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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

U.S. FOREIGN  
INTELLIGENCE  
SURVEILLANCE COURT

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MAURA PETERSON  
CLERK OF COURT

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

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

**GOVERNMENT'S MOTION TO PERMIT THE USE OR DISCLOSURE OF FISA  
INFORMATION FOR THE PURPOSE OF REDACTING THAT INFORMATION TO  
PREVENT IMPROPER USE OR DISCLOSURE**

By this motion, the government, through the undersigned Department of Justice (DOJ) attorney, seeks an order permitting the use or disclosure of information acquired from one or more of the 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) as comporting with Sections 1801(h)(1), 1809(a)(2), 1821(4)(A), and 1827(a)(2) of FISA.

The Federal Bureau of Investigation (FBI) and the Department of Justice (DOJ) have received requests from members of Congress for materials related to the FBI's Crossfire Hurricane investigation and the DOJ Office of Inspector General's related review. Responsive documents are reasonably believed to contain Page FISA information. Through this motion, the government seeks permission for FBI and DOJ to disclose, internally within FBI and DOJ, responsive materials that likely contain Page FISA information, for the purpose of identifying and redacting all Page FISA information from the material to prevent disclosure in violation of sections 1809 and 1821 of FISA. This Court previously authorized the use or disclosure of Page FISA information where "necessary to remedy or deter the types of harm at which §§ 1809 and

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1827 are addressed.” *In Re Carter W. Page*, docket nos. 16-1182, 17-52, 17-375, 17-679 at 20 (J. Boasberg) (FISA Ct. June 25, 2020). Through this motion, the government requests an order authorizing the internal disclosure and review of Page FISA information for the purpose of redacting that information, which is necessary to prevent the type of harm that sections 1809 and 1827 are designed to prevent—namely in this instance, the inadvertent disclosure of unauthorized collection to members of Congress.

**I. BACKGROUND**

On December 9, 2019, the DOJ Office of the Inspector General (OIG) released a report titled, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (the *OIG Report*), which detailed material omissions and misstatements with respect to the Page FISAs.<sup>1</sup> As set forth therein, DOJ assessed that, at least as of the time of the third and fourth applications targeting Page in docket numbers 17-375 and 17-679, if not earlier, there was insufficient predication to establish probable cause to believe that Page was acting as an agent of a foreign power. 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, and an explanation as to why the retention of such information, and any contemplated use or disclosure of it, comports with sections 1801(h)(1), 1809(a)(2), 1821(4)(A), and 1827(a)(2) of FISA.<sup>2</sup> The government filed an initial Response on February 5, 2020 (February 5 Response),

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<sup>1</sup> See also 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.

<sup>2</sup> It is a criminal offense to “intentionally” engage in “electronic surveillance under color of law except as authorized by” statute, or disclose or use “information obtained under color of law by electronic surveillance, knowing or having reason to know that the information was obtained through electronic surveillance” that had not been properly authorized. 50 U.S.C. § 1809(a). It

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and three Supplemental Responses on February 28 (February 28 Response), April 17, 2020 (April 17 Response), and October 21, 2020 (October 21 Response).

On June 25, 2020, the Court issued an Opinion and Order Regarding the Use and Disclosure of Information obtained or derived from the Page FISAs, which found that the criminal provisions in sections 1809(a)(2) and 1827(a)(2) applied to the use or disclosure of information acquired from the above dockets. Beginning with a previously recognized exception to sections 1809(a)(2) and 1827(a)(2) for actions necessary to mitigate or prevent the very harms those sections were designed to address, the Court approved the use or disclosure of Page FISA information in five limited circumstances described by the government and analyzed by the Court.<sup>3</sup> The Court also required that the government file a written report on the retention, use, or disclosure of Page FISA information every six months. *Id.*

On November 23, 2020, the Court permitted the disclosure of certain Page FISA information to Congress. *See Order Regarding Further Disclosures of Information, Docket Nos.*

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is similarly an offense to intentionally conduct a physical search under color of law within the United States to obtain foreign intelligence information “except as authorized by statute,” or to intentionally disclose or use information obtained by such a search “knowing or having reason to know that the information was obtained through physical search not authorized by statute.” *Id.* at § 1827(a).

<sup>3</sup> The Court recognized the following five circumstances as falling within the implied exception to the proscriptions in sections 1809(a) and 1827(a), first recognized in *Opinion and Order Regarding Fruits of Unauthorized Electronic Surveillance*, Docket Nos. 06-1482, 07-1492, 08-1462, 09-772 at pp. 7-8 (December 10, 2010): (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 investigation and prosecution of potential crimes relating to the Crossfire Hurricane investigations. June 25, 2020 Order at 20-21.

