

SA. J. JENKINS
CY-2

Entry: 6/24/2016
Modify: 6/24/2016

AO 442 (REV 11/11) Arrest Warrant

288A-SF-148210

SEALED BY ORDER OF COURT

10min #1 8/28/2016

UNITED STATES DISTRICT COURT

for the

Northern District of California

16-3168-

United States of America
v.

Case No. 16-cr-00269-WHA-1

Donald Ryan Austin
Defendant

GATBER

RECEIVED
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
2016 JUN 29 AM 3:44

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay

(name of person to be arrested) **Donald Ryan Austin**

who is accused of an offense or violation based on the following document filed with the court:

- Indictment Superseding Indictment Information Superseding Information Complaint
- Probation Violation Petition Supervised Release Violation Petition Violation Notice Order of the Court

This offense is briefly described as follows:

18:1030(a)(5)(A) - Intentional Transmission Causing Damage to a Protected Computer

Date: June 23, 2016

MARK J. JENKINS

Issuing officer's signature

City and state: San Francisco, California

M. Jenkins, Deputy Clerk

Printed name and title

Return

This warrant was received on (date) _____, and the person was arrested on (date) _____
at (city and state) _____

Date: _____

Arresting officer's signature

Printed name and title

United States District Court

SEALED
BY COURT ORDER

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VENUE: San Francisco

FILED
JUN 23 2016

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES OF AMERICA,

v.

DONALD RYAN AUSTIN,

CR16-00269

WHA

DEFENDANT.

INDICTMENT

18 U.S.C. § 1030(a)(5)(A) and (c)(4)(B)(i) - Intentional Transmission Causing
Damage to a Protected Computer; 18 U.S.C. § 1030(i) and (j) Forfeiture

A true bill:

[Signature]

Foreman

Filed in open court this 23rd day of June
2016

[Signature]

Clerk

~~Bail, \$ no bail warrant
Kandis Wistend 2/23/16~~

**SEALED
BY COURT ORDER**

FILED *W*
JUN 23 2016

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

1 BRIAN J. STRETCH (CABN 163973)
2 United States Attorney

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
14 v.
15 DONALD RYAN AUSTIN,
16 Defendant.

11 CASE NO. **CR16-00269**
12)
13) **VIOLATION: 18 U.S.C. § 1030(a)(5)(A) and**
14) **(c)(4)(B)(i) – Intentional Transmission Causing**
15) **Damage to a Protected Computer; 18 U.S.C.**
16) **§ 1030(i) and (j) – Forfeiture.**
17) **SAN FRANCISCO VENUE**
18) **UNDER SEAL**

WHA

19 INDICTMENT

20 The Grand Jury charges:

21 At all times relevant to this Indictment:

22 THE LINUX OPERATING SYSTEM

23 1. Linux was an operating system, which is software that enables a computer to function
24 and allows a user to run applications on the computer. Millions of business, government, academic, and
25 personal computers ran the Linux operating system.

26 2. The Linux kernel was the core piece of software in the Linux operating system. The
27 Linux kernel was a basic set of instructions for a computer plus a collection of optional instruction
28 modules.

INDICTMENT

1 3. The Linux kernel was “open source software,” meaning that its source code was available
 2 for anyone to view and modify. The source code was the list of computer instructions written in a
 3 language readable by humans.

4 THE LINUX ORGANIZATIONS

5 4. The Linux Kernel Organization was a nonprofit organization with offices in San Jose,
 6 California. It operated a website, www.kernel.org, from which it distributed the Linux kernel. Internet
 7 users could download versions of the Linux kernel from the www.kernel.org website pursuant to a free
 8 software license.

9 5. The Linux Foundation was a separate nonprofit organization with offices in San
 10 Francisco, California. The Linux Foundation encouraged the development of open source software and
 11 promoted the Linux operating system. The Linux Foundation also managed the Linux Kernel
 12 Organization and provided financial, staffing, and technical support for the operation of the
 13 www.kernel.org website.

14 6. The Linux Kernel Organization and Linux Foundation leased and operated a number of
 15 servers in order to host the Linux kernel and the www.kernel.org website. A server was a computer that
 16 managed access to network resources by other computers. Some of the servers hosted copies of the
 17 Linux kernel and some provided other website functions.

