



Legal Document

District Of Columbia District Court

Case No. 1:23-cv-01816-BAH

**GREENSPAN v. EXECUTIVE OFFICE FOR U.S.
ATTORNEYS et al**

Document 104, Attachment 2



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AARON GREENSPAN,

Plaintiff,

v.

EXECUTIVE OFFICE FOR U.S.
ATTORNEYS, et al,

Defendants.

Case No. 1:23-cv-01816-BAH

**PLAINTIFF’S STATEMENT OF GENUINE ISSUES IN OPPOSITION TO
DEFENDANTS’ CROSS-MOTION FOR SUMMARY JUDGMENT, PURSUANT TO
LOCAL CIVIL RULE 7(h)**

Pursuant to Local Civil Rule 7(h)(1), Plaintiff Aaron Greenspan submits this statement of genuine issues in opposition to the cross-motion for summary judgment filed by Defendants Federal Bureau of Investigation (“FBI”) and Drug Enforcement Administration (“DEA”) (ECF No. 99). Part I responds, paragraph by paragraph, to Defendants’ Statement of Undisputed Material Facts (ECF No. 99-5). Part II sets forth additional material facts, supported by the record, that preclude judgment for Defendants.

Preliminary Statement. Each of the seventeen paragraphs of Defendants’ statement asserts a legal conclusion—that a search was adequate, that an exemption was “properly” applied, or that a statutory obligation was “met”—rather than a fact. Local Civil Rule 7(h)(1) contemplates a statement of material *facts*, supported by “references to the parts of the record relied on,” not a restatement of the movant’s requested holdings. Plaintiff objects to each paragraph on that ground. Without waiving the objection, and so that nothing is deemed admitted, Plaintiff responds to each paragraph and identifies the record evidence creating a genuine issue. “Driver Decl.” refers to ECF No. 99-1; “Davis Decl.” to ECF No. 99-4; “Suppl. Decl.” to the Supplemental Declaration of Aaron Greenspan filed herewith; and “Opp.” to Plaintiff’s Reply in Support of His Second Motion for Summary Judgment, Opposition to

Defendants’ Second Cross-Motion for Summary Judgment, and Reply to Intervenor’s Opposition, filed herewith.

I. RESPONSES TO DEFENDANTS’ STATEMENT OF UNDISPUTED MATERIAL FACTS

1. *The FBI has searched all locations and files reasonably likely to contain responsive records. See Driver Decl. ¶ 24.*

Response: Disputed, and a legal conclusion. The Driver Declaration does not establish that the FBI’s review of the file Plaintiff identified by number, 245-IP-71386-UUUUUU, was reasonably calculated to locate all responsive records. It describes two operations—gathering and reviewing “the records contained in the file identified by Plaintiff,” and “conduct[ing] a term search within the previously identified multi-subject file using the terms: ‘Bola’ and ‘Tinubu’”—without stating whether they were distinct processes or the same one, and without stating whether the two terms were run conjunctively or disjunctively. Driver Decl. ¶ 23. A conjunctive search would not locate records referring to Intervenor by surname alone, and the FBI’s own declaration describes its manual indices as digitized by optical character recognition, a process that introduces errors. *Id.* ¶ 18 n.9. On this record the Court cannot determine what search was run. Opp. Part II.B.

2. *DEA conducted searches reasonably calculated to locate all records responsive to Plaintiff’s FOIA requests. See Davis Decl. ¶ 22.*

Response: Not disputed that the DEA conducted the searches described in the Davis Declaration. Disputed to the extent the paragraph asserts the legal conclusion that those searches were adequate; paragraph 22 of the Davis Declaration is itself a one-sentence conclusion. Plaintiff’s motion does not separately challenge the adequacy of the DEA’s search, and Plaintiff does not seek judgment against the DEA on that ground.

3. *The FBI properly withheld records under Exemption 3. See Driver Decl. ¶¶ 29-36.*

Response: Disputed. The Driver Declaration describes categories of material—documents “summarizing and analyzing information obtained from FGJ subpoenas and

returns,” pen register orders, and Title III material—and, although the FBI’s page index marks exemption codes against Bates numbers, ECF No. 99-2 at 34-51, without explaining, as to any particular document, why disclosure would reveal a secret aspect of the grand jury’s investigation rather than underlying investigative facts. Driver Decl. ¶¶ 31-36. Wiretap and pen register information from this investigation is already part of the public case file in *United States v. Edwards*, Case No. 2:92-cr-00113-RL (N.D. Indiana). ECF No. 85-2 ¶ 16. The FBI’s own FD-302 transcriptions of the Title III intercepts in this investigation, bearing file number 245F-IP-71386 and naming the Special Agent who monitored each call, were introduced into evidence and remain in the public case file. Suppl. Decl. ¶ 11 & Ex. J. Opp. Part II.G.1.

