



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

ZA/CAC
F. #2010R00057

*271 Cadman Plaza East
Brooklyn, New York 11201*

September 2, 2014

By Hand and ECF

Honorable Raymond J. Dearie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Abid Naseer
Criminal Docket No. 10-19 (S-4) (RJD)

Dear Judge Dearie:

The government respectfully submits this letter in response to the defendant's August 12, 2014 motion to suppress certain emails provided in discovery that he claims were obtained pursuant to the Foreign Intelligence Surveillance Act ("FISA"), 50 U.S.C. §§ 1801 *et seq.* See Defendant's Motion ("Def. Mot."), Docket # 328. Because the materials in question were obtained through a Rule 41 search warrant and Section 2702 Emergency Disclosure Request rather than pursuant to FISA, his motion should be denied as moot.

The defendant lists three email accounts in his letter, the contents of which have been provided to him by the government in discovery: sanapakhtana@yahoo.com,¹ humaonion@yahoo.com and chipyparveen@yahoo.com. Def. Mot. at 1. The contents of the sanapakhtana account were obtained by the government pursuant to a Rule 41 Search Warrant, a copy of which is attached hereto as Exhibit 1. The contents of the humaonion and chipyparveen accounts were obtained through an Emergency Disclosure request pursuant to 18 U.S.C. § 2702, a copy of which is attached hereto as Exhibit 2.

¹ The defendant refers to this email address as "sanaphatana@yahoo.com" in his motion.

Because neither the search warrant nor the Emergency Disclosure request were issued pursuant to FISA, the defendant is not entitled to a remedy under that statute. Accordingly, the government respectfully requests that the defendant's motion be dismissed as moot.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: /s/ Zainab Ahmad
Zainab Ahmad
Celia A. Cohen
Assistant U.S. Attorneys
(718) 254-6522/6147

United States District Court

EASTERN

DISTRICT OF

NEW YORK

UNITED STATES OF AMERICA

SEARCH WARRANT
CASE NUMBER:

- against -

THE PREMISES KNOWN AND DESCRIBED
AS YAHOO EMAIL ADDRESS
sana_pakhtana@yahoo.com

M-09-1167

TO: Special Agent Henry Heim and any other Authorized Officer of the United States:

Affidavit(s) having been made before me by SA Henry Heim, who has reason to
Affiant

believe that ☐ on the person of ☒ within the premises known as (name, description and/or location)

YAHOO EMAIL ADDRESS sana_pakhtana@yahoo.com

there is now concealed (describe the person or property)

evidence, fruits and instrumentalities of violations of Title 18, United States Code, Section 2332a(a)(2) and 2339B(a)(1), as set forth in Attachment A.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before December 4, 2009
Date

the item named above for the person or property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant as required by law to the United States Magistrate Judge on duty in this District.

11/23/09 4:00 pm
Date and Time Issued

at Brooklyn, New York
City and State

JOAN M. AZRACK, U.S. MAGISTRATE JUDGE
Name and Title of Judicial Officer

Joan M. Azrack
Signature of Judicial Officer

Attachment A

Particular Things to be Seized

1. Information to be disclosed by Yahoo

To the extent that the information described in Attachment A is within the possession, custody, or control of Yahoo, Yahoo is required to disclose the following information to the government for the email account sana_pakhtana@yahoo.com:

a. The contents of all emails stored in the account, including copies of emails sent from the account;

b. All records or other information regarding the identification of the account, to include full name, physical address, telephone numbers and other identifiers, records of session times and durations, the date on which the account was created, the length of service, the types of service utilized, the IP address used to register the account, log-in IP addresses associated with session times and dates, account status, alternative email addresses provided during registration, methods of connecting, log files, and means and source of payment (including any credit or bank account number);

c. All records or other information stored by an individual using the account, including address books, contact and buddy lists, pictures, and files;

d. All records pertaining to communications between Yahoo and any person regarding the account, including contacts with support services and records of actions taken.

2. Information to be seized by the government

All information described above in Section 1 that constitutes fruits, evidence and instrumentalities of violations of 18 U.S.C. § § 2332a(a)(2) and 2339B(a)(1) involving Najibullah Zazi, and others, since January 1, 2008, including, for the account or identifier listed above, information pertaining to the following matters:

a. Any email correspondence that constitutes evidence of a conspiracy to use weapons of mass destruction against persons and property within the United States or conspiracy to provide material support to a foreign terrorist organization, including, by way of example only, emails concerning the procurement, manufacture or use of explosive devices, and emails concerning the transportation, safe-housing and activities of terrorist operatives.

RECEIVED

U.S. Department of Justice

APR 17 2009



Federal Bureau of Investigation

In Reply, Please Refer to
File No.

