

20-828 FBI V. FAZAGA

DECISION BELOW: 965 F.3d 1015

LOWER COURT CASE NUMBER: 12-56867, 13-55017

QUESTION PRESENTED:

Section 1806 of the Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. 1801 *et seq.*, governs the "[u]se of information" obtained or derived from electronic surveillance for foreign-intelligence purposes under FISA. 50 U.S.C. 1806. Section 1806 (c) and (d) require the federal or a state government to provide notice to an aggrieved person whenever it intends to introduce such information as evidence in any proceedings against that person. Section 1806(e) affords the aggrieved person the opportunity to move to suppress any such information that was not obtained in compliance with FISA. And Section 1806(f) establishes special *in camera* and *ex parte* procedures to determine the admissibility of such evidence, if the Attorney General attests that a typical adversarial hearing would harm the national security of the United States. The question presented is as follows:

Whether Section 1806(f) displaces the state-secrets privilege and authorizes a district court to resolve, *in camera* and *ex parte*, the merits of a lawsuit challenging the lawfulness of government surveillance by considering the privileged evidence.

CERT. GRANTED 6/7/2021