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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; GENERAL VANG
15 PAO, aka Pao Vang, aka Vang Pao, LO CHA
16 THAO; LO THAO, aka President Lo Thoa, aka
17 Xia Lo Thao; YOUA TRUE VANG, aka Joseph
18 Youa Vang, aka Colonel Youa True Vang; HUE
19 VANG; CHONG YANG THAO; SENG VUE;
20 CHUE LO; NHIA KAO VANG; and DANG
21 VANG, aka David Vang,

22 Defendants.

Case No. 2:07-CR-0266 FCD

**DEFENDANTS' NOTICE OF
MOTION AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO
COMPEL DISCOVERY**

Date: December 8, 2008

Time: 10:00 a.m.

Judge: Dale A. Drozd

23 To: MCGREGOR W. SCOTT, U.S. ATTORNEY, ROBERT M. TWISS, ASSISTANT U.S.
24 ATTORNEY, and ELLEN V. ENDRIZZI, ASSISTANT U.S. ATTORNEY:

25 PLEASE TAKE NOTICE that on December 8, 2008, at 10:00 a.m., or as soon thereafter
26 as the matter may be heard, Defendants jointly, through counsel, will and hereby do move for an
27 order compelling the Government to produce documents and information in discovery pursuant to
28 Rule 16 of the Federal Rules of Criminal Procedure and *Brady v. Maryland*, 373 U.S. 83 (1963).

All Defendants have joined this Motion.

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This Motion is based on this Notice of Motion and the attached Memorandum of Points and Authorities, the Declaration of Somnath Raj Chatterjee, the files and records in this case, and any other evidence or argument that may properly be presented to the Court.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 Defendants seek an order compelling the United States (“the government”) to
4 produce information in its possession that is (a) material to the preparation of the defense
5 under Federal Criminal Rule of Procedure 16, and/or (b) exculpatory or impeachment
6 information discoverable under the *Brady* doctrine.

7 This prosecution is based on an undercover sting operation. The government alleges
8 that Defendants conspired with an undercover ATF agent to supply arms to members of the
9 Hmong community in Laos, who have been targets of repression by the communist
10 government in Laos, and to overthrow the Laotian government. The crimes charged in the
11 Indictment include conspiracy to violate the Neutrality Act, 18 U.S.C. § 960, by supporting a
12 military enterprise against a nation “with whom the United States is at peace.”

13 Evidence produced by the government shows that the undercover ATF agent actively
14 attempted to instigate a plan for supply of arms to Laos, despite opposition by Hmong elders,
15 and encouraged Defendants to believe that any actions against the communist government in
16 Laos would be supported by the U.S. Government. The government knew that members of
17 the Hmong community, under the leadership of defendant General Vang Pao, had fought
18 with the covert support of the United States during the Vietnam War against communist
19 forces in Laos from approximately 1961 to 1975. The government also knew that since the
20 withdrawal of U.S. forces from Vietnam in 1975, the Hmong community in Laos has been
21 the target of acts of genocide by the Laotian government.¹

22 _____
23 ¹ *Lao People's Democratic Republic, Hiding in the Jungle: Hmong Under Threat*,
24 Amnesty International Reports (Amnesty International, London, United Kingdom), Mar. 23,
25 2007, available at: <http://www.amnesty.org/en/library/asset/ASA26/003/2007/en/dom-ASA260032007en.pdf>, last viewed: September 2, 2008 (Since the end of the Secret War, the Lao
26 military has continued to pursue and attack those who formerly belong to the rebel Hmong and
27 their descendants, compelling them to keep on the move, and denying them the opportunity to
28 exercise their human rights); Thomas Fuller, *Old U.S. Allies, Still Hiding in Laos*, N. Y. Times,
December 17, 2007, available at: www.nytimes.com/2007/12/17/world/asia/17laos.html, last
viewed: September 2, 2008 (Four decades after the Central Intelligence Agency hired thousands
of jungle warriors to fight Communists on the western fringes of the Vietnam War, men who say
they are veterans of that covert operation are isolated, hungry and periodically hunted by a

(Footnote continues on next page.)

1 Because the government has charged Defendants with conspiring to engage in
2 military acts against the communist government in Laos and alleges that the United States is
3 “at peace” with that government, the policy and actions of the U.S. Government towards the
4 Laotian government are directly at issue and material to the defense. This is particularly true
5 given the United States’ historical collaboration with Defendants and the Hmong community
6 in resisting communist forces in Laos and the evidence that the government agent in this case
7 encouraged Defendants to believe that the U.S. Government would support actions against
8 the Laotian government. Evidence of United States’ policy and conduct with regard to the
9 Laotian government generally and any actions by the U.S. Government to encourage
10 resistance to the Laotian government by the Hmong community, in particular, are relevant
11 not only to whether the United States was “at peace” with Laos within the meaning of the
12 Neutrality Act, but also to Defendants’ state of mind and relevant intent with regard to the
13 claims alleged in the Indictment. Such evidence is also material to possible defenses of
14 outrageous government conduct and entrapment.

15 In addition, the government has charged various conspiracies regarding an alleged
16 transfer of weapons to areas in or around Laos allegedly to aid the Hmong against the
17 communist Laotian government and its agents. Documents in the possession, custody, and
18 control of the U.S. Government regarding the persecution of the Hmong, including attempted
19 genocide, by the Laotian government and its agents are material to a possible defense of
20 others claim.

21 In this regard, Defendants seek through this motion three specific categories of
22 documents: (1) those constituting or evidencing communications by the government,
23 through any of its departments or agencies, with Defendants or other members of the ethnic

24 (Footnote continued from previous page.)

25 Laotian Communist government still mistrustful of the men who sided with America); Amnesty
26 International Public Statement, *Thailand: The new Thai government must stand up for human
27 rights of refugees*, Amnesty International, available at: www.amnestyusa.org, last viewed:
28 9/2/2008 (Over crowding, lack of clean water, and constant fear of being sent back to Laos where
they face human rights violations; life for 154 Lao Hmong refugees, in detention in northern
Thailand since 2006, is intolerable).

1 Hmong population in the United States or abroad with regard to United States' policy,
2 planning, or conduct towards the government of Laos during the period of 1961 to 2007;²
3 (2) those evidencing any overt or covert military planning or operations by the U.S.
4 Government with regard to Laos during the period of 1961 to 2007;³ and (3) documents
5 regarding the persecution and attempted genocide of the Hmong in and around Laos.⁴
6 Defendants seek such documents that are within the possession of the government and its
7 departments and agencies, including the State Department, the Central Intelligence Agency
8 ("CIA"), the Department of Defense ("DOD"), and the National Security Agency ("NSA").
9 Defendants have requested these documents through a series of discovery letters to the
10 government, beginning more than a year ago. The government has not objected to these
11 requests, but it has neither produced any documents in these categories nor asserted that such
12 documents do not exist.

