

1 DANIEL J. BRODERICK, Bar #89424
Federal Defender
2 BENJAMIN D. GALLOWAY, Bar # 214897
JEFFREY L. STANIELS, Bar #91413
3 Assistant Federal Defenders
801 I Street, 3rd Floor
4 Sacramento, California 95814
Telephone: (916) 498-5700
5
6 Attorneys for Defendant
HARRISON JACK

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,) NO. CR-S-07-0266 FCD-DAD
12)
Plaintiff,)
13)
v.) DEFENDANTS' NOTICE AND MOTION
14 HARRISON ULRICH JACK) TO SUPPRESS EVIDENCE OBTAINED
15) PURSUANT TO THE EXECUTION OF
Defendants.) SEARCH WARRANTS 2:07-SW-0153 AND
16) 2:08-sw-0442, MEMORANDUM OF LAW;
17) ATTACHMENT; EXHIBITS
Date: September 20, 2010
Time: 10:00 p.m.
Judge: Hon. Frank C. Damrell

18 **TO: BENJAMIN WAGNER, United States Attorney, and to ROBERT TICE-RASKIN,**
19 **ELLEN ENDRIZZI, JILL THOMAS, Assistant United States Attorneys, counsel**
for plaintiff:

20 **PLEASE TAKE NOTICE** that on September 20, 2010, at 10:00 a.m., or as soon thereafter as
21 the matter may be heard before the Honorable Frank C. Damrell, Senior United States District Judge,
22 defendant Harrison Ulrich Jack, by and through his counsel, will and hereby does move this Court for
23 an order suppressing as evidence in the above case any and all physical evidence, statements,
24 observations, and derivative evidence obtained as the result of:

25 (1) the execution of search warrant 2:07-sw-0153 GGH at Mr. Jack's residence in Woodland,
26 California on June 4, 2007; and
27
28

1 (2) the later search of electronically stored data seized from Mr. Jack’s residence, which data
2 was first searched without proper authority, and later under the purported authority of search warrant
3 2:08-sw-0442 KJM, allegedly executed on October 26, 2008¹.

4 In the alternative, defendant Jack requests a hearing pursuant to *Franks v. Delaware*, 438 U.S.
5 154, 98 S.Ct. 2674 (1978).²

6 This motion is based upon the attached Memorandum of Points and Authorities, attachments,
7 exhibits, the files and records of this case, and any argument or evidence which may be presented
8 during the pendency of this motion and at the hearing on this and related motions.

9 Dated: May 21, 2010

Respectfully submitted,

10 DANIEL J. BRODERICK
11 Federal Defender

12 /s/ Jeffrey L. Staniels
13 JEFFREY L. STANIELS
14 BENJAMIN D. GALLOWAY
15 Assistant Federal Defenders
Attorneys for Defendant
HARRISON JACK

16 Dated: May 21, 2010

/s/ Mark J. Reichel
17 MARK J. REICHEL
18 Attorney for Defendant
LO CHA THAO

19 Dated: May 21, 2010

/s/ William J. Portanova
20 WILLIAM J. PORTANOVA
21 Attorney for Defendant
LO THAO

22
23 ¹

24 Where necessary to distinguish the two search warrants, the Jack residence warrant will be referred
25 to as “warrant 153” or “SW 153.” The computer/media evidence warrant will be referred to as
“warrant 442” or “SW 442”

26 ²

27 Mr. Jack also joins the motion for *Franks* hearing to be filed on behalf of defendant Youa True
28 Vang, CR ____ .

1 Dated: May 21, 2010

MORRISON & FORESTER

2

/s/ James J. Brosnahan
JAMES J. BROSNAHAN
Attorneys for Defendant
YOUA TRUE VANG

3

4

5 Dated: May 21, 2010

/s/ Krista Hart
KRISTA HART
Attorney for Defendant
HUE VANG

6

7

8 Dated: May 21, 2010

/s/ Dina Lee Santos
DINA LEE SANTOS
Attorney for Defendant
CHONG YANG THAO

9

10

11 Dated: May 21, 2010

/s/ Michael B. Bigelow
MICHAEL B. BIGELOW
Attorney for Defendant
SENG VUE

12

13

14 Dated: May 21, 2010

/s/ Shari Rusk
SHARI RUSK
Attorney for Defendant
CHUE LO

15

16

17 Dated: May 21, 2010

/s/ Danny D. Brace, Jr.
DANNY D. BRACE, JR.
Attorney for Defendant
NHIA KAO VANG

18

19

20 Dated: May 21, 2010

/s/ Hayes H. Gable, III
HAYES H. GABLE, III
Attorney for Defendant
DANG VANG

21

22

23 Dated: May 21, 2010

/s/ Bruce Locke
BRUCE LOCKE
Attorney for Defendant
JERRY YANG

24

25

26 Dated: May 21, 2010

/s/ Peter Kmeto
PETER KMETO
Attorney for Defendant
THOMAS YANG

27

28

TABLE OF CONTENTS

1

2

3 List of Attachments and Exhibits to Motion to Suppress. iii

4 Table of Authorities iv

5 MEMORANDUM OF POINTS AND AUTHORITIES 1

6 I. INTRODUCTION 1

7 II. SUMMARY OF ARGUMENT 2

8 III. STATEMENT OF OMITTED FACTS REGARDING THE UNDERLYING

9 INVESTIGATION THAT ARE MATERIAL TO THE ISSUANCE OF

10 SEARCH WARRANTS 3

11 A. Initial Conversations Between Jack and Agent 4

12 B. February 7, 2007 Meeting With General Vang Pao

13 and Others 7

14 C. March 1, 2007 Phone Message from Harrison Jack 8

15 D. March 5, 2007 Meeting Between Agent and Jack 8

16 E. April 3, 2007 Call Between Mr. Jack and the Agent 10

17 IV. STATEMENT OF RELEVANT FACTS REGARDING THE SEARCHES 10

18 A. Search Warrant 153 10

19 B. The Unauthorized, Warrantless Search of Electronic Data Seized From the

20 Jack Residence 12

21 C. Search Warrant 442 13

22 V. APPLICABLE LAW 15

23 A. The Fourth Amendment Exclusionary Rule 15

24 B. The Prohibition Against General Warrants 15

25 C. The Requirement of Probable Case to Search 16

26 D. Standing Requirement 17

27 VI. THE SECTIONS OF SEARCH WARRANT 153 RELATING TO COMPUTER

28 RECORDS AND FILES CONSTITUTED AN ILLEGAL GENERAL WARRANT 18

VII. THE REMAINDER OF SEARCH WARRANT 153 WAS ALSO AN ILLEGAL

GENERAL WARRANT 22

1	VIII. SEARCH WARRANT 153 LACKED PROBABLE CAUSE TO BELIEVE ANY EVIDENCE EXISTED OR THAT ANY EVIDENCE WOULD BE FOUND	
2	IN MR. JACK'S HOME	22
3	IV. ALL EVIDENCE OBTAINED PURSUANT TO SEARCH WARRANT 153 AND SEARCH WARRANT 442 INVOLVED ILLEGAL, TAINTED FRUIT	24
4		
5	1. Search Warrant 153 is the Fruit of the Illegal Wiretap Warrants and Extensions	24
6		
7	2. The Warrantless Search of the Computer Evidence Directly Concerns Evidence Seized Pursuant to SW 153	25
8		
9	3. Search Warrant 442 Also Concerns Computer Evidence Seized Pursuant to SW 153, and is Also the Fruit of the Violation of the Handling Requirements of Evidence Seized Under the Authority of Search Warrant 153	25
10		
11	CONCLUSION	26
12	ATTACHMENT A	A1

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **ATTACHMENTS AND EXHIBITS TO MOTION TO SUPPRESS**

- 2 Attachment A. Table of Material Misstatements In and Omissions From June 1, 2007, Affidavit
3 in Support of Application for Search Warrant 2:07-se-0153 for Authorization to
4 Search Residence of Harrison Jack. (Exhibit A)
- 5 Exhibit A Application And Affidavit For Search Warrant (No. 2:07-sw-0153 GGH)
- 6 Exhibit B Search Warrant (No. 2:07-sw-0153 GGH)
- 7 Exhibit C Attachment B-16 to Search Warrant (No. 2:07-sw-0153 GGH) - Items to Be Seized,
8 Including Computer/Electronic Evidence Search Procedure.
- 9 Exhibit D Search Warrant Return and ATF "Receipt for Property and Other Items."
- 10 Exhibit E ATF Report of Investigation No. 48 Bates Stamped "Tarn Egl 034721- Tarn Egl 03723"
- 11 Exhibit F ATF Report of Investigation No. 98 Bates Stamped "Tarn Egl 083810- Tarn Egl
12 083811"
- 13 Exhibit G Application And Affidavit For Search Warrant (No. 2:08-sw-0442 KJM)(First pages
14 only of cited attachments)
- 15 Exhibit H Search Warrant (No. 2:08-sw-0442 KJM)
- 16 Exhibit I Search Warrant Return (No. 2:08-sw-0442 KJM)
- 17 Exhibit J Excerpts of Certified Transcripts of Recorded Conversations and cited in the motion
- 18 Exhibit K Excerpts of Non-certified Transcripts of Recorded Conversations Provided in Discovery
19 and Cited in the Motion
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

1 **TABLE OF AUTHORITIES**

2 **FEDERAL CASES**

3 *Andresen v. Maryland*,
4 427 U.S. 463 (1976) 16

5 *Coolidge v. New Hampshire*,
6 403 U.S. 443 (1971) 15

7 *Durham v. United States*,
8 403 F.2d 190 (9th Cir. 1968) 17

9 *Franks v. Delaware*,
10 438 U.S. 154, 98 S. Ct. 2674 (1978) 2, 24

11 *In Re Grand Jury Subpoenas*,
12 926 F.2d at 857 16

13 *Illinois v. Gates*,
14 462 U.S. 213 (1983) 3, 16, 17

15 *Katz v. United States*,
16 389 U.S. 347 (1967) 17

17 *Marron v. United States*,
18 275 U.S. 192 (1927) 15

19 *Minnesota v. Olson*, ,
20 495 U.S. 91 (1990) 17

21 *Segura v. United States*,
22 468 U.S. 796 (1984) 24

23 *Stanford v. Texas*,
24 379 U.S. 476 (1965) 15, 16

25 *United States v. Abrams*,
26 615 F.2d 541 (1st Cir. 1980) 20

27 *United States v. Baldwin*,
28 987 F.2d 1432 (9th Cir. 1993) 16

United States v. Christine,
563 F. Supp. 62 (D. N.J. 1983) 16

United States v. Comprehensive Drug Testing, Inc.,
579 F.3d 989 (9th Cir. 2009)(en banc) 21

United States v. Grandstaff,
813 F.2d 1353 (9th Cir. 1987) 17

1	<i>United States v. Hillyard</i> ,	20
2	677 F.2d 1336 (9th Cir. 1982)	
3	<i>United States v. Holzman</i> ,	15
4	871 F.2d 1496 (9th Cir. 1989)	
5	<i>United States v. Honore</i> ,	20
6	450 F.2d 31 (9th Cir. 1971), cert. denied, 404 U.S. 1048, 30 L. Ed. 2d 740,	
7	92 S. Ct. 728 (1972) (<i>citing Stanford v. Texas</i> , 379 U.S. 476, 13 L. Ed. 2d	
8	431, 85 S. Ct. 506 (1964)).	
9	<i>United States v. Hurt</i> ,	15
10	795 F.2d 765 (1986)	
11	<i>United States v. Kow</i> ,	19, 20
12	58 F.3d 423 (9th Cir. 1995)	
13	<i>United States v. Lingenfelter</i> ,	17
14	997 F.2d 632 (9th Cir. 1993)	
15	<i>United States v. Rubio</i> ,	16, 17
16	727 F.2d 786 (9th Cir. 1983)	
17	<i>United States v. Spilotro</i> ,	15
18	800 F.2d 959 (9th Cir. 1986)	
19	<i>United States v. Tamura</i> ,	20, 21
20	694 F.2d 591 (9th Cir. 1982)	
21	<i>United States v. Towne</i> ,	15
22	997 F.2d 537 (9th Cir. 1993)	
23	<i>United States v. Washington</i> ,	16
24	797 F.2d 1461 (9th Cir. 1986)	
25	<i>United States v. Whitney</i> ,	16
26	633 F.2d 902 (9th Cir. 1980), cert. denied, 450 U.S. 1004 (1981)	
27	<i>Weeks v. United States</i> ,	15
28	232 U.S. 383 (1914)	

FEDERAL STATUTES

23	26 U.S.C. § 5841(b)	3
24	U.S. Const., Amend. IV	15
25	<u>LaFave, Search and Seizure: A Treatise on the Fourth Amendment</u> ,	17
26	4th Ed., § 3.7(d), (West, 2004)	

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On June 1, 2007, the government submitted an application and affidavit for a search warrant,
4 No. 2:07-sw-0153 GGH, CR 1, Ex. A, infra, to U.S. Magistrate Judge Gregory G. Hollows and
5 obtained a search warrant, Id. CR 1-2, Ex. B., infra., authorizing a search of Harrison Jack’s
6 residence in Woodland, California. The search warrant included a protocol or procedure to be
7 followed with regard to the search of computers and other media which stored electronic data. Ex. B,
8 pp. 5-7, Ex. C.³ Search warrant 153 was executed on the morning of June 4, 2007. The return on that
9 search warrant was filed on June 19, 2007. Id. CR 3, Ex. D., infra.⁴

10 On October 16, 2008, the government applied for a search warrant, No. 2:08-sw-0442 KJM, CR
11 1, Exh. G., infra, for authorization to search ALL the computer equipment and electronic media it had
12 seized 17 months earlier from several defendants in this case. The search warrant issued, Id. CR 2,
13 Exh. H, infra. According to the return, Id. CR 3, Exh. I, infra, the warrant was executed on October
14 26, 2008.

