

ATTACHMENT

A

Redacted Docket Materials

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE APPLICATION OF
THE UNITED STATES OF AMERICA FOR AN
ORDER AUTHORIZING THE INSTALLATION
AND USE OF A PEN REGISTER AND TRAP
AND TRACE DEVICE FOR ONE CELLULAR
TELEPHONE SERVICED BY AT&T FOR
INVESTIGATION OF VIOLATION OF 18
U.S.C. § 793

Case No. 23-pr-

Filed Under Seal

Subject Phone Number(s): [REDACTED]

APPLICATION FOR ORDER

The United States of America, moving by and through Assistant Special Counsel [REDACTED], respectfully submits under seal this *ex parte* application for an order pursuant to 18 U.S.C §§ 3122 and 3123, authorizing the installation and use of a pen register and trap and trace device (“pen-trap device”) to record, decode, and/or capture dialing, routing, addressing, and signaling information associated with each communication to or from the cellular telephone number [REDACTED] (hereinafter “Subject Phone Number”), an AT&T number believed to be used by [REDACTED], at [REDACTED] who is a subject of the investigation, as discussed further below. In support of this application, the United States asserts:

1. This is an application, made under 18 U.S.C. § 3122(a)(1), for an order under 18 U.S.C. § 3123 authorizing the installation and use of a pen-trap device.
2. Such an application must include three elements: (1) “the identity of the attorney for the Government or the State law enforcement or investigative officer making the application”; (2) “the identity of the law enforcement agency conducting the investigation”; and (3) “a

certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.” 18 U.S.C. § 3122(b).

3. The undersigned applicant is an “attorney for the Government” as defined in Rule 1(b)(1) of the Federal Rules of Criminal Procedure.

4. The law enforcement agency conducting the investigation is the Federal Bureau of Investigation (hereinafter “Agency”).

5. The applicant hereby certifies that the information likely to be obtained by the requested pen-trap device is relevant to an ongoing criminal investigation being conducted by the Agency.

6. This Court is a “court of competent jurisdiction” under 18 U.S.C. § 3122(a)(2) because it “has jurisdiction over the offense being investigated,” 18 U.S.C. § 3127(2)(A)(i).

ADDITIONAL INFORMATION

7. Other than the three elements described above, federal law does not require that an application for an order authorizing or extending authorization for the installation and use of a pen-trap device specify any facts. The following additional information is provided to demonstrate that the order requested falls within this Court’s authority to authorize the installation and use of a pen-trap device under 18 U.S.C. § 3123(a)(1).

8. A “pen register” is “a device or process which records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted.” 18 U.S.C. § 3127(3). A “trap and trace device” is “a device or process which captures 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 a wire or electronic communication.” 18 U.S.C. § 3127(4).

9. In the traditional telephone context, pen register devices captured the destination phone numbers of outgoing calls, while trap and trace devices captured the phone numbers of incoming calls. Similar principles apply to other kinds of wire and electronic communications, as described below.

10. The Internet is a global network of computers and other devices. Devices directly connected to the Internet are identified by a unique number called an Internet Protocol, or “IP” address. This number is used to route information between devices. Generally, when one device requests information from a second device, the requesting device specifies its own IP address so that the responding device knows where to send its response. An IP address is analogous to a telephone number and can be recorded by pen-trap devices, and it indicates the online identity of the communicating device without revealing the communication’s content.

11. A network is two or more computers or other devices connected to each other that can exchange information with each other via some transmission method, such as by wires, cables, or radio waves. The equipment that connects a computer or other device to the network is commonly referred to as a network adapter. Most network adapters have a Media Access Control (“MAC”) address assigned by the manufacturer of the adapter that is designed to be a unique identifying number. An adapter’s unique MAC address allows for proper routing of communications on a local area network and may be used for other purposes, such as authentication of customers by some network service providers. Unlike a device’s IP address that often changes each time a device connects to the Internet, a MAC address is fixed at the time of manufacture of the adapter. Because the address does not change and is intended to be unique, a MAC address can allow law enforcement to identify whether communications sent or received at different times are associated with the same adapter.

12. On the Internet, data transferred between devices is not sent as a continuous stream, but rather it is split into discrete packets. Generally, a single communication is sent as a series of packets. When the packets reach their destination, the receiving device reassembles them into the complete communication. Each packet has two parts: a header with routing and control information, and a payload, which generally contains user data. The header contains non-content information such as the packet's source and destination IP addresses and the packet's size.

13. In addition, different Internet applications are associated with different "port numbers," or numeric identifiers. The port number is transmitted along with any communication using that application. For example, port 80 typically is associated with communications involving the World Wide Web. Port numbers are also used by many wireless carriers as a method for identifying a particular device on the wireless carrier's network.

14. A cellular telephone, or cell phone, is a mobile device that transmits and receives wire and electronic communications. Individuals using cell phones contract with cellular service providers, who maintain antenna towers covering specific geographic areas. In order to transmit or receive calls and data, a cell phone must send a radio signal to an antenna tower that, in turn, is connected to a cellular service provider's network.

