Sample PEN/TRAP/E911/ESN 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

COURT ORDER

This matter having come before the Court pursuant to an application under article 18.21, Code of Criminal Procedure, and consistent with the provisions of Title 18, sections 2703(D) and 3122, by an Assistant District Attorney/District Attorney requesting an order authorizing the installation and use of a pen register and trap and trace device and requiring disclosure of certain electronic customer data and other subscriber information on the mobile communications device(s) identified below and in support of a criminal investigation against the suspect(s) identified below:

Target numbers/devices/account identifiers: (281) 555-1215

Texas Penal Code offense under investigation: §19.02, Murder

Agency for which requested: Harris County Sheriff’s Office

Requesting Officer/Authorized Peace Officer: Jason Wilcox

Incident number: F17-38992

Subscribers: Mario Cantu

Subject(s) of the investigation: Mario Cantu

THIS ORDER DOES NOT AUTHORIZE THE RELEASE OF THE CONTENTS OF ANY COMMUNICATIONS.

Any provider holding data must comply

That, inasmuch as Apple, American Online (AOL), Amerilink Wireless, AT&T (SBC), AT&T Internet Services, AT&T Mobility, Caprock Cellular, Cellco Partnership d/b/a Verizon Wireless, Cellular One, Cellular One of East Texas, Clearwire, Comcast, Commnet Wireless, Cricket Communications/Leap Wireless, Earthlink Embarq, Etex Communications, Five Star Wireless, Goggle/Gmail, Juno, Lamar County Cellular, MetroPCS, Microsoft [(Danger/Sidekick), (MSN), (Hotmail), etc.], Mid-Tex Cellular, NetZero, Panhandle Telecommunications, Inc. (PTCI), People PC, Peoples Communications (Telephone Cooperative, Inc.), Phonoscope, Pine Cellular, Plateau Telecommunications, Pocket Communications, Right Wireless, Research In Motion (RIM)/Blackberry, Sprint/Nextel, Time Warner, T-Mobile, US Cellular, Vonage, West Central Wireless, Windstream, XIT Communications, Yahoo!, and/or any other communications provider/carrier, any internet company(ies), including telephone companies, public/private/commercial email providers, website hosting companies, website companies or private entities, and/or services, and Internet Service Providers (ISPs), who may possess the requested information, such as roaming carriers, (“Providers”) will furnish all authorized information requested and/or held and provide technical assistance necessary to conduct pen registers and/or trap and traces, on the telephone/device/account numbers contained in the attached and incorporated application.

Provider must be served order

IT IS HEREBY ORDERED that Apple, American Online (AOL), Amerilink Wireless, AT&T (SBC), AT&T Internet Services, AT&T Mobility, Caprock Cellular, Cellco Partnership d/b/a Verizon Wireless, Cellular One, Cellular One of East Texas, Clearwire, Comcast, Commnet Wireless, Cricket Communications/Leap Wireless, Earthlink Embarq, Etex Communications, Five Star Wireless, Goggle/Gmail, Juno, Lamar County Cellular, MetroPCS, Microsoft [(Danger/Sidekick), (MSN), (Hotmail), etc.], Mid-Tex Cellular, NetZero, Panhandle Telecommunications, Inc. (PTCI), People PC, Peoples Communications (Telephone Cooperative, Inc.), Phonoscope, Pine Cellular, Plateau Telecommunications, Pocket Communications, Right Wireless, Research In Motion (RIM)/Blackberry, Sprint/Nextel, Time Warner, T-Mobile, US Cellular, Vonage, West Central Wireless, Windstream, XIT Communications, Yahoo!, and/or any other communications provider/carrier, any internet company(ies), including telephone companies, public/private/commercial email providers, website hosting companies, website companies or private entities, and/or services, and Internet Service Providers (ISPs), who may possess the requested information, such as roaming carriers, (“Providers”) be provided with a copy of this order if they are ordered to release information.

Judicial Findings

The Court finds, pursuant to ARTICLE 18.21 of the Texas Code of Criminal Procedure and consistent with Title 18, United States Code, that the Applicant/authorized peace officer have offered probable cause showing that the subscriber information and live pen register/trap and trace/E911 data identifying dialing, routing, addressing, and signaling information transmitted to and from the target device(s) are relevant and material to an ongoing criminal investigation of the specified offense(s). This Court further finds that the Applicant/authorized peace officer have offered probable cause showing that the use of E911 location information and ESN reader or similar equipment will provide information that is relevant and material to an ongoing criminal investigation.

