

UNITED STATES

SEP 27 2021

FOREIGN INTELLIGENCE SURVEILLANCE COURT

Clerk of Court

WASHINGTON, D.C.

(b)(1), (b)(3)

NON-U.S. PERSONS

Docket Number (b)(1), (b)(3)

(b)(1), (b)(3)

NON-U.S. PERSONS

Docket Number (b)(1), (b)(3)

OPINION AND SUPPLEMENTAL ORDER

On this date, the Court approved applications for authority to conduct physical search of the above-captioned targets pursuant to Title III of the Foreign Intelligence Surveillance Act, as amended (FISA or the Act), 50 U.S.C. §§ 1821-1829. These applications propose, for the first time, (b)(1), (b)(3) as described below, under FISA authority. By Orders dated February 10 and March 8, 2021, the Court appointed amici curiae with relevant legal expertise pursuant to Section 103(i)(2)(A) to aid in its consideration of these matters. The Court has had the benefit of three rounds of briefing on the legal and technical issues presented by these applications and entertained oral argument on June 24, 2021. The timely and able assistance of amici curiae Marc Zwillinger and James Orenstein is greatly appreciated.

(b)(1), (b)(3)

(b)(1), (b)(3)

at a particular (b)(1), (b)(3) place. In these applications,

the government seeks physical search authority under FISA to acquire information (b)(1), (b)(3)

(b)(1), (b)(3) at two separate locations (b)(1), (b)(3) The application in docket

(b)(1), (b)(3) proposes to direct (b)(1), (b)(3)

(b)(1), (b)(3)

The

application pleads the targets of the proposed physical search as non-U.S.-person (b)(1), (b)(3)

(b)(1), (b)(3) agents of (b)(1), (b)(3)

(b)(1), (b)(3)

(b)(1), (b)(3)

The application in docket number (b)(1), (b)(3) proposes to direct the

(b)(1), (b)(3), (b)(6)

(b)(1), (b)(3)

This application pleads the

targets of the proposed physical search under (b)(1), (b)(3) as agents of (b)(1), (b)(3)

(b)(1), (b)(3)

¹ In FISA parlance, the targets are the individuals or entities about whom or from whom information is sought. *See In re Sealed Case*, 310 F.3d 717, 740 (FISA Ct. Rev. 2002) (quoting H.R. Rep. No. 95-1283, pt. 1, at 73 (1978)).


The accompanying applications and orders contemplate the government receiving data

(b)(1), (b)(3)



² (b)(1), (b)(3)

(b)(1), (b)(3)



(b)(1), (b)(3) It explains that (b)(1), (b)(3) provided (b)(1), (b)(3)

(b)(1), (b)(3)

(b)(1), (b)(3) that a warrant based on probable cause is required to compel production of (b)(1), (b)(3) as described above. (b)(1), (b)(3) The government and Amici agree on the propriety of regarding the proposed operations as involving physical search under Title III of FISA. See Gov't Br. at 2 n.3, 34-39; Amici Reply Br. at 6-10. FISA defines physical search as

any physical intrusion within the United States into premises or property (including examination of the interior of property by technical means) that is intended to result in a seizure, reproduction, inspection, or alteration of information, material, or property, *under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes*

50 U.S.C. § 1821(5) (emphasis added); see generally *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring) (warrant requirement turns on whether the government intrudes on a person's expectation of privacy that society is prepared to consider reasonable). Because the Court finds sufficient basis to believe (b)(1), (b)(3) have a reasonable expectation of privacy in their (b)(1), (b)(3) and that a warrant would be required to access it (b)(1), (b)(3)

(b)(1), (b)(3) it is proper to entertain these applications pursuant to the physical search provisions in Title III of FISA. See generally *In re* (b)(1), (b)(3) Docket No. (b)(1), (b)(3) Order at 5-6 (noting the "historical preference for warrants,"

and concluding that this Court “should not lightly dismiss or disregard the willingness of the Executive Branch to submit to this Court’s role and authority under FISA”).

In addition, the Court has little difficulty finding probable cause to believe that the intended targets of the proposed physical searches are agents of the specified foreign powers on the theories proffered. *See* 50 U.S.C. § 1824(a)(2)(A).

However, the Court was unable to find, on the basis of the government’s original submissions, probable cause to believe that “the premises or property proposed to be searched” in either application “is or is about to be owned, used, possessed by, or is in transit to or from an agent of a foreign power or a foreign power,” 50 U.S.C. § 1824(a)(2)(B), without imposing further limits on the proposed production. On the suggestion of Amici, the Court limited the proposed warrants in two significant regards: (b)(1), (b)(3)

(b)(1), (b)(3)

(b)(1), (b)(3)

With those limitations, the Court was able to find probable cause to believe that the property to be searched (b)(1), (b)(3) is likely to be owned, used, or possessed by an agent of a targeted foreign power.

The government acknowledges, however, that (b)(1), (b)(3)

(b)(1), (b)(3)

might not be owned or used by agents of (b)(1), (b)(3) and undertakes to destroy non-target-related data as soon as practicable. The Court finds that undertaking too narrow, and requires further reporting on the implementation of the authority granted in these matters. It is, accordingly,

ORDERED that, not later than 60 days after receiving data (b)(1), (b)(3) to the accompanying warrants, the FBI shall destroy any data that the FBI has not affirmatively determined to be target-related data. The government shall report such destruction to the Court within ten days of the destruction; and it is

FURTHER ORDERED THAT the search returns filed in this matter shall include copies of the data produced (b)(1), (b)(3)

(b)(1), (b)(3)

ENTERED this 27th day of September, 2021, in the docket numbers captioned above.



RUDOLPH CONTRERAS
Judge, United States Foreign
Intelligence Surveillance Court

(b)(6) Chief Deputy Clerk,
FISC, certify that this document is a true
and correct copy of the original.

(b)(6)