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PRELIMINARY PROCEEDINGS BEFORE A MAGISTRATE JUDGE

SEARCH WARRANTS and INITIAL APPEARANCES

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Conceptual Overview

Obtaining and executing a search warrant illustrates the separation of powers and checks-and balances characterizing the exercise of governmental authority in the United States. The Executive branch gathers and communicates facts to the Judicial branch, which then independently evaluates the facts and, if satisfied, confers authority back to the Executive branch to violate privacy and seize property.

What is "Probable Cause" and how has it evolved?

[According to the law up to the date of this opinion, the request for a search warrant] first had to adequately reveal the "basis of knowledge" of the letterwriter -- the particular means by which he came by the information given in his report. Second, it had to provide facts sufficiently establishing either the "veracity" of the affiant's informant, or, alternatively, the "reliability" of the informant's report in this particular case...

...[W]e conclude that it is wiser to abandon the "two-pronged test" ... The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Chief Justice Rehnquist, writing for the 5-4 majority in
Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317 (1983)

Besides Probable Cause, a Judge considering a warrant must decide:

Is the presenting officer authorized to seek a Federal search warrant?

Does the proposed search relate to the Eastern District of Washington?

Does the warrant clearly describe and limit the place to be searched?

Does the warrant clearly describe and limit the evidence to be seized?

Is there a reviewable record of the facts presented to the court?

**UNITED STATES DISTRICT COURT
for the Eastern District of Washington**

In the Matter of the Search of

*(Briefly describe the property to be searched
or identify the person by name and address)*

*A Samsung Model SM-G550T1 Galaxy on5
cellular telephone, displaying FCC
identification number 3WEE2GEE and
Serviced by CANANSTRING network, further
described in Attachment "A" attached hereto
and incorporated herein by this reference*

Case No. 2:17-mj-00737-JTR

APPLICATION FOR SEARCH WARRANT

I, Jerry Javert, a federal law enforcement officer or attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that there is now concealed on the following person or property *(identify the person or describe property to be searched and give its location): A Samsung Model SM-G550T1 Galaxy on5 cellular telephone, displaying FCC identification number 3WEE2GEE and serviced by the CANANSTRING network*, further described in Attachment "A" attached hereto and incorporated herein by this reference, further described in Attachment A, attached hereto and incorporated herein by this reference,

located in the EASTERN District of WASHINGTON, there is now concealed *(identify the person or describe property to be seized)* See Attachment B, attached hereto and incorporated herein by this reference.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☒ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

21 USC 841(a)

*Manufacturing, possession or possessing with
intent to distribute a controlled substance.*

The application is based on these facts:

- ☒ Continued on attached sheet.
- ☐ Delayed notice of days (give exact ending date if more than 30 days:) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

Jerry Javert, BPA, United States Border Patrol

Applicant's printed name and title

Subscribed and Sworn to me and before me this:

Date: _

City and state: Spokane, Washington

Judge's signature

John T. Rodgers, United States Magistrate Judge

Printed name and title

AUSA Assigned: MFD

County of Investigation: Spokane

2:17-mj-00737-JTR: In Re: Search Warrants for:

1) Samsung Model SM-G550T1 Galaxy on5 cellular telephone, displaying FCC identification number 3WEE2GEE and serviced by the CANANSTRING network.

AFFIDAVIT

STATE OF WASHINGTON)

) ss

County of Spokane)

I, Jerry Javert, U.S. Border Patrol Agent , being first duly sworn on oath,
deposes and states:

PURPOSE OF THIS AFFIDAVIT

1. This affidavit is submitted in support of an application for a search
warrant for the following electronic device; described as follows:

a) PHONE 1: Samsung Model SM-G550T1 Galaxy on a cellular
telephone, displaying FCC identification number 3WEE2GEE and serviced
by the CANANSTRING network.

AFFIANT TRAINING AND EXPERIENCE

2. I am a Border Patrol Agent-Intelligence with the Department of
Homeland Security, United States Border Patrol (USBP). I have been so employed

since February 1980. I have been assigned as a Border Patrol Agent-Intelligence (BPA-I) with the Spokane Sector Intelligence Unit (SIU) since May, 2015. Before that I was a Supervisory Border Patrol Agent (SBPA) assigned to the SIU and detailed to the Drug Enforcement Administration (DEA) Task Force between March, 1995 , and April, 2015. Prior to being assigned to the SIU in Spokane, I was a Lead Border Patrol Agent (LBPA) assigned to the Curlew Border Patrol Station. Prior to be assigned as a LBPA, I was a Senior Patrol Agent at the Curlew Border Patrol Station. Prior to be assigned to the Curlew Border Patrol Station, I was assigned to the Del Rio Border Patrol Station from January 1980 to December 1995. During my tenure as a Border Patrol Agent, I have investigated numerous cases involving the international smuggling and trafficking of controlled substances as well as numerous cases involving alien smuggling. I have received training in federal law enforcement, narcotics and alien smuggling interdiction techniques, interview and interrogation techniques and intelligence gathering techniques from the U.S. Border Patrol.

