

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

UNITED STATES DISTRICT COURT

for the
District of New Mexico

APR 30 2020

**MITCHELL R. ELFERS
CLERK**

In the Matter of the Search of
*(Briefly describe the property to be searched
or identify the person by name and address)*

Information associated with cellular telephone assigned
call number 505-595-5771

Case No. *20mr1672*

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

Refer to Attachment A, attached hereto and incorporated herein.

located in the _____ District of New Jersey, there is now concealed *(identify the person or describe the property to be seized)*:

Refer to Attachment B, attached hereto and incorporated herein.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- evidence of a crime;
- contraband, fruits of crime, or other items illegally possessed;
- property designed for use, intended for use, or used in committing a crime;
- a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

<i>Code Section</i>	<i>Offense Description</i>
§ 924(c)(1)(A)(iii);	Discharging a firearm during and in relation to a crime of violence;
§ 113(a)(3); and,	Assault with a dangerous weapon; and,
§ 1153.	Offenses committed within Indian Country.

The application is based on these facts:

See attached affidavit.

- Continued on the attached sheet.
- Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Leysha Lopez Recci
Applicant's signature

Leysha López Recci, FBI Special Agent
Printed name and title

Sworn telephonically and signed electronically:.

Date: April 30, 2020

Judge's signature

City and state: Albuquerque, New Mexico

John F. Robbenhaar, U.S. Magistrate Judge
Printed name and title

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR A SEARCH WARRANT

I, Leysha López Recci, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND PURPOSE OF THE AFFIDAVIT

1. I make this affidavit in support of an application for a search warrant pursuant to Rule 41 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 2703, for information associated with cellular telephone assigned call number **505-595-5771** (hereinafter “the Account” and the “Target Phone”) that is stored at premises controlled by Verizon, a communications provider located at 180 Washington Valley Road, Bedminster, New Jersey 07921. The Account is further described in Attachment A and incorporated by reference in this affidavit. The terms “Account” and “Target Phone” are used interchangeably throughout this affidavit.
2. The applied-for warrant would require Verizon to disclose to the government historical records containing cell site information for the following dates:
 - a. **February 3, 2020;**
 - b. **February 20, 2020;**
 - c. **March 5, 2020;**
 - d. **March 6, 2020; and**
 - e. **March 9, 2020 through April 11, 2020.**

The information to be seized is further described in Attachment B and incorporated by reference in this affidavit. Based on information obtained during this investigation, which remains active, I believe the user of the Account is BYRON ROSETTA, an Indian, born in 1984.

3. This application seeks a warrant authorizing law enforcement officers working this investigation to search all responsive records and information associated with the Account for

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evidence pertaining to violations of Title 18 United States Code (U.S.C.) § 924(c)(1)(A)(iii) Discharging a firearm during and in relation to a crime of violence; § 113(a)(3) Assault with a dangerous weapon; and, § 1153 Offenses committed within Indian Country.

SUMMARY

4. Between January 3, 2020 and April 5, 2020, law enforcement agencies received approximately 20 reports of apparent random shooting incidents along the I-25 corridor and within the exterior boundaries of the Santo Domingo Pueblo, the San Felipe Pueblo, and other locations identified as Indian Country between the town of Bernalillo and Santo Domingo Pueblo in the District of New Mexico. The reports describe vehicles traveling on I-25 when the occupants are injured by apparent gunfire, the vehicles are damaged by apparent gunfire, and/or they notice noises consistent with gunfire.
5. For the purposes of this affidavit, M.G. will be the government's primary victim. On April 5, 2020, M.G.'s vehicle was struck with gunfire while driving on the Kewa Pueblo (formerly called the Santo Domingo Pueblo), identified as Indian Country in the District of New Mexico. A more complete description of the incident regarding M.G. will be outlined below.
6. During the course of the investigation, at least three victims were shot and injured. Victims were injured by .380 caliber bullets and pellets consistent with birdshot pellets fired from a shotgun rifle. Following the last shooting incident on April 5, 2020, agents identified ROSETTA as the primary suspect, based on surveillance footage, witness interviews and other physical evidence obtained during this investigation. Additional details about specific shooting incidents are further outlined below.