Washington, DC
April 17, 2009

Emily Hancock
Senior Legal Director
Yahoo, Inc.
701 First Avenue
Sunnyvale, CA 94089
Fax (408) 349-7941

RE: Request for Voluntary Emergency
Disclosure of Information

Dear Ms. Hancock:

Pursuant to 18 U.S.C. §2702, Yahoo is permitted to voluntarily provide to the Federal Bureau of Investigation (FBI) the stored contents of communications and related records if Yahoo believes, in good faith, that "an emergency involving danger of death or serious physical injury to any person requires disclosure without delay" of stored communications content and/or records relating to the emergency.

The FBI believes that the following circumstances give rise to an emergency involving danger of death or serious physical injury that requires such a disclosure and that this information can form the basis for you to conclude the same:

The Office of Legal Attache (FBI), US Embassy-London is assisting the Greater Manchester Police in England in an investigation regarding a Potential Act of Terrorism.

For the past year, the Greater Manchester Police in association with New Scotland Yard and various other United Kingdom (UK) Police Constabularies have been investigating the activities of Islamic Extremists and their plans to commit another act of terrorism within the UK. This investigation is considered the UK's top priority Counterterrorism investigation with an imminent threat to life. Approximately three weeks ago, the UK authorities uncovered the actual identities of some of the suspected operatives and began a more intensive review of their activities and communications. Due to the content of some of the communications reviewed, a command decision was made to take immediate action in order to prevent any potential loss of life.

On Wednesday April 8, 2009, twelve people were arrested in the cities of Manchester and Liverpool. At that time of the

arrests, there was substantial evidence (obtained from other sources) to suggest that an imminent attack was being planned and was scheduled to take place in the United Kingdom sometime during the week of April 13, 2009. Communications/evidence obtained prior to the arrests of these subjects (considered to be Islamic Extremists) was of a very similar nature to that evidence which was obtained/examined after the disrupted Transatlantic Airline Plot (described in the following paragraph).

In August 2006, British Police announced they had foiled a major plot to detonate an unspecified number of bombs on airlines traveling from the UK to the United States. The plot was conceived among eight or more subjects who aimed to smuggle the component parts of improvised explosive devices onto aircraft and assemble and detonate them while on board.

Subsequent to the arrests on April 8, 2009, searches were conducted at eight locations which revealed the existence of numerous pieces of electronic media containing the three named email addresses which were previously unknown to investigators. At this time, it is unclear whether all of the conspirators in this terrorism plot have been captured or whether there are others still at large and proceeding with the original plan.

The imminent nature of the threat is that it is believed that the contents (as well as any and all other associated data of the email addresses noted in these communications) will reveal current plans and/or other yet unknown associates. With this information, it is believed law enforcement can swiftly act and prevent another terrorist incident and the potential loss of life.

The normal disclosure process is unavailable because there is no identifiable U.S. law violation.

As noted previously, the FBI believes that Yahoo possesses information on this matter that could be critical to identifying yet unknown conspirators and/or plans leading to the prevention of another potential act of terrorism. Specific registration and IP subscriber information, along with content of the emails, buddy lists, and other related accounts tied to the email addresses sana_pakhtana@yahoo.com, chipyparveen@yahoo.com, and humaonion@yahoo.com, may aide in these efforts. The Yahoo accounts appear to have been set up in particular for direct communication between the suspected terrorists in an effort to thwart law enforcement.

Once the ISP and content information is obtained from Yahoo, the FBI Legal Attache in London will provide the information to selective and trusted counterparts of the Greater Manchester Police. The trusted counterparts will formulate a coordinated response on this matter, including working to identify any additional suspected terrorists and/or operational plans.

Based on this information, the FBI asks you to conclude that there is an emergency involving danger of death or serious physical injury that requires disclosure without delay of Yahoo stored communications content records as requested below. The normal disclosure process is unavailable because there is no identifiable U.S. law violation.

REQUEST FOR CUSTOMER RECORDS UNDER 2702(c)(4) AND STORED CONTENT COMMUNICATIONS UNDER 2702 (b)(8)

In order for the proper authorities to respond to this emergency, the FBI requests Yahoo to provide copies of all stored communications content and related records, including but not limited to subscriber information, login IP addresses, buddy lists, and any associated accounts, pertaining to user utilizing the below account:

sana_pakhtana@yahoo.com

chipyparveen@yahoo.com

humaonion@yahoo.com

Due to the sensitive nature of the emergency circumstances discussed in this letter, please do not disclose the existence of this request or the information contained herein except to those persons within your company who have a need to know this information in order to comply with the request.

RETURN OF INFORMATION

Due to the sensitive nature of these emergency circumstances, please do not send the requested information through routine mail service nor non-secure fax, nor disclose the substance of this letter in any telephone conversation.

Please provide the requested information to Assistant Legal Attache Bruce Helman and Senior Analyst K. Bradley Culp at Brad.Culp@ic.fbi.gov or facsimile 011-44-207-499-7944. Legat London will provide the information provided by Yahoo through secure channels to the appropriate personnel in the United Kingdom.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sean M. Joyce/rc". The signature is fluid and cursive, with a slash and the letters "rc" at the end.

Sean M. Joyce
Deputy Assistant Director
Office of International Operations
Federal Bureau of Investigation