15 As reported in the affidavit in support of search warrant 442, the earlier affidavit submitted in
16 support of search warrant 153, had also been submitted in support of 16 other search warrants issued at
17 the beginning of June. Exh. G, infra. at 3. Although different allegations were included in an affidavit
18 used in support of a 17th search warrant issued for the residence of David Vang in mid-June, Id., that
19 affidavit included the same computer/electronic data search procedures and protocol as the affidavit
20 for SW 153. See 2:07-sw-0182 CR 1,3. On that basis all defendants join this motion to the extent it

21 _____
22 ³

23 Exhibit C is an exact copy of Exh. B, pp. 5-7, and is included separately for ease of reference.

24 ⁴

25 Exactly what the government seized and how they have maintained it is something of a mystery.
26 The return notes the seizure of 18 items. A substantially contemporaneous ATF report identifies 25
27 items. Ex. E, infra. Another ATF report notes a forensic analysis being conducted on “(N-Force
28 Items #5, 9, 23,& 278) seized on June 4, 2007 from [the Jack residence].” Ex. F, infra. "Item 278"
is identified in the affidavit in support of warrant 442, Ex. G at 5, infra, as having been seized from
the residence of Nhia Vang, not from the Jack residence.

1 challenges compliance with computer search protocols. All defendants except David Vang join this
2 motion with respect to the challenge to the adequacy of the probable cause showing in the affidavit
3 that seizable evidence would be found in a particular residence, and the attack on the warrant as a
4 prohibited general warrant.

5 **II. SUMMARY OF ARGUMENT**

6 Search warrant 153 is a prohibited general warrant which authorized a search without
7 appropriate limitation of all of Mr. Jack's and other defendants' private records, computer records, and
8 other electronic storage media, regardless of a nexus between the records and any alleged criminal
9 activity. To the extent warrant 153 attempted to identify some specific records, files, or evidence, the
10 warrant application lacked any probable cause that these records, files, or evidence existed or that the
11 identified evidence would be found in the defendants' homes.

12 In addition, the affidavit in support of the request to search was so riddled with affirmative
13 misstatements and omissions of material facts that no reliable determination of probable cause based
14 on the affiant's assertions can be made, even after misstatements are stricken and omissions are added.
15 The application for warrant 153 promised that specific protocols would be followed regarding the
16 seizure and search of computer records and electronic media, and the order approving the warrant
17 required compliance with the indicated protocols. However, the government utterly failed to follow
18 the mandatory protocols.⁵

19 The second search warrant (warrant 442) was likewise issued without probable cause and based
20 upon several material false statements and omissions in the warrant application. In addition, warrant
21 442 was requested in bad faith in that it sought to obtain impermissible *post hoc* authorization for a
22

23
24 ⁵ Despite examining the discovery in this case, as well as the actual evidence seized from the
25 Mr. Jack's home that remains in the government's possession, the defense is unable to fully
26 outline the timing and methodology used by government personnel in conducting its search
27 of electronically stored data. To the extent the government fails to provide a full explanation
28 of its search of this evidence, the defense seeks a hearing where such a explanation can be
obtained.

1 search that had already been conducted without a warrant six to ten months earlier⁶, at least in the case
2 of hardware belonging to Mr. Jack and to Mr. Nhia Vang, and was done without regard to search
3 protocols which the courts had imposed at the government's request.

4 Finally, the two search warrants, as well as all evidence seized pursuant to these warrants, were
5 the illegal fruits of illegal wiretaps on Mr. Jack's home phone, Mr. Jack's cell phone, and defendant
6 Lo Cha Thao's telephone. The validity of those wiretaps is the subject of a separate motion filed on
7 behalf of Mr. Jack. CR 543.

8 **III. STATEMENT OF OMITTED FACTS REGARDING THE UNDERLYING**
9 **INVESTIGATION THAT ARE MATERIAL TO THE ISSUANCE OF SEARCH**
10 **WARRANTS.**

11 The affidavit for SW 153 (Exh. A, *infra*) was filed on June 1, 2007. As outlined below, a valid
12 search warrant is limited to evidence relating to a specified crime which there is probable cause to
13 believe will be found in the place to be searched. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). The
14 crimes identified in the search warrant affidavit all relate to the alleged effort to coordinate and aid the
15 violent overthrow of the Laotian government through the use of illegally acquired and possessed
16 weapons. *See generally* ¶¶ 5-6, Exhibit A, *infra*. In this case, the government was repeatedly advised
17 of legal, humanitarian efforts engaged in by Mr. Jack and several other defendants that related to
18 Hmong people in the United States, in refugee camps in Thailand, and in Laos. Most of this
19 information was intentionally omitted from the affidavit for search warrant in order to obtain
20 authorization for an illegal general search of any documents, records, or materials at the homes of
21 Harrison Jack and the other defendants, without any limitation as to time or subject matter. Relevant
22 facts known to the government prior to the application for search warrant are listed below. Those facts
23 which were intentionally omitted from the search warrant affidavit are underlined.

24
25
26
27
28
////

6

that is, between December 19, 2007, and March 24, 2008, a time period which occurred after
the authority to search under search warrant 153 had expired and before search warrant 442
was ever obtained. See Ex. F, *infra*. at 1.

1 **A. Initial Conversations Between Jack and Agent**

2 Harrison Jack was informed by Lo Cha Thao that the Laotian government had issued a
3 genocide order to exterminate Hmong people residing in remote areas within Laos. Jack was further
4 told that the Hmong people did not have access to modern firearms that they could use to defend
5 themselves as they tried to get out of the country. Jack was told that the Hmong leadership was
6 exploring every option to save the lives of these people and he was asked to inquire whether there was
7 any way to provide these people with modern guns, if that was an option that the Hmong leadership
8 ultimately decided to employ. Exh. I, infra, Disc. TE041425 and TE041408.⁷

9 Some time prior to September 25, 2006, Jack contacted Namon Hawthorne and informed him
10 of this situation.⁸ After the September 25, 2006, conversation, Jack had no further discussions with
11 Hawthorne about the possible purchase of any weapons. Exh. I, Disc. TE042546-TE042552.

12 Almost four months later, on January 22, 2007, Jack received a call from ATF undercover agent
13 “Steve” (the affiant on the Jack and Lo Cha Thao Affidavits and the Jack Extensions; hereinafter
14 “Steve” or “the agent”). Their conversation went in part as follows:

15 Steve: ...I talked to Namon quite a bit about your problem, and, uh, he asked that I meet
16 with you, so I thought I'd give you a call and -- and, uh, see if you wanted to meet and
talk.

17 Jack: Well, now, what problem are you talking about?

18 Steve: Uh, problem in East Asia, AK's.

19 Jack: Oh. Oh. Okay. Okay. Golly sakes, that's a long time ago.

20 Exh. I, Disc. TE041371-TE041373.

23 ⁷Relevant Tarnished Eagle (“TE”) bates-stamped discovery is attached hereto in sequential
24 order as “Exhibit I.”

25 ⁸ Previously, in March, 2006, Jack had contacted Mr. Hawthorne concerning proprietary
26 technologies that Hawthorne posted on the internet that Jack hoped might be used in the
27 cleanup of closed military bases. Hawthorne also promoted a treated water that he called
28 “Kinesis Water,” that Jack thought might be marketed in the Hmong community.

1 Steve and Jack then met at a restaurant on January 25, 2007. Jack told Steve that the Hmong
2 had contacted him months ago about weapons and that until Steve called, Jack thought the whole thing
3 had fallen through. Steve initiated the conversation about weapons. Steve unilaterally volunteered
4 that he could get more than 500 AK-47s and that he could also get M-16 rifles. Exh. I, Disc.
5 TE041383-TE041384. Steve also stated that before any weapons could be delivered, he would require
6 “money up front, half of it up front and the rest of it on delivery.” Jack stated that the Hmong were
7 considering options. One was to bring AK-47 rifles into the country and the other was to purchase
8 weapons from disillusioned, underpaid Laotian soldiers inside Laos. Jack told Steve that he did not
9 know what the Hmong in this country were going to do. Jack then told Steve the following:

10 You decide how you want to handle all that. I’m just interested in the basics, pass that on, see if
11 they can’t -- you know, however you want to do it. If you want to follow-up with them, I can
12 give you the name or vice-a-versa, depending upon what the feedback is. My thought would be
13 pass it on to them, get a feel for what their interest level is, what their priorities. Because their
14 situation’s changing daily.

15 Exh. I, Disc. TE041392.

16 Jack further informed Steve that he had worked with General Vang Pao for the last ten years,
17 not on formal or military operations, but on civic efforts, education, and youth development. Jack told
18 Steve that one of the avenues being pursued was a presentation to the U.N. regarding the Hmong
19 situation in Laos. Jack also stated:

20 Right now, like I was saying, I’ve got no idea what they’re going to do tomorrow or how
21 they’re going to approach the situation. I know they’re very sensitive to protecting their people.
22 They’re very sensitive for responding to this genocide order that came out. And the priorities,
23 you know, could shift drastically...

24 Exh. I, Disc. TE041408.

25 The following exchange then took place between Jack and Steve:

26 Jack: Okay, let me give you a scenario and you can use this as a basis for, you know,
27 analyzing or looking at things further if you choose to. This group that’s meeting right
28 now, is seriously considering promoting free democratic elections inside Laos as soon as
29 possible.

30 Steve: And willing to use force to try to get –

31 Jack: Preferably not. They want to do it differently, and they’ve got – you see, if they
32 can bring – if they can get those documents out. If they can – if they can get those

1 communist documents that actually stated active genocide, open, you know, genocide on
2 the Hmong people...If they can get exposed publicly, they can leverage that. They can
3 create havoc with having the documents. So, they get public sympathy. They get the
4 media involved. They could create a set of circumstances that would be very
5 embarrassing to the communists. It might bring them to their knees relative to how they
6 handle the Hmong. At least open the borders. You see, their primary objective is to get
7 their people out of Laos and across the border into Thailand. They don't care about
8 taking over the government. They don't want to do that. They figure it's just a matter of
9 time.

10 There's a certain group that's surrounded right now. Okay. There's about five to eight
11 thousand of 'em that are armed, that are guerillas that have families, that are basically hiding
12 and they're in the bush, okay? Those are the ones that need refuge or asylum...."

13 Exh. I, Disc. TE041424-TE041425.

14 Steve then asked Jack if the guerillas are fighting the communists right now on a regular basis
15 to try to overthrow the government. Jack responded, "No. No. No. They're trying to survive. They
16 basically have pulled together out of – out of collective security in order to protect themselves and
17 their families." Jack concluded the meeting with Steve by telling him that the Hmong will defer to
18 General Vang Pao on how to proceed and that this thing [the weapons purchase] could unwind and the
19 Hmong could decide to go in another direction.

20 On January 31, 2007, Jack left the following message on Steve's phone:

21 Steve, Harrison Jack. Just by way of feedback, it doesn't look like the Hmong
22 community is going to be in a position to continue with their activities. They're reacting
23 right now to this genocide order, and I think they're going to work internally, relative to
24 any future purchases... They've made some final decisions over the weekend meeting,
25 and then yesterday, they sort of came to a - a position that I'm passing on to you right
26 now.

27 Exh. I, Disc. TE041451.

28 Steve then initiated an unsolicited call to Jack on February 1, 2007. Steve volunteered that he
29 talked to some people who could deliver into the location. Steve also volunteered that he had boots on
30 the ground "for technical assistance"; men who could provide instruction and other specialized
31 services. Steve also volunteered that he had "other things," some "belt fed things and anti-armor type
32 of things." Exh. I, Disc. TE041457. Jack told Steve that he had heard the Communist forces inside the

1 country were selling their weapons for \$50 each and that this “lends itself to a more effective response
2 on their part.” Exh. I, Disc. TE041461.

