

WARRANT FOR THE USE OF A CELL-SITE SIMULATOR TO OBTAIN PROSPECTIVE PHONE LOCATION

THIS GO-BY IS CURRENT AS OF JUNE 2013. TO GET THE MOST CURRENT VERSION OF THIS GO-BY AND THE LATEST GUIDANCE, VISIT CCIPS ONLINE:

<http://dojnet.doj.gov/criminal/ccips/online/location.htm>

For help with any issues involving the search and seizure of computers, cell phones, and electronic evidence, call the Computer Crime and Intellectual Property Section ("CCIPS"), Criminal Division, United States Department of Justice, at (202) 514-1026.

USAGE NOTES:

- Use this go-by to enable law enforcement to use its own cell-site simulator equipment (sometimes called "triggerfish" or "stingray") to collect signals emitted by wireless phones and use these signals to determine the location of a particular person's cell phone. This warrant should not be served on a provider.
- For information about cell-site simulators and the legal implications of their use, please refer to the July 5, 2012, memorandum from Patty Merkamp Stemler, Chief, Criminal Appellate Section.
- This go-by is intended to be used with a standard AO 93 Search Warrant form. Do NOT use the AO 102 Application for a Tracking Warrant. Fill out your district's AO 93 Search Warrant form this way:
 1. Put the following language under "In the Matter of the Search of": "The Cellular Telephone Assigned Call Number [(xxx) xxx-xxxx]." Note: If you have another identifier for the phone, such as the International Mobile Subscriber Identity (IMSI) or Electronic Serial Number (ESN), you should include that identifier as well. You may also identify the phone by only its IMSI or ESN, rather than by call number, if that approach better suits the needs of your case.
 2. Below the parenthetical that asks you to "identify the person or describe the property to be searched and give its location," write "See Attachment A."
 3. Below the parenthetical that asks you to "identify the person or describe the property to be seized," write "See Attachment B."
 4. The AO 93 form includes spaces for the district in which the property to be searched is located. Rule 41(b) generally requires that the phone that you are

targeting be in the issuing district either at the time of search, or at the time the warrant is issued. If you are uncertain of the district in which the phone is located, you may be able to locate it through a range of techniques, including by using a 2703(d) order for obtaining historical cell-site information. A go-by for this is available on CCIPS online:

[http://dojnet.doj.gov/criminal/ccips/online/2703/2703\(d\)Orders/2703d go-by for non-content \(ISP list\).doc](http://dojnet.doj.gov/criminal/ccips/online/2703/2703(d)Orders/2703d%20go-by%20for%20non-content%20(ISP%20list).doc)

5. Check the box that indicates that “immediate notification may have an adverse result listed in 18 U.S.C. § 2705,” and fill out the appropriate sub-boxes and blanks to indicate the length of delay that you are seeking under 18 U.S.C. § 3103a(b). If you use the standard language contained in this go-by, you should check the first sub-box and indicate the number of days as “30.”
- To ensure compliance with the notice requirements of Rule 41, CCIPS recommends giving notice of the warrant either to the person(s) who actually used the target phone or to the registered owner (if different). However, this notice can be delayed under 18 U.S.C. § 3103a(b). This go-by includes language seeking a 30-day delay of notice under 18 U.S.C. § 3103a(b), which permits notice to be delayed up to 30 days initially as long as certain statutory requirements are satisfied. If you need a longer delay, you can attempt to seek a delay to a “later date certain if the facts of the case justify a longer period of delay,” 18 U.S.C. § 3103a(b)(3), or can seek an extension of the original 30-day delay under 18 U.S.C. § 3103(a)(c).
 1. AUSAs in the Ninth Circuit should note *United States v. Freitas*, 800 F.2d 1451, 1456 (9th Cir. 1986), which held that, absent unusual circumstances, the Fourth Amendment forbids a delay of more than 7 days (subject to extension upon application to the court) in notifying the owner of premises searched pursuant to a warrant. This holding has been expressly rejected elsewhere – see *United States v. Pangburn*, 983 F.2d 449, 455 (2d Cir. 1993) – and is incompatible with the provision in Title III permitting delay of notice of an interception order for up to 90 days. See 18 U.S.C. § 2518(8)(d), the constitutionality of which was upheld in *United States v. Cafaro*, 473 F.2d 489, 501 & n.9 (3d Cir. 1973) (citing cases).
 - Include the following information in the warrant return/inventory: (1) the date and time when the acquisition of identifying information began, and (2) the period during which the government acquired identifying information.
 - If you are seeking only prospective cell tower/sector records (sometimes called “cell-site data”), this is the wrong go-by. Instead, obtain that information from the provider with a “hybrid” order under 18 U.S.C. §§ 2703(d) and 3122-24, unless your local magistrates

refuse to grant these types of orders. In such districts, warrants are generally used. If you are looking for more precise location information, you can seek latitude/longitude data (e.g., GPS data) using a go-by available on CCIPS online:

