

1 [COUNSEL LISTED ON SIGNATURE PAGE]

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HARRISON ULRICH JACK; LO CHA THAO
aka Locha Thao; LO THAO, aka President Lo
Thao, aka Xia Lo Thao; YOUA TRUE VANG,
aka Joseph Youa Vang, aka Colonel Youa True
Vang; HUE VANG, aka Chue Hue Vang;
CHONG YANG THAO; SENG VUE; CHUE LO;
NHIA KAO VANG; DAVID VANG, aka Dang
Vang; JERRY YANG, aka Thao Nou Yang; and
THOMAS YANG, aka Pao Yang

Defendants.

Case No. 2:07-CR-0266 FCD

**DEFENDANTS' MOTION TO
SUPPRESS EVIDENCE GATHERED
AS A RESULT OF FALSE
AFFIDAVITS SUPPORTING
SEARCH WARRANTS; REQUEST
FOR HEARING PURSUANT TO
FRANKS V. DELAWARE**

Judge: Hon. Frank C. Damrell
Date: October 15, 2010
Time: 11:00 a.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION AND MOTION

TO: BENJAMIN B. WAGNER, U.S. ATTORNEY, S. ROBERT TICE-RASKIN,
ELLEN V. ENDRIZZI, AND JILL THOMAS, ASSISTANT U.S. ATTORNEYS:

PLEASE TAKE NOTICE that on October 15, 2010, at 11:00 a.m., or as soon thereafter as the matter may be heard, Defendants jointly, through counsel, will and hereby do move this Court, pursuant to Rule 12(b)(3)(C) of the Federal Rules of Criminal Procedure, to suppress Evidence Gathered as a Result of False Affidavits Supporting Search Warrants. All Defendants have joined this Motion.

This Motion is based on this Notice of Motion, the Declaration of Somnath R. Chatterjee, the attached Memorandum of Points and Authorities, the files and records in this case, and any other evidence or argument that may properly be presented to the Court. Defendants request an evidentiary hearing and estimate that the presentation of evidence and arguments will require approximately two days.

TABLE OF CONTENTS

	Page
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
	NOTICE OF MOTION AND MOTION..... i
	TABLE OF AUTHORITIES.....iii
	I. INTRODUCTION..... 1
	II. BACKGROUND..... 3
	III. ARGUMENT 5
	A. The Affidavits Falsely Claim that, Before the Government’s Undercover Agent Inserted Himself and Promoted a Plot to Procure Weapons, Harrison Jack Approached a “Defense Contractor” to Purchase Weapons. 6
	B. The Affidavits Omit Information Regarding Jack’s Desire for a Non-Violent Solution to the Persecution of the Hmong, His Understanding of the U.S. Government’s Involvement, and the Undercover Agent’s Role In Propelling a Plan to Overthrow the Government of Laos. 9
	C. The Affidavits Falsely Attribute Incriminating Statements to General Vang Pao, Falsely Cast General Vang Pao as a Ringleader, and Falsely Depict the Other Hmong Defendants as Followers in the Alleged Conspiracy..... 14
	D. The Affidavits Omit a Rift Among the Defendants and Fail to Disclose the Lack of Any Agreement to Commit Any Illegal Acts. 18
	E. The Agent Misrepresented His Alcohol Consumption During the Sting..... 21
	IV. WHEN ALLEGATIONS AGAINST INDIVIDUAL DEFENDANTS ARE CONSIDERED SEPARATELY, IT IS EVEN MORE CLEAR THAT THE GOVERNMENT LACKED PROBABLE CAUSE..... 22
	A. There Was No Probable Cause to Issue the Search Warrants Regarding Defendant Youa True Vang. 22
	B. There Was No Probable Cause to Issue the Search Warrant Regarding Defendant Chue Lo 24
	C. There Was No Probable Cause to Issue the Search Warrant Regarding Defendant Chong Yang Thao..... 24
	D. There Was No Probable Cause to Issue the Search Warrant Regarding Defendant Hue Vang. 27
	E. There Was No Probable Cause to Issue the Search Warrant Regarding Defendant Jerry Smith Yang. 28
	F. There Was No Probable Cause to Issue the Search Warrant Regarding Defendant Harrison Jack. 30
	V. CONCLUSION 30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

CASES

Agnello v. United States,
269 U.S. 20 (1925) 1

Franks v. Delaware,
438 U.S. 154 (1978)*passim*

Mills v. Graves,
930 F.2d 729 (9th Cir. 1991)..... 6

United States v. Baron-Mantilla,
743 F.2d 868 (11th Cir. 1984)..... 1

United States v. Chesher,
678 F.2d 1353 (9th Cir. 1982)..... 6, 16

United States v. Damper,
347 F. Supp. 2d 689 (D.C. Neb. 2004)..... 9

United States v. DeLeon,
979 F.2d 761 (9th Cir. 1992)..... 14

United States v. Estrada-Macias,
218 F.3d 1064 (9th Cir. 2000)..... 23, 29

United States v. Gonzalez. Inc.,
412 F.3d 1102 (9th Cir. 2005)..... 6

United States v. Kiser,
716 F.2d 1268 (9th Cir. 1983)..... 6

United States v. Kyllo,
37 F.3d 526 (9th Cir. 1994)..... 21

United States v. McCain,
271 F. Supp. 2d 1187 (N.D. Cal. 2003)..... 8, 9

United States v. Penagos,
823 F.2d 346 (9th Cir. 1987)..... 23, 29

United States v. Stanert,
762 F.2d 775, *amended*, 769 F.2d 1410 (9th Cir. 1985) 5, 6, 8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OTHER AUTHORITIES

Fourth Amendment..... 1, 3
United States Constitution..... 1

1 **I. INTRODUCTION**

2 Defendants¹ bring this motion under the Fourth Amendment of the United States
3 Constitution and *Franks v. Delaware*, 438 U.S. 154 (1978), to suppress the fruits of illegal
4 searches because the supporting affidavits contain material misrepresentations and omissions of
5 facts critical to the determination of probable cause. Defendants request a *Franks* hearing to
6 show that the affidavits supporting the search warrants contain material misrepresentations and
7 omissions, without which the magistrate judge would not have found probable cause.

8 At issue in this motion are 14 search warrants that were supported by affidavits that
9 contain identical false statements and omissions regarding an alleged criminal conspiracy to ship
10 weapons to and overthrow the government of Laos that the government asserted to obtain the
11 search warrants.² Several critical defects taint each of the affidavits:

12 *First*, the affidavits repeat the same false story that, before the government's undercover
13 agent entered the scene, defendant Harrison Jack ("Jack") contacted a "defense contractor," who
14 became a government informant, to purchase weapons. This was false. The government
15 concedes that its informant was not a "defense contractor." Rather, the informant was an
16 eccentric inventor of "kinetically charged" magic water that he believed could cure cancer and
17 other ailments. The government's misrepresentation created a false aura of credibility to the

18
19 ¹ This motion made is made by and on behalf of all defendants, at least one of whom have
20 standing to challenge each and every affidavit submitted in support of the search warrants.
21 *Agnello v. United States*, 269 U.S. 20, 22 (1925) (homeowner has protectable privacy interest);
22 Similarly, at least one of the Defendants have standing to challenge the non-residence properties
23 searched. *See United States v. Baron-Mantilla*, 743 F.2d 868, 870 (11th Cir. 1984) (finding that a
24 defendant, who did not own or rent premises searched, "could have established a legitimate
25 expectation of privacy by demonstrating 'an unrestricted right of occupancy or custody and
26 control of the premises as distinguished from occasional presence on the premises as a mere guest
27 or invitee.'")

28 ² The two affidavits submitted on June 4, 2007 were based on, and incorporated by reference, the
statements made in the earlier affidavits and attached those earlier affidavits thereto. *See*
Declaration of Somnath R. Chatterjee ("Chatterjee Decl.") in Support of Defendants'
Memorandum of Points and Authorities in Support of Motion to Suppress Evidence Gathered as a
Result of False Affidavits Supporting Search Warrants Exs. 1-2 (June 4, 2007 ATF Agent's
Affidavit in Support of the Search Warrant of 2727 N. Grove Industrial Drive, Unit #141B,
Fresno, California at 1:4-10 (TarnEgl 042841)); June 4, 2007 ATF Agent's Affidavit in Support
of Search Warrant of 4 Computers found at 2727 N. Grove Industrial Drive, Unit #141B, Fresno,
California at 1:4-10 (TarnEgl 002120)).

1 government's allegations that there was a real plot to purchase weapons, shielded the true source
2 of the government's information—a peddler of hocus pocus—and misrepresented to the court the
3 nature of what had occurred before the government's agent injected himself and propelled the
4 alleged conspiracy.

5 *Second*, the affidavits contain a fabricated description of incriminating exchanges between
6 the undercover agent and General Vang Pao that the government has since admitted never
7 occurred. The affidavits misrepresent the General Vang Pao's role in this case, suggesting that he
8 was the ringleader of the alleged conspiracy whom other defendants followed. Given the
9 General's highly respected role in the Hmong community and among the co-defendants as their
10 historical leader, by falsely representing General Vang Pao as a ringleader of the alleged
11 conspiracy, the government falsely depicted his subordinates among the Hmong defendants also
12 as being part of the conspiracy.

13 *Third*, the affidavits deceptively omit critical information that Jack and others wanted to
14 help the Hmong in Laos without violence and with the support of the U.S. government. The
15 affidavits omit critical information that some of the defendants believed the U.S. government was
16 involved and supported them, a belief promoted by the government's own undercover agent. By
17 omitting this information, the government falsely painted an ominous picture of a rogue, criminal
18 conspiracy to overthrow a foreign government without the involvement of the U.S. government.

19 *Fourth*, the government failed to disclose in two critical affidavits that were submitted on
20 June 4, 2007, that "there was a conflict in the group, that Vang Pao was apparently unhappy, that
21 certain people were threatening to resign, and that there appeared to be some sort of power
22 struggle."³ The government knew that there was a rift among the Hmong defendants about what
23 some of the defendants were doing. This rift showed that there was never any "agreement" to do
24 anything, *i.e.*, no conspiracy. Yet, the government omitted exculpatory information regarding this
25 rift from the affidavits.

