

Approved: Loyaan A. Egai
LOYAAN A. EGAL
Assistant United States Attorney

Before: HONORABLE ANDREW J. PECK
United States Magistrate Judge
Southern District of New York

08 MAG 2507

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	:	
UNITED STATES OF AMERICA	:	<u>SEALED COMPLAINT</u>
	:	
- v -	:	Violation of
	:	18 U.S.C. §
	:	1030(a)(2)(B)
HAYTHAM KHALIL,	:	
	:	
Defendant.	:	COUNTY OF OFFENSE
	:	NEW YORK
	:	
----- x	:	

SOUTHERN DISTRICT OF NEW YORK, ss.:

JEFFREY A. GOLDBERGER, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE

In or about December 2007, in the Southern District of New York and elsewhere, HAYTHAM KHALIL, the defendant, unlawfully, intentionally, and knowingly, did access a computer without authorization and did exceed authorized access, and thereby did obtain information from a department and agency of the United States, to wit, KHALIL, while employed as a New York City Police Department ("NYPD") sergeant, accessed a computer system which contained information maintained by the Federal Bureau of Investigation's National Crime Information Center ("NCIC") and as a result obtained information regarding an individual listed on a terrorist watch list.

(Title 18, United States Code, Section 1030(a)(2)(B).)

The bases for my knowledge and for the foregoing charge, are, in part, as follows:

1. I am a Special Agent of the FBI, and I have been

personally involved in the investigation of this matter. This affidavit is based upon my conversations with other law enforcement officers and agents and my examination of reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all of the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

2. Based on my conversations with other law enforcement officers, including NYPD officers, and my review of documents and files relating to this investigation, I have learned of the following:

a. The information contained in NCIC is maintained by the FBI, which is the federal agency authorized to acquire, collect, classify and preserve identification, criminal identification, crime, and other records and to exchange such information with authorized entities. NCIC also contains information derived from the FBI's "Terrorist Screening Center" regarding individuals listed on a terrorist watch list. The information is then shared for authorized use by state and local law enforcement authorities throughout the United States.

b. New York State maintains an electronic database system ("E-Justice") that is designed to give users from qualified law enforcement agencies a single point of access to computerized law enforcement information within and beyond New York State. Qualified state and local law enforcement personnel in New York have access to various forms of information maintained in E-Justice including watch list files, such as the terrorist watch list referenced to in paragraph 2a, maintained by the FBI.

3. Based on my own personal review of the E-Justice system and database, as well as my conversations with NYPD personnel, I have discovered the following about the qualifications necessary to obtain access to the E-Justice database:

a. The NYPD has an E-Justice account, which can be used by multiple users. A qualified NYPD officer is assigned an E-Justice user identification which allows him or her to access an E-Justice website. The user identification is a combination of the first four letters of an officer's last name and their six digit NYPD-issued identification number. In order

to receive the user identification, an NYPD officer must sign a "Guidelines For Electronic Access To Criminal History Record Information" form ("E-Justice Form") that details the proper use of the information contained within the E-Justice database, as well as the proper use of the E-Justice database itself.

b. Within six months of receiving this E-Justice user identification, an NYPD officer must take and pass an online E-Justice exam which consists of 25 questions relating to the proper use of the E-Justice system. Subsequent to passing the online E-Justice exam, an NYPD officer must take an online E-Justice exam every two years in order to maintain access to the E-Justice database.

c. E-Justice database users are expressly warned on the website that the database is for authorized use only, and that unauthorized use or attempted unauthorized use of the E-Justice database by persons not issued a user account is not permitted and may constitute a state or federal offense. In addition, users are warned that their access is monitored at all times.

4. From my review of an internal FBI report I learned that:

a. On or about April 23, 2008, the FBI legal attache in Ottawa, Canada, was informed by an officer of the Royal Canadian Mounted Police ("RCMP") that the RCMP had come across a Canadian citizen ("Individual-1") who was in possession of a document ("NCIC Document") containing NCIC information. Specifically, the NCIC Document identified an individual ("Individual-2") as being on a terrorist watch list. Moreover, the NCIC Document showed that the information was accessed on or about December 6, 2007, from an NYPD-based computer.

b. Individual-1 informed the RCMP that in or about December 2007, he/she received a copy of the NCIC Document referenced in paragraph 4a from an NYPD officer named Haytham Khalil.