4. *The DEA properly withheld records under Exemption 3. See Davis Decl. ¶¶ 26-30.*

Response: Disputed. Paragraphs 26 through 30 of the Davis Declaration recite the Pen Register Act and Title III and assert, in a single sentence, that the records “contained information related to wiretaps and pen register/trap and trace devices.” Davis Decl. ¶ 30. No document is identified. The DEA’s *Vaughn* index applies an identical justification paragraph across every document type. ECF No. 99-3; Opp. Parts II.E, II.G.1.

5. *The FBI properly withheld records under Exemption 5. See Hudgins Decl. (Ex. H to Driver Decl.) ¶¶ 6-9.*

Response: Disputed in part. Plaintiff does not dispute that FBI notes memorializing the advice of an Assistant United States Attorney can, in appropriate circumstances, fall within Exemption 5. Disputed that Defendants have made the showing of foreseeable harm required by 5 U.S.C. § 552(a)(8)(A)(i) as to the four pages withheld (Bates 3100-3101, 3143, 3323, 3330). ECF No. 99 at 13-15; ECF No. 99-1 at 42. The Hudgins Declaration addresses privilege, not harm, and the prosecutorial judgments at issue concern conduct more than thirty years old, as to individuals who were never charged or who are now deceased. ECF No. 35-5 at 2; ECF No. 34 at 4. Opp. Part II.G.2.

6. The FBI met the Exemption 7 threshold requirement. See Driver Decl. ¶ 37.

Response: Not disputed that the responsive records were compiled for law enforcement purposes.

7. The DEA met the Exemption 7 threshold requirement. See Davis Decl. ¶¶ 31-32.

Response: Not disputed that the responsive records were compiled for law enforcement purposes.

8. The FBI properly withheld records under Exemption 6 and/or 7(C). See Driver Decl. ¶¶ 38-50.

Response: Disputed. The following facts of record create a genuine issue as to whether any cognizable privacy interest outweighs the public interest in disclosure: (a) Intervenor Bola Ahmed Tinubu is the sitting President of Nigeria, elected February 25, 2023 and inaugurated May 29, 2023. Suppl. Decl. ¶ 5; ECF No. 99-6 at 7-8 (not disputing the dates). (b) On July 26, 1993, the United States, through an Assistant United States Attorney, filed a Verified Complaint incorporating the affidavit of IRS Special Agent Kevin Moss, which describes a joint FBI/DEA/IRS investigation of Intervenor; the filing bears the Northern District of Illinois's CM/ECF stamps as Document #1 and #1-1. ECF No. 85-4 at 1-21. (c) The court's docket in that case lists Bola Tinubu, K.O. Tinubu, and Alhaji Mogaji as Claimants, and the Decree of Forfeiture recites ownership claims asserted on behalf of "the Tinubu Family" and "Alhaji Mogaji." Suppl. Decl. Exs. K, M. (d) DEA Special Agent Vincent Balbo's sworn testimony concerning Abiodun Agbele, Karen Pertuso, and the Edwards organization was filed by the United States on the public docket of *United States v. Edwards* on March 14, 1996. ECF No. 85-4 at 22-24; Suppl. Decl. Ex. H. (e) The FBI's May 28, 2026 production released the Moss Affidavit itself with redactions, although the unredacted document has been a public court filing since 1993. ECF No. 85-4 at 67-88; ECF No. 85-3 ¶ 23. (f) Mueez Adegboyega Akande and Lee Andrew Edwards are deceased, as the Department of Justice has confirmed in writing in this case. ECF No. 35-5 at 2; ECF No. 34 at 4. (g) The FBI's procedure for

determining whether an individual is living—a presumption of death at 100 years of age and “institutional knowledge”—did not capture the Department’s own written death determination as to Akande, which Defendants now deny. Driver Decl. ¶ 41; ECF No. 99-6 at 2. (h) This Court has found that “defendants failed to show that any privacy interest Tinubu may have outweighs the public interest in release of responsive records.” ECF No. 48 at 18. Opp. Parts II.A.1, II.C, II.D.

