

SEALED

FILED

UNITED STATES DISTRICT COURT

for the

Eastern District of California

DEC 04 2015

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY JMS
DEPUTY CLERK

United States of America
v.

Case No.

Scott Anthony ORTON
Defendant(s)

2:15 - MJ - 0229 KJN

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

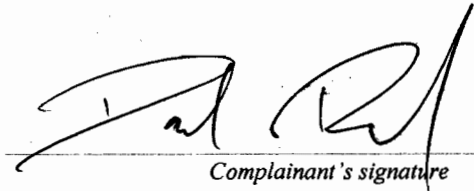
On or about the date(s) of July 16, 2015 & July 17, 2015 in the county of El Dorado in the
Eastern District of California, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. § 875(c)	Interstate Threats

This criminal complaint is based on these facts:

(see attachment)

Continued on the attached sheet.



Complainant's signature

David J. Rubel, FBI Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: Dec 4, 2015



Judge's signature

City and state: Sacramento, CA

Kendall J. Newman, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT OF DAVID J. RUBEL

I, David J. Rubel, having been duly sworn, states as follows:

I. INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) and have been so employed since 2012. I am currently assigned to the Sacramento Division of the FBI, where I investigate domestic terrorism matters, and criminal violations relating to cybercrimes, including those arising from the interstate transmission of threats via the Internet. I am a graduate of the University of Maryland, having earned a Bachelor of Science degree in Computer Science. I am also a graduate of the FBI Academy in Quantico, Virginia. I am authorized to investigate crimes involving threats of violence, including threats conveyed via the Internet.

2. I submit this affidavit in support of an application for an arrest warrant for SCOTT ANTHONY ORTON ("ORTON"). There is probable cause to believe that ORTON violated 18 U.S.C. § 875(c), which makes it a crime to transmit in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another.

3. The facts set forth in this Affidavit are based on my own personal knowledge; knowledge obtained from other individuals during my participation in this investigation, including other law enforcement officers; review of documents and records related to this investigation; communications with others who have personal knowledge of the events and circumstances described herein; and information gained through my training and experience.

4. Because this Affidavit is submitted for the limited purpose of establishing probable cause in support of the application for a warrant, it does not set forth each and every

fact that I or others have learned during the course of this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that ORTON violated 18 U.S.C. § 875(c).

II. TECHNICAL TERMS

5. Based on my training and experience, I use the following technical terms to convey the following meanings:

- a. **IP Address:** The Internet Protocol address (or simply "IP address") is a unique numeric address used by computers on the Internet. An IP address looks like a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every digital device attached to the Internet must be assigned an IP address so that Internet traffic sent from and directed to that digital device may be directed properly from its source to its destination. Most Internet service providers control a range of IP addresses. Some computers have static—that is, long-term-IP addresses, while other computers have dynamic—that is, frequently changed-IP addresses.
- b. **Internet:** The Internet is a global network of computers and other electronic devices that communicate with each other. Due to the structure of the Internet, connections between devices on the Internet often cross state and international borders, even when the devices communicating with each other are in the same state.
- c. **Domain Name:** Domain names are common, easy to remember names associated with an Internet Protocol address (defined above). For example, a domain name of "www.usdoj.gov" refers to the Internet Protocol address of 149.101.1.32. Domain names are typically strings of alphanumeric characters, with each level delimited by a period. Each level, read backwards – from right to left – further identifies parts of an organization. Examples of first level or top-level domains are typically .com for commercial organizations, .gov for the United States government, .org for organizations, and .edu for educational organizations. Second level names will further identify the organization; for example usdoj.gov further identifies the United States governmental agency to be the Department of Justice. Additional levels may exist as needed until each machine is uniquely identifiable. For example, www.usdoj.gov identifies the World Wide Web server located at the United States Department of Justice, which is part of the United States government.
- d. **Electronic Storage media:** Electronic Storage media is any physical object upon which data can be recorded. Examples include hard disks, RAM,

floppy disks, flash memory, CD-ROMs, and other magnetic or optical media.

III. STATEMENT OF PROBABLE CAUSE

A. Summary of Investigation

6. There is probable cause to believe that ORTON posted threats on a website using the online moniker "Joseywhales." The threats, which are set forth below, were directed at an officer of StemExpress, LLC, hereinafter "Victim 1."

