

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,)
)
v.) NO. SA-13-CR-580-OG
)
Muhammad JAFFER ALI, *et al*,)
)
Defendants.)

BEFORE THE HONORABLE **ORLANDO GARCIA**, DISTRICT JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

DEFENDANT SYED ALI’S (14) MOTION FOR DISCOVERY

The government has provided voluminous discovery in this case, but none that illuminates how the investigation began. Recent media disclosures have uncovered the fact that the government has engaged in a broad practice of utilizing information gathered under its pervasive new foreign surveillance authority in criminal cases, without disclosing the information’s origins, in contravention of its constitutional and statutory obligations. The international aspects of this case, as well as explicit admissions in the government’s prior submissions to the Court, suggest that such surveillance was involved in this case, although none has been disclosed by the government. Consequently, Defendant Syed Ali(14) respectfully submits the following motion for discovery, pursuant to the Fourth Amendment to the Constitution of the United States, and Rules 16 and 17.1 of the Federal Rules of Criminal Procedure.

I. Factual and Procedural History

Syed Ali,¹ a native of Pakistan, entered this country legally as a B-2 visitor on or about March 27, 1998. He eventually became an owner or partial owner of several tobacco stores in the San Antonio area. He met and married a United States citizen, and adjusted his status to permanent resident on September 16, 2002. The couple is parents of two young children and one on the way.

The affidavit filed in support of the criminal complaint on June 26, 2013 describes co-defendant Mr. Jaffer Ali and his business partner, Ashekul Mowla, as “large-scale distributors of synthetic marijuana and bath salts,” who channeled their products to tobacco stores such as Mr. Syed Ali’s.² The affidavit describes an extensive network of criminal associates, stretching across several states and abroad.³

The affidavit claims that Mr. Jaffer Ali, a naturalized United States citizen of Pakistani descent, first came to the government’s attention via a confidential informant, but does not divulge the informant’s background, motivation, or contacts.⁴

The affidavit admits that Mr. Syed Ali was not identified as a suspect through the government’s surveillance of Mr. Jaffer Ali, but through an independent investigation by counter terrorism agents associated with the San Antonio division of the FBI. These agents were investigating Mr. Syed Ali’s alleged purchase of a chemical that, while legal to possess in the United States,

¹ For ease of reference, this Motion will refer to Mr. Syed Ali occasionally as Mr. Ali, but will refer to Mr. Jaffer Ali by his full name to prevent confusion.

² Affidavit of Adebawale B. Alade, Ex. C to Criminal Complaint (Jun. 26, 2013) (Alade Aff.), Def.’s Ex. 1, at 19.

³ *Id.* at 19-21, 29, 35-36, 70-71, 78-79.

⁴ *Id.* at 19.

can be employed to make bombs. The complaint states that the agents “received information” that caused them to “initiate[] an investigation to determine the intent of the purchaser’s use of the chemical....”⁵ Agents stopped Mr. Ali, initiated surveillance, and later interviewed him “in furtherance of the mass destruction investigation.”⁶ The affidavit does not identify how Mr. Ali’s purchase of a legal product or identity came to the attention of the counter terrorism agents, nor has the government disclosed this information in its discovery to date. Government agents eventually realized that Mr. Ali is no terrorist, but at some point he was then included in the investigation of Mr. Jaffer Ali.

II. Argument

A. The Government Cannot be Trusted to Comply with its Disclosure Requirements

1. Interception of communications may only be conducted pursuant to statutory and constitutional disclosure requirements

Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (Title III) and the Foreign Intelligence Surveillance Act of 1978 (FISA) provide the exclusive statutory authority for engaging in interception of “wire, oral, or electronic communications” within the United States. Both of these statutory schemes provide a detailed framework regulating the acquisition and use of such information, in order to balance law enforcement and national security needs with important privacy considerations.

⁵ *Id.* at 23.

⁶ *Id.* at 24.

Where the two laws differ is in their application to criminal proceedings. While law enforcement agents request surveillance under Title III to support an already existing investigation,⁷ FISA expressly allows the use of its information to *launch* criminal investigations.⁸ FISA information therefore may form the genesis of a criminal case.

FISA, like Title III, requires the government to apply for an order authorizing surveillance. The application must comply with a detailed set of requirements, including stating the target with specificity, and laying out the grounds for probable cause.⁹

Crucially, both Title III and FISA impose strict disclosure requirements, mandating that the prosecution must notify both the court and the person whose communications are intercepted prior to introducing any “information obtained or derived” from the investigations in judicial proceedings.¹⁰ Failure to comply with these requirements, or with other procedural requirements, renders the

⁷ *United States v. Giordano*, 416 U.S. 505, 515 (1974) (“These procedures were not to be routinely employed as the initial step in criminal investigation. Rather, the applicant must state and the court must find that normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.”) (citing 18 U.S.C. §§ 2518(1)(c), (3)(c)); *United States v. Long*, 639 F.3d 293, 301 (7th Cir. 2011) (“[T]his necessity requirement discourages the use of wiretaps as a first-line investigative tool in the mine run of cases....”).

⁸ FISA surveillance is not concerned with criminal matters *per se*. However, its operations can and do intercept intelligence about criminal matters, including ordinary crimes unrelated to national security. *See generally In re Sealed Case*, 310 F.3d 717 (F.I.S.Ct.Rev. 2002). That information may then be disclosed to the proper authorities so that they may begin a criminal investigation. 50 U.S.C. §§ 1801(h)(3), 1806(b)-(c).

⁹ 18 U.S.C. §§ 2518(1), (2); 50 U.S.C. § 1804(a)(1)-(9).

¹⁰ 18 U.S.C. §§ 2518(8)(d), (9); 50 U.S.C. §§ 1806(c), 1825(d), 1881e.

information inadmissible as “evidence in any trial, hearing, or other proceeding....”¹¹

The United States Constitution also entitles a defendant to disclosure of material exculpatory and impeachment evidence by the government.¹² The prosecution “has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police,” and has an “inescapable” responsibility “to disclose known, favorable evidence rising to a material level of importance.”¹³ FISA intercepts, which often contain statements by suspects and their associates, may well contain favorable evidence, impeachment materials, and other evidence helpful to the defense. The law provides, and the Supreme Court has affirmed, that Fourth Amendment concerns remain operative even to the most far-reaching of the surveillance provisions.¹⁴

The defendant is also entitled to discovery under the Federal Rules of Criminal Procedure. The government “must disclose to the defendant ... any relevant written or recorded statement by the defendant ... within the government’s possession, custody, or control” that the AUSA could discover through due diligence.¹⁵ The government must also make available to the

¹¹ 18 U.S.C. § 2515; 50 U.S.C. § 1806(a).

¹² *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 154 (1972).

¹³ *Kyles v. Whitley*, 514 U. S. 419, 438 (1995).

¹⁴ *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138 (2013) (“acquisitions under [FISA’s new warrantless wiretap provisions] must comport with the Fourth Amendment.”); 50 U.S.C. § 1881a(b)(5) (requiring that all data collection “shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.”).

¹⁵ Federal Rules of Criminal Procedure, Rule 16(a)(1)(B).

defendant all “books, papers, documents, data, photographs, tangible objects, buildings or places” that are “within the government’s possession, custody, or control,” if they are material to the defense, evidence for the prosecution, or if they belong to the defendant.¹⁶ Finally, the court may order witnesses to be deposed.¹⁷ The Rules govern even in FISA cases.¹⁸

In short, even in the context of the government’s expanded surveillance powers in investigations concerning national security, the justice system’s concern with ensuring that defendants receive due process remains paramount. In the words of the Fifth Circuit in a related context, “the Government’s interest in protecting classified information ‘cannot override the defendant’s right to a fair trial.’”¹⁹

2. *The government has systematically attempted to evade these disclosure requirements*

Despite the clarity of these statutory provisions, and the courts’ agreement that the disclosure provisions are mandatory and binding, the government has systematically attempted to evade its disclosure obligations, even going so far as to mislead the United States Supreme Court as to its practices.

¹⁶ Federal Rules of Criminal Procedure, Rule 16(a)(1)(E).

¹⁷ Federal Rules of Criminal Procedure, Rule 15(a)(1).

¹⁸ 50 U.S.C. §§ 1806(e)-(f), 1825(g) (expressly permitting the filing of “a motion or request” by a defendant “pursuant to any other statute or rule of the United States ... to discover or obtain applications or orders or other materials relating to electronic surveillance or to discover, obtain, or suppress evidence or information obtained or derived from electronic surveillance under this chapter.”).

¹⁹ *United States v. El-Mezain*, 664 F.3d 467, 523 n.16 (5th Cir. 2011) (citing *United States v. Fernandez*, 913 F.2d 148, 154 (4th Cir. 1990)).

In *Clapper v. Amnesty Int'l USA*,²⁰ argued just last year, plaintiffs facially challenged the constitutionality of 2008 amendments to FISA that authorized warrantless wiretapping in certain circumstances.²¹ The government argued that the plaintiffs had no standing, since they could not prove that their communications had been targeted under the law. When the plaintiffs answered that such a position would effectively shield the new law from any constitutional review, since the plaintiffs themselves could not know, let alone prove, whether the government had secretly listened to their communications, the Solicitor General, Donald B. Verrilli Jr., assured the Supreme Court that the government would most surely disclose the use of FISA to defendants in criminal cases.²² The Court relied upon this assurance from the government, dismissing plaintiffs' concerns on the basis that:

if the Government intends to use or disclose information obtained or derived from a [FISA] acquisition in judicial or administrative proceedings, it must provide advance notice of its intent, and the affected person may challenge the lawfulness of the acquisition. §§ 1806(c), 1806(e), 1881e(a) (2006 ed. and Supp. V). Thus, if the Government were to prosecute one of respondent-attorney's foreign clients using § 1881a-authorized surveillance, the Government would be required to make a disclosure.²³

²⁰ 133 S. Ct. 1138 (2013).

²¹ The challenged amendments were codified at 50 U.S.C. § 1881a.

²² *Clapper*, 133 S. Ct. at 1154; Charlie Savage, *Federal Prosecutors, in a Policy Shift, Cite Warrantless Wiretaps as Evidence*, N.Y. Times, Oct. 26, 2013, available at www.nytimes.com; Andrea Peterson, *How the Feds Won a Key Warrantless Wiretapping Ruling by Misleading the Supreme Court*, Wash. Post, Oct. 28, 2013, available at www.washingtonpost.com, Def.'s Ex. 2.

²³ *Clapper*, 133 S. Ct. at 1154 (footnote omitted).

Months after winning the case in part based on this false representation, the Solicitor General learned that the Department of Justice categorically refused to “notify criminal defendants when eavesdropping without a warrant was an early link in an investigative chain that led to evidence used in court.”²⁴ Mr. Verrilli only discovered the practice after reading a New York Times story in June of 2013, which

... reported that prosecutors in Fort Lauderdale and Chicago had told plaintiffs they did not need to say whether evidence in their cases derived from warrantless wiretapping, in conflict with what the Justice Department had told the Supreme Court.

After reading the article, Mr. Verrilli sought an explanation from the National Security Division, whose lawyers had vetted his briefs and helped him practice for his arguments, according to officials with knowledge of the internal deliberations. It was only then that he learned of the division’s practice of narrowly interpreting its need to notify defendants of evidence “derived from” warrantless wiretapping.²⁵

This Court will surely note that the government’s (undisclosed) interpretation of its obligation to disclose not only shielded the law and the government’s practices from review; it also contravened settled precedent, which, at least in the Fifth Circuit, firmly places the determination of what evidence “derives from” wiretaps with the courts.²⁶

Mr. Verrilli instituted a months-long debate within the Justice Department as to whether the government was obligated under the law to notify defendants

²⁴ Savage, *Policy Shift*, *supra*.

²⁵ *Id.*

²⁶ *United States v. Farese*, 611 F.2d 67, 70 (5th Cir. 1980) (reserving for court determination, by means of a hearing, “[t]he question whether evidence is ‘derived from’ electronic surveillance, or is so tenuously related to it so as to be free of any ‘taint....’”).

of FISA's involvement. Even after the Solicitor General managed to convince the department to change its policy, the government waited until October 2013 to notify the first criminal defendant that FISA materials would be used in his case.²⁷ According to news reports, "the department's National Security Division is combing active and closed case files to identify other defendants who faced evidence resulting from the 2008 wiretapping law,"²⁸ but "it remains unclear how many other cases — including closed matters in which convicts are already serving prison sentences — involved evidence derived from warrantless wiretapping in which the National Security Division did not provide full notice to defendants, nor whether the department will belatedly notify them."²⁹

The government's practice of concealing its use of foreign surveillance laws in criminal cases is widespread and of long standing, and it extends to ordinary criminal cases. Investigative journalists have discovered that federal officials within the Drug Enforcement Administration (DEA) have for years engaged in a stated policy of circumventing disclosure requirements by engaging in the practice of so-called "parallel construction."³⁰ This technique is heavily employed by the Special Operations Division unit of the DEA (SOD), which is composed of agents from the FBI, Central Intelligence Agency, National Security Agency, Internal Revenue Service and the Department of Homeland

²⁷ Savage, *Policy Shift*, *supra*.

²⁸ Charlie Savage, *Door May Open for Challenge to Secret Wiretaps*, N.Y. Times, Oct. 16, 2013, available at www.nytimes.com, Def.'s Ex. 2.

²⁹ Savage, *Policy Shift*, *supra*.

³⁰ John Shiffman and Kristina Cooke, *U.S. directs agents to cover up program used to investigate Americans*, Reuters, Aug 5, 2013, available at www.reuters.com, Def.'s Ex. 2.

Security. The SOD “funnel[s] information from intelligence intercepts, wiretaps, informants and a massive database of telephone records to authorities across the nation to help them launch criminal investigations of Americans.”³¹

“Although these cases rarely involve national security issues, documents reviewed by Reuters show that law enforcement agents have been directed to conceal how such investigations truly begin—not only from defense lawyers but also sometimes from prosecutors and judges.”³² To camouflage SOD’s involvement, the unit seeks to falsify the origin of an investigation by recreating an investigative trail. SOD policy “specifically directs agents to omit the SOD’s involvement from investigative reports, affidavits, discussions with prosecutors and courtroom testimony. Government agents are instructed to then use ‘normal investigative techniques to recreate the information provided by SOD.’”³³

According to this practice, national security agents who, in the context of FISA surveillance, discover possible evidence pertaining to a drug crime pass that information through SOD to local police, instructing them, for instance, to create a pretextual stop of a specified car. If drugs are discovered in the car, the investigative record would reveal only that the car was stopped for the pretextual reason (such as a missing taillight or a minor traffic violation) without disclosing that the information leading to the stop was actually derived from a FISA intercept, despite the statutory directive.

³¹ *Id.*

³² *Id.*

³³ *Id.*

Further reports reveal that the policy has been so widespread through so many different agencies that it was actually incorporated into a written manual by the Internal Revenue Service.³⁴ The policy “instructed [IRS] agents ... to omit any reference to tips supplied by the DEA’s Special Operations Division, *especially from affidavits, court proceedings or investigative files.*”³⁵ DEA officials interviewed by Reuters reported that the practice of “parallel construction” “has been in near-daily use since the 1990s.”³⁶

3. *The government’s evasion violates defendants’ rights and invites governmental misconduct*

When a case has been instituted in this way, defendants are denied not only their statutory rights under FISA, but also well-established constitutional rights to review exculpatory evidence, gather impeachment materials, and evaluate the legality of the conduct of the officers and agents involved. As Reuters reported after consulting with constitutional experts, “If defendants don’t know how an investigation began, they cannot know to ask to review potential sources of exculpatory evidence—information that could reveal entrapment, mistakes or biased witnesses.”³⁷ When prosecutors are also denied that information, they cannot perform the required due diligence, imposed on them by the law, to provide such information to the defense. Truncating the record in this way also denies the defendant his right to examine his own

³⁴ John Shiffman and David Ingram, *IRS manual detailed DEA’s use of hidden intel evidence*, Reuters, Aug 7, 2013, available at www.reuters.com, Def.’s Ex. 2.

³⁵ *Id.* (emphasis added).

³⁶ *Id.*

³⁷ Shiffman and Cooke, *U.S. directs agents, supra.*

statements under Rule 16 (a right that is not limited to statements the government intends to introduce at trial).

Additionally, judicial review of the use of FISA is essential to ensure that the government does not overstep its authority when conducting surveillance. Although many civil liberties experts consider the FISA statute much too permissive of government spying, it does attempt to limit the government's reach by limiting the targets, situations, and means of surveillance, and subjecting the government's applications to a neutral tribunal. However, if the government does not disclose that criminal prosecutions arose on the basis of information obtained through FISA, then there is no ultimate review to ensure that these procedures were followed. This contravenes the statutory scheme and invites abuse of the government's already daunting and alarming powers.³⁸

Mr. Syed Ali wishes to note that these are not "gray" areas in which national security imperatives render courts' intervention legally questionable or practically inadvisable. Congress has already made the determination that the government should disclose this information both to courts and to defendants. Yet the government has repeatedly engaged in a deceptive practice of evading these clearly delineated requirements in order to shield its activities not only from the public, but also from judges and defendants and sometimes from its own prosecutors. The government's deceptive conduct is all the more egregious

³⁸ See *Kyles*, 514 U. S. at 438 (holding that "any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor, and even for the courts themselves, as the final arbiters of the government's obligation to ensure fair trials.").

in view of the fact that the laws the government is flouting already provide it extremely wide latitude for surveillance. In fact, the public outcry over the secrecy and breadth of government spying recently led President Obama to announce that he would pursue a series of reforms.³⁹ Unfortunately, those reforms do not resolve the matters at issue here.

B. This Court Should Therefore Compel the Government to Prove the Origins of this Investigation

1. This case contains markers indicating FISA's probable involvement

The involvement of FBI counter-terrorism officials strongly indicates that Mr. Syed Ali was targeted through FISA. The government's affidavit asserts that, after "FBI San Antonio received information of Middle Eastern males purchasing a large quantity of Acetone," "Counter Terrorism agents initiated an investigation to determine the intent of the purchaser's use of the chemical, which is not illegal to possess but is a common bomb making component."⁴⁰ The affidavit admits that Mr. Syed Ali was subjected to surveillance and followed.⁴¹ It also acknowledges that agents later interviewed Mr. Ali "in furtherance of the *mass destruction investigation*."⁴² This type of investigation falls squarely within the purview of FISA. The affidavit also makes clear that this investigation into

³⁹ Tom Cohen, Jim Acosta and Mariano Castillo, *Despite Obama's NSA changes, phone records still collected*, CNN, Jan. 17, 2014, available at www.cnn.com, Def.'s Ex. 2.

⁴⁰ Alade Aff. at 23.

⁴¹ *Id.*

⁴² *Id.* at 24 (emphasis added).

suspected terrorism was independent of the domestic criminal investigation of Jaffer Ali.

It is likely that the investigation of Mr. Jaffer Ali also began with a FISA intercept. The government admits to profiling suspects on the basis of their ethnic origins,⁴³ and Mr. Jaffer Ali's Pakistani heritage would have flagged him as a potential suspect. Moreover, according to the affidavit, Mr. Jaffer Ali and his associates traveled extensively, communicated with individuals outside the U.S., and sent money abroad.⁴⁴ These points are likely to trigger an investigation or at least increased monitoring under FISA.

2. *The government has refused to divulge details concerning the origins of this investigation*

The discovery provided by the government to date does not answer the question of whether FISA or other SOD materials prompted the investigation of Mr. Jaffer Ali or the identification of Mr. Syed Ali as a suspect. As mentioned in the statement of facts, the government has indicated that the investigation of Jaffer Ali began with a tip from a confidential informant. However, this does not rule out FISA's involvement, as the practice of "parallel construction" often involves the use of confidential informants to recreate the investigative trail.⁴⁵

⁴³ Matt Apuzzo, *U.S. to Expand Rules Limiting Use of Profiling by Federal Agents*, N.Y. Times, Jan. 15, 2014, available at www.nytimes.com, Def.'s Ex. 2.

⁴⁴ Alade Aff. at 19, 35-36, 46-47, 70-71, 78-79.

⁴⁵ Shiffman and Ingram, *IRS manual*, *supra*.

Indeed, the “confidential informant” is sometimes revealed to be nothing more than the FISA intercept itself.⁴⁶

Mr. Ali has requested that the government provide a detailed account of how the investigation of Jaffer Ali began, as well as of how Mr. Ali was included in the investigation, specifically requesting information as to whether FISA had been involved.⁴⁷ The government’s response is included in its entirety below:

Mr. Azar-Farr:

We are in receipt of your letter dated January 20, 2014, regarding discovery in the above-referenced case. *Without addressing any of the allegations in your letter regarding the Foreign Intelligence Surveillance Act and related matters*, we can inform you that the United States has complied and will continue to comply with all of its discovery obligations, including those imposed by Federal Rule of Criminal Procedure 16 and the Foreign Intelligence Surveillance Act.

If you have any further questions, please do not hesitate to call me or Mark Roomberg.⁴⁸

The AUSA thus refused to discuss whether FISA materials were implicated, and to provide any information pertaining to the origin of the investigation. Nor did he assure Mr. Ali that he had himself even seen the materials pertinent to the beginning of the investigation such that he could meet

⁴⁶ Shiffman and Cooke, *U.S. directs agents, supra* (“One current federal prosecutor learned how agents were using SOD tips after a drug agent misled him, the prosecutor told Reuters. In a Florida drug case he was handling, the prosecutor said, a DEA agent told him the investigation of a U.S. citizen began with a tip from an informant. When the prosecutor pressed for more information, he said, a DEA supervisor intervened and revealed that the tip had actually come through the SOD and from an NSA intercept.”).

⁴⁷ Def.’s Ex. 3 (Letter of undersigned counsel dated January 20, 2014 requesting discovery).

⁴⁸ Email correspondence from Jay Hulings, AUSA, to Simon Azar-Farr, Jan. 27, 2014, Def.’s Ex. 3 (emphasis added).

his discovery obligations. This sort of dismissive reply to Defendant's request for discovery should not reassure the Court that the suspect practices described above are not present in this case.

3. *Court involvement is required to ensure that the government has fulfilled its disclosure obligations*

As explained above, the government is obligated under the law to disclose when any of the links in the investigation chain leading to a criminal prosecution began with FISA. The undersigned counsel does not wish to cast doubt on the willingness of the AUSAs involved in this case to comply with their obligations under the law, but the government's past history of evasion, deception and obfuscation—not only toward defendants, but also toward courts and its own prosecutors—casts serious doubt on the ability even of the most conscientious of AUSAs to make the requisite disclosures. Moreover, unlike the remainder of the government's case, which is largely accessible to defendants, FISA materials are shrouded in secrecy. Unless the government properly discloses them, defendants cannot know what material information they might contain, and prosecutors themselves cannot access them for their disclosure obligations.

The only way that courts and defendants may be assured that the government has satisfied its obligations under the law in cases, such as this one, that involve an international components, is through discovery that conclusively demonstrates how the investigation began. The prosecution must produce the agents involved in the investigation's inception, to testify as to how the how the alleged criminal scheme first came to their attention. If the investigation required

cooperation from state or local law enforcement, those agents should testify as well. If, as is suggested in the affidavit in support of the complaint, the operation began with a tip from a confidential informant, the informant's handler must perform due diligence to investigate the source of the CI's knowledge. Here, the government should also produce the agents involved in the initial identification of Mr. Syed Ali as a suspect, including the "Counter Terrorism agents" referenced in the Alade Affidavit, the officers who performed the traffic stop after Mr. Ali allegedly purchased the acetone, as well as the individuals involved in the Jaffer Ali investigation with whom these agents communicated. The government should produce a complete list of the agents involved, in order to ensure that the origin of the investigation is clear.

The best forum in which to address these issues is an evidentiary hearing. There the parties can explore these issues thoroughly through examination of the witnesses. If the witnesses' testimony reveals that FISA activities were involved, then the Court may order that those materials be disclosed, so that they may be reviewed for evidence favorable to the defense and to ascertain the government's compliance with the procedural requirements. The Court may also order the government to disclose all Mr. Ali's written, oral and recorded statements collected via FISA, pursuant to Rule 16(a)(1)(A)-(B).

Finally, Mr. Ali requests that the court direct the government to review all materials pertinent to the beginning of the investigation and to the inclusion of Mr. Syed Ali in the investigation in order to disclose all potentially exculpatory

information, all information helpful for impeachment purposes, and all information relevant to whether the operation was conducted according to the mandates of the relevant statutes and constitutional provisions.

III. Conclusion

The government's surveillance powers, while broad, are far from unlimited. If the government seeks to use the FISA process, it must answer to the Foreign Intelligence Surveillance Court beforehand, in order to obtain a warrant, and to federal courts after, in order to obtain a criminal conviction.

The government's practice of concealing FISA's involvement circumvents this process, violating the statute and the Federal Rules of Criminal Procedure. It risks insulating its actions from review. It also shuts off a defendant's access to his own statements and to potential exculpatory and impeachment materials from the (true) beginning of the investigation, in violation of his statutory and constitutional rights.

Discovery shedding light on how an investigation began can correct this situation. Consequently, Mr. Ali respectfully requests that the Court exercise its powers under Rules 16 and 17.1 of the Federal Rules of Criminal Procedure and order (1) an evidentiary hearing at which all agents (state and federal) involved in the instigation of the investigation of Mr. Jaffer Ali and involved in the identification of Mr. Syed Ali as a suspect should testify; (2) require that the government disclose all FISA intercepts pursuant to that statute's directives, as well as all prior statements of Mr. Syed Ali not previously disclosed; and (3)

review all materials, including any FISA materials, for evidence helpful to the defense.

Dated February 3, 2014, and,

Respectfully Submitted,

/s/ Simon M. Azar-Farr

Lead Counsel

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing

DEFENDANT SYED ALI'S (14) MOTION FOR DISCOVERY

was filed with this Court on February 3, 2014, through its electronic CM/ECF filing system. Notice of this filing will be sent to the counsel for the Plaintiff, listed below, by operation of this Court's CM/ECF electronic filing system.

Mr. Mark Roomberg
Assistant U.S. Attorney
Mr. Jay Hulings
Assistant U.S. Attorney
Office of the United States Attorney
601 NW Loop 410, Suite 600
San Antonio, Texas 78206

/s/ Simon Azar-Farr
Simon Azar-Farr

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,)	
)	
v.)	CRIMINAL NO.
)	
Muhammad JAFFER ALI, <i>et al.</i> ,)	SA-13-CR-580-OG
)	
Defendants.)	

ORDER

Having considered Defendant Syed Ali’s Motion for Discovery, the Government’s Response thereto, and the other evidence of record, this Court finds as follows:

1. This case will be set down for an evidentiary hearing on _____ at _____ AM/PM. The government is ordered to produce as witnesses all agents (state and federal) involved in the instigation and initiation of the investigation of Mr. Jaffer Ali and involved in the identification of Mr. Syed Ali as a suspect.

2. The Government is hereby ordered to investigate whether surveillance under the Foreign Intelligence Surveillance Act of 1978 (FISA) prompted, contributed to, or impacted this investigation in any way. If so, the Government is further ordered to review all FISA materials and produce all evidence subject to

disclosure under FISA, the United States Constitution, and Rule 16 of the Federal Rules of Criminal Procedure.

3. The Court will address the remaining issues by further order after the evidentiary hearing is completed.

SIGNED AND ENTERED, this _____ day of _____, 2014.

ORLANDO GARCIA
US District Court Judge

EXHIBIT 1

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

06/26/13

for the

Clerk, U. S. District Court
Western District of Texas

Western District of Texas

By MAN
Deputy

United States of America)

v.)

