

No. 19-15472

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMERICAN CIVIL LIBERTIES UNION FOUNDATION,
AMERICAN CIVIL LIBERTIES UNION OF NORTHERN
CALIFORNIA, ELECTRONIC FRONTIER
FOUNDATION, AND RIANA PFEFFERKORN,

Appellants,

v.

UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,

Appellees,

On Appeal from the United States District
Court for the Eastern District of California
Case No. 1:18-mc-00057-LJO-EPG

WITHDRAWAL OF APPELLANTS' MOTION FOR THE COURT TO
OBTAIN FROM THE DISTRICT COURT, AND INCLUDE AS PART OF
THE APPELLATE RECORD, MATERIALS FILED IN A SEALED MATTER
IN THE DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

On April 15, 2019, Appellants American Civil Liberties Union Foundation, American Civil Liberties Union of Northern California, Electronic Frontier Foundation, and Riana Pfefferkorn moved this Court to obtain from the District Court for the Eastern District of California certain materials (“Contempt-Related Materials”) filed in a separate sealed matter (the “Sealed Case”) and include them as part of the appellate record in this case.¹ Docket Entry (“DE”) 9-1. In response, Appellee the United States Department of Justice (DOJ) took affirmative steps to confirm with the District Court that the Contempt-Related Materials from the Sealed Case would be included in the appellate record.

Appellee reports that the District Court has now “confirm[ed] that the Title III materials described in the [c]ourt’s February 11, 2019 Order . . . were before [the district c]ourt and considered by the [c]ourt when it issued the February 11, 2019 Order that is the subject of’ this appeal.” DE 16-1 at 2. If the government is correct that the materials at issue are part of the record on appeal and will be submitted to this Court on a sealed, *ex parte* basis in the course of this appeal, then Appellants agree that this Court does not need to take any additional action to provide us the relief we seek in our April 15 motion. On this representation, we withdraw our Motion.

Appellants thank the Department of Justice for addressing the concerns expressed in our Motion and for ensuring that this Court has a full and complete

¹ Because the case is sealed, Appellants have no case name or docket number for the Sealed Case.

appellate record before it.²

Dated: May 10, 2019

Respectfully submitted,

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Attorneys for Appellants

² Appellants respectfully reserve the right to renew our Motion to Include should any materials described in the motion ultimately be missing from the record. *See* DE 9, pp. 2-3.