3 **B. February 7, 2007, Meeting With General Vang Pao and Others**

4 On February 7, 2007, a meeting occurred at a crowded Sacramento restaurant, where a large
5 group of Hmong people (including General Vang Pao’s wife and many others) were eating lunch at
6 separate tables. Jack informed Steve that he had just received a copy of the genocide order and that he
7 was coordinating the media. Jack also stated that after the lunch meeting, the Hmong leadership
8 would be discussing what they felt they could generate over a short period of time. Jack and Steve
9 continued their conversation:

10 Jack: There’s basically two levels here. And this critical level is a combination of
11 political and extraction. In other words, trying to get these people out from an area that
12 they’re encircled right now.

13 Steve: So they’re trapped?

14 Jack: I can’t say they’re trapped, but they’re heading in that direction. The Laotian
15 [unintelligible] is leading in troops to try to encircle.

16 The conversation about the Hmong in Laos resumed:

17 Jack: We got women and children. I mean this is [unintelligible] Chief Joseph moving
18 the Nez Perce tribe.

19 Steve: Yeah.

20 Jack: You know, it’s the same operation.

21 Steve: Yeah.

22 Jack: It’s a retreat, retrograde with two – two and three generations involved.

23 Steve: Right. I understand.

24 Jack: What I’d like to be able to do is secure the Thai border crossings and avenues that
25 would allow them choices or, you know – without being totally committed to one path
26 instead of having –

27 Steve: Right.

28 Jack: -- multiple choices.

Exh. I, Disc. TE041501-TE041507.

1 The group ultimately left the restaurant to view the weapons in the RV. Steve asked for the
2 coordinates of the location where the weapons would be dropped. Defendant Hue Vang subsequently
3 entered the RV and showed the agent a map that he had put together the previous night that he said
4 showed the location where the Lao military strong points were, the locations where the Hmong were,
5 and the ideal crossing points on the border. The agent emphasized after receiving the map that
6 “nothing moves until I get half the money, until you put your order in and I get half the money.” Exh.
7 I, Disc. TE041537-TE041540. See also TE041927.

8 **C. March 1, 2007, Phone Message from Harrison Jack**

9 On March 1, 2007, Harrison Jack left the following phone message on the agent’s telephone:

10 Jack: Steve, Harrison. Just got back. I’ve only talked with Lo once. He and the
11 leadership have all moved on back to Wisconsin and Minnesota this weekend, meeting
12 with Congressional Reps, state legislators, etc., in order to generate some political
13 support for their efforts.

14 **D. March 5, 2007, Meeting Between Agent and Jack**

15 On March 5, 2007, the agent met Jack at a restaurant. When the agent asked Jack what was
16 going on, Jack responded that the Hmong were people who follow and that Vang Pao was a leader.
17 Jack further stated that Vang Pao was not the kind of person who killed people. Exh. I, Disc.
18 TE041606-TE041608.

19 The two then discussed the genocide order at length. The agent compared what was happening
20 in Laos to Nazi Germany’s final solution. Jack related how the Hmong wanted a conference about the
21 issue that could involve Americans “and anybody else they could.” Jack helped get people involved in
22 the conference from all over the country. “So we had a good meeting, good discussion, basically
23 focused on strategic planning relative to political issues, who needs to be contacted.” Jack related how
24 one person at this meeting called California Senator Feinstein’s office to arrange a meeting with her
25 staff, and how others set up meetings with Congressional representatives in Minnesota and Wisconsin.
26 Jack asked Steve if he knew anyone who could validate the genocide order. Exh. I, Disc. TE041608-
27 TE041616.
28

1 Jack related how the optimum strategy in his opinion was to get the right political support for
2 the Hmong. Jack mentioned that he knew someone in Senator Feinstein's office and that he was
3 hoping to contact. "Now, simultaneously to that, I've got them [the Hmong] to organize internally into
4 various subgroups or committees that focus on media, legal issues, fund raising, operations, you know,
5 all that kind of stuff." Jack asks the agent if he knows anyone who would "access the people." The
6 two then engaged in the following discussion:

7 Steve: You need to sit down with their military guys, sit down talk about this, plan it
8 out. Because you know as well as I do, you know, if you don't have a plan in place, an
9 objective set forth for – for the team, you know what they're going to do. They're going
10 to set up ambushes. They're going to do what they do best.

11 Jack: Yeah.

12 Steve: They're going to set up ambushes, and they're going to kill bad guys, which is all
13 great, fine and dandy. I mean, I'm all for killing bad guys. But they're an asset that
14 you're going to want to use to –

15 Jack: Use to --

16 Steve: -- to do some key things –

17 Jack: Yeah, right, yeah.

18 Steve: -- and not waste – like just killing a guy walking down the trail.

19 Jack: In fact, ideally, and I told Lo this, I said, "The optimum takeover is completely
20 bloodless. If you can hit the key points inside, transition this thing – because they've got people even
21 close to senior leadership in the military. They've got the military hierarchy. To me, that's the
22 most critical piece to this."

23 Exh. I, Disc. TE041635.

24 Jack then mentioned to Steve that he would get an update from Lo Cha Thao, but that Lo
25 "won't talk certain things over the phone." Steve asked where the Hmong were with fund raising with
26 respect to purchasing weapons and Jack stated that "best of my knowledge, they haven't initiated any
27 fund-raising." Jack mentions that he helped set up a non-profit organization called HERO (Hmong
28 Emergency Relief Organization) to support Hmong refugees and that people have promised to donate
29 money once the organization received a tax exempt number from the IRS. Steve also provides Jack
30 with a fly zone map of Laos stating that "when we get down to getting more specific, when we get

1 together for a planning meeting, which is – we’re going to have to do sooner rather than later, uh,
2 we’re going to, uh, have more detailed maps for that.” Exh. I, Disc. TE041643-TE041646.

3 **E. April 3, 2007 Call between Mr. Jack and the Agent.**

4 Mr. Jack advised the agent that he had a new cell phone, a Blackberry, that had all his e-mail on
5 it. Ex. I, infra. Disc. TE041744-45.

6 **IV. STATEMENT OF RELEVANT FACTS REGARDING THE SEARCHES**

7 **A. Search Warrant 153**

8 On June 1, 2007, the government submitted an application and affidavit for search warrant No.
9 2:07-sw-0153 GGH, Ex. A infra, to U.S. Magistrate Judge Gregory G. Hollows and obtained
10 authorization to search Harrison Jack’s residence in Woodland, California. Ex. B., infra. The search
11 warrant authorized a search for and seizure of a variety of documents and other items identified in a
12 definitional paragraph and 18 unnumbered paragraphs⁹, as well as for 7 itemized categories of
13 computer or electronic evidence (which sweeps up all hardware, storage devices, manuals, and
14 software of every kind and description) “subject to” a six paragraph statement of procedures to be
15 followed. Ex. C, infra.

16 The computer seizure and search procedure as requested by the government and authorized by
17 the warrant called for personnel trained in searching and seizing computer data to seize and carry away
18 computer devices, but only if and after determining that on-site search(es) or on-site creation of a data

19 ⁹

20 Generally the documents sought were identified as relating to the purchase and/or transportation of
21 weapons or large amounts of cash, cash itself (U.S., Laotian, or Thai) in excess of \$2000, physical
22 layouts of locations and infrastructure in Thailand or Laos, plans for movement of persons or goods
23 in either country, plans to create or dismantle government infrastructure, a specified visit to a CHP
24 facility, documents, unrestricted as to date, regarding travel to England, Southeast Asia or certain
25 domestic locations, banking records without limitation, tax returns without limitation, tax
26 information reflecting charitable deductions (apparently limited to those relevant to “Laotian
27 endeavors” see Ex. B, infra, interlineation at p. 2), documents “to, from, regarding, or referencing”
28 the CIA, a named elected official, or referencing certain elite military forces; fund raising and
membership documents regarding certain specifically identified events or Hmong organizations and
charities.

1 image of the computer hard drive proved to be impracticable. It then authorized the later search of
2 computer devices or data images by trained computer personnel, subject to stated procedures.

3 Included in the search procedures, Ex. C, *infra*, at p. 3, ¶ vi, was the direction that within 60
4 days, computer personnel would either search a computer device or data image, or seek an extension of
5 time, if needed. Otherwise, after 60 days the government was required to return the computer devices
6 and delete data images.

7 Search warrant 153 was executed on the morning of June 4, 2007. The return on that search
8 warrant was filed on June 19, 2007. Ex. D., *infra*.¹⁰ Computer devices and media were seized under
9 the authority of this warrant, but they were not searched. Although some computer devices were
10 apparently returned, Ex. G, *infra* at 5¹¹, unsearched data images were not deleted as had been ordered
11 by the terms of warrant 153. Ex. C, *infra*, at p. 3, ¶ vi.

12 The affidavit of ATF Agent Eric Crowder in support of search warrant 153, Ex. A, *infra*.,
13 consists of 201 paragraphs. 176 of those paragraphs (13-188, 191) set forth the government's case for
14 probable cause to search Mr. Jack's home. 113 of those paragraphs repeat in substantially verbatim
15 form allegations made in the earlier wiretap motions and extensions.¹² An additional 20 paragraphs
16 reported the contents of intercepted calls between Mr. Jack and others that were not mentioned in the
17

18 ¹⁰

19 Exactly what the government seized and how they have maintained it is something of a mystery.
20 The return notes the seizure of 18 items. A substantially contemporaneous ATF report identifies 25
21 items. Ex. E, *infra*. Another ATF report notes a forensic analysis being conducted on "(N-Force
22 Items #5, 9, 23, & 278) seized on June 4, 2007 from [the Jack residence]." Ex. F, *infra*. "Item 278"
is identified in the affidavit in support of warrant 442, Ex. F, *infra*, as having been seized from the
residence of Nhia Vang, not from the Jack residence. *Id* at 5.

23 ¹¹ At the place cited, the affiant asserts that computers and storage media had been imaged,
24 that the defense had copies of all the images and that "...the original computers " had been
25 returned to the defendants. Not all storage media have been returned. The ATF retains
possession of a thumb drive seized from Mr. Jack. See Ex. E, p. 2 ¶ c.

26 ¹²

27 Forty-three of these 113 paragraphs reported on telephone calls between Mr. Jack and non-law
28 enforcement people intercepted under the authority of the wiretap warrant and extensions.

1 wiretap affidavits. An additional 31 paragraphs report conversations, meetings, or observations by
2 agents that did not involve Mr. Jack's presence or participation at all.

3 Paragraph 188 requests permission to seize 18 categories of documents and other items.

4 Paragraphs 189 through 193 set forth information about computer sites of various defendants in order
5 to seek permission to seize computer items detailed in paragraph 194. With respect to Harrison Jack
6 the only information set forth is in paragraph 191 and paragraph 192:

7 "191. Harrison JACK is the subscriber to the email account hjack@charter.net. In a recorded
8 telephone call, JACK gives his home address and email address to a caller from a Hmong relief
organization."¹³

9 "192. Additionally, On April 24, 2007, during a meeting with the ATF UC, Lo Cha Thao said
10 he would e-mail Harrison Jack using his Blackberry."

11 **B. The Unauthorized, Warrantless Search of Electronic Data Seized from the Jack
Residence.**

12 In a report dated March 24, 2008, Ex. F, infra., an ATF Digital Investigator reported that he
13 "completed the forensic analysis of the computer digital evidence (N-Force Items #5,9,23 & 278)
14 seized on June 4, 2007 from Harrison Jack, [home address redacted]. All files and information
15 recovered...were exported...and saved onto a Read-Only DVD and provided to the Case Agent." Id.

16 In a narrative section of the report the analyst reported that he had created copies of forensic
17 image sets from the above listed "N-Force items" on December 19, 2007, and that "[t]he copies of the
18 forensic image sets were stored onto forensically sterile media for use by the Case Agent for his
19 working copy [] and for Discovery []." Id.

20 This search was done at a time when no warrant so authorized. The authority of Warrant 153
21 had expired. That warrant had given agents 60 days from June 4, 2007, to search devices and/or

23 13

24 No additional information identifying the time or place of the phone call or of the identity of the
25 Hmong relief organization was provided to the magistrate judge. Furthermore, nowhere in the
26 warrant was any reference whatsoever made to this organization much less to any connection it
27 might have had with any aspect of this investigation. The referenced call occurred, in fact, on
28 March 30, 2007, and was an unsolicited call from a representative of a group that is not mentioned
at all in any of the affidavits setting out Mr. Jack's alleged involvement.

