
LAW OFFICE OF **JOHN D. CLINE**

July 21, 2018

VIA ECF

Ms. Molly C. Dwyer, Clerk
United States Court of Appeals for the Ninth Circuit
95 7th Street
San Francisco, CA 94103

Re: *United States v. Keith Gartenlaub*, No.
16-50339--Rule 28(j) letter concerning
Carter Page FISA materials

Dear Ms. Dwyer:

I write under Fed.R.App.P. 28(j). This matter was argued December 4, 2017 and is awaiting decision.

In a Rule 28(j) letter dated February 24, 2018, I brought to the Court's attention the public disclosure of HPSCI majority and minority memoranda that summarized portions of a FISA application targeting Carter Page, an American citizen. I write now to advise the Court that redacted versions of the Page FISA applications and orders have been disclosed to the New York Times through the FOIA process and have been made public by the Times. Here is a link to the New York Times article, which in turn contains a link to the redacted Page FISA materials:

<https://www.nytimes.com/2018/07/21/us/politics/carter-page-fisa.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region®ion=top-news&WT.nav=top-news>

As with the HPSCI memoranda, the declassification and disclosure of the redacted Page FISA materials demonstrates that it is possible to discuss publicly aspects of a FISA application without damaging national security. In addition, the declassification and disclosure of the redacted FISA materials highlights the absurdity of the government's assertion, in this and other cases involving motions to suppress FISA surveillance, that *any* disclosure of *any portion* of a FISA application, even to cleared defense counsel under the protections of CIPA, would harm national security. If the redacted Page FISA materials can be disclosed publicly without harming national security, as the Executive Branch has determined, even more substantial disclosure of the Gartenlaub FISA application can be made to cleared defense counsel under CIPA without causing such harm.

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Very truly yours,

/s/ John D. Cline

John D. Cline
Counsel for Appellant

cc: All counsel via ECF

