

From: timothy.earley@atf.gov
To: [Bill Marshall](#)
Subject: [EXTERNAL] Final Response to ATF FOIA Request 2024-01073
Date: Wednesday, April 24, 2024 5:06:13 PM

04/24/2024

REFER TO: 2024-01073

Mr. William Marshall
425 3rd Street SW, Suite 800
Washington, DC 20024-3232

Dear Mr. Marshall:

This responds to your Freedom of Information Act (FOIA) request dated 4/16/2024, and received by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) on the same date, in which you requested records concerning Bryan Malinowski. Your request was assigned ATF tracking number 2024-01073. Please refer to this number in any future correspondence.

In response to your request, we processed a total of 55 pages of responsive material. Individual redactions identify the exemption pursuant to which the redacted material has been withheld. Please be advised that we considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

You requested material ATF is required to maintain pursuant to the Gun Control Act (GCA) and/or is information contained in ATF Firearms Trace System database. This information is exempt from disclosure pursuant to Exemption 3 of the FOIA and Public Law 112-55, 125 Stat. 552.

Exemption 3 of the FOIA permits the withholding of information prohibited from disclosure by another statute only if one of two disjunctive requirements are met: the statute either (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. Thus, a statute falls within the exemption's coverage if it satisfies any one of its disjunctive requirements.

Beginning in 2003, Congress placed restrictions on ATF's disclosure of certain GCA related information. In short, ATF can only provide certain GCA data to a law enforcement agency or a prosecutor solely in connection with a criminal investigation or prosecution. Beginning in Fiscal Year 2006, Congress included a provision within each iteration of the restriction, which effectively made the law permanent.

The most recent iteration of these various restrictions was included in ATF's 2012 Appropriation Bill, Public Law 112-55, 125 Stat. 552. Some of the information in the requested records falls within this restriction. Because the Fiscal Year 2006 through 2008 restrictions satisfy all the requirements of FOIA Exemption 3, and the 2012 language is perpetuated from those restrictions, I am withholding

this information pursuant to 5 U.S.C. section 552 (b)(3) and Public Law 112-55, 125 Stat. 552.

We are withholding third party information, including the names of ATF employees, under FOIA Exemption 6. To disclose personal information about a living individual to a member of the public, we need the written consent from the person whose information you requested. Without written consent, proof of death, or an overriding public interest, personal information is exempt from disclosure under the FOIA. The FOIA does not require agencies to disclose information that would constitute a clearly unwarranted invasion of the personal privacy of third parties. See 5 U.S.C. § 552(b)(6).

We are withholding third party information, including the names of ATF employees, pursuant to Exemption 7(C) of the FOIA. Exemption 7(C) permits the withholding of information compiled for law enforcement purposes that “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). The public interest in disclosure is limited to the FOIA’s core purpose of shedding light on an agency’s performance of its statutory duties. The public interest under Exemption 7(C) must be both significant and compelling in order to overcome the legitimate personal privacy interests of a third party. In this matter, the disclosure would not serve the core purpose of the FOIA but would serve as an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(7)(C).

We are withholding specific law enforcement codes, techniques, and procedures used in our investigation pursuant to Exemption 7(E) of the FOIA. Exemption 7(E) exempts from mandatory disclosure records or information compiled for law enforcement purposes when production of such records or information “would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). The information withheld reveals various law enforcement file numbers and codes which are primarily used to store and retrieve law enforcement information. The information withheld also reveals specific law enforcement procedures and techniques used in this investigation. Disclosure of this information could enable individuals outside of the agency to circumvent agency functions and gain access to sensitive investigative information.

At this time, the investigation relating to Bryan Malinowski is still open. Therefore, the remainder of your request is denied pursuant to 5 U.S.C. § 552(b)(7)(A) because it concerns an ongoing investigation. Exemption (b)(7)(A) authorizes us to withhold investigatory records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaisons, Lynette Carter and Jasmine Bryant, at 202-648-7390 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the

Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://doj-foia.entellitrak.com/etk-doj-foia-prod/login.request.do>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Please use the following link to navigate to your documents. This link will be available for 365 days.

To retrieve the records associated with this request use this link [Released Documents for Request 2024-01073](#) or enter <https://www.securerelease.us/request-details/45E006BE-4E61-4AA9-823A-56BBEE184B69/2> in your browser's address bar.

Please login or create a new user account using the email address associated with your records request: bmarshall@judicialwatch.org

Sincerely,

Elizabeth A. Wood
Acting Chief
Information and Privacy Governance Division

UNITED STATES DISTRICT COURT

for the
Eastern District of Arkansas

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

Residence located at (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) (SUBJECT PROPERTY)

Case No. 4:24sw00062 JJV

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

See Attachment A

located in the Eastern District of Arkansas, there is now concealed *(identify the person or describe the property to be seized)*:

See Attachment B

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:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. Sec. 922(a)(1)(A)	dealing in firearms without a license
18 U.S.C. Sec. 921(a)(6)	unlawful acquisition of a firearm

The application is based on these facts:
Please see attached affidavit

- Continued on the 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 (b) (6), (b) (7)(C)

Issued by telephone pursuant to Rule 4.1 and 41(d)(3)
of the Federal Rules of Criminal Procedure

(b) (6), (b) (7)(C) ATF Special Agent
Printed name and title

Sworn to before me and signed in my presence.

Date: 03/06/2024

City and state: Little Rock, Arkansas


Judge's signature
Joe J. Volpe, United States Magistrate Judge
Printed name and title

UNITED STATES DISTRICT COURT

for the
Eastern District of Arkansas

In the Matter of the Search of)
(Briefly describe the property to be searched)
or identify the person by name and address))
Residence located at (b) (6), (b) (7)(C))
(b) (6), (b) (7)(C) (SUBJECT PROPERTY))
)

Case No. 4:24sw00062 JJV

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 Arkansas
(Identify the person or describe the property to be searched and give its location):

See Attachment A1

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: evidence of violations of Title 18 U.S.C. §§ 922(a)(1)(A) and 922(a)(6).

YOU ARE COMMANDED to execute this warrant on or before March 20, 2024 (not to exceed 14 days)
 in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good cause has been established.

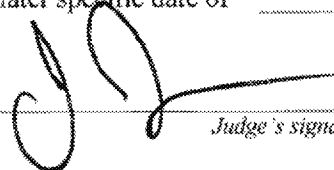
Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

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 Joe J. Volpe
(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: 03/06/2024 2:43 pm



Judge's signature

City and state: Little Rock, Arkansas

Joe J. Volpe, United States Magistrate Judge

Printed name and title

Return		
Case No.: 4:24sw00062 JJV	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		
<p>I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.</p>		
Date: _____	_____	
	<i>Executing officer's signature</i>	

	<i>Printed name and title</i>	

UNITED STATES DISTRICT COURT

for the
Eastern District of Arkansas

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

Case No. 4:24sw00063 JJV

a white 2022 Toyota Highlander with VIN number
(b) (6), (b) (7)(C) (SUBJECT VEHICLE)

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:
See Attachment A2

located in the Eastern District of Arkansas, there is now concealed *(identify the person or describe the property to be seized)*:
See Attachment B

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:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. Sec. 922(a)(1)(A)	dealing in firearms without a license
18 U.S.C. Sec. 921(a)(6)	unlawful acquisition of a firearm

The application is based on these facts:
Please see attached affidavit

- Continued on the 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 _____

Issued by telephone pursuant to Rule 4.1 and 41(d)(3)
of the Federal Rules of Criminal Procedure

(b) (6), (b) (7)(C)

Ap
(b) (6), (b) (7)(C) ATF Special Agent
Printed name and title

Sworn to before me and signed in my presence.