9. *The DEA properly withheld records under Exemption 6 and/or 7(C). See Davis Decl. ¶¶ 33-37.*

Response: Disputed. Paragraphs 33 through 37 of the Davis Declaration contain no document-specific analysis; paragraph 35 asserts that a balancing was performed without identifying whose privacy was weighed, and without reference to the public court record or to the deaths of the investigation’s principal subjects. The facts set out in response to paragraph 8 apply equally here. Opp. Parts II.D, II.E.

10. *The FBI properly withheld records under Exemption 7(D). See Driver Decl. ¶¶ 51-67.*

Response: Disputed in part. The declaration relies on implied assurances of confidentiality for a category of individuals without a showing tied to any particular source or the circumstances of that source’s cooperation. Driver Decl. ¶¶ 51-67. Abiodun Agbele’s cooperation with, and interview by, the DEA and FBI was disclosed in open court and filed on the public docket by the United States. ECF No. 85-4 at 24. Opp. Part II.F.

11. *The DEA properly withheld records under Exemption 7(D). See Davis Decl. ¶¶ 38-39.*

Response: Disputed. Paragraphs 38 and 39 of the Davis Declaration recite the exemption and a conclusion. They identify no source, describe no circumstances of cooperation, and do not distinguish express from implied assurances of confidentiality. The *Vaughn* index applies the identical “confidential sources information” label to

Personal History Reports, Reports of Investigation, and Defendant Disposition Reports alike. ECF No. 99-3. Opp. Part II.F.

12. *The FBI properly withheld records under Exemption 7(E). See Driver Decl. ¶¶ 68-79.*

Response: Disputed in part. Plaintiff does not dispute that non-public details of investigative techniques currently in use may be withheld where disclosure could reasonably be expected to risk circumvention of the law. Disputed that the declaration establishes as much for the material withheld. Category (b)(7)(E)-9 withholds the “targets, locations, and monitoring” of surveillance conducted between 1990 and 1994 in an investigation whose targets are named in public court filings, ECF No. 85-4 at 1-21, and whose wiretap and pen register information is in the public *Edwards* case file, ECF No. 85-2 ¶ 16; Suppl. Decl. ¶ 11 & Ex. J; the location of surveillance thirty years ago reveals nothing about present-day methodology. Category (b)(7)(E)-8 withholds, on Bates pages 1887, 1894, 1899, 1901, 1908, and 1915, the quantities and types of drugs purchased in controlled buys; those are facts of the investigation, not techniques, and the controlled purchase is among the most widely known law enforcement techniques in existence. The further technique described only in Defendants’ *ex parte* submission (Bates 3064, 3078, 3082, 3086, 3110) cannot be tested on this record. Driver Decl. ¶¶ 68-79. Opp. Part II.G.3.

13. *The DEA properly withheld records under Exemption 7(E). See Davis Decl. ¶¶ 40-41.*

Response: Disputed. Paragraph 41 of the Davis Declaration identifies no technique, no document, and no reason a technique used between 1990 and 1994 remains non-public. The *Vaughn* index applies the 7(E) label to internal file identifiers such as NADDIS numbers and G-DEP codes. ECF No. 99-3; ECF No. 85-1 at 25.

14. *The FBI properly withheld records under Exemption 7(F). See Driver Decl. ¶¶ 80-81.*

Response: Disputed. The declaration asserts that the individuals named in these records “would likely face violent retaliation” from “third parties involved in the criminal activities associated with this specific drug trafficking investigation,” Driver Decl. ¶¶ 80-81, without identifying any living person who poses such a threat. The organization’s leader, Lee Andrew Edwards, is deceased, ECF No. 34 at 4; Mueez Adegboyega Akande is deceased, ECF No. 35-5 at 2; and the investigation closed more than thirty years ago. The only concrete harms the declaration identifies are two 2026 prosecutions and an Inspector General account of a cartel’s surveillance of an FBI attaché in Mexico City, none of which has any connection to this investigation, and the last of which is offered for third-party cooperators rather than FBI personnel. Driver Decl. ¶ 43 n.24; id. ¶ 46 n.25. The names of the FBI Special Agents who monitored the intercepts in this investigation appear on the FBI’s own transcriptions in the public case file, and Karen Pertuso, Robert Pertuso, and Vincent Balbo are identified by name on the court’s witness list. Suppl. Decl. ¶¶ 10-11 & Exs. I, J. Opp. Part II.D.7.