The following involves technical language in recognition of the cellular and related technologies in use today which may have been involved in the providing of services to the target devices. The order requests the release of subscriber information, unique account and equipment identifiers (phone and equipment serial numbers), and real time network addressing and routing information. The order also authorizes the release of certain electronic customer data limited to information revealing the identity of customers of the applicable service and information about a customer’s use of the applicable service, as well as prospective (future up to 60 days) cell site, or antenna, information for communications activity. This information typically identifies the cellular antenna used to process a communication event. This order DOES NOT order the release of the contents of any communications, but does order the release of real-time information, such as the phone numbers called inbound and outbound to the target, and, the cellular sites/antennas used to process these communications.

Assistance Authorized

The Court finds that Applicant filed the application upon request of an authorized peace officer commissioned by the investigative agency, and that the U.S. Marshals Service and/or other designees are authorized to assist in this investigation by providing technical equipment, high-speed network connections to the target devices’ service providers, and expertise necessary to collect and analyze the information and records sought; and, like the investigative agency, may serve this order and receive all records/data authorized by it. These designees may also include, but are not limited to, representatives of the Houston Police Department, Harris County Sheriff’s Office, Harris County Criminal District Attorney’s Office, the Texas Department of Public Safety (hereinafter “DPS”), the U.S. Attorney’s Office, Federal Bureau of Investigation, U.S. Secret Service, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, U.S. Marshal’s Service, and U.S. Drug Enforcement Administration.

IT IS ORDERED that additional law enforcement agencies, other than the requesting agency, may, as requested, assist in the service of this order, reception of any data, and the processing and support of the interpretation, technical handling, archiving, and/or analysis of any received data. Additional law enforcement agencies may include, but are not limited to, the Federal Bureau of Investigation (FBI), United States Marshals Service (USMS), United States Drug Enforcement Administration (DEA), United States Secret Service (USSS), United States Department of Homeland Security (DHS), Immigration and Customs Enforcement, (ICE), United States Postal Inspection Service (USPIS), United States Bureau of Alcohol, Tobacco, and Firearms (ATF), the Harris County Sheriff’s Office (HCSO), and the Texas Department of Public Safety (DPS), etc.

Trap and Trace Authorization

IT IS ORDERED therefore that agents of the investigative agency, and/or designees, may install, or cause to be installed, and use a trap and trace device or similar equipment on the target device(s) 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 wire or electronic communication, and to record the date, time, and duration of calls created by such incoming impulses, provided the information does not include the contents of communication, for a period of up to sixty (60) days from the date and time of the issuance of this order, or until the suspect’s arrest, and/or the completion of the investigative mission, whichever is earlier.

Pen Register Authorization

IT IS ORDERED that if the investigative agency and the requesting peace officer is from the Texas Department of Public Safety or a “designated law enforcement agency,” then any authorized peace officer commissioned by the investigative agency may install, or cause to be installed, and use pen registers or similar equipment to record or decode dialing, routing, addressing, or signaling information transmitted from the target devices, to record the date and time of such dialing or transmissions, and to record the length of time the target devices are “off the hook” or connected for incoming or outgoing calls/communications and attempts, provided the information does not include the contents of communication, for a period of up to sixty (60) days from the date and time of the issuance of this order, or until the suspect(s)’ arrest, and/or the completion of the investigative mission, whichever is earlier.

However, if the authorized peace officer is not commissioned by the DPS, then the officer must be an officer of a “designated law enforcement agency” and that “designated law enforcement agency” must have a pen register policy approved by the DPS, and the officer must be designated in writing to the Director of the DPS as authorized to operate this equipment in such instances. If a pen register policy is not approved, or if the officer is not designated in writing to operate pen registers in non-immediate life-threatening situations as described below, then the pen register portion of this order is NOT authorized.

If the authorized peace officer is not an officer of the DPS or an appropriate “designated law enforcement agency,” then the pen register portion of this order is not authorized to be conducted by the authorized peace officer and service providers are ordered to filter out pen register data. However, if an appropriate officer, such as a DPS officer or an appropriately designated officer of a “designated law enforcement agency,” is assisting the requesting peace officer, then the pen register portion is authorized to be conducted by the assisting officer so long as the applicant was the District Attorney in the case of non-DPS and non-designated agency officers, or the District Attorney or any Assistant District Attorney in a case where the requesting officer is from the DPS or a designated law enforcement agency.