26 ³ Government's Opposition to Motion to Dismiss for Government Misconduct ("Gov't Opp. to
27 Mot. to Dismiss") at 64 n.42 (admitting that such information was given by the Hmong/Lao
28 interpreter to prosecutors including Ellen Endrizzi, and ATF Agent Graham Barlowe).

1 *Fifth*, the undercover agent failed to disclose the extent of his alcohol consumption while
2 he was working undercover in meetings with Jack and others. In contrast to his representations,
3 his alcohol consumption during his meetings was extensive. His failure to disclose the extent of
4 his alcohol consumption deprived the magistrate judge of critical information necessary to assess
5 the agent's judgment and recollection while weighing the facts to determine probable cause.

6 These falsehoods and material omissions, when considered cumulatively with the other
7 falsehood and omissions peppered throughout the affidavits, entitle defendants to a *Franks*
8 hearing. An evidentiary hearing will show that, absent the misrepresentations and material
9 omissions, the affidavits would not have established probable cause. Accordingly, the evidence
10 obtained from the search warrants and the fruits thereof must be suppressed under the Fourth
11 Amendment.

12 **II. BACKGROUND**

13 This motion seeks to suppress the search warrants issued on the following:

14 (1) Youa True Vang and all structures and storage facilities on the property oat
15 11643 East Belmont Avenue, Sanger, California⁴;

16 (2) Hue Vang and all structures and storage facilities on the property at 5981 East
17 Tam O'Shanter Lane, Fresno, California⁵;

18 (3) Chue Lo and all structures and storage facilities on the property at 127 West
19 Loretta Avenue, Stockton, California⁶;

20
21 _____
22 ⁴ Chatterjee Decl., Ex. 3. (11643 E. Belmont Avenue, Sanger, California Search Warrant
23 (TarnEgl 001242)). The complete Affidavit and Attachments A-9 and B-9 submitted in support
of the 11643 E. Belmont Avenue search warrant are available at Exhibit 27 of the Chatterjee
Declaration.

24 ⁵ Chatterjee Decl., Ex. 4. (5981 E. Tam O'Shanter Lane, Fresno, California Search Warrant
25 (TarnEgl 000873)). The complete Affidavit and Attachments A-4 and B-4 submitted in support
of the 5981 E. Tam O'Shanter Lane search warrant are available at Exhibit 27 of the Chatterjee
Declaration.

26 ⁶ Chatterjee Decl., Ex. 5. (127 W. Loretta Avenue, Stockton, California Search Warrant
27 (TarnEgl 000997)). The complete Affidavit and Attachments A-11 and B-11 submitted in
support of the 127 W. Loretta Avenue search warrant are available at Exhibit 27 of the Chatterjee
28 Declaration.

1 (4) Seng Vue and all structures and storage facilities located on the property at
2 4879 East Carmen Avenue, Fresno, California⁷;

3 (5) Jerry Smith Yang and all structures and storage facilities located on the property
4 at 1727 Brigham Street, Stockton, California⁸;

5 (6) Nhia Kao Vang and all structures and storage facilities at 11058 Faber Way,
6 Rancho Cordova, California;⁹

7 (7) Lo Thao and all structures and storage facilities located on the property at
8 6160 Cushing Way, Sacramento, California;¹⁰

9 (8) Lo Cha Thao and all structures and storage facilities located on the property at
10 1860 Serena Avenue, Clovis, California;¹¹

11 (9) United Hmong International, Inc., located on the property at 1558 North Ninth
12 Street, Fresno, California;¹²

13 (10) Chong Yang Thao and all structures and storage facilities located on the property
14 at 5796 East Grant Avenue, Fresno, California;¹³

15 ⁷ Chatterjee Decl., Ex. 6. (4879 E. Carmen Avenue, Fresno, California Search Warrant (TarnEgl
16 001119)). The complete Affidavit and Attachments A-12 and B-12 submitted in support of the
17 4879 E. Carmen Avenue search warrant are available at Exhibit 27 of the Chatterjee Declaration.

18 ⁸ Chatterjee Decl., Ex. 7. (1727 Brigham Street, Stockton, California Search Warrant (TarnEgl
19 000752)). The complete Affidavit and Attachments A-15 and B-15 submitted in support of the
20 1727 Brigham Street search warrant are available at Exhibit 27 of the Chatterjee Declaration.

21 ⁹ Chatterjee Decl., Ex. 8. (11058 Faber Way, Rancho Cordova, California Search Warrant
22 (TarnEgl 000494)). The complete Affidavit and Attachments A-19 and B-19 submitted in
23 support of the 11058 Faber Way search warrant are available at Exhibit 27 of the Chatterjee
24 Declaration.

25 ¹⁰ Chatterjee Decl., Ex. 9. (6160 Cushing Way, Sacramento, California Search Warrant (TarnEgl
26 000181)). The complete Affidavit and Attachments A-2 and B-2 submitted in support of the
27 6160 Cushing Way search warrant are available at Exhibit 32 of the Chatterjee Declaration.

28 ¹¹ Chatterjee Decl., Ex. 10. (1860 Serena Avenue, Clovis, California Search Warrant (TarnEgl
000084)). The complete Affidavit and Attachments A-5 and B-5 submitted in support of the
1860 Serena Avenue search warrant are available at Exhibit 32 of the Chatterjee Declaration.

¹² Chatterjee Decl., Ex. 11. (1558 N. 9th Street, Fresno, California Search Warrant (TarnEgl
000286)). The complete Affidavit and Attachments A-6 and B-6 submitted in support of the
1558 N. 9th Street search warrant are available at Exhibit 32 of the Chatterjee Declaration.

¹³ Chatterjee Decl., Ex. 12. (5796 E. Grant Avenue, Fresno, California Search Warrant (TarnEgl
000480)). The complete Affidavit and Attachments A-10 and B-10 submitted in support of the
5796 E. Grant Avenue search warrant are available at Exhibit 32 of the Chatterjee Declaration.

1 (11) Harrison Jack and all structures and storage facilities located on the property at
2 101 Monte Vista Drive, Woodland, California;¹⁴

3 (12) Vang Pao and all structures and storage facilities on the property at 9302 England
4 Avenue, Westminster, California;¹⁵

5 (13) 2727 N.Grove Industrial, Unit #141B, Fresno, California¹⁶; and

6 (14) Four computers located within 2727 North Grove Industrial Drive, Unit # 141B,
7 Fresno, California.¹⁷

8 The facts in this case have already been described in Defendant's Motion to Dismiss for
9 Outrageous Government Conduct.¹⁸ The key facts relevant to this motion are reviewed below.

10 **III. ARGUMENT**

11 Under *Franks v. Delaware*, the inclusion of false or misleading statements in an affidavit
12 submitted to support a search warrant application constitutes grounds for suppression of evidence
13 seized during the search. *Franks v. Delaware*, 438 U.S. 154 (1978). The Ninth Circuit has
14 extended *Franks* to cover omissions in the supporting affidavit. *United States v. Stanert*,
15 762 F.2d 775, 780-81, *amended*, 769 F.2d 1410 (9th Cir. 1985). To obtain a hearing, the Ninth
16 Circuit requires: (1) a substantial showing that "the affidavit contains intentionally or recklessly

17
18 ¹⁴ Chatterjee Decl., Ex. 13 (101 Monte Vista Drive, Woodland, California Search Warrant
19 (TarnEgl 000381)). The complete Affidavit and Attachments A-16 and B-16 submitted in
support of the 101 Monte Vista Drive search warrant are available at Exhibit 32 of the Chatterjee
Declaration.

20 ¹⁵ Chatterjee Decl., Ex. 14. (9302 England Avenue, Westminster, California Search Warrant
21 (TarnEgl 036092)). The complete Affidavit and Attachments A and B submitted in support of the
9302 England Avenue search warrant are available at Exhibit 33 of the Chatterjee Declaration.

22 ¹⁶ Chatterjee Decl., Ex. 15. (2727 N. Grove Industrial Drive, Unit #141B, Fresno, California
23 Search Warrant (TarnEgl 001873)). The complete Affidavit and Attachments A and B submitted
in support of the 2727 N. Grove Industrial Drive search warrant are available at Exhibit 1 of the
Chatterjee Declaration.

24 ¹⁷ Chatterjee Decl., Ex. 16. (Four Computers Seized from 2727 North Grove Industrial Drive,
25 Unit #141B, Fresno, California Search Warrant (TarnEgl 000615)). The complete Affidavit and
Attachments A and B submitted in support of the Four Computers Seized from 2727 N. Grove
Industrial Drive search warrant are available at Exhibit 2 of the Chatterjee Declaration.

26 ¹⁸ See Defs.' Mot. to Dismiss for Outrageous Government Conduct ("Dismiss Mot."), filed
27 March 9, 2009. Defs.' Reply in support of Mot. to Dismiss for Outrageous Government Conduct,
filed April 20, 2009 ("Dismiss Reply").

1 false statements, and (2) the affidavit purged of its falsities would not be sufficient to support a
2 finding of probable cause.” *Stanert*, 762 F.2d at 780 (internal citations omitted); *see also*
3 *United States v. Gonzalez. Inc.*, 412 F.3d 1102, 1110 (9th Cir. 2005). The defendant need only
4 “make specific allegations that indicate the portions of the warrant claimed to be false.”
5 *United States v. Kiser*, 716 F.2d 1268, 1271 (9th Cir. 1983).¹⁹ Once these two prongs are met, the
6 defendant may test the validity of the affidavits through live testimony and cross-examination of
7 witnesses. *United States v. Chesher*, 678 F.2d 1353, 1360-62 (9th Cir. 1982).

8 If after an evidentiary hearing, the district court concludes by a preponderance of the
9 evidence, *Franks*, 438 U.S. at 156, that the judge who issued the warrant was “misled by
10 information in the affidavit that the affiant knew was false or would have known was false except
11 for this reckless disregard for the truth,” the warrant is invalid and evidence should be suppressed.
12 *Stanert*, 762 F.2d at 780 (quoting *United States v. Leon*, 468 U.S. 897 (1984)). “There is no
13 ‘good faith’ exception to the *Franks* doctrine: a warrant based upon knowing or recklessly made
14 falsehoods in the affidavit will be invalid.” *Mills v. Graves*, 930 F.2d 729, 733 (9th Cir. 1991).

15 As shown below, the defendants have made substantial specific allegations of
16 misrepresentation and omissions—supported by proof in the form of affidavits and references to
17 the government’s submissions—that, taken cumulatively, cast serious doubt on the probable
18 cause finding supporting the warrants.

