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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

<p>UNITED STATES OF AMERICA, Plaintiff,</p> <p>vs.</p> <p>IGNACIO MARTINEZ-FLORES et al. Defendant(s).</p>	<p>Case No. CR 06-233-4-MO</p> <p><b>MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SUPPRESS WIRETAP EVIDENCE</b></p>
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Defendant, Ignacio Martinez-Flores, through his attorney Matthew Schindler has moved the court for an order suppressing all evidence obtained as a result of the government's interception of phone conversations pursuant to orders authorizing wiretaps on Target Cellphone A (dated May 9, 2006), Target Cellphone B (dated May 18, 2006), and Target Cellphone C (dated May 31, 2006).<sup>1</sup> This Memorandum of Law is offered in support of that Motion.

**MEMORANDUM OF LAW**

**A. Indictment and Wiretap Application:**

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<sup>1</sup> Defendant has standing to bring this motion because the government maintains that he was a party to intercepted communications and, as such, qualifies as an "aggrieved person" under 18 U.S.C. 2518(10)(a). *United States v. Simpson*, 813F.2d 1462, 1471 n.11 (9th Cir. 1987).

Mr. Martinez-Flores is alleged to have participated in a methamphetamine distribution conspiracy:

Count 1:

**[Conspiracy to Distribute and Possess with Intent to Distribute Methamphetamine]**

From approximately December 1, 2005, the exact date being unknown to the grand jury, **GONZALES, a.k.a. Jose Everando Sanchez-Avendano, a.k.a. Jose Martin Verdugo, a.k.a. Gordo, a.k.a. Bartolo, JUAN CARLOS MEZA-MENDEZ, a.k.a. Vladimir Meza-Breceno, a.k.a. Bladimir Meza-Breceno, a.k.a. Pariente, REGINO ADRIAN SICAROS-LOPEZ, a.k.a. Jesus Eduardo Lopez, a.k.a. Cuatro, IGNACIO MARTINEZ-FLORES, a.k.a. Gonzalo Ramos-Jimenez, a.k.a. Nacho, JESUS ANTONIO ALLON HARCEA, a.k.a. Jesus Antonio Ayon Garcia, a.k.a. Cachon, RADAME RAMIREZ-AGUIRRE, a.k.a. Rene, RAUL GARCIA-JAUREGUI, a.k.a. Don Ramon, a.k.a. The Old Man, and NOE SANCHEZ MEDINA**, defendants herein, and other persons whose identities are known and unknown to the grand jury, did knowingly and willfully combine, conspire, confederate, and agree with each other to distribute and possess with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance; in violation of Title 21, United States Code, Sections 841(a)(1), 841 (b)(1)(A), and 846.

This generic federal drug indictment was later augmented by a similarly vague Bill of Particulars summarizing the ordinary and expected accoutrements of nearly any drug conspiracy: cash, use of telephones, sales of drugs, purchase of cut, collection of drug debts, etc.

These documents in turn were supported by evidence obtained through three wiretaps granted based on nearly 400 pages of affidavits. The wiretap was

necessary, according to the government, in order to discover aspects of the conspiracy that had eluded it:

“Although SAs have attempted to do so, the investigation has not been able to identify the SANCHEZ DTO's Source of Supply (SOS) for methamphetamine or cocaine, the full extent of the DTO, all local storage locations, any significant assets representing proceeds from the distribution of controlled substances, or how the DTO is concealing their proceeds or how they are receiving their money to pay for the controlled substances purchased.”

*Affidavit of SA Ryan Lawyer In Support of Application for Interception of Wire Communication* at 9 attached as Exhibit 1.

The Affidavit suggests that if the application is authorized it will reveal everything about this conspiracy:

The wire communications to and from Target Cellphone A are expected to concern specifics of the above-described offenses including: (a) the nature, extent and methods of operation of the narcotics business of the SANCHEZ DTO; (b) the identities of all members of the DTO, their accomplices, alders and abettors, co-conspirators and participants in their illegal activities; (c) the receipt, transportation and distribution of contraband and money involved in these activities; (d) the source of supply for the narcotics organization, which SAs from the ERO have identified as being located in the Phoenix, Arizona area; (e) the drug trafficking organization financial structure in support of ongoing drug-trafficking operations; (f) the locations of contraband and items used in the furtherance of those activities; (g) the existence and locations of records relating to narcotics trafficking; (h) the existence of a conspiracy and the identities and roles of the co-conspirators; (i) the location and source of resources used to finance their illegal activities; (j) the location and disposition of the proceeds from those activities; (k) the identification of communication facilities used by the Subjects and co-conspirators to facilitate the illegal activities described herein; and (l) admissible evidence constituting proof beyond a reasonable doubt of the intent of each participant to join and to participate willingly in this conspiracy. In addition, these wire communications are expected to constitute admissible evidence of the commission of the offenses described above.

*Id* at 10-11.

**B. The government's investigation at the time of the initial wiretap request:**

In order to analyze the government's need for this interception the court must evaluate the government's investigation as outlined in the affidavit at the time of the application. The necessity requirement ensures that "wiretapping is not resorted to in situations where traditional investigative techniques would suffice to expose the crime." *United States v. Kahn*, 415 U.S. 143, 154 n. 12 (1974) (citing S. Rep.No. 1097, 90th Congress, 2d Session, 101, 1986 U.S. Cong. and Admin. News 2112). The "plain effect of the detailed restrictions of section 2518 is to guarantee that wiretapping or bugging occurs only when there is a genuine need for it, and only to the extent that it is needed." *Dalia v. United States*, 441 U.S. 238, 250 (1979).

At the time of the May 9, 2006 request was submitted, the government had already developed substantial information about this alleged conspiracy:

"This investigation has revealed that SANCHEZ is the head of a DTO in the District of Oregon that is regularly transporting 30-40 pounds of methamphetamine a month from Arizona into the District of Oregon and then distributing methamphetamine throughout the district. We have discovered the hub of the distribution network is centered in the Portland, Oregon metropolitan area and the DTO has a large client base in Linn County, Oregon. To date we have utilized two confidential sources (CSs) to purchase approximately six and a half pounds of methamphetamine and eight ounces of cocaine from this DTO."

*Id* at 8-9.

**1. Named Cooperating Witnesses Provided Substantial Information about the Conspiracy:**

Prior to the wiretap application the investigation had obtained a significant volume of information from several named cooperating informants. **Robert Rains** was the first to provide information concerning this alleged conspiracy:

“In September 2004, Robert Rains was arrested in Honolulu, Hawaii for possession with intent to distribute four ounces of crystal methamphetamine and drug paraphernalia. According to a criminal history check, Rains has multiple criminal convictions involving the possession, delivery, and manufacture of controlled substances, and felon in possession of a weapon/firearm. Rains was later convicted of possession with intent to distribute methamphetamine and is currently serving an 18-year federal prison sentence.

In September 2004, SA Dan Olson and Honolulu District Office SA Bill Wise interviewed Rains in Honolulu, Hawaii. Rains cooperated with law enforcement officers in consideration for sentencing reduction. Rains stated in November/December 2002 he was introduced to SANCHEZ by FAVELA in Sweet Home, Oregon. FAVELA was either the spouse or former spouse of SANCHEZ. Rains subsequently started buying and selling ounce quantities of methamphetamine that he received from SANCHEZ. Rains said that between November/December 2002 and September 2004 he obtained three pounds of methamphetamine from SANCHEZ while in Hawaii.

In February 2005, SAs Olson and Flannery re-interviewed Robert Rains about his involvement with the SANCHEZ DTO. Rains stated that from November or December 2002 through September 2004 SANCHEZ was his primary SOS for crystal methamphetamine. Rains identified several locations in and around the Portland, Oregon area associated with SANCHEZ. Rains identified an address in Gresham, Oregon associated with SANCHEZ and an individual known to Rains as RICARDO (later identified by CS 2 as LOPEZ-Ruiz). Rains said he had been to this location on seven to eight separate occasions to pick up methamphetamine and drop off drug proceeds. Rains stated he typically obtained one to three pounds of methamphetamine and paid

between \$8,000 and \$10,000 per pound. Rains also stated he spent the night at the location on a few occasions.

Rains identified another address in Gresham, Oregon as an apartment occupied by the brother and uncle of SANCHEZ. Rains estimated he went to the apartment five times to pick up one to three pounds of methamphetamine and drop off approximately \$5,000 in drug proceeds. On one occasion around July 2004, Rains stated he picked up ten pounds of methamphetamine from the apartment with SANCHEZ, and took it to a residence located in Gresham, Oregon. Rains admitted he took three of the ten pounds of methamphetamine for his own distribution. Rains said SANCHEZ distributed the other seven pounds of methamphetamine to CS 2 in Sweet Home, Oregon.

Rains identified an address in Portland, Oregon as a trailer home occupied by RICARDO and his girlfriend. Rains said he obtained approximately two pounds of methamphetamine from the trailer on one occasion and another one pound on the second occasion.

SAs from the ERO were able to corroborate information received from Rains about the SANCHEZ DTO through independent information gained through other confidential sources, defendant interviews, and law enforcement investigations. As a result of this corroboration, the information provided by Rains is believed to be reliable.”

*Id* at 15-17.

Another drug dealer named **Joseph Jayne** came forward in November 2004 providing information that associated Mr. Martinez-Flores with this conspiracy:

In November 2004, SA Olson and Sweet Home Police Department Detective Jeff Lynn interviewed Joseph Jayne in Albany, Oregon. Jayne cooperated with law enforcement officers in consideration for sentence reduction. Jayne has multiple criminal convictions involving the possession, delivery, and manufacture of controlled substances, assaults, felon in possession of a weapon and/or firearm, and child neglect. He is currently incarcerated in the State of Oregon. Jayne has one misdemeanor conviction for providing false information to a police officer.

Jayne told officers FAVELA introduced him to a "RICARDO" around October 2003. Jayne admitted he obtained approximately one quarter pound of methamphetamine from RICARDO every other day for approximately one year. Jayne stated he paid between \$3,000 and \$3,200 per quarter-pound of methamphetamine. Jayne also said on occasions when he ordered methamphetamine from RICARDO, two of RICARDO's associates known to Jayne as NACHO and Pedro would bring it to Jayne. Jayne said RICARDO traveled to Arizona on a regular basis and stated that RICARDO seemed to have better methamphetamine upon his return.

Jayne estimated he obtained approximately eight pounds of methamphetamine from RICARDO in the four months prior to Jayne's arrest on October 22, 2004, and approximately 15 to 30 pounds of methamphetamine from RICARDO during the year prior to Jayne's arrest. Jayne was shown a photograph of LOPEZ-Ruiz and asked if Jayne knew the subject. Jayne could not identify the photograph of LOPEZ-Ruiz.

Jayne said Rains and CS 2 also received methamphetamine from RICARDO, and believed Rains and CS 2 were both introduced to RICARDO by FAVELA.

An analysis of toll records showed that LOPEZ-Ruiz was in regular contact with SANCHEZ. Jayne said he contacted RICARDO at telephone number (541) 905-0285. An examination of phone records for phone number (541) 905-0285 between September 20, 2004, and October 01, 2004, revealed 85 phone calls between (541) 905-0285 and (541) 401-3360. At the time telephone number (541) 401-3360 was subscribed in the name of Joe E. SANCHEZ. I believe this to be the same SANCHEZ we have identified as the head of this DTO.

Jayne further said he obtained a phone in the name of Mary Etta Shackmann used to contact RICARDO for the purpose of buying methamphetamine. Examination of toll records for SANCHEZ's telephone number (541) 401-3360 revealed 75 phone calls to telephone number (541) 908-1463 (subscribed to Mary Etta Shackmann) from September 11, 2004 to September 20, 2004. SAs were able to corroborate information received from Jayne about the SANCHEZ DTO through independent information gained through other CSs, defendant interviews, and law enforcement

investigations. As a result of this corroboration, Jayne's information is believed to be reliable.

*Id.* at 17-18.

Finally, the affiant was able to interview **Eryk Miller** in January 2006. Like Rains and Jayne, he was able to provide significant and useful background, including the fact that the conspiracy appeared to receive its narcotics from Arizona:

On January 13, 2006, SA Dan Olson and I interviewed Eryk Miller about his involvement with the SANCHEZ DTO. Miller cooperated with law enforcement officers for consideration of a sentence reduction. Miller has the following felony convictions: felon in possession of a firearm, manufacture/delivery of a controlled substance, forgery, theft, and identity theft. Miller has pending federal charges for felon in possession of a firearm. Miller is unable to be utilized as a confidential source (CS) due to his methamphetamine addiction and high potential to use methamphetamine if released from custody.

Miller told SAs he received methamphetamine on a regular basis from an individual he knew as BARTOLO, whom Miller identified via a photograph as SANCHEZ. Miller told SAs he was introduced to SANCHEZ by FAVELA. Miller said SANCHEZ had a business partner named RICARDO. Miller looked at a photograph of Jose Gabriel LOPEZ-Ruiz and identified him as the person he knew as RICARDO. Miller stated he obtained methamphetamine directly from SANCHEZ and LOPEZ-Ruiz, a.k.a. RICARDO, at least 20 times. Miller said he purchased quarter-pounds of methamphetamine from SANCHEZ for \$3,000 and half-pounds of methamphetamine for \$5,800. Miller stated SANCHEZ expressed to him that SANCHEZ got his methamphetamine from Arizona. Miller believed SANCHEZ obtained approximately 20 pounds of methamphetamine per trip to Arizona. Miller believed FAVELA wired money to SANCHEZ in Arizona.

SAs were able to corroborate information received from Miller about the SANCHEZ DTO through independent information gained through other CSs, defendant interviews, and law

enforcement investigations. As a result of this corroboration, Miller's information is believed to be reliable.”

*Id.* at 19-20

**2. Three different Confidential Informants Provided Extensive Information about the Conspiracy:**

On March 25, 2004, SA Daniel Olson and OSP Detective Fred Testa debriefed CS I:

CS I cooperated with law enforcement officers for monetary compensation and previously provided information that has proved to be true and reliable by SAs from the ERO. CS I was arrested for possession with intent to distribute marijuana, but charges were never filed by the state prosecutor. CS I has no criminal convictions.