15. In addition to a unique telephone number, each cell phone has one or more unique identifiers embedded inside it. Depending upon the cellular network and the device, the embedded unique identifiers for a cell phone could take several different forms, including an Electronic Serial Number ("ESN"), a Mobile Electronic Identity Number ("MEIN"), a Mobile Identification Number ("MIN"), a Subscriber Identity Module ("SIM"), an International Mobile Subscriber Identifier ("IMSI"), a Mobile Subscriber Integrated Services Digital Network Number ("MSISDN"), or an International Mobile Station Equipment Identity ("IMEI"). When a cell phone

connects to a cellular antenna or tower, it reveals its embedded unique identifiers to the cellular antenna or tower, and the cellular antenna or tower records those identifiers as a matter of course. The unique identifiers—as transmitted from a cell phone to a cellular antenna or tower—are like the telephone number of an incoming call. They can be recorded by pen-trap devices and indicate the identity of the cell phone device making the communication without revealing the communication's content.

16. In addition, a list of incoming and outgoing telephone numbers is generated when a cell phone is used to make or receive calls, or to send or receive text messages (which may include photographs, videos, and other data). These telephone numbers can be recorded by pen-trap devices and then used to identify the parties to a communication without revealing the communication's contents.

17. Additionally, a cellular service provider generally keeps subscriber data for its customers, including the individual's name, address, and billing information. A cellular service provider also generally keeps historical records of incoming and outgoing calls and text messages in the form of toll records for a set period of time.

18. A cell phone can also be used to exchange text messages with email accounts. The email addresses associated with those text messages can be recorded by pen-trap devices and then used to identify parties to a communication without revealing the communication's contents.

19. Cell phones can connect to the Internet via the cellular network. When connecting through the cellular network, Internet communications sent and received by the cell phone each contain the same unique identifier that identifies cellular voice communications, such as an ESN, MEIN, MIN, SIM, IMSI, MSISDN, or IMEI. Internet communications from a cell phone also contain the IP address associated with that cell phone at the time of the communication. Each of

these unique identifiers can be used to identify parties to a communication without revealing the communication's contents.

THE RELEVANT FACTS

20. The United States is investigating potential violations of 18 U.S.C. §§ 793(e) (willful retention of defense information), 2071 (concealment or removal of government records), 1519 (obstruction of a federal investigation), 1001 (false statements) and 1623 (false declarations before grand jury or court) related to the improper removal and storage of classified national defense information in unauthorized spaces, as well as the unlawful concealment or removal of government records and obstruction of its investigation.

21. This investigation began as a result of a referral that the United States National Archives and Records Administration ("NARA") sent to the United States Department of Justice ("DOJ") on or about February 9, 2022 (hereinafter, the "NARA referral"). The NARA referral stated that on January 18, 2022, in accordance with the Presidential Records Act ("PRA"), NARA received from the office of former President Donald J. Trump (hereinafter "FPOTUS"), via representatives, 15 boxes of records (hereinafter, the "15 boxes"). The 15 boxes, which had been transported from a property owned by FPOTUS at [REDACTED], Palm Beach, Florida, a residence and club known as "Mar-a-Lago," were reported in the NARA referral to contain, among other things, highly classified documents intermingled with other records.

22. After an initial review of the NARA referral, the Agency opened a criminal investigation to, among other things, identify any person(s) who may have removed or retained classified information without authorization and/or in an unauthorized space. The Agency's investigation established that documents bearing classification markings, which appear to contain

NDI, were among the materials contained in the 15 boxes and were stored at Mar-a-Lago in an unauthorized location.

23. On May 11, 2022, the Department of Justice (“DOJ”) served a [REDACTED] subpoena on counsel for the Office of the Former President (the “Office”) seeking “any and all documents . . . bearing classification markings” in FPOTUS’s and/or the Office’s possession. On June 3, 2022, FPOTUS’s counsel provided DOJ with a package of 37 documents bearing classification markings at the Confidential, Secret, and Top Secret levels. After developing additional evidence that the June 3 production did not contain all of the documents with classification markings located at Mar-a-Lago, on August 8, 2022, the Agency executed a search and seizure warrant issued by a Magistrate Judge of the U.S. District Court for the Southern District of Florida. During the search, the Agency recovered from a storage room located on the ground floor of Mar-a-Lago, as well as FPOTUS’s office at Mar-a-Lago, over 100 documents bearing classification markings, which had not been produced on June 3, 2022. The documents appeared to contain NDI. The search also yielded apparent government and/or Presidential records subject to the Presidential Records Act, 44 U.S.C. § 2201.

24. The United States continues to investigate how the documents with classification markings and other records came to be stored at FPOTUS’s property in Florida, whether any additional classified documents or records may have been stored in an unauthorized location at any of FPOTUS’s properties, and the identities of any persons who may have removed or retained classified information without authorization and/or in an unauthorized space. Additionally, the United States is also investigating potential efforts to mislead law enforcement, whether any relevant documents have been altered or destroyed, and whether any other acts of obstruction of the Government’s criminal investigation have occurred.

25. Information likely to be obtained by the requested pen-trap device is relevant to this ongoing criminal investigation. According to subscriber records obtained from AT&T, the Subject Phone Number is listed to [REDACTED] who is the [REDACTED] [REDACTED] ("PAC"). The [REDACTED] PAC funds salaries and/or pays legal bills of several subjects and witnesses in connection with the ongoing investigation.