19 **A. The Affidavits Falsely Claim that, Before the Government’s Undercover**
20 **Agent Inserted Himself and Promoted a Plot to Procure Weapons,**
21 **Harrison Jack Approached a “Defense Contractor” to Purchase Weapons.**

22 In all of the search warrant affidavits, the government repeated the false statement that it
23 learned about the so-called coup plot when Harrison Jack contacted a “defense contractor” in the
24 fall of 2006 about purchasing AK-47s. But according to the government’s own investigation

25
26 ¹⁹ “Clear proof” of deliberate or reckless omission or misrepresentation is not required. *Stanert*,
27 762 F.2d at 781. Additionally, when considering the effect of misrepresentations and omissions
28 on the existence of probable cause, a court considers the effect “cumulatively.” *United States v.*
Kiser, 716 F.2d 1268, 1274 (9th Cir. 1983).

1 report, Jack in fact contacted an acquaintance named Namon Hawthorne.²⁰ Hawthorne is not a
2 “defense contractor.” He is an inventor and small businessman whose principal venture is a
3 company that sells “kinetically charged” magic water and posts “testimonials” on its website
4 claiming that its water can cure leukemia, prostate cancer, shingles, and many other ailments.²¹
5 Jack believed Hawthorne’s claims, and his faith in Hawthorne’s abilities may explain why he
6 approached Hawthorne for help. The government has produced, and defendants have uncovered,
7 no evidence suggesting that Hawthorne was involved in any way with arms sales. Moreover,
8 according to the government’s investigation report, when Jack approached Hawthorne, Jack did
9 not contemplate any sort of military offensive; he told Hawthorne he sought the weapons “for
10 protection.” The government failed to disclose this critical information to the Court. The
11 government has since admitted that “it is true that Jack initially told Hawthorne in November
12 2006, that the machine guns were sought for ‘protect[ion].’”²²

13 The government does not seriously dispute that the agent misstated the truth when he
14 attested that Namon Hawthorne was a “defense contractor.” Instead, the government claims that
15 Hawthorne allegedly told the agent that he had also invented a device to initiate explosions of
16 IEDs, and that the “DOD was looking at the device for use in the Middle East.”²³ This hardly
17 makes him a “defense contractor.” Nevertheless, the government parses words to contend that
18 the undercover agent “literally was correct” based on Merriam-Webster’s definition of
19 “contractor” as “one who contracts to perform work or provide supplies.”²⁴ Even based on the
20 government’s chosen definition of “contractor,” however, it is not “literally” true that Hawthorne
21 is a “defense contractor”.²⁵ The government has provided nothing to suggest that Hawthorne
22 actually “contract[ed]” with military to perform work or provide supplies. Ultimately, the

23 ²⁰ Chatterjee Decl., Ex. 17. (ATF Report of Investigation re: Namon Hawthorne dated 9/29/06
24 (“Hawthorne Report”) at 1 (TarnEgl 034614)).

25 ²¹ Chatterjee Decl., Ex. 18. (Excerpts from www.kinesiswater.com).

26 ²² Gov’t Opp. to Mot. to Dismiss at 76:10-12.

27 ²³ *Id.* at 74:3-10.

28 ²⁴ *Id.* at 75:5-7.

²⁵ *Id.* at 75: 5-10; 76:10-23.

1 government concedes that the agent “could have engaged in further inquiry regarding
2 Hawthorne’s background to verify the exact nature of his specific business ties to the military.”²⁶

3 These misrepresentations were material because they suggested that Jack had legitimate
4 connections with arms merchants and therefore posed a serious threat of obtaining weapons and
5 delivering them to Laos. They falsely suggested that Jack and the other defendants were already
6 engaged in a credible plot to procure illegal weapons from a “defense contractor” who had the
7 ability to deliver the weapons for the purpose of overthrowing Laos. Had the government been
8 truthful and disclosed that Hawthorne was a peddler of magic water, the government’s credibility
9 would have been undermined. And the alleged “plot” would have been exposed for what it was
10 before the government’s agent became involved—*idle and absurd speculation of one or two*
11 *individuals, not a conspiracy*. As the Ninth Circuit noted in *United States v. Stanert*, “[b]y
12 reporting less than the total story, an affiant can manipulate the inferences a magistrate will
13 draw.” *U.S. v. Stanert*, 762 F.2d at 781. To allow judges to “be misled in such a manner could
14 denude the probable cause requirement of all real meaning.” *Id.* Withholding information about
15 Hawthorne’s occupation and mischaracterizing him as a “defense contractor” in this case clearly
16 creates an “inference [that] is quite damaging considering the current suspicion being leveled at
17 the defendant[s].” *Id.*

18 *United States v. McCain*, 271 F. Supp. 2d 1187 (N.D. Cal. 2003), is instructive. There,
19 the court granted a motion to suppress where the affidavit stated that the government had
20 “obtained information derived from a confidential reliable source” and gave the court the false
21 impression that the source was a human informant, not a wiretap recording from a different
22 investigation. The court stated: “inspector Hanley deliberately drafted the affidavit so as to
23 conceal the existence of the wiretap, and consequently should have known that the reviewing
24 magistrate would likely conclude that the [reliable source] was a person rather than a wiretap...the
25 affidavit [] prevented the magistrate from exercising proper judgment in two ways: first, it was
26 misleading as to the source of the information presented...evaluation of information may be

27 ²⁶ *Id.* at 75:11-13.
28

1 affected by its source...[and] two, improper identification of the sources alone may provide
2 grounds to invalidate a warrant.” *Id.* at 1193; *see also United States v. Damper*, 347 F. Supp. 2d
3 689, 692 (D.C. Neb. 2004) (granting motion to suppress where affidavit contained inaccurate
4 statements, including false representation that the informant was known to the police as “an
5 associate gang member”). Similarly, the affidavits here misled the magistrate about the
6 government’s source, including the nature and credibility of the informant. This
7 misrepresentation alone warrants suppression.

8 **B. The Affidavits Omit Information Regarding Jack’s Desire for a Non-**
9 **Violent Solution to the Persecution of the Hmong, His Understanding of**
10 **the U.S. Government’s Involvement, and the Undercover Agent’s Role In**
11 **Propelling a Plan to Overthrow the Government of Laos.**

12 The affidavits omit numerous statements by Jack concerning his desire to help Hmong
13 villagers defend themselves without violence or a military takeover and his understanding and the
14 understanding of Lo Cha Thao that they would work with the U.S. government. The affidavits
15 also fail to disclose to the magistrate that the so-called “plot” was propelled by the agent
16 throughout the investigation. For example:

17 1. The government’s description of the undercover agent’s first meeting with
18 Jack on January 25, 2007 contains numerous misstatements and omissions to suggest falsely that
19 Jack discussed a coup plot supported by General Vang Pao. In reality, Jack emphasized at the
20 meeting that his sole desire was to help the Hmong villagers *defend* themselves against
21 genocide—*not* to take any offensive action, or even to use force at all if it could be avoided. Jack
22 told the agent that he was in contact with a group of concerned Hmong in the United States who
23 were “seriously considering promoting free democratic elections inside Laos as soon as possible.”
24 When the agent asked if this group was “willing to use force,” Jack responded, “***Preferably not.***
25 ***They want to do it differently***” He explained that “their primary objective is to get their
26 people out of Laos and across the border into Thailand. ***They don’t care about taking over the***
27
28

1 **government. They don't want to do that.** When the agent pressed, reiterating "To try to
2 overthrow the government," Jack repeated: "**No. No. No. They're trying to survive.**"²⁷

3 Indeed, during this initial January 25, 3007, meeting, Jack was clear that he "**had no idea**"
4 whether any of the Hmong individuals with whom he had prior discussions had intended to
5 purchase any weapons or to take any specific action, *i.e.*, Jack had no knowledge of any
6 agreement or any alleged conspiracy. During this meeting, in the context of the undercover
7 agent's question about the price range of weapons, Jack told the agent, "**Right now, like I was**
8 **saying, I've got no idea what they're going to do tomorrow or how they're going to approach**
9 **the situation.**"²⁸ Again, the government omitted this exculpatory information from its affidavits.

10 2. The government's representation of the February 7, 2007, meeting omitted
11 several key facts relating to Defendant Jack's objective. Jack said at the meeting that he was
12 "trying to get these people [*i.e.*, the Hmong victims of genocide] out from an area where they're
13 encircled in," and that he wanted to "secure tight border crossings and avenues" for them to
14 escape.²⁹ But he made clear that the "optimum situation" was not to use force at all, which fact
15 the government omitted.³⁰ As discussed below, the government falsely represented to the Court
16 that Jack and Vang Pao made certain statements that never occurred, including an allegation that
17 they discussed "insurgents" and initiating a "hostile military action," when in fact they only
18 discussed an escape.

19 3. The government failed to disclose numerous discussions between Jack and
20 the agent concerning the desire and efforts to obtain the support of the United States government.
21 For instance, during a March 5, 2007 meeting, Jack discussed his efforts to talk to Senator
22

23 ²⁷ Chatterjee Decl., Ex. 19. (Transcript of January 25, 2007 Meeting at 46:8-48-10 (TarnEgl
24 041425-041427)).

25 ²⁸ Chatterjee Decl., Ex. 19 at 27:18-19 and 29:4-6.

26 ²⁹ Chatterjee Decl., Ex. 20. (Transcript of February 7, 2007 Meeting at 15:18-17:25 (TarnEgl
27 041504-041506)).

28 ³⁰ *Id.* (Transcript of February 7, 2007 meeting at 17:4-15. Jack also discussed the genocide
documents with the agent and told the agent that he was "coordinating all the media." *Id.* at
12:19-20.).

1 Feinstein's staff about the genocide in Laos.³¹ He also discussed his advice to defendant Lo Cha
2 Thao to get in touch with "people in Washington" and other organizations, such as the Asian
3 Development Bank.