1 images or to seek an extension of time, if needed. It also had directed that “If, after conducting such a
2 search, the case agents determine that a computer device or data image contains any data falling within
3 the list of items to be seized pursuant to this warrant, the government will retain the computer device
4 or data image; otherwise, the government will return the computer device or delete the data image. If
5 the government needs additional time to determine whether the data...falls within any of the items to
6 be seized pursuant to this warrant, it may seek an extension of the time period from the Court within
7 the original sixty day period from the date of execution of the warrant.” Ex. C, *infra*, p. 3, ¶ vi.

8 As it turns out, the government did not comply with any of these provisions.¹⁴ A CM/ECF
9 inquiry of the search warrant file conducted on May 7, 2010, demonstrated that no documents were
10 filed later than the court’s unsealing order of June 20, 2007. Therefore, it appears no request for an
11 extension of time was made.

12 C. Search Warrant 442

13 On October 16, 2008, the government applied for search warrant number 2:08-sw-0442 KJM,
14 for authorization to search ALL the computer equipment and electronic media it had seized 17 months
15 earlier from several defendants in this case. This was 16 ½ months after the search at Mr. Jack’s
16 residence, and 7 months AFTER the electronically stored data seized from Mr. Jack’s residence had
17 already been searched without a warrant.

18 The magistrate judge was not apprised that a forensic analysis of Mr. Jack’s data had already
19 been done and supplied to the case agent. The request for warrant 442 advised that the government
20 sought to search 31552 documents (they subsequently reported seizing approximately 6442 items), and
21 thus omitted any advisement to the court that a search of at least some of this evidence had already
22
23

24 ¹⁴The affidavit in support of search warrant 442, demonstrates that the images assertedly
25 made under the authority of search warrant 153 had neither been searched nor deleted as that
26 warrant had required. However, the report of an analysis of items seized from Mr. Jack, Ex.
27 F., *infra*, asserts that forensic imaging was done on December 19, 2007, long after the
28 authority of search warrant 153 had expired.

1 been done.¹⁵ As discussed immediately below, the October 16, 2008, request for search warrant 442
2 which sought authority to search all electronic media in the case, included all four of the items which
3 had already been searched between December 19, 2007 and March 24, 2008. See Ex. G, *infra*, at 4
4 (items 5,9,& 23 - seized at Harrison Jack’s residence) & Id. at 5 (item 278 - seized at Nhia Vang’s
5 residence (sic!)).

6 The search warrant itself, Ex. H, *infra*., does not identify the items authorized to be searched.
7 The affidavit, however, lists 41 items taken from 6 different locations and reports that “...a total of
8 31,552 documents, approximately 186,000 pages, reside on the seized computers/media.” Ex. G. *infra*,
9 at 3-5. The affidavit requested a 45 day period in which to conduct the searches, Id. at 8, but the
10 warrant directed that the searches be completed “on or before October 26, 2008.” Ex. H, *infra* at 1.
11 According to the return, Ex. I, *infra*, the warrant was executed on October 26, 2008. The inventory of
12 property taken pursuant to the warrant was stated (in its entirety) to consist of “Approximately 6,224
13 documents, images or other files.” Id.

14 With regard to probable cause, the affiant stated only “I respectfully assert that the probable
15 cause that existed to issue warrants for seizure of the computers/storage media back in June 2007 still
16 exists today.” Ex. G at 6. With respect to Mr. Jack the only assertion about electronic data that had
17 appeared in search warrant 153 had been ¶¶ 191 & 192 of the affidavit for search warrant 153 which
18 disclosed merely that Mr. Jack had an e-mail account, and that Lo Cha Thao anticipated emailing Mr.
19 Jack on Mr. Jack’s **Blackberry**. Nowhere in warrant 153 was the magistrate even told that Mr. Jack
20 had a computer in his home.

21 ////

22 ////

23
24 ¹⁵

25 Except for the zip drive seized from the residence of Nhia Vang, which was incorrectly identified
26 as having been seized from the Jack residence, *Compare* Ex. G, *infra*. at 5, *with* Ex F., *infra* at 1,
27 counsel for Mr. Jack is not aware of the extent to which, if any, electronically stored data seized from
28 sources other than the Jack residence were subjected to searches before search warrant 442 was
obtained.

1 **V. APPLICABLE LAW**

2 **A. The Fourth Amendment Exclusionary Rule.**

3 The Fourth Amendment provides:

4 The right of the people to be secure in their persons, houses, papers, and effects, against
5 unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon
6 probable cause, supported by Oath or affirmation, and particularly describing the place to be
7 searched, and the person or things to be seized.

8 U.S. Const., Amend. IV. Evidence obtained in violation of the Fourth Amendment must be excluded
9 from a federal criminal prosecution. *Weeks v. United States*, 232 U.S. 383, 398 (1914).

10 **B. The Prohibition Against General Warrants**

11 The Fourth Amendment to the United States Constitution prohibits the issuance of general
12 warrants by providing that

13 ...no warrant shall issue, but upon probable cause, supported by Oath or affirmation, and
14 particularly describing the place to be searched, and the persons or things to be seized.

15 U.S. Const. amend. IV. To pass muster, a warrant must be sufficient in both particularity and breadth.

16 "The purpose of the particularity requirement is to make general searches impossible." *United*
17 *States v. Holzman*, 871 F.2d 1496, 1508 (9th Cir. 1989); *United States v. Towne*, 997 F.2d 537, 548
18 (9th Cir. 1993). "This requirement prevents general, exploratory searches and indiscriminate
19 rummaging through a person's belongings." *United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir.
20 1986); see *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). The warrant "must set out
21 objective standards by which executing officers can differentiate items subject to seizure from those
22 which are not." *Spilotro*, 800 F.2d at 963. "The purpose of particularizing the items to be seized is to
23 insure that when the warrant is executed, nothing is left to the officer's discretion." *United States v.*
24 *Hurt*, 795 F.2d 765, 771 (1986), amended, 808 F.2d 707 (9th Cir.), cert. denied, 484 U.S. 816 (1987);
25 *Stanford v. Texas*, 379 U.S. 476, 485 (1965); *Marron v. United States*, 275 U.S. 192, 196 (1927).
26 Requiring particularity in warrants "also ensures that the magistrate issuing the warrant is fully
27 apprised of the scope of the search and can thus accurately determine whether the entire search is
28 supported by probable cause." *Spilotro*, 800 F.2d at 963.

1 "Breadth deals with the requirement that the scope of the warrant be limited by the probable
2 cause on which the warrant is based." *In re Grand Jury Subpoenas Dated December 10, 1987*, 926
3 F.2d 847, 856-57 (9th Cir. 1991). "[B]readth may be defined as the requirement that there be probable
4 cause to seize the particular thing named in the warrant." *Id.* at 857. "The command to search can
5 never include more than is covered by the showing of probable cause to search." *United States v.*
6 *Whitney*, 633 F.2d 902, 907 (9th Cir. 1980), cert. denied, 450 U.S. 1004 (1981). "Like the particularity
7 requirement, this requirement prevents a 'general, exploratory rummaging in a person's belongings.'" *In Re Grand Jury Subpoenas*, 926 F.2d at 857 (quoting *Andresen v. Maryland*, 427 U.S. 463, 480
8 (1976)).
9

10 When a warrant authorizes the search and seizure of personal papers, books, or indicia of
11 membership in an organization, exacting scrutiny must be utilized to ensure the warrant satisfies the
12 specificity mandated by the Fourth Amendment to protect against the threat to individual privacy,
13 freedom of expression, and the right of association. *See Stanford v. Texas*, 379 U.S. 476 (1965)
14 (books); *Andresen v. Maryland*, 427 U.S. 463, 482 n.11 (1976) (personal papers); *United States v.*
15 *Washington*, 797 F.2d 1461, 1468 (9th Cir. 1986) (document searches); *United States v. Rubio*, 727
16 F.2d 786 (9th Cir. 1983) (membership in an association); *United States v. Christine*, 563 F. Supp. 62,
17 66 (D. N.J. 1983) (personal papers). As the Supreme Court observed:

18 We recognize that there are grave dangers inherent in executing a search warrant
19 authorizing a search of a person's papers that are not necessarily present in executing a warrant
20 to search for physical objects whose relevance is more easily ascertainable. In searches for
21 papers, it is certain that some innocuous documents will be examined, at least cursorily, in order
22 to determine whether they are, in fact, among those papers authorized to be seized. . . .
23 [R]esponsible officials, including judicial officials, must take care to assure that they are
24 conducted in a manner that minimizes unwarranted intrusions upon privacy.

25 (*Andresen*, 427 U.S. at 482 n.11.)

26 **C. The Requirement of Probable Cause to Search**

27 A warrant to search for evidence of a crime may be issued only upon a showing of
28 probable cause to believe that: (1) a crime has probably been committed; and (2) evidence relating to
that crime is probably in the place to be searched. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). As the
Ninth Circuit stated in *United States v. Baldwin*, 987 F.2d 1432, 1435 (9th Cir. 1993):

1 For an affidavit in support of a search warrant to establish probable cause, the facts must
2 be sufficient to justify a conclusion that the property which is the object of the search is
probably on the premises to be searched at the time the warrant is issued.

3 The location of seizable evidence is a separate question from the existence of such evidence.
4 *See generally* LaFave, Search and Seizure: A Treatise on the Fourth Amendment, 4th Ed., § 3.7(d),
5 (West, 2004). When multiple people are alleged to have participated in various ways in criminal
6 activity, the government is not permitted to search each person's residence without a showing that
7 seizable object(s) of a search are probably in that residence.

8 The search warrant "affidavit must provide the magistrate with a substantial basis for
9 determining the existence of probable cause," a requirement that cannot be met by a "wholly
10 conclusory statement." *Gates*, 462 U.S. at 239. "Sufficient information must be presented to the
11 magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of
12 the bare conclusions of others." *Id.* The magistrate judge is essentially being asked to determine
13 probable cause as to three distinct questions:

14 (1) Is there probable cause to believe a crime has been committed?

15 (2) Is there probable cause to believe that evidence relating to that crime exists?

16 (3) Is there probable cause to believe that this evidence is located in the place to
17 be searched?

18 Such probable cause must be evident at the time the warrant issues, *Durham v. United States*,
19 403 F.2d 190, 193 (9th Cir. 1968), and must be set forth within the four corners of the affidavit.
20 *United States v. Grandstaff*, 813 F.2d 1353, 1355 (9th Cir. 1987); *United States v. Rubio*, 727 F.2d
21 786, 795 (9th Cir. 1983).

22 **D. Standing Requirement**

23 To challenge a search under the Fourth Amendment, a defendant must show that he or she has
24 standing, i.e., a legitimate expectation of privacy in the particular place searched or item seized. *Katz*
25 *v. United States*, 389 U.S. 347, 360 (1967); *United States v. Lingenfelter*, 997 F.2d 632, 636 (9th Cir.
26 1993). A person who has no legal ownership, but who resides as an overnight guest at the property,
27 has standing to contest the legality of a search of the property. *See Minnesota v. Olson*, 495 U.S. 91,
28

1 96-97 (1990). There is no dispute in this case that on the date of the search, Harrison Jack resided at
2 the residence in Woodland that was searched or that Lo Cha Thao resided in his residence.

3
4 **VI. THE SECTIONS OF SEARCH WARRANT 153 RELATING TO**
5 **COMPUTER RECORDS AND FILES CONSTITUTED AN ILLEGAL**
6 **GENERAL WARRANT.**

7 In this case, not only is there not even a hint that records exist on computers in Mr. Jack's
8 residence that are linked in any way to the alleged illegal activity, there is not even a hint in the search
9 warrant affidavit that a computer existed in the Jack residence. The only item mentioned was that Mr.
10 Jack had a Blackberry. Exh. A, *infra*, at ¶ 192¹⁶. Yet, the warrant authorizes the search and seizure of
11 an astounding array of computer equipment as well as all of the information contained on the
12 computers or on any diskettes – without any limitation as to the relevant time period and regardless of
13 whether any of that information is personal or private or related in any way to any alleged criminal
14 offense. Exh. B., *infra* pp. 507; Exh. C, *infra*.

15 The sum total of allegations relating to Mr. Jack's computer is as follows:

16 ¶191. Harrison JACK is the subscriber to the email account hjack@charter.net. In a
17 recorded telephone call, JACK gives his home address and email address to a caller from
18 a Hmong relief organization.

19 ¶192. Additionally, On April 24, 2007, during a meeting with the ATF UC, Lo Cha Thao said
20 he would e-mail Harrison Jack using his Blackberry.

