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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH O'SHAUGHNESSY,

Defendant.

Case No. 3:16-cr-00051-BR

**MOTION TO SUPPRESS
EVIDENCE DERIVED FROM
DISTRICT OF NEVADA
FACEBOOK WARRANTS**

Defendant Joseph O'Shaughnessy, through counsel Amy Baggio, moves to suppress evidence obtained in the District of Nevada pursuant to search warrants issued in contravention of the Fourth Amendment of the United States.

CERTIFICATION OF CONFERRAL: Undersigned counsel conferred with AUSA Ethan Knight, who objects to this motion to suppress.

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I. INTRODUCTION

Discovery in this case contains warrants for defendants' Facebook accounts. In October 2015, the District of Nevada issued search warrants for the contents of certain defendants' Facebook pages for the time period of March 28, 2014, through October 14, 2015, in relation to the government's investigation into the so-called "Bunkerville standoff" in Nevada in 2014.

In April 2016, the District of Oregon issued search warrants for the contents of certain Oregon defendants' Facebook accounts for the time period of November 1, 2015, through the various dates of defendants' arrests in relation to the Oregon case. The fruits of the Nevada Facebook warrants are included in the Oregon discovery, but currently available only to the Oregon defendants charged in the Nevada case.

Defendants are filing three motions to challenge the Facebook warrants. First, Defendant Ryan Payne filed a motion to suppress the fruits of both Oregon and Nevada Facebook warrants based on an argument related to jurisdiction. (Doc. 712.) Second, Defendant David Fry will file today a motion challenging the Oregon Facebooks warrants as a violation of the Fourth Amendment. In this third motion, Defendant O'Shaughnessy is incorporating Defendant Fry's challenges to the Nevada warrants, as well as marshalling an additional factual argument as to the Nevada warrants.

For clarity of the record, in terms of exhibits to this motion, Mr. O'Shaughnessy is filing *under seal* Exhibit A to this motion, which consists of the District of Nevada Facebook

warrant paperwork. (*See* Exhibit A (SEALED)¹, at GB.000823 & GB.000826). This motion also refers to, and incorporates by reference, the Oregon Facebook warrants filed by Defendant Payne. (*See* “Attachment B” (SEALED) to Defendant Payne’s Motion to Suppress Facebook Evidence (Doc. 712) at page 3, note 2). Therefore, both the Nevada and Oregon Facebook paperwork are offered as sealed exhibits to this motion.

II. THE NEVADA FACEBOOK WARRANTS VIOLATE THE FOURTH AMENDMENT

A. Defendants Subject To Nevada Facebook Warrants Incorporate By Reference The Arguments Raised By David Fry Regarding The Oregon Facebook Warrants

In a separately filed motion, the defendants, through counsel for David Fry, are moving to suppress evidence derived from District of Oregon warrants for Facebook information, asserting that the warrants violate the Fourth Amendment of the Constitution. By this motion, the defendants charged in the District of Nevada case (2:16-cr-00046-GMN-PAL), hereby incorporate by reference those arguments and authorities in support of this challenge to the Nevada warrants for Facebook information.

B. The Nevada Facebook Warrants Are Even More Constitutionally Infirm Than The Oregon Facebook Warrants

Identical to the Oregon Facebook warrant, the Nevada Facebook warrant for Mr. O’Shaughnessy’s account states that “Facebook is required to disclose the following information to the government...” (Ex. A, at GB.000826), and then proceeds with an

¹ In its Order of June 17, 2016, the Court ordered defendants to file under seal any warrant paperwork that remains under seal but which is the subject of these motions. Doc. 726 at 3-4.

expansive list of items, including but not limited to, group affiliations, activity logs for the Mr. O'Shaughnessy and for any of Mr. O'Shaughnessy's affiliated pages, all profile information, comments, friend lists, private messages, chat history, video calling history, friend requests, photographs/videos, comments to others' photographs/videos, and records of all Facebook searches conducted by Mr. O'Shaughnessy. (Ex. A, at GB.000826-828). The demand for wholesale production of all lists of friends, associations, groups, posting of articles, and commenting on articles/videos renders the Nevada warrant precisely the type of general warrant the Supreme Court struck down in *Stanford v. Texas*, in which the Court held:

The point is that it was not any contraband of that kind which was ordered to be seized, but literary material—'books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party in Texas.' The indiscriminate sweep of that language is constitutionally intolerable. To hold otherwise would be false to the terms of the Fourth Amendment, false to its meaning, and false to its history.

Stanford v. Texas, 379 US 476, 486 (1965). As established by Mr. Fry in his challenge to the Oregon Facebook warrants, this initial "required...disclosure" was no doubt a "seizure" under the Fourth Amendment and was unconstitutional.

Also like the Oregon warrant, the Nevada warrant contains a separate section listing the "Description of Items to Be Seized" out of the larger vat of "disclosed" information from Facebook. (Ex. A, at GB.000828). However, unlike the Oregon warrant which provided for a six-part "Search Procedure" (Ex. B, MNWR_0044174-175), the Nevada warrant simply concludes:

Once the law enforcement agents have searched the information to be disclosed by Facebook as set forth in Attachment B, Section II of the warrant, and have seized any information as described in Attachment B, Section III of the warrant, the Government shall either (1) return the non-seized information to Facebook, (2) destroy any non-seized information received from Facebook, or (3) seal the non-seized information, unless the Government obtains another warrant to search the nonseized information.

Ex. A, at GB.000831.

Mr. O'Shaughnessy agrees with Mr. Fry that the Oregon Facebook warrants are unconstitutional; however, the Nevada warrants, which lack the six part "Search Protocol," run even farther afoul of the Fourth Amendment.

As a result of the unconstitutional Nevada warrant, the government seized 49,924 pages of information from Mr. O'Shaughnessy's Facebook account. All fruits of this unconstitutional Nevada Facebook warrant should be suppressed.

III. CONCLUSION

Accordingly, and in full reliance on the arguments and citations of authorities raised on behalf of all Oregon-charged defendants by counsel for Mr. Fry, as well as the additional arguments raised in this Motion, the fruits of the District of Nevada Facebook warrants should be suppressed.

Respectfully submitted on June 20, 2016.

/s/ Amy Baggio

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