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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO-OAKLAND DIVISION

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION, *et al.*,

*Plaintiffs,*

v.

DEPARTMENT OF JUSTICE, *et al.*,

*Defendants.*

Case No. 19-CV-00290-EMC

**MOTION FOR PUBLIC RELEASE OF  
HEARING TRANSCRIPT**

Courtroom: 5  
Judge: Hon. Edward M. Chen

1 Pursuant to Local Rule 7-11, Plaintiffs respectfully request that the Court publicly release  
2 a transcript, with redactions where appropriate under the Freedom of Information Act (FOIA), of  
3 the *ex parte, in camera* hearing held on Friday, September 17, 2021 at 10:30am. ECF No. 139,  
4 141. Defendants oppose this request.

5 The hearing concerns the parties' pending cross motions for summary judgment as to  
6 Defendants U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement,  
7 and U.S. Citizenship and Immigration Services. ECF Nos. 98, 108-09, 126-29, 133-34. At this  
8 hearing, the Court and Defendants' counsel were to "go over all the redactions" in documents at  
9 issue where the government has asserted the deliberative process privilege under FOIA  
10 Exemption 5. 5 U.S.C. § 552(b)(5); ECF. No. 139.

11 The release of a transcript accords with the public's right of access to court proceedings  
12 and directly furthers FOIA's underlying purpose.

13 The public enjoys a qualified First Amendment and common law right of access to  
14 judicial documents such as transcripts. *Press-Enterprise Co. v. Superior Ct. of Cal.*, 478 U.S. 1,  
15 8-9 (1986); *Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). This right  
16 "applies fully" to documents relating to dispositive civil pleadings, because "the resolution of a  
17 dispute on the merits, whether by trial or summary judgment, is at the heart of the interest in  
18 ensuring the public's understanding of the judicial process and of significant public events."  
19 *Kamakana*, 447 F.3d at 1179 (citations omitted). The presumption of public access can be  
20 overcome only for "compelling reasons," *id.*, and based on "specific, on the record findings."  
21 *Press-Enterprise*, 478 U.S. at 13-14.

22 The public's right of access to judicial documents requires the disclosure of a transcript  
23 of the *ex parte* and *in camera* hearing, with redactions where appropriate under FOIA. Release of  
24 the transcript directly furthers FOIA's basic purpose: "to ensure an informed citizenry, vital to  
25 the functioning of a democratic society, needed to check against corruption and to hold the  
26 governors accountable to the governed." *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152  
27 (1989) (citation omitted). Here, where the transcript at issue relates to dispositive motions and  
28 Defendants' withholding of records regarding surveillance of First Amendment-protected

1 speech, and where Defendants already have had multiple opportunities to justify their  
2 withholdings on the record, furthering FOIA's basic purpose is particularly important.

3 For these reasons, Plaintiffs respectfully ask that the Court publicly release a transcript of  
4 the *ex parte* and *in camera* proceeding with redactions where appropriate pursuant to FOIA.  
5 Further, if the transcript remains sealed, Defendants should be directed to publicly describe their  
6 answers more fully, including disclosure of which of the Court's questions they answered as well  
7 as the issue or document to which the answer is addressed. That sort of disclosure would help  
8 more properly balance any need for secrecy with the public's right of access.

9  
10 Respectfully submitted,

11 DATED: September 17, 2021

/s/ Matthew Cagle  
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**[PROPOSED] ORDER**

Upon Plaintiffs’ motion for the public release of a transcript of the *ex parte*, *in camera* hearing held in this matter on Friday, September 17, 2021 at 10:30 a.m., and good cause appearing, the Court hereby orders the release of the transcript with redactions where appropriate pursuant to FOIA.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Hon. Edward M. Chen  
United States District Judge