


UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE WRITS OF HABEAS CORPUS FILED BY DETAINEES AT
THE U.S. NAVAL STATION GUANTANAMO BAY, CUBA


DECLARATION OF ROBERT S. MUELLER, III
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

City of Washington :
: ss.
District of Columbia :

I, Robert S. Mueller, III, hereby declare the following:

1. (U) I am the Director of the Federal Bureau of Investigation (FBI), United States Department of Justice (DOJ), a component of an Executive Department of the United States Government (USG). I am responsible for, among other things, the national security operations of the FBI, including the FBI's Counterterrorism Division (CTD).

2. (U) The matters stated herein are based upon my personal knowledge, my review and consideration of documents and information available to me in my official capacity, and information furnished by Special Agents and other employees of the FBI and my conclusions have been reached in accordance therewith.



[REDACTED]

3. (U) I am generally familiar with the Court's November 6, 2008 Case Management Order in this matter. I submit this declaration in support of the government's Motion for Reconsideration. This declaration will demonstrate that in light of the number of cases, the totality of the court ordered requirements, the types of information implicated and the short deadlines imposed, FBI compliance with the Court's order could reasonably be expected to impair the national security and, therefore, should be reconsidered.

(U) The Burden on the FBI's Counterterrorism Resources and Operations

4. (U) This Court's November 6, 2008 Case Management Order requires that, within 14 days of the Order or within 14 days of filing the factual return, the government, including the FBI, disclose all "reasonably available evidence in its possession that tends to materially undermine the information presented to support the government's justification for detaining the petitioner." This information is to be disclosed to properly cleared petitioner's counsel. It is my understanding that the Case Management Order applies to approximately 115 habeas corpus cases involving approximately 200 petitioners. It would impair the national security to divert the FBI resources required to comply with this requirement.

[REDACTED]

[REDACTED]

(U) **Electronic Searches**

5. (U) In order to comply with the Order, the FBI would have to search for and disclose potentially hundreds of thousands of documents. The FBI has two methods to search for responsive documents. The first is to search the FBI's Automated Case Support (ACS), the electronic system which has the most complete repository of FBI materials. This type of search is extraordinarily time consuming and would likely have a negative impact on the use of ACS during the search periods. The second method is to search the Investigative Data Warehouse (IDW) system. IDW is a "warehouse" of information that provides a single-access repository for information utilizing extensive data sources, including those located in FBI files and information from sources outside of the FBI. An IDW search would allow the FBI to conduct each search in a reasonable period of time without crippling the system but provides access only to a subset of documents that are found in ACS. Both methods are discussed below.

6. (U) ACS is an old mainframe computer system and searches of its data must be "literal." For example, in order to search for documents relating to a particular petitioner, separate searches must be run for each spelling variant of each name (first, middle, last and alias). Additional searches must be run for every

[REDACTED]

[REDACTED]

combination of names (e.g., first-last, first-middle-last, alias-last, last-first, etc.). Each of these searches is run against the approximately 27 million documents in the electronic files.

7. [REDACTED]

8. (U) Searches like ones conducted to find the Hussein documents encumber ACS because all of the electronic files of the [REDACTED]

[REDACTED]

FBI are being searched for the various terms. These searches must take place after normal business hours and on weekends so as not to impair the FBI's electronic record search capacity and thereby adversely affect the ability of other FBI employees to use ACS in support of the FBI's primary missions.¹

9. (U) In order to meet Court-imposed deadlines, ACS searches would have to be run around the clock from multiple computers. Even with such extraordinary measures, the FBI would still not be able to meet the Court's deadlines. ACS is an operational system used to support everything from white-collar and violent crime to counter-espionage and counterterrorism investigations. Performing multiple simultaneous searches of the nature that would be required to support this order will have a negative impact on the overall performance of ACS.

10. (U) As an alternative to searching ACS, the FBI could conduct these searches through IDW. IDW is populated with approximately two-thirds of the information that is contained in ACS. As is pertinent to these cases, IDW does not contain information from ACS.

¹ (U) ACS is used for investigative and analytical searches, uploading or downloading documents, and setting investigative leads not only in national security operations and foreign intelligence collection, but all criminal investigations.

[REDACTED]

that has restricted access, such as tax records and grand jury materials. Because counterterrorism records are generally not restricted, however, IDW searches are likely to reveal most, if not all of the documents that would be revealed through ACS searches. If IDW were an acceptable route through which to conduct these searches, the FBI could conduct ACS searches only when there is some reason to believe that information pertaining to a particular petitioner is in restricted files.

11. (U) Unlike ACS, IDW can be efficiently used to conduct batch (or bulk) data searches. Those searches can be conducted in a more condensed time frame and will have no affect on ACS, because the searches are not run against the ACS mainframe computer system and thus significantly reducing the negative impact on FBI operational matters. There would also be no adverse effects on searches and other tasks being performed on ACS or IDW at the same time.

12. (U) Provided that the Court and petitioner's counsel do not object to the FBI satisfying its discovery obligation to produce all information that is "reasonably available" through IDW searches, the FBI would likely be able to conduct the initial document identification searches in a reasonable period of time, although

[REDACTED]

[REDACTED]

still not within the 14 day deadline imposed by the Court. This, however, would not alleviate the other issues discussed below.

