

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

THE STATE OF GEORGIA,

v.

JOHN CHARLES EASTMAN, et al.

Case No.: 23SC188947

Judge: Scott McAfee

PRELIMINARY/PLACEHOLDER MOTION TO SUPPRESS

John Charles Eastman, through counsel files this “Preliminary/Placeholder Motion To Suppress” to preserve the ability to perfect a motion to suppress for an unlawful search and seizure in violation of Defendant Eastman’s Fourth Amendment rights should it be determined that the State intends to seek admission of evidence derived from the seizure of Defendant’s phone or from archival copies of his client communications stored on his former employer’s server.

BACKGROUND ON PHONE SEIZURE

On the evening of June 22, 2022, federal agents served a search warrant on Defendant John Charles Eastman while defendant was exiting a restaurant. Defendant asked to see the warrant, but the executing officer refused. Defendant was frisked. Defendant’s phone – an iPhone Pro 12 – was seized. Defendant was forced to provide biometric data to open said phone. Defendant was not provided a copy of the warrant until after his phone was seized, and even then, he was only given a copy of the search warrant but not the supporting affidavit referenced in it.

The federal agents identified themselves as FBI agents, but they appeared to be executing a warrant issued at the behest of the Department of Justice’s Office of the Inspector General (OIG).

While Defendant is an attorney, Defendant has never worked for the Department of Justice.

The warrant authorized a search of Defendant’s person and the area within Defendant’s immediate control. The warrant authorized seizure of “any electronic or digital device—including cell phones, USP devices, iPads, and computers identified in the affidavit—and all information in such devices.”

**BACKGROUND ON ARCHIVED COMMUNICATIONS
PRODUCED PURSUANT TO WARRANT**

Defendant Eastman was employed as a law professor at Chapman University until January 2021. In that capacity, in addition to teaching constitutional law and other substantive law courses, he co-directed a constitutional law legal clinic, representing clients in both trial and appellate courts, including the Supreme Court of the United States. Dr. Eastman utilized his university email account in the course of those representations, engaging frequently in communications with clients and others protected by attorney-client or work-product privileges.

After receiving the District Attorney’s first production of documents in this matter, Dr. Eastman learned for the first time that a warrant had been served on his former employer to obtain any of his communications that it might have retained in archival format. Although Dr. Eastman had removed all such client communications

pursuant to a settlement when he retired from the University, Chapman had retained archival copies of those records without notifying Dr. Eastman it had done so.

A federal court already found that the attorney-client privilege applied to such documents and was not waived merely because the communications were conducted using the Chapman email system. *Eastman v. Thompson*, 594 F.Supp.3d 1156, 1176-80 (C.D. Cal. 2022). The District Attorney's office was presumptively aware of this court ruling, as filings in that case are among the documents that it produced to Defendants in this litigation. E.g., FCDA00072623. Nevertheless, the warrant sought (and presumably obtained) these privileged communications, subject to review by a "Filter Team" and the mandate that "The Filter Team shall process the seized items and provide them to counsel for the privilege holder, on a rolling basis, so that counsel for the privilege holder may perform the initial privilege review." Warrant for Search and Seizure issued to Chapman University, Case No. 2022EX001279, Attachment A, ¶ 2 (July 20, 2023). FCDA00045562; FCDA00045565.

Dr. Eastman and his many clients whose privileged communications with Dr. Eastman using the Chapman email account are the holders of the privilege, yet no "seized items" have been provided to Dr. Eastman or his counsel by the Filter Team, and neither, to Dr. Eastman's knowledge, have any been provided to any of Dr. Eastman's clients. This would be in direct violation of the conditions imposed by the search warrant.

ARGUMENT

To date, Defendant Eastman has not identified any discovery provided by the State which appears to come from his cell phone or from the Chapman University archived repository referenced above. Should future discovery reflect the State intends to introduce such evidence, then Defendant Eastman will perfect this motion to suppress.

Respectfully Submitted,
/s/ Wilmer Parker
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing PRELIMINARY/PLACEHOLDER MOTION TO SUPPRESS by filing the same with the Clerk of Court using the Odyssey eFileGA electronic filing system, which will automatically send email notification of such filing to all parties of record.

This 8th day of January 2024.

/s/ Wilmer Parker
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