13 Second, Defendants seek through this motion a related category of documents: Those
14 constituting or evidencing communications by the prosecution (the U.S. Attorney's Office,
15 the Department of Justice, or agents working under their direction) with the CIA, other
16 agencies, and the ATF agent regarding this case. The government has admitted that
17 prosecutors discussed this case with the CIA and has made representations in open court
18 regarding the content of those discussions. It has refused, however, to produce documents
19 that evidence those communications based on assertion of the attorney work-product
20 doctrine. The requested information, however, must be provided under *Brady* and its
21 progeny. In any event, the government has not established any work-product protection, and
22 the government's reference to and reliance on the content of its communications waived any
23

24 ² A summary of the requests seeking documents in this category is set forth in Appendix
25 A to this Memorandum.

26 ³ A summary of the requests seeking documents in this category is set forth in Appendix B
27 to this Memorandum.

28 ⁴ A summary of the requests seeking documents in this category is set forth in Appendix C
to this Memorandum.

1 such protection. Moreover, neither work product nor Rule 16(a)(2) apply to prevent the
2 disclosure of facts provided by other agencies or other agencies' documents.

3 Third, Defendants have requested and seek through this motion any recordings or
4 documents obtained by the government in the course of its investigation in this case that
5 constitute or describe cell telephone calls, emails, or other communications sent or received
6 by any defendant that were intercepted by the program for presidentially approved
7 warrantless interception of electronic communications ("PAWIEC"), the National Security
8 Agency and/or a Narus computer, including a Narus STA 6400 computer. Despite
9 Defendants' requests, the government has neither produced such documents nor affirmed that
10 they do not exist.⁵

11 Fourth, Defendants have requested any evidence of prior "bad acts" that the
12 government intends to present in its case-in-chief at trial under Federal Rule of Evidence
13 404(b). Because the government has neither produced such documents nor affirmed that it
14 will not seek to present 404(b) evidence at trial, Defendants seek discovery of any such
15 evidence through this motion.

16 Finally, Defendants request an order compelling the government to produce specific
17 items that the government has agreed to produce but has not yet produced.⁶

18 RELEVANT PROCEDURAL HISTORY

19 The Indictment, filed on June 14, 2007, charges five conspiracy counts based on an
20 alleged plot to ship weapons to the ethnic Hmong living in Laos in order to facilitate the
21 overthrow of the communist leadership of Laos. (Indictment, at ¶ 16.) Counts I, IV, and V
22 allege conspiracies under 18 U.S.C. § 371 to: violate the Neutrality Act, 18 U.S.C. § 960;
23 receive and possess firearms and destructive devices in violation of 18 U.S.C. § 922(o); and
24 export certain listed defense items without a State Department license in violation of 22

25 _____
26 ⁵ A summary of specific requests seeking documents in this category is set forth in
Appendix D to this Memorandum.

27 ⁶ A summary of specific requests seeking documents in this category is set forth in
Appendix E to this Memorandum.
28

1 U.S.C. § 2778. Count II alleges a conspiracy to kill, kidnap, maim, and injure people in a
2 foreign country in violation of 18 U.S.C § 956(a). Count III alleges a conspiracy to receive
3 and possess missile systems in violation of 18 U.S.C. § 2332g. The bulk of the government’s
4 evidence consists of video and audio recordings made by the undercover ATF agent and
5 wiretap recordings from the home and cell telephones of defendant Harrison Jack and from
6 the Blackberry telephone of defendant Lo Cha Thao.

7 Defendants have made a series of discovery requests to the government over the past
8 year.⁷ Except with regard to communications between the prosecution and the CIA (*see* Part
9 IV, *infra*), the government has not denied that it is obligated to produce the categories of
10 documents identified in those letters and sought in this motion. The government’s May 22,
11 2008 letter states:

12 The documents requested will be produced to the extent possible,
13 and if they do not exist or if a decision is made not to produce them,
the United States will provide an explanation.⁸

14 Other than communications with the CIA, however, the government has not explained its
15 failure to produce documents or recordings requested by this Motion.

16 **I. DEFENDANTS ARE ENTITLED TO DISCOVERY UNDER RULE**
17 **16 AND BRADY V. MARYLAND.**

18 Rule 16(a)(1)(E)(i) of the Federal Rules of Criminal Procedure requires the
19 government to disclose to the defense all documents and other materials “within the
20 government’s possession, custody, or control” that are “material to preparing the defense.”
21 The Ninth Circuit has consistently taken an expansive view of what the term “material”
22 means in this context. *See, e.g., United States v. Bergonzi*, 214 F.R.D. 563, 577 (N.D. Cal
23 2003) (“evidence ‘is material as long as there is a strong indication that ... [the evidence] will

24 ⁷ *See* Declaration of Somnath R. Chatterjee (“Chatterjee Decl.”) in Support of Defendants’
25 Memorandum of Points and Authorities in Support of Motion to Compel Discovery Exs. 1-11
(Counsel for Defendants have submitted letter requests for discovery dated July 11, 2007
26 (Reichel), July 19, 2007 (Keker), August 14, 2007 (Chatterjee), August 22, 2007 (Keker),
October 9, 2007 (Balazs), November 26, 2007 (Balazs), January 17, 2008 (Balazs) March 4, 2008
27 (Chatterjee), May 13, 2008 (Balazs), April 18, 2008 (Keker), April 22, 2008 (Chatterjee)).

28 ⁸ Chatterjee Decl., Ex. 12.

1 play an important role in uncovering admissible evidence, aiding witness preparation,
2 corroborating testimony, or assisting impeachment or rebuttal.”). Rule 16 must be
3 interpreted broadly to ensure that the defense has a fair opportunity to prepare for trial.
4 *United States v. Liquid Sugars, Inc.*, 158 F.R.D. 466, 472 fn. 5 (E.D. Cal. 1994).

5 Accordingly, the “materiality requirement typically ‘is not a heavy burden.’” *Id.* at 471.

6 The government is also required by *Brady v. Maryland*, 373 U.S. 83 (1963), and its
7 progeny to produce much of the discovery requested by this motion. *Brady* imposes on the
8 government an affirmative duty to produce any evidence favorable to Defendants that is
9 material to either guilt or punishment. *See United States v. Bagley*, 473 U.S. 667, 674-75
10 (1985). Both exculpatory information and evidence that can be used to impeach the
11 prosecution’s witnesses are considered “favorable” under *Brady* and must be disclosed by the
12 government. *Id.* at 676-77; *see also Giglio v. United States*, 405 U.S. 150, 154-55 (1972).

13 The prosecution must produce to the defense not only all favorable evidence that is
14 admissible, but also all evidence that “is reasonably likely to lead to admissible evidence.”
15 *United States v. Sudikoff*, 36 F. Supp. 2d 1196, 1200 (C.D. Cal. 1999). “[I]n the pretrial
16 context it would be inappropriate to suppress evidence because it seems insufficient to alter a
17 jury’s verdict ... where doubt exists as to the usefulness of evidence, [the government] should
18 resolve such doubts in favor of full disclosure. *Id.* at 1199; (citing *United States v. Van*
19 *Brundy*, 726 F.2d 548, 552 (9th Cir. 1984).