(U) Review of Responsive Documents

13. (U) Once potentially responsive documents are identified through either ACS or IDW searches, the FBI must provide the documents to the DOJ. The DOJ will then conduct its own search and review to determine which documents are actually pertinent to the particular petitioner and responsive to the Court's order. Once the process is completed, the DOJ will then return those pertinent documents to the FBI for a final review of the documents to determine what information, if any, is authorized for release.

14. (U) Based upon initial search results, it is probable that tens of thousands of documents may need to undergo this final review by the FBI. Agents and analysts would be required to review the documents carefully in order to identify any highly sensitive information and techniques described more fully in the "Disclosure of Classified Information" section of this declaration.

15. (U) While it is not possible at this time to estimate the number of agents and analysts who would be required to perform such a review, it is likely to be significant. Due to the specialized

[REDACTED]

[REDACTED]

subject matter of the documents, it is expected that the review would be performed by agents and analysts assigned to the FBI's Counterterrorism Division, taking them away from daily operational duties.

(U) Discovery Requests

16. (U) [REDACTED] Additionally, for several reasons, the requirement that the government provide, upon request, any document or objects in the FBI's possession that are referenced in the factual return within 14 days of the date of the Court's November 6, 2008 Order or within 14 days of filing the factual return, is unduly burdensome and extraordinarily time consuming. It is not always readily apparent from the FBI reporting that the documents or objects used or referenced in the FBI investigation or statement were retained by the FBI. For example, in counterterrorism investigations it is often the case that other law enforcement agencies, United States intelligence community partners, or foreign governments provide documents and objects for use by the FBI during the investigation or the taking of a statement. Even if an FBI report indicates that the document or object was kept as evidence, it can take the FBI several days to track down the exact location of the evidence. Often,

[REDACTED]

it requires an agent in one of the FBI's 56 field offices to travel to an evidence storage facility to search for and locate the specific piece of evidence. If the FBI report does not specifically indicate that the document or object was kept as evidence, FBI personnel must contact the agent who conducted the interview to inquire further. Further confirmation is typically made by requesting the paper file from storage and reviewing the file to determine if the requested

document or object is in the case file. These hand searches can take several days to weeks, depending on where the evidence storage facility is located or where the case files are stored. Even if only one FBI document or object was requested from each of the approximate 200 cases, the FBI would not reasonably be able to produce 200 pieces of evidence in 14 days.

17. (U) Finally, the requirement that, within 14 days of filing the factual return, the government disclose to the petitioner "all statements, in whatever form, made or adopted by the petitioner" and all "information about the circumstances in which the statements of the petitioner were made or adopted" is unduly burdensome and time consuming. This requirement not only implicates searches related to petitioner himself, but additional searches related to other detainees who may have provided statements that were made or adopted by the petitioner. These additional searches increase the

[REDACTED]

[REDACTED]

burden on ACS and require additional time to complete in both ACS
and IDW.

18. [REDACTED]

(U) Disclosure of Classified Information

19. [REDACTED]

[REDACTED]

20. (U) Disseminating human source information could reasonably lead to the disclosure of their identities because often the information provided by human sources is singular in nature. The disclosure of singular information could endanger the life of the source or his/her family or friends, or cause the source to suffer physical or economic harm or ostracism within the community. These consequences, and the inability of the FBI to protect the identities of its human sources, would make it exceptionally more difficult for the FBI and other U.S. intelligence agencies to recruit human sources in the future.

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

techniques, and could disclose how and where such techniques are employed against particular members of terrorist organizations. Such disclosures might also reveal that there are certain communications or types of communications that the FBI has not acquired, thus revealing the FBI's technical vulnerabilities.

22. (U) [REDACTED] The FBI receives information from foreign intelligence and law enforcement services in furtherance of its counterterrorism mission. That information is often provided with strict limitations on its use. Generally, the FBI must obtain permission from the foreign service before it can further disseminate or use its information in the course of other proceedings. Further dissemination by the FBI, even if authorized to provide to cleared defense counsel or the Court, would require extensive, time-consuming coordination with every nation that has provided information related to the petitioners.

[REDACTED]

24. (U) In addition, FBI files contain documents provided by other U.S. intelligence agencies. The FBI is not in a position to evaluate the sensitivity of the other government agency information.

[REDACTED]

[REDACTED]

In fact, standard procedures for handling classified information require that the information be referred back to the originating agency for review to determine whether it can be disseminated. Those reviews will be completed by personnel from the other government agencies who will likely be conducting review of their own information as required by this Court's Order.

24. (U) Because this information will come not only from FBI cases where the petitioner is the subject, disclosing intelligence acquired from or by these other sources will likely also reveal current subjects of FBI national security investigations.

25. (U) It is my understanding that the Court has provided for procedures to address, in camera and ex parte, the disclosure of classified discovery information that the FBI determines, in the interest of national security, cannot be shared with a petitioner's counsel. It is anticipated that this procedure would likely be invoked in a significant number of cases. While the burdens on the resources and personnel of the FBI have been summarized above with respect to the initial searching and the final review of the information, the preparation of court documents, including declarations attested to by FBI officials, is also likely to be time consuming and burdensome, particularly in light of the other expedited deadlines imposed by the Court.

[REDACTED]

[REDACTED]

26.

[REDACTED]

(U) Conclusion

27.


[REDACTED]

[REDACTED]

[REDACTED]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury
that the foregoing is true and correct.

Executed on Feb. 14th, 2008.



ROBERT S. MUELLER, III
Director
Federal Bureau of Investigation