18 7. P.A. was a member of the Linux Foundation Technical Advisory Board and founder of
 19 the Linux Kernel Organization.

20 8. J.H. was a system administrator for the Linux Kernel Organization.

21 THE DEFENDANT’S ATTACKS ON
 22 SERVERS CONNECTED TO THE LINUX ORGANIZATIONS

23 9. The Phalanx rootkit was a piece of malicious software that established a “backdoor” on a
 24 computer, allowing an unauthorized person to access the computer with full administrative privileges.
 25 An attacker could use the backdoor to connect to the infected computer via SSH, which is a protocol that
 26 allows secure remote login and control of a computer. The rootkit also enabled an unauthorized person
 27 to install additional software on the infected computer.

28 10. The Ebury trojan was a piece of malicious software that harvested the credentials of
 INDICTMENT

1 authorized users who logged in via SSH to an infected computer. The Ebury trojan collected the
2 credentials and transmitted them over the Internet to an outside computer controlled by the person who
3 installed the malicious software.

4 11. The defendant, DONALD RYAN AUSTIN ("AUSTIN"), used credentials belonging to
5 an individual, J.H., to gain unauthorized access to servers belonging to the Linux Foundation, the Linux
6 Kernel Organization, and P.A. AUSTIN installed the Phalanx rootkit and Ebury trojan on several of
7 those servers, causing damage without authorization. AUSTIN also used the unauthorized administrative
8 privileges to make other changes to the servers, such as inserting messages that would automatically
9 display when the servers restarted. One of AUSTIN's goals was to gain access to the software
10 distributed through the www.kernel.org website.

11 COUNT ONE: (18 U.S.C. § 1030(a)(5)(A) – Intentional Transmission of Information, Code, or
12 Command Causing Damage to a Protected Computer)

13 12. The factual allegations of Paragraphs One through Eleven are re-alleged and incorporated
14 as if fully set forth here.

15 13. The Linux Foundation leased a server, known as "Odin1," in connection with the
16 operation of the www.kernel.org website. The Odin1 server was connected to the Internet and located in
17 San Jose, California.

18 14. Starting on or about August 13, 2011 and continuing through on or about September 1,
19 2011; in the Northern District of California and elsewhere, the defendant,

20 DONALD RYAN AUSTIN,
21 knowingly caused the transmission of a program, information, code, and command, and, as a result of
22 such conduct, intentionally caused damage without authorization to a protected computer; that is,
23 AUSTIN knowingly transmitted a program, information, code, and command to the Odin1 server and
24 thereby caused damage without authorization, and the offense caused loss to a person during a one year
25 period from the defendant's course of conduct affecting a protected computer aggregating at least
26 \$5,000 in value. All in violation of Title 18, United States Code, Sections 1030(a)(5)(A) and
27 (c)(4)(B)(i).

28 //
INDICTMENT

1 COUNT TWO: (18 U.S.C. § 1030(a)(5)(A) – Intentional Transmission of Information, Code, or
2 Command Causing Damage to a Protected Computer)

3 15. The factual allegations of Paragraphs One through Eleven are re-alleged and incorporated
4 as if fully set forth here.

5 16. The Linux Foundation leased a server, known as “Zeus1,” in connection with the
6 operation of the www.kernel.org website. The Zeus1 server was connected to the Internet and located in
7 San Jose, California.

8 17. Starting on or about August 13, 2011 and continuing through on or about September 1,
9 2011, in the Northern District of California and elsewhere, the defendant,

10 DONALD RYAN AUSTIN,

11 knowingly caused the transmission of a program, information, code, and command, and, as a result of
12 such conduct, intentionally caused damage without authorization to a protected computer; that is,
13 AUSTIN knowingly transmitted a program, information, code, and command to the Zeus1 server and
14 thereby caused damage without authorization, and the offense caused loss to a person during a one year
15 period from the defendant’s course of conduct affecting a protected computer aggregating at least
16 \$5,000 in value. All in violation of Title 18, United States Code, Sections 1030(a)(5)(A) and
17 (c)(4)(B)(i).

