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FILED

DEC 06 2019

IN THE UNITED STATES DISTRICT COURT CLERK, U.S. DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DISTRICT OF CALIFORNIA  
BY [Signature] DEPUTY

1 IN RE ORDER REQUIRING

2 SABRE

3 TO ASSIST IN THE EXECUTION OF AN  
4 ARREST WARRANT ISSUED BY THE  
5 SOUTHERN DISTRICT OF CALIFORNIA

Case No.: 19 CR 4643-H

APPLICATION

Filed Under Seal

10  
11 **APPLICATION OF THE UNITED STATES FOR AN ORDER**  
12 **AUTHORIZING TRAVEL RECORD PRODUCTION AND CONTEMPORANEOUS**  
13 **ACCOUNT ACCESS**

14 The United States of America moves this Court, pursuant to the All Writs Act, Title 28, United  
15 States Code, Section 1651, for entry of an *ex parte* Order directing the Authorized Custodians of Records  
16 of Sabre, or its designee, to assist in the execution of a federal arrest warrant by providing to the United  
17 States Attorney and his designees and representatives from the Federal Bureau of Investigation ("FBI")  
18 all records, services, and usage for a period of **six months**, for any travel orders, transactions, or  
19 reservations associated with the following information:

20 Name: Deepanshu Kher

21 Alias(es): None known

22 Address: 709 Fancy Apartments 19, Vasundhara Enclave, Delhi, India

23 Phone number: 419-530-4723 (U.S.), 919923699092 (India), 16146848006 (Skype),  
24 18188219959 (WhatsApp).

25 Credit card number: N/A

26 Passport number: Indian Passport: J4775284  
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1 Email Address(es): deepanshu.kher7@gmail.com, deepanshu.kher@outlook.com  
2 (the "Traveler").

3 The Government further requests that Sabre be ordered to provide representatives of the FBI  
4 complete and contemporaneous "real time" account activity information of the Traveler on a weekly,  
5 ongoing basis by telephone contact, email, and/or facsimile transmission, for a period of **six months** from  
6 the date of this Order. Sabre shall not intercept, nor shall Sabre provide, the content of any wire or  
7 electronic communications.  
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9 Finally, the Government requests that the Court's Order and this Application be sealed and that  
10 Sabre and its agents and employees shall not disclose the existence of the *ex parte* under seal Application  
11 or Order to any person, except representatives of the United States Attorney and his designees and the  
12 FBI, unless and until further ordered by this Court, except that Sabre may disclose the existence of this  
13 Application and/or Order to its attorney for the purpose of receiving legal advice.  
14

### 15 INTRODUCTION

16 The United States of America, by and through Robert S. Brewer, Jr., United States Attorney, and  
17 Alexandra F. Foster, Assistant United States Attorney, hereby moves this Court under the All Writs Act,  
18 28 U.S.C. § 1651, for an order requiring Sabre to assist in the execution of a federal arrest warrant by  
19 periodically reviewing its records for evidence that the subject of the arrest warrant is traveling.  
20

### 21 FACTS

22 On November 19, 2019, the Court issued an arrest warrant for Deepanshu Kher pursuant to an  
23 indictment issued by the grand jury on the same date. *See U.S. v. Kher*, 19CR04643-H. In the indictment,  
24 Kher is charged with violating Title 18, U.S.C. Section 1030(a)(5)(A) and (c)(4)(B)(i) – Intentional  
25 Damage to a Protected Computer. *Id.* Kher is currently a fugitive.

26 Kher is an Indian citizen. He has been issued two non-immigrant visas to the United States, one  
27 in 2007 and the other in 2014. Both have expired. Kher currently has a visa application pending  
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1 adjudication with the U.S. Consular office in Delhi, India. Kher indicated that he wanted to visit his  
2 brother, Deepak Kher, in the United States. Deepak Kher, Deepanshu Kher's brother, is working as an  
3 engineer in New York. Once the visa is approved, the government expects that the Defendant will book  
4 air travel to the United States. The visa was approved on December 3, 2019 by the State Department, so  
5 Deepanshu Kher will likely be travelling in the near future.

