

No. 25-705

In the Supreme Court of the United States

CARTER PAGE, PETITIONER

v.

JAMES B. COMEY, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the petitioner's claims that certain individuals working for the United States unlawfully procured surveillance warrants and used and disclosed surveillance information are time-barred.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-74a) is reported at 137 F.4th 806. The memorandum opinion of the district court (Pet. App. 87a-155a) is reported at 628 F. Supp. 3d 103. The memorandum opinion of the district court (Pet. App. 75a-86a) denying petitioner's motion for reconsideration is available at 2023 WL 244350.

JURISDICTION

The judgment of the court of appeals was entered on May 23, 2025. A petition for rehearing was denied on July 14, 2025. Pet. App. 156a-157a. The Chief Justice extended the time within which to file a petition for a writ of certiorari to and including December 11, 2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Foreign Intelligence Surveillance Act of 1978 (FISA), Pub. L. No. 95-511, 92 Stat. 1783 (50 U.S.C. 1801 *et seq.*) “authorize[s] and regulate[s] certain governmental electronic surveillance of communications for foreign intelligence purposes.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 402 (2013). Under FISA, federal officials can apply to the Foreign Intelligence Surveillance Court (FISC) for a warrant to conduct electronic surveillance of people in the United States upon a showing of, *inter alia*, probable cause to believe “the target of the electronic surveillance is * * * an agent of a foreign power.” 50 U.S.C. 1805(a)(2)(A).

FISA prohibits anyone from “intentionally engag[ing] in electronic surveillance under color of law except as authorized” by FISA or “intentionally disclos[ing] or us[ing] information obtained under color of law by electronic surveillance, knowing or having reason to know that the information was obtained through electronic surveillance not authorized,” 50 U.S.C. 1809(a)(1) and (2), and provides a cause of action to those injured by violations of those proscriptions, see 50 U.S.C. 1810. The USA PATRIOT Act (PATRIOT Act), Pub. L. No. 107-56, § 223(c)(1), 115 Stat. 294 (codified at 18 U.S.C. 2712), waives the United States’s sovereign immunity from damages for “willful violation[s]” of, as relevant here, a provision of FISA regulating the use of “[i]nformation acquired from an electronic surveillance,” 50 U.S.C. 1806(a); see 18 U.S.C. 2712(a). A PATRIOT Act claim must be presented to the pertinent agency and filed “within 2 years after [it] accrues”—which is when the plaintiff “first has a reasonable opportunity to discover the violation”—“or * * * within 6 months after” the agency denies it. 18 U.S.C. 2712(b)(2).

2. Petitioner was a foreign-policy advisor to then-candidate Donald Trump during the 2016 Presidential election. See Pet. App. 4a. On July 31, 2026, petitioner became the subject of an FBI investigation into “whether ‘individual(s) associated with the Trump campaign were * * * coordinating activities with the Government of Russia.’” *Ibid.* (brackets and citation omitted). As part of the investigation, the FBI submitted four FISA warrant applications targeting petitioner—in October 2016, January 2017, April 2017, and June 2017—to the FISC. See *id.* at 6a-7a, 10a, 159a-160a. The warrants alleged that petitioner was an agent of Russia. See *id.* at 160a.

However, as a December 9, 2019, report by the Department of Justice Office of the Inspector General (OIG) concluded, those “warrants lacked probable cause and were ‘unlawfully obtained.’” Pet. App. 97a (quoting *id.* at 223a). As set out in the report and a subsequent FISC opinion, there were “myriad errors and omissions in the applications for authority to conduct electronic surveillance of” petitioner. D. Ct. Doc. 88-17, at 2 (Sept. 17, 2021). The first warrant application relied upon “multiple * * * factual assertions * * * [that] were inaccurate, incomplete, or unsupported” to support the claim petitioner was an agent of the Russian government. OIG, U.S. Dep’t of Justice, *Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigation* viii (Dec. 2019), <https://perma.cc/AQC6-6QE5> (OIG Report). The issues included the omission of the fact that petitioner was “an ‘operational contact’” and “had provided information” about Russia for another agency, the overstatement of the degree to which facts were corroborated or sources were reliable, and the omission of facts

undermining the claim that petitioner was an agent of the Russian government. *Ibid.*; see *id.* at viii-ix.