15. *The DEA properly withheld records under Exemption 7(F). See Davis Decl. ¶¶ 42-46.*

Response: Disputed. Paragraphs 42 through 46 of the Davis Declaration describe the work of law enforcement personnel in general terms (“Many of those violators are armed”), Davis Decl. ¶ 44, and contain no fact specific to these records, these employees, or any present-day threat. The facts set out in response to paragraph 14 apply equally here.

16. *The FBI has met its segregability obligations. See Driver Decl. ¶ 87.*

Response: Disputed. The FBI withheld 63 pages in full on the categorical statement that all information on them was “either fully covered” by an exemption or “so intertwined with exempt material” that nothing could be released, and withheld a further 59 pages as duplicates without identifying the pages they duplicate. Driver Decl. ¶ 87. The FBI’s segregability review did not account for material in the public domain: the FBI redacted

the Moss Affidavit, ECF No. 85-4 at 67-88, a document available in full on a federal court docket since 1993, *id.* at 1-21. Opp. Part II.D.1.

17. *The DEA has met its segregability obligations. See Davis Decl. ¶ 47.*

Response: Disputed. The DEA's segregability showing is a single generic paragraph, Davis Decl. ¶ 47, offered for an index in which 171 of 236 pages are withheld in full, including standardized forms—DEA-202 Personal History Reports and DEA-210 Defendant Disposition Reports—that ordinarily contain segregable, non-substantive content such as headings, dates, and form fields. ECF No. 99-3. Opp. Part II.E.

II. ADDITIONAL MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

Plaintiff incorporates his Amended Statement of Material Facts, filed herewith, which restates ECF No. 85-2 with record citations and corrects the year stated in ¶ 23, and states the following additional facts:

31. The copy of the Verified Complaint and Moss Affidavit filed at ECF No. 85-4 at 1-21 bears CM/ECF header stamps assigned by the United States District Court for the Northern District of Illinois, including “Case: 1:93-cv-04483 Document #: 1 Filed: 07/26/93 Page 1 of 3 PageID #:1” and “Case: 1:93-cv-04483 Document #: 1-1 Filed: 07/26/93 Page 1 of 15 PageID #:4.” ECF No. 85-4 at 2, 5.

32. Document No. 778 in *United States v. Edwards*, Case No. 2:92-cr-00113-RL (N.D. Indiana), is the Government's Sentencing Memorandum, bearing the Clerk's file stamp of March 14, 1996, to which the United States attached selected pages of DEA Special Agent Vincent Balbo's testimony at the sentencing hearing of Lee Andrew Edwards. Suppl. Decl. ¶ 9 & Ex. H; ECF No. 85-4 at 22-24.

33. At the March 9, 1993 trial in *United States v. Edwards*, before the Honorable Rudy Lozano, Assistant United States Attorney Daniel L. Bella stated on the record that defense counsel had “inquired regarding Grand Jury transcripts of witnesses Karen Pertuso, Vincent Balbo, with regard to Grand Jury proceedings that did not lead to the indictment of this case, but led to the indictments of other defendants who were at one point or another somehow connected

with Mr. Edwards,” and that “I pulled those Grand Jury transcripts . . . I do have them in our offices here in Hammond.” Suppl. Decl. ¶ 8 & Ex. G at 43-44.

34. The FBI’s May 28, 2026 production to Plaintiff included a copy of the Moss Affidavit with redactions. ECF No. 85-4 at 67-88; ECF No. 85-3 ¶ 23.

35. The URLs reproduced in Defendants’ response at ECF No. 99-6 at 7 and 9 omit the hyphens that appear in Plaintiff’s citations at the points where those addresses wrap across a line in ECF No. 85-2 (“detroitoffice” for “detroit-office”; “nigeriameets” for “nigeria-meets”). *Compare* ECF No. 85-2 ¶¶ 20, 30 *with* ECF No. 99-6 at 7, 9.

36. The FBI searched the file Plaintiff identified using the terms “Bola” and “Tinubu.” Driver Decl. ¶ 23.

37. The FBI determines whether an individual is living by presuming death if the individual was born more than 100 years ago and otherwise relying on “institutional knowledge gained from prior FOIA requests or internal records.” Driver Decl. ¶ 41.

38. To support its withholding of the names of FBI personnel, the Driver Declaration cites two 2026 criminal prosecutions, and to support its withholding of the names of third-party cooperators it cites an Office of the Inspector General account of a cartel’s surveillance of an FBI official in Mexico City, none of which concerns this investigation or any person named in the responsive records. Driver Decl. ¶ 43 n.24; *id.* ¶ 46 n.25.