On March 23, 2004, CS I was inside a business owned by CS 2 in Sweet Home, Oregon. While inside the business, CS I observed two Hispanic males enter the business. One of the males identified himself as "Luis." CS I was shown a photograph of SANCHEZ at a later date and identified him as the second Hispanic male inside the business. CS 2 immediately went to the back of the store with SANCHEZ. CS I spoke with Luis who claimed he was from Mexico. A short time later, SANCHEZ exited the back of the store carrying a paper bag under his right arm. SANCHEZ and Luis then exited the store and departed the area in a green Chevy Lumina. CS I stated he/she also left the store and departed in the same direction in his/her vehicle, traveling northwest on Highway 20 toward Lebanon, Oregon. CS I said he/she saw the Hispanic males and was motioned to pull over. CS I said he/she and the Hispanic males stopped their vehicles in the parking lot of the Wal-Mart store in Lebanon, Oregon. SANCHEZ asked CS I what he/she did for work and suggested the CS sell methamphetamine. SANCHEZ and Luis told CS 1 they sold methamphetamine to CS 2 for \$10,000.00 per pound. SANCHEZ offered to sell a pound of methamphetamine to CS 1 for \$9,000 or \$8,500 if he/she was willing to travel to Portland, Oregon to purchase the methamphetamine. CS I obtained telephone numbers ((503) 753-1334) for SANCHEZ and ((503) 961-2495) for Luis. SANCHEZ also told CS I he and Luis got their methamphetamine from Phoenix, Arizona, and would soon travel to Phoenix to obtain more. CS I said SANCHEZ called him/her the next day and offered

to sell CS I a half-pound of methamphetamine for \$4,500. SANCHEZ said he was in Phoenix and would bring ten pounds of methamphetamine back to Oregon. Two days later, CS 1 received a call from SANCHEZ who stated he would return to Oregon on March 27, 2004. CS 1 further said SANCHEZ offered CS I a free sample of the methamphetamine upon his return to Oregon.

*Affidavit of SA Ryan Lawyer In Support of Application for Interception of Wire Communication at 20-21.*

In December 2005, the DEA established a second confidential source, which it referred to as **CS 2**. CS 2 personally distributed multiple pounds of methamphetamine for the conspiracy and was a crucial insider for the government easily capable of obtaining multiple pounds of methamphetamine from the conspiracy and revealed nearly every aspect of the conspiracy.

CS 2 also provided extensive detail about the group:

“CS 2 has one felony conviction for attempt to commit robbery and is currently awaiting trial for Oregon state criminal charges of attempted murder. CS 2 was indicted by a federal grand jury in the District of Oregon for distribution of methamphetamine and this charge is pending. CS 2 has cooperated and continues to cooperate with law enforcement officers in consideration for a sentence reduction in the pending federal drug case.

CS 2 admitted he/she regularly received approximately one to four pounds of methamphetamine for \$8,000 per pound on a weekly basis from SANCHEZ or other members of SANCHEZ DTO over the previous two years. CS 2 stated the most methamphetamine he/she purchased from SANCHEZ at one time was seven pounds. When ordering methamphetamine from SANCHEZ, CS 2 said his/her normal practice was to simply call SANCHEZ and say he/she needed a number, such as "one," which would refer to the number of pounds of methamphetamine CS 2 needed. CS 2 said based on his/her dealings with SANCHEZ, that SANCHEZ is the head of the DTO based in Portland, Oregon, that regularly transported approximately 30-40 pounds of methamphetamine a week from Arizona to Portland. CS 2 stated that

he/she personally obtained methamphetamine from three Hispanic distributors he/she knew to be associated with the SANCHEZ DTO. CS 2 identified photographs of the three distributors as FAVELA-Gonzalez, whom CS 2 knew as PERRO, LOPEZ-Ruiz, whom CS 2 knew as RICARDO and SANCHEZ, who CS 2 knew as BARTOLO. CS 2 said FAVELA introduced him/her to SANCHEZ, whom CS 2 believed to be an ex-spouse of FAVELA.

CS 2 said SANCHEZ and FAVELA-Gonzalez took turns traveling to Mexico for a month at a time. While one was in Mexico, the other oversaw the SANCHEZ DTO operations in Portland. CS 2 further stated SANCHEZ and FAVELA-Gonzalez made frequent trips to Arizona to obtain methamphetamine. CS 2 also said that while SANCHEZ paid cash for some of the methamphetamine, he was also "fronted" methamphetamine from another drug trafficking organization in Arizona. FAVELA wired money to Arizona to cover the difference in price. SA's obtained information via an Administrative Subpoena to Western Union that verified FAVELA wired money to SANCHEZ on five occasions, FAVELA wired money from Oregon to SANCHEZ in Arizona. Western Union records show these wire transfers were between increments of \$400 to \$1,000, over a one-year period. I have verified Western Union has a standing policy that customers must display photo identification before they are allowed to send or receive over \$1,000.

In the fall of 2005, DVD and ROCN began an investigation of Daniel ORTIZ-Martinez for the distribution of methamphetamine and cocaine in the Portland area. ORTIZ-Martinez is believed to be linked to the SANCHEZ DTO and told CS 3 he/she could purchase methamphetamine or cocaine through RICARDO. ORTIZ-Martinez provided telephone numbers (503) 621-4705 and (503) 309-9108 for CS 3 to contact RICARDO, subsequently identified by CS 2 and CS 3 as LOPEZ-Ruiz. On December 8, 2005, CS 3 made a controlled purchase of two ounces of cocaine from LOPEZ-Ruiz for \$1,300.

CS 2 stated on or about December 10, 2005, he/she contacted FAVELA-Gonzalez, who arranged for the delivery of approximately four pounds of methamphetamine. The methamphetamine was delivered to CS 2 by a Hispanic male believed to be PARIENTE. CS 2 said approximately two days later, he/she received approximately one more pound of methamphetamine from FAVELA-Gonzalez delivered by PARIENTE. Later in December 2005, FAVELA-Gonzalez and LOPEZ-Ruiz both called CS 2 and claimed they each

had four pounds of methamphetamine to sell to CS 2. CS 2 was unable to purchase the methamphetamine because he/she was subsequently arrested and temporarily in jail.

On several occasions in December 2005, CS 2 contacted FAVELA to obtain a current telephone number to use to contact SANCHEZ. FAVELA told CS 2 she would call ORTIZ-Martinez to obtain a current phone number for SANCHEZ. FAVELA would either provide CS 2 with a number to contact SANCHEZ or instruct SANCHEZ to call CS 2.

On December 24, 2005, FAVELA told CS 2 that he/she could contact SANCHEZ on telephone number (602) 773-8578 (Prior Phone 1). That same day, CS 2 made a consensually recorded call to SANCHEZ on (602) 773-8578 to discuss when SANCHEZ would be back in the State of Oregon and to call CS 2 when he got back. CS 2 told SANCHEZ he had a "bunch" (methamphetamine) that he was sitting on but that he was also trying to get some money together to buy some more. SANCHEZ told CS 2 he would call him when he got back. I have listened to this recording and verified the context of the call. I have also verified, through phone records, that SANCHEZ and CS 2 talked on this date over Prior Phone 1.

On December 31, 2005, SANCHEZ called CS 2 on multiple occasions and left voice messages asking CS 2 to call him back on (602) 773-8578 (Prior Phone 1). CS 2 made a recording of the voice mails. CS 2's automated voice mail also recorded that SANCHEZ's calls originated from this number. CS 2 and SANCHEZ did not talk on December 31, 2005. I have verified, through phone records, that SANCHEZ called CS 2 on this date from Prior Phone 1.

On January 9, 2006, CS 2 called SANCHEZ on a new number provided by SANCHEZ, (503) 621-4831 (Prior Phone 2), to make arrangements to purchase "one" (one pound or methamphetamine). CS 2 received the (503) 621-4831 number from FAVELA earlier on January 1, 2006. CS 2 utilized a micro-cassette recorder previously provided by law enforcement to record the phone conversation between him/her and SANCHEZ. I have listened to this recording and verified the context of the call. I do not have phone records to verify these calls.

On January 11, 2006, at the direction of SAs from the ERO, CS 2 placed several phone calls to SANCHEZ at telephone number

(503) 621-4831 (Prior Phone 2) and made arrangements to purchase "one" (one pound of methamphetamine). CS 2 utilized a micro-cassette recorder previously provided by law enforcement to record phone conversations between him/her and SANCHEZ. All conversations between CS 2 and SANCHEZ were conducted in English. I have listened to all recorded telephone conversations between CS 2 and SANCHEZ and verified what CS 2 told me about the conversation was true. SANCHEZ stated he would not personally make the delivery, but would send a friend. CS 2 agreed to meet the "deliveryman" in Albany, Oregon. On the same date, CS 2 again called telephone number (503) 621-4831 (Prior Phone 2) and asked when the delivery would arrive. SANCHEZ told CS 2 the deliveryman would drive a dark colored Dodge Dakota and arrive within ten minutes. I provided CS 2 with an audio recording device to monitor and record the conversation during the drug transaction. Approximately ten minutes later a dark green Dodge Dakota arrived at the predetermined meet location and parked next to the vehicle of CS 2. A Hispanic male, the sole occupant of the vehicle, exited the Dodge Dakota and exchanged approximately one pound of crystal methamphetamine with CS 2 for \$7,500 Official Advance Funds (OAF). After the deal, in order to identify the driver, a traffic stop was conducted on the dark colored Dodge Dakota and the sole occupant was identified as LOPEZ. I do not have phone records to verify these calls.

On January 24, 2006, CS 2 received a new number, (503) 309-5822 (Prior Phone 4), from SANCHEZ to be used by CS 2 to contact SANCHEZ. On this same date, at the direction of SAs from the ERO, CS 2 placed several phone calls to SANCHEZ at (503) 309-5822 (Prior Phone 3) and arranged for the purchase of "one" (one pound of methamphetamine) to be delivered to CS 2 at Burger King in Lebanon, Oregon. SANCHEZ told CS 2 that he would not personally meet with CS 2, but he would send a friend. CS 2 made an audio recording of the phone conversations, which I have listened to. I provided CS 2 with an audio recording device to monitor and record the conversation during the drug transaction. After approximately one hour CS 2 called SANCHEZ at (503) 309-5822 (Prior Phone 3) to ascertain when the friend would arrive at the Burger King. SANCHEZ stated he just talked to the friend and the friend would arrive within five minutes in a Gold Dodge Stratus. Within minutes SA Olson observed LOPEZ arrive at the Burger King in a Gold Dodge Status, bearing Oregon registration 120CGD. After arriving at the Burger,King, LOPEZ exited the Stratus and

entered the front passenger seat of CS 2's vehicle where he exchanged approximately one pound of methamphetamine for \$7,500 OAF with CS 2. LOPEZ exited CS 2's vehicle, returned to the Dodge Stratus, and left the area. Law enforcement officers conducted surveillance on LOPEZ after the transaction with CS 2. Agents observed LOPEZ drive to Don Pedro's restaurant located on 122nd Street in Gresham, Oreizon. Agents observed SANCHEZ arrive at Don Pedro's a short time later and meet with LOPEZ. Agents observed LOPEZ exit Don Pedro's together with SANCHEZ, enter SANCHEZ's vehicle, and leave the area. I have verified that these calls involving Prior Phone 3 took place from SANCHEZ's telephone records.

On January 25, 2006, SANCHEZ called CS 2 from (503) 309-5822 (Prior Phone 3) and the two agreed to meet in Sweet Home, Oregon to discuss a \$14,000 debt owed to CS 2 by SANCHEZ's former partner, LOPEZ-Ruiz, also known as RICARDO. SA Dan Olson and I met with CS 2 prior to the arrival of SANCHEZ and concealed a recorder/transmitter in the office of CS 2's business to record the conversations between CS 2 and SANCHEZ. At approximately 10:25 a.m. Sweet Home Police Department (SHPD) Detectives Jeff Lynn and Cindy Pichardo observed a Black Lincoln Navigator bearing Oregon registration YPJ647 arrive at the location. SA Olson observed two Hispanic males exit the Navigator and enter the business. SA Olson identified the two males as SANCHEZ and LOPEZ. CS 2 met with both SANCHEZ and LOPEZ inside the business. SANCHEZ told CS 2 he was having difficulty obtaining the necessary quantities of methamphetamine from his SOS in Arizona. SANCHEZ further indicated he was concerned that some people in Portland were trying to contact his "friends," who were bringing narcotics into Oregon for him, and attempting to do deals without his knowledge. SANCHEZ told CS 2 that his friends from Arizona come to see him and nobody else. I have verified that this call took place from SANCHEZ's telephone records.

SANCHEZ told CS 2 the pound of methamphetamine CS 2 purchased on January 24, 2006, came from a customer to whom SANCHEZ previously supplied five pounds of methamphetamine. SANCHEZ claimed he contacted this customer and instructed him to return one of the five pounds so SANCHEZ could sell it to CS 2.

SANCHEZ and CS 2 discussed current street prices for methamphetamine and SANCHEZ lamented the price of an ounce of methamphetamine had fallen in recent years. SA's observed SANCHEZ and LOPEZ as they left CS 2 and drove to the "OK Country Feed and Seed." SA Olson observed LOPEZ exit the Navigator and enter the store. Sweet Home Police Detective Jeff Lynn later received a phone call from the manager of the "OK Country Feed and Seed" who told Detective Lynn the passenger of a Black Lincoln Navigator just purchased one pound of MSM.

On February 14, 2006, at the direction of SAs, CS 2 placed a phone call to SANCHEZ at (503) 309-5822 (Prior Phone 3) and arranged for the purchase of "one" (one pound of methamphetamine) on the following day. SANCHEZ told CS 2 he was in Arizona, but would send his brother. CS 2 utilized a micro-cassette recorder previously provided by law enforcement to record the phone conversation between him/her and SANCHEZ. I have also verified that this call took place from SANCHEZ's telephone records.

