

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

U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT
2020 NOV -3 PM 4:12
LEEANN FLYNN HALL
CLERK OF COURT

IN RE CARTER W. PAGE, A U.S. PERSON

Docket Numbers: 16-1182, 17-0052, 17-0375, & 17-0679

**NOTICE OF POTENTIAL USE OR DISCLOSURE OF FISA INFORMATION
SUBJECT TO THE COURT'S ORDER DATED JUNE 25, 2020**

The United States of America, by and through the undersigned Department of Justice Attorney, hereby submits this notice of potential future use or disclosure of information acquired or derived from four Foreign Intelligence Surveillance Act (FISA) applications targeting Carter W. Page (Page) in docket numbers 2016-1182, 2017-0052, 2017-0375, and 2017-0679 (the Page FISAs). Consistent with the parameters set by the Court for the use or disclosure of Page FISA information with respect to future litigation brought by Page, *see* In Re Carter W. Page, docket nos. 16-1182, 17-52, 17-375, 17-679, dated June 25, 2020 (J. Boasberg) (June 25, 2020 Order), any such future use or disclosure will only be made insofar as necessary to the good-faith conduct of the litigation of claims by Page under the Federal Tort Claims Act (FTCA) and the Patriot Act.

I. BACKGROUND

On January 7, 2020, the Court ordered the Government to provide information regarding the handling and disposition of information acquired pursuant to the Page FISAs. *In Re Carter W. Page*, docket nos. 16-1182, 17-52, 17-375, 17-679, dated January 7, 2020 (J. Boasberg) (January 7, 2020 Order). The January 7, 2020 Order was issued following the December 9, 2019 release of a Department of Justice (DOJ) Office of the Inspector General (OIG) report titled,

Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane

Investigation (the OIG Report), and four letters submitted by the Government pursuant to Rule 13(a) of the Court's Rules of Procedure dated July 12, 2018, October 25, 2019, November 27, 2019 and December 9, 2019, which detailed material omissions and misstatements with respect to the Page FISAs. On February 5, 2020, the Government filed an initial Response to the Court's January 7, 2020 Order (February 5 Response), and filed Supplemental Responses on February 28, April 17, and October 21, 2020.

In the June 25, 2020 Order, the Court analyzed whether the Government's retention, use and disclosure of Page FISA information as set forth in its responses comported with certain procedures and criminal provisions of FISA. *See* 50 U.S.C. §§ 1801(h)(1), 1809(a)(2), 1821(4)(A), and 1827(a)(2). Based on an exception to Sections 1809(a)(2) and 1827(a)(2) for actions necessary to mitigate or prevent the very harms those sections are designed to address, the Court set forth the parameters for the use or disclosure of Page FISA information in five limited circumstances described by the Government and analyzed by the Court.¹ Of particular relevance here, the Court held that "[w]ith regard to any future claims brought by Page seeking redress for unlawful electronic surveillance or physical search or for disclosure of the results of such surveillance or search, the government may use or disclose Page FISA information insofar as necessary to the good-faith conduct of the litigation of such claims." *Id.* at 20. The

¹ More specifically, following its analysis of applicable FBI minimization procedures as required by FISA (§§ 1801(h)(1) and 1821(a)(2)), as well as Sections 1809(a)(2) and 1827(a)(2) and certain limited exceptions to those criminal provisions of the Act, the Court set parameters for the use or disclosure of Page FISA information in the following five circumstances: (1) certain identified ongoing third-party litigation pursuant to the Freedom of Information Act (FOIA); (2) ongoing and anticipated FOIA and civil litigation with Page; (3) FBI review of the conduct of its personnel involved in the Page investigation; (4) DOJ OIG monitoring of the implementation of one of the recommendations (Recommendation 9) stemming from the OIG Report; and (5) the review of the conduct of Government personnel in the Page and broader Crossfire Hurricane investigations. *Id.* at 20-21.

Government advises the Court that Page has now filed administrative claims under the FTCA and Patriot Act based on electronic surveillance and physical search authorized by the Page FISAs.

II. POTENTIAL USE OR DISCLOSURE OF PAGE FISA INFORMATION

As noted by the Court, at the time of the June 25, 2020 Order, Page had already filed a complaint against DOJ alleging “FOIA and Privacy Act violations, including that he was improperly denied access to his own records.” *Id.* at 12 (citing Feb. 5 Response at 26).

Additionally, Page's attorneys had advised DOJ that Page would likely bring more claims against the government, “including violations of the Patriot Act, FISA, the Privacy Act, and the Federal Tort Claims Act.” *Id.* In anticipation of such future litigation, and consistent with the exception to Sections 1809(a)(2) and 1827(a)(2) for actions necessary to prevent the very harms those sections are designed to address, the Court found that those sections did not prohibit the use or disclosure of Page FISA information if necessary for the good-faith conduct of “any future claims brought by Page seeking redress for unlawful electronic surveillance or physical search or for disclosure of the results of such surveillance or search.” *Id.* at 20.

In October 2020, the National Security Division (NSD) was advised by the Torts Branch of the Civil Division of DOJ that Page had filed administrative claims seeking damages under both the FTCA and the Patriot Act based on injuries allegedly caused by unlawful electronic surveillance and physical search. The Torts Branch further advised that it reasonably expected litigation would arise from these claims and, accordingly, will request the preservation of materials relevant to the litigation, including Page FISA information. Of note, these materials are likely already being preserved in response to Page's FOIA and Privacy Act claims discussed above; however, the Torts Branch has not finalized its preservation request, and the breadth of

the request is not known. Accordingly, the Government hereby notifies the Court that some Page FISA information will also be retained in response to Page's FTCA and Patriot Act claims, and that the Government will only use or disclose Page FISA information insofar as necessary for the good-faith conduct of those claims. Should the Government ultimately determine that the disclosure of Page FISA information to Page or any third party is necessary for the good-faith conduct of Page's FTCA or Patriot Act claims, the Government will notify the Court before making any such disclosure.

Dated: 11/3/2020

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Ben K" followed by a flourish, with the word "for" written in small letters above the end of the signature.

Melissa MacTough
Deputy Assistant Attorney General
National Security Division
U.S. Department of Justice