Muhammad JAFFER ALI(1), Ashkul MOWLA(2), Ashak WESA a.k.a. Antonio(3), David B. PUCEK(4), Dung NGUYEN a.k.a. Alex(5), Brian ARTHUR(6), R. DAN ARTHUR(7), Joshua Louis HASNESS(8), Amir Nabil Shaker SENADA(9), Salma JAFFER ALI(10), Faizan ALI(11), Luz Abril GARCIA(12), Irma ZERTUCHE-Santillan(13), Gulzar DHARANI(14), Abu Mohammad Maftah UDDIN(15), Syed ALI(16), Yong CHONG(17), Derrick SANTILLAN(18), Prasanta BARDHAN(19) DEFENDANT(s)

Case No. 5:13-MJ-578

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 10, 2012 in the county of Bexar in the Western District of Texas, the defendant(s) violated:

Code Section
21 U.S.C. 846 and 841(a)

Offense Description
Conspiracy to Manufacture, Distribute, and Possess with Intent to Distribute a Controlled Substance and Controlled Substance Analogue

This criminal complaint is based on these facts:

See Attachment "C"

Continued on the attached sheet.

A. Alade

Complainant's signature

Adebowale Alade, Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: 6/26/13

John W. Primomo
Judge's signature
John W. Primomo, US Magistrate Judge
Printed name and title

City and state: San Antonio, Texas

ATTACHMENT C

I, Adebowale B. Alade, a Special Agent (SA) with the Federal Bureau of Investigation (FBI), being duly sworn, state as follows:

1. I am a Special Agent with the FBI, duly appointed according to law and acting as such, and have been employed by the FBI since February 2012. As a FBI Special Agent, I am an "investigator or law enforcement officer" within the meaning of Title 18, United States Code, Section 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations and to make arrests for offenses enumerated in Title 18, United States Code, Section 2516. Prior to being employed by the FBI, I was employed as a Police Officer with the Gainesville Police Department, Gainesville, Florida, for approximately nine (9) years. In addition to working patrol, my assignments included serving as a Federal Task Force Officer and an undercover officer in drug investigations. I am currently assigned to the San Antonio Division, Violent Crimes and Major Offender Squad of the FBI. Since becoming a Special Agent, I have participated in numerous criminal investigations, including many involving organized criminal enterprises, violent gangs, public corruption and drug trafficking. I have conducted or participated in physical and electronic surveillance, including court-authorized wire and electronic interceptions, execution of search warrants, debriefings of informants and reviews of taped conversations and narcotics records. Through my training, education and experience, I have become familiar with the manner in which illegal drugs are imported and distributed, the method of payment for such drugs, and the efforts of persons involved in such activities to avoid detection by law enforcement. Among other duties, I am currently involved in an investigation that focuses on the illegal activities a drug trafficking organization based in San Antonio, Texas, numerous other states and internationally.

LOCATIONS TO BE SEARCHED

2. This affidavit is made and submitted in support of an application for arrest and search warrants for the following locations within the Western District of Texas:

- A. 15515 Portales Pass, Helotes, Texas: Residence of Muhammad & Salma Jaffer Ali
- B. 5623 Dha.k.a. View, San Antonio, Texas: Residence of Ashekul Mowla
- C. 91 Big Horn Canyon, San Antonio, Texas: Residence of Syed Ali
- D. 5562 Rangeland Street, San Antonio, Texas: Residence of Yong Chong
- E. 6400 Wurzbach Road, Apt. 2108, San Antonio, Texas: Residence of Prasanta Bardhan
- F. 5403 Evers Road, San Antonio, Texas: Best Foods #2
- G. 11421 West Avenue, San Antonio, Texas: Hang Ten Smoke Shop
- H. 6604 N.W. Expressway, San Antonio, Texas: A-AAALKey Mini Storage, units 250 & 502
- I. 5555 N.W. Loop 410, San Antonio, Texas: A-AAALKey Mini Storage, units 80, 243, 275, 281, 364, 399, 436, & 534
- J. 6627 Topper Run, Suite 102, San Antonio, Texas: Suspected lab
- K. 16939 Nacogdoches, San Antonio, Texas: The Storage Center, units 1002
- L. 999 FM 1518, Schertz, Texas: Covey's Happy Mini Storage, units A-28, F-09, I-17, J-18, J-22, J-24, J-26, J-28 and J-30
- M. 14989 Judson Road, San Antonio, Texas: Judson Storage, units 2303 & 2326
- N. 14815 Jones Maltsberger, San Antonio, Texas: Public Storage, unit 262
- O. 13800 Nacogdoches, San Antonio, Texas: Public Storage, unit 278
- P. 9415 North IH-35, San Antonio, Texas: Pioneer Stor & Lok, units 16 & 17

- Q. 8525 Perrin Beitel, San Antonio, Texas: Smokers Galaxy
- R. 703 W. Rhapsody, San Antonio, Texas: Gloria's Food Mart
- S. 1502 Hildebrand, San Antonio, Texas: Hildebrand Grocery
- T. 7031 Ray Bon, San Antonio, Texas: Ray Bon Grocery
- U. 530 S. General McMullen, San Antonio, Texas: Anam Food Mart
- V. 2111 Harry Wurzbach, San Antonio, Texas: Fort Sam Grocery
- W. 6414 Wurzbach, San Antonio, Texas: Stanley's Ice House
- X. 3604 Commercial Avenue, San Antonio, Texas: Fast Stop Grocery

OFFENSES

3. I am familiar with relevant aspects of this investigation as a result of my personal participation in this investigation, including the review of transcripts and summaries of conversations recorded during this investigation pursuant to court authorized wire interceptions of various telephones including telephones utilized by **Muhammad JAFFER ALI** and **Ashkul MOWLA**. I have also discussed the contents of some of the recorded conversations with Urdu, Bengali, Gujarati and Spanish speaking agents and/or monitors who have listened to the conversations. I have participated in interviews of cooperating witnesses to include confidential human sources. I have reviewed reports written by other agents regarding seizures of controlled substances, controlled substance analogues, precursor chemicals and other materials as well as drug proceeds associated with the persons under investigation and I have spoken personally with many of the agents involved in such seizures. I have also reviewed the photographs taken, the documents seized and the intelligence learned as a result of said seizures. On the basis of this familiarity, and on the basis of other information which I have reviewed and determined to be reliable, as will be detailed more fully below, I believe there is probable cause that evidence of the following crimes committed by **Muhammad JAFFER ALI**, **Ashkul MOWLA**, **Ashak WESA a.k.a. Antonio**, **David B. PUCEK**, **Dung NGUYEN a.k.a. Alex**, **Brian ARTHUR**, **R. DAN ARTHUR**, **Joshua Louis HASNESS a.k.a. Josh**, **Amir Nabil Shaker SENADA a.k.a. Sam**, **Salma JAFFER ALI**, **Faizan ALI**, **Luz Abril GARCIA**, **Irma ZERTUCHE-Santillan a.k.a. Natalie or Nathly**, **Gulzar DHARANI a.k.a. Gloria**, **Abu Mohammad Mafttah UDDIN a.k.a. Paul**, **Syed ALI**, **Yong CHONG a.k.a. Sam**, **Derrick SANTILLAN**, **Prasanta BARDHAN**, and others known and unknown, who have aided and abetted in the commission of these federal offenses will be found in the premises named herein:

(a) distribution of and possession with intent to distribute controlled substance and controlled substance analogues, cannabinoids, also known as synthetic marijuana and substituted cathinones, also known as bath salts, all of which are set forth in Sections 802(32), 802(34), and 813 of Title 21;

(b) attempts and conspiracies to do the same, all in violation of Sections 841(a)(1) and 846 of Title 21, United States Code;

(c) importation of controlled substance and controlled substance analogues, cannabinoids and substituted cathinones into the United States, all in violation of Section 960 of Title 21, United States Code;

(d) attempts and conspiracies to do the same, all in violation of Sections 952(a) and 963 of Title 21, United States Code;

(e) use of wire facilities to facilitate the commission of the offenses described in subparagraphs (a), (b), (c) and (d) above, in violation of Title 21, United States Code, Section 843(b);

(f) money laundering and conspiracies to do the same, in violation of Title 18, United States Code, Section 1956 and 1957;

(g) structuring transactions to evade reporting requirements, in violation of Title 31, United States Code, Section 5324; and,

(h) aiding and abetting the offenses described in subparagraphs (a), (c) and (f) above, in violation of Title 18, United States Code, Section 2.4.

The items sought constitute fruits, proceeds, evidence, and instrumentalities of violations of the federal felony offenses all as listed above in paragraph 3. Based upon my training and experience, I know the

following regarding drug trafficking generally:

Traffickers, dealing in and manufacturing controlled substances and controlled substance analogues hereinafter referred to generically as drugs, commonly keep their supply of drugs or precursor chemicals on hand for immediate access. These drugs and precursor chemicals are commonly kept on the trafficker's person, in their home, in secondary locations such as storage units or in their vehicles. Traffickers also typically store large amounts of drugs and/or precursor chemicals in locked containers or security containers to protect their investment in the drugs;

Persons involved in large scale drug trafficking and/or money laundering almost always keep records of their transactions; because drug trafficking generates large sums of cash, it requires the keeping of detailed records as to the purchase and distribution of drugs as well as the laundering of the proceeds; drug traffickers and money launderers typically keep documents, or data on computers and other electronic media capable of storing data and/or images, demonstrating the purchase of assets, as well as bank records and other evidence of the accumulation of wealth through illegal activities, as well as the methods used to lauder the proceeds; such records also typically provide evidence as to the identity of additional criminal associates who are facilitating the laundering of the drug proceeds on behalf of the organization; these records, unlike the controlled substances, are often maintained for long periods of time; such records are often maintained under the dominion and control of the drug traffickers and money launderers, and as such, are often kept in their residences, businesses, or other locations that they control;

Drug traffickers commonly maintain addresses or telephone numbers in books, papers, or on computers, cellular telephones/smart phones, as well as on other types of electronic media capable of storing such data, which reflect names, addresses and/or telephone numbers of their associates in the trafficking organization;

It is common for drug traffickers to maintain books, records, receipts, notes, ledgers, airline tickets, receipts relating to the purchase of financial instruments and/or the transfer of funds, and other papers relating to the transportation, ordering, sale and distribution of controlled substances; the aforementioned books, records, receipts, notes, ledgers, etc., are maintained where the drug traffickers have ready access to them;

Drug traffickers often take or cause to be taken photographs or video movies of themselves; their associates, their property and their product; these traffickers usually maintain these photographs in their possession or post them online on their own websites, or on their personal and/or business profiles on social media sites, such as Facebook;

Large-scale drug traffickers often purchase and/or title their assets in fictitious names, aliases, or the names of relatives, associates or business entities to avoid detection of these assets;

Even though these assets are in names other than the drug traffickers', their true owners will continue to exercise dominion and control over the use, ownership, and disposition of these assets;

Large-scale drug traffickers must maintain on-hand large amounts of U.S. currency in order to maintain and finance their ongoing drug business and typically possess cash counting machines to aid in their business;

It is common for large-scale drug dealers to secrete contraband, proceeds of drug sales and records of drug transactions as well as asset purchases in secure locations within their residences, businesses and/or other locations over which they maintain dominion and control, for ready access and to conceal these items from law enforcement authorities;

In order to accomplish this concealment, drug traffickers frequently build “stash” places or utilize “diversion safes” within their residences or business; there are a number of publications available instructing where and how to build “stash” places; copies of these types of publications have been found in the residences of drug traffickers. From the exterior, diversion safes appear to be common garage, household, or grocery items (i.e., a can of Pringles potato chips), but, in fact, are specifically manufactured and sold to conceal drugs, currency, and other valuables in containers which most law enforcement officers would not normally check for such items. Diversion safes are advertised in publications that traffickers in synthetic drugs utilize for business, such as B2B Wholesale Magazine, and are displayed by exhibitors at business-to-business trade shows where traffickers in synthetic drugs also exhibit and attend;

It is common for persons involved in large-scale drug trafficking to maintain evidence pertaining to their obtaining, secreting, transfer, concealment and/or expenditure of drug proceeds, such as currency, financial instruments, precious metals and gemstones, jewelry, books, records, invoices, receipts, records of real estate transactions, bank statements and related records, passbooks, money drafts, letters of credit, money orders, bank drafts, cashier’s checks, bank checks, safe deposit box keys and money wrappers; these items are maintained by the drug traffickers within their residences, businesses or other locations over which they maintain dominion and control;

Large-scale drug traffickers often utilize electronic equipment such as computers, flash drives, cellular phones, smart phones and other devices and software to communicate and to store electronic data such as records, contact information and other data relevant to their drug trafficking activity;

The courts have recognized that the manner in which the currency is handled, carried and concealed may establish probable cause that there is a substantial connection between the questionable currency and drug transactions;

When drug traffickers amass large proceeds from the sale of drugs, the drug traffickers attempt to legitimize these profits through money laundering activities; to accomplish these goals, drug traffickers often utilize domestic and international banks and their attendant services, securities brokers, professionals such as attorneys and accountants, casinos, real estate, shell corporations and business fronts and otherwise legitimate businesses which generate large

quantities of cash;

Individuals involved in multi-state illegal drug distribution activities often open checking accounts at financial institutions that have numerous branches throughout the United States. They then instruct their customers to deposit cash into these accounts as payment for drugs. This allows the customer's identity to be concealed and for promotion of the illegal activity because of the distributor's immediate access to payments from customers located long distances away;

The Currency Transaction Report (CTR) (FinCEN Form 104) which is required to be completed and filed with FinCEN by all financial institutions on every currency transaction which exceeds \$10,000, causes tremendous problems for drug traffickers when they attempt to negotiate their illegal profits at a financial institution, and that in order to evade the filing of a CTR, drug traffickers often "structure" their currency transactions so that no one transaction exceeds \$10,000, or they provide false or misleading information in an attempt to legitimize or conceal the source and/or ownership of the currency;

Drug traffickers at times become fearful that their extravagant spending habits will bring them under scrutiny by the Internal Revenue Service or other federal, state or local agencies. In order to legitimize their spending, these traffickers commonly file tax returns reporting income commensurate with the amount of money they have spent during the year which they feel can be traced and documented by the government; the "source" of their income reported on these returns is usually falsely stated, misleading or generic in terms; retained copies of these returns are commonly kept by the traffickers in their residences, businesses, and other locations under the dominion and control of drug traffickers;

Drug traffickers commonly have in their possession, that is on their person, at their residences and/or their businesses, firearms, including but not limited to handguns, pistols, revolvers, rifles, shotguns, machine guns and other weapons; said firearms are used to protect and secure a drug trafficker's property. Such property may include but is not limited to drug, jewelry, drug paraphernalia, books, records and United States currency; and

The techniques and practices used by drug traffickers to avoid detection by law enforcement include, but are not limited to, the use of multiple locations at which to conduct drug related activities and to keep records and drugs, the use of proxy businesses and proxy agents, mail drops and P.O. Boxes, websites and proxy servers/contacts, commercial shipping businesses such as UPS and FedEx to receive and ship drugs, electronic wire transfers and payment systems, computers, email, voice mail, Short Message Service (SMS) and Multimedia Messaging Service (MMS) messages (commonly referred to as text messages), Caller I.D. masking or spoofing services, cellular telephones/smart phones, pay phones, and the use of numerous associates and "workers" or "mules" to further their criminal enterprise.

2. Based upon my training and experience, I further know the following as it relates to drug trafficking in controlled substance analogues, specifically synthetic cannabinoids:

The unique danger regarding the trafficking of products containing synthetic cannabinoids is that the end-distributor is many times a “brick and mortar” retailer, marketing its wares to the public, providing an easy and seemingly legitimate avenue for the general public to obtain these often dangerous compounds. Therefore, product manufacturers and distributors regularly utilize a variety of private laboratories to generate “does not contain” reports that are forwarded on with their products to the wholesale and retail level. These “does not contain” reports are used in an attempt to bolster the apparent legality of the products by listing, at the request of manufacturers and distributors, specific illegal substances that are not contained in the product, while excluding others that are in fact in the product. As such, the reports are used in an attempt to thwart law enforcement efforts to enforce laws and ordinances regarding synthetic drugs, and the reports are further customized as to the specific states’ current laws relating to synthetic cannabinoids. Through their actions, the wholesalers and retailers demonstrate their knowledge that despite these reports, such products are not legal to distribute or sell for human consumption. I know that despite being one of the most profitable items to end-distributors, products containing synthetic cannabinoids are normally kept out public view, and customers purchasing these products typically must be “known” to the business owners/agents, in an attempt to evade detection of trafficking activities by law enforcement. I am aware that the manufacturers and distributors are provided a “does contain” report that details the chemicals present in their products, but these reports are not normally provided to wholesalers or retailers. Furthermore, I know that manufacturers and distributors are now employing attorneys to submit samples to the labs for an analysis on their behalf, so if law enforcement gets a copy of the report, the manufacturer’s or distributor’s name and identifying information will not be printed on it, and the attorneys will claim “attorney-client” privilege when approached by law enforcement, thus aiding in concealing their identities and drug trafficking activities. Attorneys also provide their manufacturer and distributor clients letters for their retailer clients, providing a legal opinion as to the compliance of the products in an attempt to further thwart law enforcement efforts regarding the distribution and sale of these drugs;

Traffickers in synthetic cannabinoid products frequently travel to China, Taiwan, and Hong Kong, which are source countries for the precursor chemicals and compounds as well as for the packaging used for retail sales of such products. In addition, traffickers who conduct interstate transportation and distribution of controlled substances must transport the controlled substances themselves or have couriers, including businesses such as the United Parcel Service (UPS) and Federal Express (FedEx), transport the drugs for them. Consequently, drug traffickers often keep records of such travel, including airline tickets, bus tickets, rental car receipts, as well as records of shipments of drugs and payments for drug shipments received through UPS and FedEx, as most shipments of synthetic cannabinoid products are sent C.O.D.; and

Traffickers in synthetic cannabinoid compounds and products commonly utilize storage facilities to manufacture and/or store drugs, records, assets, and other evidence of their trafficking activities. The traffickers also commonly use mail boxes at commercial locations, such as the UPS Store, as business addresses to receive drug shipments and correspondence related to their trafficking activities. I know that packages delivered to these locations are commonly received on the recipient’s behalf by unwitting employees of the storage facilities and commercial mail box

locations, and are kept in the office areas until the designated recipient comes to the business to collect them.

3. This affidavit is based upon my personal knowledge, and upon information reported to me by other federal, state, and local law enforcement officers during the course of their official duties, all of whom I believe to be truthful and reliable. Some of the facts in this affidavit were also provided by confidential human sources (CHS), one of which has previously been involved in the distribution of synthetic cannabinoid products.

4. Because this affidavit is submitted for the limited purpose of securing authorization for a search warrant and complaints, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are essential to establish the necessary foundation for the requested search warrants.

STATUTORY AND FINANCIAL BACKGROUND

Controlled Substance Analogue Enforcement Act of 1986

5. In 1986, the Controlled Substances Act (“CSA”) was amended by the Controlled Substance Analogue Enforcement Act. This amendment added 21 U.S.C. § 813, which provides: “A controlled substance analogue shall, to the extent intended for human consumption, be treated, for the purposes of any Federal law as a controlled substance in schedule I.” The term “controlled substance analogue” is defined in 21 U.S.C. § 802(32)(A) to be a substance which:

(1) has a chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;

(2) has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

(3) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

SYNTHETIC CANNABINOIDS

6. The following are the full chemical names for the synthetic cannabinoid compounds referenced in this affidavit:

- * AM-2201: 1(5Fluoropentyl)3(1naphthoyl)indole
- * JWH-018: 1pentyl3(1naphthoyl)indole
- * UR-144: 1-Pentyl-3-(2,2,3,3-tetramethylcyclopropyl)methanone
- * 5FUR-144: 1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropyl)methanone
- * XLR11: [1-(5-fluoropentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclo-propyl)methanone
- * AKB48: N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide

Based on my training and experience I know that, in recent years, individuals have begun to manufacture and traffic in synthetic cannabinoid products, of which two of the past popular brand names were "Spice" and "K2." These products are a mixture of an organic carrier medium, such as the herb-like substances Marshmallow and Damiana, which is then mixed with one or

more synthetic cannabinoid compounds which have a chemical structure similar to tetrahydrocannabinol ("THC"). THC is the psychoactive ingredient in marijuana.

7. Hundreds of types of synthetic cannabinoid compounds exist, of which five were designated as Schedule I controlled substances on March 1, 2011, through the Drug Enforcement Administration's emergency scheduling authority under 21 U.S.C. § 811(h)(2). The substances placed into Schedule I are 1-pentyl-3-(1-naphthoyl) indole (JWH-018), 1 butyl-3-(1-naphthoyl) indole(JWH-073),1-[2-(4-morpholinyl)ethyl]indole(JWH-200),5-(1,1-dimethylheptyl)-2-[(1R,3 S)-3-hydroxycyclohexyl]-phenol(CP-47,497),and5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue).

8. In response to this emergency scheduling, clandestine manufacturers and traffickers began distributing synthetic cannabinoid products containing slightly varied compounds in an attempt to circumvent newly enacted federal and state laws. Synthetic cannabinoid products are commonly sold in head shops, tobacco shops, convenience stores, adult stores, and over the Internet. They are often marketed as incense, potpourri, or "fake weed" and their packages often carry the markings "not for human consumption." Distributors of these synthetic cannabinoid products utilize these product names and markings in an attempt to disguise the products as containing controlled substance analogues of the emergency scheduled synthetic cannabinoid compounds. Users of these products have reported intense hallucinogenic effects including, but not limited to, paranoia, panic attacks, increased heart rate, hallucinations, and increased blood pressure.

DEA Identified AM-2201, UR-144 and 5FUR-144 as Analogues of JWH-018

9. DEA determined that the following synthetic cannabinoid compounds are controlled substance analogues of the schedule I controlled substance JWH018: AM-2201, UR-144, and 5FUR-144. As such, 21 U.S.C. § 813 provides that AM-2201, UR-144, and 5FUR-144, to the extent intended for human consumption, shall be treated as Schedule I controlled substances under Title 21, U.S.C.

****Effective May 16, 2013, UR-144, XLR11, and AKB48 were temporarily placed in Schedule I for 2 years. The three substances were found to pose an imminent hazard to public safety. The Final Order will impose administrative, civil, and criminal sanctions and regulatory controls of Schedule I substances under the CSA on the manufacture, distribution, possession, importation, and exportation of these synthetic cannabinoids. UR-144, XLR11, and AKB48 have been encountered extensively laced on plant material and marketed under the guise of “herbal incense”.**

The Synthetic Drug Abuse Prevention Act of 2012

10. On July 9, 2012, the Synthetic Drug Abuse Prevention Act of 2012 was signed into law. The act permanently added JWH-018 and AM-2201 to Schedule I under Title 21.

Money Laundering

Title 18, U.S.C. §§ 1956(c)(7)(A) and 1961(1)(D), define violations of 21 U.S.C. §§ 841 and 846 as “specified unlawful activities” for the purposes of money laundering in violation of 18 U.S.C. §§ 1956 and 1957.¹

¹ 18 U.S.C. § 1957(f)(3).

11. Engaging in a conspiracy to commit money laundering is a violation of 18 U.S.C. § 1956(h). Based on my training and experience, I know that a conspiracy is an ongoing offense and that a conspiracy, while not required by law under 18 U.S.C. § 1956(h), often involves one or more overt acts in furtherance of the conspiracy.

Based on my training and experience, I know that:

Individuals involved in illegal sale of controlled substances or other unlawful activities often generate large amounts of criminal proceeds. These individuals are often motivated to use the money to facilitate and promote the operation of their illegal activities by purchasing additional product for future sales or to finance the expansion of their illegal enterprise. These individuals also use the money generated to purchase legitimate personal items, such as real estate, automobiles, watercraft, and jewelry.

Individuals attempting to conceal their criminal proceeds or illegal activities will frequently place assets in the names of friends, relatives, or close associates to avoid detection of these assets by government agencies. Even though these assets are in the names of others, their true owners will continue to exercise dominion and control over the use, ownership, and disposition of these assets.

Individuals involved in illegal activities often utilize domestic and international banks and their attendant services. They may often attempt to establish a "front" operation (business or shell corporation) which allegedly generates large quantities of cash in order to make it appear as if their wealth was legitimately obtained. In addition, they will often use checking and savings accounts at financial institutions. Frequently, these individuals have some sort of legitimate income or funds, and co-mingle their illegal profits with their legitimate funds. This helps to conceal the illegal source. These individuals also utilize the movement of funds amongst various accounts and engage in the seemingly random opening and closing of bank accounts in an attempt to further conceal the source of the funds.

Individuals involved in the manufacture, distribution, and sale of illegal products, such as narcotics, often utilize a large amount of cash transactions to conduct business in an attempt to avoid detection and to finance their on-going business operations.

All of these methods employed by individuals to conceal illegal funds and utilize illegally obtained proceeds to promote ongoing operations are what I generally refer to as "money laundering."

Currency Transaction Reports

12. FinCEN Form 104, which is also known as a Currency Transaction Report (“CTR”), is a form filed with the United States Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) by financial institutions when more than \$10,000 in currency is deposited or withdrawn from a specific customer’s accounts in a single business day. Based on my training and experience, I know that it is a crime under Title 31, U.S.C. to cause a false CTR to be filed. I further know that a false CTR can assist in money laundering by concealing the source and nature of illegal proceeds deposited into financial accounts and is a violation of 18 U.S.C. § 1956(a)(1)(B)(ii).

COMPUTERS, ELECTRONIC STORAGE, AND FORENSIC ANALYSIS

13. As described above and in Attachment B, this application seeks permission to search for records that might be found on any of the Subject Premises, in whatever form they are found. One form in which the records might be found is data stored on a computer’s hard drive or other storage media. Thus, the warrant applied for would authorize the seizure of electronic storage media or, potentially, the copying of electronically stored information, all under Rule 41(e)(2)(B).

14. Probable cause. I submit that if a computer or storage medium is found on the Subject Premises, there is probable cause to believe those records will be stored on that computer or storage medium, for at least the following reasons:

Based on my knowledge, training, and experience, I know that computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a storage medium, deleted, or viewed via the Internet. Electronic files downloaded to a storage medium can be stored for years at little or no cost. Even when files have been deleted, they can be recovered months or years later using forensic tools. This is so because when a person “deletes” a file on a computer, the data contained in the file does not actually disappear; rather,

that data remains on the storage medium until it is overwritten by new data.

Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space—that is, in space on the storage medium that is not currently being used by an active file—for long periods of time before they are overwritten. In addition, a computer’s operating system may also keep a record of deleted data in a “swap” or “recovery” file.

Wholly apart from user-generated files, computer storage media—in particular, computers’ internal hard drives—contain electronic evidence of how a computer has been used, what it has been used for, and who has used it. To give a few examples, this forensic evidence can take the form of operating system configurations, artifacts from operating system or application operation, file system data structures, and virtual memory “swap” or paging files. Computer users typically do not erase or delete this evidence, because special software is typically required for that task. However, it is technically possible to delete this information.

Similarly, files that have been viewed via the Internet are sometimes automatically downloaded into a temporary Internet directory or “cache.”

Based on actual inspection of other evidence related to this investigation, including emails and invoices from the targets, I am aware that computer equipment was used to generate, store, and print documents used in this drug trafficking scheme. There is reason to believe that there are computer systems currently located on at some or all of the Subject Premises.

15. Forensic evidence. As further described in Attachment B, this application seeks permission to locate not only computer files that might serve as direct evidence of the crimes described on the warrant, but also for forensic electronic evidence that establishes how computers were used, the purpose of their use, who used them, and when. There is probable cause to believe that this forensic electronic evidence will be on any storage medium in the Subject Premises because:

Data on the storage medium can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave traces of information on the storage medium that show what tasks and processes were recently active. Web browsers, e-mail programs, and chat programs store configuration information on the storage medium that can reveal information such as online nicknames and passwords. Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage devices or other external storage media, and the times the computer was in use. Computer file systems can record information about the dates files were

created and the sequence in which they were created, although this information can later be falsified.