20 The prosecution’s obligation to produce information under *Brady* and Rule 16
21 extends to information in the possession, custody, or control of both (1) agencies involved in
22 the investigation and (2) other governmental agencies where the prosecution has knowledge
23 of and access to the information. *See United States v. Santiago*, 46 F.3d 885, 894 (9th Cir.
24 1995) (government required to produce documents from files of Bureau of Prison; “[a]gency
25 involvement in the investigation to be a sufficient, but not necessary, factor to show that the
26 prosecution was in ‘possession’ of the agency’s information”); *United States v. Bryan*, 868
27 F.2d 1032, 1036 (9th Cir. 1989) (prosecutor deemed to have knowledge of and access to
28 anything in the possession, custody or control of any federal agency participating in the same

1 investigation); *see also United States v. Jennings*, 960 F.2d 1488, 1490 (9th Cir. 1992)
2 (Brady requirements “cannot be evaded by claiming lack of control over the files or
3 procedures of other executive branch agencies”). Although this inquiry is fact specific,
4 courts have compelled prosecutors to produce information under the control of the CIA, the
5 State Department, and the Department of Defense. *See, e.g., United States v. Libby*, 429 F.
6 Supp. 2d 1, 11 (D.D.C. 2006) (documents from the CIA were “in the possession” of the
7 special counsel); *United States v. Ubiparipovic*, 2006 U.S. Dist. LEXIS 23645 at *5 (D. Ariz.
8 2006) (holding, that upon showing of materiality by defense, prosecution would be required
9 to request information from and through the State Department); *United States v. NYNEX*
10 *Corp.*, 781 F. Supp. 19, 25 (D.D.C. 1991) (holding that prosecution must produce materials
11 possessed by other federal agencies allied with the prosecution).

12 **II. DEFENDANTS ARE ENTITLED TO DOCUMENTS DESCRIBING**
13 **COMMUNICATIONS BETWEEN THE U.S. GOVERNMENT AND**
14 **DEFENDANTS OR OTHER MEMBERS OF THE HMONG**
15 **COMMUNITY REGARDING POLICY, PLANNING OR CONDUCT**
16 **TOWARDS THE GOVERNMENT OF LAOS.**

17 The government has not objected to producing documents constituting or evidencing
18 communications by government agencies with Defendants or other members of the ethnic
19 Hmong population in the United States or abroad with regard to United States’ policy,
20 planning, or conduct towards the government of Laos during the period of 1961 to 2007.
21 With the exception of an FBI 302 describing a meeting with former CIA employee Michael
22 Spak, who spoke with CIA representatives on behalf of General Vang Pao in 2004 (*see*
23 discussion below), and recordings of Defendants’ phone calls and conversations with the
24 undercover agent, however, the government has not produced any documents in this
25 category.

26 This category of documents is material to Defendants’ state of mind with regard to
27 the alleged conspiracy and to defenses of outrageous government conduct, entrapment, and
28 defense of others. Evidence in this category may support the conclusion that Defendants did
not and would not agree to any actions against the government in Laos without the approval
and support of the U.S. Government. It is also relevant to Defendants’ knowledge or lack of

1 knowledge that the United States was “at peace” with Laos as required by the Neutrality
2 Act.⁹ This is particularly true given the long history of collaboration between the Hmong
3 community and the U.S. Government in resisting the communist government in Laos and the
4 actions of the undercover agent to encourage Defendants to believe that actions against the
5 Laotian government would be supported by the U.S. Government, including the CIA.

6 It is well-established that the U.S. Government has a long history of supporting
7 military actions in Laos, dating as far back as the Eisenhower administration. Jane Hamilton-
8 Merritt, *Tragic Mountains*, p. xvii, Indiana University Press 1999 (1993). In fact, the tribal
9 villages and mountaintops of Laos witnessed the longest covert operation ever undertaken by
10 the United States. *Id.* In April 1994, in congressional testimony, former CIA director,
11 William E. Colby disclosed much of this history. *Id.* He reported that for over 10 years the
12 Hmong, under the command of General Vang Pao, valiantly fought the North Vietnamese
13 forces in collaboration with the CIA, preventing more than 70,000 North Vietnamese troops
14 from proceeding to South Vietnam to attack U.S. forces. *Id.* General Pao led Hmong troops
15 as an employee of the U.S. Government. *Id.* at 137. Due to this unique historical
16 relationship, Vang Pao’s name has become “synonymous” with the CIA and its “covert”
17 operations against communist forces in Laos. *Id.* at xxv, 342.

18 The government has produced one document showing recent communications
19 between the CIA and leaders of the Hmong community with regard to circumstances in Laos.
20 According to an FBI 302, prosecutors and defense counsel met with Michael Spak, a former
21 CIA operative, at Spak’s request on August 17, 2007.¹⁰ Spak described a February 2004
22 meeting in Washington, D.C. with General Pao, who was in Washington for a meeting with
23 an undersecretary in the U.S. State Department, and two other men to discuss the conflict
24 between the Laotian government and Hmong villagers.¹¹ During this meeting, Spak

25 ⁹ The Neutrality Act criminalizes only “knowing[.]” conduct in support of a “military or
26 naval expedition or enterprise” against a country “with whom the United States is at peace.” 18
U.S.C. § 960.

27 ¹⁰ Chatterjee Decl., Ex. 13.

28 ¹¹ *Id.*

1 discussed political and military approaches to the conflict in Laos and offered to discuss a
2 military approach with his contacts in the CIA, noting that he and his company “would not
3 assist with any military operations without approval from the U.S. Government.”¹²

4 According to the Spak interview:

5 [f]ollowing the February 2004 meeting, SPAK approached one of
6 his CIA contacts about military support for the Hmong resistance.
7 His CIA contact forwarded the matter to a CIA officer in the
8 Southeast Asia [unit who] said the response was, “good luck.”
9 When SPAK asked what was meant by this response, he received
no clarification. SPAK advised investigators that this response was
not sufficient for him to initiate any action. He did not forward the
response to VANG PAO or any of his people.¹³

10 Recorded conversations produced by the government in discovery also refer to
11 contacts between Defendants and CIA representatives. For example, defendant Harrison
12 Jack told the undercover ATF agent that another defendant, Lo Cha Thao, had met with two
13 “deputy directors” of the CIA, and that they were “basically supportive” and “also mentioned
14 that they had some funding available.”¹⁴ In another call, Mr. Jack mentioned to the agent
15 that the CIA officials had warned that “[y]ou can’t count on the UN You need to take
16 care and protect yourself on the field, and we’ll support you on that.”¹⁵

17 Recorded conversations produced by the government also show that Mr. Jack
18 discussed the CIA’s involvement with others. For example, in an April 4, 2007, telephone
19 conversation with Bill Jefferds, Mr. Jack stated, “So, at least ... elected representatives and
20 their channels have been advised. There’s also been a meeting with the CIA, two weeks
21 ago.”¹⁶ In an April 13, 2007 telephone conversation, Mr. Jack asked defendant Lo Cha Thao
22 about meetings with the CIA:

23 Jack: any future meetings

24 ¹² *Id.*

25 ¹³ *Id.*

26 ¹⁴ Chatterjee Decl., Ex. 14.

