

20-7975 Exhibit A
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

DEC 17 2020

OFFICE OF THE CLERK

Larry Welenc, Petitioner

v

State of Florida, Respondent

From US DEPT OF JUSTICE
4/19/2021 FBI

ON PETITION FOR WRIT OF CERTIORARI
TO UNITED STATES DISTRICT COURT OF APPEAL
DC CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTIONS PRESENTED FOR REVIEW

- 1.) Can a US District Court Judge determine that a an excised Document released under The Freedom of Information Act, 5 U.S.C. § 552, consisting only of a blank sheet of paper and a page number falls under a FOIA Exemption, without having been informed of that document's contents ?
- 2.) Can the FBI keep an unspecified alleged investigation of a citizen open for 32 years based on an alleged surveillance photo from 1988 or any other basis or is this a violation of the Statute of limitations ?
- 3.) Is a litigant before a US Court District Court entitled to a decision from the Court and the FBI on Motion for a Declaration that no judge had been approached or has had an ex parte communications with the FBI or their attorney justified by an unsubstantiated claim of National Security before being required to respond to any Motion by the FBI and their Attorney?
- 4.) Is the FBI required or should they be required to release exonerating information in a civil matter, here in a FOIA comlaint, if they are the investigating agency in the matter to which the exonerating evidence refers?

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

Larry Welenc,	Appellant and Petitioner
US Department of Justice, Federal Bureau of Investigation	Appellee and Respondent

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TABLE OF AUTHORITIES

CASES

Yonemoto v. VA, No. 10-15180, 2012 U.S. App. LEXIS 1108 (9th Cir. Jan. 18, 2012)
(Berzon, J.) (amended op.)

Harrison v. BOP, No. 07-1543, 2009 WL 1163909 (D.D.C. May 1, 2009) (Friedman, J.).

Sussman v. U.S. Marshals Serv., No. 03-610, 2009 WL 3068188 (D.D.C. Sept. 25, 2009)
(Kennedy, J.)

Batton v. Evers, No. 08-20724, 2010 WL 625988 (5th Cir. Feb. 24, 2010) (Haynes, J.)

Citizens for Resp. & Ethics in Wash. v. DOJ, No. 11-754, 2012 WL 45499 (D.D.C. Jan. 10, 2012) (Kessler, J.)

Knittel v. IRS, No. 07-1213, 2009 WL 2163619 (W.D. Tenn. July 20, 2009) (Breen, J.)

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STATUTES

Rule 11, Certiorari to a United States Court of Appeals before Judgment

5 U.S.C. § 552 The Freedom of Information Act,

28 U.S.C paragraph 2101 (e)

28 U.S.C paragraph 1254.

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INDEX TO APPENDICES

Appendix A Order of the US District Court dated July 8, 2019

Appendix B: Order of the US District Court dated November 18, 2019

Appendix C: Motion for Declaration with the US District Court of Appeal, filed October 14, 2020

Appendix D: Order of the US District Court of Appeal November 6, 2020

OPINIONS BELOW

Petitioner Larry Welenc respectfully prays that a writ of certiorari issue to review the judgments below.

Order of the US District Court dated July 8, 2019

Order of the US District Court dated November 18, 2019

Order of the US District Court of Appeal November 6, 2020

STATEMENT OF JURISDICTION

The jurisdiction of this court is invoked pursuant to Rule 11. Certiorari to a United States Court of Appeals before Judgment

STATEMENT OF THE CASE

This case stems in part from a case before Judge Reggie Walton in the US District Court in 2008 the which the Petitioner had motioned for the expungement of an alleged photo of the Petitioner released in prior FOIA Request with the FBI . The FOIA request was a general request not seeking any specific documents. The Petitioner based his Motion to Expunge on the fact that the person in the photo could not be a photo of the Petitioner as the Petitioner was living in Europe at the time of the photo at the surveillance camera date stamp and the person in the photo was obviously at least 6 inches shorter than the Petitioner and had a full beard. The case was dismissed without prejudice for failure to prosecute though Judge Walton refused to reopen the case when Petitioner was able to produce additional which had been released through a subsequent FOIA Request. Despite the case being dismissed “without prejudice” Judge Walton repeatedly refused to reopen the case