7. StemExpress, LLC is a company that supplies human tissue for biomedical research. In July 2015, StemExpress was the subject of controversy concerning how it procures human tissue. Media outlets obtained a surreptitiously recorded video purporting to implicate StemExpress in the purchase and sale of fetal tissue. This story gained much attention in the media and on the presidential campaign trail beginning in July 2015.

8. StemExpress's headquarters is located in Placerville, California. When the threats against Victim 1 were conveyed, Victim 1 resided in El Dorado County, in the State and Eastern District of California.

9. The statements at issue were posted on the website nation.foxnews.com (hereinafter "Fox Nation"), which is a website that is administered by Fox News Network, LLC (hereinafter "Fox News"). The Fox Nation website features news articles, video clips, and links to editorial blogs. Visitors to the Fox Nation website can post comments on the website's comments page. Based on evidence gathered during this investigation, there is probable cause to believe that ORTON posted the statements regarding Victim 1, which are set forth below, on the Fox Nation website, in violation of 18 U.S.C. § 875(c).

B. Background and Prior Internet Communications by ORTON

i. ORTON's Email to Puyallup City Council

10. In June 2009, law enforcement became aware of ORTON's practice of sending threatening statements via the Internet. On June 18, 2009, ORTON sent a purportedly anonymous email to the City of Puyallup's (Washington) constituent tracking program email account. ORTON's email, which was addressed to Puyallup's city council, included derogatory statements about the city council members as well as the following statements:

Get out of office or be forced out by whatever means necessary.
You are all illegal. You are tyrannical, half-pint, would-be dictators and you have no place in America, even Puyallup. You have made a new adversary in me. I am coming for you, creeps. You have committed crimes against freedom. You MUST BE put out of office, permanently, and I loathe you for your deeds.

11. On October 1, 2009, after Puyallup police traced the email to ORTON, officers interviewed ORTON at his home located at 5809 136th Street E in Puyallup, Washington. During the interview, ORTON acknowledged that he sent the anonymous email. Officers asked ORTON whether he intended to intimidate or harm Puyallup city council members, to which he responded, among other things, "I meant no malice and am ashamed that I gave that impression. It was strictly my political opinion, poorly worded." ORTON also provided Puyallup police officers with a handwritten statement, in which he stated, among other things, "I swear on oath that I will never do any more than vote against anyone . . . Please accept my apologies for the poorly worded email. I will not ever do it again."

ii. ORTON's Email to the Tacoma News Tribune

12. On September 16, 2009, ORTON sent an email to the general email account of the Tacoma News Tribune (TNT). He sent the message from email account ScottOrton@mac.com, which was associated with a Tacoma News Tribune subscriber account

assigned to ORTON at 5809 136th Street E, Puyallup, Washington. In the email to the newspaper, ORTON stated, among other things:

I don't know why you are doing this and why you would put yourselves in danger. I am telling you this because I was once employed by the TNT. Your publishers and editors are in danger. America will forgive but you are rapidly running out of time. Bubba is extremely angry – we can do nothing to stop Bubba and the clock is ticking.

iii. ORTON'S Threats to Kill a Fox Nation User

13. On May 7, 2015, ORTON used the Joseywhales Fox Nation account to threaten another Fox Nation user who was using the online moniker, "atticusgrinch." ORTON posted the following statements on the Fox Nation website:

Comment Created Date (GMT)	Comment
5/7/2015; 16:56	I would take out atticusgrinch if I get the chance. Yes this is a death threat.
5/7/2015; 16:56	I'll kill Atticus when I find him. Free speech.
5/7/2015; 16:57	I must kill atticus based on my ideology. Yes this is a death threat but its more like a statement of fact. And free speech.
5/7/2015; 16:59	I'll pay ten thousand dollars to anyone who can lead me to the location and identity of atticusgrinch.
5/7/2015; 17:00	Atticus I'm finding you and taking you out. Period.
5/7/2015; 17:00	You're gonna die at my feet.
5/7/2015; 17:01	I'll not only kill atticus I'll brag about here.
5/7/2015; 17:02	I'll pay ten thousand dollars to anyone who leads me to the whereabouts of atticusgrinch so I can kill him.
5/7/2015; 17:03	Atticus I was born to put two bullets through your head.
5/7/2015; 17:04	You're dead.

iv. ORTON'S Threats to Kill FBI Agents

14. On June 2, 2015, ORTON used the Joseywhales Fox Nation account to threaten to kill FBI agents. ORTON posted the following statements on the Fox Nation website:

Comment Created Date (GMT)	Comment
6/2/2015; 13:58	Hey FBI You're acting beyond the scope of your delineated authority. In my view it is Treason. I'll kill you for it
6/2/2015; 13:59	FBI taking up arms against Americans is a bad idea...
6/2/2015; 13:59	The FBI does not have the right to exist.
6/2/2015; 14:00	Hey FBI I will kill you for this. You're violating the constitution. I find it unacceptable.
6/2/2015; 14:04	The wrong cops are being killed. The FBI are the ones that need to be shot at.
6/2/2015; 14:04	What do we want? Dead FBI agents. When do we want them? Today!
6/2/2015; 14:04	Some FBI agents need to be hung from overpasses...
6/2/2015; 14:05	The wrong cops are being killed Federal cops are the ones who need to be executed in the streets.
6/2/2015; 14:07	FBI agents need to be beheaded and their heads lined up alongside the road like a Burma Shave commercial...
6/2/2015; 14:12	I'm a licensed pilot and I never thought I'd actually consider shooting down another aircraft...
6/2/2015; 14:13	Hey FBI I have access to a Cessna too. Do yours have armor? I'll bet they don't...
6/2/2015; 14:13	I intend to shoot you down FBI... You can't do what you're doing. Not here.

C. ORTON's Threats to Kill Victim 1 in the Eastern District of California

15. On July 19, 2015, FBI agents received tips via the FBI Public Access Line that threats were made against Victim 1. In response to the tips, I reviewed the Fox Nation website and identified threatening statements directed at Victim 1. The statements were posted by the Fox Nation user "Joseywhales."

16. During my review of the Fox Nation website, I learned that in order to post a statement in the website's comment section, one must first create a Fox Nation account. In order to create an account, the putative user must provide a name, physical address, and email address.

i. Fox Nation Users Joseywhales and Josewhales

17. On August 26, 2015, Fox News provided information associated with the Fox Nation accounts for users Joseywhales and Joseywhales. In addition to the user-provided identifying information described above—i.e., the user’s name, physical address, and email address—Fox News provided the IP address assigned to the electronic device that was used to create the accounts. Specifically, Fox News provided the following information:

Account display Name: “Joseywhales”

User ID: 2e5c7334-d0f8-42de-bf6a-16d50dd7cbcc

Subscriber name provided by user: Scott Orton

Address provided by user: Washington, United States, 93737

E-mail address provided by user: none

Dates of service: September 18, 2012 – September 18, 2012

IP address(es): none

Account display Name: “Joseywhales”

User ID: 6154e4b6-0c59-4beb-b4f9-0d16b789b7d6

Subscriber name provided by user: Bart Simpson

Address provided by user: WA, APO/FPO/DPO

E-mail address provided by user: scottorton@me.com

Dates of service: September 26, 2012 – present

IP address(es): 24.19.67.214; 73.181.138.175

18. On September 25, 2015, I obtained from Fox News a list of statements posted on the Fox Nation website by Fox Nation user Joseywhales. Along with the list of statements, Fox News provided the dates on which the statements were posted to the Fox Nation website, as well as the IP address assigned to the digital device used to post the statements. Below are Joseywhales’s statements (and related information) concerning Victim 1:

Comment ID	Comment Created Date (GMT)	IP Address	Comment ¹
347326166	July 16, 2015; 16:21	73.181.138.175	The management of StemExpress should be taken by force and killed in the streets today.
347326390	July 16, 2015; 16:21	73.181.138.175	Kill StemExpress employees. I'll pay you for it.
347326654	July 16, 2015; 16:22	73.181.138.175	Stop the death of innocents. Kill the killers.
347327170	July 16, 2015; 16:22	73.181.138.175	StemExpress your lives don't matter nearly as much as your deaths do.
347327398	July 16, 2015; 16:23	73.181.138.175	Innocent lives matter. StemExpress employees' lives don't.
347348862	July 16, 2015; 16:58	73.181.138.175	The [officer] of StemExpress is a death-profitier. The [officer] of StemExpress should be hung by the neck using piano wire and propped up on the lawn in front of the building with a note attached...
347349991	July 16, 2015; 17:00	73.181.138.175	[Victim 1 officer] StemExpress Inc. lives in Placerville CA. I'm going there.
347350267	July 16, 2015; 17:01	73.181.138.175	I'll pay ten grand to whomever beats me to [Victim 1]...
347350691	July 16, 2015; 17:01	73.181.138.175	[Victim 1 officer] StemExpress Inc. must die to save the innocents.
347350952	July 16, 2015; 17:02	73.181.138.175	[Victim 1] your life isn't worth squat.
347352243	July 16, 2015; 17:04	73.181.138.175	[Victim 1's] life is in more danger than Trumps. I'm here. El Chapo is in Mexico.
347352770	July 16, 2015; 17:05	73.181.138.175	[Victim 1] must die. End of story. If we as humanity accept her actions we're to be judged in the harshest manner possible.
347355967	July 16, 2015; 17:11	73.181.138.175	I'll take care of [Victim 1] myself.
347356248	July 16, 2015; 17:11	73.181.138.175	I'm going to Placerville this weekend.
347359093	July 16, 2015; 17:16	73.181.138.175	[Victim 1] will have to face the souls of the babies she's bought and sold when she arrives on the other side. I'm sending her there early.
347360148	July 16, 2015; 17:18	73.181.138.175	StemExpress employees you're on notice. You need to pay for what you've done.

