

**UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.**

IN RE MOTION FOR)
PUBLICATION OF RECORDS)
) Docket No. Misc. 19-01
)
)

**NOTICE OF SUPPLEMENTAL INFORMATION SUPPORTING
JOHN SOLOMON AND SOUTHEASTERN LEGAL FOUNDATION'S
MOTION FOR PUBLICATION OF RECORDS**

Kimberly S. Hermann
Georgia Bar No. 646473
Anna Celia Howard
Georgia Bar No. 747472
SOUTHEASTERN LEGAL FOUNDATION
560 W. Crossville Rd., Ste. 104
Roswell, GA 30075
(770) 977-2131
khermann@southeasternlegal.org

December 18, 2019

On May 22, 2019, Southeastern Legal Foundation and John Solomon (Movants) moved the Foreign Intelligence Surveillance Court (FISC) to publish records regarding: 1) any orders, opinions, decisions, sanctions, or other records related to any investigation or finding that any attorney violated the Foreign Intelligence Surveillance Court Rules of Procedure (FISC Rules) or applicable Rules of Professional Conduct in connection with the Carter Page Foreign Intelligence Surveillance Act (FISA) application and renewals or the Section 702 violations the government orally advised this Court about on October 24, 2016; 2) any orders, opinions, decisions, sanctions, or other records finding that any attorney violated or did not violate FISC Rule of Procedure 13, specifically, in connection with the Carter Page FISA application and renewals or the Section 702 violations the government orally advised this Court about on October 24, 2016; and 3) any records regarding any referral or complaint made to any attorney disciplinary body for conduct related to the Carter Page FISA application and renewals or the Section 702 violations the government orally advised this Court about on October 24, 2016.

Pursuant to the First Amendment and FISC Rule of Procedure 62, Movants now submit this supplemental notice to bring to the Court's attention new public disclosures made in the *U.S. Department of Justice Office of the Inspector General's Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* released on December 9, 2019 (IG Report). The IG Report identifies at least 17 significant errors or omissions in the Carter Page FISA application and renewals, and many more Woods Procedures violations.

I. Introduction.

Attorneys play an integral role in the execution of our system of laws. As officers of the court, licensed lawyers voluntarily submit to regulatory governance under strict codes of conduct administered by quasi-governmental bodies charged with enforcement of those codes. On top of that, courts maintain and enforce their own rules to protect the integrity of the judicial system. While no rule is more important than another, an attorney's duty to be open and honest with the court at all times must always remain at the forefront and should guide every action an attorney takes. This is true not only for private attorneys, but especially for our country's government attorneys. President Bill Clinton's surrender of his law license on his last day in office, followed by disbarment by the U.S. Supreme Court for his violations of the Rules of Professional Conduct, remind us that no one is above the law.

Movants file this notice because on December 9, 2019, the United States Department of Justice Office of Inspector General (OIG) released the IG Report and revealed that we again face a judicial crisis—this time it comes to us courtesy of the FBI and DOJ, and in the form of fraud on this Court. Because of the IG Report, we now know that to obtain permission to conduct surveillance of American citizen Carter Page (and by extension, a major party presidential campaign), our nation's highest law enforcement officers, national security advisors, and government attorneys lied to, misled, and withheld material facts from this Court. And because of the IG Report, we now know that these misrepresentations amount to professional

misconduct, including violations of the Rules of Professional Conduct in the various states where the attorneys are licensed and violations of the FISC Rules.

The public has an interest in transparent court proceedings, and this Court has the inherent power to release the requested records. Movants filed their original motion because facts had come to light surrounding an overall lack of candor by the FBI and DOJ to this Court regarding the series of memorandums known as the “Steele dossier,” which served as the primary basis for the application and renewal requests. We had also learned that DOJ and FBI officials approved the Carter Page applications and renewals, some without even fully reading them. This was despite warnings by multiple persons in the FBI, DOJ, and State Department that the applications and renewals were based largely on unverifiable and debunked information. And rather than address those concerns, the public record showed that the DOJ and FBI presented the already debunked information to this Court as both true and verified. We now know that the instances of alleged misconduct detailed in Movants’ original motion were just the tip of the iceberg, and that there is nothing “alleged” about the FBI and DOJ’s misconduct.

