



U.S. Department of Justice

Executive Office for United States Attorneys
Freedom of Information/Privacy Act Staff
600 E Street, N.W., Room 7300
Washington, D.C. 20530
202-616-6757 Fax 202-616-6478

Requester: Catherine Crump

Request Numbers: 07-4122; 07-4123; 07-4126; 07-4127; 07-4129; 07-4130; 07-4132; 07-4135; and, 07-4136

In Re: ACLU et al. v. Dep't of Justice, No. 08-1157 (D.D.C.)

JUN 18 2009

Dear Requester:

Pursuant to the parties' Joint Motion To Amend Briefing Schedule, enclosed are copies of the Bates-stamped material, which the EOUSA has generally released in part in response to your FOIA request. Also enclosed is a revised *Vaughn* Index that reflects the Bates range associated with each document listed in the *Vaughn* Index. The enclosure does not include the material that EOUSA withheld in full; therefore, the Bates stamping is not in sequential order. However, all of the material that EOUSA reviewed in response to your request has been Bates-stamped and is addressed in the revised *Vaughn* Index, with the exception of documents released in full.

Also enclosed is additional material, consisting of 11 pages, that the EOUSA has determined, after conducting a foreseeable harm analysis, is appropriate for discretionary disclosure under the terms of the Attorney General's March 19, 2009 Memorandum on the FOIA.

Sincerely,

William G. Stewart II
Assistant Director

Enclosure(s)

REVISED Attachment YY

ACLU, et al. v. Dep't of Justice, Civil Action No. 08-cv-01157-JR
(FOIA Nos. 07-4122 (USAO NDCA); 07-4123 (USAO CDCA); 07-4126 (USAO DDC); 07-4127 (USAO NDIN); 07-4129 (USAO EDLA); 07-4130 (USAO MDLA); 07-4132 (USAO DNJ); 07-4135 (USAO SDFL); and, 07-4136 (USAO DNV)).

Glossary:

“RIF” –released in full

“RIP” –released in part

“WIF” –withheld in full; reviewed for and not deemed segregable

“NS” –reviewed for and determined not segregable either because the document and/or information is categorically exempt or because no meaningful, intelligible portion would remain after redacting exempt information.

“USAO” –United States Attorney’s Office

“AUSA” –Assistant U.S. Attorney

DOC	PAGES	DOCUMENT DESCRIPTION	EXEMPT STATUS	JUSTIFICATION
1	2 Bates #: P1-P2	Internal memorandum dated February 2007 regarding revised templates for pen register and trap and trace applications and orders	RIP: b7E	Withheld portions of sub-paragraphs (2) and (9), and all of sub-paragraphs (6), (7), and (8) to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public and the legal methods to obtain cell phone use/account information. The withheld information is not appropriate for discretionary disclosure.

2	15 Bates #: P3-P17	Template for a Sealed Order (5 pages) and Application (10 pages) to obtain a pen register and trap and trace device.	RIP: b2, b7E	Withheld portions of pages 2-4 of the Order and pages 2-9 of the Application to protect the details of techniques and procedures for law enforcement investigations that relate to information/cellular phone technology, that are not generally known to the public and the methods of obtaining cell phone use information. On pages 8-9 also withheld information regarding how investigative agents use the cell phone information, which if released could risk circumvention of the law by providing details of how to avoid detection, thereby negatively impacting the effectiveness of this technique. (A withheld footnote on page 2 of the Order is the same as the withheld footnote on page 6 of the Application.) The withheld information is not appropriate for discretionary disclosure.
3	15 Bates #: P18-P32	Template for a Sealed Order (6 pages) and Application (9 pages) to obtain a pen register and trap and trace device.	RIP: b7E	Withheld portions of pages 1 - 5 of the Order and pages 2 - 8 of the Application to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public and the methods of obtaining cell phone use information. The withheld information is not appropriate for discretionary disclosure.
4	2 Bates #: P33-P34	Three internal emails dated December 28, 2006, and January 3, 2007, regarding application for prospective cell site information	WIF: b5, b7E	Withheld this internal communications regarding the procedure to obtain prospective cell site information in a fugitive case and in a non-fugitive case because it is protected by the deliberative process privilege; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology that are not generally known to the public and the methods of obtaining cell phone use information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

5	2 Bates #: P35-P36	Internal email message dated December 16, 2006, regarding procedure for obtaining cell site information	WIF: b5, b7E	Withheld this internal communication regarding the procedure to obtain prospective cell site information because it is protected by the deliberative process privilege; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public and the methods of obtaining cell phone use information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
6	1 Bates #: P37	Internal email message dated January 3, 2006, regarding requesting cell site information	WIF: b5, b7E	Withheld this internal communication regarding the procedure to obtain prospective and/or real time cell site information because it is protected by the deliberative process privilege; and, to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public and the methods of obtaining cell phone use information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
7	1 Bates #: P38	Internal email message dated January 26, 2006, regarding wiretap application requesting cell site information	WIF: b5, b7E	Withheld this internal communication regarding the procedure to obtain cell site information in wiretap applications because it is protected by the deliberative process privilege; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public and the methods of obtaining cell phone use information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

8	2 Bates #: P39-P40	Internal email message dated January 29, 2006, to the Ad Hoc Cell Site Committee regarding the proper procedures for obtaining cell site information	WIF: b5, b7E	Withheld this internal communication regarding the procedure to obtain cell site information because it is protected by the deliberative process privilege; and, to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public and the methods of obtaining cell phone use information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
9	2 Bates #: P41-P42	Internal email message dated February 1, 2006, to the Ad Hoc Cell Site Committee regarding a denial of an application for cell site information	WIF: b5, b6, b7C, b7E	Withheld this internal communication regarding a denial of an application to obtain cell site information because it is protected by the attorney work product and deliberative process privileges; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public, and the methods of obtaining cell phone use information; and the name of a third party of investigative interest to the government to protect against harassment or stigmatizing public attention. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
10	1 Bates #: P43	Internal email message dated February 3, 2006, regarding an application for cell site information	WIF: b5, b7E	Withheld this internal communication regarding the procedure to obtain cell site information because it is protected by the deliberative process privilege; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public, and the methods of obtaining cell phone use information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

11	1 Bates #: P44	Four internal email messages dated February 6, 2006, regarding an application for cell site information	WIF: b5, b7E	Withheld this internal communications regarding the procedure to obtain cell site information because it is protected by the deliberative process privilege; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public, and the methods of obtaining cell phone use information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
12	2 Bates #: P45-P46	Two internal email messages dated March 16, 2006, to the Ad Hoc Cell Site Committee regarding denial of a pen register and trap and trace application	WIF: b5	Withheld this internal communications regarding the procedure to obtain cell site information because it is protected by the deliberative process privilege. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
13	1 Bates #: P47	Internal email message dated March 28, 2006, regarding an application for cell site information	WIF: b5, b7E	Withheld this internal communication regarding the procedure to obtain cell site information in a fugitive case because it is protected by the deliberative process privilege; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public, and the methods of obtaining cell phone use information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

14	2 Bates #: P48-P49	Internal email message dated March 30, 2006, to the Ad Hoc Cell Site Committee regarding the procedure for obtaining cell site information	WIF: b5, b7E	Withheld this internal communication regarding the procedure to obtain prospective cell site information in fugitive cases and in non-fugitive cases because it is protected by the deliberative process privilege; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public, and the methods of obtaining cell phone use information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
15	2 Bates #: P50-P51	Internal email message dated April 3, 2006, to the Ad Hoc Cell Site Committee regarding the procedure for obtaining cell site information	WIF: b5, b6, b7C, b7E	Withheld notes of a witness interview, which is protected by the deliberative process privilege, and the names of the witness and third parties merely mentioned to protect against stigmatizing public attention or harassment; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public, and the methods of obtaining cell phone use information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
16	2 Bates #: P52-P53	Draft letter from USAO to Chief Magistrate Judge dated August 6, 2008	WIF: b5	Withheld this draft letter regarding the procedure for filing applications for prospective cell site information because it is protected by the deliberative process privilege. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

17	2 Bates #: P54-P55	Two internal email messages dated November 30, 2006, regarding the procedure for obtaining cell site information	WIF: b5, b7E	Withheld these internal communications regarding the procedure to obtain cell site information in fugitive cases and in non-fugitive cases because it is protected by the deliberative process privilege; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public, and the methods of obtaining cell phone use information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
18	2 Bates #: P56-P57	Eight internal email messages dated December 28, 2006, regarding the procedure for obtaining cell site information	WIF: b5, b7E	Withheld these internal communications regarding the procedure to obtain cell site information in non-fugitive case because it is protected by the deliberative process privilege; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology, that are not generally known to the public, and the methods of obtaining cell phone use information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
19	14 Bates #: P58-P71	Draft Application (Under Seal) and Proposed Order (Under Seal)	WIF: b5, b6, b7C	Withheld this draft document because it is protected by the attorney work product and deliberative process privileges; and, the telephone/cell phone number of a third party of investigative interest to the government to protect against harassment or stigmatizing public attention. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

20	21 Bates #: P72-P92	Draft Application (Under Seal), Memorandum of Points and Authorities, Affidavit, Proposed Order (Under Seal)	WIF: b5, b6, b7C, b7D	Withheld this draft document because it is protected by the attorney work product and deliberative process privileges; and, three names, two cell phone numbers, one cell phone account number, and one date of birth of three individuals of investigative interest to the government to protect against harassment or stigmatizing public attention, the names of an FBI Special Agent and local law enforcement officer to protect against harassment and annoyance in the conduct of official duties and in private life, and detailed information provided by two confidential informants. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
21	22 Bates #: P93-P114	Draft Application (Under Seal) and Proposed Order (Under Seal)	WIF: b5, b6, b7C	Withheld this draft document because it is protected by the attorney work product and deliberative process privileges; and, the name, home address, cell phone number, and driver's license number of two third parties of investigative interest to the government to protect against harassment or stigmatizing public attention, and the name of an ICE Special Agent to protect against harassment and annoyance in the conduct of official duties and in private life. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

22	29 Bates #: P115- P143	Draft Application (Under Seal) and Proposed Order (Under Seal)	WIF: b5, b6, b7C, b7D	Withheld this draft document because it is protected by the attorney work product and deliberative process privileges; and, the name, home address, cell phone number, cell phone account number and driver's license number of two third parties of investigative interest to the government to protect against harassment or stigmatizing public attention; the names and business name and address of fourteen third parties merely mentioned; the names of two FBI and two DEA Special Agents to protect against harassment and annoyance in the conduct of official duties and in private life; and detailed information provided by a confidential informant and a cooperating witness. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
23	28 Bates #: P144- P171	Draft Application (Under Seal) and Proposed Order (Under Seal)	WIF: b5, b6, b7C	Withheld this draft document because it is protected by the attorney work product and deliberative process privileges; and, the name, alias name, home address, cell phone number, cell phone account number related to two third parties of investigative interest to the government to protect against harassment or stigmatizing public attention; the names of five third parties merely mentioned; and the name of an ICE Special Agent to protect against harassment and annoyance in the conduct of official duties and in private life. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

24	23 Bates #: P172- P194	Draft Application (Under Seal) and Proposed Order (Under Seal)	WIF: b5, b6, b7C	Withheld this draft document because it is protected by the attorney work product and deliberative process privileges; and, the name, alias name, and two cell phone numbers related to five third parties of investigative interest to the government to protect against harassment or stigmatizing public attention; the names of five third parties merely mentioned; and the name of a DEA Special Agent to protect against harassment and annoyance in the conduct of official duties and in private life. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
25	2 Bates #: P195- P196	Internal email message dated June 26, 2006, regarding the procedures pertaining to obtaining cell site and GPS information	RIP: b7E	Withheld portions of sub-paragraphs (1), and (2)(A) and (B) to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology and the legal methods to obtain cell phone use information. The withheld information is not appropriate for discretionary disclosure.
26	24 Bates #: P197- P220	Template Application (Under Seal) (3 pages), Memorandum of Points and Authorities (13 pages), Declaration (3 pages), Proposed Order (Under Seal) (5 pages) (June 22, 2007 version)	RIP: b7E	Withheld portions of Application (at page 1), Memorandum of Points and Authorities (at pages 2-4, 11, 12), Declaration (at page 3), and Order (at pages 2, 4) to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology that are not generally known to the public and the legal methods to obtain cell phone use information. The withheld information is not appropriate for discretionary disclosure.
27	28 Bates #: P221- P248	Template Application (Under Seal) (3 pages), Memorandum of Points and Authorities (13 pages), Declaration (3 pages), Proposed Order (Under Seal) (6 pages), Return for GPS/Cell Site Warrant (3 pages) (July 28, 2008 version)	RIP: b7E	Withheld portions of Memorandum of Points and Authorities (at pages 2, 4, 10, 11), Declaration (at page 3), Order (at pages 3-5), and Warrant Return (at pages 1, 2) to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology that are not generally known to the public and the legal methods to obtain cell phone use information. The withheld information is not appropriate for discretionary disclosure.

28	25 Bates #: P249- P273	Template Application (Under Seal) (3 pages), Memorandum of Points and Authorities (13 pages), Declaration (3 pages), Proposed Order (Under Seal) (6 pages) (August 27, 2008 version)	RIP: b7E	Withheld portions of Memorandum of Points and Authorities (at pages 2, 4, 10, 11), Declaration (at page 3), Order (at pages 3, 5), and Warrant Return (at pages 1, 2) to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology that are not generally known to the public and the legal methods to obtain cell phone use information. The withheld information is not appropriate for discretionary disclosure.
29	9 Bates #: P274- P282	Template Application (Under Seal) (6 pages) and Proposed Order (Under Seal) (3 pages)	RIP: b6, b7C, b7E	Withheld portions of Application (at pages 2, 3), and Order (at pages 1, 2) to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology that are not generally known to the public and the legal methods to obtain cell phone use information; and certain details pertaining to location of a drug organization and the criminal case number to protect against stigmatizing public attention or harassment. The withheld information is not appropriate for discretionary disclosure.
30	2 Bates #: P283- P284	Draft Proposed Order (Under Seal) (2 pages)	WIF: b5, b6, b7C	Withheld this draft document because it is protected by the attorney work product and deliberative process privileges; and, a cell phone number related to a third party of investigative interest to the government to protect against harassment or stigmatizing public attention; and the name of an FBI Special Agent to protect against harassment and annoyance in the conduct of official duties and in private life. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

31	5 Bates #: P285- P289	Draft Application (Under Seal) (5 pages)	WIF: b5, b6, b7C	Withheld this draft document because it is protected by the attorney work product and deliberative process privileges; and, a cell phone number related to a third party of investigative interest to the government to protect against harassment or stigmatizing public attention; and the name of an FBI Special Agent to protect against harassment and annoyance in the conduct of official duties and in private life. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
32	10 Bates #: P290- P299	Template Application (Under Seal) (6 pages) and Proposed Order (Under Seal) (4 pages)	RIP: b7E	Withheld portions of Application (at pages 3, 5), and Order (at page 3) to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology and are not generally known to the public. The withheld information is not appropriate for discretionary disclosure.
33	9 Bates #: P300- P308	Template Application (Under Seal) (6 pages) and Proposed Order (Under Seal) (3 pages)	RIP: b7E	Withheld portions of Application (at page 4), and Order (at page 2) to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology and are not generally known to the public. The withheld information is not appropriate for discretionary disclosure.
34	15 Bates #: P309- P323	Template Application (Under Seal) (10 pages) and Proposed Order (Under Seal) (5 pages)	RIP: b7E	Withheld portions of Application (at pages 3-5, 7, 8), and Order (at pages 3, 4) to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology and that are not generally known to the public. The withheld information is not appropriate for discretionary disclosure.

35	13 Bates #: P324- P336	Draft Application (Sealed) (7 pages) and Proposed Order (Sealed) (6 pages)	WIF: b5, b6, b7C	Withheld this draft document because it is protected by the attorney work product and deliberative process privileges; and, the name and cell phone number related to a third party of investigative interest to the government to protect against harassment or stigmatizing public attention; and the name of a DEA Special Agent to protect against harassment and annoyance in the conduct of official duties and in private life. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
36	13 Bates #: P337- P349	Draft Application (Sealed) (7 pages) and Proposed Order (Sealed) (6 pages)	WIF: b5, b6, b7C	Withheld this draft document because it is protected by the attorney work product and deliberative process privileges; and, the name and cell phone number related to a third party of investigative interest to the government to protect against harassment or stigmatizing public attention; and the names of a DEA Special Agent and local law enforcement official to protect against harassment and annoyance in the conduct of official duties and in private life. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
37	2 Bates #: P350- P351	Internal email message dated January 22, 2007, regarding need for cell site information	RIP: b6, b7C	Withheld only the name and cell phone number of a third party of investigative interest to the government, and the names, cell phone number, home address, business name and address relating to three third parties merely mentioned, factual details pertaining to an ongoing kidnapping/attempted murder case to protect against harassment and/or stigmatizing public attention. The withheld information is not appropriate for discretionary disclosure.
38	3 Bates #: P352- P354	Internal email message dated February 6 & 7, 2007, regarding cell site information	RIP: b5, b6, b7C	Withheld only the name of one federal law enforcement official to protect against harassment and annoyance in the conduct of official duties and in private life; and details of an internal discussion on the procedure for obtaining cell site information, which is protected by the deliberative process privilege. The withheld information is not appropriate for discretionary disclosure.

39	2 Bates #: P355- P356	Internal email message dated January 22, 2007, regarding procedures for obtaining cell site information	RIP: b5	Withheld only one sentence containing a suggestion on the procedure for obtaining cell site information, which is protected by the deliberative process privilege. The withheld information is not appropriate for discretionary disclosure.
40	2 Bates #: P357- P358	Two internal email messages dated October 4 and 5, 2008, regarding procedures for obtaining cell site information	WIF: b5, b7E	Withheld these internal communications regarding the procedure to obtain cell site information because they are protected by the deliberative process privilege; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to the legal method for obtaining cell phone information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
41	2 Bates #: P359- P360	Four internal email messages dated September 1, 2005, regarding procedures for obtaining cell site information	WIF: b5, b7E	Withheld these internal communications regarding the procedure to obtain cell site information because they are protected by the deliberative process privilege; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to the legal method for obtaining cell phone information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
42	1 Bates #: P361	Internal email message dated October 6, 2005, regarding procedures for obtaining cell site information	WIF: b5	Withheld details of request for advice regarding the proper procedure for obtaining cell site information, which is protected by the deliberative process privilege. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
43	1 Bates #: P362	Internal email message dated November 19, 2007, regarding procedures for obtaining GPS or similarly precise location data	RIP: b5	Withheld details of advice to the field regarding the proper procedure for obtaining cell site information, which is protected by the deliberative process privilege. The withheld information is not appropriate for discretionary disclosure.

44	2 Bates #: P363- P364	Four intra-agency email messages dated June 4, 2004 and March 22, 2007, regarding procedures for obtaining cell site information	RIP: b5, b7E	Withheld details of request for advice regarding the proper procedure for obtaining cell site information, which is protected by the deliberative process and attorney client privilege. ¹ The withheld information is not appropriate for discretionary disclosure.
45	1 Bates #: P365	Internal email message dated May 28, 2004, regarding procedures for obtaining cell site information	RIP: b5, b7E	Withheld details of advice regarding the proper procedure for obtaining cell site information, which is protected by the deliberative process privilege; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to the legal method for obtaining cell phone information. The withheld information is not appropriate for discretionary disclosure.
46	1 Bates #: P366	Internal email message dated May 28, 2004, regarding procedures for obtaining cell site information	RIP: b5	Withheld this internal communication regarding procedure to obtain cell site information because it is protected by the deliberative process privilege. The withheld information is not appropriate for discretionary disclosure.
47	2 Bates #: P367- P368	Internal email message dated November 19, 2007, regarding procedures for locating fugitives	WIF: b5, b7E	Withheld details of advice regarding the proper procedure for locating fugitives, which is protected by the deliberative process privilege; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to the legal methods for locating fugitives. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

¹ Two email messages dated June 4, 2004 and March 22, 2007, that are included in this email chain originated with the DOJ Criminal Division, which has advised EOUSA that both messages are exempt from release pursuant to FOIA Exemption (b)(5) because they are protected by the deliberative process and attorney client privileges.

48	19 Bates #: P369- P387	Draft Application (Under Sealed) (8 pages) and Proposed Order (Under Seal) (6 pages) and Memorandum of Law (5 pages)	WIF; b5, b6, b7C, b7D	Withheld this draft document because it is protected by the attorney work product and deliberative process privileges; and, the names, cell phone number, cell phone account number, business name and address related to two third parties of investigative interest to the government to protect against harassment or stigmatizing public attention; the names of an ICE Special Agent to protect against harassment and annoyance in the conduct of official duties and in private life; and information provided by a confidential source. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
49	1 Bates #: P388	Internal email message dated March 22, 2007, regarding procedures for obtaining prospective cell site information	WIF: b5	Withheld details of request for advice regarding the proper procedure for obtaining cell site information, which is protected by the deliberative process privilege. . There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
50	1 Bates #: P389	Internal memorandum regarding recommended procedures for obtaining prospective cell site/GPS information	WIF: b5	Withheld details of advice regarding the proper procedure for obtaining prospective cell site information in fugitive and non-fugitive cases, which is protected by the deliberative process and attorney client privileges. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

51	4 Bates #: P390- P393	Three intra-agency email messages dated February 11 and 12, 2004, and May 27, 2004, regarding the procedure for locating fugitives and attachment	WIF: b5, b6, b7C	Withheld details of intra-agency discussions regarding the proper procedure for obtaining cell site information in fugitive cases, which is protected by the deliberative process privilege. ² There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
52	1 Bates #: P394	Internal email message dated June 18, 2007, regarding the proper procedure for obtaining electronic communications after an adverse 6 th Circuit decision	RIP: b5	Withheld details of internal discussion regarding the impact of a 6 th Circuit decision on the procedures for obtaining electronic communications, which is protected by the deliberative process privilege. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
53	2 Bates #: P395- P396	Intra-agency email message dated September 12, 2008, containing guidance for obtaining cellular phone records	WIF: b5	Withheld details of internal guidance in response to a recent court decision regarding the procedures for obtaining cell phone records, which is protected by the deliberative process and attorney client privileges. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
54	1 Bates #: P397	Two internal email messages dated September 11, 2008, regarding a recent adverse decision	WIF: b5	Withheld details of internal discussion regarding the impact of a district court decision on the procedures for obtaining cell site information, which is protected by the deliberative process privilege. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

² Five email messages dated February 11 & 12, May 27, and June 4, 2004, and an attached printout of cell phone activity associated with a target's cell phone contained in this email chain originated with the United States Marshals Service (USMS), which has advised EOUSA that these messages are exempt from release pursuant to FOIA Exemptions (b)(5) and (b)(7)(C), and (b)(6), because they are protected by the deliberative process and attorney client privileges, and to protect the name of a USMS employee.

55	2 Bates #: P398- P399	Three internal email messages dated July 2, 2008, and August 7, 2008, requesting advice on the procedure for obtaining GPS information in a criminal investigation	WIF: b5	Withheld details of internal discussion regarding the proper procedure for obtaining cell site information in ongoing criminal investigation, which is protected by the deliberative process privilege. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
56	1 Bates #: P400	Two intra-agency email messages dated July 22, 2008, seeking legal advice pertaining to obtaining cell site information	WIF: b5	Withheld details of intra-agency request for legal advice regarding the obtaining cell site information, which is protected by the deliberative process and attorney client privileges. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
57	1 Bates #: P401	Internal email message dated May 15, 2008, regarding the proper procedure for obtaining GPS data	WIF: b5	Withheld details of internal discussion regarding the proper procedure for obtaining GPS information to include in a internal form, which is protected by the deliberative process and attorney client privileges. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
58	3 Bates #: P402- P404	Seven intra-agency email messages dated January 24, 2007, regarding the proper procedure for obtaining GPS information	WIF: b5	Withheld details of intra-agency discussions regarding the proper procedure for obtaining GPS information, which is protected by the deliberative process and attorney client privileges. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

59	3 Bates #: P405- P407	Seven intra-agency email messages dated January 24, 2007, regarding the proper procedure for obtaining cell phone location information	WIF: b5, b7E	Withheld details of intra-agency discussions regarding the proper procedure for obtaining cell phone location information, which is protected by the deliberative process and attorney client privileges; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology that are not generally known to the public and the legal methods to obtain cell phone location information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
60	1 Bates #: P408	Two intra-agency email messages dated January 24, 2007, regarding the proper procedure for obtaining cell phone location information	WIF: b5	Withheld details of intra-agency discussions regarding the proper procedure for obtaining cell phone location information, which is protected by the deliberative process and attorney client privileges. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
61	1 Bates #: P409	Two intra-agency email messages dated January 24, 2007, regarding the proper procedure for obtaining cell phone location information	WIF: b5, b7E	Withheld details of intra-agency discussions regarding the proper procedure for obtaining cell phone location information, which is protected by the deliberative process and attorney client privileges; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology that are not generally known to the public and the legal methods to obtain cell phone location information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

62	2 Bates #: P410- P411	Four intra-agency email messages dated January 8, 2007, regarding the proper procedure for obtaining cell site information	WIF: b5, b7E	Withheld details of intra-agency discussions regarding the proper procedure for obtaining cell site information, which is protected by the deliberative process and attorney client privileges; and to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology that are not generally known to the public and the legal methods to obtain cell site information. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
63	1 Bates #: P412	Two internal email messages dated January 8, 2007, regarding the proper procedure for obtaining cell site information	WIF: b5	Withheld details of intra-agency discussion regarding the proper procedure for obtaining cell site information, which is protected by the deliberative process privilege. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
64	4 Bates #: P413- P416	Four intra-agency email messages dated November 21, 2006, regarding the proper procedure for obtaining GPS information	WIF: b5	Withheld details of intra-agency discussion regarding the proper procedure for obtaining GPS information in fugitive cases, which is protected by the deliberative process and attorney client privileges. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
65	15 Bates #: P417- P431	Draft Application (Sealed) (5 pages), Affidavit (5 pages), and Proposed Order (5 pages) (Sealed)	WIF: b5, b6, b7C, b7D	Withheld this draft document because it is protected by the attorney work product and deliberative process privileges; and, the names and cell phone numbers related to third parties of investigative interest to the government to protect against harassment or stigmatizing public attention; the name of a local law enforcement official to protect against harassment and annoyance in the conduct of official duties and in private life; and information provided by a confidential source. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.

66	12 Bates #: P432- P443	Draft Application (Sealed) (5 pages), Declaration (2 pages), and Proposed Order (5 pages) (Sealed)	WIF: b5, b6, b7C	Withheld this draft document because it is protected by the attorney work product and deliberative process privileges; and the names and cell phone numbers related to third parties of investigative interest to the government to protect against harassment or stigmatizing public attention; and the name of an FBI Special Agent to protect against harassment and annoyance in the conduct of official duties and in private life. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
67	7 Bates #: P444- P450	Application (Sealed) (5 pages), and Order (2 pages) (Sealed)	WIF: b5, b6, b7A, b7C	Withheld this document because it is protected by the attorney work product privilege; and, the name and cell phone numbers related to third party of investigative interest to the government to protect against harassment or stigmatizing public attention; the names and business affiliations of three third parties merely mentioned to protect against harassment and unwanted public attention; and the name of an FBI Special Agent to protect against harassment and annoyance in the conduct of official duties and in private life. There is no reasonably segregable information contained in this document. The withheld information is not appropriate for discretionary disclosure.
68	14 Bates #: P451- P464	Template Application (Under Seal) (8 pages) and Proposed Order (Under Seal) (6 pages) (Supplemental Release)	RIP: b7E	Withheld portions of Application (at pages 2, 3, 5-7), and Order (at pages 2-5) to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology and that are not generally known to the public. The withheld information is not appropriate for discretionary disclosure.

69	21 Bates #: P465- P485	Template Proposed Order (Under Seal) (7 pages), Application (Under Seal) (9 pages) and Affidavit in Support of Application (Under Seal) (5 pages) (Supplemental Release)	RIP: b2, b7E	Withheld portions of Order (at pages 2-6), Application (at pages 10-16), and Affidavit (at pages 18, 19, 21), and withheld in full page 20 of the Affidavit to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology and that are not generally known to the public. On page 5 of the Order also withheld information regarding the investigative agency's interest in continuation of service on a target's cell phone account, which if released could risk circumvention of the law by providing details of how to avoid detection, thereby negatively impacting the effectiveness of this technique. The withheld information is not appropriate for discretionary disclosure.
70	19 Bates #: P486- P504	Template Application (Under Seal) (11 pages) and Proposed Order (Under Seal) (8 pages) (Supplemental Release)	RIP: b7E	Withheld portions of Application (at pages 1-7, 9-11), and Order (at pages 3, 5, 6) to protect the details of techniques and procedures for law enforcement investigations and prosecutions that relate to information/cellular phone technology and that are not generally known to the public. The withheld information is not appropriate for discretionary disclosure.
71	13 Bates#: P505- P517	Template Sealed Application (6 pages), Sealed Proposed Order (4 pages) and Sealed Order to Service Provider (3pages) (Supplemental Release)	RIP: b2, b7E	Withheld portions of pages 2, 3, and 5 of the Application and pages 2 and 3 of the Order, and pages 1 and 2 of the Order to the Service Provider to protect the details of techniques and procedures for law enforcement investigations that relate to information/cellular phone technology, that are not generally known to the public and the methods of obtaining cell phone use information. On page 3 of the Application also withheld information regarding the geographic range for pinpointing a target's cell phone and the general manner in which this is done, which if released could risk circumvention of the law by providing details of how to avoid detection, thereby negatively impacting the effectiveness of this technique. The withheld information is not appropriate for discretionary disclosure.

[illegible]

February 2007

The Cell Site/Pen Register Working Group (including John Glang, Steve Jigger, Pete Axelrod and Tim Lucey) has been working on updated pen register applications and orders to address some recent cell site and other issues raised in the NDCA, and around the country.

The S Drive includes revised templates for an Application and proposed Order for the installation of a pen register and trap and trace device in this district. (Go to: S Drive/NDCA/Forms/Pen Register & Trap Form)

There are two forms (1) no cell-site information (either real-time or historical) and no GPS tracking information is being requested; and (2) cell-site information (either real-time or historical) and no GPS tracking information is being requested. [Presently there is no GPS form because there only two providers for GPS information and due to some more technical legal issues. If you need GPS information, please consult with the working group which can advise based on the facts of your case.]

For the **no-cell site and no-GPS form**, the templates are on the S Drive listed as:
PenApplication2007.standard.noncellorGPS.wpd ; and
PenOrder2007.standard.noncellorGPS.wpd

For the **cell site and no-GPS form**, the templates are on the S Drive listed as:
PenApplication2007.standard.cell.nonGPS.wpd ; and PenOrder2007.standard.cell.nonGPS.wpd)

Please note that the following changes have been made:

- (1) There is now only one proposed Order (for each form). The new Order provides that the identity of any targets of the investigation and the possible violations thereof may be redacted on the copy of the Order which is served on the service provider;

- (2) The itemized list of service providers (which is current) and the name of the investigating agency appear only once in each document. Inclusion of the list of

[b7E
b7E]

- (3) Consistent with the amendment in the PATRIOT Act to 18 U.S.C. § 3123(b)(1)(C), the tracing operations authorized by the Order are without geographical limits;

-
- (4) Technical terms and acronyms such as "pen register", "trap and trace device", "VoIP", "ESNs", "SIMs", "IMSI", "IMEIs", and "UFMIs" are defined in footnotes in the Application;

- (5) There are separate Certifications in the Application under both 18 U.S.C. §§ 3122

R.P.

and 3123 and 18 U.S.C. § 2703;

(6)

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(7)

[b7E
b7E
b7E]

(8)

[b7E
b7E]

(9)

If you make any changes to the model forms [b7E
b7E] the judges have asked that modifications be
highlighted in a cover letter.

We hope these forms are useful in your cases and investigations. Please let the Cell Site/Pen
Register Working Group know of any constructive comments or suggestions you may have.

R 10

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 IN RE TELEPHONE
6 INFORMATION NEEDED FOR A
7 CRIMINAL INVESTIGATION

No.

SEALED ORDER

8 Before this Court is an Application under 18 U.S.C. §§ 2703(c), 2703(d), 3122, and 3123,
9 by Assistant United States Attorney [Name of AUSA], an attorney for the Government as
10 defined by Fed. R. Crim. P. 1(b)(1)(B), requesting an Order authorizing the [installation and]
11 [continued] use of a pen register and trap and trace device on the instrument or facility currently
12 utilizing the following subject telephone number, (hereinafter, the "Target Device"):

13 Telephone number: _____
14 Service provider: _____
15 Subscriber: _____
16 Address: _____

17 Upon review of the Application, the Court hereby FINDS that:

18 Pursuant to 18 U.S.C. § 3123, Applicant has certified that the information likely to be
19 obtained by such use is relevant to an ongoing criminal investigation being conducted by the
20 [insert name of agency] (hereinafter the "Investigative Agency") in connection with possible
21 violations of [insert code sections] by [list names of targets] and others.

22 Pursuant to 18 U.S.C. §§ 2703(c)(1)(B) and 2703(d), Applicant has offered specific and
23 articulable facts showing that there are reasonable grounds to believe that records or other
24 information identifying subscribers or customers (not including the contents of communications)
25 for telephone numbers identified through the pen register and trap and trace devices on the Target
26 Device, changes in service regarding the Target Device, and records or other information
27 pertaining to subscriber(s) or customer(s) (but not including the contents of communications) for
28 the Target Device are relevant and material to an ongoing criminal investigation of the specified
offenses.

THEREFORE, IT IS HEREBY ORDERED, pursuant to 18 U.S.C. § 3123, that agents of

SEALED ORDER

1 the Investigative Agency may [install, or cause to be installed, and] [continue to] use a pen
2 register to record or decode dialing, routing, addressing, or signaling information transmitted¹
3 from the Target Device, to record the date and time of such dialings or transmissions, and to
4 record the length of time the telephone receiver in question is "off the hook" or connected for
5 incoming or outgoing calls and attempts, for a period of sixty (60) days from the date this Order
6 is filed by the Court,² provided, however, that such information shall not include the contents of

7 any communication;

8 IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3123, that agents of the
9 Investigative Agency may [install, or cause to be installed, and] [continue to] use a trap and
10 trace device on the Target Device to capture and record the incoming electronic or other impulses
11 which identify the originating numbers or other dialing, routing, addressing, or signaling
12 information³ reasonably likely to identify the source of a wire or electronic communication, and
13 to record the date, time, and duration of calls created by such incoming impulses, for a period of
14 sixty (60) days from the date this Order is filed by the Court, provided, however, that such
15 information shall not include the contents of any communication;

16 IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§ 2703(c)(1)(B), 2703(c)(2),
17 2703(d), 3122, and 3123 that Adelphia Communications, Adelphia Long Distance, Allegiance
18 Telecom of California, Inc., Astound, AT&T California, AT&T Local Service, AT&T Long
19 Distance, AT&T Midwest, AT&T Nevada, AT&T Southwest, Bell South Telecommunications,
20 Broadwing Communications, Cellco Partnership doing business as Verizon Wireless, Cellular
21 One, Central Wireless Partnership doing business as Sprint PCS, Cingular Wireless, Comcast,

22 [REDACTED] b7E
23 [REDACTED] b7E
24 [REDACTED] b7E
25 [REDACTED] b7E

26 ² As used herein, "the date this Order is filed by the Court" is the date indicated by
27 the clerk's file stamp on the first page of the Order.

28 ³ This includes the same information described in footnote 2 above,

1 Cox Communications, Dobson Cellular, Dobson Communications, Edge Wireless LLC, Electric
2 Lightwave Inc., Embarq, Ernest Communications, Evans Telephone Company, Frontier: A
3 Citizens Communications Company, Genesis Communications International, ICG
4 Communications, ICG Telecom Group, Locus Communications, Metrocall, Metro PCS,
5 Mpower, Nationwide Paging, Navigator Telecommunications LLC, Network Services LLC,
6 Nextel Communications, NII Communications, Pac West Telecomm Incorporated, Qwest

7 Communications, RCN Communications, Roseville Telephone Company, Skype, Sprint-Nextel,
8 TelePacific Communications, Teligent, Time-Warner Telecom, T-Mobile USA Inc., USA
9 Mobility, US Cellular, US TelePacific Corp. doing business as TelePacific Communications,
10 Verizon California, Verizon District of Columbia, Verizon Maryland, Verizon New Jersey,
11 Verizon New York, Verizon Northwest, Verizon Texas, Vonage, Weblink Wireless, West Coast
12 PCS LLC doing business as Sure West Wireless, Western Wireless Corporation, XO
13 Communications, and any and all other telephone service providers (including any Internet
14 service provider or other electronic communications provider providing voice-over IP telephony
15 [VoIP]) (collectively, "the Telephone Service Providers"), and any and all other persons or
16 entities providing wire or electronic communications service in the United States whose
17 assistance may facilitate the execution of this Order, shall disclose or provide, upon oral or
18 written demand by agents of the Investigative Agency:

19 1. For the Target Device, records or other information pertaining to subscriber(s) or
20 customer(s), including toll or call detail records [REDACTED] for
21 the sixty (60) days prior to the date this Order is filed by the Court (but not including the contents
22 of communications),

23 2. Pursuant to 18 U.S.C. § 2703(c), after receipt and storage⁴, the following
24 subscriber records and other information for all published, non-published, or unlisted dialing,
25 routing, addressing, or signaling information captured by the pen register and trap and trace
26 device on the Target Device:

27 ⁴ "After receipt and storage" is intended to ensure that the information authorized
28 under subsection 2 herein is information that is first captured and recorded by the provider before
being sent to the Investigative Agency.

- (i) name;
(ii) address;
(iii) local and long distance telephone connection records, or records of session times and durations with Target Device;
(iv) length of service (including start date) and types of service utilized; and
(v) telephone or instrument number or other subscriber number or identity including any temporarily assigned network address; and

3. Any and all changes (including additions, deletions, and transfers) in service regarding the Target Device, including telephone numbers; other unique identifiers such as

IT IS FURTHER ORDERED that this authorization for the [installation and] [continued] use of a pen register and trap and trace device applies not only to the Target Device,

Target Device within the 60-day period authorized by this Order and further, that, pursuant to 18 U.S.C. § 3123(b)(1)(C), the tracing operations authorized by this Order be without geographical limits.

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§ 3123(a)(1) and § 3123 (b)(2), that, upon service of this Order, the Target Device's Telephone Service Providers shall furnish agents of the Investigative Agency with all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen register and trap and trace devices, unobtrusively and with minimum interference with the services that are accorded the persons with respect to whom the installation and use is to take place.

IT IS FURTHER ORDERED that the Target Device's Telephone Service Providers shall furnish the results of the pen register and trap and trace devices to agents of the Investigative

Agency as soon as practicable, twenty four (24) hours a day for the duration of the Order.

IT IS FURTHER ORDERED that the Target Device's Telephone Service Providers be reasonably compensated by the Investigative Agency for reasonable expenses directly incurred in providing information, facilities, and assistance.

Good cause having been shown, IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§ 2705(b) and 3123(d), that this Order and the Application be SEALED until otherwise ordered by

the Court, that the identity of any targets of the investigation and the possible violations thereof may be redacted from any copy of the Order served on any service provider or other person, and that the Target Device's Telephone Service Providers and any other Telephone Service Provider which provides service to a telephone number that either places telephone calls to, or receives telephone calls from, the Target Device, shall not disclose in any manner, directly or indirectly, by any action or inaction, the existence of this Order, in full or redacted form, of the pen register or trap and trace devices, or of this investigation, to the listed subscribers for the

///

///

Target Device, or to any other person unless otherwise ordered by this Court.