¹ The victim's name and position at StemExpress have been replaced with the terms "Victim 1" and "officer" to protect the identity of the victim.

347360416	July 16, 2015; 17:18	73.181.138.175	Everyone at StemExpress should be executed on live TV.
347460949	July 16, 2015; 20:08	73.181.138.175	Someone needs to double tap the [officer] of StemExpress. She lives in Placerville CA.
347467546	July 16, 2015; 20:20	73.181.138.175	I think I'll take a little trip to Placerville this weekend. I hear there's some good hunting down Placerville way...
347794919	July 17, 2015; 14:05	73.181.138.175	[Victim 1 officer] of StemExpress should be executed by hanging.

ii. ORTON's Email Address Is Linked to the Joseywhales Account

19. The email address listed on the account profile for Joseywhales—the user who posted the statements listed above—is scottorton@me.com. Apple Inc. hosts the email accounts for the me.com domain. On September 25, 2015, Apple Inc. provided subscriber records for the email account scottorton@me.com. Apple Inc. records identified the subscriber as:

Scott Orton
5809 136th St. E.
Puyallup, Washington

iii. The Threats to Victim 1 Were Sent From ORTON's IP Address

20. In September 2015, I performed a WHOIS lookup query on a publicly available database that stores the registered users and assignees of Internet resources—such as an IP address block—to identify the Internet service provider administering the IP address 73.181.138.175 in July of 2015. From my search, I determined that Comcast Corporation administered that IP address.

21. On October 20, 2015, I obtained Comcast records identifying the subscriber for the account assigned to IP address 73.181.138.175 on July 16, 2015, at 17:01 (GMT). Fox Nation user Joseywhales posted the statement “I'll pay ten grand to whomever beats me to [Victim 1]...” from IP address 73.181.138.175 on July 16, 2015, at 17:01 (GMT). Comcast

records indicate that the foregoing IP address was assigned to ORTON at 5809 136th Street E, Puyallup, WA 98373-5117.

iv. ORTON's Statements to Agents Regarding the Threats to Victim 1

22. On November 24, 2015, ORTON agreed to be interviewed by agents in his home. Before beginning the interview, ORTON was provided a *Miranda* warning.

23. During the interview, ORTON stated that he created and used the Joseywhales Fox Nation account, and acknowledged that he was responsible for the comments posted on the Fox Nation website by the Joseywhales account. He also confirmed that his primary email account is scottorton@me.com, and that Comcast Corporation is his Internet service provider.

24. ORTON told agents that he used to be a professional copywriter, and that because of his professional experience, he uses "words that have a lot of meaning." He told agents that he wrote his Fox Nation comments "so they would cut like a knife," and that he relied on the skills he gained as a copywriter to make online statements that would influence people. ORTON explained that his goal in making his statements on the Fox Nation website was to get people to "wake up."

25. Agents asked ORTON a series of questions regarding the reason why he chose to post the above-referenced statements concerning Victim 1. In response, ORTON acknowledged that his goal in making the statements concerning Victim 1 was to influence Victim 1, and to stop Victim 1's behavior.

26. Agents asked ORTON to explain why he chose to post the statement "The [officer] of StemExpress is a death-profiteer. The [officer] of StemExpress should be hung by the neck using piano wire and propped up on the lawn in front of the building with a note attached..." ORTON responded that he had recently seen a documentary on Hitler and the Third

Reich, and explained that the use of piano wire was their “methodology” for committing murder. ORTON stated that the use of piano wire was “a horrific thing,” and that his reference to murder using piano wire was intended to “paint a mental picture with words.” ORTON explained further, stating “I’m a wordsmith. That’s what I do.”