27 ¹⁵ Chatterjee Decl., Ex. 15.

28 ¹⁶ Chatterjee Decl., Ex. 16.

1 Lo: future meeting?
2 Jack: Yeah
3 Lo: um yeah we have a lot of meetings
4 Jack: well I mean with the...with the CIA
5 Lo: Uh . . . what . . . we are doing right now is, um, he gave us a
6 mission to, to ah establish¹⁷

7 Later in the same telephone conversation, Lo Cha Thao stated: “Hopefully that work . . .
8 ahm . . . but um he’s gonna be going and uh the CIA gave us a mission to go and find the
9 exact um heartbeat of the country, of that country, you know.”¹⁸ Lo Cha Thao, again in the
10 same conversation, referenced the CIA’s involvement in the alleged plan stating:

11 So, you know doing this kind of planning you need both of those in
12 place. So, a good thing I mean, um, we got your help, we got the,
13 you know, Congress and the Senators on you know, the right page,
14 and we have military personnel like you and General Jeffards and
15 we go the top guy like the CIA guy giving the under table strategies
16 so.¹⁹

17 Later that same day, Mr. Jack relayed this information to the undercover agent. Mr. Jack
18 stated:

19 Now the other piece to this that I asked him about, I said where
20 does the Agency stand. What are they going to do for you? And
21 they said they can make funds available as soon as we’re able to
22 provide them the intel, the requirements, and you know, meet some
23 of the other terms. He didn’t go into too much detail on that. But
24 he said he had other meetings that were pending.²⁰

25 The Defendants’ conversations regarding the CIA’s involvement continued into May
26 2007. For example, Mr. Jack and Lo Cha Thao on May 4, 2007 discussed the CIA’s position
27 on the alleged plan:

28 Lo: Yeah its going to be back where the CIA you know, come in
play.
Jack: Ok

25 ¹⁷ Chatterjee Decl., Ex. 17.

26 ¹⁸ *Id.* at 9.

27 ¹⁹ *Id.* at 13.

28 ²⁰ Chatterjee Decl., Ex. 18.

1 Lo: and um
2 Jack: Now do you have any subsequent meeting scheduled with
3 them?
4 Lo: There just waiting on us.
5 Jack: Ok, fine that's all I need to hear.
6 Lo: Yeah they are waiting on us and they mobilized everything
7 over there already. They're just waiting for our call and uh.
8 Jack: Oh really.
9 Lo: Yeah they are just waiting for our call so
10 Jack: All right²¹

11 Moreover, recordings of conversations produced by the government show that the
12 undercover agent encouraged Defendants to believe that the U.S. Government, through the
13 CIA or otherwise, would support the plan that he was promoting. For example, in the
14 context of a discussion about the CIA and the conditions in and around Laos, the agent stated
15 to Mr. Jack:

16 They know what the hell's going on. They don't want to get into
17 another Vietnam, but if Vang Pao goes in there and takes over the
18 freaking country and then wants a -- and -- and gets things squared
19 away and then wants to have democratic elections, that's gonna be
20 like that. I have no doubt in my mind.²²

21 Later in the same conversation, the agent stated:

22 We've got a different CIA today than you had then, Harrison. I
23 think that, uh, I think they'll step in there and go, "Hey, you know,
24 this is what we can do, and this is why we can do it, because we
25 have the backing of our Government and not just our agency, and
26 we want to back your political endeavor of democracy."²³

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

²¹ Chatterjee Decl., Ex. 19.

²² Chatterjee Decl., Ex. 20.

²³ *Id.* at 50.

1 going down.”²⁴ Similarly, in a phone conversation between Harrison Jack and the
2 undercover agent on May 4, 2007 discusses the CIA’s support the alleged plan:

3 Jack: (referring to Lo Cha Thao) He’s got a meet he’s going to
4 bring whatever recommendations they provide to the table next. Ah
the Agency is also standing by ready to roll.

5 Agent: The CIA.

6 Jack: Yeah.

7 Agent: Ok, good.²⁵

8 The undercover agent also made statements suggesting that he had the support of the
9 U.S. military for the plan he was promoting. When Mr. Jack asked him how they would
10 bring missing POW’s from the Vietnam War back into the United States while avoiding
11 media exposure, the agent responded, with reference to two United States Air Force bases,
12 “Travis or Beale? Beale would probably be better.”²⁶ The agent thus purposely implied that
13 he had access to bases under the control of the Department of Defense and clearance to land
14 an airplane at those bases.

15 The veracity of the agent’s statements is not at issue. What is at issue is Defendants’
16 state of mind with regard to the alleged conspiracy. To the degree a defendant did not intend
17 to participate in any plan that did not have the consent of the U.S. Government, there was no
18 agreement without that consent. And to the degree a defendant believed that that such
19 consent existed, he had no intent to engage in a criminal conspiracy. The agent’s statements
20 were calculated to foster that belief. They are relevant not only to whether Defendants had
21 the requisite intent to enter into a criminal conspiracy but also to possible defenses of
22 outrageous government conduct, entrapment, and defense of others. They are also relevant to
23 whether Defendants intended “knowingly” to engage in conduct with regard to a country
24 “with whom the United States is at peace” (18 U.S.C. § 960) in violation of the Neutrality
25 Act as alleged.

26 ²⁴ *Id.* at 56.

27 ²⁵ Chatterjee Decl., Ex. 21.

28 ²⁶ *Id.* at 59.

1 In light of the undercover agent's encouraging the belief that the plan he was
 2 promoting had U.S. Government approval, and given the history of U.S. Government
 3 collaboration with the Hmong community in resisting the communist government in Laos,
 4 Defendants are entitled to any further evidence of communications by the CIA or other
 5 branches of the U.S. Government to them or other members of the Hmong community with
 6 regard to U.S. policy and actions in and towards Laos.

7 **III. DEFENDANTS ARE ENTITLED TO ALL DOCUMENTS THAT**
 8 **DESCRIBE THE UNITED STATES' OVERT OR COVERT MILITARY**
 9 **OPERATIONS IN LAOS BETWEEN THE YEARS 1961 AND 2007.**

10 The government has not objected to Defendants' requests for documents that describe
 11 the United States' overt or covert military operations in Laos between the years 1961 and
 12 2007.²⁷ It has, however, failed to produce any documents in this category.

