

1 [COUNSEL LISTED ON SIGNATURE PAGE]
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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

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

23 Defendants.
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Case No. 2:07-CR-0266 FCD

**DEFENDANTS' RENEWED
MOTION TO DISMISS FOR
OUTRAGEOUS GOVERNMENT
CONDUCT; REQUEST FOR
EVIDENTIARY HEARING**

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

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NOTICE OF MOTION AND MOTION

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

PLEASE TAKE NOTICE that on October 15, 2010, at 11:00 a.m., or as soon thereafter as the matter may be heard, Defendants jointly, through counsel, will and hereby do renew, pursuant to Federal Rule of Criminal Procedure 12(b)(3), their Motion to Dismiss for Outrageous Government Conduct, filed on March 9, 2009. All Defendants have joined this Motion.

This Motion is based on this Notice of Motion and the attached Memorandum of Points and Authorities; the files and records in this case, including Defendants' March 9, 2009 Motion to Dismiss for Outrageous Government Conduct, Defendants' Motion to Suppress the Fruits of Illegal Wiretaps, Defendants' Motion to Suppress Evidence Gathered as a Result of False Affidavits Supporting Search Warrants, Defendant Youa True Vang's Motion to Dismiss for Prosecutorial Misconduct before the Grand Jury, Defendants' Motion to Dismiss Count Three of the Superseding Indictment and all documents submitted in support of those motions; and any other evidence or argument that may properly be presented to the Court.

Defendants request an evidentiary hearing and estimate that the presentation of evidence and arguments will require approximately two days.

1 **I. INTRODUCTION**

2 Defendants respectfully renew their Motion to Dismiss for Outrageous Government
3 Conduct, originally filed on March 9, 2009.¹ At the May 11, 2009 hearing on this motion, the
4 Court ruled that Defendants could “renew this motion based on a full and complete record.”²
5 Although it is still uncertain whether the government has provided a full and complete record,
6 Defendants submit this renewed motion based on the discovery produced to date.

7 This case has been tainted by a pattern of outrageous government misconduct that started
8 with the ATF’s undercover sting operation, continued with the government’s submission of false
9 and misleading affidavits to the Court, and, most recently, infected the September 17, 2009 grand
10 jury proceeding which led to the filing of the Superseding Indictment.

11 Standing alone, the government’s conduct during the undercover sting operation warrants
12 dismissal on due process grounds. The government’s instigation of and excessive involvement in
13 the supposed plot to overthrow the Lao government mirrors or exceeds the outrageous conduct
14 that led other courts to dismiss cases for outrageous government conduct. Additionally, the
15 evidence demonstrates that the government engaged in constitutionally unacceptable mental
16 coercion by exploiting some of the so-called conspirators’ outrage and frustration at the Lao
17 government’s policy of genocide against the Hmong, and by assuring them that the U.S.
18 government would back a military offensive against Laos.

19 The Court should also dismiss the Superseding Indictment under its supervisory
20 powers — an additional and independent basis for dismissal. Here, the outrageous conduct
21 during the undercover sting operation, taken together with the government’s submission of false
22 and misleading affidavits to the Court and presentation of false and misleading testimony to the
23 grand jury, demonstrate that government misconduct has pervaded virtually every aspect of this
24 case and that the only adequate remedy to cure these transgressions is dismissal.

25 _____
26 ¹ Defendants’ Motion to Dismiss for Outrageous Government Conduct, filed on Mar. 9, 2009
27 (“March 9, 2009 Motion”) [Dkt. No. 379].

28 ² Transcript of May 11, 2009 Hearing on Motion to Dismiss for Outrageous Government
Conduct at 58 [Dkt. No. 432].

1 Lastly, if any doubt remains as to the appropriateness of dismissal, Defendants
2 respectfully request an evidentiary hearing to more fully examine and expose the outrageous
3 government conduct in this case.

4 **II. FACTS**

5 The facts relevant to this motion are set forth in the following motions and the documents
6 filed in support thereof, which Defendants hereby incorporate by reference: (1) Defendants'
7 March 9, 2009 Motion (Dkt. No. 379); (2) Defendants' Motion to Suppress the Fruits of Illegal
8 Wiretaps, filed May 14, 2010 (Dkt. No. 543); (3) Defendants' Motion to Suppress Evidence
9 Gathered as a Result of False Affidavits Supporting Search Warrants, to be filed May 21, 2010;
10 (4) Defendant Youa True Vang's Motion to Dismiss for Prosecutorial Misconduct before the
11 Grand Jury, filed May 20, 2010 (Dkt. No. 550); and (5) Defendants' Motion to Dismiss Count
12 Three of the Superseding Indictment, to be filed May 21, 2010.