21 Exh. A, *infra*. at 71.

22 From this, the magistrate judge could reasonably conclude that Harrison Jack probably has a
23 Blackberry smart phone and that he has e-mail capability on that smart phone. The magistrate judge
24 could also reasonably conclude that Mr. Jack disclosed his e-mail address to Lo Cha Thao and to an

25 ¹⁶ In paragraph 191, the affiant advised the magistrate judge that in an intercepted telephone
26 call, Mr. Jack had provided a caller with his email address. Even if that information survives
27 the challenge that it is an illegal fruit of the wiretap of Mr. Jack's telephones, the information
28 permits no inference that Mr. Jack used a computer in connection with his e-mail account,
especially since he had told the ATF Undercover agent in a recorded conversation, that he
had all his email on his blackberry. *See, supra*. at 12; Ex. I, *infra*. Disc. TE041744-45.

1 unidentified person connected to an unidentified Hmong relief organization. There is absolutely no
2 suggestion, however, that anyone ever contacted Mr. Jack through this account or, more importantly,
3 that anyone ever contacted him by e-mail about anything to do with the illegal activities being
4 investigated in this case, except for a suggestion from Lo Cha Thao that he would contact Mr. Jack's
5 Blackberry some time after April 24, 2007.

6 Even more astounding is the fact that knowing it had no case-specific facts to support a search
7 of any computers that might be found at Mr. Jack's residence, the government failed to insert even the
8 standard boilerplate about how computer records necessarily exist in relation to the alleged crimes.
9 Certainly this Court and undersigned counsel have seen hundreds of search warrant affidavits that
10 contain boilerplate statements by the affiant outlining where criminals, drug dealers, or pedophiles
11 "usually" keep evidence of illegal activities. Indeed, the government did exactly that when justifying
12 its assertion that computers were likely present at the offices of United Hmong International, Inc. Ex.
13 A, *infra.* at 69-70, ¶ 190. Regardless of the efficacy of this boilerplate language, it is worth
14 emphasizing that none – none – of this boilerplate language is anywhere in the affidavit in this case
15 with respect to items likely to be found at the Jack residence. In other words, even boilerplate,
16 conclusory language is not used to link up the computers, computer information, or computer
17 equipment searched and seized in this case with any criminal activity being investigated.

18 The warrant in this case is a worse example of a general warrant than the one condemned by the
19 Ninth Circuit in *United States v. Kow*, 58 F.3d 423 (9th Cir. 1995). In that case, the court noted that

20 The warrant authorized the seizure of virtually every document and computer file
21 at HK Video. To the extent that it provided any guidance to the officers executing the
22 warrant, the warrant apparently sought to describe every document on the premises and
23 direct that everything be seized...[T]he warrant contained no limitations on which
24 documents within each category could be seized or suggested how they related to
25 specific criminal activity. By failing to describe with any particularity the items to be
26 seized, the warrant is indistinguishable from the general warrants repeatedly held by this
27 court to be unconstitutional.

28 *Kow*, 58 F.3d at 427.

The search warrant in this case resembled the one in *Kow* in other ways as well. As the *Kow*
court elaborated:

1 Most obviously, the warrant could have specified the suspected criminal conduct.
2 Except for vague references to "fraudulent" transactions and possible disparities between
3 actual and reported income, the warrant failed to give any indication of the alleged crime
4 to which the seized documents pertained...We have criticized repeatedly the failure to
5 describe in a warrant the specific criminal activity suspected. [citations omitted]

6 Id.

7 Finally, as in *Kow*, the government cannot contend that severance of the invalid portions of the
8 warrant is possible. When "no portion of the warrant is sufficiently particularized to pass
9 constitutional muster, then total suppression is required. Otherwise the abuses of a general search
10 would not be prevented." Id.

11 As a general rule, in searches made pursuant to warrants only the specifically enumerated items
12 may be seized. *United States v. Honore*, 450 F.2d 31, 33 (9th Cir. 1971), cert. denied, 404 U.S. 1048,
13 30 L. Ed. 2d 740, 92 S. Ct. 728 (1972) (citing *Stanford v. Texas*, 379 U.S. 476, 13 L. Ed. 2d 431, 85 S.
14 Ct. 506 (1964)). It is true that all items in a set of files may be inspected during a search, provided that
15 sufficiently specific guidelines for identifying the documents sought are provided in the search warrant
16 and are followed by the officers conducting the search. Cf. *United States v. Hillyard*, 677 F.2d 1336,
17 1340-41 (9th Cir. 1982). However, the wholesale seizure for later detailed examination of records not
18 described in a warrant is significantly more intrusive, and has been characterized as "the kind of
19 investigatory dragnet that the Fourth Amendment was designed to prevent." *United States v. Abrams*,
20 615 F.2d 541, 543 (1st Cir. 1980).

21 In *United States v. Tamura*, 694 F.2d 591 (9th Cir. 1982) the court disapproved the wholesale
22 removal and retention of a large quantity of documents, much of which was not covered by the
23 probable cause showing in the search warrant and affidavit. With an eye to the situation where
24 officers are confronted with such large quantities of intermingled seizable and non-seizable material
25 that on site separation of the two was unfeasible the court noted that "...law enforcement officials
26 generally can avoid violating fourth amendment rights by sealing and holding the documents **pending**
27 **approval by a magistrate for a further search....**" 694 F.2d at 594 (Emphasis supplied). The
28 *Tamura* court also noted that with respect to searches rather than seizures the Court of Appeals had

1 approved a procedure whereby officers brought in experts to facilitate searches of complex items in
2 order to minimize unwarranted intrusions into privacy. Id. at 596.

3 In *United States v. Comprehensive Drug Testing, Inc.*, 579 F.3d 989 (9th Cir. 2009)(en
4 banc) the Court of Appeals provided an updated set of guidelines governing the search and seizure of
5 electronically stored evidence. Even though portions of that opinion set guidelines which postdate the
6 warrants and searches and seizures involved in this case, the opinion approved of the actions of district
7 courts in applying its “venerable precedent” *United States v. Tamura*, 694 F.2d 591 (9th Cir. 1982) to
8 the issues raised by such searches and seizures of electronic media. The *Tamura* case was the law at
9 the time of the searches in this case and requires the suppression of all electronically stored evidence
10 seized from Mr. Jack’s residence.

11 In this case, the agents searching Mr. Jack’s computer were given no guidance whatsoever as
12 to a relevant time period, no guidance to distinguish legal activities related to the Hmong people from
13 illegal activities, and no guidance about what specific e-mails or computer records to look for. This is
14 not surprising because the government had no facts to support the existence of any such records on Mr.
15 Jack’s computer. It is clear from the omitted facts that Mr. Jack and Mr. Lo Cha Thao were involved
16 in a number of legal, humanitarian activities, many of which predated the contact with the case agent
17 by years. There is no legal authority to search and seize these records. It is also clear that until Mr.
18 Jack contacted Namon Hawthorne on or about September 26, 2006, there was no evidence relating to
19 the alleged charges in existence. There is no legal authority to search and seize records that predated
20 this date. Yet, there is absolutely nothing in the search warrant affidavit to guide searching agents how
21 to distinguish between personal records that have nothing to do with any crimes or personal records
22 that are outside any relevant time frame.

23 Surely, no citation is needed to establish the proposition that the mere fact that a suspect to
24 criminal activity has a home does not, without more, support a finding that probable cause exists to
25 believe that he has a computer or that evidence of a crime will be found in the home or on an in-home
26 computer or its related storage media, if indeed there are any.

1 What the affidavit for search warrant 153 reports is that Mr. Jack relayed to the ATF
2 undercover agent information about these matters that he received orally from Lo Cha Thao, or from
3 “Hmong leadership”. The matters he related concerned activities conducted by various Hmong people
4 that Mr. Jack had been told about, not activities that he was undertaking himself. Nothing in the
5 affidavit warrants an inference that Mr. Jack possessed at his home maps, or fund raising documents,
6 or financial or tax records, or plans for government organization that bore on the criminal charges.

7 The warrant to search Mr. Jack’s computer was without question an illegal general warrant.

8
9 **VII. THE REMAINDER OF SEARCH WARRANT 153 WAS ALSO AN
10 ILLEGAL GENERAL WARRANT.**

11 The total lack of particularity or specificity as to computer records is but the worst example of
12 the generalized nature of search warrant 153. The remainder of the warrant suffers the same
13 constitutional deficiency. There is simply no distinction made between records relating to lawful
14 activities and records connected to the alleged illegal activity. If the word “Hmong” was on a
15 document, the agents searched and seized it. If a record related to money of any kind – even though
16 Mr. Jack made it clear time and time again that he had nothing to do with alleged illegal fund-raising –
17 it was searched and seized. All of Mr. Jack’s bank statements were to be searched and seized. All of
18 his tax returns – regardless of year. Any and all records relating to lawful charitable work on behalf of
19 the Hmong people.

20 **VIII. SEARCH WARRANT 153 LACKED PROBABLE CAUSE TO BELIEVE
21 ANY EVIDENCE EXISTED OR THAT ANY EVIDENCE WOULD BE FOUND
22 IN MR. JACK’S HOME.**

23 Perhaps the best way to illustrate this is to use a few examples.

24 1. On February 7, 2007, Harrison Jack met with the agent and several other defendants at a
25 restaurant and later inside an RV. Prior to that time, there was no hint of the existence of any maps of
26 Thailand, Laos, or anywhere. The agent asked for coordinates of locations withing Laos. (The agent
27 intentionally omitted this fact from the affidavit.) Defendant Hue Vang (not Harrison Jack or Lo Cha
28 Thao) showed the agent a map *that he had put together the previous night*. (Emphasis on facts again

1 intentionally omitted from the affidavit.) The agent took the map. (Again, a fact omitted from the
2 affidavit.). There is no cause, let alone no probable cause, to believe this evidence would be in
3 Harrison Jack's or Lo Cha Thao's homes.

4 2. On or about April 13, 2007, Harrison Jack attended a meeting in Stockton with Hmong
5 individuals. According to paragraph #63 of the affidavit, "JACK left a voice message on the ATF
6 UC's cellular telephone, briefly explaining what had been discussed at the meeting. The ATF UC
7 contacted JACK later that day at home. JACK said he would be referring to notes from his morning
8 meeting during the call." There is sufficient probable cause to believe that notes regarding an April
9 13, 2007, meeting exist. However, there is nothing in the four corners of the affidavit to imply or
10 suggest (even boilerplate) that such notes would be in Harrison Jack's home. There is also nothing in
11 the affidavit to guide agents searching through all of Harrison Jack's personal notes and records to
12 look for records relating to this date.

13 3. Paragraph #86 of the affidavit states: "JACK said that they [Neo Hom] would probably give
14 the ATF UC paper bags of cash when they placed the order. JACK said they had once given him
15 \$2,500 in a paper bag, which represented the proceeds from water bottle sales at a Hmong New Year
16 celebration." Jack never once used the term Neo Hom, a fact again omitted from the agent's
17 affidavit. Jack's receipt of \$2,500 related to an entirely legal business venture, and was not connected
18 in any way to any of the alleged illegal activities. There is nothing in this paragraph that gives cause to
19 search or seize anything; yet, the warrant permits the seizure of any and all of Mr. Jack's financial
20 records as well as all of this money, even though the case agent knew this money was entirely legal.

21 4. Paragraph #183 states as follows:

22 During their conversation Lo Cha THAO told UC ATF-DC3 that United Hmong
23 International was at the Rolling Thunder event to raise money to send back to Laos for
24 food and shelter for the Hmong people who are hiding in the jungles. Lo Cha THAO
25 said that UHI is based in California and has an office in Washington, D.C. Lo Cha
26 THAO also informed ATF UC-DC3 that the money raised would be paid to an
27 intelligence person located in Laos who would then pay people to carry food, medicine,
28 and shelter supplies into the jungles to provide assistance to the Hmong people.

Raising money to send back to Laos for food and shelter is entirely legal. More significantly, it is not
evidence connected to the alleged crimes in the indictment. And, most significantly, there is not even

1 a suggestion any of this money would be in Harrison Jack's house. Yet, the warrant permits the
2 searching agents to seize any money and to search and seize any records (without even a suggestion
3 any records even exist).

4 In determining whether there is probable cause to issue a search warrant, settled law requires
5 three things that must be shown at the time the warrant issues and must be set forth within the four
6 corners of the affidavit:

7 1. Does the affidavit set forth probable cause to believe a crime has been committed?

8 Maybe, maybe not. This depends upon what remains after the material omissions are
9 reinserted into the affidavit, the misleading or false facts are deleted, and the court conducts a *Franks*
10 hearing (which is the subject of a separate motion, joined in by all defendants).

11 2. Does the affidavit set forth probable cause to believe that evidence relating to the
12 alleged crimes exists?