26. Historical telephone connection records provided by AT&T revealed that beginning at least as early as May 2022, the Subject Phone Number was used to communicate with subjects and witnesses shortly before and/or after they spoke with the Government in connection with this criminal investigation. Analysis of the AT&T records revealed at least nine (9) individuals who had contact with the user of the Subject Phone Number within two days before, and/or within two days after, either their grand jury testimony or interview with law enforcement in connection with the criminal investigation. According to information obtained by law enforcement, [REDACTED] efforts to contact individuals known to have been interviewed by the Government or to have testified [REDACTED] appear to be ongoing.

27. Through this application, the Government seeks both historical and prospective phone communication information for the Subject Phone Number. Based on witness interviews and telephone connection records, the Government believes that the user of the Subject Phone Number may make or receive calls from confederates soon after learning about relevant individuals being approached, interviewed, or re-interviewed by federal agents. These calls may provide evidence of the offenses under investigation, or otherwise lead to other avenues of investigation. Accordingly, to further the investigation, investigators seek to obtain the dialing, routing, addressing, and signaling information associated with communications sent to or from the Subject Phone Number.

28. The pen-trap device sought by this application will record, decode, and/or capture dialing, routing, addressing, and signaling information associated with each communication to or from the Subject Phone Number, including the date, time, and duration of the communication, and the following, without geographic limit:

- IP addresses associated with the cell phone device or devices used to send or receive electronic communications;
- Any unique identifiers associated with the cell phone device or devices used to make and receive calls with the Subject Phone Number, or to send or receive other electronic communications, including the ESN, MEIN, IMSI, IMEI, SIM, MSISDN, or MIN;
- IP addresses of any websites or other servers to which the cell phone device or devices is/are connected; and
- Source and destination telephone numbers and email addresses.

GOVERNMENT REQUESTS

29. For the reasons stated above, the United States requests that the Court enter an Order authorizing the installation and use of a pen-trap device to record, decode, and/or capture the dialing, routing, addressing, and signaling information described above for each communication to or from the Subject Phone Number, including the date, time, and duration of the communication, without geographic limit. The United States does not request and does not seek to obtain the contents of any communications, as defined in 18 U.S.C. § 2510(8).

30. The United States further requests that the Court authorize the foregoing installation and use for a period of sixty days (60) from the date of the Court's Order, pursuant to 18 U.S.C. § 3123(c)(1).

31. The United States further requests that the Court order, pursuant to 18 U.S.C. §§ 3123(b)(2) and 3124(a)-(b), that AT&T (hereinafter "Service Provider") and any other person or entity providing wire or electronic communication service in the United States whose assistance

may facilitate execution of the Order, furnish the Agency forthwith all information, facilities, and technical assistance necessary to install the pen-trap devices, including installation and operation of the pen-trap devices unobtrusively and with minimum disruption of normal service. Any entity providing such assistance shall be reasonably compensated by the Agency, pursuant to 18 U.S.C. § 3124(c), for reasonable expenses incurred in providing facilities and assistance in furtherance of the Order.

32. The United States further requests that the Court order the Service Provider and any other person or entity whose assistance may facilitate execution of this Order to notify the applicant and the Agency of any changes relating to the Subject Phone Number, including changes to subscriber information, and to provide prior notice to the applicant and the Agency before terminating or changing service to the Subject Phone Number.

33. The United States further requests that the Court order that the Agency and the applicant have access to the information collected by the pen-trap device as soon as practicable, twenty-four hours per day, or at such other times as may be acceptable to them, for the duration of the Order.

34. The United States further requests that the Court order that the Service Provider disclose to the Agency the subscriber data and call and electronic communication call details (including text details) for the Subject Phone Number from November 24, 2022 through the present, as well as the subscriber data for any of the telephone numbers with which the Subject Phone Number is in contact with during the period of the pen-trap device that are available to the Service Provider.

35. The United States further requests, pursuant to 18 U.S.C. § 3123(d)(2), that the Court order the Service Provider and any other person or entity whose assistance facilitates

execution of the Court's Order, and their agents and employees, not to disclose in any manner, directly or indirectly, by any action or inaction, the existence of this application and the Court's Order, the resulting pen-trap device, or this investigation, unless and until authorized by this Court, except that the Service Provider may disclose the Order to an attorney for the Service Provider for the purpose of receiving legal advice.

36. The United States further requests that this application and any resulting Order be sealed until otherwise ordered by the Court, pursuant to 18 U.S.C. § 3123(d)(1).

37. The United States further requests that the Clerk of the Court provide the Special Counsel's Office with one certified copy of this application and the Court's Order.

38. The foregoing is based on information provided to me in my official capacity by agents of the Agency or otherwise gained during the course of the investigation.

I declare under penalty of perjury that the foregoing is true and correct.