Forensic evidence on a computer or storage medium can also indicate who has used or controlled the computer or storage medium. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence. For example, registry information, configuration files, user profiles, e-mail, e-mail address books, “chat,” instant messaging logs, photographs, the presence or absence of malware, and correspondence (and the data associated with the foregoing, such as file creation and last-accessed dates) may be evidence of who used or controlled the computer or storage medium at a relevant time.

A person with appropriate familiarity with how a computer works can, after examining this forensic evidence in its proper context, draw conclusions about how computers were used, the purpose of their use, who used them, and when.

The process of identifying the exact files, blocks, registry entries, logs, or other forms of forensic evidence on a storage medium that are necessary to draw an accurate conclusion is a dynamic process. While it is possible to specify in advance the records to be sought, computer evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.

Further, in finding evidence of how a computer was used, the purpose of its use, who used it, and when, sometimes it is necessary to establish that a particular thing is not present on a storage medium. For example, the presence or absence of counter-forensic programs or anti-virus programs (and associated data) may be relevant to establishing the user’s intent.

16. Necessity of seizing or copying entire computers or storage media. In most cases, a thorough search of a premises for information that might be stored on storage media often requires the seizure of the physical storage media and later off-site review consistent with the warrant. In lieu of removing storage media from the Subject Premises, it is sometimes possible to make an image copy of storage media. Generally speaking, imaging is the taking of a complete electronic picture of the computer’s data, including all hidden sectors and deleted files. Either seizure or imaging is often necessary to ensure the accuracy and completeness of data recorded on

the storage media, and to prevent the loss of the data either from accidental or intentional destruction. This is true because of the following:

The time required for an examination. As noted above, not all evidence takes the form of documents and files that can be easily viewed on site. Analyzing evidence of how a computer has been used, what it has been used for, and who has used it requires considerable time, and taking that much time on premises could be unreasonable. As explained above, because the warrant calls for forensic electronic evidence, it is exceedingly likely that it will be necessary to thoroughly examine storage media to obtain evidence. Storage media can store a large volume of information. Reviewing that information for things described in the warrant can take weeks or months, depending on the volume of data stored, and would be impractical and invasive to attempt on-site.

Technical requirements. Computers can be configured in several different ways, featuring a variety of different operating systems, application software, and configurations. Therefore, searching them sometimes requires tools or knowledge that might not be present on the search site. The vast array of computer hardware and software available makes it difficult to know before a search what tools or knowledge will be required to analyze the system and its data on the Premises. However, taking the storage media off-site and reviewing it in a controlled environment will allow its examination with the proper tools and knowledge.

Variety of forms of electronic media. Records sought under this warrant could be stored in a variety of storage media formats that may require off-site reviewing with specialized forensic tools.

17. Nature of examination. Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant for which I am applying would permit seizing, imaging, or otherwise copying storage media that reasonably appear to contain some or all of the evidence described in the warrant, and would authorize a later review of the media or information consistent with the warrant. The later review may require techniques, including but not limited to computer-assisted scans of the entire medium, that might expose many parts of a hard drive to human inspection in order to determine whether it is evidence described by the warrant. Therefore, I respectfully request that the Court indicate that once seized, the actual execution of the search on the computer or computer(s) in question may be executed at anytime in the day or night in a laboratory setting

and that the return be due in a reasonable amount of time. The latter request is being made because based on me being advised that a search of a computer and related electronic storage format takes longer than the usual ten (10) days because of the technology involved in reviewing and searching said items. Alternatively, I would seek a return, if not for a reasonable amount of time, a time period not to exceed thirty (30) days.

BACKGROUND

18. In January 2012, an FBI San Antonio confidential human source (CHS-1) identified business partners **Muhammad JAFFER ALI** and **Ashekul MOWLA** as large-scale distributors of synthetic marijuana and bath salts at various convenience stores, smoke shops, and flea markets in San Antonio, Texas and various other U.S. cities to include but not limited to Houston, Austin, Dallas, Laredo, as well as Tulsa and Oklahoma City, Oklahoma. **JAFFER ALI** and his wife, **Salma JAFFER ALI** own Best Foods #2, a convenience store/Phillips 66 gas station at 5403 Evers Road, San Antonio. Synthetic narcotics are sold at this location. **Muhammad JAFFER ALI** and **MOWLA** are partners in Hang Ten Smoke Shop, located at 11421 West Avenue, San Antonio, Texas. Synthetic narcotics are also sold at this location.

19. Investigation to date confirms that **JAFFER ALI** regularly travels within and around San Antonio, Houston, Austin, Dallas and various other Texas and Oklahoma cities. According to sources, including FBI CHS-1, **MOWLA** is responsible for distribution within San Antonio as well as to various cities along the southern border of Texas from Corpus Christi to Laredo. FBI CHS-1 also advised that **JAFFER ALI** interacts directly with several chemists who are manufacturing/producing synthetic narcotic products for the **JAFFER ALI** drug trafficking organization (DTO) to distribute. To date, the investigation has identified the

following individuals as chemists manufacturing synthetic cannabinoids for **JAFFER ALI: Dung NGUYEN a.k.a Alex, Joshua Louis HASNESS a.k.a. Josh, Brian ARTHUR, Robert Daniel ARTHUR a.k.a Dan, and Ashak WESA a.k.a. Antonio.** To carry out the full scope of the DTOs activities, **JAFFER ALI** employs the assistance of the following individuals beyond himself, **MOWLA** and the noted chemists:

20. **Salma JAFFER ALI – Muhammad JAFFER ALI’s wife** who assists **JAFFER ALI** in the day to day activities, including the sale of synthetic marijuana products, at Best Foods #2, a convenience store/Phillips 66 gas station at 5403 Evers Road, San Antonio which they own. She is also highly involved in the laundering of the proceeds of their illegal activities.

21. **Abu Mohammad Mafttah UDDIN a.k.a. Paul** – runs the day to day activities of Hang Ten Smoke Shop, is **MOWLA’s** nephew and resides with **MOWLA**.

22. **Luz Abril GARCIA** – cashier at Best Foods where she actively sells synthetic marijuana products and has obtained storage units in her name for use by the DTO.

23. **Irma Zertuche-SANTILLAN a.k.a. Natalie a.k.a. Nathly** – transports synthetic marijuana products between San Antonio, Houston, Dallas, and Austin at **JAFFER ALI’s** direction.

24. **David PUCEK** – lives in Louisville, Kentucky, and is **JAFFER ALI’s** main supplier of damiana and marshmallow leaves and brokers the sale of chemicals used to manufacture synthetic marijuana products for distribution by the DTO.

25. **Amir Nabil Shaker SENADA** – right-hand man of chemist **Ashak WESA a.k.a. Antonio.** **SENADA** oversees **WESA’s** manufacturing operations including what is believed to be a lab at 6627 Topper Run, San Antonio.

26. **Gulzar DHARANI a.k.a. Gloria** – owner/operator of the following five (5) convenience stores in San Antonio where synthetic marijuana products supplied by the DTO are sold: Gloria's Food Mart, Anam Food Mart, Fort Sam Grocery, Hildebrand Grocery and Ray Bon Grocery. **DHARANI** also assist in the laundering of the DTO's drug proceeds.

27. **Syed ALI** – owner/operator of Smokers Galaxy, 8525 Perrin Beitel, San Antonio, where synthetic marijuana products supplied by the DTO are sold.

28. **Yong CHONG** – distributor of synthetic marijuana products supplied by the DTO.

29. **Prasanta BARDHAN** - distributor of synthetic marijuana products supplied by the DTO.

30. **Derrick SANTILLAN** – employee at Hang Ten Smoke Shop, also the renter of storage units 399,436 and 534 at A-AAKey Mini Storage, 5555 N.W. Loop 410, San Antonio, Texas, used by the DTO to safely store the synthetic marijuana products which they distribute as well as possibly precursor chemicals and other products used by the chemists.

31. **Faizan ALI – JAFFER ALI's** right hand man in Houston overseeing the acceptance and distribution of precursor materials and finished products as well as collecting proceeds from buyers on **JAFFER ALI's** behalf.

32. On April 4, 2013, United States District Judge Xavier Rodriguez issued an Order authorizing a Title III wiretap on (210) 838-4110, (210) 417-0557, (210) 367-7058 and (210) 838-4110 known to be utilized by **JAFFER ALI** or **MOWLA**. This Order was renewed on May 10, 2013 and June 7, 2013. Pursuant to this Order, the FBI has intercepted numerous telephone conversations and text messages between **JAFFER ALI**, **MOWLA**, and numerous others

concerning the illegal production, storage, distribution, and sale of various kinds of synthetic narcotics by **JAFFER ALI, MOWLA**, and their associates.

PROBABLE CAUSE

33. On January 10, 2012, at the direction of the FBI, after negotiations with **JAFFER ALI**, FBI CHS-1 took receipt of approximately ninety-six (96) packets of cannabinoids (synthetic marijuana) from **MOWLA** while under surveillance by agents. The packages were provided to agents for the purpose of submission to the Texas Department of Public Safety Laboratory to determine whether they contained controlled substances. Lab test confirmed the presence of AM-2201 and JWH-073. At the time, JWH-073 was already a federally banned Schedule 1 substance and AM-2201 was banned at the state level.

34. On October 16, 2012, DEA San Antonio CHS-1 and an undercover agent made separate controlled purchases of synthetic marijuana from Best Foods-2. Soheb **MARDHANI** was working at the store and made the sales. During the sale to the undercover agent, who consensually recorded the conversation, **MARDHANI** discussed the “high” and/or effects a person could experience when consuming the products, even though the packages purchased by DEA CHS-1 and the undercover agent were label “not for human consumption.”

35. As stated previously in this affidavit, **JAFFER ALI** and **MOWLA** own Hang Ten Smoke Shop on West Avenue in San Antonio. **MOWLA**'s nephew, **Abu Mohammad Mafttah UDDIN**, runs the day to day operations of the business. On November 13, 2012, DEA San Antonio CHS-1 made a controlled purchase of synthetic marijuana from **UDDIN** at Hang Ten. The next day, surveillance observed **Yong CHONG** placing several boxes in his vehicle which he obtained from the business. A traffic stop and subsequent consent search of his vehicle resulted

in the seizure of approximately 2,100 packages of synthetic marijuana, marketed under the names Kush and Klimax. **CHONG** stated to officers that he was taking the items to 5403 Evers (Best Foods #2) at the direction of **MOWLA**. **CHONG** was not arrested. Subsequent to the traffic stop, agents executed a consent search of Hang Ten and seized approximately 9,500 packages of synthetic marijuana. The seized items were packaged using over 50 different brand names. Later that day **JAFFER ALI** made contact with one of the investigating agents and acknowledged ownership of the seized items stating that he had lab reports documenting the products were not illegal. DEA lab analysis indicated the representative samples of the seized products contain 5FUR-144 or XLR-11.

36. In early January 2013, FBI San Antonio received information of Middle Eastern males purchasing a large quantity of Acetone. Counter Terrorism agents initiated an investigation to determine the intent of the purchaser's use of the chemical, which is not illegal to possess but is a common bomb making component. On January 10, surveillance identified **Syed ALI** taking receipt of approximately sixty (60) gallons (12 five-gallon buckets) of Acetone from a company in San Antonio. After being traffic stopped and identified, **ALI** was surveilled to a storage facility on Perrin Beitel and subsequently Smokers Galaxy, which **ALI** and his business partner A.R.K. own.

37. Agents are aware that Acetone is also utilized in the manufacturing of synthetic marijuana. Damiana and/or marshmallow leaves are initially washed in acetone and dried. The damiana and/or marshmallow is then sprayed with various chemicals which when burned/smoked produce the desired hallucinogenic effect for the user. The acetone is believed to allow a more effective absorption of the chemicals sprayed on the product. The damiana and/or marshmallow

is then packaged in varying gram quantities per bag under numerous brand names as mentioned previously in this affidavit.

38. On January 24, 2013, Syed ALI was interviewed at his home by agents in furtherance of the mass destruction investigation. During the interview, ALI appeared very nervous and gave conflicting statements regarding his intended use of the acetone he purchased on January 10. He did allow agents to follow him to the above-noted storage unit to observe the containers. A.R.K. met ALI and the agents at the storage facility with the key to the unit. Twelve containers, six full and six empty, were located inside the storage unit. Also seen in the unit were multiple boxes with "MAGNUM DETOX" stamped on the side in red. Agents are aware that this product is commonly utilized by drug users prior to having to provide urine samples in an attempt to hide and/or eliminate the presence of illegal substances.

39. In late January 2013, FBI CHS-1 advised agents that S.M. indicated he (S.M.) has transported boxes of damiana and/or marshmallow to JAFFER ALI's storage units in Houston, Texas, where JAFFER ALI had S.M. meet with an unspecified individual. S.M. stated that JAFFER ALI is having Klimax manufactured at these units.

40. On January 31, 2013, FBI CHS-2 consensually recorded a conversation with JAFFER ALI. During the conversation, FBI CHS-2 informed JAFFER ALI that FBI CHS-2 was "looking to buy product" from JAFFER ALI, mentioning "10 gram Klimax and 10 gram Angry Birds." JAFFER ALI responded saying "the Angry Bird right now we don't have it we out of the bags" and asked "what else you need." FBI CHS-2 told JAFFER ALI that FBI CHS-2 was dealing with "oil workers" and "they want strong product." JAFFER ALI

commented he had “everything” and that if he (**JAFFER ALI**) wasn’t available when FBI CHS-2 was in town that his “guy” would take care of FBI CHS-2 and show all the products.

41. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that when **JAFFER ALI** commented that he did not have “Angry Birds” and that they were “out of the bags” he was referring to not having the empty pre-printed bags with the Angry Bird name and logo on them which he would utilize to package the product after he and/or his associates manufactured it, possibly in the Houston area. **JAFFER ALI** is known to receive pre-printed packages, thousands at a time, for numerous brand names of synthetic marijuana. When FBI CHS-2 commented that the “oil workers” wanted “strong product,” this was a reference to the product being consumed by the buyer, which is contrary to the packages being marked with “not for human consumption.” When **JAFFER ALI** referred to his “guy” taking care of FBI CHS-2 and showing FBI CHS-2 “all the products” I believe that he (**JAFFER ALI**) was referring to **MOWLA** showing FBI CHS-2 the various brands they distribute.

42. On February 7, 2013, at approximately 10:34 A.M. (CST), FBI CHS-2 consensually recorded a call from **MOWLA**. During this conversation, **MOWLA** agreed to meet with FBI CHS-2 that “Jeff told me to talk to you” and then asked what time FBI CHS-2 was going to be in San Antonio.

43. That afternoon, February 7, 2013, FBI CHS-2 contacted **MOWLA** prior to meeting at Best Foods #2. Agents surveilled the meeting during which FBI CHS-2 was equipped with a transmitter and recording device. **MOWLA** arrived at the location in his silver Toyota 4Runner. **MOWLA** and FBI CHS-2 discussed various brands of synthetic marijuana and the prices of each

product. After agreeing upon prices and quantities, **MOWLA** was surveilled leaving the location and travelling to A-AAKey Mini Storage, 5555 N.W. Loop 410 (**Location I**). While **FBI CHS-2** was waiting for **MOWLA** to return, **FBI CHS-2** and **Luz Abril GARCIA** engaged in a conversation regarding the sale of the synthetic marijuana at **Best Foods**. **GARCIA** commented to **FBI CHS-2** that the users smoke the product and mentioned various brands which are the more popular brands sold at the store. Upon his return, **MOWLA** re-entered the store carrying two black plastic bags. **MOWLA** and **FBI CHS-2** counted the packages as well as the \$2,500.00 that **FBI CHS-2** paid for the products. **FBI CHS-2** turned over ninety-two (92) 10-gram packages of synthetic marijuana to agents. The following brand names were included: **Klimax**, **Scooby Snax**, **Devil Eye**, **Atomic**, **Psycho**, **Godfather**, **OG** and **Devil Eye**. Lab analysis is pending.

44. On the evening of February 12, 2013, the San Antonio Police Department (**SAPD**) received a call from a concerned brother of a minor-aged male who was abusing synthetic marijuana. The brother stated that the minor was purchasing the synthetic marijuana at 5403 Evers Road (**Best Foods #2/Phillips 66**). A uniformed officer was dispatched to the above address. The officer asked the employee behind the counter, later identified as **Luz Abril GARCIA**, if the store sold "potpourri" products. **GARCIA** acknowledged that they did and showed the officer boxes behind the counter. When asked if there were any additional such products in the store, **GARCIA** showed the officer a large assortment in the back room. The **SAPD Narcotics Unit** was dispatched to the location. Approximately \$500,000.00 worth of synthetic marijuana and several thousands of empty packages in large boxes waiting to be filled were seized from the location. **GARCIA** put detectives in contact with **Salma JAFFER ALI**

who told the detectives that **GARCIA** could handle everything. She (**Salma JAFFER ALI**) stated she was at a game with her son and did not have time to come to the location. Initial laboratory results indicate the presence of AM-2201 in some of the products seized.

45. On April 6, 2013, pursuant to the court-ordered wire interception, **JAFFER ALI** was intercepted receiving a call from **Dung NGUYEN** a.k.a. **Alex**. **NGUYEN** told **JAFFER ALI** "I made 5,000 Godfather 10 grams but I need to pack it." **NGUYEN** then told **JAFFER ALI** "he will give you \$2.00 on every bag he sells \$2 and the other Alex ok same thing he will give you a dollar I'll give you a dollar you get \$2.00 on everything he sells." "So he ordered 15,000 so you get \$2.00 from every bag." Toward the end of the conversation **NGUYEN** told **JAFFER ALI** that "A52 has a red lock on the lock on A52."

46. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe **NGUYEN** was at a storage facility belonging to **JAFFER ALI** attempting to deliver an unspecified quantity and name brand of synthetic narcotics to **JAFFER ALI**, but the rent had not been paid and therefore **NGUYEN** was not able to access unit A52 at Great Value Storage, 9951 Harwin, Houston, Texas, as he had planned. When **NGUYEN** talked about **JAFFER ALI** receiving "\$2 from every bag" I am aware of an agreement **JAFFER ALI** made with several of the wholesalers in Houston wherein **JAFFER ALI** receives a broker fee/commission on the sale of any product manufactured by **NGUYEN**.

47. On April 8, 2013, **JAFFER ALI** was intercepting placing a call to **David PUCEK**. During the conversation, **PUCEK** stated he was "tallying up all these March monthlies." **JAFFER ALI** asked **PUCEK** "how many you (**PUCEK**) sending in?" **PUCEK** responded,

“Let’s see I got yours right here, so I’ve got with your balance, let’s see I can send you, I think 4,000 pounds of marshmallow and 1,000 pounds of damiana, and that covers the shipping too.”

48. Based upon my training, experience, and conversations with other agents involved in this investigation, I believe **PUCEK** was tallying up records he maintains of his sales of damiana, marshmallow, and chemicals for the month of March 2013. I also believe **PUCEK** reviewed records he maintains regarding **JAFFER ALI**’s account with **PUCEK** when he (**PUCEK**) told **JAFFER ALI**, “let’s see I got yours right here, so I’ve got with your balance, let’s see I can send you, I think 4,000 pounds of marshmallow and 1,000 pounds of damiana, and that covers the shipping too.”

49. On April 9, 2013, **JAFFER ALI** was intercepted speaking with **Robert Daniel ARTHUR**. **ARTHUR** stated that “Brian” had said **JAFFER ALI** had called. **JAFFER ALI** asked if he could meet with **ARTHUR** and/or “Brian.” **ARTHUR** requested that **JAFFER ALI** come to “the bar around noon tomorrow.” **JAFFER ALI** asked “what kind of product” they were currently making. **ARTHUR** responded that the “new formula” was “all legal” and that they had “1.5 gram and 3 gram packs.” **JAFFER ALI** told **ARTHUR** that he (**JAFFER ALI**) buys “in bulk” “like 10,000 pieces” “not in hundreds.” They agreed to meet at the bar the next day. The same day at approximately 7:55 P.M., **JAFFER ALI** received a SMS text message from **ARTHUR** that stated “Got the factory working on 5000 2g Titanic @ 2.50 and 1000 3G Top Shelf @ 3.75”.

50. On April 10, 2013, at approximately 5:34 P.M., **JAFFER ALI** called **PUCEK**. **JAFFER ALI** told **PUCEK** that an unspecified individual had “200” that **JAFFER ALI** wanted to “collect.” **PUCEK** asked “where” did **JAFFER ALI** want the 200 sent to and **JAFFER ALI**

replied "Cali." **PUCEK** asked if **PUCEK** could "go to Cali and pick up the cash" and then have the items shipped. **JAFFER ALI** said **PUCEK** would see "\$45,000.00 in the bank by noon tomorrow." **PUCEK** stated he (**PUCEK**) had just "sent 3,000 pounds of marshmallow and damiana is going out tomorrow."

51. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I know that **PUCEK** is responsible for the importation, transportation and distribution of multi-ton quantities of marshmallow and damiana leaves into and throughout the United States. When **JAFFER ALI** referred to another individual having "200" and wanting them shipped to "Cali," I believe **JAFFER ALI** was referring to 200 kilograms of chemical (possibly UR-144 or XLR-11) used in the manufacturing of synthetic marijuana and he wanted them delivered to an unspecified address in California. I believe **JAFFER ALI** has a chemist in California who is manufacturing items for distribution by **JAFFER ALI**.

52. On April 12, 2013, **JAFFER ALI** was intercepted receiving a telephone call from **Robert Daniel ARTHUR** a.k.a. **Dan** and had the following conversation: **ARTHUR** said the "stuff is ready." **JAFFER ALI** then asked if **ARTHUR** had the "lab report" stating he needed "both of them" "like what the ingredients in there. I mean like, like 2 reports you know, like the one that what is in there and what is not in there," "my buyer is way picky, he buy big quantity but the problem is he (unintelligible)." **JAFFER ALI** stated he would get to the bar between 3:00 and 4:00pm. Later that afternoon, surveillance agents followed **JAFFER ALI** to the Parrot Pub in Spring, Texas, and observed **JAFFER ALI** and **Robert Daniel ARTHUR** loading boxes into **JAFFER ALI**'s Suburban.

53. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I know that **ARTHUR's** son is **Brian ARTHUR** who is believed to be a chemist manufacturing synthetic marijuana being sold under the brand names of "Titanic" and "Top Shelf." On April 13, 2013, at approximately 11:51 A.M., **JAFFER ALI** sent **Dan ARTHUR** the following SMS message: "Rizwan Dallas, April 13, 2013 11:44am, Zippotraders@gmail.com." Shortly thereafter, **ARTHUR** sent the following reply SMS message to **JAFFER ALI**: "Sent email with captains and DNC." When **JAFFER ALI** asked for the "lab report" "like 2 reports you know?" I believe that **JAFFER ALI** wanted to receive 2 reports regarding the same product. One report would detail all chemicals included in the product which would be used to show his buyers/distributors to prove that the appropriate chemicals were included in order for users to obtain the desired hallucinogenic effects. The other report would be utilized by the buyers/distributors to provide to the retail locations selling the products to the end user. This second report would not contain any reference to any controlled substance and/or analogue thereof. The purpose of this report was to display in a store and/or show to law enforcement officials should someone be questioned regarding the legality of the product.

54. Based on the above referenced g-mail account, calls and text messages among other things agents obtained a search warrant for the above referenced gmail account. A review of the records obtained from the search warrant revealed laboratory reports from AIBioTech which are addressed to Herbal Mysteries, 3801 Polk, Houston, Texas 77253, Attn: Brian. The tests were conducted on synthetic marijuana brands Titanic and Top Shelf on or about January 30, 2013 and Blue Vortex on or about May 14, 2012. Each substance tested would have a cover

page with "1" on the bottom middle of the page and two (2) pages marked "2" at the bottom middle as though one could chose which page to include with the cover page. One of the pages marked "2" contained the wording: "By comparison with various reference standards (Table 1),.....was found to be negative for the following cannabinoid classes: Naphthoylindoles, Naphthylmethylindoles, Naphthoylpyrroles, Naphthylmethylindenes, Phenylacetylindoles, and Cyclohexylphenoles, including," then followed by "Table 1" which noted that none of the controlled substances were detected in the product. The second page marked "2" contained the wording: "By comparison with various reference standards (Table 1),was found to contain:" Both of these pages for Top Shelf and Titanic were noted as containing 5F PB-22. PB-22 and 5F PB-22 are analogues of JWH-018 and therefore considered Schedule I Controlled Substances when intent for human consumption is shown.

55. On April 14, 2013, **JAFFER ALI** was intercepted calling **Ashak WESA a.k.a. Antonio**. During the conversation, **WESA** asked if **JAFFER ALI** recalled when **JAFFER ALI** had approximately 5,000 pieces of "Sexy Monkey." **JAFFER ALI** acknowledged then **WESA** asked if **JAFFER ALI** still had any of that brand. **JAFFER ALI** indicated he believed he "still had most of it" but may have sold some. **JAFFER ALI** went on to say that "the problem with the product" was someone "died and the death was blamed on Sexy Monkey." **WESA** stated the reason he was asking was that the "same stuff" used to manufacture Sexy Monkey is used in 7H. **JAFFER ALI** acknowledged.

56. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe this conversation shows **JAFFER ALI** and **WESA**'s knowledge of humans consuming their products contrary to

the stickers and/or printing they ensure are on of their packages. Furthermore, **JAFFER ALI** appeared not to be concerned with the death of the users and just wanted to make sure if he will have chemicals to continue manufacturing the products even after the most recently ban.

57. On April 15, 2013, **JAFFER ALI** was intercepted speaking with **Ashak WESA a.k.a. Antonio**. During the conversation, **WESA** commented that he had "little sugar." **JAFFER ALI** asked what **WESA** had said. Then **WESA** said "camcorder, little camcorder." Based upon my training, experience, and conversations with other agents involved in this investigation, I believe that believe that "camcorder" is a code word used by **WESA** and **JAFFER ALI** to refer to the chemicals used to manufacture the synthetic marijuana. **JAFFER ALI** told **WESA** that he had a lot of "checks and money orders" with him that he would send to his wife tonight and that she could then get with **WESA**. I believe this discussion indicates that **JAFFER ALI** would be given cashier's checks and/or blank money orders from his customers as payment for the product. He would then launder that money through bank accounts associated with his convenience store, Best Foods 2 in San Antonio.

58. On April 16, 2013, **MOWLA** was intercepted calling **Amir Nabil Shaker SENADA A.K.A. Sam**. **SENADA** asked "how much" was **MOWLA** going to pay. **MOWLA** said he "has \$17,000.00." **SENADA** said he would get with **MOWLA** later to pick up the money. **SENADA** also stated he was sending an unspecified person "with bags." **MOWLA** said he would text the "address to drop off the product." Approximately four minutes later, **MOWLA** sent the following SMS message to **SENADA**: "1502 West Hildebrand Av."

59. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I know **SENADA** to work for

Ashak WESA a.k.a. Antonio in manufacturing synthetic narcotics. I believe that **MOWLA** was paying **WESA** via **SENADA** \$17,000.00 towards an outstanding balance for previous shipments of synthetic narcotics. The above referenced address on Hildebrand is that of Hildebrand Grocery, owned by **Gulzar DHARANI a.k.a. Gloria**. As stated previously in this affidavit, this store sells synthetic narcotics supplied by **MOWLA**. I believe **MOWLA** was having **SENADA** send one of his workers to deliver an order to Hildebrand Grocery on **MOWLA's** behalf.

