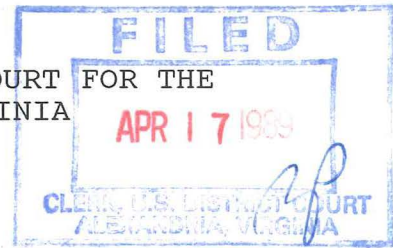


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



UNITED STATES OF AMERICA)

V.)

CRIMINAL NO. 89-56-A

MOUSA HAWAMDA, et al.,)

Defendants.)

MEMORANDUM OPINION
AND ORDER

This matter is before the court on motions of the defendants for disclosure of any electronic surveillance on which the defendants have been overheard.^{1/} In response to those motions the government has advised defense counsel that the defendants have been overheard on electronic surveillance conducted pursuant to orders issued under the Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. § 1801, et seq.

The government has provided defense counsel with access to the FISA surveillance logs of those intercepted conversations which the government intends to use in this proceeding.

The government has also submitted for ex parte, in camera review, and the court has reviewed, 38 original and

1. Only the defendants Maisoun Benmohamed, Abdussadam Ali Deghairs, Issa Hammad, Jafar Jafari and Omar Al-Madani have actually filed motions for disclosure. Defendants Robert Alphonso Brown and Nabil Abuznaid have filed motions adopting the motions of the other defendants. Defendant Mousa Hawamda is a fugitive.

21

renewal applications for surveillance under FISA, affidavits in support of each original and each renewal application, and the orders resulting from those applications. In addition, the court has reviewed intercepts by the Central Intelligence Agency that were not authorized under FISA.

As to the FISA documents there has been filed, pursuant to § 106(f) of FISA, 50 U.S.C. § 1806(f), the affidavit of the Attorney General that disclosure of or an adversary hearing revealing these documents would harm the national security of the United States.

As to the non-FISA CIA intercepts, the Director of the CIA, William Webster, has filed a statement under penalty of perjury that disclosure of these intercepts, and indeed the disclosure of the fact of such intercepts, would cause serious damage to national security.

After the above examination, the court makes the following findings:

1. As to each of the applications and renewal applications under FISA that:

- (a) The applications and applications for renewal clearly establish probable cause that the organizations who are targets of the proposed surveillance are foreign powers or agents of foreign powers and that the facilities or places at which the proposed surveillance is directed were being used, or about to be used, by a foreign power or an agent of a foreign power.

(b) The persons against whom the surveillance is directed are engaged in activities in preparation for conduct described in § 101(e) of FISA.

(c) The applications were made by a federal officer and approved by the Attorney General as authorized by the President, pursuant to § 104(a) of FISA.

(d) The minimization procedures in each case met the requirements of § 101(h) of FISA.

(e) The certifications of the Director of the FBI, the Director of the CIA, and the Secretary of Defense contained all the statements required by § 104 of FISA.

(f) The surveillance was for the purpose of obtaining foreign intelligence information or countering foreign intelligence.

(g) None of the defendants in this action were targets of the surveillance.

(h) No disclosure is necessary to make an accurate determination of the legality of the surveillance.

2. Disclosure of the contents of the FISA material would harm the national security because it would reveal the capabilities and techniques of surveillance, the sources and methods used to counter international terrorism, highly sensitive foreign intelligence information that has been gained and sought to be gained, the avenues of intelligence gathering that are being pursued, and the identities and locations of the targets of

surveillance as well as others who are possibly implicated in wrongdoing and continuing criminal activity. Moreover, so much of the material fits one or more of these categories that redaction would leave nothing but meaningless unconnected words.

3. As to the non-FISA surveillance by the CIA, the court further finds that:

(a) The surveillance was primarily for the gathering of foreign intelligence information. Therefore, although no warrant was obtained, none was necessary so long as the surveillance was reasonable. United States v. Truong, 629 F.2d 908, 916 (4th Cir. 1980). The surveillance in this case was not directed at a defendant, but a third party; only three conversations were recorded; and the defendants' conversations were overheard unexpectedly. The court finds that the surveillance was reasonable.

(b) Disclosure of the CIA intercepts would cause damage to the national security because it would reveal the sources and methods through and by which the government acquires certain information, as well as the fact and location of the surveillance.

The defendants point out that the offenses for which they were indicted, namely, wire fraud, credit card fraud and conspiracies to commit these substantive offenses, are not offenses for which surveillance is authorized under FISA. This is, of course, true; however, when a monitoring agent overhears

evidence of domestic criminal activity, it would be a subversion of his oath of office if he did not forward that information to the proper prosecuting authorities. These applications recognize the potential for criminal involvement, and when that involvement becomes evident there is no requirement that surveillance cease or that it be ignored. United States v. Duggan, 743 F.2d 59, 78 (2nd Cir. 1984).

One of the defendants also requests that the government canvass state and local law enforcement agencies to determine whether any of them has conducted electronic surveillance of him. The court will not impose such a requirement. United States v. Kember, 648 F.2d 1354, 1370 (D.C. Cir. 1980).

Nor will the court order disclosure of surveillance of persons other than defendants in which the name of a defendant was mentioned.

Similarly the defendants, who were not targets of the surveillance, are not entitled to information such as the mode or duration of surveillance.

For the foregoing reasons, neither disclosure nor an adversary hearing will be granted.

And it is so ordered.


United States District Judge

Alexandria, Virginia
April 17th, 1989