

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: Warrants and Orders For
Prospective and Historical Location
Information and Pen Register
Information for the Cellphones
Assigned Call Numbers [REDACTED]
and [REDACTED] USAO Reference
No. 2018R01618

APPLICATION
20 Mag. **6770**

**Application for Warrants and Orders
for Cellphone Location and Pen Register Information**

The United States of America, by its attorney, Audrey Strauss, Acting United States Attorney for the Southern District of New York, [REDACTED] Assistant United States Attorney, of counsel, respectfully requests that the Court issue the accompanying proposed Warrants and Orders for prospective and historical location information and pen register information for two cellphones. As grounds for this Application the Government relies on the following facts and authorities.

I. Introduction

1. I am an Assistant United States Attorney in the U.S. Attorney's Office for the Southern District of New York. This Application is submitted in conjunction with the accompanying affidavit of a law enforcement agent ("Agent Affidavit"), to be sworn before this Court, and incorporated by reference herein. I make this Application based on information and belief, including the Agent Affidavit, my review of other documents in the case, and information received from investigative personnel.

2. The Investigating Agency, Target Cellphones, Subscribers, Target Subject, Service Providers, Subject Offenses, Successor Service Provider, and Successor Cellphone referenced in this Application are as specified in the Agent Affidavit.

II. Legal Authority

A. Prospective Location Information

3. The Government seeks to obtain both precision location information and cell site data for the Target Cellphones on a prospective basis (the “Prospective Location Information”) for a period of 45 days from the date of this order – the same period of time for which a warrant for a tracking device may be granted under Rule 41(e)(2)(C). It bears noting, however, that while the Prospective Location Information may permit “tracking” the user of the phone in the colloquial sense, this is not an application for a warrant for a “tracking device” as defined in Fed. R. Crim. P. 41(a)(2)(E) and 18 U.S.C. § 3117(b). Those provisions only apply where an agent is seeking to physically install a tracking device on a given object. Instead, the Prospective Location Information will be obtained by requiring the Service Provider to provide the information.

4. The authority for this application is found in 18 U.S.C. § 2703(c)(1), which authorizes a court of competent jurisdiction to require any electronic communication service provider (which includes a cellular telephone service provider¹) to disclose any “record or other information pertaining to a subscriber” other than the “contents of communications,” when the government obtains, *inter alia*, a warrant under the applicable procedures of Rule 41. *See* 18 U.S.C. § 2703(c)(1)(A). Because data concerning a subscriber’s location, such as precision location information and cell site data, constitutes “information pertaining to a subscriber” that does not include the “contents of communications,” that data is among the types of information available

¹ *See* 18 U.S.C. § 2711(1) (incorporating by cross-reference statutory definitions set forth in 18 U.S.C. § 2510); 18 U.S.C. § 2510(15) (defining “electronic communication service” as “any service which provides to users thereof the ability to send or receive wire or electronic communications”).

under § 2703(c)(1)(A).² Further, as specified in 18 U.S.C. § 2711(3), this Court is a court of competent jurisdiction under the Stored Communications Act because it has jurisdiction over the Subject Offenses.

5. The Government's request for cell site data also implicates the pen register statute, because such data constitutes signaling information used by the Service Providers to route communications to and from the Target Cellphones. In order to collect such data, a valid pen register order is required.³ Accordingly, I hereby certify pursuant to 18 U.S.C. § 3122 that such signaling information is relevant to an ongoing investigation being conducted by the Investigating Agency into suspected violations of the Subject Offenses by the Target Subject.