Date: 03/06/2024



Judge's signature

City and state: Little Rock, Arkansas

Joe J. Volpe, United States Magistrate Judge
Printed name and title

UNITED STATES DISTRICT COURT

for the
Eastern District of Arkansas

In the Matter of the Search of)
(Briefly describe the property to be searched)
or identify the person by name and address))
a white 2022 Toyota Highlander with VIN number)
(b) (6), (b) (7)(C) (SUBJECT VEHICLE))
)

Case No. 4:24sw00063 JJV

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 Arkansas
(identify the person or describe the property to be searched and give its location):

See Attachment A2

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: evidence of violations of Title 18 U.S.C. §§ 922(a)(1)(A) and 922(a)(6).

YOU ARE COMMANDED to execute this warrant on or before March 20, 2024 (not to exceed 14 days)
 in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good 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.

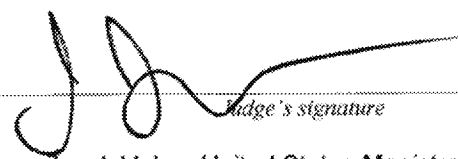
The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to Joe J. Volpe
(United States Magistrate Judge)

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: 03/06/2024 2:43 pm

City and state: Little Rock, Arkansas



Joe J. Volpe, United States Magistrate Judge
Printed name and title

Return

Case No.:

4:24sw00063 JJV

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

IN THE MATTER OF THE SEARCH OF THE
RESIDENCE LOCATED AT (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
(SUBJECT PROPERTY) and A WHITE 2022
TOYOTA HIGHLANDER, WITH VEHICLE
IDENTIFICATION NUMBER (VIN)
(b) (6), (b) (7)(C) (SUBJECT
VEHICLE)

Case No. 4:24sw00062 JJV
4:24sw00063 JJV

Filed Under Seal

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, (b) (6), (b) (7)(C) being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. Your Affiant, (b) (6), (b) (7)(C) is an investigative or law enforcement officer of the United States, within the meaning of Title 18, United States Code (USC) Section 2510(7) and is empowered by law to conduct investigation of and to make arrests for offenses enumerated in Title 18, United States Code (USC) Section 2516. Your Affiant is a Special Agent (S/A) of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), assigned to the Little Rock Field Office.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

3. In your Affiant's law enforcement employment, your Affiant has authored and conducted numerous analyses of telephones and telephone billing records, including those used by subjects involved in possession of firearms. Your Affiant has taken over 200+ hours of cellular data training courses from 2018-2023. Your Affiant has taken additional training courses covering the topics of cellular data from providers, cellular data stored on a cellular device, and other data held on cellular devices associated with other electronics. Your Affiant has participated in the execution of search warrants, including search warrants for contents from electronic devices such as cellular telephones and portable electronic storage devices. Consequently, your Affiant is familiar with the ways in which persons who are engaged in the business of dealing firearms without a license use cellular telephones to facilitate, promote, and memorialize their illegal activities. Your Affiant knows that persons who engage in the business of dealing firearms without a license, often take pictures and videos of their illegal activity and maintain those pictures and videos on their phones. Furthermore, based upon your Affiant's training and experience, persons who are engaged in the business of dealing firearms without a license, often take photographs and

videos of firearms, firearm parts and accessories, and other contraband in their possession using their cellular telephones and subsequently post such photographs and videos on social media, including on Facebook and Snapchat, using their cellular telephones. Your Affiant knows CashApp, PayPal, Zelle, and similar online monetary transaction accounts, are digital applications commonly used via cellular phones to purchase or pay for both legal and contraband items, such as firearms by prohibited persons.

4. Additionally, based upon your Affiant's training and experience, your Affiant knows that persons who engage in the business of dealing firearms without a license, often utilize cellular telephones to facilitate the purchase of, transportation of, and/or distribution of the firearms. They frequently use cellular phones to send and receive phone calls, text messages, and voice mails to and from their source(s) of supply and their customers. They store contact information, e.g. phone numbers and addresses, for their source(s) of supply and customers in their cellular phones. Your Affiant knows persons who are engaged in the business of dealing firearms without a license use cellular telephones to take/receive photographs of firearms. Persons who are engaged in the business of dealing firearms without a license use cellular telephones to take photographs of the proceeds of their firearm and firearm dealing activities. Thus, cellular telephones frequently contain names, text messages, voice mail messages, photographs, videos, and contact numbers for/of others involved in the business of dealing of firearms. Your Affiant knows cellular telephones will retain text messages, contact lists, phone call information, and photographs until manually deleted or deleted according to the cellular phone's settings.

5. Your Affiant has also been involved in various types of electronic surveillance and in the debriefing of defendants, witnesses, informants, and others who have knowledge of firearms violations. Your Affiant has participated in investigations resulting in the arrest of prohibited

persons in possession of firearms, firearms trafficking suspects, and in the seizure of numerous unlawfully possessed firearms. Your Affiant has participated in investigations involving the use of video surveillance. Your Affiant is familiar with the manner in which persons who are engaged in the business of dealing firearms without a license, including but not limited to: their methods of unlawfully acquiring and distributing firearms, use of telecommunication devices to include electronic mail, land line telephones, cellular telephones, and has been trained on the use of counter surveillance techniques, and use of numerical codes and coded and/or cryptic language, words, and references to conduct their transactions.

6. Your Affiant knows that Title 18 U.S.C. Section 922(a)(6), of the Gun Control Act (GCA), makes it unlawful for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition.

7. Your Affiant knows that Title 18 U.S.C. Section 922(a)(1)(A), of the GCA, it is unlawful for any person except a licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce.

8. Your Affiant knows that the term “firearm”, as defined in Title 18 U.S.C. Section 921(a)(3)(A) of the GCA, means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosives; or (B) the frame or receiver of any such weapon; or (C) any firearm muffler or firearm silencer; or (D) any destructive

device.

9. Your Affiant knows the term “dealer”, as defined in Title 18 USC 921(a)(11) of the GCA, means (A) any person engaged in the business of selling firearms at wholesale or retail; or (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or (C) any person who is a pawnbroker.

10. Your Affiant knows the term “engaged in the business”, as defined in Title 18 USC 921(a)(21)(C) of the GCA, as applied to a dealer in firearms, as defined in 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business to predominately earn a profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.

11. Your Affiant knows the term “to predominately earn a profit”, as defined in Title 18 USC 921(a)(22) of the GCA, means that the intent underlying the sale or disposition of firearms is predominately one of obtaining pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: Provided, that proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism.