DATE

UNITED STATES MAGISTRATE JUDGE

1 JOSEPH P. RUSSONIELLO (CABN 44332)
United States Attorney

2 BRIAN J. STRETCH (CABN 163973)
3 Chief, Criminal Division

4 AUSA (CABN _____)
Assistant United States Attorney

5 450 Golden Gate Ave., Box 36055
6 San Francisco, California 94102

7 Telephone: (415)-436-_____
Facsimile: (415)-436-7234
8 E-Mail: AUSA@usdoj.gov

9 Attorneys for Applicant

10
11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 IN RE TELEPHONE)
16 INFORMATION NEEDED FOR A)
17 CRIMINAL INVESTIGATION)

No.

APPLICATION

(UNDER SEAL)

18
19 A. INTRODUCTION

20 I, [Name of AUSA], an Assistant United States Attorney in the Northern District of
21 California, hereby apply to the Court for an order:

22 1. Pursuant to 18 U.S.C. §§ 3122 and 3123, authorizing the [installation and]
23 [continued] use of a pen register and trap and trace device,¹ on the instrument or facility
24 _____

25 ¹ A "pen register" is a "device or process which records or decodes dialing, routing,
26 addressing, or signaling information transmitted by an instrument or facility from which a wire or
27 electronic communication is transmitted, provided, however, that such information shall not include
28 the contents of any communication ..." 18 U.S.C. § 3127(3). A "trap and trace device" is "a device
or process which captures the incoming electronic or other impulses which identify the originating
number" or other identifiers "reasonably likely to identify the source of a wire or electronic
communication, provided, however, that such information not include the contents of any

APPLICATION (UNDER SEAL)

1 currently utilizing the following subject telephone number(s), (hereinafter, the "Target Device"):

2 Telephone number: _____
3 Service provider: _____
4 Subscriber: [optional] _____
5 Address: [optional] _____

6 2. Pursuant to 18 U.S.C. §§ 2703(c), 2703(d), 3122, and 3123, directing Adelphia
7 Communications, Adelphia Long Distance, Allegiance Telecom of California, Inc., Astound,
8 AT&T California, AT&T Local Service, AT&T Long Distance, AT&T Midwest, AT&T Nevada,
9 AT&T Southwest, Bell South Telecommunications, Broadwing Communications, Cellco
10 Partnership doing business as Verizon Wireless, Cellular One, Central Wireless Partnership
11 doing business as Sprint PCS, Cingular Wireless, Comcast, Cox Communications, Dobson
12 Cellular, Dobson Communications, Edge Wireless LLC, Electric Lightwave Inc., Embarq, Ernest
13 Communications, Evans Telephone Company, Frontier: A Citizens Communications Company,
14 Genesis Communications International, ICG Communications, ICG Telecom Group, Locus
15 Communications, Metrocall, Metro PCS, Mpower, Nationwide Paging, Navigator
16 Telecommunications LLC, Network Services LLC, Nextel Communications, NII
17 Communications, Pac West Telecomm Incorporated, Qwest Communications, RCN
18 Communications, Roseville Telephone Company, Skype, Sprint-Nextel, TelePacific
19 Communications, Teligent, Time-Warner Telecom, T-Mobile USA Inc., USA Mobility, US
20 Cellular, US TelePacific Corp. doing business as TelePacific Communications, Verizon
21 California, Verizon District of Columbia, Verizon Maryland, Verizon New Jersey, Verizon New
22 York, Verizon Northwest, Verizon Texas, Vonage, Weblink Wireless, West Coast PCS LLC
23 doing business as Sure West Wireless, Western Wireless Corporation, XO Communications, and
24 any and all other telephone service providers² (including any Internet service provider or other

25 _____
26 communication." 18 U.S.C. § 3127(4).
27
28

1 [b7E]
2 [b7E]
3 [b7E]
4 a. For the Target Device, records or other information pertaining to
5 subscribers or customers, including cell site information⁴ and toll or call detail records⁵
6 [b7E] for the sixty (60) days prior to the date the Order is
7 filed by the Court⁶ (but not including the contents of communications).

8 b. For the Target Device, after receipt and storage,⁷ records or other
9 information pertaining to subscribers or customers, including (1) the means and source of
10 _____
11 carrier, but the telephone number and subscriber information remain the same.

12 ³ VoIP is essentially a type of hardware and/or software (provided, for example, by
13 Qwest Communications, SBC Communications, Sprint-Nextel, and Verizon Wireless) that allows
14 people to use the Internet as a transmission medium for telephone calls. In general, this means
15 sending voice information in the form of digital packets of information rather than sending it through
16 the traditional public switch telephone network.

17 ⁴ A cell phone must send a radio signal to an antenna tower which, in turn, is connected
18 to the provider's network. The area covered by the tower varies depending, inter alia, on the
19 population density of the area. This area is often divided into thirds, or 120 degree sectors. "Cell
20 site information" as used in this Application refers to the antenna tower and sector to which the cell
21 phone sends its signal. This includes the physical location and/or address of the cellular tower and
22 identification of the particular sector of the tower receiving the signal. This information does not
23 provide the specific or precise geographical coordinates of the Target Device.

24 ⁵ [b7E]
25 ⁶ As used herein, "the date the Order is filed by the Court" is the date indicated by
26 the clerk's file stamp on the first page of the Order.

27 ⁷ "After receipt and storage" is intended to ensure that the information authorized
28 under paragraphs 2b and 2c is information that is first captured and recorded by the provider
before being sent to the Investigative Agency.

1 payment for the service and (2) cell site information, provided to the United States for (a) the
2 origination of a call from the Target Device or the answer of a call to the Target Device and (b)
3 the termination of the call (but not including the contents of the communications.)

4 c. Pursuant to 18 U.S.C. § 2703(c), after receipt and storage, the following
5 subscriber records and other information for all published, non-published, or unlisted dialing,
6 routing, addressing, or signaling information captured by the pen register and trap and trace

7 device on the Target Device:

- 8 (i) name;
- 9 (ii) address;
- 10 (iii) local and long distance telephone connection records, or records of
11 session times and durations with Target Device;
- 12 (iv) length of service (including start date) and types of service utilized;
13 and
- 14 (v) telephone or instrument number or other subscriber number or
15 identity, including any temporarily assigned network address; and

16 d.

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published, listed, or unlisted) associated with these service changes.

3. This Application does not seek (1) § b7E

b7E

b7E

B. CERTIFICATION PURSUANT TO 18 U.S.C. §§ 3122 AND 3123

4. 18 U.S.C. § 3122(b)(2) provides that a court may issue an order for a pen register or a trap or trace device when an attorney for the government certifies that "the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by (a law enforcement agency.)" In support of this Application, I state the following:

5. I am an "attorney for the Government" as defined in Rule 1(b)(1)(B) of the Federal Rules of Criminal Procedure, and therefore, pursuant to 18 U.S.C. § 3122, may apply for an order authorizing the installation and use of pen registers and trap and trace devices.

6. I certify that the information likely to be obtained from the pen register and trap and trace device on the Target Device is relevant to an ongoing criminal investigation being conducted by the Investigative Agency in connection with possible violations of federal criminal statutes, including [insert code sections] by [list names of targets] and others.

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b7E

7. Therefore, based upon the above Certification, and pursuant to 18 U.S.C. §§ 3122 and 3123, I request that the Court issue an order authorizing:

a. The Investigative Agency [to install, or cause the provider to install, and use,] [to continue to use] a pen register device to record or decode dialing, routing, addressing, or signaling information transmitted¹³ from the Target Device, to record the date and time of such dialings or transmissions, and to record the length of time the telephone receiver in

question is “off the hook” or connected for incoming or outgoing calls, for a period of sixty (60) days from the date the order is filed by the Court.

b. The Investigative Agency [to install, or cause the provider to install, and use,] [to continue to use] a trap and trace device on the Target Device to capture and record the incoming electronic or other impulses which identify the originating numbers or other dialing, routing, addressing, or signaling information¹⁴ reasonably likely to identify the source of a wire or electronic communication and to record the date, time, and duration of calls created by such incoming impulses, for a period of sixty (60) days from the date the Order is filed by the Court.

c. That, pursuant to 18 U.S.C. § 3123(b)(1)(c), the requested [installation
and use] [continued use] of a pen register and trap and trace device permit the use of each not
only on the Target Device, but also [] b7E

13

¹⁴ This includes the same information described in footnote 13 above.

b7E

8. I further request, pursuant to 18 U.S.C. §§ 3123(a)(1) and 3123(b)(2), that the Order direct that the furnishing of information, facilities, and technical assistance necessary to accomplish the installation and operation of the pen register and trap and trace device by the

Target Device's Telephone Service Providers (including any Internet service provider or other electronic communications provider providing VoIP), and any and all other telephone service providers, persons, or entities providing wire or electronic communications service in the United States whose assistance may facilitate the execution of the Order, occur unobtrusively and with a minimum of interference with the services that are accorded the persons with respect to whom the installation and use is to take place, with reasonable compensation to be paid by the Investigative Agency for reasonable expenses directly incurred in providing such information, facilities, and assistance.

9. I further request that the Order direct the Telephone Service Providers to furnish the results of the pen register and trap and trace devices to agents of the Investigative Agency as soon as practicable, twenty-four (24) hours a day for the duration of the order.

C. COMPLIANCE WITH 18 U.S.C. § 2703

10. 18 U.S.C. § 2703(d) provides that a court may issue an order authorizing disclosure of a record or other information pertaining to a telephone subscriber or customer (not including the contents of communications) when a United States agency provides the Court with "specific and articulable facts showing that there are reasonable grounds to believe that ... the records or other information sought, are relevant and material to an ongoing criminal investigation." 18 U.S.C. § 2703(d).

11. For the purposes of obtaining a court order for disclosure as described in 18 U.S.C. §§ 2703(c)(1)(B) and 2703(c)(2), and in order to satisfy the requirements of 18 U.S.C. § 2703(d), Applicant, based on discussions with agents of the Investigative Agency, hereby sets forth the following specific and articulable facts that they have provided to me showing that there

1 are reasonable grounds to believe that the records and other information identifying subscribers
2 (but not including the contents of communications) for telephone numbers identified through the
3 pen register and trap and trace device on the Target Device, cell site information regarding the
4 Target Device, subscriber information associated with any service changes regarding the Target
5 Device, and the records or other information pertaining to subscribers (but not including the
6 contents of communications) for the Target Device will be relevant and material to an ongoing

7 criminal investigation:

8 [b7E
9
10 b7E
11
12]
13 12. Agents of the Investigative Agency have advised Applicant that, based upon their
14 training and experience, [b2 + b7E

15
16 b2 + b7E
17
18
19 b2 + b7E
20 [b2 + b7E]
21 13. Obtaining the information specified in paragraph 2c above is critical to accurately
22 identifying such subscribers because, among other things:

23 a.

24 b2 b7E
25 b2 b7E
26 b.
27 b2 b7E
28

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5 14. The investigating agents have further advised me that the [b2 b7E]
6

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9
10 15. Agents believe, based on these facts and their training and experience, that the
11 Target Device is currently being used to conduct criminal activities in violation of federal law.
12 Pursuant to 18 U.S.C. §§ 2703(c)(1)(B), 2703(d), 3122, and 3123, there are reasonable grounds
13 to believe that the specific and articulable facts, discussed above, show that the records and
14 information sought are relevant and material to an ongoing criminal investigation.

15 16. I therefore request that the Court issue an Order requiring that the Target
16 Device's Telephone Service Providers disclose, or provide upon oral or written request by agents
17 of the Investigative Agency, the information set forth above in paragraph 2.

18 17. The undersigned represents, upon information and belief, the Target Device
19 [has/has not] been the subject of prior order[s] entered by this Court on _____.

20 D. REQUEST FOR NON-DISCLOSURE AND SEALING

21 18. Based upon the information provided in this Application, I believe that
22 ~~disclosure of the requested Order may result in flight from potential prosecution or the~~
23 ~~destruction of, or tampering with evidence, or may otherwise seriously jeopardize the~~
24 ~~investigation. Moreover, the exact nature of the government's pen register device and its~~
25 ~~configuration is classified as a law enforcement sensitive investigative technique, the disclosure~~
26 ~~of which would likely jeopardize other ongoing investigations and/or future use of the technique.~~
27 Therefore, pursuant to 18 U.S.C. §§ 2705(b) and 3123(d), I request that this Application and
28 Order be sealed, that the identity of any targets of the investigation and the possible violations

1 thereof may be redacted from any copy of the Order served on any telephone service provider or
2 other person, and that the Court direct the Telephone Service Providers and any other Telephone
3 Service Provider which provides service to a telephone number that either places telephone calls
4 to, or receives telephone calls from, the Target Device, not to disclose in any manner, directly or
5 indirectly, by any action or inaction, the existence of the Order, in full or redacted form,
6 regarding the pen register or trap and trace devices, or of this investigation, to the listed

7 subscriber(s) for the Target Device, the occupants of said premises, the subscribers of the
8 incoming calls to or outgoing calls from the Target Device, or to any other person until otherwise
9 ordered by this Court.

10 I declare under penalty of perjury that the foregoing factual assertions are true and correct
11 to the best of my knowledge and belief.

12 Dated: _____

Respectfully submitted,

13 JOSEPH P. RUSSONIELLO
14 United States Attorney

15
16 Assistant United States Attorney

1. SCOTT N. SCHOOLS (SCBN 9990)
United States Attorney

2. BRIAN J. STRETCH (CABN 163973)
3 Chief, Criminal Division

4 AUSA (CSBN _____)
Assistant United States Attorney

5 450 Golden Gate Ave., Box 36055
6 San Francisco, California 94102

7 Telephone: (415)-436-
Facsimile: (415)-436-7234
8 E-Mail: AUSA@usdoj.gov

9 Attorneys for Applicant

10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14
15 IN RE TELEPHONE
16 INFORMATION NEEDED FOR A
17 CRIMINAL INVESTIGATION

No.

APPLICATION

(UNDER SEAL)

18
19 A. INTRODUCTION

20 I, [Name of AUSA], an Assistant United States Attorney in the Northern District of
21 California, hereby apply to the Court for an order:

22 1. Pursuant to 18 U.S.C. §§ 3122 and 3123, authorizing the ~~[installation and]~~
23 ~~[continued]~~ use of a pen register and trap and trace device,¹ on the instrument or facility
24

25 ¹ A "pen register" is a "device or process which records or decodes dialing, routing,
26 ~~addressing, or signaling information transmitted by an instrument or facility from which a wire or~~
27 electronic communication is transmitted, provided, however, that such information shall not include
28 the contents of any communication ..." 18 U.S.C. § 3127(3). A "trap and trace device" is "a device
or process which captures the incoming electronic or other impulses which identify the originating
number" or other identifiers "reasonably likely to identify the source of a wire or electronic
communication, provided, however, that such information not include the contents of any

APPLICATION (UNDER SEAL)

1 currently utilizing the following subject telephone number(s), (hereinafter, the "Target Device"):

2 Telephone number: _____
3 Service provider: _____
4 Subscriber: _____
5 Address: _____

6 2. Pursuant to 18 U.S.C. §§ 2703(c), 2703(d), 3122, and 3123, directing Adelphia
7 Communications, Adelphia Long Distance, Allegiance-Telecom of California, Inc., Astound,
8 AT&T California, AT&T Local Service, AT&T Long Distance, AT&T Midwest, AT&T Nevada,
9 AT&T Southwest, Bell South Telecommunications, Broadwing Communications, Cellco
10 Partnership doing business as Verizon Wireless, Cellular One, Central Wireless Partnership
11 doing business as Sprint PCS, Cingular Wireless, Comcast, Cox Communications, Dobson
12 Cellular, Dobson Communications, Edge Wireless LLC, Electric Lightwave Inc., Embarq, Ernest
13 Communications, Evans Telephone Company, Frontier: A Citizens Communications Company,
14 Genesis Communications International, ICG Communications, ICG Telecom Group, Locus
15 Communications, Metrocall, Metro PCS, Mpower, Nationwide Paging, Navigator
16 Telecommunications LLC, Network Services LLC, Nextel Communications, NII
17 Communications, Pac West Telecomm Incorporated, Qwest Communications, RCN
18 Communications, Roseville Telephone Company, Skype, Sprint-Nextel, TelePacific
19 Communications, Teligent, Time-Warner Telecom, T-Mobile USA Inc., TracFone Wireless,
20 USA Mobility, US Cellular, US TelePacific Corp. doing business as TelePacific
21 Communications, Verizon California, Verizon District of Columbia, Verizon Maryland, Verizon
22 New Jersey, Verizon New York, Verizon Northwest, Verizon Texas, Virgin Mobile, Vonage,
23 Weblink Wireless, West Coast PCS LLC doing business as Sure West Wireless, Western
24 Wireless Corporation, XO Communications, and any and all other telephone service providers²

25 _____
26 communication." 18 U.S.C. § 3127(4).
27
28

(including any Internet service provider or other electronic communications provider providing voice-over IP telephony [VoIP])³ (collectively, "the Telephone Service Providers"), to disclose or provide, upon oral or written demand by agents of the [insert agency name] (hereinafter the "Investigative Agency"),

a. For the Target Device, records or other information pertaining to subscribers or customers, including toll or call detail records⁴ ~~(b7E)~~ for the sixty (60) days prior to the date the Order is filed by the Court⁵ (but not including the contents of communications).

b. Pursuant to 18 U.S.C. § 2703(c), after receipt and storage⁶, the following subscriber records and other information for all published, non-published, or unlisted dialing, routing, addressing, or signaling information captured by the pen register and trap and trace device on the Target Device:

- (i) name;
- (ii) address;
- (iii) local and long distance telephone connection records, or records of session times and durations with Target Device;

carrier, but the telephone number and subscriber information remain the same.

³ VoIP is essentially a type of hardware and/or software (provided, for example, by Qwest Communications, SBC Communications, Sprint-Nextel, and Verizon Wireless) that allows people to use the Internet as a transmission medium for telephone calls. In general, this means sending voice information in the form of digital packets of information rather than sending it through the traditional public switch telephone network.

⁴ ~~(b7E)~~
⁵ As used herein, "the date the Order is filed by the Court" is the date indicated by the clerk's file stamp on the first page of the Order.

⁶ "After receipt and storage" is intended to ensure that the information authorized under paragraph 2b is information that is first captured and recorded by the provider before being sent to the Investigative Agency.

- (iv) length of service (including start date) and types of service utilized;
(v) telephone or instrument number or other subscriber number; and
identity, including any temporarily assigned network address; and

c. [

b7E

b7E

B. CERTIFICATION PURSUANT TO 18 U.S.C. §§ 3122 AND 3123

3. 18 U.S.C. § 3122(b)(2) provides that a court may issue an order for a pen register or a trap or trace device when an attorney for the government certifies that "the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by (a law enforcement agency.)" In support of this Application, I state the following:

4. I am an "attorney for the Government" as defined in Rule 1(b)(1)(B) of the Federal Rules of Criminal Procedure, and therefore, pursuant to 18 U.S.C. § 3122, may apply for an order

[

b7E

] b7E

[

b7E

b7E

1 authorizing the installation and use of pen registers and trap and trace devices.

2 5. I certify that the information likely to be obtained from the pen register and trap and trace
3 device on the Target Device is relevant to an ongoing criminal investigation being conducted by
4 the Investigative Agency in connection with possible violations of federal criminal statutes,
5 including [insert code sections] by [list names of targets] and others.

6 6. Therefore, based upon the above Certification, and pursuant to 18 U.S.C. §§ 3122 and
7 3123, I request that the Court issue an order authorizing:

8 a. The Investigative Agency [to install, or cause the provider to install, and use,
9 [to continue to use] a pen register device to [b7E
10 b7E
11 b7E
12 b7E } for a period of sixty (60) days from
13 the date the order is filed by the Court.

14 b. The Investigative Agency [to install, or cause the provider to install,
15 and use,] [to continue to use] a trap and trace device on the Target Device to [b7E
16 b7E
17 b7E
18 b7E
19 b7E } for a period of sixty (60) days from the date the Order is filed by the
20 Court.

21 c. That, pursuant to 18 U.S.C. § 3123(b)(1)(c), the requested [installation
22 and use] [continued use] of a pen register and trap and trace device permit the use of each not

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24 10 F b7E
25 b7E

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28 11 This includes the same information described in footnote 11 above.

1 only on the Target Device. [b7E

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4 b7E
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9 7. I further request, pursuant to 18 U.S.C. §§ 3123(a)(1) and 3123(b)(2), that the
10 Order direct that the furnishing of information, facilities, and technical assistance necessary to
11 accomplish the installation and operation of the pen register and trap and trace device by the
12 Target Device's Telephone Service Providers (including any Internet service provider or other
13 electronic communications provider providing VoIP), and any and all other telephone service
14 providers, persons, or entities providing wire or electronic communications service in the United
15 States whose assistance may facilitate the execution of the Order, occur unobtrusively and with a
16 minimum of interference with the services that are accorded the persons with respect to whom
17 the installation and use is to take place, with reasonable compensation to be paid by the
18 Investigative Agency for reasonable expenses directly incurred in providing such information,
19 facilities, and assistance.

20 8. I further request that the Order direct the Telephone Service Providers to furnish
21 the results of the pen register and trap and trace devices to agents of the Investigative Agency as
22 soon as practicable, twenty-four (24) hours a day for the duration of the order.

23 C. CERTIFICATION PURSUANT TO 18 U.S.C. § 2703

24 9. 18 U.S.C. § 2703(d) provides that a court may issue an order authorizing
25 disclosure of a record or other information pertaining to a telephone subscriber or customer (not
26 including the contents of communications) when a United States agency provides the Court with
27 "specific and articulable facts showing that there are reasonable grounds to believe that ... the
28 records or other information sought, are relevant and material to an ongoing criminal

1 investigation." 18 U.S.C. § 2703(d).

2 10. For the purposes of obtaining a court order for disclosure as described in 18
3 U.S.C. §§ 2703(c)(1)(B) and 2703(c)(2), and in order to satisfy the requirements of 18 U.S.C. §
4 2703(d), Applicant, based on discussions with agents of the Investigative Agency, hereby sets
5 forth the following specific and articulable facts that they have provided to me showing that there
6 ~~are reasonable grounds to believe that the records and other information identifying subscribers~~
7 (but not including the contents of communications) for telephone numbers identified through the
8 pen register and trap and trace device on the Target Device, subscriber information associated
9 with any service changes regarding the Target Device, and the records or other information
10 pertaining to subscribers (but not including the contents of communications) for the Target
11 Device will be relevant and material to an ongoing criminal investigation:

12 [b7E]
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14 b7E
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17 11. Agents of the Investigative Agency have advised Applicant that, based upon their
18 training and experience, [b7E]
19
20 b7E
21
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23 s
24 b7E]
25

26 12. Obtaining the information specified in paragraph 2b above is critical to accurately
27 identifying such subscribers because, among other things:
28

[a. b7E]

b.

c.

13. Agents believe, based on these facts and their training and experience, that the Target Device is currently being used to conduct criminal activities in violation of federal law. Pursuant to 18 U.S.C. §§ 2703(c)(1)(B), 2703(d), 3122, and 3123, there are reasonable grounds to believe that the specific and articulable facts, discussed above, show that the records and information sought are relevant and material to an ongoing criminal investigation.

14. I therefore request that the Court issue an Order requiring that the Target Device's Telephone Service Providers disclose, or provide upon oral or written request by agents of the Investigative Agency, the information set forth above in paragraph 2.

15. The undersigned represents, upon information and belief, the Target Device [has/has not] been the subject of prior order[s] entered by this Court on _____.

D. REQUEST FOR NON-DISCLOSURE AND SEALING

16. Based upon the information provided in this Application, I believe that disclosure of the requested Order may result in flight from potential prosecution or the destruction of, or tampering with evidence, or may otherwise seriously jeopardize the investigation. Moreover, the exact nature of the government's pen register device and its configuration is classified as a law enforcement sensitive investigative technique, the disclosure of which would likely jeopardize other ongoing investigations and/or future use of the technique.

Therefore, pursuant to 18 U.S.C. §§ 2705(b) and 3123(d), I request that this Application and Order be sealed, that the identity of any targets of the investigation and the possible violations thereof may be redacted from any copy of the Order served on any telephone service provider or

1 other person, and that the Court direct the Telephone Service Providers and any other Telephone
2 Service Provider which provides service to a telephone number that either places telephone calls
3 to, or receives telephone calls from, the Target Device, not to disclose in any manner, directly or
4 indirectly, by any action or inaction, the existence of the Order, in full or redacted form,
5 regarding the pen register or trap and trace devices, or of this investigation, to the listed
6 subscriber(s) for the Target Device, the occupants of said premises, the subscribers of the

7 incoming calls to or outgoing calls from the Target Device, or to any other person until otherwise
8 ordered by this Court.

9 I declare under penalty of perjury that the foregoing factual assertions are true and correct
10 to the best of my knowledge and belief.

11 Dated: _____

Respectfully submitted,

12 SCOTT N. SCHOOLS
13 United States Attorney

14 _____
15 Assistant United States Attorney
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1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 IN RE TELEPHONE
6 INFORMATION NEEDED FOR A
7 CRIMINAL INVESTIGATION

No.

SEALED ORDER

8 Before this Court is an Application under 18 U.S.C. §§ 2703(c), 2703(d), 3122, and 3123,
9 by [Name of AUSA], an attorney for the Government as defined by Fed. R. Crim. P. 1(b)(1)(B),
10 requesting an Order authorizing the [installation and] [continued] of a pen register and trap and
11 trace device on the instrument or facility currently utilizing the following subject telephone
12 number, (hereinafter, the "Target Device"):

13 Telephone number:
14 Service provider:
15 Subscriber:
16 Address:

17 Upon review of the Application, the Court hereby FINDS that:

18 Pursuant to 18 U.S.C. § 3123, Applicant has certified that the information likely to be
19 obtained by such use is relevant to an ongoing criminal investigation being conducted by the
20 [insert name of agency] (hereinafter the "Investigative Agency") in connection with possible
21 violations of [insert code section] by [list names of targets], and others:

22 Pursuant to 18 U.S.C. §§ 2703(c)(1)(B) and 2703(d), Applicant has offered specific and
23 articulable facts showing that there are reasonable grounds to believe that records or other
24 information identifying subscribers or customers (not including the contents of communications)
25 for telephone numbers identified through the pen register and trap and trace devices on the Target
Device, changes in service regarding the Target Device, cell site information¹ regarding the

26
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28
SEALED ORDER

1 Target Device, and records or other information pertaining to subscriber(s) or customer(s) (but
2 not including the contents of communications) for the Target Device are relevant and material to
3 an ongoing criminal investigation of the specified offenses.

4 THEREFORE, IT IS HEREBY ORDERED, pursuant to 18 U.S.C. § 3123, that agents of
5 the Investigative Agency may [install, or cause to be installed, and] [continue to] to use a pen
6 register to [b7E

7
8
9] for a period of sixty (60) days from the date this Order
10 is filed by the Court,³ provided, however, that such information shall not include the contents of
11 any communication;

12 IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3123, that agents of the
13 Investigative Agency may [install, or cause to be installed, and] [continue to] use a trap and
14 trace device on the Target Device to [b7E

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16
17 b7E ation of calls created by such incoming impulses] for a period of
18 sixty (60) days from the date this Order is filed by the Court, provided, however, that such
19 information shall not include the contents of any communication;

20
21 [b7E]

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23
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25 b7E)

26 ³ As used herein, "the date this Order is filed by the Court" is the date indicated by
27 the clerk's file stamp on the first page of the Order.

28 ⁴ This includes the same information described in footnote 2 above.

1 IT IS FURTHER ORDERED that the Investigative Agency is not authorized to obtain
2 from the telephone Service Providers: (1) [b7E

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4 b7E

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6
7 ME]

8 IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§ 2703(c)(1)(B), 2703(c)(2),
9 2703(d), 3122, and 3123 that Adelphia Communications, Adelphia Long Distance, Allegiance
10 Telecom of California, Inc., Astound, AT&T California, AT&T Local Service, AT&T Long
11 Distance, AT&T Midwest, AT&T Nevada, AT&T Southwest, Bell South Telecommunications,
12 Broadwing Communications, Cellco Partnership doing business as Verizon Wireless, Cellular
13 One, Central Wireless Partnership doing business as Sprint PCS, Cingular Wireless, Comcast,
14 Cox Communications, Dobson Cellular, Dobson Communications, Edge Wireless LLC, Electric
15 Lightwave Inc., Embarq, Ernest Communications, Evans Telephone Company, Frontier: A
16 Citizens Communications Company, Genesis Communications International, ICG
17 Communications, ICG Telecom Group, Locus Communications, Metrocall, Metro PCS,
18 Mpower, Nationwide Paging, Navigator Telecommunications LLC, Network Services LLC,
19 Nextel Communications, NII Communications, Pac West Telecomm Incorporated, Qwest
20 Communications, RCN Communications, Roseville Telephone Company, Skype, Sprint-Nextel,
21 TelePacific Communications, Teligent, Time-Warner Telecom, T-Mobile USA Inc., TracFone

22 5 [b7E

23 b7E

24 b7E]

25 b7E

26
27 b7E

1 Wireless, USA Mobility, US Cellular, US TelePacific Corp. doing business as TelePacific
2 Communications, Verizon California, Verizon District of Columbia, Verizon Maryland, Verizon
3 New Jersey, Verizon New York, Verizon Northwest, Verizon Texas, Virgin Mobile, Vonage,
4 Weblink Wireless, West Coast PCS LLC doing business as Sure West Wireless, Western
5 Wireless Corporation, XO Communications, and any and all other telephone service providers
6 (including any Internet service provider or other electronic communications provider providing
7 voice-over IP telephony [VoIP]) (collectively, "the Telephone Service Providers"), and any and
8 all other persons or entities providing wire or electronic communications service in the United
9 States whose assistance may facilitate the execution of this Order, shall disclose or provide, upon
10 oral or written demand by agents of the Investigative Agency:

11 1. For the Target Device, records or other information pertaining to subscriber(s) or
12 customer(s), including cellsite information and [REDACTED] b7E]
13 [REDACTED] for the sixty (60) days prior to the date this Order is filed by the Court (but
14 not including the contents of communications);

15 2. For the Target Device, after receipt and storage,⁷ records or other information
16 pertaining to subscriber(s) or customer(s), including (1) the means and source of payment for the
17 service and (2) cellsite information, provided to the United States for (a) the origination of a call
18 from the Target Device or the answer of a call to the Target Device and (b) the termination of the
19 call (but not including the contents of the communications);

20 3. Pursuant to 18 U.S.C. § 2703(c), after receipt and storage, the following
21 subscriber records and other information for all published, non-published, or unlisted dialing,
22 routing, addressing, or signaling information captured by the pen register and trap and trace
23 device on the Target Device:

- 24 (i) name;
25 (ii) address;
26 (iii) local and long distance telephone connection records, or records of session
times and durations with Target Device;
27 (iv) length of service (including start date) and types of service utilized; and

28 ⁷ "After receipt and storage" is intended to ensure that the information authorized
under paragraphs 2 and 3 is information that is first captured and recorded by the provider before
being sent to the Investigative Agency.

1 (v) telephone or instrument number or other subscriber number or identity,
2 including any temporarily assigned network address; and

3 4. [b7E

4 b7E

7 b7E]
8 IT IS FURTHER ORDERED that this authorization for the [installation and]
9 [continued] use of a pen register and trap and trace device applies not only to the Target Device,
10

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13 b7E

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17 b7E]
18 IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§ 3123(a)(1) and § 3123 (b)(2),
19 that, upon service of this Order, the Target Device's Telephone Service Providers shall furnish
20 agents of the Investigative Agency with all information, facilities, and technical assistance
21 necessary to accomplish the installation and use of the pen register and trap and trace devices,
22 unobtrusively and with minimum interference with the services that are accorded the persons
23 with respect to whom the installation and use is to take place.

24 IT IS FURTHER ORDERED that the Target Device's Telephone Service Providers shall
25 furnish the results of the pen register and trap and trace devices to agents of the Investigative

26 Agency as soon as practicable, twenty four (24) hours a day for the duration of the Order.

27 IT IS FURTHER ORDERED that the Target Device's Telephone Service Providers be
28 reasonably compensated by the Investigative Agency for reasonable expenses directly incurred in

1 providing information, facilities, and assistance.

2 Good cause having been shown, IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§
3 2705(b) and 3123(d), that this Order and the Application be SEALED until otherwise ordered by
4 the Court, that the identity of any targets of the investigation and the possible violations thereof
5 may be redacted from any copy of the Order served on any service provider or other person, and
6 that the Target Device's Telephone Service Providers and any other Telephone Service Provider

7 which provides service to a telephone number that either places telephone calls to, or receives
8 telephone calls from, the Target Device, shall not disclose in any manner, directly or indirectly,
9 by any action or inaction, the existence of this Order, in full or redacted form, of the pen register
10 or trap and trace devices, or of this investigation, to the listed subscribers for the Target Device,
11 or to any other person unless otherwise ordered by this Court.

12
13
14 DATE

UNITED STATES MAGISTRATE JUDGE

Wilkison, Tracy (USACAC)

From: Wilkison, Tracy (USACAC)
Sent: Tuesday, June 26, 2007 7:15 PM
To: USACAC-AUSAs Criminal
Subject: Cell site and GPS information forms

There are now new forms to obtain cell site and GPS information for the cellular telephones of your crooks and fugitives. Yay!

***Following a delicate negotiation dance (which resembles an Irish jig, FYI) with the magistrate judges, please follow these rules:

- (1) Do not change the forms without running the changes by me or Dan Goodman. Preferably Dan.
- (2) For the next month or so, whenever you file any of the various versions of the forms, please email the finalized version to me - when I have one of every kind, we can stop. ***

The forms are located at S:\Criminal Forms\Pen Registers\Cell Site and GPS apps, and are broken down into the following categories:

(1) Historical cell site app and order: Use this when you want cell site information for your cell phone that is historical (i.e., between May 1, 2007 and today). [b7E]
[b7E] This is a fairly short application based on your proffer of the agent's information, and a conclusion that the information obtained would be relevant and material to your ongoing (or fugitive) investigation. No agent declaration needed, and you can do repeatedly to get updates.

(2) Prospective cell site and GPS app and orders:

(A) Investigation: Use this when you are doing an ongoing investigation, and [b7E]
[b7E] You can ask for (1) cell site only; (2) cell site and GPS information; or (3) GPS info only. [b7E]
[b7E] The agent must provide a declaration in support demonstrating probable cause to believe that the information will provide evidence of the crimes being investigated. [b7E]

[b7E] If the reason why (for any of this) is of interest to you, please call or email me. Please note that the tracking device procedures of Rule 41 are somewhat onerous - including notice provisions - so please read what the order commands you to do, and follow it. If you need an extension of the notice provisions, please see the notice extension form at S:\Criminal Forms\Complaint\ Tracking Devices. Also note that because the request for cell site information is based on the "hybrid" theory (again - if you're actually interested, let me know), you must provide a certification at the end of the application that the information is relevant to an ongoing investigation.

If you seek cell site data, attach the Hodor declaration as well to your application. If you seek GPS data, attach the Kischer declaration as well. Both are in .pdf files in the same location as the forms.

(B) Fugitive: Use this form when you are trying to find a fugitive. Because the request for cell site information is based on the All Writs act, you don't need to do a certification, and [b7E]
[b7E] Otherwise, the forms are basically the same, and again, if you seek GPS information, you must follow the tracking device procedures for Rule 41. Please attach the Hodor or Kischer declarations as appropriate.

For those who are still reading, this seems like an appropriate time to remind you that if you want to [b7E]
[b7E] you must now get a Rule 41 warrant - please
see S:\Criminal Forms\Complaint\ Tracking Devices for the forms.

1 ***Note: if you are requesting only cell site data, use this
2 form, the Hodor declaration, and your agent's declaration. If
3 you are requesting only GPS info, use this form, the Kischer
4 declaration, and your agent's declaration. If you are requesting
5 both, use all of the declarations.***

6 ***Note:

b7E

7 ***Note: if you are requesting continued information, state that
8 throughout, and insert into the app. that a previous order was
9 obtained, and provide the case number and magistrate judge***

10 GEORGE S. CARDONA
11 United States Attorney
12 THOMAS P. O'BRIEN
13 Assistant United States Attorney
14 Chief, Criminal Division
15 [YOU] (CA Bar No. _____)
16 Assistant United States Attorney
17 XX00 United States Courthouse
18 312 North Spring Street
19 Los Angeles, California 90012
20 Telephone: (213) 894-XXXX
21 Facsimile: (213) 894-XXXX
22 Email: XXXX@usdoj.gov

23 Attorneys for Applicant
24 United States of America

25 UNITED STATES DISTRICT COURT
26 FOR THE CENTRAL DISTRICT OF CALIFORNIA

27 IN RE CELLULAR
28 TELEPHONE[S]

) No. _____
)
) GOVERNMENT'S EX PARTE APPLICATION
) FOR AN ORDER AUTHORIZING THE
) DISCLOSURE OF CELL SITE
) INFORMATION UNDER THE ALL WRITS
) ACT [AND GPS INFORMATION];
) DECLARATIONS OF HENRY HODOR, ERIC
) A. KISCHER AND [AGENT]
)
) (UNDER SEAL)

1 The United States of America, by and through its counsel of
2 record, the United States Attorney for the Central District of
3 California, hereby applies for an order authorizing the
4 disclosure of cell site information, [IF WANT GPS INFO: as well
5 as "GPS information"] at such intervals and times as the
6 government may request, and the furnishing of all information,
7 facilities, and technical assistance necessary to accomplish said
8 disclosure unobtrusively, which disclosure will establish the
9 approximate location of the following cellular telephone[s] for a
10 period of 45 [IF REQUESTING ONLY CELL SITE, MAY REQUEST 60 DAYS]
11 days [IF MORE THAN ONE, USE SUBPARAGRAPH STRUCTURE BELOW]:

12 (a) [TARGET NUMBER], a cellular telephone issued by
13 [TELEPHONE COMPANY], subscribed to [SUBSCRIBER INFORMATION] and
14 believed to be used by [USER] ("Subject Telephone #1");

15 (b) [REPEAT FOR 2ND/SUBSEQUENT PHONE] ("Subject
16 Telephone #2, and concurrently with Subject Telephone #1 referred
17 to as "the Subject Telephones").

18 [IF REQUESTING GPS INFO: This application also seeks
19 authorization under 18 U.S.C. § 3103a(b), for reasonable cause
20 shown, to delay notification of the above order to the subscriber
21 and users of the Subject Telephone for a period of 30 days from
22 the date that the disclosure ends. [YOU MAY ASK FOR A LONGER

23 PERIOD OF DELAY NOW TO A DATE CERTAIN IF YOU CAN STATE WHY THE
24 FACTS OF THIS CASE JUSTIFY SUCH AN ORDER, OR YOU MAY ASK FOR
25 CONTINUANCES OF THE DELAY AS NEEDED].