13 **III. ARGUMENT**

14 **A. THE GOVERNMENT'S OUTRAGEOUS CONDUCT WARRANTS**
15 **DISMISSAL OF THE SUPERSEDING INDICTMENT ON DUE**
16 **PROCESS GROUNDS.**

17 The Supreme Court first recognized the defense of outrageous government conduct in
18 *United States v. Russell*, 411 U.S. 423 (1973), where it stated that there might be situations "in
19 which the conduct of law enforcement officials is so outrageous that due process principles would
20 absolutely bar the Government from invoking judicial process to obtain a conviction." *Id.* at 431-
21 32. Following *Russell*, the Ninth Circuit has repeatedly affirmed that "a defendant may raise a
22 due process-based outrageous government conduct defense to a criminal indictment." *United*
23 *States v. Bogart*, 783 F.2d 1428, 1433 (9th Cir. 1986), *vacated on other grounds, United States v.*
Wingender, 790 F.2d 802 (9th Cir. 1986) (citing cases).

24 While there is no bright-line test for determining when the government's behavior reaches
25 a level of outrageousness to constitute a due process violation, the Ninth Circuit has recognized
26 two categories of cases in which law enforcement conduct becomes constitutionally
27 impermissible: (1) where the police fabricate the crime to secure the defendant's conviction, or
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1 (2) where the government utilizes unwarranted physical or mental coercion to effectuate the
2 crime. *Bogart*, 783 F.2d at 1438. Both types of outrageous government conduct occurred here.

3 First, as set forth in Defendants' March 9, 2009 Motion, the government instigated,
4 maintained, and actively participated in the alleged plot. Among other things:

- 5 • The government knew when it first learned of this case in September 2006 that
6 Harrison Jack and others were seeking only "to help those persons being ethnically
7 cleansed by providing them with firearms to *protect themselves*," not to engage in any
8 sort of military offensive.³
- 9 • The government inexplicably waited *four months*, until January 23, 2007, to initiate
10 contact with Jack, at a time when Jack had forgotten about the entire affair and was
11 engaged in no criminal activity whatsoever.⁴
- 12 • When the undercover ATF agent finally met with Jack on January 25, 2007, the
13 undercover ATF agent suggestively asked not once, but twice, whether Jack and the
14 people he was working with were willing to use force against the Lao government, and
15 each time Jack clearly answered no, explaining that "*They don't care about taking*
16 *over the government. They don't want to do that,*" and "*They're trying to survive.*"⁵
- 17 • During this initial January 25, 2007, meeting, Jack stated that he "*had no idea*"
18 whether any of the Hmong individuals with whom he had prior discussions had
19 intended to purchase any weapons or to take any specific action, *i.e.*, before the agent
20 interjected himself, Jack had no knowledge of any agreement or any alleged
21 conspiracy. During this meeting, in the context of the undercover agent's question
22 about the price range of weapons, Jack told the agent, "*Right now, like I was saying,*

23 ³ March 9, 2009 Motion at 4 (quoting Declaration of Galia A. Phillips in Support of Defendants'
24 Motion to Dismiss for Outrageous Government Conduct ("Phillips Decl."), Ex. 2, ATF Report of
25 Investigation re Namon Hawthorne dated Sept. 29, 2006 at 1 [TarnEgl 034614] [Dkt. No. 393-4]
(emphasis added)). Nothing herein is an admission of any fact by any Defendant.

26 ⁴ *Id.* at 5-6 (quoting Phillips Decl., Ex. 14, Jack's Calls, Jan. 22, 2007, at 2:17-3:4 [Dkt. No.
382-6]).

27 ⁵ *Id.* at 6 (quoting Phillips Decl., Ex. 15, Transcript of Jan. 25, 2007 Meeting at 51:23-52:12,
52:24-53:1, 54:17-55:13 [Dkt. No. 383-3] (emphasis added)).

