

DID KASH PATEL ALREADY CONFESS TO ILLEGALLY DISSEMINATING CARTER PAGE FISA INFORMATION?

I'm pretty proud of how closely my two posts (first, second) predicted what the likely and known contents of the Trump affidavit would be. I pretty accurately described the structure, the contents, and many of the known details of what we've seen of the application so far.

That's especially true of the statutory section. I not only predicted that – “Particularly given the novel legal issues implicating a search of the former President” – there would be a substantial statutory background section, but that, “If there's a version of this statutory language, it may be among the things DOJ would acquiesce to releasing.”

Which they did.

And, to a significant extent, I predicted what would be in that statutory section. Here is that section of my post, with the paragraphs of the Trump affidavit where that language appears in bold and linked.

- The statutory language, basically a cut-and-paste describing the elements of the offense of each of the three statutes. [¶8](#), [¶20](#), [¶21](#)
- Language about classification, including separate paragraphs describing Confidential,

Secret, Top Secret. [Here's a version in Reality Winner's search warrant.]

¶9-10, ¶17

- Language about the special categories of Secure Compartmented Information, Special Access Programs, and (if they were really searching for documents pertaining to nuclear weapons) Restricted Data under the Atomic Energy Act

¶11-16

- Language about 32 CFR sections 2001 and 2003, which cover the storage of classified information, with specific reference to the standards for locks and storage containers. **¶19**
- A description of the Presidential Records Act and Federal Records Act. **¶22, 23**
- A description of what qualifies as a Presidential Record and what qualifies as a Federal Record.

Everything I expected to be in there, was in there. The details I didn't anticipate, though, are pretty noteworthy.

That's particularly true of the section describing special designations. These designations all stem from what the FBI found in the 15 boxes Trump returned in January.

From May 16-18, 2022, FBI agents conducted a preliminary review of the

FIFTEEN BOXES provided to NARA and identified documents with classification markings in fourteen of the FIFTEEN BOXES. A preliminary triage of the documents with classification markings revealed the following approximate numbers: 184 unique documents bearing classification markings, including 67 documents marked as CONFIDENTIAL, 92 documents marked as SECRET, and 25 documents marked as TOP SECRET. Further, the FBI agents observed markings reflecting the following compartments/dissemination controls: HCS, FISA, ORCON, NOFORN, and SI. Based on my training and experience, I know that documents classified at these levels typically contain NDI. Several of the documents also contained what appears to be FPOTUS 's handwritten notes.

If the FBI found a document of a particular type in May, it included that designation in this statutory section.

The Atomic Energy Act was *not* included, which means (as some knowledgeable people predicted in advance), if Trump had nuke documents, they're not about *our* nukes, they're about someone else's. Trump's affidavit also includes a description of HCS and SI, Human and Signals Intelligence, designations which have appropriately sobered the response of at least some Republicans, because they mean Trump could get someone killed.

The mention of ORCON – Originator Controlled material – would mostly matter if the FBI found that one of NSA documents that Mike Ellis was sharing with unauthorized people and places during the period Trump was packing up were among the things in the boxes. Those documents were both described as relating to (a or some), "controlled, compartmented NSA program," in the Inspector General Report on Ellis and the designation ORCON would matter more if documents

were retained after the Originator made a sustained effort to get them back, as NSA did in this case.

It's the mention of FISA, though, that I should have anticipated, and which could present heightened legal problems for Trump – and Kash Patel, and others.

14. Foreign Intelligence Surveillance Act, or "FISA," is a dissemination control designed to protect intelligence information derived from the collection of information authorized under the Foreign Intelligence Surveillance Act by the Foreign Intelligence Surveillance Court, or "FISC."

That's because both Kash and John Solomon have been attempting to create an alibi for information that may include the final Carter Page application. And, as that preliminary review determined, there was at least one FISA document in the boxes returned in January.

On top of any violations of the Espionage Act, if Trump took a copy of that with him after he was fired, it might constitute unlawful dissemination under FISA.

Between them, Kash and Solomon – whom Trump made his representatives to NARA on June 19 – have described *that* materials relating to the Russian investigation were among those NARA found in the returned boxes and *that* they might include a Carter Page FISA warrant (which I assume must mean the application).

There's the May 5 column in which Kash claimed that everything that had been returned in the 15 boxes had been declassified.

"Trump declassified whole sets of materials in anticipation of leaving government that he thought the American public should have the right to read themselves," Patel told Breitbart News in a phone interview.

