UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	
	)	Crim. No. 17-201-01 (ABJ)
PAUL J. MANAFORT, JR.,	)	
	)	
Defendant.	)	

DEFENDANT PAUL J. MANAFORT, JR.'S MOTION TO SUPRESS EVIDENCE AND ALL FRUITS THEREOF RELATING TO THE GOVERNMENT'S SEARCH OF THE STORAGE UNIT LOCATED IN ALEXANDRIA, VIRGINIA

Defendant Paul J. Manafort, Jr., by and through counsel, hereby moves the Court pursuant to Rules 12(b)(3)(C) and 41(h) of the Federal Rules of Criminal Procedure to suppress evidence obtained by the government pursuant to a search warrant issued by a magistrate judge in the Eastern District of Virginia on May 27, 2017, for the storage unit located in Alexandria, Virginia (the "Search Warrant," attached hereto as Exhibit A) because: (1) the warrantless initial search of the storage unit for information that the FBI then used to obtain the Search Warrant violated the Fourth Amendment; (2) the Search Warrant was an overbroad general warrant that improperly gave federal agents *carte blanche* to indiscriminately seize property contained within the storage unit in violation of Mr. Manafort's Fourth Amendment rights; and (3) the agents who executed the search exceeded the warrant's search parameters in violation of the Fourth Amendment.[1]

[1] The warrant is also invalid because the FBI agents who sought and executed the warrant acted pursuant to Acting Attorney General Rosenstein's invalid grant of authority to the Special Counsel, as set forth in his Motion to Dismiss (Dkt. No. 235). As the Supreme Court has recognized,

> where the officer's powers are limited by statute, his actions beyond those limitations are considered individual and not sovereign actions. The officer is not doing the business which the sovereign has empowered him to do or he is doing it in a way which the sovereign has forbidden. His actions are ultra vires his authority and therefore may be made the object of specific relief.

Accordingly, the evidence obtained from the government's search of the storage unit should be suppressed. Moreover, because other search warrants later obtained by the government incorporated the fruits of the illegal search of the storage unit, all evidence obtained from those warrants must also be suppressed.[2]

I. FACTS

On May 27, 2017, the FBI executed the Search Warrant for the storage unit and seized nine categories of documents and binders from it. It was not, however, the first time that the FBI had searched the storage unit. The day before, May 26, 2017, an FBI Special Agent (the "FBI Agent") conducted a warrantless search of the storage unit after obtaining "consent" to do so from a former low-level employee of Davis Manafort Partners, Inc. ("DMP"). During the time that he was employed by DMP, the former employee's responsibilities involved carrying out low-level administrative functions. He had no actual authority to allow the FBI Agent into the premises, as an experienced law enforcement officer must have known. The FBI Agent clearly recognized this, because he did not open any of the containers stored within the premises at that time. Instead, the FBI Agent entered and observed a number of boxes and a filing cabinet inside the premises, as well as some writing on the sides of some boxes. He then left the storage facility. The next day, the FBI Agent prepared and signed an Affidavit in Support of an Application for a Search Warrant (the "FBI Affidavit," attached hereto as Exhibit B). In his affidavit, the FBI Agent used the information he had obtained during his warrantless search to argue in support of probable cause for a warrant to search the storage unit and seize documents from it. When a magistrate judge

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Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 689 (1949).

[2] For example, the search warrant affidavit submitted with the government's application for a warrant to search Mr. Manafort's residence incorporated evidence obtained from the FBI Agent's warrantless initial search of the storage unit.

sitting in the Eastern District of Virginia issued the Search Warrant the following day, the FBI Agent's end-run around the Fourth Amendment was complete. The Search Warrant was executed less than an hour after it was issued, and the FBI seized virtually every document contained within the storage unit.

II. DISCUSSION

A. The FBI's warrantless search of the storage unit violated the Fourth Amendment

1. Neither Mr. Manafort nor any other authorized person consented to the warrantless initial search of the storage unit

As the FBI Affidavit makes plain, the storage unit contained business records belonging to Mr. Manafort or businesses associated with him. (*See* FBI Aff. ¶¶ 28, 30 (describing "office files of Manafort's business" and "more recent office files of Manafort's business").) Mr. Manafort maintained a reasonable expectation of privacy in the storage unit, which had been locked (*see id.* ¶ 30), and the FBI Agent's intrusion into the premises prior to obtaining a valid search warrant constituted a search within the meaning of the Fourth Amendment. *See, e.g.*, *Garcia v. Dykstra*, 260 Fed. App'x 887, 897 (6th Cir. 2008). In *Garcia*, the court determined that law enforcement intrusion into a locked storage unit constituted a search, reasoning:

> [a]lthough an individual may not maintain a legitimate expectation of privacy in the lock on a door on the theory that a lock exposed to a public hallway is available to testing by anyone, he may reasonably expect that the contents of a closed, locked storage unit within a gated storage complex will remain free from public inspection.

