

No. 20-828

In the Supreme Court of the United States

FEDERAL BUREAU OF
INVESTIGATION, *et al.*, *Petitioners,*

v.

YASSIR FAZAGA, *et al.* *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Ninth
Circuit

**RESPONDENTS' APPLICATION FOR LEAVE TO FILE OPPOSITION
BRIEF IN EXCESS OF WORD LIMITS**

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Pursuant to Supreme Court Rules 22 and 33.1(d), Respondents respectfully request leave to file a brief on the merits in excess of the word limit, up to a total of 17,000 words, to respond to the three top-side briefs, which contain a combined total of 24,869 words.

1. This case concerns a challenge to a Government surveillance operation conducted between 2006 and 2007 in Orange County by the Federal Bureau of Investigation that Respondents allege violated their right to freedom of religion. Respondents sued the United States, the FBI, the FBI's director in his official capacity, the assistant director in charge of the FBI's Los Angeles field office in his official capacity (collectively "Petitioners"), and five individual FBI agents ("Individual Capacity Respondents"). Respondents brought a total of eleven claims, including one under the Foreign Intelligence Surveillance Act ("FISA"), 50 U.S.C. 1810. After the district court dismissed all but Respondents' FISA claim on state secrets grounds, the court of appeals reversed in part, holding that FISA's procedures for in camera ex parte review codified at 50 U.S.C. 1806 displace the state secrets privilege's dismissal remedy in electronic surveillance cases. *Fazaga v. FBI*, 965 F.3d 1015 (9th Cir. 2020). Petitioners successfully sought certiorari before this Court, with support from the five Individual Capacity Respondents.

2. On July 30, 2021, Petitioners and the Individual Capacity Respondents filed three opening briefs. The Individual Capacity Respondents' two briefs contain 8,424 words and 3,795 words, respectively. The first has approximately 14 pages of argument, and the second approximately 8 pages of argument. These briefs raise

various legal arguments absent from Petitioners' opening brief, including extensive argument concerning the Seventh Amendment and Due Process Clause that Petitioners never made.

3. To respond to all the arguments raised in the three top-side briefs, Respondents request 4,000 additional words, or approximately 15 additional pages. Respondents believe this additional space is necessary to respond adequately to the 22 additional pages of separate argument raised by the top-side parties.

4. Petitioners' and Individual Capacity Respondents' counsel take no position on this request. This application is timely under Rule 33.1(d), as Respondents have submitted it more than 15 days before the date on which Respondents' brief is due, which is September 21, 2021.

Respectfully submitted,

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