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RULE 41 CHANGES ENSURE A JUDGE MAY CONSIDER WARRANTS FOR CERTAIN REMOTE SEARCHES

June 20, 2016

Blog post courtesy of Assistant Attorney General Leslie R. Caldwell of the Criminal Division

Congress is currently considering proposed amendments to Rule 41, which are scheduled to take effect on Dec. 1, 2016.

This marks the end of a three-year deliberation process, which included extensive written comments and public testimony. After hearing the public's views, the federal judiciary's Advisory Committee on the Federal Rules of Criminal Procedure, which includes federal and state judges, law professors, attorneys in private practice and others in the legal community, rejected criticisms of the proposal as misinformed and approved the amendments. The amendments were then considered and unanimously approved by the Standing Committee on Rules and the Judicial Conference, and adopted by the U.S. Supreme Court.

The amendments do not change any of the traditional protections and procedures under the Fourth Amendment, such as the requirement that the government establish probable cause. Rather, the amendments would merely ensure that at least one court is available to consider whether a particular warrant application comports with the Fourth Amendment.

The amendments would not authorize the government to undertake any search or seizure or use any remote search technique, whether inside or outside the United States, that is not already permitted under current law. The use of remote searches is not new and warrants for remote searches are currently issued under Rule 41. In addition, most courts already permit the search of multiple computers pursuant to a single warrant so long as necessary legal requirements are met.

The amendments would apply in two narrow circumstances:

First, where a suspect has hidden the location of his or her computer using technological means, the changes to Rule 41 would ensure that federal agents know which judge to go to in order to apply for a warrant. For example, if agents are investigating criminals who are sexually exploiting children and uploading videos of that exploitation for others to see—but concealing their locations through anonymizing technology—agents will be able to apply for a search warrant to discover where they are located. A recent investigation that utilized this type of search warrant identified dozens of children who suffered sexual abuse at the hands of the offenders. While some federal courts hearing cases arising from this investigation have upheld the warrant as lawful, others have ordered the suppression of evidence based solely on the lack of clear venue in the current version of the rule.

And second, where the crime involves criminals hacking computers located in five or more different judicial districts, the changes to Rule 41 would ensure that federal agents may identify one judge to review an application for a search warrant rather than be required to submit separate warrant applications in each district—up to 94—where a computer is affected. For example, agents may seek a search warrant to assist in the investigation of a ransomware scheme facilitated by a botnet that enables criminals abroad to extort thousands of Americans. Absent the amendments, the requirement to obtain up to 94 simultaneous search warrants may prevent investigators from taking needed action to liberate computers infected with malware. This change would not permit indiscriminate surveillance of thousands of victim computers—that is against the law now and it would continue to be prohibited if the amendment goes into effect.

These changes would ensure a court-supervised framework through which law enforcement can successfully investigate and prosecute these instances of cybercrime.

Topic(s):

Cyber Crime

Component(s):Criminal Division

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February 6, 2017

Courtesy of [Acting Assistant Attorney General Kenneth Blanco](#)

On Friday, a United States Magistrate Judge in the Eastern District of Pennsylvania issued an important opinion in a dispute between the United States and Google over whether Google must comply with warrants issued by United States judges. The matter involved two warrants to search Google accounts belonging to suspected criminals in the United States who communicated with others in the United States. Google refused to fully comply with the warrants, asserting that it could not be compelled to disclose data unless it knew the data was actually located in the United States. The Magistrate Judge ordered Google to comply with the search warrants, specifically finding that no seizure occurs outside the United States and that the search occurs in Pennsylvania.

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Courtesy of [Acting Assistant Attorney General Jeffrey H. Wood](#)

As a new official within the Environment and Natural Resources Division (ENRD), I have appreciated the positive outreach from a wide range of stakeholders, especially our State partners. State attorney general offices and State environmental officials have reached out or visited the ENRD front office to share their perspectives across a broad range of issues. The Environmental Council of the States, the Association of Air Pollution Control Agencies, and other State associations have afforded me an opportunity to visit with their members to hear about their concerns and priorities. I have tried to approach these first few months of the new administration with open ears, listening more and speaking less, particularly when it comes to the States. On many occasions, when discussing a matter that is taking place in a particular State, I have asked our ENRD attorneys a straightforward question: What does the State have to say about it?

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April 26, 2017

This week a decision was filed in the Superior Court of the Virgin Islands in the case of Joseph v. Virgin Islands, CV No. ST-11-CV-419, stating that the government of the United States Virgin Islands can be sued under the Uniformed Services Employment and Reemployment Rights Act ("USERRA").

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April 24, 2017

Courtesy of [Clifford J. White III, Director of the United States Trustee Program](#)

The United States Trustee Program (USTP) within the Department of Justice (DOJ) was established as the "watchdog" of the bankruptcy system. Among our duties is to ensure that all parties follow the rules set out by Congress in the

Bankruptcy Code. The recent United States Supreme Court decision in *Czyzewski v. Jevic Holding Corp.*, et al., No. 15-649 (U.S. Mar. 22, 2017), helps illustrate why those rules are so important.

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