Id.

Of course, a warrantless search is "the quintessential intrusion and is presumptively unreasonable." *United States v. Peyton*, 745 F.3d 546, 552 (D.C. Cir. 2014). "Even if supported by probable cause, warrantless searches are 'per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.'" *United States v.*

McEachin, 670 F.2d 1139, 1144 (D.C. Cir. 1981) (quoting *United States v. McClinnhan*, 660 F.2d 500, 503 (D.C. Cir. 1981)). Accordingly, unless an exception to the presumptive rule applies, the initial search conducted by the FBI Agent – prior to seeking judicial authorization to search the storage unit – was unlawful.

In this case, the sole applicable exception to the rule stated above would be third-party consent. *See generally United States v. Matlock*, 415 U.S. 164 (1974). In an effort to use the evidence ultimately seized from the storage unit – *after* the FBI Agent used information gleaned from his warrantless search to obtain the Search Warrant – against Mr. Manafort at trial, the Special Counsel must rebut the presumption of unreasonableness by arguing that the former employee had legal authority to permit the FBI Agent to enter the storage unit and that he consented to the search. But the former employee had no such authority, and the FBI Agent knew it.

The Search Warrant was fundamentally flawed from the outset because the FBI Agent knew when he conducted the warrantless search of the storage unit that he had not obtained valid consent to do so. The *former* DMP employee had no authority to consent to a search of DMP's property. Because the initial warrantless search violated the Fourth Amendment and formed the basis for the government's subsequent application for a warrant to search that storage unit and seize its contents, the Search Warrant should have never been issued, and all evidence that the government obtained from the FBI's second search of the premises, and the fruits thereof, should be suppressed. *See generally Wong Son v. United States*, 371 U.S. 471 (1963); *United States v. Holmes*, 505 F.3d 1288 (D.C. Cir. 2007).

2. The former employee had no actual or apparent authority to consent to the initial search

An agent acts with actual authority only when he reasonably believes, *in accordance with the principal's manifestations to the agent,* that the principal wishes the agent so to act." *A-J*

Marine, Inc. v. Corfu Contractors, Inc., 810 F. Supp. 2d 168, 175–76 (D.D.C. 2011) (quoting Restatement (Third) of Agency: Actual Authority § 2.01 (2006) (emphasis in original)). "Actual authority can be created expressly or by implication through 'written or spoken words or other conduct of the principal, which reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal's account.'" *Id.* (quoting *Evans v. Skinner*, 742 F. Supp. 30, 32 (D.D.C. 1990)).

In this case, when considering the question of actual authority, the relevant analysis rests on the former employee's state of mind – *i.e.*, what he *reasonably understood* the authority Mr. Manafort vested in him to be (or not to be) – *not* on what the FBI Agent may have *believed* from the face of the lease agreement. Here, the former employee was named as an occupant on the lease agreement simply for administrative convenience and only because he happened to be the DMP employee tasked with setting up the storage lease on DMP's behalf and moving DMP's business records into the unit. This is bolstered by the fact that the former employee's DMP email address was listed on the lease agreement and the fact that Mr. Manafort appears on the agreement as the *only person* with authorized access to the storage unit. As the FBI Agent knew, the former employee's primary responsibilities at DMP were performing ministerial "functions for Manafort and his companies *as directed by Manafort*." (*See* FBI Aff. ¶ 28) (emphasis supplied). It was clear to the former employee and others at DMP that he had no authority to enter the storage unit for any reason *absent prior express permission from Mr. Manafort*. On no occasion did Mr. Manafort do or say anything that manifested an express or implied desire to allow the former employee to consent to a law enforcement search of the premises for DMP's records. Put simply, he did not have actual authority in connection with the storage unit and did not have the actual authority to consent to the FBI Agent's search.

