Court Declines to Vacate “Twitter Order”

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A US District Court has denied a motion (Loislaw $) by WikiLeaks supporters Jacob Appelbaum (ioerror), Birgitta Jonsdottir (birgittaj), and Rop Gonggrijp (rop_g) (collectively, petitioners) to vacate a sealed order (Twitter Order) issued under the Stored Communications Act (SCA) (Loislaw $).
The Twitter Order required Twitter, Inc. to turn over to the United States subscriber information concerning WikiLeaks, rop_g, ioerror, birgittaj, Julian Assange, Bradley Manning, Rop Gonggrijp, and Birgitta Jonsdottir. The order was sought as a part of a federal investigation into the release of classified information by WikiLeaks.

In arguing that the Twitter Order should be vacated, the petitioners made four arguments: (1) that they had standing under the SCA; (2) whether the Twitter Order was properly issued under the SCA; (3) whether the Twitter Order violated their First Amendment rights; (4) whether the Twitter Order should have been vacated as to Ms. Jonsdottir for reasons of international comity.

The judge first noted that under the SCA, an order could only be challenged if the *contents* of electronic communications had been sought. The definition of contents was any information regarding substance, purport, or meaning of a communication. The judge found that the Twitter Order was only a request for records. Therefore, the petitioners lacked standing to bring a challenge.

While the petitioners did lack standing, the judge went on to find that substance of their motion was also “unavailing.”

The petitioners argued that because the information was sought in connection with an investigation into WikiLeaks, and their tweets pertained primarily to non-WikiLeaks topics, the Twitter Order demanded information that was not relevant to the investigation. However, the judge found that the Twitter Order was properly issued because is sought "relevant and material" information for the investigation.

The petitioners also claimed the Twitter Order would have a chilling effect on their First Amendment rights by allowing the government to create a "map of association." However, the judge found no cognizable First Amendment violation because the petitioners failed to explain how the Twitter Order had a chilling effect. The Twitter Order was a routine compelled disclosure of non-content information which the petitioner provided to Twitter under its privacy policy.

Next, the petitioner argued that the Twitter Order was a warrantless search in violation of the Fourth Amendment because release of their internet protocol addresses (IP Addresses) was "intensely revealing," and required a warrant. The judge noted that no legitimate expectation of privacy existed in subscriber information voluntarily conveyed to phone and internet companies. Further, several federal circuits had declined to recognize a Fourth Amendment privacy interest in IP addresses. The found that "because the petitioners had conveyed their IP addresses as a condition of use, they have no legitimate Fourth Amendment privacy interest."

Finally, the judge found that there was no threat to international comity because Ms. Jonsdottir's tweets had littler relation to her status as an Icelandic Parliament member.