On February 15, 2006, at the direction of SAs, CS 2 attempted to contact SANCHEZ at (503) 309-5822 (Prior Phone 3). However, the telephone number was a prepaid account and was disconnected due to lack of payment. The account was later paid and service resumed the next day. CS 2 contacted FAVELA at telephone number (541) 401-8881 to obtain another telephone number for SANCHEZ. FAVELA said SANCHEZ had another number and she would contact SANCHEZ for CS 2. Within minutes, SANCHEZ contacted CS 2 via tel, number (602) 475-9022 (Prior Phone 4). Linn County Sheriff's Office Detective Dave Snippen and I witnessed CS 2 have the aforementioned telephone conversation with SANCHEZ. SANCHEZ told CS 2 his phone was out of minutes and shut off. SANCHEZ told CS 2 he was unable to contact anyone in Portland that morning to arrange the delivery. SANCHEZ told CS 2 he recently contacted someone in Portland and they would be in Albany, Oregon in one and a half hours. SANCHEZ also stated that the methamphetamine would be delivered in a green Dodge Durango. On February 15, 2006, at approximately 2:30 p.m., CS 2 received a phone call from (602) 475-9022 (Prior Phone 4). I know (602) is a Phoenix area telephone prefix. SANCHEZ told CS 2 that the green Dodge Durango was at Taco Bell, the predetermined meet location and waiting for him/her. Detective Dave Snippen and I witnessed CS 2 have the aforementioned telephone conversation with SANCHEZ. CS 2 drove to the Taco Bell and parked next to a

grey Dodge Durango. The driver of the Durango, later identified via a traffic stop as Raul PONCE-Ochoa, entered the front passenger seat of CS 2's vehicle where he sold approximately one pound of methamphetamine to the CS 2 for \$7,500 OAF. I have also verified that these calls took place from SANCHEZ's telephone records.

On February 20, 2006, PPB Officers Tony Passadore and Mark DeLong conducted a routine traffic stop on a maroon Ford F-150 that SANCHEZ was operating. There were two passengers in the vehicle: Gonzolo RAMOS-Jimenez and Jesus Antonio Ayon Garnica. During the vehicle stop SANCHEZ provided Officers with information about narcotics being sold at 416 SE 194th, Portland, Oregon. PPB Officers seized \$17,506 U.S. Currency from SANCHEZ and the vehicle was impounded until the registered owner, Jorge Armando COTA-Lopez, and SANCHEZ later retrieved it on February 23, 2006. Officers noted that there were four different cellular telephones in the vehicle. Officers responded to 416 SE 194th, Portland, Oregon and seized approximately 12 ounces of methamphetamine and approximately eight pounds of MSM from Michelle RAMIREZ pursuant to a consent search of a residence she occupied. I received information from ROCN detectives that, through their investigations, RAMIREZ has been identified as a low level distributor for SANCHEZ. Based on my training and experience and that of other agents, I believe SANCHEZ provided this information to redirect the attention of law enforcement officers away from him.

On February 22, 2006, CS 2 contacted me and stated SANCHEZ met with the CS in Sweet Home, Oregon, and provided CS 2 details about the traffic stop that occurred on February 20, 2006 in Portland, including that SANCHEZ paid \$23,000 in cash to a friend in Arizona for the vehicle. SANCHEZ further told CS 2 that he had a contact at Sprint who can supply him phones if he ever felt that law enforcement was on to him.

On March 9, 2006, CS 2 contacted law enforcement by telephone and said he/she again met with SANCHEZ in person in Sweet Home, Oregon. SANCHEZ came to speak with CS 2 unexpectedly and the meeting was not recorded. CS 2 stated SANCHEZ provided him/her with a new telephone number, (503) 621-4083 (Prior Phone 6), for CS 2 to contact SANCHEZ for future methamphetamine transactions. SANCHEZ told CS 2 he no longer used a previous telephone number, (503) 309-5822 (Prior Phone 3),

that he had given to CS 2. CS 2 said SANCHEZ attempted to borrow \$20,000 from the CS. CS 2 said SANCHEZ said he had \$50,000, but needed \$70,000 to purchase methamphetamine in Arizona. SANCHEZ told the CS that he intended to travel to Arizona to purchase methamphetamine on March 9, 2006, in the yellow Dodge truck SANCHEZ was driving. CS 2 personally observed this vehicle. CS 2 stated SANCHEZ also bragged about distributing eight to ten pounds of methamphetamine a week from Arizona to Oklahoma, at a price of \$10,000 to \$16,000 per pound. CS 2 believes SANCHEZ also has a managerial role within another DTO in Arizona that is believed to be an SOS for other organizations.

On March 14, 2006, at the direction of SAs, CS 2 contacted SANCHEZ at Prior Phone 6 and made arrangements for the purchase of "one" (one pound of methamphetamine). CS 2 utilized a micro-cassette recorder I previously provided to record all the phone conversations between him/her and SANCHEZ. All conversations between CS 2 and SANCHEZ were conducted in English. I have listened to all recorded telephone conversations between CS 2 and SANCHEZ and have verified what CS 2 has told me about the conversation is true. SANCHEZ stated that he would not be able to make the delivery, but would arrange for the delivery to take place. I do not have phone records from this date and thus cannot independently verify that this call occurred.

On March 14, 2006, DEA SAs in Phoenix, Arizona observed a yellow Dodge truck at 5529 North 23rd Avenue, Phoenix, Arizona, similar to the vehicle CS 2 said SANCHEZ had in Sweet Home, Oregon, on March 9, 2006. Phoenix SAs also saw a maroon Ford truck with Arizona license 621 SNS at 5529 North 23rd Avenue, Phoenix, Arizona. The maroon Ford is the same vehicle SANCHEZ drove when he was stopped by PPB Officers on February 20, 2006.

On March 15, 2006, at the direction of SAs from the ERO, CS 2 contacted SANCHEZ at Prior Phone 6 to coordinate the delivery of the "one" (one pound of methamphetamine) that was ordered from SANCHEZ. CS 2 recorded the telephone conversation with SANCHEZ. CS 2 asked SANCHEZ when it would be delivered to CS 2 in Albany. While he continued his conversation with CS 2, SANCHEZ could be overheard utilizing a second telephone to call an individual SANCHEZ called PARIENTE. SANCHEZ spoke in Spanish. The recording made by CS 2 captured a portion of the conversation of SANCHEZ had with PARIENTE. SA Dan Olson,

who is fluent in Spanish, later translated SANCHEZ's half of the conversation, and heard SANCHEZ ask PARIENTE if he was going to meet "that guy" in Albany. SANCHEZ confirmed PARIENTE would be "there" at 2:20 p.m. SANCHEZ then refocused his conversation to CS 2 and told him/her that it (the methamphetamine) would be delivered at the predetermined meet location at 2:20 p.m. in a white Grand Marquis. I have also verified that these calls took place from SANCHEZ's telephone records.

Law enforcement provided CS 2 with an audio recording device to monitor and record the conversation during the drug transaction. At approximately 2:10 p.m. CS 2 arrived at the predetermined meet location and met with the lone occupant of a white Mercury Grand Marquis, a Hispanic male. CS 2 purchased approximately one pound of methamphetamine from the Hispanic male for \$7,500 OAF. ROCN agents observed this same Hispanic male leave the residence at 5720 SE Jenne Road, Portland, Oregon at 12:54 p.m. earlier that day.

On the morning of March 22, 2006, PPB conducted a traffic stop of a vehicle driven by COTA-Lopez (COTA-Lopez is believed to be a member of the SANCHEZ DTO). COTA-Lopez committed a traffic infraction by making an improper turn, was stopped, and issued a traffic citation. The vehicle was towed because COTA-Lopez did not have an operator's license. During an inventory search of the vehicle, prior to towing, an officer discovered a bag containing what was later determined to be approximately 15 pounds of MSM. Later on March 22, 2006, SANCHEZ contacted CS 2 from (503) 754-1382 (Prior Phone 5), and told CS 2 that (503) 754-1382 (Prior Phone 5) was the new number that could be used to contact him. The phone number SANCHEZ was calling from, (503) 754-1382, also appeared on CS 2's caller identification. This is the seventh phone the SANCHEZ DTO has either switched to or dropped during the course of this investigation.

On April 3, 2006, at the direction of law enforcement, CS 2 placed two calls to SANCHEZ on Prior Phone 6, to check whether SANCHEZ was continuing to utilize Prior Phone 6. CS 2 was unable to contact SANCHEZ on Prior Phone 6. On the same date, CS 2 placed a call to (503) 754-1382 and was able to contact SANCHEZ on the first attempt. CS 2 asked SANCHEZ if he was continuing to use Prior Phone 6 and SANCHEZ told CS 2 he had not turned on Prior Phone 6 in two days. I have verified this series of phone calls

through SANCHEZ's telephone records. CS 2 also recorded these telephone calls.

On April 4, 2006, at the direction of SAs from the ERO, CS 2 attempted to call SANCHEZ on (503) 754-1382 (Prior Phone 5), to inquire about buying "five" (five pounds of methamphetamine). SANCHEZ did not immediately answer the call. However, right after CS 2 terminated the call, SANCHEZ immediately called CS 2 back from (503) 754-1382 (Prior Phone 5). During the call CS 2 told SANCHEZ he/she had some people that were interested in "buying five pounds" and he/she wanted to know what it would cost and whether he/she could get a price break. SANCHEZ told CS 2 that the lowest he could sell it for was \$7,250 a pound. CS 2 told SANCHEZ that he/she would call him back. CS 2 has told me that when arranging previous methamphetamine deals with SANCHEZ he/she would rarely use the name of the drug but rather would use terms like "I want one," meaning he/she wanted to buy one pound of methamphetamine. CS 2 used to buy a pound of methamphetamine from SANCHEZ for approximately \$7,500. About 20 minutes later CS 2 called SANCHEZ back on (503) 754-1382 (Prior Phone 5) and told SANCHEZ that the price sounded good and that he/she was interested and would call SANCHEZ back in a week or two to do the deal. SANCHEZ told CS 2 that he only wanted to deal directly with him/her. I have verified this series of phone calls through SANCHEZ's telephone records. These phone calls were made in my presence and they were also recorded.

On April 10, 2006, telephone number (503) 754-1382 (Prior Phone 5) was deactivated by the provider due to lack of payment. Prior Phone 5 was a prepaid account. Following the deactivation of Prior Phone 5, SANCHEZ utilized Prior Phone 6 and potentially another unknown phone, to contact people associated with his DTO.

On April 16, 2006, FAVELA stopped by and visited CS 2 and they talked about how it was hard to get a hold of SANCHEZ recently. CS 2 told FAVELA that he was trying to get a hold of SANCHEZ and complained to her about not being able to get a hold of him.

On April 17, 2006, SANCHEZ called CS 2 and provided CS 2 with Target Cellphone A, (602) 718-9566, as a new number CS 2 should use to contact him. SANCHEZ told CS 2 that this was a good number for him now and that he was still in Phoenix, Arizona.

CS 2 told SANCHEZ that he needed something on Wednesday and that he would call SANCHEZ back to set it up after he got the money. On April 18, 2006, CS 2 called Target Cellphone A, (602) 718-9566, from Oregon and talked to SANCHEZ, who was still believed to be in Arizona. CS 2 ordered "one" (one pound of methamphetamine) for tomorrow and checked to make sure the price was still \$7,500. SAs Brian Flannery and Frank Sampson witnessed CS 2 make the phone call to SANCHEZ and watched CS 2 dial the number for Target Cellphone A, (602) 718-9566. SA Flannery also recorded the conversation between CS 2 and SANCHEZ. On April 19, 2006, CS 2 again called SANCHEZ on Target Cellphone A, and SANCHEZ told him/her that the guy was just now leaving Portland, Oregon and would be there around 2:00. Later, SANCHEZ called CS 2 from (503) 621-4083 (Prior Phone 6), and told CS 2 that the guy was about five minutes away and gave a description of the vehicle the courier was driving. Approximately five minutes later CS 2 arrived at the predetermined meet location in Albany, Oregon and saw the vehicle SANCHEZ described and noticed that it was occupied by two male Hispanics. Law enforcement agents had surveillance on the meet location. The driver of the vehicle was identified by law enforcement agents as PARIENTE. The other person in the vehicle was unknown. The unknown male Hispanic came over to CS 2's vehicle and delivered one pound of methamphetamine in exchange for \$7,500. Law enforcement agents observed the unknown male Hispanic make contact with CS 2. I have verified, from SANCHEZ's telephone records, that these calls took place.

On May 9, 2006, CS 2 contacted law enforcement and said he had received a call from SANCHEZ on telephone number (602) 515-2523, **Target Cellphone B**. CS 2 did not answer the call and SANCHEZ left a voice mail instructing CS 2 to call him back at (602) 5152523. CS 2 then attempted to call SANCHEZ at **Target Cellphone B**. However, as CS 2 was dialing the number, SANCHEZ again called CS 2 from **Target Cellphone B**. During this conversation, CS 2 told SANCHEZ that he/she was contacted by LOPEZ-Ruiz, who offered to provide CS 2 methamphetamine. SANCHEZ told CS 2 that all his "guys" are trying to "take my business." CS 2 explained to SANCHEZ that business had been slow. SANCHEZ told CS 2 if he/she needed anything to call him. I have verified, from SANCHEZ's telephone records, that these calls took place.

SAs from the ERO have been able to corroborate information received from CS 2 about the SANCHEZ DTO through independent information gained through other confidential sources, defendant interviews, and law enforcement investigations. As a result of this corroboration, the information provided by CS 2 is believed to be reliable.

*Affidavit of SA Ryan Lawyer In Support of Application for Interception of Wire Communication at 21-36.*

The almost staggering amount of information developed through CS 2 prior to the wiretap application was supplemented by another confidential source: CS 3. CS 3 provided additional background concerning the conspiracy:

“On March 7, 2006, SA Flannery, DVD Officer Dave Abrahamson, and I interviewed a DVD CS (hereafter referred to as "CS 3"). CS 3 has cooperated and continues to cooperate with law enforcement officers because he/she believes members of the SANCHEZ DTO will harm or kill the CS and/or family members of the CS if they are not incarcerated.

CS 3 told SAs over the past several years he/she became aware of a group of Hispanic males involved in the distribution of methamphetamine and cocaine in the Portland, Oregon area. CS 3 said he/she knows the head of this group as GORDO. CS 3 identified a photo of SANCHEZ as the person she knows as GORDO. CS 3 said SANCHEZ arranged for the transportation of methamphetamine and cocaine from Phoenix, Arizona to Portland, Oregon. CS 3 said the drugs are distributed by ORTIZ-Martinez and an individual known as CUATRO. CS 3 identified a photograph of LOPEZ as the person he/she knew as CUATRO. CS 3 said the only drugs he/she has seen in the possession of SANCHEZ were "user amounts" of cocaine.