26 This application involves a fugitive investigation, and is
27 based on the attached memorandum of points and authorities, and
28 declarations of the following individuals: (1) Henry Hodor (a

1 declaration previously prepared outside of this district); (2)
2 [IF REQUESTING GPS INFO: Eric A. Kischer (a declaration
3 previously prepared within this district)]; and (3) [AGENT].
4

5 DATED: _____

Respectfully submitted,

6 GEORGE S. CARDONA
United States Attorney

7 THOMAS P. O'BRIEN
8 Assistant United States Attorney
Chief, Criminal Division
9

10 _____
11 [YOU]
Assistant United States Attorney
12 Attorneys for Applicant
13 United States of America
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 INTRODUCTION

4 By this application, the government seeks an order that
5 cellular telephone service provider[s] furnish the [AGENCY
6 ("INITIALS")] with cell site [and "GPS"] information for a
7 cellular telephone being used by a fugitive who is the subject of
8 a federal arrest warrant [, and by associates of the fugitive],
9 under circumstances where there is probable cause to believe that
10 the information likely to be received concerning the approximate
11 location of the following Subject Telephone[s], currently within
12 the Central District of California, will constitute or yield
13 evidence of the approximate location of the fugitive [IF MORE
14 THAN ONE, USE SUBPARAGRAPH STRUCTURE BELOW]:

15 (a) [TARGET NUMBER], a cellular telephone issued by
16 [TELEPHONE COMPANY], subscribed to [SUBSCRIBER INFORMATION] and
17 believed to be used by [USER] ("Subject Telephone #1");

18 (b) [REPEAT FOR 2ND/SUBSEQUENT PHONE] ("Subject
19 Telephone #2, and concurrently with Subject Telephone #1 referred
20 to as "the Subject Telephones").

21 The information sought by this application includes
22 information about the location (physical address) of the "cell
23 sites"¹ linked to the Subject Telephone[s] at call origination

24 _____
25 ¹ In order for a cellular telephone to make or receive a
26 call, it must be within radio range of a "cell site," or cell
27 tower, which connects it to a carrier's wireless network. Each
28 tower transmits and receives radio signals across 360 degrees;
wireless carriers typically divide that 360 degree circle into
three equal slices of 120 degrees, each of which is called a
"sector." Carriers control multiple towers through the use of a

(for outbound calling), call termination (for incoming calls),² and, if reasonably available, during the progress of a call.

This information, which is acquired in the first instance by the cellular telephone service provider, includes any information, apart from the content of any communication, that is reasonably available to the service provider and that is requested by the [AGENCY], concerning the cell sites/sectors receiving and transmitting signals to and from the Subject Telephone[s],

[b7E] This information is sought based on the legal authority of the All Writs Act, 28 U.S.C. § 1651(a), as well as on the Court's inherent authority.³

[IF SEEKING GPS INFO, USE THE FOLLOWING TWO PARAGRAPHS: This application further seeks latitude and longitude data gathered for the Subject Telephone[s], including Global Positioning Satellite ("GPS") and/or network timing information, and including information from such programs as Nextel Mobile Locator, Boost Mobile Loopt, Sprint/Nextel Findum Wireless, or a

"base station." Sensors within the base station detect which tower and sector makes radio contact with a cellular telephone. (Hodor Decl. ¶¶ 9-11, at 6-7).

² The telephone at "call origination" is the cellular telephone that is calling another telephone. The telephone at "call termination" is the cellular telephone that is receiving the call. (Hodor Decl. ¶ 21, at 15-16).

³ The government does not concede that a showing of probable cause is required for this Court to issue orders authorizing the government to obtain cell site and GPS information. In light of the applicability of the All Writs Act to this situation, as discussed below, this application does not rely on, and this Court need not consider the validity of, the government's theory that courts may issue orders based on the combined effect of 18 U.S.C. § 3123 and 18 U.S.C. § 2703 authorizing the government to obtain this information.

1 similar program, which will establish the approximate location of
2 the Subject Telephone[s], and which information is acquired in
3 the first instance by the cellular telephone service provider
4 (referred to herein as "GPS information"). This information is
5 sought based on the authority in Federal Rule of Criminal
6 Procedure 41(b)(1) and (2) and the All Writs Act, and will be
7 obtained in conformity with the procedures of Federal Rule of
8 Criminal Procedure 41.

9 Also, this application seeks authorization under 18 U.S.C.
10 § 3103a(b), for reasonable cause shown, to delay notification of
11 the above order to the subscriber and users of the Subject
12 Telephone for a period of 30 days from the date that the
13 disclosure ends. [YOU MAY ASK FOR A LONGER PERIOD OF DELAY NOW TO
14 A DATE CERTAIN IF YOU CAN STATE WHY THE FACTS OF THIS CASE
15 JUSTIFY SUCH AN ORDER, OR YOU MAY ASK FOR CONTINUANCES OF THE
16 DELAY AS NEEDED] As discussed in the attached declaration of
17 [AGENT], immediate notification of this order to the user of the
18 Subject Telephone[s] may have an adverse result.]

19 This application further seeks an order that: (1) authorizes
20 the disclosure of the requested information whether the Subject
21 Telephone[s] [is/are] located within this District, outside of
22 the District, or both; (2)

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and (3) orders the [AGENCY] to reimburse the applicable cellular telephone service provider for its reasonable expenses directly incurred in providing the requested information and any related technical assistance.

The application is made in connection with the arrest warrant for [FUGITIVE], which is a [federal arrest warrant for [FEDERAL CHARGES]][federal arrest warrant for Unlawful Flight to Avoid Prosecution, in violation of 18 U.S.C. 1073], and is based upon declarations from the following individuals: (1) Henry Hodor (a declaration previously prepared outside of this district); (2) [IF REQUESTING GPS INFO: Eric A. Kischer (a declaration previously prepared within this district)]; and (3) [AGENT].

II

DISCUSSION

A. The All Writs Act Permits Disclosure of Cell Site Information [and GPS information] to Effect a Federal Arrest Warrant

The All Writs Acts permits courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a); see also Adams v. United States ex rel. McCann, 317 U.S. 269, 273 (1942) ("unless appropriately confined by Congress, a federal court may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids

1 is calculated in its sound judgement to achieve the ends of
2 justice entrusted to it."). Because a federal court has already
3 issued an arrest warrant for the fugitive, an order that a
4 cellular telephone service provider provide the requested cell
5 site information [and GPS information] to law enforcement is an
6 order in furtherance of the jurisdiction of the Court. See,
7 e.g., United States v. X, 601 F. Supp. 1039, 1042 (D. Md. 1984)
8 ("other Orders, such as an arrest warrant, may also serve as the
9 predicate for an All Writs Act Order"). [INCLUDE THIS FOOTNOTE
10 ONLY IF YOU ARE NOT GETTING GPS: ⁴]

11 Nine years before the pen register statute was enacted, the
12 Supreme Court ruled that the All Writs Act could be used to
13 command a telephone company to provide certain assistance to the
14 USMS in connection with the placement of a pen register on a
15 telephone line.⁵ In that case, United States v. New York
16 Telephone Co., 434 U.S. 159, 98 S. Ct. 364, 54 L. Ed. 2d 376
17 (1977), an FBI agent submitted an affidavit that the district
18 judge found to set forth probable cause that an illegal gambling
19 enterprise using facilities of interstate commerce was being
20 conducted at a particular location, and that the two telephones

21 _____
22 ⁴ As discussed in the attached declaration of Mr. Hodor,
23 this application does not seek latitude and longitude data (often
24 colloquially referred to as "GPS information") either via the
25 "handset based" or "network based" systems. (Hodor Decl. ¶¶ 30-
26 37). Accordingly, this application is not made pursuant to
27 Federal Rule of Criminal Procedure 41.

28 ⁵ "Prior to the 1986 enactment of the pen registers statute
(effective January 1987), . . . authorization for pen registers
was to be found in the provisions of the 'All Writs Act' . . .
and Rule 41, Fed.R.Crim.P." In the Matter of the Interception of
Wire And Oral Communications, 682 F. Supp. 669, 670 n.1 (D.N.H.
1988).

REF

1 at issue had been, were being, and would continue to be used in
2 connection with those offenses. 434 U.S. at 162. The district
3 court's order authorized the FBI to operate pen registers on the
4 two telephones for a certain time period. Id. The telephone
5 company declined to comply fully with the court order: it agreed
6 to identify for the FBI the specific pairs of wires that
7 constituted the circuits of the two telephone lines, but refused
8 to lease lines to the FBI that "were needed to install the pen
9 registers in an unobtrusive fashion." Id.

10 The Supreme Court in New York Telephone agreed with the
11 district court's ruling that a pen register could be authorized
12 under Rule 41 of the Federal Rules of Criminal Procedure. A key
13 distinction between New York Telephone and this case, however, is
14 that in this case the Court has already issued an arrest warrant,
15 such that the cell site order sought is in furtherance of the
16 Court's jurisdiction, whereas in New York Telephone there was no
17 such arrest warrant, so that an order to implement a pen register
18 was arguably not in furtherance of the district court's
19 jurisdiction. Cf. United States v. Hall, 583 F. Supp. 717, 719,
20 721 (E.D. Va. 1984) ("The Supreme Court, mindful that the All
21 Writs Act cannot be used to extend jurisdiction, looked first at
22 the independent authority the district court had to issue that
23 portion of the pen register order authorizing agents of the FBI
24 to install and use pen registers."). More importantly for the
25 purposes of the instant application, the Supreme Court in New
26 York Telephone held that the All Writs Act permitted issuance of
27 an order compelling the telephone company to provide the
28 assistance sought. 434 U.S. at 171-78.

1 In recognizing the authority of the district court to issue
2 an order under the All Writs Act compelling the requested
3 assistance from the telephone company, the Supreme Court
4 described broadly the scope of judicial power under the All Writs
5 Act. "Indeed," the Supreme Court wrote, "[u]nless appropriately
6 confined by Congress, a federal court may avail itself of all
7 auxiliary writs as aids in the performance of its duties, when
8 the use of such historic aids is calculated in its sound judgment
9 to achieve the ends of justice entrusted to it." 434 U.S. at
10 172-73. The Supreme Court took note of other facts supporting
11 the conclusion that the order compelling the phone company to
12 provide assistance was consistent with the All Writs Act, which
13 facts are present here: that there was probable cause to believe
14 the phone company's facilities were being used to facilitate the
15 crime, that the telephone company was a highly regulated public
16 utility with the duty to serve the public, and that the use of a
17 pen register was by no means offensive to the phone company. Id.
18 at 174.

19 Here, there is, firstly, probable cause to believe that the
20 Subject Telephone[s] are enhancing the fugitive's ability to
21 remain a fugitive. See Declaration of [AGENT], ¶ [NUMBER]. It
22 is not necessary that the telephone calls themselves be illegal,
23 although that happened to be the case in New York Telephone. See
24 Hall, 583 F. Supp. at 720. Secondly, the cellular telephone
25 market is heavily regulated by the Federal Communications
26 Commission, see, e.g., Metro Mobile CTS, Inc. v. NewVector
27 Communications, Inc., 892 F.2d 62, 63 (9th Cir. 1989) (discussing
28 the cellular telephone market in Phoenix), just as the hard-line

1 telephone market was heavily regulated in New York Telephone.
2 Thirdly, law enforcement's acquisition of the cell site
3 information [and GPS information] is by no means offensive to the
4 cellular telephone service provider, which collects this
5 information for itself anyway. See Hodor Declaration, ¶¶ 8-25.
6 As one court said in the similar context of an All Writs Act
7 application for credit card records, "Withholding information
8 that could lead to apprehension of a fugitive in no way serves"
9 the company's interest. Hall, 583 F. Supp. at 721.

10 Although one district court case, Hall, 583 F. Supp. at 719,
11 721, has stated that New York Telephone required that an order
12 under the All Writs Act may issue only where the assistance of a
13 third-party is "absolutely necessary," the government disagrees
14 that this requirement is found in New York Telephone. In
15 contending that this requirement is found in New York Telephone,
16 the Hall decision did not cite to any place in the New York
17 Telephone decision, instead citing only to a (student) case
18 comment from the Suffolk University Law Review in 1978. See
19 Comment, 12 Suffolk U.L. Rev. 1027 (1978). Contrary to the
20 language in Hall, although the Supreme Court in New York
21 Telephone noted that the assistance of the telephone company was
22 essential to the fulfillment of the purpose of the pen register

23 order, see 434 U.S. at 175-76, it did not say that the assistance
24 of a third party must be essential before an order under the All
25 Writs Act could issue to that party.⁶

26 _____
27 ⁶ Nor does the Comment in the Suffolk University Law Review
28 quote any language from New York Telephone establishing this
supposed requirement of absolute necessity. Rather, the Comment

1 Even if Hall's "absolutely necessary" requirement were
2 imposed in this case, however, it is satisfied here. The
3 district judge in Hall stated that "the absolute necessity refers
4 not to catching the fugitive but to obtaining the . . . records"
5 -- that is, the supposed requirement looks at whether the
6 assistance of the company receiving the order is absolutely
7 necessary in producing the records sought, as in the case where
8 no one else could produce those records. See 583 F. Supp. at
9 721-22 & n.2. Here, no one but the cellular telephone service
10 provider could produce the information sought. See [AGENT] Dec.
11 at ¶ [NUMBER].

12 In conclusion, "[t]he All Writs Act, read with the New York
13 Telephone gloss, permits the district court, in aid of a valid
14 warrant, to order a third party to provide nonburdensome
15 technical assistance to law enforcement officers." Plum Creek
16 Lumber Co. v. Hutton, 608 F.2d 1283, 1289 (9th Cir. 1979). Here,
17 an order pursuant to the All Writs Act is "necessary or
18 appropriate" -- to use the language of the Act -- in light of the
19 agent's declaration. That declaration explains the assistance
20 necessary from the cellular telephone service provider and notes
21 that efforts to locate the fugitive have been unsuccessful, and
22

23 cites only to two pages and a footnote from New York Telephone,
24 see 12 Suffolk U.L. Rev. at 1032 & n.29, which portions of the
25 opinion do not, as just noted in text, say that necessity is a
26 requirement before a court may issue an order under the All Writs
27 Act. The invention of the necessity requirement in the Comment
28 likely arises from the fact that the Comment focuses considerable
attention on discussing the limits to the New York Telephone
Court's reliance on the concept -- mentioned in a footnote in New
York Telephone, see 434 U.S. at 374 n.24 -- that citizens have a
duty to assist law enforcement. See 12 Suffolk U.L. Rev. at
1035-38.

1 that there is probable cause to believe that the requested
2 location information will cast light on the fugitive's current
3 whereabouts. See United States v. X, 601 F. Supp. at 1042
4 ("Here, as in the case before Judge Nickerson, an Order pursuant
5 to the All Writs Act is 'necessary and [sic] appropriate,' in the
6 light of the Special Agent's statements that defendant X has
7 disappeared; that efforts to locate him have been unsuccessful;
8 that it is likely the defendant maintains telephone contact with
9 his close relatives; and that is likely the requested toll
10 records will provide information concerning defendant's current
11 whereabouts, thereby preventing frustration of this Court's
12 earlier-issued arrest warrant.").

13 The application and order in this case are supported by
14 probable cause. Under these circumstances, the issuance of the
15 proposed order is in aid of this Court's jurisdiction because it
16 will prevent "frustration of this Court's earlier-issued arrest
17 warrant." United States v. X, 601 F. Supp. at 1042. Finally,
18 the order may also lawfully be based on this Court's inherent
19 authority -- either standing alone or in conjunction with the All
20 Writs Act. See United States v. Illinois Bell Telephone Co., 531
21 F.2d 809, 811 & n.2, 814 (7th Cir. 1976) (district court had
22 inherent authority to order telephone company's assistance;

23 inherent authority is not directly derived from Fed. R. Crim. P.
24 41; district court's order was not in form of search warrant but
25 was in the nature of one).

26 Because of the particular features of this application,
27 including the fact that it seeks an order based upon the Court's
28 authority under the All Writs Act, the showing of probable cause

1 and the fact that an arrest warrant for the fugitive already
2 exists, the cell site information [and GPS information] sought by
3 the government [b7E]

4 [b7E]
5 [ME]
6 [IF SEEKING GPS INFO, USE SECTIONS B AND C:

7 B. Federal Rule of Criminal Procedure Rule 41

8 Federal Rules of Criminal Procedure 41(b)(1) and (2), and
9 (c), as well as 18 U.S.C. § 2703(c)(1)(A) and the All Writs Act,
10 also authorize the Court to order the provision of GPS
11 information upon a showing of probable cause to believe that the
12 monitoring sought will lead to the discovery of evidence of
13 identified criminal activity.⁷

14 As detailed in the declaration of Drug Enforcement
15 Administration Special Agent Eric A. Kischer, some, but not all,
16 cellular telephone service providers have the technical means to
17 obtain GPS information. GPS information is not generated
18 specifically for law enforcement, but is the product of a federal
19 law that requires cellular telephone service providers to
20 maintain and access location information for emergency
21 responders. Kischer Dec., ¶ 5. [b7E]

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23 b7E
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27 ⁷ Again, the government does not concede that probable
28 cause must be shown to obtain the GPS information sought, but
nonetheless provides probable cause in this case. See fn. [3],
supra.

b7E

The proposed order establishes a procedure that is in conformity with Rule 41(e)(2)(B) and (f)(2). These procedures include obtaining a court order for the information that states (1) the property to be tracked; (2) that the device may be used for no longer than 45 days, unless extensions are obtained; (3) that the device must be installed within 10 days; (4) that a return will be provided to the court; and (5) that notice will be provided after the use has ended, unless an order allowing delayed notice is obtained.

C. Delayed Notice

18 U.S.C. § 3103a(b) states that any notice required following the issuance of a court order may be delayed if, *inter alia*, the court finds reasonable cause to believe that providing immediate notification of the execution of the court order may

1 have an adverse result. An adverse result is defined in 18
2 U.S.C. § 2705(a)(2) as including endangering the life or physical
3 safety of a person, flight from prosecution, destruction of or
4 tampering with evidence, intimidation of potential witnesses, and
5 serious jeopardy of an investigation. Moreover, the Advisory
6 Committee Notes for Fed. R. Crim. P. 41(f)(3) (2006 Amendments)
7 state that delay of notice may be appropriate where "the officer
8 establishes that the investigation is ongoing and that disclosure
9 of the warrant will compromise that investigation." The attached
10 declaration of [AGENT] provides reasonable cause to believe that
11 immediate notification of the execution of the order may have an
12 adverse result, and the proposed order both provides for the
13 giving of such notice within 30 days after the date that the
14 disclosure ends and prohibits, as part of the receipt of the
15 requested information, the seizure of any tangible property or
16 any other prohibited wire or electronic information as stated in
17 18 U.S.C. § 3103a(b)(2).]

18 III

19 CONCLUSION

20 Applicant respectfully requests that the Court issue the
21 order in the form presented herewith.
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1 ***Note: this declaration goby is designed to ensure that the
2 same language that is in the application makes it into the
3 declaration - it is not a strict structural requirement, nor are
4 the headings required****

5 ***Note Also: IF YOU ARE SEEKING GPS INFO, we are following the
6 procedures of Rule 41 - which means that the agent should be
7 available so that the judge can make inquiries of him or her if
8 the judge wants per Rule 41(d) (2) ****

9
10 DECLARATION OF [AGENT]

11 I, [AGENT], do hereby declare and affirm:

12 1. [STATEMENT OF BACKGROUND/TRAINING/EXPERIENCE, ETC.].

13 PURPOSE OF DECLARATION

14 2. This declaration is made in support of an application
15 for an order authorizing the disclosure of cell site information,
16 [as well as "GPS" information], as defined within the
17 application, at such intervals and times as the government may
18 request, and the furnishing of all information, facilities, and
19 technical assistance necessary to accomplish said disclosure
20 unobtrusively, which disclosure will establish the approximate
21 location of the following cellular telephone[s] for a period of
22 45 [IF REQUESTING ONLY CELL SITE, MAY REQUEST 60 DAYS] days [IF

23 MORE THAN ONE, USE SUBPARAGRAPH STRUCTURE BELOW]:

24 (a) [TARGET NUMBER], a cellular telephone issued by
25 [TELEPHONE COMPANY], subscribed to [SUBSCRIBER INFORMATION] and
26 believed to be used by [USER] ("Subject Telephone #1");

1 (b) [REPEAT FOR 2ND/SUBSEQUENT PHONE] ("Subject
2 Telephone #2, and concurrently with Subject Telephone #1, referred
3 to as "the Subject Telephones").

4 [IF REQUESTING GPS INFO: 3. I also seek authorization under
5 18 U.S.C. § 3103a(b), for reasonable cause shown below, to delay
6 notification of the proposed order for a period of 30 days from
7 the date that the disclosure ends. [YOU MAY ASK FOR A LONGER
8 PERIOD OF DELAY NOW TO A DATE CERTAIN IF YOU CAN STATE WHY THE
9 FACTS OF THIS CASE JUSTIFY SUCH AN ORDER, OR YOU MAY ASK FOR
10 CONTINUANCES OF THE DELAY AS NEEDED]]

11 4. The facts set forth in this declaration are based upon
12 my own personal observations, my training and experience, and
13 information obtained during this investigation from other
14 sources. This declaration is intended to show that there is
15 cause to obtain the information herein sought, and does not
16 purport to set forth all my knowledge of, or investigation into,
17 this matter.

18 PROBABLE CAUSE

19 5. [INSERT PARAGRAPHS DISCUSSING THE FEDERAL ARREST
20 WARRANT OR THE UFAP WARRANT OBTAINED, THAT EFFORTS TO LOCATE THE
21 FUGITIVE HAVE BEEN UNSUCCESSFUL, AND WHY THERE IS PROBABLE CAUSE
22 TO BELIEVE THAT THE INFORMATION SOUGHT WILL CAST LIGHT ON THE
23 FUGITIVE'S CURRENT WHEREABOUTS.]

24
25 [IF SEEKING GPS INFO:

26 GROUND'S FOR DELAYING NOTICE

27 6. Based on my training and experience and my
28 investigation of this matter, I believe that reasonable cause

1 exists to delay the service of the order as normally required for
2 a period of 30 days beyond the end of the disclosure period
3 because [INSERT FACTS RELATING TO WHY GOOD CAUSE EXISTS; INCLUDE
4 REFERENCE TO A PARTICULAR ADVERSE RESULT. FOR EXAMPLE: [

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Prospective Cell site (and GPS)/ fugitive / June 22, 2007

1 GEORGE S. CARDONA
United States Attorney
2 THOMAS P. O'BRIEN
Assistant United States Attorney
3 Chief, Criminal Division
[YOU] (CA Bar No. _____)
4 Assistant United States Attorney
XX00 United States Courthouse
5 312 North Spring Street
Los Angeles, California 90012
6 Telephone: (213) 894-XXXX
Facsimile: (213) 894-XXXX
7 Email: XXXX@usdoj.gov

8 Attorneys for Applicant
United States of America
9

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 IN RE CELLULAR) No. _____
14 TELEPHONE[S]) [proposed] ORDER
15)
16) (UNDER SEAL)
17)

18 Upon application by the United States of America, supported
19 by the declarations of Henry Hodor, [IF REQUESTING GPS INFO: Eric
20 A. Kischer], and [AGENT], for orders relating to the following
21 cellular telephone[s] [IF MORE THAN ONE, USE SUBPARAGRAPH
22 STRUCTURE BELOW]:

23 (a) [TARGET NUMBER], a cellular telephone issued by
24 [TELEPHONE COMPANY], subscribed to [SUBSCRIBER INFORMATION] and
25 believed to be used by [USER] ("Subject Telephone #1"); and

26 (b) [REPEAT FOR 2ND/SUBSEQUENT PHONE] ("Subject
27 Telephone #2, and concurrently with Subject Telephone #1 referred
28 to as "the Subject Telephones"),

THIS COURT FINDS THAT there is probable cause to believe that cell site information, [as well as GPS information,] likely to be received concerning the approximate location of the Subject Telephone[s], currently within the Central District of California, will constitute or yield evidence of the approximate location of a fugitive from a federal arrest warrant.

[IF SEEKING GPS INFO: THIS COURT FURTHER FINDS reasonable cause exists to believe that providing immediate notification of this order to the user of the Subject Telephone[s] may have an adverse result.]

GOOD CAUSE HAVING BEEN SHOWN, THIS COURT HEREBY ORDERS THAT:

1. [TELEPHONE COMPANY] shall disclose, at such intervals and times as directed by [AGENCY], information concerning the location (physical address) of the cell site at call origination (for outbound calling), call termination (for incoming calls), and, if reasonably available, during the progress of a call, for the Subject Telephone[s], as well as such other information, apart from the content of any communication, that is reasonably available to the cellular telephone service provider and that is requested by the [AGENCY] or any law enforcement agency working with the [AGENCY], concerning the cell sites/sectors receiving and transmitting signals to and from the Subject Telephone[s],

[b7E]

[IF REQUESTING GPS INFO, ADD PARAGRAPHS 2 THROUGH 5:

2. [TELEPHONE COMPANY] shall disclose at such intervals and times as directed by [AGENCY], latitude and longitude data gathered for the Subject Telephone[s], including Global Positioning Satellite ("GPS") and/or network timing information,

1 and including information from such programs as Nextel Mobile
2 Locator, Boost Mobile Loopt, Sprint/Nextel Findum Wireless, or a
3 similar program, which will establish the approximate location of
4 the Subject Telephone[s] (referred to herein as "GPS
5 information"), and shall furnish all information, facilities, and
6 technical assistance necessary to accomplish said disclosure
7 unobtrusively.

8 3. As part of the receipt of the requested GPS
9 information, the [AGENCY] is prohibited from seizing any tangible
10 property pursuant to this order, or any other prohibited wire or
11 electronic information as stated in 18 U.S.C. § 3103a(b)(2). The
12 [AGENCY] is not prohibited from doing so in relation to any other
13 investigation authorized by law.

14 4. The [AGENCY] shall make a return of this order for GPS
15 information to the duty United States Magistrate Judge within 10
16 calendar days after the disclosure of information ceases. The
17 return shall state the date and time the telephone company began
18 providing information pursuant to this order, and the period
19 during which information was provided, including pursuant to any
20 orders permitting continued disclosure.

21 5. The [AGENCY] is permitted to delay service of this
22 order for GPS information to the subscriber[s] of the Subject

23 Telephone[s] [for a period of 30 days from the date that the
24 disclosure ends] [until DATE][USE LATTER ONLY IF YOU HAVE
25 JUSTIFIED AS DISCUSSED ABOVE]].

26 6. The disclosure of the requested information by the
27 cellular telephone service provider[s] shall begin during the
28 daytime on the earlier of the day on which law enforcement

1 officers first begin to receive information pursuant to this
2 order or ten days after the date of this order, and continue for
3 up to 45 [IF REQUESTING ONLY CELL SITE, MAY REQUEST 60 DAYS] days
4 thereafter unless additional orders are made continuing the
5 period of the disclosure.

6 7. The disclosure of the requested information shall occur
7 whether the Subject Telephone[s] [is/are] located within this
8 District, outside of the District, or both.

9 8. [

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9. [TELEPHONE COMPANY] shall execute the Court's order as
soon as practicable after it is signed. If a copy of the order
is given to any cellular telephone service provider, the copy may

23 be redacted by law enforcement to exclude the Target Subjects or
24 fugitive and any description of the offenses under investigation.

25 10. The [AGENCY] shall reimburse the applicable cellular
26 telephone service provider for their reasonable expenses directly
27 incurred by the cellular telephone service provider in providing
28 the requested information and any related technical assistance.

1 11. To avoid prejudice to this criminal fugitive
2 investigation, the applicable cellular telephone service
3 providers and their agents and employees shall not disclose to or
4 cause a disclosure of this Court's order, or the request for
5 information by the [AGENCY] or other law enforcement agencies
6 involved in the investigation, or the existence of this
7 investigation, except as necessary to accomplish the assistance
8 hereby ordered. In particular, the cellular telephone service
9 providers and their agents and employees are ordered not to make
10 any disclosure to the lessees of the telephone or telephone
11 subscribers.

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13 DATED: _____

14 _____
15 HONORABLE [judge]
16 UNITED STATES MAGISTRATE JUDGE.
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1 ***Note: if you want EITHER GPS data, or cell site info for
2 whenever the phone is turned on, you must include the procedures
3 under Rule 41 and CALL THE ORDER A WARRANT. If you only want cell
site info during the progress of a call, you need not follow
those procedures.***

4 ***Note: if you are requesting only cell site data, use this
5 form, the Hodor declaration, and your agent's declaration. If
6 you are requesting only GPS info, use this form, the Kischer
declaration, and your agent's declaration. If you are requesting
both, use all of the declarations.***

7 ***Note: if you are requesting continued information, state that
8 throughout, and insert into the app. that a previous Warrant was
warrant/order***

9
10 THOMAS P. O'BRIEN
11 United States Attorney
12 CHRISTINE C. EWELL
13 Assistant United States Attorney
14 Chief, Criminal Division
15 [YOU] (CA Bar No. _____)
16 Assistant United States Attorney
17 XX00 United States Courthouse
18 312 North Spring Street
19 Los Angeles, California 90012
20 Telephone: (213) 894-XXXX
21 Facsimile: (213) 894-XXXX
22 Email: XXXX@usdoj.gov

23 Attorneys for Applicant
24 United States of America

25 UNITED STATES DISTRICT COURT
26
27 FOR THE CENTRAL DISTRICT OF CALIFORNIA

28) No. _____
29)
30) IN RE CELLULAR
31) TELEPHONE[S]
32) GOVERNMENT'S EX PARTE APPLICATION
33) FOR [A WARRANT] [AN ORDER]
34) AUTHORIZING THE DISCLOSURE OF
35) CELL SITE INFORMATION [AND GPS
36) INFORMATION]; DECLARATIONS OF
37) HENRY HODOR, ERIC A. KISCHER AND
38) [AGENT]
39)
40) (UNDER SEAL)

41 Prospective Cell site [and GPS]/ investigation / July 28, 2008

RIF

1 The United States of America, by and through its counsel of
2 record, the United States Attorney for the Central District of
3 California, hereby applies for [a warrant] [an order] authorizing
4 the disclosure of cell site information, [IF WANT GPS INFO: as
5 well as "GPS information"] at such intervals and times as the
6 government may request, and the furnishing of all information,
7 facilities, and technical assistance necessary to accomplish said
8 disclosure unobtrusively, which disclosure will establish the
9 approximate location of the following cellular telephone[s] for a
10 period of 45 [IF REQUESTING ONLY CELL SITE, MAY REQUEST 60 DAYS]
11 days [IF MORE THAN ONE, USE SUBPARAGRAPH STRUCTURE BELOW]:

12 (a) [TARGET NUMBER], a cellular telephone issued by
13 [TELEPHONE COMPANY], subscribed to [SUBSCRIBER INFORMATION] and
14 believed to be used by [USER] ("Subject Telephone #1");

15 (b) [REPEAT FOR 2ND/SUBSEQUENT PHONE] ("Subject
16 Telephone #2, and concurrently with Subject Telephone #1 referred
17 to as "the Subject Telephones").

18 [IF REQUESTING GPS INFO: This application also seeks
19 authorization under 18 U.S.C. § 3103a(b), for reasonable cause
20 shown, to delay notification of the above Warrant to the
21 subscriber and users of the Subject Telephone for a period of 30

22 ~~days from the date that the disclosure ends. [YOU MAY ASK FOR A~~
23 ~~LONGER PERIOD OF DELAY NOW TO A DATE CERTAIN IF YOU CAN STATE WHY~~
24 ~~THE FACTS OF THIS CASE JUSTIFY SUCH AN ORDER, OR YOU MAY ASK FOR~~
25 ~~CONTINUANCES OF THE DELAY AS NEEDED. IF YOU SEEK A CONTINUANCE,~~
26 ~~GO FIRST TO THE JUDGE WHO SIGNED THIS ORDER/ WARRANT]~~

27

28 Prospective Cell site [and GPS]/ investigation / July 28, 2008

1 This application is based on the attached memorandum of
2 points and authorities, including the certification by the
3 attorney for the government, and declarations of the following
4 individuals: (1) Henry Hodor (a declaration previously prepared
5 outside of this district); (2) [IF REQUESTING GPS INFO: Eric A.
6 Kischer (a declaration previously prepared within this
7 district)]; and (3) [AGENT].

8 DATED: _____

Respectfully submitted,

9 THOMAS P. O'BRIEN
United States Attorney

10 CHRISTINE C. EWELL
11 Assistant United States Attorney
12 Chief, Criminal Division

13 _____
14 [YOU]
Assistant United States Attorney

15 Attorneys for Applicant
16 United States of America
17
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 INTRODUCTION

4 By this application, the government seeks [a warrant] [an
5 order] that cellular telephone service provider[s] furnish the
6 [AGENCY ("INITIALS")] with cell site [and "GPS"] information for
7 a cellular telephone being used by the subject of a federal
8 investigation, under circumstances where there is probable cause
9 to believe that [a federal crime is / federal crimes are] being
10 committed and that the information likely to be received
11 concerning the approximate location of the following Subject
12 Telephone[s], currently within the Central District of
13 California, will constitute or yield evidence of [that crime /
14 those crimes] [IF MORE THAN ONE, USE SUBPARAGRAPH STRUCTURE
15 BELOW]:

16 (a) [TARGET NUMBER], a cellular telephone issued by
17 [TELEPHONE COMPANY], subscribed to [SUBSCRIBER INFORMATION] and
18 believed to be used by [USER] ("Subject Telephone #1");

19 (b) [REPEAT FOR 2ND/SUBSEQUENT PHONE] ("Subject
20 Telephone #2, and concurrently with Subject Telephone #1 referred
21 to as "the Subject Telephones").

22 The information sought by this application includes
23 information about the location (physical address) of the "cell
24 sites"¹ linked to the Subject Telephone[s] at call origination

25
26 ~~..... 1 In order for a cellular telephone to make or receive a~~
27 ~~call, it must be within radio range of a "cell site," or cell~~
28 ~~tower, which connects it to a carrier's wireless network. Each~~
~~tower transmits and receives radio signals across 360 degrees;~~

Prospective Cell site (and GPS) / investigation / July 28, 2008

1 (for outbound calling), call termination (for incoming calls),²
2 and, if reasonably available, during the progress of a call.
3 This information, which is acquired in the first instance by the
4 cellular telephone service provider, includes any information,
5 apart from the content of any communication, that is reasonably
6 available to the service provider and that is requested by the
7 [AGENCY], concerning the cell sites/sectors receiving and
8 transmitting signals to and from the Subject Telephone[s] [ONLY IF
9 SEEKING GPS OR FOLLOWING RULE 41 PROCEDURES: [b7E
10 b7E] This information is sought based on the
11 combined authority of 18 U.S.C. § 3121 et seq. (the "Pen Register
12 Statute") and 18 U.S.C. §§ 2701-11 (the "Stored Communications
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22 wireless carriers typically divide that 360 degree circle into
23 three equal slices of 120 degrees, each of which is called a
24 "sector." Carriers control multiple towers through the use of a
25 "base station." Sensors within the base station detect which
26 tower and sector makes radio contact with a cellular telephone.
27 (Hodor Decl. ¶¶ 9-11, at 6-7).

28 ² The telephone at "call origination" is the cellular
telephone that is calling another telephone. The telephone at
"call termination" is the cellular telephone that is receiving
the call. (Hodor Decl. ¶ 21, at 15-16).

Prospective Cell site [and GPS] investigation / July 28, 2008

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1 Act").³ The attorney for the government has made the required
2 certification at the end of this application.

3 [IF SEEKING GPS INFO, USE THE FOLLOWING TWO PARAGRAPHS: This
4 application further seeks latitude and longitude data gathered
5 for the Subject Telephone[s], including Global Positioning
6 Satellite ("GPS") and/or network timing information, and
7 including information from such programs as Nextel Mobile
8 Locator, Boost Mobile Loopt, Sprint/Nextel Findum Wireless, or a
9 similar program, which will establish the approximate location of
10 the Subject Telephone[s], and which information is acquired in
11 the first instance by the cellular telephone service provider
12 (referred to herein as "GPS information"). This information is
13 sought based on the authority in Federal Rule of Criminal
14 Procedure 41(b)(1) and (2) and 28 U.S.C. § 1651 (the All Writs
15 Act), and will be obtained in conformity with the procedures of
16 Federal Rule of Criminal Procedure 41.

17 Also, this application seeks authorization under 18 U.S.C.
18 § 3103a(b), for reasonable cause shown, to delay notification of
19 the above Warrant to the subscriber and users of the Subject
20 Telephone for a period of 30 days from the date that the
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22 ³ In light of the government's showing of probable cause
23 herein, this application does not rely on, and this Court need
24 not consider the validity of, the government's continuing
25 position that courts may issue orders authorizing the government
26 to obtain cell site and GPS information based on the combined
27 effect of the Pen Register Statute and the Stored Communications
28 Act even where the government does not show probable cause.
(That theory has been advanced in support of applications for
cell site information in various districts and is discussed in a
number of court opinions). The government continues to maintain
that probable cause is not required to properly request and
obtain the information it seeks herein.

1 disclosure ends. [YOU MAY ASK FOR A LONGER PERIOD OF DELAY NOW
2 TO A DATE CERTAIN IF YOU CAN STATE WHY THE FACTS OF THIS CASE
3 JUSTIFY SUCH AN ORDER, OR YOU MAY ASK FOR CONTINUANCES OF THE
4 DELAY AS NEEDED. AGAIN, CONTINUANCES SHOULD GO TO THE SAME
5 JUDGE]. As discussed in the attached declaration of [AGENT],
6 immediate notification of this order to the user of the Subject
7 Telephone[s] may have an adverse result.]

8 This application further seeks an order that: (1) authorizes
9 the disclosure of the requested information whether the Subject
10 Telephone[s] [is/are] located within this District, outside of
11 the District, or both; (2)[b7E

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and (3) orders the

22 [AGENCY] to reimburse the applicable cellular telephone service
23 provider for its reasonable expenses directly incurred in
24 providing the requested information and any related technical
25 assistance.

26 The application is made in connection with an investigation
27 of offenses committed by [TARGET], specifically violations of

28

Prospective Cell site (and GPS) / investigation / July 28, 2008

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1 [STATUTES AND DESCRIPTIONS], and is based upon the certification
2 by the attorney for the government as well as declarations from
3 the following individuals: (1) Henry Hodor (a declaration
4 previously prepared outside of this district); (2) [IF REQUESTING
5 GPS INFO: Eric A. Kischer (a declaration previously prepared
6 within this district)]; and (3) [AGENT].

7 II

8 DISCUSSION

9 A. The Pen Register Statute and the Stored Communications Act

10 The Pen Register Statute and the Stored Communications Act,
11 in combination, authorize the disclosure of cell site
12 information.

13 1. 18 U.S.C. § 3127: The Pen Register Statute

14 The Pen Register Statute, as amended by the USA PATRIOT Act,
15 permits courts to issue ex parte orders permitting telephone
16 service providers or law enforcement officials to install and use
17 pen registers and trap and trace devices. The statute defines a
18 "pen register" as "a device or process which records or decodes
19 dialing, routing, addressing, or signaling information
20 transmitted by an instrument or facility from which a wire or
21 electronic communication is transmitted, provided, however, that

22 such information shall not include the contents of any
23 communication." 18 U.S.C. § 3127(3) (emphasis added). The
24 statute defines a "trap and trace device" as "a device or process
25 which captures the incoming electronic or other impulses which
26 identify the originating number or other dialing, routing,
27 addressing, or signaling information reasonably likely to

1 identify the source of a wire or electronic communication,
2 provided, however, that such information shall not include the
3 contents of any communication." 18 U.S.C. § 3127(4) (emphasis
4 added).

5 The definitions of a "pen register" and a "trap and trace
6 device" in the Pen Register Statute include the cell site
7 information the government seeks here. As explained in the Hodor
8 declaration, a cellular telephone transmits signals to the
9 nearest cell tower or towers when the user makes a call and also
10 transmits information to such towers when the cell phone is on,
11 even if a call is not in progress, in order for the cellular
12 telephone to register its presence in the network. (Hodor Decl.
13 ¶¶ 9-11). These transmissions constitute "signaling information"
14 under the definitions in the Pen Register Statute, which are set
15 forth above, and thus the statute permits an order for cell site
16 information upon an appropriate application by the government.
17 See In Re: Application of the United States for an Order for
18 Prospective Cell Site Location Information on a Certain Cellular
19 Telephone, 460 F. Supp. 2d 448, 455 (S.D.N.Y. 2006).

