

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

**UNITED STATES OF AMERICA * CRIMINAL NO. 1:17-CR-00204-001
VERSUS * CHIEF JUDGE DRELL
NATHAN BURL CAIN, II and * MAGISTRATE JUDGE PEREZ-MONTES
TONIA BANDY CAIN**

**REPLY MEMORANDUM IN SUPPORT OF JOINT
MOTION TO SUPPRESS ON BEHALF OF DEFENDANTS
NATHAN B. CAIN, II AND TONIA B. CAIN**

NOW INTO COURT, through undersigned counsel, come Nathan Cain and Tonia Cain, who submit this reply to the United States' Opposition to Joint Motion to Suppress. (Rec. Doc. 38). In accordance with this Court's order, this reply is limited to matters raised by the opposition memorandum.

The defendants have moved to suppress any and all evidence obtained and/or seized by the State of Louisiana, Office of the Inspector General (OIG), because the OIG does not have authority to obtain and execute search warrants. The government maintains that the OIG has investigative powers of a law enforcement agency, except for arrest powers. The defendants agree that the OIG has authority to investigate the Executive Branch, and they do not have arrest powers. These facts, however, show the limited nature of the OIG's authority and establishes that because of those limitations, the OIG has no search warrant authority.

It is clear that the OIG is meant to keep tabs on, investigate waste and fraud, and find possible criminal activity in the Executive Branch. La. R.S. 49:220.21 through La. R.S. 49:220.26. The OIG is clearly not meant to be an all-encompassing law enforcement agency, who, like traditional law enforcement agencies, investigates crimes and prosecutes those crimes.

Instead, the OIG investigates possible fraud and waste, makes *recommendations* regarding disciplinary action and *recommendations* regarding further investigation and shall *report* credible criminal complaints to appropriate authorities:

C.(1) The inspector general shall help prevent waste, inefficiency, mismanagement, misconduct, abuse, fraud, and corruption in covered agencies by periodically reviewing policies and procedures and monitoring operations and making recommendations for improvement.

(2) The inspector general shall receive complaints of waste, inefficiency, mismanagement, misconduct, abuse, fraud, or corruption in covered agencies and determine whether they warrant investigation by the inspector general or by appropriate federal, state, or local agencies or may conduct such investigations upon his own initiative. In order to accomplish this, the office of the inspector general shall maintain a toll-free fraud hotline number and web site for anonymous reporting.

(3) The inspector general shall investigate complaints of waste, inefficiencies, mismanagement, misconduct, abuse, fraud, and corruption and, when appropriate, recommend whether disciplinary action or further investigation by appropriate federal, state, or local agencies is warranted and take further action as appropriate.

(4) The inspector general shall report complaints of fraud, abuse, or corruption to such federal, state, or local agencies when there is evidence of what may be criminal activity and when otherwise appropriate and shall otherwise cooperate with such agencies in any further action.

(5) The inspector general shall make reports of his findings to the governor. Such reports shall be subject to the provisions of R.S. 44:1 et seq.

(6) The inspector general shall submit an annual report to the governor and the Joint Legislative Committee on the Budget at the end of each fiscal year that describes the accomplishments and contributions made by the office toward achieving the mission of helping to prevent and detect waste, fraud, and abuse in Louisiana government. Upon completion, as indicated by signature of the inspector general, all final reports of the inspector general immediately shall be filed with the Joint Legislative Committee on the Budget and shall include the response of the agency, if any. All such reports shall be provided to the staff of the governor's office and the Joint Legislative Committee on the Budget upon request.

La. R.S. 49: 220.24(C). (Emphasis added).

This shows that OIG's power as a law enforcement agency relates to investigating the Executive Branch and then notifying traditional law enforcement once there is credible information regarding possible criminal activity. The OIG is not empowered to complete an investigation from start to finish – they are to handle the initial calls and complaints, conduct preliminary investigations, and then hand the case to other law enforcement agencies for determination of whether to proceed further, etc. Regardless of whether a statute calls the OIG “law enforcement” or whether the employees are special officers commissioned by the Louisiana State Police, the fact remains that the OIG has limited investigative powers and lacks the authority to obtain and execute search warrants.

For all of the reasons set forth in the Memorandum in Support of Motion to Suppress and this Reply Memorandum, the defendants move for all evidence seized as a result of the search warrant obtained and executed by the OIG in this case be suppressed on the grounds that such evidence was obtained in violation of the Fourth Amendment

**RESPECTFULLY SUBMITTED
BY ATTORNEYS:**

**WALTERS PAPIILLION THOMAS
CULLENS, LLC**

/s/John S. McLindon
JOHN S. McLINDON, Of Counsel
Bar Number 19703
12345 Perkins Road, Bldg. 2, Ste. 202
Baton Rouge, LA 70810
225-236-3636, Telephone
1-877-241-2631, Facsimile
E-mail: mclindon@lawbr.net
Counsel for Nathan Burl Cain, II

**REBECCA L. HUDSMITH, FEDERAL
PUBLIC DEFENDER FOR THE
MIDDLE & WESTERN DISTRICTS OF
LOUISIANA**

/s/Cristie Gautreaux Gibbens
CRISTIE GAUTREAU GIBBENS
Assistant Federal Public Defender
Bar Number 24102
102 Versailles Blvd., Suite 816
Lafayette, Louisiana 70501
337-262-6336, Telephone
337-262-6605, Facsimile
Email: Cristie_gibbens@FD.org
Counsel for Tonia Bandy Cain

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2018, a copy of the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

/s/ John S. McLindon

JOHN S. McLINDON