February 9, 2023

Respectfully submitted,

JACK SMITH
SPECIAL COUNSEL
N.Y. BAR NUMBER 2678084

[REDACTED]

[REDACTED]
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Washington, D.C. 20530
[REDACTED]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE APPLICATION OF
THE UNITED STATES OF AMERICA FOR AN
ORDER AUTHORIZING THE INSTALLATION
AND USE OF A PEN REGISTER AND TRAP
AND TRACE DEVICE FOR ONE CELLULAR
TELEPHONE SERVICED BY AT&T FOR
INVESTIGATION OF VIOLATION OF 18
U.S.C. § 793

Case No. 23-pr-58

Filed Under Seal

ORDER

The United States of America, moving by and through Assistant Special Counsel [REDACTED], has submitted an Application for Order pursuant to 18 U.S.C. §§ 3122 and 3123, requesting that the Court issue an Order authorizing the installation and use of a pen register and trap and trace device (“pen-trap device”) on the cellular telephone phone number described in Attachment A (“Subject Phone Number”) which is incorporated into this Order by reference.

The Court finds that an attorney for the government has submitted the Application for Order and has certified that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation being conducted by the Federal Bureau of Investigation (the “Agency”) of individuals in connection with possible violations of 18 U.S.C. §§ 793(e) (willful retention of defense information), 2071 (concealment or removal of government records), 1519 (obstruction of a federal investigation), 1001 (false statements) and 1623 (false declarations before grand jury or court) related to the improper removal and storage of classified national defense information in unauthorized spaces, as well as the unlawful concealment or removal of government records and obstruction of its investigation.

IT IS THEREFORE ORDERED, pursuant to 18 U.S.C. § 3123, that the Agency is authorized to install and use pen-trap devices to record, decode, and/or capture dialing, routing,

addressing, and signaling information associated with each communication to or from the Subject Phone Number described in Attachment A, including the date, time, and duration of the communication, and the following, without geographic limit:

- IP addresses associated with the cell phone device or devices used to send or receive electronic communications;
- Any unique identifiers associated with the cell phone device or devices used to make and receive calls with the Subject Phone Number, or to send or receive other electronic communications, including the ESN, MEIN, IMSI, IMEI, SIM, MSISDN, or MIN;
- IP addresses of any websites or other servers to which the cell phone device or devices is/are connected; and
- Source and destination telephone numbers and email addresses.

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3123(c)(1), that the use and installation of the foregoing is authorized for sixty (60) days from the date of this Order;

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§ 3123(b)(2) and 3124(a)-(b), that AT&T (hereinafter “Service Provider”) and any other person or entity providing wire or electronic communication service in the United States whose assistance may, pursuant to 18 U.S.C. § 3123(a), facilitate the execution of this Order shall, upon service of this Order, furnish information, facilities, and technical assistance necessary to install the pen-trap device, including installation and operation of the pen-trap device unobtrusively and with minimum disruption of normal service;

IT IS FURTHER ORDERED that the Agency reasonably compensate the Service Provider and any other person or entity whose assistance facilitates execution of this Order for reasonable expenses incurred in complying with this Order;

IT IS FURTHER ORDERED that the Service Provider and any other person or entity whose assistance may facilitate execution of this Order, notify the applicant and the Agency of

any changes relating to the Subject Phone Number, including changes to subscriber information, and to provide prior notice to the Agency before terminating or changing service to the Subject Phone Number;

IT IS FURTHER ORDERED that the Agency and the applicant are authorized to have access to the information collected by the pen-trap device as soon as practicable, twenty-four hours per day, or at such other times as may be acceptable to the Agency, for the duration of the Order;

IT IS FURTHER ORDERED that the Service Provider disclose the subscriber data and call and electronic communication call details (including text details) for the Subject Phone Number from November 24, 2022, through the present to the Agency, as well as the subscriber data for any of the telephone numbers with which the Subject Phone Number is in contact during the period of the pen-trap device that is available to the Service Provider;

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3123(d)(2), that the Service Provider and any other person or entity whose assistance facilitates execution of this Order, and their agents and employees, shall not disclose in any manner, directly or indirectly, by any action or inaction, the existence of the application and the Court's Order, the pen-trap device, or the investigation to any person, unless and until otherwise ordered by the Court, except that the Service Provider may disclose the Order to an attorney for the Service Provider for the purpose of receiving legal advice;

IT IS FURTHER ORDERED that the Service Provider may move to quash or modify this Order if the information or records requested are unusually voluminous in nature or if compliance with this Order otherwise would cause an undue burden on the Service Provider;

IT IS FURTHER ORDERED that the Clerk of the Court shall provide the Special Counsel's Office with one certified copy of this Application and Order upon request, and shall provide copies of this Order to the Agency and Service Provider upon request; and

IT IS FURTHER ORDERED that the Application for Order and this Order are sealed until otherwise ordered by the Court, pursuant to 18 U.S.C. § 3123(d)(1).

February 10, 2023

Date



Beryl A. Howell

Hon. Beryl A. Howell
Chief United States District Judge

ATTACHMENT A
(Subject Phone Number)

Subject Phone Number: [REDACTED]

Provider: AT&T

Suspected User of Device: [REDACTED]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE APPLICATION OF
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ORDER AUTHORIZING THE INSTALLATION
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AND TRACE DEVICE FOR ONE CELLULAR
TELEPHONE SERVICED BY AT&T FOR
INVESTIGATION OF VIOLATION OF 18
U.S.C. § 793

Case No. 23-pr-00058

Filed Under Seal

Subject Phone Number(s): [REDACTED]

SECOND APPLICATION FOR ORDER¹

The United States of America, moving by and through Assistant Special Counsel [REDACTED], respectfully submits under seal this *ex parte* application for an order pursuant to 18 U.S.C §§ 3122 and 3123, authorizing the installation and use of a pen register and trap and trace device (“pen-trap device”) to record, decode, and/or capture dialing, routing, addressing, and signaling information associated with each communication to or from the cellular telephone number [REDACTED] (hereinafter “Subject Phone Number”), an AT&T number believed to be used by [REDACTED], at [REDACTED], who is a subject of the investigation, as discussed further below. In support of this application, the United States asserts:

1. This is an application, made under 18 U.S.C. § 3122(a)(1), for an order under 18 U.S.C. § 3123 authorizing the installation and use of a pen-trap device.