13 The documents requested are material to the preparation of the defense to Count One
 14 of the Indictment, which alleges a conspiracy to violate the Neutrality Act through support of
 15 an armed insurgency against the government of Laos. The Neutrality Act provides that:

16 Whoever, within the United States, knowingly begins or sets on
 17 foot or provides or prepares a means for or furnishes the money for,
 18 or takes part in, any military or naval expedition or enterprise to be
 19 carried on from thence against the territory or dominion of any
 20 foreign prince or state, or of any colony, district, or people *with*
 21 *whom the United States is at peace*, shall be fined under this title or
 22 imprisoned nor more than three years, or both.

23 18 U.S.C. § 960 (emphasis added.) The government, therefore, has the burden of proving
 24 that the United States was "at peace" with Laos at the relevant time. *United States v. Chhun*,
 25 513 F. Supp. 2d 1179, 1183 (C.D. Cal. 2007).

26 While case authority defining "at peace" for purposes of the Neutrality Act is sparse,
 27 *United States v. Terrell*, 731 F. Supp. 473 (S.D. Fla. 1989), offers significant guidance.
 28 *Terrell* analogized "at peace" to "neutrality" and noted that the Supreme Court has defined
 "neutrality" as "consisting in abstinence from any participation in a public, private, or civil

²⁷See Appendix B.

1 war, and in impartiality of conduct towards both parties.” *Id.* at 475, quoting *United*
2 *States v. The Three Friends*, 166 U.S. 1, 52 (1896).

3 The defendants in *Terrell* were charged with violating the Neutrality Act by
4 participating in military operations against the “Sandinista” government in Nicaragua, and
5 moved to dismiss the indictment on the basis that the United States was not “at peace” with
6 Nicaragua. *Id.* at 474. While Congress had withdrawn support for any actions against the
7 Sandinista government during the indictment period, the executive branch had covertly
8 supported operations against the Sandanista government by the Nicaraguan “Contras.”
9 Relying on district court precedent holding that the “peace” could only be broken for
10 Neutrality Act purposes by a congressional declaration of war, or by affirmation or
11 ratification by Congress of “actions contrary to a state of peace,”²⁸ the Government argued in
12 *Terrell* that the United States was “at peace” with Nicaragua during the indictment period
13 despite the executive’s covert support for the Contras because that support was not
14 authorized by Congress. *Id.* at 476.²⁹

15 The *Terrell* court disagreed, refusing to equate the lack of congressional support or
16 authorization with a state of “peace” between the United States and Nicaragua. *Id.* Instead,
17 the court considered the realities of modern warfare and the numerous conflicts in which the
18 United States has engaged since World War II without a formal declaration of war, including

19 _____
20 ²⁸ See *United States v. Smith*, 27 F. Cas. 1233, 1243 (Cir. Ct. D. N.Y. 1806); *United*
21 *States v. Burr*, 25 F. Cas. 201, 207 (Cir. Ct. D. Va. 1807); *Dellums v. Smith*, 577 F. Supp. 1449,
22 1453 (N.D. Cal. 1984).

23 ²⁹ One unpublished district court opinion has held similarly that evidence of covert
24 operations is not relevant to determining whether the United States is “at peace” for purposes of
25 the Neutrality Act. See *United States v. Chhun*, No. CR 05-00519ADDP, 2008 WL 793386,
26 (C.D. Cal. Mar. 20, 2008). In *Chhun*, the court held that evidence of covert operations by the
27 U.S. against Cambodia were irrelevant to the determination of “at peace” because a “declared or
28 undeclared war involves open and notorious military operations against a foreign nation.” *Id.* at
*2. Application of that standard would be particularly inappropriate in this case given the
extensive history of covert operations by the United States in Laos and the involvement of
Defendants and the Hmong community in those operations. Ignoring the United States’ covert
operations in Laos would be to ignore the historical realities that have defined and continue to
define the modern relationship between the two countries, as well as the government’s
relationship to General Pao and the Hmong community in Laos and the Defendants’ mental
framework.

1 conflicts in Korea, Vietnam, and the Persian Gulf. *Id.* at 475-76. Applying a
2 “neutrality/impartiality” standard to the state of U.S./Nicaragua relations, the court found that
3 the two countries were not “at peace” during the relevant time period. *Id.* at 477.

4 As was true with regard to the Sandanista government in Nicaragua at issue in the
5 *Terrell* case, the United States has a history of supporting covert operations against the
6 communist government in Laos. Indeed, the Hmong community in Laos, led by defendant
7 Vang Pao, engaged for many years in armed resistance to communist forces in Laos with the
8 support and direction of the U.S. Government. As with regard to the Nicaraguan government
9 in *Terrell*, the United States cannot be said to be “at peace” to the degree that it has continued
10 any support for covert operations against the Laotian government. Whatever standard the
11 Court may ultimately apply in determining whether the government has carried its burden of
12 proving that the United States was “at peace” with Laos, the history of any overt or covert
13 actions by the United States against the communist regime in Laos is material to Defendants’
14 preparation of a defense to the Neutrality Act claim. As was true in *Terrell* with regard to
15 Nicaragua, the determination of “neutrality” and “at peace” should be made with the benefit
16 of the full record of the United States’ relationship with Laos. *Id.* at 475.

17 **IV. DEFENDANTS ARE ENTITLED TO DOCUMENTS REGARDING**
18 **THE PERSECUTION OF THE HMONG IN AND AROUND LAOS.**

19 The government has not objected to Defendants’ requests for documents regarding
20 the condition of the Hmong in and around Laos since 1976, including the persecution of the
21 Hmong and/or genocide by the Laotian government.³⁰ It has, however, failed to produce
22 documents in this category.

23 Count Two of the indictment charges a conspiracy “to commit at any place outside
24 the United States an act that would constitute the offense of murder, kidnapping or maiming”
25 in violation of 18 U.S.C. § 956(a). And, Counts Three through Five charge conspiracies to
26 illegally send weapons to areas in or around Laos in violation of various statutes. (Count

27 _____
28 ³⁰See Appendix C.

1 Three — 18 U.S.C. § 2332g; Count Four — 18 U.S.C. § 371, 18 U.S.C. § 922(o), and 26
2 U.S.C. § 5861; and Count Five — 18 U.S.C. § 371 and 22 U.S.C. § 2778.) In a series of
3 requests, Defendants have requested documents regarding the persecution of members of the
4 Hmong population in Laos since January 1975 by the Government of Laos and other
5 communist forces in and near Laos; the exodus of members of the Hmong population from
6 Laos after January 1975; the genocide against the Hmong population; the refugee camps in
7 Thailand that housed members of the Hmong population, and human rights violations by the
8 Government of Laos at any time between January 1975 and the present. This information is
9 material to a possible defense of defense of others that might be raised by some Defendants.
10 For example, documents prepared by or in the possession, custody, or control of the U.S.
11 Government regarding these matters, including genocide against the Hmong, could be
12 relevant to establishing that conduct by the Laotian government, including its army, has been
13 illegal. The government has access to these documents in the possession of the State
14 Department and the CIA, as well as other agencies, and should be ordered to produce them.