3. I have also received specialized training in personal electronics forensics and am certified as a Cellebrite Mobile Examiner. I have also been assigned duties which have included and involved, but were not limited to, patrol duties on the international borders with both Mexico and Canada, Instructor Training in USBP Law and Operations, Instructor Training in USBP Driving

Techniques and instructing students in the USBP intelligence program at the USBP Supervisory Technical Training Course, investigation and interdicting subjects in violation of the Immigration and Nationality Act, gathering drug and non-drug evidence, and executing search/arrest warrants involving drug and alien offenses. Your affiant is very familiar with the methods and techniques of smuggling controlled substances across the international border between the United States and Canada. Prior to joining the USBP, I was enlisted in the United States Naval Reserve from 1986 to 1990. I was assigned to Small Boat Rescue Station Soaknphloat in Virginia Beach, VA. While enlisted in the Naval Reserve, your affiant was assigned duties that included, but were not limited to, patrol duties in U.S. coastal waters, law enforcement operations on the high seas and U.S. territorial waters, search and rescue operations and communications watchstanding. I have attended the Maritime Law Enforcement School in Cape Cod, MA and was trained as a watchstander, boat crewman, boarding team member and emergency medical technician.

4. During the course of my employment as a Border Patrol Agent, I have conducted or participated in numerous investigations of illicit narcotics trafficking organizations involved in conspiracies to import, manufacture, and distribute marijuana, MDMA (3,4 Methylenedioxymethamphetamine, also known as "Ecstasy," "E," "Molly," or "X"), methamphetamine, cocaine, and other controlled

substances, in violation of 21 U.S.C. §§ 846 and 963, and the possession of the marijuana, MDMA, methamphetamine, cocaine, and other controlled substances, with the intent to distribute, in violation of 21 U.S.C. § 841.

5. I have debriefed many individuals who were involved in controlled substance trafficking, and through this method, and my other training and background, I am familiar with the methods and techniques traffickers use in manufacturing, distributing, and transporting narcotics and concealing the proceeds thereof.

6. I have spoken to, worked with, and gained knowledge from numerous experienced federal, state, and local drug investigators. I have interviewed drug cultivators, dealers, users, and confidential informants and have discussed with them the lifestyles, appearances, and habits of drug cultivators, dealers, and users. I have become familiar with the manner in which drug traffickers cultivate, smuggle, transport, store, and distribute drugs, as well as how they collect and launder the proceeds from drug sales. I am also familiar with the manner in which drug traffickers use telephones, cellular telephone technology, pagers, coded communications or slang-filled telephone conversations, false or fictitious identities and nominee subscribers, and other means to facilitate their illegal activities and thwart law enforcement detection and investigation.

7. I have discussed packaging, preparation, methods of operation, and security measures typically employed by drug traffickers. I have examined records consisting in part of buyers' and sellers' lists, and pay and owe ledgers. I have also examined documentation of various methods by which narcotics are manufactured and imported into the United States.

8. During the course of my employment as a Border Patrol Agent and a DEA Task Force Officer, I have participated in numerous criminal investigations and have gained knowledge and experience by working with other agents. I have participated in Federal and State search warrants involving the seizure of the aforementioned listed controlled substances, the seizure of records relating to the manufacturing and distribution of controlled substances, and other types of evidence, including digital evidence seized from cellular telephones and other electronic devices, documenting the activities of drug trafficking organizations and its members. I have assisted agents with affidavits requesting the collection of latitude and longitude (i.e. GPS) data. I have utilized numerous investigative techniques and resources and draw on the experience, techniques, and resources I have gained in my employment as a Border Patrol Agent as well as the experience and training of other agents and officers.

9. During the course of my career, while investigating individuals and groups engaged in the trafficking of controlled substances, I have conducted

physical surveillance hundreds of drug traffickers. It has been my experience that drug traffickers use vehicles to facilitate the transportation and distribution of controlled substances and/or the proceeds from the distribution of controlled substances. Vehicles utilized in the transportation of controlled substances can be equipped with hidden, or "trap," compartments, which are used to conceal drugs and other contraband, or proceeds from transactions involving controlled substances.