60. On April 17, 2013, **JAFFER ALI** was intercepted speaking with **Dung NGUYEN a.k.a. Alex**, a chemist manufacturing synthetic marijuana for **JAFFER ALI** in Houston. **NGUYEN** asked if **JAFFER ALI** does any "business" with "Soje," "Sundeeep," or "Ashik." He went on to say that these individuals were arrested recently in Florida, that their telephone contacts had been collected by law enforcement, and they may be working for the police now. **NGUYEN** indicated he was in Florida at the time of the call making sure he cut out those individuals from anyone **NGUYEN** was dealing with.

61. On April 18, 2013, **JAFFER ALI** was intercepted calling and speaking with **PUCEK**. During the conversation, **JAFFER ALI** asked if **PUCEK** had anything to write with. **JAFFER ALI** gave **PUCEK** the numbers, "97, 93, 95, 95, and 9" and told **PUCEK** everything was "yesterday." **PUCEK** repeated the numbers back to **JAFFER ALI**. **JAFFER ALI** said when he can do some more, **JAFFER ALI** would call **PUCEK**. **PUCEK** said he would have them send them out when **JAFFER ALI** told **PUCEK** the address to ship them too.

62. Based upon my training, experience, and conversations with other agents involved in this investigation, I believe **JAFFER ALI** requested **PUCEK** to write down the structured

amounts of deposits made by or on behalf of **JAFFER ALI** into **PUCEK's** bank account(s) for the purchase of damiana, marshmallow and/or chemicals. I believe **PUCEK** was planning to ship additional damiana and marshmallow to an address to be determined by **JAFFER ALI**. I believe **PUCEK** maintains notes and ledgers that document payments made for damiana, marshmallow, and/or chemicals and the addresses to which these items are shipped.

63. On April 18, 2013, **JAFFER ALI** was intercepted speaking with his right hand man in Houston, **Faizan ALI**. **JAFFER ALI** told **ALI** he (**JAFFER ALI**) had "to give money for AB." **JAFFER ALI** said he (**JAFFER ALI**) spoke to "Antonio" who will bring "30,000 after 4 o'clock." **JAFFER ALI** said they need to give Antonio "70 or 80" but give him "50" now. **ALI** says he (**ALI**) will pay "him 50." **JAFFER ALI** then states that he (**JAFFER ALI**) spoke to "Mike of MWI" who will "bring 14 tomorrow."

64. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that **JAFFER ALI** was telling **ALI** that **Ashak WESA a.k.a. Antonio** will deliver approximately 30,000 packages of "AB" (referring to Atomic Bomb brand of synthetic marijuana) in Houston, Texas, which **WESA** was responsible for manufacturing in San Antonio, Texas. Furthermore, I believe **JAFFER ALI** was saying that he (**JAFFER ALI**) owes **WESA** \$70,000.00 to \$80,000.00 for this and/or previous orders of various synthetic narcotics which **WESA** is manufacturing. However, **JAFFER ALI** was telling **ALI** to pay **WESA** just \$50,000.00 when **WESA** makes the delivery. I believe that **JAFFER ALI** was referring to M.C. of Mike's Worldwide Imports (MWI) owing **JAFFER ALI** approximately \$14,000.00 for unspecified products previously delivered to M.C. by **JAFFER ALI** and/or one of **JAFFER ALI's** workers.

65. On April 19, 2013, **JAFFER ALI** was intercepted speaking with **Ashak WESA a.k.a. Antonio**. **JAFFER ALI** told **WESA** that he needed “Bizarro” in Houston and requested 5,000 3.5 gram bags and 5,000 10 gram bags. **JAFFER ALI** added that the wanted it “strong, 1 to 5.” **WESA** agreed. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that Bizarro is a brand name of synthetic marijuana that **WESA** is manufacturing for **JAFFER ALI**. When **JAFFER ALI** referred to wanting if “strong, 1 to 5,” he was referring to the ratio of chemical (UR-144) to acetone that is sprayed on the damiana and/or marshmallow.

66. On April 20, 2013, **MOWLA** was intercepted calling **Amir Nabil Shaker SENADA a.k.a. Sam**. During this conversation, **MOWLA** was giving an order for new product to **SENADA** and specified that he wanted the product made with “75% marshmallow and 25% Damiana” and the ratio at “1 to 7”. **MOWLA** said he would text the order and shortly thereafter sent the following text message to **SENADA**: “4000 red 1500blue 10g. New improve aroma bag. 75% mars mellow 25% damiana. Cam 1to6 plz.bebe.” Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that **MOWLA** was asking for 5,500 pieces of finished product made to his precise request.

67. On April 21, 2013, **JAFFER ALI** was intercepted speaking with **Dung NGUYEN a.k.a. Alex**. **NGUYEN** called to remind **JAFFER ALI** that **NGUYEN** was leaving that morning to go to China until April 29. However, **NGUYEN’S** sister was staying behind, had keys to all the warehouses and would check to see if the “units” arrived the night before. **NGUYEN** also said that 50,000 Godfather bags had come in on Friday and his sister would have

them ready to deliver to **JAFFER ALI** on Monday. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that **NGUYEN** was going to China to speak with chemists there regarding new chemicals that could be used to manufacture the synthetic marijuana in order to circumvent the United States Controlled Substances laws.

68. On April 22, 2013, **JAFFER ALI** was intercepted calling **Joshua Louis HASNESS a.k.a. Josh** who told **JAFFER ALI** that he (**HASNESS**) had “just dropped.....Super OG, Regular OG and Atomic.” Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe **HASNESS** is a chemist in the Houston, Texas, area producing numerous brand names of synthetic narcotics of which he sells to **JAFFER ALI** on a regular basis. **HASNESS** appeared to have just delivered an unspecified amount of synthetic marijuana to a storage unit belonging to **JAFFER ALI**.

69. On April 25, 2013, **Muhammad JAFFER ALI** was intercepted calling his wife, **Salma JAFFER ALI**. **Muhammad** was driving to San Antonio at the time of this conversation and anticipated arriving home around 1:00 A.M. During the conversation, **Salma** asked if **Muhammad** had “spoken to” **MOWLA**. **Salma** wanted to know if **MOWLA** “changed his money orders.” **Muhammad** stated he could give **MOWLA** “a signed check to withdraw money” but that **Muhammad** would look into the “money situation tomorrow.” **Muhammad** went on to say that he (**Muhammad**) has “money orders for \$5,700 and a couple of checks totaling \$6,000.”

70. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I know that when **Salma** asked if **Ashek** “changed his money orders” that she wanted to know if **Ashekul MOWLA** exchanged an unspecified number and/or amount of money orders for cash at various locations. The DTO is known for accepting blank money orders as payment for synthetic narcotics. This then requires members of the DTO, primarily **Salma** and/or **MOWLA**, to go to various banks and other financial institutions or their associates to cash the money orders. I believe that **Muhammad** and **Salma** sit down when **Muhammad** is in town and go over the financial records which they must maintain with the volume of product constantly coming in and going out to so many different locations and/or people.

71. On April 27, 2013, **MOWLA** was intercepted calling **Yong CHONG**. **MOWLA** told **CHONG** that he (**MOWLA**) had “3,400 coming” and “2,000 more” would be available Monday. **CHONG** comments that the “pineapple is slow” but that the “red one” is the one selling the most, “my customers are all red.” **CHONG** asked “you will leave it over there in 34?” **MOWLA** acknowledged. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe when **CHONG** referred to “34” that he was in fact referring to storage unit 534 at A-AAA Key Mini Storage, 5555 N.W. Loop 410, San Antonio, Texas. This unit is rented in **Derrick SANTILLAN**’s name, but agents are aware that **MOWLA** pays the rent monthly in cash. **CHONG** is believed to have a key or keys to one or several of **MOWLA/JAFFER ALI**’s storage units at this storage facility to allow **CHONG** to easily obtain product to distribute for the DTO.

72. On April 27, 2013, **JAFFER ALI** was intercepted calling **Brian ARTHUR**. **JAFFER ALI** asked if **ARTHUR** “had a chance to send the e-mail for the lab certificates.” **ARTHUR** said he would get it done. During the conversation, **JAFFER ALI** and **ARTHUR** began discussing the “strength” of the products. **ARTHUR** stated if it is made “stronger than there are going to be problems with the way it dissolves.” **ARTHUR** asked if **JAFFER ALI** has seen “the PB and how sometimes there are little crystals.” **ARTHUR** went on to say “that is what is going to happen when you try to make it stronger and then someone gets one of those and it makes them, and we don’t want to make anyone sick.”

73. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe **ARTHUR**, is manufacturing synthetic narcotics for distribution in the Houston, Texas area. When **JAFFER ALI** asked about a “lab certificate” I believe he was asking for a “lab report” showing the chemical breakdown of the product **ARTHUR** is selling. Based on previous conversations as noted in the affidavit, which **JAFFER ALI** has had with **ARTHUR**’s father, **Robert Daniel ARTHUR**, I believe **JAFFER ALI** was expecting to get 2 lab reports per product, one to see everything and one report which would be shown to law enforcement in an effort to avoid interdiction action. When **ARTHUR** said if he made “stronger than there are going to be problems with the way it dissolves” I believe that he (**ARTHUR**) was saying that if too much chemical, which comes in a powder form, was used to make the solution which is sprayed on the base product, that the chemical will not dissolve properly in the acetone and form crystals. I believe **ARTHUR** was saying that the crystal can be the cause of users getting sick. **ARTHUR**

and **JAFFER ALI**'s conversation regarding the PB-22 forming crystals and making people sick shows their knowledge of human consumption.

74. On April 30, 2013, **MOWLA** was intercepted calling **Yong CHONG**. **MOWLA** asked **CHONG** if he could "open a storage room here I want to put more stuff today, on your name." "Not at the Evers one, do a different place, Vance Jackson or any place, open 2 small, 2 of them. I pay the money no problem, every month I pay on my credit card. Only 2 months needed. Don't tell them anything, just get 2 of them, one 5x5 and one 5x10." **CHONG** asked "what about the same place, no?" **MOWLA** replies "same place I have about, I have 6 or 7 of them. Over there we are going to put the Klimax in different place. There I give you a key but I pay its mine." **CHONG** says "ok" and agrees to go the next morning to rent the units. Agents learned that on May 2, 2013, **CHONG** rented units 250 (a 5x15) and 502 (a 5x10) at A-AAA Key Mini Storage, 6604 N.W. Expressway, San Antonio, Texas. However, **MOWLA** paid cash for the rental. On May 4, 2013, **MOWLA** was intercepted talking with **JAFFER ALI** about a "new place" near Vance Jackson and I-10, where **MOWLA** was dropping off some "stuff."

75. On May 1, 2013, **MOWLA** was intercepted calling **Gulzar DHARANI a.k.a. Gloria**. **MOWLA** told **DHARANI**: "I told you to deposit everyday four or five thousand remember?" "Not in one day, because the same name, that's why I try to do three or four thousand every day." **DHARANI** said "ok, I will do it today, don't worry." **MOWLA** said "yeah, three, four, three, four, don't put five. I think money orders, that's why...everyday I think is better."

76. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I know **DHARANI** owns and operates at least five (5) convenience stores in San Antonio: Gloria's Food Mart, Anam Food

Mart, Fort Sam Grocery, Hildebrand Grocery and Ray Bon Grocery. In addition to selling synthetic marijuana supplied by **MOWLA, DHARANI** is believed to be assisting **MOWLA** and the DTO in laundering their drug trafficking proceeds through her business accounts. **MOWLA** and **JAFFER ALI** are known to receive blank money orders as payment for synthetic narcotics. Therefore, the money orders need to be cashed and **DHARANI** is believed to be assisting that process through the use of bank accounts associated with her stores. I believe **MOWLA** is instructing **DHARANI** on the best practice to use when cashing/depositing the money orders in an effort to not appear suspicious to the banks.

77. On May 4, 2013, **JAFFER ALI** was intercepted calling **Joshua HASNESS**. **HASNESS** asked if it would be ok if he (**HASNESS**) would “drop off 1 today” and bring “the rest tomorrow.” **JAFFER ALI** said that would be fine and they (**HASNESS** and **JAFFER ALI**) agreed to meet in one hour. At approximately 7:23 P.M., **HASNESS** called **JAFFER ALI** to confirm the meeting location. **JAFFER ALI** stated they would meet at his (**JAFFER ALI**) “warehouse.” At approximately 7:43 P.M. **JAFFER ALI** called **HASNESS** to confirm his (**HASNESS**) location. **HASNESS** indicated he was at the “storage unit.” **JAFFER ALI** stated he (**JAFFER ALI**) was “waiting at the warehouse.” **HASNESS** asked to confirm the address of the warehouse and **JAFFER ALI** replied “9811” Harwin.

78. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that when **HASNESS** asked if he could “drop off 1 today” and bring “the rest tomorrow” that he (**HASNESS**) was delivering approximately 1,000 pieces of synthetic marijuana but that it was only a portion of an amount requested by **JAFFER ALI** and that **HASNESS** would deliver the

remaining amount the next day. I also believe that after delivering the packages to an unspecified storage unit utilized by **JAFFER ALI** that **HASNESS** went to 9811 Harwin, Houston, Texas, which is believed to be a warehouse recently rented by **JAFFER ALI** to possibly utilize as a novelty wholesale business from where I believe **JAFFER ALI** will sell synthetic narcotics.

79. On May 4, 2013, **JAFFER ALI** was intercepted receiving and sending the following series of text messages to and from **Brian ARTHUR**: "If I need titanic 50000 what best price for me?" **ALI** responded "What gram packages?" **ARTHUR** wrote back "2Gr" and **ARTHUR** responded "\$2.30. Or 2.10 if you provide printed bags. That price is good for any quantity between 5000 and 1 million."

80. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I know that **JAFFER ALI** had been speaking and texting for **ARTHUR** trying to negotiate lower prices for the products **JAFFER ALI** was buying from **ARTHUR**. This text message was **ARTHUR's** response letting **JAFFER ALI** know that no matter the quantity of wholesale product he purchased the price was the same. **ARTHUR** was saying that no matter how many packages of synthetic marijuana **JAFFER ALI** purchases from him **JAFFER ALI** would pay the same price. The only difference was whether **JAFFER ALI** provided the printed bag. If **JAFFER ALI** provided **ARTHUR** with the printed bags, the cost of the product would be \$2.10 per 2-gram bag. If not the product was \$2.30 per bag.

81. On May 12, 2013, **MOWLA** was intercepted receiving a call from **Prasanta BARDHAN**. **BARDHAN** told **MOWLA** that **BARDHAN** called **JAFFER ALI** recently but

couldn't understand what **JAFFER ALI** was saying. **MOWLA** told **BARDHAN** to ask **JAFFER ALI** for Classic Klimax and red Klimax. **BARDHAN** mentions having "Mohashin" bring product for **BARDHAN** "that it is pretty good and cheap. Mohashin had a customer taste it and the customer said it was good." **BARDHAN** comments that his house is "filled with this product." Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe **MOWLA** was telling **BARDHAN** to have **JAFFER ALI** supply even more synthetic marijuana products to **BARDHAN** to distribute. When **BARDHAN** referred to "Mohashin" I believe he was referring to Mohashin Sarker. On June 4, 2013, **BARDHAN** accompanied Sarker recently to the rental office of A-AAA Key Mini Storage at 5555 N.W. Loop 410, where **BARDHAN** has been renting unit 243 (10x10) since March 27, 2012. Even though the new unit, #80 (10x15), was rented in Sarker's name, according to A-AAKey management, **BARDHAN** paid the rental fees. Sarker's address on the rental agreement is 6400 Wurzbach Road, the same as **BARDHAN**. The agreement also listed **BARDHAN** as the emergency contact. **BARDHAN** flew to Bangladesh, his home country, on June 12 and has a return flight scheduled for June 24. Between June 10, 2013 and June 12, 2013 the units were accessed six times, the last of which being June 12, 2013 at 9:12 a.m..

82. On May 16, 2013, **JAFFER ALI** was intercepted receiving a call from **Luz Abril GARCIA**. **GARCIA** told **JAFFER ALI** that "Antonio's brother" brought about "10 pieces of Klimax" to the store. **GARCIA** wanted to know if she could "save" the pieces for her "regular customers." **JAFFER ALI** said that was fine and to get "feedback" from the customers. I believe **GARCIA** was stating that if she gives her regular customers the first opportunity to try

the new product she is much more likely to get the feedback that **JAFFER ALI** wants/needs to determine if this product should be kept or replaced.

83. On May 16, 2013, **JAFFER ALI** was intercepted receiving the following text message from **R. Dan ARTHUR**: “Jeff, New law goes in effect today banning UR144 that most products contain, but our stuff uses 5F PB-22 which is not on the banned list, so let me know if you need anything.”

84. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I know that **Dan ARTHUR** was referring to the recent addition of UR-144, AKB48 and XLR11 to the Schedule I Controlled Substance Act. **ARTHUR** wanted to say that their products are legal to sell since they contain the chemical 5F PB-22. In fact, 5F PB-22 is considered a controlled substance when knowledge of human consumption can be proven, as is the case here. Previously on April 22, 2013, **JAFFER ALI** and **ARTHUR** were intercepted in a conversation regarding the customers complaining that the “flavor and ratio” “being no good.”

85. On May 17, 2013, **JAFFER ALI** was intercepted calling **Brian ARTHUR**. **JAFFER ALI** asked to meet with chemist **Brian ARTHUR** at **ARTHUR**'s office or somewhere. **ARTHUR** appeared busy and caught off guard by **JAFFER ALI**'s request, but **JAFFER ALI** said he just needed 15 or 20 minutes “to learn something” from **ARTHUR**. **JAFFER ALI** asked **ARTHUR** to text his address to **JAFFER ALI**. Two minutes later **Brian ARTHUR** sent the following text message to **JAFFER ALI**: “3801 polk”. As noted earlier in this affidavit, agents are aware that 3801 Polk Street in Houston is the address of Super Happy Fun Land, an experimental electronic music, underground jazz and outsider art venue owned

and/or managed by **Brian ARTHUR**. It is also the address for Herbal Mysteries which is the company name included on a AIBioTech lab report sent to **Brian ARTHUR** regarding the analysis of his synthetic marijuana products Top Shelf, Titanic and Blue Vortex. Later that evening, **JAFFER ALI** went back to meet **ARTHUR** at 3801 Polk Street for the purpose of picking up an order for 7,000 pieces of synthetic marijuana **JAFFER ALI** had ordered from **ARTHUR**. When **JAFFER ALI** was on his way to the location, **ARTHUR** commented he would call the "warehouse" to have someone bring **JAFFER ALI**'s order saying it would be there in ten minutes. 3801 Polk Street appears to be **ARTHUR**'s primary office with his manufacturing site within 10 minutes of that location.

86. On May 17, 2013, **MOWLA** was intercepted coordinating with **WESA** for the delivery of finished products to **MOWLA**'s new storage facility, A-AAA Key Mini Storage, 6604 N.W. Expressway, San Antonio. Surveillance agents later observed **S.C.** arrive at the facility and place boxes in unit 502.

87. On May 19, 2013, **MOWLA** was intercepted calling **Prasanta BARDHAN**. **MOWLA** told **BARDHAN** that he wanted to show him **Klassic**. **MOWLA** stated that he is on the highway near Evers, and has it stored somewhere nearby. **BARDHAN** said he would be home all day and **MOWLA** replied he would "bring 50" to **BARDHAN**'s house. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe **MOWLA** wanted to show **BARDHAN** the synthetic marijuana brand **Klassic** made most likely with new chemicals. **MOWLA** is believed to have delivered 50 pieces of the product to **BARDHAN**'s apartment, 6400 Wurzbach Road #2108, San Antonio, Texas.

88. On May 20, 2013, **JAFFER ALI** was intercepted calling **David PUCEK**. **PUCEK** and **JAFFER ALI** were discussing an unknown male (UM) not being able to “bring PB into Florida or Georgia” anymore as “it’s illegal.” **PUCEK** said the UM “does have AB” if **JAFFER ALI** wanted it but that it was “kinda high.” **PUCEK** commented that “supposedly the AB is better than the PB stuff.” **JAFFER ALI** asked the price and **PUCEK** said “\$2,600.00.” **JAFFER ALI** said “tell him 10 AB” and we’ll “see how it is.” **PUCEK** thinks the UM has **JAFFER ALI**’s money from the “leftover five FPB” that UM did not supply. **PUCEK** will have the UM apply that money to this purchase and see how much is left. **JAFFER ALI** said “no problem.” At approximately 2:29 P.M., **PUCEK** sent the following text message to **JAFFER ALI**: “So with your 13600 credit those 10 cost 26000.. so he needs u to deposit 12400. Cool?” Then at approximately 3:43 P.M. **PUCEK** sent the following text message to **JAFFER ALI**: “Send me address in next five minutes and he will send today.” At approximately 4:04 P.M., **JAFFER ALI** sent the following text message to **PUCEK**: “Josh luis 18062 Fm 529 number 258 Cypress TX 77433.”

89. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe **PUCEK** was telling **JAFFER ALI** that the UM who supplied the chemicals used to manufacture the synthetic marijuana, i.e. PB-22 and 5F-PB-22,² are now banned substances in the states of Florida and Georgia, therefore the UM was not importing the chemicals from China to those states where UM has a network of drop locations established. When **PUCEK** mentioned “AB being better than PB” I believe he was referring to the newest chemicals being used, referred to as “AB,” are

² PB-22 is an analogue of JWH-018, a Schedule I Controlled substance. 5F-PB-22 is an analogue of PB-22. As such, when intent of human consumption is shown, PB-22 and 5F-PB-22 are considered controlled substances on a federal level.

stronger chemicals and are said to give the user of the end product a stronger effect. In the subsequent text messages, **PUCEK** was saying that **JAFFER ALI** had a credit with the UM of \$13,600 due to **JAFFER ALI** previously depositing money for the 5F-PB-22 that was never sent by the UM due to the state ban. The AB cost \$2,600 per kilogram and **JAFFER ALI** ordered 10 kilograms, therefore, after applying the credit, **JAFFER ALI** only needed to deposit \$12,400 to pay for the 10 kilograms of the AB. The address provided is believed to be associated with chemist **HASNESS**.

90. On May 21, 2013, **MOWLA** was intercepted calling K.H. who appears to be located in Bangladesh. **MOWLA** confirms that he received 2 text messages regarding \$8,000 and \$5,500 and that **MOWLA** will "send that" in a few moments. **MOWLA** told K.H. to "keep it for now" and **MOWLA** will tell K.H. later "where it will go." Prior to the call **MOWLA** received text messages containing bank account information and the above referenced dollar amounts. **MOWLA** frequently receives this type of text messages. Later that day **MOWLA** was again intercepted receiving a call from K.H. **MOWLA** confirmed that the deposits had been made in two different accounts at two different banks. Agents believe **MOWLA** went to two different banks to make the deposits because he was afraid he would raise the suspicion of bank employees. A trash run was completed on May 22, 2013, at **MOWLA**'s residence. Included in the documents retrieved from the trash were numerous bank deposit slips from various banks, several of which included the name "Kabir" hand-written on the top of the slip. Agents believe that **MOWLA** wrote the names on the slip so he would remember to what each deposit pertained. Agents further believe that **MOWLA** is moving his drug trafficking proceeds to Bangladesh through this method, all deposits are made in amounts below \$10,000.00, to avoid seizure by U.S.

law enforcement. The deposits were made between January 14, 2013, and May 13, 2013, and totaled \$321,125.05.

91. On May 22, 2013, **JAFFER ALI** was intercepted calling N.K., owner of a retail store in Dallas, Texas. **JAFFER ALI** placed N.K. on a 3-way call with **Abu Mohammad Mafttah UDDIN a.k.a. Paul** who runs Hang Ten Smoke Shop in San Antonio, Texas. N.K. provided his e-mail address but **UDDIN** had a hard time understanding N.K. **JAFFER ALI** then told **UDDIN** to give N.K. **UDDIN's** telephone number so that N.K. could text his e-mail address to **UDDIN**. **UDDIN** stated that he lost his telephone but provides the number for another employee so that N.K. could send the address. **JAFFER ALI** told **UDDIN** to e-mail "all the new ones I gave you" when he received N.K.'s e-mail address. Shortly thereafter, N.K. sent a text message to **JAFFER ALI** that included N.K.'s email address. Later, N.K. sent the following text message to **JAFFER ALI**: "Did u send email." **JAFFER ALI** then forwarded N.K.'s text message that contained his e-mail address to the telephone number provided by **UDDIN**.

92. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that **JAFFER ALI** provided **UDDIN** with lab reports for new synthetic marijuana products which **JAFFER ALI** supplied to Hang Ten to sell. I further believe that N.K., who owns a retail store in Dallas, Texas, was also being supplied synthetic marijuana products by **JAFFER ALI** and that N.K. was wanting the lab reports which show which chemicals where or where not utilized in manufacturing the product. As noted above, agents are aware that there are typically two reports for each product. One report shows the all the chemicals (legal or not) that are contained in the

product. The other report is intended to be shown to law enforcement and this report shows the product to not contain any controlled substance. Agents intend to request a search warrant for N.K.'s e-mail address in an attempt to capture the documents sent to N.K. by **UDDIN**.

93. On May 24, 2013, **David PUCEK** was intercepted speaking with **JAFFER ALI**. **PUCEK** and **JAFFER ALI** discussed making deposits. **JAFFER ALI** said that he made "2, 95, one yesterday and one today" and could make "a 9 today." **PUCEK** said he would have "him" send "15 ABF" to **JAFFER ALI**. Based upon my training, experience, and conversations with other agents involved in this investigation, I believe **PUCEK** noted the two \$9,500 deposits **JAFFER ALI** had made as well as the \$9,000 he was going to make that day. I believe that these deposits were made in amounts less than \$10,000 at different banks in order to avoid having to fill out Currency Transaction Reports with banks. Based on those deposits I believe **PUCEK** was having a chemical supplier ship 15 kilograms of AB-Fubinaca to **JAFFER ALI**.

94. On May 26, 2013, **JAFFER ALI** was intercepted receiving a call from **Dung NGUYEN a.k.a. Alex. NGUYEN** told **JAFFER ALI** that he (**NGUYEN**) had "dropped stuff off" to **JAFFER ALI**'s storage. **NGUYEN** went on to say that he only saw one box of Master Kush and wanted to know if **JAFFER ALI** wanted him (**NGUYEN**) to make more. **NGUYEN** commented that he could "make all new" and "put "new" on it." **JAFFER ALI** agreed to start making the "new" products. Based upon my training, experience, and conversations with other agents involved in this investigation, I believe that the "new" refers to utilizing an AB chemical, either AB-Fubinaca or AB-Pinaca.

95. On May 27, 2013, **JAFFER ALI** was intercepted receiving a call from **Syed ALI**. **ALI** stated he wanted "200" of "Kisha Cole" in 10 grams. **JAFFER ALI** replied that he only

had “them in 3 grams” and “have 100 pieces.” **JAFFER ALI** offered that he had “Angry Bird in big size.” **ALI** said to give him “200 pieces.” Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I know that when **ALI** owns Smokers Galaxy in San Antonio and is believed to be ordering synthetic marijuana products to be distributed from his store. “Kisha Cole” and “Angry Birds” are brand names of synthetic marijuana distributed by **JAFFER ALI**. 3 grams and 10 grams are common weights these products are packaged in for sale.

96. On May 29, 2013, **MOWLA** called **A.R.K.** **MOWLA** said “you need Klimax, 1,000 pieces red ones?” **A.R.K.** acknowledged. **MOWLA** requested that **A.R.K.** come pick up the product at Evers at 4:30 P.M. **A.R.K.** agreed. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I know that **A.R.K.** is co-owner of Smoker’s Galaxy in San Antonio, Texas. **A.R.K.** is acknowledging that he will pick up 1,000 pieces of Klimax from Best Foods #2 at 5403 Evers Road. Surveillance units observed a tan colored Toyota Minivan arrive at Best Foods #2 bearing Texas license plate **TKR-298**, which is registered to **A.R.K.** **A.R.K.** was observed placing a bag inside the vehicle prior to departing.