Alternatively, a person with apparent authority may authorize a search, provided that law enforcement reasonably believes that the person is authorized to do so. *See United States v. Peyton*, 745 F.3d 546, 552 (D.C. Cir. 2014) ("Even a person who does not *actually* use the property can authorize a search if it is reasonable for the police to believe she uses it," and "[s]uch 'apparent authority' is sufficient to sustain a search" provided "that officers' factual determinations in such situations are reasonable.") (citation omitted; emphasis in original). However, "[a]pparent authority ends when it is no longer reasonable for the third party with whom an agent deals to believe that the agent continues to act with actual authority." Restatement (Third) of Agency: Termination of Apparent Authority § 3.11(2) (2006). As the District of Columbia Court of Appeals has explained (in answering a certified question from the Circuit Court of Appeals for the District of Columbia), "apparent authority depends upon the *principal's manifestations to the third party*[.]" *Makins v. D.C.*, 861 A.2d 590, 594 (D.C. 2004) (emphasis added).

Here, Mr. Manafort never expressed anything to the FBI Agent with regard to what the former employee was authorized to do (or not to do). Mr. Manafort and the FBI Agent have never communicated with each other. Second, the FBI Agent stated in his affidavit that he accompanied the former employee to the storage facility and that, after they arrived, he reviewed a copy of the lease agreement that identified the former employee as the storage unit's occupant. (*See* FBI Aff. ¶ 29.) But the FBI Agent also acknowledges that he knew that that the former employee was no longer employed by DMP. (*See id.* ¶ 28 ("your Affiant met with [him], a *former employee* of [DMP.]") (emphasis added).) It was entirely unreasonable for the FBI Agent to have believed at the time he visited the storage facility with the former employee that the *former* DMP employee had the authority to consent to a search of the storage unit for DMP records. Lastly, the FBI Agent knew that the premises contained Mr. Manafort's – *not* the former employee's – business records,

(*see id.*), rendering any belief by the FBI Agent that the former employee had authority to consent to a search of the storage unit unreasonable.

That is, once the FBI Agent knew that the former employee could not legally enter the storage unit without Mr. Manafort's direction and consent, the FBI Agent knew that the former employee had no actual or apparent authority to do so. In *United States v. Corral*, 339 F. Supp. 2d 781 (W.D. Tex. 2004), the court suppressed evidence seized from a home where the purported consent to a warrantless search came from a part-time domestic housekeeper. *Id.* at 799. Prior to the search, the housekeeper told federal agents that she was in charge of the homeowner's child when the homeowner was absent and that the homeowner allowed her to clean (and thereby access) the entire premises on a regular basis. *Id.* at 785-86. The court reasoned that these "minimal facts" had been insufficient to provide a basis for the agents to reasonably believe that the housekeeper had apparent authority to consent to a search of the home. *Id.* at 796. In *Boyer v. Peterson*, 221 F. Supp. 3d 943 (W.D. Mich. 2016), the court concluded that a spouse did not have apparent authority to consent to a search of a home despite being a co-owner of the property where the spouse was no longer a co-occupant of the home, a fact known to the police at the time of the search. *Id.* at 957. The court noted that the searching officer's reliance on the spouse "as the 'owner' and 'deed-holder' was not sufficient to conclude that the spouse had 'actual' or 'apparent' authority over the residence" because "[a] third-party's 'common authority' is not synonymous with a technical property interest.") *Id.* (quoting *Georgia v. Randolph*, 547 U.S. 103, 110 (2006)). In *United States v. Toan Phuong Nghe*, 925 F. Supp. 2d 1142 (W.D. Wash. 2013), the court held that it was unreasonable for police officers to conduct a warrantless search of a hotel room despite the fact that the hotel manager had consented to the search, because the manager did not have

apparent authority to consent to the search even though he had given the officers a key to the hotel room. *Id.* at 1147.

In this case, the FBI Agent overstepped the confines of the Fourth Amendment, and any reliance by the government on the concept of apparent authority is misplaced. Although the former employee retained a key to a storage unit that contained DMP's property and papers, he was no longer a DMP employee, and the FBI Agent knew this. The mere fact that the former employee still appeared on the lease agreement did not confer on him the apparent authority to consent to a search of the unit under the facts then and there known by the FBI Agent. Just as in *Boyer*, *supra*, a technical property interest is not the same as having actual or apparent authority over the premises to be searched. For these reasons, the Court should conclude that the former employee had neither actual nor apparent authority to allow the FBI Agent to conduct the warrantless initial search of the storage unit.

