

IN THE UNITED STATES DISTRICT COURT

FOR THE ___ DISTRICT OF ___

IN THE MATTER OF THE APPLICATION)
OF THE UNITED STATES OF AMERICA)
FOR AN ORDER AUTHORIZING THE)
INSTALLATION AND USE OF A PEN)
REGISTER AND TRAP AND TRACE)
DEVICE AND ACQUISITION OF)
CELL SITE INFORMATION FOR)
TELEPHONE NUMBER _____)
[WITH ESN/IMSI NUMBER _____])

UNDER SEAL

NO. _____

APPLICATION

_____, an attorney of the United States Department of Justice, hereby applies to the Court pursuant to 18 U.S.C. §§ 3122, 3123, and 2703(d) for an Order 1) authorizing the installation and use of a pen register and trap and trace device ("Pen/Trap") on the cellular telephone bearing number _____ and ESN/IMSI _____ (the "Target Telephone") and 2) authorizing acquisition of information reflecting the location of cellular towers (cell site and sector/face) related to the use of the Target Telephone ("cell-site information"). In support of this application, Applicant states the following:

1. Applicant is an "attorney for the Government" as defined in Fed. R. Crim. P. 1, and therefore may apply, pursuant to 18 U.S.C. §§ 2703(d) and 3122, for an Order authorizing the installation and use of a Pen/Trap and acquisition of cell-site information.

2. Pursuant to 18 U.S.C. § 3123(a)(1), upon an application made under 18 U.S.C. § 3122(a)(1) a court "shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney

for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.”

3. Pursuant to 18 U.S.C. § 2703(d), a court may order an electronic communication service to disclose non-content information about a customer or subscriber if the government “offers 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.”

4. Cellular telephone companies routinely create and maintain, in the regular course of their business, records of information concerning their customers’ usage. These records typically include for each communication a customer makes or receives (1) the date and time of the communication ; (2) the telephone numbers involved; (3) the cell tower to which the customer connected at the beginning of the communication ; (4) the cell tower to which the customer was connected at the end of the communication ; and (5) the duration of the communication. The records may also, but do not always, specify a particular sector of a cell tower used to transmit a communication.¹ Cell-site information is useful to law enforcement because of the limited information it provides about the general location of a cell phone when a communication is made.

As one court has explained:

The information does not provide a “virtual map” of the user’s location. The information does not pinpoint a user’s location within a building. Instead, it only identifies a nearby cell tower and, for some carriers, a 120-degree face of that tower. These towers can be up to 10 or more miles apart in rural areas and may be up to a half-mile or more apart even in urban areas.

¹ Cell towers are often divided into three 120° sectors, with separate antennas for each of the three sectors. To the extent this information does exist in a particular instance, it does not provide precise information regarding the location of the cell phone at the time of the communication, but instead shows only in which of the three 120°, pie-shaped sectors the phone was probably located.

In re Application of United States for an Order for Disclosure of Telecommunications Records, 405 F. Supp. 2d 435, 449 (S.D.N.Y. 2005) (citation omitted).

5. By this application, the government seeks an order authorizing (1) the installation and use of a Pen/Trap on the Target Telephone and (2) the acquisition of cell-site information related to the use of the Target Telephone. The requested information does not include GPS data or other E-911 Phase II location information.

6. Applicant certifies that the [AGENCY NAME] (the "Investigative Agency") is conducting an ongoing criminal investigation of [TARGET NAMES], and others both known and as yet unknown, in connection with possible violations of __ U.S.C. § _____. It is believed that one or more subjects of the investigation possess and are using the Target Telephone, which is subscribed to by [SUBSCRIBER NAME], [SUBSCRIBER ADDRESS], with service provided by [SERVICE PROVIDER NAME].

7. Further, as required under 18 U.S.C. § 2703(d), Applicant offers the following specific and articulable facts showing that there are reasonable grounds to believe that the cell-site information sought is relevant and material to this ongoing criminal investigation.

8. **[Set out specific facts explaining the relevance of the requested cell-site information. It is not necessary to show that the communications themselves are expected to be in furtherance of the offenses under investigation; for example, location records for a non-criminal call may nevertheless place a target in the general vicinity of a narcotics delivery or other criminal event.]**

#. Because the assistance of [SERVICE PROVIDER NAME] will be necessary to accomplish the objectives of the requested order, Applicant further requests that the Order direct that,

upon service of the order upon it, [SERVICE PROVIDER NAME] furnish information, facilities, and technical assistance necessary to accomplish the installation of the Pen/Trap, including installation and operation of the devices unobtrusively and with a minimum of disruption of normal service. [SERVICE PROVIDER NAME] shall be compensated by Investigative Agency for reasonable expenses incurred in providing such facilities and assistance in furtherance of the Order.