The current case before the court concerns a Petition for Judicial review filed on 2017, on FOIA Request made in 2015 for all documents on the Petitioner related to his then contact with the then head of the FBI Legal Unit in Las Vegas Nancy Shuster whom Plaintiff , whom Petitioner was brought in contact with as a result of his FOIA Request with the US Department of State in 1995. The FBI responded to the incorrect FOIA request in the case before this court which Judge Walton determined in his Memorandum and Opinion “did not matter”. Judge Walton found that the withheld documents fell under Exemption 5 despite many of those documents consisting only of a blank piece of paper

with a page no. Petitioner is submitting one such document here as Exhibit A. It is the opinion of the Petitioner that the tactic of the FBI redacting entire pages is the result of FOIA request the Petitioner made around 1995. Both the FBI and the US Department of State were responding to the same request with the US Department of still filing in the sections of certain documents excised by the FBI and the FBI filling in the sections of the certain documents excised by US Department of State.

The FBI through their attorney in his Answer to the Petition tried to get the lower court case dismissed in part because this was an ongoing investigation and cited the 2008 case as evidence that the petitioner was trying to relitigate the case. The Motion for Dismissal was denied. The FBI claimed in it Motion for Summary Affirmance the that the Petitioner was trying to seek a photo of his own arrest which is both ludicrous since the Petitioner was trying to have the photo expunged in the 2008 case on the basis that it was not the Petitioner in the photo , nor was the Plaintiff in the RIO Hotel and Casino during the month of the photo even if one was to construe the year as 1998 and not 1988 and that the photo is from the RIO's Security cameras. The FBI in their Motion to Dismiss with the lower Court continuously referred to the Declaration or David Hardy, which made reference to an alleged investigation of the Plaintiff which was used to deny Petitioners Motion to Expunge the photo. By making this argument in their 2107 the FBI was admitting that an Investigation had been going on for some 30 years which lies well above the 5year statute of limitation. Judge Reggie Walton stated in his Memorandum and Opinion even if the information in the withheld records exonerates the Plaintiff as he speculates, the FBI need no disclose it if a FOIA Exemption applies. Even if this were

true, the FBI could not make reference to the Declaration of David Hardy as if there were still an ongoing investigation if in fact that investigation had been in fact concluded. Since the FBI has used the Declaration of Warren Hardy in their Pleadings it must assume that the investigation is ongoing and in its 32nd year.

It is the Petitioner's contention that there is no basis for investigation and that the FBI simply opening up a fictitious investigation based on a fictitious surveillance photo to keep track of the Plaintiff after his trip to Hungary in 1988 from Vienna Austria during his 8 and ahalf year residency in Europe. Petitioner did not register with the US Department of State and the trip was not uneventful, those events having been made public by the Petitioner on his Facebook page in a series of posts along with a document released from another FOIA request on the FBI's attempt to set up an International Police academy in Budapest Hungary after fall of the Wall, which referred to the seating arrangement in order "not to kill the goose that laid the golden egg". Petitioner did appeal the excising of the information released but except for a few insignificant additional documents released, the FOIA request was denied.

Petitioner filed a Motion for Declaration on October 10, 2020, Exhibit B, to determine whether the contents of the documents consisting only of a blank paper with a page number, were made privy to the Judge in and ex-parte communication and Motion to have for a ruling on that Motion before Petitioner responded to the Defendant's motion for Summary Affirmance... In their Order of November 6, 2020 the Court decided to decide on the motion simultaneously with the Motion for Summary Affirmance, therefore

compelling Petitioner to the Motion respond without knowing whether an ex-parte communication had actually taking place

ARGUMENT IN SUPPORT OF THIS PETITION

The case is in the public interests for obvious reasons; should the lower court case stand, the FBI would have a mechanism to thwart any FOIA Request, simply by excising entire documents except for the page numbers and claiming Exemption 5. It is impossible as Petitioner stated in his Motion for a Judge to know what is in and excise document consisting only of a page number unless that Judge had an ex-parte communication the FBI or their attorney which would be violation of the rules of the court but which a Judge may allow should the FBI or similar US government allege National Security , real, imagined, or simply fabricated to thwart a FOIA Request and continue a fictitious investigation, which would be a violation of Petitioner's first Amendment rights.

