

THE GOVERNMENT'S COY DANCE ON FISA AND RUDY'S GRIFTERS

As I noted last month, one of the guys indicted along with Rudy's grifters, Andrey Kukushkin, asked the government for notice of any of several kinds of surveillance, including FISA. The government responded today with the kind of non-denial that all-but confirms that one of the grifters, Lev Parnas and Igor Fruman, their co-conspirators, or their funders were implicated in a FISA order.

It starts by stating, "the Government has repeatedly informed the defendants, it does not intend to use any information that was obtained or derived from FISA or other forms of surveillance identified by Kukushkin," meaning under FISA they have no obligation to notify defendants of its use. It then reviews the requirements of statute, which state that the government only has to provide notice if it plans to use evidence obtained via FISA. It asserts it has met the requirements of FISA.

The Government has complied with its discovery and disclosure obligations, and Kukushkin's motion fails to set forth any legal basis to require anything more.

With respect to FISA, the Government has complied with its obligations under Section 1806 in this case. On December 1, 2019, the Government notified defense counsel that it did not intend to use any FISA-obtained or FISA-derived information against the defendants at trial.

It's basically a legalistic way of saying, "yes, yes, yes, but no." All the more so given that the government corrects a Kukushkin claim that the government had stated they had not obtained

FISA collection.

Kukushkin incorrectly states that the Government has “denied procuring evidence pursuant to Title III or FISA warrants.” Dkt. 45 at n.1. The Government has told the defense that it did not obtain or use Title III intercepts in this investigation. The Government has not made any representations about the use of FISA warrants.

And the government provided Judge Oetken an ex parte filing, which is the kind of thing you’d do to be very transparent to the judge when asked about FISA.

The Government is separately submitting a supplemental letter to the Court ex parte and under seal.

Again, all this is legally uninteresting but factually intriguing given how open the government is about the likelihood they did use FISA in this case.

Especially given how they note that the representations the government makes in this letter apply to all the defendants, including Fruman and Parnas.

The Government writes in response to defendant Andrey Kukushkin’s December 12, 2019 letter motion, which is made **“on behalf of all defendants,”** seeking the Court to direct the Government to affirm or deny, under 18 U.S.C. § 3504, whether the defendants were the subject of any Government surveillance, including under Executive Order 12333 or the Foreign Intelligence Surveillance Act (“FISA”). [my emphasis]

If Kukushkin were targeted with a FISA order, it would mostly implicate some Nevada Republicans –

that's the side of the grift Kukushkin got charged under.

But if Parnas or Fruman were targeted, it might implicate Pete Sessions, Ron DeSantis, Devin Nunes, the other members of Congress Adam Schiff intimated were also included in the Parnas call records obtained by HPSCI, the President's lawyer, and possibly even the President himself.

And if any of the grifters were personally targeted, it would probably mean that Bill Barr (who has been personally involved in the case since early last year) had agreed that someone in direct communication with all these Republicans was or is probably an Agent of a Foreign power.