B. Historical Location Information

6. The Government also seeks historical cell site data for the Target Cellphones for the period from June 1, 2020 to the present (the "Historical Location Information"). Because such data—like "Prospective Location Information"—constitutes information concerning a subscriber, the Court is authorized to order the Service Providers to provide this data pursuant to a warrant

² See *In re Application*, 460 F. Supp. 2d 448, 459–60 & n. 55 (S.D.N.Y. 2006) (Kaplan, J.) (cellphone location information falls within § 2703(c)(1)); *accord, e.g., United States v. Caraballo*, 963 F. Supp. 2d 341, 361 (D.Vt. 2013); *In re Order*, 632 F. Supp. 2d 202, 207 (E.D.N.Y. 2008); *In re Application*, 405 F. Supp. 2d 435, 444–45 (S.D.N.Y. 2005). *But see In re Application*, 849 F. Supp. 2d 526, 574 (D.Md. 2011) (rejecting view that cellular location data falls within the scope of the SCA and finding that phone must be treated as "tracking device" for purposes of Rule 41 where used to collect location data); *In re Application*, 2009 WL 159187, at *5-*6 (S.D.N.Y. Jan.13, 2009) (McMahon, J.) (same).

³ See 18 U.S.C. § 3121 (prohibiting use of pen register or trap and trace device without an order under the pen register statute); 3127(3) & (4) (defining pen register and trap and trace device to include devices or processes that record, *inter alia*, signaling information). Although cell site data constitutes "signaling" information within the meaning of the pen register statute, a separate statute precludes the Government from relying "solely" on the authority provided by the pen register statute to ascertain a subscriber's location. 47 U.S.C. § 1002(a). Here, the Government seeks to obtain such data pursuant to 18 U.S.C. § 2703(c) as well as the pen register statute, rather than "solely" under the latter statute. See *In re Application*, 460 F. Supp. 2d at 456-59.

application under 18 U.S.C. § 2703(c), under the applicable procedures of Rule 41. *See* 18 U.S.C. § 2703(c)(1)(A). I respectfully submit that the same probable cause supporting the Government’s request for a warrant to obtain the Prospective Location Information requested above also supports the issuance of a warrant under § 2703(c) for the requested Historical Location Information. In addition, the Government seeks toll records for the same period as the Historical Location Information. Pursuant to 18 U.S.C. § 2703(d), I respectfully submit that the Agent Affidavit offers specific and articulable facts showing that there are reasonable grounds to believe that the toll record information sought is relevant and material to an ongoing criminal investigation.

C. Pen Register Information

7. Finally, the Government seeks an order pursuant to 18 U.S.C. §§ 3121-26 authorizing the use of a pen register on the Target Cellphones for a period of 45 days from the date of this order. Specifically, the Government seeks an order directing the Service Providers to furnish any information, facilities, and technical assistance necessary to operate, unobtrusively and with minimum disruption of service, a pen register and trap and trace device to capture all dialing, routing, addressing, or signaling information associated with each call transmitted to or from the Target Cellphones, as specified further in the proposed Warrants and Orders (the “Pen Register Information”).⁴

⁴ The Government is also not seeking authorization to obtain post-cut-through dialed digits (“PCTDD”), or digits that are dialed after a telephone call from the Target Cellphones has been connected. Pursuant to the attached Order, if possible, the Service Provider will forward only pre-cut-through-dialed digits to the Investigating Agency. However, if the Service Providers’ technical capabilities require it to forward all dialed digits, including PCTDD, to the Investigating Agency, the Investigating Agency will only decode and forward to the agents assigned to the investigation the numbers that are dialed before the call is cut through.

8. I hereby certify pursuant to 18 U.S.C. § 3122 that the Pen Register Information is relevant to an ongoing investigation being conducted by the Investigating Agency into suspected violations of the Subject Offenses by the Target Subject.

D. Sealing and Non-Disclosure Order to Service Providers

9. When the Government obtains records or information under § 2703(c), it is not required to notify the subscriber or customer. 18 U.S.C. § 2703(c)(3). Additionally, the Government may obtain an order precluding the Service Providers from notifying the subscriber or any other third-party of the warrant or order obtained, for such period as the Court deems appropriate, where there is reason to believe that such notification will result in endangering the life or physical safety of an individual, flight from prosecution, destruction of or tampering with evidence, or intimidation of potential witnesses, or will otherwise seriously jeopardize the investigation. 18 U.S.C. § 2705(b).

