

JUDGE ROBERT J. BRYAN

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)	No. CR16-5110RJB
Plaintiff,)	SUPPLEMENTAL EXHIBIT TO
v.)	MOTION TO SUPPRESS
DAVID TIPPENS,)	
Defendant.)	

UNITED STATES OF AMERICA,)	No. CR15-387RJB
Plaintiff,)	SUPPLEMENTAL EXHIBIT TO
v.)	MOTION TO SUPPRESS
GERALD LESAN,)	
Defendant.)	

UNITED STATES OF AMERICA,)	No. CR15-274RJB
Plaintiff,)	SUPPLEMENTAL EXHIBIT TO
v.)	MOTION TO SUPPRESS
BRUCE LORENTE,)	
Defendant.)	

1 Defendants' David Tippens, Gerald Lesan, and Bruce Lorente, through their
2 respective attorneys, submit the attached October 27, 2016, Rule 41 letter addressed to
3 U.S. Attorney General Loretta Lynch from Members of Congress and the United States
4 Senate as a supplemental exhibit for the Court's consideration.

5 DATED this 1st day of November, 2016.

6 Respectfully submitted,

7
8 s/ Colin Fieman

9 Colin Fieman
10 Attorney for David Tippens

11 s/ Robert Goldsmith

12 Robert Goldsmith
13 Attorney for Gerald Lesan

14 s/ Mohammad Hamoudi

15 Mohammad Hamoudi
16 Attorney for Bruce Lorente
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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties registered with the CM/ECF system.

s/ Amy Strickling, Paralegal
Federal Public Defender Office

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Congress of the United States

Washington, DC 20510

October 27, 2016

The Honorable Loretta Lynch
United States Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Lynch:

We write to request information regarding the Department of Justice's proposed amendments to Rule 41 of the Federal Rules of Criminal Procedure. These amendments were approved by the Supreme Court and transmitted to Congress pursuant to the Rules Enabling Act on April 30, 2016. Absent congressional action the amendments will take effect on December 1, 2016.

The proposed amendments to Rule 41 have the potential to significantly expand the Department's ability to obtain a warrant to engage in "remote access," or hacking of computers and other electronic devices. We are concerned about the full scope of the new authority that would be provided to the Department of Justice. We believe that Congress -- and the American public -- must better understand the Department's need for the proposed amendments, how the Department intends to use its proposed new powers, and the potential consequences to our digital security before these rules go into effect. In light of the limited time for congressional consideration of the proposed amendments, we request that you provide us with the following information two weeks after your receipt of this letter.

1. How would the government prevent "forum shopping" under the proposed amendments? The proposed amendments would allow prosecutors to seek a warrant in any district "where activities related to a crime may have occurred." Will the Department issue guidance to prosecutors on how this should be interpreted?
2. We are concerned that the deployment of software to search for and possibly disable a botnet may have unintended consequences on internet-connected devices, from smartphones to medical devices. Please describe the testing that is conducted on the viability of 'network investigative techniques' ("NITs") to safely search devices such as phones, tablets, hospital information systems, and internet-connected video monitoring systems.
3. Will law enforcement use authority under the proposed amendments to disable or otherwise render inoperable software that is damaging or has damaged a protected device? In other words, will network investigative techniques be used to "clean" infected devices, including devices that belong to innocent Americans? Has the Department ever attempted to "clean" infected computers in the past? If so, under what legal authority?

4. What methods will the Department use to notify users and owners of devices that have been searched, particularly in potential cases where tens of thousands of devices are searched?
5. How will the Department maintain proper chain of custody when analyzing or removing evidence from a suspect's device? Please describe how the Department intends to address technical issues such as fluctuations of internet speed and limitations on the ability to securely transfer data.
6. Please describe any differences in legal requirements between obtaining a warrant for a physical search versus obtaining a warrant for a remote electronic search. In particular, and if applicable, please describe how the principle of probable cause may be used to justify the remote search of tens of thousands of devices. Is it sufficient probable cause for a search that a device merely be "damaged" and connected to a crime?
7. If the Department were to search devices belonging to innocent Americans to combat a complicated computer crime, please describe what procedures the Department would use to protect the private information of victims and prevent further damage to accessed devices.

Sincerely,




Ron Wyden
United States Senator



Patrick Leahy
United States Senator



Tammy Baldwin
United States Senator



Christopher A. Coons
United States Senator



Ted Poe
Member of Congress



John Conyers, Jr.
Member of Congress




Justin Amash
Member of Congress



Jason Chaffetz
Member of Congress



Steve Daines
United States Senator



Judy Chu
Member of Congress



Al Franken
United States Senator



Steve Cohen
Member of Congress



Mazie Hirono
United States Senator



Suzan DeBene
Member of Congress



Mike Lee
United States Senator



Louie Gohmert
Member of Congress



Jon Tester
United States Senator



Henry C. "Hank" Johnson
Member of Congress



Elizabeth Warren
United States Senator




Ted W. Lieu
Member of Congress



Martin Heinrich
United States Senator



Zoe Lofgren
Member of Congress



Jerrold Nadler
Member of Congress