

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

UNITED STATES OF AMERICA,

v.

[REDACTED],

Defendant.

)
)
)
)
)
)

Criminal Number: [REDACTED]

**DEFENDANT’S EX PARTE APPLICATION
FOR ISSUANCE OF SUBPOENA DUCES TECUM**

COMES NOW the defendant, [REDACTED], by counsel, pursuant to Rules 17(b) and (c) of the Federal Rules of Criminal Procedure, and respectfully moves the Court for an Order directing the clerk’s office to issue an *Ex Parte* subpoena duces tecum for

Custodian of Records, and/or Agent
Google, Inc.
1001 North Shoreline Boulevard
Mountain View, CA 94043

And/or: Cooperation Service Company
Registered Agent-Google-LLC
100 Shockoe Slip, 2nd Floor
Richmond, VA 23219

to produce

All records indicating when and how [REDACTED] enabled the “Location History” setting, including:

- a. Subscriber registration records for [REDACTED] accounts: [REDACTED], [REDACTED]
- b. Audit logs for [REDACTED] account, including the “Google Account Change History”

- c. Any records indicating the specific interface used to enable Location History on [REDACTED] accounts (i.e., whether it was a device-based consent flow versus a browser-based consent flow and the particular application or setup/setting opt-in screen)
- d. All written documentation describing the supported Location History consent flow(s), if any, in effect on the date on which Location History was enabled on [REDACTED] account.

in the Office of the Clerk, 3rd Floor, United States District Courthouse, 701 E. Broad Street, Richmond, Virginia 23219, on or before **Friday, November 19, 2021, at 12:00 noon.**

In support of this application, [REDACTED] sets forth that Google, Inc., and/or its agent, is in possession of documents necessary for determining how he should proceed in this case.

Pursuant to the requirements of Federal Rule of Criminal Procedure 17, as set forth in *United States v. Beckford*, 964 F. Supp. 1010, 1016, 1027 (E.D. Va. 1997), in support of this application, the defendant sets forth that the records are needed to aid [REDACTED] for investigative purposes in preparation for his motions hearing. The defendant represents that the requested documents are evidentiary and relevant, that they are not otherwise procurable reasonably in advance of the hearing by exercise of due diligence; that the defendant cannot properly argue at his motion without such production and inspection in advance of the hearing and the failure to obtain advance inspection of these records may tend unreasonably to delay the proceedings; and, that the request for these records is made in good faith and is not intended as a general fishing expedition. *See United States v. Nixon*, 418 U.S. 683, 699-700 (1974).

The defendant further represents, in accordance with the analysis set forth in *United States v. King*, 194 F.R.D. 569 (E.D.Va. 2000), that his request is relevant and the documents requested are both admissible and specific in nature. The documents are relevant in that they are necessary for preparing for the motions hearing on Monday, January 24, 2022. These documents

are admissible under Fed. R. Evid. Rule 803(6) in that they are records kept in the ordinary course of business. The request is specific in nature in that it requests records for specific information during a specific time frame.

The defendant represents that he is in the same financial condition as when counsel was appointed to represent him in this matter, and he remains unable to pay any fees related to the production of the documents, and that the production of the requested documents is necessary to his defense.

WHEREFORE, the defendant requests that this Court order Google, Inc., and/or its agent, to produce the requested records in the office of the Clerk, United States District Court, 701 East Broad Street, 3rd Floor, Richmond, Virginia 23219, on or before **Friday, November 19, 2021, at 12:00 noon**, and that the defendant be allowed to copy the documents for use in his case in chief.

Respectfully submitted,

[Redacted signature]

By: _____
/s/
Counsel

[Redacted text]