IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 12 CR 723
	)	Judge Sharon Johnson Coleman
ADEL DAOUD,	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION FOR NOTICE OF FISA AMENDMENTS ACT EVIDENCE PURSUANT TO 50 U.S.C. §§ 1881e(a), 1806(c)

Defendant, **ADEL DAOUD**, by and through his attorneys, **THOMAS ANTHONY DURKIN**, **JANIS D. ROBERTS**, and **JOSHUA G. HERMAN**, pursuant to 50 U.S.C. §§ 1881e(a) and 1806(c), and the Search and Seizure, Due Process, and Effective Assistance of Counsel provisions of the Fourth, Fifth, and Sixth Amendments to the Constitution of the United States, respectfully requests that this Court enter its order requiring the government to give formal notice of the following specifics pertaining to its September 18, 2012, Notice of Intent to Use Foreign Intelligence Surveillance Act Information ("FISA Notice") (Dkt. # 9), a copy of which is attached hereto as Exhibit A. These specifics, at a minimum, are: (1) whether the electronic surveillance described in its FISA Notice was conducted pursuant to the pre-2008 provisions of the Foreign Intelligence Surveillance Act ("FISA") or, instead, the FISA Amendments Act ("FAA"); and, (2) whether the affidavit and other evidence offered in support of any FISA order relied on information obtained or derived from an FAA surveillance order.

In support of this motion, Defendant, through counsel, shows to the Court the following:

1. On July 10, 2008, the FAA was signed into law and codified at 50 U.S.C. § 1881a.[1] The Supreme Court recently discussed that while the FAA left much of FISA intact, it "established a new and independent source of intelligence collection authority, beyond that granted in traditional FISA." *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1444 (2013) (internal quotation marks omitted).[2] Specifically, 50 U.S.C. § 1881a "supplements pre-existing FISA authority by creating a new framework under which the Government may seek the [Foreign Intelligence Surveillance Court's] authorization of certain foreign intelligence surveillance targeting the communications of non-U.S. persons located abroad." *Clapper*, 133 S. Ct. at 1444. The controversial FAA provides the government with much broader surveillance powers compared to traditional FISA surveillance, as the FAA does not require the government to demonstrate "probable cause that the target of the electronic surveillance is a foreign power or agent of a foreign power" and it does not require the government "to specify the nature and location of each of the particular facilities or places at which the electronic surveillance will occur." *Id*.

2. On September 18, 2012, the government filed its FISA Notice in this case, by which the government filed a written notice stating in pertinent part that it intended to "offer into evidence, or otherwise use or disclose in any proceedings in this matter, information obtained and derived from electronic surveillance conducted pursuant to the Foreign Intelligence Surveillance Act of 1978 ("FISA"), as amended, 50 U.S.C. §§ 1801-1812 and 1821-1829." The government stated that this notice was pursuant to 50 U.S.C. §§ 1806(c) and 1825(d), the

[1] The FAA was reauthorized by President Obama on December 30, 2012 for five years, until December 31, 2017.
[2] The plaintiffs in the *Clapper* case were various attorneys and human rights, labor, legal, and media organizations who brought an action for a declaration that § 1881a was unconstitutional and sought an injunction against § 1881a-authorized surveillance. The Supreme Court ultimately dismissed the plaintiff's lawsuit for lack of Article III standing.

sections that set forth FISA's notice requirements for electronic surveillance and physical searches, respectfully.

3. The FISA Notice does not, however, indicate whether the government intends to use evidence obtained, or derived from, surveillance authorized by the FAA or pre-FAA FISA surveillance standards. As a result, it is not possible for counsel to determine whether the information subject to the FISA Notice was intercepted pursuant to the FAA. By statute, and as a matter of Due Process, counsel submit that Defendant is entitled to notice of the government's intent to use FAA evidence against him. *See* 50 U.S.C. §§ 1881e(a), 1806(c); *Clapper*, 133 S. Ct. at 1142.

4. While the FISA Notice does not state whether the government intends to use evidence obtained or derived from FAA surveillance, Senate floor comments by Senator Diane Feinstein (D-CA) indicate that the government in fact used the FAA in this case. Specifically, on December 27, 2012, Senator Feinstein urged the Senate to reauthorize the FAA and in doing so made direct reference to this case being one of the nine specific cases in which the FAA had been used. A copy of the relevant portion of Senator Feinstein's remarks is attached as Exhibit B, with emphasis added. Senator Feinstein's reference to a "plot to bomb a downtown Chicago bar" unmistakably refers to this case.

5. For the above-stated reasons, as well as those set forth in the accompanying Memorandum of Law, which is incorporated herein, counsel request that the Court grant this motion.

Respectfully submitted,

/s/Thomas Anthony Durkin
THOMAS ANTHONY DURKIN,

/s/Joshua G. Herman
JOSHUA G. HERMAN,
Attorneys for Defendant Adel Daoud.

DURKIN & ROBERTS
2446 North Clark St.
Chicago, Illinois 60614
(312) 913-9300
tdurkin@durkinroberts.com
jherman@durkinroberts.com

CERTIFICATE OF SERVICE

Joshua G. Herman, Attorney at Law, hereby certifies that the foregoing Defendant's Motion for Notice of FISA Amendments Act Evidence Pursuant to 50 U.S.C. §§ 1881e(a), 1806(c), was served on May 22, 2013, in accordance with Fed.R.Crim.P.49, Fed.R.Civ.P.5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

/s/ Joshua G. Herman
JOSHUA G. HERMAN,
Attorney at Law.

DURKIN & ROBERTS
2446 N. Clark Street
Chicago, IL 60614
(312) 913-9300