13 Except for a very few, limited exceptions (such as Harrison Jack's notes of a meeting on a
14 specific day), no.

15 3. Does the affidavit set forth probable cause to believe that evidence relating to the
16 alleged crimes is located in the place to be searched?

17 Absolutely and unequivocally, no.

18 There is insufficient probable cause to justify search warrant 153.

19 **IX. ALL EVIDENCE OBTAINED PURSUANT TO SEARCH WARRANT 153 AND
20 SEARCH WARRANT 442 INVOLVED ILLEGAL, TAINTED FRUIT.**

21 "The exclusionary rule reaches not only primary evidence obtained as a direct result of an
22 illegal search or seizure, but also evidence later discovered and found to be derivative of an illegality
23 or 'fruit of the poisonous tree.'" *Segura v. United States*, 468 U.S. 796, 804 (1984); citations omitted.

24 **1. Search Warrant 153 is the Fruit of the Illegal Wiretap Warrants and Extensions.**

25 Paragraph #4 of the affidavit specifically states that it is based upon: "interception of wire
26 communications of the home and cellular telephone used by co-conspirator Harrison Ulrich JACK and
27 the cellular telephone used by co-conspirator Lo Cha THAO." Moreover, the affidavit is replete
28 with information gleaned from these illegal wiretaps. In addition, the sole source of information

1 concerning Mr. Jack's e-mail address was obtained as the direct result of a telephone call intercepted
2 under the authority of the wiretap warrant and extensions. Ex. A, infra, at 71 ¶ 191

3 **2. The Warrantless Search of the Computer Evidence Directly Concerns Evidence**
4 **Seized Pursuant to SW 153.**

5 Once the 60 day period had expired during which agents were authorized to search computers
6 and storage data or seek an extension of time under the authority of search warrant 153, the terms of
7 the warrant itself required them to return computer equipment and erase data images. From that time
8 on the authorities had no right to retain any hardware or data images. In Mr. Jack's particular situation
9 agents not only retained the data, but they conducted a forensic analysis of it, and provided a working
10 copy to the case agent. The affidavit subsequently submitted in support of search warrant 442
11 establishes their recognition that a warrant was required in order for such a search to be authorized.

12 Furthermore, providing a working copy to a case agent violated the terms under which seizure
13 of the computers had originally been authorized. The search warrant protocol of search warrant 153
14 had included the directive that computers be initially examined and reviewed by "law enforcement
15 personnel trained in searching and seizing computer data" Ex. C, infra at 2 ¶ i. The warrant further
16 required that "The computer devices will be reviewed by appropriately trained personnel in order to
17 extract and seize any data that falls within the list of items to be seized set forth herein." Id. at 3, ¶ iv.

18 **3. Search Warrant 442 Also Concerns Computer Evidence Seized Pursuant to SW 153,**
19 **and is Also the Fruit of the Violation of the Handling Requirements of Evidence Seized**
20 **under the Authority of Search Warrant 153.**

21 Had search warrant 153 limited the authority to search in accordance with the showing of
22 probable cause, and had the agents so limited the scope of their seizures, no computer related
23 equipment other than the Blackberry smart phone would have been seized. All other evidence retained
24 by the agents was illegally seized.

25 To the extent that seizures and searches resulting from an examination of the Blackberry
26 consisted in anything but e-mails initially determined by computer personnel to have between Lo Cha
27 Thao and Mr. Jack, the seizures and searches of that information are similarly illegal as in violation of
28 the explicit terms and proper scope of search warrant 153.

1 The evidence existed in ATF custody only because the agents involved failed to search it or get
2 an extension of time within the parameters set by search warrant 153. In that regard, it must be noted
3 that the magistrate judge did not impose these requirements *sua sponte* or to the surprise of the agents.
4 The search protocol was submitted to the magistrate judge by the agents themselves, so they were fully
5 aware from the first moment of the time constraints and other pertinent conditions for their continued
6 possession of data images under which they were operating.

7 **CONCLUSION**

8 The Constitution requires a particularized search warrant, supported by probable cause. It does
9 not permit the kind of general warrant for all computer records, all financial records, all records with
10 the word “Hmong” on it that was used in this case.

11 Established law mandates a showing of probable cause for anything to be searched or seized
12 and that this showing be based upon the full disclosure of relevant facts and the absence of misleading
13 or false statements. The fact government agents may subjectively believe some defendants have
14 committed certain specified crimes may be enough to justify a criminal complaint, but it is certainly
15 not enough to justify a search warrant of these defendants’ houses.

16 The evidence taken from the homes of Harrison Jack and other defendants was illegally seized,
17 illegally searched, and constitutes the illegal, tainted fruit of other actions by the government. All of
18 this evidence must be suppressed.

19 Dated: May 21, 2010

DANIEL J. BRODERICK
Federal Defender

21 /s/ Jeffrey L. Staniels
JEFFREY L. STANIELS
22 BENJAMIN D. GALLOWAY
23 Assistant Federal Defenders

24 Dated: May 21, 2010

/s/ Mark J. Reichel
MARK J. REICHEL
25 Attorney for Defendant
26 LO CHA THAO
27

1 Dated: May 21, 2010

/s/ William J. Portanova
WILLIAM J. PORTANOVA
Attorney for Defendant
LO THAO

4 Dated: May 21, 2010

MORRISON & FORESTER

/s/ James J. Brosnahan
JAMES J. BROSNAHAN
Attorneys for Defendant
YOUA TRUE VANG

8 Dated: May 21, 2010

/s/ Krista Hart
KRISTA HART
Attorney for Defendant
HUE VANG

11 Dated: May 21, 2010

/s/ Dina Lee Santos
DINA LEE SANTOS
Attorney for Defendant
CHONG YANG THAO

14 Dated: May 21, 2010

/s/ Michael B. Bigelow
MICHAEL B. BIGELOW
Attorney for Defendant
SENG VUE

17 Dated: May 21, 2010

/s/ Shari Rusk
SHARI RUSK
Attorney for Defendant
CHUE LO

20 Dated: May 21, 2010

/s/ Danny D. Brace, Jr.
DANNY D. BRACE, JR.
Attorney for Defendant
NHIA KAO VANG

23 Dated: May 21, 2010

/s/ Hayes H. Gable, III
HAYES H. GABLE, III
Attorney for Defendant
DANG VANG

1 Dated: May 21, 2010

/s/ Bruce Locke
BRUCE LOCKE
Attorney for Defendant
JERRY YANG

2

3 Dated: May 21, 2010

/s/ Peter Kmeto
PETER KMETO
Attorney for Defendant
THOMAS YANG

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

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

ATTACHMENT 1

Material Misstatements In And Omissions From Special Agent's June 1, 2007 Affidavit In Support Of Application For Search Warrant 2:07-sw-0153 Authorizing Search Residence of Harrison Jack (Exhibit A)

Agent's Affidavit	Fact
<p>¶6. Essentially, the Target Subjects seek to coordinate and aid the violent overthrow the communist Laotian government in order to restore the non-communist Hmong people to power in that country.</p>	<p>There is no "insurgent" group attempting to overthrow the current government of Laos by military means. Jack repeatedly denies any attempt to overthrow the government.</p> <p>When asked if this group was willing to use force, Jack responded "Preferably not. They want to do it differently...[I]f they can get those [i.e. genocide] documents out...they can leverage that...at least open the borders...You see their primary objective is to get their people out of Laos and across the border into Thailand. They don't care about taking over the government. They don't want to do that." [January 25, 2007 Meeting] Exh. J, Disc. TE041425.</p>
<p>¶13. [Mr.] JACK came to ATF's attention when JACK "reached out to a defense contractor."</p>	<p>Mr. Jack reached out to Namon Hawthorne, who is not and was not a defense contractor. The government admitted that this reference was "ill advised" amidst a preposterous effort to defend it as "literally correct." Government's Opposition to Defense Motion to Dismiss, CR 412 p. 75.</p>

Agent's Affidavit	Fact
<p>¶14. In early January 2007, the ATF UC ...made a recorded call to JACK, and said, "I have the answer to your problem.." JACK replied, "What problem?" To which the ATE UC responded, "The problem that you spoke to [defense contractor] about."</p>	<p>UC: Anyway, I talked to Namon quite a bit about your problem, and he asked that I meet with you, so.. JACK: Well, now, what problem are you talking about? UC: The problem in East Asia, AKs. JACK: Oh. Oh. Okay, okay, golly sakes, that's a long time ago. Exh. J, Disc. TE041373:17-25.</p>
<p>¶14. On January 25, 2007, the ATF UC posed as an arms dealer and met with JACK to discuss the sale of 500 AK-47s to General VANG Pao.</p>	<p>Neither Jack nor the agent discuss the sale of anything to General Vang Pao. Exh. J, Disc. TE041380-TE041449.</p>
<p>¶17. JACK advised the ATF UC that he wanted to purchase approximately 500 AK-47 automatic assault rifles.</p>	<p>Jack states repeatedly that the Hmong are discussing alternatives, and he has no idea what they are going to do. "[L]ike I was saying, I've got no idea what they're going to do tomorrow or how they're going to approach the situation. I know they're very sensitive to protecting their people, they're very sensitive for responding to this genocide order that came out. And the priorities, you know, could shift drastically. ... I mean they may pay for whatever they want, they may want to arm X number of people immediately. ... I don't know." Exh. J, Disc. TE041408.</p>

Agent's Affidavit	Fact
<p>¶18. An automatic weapon is one that will fire more than one round, or bullet, without manual reloading, with a single function of the trigger. It is a violation of federal law in the United States to possess, transfer, or receive automatic weapons ... unless registered with the National Firearms Registry maintained by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.</p>	<p>26 U.S.C. § 5841(b): "By Whom Registered. - * * *. Each firearm transferred shall be registered to the transferee by the transferor. (c) * * *. Each . . . transferor of a firearm shall, prior to . . . transferring a firearm, obtain authorization in such manner as required by this chapter or regulations issued thereunder to . . . transfer the firearm, and such authorization shall effect the registration of the firearm required by this section.</p>
<p>¶19. During that January 25, 2007 meeting, JACK indicated that he and General VANG Pao wished to take delivery of these automatic weapons in Laos, at specific locations they would identify later.</p>	<p>Jack never indicated any wishes by General Vang Pao about any weapons. Exh. J, Disc. TE041380-TE041449.</p>
<p>¶19. "Jack said he works directly for General Vang Pao." [emphasis added]</p>	<p>Jack: "I'm working personally with General Vang Pao...." [emphasis added]. Exh. J, Disc. TE041393.</p>
<p>¶20. During this meeting, JACK and the ATF UC discussed the purchase price for 500 AK-47 machine guns. JACK told the ATF UC "they" [which the ATF UC interpreted as the Neo Hom] have the cash.</p>	<p>No description of what the agent meant by "Neo Hom" was included in the search warrant affidavit. The magistrate was left to speculate on what this meant. In context the term is repeatedly used to imply that an organized entity with a formal structure and a name was involved. See ¶ 25 below.</p>
<p>¶21. JACK said General VANG Pao was the one trying to get weapons to the Hmong people in Laos.</p>	<p>Jack does not ever say this. Exh. J, Disc. TE041380-TE041449.</p>

Agent's Affidavit	Fact
<p data-bbox="201 260 532 289">January 31, 2007</p> <p data-bbox="201 321 553 350">Material Omission</p>	<p data-bbox="878 260 1523 443">Jack informs the ATF UC that "it doesn't look like the Hmong community is going to be, uh, in a position to, uh, continue with their, uh, activities." Exh. J, Disc. TE041451.</p>
<p data-bbox="201 501 802 621">¶22. On February 1, 2007, the ATF UC made a recorded telephone call to Harrison JACK.</p> <p data-bbox="201 653 553 682">Material Omission</p>	<p data-bbox="878 501 1503 562">Mr. Jack offers direct contact to Lo's group:</p> <p data-bbox="878 594 1503 714">JACK: What I'd like to do is get the information into their hands before I leave, that way you've got a...</p> <p data-bbox="878 720 1308 749">UC: Yeah, definitely.</p> <p data-bbox="878 753 1523 930">JACK: -- that way you've got a direct relationship and all the pieces are in place, so nothing's dependent upon me, you just go ahead and cut whatever --</p> <p data-bbox="878 936 1062 966">UC: Okay.</p> <p data-bbox="878 970 1414 1031">JACK: -- contract you can. Exh. J, Disc. TE041461.</p>
<p data-bbox="201 1079 846 1360">¶23. On Monday, February 5, 2007, the ATF UC received a voicemail message from JACK stating that Wednesday would be an ideal day to meet. JACK said that the highest leadership, including General VANG Pao, would be present for the meeting...</p>	<p data-bbox="878 1079 1463 1178">Exaggerates Jack's knowledge and participation with the Hmong:</p> <p data-bbox="878 1209 1523 1577">"I just got a call from my Hmong point of contact indicating that Wednesday would be an ideal day to get together if we can, and that the highest leadership, General Vang Pao, could very well be present for this -- for this get-together which is exactly what you need by way of credibility and guarantee." Exh. J, Disc. TE047472:6-11</p>

