Sample APPLICATION FOR PEN/TRAP/E911/ESN ORDER

IN RE ORDER AUTHORIZING INSTALLATION AND USE OF § THE STATE OF TEXAS

TRAP AND TRACE, PEN REGISTER, AND ESN READER

DEVICES

AUTHORIZING RELEASE OF CUSTOMER RECORDS § (UNDER SEAL)

AND OTHER INFORMATION

AUTHORIZING E911 LOCATION-GEOLOCATION BASED

MEASUREMENTS PERTAINING TO MOBILE § HARRIS COUNTY, TEXAS

COMMUNICATIONS DEVICES

APPLICATION FOR COURT ORDER

{ARTICLE 18.21, TEXAS CODE OF CRIMINAL PROCEDURE}

Target Numbers/Devices/Account Identifiers: (281) 555-1215

Expected location of the target device: Harris County, Texas

Offense under Investigation: Murder, Tex. Penal Code §19.02

Investigative agency: Harris County Sheriff’s Office

Authorized Peace Officer Jason Wilcox

Name of subscriber(s): UNKNOWN

Name of the subject of the investigation: Mario Cantu

An “authorized peace officer,” commissioned by the Harris County Sheriff’s Office, (hereinafter “designated law enforcement agency”) and the undersigned prosecutor request that an application for the use of a pen register, ESN reader, trap and trace device, or similar equipment be made under the authority of Texas Code of Criminal Procedure article 18.21 §2 and consistent with 18 U.S.C. §§2703 and 3121.

In response to that request, and, on the prosecutor’s own motion, the undersigned Criminal District Attorney or Assistant Criminal District Attorney (hereinafter “Applicant”) applies to this Court for an order authorizing the installation and use of a pen register, trap and trace device, and/or similar equipment, and requesting the disclosure of certain electronic customer data and other information. The Applicant believes that based on the facts amounting to probable cause that are set forth in the authorized peace officer’s affidavit made in support of this application that the installation and use of a trap and trace device, a pen register, an ESN reader, or similar equipment will likely produce information that is material to an ongoing criminal investigation. The undersigned prosecutor has jurisdiction within the place described in article 18.21 §2(a)(1)–(5), namely, in the judicial district in which is located one or more of the following: the site of the proposed installation or use of the device or equipment; the site of the communication device on which the device or equipment is proposed to be installed or used; the billing, residential, or business address of the subscriber to the electronic communications service on which the device or equipment is proposed to be installed or used; the headquarters of: (A) the office of the prosecutor filing an application under this section; or (B) a law enforcement agency that requests the installation and use of the device or equipment; or the headquarters of a service provider ordered to install the device or equipment, namely, the judicial district of Harris County, Texas. The Applicant respectfully requests that the Court issue the accompanying order based upon the facts amounting to probable cause that are provided by the requesting officer in the attached affidavit, which is incorporated herein for all purposes.

Based upon the probable cause provided by the authorized peace officer in the attached affidavit, your Applicant requests that the Court issue an order directing the target devices’ service providers, and all other communications providers, persons or entities providing wire or electronic communications service in the United States whose assistance may facilitate the execution of the order, to establish or use trap and traces, pen registers and/or other similar equipment and, to provide other information regarding the target devices.

Applicant requests that the Court issue an order authorizing the installation and use of trap and trace devices or other similar equipment on the target devices/accounts to capture and record the incoming electronic or other impulses which identify the originating numbers, Internet Protocol (IP) addresses, and/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/communications events created by such incoming impulses, provided the information does not include the contents of communication, for a period not to exceed sixty (60) days from the date and time of the issuance of the order, or until the suspect’s arrest and/or the accomplishment of the investigative mission, whichever is earlier, unless, before expiration, the order is extended by a subsequent order of this Court.

Applicant further requests that the Court issue an order authorizing the installation and use of pen registers or similar equipment to record or decode dialing, routing, addressing, or signaling information transmitted from the target devices/accounts, to record the date and time of such dialings or transmissions, and to record the length of time the target devices are “off the hook” or connected for incoming or outgoing calls/communications events and attempts, provided that the information does not include the contents of communication, not to exceed sixty (60) days from the date and time of the issuance of the order, or until the suspect’s arrest and/or the accomplishment of the investigative mission, whichever is earlier unless the order is extended before expiration.

Applicant further requests that the Court issue an order directing the target device’s service providers, and all other communications providers, persons or entities providing wire or electronic communication service in the United States to provide, at the authorized peace officer or designee’s verbal or written request, the real-time E911 location of the target device. It is important to note that, to the extent this may be construed as a tracking device, that the E911 technology is already in place, and the service provider’s utilization of it at law enforcement’s request installs neither a process nor a device. Therefore the Applicant and authorized peace officer request to be excused from notifying this Court in writing of the utilization of E911 technology, as may be contemplated by article 18.21 §14(d), Code of Criminal Procedure. Because it cannot be guaranteed that the use of E911 locating technology will not reveal the target device to be in a constitutionally protected area, probable cause is offered in support of this request.

Applicant further requests that the Court issue an order authorizing the authorized peace officer or designee, and/or U.S. Marshals Service or other peace officer assigned to the task force, or special investigator as defined by article 2.122, Code of Criminal Procedure, to use an ESN reader or similar equipment capable of identifying the electronic serial number or other unique identifying number, whether numeric or alphanumeric, of the target device.

Applicant further requests that the Court direct the target device’s service providers, and all other communications providers, persons or entities providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order, and all involved internet related companies such as Internet Service Providers (ISPs), web hosting companies, website companies/entities, email providers (public and private), etc., 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 devices, including telephone numbers, IP (internet protocol) addresses, and subscriber information associated with these service changes.

Applicant further requests that the order direct the furnishing of information, facilities, and technical assistance necessary to accomplish the installation and operation of the pen register and/or trap and trace devices by the service provider, and all other communications 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, and/or designees, for reasonable expenses incurred in providing such facilities and assistance.

Applicant further requests that the Court direct the target device’s service provider, and all other communications providers, persons or entities providing service/communicating with the target devices/accounts 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 subscribers for the target devices, the occupant of said premises, the subscriber of the incoming calls/communications to or outgoing calls/communications from the target devices, or to any other person, the existence of the order, in full or redacted form, the existence of the pen register, trap and trace devices, or similar equipment, or the existence of this investigation unless otherwise ordered by this Court, and further that this application, affidavit, and order be SEALED.

WHEREFORE, PREMISES CONSIDERED, your applicant respectfully requests that an order consistent with this Application and subsequent technical wording of said order be GRANTED.

I affirm that the forgoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on the \_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_, at \_\_\_\_\_ m.

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 ASSISTANT CRIMINAL DISTRICT ATTORNEY

 HARRIS COUNTY, TEXAS

SUBSCRIBED AND SWORN before me, the undersigned authority, on this the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

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