12. The information in this Affidavit is based on your Affiant’s personal observations; information received from outside sources; information received from cooperating witnesses; review of recordings and text messages; review of records and law enforcement databases; records of the purchase of firearms, firearms parts and accessories; information received from other law enforcement agents; your Affiant’s experience and training; and the experience of other agents and

law enforcement officers. Because of this Affidavit's limited purpose, it does not contain all of the facts known to your Affiant or other law enforcement officers about the investigation. Additionally, the conversations summarized and transcribed below do not necessarily represent the entirety of the conversation, but rather the essential parts that support probable cause. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of your Affiant's knowledge about this matter.

13. Based on your Affiant's training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of Title 18, United States Code §§ 922(a)(1)(A) and 922(a)(6), have been committed by Bryan Keith MALINOWSKI (hereafter referred to as MALINOWSKI). There is also probable cause to search the property described in Attachment A for evidence, instrumentalities, and/or fruits of these crimes further described in Attachment B. This affidavit is made in support of a search warrant for the residence, electronic devices, including cell phones, and any storage safes, as further described in Attachment A1 and B (the "SUBJECT PROPERTY"), as well as a white 2022 Toyota Highlander, with vehicle identification number (VIN) **(b) (6), (b) (7)(C)** (the "SUBJECT VEHICLE"), as further described in Attachment A2 and B.

JURISDICTION

14. This Court has jurisdiction to issue the requested warrant because it is "a court of competent jurisdiction" as defined by Title 18, United States Code, Sections 2711, and Title 18, United States Code, Sections 2703(a), (b)(1)(A), & (c)(1)(A). Specifically, the Court is "a district court of the United States . . . that has jurisdiction over the offense being investigated" as outlined in Title 18, United States Code, Section 2711(3)(A)(i).

PROBABLE CAUSE

15. By way of background, ATF works in conjunction with various law enforcement agencies within the United States (U.S.) by tracing the acquisition and disposition of firearms recovered there that are sourced in the U.S. ATF also assists bordering foreign countries, Canada and Mexico, in investigating firearm-related crimes where recovered firearms have an origin or similar nexus to the U.S. The cooperation between these countries and ATF in the U.S. is intended to combat violent firearm-related crimes that cross each country's border. ATF further employs individuals, including liaison/attaché and intelligence personnel, who are stationed in these respective foreign countries.

16. ATF further utilizes personnel assigned to regional Crime Gun Intelligence Centers (CGIC) in its US-based field divisions, as well as in its Office of Strategic Intelligence and Information (OSII), who assist in detecting and investigating potential firearms trafficking schemes. Much of the intelligence used in investigating firearm trafficking schemes revolves around data accessed through ATF's National Tracing Center (NTC). When a firearm is recovered by a law enforcement agency, both inside the U.S. as well as Canada and Mexico, a trace request may be submitted to the NTC by the recovering and/or related investigating agency. To initiate a trace, information including the firearm description (to include type, make, manufacturer, model, and caliber), recovery location/information, and any potential involved persons, is requested of the submitter. NTC utilizes information obtained from federal firearms licensees (FFLs) who are licensed by ATF to engage in various aspects of firearm-related commerce, which may include activities such as manufacturing, importing, acquiring, and/or disposing of firearms lawfully within the confines of the National Firearms Act (NFA) and GCA, amongst other potential states.

17. For an individual to purchase a firearm(s), they must appear in person at the


premises or authorized alternate location of an FFL. Upon presenting valid government-issued photo identification, verified by the FFL or an employee/designee, the individual purchaser (transferee/buyer), in conjunction with the FFL (transferor/seller) must complete an ATF Form 4473, Firearms Transaction Record.

18. The current version of the ATF Form 4473 was most recently updated in May 2020. The information that follows is based off the May 2020 format and layout of the ATF Form 4473. At the top of page 1 of the 6-page Form 4473, a warning appears regarding unlawful transactions. An excerpt of the top page 1 of the form warning appears below:

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

OMB No. 1140-0020

Firearms Transaction Record

<p>WARNING: The information you provide will be used to determine whether you are prohibited by Federal or State law from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. 921 et. seq., are punishable by up to 10 years imprisonment and/or up to a \$250,000 fine. Any person who exports a firearm without a proper authorization from either the Department of Commerce or the Department of State, as applicable, is subject to a fine of not more than \$1,000,000 and up to 20 years imprisonment.</p> <p>Read the Notices, Instructions, and Definitions on this form. Prepare in original only at the licensed premises (including business temporarily conducted from a qualifying gun show or event in the same State in which the premises is located) unless the transaction qualifies under 18 U.S.C. 922(c). All entries must be handwritten in ink unless completed under ATF Rul. 2016-2. PLEASE PRINT.</p>	<p>Transferor's/Seller's Transaction Serial Number (if any)</p> 
---	--

The warning cautions that the information provided is used to determine if the purchaser is prohibited from receiving firearm(s), and explicitly reads, "Any person who exports a firearm without a proper authorization from either the Department of Commerce or the Department of State, as applicable is subject to a fine of not more than \$1,00,000 and up to 20 years imprisonment."

19. In Section A of the 4473, firearm(s) description information must be recorded by the FFL (transferor/seller). Section A of page 1 is excerpted below:

Section A - Must Be Completed By Transferor/Seller Before Transferee/Buyer Completes Section B

1. Manufacturer and Importer (if any) (If the manufacturer and importer are different, include both.)	2. Model (if designated)	3. Serial Number	4. Type	5. Caliber or Gauge
1. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6. Total Number of Firearms to be Transferred (Please spell total number e.g., one, two, etc. Do not use numerals.) [REDACTED]			7. Check if any part of this transaction is a pawn redemption. Record Line Number(s) From Question 1: [REDACTED] <input type="checkbox"/>	
			8. Check if this transaction is to facilitate a private party transfer. <input type="checkbox"/>	

20. In Section B (on page 1), the form is required to be completed by the purchaser (transferee/buyer). It requires the purchaser's identifying and demographic information be provided as reflected in the excerpt below:

Section B - Must Be Completed Personally By Transferee/Buyer

9. Transferee's/Buyer's Full Name (If legal name contains an initial only, record the initial followed by "IO" in quotes. If no middle initial or name, record "NMN".)

Last Name (including suffix, e.g., Jr, Sr, II, III) [REDACTED]	First Name [REDACTED]	Middle Name [REDACTED]
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10. Current State of Residence and Address (U.S. postal abbreviations are acceptable. Cannot be a post office box.)