CS 3 told law enforcement that in January 2006, he/she overheard SANCHEZ talking on a cellular telephone about what he could "get for \$50,000 or \$100,000" and could he get "additional price breaks." SANCHEZ later told CS 3 he was calling "Arizona." CS 3 stated SANCHEZ told the CS SANCHEZ obtained methamphetamine from Arizona. CS 3 said ORTIZ-Martinez also

told the CS that he received methamphetamine and cocaine from Phoenix, Arizona.

CS 3 said he/she knows SANCHEZ has used telephone number of (503) 309- 5822 and has seen SANCHEZ in possession of multiple cellular telephones at a time. CS 3 stated that SANCHEZ changes his telephone number every few weeks. CS 3 has also heard SANCHEZ, on multiple occasions, refer to things being "hot" up there (the Portland metropolitan area).

CS 3 stated that he/she knows that SANCHEZ occasionally asks people to carryout small tasks like renting motel rooms to assist members of the SANCHEZ DTO avoid detection by law enforcement. CS 3 said he/she only communicated with SANCHEZ when SANCHEZ needed something. CS 3 stated he/she does not know the SOS for SANCHEZ in Arizona and had never been directly asked to transport methamphetamine from Arizona to Oregon on his behalf. CS 3 believed he/she would never have an opportunity to be introduced to the SOS in Arizona. DVD Officer Abrahamson later told SAs CS 3 previously informed him SANCHEZ requested CS 3 to travel to Arizona on SANCHEZ's behalf.

CS 3 was unaware of any permanent residences associated with SANCHEZ. CS 3 believed SANCHEZ normally stayed at random residences each night he was in the Portland area. CS 3 stated that SANCHEZ had a girlfriend named Mercedes Townsend. Law enforcement databases indicate Townsend was arrested in June of 1999 for conspiracy to manufacture methamphetamine following the seizure of approximately 49.4 pounds of pseudoephedrine tablets. CS 3 stated that much of the information he/she gained about the SANCHEZ DTO came through his/her association with SANCHEZ, ORTIZ-Martinez, and Jorge COTA-Lopez, as well as his/her knowledge and observations of other Hispanic drug dealers he/she knows.

SAs from the ERO were able to corroborate information received from CS 3 about the SANCHEZ DTO through independent information gained through other confidential sources, defendant interviews and law enforcement investigations. As a result of this corroboration, the information provided by CS 3 is believed to be reliable.”

*Affidavit of SA Ryan Lawyer In Support of Application for Interception of Wire Communication at 36-38.*

**3. Pen register and toll analysis was also highly successful:**

It is not clear from the Affidavit when the government actually began a comprehensive analysis of the phones it had learned were connected to this case. The first reference to a specific request concerning toll records is April 26, 2006. *Id.* at 38. Once the government actually obtained records, they yielded important and useful information about the conspiracy:

**Target Cellphone A: (602) 718-9566**

On April 17, 2006, SANCHEZ called CS 2 and provided CS 2 with **Target Cellphone A**, (602) 718-9566 as a contact number while SANCHEZ was in Arizona. On April 24, 2006, law enforcement sent the provider of **Target Cellphone A** a subpoena for toll records. On April 26, 2006, agents obtained limited toll records for **Target Cellphone A**. The company only sent the records of incoming and outgoing calls from between April 12, 2006, and April 19, 2006. Toll records indicate **Target Cellphone A** was activated on April 9, 2006 and began to be used on April 12, 2006. Historical toll record information for Target Cellphone A shows approximately 798 incoming and outgoing calls between April 12, 2006 and April 19, 2006. On May 1, 2006, at approximately 3:00 p.m., we began receiving pen register and trap and trace information on Target Cellphone A. Between May 1, 2006, and May 2, 2006, there have been an additional 49 incoming and outgoing calls on **Target Cellphone A**. **The following** is a summary of calls which were incoming or outgoing on **Target Cellphone A** during this period:

a. Toll record information indicated **Target Cellphone A had 102 contacts** with Phoenix cellular number (602) 367-7959, subscribed to Jessica Ortega at 4636 N 22nd Ave., Phoenix, Arizona. According to law enforcement databases, Ortega's cellular number was also in contact with the targets of a current DEA Los Angeles narcotics investigation. The last reported contact between **Target Cellphone A** and number (602) 367-7959 was May 2, 2006.

b. Toll record information indicated **Target Cellphone A** had 73 contacts with (503) 309-3857, subscribed to Vladimir MEZA-Briceno at 16415 SE Stark, Portland. Criminal records show Juan Carlos Meza-Mendez uses an alias of Vladimir Meza-Briceno with a date of birth matching the DOB listed on Meza-Briceno's Sprint cellular account. Meza-Mendez has been arrested by ICE/CBP at ports of entry in California and Arizona for illegal entry. CS 3 has identified telephone number (503) 309-3857 as a number used by PARIENTE. PARIENTE has been identified as a lieutenant of the SANCHEZ DTO and has delivered one pound of methamphetamine to CS 2 on two occasions. The last reported contact between **Target Cellphone A** and number (503) 309-3857 was May 2, 2006.

c. Toll record information indicated **Target Cellphone A** had 36 contacts with (602) 349-7954, subscribed to a Jesus Garcia, but known to be used by Jorge Armando COTA-Lopez. COTA-Lopez is the registered owner of the Ford F1 50 SANCHEZ was driving on February 20, 2006, when he was stopped by PPB and approximately \$17,000 in cash was seized from the vehicle. Additionally, he was stopped by law enforcement on March 22, 2006, and approximately 15 pounds of MSM was found in his vehicle. CS 3 has identified COTA-Lopez., through his/her observations, as an associate of SANCHEZ. The last reported contact between **Target Cellphone A** and number (602) 349-7954 was April 19, 2006.

d. Toll record information indicated **Target Cellphone A** had 31 contacts with (503) 753-9030, subscribed to Gonzalo RAMOS-Jimenez, aka NACHO. CS 2 and CS 3 have identified RAMOS-Jimenez, via a photograph, as the person they know as NACHO. CS 2 has told law enforcement that NACHO has delivered methamphetamine to him/her on many occasions over the last two years. The last reported contact between **Target Cellphone A** and number (503) 753-9030 was April 19, 2006.

e. Toll record information indicated **Target Cellphone A** had 15 contacts with Phoenix, Arizona telephone number (602) 434-4092. This number is the target of a DEA Phoenix investigation involving the distribution of methamphetamine. DEA Phoenix is currently monitoring a pen on telephone number (602) 434-4092. The last reported contact between **Target Cellphone A** and number (602) 434-4092 was. April 19, 2006.

f. Toll record information indicated **Target Cellphone A** had 20 contacts with Noah WIBLE at telephone number (541) 409-5280. In February 2006, Linn County narcotics detectives utilized a

confidential source to conduct controlled purchases of methamphetamine from WIBLE. This number was last contacted by Target Cellphone A on May 2, 2006.

g. Toll record information indicated Target Cellphone A had 10 contacts with (503) 957-2767, subscribed to Jesus Antonio Ayon-Garnica at 17010 SE Stark St., Apt. E314, Portland. Ayon-Garnica was a passenger in SANCHEZ's car during the traffic stop on February 20, 2006. This number was last contacted on April 19, 2006.

h. Toll record information indicated Target Cellphone A had nine contact with Lebanon, Oregon cellular number (541) 570-2096, subscribed to, Cory SPENCE at 42 Market St., Apt. 34, Lebanon, Oregon. Linn County narcotics detectives have determined, through controlled narcotics buys and information provided by numerous cooperating defendants, that SPENCE is a methamphetamine distributor in Linn County. CS 2 told SAs that SPENCE obtains methamphetamine from SANCHEZ. This number was last contacted by Target Cellphone A on April 19, 2006.

i. Toll record information indicated Target Cellphone A had one contact with FAVELA's cellular number (541) 401-8881. FAVELA has been identified by CS 2 and other cooperating defendants as a broker and point of contact for SANCHEZ and other Linn County methamphetamine distributors. This number was last-contacted by Target Cellphone A on April 19, 2006.

j. Toll record information indicated Target Cellphone A had one contact with Lebanon phone number (541) 409-2866. Linn County narcotics detectives previously interviewed a local CS, and determined (541) 409-2866 is a number utilized by Randy DRAKE, a local methamphetamine dealer. We do not yet have subscriber information for this phone. This number was contacted by Target Cellphone A on April 18, 2006.

k. On April 26, 2006, the Honorable United States Magistrate Judge Janice M. Stewart signed a court order authorizing the installation of a pen register and trap and trace device on **Target Cellphone A**. Due to a problem with the service provider, updated records were not received until 3:00 p.m. on May 1, 2006.

### **Prior Phones Utilized by SANCHEZ**

#### **Telephone Number (5031621-4083 (Prior Pbone 6)**

On March 9, 2006, CS 2 contacted me and advised SANCHEZ had discontinued use of a previous telephone number he

had been using, telephone number (503) 309-5822, due to possible law enforcement detection based upon the February 20, 2006, traffic stop conducted by PPB. - CS 2 stated SANCHEZ told him/her that he would now be utilizing cellular telephone number (503) 621-4083 (Prior Phone 6). Starting the week of April 3, 2006, and continuing to April 10, 2006, pen registers and toll record information indicated, based upon call volume, that SANCHEZ was temporarily not using Prior Phone 6 as his primary telephone. Rather, the records indicated SANCHEZ had switched over to using (503) 754-1382 (Prior Phone 5) as his primary number. Pen registers and toll record information, however, indicated SANCHEZ continued to make outgoing calls and receive incoming calls on Prior Phone 6. Since the (503) 754-1382 (Prior Phone 5) number was deactivated on April 10, 2006, the call volume on Prior Phone 6 once again increased. As of April 28, 2006, Prior Phone 6, a prepaid cellular telephone, had only approximately \$11 worth of service time available.

On March 14, 2006, the Honorable United States Magistrate Judge Thomas M. Coffin signed a court order authorizing the installation of a pen register and trap and trace device(503) 621-4083 (Prior Phone 6). Pen registers and toll record information for **Prior Phone 6** shows approximately 1,025 incoming and outgoing calls between March 15, 2006 and **April 28**, 2006. The following is a summary of calls which were incoming or outgoing on **Prior Phone 6** during this period:

a. Pen registers and toll record information indicated Prior Phone **6 had 68** contacts with cellular number (503) 754-6647 and 10 calls to (503) 754-1382 (Prior Phone 5), both subscribed to Juan M. Lopez at 24786 SW Oregon St., Apt. 38, Portland, Oregon. At the beginning of April 2006, CS 3 used cellular number (503) 754-6647 to contact PARIENTE. On March 15, 2006, CS 2 purchased one pound of methamphetamine from PARIENTE for \$7,500. Again, on April 19, 2006, CS 2 purchased another pound of methamphetamine from PARIENTE for \$7,500. On March 22, 2006, SANCHEZ called CS 2 and told him/her that he/she could contact him on (503) 754-1382 (Prior Phone 5). The (503) 754-6647 phone was on the same account as the (503) 754-1382 (Prior Phone 5) and was also deactivated on April 10, 2006, for lack of payment.

b. Pen registers and toll record information indicated Prior Phone 6 had 10 contacts with Filiberto Quintero at cellular number (503) 901-5625. According to law enforcement databases, Filiberto Quintero sold one ounce of cocaine to an undercover agent in July 1995. Agents have identified two vehicles that were used to

deliver methamphetamine to CS 2 as being registered to an Aptia Quintero. Oregon DMV records indicate another vehicle exists that is registered to both Aptia Quintero and Filiberto Quintero with the address of 2731 SE 141<sup>st</sup> Street Portland, Oregon. The most recent contact between the phones was on April 20, 2006.

c. Pen registers and toll record information indicated Prior Phone 6 had 139 contacts with Phoenix cellular number (602) 367-7959, subscribed to Jessica Ortega at 4636 N 22nd Av.-Phoenix, Arizona. The last call between the phones was on April 25, 2006.

d. Pen registers and toll record information indicated Prior Phone 6 had 42 contacts with FAVELA's cellular number (541) 401-8881. The most recent contact between the phones was on April 27, 2006.

e. Pen registers and toll record information indicated Prior Phone 6 had 17 contacts with Lebanon, Oregon cellular number (541) 570-2096, subscribed to Cory SPENCE at 42 Market St., Apt. 34, Lebanon, Oregon. The most recent contact between the phones was on April 23, 2006, in which SPENCE called SANCHEZ.

f. Pen registers and toll record information indicated Prior Phone 6 had 230 contacts with Noah WIBLE at telephone number (541) 409-5280. The most recent contact between the phones was on April 27, 2006, in which WIBLE called SANCHEZ.

g. Pen registers and toll record information indicated Prior Phone 6 had 42 contacts with Mario Perez at residential number (503) 256-8453. The subscriber is listed as Maria Perez at 15950 East Burnside, Portland, Oregon. Law enforcement records indicate that Mario Perez resides at this address and that Mario Perez has a lengthy criminal record for weapons violations, including for attempted murder. The most recent contact between the phones was on March 26, 2006.

h. Pen registers and toll record information verifies that Prior Phone 6 was called by CS 2 to arrange a narcotics transaction on March 15, 2006. Records also verify that CS 2 talked to SANCHEZ on Prior Phone 6 on April 12, 2006. Pen registers and toll record information also verifies that on April 19, 2006, SANCHEZ called CS 2 from Prior Phone 6 to let CS 2 know that the methamphetamine CS 2 ordered was on its way. Telephone Number (503) 754-1382 (Prior Phone 5)

Over the course of this investigation agents have sought and received five prior court orders to install pen registers and trap and

trace operations on three other phones that SANCHEZ has utilized. One phone was disconnected prior to getting any information through the court order. An additional phone utilized by SANCHEZ was disconnected prior to presenting the pen register and trap and trace order to the magistrate.

On March 24, 2006, the Honorable United States Magistrate Judge Donald C. Ashmanskas signed a court order authorizing the installation of a pen register and trap and trace device on (503) 754-1382.