Agent's Affidavit	Fact
February 7, 2007 Meeting	
<p>¶25. On February 7, 2007, the ATF UC met with JACK, General VANG Pao, and approximately twelve suspected Neo Hom leaders concerning the sale of weapons to Neo Hom. [Again, at no time was the term "Neo Hom" used by any of the Target Subjects in the ATF UC's presence to identify their affiliation.] (emphasis added)</p>	<p>Use of "Neo Hom" creates impression that some sort of entity with structure existed and bound these suspects together but that suspect-members were careful not to advertise its existence or their membership in it. In fact, "Neo Hom" exists in this case solely as a figment of the government's overactive imagination. See supra re ¶ 20.</p> <p>Even in the wiretap applications, see CR 543, Exh. A ¶ 23, which were submitted directly to this court (rather than a magistrate judge) for review and authorization, the evidence mustered in support of the government's flight of fancy all predates any of Mr. Jack's involvement with the Hmong in any capacity having any bearing at all on this case. The sole possible exception regards a line attributed to General Vang Pao in response to a reporter's question about his changing positions regarding forcible return to Laos in a 2007 New Republic article. That remark contains no mention of Neo Hom. Nowhere is there any hint of a suggestion that Mr. Jack was aware of that article or of the statement.</p>

Agent's Affidavit	Fact
<p>¶27. During lunch, JACK and General VANG Pao advised the ATF UC that the plan was to provide arms to insurgents who were in place in Laos, and to initiate hostile military action in the very near future against military forces of the government of Laos. The ATF UC 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. The ATF UC was also advised that the two dozen special operations mercenary troops, which he was being asked to provide, would play a large role in the insurgent military operation. The ATF UC told JACK and General VANG Pao that any special operations troops that he would be able to provide would be very conspicuous, and that it would be necessary for them to "melt" back into the Lao jungle immediately after completion of the "strike" mission against the Lao government troops. The ATF UC told them that the mercenary troops could not be used to secure and maintain positions along the border. JACK stated that they understood.</p>	<p>The agent's statement is entirely false. There was no discussion of "insurgents" between the agent and General Vang Pao or Jack. Exh. J, Disc. TE041490-TE041543.</p> <p>nor of - "initiat[ing] hostile action." Instead Jack says "their [the Hmong's] primary objective is to get their people out of Laos and across the border into Thailand. They don't care about taking over the government, they don't want to do that." Exh. J, Disc. TE041425; TE041504.</p> <p>Nor of - "insurgents attacking government soldiers and positions". Exh. J, Disc. TE41490-TE041543.</p> <p>Nor of - mercenaries playing a large role in the insurgent military operation. Jack indicates only a need to secure border crossings so the Hmong people could escape. [2/7/2007 Meeting] Exh. J, Disc. TE041500.</p> <p>Nor of - a "strike mission." Exh. J, Disc. TE41490-TE041543.</p>
<p>¶29. The ATF UC told JACK and General VANG Pao that he needed to get an operational briefing from someone doing the operations planning for their insurgent operation, as well as copies of the operations plan.</p>	<p>No discussion of "an operational briefing" occurred. Exh. J, Disc. TE41490-TE041543.</p>

Agent's Affidavit	Fact
<p>¶30. At that time JACK told the ATF UC that they had maps. (emphasis added)</p>	<p>That is, that the Hmong had maps:</p> <p>JACK: Get Hue with the maps. ATF UC: Okay. JACK: Yeah, they're sensitive to that. Why don't you leave those maps out and just provide a quick overview of coordinates. HUE VANG: This is the one I put together last night. ATF UC: Right. Who's the gentleman who gave me the maps? Exh. J, Disc. TE041538, TE41645.</p>
<p>¶33. JACK and Hue VANG entered the RV and provided the ATF UC with maps of Laos that identified Hmong and Laotian government troop locations; those locations indicated where it was likely that Neo Hom would want the weapons and mercenaries air lifted and parachuted into Laos</p>	<p>Hue Vang provided the maps. See above:</p> <p>UC: So have you agreed on a drop point... Hue Vang: For the last 25 to 30 years we haven't even gone that far... HARRISON JACK: Just been surviving independently? HUE VANG: Yeah, Yeah...just trying to survive independently... Exh. J, Disc. TE041539.</p>

Agent's Affidavit	Fact
<p>¶35. On February 15, 2007, at approximately 7:03 p.m., the ATF UC telephoned JACK...</p> <p>JACK said that they [Neo Hom] were in motion and had budgeted for virtually everything on the weapons price/inventory list.</p> <p>JACK said they were doing some major fund-raising ...</p>	<p>There is no mention of "Neo Hom"</p> <p>"[T]hey've got things budgeted according to your submission...I just saw preliminary drafts of budgets and that type of thing."</p> <p>Jack: "I don't think they're going to do anything before [February 27] ...They - they've got some major fund-raising to do." Exh. J, Disc. TE041561, TE041565.</p>
<p>¶36. On March 2, 2007, the ATF UC received a voicemail message from JACK...</p> <p>JACK invited the ATF UC to deal directly with Lo [Lo Cha THAO], who had attended the meeting in Sacramento and whom JACK identified as General VANG Pao's principal lieutenant. At that time, JACK provided THAO's cellular telephone number, 559-XXX-XXXX.</p>	<p>OMITS reference Jack saw no need to be in middle of dealings.</p> <p>I did not... ask him about the status of their requirement. But feel free to contact him directly. I really don't have a need to be in the middle of this any longer. Having set things up, I'll really leave the rest of it up to the two of you. His direct line is 559-XXX-XXXX... Exh. J, Disc. TE041572:11-17.</p>

Agent's Affidavit	Fact
<p>¶¶37-38. During the afternoon of March 5, 2007, the ATF UC met with JACK at Hangar 17...</p> <p>JACK said ...some of the "white folks" present during the meeting were becoming concerned because they could see that the Hmong were not content with only administrative efforts; they were looking at something operational. The ATF UC understood this to mean that Neo Hom members were discussing the takeover of the Laotian government in the presence of non-Neo Hom individuals.</p>	<p>Creates false impression of a break in secrecy within the government's fabricated entity "Neo Hom." Further the meeting was about options to help the beleaguered Hmong, not about a takeover of the Laotian government:</p> <p>JACK: ...And met all day. Had a time frame from 10:00 to 12:00, which was a conference call. And I had people calling in from all over the country. So we had a good -- good meeting, good discussion. Basically focused on strategic planning relative to political issues, who needs to be contacted, how it's going to come down.</p> <p>. . . .</p> <p>...so we ran until about two o'clock, then we broke out into separate sessions. You know, it's a kick - - because some of the white folks...Exh. J, Disc. TE041610:25-TE041612:17.</p>

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

Agent's Affidavit	Fact
<p>¶39 JACK said it was a little bit of a sensitive area and that he and Lo [Lo Cha THAO] had to break up the group. JACK said he warned THAO that everybody had to make their own decision as to the level at which they were willing to participate.</p>	<p>Material Omission: Fails to disclose lack of agreement among the Hmong present, and the multi-faceted approach to the perceived crisis in Laos:</p> <p>"So one thing led to another, and I told Lo, I said, look, you need to break this group up. You've got one group that wants to go one way, one group that wants to go another. So it was a little bit of a sensitive area for - for Lo at that time, because he was expecting everybody to stick around. And I warned him, I said, look, everybody here's got to make that decision on their own as far as what level they're willing to participate. Exh. J, Disc. TE041612-TE041616.</p> <p>Jack: "I've got them to organize internally into various subgroups or committees that focus on media, legal issues, fund raising, operations, you know, all that kind of stuff." Exh. J, Disc. TE041622.</p>

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

Agent's Affidavit	Fact
<p>¶41. At the [March 5] meeting, the ATF UC asked about the group's fund-raising efforts. JACK said that he had the American side ready to move JACK said that he had set up a "501 account" called "HERO" (Hmong Emergency Relief Organization) to support White Water and other refugee camps.</p>	<p>Harrison Jack informed the ATF agent that to the "best of my knowledge, they haven't initiated any fund-raising." Exh. J, Disc. TE041640.</p> <p>Harrison Jack informed the ATF agent that he had previously set up a non-profit entity "before this thing ever came down" called HERO (Hmong Emergency Relief Organization) to support Hmong refugees and that people have promised to donate money once the organization received a tax exempt number from the IRS. Exh. J, Disc. TE041641.</p>

Agent's Affidavit	Fact
<p>March 5, 2007</p> <p>Material Omission</p>	<p>The ATF agent states that all the weapons on the weapons list would cost over \$5 million dollars. The ATF agent also provides Harrison Jack with a fly zone map of Laos stating that "when we get down to getting more specific, when we get together for a planning meeting, which is - we're going to have to do sooner rather than later, huh, we're going to, uh, have more detailed maps for that." Exh. J, Disc. TE041643; TE041646.</p>
<p>March 7, 2007</p> <p>Material Omission</p>	<p>Jack informs the ATF UC "they have made an informal contact with the CIA already." Exh. J, Disc. TE041720.</p>
<p>March 28, 2007</p> <p>Material Omission</p>	<p>Jack informed the ATF UC that Lo Cha Thao had met with two deputy directors of the CIA. Exh. J, Disc. TE041727-TE041728.</p>
<p>¶49. On March 30, 2007, the ATF UC called Harrison JACK and JACK told him that "they" [meaning his Hmong contacts] had begun the collection process. He said they had less than \$100,000 but expected to have more soon</p>	<p>JACK: I just don't have any time frame on the funds being available. Right now...they've begun the collection process. They've got, you know, less than 100 grand at the moment. But it's a start, okay? ATF UC: Right, right. HARRISON JACK: And they're in a position when it - when it clicks and they get the - the larger funds coming in, it - it should happen fairly quickly, but - that's all I can - I can relate at the moment. Exh. J, Disc. TE041733.</p>

Agent's Affidavit	Fact
<p>¶53 On April 4, 2007, Lo Cha THAO called Harrison Jack ... "THAO said that General VANG Pao had ordered funding to be in place for a purchase."</p>	<p>"General Vang Pao is going to come up this week... he has... Uh we um ordered some of the funding to be uh in place." [emphasis added]. Exh. K, 0077-001, 4/4/07, p. 2:16-18.</p>
<p>April 4, 2007 Material Omission</p>	<p>Jack informed William Jefferds that Lo Cha Thao had met with the CIA by stating "So, at least ... elected representatives and their channels have been advised. There's also been a meeting with the CIA, two weeks ago." Exh. K, 00082-001, 4/4/07, p. 3:23-24.</p>
<p>¶54 On April 5, 2007. HARRISON JACK called LO CHA THAO...Thao described the budget to buy weapons, as "standing by."</p>	<p>"Well I want to make sure that—you know—they got the budget standing by." Exh. K, 0109-001, 4/5/2007, p. 5:17-18.</p>
<p>April 9, 2007 Material Omission</p>	<p>The agent learned that Defendants were attempting to attract public attention to the Hmong genocide in Laos, including working to smuggle in jars of "yellow rain" to a laboratory in the U.S. to get evidence of the Lao government abuses. Exh. K, 00154-001, 4/9/2007, pp. 1:18-5:1.</p>
<p>¶59. On April 12, 2007, Lo Cha THAO called HARRISON JACK..."THAO said that his group had been consulting with a United States congressman and had received advice concerning 'under the table strategies' from military personnel like Harrison JACK and an unnamed 'CIA guy.'"</p>	<p>"We got—you know—Congress and the senators on—you know—the right page. And we have military personnel like you and General Jeffords. And we got the top guys like the CIA guy giving under the table strategies." Exh. K, 00208-001, 4/12/2007, p. 19:4-9.</p>