10. Further, based on my training and experience, I know:

a) Drug traffickers, alien smugglers, and money remitters often maintain on hand, large amounts of U.S. Currency in order to maintain and finance their on-going illicit drug business. The courts have recognized that unexplained wealth in combination with other factors is probative evidence of drug trafficking in illegal controlled substances. Individuals involved in the distribution of controlled substances commonly deal in currency because of its untraceable nature, and they often convert their illicit currency into currency equivalents such as cashier's checks and money orders, pre-paid credit cards, and gift cards. Evidence of such may be located in a vehicle;

b) Drug traffickers, alien smugglers, and money remitters maintain books, records, receipts, notes, ledgers, logs, airline tickets, money orders, and other records and papers relating to the manufacture, transportation, ordering, sale,

and equipment purchased and used to manufacture them. Drug traffickers commonly "front" (provide on consignment) controlled substances to their clients; that the aforementioned books, records, receipts, notes, ledgers, etc. are maintained where the traffickers have ready access to them, such as their homes and/or vehicles;

c) Drug traffickers, alien smugglers, and money remitters hide and attempt to conceal their contraband, proceeds of drug sales, and transactions in secure locations, such as vehicles, for ready access. They also hide these items in an attempt to conceal them from law enforcement authorities;

d). Drug traffickers, alien smugglers, money remitters, and their associates collect proceeds from the sale of illicit drugs. In an attempt to legitimize their profits, they often utilize banks and their attendant services, which include: securities, cashier's checks, money drafts, real estate transactions documents, deposit slips, draft slips, checks and related financial transaction documents. Documents related to such endeavors may be located in a vehicle;

e). Drug traffickers, alien smugglers, and money remitters commonly maintain addresses or telephone numbers in books or papers which reflect the names, addresses and/or telephone numbers for their customers, co-conspirators, sources of supply, and other criminal associates. Drug traffickers, alien smugglers, and money remitters also commonly use cellular telephones and cellular phone

applications to communicate with their customers and suppliers. Drug traffickers, alien smugglers, and money remitters also use various codes to communicate with other individuals who are involved in the illicit drug trafficking activities. These documents and cell phones may be located in vehicles. It is common for drug traffickers, alien smugglers, and money remitters to have more than one cellular phone;

f). Drug traffickers, alien smugglers, and money remitters take, or cause to be taken, photographs of themselves, their criminal associates, their property, and unlawfully acquired assets/contraband. Such photographs may be contained in paper format or stored in an electronic device, such as a cellular telephone, thumb drive, CD, or computer;

g). Drug traffickers, alien smugglers, and money remitters keep paraphernalia for manufacturing, packaging, weighing, and distributing controlled substances. That these items include, but are not limited to, scales, plastic bags, plastic wrap, plastic containers, tape or other similar paraphernalia. This paraphernalia is often kept in close vicinity, allowing easy access, and is usually found in the residences of drug distributors and alien smugglers or at secondary "stash" houses or storage units, which are solely maintained to store controlled substances and paraphernalia or at locations drug traffickers, alien smugglers, and

money remitters consider safe. Such items may also be located in a vehicle, especially when dealing with rural mountainous locations;

h). Drug traffickers, alien smugglers, and money remitters often possess firearms in their vehicle because of the inherent dangers associated with drug trafficking. A firearm is generally recognized by the courts as a “tool of the drug trade.” Drug traffickers, alien smugglers, and money remitters also keep ammunition of all to accompany those firearms they, and/or their co-conspirators possess;

i). Cellular phones, particularly pre-paid phones and smart phones, are the preferred method of communication between those that traffic in controlled substances. Drug distributors, alien smugglers, and money remitters often possess more than one cellular phone to facilitate their illegal activities. Often times these cellular phones are not subscribed under the subject’s name. Individuals involved in illicit drug distribution, alien smuggling, or remitting proceeds of crime will change their phone numbers and change their phones in order to avoid law enforcement monitoring, and I know smart phones used by drug dealers are often encrypted and password protected, which sometimes takes months to forensically decipher, if it can be done at all. I know that the content of some types of phones, particularly smart phones, can be remotely deleted;

j). In my experience, and that of other law enforcement agents involved in this investigation, the illicit distribution of such controlled substances, alien smuggling or the remitting of proceeds of crimes is frequently a continuing activity that occurs over months and/or years. Persons involved in the trafficking of controlled substances, humans, or proceeds typically obtain and distribute drugs, people on a regular basis, much as a distributor of a legal commodity would purchase inventory for sale. Similarly, drug traffickers will maintain an inventory of controlled substances that will fluctuate in size depending upon the demand for and the available supply of the product. It has been my experience that drug traffickers, alien smugglers, and money remitters keep their records of their illegal activities not only for the period of their trafficking violations, but also for a period of time extending beyond the time during which the trafficker actually possesses/controls illegal controlled substances, smuggled aliens, or the proceeds thereof in order to maintain contact with criminal associates for future transactions or because the trafficker might still be owed money or might owe someone else money; and

k) Drug traffickers, alien smugglers, and money remitters use cellular telephone as the most common form of communication. I believe cellular telephones are commonly used because of the convenience. In my experience, cellular telephones are typically used to communicate dates, times, and locations of

meetings. It has been my experience that drug traffickers, alien smugglers, and money remitters commonly use cellular telephones to negotiate quantities and prices of the controlled substances, albeit, drug traffickers typically use code words or cryptic messaging when communicating about drugs. In other words, in my experience, those engaged in drug trafficking, alien smugglers, and money remitters use their cellular telephones in furtherance of their trafficking efforts.

