

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE APPLICATION OF THE UNITED
STATES OF AMERICA FOR AN ORDER
PURSUANT TO 18 U.S.C. § 2703(d)

Misc. No. 10GJ3793
No. 1:11DM3 (Mag. Buchanan)
No. 1:11EC3

I, STUART A. SEARS, declare and state as follows:

1. I am an attorney licensed to practice law in the Commonwealth of Virginia and am a member of the law firm of Zwerling, Leibig & Moseley, P.C, counsel for one of the Real Parties in Interest, Jacob Appelbaum, in the above-captioned matter. I have personal knowledge of the facts stated in this Declaration, and if called as a witness I could and would competently testify to them under oath.

2. Attached hereto as Exhibit A is a true and correct copy of the May 4, 2011 Order issued by Magistrate Buchanan that is the subject of the Real Parties' Objections.

3. On May 6, 2011, I personally went to the Clerk's Office and asked to see the running list for this case. I was originally informed that there was nothing for the public to view regarding this case. I then spoke to the operations supervisor for the Clerk's Office, Richard Banke. He told me that there was no running list for specific cases. He then showed me on a computer screen all that existed regarding this matter, which was a one-page computer entry listing four "EC" cases—EC 1, EC 2, EC 3, and EC 4. The entire screen only depicted a list of four cases, each entitled "USA v. Under Seal." The general heading of the page was "Case Assignment History Report." The cases were listed in numerical order from 1:11-ec-1 through 1:11-ec-4. The only other relevant information available on the screen was when the case had been created and to which judge it had been assigned.

4. Upon questioning, Mr. Banke advised me that there was no other information or documents available to be viewed in connection with this case.

5. On May 11, 2011, I called Mr. Banke by telephone. He confirmed that there was no other running list other than the computer screen he had previously shown me that showed the existence of the 1:11-ec-1, ec-2, ec-3, and ec-4 cases. Mr. Banke also advised me that the Clerk's Office was not maintaining any other list of documents in connection with this case. Upon questioning, he advised that there was no book, ledger or any other list being kept regarding this case. He also stated that it was his understanding that what the Clerk's Office had done regarding the docketing was in compliance with Magistrate Buchanan's May 4 Order.

6. On May 12, 2011, I spoke via telephone with Magistrate Buchanan's chambers to inquire whether the Clerk's office had in fact done everything required by the May 4 Order. I advised Chambers that I interpreted the May 4 Order to direct the Clerk's office to keep a publicly docketed running list of all filings in this case, which would identify all filings including search warrants, subpoenas, etc. I further relayed to Chambers the information I had received from Mr. Banke that no other information was available or docketed apart from the one-page computer screen I had seen depicting the existence of the four 1:11-ec cases.

7. Later on May 12, 2011, I received a call from Magistrate Buchanan's chambers advising me that any confusion over the May 4 Order had now been straightened out and that the filings we were seeking to view would now be docketed on the running list. I was advised that the running list would not be available to be viewed until Monday, May 16, 2011.

8. On May 16, 2011, I personally went to the Clerk's office to view the running list reflecting the documents filed in this case. I was assisted again by the supervisor, Mr. Banke. The running list I was shown was almost identical to the previous case list that I had seen on May 6, which merely showed the existence of the four ec cases. The only change in the list was

that, for 1:11-ec-3, there were now two new notations directly under the case number: “12/14/10 Under Seal Application and Order; 1/5/11 Motion and Order to unseal order of 12/14/10 (granted).” No notations were added to any of the other ec cases. In addition, the list now included the existence of additional 1:11-ec cases, running from 1:11-ec-5 through 1:11-ec-9. There were no notations or information regarding these additional cases. A true and correct copy of this running list that I viewed is attached hereto as Exhibit B.

9. During this conversation, I was advised by Mr. Banke that there was no other running list being kept in connection with the case. When I inquired whether any search warrants connected with this case were being kept on a list to be tracked, I was informed that search warrants are not listed to a specific case number, but rather are kept separately on a list of all search warrants being filed, regardless of case number.

10. The next day, on May 17, 2011, I contacted Mr. Banke by telephone again in an attempt to confirm whether anything else was publicly available now or would be added to the public docket in response to the motion for public docketing. I was informed that there was no other public information for any of the other ec dockets, that there was not a sub-list within those docket numbers indicating which documents had been filed in those dockets, and that the Clerk’s Office understood that it was now in compliance with the May 4 Order. When I asked if it was possible to see a list of any other electronic communications orders that were requested or issued in December 2010 or January 2011, which might not be reflected on this new “ec” running list, Mr. Banke informed me that the Clerk’s Office had not previously kept a running list of electronic communications orders or requests and that it had just created this “ec” docketing system and this new “ec” running list for electronic communications cases.