4 4. The government failed to disclose that Jack and the agent discussed
5 whether the U.S. government would support efforts in Laos, and the undercover agent encouraged
6 Jack and other defendants to believe that the U.S. government, through the CIA or otherwise,
7 would support the plan that he was promoting. For example, in the context of a discussion about
8 the CIA and the conditions in and around Laos, the agent stated to Mr. Jack:

9 They know what the hell's going on. They don't want to get into
10 another Vietnam, but if Vang Pao goes in there and takes over the
11 freaking country and then wants the -- and -- and gets things
12 squared away and then wants to have democratic elections, that's
13 gonna be like that. I have no doubt in my mind.³²

14 Later in the same conversation, the agent stated:

15 You've got a different CIA today than you had then, Harrison. I
16 think that, uh, I think they'll step in there and go, "Hey, you know,
17 this is what we can do, and this is why we can do it, because we
18 have backing of our Government, not just our agency, and we want
19 to back your political endeavor of democracy."³³

20 Yet again, later in the same conversation, the agent made another statement alluding to the
21 CIA's support for the alleged plan. When Mr. Jack asked, "what time — would you see the CIA
22 best involved in this?" the agent replied, "Oh, they're going to — they're gonna know when to
23 come in, 'cause they're going to watch what's going on. As soon as it starts going down."³⁴

24 Similarly, in a phone conversation between Harrison Jack and the undercover agent on May 4,
25 2007, Jack discusses the CIA's support the alleged plan:

26 Jack: (referring to Lo Cha Thao) [H]e's got a meeting he's going to
27 bring whatever recommendations they provide to the table next. Ah
28 the Agency is also standing by ready to roll.

Agent: The CIA.

³¹ Chatterjee Decl., Ex. 21. (March 5, 2007 Meeting Transcript at 34:3-5 (TarnEgl 041615)).

³² Chatterjee Decl., Ex. 21. (March 5, 2007 Meeting Transcript at 50:5-11 (TarnEgl 041631)).

³³ *Id.* at 50:23-51:4 (TarnEgl 041631-32).

³⁴ *Id.* at 56:4-8 (TarnEgl 041637).

1 Jack: Yeah.

2 Agent: Ok, good. That's a good thing.³⁵

3 The government also failed to disclose a phone conversation between the agent and Jack on
4 March 7, 2007 in which Jack said he called Amnesty International who had "made an informal
5 call to the CIA."³⁶

6 5. The affidavits failed to disclose that the undercover agent suggested to Jack
7 that *he* had the support of the U.S. military for the plan he was promoting. When Mr. Jack asked
8 him how they would bring missing POW's from the Vietnam War back into the United States
9 while avoiding media exposure, the agent responded, with reference to two United States Air
10 Force bases, "Travis or Beale? Beale would probably be better."³⁷ The agent thus purposely
11 implied that he had access to bases under the control of the Department of Defense and clearance
12 to land an airplane at those bases.

13 6. The government failed to disclose that some of the defendants made
14 statements to show that they believed the CIA was involved. For instance, on April 13, 2007,
15 Jack told the agent in a recorded call:

16 Now the other piece to this that I asked him about, I said where
17 does the Agency stand. What are they going to do for you? And
18 they said they can make funds available as soon as we're able to
19 provide them the intel, the requirements, and you know, meet some
of the other terms. He didn't go into too much detail on that. But
he said he had other meetings that were pending.³⁸

20 And on May 4, 2007, Jack and Lo Cha Thao again discussed the CIA's position on the alleged
21 plan:

22 Lo: Yeah its going to be back where the CIA you know, come in
23 play.

24 Jack: Ok

25 ³⁵ Chatterjee Decl., Ex. 22. (May 4, 2007 H. Jack Call at 3:2-7 (TarnEgl 042187)).

26 ³⁶ Chatterjee Decl., Ex. 23. (March 7, 2007 H. Jack Call at 3:3-4 (TarnEgl 041720)).

27 ³⁷ Chatterjee Decl., Ex. 24. (March 5, 2007 Meeting Transcript at 59:5-12 (TarnEgl 041640)).

28 ³⁸ Chatterjee Decl., Ex. 25. (April 13, 2007 H. Jack Call at 17:24-18:7 (TarnEgl 041893-94)).

1 Lo: and um

2 Jack: Now do you have any subsequent meeting scheduled with
3 them?

4 Lo: There just waiting on us.

5 Jack: Ok, fine that's all I need to hear.

6 Lo: Yeah they are waiting on us and they mobilized everything
7 over there already. They're just waiting for our call and uh.

8 Jack: Oh really.

9 Lo: Yeah they are just waiting for our call so

10 Jack: All right³⁹

11 The government was monitoring these calls as they occurred, yet none of the affidavits discloses
12 the efforts by Jack and others to obtain assistance from the CIA or U.S. government.

13 7. The government failed to disclose the undercover agent's efforts to
14 encourage and propel the alleged plot. For instance, the agent encouraged the "conspirators" to
15 buy more, and more powerful, weapons, including M-16s, anti-armor weapons, grenades,
16 claymore mines, smoke grenades, AT-4 antitank rockets, Stinger missiles, and more. And he
17 pushed Jack and Lo Cha Thao to buy bigger quantities of weapons — warning them, for example,
18 that his "partner was not happy with the size of the first order." Significantly, it was the agent
19 who injected Stinger missiles into the scheme. Jack told the agent that the Laotian government
20 had begun spraying Hmong villagers with what appeared to be "yellow rain" — a chemical
21 weapon — and that "people are starting to drop." The agent volunteered that he had recently
22 acquired three Stinger missiles, and suggested that the villagers could use the missiles to shoot
23 down the helicopters that were spraying them.

24 These omissions are material. Jack's expression of a desire for a peaceful solution to the
25 Laotian persecution of the Hmong, his effort to obtain the support of the CIA, and Jack and Lo
26 Cha Thao's open outreach to various agencies seeking help for the Hmong are inconsistent with

27 ³⁹ Chatterjee Decl., Ex. 26. (May 4, 2007 9:44:07PDT H. Jack Call (Bureau of ATF, San
28 Francisco Division Field Division Transcript)).

1 the alleged secret plot “to overthrow the communist Laotian government” that the government
 2 alleged in the affidavits.⁴⁰ The disclosure of these facts would have undercut the government’s
 3 allegation that there was a conspiracy afoot to overthrow the government of Laos. Had the
 4 government been truthful, the possibility that Jack and some of the defendants would work with
 5 the U.S. government before engaging in any shipment of weapons to the Hmong or other efforts
 6 to assist the Hmong in Laos would have been open. There is nothing inherently criminal in the
 7 desire to assist a hunted and persecuted ethnic group in Laos. Nor would it have been illegal for
 8 the defendants to have worked in full cooperation and partnership with the U.S. government and
 9 to have obtained the necessary licenses. The government’s failure to include this exculpatory
 10 evidence was misleading and impacted the court’s probable cause analysis. *See United States v.*
 11 *DeLeon*, 979 F.2d 761, 764-65 (9th Cir. 1992) (*Franks* hearing warranted where affidavit only
 12 included information about one individual who claimed to smell marijuana on defendant’s
 13 property and omitted information about another eyewitness who did not see or smell anything).

14 **C. The Affidavits Falsely Attribute Incriminating Statements to General**
 15 **Vang Pao, Falsely Cast General Vang Pao as a Ringleader, and Falsely**
 16 **Depict the Other Hmong Defendants as Followers in the Alleged**
Conspiracy.

17 The affidavits contain numerous statements that falsely implicate General Vang Pao in the
 18 alleged plot to overthrow the government of Laos. These misrepresentations were material
 19 because the government presented General Vang Pao as the alleged ringleader of the conspiracy
 20 around whom the other Hmong defendants rallied.

21 The undercover agent’s affidavits falsely implicate General Vang Pao in the alleged
 22 conspiracy by misrepresenting what occurred during a February 7, 2007, meeting.⁴¹ This meeting

23 ⁴⁰ *See, e.g.*, Chatterjee Decl., Ex. 27. (Agent Crowder Affidavit in Support of Search Warrants
 24 of Hue Vang, Youa True Vang, Chue Lo, Seng Vue, Jerry Smith Yang, Salen Tong Va Lor, and
 Nhia Kao at 3:12-15 (TarnEgl 001250)).

25 ⁴¹ Agent Crowder repeated this description in other affidavits submitted in support of the search
 26 warrant and wiretap applications. *See* Chatterjee Decl., Ex. 29. (Agent Affidavit ISO Cont.
 27 Wiretap of H. Jack at 23:20-27:5 (TarnEgl 034808-812)); Chatterjee Decl., Exh. 30. (Agent’s
 28 Affidavit ISO Wiretap of H. Jack at ¶¶ 62-69 (TarnEgl 035400-403)); Chatterjee Decl., Ex. 31.
 (Agent’s Affidavit ISO Lo Cha Thao Wiretap at 21:25-25:11 (TarnEgl 034958-962)); *See also*
 Chatterjee Decl., Ex. 32, at ¶¶ 25-34; Chatterjee Decl., Ex. 33, at ¶¶ 26-35; Chatterjee Decl., Ex.

(Footnote continues on next page.)

1 was critical to the government's case because it was the only time the agent met General Vang
 2 Pao. The February 7th meeting occurred at a crowded Thai restaurant, where a large retinue of
 3 Hmong guests (including the General's wife and many others) dined at two tables. In describing
 4 the meeting, the agents repeatedly and misleadingly attribute supposedly incriminating statements
 5 to "Jack and General Vang Pao" collectively, as though both were actively discussing the
 6 supposed coup plot at the meeting. In fact, General Vang Pao said virtually nothing to the agent
 7 at the lunch meeting. The only exchange between General Vang Pao and the agent that appears
 8 on the tape of the lunch meeting is the following:

9 ATF Under Cover: General

10 Vang Pao: Hi, "Steve". How do you do.

11 ATF Under Cover: Nice to meet you. Nice to meet you.⁴²

12 The government admits that its affidavits misrepresent three key allegedly incriminating
 13 interactions the undercover agent claimed to have with General Vang Pao.⁴³ All of these
 14 statements were included in the undercover agent's affidavits submitted in support of wiretaps
 15 (not at issue in this motion) and then were later again included in the Crowder affidavits.

16 *First*, the declarations state: "During the meeting at the restaurant on February 7, 2007, I
 17 [government agent] told Jack and General Vang Pao that I needed to have them show me on maps
 18 exactly where they needed me to insert both the troops and munitions, . . . [and] [t]hey stated that
 19 they understood and could provide me with maps showing the points of insertion, as well as the
 20 placement of insurgent troops and Lao government troops."⁴⁴ The government admits the
 21 following statement is inaccurate. Indeed, the tapes reveal no such discussion at the lunch
 22

23 (Footnote continued from previous page.)

