

DOJ: OUR DELAYED NOTICE DOESN'T MEAN YOU CAN WITHDRAW YOUR PLEA

DOJ has now given a third defendant, Agron Hasbajrami, notice his prosecution was “derived from” Section 702.

The government submits this letter to supplement the government’s original Foreign Intelligence Surveillance Act (“FISA”) notice, which was filed on September 13, 2011. The original FISA notice advised you that the government intended to offer into evidence, or otherwise use or disclose “information obtained or derived from electronic surveillance and physical searches conducted pursuant to the Foreign Intelligence Surveillance Act of 1978 (‘FISA’), as amended, 50 U.S.C. §§ 1801-1812 and 1821-1829.” (Dckt. # 9). Electronic surveillance under these provisions is commonly referred to as Title I collection, while physical search is commonly referred to as Title III collection.

We write to supplement the original notice by informing you that, pursuant to 50 U.S.C. §§ 1806(c) and 1881e(a), the government intended to offer into evidence or otherwise use or disclose in proceedings in the above-captioned matter information derived from acquisition of foreign intelligence information conducted pursuant to the Foreign Intelligence Surveillance Act of 1978, as amended, 50 U.S.C. § 1881a. This supplemental notification is based on a recent determination by the government that certain evidence or information obtained or derived from

Title I and Title III FISA collection in this case was itself also derived from other collection pursuant to Title VII of FISA as to which you were aggrieved. [my emphasis]

Oops! "Was aggrieved." That means he should have gotten notice.

There's just one problem: Hasbajrami already took a plea deal, pleading guilty to material support for terrorism on April 12, 2012.

And DOJ says he can't take it back.

The Supplemental Notification was filed based on a recent determination by the government that certain evidence or information obtained or derived from Title I and Title III collection in the petitioner's criminal case was itself also derived from other collection pursuant to Title VII of FISA as to which the petitioner was aggrieved. Title VII of FISA, enacted pursuant to the FISA Amendments Act ("FAA"), permits, inter alia, the targeting of electronic communications of non-U.S. persons located outside the United States, subject to certain statutory requirements. See 50 U.S.C. § 1881a. Specifically, the Supplemental Notification stated that "the government intended to offer into evidence or otherwise use or disclose in proceedings in [the criminal case] information derived from acquisition of foreign intelligence information conducted pursuant to the Foreign Intelligence Surveillance Act of 1978, as amended, 50 U.S.C. §1881a."

The Supplemental Notification does not afford the petitioner a basis to withdraw his plea or to otherwise attack his conviction or sentence because he expressly waived that right, as well as

his right to any additional disclosures from the government, in his plea agreement. The plea agreement, which was accepted by the Court at sentencing, provided that, "The defendant agrees not to file an appeal or otherwise challenge, by petition pursuant to 28 U.S.C. § 2255 or any other provision, the conviction or sentence in the event that the Court imposes a term of imprisonment of 15 years or below. . . . The defendant waives any right to additional disclosure from the government in connection with the guilty plea." [my emphasis]

Mind you, Hasbajrami has an active habeas challenge to his conviction, and DOJ has very generously suggested they wouldn't mind if the Court gives him some more briefing time to address this delayed notice.

Still.

No wonder John Carlin umed and ahed so much today.