INVESTIGATION

11. I am familiar with the facts set forth set forth in this affidavit based on my own observations and observations that have been made other law enforcement officers who have participated in or contributed to this investigation. I have been made aware of the observations of these law enforcement officers through meetings and personal discussions with them and through reading reports prepared or endorsed by them. These law enforcement officers include, but are not limited to those named in this affidavit.

12. On October 7, 2017, your affiant received a telephone call from U.S. Border Patrol Spokane Dispatch (KAK760) who advised that they had received a call from a Spokane County Sheriff's Office (SCSO) Deputy Perez. Deputy Perez had advised KAK760 that he had conducted a traffic stop on a subject who could only provide Mexico-issued identity documents. Deputy

Perez requested USBP assistance. Your affiant provided your affiant with the Deputy's contact information and Agent Javert called him directly.

13. On the phone, Deputy Perez advised your affiant that he had conducted a traffic stop on a subject for moving violation (Failure to Signal) after he had observed the subject depart a suspect narcotics-involved property. The Deputy stated that the subject had only Mexican documents for identification purposes. Your affiant told the Deputy that he would not be able to respond to the traffic stop, but that if the subject is being detained that the USBP could make contact with him in the morning. Deputy Perez then provided your affiant with the subject's biographical information. The subject was identified by Deputy Perez as: Jesus Medina-PEREZ, with a DOB of 02/08/1974. Your affiant wrote this information down and thanked Deputy Perez for his assistance and ended the call.

14. A few minutes later Deputy Perez called your affiant back to update the situation. The Deputy advised that he was arresting the subject for not possessing a valid motor vehicle operator's license. The Deputy further advised that during a search incident to arrest that he located a bag in the subject's pocket with a large amount of U.S. currency. Deputy Richmond advised your affiant that it was his belief that the subject would be able to bond out right away from the county jail. The Deputy also informed your affiant that the subject had several receipts from a

money remittance shop located at the El Chappo Cantina Market in Spokane. He stated that the remittances were for various amounts, up to \$9,960.00 U.S. dollars and that they were all directed to Acapulco, Chametla, Mexico. I thanked Deputy Perez for the update and advised him that I would follow-up on the information. After ending the call I notified KAK760 and my supervisor.

15. The next morning your affiant began following up on the information while BPA Klink checked to see if the subject had bonded out the prior night. Agent Klink checked with the Spokane County Jail and determined that the subject had indeed bonded out immediately after booking. Your affiant checked several different DHS, DOJ, and other law enforcement databases utilizing the information provided by Deputy Perez. Your affiant discovered that the subject utilized several different variations of his name and different birthdates. In addition to the name Jesus Medina-PEREZ the subject used Jose Medina-PEREZ, and Jose Perez-MEDINA; along with the following dates of birth: 03/08/1973, 03/07/1974, and 02/04/1977. Your affiant then contacted the Washington State Patrol to acquire a copy of the subject's fingerprints from his booking into Spokane County Jail.

16. Upon receipt of the fingerprint card from the Washington State Patrol, your affiant scanned the subject's prints into DHS/DOJ databases and found that he had a minor criminal history; consisting of a theft arrest in 1998, in Dallas, TX

along with his recent arrest in Spokane County. His criminal record stated that he was born in Mexico. According the database checks the subject had never been encountered by immigration authorities. The subject's criminal record also indicated that he utilized numerous aliases.

17. During the same time period your affiant and Agent Klink conducted a drive-by and surveillance of the address that the subject had provided to Deputy Perez: 604 South Ella Road, in Spokane Valley, Washington. On October 10, 2017, I observed the subject's registered vehicle; a 2010 Chevrolet pick-up truck display Washington plate B40132J, parked in the driveway of the residence. On October 12, 2017, Agent Klink and your affiant drove by the residence and the truck was no longer there. On the morning of October 14, 2017, your affiant, BPA Fizzbit and BPA Jones set up surveillance on the residence and observed the truck once again parked in the driveway.

18. On October 12, 2017, at approximately 8:20 AM your affiant and the other agents observed the subject depart from the residence in the pick-up truck. The Agents followed the subject to a garden supply store located near the intersection of Broadway Avenue and Ella Avenue, in Spokane Valley, Washington. Agents Fizzbit and Jones flowed the subject inside and asked him to come speak with them outside. Outside, your affiant questioned the subject as to his citizenship and his true identity. The subject stated that he was present illegally in the United States

and provided a Mexican matricular card that showed his true name was Jesus Medina-PEREZ, with a true date of birth of 02/09/1974. I advised the Medina-PEREZ that he was under arrest at this time and walked him to my service vehicle. Medina-PEREZ asked your affiant if we could retrieve his personal effects from the cab of his truck.