"The White House counsel failed to generate the paperwork to change the classification markings, but that doesn't mean the information wasn't declassified," Patel said. "I was there with President Trump when he said 'We are declassifying this information.'"

In that column, Kash exhibited knowledge that the materials included documents from "Russiagate" [sic] and Impeachment 1.0.

"It's information that Trump felt spoke to matters regarding everything from Russiagate to the Ukraine impeachment fiasco to major national security matters of great public importance – anything the president felt the American people had a right to know is in there and more."

That's the column cited in the Trump affidavit – though there's at least one sentence of that paragraph that remains redacted.

I am aware of an article published in Breitbart on May 5, 2022, available at <https://www.breitbart.com/politics/2022/05/05/documents-mar-a-lago-marked-classified-wereah-eadv-declassified-kash-patel-says/>, which states that Kash Patel, who is described as a former top FPOTUS administration official, characterized as "misleading" reports in other news organizations that NARA had found classified materials among records that FPOTUS provided to NARA from Mar-a-Lago. Patel alleged that such reports were misleading because FPOTUS had declassified the materials at issue.
[redacted]

Kash has issued a statement complaining, even though he had no complaint when information about Michael Isikoff was unsealed in the Carter Page FISA application for a similar published

statement.

FBI's WhatsApp Warrant

Today marks another vicious attack from DOJ/FBI who intentionally jeopardized my safety by un-redacting my name in the most reviewed search warrant in the history of the United States. This cartel of corruption inside of our government is so devoid of concern about national security, they could not be bothered to see the judge in-person. Instead, they literally called in the raid on the home of a former president via the FBI's best friend, Zuckerberg's WhatsApp. The DOJ is on the line for my security with their dangerous actions. This same FBI has been investigating death threats made against me due to baseless political overreach by government gangsters and in their greed for political vengeance, have threatened my safety again. Me, a former national security prosecutor, Deputy OIG, Chief of Staff for DoD, and lead investigator for Russia Gate- the very investigation they continue to work so hard to cover up. Brown Lives Matter. These gangsters are on notice.

Kash Patel, Former Chief of Staff for the DoD and lead Investigator for Russia Gate

More interesting still, on July 20, John Solomon (who did a podcast on January 14, 2021 bragging of detailed knowledge of what Russian investigation materials *would* be released in the coming days) described having newly obtained a January 20, 2021 Mark Meadows memo to DOJ instructing them to declassify documents from the Russian investigation.

Even though the Meadows memo cites from Trump's own January 19, 2021 order stating that the declassification, "does not extend to materials that must be protected from disclosure pursuant to orders of the Foreign Intelligence Surveillance Court," Solomon described that the declassified information *did* include both transcripts of "intercepts made by the FBI of Trump aides," (which may have included the intercepts of Mike Flynn obtained by targeting Sergey Kislyak which, because the intercepts took place in the US, may have been conducted under FISA) and "a declassified copy of the final FISA warrant approved by an intelligence court."

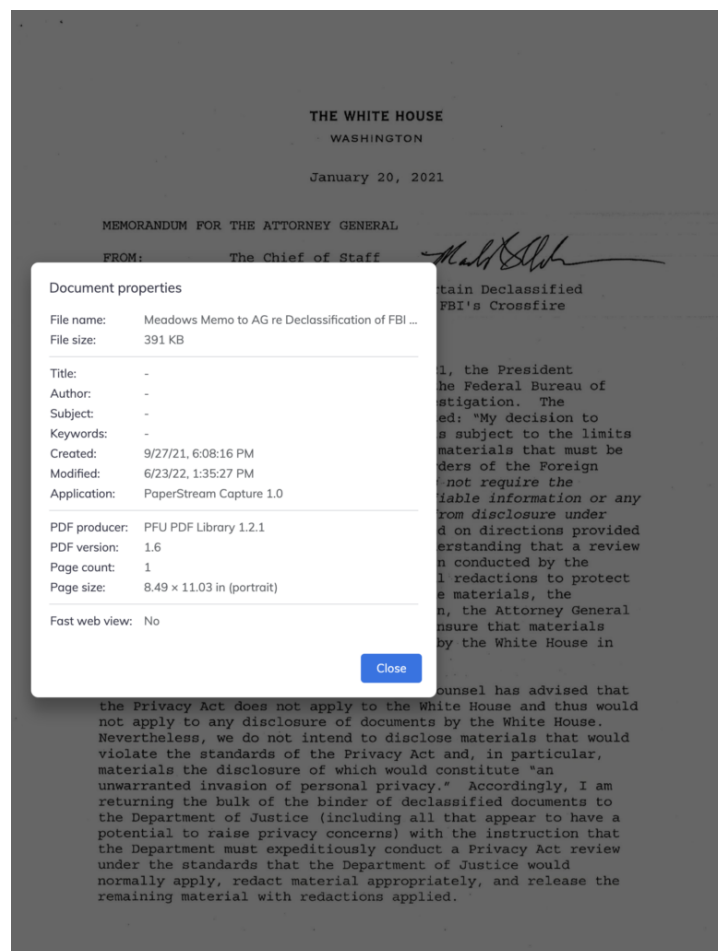
The declassified documents included **transcripts of intercepts made by the FBI of Trump aides, a declassified copy of the final FISA warrant approved by an intelligence court**, and the tasking orders and debriefings of the two main confidential human sources, Christopher Steele and Stefan Halper, the bureau used to investigate whether Trump had colluded with Russia to steal the 2016 election.