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16-1182, 17-52, 17-375, 17-679, (FISA Ct. Nov. 23, 2020) (November 23, 2020 Order). In the October 21 Response, the government advised the Court that the FBI had shared a document containing Page FISA information with the Senate Judiciary Committee (SJC) and anticipated that witnesses called before the committee would be required to orally disclose Page FISA information in response to questions posed by the committee. As reported in the October 21 Response, the committee at the time was actively investigating the conduct of government personnel involved in the FBI's Crossfire Hurricane investigation and the Chief Investigative Counsel for SJC had indicated that the Committee anticipated making one or more criminal referrals at the conclusion of its investigation. The Court found that the "circumstances described by the government" were consistent with the parameters for the disclosure of Page FISA information set forth in the June 25, 2020 Order. *Id.* at 2.

On June 9, 2023, the Court permitted the disclosure of a small amount of Page FISA information contained in the Classified Appendix created by Special Counsel Durham to select members of Congress and staff. *See* Order Respecting the Limited Disclosure of Information in the Classified Appendix to the Report on Matters Related to Intelligence Activities and Investigations Arising out of the 2016 Presidential Campaigns, Nos. 16-1182, 17-52, 17-375, 17-679 (FISA Ct. June 9, 2023) (June 9, 2023 Order). In the government's June 7, 2023 motion for permission to disclose the Classified Appendix, the government acknowledged that there was not an active congressional investigation into the conduct of the Crossfire Hurricane investigation, but argued that Congress needed a full record of the Durham investigation in order to perform ongoing oversight of the government's use of its FISA authority as set forth in 50 U.S.C. § 1871. Additionally, the government anticipated future hearings involving additional reforms to FISA, during which Crossfire Hurricane would inevitably be discussed. The FISC agreed that

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disclosure within that “narrow context . . . align[ed] with the purposes for use or disclosure of Page FISA information set out in the June 25, 2020 Order.” *Id.* at 4.

## **II. REQUESTS FROM CONGRESS**

The FBI and DOJ received a request dated March 17, 2025, from the Chairman of the Senate Permanent Subcommittee on Investigations and the Chairman of the Senate Judiciary Committee (SJC) that asked for unredacted copies of all 165 transcribed interviews conducted by OIG during its review of the Page FISAs (the SJC Request). Based on prior reviews of OIG transcripts in response to FOIA requests, it is believed that this material includes Page FISA information. The SJC request did not cite to an active investigation into potential crimes related to Crossfire Hurricane, but did incorporate an earlier request for unredacted transcripts sent to the DOJ Inspector General dated April 25, 2023, which referred to a need for oversight of OIG to ensure the efficiency and effectiveness of operations, as well as efforts to expose corruption within the FBI.

The FBI received a request dated March 19, 2025, from the Chairman of the House Judiciary Committee (HJC) that asked for numerous documents likely to contain Page FISA information, including (i) all documents and communications referring or relating to the so-called Steele dossier or the Crossfire Hurricane investigation,<sup>4</sup> (ii) all documents or

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<sup>4</sup> The request provided examples of documents responsive to (i) as “including, but not limited to”: (a) the Crossfire Hurricane investigation's opening and closing electronic communications, signed payment receipts, case expenditure documents, admonishments, and consent forms; (b) all FD-302 and FD-1023 forms generated as part of or in relation to the Crossfire Hurricane investigation; (c) all briefing documents concerning the Crossfire Hurricane investigation provided to the FBI Director or other senior executive officials, including the President, Vice President, Attorney General, and Central Intelligence Agency Director, from January 1, 2016 to January 19, 2017; (d) the document titled “CF - CH comparison” created during the Durham investigation in or around December 2021, comparing the treatment of the Crossfire Hurricane

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communication cited or otherwise referenced in Special Counsel Durham's report, and (iii) all transcripts and reports of interviews conducted by Special Counsel Durham and his team (the HJC Request). The HJC request did not reference an active investigation into potential crimes related to Crossfire Hurricane, but stated that the Committee still must fully assess and understand the lengths to which the FBI went to interfere in the 2016 presidential election.

**III. PROPOSED USE OR DISCLOSURE OF PAGE FISA INFORMATION**

The government is not seeking authority to disclose Page FISA information to Congress in response to the SJC and HJC Requests. Instead, the government proposes to review the materials requested by Congress for the purpose of redacting any Page FISA information that happens to appear therein. This review process will necessarily involve internal sharing of Page FISA information with FBI and DOJ personnel who previously did not have access to the information. In particular, the FBI has created a task force of approximately 25 people who, in coordination with the Office of General Counsel, will review and redact responsive materials. Similarly, OIG, or FBI on its behalf, will need to access and review responsive transcripts to redact Page FISA information prior to production to the SJC.