¹ On February 10, 2023, the United States obtained and implemented an Order authorizing a pen-trap device with respect to the Subject Phone Number. *See* D.E. 2 (Sealed Order), Case No. 23-pr-00058-BAH. That authorization expired on or about April 10, 2023. This is the Government’s second application for a pen-trap device with respect to the Subject Phone Number.

2. Such an application must include three elements: (1) “the identity of the attorney for the Government or the State law enforcement or investigative officer making the application”; (2) “the identity of the law enforcement agency conducting the investigation”; and (3) “a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.” 18 U.S.C. § 3122(b).

3. The undersigned applicant is an “attorney for the Government” as defined in Rule 1(b)(1) of the Federal Rules of Criminal Procedure.

4. The law enforcement agency conducting the investigation is the Federal Bureau of Investigation (hereinafter “Agency”).

5. The applicant hereby certifies that the information likely to be obtained by the requested pen-trap device is relevant to an ongoing criminal investigation being conducted by the Agency.

6. This Court is a “court of competent jurisdiction” under 18 U.S.C. § 3122(a)(2) because it “has jurisdiction over the offense being investigated,” 18 U.S.C. § 3127(2)(A)(i).

ADDITIONAL INFORMATION

7. Other than the three elements described above, federal law does not require that an application for an order authorizing or extending authorization for the installation and use of a pen-trap device specify any facts. The following additional information is provided to demonstrate that the order requested falls within this Court’s authority to authorize the installation and use of a pen-trap device under 18 U.S.C. § 3123(a)(1).

8. A “pen register” is “a device or process which records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted.” 18 U.S.C. § 3127(3). A “trap and trace device” is “a

device or process which captures 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 a wire or electronic communication.” 18 U.S.C. § 3127(4).

9. In the traditional telephone context, pen register devices captured the destination phone numbers of outgoing calls, while trap and trace devices captured the phone numbers of incoming calls. Similar principles apply to other kinds of wire and electronic communications, as described below.

10. The Internet is a global network of computers and other devices. Devices directly connected to the Internet are identified by a unique number called an Internet Protocol, or “IP” address. This number is used to route information between devices. Generally, when one device requests information from a second device, the requesting device specifies its own IP address so that the responding device knows where to send its response. An IP address is analogous to a telephone number and can be recorded by pen-trap devices, and it indicates the online identity of the communicating device without revealing the communication’s content.

11. A network is two or more computers or other devices connected to each other that can exchange information with each other via some transmission method, such as by wires, cables, or radio waves. The equipment that connects a computer or other device to the network is commonly referred to as a network adapter. Most network adapters have a Media Access Control (“MAC”) address assigned by the manufacturer of the adapter that is designed to be a unique identifying number. An adapter’s unique MAC address allows for proper routing of communications on a local area network and may be used for other purposes, such as authentication of customers by some network service providers. Unlike a device’s IP address that often changes each time a device connects to the Internet, a MAC address is fixed at the time of

manufacture of the adapter. Because the address does not change and is intended to be unique, a MAC address can allow law enforcement to identify whether communications sent or received at different times are associated with the same adapter.

12. On the Internet, data transferred between devices is not sent as a continuous stream, but rather it is split into discrete packets. Generally, a single communication is sent as a series of packets. When the packets reach their destination, the receiving device reassembles them into the complete communication. Each packet has two parts: a header with routing and control information, and a payload, which generally contains user data. The header contains non-content information such as the packet's source and destination IP addresses and the packet's size.

13. In addition, different Internet applications are associated with different "port numbers," or numeric identifiers. The port number is transmitted along with any communication using that application. For example, port 80 typically is associated with communications involving the World Wide Web. Port numbers are also used by many wireless carriers as a method for identifying a particular device on the wireless carrier's network.

14. A cellular telephone, or cell phone, is a mobile device that transmits and receives wire and electronic communications. Individuals using cell phones contract with cellular service providers, who maintain antenna towers covering specific geographic areas. In order to transmit or receive calls and data, a cell phone must send a radio signal to an antenna tower that, in turn, is connected to a cellular service provider's network.

15. In addition to a unique telephone number, each cell phone has one or more unique identifiers embedded inside it. Depending upon the cellular network and the device, the embedded unique identifiers for a cell phone could take several different forms, including an Electronic Serial Number ("ESN"), a Mobile Electronic Identity Number ("MEIN"), a Mobile Identification

Number (“MIN”), a Subscriber Identity Module (“SIM”), an International Mobile Subscriber Identifier (“IMSI”), a Mobile Subscriber Integrated Services Digital Network Number (“MSISDN”), or an International Mobile Station Equipment Identity (“IMEI”). When a cell phone connects to a cellular antenna or tower, it reveals its embedded unique identifiers to the cellular antenna or tower, and the cellular antenna or tower records those identifiers as a matter of course. The unique identifiers—as transmitted from a cell phone to a cellular antenna or tower—are like the telephone number of an incoming call. They can be recorded by pen-trap devices and indicate the identity of the cell phone device making the communication without revealing the communication’s content.