20 2. 18 U.S.C. § 2703: The Stored Communication Act

21 The Pen Register Statute would be enough to authorize the
22 government's acquisition of cell site information were it not for
23 a statute known as the Communications Assistance for Law
24 Enforcement Act of 1994 ("CALEA"), codified at 47 U.S.C. §§ 1001-
25 1021. CALEA creates a statutory impediment to law enforcement
26 obtaining cell site information based on the Pen Register Statute
27 alone. However, that impediment is itself overcome by the

1 provisions of the Stored Communication Act, which also governs
2 cell site information.

3 Section 1002(a)(2) of CALEA requires telecommunications
4 carriers to ensure that their equipment is, among other things,
5 capable of the following:

6 expeditiously isolating and enabling the government,
7 pursuant to a court order or other lawful
8 authorization, to access call-identifying information
9 that is reasonably available to the carrier . . .

10 except that, with regard to information acquired solely
11 pursuant the authority for pen registers and trap and
12 trace devices (as defined in section 3127 of Title 18),
13 such call-identifying information shall not include any
14 information that may disclose the physical location of
15 subscriber (except to the extent that the location may
16 be determined from the telephone number).

17 47 U.S.C. § 1002(a)(2) (emphasis added). The government
18 recognizes that cell site information "may disclose the physical
19 location of the subscriber" and that the "solely pursuant" clause
20 of CALEA set forth above prevents the government from obtaining
21 such cell site information pursuant to the Pen Register Statute
22 alone. Section 1002 does not, however, preclude entirely the
23 disclosure of cell site information under the Pen Register
24 Statute, but, rather, permits such disclosure pursuant to a
25 combination of the Pen Register Statute and some additional
26 authority. That additional authority is the Stored
27 Communications Act.

1 Section 2703(c)(1)(B) of the Stored Communications Act
2 provides that "[a] government entity may require a provider of
3 electronic communication service to disclose a record or other
4 information pertaining to a subscriber to or customer of such
5 service (not including the contents of communications). . . when
6 the governmental entity" obtains a court order for such
7 disclosure pursuant to Section 2703(d). 18 U.S.C.
8 § 2703(c)(1)(B).

9 The definition of terms in the Stored Communications Act
10 makes clear that the "record or other information" that a court
11 may order a provider to disclose to the government under Section
12 2703(d) includes cell site information. First, the Stored
13 Communications Act expressly adopts the definition of statutory
14 terms set forth in 18 U.S.C. § 2510. See 18 U.S.C. § 2711 ("As
15 used in this chapter . . . (1) the terms defined in section 2510
16 of this title have, respectively, the definitions given such
17 terms in that section"). Thus, the term "provider of electronic
18 communication service" used in Section 2703(c) covers cellular
19 telephone service providers, because 18 U.S.C. § 2510(15) defines
20 "electronic communications service" as "any service which
21 provides to users thereof the ability to send or receive wire or
22 ~~electronic communications.~~" 18 U.S.C. § 2510(15). Further,
23 cell site information is "a record or other information
24 pertaining to a subscriber to or customer of" an electronic
25 communications service -- another term used in Section 2703(c) --
26 because, as indicated by the Hodor declaration, cellular
27 telephone service providers receive and store the information, if
28

1 sometimes only momentarily, before forwarding it to law
2 enforcement officials. (Hodor Decl. ¶¶ 14, 17-25). See In Re:
3 Application of the United States for an Order for Prospective
4 Cell Site Location Information on a Certain Cellular Telephone,
5 460 F. Supp. 2d 448, 457-60 (S.D.N.Y. 2006).

6 [INCLUDE THIS FOOTNOTE ONLY IF YOU ARE NOT GETTING GPS⁴]

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25 ⁴ As discussed in the attached declaration of Mr. Hodor,
26 this application does not seek latitude and longitude data (often
27 colloquially referred to as "GPS information") either via the
28 "handset based" or "network based" systems. (Hodor Decl. ¶¶ 30-
Federal Rule of Criminal Procedure 41.

Prospective Cell site [and GPS]/ investigation / July 28, 2008

1 [IF SEEKING GPS INFO, USE SECTIONS B AND C:

2 B. Federal Rule of Criminal Procedure Rule 41 and the All Writs
3 Act

4 Federal Rules of Criminal Procedure 41(b)(1) and (2), and
5 (c), as well as the above discussed sections and 18 U.S.C.
6 § 2703(c)(1)(A), authorize the court to order the provision of
7 GPS information upon a showing of probable cause to believe that
8 the monitoring sought will lead to the discovery of evidence of
9 identified criminal activity.⁵ Because the GPS information is
10 being sought under this authority, and because as discussed below
11 the procedures of Rule 41(e)(2)(B) and (f)(2) are being followed,
12 the GPS information may be provided regardless of whether a call
13 is in progress.

14 As detailed in the declaration of Drug Enforcement
15 Administration Special Agent Eric A. Kischer, some, but not all,
16 cellular telephone service providers have the technical means to
17 obtain GPS information. GPS information is not generated
18 specifically for law enforcement, but is the product of a federal
19 law that requires cellular telephone service providers to
20 maintain and access location information for emergency
21 responders. Kischer Dec., ¶ 5. [b7E

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26 ⁵ Again, the government does not concede that probable cause
27 must be shown to obtain the GPS information sought, but
28 nonetheless provides probable cause in this case. See fn. 3,
supra.

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In addition, the All Writs Acts permits courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a); see also Adams v. United States ex rel. McCann, 317 U.S. 269, 273 (1942) ("unless appropriately confined by Congress, a federal court may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it.").

The proposed warrant establishes a procedure that is in conformity with Rule 41(e)(2)(B) and (f)(2). These procedures include obtaining a court warrant for the information that states

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1 (1) the property to be tracked; (2) that the device may be used
2 for no longer than 45 days, unless extensions are obtained; (3)
3 that the device must be installed within 10 days; (4) that a
4 return will be provided to the court; and (5) that notice will be
5 provided after the use has ended, unless an order allowing
6 delayed notice is obtained.

7 C. Delayed Notice

8 18 U.S.C. § 3103a(b) states that any notice required
9 following the issuance of a warrant may be delayed if, *inter*
10 *alia*, the court finds reasonable cause to believe that providing
11 immediate notification of the execution of the warrant may have
12 an adverse result. An adverse result is defined in 18 U.S.C. §
13 2705(a)(2) as including endangering the life or physical safety
14 of a person, flight from prosecution, destruction of or tampering
15 with evidence, intimidation of potential witnesses, and serious
16 jeopardy of an investigation. Moreover, the Advisory Committee
17 Notes for Fed. R. Crim. P. 41(f)(3) (2006 Amendments) state that
18 delay of notice may be appropriate where "the officer establishes
19 that the investigation is ongoing and that disclosure of the
20 warrant will compromise that investigation." The attached
21 declaration of [AGENT] provides reasonable cause to believe that
22 ~~immediate notification of the execution of the warrant may have~~
23 an adverse result, and the proposed warrant both provides for the
24 giving of such notice within 30 days after the date that the
25 disclosure ends and prohibits, as part of the receipt of the
26 ~~requested information, the seizure of any tangible property or~~

1 any other prohibited wire or electronic information as stated in
2 18 U.S.C. § 3103a(b)(2).]

3 III

4 CONCLUSION

5 Applicant respectfully requests that the Court issue the
6 warrant in the form presented herewith.

7 IV

8 CERTIFICATION

9 In support of this application, and pursuant to 18 U.S.C.
10 § 3122, I state that I, [YOUR NAME], am an "attorney for the
11 Government" as defined in Rule 1(b)(1) of the Federal Rules of
12 Criminal Procedure. I certify that the information likely to be
13 obtained from the requested order/ warrant is relevant to an
14 ongoing criminal investigation being conducted by the
15 [AGENCY/IES] of [LIST MAIN TARGET(S)] for violations of [LIST
16 STATUTES].

17 I declare under penalty of perjury under the laws of the
18 United States of America that the foregoing paragraph is true and
19 correct.

20 _____
21 DATE

[YOU]
Assistant United States Attorney
[INSERT SECTION] Section

1 ***Note: this declaration goby is designed to ensure that the
2 same language that is in the application makes it into the
3 declaration - it is not a strict structural requirement, nor are
4 the headings required****

5 ***Note Also: IF YOU ARE SEEKING GPS INFO, we are following the
6 procedures of Rule 41 - which means that the agent should be
7 available so that the judge can make inquiries of him/her if the
8 judge wants per Rule 41(d) (2) ****

9
10 DECLARATION OF [AGENT]

11 I, [AGENT], do hereby declare and affirm:

12 1. [STATEMENT OF BACKGROUND/TRAINING/EXPERIENCE, ETC.].

13 PURPOSE OF DECLARATION

14 2. This declaration is made in support of an application
15 for [a warrant] [an order] authorizing the disclosure of "cell
16 site" information, [as well as "GPS" information,] as defined
17 within the application, at such intervals and times as the
18 government may request, and the furnishing of all information,
19 facilities, and technical assistance necessary to accomplish said
20 disclosure unobtrusively, which disclosure will establish the
21 approximate location of the following cellular telephone[s] for a

22 period of 45 [IF REQUESTING ONLY CELL SITE, MAY REQUEST 60 DAYS]
23 days [IF MORE THAN ONE, USE SUBPARAGRAPH STRUCTURE BELOW]:

24 (a) [TARGET NUMBER], a cellular telephone issued by
25 [TELEPHONE COMPANY], subscribed to [SUBSCRIBER INFORMATION] and
26 believed to be used by [USER] ("Subject Telephone #1");

1 (b) [REPEAT FOR 2ND/SUBSEQUENT PHONE] ("Subject
2 Telephone #2, and concurrently with Subject Telephone #1 referred
3 to as "the Subject Telephones").

4 [IF REQUESTING GPS INFO: 3. I also seek authorization under
5 18 U.S.C. § 3103a(b), for reasonable cause shown below, to delay
6 notification of the proposed warrant for a period of 30 days from
7 the date that the disclosure ends. [YOU MAY ASK FOR A LONGER
8 PERIOD OF DELAY NOW TO A DATE CERTAIN IF YOU CAN STATE WHY THE
9 FACTS OF THIS CASE JUSTIFY SUCH AN ORDER, OR YOU MAY ASK FOR
10 CONTINUANCES OF THE DELAY AS NEEDED]]

11 4. The facts set forth in this declaration are based upon
12 my own personal observations, my training and experience, and
13 information obtained during this investigation from other
14 sources. This declaration is intended to show that there is
15 cause to obtain the information herein sought, and does not
16 purport to set forth all my knowledge of, or investigation into,
17 this matter.

18 PROBABLE CAUSE

19 5. [INSERT PARAGRAPHS DISCUSSING WHY THERE IS PROBABLE
20 CAUSE TO BELIEVE THAT FEDERAL CRIMES ARE BEING COMMITTED AND THAT
21 THE INFORMATION SOUGHT WILL PROVIDE EVIDENCE OF THE VIOLATIONS.]

22
23 [IF SEEKING GPS INFO:

24 GROUND FOR DELAYING NOTICE

25 6. Based on my training and experience and my
26 investigation of this matter, I believe that reasonable cause
27 exists to delay the service of the warrant as normally required

28 Prospective Cell site (and GPS)/ investigation / July 28, 2008

1 for a period of 30 days beyond the end of the disclosure period
2 because [INSERT FACTS RELATING TO WHY GOOD CAUSE EXISTS; INCLUDE
3 REFERENCE TO A PARTICULAR ADVERSE RESULT. FOR EXAMPLE: (

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11 b7E

12 b7E] Note that for each extension of the
13 delay, you must make an updated showing of the need for further
14 delay.]]

15
16 I declare and affirm under penalty of perjury that the
17 foregoing is true and correct to the best of my knowledge.

18 Executed on [DATE], at [LOCATION], California.

19
20 [AGENT]
21 [AGENCY]
22

1 THOMAS P. O'BRIEN
United States Attorney
2 CHRISTINE C. EWELL
Assistant United States Attorney
3 Chief, Criminal Division
[YOU] (CA Bar No. _____)
4 Assistant United States Attorney
XX00 United States Courthouse
5 312 North Spring Street
Los Angeles, California 90012
6 Telephone: (213) 894-XXXX
Facsimile: (213) 894-XXXX
7 Email: XXXX@usdoj.gov

8 Attorneys for Applicant
United States of America
9

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 IN RE CELLULAR) No. _____
14 TELEPHONE[S]) [proposed] [WARRANT] [ORDER]
15)
16) (UNDER SEAL)
17)

18 Upon application by the United States of America, supported
19 by the declarations of Henry Hodor, [IF REQUESTING GPS INFO: Eric
20 A. Kischer], and [AGENT], for [a warrant and] orders relating to
21 the following cellular telephone[s] [IF MORE THAN ONE, USE
22 SUBPARAGRAPH STRUCTURE BELOW]:

23 (a) [TARGET NUMBER], a cellular telephone issued by
24 [TELEPHONE COMPANY], subscribed to [SUBSCRIBER INFORMATION] and
25 believed to be used by [USER]. ("Subject Telephone #1"); and
26
27
28

1 (b) [REPEAT FOR 2ND/SUBSEQUENT PHONE] ("Subject
2 Telephone #2, and concurrently with Subject Telephone #1 referred
3 to as "the Subject Telephones"),

4 THIS COURT FINDS THAT there is probable cause to believe
5 that cell site information, [as well as GPS information,] likely
6 to be received concerning the approximate location of the Subject
7 Telephone[s], currently within the Central District of
8 California, will constitute or yield evidence of violations of
9 [STATUTES AND DESCRIPTIONS], being committed by [TARGET] [and
10 others [known and] unknown].

11 THIS COURT FURTHER FINDS THAT, pursuant to 18 U.S.C. § 3123,
12 the attorney for the government has certified that the
13 information likely to be obtained is relevant to an ongoing
14 criminal investigation of [LIST MAIN TARGET(S)] being conducted
15 by the [AGENCY/IES] for violations of [LIST STATUTES].

16 [IF SEEKING GPS INFO: THIS COURT FURTHER FINDS reasonable
17 cause exists to believe that providing immediate notification of
18 this warrant to the user of the Subject Telephone[s] may have an
19 adverse result.]

20 GOOD CAUSE HAVING BEEN SHOWN, THIS COURT HEREBY ISSUES THIS
21 WARRANT AND FURTHER ORDERS THAT:

22 1. [TELEPHONE COMPANY] shall disclose, at such intervals
23 and times as directed by [AGENCY], information concerning the
24 location (physical address) of the cell site at call origination
25 (for outbound calling), call termination (for incoming calls),
26 and, if reasonably available, during the progress of a call, for
27 the Subject Telephone[s], as well as such other information,

1 apart from the content of any communication, that is reasonably
2 available to the cellular telephone service provider and that is
3 requested by the [AGENCY] or any law enforcement agency working
4 with the [AGENCY], concerning the cell sites/sectors receiving
5 and transmitting signals to and from the Subject Telephone[s]

6 [b7E
7 [b7E]

8 [IF REQUESTING GPS INFO, ADD PARAGRAPHS 2 THROUGH 5:

9 2. [TELEPHONE COMPANY] shall disclose at such intervals
10 and times as directed by [AGENCY], latitude and longitude data
11 gathered for the Subject Telephone[s], including Global
12 Positioning Satellite ("GPS") and/or network timing information,
13 and including information from such programs as Nextel Mobile
14 Locator, Boost Mobile Loopt, Sprint/Nextel Findum Wireless, or a
15 similar program, which will establish the approximate location of
16 the Subject Telephone[s] (referred to herein as "GPS
17 information"), and shall furnish all information, facilities, and
18 technical assistance necessary to accomplish said disclosure
19 unobtrusively.

20 3. As part of the receipt of the requested GPS
21 information, the [AGENCY] is prohibited from seizing any tangible
22 property pursuant to this warrant, or any other prohibited wire
23 or electronic information as stated in 18 U.S.C. § 3103a(b)(2).
24 The [AGENCY] is not prohibited from doing so in relation to any
25 other investigation authorized by law.

26 4. The [AGENCY] is permitted to delay service of this
27 warrant for GPS information to the subscriber[s] of the Subject
28

1 Telephone[s] [for a period of 30 days from the date that the
2 disclosure ends] [until DATE] [USE LATTER ONLY IF YOU HAVE
3 JUSTIFIED AS DISCUSSED ABOVE]]. Any requests for a continuance
4 of this delay should be filed with this Court, unless directed to
5 the duty United States Magistrate Judge by this Court.

6 5. The [AGENCY] shall make a return of this warrant for
7 GPS information to this Court (unless directed to the duty United
8 States Magistrate Judge by this Court) within 10 calendar days
9 after the disclosure of information ceases. The return shall
10 state the date and time the telephone company began providing
11 information pursuant to this warrant, and the period during which
12 information was provided, including pursuant to any orders
13 permitting continued disclosure.

14 6. The disclosure of the requested information by the
15 cellular telephone service provider[s] shall begin during the
16 daytime on the earlier of the day on which law enforcement
17 officers first begin to receive information pursuant to this
18 warrant or ten days after the date of this warrant, and continue
19 for up to 45 [IF REQUESTING ONLY CELL SITE, MAY REQUEST 60 DAYS]
20 days thereafter unless additional orders are made continuing the
21 period of the disclosure.

22 ~~7. The disclosure of the requested information shall occur~~
23 whether the Subject Telephone[s] [is/are] located within this
24 District, outside of the District, or both.

25 8. [b7E
26 [b7E
27 [b7E ranged telephone number(s) assigned to an]
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9. [TELEPHONE COMPANY] shall execute the Court's warrant as soon as practicable after it is signed. If a copy of the warrant is given to any cellular telephone service provider, the copy may be redacted by law enforcement to exclude the Target Subjects and any description of the offenses under investigation.

10. The [AGENCY] shall reimburse the applicable cellular telephone service provider for their reasonable expenses directly incurred by the cellular telephone service provider in providing the requested information and any related technical assistance.

11. To avoid prejudice to this criminal investigation, the applicable cellular telephone service providers and their agents and employees shall not disclose to or cause a disclosure of this Court's warrant and orders, or the request for information by the [AGENCY] or other law enforcement agencies involved in the investigation, or the existence of this investigation, except as necessary to accomplish the assistance hereby ordered. In particular, the cellular telephone service providers and their

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1 agents and employees are ordered not to make any disclosure to
2 the lessees of the telephone or telephone subscribers.
3

4 _____
5 HONORABLE [judge]
6 UNITED STATES MAGISTRATE JUDGE

7 DATE/ TIME OF ISSUE: _____

8 AFFIANT NAME/ AGENCY: _____
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Prospective Cell site [and GPS]/ investigation / July 28, 2008

RETURN FOR GPS / CELL SITE WARRANT

This return is being submitted pursuant to Federal Rule of Criminal Procedure 41(f)(2) in relation to the court Warrant in case [INSERT CASE NUMBER OF ORIGINAL WARRANT, e.g., "08-0441(A)M"] (the "Warrant"). The Warrant was signed on [DATE] by the Hon. [INSERT MAG. JUDGE WHO SIGNED Warrant], United States Magistrate Judge.

The Warrant authorized the disclosure of GPS and /or cell site information relating to the following Telephone(s) (the "Target Telephone(s)"): [IF PHONES DEFINED WITH SHORT NAMES IN ORIGINAL WARRANT, insert the following: Target Telephone [# X] [and Target Telephone # Y], as described in the Warrant.]

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24 [FOR BOTH OPTIONS NO.1 AND NO. 2 - IF NO INFORMATION
25 RECEIVED ON ONE OR MORE PHONES ADD: No information was obtained
26 for [NAME OF PHONE. e.g, "Target Telephone 8"].

27 [IF ORIGINAL APP. AND Warrant FILED UNDER SEAL ADD: The
28 Warrant was filed under seal. Therefore, I request that this

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1 return be filed under seal as well, for the reasons set forth in
2 the Warrant, and to protect the integrity of the ongoing criminal
3 investigation.]

4
5 I swear that this is a true notation of the date and time of
6 installation and the period of use for the Target Telephone(s)
7 pursuant to the Warrant.

8
9 _____
10 [Agency] [Special Agent] [Agent Name] Date

11 [IF UNDER SEAL REQUESTED ADD: This return is received and shall
12 be sealed for the same reasons set forth in the original
13 Warrant.]

14 Subscribed, sworn to, and returned to me on this date.

15 _____
16 United States Magistrate Judge Date

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1 ***Note: if you want EITHER GPS data, or cell site info for
2 whenever the phone is turned on, you must include the procedures
3 under Rule 41 and CALL THE ORDER A WARRANT. If you only want cell
site info during the progress of a call, you need not follow
those procedures.***

4 ***Note: if you are requesting only cell site data, use this
5 form, the Hodor declaration, and your agent's declaration. If
6 you are requesting only GPS info, use this form, the Kischer
declaration, and your agent's declaration. If you are requesting
both, use all of the declarations.***

7 ***Note: if you are requesting continued information, state that
8 throughout, and insert into the app. that a previous Warrant was
warrant/order***

9 THOMAS P. O'BRIEN
10 United States Attorney
CHRISTINE C. EWELL
11 Assistant United States Attorney
Chief, Criminal Division
12 [YOU] (CA Bar No. _____)
Assistant United States Attorney
13 XX00 United States Courthouse
312 North Spring Street
14 Los Angeles, California 90012
Telephone: (213) 894-XXXX
15 Facsimile: (213) 894-XXXX
Email: XXXX@usdoj.gov

16 Attorneys for Applicant
17 United States of America

18 UNITED STATES DISTRICT COURT
19 FOR THE CENTRAL DISTRICT OF CALIFORNIA
20

21	) No.
22	IN RE CELLULAR)
TELEPHONE[S])
23	) <u>GOVERNMENT'S EX PARTE APPLICATION</u>
24	) <u>FOR [A WARRANT] [AN ORDER]</u>
25	) <u>AUTHORIZING THE DISCLOSURE OF</u>
26	) <u>CELL SITE INFORMATION [AND GPS</u>
27	) <u>INFORMATION]; DECLARATIONS OF</u>
28	) <u>HENRY HODOR, ERIC A. KISCHER AND</u>
	) <u>[AGENT]</u>
)
	) (UNDER SEAL)

1 The United States of America, by and through its counsel of
2 record, the United States Attorney for the Central District of
3 California, hereby applies for [a warrant] [an order] authorizing
4 the disclosure of cell site information, [IF WANT GPS INFO: as
5 well as "GPS information"] at such intervals and times as the
6 government may request, and the furnishing of all information,
7 facilities, and technical assistance necessary to accomplish said
8 disclosure unobtrusively, which disclosure will establish the
9 approximate location of the following cellular telephone[s] for a
10 period of 45 [IF REQUESTING ONLY CELL SITE, MAY REQUEST 60 DAYS]
11 days [IF MORE THAN ONE, USE SUBPARAGRAPH STRUCTURE BELOW]:

12 (a) [TARGET NUMBER], a cellular telephone issued by
13 [TELEPHONE COMPANY], subscribed to [SUBSCRIBER INFORMATION] and
14 believed to be used by [USER] ("Subject Telephone #1");

15 (b) [REPEAT FOR 2ND/SUBSEQUENT PHONE] ("Subject
16 Telephone #2, and concurrently with Subject Telephone #1 referred
17 to as "the Subject Telephones").

18 [IF REQUESTING GPS INFO: This application also seeks
19 authorization under 18 U.S.C. § 3103a(b), for reasonable cause
20 shown, to delay notification of the above Warrant to the
21 subscriber and users of the Subject Telephone for a period of 30

22 days from the date that the disclosure ends. [YOU MAY ASK FOR A
23 LONGER PERIOD OF DELAY NOW TO A DATE CERTAIN IF YOU CAN STATE WHY
24 THE FACTS OF THIS CASE JUSTIFY SUCH AN ORDER, OR YOU MAY ASK FOR
25 CONTINUANCES OF THE DELAY AS NEEDED. IF YOU SEEK A CONTINUANCE,
26 GO FIRST TO THE JUDGE WHO SIGNED THIS ORDER/ WARRANT]

1 This application is based on the attached memorandum of
2 points and authorities, including the certification by the
3 attorney for the government, and declarations of the following
4 individuals: (1) Henry Hodor (a declaration previously prepared
5 outside of this district); (2) [IF REQUESTING GPS INFO: Eric A.
6 Kischer (a declaration previously prepared within this
7 district)]; and (3) [AGENT].

8 DATED: _____

Respectfully submitted,

9 THOMAS P. O'BRIEN
United States Attorney

10 CHRISTINE C. EWELL
11 Assistant United States Attorney
12 Chief, Criminal Division

13 _____
14 [YOU]
Assistant United States Attorney

15 Attorneys for Applicant
16 United States of America
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 INTRODUCTION

4 By this application, the government seeks [a warrant] [an
5 order] that cellular telephone service provider[s] furnish the
6 [AGENCY ("INITIALS")] with cell site [and "GPS"] information for
7 a cellular telephone being used by the subject of a federal
8 investigation, under circumstances where there is probable cause
9 to believe that [a federal crime is / federal crimes are] being
10 committed and that the information likely to be received
11 concerning the approximate location of the following Subject
12 Telephone[s], currently within the Central District of
13 California, will constitute or yield evidence of [that crime /
14 those crimes] [IF MORE THAN ONE, USE SUBPARAGRAPH STRUCTURE
15 BELOW]:

16 (a) [TARGET NUMBER], a cellular telephone issued by
17 [TELEPHONE COMPANY], subscribed to [SUBSCRIBER INFORMATION] and
18 believed to be used by [USER] ("Subject Telephone #1");

19 (b) [REPEAT FOR 2ND/SUBSEQUENT PHONE] ("Subject
20 Telephone #2, and concurrently with Subject Telephone #1 referred
21 to as "the Subject Telephones").

22 The information sought by this application includes
23 information about the location (physical address) of the "cell
24 sites"¹ linked to the Subject Telephone[s] at call origination

25 _____
26 ¹ In order for a cellular telephone to make or receive a
27 call, it must be within radio range of a "cell site," or cell
tower, which connects it to a carrier's wireless network. Each
tower transmits and receives radio signals across 360 degrees;

1 (for outbound calling), call termination (for incoming calls),²
2 and, if reasonably available, during the progress of a call.
3 This information, which is acquired in the first instance by the
4 cellular telephone service provider, includes any information,
5 apart from the content of any communication, that is reasonably
6 available to the service provider and that is requested by the
7 [AGENCY], concerning the cell sites/sectors receiving and
8 transmitting signals to and from the Subject Telephone[s] [b7E.]

9 [b7E]

10 [b7E]

11 [b7E]. This information is sought based on the combined
12 authority of 18 U.S.C. § 3121 et seq. (the "Pen Register
13 Statute") and 18 U.S.C. §§ 2701-11 (the "Stored Communications
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22 wireless carriers typically divide that 360 degree circle into
23 three equal slices of 120 degrees, each of which is called a
24 "sector." Carriers control multiple towers through the use of a
25 "base station." Sensors within the base station detect which
26 tower and sector makes radio contact with a cellular telephone.
(Hodor Decl. ¶¶ 9-11, at 6-7).

27 ² The telephone at "call origination" is the cellular
28 telephone that is calling another telephone. The telephone at
"call termination" is the cellular telephone that is receiving
the call. (Hodor Decl. ¶ 21, at 15-16).

Prospective Cell site (and GPS)/ investigation / August 27, 2008

1 Act").³ The attorney for the government has made the required
2 certification at the end of this application.

3 [IF SEEKING GPS INFO, USE THE FOLLOWING TWO PARAGRAPHS: This
4 application further seeks latitude and longitude data gathered
5 for the Subject Telephone[s], including Global Positioning
6 Satellite ("GPS") and/or network timing information, and
7 including information from such programs as Nextel Mobile
8 Locator, Boost Mobile Loopt, Sprint/Nextel Findum Wireless, or a
9 similar program, which will establish the approximate location of
10 the Subject Telephone[s], and which information is acquired in
11 the first instance by the cellular telephone service provider
12 (referred to herein as "GPS information"). This information is
13 sought based on the authority in Federal Rule of Criminal
14 Procedure 41(b)(1) and (2) and 28 U.S.C. § 1651 (the All Writs
15 Act), and will be obtained in conformity with the procedures of
16 Federal Rule of Criminal Procedure 41.

17 Also, this application seeks authorization under 18 U.S.C.
18 § 3103a(b), for reasonable cause shown, to delay notification of
19 the above Warrant to the subscriber and users of the Subject
20 Telephone for a period of 30 days from the date that the
21 _____

22 ³ In light of the government's showing of probable cause
23 herein, this application does not rely on, and this Court need
24 not consider the validity of, the government's continuing
25 position that courts may issue orders authorizing the government
26 to obtain cell site and GPS information based on the combined
27 effect of the Pen Register Statute and the Stored Communications
28 Act even where the government does not show probable cause.
(That theory has been advanced in support of applications for
cell site information in various districts and is discussed in a
number of court opinions). The government continues to maintain
that probable cause is not required to properly request and
obtain the information it seeks herein.

1 disclosure ends. [YOU MAY ASK FOR A LONGER PERIOD OF DELAY NOW
2 TO A DATE CERTAIN IF YOU CAN STATE WHY THE FACTS OF THIS CASE
3 JUSTIFY SUCH AN ORDER, OR YOU MAY ASK FOR CONTINUANCES OF THE
4 DELAY AS NEEDED. AGAIN, CONTINUANCES SHOULD GO TO THE SAME
5 JUDGE]. As discussed in the attached declaration of [AGENT],
6 immediate notification of this order to the user of the Subject
7 Telephone[s] may have an adverse result.]

8 This application further seeks an order that: (1) authorizes
9 the disclosure of the requested information whether the Subject
10 Telephone[s] [is/are] located within this District, outside of
11 the District, or both; (2) [b7E]

12 [b7E]
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20 [b7E]
21 [b7E] and (3) orders the

22 [AGENCY] to reimburse the applicable cellular telephone service
23 provider for its reasonable expenses directly incurred in
24 providing the requested information and any related technical
25 assistance.

26 The application is made in connection with an investigation
27 of offenses committed by [TARGET], specifically violations of

28 Prospective Cell site [and GPS]/ investigation / August 27, 2008

1 [STATUTES AND DESCRIPTIONS], and is based upon the certification
2 by the attorney for the government as well as declarations from
3 the following individuals: (1) Henry Hodor (a declaration
4 previously prepared outside of this district); (2) [IF REQUESTING
5 GPS INFO: Eric A. Kischer (a declaration previously prepared
6 within this district)]; and (3) [AGENT].

7 II

8 DISCUSSION

9 A. The Pen Register Statute and the Stored Communications Act

10 The Pen Register Statute and the Stored Communications Act,
11 in combination, authorize the disclosure of cell site
12 information.

13 1. 18 U.S.C. § 3127: The Pen Register Statute

14 The Pen Register Statute, as amended by the USA PATRIOT Act,
15 permits courts to issue ex parte orders permitting telephone
16 service providers or law enforcement officials to install and use
17 pen registers and trap and trace devices. The statute defines a
18 "pen register" as "a device or process which records or decodes
19 dialing, routing, addressing, or signaling information
20 transmitted by an instrument or facility from which a wire or
21 electronic communication is transmitted, provided, however, that

22 such information shall not include the contents of any
23 communication." 18 U.S.C. § 3127(3) (emphasis added). The
24 statute defines a "trap and trace device" as "a device or process
25 which captures the incoming electronic or other impulses which
26 identify the originating number or other dialing, routing,
27 addressing, or signaling information reasonably likely to

1 identify the source of a wire or electronic communication,
2 provided, however, that such information shall not include the
3 contents of any communication." 18 U.S.C. § 3127(4) (emphasis
4 added).

5 The definitions of a "pen register" and a "trap and trace
6 device" in the Pen Register Statute include the cell site
7 information the government seeks here. As explained in the Hodor
8 declaration, a cellular telephone transmits signals to the
9 nearest cell tower or towers when the user makes a call and also
10 transmits information to such towers when the cell phone is on,
11 even if a call is not in progress, in order for the cellular
12 telephone to register its presence in the network. (Hodor Decl.
13 ¶¶ 9-11). These transmissions constitute "signaling information"
14 under the definitions in the Pen Register Statute, which are set
15 forth above, and thus the statute permits an order for cell site
16 information upon an appropriate application by the government.
17 See In Re: Application of the United States for an Order for
18 Prospective Cell Site Location Information on a Certain Cellular
19 Telephone, 460 F. Supp. 2d 448, 455 (S.D.N.Y. 2006).

20 2. 18 U.S.C. § 2703: The Stored Communication Act

21 The Pen Register Statute would be enough to authorize the
22 government's acquisition of cell site information were it not for
23 a statute known as the Communications Assistance for Law
24 Enforcement Act of 1994 ("CALEA"), codified at 47 U.S.C. §§ 1001-
25 1021. CALEA creates a statutory impediment to law enforcement
26 obtaining cell site information based on the Pen Register Statute
27 alone. However, that impediment is itself overcome by the

1 provisions of the Stored Communication Act, which also governs
2 cell site information.

3 Section 1002(a)(2) of CALEA requires telecommunications
4 carriers to ensure that their equipment is, among other things,
5 capable of the following:

6 expeditiously isolating and enabling the government,
7 pursuant to a court order or other lawful

8 authorization, to access call-identifying information
9 that is reasonably available to the carrier . . .

10 except that, with regard to information acquired solely
11 pursuant the authority for pen registers and trap and
12 trace devices (as defined in section 3127 of Title 18),
13 such call-identifying information shall not include any
14 information that may disclose the physical location of
15 subscriber (except to the extent that the location may
16 be determined from the telephone number).

17 47 U.S.C. § 1002(a)(2) (emphasis added). The government
18 recognizes that cell site information "may disclose the physical
19 location of the subscriber" and that the "solely pursuant" clause
20 of CALEA set forth above prevents the government from obtaining
21 such cell site information pursuant to the Pen Register Statute

22 alone. Section 1002 does not, however, preclude entirely the
23 disclosure of cell site information under the Pen Register
24 Statute, but, rather, permits such disclosure pursuant to a
25 combination of the Pen Register Statute and some additional
26 authority. That additional authority is the Stored
27 Communications Act.

1 Section 2703(c)(1)(B) of the Stored Communications Act
2 provides that "[a] government entity may require a provider of
3 electronic communication service to disclose a record or other
4 information pertaining to a subscriber to or customer of such
5 service (not including the contents of communications). . . when
6 the governmental entity" obtains a court order for such
7 disclosure pursuant to Section 2703(d). 18 U.S.C.
8 § 2703(c)(1)(B).

9 The definition of terms in the Stored Communications Act
10 makes clear that the "record or other information" that a court
11 may order a provider to disclose to the government under Section
12 2703(d) includes cell site information. First, the Stored
13 Communications Act expressly adopts the definition of statutory
14 terms set forth in 18 U.S.C. § 2510. See 18 U.S.C. § 2711 ("As
15 used in this chapter . . . (1) the terms defined in section 2510
16 of this title have, respectively, the definitions given such
17 terms in that section"). Thus, the term "provider of electronic
18 communication service" used in Section 2703(c) covers cellular
19 telephone service providers, because 18 U.S.C. § 2510(15) defines
20 "electronic communications service" as "any service which
21 provides to users thereof the ability to send or receive wire or
22 electronic communications." 18 U.S.C. § 2510(15). Further,
23 cell site information is "a record or other information
24 pertaining to a subscriber to or customer of" an electronic
25 communications service -- another term used in Section 2703(c) --
26 because, as indicated by the Hodor declaration, cellular
27 telephone service providers receive and store the information, if

1 sometimes only momentarily, before forwarding it to law
2 enforcement officials. (Hodor Decl. ¶¶ 14, 17-25).. See In Re:
3 Application of the United States for an Order for Prospective
4 Cell Site Location Information on a Certain Cellular Telephone,
5 460 F. Supp. 2d 448, 457-60 (S.D.N.Y. 2006).

6 [INCLUDE THIS FOOTNOTE ONLY IF YOU ARE NOT GETTING GPS⁴]
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25 ⁴ As discussed in the attached declaration of Mr. Hodor,
26 this application does not seek latitude and longitude data (often
27 colloquially referred to as "GPS information") either via the
28 "handset based" or "network based" systems. (Hodor Decl. ¶¶ 30-
37). Accordingly, this application is not made pursuant to
Federal Rule of Criminal Procedure 41.

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1 [IF SEEKING GPS INFO, USE SECTIONS B AND C:

2 B. Federal Rule of Criminal Procedure Rule 41 and the All Writs
3 Act

4 Federal Rules of Criminal Procedure 41(b)(1) and (2), and
5 (c), as well as the above discussed sections and 18 U.S.C.
6 § 2703(c)(1)(A), authorize the court to order the provision of
7 GPS information upon a showing of probable cause to believe that
8 the monitoring sought will lead to the discovery of evidence of
9 identified criminal activity.⁵ Because the GPS information is
10 being sought under this authority, and because as discussed below
11 the procedures of Rule 41(e)(2)(B) and (f)(2) are being followed,
12 the GPS information may be provided regardless of whether a call
13 is in progress.

14 As detailed in the declaration of Drug Enforcement
15 Administration Special Agent Eric A. Kischer, some, but not all,
16 cellular telephone service providers have the technical means to
17 obtain GPS information. GPS information is not generated
18 specifically for law enforcement, but is the product of a federal
19 law that requires cellular telephone service providers to
20 maintain and access location information for emergency
21 responders. Kischer Dec., ¶ 5. [b7E]

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26 ⁵ Again, the government does not concede that probable cause
27 must be shown to obtain the GPS information sought, but
28 nonetheless provides probable cause in this case. See fn. 3,
supra.

Prospective Cell site (and GPS) / investigation / August 27, 2008

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In addition, the All Writs Acts permits courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a); see also Adams v. United States ex rel. McCann, 317 U.S. 269, 273 (1942) ("unless appropriately confined by Congress, a federal court may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it.").

The proposed warrant establishes a procedure that is in conformity with Rule 41(e)(2)(B) and (f)(2). These procedures include obtaining a court warrant for the information that states

1 (1) the property to be tracked; (2) that the device may be used
2 for no longer than 45 days, unless extensions are obtained; (3)
3 that the device must be installed within 10 days; (4) that a
4 return will be provided to the court; and (5) that notice will be
5 provided after the use has ended, unless an order allowing
6 delayed notice is obtained.

7 C. Delayed Notice

8 18 U.S.C. § 3103a(b) states that any notice required
9 following the issuance of a warrant may be delayed if, *inter*
10 *alia*, the court finds reasonable cause to believe that providing
11 immediate notification of the execution of the warrant may have
12 an adverse result. An adverse result is defined in 18 U.S.C. §
13 2705(a)(2) as including endangering the life or physical safety
14 of a person, flight from prosecution, destruction of or tampering
15 with evidence, intimidation of potential witnesses, and serious
16 jeopardy of an investigation. Moreover, the Advisory Committee
17 Notes for Fed. R. Crim. P. 41(f)(3) (2006 Amendments) state that
18 delay of notice may be appropriate where "the officer establishes
19 that the investigation is ongoing and that disclosure of the
20 warrant will compromise that investigation." The attached
21 declaration of [AGENT] provides reasonable cause to believe that

22 immediate notification of the execution of the warrant may have
23 an adverse result, and the proposed warrant both provides for the
24 giving of such notice within 30 days after the date that the
25 disclosure ends and prohibits, as part of the receipt of the
26 requested information, the seizure of any tangible property or
27

1 any other prohibited wire or electronic information as stated in
2 18 U.S.C. § 3103a(b)(2).]