97. On May 29, 2013, **JAFFER ALI** was intercepted receiving a call from **Irma ZERTUCHE-Santillan**. **ZERTUCHE-Santillan** told **JAFFER ALI** “the guy already left” and that she had found the “Scooby” and had given it to the UM. **ZERTUCHE-Santillan** said “the other 2 orders are ready” and that she also found “100 of the hypnotic.” **JAFFER ALI** then commented that something “might be at the other one, number 52” and that they would “check there later.” **ZERTUCHE-Santillan** asked if someone else was “coming or not.” **JAFFER**

ALI said to give him 5 minutes and he would confirm, if not **ZERTUCHE-Santillan** could go to the hotel and get some rest.

98. Based upon my training, experience, and conversations with other agents involved in this investigation, I believe **ZERTUCHE-Santillan** is at a storage facility in Houston, Texas, and assisted one of **JAFFER ALI**'s buyers in taking receipt of an unknown amount of synthetic marijuana. When **JAFFER ALI** referred to "number 52" I believe he was referring to storage unit #52 at Great Value Storage, 9951 Harwin Drive, Houston, Texas

99. On May 30, 2013, **JAFFER ALI** was intercepted calling **David PUCEK** and completing a three-way call including chemist **HASNESS**. **HASNESS** was complaining of problems he was experiencing when trying to work with the AB-Fubinaca they had recently received. **HASNESS** told **PUCEK** "see if there is an extra step to the process or something like that, but it was the strangest thing it happened within seconds of adding the acetone, it was like it just all turned to cream cheese." **PUCEK** asked "did you use a full kilo or how much did you use?" **HASNESS** responded "I used a full one." **PUCEK** then asked "and then how much acetone do you mix with it?" **HASNESS** answered "well I used one full gallon and then it turned in to cream cheese then I added another half on top of that to try...it turned in to large chunks...now it's a slurry and just not working." **PUCEK** said he would "call him" because "I don't mix it" but he would call and get back with **HASNESS**.

100. Based upon my training, experience, and conversations with other agents involved in this investigation, I believe **HASNESS** began using the new chemical, AB-Fubinaca because they (**JAFFER ALI**, **HASNESS** and others involved in synthetic cannabinoids) believe it skirts the law and is not considered illegal to use. However, **HASNESS** was not getting the chemical

to mix properly and was therefore not able to use it. I believe **PUCEK** shows he is very familiar with how the damiana, marshmallow, and chemicals he is involved with are used in the manufacturing of illegal controlled substances.

101. On May 30, 2013, **MOWLA** was intercepted receiving a call from **Yong CHONG**. **CHONG** told **MOWLA** that he (**CHONG**) needed "200 Supreme" and asked if "it is in the storage room?" **MOWLA** said "in the same box." **MOWLA** said for **CHONG** to take what he needed and "write down how many" **CHONG** took. Based upon my training, experience, and conversations with other agents involved in this investigation, I believe **CHONG** was going to take receipt of 200 pieces of Supreme from a storage unit at A-AAA Key Mini Storage, 5555 N.W. Loop 410, San Antonio. When **MOWLA** instructed **CHONG** to "write down how many" I believe **MOWLA** maintains written records inside the storage units to maintain as accurately as possible the amount of inventory they have and who owes what amount of money.

102. On May 31, 2013, **JAFFER ALI** was intercepted conducting a three-way call with **H.S.**, a synthetic marijuana supplier from Orlando, FL and **Chris LNU**, a chemist from Austin Analytical, a private laboratory in Austin, Texas. **JAFFER ALI** got **H.S.** on the line and told **H.S.** that **Chris LNU** is going to go over the lab results that **Chris LNU** sent to **JAFFER ALI** to determine the legality of the components of various products **JAFFER ALI** sent to the lab. **Chris LNU** starts off saying that **Orgazmo**, **Angry Bird**, **Nutronium**, **7H Hydro** and **Klimax** are all "illegal." Hearing this **H.S.** told **JAFFER ALI** to put the products to the side and **H.S.** would swap them out. The next evening, **JAFFER ALI** was intercepted talking with his wife, **Salma JAFFER ALI**. **Salma** asked about **Orgasmo** and **Muhammed JAFFER ALI** said the "lab report was not good." **Luz Abril GARCIA** then got on the phone. **JAFFER ALI** instructed

her to not sell Orgasmo, Neutrum, 7H or Angry Birds because the lab reports were not good. Four days later, on June 5, 2013, even after **JAFFER ALI** was told the product contained a controlled substance, a DEA CHS purchased a 10-gram Orgazmo strawberry Zencense package from Hang Ten Smoke Shop for \$40.00.

103. On June 4, 2013, **JAFFER ALI** sent the following text message **Irma Zertuche-SANTILLAN a.k.a. Nathaly, a.k.a. Natalie**: "I need your help in Houston". The following string of responses were exchanged between **JAFFER ALI** and **Zertuche-SANTILLAN**: "Howmany days ??" "Two days" "OK tomorrow at what time ??? I'll take anything from here ?" "I let you know." "OK."

104. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I know that **Zertuche-SANTILLAN** is involved in the transportation of synthetic narcotics at the direction of **JAFFER ALI**. I believe **JAFFER ALI** wanted **Zertuche-SANTILLAN** to drive from San Antonio to Houston possibly transporting synthetic narcotics and then to assist **JAFFER ALI** in moving synthetic narcotic products between various storage units **JAFFER ALI** rents in Houston.

105. On June 4, 2013, **MOWLA** called his wife, T.B. **MOWLA** asked "how is the money counting going?" T.B. responded "still counting." **MOWLA** tells T.B. he will pick up the kids and drop them off at home. T.B. replies "Oh that would be good. Then I can count the money peacefully." **MOWLA** asked "What did you count? How much?" T.B. asked "How much did I count?" **MOWLA** said "yes." T.B. stated "Four days remaining." **MOWLA** stated "tell me the last month's total in short term. Last month, how much is it all together?"

T.B. answered "That I haven't made the total yet." **MOWLA** said "After you do the total, 10,000 or 20,000, just say if it's 10 then 10, if it is 20 then 20."

106. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe T.B., **MOWLA's** wife, was counting U.S. currency, possibly at Hang Ten Smoke Shop. When T.B. said "still counting" and "can count the money peacefully" it indicated that there was a large amount of money. If this money represented legitimate sales from Hang Ten, it would be common practice for a business to conduct regular cash deposits into a bank account versus leaving it at the store to be counted on a monthly basis. When **MOWLA** instructed T.B. "if it's 10 then 10, it is 20 then 20" he was telling her to speak in coded language, which is not how legitimate business owners would typically discuss their finances. I believe this money represents the proceeds of the sale of synthetic marijuana sold from Hang Ten, which I believe is maintained separately in the store, possibly in a safe.

107. On June 6, 2013, **JAFFER ALI** was intercepted receiving a call from H.S. H.S. told **JAFFER ALI** that H.S. will have "two shipments" "going to two different locations" and that **SINGH** will send **JAFFER ALI** the "tracking numbers." H.S. then asked how much money did **JAFFER ALI** "deposit yesterday." **JAFFER ALI** replied "6150." H.S. asked **JAFFER ALI** to make "three more deposits" "of 6140" in "Chase." After these deposits H.S. will have **JAFFER ALI** use "Wells Fargo." H.S. commented that **JAFFER ALI's** "balance due is 19,700" and that H.S. needed **JAFFER ALI** to make the deposits because H.S. needed to "pay somebody else."

108. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that H.S. was shipping synthetic marijuana products to two different addresses previously provided by **JAFFER ALI**. I believe H.S. and **JAFFER ALI** then structured deposits being made by **JAFFER ALI** into bank accounts provided by H.S. to pay the \$19,700 owed by **JAFFER ALI** for synthetic marijuana supplied by H.S..

109. On June 6, 2013, **JAFFER ALI** was intercepted calling **Faizan ALI**. **JAFFER ALI** asked if **ALI** was at the “new location or the other one.” **ALI** said he was at “Harry’s.” **JAFFER ALI** said he would “come over.” **ALI** said he was looking for more “bags” and that he had “unloaded the merchandise” and “put it up.” **JAFFER ALI** asked for **ALI** to “text the number for the gate there.” Shortly thereafter, **JAFFER ALI**, received the following text message: “21579700.”

110. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe **JAFFER ALI** was asking if **ALI** was at a new storage location they recently began using in Houston or possibly storage units at Great Value Storage where they have maintained units for some time. When **ALI** said he was at “Harry’s,” I believe he was referring to a location associated with an unknown male named “Harry.” I believe **ALI** received merchandise that he had placed in a storage unit and he may have been looking for empty bags, which he would then provide to a chemist to package with new product. The text message sent by **ALI** appears to be the code **JAFFER ALI** would need to enter to gain access to **ALI**’s location.

111. On June 6, 2013, **MOWLA** was intercepted receiving a call from **Mafftah UDDIN**. During the conversation, **UDDIN** advised **MOWLA** that he had an order for “the old stuff.” **MOWLA** questioned what **UDDIN** was speaking in reference to and **UDDIN** replied “old Klimax.” **MOWLA** acknowledged.

112. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that **Mafftah UDDIN** was referring to an order for synthetic marijuana manufactured with chemicals that were currently banned. The **DTO** routinely used “old” to describe products that were produced before the most recent Federal Ban.

113. On June 8, 2013, **JAFFER ALI** was intercepted calling **Syed ALI**. During the conversation **JAFFER ALI** advised that several individuals had been in trouble with law enforcement lately. **Syed ALI** advised that the best thing to do is “lay low and not get noticed.”

114. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality I believe that **JAFFER ALI** and **Syed ALI** are making reference to several recent arrests made by law enforcement, in the Texas area, in regard to synthetic marijuana.

115. On June 8, 2013, **JAFFER ALI** was intercepted calling **Syed ALI**. During the conversation **Syed ALI** questioned if **UM** was manufacturing product. **JAFFER ALI** advised that **UM** currently wasn’t because things were “hot.” **Syed ALI** advised that people sell the product openly in Austin but **Syed ALI** is not sure how they are able to. **Syed ALI** advised that 3 law enforcement officers came to his store in regard to a complaint of the sell of Klimax. **Syed**

ALI advised that the lab certificate “saved” him. **JAFFER ALI** requested that **Syed ALI** retain the officer’s name if that occurs again.

116. On June 7, 2013, **MOWLA** was intercepted receiving a call from **Gluzar DHARANI** a.k.a. **Gloria**. **MOWLA** told **DHARANI** that he now had **Diablo** and was going to bring it to her in 30 minutes. **DHARANI** asked **MOWLA** how much she “owed” **MOWLA** from the “money orders” several weeks ago. **MOWLA** said he had it written down, papers could be heard in the background being moved around. **MOWLA** replied “\$5,300.” **DHARANI** said she had the money and would pay **MOWLA** when he brought the **Diablo**. **MOWLA** asked if she needed any other products. **DHARANI** said to bring her “100 mix and match.” Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe when **DHARANI** asked how much she “owed” from the money orders that she was referring to **MOWLA** haven given her blank money orders the **DTO** receives often as payment for synthetic narcotic products for her to launder through her business accounts. When **MOWLA** said he had it written down and then gave her the exact number I believe he maintains written records of his financial activities related to the **DTO**.

117. On June 10, 2013, **Faizan ALI** was intercepted calling **JAFFER ALI**. **ALI** told **JAFFER ALI** to send “Anthony’s girl to storage #52.” **JAFFER ALI** said “okay.” A short time later **ALI** called back to **JAFFER ALI** and asked “what happened.” **JAFFER ALI** stated he was trying to call “her” but she wasn’t answering. **JAFFER ALI** placed **ALI** on hold and spoke with **S.C.** on the other line. **S.C.** said she was looking for the warehouse. **JAFFER ALI** told her a “guy will be there” and that she would “unload the stock in to #52 or #24” and possibly

move the items in #24 to #52, whatever they thought was right. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I know that S.C. transports synthetic narcotics between San Antonio and Houston on a regular basis at the direction of chemist **Ashak WESA a.k.a. Antonio**. S.C. was delivering unspecified synthetic marijuana products manufactured by WESA to **JAFFER ALI** and **JAFFER ALI** was having S.C. and **ALI** store the items at Great Value Storage in either unit #52 or #24.

118. On June 10, 2013, **Ashkul MOWLA** was intercepted calling **Mafftah UDDIN**. During the conversation, **MOWLA** questioned if **Derrick SANTILLAN** had been rolling cigarettes with the “incense” sold at Hang Ten. **UDDIN** acknowledged that **SANTILLAN** had. **MOWLA** replied that **UDDIN** knew that was illegal and **SANTILLAN** should be warned against the behavior. **UDDIN** advised that **SANTILLAN** had only done it once.

119. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that **MOWLA** was utilizing his remote access to surveillance cameras to view what was occurring at Hang Ten. **MOWLA** observed activity consistent with **SANTILLAN** using the product sold as “incense” at the location to fill a cigarette. This is a common method for user(s) to ingest synthetic marijuana. **MOWLA** knowing the act was illegal cautioned **UDDIN** in allowing that inside of the store. **UDDIN** acknowledged.

120. On June 12, 2013, **David PUCEK** was intercepted calling **JAFFER ALI**. During the conversation **PUCEK** told **JAFFER ALI** “so I got the marshmallow in today, do you want me to ship it off to you?” **JAFFER ALI** responded “yeah, to the Houston terminal.” **JAFFER**

ALI then asked “so is there more coming?” **PUCEK** stated he had 4,000 more coming in next week and asked if **JAFFER ALI** wanted “this 1,000 and the other 4,000?” **JAFFER ALI** replied yes.

121. On June 12, 2013, **JAFFER ALI** was intercepted calling **Luz Abril GARCIA**. **JAFFER ALI** asked **GARCIA** “how sales are going?” **GARCIA** responded “\$800 in the morning and in the evening \$1,200.” **JAFFER ALI** then begins asking the response **GARCIA** is getting from the customers regarding various products. **GARCIA** says people are complaining about Pure Fire and Paradise, they do not like them. The red and green Klimax are good but Kush is giving people headaches. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe **GARCIA** was telling **JAFFER ALI** that they sold \$2,000 that day just in the sale of synthetic marijuana. Furthermore, when **GARCIA** and **JAFFER ALI** discuss customer reactions to the new products and **GARCIA** states that Kush is giving headaches, I believe this is another instance where she is acknowledging her knowledge of human consumptions even though the packaging says “not for human consumption” and they tell customers it is aromatherapy.

122. On June 12, 2013, **MOWLA** was intercepted receiving a call from chemist **Ashak WESA** a.k.a. **Antonio**. During the conversation, **WESA** explained to **MOWLA** that his workers used the “new formula” yesterday and it was “very strong.” **WESA** commented that the “3 guys that made it did not come to work today and that one of the guy’s wife called at 2 AM and told” **WESA** that her husband was “hallucinating and talking to himself and today his eyes were really big and he keeps talking to himself.” **MOWLA**’s response was to ask **WESA** to make Klimax with “that mix” because he has a guy who orders 2,000 pieces every week but is not

ordering because he started getting Classic Klimax.” Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that **MOWLA** does not care the potential for harmful and fatal effects of these products and will continual ask for the product to be stronger and stronger in an attempt to make as much money as possible.

123. On June 16, 2013, **MOWLA** and **JAFFER ALI** were intercepted discussing their storage units at “Evers.” **JAFFER ALI** asked **MOWLA** if the “storage units at Evers were full.” **MOWLA** replied no there is a large amount of space. **MOWLA** commented that he attempted to get “Claudia” to help him rent another storage unit “over across the street of the mall” but that she was still in Kansas. **JAFFER ALI** asked if “Antonio’s product” was in “250.” **MOWLA** replied, not it is actually in “399.” **JAFFER ALI** comments that the “new product” is in “281.” Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe **JAFFER ALI** and **MOWLA** were referring to storage units 281 and 399 at A-AAA Key Mini Storage, 5555 N. W. Loop 410 and unit 250 at A-AAA Key Mini Storage, 6604 N.W. Expressway, San Antonio. All of the units are rented in names other than **JAFFER ALI** and/or **MOWLA**, however, they pay the rental and maintain control of the units. Not having their names on the units is a measure they take to try and distance themselves from the products inside. Unit 281 has been rented since July 2, 2011, in the name of Oscar Moreno. “Jeff Ali (210)367-7058” is listed as the “Emergency Contact and as having authority to enter the unit. Unit 399 has been rented since July 28, 2012, in **Derek Ray SANTILLAN**’s name. A-AAA Key management has advised that **MOWLA** personally pays the monthly fees for units 281, 399, 364, 436 and 534 in cash every

month. Unit 364 has been rented since August 2, 2012, in the name of R.C.R., S.M., and **JAFFER ALI** are listed as having authority to enter the unit. Unit 436 and 534 were rented on July 28, 2012 and September 8, 2012, respectively, in **Derek Ray SANTILLAN**'s name.

124. On June 17, 2013, **MOWLA** was intercepted talking with **Derrick SANTILLAN**. **MOWLA** asked if anyone came in to buy wholesale. **SANTILLAN** said "yes, one of" **MOWLA**'s friends who **SANTILLAN** had seen before. **MOWLA** instructed **SANTILLAN** to "not let anybody go in, not even Roger [PH], now you, me and Paul are only three or four people nobody else. **SANTILLAN** replied "I told him to come to the back because there was a bunch of customers in the store and he wanted to ask about the old stuff. I didn't want him to say any old stuff in front of customers you know, it was different customers that were in the store too, not regulars. So that's why I told him 'hey, hey, shh, come over here.'" **MOWLA** reiterated not to "take anybody inside" because "selling the older stuff is very dangerous so now we have to be careful even if new or old, don't let anybody go inside even restroom, you know where restroom is a lot of things also." **MOWLA** went on to say "for your safety and for everybody's safety should not allow anybody because I have the older stuff, until we are out of that we have to be very careful." When **MOWLA** and **SANTILLAN** are referring to "the old stuff" I believe they are referring to having synthetic marijuana products which contain the now banned chemicals and **MOWLA** is storing several of them in the bathroom area at the Hang Ten Smoke Shop. They are very selective to whom they will sell these products too trying to avoid selling to an undercover law enforcement officer or an individual assisting law enforcement.

125. On June 18, 2013, **JAFFER ALI** was intercepted calling **Luz Abril GARCIA**. **JAFFER ALI** asked how "Tornado" was selling. **GARCIA** said it was "selling good, better

than Atomic.” **GARCIA** went on to say that Tornado is “more, strong like Atomic, more, more strong.” **GARCIA** said that they did not have any of the “Klimax red” and that people were requesting mango and “the other one.” **JAFFER ALI** said he would get some later and call her back. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe **GARCIA** was telling **JAFFER ALI** that the users of Tornado are experiencing a more intense reaction when they use Tornado than when using Atomic Bomb. Again this shows **GARCIA**’s knowledge of human consumption of these products.

126. On June 18, 2013, **JAFFER ALI** was intercepted calling **Salma JAFFER ALI**. **Salma JAFFER ALI** advised **JAFFER ALI** that **Ashkul MOWLA** was going to deposit \$20,000. **Salma JAFFER ALI** advised that she had \$12,000 in cash. **JAFFER ALI** advised her to deposit \$10,000 in a combination of checks and cash because a large deposit of cash would be questioned.

127. On June 18, 2013, **JAFFER ALI** was intercepted receiving a call from **Syed ALI**. During the conversation, the two discussed the different prices of known brand names of synthetic marijuana. **JAFFER ALI** and **SYED Ali** began to converse about the legality of selling synthetic marijuana. **JAFFER ALI** advised that “technically’ it is not illegal. **JAFFER ALI** advised that he has an attorney attempting to ascertain previously seized product back from law enforcement. **JAFFER ALI** advised that the federal government would not get involved with seizures unless one is caught leaving a store with the product.

128. On June 19, 2013, **MOWLA** was intercepted receiving a call from **CHONG**. **CHONG** asked “how many Supreme, yellow, gold anything” did **MOWLA** have. **CHONG**

went on to say that "Klassic, blue" is "coming out in drug tests." **CHONG** asked where **MOWLA** had the Supreme. **MOWLA** said "same place, your place." **CHONG** said he was there yesterday and only saw 200 or 300 pieces. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe **CHONG** needs to substitute Supreme for Klassic because people are starting to fail urinalysis when using Klassic. Many traditional drug users began using synthetic narcotics because the usage would not register on a urinalysis which may be given for employment purposes or even more often to individuals on probation. Many of the laboratories conducting the urinalysis are beginning to test for synthetic cannabinoids and I believe this is what **CHONG** is referring to with **MOWLA**.

129. On June 19, 2013, **MOWLA** was intercepted receiving a call from **UDDIN**. During the conversation **UDDIN** suggested that Hang Ten place an ad in a local periodical. **MOWLA** replied that the idea was good but they would not place the ad because they are "selling Spice." **MOWLA** continued that it would not be smart to place the ad now.

130. On June 19, 2013, **MOWLA** was intercepted receiving a call from **UDDIN**. During the conversation **UDDIN** advised that he had received feedback from two customers in regard to Hang Ten's product "Klimax." **UDDIN** advised that the feedback was favorable. **MOWLA** questioned how the "strength" of the product was. **UDDIN** replied that it was good. **MOWLA** advised **UDDIN** to find out how to improve the product in reference to strength and flavor. **MOWLA** advised **UDDIN** to test the product more.

131. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that **MOWLA** and

UDDIN were discussing the level of intoxication the synthetic marijuana caused. Additionally, I believe that **MOWLA** instructed **UDDIN** to speak with customers and determine if the flavor when the product is smoke needed to be changed as well as if the product's intoxication level needed to be increased.

132. On June 21, 2013, **Muhammad JAFFER ALI** was intercepted calling **Salma JAFFER ALI**. **Muhammad** questioned if **UM** had come and received his order of 100 pieces **Salma** advised that **UM** had come by but the Evers store was out of product. **Salma** advised that she had not received any complaints from the customers in regard to the product. **Muhammad** advised that he had paid a lawyer \$20,000 just in case of an "emergency" and would furnish the lawyers phone number to **Salma**.

133. On June 21, 2013, **MOWLA** was intercepted receiving a call from Yanick Last Name Unknown (LNU) an employee of Hang Ten Smoke Shop. Yanick explained to **MOWLA** "you got a climax out of it but I'm already pretty sober. It was pretty good but for me pretty short" like 18 minutes. **MOWLA** asked "stronger than the Classic?" Yanick replied "yeah stronger for me, I don't know how for Derrick, he's a constant smoker I'm not." **MOWLA** asked about the "taste." Yanick said yeah and potency was good but time wise it was short. **MOWLA** said "try it with more people." Yanick agreed. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe Yanick and **Derrick SANTILLAN** consumed one of the new synthetic marijuana products being sold at the smoke shop and Yanick was explaining the physiological effects he experienced to **MOWLA**. Young kids could be laughing and playing in the background when Yanick was explaining his experience.

134. On June 21, 2013, **MOWLA** was intercepted receiving a call from **Amir Nabil Shaker SENADA a.k.a. Sam**. **MOWLA** and **SENADA** discussed arrangements for **SENADA** to have someone deliver finished product from **WESA's** lab to a storage unit. **MOWLA** said "I have a key to 502 you have a key for it?" **SENADA** says no, the key is with the girl, she is sick." **MOWLA** says "ok if you don't have a key then I have to be there because no one has a key to 502 and 399." **SENADA** said for **MOWLA** to call when he is available. **MOWLA** said if the "stuff is good I am going to tell Antonio to raise come price but do more stronger I have to fuck people over." **SENADA** replied "this one is stronger don't worry, I made it more stronger." Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that **MOWLA** was referring to storage unit 502 at A-AAA Key Mini Storage, 6604 N. W. Expressway and unit 399 at A-AAA Key Mini Storage, 5555 N.W. Loop 410. I believe the "girl" that is sick is S.C. who regularly delivers finished product to **MOWLA** and **JAFFER ALI's** storage units in San Antonio and Houston. When **MOWLA** refers to the product needing to be "stronger" and wanting to "fuck people over," I believe he is again acknowledging the human consumption and his complete disregard for the safety of the user.

135. On June 21, 2013, **JAFFER ALI** was intercepted calling **Salma JAFFER ALI**. **JAFFER ALI**. **Salma JAFFER ALI** and **JAFFER ALI** discussed how business had been slow. **Salma JAFFER ALI** advised that people are still selling product but are fearful of purchasing any new product. She continued that many of the customers who previously patronized the Ever's store are now going to Hang Ten. **Salma JAFFER ALI** advised that Hang Ten sells the product cheaper but Hang Ten currently does not have "AB."

136. Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I believe that **JAFFER ALI** and **Salma JAFFER ALI** were discussing the low level of sells for synthetic marijuana. **AB** is a known acronym for a popular brand name of a synthetic marijuana product "Atomic Bomb."

137. On June 22, 2013, **MOWLA** was intercepted receiving a call from his wife, **T.B.** **T.B.** accused **MOWLA** of "moving the money from two different places." She said **MOWLA** moved "Pabel's \$2,500 and the bag of money from the store." **MOWLA** denied moving the money. **MOWLA** said he only placed the "bag of \$20,000 under the glass." **T.B.** asked for the "bag full of money from the car." **MOWLA** said "from the black bag," he "only took one bag and placed it under the glass." She then asked about the money in the "armoire" and **MOWLA** said he didn't take it. **MOWLA** said **T.B.** is careless keeping money laying all over the house, she needs to count them all. **MOWLA** said he has found "a bundle of money when he was getting his pants then he found three or four more bundles at other places. **MOWLA** said she needs to gather all the money in one place. **MOWLA** commented that he put one of the bundles he found in a bucket next to the chest of drawers.

138. On June 22, 2013, **MOWLA** was intercepted receiving a call from his wife, **T.B.** **T.B.** commented that she "found the money." She said she "took that money away from" her "money and placed it in a separate bag." **MOWLA** said he knew that is what she had done. **MOWLA** said **T.B.** has "money all over the place." **T.B.** thought **MOWLA** had taken the bag because he had moved "the other bag." Based on my training, experience, conversations with other agents involved in this investigation, and my knowledge of this investigation in its totality, I

believe large sums of U.S. currency representing proceeds of **MOWLA's** illegal drug trafficking activities are stashed around their residence located at 5623 Dhaka View, San Antonio, Texas.

RESIDENCES

139. 15515 Portales Pass, Helotes, Texas, is the permanent residence of **Muhammad JAFFER ALI** and **Salma JAFFER ALI**. This has been confirmed through physical surveillance cell site data for cellular telephones utilized by both **Muhammad JAFFER ALI** and **Salma JAFFER ALI** as well as ping data relating to **Muhammad JAFFER ALI's** cellular telephone assigned telephone number (210)838-4110.

140. 5623 Dhaka View, San Antonio, Texas, is the permanent residence of **Ashekul MOWLA** and his wife and children. This has been confirmed through physical surveillance and the on-going use of a GPS tracker installed on **MOWLA's** vehicle and a pole-camera installed in the vicinity of the residence.

141. 91 Big Horn Canyon, San Antonio, Texas, is the permanent residence of **Syed ALI** and his family. This has been confirmed through

142. 5562 Rangeland Street, San Antonio, Texas, is the permanent residence of **Yong Hwa CHONG**. This has been confirmed through physical surveillance.

143. 6400 Wurzbach Road #2108, San Antonio, Texas, is the apartment permanent residence of **Prasanta BARDHAN**. This has been confirmed through physical surveillance.