I declare under penalty of perjury that the foregoing is true and correct. Executed this
18th day of May, 2011, at Alexandria, Virginia.

/s/ Stuart A. Sears
Stuart A. Sears

EXHIBIT A

EXHIBIT B

CASE ASSIGNMENT HISTORY REPORT

**U.S. District Court
Eastern District of Virginia -
Report Date: 5/16/2011**

Detail Report

CASE	ASSIGNMENT	JUDGE	SOURCE
1:11-ec-00001 USA v. Under Seal	Assigned: 05/02/2011 Direct assignment (Other)	<i>Presider:</i> Buchanan, Theresa Carroll <i>Referral:</i>	<i>Pres. Deck:</i> A-Criminal (EC Cases) <i>Instance No.:</i> 1 <i>Card No.:</i> 5 <i>User:</i> jlan
Not Filed			
1:11-ec-00002 USA v. Under Seal	Assigned: 05/03/2011 Direct assignment (Other)	<i>Presider:</i> Buchanan, Theresa Carroll <i>Referral:</i>	<i>Pres. Deck:</i> A-Criminal (EC Cases) <i>Instance No.:</i> 1 <i>Card No.:</i> 6 <i>User:</i> jlan
Not Filed			
1:11-ec-00003 U.S. v. Under Seal; 12/14/10 Under Seal Application and Order; 1/5/11 Motion and Order to unseal order of 12/14/10 (granted);	Assigned: 05/03/2011 Direct assignment (Other)	<i>Presider:</i> Buchanan, Theresa Carroll <i>Referral:</i>	<i>Pres. Deck:</i> A-Criminal (EC Cases) <i>Instance No.:</i> 1 <i>Card No.:</i> 7 <i>User:</i> rban
Not Filed			
1:11-ec-00004 USA v. Under Seal	Assigned: 05/05/2011 Direct assignment (Other)	<i>Presider:</i> Buchanan, Theresa Carroll <i>Referral:</i>	<i>Pres. Deck:</i> A-Criminal (EC Cases) <i>Instance No.:</i> 1 <i>Card No.:</i> 8 <i>User:</i> jcor
Not Filed			
1:11-ec-00005 USA v. Under Seal	Assigned: 05/06/2011 Direct assignment (Other)	<i>Presider:</i> Buchanan, Theresa Carroll <i>Referral:</i>	<i>Pres. Deck:</i> A-Criminal (EC Cases) <i>Instance No.:</i> 1 <i>Card No.:</i> 18 <i>User:</i> jcor
Not Filed			
1:11-ec-00006 USA v. Under Seal	Assigned: 05/11/2011 Direct assignment (Other)	<i>Presider:</i> Jones, Thomas Rawles, Jr <i>Referral:</i>	<i>Pres. Deck:</i> A-Criminal (EC Cases) <i>Instance No.:</i> 1 <i>Card No.:</i> 13 <i>User:</i> jsch
Not Filed			

1:11-ec-00007 *Assigned:* 05/12/2011 *Presider:* Jones, Thomas Rawles, Jr *Pres. Deck:* A-Criminal (EC Cases)
 USA v. Under Direct assignment *Referral:* *Instance No.:* 1 *Card No.:* 14
 Seal (Other) *User:* jcor

Not Filed

1:11-ec-00008 *Assigned:* 05/12/2011 *Presider:* Jones, Thomas Rawles, Jr *Pres. Deck:* A-Criminal (EC Cases)
 USA v. Under Direct assignment *Referral:* *Instance No.:* 1 *Card No.:* 15
 Seal (Other) *User:* jcor

Not Filed

1:11-ec-00009 *Assigned:* 05/13/2011 *Presider:* Jones, Thomas Rawles, Jr *Pres. Deck:* A-Criminal (EC Cases)
 U.S. v. Under Direct assignment *Referral:* *Instance No.:* 1 *Card No.:* 16
 Seal (Other) *User:* jsch

Not Filed

Assignment History Report Selection Criteria

Presiding Judge(s)	All
Presider Deck(s)	A-Criminal (EC Cases) (ec)
Referral Judge(s)	All
Referral Deck(s)	All
Case Group	All
Office	Alexandria (1)
Assignment Method	All
Direct Assignment Reason	All
Reassignment Reason	All
Assignment Date Range	1/1/1970 - 5/16/2011
Terminal Digit(s)	All
Include Detail Report	Yes
Include Summary By Judge	No
Include Summary By Deck	No
Include Current Assignments	Yes
Include Terminated Assignments	No
Include Original Assignments	Yes
Include Reassignments	Yes
Include Filed Cases	Yes
Include Unfiled Cases	Yes
Report Sort 1	Presiding Judge

Report Sort 2	None
Report Sort 3	None

Report Completed

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following counsel of record:

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I also certify that on this 19th day of May, 2011, I caused the following party to be served by first-class United States mail:

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