10. Further, 18 U.S.C. § 3123(d) provides that an order directing installation of a pen register or trap and trace device shall direct the pertinent service provider “not to disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person unless or until otherwise ordered by the Court.”

11. Accordingly, as explained further in the Agent Affidavit, in light of the confidential nature of the continuing criminal investigation and the adverse consequences expected in the event of premature notification, the Government respectfully requests that the Court direct the Service Providers not to notify the Subscribers or any other person of the Warrants and Orders sought herein for a period of one year, subject to extension upon application to the Court, if necessary.

12. For similar reasons, I respectfully request that the proposed Warrants and Orders, this Application, and the accompanying Agent Affidavit, be maintained under seal until the Court orders otherwise, except that the Government be permitted without further order of this Court to

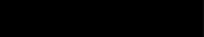
serve these Warrants and Orders on the Service Providers; provide copies of the Warrants and Orders or the supporting Application and Agent Affidavit as need be to personnel assisting the Government in the investigation and prosecution of this matter; and disclose these materials as necessary to comply with discovery and disclosure obligations in any prosecutions related to this matter.

III. Prior Requests

13. Except as may be set forth above, no prior request for the relief requested herein has been made.

Dated: New York, New York

June 29, 2020


Assistant United States Attorney
Tel.: 

18 U.S.C. §§ 2703(d) & 2705; and 18 U.S.C. §§ 3121-3126, in support of two warrants and orders for prospective location information, historical location information, toll records, and pen register information, for the Target Cellphones identified below (collectively, the “Requested Information”).

3. **Basis for Knowledge.** This Affidavit is based upon my participation in the investigation, my examination of reports and records, and my conversations with other law enforcement agents and other individuals, as well as my training and experience. Because this Affidavit is being submitted for the limited purpose of obtaining the Requested Information, it does not include all the facts that I have learned during the course of this investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated. In addition, unless otherwise indicated, statements by others referenced in this Affidavit were not necessarily made to me, but may have been provided to me by someone else to whom I have spoken or whose report I have read (and who in turn may have had either direct or indirect knowledge of the statement). Similarly, unless otherwise indicated, information in this Affidavit resulting from surveillance does not necessarily set forth my personal observations, but may have been provided to me by other law enforcement agents who observed the events, and to whom I have spoken or whose report I have read.

4. **Target Cellphones, Subscribers, Target Subject, and Service Providers.** The Target Cellphones referenced in this Affidavit are the cellphone assigned call number 917-520-3106 (“Target Cellphone-1”) and the cellphone assigned call number 978-525-8484 (“Target Cellphone-2,” and collectively with Target Cellphone-1, the “Target Cellphones”). As further discussed below, Target Cellphone-1 is subscribed to in the name of “Terramar Project, Inc.”

(“Subscriber-1”), and Target Cellphone-2 is subscribed to in the name of “G Max” (“Subscriber-2,” and collectively with Subscriber-1, the “Subscribers”). GHISLAINE MAXWELL is believed to use the Target Cellphones and is a Target Subject of this investigation. T-Mobile is the Service Provider for Target Cellphone-1, and AT&T is the Service Provider for Target Cellphone-2.

5. **Precision Location Capability.** Cellphone service providers have technical capabilities that allow them to collect at least two kinds of information about the locations of the cellphones to which they provide service: (a) precision location information, also known as E-911 Phase II data, GPS data, or latitude-longitude data, and (b) cell site data, also known as “tower/face” or “tower/sector” information. Precision location information provides relatively precise location information about a cellphone, which a provider can typically collect either via GPS tracking technology built into the phone or by triangulating the device’s signal as received by the provider’s nearby cell towers. Cell site data, by contrast, reflects only the cell tower and sector thereof utilized in routing any communication to and from the cellphone, as well as the approximate range of the cellphone from the tower during the communication (sometimes referred to as “per-call measurement” (“PCM”) or “round-trip time” (“RTT”) data). Because cell towers are often a half-mile or more apart, even in urban areas, and can be ten or more miles apart in rural areas, cell site data is typically less precise than precision location information. Based on my training and experience, I know that the Service Providers have the technical ability to collect precision location information from any cellphone on its network, including by initiating a signal on the Service Providers’ network to determine the phone’s location. I further know that cell site

data is routinely collected by the Service Providers in the course of routing calls placed to or from any cellphone on their network.¹

