

ORIGINAL FILED

JUN 8 1999

G. DONALD HANEKE, U.S. MAGISTRATE

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN THE MATTER OF THE APPLICATION :  
OF THE UNITED STATES OF AMERICA :  
FOR AN ORDER AUTHORIZING THE :  
SURREPTITIOUS ENTRY INTO THE :  
PREMISES OF MERCHANT SERVICES OF :  
ESSEX COUNTY, LOCATED AT 149 :  
LITTLE STREET, BELLEVILLE, NEW :  
JERSEY, FOR THE PURPOSE OF :  
CONDUCTING A SEARCH FOR EVIDENCE :  
OF VIOLATIONS OF TITLE 18, U.S.C. :  
§§ 371, 892-894, 1955 AND 1962 :

Mag. No. 99-4061-01

SEALED APPLICATION

Pursuant to Rule 41(b) of the Federal Rules of Criminal Procedure and the All Writs Act, 28 United States Code, Section 1651, the United States of America by and through Faith S.

Hochberg, United States Attorney for the District of New Jersey, and Ronald D. Wigler, Assistant United States Attorney for said District, hereby makes application to this Court for an order authorizing the postponement of notification in the above-captioned matter. This application is based upon the following facts:

1. On May 8, 1999, the Honorable G. Donald Haneke, United States Magistrate Judge, authorized the surreptitious entry of the premises of Merchant Services of Essex County, 149 Little Street, Belleville, New Jersey [hereinafter, "TARGET LOCATION"], for the purpose of conducting a search for evidence of violations of Title 18, U.S.C. §§ 371, 892-894, 1955 and 1962.

2. The May 8, 1999 application sought authority to: (1) search for and seize encryption key related pass phrases from Nicodemo S. Scarfo's computer located in the TARGET LOCATION by installing a specialized computer program to search for and seize computer passwords and keys which would allow the Government to read and interpret data that was previously seized pursuant to a search warrant on January 15, 1999, as well as those to be seized under this present court Order; (2) search for and seize business records in whatever form they are kept; and (3) install and leave behind software, firmware, and/or hardware equipment which will monitor the inputted data entered on Nicodemo S. Scarfo's computer by recording the key related information as they are entered.

3. The recovery of the computer key related information from Nicodemo S. Scarfo's computer located in the TARGET LOCATION are necessary to allow the Government to capture the password necessary to decrypt computer files seized lawfully pursuant to the court authorized search warrant executed on January 15, 1999, as well as those to be seized under this present court Order.

4. On May 10, 1999, agents of the Federal Bureau of Investigation ["F.B.I."] surreptitiously entered the TARGET LOCATION and installed and left behind software, firmware, and/or hardware equipment which would monitor the inputted data entered on Nicodemo S. Scarfo's computer by recording the key related information as it was entered.

5. Sometime in late May, 1999, Nicodemo S. Scarfo removed his computer from the TARGET LOCATION. The F.B.I. has received information that Scarfo's computer should be returned to the TARGET LOCATION in the near future. As of this date, Nicodemo S. Scarfo's computer is still not in the TARGET LOCATION. As such, agents of the F.B.I. are currently unable to complete their installation, maintenance, and removal of the software, firmware, and hardware.

6. In the May 8, 1999, Affidavit in Support of Application, court authorization was requested to delay notification that an Order was obtained and executed for a period until such time when the F.B.I. had completed their installation, maintenance, and removal of the software, firmware, and hardware. In addition, the May 8, 1999, Application, Affidavit, Order and all documents relating thereto were sealed until further order of the Court because the investigation was continuing and could be seriously compromised by premature disclosure.

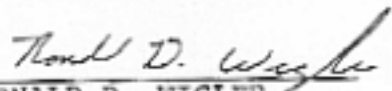
7. I respectfully submit that the continuing nature of this investigation, taken together with the negative impact of premature disclosure upon the case, constitutes good cause to order the postponement of notification in the above-captioned matter.

8. Therefore, it is respectfully requested that this Court grant an Order postponing the notification of the May 8, 1999 Application, Affidavit, Order and all documents relating thereto for a period of 30 days from the date of the Court's Order or

until further order of the Court.

9. It is further requested that the Application and the Order of the Court be SEALED with the previously submitted papers.

I hereby certify under penalty of perjury that the foregoing is true and correct.

  
RONALD D. WIGLER  
Assistant U.S. Attorney

Executed on June 8, 1999.