



National Association of Assistant United States Attorneys

12427 Hedges Run Dr. • Suite 104

Lake Ridge • VA • 22192-1715

Phone: 800-455-5661 • Fax: 800-528-3492 • Email: staff@naausa.org

www.naausa.org

February 4, 2015

The Honorable Reena Raggi
Chair, Advisory Committee on the Criminal Rules
704S United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201-1818

Re: Proposed Amendment of Rule 41

Dear Judge Raggi:

The National Association of Assistant United States Attorneys supports the proposed amendment of Rule 41 to revise the territorial limits of search warrants for remote access to electronic information contained in another judicial district. This would ensure the establishment of a court-supervised framework through which law enforcement may successfully investigate and prosecute crimes involving botnets and internet anonymizing technologies. That would be achieved by the conferral of authority to a magistrate judge, in a district where activities related to a crime have occurred, to issue a warrant to use remote access to search electronic storage media and seize or copy electronically stored information located outside of the district.

The Advisory Committee's proposal would change Rule 41 in two ways. The first change is an amendment to Rule 41(b), which generally limits warrant authority to searches within a district, but permits out-of-district searches in specified circumstances. The amendment would add specified remote access searches for electronic information to the list of other extraterritorial searches permitted under Rule 41(b). The second part of the proposal is a change to Rule 41(f)(1)(C), regulating notice that a search has been conducted. New language would be added at the end of that provision indicating the process for providing notice of a remote access search. The National Association of Assistant United States Attorneys supports both of these changes because of their responsiveness to the challenges created by sophisticated technologies in the hands of criminals intent on causing harm to specific persons and the public at large.

The National Association of Assistant United States Attorneys represents the interests of the 5,400 Assistant United States Attorneys (AUSAs) employed by the Department of Justice and responsible for the prosecution of federal crimes and the handling of civil litigation involving the United States. United States Attorneys and Assistant United States Attorneys are the gatekeepers of our system of justice. Their primary responsibility is to protect the innocent and prosecute the guilty.

President	Vice President for Policy	Vice President for Operations	Treasurer	Secretary
Robert G. Guthrie ED of Oklahoma	John E. Nordin II CD of California	and Membership Lawrence J. Leiser ED of Virginia	Daniel A. Brown SD of Ohio	Leah Bynon Farrell New Jersey

Increasingly Sophisticated Technologies Pose Challenges to Law Enforcement

Mindful of the above responsibilities, we appreciate the Advisory Committee's sensitivities to the concerns first raised by the Department of Justice about the need to improve Rule 41's territorial venue limitations and to respond to the increasing need arising within law enforcement investigations of sophisticated internet crimes to locate electronic information when the location of the electronic information being sought is unknown or the electronic information spans multiple districts.

Law enforcement investigations of financial fraud, child pornography, terrorism and other threats to the public often require a remote search of the suspect's computer. But criminal suspects are increasingly using sophisticated anonymizing technologies and proxy services designed to hide their true IP addresses. This creates significant difficulties for law enforcement to identify the district in which the electronic information or an electronic device is located, even though other details may be sufficiently detailed in the warrant. In response, law enforcement authorities seek to use computer software that enables remote searching of a computer to determine the true IP address or other identifying information associated with the suspect's computer.

In addition, the use of multiple computers in many districts simultaneously as part of a sophisticated criminal scheme, commonly known as a botnet, is increasingly requiring law enforcement to pursue remote access to those computers, which may be located in different districts. Botnets represent increasing threats to the public, through their use in massive denial of service attacks, the theft of personal and financial data, and the distribution of malware designed to cause havoc and harm to the users of host computers.