3. The former employee had no "common authority" to consent to the FBI Agent's initial search

Absent actual or apparent authority, only persons with "'common authority over … the premises'" may consent to a search of that premises. *United States v. Peyton*, 745 F.3d 546, 552 (D.C. Cir. 2014) (quoting *Matlock*, 415 U.S. at 171). Common authority (a concept often intertwined with the concept of apparent authority, *supra*,) is narrowly defined as:

> mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.

Id. at 552 (quoting *Matlock*, 415 U.S. at 171 n.7). The burden of establishing common authority with regard to third-party consent to search property rests with the government. *See Illinois v. Rodriguez*, 497 U.S. 177, 181–82 (1990).

Peyton is instructive. There, the defendant shared a small apartment with his great-great-grandmother (the "co-occupant"); she lived in the bedroom area while the defendant slept and kept his personal property in the apartment's living room. 745 F.3d at 549. The police had been to the apartment previously when they conducted a search pursuant to a warrant. On the occasion at issue, however, the officers decided to proceed to the apartment without a warrant when they knew that the defendant would not be there with the express hope that the co-occupant would consent to a search. *Id.* When the police arrived at the apartment they explained to the co-occupant that they believed that there might be drugs inside the apartment and obtained her written consent to search the entire apartment. *Id.* As the officers approached the bed in the living room, however, the co-occupant stated that the defendant kept his personal belongings in that area. *Id.* Nevertheless, an officer observed a closed shoebox near the bed, opened it, and discovered illegal narcotics. *Id.* The defendant was subsequently indicted for possession with intent to distribute crack cocaine. *Id.* at 550.

The Court of Appeals held that the co-occupant lacked common authority in connection with the shoebox, despite the fact that it was located in the apartment that she shared with the defendant and that the defendant had made no attempt to hide the shoebox. *Id.* at 553-54. The court further noted that it should have been clear to the police that the shoebox contained personal property and that the defendant's co-occupant did not have permission to use the shoebox herself. *Id.* More specifically, the court held that common authority to consent to a search is applicable only where "it is reasonable for the police to believe" that a person using the property has actual authority to consent to a search of that property. *Id.* (citing *Rodriguez*, 497 U.S. at 186). The court explained that the scope of the common authority principal is limited because "[t]he fact that a person has common authority over a house, an apartment, or a particular room, does not mean that

she can authorize a search of anything and everything within that area." *Id.* Thus, while common authority may be sufficient to allow officers to search a "common area" and "extends to most objects in plain view, it does not automatically extend to the interiors of every enclosed space within the area." *Id.* (quoting *Donovan v. A.A. Beiro Construction Co.*, 746 F.2d 894, 901-02 (D.C. Cir. 1984)). Critically, the court further explained that "[a]pparent authority does not exist *where it is uncertain* that the property is in fact subject to mutual use." *Id.* at 554 (footnote omitted; emphasis added).

Based on his sworn affidavit, the FBI Agent could not have proceeded with any degree of certitude that the former employee and Mr. Manafort mutually used the storage unit after he learned that he was no longer an employee of DMP. Nothing that the former employee purportedly stated to the FBI Agent can be construed as an indication that he ever shared use of the storage unit with Mr. Manafort. Rather, the FBI Affidavit makes it abundantly clear that the storage unit was used exclusively for the storage of Mr. Manafort's business records and that it did not contain any property that belonged to the former employee. Indeed, the FBI Affidavit states that the former employee described the contents of the premises as the "office files of Manafort's business" (FBI Aff. ¶ 28) as well as "additional, more recent office files of Manafort's business[.]" (*Id.* ¶ 30.) In fact, the former employee was unable to provide the FBI Agent with a description of the contents of the filing cabinet stored in the premises but stated that he would put "brown, legal-sized files" into the cabinet at Mr. Manafort's direction. (*Id.*) He also explained to the FBI Agent that the filing cabinet stored inside the premises had come from Mr. Manafort's former residence. (*Id.*) Not once in his affidavit does the FBI Agent identify a single item of property that belonged to the former employee and that was contained, or might have been contained, within the storage unit. In short, *nothing* that he stated to the FBI Agent when he described the contents of the storage unit

could have caused the FBI Agent to reasonably believe that the unit was a space that Mr. Manafort and the former employee mutually shared. Thus, the FBI Agent had no legitimate basis to reasonably believe that the former employee had common authority to consent to the warrantless initial search of the storage unit.