16. In addition, a list of incoming and outgoing telephone numbers is generated when a cell phone is used to make or receive calls, or to send or receive text messages (which may include photographs, videos, and other data). These telephone numbers can be recorded by pen-trap devices and then used to identify the parties to a communication without revealing the communication’s contents.

17. Additionally, a cellular service provider generally keeps subscriber data for its customers, including the individual’s name, address, and billing information. A cellular service provider also generally keeps historical records of incoming and outgoing calls and text messages in the form of toll records for a set period of time.

18. A cell phone can also be used to exchange text messages with email accounts. The email addresses associated with those text messages can be recorded by pen-trap devices and then used to identify parties to a communication without revealing the communication’s contents.

19. Cell phones can connect to the Internet via the cellular network. When connecting through the cellular network, Internet communications sent and received by the cell phone each

contain the same unique identifier that identifies cellular voice communications, such as an ESN, MEIN, MIN, SIM, IMSI, MSISDN, or IMEI. Internet communications from a cell phone also contain the IP address associated with that cell phone at the time of the communication. Each of these unique identifiers can be used to identify parties to a communication without revealing the communication's contents.

THE RELEVANT FACTS

20. The United States is investigating potential violations of 18 U.S.C. §§ 793(e) (willful retention of defense information), 2071 (concealment or removal of government records), 1519 (obstruction of a federal investigation), 1001 (false statements) and 1623 (false declarations before grand jury or court) related to the improper removal and storage of classified national defense information in unauthorized spaces, as well as the unlawful concealment or removal of government records and obstruction of its investigation.

21. This investigation began as a result of a referral that the United States National Archives and Records Administration ("NARA") sent to the United States Department of Justice ("DOJ") on or about February 9, 2022 (hereinafter, the "NARA referral"). The NARA referral stated that on January 18, 2022, in accordance with the Presidential Records Act ("PRA"), NARA received from the office of former President Donald J. Trump (hereinafter "FPOTUS"), via representatives, 15 boxes of records (hereinafter, the "15 boxes"). The 15 boxes, which had been transported from a property owned by FPOTUS at [REDACTED], Palm Beach, Florida, a residence and club known as "Mar-a-Lago," were reported in the NARA referral to contain, among other things, highly classified documents intermingled with other records.

22. After an initial review of the NARA referral, the Agency opened a criminal investigation to, among other things, identify any person(s) who may have removed or retained

classified information without authorization and/or in an unauthorized space. The Agency's investigation established that documents bearing classification markings, which appear to contain NDI, were among the materials contained in the 15 boxes and were stored at Mar-a-Lago in an unauthorized location.

23. On May 11, 2022, the Department of Justice ("DOJ") served a [REDACTED] subpoena on counsel for the Office of the Former President (the "Office") seeking "any and all documents . . . bearing classification markings" in FPOTUS's and/or the Office's possession. On June 3, 2022, FPOTUS's counsel provided DOJ with a package of 37 documents bearing classification markings at the Confidential, Secret, and Top Secret levels. Counsel for FPOTUS provided DOJ with a written certification, signed by another person who was acting as the custodian of records on behalf of the Office for purposes of the subpoena, indicating that "a diligent search was conducted," that the "search was conducted after receipt of the subpoena, in order to locate any and all documents that are responsive to the subpoena," and that "any and all responsive documents" were being provided. Counsel for FPOTUS indicated that all responsive documents had been located in one storage room located on the ground floor at Mar-a-Lago (the "storage room").

24. After developing additional evidence that the June 3 production did not contain all of the documents with classification markings located at Mar-a-Lago, on August 8, 2022, the Agency executed a search and seizure warrant issued by a Magistrate Judge of the U.S. District Court for the Southern District of Florida. During the search, the Agency recovered from the storage room, as well as FPOTUS's office at Mar-a-Lago, over 100 documents bearing classification markings, which had not been produced on June 3, 2022. The documents appeared to contain NDI. The search also yielded apparent government and/or Presidential records subject to the Presidential Records Act, 44 U.S.C. § 2201.

25. The United States continues to investigate how the documents with classification markings and other records came to be stored at FPOTUS's property in Florida, whether any additional classified documents or records may have been stored in an unauthorized location at any of FPOTUS's properties, and the identities of any persons who may have removed or retained classified information without authorization and/or in an unauthorized space. Additionally, the United States is also investigating potential efforts to mislead law enforcement, whether any relevant documents have been altered or destroyed, and whether any other acts of obstruction of the Government's criminal investigation have occurred.

26. Information likely to be obtained by the requested pen-trap device is relevant to this ongoing criminal investigation. According to subscriber records obtained from AT&T, the Subject Phone Number is listed to [REDACTED], who is the [REDACTED] [REDACTED] ("PAC"). The [REDACTED] PAC funds salaries and/or legal bills, of several subjects and witnesses in connection with the ongoing investigation.