24 27 at ¶¶ 25-34; Chatterjee Decl., Ex. 28, (Agent's Affidavit ISO Criminal Complaint at 8:13-
 12:5).

25 ⁴² Chatterjee Decl., Ex. 20. (February 7, 2007 Meeting at 8:19-21 (TarnEgl 041497)).

26 ⁴³ Gvt. Opp. 81:16-17; 83:13-15; 85:20-22.

27 ⁴⁴ Chatterjee Decl., Ex. 29. (Agent's Affidavit in Support of an Application for an Application
 for Authorization to Continue to Intercept Wire Communications of H. Jack at 24:22-25:2
 (TarnEgl 034809-10)).

1 meeting and the agent does not remember “whether Vang Pao was a party to or a participant in
2 these noted discussions.”⁴⁵

3 *Second*, the government admits that the following statement—the agent’s description of
4 Jack and General Vang Pao’s insurgency plan—is, in fact, false:

5 Jack and General Vang Pao advised me that the plan was to provide
6 arms to insurgents who were in place in Laos, and to initiate hostile
7 military action in the very near future against military forces of the
8 government of Laos. I was advised that the insurgents would attack
Lao government soldiers and positions and attempt to gain control
of certain areas of the border between Laos and Thailand.⁴⁶

9 The taped record contains no such statement, and the government concedes that the agent “does
10 not believe that Vang Pao affirmatively made the statements in the affidavit.”⁴⁷

11 *Third*, the government admits the following statement is inaccurate: “I told Jack and
12 General Vang Pao that I needed to get an operational briefing from someone doing the operations
13 planning for their insurgent operation, as well as copies of the operations plan.”⁴⁸ The tapes do
14 not disclose any such statement.

15 These concessions that the affidavits contained false information regarding the alleged
16 conspiracy is sufficient to satisfy “substantial preliminary showing” prong of *Franks*. *See*
17 *Chesher*, 678 F.2d at 1360 (holding that defendant was entitled to a *Franks* hearing and noting
18 that “a preliminary showing of actual falsity in the affidavit—is satisfied here by the
19 government’s concession that Agent’s statement that [defendant] was a [Hells Angels] member as
20 of the date of the affidavit, June 13, 1979, was false”).

21 Although the government has since dismissed General Vang Pao from the case, these
22 misrepresentations were material to the government’s assertion of probable cause as to *all* of the
23 Hmong defendants. The government repeatedly cited General Vang Pao’s involvement as

24 _____
25 ⁴⁵ Gvt. Opp. 83:13-15.

26 ⁴⁶ Chatterjee Decl., Ex. 28. (Agent’s Affidavit in Support of a Criminal Complaint at 9:4-10).

27 ⁴⁷ Gvt. Opp. at 81:16-17 (emphasis in original).

28 ⁴⁸ Chatterjee Decl., Ex. 28. (Agent’s Affidavit in Support of a Criminal Complaint at 10:2-5);
Gvt. Opp. at 85:20-22

1 evidence that this conspiracy was plausible, realistic and terrifying.⁴⁹ The government presented
 2 General Vang Pao as the ringleader of the conspiracy⁵⁰ and as the person the other Hmong
 3 defendants would follow.⁵¹ Indeed, the government included the agent's false statements about
 4 the General's role in the conspiracy in every affidavit it filed in support of a search warrant
 5 application.⁵² The government's theory to implicate other Hmong defendants in the alleged
 6 conspiracy was that those Hmong defendants followed General Vang Pao, who was their
 7 historical leader. Thus, by falsely casting General Vang Pao as a ringleader of the conspiracy, the
 8 government also falsely depicted the other Hmong defendants, who were aligned with General
 9 Vang Pao, as participants in the conspiracy. Without General Vang Pao as the glue to keep the
 10 alleged conspiracy together, the government's ability to establish probable cause as to the other
 11 Hmong defendants would have been critically undermined.

12 _____
 13 ⁴⁹ Chatterjee Decl., Ex. 27. (June 1, 2007 Agent's Affidavit in Support of Hue Vang, Youa True
 14 Vang, Chue Lo, Seng Vue, Jerry Smith Vang, and Salen Tong Va Lor Search Warrants at ¶¶ 17-
 15 19, 21, 24-25 (TarnEgl 001254-58)); Chatterjee Decl., Ex. 33. (June 1, 2007 Agent's Affidavit
 16 in Support of Vang Pao Search Warrants at ¶¶ 11, 13, 20, 24, 25, 26, 32, 41, 42, 44, and 57
 17 (TarnEgl 002019-36)); Chatterjee Decl., Ex. 32. (June 1, 2007 Agent's Affidavit in Support of
 18 Lo Thao, Lo Cha Thao, United Hmong International, Inc., Chong Yang Thao, Harrison Jack
 19 Search Warrants at ¶¶ 19, 21, 23-29, 31, 33, 36, 40, 42, 43, 53, 54, 59, 67, and 79 (TarnEgl
 20 0000009-32)); Chatterjee Decl., Ex. 28. (June 4, 2007 Agent's Affidavit in Support of Criminal
 21 Complaint at ¶¶ 15, 17, 19, 20-25, 27, 29, 32, 36-38, 48, 53, and 73).

22 ⁵⁰ Chatterjee Decl., Ex. 35. (July 12, 2007 Bail Hearing Transcript at 58:5-11 ("That doesn't
 23 seem even remotely like General Vang Pao haranguing all the others that they were doing
 24 something illegal and had to stand down. That sounds much more like General Vang Pao
 25 exercising commands and saying: This is your mission. You've been entrusted with this mission.
 26 If you don't accomplish this mission, there's going to be a problem."); *Id.* (July 12, 2007 Bail
 27 Hearing at 58:23-24 ("A more reasonable interpretation, however, is that the haranguing was not
 28 about what to do, but how to do it.")).

⁵¹ Chatterjee Decl., Ex. 30. (March 28, 2007 Agent's Affidavit in Support of Harrison Jack
 Wiretap Application at ¶¶ 22-25 (TarnEgl 035292-94)); Chatterjee Decl., Ex. 29. (April 27, 2007
 Agent's Affidavit in Support of Harrison Jack Wiretap Application at ¶¶ 25-28 (TarnEgl 034794-
 95)); Chatterjee Decl., 31. (May 9, 2007 Agent's Affidavit in Support of Lo Cha Thao Wiretap
 Application at ¶¶ 20, 21, 23, 24 (TarnEgl 034945-46)); Chatterjee Decl., Ex. 33. (June 1, 2007
 Agent's Affidavit in Support of Vang Pao Search Warrant at ¶ 11 (TarnEgl 0020190-20)).

⁵² The two affidavits submitted on June 4, 2007 were based on, and incorporated by reference,
 the statements made in the earlier affidavits and attached those earlier affidavits thereto.
 Chatterjee Decl., Ex. 1. (June 4, 2007 ATF Agent's Affidavit in Support of the Search Warrant
 of 2727 N. Grove Industrial Drive, Unit #141B, Fresno, California at 1:4-10 (TarnEgl 042842));
 Chatterjee Decl., Ex. 2. (June 4, 2007 ATF Agent's Affidavit in Support of Search Warrant of 4
 Computers found at 2727 N. Grove Industrial Drive, Unit #141B, Fresno, California at 1:4-10
 (TarnEgl 002120)).

1 **D. The Affidavits Omit a Rift Among the Defendants and Fail to Disclose the**
 2 **Lack of Any Agreement to Commit Any Illegal Acts.**

3 The government's affidavits omit material information about a rift among the Hmong
 4 defendants. Instead, the government created the false impression that all of the Hmong
 5 defendants supported a purported plot to ship weapons and overthrow the government of Laos
 6 despite the extensive wiretap evidence demonstrating deep and entrenched divisions.

7 *First*, in the affidavits, the agents repeatedly and falsely referred to the alleged conspiracy
 8 itself as "Neo Hom," a Hmong organization founded by General Vang Pao, even while admitting
 9 that "at no time has the term 'Neo Hom' been used by any of the suspects in my presence to
 10 identify their affiliation."⁵³ The use of this term was plainly designed to equate Neo Hom and its
 11 members with the alleged conspiracy.

12 *Second*, the agents omitted from the affidavits the May 2007 directive by General Vang
 13 Pao to Lo Cha Thao that there must not be "any other violence whatsoever." They also omitted
 14 the numerous other statements in wiretapped calls and interviews that disclosed that same thing.
 15 And, they failed to disclose that General Vang Pao had berated certain defendants at the June 2
 16 meeting.⁵⁴ Even while the government had recordings that they intercepted showing General
 17 Vang Pao was opposed to violence, the affidavits misleadingly describe the press reports about the
 18 aftermath of Vang Pao's November 2003 speech calling for reconciliation as evidence that he
 19 now supports violence—something their own evidence established was false.⁵⁵

20 _____
 21 ⁵³ Chatterjee Decl., Ex. 33. (June 1, 2007 Agent Affidavit in Support of Search Warrant of 9302
 22 England Avenue, Westminster, California at 5:15-17 (TarnEgl 002019) ("At no time during this
 23 investigation has a Target Subject or any other Hmong person identified him/herself to me as a
 24 Neo Hom member.")); Chatterjee Decl., Ex. 27. (June 1, 2007 Agent Affidavit in Support of Hue
 25 Vang and others at 8:26-28; 10:20-23 (TarnEgl 001255-57)).

26 ⁵⁴ Chatterjee Decl., Ex. 36. (June 2, 2007 Lo Cha Thao Call at 3 (TarnEgl 039817)).

27 ⁵⁵ Chatterjee Decl., Ex. 33. (June 1, 2007 Agent Affidavit in Support of Search Warrant of 9302
 28 England Avenue, Westminster, California at 5:21-6:1 (TarnEgl 002019-20)); Chatterjee Decl.,
 Ex. 37. (June 3, 2007 Agent Affidavit in Support of Search Warrant of 2409 North First Street,
 Fresno, California at 6:27-7:7 (TarnEgl 001760-61)); *see also* Chatterjee Decl., Ex. 31. (May 9,
 2007 Agent Affidavit in Support of an Application for Authorization to Intercept Wire
 Communications of Lo Cha Thao at 8:23-9:3 (TarnEgl 034945-46)); Chatterjee Decl., Ex. 30.
 (March 28, 2007 Agent Affidavit in Support of an Application for Authorization to Intercept Wire
 Communications of Harrison Jack at ¶ 24 (TarnEgl 035389)); Chatterjee Decl., Ex. 29. (April 27,

(Footnote continues on next page.)

