

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HAROLD WEISBERG,

Appellant/Cross-Appellee,

v.

U.S. DEPARTMENT OF JUSTICE

Appellee/Cross-Appellant.

AND CONSOLIDATED Nos. 82-1274
83-1722 and 83-1764

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPLY SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
CERTIFICATE OF SERVICE.....	4

TABLE OF AUTHORITIES

Cases:

Center For National Security Studies, v. Central Intelligence Agency, 711 F. 2d 409 (D.C. Cir. 1983).....	2
Green v. Department of Commerce, 618 F. 2d 836 (D.C. Cir. 1980).....	2
McNally v. Pulitzer Publishing Co. 532 F. 2d (8th Cir.), <u>cert. denied</u> , 429 U.S. 855 (1976).....	2
Perfect Fit Industries, Inc. v. Acme Quilting Co., 618 F. 2d 950 (2d Cir. 1980).....	2

Statutes:

Federal Courts Improvement Act.....	1
403(e) of Pub. L. 97-164.....	1,2
28 U.S.C. 1292(a)(1).....	1
28 U.S.C. 1295(a)(2).....	1
28 U.S.C. 1346.....	1

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In our opening supplemental brief, we demonstrated that: (1) the transition provision of the Federal Courts Improvement Act, §403(e) of Pub. L. 97-164, preserved the jurisdiction of this Court over the entire case, since an appeal was pending prior to October 1, 1982; and (2) alternatively, 28 U.S.C. 1295(a)(2) is not involved in this case, because the district court's jurisdiction did not rest "in whole or in part" on 28 U.S.C. 1346. We take this opportunity to reply to certain assertions in plaintiff's opening supplemental brief.

1. Plaintiff has failed even to mention §403(e) of the Federal Courts Improvement Act. Accordingly, we stand upon the analysis of this provision presented in our opening supplemental brief.

2. Plaintiff's reliance upon Rule 54(b), Fed. R. Civ. P., is misplaced. Where, as here, the district court has finally adjudicated all of the plaintiff's FOIA claims, appeal lies under 28 U.S.C. 1292(a)(1). See Center For National Security Studies v. Central Intelligence Agency, 711 F. 2d 409, 410-414 (D.C. Cir. 1983).¹ As we demonstrated in our opening brief (at 3-4 n. 2), Rule 54(b) has no application to appeals brought under 28 U.S.C. 1292(a)(1), since that statute makes the grant or denial of injunctive relief immediately appealable without regard to finality. See also Perfect Fit Industries, Inc. v. Acme Quilting Co., 618 F. 2d 950, 952 n. 4 (2d Cir. 1980) (denial of injunctive relief immediately appealable); McNally v. Pulitzer Publishing Co., 532 F. 2d 69 (8th Cir.), cert. denied, 429 U.S. 855 (1976) (same). For the same reason, Rule 59(e) is also inapplicable. Thus, this Court retained jurisdiction to decide the entire case under §403(e) of the

¹ Green v. Department of Commerce, 618 F. 2d 836 (D.C. Cir. 1980), is not to the contrary. In Green, as in Center For National Security Studies, the district court had not finally resolved the entire FOIA claim, but had merely denied injunctive relief with respect to a small part of that claim; here in contrast, the entire FOIA claim had been decided on the merits when plaintiff filed his appeal. Center For National Security Studies clearly establishes the proposition that plaintiff's finally-adjudicated FOIA claims were appealable under 28 U.S.C. 1292(a)(1) when plaintiff filed his notice of appeal.

Federal Courts Improvement Act, since plaintiff had filed a timely notice of appeal under Rule 4(a)(3), Fed. R. App. P., from the district court's final disposition of his FOIA claims.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in our opening supplemental brief, this Court should determine that it had jurisdiction to decide the instant case in its entirety.

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