3 III

4 CONCLUSION

5 Applicant respectfully requests that the Court issue the
6 warrant in the form presented herewith.

7 IV

8 CERTIFICATION

9 In support of this application, and pursuant to 18 U.S.C.
10 § 3122, I state that I, [YOUR NAME], am an "attorney for the
11 Government" as defined in Rule 1(b)(1) of the Federal Rules of
12 Criminal Procedure. I certify that the information likely to be
13 obtained from the requested order/ warrant is relevant to an
14 ongoing criminal investigation being conducted by the
15 [AGENCY/IES] of [LIST MAIN TARGET(S)] for violations of [LIST
16 STATUTES].

17 I declare under penalty of perjury under the laws of the
18 United States of America that the foregoing paragraph is true and
19 correct.

20 _____
21 DATE

[YOU]
Assistant United States Attorney
[INSERT SECTION] Section

1 ***Note: this declaration goby is designed to ensure that the
2 same language that is in the application makes it into the
3 declaration - it is not a strict structural requirement, nor are
4 the headings required****

5 ***Note Also: IF YOU ARE SEEKING GPS INFO, we are following the
6 procedures of Rule 41 - which means that the agent should be
7 available so that the judge can make inquiries of him/her if the
8 judge wants per Rule 41(d) (2)****

9
10 DECLARATION OF [AGENT]

11 I, [AGENT], do hereby declare and affirm:

12 1. [STATEMENT OF BACKGROUND/TRAINING/EXPERIENCE, ETC.].

13 PURPOSE OF DECLARATION

14 2. This declaration is made in support of an application
15 for [a warrant] [an order] authorizing the disclosure of "cell
16 site" information, [as well as "GPS" information,] as defined
17 within the application, at such intervals and times as the
18 government may request, and the furnishing of all information,
19 facilities, and technical assistance necessary to accomplish said
20 disclosure unobtrusively, which disclosure will establish the
21 approximate location of the following cellular telephone[s] for a
22 period of 45 [IF REQUESTING ONLY CELL SITE, MAY REQUEST 60 DAYS]
23 days [IF MORE THAN ONE, USE SUBPARAGRAPH STRUCTURE BELOW]:

24 (a) [TARGET NUMBER], a cellular telephone issued by
25 [TELEPHONE COMPANY], subscribed to [SUBSCRIBER INFORMATION] and
26 believed to be used by [USER] ("Subject Telephone #1");
27
28

1 (b) [REPEAT FOR 2ND/SUBSEQUENT PHONE] ("Subject
2 Telephone #2, and concurrently with Subject Telephone #1 referred
3 to as "the Subject Telephones").

4 [IF REQUESTING GPS INFO: 3. I also seek authorization under
5 18 U.S.C. § 3103a(b), for reasonable cause shown below, to delay
6 notification of the proposed warrant for a period of 30 days from
7 the date that the disclosure ends. [YOU MAY ASK FOR A LONGER
8 PERIOD OF DELAY NOW TO A DATE CERTAIN IF YOU CAN STATE WHY THE
9 FACTS OF THIS CASE JUSTIFY SUCH AN ORDER, OR YOU MAY ASK FOR
10 CONTINUANCES OF THE DELAY AS NEEDED]]

11 4. The facts set forth in this declaration are based upon
12 my own personal observations, my training and experience, and
13 information obtained during this investigation from other
14 sources. This declaration is intended to show that there is
15 cause to obtain the information herein sought, and does not
16 purport to set forth all my knowledge of, or investigation into,
17 this matter.

18 PROBABLE CAUSE

19 5. [INSERT PARAGRAPHS DISCUSSING WHY THERE IS PROBABLE
20 CAUSE TO BELIEVE THAT FEDERAL CRIMES ARE BEING COMMITTED AND THAT
21 THE INFORMATION SOUGHT WILL PROVIDE EVIDENCE OF THE VIOLATIONS.]

22
23 [IF SEEKING GPS INFO:

24 GROUND FOR DELAYING NOTICE

25 6. Based on my training and experience and my
26 investigation of this matter, I believe that reasonable cause
27 exists to delay the service of the warrant as normally required

28 Prospective Cell site [and GPS]/ investigation / August 27, 2008

1 for a period of 30 days beyond the end of the disclosure period
2 because [INSERT FACTS RELATING TO WHY GOOD CAUSE EXISTS; INCLUDE
3 REFERENCE TO A PARTICULAR ADVERSE RESULT. FOR EXAMPLE: (b7E

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5 b7E

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7 b7E

8 b7E

9 b7E

10 b7E

11 b7E

12 [b7E] Note that for each extension of the
13 delay, you must make an updated showing of the need for further
14 delay.]]

15
16 I declare and affirm under penalty of perjury that the
17 foregoing is true and correct to the best of my knowledge.

18 Executed on [DATE], at [LOCATION], California.

19
20 [AGENT]
21 [AGENCY]

1 THOMAS P. O'BRIEN
United States Attorney
2 CHRISTINE C. EWELL
Assistant United States Attorney
3 Chief, Criminal Division
[YOU] (CA Bar No. _____)
4 Assistant United States Attorney
XX00 United States Courthouse
5 312 North Spring Street
Los Angeles, California 90012
6 Telephone: (213) 894-XXXX
Facsimile: (213) 894-XXXX
7 Email: XXXX@usdoj.gov

8 Attorneys for Applicant
United States of America
9

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 IN RE CELLULAR) No. _____
14 TELEPHONE[S]) [proposed] [WARRANT] [ORDER]
15)
16) (UNDER SEAL)
17)

18 Upon application by the United States of America, supported
19 by the declarations of Henry Hodor, [IF REQUESTING GPS INFO: Eric
20 A. Kischer], and [AGENT], for [a warrant and] orders relating to
21 the following cellular telephone[s] [IF MORE THAN ONE, USE

22 SUBPARAGRAPH STRUCTURE BELOW]:

23 (a) [TARGET NUMBER], a cellular telephone issued by
24 [TELEPHONE COMPANY], subscribed to [SUBSCRIBER INFORMATION] and
25 believed to be used by [USER] ("Subject Telephone #1"); and
26
27
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1 (b) [REPEAT FOR 2ND/SUBSEQUENT PHONE] ("Subject
2 Telephone #2, and concurrently with Subject Telephone #1 referred
3 to as "the Subject Telephones");

4 THIS COURT FINDS THAT there is probable cause to believe
5 that cell site information, [as well as GPS information,] likely
6 to be received concerning the approximate location of the Subject
7 Telephone[s], currently within the Central District of
8 California, will constitute or yield evidence of violations of
9 [STATUTES AND DESCRIPTIONS], being committed by [TARGET] [and
10 others [known and] unknown].

11 THIS COURT FURTHER FINDS THAT, pursuant to 18 U.S.C. § 3123,
12 the attorney for the government has certified that the
13 information likely to be obtained is relevant to an ongoing
14 criminal investigation of [LIST MAIN TARGET(S)] being conducted
15 by the [AGENCY/IES] for violations of [LIST STATUTES].

16 [IF SEEKING GPS INFO: THIS COURT FURTHER FINDS reasonable
17 cause exists to believe that providing immediate notification of
18 this warrant to the user of the Subject Telephone[s] may have an
19 adverse result.]

20 GOOD CAUSE HAVING BEEN SHOWN, THIS COURT HEREBY ISSUES THIS
21 WARRANT AND FURTHER ORDERS THAT:

22 1. [TELEPHONE COMPANY] shall disclose, at such intervals
23 and times as directed by [AGENCY], information concerning the
24 location (physical address) of the cell site at call origination
25 (for outbound calling), call termination (for incoming calls),
26 and, if reasonably available, during the progress of a call, for
27 the Subject Telephone[s], as well as such other information,

1 apart from the content of any communication, that is reasonably
2 available to the cellular telephone service provider and that is
3 requested by the [AGENCY] or any law enforcement agency working
4 with the [AGENCY], concerning the cell sites/sectors receiving
5 and transmitting signals to and from the Subject Telephone[s]

6 [- - b7E]
7 [b7E]
8 [b7E]

9 [IF REQUESTING GPS INFO, ADD PARAGRAPHS 2 THROUGH 5:

10 2. [TELEPHONE COMPANY] shall disclose at such intervals
11 and times as directed by [AGENCY], latitude and longitude data
12 gathered for the Subject Telephone[s], including Global
13 Positioning Satellite ("GPS") and/or network timing information,
14 and including information from such programs as Nextel Mobile
15 Locator, Boost Mobile Loopt, Sprint/Nextel Findum Wireless, or a
16 similar program, which will establish the approximate location of
17 the Subject Telephone[s] (referred to herein as "GPS
18 information"), and shall furnish all information, facilities, and
19 technical assistance necessary to accomplish said disclosure
20 unobtrusively.

21 3. As part of the receipt of the requested GPS

22 information, the [AGENCY] is prohibited from seizing any tangible
23 property pursuant to this warrant, or any other prohibited wire
24 or electronic information as stated in 18 U.S.C. § 3103a(b)(2).
25 The [AGENCY] is not prohibited from doing so in relation to any
26 other investigation authorized by law.

27

28

1 4. The [AGENCY] is permitted to delay service of this
2 warrant for GPS information to the subscriber[s] of the Subject
3 Telephone[s] [for a period of 30 days from the date that the
4 disclosure ends] [until DATE] [USE LATTER ONLY IF YOU HAVE
5 JUSTIFIED AS DISCUSSED ABOVE]]. Any requests for a continuance
6 of this delay should be filed with this Court, unless directed to
7 the duty United States Magistrate Judge by this Court.

8 5. The [AGENCY] shall make a return of this warrant for
9 GPS information to this Court (unless directed to the duty United
10 States Magistrate Judge by this Court) within 10 calendar days
11 after the disclosure of information ceases. The return shall
12 state the date and time the telephone company began providing
13 information pursuant to this warrant, and the period during which
14 information was provided, including pursuant to any orders
15 permitting continued disclosure.

16 6. The disclosure of the requested information by the
17 cellular telephone service provider[s] shall begin during the
18 daytime on the earlier of the day on which law enforcement
19 officers first begin to receive information pursuant to this
20 warrant or ten days after the date of this warrant, and continue
21 for up to 45 [IF REQUESTING ONLY CELL SITE, MAY REQUEST 60 DAYS]
22 days thereafter unless additional orders are made continuing the
23 period of the disclosure.

24 7. The disclosure of the requested information shall occur
25 whether the Subject Telephone[s] [is/are] located within this
26 District, outside of the District, or both.

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12 9. [TELEPHONE COMPANY] shall execute the Court's warrant as
13 soon as practicable after it is signed. If a copy of the warrant
14 is given to any cellular telephone service provider, the copy may
15 be redacted by law enforcement to exclude the Target Subjects and
16 any description of the offenses under investigation.

17 10. The [AGENCY] shall reimburse the applicable cellular
18 telephone service provider for their reasonable expenses directly
19 incurred by the cellular telephone service provider in providing
20 the requested information and any related technical assistance.

21 11. To avoid prejudice to this criminal investigation, the
22 applicable cellular telephone service providers and their agents
23 and employees shall not disclose to or cause a disclosure of this
24 Court's warrant and orders, or the request for information by the
25 [AGENCY] or other law enforcement agencies involved in the
26 investigation, or the existence of this investigation, except as
27 necessary to accomplish the assistance hereby ordered. In

1 particular, the cellular telephone service providers and their
2 agents and employees are ordered not to make any disclosure to
3 the lessees of the telephone or telephone subscribers.
4

5
6 HONORABLE [judge]
7 UNITED STATES MAGISTRATE JUDGE

8 DATE/ TIME OF ISSUE: _____

9 AFFIANT NAME/ AGENCY: _____
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28 Prospective Cell site (and GPS)/ investigation / August 27, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF THE APPLI- :
CATION OF THE UNITED STATES :
OF AMERICA FOR AN ORDER :
FOR CELLULAR SITE INFORMATION :
FOR TELEPHONE (XXX) XXX-XXXX :

CRIMINAL
NO.: E hnc]
(UNDER SEAL)

**APPLICATION FOR ORDER REQUIRING
DISCLOSURE OF CELLULAR SITE INFORMATION**

COMES NOW the United States, by and through counsel, XXXXXXXXXXXXX, United States Attorney for the Northern District of Georgia, and XXXXXXXXXXXXX, Assistant United States Attorney, an attorney of the United States Department of Justice, and hereby applies to the Court, pursuant to 18 U.S.C. § 2703(d), for disclosure of cellular site information based on contemporaneous billing records, and in support of this application respectfully shows as follows:

1. Applicant is an "attorney for the Government" as defined in Rule 54(c) of the Federal Rules of Criminal Procedure.

2. Applicant certifies that the Drug Enforcement Administration is conducting a criminal investigation involving the distribution of controlled substances, in violation of federal laws, including, but not limited to, Title 21, United States Code, Sections 841, 843 and 846, and that the unidentified user(s) of the cellular telephone identified below is/are the subjects of the investigation.

The investigation to date has revealed that the user(s) of the cellular telephone is/are associated with an organization believed to be distributing large quantities of cocaine throughout the United States,

RIP

including Atlanta, Georgia. Since [b7C], more than 1,000 kilograms of cocaine have been seized from members of this organization, including approximately [b7C]

[b7C] Moreover, [b7C]

[b7C]

[b7C]

[b7C] The cellular telephone being used by the organization is presently operating as a Sprint PCS prepaid cellular telephone bearing Electronic Serial Number (ESN) XXXXXXXXXXXX, subscribed to by XXXXXXXXXXXX XXXXXXXXXXXX, [b7C] Georgia.

3. Applicant further certifies that cellular site information is necessary to identify the cellular tower(s) in the Atlanta metropolitan area with which cellular telephone (XXX) XXX-XXXX is connecting. To date, investigating agents have been unable to fully identify the user(s) of the cellular telephone. Specific disclosure of cellular site information for the telephone, therefore, will assist the agents in tracking and locating the user(s) and, potentially, in locating stash houses or other areas used to store drugs or drug proceeds. Moreover, [b7C]

[b7C]

4. Applicant submits that there are specific and articulable facts, as set forth in paragraphs 2 and 3, above, to show that there are reasonable grounds to believe that the cellular site information sought, including cell site activations as well as the physical location and/or address of the cellular tower(s), is relevant and material to the ongoing criminal investigation of the targets named herein.

5. Applicant further certifies that the investigation currently being conducted by the Drug Enforcement Administration, Atlanta Field Division, is part of a multi-district investigation, involving investigating agencies in [b7C] In the experience of the investigating agents, members of such large-scale drug distribution organizations often discontinue use of communication devices as a result of law enforcement action. Accordingly, your applicant requests that the Court's order apply not only to telephone number (XXX) XXX-XXXX, [b7E] [b7E] [b7E] within the period of the Order.

6. Given that members of this organization are likely to change telephones and/or alter their methods of operation in response to law enforcement action, agents believe that disclosure of this request for information or of this investigation could seriously jeopardize integrity of the investigation.

7. This Court already has authorized the installation and use of a pen register and trap and trace device upon the above-referenced cellular telephone. Your applicant, thus, requests that this Court expand its order to include the cellular site information requested herein.

WHEREFORE the Government respectfully requests that, pursuant to 18 U.S.C. §§ 2703(c)(ii) and 2703(d), the court direct that Sprint Spectrum, LP ("Sprint") forthwith, and on a continuing basis, provide to the Drug Enforcement Administration all cellular site information based on contemporaneous billing records for telephone number (XXX) XXX-XXXX for a period of sixty (60) days, beginning from the date of this Order. Because the investigation discussed in this application is a multi-district drug investigation, and because disclosure of this request to the listed

subscriber and/or to the targets of the investigation may seriously jeopardize that investigation, the Government further requests that this application and order be placed under seal, and

that, pursuant to 18 U.S.C. § 2705(b), Sprint and its agents and employees, be directed not to disclose to the subscriber or any other person the existence of this application, order or the investigation.

Respectfully submitted,

XXXXXXXXXXXXX
UNITED STATES ATTORNEY

XXXXXXXXXXXXX
ASSISTANT UNITED STATES ATTORNEY
XXXXXXXXXXXXX
XXXXXXXXXXXXX
Atlanta, Georgia 30335
XXX/XXX-XXXX
Georgia Bar No. XXXXXXXXXXXXX

VERIFICATION

I, Special Agent XXXXXXXXXXXX, declare under penalty of perjury that I have read the foregoing application, and that the facts stated therein are true and correct to the best of my knowledge and belief.

S/A XXXXXXXXXXXX
Drug Enforcement Administration

EXECUTED on this 15th day of August, 2001.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF THE APPLI- :
CATION OF THE UNITED STATES : CRIMINAL
OF AMERICA FOR AN ORDER : NO. 576
FOR CELLULAR SITE INFORMATION : (UNDER SEAL)
FOR TELEPHONE (XXX) XXX-XXXX :

ORDER

This matter having come before the Court pursuant to an application under Title 18, United States Code, Sections 2703(c)(ii) and (d), by XXXXXXXXXXXXX, an attorney for the Government, which Application requests an Order under Title 18, United States Code, Section 2703(d), providing for the disclosure of cellular site information based on contemporaneous billing records, the Court finds, based on specific and articulable facts, that there are reasonable grounds to believe that the requested information is relevant and material to an ongoing criminal investigation into possible violations of federal law, including Title 21, United States Code, Sections 841, 843 and 846. The court also finds that there is reason to believe that disclosure to the subscriber or to other persons of the application, this order or the investigation could seriously jeopardize the investigation.

ACCORDINGLY, IT IS ORDERED, pursuant to Title 18, United States Code, Sections 2703(c)(ii) and 2703(d), and in addition to the installation and use of a pen register and trap and trace device as previously authorized by this Court, that Sprint Spectrum, LP ("Sprint") shall provide forthwith, and on a continuing basis, to the Drug Enforcement Administration all cellular site information based on contemporaneous billing records, to include cell site activations and the

RIP

physical location and/or address of cellular tower(s), for telephone number (XXX) XXX-XXXX, a Sprint PCS prepaid cellular telephone bearing Electronic Serial Number (ESN) XXXXXXXXXXXX, subscribed to by XXXXXXXXXXXX XXXXXXXXXXXX XXXXXX, XXXXXXXXXXXX, XXXXXXXXXXXX Georgia, XXXXXXXXXXXX, for a period of sixty (60) days from the date of this Order.

IT IS FURTHER ORDERED that this Order shall apply not only to telephone number (XXX)

XXX-XXXX, [

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] within the period of the Order.

IT IS FURTHER ORDERED that this Order and the Application be sealed until otherwise ordered by the Court, and that Sprint or its agents and employees shall not disclose the existence of the

application, this order, or the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the Court.

SO ORDERED this ____ day of August, 2001.

UNITED STATES MAGISTRATE JUDGE

Presented by:

XXXXXXXXXXXXX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE APPLICATION)
OF THE UNITED STATES OF AMERICA)
FOR AN ORDER AUTHORIZING) MISC. NO. _____
DISCLOSURE OF SUBSCRIBER AND CELL)
SITE INFORMATION ON CELLULAR) UNDER SEAL
TELEPHONE NUMBER [INSERT NUMBER])

APPLICATION FOR DISCLOSURE OF SUBSCRIBER AND CELL SITE
INFORMATION PURSUANT TO TITLE 18 U.S.C. SECTION 2703

The United States of America, by and through its counsel,
Kenneth L. Wainstein, United States Attorney for the District of
Columbia, and [INSERT NAME OF AUSA], Assistant United States
Attorney, hereby applies to the Court for an order directing
[INSERT NAME OF SERVICE PROVIDER] (hereinafter "Service
Provider"), an electronic communications service provider for the
telephone number [INSERT TELEPHONE NUMBER] (hereinafter "subject
cellular telephone number"), a cellular telephone with the [INSERT
APPROPRIATE IDENTIFICATION NUMBER, E.G. ESN, IMSI, etc.],
subscribed to by [INSERT NAME AND ADDRESS OF SUBSCRIBER], to
disclose to the [INSERT NAME OF AGENCY] (hereinafter "Agency")

subscriber information relating to telephone numbers called from
and calling to the subject cellular telephone, and cell site
information relating to the subject telephone. In support of this
application, the United States certifies the following:

1. The Applicant is an "attorney for the government" as
defined in Rule 1(b)(1) of the Federal Rules of Criminal Procedure.

RIF

2. The Applicant certifies that the Agency is conducting a criminal investigation of the user(s) of the subject cellular telephone number and others in connection with possible violations of federal laws, including [INSERT CODE CITATIONS]. Based upon reliable information, it is believed that the user(s) of subject cellular telephone number, subscribed to by [INSERT NAME AND ADDRESS OF SUBSCRIBER], utilizes the cellular telephone in violation of [INSERT CODE CITATIONS]. [INSERT A BRIEF DESCRIPTION OF CRIMINAL ACTIVITY].

3. The Applicant further certifies that there is reasonable grounds to believe that the requested subscriber and cell site information is relevant and material to the ongoing criminal investigation being conducted by the Agency. As set forth more fully below, it is believed this information will provide the agents with investigative leads and potential evidence at trial concerning contacts made by the targets in the course of their criminal activity.

SUBSCRIBER INFORMATION

4. In an accompanying Application, the Applicant has requested that the Court issue an order authorizing the use of a pen ~~register/trap and trace device to register numbers dialed to or~~ pulsed from the subject cellular telephone number.

5. In this Application, the Applicant further requests, pursuant to Title 18 U.S.C. Section 2703(c)(1)(B), the use of a caller identification device on the subject cellular telephone and that for each telephone number for which they possess such information the Service Provider, and any other provider of electronic communication service, be directed to provide to the Agency the subscriber information, including subscriber name and address, telephone location, length of service, as well as all information regarding the means and source of payment for service for all telephone numbers dialed or pulsed from the subject cellular telephone number, as indicated by the pen register, and all telephone numbers calling the subject cellular telephone number, as indicated by the trap and trace and caller identification device, whether published or non-published.¹

6. In support of its request for an order under Title 18 U.S.C. Section 2703(d), directing the disclosure of subscriber information, the Government hereby sets forth the following specific and articulable facts showing that there is reasonable grounds to believe that the requested subscriber information will be relevant

and material to an ongoing criminal investigation for the following reasons:

7. [INSERT BRIEF SPECIFIC FACTUAL STATEMENT SETTING FORTH REASONS WHY SUBSCRIBER INFORMATION IS RELEVANT AND MATERIAL TO THE INVESTIGATION].

CELL SITE INFORMATION

8. The Applicant further requests, pursuant to Title 18 U.S.C. Sections 2703(c)(1)(B) and (d), that the Service Provider listed in the accompanying proposed order, and any other person or entity providing wire or electronic communications service in the United States whose assistance may facilitate execution of the order to be issued, disclose any records showing the location of cell site/sector (physical address) at call origination (for outgoing calls), and call termination (for incoming calls) if reasonably available.

9. Cell site information will be of great assistance to the investigation to ascertain the area in which the target phone is located when calls are being made.

10. The Applicant requests further that the Court's Order direct the Service Provider, its agents, employees and affiliates not to disclose to the subscriber, or to any other person, the disclosure of information requested herein unless or until otherwise ordered by the Court.

11. It is further requested that the Court's Order apply not only to the subject cellular telephone number, but also to [

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] which are listed to the same subscriber and wireless telephone account number as the subject cellular telephone number within the 60 day period authorized by this Order.

12. It is further requested that the Court's Order apply to the Service Provider, and to any other communications service provider which contracts or otherwise agrees to provide cellular telephone service to a telephone bearing the same telephone number or [INSERT APPROPRIATE IDENTIFICATION NUMBER, E.G. ESN, IMSI, etc.] during the sixty day period authorized by this Order.

13. Because disclosure of this Application could jeopardize the investigation for which the authorization to disclose subscriber and cell site information is sought, the Applicant further requests that this Application be filed under seal. The Applicant further

requests that this Court's Order, and any subsequent orders, be sealed until otherwise ordered by the Court.

WHEREFORE, it is respectfully requested that the Court grant an Order for a period of 60 days directing the Service Provider, or any other electronic communications provider subject to the Court's Order, to disclose to the Agency subscriber and cell site information relating to the subject cellular telephone number, and sealing this Application and the Court's Order.

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on this ____ day of _____, 2005.

Respectfully submitted,

KENNETH L. WAINSTEIN
UNITED STATES ATTORNEY
DC Bar No. 451-058

[INSERT NAME OF AUSA]
ASSISTANT UNITED STATES ATTORNEY
555 4th Street, NW
Washington, DC 20001

~~DC BAR NO. [AUSA'S BAR NUMBER]~~
[INSERT AUSA'S TELEPHONE NUMBER]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE APPLICATION)
OF THE UNITED STATES OF AMERICA)
FOR AN ORDER AUTHORIZING) MISC. NO. _____
DISCLOSURE OF SUBSCRIBER AND CELL)
SITE INFORMATION ON CELLULAR) UNDER SEAL
TELEPHONE NUMBER [INSERT NUMBER])

ORDER

This matter having come before the Court pursuant to the Government's Application under Title 18 U.S.C. Section 2703, by [INSERT NAME OF AUSA], an attorney for the government, which Application requests an Order under Title 18 U.S.C. Section 2703, authorizing the installation of a caller identification device, on [INSERT TELEPHONE NUMBER] (hereinafter "subject cellular telephone number"), a cellular telephone, [INSERT APPROPRIATE IDENTIFICATION NUMBER, E.G. ESN, IMSI, etc.], subscribed to by [INSERT NAME AND ADDRESS OF SUBSCRIBER], and directing the disclosure of subscriber records and cell site information pertaining to the subscriber, the Court makes the following findings:

Findings Pursuant to Title 18 U.S.C. Section 2703(d)

1. There are reasonable grounds to believe that the contents of the requested records, subscriber information and cell site information are relevant and material to an ongoing criminal investigation described in the Application; accordingly,

ORDER

IT IS ORDERED, pursuant to Title 18 U.S.C. Section 2703, that agents of the [INSERT NAME OF AGENCY] (hereinafter "Agency") may install and use a caller identification device on the subject cellular telephone, for a period of sixty (60) days; and

IT IS FURTHER ORDERED, pursuant to Title 18 U.S.C. Sections 2703(c)(1)(B) and 2703(d), that for each telephone number for which they possess such information, [INSERT NAME OF SERVICE PROVIDER] (hereinafter "Service Provider"), and any other provider of electronic communication service, shall provide to the Agency all subscriber information, including subscriber name and address, telephone location, and length of service, as well as all information regarding the means and source of payment for service, for all telephone numbers dialed or pulsed from the subject cellular telephone number, as indicated by the pen register, and all telephone numbers calling the subject cellular telephone number, as indicated by the trap and trace and caller identification device, whether published or non-published, and

IT IS FURTHER ORDERED, pursuant to Title 18 U.S.C. Section 2703(d) that the Service Provider shall provide cell site/sector (physical address) at call origination (for outgoing calls), and ~~call termination (for incoming calls), and if reasonably available,~~ during the progress of the call, and

IT IS FURTHER ORDERED, that this Order shall apply not only to the subject cellular telephone number, but also to [REDACTED]

[REDACTED] b7E

[REDACTED] b7E

[REDACTED] b7E

[REDACTED] b7E

[REDACTED] b7E

[REDACTED] b7E

[REDACTED] b7E

[REDACTED] b7E

] which are listed to the same subscriber and wireless telephone account number as the subject cellular telephone number within the 60 day period authorized by this Order.

IT IS FURTHER ORDERED, that this Order shall apply to the Service Provider, and to any other service provider which contracts or otherwise agrees to provide cellular telephone service to a telephone bearing the same telephone number and/or [INSERT APPROPRIATE IDENTIFICATION NUMBER, E.G. ESN, IMSI, etc.] during the 60 day period contemplated by the Order in this matter.

IT IS FURTHER ORDERED, that the Service Provider, or any other service provider to whom this Order applies, shall be compensated by the Agency for reasonable expenses incurred in providing technical assistance; and

IT IS FURTHER ORDERED, that this Order and the Application shall be sealed until otherwise ordered by the Court and that the Service Provider, its agents, employees and affiliates, shall not disclose the existence of the caller identification device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the Court.

SO ORDERED this _____ day of _____, 2005.

UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE APPLICATION)
OF THE UNITED STATES OF AMERICA)
FOR AN ORDER AUTHORIZING) MISC. NO. _____
DISCLOSURE OF AND CELL SITE)
INFORMATION ON CELLULAR) UNDER SEAL
TELEPHONE NUMBER [TELEPHONE NUMBER])

APPLICATION FOR DISCLOSURE OF CELL SITE INFORMATION
PURSUANT TO TITLE 18 U.S.C. SECTION 2703

The United States of America, by and through its counsel, Kenneth L. Wainstein, United States Attorney for the District of Columbia, and [INSERT NAME OF AUSA], Assistant United States Attorney, hereby applies to the Court for an order directing [INSERT SERVICE PROVIDER] (hereinafter "Service Provider"), an electronic communications service provider for the telephone number [INSERT CELLULAR TELEPHONE NUMBER] (hereinafter "subject cellular telephone number"), a cellular telephone with the [INSERT APPROPRIATE IDENTIFICATION NUMBER, E.G. ESN, IMSI, etc.], subscribed to by [INSERT NAME AND ADDRESS OF SUBSCRIBER] to disclose to [INSERT NAME OF AGENCY] (hereinafter "Agency") cell site information relating to the subject telephone. In support of this application, the United States certifies the following:

1. The Applicant is an "attorney for the government" as defined in Rule 1(b)(1) of the Federal Rules of Criminal Procedure.

2. The Applicant certifies that the Agency is conducting a criminal investigation of the user(s) of the subject cellular

telephone number and others in connection with possible violations of federal laws, including [INSERT CODE CITATIONS]. Based upon reliable information, it is believed that the user(s) of subject cellular telephone number, subscribed to by [INSERT NAME AND ADDRESS OF SUBSCRIBER], utilizes the cellular telephone in violation of [INSERT CODE CITATION], [INSERT A BRIEF DESCRIPTION OF CRIMINAL ACTIVITY].

3. The Applicant further certifies that there is reasonable grounds to believe that the requested cell site information is relevant and material to the ongoing criminal investigation being conducted by the Agency. As set forth more fully below, it is believed this information will provide the agents with investigative leads and potential evidence at trial concerning contacts made by the targets in the course of their criminal activity.

CELL SITE INFORMATION

4. The Applicant requests, pursuant to Title 18 U.S.C. Sections 3122, 3123, and 2703(c)(1)(B) and (d), as set forth in the accompanying Application of [INSERT NAME OF AUSA] for a Pen Register, Caller Identification and Cell Site Information Pursuant to Title 18 U.S.C. Sections 3122 and 3133, which Application is adopted and incorporated by reference herein, that the Service Provider listed in the accompanying proposed order, and any other person or entity providing wire or electronic communications service in the United

States whose assistance may facilitate execution of the order to be issued, disclose the location of cell site/sector (physical address) at call origination (for outgoing calls), call termination (for incoming calls) and if reasonably available, during the progress of a call.

5. The cell site information that the Government seeks to obtain on a prospective basis is information that ordinarily would be obtained by a "pen register device" as defined in Title 18 U.S.C. Section 3127, and is also "records or other information" as defined in Title 18 U.S.C. Section 2703(c). As such "records or other information" the cell site information's disclosure is obtainable by a court issuing an order that complies with Title 18 U.S.C. Section 2703(d), as well as with Title 18 U.S.C. Section 3123.¹ An order can issue under Section 2703(d) only upon a finding that the information is both "relevant and material" to an ongoing investigation. For the following reasons, it is reasonable to

¹ As is our practice, the Government is seeking to acquire cell site information pursuant to both Title 18 U.S.C. Sections 3122, 3123, and Title 18 U.S.C. Section 2703(b)(1)(C) and (d). In ~~order to comply with the July 25, 2005 Order of the Magistrate~~ Judges of this Court, we have invoked the authority of the two controlling statutes in separate applications, each of which is incorporated by reference into the other.

believe that the cell site information sought in this Application will be both relevant and material to the ongoing investigation.

6. [INSERT BRIEF STATEMENT SETTING FORTH REASONS WHY CELL SITE LOCATION INFORMATION WILL BE RELEVANT AND MATERIAL TO THE INVESTIGATION]

~~7. The Applicant requests further that the Court's Order~~
direct the Service Provider, its agents, employees and affiliates not to disclose to the subscriber, or to any other person, the disclosure of information requested herein unless or until otherwise ordered by the Court.

8. It is further requested that the Court's Order apply not only to the subject cellular telephone number, but also [b7E

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which are listed to the same subscriber and wireless telephone account number as the subject cellular telephone number within the 60 day period authorized by this Order.

9. It is further requested that the Court's Order apply to the Service Provider, and to any other communications service provider which contracts or otherwise agrees to provide cellular telephone

service to a telephone bearing the same telephone number or [INSERT TYPE OF IDENTIFICATION NUMBER] during the sixty day period authorized by this Order.

10. Because disclosure of this Application could jeopardize the investigation for which the authorization to disclose subscriber and cell site information is sought, the Applicant further requests that this Application be filed under seal. The Applicant further requests that this Court's Order, and any subsequent orders, be sealed until otherwise ordered by the Court.

WHEREFORE, it is respectfully requested that the Court grant an Order for a period of 60 days directing the Service Provider, or any other electronic communications provider subject to the Court's Order, to disclose to the Agency subscriber and cell site information relating to the subject cellular telephone number, and sealing this Application and the Court's Order.

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on this ____ day of _____, 2005.

Respectfully submitted,

KENNETH L. WAINSTEIN
UNITED STATES ATTORNEY

~~DC Bar No. 451-058~~

[INSERT NAME OF AUSA]
ASSISTANT UNITED STATES ATTORNEY
555 4th Street, NW
Washington, DC 20001
DC BAR NO. [AUSA'S BAR NUMBER]
[INSERT AUSA'S TELEPHONE NUMBER]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE APPLICATION)
OF THE UNITED STATES OF AMERICA)
FOR AN ORDER AUTHORIZING) MISC. NO. _____
DISCLOSURE OF AND CELL SITE)
INFORMATION ON CELLULAR) UNDER SEAL
TELEPHONE NUMBER [TELEPHONE NUMBER])

ORDER

This matter having come before the Court pursuant to the Government's Application under Title 18 U.S.C. Section 2703, by [INSERT NAME OF AUSA], an attorney for the government, which Application requests an Order under Title 18 U.S.C. Section 2703, authorizing the installation of a caller identification device, on [INSERT TELEPHONE NUMBER] (hereinafter "subject cellular telephone number"), a cellular telephone, [INSERT TYPE OF IDENTIFICATION NUMBER, E.G. ESN, IMSI, ETC., AND ACTUAL NUMBER], subscribed to by [INSERT NAME AND ADDRESS OF SUBSCRIBER], and directing the disclosure cell site information pertaining to the subscriber, the Court makes the following findings:

Findings Pursuant to Title 18 U.S.C. Section 2703(d)

1. There are reasonable grounds to believe that cell site information is relevant and material to an ongoing criminal investigation described in the Application; accordingly,

ORDER

IT IS ORDERED, pursuant to Title 18 U.S.C. Section 2703, that agents of the [INSERT NAME OF AGENCY] (hereinafter "Agency") may install and use a caller identification device on the subject cellular telephone, for a period of sixty (60) days; and

IT IS FURTHER ORDERED, pursuant to Title 18 U.S.C. Section 2703(d) that the Service Provider shall provide cell site/sector (physical address) at call origination (for outgoing calls), and call termination (for incoming calls), and if reasonably available, during the progress of the call, and

IT IS FURTHER ORDERED, that this Order shall apply not only to the subject cellular telephone number, but also to [b7E]

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] which are listed to the same subscriber and wireless telephone account number as the subject cellular telephone number within the 60 day period authorized by this Order.

IT IS FURTHER ORDERED, that this Order shall apply to the Service Provider, and to any other service provider which contracts or otherwise agrees to provide cellular telephone service to a telephone bearing the same telephone number and/or INSERT TYPE OF IDENTIFICATION NUMBER, E.G. ESN, IMSI, ETC.] during the 60 day period contemplated by the Order in this matter.

IT IS FURTHER ORDERED, that the Service Provider, or any other service provider to whom this Order applies, shall be compensated by the Agency for reasonable expenses incurred in providing technical assistance; and

IT IS FURTHER ORDERED, that this Order and the Application shall be sealed until otherwise ordered by the Court and that the Service Provider, its agents, employees and affiliates, shall not disclose the existence of the caller identification device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the Court.

SO ORDERED this _____ day of _____, 2005.

UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE)	
APPLICATION OF THE UNITED)	
STATES OF AMERICA FOR AN ORDER)	MISC. NO. _____
AUTHORIZING THE INSTALLATION)	
AND USE OF A PEN REGISTER, TRAP)	<u>UNDER SEAL</u>
AND TRACE, AND CALLER)	
IDENTIFICATION DEVICE ON CELLULAR)	
TELEPHONE NUMBER [TELEPHONE NUMBER])	
AND DISCLOSURE OF SUBSCRIBER AND)	
CELL SITE INFORMATION)	

APPLICATION FOR PEN REGISTER, CALLER
IDENTIFICATION DEVICE, SUBSCRIBER AND CELL SITE INFORMATION

The United States of America, by and through its counsel,
Jeffrey A. Taylor, United States Attorney for the District of
Columbia, and [INSERT NAME OF AUSA], Assistant United States
Attorney, hereby applies to the Court for an Order authorizing the
installation and use of a pen register, trap and trace and caller
identification device on, and for subscriber information relating
to, telephone numbers called from and calling to the telephone line
presently assigned number [INSERT CELLULAR TELEPHONE NUMBER], a
cellular telephone with the Electronic Serial Number (ESN) [INSERT
~~ESN NUMBER] subscribed to by [INSERT NAME AND ADDRESS OF~~
SUBSCRIBER] and authorizing disclosure of cell site information on
cellular telephone number [INSERT CELLULAR TELEPHONE NUMBER]. In
~~support of this application, the United States certifies the~~
following:

RIF

1. The Applicant is an "attorney for the government" as defined in Rule 1(b) (1) of the Federal Rules of Criminal Procedure, and therefore, pursuant to Title 18, United States Code, Section 3122, may apply for an Order authorizing the installation and use of a pen register, trap and trace, and/or a caller identification device.

2. The Applicant certifies that the [INSERT NAME OF AGENCY], (hereinafter "the Agency") is conducting a criminal investigation of the user(s) of the cellular telephone identified above and others in connection with possible violations of federal laws, including [INSERT CODE CITATIONS]. Based upon reliable information, it is believed that the user(s) of cellular telephone number [INSERT CELLULAR TELEPHONE NUMBER], subscribed to by [INSERT NAME AND ADDRESS OF SUBSCRIBER], utilizes the cellular telephone in furtherance of [INSERT CODE CITATION], [INSERT A BRIEF DESCRIPTION OF CRIMINAL ACTIVITY].

3. The Applicant further certifies that the information likely to be obtained from the pen register and the caller identification device is relevant to the ongoing criminal investigation being conducted by the Agency. It is believed this information will provide the agents with investigative leads and potential evidence ~~at trial concerning contacts made by the targets in the course of~~ their criminal activity. The information to be obtained from the

caller identification feature is [REDACTED]

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4. The Applicant requests that the Court issue an Order

authorizing the use of (1) a pen register to register numbers dialed to or pulsed from [INSERT CELLULAR TELEPHONE NUMBER], to record the date and time of such dialings or pulsings, and [REDACTED]

b7E

[REDACTED] and (2) the use of the trap and trace and caller identification device¹ on [INSERT CELLULAR TELEPHONE NUMBER] to capture the incoming electronic and other impulses which identify the originating number of a wire or electronic communication, and the date and time of such incoming pulses, for a period of sixty (60) days.