1 *Third*, numerous intercepted telephone calls from Jack or Lo Cha Thao demonstrated that
 2 Vang Pao and other Hmong elders, including Youa True Vang and Chong Yang Thao, were
 3 opposed to doing anything.⁵⁶ In a May 12, 2007 call, for example, Lo Cha Thao was directly
 4 informed that Vang Pao forbade any violence in Laos whatsoever:

5 [B]ut the old man [Vang Pao] emphasized ... this morning
 6 that he think strongly about these work [T]he owners of this
 7 country [US Government] had already hold hands [with Laos], so
 8 that's that. We don't have to make trouble [H]e emphasized I
 9 think is, that part and this work contradict [H]e emphasize very
 10 strong that ... that guy still considers that he is active for ... the
 11 owner of this country [US government] and with the policy he
 12 already have an agreement so that is how our duty is going to go.
 13 **There will not be any other violence whatsoever.** So that is what
 14 has been approved.”⁵⁷

11 *Fourth*, other government recordings also showed a rift among the alleged co-
 12 conspirators.⁵⁸ On one such call, Lo Cha Thao stated: “Don't share ideas anymore. Youa True
 13 and they are done. Chong Yang Thao is done.”⁵⁹ Further intercepted phone calls established that
 14 Vang Pao, in fact, wanted a political solution to the genocide,⁶⁰ and that Vang Pao had insisted

15 (Footnote continued from previous page.)

16 2007 Agent Affidavit in Support of Application for Authorization to Continue to Intercept Wire
 17 Communications of Harrison Jack at 10:18-26 (TarnEgl 034795)).

18 ⁵⁶ The government asserts in its Opposition to Defendants' Motion to Dismiss for Outrageous
 19 Government Conduct that they could not have known the content of Lo Cha Thao's intercepted
 20 phone calls before they received the completed translations in November 2007. However, the
 21 government simultaneously admits that they had access and knowledge of the content of the calls
 22 because they had a Hmong/Lao linguist review completed wiretap intercepts **during** the
 23 investigation. Government's Opposition to Defendants' Motion to Dismiss for Outrageous
 24 Government Conduct, (Docket # 412), p.64 n.42. Moreover, in the very affidavits at issue the
 25 government included discussions from intercepted calls that had occurred in April and May 2007
 26 (see e.g. Chatterjee Decl., Ex. 27. (TarnEgl 001261-62)) so there is no basis for this claim.

22 ⁵⁷ Chatterjee Decl., Ex. 38. (May 12, 2007 Lo Cha Thao Call at 4-5 (TarnEgl 036238-39)).
 23 (emphasis added).

23 ⁵⁸ On April 18, 2007 Harrison Jack informed the ATF UC that there was no agreement between
 24 any of the alleged Hmong participants, Mr. Jack stated: “[m]y guess is their first order will
 25 probably be – the only figure I've heard once over the phone – because they're very reluctant. I
 26 mean – and the other thing is until everybody agrees and they get General Vang Pao's order,
 27 they're very sensitive to making any public statement along those lines.” Chatterjee Decl., Ex. 39.
 28 (April 18, 2007 Meeting at 35-36 (TarnEgl 041965-66)).

27 ⁵⁹ Chatterjee Decl., Ex. 40. (May 18, 2007 Lo Cha Thao Call at 6-7 (TarnEgl 037257)).

1 that defendant Lo Thao resign as President of the 18 Clan, a Hmong organization, if he went
2 along with any plan to use violence.⁶¹

3 The rift among the alleged co-conspirators was even more apparent at a critical meeting
4 on June 2, 2007 attended by a number of the defendants. The government revealed for the first
5 time in a footnote of its opposition brief that an interpreter informed the agents and prosecutors
6 by June 3 that certain telephone intercepts “*appeared to indicate that there was a conflict in the*
7 *group, that Vang Pao was apparently unhappy, that certain people were threatening to resign,*
8 *and that there appeared to be some sort of power struggle.*”⁶² The government apparently did
9 nothing to investigate this critical information before signing the subsequent affidavits for search
10 warrants, and withheld this information from the court.⁶³

11 The omission of a rift among some of the defendants was material because the rift showed
12 that there was no conspiracy, there was no agreement among the defendants, and what some of
13 the defendants might have been doing was not supported, ratified, or approved by other
14 defendants. This information undermines the agent’s claims that the defendants worked together
15 “to coordinate and aid the violent overthrow of the communist Laotian government in order to
16 restore the non-communist Hmong people to power in that country.”⁶⁴ Information about the rift

17 (Footnote continued from previous page.)

18 ⁶⁰ Chatterjee Decl., Ex. 41. (May 20, 2007 Lo Cha Thao Call at 21 (TarnEgl 037493). See also
19 *Id.* at 8-9 (TarnEgl 037480-81). Lo Cha Thao also discussed Vang Pao’s decision to work for a
20 political solution—on a call on May 18, 2007. Chatterjee Decl., Ex. 40. (May 18, 2007 Lo Cha
21 Thao Call at 6-8 (TarnEgl 037256-58); see also Chatterjee Decl., Ex. 42. (June 2, 2007 Lo Cha
22 Thao Call at 3 (TarnEgl 39880); Chatterjee Decl., Ex. 43. (June 3, 2007 Lo Cha Thao Call at 17-
23 18 (TarnEgl 037804-05)).

24 ⁶¹ Chatterjee Decl., Ex. 41. (May 20, 2007 Lo Cha Thao Call at 12 (TarnEgl 037484)).

25 ⁶² Gvt. Opp. at 64 n.42.

26 ⁶³ The two affidavits submitted on June 4, 2007 were based on, and incorporated by reference,
27 the statements made in the earlier affidavits and attached those earlier affidavits thereto.
28 Chatterjee Decl., Ex. 1. (June 4, 2007 ATF Agent’s Affidavit in Support of the Search Warrant
of 2727 N. Grove Industrial Drive, Unit #141B, Fresno, California at 1:7-10 (TarnEgl 042842));
Chatterjee Decl., Ex. 2. (June 4, 2007 ATF Agent’s Affidavit in Support of Search Warrant of 4
Computers found at 2727 N. Grove Industrial Drive, Unit #141B, Fresno, California at 1:8-10
(TarnEgl 002120)).

⁶⁴ Chatterjee Decl., Ex. 32. (June 1, 2007 Agent Affidavit in Support of Search Warrant of Lo
Thao, Lo Cha Thao, United Hmong International, Inc., Chong Yang Thao, Harrison Jack at 3:13-
16; Chatterjee Decl., Ex. 33. (June 1, 2007 Agent Affidavit in Support of Search Warrant of

(Footnote continues on next page.)

1 would have undercut a finding of probable cause as to a number of the defendants and would
2 have established that there was no broad alleged conspiracy. *United States v. Kyllo*, 37 F.3d 526
3 (9th Cir. 1994), is instructive. There, the Ninth Circuit vacated a conviction and remanded the
4 matter for a *Franks* hearing because the affidavit omitted the fact that the defendant's wife (who
5 had been recently arrested for drug use) was living in another state and separated from the
6 defendant. The court found this omission to be material because it would have undermined the
7 suggestion that the defendant "was involved with drugs simply because his wife was." *Id.* at 529.
8 Similarly, here, omission of information concerning the lack of unity among the group was
9 material because, had it been included, it would have undermined the notion that the court should
10 find probable cause against all of the defendants based on the alleged conducts and statements of
11 one or two.

12 **E. The Agent Misrepresented His Alcohol Consumption During the Sting.**

13 The undercover agent also misrepresented his own repeated consumption of alcohol
14 during his meetings with the alleged "conspirators." His affidavit states that he consumed alcohol
15 at the March 5, 2007 meeting with Jack and Lo Cha Thao, suggesting that this was a noteworthy
16 and isolated event.⁶⁵ But he does not disclose that he also consumed alcohol (both beer and hard
17 liquor) on at least the meetings on April 12, April 24, May 3, May 11, and May 23.⁶⁶ Had the
18 agent been truthful about his extensive consumption of alcohol during his interaction with some
19 of the defendants, the court would have been able to more accurately gauge the agent's judgment
20 and recollection of the underlying events.

21 _____
(Footnote continued from previous page.)

22 Vang Pao at 3:13-16 (TarnEgl 002017); Chatterjee Decl., Ex. 27. (June 1, 2007 Agent Affidavit
23 in Support of Search Warrant of Hue Vang, Youa True Vang, Chue Lo, Seng Vue, Jerry Smith
Yang, Nhia Kao Vang at 3:12-15 (TarnEgl 001250)).

24 ⁶⁵ Chatterjee Decl., Ex. 28. (June 3, 2007 Agent Affidavit in Support of the Criminal Complaint
25 at 13:10-12).

26 ⁶⁶ Chatterjee Decl., Ex. 44. (April 12, 2007 Meeting at 3:18-19 (TarnEgl 041788)); Chatterjee
27 Decl., Ex. 45. (April 24, 2007 4/24/07 Meeting at 3:18-4:2, 5:25-6:21 (TarnEgl 042046-49));
28 Chatterjee Decl., Ex. 46. (May 3, 2007 Meeting at 3:8-14 (TarnEgl 042104)); Chatterjee Decl.,
Ex. 47. (May 11, 2007 Meeting at 5/11/07 meeting at 7:8-10 (TarnEgl 042254)); Chatterjee Decl.,
Ex. 48. (May 23, 2007 Meeting at 4:23-25 (TarnEgl 042357)).