1 *I've got no idea what they're going to do tomorrow or how they're going to*
2 *approach the situation.*"⁶

- 3 • The government continued to ignore statements indicating a desire for a non-violent
4 resolution, including Jack's February 7, 2007 statement that the "optimum situation"
5 was not to use force at all and instead was to "generate some political, via the
6 international leverage, where they cut the genocide off . . . , rather than having to fight
7 their way out."⁷
- 8 • The undercover ATF agent implied that the United States government would support
9 an invasion of Laos, telling Jack on March 5, 2007, that the United States government
10 and the CIA would "back [their] political endeavor of democracy" in Laos after "Vang
11 Pao goes in there and takes over the freaking country . . . and gets things squared
12 away," and that the CIA would come in "[a]s soon as it starts going down" because
13 "they're going to watch what's going on."⁸
- 14 • The government ignored repeated statements by certain Defendants describing their
15 efforts to obtain government support for the alleged endeavor and expressing their
16 belief that various government officials and agencies, including the CIA, supported the
17 plan.⁹

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20 ⁶ See Phillips Decl., Ex. 15, Transcript of Jan. 25, 2007 Meeting at 31:9-11 [Dkt. No. 383-3].

21 ⁷ *Id.* at 6 n.12 (quoting Phillips Decl., Ex. 16, Transcript of Feb. 7, 2007 Meeting at 18:8-19:1 [Dkt. No. 383-4]).

22 ⁸ *Id.* at 7 (quoting Phillips Decl., Ex. 17, Mar. 5, 2007 Meeting at 49-51 [Dkt. No. 383-5]); *see also* Phillips Decl., Ex. 17, Mar. 5, 2007 Meeting at 56 [Dkt. No. 383-5]. Assistant U.S. Attorney Robert Tice-Raskin conceded at the May 11, 2009 hearing that it would be "somewhat troubling" if a federal agent told alleged conspirators that the United States government supported an invasion of another country. *See* Transcript of May 11, 2009 Hearing on Motion to Dismiss for Outrageous Government Conduct at 51-52 [Dkt. No. 432].

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25 ⁹ March 9, 2009 Motion at 8 (quoting Phillips Decl., Ex. 16, Feb. 7, 2007 Meeting at 14:8-18 [Dkt. No. 383-4]; Ex. 17, Mar. 5, 2007 Meeting at 31:4-13 [Dkt. No. 383-5]; Ex. 20, Jack's Calls, Mar. 28, 2007, 10:40 a.m. at 1:7-25 [Dkt. No. 384-4]; Ex. 21, Jack's Calls, Apr. 3, 2007, 4:28 p.m. at 1:22-3:4 [Dkt. No. 384-5]; Ex. 22, Hmong to English transcript of the wiretap recording of a Lo Cha Thao telephone call, May 20, 2007, 16:48 p.m. at 28 [TarnEgl 037500] [Dkt. No. 384-6]).

- 1 • The undercover ATF agent provided necessary expertise for the alleged plot to
2 Defendants — most of whom are elderly and/or have no military experience
3 whatsoever — and pressed them to hold a “planning meeting” and to produce a
4 written operational plan, among other things.¹⁰
- 5 • The government knew that Defendants were utterly incapable of financing the alleged
6 scheme and, according to the government’s evidence, ultimately raised less than a
7 quarter of a percent of the alleged total budget.¹¹
- 8 • When the government learned of a critical rift among the alleged conspirators at a
9 June 2, 2007 meeting at which Vang Pao and others opposed any coup plan, the
10 government rushed to arrest most of the Defendants two days later.¹²

11 These facts, along with the facts incorporated by reference from Defendants’ other
12 motions, mirror or exceed the facts in other cases where courts have dismissed for outrageous
13 government conduct and warrant dismissal of the indictment here. *See, e.g., Greene v. United*
14 *States*, 454 F.2d 783, 785-87 (9th Cir. 1971) (dismissing indictment where government agent
15 “helped first to reestablish, and then to sustain, criminal operations which had ceased” before his
16 involvement); *United States v. Twigg*, 588 F.2d 373, 380-81 (3d Cir. 1978) (dismissing
17 indictment where government informant proposed crime, provided necessary expertise, and
18 assistance defendants provided was minimal and at the specific direction of the informant);
19 *United States v. Batres-Santolino*, 521 F. Supp. 744, 748-51 (N.D. Cal. 1981) (dismissing
20 indictment where “government agents ‘manufactured’ a crime that . . . could not and would not
21 have been committed if [the informant] had not inveigled defendants into it and offered to provide
22 them with an otherwise unavailable source of supply of the illegal drug they were to import”).

23 Second, dismissal on due process grounds is warranted here because the government
24 employed unwarranted mental coercion to effectuate the alleged crime. *See Bogart*, 783 F.2d at
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26 ¹⁰ *See id.* at 11-13.

27 ¹¹ *See id.* at 13.

28 ¹² *See id.* at 13-18.