AGENT'S BACKGROUND

7. I have been a law enforcement officer since March 2017, and I am employed as a Special Agent

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with the Federal Bureau of Investigation (FBI). I am currently assigned to the FBI's Albuquerque Violent Crime Task Force (VCTF), where I investigate cases involving violent repeat offenders, kidnappings, crimes against children, commercial robberies, fugitives, and crimes committed within Indian Country. I also assist with investigations of drug trafficking organizations and gang-criminal enterprises. I have reviewed and analyzed thousands of telephone records to obtain evidence used in criminal investigations. I have used historical cell site information to locate the phones of subjects, victims and witnesses dozens of times, including real-time data analysis during kidnapping investigations.

8. I am involved in a joint investigation with the Bureau of Indian Affairs (BIA), New Mexico State Police (NMSP), Sandoval County Sherriff's Office (SCSO) and the Drug Enforcement Administration (DEA) regarding the involvement of ROSETTA in multiple shooting incidents along interstate I-25 and within Indian Country resulting in great bodily injury of multiple victims.
9. The facts in this affidavit come from my own investigation and information I obtained from other sworn law enforcement officers of the FBI, NMSP, BIA, and DEA. The affidavit does not include each and every fact known concerning this investigation, but has set forth only the facts to establish probable cause.

FACTS ESTABLISHING PROBABLE CAUSE

10. Beginning on or around January 3, 2020, law enforcement agencies started receiving reports of shooting incidents along the I-25 corridor between the town of Bernalillo and Santo Domingo Pueblo in New Mexico. Most reports were by occupants of vehicles traveling on I-25 stating their vehicle had been struck by gunshots; they heard what appeared to be gunshots; or they witnessed gunshots coming from the surrounding areas. The latest shooting incident

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was reported on April 5, 2020. The various law enforcement agencies opened a joint investigation, and obtained physical evidence, suspect descriptions and surveillance footage from some of the incidents. The incidents described in the following paragraphs are not a complete list of reports received by law enforcement.

11. On February 3, 2020, at approximately 11:00 a.m., D.E. and E.M. were traveling southbound on I-25 around mile marker 258 when the driver felt something impact the vehicle. The passenger looked back and saw a male standing by a bush holding a long gun. The man was wearing tan pants and a camouflage shirt, and he stood near the west fence holding a long gun. The damage to the vehicle was near its front passenger's side pillar. This incident was documented by officers.
12. On February 20, 2020, at approximately 9:05 p.m., T.L. was traveling southbound on I-25 near mile marker 248, when T.L. heard a "loud bang." T.L. thought the vehicle hit the something in the road and recalls seeing multiple vehicles traveling in the same direction. When T.L. arrived in Albuquerque, T.L. noticed damage to the vehicle consistent with a firearm projectile. A hole was located on the driver's side front fender wheel panel, where a projectile was recovered. T.L. reported the incident on February 25, 2020 and provided the recovered projectile to officers. The projectile was sent to the New Mexico Forensic Laboratory for analysis.
13. On March 5, 2020, at approximately 5:40 p.m., L.T. and E.C. were traveling northbound on I-25 when L.T. heard glass break. A projectile entered the vehicle through the driver's side window, grazed L.T.'s neck and struck E.C. in the arm. L.T. and E.C. were traveling with their baby and they stopped their vehicle near mile marker 244. The baby was in the back seat of the vehicle and it was not injured. L.T. and E.C. were treated for their injuries, and law

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enforcement responded to the scene and investigated the incident. The projectile was recovered from the scene, and it was sent to the New Mexico Forensic Laboratory for analysis.

14. On March 6, 2020, at approximately 1:30 p.m., J.O. was traveling southbound on I-25 near mile marker 256, when J.O. heard a “loud bang” and felt glass hit J.O.’s body. J.O. stopped in the center median near mile marker 255 and noticed a bullet hole in the windshield. A projectile was recovered from the front passenger seat and later sent to the New Mexico Forensic Laboratory for analysis.

