

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JUN 16 2006

Michael N. Milby, Clerk

IN THE MATTER OF THE	§	
APPLICATION OF THE UNITED	§	
STATES OF AMERICA FOR AN	§	Magistrate No. H-06-356M
ORDER AUTHORIZING (1)	§	
INSTALLATION AND USE	§	
OF A PEN REGISTER AND TRAP	§	
AND TRACE DEVICE OR PROCESS,	§	
(2) ACCESS TO CUSTOMER RECORDS,	§	
AND (3) CELL PHONE TRACKING	§	

**OBJECTION TO COURT’S JUNE 15, 2006 ORDER ALLOWING
AMICUS CURIAE BRIEF**

The United States of America, hereinafter “the Government,” by and through the United States Attorney for the Southern District of Texas, files this Objection to the Court’s June 15, 2006 Order allowing the Electronic Frontier Foundation to file an *amicus curiae* brief and in support states the following:

1. The Government objects to the Court’s granting of the motion by Electronic Frontier Foundation for leave to file an *amicus curiae* brief on this issue.
2. Title 18, United States Code, Section 3123(a) directs that the Court issue an *ex parte* order authoring the installation and use of a pen register or trap and trace device and Section 3123(d) directs that the Court’s order be filed under seal. The statute clearly does not envision or allow for an adversarial process. A pen register application and order reveal ongoing criminal investigations as well as sensitive investigative techniques that are not appropriate for an adversarial hearing or public debate. Search warrants, pen register applications, wire intercept applications are all *ex parte* proceedings for this very reason. If the possibility exists that such proceedings will be allowed to become adversarial, it will hamper the government’s ability to properly address these issues and the

government will be hesitant to reveal, and may not reveal, facts concerning a criminal investigation or investigative techniques that are used, and the limitations on those techniques, out of concern that this information will become public. This concern is heightened by the fact that Electronic Frontier Foundation requests leave for other unknown entities to also file *amicus* briefs and the Court's granting that request.

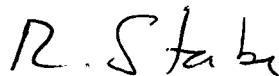
2. Electronic Frontier Foundation has no standing on this issue.
3. The government had not received any notice of the motion by Electronic Frontier Foundation prior to the Court granting the request and did not have the opportunity to respond prior to the Court's granting of the motion.

WHEREFORE, the United States respectfully requests that this Honorable Court deny the motion by Electronic Frontier Foundation and others for leave to file an *amicus curiae* brief in this matter.

The United States further requests that this Honorable Court withdraw its order of June 15, 2006 granting such leave.

Respectfully submitted,

DONALD J. DeGABRIELLE, JR.
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