

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: APPLICATION FOR TELEPHONE  
INFORMATION NEEDED FOR A  
CRIMINAL INVESTIGATION

Case No. 15-XR-90304-HRL-1(LHK)

**ORDER FOR RESPONSE AND  
CONTINUING HEARING**

The government has submitted, under seal, an application for an order pursuant to 18 U.S.C. §§ 3122 and 3123 and 18 U.S.C. § 2703(d) seeking cell site location information (“CSLI”) for several phone numbers. *See* ECF No. 2 at 1. The application sought historical CSLI for sixty (60) days back from the date of the order, as well as prospective CSLI for sixty (60) days going forward. *See id.* at 2. In support of the application to U.S. Magistrate Judge Howard R. Lloyd, the government submitted a letter brief on March 17, 2015. ECF No. 1.

On April 9, 2015, Judge Lloyd issued a public order denying the government’s application. ECF No. 2. In that order, Judge Lloyd stated that he found “very persuasive” U.S. District Judge Susan Illston’s analysis in *United States v. Cooper*, No. 13-CR-00693-SI-1, 2015 WL 881578 (N.D. Cal. Mar. 2, 2015). ECF No. 2 at 5. “[U]ntil binding authority says otherwise,” Judge

1 Lloyd concluded, “in order to get cell site information, prospective or historical, the government  
2 must obtain a search warrant under Rule 41 on a showing of probable cause.” *Id.*

3 On April 30, 2015, the government appealed Judge Lloyd’s order to the undersigned. ECF  
4 No. 4. The government elected to appeal Judge Lloyd’s denial of the application only with respect  
5 to *historical CSLI*. *See id.* at 1 (“The government appeals Judge Lloyd’s Order to this Court to the  
6 extent Judge Lloyd denied the government historical cell site information.”); *id.* at 3 n.1 (“As  
7 noted, however, the government is not appealing Judge Lloyd’s order to the extent it denied the  
8 government prospective cell site information.”). On May 7, 2015, the government filed a  
9 supplemental brief regarding the Eleventh Circuit’s en banc decision in *United States v. Davis*, —  
10 F.3d —, 2015 WL 2058977 (11th Cir. May 5, 2015), which overruled the original panel opinion  
11 cited by Judge Illston in *Cooper*. ECF No. 5.

12 Accordingly, the Court hereby ORDERS the Clerk to provide to the Federal Public  
13 Defender for the Northern District of California a copy of the following public documents: this  
14 order, the government’s letter brief to Judge Lloyd (ECF No. 1), Judge Lloyd’s order (ECF No. 2),  
15 the government’s appeal to the undersigned (ECF No. 4), and the government’s supplemental brief  
16 in support of that appeal (ECF No. 5). If the Public Defender wishes to file a written response to  
17 the arguments made in the government’s appeal and supplemental brief, the Public Defender shall  
18 do so by June 12, 2015. The government may file a reply by June 19, 2015. The hearing on the  
19 government’s appeal is hereby CONTINUED to Friday, June 24, 2015, at 9:30 a.m.

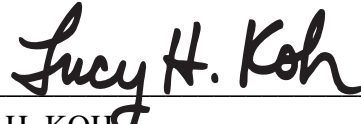
20 The central legal question presented is whether the Fourth Amendment to the U.S.  
21 Constitution requires that the government obtain a warrant supported by probable cause in order to  
22 collect the requested historical CSLI. As a result, any briefing submitted should address (1)  
23 whether the Supreme Court’s decisions in *United States v. Miller*, 425 U.S. 435 (1976), and *Smith*  
24 *v. Maryland*, 442 U.S. 735 (1979), control the outcome here; (2) the Eleventh Circuit’s en banc  
25 decision in *Davis*; and (3) whether if the Court concludes that the Fourth Amendment requires a  
26 warrant supported by probable cause, the Court must find any part of the Stored Communications  
27 Act unconstitutional. In addition, at the June 24, 2015 hearing, the government should be

1 prepared to answer questions regarding CSLI technology, including how precise the requested  
2 CSLI is and whether the requested CSLI could have been generated when the target cell phones  
3 were idle (i.e., neither making or receiving a call or text message) or turned off.

4 **IT IS SO ORDERED.**

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6 Dated: May 20, 2015



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8 LUCY H. KOH  
9 United States District Judge

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