15. On March 9, 2020, at approximately 6:19 p.m., E.R. was traveling southbound on I-25 when “something” hit the vehicle’s windshield and hit E.R. on the top left side of the forehead. The projectile entered the vehicle at the driver’s side window, struck E.R. and lodged in the back of E.R.’s head. E.R. was treated for injuries and medical professionals recovered a projectile from E.R.’s head. The projectile was later sent to the New Mexico Forensic Laboratory for analysis.

16. On April 4, 2020, at approximately 7:47 p.m., P.M. and J.L. were traveling southbound on I-25 near mile marker 255. The occupants described hearing a “loud popping” sound, and the driver thought a car passing by “kicked up a rock.” Shortly after the popping sound, the driver saw he was bleeding, pulled over and stopped. 9-1-1 was called, and law enforcement responded, as well as an ambulance from the Kewa Pueblo.

17. On April 4, 2020, at approximately 7:49 p.m., the ambulance mentioned above was en-route traveling southbound near mile marker 255, when its windshield sustained damage from suspected shotgun projectiles. The paramedics heard a popping sound and projectiles struck their windshield. The paramedics continued their call for service and transported P.M. and J.L. to the University of New Mexico Hospital.

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18. On April 5, 2020, at approximately 1:20 p.m., M.G., an enrolled member of the Kewa Pueblo, was traveling westbound on State Road 22, within the Kewa Pueblo, which is considered Indian Country in the District of New Mexico. M.G. was near mile marker 2.5 approaching the housing when he observed a dark colored sedan driving towards him. M.G. waived at the driver of the dark sedan and observed the driver. M.G. later described the driver as a young male, thin build, possibly white or Hispanic wearing a black hat with no facial hair. As the dark sedan drove past M.G., he noticed his driver sideview mirror explode. M.G. thought the mirror was damaged by a rock, but he noticed that within the damage there were pieces M.G. recognized as pellets from a shotgun. M.G. then noticed a shotgun shell wad, a component within shotgun ammunition, close by. M.G. was not injured. There were no other occupants in the vehicle when M.G. was shot. M.G. reported the incident to authorities and the incident was investigated. Later, M.G. was shown a photo array consisting of several individuals, including ROSETTA. M.G. did not believe the driver of the dark sedan was included in the photo array. On April 22, 2020, FBI Agents conducted a secondary photo array, and M.G. was again unable to identify the driver of the vehicle.

19. This investigation shows M.G.'s vehicle was struck about 2 miles from exit 259 on I-25, on State Road 22. Near the I-25 exit, on State Road 22, there is a gas station equipped with surveillance cameras. During the course of this investigation, agents obtained surveillance footage from this gas station. Agents observed the surveillance video and M.G. is seen placing gas in the vehicle. Approximately 7 minutes after M.G. leaves the view of the camera, a black vehicle with chrome accents (hereinafter the "Suspect Vehicle") is seen driving in the opposite direction. The vehicle observed on the surveillance video closely resembles the vehicle described by M.G.

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20. An FBI Agent reviewed the surveillance video and observed M.G. leaving the gas station. For the next several minutes there were no dark sedan's traveling east on State Road 22. The agent then observed the Suspect Vehicle traveling east at a high rate of speed, faster than the other vehicles in the video. The agent also observed what was described as damage or something covering up the paint on the front passenger fender. The agent also described the vehicle as having chrome door handles, chrome at the bottom of the windows, large headlights, silver wheels, and it is a four-door sedan, newer model. A photograph of the Suspect Vehicle is incorporated herein for reference as Exhibit 1.
21. Agents conducted a canvass on the Pueblo for information regarding the black sedan with chrome accents. A resident, whose identity is known to the FBI, told agents that a guy up the road by the name of ROSETTA drove a black vehicle and had a lot of guns. Agents then went to the ROSETTA residence and asked about the black vehicle observed on the surveillance video. Family members identified BYRON ROSETTA as the owner of a black vehicle.
22. Agents interviewed at least three confidential witnesses ("CW") who are familiar with ROSETTA and have closely interacted with ROSETTA in recent months. The individuals are not listed by name in this affidavit to protect their identity and ensure their safety. Through these interviews, agents learned ROSETTA has been "acting up" in the last few months. ROSETTA has recently experienced some life changes. Some of the witnesses believed ROSETTA is the person that has been shooting at vehicles on I-25.
23. CW-1 confirmed ROSETTA was the owner of a black car with chrome accents. C.W. told agents ROSETTA was at CW-1's house, located within the new housing area of the Kewa Pueblo, on Friday, Saturday and Sunday (April 3rd, 4th and 5th). CW-1 also told agents ROSETTA stayed the night on Friday, but left midday Saturday. ROSETTA then returned on

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Sunday morning and left around noon on Sunday. CW-1 was afraid that if law enforcement approached ROSETTA, he would pull out a gun and get himself killed.