1 **IV. WHEN ALLEGATIONS AGAINST INDIVIDUAL DEFENDANTS ARE**
2 **CONSIDERED SEPARATELY, IT IS EVEN MORE CLEAR THAT THE**
3 **GOVERNMENT LACKED PROBABLE CAUSE.**

4 The affidavits that supported the warrants at issue here are rife with false statements and
5 material omissions. The government falsely represented Jack's contact with a "defense
6 contractor," misrepresented discussions that occurred on February 7, 2007, falsely described
7 General Vang Pao as the ringleader despite his vocal opposition to the use of violence, omitted
8 evidence concerning the desire for a peaceful solution to help the Hmong in Laos, omitted
9 evidence regarding numerous discussions about efforts to gain the support of the CIA and U.S.
10 government, omitted information about the undercover agent's encouragement of the alleged plot,
11 omitted information about the agent's repeated alcohol use, and withheld critical information
12 about a rift among the defendants that established that there was no agreement to do anything.
13 Indeed, in the decisions cited above, courts have granted *Franks* hearings based on far less
14 egregious and rampant government misconduct. Absent the misrepresentations and omissions
15 here, none of the affidavits at issue would support a finding of probable cause. However, as
16 shown below, this is more true for those defendants who were barely mentioned in the affidavits
17 and who did not appear on the recorded calls or engage in any conversations with the agent.

17 **A. There Was No Probable Cause to Issue the Search Warrants Regarding**
18 **Defendant Youa True Vang.**

19 In June 2007, defendant Youa True Vang was a 71-year old American citizen with no
20 criminal record who served the U.S. government for 15 years during the Vietnam War. Given the
21 paltry evidence that the government submitted to support the warrants against Youa True Vang,
22 without the misrepresentations and omissions above, the government would not have been able to
23 establish probable cause that defendant Youa True Vang was part of any alleged conspiracy.
24 Other than in the description of the properties to be searched, defendant Youa True Vang is only
25 mentioned 3 times in the affidavit.
26
27
28

- 1 1. He is described as the Founder of the Hmong International New Year
2 organization.⁶⁷ This representation is completely innocuous. The Hmong
3 International New Year is a cultural event held dear to members of the Hmong
4 people everywhere.
- 5 2. The affidavit states that he “looked at and/or handled the firearms” in an RV on
6 February 7, 2007.⁶⁸
- 7 3. The affidavit states that he attended a meeting with a documentary filmmaker, the
8 agent, and other defendants on April 18, 2007, where the agent displayed AK-
9 47s.⁶⁹

10 Other than these allegations, Youa True Vang is not mentioned anywhere in the affidavit. There
11 is no discussion or description of any other conduct by Youa True Vang. And, the affidavits do
12 not attribute any incriminating statements to him. Mr. Youa True Vang’s mere presence at two
13 meetings was insufficient to tie him to any alleged conspiracy. *See, e.g., United States v. Estrada-*
14 *Macias*, 218 F.3d 1064, 1066 (9th Cir. 2000) (holding that, although “defendant must have
15 known that several individuals living around him were engaged in a conspiracy to manufacture
16 methamphetamine, the inference was not enough to permit conviction”; “casual association with
17 conspiring people is not enough”); *United States v. Penagos*, 823 F.2d 346, 349-50 (9th Cir.
18 1987) (presence of defendant at time of cocaine delivery and possible actions as lookout
19 insufficient to convict of conspiracy or possession with intent to distribute).

20 The false statements about General Vang Pao are particularly material to Youa True Vang
21 because the agents were aware that General Vang Pao and Youa True Vang both fought together
22 for the Americans during the Vietnam War. It was a false inference planted in the affidavit that
23 General Vang Pao was the leader and that Youa True Vang was following him in a criminal
24

25 ⁶⁷ Chatterjee Decl., Ex. 27 (June 1, 2007 Agent Affidavit in Support of Search Warrant of Hue
26 Vang, Youa True Vang, Chue Lo, Seng Vue, Jerry Smith Yang, Nhia Kao Vang at 1616-20
(TargEgl 001263)).

27 ⁶⁸ *Id.* at 11. (TarnEgl 001257).

28 ⁶⁹ *Id.* at 12. (TarnEgl 001258).

1 enterprise. Accordingly, the Court should suppress the evidence obtained from the warrants to
2 search Youa True Vang's properties.

3 **B. There Was No Probable Cause to Issue the Search Warrant Regarding**
4 **Defendant Chue Lo.**

5 When the search warrant was issued, in June 2007, Mr. Lo was 61 years old with no
6 criminal record. He served for the United States government in the Vietnam War, beginning in
7 1962, when he was only 15 years old for. Mr. Lo was later recruited by General Vang Pao to
8 serve in the Court system in Laos, which he did until 1975 when he was exiled to Thailand with
9 his family. Mr. Lo has always been close to and loyal to the General. In Thailand, Mr. Lo served
10 as a judge in the refugee camp. Chue Lo moved his family to the United States and has been a
11 permanent resident since 1978. During that time he has engaged in humanitarian efforts to help
12 Hmong refugees in Laos. Given the misrepresentations and omissions in the warrant affidavits,
13 the government would not have been able to establish probable cause that Mr. Lo was part of any
14 alleged conspiracy. Mr. Lo is mentioned along with a chain of other defendants, as having
15 attended meetings with numerous people present for innocuous purposes. However, the
16 government ignores evidence that Chue Lo was unwilling to work with Lo Cha Thao.⁷⁰

17 Mr. Lo was the leader of the Lo clan, part of the 18 member clan council, whose elders
18 preside over Weddings, funerals, divorces, custody issues and other ritual events. Mr. Lo does
19 not speak any English and never had a conversation with the undercover agent. The government
20 did not have recordings of incriminating statements made by Mr. Lo to other defendants.

21 **C. There Was No Probable Cause to Issue the Search Warrant Regarding**
22 **Defendant Chong Yang Thao.**

23 On the date of the arrest, defendant Chong Yang Thao was a 54- year old American
24 citizen with no criminal record. Previously, Mr. Thao served as a soldier under the command of
25 General Vang Pao and the U.S. government from 1968 to 1975. In 1975, Mr. Thao was captured
26 by enemy troops and placed into a concentration camp. After escaping from the concentration

27 ⁷⁰ Chatterjee Decl., Ex. 49. (June 3, 2007 Lo Cha Thao Call at 7 (TarnEgl 036663)).
28

1 camp, Mr. Thao fled to Thailand and lived in a refugee camp until he came to the United States in
2 1978. Mr. Thao was naturalized as a United States citizen in 1986.

3 Other than the description of the properties to be searched, Mr. Chong Yang Thao is only
4 mentioned a handful of times in the affidavit and many of the times he is mentioned involves
5 statements made by Lo Cha Thao, not Mr. Chong Yang Thao.

6 Other than the description of the properties to be searched, Mr. Chong Yang Thao is only
7 mentioned a handful of times in the affidavit and many of the times he is mentioned involves
8 statements made by Lo Cha Thao, not Mr. Chong Yang Thao.

9 1. Mr. Chong Yang Thao is described as attending a meeting on May 7, 2007, at the
10 Amarin Thai Restaurant.⁷¹

11 2. The affidavit states that in a call between Lo Cha Thao and Harrison Jack, that Lo
12 Cha Thao says that Chong Yang Thao head up the Lao Movement for Democracy Office and that
13 President Thao will get up all the checks and everything.⁷²

14 3. The affidavit states that Mr. Thao was present at a meeting on April 18, 2007, with
15 documentary film maker Richard Jellerson, the undercover agent, and other defendants. The
16 undercover agent brought and displayed AK-47 rifles at this meeting.⁷³

17 4. The affidavit states that Lo Cha Thao called Jerry Smith Yang on May 12, 2007.
18 In that call the affidavit claims that Mr. Yang stated that he wired \$1,000.00 to Chong Yang
19 Thao.⁷⁴

20 5. The affidavit states that on May 14 2007, Lo Cha Thao called Lo Thao and said
21 that he (Lo Cha Thao) had a meeting with several men, including Chong Yang Thao, to discuss
22

23 ⁷¹ Chatterjee Decl., Ex. 32 (June 1, 2007 Agent Affidavit in Support of Search Warrant of Lo
24 Thao, Lo Cha Thao, United Hmong International, Inc., Chong Yang Thao, Harrison Jack at 11
(TarnEgl 000012)).

25 ⁷² *Id.* at 21. (TarnEgl 000022).

26 ⁷³ Chatterjee Decl., Ex. 32 (June 1, 2007 Agent Affidavit in Support of Search Warrant of Lo
27 Thao, Lo Cha Thao, United Hmong International, Inc., Chong Yang Thao, Harrison Jack at 26
(TarnEgl 000027)).

28 ⁷⁴ *Id.* at 54. (TarnEgl 000055).

1 the list of items to purchase and that Chong Yang Thao only wanted to buy what was on their
2 list.⁷⁵

3 6. The affidavit states that on May 14, 2007, that Chong Yang Thao called Lo Cha
4 Thao and they discuss Chong Yang Thao calling “David” to get a blueprint.⁷⁶

5 7. The affidavit states that on May 19, 2007, Lo Cha Thao calls Chong Yang Thao
6 and they discuss whether “Grandfather” will attend a meeting.⁷⁷

7 8. The affidavit states that on May 23, 2007, Chong Yang Thao was present at a
8 meeting that occurred at the Hanger 17 Restaurant, along with the Undercover Agent, Harrison
9 Jack, Lo Cha Thao, and Lo Thao. The affidavit states that the undercover showed the group
10 maps. According to the Affidavit, Lo Cha Thao, Lo Thao, and Chong Yang Thao engaged in
11 several conversations in Hmong.⁷⁸

12 Although Mr. Chong Yang Thao is allegedly present at a few meetings, he is never
13 described as being an active participant, but instead is always described as merely being present.
14 Furthermore, he is never described as ever having engaged in any conversations with the
15 undercover Agent or Harrison Jack. Additionally, many of the references to Mr. Chong Yang
16 Thao are made by Lo Cha Thao in his conversations with other people. Mr. Chong Yang Thao’s
17 mere presence and vague references to Mr. Chong Yang Thao by Lo Cha Thao are insufficient to
18 tie him to the alleged conspiracy.

19 Like defendant, Youa True Vang, and former defendant, General Vang Pao, Mr. Chong
20 Yang Thao fought along side the Americans in the Vietnam War. By dismissing the case against
21 General Vang Pao, the alleged leader of this conspiracy, the government has in essence admitted
22 their error in inferring that Mr. Thao and other intended to follow their leader (General Vang
23 Pao), into a criminal conspiracy. The false statements contained throughout the affidavit about
24 the overall conspiracy along with the vague references of mere presence at a few meetings and

25 ⁷⁵ *Id.*

26 ⁷⁶ *Id.* at 55. (TarnEgl 000056).