39. The DEA’s *Vaughn* index (ECF No. 99-3) catalogues 236 pages, of which 171 are withheld in full, and reproduces, from the DEA’s earlier index at ECF No. 65-2 at 3, the same justification paragraph—including the same typographical errors (“faciliate,” “investion,” “signuatures,” and the statement that Exemption 7(E) “was also revoked”)—across entries for DEA-6 Reports of Investigation, DEA-202 Personal History Reports, DEA-210 Defendant Disposition Reports, FBI Identification Records, and Title III request pages. ECF No. 99-3.

40. The FBI’s Exemption 5 withholding is limited to four Bates pages: 3100-3101, 3143, 3323, and 3330. ECF No. 99 at 13-15; ECF No. 99-1 at 42.

41. On April 8, 2025, this Court found that “defendants failed to show that any privacy interest Tinubu may have outweighs the public interest in release of responsive records.” ECF No. 48 at 18.

42. On October 15, 2025, this Court denied Plaintiff’s motion to compel (ECF No. 55) and Intervenor’s motion to confirm the applicability of Exemptions 6 and 7(C) (ECF No. 56), stating that “any evaluation of the applicability of Exemptions 6 and 7(C) to specific records would be appropriate only when production is complete and the agency’s justification for any challenged withholding is before the Court.” Minute Order (Oct. 15, 2025).

43. Production is complete, and some of Defendants’ declarations and *Vaughn* index are before the Court, to the extent they concern the correct matter at all. ECF Nos. 99-1 through 99-4.

44. Intervenor’s counsel in this action, Christopher W. Carmichael, wrote on August 22, 2023, in correspondence filed in *Abubakar v. Chicago State University*, Case No. 1:23-cv-05099 (N.D. Illinois), that “the key fact – that Bola A. Tinubu graduated from Chicago State University in June 1979 with a Bachelor of Science in Business Administration, with honors – is accurate and true.” Suppl. Decl. ¶ 19 & Ex. R at 2.

45. Intervenor’s published biography, as posted by the Embassy of the Federal Republic of Nigeria in Tel Aviv, Israel, states that he “returned to Nigeria in the early 1990s and was employed by Mobil Nigeria as an accountant, before entering politics as a Lagos West senatorial candidate in 1992 under the banner of the Social Democratic Party,” and that “[i]n 1992, he was elected to the Senate.” Suppl. Decl. ¶ 20 & Ex. S.

46. On November 18, 1993, the Congressional Record reprinted a *Reuters* article quoting “Senator Bola Tinubu” and identifying him as “the Social Democratic Party senator.” 139 Cong. Rec. 30047 (Nov. 18, 1993); Suppl. Decl. ¶ 18 & Ex. Q.

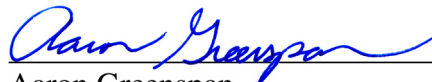
47. On August 18, 1993, *The Herald* (Glasgow), *The Irish Times*, and *The Dallas Morning News* each published an article quoting Senator Bola Tinubu’s reaction to President Babangida’s offer to step down, identifying him as a Senator. Suppl. Decl. ¶ 21 & Ex. T.

48. The case file of *United States v. Edwards* contains a compilation captioned “Photocopies of Cassettes Which Were Introduced Into Evidence and Accompanying Transcripts,” consisting of FBI Form FD-302 transcriptions of telephone conversations intercepted in 1990 on a telephone subscribed to by Lee Andrew Edwards. The transcriptions bear FBI file number 245F-IP-71386 and identify by name the FBI Special Agent who monitored each call, including Special Agents Dennis Phillip Hyten, William C. Haman, Kenneth A. Roper, J. J. Klaver, Robert J. Kowalski, Patrick P. Quigley, and Karen L. Pertuso, and bear the name of Special Agent David A. Roth. Suppl. Decl. ¶ 11 & Ex. J.

49. The Decree of Forfeiture entered October 4, 1993 in *USA v. Acct 263226700, et al*, Case No. 1:93-cv-04483 (N.D. Illinois), recites that “[o]wnership interests in the funds in these defendant accounts have been asserted on behalf of Bola A. Tinubu, K.O. Tinubu (individually and on behalf of the Tinubu Family) and Alhaji Mogaji,” and orders \$460,000 held in an account in Bola Tinubu’s name forfeited to the United States as “proceeds of narcotics trafficking or . . . involved in financial transactions in violation of 18 U.S.C. §§ 1956 and 1957.” Suppl. Decl. ¶ 14 & Ex. M.

Dated: September 9, 2026

Respectfully submitted,



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