Number and Street Address [REDACTED]	City [REDACTED]	State [REDACTED]	ZIP Code [REDACTED]	County/Parish/Borough [REDACTED]
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11. Place of Birth

U.S. City and State [REDACTED]	-OR- Foreign Country [REDACTED]	12. Height Ft. [REDACTED] In. [REDACTED]	13. Weight (lbs.) [REDACTED]	14. Sex <input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Non-Binary	15. Birth Date Month [REDACTED] Day [REDACTED] Year [REDACTED]
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16. Social Security Number (optional, but will help prevent misidentification) [REDACTED]

17. Unique Personal Identification Number (UPIN) or Appeals Management Database Identification (AMD ID) (if applicable) [REDACTED]

18.a. Ethnicity
 Hispanic or Latino
 Not Hispanic or Latino

18.b. Race (Select one or more race in 18.b. Both 18.a. and 18.b. must be answered.)
 American Indian or Alaska Native Black or African American White
 Asian Native Hawaiian or Other Pacific Islander

19. Country of Citizenship: (Check/List more than one, if applicable. Nationals of the United States may check U.S.A.)
 United States of America (U.S.A.) Other Country/Countries (Specify): [REDACTED]

20. If you are an alien, record your U.S.-issued alien or admission number (AR#, USCIS#, or I94#): [REDACTED]

21. Section B also requires the purchaser respond to a series of "Yes" or "No" questions under 21a-21k. These questions are used by the transferor to determine if the purchaser is prohibited from possessing/receiving firearm(s). Question 21 is split between pages 1 and 2, as depicted below:

21. Answer the following questions by checking or marking either the "yes" or "no" box to the right of the questions:		Yes	No
a.	Are you the actual transferee/buyer of the firearm(s) listed on this form and any continuation sheet(s) (ATF Form 5300.9A)? Warning: You are not the actual transferee/buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual transferee/buyer, the licensee cannot transfer the firearm(s) to you. Exception: If you are only picking up a repaired firearm(s) for another person, you are not required to answer 21.a. and may proceed to question 21.b.	<input type="checkbox"/>	<input type="checkbox"/>
b.	Are you under indictment or information in any court for a felony , or any other crime for which the judge could imprison you for more than one year, or are you a current member of the military who has been charged with violation(s) of the Uniform Code of Military Justice and whose charge(s) have been referred to a general court-martial?	<input type="checkbox"/>	<input type="checkbox"/>
c.	Have you ever been convicted in any court, including a military court, of a felony , or any other crime for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation?	<input type="checkbox"/>	<input type="checkbox"/>
d.	Are you a fugitive from justice?	<input type="checkbox"/>	<input type="checkbox"/>
e.	Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance? Warning: The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.	<input type="checkbox"/>	<input type="checkbox"/>

Previous Editions Are Obsolete

STAPLE IF PAGES BECOME SEPARATED

ATF Form 4473 (5300.9)
Revised May 2020

Page 1 of 6

	Yes	No
f. Have you ever been adjudicated as a mental defective OR have you ever been committed to a mental institution?	<input type="checkbox"/>	<input type="checkbox"/>
g. Have you ever been discharged from the Armed Forces under dishonorable conditions?	<input type="checkbox"/>	<input type="checkbox"/>
h. Are you subject to a court order, including a Military Protection Order issued by a military judge or magistrate, restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner?	<input type="checkbox"/>	<input type="checkbox"/>
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence, or are you or have you ever been a member of the military and been convicted of a crime that included, as an element, the use of force against a person as identified in the instructions?	<input type="checkbox"/>	<input type="checkbox"/>
j. Have you ever renounced your United States citizenship?	<input type="checkbox"/>	<input type="checkbox"/>
k. Are you an alien illegally or unlawfully in the United States?	<input type="checkbox"/>	<input type="checkbox"/>
21.l.1. Are you an alien who has been admitted to the United States under a nonimmigrant visa?	<input type="checkbox"/>	<input type="checkbox"/>
21.l.2. If you are such an alien do you fall within any of the exceptions stated in the instructions? (U.S. citizens/nationals leave 21.l.2. blank)	<input type="checkbox"/>	<input type="checkbox"/>

22. Question 21.1. specifically asks, "Are you the actual transferee/buyer of the firearm(s) listed on this form and any continuation sheet(s)..." In bold font, it continues, "Warning: You are not the actual transferee/buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual transferee/buyer, the licensee cannot transfer the firearm(s) to you."

23. Between questions 21 and the certification portion of question 22, the following statement appears:

I certify that my answers in Section B are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. I understand that answering "yes" to question 21.a. if I am not the actual transferee/buyer is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I understand that a person who answers "yes" to any of the questions 21.b. through 21.k. is prohibited from receiving or possessing a firearm. I understand that a person who answers "yes" to question 21.l.1. is prohibited from receiving or possessing a firearm, unless the person answers "yes" to question 21.l.2. and provides the documentation required in 26.d. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of Federal law.

22. Transferee's/Buyer's Signature	23. Certification Date		
	Month	Day	Year

24. The certification statement cautions specifically, “I understand that answering “yes” to question 21.a. if I am not the actual transferee/buyer is a crime punishable as a felony under Federal law, and may also violate State and/or local law.” It also warns, “I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony under Federal law, and may also violate State and/or local law.” It continues, “I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation Federal law.”

25. The Background check portion of the form is documented by the FFL in Section C of pages 2-3. Unless the purchaser has a valid concealed carry weapon permit accepted in the state of purchase, the FFL is required to initiate a National Instant Check System (NICS) check with the Federal Bureau of Investigation (FBI) to determine if the person has any prohibiting factors that would preclude them from lawfully possessing or receiving firearm(s). When a NICS check is initiated by an FFL, NICS provides a unique identifier consisting of letters and numerals, which is referred to as a NICS transaction number. NICS also typically gives one (1) of the following responses: proceed, delayed, or denied. On a proceeded transaction, the firearm(s) can be transferred to the purchaser immediately; the opposite occurs with a denied transaction and no transfer is permitted. Delayed transactions may require additional time to research and may still result in a proceed or denied. It is possible that an inconclusive or untimely “no response” from NICS results, and it is possible for a firearm to be transferred lawfully by an FFL while in a “delayed” status. Section C is excerpted below:

Section C - Must Be Completed By Transferor/Seller Prior To The Transfer Of The Firearm(s)

24. Category of firearm(s) to be transferred (check or mark all that apply):
 Handgun Long Gun Other Firearm (frame, receiver, etc.)
 (rifle or shotgun)

25. If sale or transfer is at a qualifying gun show or event:
 Name of Function: _____
 City, State: _____

26.a. Identification (e.g., Virginia driver's license (VA DL) or other valid government-issued photo identification including military ID.)
 Issuing Authority and Type of Identification Number on Identification Expiration Date of Identification (if any)
 _____ _____ Month Day Year
 _____ _____ _____ _____ _____

26.b. Supplemental Government Issued Documentation (if identification document does not show current residence address or full legal name)

26.c. Official Military Orders Establishing Permanent Change of Station (PCS):
 PCS Base/City and State: _____ PCS Effective Date: _____ PCS Order Number (if any): _____

26.d. Exception to the Nonimmigrant Alien Prohibition: If the transferee/buyer answered "yes" to 21.1.2, record the type of documentation showing the exception to the prohibition and attach a copy to this ATF Form 4473:

27.a. Date the transferee's/buyer's identifying information in Section B was transmitted to NICS or the appropriate State agency:
 Month Day Year
 _____ _____ _____

27.b. The NICS or State transaction number (if provided) was:

27.c. The response initially provided by NICS or the appropriate State agency was:
 Proceed Delayed
 Denied [The firearm(s) may be transferred on _____ if State law permits (optional)]
 Cancelled

27.d. Prior to transfer the following response(s) was/were later provided by NICS or the appropriate State agency:
 Proceed _____ (date) Overturned
 Denied _____ (date)
 Cancelled _____ (date)
 No response was provided within 3 business days.