5. The Applicant further requests that the Order direct [INSERT NAME OF SERVICE PROVIDER] to furnish all information, facilities, and technical assistance necessary to accomplish the ~~installation of the pen register, trap and trace and the caller~~ identification device unobtrusively with a minimum of interference

1 [REDACTED]

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[REDACTED]

with the services that the provider accords the subscriber(s), and with compensation to be paid by the Agency for reasonable expenses incurred in providing such facilities and assistance.

6. The Applicant requests further that the Court's Order direct [INSERT NAME OF SERVICE PROVIDER], its agents, employees and affiliates not to disclose to the subscriber, or to any other person, the existence of the requested pen register, trap and trace, or the caller identification device, or of this investigation, unless or until otherwise ordered by the Court.

7. [INSERT LANGUAGE STATING WHY SUBSCRIBER INFORMATION REQUESTED PURSUANT TO §2703 IS RELEVANT TO THE INVESTIGATION. THE FOLLOWING LANGUAGE MAY BE USED IN NARCOTICS CASES]

The Applicant believes that the target cellular telephone is being used to facilitate drug trafficking. Subscriber information concerning telephones in contact with the target cellular telephone will assist investigators in identifying persons involved in the illegal activity. Moreover, in the experience of the Applicant and the law enforcement personnel conducting the investigation in this matter, persons engaged in illegal narcotics trafficking also are engaged in money laundering in violation of 18 United States Code, §§ 1956 and 1957. Such money laundering activity [b7E]

[b7E] Information concerning the means and methods by which the subscriber or user of a cellular telephone number pays for that service will provide evidence of illegal narcotics activity and related money laundering and thus assist law enforcement in the investigation of the illegal narcotics activity of the target.

8. The Applicant submits that the facts set forth in paragraphs two and seven herein provide reasonable grounds to believe that the contents of records and information relating to subscribers or customers of telephones in contact with [INSERT CELLULAR TELEPHONE NUMBER] are relevant and material to the ongoing criminal investigation. Therefore, the applicant also requests, pursuant to Title 18, United States Code, Sections 2703(c) (1) (B) and 2703(d), that for each telephone number for which they possess such information, [INSERT NAME OF SERVICE PROVIDER] and any other provider of electronic communication service, be directed to provide to the Agency the subscriber information, including subscriber name and address, telephone location, length of service, as well as all information regarding the means and source of payment for service, ~~for all telephone numbers dialed or pulsed from [INSERT CELLULAR TELEPHONE NUMBER], as indicated by the pen register, and all telephone numbers calling [INSERT CELLULAR TELEPHONE NUMBER], as indicated by the trap and trace and caller identification device,~~ whether published or non-published. As noted above, the

subscriber's name will be shown on the caller identification feature; however, it will not appear if the number is a non-published number.

9. In support of its request for an order under 18 U.S.C. §2703(d) directing the furnishing of cell site information pursuant to 18 U.S.C. §§ 2703(c)(1)(B) and 2703(d), the government hereby sets forth the following specific and articulable facts showing that there is reasonable grounds to believe that the cell site information regarding [INSERT CELLULAR TELEPHONE NUMBER] will be relevant and material to an ongoing criminal investigation for the following reasons:

10. [INSERT BRIEF, SPECIFIC FACTUAL STATEMENT AS TO WHY CELL SITE INFORMATION IS RELEVANT TO THE INVESTIGATION. FOR NARCOTICS CASES THE FOLLOWING STATEMENT MAY BE USED.]

Your applicant and the law enforcement personnel conducting the investigation in this matter know that persons engaged in illegal narcotics trafficking utilize their telephones to arrange meetings at which narcotics are supplied and payment for those narcotics are made. Knowing the location of the trafficker when such telephone calls are made will assist law enforcement in discovering the location of the premises in which the trafficker maintains his ~~supply of narcotics, paraphernalia used in narcotics trafficking~~ such as cutting and packaging materials, and other evidence of

illegal narcotics trafficking, including records and financial information. Similarly, knowledge of the location of the trafficker when he places telephone calls to known suppliers and customers can assist law enforcement in this physical surveillance of the subject and in obtaining further relevant evidence of the target's illegal narcotics trafficking activity. The use of a cellular telephone requires that the caller's signal involve the use of cell site in the service provider's system. When the target telephone is a cellular telephone, the location of this cell site and the direction from which the caller's signal was sent provides relevant information to assist law enforcement in the above functions.

11. Accordingly, it is requested that the [INSERT NAME OF SERVICE PROVIDER] listed in the accompanying proposed order, and any other person or entity providing wire or electronic communications service in the United States whose assistance may facilitate execution of the order to be issued, disclose the location of cell site/sector (physical address) at call origination (for outgoing calls) call termination (for incoming calls), and if reasonably available, during the progress of a call, for the cellular telephone [INSERT CELLULAR TELEPHONE NUMBER].

12. It is further requested that the Court's order apply not only to [INSERT CELLULAR TELEPHONE NUMBER], but also [b7E]

[

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]

[b7E
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b7E] which are listed to
the same subscriber and wireless telephone account number as the
subject cellular telephone number within the sixty (60) day period
authorized by this order.

13. Because disclosure of this application could jeopardize the investigation for which the authorization to install and use the pen register, trap and trace and caller identification device is sought, the Applicant further requests that this application be filed under seal, pursuant to Title 18, United States Code, Section 3123(d)(1). The Applicant further requests that this Court's Order, and any subsequent Orders, be sealed until otherwise ordered by the Court.

WHEREFORE, it is respectfully requested that the Court grant an Order for a period of sixty (60) days, (1) authorizing the installation and use of a pen register to record numbers dialed or pulsed from [INSERT CELLULAR TELEPHONE NUMBER]; (2) authorizing the installation and use of a trap and trace and caller identification device to capture the incoming electronic or other impulses which identify the originating number of a wire or electronic communication to [INSERT CELLULAR TELEPHONE NUMBER]; (3) directing [INSERT SERVICE PROVIDER] to furnish forthwith to agents of the

[INSERT NAME OF AGENCY] all information, facilities, and technical assistance necessary to accomplish the installation and use of the devices unobtrusively and with minimum interference to the service presently accorded persons whose dialings or pulsings are the subject of the pen register, trap and trace, and caller identification device; and (4) directing [INSERT NAME OF SERVICE PROVIDER] and any other service provider of electronic communications services to provide agents of the [INSERT NAME OF AGENCY] with all subscriber names and addresses, telephone locations and dates of service, as well as all information regarding the means and source of payment for service, for all numbers dialed or pulsed from, or making incoming calls to [INSERT CELLULAR TELEPHONE NUMBER]; (5) to disclose the location of cell site/sector (physical address) at call origination (for outgoing calls), call termination (for incoming calls), and if reasonably available, during the progress of the call, for cellular telephone number [INSERT CELLULAR TELEPHONE NUMBER]; and (6) sealing this Application and the Court's Order.

I certify under penalty of perjury that the foregoing is true
and correct.

EXECUTED on this ____ day of _____, 2004.

Respectfully submitted,

JEFFREY A. TAYLOR
UNITED STATES ATTORNEY
D.C. Bar No. 451-058

[INSERT NAME OF AUSA]
ASSISTANT UNITED STATES ATTORNEY
555 4th Street, NW
Washington, D.C. 20001
D.C. BAR NO. [AUSA'S BAR NUMBER]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE)	
APPLICATION OF THE UNITED)	
STATES OF AMERICA FOR AN ORDER	)	MISC. NO. _____
AUTHORIZING THE INSTALLATION)	
AND USE OF A PEN REGISTER, TRAP	)	<u>UNDER SEAL</u>
AND TRACE, AND CALLER)	
<hr/>		
IDENTIFICATION DEVICE ON CELLULAR)	
TELEPHONE NUMBER [TELEPHONE NUMBER])	
AND DISCLOSURE OF SUBSCRIBER)	
INFORMATION)	

ORDER

This matter having come before the Court pursuant to an application under Title 18, United States Code, Section 3122, by [INSERT NAME OF AUSA], an attorney for the Government, which application requests an Order under Title 18, United States Code, Section 3123, authorizing the installation and use of a pen register, trap and trace, a caller identification device, and cell site information on [INSERT CELLULAR TELEPHONE NUMBER], a cellular telephone, Electronic Serial Number (ESN) [INSERT ESN] and under Title 18, United States Code, Sections 2703(c)(1)(B) and 2703(d), directing the disclosure of subscriber records and information

likely to be obtained by such installation and use, and that the disclosure of such records is relevant to an ongoing criminal investigation into possible violations committed by the user(s) of

the cellular telephone and others of federal law, including [INSERT CODE CITATION], and

IT APPEARING that the numbers dialed or pulsed to and from the cellular telephone bearing [INSERT CELLULAR TELEPHONE NUMBER], a cellular telephone, Electronic Serial Number (ESN) [INSERT ESN] subscribed to by [INSERT NAME AND ADDRESS OF SUBSCRIBER], are relevant to an ongoing criminal investigation of possible violations of [INSERT CODE CITATIONS] and

IT FURTHER APPEARING that there are reasonable grounds to believe that the contents of the requested records, subscriber information and cell site information are relevant and material to an ongoing criminal investigation described in the application;

IT IS ORDERED, pursuant to Title 18, United States Code, Section 3123, that agents of the [INSERT NAME OF AGENCY] may install and use (1) a pen register to register numbers dialed to or pulsed from [INSERT CELLULAR TELEPHONE NUMBER], to record the date and time of such dialings or pulsings, and to record the length of time the telephone receivers in question are off the hook for incoming or outgoing calls; and (2) a trap and trace and caller identification device on [INSERT CELLULAR TELEPHONE NUMBER] to capture the incoming electronic and other impulses which identify the originating number of a wire or electronic communication and the date and time of such incoming pulses, for a period of sixty (60) days; and

IT IS FURTHER ORDERED that the information obtained from the caller identification feature provided pursuant to this Order shall

be [

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] and

IT IS FURTHER ORDERED, pursuant to Title 18, United States Code, Section 3123(b)(2), that [INSERT NAME OF SERVICE PROVIDER]

shall furnish agents of the [INSERT NAME OF AGENCY] forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the devices unobtrusively and with minimum interference with the services that are accorded persons whose dialings and pulsings are the subject of the pen register, the trap and trace and the caller identification device; and

IT IS FURTHER ORDERED, that the [INSERT NAME OF SERVICE PROVIDER] provider shall be compensated by the applicant for reasonable expenses incurred in providing technical assistance; and

IT IS FURTHER ORDERED, pursuant to Title 18, United States Code, Sections 2703(c)(1)(B) and 2703(d), that, for each telephone number for which they possess such information, [INSERT NAME OF SERVICE PROVIDER] and any other provider of electronic communication

service shall provide to agents of the [INSERT NAME OF AGENCY] all subscriber information, including subscriber name and address, telephone location, and length of service, as well as all information regarding the means and source of payment for service, for all telephone numbers dialed or pulsed from cellular telephone

number [INSERT CELLULAR TELEPHONE NUMBER], as indicated by the pen register, and all telephone numbers calling [INSERT CELLULAR TELEPHONE NUMBER], as indicated by the trap and trace and caller identification device, whether published or non-published, and

IT IS FURTHER ORDERED, pursuant to Title 18 U.S.C. §2703(d)

that [INSERT NAME OF SERVICE PROVIDER] shall provide the cell site/sector (physical address) at call origination (for outgoing calls), call termination (for incoming calls), and it reasonably available, during the progress of the call, for cellular telephone number [INSERT CELLULAR TELEPHONE NUMBER], and

IT IS FURTHER ORDERED, that this Order shall apply not only to [INSERT CELLULAR TELEPHONE NUMBER], but also [b7E]

[b7E
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b7E] which are listed to the same

subscriber and wireless telephone account number as the subject cellular telephone number within the sixty (60) day period authorized by this order.

IT IS FURTHER ORDERED, pursuant to Title 18, United States Code, Section 3123(d), that this Order and the application shall be sealed until otherwise ordered by the Court, and that [INSERT NAME

OF SERVICE PROVIDER], its agents, employees and affiliates, shall not disclose the existence of the pen register, trap and trace or caller identification device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the Court.

SO ORDERED this _____ day of _____, 2004.

UNITED STATES MAGISTRATE JUDGE

[DATE]

Finnegan, Karen (USAEO)

From: Bella, Daniel (USAINN)
Sent: Monday, January 22, 2007 11:54 AM
To: Schmid, Donald (USAINN); Hays, Kenneth (USAINN); Capp, David (USAINN)
Cc: VanBokkelen, Joseph (USAINN)
Subject: RE: FBI need for ct order -- kidnapping case

Donald and I discussed language to be used in a subsequent order situation. I sent to Donald some forms we've used addressing the cell site issue.

~~The human side of this is sobering. On the legal side, these are just the facts that would be a good test of the cell site issue.~~

From: Schmid, Donald (USAINN)
Sent: Monday, January 22, 2007 9:49 AM
To: Hays, Kenneth (USAINN); Bella, Daniel (USAINN); Capp, David (USAINN)
Cc: VanBokkelen, Joseph (USAINN)
Subject: FBI need for ct order -- kidnapping case

FBI and I assisted over the weekend with an ongoing kidnapping/attempted murder case out of Elkhart county. The facts are below. [

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b7C

P.R.
b7C

Donald J. Schmid
Assistant United States Attorney
U.S. Attorney's Office
204 S. Main Street
South Bend, IN 46601
(574) 236-8287
FAX: (574) 236-8155
donald.schmid@usdoj.gov

Finnegan, Karen (USAE0)

From: Bella, Daniel (USAINN)
Sent: Wednesday, February 07, 2007 6:09 PM
To: Stewart, Randall (USAINN)
Subject: FW: Cell site issue

Contacts:

[b7c]

Randy,

~~The issue is that we cannot obtain cell site data with just a pen register and 2703(d) order, like we used to.~~
This has been brewing across the country, and Judge Lee entered an order in our District on the issue. Our work around is to prepare the same documentation, but to add to it an affidavit by an agent that establishes probable cause to get the cell site data. See my e-mail below that I sent to [b7c] for more details. Compare the attached go-bys to what you have, and hopefully that will point you in the right direction, to modify or rewrite (or have re-written) what's been given you. You'll need an affidavit from the agent too.

When I get room to breath, I'll post this on the intra-net so all can have access to this.

Please let me know if you need more or have any questions.

-Dan

From: Bella, Daniel (USAINN)
Sent: Tuesday, February 06, 2007 3:06 PM
To: [b7c]
Subject: Cell Site issue

[b7c]

Attached are the order from Judge Lee in Ft. Wayne saying that we cannot get cell site information just from a pen register and 2703(d) order (for provider records), and that we make a showing of probable cause.

Also attached are an application and an order where we took our standard pen register application and added language at paragraphs 11 and 12 indicating that we are establishing probable cause. There would be an affidavit attached to the application. I do not have the affidavit that we used in this instance, but the facts are going to be different for every application and the AUSA and agent will need to coordinate on the affidavit. [b5]

Since you may not use WordPerfect, I've also included pdf files of the application and order.

This has been used by AUSAs David Nozick in Hammond, and by Jesse Barrett and Donald Schmid in South Bend.

I hope this helps.

-Dan Bella
Criminal Chief, U.S. Attorney's Office, N.D. Indiana
Direct: (219) 937-5609



Judge Lee
order.pdf



pen register
application with ...



pen register order
with pc for...



pen register
application with ...



pen register order
with pc for...

Recipient
Stewart, Randall (USAINN)

Read
Read: 2/15/2007 1:52 PM

R-15

Finnegan, Karen (USAE0)

From: Bella, Daniel (USAINN)
Sent: Monday, January 22, 2007 11:51 AM
To: Schmid, Donald (USAINN)
Subject: Pen register w/ cell site documents

Donald,

Dave Nozick and I discussed the cell site issue and came up with the attached forms. Please see paragraph 11 of the application, and the second full paragraph on page two of the order. A separate affidavit by the agent was attached to the application. [b5]

FYI, David provided these same forms to Jesse Barrett on or about 10/13/06 for his use in a South Bend investigation.

Good luck.

-Dan



per register order
with pc for...



per register
application with ...

Tracking:

RIP
b5

Recipient
Schmid, Donald (USAINN)

Read
Read: 1/22/2007 12:05 PM

RIF

Finnegan, Karen (USAE0)

From: Dupre, Brock (USALAE)
Sent: Wednesday, November 19, 2008 5:05 PM
To: Finnegan, Karen (USAE0)
Subject: FW: GPS or "E-911 data" warrants

From: Knight, Tracey (USALAE)
Sent: Monday, October 27, 2008 10:52 AM
To: Dupre, Brock (USALAE)
Subject: FW: GPS or "E-911 data" warrants

From: Klebba, Brian (USALAE)
Sent: Monday, November 19, 2007 10:37 AM
To: USALAE-CR-Attorneys; USALAE-CR-Assistants
Subject: GPS or "E-911 data" warrants

Greetings:

OEO has asked that I forward the following information regarding the acquisition of GPS or similarly precise location data (sometimes called "E-911 data") on target phones. The Department and specifically OEO and CCIPS continue to believe that the most appropriate legal mechanism is a Rule 41 warrant, and I'm attaching a sample form for that purpose that has been disseminated by OEO. (Note: for mere tower/sector data – a/k/a the less accurate "cell-site" records – OEO remains of the view that 2703(d) & pen/trap combined are sufficient authority.)

According to OEO [

b5

, 65

You may want to have your legal assistant to save this form in your directory for future reference or you may contact me for it. Thanks,



Generic lat-long
order v 1.2 1...

Brian

~~Brian M. Klebba, Assistant U.S. Attorney~~

U.S. Department of Justice
United States Attorney's Office
Hale Boggs Federal Building
500 Poydras Street, Suite 210B
New Orleans, Louisiana 70130
(504) 680-3000 main
(504) 680-3079 direct
(504) 589-4510 fax
Brian.Klebba@usdoj.gov

Bourgeois, Richard

From: Judish, Nathan
Sent: Friday, June 04, 2004 2:31 PM
To: Bourgeois, Richard
Subject: RE: Obtaining Cell Site Locator Information

b5 per Crim Dim.

Thanks,
Nathan Judish
Computer Crime and Intellectual Property Section



Cell Phone Location
Memo.wpd

(b)(5)
W.F.F.
per
CRIM DIV

-----Original Message-----

From: Bourgeois, Richard
Sent: Friday, June 04, 2004 2:15 PM
To: Judish, Nathan
Subject: Obtaining Cell Site Locator Information

Thank you very much for your help on the phone. Please let me know if you are able to find out anything regarding the interpretation of the "ongoing criminal investigation" language in 2703(d).

Rich

Richard L. Bourgeois, Jr.
Assistant United States Attorney
Russell B. Long Federal Courthouse
777 Florida Street, Suite 208
Baton Rouge, Louisiana 70801
Tel: 225-389-0443
Fax: 225-389-0561

RIF
per
EDUSA

RIP

From: Judish, Nathan
Sent: Thursday, March 22, 2007 11:44 AM
To: Jones, Patricia (USALAM)
Subject: RE: cell-site go-by

b5

Nathan

From: Jones, Patricia (USALAM) [mailto:Patricia.Jones4@usdoj.gov]
Sent: Thursday, March 22, 2007 12:14 PM
To: Judish, Nathan
Subject: RE: cell-site go-by

(b)(5)
W.I.F.
per
CRIM DIV

Thanks, Nathan.

b5

VIF
b5
per
EDUSA

Thanks.

From: Judish, Nathan
Sent: Thursday, March 22, 2007 11:08 AM
To: Jones, Patricia (USALAM)
Subject: cell-site go-by

Please see attached.

Thanks,
Nathan

WIF
2

Bourgeois, Richard

From: Bourgeois, Richard
Sent: Friday, May 28, 2004 4:14 PM
To: USA-LAM-Criminal Attorneys
Subject: 18 U.S.C. 2703

Stan asked me to send out an email regarding the issues we are facing with the magistrate judges in our recent requests for cellular telephone records and subscriber information pursuant to 18 U.S.C. 2703.

b5, b7E

If you have any questions about the judges specific concerns, or would like to discuss these issues further, please let me know.

Rich

RIP
b5, b7E

Bourgeois, Richard

From: Bourgeois, Richard
Sent: Friday, May 28, 2004 3:46 PM
To: Salomon, Rene
Subject: 18 USC 2703

Rene,

I know that you are on vacation right now, but when you get back next week let me know when you have some free time. We have some issues that have come up regarding the use of Pen Register / Trap and Trace orders in conjunction with 18 USC 2703 in order to assist in the location of fugitives.

Thanks,
Rich

Richard L. Bourgeois, Jr.
Assistant United States Attorney
Russell B. Long Federal Courthouse
777 Florida Street, Suite 208
Baton Rouge, Louisiana 70801
Tel: 225-389-0443
Fax: 225-389-0561

Germano, Judith (USANJ)

From: Liebermann, Erez (USANJ)
Sent: Monday, June 18, 2007 7:07 PM
To: USANJ-AUSA_Criminal
Subject: 18 U.S.C. § 2703(d) Orders for Content

Earlier today the 6th Circuit decided *United States v. Warshak*, attached. Preliminary guidance from DOJ is also attached. In sum, the court cast doubt on the constitutionality of acquiring the content of stored electronic communication with a 18 U.S.C. § 2703(d) order when no advance notice is provided to the user/subscriber. [b5]

[b5] It does affirm the District Court's preliminary injunction forbidding the United States from obtaining a 2703(d) order for content relating to any resident of the Southern District of Ohio.

[b5]
If you are looking for this type of information, please come talk to me.

Please don't hesitate to call me (x2874) with any questions.

Thanks,

erez.



USv. Warshak - [chip] Adverse
2703(d) Content... decision in War...

RLP
b5

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN THE MATTER OF THE
APPLICATION OF THE UNITED
STATES OF AMERICA FOR AN
ORDER: (1) AUTHORIZING THE
INSTALLATION AND USE
OF A PEN REGISTER AND A
TRAP AND TRACE DEVICE; AND
(2) AUTHORIZING RELEASE OF
CUSTOMER RECORDS AND OTHER
INFORMATION PERTAINING TO A
MOBILE COMMUNICATIONS DEVICE

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Magistrate No.

APPLICATION

(UNDER SEAL)

[NAME], an Assistant United States Attorney for the Southern District of Texas

("Applicant"), applies to the court for an order authorizing the installation and use of a pen register and trap and trace device and requiring disclosure of customer records and other information. In support of this application, Applicant states the following:

1. Applicant is an "attorney for the Government" as defined in Rule 1(b)(1)(B) of the Federal Rules of Criminal Procedure; and, pursuant to 18 U.S.C. Section 3122, may apply for an order authorizing the installation and use of pen registers and trap and trace devices, and, pursuant to 18 U.S.C. Section 2703(d), may apply for an order requiring the disclosure of "a record or other information pertaining to a subscriber to or customer of" an electronic communications service provider.

2. Applicant certifies that the United States Marshals Service ("Investigative Agency") is conducting a criminal fugitive investigation of [FUGITIVE(S)] ("Suspect"), in connection with violations of [LIST VIOLATIONS]; it is believed that the Suspect [or Suspect's known associate] is using [or has immediate access to] a mobile communications device identified by

R 114

Mobile Identification Number ("MIN") [AREA CODE/PHONE NUMBER] ("Target Device"), a wireless telephone believed to be issued and/or serviced by [NAME OF CARRIER, IF KNOWN] and to be subscribed to by [SUBSCRIBER'S NAME AND BILLING ADDRESS, IF KNOWN; IF PREPAID ACCOUNT, STATE "PREPAID ACCOUNT"]; and that the information likely to be obtained from the pen register and trap and trace device is relevant and material to an ongoing criminal investigation.

3. In accordance with Title 18, United States Code, Section 3121(c), Applicant has informed the Investigative Agency and its agents conducting this investigation that they shall use

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4. Applicant requests that the court issue an order, pursuant to 18 U.S.C. Sections 3122 & 3123, authorizing the installation and use of a pen register to record or decode dialing, routing, addressing, or signaling information transmitted from the Target Device, [b7E]

b7E

b7E

b7E -] and attempts for a period of sixty days.

5. Applicant further requests that the Court issue an order, pursuant to 18 U.S.C.

Sections 3122 & 3123, authorizing the installation and use of a trap and trace device on the
Target Device to capture [b7E

[

[

[

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] for a period of sixty days.

6. Applicant further requests, pursuant to 18 U.S.C. Section 3123(b)(1)(C), the requested
installation and use of a pen register and trap and trace device permit the use of such a pen
register and trap and trace device [b7E]

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[b7E] within the

60-day period authorized by this order.

7. Applicant further requests that the court direct the Target Device's service provider,
and all other telecommunications providers, persons or entities providing wire or electronic

RIP

communication service in the United States whose assistance may facilitate the execution of the order, to notify agents of the Investigative Agency, upon oral or written request, of any and all changes (including additions, deletions, and transfers) in service regarding the Target Device, including telephone numbers and subscriber information associated with these service changes.

8. Applicant further requests, pursuant to 18 U.S.C. Sections 3123(a)(1), 3123(b)(2), and 3124, that the order direct that the furnishing of information, facilities, and technical assistance necessary to accomplish the installation and operation of the pen register and trap and trace device by the service provider, and all other telecommunications providers, persons, or entities providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order, occur unobtrusively and with a minimum of interference with the services that are accorded the persons with respect to whom the installation and use is to take place with reasonable compensation to be paid by the Investigative Agency for reasonable expenses incurred in providing such facilities and assistance.

9. In support of its request for an order under 18 U.S.C. Section 2703(d) directing the furnishing of customer records and other information (specifically cell site activations), pursuant to 18 U.S.C. Sections 2703(c)(1)(B), 2703(c)(2) and 2703(d), and based upon discussions with Deputy U.S. Marshal [CIDUSM'S NAME], the government sets forth the following specific and articulable facts showing that there are reasonable grounds to believe that the customer records and other information pertaining to both the Target Device and the telephone numbers likely to be identified through the pen register and trap and trace device on the Target Device are relevant and material to an ongoing criminal investigation:

a. INSERT BRIEF YET SPECIFIC, FACTUAL STATEMENT

CONCERNING YOUR INVESTIGATION AND INFORMATION INDICATING THAT

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FUGITIVE(S) IS USING/HAS USED/HAS IMMEDIATE ACCESS TO THE SUBJECT
TELEPHONE(S).]

b. [INSERT CONCISE EXPLANATION AS TO WHY SUBSCRIBER AND
OTHER INFORMATION IS RELEVANT AND MATERIAL TO YOUR INVESTIGATION.]

c. Deputy [AGENT'S NAME] has further advised Applicant of the following:

That the device characteristics [

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d. Based upon the above facts, and pursuant to 18 U.S.C. Sections 2703(c)(1)(B),

2703(c)(2), and 2703(d), because there are reasonable grounds to believe that such information is

relevant and material to an ongoing criminal investigation, Applicant requests that the Target

Device's service provider, and all other telecommunications providers, persons or entities providing wire or electronic communications service in the United States whose assistance may facilitate the execution of the order, be ordered to supply the following information: (A) name; (B) address; (C) local and long distance telephone connection records, and records of session

times and durations; (D) length of service (including start date) and types of service utilized; (E)

telephone or instrument number or other subscriber number or identity, [b7E J b7E

[b7E -] and (F) means and source of payment for such service (including any credit card or bank account number) of a subscriber to or customer of an electronic

communication service or remote computing service, for the Target Device and for published,

non-published, or unlisted dialing, routing, addressing, or signaling information captured by the pen register or trap and trace device on the Target Device, upon oral or written demand by agents

of the Investigative Agency, for a period of 60 days prior to and 60 days after the date of this

order, and that all entities providing communications service to the Target Device also be ordered

to provide the following customer records and information with respect to the Target Device:

a.

b.

c.

d.

e.

b7E

b7E

b7E

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b7E

10. Applicant further requests, pursuant to 18 U.S.C. Section 3123(d), that the court

direct the Target Device's service provider, and all other telecommunications providers, persons or entities providing service to the Target Device who are obligated by the order to provide assistance to the Investigative Agency, not to disclose in any manner, directly or indirectly, by any action or inaction, to the subscriber(s) for the Target Device, the occupant of said premises, the subscriber of the incoming calls to or outgoing calls from the Target Device, or to any other person, the existence of this order, in full or redacted form, the existence of the pen register or trap and trace device, or the existence of this investigation unless otherwise ordered by this court, and further that this application and order be SEALED.

11. Applicant further requests that, upon request of the Investigative Agency, all records and information required to be provided pursuant by this order be provided in a commercially reasonable electronic format specified by the Investigative Agency, and that those records be delivered forthwith via electronic mail (unless delivery under the current CALEA delivery protocol is possible and requested) to the email address specified by the agent serving this order.

12. Applicant further requests, because it is necessary to advance the purposes of this investigation, that the Court's Order direct the Target Device's service provider(s) [b7E]

[b7E] b7E

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on _____

[YOUR NAME]

Assistant United States Attorney

[Phone number]

RIF

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN THE MATTER OF THE	§	
APPLICATION OF THE UNITED	§	
STATES OF AMERICA FOR AN	§	Magistrate No.
ORDER: (1) AUTHORIZING THE	§	
INSTALLATION AND USE	§	
OF A PEN REGISTER AND A	§	ORDER
TRAP AND TRACE DEVICE; AND	§	
(2) AUTHORIZING RELEASE OF	§	(UNDER SEAL)
CUSTOMER RECORDS AND OTHER	§	
INFORMATION PERTAINING TO A	§	
MOBILE COMMUNICATIONS DEVICE	§	

This matter having come before the Court pursuant to an application under Title 18, United States Code, Sections 3122, 3123, and 2703(c) and (d), by Assistant United States Attorney [NAME], an attorney for the Government as defined by Fed. R. Crim. P. 1(b)(1)(B), requesting an order authorizing the installation and use of a pen register and a trap and trace device on the mobile communications device identified by Mobile Identification Number ("MIN") ("Target Device"), a wireless telephone believed to be issued and/or serviced by [NAME OF CARRIER, IF KNOWN] and to be subscribed to by [SUBSCRIBER'S NAME AND BILLING ADDRESS, IF KNOWN; IF PREPAID ACCOUNT, STATE "PREPAID ACCOUNT"] and used by, or immediately accessible to, [FUGITIVE(S) NAME] ("Suspect");

Upon review of the application, the Court finds that, pursuant to 18 U.S.C. Section 3123, Applicant has certified that the information likely to be obtained by such use is relevant to an ongoing criminal investigation being conducted by the United States Marshals Service ("Investigative Agency") into violations of [STATUTE(S)] by the Suspect.

The Court further finds, pursuant to 18 U.S.C. Sections 2703(c)(1)(B), 2703(c)(2) and 2703(d), that Applicant has offered specific and articulable facts showing that there are reasonable grounds to believe that the subscriber information and other records for dialing, routing, addressing, and signaling information transmitted to and from the Target Device is relevant and material to an ongoing criminal investigation of the specified offenses;

Pursuant to 18 U.S.C. Sections 2703(c)(1)(B) and 2703(d), Applicant has further established that there are specific and articulable facts showing that there are reasonable grounds to believe that customer records and information regarding the Target Device are relevant and material to an ongoing criminal investigation of the specified offenses; and,

The Court further finds that [b7E]

[b7E]
[b7E]
[b7E]

IT IS ORDERED, pursuant to 18 U.S.C. Section 3123, that agents of the Investigative Agency may install, or cause to be installed, and use a pen register to record or decode dialing, routing, addressing, or signaling information transmitted from the Target Device, including [b7E]

[b7E]
[b7E]
[b7E] for a period of sixty days from

the date this Order is filed by the court;

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. Section 3123, that agents of the Investigative Agency may install, or cause to be installed, and use a trap and trace device on the Target Device to capture and record the incoming electronic or other impulses which identify the

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originating number, or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication, and to record the date, time, and duration of calls created by such incoming impulses, for a period of sixty days from the date this Order is filed by the court;

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. Sections 2703(c)(1)(B), 2703(c)(2) and 2703(d), that the Target Device's service provider, and all other telecommunications providers, persons or entities providing wire or electronic communications service in the United States whose assistance may facilitate the execution of this Order, shall supply the following information: (A) name; (B) address; (C) local and long distance telephone connections records and records of session times and durations; (D) length of service (including start date) and types of service utilized; (E) telephone or instrument number or other subscriber number or identity, b7E and (F) means and source of payment for such service (including any credit card or bank account number) of a subscriber to or customer of an electronic communication service or remote computing service, for the Target Device and for published, non-published, or unlisted dialing, routing, addressing, or signaling information for all calls originating or terminating at the Target Device, upon oral or written demand by agents of the Investigative Agency, for a period of 60 days prior to and 60 days after the date of this Order.

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. Sections 2703(c)(1)(B) and 2703(d), that all entities providing wire or electronic communications service to the Target Device shall provide the following additional customer records and information with respect to the Target Device for a period of 60 days prior to and 60 days after the date of this Order.

a.
b.
c.

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d.

e.

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IT IS FURTHER ORDERED that this authorization for the installation and use of a pen register and trap and trace device applies not only to the Mobile Identification Number ("MIN") listed above, [b7E]

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[b7E] within the 60-day period authorized by this Order;

IT IS FURTHER ORDERED, that the Target Device's service provider, and all other telecommunications providers, persons or entities providing wire or electronic communication service in the United States whose assistance may facilitate the execution of this Order, shall notify agents of the Investigative Agency, upon oral or written request, of any and all changes (including additions, deletions, and transfers) in service regarding the Target Device, including telephone numbers and subscriber information associated with these service changes.

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. Section 3123(a)(1) and (b)(2), that upon service of this Order upon it, the Target Device's service provider, and all other telecommunications providers, persons or entities providing wire or electronic communication

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service in the United States whose assistance may facilitate execution of this Order, shall furnish agents of the Investigative Agency forthwith, 24 hours-a-day if requested by the Investigative Agency, all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen register and trap and trace device unobtrusively and with minimum interference with the services that are accorded the persons with respect to whom the installation and use is to take place;

IT IS FURTHER ORDERED that the Target Device's service provider, and all other telecommunications providers, persons or entities carriers providing assistance pursuant to this Order, be reasonably compensated by the Investigative Agency for reasonable expenses incurred in providing facilities and assistance hereunder; and,

IT IS FURTHER ORDERED that the Target Device's service provider(s) shall not

[b7E] b7E

IT IS FURTHER ORDERED that, upon request of the Investigative Agency, all records and information required to be provided pursuant to this Order shall be provided in a commercially reasonable electronic format specified by the Investigative Agency; and that those records be delivered forthwith via electronic mail (unless delivery under the current CALEA delivery protocol is possible and requested) to the email address specified by the agent serving this Order;

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. Section 3123(d), that this Order and the application be sealed until otherwise ordered by the court, that the identity of any suspect(s) of the underlying criminal investigation may be redacted from any copy of this Order to be served on any service provider or other person, and that the Target Device's service provider, and all other telecommunications providers, persons or entities providing wire or electronic communication service in the United States whose assistance may facilitate execution of this Order, their representatives, agents and employees shall not disclose in any manner, directly or indirectly, by any action or inaction, the existence of this Order, the existence of the pen register or trap and trace device, or the existence of the above-described investigation, to the listed subscriber(s) for the Target Device, the occupant of said premises, the subscribers of the incoming calls to or outgoing calls from the Target Device, or to any other person, in full or redacted form, unless or until otherwise ordered by the court.

DATED: _____

United States Magistrate Judge

IN THE MATTER OF THE
APPLICATION OF THE UNITED
STATES OF AMERICA FOR AN
ORDER: (1) AUTHORIZING THE
INSTALLATION AND USE
OF A PEN REGISTER AND TRAP
AND TRACE DEVICE;
(2) AUTHORIZING RELEASE
OF SUBSCRIBER AND OTHER
INFORMATION; AND,
(3) AUTHORIZING THE DISCLOSURE
OF WIRELESS LOCATION DATA

Case No. _____

(UNDER SEAL)

This matter comes before the Court pursuant to written and sworn application under 18 U.S.C. §§ 3122(a)(1), 3127(5) and 2703(c)(1)(B) & (d) and Fed. R. Crim. P. 41 by Assistant United States Attorney [Name] (hereafter, "**Applicant**"), an Attorney for the Government as defined by Federal Rule of Criminal Procedure Rule 1(b)(1)(B), and accompanying affidavit of Deputy United States Marshal [Name] (hereafter, "**Affiant**"), applying for a multi-part order authorizing (i) the installation and use of a pen register and trap & trace device; (ii) the disclosure of stored wire and electronic transactional records; and, (iii) the disclosure of wireless device location data.

~~UPON REVIEW OF THE APPLICATION, THE COURT FINDS AND ORDERS:~~

1. PEN/TRAP AUTHORIZED. Pursuant to 18 U.S.C. § 3123(a)(1), **Applicant** has certified that the information likely to be obtained by a pen register and trap and trace device installed on Provider's Legal Name, telephone number [(xxx) xxx-xxxx] is relevant to an

ongoing criminal investigation being conducted by the United States Marshals Service (hereafter,

the "Investigative Agency") [ADD THE FOLLOWING FOR STATE CASES: and the Gulf Coast Violent Offenders Task Force, under special apprehension authority of the United States Attorney General as delegated to the United States Attorney pursuant to the National Anti-Violent Crime Initiative,] in connection an ongoing criminal investigation regarding

[Offense Description, such as: 18 U.S.C. § 751 (Escape) OR SPECIFY STATE STATUTE)]

by [SUBJECT'S NAME IN CAPS] (hereafter, "Subject"), a fugitive from justice.

Therefore, pursuant to 18 U.S.C. § 3123, agents of the Investigative Agency may install or cause to be installed and use (i) a pen register, anywhere in the United States, to record or decode dialing, routing, addressing, or signaling information [b7E b7E]

[b7E] the Target Device, to record the date and time of such dialings or transmissions, and [b7E b7E]

[b7E] and, (ii) a trap and trace device on the Target Device, anywhere in the United States, to capture and record the incoming electronic or other impulses which identify the originating numbers or other dialing, routing, addressing, or signaling information² reasonably likely to identify the source of a wire or electronic communication, and to record the date, time, and duration of calls created by such incoming impulses; provided, however, that such pen register and trap and trace authorization shall not include the contents of any communication;

2. TRANSACTIONAL AND STORED RECORDS ACCESS. Pursuant to 18 U.S.C. §§ 2703(c)(1)(B) and 2703(d), Applicant and Affiant have offered specific and articulable facts showing that there are reasonable grounds to believe that records or other information identifying subscribers or customers (but not including the contents of communications) for telephone numbers identified through the pen register and trap and trace device on the **Target Device**, changes in service regarding the **Target Device**, cell site information regarding the **Target Device**, and records or other information pertaining to subscriber(s) or customer(s) (but not including the contents of communications) for the **Target Device** are relevant and material to an ongoing criminal investigation of the specified offenses.