27. Agents also inquired about ORTON’s statement “I’ll pay ten grand to whomever beats me to [Victim 1]...” ORTON’s response was that he “was just spit-balling.” When agents asked ORTON whether he understood that his statement could be construed as a solicitation of murder for hire, ORTON responded “the way I saw it in my mind was it would be more like a fund for defense.” Later, ORTON stated that he made the statement “just to get trolls upset.”

v. Agents Executed a Search Warrant at ORTON’s House

28. When agents visited ORTON’s home on November 24, 2015, they also executed search warrants issued by United States Magistrate Judge Karen L. Strombom of the United States District Court for the Western District of Washington. Pursuant to the warrants, agents seized several items from ORTON’s home, including computers, cell phones, and two guns.

D. ORTON’s Statements Concerning Special Agent Rubel

During my review of ORTON’s postings to the Fox Nation website, I identified the following postings in which ORTON references me:

Comment Created Date (GMT)	Comment
7/27/2015; 14:13	Hey Special Agent Rubel of the FBI... There's a troll here giving out your identity online. I can buy your address from the Chinese now. How do like that?
7/27/2015; 14:14	I'll be contacting the FBI myself gerbil to let them know who's giving out their names on conservative websites.
7/27/2015; 14:14	I hope you enjoy your next little chat with the FBI gerbil.
7/27/2015; 14:16	Publishing the names of FBI Special Agents is not smart. Especially when you're revealing an investigation in progress...

7/27/2015; 14:16	I'll contact Agent Rubel myself henri. Thanks for being so stupid. I knew you wouldn't let me down.
7/27/2015; 14:17	Agent Rubel... I'm not going to kill anyone. Your enemy is known here as ArchieShepp.
7/27/2015; 14:18	Where's the gerbil... On the phone talking to Special Agent Rubel? Did you get another call from the FBI gerbil?
7/27/2015; 14:22	Publishing law enforcement names without their consent is not smart. You're in some trouble gerbil. And they know how to find you...
7/27/2015; 14:25	Gerbil all this bluster you're posting could end up being real expensive to you. I may walk the line but you may end up walking the perp-walk of shame.
7/27/2015; 14:29	I've contacted the FBI gerbil. They know now. You're in trouble. False reporting to federal agents is a crime and publishing the names of special agents really pi sse s them off.
7/27/2015; 14:33	Tipping off people under investigation is a crime too gerbil. Federal crimes carry heavy sentences. You grabbed a tiger by the tail gerbil. Bad move.
8/8/2015; 19:16	I'll pay ten large for information on how I can find you gerbil. Agent Rubel can't protect you.
8/8/2015; 19:28	I miss agent rubel. I was gonna make espresso.

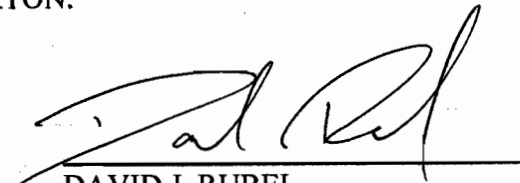
IV. REQUEST FOR SEALING

29. It is respectfully requested that this Court issue an order sealing, until further order of the Court, all papers submitted in support of this application for an arrest warrant, including the warrant, affidavit and complaint. I believe that sealing these documents is necessary because they relate to an ongoing investigation and disclosure of the warrant, this affidavit, and/or the complaint will jeopardize the progress of the investigation. Disclosure of these materials would give ORTON an opportunity to change patterns of behavior or flee from prosecution.

V. CONCLUSION

30. For the reasons set forth above, there is probable cause to believe that SCOTT ANTHONY ORTON violated 18 U.S.C. § 875(c), which makes it a crime to transmit in interstate or foreign commerce any communication containing any threat to kidnap any person

or any threat to injure the person of another. Therefore, I respectfully request that a warrant issue for the arrest of SCOTT ANTHONY ORTON.




DAVID J. RUBEL
Special Agent
Federal Bureau of Investigation

Approved as to form.



BRIAN A. FOGERTY
Assistant United States Attorney

Subscribed and sworn before me
this 4 day of December, 2015.



HON. KENDALL J. NEWMAN
United States Magistrate Judge
Eastern District of California
Sacramento, California