In February 2006, after a prior court order discussed below, a pen register on cellular phone, (503) 309-5822, a phone known to be utilized by SANCHEZ, indicated a high number of calls being made to (503) 754-1382. SAs previously identified, through toll analysis, that telephone number (503) 754-1382 was initially being utilized by either LOPEZ or LOPEZ-Ruiz between February 2006, and mid-March 2006.

On March 22, 2006, SANCHEZ contacted CS 2 from (503) 754-1382, and told him/her that (503) 754-1382 was his new cellular number and he could be contacted at this number. On or about March 22, 2006, the call pattern of (503) 754-1382 changed from a call pattern consistent with being used by either LOPEZ or FAVELA-Gonzalez to a call pattern consistent with prior phones that have been known to be utilized by SANCHEZ.

Between March 22, 2006, and April 10, 2006, phone records have indicated that the incoming and outgoing calls to Prior Phone 6 slowly decreased. However, records indicated that during this time period (503) 754-1382 was replacing telephone number (503) 621-4083. Pen registers and toll record information for telephone number (503) 621-4083 shows approximately 247 incoming and outgoing calls from March 22, 2006 through April 3, 2006. Pen registers and toll record information for (503) 754-1382 (Prior Phone 5) showed approximately 1, 110 incoming and outgoing calls from March 22, 2006 through April 3, 2006. Cell site information obtain from pen registers indicated (503) 754-1382 and telephone number (503) 621-4083 (Prior Phone 6), are always in the same geographical area, leading us to believe that one person is traveling with both phones. Between March 22, 2006, and April 9, 2006, pen registers and toll records also show telephone numbers calling but continuously failing to contact SANCHEZ at Prior Phone 6. The pen registers and

toll records also show that many of these callers, after failing to contact SANCHEZ at telephone number (503) 621-4083, immediately turn around and call (503) 754-1382.

Pen registers and toll record information reveals that (503) 754-1382 is no longer being utilized by SANCHEZ, as of April 10, 2006. The following is a summary of calls which were incoming or outgoing on (503) 754-1382 from between March 22, 2006, and April 10, 2006. During this time period there were approximately 1,910 incoming and outgoing calls on (500)754-1382. Only high frequency calls and calls to suspected DTO members are listed.

a. Pen registers and toll record information indicated (503) 754-1382 had 155 contacts with cellular number (503) 754-6647 subscribed to Juan M. Lopez at 24786 SW Oregon St. Apt. 38 Portland, Oregon. The most recent contact between the phones was on April 9, 2006, roll analysis indicated cellular number (503) 754-6647 is used by either FAVELA-Gonzalez/ or LOPEZ.

b. Pen registers and toll record information indicated (503) 754-1382 had 220 contacts with Phoenix cellular number (602) 367-7959, subscribed to Jessica Ortega at 4636 N 22nd Ave., Phoenix, Arizona. The most recent contact between the phones was on April 9, 2006.

c. Pen registers and toll record information indicated (503) 754-1382 had 53 contacts with Lebanon, Oregon cellular number (541) 570-2096, subscribed to Cory SPENCE at 42 Market St., Apt. 34, Lebanon, Oregon. The most recent contact between the phones was on April 9, 2006.

d. Pen registers and toll record information indicated (503) 754-1382 had 29 contacts with Vancouver, Washington cellular number (360) 433-5393, subscribed to Antonio M. Garcia at 2910 Neals Lane, Vancouver, Washington. The most recent contact between the phones was on April 2, 2006. After SANCHEZ's maroon Ford F150 truck was retrieved from an impound lot on February 23, 2006, the registered owner, Jorge Armando COTA-Lopez, drove the vehicle to this address. Additionally, following the March 15, 2006, controlled purchase made by CS 2, the unknown Hispanic male who delivered the methamphetamine to CS 2 traveled to this location later in the day.

e. Pen registers and toll record information indicated (503) 754-1382 had 100 contacts with (602) 349-7954, subscribed to a Jesus Garcia, but known to be used by Jorge Armando COTA-Lopez. The most recent contact between the phones was on April 10, 2006.

f. Pen registers and toll record information indicated (503) 754-1382 had 29 contacts with cellular number (503) 901-5625, subscribed to Ayq Auto Repair at 605 SE 122nd Ave., Portland, Oregon. The most recent contact between the phones was on April 6, 2006.

g. Pen registers and toll record information indicated (503) 754-1382 had 13 contacts with (971) 533-6626, subscribed to Michelle RAMIREZ at 16415 SE Stark St., Apt. 17, Portland, Oregon. The most recent contact between the phones was on April 5, 2006. On February 20, 2006, based on information provided by SANCHEZ, the PPB seized approximately 12 ounces of methamphetamine, approximately eight pounds of MSM, scales, and other drug packaging materials from RAMIREZ's residence at 416 SE 194th, Portland, Oregon.

h. Pen registers and toll record information indicated (503) 754-1382 had 66 contacts with Noah WIBLE at telephone number (541) 409-5280. The most recent contact between the phones was on April 10, 2006.

i. Pen registers and toll record information indicated (503) 754-1382 had seven contacts with cellular number (541) 401-8881, which is used by FAVELA. The most recent contact between the phones was on April 1, 2006.

j. Pen registers and toll record information verifies that on April 4, 2006, CS 2 talked to SANCHEZ on (503) 754-1382 about arranging a five-pound narcotics transaction.

**Telephone Number (602) 475-9022 (Prior Phone 4)**

On February 15, 2006, at the direction of law enforcement, CS 2 attempted to contact SANCHEZ at (503) 309-5822 (Prior Phone 3). However, the telephone number was a prepaid account and was disconnected due to lack of payment. The account was later paid and service resumed. CS 2 contacted FAVELA at telephone number (541) 401-8881 to obtain another telephone number for SANCHEZ. FAVELA said SANCHEZ had another telephone number and she would contact SANCHEZ for CS 2. Within minutes, SANCHEZ contacted CS 2 via telephone number (602) 475-9022 (Prior Phone 4). Toll records from telephone number (602) 475-9022 (Prior Phone 4) indicated at 12:22 p.m. Pacific Time, SANCHEZ received a call from FAVELA's cellular phone, (541) 401-8881. At 1:00 p.m. Pacific Time, SANCHEZ's phone, (602) 475-9022 (Prior Phone 4), placed a one-minute, two-second call to CS 2. SANCHEZ's phone, (602) 475-9022 (Prior Phone 4), then

exchanged calls with various Arizona and Mexico phone numbers that lasted one to two minutes. At 2:28 p.m. Pacific Time, SANCHEZ's phone, (602) 475-9022 (Prior Phone 4), placed a brief call to CS 2. Immediately following this call, SANCHEZ's Arizona phone, (602) 475-9022 (Prior Phone 4), placed a one-minute, four-second call to FAVELA-Gonzalez's number ((503)753-1153). At 2:45 p.m. Pacific Time, SANCHEZ's Arizona phone, (602) 475-9022 (Prior Phone 4), placed a brief call to FAVELA-Gonzalez's phone.

Prior Phone 4, a prepaid cellular telephone, was activated on February 12, 2006. CS not had any other contact with SANCHEZ on Prior Phone 4 and the phone appears to have been "dropped" sometime after March 15, 2006. The last connected call on Prior Phone 4 was on March 15, 2006, when SANCHEZ called PARIENTE. On March 18, 2006, PARIENTE called Prior Phone 4 and records reveal that the call only lasted 18 seconds and does not appear to have connected. There have been no incoming or outgoing calls since then.

### **Telephone Number (503) 309-5822 (Prior Phone 3)**

In January 2006, SAs identified, via CS 2, that SANCHEZ was using cellular telephone number (503) 309-5822 (Prior Phone 3) to conduct his illegal narcotics business. On January 31, 2006, the Honorable United States Magistrate Judge Thomas M. Coffin signed a court order authorizing SAs to install a pen register and trap and trace device on cellular telephone (503) 309-5822 that was being used by SANCHEZ.

On February 22, 2006, DEA Intelligence Analyst (IA) Tim Halvorsen reviewed pen register activity for (503) 309-5822, hereafter referred to as the "309 phone." Originating cell site information showed the 309 phone was used in the Phoenix, Arizona metropolitan area from February 3, 2006, through February 18, 2006. Cell site records indicated the 309 phone returned to the Portland, Oregon area on February 19, 2006. Originating cell site information indicated the 309 phone was in the Portland, Oregon, metropolitan area from February 19, 2006, through February 24, 2006. Cell site records show the 309 phone traveled to the Phoenix, Arizona area on February 25, 2006.

The following is a summary of some relevant incoming and outgoing numbers dialed on this phone between February 1, 2006, and March 14, 2006. The last outgoing call appears to have been made on March 11, 2006. Not all the calls have been detailed.

a. Pen registers and toll record information indicated the 309 phone had 279 contacts with Phoenix, Arizona cellular number (602) 367-7959, subscribed to Jessica Ortega at 4636 N 22nd Ave., Phoenix, Arizona.

b. The 309 phone also had 46 contacts with Phoenix residential number (602) 293-3962 subscribed to Jessica Ortega at 5529 N 23rd Ave., Phoenix, Arizona. On February 28, 2006, surveillance agents observed SANCHEZ's vehicles, both a maroon Ford pickup and a yellow Dodge pickup, at this residence.

c. The 309 phone had 93 contacts with Portland, Oregon cellular number (971) 533-6626, subscribed to Michelle RAMIREZ at 16415 SE Stark St., Apt. 17, Portland, Oregon.

d. The 309 phone had 170 contacts with Portland cellular number (503) 753-1603. SAs have identified, via pen register data, that this number was used by LOPEZ on January 24, 2006, during the delivery of one pound of methamphetamine to CS 2.

e. Pen registers and toll record information indicated the 309 phone had 77 contacts with Portland cellular number (503) 901-6557. PPB DVD has identified this number as being used by ORTIZ-Martinez, whom they are currently investigating for distribution of cocaine and methamphetamine in the Portland area. DVD has conducted eight controlled purchases of methamphetamine and cocaine from and through ORTIZ-Martinez utilizing both a CS and an undercover task force agent. To this point, DVD has purchased approximately 17 ounces of methamphetamine and eight ounces of cocaine from and through ORTIZ-Martinez. Surveillance has indicated that ORTIZ-Martinez may be getting the narcotics for these deals from a source other than SANCHEZ and members of the SANCHEZ DTO.

f. Pen registers and toll record information indicated the 309 phone had 132 contacts with FAVELA at number (541) 401-8881.

g. Pen registers and toll record information indicated the 309 phone had 77 contacts with Phoenix cellular number (602) 349-6846, subscribed to Ramon Verduzco at 2340 N 48th Lane, Phoenix, Arizona. According to law enforcement databases this address was associated with Gerardo Patino Naranjo in January 2004. Patino

Naranjo was convicted of possession with intent to distribute 400 pounds of marijuana in February 2005.

h. Pen registers and toll record information indicated the 309 phone had 56 contacts with Portland cellular number (503) 753-1153, used by FAVELA-Gonzalez. CS 2 identified FAVELA-Gonzalez as the brother and a criminal associate of SANCHEZ who manages the SANCHEZ DTO when SANCHEZ is in Arizona.

i. Pen registers and toll record information indicated the 309 phone had 49 contacts with Portland cellular number (503) 754-1382, subscribed to Juan M. Lopez at 24786 SW Oregon St., Apt. 38, Portland, Oregon. The 309 phone had 32 contacts with cellular number (503) 754-6647, also subscribed to Juan M. Lopez at this address. Contacts with these numbers began on March 5, 2006, days after contact with LOPEZ and FAVELA-Gonzalez's phones ceased. Records checks indicate this is not a valid address. SANCHEZ previously provided the (503) 754-1382 number as anew number CS 2 could use to contact to him.

j. Pen registers and toll record information indicated the 309 phone had 45 contacts with Lebanon, Oregon cellular number (541) 570-2096, subscribed to Cory SPENCE.

k. Pen registers and toll record information indicated the 309 phone had 36 contacts with Mario Perez at residential number (503) 256-8453.

l. Pen registers and toll record information indicated the 309 phone had 23 contacts with Portland landline, (503) 771-2795, subscribed to Alma Rubio at 7325 NE Halsey St., Portland, Oregon. SANCHEZ listed this address as his on a "consent to search" form signed by him on February 20, 2006.

m. Pen registers and toll record information indicated the 309 phone had 20 contacts with Lebanon phone number (541) 409-2866. Linn County narcotics detectives previously interviewed a local CS, and determined (541) 409-2866 is a number utilized by Randy DRAKE, a local methamphetamine dealer.

n. Pen registers and toll record information indicated the 309 phone had 17 contacts with Vancouver, Washington cellular number (360) 433-5393, subscribed to Antonio M. Garcia at 2910 Neals Lane, Vancouver, Washington.

o. Pen registers and toll record information indicated the 309 phone had 19 contacts with Phoenix cellular number (602) 434-8041. According to law enforcement databases this number was also in contact with Rosalie Howard (623) 478-1943, a target of a previous DEA Phoenix Field Division case involving the distribution of marijuana and methamphetamine.

p. Pen registers and toll record information indicated the 309 phone had nine contacts with Phoenix cellular number (602) 434-4092, subscribed to Egilberto Garcia at 3114 W McDowell Rd., Phoenix, Arizona. According to law enforcement databases, this number is also in contact with a target of a DEA Phoenix investigation involving the distribution of methamphetamine.

q. Pen registers and toll record information indicated the 309 phone had six contacts with Portland cellular number (503) 975-6280; subscribed to Jesus A. Garnica at 6415 NE Killingsworth St., Portland, Oregon. Garnica was a passenger in SANCHEZ's vehicle when SANCHEZ was stopped by PPB on February 20, 2006. Garnica was found to be in possession of \$2,950 in cash.

r. The 309 phone also had 11 contacts with cellular number (503) 284-6955 subscribed to Christian Flores at 6415 NE Killingsworth St., Space D3, Portland, Oregon. Law enforcement has identified a Milagros Reyes Plata as also living at 6415 NE Killingsworth St., Space D5, Portland, Oregon, and as the subscriber of (503) 422-9006 and (503) 422-9784. Pen register records show both of Reyes' phones have also been in contact with ORTIZ-Martinez and FAVELA-Gonzalez. Reyes was also the registered owner of two vehicles used by LOPEZ to deliver methamphetamine to CS 2 on two separate occasions.