18 COUNT THREE: (18 U.S.C. § 1030(a)(5)(A) – Intentional Transmission of Information, Code, or
19 Command Causing Damage to a Protected Computer)

20 18. The factual allegations of Paragraphs One through Eleven are re-alleged and incorporated
21 as if fully set forth here.

22 19. The Linux Foundation leased a server, known as “Pub3,” in connection with the
23 operation of the www.kernel.org website. The Pub3 server was connected to the Internet and located in
24 Redwood City, California.

25 20. Starting on or about August 13, 2011 and continuing through on or about September 1,
26 2011, in the Northern District of California and elsewhere, the defendant,

27 DONALD RYAN AUSTIN,

28 knowingly caused the transmission of a program, information, code, and command, and, as a result of
INDICTMENT

1 such conduct, intentionally caused damage without authorization to a protected computer; that is,
2 AUSTIN knowingly transmitted a program, information, code, and command to the Pub3 server and
3 thereby caused damage without authorization, and the offense caused loss to a person during a one year
4 period from the defendant's course of conduct affecting a protected computer aggregating at least
5 \$5,000 in value. All in violation of Title 18, United States Code, Sections 1030(a)(5)(A) and
6 (c)(4)(B)(i).

7 COUNT FOUR: (18 U.S.C. § 1030(a)(5)(A) – Intentional Transmission of Information, Code, or
8 Command Causing Damage to a Protected Computer)

9 21. The factual allegations of Paragraphs One through Eleven are re-alleged and incorporated
10 as if fully set forth here.

11 22. P.A. used a computer located in the Northern District of California and connected to the
12 Internet as a private e-mail server.

13 23. Starting on or about August 13, 2011 and continuing through on or about September 1,
14 2011, in the Northern District of California and elsewhere, the defendant,

15 DONALD RYAN AUSTIN,

16 knowingly caused the transmission of a program, information, code, and command, and, as a result of
17 such conduct, intentionally caused damage without authorization to a protected computer; that is,
18 AUSTIN knowingly transmitted a program, information, code, and command to P.A.'s personal mail
19 server and thereby caused damage without authorization, and the offense caused loss to a person during
20 a one year period from the defendant's course of conduct affecting a protected computer aggregating at
21 least \$5,000 in value. All in violation of Title 18, United States Code, Sections 1030(a)(5)(A) and
22 (c)(4)(B)(i).

23 FORFEITURE ALLEGATION

24 24. The factual allegations contained in this Indictment are hereby realleged for the purpose
25 of alleging forfeiture pursuant to Title 18, United States Code, Section 1030(i) and (j).

26 25. Upon conviction of the offenses in violation of Title 18, United States Code, Section
27 1030(a)(5) set forth in this Indictment, the defendant,

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INDICTMENT

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DONALD RYAN AUSTIN,

shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 1030(i) and (j), any personal property used or intended to be used to commit or to facilitate the commission of said violation or a conspiracy to violate said provision, and any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses, including but not limited to: a sum of money equal to the total amount of proceeds defendant obtained or derived, directly or indirectly, from the violation.

26. If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 1030(i)(2).

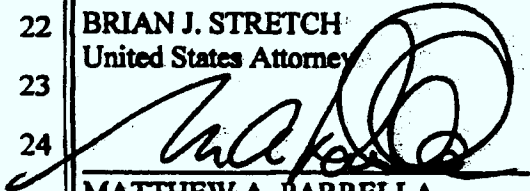
All pursuant to Title 18 United States Code, Section 1030.

Dated: 6/23/16

A TRUE BILL.

FOREPERSON

BRIAN J. STRETCH
United States Attorney



MATTHEW A. PARRELLA
Chief, CHIP Unit

(Approved as to form: _____)


AUSA M. KANE

INDICTMENT

SEALED BY COURT ORDER

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT SUPERSEDING

OFFENSE CHARGED

18 U.S.C. § 1030(a)(5)(A).

- Petty
 Minor
 Misdemeanor
 Felony

PENALTY: Ten years imprisonment, three years supervised release, \$250,000 fine, \$100 special assessment, forfeiture, restitution.

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEFENDANT - U.S.