In the end, multiple investigations found there was no such collusion and

that the FBI violated rules and misled the FISA court in an effort to keep the probe going.

The documents that Trump declassified never saw the light of day, even though they were lawfully declassified by Trump and the DOJ was instructed by the president through Meadows to expeditiously release them after redacting private information as necessary. [my emphasis]

Curiously, the PDF of the Mark Meadows memo Solomon linked (my link) – which includes a staple mark and other oddities for an original document preserved by NARA – shows a September 27, 2021 creation date, with a modification date just days after Trump designated Solomon as his representative at NARA. (h/t @z3dster for the observation)



Back to Solomon's implication that the documents

in question – documents that Kash had suggested were among those boxed and sent back to NARA – included the final Carter Page warrant.

If the former President's stash included an unredacted copy of the final FISA application targeting Carter Page, it could mean additional trouble for him and anyone else involved.

Even a Kislyak intercept would, because it would impact Mike Flynn's privacy.

Similarly, even if, after three years of effort led largely by Kash Patel, an Inspector General hadn't deemed the Carter Page FISA applications problematic, Trump took the Carter Page warrant application home after he left office, it would be an egregious violation of FISA's minimization procedures, which strictly limit how such material can be disseminated. A disgruntled former government's employee's desire to spread propaganda about his tenure is not among the approved dissemination purposes.

But Carter Page, almost uniquely of any American surveilled under FISA, has special protections against such things happening.

That's because in the wake of the IG Report on Carter Page, and in the wake of Bill Barr's DOJ withdrawing its claim of probable cause for the last two Page warrants, James Boasberg required the government to ensure that materials for which there might not have been probable cause were no longer disseminated. In issuing that order, Boasberg cited 50 USC 1809(a)(2), the part of FISA that makes it a crime, punishable by a five year sentence, to disseminate improperly collected material from a targeted person. As a result, in June 2020, Boasberg issued an order sequestering the material collected from the Carter Page FISA except for five designated purposes.

Indulging the former President's tantrum is not one of those five purposes.

And Trump and Kash, especially, have reason to know about this sequester. That's because in

October 2020 – at a time when Kash was still babysitting John Ratcliffe at DNI – DOJ violated the sequester by sharing information on Page with the Jeffrey Jensen and John Durham inquiries. As far as we know, *that* violation of the sequester order didn't result in surveillance records on Carter Page being stored in a poorly secured storage closet in a resort hotel, but it still involved a hearing before the FISC and a public scolding.

If there's an unredacted copy of the Page application, it would mean sections like this and this would be unsealed. There's even a description of the emails that Page sent to the campaign bragging about his access to top Russian officials that, because of how it came to be in the application, would be subject to Boasberg's sequestration order. There might even be contacts that Page had with Steve Bannon, whose privacy would also be implicated. Disseminating any of that stuff in unredacted form is, by itself, a crime, one the FISC has warned Trump and Kash's bosses about repeatedly.

In his January 2021 podcast, Solomon claimed that the material Trump wanted to release would prove he was spied on. To show that from materials relating to Carter Page would require sharing information specifically covered by the sequestration order. Shipping that from the White House to Mar-a-Lago would be a crime. Sharing it from there would *definitely* be a crime. And any authorization would have to involve the FISA Court. No President – not Trump and not Biden – can lawfully ignore that order.

Since at least May, both Kash and Solomon seem frantic to help Trump develop a cover story. And their frantic efforts seem to explicitly include materials pertaining to Carter Page.

And that's why the confirmation that Trump had FISA materials in his stolen boxes could present additional headaches for the former President and his flunkies.