Indeed, the fact that the FBI Agent knew that the former employee had no true authority to consent to a search of the storage unit is revealed by the steps the FBI Agent took once he gained initial access to the unit. Rather than conducting a search and seizure based on a belief that the former employee had authority to consent to such a search – which the law would have clearly permitted in the case of a valid and voluntary consent – the FBI Agent took care not to open any of the boxes or the filing cabinet that he observed inside the unit. (*See id.* ¶ 31.) Instead, the FBI Agent completed his initial search, left the storage facility, returned to his office, and drafted the search warrant affidavit to establish probable cause to conduct the second search of the premises. Had the FBI Agent truly believed that the former employee had the authority to consent to the initial search, there would have been no reason for the FBI Agent to apply for a search warrant to allow him to search the storage unit a second time.

4. Suppression is the appropriate remedy for the warrantless initial search

The appropriate remedy here is suppression of all evidence seized by the government from the premises and the fruits thereof. *See United States v. Holmes*, 505 F.3d 1288 (D.C. Cir. 2007). In *Holmes*, police officers chased down and apprehended a defendant who had fled immediately upon seeing the officers approach him. *Id.* at 1290. During the course of conducting a routine pat down, one of the officers felt a set of car keys in the defendant's pants and removed them. *Id.* The officer subsequently used the suspect's car key to enter the suspect's vehicle, where the officer discovered a handgun. *Id.* at 1291. After the defendant's motion to suppress was denied, the

handgun was admitted as evidence at the defendant's trial, which resulted in his conviction for unlawful possession of a firearm. *Id.* at 1291-92.

The Court of Appeals reversed. *Id.* at 1295-96. The court reasoned that the search and seizure of the defendant's keys from inside his pocket exceeded the scope of a protective frisk and, thus, a warrant should have been obtained prior to searching the pocket and seizing its contents. *Id.* at 1292. The court explained that illegally obtained evidence must be suppressed where a defendant "make[s] a *prima facie* showing of a causal nexus between the Fourth Amendment violation and the evidence he seeks to suppress[]" *id.* (citing *United States v. Crews*, 445 U.S. 463, 471 (1980)), unless the government can establish that the evidence would have been inevitably discovered, that it would have been discovered through independent means, or attenuation of the taint. *Id.* at 1293.

Here, the nexus between the government's violation of the Fourth Amendment and the evidence it obtained from the initial search is clear. But for the impermissible warrantless initial search of the storage unit, the FBI Agent would have had very little specific knowledge of its contents. Therefore, the FBI Agent would not have been in a position to swear out an affidavit to establish probable cause for a warrant to search the storage unit, the Search Warrant would have never been issued, and the materials would have never been seized. There is no basis here for the government to argue the concepts of inevitable discovery, or discovery by independent means, nor is there a factual basis to argue that any subsequent action purged the taint of the warrantless initial search. Accordingly, all evidence that the government seized from the storage unit must be suppressed.

5. The Court should hold a hearing as to whether the former employee's purported consent to the initial search of the storage unit was voluntary

"The Fourth Amendment test for a valid consent to search is that the consent be voluntary, and 'voluntariness is a question of fact to be determined from all the circumstances.'" *United States v. Glover*, 583 F. Supp. 2d 5, 18 (D.D.C. 2008) (quoting *Ohio v. Robinette*, 519 U.S. 33, 40 (1996)). The burden lies with the government to establish that consent was freely and voluntarily given. *Id.* The Supreme Court has cautioned that the question of whether consent was free and voluntary requires the "most careful scrutiny" to deter "the possibility of official coercion", therefore, "account must be taken of subtly coercive police questions, as well as the possibly vulnerable subjective state of the person who consents." *Schneckloth v. Bustamonte*, 412 U.S. 218, 229 (1973).