s. Pen registers and toll record information indicated the 309 phone had five contacts with Portland cellular number (503) 422-2402, subscribed to Donna Cox at 7227 SE Flavel St., Apt. 3, Portland, Oregon. According to law enforcement databases this number was also in contact with Salvador Parada Cervantes' phone (503) 752-7390. Salvador Parada Cervantes was identified by CS 3 as an individual he/she has personally known to purchase cocaine.

t. Pen registers and toll record information indicated the 309 phone had five contacts with Filiberto Quintero's cellular number (503) 901-5625, subscribed to Ayq Auto Repair at 605 SE 122nd Ave., Portland, Oregon.

u. Pen registers and toll record information indicated the 309 phone had three contacts with Tucson, Arizona cellular number (602) 309-4227, subscribed to Melissa Buelna at 8041 E. Malvern Street East, Tucson, Arizona. Arizona DEA has previously investigated members of the Buelna family in Arizona for importing cocaine into the United States. Erika Buelna is listed as a cosigner on a Wells Fargo bank account owned by SANCHEZ in Arizona.

v. The 309 phone also had one contact with residential number (520) -745-9002, subscribed to Stephany Buelna at 8041 E. Malvern Street East, Tucson, Arizona. According to law

enforcement databases, Eduardo Martan Gastelum used this address in 1989 when Martan was reportedly smuggling multi-hundred pound quantities of cocaine into Arizona from Mexico.

w. Pen registers and toll record information indicated the 309 phone had two contacts with Phoenix cellular number (602) 434-4092, subscribed to Egilberto Garcia at 3114 W McDowell Rd., Phoenix, Arizona. This telephone number is also in contact with a target of a Phoenix DEA case involving the distribution of methamphetamine and cocaine. Phoenix DEA is currently monitoring a pen register on telephone number (602) 434-4092.

x. Pen registers and toll record information indicated the 309 phone had one contact with Phoenix number (602) 455-4628, subscribed to Asadero Obregon Mariscos at 1212 S 28th Ave., Phoenix, Arizona. According to DEA agents in Phoenix, Arizona this number is associated with an investigation involving the distribution of methamphetamine in Arizona.

### **Telephone Numbers Used by FAVELA-Gonzalez and LOPEZ**

On February 13, 2006, SAs also sought and received two court orders to install per registers and trap and trace operations on telephone number (503) 753-1153, identified as FAVELA-Gonzalez's phone, and telephone number (503) 753-1603, identified as LOPEZ's phone. Both FAVELA-Gonzalez and LOPEZ are believed to be high ranking SANCHEZ"DTO members. An analysis of these phones revealed that SANCHEZ regularly used the phone to call and receive calls from other identified members of his DTO, other suspected narcotics dealers, 3rd individuals whose telephone numbers have appeared in other narcotics investigations. Pen register analysis also indicated a high volume of calls from both phones to SANCHEZ, other members of the DTO, and various unknown numbers in Arizona. FAVELA-Gonzalez's phone contacted LOPEZ's phone 326 times and had contact with approximately 60 other common numbers. Pen register information indicated FAVELA-Gonzalez's and LOPEZ's phones also contacted telephone numbers (602) 299-6226 and (602) 348-2627, both of which in turn were also in contact with a telephone number (602) 472-2158 which is associated with a DEA Phoenix investigation involving the distribution of methamphetamine. On or about March 4, 2006, pen register information indicated FAVELA-Gonzalez's and LOPEZ's phones ceased to be utilized. FAVELA-Gonzalez's phone was used to contact the following numbers:

a. 104 contacts with (602) 773-8578, a telephone number used by SANCHEZ. This number was also used by CS 2 to contact SANCHEZ in late December 2005.

b. 41 contacts to Rosalio MIRAMONTES' (503) 975-8655 number. CS 2 previously told us that MIRAMONTES had offered to sell CS 2 pounds of methamphetamine. When CS 2 was still actively dealing drugs SANCHEZ introduced MIRAMONTES to CS 2. On one occasion surveillance agents saw MIRAMONTES traveling in the same vehicle as SANCHEZ.

c. 29 contacts with Jose Gabriel LOPEZ-Ruiz's (503) 309-9108 number. LOPEZ-Ruiz was previously identified by CS 2 and Eryk Miller as a methamphetamine dealer working with SANCHEZ.

d. 21 contacts with telephone number (503) 997-2617. This number has in turn been in contact with telephone number (503) 752-7390, which is a phone that has been utilized by Carlos Cordero-Gomez, an individual ROCN agents have identified as a suspected methamphetamine and cocaine distributor in Portland, Oregon.

e. 18 contacts with Dawn FAVELA's (541) 401-8881 number.

*Affidavit of SA Ryan Lawyer In Support of Application for Interception of Wire Communication at 38-59.*

These records provided the government with an enormous amount of information concerning the operation, structure, and dynamics of this conspiracy. One which, as is argued further below, the government had so thoroughly vetted and exposed, a wiretap was redundant and unnecessary.

**C. The Congressional intent to allow wiretaps only when necessary has been thwarted by a lack of meaningful review of wiretap applications at the same time that such applications have exponentially increased.**

The predecessor to the modern federal wiretap statutory scheme was the Federal Communications Act of 1934, 47 U.S.C. § 605 (1970). *See United States v. Jones*, 542 F.2d 661, & n.10. In the late Sixties, dissatisfaction with this Act,

academic criticism, and the reports of scholarly committees drove Congress to create a new wiretap statute: the Omnibus Crime Control and Safe Streets Act of 1968.

One important factor in the creation of the 1968 Act was a series of contemporaneous Supreme Court decisions addressing the constitutionality of wiretapping. Foremost among these was the *Berger* decision, where the Court rejected a New York wiretapping statute. *See Berger v. United States*, 388 U.S. 41, 63 (1967). While discussing a pre-Title III wiretap, the Supreme Court emphasized that "[f]ew threats to liberty exist which are greater than that posed by the use of eavesdropping devices." *Id.* at 63. The Court in *Berger* went on to recognize that although wiretapping is a more expedient form of investigation, expediency in law enforcement must ultimately yield to the requirements of the Fourth Amendment "before the innermost secrets of one's home or office are invaded." *Id.*; see also *United States v. Kalustian*, 529 F.2d 585, 589 (9th Cir. 1976). The wiretap provisions of the Omnibus Crime Control and Safe Streets Act of 1968 are now codified at 18 USC §§ 2510 - 2520.

Given today's wildly expanding tolerance for wiretapping, it is remarkable to recall that in enacting Title III in 1968, Congress actually intended to increase protections for individuals against surveillance and recording. This goal was summarized in one Senate Report:

Title III has as its dual purpose (1) **protecting the privacy of wire and oral communications**, and (2) delineating on a uniform basis the circumstances and conditions under which the interception of

wire and oral communications may be authorized. To assure the privacy of oral and wire communications, Title III prohibits all wiretapping and electronic surveillance by persons other than duly authorized law enforcement officers engaged in the investigation or prevention of specified types of serious crimes, and only after authorization of a court order obtained after a showing and finding of probable cause.

*Jones*, 542 F.2d at 668, quoting S.Rep. No. 1097, *reprinted in* U.S. Code Cong. & Admin. News 1968, 90th Cong., 2d Sess., at 2153.

Against this backdrop of Congressional intent to protect privacy in the face of emerging technologies is the stark reality of the current Title III system in which the judiciary has abrogated its gatekeeper function. Statistics Congress required to be kept as part of oversight of the Title III system clearly reveal this lack of meaningful supervision. Under Title III, the Administrative Office of the United States Courts is directed to compile statistics concerning wiretap applications, authorizations, and related data. The most recent report covers 2005.<sup>2</sup>

**This report reveals that during 2005, 1773 intercepts were authorized by state and federal courts representing an increase from the previous year and the largest number of authorizations in history. After considering those 1773 applications, one application was denied by the courts. See *Report of the Director of the Administrative Office of the United States Courts on Applications for Orders Authorizing or Approving the Interception of Wire, Oral, or Electronic Communications* April 2006 at 5 (“2005 Wiretap Report”).** Since the passage of Title III in 1968 federal and state courts have **authorized 32,748 wiretaps and**

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<sup>2</sup> Reports going back to 1996 can be obtained at: <http://www.uscourts.gov/library/wiretap.html>.

**denied only 32 applications.** See *Electronic Privacy Information Center Title III Chart* found at [www.epic.org/privacy/wiretap/stats/wiretap\\_stats.html](http://www.epic.org/privacy/wiretap/stats/wiretap_stats.html). **In the last 18 years, despite nearly 20,000 approvals only 5 applications have been denied. 99.99975% of the applications are approved.**

These statistics indicate that the judiciary has not truly engaged in the necessity analysis required by Title III, Congress, and the Constitution.<sup>3</sup> It simply defies common sense that the courts, if they were to apply a meaningful standard for what is “necessary” in a given case, would have become such a transparent rubber stamp for Executive intrusion into fundamental privacy rights.

Unfortunately, the entire mechanism for checking unnecessary and inappropriate Title III wiretap requests is broken. At the front end, the District Court judges informed by unbelievably permissive and limited scrutiny from the Court of Appeals apparently never deny applications. Then an aggrieved party to interception is tasked with convincing the very judge that approved the application that the decision was an error. And finally, if the judge refuses to find any error then the defendant must convince an appellate court that the judge abused his discretion in granting the authorization in the first place. It is no wonder that only a handful of cases have ever ordered suppression under Title III. The consequence, however, is that there is no one checking the process at the point of the application and no one checking the process at the back end either.

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<sup>3</sup> The Foreign Intelligence Surveillance Court is also a rubber stamp for wiretap requests. After being presented 15,000 requests under the Act since 1979 it approved all of them except **five** without any modification and did not deny a single one. See [http://www.epic.org/privacy/wiretap/stats/fisa\\_stats.html](http://www.epic.org/privacy/wiretap/stats/fisa_stats.html).

There is significant reason any court should be concerned about the unchecked environment surrounding Title III. It is not as though these wiretaps only impact criminals. According the *2005 Wiretap Report*, on average **107 different people** were intercepted in the typical wiretap. *See Report* at 5. In this case, given a conspiracy indictment charging eight defendants, nearly **100 people** guilty of nothing had the government listening to their calls.

Calls that might have been very personal and had nothing to do with criminal activity were recorded and scrutinized by the government in this case despite “minimization” requirements. How do we know this? Because the 2005 Wiretap Report tells us that on average only 22% of the intercepted calls were incriminating. *Id.* **Nearly 80% of the time the government is listening in on completely innocuous conversations between innocent people.**

This liberal approach to Title III might be justified if matters of national security or violence were the impetus for these requests. In fact, very rarely are wiretaps ever requested for anything other than drug crimes. In 2005 of the 1773 intercepts authorized 1443 (81%) were for drug offenses, a number double what it was ten years ago. Unfortunately, what has developed is an environment where all a prosecutor or agent needs to do is claim the existence of a “drug conspiracy” wrap it in boilerplate language of necessity and a wiretap is authorized even when, as is the case here, it was far from necessary. On this point, the District of Columbia has observed that: “we must be careful not to permit the government merely to characterize a case as a “drug conspiracy” . . . that is therefore inherently

difficult to investigate. The affidavit must show with specificity why in this particular investigation ordinary means of investigation will fail.” *United States v. Robinson*, 698F.2d 448, 453 (D.C.Cir. 1983)(per curiam), quoted in *Ippolito*, 774 F.2d at 1486, and in *United States v. Simpson*, 813 F.2d 1462, 1471 (9th Cir. 1987).

**D. The Judiciary’s apparent deference to the Executive is misplaced and inconsistent with Congressional intent:**

While the statistical realities of Title III wiretaps provide ample reason for the court to strictly scrutinize these wiretaps and doubt the government’s claim of need, other more in depth investigations into Executive misuse of surveillance powers provide an even more compelling reason for skepticism. For example, on March 9, 2007 it was revealed that the Department of Justice has been egregiously misusing the power to issue National Security Letters and Requests to obtain information from third parties about United States Citizens under the Patriot Act. *See generally: A Review of the Federal Bureau of Investigation’s Use of National Security Letters* found at: <http://www.usdoj.gov/oig/special/s0703b/final.pdf>.

The use of these letters was liberalized by the Patriot Act and allowed the Department to use them to obtain information about United States Citizens for the first time. *Id.* at x. It also broadly expanded the number of people at the FBI that could authorize such a letter. Much like Title III, Congress demanded data and appropriate controls to assure accountability concerning the issuance of these letters. *Id.* at xiv – xv. FBI records indicated that in 2000 before the Patriot Act,

some 8500 Letters were issued, a number that increased to more than 45,000 in 2005.

The OIG's review revealed at the outset that the FBI failed to accurately track the number of letters issued and therefore that its figures were significantly understated and many thousands more Letters and Requests were actually issued.<sup>4</sup> In fact, according to the OIG, there were at least **140,000** of Requests under the Act from 2003 to 2005. In addition, the number of United States Citizens coming under scrutiny also increased, from none before the Patriot Act, to 53% by 2005. *Id* at xx.

Unsurprisingly, the government egregiously abused its unchecked power to issue these Letters and Requests. *Id* at xxviii – xxxviii. When the OIG inspected only 77 case files involving 293 Requests it found 22 violations, nearly as many as the FBI discovered (26) during its “review” of the entire organization. *Id.* at xxxiii. The FBI repeatedly made factual misstatements to justify claims of exigent circumstances for ignoring certain protocols and policies. *Id* at xxxviii.

Importantly, very much like Title III's necessity requirement, the guidelines regarding the use of Letters and Requests, purported to limit the use of these to specific situations reflecting emergencies or true national security concerns were violated or ignored. *See e.g. id* at xxxv-xli. The OIG found that FBI repeatedly violated its own policies and guidelines and created an environment, just like Title

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<sup>4</sup> Mr. Martinez-Flores has been unable to find any indication that the Department of Justice OIG has ever conducted any investigation into possible misuse of Title III wiretaps.

III, where law enforcement effectively used these whenever it wanted to use them. It claimed exigencies when there were no exigencies. It used them for investigations that had nothing to do with national security. It obtained types of records not authorized and otherwise flaunted its own rules and Congressional intent.