6. **Successor Service Provider.** Because it is possible that the Target Subject may change cellphone service provider during the course of this investigation, it is requested that the warrant and investigative order requested apply without need for further order to any Successor Service Provider who may provide service to the Target Cellphones during the time frames at issue herein.

II. Facts Establishing Probable Cause

7. Although I understand that probable cause is not necessary to obtain all of the Requested Information, I respectfully submit that probable cause exists to believe that the Requested Information will lead to the location of a person, GHISLAINE MAXWELL, to be arrested for the crimes of conspiracy to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371; enticement of a minor to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 2422; conspiracy to transport minors with intent to engage in criminal sexual activity, in violation of 18 U.S.C. § 371; transporting a minor with intent to engage in criminal sexual activity, in violation of 18 U.S.C. § 2423(a); and perjury, in violation of 18 U.S.C. § 1623 (the “Subject Offenses”).

8. On June 29, 2020, a grand jury in the Southern District of New York returned an indictment charging GHISLAINE MAXWELL with the Subject Offenses. The Indictment charging MAXWELL is attached as Exhibit A hereto (the “Indictment”). That same day, United States Magistrate Judge Lisa Margaret Smith signed a warrant for MAXWELL’s arrest, which is attached as Exhibit B hereto (the “Arrest Warrant”).

¹ Toll records are sometimes necessary or helpful in order to obtain or interpret historical cell site data and are therefore also requested herein.

9. In light of these pending charges in the Indictment and the issuance of the Arrest Warrant, GHISLAINE MAXWELL is subject to arrest for the Subject Offenses.

10. Based on my review of T-Mobile records, I have learned that Target Cellphone-1 is subscribed in the name of "Terramar Project, Inc." Based on my review of publicly available videos and related information, I know that GHISLAINE MAXWELL has given multiple public addresses in her capacity as the founder and president of an organization known as the TerraMar Project, a non-profit organization that, as noted, was founded and run by MAXWELL and devoted to ocean protection.

11. As set forth in Paragraph 3 of Exhibit A, MAXWELL was a close associate and employee of Jeffrey Epstein's. Additionally, as set forth in Paragraphs 1 through 19 of Exhibit A, MAXWELL is charged with committing four of the Subject Offenses together with Epstein. I know from my participation in this investigation that on or about July 6, 2019, Epstein was arrested by the FBI on federal sex trafficking charges. During that arrest, the FBI seized an iPhone from Epstein's possession (the "Epstein Phone"). Pursuant to a judicially authorized search warrant, the FBI subsequently searched the contents of the Epstein Phone. Among other things, that search revealed that the phone number associated with Target Cellphone-1 was saved as a contact in the Epstein Phone under the name "Ghislaine."

12. I further know from my review of T-Mobile records the following:

- a. Target Cellphone-1 has been active within the last 30 days.
- b. Target Cellphone-1 has been in contact with a phone subscribed to in the name of "Joshua Perry," which I know from my review of a law enforcement database is the name of the husband of a former employee of Jeffrey Epstein (the "Joshua Perry Phone"). The most recent contact between Target Cellphone-1 and the Joshua Perry Phone occurred in or about May 2020.

c. Target Cellphone-1 has also been in contact with a phone subscribed to the business “Haddon, Morgan, & Foreman,” which I know from my review of court records is the name of a law firm that currently represents GHISLAINE MAXWELL in civil litigation (the “Haddon, Morgan, & Foreman Phone”). The most recent contact between Target Cellphone-1 and the Haddon, Morgan, & Foreman Phone occurred in or about February 2020.

