

**GLOBAL RELIEF FOUNDATION,  
INC., Plaintiff,**

**v.**

**Paul H. O'NEILL, Colin L. Powell, John  
Ashcroft, R. Richard Newcomb, and  
Robert S. Mueller, III, Defendants.**

**No. 02 C 674.**

United States District Court,  
N.D. Illinois,  
Eastern Division.

June 11, 2002.

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**MEMORANDUM OPINION  
AND ORDER**

ANDERSEN, District Judge.

This case is before the Court on the motion of plaintiff Global Relief Foundation, Inc. for preliminary injunctive relief pursuant to Federal Rule of Civil Procedure 65. For the following reasons, the motion is denied.

**OVERVIEW**

Before addressing the motion for preliminary injunction filed by the plaintiff, Global Relief Foundation (“Global Relief”), a brief description of this case is in order.

On December 14, 2001, the Federal Bureau of Investigation (“FBI”) searched the headquarters of Global Relief and the home of its executive director. Pursuant to the searches, materials were seized for analysis by the FBI. Global Relief contends that both the search and seizure were unauthorized by law and unconstitu-

tional. The defendants maintain that both the search and seizure were lawfully authorized by the Foreign Intelligence Surveillance Act and that they were constitutional. This Court agrees with the defendants.

Also on December 14, 2001, the Office of Foreign Asset Control ("OFAC") of the United States Department of the Treasury issued a blocking order freezing the financial assets of Global Relief pending the FBI's investigation of what relationship, if any, Global Relief might have to the terrorists behind the September 11, 2001 attacks on the World Trade Center and the Pentagon. Global Relief contends that the order temporarily "freezing" its assets was not authorized by statute, executive order or the Constitution. The defendants maintain that this blocking order was both lawful and constitutional. They cite the International Emergency Economic Powers Act, as amended by the USA Patriot Act, as the statutory basis for the authority to issue the blocking order. This authority was granted first to the President and then delegated by him to the Treasury pursuant to Executive Order Number 13224. Once again, this Court agrees with the defendants.

The assets seized for analysis and the funds blocked by OFAC's order have been seized and blocked "pending investigation" of Global Relief and others. Thus far, no agency of the United States government has declared or requested any forfeiture of assets to the government. Nor have any individuals or Global Relief been charged with any crimes. Hence, Global Relief's request for a preliminary injunction is directed only to the release of funds and materials seized for investigative purposes while the investigation itself is ongoing.

To justify its emergency search and, to some extent, the blocking order, defendants have asked this Court to review materials, *in camera* and *ex parte*, without

revealing them to Global Relief or its attorneys. In accordance with our order of April 5, 2002, we have reviewed materials furnished by the FBI to us and have concluded that they are relevant to the ongoing investigation and that their disclosure to Global Relief, while the investigation is pending, could undermine this investigation and others of national significance.

### BACKGROUND

Global Relief began operating in 1992 as a domestic, non-profit corporation chartered and headquartered in Illinois. According to its complaint, Global Relief claims to be a charitable organization that funds humanitarian relief programs throughout the world. These programs allegedly distribute food, fund schools for orphans, and provide medical services.

Global Relief characterizes itself as the largest U.S.-based Islamic charitable organization "with respect to the geographic scope of its relief programs." (Complaint ¶ 12.) As contributions to Global Relief increased (in 1995, the organization reported accepting donations totaling \$431,155; by 2000, it reported nearly \$3.7 million), it appears to have expanded the reach of its efforts. In 1995, it reported funding programs in Chechnya, Bosnia, Pakistan, Kashmir, and Lebanon. It reported funding additional programs in Afghanistan and Azerbaijan in 1996, Bangladesh in 1997, Iraq and Somalia in 1998, Albania, Belgium, China, Eritrea, Kosovo, and Turkey in 1999, and, eventually, Ethiopia, Jordan, Palestine, and Sierra Leone in 2000. Global Relief also has funded programs in Gaza and the West Bank. (Complaint ¶ 11.) To assist with the distribution of humanitarian aid abroad, Global Relief established regional offices in Belgium, Azerbaijan, and Pakistan. Reportedly, such offices received hundreds of thousands of dollars in contributions, in addition to the amounts

reported by the headquarters in the United States. Although Global Relief has funded relief programs in the United States, over 90 percent of its donations have been sent abroad.

On September 11, 2001, terrorists attacked the United States. Individuals hijacked four commercial airliners containing passengers and crew and flew them deliberately into the two towers of the World Trade Center in New York City as well as into the Pentagon near Washington, D.C. The fourth plane was diverted from its path and crashed in rural Pennsylvania. Over 3,000 people were murdered.

On September 24, 2001, President George W. Bush declared a national emergency with respect to the "grave acts of terrorism and threats of terrorism . . . and the continuing and immediate threat of further attacks on United States nationals or the United States." Exec. Order No. 13224, 66 Fed.Reg. 49074 (2001). The President determined that the acts perpetrated on September 11 constituted "an unusual and extraordinary threat to national security, foreign policy, and economy of the United States." In light of the "pervasiveness and expansiveness of the financial foundation of terrorists," the President cited the need for financial sanctions against individuals or organizations that engage in or support terrorism throughout the world.