15 **V. DEFENDANTS ARE ENTITLED TO COMMUNICATIONS WITH**
16 **THE CIA, OTHER AGENCIES AND THE ATF AGENT**
17 **REGARDING THIS CASE.**

18 The Court should compel the government to produce communications with the CIA,
19 as well as other U.S. Government agencies, and the ATF agent regarding this case.

20 At the July 12, 2007 bail hearing, the U.S. Attorney's Office informed the Court that
21 the prosecution had met with the CIA regarding this case. The prosecutor stated:

22 When this issue first was raised, we made contact with the CIA.
23 We sent a member and a prosecutor on our prosecution team
24 physically to the CIA, met with the general counsel's office of the
25 CIA, explained that Lo Cha Thao had said that a named individual
26 of the CIA and a second named individual of the CIA had met with
27 them and had a discussion, and they categorically deny that any
28 such contact ever took place.³¹

25 Accordingly, Defendants have requested “[a]ll documents on communication between any
26 prosecutor, or employee of EDCA United States Attorney's office and the CIA related to this

27 ³¹ Chatterjee Decl., Ex. 22.

1 case.”³² The government has denied neither that such documents exist nor that they are
2 material to the preparation of the defense. But in a May 23, 2008 letter, the government
3 announced that it would not comply with this request “because those documents, if any and if
4 relevant, would be protected from discovery by privilege (*i.e.*, attorney work product).”³³
5 The Court should order the government to produce the responsive documents or provide the
6 information obtained from the CIA for a number of reasons.

7 First, information obtained by the government in communications with the CIA (or
8 other agencies) or information provided by the CIA (or other agencies) regarding this case
9 must be disclosed over any objection because they are exculpatory or otherwise fall within
10 the ambit of *Brady* and its progeny. *United States v. Goldman*, 439 F. Supp. 337, 350
11 (S.D.N.Y. 1977) (“Of course, if [work product] material be of a *Brady* nature, then it must be
12 produced.”). As explained above, any information showing the government’s knowledge of
13 or involvement in the events charged in the Indictment would be exculpatory.

14 Second, the government bears the burden of establishing work-product protection, but
15 has not provided the necessary foundation to establish this protection.

16 Third, any protection the government claims under the work-product doctrine or Rule
17 16(a)(2), however, was waived here when the prosecution referred to and relied on the
18 substance of those communications in open court. Waiver is the intentional or voluntary
19 relinquishment of a known right, and work product and Rule 16(a)(2) protections can be
20 waived either expressly or impliedly. *See United States v. Fort*, 472 F.3d 1106, 1120 (9th
21 Cir. 2007). By expressly relying on and disclosing in open court communications with the
22 CIA, the prosecution relinquished any right to withhold the substance of those
23 communications from the defense. The prosecution cannot use the work-product doctrine as
24 both a sword and a shield.

25 ³² Chatterjee Decl., Ex.10. This request was reiterated in a discovery letter dated April 18,
26 2008, which requested “documents on communication between any prosecutor, or employee of
27 EDCA United States Attorney’s office or DOJ employee and the CIA, related to this case, as
28 requested on August 22, 2007.”

³³ Chatterjee Decl., Ex. 23.

1 Fourth, any documents prepared by the CIA regarding this action are not attorney
2 work product or otherwise protected and must be disclosed. As the government has not
3 identified the CIA as an investigating or prosecuting agency in this case, documents prepared
4 by the CIA fall outside the plain language of Rule 16(a)(2) and cannot be attorney work
5 product.

6 To the extent the government has communications with other agencies of the U.S.
7 Government, including the NSA, the State Department, and the Department of Defense,
8 regarding this case, Defendants request that the Court order production of those documents as
9 well. Similarly, Defendants request that the government produce all documents and
10 information regarding communications by any person or agency with the investigating ATF
11 agent regarding his undercover operation in this case, his investigation of this case, and his
12 dealings with any Defendant. This information falls under the scope of *Brady* and its
13 progeny and is material to the defense of entrapment and for possible impeachment of the
14 ATF agent, as well as other matters.

15 **VI. DEFENDANTS ARE ENTITLED TO RECORDINGS OR DOCUMENTS**
16 **RESULTING FROM INTERCEPTION OF THEIR TELEPHONE,**
17 **EMAIL, OR OTHER COMMUNICATION BY THE PRESIDENTIALLY**
18 **APPROVED WARRANTLESS INTERCEPTION OF ELECTRONIC**
COMMUNICATIONS, THE NATIONAL SECURITY AGENCY,
AND/OR A NARUS COMPUTER.

19 Defendants have requested and the government has not objected to production of any
20 recordings or documents obtained by the government during the course of the investigation
21 that constitute or describe a Defendant's cell telephone call, email, or other communications
22 that were intercepted by the presidentially approved warrantless interception of electronic
23 communications, the NSA, and/or a Narus computer, including a Narus STA 6400
24 computer.³⁴ However, the government has neither produced any documents in the category
25 nor affirmed that such documents do not exist.

26 ³⁴ The Narus STA 6400 is data mining equipment that captures and sifts through large
27 amounts of data — such as telephone calls and emails — looking for preprogrammed targets.
28 *Hepting v. AT&T*, 439 F. Supp. 2d 974, 989 (N.D. Cal. 2006); Ryan Singel, *Whistle Blower Outs*
NSA Spy Room, Wired April 7, 2006 available at

(Footnote continues on next page.)

1 Shortly after September 11, 2001, President Bush secretly authorized the National
2 Security Agency to eavesdrop on Americans and others inside the United States to search for
3 evidence of terrorist activity without the court-approved warrants ordinarily required for
4 domestic spying. James Risen and Erin Lichtblau, *Bush Lets U.S. Spy on Callers Without*
5 *Courts*, N.Y. Times, December 16, 2005 (available at:
6 <http://www.nytimes.com/2005/12/16/politics/16program.html>); Josh Meyer and Joseph
7 Menn, U.S. Spying Is Much Wider, Some Suspect, L.A. Times, December 26, 2005
8 (available at: <http://latimes.com/news/nationworld/nation/la-na-spy25dec25,0,1214433.story>)
9 Under a presidential order signed in 2002, the intelligence agency has monitored the
10 international telephone calls and international e-mail messages of hundreds, perhaps
11 thousands, of people inside the United States without warrants in an effort to track possible
12 “terrorist” communications. *Id. See also Hepting v. AT&T Corp.*, 439 F. Supp. 2d 974 (N.D.
13 Cal. 2006) (discussing the United States’ warrantless surveillance program); *United States v.*
14 *Ahmed Omar Abu Ali*, No. 05-053, 2006 U.S. Dist. LEXIS 95912 at *6-7 (E.D. Va. Feb. 17,
15 2006) (requiring the United States to respond to request regarding whether information
16 obtained by presidentially approved warrantless interception of electronic communication
17 was used to obtain FISA warrant or evidence presented to the jury). Evidence suggests that
18 the government has also surreptitiously intercepted domestic telephone and e-mail messages.
19 *Id.*

20 The government is obligated to produce these documents for several reasons. First,
21 the requested documents are relevant written or recorded statements made by a defendant
22 subject to disclosure under Federal Rule of Criminal Procedure 16(a)(1)(A). Here, the
23 government investigated the crimes charged in the Indictment from around January 2007
24 until October 3, 2007. Defendants are entitled to obtain all of their statements made during

25 (Footnote continued from previous page.)