UNDERCOVER BUYS

Law enforcement agencies participating in this investigation have conducted controlled purchases of various brands of synthetic narcotics at the following locations:

Best Foods #2 (5403 Evers Road, San Antonio, Texas),

owned by **Muhammed JAFFER ALI and Salma JAFFER ALI;**

- 10/16/12: DEA, 1 package Gorilla Dro Po-Po and 1 4-gram package of OMG
- 10/16/12: CS, 1 3-gram package of Mr. Nice Guy Sour Apple Vintage
- 02/07/13: FBI, 92 packages of Klimax, Scooby Snax, Devil Eye, Atomic, Psycho, Godfather, OG and Devil Eye
- 05/22/13: SAPD, 10 grams of Klimax
- 6/6/13: CS, 1 3-gram package Venom "7 Aces" 3, and 1 3-gram package Diablo Botanical
- 06/07/13: SAPD, 3 grams of Klimax

Hang Ten (11421 West Avenue, San Antonio, Texas),

owned by **Muhammed JAFFER ALI and Ashekul MOWLA;**

- 10/16/12: DEA, 15 grams of iBlown (lab results indicate the presence of 5FUR-144)
- 10/16/12: DEA, 11 grams of KUSH (lab results indicate the presence of UR-144)
- 05/22/13: SAPD, 3 grams of Titanic
- 06/07/13: SAPD Diablo 3g

Smokers Galaxy (8525 Perrin Beitel, San Antonio, Texas),

owned by **Syed ALI and A.R.K.;**

- 07/27/12: DEA, 1 gram of Disco Multi-Purpose Solution 1g (lab results indicate the presence of alpha-Pyrrolidinopentiophenone hydrochloride)
- 08/10/12: DEA, 11 grams of grape-flavored KUSH
- 06/07/13: SAPD, 1.5 grams of Happy Days
- 06/13/13: DEA, 3 grams of Green Zombie Chronic Hypnotic

Gloria Food Mart (703 W. Rhapsody, San Antonio, Texas),
owned/operated by Gulzar DHARANI a.k.a. Gloria;

10/16/12: DEA, 1000 milligrams of Eight Ball Concentrated Glass Cleaner, 250
milligrams of Tran Quility, 500 milligrams of White Angel Stain Remover,
Fire Ant Killer;

11/13/12: DEA, 1 glass jar of Fire Ant Killer

05/31/13: DEA, 2 3-gram packages of Klimax;

06/05/13: DEA 2 3-gram packages of Klimax and one 10-gram package of Klimax;

06/05/13: DEA, 1 250-milligram jar of Happy Land concentrated plant nutrient, 1
250-milligram jar of Tran Quility concentrated plant nutrient;

Hildebrand Grocery (1502 Hildebrand, San Antonio, Texas),

owned by Gulzar DHARANI a.k.a. Gloria;

05/31/13: DEA, 3 grams of Klimax;

(DHARANI has been in India visiting family since June 15th, however, she was
intercepted on Saturday, June 22, 2013, placing an order from India with MOWLA for
100 mix/match (Mango, Bubble Gum, Strawberry) to be delivered to Hildebrand Grocery
immediately)

Ray Bon Grocery (7031 Ray Bon, San Antonio, Texas),

owned/operated by Gulzar DHARANI a.k.a. Gloria;

06/05/13: DEA, 3 grams of Klimax;

Anam Food Mart (530 S. General McMullen, San Antonio, Texas),

owned/operated by Gulzar DHARANI a.k.a. Gloria;

06/12/13: SAPD, 10 grams of Klimax;

Stanley's Ice House (6414 Wurzbach, San Antonio, Texas),

owned/operated by **Gulzar DHARANI a.k.a. Gloria;**

05/13/13: DEA, 3 grams of Klimax;

06/05/12: DEA, 11 grams of KUSH;

06/07/13: SAPD, 3 grams of Klimax;

Fort Sam Grocery (2111 Harry Wurzbach, San Antonio, Texas),

owned/operated by **Gulzar DHARANI a.k.a. Gloria;**

06/13/13: DEA, 10 grams of Klimax strawberry 2XX;

Fast Stop (3604 Commercial Avenue, San Antonio, Texas),

MOWLA was surveilled to this location where he supplied suspected synthetic marijuana products for further distribution

05/22/13: SAPD, 3 grams of Klimax;

06/12/13: SAPD, 10 grams of Klimax;

THE STORAGE CENTER, Unit 1002

144. On April 2, 2013, agents received information concerning the attempted delivery of 3 pallets containing 20 50-pound bags (1,000 pounds total) of a substance later identified as damiana. Damiana is finely cut plant material used in the production of cannabinoids (synthetic marijuana) which is grown in such places as Mexico and South America. On March 29, 2013, the company was unsuccessful in making delivery of the damiana to unit #1002 at The Storage Center located at 16939 Nacogdoches San Antonio, Texas. The shipping information obtained by DEA indicated that the damiana was shipped by A Herb CO, 4501 E. Washington BLVD, Los Angeles, CA 90040 and the consignee was listed as Damiana Trade, 16939 Nacogdoches, San

Antonio, Texas. DEA was also notified that a previous shipment of 40 50-pound bags of damiana (2,000 pounds total) had been successfully delivered to this location approximately two weeks prior to the same storage unit.

145. On April 2, 2013, a DEA administrative subpoena was served on The Storage Center for information regarding the renter of unit 1002. Management advised that storage unit 1002 was rented on February 1, 2013, by A.S. of 414 E. Aviation BLVD #21 Universal City, Texas. Officers were also advised that a person stating to be A.S. sister, S.C., had rented unit 1030. On this date, DEA observed a Middle Eastern male, later identified by DEA as Amir **SENADA** inside storage unit 1002. The manager also advised that **SENADA** had previously come into the office of the storage center and rented storage unit 1011 advising the manager to put the unit under the same renter as unit 1002. Management advised that several individuals other than A.S., S.C., and **SENADA** were accessing the storage units and that numerous packages were being delivered to storage unit 1002 via FedEx and DHL shipping companies. Some of these packages seen by DEA contained shipping labels from Hong Kong and China. China is the primary source country for the chemicals used in the synthetic marijuana manufacturing process.

146. On June 4, 2013, DEA was notified by the manager of The Storage Center that S.C. had cancelled unit 1011 and unit 1030. On this date DEA observed **Ashak WESA a.k.a. Antonio** engage in conversation with management. DEA was advised that **WESA** asked management to place any shipping boxes received into unit 1002.

147. On June 6, 2013, DEA was notified by management at The Storage Center that four FedEx packages for unit 1002 had arrived. DEA arrived at The Storage Center and inspected the shipped boxes. The boxes were addressed to "Julia WESSAK" from a Postal Center Plus in

Newark, NJ. The telephone number associated with WESSAK at the unit was listed on the FedEx label as (305)834-9451. Investigation has confirmed this number is utilized by WESA.

148. On June 12, 2013, DEA was notified by management at The Storage Center that an Express Mail Service (EMS) envelope for unit 1002 had arrived. DEA arrived at The Storage Center and inspected the envelope. The envelope was addressed to "Julia" and was shipped from Shanghai Keeps Trading CO., INC, Shanghai, China. China is a source of supply for chemicals as well as packaging used to make and distribute synthetic marijuana.

149. On June 13, 2013, DEA was notified by The Storage Center that a FedEx Box for unit 1002 had arrived. DEA arrived at The Storage Center and inspected the box. The box was addressed to "Michael David," a name seen on other shipments to this organization. A flammable liquid placard was displayed and the word "16 liters" was hand written on the side of the box. The box was shipped by Tasty Puff of Albuquerque, NM.

150. On this same date, The Storage Center management notified DEA that a Middle Eastern male, identified as SENADA, driving a white Toyota had arrived and retrieved the Tasty Puff box and told management that he had been "tracking" this package. Later in the afternoon DEA observed SENADA travel to The Storage Center in a 2012 white Toyota rental car and enter and park by unit 1002. SENADA was observed by DEA entering the unit and retrieving two cardboard boxes and placing them in the trunk of the vehicle.

151. Over the course of the past two months, DEA has observed and identified numerous associates of the JAFFER ALI/MOWLA organization entering the above-named storage units and offloading and loading various sized boxes and what appear to be damiana bags into and out of the units at The Storage Center. DEA had also observed these subjects transport

the bags and boxes to 18811 FM 2252, San Antonio, Texas. This location was a warehouse with two overhead doors with a loading dock and office door. The building was located in a small business park at the end of a private road behind a body shop and restaurant. Affiant believes that this was used as a synthetic marijuana manufacturing and distribution site. DEA had also seen **WESA, SENADA, S.C.,** and **A.S.** at this FM 2252 location.

152. DEA has also observed boxes transported from the FM 2252 warehouse site that were later seized by law enforcement and which contained finished synthetic marijuana packets. Such an occasion was on April 2, 2013, when a Suzuki SUV bearing Texas license plate DS9 D181 (registered to **Irma ZERTUCHE-Santillan**, 319 Beal Street, San Antonio, Texas) was surveilled leaving the FM 2252 site and subsequently traffic stopped on IH-10 for following too close to a tractor trailer in unsafe weather conditions. **ZERTUCHE-Santillan** was identified as the driver and **B.C.** was her passenger. **ZERTUCHE-Santillan** consented to a search of her vehicle, which resulted in the seizure of approximately 5,650 packages of synthetic marijuana. **ZERTUCHE-Santillan** told the officer conducting the traffic stop that she had received the merchandise from an unknown male at a Chevron gas station in San Antonio at the intersection of Callaghan and I-410. Based on surveillance observations, agents are aware that **ZERTUCHE-Santillan** was not being truthful in her answers. **ZERTUCHE-Santillan** and **B.C.** were released from the seizure site.

153. On April 8, 2013, DEA also seized evidence recovered from a trash site where discarded items from the FM 2252 site were placed by **S.C.** and an unknown male associate. These discarded items included foil packages, damiana, receipts from deliveries, lists of workers

and amounts each had packaged of the finished synthetic marijuana foil packages, empty "Tasty Puff" brand containers used to flavor the chemically treated damiana.

Judson Storage, Units 2303 and 2326

154. On April 2, 2013, during surveillance of the below referenced warehouse location, agents observed SENADA depart the site and travel to Judson Storage located at 14989 Judson Rd., San Antonio, Texas. SENADA parked next to a storage unit, later identified as storage unit 2303. SENADA was seen inside the storage unit that contained numerous large cardboard boxes. On April 3, 2013, records were obtained which indicated that on March 12, 2013, A.S. rented unit 2303 (10x20). S.C. was listed on the application as having "access rights" to unit 2303. A.S. listed her employer as "Best Foods."

155. On April 17, 2013, a DEA Administrative Subpoena was served on management at Judson Storage, which revealed that on April 6, 2013, S.C. had rented storage unit #2326 and unit #3482. A.S. was listed as a person having access to the storage units. DEA was advised by management of Judson Storage that a Middle Eastern male, later identified by management and DEA as Amir SENADA, had been seen in unit #2303. Management advised DEA that DHL attempted to deliver packages to the units rented under A.S.'s and S.C.'s name, but had a strong odor and were refused delivery.

156. On June 5, 2013, DEA was notified by management that unit 3482 did not have a lock on it and when opened by management was completely empty. On June 6, 2013, DEA was notified by management that S.C. was seen in unit 2326. S.C. came to the management office and paid cash for the June storage rental fees, paying \$140.00 for unit 2303, \$51.20 as a pro-rated amount to vacate unit 3482, and \$140.00 for unit 2326.

157. On June 22, 2013, DEA made contact with management at Judson Storage and inquired as to entry activity by S.C. or subjects associated with units 2303 and 2326. Entry and exit thru the gated area requires entering a unique combination of an entry code and the unit number. Management checked the computer database for unit 2303 and advised that an entry date of June 19, 2013 at 5:00 p.m, had been recorded for unit 2303. Management also checked the computer database for unit 2326 and advised that an entry date of June 17, 2013 at 10:00 a.m., had been recorded for unit 2326. Management also advised seeing a Cargo van, silver Honda, and a U-Haul rental van at the units on several occasions in the recent weeks.

Covey's Happy Mini Storage, units A-28, F-09, I-17, J-18, J-22, J-24, J-26, J-28 and

J-30

158. On May 3, 2013, agents observed a Ford Expedition, a U-Haul truck and a silver Chevrolet Malibu depart the suspected laboratory site located at 18811 FM 2252, San Antonio, TX. All three vehicles drove in tandem to The Storage Center located at 16939 Nacogdoches San Antonio, Texas. These vehicles were driven by S.C., a Hispanic male identified by DEA as M.A., and a third unidentified Hispanic male. They were observed by DEA loading numerous boxes from the warehouse site and The Storage Center into vehicles and then observed off-loading the boxes into several storage units at Covey's Happy Mini Storage located at 999 FM 1518 Schertz, Texas. Over the course of several trips to Covey's Happy Mini Storage, DEA observed many boxes being placed into several storage units. Some of the boxes were open and could be seen to contain many foil packages of finished synthetic marijuana packages inside large zip lock bags similar to those previously seized by law enforcement.

159. On May 10, 2013, a DEA administrative subpoena was served on management of Covey's Happy Mini Storage. Management advised DEA that S.C. rented storage units A-28, F-9, I-17, J-35 and J-36 on April 24, 2013 and May 2, 2013. The rental contract was in the name A.S.

160. On May 13, 2013, DEA was advised by management at Covey's Happy Mini Storage that S.C. and an unidentified Middle Eastern Male rented an additional 300 square feet of storage space under the name A.S. by vacating smaller units and acquiring larger ones. The Middle Eastern male requested Covey's Happy Mini Storage take delivery of DHL packages. S.C. completed the form for package deliveries and listed her address as 414 Aviation #19, Universal City, Texas and a phone number of 210-371-3651. The storage units listed under A.S. name were identified as A-28, F-09, I-17, J-18, J-24, J-26, J-28, and J-30. DEA observed targets driving to this location and entering several of the above storage units on a number of occasions at various times of the day and evening.

161. On June 11, 2013, DEA was advised by Covey's Happy Mini Storage management that on May 27, 2013, S.C. added storage unit J-22(10X10) to A.S.'s rental contact.

162. In June 2013, FBI intelligence information received by DEA and surveillance operations conducted by DEA revealed that members of the **JAFFER ALI/MOWLA** organization were relocating stored items used in the production of synthetic marijuana from storage facilities and closing the synthetic marijuana manufacturing and distribution site at 18811 FM 2252. On the evening of June 2, 2013, DEA observed S.C. depart in a U-Haul van followed by a red mustang (mentioned in the following paragraphs) from the synthetic marijuana manufacturing and distribution site at 18811 FM 2252 and arrive at Covey's Happy Mini Storage.

DEA was unable to observe whether boxes were offloaded or loaded onto the U-Haul from the units due to the time of night. The U-Haul departed approximately 15 minutes later before returning to the manufacturing and distribution site. On June 4, 2013, DEA surveillance was conducted on members of this drug organization. M.A. and an unidentified Hispanic male were observed departing The Storage Center in a Penske truck after loading unknown boxes from storage units 1002 and 1011. DEA observed the truck arrive at Covey's Happy Mini Storage where M.A. and the Hispanic male were observed loading boxes from two different units into the Penske truck. The truck departed then area and returned to The Storage Center. On June 18, 2013, a Middle Eastern Male identified as M.S.M. and an unidentified female were observed by DEA departing 6627 Topper Run, Suite #102, San Antonio, TX, which appears to be a new manufacturing and distribution site and which is further described in the paragraphs that follow. M.S.M. drove in white Chevrolet van and traveled to Covey's Happy Mini Storage, where M.S.M. and the female were observed opening and entering several different storage units related to the above. They loaded several boxes from one of the units into the van and returned to the Topper Run site.

163. On June 21, 2013, DEA met with Covey's Happy Mini Storage management to confirm the storage units rented by S.C. and obtain any entry activity by S.C. and associates. Management confirmed that all nine (9) storage units are still rented to A.S. and S.C. and that an entry/exit computer check had recorded an entry into the gated area under for one of the storage units on June 20, 2013, at approximately 3:27 p.m.

Public Storage, 14815 Jones Malsberger, Unit 262

164. On June 2, 2013, DEA conducted surveillance operation of S.C. at the location where S.C. is believed to be living. S.C. departed the location in a previously identified U-Haul van. S.C. traveled to 18811 FM 2252 San Antonio, Texas, the site of the suspected synthetic marijuana manufacturing and distribution site. S.C. was followed by a previously red Ford Mustang driven by T.L., who DEA had seen at the manufacturing site in this vehicle on previous occasions. T.L. was accompanied by an unidentified female passenger. S.C. backed the van to the warehouse bay door. A short time later, S.C. departed in the U-Haul van and drove to Wal-Mart, where she purchased padlocks and black trash bags. S.C. then departed Wal-Mart and arrived back at the FM 2252 site. S.C. then departed site followed by the Ford Mustang. Both vehicle drove in tandem and arrived at Public Storage, located at 14815 Jones Malsberger, San Antonio, TX.

165. After arriving at the business, S.C. walked inside the office of Public Storage. After talking with management, S.C. entered the drove the U-Haul van inside the gated area of storage units. DEA was observed S.C., T.L., and the unknown female unloaded numerous black trash bags containing suspected damiana, large plastic tarps, and what appeared to be equipment to be used in sealing or stamping the synthetic marijuana foil packages prior to distribution. Both vehicles returned to the FM 2252 site and then made a second trip to Public Storage.

166. A DEA Administrative Subpoena served on Public Storage on June 6, 2013, revealed that S.C. had rented storage unit 262 on June 2, 2013. A printout of entry and exit information indicated two entries on June 2, 2013, and one entry on June 5, 2013, for a total time

of approximately 10 minutes each. DEA has not observed S.C. or associates travel to this facility since the items were placed in unit 262 on June 2, 2013. On June 22, 2013, DEA contacted management at Public Storage and inquired as to any recent entry activity by S.C. or subjects associated with unit 262. Management advised DEA that according to a computer check over the past 10 days, there have been no entries for this unit. An entry and exit code and unit number is required to enter and exit the facility. DEA believes that items necessary in the processing stage of synthetic marijuana distribution are still secured in this location.

PIONEER Stor & Lok, 9415 N IH-35, Units 16 & 17

167. On June 4, 2013, DEA surveillance was conducted on members of this drug organization. S.C. and M.A. and an unknown male were observed at The Storage Center in the area near units 1030 and 1011. Over the course of several trips, what appeared to be damiana bags were removed from both storage units via a Penske Truck and a Ford Expedition. The vehicles traveled together to the Texas Best Self Storage Center located at 16002 Nacogdoches San Antonio, Texas. S.C., M.A., and the male then removed what appeared to be damiana bags and various size boxes from two units. DEA had previously identified this storage facility during surveillance of SENADA and WESA, who were observed removing boxes with flammable markings on them and what appeared to be bags of damiana and finished synthetic marijuana packages from the units.

168. A DEA Administrative Subpoena served on Texas Best Storage on April 3, 2013, revealed four (4) storage units had been rented by A.S. and S.C. Management advised that packages are delivered by shipping companies on a regular basis addressed to A.S. and S.C.'s first names and "BEST FOOD". DEA has seen many of the packages that were shipped from such

places as Hong Kong and China. DEA observed one box containing new, unfilled foil packages through torn areas of the box and seam. One of the packages that were visible from a broken seam was labeled "Wolf Pack," which is a brand label of synthetic marijuana that DEA has seen in previous seizures. On June 8, 2013, DEA received information from management at Texas Best Self Storage, that all four units rented under the name A.S. and S.C., had been vacated.

169. On June 4, 2013, after the Damiana bags were loaded in the vehicles from Texas Best Storage Center, DEA observed S.C. (driving the Penske truck) and M.A. (driving the Ford Expedition with the unknown male passenger) depart Texas Best Self Storage and arrive at Pioneer Stor & Lok, located at 9415 North IH-35, San Antonio, TX. Both vehicles parked in front of the storage facility and S.C. made contact with an employee of the storage facility... DEA observed S.C. and the employee of the storage facility walk into the fenced area of the storage facility. DEA observed both vehicles pull into the secure area of the storage complex and park in front of a storage unit, where S.C. was observed opening unit #17. S.C., M.A. and an unknown male subject were observed unloading sacks of suspected damiana and unknown boxes.

170. DEA served an administrative Subpoena at this location on June 17, 2013, which revealed that S.C. rented storage unit 16 on June 3, 2013, and unit 17 was added to the original contract on June 4, 2013. Management advised DEA that S.C. stated that she was storing T-shirts and Tea Bags. Management also advised DEA on June 17, 2013, that tenants of other units complained of the smell coming from units 16 and 17 and that S.C. was informed by management that she would need to vacate the premises by the end of the month.

171. On June 17, 2013, DEA observed S.C. drive the previously identified Chevrolet cargo van and park near units 16 and 17. S.C. departed the area a short time later, but DEA lost her location due to heavy traffic.

Public Storage, 13800 Nacogdoches Road, Unit 278

172. On the evening of June 4, 2013, DEA observed S.C. in a white 2013 Chevrolet cargo van with Texas temporary tag. S.C. traveled in the van to the 18811 FM 2252 site. S.C. departed the warehouse and DEA observed two (2) bundles of flat unused cardboard boxes thru the windows of the cargo area of the van. DEA had observed on several occasions boxes that were transported from the warehouse and later seized from FedEx, and which contained finished packages of synthetic marijuana shipped to non-existent addresses, fictitious names, and even shipped to motels in Texas and out of state. S.C. drove to Public Storage located at 13800 Nacogdoches Rd., San Antonio, Texas and entered the complex. DEA was unable to observe which unit S.C. entered.

173. On June 6, 2013, a DEA Administrative Subpoena served on Public Storage management revealed that S.C. had rented storage unit 278 on April 10, 2013. The alternate contact name listed on the rental agreement was A.S. A printout of entries dates show S.C. entered the facility three times on June 4, 2013, and there were multiple gate entries per day beginning April 10 thru the date of the printout on June 6, 2013. Affiant believes this is the unit S.C. drove to on June 4, 2013.

174. On June 22, 2013, DEA visited management at Public Storage and inquired as to entry activity by S.C. or subjects associated with unit 278. Management checked the computer database and advised that an entry date of June 21, 2013 at 4:38 p.m., had been recorded for unit

278 for a total time of approximately 10 minutes. Entry and exit thru the gated area requires entering a unique combination of an entry code and the unit number.

Warehouse located at 6627 Topper Run, Suite 102, San Antonio, Texas

175. On June 6, 2013, DEA conducted surveillance at several known storage units identified as being used by this drug organization. During surveillance, DEA observed a Penske Truck, turning into The Storage Center located at 16939 Nacogdoches, San Antonio, TX. DEA observed the truck enter the front parking lot of The Storage Center and observed an older Hispanic male (subject #1) wearing a dark colored ball cap exit the truck. This Hispanic male has been seen during previous surveillances, but has not yet been identified. The driver of the Penske truck was wearing a white ball cap and identified by DEA as M.A. from previous surveillances. A third unidentified male (subject #3) was wearing a red ball cap and has been seen during previous surveillances, but has not been identified.

176. DEA observed the subject #1 and subject #3 enter a previously identified 2002 gold Saturn with silver parked in the parking lot of The Storage Center. Subject #1 entered the driver's seat of the Saturn and followed M.A., who was driving the Penske truck south on FM 2252 to east Loop 1604. A short time later, both vehicles arrived at the warehouse identified as 6627 Topper Run San Antonio, TX. The vehicles parked near suite "102" which was marked above the middle office door. DEA was unable to serve a DEA Administrative Subpoena because it is unknown who actually owns the entire building and to inquire could compromise the investigation. The complex is a self-contained structure comprised of three separate office doors and three separate bay doors. Each suite has a single bay door to the right of a single office door. There was no business name listed above the bay door or office doors marked "101" or

“102.” The Penske truck driven by M.A. backed all the way to the warehouse middle bay door and to the right of the office door so that the doors of the Penske truck would not open. All three subjects then entered the Saturn and departed the area. S.C. arrived shortly thereafter in a previously identified 2013 white Chevrolet cargo van. S.C. parked on the passenger side of the Penske truck and remained in the vehicle for several minutes. DEA then observed S.C. exit the van and enter the Penske truck and remove what appeared to be a cellular phone charger or headphones. S.C. then returned to the van and departed the area. S.C. was observed by DEA travel to the Inn Town Suites located at 9530 Perrin Beitel San Antonio, TX.

177. Between June 12, and June 17, 2013, DEA observed the following activity at what DEA believes to be the new synthetic marijuana manufacturing and distribution site. DEA observed the Chevrolet van driven by S.C. and the previously identified red mustang parked in front of the bay door to suite 102. A Toyota Camry rental car identified by DEA as being driven by Amir SENADA arrived in front of suite 102. DEA also observed two unidentified workers (one male and one female) exit the office door of suite 102 wearing aprons and start smoking. DEA believes these are paid workers who packaging synthetic marijuana inside the warehouse of suite 102. DEA believes the workers are wearing aprons to minimize the contact of the synthetic marijuana to clothing and skin due to the chemicals and flavoring sprayed on the Damiana plant material. DEA is aware that some of the chemicals used in the manufacturing process are flammable and therefore, workers would come outside to smoke. During surveillance by DEA at the previous warehouse manufacturing site, workers were seen standing outside the office door smoking.

178. On June 18, 2013, DEA conducted surveillance of 6627 Topper Run, Suite 102, San Antonio, TX. During surveillance operations, DEA observed several vehicles parked in front of the Suite 102. One of the vehicles was a red Ford Mustang seen in previous surveillances by DEA at both storage facilities and the prior manufacturing and distribution site located at 18811 FM 2252, San Antonio, Texas. On this date, DEA observed T.L. and a previously observed unidentified female exit the office door to the new warehouse site and enter the Ford Mustang. Also observed this date was the previously identified white Ford Expedition parked in front of the lab. DEA observed the driver of the Ford Expedition, M.A., exit the office door to the warehouse and enter the Ford Expedition. M.A. has been seen numerous times at the previous manufacturing site and storage facilities moving boxes. Also seen by DEA was Amir SENADA, who was observed at the warehouse with his previously identified silver Honda (registered in his name) parked in front. DEA observed SENADA enter the trunk of his vehicle and removed two large clear zip lock bags of what appeared to be synthetic marijuana packages of unknown brands. SENADA walked into the office door of the warehouse with these packages.

179. During surveillance on this date, DEA observed several unknown subjects entering and exiting the office door and often times seen leaving the door open. One male subject was observed brushing off his clothing and hair. DEA believes this subject was attempting to remove damiana plant material from his clothing. DEA observed items inside the office area of the warehouse where large boxes could be seen stacked on top of each other along with large plastic storage bins. Also observed were several one gallon sized plastic bottles on top of a table containing an unknown yellow liquid.

180. During surveillance at the Topper Run warehouse on June 18, 2013, DEA observed a green Honda registered to M.S.M. M.S.M. and an unidentified female were observed departing the warehouse in a white Chevrolet van and traveling to Covey's Happy Mini Storage located at 999 FM 1518 Schertz, TX, where M.S.M. and the female entered several different storage units mentioned in previous paragraphs. They several boxes from one of the units into the Chevrolet van and departing back to the Topper Run address. M.S.M. and the female were observed by DEA as they removed items from the white Chevrolet van and place them inside the warehouse office area. M.S.M. and the female were then observed by DEA as they traveled to the previous laboratory site at 18811 FM 2252, San Antonio, Texas. M.S.M. and the female then entered the warehouse door and were seen making multiple trips to the van carrying items such as folded card board boxes and plastic storage bins. M.S.M. and the female then returned to the warehouse site on Topper Run and offloaded these items into the office area. Later this date, M.S.M. and the female passenger departed the warehouse and drove to Hang Ten Gifts and Novelties located at 11421 West Avenue, San Antonio, TX. M.S.M. was identified removing a large box from the van and entering the store. M.S.M. departed empty handed and departed the area. Observed in front of the store was a silver Toyota 4-Runner, previously identified as being registered to **Ashkul MOWLA**. **MOWLA** has been seen on multiple surveillances by DEA and FBI in this vehicle and is part owner of this store where several undercover purchase of synthetic marijuana has been made.