On December 14, 2001, pursuant to the Foreign Intelligence Surveillance Act, then-acting Deputy Attorney General Larry D. Thompson authorized the search of Global Relief's Bridgeview, Illinois office and the residence of its executive director. The FBI's Chicago Division Joint Terrorism Task Force conducted both searches. From the Global Relief office, the FBI seized items including computers and servers, modems, a cellular phone, hand-held radios, video and audio tapes, cassette

tapes, computer diskettes, a credit card imprinter, foreign currency, U.S. mail, photographs, receipts, documents, and records. From the executive director's residence, the FBI seized computers, computer diskettes, video and audio tapes, cassette tapes, date books, a cellular telephone, a camera, a palm pilot, credit cards, foreign currency, photographs, documents, records, and \$13,030 in U.S. currency. Since being seized, the items removed from both the Global Relief office and the executive director's residence have been secured in FBI custody for review and analysis.

Also, on December 14, 2001, pursuant to the International Emergency Economic Powers Act and President Bush's Executive Order, OFAC issued a "Blocking Notice and Requirement to Furnish Information" to Global Relief, which "froze," until further notice, the funds, accounts, and business records in which the organization had an interest. OFAC has claimed that it acted on the basis of substantial classified and unclassified information related to Global Relief's possible connections with terrorist organizations.

The blocking order advised Global Relief of the administrative procedures available to it should it choose to contest OFAC's action, including the right to challenge the blocking and to seek licenses to resume operations in whole or in part. Although Global Relief applied for and was granted licenses to access limited blocked funds to pay for legal expenses, salaries, payroll taxes, health insurance, rent, and utilities, it did not challenge the blocking order itself through administrative procedures.

On January 28, 2002, Global Relief filed a petition for declaratory judgment and injunctive relief and for a writ of mandamus with this Court, naming Paul H. O'Neill, Colin L. Powell, John Ashcroft, R. Richard Newcomb, and Robert S. Mueller,

III, in their official capacities, as defendants (collectively, the “defendants”). In its petition, Global Relief requested that the defendants be ordered to “unfreeze” its assets and return the items seized during the search of the organization’s office and the executive director’s residence. In addition, on February 12, 2002, Global Relief filed a motion for preliminary injunction, arguing that the blocking of its assets and records was both unlawful and unconstitutional.

1. *The Foreign Intelligence Surveillance Act*

As the first part of its statutory argument offered in support of its motion for a preliminary injunction, Global Relief contends that the search of its headquarters and the subsequent search of the home of Global Relief's executive director was an *ultra vires* action (which is defined as an act which is beyond the powers conferred on executive agencies by Congress). In response to this argument, the defendants have asserted that the searches conducted on December 14, 2001 were in accordance with the procedures identified in the Foreign Intelligence Surveillance Act, 50 U.S.C. § 1801 *et seq.*, (hereinafter "FISA").

FISA was passed by Congress in 1978 to "put to rest a troubling constitutional issue" regarding the President's "inherent power to conduct warrantless electronic surveillance in order to gather foreign intelligence in the interests of national security." *U.S. v. Squillacote*, 221 F.3d 542, 552 (4th Cir.2000) (citing *ACLU Found. of S. California v. Barr*, 952 F.2d 457, 460 (D.C.Cir.1991)). FISA was enacted to create by statute a "secure framework by which the Executive Branch may conduct legitimate electronic surveillance for foreign intelligence purposes within the context of this Nation's commitment to privacy and individual rights." S.Rep. No. 95-604, at 15 (1978), *reprinted in* 1978 U.S.C.C.A.N. 3904, 3916.

To oversee the exercise of the powers granted by FISA to the Executive Branch and to ensure that the new investigatory

power is used constitutionally and lawfully, FISA established the Foreign Intelligence Surveillance Court, which is composed of seven federal district court judges appointed by the Chief Justice of the United States, to review applications for authorization of electronic surveillance aimed at obtaining intelligence information. *See* 50 U.S.C. § 1803. In 1994, FISA was amended to give the Foreign Intelligence Surveillance Court jurisdiction to hear applications for physical searches as well as electronic searches. *See* 50 U.S.C. § 1821–29. Each application to the Foreign Intelligence Surveillance Court must first be personally approved by the Attorney General. *See* 50 U.S.C. § 1804(a). The application must contain, among other things, a statement of facts to justify the belief that the target of the search is a foreign power or an agent of a foreign power, that the premises or property to be searched contains foreign intelligence information, and that the premises or property to be searched is owned, used, or possessed by a foreign power or an agent of a foreign power. Additionally, the application must contain a certification by a senior Executive Branch official that the information sought is foreign intelligence information which could not reasonably be obtained by normal investigative techniques. *See* 50 U.S.C. § 1823(a).