26 www.wired.com/print/science/discoveries/news/2006/04/70619. The U.S. Government uses this
27 equipment to monitor and to capture Internet traffic and telephone and email communications
28 through carriers such as AT&T. *Id.*

1 that period that were captured by the government. *United States v. Bailleaux*, 685 F.2d 1105,
2 1114 (9th Cir. 1982) (“Ordinarily, a statement made by the defendant during the course of
3 the investigation of the crime charged should be presumed to be subject to disclosure, unless
4 it is clear that the statement cannot be relevant. Where the Government is in doubt, the
5 written or recorded statement should be disclosed, if a proper request is made”). Indeed, this
6 is a conspiracy prosecution based on alleged communications among the Defendants
7 themselves and between the Defendants and the government and/or third parties. Much of
8 the relevant communication is in Hmong. All communications regarding the Defendants that
9 the government captured during the limited period at issue are relevant — both for what they
10 show and what they do not show. Second, for a similar reason, the Defendants’
11 communications during the relevant period are likely to have exculpatory information and
12 must be produced under *Brady* and its progeny. Third, even though the government might
13 not present any statements obtained by the government’s warrantless surveillance program as
14 part of its case-in-chief, such interceptions may have played a part in the government’s
15 investigation and led to other evidence. If so, and since these warrantless interceptions
16 violated Defendants’ Fourth Amendment rights, any evidence discovered as a result of those
17 interceptions should be excluded as fruit of the poisonous tree. *United States v. Johns*, 891
18 F.2d 243, 246 (9th Cir. 1989) (conviction reversed because the marijuana was the fruit of
19 illegal stop and it was obtained in violation of the Fourth Amendment). The defense is
20 entitled to receive any information that the government obtained during the investigation of
21 this case through its warrantless surveillance in order to fully assess and prepare suppression
22 motions.

23 **VII. DEFENDANTS ARE ENTITLED TO DISCLOSURE OF ANY EVIDENCE**
24 **OF PRIOR “BAD ACTS” THAT THE GOVERNMENT INTENDS TO**
25 **PRESENT UNDER FEDERAL RULE OF EVIDENCE 404(B).**

26 Defendants are entitled to discovery of any prior “bad acts” that the government
27 intends to introduce against any defendant pursuant to Federal Rule of Evidence 404(b). The
28 government must “provide reasonable notice in advance of trial” of its intent to use evidence
under 404(b). *United States v. Vega*, 188 F.3d 1150, 1152 (9th Cir. 1999). The purpose of

1 this notice is to “reduce surprise and promote early resolution of the issue of admissibility.”
2 *Id.* at 1153. The government has not disclosed such evidence but has not affirmed that it will
3 not seek to present such evidence at trial. Defendants, therefore, seek an order compelling
4 production of any such evidence in the government’s possession that it intends to present as
5 part of its case-in-chief against any defendant. As this is a complex conspiracy action with
6 eleven Defendants, the defense should be entitled to lengthy notice — at least 60 days before
7 trial. Courts in complex criminal matters have required similar advance notice. *See United*
8 *States v. Reddy*, 190 F. Supp. 2d 558, 576-77 (S.D.N.Y. 2002) (45 day notice ordered in case
9 involving thirteen counts of mail and wire fraud against three Defendants); *United States v.*
10 *Patterson*, 162 F. Supp. 2d 1017, 1019 (N.D. Ill. 2001) (Government agreed forty-five days
11 prior to trial was “reasonable notice” to defendant); *United States v. Nachamie*, 91 F. Supp.
12 2d 565, 577 (S.D.N.Y. 2000) (disclosure ordered one month before Medicaid fraud trial).

13 **VIII. DEFENDANTS ARE ENTITLED TO PRODUCTION OF OTHER**
14 **SPECIFIED DOCUMENTS AND CATEGORIES OF DOCUMENTS THAT**
15 **THE GOVERNMENT HAS NEITHER PRODUCED NOR DENIED EXIST.**

16 The government has also agreed to produce but has not yet produced other
17 specifically requested information and documents. These items are described in Appendix E.
18 There is no dispute that the government is obligated to produce the requested information.
19 Accordingly, Defendants are entitled to an order compelling production.

20 **IX. CONCLUSION**

21 For all of the reasons stated above, Defendants’ motion to compel discovery should
22 be granted, and the government should be ordered to produce the following categories of
23 evidence in the possession of the U.S. Government or any of its agencies, including without
24 limitation the Department of Justice, the Department of State, the Department of Defense or
25 the CIA:

- 26 1) documents constituting or evidencing communications by the government,
27 through any of its departments or agencies, with Defendants or other
28 members of the ethnic Hmong population in the United States or abroad,

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- with regard to United States' policy, planning, or conduct towards the government of Laos during the period of 1961 to 2007;
- 2) documents evidencing any overt or covert military planning or operations by the U.S. Government with regard to Laos during the period of 1961 to 2007;
 - 3) documents constituting or evidencing communications by the prosecution (the U.S. Attorney's Office, the Department of Justice or agents working under their direction) with the CIA or other government agencies related to this case;
 - 4) documents constituting or evidencing communications by any U.S. Government agency and the undercover ATF agent regarding the investigation of this case;
 - 5) documents regarding the persecution or attempted genocide of the Hmong in or around Laos;
 - 6) recordings or documents that constitute or describe cell telephone calls, email, or other communications sent or received by any defendant that were intercepted by the presidentially approved warrantless interception of electronic communications, the National Security Agency and/or a Narus computer, including a Narus STA 6400 computer;
 - 7) evidence of any prior "bad acts" that the government intends to introduce at trial against any defendant under Federal Rule of Evidence 404(b);
 - 8) other specific documents and categories of documents as set forth in Appendix E.