DONALD RYAN AUSTIN

DISTRICT COURT NUMBER

CR16-00269

JUN 23 2016

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

WHA

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

FBI

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District:

this is a reprosecution of charges previously dismissed which were dismissed on motion of:

U.S. ATTORNEY DEFENSE

SHOW DOCKET NO.

this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person

Furnishing Information on this form BRIAN J. STRETCH

U.S. Attorney Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned)

MICHELLE J. KANE

DEFENDANT

IS NOT IN CUSTODY

Has not been arrested, pending outcome this proceeding:
1) If not detained give date any prior summons was served on above charges

2) Is a Fugitive

3) Is on Bail or Release from (show District)

IS IN CUSTODY

4) On this charge

5) On another conviction: } Federal State

6) Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution:

Has detainer been filed? Yes No } If "Yes" give date filed

DATE OF ARREST Month/Day/Year

Or... If Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY Month/Day/Year

This report amends AO 257 previously submitted.

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT

Bail Amount: No bail

If Summons, complete following:

Arraignment Initial Appearance

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Defendant Address:

Date/Time: Before Judge:

Comments:

1 BRIAN J. STRETCH (CABN 163973)
United States Attorney

2 DAVID R. CALLAWAY (CABN 121782)
3 Chief, Criminal Division

4 MICHELLE J. KANE (CABN 210579)
5 Assistant United States Attorney

6 1301 Clay Street, Suite 340S
Oakland, California 94612
7 Telephone: (510) 637-3680
8 FAX: (510) 637-3724
michelle.kane3@usdoj.gov

9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 vs.
16 DONALD RYAN AUSTIN,
17 Defendant.

SEALED
BY COURT ORDER

FILED
JUN 23 2016
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

WHA

CR16-00269

) Criminal
) SEALING APPLICATION AND
) SEALING ORDER
)
) SAN FRANCISCO VENUE
) UNDER SEAL

18
19 The United States requests that the Indictment, Penalty Sheet and Arrest Warrant
20 in the above-captioned case filed with the Court on June 23, 2016, be filed under seal
21 until further order of the Court, with the exception that the Clerk's office may provide a
22 copy of the Indictment, Penalty Sheet and Arrest Warrant to the U.S. Attorney's Office
23 and agents of the Federal Bureau of Investigation.

24 The sealing application is requested because the government is continuing its
25 investigation and disclosure of the indictment may thwart the investigation and
26 apprehension of defendant, potential accomplices, associates, and/or co-conspirators.

27 ///

28

1 WHEREFORE, I respectfully request that the Court issue an Order granting this
2 Application.

3
4 DATED: June 22, 2016

Respectfully submitted,

5 BRIAN J. STRETCH
6 United States Attorney

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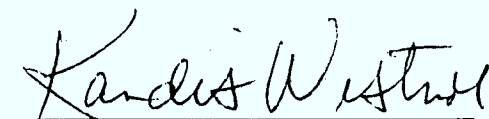
8 MICHELLE J. KANE
9 Assistant United States Attorney

10
11 **ORDER**

12 On the government's application, the Indictment, Penalty Sheet, and Arrest Warrant
13 filed with the Court on June 23, 2016, shall be filed under seal until further order of the
14 court with the exception that the Clerk's office may provide a copy of the Indictment,
15 Penalty Sheet and Arrest Warrant to the U.S. Attorney's Office and agents of the Federal
16 Bureau of Investigation.

17 IT IS SO ORDERED.

18 Dated: 6/23, 2016

19 
20 KANDIS A. WESTMORE
21 U.S. Magistrate Judge

**SEALED
BY COURT ORDER**

**United States District Court
Northern District of California**

FILED

JUN 23 2016

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

CRIMINAL COVER SHEET

Instructions: Effective January 3, 2012, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case.

Case Name:

USA v. DONALD RYAN AUSTIN

Case Number:

CR16-00269

WHA

Total Number of Defendants:

1 2-7 8 or more

Is This Case Under Seal?

Yes No

Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?

Yes No

Venue (Per Crim. L.R. 18-1):

SF OAK SJ EUR MON

Is any defendant charged with a death-penalty-eligible crime?

Yes No

Assigned AUSA (Lead Attorney):

MICHELLE J. KANE, AUSA

Is this a RICO Act gang case?

Yes No

Date Submitted:

June 23, 2016

Comments:

[Empty box for comments]

Save Print Clear Form