

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 2018-29

IN RE: RETENTION AND DISPOSITION OF
TITLE III WIRETAP APPLICATIONS,
ORDERS AND RECORDINGS



Administrative Order 2008-30, titled “In Re: Retention of Sealed Documents and Repeal of Administrative Order 95-70,” provides that all documents presented to Judges of this Court related to surveillance, including but not limited to Title III electronic wiretap applications, pen registers, transponder applications, trap and trace applications, cell site and subscriber information applications shall be retained by the Clerk’s Office. Pursuant to Administrative Order 2008-30, the Clerk’s Office will continue to retain such records.

Administrative Order 2012-86, titled “In Re: Retention of Electronic Surveillance Records and Grand Jury Matters,” provides that documents related to grand jury matters, as well as records related to electronic surveillance, including but not limited to Title III electronic wiretap applications, pen registers, transponder applications, trap and trace applications, cell site and subscriber information applications shall be destroyed by the Clerk's Office ten years after the last judicial action in the file. On November 19, 2015, the Judicial Conference Committee on Court Administration and Case Management issued a memorandum regarding the “Disposition of Court-Ordered Wiretap Recordings and Related Documents” (hereinafter “Memorandum”) providing guidance to Judges regarding the destruction of court-ordered wiretap recordings and applications and orders related to those recordings. As articulated in the Memorandum and pursuant to 18 U.S.C. § 2518(8)(a), Title III wiretap applications, orders, and recordings must be kept for ten years, and may then only be destroyed by order of the denying or

issuing Judge. The Memorandum also states that if the denying or issuing Judge is reasonably unavailable, the Chief District Judge, or his/her designee may order the destruction of said records. At the regularly scheduled Judges' Meeting of this Court in February 2017, it was determined that the Court's local procedures should be modified to conform to § 2518(8)(a). Accordingly, it is hereby

ORDERED that Title III wiretap applications, orders and recordings shall be retained by the Clerk's Office for ten years after the records were initially sealed by this Court, except that, when a law enforcement custodian has been designated by Court order to maintain custody of the Title III recordings, that custodian shall maintain custody of such recordings for a period of no less than ten years from the date the case was initially sealed, in a manner so as to prevent editing, alteration, and/or destruction, as required by 18 U.S.C. § 2518(8)(a). It is further

ORDERED that the Clerk of Court is to provide notice to the U.S. Attorney's Office (both to the Assistant U.S. Attorney who appeared on the Title III application and to the Chief of the Criminal Division of the U.S. Attorney's Office) regarding Title III wiretap records that have been retained by the Clerk's Office for ten or more years since initially sealed, informing the U.S. Attorney's Office in such notice of the specific wiretap records that are eligible for destruction and of the impending issuance of an Order directing the destruction of such records unless objections are filed within thirty days of the notice. It is further

ORDERED that the U.S. Attorney's Office is responsible for informing the Court within thirty days of such notice (unless an extension of time has been sought by the U.S. Attorney's Office to respond to the notice) if it has any objection to the destruction of the pertinent Title III wiretap records. The U.S. Attorney's office shall lodge an objection to the records destruction to

inform the Court if, in connection with the pertinent wiretap, the U.S. Attorney's Office has actual knowledge that:

(1) Notices of the intercepted communications that the government has been required to serve in accordance with 18 U.S.C. § 2518(8)(d) pursuant to an order of the issuing judge have not been furnished.

(2) Persons named in the wiretap application or order and other parties to the intercepted communications who have been provided notification in accordance with 18 U.S.C. § 2518(8)(d) have been foreclosed by the government from seeking access to the application, order, or intercepted communications.

(3) The persons named in the application or order or any other parties to the intercepted communications have otherwise been denied a meaningful opportunity to file a motion to recover civil damages for a violation Chapter 119 of Title 18 of the United States Code, pursuant to 18 U.S.C. § 2520.

(4) The application, order, or recording retains evidentiary value because:

(A) the government is still contemplating the use of the intercepted communications as evidence in a criminal proceeding; or

(B) the intercepted communications have been used as evidence in a criminal proceeding and a defendant's conviction in that proceeding has not yet become final (i.e., opportunities for appellate review of the conviction or for collateral attack have not yet been exhausted or have not yet expired).

(5) All prosecutions have not yet terminated, or there is legal reason to retain the sealed recordings, including any outstanding *Brady*¹ or *Giglio*² obligations that the government may have to a defendant.

¹ *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

² *Giglio v. United States*, 405 U.S. 150, 153–55 (1972).

(6) The application, order, or recording is pertinent to a case involving high-profile media coverage or the death penalty, or has particular historic, national, or international significance. It is further

ORDERED that records relating to Title III wiretap recordings shall be destroyed by order of the issuing or denying judge unless that judge is unavailable in which case the Chief Judge or his/her designee may order the destruction of such records. It is further

ORDERED that upon order of the Court, the Clerk's Office shall dispose of such records in its custody in a secure manner as established by the Clerk of Court, and any law enforcement custodian that may previously have been designated by Court order to maintain custody of the Title III recordings shall be authorized to destroy such recordings in compliance with applicable law and that law enforcement agency's policies and procedures. It is further

ORDERED that this Administrative Order supersedes Administrative Order 2012-86 titled "In Re: Retention of Electronic Surveillance Records and Grand Jury Matters," only as to Title III electronic wiretap applications. Administrative Order 2012-86 remains in full effect as to all other documents referenced in that Order.

DONE AND ORDERED in Chambers at Miami, Florida, this 12th day of April, 2018.



K. MICHAEL MOORE
CHIEF UNITED STATES DISTRICT JUDGE

c: All Southern District and Magistrate Judges
Benjamin Greenberg, United States Attorney
Michael Caruso, Federal Public Defender
Steven M. Larimore, Court Administrator • Clerk of Court
Library