1 1438 (“Ultimately, every case must be resolved on its own particular facts.”); *see also United*
2 *States v. Marshank*, 777 F. Supp. 1507, 1523 (N.D. Cal. 1991) (“Whether outrageous government
3 misconduct exists turns on the totality of the circumstances.”). The government knew from the
4 outset of this case that certain Defendants were seeking only to help the Hmong defend
5 themselves against the well-documented human rights violations being perpetrated by the Lao
6 government.¹³ Indeed, the undercover ATF agent heard firsthand accounts about how Lao
7 soldiers had raped eight Hmong girls, ages 11 to 16, about how the Lao government was spraying
8 a toxic chemical agent called “yellow rain” on Hmong villagers, and how family members of
9 some of the Defendants had been killed by the Lao government.¹⁴

10 In response to these accounts, the undercover ATF agent stoked and exploited the
11 Defendants’ outrage and frustration, comparing Laos’s genocidal campaign against the Hmong to
12 “the German’s final solution” and assured certain Defendants that the United Nations was “not
13 going to do anything.”¹⁵ The agent then offered to provide more powerful weapons.¹⁶ For
14 example, it was the ATF agent who suggested Stinger missiles after he was told about the yellow
15 rain.¹⁷ The agent pressed them to buy bigger quantities, warning them that his “partner was not
16 happy with the size of the first order.”¹⁸ He also stated that there was “no doubt in [his] mind”
17 that the United States and the CIA would back the alleged plan, and he ignored repeated
18 statements by some of the Defendants expressing their belief that the government would support
19 such a plan.¹⁹

20 It was only through the agent’s manipulation, pressure, and assurances that the
21 government was able to transform an initial desire to help the Hmong defend themselves into the

22 ¹³ *See* March 9, 2009 Motion at 4, 6.

23 ¹⁴ *Id.* at 9-10.

24 ¹⁵ *Id.* at 6-7 (quoting Phillips Decl., Ex. 15, Jan. 25, 2007 meeting at 19:18-20:2 [Dkt. No. 383-3]; Ex. 17, Transcript of Mar. 5, 2007 Meeting at 24:25-25:16 [Dkt. No. 383-5]).

25 ¹⁶ *Id.* at 9.

26 ¹⁷ *Id.*

27 ¹⁸ *Id.* (quoting Phillips Decl., Ex. 1, Agent’s Affidavit at 32:20-22 [Dkt. No. 393]).

28 ¹⁹ *See supra* footnotes 7 & 8.

1 overblown, government-manufactured conspiracy with which the government now charges the
2 defendants. Under these circumstances, the government engaged in constitutionally
3 impermissible mental coercion to effectuate the alleged plot.

4 **B. THE COURT SHOULD DISMISS THE SUPERSEDING INDICTMENT**
5 **UNDER ITS SUPERVISORY POWERS.**

6 The Ninth Circuit has held that even where government misconduct does not rise to the
7 level of a due process violation, “the court may nonetheless dismiss under its supervisory
8 powers.” *United States v. Chapman*, 524 F.3d 1073, 1084 (9th Cir. 2008) (citation omitted). The
9 supervisory power has been used by federal courts to dismiss indictments for prosecutorial
10 misconduct in a variety of contexts. *See, e.g., id.* at 1085 (dismissing indictment for prosecutor’s
11 discovery abuses and affirmative misrepresentations to court of full compliance with discovery
12 obligations); *United States v. Samango*, 607 F.2d 877, 884 (9th Cir. 1979) (dismissing indictment
13 where cumulative effect of prosecutorial misconduct produced a biased grand jury); *United States*
14 *v. Stein*, 495 F. Supp. 2d 390 (S.D.N.Y. 2007) (dismissing indictment pre-trial based on
15 government’s misconduct in threatening to indict defendants’ employer if employer paid
16 defendants’ legal fees). In the Ninth Circuit, a court may exercise its supervisory power ““to
17 implement a remedy for the violation of a recognized statutory or constitutional right; to preserve
18 judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a
19 jury; and to deter future illegal conduct.”” *Chapman*, 524 F.3d at 1085 (citation omitted). Each
20 of these reasons justify dismissal here.