Moreover, if the Applicant is not the elected District Attorney, but is an Assistant District Attorney, and the requesting officer is not from the DPS or a “designated law enforcement agency,” then the pen register portion of this order is similarly not authorized. Pursuant to article 18.21, §1, Definitions, eligible “designated law enforcement agencies” are the police departments of the cities of Austin, Dallas, El Paso, Fort Worth, Houston, and San Antonio, the Harris County Sheriff’s Office, and the Texas Department of Criminal Justice, Office of Inspector General.

In the case of immediate life-threatening situations, as defined by Article 18.20, §1, Code of Criminal Procedure, in order to have conducted an emergency pen register, the peace officer must meet certain qualifications. The peace officer must be assigned to a unit to deal with life threatening situations. The peace officer must meet a training requirement of forty hours of hostage/barricaded suspect training every year, and/or twenty-four hours of kidnapping training at least once in a career. And finally, the officer must have been designated in writing by the elected District Attorney in the county of installation prior to conducting an emergency pen register. If all of these qualifications were not met, then the pen register portion of this order WAS NOT/IS NOT AUTHORIZED.

Court Ordered Services

IT IS FURTHER ORDERED that the target device’s service providers, and all other communications providers, persons or entities providing wire or electronic communications service in the United States, and doing business in the State of Texas that may possess information or capabilities pertaining to the investigation, and/or whose assistance may facilitate the execution of this order shall supply, without geographical limitation, the following information:

a. With respect to both the target devices/account identifiers and all calls/communications originating at or terminating with the target devices/account identifiers, for a period of twelve months prior and up to sixty (60) days after the date and time of this order: (1) name, (2) address, (3) subscriber information, (4) length of service (including start date) and types of service utilized, (5) 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 associated with or tied to the target of this order.

b. With respect to the target devices/account identifiers only, for a period of sixty (60) days after the date of the signature of this order: real time data that includes (1) non-content Short Message Service (SMS) data (e.g., the automated systems messages delivered to a device from the network; (2) all cell site activations and sectors for all incoming and outgoing calls/communications (including interim/hand-off cell sites and sectors occurring during phone calls), including “text header information” when applicable, and any ranging (real-time-tool) “RTT data,” “reveal” (per-call measurement data) in unabridged formal call detail location records, “angle from the tower” data, including contemporaneous (real-time) with these communications, calls/communications detail, together with a complete listing of cell site identification numbers, physical addresses, latitudes and longitudes, sector identifiers, Long Term Evolution (LTE) (complete CGI or eNodeB and Cell Site, NodeB, location area codes) location area codes (LACs), cellular identifiers (CIDs), intercept access points (IAPs), repolls, switches, and true orientations of all cell sites in the market where the target devices/account identifiers may be located, and (3) provide a list of control/radio channels and PN (pseudo noise) offsets (by sector) with their corresponding cell sites (including detailed cellular site maintenance records upon request) in the market where the target devices/account identifiers may be, or have been, located, and provide, upon request, a detailed radio frequency (RF) engineering map showing cellular/wireless coverage areas. Furthermore, the concerned carriers will provide RF (radio frequency) propagation maps/surveys and cellular antenna/tower maintenance records, and cellular antenna/tower maintenance records procedures, upon request. These maps/surveys and maintenance records will be provided in electronic format, such as original color format, if available.

c. Upon request, provide (as often as possible and requested, and via email if possible) enhanced-911 (E911) signal triangulation, GPS (global positioning system), web-map tool, precision locator tool, geolocations, including being triggered and provided with all Communications Assistance for Law Enforcement Act (CALEA) based messaging events such as registration, de-registration, etc., or any other precision-based geo-location data creatable/available, including any location information delivered to a public safety answering point (PSAP) pursuant to a 911 call. As the result of the information stated in the peace officer’s affidavit, the court finds that there is probable cause to issue this warrant.

d. Real time data that any Internet Service Provider (ISP), email company or email server entity (public or private), website hosting company, and/or website or internet service providing company and/or entity, any subscriber information, identified from the original target devices/accounts identifiers and records pertaining to the target devices/account identifiers, such as, if the original target device’s/account identifiers record reveal internet activity, such as email activity, web activity, and/or other internet connected applications, then this order will also order the release of all subscriber information pertaining to user identity.

e. Any available personal unlocking/unblocking codes (PUK/PUC) and personal identification numbers (PINs) that are on file for the target devices and/or accounts.

f. The trap and trace/pen register/geolocation/cell site records release portions of this order will also apply to all packet data/IP protocol communications, including email, web surfing, proprietary communications such as Blackberry’s PIN to PIN messaging, etc., by the target devices for the effective period of this order.