Mr. Martinez-Flores is left to speculate about what an OIG investigation into the issuance of Title III wiretaps would reveal. He must instead depend on the court to meaningfully apply the necessity requirement to this application and these facts.

The government's application in this case fails for two primary reasons: (1) it was not necessary because the government failed to pursue so many leads before resorting to a wiretap; and (2) it had so thoroughly exposed this routine drug conspiracy at the time of the application it was not necessary.

**E. The government ignored numerous investigative leads in this case prior to applying for a wiretap.**

The government's affidavit in support of the wiretap order must give a factual basis sufficient to show that ordinary investigative procedures have failed or will fail in the particular case at hand. *United States v. Spagnuolo*, 549 F.2d 705, 710 (9th Cir. 1977); *United States v. Ippolito*, 774 F.2d. 1482, 1486 (9th Cir., 1985) ["Such a showing must allege specific circumstances that render normal investigative techniques particularly ineffective, or the application must be

denied." ] In order to show necessity, the government must overcome the statutory presumption against granting a wiretap application. *Ippolito*, 774 F.2d at 1486.

The Ninth Circuit has "expressly adopted a practical and common sense approach in determining the sufficiency of government wiretap affidavits." *Ippolito*, 774 F.2d at 1486, citing *Abascal*, 564 F.2d at 825. The Circuit's approach is consistent with the legislative history of the wiretap statute. S.Rep.No. 1097, 90th Cong. 2d Sess.1968, U.S. Code Cong. & Adm. News, pp. 2112, 2190. Fundamental to this approach is a showing that the agents endeavored in good faith to successfully utilize normal investigative techniques: "[T]he affidavit must reveal that normal investigative techniques have been employed in a good faith effort to determine the identity of those violating the law and to assemble sufficient evidence to justify their prosecution and that these efforts have failed to achieve their ends." *Spagnuolo*, 549 F.2d at 710.

Accordingly, although law enforcement agencies need not exhaust all conceivable alternative procedures before resorting to a wiretap, the government must show, by a full and complete statement, and the issuing court must find, that "normal investigative techniques employing a normal amount of resources have failed to make the case within a reasonable period of time." *Ippolito*, 774 F.2d at 1486, quoting from *Spagnuolo*, 549 F.2d at 710. The agent's experiences standing alone are not sufficient to meet the good faith standard. Thus, for an agent to assert in an affidavit that based on his/her experience, s/he believes that normal, investigative methods would fail or are too dangerous, is not sufficient to satisfy

the good faith requirement. As explained in *Ippolito*, 774 F.2d at 1486, any such showing requires setting forth an adequate factual history of the investigation and a description of the criminal enterprise sufficient to enable the district judge to determine, independently of an agent's assertions with respect to his or other agents' experiences, that ordinary investigative techniques very likely will not succeed. The government's application in this case falls short.

1. **Named Cooperating Witnesses provided investigative leads that were ignored.**

Robert Rains identified an apartment in Gresham, Oregon as a locus for activities of the conspiracy. The affidavit does not indicate that physical surveillance was attempted on this location. It does not appear that anyone associated with management of the apartment was contacted. The affidavit does not demonstrate that any attempt was made to recruit other individuals at the complex who might provide information like license plates, physical descriptions, or other information. Rains also identified a residence in Portland, Oregon associated with the conspiracy and other relevant locations. Again it appears there was little or no effort to follow up on those or their possible significance to the conspiracy.

Joseph Jayne told the government in November 2004 that he believed that members of the conspiracy made regular trips to Arizona and when they returned had better methamphetamine. Thus no later than the fall of 2004 the government had information from a named informant that Arizona was the source for the

conspiracy's drugs and yet it did nothing to explore that connection. There is little or no indication in the application that the government made any effort to engage or coordinate with the DEA in Arizona or otherwise investigate through traditional means the Arizona supply connection. The lack of a coordinated investigation is a glaring hole in this request and taints the entire application. If discovering the source of supply in Arizona was so important that it justified this wiretap, why was so little done to pursue the dozens of leads in Arizona?

Eryk Miller specifically told the government that the source of supply was in Phoenix, Arizona and that Favela-Gonzalez was traveling back and forth to Arizona with 20 pounds of methamphetamine. Here again, the connection to Arizona could not have been more clear and yet it appears, that other than seek a wiretap, the government did next to nothing to investigate the connection.

2. **Confidential informants thoroughly infiltrated this conspiracy:**

It is telling that it requires government 23 pages of its affidavit to provide just some of the content of the information provided by its Confidential Informants. CS 2 alone had participated in 200 multi-pound methamphetamine transactions with this conspiracy. More importantly the government is able to identify nearly every participant including everyone it indicts in this case. It obtains numerous recorded conversations and a number of important investigative leads. During the course of debriefing this informant, the government gets as

detailed an exploration of a drug trafficking conspiracy as it could ever hope for and yet, according to the affidavit, it is not enough.

3. **Pen Register and toll information was incredibly revealing:**

As with the informants, when the government finally got around to analyzing the information provided by its trap and trace and phone records there was a wealth of leads, which in a disturbing pattern in this case, were apparently ignored:

- The trap and trace identifies a location, 2731 SE 141<sup>st</sup> Street in Portland and two people, Filiberto Quintero and Aptia Quintero, which appeared to be associated with the conspiracy. The affidavit does not indicate that anything was done to explore this connection. *Affidavit* at 43-44.
- The trap and trace identifies a location associated with one of the conspirator's cell phones, 24786 SW Oregon St. Apt 38, Portland, Oregon. The affidavit does not indicate that any surveillance was undertaken at this location or that it was otherwise investigated. *Id* at 43.
- Trap and trace reveals a phone subscribed to Jessica Ortega at 4636 N 22<sup>nd</sup> Ave, Phoenix, Arizona has had hundreds of contacts with Sanchez. Even though agents know that the DTO is being supplied from Phoenix nothing is done to investigate this address or this person. *Id.* at 44 and 47.

- The phone records revealed 42 contacts with a phone associated with Mario Perez and an address of 15950 East Burnside, Portland, Oregon. Even though Perez had a lengthy criminal history, nothing was done to investigate his connection to the conspiracy.
- Trap and trace indicates contact with a phone subscribed to Antonio M. Garcia and associated with 2910 Neals Ln., Vancouver, Washington. This address is important because one of the conspirators drove a vehicle associated with Sanchez to this address after recovering the car from impound. Nothing was done to investigate this address or Antonio Garcia's connection to the conspiracy.
- The government only used originating cell site information for one of the phones associated with Sanchez for a short period of time ignoring the very powerful evidence such records could provide about the conspirator's daily activities and the potential source of supply in Arizona. *Id.* at 50. If the government was able to determine that Sanchez's phone was in Phoenix, then at a minimum it should have requested DEA in Phoenix conduct surveillance to ascertain what he was doing and where he was going. To somehow suggest it is more likely that Sanchez is going to reveal with specificity his source of supply on the telephone than through a personal meeting is ridiculous and defies common sense. The government's best hope of identifying

that source of supply was through watching Sanchez. It ignored nearly every opportunity to do this.

- Analysis of the “309” phone associated with finally reveals some attempt at watching the Arizona location where Favela-Gonzalez and two vehicles associated with him were observed. No other investigation concerning this location and its relationship to the source of supply was undertaken. *Id* at 51.
- This phone had 77 contacts with a phone subscribed to another address in Phoenix that databases revealed was associated with drug traffickers. Nothing else was done to investigate this connection. *Id* at 52.
- Records for the 309 phone indicated it had contact with a Phoenix cellular number associated with Rosalie Howard, a target of the previous DEA Phoenix investigation. *Id* at 53. Nothing was done to examine connections between this conspiracy and the case in Phoenix.
- Pen registers and toll record information indicated the 309 phone had 23 contacts with Portland landline, (503) 771-2795, subscribed to Alma Rubio at 7325 NE Halsey St., Portland, Oregon. Favela-Gonzalez listed this address as his on a "consent to search" form signed by him on February 20, 2006. *Id* at 53. Nothing was done to investigate this residence or its connection to the conspiracy.
- The 309 number had contact with another Phoenix cell number (602) 434-4092 and associated with an address, 3114 W McDowell Rd in

Phoenix. According to law enforcement databases, that number was connected to another DEA Phoenix investigation involving distribution of meth. *Id* at 54. Nothing was done to explore connections between Favela-Gonzalez and this other investigation.

- Pen registers and toll record information indicated the 309 phone had three contacts with Tucson, Arizona cellular number (602) 309-4227, subscribed to Melissa Buelna at 8041 E. Malvern Street East, Tucson, Arizona. According to the affidavit, the Arizona DEA previously investigated members of the Buelna family for importing cocaine into the United States. Erika Buelna is listed as a cosigner on a Wells Fargo bank account owned by Favela-Gonzalez in Arizona. *Id* at 55. The affidavit reveals nothing about any investigation into connections between the Buelnas and the conspiracy.
- Pen registers and toll record information indicated the 309 phone had two contacts with Phoenix cellular number (602) 434-4092, subscribed to Egilberto Garcia at 3114 W McDowell Rd., Phoenix, Arizona. This telephone number is also in contact with a target of a Phoenix DEA case involving the distribution of methamphetamine and cocaine. Phoenix DEA is currently monitoring a pen register on telephone number (602) 434-4092. *Id*. Nothing was done to investigate the connection between the Phoenix case and the Favela-Gonzalez conspiracy.

- Pen registers and toll record information indicated the 309 phone had one contact with Phoenix number (602) 455-4628, subscribed to Asadero Obregon Mariscos at 1212 S 28th Ave., Phoenix, Arizona. According to DEA agents in Phoenix, Arizona this number is associated with an investigation involving the distribution of methamphetamine in Arizona. *Id* at 56. Nothing was done to investigate the connection between this investigation and the Favela-Gonzalez conspiracy.

Through subscriber information, the government was able to identify a number of other participants in this conspiracy as well as confirm physical locations associated with the conspiracy that had previously been identified by confidential informants. The records in combination with the informants allowed the government to constantly keep track of the specific phones that the leader of this conspiracy was using. At the same time the Pen Registers and Trap and Trace authorizations provided a deep well of investigative leads that government failed to pursue prior to seeking a wiretap.

**F. The government's claim of necessity is unsupported by facts specific to this case:**

The government's greatest tool for wiretaps is a computer and word-processing software, with which is copies and pastes boilerplate language from previous applications. As the Ninth Circuit has explained, the government cannot simply rest on generalizations, but instead, "[M]ust allege specific circumstances that render normal investigative techniques particularly ineffective or the

application must be denied .... The reason for requiring specificity is to prevent the government from making general allegations about classes of cases and thereby sidestepping the requirement that there be necessity in the particular investigation in which the wiretap is sought. *Ippolito*, 774 F.2d at 1486.

While the government, in satisfying the necessity requirement, need not exhaust all alternative means of investigation, "neither should it be able to ignore avenues of investigation that appear both fruitful and cost-effective." *Id.* As the Court in *Ippolito* observed, "We would flaunt the statutory intent that wiretaps be used only if necessary, were we to sanction a wiretap simply because the government pursued some 'normal' investigative strategies that were unproductive, when more fruitful investigative methods were available." *Id.*

The government cannot skirt the necessity requirement by simply informing the court of the investigating agents' conclusions regarding whether or not traditional investigative techniques will suffice to expose the crime. Requisite necessity cannot be shown by "bare conclusory statements that normal techniques would be unproductive." *United States v. Ashley*, 876 F.2d 1069, 1072 (1st Cir. 1989). The affiant cannot rely on "mere boilerplate recitations of the difficulties of gathering usable evidence," in place of specific factual allegations explaining why a normal investigation will not succeed. *United States v. Kerrigan*, 514 F.2d 35, 38 (9th Cir. 1975). Lest the requirements of section 2518 be rendered "nullities," the court held that "[t]he government may not cast its investigative net so far and so

wide as to manufacture necessity in all circumstances." *United States v. Blackmon*, 273 F.3d 1204, 1211 (9th Cir. 2001).

**1. The government's claimed limitations with the use of informants in this case are specious, generic, and misleading:**

The fact that there was so much obvious investigation left undone by the government in this case prior to requesting the wiretap is validation of the fact that whatever restrictions Congress intended with Title III have become largely moot. For example, the affidavit claims that while CS 2 performed "over 200 multi-pound transactions with SANCHEZ" and is "considered a friend and close business associate. . . Sanchez has never discussed anything about the specifics or scope of the Sanchez DTO in Portland, Oregon or their connections with Phoenix, Arizona and their SOS." *Affidavit of SA Ryan Lawyer In Support of Application for Interception of Wire Communication* at 59. This statement is both meaningless and misleading. By participating in numerous controlled buys and obtaining numerous phone numbers for the government, CS 2 provided the government with an extraordinarily complete picture of the DTO.

It is misleading in that it omits the obvious fact that Favela-Gonzalez did not have to tell CS 2 the "specifics" because when he participated in controlled buys and provided phone numbers to the informant, the government was learning a tremendous amount about the "specifics" and "scope." It was checking to see who the phones were subscribed to and where, it was taking pictures of vehicles involved and identifying who those were registered to, it was watching who was

delivering drugs for the conspiracy, and it was checking on phone contacts between different conspirators. The fact that CS 2 was not told this by Favela-Gonzalez is meaningless.

The claim of the government's inability to identify the source of supply through CS 2 while perhaps technically true is also specious given the extraordinary number of other opportunities the government ignored to determine the source of supply in Phoenix that emanated from CS 2's cooperation. CS 2 did have indications from Favela-Gonzalez about when he would be making trips to Arizona to re-supply. A coordinated effort with Phoenix DEA to watch Favela-Gonzalez during one of these trips could easily have revealed the source of supply. In addition there were numerous phone numbers related to CS 2's cooperation that were tied to people and addresses in Phoenix, Arizona. So while it is technically true (as is the case in 99% of the drug cases) that Favela-Gonzalez did not provide the name, address, and zip code of source of supply, he certainly could and did provide information to CS 2 either directly or indirectly that would have allowed the government to discover it had it tried.