[http://dojnet.doj.gov/criminal/ccips/online/location.htm#Applications and Orders](http://dojnet.doj.gov/criminal/ccips/online/location.htm#Applications_and_Orders).

- Additional language (in red print) was added by the FBI to this CCIPS sample affidavit to address FBI policy requirements for WIDT search warrants.
- The WIDT operator is NOT to be named in the order or warrant or return.

IN THE UNITED STATES DISTRICT COURT
FOR _____

IN THE MATTER OF THE SEARCH OF
THE CELLULAR TELEPHONE ASSIGNED
CALL NUMBER [(xxx) xxx-xxxx], [WITH
INTERNATIONAL MOBILE SUBSCRIBER
IDENTITY / ELECTRONIC SERIAL
NUMBER xxxxxxxx]

Case No. _____

Filed Under Seal

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, [AGENT NAME] [The WIDT operator must NOT be affiant], being first duly sworn,
hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant under Federal Rule of Criminal Procedure 41 to authorize law enforcement to employ an electronic investigative technique, which is described in Attachment B, to determine the location of the cellular telephone assigned call number [(xxx) xxx-xxxx], (the "Target Cell Phone"), which is described in Attachment A.

2. I am a Special Agent with the [Agency], and have been since [Date].
**[DESCRIBE TRAINING AND EXPERIENCE TO THE EXTENT IT SHOWS
QUALIFICATION TO SPEAK ABOUT THIS INVESTIGATION, CELLULAR
TELEPHONES, AND OTHER TECHNICAL MATTERS].**

3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended

to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

4. One purpose of applying for this warrant is to determine conclusively the Target Cell Phone's location. However, there is reason to believe the Target Cell Phone is currently located in this district because **[Provide evidence suggesting that Target Cell Phone is currently located in this district, e.g. the Target Cell Phone's owner is known to spend most of his time in this district; the telephone number area code associated with the Target Cell Phone corresponds to this district; the Target Cell Phone's owner was seen in this district X days ago; Cell-site data obtained for the Target Cell Phone indicated that it was normally to be found in this district, or found in this district X days ago; etc].**

5. **[USE THIS PARAGRAPH IF THE LOCATION INFORMATION IS EVIDENCE OF A CRIME.]** Based on the facts set forth in this affidavit, there is probable cause to believe that violations of **[statutes]** have been committed, are being committed, and will be committed by **[suspects or unknown persons]**. There is also probable cause to believe that the location of the target cell phone will constitute evidence of those criminal violations[, and will lead to the identification of individuals who are engaged in the commission of these offenses]].

6. **[USE THIS PARAGRAPH IF THE LOCATION INFORMATION WILL HELP TO EFFECTUATE AN ARREST AND/OR LOCATE A FUGITIVE.]** Based on the facts set forth in this affidavit, there is probable cause to believe that **[Fugitive]** has violated **[statutes]**. **[Fugitive]** was charged with these crimes on **[date]** and is the subject of an arrest warrant issued on **[date]**. **[[If appropriate:** There is also probable cause to believe that

[Fugitive] is aware of these charges and has fled.]] There is also probable cause to believe that the target cell phone's location will assist law enforcement in arresting [Fugitive], who is a "person to be arrested" within the meaning of Federal Rule of Criminal Procedure 41(c)(4).

PROBABLE CAUSE

7. **[[Give facts establishing the probable cause described above. Among other things, this section generally should (1) establish a connection between the Target Cell Phone and the suspected crime and/or targeted individual, (2) identify the subscriber name and address for the Target Cell Phone [this information can be obtained with a subpoena to the wireless provider for the call number], (3) identify the primary user(s) of the Target Cell Phone, if known, and (4) explain why there is probable cause to monitor the phone's location for the next thirty days (or for some shorter period of time, if you amend this request to cover a period less than thirty days).]]**

8. In my training and experience, I have learned that cellular phones communicate wirelessly across a network of cellular infrastructure, including towers that route and connect individual communications. When sending or receiving a communication, a cellular phone broadcasts certain signals to the cellular tower that is routing its communication. Law enforcement may monitor these signals when cellular phones initiate or receive calls, and may also initiate a communication with the Target Cell Phone in order to cause it to emit signals. By collecting these signals, law enforcement can relatively precisely determine the location of the cellular telephone itself.