19. Your affiant and Agent Jones retrieved Medina-PEREZ's wallet, a ballcap, a plastic grocery bag and a box of Tylenol from the cab of his truck and secured them in your affiant's service vehicle. Your affiant checked Medina-PEREZ's wallet for any additional forms of identification and located a small bag of what appeared to be crystal methamphetamine, along with a Mexican voter identification card. Medina-PEREZ was secured in your affiant's service vehicle and transported to the Spokane Border Patrol Sector for further processing; with the assistance of Agent Fizzbit. Upon arrival at the Spokane Border Patrol Sector your affiant conducted an inventory of Medina-PEREZ's personal effects.

20. Your affiant found that the box of Tylenol contained 5 plastic bindles of what appeared to be additional crystal methamphetamine. In your affiant's experience, such packaging typically indicates the narcotics are for resale. Your affiant weighed the narcotics and found there was a total of 2.95 grams (including the packaging). At this time BPA Johnson advised Medina-PEREZ of his Miranda Rights; which was witnessed by Agents Jones and your affiant. Your affiant then

continued the inventory and found that the plastic grocery bag contained a bank envelope with \$8000.00 U.S. dollars inside of it; along with the subject's expired Mexican passport. Agents Jones and Klink each counted the currency from the grocery bag and the subject's wallet and determined there was a total of \$8,429.00 U.S. dollars.

21. Your affiant then contacted the Spokane District Drug Enforcement Administration (DEA) and TFO Woodway advised that he and TFO Bemis would come to Spokane Sector and take custody of the narcotics and currency. They arrived in the early afternoon and took custody of the narcotics and currency and advised that they will be presenting the case to local prosecutors. The Border Patrol maintained custody of Medina-PEREZ and he will be held in DHS custody pending either state charges or immigration proceedings.

22. Based on your affiant's experience and training, given the totality of circumstances it is likely that Medina-PEREZ was likely involved in the distribution of controlled substances in violation of 21 U.S.C. §841. It is also highly likely that Medina-PEREZ likely has evidence of his suspected nefarious activities or contacts related to said activities on his cellular telephone.

CONCLUSION

23. WHEREFORE, based on the foregoing, I respectfully request that the Court issue a warrant authorizing the search of PHONE 1: Samsung Model SM-

G550T1 Galaxy on5 cellular telephone, displaying FCC identification number
3WEE2GEE and serviced by the CANANSTRING network respective Attachment
As for the items described in the respective Attachment Bs.

I declare under penalty of perjury that the statements above are true and
correct to the best of my knowledge and belief.

Respectfully submitted:

Jerry Javert, BPA
U.S. Border Patrol

SUBSCRIBED AND SWORN to and before me this _____ day of November, 2017.

John T. Rodgers
United States Magistrate Judge

ATTACHMENT A

The property to be searched is A Samsung Model SM-G550T1 Galaxy on5 cellular telephone, displaying FCC identification number 3WEE2GEE and serviced by the CANANSTRING network.

ATTACHMENT B

Records and information on the Devices described in Attachment A that relate to violations of Title 21, United States Code, Section 841(a) (Manufacturing, possession, possessing with Intent to Distribute a Controlled Substance), including:

1. Any records containing information that indicates the types, amounts, and prices of firearms sold as well as dates, places, amounts and clients specific transactions;
2. Any records containing information related to sources of making & possessing counterfeit immigration documents, including names, addresses, phone numbers, or any other identifying records.
3. All bank record, checks, credit card bills, account information, and other financial records;
4. Evidence of user attribution showing who used or owned the device, such as phonebooks, saved usernames and passwords, documents, and browsing history.
5. Any photographs, text messages, or other forms of communication regarding purchasing, selling, possession, or disposal of making & possessing counterfeit immigration documents;
6. Records from email and internet-based communication type applications, and other social media accounts to include Facebook related to the acquisition or disposition of making & possessing counterfeit immigration

documents;

7. Records of Internet activity, including firewall logs, caches, browser history and cookies, “bookmarked” or “favorite” web pages, search terms that the user entered into any; and

8. Internet search engine, and records of user-typed web address related to acquisition or disposition of making & possessing counterfeit immigration documents.

As used above, the terms “records” and “information” include all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored, including any form of computer or electronic storage (such as flash memory or other media that can store data) and any photographic form.

If evidence of crimes unrelated to the violations of 21 U.S.C. § 841(a) (Manufacturing, possession or possessing with intent to distribute a controlled substance), an amendment to this search warrant will be sought.

UNITED STATES DISTRICT COURT

for the

Eastern District of Washington

In the Matter of the Search of

*(Briefly describe the property to be searched or
identify the person by name and address)*

*A Samsung Model SM-G550T1 Galaxy on5
cellular telephone, displaying FCC
identification number 3WEE2GEE and
served by the CANANSTRING network,
further described in Attachment "A"
attached hereto and incorporated herein by
this reference*

Case No. 2:17-mj-00737-JTR

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Eastern District of Washington *(identify the person or describe the property to be searched and give its location)*: A Samsung Model SM-G550T1 Galaxy on5 cellular telephone, displaying FCC identification number 3WEE2GEE and served by the CANANSTRING network, further described in Attachment "A" attached hereto and incorporated herein by this reference

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(identify the person or describe the property to be seized)*: See Attachment B, attached hereto and incorporated herein by this reference.