The Amendment's Rationale Coincides with Permissible Extra-Territorial Searches

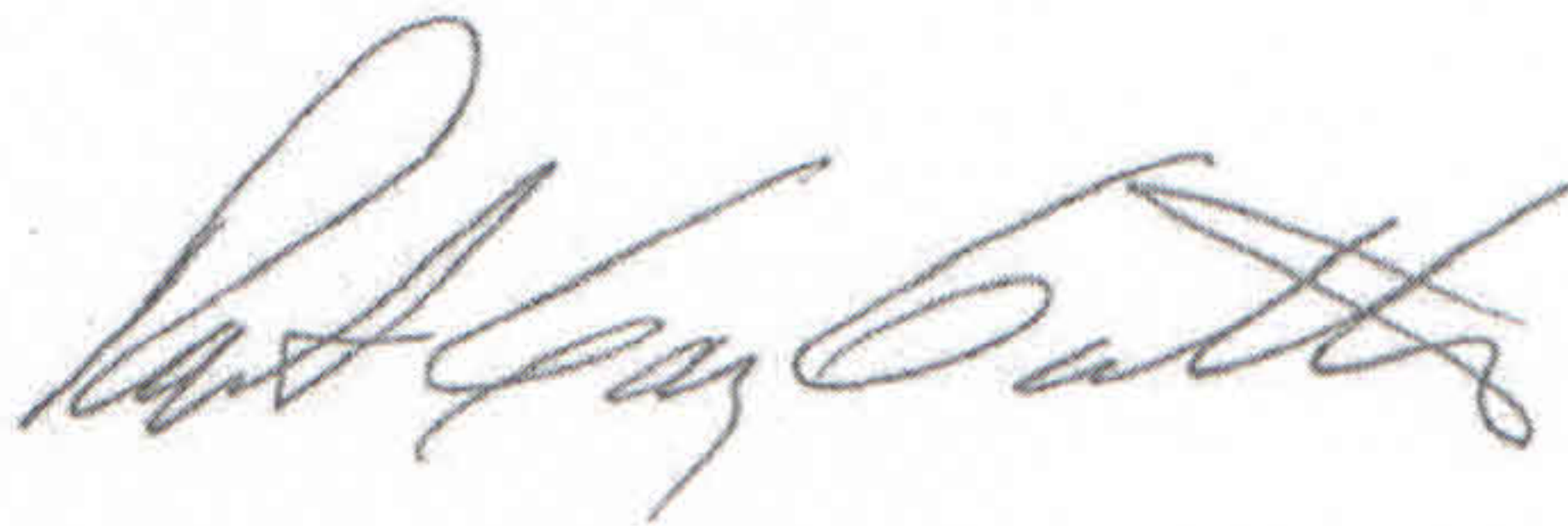
The investigation of botnet schemes can require significant resources and efforts involved in the coordination of warrants and searches spanning numerous districts. Investigative searches of numerous computers in numerous districts in a large botnet investigation requires law enforcement, under the current Rule 41, to obtain warrants in potentially all 94 districts. The number of occasions like this are only growing. The coordination of that many requests and their review by significant numbers of magistrate judges not only wastes judicial and investigative resources, but also may cause delay that impedes the investigation. The solution lies in amending Rule 41, along the lines devised by the Advisory Committee, to authorize a court in a district where activities related to a crime have occurred to issue a warrant for electronic storage media within or outside the district. Such an amendment, and its underlying rationale, would coincide with the justification underlying the extra-territorial searches contained in Rule 41, involving investigations of domestic or international terrorism, as well as the use of tracking devices outside the jurisdiction of the court.

Under the proposed amendment, investigators could obtain a warrant to remotely install software on a target device to determine the true IP address or identifying information for that device, but only if that location of the device or information has been concealed by technological means. We believe the use of remote access techniques with these safeguards is appropriate as outlined in the proposed rule. We expect that collateral issues, such as the level of specificity required in a warrant seeking authorization to conduct a remote access search or seizure, will be sufficiently addressed by the courts in due course. We are pleased that the Advisory Committee has embraced the same view.

Conclusion

The National Association of Assistant United States Attorneys believes that the proposed amendment of Rule 41 is necessary, strikes the right balance and will permit law enforcement to investigate and prosecute crimes involving computers and electronic information. We recommend that the Advisory Committee solicit the support approval of the proposed amendments from the Committee on Rules of Practice and Procedure.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert Gay Guthrie".

Robert Gay Guthrie
President