

TYLER LEMONS CONFESSES KASH PATEL'S FBI WAS READING PREVIOUSLY SEIZED MATERIAL WITHOUT A RENEWED WARRANT

Lindsey the Insurance Lawyer's Loaner AUSAs have replied to Jim Comey's opposition to their demand to a filter protocol to access attorney-client communications with Dan Richman.

Just a reminder, perhaps for their benefit more than yours (because you're all super smart and can read), a significant part of Comey's challenge to their rush to get a filter protocol is that any review of this material violated the Fourth Amendment. He argued there were two problems with doing so. First, the warrants were super old, over five years old. And also, because prosecutors charged him with different crimes – 18 USC 1001 and 1505 – than those for which the original warrants were approved.

The Fourth Amendment plainly prohibits the government from doing exactly what it seeks to do here: the Arctic Haze warrants were obtained more than five years ago in a separate and now-closed criminal investigation and authorized the seizure of evidence of separate offenses. Yet the government seeks to turn those warrants into general warrants to continue to rummage through materials belonging to Mr. Comey's lawyer in an effort to seize evidence of separate alleged crimes. The Court should not authorize the government to conduct an unlawful review.

A. Applicable Law

Courts have repeatedly held that the government must execute search warrants within a reasonable period of time, including with respect to electronic data. As the Fourth Circuit has explained, district courts “retain[] the authority to determine that prolonged retention of nonresponsive data by the government violated the Fourth Amendment.” *United States v. ZelayaVeliz*, 94 F.4th 321, 338 (4th Cir. 2024) (citation omitted).⁶ That authority derives from application of the general “Fourth Amendment reasonableness” standard. *Id.* And “[c]ourts have applied this reasonableness standard to suppress evidence when the government delayed unreasonably in sifting through social media warrant returns for relevant evidence.” *Id.* (citing *United States v. Cawthorn*, 682 F. Supp. 3d 449, 458–60 (D. Md. 2023)). In *Cawthorn*, for instance, the district court held that two years was “an ample amount of time to conduct the necessary review” of digital materials, and “[c]ontinued access to search through the data beyond what the Government ha[d] already identified as responsive in its report would be unreasonable.” 682 F. Supp. 3d at 459 n.7. See *id.* at n.8 (noting that the good faith exception does not apply “where the error was not with the warrant itself but, rather, the government’s execution of that warrant in the context of a search of electronic data”) (citation omitted).

It is similarly well-established that “[u]nder the Fourth Amendment, when law enforcement personnel obtain a warrant to search for a specific crime but later, for whatever reason, seek to broaden their scope to search for evidence of another crime, a new warrant is required.” *United States v. Nasher-*

Alneam, 399 F. Supp. 3d 579, 592 (S.D. W. Va. 2019) (citing *United States v. Williams*, 592 F.3d 511, 516 n.2 (4th Cir. 2010)); see also *Terry v. Ohio*, 392 U.S. 1, 19 (1968) (“The scope of the search must be strictly tied to and justified by the circumstances which rendered its initiation permissible.”) (cleaned up).

“Given the heightened potential for government abuse of stored electronic data, it is imperative that courts ensure that law enforcement scrupulously contain their searches to the scope of the search warrant which permitted the search in the first place. This is especially true where, as here, the illegal search was conducted at the behest of lawyers—the people in the best position to know what was allowed under the law.” *Nasher-Alneam*, 399 F. Supp. 3d at 595. A reasonable warrant thus “confine[s] the executing officers’ discretion by restricting them from rummaging through [digital] data in search of unrelated criminal activities.” *Zelaya-Veliz*, 94 F.4th at 337 (citation omitted).

6 Mr. Comey reserves his right to move to suppress these warrants, to the extent the government continues to use them in this manner. See, e.g., *United States v. Place*, 462 U.S. 696, 709–10 (1983) (a seizure lawful at its inception can nevertheless violate the Fourth Amendment based on agents’ subsequent conduct); *DeMassa v. Nunez*, 770 F.2d 1505, 1508 (9th Cir. 1985) (“an attorney’s clients have a legitimate expectation of privacy in their client files”). Until the government answers the questions the defense has previously raised about these warrants, which to date have remained unanswered and which are detailed at the end of this

submission, the defense will not be in a position to file an appropriately targeted suppression motion.

Lindsey's Loaner AUSAs *completely ignore* this discussion about the Fourth Amendment, dismissing it with a little wave of their hands. How dare a defendant ask about things like the Fourth Amendment, when we're trying to get to his texts with his attorney, they ask!