27.e. After the firearm was transferred, the following response was provided by NICS or the appropriate State agency (if applicable) on:
 _____ (date) Proceed Denied Cancelled

27.f. Name and Brady identification number of the NICS examiner. (optional)
 _____ (name) _____ (number)

27.g. Name of FFL Employee Completing NICS check. (optional)

28. No NICS check is required because a background check was completed during the NFA approval process on the individual who will receive the NFA firearm(s), as reflected on the approved NFA application.

29. No NICS check is required because the transferee/buyer has a valid permit from the State where the transfer is to take place, which qualifies as an exemption to NICS.

Issuing State and Permit Type Date of Issuance (if any) Expiration Date (if any) Permit Number (if any)
 _____ _____ _____ _____

26. Page 3 further contains an option Section D re-certification by the purchaser that is only completed if the firearm(s) transfer takes place on a date different than the purchaser signed Section B.

27. Page 3 also includes Section E, which must be completed by the FFL. It contains a block in item 32 entitled “for use by Licensee” and contains a blank optional field. Item 33 is a required block with space for the name of the FFL and business premises address to be documented, as well as documentation of the abridged FFL number (requiring the first 3 and last 5 numerals in the FFL number). The first 3 numbers correspond to a state and region, for example, for FFLs located within the State of Arkansas, the first 3 numerals are 5-71. The last 5 numerals are unique to the individual FFL. The first 3 and last 5 numerals of the FFL number generally do not change as long as the license remains valid and issued to the same entity, so they are commonly used within the firearms industry and within ATF without inclusion of the county codes, license type, and expiration year and month codes that fall between the first 3 and last 5 numerals.

28. Section E on page 3 further contains the following certification section to be completed by the FFL.

The Individual Transferring The Firearm(s) Must Complete Questions 34-36. For Denied/Cancelled Transactions, The Individual Who Completed Section C Must Complete Questions 34-35.		
I certify that: (1) I have read and understand the Notices, Instructions, and Definitions on this ATF Form 4473; (2) the information recorded in Sections A, C and E is true, correct, and complete; and (3) this entire transaction record has been completed at the licensed business premises (“licensed premises” includes business temporarily conducted from a qualifying gun show or event in the same State in which the licensed premises is located) unless this transaction has met the requirements of 18 U.S.C. 922(c). Unless this transaction has been denied or cancelled by NICS or State agency, I further certify on the basis of — (1) the transferee’s/buyer’s responses in Section B (and Section D, if applicable); (2) the verification of the identification recorded in question 26 (and the re-verification at the time of transfer, if Section D was completed); and (3) State or local law applicable to the firearms business — it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section B.		
34. Transferor’s/Seller’s Name (please print)	35. Transferor’s/Seller’s Signature	36. Date Transferred
		Month Day Year

29. By signing Section E, and completing questions 34-36, the dealer/transferor certifies (in part) the fact that they have verified the identification of the purchaser. The remainder of pages 3-6 include notices, instructions, definitions, and similar information to be used for reference.

30. In December 2023, ATF Industry Operations Investigator Specialist (IOIS) (b) (6), (b) (7)(C) referred an investigative lead to the ATF Little Rock Field Office for further review. IOIS (b) (6), (b) (7)(C) identified information to suspicious activity. In November 2023, Canada police officials received a photograph of firearms by a confidential informant. The firearms were not known to have been recovered. Some serial numbers were visible for the firearms, which were then submitted as an investigative trace request. A trace request is completed by the National Tracing Center (NTC). During a trace request, NTC attempts to identify the original purchaser of a firearm after the firearm leaves a manufacturer. Through the trace, Bryan Keith MALINOWSKI (b) (6), (b) (7)(C) showed to be the purchaser for multiple firearms.

31. The reports showed MALINOWSKI purchased approximately ninety-two (92) firearms from November 2021 to December 2023. MALINOWSKI showed to be a resident of Little Rock, Arkansas, in the Eastern District of Arkansas. Many of the firearms located in the Multiple Sale Summary reports, showed MALINOWSKI was purchasing multiples of the same manufacturer and model of firearms.

32. All the firearms from the reports were purchased from Federal Firearms Licensee (FFL) (b) (6), (b) (7)(C) North Little Rock, Arkansas (b) (6), (b) (7)(C). The Multiple Sale Summary reports firearms purchased by MALINOWSKI are as follows:

(b)(3) 112 PL 55 125 STAT 552

(b)(3) 112 PL 55 125 STAT 552

k. And multiple different handguns where he purchased two of the same manufacturer and model firearms.

33. On December 15, 2023, your Affiant reviewed the above information and opened an investigation into MALINOWSKI. MALINOWSKI's address on his Arkansas Driver's License showed to be **(b) (6), (b) (7)(C)** (hereafter referred to as the **SUBJECT PROPERTY**).

34. On December 19, 2023, your Affiant reviewed records at **(b) (6), (b) (7)(C)**. The records included ATF Form 4473. **(b) (6), (b) (7)(C)** provided records for all the firearms purchased by MALINOWSKI from them, which totaled approximately one hundred forty-two (142) firearms from 2019 to December 19, 2023. Each form included the address for MALINOWSKI to be the **SUBJECT PROPERTY**.

35. An employee of **(b) (6), (b) (7)(C)** stated MALINOWSKI usually purchases firearms from gunbroker.com and has the firearms shipped to **(b) (6), (b) (7)(C)**. The employee stated typically the FSAAP, AR style pistols which MALINOWSKI buys, come directly from the manufacturer. Before transferring to MALINOWSKI, **(b) (6), (b) (7)(C)** has MALINOWSKI fill out ATF Form 4473 and MALINOWSKI is charged \$25.00 transfer fee. The employee provided information concerning current in stock firearms that were shipped to them and were awaiting transfer to MALINOWSKI. Two (2) of the pending transfer firearms included invoices from gunbroker.com. Both invoices showed the firearms billing was addressed to Bryan Malinowski at the **SUBJECT PROPERTY**, with phone number **(b) (6), (b) (7)(C)**

(b) (6), (b) (7)(C) and email address **(b) (6), (b) (7)(C)**. The gunbroker.com buyer name on the account was **(b) (6), (b) (7)(C)**

