

TOPIC 2: SURVEILLANCE AND INVESTIGATION OF SUSPECTED TERRORISTS

Case

Global Relief Fnd., Inc. v. O’Niell, 315 F.3d 748 (7th Cir. 2002).

In re: Sealed Case, 310 F.3d 717 (Foreign Int. Surv. Ct. Rev. 2002).

See also U.S. Department of Justice, Justice Department Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (June 2003), available at http://www.usdoj.gov/crt/spl/it/documents/guidance_on_race.htm.

Summary

Charitable corporation sued Secretary of Treasury, seeking to enjoin Secretary's order blocking corporation's assets issued under International Emergency Economic Powers Act (IEEPA), and to enjoin Secretary from extending asset freeze by naming corporation "Specially Designated Global Terrorist." The United States District Court for the Northern District of Illinois, Wayne R. Andersen, J., 207 F.Supp.2d 779, denied preliminary injunction, corporation appealed, and Secretary did subsequently name corporation "Specially Designated Global Terrorist." The Court of Appeals, Easterbrook, Circuit Judge, held that: (1) corporation's appeal did not become moot when Secretary named corporation "Specially Designated Global Terrorist"; (2) foreign national could have "interest" in property wholly owned by corporation which was United States citizen; (3) President's delegation to Secretary of Treasury of authority under IEEPA did not present separation-of-powers problem; (4) corporation was not entitled to predeprivation hearing; (5) blocking of corporation's assets did not violate ex post facto clause; and (6) blocking of corporation's assets was not bill of attainder. Affirmed.

Government appealed from order of the Foreign Intelligence Surveillance Court, imposing restrictions on its use of information obtained through surveillance under Foreign Intelligence Surveillance Act (FISA). The Foreign Intelligence Surveillance Court of Review held that: (1) FISA did not require government to demonstrate to the FISA court that its primary purpose in conducting electronic surveillance was not criminal prosecution, abrogating In re All Matters Submitted to Foreign Intelligence Surveillance Court, 218 F.Supp.2d 611, and (2) Patriot Act's amendment to FISA, permitting government to conduct surveillance of agent of foreign power if foreign intelligence is "significant purpose" of such surveillance, did not violate Fourth Amendment. Reversed and remanded.

In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement officers may not use race or ethnicity to any degree, except that officers may rely on race and ethnicity in a specific suspect description. This prohibition applies even where the use of race or ethnicity might otherwise be lawful.

The above standards do not affect current Federal policy with respect to law enforcement activities and other efforts to defend and safeguard against threats to national security or the integrity of the Nation's borders.