Defendant's response does not address the underlying premise of a filter protocol. Instead, Defendant first jumps to the underlying search warrants and presumptively declares that the government is conducting an unconstitutional search. This is wrong. The government is not asking to look at the raw returns from prior search warrants. The government is simply asking for a judicially approved filter protocol as to a small and specific subset of evidence that was lawfully obtained consistent with the terms of a federal search warrant.

They excuse doing so because the crimes DOJ investigated from 2017 to 2021 (for which they told investigators in EDVA there was not sufficient evidence to charge either Comey or Dan Richman) are "consistent with" the crime under investigation here, that Comey authorized Richman to share information anonymously (while Richman was still at FBI).

In 2019 and 2020, the government obtained a series of search warrants during an ongoing investigation into violations of 18 U.S.C. §641 (Theft and Conversion of Stolen Government Property) and 18 U.S.C. §793 (Unlawful Gathering or Transmission of National Defense Information). In ways **consistent with** the current prosecution, the prior government investigation focused in part

on the relationship and communication between the Defendant and Daniel Richman ("Richman"). [my emphasis]

That "consistent with" is the only excuse they gave for snooping in these communications in search of evidence for a different crime.

And that's important because, in an attempt to poo poo Comey's concern about the investigative team's access attorney-client communications, they confess that the FBI *has* been snooping through this material.

The government has proceeded with an abundance of caution in reviewing lawfully obtained evidence from the 2019 and 2020 search warrants. While reviewing evidence that was previously filtered by the Defendant's attorney, an FBI agent noted that some of the communications appeared to involve an attorney and client. At that time, a prophylactic decision was made to remove the FBI agent from the investigative team and pause any further review of the evidence from the 2019 and 2020 search warrants. This was orally communicated to the investigative team and communicated through written instruction (email) to the lead investigators.

This sequence of events is what the Defendant relies on to assume taint. The presumption is wrong. No members are of the investigative team have been tainted by attorney-client privileged material. However, when undersigned counsel joined the prosecutorial team, a decision was made for the **quarantined evidence** to remain that way to allow the Court to implement a filter protocol that completely removes any concern. The Defendant questions the government's ability to safeguard privileged material. But the reality is that the government has proceeded with the utmost

caution and respect for privileged material. [my emphasis]

Let's lay this out in detail:

- "While reviewing evidence that was previously filtered by the Defendant's attorney:" We have been accessing this material without a new warrant
- "[A]n FBI agent noted that some of the communications appeared to involve an attorney and client:" An FBI Agent we won't otherwise identify discovered there were attorney-client communications in there
- "[A] prophylactic decision was made to remove the FBI agent from the investigative team:" a decision was made [by the FBI General Counsel, who we will not name] to preserve the general investigation remove this particular agent from this particular investigative team
- "This was orally communicated to the investigative team:" There's no paper trail of the entire investigative team being told to stop
- "[A]nd communicated through written instruction (email)

to the lead investigators:"
only the lead investigators
(who may include the FBI
agent in question) got
written notice, meaning
everyone else is carrying on
as they were

- "[W]hen undersigned counsel
joined the prosecutorial
team, a decision was made:"
We don't want to put our law
licenses on the line, so
instead we're demanding a
filter protocol without
first getting a warrant

The initial reference to "quarantined evidence"
(bolded above) must be in the page of this
filing that is redacted. So it's not clear
whether it refers to just "five text threads
identified" in Richman's original privilege log.
It *doesn't* appear to be refer to the entire vat
of materials from Richman, the one still
accessible to some group of FBI Agents. And at
least from the unredacted section, I see no
explanation for what the attorney-client
communication is, and whether Richman failed to
identify it or whether it somehow escaped from
that filter. Further, I see no explanation of
whether that attorney-client communication
remains accessible to investigators.

What I do know is that, in their bid to
accelerate this process, Lindsey's Loaner AUSAs
claimed that Comey, "used current lead defense
counsel [Patrick Fitzgerald] to improperly
disclose classified information," insinuating it
was a crime for Jim Comey to release
unclassified information about Donald Trump's
misconduct to the press. That is, they invoked
crime-fraud exception pertaining to
communications that – because they post-date the
time Dan Richman left the FBI– are completely

irrelevant to the charges at issue here, and because they were unclassified, were legal to share (albeit, per DOJ IG, a violation of FBI guidelines).

They insinuated it would be a crime to say true, unclassified things about Donald Trump, parroting the craziest theories of the fever conspiracists.

And that makes me very skeptical that these Loaner AUSAs have quarantined any of the problems at issue here.

Update: Reviewing this made me realize something. Prosecutors first started pressuring Comey for this filter protocol on October 10. They requested it even before providing discovery on October 13 (and attempted to delay discovery on most stuff for a week). Only after that did they confirm to Comey that Dan Richman is the one DOJ had charged him with lying about authorizing to share information 20 days earlier.