181. In light of the aforementioned factual information, I respectfully submit that there is probable cause to believe that evidence, fruits, and instrumentalities of such criminal offenses may be located at the SUBJECT PREMISES described in Attachment A,

I believe that there is probable cause to believe that **Muhammad JAFFER ALI, Ashekul MOWLA, Ashak WESA a.k.a. Antonio, David B. PUCEK, Dung NGUYEN a.k.a. Alex, Brian ARTHUR, R. DAN ARTHUR, Joshua Louis HASNESS, Amir Nabil Shaker SENADA a.k.a. Sam, Salma JAFFER ALI, Faizan ALI, Luz Abril GARCIA, Irma SERUCHE-Santillan a.k.a. Natalie or Nathly, Gulzar DHARANI a.k.a. Gloria, Abu Mohammad Mafttah UDDIN a.k.a. Paul, Syed ALI, Yong CHONG a.k.a. Sam, Derrick SANTILLAN, Prasanta BARDHAN, and others known and unknown** have violated, and are likely continuing to violate: *(a) distribution of and possession with intent to distribute controlled substances and controlled substances analogues, cannabinoids, also known as synthetic marijuana and substituted cathinones, also known as bath salts, all of which are set forth in Sections 802(32), 802(34), and 813 of Title 21; (b) attempts and conspiracies to do the same, all in violation of Sections 841(a)(1) and 846 of Title 21, United States Code; (c) importation of controlled substances and controlled substances analogues, cannabinoids and substituted cathinones into the United States, all in violation of Section 960 of Title 21, United States Code; (d) attempts and conspiracies to do the same, all in violation of Sections 952(a) and 963 of Title 21, United States Code; (e) use of wire facilities to facilitate the commission of the offenses described in subparagraphs (a), (b), (c) and (d) above, in violation of Title 21, United States Code, Section 843(b); (f) money laundering and conspiracies to do the same, in violation of Title 18, United States Code, Section 1956 and 1957; (g) structuring transactions to evade reporting*

requirements, in violation of Title 31, United States Code, Section 5324; and (h) aiding and abetting the offenses described in subparagraphs (a), (c) and (f) above, in violation of Title 18, United States Code, Section 2.


Adebowale Alade, Special Agent
Federal Bureau of Investigation

Sworn to and Subscribed before me on this 26th day of June, 2013.


John W. Primomo
United States Magistrate Judge

EXHIBIT 2

The New York Times

October 26, 2013

Federal Prosecutors, in a Policy Shift, Cite Warrantless Wiretaps as Evidence

By CHARLIE SAVAGE

WASHINGTON — The Justice Department for the first time has notified a criminal defendant that evidence being used against him came from a warrantless wiretap, a move that is expected to set up a Supreme Court test of whether such eavesdropping is constitutional.

Prosecutors filed such a notice late Friday in the case of Jamshid Muhtorov, who was charged in Colorado in January 2012 with providing material support to the Islamic Jihad Union, a designated terrorist organization based in Uzbekistan.

Mr. Muhtorov is accused of planning to travel abroad to join the militants and has pleaded not guilty. A criminal complaint against him showed that much of the government's case was based on intercepted e-mails and phone calls.

The government's notice allows Mr. Muhtorov's lawyer to ask a court to suppress the evidence by arguing that it derived from unconstitutional surveillance, setting in motion judicial review of the eavesdropping.

The New York Times reported on Oct. 17 that the decision by prosecutors to notify a defendant about the wiretapping followed a legal policy debate inside the Justice Department.

The debate began in June when Solicitor General Donald B. Verrilli Jr. discovered that the department's National Security Division did not notify criminal defendants when eavesdropping without a warrant was an early link in an investigative chain that led to evidence used in court. As a result, none of the defendants knew that they had the right to challenge the warrantless wiretapping law.

The practice contradicted what Mr. Verrilli had told the Supreme Court last year in a case challenging the law, the FISA Amendments Act of 2008. Legalizing a form of the Bush administration's program of warrantless surveillance, the law authorized the government to wiretap Americans' e-mails and phone calls without an individual court order and on domestic soil so long as the surveillance is "targeted" at a foreigner abroad.

A group of plaintiffs led by Amnesty International had challenged the law as unconstitutional. But Mr. Verrilli last year urged the Supreme Court to dismiss the case because those plaintiffs

could not prove that they had been wiretapped. In making that argument, he said a defendant who faced evidence derived from the law would have proper legal standing and would be notified, so dismissing the lawsuit by Amnesty International would not close the door to judicial review of the 2008 law. The court accepted that logic, voting 5-to-4 to dismiss the case.

In a statement, Patrick Toomey, staff attorney with the American Civil Liberties Union, which had represented Amnesty International and the other plaintiffs, hailed the move but criticized the Justice Department's prior practice.

"We welcome the government's belated recognition that it must give notice to criminal defendants who it has monitored under the most sweeping surveillance law ever passed by Congress," Mr. Toomey said. "By withholding notice, the government has avoided judicial review of its dragnet warrantless wiretapping program for five years."

The Justice Department change traces back to June, when *The Times* reported that prosecutors in Fort Lauderdale and Chicago had told plaintiffs they did not need to say whether evidence in their cases derived from warrantless wiretapping, in conflict with what the Justice Department had told the Supreme Court.

After reading the article, Mr. Verrilli sought an explanation from the National Security Division, whose lawyers had vetted his briefs and helped him practice for his arguments, according to officials with knowledge of the internal deliberations. It was only then that he learned of the division's practice of narrowly interpreting its need to notify defendants of evidence "derived from" warrantless wiretapping.

There ensued a wider debate throughout June and July, the officials said. National security prosecutors raised operational concerns: disclosing more to defendants could tip off a foreign target that his communications were being monitored, so intelligence officials might become reluctant to share crucial information that might create problems in a later trial.

Mr. Verrilli was said to have argued that there was no legal basis to conceal from defendants that the evidence derived from legally untested surveillance, preventing them from knowing they had an opportunity to challenge it. Ultimately, his view prevailed and the National Security Division changed its practice going forward, leading to the new filing on Friday in Mr. Muhtorov's case.

Still, it remains unclear how many other cases — including closed matters in which convicts are already serving prison sentences — involved evidence derived from warrantless wiretapping in which the National Security Division did not provide full notice to defendants,

nor whether the department will belatedly notify them. Such a notice could lead to efforts to reopen those cases.

This article has been revised to reflect the following correction:

Correction: October 27, 2013

An earlier version of this article incorrectly stated that a criminal complaint showed that much of the government's case against Jamshid Muhtorov was based on e-mails and phone calls intercepted under a 2008 surveillance law. The complaint does not say that the particular communications it cites were obtained directly from such surveillance.

How the feds won a key warrantless wiretapping ruling by misleading the Supreme Court

By Andrea Peterson, Updated: October 28, 2013 at 11:18 am

The New York Times reported that the Department of Justice recently [changed policies](#), and will be notifying a criminal defendant that the evidence being used against them came from a warrantless wiretap. Just one problem: Justice told the Supreme Court that was standard policy already earlier this year.

According to the Times, prosecutors filed such a notice for the first time late on Friday. It was in the case of Jamshid Muhtorov, who is accused of providing material support to the Islamic Jihad Union, a designated terrorist organization. The government alleges he was planning to travel abroad to join the group, but he has pleaded not guilty. According to the criminal complaint, much of the government's case was based on intercepted calls and e-mails. By giving him notice that some of that evidence was derived from warrantless surveillance, prosecutors have set him up to be able to challenge the constitutionality of those programs.

In February, the Supreme Court [dismissed](#) a challenge to FISA Amendments Act (FAA) surveillance programs brought by Amnesty International on standing grounds -- agreeing with the government that since Amnesty International could not prove that it was the victim surveillance at the time, it had no right to sue. That 5-4 decision at least partially relied on an argument made by Solicitor General Donald B. Verrilli Jr. that while Amnesty International did not have grounds to sue, others might because "the government must provide advance notice of its intent to use information obtained or derived" from the laws. In fact, the Supreme Court mirrors that language fairly explicitly in its ruling, saying that "if the government intends to use or disclose information obtained or derived from" surveillance authorized by FAA "in judicial or administrative proceedings, it must provide advance notice of its intent, and the affected person may challenge the lawfulness of the acquisition."

But in June, the Times reports Verrilli discovered that Justice's National Security Division had actually *not* been notifying criminal defendants when evidence used against them was derived from warrantless snooping early in the investigative chain. This set off a months-long internal policy debate over *whether or not Justice should be doing what they told the Supreme Court they were already doing*.

It's obviously problematic that Justice misled the Supreme Court about how the agency was handling the law in practice. But the implications of that practice are even more troubling. Patrick Toomey, the American Civil Liberties Union attorney who represented plaintiffs in Amnesty International case, said in a statement to the Times "by withholding notice, the government has avoided judicial review of its dragnet warrantless wiretapping program for

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The New York Times

October 16, 2013

Door May Open for Challenge to Secret Wiretaps

By **CHARLIE SAVAGE**

WASHINGTON — Five years after Congress authorized a sweeping warrantless surveillance program, the Justice Department is setting up a potential **Supreme Court** test of whether it is constitutional by notifying a criminal defendant — for the first time — that evidence against him derived from the eavesdropping, according to officials.

Prosecutors plan to inform the defendant about the monitoring in the next two weeks, a law enforcement official said. The move comes after an internal Justice Department debate in which Solicitor General **Donald B. Verrilli Jr.** argued that there was no legal basis for a previous practice of not disclosing links to such surveillance, several Obama administration officials familiar with the deliberations said.

Meanwhile, the department's National Security Division is combing active and closed case files to identify other defendants who faced evidence resulting from the 2008 wiretapping law. It permits eavesdropping without warrants on Americans' cross-border phone calls and e-mails so long as the surveillance is "targeted" at foreigners abroad.

It is not yet clear how many other such cases there are, nor whether prosecutors will notify convicts whose cases are already over. Such a decision could set off attempts to reopen those cases.

"It's of real legal importance that components of the Justice Department disagreed about when they had a duty to tell a defendant that the surveillance program was used," said Daniel Richman, a Columbia University law professor. "It's a big deal because one view covers so many more cases than the other, and this is an issue that should have come up repeatedly over the years."

The officials spoke on the condition of anonymity because they were not authorized to disclose internal discussions. **The Wall Street Journal** previously reported on a recent court filing in which the department, reversing an earlier stance, said it was obliged to disclose to defendants if evidence used in court was linked to warrantless surveillance, but it remained unclear if there were any such cases.

The debate was part of the fallout about National Security Agency surveillance set off by leaks by Edward J. Snowden, the former N.S.A. contractor. They have drawn attention to the 2008 law, the FISA Amendments Act, which legalized a form of the Bush administration's once-secret warrantless surveillance program.

In February, the Supreme Court dismissed a case challenging its constitutionality because the plaintiffs, led by Amnesty International, could not prove they had been wiretapped. Mr. Verrilli had told the justices that someone else would have legal standing to trigger review of the program because prosecutors would notify people facing evidence derived from surveillance under the 2008 law.

But it turned out that Mr. Verrilli's assurances clashed with the practices of national security prosecutors, who had not been alerting such defendants that evidence in their cases had stemmed from wiretapping their conversations without a warrant.

Jameel Jaffer, an American Civil Liberties Union lawyer who argued in the Supreme Court on behalf of the plaintiffs challenging the 2008 law, said that someone in the Justice Department should have flagged the issue earlier and that the department must do more than change its practice going forward.

"The government has an obligation to tell the Supreme Court, in some formal way, that a claim it made repeatedly, and that the court relied on in its decision, was simply not true," he said. "And it has an obligation to notify the criminal defendants whose communications were monitored under the statute that their communications were monitored."

A Justice Department spokesman declined to comment. The department's practices came under scrutiny after a December 2012 speech by Senator [Dianne Feinstein](#), the chairwoman of the Intelligence Committee. During debate over extending the 2008 law, she warned that terrorism remained a threat. [Listing several terrorism-related arrests](#), she added, "so this has worked."

Lawyers in two of the cases Ms. Feinstein mentioned — one in Fort Lauderdale and one in Chicago — asked prosecutors this spring to confirm that surveillance under the 2008 law had played a role in the investigations of their clients so they could challenge it.

But prosecutors said they did not have to make such a disclosure. On June 7, The New York Times [published an article](#) citing Ms. Feinstein's speech and the stance the prosecutors had taken.

As a result, Mr. Verrilli sought an explanation from national security lawyers about why they

had not flagged the issue when vetting his Supreme Court briefs and helping him practice for the arguments, according to officials.

The national security lawyers explained that it was a misunderstanding, the officials said. Because the rules on wiretapping warrants in foreign intelligence cases are different from the rules in ordinary criminal investigations, they said, the division has long used a narrow understanding of what “derived from” means in terms of when it must disclose specifics to defendants.

In national security cases involving orders issued under the [Foreign Intelligence Surveillance Act](#) of 1978, or FISA, prosecutors alert defendants only that some evidence derives from a FISA wiretap, but not details like whether there had just been one order or a chain of several. Only judges see those details.

After the 2008 law, that generic approach meant that prosecutors did not disclose when some traditional FISA wiretap orders had been obtained using information gathered through the warrantless wiretapping program. Division officials believed it would have to disclose the use of that program only if it introduced a recorded phone call or intercepted e-mail gathered directly from the program — and for five years, they avoided doing so.

For Mr. Verrilli, that raised a more fundamental question: was there any persuasive legal basis for failing to clearly notify defendants that they faced evidence linked to the 2008 warrantless surveillance law, thereby preventing them from knowing that they had an opportunity to argue that it derived from an unconstitutional search?

The debate stretched through June and July, officials said, including multiple meetings and dueling memorandums by lawyers in the solicitor general office and in the national security division, which has been led since March by acting Assistant Attorney General John Carlin. The deliberations were overseen by James Cole, the deputy attorney general.

National security lawyers and a policy advisory committee of senior [United States attorneys](#) focused on operational worries: Disclosure risked alerting foreign targets that their communications were being monitored, so intelligence agencies might become reluctant to share information with law enforcement officials that could become a problem in a later trial.

But Mr. Verrilli argued that withholding disclosure from defendants could not be justified legally, officials said. Lawyers with several agencies — including the Federal Bureau of Investigation, the N.S.A. and the office of the director of national intelligence — concurred, officials said, and the division changed the practice going forward.

National Security Division lawyers began looking at other cases, eventually identifying the one that will be publicly identified soon and are still looking through closed cases and deciding what to do about them.

But in a twist, in the Chicago and Fort Lauderdale cases that Ms. Feinstein had mentioned, prosecutors made new court filings saying they did not intend to use any evidence derived from surveillance of the defendants under the 2008 law.

When defense lawyers asked about Ms. Feinstein's remarks, a Senate lawyer responded in a [letter](#) that she "did not state, and did not mean to state" that those cases were linked to the warrantless surveillance program. Rather, the lawyer wrote, her point was that terrorism remained a problem.

In a recent court filing, the lawyers wrote that it is "hard to believe" Ms. Feinstein would cite "random" cases when pressing to reauthorize the 2008 law, suggesting either that the government is still concealing something or that she had employed the "politics of fear" to influence the debate. A spokesman for Ms. Feinstein said she preferred to let the letter speak for itself.

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Exclusive: U.S. directs agents to cover up program used to investigate Americans

Mon, Aug 5 2013

By [John Shiffman](#) and [Kristina Cooke](#)

WASHINGTON (Reuters) - A secretive U.S. Drug Enforcement Administration unit is funneling information from intelligence intercepts, wiretaps, informants and a massive database of telephone records to authorities across the nation to help them launch criminal investigations of Americans.

Although these cases rarely involve national security issues, documents reviewed by Reuters show that law enforcement agents have been directed to conceal how such investigations truly begin - not only from defense lawyers but also sometimes from prosecutors and judges.

The undated documents show that federal agents are trained to "recreate"

the investigative trail to effectively cover up where the information originated, a practice that some experts say violates a defendant's Constitutional right to a fair trial. If defendants don't know how an

investigation began, they cannot know to ask to review potential sources of exculpatory evidence - information that could reveal entrapment, mistakes or biased witnesses.

"I have never heard of anything like this at all," said Nancy Gertner, a Harvard Law School professor who served as a federal judge from 1994 to 2011. Gertner and other legal experts said the program sounds more troubling than recent disclosures that the National Security Agency has been collecting domestic phone records. The NSA effort is geared toward stopping terrorists; the DEA program targets common criminals, primarily drug dealers.

"It is one thing to create special rules for national security," Gertner said. "Ordinary crime is entirely different. It sounds like they are phonying up investigations."

THE SPECIAL OPERATIONS DIVISION

The unit of the DEA that distributes the information is called the Special Operations Division, or SOD. Two dozen partner agencies comprise the unit, including the FBI, CIA, NSA, Internal Revenue Service and the Department of Homeland Security. It was created in 1994 to combat Latin American drug cartels and has grown from several dozen employees to several hundred.

Today, much of the SOD's work is classified, and officials asked that its precise location in Virginia not be revealed. The documents reviewed by Reuters are marked "Law Enforcement Sensitive," a government categorization that is meant to keep them confidential.

"Remember that the utilization of SOD cannot be revealed or discussed in any investigative function," a document presented to agents reads. The document specifically directs agents to omit the SOD's involvement from investigative reports, affidavits, discussions with prosecutors and courtroom testimony. Agents are instructed to then use "normal investigative techniques to recreate the information provided by SOD."

A spokesman with the Department of Justice, which oversees the DEA, declined to comment.

But two senior DEA officials defended the program, and said trying to "recreate" an investigative trail is not only legal but a technique that is used almost daily.

A former federal agent in the northeastern United States who received such tips from SOD described the process. "You'd be told only, 'Be at a certain truck stop at a certain time and look for a certain vehicle.' And so we'd alert the state police to find an excuse to stop that vehicle, and then have a drug dog search it," the agent said.

"PARALLEL CONSTRUCTION"

After an arrest was made, agents then pretended that their investigation began with the traffic stop, not with the SOD tip, the former agent said. The training document reviewed by Reuters refers to this process as "parallel construction."

The two senior DEA officials, who spoke on behalf of the agency but only on condition of anonymity, said the process is kept secret to protect sources and investigative methods. "Parallel construction is a law enforcement technique we use every day," one official said. "It's decades old, a bedrock concept."

A dozen current or former federal agents interviewed by Reuters confirmed they had used parallel construction during their



careers. Most defended the practice; some said they understood why those outside law enforcement might be concerned.

"It's just like laundering money - you work it backwards to make it clean," said Finn Selander, a DEA agent from 1991 to 2008 and now a member of a group called Law Enforcement Against Prohibition, which advocates legalizing and regulating narcotics.

Some defense lawyers and former prosecutors said that using "parallel construction" may be legal to establish probable cause for an arrest. But they said employing the practice as a means of disguising how an investigation began may violate pretrial discovery rules by burying evidence that could prove useful to criminal defendants.

A QUESTION OF CONSTITUTIONALITY

"That's outrageous," said Tampa attorney James Felman, a vice chairman of the criminal justice section of the American Bar Association. "It strikes me as indefensible."

Lawrence Lustberg, a New Jersey defense lawyer, said any systematic government effort to conceal the circumstances under which cases begin "would not only be alarming but pretty blatantly unconstitutional."

Lustberg and others said the government's use of the SOD program skirts established court procedures by which judges privately examine sensitive information, such as an informant's identity or classified evidence, to determine whether the information is relevant to the defense.

"You can't game the system," said former federal prosecutor Henry E. Hockeimer Jr. "You can't create this subterfuge. These are drug crimes, not national security cases. If you don't draw the line here, where do you draw it?"

Some lawyers say there can be legitimate reasons for not revealing sources. Robert Spelke, a former prosecutor who spent seven years as a senior DEA lawyer, said some sources are classified. But he also said there are few reasons why unclassified evidence should be concealed at trial.

"It's a balancing act, and they've doing it this way for years," Spelke said. "Do I think it's a good way to do it? No, because now that I'm a defense lawyer, I see how difficult it is to challenge."

CONCEALING A TIP

One current federal prosecutor learned how agents were using SOD tips after a drug agent misled him, the prosecutor told Reuters. In a Florida drug case he was handling, the prosecutor said, a DEA agent told him the investigation of a U.S. citizen began with a tip from an informant. When the prosecutor pressed for more information, he said, a DEA supervisor intervened and revealed that the tip had actually come through the SOD and from an NSA intercept.

"I was pissed," the prosecutor said. "Lying about where the information came from is a bad start if you're trying to comply with the law because it can lead to all kinds of problems with discovery and candor to the court." The prosecutor never filed charges in the case because he lost confidence in the investigation, he said.

A senior DEA official said he was not aware of the case but said the agent should not have misled the prosecutor. How often such misdirection occurs is unknown, even to the government; the DEA official said the agency does not track what happens with tips after the SOD sends them to agents in the field.

The SOD's role providing information to agents isn't itself a secret. It is briefly mentioned by the DEA in budget documents, albeit without any reference to how that information is used or represented when cases go to court.

The DEA has long publicly touted the SOD's role in multi-jurisdictional and international investigations, connecting agents in separate cities who may be unwittingly investigating the same target and making sure undercover agents don't accidentally try to arrest each other.

SOD'S BIG SUCCESSES

The unit also played a major role in a 2008 DEA sting in Thailand against Russian arms dealer Viktor Bout; he was sentenced in 2011 to 25 years in prison on charges of conspiring to sell weapons to the Colombian rebel group FARC. The SOD also recently coordinated Project Synergy, a crackdown against manufacturers, wholesalers and retailers of synthetic designer drugs that spanned 35 states and resulted in 227 arrests.

Since its inception, the SOD's mandate has expanded to include narco-terrorism, organized crime and gangs. A DEA spokesman declined to comment on the unit's annual budget. A recent LinkedIn posting on the personal page of a senior SOD official estimated it to be \$125 million.

Today, the SOD offers at least three services to federal, state and local law enforcement agents: coordinating international investigations such as the Bout case; distributing tips from overseas NSA intercepts, informants, foreign law enforcement partners and domestic wiretaps; and circulating tips from a massive database known as DICE.

The DICE database contains about 1 billion records, the senior DEA officials said. The majority of the records consist of phone log and Internet data gathered legally by the DEA through subpoenas, arrests and search warrants nationwide. Records are kept for about a year and then purged, the DEA officials said.

About 10,000 federal, state and local law enforcement agents have access to the DICE database, records show. They can query it to try to link otherwise disparate clues. Recently, one of the DEA officials said, DICE linked a man who tried to smuggle \$100,000 over the U.S. southwest border to a major drug case on the East Coast.

"We use it to connect the dots," the official said.

"AN AMAZING TOOL"

Wiretap tips forwarded by the SOD usually come from foreign governments, U.S. intelligence agencies or court-authorized domestic phone recordings. Because warrantless eavesdropping on Americans is illegal, tips from intelligence agencies are

generally not forwarded to the SOD until a caller's citizenship can be verified, according to one senior law enforcement official and one former U.S. military intelligence analyst.

"They do a pretty good job of screening, but it can be a struggle to know for sure whether the person on a wiretap is American," the senior law enforcement official said.

Tips from domestic wiretaps typically occur when agents use information gleaned from a court-ordered wiretap in one case to start a second investigation.

As a practical matter, law enforcement agents said they usually don't worry that SOD's involvement will be exposed in court. That's because most drug-trafficking defendants plead guilty before trial and therefore never request to see the evidence against them. If cases did go to trial, current and former agents said, charges were sometimes dropped to avoid the risk of exposing SOD involvement.

Current and former federal agents said SOD tips aren't always helpful - one estimated their accuracy at 60 percent. But current and former agents said tips have enabled them to catch drug smugglers who might have gotten away.

"It was an amazing tool," said one recently retired federal agent. "Our big fear was that it wouldn't stay secret."

DEA officials said that the SOD process has been reviewed internally. They declined to provide Reuters with a copy of their most recent review.

(Edited by Blake Morrison)

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Exclusive: IRS manual detailed DEA's use of hidden intel evidence

Wed, Aug 7 2013

By John Shiffman and David Ingram

WASHINGTON (Reuters) - Details of a U.S. Drug Enforcement Administration program that feeds tips to federal agents and then instructs them to alter the investigative trail were published in a manual used by agents of the Internal Revenue Service for two years.

The practice of recreating the investigative trail, highly criticized by former prosecutors and defense lawyers after Reuters reported it this week, is now under review by the Justice Department. Two high-profile Republicans have also raised questions about the procedure.

A 350-word entry in the Internal Revenue Manual instructed agents of the U.S. tax agency to omit any reference to tips supplied by the DEA's Special Operations Division, especially from affidavits, court proceedings or investigative files. The entry was published and posted online in 2005 and 2006, and was removed in early 2007. The IRS is among two dozen arms of the government working with the Special Operations Division, including the Federal Bureau of Investigation, the National Security Agency and the Central Intelligence Agency.

An IRS spokesman had no comment on the entry or on why it was removed from the manual. Reuters recovered the previous editions from the archives of the Westlaw legal database, which is owned by Thomson Reuters Corp, the parent of this news agency.

As Reuters reported Monday, the Special Operations Division of the DEA funnels information from overseas NSA intercepts, domestic wiretaps, informants and a large DEA database of telephone records to authorities nationwide to help them launch criminal investigations of Americans. The DEA phone database is distinct from a NSA database disclosed by former NSA contractor Edward Snowden.

Monday's Reuters report cited internal government documents that show that law enforcement agents have been trained to conceal how such investigations truly begin - to "recreate" the investigative trail to effectively cover up the original source of the information.

DEA officials said the practice is legal and has been in near-daily use since the 1990s. They have said that its purpose is to protect sources and methods, not to withhold evidence.

NEW DETAIL

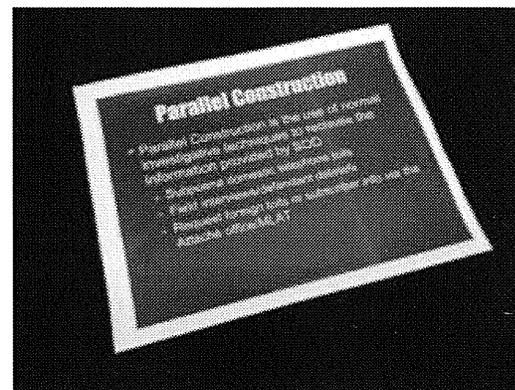
Defense attorneys and some former judges and prosecutors say that systematically hiding potential evidence from defendants violates the U.S. Constitution. According to documents and interviews, agents use a procedure they call "parallel construction" to recreate the investigative trail, stating in affidavits or in court, for example, that an investigation began with a traffic infraction rather than an SOD tip.

The IRS document offers further detail on the parallel construction program.

"Special Operations Division has the ability to collect, collate, analyze, evaluate, and disseminate information and intelligence derived from worldwide multi-agency sources, including classified projects," the IRS document says. "SOD converts extremely sensitive information into usable leads and tips which are then passed to the field offices for real-time enforcement activity against major international drug trafficking organizations."

The 2005 IRS document focuses on SOD tips that are classified and notes that the Justice Department "closely guards the information provided by SOD with strict oversight." While the IRS document says that SOD information may only be used for drug investigations, DEA officials said the SOD role has recently expanded to organized crime and money laundering.

According to the document, IRS agents are directed to use the tips to find new, "independent" evidence: "Usable information regarding these leads must be developed from such independent sources as investigative files, subscriber and toll requests, physical surveillance, wire intercepts, and confidential source information. Information obtained from SOD in response to a search



or query request cannot be used directly in any investigation (i.e. cannot be used in affidavits, court proceedings or maintained in investigative files)."