This Court has stringent rules governing behavior of attorneys who come before it and the FISA applications that it considers. And it must, because it decides whether a federal agency can surveil American citizens—and in this case, a major party presidential campaign. Movants recognize that this Court takes that obligation seriously and only wishes that the attorneys involved in the Carter Page FISA application and renewals did too. The federal government’s burden to tell the truth,

disclose information timely, and update this Court often is particularly critical because the parties being surveilled are not only not represented, but do not even know that they are the subject of a FISA application.

Movants filed their original motion as an exercise of their common law right of access and First Amendment right of access to judicial records and asked the Court to make public any judicial records related to any such misconduct. Movants file this notice because they and the American people now know that such records must exist. The integrity and reputation of this Court—and the FISA process more generally—hinge on how this Court handled the FBI and DOJ’s misconduct, and therefore the Court should make public any related records. The public has an interest in transparent court proceedings, and this Court has the inherent power to release the requested records.

II. The IG Report’s disclosure of dozens of Woods Procedures violations and 17 significant errors or omissions in the Carter Page FISA application and renewals supports this Court’s publication of records related to the FBI and DOJ’s misconduct.

The OIG undertook its “review to examine certain actions taken by the FBI and the DOJ during an FBI investigation opened on July 31, 2016, known as ‘Crossfire Hurricane,’ into whether individuals associated with the Donald J. Trump for President Campaign were coordinating, wittingly or unwittingly, with the Russian government’s efforts to interfere in the 2016 U.S. presidential election.” IG Report at i.¹ The OIG focused on “whether the Department and the FBI complied with

¹ The Special Counsel ultimately concluded that members of the Trump Campaign did not conspire or coordinate with the Russian government in its election interference activities. Special Counsel Robert

applicable legal requirements, policies, and procedures in taking the actions [it] reviewed or, alternatively, whether the circumstances surrounding the decision indicated that it was based on inaccurate or incomplete information, or considerations other than the merits of the investigation.” *Id.* at i-ii. The OIG ultimately found “at least 17 significant errors or omissions in the Carter Page applications, and many additional errors in the Woods Procedures.” *Id.* at xiii.

The IG Report is over 400 pages. It speaks for itself and Movants certainly do not seek to restate the IG Report’s findings. Indeed, it is ripe with example after example of how “FBI personnel fell far short of the requirement that they ensure that all factual statements in a FISA application are ‘scrupulously accurate’” and how factual assertions relied upon in the Carter Page FISA application and renewals were “inaccurate, incomplete, or unsupported by the appropriate documentation, based upon information the FBI had in its possession” when it sought the application and renewals from this Court. *Id.* at viii; *see also id.* at xi-xiii. For example, the IG Report informs us that the FBI and DOJ failed to tell this Court that Carter Page had been approved as an operational contact for another federal agency,² lied to this Court when they stated that Christopher Steele’s prior reporting had been corroborated and used in criminal proceedings, failed to tell this Court that Christopher Steele’s reports were based partially on an unreliable sub-source, lied to this Court about Christopher

S. Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* (March 2019).

² Not only did they fail to disclose Carter Page’s status with the other U.S. government agency to the Court, but an FBI attorney actually altered an email from the other agency so that the email stated that Mr. Page was “not a source” for the other agency. *Id.* at xi.