36. A review of traces of recovered firearms from NTC where MALINOWSKI was listed as the purchaser, showed three (3) firearms were recovered during the commission of a crime. The three (3) firearms are listed below:

a. (b)(3) PL112-55, 125 Stat. 552

(b)(3) PL112-55, 125 Stat. 552

b. (b)(3) PL112-55, 125 Stat. 552

(b)(3) PL112-55, 125 Stat. 552

c. (b)(3) PL112-55, 125 Stat. 552

(b)(3) PL112-55, 125 Stat. 552

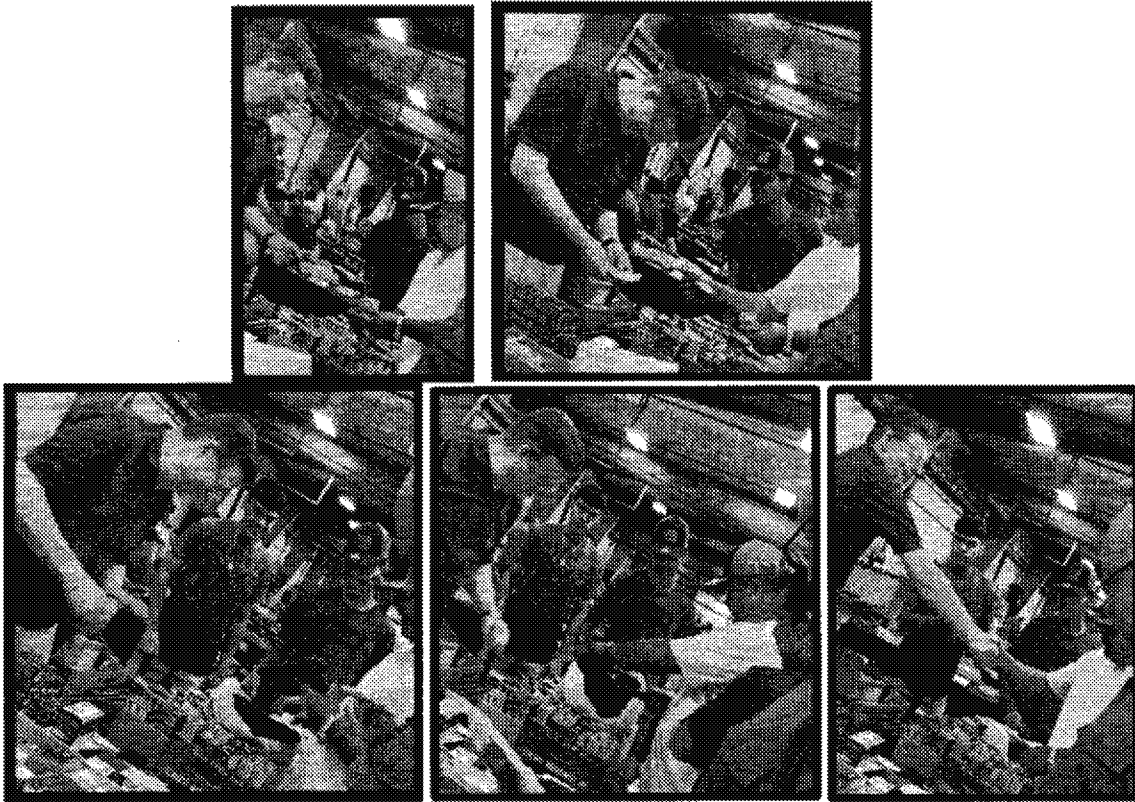
37. On December 21, 2023, ATF S/A (b) (6), (b) (7)(C) viewed a photograph of MALINOWSKI

and recognized MALINOWSKI from a separate unrelated ATF investigation she was conducting. S/A

(b) (6), (b) (7)(C)

attended a G&S Promotions gun show in Conway Arkansas on June 11, 2023. S/A (b) (6), (b) (7)(C) observed

MALINOWSKI, appearing to be an unlicensed individual, operating as a vendor at the gun show. MALINOWSKI sold firearms to several subjects without asking for any identification or paperwork. At the time, ATF [REDACTED] did not know MALINOWSKI's identity. The photographs of the sell she witnessed are below:



38. On December 27, 2023, your Affiant conducted a recorded interview with W-1 [REDACTED]

[REDACTED] (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) W-1 provided a statement in summary:

a. The firearm W-1 was arrested with by [REDACTED] (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) was purchased by [REDACTED] from a seller at a gun show in April/ May of 2022, at the Arkansas State Fairgrounds in Little Rock, Arkansas. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

b. W-1 was shown a photographic line-up featuring MALINOWSKI and five (5) other similar appearing individuals. W-1 positively identified MALINOWSKI, by his Arkansas Driver's License photograph.

c. W-1 went to MALINOWSKI's booth at the gun show because [REDACTED] saw MALINOWSKI working alone, make a sale to another unidentified subject without asking for paperwork. At the gun show, MALINOWSKI had a single table with approximately 12-13 firearms on the table. MALINOWSKI had older guns, handguns, and some rifles. W-1 asked MALINOWSKI if he did any paperwork (documenting identifying information of the buyer or documenting the sell). MALINOWSKI said no, so W-1 began buying firearms from him. On this date at the gun show, W-1 only bought (b) (6), (b) (7)(C) pistol, from MALINOWSKI.

d. Through text messages starting from after the gun show to approximately June 2023, W-1 and MALINOWSKI exchanged numerous text messages about purchasing additional firearms. W-1 would primarily reach out to MALINOWSKI but sometimes MALINOWSKI would reach out to W-1 about new firearms MALINOWSKI had for sell. If there was a firearm MALINOWSKI did not have in his inventory, he would try to get the firearm to sell to W-1. MALINOWSKI offered to sell firearms to any of W-1's friends, but W-1 never referred anyone to MALINOWSKI for buying firearms.

e. W-1 made a total of three firearm purchases from MALINOWSKI between approximately (b) (6), (b) (7)(C) 2022 to [REDACTED] 2023. MALINOWSKI was willing to meet W-1 anywhere in a public place, so they conducted two purchases a business parking lot in Little Rock, Arkansas. The only identifying question MALINOWSKI asked W-1 was if W-1 was over 18 years old. The three purchases W-1 made from MALINOWSKI are described below:

- [REDACTED] 2022 [REDACTED] 2022: W-1 purchased a (b) (6), (b) (7)(C) at a gun show at the Arkansas State Fairgrounds in Little Rock, Arkansas. W-1 paid \$700.00 for

the firearm. MALINOWSKI provided the original box with the firearm during the purchase. W-1 was arrested with this firearm by (b) (6), (b) (7)(C) in (b) (6), (b) (7)(C) 2022.

- February 2023: W-1 purchased a (b) (6), (b) (7)(C) pistol, at a business parking lot. W-1 paid \$725.00 cash for the firearm. MALINOWSKI provided the original box with the firearm during the purchase. This was the firearm W-1 was arrested with by (b) (6), (b) (7)(C) Police Department (b) (6), (b) (7)(C) W-1 only had this firearm for approximately two days prior to being arrested. Present with MALINOWSKI during this transaction, was a female described as MALINOWSKI's wife.
- June 2023: W-1 purchased a (b) (6), (b) (7)(C) handgun from MALINOWSKI by himself, at the same business parking lot in Little Rock, Arkansas, for \$120.00. This firearm did not come with a box. W-1 threw the firearm away because (b) (6), (b) (7)(C) did not want the firearm. This firearm was never recovered.