In this matter, FBI is retaining unauthorized collection from the Page FISAs for very specific reasons detailed in prior motions and orders. The present issue arises because the unauthorized collection happens to be co-mingled with official FBI and DOJ records that must be maintained pursuant to federal recordkeeping rules. Where retention of unauthorized

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investigation and the Clinton investigation; (e) all Letterhead Memoranda drafted in connection with the Crossfire Hurricane investigation; (f) all Foreign Intelligence Surveillance Act applications and returns associated with the Crossfire Hurricane investigation; (g) any documents declassified in or around January 2021 referring or relating to the Crossfire Hurricane investigation, the Steele dossier, or related matters.

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collection is for narrow, time-limited purposes and also co-mingled with records that must be accessed for other, legitimate governmental activities, the government proffers that any steps that must be taken to prevent unnecessary disclosure of the unauthorized collection would fall squarely within the exception to sections 1809 and 1827 recognized by this Court in the June 25, 2020 Order. *See also* Opinion and Order Requiring Destruction of Information Obtained by Unauthorized Electronic Surveillance, Docket Nos. 06-1482, 07-1492, 08-1462, 09-772 at 5 (FISA Ct. May 13, 2011) (“in limited circumstances, prohibiting use or disclosure of the results of unauthorized electronic surveillance would be so absurd or glaringly unjust ... as to [ call into] question whether Congress actually intended what the plain language of Section 1809(a)(2) so clearly imports”) (quoting *United States v. Rodgers*, 466 U.S. 475, 484 (1984)). Once the reasons for retaining the particular Page FISA collection are no longer operative and there is no more foreseeable need for that particular information, the collection should be deleted so that the government may continue to use the other records with which the collection was intermingled. *See* June 25, 2020 Order at 7 (concluding that “some permissible forms of use and disclosure of Page FISA information” were reasonably anticipated and, accordingly, did not order the destruction of the Page FISA information); *see also* *Opinion and Order Requiring Destruction of Information Obtained by Unauthorized Electronic Surveillance*, Docket Nos. 06-1482, 07-1492, 08-1462, 09-772 at 9 (FISA Ct. May 13, 2011) (requiring the deletion of overcollected information notwithstanding the fact that the statute does not prohibit retention). Accordingly, although the principle being articulated by the government may have applicability in other circumstances, its application in the present circumstance will be limited.

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**IV. THE PROPOSED USE OR DISCLOSURE OF PAGE FISA MATERIAL IS CONSISTENT WITH SECTIONS 1801(h)(1), 1809(a)(2), 1821(4)(A), AND 1827(a)(2) OF FISA**

The Supreme Court has recognized that each House of Congress has the implicit authority to gather information in support of its legislative powers. *See McGrain v. Daugherty*, 273 U.S. 135, 174-175 (1927) (“[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change”). Where a committee chairman asks for information from the Executive Branch, there is an “implicit constitutional mandate to seek optimal accommodation.” *See United States v. Am. Tel. & Tel.*, 567 F.2d 121, 127 (D.C. Cir. 1977). Indeed, this Court has twice approved of the limited disclosure of Page FISA information to Congress under the parameters articulated in the June 25, 2020 Order, based in part on respect for congressional oversight authority. *See, e.g.*, June 9, 2023 Order at 4 (approving sharing with congressional personnel “engaged in ongoing oversight of the Government’s exercise of FISA authorities”). Even without an active investigation into Crossfire Hurricane, Congress continues to perform oversight of the FBI, DOJ, and the Government’s use of its FISA authority. *See* 50 U.S.C. § 1871. Accordingly, the executive branch has an obligation to engage in the accommodation process by supplying responsive information that is not privileged or otherwise protected by law. However, because Page FISA information is intertwined and co-mingled with non-FISA information, complying with that obligation will require the government to review materials that may contain Page FISA information so that the Page FISA information can be identified and removed from any response.

The government’s access and review will prevent the types of harm at which section 1809 and 1827 are addressed. Specifically, the government is seeking to comply with its obligation to accommodate the request for information from a co-equal branch of government

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while preventing the disclosure of Page FISA information. In many respects, this situation is similar to the circumstance approved by the Court for use or disclosure of Page FISA information in response to FOIA requests. Specifically, the Court held that FOIA does not necessarily conflict with sections 1809(a)(2) and 1827(a)(2) because the FOIA statute specifically exempted such unauthorized collection from disclosure under 5 U.S.C. § 552(b)(3)(A). *See id.* at 10. However, the Court recognized that, practically speaking, FOIA litigation would still not be able to proceed if sections 1809(a)(2) and 1827(a)(2) barred “FBI and other DOJ personnel working on that litigation from using or disclosing such information among themselves” if FISA information appeared in documents responsive to FOIA requests. *Id.* at 11. Because Page FISA information is comingled with non-Page FISA information in Crossfire Hurricane materials, good-faith review required government personnel to access Page FISA information. Accordingly, the Court allowed the government personnel to use or disclose Page FISA information, but admonished the government to “take into account the strictures of §§ 1809(a)(2) and 1827(a)(2) in assessing what should be disclosed to the plaintiffs.” *Id.* at 12. Essentially, the government was permitted to internally review and disclose Page FISA information so that such information could be removed from the materials ultimately produced to the FOIA plaintiffs.