g. That any applicable communications provider is ordered to provide all addressing and routing information associated with installed applications on the target devices/account identifiers that are the subject of this order, including but not limited to all Apple “I” products, Google Android “Market Apps,” or any other applications not listed herein but that are installed on said device(s).

h. That, upon request, any communications provider is ordered to release specific information pertaining to the target devices/account identifiers regarding the physical handsets/devices including the manufacturer, model, operating system(s), serial numbers (i.e., ESNs, MEIDs, IMEIs, IMSIs, UFMIs, Blackberry PINs, MAC addresses, ICCIDs, SIM cards, etc.), and like information, to law enforcement upon verbal or written request and make such information available to law enforcement without delay for the duration of the order.

i. It is also ordered that all involved communications providers and associated retailers/companies are ordered to release, upon specific request, all purchase, payment (cash, credit, check, prepaid card, etc.), and activation information (even if through third parties) for all target devices/account identifiers, accounts, and subsequent payments, such as prepaid minute cards. This includes the specific data, time, and location (including the specific store, register, clerk, etc.) in which all devices/account identifiers, account changes, purchases, payments, etc., occurred. It is also ordered that all involved retailers (and neighboring businesses/residences) release any available surveillance video from the aforementioned transactions, both from within, and from the outside of the stores, and the area of the stores, where any of the aforementioned transactions occurred.

Some phone companies, including the providers possibly providing service to the target devices/account identifiers, have the ability to collect records that will much more accurately identify a wireless telephone’s estimated location—typically through their Enhanced 911 (E911) system—which may include Global Positioning System (GPS) satellite readings, signal strength measurements, or tower triangulation. These records are generally created by a phone’s user when he dials 911. Thus, if a phone company collects this information at law enforcement’s request and in cases where the user did not dial 911, this cannot be said to be a record maintained in the ordinary course of business. To the extent that this type of information is determined to constitute “tracking,” it is important to note that law enforcement “installs” neither “device” nor process, and, thus, this more invasive type of record cannot be said to constitute the installation or use of a tracking device as contemplated by either state or federal law. The authorized peace officer or designee is therefore excused from filing any return in this Court showing the installation of an electronic tracking device.

IT IS ORDERED that this order shall apply not only to the Mobile Directory Number (“MDN”) listed above, but also to extend to any changed Mobile Directory Number (the device’s 10-digit telephone number) in the United States assigned to an instrument bearing the same International Mobile Subscriber Identity (“IMSI”—the international numbering standard which allows devices to receive communications service outside their country and network of origin; this is separate and distinct from the MDN), Electronic Serial Number (“ESN”—for older technology, the device’s unique equipment identifier), Mobile Equipment Identity (“MEID”—a longer character string that is replacing the ESN in domestic standards), International Mobile Equipment Identity (“IMEI”—the international device serialization equivalent to ESNs), or Subscriber Identity Module (“SIM” for some newer devices, the memory card that contains the IMSI and which can be removed from one device and inserted into another to immediately gain communications service using the same MDN as the target device(s)), Integrated Circuit Card IDs (IDDICs—the actual serial number of a SIM card), Personal Identification Number (PINs), Media Access Control address (MAC address—another serial number associated with network interface cards/equipment of communications devices) or any changed IMSIs, ESNs, MEIDs, IMEIs, SIMs, MACs, ICCIDs, PINs, MAC addresses assigned to the same MDN as the target devices, and any additional changes, whether they occur consecutively or simultaneously, and are listed to the same subscriber, hardware, or account number as the target devices/account identifiers within the period authorized by this order.

IT IS ORDERED that the target devices’ 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, shall notify agents of the Investigative Agency, and/or designees, upon oral or written request, of any and all changes (including additions, deletions, and transfers) in service regarding the target devices/account identifiers, including telephone numbers and subscriber information associated with these service changes.

IT IS ORDERED that upon service of this order, 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 execution of this order, shall furnish agents of the investigative agency, and/or designees, forthwith, 24 hours a day if requested, all information, facilities, and technical assistance necessary to accomplish the installation and use of the pen registers 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. Assistance should include the temporary reconfiguration or supervision of data services or other protocols to the target devices, which may be necessary for the investigative agency to install its own pen registers, trap and trace devices, and/or similar equipment as applicable. This may be needed for various reasons including “call setup” activity that is necessary for the investigative agency to properly isolate and follow the non-content transactional activity (e.g. incoming call notification and acknowledgement, calling number and channel assignment) associated with wireless phone calls that may occur on data channels or other protocols. Law enforcement cannot currently isolate all calls with data services or other nonstandard protocols. Such assistance should invisibly shift call setup to standard protocols.