As discussed above, the FBI Agent's Affidavit avers that the former employee consented to the FBI's warrantless initial search of Unit 3013 on May 26, 2017. This consent must be considered invalid, however, unless the government carries its burden of proving at a hearing that it was voluntarily given. *Schneckloth*, 412 U.S. at 222. The test for voluntariness is based on all the facts and circumstances, including a claim by agents that they have authority to make the search even without consent; a show of force or other coercive surroundings; a threat to seek or obtain a search warrant; prior illegal action by agents; and agents having given a warning of one's right not to consent. Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, § 8.2 (5th ed.). Other factors include the person's age, education, and emotional state. *Schneckloth*, 412 U.S. at 226. The FBI Affidavit provides no indication of the facts and circumstances of the former employee's purported consent. The government, therefore, must prove the validity of his consent at a hearing.

B. The Search Warrant was unconstitutionally overbroad

1. The Search Warrant was an impermissible "all documents" warrant

Even if the Search Warrant was not invalid in light of the FBI's warrantless search, it was fatally overbroad in scope because it allowed the searching agents to indiscriminately seize everything from the storage unit. The Fourth Amendment simply does not permit the warrant that was issued in this case, which was essentially a general warrant for "any and all" documents without any temporal limitation.

The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. IV. The purpose of the Fourth Amendment's warrant clause is to ensure that "those searches deemed necessary should be as limited as possible." *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971).

"[T]he specific evil" in this case "is the 'general warrant' abhorred by the colonists, and the problem is not the intrusion per se, but of a general, exploratory rummaging in a person's belongings." *Coolidge*, 403 U.S. at 467; *see also Arizona v. Grant*, 556 U.S. 332, 345 (2009) ("[T]he central concern underlying the Fourth Amendment [is] the concern about giving police officers unbridled discretion to rummage at will among a person's private effects."). The Constitution limits law enforcement's rights to search only "the specific areas and things for which there is probable cause to search," and requires that "that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." *Maryland v. Garrison*, 480 U.S. 79, 84 (1987). For these reasons,

the Fourth Amendment requires that search warrants "'particularly describ[e] the place to be searched, and the persons or things to be seized," which operates to "prevent[ ] the seizure of one thing under a warrant describing another.'" *Jones v. Kirchner*, 835 F.3d 74, 79 (D.C. Cir. 2016) (quoting *Marron v. United States*, 275 U.S. 192, 195–96 (1927)).

The Search Warrant here fell short of the constitutional requirements set out above. The Search Warrant directed the seizure of, *inter alia*, "*[a]ny and all* financial records" related to Mr. Manafort or any companies associated with him, (*see* Search Warrant, Attachment B, ¶ 1a. (emphasis added)), "*[a]ny and all* federal and state tax documentation, including but not limited to personal and business tax returns and all associated schedules" (*id.* ¶ 1b. (emphasis added)), all communications related to "*any* foreign financial institution," (*id.* ¶ 1b[3]. (emphasis added)), "*[a]ny and all* correspondence, communication, memorandum or record of *any kind* relating to" Mr. Manafort's work, (*id.* ¶ 1c. (emphases added)), "*any and all* daily planners, logs, calendars, schedule books", (*id.* ¶ 1g. (emphasis added)), and "[c]omputers or storage media" that the executing agents were apparently able to recognize during their search had been used in connection with the offenses under investigation, (*id.* ¶ 2.)

The Search Warrant functioned as a general warrant that improperly authorized an unfettered search and the wholesale seizure of virtually every document contained within the storage unit. The Search Warrant violated the core purpose of the particularity requirement "to protect against the centuries-old fear of general searches and seizures." *United States v. Heldt*, 668 F.2d 1238, 1257 (D.C. Cir. 1981). As the Court of Appeals recently observed, this is especially true where law enforcement agents are not seeking illegal contraband, but are instead searching for and seizing purely innocuous items such as documents or electronic devices. *See United States*

[3] Attachment B to the Search Warrant contains two sections labeled "1b.".

v. Griffith, 867 F.3d 1265, 1276 (D.C. Cir. 2017) (finding warrant that permitted seizure of "all electronic devices" unconstitutionally overbroad).

2. The Search Warrant for the storage unit bore no temporal limitation in violation of the Fourth Amendment.

For a search warrant to be valid, it must provide the executing agents with guidance as to the time frame for which the agents are to seize evidence. In other words, if the government is investigating potential offenses for the years 2006 through 2017, then the search warrant must limit agents to searching for and seizing evidence that relates to offenses for those years only. The Search Warrant lacked any temporal limitation at all, making it impermissibly broad and leaving the decision of what to seize to the discretion of the agents in violation of the Fourth Amendment.