27. Historical telephone connection records provided by AT&T revealed that beginning at least as early as May 2022, the Subject Phone Number was used to communicate with subjects and witnesses shortly before and/or after they spoke with the Government in connection with this criminal investigation. Analysis of the AT&T records revealed at least nine (9) individuals who had contact with the user of the Subject Phone Number up to two days before, and/or up to two days after, either their [REDACTED] testimony or interview with law enforcement in connection with the criminal investigation. According to information obtained by law enforcement, as well as through the previously authorized February 11, 2023 pen-trap device with respect to the Subject Phone Number, [REDACTED] efforts to contact individuals known to have been interviewed by the Government or to have testified [REDACTED] remain ongoing.

28. Through this application, the Government seeks both historical and prospective phone communication information for the Subject Phone Number. Based on witness interviews and telephone connection records, the Government believes that the user of the Subject Phone Number may make or receive calls from confederates soon after learning about relevant individuals being approached, interviewed, or re-interviewed by federal agents. These calls may provide evidence of the offenses under investigation, or otherwise lead to other avenues of investigation. Accordingly, to further the investigation, investigators seek to obtain the dialing, routing, addressing, and signaling information associated with communications sent to or from the Subject Phone Number.

29. The pen-trap device sought by this application will record, decode, and/or capture dialing, routing, addressing, and signaling information associated with each communication to or from the Subject Phone Number, including the date, time, and duration of the communication, and the following, without geographic limit:

- IP addresses associated with the cell phone device or devices used to send or receive electronic communications;
- Any unique identifiers associated with the cell phone device or devices used to make and receive calls with the Subject Phone Number, or to send or receive other electronic communications, including the ESN, MEIN, IMSI, IMEI, SIM, MSISDN, or MIN;
- IP addresses of any websites or other servers to which the cell phone device or devices is/are connected; and
- Source and destination telephone numbers and email addresses.

GOVERNMENT REQUESTS

30. For the reasons stated above, the United States requests that the Court enter an Order authorizing the installation and use of a pen-trap device to record, decode, and/or capture the dialing, routing, addressing, and signaling information described above for each

communication to or from the Subject Phone Number, including the date, time, and duration of the communication, without geographic limit. The United States does not request and does not seek to obtain the contents of any communications, as defined in 18 U.S.C. § 2510(8).

31. The United States further requests that the Court authorize the foregoing installation and use for a period of sixty days (60) from the date of the Court's Order, pursuant to 18 U.S.C. § 3123(c)(1).

32. The United States further requests that the Court order, pursuant to 18 U.S.C. §§ 3123(b)(2) and 3124(a)-(b), that AT&T (hereinafter "Service Provider") and any other person or entity providing wire or electronic communication service in the United States whose assistance may facilitate execution of the Order, furnish the Agency forthwith all information, facilities, and technical assistance necessary to install the pen-trap devices, including installation and operation of the pen-trap devices unobtrusively and with minimum disruption of normal service. Any entity providing such assistance shall be reasonably compensated by the Agency, pursuant to 18 U.S.C. § 3124(c), for reasonable expenses incurred in providing facilities and assistance in furtherance of the Order.

33. The United States further requests that the Court order the Service Provider and any other person or entity whose assistance may facilitate execution of this Order to notify the applicant and the Agency of any changes relating to the Subject Phone Number, including changes to subscriber information, and to provide prior notice to the applicant and the Agency before terminating or changing service to the Subject Phone Number.

34. The United States further requests that the Court order that the Agency and the applicant have access to the information collected by the pen-trap device as soon as practicable,

twenty-four hours per day, or at such other times as may be acceptable to them, for the duration of the Order.

35. The United States further requests that the Court order that the Service Provider disclose to the Agency the subscriber data and call and electronic communication call details (including text details) for the Subject Phone Number from April 9, 2023 through the present, as well as the subscriber data for any of the telephone numbers with which the Subject Phone Number is in contact with during the period of the pen-trap device that are available to the Service Provider.

36. The United States further requests, pursuant to 18 U.S.C. § 3123(d)(2), that the Court order the Service Provider and any other person or entity whose assistance facilitates execution of the Court's Order, and their agents and employees, not to disclose in any manner, directly or indirectly, by any action or inaction, the existence of this application and the Court's Order, the resulting pen-trap device, or this investigation, unless and until authorized by this Court, except that the Service Provider may disclose the Order to an attorney for the Service Provider for the purpose of receiving legal advice.

37. The United States further requests that this application and any resulting Order be sealed until otherwise ordered by the Court, pursuant to 18 U.S.C. § 3123(d)(1).

38. The United States further requests that the Clerk of the Court provide the Special Counsel's Office with one certified copy of this application and the Court's Order.

[Intentionally Left Blank]

39. The foregoing is based on information provided to me in my official capacity by agents of the Agency or otherwise gained during the course of the investigation.

I declare under penalty of perjury that the foregoing is true and correct.