Agent's Affidavit	Fact
<p>April 12, 2007</p> <p>Material Omission</p>	<p>Lo Cha Thao informed Jack that the CIA was involved by stating "the CIA gave us a mission to go and find the exact uh heartbeat of the country, of that country, you know." Exh. K, 00208-001, 4/12/07, p. 13:15-17.</p>
<p>April 12, 2007</p> <p>Material Omission</p>	<p>Jack informed the agent that the CIA was supportive of the plan, he stated "We [the CIA] can't become overtly involved, but we'll support and facilitate whatever reference you've got going ... I mean, they even offered funding." Exh. J, Disc. TE041809.</p>
<p>¶63. JACK said he had learned that the Hmong guerrilla army in Laos is divided into regional units with independent, clan-based leadership. Each unit would be activated for the war</p>	<p>Jack never mentions a "Hmong guerilla army in Laos" or "the war." Exh. J, Disc. TE041878-TE041897.</p>
<p>¶64. JACK estimated that they <u>have</u> millions of dollars to spend and that an initial order for one "province" could include 1,500 M-16s.</p>	<p>JACK: "He said initially - he said initially <u>they'll be generating</u> dollars. ... And he was talking millions right off the top." Exh. J, Disc. TE041885.</p>
<p>April 13, 2007</p> <p>Material Omission</p>	<p>Jack informed the agent that Lo Cha Thao had secured funding from the CIA by stating "they said they [CIA] can make funds available as soon as we're able to provide them the intel, the requirements, and you know, meet some of the other terms." Exh. J, Disc. TE041894.</p>

Agent's Affidavit	Fact
<p>April 13, 2007</p> <p>Material Omission</p>	<p>Jack informed the ATF UC that the CIA would be providing funding by stating "they've got external dollars that are probably be coming in from Thailand via the Agency to augment this thing." Exh. J, Disc. TE041894.</p>
<p>¶66. On April 19, 2007, Harrison JACK received an incoming call on his cell phone from Richard [LNU] [later identified as Richard Jellerson]. "JACK and Richard [JELLERSON] discussed specific of planning and budgeting a mission."</p>	<p>This conversation, which the agent takes completely and inexcusably out of context, is obviously about producing a documentary about the plight of the Hmong: "(Harrison) I'm standing by for that. I also advised Steve of budget increments that might increase depending upon what kinda of footage and uh how effectively we want to you know document this so we have a heads up on that piece too." Exh. K, 00398-001, 4/19/07, p. 1:22-2:1.</p>
<p>¶66 ... "During the conversation, they discussed the possibility of sending the UC on a 'LURP,' (Long Range Reconnaissance Patrol) in Laos. JACK and Richard [JELLERSON] spoke about troop movements across the border between Thailand and Laos." Id.</p>	<p>"(RICHARD) Um, if Steve's the LURP (inaudible) with a camera um you know what those guys did they were just amazing man just sit out there and watch. ... Anyway that may solve a problem the border crossing you were we heard about yesterday um the troops from one country going into another and raids and spraying but uh we need to check it out ... two or three guys that just hide out for two weeks or four days and we give them clear cut objectives here's the footage we are looking for and uh those guys are smart the cameras are easy to operate." Exh. K, 00398-001, 4/19/07, pp. 2:8-10, 19-23; 3:25; 4:1-3.</p>

Agent's Affidavit	Fact
<p>¶66 "JACK and Richard [JELLERSON] continued to talk about funding and budgeting for the operation. At the end of the call, JACK told Richard [JELLERSON] to budget \$10,000 for bribes." Id.</p>	<p>(RICHARD) It's not, it's not cheap, what I tried to do is to make this thing so feasible financially at the theatrical release level that's where we were at first every time we add a though we add budget. Uh, but then again, if it's the film we want that everybody's involved with that we want, we should do it that way. ... (RICHARD) Did you see my note, I should have considered bribes in the budget, I should have. I've been gone from that part the world for along time but dear god that's how that place works. (HARRISON) You may want to term that local marketing or something I don't know." Exh. K, 00398-001, 4/19/07, pp. 7:24-8:4; 10:9-14.</p>
<p>¶70-73. Shortly before 7:00 p.m. on April 24, the ATF UC returned a telephone call to Harrison JACK...</p> <p>JACK: "Well, I'll tell you, I will tell you what are ... my thoughts are. Um, you know, the, the, the percentages that, Well put it this way ... its taken me ten years to put this together. It's not just the last couple of months." (¶71.)</p>	<p>Recants the inference in the 4/27 affidavit in support of the first Jack wiretap extension (at p. 41, ¶120) that "this" referred to "[the insurgency]"</p> <p>Further, Jack does not say "he has been working on this for ten years" or that "he deserved the money." These are the UC's words, not Jack's. Exh. K, 00498-001, 4/24/07, pp. 1-8.</p>

Agent's Affidavit	Fact
<p>¶¶74-75. A few minutes later, Lo Cha THAO arrived with 7 associates. ... The ATF UC had a discussion about the Stinger missiles with Lo Cha THAO. The ATF UC asked THAO how many he needed, and how far apart they would be. THAO indicated that they would need them in the Northern Province of Laos and also down in the South near Vientiane.</p>	<p>Lo Cha Thao actually states: "We need like two of those and – just like two stingers for the different provinces that we have." He does not specify which of Laos' 16 provinces he is referring to. Importantly, there is no mention of "the Northern Province of Laos" and no statement regarding "down in the South near Vientiane." These details are fabrications. Exh. J, Disc. TE042067.</p>
<p>¶80. On April 29, 2007, Harrison JACK telephoned the ATF UC from his home phone and left a message. JACK said he was following up on his last call and needed to give the leadership some additional confidence on the ATF UC's capability to deliver to a specific location...JACK asked that the ATF UC call him. [Due to an equipment malfunction, this telephone call was not recorded.]</p>	<p>The agent's claim that the call was not recorded due to an equipment malfunction is preposterous. The call was obviously recorded because it went to the agent's cellular telephone voice mail inbox, and the undercover agent listened to the recording and then reported about it. Additionally, this call would have been recorded by at least two, and perhaps three separate mechanisms. In addition to being recorded by the agents voice mail mechanism, this call was from the AT&T land line at the JACK residence which was subject to the wiretap order, so all incoming and outgoing calls to and from the JACK residence phone were recorded pursuant to the wiretap order. In addition, if the agent employed the customary law enforcement practice for ensuring the integrity, capture and retention of all conversations to the UC cellular telephone, the carrier for that phone would have made a record of all calls incoming and outgoing to that UC cell phone.</p>

Agent's Affidavit	Fact
<p>¶82. On May 2, 2007, Harrison JACK called the ATF UC and told him that "they" [the ATF UC understood this term to refer to the Neo Hom organization] were just about to place an order with the ATF UC ...The ATF UC told JACK that they should meet in order to discuss the delivery of equipment. [Due to an equipment malfunction, this telephone call was not recorded.]</p>	<p>Again, this is highly dubious (see above).</p>
<p>¶¶83-85. On Thursday, May 3,, 2007, the ATF UC met with Harrison JACK at Hangar 17 Bar & Grill. ... JACK voiced his concern about the lack of planning and told the ATF UC that he believed a well placed "team" (referring to special operations-trained mercenaries) could secure Vientiane (the capital of Laos) in order to disrupt Laotian government operations.</p>	<p>The agent fails to mention that Jack was discussing the idea of securing a compound in Vientiane so that "they have a peaceful transition." Exh. J, Disc. TE042119.</p>
<p>May 3, 2007 Material Omission</p>	<p>ATF UC informed Jack that they could deliver humanitarian aid to the Hmong stating "You go in there and you see the Hmong that have been treated badly—and are starving—you can start propping them up and getting the support and helping them." Exh. J, Disc. TE042155.</p>

Agent's Affidavit	Fact
<p>¶95. Later that same day, May 4, 2007, the ATF UC called JACK and left a message asking JACK to call him. JACK called the ATF UC and told him that he had spoken with Lo Cha THAO, who told JACK that THAO would have the items (which the ATF UC understood to be firearms) selected and faxed to JACK by Monday, May 7, 2007.</p>	<p>Jack did not say this. Exh. J, Disc. TE042185-TE042192.</p>
<p>¶96. The ATF UC told JACK that his partner was not happy with the size of the first order, and JACK replied that this was the first of many orders to come.</p>	<p>This conversation did not occur. Exh. J, Disc. TE042185-TE042192.</p>
<p>¶96 "JACK said that Lo (Lo Cha THAO) was hesitant to place a large order ... JACK said Lo's (Lo Cha THAO) people had lost orders in the past and they needed to feel secure about this first order."</p>	<p>Jack did not say this. Exh. J, Disc. TE042185-TE042192.</p>
<p>¶99. Also on May 7, the ATF UC called Harrison JACK... JACK suggested that it [the Long Chang area of Laos] could be used as a special operations base...</p>	<p>Jack was wildly day dreaming about setting up a resource center for veterans, he specifically states "And I was thinking it could be a haven, it could have R and R facilities there, it could have medical facilities, it could have rehab facilities, it could be a resource that would be available if somebody wanted to take advantage of it." Exh. J, Disc. TE042206.</p>

Agent's Affidavit	Fact
<p>¶113. At 5:45 p.m. [on May 8, 2007,] Harrison JACK called Lisa Navarro. JACK left a message telling her that he has an individual by the name of "Steve" who might be an undercover FBI agent. JACK asked Lisa to run "Steve's" name and number through her databases. JACK told Lisa that he would be in touch.</p>	<p>The agent fails to mention that the "checks" Jack was referring to are "pendulum kinesiology and so on." Exh. K, 00575-001, 5/8/07, p. 1:1-23.</p>
<p>¶140. At approximately 2:40 p.m. on May. 10, 2007, JACK called the ATF UC and provided the dates of June 9 and June 11 as the days they could meet in Thailand for weapons delivery.</p>	<p>In fact, it is the agent, not Jack, who provides Jack with the dates of June 9 and June 11 on which to meet in Thailand. Exh. K, 00886-001, 5/10/07, pp. 1:8-4:7.</p>
<p>¶¶146-147. Later on May 11, at approximately 4:04 p.m., the ATF UC met with Harrison JACK and Lo Cha THAO at Hangar 17 Bar & Grill. ... JACK asked THAO if they (the Hmong insurgents) were at rallying points right now, and Lo Cha THAO replied, "Yes."</p>	<p>No one other than government representatives use the term "insurgent" - and nobody says the word during this meeting.</p>

Agent's Affidavit	Fact
<p data-bbox="199 258 451 289">May 12, 2007</p> <p data-bbox="199 321 557 352">Material Omission</p>	<p data-bbox="878 258 1528 1003">A messenger informed Lo Cha Thao that the General forbade any violence in Laos by stating "[B]ut the old man [Vang Pao] emphasized ... this morning that he think strongly about these work ... [T]he owners of this country [US Government] had already hold hands [with Laos], so that's that. We don't have to make trouble... What he emphasize I think is, that part and this work contradict ... [H]e emphasize very strong that ... that guy still considers that lie is active for the owner of this country [US Government] and with the policy he already have an agreement so that is how our duty is going to. There will not be any other violence whatsoever. So that is what has been approved." Exh. J, Disc. TE036238-TE036239.</p>
<p data-bbox="199 1056 451 1087">May 12, 2007</p> <p data-bbox="199 1119 557 1150">Material Omission</p>	<p data-bbox="878 1056 1528 1276">A colleague of Lo Cha Thao understood that Lo Cha had not gained the support of the Hmong elders, he stated "over there is there's no unity and over here there's not unity." Exh. J, Disc. TE036183.</p>
<p data-bbox="199 1329 451 1360">May 12, 2007</p> <p data-bbox="199 1392 557 1423">Material Omission</p>	<p data-bbox="878 1329 1528 1518">Lo Cha Thao told a colleague that the Hmong elders were not behind his plan, he stated "They [Hmong elders] have their own plans." Exh. J, Disc. TE036217.</p>

Agent's Affidavit	Fact
<p>May 14, 2007</p> <p>Material Omission</p>	<p>Lo Cha Thao lied about the status and progress of the plan to gain additional support, he stated "It's going to happen, because the high bridge people are going with us. The tools are dropped over there already." Exh. J, Disc. TE036854.</p>
<p>May 16, 2007</p> <p>Material Omission</p>	<p>As late as May 16, 2007, colleagues of Lo Cha Thao approved of his plan only if U.S. government would be paying for the weapons, by stating "But as for the tools and everything else, they are giving it to us, right? ... if that is the case then it's okay." Exh. J, Disc. TE037051.</p>
<p>May 18 2007</p> <p>Material Omission</p>	<p>The agent omits all reference division within the group: Lo Cha Thao states "our mission, we are going to go ahead with it. VP cannot stop all of us." Exh. J, Disc. TE037216.</p>
<p>May 18, 2007</p> <p>Material Omission</p>	<p>Lo Cha Thao confided in a colleague that Vang Pao had joined the Indo-China Coalition, in direct opposition to his plans. Lo Cha states "you [Vang Pao] made the decision that you're going to join in as a member or to hold a position in the Indo China Coalition in Vietnam .. he made a decision to go that route." Exh. J, Disc. TE037256.</p>
<p>May 20, 2007</p> <p>Material Omission</p>	<p>The agent omits reference that Lo Cha Thao was aware that Vang Pao wanted a political solution to the genocide in Laos. Exh. J, Disc. TE037216.</p>