39. Your Affiant obtained the (b) (6), (b) (7)(C) report concerning W-1's arrest. The report detailed W-1 was pulled over during a traffic stop, in which the (b) (6), (b) (7)(C) with Serial Number (b) (6), (b) (7)(C) was recovered. The firearm was not able to be located in a previous trace through NTC due to (b) (6), (b) (7)(C) not routinely submitting trace requests. (b)(3) Public Law 112-55, 125 Stat. 552

(b)(3) Public Law 112-55, 125 Stat. 552 your Affiant contacted (b) (6), (b) (7)(C) via telephone, who stated (b) (6), (b) (7)(C) did own the firearm, but he sold the firearm to (b) (6), (b) (7)(C) possibly in 2019. Your Affiant contacted (b) (6), (b) (7)(C) who provided an invoice where they sold the firearm June 16, 2022, online through gunbroker. The invoice showed the firearm was shipped to MALINOWSKI with phone number (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C)

The firearm sold for approximately \$468.51. ATF Form 4473 for this firearm showed the firearm was transferred to MALINOWSKI on June 23, 2022.

40. On January 2, 2024, your Affiant made contact with W-1's mother, who signed a consent form allowing your affiant to view W-1's phone. In the phone, your Affiant located contact "Bryan", with contact number (b) (6), (b) (7)(C). Your Affiant took photographs of the text thread, which is summarized below:

a. On Saturday, February 4, 2023, starting at 2:27 p.m., W-1 sent a message addressed to Bryan, introducing (b) (6), (b) (7)(C) and references getting Bryan's number during a December gun show. There is not another message until Monday, February 13, 2023, starting at 5:05 p.m.. W-1 and MALINOWSKI begin exchanges messages negotiating the sale of multiple firearms MALINOWSKI has for sell. MALINOWSKI sends a list of six firearms, (three Glocks and three AR style guns), which includes AR 15 style .223/.556 caliber pistol for \$750.00. W-1 and MALINOWSKI agreed to a sale of a firearm and coordinate meeting at a business parking lot in Little Rock, Arkansas.

b. A month later, W-1 reaches back out to MALINOWSKI for more firearms. MALINOWSKI offers several firearms for sale, which includes a Glock, Model 17 for \$725.00.

c. Months later, W-1 reaches out to MALINOWSKI about additional firearms, and MALINOWSKI replies with multiple photographs of multiple firearms for sale. W-1 and MALINOWSKI agree to exchange a Glock, Model 19 for \$700.00. There are several text messages that follow indicating they met for the transaction.

d. Months later, W-1 reached out to MALINOWSKI again for any new firearms for sell, and MALINOWSKI replied with a list of multiple firearms to sell and prices for each.

41. On January 11, 2024, your Affiant was notified that a firearm previously purchased by MALINOWSKI (b) (6), (b) (7)(C) pistol, with (b) (6), (b) (7)(C), was recovered by the (b) (6), (b) (7)(C) California.

42. Your Affiant obtained the (b) (6), (b) (7)(C) report, which detailed on January 5, 2024, (b) (6), (b) (7)(C) Officers were patrolling near a known park area frequented by Norteno criminal street gang members and associates. Additionally, a shooting and robbery had taken place the previous night in this area. (b) (6), (b) (7)(C) Officers came across a 15-year-old, juvenile Hispanic male. (b) (6), (b) (7)(C) Officers made contact with the juvenile who then fled and was subsequently arrested while being in the possession of a stolen (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) According to the (b) (6), (b) (7)(C) report, the juvenile is a documented Norteno gang member. ATF Form 4473 showed MALINOWSKI was transferred the firearm on May 1, 2022.

43. On January 27, 2024, at approximately 9:18 a.m., ATF S/As, acting in an undercover capacity, conducted an undercover purchase of firearms from MALINOWSKI at a gun show located at the (b) (6), (b) (7)(C) The gun show was a G&S Promotions gun show, which is the same promoters of the gun show MALINOWSKI was observed selling firearms at in June 2023 by S/A (b) (6), (b) (7)(C) The below observations were made:

a. MALINOWSKI was operating as a vendor, with approximately 2-3 tables by himself. The tables MALINOWSKI was operating had a rack with AR style pistols, two containers with various pistols, and several boxes of various types of ammunition. Underneath the table, were recognizable gun boxes and other firearms not on display.

b. The first undercover agent approached MALINOWSKI, who began describing various firearms he had on display. These firearms included pistols manufactured by Glock, SCCY, and Beretta. MALINOWSKI further described the AR style pistols as not considered rifles because they did not have an arm brace on them. MALINOWSKI stated he sells at gun

shows in Benton (Arkansas), Conway (Arkansas), and at a music hall in Memphis (Tennessee). MALINOWSKI stated he sells out of AR pistols, like the ones he had on display, very quickly at the Memphis gun show.

c. MALINOWSKI stated he was a private seller therefore no paperwork was needed to be filled out for a purchase. MALINOWSKI stated the customer just had to be over 21. MALINOWSKI stated he receives payment via cash, paypal, and zelle.

d. MALINOWSKI agreed to sell the first undercover agent two firearms: 1) (b)(3) 112 PL 55 125 STAT 552 Serial Number (b) (6), (b) (7)(C) with one magazine and a carrying sleeve, for \$725.00, and 2) (b)(3) 112 PL 55 125 STAT 552 Serial Number (b) (6), (b) (7)(C) with two magazines and original gun box, for \$575.00. The total price for both purchases were \$1,300.00. MALINOWSKI stated several times the FSAAP pistol was new. During the sell, MALINOWSKI pulled out another FSAAP pistol from a wrapper. MALINOWSKI stated this firearm was brand new and available for sell as well.

e. MALINOWSKI agreed to sell a second undercover agent a (b)(3) 112 PL 55 125 STAT 552 (b)(3) 112 PL 55 125 STAT 552 Serial Number (b) (6), (b) (7)(C) for \$325.00.

f. MALINOWSKI stated the Benton gun show the following weekend is the next gun show he will be selling at. MALINOWSKI provided his phone number to both undercover agents who purchased firearms from him, as (b) (6), (b) (7)(C) MALINOWSKI stated he could be contacted outside of a gun show for any purchases. When the second undercover agent told MALINOWSKI he had family and friends who might be interested in purchasing a firearm, MALINOWSKI replied okay, and made the comment, "Cash, no paper". During the sale, MALINOWSKI pulled out an Apple iPhone smart phone to research information concerning a firearm.

44. On January 30, 2024, your Affiant received Verizon toll records for number (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) The records showed the account to be active since 2019. The records show there has only been two (2) devices linked to (b) (6), (b) (7)(C) an iPhone SE Space Gray 128GB with International Mobile Equipment Identifier (IMEI) (b) (6), (b) (7)(C) and International Mobile Subscriber Identity (IMSI) (b) (6), (b) (7)(C) (starting in 2019), and an iPhone SE 20 256GB black with IMEI Number (b) (6), (b) (7)(C) and IMSI (b) (6), (b) (7)(C) (starting in 2022). IMEI is a unique number to a device. IMSI number is a unique to each cellular signal to identify the signal on a cellular network. Verizon showed subscriber information for the account to be held by Comcast.