YOU ARE COMMANDED to execute this warrant on or before November 2017 *(not to exceed 14 days)*

☒ in the daytime 6:00 a.m. to 10 p.m.

☐ at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to John T. Rodgers
(United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)*

☐ for _____ days *(not to exceed 30)* ☐ until, the facts justifying, the later specific date of _____

Date and time issued: _____

Judge's signature

City and state: Spokane, Washington

John T. Rodgers, United States Magistrate Judge
Printed name and title

Return

Case No.:

2:17-mj-00737-JTR

Date and time warrant executed:

Copy of warrant and inventory left with:

Inventory made in the presence of :

Inventory of the property taken and name of any person(s) seized:

Certification

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.

Date: _____

Executing officer's signature

Printed name and title

ATTACHMENT A

The property to be searched is A Samsung Model SM-G550T1 Galaxy on5 cellular telephone, displaying FCC identification number 3WEE2GEE and serviced by the CANANSTRING network.

ATTACHMENT B

Records and information on the Devices described in Attachment A that relate to violations of Title 21, United States Code, Section 841(a) (Manufacturing, possession, possessing with Intent to Distribute a Controlled Substance), including:

1. Any records containing information that indicates the types, amounts, and prices of firearms sold as well as dates, places, amounts and clients specific transactions;
2. Any records containing information related to sources of making & possessing counterfeit immigration documents, including names, addresses, phone numbers, or any other identifying records.
3. All bank record, checks, credit card bills, account information, and other financial records;
4. Evidence of user attribution showing who used or owned the device, such as phonebooks, saved usernames and passwords, documents, and browsing history.
5. Any photographs, text messages, or other forms of communication regarding purchasing, selling, possession, or disposal of making & possessing counterfeit immigration documents;
6. Records from email and internet-based communication type applications, and other social media accounts to include Facebook related to the acquisition or disposition of making & possessing counterfeit immigration

documents;

7. Records of Internet activity, including firewall logs, caches, browser history and cookies, “bookmarked” or “favorite” web pages, search terms that the user entered into any; and

8. Internet search engine, and records of user-typed web address related to acquisition or disposition of making & possessing counterfeit immigration documents.

As used above, the terms “records” and “information” include all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored, including any form of computer or electronic storage (such as flash memory or other media that can store data) and any photographic form.

If evidence of crimes unrelated to the violations of 21 U.S.C. § 841(a) (Manufacturing, possession or possessing with intent to distribute a controlled substance), an amendment to this search warrant will be sought.

What is an "Initial Appearance ?"

(Often confused with an "Arraignment")

The Initial Appearance is a critical aspect of "Due Process." It is not universal even among developed nations that an arrested person hear directly, promptly and plainly from a judge what they're accused of, and what rights they have. It is the law in the United States.

(*Arraignment* is a narrower concept, associated with the defendant's *answer* to the charges, by entering a plea of Not Guilty or Guilty, Nolo Contendere, etc.)

Timing:

As soon after taken into custody as practicable

Rule 5 language: "without unnecessary delay"

Held anytime a person is arrested, *OR* charges are changed

Some issues always addressed:

Specify charges

Potential penalty

Rights in connection with the process

Often additional issues are also addressed:

Enter a formal "Not Guilty" plea

Inquiry into bail / detention

Appoint counsel

Test probable cause

Title 18 United States Code, section 3142 - Release or detention pending trial

(selected portions, emphasis supplied)

///

(b) Release on Personal Recognizance or Unsecured Appearance Bond.-The judicial officer **shall order the pretrial release** of the person on personal recognizance, or upon execution of an unsecured appearance bond **...unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety** of any other person or the community.

(c) Release on Conditions.-

(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person-

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the **appearance of the person as required and the safety of any other person and the community**, which may include the condition that the person-

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition ...

(ii) maintain employment, or...seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on personal associations, place of abode, or travel;

(v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(vii) comply with a specified curfew;

- (viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;
- (ix) refrain from excessive use of alcohol, or any use of a narcotic drug
- (x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;
- (xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;
- (xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;
- (xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and
- (xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

In any case that involves a minor victimany release order shall contain, at a minimum, a condition of electronic monitoring and each of the conditions specified at subparagraphs (iv), (v), (vi), (vii), and (viii).

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

(e) Detention.-

(1)...

(2) In a case described in subsection (f)(1) of this section, a **rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that-**

(A) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section,

(B) the offense ...was committed while the person was on release pending trial for a Federal, State, or local offense; and

(C) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in subparagraph (A), whichever is later.

(3) Subject to rebuttal by the person, it shall be **presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community** if the judicial officer finds that there is probable cause to believe that the person committed-

(A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(B) an offense under section 924(c), 956(a), or 2332b of this title;

(C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;

(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or

(E) an offense involving a minor victim ...