April 11, 2023

Respectfully submitted,

JACK SMITH
SPECIAL COUNSEL

[REDACTED]

[REDACTED]

Assistant Special Counsel

D.C. Bar No. [REDACTED]

950 Pennsylvania Ave. NW, Rm. [REDACTED]

Washington, D.C. 20530

[REDACTED]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE APPLICATION OF
THE UNITED STATES OF AMERICA FOR AN
ORDER AUTHORIZING THE INSTALLATION
AND USE OF A PEN REGISTER AND TRAP
AND TRACE DEVICE FOR ONE CELLULAR
TELEPHONE SERVICED BY AT&T FOR
INVESTIGATION OF VIOLATION OF 18
U.S.C. § 793

Case No. 23-pr-00058

Filed Under Seal

ORDER

The United States of America, moving by and through Assistant Special Counsel [REDACTED], has submitted a Second Application for Order pursuant to 18 U.S.C. §§ 3122 and 3123, requesting that the Court issue an Order authorizing the installation and use of a pen register and trap and trace device (“pen-trap device”) on the cellular telephone phone number described in Attachment A (“Subject Phone Number”) which is incorporated into this Order by reference.

The Court finds that an attorney for the government has submitted the Application for Order and has certified that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation being conducted by the Federal Bureau of Investigation (the “Agency”) of individuals in connection with possible violations of 18 U.S.C. §§ 793(e) (willful retention of defense information), 2071 (concealment or removal of government records), 1519 (obstruction of a federal investigation), 1001 (false statements) and 1623 (false declarations before grand jury or court) related to the improper removal and storage of classified national defense information in unauthorized spaces, as well as the unlawful concealment or removal of government records and obstruction of its investigation.

IT IS THEREFORE ORDERED, pursuant to 18 U.S.C. § 3123, that the Agency is authorized to install and use pen-trap devices to record, decode, and/or capture dialing, routing,

addressing, and signaling information associated with each communication to or from the Subject Phone Number described in Attachment A, including the date, time, and duration of the communication, and the following, without geographic limit:

- IP addresses associated with the cell phone device or devices used to send or receive electronic communications;
- Any unique identifiers associated with the cell phone device or devices used to make and receive calls with the Subject Phone Number, or to send or receive other electronic communications, including the ESN, MEIN, IMSI, IMEI, SIM, MSISDN, or MIN;
- IP addresses of any websites or other servers to which the cell phone device or devices is/are connected; and
- Source and destination telephone numbers and email addresses.

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3123(c)(1), that the use and installation of the foregoing is authorized for sixty (60) days from the date of this Order;

IT IS FURTHER ORDERED, pursuant to 18 U.S.C. §§ 3123(b)(2) and 3124(a)-(b), that AT&T (hereinafter "Service Provider") and any other person or entity providing wire or electronic communication service in the United States whose assistance may, pursuant to 18 U.S.C. § 3123(a), facilitate the execution of this Order shall, upon service of this Order, furnish information, facilities, and technical assistance necessary to install the pen-trap device, including installation and operation of the pen-trap device unobtrusively and with minimum disruption of normal service;

IT IS FURTHER ORDERED that the Agency reasonably compensate the Service Provider and any other person or entity whose assistance facilitates execution of this Order for reasonable expenses incurred in complying with this Order;

IT IS FURTHER ORDERED that the Service Provider and any other person or entity whose assistance may facilitate execution of this Order, notify the applicant and the Agency of

any changes relating to the Subject Phone Number, including changes to subscriber information, and to provide prior notice to the Agency before terminating or changing service to the Subject Phone Number;

IT IS FURTHER ORDERED that the Agency and the applicant are authorized to have access to the information collected by the pen-trap device as soon as practicable, twenty-four hours per day, or at such other times as may be acceptable to the Agency, for the duration of the Order;

IT IS FURTHER ORDERED that the Service Provider disclose the subscriber data and call and electronic communication call details (including text details) for the Subject Phone Number from April 9, 2023, through the present to the Agency, as well as the subscriber data for any of the telephone numbers with which the Subject Phone Number is in contact during the period of the pen-trap device that is available to the Service Provider;

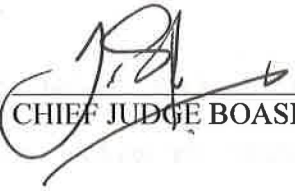
IT IS FURTHER ORDERED, pursuant to 18 U.S.C. § 3123(d)(2), that the Service Provider and any other person or entity whose assistance facilitates execution of this Order, and their agents and employees, shall not disclose in any manner, directly or indirectly, by any action or inaction, the existence of the application and the Court's Order, the pen-trap device, or the investigation to any person, unless and until otherwise ordered by the Court, except that the Service Provider may disclose the Order to an attorney for the Service Provider for the purpose of receiving legal advice;

IT IS FURTHER ORDERED that the Service Provider may move to quash or modify this Order if the information or records requested are unusually voluminous in nature or if compliance with this Order otherwise would cause an undue burden on the Service Provider;

IT IS FURTHER ORDERED that the Clerk of the Court shall provide the Special Counsel's Office with one certified copy of this Application and Order upon request, and shall provide copies of this Order to the Agency and Service Provider upon request; and

IT IS FURTHER ORDERED that the Application for Order and this Order are sealed until otherwise ordered by the Court, pursuant to 18 U.S.C. § 3123(d)(1).

4/14/23
DATE


CHIEF JUDGE BOASBERG

ATTACHMENT A
(Subject Phone Number)

Subject Phone Number: [REDACTED]

Provider: AT&T

Suspected User of Device: [REDACTED]