Similarly, sections 1809(a)(2) and 1827(a)(2) should not bar FBI and other DOJ personnel from reviewing or internally disclosing Page FISA information when responding to the SJC and HJC Requests. The materials requested by SJC and HJC will help guide future hearings and ultimately determine whether additional reforms of FISA are needed to prevent future unauthorized collection. However, because Page FISA information is comingled with non-FISA information, the review and redaction of Page FISA information is a necessary first step to providing those materials. The redaction of Page FISA information from government records

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*ipso facto* mitigates the harm of unauthorized FISA collection by preventing the further disclosure of that information. Accordingly, the review and redaction of materials containing Page FISA falls within the implicit exception to sections 1809(a)(2) and 1827(a)(2) recognized by this Court. A contrary reading of sections 1809(a)(2) and 1827(a)(2) would impede the robust oversight of the government's FISA authority mandated by Congress and prevent the government from access and use of its records for legitimate purposes.

The government may very well receive additional requests for records containing some amount of Page FISA information. Thus, the government respectfully requests the Court to recognize that the implicit exception to sections 1809(a)(2) and 1827(a)(2) to access unauthorized collection to facilitate its deletion or redaction would apply any time the government must retain unauthorized collection to satisfy obligations previously recognized as exceptions to those sections' proscriptions and takes steps to ensure such collection is not further used or disclosed when government records, with which the unauthorized collection is intermingled, must be used or disclosed for legitimate governmental purposes. Such limited access and disclosure of Page FISA information, as currently contemplated and described herein, is not the type of harm sections 1809 and 1827 were designed to prevent. *See* H. R. Conf. Rep. No. 95-1283, at 96-97 (1978) (section 1809(a)(2) was designed to prevent "intelligence agency personnel" from "intentionally and totally ignor[ing] the minimization procedures").

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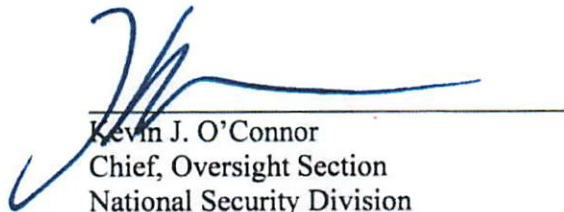
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#### IV. CONCLUSION

For the reasons more particularly described above, the government requests that this Court issue an Order permitting the internal access, review and disclosure of Page FISA information for the purposes of redacting or deleting that information in response to requests from Congress. A proposed Order is attached.

Dated: 6/6/25

Respectfully submitted,



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Kevin J. O'Connor  
Chief, Oversight Section  
National Security Division  
U.S. Department of Justice

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**UNITED STATES**

**FOREIGN INTELLIGENCE SURVEILLANCE COURT**

**WASHINGTON, D.C.**

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

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

**ORDER PERMITTING THE USE OR DISCLOSURE OF FISA INFORMATION FOR  
THE PURPOSE OF REDACTING THAT INFORMATION**

The government has filed a motion requesting permission to use or disclose information acquired from one or more of the 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). Specifically, the government has requested authorization to review Federal Bureau of Investigation and Department of Justice (DOJ) records that likely contain Page FISA information for the purpose of redacting or deleting that information. The Court agrees that the limited use or disclosure of Page FISA information proposed by the government is “necessary to remedy or deter the types of harm at which [50 U.S.C.] §§ 1809 and 1827 are addressed,” and, accordingly, fall within an exception to those statutory provisions. *See In Re Carter W. Page*, docket nos. 16-1182, 17-52, 17-375, 17-679, (FISA Ct. June 25, 2020) (J. Boasberg).

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For the reasons stated above and set forth within the government's motion, IT IS  
HEREBY ORDERED THAT the Motion is GRANTED as follows: the government may review  
official government records that likely contain unauthorized collection under FISA provided  
that:

1. a purpose of the review is to prevent further disclosure of unauthorized collection; and
2. disclosure of and access to government records that may contain unauthorized  
collection is limited to those personnel necessary to prevent further use or disclosure of  
unauthorized collection; and
3. there is a legitimate governmental purpose for such limited disclosure of the  
government records as described herein and in the government's motion.

ENTERED this \_\_\_\_ day of June, 2025. \_\_\_\_\_

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