Steele's contacts with reporters, failed to present this Court with statements from George Papadopoulos that neither he nor anyone in the Trump campaign were collaborating with Russia or outside groups like WikiLeaks, failed to present this Court with several of Carter Page's statements which undermined a major narrative in the FISA application and renewals, failed to disclose to this Court statements that severely undermined Christopher Steele's credibility, failed to correct false information relied on by this Court to grant the Carter Page application, and most egregiously, they failed to tell this Court that Christopher Steele's reports were funded by the Democratic Party and/or the Democratic National Committee, were going to the Clinton campaign, and that Steele was "desperate that Donald Trump not get elected and was passionate about him not being the U.S. President." *Id.* at i-xix.

While that list appears long—and it is—it is really only a two-second glimpse into the fraud committed on this Court. As officers of the court, attorneys have an obligation to be open and honest with the court at all times, to not mislead the court, and to disclose all facts (good and bad) in ex parte proceedings like those before this Court. The FBI and DOJ must be held accountable for lying, misleading, falsifying documents, and withholding pertinent information from this Court to obtain permission to surveil Carter Page and a major party presidential campaign.³ The integrity of the federal judiciary and our country's justice system depend on it.

³ This includes those in supervisory positions. The ABA Model Rules of Professional Conduct state that a supervising lawyer is responsible for another lawyer's violation of the Rules if the lawyer knows or reasonably should have known of the misconduct. See ABA Model Rule 5. It is hard to imagine a more sensitive situation than asking to spy on a major party presidential campaign. For any

III. Conclusion.

The public now knows with certainty that the FBI and DOJ attorneys engaged in misconduct before this Court. But the public does not know what this Court, or any other court or licensing board or bar association, has done about it. The FBI and DOJ should welcome public disclosure of records regarding attorney misconduct so that this misconduct can be addressed and so that proper procedures can be put in place to ensure this misconduct never happens again. Movants urge this Court to release the requested records because leaving the issue of how this Court addressed the FBI and DOJ's misconduct to public speculation undermines the integrity of both this Court and the FISA process in general.

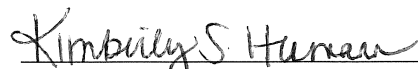
For these reasons and the reasons in their original motion, the Movants request that this Court make public: 1) any orders, opinions, decisions, sanctions, or other records related to any investigation or finding that any attorney violated the FISC Rules or applicable Rule of Professional Conduct in connection with the Carter Page FISA application and renewals or the Section 702 violations disclosed by this Court's previous public order in spring 2017; 2) any orders, opinions, decisions, sanctions, or other records finding that any attorney violated or did not violate FISC Rule of Procedure 13, specifically, in connection with the Carter Page FISA application and renewals or the Section 702 violations disclosed by this Court's

signatories, managers, or supervisors to plead ignorance here is not only hard to believe, but is also insulting to this Court and the American people who expect more from their country's top law enforcement.

previous public order in spring 2017; and 3) any records regarding any referral or complaint made to any attorney disciplinary body for conduct related to the Carter Page FISA application and renewals or the Section 702 violations disclosed by this Court's previous public order in spring 2017.

Dated: December 18, 2019

Respectfully submitted,



Kimberly S. Hermann

Georgia Bar No. 646473

Anna Celia Howard

Georgia Bar No. 747472

SOUTHEASTERN LEGAL FOUNDATION

560 W. Crossville Rd., Ste. 104

Roswell, GA 30075

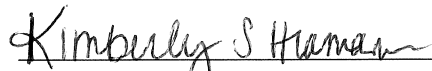
(770) 977-2131

khermann@southeasternlegal.org

CERTIFICATE OF SERVICE

I, Kimberly S. Hermann, certify that on this day, December 18, 2019, a copy of the Notice of Supplemental Information Supporting John Solomon and Southeastern Legal Foundation's Motion for Publication of Records was served on the following persons by UPS overnight delivery:

Department of Justice
c/o Litigation Security Group
145 N Street NE
Suite 2W115
Washington, DC 20530



Kimberly S. Hermann
Georgia Bar No. 646473
SOUTHEASTERN LEGAL FOUNDATION
560 W. Crossville Rd., Ste. 104
Roswell, GA 30075
(770) 977-2131
khermann@southeasternlegal.org