The affidavit states that the CS 2 was not able to "learn any additional Sanchez DTO members in Portland, Oregon." *Id* at 60. That statement is misleading and meaningless to the necessity analysis. Again, while Favela-Gonzalez may not have told CS 2 directly that someone by the specific name of \_\_\_\_\_ would be delivering drugs, every time someone showed up to deliver drugs that was not Favela-Gonzalez, the government was learning about someone

involved with the conspiracy. Every time phone calls were exchanged or CS 2 was able to get a contact number for Favela-Gonzalez, the pen register or trap and trace records showed contacts between the conspirators, provided subscriber information, and revealed other leads the government could follow.

The affidavit's claim that "CS 2 is unaware of the day to day operations of the SANCHEZ DTO" is also misleading. *Id* at 60. With every controlled delivery and monitored phone call the government was obviously learning about "day to day" operations through CS 2 even if CS 2 was not directly being told about those operations. Furthermore, CS 2 knew enough about the day to day operations to purchase drugs from the conspiracy hundreds of times.

The claim that CS 2 could not provide any information on cocaine distribution activities is ambiguous because it leaves the impression that CS 2 was asked to obtain cocaine or provide information when there is no indication such a request was ever made. *Id.*

The affidavit's statement that CS 2's effectiveness is limited because he does not know where stash houses are located, he does not know larger customers, or the financial operations of the conspiracy are disingenuous and meaningless. *Id.* CS 2 purchased hundreds of pounds of drugs from the conspiracy. Does the government really need multiple customers buying hundreds of pounds of drugs in order to prosecute this conspiracy? Regarding stash houses, the government had numerous leads on vehicles and co-conspirators emanating from CS 2's cooperation that might have revealed stash houses and there is no indication in the

affidavit that the government tried such surveillance and failed. The best lead that the government had concerning the financial dealings of the conspiracy came from the trap and trace which indicated that a member of drug trafficking family in Phoenix opened a bank account with Favela-Gonzalez. *Id* at 55. So while it may be that CS 2 was not able to specifically provide financial information, phone numbers that CS 2 assisted the government in obtaining did provide it with important clues about the finances of the organization that the government did not pursue. *Id.*

¶109 is similarly misleading. While CS 2 may have faced criminal charges, the impact of those charges on his ability to cooperate is totally speculative and prospective. The affidavit does not suggest that CS 2 actually had to discontinue cooperation rather it suggests that at some nebulous date in the future that bears no relationship to the wiretap application, he may not be able to provide information; a statement true of every informant ever used.

The rest of the supposed limitations cited in the affidavit are too generic to be meaningful and apply in nearly every drug conspiracy and particularly every Latino drug conspiracy. *Id* at 61-63. These limitations also suggest that it is just as unlikely that the government would learn anything meaningful about the finances and source of supply, or much else through a wiretap that it had already not discovered through its limited use of traditional means of investigation.

**2. The government's claims about the limitations of interviewing subjects are misleading, incomplete, and lacking specificity:**

¶115 is typical of the boilerplate generalizations and assumptions that inform that government's claims of necessity in this case. *Id.* The limitations cited by the affidavit are true of every single drug conspiracy that has ever existed and this same boilerplate likely resides in every wiretap application concerning a federal drug case in this district. *United States v. Blackmon*, 273 F.3d 1204, 1210-1211 (9th Cir. 2001). While perhaps literally true, the complained of limitations reveal nothing about the specifics of what makes this the unusual case where a wiretap should be authorized.

Furthermore, the affidavit reveals nothing about the dozens of other interviews the government could have and should have conducted before requesting this wiretap. There were numerous subscribers to cell phones associated with the conspiracy who were likely fronts for the conspirators. The affidavit does not indicate the government attempted to interview or contact a single one of these people despite having significant leverage to obtain their cooperation.

There should have been significant coordination with the DEA in Phoenix regarding other potential witnesses. Databases apparently connected several of the phones in this case with phones or people that were part of investigations conducted by DEA in Phoenix. If the government ever attempted to engage DEA Phoenix regarding those people or investigations it is not reflected by the affidavit. Given the government believed the source of supply was in Phoenix, Arizona and

the government knew that at least two years before it applied for the wiretap, this omission is significant.

The government, it seems, cannot help but sarcastically denigrate the idea that interviewing or even attempting to interview subjects of the investigation could be productive. *Affidavit of SA Ryan Lawyer In Support of Application for Interception of Wire Communication* at 63. Then in a bizarre turn that must relate to its over reliance on boilerplate, SA Lawyer suggests that Favela-Gonzalez was engaging in diversionary tactics by providing the government with incriminating statements about narcotics after he was found in possession \$17,000 that he could not explain and then by directing the government to a stash house where 12 ounces of methamphetamine and eight pounds of MSM were seized. *Id.*

Under the government's twisted logic this was an "unproductive interview of a subject" of the investigation because Favela-Gonzalez's incriminating statements disclosed only a "low level distributor" which "diverted" resources. Even accepting the conclusory statement that Ramirez was only a "low-level" distributor, the fact that Favela-Gonzalez disclosed this information simply when asked directly contradicts the government's boilerplate about the how pointless it is to interview subjects. Beyond that, it is difficult to imagine that it was a waste of government resources to remove tens of thousands of methamphetamine doses from the street.

Based on the affidavit, it appears that the government tried exactly once to interview a subject of this investigation prior to seeking a wiretap and that one

interview provided significant and important information and resulted in the seizure of a large quantity of drugs. This experience also should have made it extremely clear to the government how easy this case was going to be. It is not as though Favela-Gonzalez relocated or ceased his activities after his up close and personal experience with the government, they continued unabated for four more months with the government aware of every move.

These odd juxtapositions are found throughout the affidavit with respect to every claimed necessity and expose the danger of allowing the government to rely on boilerplate. In one sentence the agent cuts and pastes in the boilerplate (Interviewing subjects is unproductive) and then in the next sentence the agent provides an example that completely contradicts the boilerplate (the government interviewed a subject and received useful information and seized a large quantity of drugs). This occurs over and over again in this affidavit.

The rest of the supposed hardships claimed by the government were either inconsequential considering the scope of the investigation (§§117, 118) or too generic to be meaningful (§116).

**3. The government's assumptions about the ineffectiveness of search warrants are both boilerplate and wrong:**

Agent Lawyer states without any support that there is no role for search warrants in the investigation prior to the application for the wiretap. Again the connection to Phoenix and the government's knowledge concerning that area as a source of supply for this conspiracy begged for the use of a search warrant.

Favela-Gonzalez's phones had numerous of contacts with a Phoenix number associated with a person, Jessica Ortega, and a specific address, 5529 N 23rd Ave, Phoenix, Arizona. They knew that one of Ortega's cellular numbers was connected with another DEA investigation in Los Angeles. On February 28, 2006, surveillance agents observed Favela-Gonzalez's vehicles, both a maroon Ford pickup and a yellow Dodge pickup, at this residence. It does not appear from the affidavit that, despite knowing the source of supply was in Arizona, the government pursued any investigation of Ortega or this residence despite seeing two vehicles associated with Favela-Gonzalez at the house. A search warrant served at that location might have provided important information about the source of supply.

A statement like "SA's have been able to identify one, but not all locations where Subjects receive, store, and distribute money and narcotics" is meaningless in the absence of the government explaining what it did do to identify those locations. There is simply nothing in the affidavit indicating such an effort. The court could not conclude that traditional methods had been exhausted when it was not told what was done.

¶¶121 and 122 are typical of the conclusory and misleading statements that pervade this affidavit. The agent concludes that a search warrant in Portland would necessarily alert the conspiracy to the investigation. A statement which clearly ignores the fact that when Favela-Gonzalez was pulled over by the police, had \$17,500 seized from him, he then directed agents to 12 ounces of

methamphetamine and 8 pounds of MSM and continued his business as before. It is just as reasonable to conclude from these facts that a warrant might have caused confusion and panic which would have led to the disclosure of stash houses or stores of money or other important clues. It also ignores the fact that these defendant's were deeply in debt for the drugs they were selling. They had to continue their activities or face serious repercussions from those fronting them the drugs.

**4. Whatever the limitations of trap and trace or pen registers might be, in this case they were extremely effective:**

The statement in ¶123 that the use of toll records and pen register information has been “extremely limited” is meaningless; whatever “limited” might mean in a given case these records provided a plethora of useful information. Mr. Martinez-Flores will not restate all of the investigative leads discussed above in section E.3 of this memorandum that do not appear to have been followed. Suffice it to state that there were more than a dozen obvious investigative leads generated by the trap and trace that the government either ignored or failed to pursue.

The statement that “[t]oll records have identified several telephone numbers” associated with members of the conspiracy is misleading. *Id* at 67. The affidavit reveals that the investigation had revealed at least **five** phones associated with Favela-Gonzalez alone and at least **fifteen** other phones that were connected to the conspiracy. If the government was somehow impeded in this investigation

because of technical difficulties caused by providers or through changing numbers the affidavit certainly does not indicate that those impediments would not apply equally to a wiretap.

CS 2's comment that Favela-Gonzalez could get a new phone whenever he wanted through an insider is meaningless because such ability would thwart a wiretap as much as any form of traditional investigation. *Affidavit* at 68. Furthermore, because of CS 2's relationship with Favela-Gonzalez, he was repeatedly able to obtain new numbers used by the conspiracy.

The statement in ¶127 that the government had identified more than 50 numbers in Phoenix and therefore could not identify the source of supply from those records alone is misleading. The statement maybe literally true except that the *analysis* of the trap and trace would have easily eliminated a significant percentage of those numbers. In addition, if the government had cross-referenced those numbers with numbers connected to DEA investigations in Phoenix and then actually tracked where Favela-Gonzalez went when in Phoenix, the universe would have been much smaller.

The limitations of toll records outlined in ¶128, while true are generic and apply to every situation where telephones are involved in a crime. A wiretap will usually provide evidence more easily but that is not the standard for authorizing one.

It is also troubling that the government failed to make greater use of cell site origination information in order to determine where conspirators had been.

Obviously a consistent record of where phones known to be associated with the conspiracy were located was important evidence that the government never bothered to develop prior to requesting the wiretap. It appears this was done only once and only with respect to a single phone.

**5. Physical Surveillance was incredibly effective despite any superficial attempts at counter surveillance:**

¶¶129 and 130 contain boilerplate recitations about physical surveillance and its limitations that apply to every case and are therefore legally insignificant. Given the affidavit's total lack of specificity concerning what was learned and what was achieved through physical surveillance as compared to the two instances where counter surveillance was attempted, there is no way the court could meaningfully evaluate whether the government had really exhausted what was possible through surveillance. If the two instances of counter surveillance occurred during two attempts at surveillance they would have substantially more relevance than if they occurred in the context of a thousand hours of surveillance.

The government knew of a number of vehicles associated with the conspiracy and yet it utilized exactly one tracking device to monitor the movement of those vehicles. This was a grossly underutilized form of surveillance that is less intrusive than a wiretap and should have been more effectively employed.

It is also troubling that so little effort was apparently made to follow Favela-Gonzalez in Phoenix (or anywhere else) where the government knew he was being supplied with drugs. At a minimum the government should have been

required to demonstrate that it had attempted to follow Favela-Gonzalez and to engage the DEA in Phoenix before a wiretap was authorized.

**6. The other traditional means of investigation cited in the affidavit were either underutilized or claimed to be insufficient for generic reasons:**

The government conducted two trash searches. At both locations incriminating evidence including drug packaging was found. *Affidavit* at 72. The affidavit is internally inconsistent because it then goes on to conclude from two successful trash searches that drug traffickers go to great lengths to destroy incriminating evidence. *Id* at 73. Not this conspiracy apparently, as they are comfortable putting out their incriminating evidence with curbside recycling. It is perhaps a small point but it is indicative of a larger problem: every drug conspiracy does not justify a wiretap. These were not sophisticated drug dealers and a wiretap was not necessary.

The paragraph on consensual recordings is similarly a boilerplate recitation of the inherent limitations of any consensual recording. *Id* at 73-74. Of course, absent the government disclosing in the affidavit the substantial amount of useful information it had obtained at the time of the application from consensual recordings there was no way for the court to meaningfully assess this information in the context of the necessity analysis.

The same could be said of the section concerning Grand Jury subpoenas. The conclusory statement that the use of subpoenas in the investigation has produced minimal results is meaningless unless the government discloses who and

what it had subpoenaed. *Id* at 74-75. The only subpoena it refers to relating to bank records was apparently successful in demonstrating that Favela-Gonzalez had traveled to Arizona. Again, the court has only been presented a portion of the information necessary to make an informed decision about the necessity of the wiretap.

**G. Conclusion:**

It is indeed ironic and tragic for anyone committed to civil liberties in this country that the historic safeguard against Executive overreaching, the Judiciary, has utterly failed in its role to adequately oversee the Title III process. Between Title III and FISA, nearly 50,000 applications for wiretaps have been submitted over the last 39 years, and during that time at grand total of 32 have been rejected by the courts. In the last eighteen years under Title III alone, courts have rejected only 5 applications while approving nearly 20,000 others. That simply cannot be considered legitimate oversight.

The fallout from the most recent scandal involving the FBI's blatant misuse of National Security Letters is predictable: numerous members of Congress calling for legislation to require such requests to be scrutinized by the Judiciary just like Title III. Apparently those members of Congress are unaware that the Judiciary is no longer a bulwark that restrains the Executive in any meaningful way.

The wiretap in this case should not have been authorized. The affidavit is filled with literally hundreds of investigative leads that were not pursued prior to the request for a wiretap nearly every one of them directly related to the reasons

underlying the request for a wiretap. In contrast, the section dedicated to necessity, is packed with pointless boilerplate and fails to meet a basic threshold of “demonstrating with specificity why in this particular investigation ordinary means of investigation will fail.” *United States v. Simpson*, 813 F.2d 1462, 1471 (9th Cir. 1987). In nearly every instance, the government’s claimed limitations either apply to any drug case or alternatively are not borne out by what actually occurred when such traditional techniques were used.

In this case, the wiretap was simply a way to obtain confessions from the conspirators without interrogating them directly. That kind of superfluous use of wiretaps cannot be what Congress envisioned when it passed Title III. The wiretap in this case was unnecessary and the government’s application failed to meet the requirements for authorization under Title III. All evidence derived from it must be suppressed.

Respectfully submitted on March 12, 2007.

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