IT IS ORDERED that whenever possible, the companies provide, upon the specific requests of the agent or designee, a twenty-four (24) hour switch-technician/employee/vendor to assist in providing data to comply with this order and/or the interpretation of the provided data. The court also directs that this order remain valid regardless of the true subscriber’s name. Also, with applicable formats, the providers shall supply, upon the specific requests of the agent/designees, the TMSI information as often and/or frequently as it should have changed.

Provider Compensation

IT IS ORDERED that the target device’s service providers, and all other communications providers, persons or entities providing assistance pursuant to this order shall be reasonably compensated by the investigative agency, and/or designees, for reasonable expenses incurred in providing facilities and assistance hereunder.

Non-termination of Services

IT IS ORDERED that the target device’s service providers shall not terminate or restrict service to the target devices; provided that, upon notice to the investigative agency and/or designees that the target device’s service would otherwise be terminated for non-payment pursuant to routine billing practices, the investigative agency and/or designees timely agrees in writing to assume financial responsibility for all services provided to the target devices after termination would otherwise have been effectuated and continuing to the earlier of the investigative agency’s and/or designee’s written notice to terminate service or to the expiration of this order, and any extensions thereof.

Electronic Response Authorized

IT IS ORDERED that, upon request of the investigative agency and/or designees, 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/or designees, and that those records be delivered forthwith via electronic mail (email)—unless contemporaneous delivery under the current communications assistance to law enforcement act (CALEA) delivery protocol is possible and requested—to the email addresses specified by the agents/designees serving this order, and that the U.S. Marshals Service may serve this order and receive and analyze all information and records authorized by this order. This is to include that any and all records/data will be provided in all available formats of data, upon request, including, but not limited to, documents/files currently produced in Microsoft Word, Microsoft Excel, PDF, CSV (comma separated value), or other electronic formats, and/or pulled from such systems.

Verbal Response Authorized

IT IS ORDERED that communications providers are also ordered to verbally provide any and all data and services that are ordered herein to officers or designees if specifically requested to do so. This is to include verbally advising officers or designees if cellular telephones are known to be currently powered on/active on a communications provider’s network (such as notifying officers if the devices/account identifiers are currently active in the Home Location Registry [HLR] and/or Visitor Location Registry [VLR]). Communications providers are also ordered to notify officers or designees if devices roam (and what specific networks are roamed to/from) from a home/primary network to another network and it is known by the home/primary network to what roaming network the devices roamed. This includes verbally notifying officers or designees of the last known network registrations/activity if the devices are not found to be powered on. And, if the accounts are currently active accounts, including if the account is inactivated or closed for non-payment, how many minutes and/or credits remain on prepaid-type accounts.

Business Records Affidavit

Upon request, any company or entity providing information under this order shall provide all of the requested data/information/records with a Texas Business Records Affidavit (a copy of this affidavit will be provided if necessary and it is important that this affidavit comply with the Texas Rules of Evidence).

IT IS ORDERED that authorized peace officers and/or persons assisting and working under the direct supervision of authorized peace officers, are authorized to possess, install, and/or operate ESN readers, pen registers, trap and traces, and/or similar equipment in support of the objectives of this order. Moreover, that authorized personnel are authorized to operate such equipment in the order to calibrate/test said equipment, and, in training, to ensure that the equipment and personnel are operational in support of the objectives of this and future anticipated court orders and investigations.

Sealing

IT IS ORDERED that this order and the application and affidavit supporting it, if any, be sealed until otherwise ordered by the Court, and that the identity of any suspects of the underlying criminal investigation may be redacted from any copy of this order to be served on any service provider or other persons or entities.

IT IS ORDERED that the elected Harris County Criminal District Attorney and/or her representative seal and maintain the original signed Court Order in a manner consistent with the intent of the Texas Code of Criminal Procedure and federal law. Further, any party or agency shall not release the contents of this order, application, or affidavit, if any, without first seeking and receiving, in writing, the issuing Court’s authorization.

Non-disclosure

IT IS ORDERED that any company, person, or entity upon whom this order is served, 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, the existence of the pen registers or trap and trace devices, or similar equipment, or the existence of the previously-described investigation, to the listed subscribers for the target devices, the occupant of said premises, the subscribers of the incoming calls to or outgoing calls from the target devices, or to any other person, in full or redacted form, unless or until otherwise ordered by this Court.

 SO ORDERED.

 Date: \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 DISTRICT JUDGE

 Time: \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ District Court

 HARRIS COUNTY, TEXAS