27 ⁷⁷ *Id.*

28 ⁷⁸ *Id.* at 59-62. (TarnEgl 000060-63).

1 some references about Mr. Chong Yang Thao by Lo Cha Thao are not sufficient probably cause
2 for the search warrant and the court should accordingly suppress the evidence obtained from Mr.
3 Chong Yang Thao's home located at 5796 East Grant Avenue, Fresno, California.

4 **D. There Was No Probable Cause to Issue the Search Warrant Regarding**
5 **Defendant Hue Vang.**

6 Hue Vang is a 41 year old man with no criminal history. His father fought alongside the
7 General during the Vietnam War. After the fall of Vietnam in 1975, the family fled Vietnam first
8 to Thailand to a refugee camp and then to the United States. The affidavit in support of the
9 search warrant provides a paucity of evidence in relation to Hue Vang.

10 1. On February 7, 2007, Hue Vang was present during the lunch meeting at the
11 Amarin Thai Restaurant in Sacramento. He entered the RV and viewed the weapons; the
12 undercover agent gave Hue Vang a memory stick which contained a list of the weapons viewed in
13 the RV. Later that same day Hue Vang provided a map of Laos to the undercover agent.⁷⁹

14 2. On April 18, 2007, Hue Vang was present at a hotel room when several
15 individuals viewed weapons. Many individuals discussed the weapons and, at times, Hue Vang
16 acted as an interpreter. At one point Hue Vang mentions they may need approximately 10,000.
17 That is the sum total of evidence against Hue Vang presented in the affidavit in support of the
18 search warrant. The undercover agent omitted critical information from the affidavit. When
19 poring over the maps in the RV in the parking lot near Amarin Thai Restaurant on February 7,
20 2007, the undercover agent failed to inform the magistrate of the actual conversation. When the
21 undercover agent asked Hue Vang about potential drop points for the weapons, ammunition and
22 troops Hue Vang replied: "For the last 25 to 30 years we haven't even gone that far yet, we
23 haven't - - have any (unintelligible) - -" Harrison Jack interjected: "Just been surviving
24
25

26 ⁷⁹ Chatterjee Decl., Ex. 27. (June 1, 2007 Agent Affidavit in Support of Search Warrant of Hue
27 Vang, Youa True Vang, Chue Lo, Seng Vue, Jerry Smith Yang, Nhia Kao Vang at 14-15
28 (TarnEgl 001261-62)).

1 independently?” And Hue Vang replies: “Yeah. Yeah, just basically now just trying to survive
2 independently. But obviously drop points is very possible ... [.]”⁸⁰

3 The undercover agent summarized the conversation as: “Hue Vang entered the RV and
4 provided the ATF UC with maps of Laos that identified Hmong and Laotian government troop
5 locations; those location indicated where it was likely that Neo Hom would want the weapons and
6 mercenaries air lifted and parachuted into Laos.”⁸¹ The agent’s summary distorts what actually
7 occurred. The actual conversation indicates these folks have been concerned about and trying to
8 help their people for the past 25-30 years. They have not even gotten to the point of determining
9 drop points, they are just trying to help them survive.

10 The undercover agent also omitted critical information concerning the April 18, 2007,
11 meeting at the hotel. Following the meeting, after Hue Vang and the other Hmong defendants left
12 the meeting, Harrison Jack met with the undercover agent and told him: “My guess is their first
13 order will probably be - - the only figure I’ve heard once over the phone - - because they’re very
14 reluctant. I mean - - and the other thing is *until everybody agrees and they get General Vang*
15 *Pao’s order*, they’re very sensitive to making any public statement along those lines.”⁸² It
16 appears that as of April 18, 2007, the group had not yet reached an agreement. Hue Vang was not
17 part of any agreement.

18 **E. There Was No Probable Cause to Issue the Search Warrant Regarding**
19 **Defendant Jerry Smith Yang.**

20 In June 2007, defendant Jerry Smith Yang was a United States citizen with no criminal
21 record who had served the U.S. government for a number of years during the Vietnam War.
22 Given the very limited evidence that the government submitted to support the warrant against
23 Jerry Smith Yang, without the misrepresentations and omissions above, the government would

24 ⁸⁰ Chatterjee Decl., Ex. 20. (Transcript of February 7, 2007 Meeting at 50:15-17 (TarnEgl
25 041539)).

26 ⁸¹ Chatterjee Decl., Ex. 27. (June 1, 2007 Agent Affidavit in Support of Search Warrant of Hue
27 Vang, Youa True Vang, Chue Lo, Seng Vue, Jerry Smith Yang, Nhia Kao Vang at 15 (TarnEgl
28 001262)).

⁸² Chatterjee Decl., Ex. 39. (April 18, 2007 Meeting at 35-36 (TarnEgl 041965-66)).

1 not have been able to establish probable cause that defendant Jerry Smith Yang was part of any
2 alleged conspiracy. Other than in the description of the properties to be searched, defendant Jerry
3 Smith Yang is only mentioned 3 times in the affidavit.⁸³ First, the affidavit states that Jerry Smith
4 Yang attended the meeting with seven other individuals (including Lo Cha Thao) on April 24,
5 2007 at the Hilton Hotel where the undercover agent displayed some weapons.⁸⁴ Second, the
6 affidavit states that Jerry Smith Yang stated in a telephone call with Lo Cha Thao on May 12,
7 2007 that he, Jerry Smith Yang, had wire transferred \$1,000 to his brother, Thomas Yang, in
8 Thailand.⁸⁵ And third, the affidavit states that Jerry Smith Yang called Lo Cha Thao 87 times
9 from March 30, 2007 to May 21, 2007 and received 68 calls from Lo Cha Thao during the same
10 period.⁸⁶ Other than that, Jerry Smith Yang is not mentioned anywhere in the affidavit. There is
11 no discussion or description of any other conduct by Jerry Smith Yang. And, the affidavit does
12 not attribute any incriminating statements to Mr. Yang. Mr. Jerry Smith Yang's mere presence at
13 one meeting would have been insufficient to tie him to any alleged conspiracy. *See, e.g., United*
14 *States v. Estrada-Macias*, 218 F.3d 1064 at 1066; *United States v. Penagos*, 823 F.2d at 349-50
15 (9th Cir. 1987). Nor is the fact that Jerry Smith Yang sent his brother money in any way
16 incriminating. The affidavit does not explain how providing money to a person's brother who is
17 overseas can lead to an inference that an individual is participating in a conspiracy. Nor do the
18 mere number of phone calls between Jerry Smith Yang and Lo Cha Thao incriminate Mr. Yang.
19 With the exception of the information about the wire of \$1,000 to his brother, there is nothing in
20 the affidavit concerning the content of the calls between Jerry Smith Yang and Lo Cha Thao and,
21 while the content of telephone calls could be incriminating, the mere making of calls, without
22 more, cannot. Accordingly, the court should suppress the evidence obtained from the warrants to
23 search Jerry Smith Yang's home.

24 ⁸³ Chatterjee Decl., Ex. 27. (June 1, 2007 Agent Affidavit in Support of Search Warrant of Hue
25 Vang, Youa True Vang, Chue Lo, Seng Vue, Jerry Smith Yang, Nhia Kao Vang at 1-22 (TarnEgl
001248-69).

26 ⁸⁴ *Id.* at 14. (TarnEgl 001261).

27 ⁸⁵ *Id.* at 15 (TarnEgl 001262).

28 ⁸⁶ *Id.* at 16. (TarnEgl 001263).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F. There Was No Probable Cause to Issue the Search Warrant Regarding Defendant Harrison Jack.

Defendant Harrison Jack joins this motion, and moves separately for a *Franks* hearing for the reasons stated in his previously filed motion to suppress wiretap evidence (Dkt. No. 543), and for the additional reasons pertaining individually to his situation contained in his Motion to Suppress Evidence, filed concurrently herewith.

V. CONCLUSION

Based on the foregoing, the Court should suppress all of the evidence obtained through the searches supported by the tainted affidavits. Given the showing made by this motion, the defendants are entitled to an evidentiary hearing where they can question (1) the undercover ATF agent, (2) FBI agent Erik Crowder, (3) prosecutor Ellen Endrizzi, who oversaw the wiretap and search-warrant process, (4) and other appropriate witnesses. Defendants also seek to question the interpreter who informed government agents about disagreements among the defendants in June 2007.

Dated: May 21, 2010

Respectfully submitted,

MORRISON & FOERSTER LLP

By: /s/ James J. Brosnahan
JAMES J. BROSNAHAN
GEORGE C. HARRIS
SOMNATH RAJ CHATTERJEE
MELISSA ANN JONES
Attorneys for Defendant
YOUA TRUE VANG

Dated: May 21, 2010

By: /s/ Daniel J. Broderick
DANIEL J. BRODERICK
Federal Defender
JEFFREY L. STANIELS
BENJAMIN D. GALLOWAY
Assistant Federal Defenders
Attorneys for Defendant
HARRISON JACK

1 Dated: May 21, 2010 By: /s/ Mark J. Reichel
MARK J. REICHEL
Attorney for Defendant
LO CHA THAO

2
3
4 Dated: May 21, 2010 By: /s/ William J. Portanova
WILLIAM J. PORTANOVA
Attorney for Defendant
LO THAO

5
6
7 Dated: May 21, 2010 By: /s/ Krista Hart
KRISTA HART
Attorney for Defendant
HUE VANG

8
9
10 Dated: May 21, 2010 By: /s/ Dina Lee Santos
DINA LEE SANTOS
Attorney for Defendant
CHONG YANG THAO

11
12
13 Dated: May 21, 2010 By: /s/ Michael B. Bigelow
MICHAEL B. BIGELOW
Attorney for Defendant
SENG VUE

14
15
16 Dated: May 21, 2010 By: /s/ Shari Rusk
SHARI RUSK
Attorney for Defendant
CHUE LO

17
18
19 Dated: May 21, 2010 By: /s/ Danny D. Brace, Jr.
DANNY D. BRACE, JR.
Attorney for Defendant
NHIA KAO VANG

20
21
22 Dated: May 21, 2010 By: /s/ Hayes H. Gable, III
HAYES H. GABLE, III
Attorney for Defendant
DANG VANG

23
24
25 Dated: May 21, 2010 By: /s/ Bruce Locke
BRUCE LOCKE
Attorney for Defendant
JERRY YANG

26
27
28