(f) Detention Hearing.-The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community-

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The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance

(g) Factors To Be Considered.-The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning-

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including-

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or atTest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law

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Post Pretrial Services Report

District/Office Eastern District of Washington/Yakima	Charge(s) (Title, Section, and Description)
Judicial Officer The Honorable John T. Rodgers U.S. Magistrate Judge	Count 1: Possession with Intent to Distribute a Controlled Substance in the form of Ecstasy, 21 U.S.C. § 841(a)(1)
Docket Number (Year-Sequence No.-Def't. No.) 2:16MJ-00J000-1	Count 2: Felon in Possession of a Firearm, 18 U.S.C. § 922(g)(1)

DEFENDANT

Name Rolando Herrera-Godoy		Employer/School Eastern Washington University (Student)	
Address 1005 W. Main St. Apt. #K401 Cheney, WA 99004		Empl/School Address 101 Sutton Hall Cheney, WA 99004	
Time at Address 3 months	Time in Community 7 months	Monthly Income N/A	Time in Empl/School 7 months

DEFENDANT HISTORY

Rolando Herrera-Godoy was arrested on November 2, 2016 and is scheduled to make his initial appearance in the United States District Court for the Eastern District of Washington on November 3, 2016.

In preparation of this pretrial services report, the defendant was interviewed at the Spokane County Jail, in the presence of assigned counsel. The defendant's girlfriend, Bianca Bueno, his mother, Marian Godoy, and Ms. Bueno's parents were contacted and interviewed by telephone, to confirm the information provided by Mr. Herrera-Godoy. In addition, the case agent was contacted and interviewed telephonically.

1. DEFENDANT HISTORY/RESIDENCE/FAMILY TIES:

Rolando Herrera-Godoy is a 21-year-old male born to Maria Godoy and Javier Herrera in Wenatchee, Washington. The defendant's father passed away when he was 5 years old. The defendant has two brothers, Eduardo Herrera-Godoy, age 32, and Jamie Herrera-Godoy, age 28, as well as two sisters, Maria Ramirez, age 25, and Felecia Herrera-Godoy, age 22. All of the defendant's siblings reside in the Eastern District of Washington. The defendant stated he maintains close ties with his mother and siblings. The defendant's mother is employed through the Washington State Department of Social and Health Services (DSHS) and is a naturalized citizen, originally from Mexico.

The defendant's mother was asked who the defendant associates with. She stated the defendant has one friend who she knows to be a gang member. Otherwise, the defendant associates with law abiding individuals, to the best of her knowledge.

Mr. Herrera-Goday has numerous relatives residing in Mexico; however he indicated he is not close with them, and does not know them well. The defendant stated he has lived in Wenatchee, his entire juvenile life prior to moving to Cheney, Washington, to attend Eastern Washington University (EWU). The defendant reported he does not possess a passport, and has only traveled outside of the United States on two occasions, both occurring prior to the age often. The defendant's mother confirmed the information provided by the defendant.

Mr. Herrera-Goday has been in a committed relationship with Ms. Bianca Bueno, age 20, for 2 years. The defendant and his significant other attend EWU, where they have lived together at the above-noted address. Ms. Bueno is currently pregnant with the couples' child. Should the defendant be released from custody pending further proceedings in this matter, the couple would reside with Ms. Bueno's parents at 3210 North First Avenue in Richland, Washington. Ms. Bueno confirmed the information provided by the defendant, stating that her parents, Eduardo Lopez-Bueno and Alice Miller, are supportive of her and the defendant.

The undersigned officer completed a criminal records check on both Eduardo Lopez-Bueno and Alice Miller, which indicated neither individual has a criminal record. Mr. Lopez-Bueno was contacted and interviewed by telephone. The potential conditions of pretrial release supervision were explained to Mr. Lopez-Bueno, and he will allow the defendant and his daughter to reside at his residence. Mr. Lopez-Bueno stated he is a pastor at a local church. Mrs. Miller does not work outside the home. If the defendant resides at the proffered residence, electronic home monitoring would be available as a condition of release.

The defendant stated his brother, Eduardo Herrera-Goday, also lives in the area of Richland, Washington, and would be able to assist the defendant in transportation for Court related matters, if he is released from custody. The defendant's brother is a school teacher and does not have a criminal record. The defendant's mother confirmed the information related to the defendant's brother.

2. EMPLOYMENT HISTORY /FINANCIAL RESOURCES:

The defendant is currently enrolled full-time as a student at EWU in Cheney, Washington, majoring in business studies. Mr. Herrera-Goday stated he worked briefly in January 2014, through EWU's work-study program, but is no longer employed in that capacity. The defendant reported he uses student loans to pay for his tuition, as well as room and board. Mr. Herrera-Goday's only other previous employment experience was at a Walgreens store near Wenatchee, from September 2015 to January 2016. This information was verified by the defendant's mother.