In total, the initial FISA warrant application contained “seven significant inaccuracies and omissions” that were never corrected and thus “repeated in all three renewal applications.” OIG Report viii-ix. OIG also identified another ten “significant errors in the renewal applications.” *Id.* at ix; see *id.* at xi-xii. These included omissions of material facts, such as petitioner’s “relationship” with another agency even though the agency “reminded” the FBI of the relationship; “the political origins” of the report undergirding the initial FISA warrant application and the political “connections” of the source that provided them; and other facts that undermined the assertion that petitioner was a foreign agent. *Id.* at xi-xii; see Pet. 9-11 (summarizing those errors); D. Ct. Doc. 88-17, at 4-7 (highlighting issues FISC found especially concerning). In response to the OIG Report, the government instituted “multiple remedial measures.” D. Ct. Doc. 88-17, at 1.

In addition to the problems with the warrant applications, on April 10, 2017, two FBI employees “devis[e]d a plan to leak information about the * * * investigation [of petitioner] to the news media.” Pet. App. 7a. The next day, the *Washington Post* reported “about the FISA warrants.” *Id.* at 96a. The *New York Times* did so on April 22, 2017. *Id.* at 219a-220a. Petitioner, in turn, told the *Washington Post* that its reporting “confirm[ed] all of [his] suspicions about unjustified, politically motivated government surveillance,” *id.* at 8a (citation omitted), and on November 2, 2017, stated in congressional testimony that “he was a victim of two felonies: the leaking of both his identity and classified

information in relation to the FISA warrant documented in the *Washington Post* article,” *id.* at 10a.

3. On November 27, 2020, petitioner initiated this suit, naming eight individuals—James Comey, Andrew McCabe, Kevin Clinesmith, Peter Strzok, Lisa Page, Joe Pientka III, Stephen Somma, and Brian Auten—who were involved in developing the FISA applications, leaking the FISA investigation to the media, or supervising those involved; the United States; the FBI; and the Department of Justice. Pet. App. 11a-12a, 167a-169a. He brought FISA and claims under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against the individuals; Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 *et seq.*, and PATRIOT Act claims against the United States; and Privacy Act, 5 U.S.C. 552a, claims against the FBI and Department of Justice. Pet. App. 12a.

On September 1, 2022, the district court granted the defendants’ motions to dismiss, Pet. App. 87a-155a; as part of its ruling, the court held that petitioner’s FISA and PATRIOT Act claims failed to state a claim for relief, *id.* at 13a.

4. Petitioner appealed only the dismissal of his FISA and PATRIOT Act claims. Pet. App. 13a. The court of appeals affirmed the district court on the alternative grounds that petitioner’s claims against the individual defendants and the United States were time barred. See *id.* at 3a; see also *id.* at 26a-30a (discussing the PATRIOT Act claim). Judge Henderson concurred in the dismissal of petitioner’s PATRIOT Act claim on the basis that petitioner forfeited his claim and that it was legally insufficient. See *id.* at 42a (Henderson, J., concurring in part and dissenting in part).

ARGUMENT

On April 21, 2026, the United States and petitioner agreed to settle petitioner's claims against the United States. The settlement does not involve petitioner's claims against the individual defendants.

The settlement of a case on appeal renders the appeal moot. See, e.g., *Alvarez v. Smith*, 558 U.S. 87, 94 (2009); *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 21 (1994); *Lake Coal Co. v. Roberts & Schaefer Co.*, 474 U.S. 120 (1985) (per curiam). Where, as here, there is a partial settlement, the "settlement moots the settled claims." 13B Charles Alan Wright et al., *Federal Practice and Procedure* § 3533.2, at 779 (3d ed. 2008); see, e.g., *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 78 n.5 (1987); *Center for Biological Diversity v. EPA*, 56 F.4th 55, 66 (D.C. Cir. 2022).

This settlement therefore moots petitioner's PATRIOT Act claim against the United States. Because there are no other live claims between petitioner and the United States, there is no "actual controversy" between the two and the Court should deny the petition insofar as it seeks review of the court of appeals' decision affirming the district court's dismissal of petitioner's PATRIOT Act claim, which is against the United States only. *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013) (citation omitted).

The United States expresses no opinion on whether the Court should review petitioner's claim that the court of appeals erred in affirming the dismissal of his FISA claims against the individual defendants.

CONCLUSION

The petition for a writ of certiorari is moot, and should therefore be denied, insofar as it seeks review of the court of appeals' holding that petitioner's PATRIOT Act claim is time-barred.

Respectfully submitted.

D. JOHN SAUER
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APRIL 2026