When the target of the surveillance is a “United States person” (which the parties concede Global Relief is), the Foreign Intelligence Surveillance Court may issue an order authorizing the surveillance only if a FISA judge concludes there is “probable cause” to believe that the target of the surveillance is a foreign power or agent of a foreign power, that proposed “minimization procedures” are sufficient under the terms of the statute, that the certifications required by section 1823 have been made, and that the certifications are not “clearly erroneous.” 50 U.S.C. § 1824(a)(3)–(5). Under the statute, an agent of a foreign

power is any person “who knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States.” 50 U.S.C. § 1801(b)(2)(A). FISA authorizes the federal district courts to review warrant applications and probable cause determinations made by the Foreign Intelligence Surveillance Court. *See* 50 U.S.C. § 1825(d)—(g).

Furthermore, FISA provides that, when the United States intends to use in a district court information derived from a FISA search or when an aggrieved party requests discovery of information related to a FISA application, the Attorney General must file “an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States.” 50 U.S.C. § 1825(g). Attorney General John Ashcroft has filed such an affidavit in this case. This having been done, the statute requires us to “review *in camera* and *ex parte* the application, order, and such other materials relating to the physical search as may be necessary to determine whether the physical search of the aggrieved party was lawfully authorized and conducted.” *Id.* As we noted in our April 5, 2002 ruling denying Global Relief’s motion to prevent consideration of certain materials *in camera* and *ex parte*, *see Global Relief Foundation, Inc. v. O’Neill*, 205 F.Supp.2d 885, 887–88 (N.D. Ill.2002), this Court decided to consider these submissions. We have done so on an *ex parte* basis and have not permitted counsel for Global Relief to review the submissions with us.

With this analytical framework in mind, we now turn to the facts of the case currently before us. As was discussed above, agents of the FBI arrived at the corporate headquarters of Global Relief and the

home of its executive director on December 14, 2001 and seized a considerable amount of material they felt was relevant to their investigation of Global Relief's activities. As the defendants have conceded in their briefs, no warrant had been obtained before the FBI arrived either at Global Relief's headquarters or the executive director's residence. Nevertheless, FISA includes a provision which states that, when the Attorney General declares that "an emergency situation exists with respect to the execution of a search to obtain foreign intelligence information" prior to the Foreign Intelligence Surveillance Court acting on the application, a warrantless search is authorized. 50 U.S.C. § 1824(e)(1)(B)(i). When such an emergency situation arises, the government must submit a warrant application to the Foreign Intelligence Surveillance Court within 72 hours of the warrantless search for approval. See 50 U.S.C. § 1824(e), *as amended by*, P.L. 107-108, 115 Stat. 1394, 1402 (2001). In this case, the failure of the FBI agents to present a FISA warrant on December 14 was caused by the Assistant Attorney General's declaration that an emergency situation existed with respect to the targeted documents and material. The defendants did submit a warrant application to the Foreign Intelligence Surveillance Court on December 15, as required by 50 U.S.C. § 1824(e). We have reviewed the warrant that issued and the submissions to the Foreign Intelligence Surveillance Court in support of that warrant.

[3] We conclude that the FISA application established probable cause to believe that Global Relief and the executive director were agents of a foreign power, as that term is defined for FISA purposes, at the time the search was conducted and the application was granted. We are also satisfied that Global Relief and the executive director were not targeted because of any protected First Amendment activities in

which they may have engaged. Given the sensitive nature of the information upon which we have relied in making this determination and the Attorney General's sworn assertion that disclosure of the underlying information would harm national security, it would be improper for us to elaborate further on this subject. See *Squillacote*, 221 F.3d at 554 (finding probable cause to authorize FISA surveillance and declining to comment further on the probable cause issue when the Attorney General filed an affidavit); *United States v. Isa*, 923 F.2d 1300, 1304 (8th Cir.1991) (same).

This Court has concluded that disclosure of the information we have reviewed could substantially undermine ongoing investigations required to apprehend the conspirators behind the September 11 murders and undermine the ability of law enforcement agencies to reduce the possibility of terrorist crimes in the future. Furthermore, this Court is persuaded that the search and seizure made by the FBI on December 14 were authorized by FISA. Accordingly, we decline plaintiff's request that we declare the search invalid and order the immediate return of all items seized.



Amendment provides that “the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

We reject Global Relief’s argument because FISA’s safeguards provide sufficient protection for the rights guaranteed by the Fourth Amendment in the context of foreign intelligence activities. We agree with the many courts which have held that searches conducted pursuant to FISA do not violate the protections afforded by the Fourth Amendment. *See, e.g., United States v. Pelton*, 835 F.2d 1067, 1075 (4th Cir.1987); *United States v. Cavanagh*, 807 F.2d 787, 790–92 (9th Cir.1987); *United States v. Duggan*, 743 F.2d 59, 73 (2d Cir.1984).

For these reasons it is unlikely that Global Relief will succeed in proving a violation of the Fourth Amendment.

#### 9. *Fourth Amendment*

[23] Global Relief next argues that defendants unconstitutionally searched its offices and seized its property in violation of the Fourth Amendment. The Fourth