The IRS document makes no reference to SOD's sources of information, which include a large DEA telephone and Internet database.

CONCERN IN CONGRESS

House Intelligence Committee Chairman Mike Rogers, R-Michigan, expressed concern with the concept of parallel construction as a method to hide the origin of an investigation. His comments came on the Mike Huckabee Show radio program.

"If they're recreating a trail, that's wrong and we're going to have to do something about it," said Rogers, a former FBI agent. "We're working with the DEA and intelligence organizations to try to find out exactly what that story is."

Spokespeople for the DEA and the Department of Justice declined to comment.

Sen. Rand Paul, R-Kentucky, a member of the Homeland Security and Government Affairs Committee, said he was troubled that DEA agents have been "trying to cover up a program that investigates Americans."

"National security is one of government's most important functions. So is protecting individual liberty," Paul said. "If the Constitution still has any sway, a government that is constantly overreaching on security while completely neglecting liberty is in grave violation of our founding doctrine."

Officials have stressed that the NSA and DEA telephone databases are distinct. The NSA database, disclosed by Snowden, includes data about every telephone call placed inside the United States. An NSA official said that database is not used for domestic criminal law enforcement.

The DEA database, called DICE, consists largely of phone log and Internet data gathered legally by the DEA through subpoenas, arrests and search warrants nationwide. DICE includes about 1 billion records, and they are kept for about a year and then purged, DEA officials said.

(Research by Hilary Shroyer of West, a Thomson Reuters business. Additional reporting by David Lawder. Edited by Michael Williams)

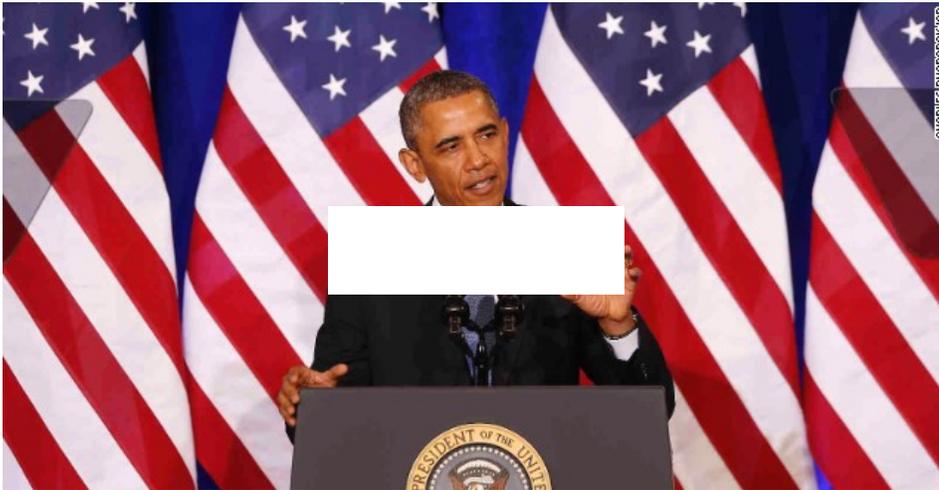
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Despite Obama's NSA changes, phone records still collected

By Tom Cohen, Jim Acosta and Mariano Castillo, CNN
updated 4:01 PM EST, Fri January 17, 2014



Obama limits government access to phone data

STORY HIGHLIGHTS

NEW: House Speaker John Boehner says any changes can't harm national security

President Barack Obama issues new guidance for intelligence-gathering

An advisory panel recommended in December that government better protect civil liberties

Leaks by Edward Snowden exposed scope of NSA electronic surveillance

Washington (CNN) -- After the firestorm over Edward Snowden's disclosure of U.S. surveillance programs, the most contentious aspect revealed by last year's classified leaks will continue under reforms announced Friday by President Barack Obama.

Someone will still collect records of the numbers and times of phone calls by every American.

While access to the those records will be tightened and they may be shifted from the National Security Agency to elsewhere, the storage of the phone metadata goes on.

For that reason, civil libertarians, members of Congress and others complained that Obama failed to go far enough in what his administration labeled as the most comprehensive intelligence-gathering reforms since he took office in 2009.

In his 45-minute speech at the Justice Department, Obama unveiled new guidance for intelligence-gathering as well as reforms intended to balance what he called the nation's vital security needs with concerns over privacy and civil liberties.

By making the changes after a review he ordered following the Snowden disclosures, Obama put his signature on the U.S. intelligence operation and helped define his legacy as a chief executive who had promised a more open and transparent government when he entered the White House in 2009.

He outlined a series of steps -- some immediate and some requiring time to work out, possibly with Congress -- that would change some



NYT: NSA bugged devices without internet



What's the impact of NSA data collection?

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Who is Edward Snowden?

updated 10:25 AM EDT, Sun June 23, 2013



He's a high-school dropout who worked his way into the most secretive computers in U.S. intelligence as a defense contractor.

Snowden gets Russia asylum

updated 11:55 PM EDT, Thu August 1, 2013



The White House is "very disappointed" that National Security Agency leaker Edward Snowden has been granted temporary asylum in Russia.

Leak: Spies snooped in 'Warcraft,' other games

updated 8:57 AM EST, Tue December 10, 2013



Spies with surveillance agencies in the U.S. and U.K. infiltrated video games like "World of Warcraft" in a hunt for terrorists "hiding in plain sight" online.

Is the Snowden case Manning, Part II?

updated 7:39 AM EDT, Fri August 2, 2013



Bradley Manning and Edward Snowden both held jobs that gave them access to some of their country's most sensitive intelligence. They chose to share that material with the world and are now paying for it.

NSA chief: Snooping is crucial to fighting terrorism

updated 10:35 AM EDT, Thu August 1, 2013



The NSA's controversial intelligence-gathering programs have prevented 54 terrorist attacks around the world, including 13 in the United States.

New leak: NSA program taps all you do online

updated 2:54 PM EDT, Thu August 1, 2013



You've never heard of XKEYSCORE, but it definitely knows you. The National Security Agency's top-secret program essentially makes available everything you've ever done on the Internet.

aspects of the NSA collection of phone records and other information but generally leave intact the core and function of existing programs.

Obama also addressed concerns abroad that the United States spies on ordinary people as well as allied leaders. Snowden's disclosures showed U.S. surveillance of personal communications of leaders in Germany, Brazil and other allies.

"The United States is not spying on ordinary people who don't threaten our national security" Obama said, adding that "unless there is a compelling national security purpose, we will not monitor the communications of heads of state and government of our close friends and allies."

Obama not dwelling on Snowden

Before Obama spoke, a senior administration official who briefed reporters on condition of not being identified said the President's assurances of no further spying on foreign leaders extended only to "dozens" of heads of state and government of U.S. friends and allies.

Initial reaction indicated those favoring robust intelligence gathering agreed with the President. Director of National Intelligence James Clapper said Obama "took a measured and thoughtful approach," while Defense Secretary Chuck Hagel said he supported the reforms.

House Speaker John Boehner warned Obama against allowing politics to "cloud his judgment" over maintaining what the Ohio Republican called necessary programs for national security.

"The House will review any legislative reforms proposed by the administration, but we will not erode the operational integrity of critical programs that have helped keep America safe," Boehner said in a statement.

On the other side, Republican Sen. Rand Paul of Kentucky said the speech deserved "an 'A' for effort and probably a 'C' for content," while WikiLeaks founder Julian Assange told CNN that it was "embarrassing" for a head of state to speak so long and "say almost nothing."

"Unfortunately, today, what we see is very few concrete reforms," said Assange, who noted that Snowden intends to publicly respond to Obama's speech as soon as next week.

Sen. Bernie Sanders of Vermont, an independent who caucuses with the majority Democrats, called Obama's speech an first step in a necessary dialogue on balancing security needs with privacy rights in the digital age.

"The devil is going to be in the details," Sanders said, adding that the discussion will continue for years as technological capabilities expand.

Obama: Intel has helped us

Obama's changes to the controversial NSA telephone bulk collection program disclosed by Snowden require intelligence analysts to get approval from the Federal Intelligence Surveillance Court to go into the metadata stored by the agency.

Today, the NSA determines when analysts can examine the metadata, a senior administration official told reporters on condition of not being identified.

"That is no longer an issue that is dealt with solely within the NSA,"

Don't let U.S. government read your e-mail

updated 9:04 AM EDT, Sun August 18, 2013



You may have never heard of Lavabit and Silent Circle. That's because they offered encrypted (secure) e-mail services, something most Americans have probably never thought about needing.

More on NSA to be declassified



The U.S. intelligence community plans to declassify additional information about surveillance programs of the National Security Agency.

Snowden -- facts, fictions and fears

updated 2:54 PM EDT, Wed July 24, 2013



"Any analyst at any time can target anyone. Any selector, anywhere ... I, sitting at my desk, certainly had the authorities to wiretap anyone."

Interactive: Keeping track of Snowden

updated 9:38 AM EDT, Tue July 16, 2013



Follow Snowden's movements and asylum requests across the globe via our interactive.

Obama: All nations collect intelligence

updated 9:56 AM EDT, Tue July 2, 2013



President Barack Obama responds to outrage by European leaders over revelations of alleged U.S. spying.

Sharing secrets: U.S. intelligence leaks

updated 2:06 PM EDT, Tue August 27, 2013



Browse through a history of high-profile intelligence leaking cases.

CNN Exclusive: Bush on Snowden

updated 10:37 AM EDT, Tue July 2, 2013



Former President George W. Bush talks Snowden, AIDS, Mandela and his legacy.

Snowden took job to gather evidence

updated 9:04 AM EDT, Wed June 26, 2013



Edward Snowden took a job with an NSA contractor in order to gather evidence about U.S. surveillance programs.

Snowden Index



Is Edward Snowden a hero, a traitor or something in between? Here's a glance at your opinions about the NSA leaker.

Hiding your data from Internet snoopers

updated 6:47 AM EDT, Wed June 19, 2013

the official said. "They have to bring it to the FISA court."

In addition, Obama said he ordered Attorney General Eric Holder to work with intelligence officials on finding another place to store the metadata records that include phone numbers and the length of calls, but not content.

Obama also called on Congress to authorize establishment of a new panel of outside advocates to participate in "significant cases" before the secret FISA courts that handle intelligence collection issues.

Another step extended U.S. legal protections involving surveillance to foreign nationals, noted CNN Chief National Security Correspondent Jim Sciutto, who called the President's speech extraordinary in one way for publicly addressing what had been top-secret programs seven months ago.

However, Sciutto noted Obama's reforms made no mention of losses by U.S. technology businesses around the world due to concerns that customers would be spied on under the programs disclosed by Snowden's leaks.

Some critics on both sides of the political aisle contend collection of such vast amounts of information violates personal privacy.

Democratic Sens. Patrick Leahy of Vermont and Tom Udall of New Mexico said they intend to continue pushing legislation to limit the metadata collection beyond what Obama proposes.

Republican Rep. Justin Amash of Michigan said that "Congress must do what the President apparently will not: end the unconstitutional violation of Americans' privacy, stop the suspicionless surveillance of our people, and close the era of secret law."

In his speech, Obama argued that national security depended on access to such data as long as it was under proper control and regulation.

[Read Obama's remarks](#)

"No evidence of abuse has been found involving surveillance programs, but changes are needed in response to legitimate privacy concerns that have been raised, Obama said.

The new guidance he issued declared the United States will not collect intelligence "for the purpose of suppressing or burdening criticism or dissent, or for disadvantaging persons based on their ethnicity, race, gender, sexual orientation, or religion."

Offering a historical review of U.S. intelligence gathering, Obama recalled events in American history going back to Paul Revere's famous ride.

The 9/11 terrorist attacks raised the profile and priority of U.S. intelligence efforts, the President said, and now technological advances that allow supercomputers to gather huge amounts of digital data have complicated efforts "to both defend our nation and uphold our civil liberties."

[Obama and the bottom line](#)

Obama remained critical of Snowden, who is now living under asylum in Russia, following his series of leaks that began last June and transformed the debate on national security surveillance in the post 9/11 era.

"Our nation's defense depends in part on the fidelity of those



With reports of NSA snooping, many people have started wondering about their personal internet security.

Notable leakers and whistle-blowers

updated 9:52 AM EDT, Wed August 14, 2013



Click through our gallery to learn about other major leaks and what happened in the aftermath.

Who & what is the real NSA?

updated 4:02 PM EDT, Sun June 9, 2013



What really goes on inside America's most secretive agency? CNN's Chris Lawrence reports.

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NSA

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Katy Perry

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'Partridge family' star arrested again



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See devil baby scare New Yorkers



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What Obama changed at the NSA: 5 takeaways



Iranian official on nuke deal: 'We did not agree to dismantle anything'

entrusted with our nation's secrets," Obama said. "If any individual who objects to government policy can take it in their own hands to publicly disclose classified information, then we will never be able to keep our people safe, or conduct foreign policy."

While the bulk telephone data remains with the NSA for now, Obama wants those records moved out of government hands, though it is uncertain where, a senior administration official said in briefing reporters on condition of not being identified.

Federal courts are divided on NSA telephone data collection. One judge in Washington ruled preliminarily in December that it was probably unconstitutional on privacy grounds. A second judge ruling in another case in New York subsequently found it lawful.

CNN's Michael Pearson, Ashley Fantz, Matt Hoyer, Evan Perez, and Bill Mears contributed to this report.

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Cesar Cordova · 6 days ago

"Changes in the NSA goes as follows. Tuesday will now be known as Taco Tuesdays at the cafeteria. That is all."

896 ^ | 14 ▾ · Reply · Share ›



SRsage107 → Cesar Cordova · 6 days ago

You misread. It clearly says "sweeping" changes. It just means they are going to "try" and keep more of their illegal surveillance swept under the rug.

630 ^ | 6 ▾ · Reply · Share ›



AgonyTwists → SRsage107 · 6 days ago

Into a bar walks the Director of the NSA.

Bartender:say, " I've got a new joke for you."

NSA Director says. "Heard it"

717 ^ | 2 ▾ · Reply · Share ›



Bill the Cat → AgonyTwists · 6 days ago

"I love you baby, you go on and hang up first."

"I love you more snookums, you hang up first. "

"I love you infinity more, now you hang up first my little

POLITICS

U.S. to Expand Rules Limiting Use of Profiling by Federal Agents

By MATT APUZZO JAN. 15, 2014

The Justice Department will significantly expand its definition of racial profiling to prohibit federal agents from considering religion, national origin, gender and sexual orientation in their investigations, a government official said Wednesday.

The move addresses a decade of criticism from civil rights groups that say federal authorities have in particular singled out Muslims in counterterrorism investigations and Latinos for immigration investigations.

The Bush administration banned profiling in 2003, but with two caveats: It did not apply to national security cases, and it covered only race, not religion, ancestry or other factors.

Since taking office, Attorney General Eric H. Holder Jr. has been under pressure from Democrats in Congress to eliminate those provisions. “These exceptions are a license to profile American Muslims and Hispanic-Americans,” Senator Richard J. Durbin, Democrat of Illinois, said in 2012.

President George W. Bush said in 2001 that racial profiling was wrong and promised “to end it in America.” But that was before the terrorist attacks of Sept. 11. After those attacks, federal agents arrested and detained dozens of Muslim men who had no ties to terrorism. The government also began a program known as special registration, which required tens of thousands of Arab and Muslim men to register with the

authorities because of their nationalities.

“Putting an end to this practice not only comports with the Constitution, it would put real teeth to the F.B.I.’s claims that it wants better relationships with religious minorities,” said Hina Shamsi, a national security lawyer with the American Civil Liberties Union.

It is not clear whether Mr. Holder also intends to make the rules apply to national security investigations, which would further respond to complaints from Muslim groups.

“Adding religion and national origin is huge,” said Linda Sarsour, advocacy director for the National Network for Arab American Communities. “But if they don’t close the national security loophole, then it’s really irrelevant.”

Ms. Sarsour said she also hoped that Mr. Holder would declare that surveillance, not just traffic stops and arrests, was prohibited based on religion.

The Justice Department has been reviewing the rules for several years and has not publicly signaled how it might change them. Mr. Holder disclosed his plans in a meeting on Wednesday with Mayor Bill de Blasio of New York, according to an official briefed on the meeting who spoke on the condition of anonymity because the conversation was private.

Mr. de Blasio was elected in November after running a campaign in which he heavily criticized the Police Department’s stop-and-frisk tactic, which overwhelmingly targets minorities and which a federal judge declared unconstitutional. The mayor and attorney general did not discuss when the rule change would be announced, the official said.

A senior Democratic congressional aide, however, said the Obama administration had indicated an announcement was “imminent.”

The Justice Department would not confirm the new rules on Wednesday night but released a short statement saying that the mayor and the attorney general discussed “preventing crime while protecting civil rights and civil liberties.”

In the past, Mr. Holder has spoken out forcefully against profiling.

“Racial profiling is wrong,” he said in a 2010 speech. “It can leave a lasting scar on communities and individuals. And it is, quite simply, bad policing — whatever city, whatever state.”

Officials in the Bush administration made similar statements, however, which is why civil rights groups have eagerly waited to hear not just Mr. Holder’s opinion, but also the rules he plans to enact.

As written, the Justice Department’s rules prohibit federal agents from using race as a factor in their investigations unless there is specific, credible information that makes race relevant to a case.

For example, narcotics investigators may not increase traffic stops in minority neighborhoods on the belief that some minorities are more likely to sell drugs. They can, however, rely on information from witnesses who use race in their descriptions of suspects.

The rules cover federal law enforcement agencies such as the F.B.I. They do not cover local or state police departments.

That is significant because Muslim groups have sued the New York Police Department over surveillance programs that mapped Muslim neighborhoods, photographed their businesses and built files on where they eat, shop and pray.

Mr. Holder’s comments about the new racial profiling rules came up in a conversation about that topic, the official said. William J. Bratton, the city’s new police commissioner, has said he will review those practices.

While the rules directly control only federal law enforcement activities, their indirect effect is much broader, said Fahd Ahmed, the legal director of the Queens-based South Asian immigrant advocacy group Desis Rising Up and Moving.

For instance, he said, immigration bills in Congress have copied the Justice Department profiling language. And civil rights groups can use the rules to pressure state and local agencies to change their policies.

“Federal guidelines definitely have an impact,” Mr. Ahmed said. “Local organizers can say, ‘These policies are not in line with what’s coming from the federal level.’ ”

EXHIBIT 3

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January 20, 2014

Mark Roomberg
Assistant United States Attorney
Mr. Jay Hulings
Assistant United States Attorney
Western District of Texas
U.S. Department of Justice
601 NW Loop 410, Suite 600
San Antonio, Texas 78216-5512

Re: Discovery in *United States v. Mohammad Jaffer Ali, et al*,
SA-13-CR-580-(14)-OG

Dear Mr. Roomberg and Mr. Hulings:

Thank you for your partial provision of discovery materials in *United States v. Mohammad Jaffer Ali, et al*, SA-13-CR-580-OG. I am writing in behalf of my client, Mr. Syed Ali, to formally request production of additional materials, which pertain to the initiation of the investigation. In particular, I request all discovery as to how the investigation against Mr. Jaffer Ali and his purported circle of associates (including my client Mr. Syed Ali) began, as well as how my client was first targeted for investigation. Included in this letter is a specific request for discovery as to whether the investigation originated because of, profited from, or involved any information derived from surveillance or investigation under the Foreign Intelligence Security Act of 1978 (FISA).

As you are no doubt aware, FISA provides the only statutory authorization for engaging in interception of wire or electronic communications other than the traditional process for law enforcement officers as set forth under Title III of the Omnibus Crime Control and Safe Streets Act of 1968.¹ FISA allows collection and

¹ 50 U.S.C. 1812. Both statutory schemes have, of course, been amended by later enactments, including the Electronic Communications Privacy Act, the USA PATRIOT

evaluation of wire and electronic data specifically for purposes of gathering foreign intelligence in order to protect the United States from international terrorism. While FISA is directed at the surveillance of activities far removed from those alleged in this case, if agents conducting FISA surveillance activity inadvertently encounter details pertaining to criminal activity, the law permits them to share this information with prosecutors.²

While the materials your office has provided to date do not specifically acknowledge any activity under FISA in connection with this case, the case officer's description of the investigation to the court makes FISA's involvement clear. The sworn statement of Ms. Katherine Gutierrez in support of the first application to intercept wire and electronic communications pursuant to 18 U.S.C. § 2518 states that, after "FBI San Antonio received information of Middle Eastern males purchasing a large quantity of Acetone," "Counter Terrorism agents initiated an investigation to determine the intent of the purchaser's use of the chemical which while not illegal to possess, is a common bomb making component."³ The affidavit admits that Mr. Ali was subjected to surveillance and was followed.⁴ The affidavit also acknowledges that agents later interviewed Mr. Ali "in furtherance of the *mass destruction investigation*."⁵ This type of investigation falls squarely within the purview of FISA. The affidavit also makes clear that this already-ongoing investigation into suspected terrorism was independent of the domestic criminal investigation of Jaffer Ali and others charged in this case. Accordingly, it is clear that defendant Mr. Syed Ali came to the attention of the government by way of a terrorism investigation under FISA.

Your office has provided less information about the genesis of the investigation of Mr. Syed Ali's codefendants, including Mr. Jaffer Ali, apart from the involvement of a confidential informant. However, given the national origin of the other defendants and the significant international communication and travel alleged in the Complaint, as well as the violent potentialities of the materials allegedly used in the production of the synthetic marijuana, it seems highly likely

Act, the USA PATRIOT Improvement and Reauthorization Act, and the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008.

² 50 U.S.C. § 1801(h)(3).

³ Affidavit in Support of Application, Ex. C to Application for the Interception of Wire and Electronic Text Messaging Communications (Apr. 4, 2013) (Gutierrez Aff.) at 27-28.

⁴ *Id.* at 28.

⁵ *Id.* at 30 (emphasis added).

that the entire investigation targeting Mr. Ali's co-defendant Jaffer Ali and his associates began with a FISA intercept.

You are no doubt aware that FISA imposes a very broad, mandatory disclosure requirement on federal and state officials, insisting that

Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this subchapter, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.⁶

The United States Supreme Court has affirmed that "if the Government intends to use or disclose information obtained or derived from a [FISA] acquisition in judicial or administrative proceedings, it must provide advance notice of its intent, and the affected person may challenge the lawfulness of the acquisition."⁷ If the investigation began because of information received under FISA, then the entire investigation was "derived" from that acquisition, and is covered by the statutory disclosure directive.

Unfortunately, federal officials within the Drug Enforcement Administration (DEA) have for years engaged in a stated policy of circumventing these disclosure requirements by engaging in the practice of so-called "parallel construction."⁸ This technique was established by the Special Operations Division unit of the DEA (SOD), which is composed of agents from the FBI, CIA, NSA, Internal Revenue Service and the Department of Homeland Security.

The SOD "funnel[s] information from intelligence intercepts, wiretaps, informants and a massive database of telephone records to authorities across the

⁶ 50 U.S.C. § 1806(c).

⁷ *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138 (2013).

⁸ John Shiffman and Kristina Cooke, *U.S. directs agents to cover up program used to investigate Americans*, Reuters, Aug 5, 2013, available at www.reuters.com.

nation to help them launch criminal investigations of Americans.”⁹ To conceal SOD’s involvement, the unit directs agents to falsify the origin of an investigation by recreating an investigative trail. “Although these cases rarely involve national security issues, documents reviewed by Reuters show that law enforcement agents have been directed to conceal how such investigations truly begin - not only from defense lawyers but also sometimes from prosecutors and judges.”¹⁰

When a case has been instituted in this way, defendants are denied not only their statutory rights under FISA to full disclosure, but also well-established constitutional rights to review exculpatory evidence, gather impeachment materials, and evaluate the legality of the conduct of the officers and agents involved.

Accordingly, it is essential for the ends of justice that Mr. Ali receive discovery that squarely and comprehensively explains the genesis of this investigation: who instituted it, when and why, and on the basis of what information. I request sworn statements from all the officers involved at the beginning of the operation detailing how the alleged criminal scheme¹¹ first came to their attention. If state officers were involved, I will need sworn statements from them, as well. If, as is suggested in the affidavit, the operation began with a tip from a confidential informant, the informant’s handler must provide a sworn statement revealing the identity of the informant and the informant’s background, and discussing the source of the informant’s knowledge of suspected criminal activity pertaining to all of the defendants. The affidavit must also certify that the handler has explicitly investigated whether the informant was tipped off by or had any contact with any individual bearing any information obtained through or derived from a FISA investigation.

Independently, I request sworn statements from all agents and individuals involved in the initial identification of Mr. Syed Ali as a suspect, including the “FBI San Antonio agents” and “Counter Terrorism agents” referenced in the Gutierrez Affidavit, the officers who performed the traffic stop after Mr. Ali allegedly purchased the acetone, as well as all the individuals involved in the Jaffer Ali investigation with whom these agents communicated. The affidavits must disclose how Mr. Syed Ali came to the agents’ attention, how it was known he intended to purchase the acetone, when and where he was subjected to surveillance, and what

⁹ *Id.*

¹⁰ *Id.*

¹¹ By “criminal scheme,” I refer to the entire criminal operation referenced in the Criminal Complaint, which focuses on the alleged conduct of Mr. Jaffer Ali and his associates.

types of surveillance were conducted. Under oath, they must disclose whether their information was based upon or derived in any way from any activities pursuant to any provisions of FISA, before or after the 2008 amendments.

I also request a complete list of each of the officers/agents who fit the description in the preceding two paragraphs, indicating the knowledge and role of each.

Finally, your office should review all materials pertinent to the beginning of the investigation and to the inclusion of Mr. Syed Ali in the investigation in order to disclose all potentially exculpatory information, all information helpful for impeachment purposes, and all information relevant to whether the operation was conducted according to the mandates of the relevant statutes and constitutional provisions.

I am sure you understand that in view of the government's established history of deliberately and willfully evading FISA's disclosure requirements,¹² it will not be sufficient to merely receive your unsworn assurances that no FISA materials were involved.

Thank you for your attention to this matter. Please let me know promptly of your efforts to comply with this request so that I may refer any unresolved matters to the court.

Respectfully,



Simon Azar-Farr

¹² Not only in the above-cited SOD practices, which conceal the true origins of the investigation from federal prosecutors as well as from defendants, but also in cases such as *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138 (2013), in which the Solicitor General assured the Supreme Court that the government would disclose the use of FISA to defendants in criminal cases, only to later learn that the Department of Justice had categorically refused to disclose this information during prosecutions, both before and after the case was argued. Charlie Savage, *Federal Prosecutors, in a Policy Shift, Cite Warrantless Wiretaps as Evidence*, The New York Times, Oct. 26, 2013, available at www.nytimes.com; Andrea Peterson, *How the Feds Won a Key Warrantless Wiretapping Ruling by Misleading the Supreme Court*, The Washington Post, Oct. 28, 2013, available at www.washingtonpost.com.

From: "Hulings, Jay (USATXW)" <Jay.Hulings@usdoj.gov>
Subject: U.S. v. Syed Ali, SA-13-CR-580-OG
Date: January 27, 2014 11:30:11 AM CST
To: "Simon Azar-Farr (simon.azarfarr@gmail.com)" <simon.azarfarr@gmail.com>
Cc: "Roomberg, Mark (USATXW)" <Mark.Roomberg@usdoj.gov>

Mr. Azar-Farr:

We are in receipt of your letter dated January 20, 2014, regarding discovery in the above-referenced case. Without addressing any of the allegations in your letter regarding the Foreign Intelligence Surveillance Act and related matters, we can inform you that the United States has complied and will continue to comply with all of its discovery obligations, including those imposed by Federal Rule of Criminal Procedure 16 and the Foreign Intelligence Surveillance Act.

If you have any further questions, please do not hesitate to call me or Mark Roomberg.

Thank you.

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