Recent decisions by the courts have upheld that there has to be a factual basis to implement FOIA and that the information must be sufficient to make those determination, Yonemoto v. VA, No. 10-15180, 2012 U.S. App. LEXIS 1108 (9th Cir. Jan. 18, 2012) (Berzon, J.) (amended op.). Holding: Reversing the district court's decision that the VA's offer to provide certain emails to plaintiff in an unredacted form with restrictions on distribution mooted his FOIA claims, and remanding for court to consider the VA's claims of exemption on those records; Harrison v. BOP, No. 07-1543, 2009 WL 1163909 (D.D.C. May 1, 2009) (Friedman, J.). As to another of plaintiff's requests, BOP has failed to provide sufficient justification for its use of exemptions. Sussman v. U.S. Marshals Serv., No. 03-610, 2009 WL 3068188 (D.D.C. Sept. 25,

2009) (Kennedy, J.). "The record submitted does not permit the Court to determine exactly which exemptions [apply] to which redacted portions of which documents [plaintiff] challenges. The information submitted by the Marshals Service in its Vaughn index, together with its declarations, is insufficient to support a determination that the Marshals Service has justified its nondisclosure decisions.". Citizens for Resp. & Ethics in Wash. v. DOJ, No. 11-754, 2012 WL 45499 (D.D.C. Jan. 10, 2012) (Kessler, J.). Holding: Denying defendants' motion for summary judgment; granting plaintiff's cross-motion for summary judgment and holding that DOJ cannot assert a categorical denial under Exemptions 6 and 7..... In terms of the public interest, the court finds that "the American public has a right to know about the manner in which its representatives are conducting themselves and whether the government agency responsible for investigating and, if warranted, prosecuting those representatives for alleged illegal conduct is doing its job.", Knittel v. IRS, No. 07-1213, 2009 WL 2163619 (W.D. Tenn. July 20, 2009) (Breen, J.). "[T]he IRS has submitted no evidence regarding the alleged privacy interests. In fact, the Defendant has not provided this Court with any guidance as to the nature of the materials requested or their contents. Without knowing the general substance of the information for which disclosure is sought the Court is unable to assess the privacy interests at stake, and therefore is unable to conduct the requisite balancing test."

Batton v. Evers, No. 08-20724, 2010 WL 625988 (5th Cir. Feb. 24, 2010) (Haynes, J.). The court finds that the IRS failed to provide a sufficiently detailed description of the documents that were withheld under this exemption for the court "to meaningfully review the applicability of this exemption."

A blank piece of paper obviously does meet any criteria to make such determinations mentioned in the above referenced cases and in terms of the public interest, the American public has a right to know about the manner in which its public servants are conducting

themselves and whether the government agency responsible for investigating and, if warranted, prosecuting those representatives for alleged illegal conduct is doing its job.

CONCLUSIONS

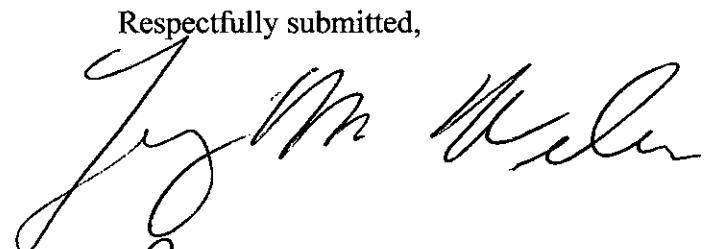
Should the decision in the lower case be allowed to stand, and it's reversal in contingent on the Petitioner pursuing his appeal, which is not granted the FBI have a precedent to simply thwart FOIA requests by excising entire documents, thus holding them accountable for their actions and giving them the "carte blanche" conduct unwarranted investigations .

The Petition for a writ of Certiorari should be granted.

Respectfully submitted,

Dated:

December 16 2021


Jim M. Weller
PETITIONER