21 First, the government violated federal constitutional and statutory rights. The
22 government’s outrageous conduct in the undercover sting operation violated Defendants’ due
23 process rights. The government’s submission of false and misleading affidavits to support the
24 search warrants and wiretaps violated the Fourth Amendment and 18 U.S.C. § 2518’s
25 requirement of a “full and complete statement of the facts and circumstances” justifying the
26 applicant’s belief that a wiretap order should issue. *See, e.g., United States v. Barrera-Moreno*,
27 951 F.2d 1089, 1092 (9th Cir. 1991) (recognizing that “a Fourth Amendment violation may
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1 properly result in dismissal if the violation is not adequately remedied by application of the
2 exclusionary rule”). And the government’s presentation of false and misleading testimony to the
3 grand jury violated Defendants’ constitutional right to an independent grand jury. *See Samango*,
4 607 F.2d at 884.²⁰

5 Second, dismissal under the Court’s supervisory powers is also necessary “to preserve
6 judicial integrity.” *Chapman*, 524 F.3d at 1085. Indeed, the government has admitted that it
7 made false and misleading statements in sworn affidavits to the Court.²¹ And, after the arrests of
8 most of the defendants in June 2007, the government then repeated some of those false and
9 misleading statements in an effort to deny bail and to keep the defendants in custody.²² The
10 government continued in that vein to request onerous conditions of release that have continued
11 for years.²³

12 Third, dismissal is warranted “to deter future illegal conduct” by the government.
13 *Chapman*, 524 F.3d at 1085. In this regard, the Court should consider whether “any lesser
14 sanction [would be] like endorsing [the government’s conduct].” *Chapman*, 524 F.3d at 1088.
15 Here, declining to dismiss this case would endorse the notion that an undercover ATF agent may
16 prey on the vulnerabilities of suspects and may suggest to them that the U.S. government would

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18 ²⁰ *See* Defendants’ Motion to Suppress the Fruits of Illegal Wiretaps [Dkt. No. 543]; Defendants’
19 Motion to Suppress Evidence Gathered as a Result of False Affidavits Supporting Search
20 Warrants; Defendant Youa True Vang’s Motion to Dismiss for Prosecutorial Misconduct before
21 the Grand Jury [Dkt. No. 550]; and Defendants’ Motion to Dismiss Count Three of the
22 Superseding Indictment.

23 ²¹ *See* Defendants’ Motion to Suppress Evidence Gathered as a Result of False Affidavits
24 Supporting Search Warrants at 14-15 (citing Government’s Opposition to Defendants’ Motion to
25 Dismiss, filed April 6, 2009, at 81:16-17, 83:13-15, 85:20-22 [Dkt. No. 412]).

26 ²² Among other misrepresentations, the government falsely stated at the bail hearing that: Jack
27 was “a . . . defense professional dealing with the defense professionals” and that Defendants “had
28 enough American currency to purchase” 125 AK-47s and smoke grenades, a second load of AK-
47s and smoke grenades, and a Stinger missile.” *See* March 9, 2009 Motion at 24-26 (quoting
Phillips Decl., Ex. 39, Bail Hearing at 44, 64 [Dkt. No. 386-6]).

²³ *See* Notice to Defendant Being Released (“Notice”) as to Seng Vue [Dkt. No. 117]; Notice as
to Lo Thao [Dkt. No. 119]; Notice as to Youa True Vang [Dkt. No. 120]; Notice as to Vang Pao
[Dkt. No. 121]; Notice as to Harrison Jack Ulrich [Dkt. No. 122]; Notice as to Chong Yang Thao
[Dkt. No. 125]; Notice as to Dang Vang [Dkt. No. 129]; Notice as to Hue Vang [Dkt. No. 132];
Notice as to Chue Lo [Dkt. No. 136]; Notice as to Nhia Kao Vang [Dkt. No. 139]; Notice as to Lo
Cha Thao [Dkt. No. 117].

1 support the very conduct for which the government later prosecutes. Refusing to dismiss would
2 also suggest that it is permissible for the government to make misrepresentations to the Court and
3 the grand jury.

4 Dismissal is the only remedy to fully rectify the government's violations here. *See United*
5 *States v. Morrison*, 449 U.S. 361, 366 (1981) (dismissal under a court's supervisory powers is
6 appropriate when suppression of evidence or new trial cannot remedy prejudice to the defendant).
7 The fruit of the government's transgressions is the indictment itself, brought about by the
8 aggressive tactics of the undercover ATF agent, the false affidavits, and the false and misleading
9 statements presented to the grand jury. The government's pervasive misconduct taints the entire
10 prosecution, from the investigation, to the sting, to the searches and the arrests, to the grand jury,
11 to the indictment, and to the initial denial of bail and to the conditions of release. In this situation,
12 only a dismissal would be adequate.