5. Based on my conversations with members of the NYPD's Internal Affairs Bureau ("IAB") and review of NYPD documents, I discovered the following:

a. IAB conducted a review of NYPD files and discovered that HAYTHAM KHALIL, the defendant, did not have an executed E-Justice Form, as referenced in paragraph 3a, in his

files and as a result did not have the authorization to access the E-Justice database.

b. In or about April 2008, IAB performed an audit of the NYPD E-Justice account regarding any searches using the E-Justice database that occurred on or about December 6, 2007, as well as any searches involving inquiries of Individual-2. IAB discovered that an inquiry involving Individual-2 had been conducted on December 6, 2007, at 9:26 p.m. using the account of an NYPD officer ("Officer-1") who had proper authorization to use the E-Justice database.

c. IAB also performed an audit of all NYPD databases to determine whether any inquiries as to Individual-2 were made by NYPD personnel. As a result of that audit, IAB discovered that on December 6, 2007, between 9:02 p.m. and 9:14 p.m., HAYTHAM KHALIL, the defendant, conducted a search for information on Individual-2 using the New York State Department of Motor Vehicles database.

6. On or about July 10, 2008, I interviewed Officer-1, who, in sum and substance, informed me of the following:

a. Officer-1 had previously been assigned to the Patrol Borough Manhattan South Investigations Unit¹ from in or about January 2007 until in or about September 2007. During that time period, Officer-1 stated that HAYTHAM KHALIL, the defendant, was also assigned to the Patrol Borough Manhattan South Investigations Unit.

b. Officer-1 had proper authorization to use the E-Justice database during this time period. As part of Officer-1's duties, Officer-1 would run E-Justice searches for other NYPD sergeants relating to their individual cases. HAYTHAM KHALIL, the defendant, was one of the sergeants for whom Officer-1 conducted E-Justice searches. Officer-1 would leave his/her E-Justice database user name and password on a pad so that the NYPD sergeants could access the E-Justice database when Officer-1 was not present to assist them.

¹ The Patrol Borough Manhattan South Investigations Unit handles internal administrative cases involving allegations against NYPD personnel assigned to patrol the areas located within Bureau Manhattan South.


c. After Officer-1 left Manhattan South Inspections in or about September 2007, HAYTHAM KHALIL, the defendant, contacted Officer-1 and asked for Officer-1's user identification in order to access the E-Justice database.

7. I reviewed the sign-in log of the Patrol Borough Manhattan South Investigations Unit for December 6, 2007. The sign-in log revealed that HAYTHAM KHALIL, the defendant, signed in at 12:00 p.m. and signed out at 9:35 p.m.

8. On October 8, 2008, I interviewed Individual-1. Individual-1 informed me that he/she is acquainted with HAYTHAM KHALIL, the defendant. After KHALIL discovered that Individual-1 was involved in a child custody proceeding against Individual-2, KHALIL informed Individual-1 that he had the NCIC Document referenced in paragraph 4a. KHALIL sent the document to Individual-1, who received it in or about December 2007. Individual-1 then provided the document to his/her attorney to be used in relation to the child custody proceeding.

9. On or about November 3, 2008, I spoke to the attorney for Individual-1, who informed me that after receiving the NCIC Document from Individual-1, the NCIC Document was forwarded to the RCMP.


WHEREFORE, deponent prays that a warrant be issued for the arrest of HAYTHAM KHALIL, the defendant, and that he be arrested and imprisoned, or bailed, as the case may be.



JEFFREY A. GOLDBERGER
Special Agent
Federal Bureau of Investigation

Sworn to before me this
___ day of November, 2008.

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HONORABLE ANDREW J. BECK
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK