

US settles case over fake Facebook page (Update)

20 January 2015, by Eric Tucker

The Justice Department has reached a \$134,000 settlement with a New York woman after federal drug agents used information from her cellphone to set up a fake Facebook page in her identity, a tactic that raised privacy concerns and led to a federal government review of the ruse, according to court papers filed Tuesday.

The government did not admit wrongdoing as part of its settlement with Sondra Arquiatt, which comes months after a judge referred both sides into mediation.

After initially defending the practice, the Justice Department said last October that it would review whether the undercover tactic went too far, and ultimately reached what one official described as a fair outcome.

"This settlement demonstrates that the government is mindful of its obligation to ensure the rights of third parties are not infringed upon in the course of its efforts to bring those who commit federal crimes to justice," Richard Hartunian, the U.S. attorney for the Northern District of New York, said in a statement.

"It also takes into account emerging personal privacy concerns in the age of social media, and represents a fair resolution of plaintiff's claims," he added.

The settlement resolves allegations that the Drug Enforcement Administration took photos and other information from Arquiatt's cellphone to create a fake Facebook page in hopes of tricking her friends and associates into revealing incriminating drug secrets. The fake social media page, which included photos of her posing on the hood of a sleek BMW and a close-up with her young son and niece, was created by a DEA agent after the authorities arrested Arquiatt in a 2010 drug bust and seized her cellphone.

She pleaded guilty in 2011 to a drug conspiracy charge and was sentenced the following year to time served and given a period of home confinement, court records show.

Arquiatt sued the government in 2013, saying she suffered fear and emotional distress and was put in danger because the fake page gave the impression that she was cooperating with a federal investigation. She accused the DEA agent who set up the page of maintaining the account for at least three months and using it to "initiate contact with dangerous individuals he was investigating," all while pretending to be her.

The Justice Department initially defended the creation of the page in court filings, saying Arquiatt "implicitly consented by granting access to the information stored in her cellphone and by consenting to the use of that information to aid in ... ongoing criminal investigations." But the actions drew the concern of Justice Department officials in Washington, who announced a review last fall as the case was attracting public attention.

The settlement does not specifically prohibit the DEA from using similar undercover tactics in the future, but a Justice Department spokeswoman said in a statement that department leadership had already met with law enforcement agencies to "make clear the necessity of protecting the privacy and safety of third parties in every aspect of our criminal investigations."

The DEA settlement closes out the first of a series of recently disclosed high-profile and widely criticized undercover investigations by federal agents that involved questionable tactics.

In the wake of disclosures about the fake Facebook page, criminal defendants in an Internet gambling case in Las Vegas accused FBI agents of posing as computer technicians to surreptitiously gain access to multiple luxury high-roller suites where

the gamblers were accused of running an illegal online sports betting ring. The group of Asian gamblers accused government agents of intentionally shutting off Internet service to the rooms so they could pose as repairmen and enter the suites to gather evidence.

Under U.S. law, a person whose property is inspected generally must waive his constitutional protections against unreasonable searches unless authorities obtain a warrant. Evidence collected improperly is not supposed to be used at trial. A federal judge has not yet ruled on the legality of the government's actions.

In a case in Seattle, the FBI sent a fake news story it attributed to The Associated Press to trick a suspect in a bomb-threat case into clicking on a website link and revealing his location. The AP objected that the FBI's practice was "unacceptable" and undermined the news cooperative's credibility.

After details of the 2007 case emerged late last year, FBI Director James Comey said he was "not willing to say never" when asked if the FBI would swear off future use of the tactic.

The settlement agreement in the Arquiatt case was signed by all parties last week, but not publicly filed until late Tuesday afternoon, hours before President Barack Obama was to deliver his State of the Union address.

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