Therefore, pursuant to 18 U.S.C. § 2703(d), **Provider** shall disclose or provide the following, upon oral or written demand of the **Investigative Agency**:

a. Subscriber records and other information for the **Target Device** and for all published, non-published, or unlisted dialing, routing, addressing, or signaling information identified pursuant to the proposed order, being limited to:

- (A) name;
- (B) address;
- (C) local and long distance telephone connection records, or records of session times and durations;
- (D) length of service (including start date) and types of service utilized;
- (E) [REDACTED] b7E] b7E
- (F) date of birth;
- (G) social security number;
- (H) driver's license (state and number);
- (I) contact names and numbers; and
- (J) employment information;

b. Any and all changes (including additions, deletions, and transfers) in service regarding the **Target Device**, including [b7E]

[b7E] subscriber information changes (published, non-published, listed, or unlisted);

c. For the **Target Device**, records or other information pertaining to its subscriber or customer, [b7E]

[b7E] and the means and source of payment.

3. Future wireless location data. Pursuant to Fed. R. Crim. P. 41 and 18 U.S.C. §

2703(c)(1)(A), the Court finds that **Affiant** has offered sufficient evidence, amounting to probable cause, to believe that a crime has been committed, that **Subject** committed that crime, and that the information likely to be received concerning the location of the wireless phone used by **Subject** constitutes evidence of the crime or will otherwise assist law enforcement in apprehending **Subject**.

Therefore, **Provider** shall employ and disclose the results (through any means reasonably available) of any and all available location-based services, including but not limited to real-time cell-site data [b7E]

[b7E] It is further ordered, consistent with the provisions of 18 U.S.C. § 2703(e), that no cause of action shall lie against **Provider** for complying with this Order.

4. PROVIDER ASSISTANCE & COMPENSATION. Pursuant to 18 U.S.C. § 3124(a),

(b) & (c), **Provider** and any other provider of wire or electronic communication service, landlord, custodian, or other person, shall furnish the **Investigative Agency**—unobtrusively and

with a minimum of interference to services—all information, facilities, and technical assistance necessary to accomplish the installation of the pen register and trap & trace devices; and such providers shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

5. DELIVERY OF RECORDS. Pursuant to 47 U.S.C. § 1002(a) and by Order of this Court, upon request of the **Investigative Agency**, all records and information required to be provided pursuant to this Order shall be provided in a commercially reasonable electronic format specified by the **Investigative Agency**; and those records shall be delivered forthwith via electronic mail (unless delivery under the current CALEA delivery protocol is possible and requested by the **Investigative Agency**) to the email address specified by the agent serving the proposed order.

6. CONTINUATION OF SERVICES. Applicant has requested, and this Court so Orders, that Provider [b2 b7E]

[b2 b7E] b2 b7E
[b2 b7E] b2 b7E
C . . . b2 b7E]

~~7. APPLICABILITY AND DURATION OF ORDER.~~ Pursuant to 18 U.S.C. § 3124,

this Order, upon service, shall apply to any person or entity providing wire or electronic

communication service in the United States whose assistance may facilitate its execution

[b7E] and that, whenever served on any person or entity not specifically named therein, upon request of such person or entity, the Applicant or Investigative

Agency that is serving the order shall provide written or electronic certification that the order applies to the person or entity being served. 18 U.S.C. 3123(a)(1). Further, pursuant to 18 U.S.C. § 3123(b)(1)(C), this Order shall apply not only to the Target Device, [b7E]

[b7E]

[b7E] within the period authorized by the order. Further, this Order shall be effective in all respects for the thirty (30) days following its execution and, with respect to stored and transactional records, effective also for the sixty (60) days preceding its execution. 18 U.S.C. §§ 3123(c) and 2703(d).

8. NONDISCLOSURE & SEALING. Finally, pursuant to 18 U.S.C. §§ 2705(b), 3123(d), and 3103a(b), the Court finds that Applicant has articulated sufficient concern based on the interests of protecting law-enforcement sensitive investigative technique and the jeopardy posed to this investigation should this Order or Investigation be disclosed. Therefore, the Court orders that Provider, and all other telecommunications providers, persons or entities providing service to the Target Device who are obligated by this Order to provide assistance to the

Investigative Agency, shall not disclose in any manner, directly or indirectly, by any action or

inaction, to the subscriber(s) for the **Target Device**, the occupant of said premises, the subscriber of the incoming calls to or outgoing calls from the **Target Device**, or to any other person, the existence of this Order, in full or redacted form, the existence of the pen register, trap and trace or the existence of this investigation, unless and until otherwise ordered by this Court; and, further, that the identity of the **Subject** may be redacted from any copy of this Order to be served on any service provider or other person; and further that **Applicant's** Application (and Affidavit) and this Order are herewith SEALED for a period extending at least to the date of **Subject's** arrest or dismissal of the underlying arrest warrant, whichever comes first.

[BEFORE SUBMITTING, SEARCH FOR ALL BRACKETS IN THE APPLICATION

AND ORDER AND MAKE SURE THAT THEY HAVE BEEN FILLED IN OR DELETED AND UNBOLDED EXCEPT FOR "Target Device," "Investigative Agency," "Subject," "Provider," "Applicant," or "Affiant"]

Signed on _____ 2005, at Houston Texas.

[INSERT DUTY JUDGE'S NAME]

United States Magistrate Judge
Southern District of Texas

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN THE MATTER OF THE
APPLICATION OF THE UNITED
STATES OF AMERICA FOR AN
ORDER: (1) AUTHORIZING THE
INSTALLATION AND USE
OF A PEN REGISTER AND TRAP
AND TRACE DEVICE;
(2) AUTHORIZING RELEASE
OF SUBSCRIBER AND OTHER
INFORMATION; AND,
(3) AUTHORIZING THE DISCLOSURE
OF WIRELESS LOCATION DATA

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Case No. _____

(UNDER SEAL)

APPLICATION

The United States of America, by and through the undersigned Assistant United States Attorney, applies for a multi-part order authorizing (i) the installation and use of a pen register and trap & trace device; (ii) the disclosure of stored wire and electronic transactional records; and, (iii) disclosure of wireless location data. In support of this application, Applicant states the following:

1. AUTHORITY TO SEEK ORDER. Applicant is an "attorney for the Government" as defined by Fed. R. Crim. P. 1(b)(1)(B) and, therefore, may apply for an order authorizing the installation and use of a pen register and trap & trace device; the disclosure of stored wire and electronic transactional records; and the ongoing disclosure of wireless device location data. 18 U.S.C. §§ 3122(a)(1), 3127(5) and 2703(c)(1)(B) & (d); FED. R. CRIM. P. 41.

2. CERTIFICATION OF MATERIALITY AND FACTUAL BACKGROUND.

Applicant certifies that the United States Marshals Service ADD THE FOLLOWING FOR

STATE CASES: and the Gulf Coast Violent Offenders Task Force, under special

apprehension authority of the United States Attorney General as delegated to the United States Attorney pursuant to the National Anti-Violent Crime Initiative,] (hereafter, the "Investigative Agency") is conducting an ongoing criminal investigation regarding [Offense Description, such as: 18 U.S.C. § 751 (Escape) OR SPECIFY STATE STATUTE)] by

[SUBJECT'S NAME IN CAPS] (hereafter, "Subject"), a fugitive from justice; that it is believed that Subject uses, has ready access to, or is occasionally in close proximity with the electronic communications device bearing telephone number [(xxx) xxx-xxxx] (hereafter, the "Target Device"), which is believed to receive communications service through [Choose One or Verify with ESU before submitting if something else: Cellco Partnership d/b/a Verizon

Wireless; Sprint Spectrum, L.P. d/b/a Sprint-Nextel; Cingular Wireless; T-Mobile USA, Inc.] (hereafter, "Provider") and to be subscribed to by [Subscriber's Name, if known—if unknown, state "an unknown subscriber"] at [Service Address, if known—if unknown, state "an unknown location"]; and that the information likely to be obtained from the pen register and trap & trace device is relevant to the aforementioned investigation and will assist in securing Subject's apprehension. 18 U.S.C. § 3122(b)(1) & (2). By way of specific and articulable facts necessary to substantiate a request for stored wire and electronic transactional records under 18 U.S.C. § 2703(d), and a statement of probable cause to substantiate a request for the required disclosure of wireless device location data under Fed. R. Crim. P. 41(d)(1), Applicant offers the Affidavit of Deputy United States Marshal [NAME] (hereafter, "Affiant"), which is attached hereto and incorporated by reference into this Application.

3. PEN/TRAP REQUEST. Pursuant to 18 U.S.C. § 3123(a)(1), Applicant requests the Court issue an order authorizing the installation and use of a pen register³ (including "post-cut-through dialed digits")⁴ and trap and trace⁵ device. In accordance with 18 U.S.C. § 3121(c) and express Department of Justice Policy, Applicant has informed the **Investigative Agency** and its agents conducting this investigation that they shall use technology reasonably available [b7E]

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4. TRANSACTIONAL AND STORED RECORDS REQUEST. Pursuant to 18 U.S.C.

§§ 2703(c) & 2703(d) and 47 U.S.C. § 1002, Applicant requests the Court issue an order directing **Provider** to disclose or provide the following to **Investigative Agency**:

³ A "pen register" is a "device or process which records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided, however, that such information shall not include the contents of any communication ..." 18 U.S.C. § 3127(3). This includes dialing, routing, addressing, or signaling information transmitted over the communication service provider's network by a two-way radio feature (including, but not limited to, Nextel's "Direct Connect/Direct Dispatch," Verizon Wireless' "Push to Talk," or Sprint's "ReadyLink"). Information transmitted by the two-way radio feature will not disclose content of the call.

⁵ A "trap and trace device" is "a device or process that captures the incoming electronic or other impulses which identify the originating number" or other identifiers "reasonably likely to identify the source of a wire or electronic communication, provided, however, that such information not include the contents of any communication." 18 U.S.C. § 3127(4). As with a pen register, this includes information captured for any two-way radio feature.

a. Subscriber records and other information for the **Target Device** and for all published, non-published, or unlisted dialing, routing, addressing, or signaling information identified pursuant to the proposed order, being limited to:

- (A) name;
- (B) address;
- (C) local and long distance telephone connection records, or records of session times and durations;
- (D) length of service (including start date) and types of service utilized;
- (E) [REDACTED] b7E b7E b7E] b7E
- (F) date of birth;
- (G) social security number;
- (H) driver's license (state and number);
- (I) contact names and numbers, and
- (J) employment information;

b. Any and all changes (including additions, deletions, and transfers) in service regarding the **Target Device**, including [REDACTED] b7E]

[REDACTED] b7E] b7E

[REDACTED] b7E]

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c. For the **Target Device**, records or other information pertaining to its subscriber or customer, including historical call detail records⁷ and cell-site information⁸ (including any two-way radio feature mode) and the means and source of payment for service.

5. Wireless Location Data. Pursuant to Fed. R. Crim. P. 41, 18 U.S.C. § 2703(c)(1)(A),

and the probable cause set forth in the attached Affidavit, Applicant requests the Court issue an Order requiring **Provider** to disclose to the **Investigative Agency** prospective location information, including [

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] Specific disclosure of location

~~information will assist law enforcement in identifying the approximate physical location of the~~

Target Device and will not disclose content of the calls. This includes the request for an order directing **Provider** to employ and to disclose the results (through any means reasonably available) of any and all [

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] The requested order should contain a provision,

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identical to that found at 18 U.S.C. § 2703(e), that no suit shall lie against Provider for complying with the Court's order and should be valid for a period of sixty (60) days, consistent with the duration authorized by the pen register.

6. PROVIDER ASSISTANCE & COMPENSATION. Applicant requests further that

Provider and all other providers of wire or electronic communication service, landlord, custodian, or other person furnish the Investigating Agency—unobtrusively and with a minimum of interference to services—all information, facilities, and technical assistance necessary to accomplish the installation of the pen register, trap & trace and wireless data disclosure order; and that such providers be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance. 18 U.S.C. § 3124(a), (b) & (c).

7. DELIVERY OF RECORDS. Applicant further requests that, upon request of the Investigative Agency, all records and information required to be provided pursuant to the proposed order be provided in a commercially reasonable electronic format specified by the Investigative Agency; and that those records be delivered forthwith via electronic mail (unless delivery under the current CALEA delivery protocol is possible and requested) to the email address specified by the agent serving the proposed order. 47 U.S.C. § 1002(a).

8. CONTINUATION OF SERVICES. Applicant further requests, because it is necessary to advance the purposes of this investigation, that the proposed order direct Provider

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9. APPLICABILITY AND DURATION OF REQUESTED ORDER. Applicant

finally requests that the proposed order, upon service, shall apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate its execution [b7E] b7E

[b7E] and that whenever served on any person or entity not specifically named therein, upon request of such person or entity, the attorney for the Government or law enforcement or investigative officer that is serving the order shall provide written or electronic certification that the order applies to the person or entity being served. 18 U.S.C. 3123(a)(1). Applicant requests that, pursuant to 18 U.S.C. § 3123(b)(1)(C), the proposed order apply not only on the Target Device, [b7E]

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[b7E]

[b7E]

] Applicant requests, further, that the proposed order be

effective in all respects for the thirty (30) days following its execution and, with respect to stored and transactional records, effective also for the sixty (60) days preceding its execution. 18 U.S.C. §§ 3123(c) and 2703(d).

10. NONDISCLOSURE & SEALING. Pursuant to 18 U.S.C. §§ 2705(b), 3123(d), and

3103a(b), Applicant further requests that the proposed order direct the **Provider**, and all other telecommunications providers, persons or entities providing service to the **Target Device** who are obligated by the proposed order to provide assistance to the **Investigative Agency**, not to disclose in any manner, directly or indirectly, by any action or inaction, to the subscriber(s) for the **Target Device**, the occupant of said premises, the subscriber of the incoming calls to or outgoing calls from the **Target Device**, or to any other person, the existence of the proposed order, in full or redacted form, the existence of the pen register, trap and trace device, or the existence of this investigation, unless otherwise ordered by this Court; and that the identity of the **Subject** may be redacted from any copy of the proposed order to be served on any service provider or other person; and further that this application any order entered in connection therewith be SEALED for a period extending at least to the date of **Subject's** arrest or dismissal of the underlying arrest warrant, whichever comes first. Specifically, disclosure of the requested order and investigation would likely result in continued flight from prosecution, a modification of the **Subject's** activities or the activities of those with whom **Subject** communicates and associates, or the destruction or tampering of evidence; and would otherwise seriously jeopardize the investigation.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on [INSERT DATE], at Houston, Texas.

[BEFORE FILING, SEARCH FOR ALL BRACKETS IN THE APPLICATION AND ORDER AND MAKE SURE THAT THEY HAVE BEEN FILLED IN OR DELETED AND UNBOLDED EXCEPT FOR "Target Device," "Investigative Agency," "Subject," "Provider," "Applicant," or "Affiant"]

[AUSA'S NAME]

Assistant U.S. Attorney – S.D. Texas

[AUSA'S TELEPHONE NUMBER]

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN THE MATTER OF THE
APPLICATION OF THE UNITED
STATES OF AMERICA FOR AN
ORDER: (1) AUTHORIZING THE
INSTALLATION AND USE
OF A PEN REGISTER AND TRAP
AND TRACE DEVICE;
(2) AUTHORIZING RELEASE
OF SUBSCRIBER AND OTHER
INFORMATION; AND,
(3) AUTHORIZING THE DISCLOSURE
OF WIRELESS LOCATION DATA

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Case No. _____

(UNDER SEAL)

AFFIDAVIT IN SUPPORT OF APPLICATION

1. I, [AGENT'S NAME], am a Deputy United States Marshal with the United States Marshals Service and, as such, I am charged with enforcing all laws in all jurisdictions of the United States, its territories and possessions. My primary duty and assignment obligates me to apprehend state and federal felony fugitives. I submit this Affidavit in support of the attached application for an order authorizing the installation and use of a pen register and trap and trace device, authorizing release of subscriber and other information, and authorizing the ongoing disclosure of wireless device location data. I set forth the following facts showing that there are sufficient grounds to believe that the cell-site and other subscriber records and information pertaining to telephone number [(xxx) xxx-xxxx] (as defined in the Application and herein, the "Target Device") and records or other information identifying subscribers (but not including the contents of communications) for telephone numbers calling or receiving calls from the Target Device will likely be relevant and material to an ongoing criminal investigation:

a. [INSERT SUMMARY OF FACTS relating to the investigation and, without unnecessarily identifying sources (because this affidavit will someday be unsealed), how this telephone number was identified. Set forth SPECIFIC facts regarding the investigation, why you think the target is using or has access to the target device, or that the location of the target device will lead to apprehension; and why getting subscriber information/cellsite information is relevant to the investigation]

b. In my experience, information identifying the subscribers of telephone numbers calling to or from a fugitive [b7E ME] has yielded information that is relevant and material to fugitive investigations. Such information includes investigative leads relating to:

- (A) the names of individuals associated with, and businesses relevant to, the fugitive;
- (B) the location of "safe-houses" and other places of refuge or assistance;
- (C) the identity of family members, friends and those who have gained a fugitive's affection;
- (D) the locations of money transfers, modes and means of transportation, businesses used by fugitives, and even the identity of pizza or other fast-food delivery services providing fugitive nourishment and sustenance;
- (E) the geographic breadth and frequency of a fugitive's movements;
- (F) the identities of those knowingly providing safe-harbor or assistance to a fugitive, who may themselves be charged with concealing a person from arrest or accessory after the fact.

Based upon my training and experience, one of the most useful, undetectable and reliable ways to identify the foregoing information and to quickly and safely arrest fugitives is to evaluate the pattern of calls made to and from the Target Device [b7E ME]

[b7E] and to then conduct an investigation concerning those individuals. [b7E] b7E

[b7E]
c. b7E] b7E

c. Obtaining the subscriber name, address, date of birth, social security number, driver's license information, contact names and numbers, employment information; and method of payment is critical to accurately identifying such subscribers because, among other things:

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(B)

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precise. I seek an order to compel disclosure of these records. [

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3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on [INSERT DATE], at

Houston, Texas.

[BEFORE FILING, SEARCH FOR ALL BRACKETS IN THE APPLICATION AND ORDER AND MAKE SURE THAT THEY HAVE BEEN FILLED IN OR DELETED AND UNBOLDED EXCEPT FOR "Target Device", "Investigative Agency", etc.]

[AGENT'S NAME], Deputy
United States Marshals Service

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Combined 3123/2703 Application

[NAME]

United States Attorney

[NAME]

Assistant United States Attorney

Chief, Criminal Division

[YOUR NAME]

Assistant United States Attorney

[] Section

[] State Bar No. []

[ADDRESS]

Telephone: () X-[]

Facsimile: () X-[]

Attorneys for Applicant
United States of America.

UNITED STATES DISTRICT COURT

FOR THE [] DISTRICT OF []

IN THE MATTER OF THE)
APPLICATION OF THE UNITED)
STATES OF AMERICA FOR AN)
ORDER: (1) AUTHORIZING THE)
INSTALLATION AND USE)
OF A PEN REGISTER AND A)
TRAP AND TRACE DEVICE; AND)
(2) AUTHORIZING RELEASE OF)
SUBSCRIBER INFORMATION)
AND/OR CELL SITE INFORMATION)

No. _____

A P P L I C A T I O N

(UNDER SEAL)

[YOUR NAME], an Assistant United States Attorney for the

[], hereby applies to the court for an order:

1. Pursuant to 18 U.S.C. §§ 3122 and 3123, authorizing the installation and use of a pen register and the use of a trap and trace device

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¹ A "pen register" is a "device or process which records or decodes dialing, routing, addressing or signaling information transmitted by an instrument or facility from which a wire or electronic

FOLLOWED BY ADDRESS] [NOTE TO AGENTS:

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b7E] and used by [TARGET'S NAME] (hereinafter the "Subject Telephone Number" [OR, IF YOU PLAN TO GET PENS ON OTHER PHONES AT A LATER DATE, YOU CAN KEEP TRACK BETTER BY NUMBERING, SUCH AS "Subject Telephone Number One"]);

2. Pursuant to 18 U.S.C. §§ 2703(c)(1)(B), 2703(c)(2) and 2703(d), directing disclosure of subscriber information for all published, non-published, or unlisted numbers dialed or otherwise transmitted to and from the Subject Telephone Number, upon oral or written demand by special agents of the [LIST AGENCY/IES]³; and

3. [FOR WIRELESS TELEPHONE ONLY]: Pursuant to 18 U.S.C. §§ 2703(c)(1)(B) and 2703(d), directing disclosure of the location of cell site/sector (physical address) at call origination (for outbound calling), call termination (for incoming calls), and, if reasonably available, [b7E] b7E

³"Subscriber Information" includes:

(A) name; (B) address; (C) local and long distance telephone connection records, or records of session times and durations; (D) length of service (including start date) and types of service utilized; (E) b7E and (F) means and source of payment for such service (including any credit card or bank account number) of a subscriber to or customer of an electronic communication service or remote computing service. 18 U.S.C. § 2703(c)(2). b7E

Subject Telephone Number. 4

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In support of this application, I state the following:

A. CERTIFICATION FOR A PEN REGISTER AND A TRAP AND TRACE DEVICE

1. I am an "attorney for the Government" as defined in Rule 54(c) of the Federal Rules of Criminal Procedure, and therefore, pursuant to 18 U.S.C. § 3122, may apply for an order authorizing the installation and use of pen registers and trap and trace devices.

2. I certify that the information likely to be obtained from the pen register and trap and trace device is relevant to an ongoing criminal investigation being conducted by the Federal Bureau of Investigation (FBI) in connection with possible violations of federal criminal offenses, including [CITE STATUTE(S)]; and that it is believed that [LIST MAIN TARGET(S)], and others known and unknown, have and will continue to use the Subject Telephone Number in furtherance of the subject offense.

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3. Wherefore, based upon the above Certification,⁵ I request that the court issue an order authorizing:

a. The installation and use of a pen register to record or decode dialing, routing, addressing, or signaling information⁶ transmitted from the Subject Telephone Number, to record the date

⁵ Section 3122 "was not intended to require independent judicial review of relevance; rather, the reviewing court need only verify the completeness of the certification." In re United States, 10 F.3d 931, 935 (2d Cir. 1993) (citing S. Rep. No. 541, 99th Cong., 2d Sess. 47 (1986), reprinted in 1986 U.S.C.C.A.N. 3555, 3601); see also United States v. Fregoso, 60 F.3d 1314, 1320 (8th Cir. 1995) (holding that the judicial role under Section 3123(a) is ministerial in nature because a proper application under Section 3122 mandates entry of the order); Brown v. Waddell, 50 F.3d 285, 290 (4th Cir. 1995) (Section 3122 does not require the government to establish probable cause to obtain a pen register or trap and trace device); United States v. Newman, 733 F.2d 1395, 1398 (10th Cir. 1984) ("[N]o showing of probable cause -- or even 'sufficient cause,' as defendant suggests -- is necessary to justify authorization of a pen register.")

Section 3121(c), as amended by the USA Patriot Act, P.L. 107-56 (2001) affirmed the requirement to "use technology reasonably available" that restricts the collection of information "so as not to include the contents of any wire or electronic communications." This provision implicitly recognizes that the incidental collection of some content may occur despite the use of reasonably available technology to avoid such capture. With regard to the requirement of Section 3121(c) to use technology reasonably available so as not to include the contents of any wire or electronic communications,

and time of such dialings or transmissions, and to record the length of time the telephone receiver in question is "off the hook" for incoming or outgoing calls for a period of sixty days.

b. The installation and use of a trap and trace device on the Subject Telephone Number to capture and record the incoming electronic or other impulses which identify the originating numbers or other dialing, routing, addressing, or signaling information reasonably likely to identify the sources of wire or electronic communications and to record the date, time and duration of calls created by such incoming impulses, for a period of sixty days, and that the tracing operations be without geographical limits.

c. That, pursuant to 18 U.S.C. § 3123(b)(1)(C), the requested installation and use of a pen register and trap and trace device permit the use of such a pen register and trap and trace device

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60-day period authorized by this order.⁷

5. Applicant further requests that the court direct the local, long distance, and wireless carriers listed in the proposed order, filed concurrently herewith, and any other person or entity providing wire or electronic communication service in the United States whose assistance is used to facilitate execution of the order to notify special agents of the FBI, upon oral or written request, [] b7E]

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6. Pursuant to 18 U.S.C. § 3123(a)(1) and § 3123(b)(2), I further request that the court direct that upon service of the order upon it, the local, long distance, and wireless carriers, and any other person or entity providing wire communication service in the United States whose assistance may facilitate execution of the order, furnish the information, facilities, and technical assistance necessary to accomplish unobtrusively the installation and use of the pen register and trap and trace device with

⁷ Section 3123(b)(1)(C) has been amended to require the Court to specify in the order "the attributes of the communications to which the order applies, including the number or other identifier" 18 U.S.C. § 3123(b)(1)(C). The account number, when combined with the same subscriber name for the Subject Telephone Number sufficiently specifies "the attributes of the communications to which the order applies, including the number or other identifier" as required by

§ 3123(b)(1)(C). Cf. United States v. Duran, 189 F.3d 1071, 1083-1086 (9th Cir. 1999) (holding interception of wire communications on a cellular telephone with a changed telephone number followed by a changed ESN were covered by the order authorizing the interception of wire communications even though the court order authorizing the wiretap only anticipated a changed telephone number but did not anticipate a changed ESN).

compensation to be paid by the investigative agency for reasonable expenses directly incurred in providing such facilities and assistance.

7. Applicant further requests that the order direct the local, long distance, and wireless carriers, and any other person or entity providing wire or electronic communication service in the United States whose assistance is used to facilitate execution of the order, furnish the results of the pen register and trap and trace installations to Agents of the Federal Bureau of Investigation as soon as practicable twenty four (24) hours a day for the duration of the order.

B. SPECIFIC AND ARTICULABLE FACTS ESTABLISHING REASONABLE GROUNDS TO BELIEVE THAT SUBSCRIBER RECORDS [AND CELL SITE INFORMATION] ARE RELEVANT AND MATERIAL TO AN ONGOING CRIMINAL INVESTIGATION

1. In support of its request for an order under 18 U.S.C. § 2703(d) directing the furnishing of subscriber information [FOR WIRELESS PHONE: and cell site information] pursuant to 18 U.S.C. §§ 2703(c)(1)(B), 2703(c)(2) and 2703(d), and based upon discussions with SA [AGENT'S NAME], the government hereby sets forth the following specific and articulable facts showing that there are reasonable grounds to believe that the subscriber information pertaining to telephone numbers identified through the pen register and trap and trace device on the Subject Telephone Number [FOR WIRELESS PHONE: and cell site information regarding the Subject

Telephone Number] will be relevant and material to an ongoing criminal investigation:

a. [INSERT BRIEF, YET SPECIFIC, FACTUAL STATEMENT RE:
YOUR INVESTIGATION AND INFORMATION INDICATING THAT TARGET(S) IS
USING THE SUBJECT TELEPHONE(S); TRY TO LIMIT THIS SECTION TO 3
PARAGRAPHS. FOR A CONTINUATION OF A PEN REGISTER: ADD THE DATE,
MISC. NUMBER AND SIGNING JUDGE OF ALL PRIOR PEN REGISTER ORDERS AND
SOME JUDGES MIGHT REQUIRE SOME INFORMATION REGARDING THE RESULTS OF
THE PEN REGISTER(S)/TRAP AND TRACE(S) DURING THE MOST RECENT 60-DAY
PERIOD.]

b. [INSERT CONCISE EXPLANATION AS TO WHY SUBSCRIBER
INFORMATION IS RELEVANT AND MATERIAL TO YOUR INVESTIGATION. IF
DRUG TRAFFICKING CASE, ADAPT THE FOLLOWING PARAGRAPH: In [AGENT'S
NAME's] experience, subscriber information, including toll data
from numbers obtained from numbers captured by the pen register and
the trap and trace has yielded information that is relevant and
material to narcotics trafficking investigations. [b7E]

[b7E] [IF YOU HAVE NEED FOR TOLL DATA ADD THE
FOLLOWING OR OTHER FACTS THAT SUPPORT THE REQUEST : [b7E]

c. [FOR WIRELESS TELEPHONE ONLY]: SA [AGENT'S NAME] has

further advised[

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ME]

5. Accordingly, based upon the above proffer, and pursuant to
~~18 U.S.C. §§ 2703(c)(1)(B), 2703(c), and 2703(d), because there are~~
reasonable grounds to believe that such information is relevant and
material to the ongoing investigation, I request that the providers
listed in the proposed order, filed concurrently herewith, and any
other person or entity providing wire or electronic communications
service in the United States whose assistance may facilitate
execution of the order be ordered to supply subscriber information
(including the names and addresses, whether listed or unlisted,
billing information, and periods of telephone activation) for
dialing, routing, addressing, or signaling information captured by
the pen register on the **Subject Telephone Number**, and for dialing,
routing, addressing, or signaling information reasonably likely to
identify the source of a wire or electronic communication
~~transmitted to the Subject Telephone Number as captured by the trap~~
and trace device on the **Subject Telephone Number** upon oral or
written demand by agents of the [AGENCY/IES] [b7E] b7E

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C. REQUEST THAT APPLICATION AND ORDER BE FILED UNDER SEAL AND THAT THE ORDER PRECLUDE NOTICE

1. Based upon the information provided in this application, I believe that the disclosure of the requested court order may result in the flight from potential prosecution, may result in the destruction of or tampering with evidence, or may otherwise seriously jeopardize the investigation. Therefore, pursuant to 18 U.S.C. §§ 2705(b) and 3123(d), I further request that the court direct the local, long distance and wireless carriers listed in the proposed order, and any other local, long distance or wireless carrier servicing the **Subject Telephone Number** who is obligated by the order to provide assistance to the applicant not to disclose in any manner, directly or indirectly, by any action or inaction, to the listed subscriber[s] for the **Subject Telephone Number**, the occupant of said premises, the subscriber of the incoming calls to or outgoing calls from the **Subject Telephone Number**, or to any other person, the existence of this order, in full or redacted form, of the pen register or trap and trace devices, or of this investigation unless otherwise ordered by this court and further

that this application and order be SEALED.

I declare under penalty of perjury that the foregoing is true
and correct to the best of my knowledge and belief, and that this
declaration was executed on [DATE] at [_____].

[YOUR NAME]

Assistant United States Attorney
[_____] Section

Combined 3123/2703 Order

[NAME]

United States Attorney

[NAME]

Assistant United States Attorney

Chief, Criminal Division

[YOUR NAME]

Assistant United States Attorney

[] Section

State Bar No. []

[ADDRESS]

Telephone: (XXX) []-[]

Facsimile: (XXX) []-[]

Attorneys for Applicant
United States of America

UNITED STATES DISTRICT COURT

FOR THE [] DISTRICT OF []

IN THE MATTER OF THE)
APPLICATION OF THE UNITED)
STATES OF AMERICA FOR AN)
ORDER: (1) AUTHORIZING THE)
INSTALLATION AND USE)
OF A PEN REGISTER AND A)
TRAP AND TRACE DEVICE,)
AND (2) AUTHORIZING RELEASE)
OF SUBSCRIBER INFORMATION)
AND/OR CELL SITE INFORMATION)

No. _____

[PROPOSED] ORDER

(UNDER SEAL)

This matter having come before the court pursuant to an
application under Title 18, United States Code, Sections 2703(c)

and (d), 3122 and 3123, by Assistant United States Attorney [YOUR
NAME], an attorney for the Government as defined by Fed. R. Crim.

~~P. 54(c), requesting an order authorizing the installation and use~~

of a pen register and the use of a trap and trace device, on the
following telephone number:

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(a) [AREA CODE AND PHONE NUMBER], a [TYPE OF PHONE, E.G., "HARD-LINE TELEPHONE," "CELLULAR TELEPHONE," OR "DIGITAL TELEPHONE"] issued by [NAME OF CARRIER, E.G., AT&T WIRELESS SERVICES], with Electronic Serial Number ("ESN") [FILL IN ESN] ~~if Nextel:~~ instead of ESN, insert International Mobile Subscriber Identifier ("IMSI"), which is preferred, but not required; [if Cingular Wireless: ESN and/or Subscriber Identity Module ("SIM") [FILL IN ESN AND/OR SIM]], subscribed to by [SUBSCRIBER'S NAME AND BILLING ADDRESS, IF KNOWN; IF PREPAID ACCOUNT, STATE "PREPAID ACCOUNT," FOLLOWED BY ADDRESS] and used by [TARGET'S NAME] (hereinafter the "Subject Telephone Number"; and

UPON REVIEW OF THE APPLICATION, THE COURT HEREBY FINDS THAT:

Pursuant to 18 U.S.C. § 3123, Applicant has certified that the information likely to be obtained by such use is relevant to an ongoing criminal investigation being conducted by the Federal Bureau of Investigation into possible violations of [STATUTE(S)] by [MAIN TARGETS], and others.

Pursuant to 18 U.S.C. §§ 2703(c)(1)(B), 2703(c)(2) and 2703(d), Applicant has offered specific and articulable facts ~~showing that there are reasonable grounds to believe that~~

subscriber information for dialing, routing, addressing, and signaling information (not including the contents of any

RIF

communication) transmitted to and from the Subject Telephone Number is relevant and material to an ongoing criminal investigation of the specified offenses;

~~[FOR WIRELESS TELEPHONE ONLY] Pursuant to 18 U.S.C. §§ 2703(c)(1)(B) and 2703(d), Applicant has further established that there are specific and articulable facts showing that there are reasonable grounds to believe that cell site information is relevant and material to an ongoing criminal investigation of the specified offenses;~~

THEREFORE, IT IS HEREBY ORDERED, pursuant to 18 U.S.C.

§ 3123, that agents of the Federal Bureau of Investigation may install, or cause to be installed, and use a pen register to record or decode dialing, routing, addressing, or signaling information transmitted from the Subject Telephone Number,¹ to record the date and time of such dialings or transmissions, and [b7E]

[b7E]] b7E
[b7E] for a period of sixty days from the date this order is filed by the court;²

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3123, that agents of the Federal Bureau of Investigation may install, or cause to be installed, and use a trap and trace device on the Subject

² As used herein, "the date this order is filed by the court" is the date indicated by the clerk's file stamp on the first page of this order.

Telephone Number to capture and record the incoming electronic or other impulses which identify the originating number, or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication, and to record the date, time, and duration of calls created by such incoming impulses, for a period of sixty days from the date this order is filed by the court, and that the tracing operations be without geographical limits;

IT IS FURTHER ORDERED, pursuant to 18 U.S.C.

§§ 2703(c)(1)(B), 2703(c)(2) and 2703(d), that [NAME PROVIDER(S)] Pacific Bell Telephone Company, Southwestern Bell Telephone Company (SBC), Verizon California, Inc., AT&T Broadband, Allegiance Telecom, MPower Communications, Ameritech, Cox Communications (hereinafter "the local carriers"); AT&T, U.S. Sprint, WorldCom (hereinafter "the long distance carriers"); Cellco Partnership, dba Verizon Wireless, AT&T Wireless Services, Cingular Wireless, Sprint Spectrum L.P., and Nextel Communications (hereinafter "the wireless carriers"); and any other local, long distance or wireless carrier servicing the Subject Telephone Number, shall supply subscriber information (including the names and addresses, whether listed or unlisted, billing information, and periods of telephone activation) for dialing, routing, addressing, or signaling information captured by the pen register on the

Subject Telephone Number, and for dialing, routing, addressing, or signaling information reasonably likely to identify the source of

a wire or electronic communication transmitted to the Subject Telephone Number as captured by the trap and trace device on the Subject Telephone Number, upon oral or written request by special agents of the FBI;

~~[FOR WIRELESS TELEPHONE ONLY AND CELL SITE HAS BEEN REQUESTED.]~~

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§ 2703(c)(1)(B), 2703(c)(2) and 2703(d), that the wireless carriers shall provide the [b7E]

[b7E] b7E b7E

IT IS FURTHER ORDERED that this authorization for the installation and use of a pen register and trap and trace device applies not only to the telephone number listed above for the Subject Telephone Number, [b7E]

[b7E] b7E b7E

[b7E] b7E b7E

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[] within
the 60-day period authorized by this order;

IT IS FURTHER ORDERED, that the local, long distance, and the
~~wireless carriers, and any other person or entity providing wire~~
communication service in the United States whose assistance may
facilitate execution of the order, notify special agents of the
FBI, upon oral or written request, of any and all changes
(including additions, deletions, and transfers) in service
regarding the **Subject Telephone Number** to include telephone numbers
and subscriber information (published and non-published) associated
with these service changes;

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §
3123(a)(1) and (b)(2) and § 2703(c) and (d), that upon service of
this order upon it, the local, long distance, and the wireless
carriers, and any other person or entity providing wire
communication service in the United States whose assistance may
facilitate execution of the order, shall furnish agents of the
[AGENCY/IES] forthwith all information, including but not limited
to telephone subscriber information, facilities, and technical
assistance necessary to accomplish the installation and use of the
pen register and trap and trace device unobtrusively and with
~~minimum interference with the services that are accorded the~~
persons with respect to whom the installation and use is to take
place;

IT IS FURTHER ORDERED that the local, long distance, and the wireless carriers, and any other person or entity providing wire or electronic communication service in the United States whose assistance is used to facilitate execution of the order, furnish the results of the pen register and trap and trace installations to special agents of the FBI as soon as practicable twenty four (24) hours a day for the duration of the order.

IT IS FURTHER ORDERED that the local, long distance and the wireless carriers be compensated by the investigative agency for reasonable expenses directly incurred in providing technical assistance; and,

Good cause having been shown, IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§ 2705(b) and 3123(d), that this order and the application be sealed until otherwise ordered by the court, that the identity of any target(s) of the underlying criminal investigation may be redacted from any copy of this order to be served on any service provider or other person, and that the local, long distance and the wireless carriers and their representatives, agents and employees shall not disclose in any manner, directly or indirectly, by any action or inaction, the existence of this order or the existence of the above-described investigation, to the listed subscriber[s] for the **Subject Telephone Number**, the occupant of said premises, the subscribers of the incoming calls to or outgoing calls from the **Subject Telephone Number**, or to any other person, in full or redacted form, unless or until otherwise ordered

by the court.

DATED: _____ [NOTE TO AGENTS/ASSISTANT UNITED STATES

ATTORNEY'S: LEAVE ENTIRE DATE BLANK FOR COURT TO FILL IN; IF WRONG

MONTH OR YEAR IS LEFT IN (I.E., DUPING AN OLD ORDER), PHONE COMPANY

MAY REJECT, DESPITE CLERK'S DATE/TIME STAMP ON FACE PAGE]

***: BEFORE FILING, SEARCH FOR ALL BRACKETS "[" TO MAKE SURE THAT
ALL BRACKETS AND BRACKETED PHRASES HAVE BEEN DELETED*****

UNITED STATES MAGISTRATE JUDGE

Presented by:

[YOUR NAME]
Assistant United States Attorney
[] Section

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN THE MATTER OF AN APPLICATION :
OF THE UNITED STATES OF AMERICA : SEALED APPLICATION
FOR AN ORDER AUTHORIZING DISCLOSURE :
OF GPS COORDINATES OF A SPECIFIED :
WIRELESS TELEPHONE :
-----X

[YOUR NAME], an Assistant United States Attorney in the
Office of Roslynn R. Mauskopf, United States Attorney for the
Eastern District of New York, hereby applies to the Court for an
Order pursuant to the All Writs Act, 28 U.S.C. § 1651(a), directing
~~Sprint/Nextel (the "Carrier") to disclose certain information,~~
further defined below as "GPS Coordinates," relating to the
wireless telephone assigned telephone number [TELEPHONE NUMBER] and
[ESN/IMSI/IMEI], issued by the Carrier and subscribed to in the
name of [SUBSCRIBER NAME AND ADDRESS, if any] (the "SUBJECT
WIRELESS TELEPHONE") for use by law enforcement agents assigned to
effect an arrest warrant that was issued on or about [DATE OF
WARRANT], in the Eastern District of New York, by [NAME OF JUDGE]
commanding that [NAME OF FUGITIVE] (the "SUBJECT FUGITIVE") be
brought before the Court to be arraigned on a [COMPLAINT OR
INDICTMENT] charging a violation of [STATUTE VIOLATED] (the
"SUBJECT ARREST WARRANT").