When asked questions related to his financial assets and liabilities, the defendant stated he has a checking and savings account through Bank of America, each containing a balance of less than \$5. The defendant denied any additional assets. The defendant reported he owes approximately \$5,000 in student loans, and has one credit card through Bank of America with a balance of \$700, in which he pays \$150 per month. The defendant also stated he has approximately \$800 in medical bills for dental work, for which he has a monthly payment of \$154. Mr. Herrera-Goday pays \$515 per month toward rent at his current address. The defendant's mother stated she helps the defendant with school expenses, when possible, and confirmed the information provided by the defendant.

3. HEALTH:

Mr. Herrera-Goday advised he is in good health, and denied being under the care of a physician for any type of medical condition or prescribed medication at this time. Upon the advice of counsel, the defendant was not asked questions related to his use of controlled substances or alcohol, nor was he asked questions regarding any prior participation in mental health treatment services he may or may not have received.

The defendant's mother stated the defendant has been a frequent marijuana user since he witnessed the death of a good friend, at the age of 15, in a drive-by shooting. She stated she feels this event was very traumatic in the defendant's life, although he has not received any counseling for this issue. She further stated she believes the defendant consumes alcohol to intoxication on a regular basis, and when he drinks he is "not the same person." The defendant's mother stated she is concerned the defendant has participated in the use of other illegal controlled substances, but does not know for certain his complete history of substance abuse. She stated Mr. Herrera-Goday was involved in chemical dependency treatment due to a conviction for driving under the influence, but was unsure if he has completed the program. It should be noted, the defendant has prior convictions for possession with intent to distribute ecstasy and driving under the influence in his criminal history.

4. CRIMINAL HISTORY:

Criminal history information for this report was gathered through a search of the Washington State Judicial Information System (JIS), Washington Crime Information Center (WACIC), National Crime Information Center (NCIC), and Yakima County Sheriffs Office Database (Spillman).

Juvenile

None

Adult

<u>Date of Arrest</u>	<u>Charge/Agency</u>	<u>Date Sentence Imposed / Disposition</u>
06/31/2013	Driving Under the Influence Chelan County District Court, Wenatchee, WA #P610607	08/25/2013: 365 days custody, 364 days suspended; 24 months probation

The defendant failed to appear on one occasion in reference to the above matter.

The defendant's probation term in this matter ended on or about August 25, 2011.

07/11/2014	Possession With Intent to Distribute Ecstasy Chelan County Superior Court, Wenatchee, WA # 11-1-001874-1	10/8/2014: 5 days custody; 12 months community supervision
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The defendant's term of community supervision ended on or about October 13, 2016.

5. ARREST BEHAVIOR:

The case agent was contacted, and stated that when the defendant was initially contacted, he attempted to flee, but eventually complied with the agents and was arrested without incident. After the defendant was arrested, officers found controlled substances in his back pack and an unloaded firearm and more controlled substances in the defendant's vehicle.

6. ASSESSMENT:

The following factors were taken into consideration regarding the defendant's risk of nonappearance and risk of danger to the community.

RISK OF NON-APPEARANCE

- 1 prior failure to appear
- Relatives who reside outside of the United States
- History of substance use/abuse
- Arrest behavior

RISK OF DANGER TO THE COMMUNITY

- Nature of offense
- Possession of Weapons
- 2 prior convictions for drug/alcohol-related offenses
- Recent illicit drug use

7. RECOMMENDATION :

Based on the above information, it appears that conditions of release can be fashioned by the Court that would reasonably assure future court appearances. It is respectfully recommended that the defendant be released from detention under the special conditions listed below.

- Participate in a program of GPS electronic home monitoring. Defendant to release from custody when equipment is available and electronic monitoring service is in place.
- Report as directed to the United States Probation/Pretrial Services Office.
- Notify the United States Probation/Pretrial Services Office within 24 hours of any change in address, telephone number, or employment.
- Notify the United States Probation/Pretrial Services Office within 24 hours of any contact with law enforcement.
- Remain in the Eastern District of Washington unless given permission by the United States Probation/Pretrial Services Office.
- Maintain employment, or, if unemployed, actively seek employment.
- Maintain or commence an educational program, as directed by pretrial services.
- Refrain from associating with known gang members or known felons.
- Refrain from possessing a firearm, destructive device, or other dangerous weapon.
- Refrain from the use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802), without a prescription by a licensed medical practitioner.
- Submit to random urinalysis testing as directed by the United States Probation/Pretrial Services Office.
- Submit to random breathalyzer testing as directed by United States Probation/Pretrial Services.
- Participate in a chemical dependency evaluation and any treatment as directed by the United States Probation Office. Defendant to have evaluation completed while in custody and, if treatment is recommended, an initial treatment appointment prior to release from custody.

Respectfully submitted,

XXX, Sr.
Chief U.S. Probation Officer

by _____
XXX
U.S. Probation Officer

Approved By:

s/ XX 11/2/2017
XXXXXX
Supervising U.S. Probation Officer