d. Target Cellphone-1 has also been in contact with a phone subscribed to in the name of “Isabel Maxwell,” which I know from my review of a law enforcement database is the name of GHISLAINE MAXWELL’s sister (the “Isabel Maxwell Phone”). The most recent contact between Target Cellphone-1 and the Isabel Maxwell Phone occurred in or about August 2019.

e. Target Cellphone-1 has also been in contact with a phone subscribed to in the name of “Laura Menninger,” which I know from my review of court records is the name of an attorney who currently represents GHISLAINE MAXWELL in civil litigation (the “Laura Menninger Phone”). The most recent contact between Target Cellphone-1 and the Laura Menninger Phone occurred in or about August 2019.

f. Target Cellphone-1 has also been in contact with a phone subscribed to in the name of “Scott Borgerson,” which I know from my review of bank records and Amazon records is the name of an individual with whom GHISLAINE MAXWELL shares a joint bank account and to whom MAXWELL’s Amazon account has sent multiple packages within approximately the last year (the “Scott Borgerson Phone”). The most recent contact between Target Cellphone-1 and the Scott Borgerson Phone occurred in or about August 2019.

13. Accordingly, I respectfully submit there is probable cause to believe that the location of Target Cellphone-1 will reveal the location of GHISLAINE MAXWELL.

14. Based on my review of AT&T records, I have learned that Target Cellphone-2 is subscribed in the name of "G Max," which appears to be a shortened version of GHISLAINE MAXWELL's name. I further know from my review of AT&T records that Target Cellphone-2 has been active within the last 30 days. In particular, within the last 30 days, Target Cellphone-2 has been in contact with the Isabel Maxwell Phone, the Laura Menninger Phone, the Haddon, Morgan, & Foreman Phone, and the Scott Borgerson Phone.

15. Accordingly, I respectfully submit that there is probable cause to believe that the location of Target Cellphone-2 will reveal the location of GHISLAINE MAXWELL.

III. Request for Warrants and Orders

16. Based on the foregoing, I respectfully request that the Court require the Service Providers to provide the Requested Information as specified further in the Warrants and Orders proposed herewith, including prospective precision location and cell site data for a period of 45 days from the date of this Order, historical cell site data and toll records for the period from June 1, 2020 through the date of this Order, and pen register information for a period of 45 days from the date of this Order.

1. **Nondisclosure.** The scope of this ongoing criminal investigation and existence of the Indictment and Arrest Warrant are not publicly known. As a result, premature public disclosure of this affidavit or the requested Warrants and Orders could alert GHISLAINE MAXWELL that she is under investigation and subject to arrest, causing her to destroy evidence, flee from prosecution, or otherwise seriously jeopardize the investigation. Specifically:

a. As evidenced by the charges alleged in the Indictment, MAXWELL is known to have participated in acts of sexual abuse of minors. Alerting her to the existence and scope of the investigation may lead her to intimidate witnesses. *See* 18 U.S.C. § 2705(b)(1),(4).

b. Additionally, the Target Subject is at liberty in the community. Premature disclosure of the existence of this application and the charges contained in the Indictment could result in the Target Subject fleeing from prosecution if she were made aware of the pending charges before arrest. *See* 18 U.S.C. § 2705(b)(2).

17. Accordingly, there is reason to believe that, were the Service Providers to notify the subscribers or others of the existence of the warrant, the investigation would be seriously jeopardized. Pursuant to 18 U.S.C. § 2705(b), I therefore respectfully request that the Service Providers be directed not to notify the subscribers or others of the existence of the Warrants and Orders for a period of one year, and that the Warrants and Orders and all supporting papers be maintained under seal until the Court orders otherwise, as specified in the Application submitted in conjunction with this Affidavit.

 Amanda Young
Special Agent
Federal Bureau of Investigation

Sworn to before me this
29 day of June, 2020



HONORABLE KATHARINE H. PARKER
United States Magistrate Judge
Southern District of New York

Sworn to before me by reliable electronic means in
accordance with Fed. R. Crim. P. 4.1 and 41(d)(3).