1 Dated: September 15, 2008

Respectfully submitted,

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Dated: September 15, 2008

LAW OFFICE OF HAYES H. GABLE, III

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

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APPENDIX A

Specific requests in discovery letters to the government for documents in these categories include:

1. All documents that summarize, describe, or refer to any communications between any Defendant and any agent or purported agent of the U.S. Government or any agency of the U.S. Government, including, without limitation, the State Department, the Central Intelligence Agency, and/or any branch of the U.S. armed forces, regarding any of the following:
 - (a) Any military activity in Laos or Lao People’s Democratic Republic (Laos);
 - (b) The provision of military support or weapons to any group in Laos;
 - (c) Any military action against the current government of Laos;
 - (d) Defending members of the Hmong population in or around Laos; and/or
 - (e) Providing any assistance to members of the Hmong population in or around Laos.
2. All documents that describe or refer to the “Neo Hom,” the “Neo Hom movement,” or the United Lao National Liberation Front as referenced in Paragraph 18 of the Indictment.
3. All documents that describe or refer to the United Hmong International or the Supreme Council of the Hmong 18 Clans as referenced in Paragraph 4 of the Indictment.
4. All documents that describe or refer to the United Lao Council for Peace, Freedom and Reconstruction.
5. All documents that describe or refer to the Hmong International New Year as referenced in Paragraph 5 of the Indictment.

APPENDIX B

Specific requests in discovery letters to the government for documents in these categories include:

1. All documents that summarize, describe, or refer to any military activity by the U.S. Government or its proxy in Laos at any time between 1961 and 1976.
2. All documents that summarize, describe, or refer to the Secret War in Laos.
3. All documents that summarize, describe, or refer to the recruitment by the U.S. Government of members of any Hmong population to provide military services or to engage in combat in Laos at any time between 1961 and 1976.
4. All documents that summarize, describe, or refer to military activity by members of the Hmong population in Laos at any time between 1961 and 1976.
5. All documents that summarize, describe, or refer to any payments to any Defendants or members of the Hmong population at any time between 1961 and 1976.
6. All documents that identify the name or any U.S. citizen or employee of the U.S. Government or armed forces who engaged in combat or provided military services, including training, in Laos at any time between 1961 and 1976.
7. All documents that summarize, describe, or refer to any actual, potential, or contemplated military action by the U.S. Government or its proxy in Laos between January 1975 and the present.
8. All documents that summarize, describe, or refer to the policy of the U.S. Government towards Laos between January 1975 and the present.
9. All documents that summarize, describe, or refer to the relations between the U.S. Government and the government of Laos at any time between January 1975 and the present.
10. All documents that summarize, describe, or refer to any regime change in Laos at any time between January 1975 and the present.
11. All documents that describe or refer to foreign aid provided by the U.S. Government to any organization or group of people in Laos, to any organization for the benefit of any group of people in Laos, or the government of Laos.
12. All documents that summarize, describe, or refer to any American prisoners of war in Laos, including, without limitation, any search for such prisoners at any time between January 1975 and the present.

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APPENDIX C

Specific requests in discovery letters to the government for documents in these categories include:

1. All documents that describe or refer to the persecution of members of the Hmong population in Laos since January 1975 by the Government of Laos, the Pathet Lao, any communist organization, or the Socialist Republic of Vietnam.
2. All documents that describe or refer to the exodus of members of the Hmong population from Laos after January 1975.
3. All documents that describe, or refer to genocide against the Hmong population.
4. All documents that describe or refer to any refugee camps in Thailand that housed members of the Hmong population.
5. All documents that summarize, describe, or refer to human rights violations by the Government of Laos at any time between January 1975 and the present.

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APPENDIX D

Specific requests in discovery letters to the government for documents in these categories include:

1. All emails sent or received by Mr. Youa Vang or any co-defendant concerning any fact or allegation set forth in the Indictment that were intercepted by any office of the U.S. Government.
2. The names and contact information of any agent of the U.S. Government who intercepted any cell phone or e-mail communication to which Mr. Youa Vang or any co-defendant was a party.
3. All recordings of any communication and all e-mails to which Mr. Youa Vang or any co-defendant was a party that was captured by a Narus computer, including without limitation, the Narus STA 6400, that is in the possession or control of any office of the U.S. Government.
4. All recordings of any communication to which Mr. Youa Vang or any co-defendant was a party that was intercepted by the National Security Agency.
5. All recordings of any communication to which Mr. Youa Vang or any co-defendant was a party from any telephone installation in the United States that was intercepted by any office of the U.S. Government.
6. Please let us know whether any information obtained by the presidentially approved warrantless interception of electronic communications was used to obtain either (a) a warrant against Mr. Youa Vang or any co-defendant or (b) any evidence or other information regarding Mr. Youa Vang or any co-defendant. If yes, please describe what information was used, the nature and extent of that information, and what warrants, evidence, other information was obtained by use of that information.

APPENDIX E

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2 1. The location of “[t]he names of all informants who are percipient witnesses and
3 not part of any ongoing investigation, [that] have been provided.” (Ex. 12.)

4 2. The names of the interpreters of the intercepted calls and seized foreign language
5 documents. (Exs. 11 and 12.)

6 3. The names of the “FBI interpreter” referenced in Paragraph 4 of the ATF Report
7 of Investigation of Youa True Vang (TarnEgl 034712). (Ex. 12.)

8 4. “Any report or statement on the FBI confidential informant referenced in TarnEgl
9 035934.” (Ex. 10.)

10 5. “The April 13, 2007 surveillance at K-mart parking lot” referenced in Paragraphs
11 54 and 55 of the Special Agent Affidavit. (Exs. 3 and 11.) August 14, 2007 and April 22, 2008
12 discovery letters.

13 6. “The April 23, 2007 call” referenced in Paragraph 61 of the Special Agent
14 Affidavit, including the Special Agent’s return phone call to Harrison Jack as referenced in
15 Paragraph 61 of the Special Agent Affidavit.

16 7. “The April 24, 2007 call” referenced in Paragraph 63 of the Special Agent
17 Affidavit. (Exs. 3 and 11.)

18 8. “The May 1, 2007 call” referenced in Paragraph 74 of the Special Agent Affidavit.
19 (Ex. 3 and 11.)

20 9. The surveillance video of “[t]he May 23, 2007 meeting at a bar” referenced in
21 Paragraph 115 of the Special Agent Affidavit. (Ex. 3.)

22 10. All video and audio recordings made of and in connection with the arrest of Youa
23 True Vang. (Exs. 3 and 5.)

24 11. A useable copy of the surveillance video of “[t]he May 11, 2007 meeting”
25 referenced in Paragraph 111 of the Special Agent Affidavit. (Ex. 3.)

26 12. The June 1, 2007 telephone call between the ATF Agent and Harrison Jack
27 referenced in TarnEgl 2549-51. (Ex. 5.)

28 13. All documents that refer or relate to any assassination attempt in the last 10 years
against General Vang Pao or any of the Hmong defendants, including any attempt by the
Government of Laos. (Ex. 6.)

14. All documents that refer or relate to any assassination attempt in the last 10 years
by the Government of Laos. (Ex. 6.)

15. All documents in the government’s possession regarding the government’s
investigation of the so-called Neo Hom in the last 10 years. (Exs. 3 and 6.)

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16. All documents given to the ATF agent by any Defendant, including, without limitation, maps.

17. All documents, including, without limitation, correspondence, sent to or received from any person or agency outside of the U.S. Attorney's Office concerning any document given to the ATF agent by any Defendant.