The Fourth Amendment requires that "those searches deemed necessary should be as limited as possible." *Coolidge*, 403 U.S. at 467. "Failure to limit broad descriptive terms by relevant dates, when such dates are available to the police, will render a warrant overbroad." *United States v. Ford*, 184 F.3d 566, 576 (6th Cir. 1999). The dates were manifestly available to the agents in this case. Indeed, the other warrants that the government executed in this case explicitly prohibited the agents from seizing evidence relating to anything other than offenses "occurring on or after January 1, 2006." The warrant's descriptive terms, unbound by any temporal limitation, were impermissibly broad by their own right, authorizing the seizure of "[a]ny and all financial records for Paul Manafort, Richard Gates or companies associated with Paul Manafort or Richard Gates." (Search Warrant, Attachment B ¶ 1a.) As noted, a warrant that authorizes the seizure of any and all financial records of the targets of the investigation for any and all years is a general warrant that is repugnant to the Fourth Amendment.

Federal courts have repeatedly pointed to the absence of a temporal limitation as an indicator of a warrant's unconstitutional overbreadth. *See, e.g.*, *United States v. Blake*, 868 F.3d

960, 974 (11th Cir. 2017) ("[T]he warrants should have requested data only from the period of time during which Moore was suspected of taking part in the prostitution conspiracy."); *In re 650 Fifth Ave. & Related Props.*, 830 F.3d 66, 84 (2d Cir. 2016) ("Nor does the warrant place any temporal limit on the property to be seized."); *United States v. Yusuf*, 461 F.3d 374, 395 (3d Cir. 2006) (finding a search warrant valid in part because it was restricted to a fixed time period); *United States v. Abboud*, 438 F.3d 554, 576 (6th Cir. 2006) (invalidating a warrant that was limited to a six-year period on the ground that probable cause only supported the seizure of evidence pertaining to a three-month period); *United States v. Kow*, 58 F.3d 423, 427 (9th Cir. 1995) (finding one factor in the overbreadth analysis to be the government's failure to "limit the scope of the seizure to a time frame within which the suspected criminal activity took place, even though [the] affidavit indicates that the alleged criminal activity began relatively late in [the business's] existence."); *United States v. Leary*, 846 F.2d 592, 604 (10th Cir. 1988) (warrant impermissibly failed to limit itself to the "specific period of time coincident to the suspect transaction"); *United States v. Abrams*, 615 F.2d 541, 543 (1st Cir. 1980) (finding warrant overbroad in part because it contained "no limitation as to time").

According to his affidavit, during the warrantless initial search the FBI Agent observed file boxes bearing dates going back 30 years, (*see* FBI Aff. ¶ 36), demonstrating that the government knew that the storage unit contained materials predating the years under investigation by *more than two decades*. Despite this, nothing in the Search Warrant limited the agents' seizure of materials based on their temporal relevance to the Special Counsel's investigation. With this temporally-unbounded warrant in hand, the agents did not need to spend any time determining which materials were relevant to the years under investigation. Indeed, the magistrate judge signed

the Search Warrant at 4:47 p.m., (*see* Search Warrant), and the agents had completed their search and seizure by 5:20 p.m. (*see* Search Warrant Return).

The FBI Affidavit cannot save this defective warrant. The Supreme Court has made clear that the Fourth Amendment's particularity requirements must be satisfied "in the warrant, *not in the supporting documents*." *Groh v. Ramirez*, 540 U.S. 551, 557 (2004) (emphasis added). A court may only "construe a warrant with reference to a supporting application or affidavit if the warrant uses appropriate words of incorporation, and if the supporting document accompanies the warrant." *Id*. at 557–58. The Court of Appeals has recently explained that it will "read warrants by reference to an affidavit, [but], only if the issuing judge uses explicit words on the warrant indicating an intention to incorporate the affidavit's contents and thereby limit [the warrant's] scope." *Griffith*, 867 F.3d 1265 at 1277. Here, the Search Warrant in no way incorporated the FBI Affidavit, rendering it a general warrant for all financial documents covering any time period.