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A. The Information Sought

1. GPS is a worldwide radio-navigation system based on a network of satellites in orbit around the earth and their ground stations. GPS-enabled equipment uses signals communicated from the satellites ("GPS signals") as reference points to estimate the geographic position of a given electronic device. [b7E]

2. I have been informed that, when it was manufactured the SUBJECT WIRELESS TELEPHONE was pre-equipped with a GPS-enabled chip. Further, [b7E]

[

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b7E

3. Under the order proposed herein, agents of [NAME OF AGENCY] would be authorized orally to request the Carrier to use its Precision Locate Service unobtrusively to acquire the current GPS Coordinates of the Subject Wireless Telephone [

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[b7E

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[b7E

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AIP

B. BASIS OF REQUESTED ORDER

4. The Court has authority pursuant to the All Writs Act, 28 U.S.C. § 1651, to order disclosure of GPS Coordinates on a showing of probable cause to believe that a federal fugitive is using a specified wireless telephone. Under 28 U.S.C. § 1651(a), such disclosure is of appropriate aid to the Court's extant jurisdiction over an open arrest warrant because it assists agents to find the fugitive so that the warrant can be executed and he can be brought before the Court to be arraigned.³

5. I have discussed the investigation of the SUBJECT FUGITIVE fully with the ICE agents involved in it. Based upon those discussions, the government respectfully submits that the following demonstrates probable cause to believe that the SUBJECT FUGITIVE is using the SUBJECT WIRELESS TELEPHONE:⁴

[INSERT PROBABLE CAUSE TO BELIEVE FUGITIVE IS USING PHONE]

6. Based on the foregoing, I respectfully request that the Court issue an Order pursuant to the All Writs Act, 28 U.S.C. § 1651(a):

³ See, e.g., In re Application of the United States for an Order (1) Authorizing the Use of a Pen Register and a Trap and Trace Device and (2) Authorizing Release of Subscriber Information and/or Cell Site Information, 396 F. Supp.2d 294, 325-26 (E.D.N.Y. 2005) (James Orenstein, M.J.) (approving same).

⁴ Because the purpose of this affirmation is to establish the requisite probable cause, I have not set forth each and every fact of which I am aware.

a. Directing the Carrier [b7E]

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b. Directing the Carrier to [b7E]

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within

the period authorized by this order;

c. Directing the Carrier to notify [NAME OF AGENCY]
agents, upon oral or written request, of any and all changes
(including additions, deletions, and transfers) in service
regarding the SUBJECT WIRELESS TELEPHONE to include telephone
numbers and subscriber information (published and non-published)
~~associated with these service changes;~~

d. Directing the Carrier not to disclose to the listed subscriber of the SUBJECT WIRELESS TELEPHONE or to any other person, (a) the existence of the authorizing order, in full or redacted form and (b) the disclosure of GPS Coordinates with respect to the SUBJECT WIRELESS TELEPHONE, unless and until otherwise ordered by the Court. Any such disclosure would severely jeopardize this investigation by alerting [NAME OF FUGITIVE] to the existence of an investigation and likely lead to flight and/or destruction or concealment of evidence of the SUBJECT FUGITIVE's location.

7. No prior request for the relief set forth herein has been made except to the extent set forth above. The foregoing is affirmed under the penalties of perjury. See 28 U.S.C. § 1746.

Dated: Brooklyn, New York
DATE

[YOUR NAME]
Assistant United States Attorney
[YOUR TEL. NUMBER]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN THE MATTER OF AN APPLICATION :
OF THE UNITED STATES OF AMERICA : SEALED ORDER OF
FOR AN ORDER AUTHORIZING DISCLOSURE : AUTHORIZATION
OF GPS COORDINATES OF A SPECIFIED :
WIRELESS TELEPHONE :
-----X

This matter having come before the court pursuant to an application by Assistant United States Attorney [YOUR NAME], requesting an Order pursuant to the All Writs Act, 28 U.S.C. § 1651(a), directing Sprint/Nextel (the "Carrier") to disclose certain information, further defined below as "GPS Coordinates," relating to the wireless telephone assigned telephone number [TELEPHONE NUMBER] and [ESN/IMSI/IMEI], issued by the Carrier and subscribed to in the name of [SUBSCRIBER NAME AND ADDRESS, if any] (the "SUBJECT WIRELESS TELEPHONE") for use by law enforcement agents assigned to effect an arrest warrant that was issued on or about [DATE OF WARRANT] in the Eastern District of New York, by Magistrate Judge Steven M. Gold commanding that [NAME OF FUGITIVE] (the "SUBJECT FUGITIVE") be brought before the Court to be arraigned on a [COMPLAINT OR INDICTMENT] charging a violation of [STATUTE VIOLATED] (the "SUBJECT ARREST WARRANT"), now therefore, UPON REVIEW OF THE APPLICATION, THE COURT HEREBY FINDS THAT:

~~Applicant has established probable cause to believe that~~
[NAME OF FUGITIVE] is presently using the SUBJECT WIRELESS TELEPHONE and, accordingly, pursuant to the All Writs Act, 28

RIF

U.S.C. § 1651, disclosure of the approximate coordinates, [b7E]

[b7E]

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]e

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b7E

] would be of appropriate

aid of the Court's jurisdiction with respect to the pending warrant

to arrest the SUBJECT FUGITIVE because that information will aid agents in locating [NAME OF FUGITIVE], executing the SUBJECT ARREST WARRANT and bringing [NAME OF FUGITIVE] before the Court to answer charges; now therefore,

IT IS HEREBY ORDERED, pursuant to the All Writs Act, 28

U.S.C. § 1651, that upon oral request by agents of [NAME OF AGENCY], the Carrier shall, at any times specified by the agents,

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] and upon their

computation, immediately report them to [NAME OF AGENCY];

IT IS FURTHER ORDERED, pursuant to the All Writs Act, 28

U.S.C. § 1651, that this Order for the disclosure of GPS

Coordinates applies [

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[b7E]
[b7E] within the period authorized by this order;

IT IS FURTHER ORDERED, that the local, long distance, and the wireless carriers, and any other person or entity providing wire communication service in the United States whose assistance may facilitate execution of the order, notify [NAME OF AGENCY] agents, upon oral or written request, of any and all changes (including additions, deletions, and transfers) in service regarding the SUBJECT WIRELESS TELEPHONE to include telephone numbers and subscriber information (published and non-published) associated with these service changes;

IT IS FURTHER ORDERED that the local, long distance and the wireless carriers be compensated by the investigative agency for reasonable expenses directly incurred in providing technical assistance; and,

Good cause having been shown, IT IS FURTHER ORDERED, pursuant to the All Writs Act, 28 U.S.C. § 1651(a), that this order and the application be sealed until otherwise ordered by the court, and that the Carrier shall not disclose in any manner, directly or indirectly, by any action or inaction, (a) the existence of this order, or (b) the disclosure of the GPS Coordinates of the SUBJECT

WIRELESS TELEPHONE, to the listed subscriber for the SUBJECT
WIRELESS TELEPHONE, the occupant of said premises, the subscribers
of the incoming calls to or outgoing calls from the SUBJECT
WIRELESS TELEPHONE, or to any other person, in full or redacted
form, unless or until otherwise ordered by the Court.

Dated: Brooklyn, New York
[DATE]

UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN THE MATTER OF AN APPLICATION :
OF THE UNITED STATES OF AMERICA : SEALED ORDER TO
FOR AN ORDER AUTHORIZING DISCLOSURE : SERVICE PROVIDER
OF GPS COORDINATES OF A SPECIFIED :
WIRELESS TELEPHONE :
-----X

WHEREAS this Court has, upon the application of the United States of America, entered an order pursuant to the All Writs Act, 28 U.S.C. § 1651(a), directing Sprint/Nextel (the "Carrier") to disclose certain information, further defined below as "GPS Coordinates," relating to the wireless telephone assigned telephone number [TELEPHONE NUMBER] and [ESN/IMSI/IMEI], issued by the Carrier and subscribed to in the name of [SUBSCRIBER NAME AND ADDRESS, if any] (the "SUBJECT WIRELESS TELEPHONE") for use in connection with an on-going criminal investigation of a fugitive, now therefore, it is hereby

ORDERED, pursuant to the All Writs Act, 28 U.S.C. § 1651, pursuant to the All Writs Act, 28 U.S.C. § 1651, that upon oral request by agents of [NAME OF AGENCY], the Carrier shall, [b7E]

[b7E] and upon their computation, immediately report them to [NAME OF AGENCY];

indirectly, by any action or inaction, (a) the existence of this order, or (b) the disclosure of the GPS Coordinates of the SUBJECT WIRELESS TELEPHONE, to the listed subscriber for the SUBJECT WIRELESS TELEPHONE, the occupant of said premises, the subscribers of the incoming calls to or outgoing calls from the SUBJECT WIRELESS TELEPHONE, or to any other person, in full or redacted form, unless or until otherwise ordered by the Court.

Dated: Brooklyn, New York
DATE

UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

Jones, Patricia (USALAM)

(b)(2)

From: [redacted] behalf of Judish, Nathan
Sent: Wednesday, November 23, 2005 12:56 PM
To: [redacted]
Subject: [chip] latest briefing on cell-site issue
Attachments: SDNY 2d Cell Site Brief - final 112205.wpd; SDNY Cell site brief 9 29 05 - final2.wpd
Importance: Low

As you know, many magistrates around the country have begun rejecting the use of the pen/trap statute and 2703 for prospective applications for cell-site information. Their rejections are based on two recent opinions by magistrates in S.D. Tex. and EDNY. See In re Application for Pen Register and Trap/Trace Device with Cell Site Location Authority, 2005 WL 2656621 (S.D. Tex. Oct. 14, 2005); In re Application of the United States for an Order (1) Authorizing the Use of a Pen Register and a Trap and Trace Device and (2) Authorizing Release of Subscriber Information and/or Cell Site Information, 2005 WL 2739208 (EDNY Oct. 24, 2005).

Attached is a letter, submitted yesterday to magistrates in SDNY, which addresses the many errors in the Texas and EDNY opinions. Tom Brown worked on this letter with the assistance of CCIPS. Because this letter references an October 5 letter on cell-site information submitted in SDNY, I am attaching that previous letter as well.

Finally, an unrelated correction: in my email of 11/16, the Westlaw citation to the Massachusetts opinion regarding magistrate-imposed restrictions on the collection of content by pen/trap devices should have been 2005 WL 2746649.

Nathan Judish

Computer Crime and Intellectual Property Section

RIP
①

Bourgeois, Richard

From: Judish, Nathan
Sent: Thursday, June 10, 2004 1:48 PM
To: Bourgeois, Richard
Subject: 2703(d) orders for cell site

Rich,

Please see the attached House Report of the Electronic Communications Privacy Act of 2000. [

[
H.R. 5018 WOULD REQUIRE THE GOVERNMENT TO MEET A PROBABLE CAUSE STANDARD TO OBTAIN INFORMATION DISCLOSING THE PHYSICAL LOCATION OF MOBILE PHONE USERS, WITH CERTAIN EXCEPTIONS

Location tracking of users of wireless communications services is an emerging concern. Wireless telephones, which are increasingly used, generate information that can be used to physically track the movement of users. Initially limited to cell site antenna location, this tracking data is becoming more sophisticated with the introduction of new technologies. Still, persons in emergency situations want to be found when they call emergency services such as "911," and the government should have the ability to locate suspected criminals in those circumstances. Currently, there are no clear legal standards governing when the government can collect location information from cell phone companies. Law enforcement now uses its authority under 18 U.S.C. S 2703(d) (requirements for government access to business "records") to obtain location information from mobile phone service providers. However, 18 U.S.C. S 2703(d) does not contain any emergency exceptions to its requirements.

H.R. 5018 provides that the government must show probable cause before it may obtain information disclosing the location of a customer or user of a mobile phone from a mobile phone service provider. Certain exceptions to this provision are provided in the bill for disclosing such information to emergency service providers such as hospitals, or to the legal guardian or members of the user's immediate family in situations involving the risk of death or serious physical harm, or with the express consent of the user of the mobile phone equipment. These exceptions are based on 47 U.S.C. S 222, which already prohibits cell phone companies from disclosing customer location information to marketers and other commercial entities without express customer consent or under other exceptions. See 47 U.S.C. S 222(d).

Thanks,
Nathan Judish



ECPA 2000.wpd

RIP
(2)
P519

Jones, Patricia (USALAM)

(b)(2)

From: [] in behalf of Judish, Nathan
Sent: Tuesday, September 06, 2005 4:15 PM
To: [] (b)(2)
Subject: [chip] Prospective orders for cell-site information
Attachments: cellsite response to Magistrate Judge Smith 080205.wpd; Memo from Magistrate Judge Smith.pdf
Importance: Low

Recently, magistrates in several districts around the country have begun to object to the use of 2703(d) orders for prospective collection of cell-site information. The matter was apparently brought to their attention by a memorandum issued June 10 by Magistrate Judge Smith of the Southern District of Texas. In addition, on August 25, Magistrate Judge Orenstein of the Eastern District of New York issued an opinion (available at 2005 WL 2043543) rejecting an application for prospective cell-site information pursuant to 2703 and the pen/trap statute. This issue has arisen in several other districts as well.

Magistrate Judge Smith raised two primary objections to use of 2703(d) orders for prospective collection of cell-site information. First, Judge Smith argued that a cell phone is a "tracking device" as defined in 18 U.S.C. § 3117(b), and that records related to tracking devices fall outside the scope ECPA. Second, Judge Smith argued that the ECPA's organizational structure demonstrates that 2703(d) orders are inherently retrospective: for example, ECPA includes no duration period for 2703(d) orders.

If you would like our assistance with this issue, please let me know.

Nathan Judish
Computer Crime and Intellectual Property Section

Jones, Patricia (USALAM)

(b)(2)

From: [redacted] on behalf of Judish, Nathan
Sent: Wednesday, November 02, 2005 2:32 PM
To: [redacted] (b)(2)
Subject: [chip] prospective orders for cell-site information

Importance: Low

As many of you are aware, two magistrate judges have recently issued opinions rejecting use of the pen/trap statute and 2703 for prospective applications for cell-site information. See In re Application for Pen Register and Trap/Trace Device with Cell Site Location Authority, 2005 WL 2656621 (S.D. Tex. Oct. 14, 2005); In re Application of the United States for an Order (1) Authorizing the Use of a Pen Register and a Trap and Trace Device and (2) Authorizing Release of Subscriber Information and/or Cell Site Information, 2005 WL 2739208 (EDNY Oct. 24, 2005).

(b)(5)

(b)(5)

(b)(5)

Nathan Judish

Computer Crime and Intellectual Property Section

(b)(2)

Jones, Patricia (USALAM)

From: [(b)(2)] on behalf of Eckenwiler, Mark
Sent: Friday, November 16, 2007 2:19 PM
To: [(b)(2)]
Subject: [chip] Obtaining prospective, precise location data on wireless phones
Attachments: Generic lat-long order v 1.2 10-07.wpd

CHIPs, I'm writing to repeat the advice given at the CHIP conference in June concerning acquisition of GPS or similarly precise location data (sometimes called "E-911 data") on target phones. We continue to believe that the most appropriate legal mechanism is a Rule 41 warrant, and I'm attaching a sample form for that purpose. (Note: for mere tower/sector data - a/k/a the less accurate "cell-site" records - we remain of the view that 2703(d) & pen/trap combined are sufficient authority.)

As always, I welcome your questions, comments, and critiques.

Mark Eckenwiler
Associate Director, OEO
Criminal Division

ALL (b)(5)

[DRAFT - Ver. 1.2. 10/25/07]

W 11/2

(b)
P523

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF
AMERICA FOR AN ORDER AUTHORIZING THE RELEASE OF
PROSPECTIVE CELL SITE INFORMATION

Misc. No. 05-508 (JMF)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

2005 U.S. Dist. LEXIS 34616

December 22, 2005, Filed

JUDGES: [*1] JOHN M. FACCIOLA, UNITED STATES MAGISTRATE JUDGE.

OPINIONBY: JOHN M. FACCIOLA

OPINION:

MEMORANDUM

Availing itself of modern technology, the government now seeks to ascertain the location of a cell phone by learning of "cell site data" "which reveals the user's physical location while the phone is turned on." In re Application for Pen Register and Trap/Device with *Cell Site Location Authority*, 2005 WL 2656621 (S.D. Tx. Oct. 14, 2005) (hereafter "the Texas Case"). n1 In the Texas case, Magistrate Judge Smith concluded that this information is not available to the government under the provisions of the Electronic Communications Privacy Act of 1986, Pub. L. No. 99-508, 100 Stat. 1848 (1986) upon a certification by the government that the data is relevant to an ongoing criminal investigation. 18 U.S.C. § 3123 (a)(1). n2 A magistrate judge in New York has agreed. In re: *Authorizing the Use of a Pen Register*, 384 F. Supp. 2d 562 (E.D.N.Y. 2005) (hereafter "the New York case").

n1 This contains a masterful explanation of the technology.

n2 All references to statutory materials are to the electronic versions that appear in Westlaw and Lexis.

[*2]

The United States, conceding the existence of these decisions but not necessarily their validity, now seeks cell site data that would reveal the location of the person using the cell phone by "demonstrating probable cause to believe that the requested prospective cell cite information is relevant and material to an ongoing criminal investigation."

Application (under seal) at 8. Thus, the government melds the statutory standard of 18 U.S.C. § 3123 and the constitutional standard to overcome the holdings in the Texas and New York cases.

I am afraid that I find the government's chimerical approach unavailing. Indeed, and to keep the animal metaphor going, it reminds one of the wag who said a camel is a horse planned by a committee.

Obviously, the statement that there is probable cause to believe that the information is relevant and material to an ongoing criminal investigation is tautological. Whenever an Assistant United States Attorney certifies that the information to be gained by the installation of a pen register is relevant and material to an ongoing criminal investigation, there is, implicit in that representation, the representation that it is more [*3] likely than not that the information is relevant and material to a criminal investigation. That the Assistant sets forth the facts that leads her to make the certification adds nothing to what was really already there.

Furthermore, if the government's quoted statement is an invocation of the Fourth Amendment standard, it fails to capture the entire force of that Amendment—that it permits the issuance of a warrant upon a showing that there is probable cause to believe that whatever is to be seized is "(1) evidence of a crime; (2) contraband, fruits of crime, or other items illegally possessed; (3) property designed for use, intended for use, or used in committing a crime." *Fed. R. Crim. P. 41(c); Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 308, 18 L. Ed. 2d 782 (1967). Putting aside the complicated question of whether a person's location could in itself meet any of these criteria, it is certainly clear that probable cause to believe that a person's location is relevant to a criminal investigation cannot possibly meet the constitutional standard the government purports to invoke, that it is more likely than not that what [*4] is be seized is evidence, contraband, fruits of a crime or designed to be used to commit a crime.

More to the point, the probable cause showing does not meet the central problem identified in the Texas and New York cases, that the statutes upon which the government purports to rely in those cases and in this one, i.e., 18 U.S.C. §§ 3122, 3123, 2703(c)(1) do not authorize the government to secure cell site data that would disclose the location of the person using the cell phone. Invocation of the probable cause standard does not solve the fundamental problem that the statutes the government invokes cannot be construed to give the government the information it seeks.

Accordingly, I will not sign the proposed order in which section 2 of page 2 speaks of "the location of cell site/sector (physical address) at call origination (for outbound calling), call termination (for incoming calls),

and, if reasonably available, during the progress of a call, on an ongoing and/or real time basis for the Subject Telephone Number." I note further that in the proposed order sent me the sentence before this phrase is missing and the proposed Order does not indicate who [*5] is to be ordered to provide the information I have just quoted. I have signed the other proposed order that does not contain this statement.

JOHN M. FACCIOLA

UNITED STATES MAGISTRATE JUDGE

Dated:

2006 U.S. Dist. LEXIS 312, *

2 of 3 DOCUMENTS

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF
AMERICA FOR AN ORDER AUTHORIZING THE RELEASE OF
PROSPECTIVE CELL SITE INFORMATION

Misc. No. 05-508 (JMF)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

2006 U.S. Dist. LEXIS 312

January 6, 2006, Decided

JUDGES: [*1] JOHN M. FACCIOLA, UNITED STATES MAGISTRATE JUDGE.

OPINIONBY: JOHN M. FACCIOLA

OPINION:

MEMORANDUM

The government once again seeks an order that would require a cell phone company to provide it with "the location of cell site/sector (physical address) at call origination (for outbound calling), call termination (for incoming calls) and, if reasonably available, during the progress of a call, on a real time basis." Proposed Order at P2. n1 It claims entitlement to the order on the ground that there is "reasonable cause to believe that the requested prospective cell site information is relevant and material to a criminal investigation." Application at 10-11.

n1 I granted the government authority to install a pen register on the subject phone in an earlier order.

There are three standards that might pertain to the government's application: (1) the government may secure a pen register upon the certification that the information sought to be captured by the device is relevant to a criminal investigation (*18 U.S.C. § 3122* [*2] (a)(2) n2); (2) the government may secure the "contents of wire or electronic communications in a remote computing device" (*18 U.S.C. § 2703(b)*) or "records concerning electronic communication or remote computing service" (*18 U.S.C. § 2703(c)*) by (*inter alia*) securing a court order upon a showing of specific and articulable facts that the information sought is relevant to and material to an ongoing criminal investigation (*18 U.S.C. § 2703(d)*); and (3) the government may secure a warrant pursuant to *Rule 41 of the Federal Rules of Criminal Procedure* upon a showing, consistent with the requirements of the Fourth Amendment, that there is probable cause to believe that what is to be seized is (*inter alia*) evidence of a crime.

n2 Note that all references to the United States Code in this document are to the electronic version that appears in Westlaw or Lexis.

As I indicated in [*3] my prior opinion, the government's approach melds several of these standards. It states that, while it persists in its view that the government may secure cell site information pursuant to a combination of the Pen Register statute, *18 U.S.C. § 3123*, and the Stored Communications Act, *18 U.S.C. § 2703(c)*, "out of an abundance of caution, pursuant to the Texas Op. and the New York Op. sets forth facts demonstrating probable cause to believe that the requested prospective cell site information is relevant and material to an ongoing criminal investigation." Application at 9-10. In addition, in what the government calls "a further act of caution" (*id.* at 11), it

submits an affidavit prepared by the investigation agent. In that affidavit the agent specifies the information that led him to believe that a person, who we can call "John Doe," is distributing drugs, that he traveled to a certain state to meet with his supply source, and that he used the cell phones at issue to conduct his drug business. The agent therefore concludes that his learning of what he calls "cellular site locations" will provide "evidence of the traveling to [*4] the source of supply, locations of stash sites, and distribution of illegal narcotics." Affidavit of Investigating Agent at P16.

The government's approach puts us back to where we started. The order the government asks me to sign contains my finding that the certification by the Assistant that the information sought to be obtained by the pen register and the affidavit of the agent "support probable cause to believe that the information sought is relevant" to that investigation and is evidence of "ongoing criminal activity." If one accepts, as I do, that, as three magistrate judges have held, n3 the information the government seeks can only be secured by a warrant issued pursuant to *Rule 41 of the Federal Rules of Criminal Procedure*, the standard that pertains to the issuance is, as the Fourth Amendment requires, probable cause to believe that the information sought is itself evidence of a crime, not that the information is relevant to an investigation.

n3 In re: Application for Pen Register and Trap/Device with Cell Site Location Authority, 2005 WL 2656621 (S.D. Tx. Oct. 14, 2005) (hereafter "the Texas Opinion"); In re: *Authorizing the Use of a Pen Register*, 384 F. Supp. 2d 562 (E.D.N.Y. 2005); In re: *Application Authorizing the Use of a Pen Register*, 2005 WL 3160860 (D. Md. Nov. 29, 2005).

[*5]

The government counters that surveillance of its subject can be expected to produce admissible evidence because the government's knowledge of where he is every moment of the day can be used, as it has been used in reported cases, as evidence that, for example, might rebut an alibi or deny the defendant the ability to say that he was or was not at a certain place. That is certainly true. But, that the information sought might be evidence does not modify the standard guiding whether it can be secured by the means chosen. The government's invocation of an ersatz standard ("probable cause to show relevance to an ongoing investigation") and meeting it cannot overcome my objection to the order it proposes.

n4 In fact there are three.

The government acknowledges that two opinions n4 of magistrate judges "have suggested that the government must demonstrate probable cause [to believe that that the information sought is evidence of a crime] to obtain disclosure of prospective cell site information." Application at [*6] 9. It also points to a more recent opinion n5 that suggests that the "reasonable cause standard is the correct one to be met in an application for prospective cell site information." Application at 9.

n5 In re: *Application for Disclosure of Telecommunications Records*, 2005 WL 3471754 (S.D.N.Y. Dec 20, 2005) (hereafter "New York II").

It must first be noted that the author of the opinion upon which the government relies said nothing about any "reasonable cause" standard. He granted the application upon the certification by the government pursuant to the Pen Register statute that the information was "relevant and material to an ongoing investigation." *New York II*, 2005 WL 3471754 at *3. Furthermore, the author of that opinion, Judge Gorenstein, could not have been more careful in distinguishing the situation before him from the situations in the three other cases. He indicated that the government was seeking "cell-site information concerning the physical location of the antenna towers [*7] associated with the beginning and termination of calls to and from a particular cellphone." *Id.* at *2. That information permitted the

government to "obtain a list of each call made by the subject cell phone, along with a date, start time and end time." Id. Judge Gorenstein then explained the difference between the application made to him and the applications made in the three other cases, decided by magistrate judges:

The Court is aware of three cases that have considered the availability of cell site data : In re Application for Pen Register and Trap/Trace Device with *Cell Site Location Authority*, 396 F. Supp. 2d 747 (S.D. Tex. 2005) ("Texas Decision") In the Matter of an Application of the United States for an Order (1) Authorizing the Use of a Pen Register and a Trap and Trace Device and (2) Authorizing Release of Subscriber Information and/or *Cell Site Information*, 396 F. Supp. 2d 294 (E.D.N.Y. 2005) ("EDNY Decision"); and *In re Application of the United States for an Order Authorizing the Installation and Use of a Pen Register and a Caller Identification System on Telephone Numbers (Sealed) and Production of Real Time Cell Site Information*, 2005 WL 3160860 [*8] (D. Md. Nov. 29, 2005) ("Maryland Decision"). These cases appear to involve requests for cell site information that go beyond both what has been sought in this case and what has actually been received by the Government pursuant to any cell site application in this District. First, the cell site information provided in this District is tied only to telephone calls actually made or received by the telephone user. Thus, no data is provided as to the location of the cell phone when no call is in progress. Second, at any given moment, data is provided only as to a single cell tower with which the cell phone is communicating. Thus, no data is provided that could be "triangulated" to permit the precise location of the cell phone user. Third, the data is not obtained by the Government directly but is instead transmitted from the provider digitally to a computer maintained by the Government. That is, the provider transmits to the Government the cell site data that is stored in the provider's system. The Government then uses a software program to translate that data into a usable spreadsheet.

2005 WL 3471754 at *2. Thus, the government misunderstands Judge Gorenstein's [*9] holding and then mistakenly claims that it applies to its application in this case even though its application is different from the one Judge Gorenstein approved. n6

n6 Note the pains Judge Gorenstein took to warn the government that if it sought any greater information than he was permitting he would require supplemental briefing. *New York II*, 2005 WL 3471754 at *11.

The government also argues that, if the three opinions by magistrate judges denying similar applications are correct, there would be no mechanism by which to "get cell site data whatsoever, which directly contradicts the full intent of Congress expressed in the legislative history and the plain language of 47 U.S.C. § 1002." Application at 9.

The government's reliance on 47 U.S.C. § 1002 is curious because that provision *prohibits* the use of pen registers and trap and trace devices to disclose the location of the person using the phone. That provision requires telecommunication [*10] carriers to have the ability to provide "call setup information" to law enforcement agencies. Specifically, 47 U.S.C. § 1002 "requires telecommunications carriers to insure that their equipment is capable of providing a law enforcement agency with information to which it may be entitled under statutes relating to electronic surveillance." *New York II*, 2005 WL 3471754 at *4. The provision's legislative history indicates that then FBI Director Louis Freech spoke to what he thought was the illegitimate concern that legislation requiring telecommunications carriers to provide what the Director called "call setup information" would permit the tracking of persons. In the subdivision of his statement that he subtitled "Allegations of Tracking Persons," the Director stated:

Allegations of "tracking" persons

Law enforcement's requirements set forth in the proposed legislation include an ability to acquire

"call setup information." This information relates to dialing type information -- information generated by a caller which identifies the origin, duration, and destination of a wire or electronic communication, the telephone number or [*11] similar communication address. Such information is critical to law enforcement and, historically, has been acquired through use of pen register or trap and trace devices pursuant to court order.

Several privacy-based spokespersons have criticized the wording of the definition regarding this long-standing requirement, alleging that the government is seeking a new, pervasive, automated "tracking" capability. Such allegations are completely wrong.

Some cellular carriers do acquire information relating to the general location of a cellular telephone for call distribution analysis purposes. However, this information is not the specific type of information obtained from "true" tracking devices, which can require a warrant or court order when used to track within a private location not open to public view. See *United States v. Karo*, 468 U.S. 705, 714, 82 L. Ed. 2d 530 (1984). Even when such generalized location information, or any other type of "transactional" information, is obtained from communications service providers, court orders or subpoenas are required and are obtained.

In order to make clear that the acquisition of such information is not being sought [*12] through the use of a pen register or trap and trace device, and is not included within the term "call setup information," we are prepared to add a concluding phrase to this definition to explicitly clarify the point: except that such information (call setup information) shall not include any information that may disclose the physical location of a mobile facility or service beyond that associated with the number's area code or exchange.

Statement of Louis J. Freeh, Director, FBI, Before the Senate Joint Judiciary Technology, Law, Civil and Constitutional Rights at 29 (March 18, 1994) reprinted in *Federal Document Clearing House*, 1994 WL 223962.

The Director's offer and its acceptance by Congress led to the exception codified as 47 U.S.C. § 1002(a)(2). Thus, the statute enacted to require that telecommunications carriers have certain capabilities provided, as a somewhat grammatically incongruous exception to the imposition of required capabilities, that:

except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of Title 18), [*13] such call-identifying information n7 shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number)

47 U.S.C. § 1002(a)(2).

n7 The term "call-identifying information" means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier. 47 U.S.C. § 1001(2).

Thus, while the legislation spoke to capabilities, the exception was based on the express representation by the government to Congress that the authority for pen registers and trap and trace devices would not and could not be used to secure location information, the very information the government now wants to secure by using a pen register and trap and trace device.

The government does not argue the significance [*14] of any legislation enacted since 1994 that would express

any intention by Congress to revise or repeal this legislation and, therefore, proposes no reason whatsoever why it is no longer in force and effect. Furthermore, in the Texas Opinion, Judge Smith explains why the Patriot Act's expansion of the definitions in the Pen Register statute cannot possibly be read as granting the government the very authority to use that statute to secure the data the same government assured Congress it could not secure using that statute in 1994. *Texas Op.*, 2005 WL 2656621 at *13-*15.

I appreciate that a fundamental premise of Judge Gorenstein's opinion is that, if the Pen Register statute does not permit the government to use the Pen Register statute to secure cell site information, the information is absolutely unavailable. *New York II*, 2005 WL 3471754 *4. This conclusion troubles Judge Gorenstein because of indications, contemporaneous to the Congressional consideration of the legislation Director Freeh was proposing, that physical location data would have been obtainable under the Pen Register statute and the exception that I have quoted above would have been [*15] unnecessary if the Pen Register statute did not permit the acquisition of physical location data. *Id.* The judge then reasons that, because the exclusion indicates that what Director Freeh called "call setup information" and what the exclusion calls "call-identifying" information that may disclose the location of the subscriber" n8 may not be secured "solely" by a trap and trace device, Congress intended to its being captured by some other means in addition to the trap and trace device. He then finds that a provision in the Stored Communications Act, enacted by another Congress and codified in 18 U.S.C. § 2703, grants that additional means by which the government may install a trap and device and secure the cell site data that would disclose the subscriber's location.

n8 47 U.S.C. § 1002(a)(2)

The explicit premise of this analysis is the perception that in 1994 Congress understood that information that disclosed the location of the person using a cell [*16] phone could be secured by a trap and trace device and intended that it be secured by some means other than a trap and trace device. I can find no contemporaneous indication that, in 1994, Congress had any such understanding, let alone that it was aware of the technology now available that, by triangulation, permits the government to know where the cell phone is. The converse is true. Congress, at most, understood that a communications provider could acquire what Director Freeh called "information relating to the general location of a cellular telephone" and, at his request, precluded the use of the Pen Register statute to secure it.

We have to begin with the Director's statement quoted above. To rebut the claim that the statute he proposed, by permitting the government to secure "call setup information," would grant the government a "pervasive, automated 'tracking capability,'" n9 he first assured Congress that, while certain carriers "do acquire information relating to the general location of a cellular telephone for call distribution analysis purposes," that kind of information was not the kind of information that would or could be obtained by the use of a "true" tracking device, [*17] i.e., a device affixed to a car that permitted its movement to be monitored. He then stated that "when such generalized location information" was obtained, it was by the use of court orders and subpoena, meaning that the claim that the authority he sought to secure "call setup information" by the Pen Register was false and he neither could nor wanted to use the Pen Register statute to secure it. While he may have thought it unnecessary, he nevertheless indicated that he would have no objection to Congress insisting that, while a carrier could be required to produce call setup information, it could not be required to disclose any information that might disclose the physical location of a mobile facility or service.

n9 1994 WL 223962 at *17.

Thus, there is nothing in Freeh's statement suggesting that he had any knowledge of the possibility that a pen register could be used to secure cell site information that disclosed the location of the cell phone user by, for example, the triangulation of contemporaneous [*18] transmission from the phone or any other means of capturing the location of the cell phone during the transmission of a call.

The Senate and House reports about the legislation that contained the exception at issue similarly indicate that, at most, Congress was aware, as Freeh was aware, that transactional data about the cell phone might disclose "location information." The House Report stated that the bill Freeh proposed:

Expressly provides that the authority for pen registers and trap and trace devices cannot be used to obtain tracking and location information, other than that which can be determined from the phone number. Currently, in some cellular systems, transactional data that could be obtained by a pen register may include location information.

H.R. Rep. No. 103-827(I) (1994), reprinted in 1994 U.S.C.C.A.N. 3489, 3497, available at 1994 WL 557197 at *17. n10 This statement indicates that, at most, the "transactional data maintained" by the carrier might yield information as to where the phone was located once the pen register was installed.

n10 The Senate Report is to the same effect. S. Rep. No. 103-402 (1994), available at 1994 WL 562252 at *18 (1994).

[*19]

Thus, whatsoever the actual existence of the technology in 1994, I cannot find any contemporaneous understanding by either Director Freeh or the Congress that the government had the capability that it now has to ascertain the location of a person using a cell phone, let alone that Congress intended to permit the government to use the Pen Register statute to avail itself of that technology, provided it combined its use of that statute with some other means. While the government would counter, relying on Judge Gorenstein's opinion, that the word "solely" in 47 U.S.C. § 1002 (a)(2) suggests that this is true because it only precludes use of the Pen Register statute itself, I would have to answer that this conclusion, besides being historically inaccurate, reaches an utterly counter-intuitive conclusion. It is inconceivable to me that the Congress that precluded the use of the Pen Register statute to secure in 1994 "transactional data" or what Freeh called "call up information" nevertheless intended to permit the government to use that same statute, whether by itself or combined with some other means, to secure the infinitely more intrusive information about [*20] the location of a cell phone every minute of every day that the cell phone was on. I cannot predicate such a counter-intuitive conclusion on the single word "solely."

I therefore persist in my view that the government lacks the power to secure the information it seeks and will once again decline to sign the proposed order the government has tendered.

JOHN M. FACCIOLA

UNITED STATES MAGISTRATE JUDGE

Dated: January 6, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF THE)
APPLICATION OF THE UNITED) ~~Magistrate's No. 07-524M~~
STATES OF AMERICA FOR AN ORDER)
DIRECTING A PROVIDER OF)
ELECTRONIC COMMUNICATION)
SERVICE TO DISCLOSE RECORDS TO)
THE GOVERNMENT)

MEMORANDUM ORDER

Pending before the Court is the OBJECTIONS AND NOTICE OF APPEAL PURSUANT TO FED. R. CRIM. P. 59(a) AND 28 U.S.C. § 636(b)(1)(A) filed by the government (Document No. 4), with a memorandum of law in support of request for review (Document No. 11) and supplement (Document No. 21). The government appeals the OPINION AND MEMORANDUM ORDER filed by Magistrate Judge Lisa Pupo Lenihan on February 22, 2008.¹ In summary, the extensive and detailed Opinion and Memorandum Order denied an ex parte application filed by the government pursuant to the Stored Wire and Electronic Communications and Transactional Records Access Act, 18 U.S.C. § 2703, which sought provider disclosure of certain cellular telephone ("cell phone") subscriber information without a showing of probable cause pursuant to the Fourth Amendment to the United States Constitution.

~~In recognition of the important and complex matters presented in this case and the lack of~~
binding precedent from the United States Court of Appeals for the Third Circuit, the Court has received and considered memoranda of law submitted by the following amici curiae: BRIEF OF AMICUS CURIAE SUSAN FREIWALD IN FAVOR OF AFFIRMANCE (Document No. 27),

¹ The Opinion was also signed by Chief United States Magistrate Judge Susan Paradise Baxter and Magistrate Judges Amy Reynolds Hay, Francis X. Caiazza and Robert C. Mitchell.

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BRIEF OF AMICI CURIAE THE ELECTRONIC FRONTIER FOUNDATION, THE AMERICAN CIVIL LIBERTIES UNION, THE ACLU-FOUNDATION OF PENNSYLVANIA, INC., AND THE CENTER FOR DEMOCRACY AND TECHNOLOGY IN OPPOSITION TO THE GOVERNMENT'S REQUEST FOR REVIEW (Document No. 28), and BRIEF OF AMICUS CURIAE FEDERAL PUBLIC DEFENDER (Document No. 29). The government has also filed a reply memorandum of law in response to the arguments presented by the amici curiae (Document No. 30). The appeal is ripe for disposition.

After in-depth consideration of the foregoing, the Court finds that the OPINION AND MEMORANDUM ORDER filed by Magistrate Judge Lisa Pupo Lenihan on February 22, 2008 is not clearly erroneous or contrary to law and therefore the OBJECTIONS AND NOTICE OF APPEAL PURSUANT TO FED. R. CRIM. P. 59(a) AND 28 U.S.C. § 636(b)(1)(A) filed by the government (Document No. 4) are **DENIED** and said OPINION AND MEMORANDUM ORDER is **AFFIRMED**.

The clerk shall docket this case closed.

SO ORDERED this 10th day of September, 2008.

BY THE COURT:

/s Terrence F. McVerry

United States District Court Judge

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cc: Magistrate Judge Lisa Pupo Lenihan

Soo C. Song, AUSA

soo.song@usdoj.gov

Luke E. Dembosky, AUSA

luke.dembosky@usdoj.gov

Amici Curiae:

Lisa B. Freeland, FPD

lisa_freeland@fd.org

Professor Susan A. Freiwald

freiwald@usfca.edu

Jennifer S. Granick

Electronic Frontier Foundation

Jennifer@eff.org