13 **C. THE COURT SHOULD ORDER AN EVIDENTIARY HEARING.**

14 Defendants request that the Court, at a minimum, grant an evidentiary hearing to more
15 fully examine and expose the outrageous government misconduct in this case. An evidentiary
16 hearing is generally required "when the moving papers allege facts with sufficient definitiveness,
17 clarity, and specificity to enable the trial court to conclude that contested issues of fact exist."
18 *United States v. Qadri*, 2010 U.S. Dist. LEXIS 22065, at *17 (D. Haw. Mar. 9, 2010) (citing
19 *United States v. Howell*, 231 F.3d 615, 620 (9th Cir. 2000)). An evidentiary hearing on a motion
20 to dismiss an indictment based on government misconduct is required if a defendant raises a
21 material issue of fact "which if resolved in accordance with [the defendant's] contentions would
22 entitle him to relief." *United States v. Irwin*, 612 F.2d 1182, 1187 (1980). Further, in
23 determining whether a defendant was prejudiced by government misconduct, the Court must
24 assume that the factual allegations in the defendant's exhibits and affidavits are true. *Id.*; *see also*
25 *United States v. Westerdahl*, 945 F.2d 1083, 1086 (9th Cir. 1991).

26 The facts described in this motion and the motions incorporated by reference herein
27 establish outrageous government conduct that has prejudiced Defendants and that entitle them to
28 relief. While the defendants believe that dismissal is appropriate on the current record, an

1 evidentiary hearing will corroborate the evidence Defendants have received to date and provide
2 additional details concerning the government's misconduct.²⁴

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court should dismiss the Superseding Indictment with
5 prejudice for the government's outrageous government conduct in this case. Given the showing
6 made by this motion and the motions incorporated by reference, Defendants are entitled to an
7 evidentiary hearing where they can question (1) the undercover ATF agent, (2) prosecutor Ellen
8 Endrizzi, who oversaw the wiretap and search-warrant process, (3) the government's witness at
9 the grand jury, (4) prosecutor Jill Thomas, who questioned the government's witness at the grand
10 jury, (5) Erik W. Crowder, and (6) other witnesses as may be appropriate.

11 Dated: May 21, 2010

Respectfully submitted,

MORRISON & FOERSTER LLP

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13
14 By: /s/ James J. Brosnahan
15 JAMES J. BROSNAHAN
16 GEORGE C. HARRIS
17 SOMNATH RAJ CHATTERJEE
18 MELISSA ANN JONES
19 Attorneys for Defendant
20 YOUA TRUE VANG

21 Dated: May 21, 2010

22 By: /s/ Daniel J. Broderick
23 DANIEL J. BRODERICK
24 Federal Defender
25 JEFFREY L. STANIELS
26 BENJAMIN D. GALLOWAY
27 Assistant Federal Defenders
28 Attorneys for Defendant
HARRISON JACK

26 ²⁴ Indeed, as the Court recognized at the May 11, 2009 hearing on Defendants' original motion to
27 dismiss, the resolution of issues of fact and credibility are essential to the determination of this
28 motion. *See* Transcript of May 11, 2009 Hearing on Motion to Dismiss for Outrageous
Government Conduct at 55 [Dkt. No. 432].

1 Dated: May 21, 2010 By: /s/ Mark J. Reichel
MARK J. REICHEL
2 Attorney for Defendant
LO CHA THAO
3

4 Dated: May 21, 2010 By: /s/ William J. Portanova
WILLIAM J. PORTANOVA
5 Attorney for Defendant
LO THAO
6

7 Dated: May 21, 2010 By: /s/ Krista Hart
KRISTA HART
8 Attorney for Defendant
HUE VANG
9

10 Dated: May 21, 2010 By: /s/ Dina Lee Santos
DINA LEE SANTOS
11 Attorney for Defendant
CHONG YANG THAO
12

13 Dated: May 21, 2010 By: /s/ Michael B. Bigelow
MICHAEL B. BIGELOW
14 Attorney for Defendant
SENG VUE
15

16 Dated: May 21, 2010 By: /s/ Shari Rusk
SHARI RUSK
17 Attorney for Defendant
CHUE LO
18

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

22 Dated: May 21, 2010 By: /s/ Hayes H. Gable, III
HAYES H. GABLE, III
23 Attorney for Defendant
DANG VANG
24

25 Dated: May 21, 2010 By: /s/ Bruce Locke
BRUCE LOCKE
26 Attorney for Defendant
JERRY YANG
27
28