AUTHORIZATION REQUEST

9. Based on the foregoing, I request that the Court issue the proposed search warrant, pursuant to Federal Rule of Criminal Procedure 41.

10. I further request, pursuant to 18 U.S.C. § 3103a(b) and Federal Rule of Criminal Procedure 41(f)(3), that the Court authorize the officer executing the warrant to delay notice until 30 days after the collection authorized by the warrant has been completed. This delay is justified because there is reasonable cause to believe that providing immediate notification of the warrant may have an adverse result, as defined in 18 U.S.C. § 2705. Providing immediate notice to the subscriber or user of the Target Cell Phone would seriously jeopardize the ongoing investigation, as such a disclosure would give that person an opportunity to destroy evidence, change patterns of behavior, notify confederates, and flee from prosecution. *See* 18 U.S.C. § 3103a(b)(1). There is reasonable necessity for the use of the technique described above, for the reasons set forth above. *See* 18 U.S.C. § 3103a(b)(2).

11. I further request that the Court authorize execution of the warrant at any time of day or night, owing to the potential need to locate the Target Cell Phone outside of daytime hours.

12. **[[If your district does not have standard forms/procedures for filing under seal, you can insert this language in the affidavit:** I further request that the Court order that all papers in support of this application, including the affidavit and search warrant, be sealed until further order of the Court. These documents discuss an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation. Accordingly, there is good

cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.]]

13. A search warrant may not be legally necessary to compel the investigative technique described herein. Nevertheless, I hereby submit this warrant application out of an abundance of caution.

14. I further request that the Court authorize the officers to whom it is directed to install or use a pen register and a trap and trace device/ cell site simulator device pursuant to 18 U.S.C. § 3123, as described in Attachment B, to determine the location of the cell phone identified in Attachment A.

15. The target cellular device (e.g., cell phone) and other cellular devices in the area might experience a temporary disruption of service from the service provider. Any potential service disruption to non-target devices would be brief and will be minimized so as to be no more disruptive than might occur in the ordinary course of cellular service coverage.

16. Once the objective of the operation is achieved (i.e., target cell phone location or identification is provided to investigators), the operator of the pen register and trap and trace electronic device will delete ("purge") the associated data from the system. Purging is done by the FBI as an additional, internal procedural safeguard: (1) To ensure that the privacy rights of innocent third parties are maintained; (2) To ensure that the FBI does not store or maintain data beyond the scope of its legal authorization; (3) To ensure that the FBI does not collect information about individuals who are not the subject of criminal or national security investigations; and (4) To promptly preserve the operational use of the equipment.

17. The FBI considers further details than those stated immediately above about the technique to be Law Enforcement Sensitive (LES); that is, disclosure of those details could be used by adversaries of law enforcement to thwart law enforcement efforts.

Respectfully submitted,

[AGENT NAME]
Special Agent
[AGENCY]

Subscribed and sworn to before me
On: _____

UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A

Property to Be Searched

This warrant authorizes the use of the electronic investigative technique described in Attachment B on the cellular telephone assigned phone number (xxx) xxx-xxxx, [with International Mobile Subscriber Identity / Electronic Serial Number xxxxxxx], whose wireless provider is [[**WIRELESS PROVIDER**]].

ATTACHMENT B

Particular Things to Be Seized

This Warrant authorizes the officers to whom it is directed to install or use a pen register and a trap and trace device/ cell site simulator device pursuant to 18 U.S.C. § 3123 to determine the location of the cell phone identified in Attachment A by collecting and examining:

1. radio signals emitted by the target cell phone for the purpose of communicating with cellular infrastructure, including towers that route and connect individual communications; and
2. radio signals emitted by the target cell phone in response to signals sent to the cell phone by the officers;

for a period of thirty days, during all times of day and night, including location of the target cell phone on multiple occasions during this period. This warrant does not authorize the interception of any telephone calls, text messages, or Internet data, and this warrant prohibits the seizure of any tangible property. The Court finds reasonable necessity for the use of the technique authorized above. *See* 18 U.S.C. § 3103a(b)(2).