C. The executing agents improperly seized materials beyond the warrant's scope and returned a search inventory so general as to violate the requirement of an inventory

Even where the particularity requirement is satisfied – and here it was not – "the search itself must be conducted in a reasonable manner, appropriately limited to the scope and intensity called for by the warrant." *Heldt*, 668 F.2d at 1256 (citation and footnotes omitted). As the court in *Heldt* further explained:

> When investigators fail to limit themselves to the particulars in the warrant, both the particularity requirement and the probable cause requirement are drained of all significance as restraining mechanisms, and the warrant limitation becomes a practical nullity. Obedience to the particularity requirement both in drafting and executing a search warrant is therefore essential to protect against the centuries-old fear of general searches and seizures.

Id. at 1257. In light of these principals, "the Fourth Amendment confines an officer executing a search warrant strictly within the bounds set by the warrant[.]" *Id.* at 1260 (quoting *Bivens v. Six*

Unknown Named Agents, 403 U.S. 388, 394 n.7 (1971)). Therefore, "in general, only items particularly mentioned in the warrant may be seized." *Id.* at 1268 (collecting cases).

The agents that executed the Search Warrant in this case ran afoul of the above principles and seized virtually everything from the premises. This is clear from the Search Warrant Return inventory, which simply lists nine groups of unidentified "documents" seized by the agent (with the exception of line item #1, which lists a group of unidentified "documents and binders"). (*See* Search Warrant Return.) Accordingly, the searching agents improperly seized everything contained within the storage unit, without regard for which "documents" and "binders" they were authorized, or not authorized, to take.

In addition, Rule 41 of Federal Rules of Criminal Procedure sets forth procedures that the government must follow when seeking and executing search and seizure warrants. After executing a search warrant, "[a]n officer present during the execution of the warrant must prepare and verify an inventory of any property seized." Fed. R. Crim. P. 41(f). As noted above, after searching the premises, the agents prepared a document that purported to be an inventory but which was instead a perfunctory statement that the FBI seized "documents" and "documents and binders." This description fails entirely to inform either "the person from whom, or from whose premises, the property was taken," or the Court what the agents seized. *Id*.

Courts analyze alleged violations of Rule 41 by first considering if the Rule was in fact violated and, if it was, determining whether the violation rose to a violation of the Fourth Amendment. *See United States v. Krueger*, 809 F.3d 1109, 1113 (10th Cir. 2015). Here, the purported inventory was so devoid of description as to be a violation of Rule 41.

A search and seizure that leaves the subject without a reasonable description of what was seized is an unreasonable search and seizure in violation of the Fourth Amendment and requires suppression of the fruits of the seizure. In the alternative, if a court

> determine[s] that the Rule 41 violation is not of constitutional import, [it] then consider[s] whether the defendant can establish that, as a result of the Rule violation, (1) there was prejudice in the sense that the search might not have occurred or would not have been so abrasive if the Rule had been followed, or (2) there is evidence of intentional and deliberate disregard of a provision in the Rule.

Krueger, 809 F.3d at 1114. Here, the inventory is so bare as to rise to the level of an intentional and deliberate disregard of Rule 41, and thus suppression is warranted.

D. All evidence seized from the storage unit should be suppressed

Evidence seized in violation of the Fourth Amendment, as well as the fruits thereof, is subject to suppression. *See Herring v. United States*, 555 U.S. 135, 139 (2009) (holding that the exclusionary rule forbids use of improperly obtained evidence at trial). The primary purpose of the exclusionary rule "is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures." *United States v. Calandra*, 414 U.S. 338, 347 (1974). *See also United States v. Johnson*, 332 F. Supp. 2d 35, 38 (D.D.C. 2004) ("The exclusionary rule bars the prosecution from using in its case-in-chief evidence obtained during a search that violated the Fourth Amendment.") (citing *United States v. Dawkins,* 17 F.3d 399, 407–08 (D.C. Cir. 1994)).

In this case, without the FBI Agent's illegal initial search, the Search Warrant in this case would have never been issued, and the evidence from the storage unit would have never been discovered. When the Search Warrant was (improperly) issued, it was impermissibly overbroad; and even if it was sufficiently particularized, the agents ignored its scope and improperly seized virtually everything from the premises. Accordingly, the exclusionary rule should be applied, and

the evidence from the storage unit suppressed, because the Search Warrant was fundamentally flawed from the outset, it was insufficiently particularized and, even it did not suffer these infirmities, it was executed in an impermissibly overbroad fashion.

III. CONCLUSION

Wherefore, Mr. Manafort respectfully moves the Court to suppress the evidence seized and all fruits of the government's search of the storage unit on the grounds stated herein.

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Respectfully submitted,

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