24. CW-2 stated ROSETTA was in a house on the Kew Pueblo on April 3, 4, and 5, 2020. ROSETTA stayed the night on April 3rd but left the next day, supposedly to go back to his house in Albuquerque. According to CW-2, ROSETTA exited the house around 12:00 p.m., on April 5th, but he stayed outside the house for “awhile.” ROSETTA walked out of the residence, sat in his vehicle and began using his phone, sending apparent texts prior to leaving the property. CW-2 also said that in 2019, ROSETTA was driving, and CW-2 was a passenger in the vehicle. A truck made ROSETTA mad, he grabbed a gun and lunged in the direction of the truck.
25. CW-3 told agents about a recent incident that occurred on State Road 22. ROSETTA was driving, and CW-3 was a passenger. Near mile marker 2, ROSETTA pulled a pistol and shot out the passenger window, right in front of CW-3’s face. CW-3 was scared and got mad at ROSETTA, who said he was shooting at street signs. CW-3 also confirmed ROSETTA’s phone number was **505-595-5771**.
26. On April 9, 2020, NMSP agents searched ROSETTA’s residence, pursuant to a state search warrant. During the search of the residence, agents located the following items: .380 caliber ammunition; shotgun ammunition (12-gauge birdshot and 20-gauge birdshot); gun box for a Walther PK380, .380 caliber handgun bearing serial number WB152869; and, a black shotgun rifle bearing serial number 157070H. Agents also observed camouflage clothing inside ROSETTA’s apartment.
27. NMSP agents interviewed ROSETTA and advised him of his rights under Miranda. ROSETTA agreed to speak to the agents and stated he bought a .380 handgun at Cabela’s, however

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ROSETTA did not have that gun anymore. ROSETTA told agents he was cleaning the .380 handgun by a river and the gun broke, so ROSETTA threw away the gun in the river. ROSETTA also stated he owned the shotgun located in the residence. ROSETTA later stopped the interview and he was released. After learning ROSETTA may have disposed of the .380 handgun near the river, agents canvassed the area described by ROSETTA and located several shell casings from a pistol.

28. On April 11, 2020, law enforcement officers arrested ROSETTA due to public safety concerns. ROSETTA was driving a black sedan with chrome accents at the time of his arrest. ROSETTA was driving a black 2018 Hyundai Sonata, Limited Edition, with damage to the front passenger fender and bumper. ROSETTA's vehicle was towed to the FBI Albuquerque office following ROSETTA's arrest. ROSETTA was in possession of a cellular telephone, believed to be the Target Phone, at the time of his arrest.
29. The FBI Agent that reviewed the surveillance footage described above also observed ROSETTA's vehicle at the FBI Albuquerque office. The agent observed the vehicle to be consistent with the surveillance video and observed damage to the front bender, consistent with the Suspect Vehicle on the video. ROSETTA's vehicle had duct tape on the front passenger fender and a broken headlight. ROSETTA's vehicle also had chrome door handles, chrome at the bottom of the windows, large headlights, silver wheels, and it is a four-door sedan, newer model. The rims on the Suspect Vehicle, as seen in Exhibit 1, appear to be the same as the rims on ROSETTA's vehicle. A photo of ROSETTA's vehicle is incorporated herein for reference as Exhibit 2.
30. **Forensic Laboratory Analysis of Projectiles:** The New Mexico State Forensic Laboratory examined several projectiles recovered from the scenes. The laboratory determined that

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several projectiles came from the same firearm and were .380 caliber bullets. Furthermore, the forensic laboratory determined that the bullets could have been shot from several firearms, one of which is a Walther.