#. Notification to the subscriber or customer or to any other unauthorized person of the issuance of the anticipated Order (or the existence of the investigation) would seriously jeopardize said investigation. Due to the sensitive nature of this investigation and in order to protect the sources and methods involved in this investigation, it is respectfully requested that, pursuant to 18 U.S.C. § 3123(d), the Application and anticipated Order in this matter be filed under seal, until further order of this Court. For the same reasons, it is also respectfully requested that pursuant to 18 U.S.C. §§ 2705(b) and 3123(d), this Court order [SERVICE PROVIDER NAME] not to disclose the existence of the application, the resulting court order, or the investigation to the listed subscriber for any reason or to any other person, except as required to execute the order, unless or until ordered by this Court.

WHEREFORE, IT IS REQUESTED that this Court enter an ex parte Order for a period of sixty (60) days, commencing upon the date of installation of the Pen/Trap, authorizing the installation and use of a Pen/Trap to collect the dialing, routing, addressing, and signaling information (including date and time) associated with communications to or from the Target Telephone.

IT IS FURTHER REQUESTED that the Order authorize agents of the Investigative Agency to acquire, during the same 60-day period, cell-site information for communications to and from the Target Telephone as well the physical location of the cellular towers(s) identified thereby.

IT IS FURTHER REQUESTED that the Order direct [SERVICE PROVIDER NAME] to furnish agents of the Investigative Agency forthwith all information, facilities, and technical assistance necessary to effectuate the Order unobtrusively and with minimum interference to the services accorded to the user of the Target Telephone.

IT IS FURTHER REQUESTED that this Application and the anticipated Order of this Court be filed under seal, and that the Court direct [SERVICE PROVIDER NAME] not to disclose to any person the existence of this Application, the resulting Order, or the investigation for any reason, except as required to execute the Order, unless or until ordered otherwise by this Court.

IT IS FURTHER REQUESTED that the Court's Order apply to any changed cellular telephone number subsequently assigned to the Target Telephone within the period of the Order.

Applicant declares and certifies, under penalty of perjury, that to the best of Applicant's knowledge and belief, the foregoing is true and correct.

[NAME]
Assistant U.S. Attorney

SUBSCRIBED and SWORN to before me this _____ day of _____, 200_.

[NAME]
UNITED STATES MAGISTRATE JUDGE

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UNDER SEAL

NO. _____

ORDER

This matter having come before the Court pursuant to an Application under 18 U.S.C. §§ 3122, 3123, and 2703(d) by _____, Assistant United States Attorney for the ___ District of ___, which Application requests an Order authorizing the installation and use of a pen register and trap and trace device ("Pen/Trap") on the cellular telephone bearing phone number _____ and ESN/IMSI _____ (the "Target Telephone"), and the acquisition of information reflecting the location of cellular towers (cell site and sector/face) related to the use of the Target Telephone ("cell-site information"), the Court finds:

1. The Applicant has certified that the [AGENCY NAME] (the "Investigative Agency") is conducting an ongoing criminal investigation of [TARGET NAMES], and others both known and as yet unknown, in connection with possible violations of ___ U.S.C. § ___, [OFFENSE];

2. The Applicant has further certified that one or more subjects of the investigation are believed to be using the Target Telephone, subscribed to by [SUBSCRIBER NAME], [SUBSCRIBER ADDRESS], with service provided by [SERVICE PROVIDER NAME]; and

3. The Applicant has offered specific and articulable facts showing that there are reasonable grounds to believe that the requested cell-site information is relevant and material to the ongoing criminal investigation.

IT IS THEREFORE ORDERED, pursuant to 18 U.S.C. § 3123, that agents of the Investigative Agency may, for a period of sixty (60) days commencing upon the date of installation of the Pen/Trap, install and use a Pen/Trap to collect the dialing, routing, addressing, and signaling information (including date and time) associated with communications to or from the Target Telephone.

IT IS FURTHER ORDERED that agents of the Investigative Agency are authorized to acquire, during the same 60-day period, cell-site information for communications to and from the Target Telephone as well the physical location of the cellular towers(s) identified thereby, but not to include GPS data or other E-911 Phase II location information.

IT IS FURTHER ORDERED that [SERVICE PROVIDER NAME] furnish agents of the Investigative Agency forthwith all information, facilities, and technical assistance necessary to effectuate the Order unobtrusively and with minimum interference to the services accorded to the user(s) of the Target Telephone, and that [SERVICE PROVIDER NAME] be compensated by the Investigative Agency for reasonable expenses incurred in providing such facilities and technical assistance.

IT IS FURTHER ORDERED that this Order and the underlying Application be sealed, and that [SERVICE PROVIDER NAME] not disclose to any person the existence of this Order, the underlying Application, or the investigation for any reason, except as required to execute the Order, unless or until ordered otherwise by this Court.

IT IS FURTHER ORDERED that this Order apply to any changed cellular telephone number subsequently assigned to the Target Telephone within the period of this Order.

SIGNED this _____ day of _____, 200_.

[NAME]
UNITED STATES MAGISTRATE JUDGE