6  
7 Sabre is a Travel Commerce Platform providing distribution, technology, payment, and other  
8 solutions for the global travel and tourism industry. Sabre processes roughly one third of all air travel  
9 reservations, with a focus on travel to and from the United States. Sabre is capable of searching for and  
10 retrieving travel records for individuals whose travel reservations are processed using or through Sabre's  
11 computers. This Application seeks an order requiring Sabre to use any such capability, to assist agents in  
12 complying with the arrest warrant.

### 13 DISCUSSION

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15 The All Writs Act (AWA) provides that "[t]he Supreme Court and all courts established by Act of  
16 Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable  
17 to the usages and principles of law." 28 U.S.C. § 1651(a). As the Supreme Court explained, "[t]he All  
18 Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute." *Penn.*  
19 *Bureau of Corr. v. United States Marshals Serv.*, 474 U.S. 34, 43 (1985). "The power conferred by the  
20 Act extends, under appropriate circumstances, to persons who, though not parties to the original action or  
21 engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper  
22 administration of justice ... and encompasses even those who have not taken any affirmative action to  
23 hinder justice." *United States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977). Specifically, in *United*  
24 *States v. New York Tel. Co.*, the Supreme Court held that the AWA permitted district courts to order a  
25 telephone company to effectuate a search warrant by installing a pen register. Under the reasoning of *New*  
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1 *York Tel. Co.*, this Court has the authority to order Sabre to use any capabilities it may have to assist in  
2 effectuating the arrest warrant.

3 The Government is aware, and can represent, that in other cases, district courts within the 3<sup>rd</sup> and  
4 4<sup>th</sup> Circuits have ordered the “hot watch” or real-time transmission of information related to credit cards  
5 under this authority. The Government is also aware that in other cases, courts have ordered Sabre to assist  
6 in effectuating arrest warrants under the authority of the AWA. Sabre has complied with such orders from  
7 Courts in the Ninth Circuit, specifically two in the Western District of Washington, one signed in 2019  
8 (AWA Order GJ19-097) and the other in 2017 (AWA order GJ17-432), and one in the Northern District  
9 of California signed in 2016 (AWA order CR1690391MISC EDL). All of these AWA orders remain under  
10 seal. Other Federal Courts have also issued AWA orders, such as in Case No. 15-880 in the United States  
11 District Court for the Western District of Pennsylvania and in Case No. 1:15-CR-245 in the United States  
12 District Court for the Eastern District of Virginia.

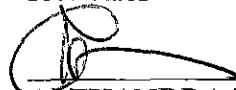
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15 This AUSA submitted this application to this Court on December 3, 2019, and the Court signed  
16 the Order that evening. On December 4, 2019, the Clerk of Courts informed this AUSA that it would not  
17 accept and file the Application and Order and this AUSA needed to file the Application and Order with  
18 the District Court Judge assigned to the matter, Judge Marilyn L. Huff. The Clerk of Courts also refused  
19 to return this Court’s order to this AUSA and informed this AUSA that it would be shredding this Court’s  
20 order. The AUSA filed the Application and Order with Judge Huff on December 4, 2019. On December  
21 6, 2019, Judge Huff’s Courtroom Deputy informed this AUSA that Judge Huff was not in chambers and  
22 asked that this matter be referred back to this Court.

23  
24 WHEREFORE, it is respectfully requested that the Court grant an *ex parte* order pursuant to the  
25 All Writs Act, Title 28, United States Code, Section 1651, that the Authorized Custodian of Records of  
26 Sabre account records, or its designee, assist in the execution of a federal arrest warrant by providing to  
27 representatives of FBI, records and services for the Traveler.  
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1 It is further requested that Sabre be ordered to: (a) representatives of the FBI complete and  
2 contemporaneous account activity information for the aforesaid Traveler on a weekly basis by email to  
3 the email address HQ-DIV16-FUGITIVE-TRAVEL@ic.fbi.gov, for a period of six months from the date  
4 of this Order; and (b) not disclose the existence of this Application and/or Order of the Court, or the  
5 existence of the investigation, or this request until further ordered by the Court, except that Sabre may  
6 disclosure this Application and/or Order for the purpose of receiving legal advice.  
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8 Date: December 6, 2019

9 Respectfully submitted,  
10 ROBERT S. BREWER, Jr.

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13 ALEXANDRA F. FOSTER  
14 Assistant U.S. Attorney  
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