31. Incidents' Timeline and Requested Timeframe: As outlined in this affidavit, the shooting incidents began on or around January 3, 2020. The dates specified in paragraph 2 and Attachment B are for specific incidents described in this affidavit and the entire timeframe from March 9, 2020 through April 11, 2020. The reason to include this broad timeframe is because ROSETTA stated he disposed of a .380 firearm by the river, and agents later recovered pistol shell casings from the general river area described by ROSETTA. Evidence obtained during this investigation shows at least two firearms were used during the different shootings that started on January 3, 2020. A .380 caliber handgun has not been recovered at this time. The last shooting incident where a .380 caliber projectile was recovered was on March 9, 2020. Therefore, I believe ROSETTA disposed of the .380 firearm between the March 9, 2020, incident and the time he was arrested on April 11, 2020. Obtaining data for this broad range of dates will confirm or disprove whether ROSETTA's cell phone was in the various areas or not during the requested timeframe and will assist agents in recovering physical evidence relevant to this investigation.

32. Based on my experience, I know that most individuals possess a cell phone and maintain the cell phone in their possession in and outside their residence. Based on information obtained through this investigation, including database searches and witness statements, I believe the Target Phone was being utilized by ROSETTA, specifically in violation of 18 U.S.C. § 924(c)(1)(A)(iii) Discharging a firearm during and in relation to a crime of violence; § 113(a)(3) Assault with a dangerous weapon; and, § 1153 Offenses committed within Indian

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Country. I also believe the requested historical information associated with the Target Phone will greatly assist the FBI and law enforcement agencies working on this investigation (hereinafter “the Agencies”) in obtaining additional evidence relevant to the ongoing investigation. Specifically, the requested historical records will enable the Agencies to identify patterns of life for ROSETTA. This will identify general areas where the individual frequents and their frequent contacts, both of which will assist in verifying ROSETTA’s location around the time of these shooting incidents.

33. Based on my training and experience, and for all the reasons set forth herein, probable cause exists to believe that the location information described in Attachment B will enable the Agencies to verify ROSETTA’s location around the time of the incidents and is relevant to an ongoing investigation.

APPLICABLE CELLULAR TECHNOLOGY

34. In my training and experience, I have learned that cellular phones and other cellular devices communicate wirelessly across a network of cellular infrastructure, including towers that route and connect individual communications. When sending or receiving a communication, a cellular device broadcasts certain signals to the cellular tower that is routing its communication. These signals include a cellular device’s unique identifiers.
35. I am aware that mobile phone providers have technical capabilities that allow them to collect and generate at least two kinds of information about the locations of the mobile phones to which they provide service: (1) E-911 Phase II data, also known as GPS data or latitude-longitude data, and (2) cell-site data, also known as “tower/face information” or cell tower/sector records. E-911 Phase II data provides relatively precise location information about the mobile phone itself, either via GPS tracking technology built into the phone or by

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triangulating on the device's signal using data from several of the provider's cell towers. Cell-site data identifies the "cell towers" (i.e., antenna towers covering specific geographic areas) that received a radio signal from the mobile telephone and, in some cases, the "sector" (i.e., faces of the towers) to which the telephone connected. These towers are often a half-mile or more apart, even in urban areas, and can be 10 or more miles apart in rural areas. Furthermore, the tower closest to a wireless device does not necessarily serve every call made to or from that device. Accordingly, cell-site data is typically less precise than E-911 Phase II data.

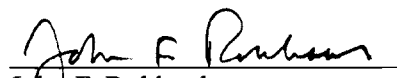
36. I request that the Court direct the specified electronic service providers to furnish the government all information, facilities, and technical assistance necessary to accomplish the collection of the information described in Attachment B unobtrusively and with a minimum of interference with services. The government will compensate the electronic service providers for reasonable expenses incurred in furnishing such facilities or assistance.
37. I swear that this information is true and correct to the best of my knowledge. AUSA David Cowen reviewed this affidavit.

Respectfully Submitted,



Leysha López Recci
FBI Special Agent

ELECTRONICALLY SUBMITTED AND TELEPHONICALLY SWORN ON APRIL 30, 2020.



John F. Robbenhaar
United States Magistrate Judge

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

Exhibit 1:

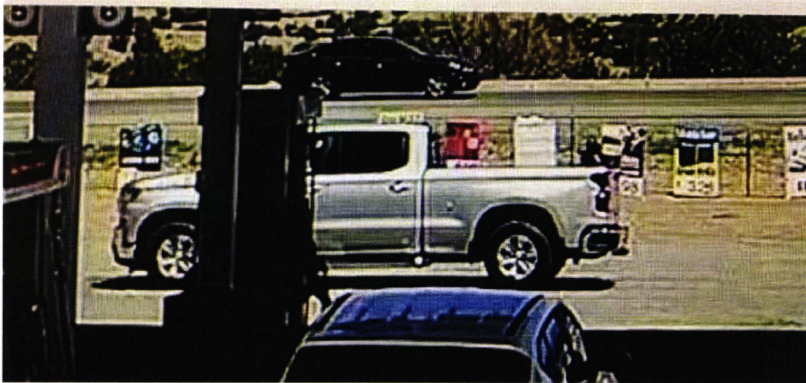


Exhibit 2:



ATTACHMENT A

Information associated with cellular telephone assigned call number **505-595-5771** (hereinafter “the Account” and the “Target Phone”) that is stored at premises controlled by Verizon, a communications provider located at 180 Washington Valley Road, Bedminster, New Jersey 07921.

ATTACHMENT B

1. Information to be Disclosed by the Provider

To the extent that the information described in Attachment A is within the possession, custody, or control of the Provider, including any information that has been deleted but is still available to the Provider or that has been preserved pursuant to a request made under 18 U.S.C. § 2703(f), the Provider is required to disclose to the government the following information pertaining to the Account listed in Attachment A for the following dates, from 12:00 a.m. to 11:59 p.m. in Mountain Time (MT):

February 3, 2020;

February 20, 2020;

March 5, 2020;

March 6, 2020; and

March 9, 2020 through April 11, 2020.

- a. The following information about the customers or subscribers of the Account:
 - i. Names (including subscriber names, user names, and screen names);
 - ii. Addresses (including mailing addresses, residential addresses, business addresses, and e-mail addresses);
 - iii. Local and long distance telephone connection records;
 - iv. Records of session times and durations, and the temporarily assigned network addresses (such as Internet Protocol ("IP") addresses) associated with those sessions;
 - v. Length of service (including start date) and types of service utilized;
 - vi. Telephone or instrument numbers (including MAC addresses, Electronic Serial Numbers ("ESN"), Mobile Electronic Identity Numbers ("MEIN"), Mobile Equipment Identifier ("MEID"); Mobile Identification Number ("MIN"), Subscriber Identity Modules ("SIM"), Mobile Subscriber Integrated Services Digital Network Number ("MSISDN"); International Mobile

Subscriber Identity Identifiers (“IMSI”), or International Mobile Equipment Identities (“IMEI”);

- vii. Other subscriber numbers or identities (including the registration Internet Protocol (“IP”) address); and
- viii. Means and source of payment for such service (including any credit card or bank account number) and billing records.

2. Information to be seized by the government

- a. All records and other information (not including the contents of communications) relating to wire and electronic communications sent or received by the Account, including:

- i. the date and time of the communication, the method of the communication, and the source and destination of the communication (such as the source and destination telephone numbers (call detail records), email addresses, and IP addresses); and
- ii. information regarding the cell tower and antenna face (also known as “sectors”) through which the communications were sent and received, as well as per-call measurement data (also known as the “real-time tool” or “RTT” data).

All information described above in Section I that constitutes [evidence, fruits, contraband, and instrumentalities] of violations of Title 18 United States Code (U.S.C.) § 924(c)(1)(A)(iii) Discharging a firearm during and in relation to a crime of violence; § 113(a)(3) Assault with a dangerous weapon; and, § 1153 Offenses committed within Indian Country, involving Byron Rosetta during the dates outlined above.

Law enforcement personnel (who may include, in addition to law enforcement officers and agents, attorneys for the government, attorney support staff, agency personnel assisting the

government in this investigation, and outside technical experts under government control) are authorized to review the records produced by the Provider in order to locate the things particularly described in this Warrant.