45. On January 31, 2024, S/A (b) (6), (b) (7)(C) reviewed ATF Form 4473 at (b) (6), (b) (7)(C) for the three (3) firearms purchased from MALINOWSKI at the gun show on January 27, 2024. (b) (6), (b) (7)(C)

(b)(3) Public Law 112-55, 125 Stat 552

showed Bryan Malinowski, with an address at the **SUBJECT PROPERTY**, with contact number (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

46. On February 5, 2024, the Affiant received information that a (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) pistol, with (b) (6), (b) (7)(C) had been run in (b) (6), (b) (7)(C) California, by a member of the (b) (6), (b) (7)(C) Narcotics and Gang Enforcement Task Force. The Affiant obtained a report which detailed that on August 2, 2022, a search warrant was conducted on a residence, a vehicle, and (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) in furtherance of an investigation. Through the search warrant, the (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) pistol, with Serial Number (b) (6), (b) (7)(C) was recovered from (b) (6), (b) (7)(C) additionally, six (6) bottles of "farmapram alprazolam", 780.1 grams gross weight of marijuana, another 206.1 grams gross weight of marijuana, a digital scale, and unused clear zip locks bags were located in the vehicle with (b) (6), (b) (7)(C) had an additional \$5,860.00 in US currency on his person. At the residence searched where (b) (6), (b) (7)(C) came out of, an additional over 3,500 grams of gross weight marijuana and another firearm was located. Reviewing ATF Form 4473 (b)(3) Public Law 112-55, 125 Stat 552

(b)(3) Public Law 112-55, 125 Stat 552
(b)(3) Public Law 112-55, 125 Stat 552

47. On February 8, 2024, at approximately 11:40 a.m., MALINOWSKI arrived at (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) ATF S/As observed MALINOWSKI walking out of (b) (6), (b) (7)(C) holding a black box. MALINOWSKI was observed opening the rear driver side door of SUBJECT VEHICLE and putting the black box inside of the vehicle. MALINOWSKI was observed getting into the driver seat and pull out of the parking lot, traveling in an eastern direction on (b) (6), (b) (7)(C) Several ATF S/As attempted to follow MALINOWSKI. While following MALINOWSKI, he committed the traffic violations of running multiple red lights. MALINOWSKI entered Interstate 40 east bound, and simultaneously crossed two lanes of traffic to continue on Interstate 40 east bound. When approaching the intersection of Interstate 40 and Highway 67/167, MALINOWSKI again simultaneously merged across two lanes of traffic to travel north bound on Highway 67/167. He abruptly merged from Highway 67/167, while crossing the neutral area of the onramp, onto McCain Boulevard exit ramp. ATF S/As lost sight of MALINOWSKI due to his reckless driving, and S/As inability to keep up with MALINOWSKI without risking danger to the safety of other motorists.

48. The area where ATF S/As lost sight of MALINOWSKI, is a high traffic area with lots of commercial businesses ranging from retail, restaurants, department stores, and self-storage facilities.

49. At approximately 2:33 p.m., ATF S/As observed the **SUBJECT VEHICLE** parked in the Director's parking space at Bill and Hillary Clinton National Airport, where he works. This parking space is located in a secured parking lot with access granted through a locked access gate. The parking lot has signs labelling the area for authorized personnel only. Your Affiant, and other S/As, do not have vehicular access to this parking lot, making personal observations difficult. At approximately 5:10 p.m., ATF S/As observed MALINOWSKI pull out and leave the airport. MALINOWSKI drove straight to the **SUBJECT PROPERTY**, where he parked in the driveway. MALINOWSKI did not make any stops between the airport and his residence. ATF S/As observed MALINOWSKI exit the **SUBJECT VEHICLE** and go inside of his residence without carrying any packaging or boxes.

50. Your Affiant checked Arkansas license plate ^{(b) (6), (b) (7)(C)} [REDACTED] which returned to a white 2022 Toyota Highlander, bearing VIN ^{(b) (5), (b) (7)(C)} [REDACTED] (also known as the **SUBJECT VEHICLE**). The vehicle's registered owner showed to be Clinton National Airport at 1 Airport Road, Little Rock, Arkansas 72202, which is where MALINOWSKI is employed.

(b) (7) (E)

52. The ^{(b) (7)(E)} [REDACTED] from the area where ATF S/As attempted following MALINOWSKI on February 8, 2024, showed ^{(b) (7)(E)} [REDACTED] in McCain Boulevard and further east on Highway 161 near Bethany Road ^{(b) (7)(E)} [REDACTED] the **SUBJECT VEHICLE** appears in the area of McCain Boulevard near Landers Road and Highway 161 near Bethany Road, on multiple occasions.

53. Your Affiant reviewed previous purchases of firearms at (b) (6), (b) (7)(C) January 5, 2024, and January 17, 2024), and the SUBJECT VEHICLE had a similar pattern of (b) (7)(E) in the same (b) (7)(E) on February 8, 2024.

54. (b) (7)(E) on January 27, 2024 (the date of the undercover purchase from MALINOWSKI from the Conway gun show), the SUBJECT VEHICLE was traveling throughout Little Rock and North Little Rock, Arkansas. Between the times of January 27, 2024, at approximately 9:53 p.m. to January 28, 2024, at approximately 12:26 a.m., the SUBJECT VEHICLE (b) (7)(E) (b) (7)(E) in North Little Rock, in Little Rock, and again in North Little Rock. The areas in which the SUBJECT VEHICLE was located (b) (7)(E) in Little Rock, is an area known to the Affiant. Based on the Affiant's background, training, and experience as a law enforcement officer, the Little Rock areas are known for violent crime, and buying and selling contraband such as firearms and controlled substances, specifically during the evening and midnight hours.

55. On February 15, 2024, (b) (6), (b) (7)(C) obtained a tracking device search warrant for the SUBJECT VEHICLE.

56. On February 20, 2024, the tracking vehicle was successfully installed on the SUBJECT VEHICLE.

57. On February 21, 2024, MALINOWSKI purchased three (3) additional firearms from (b) (6), (b) (7)(C)

(b)(3) Public Law 112-55, 125 Stat 552

(b)(3) Public Law 112-55, 125 Stat 552 /As surveilled MALINOWSKI from (b) (6), (b) (7)(C) at approximately 3:30 p.m., until he arrived back at his residence at approximately 5:44 p.m. During the approximate two-hour span of time, MALINOWSKI drove in circular patterns in the area of AR-161 (North Little Rock), and Martin Luther King and Roosevelt Road (Little Rock). MALINOWSKI's driving was erratic, often pulling into parking lots and turning around in the parking to the same direction he was already traveling. Other than stopping for several minutes at a Sonic located at 2124 AR-161, North Little Rock, AR, MALINOWSKI

was not observed making any extended stops where he was observed meeting any individuals or getting out of his vehicle.

58. MALINOWSKI was observed by S/As on several other occasions, driving in erratic circular patterns around the same neighborhoods for multiple hours, similar to the pattern observed on February 21, 2024. These dates include February 26, 2024, February 27, 2024 (the same day he purchased a (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) and February 28, 2024.

59. On February 23, 2024, Gunbroker.com provided records via (b) (7)(E) subpoena, concerning user (b) (6), (b) (7)(C) the username from previous gunbroker.com purchases by MALINOWSKI that were sent to (b) (6), (b) (7)(C). The records showed numerous of transactions made by MALINOWSKI on gunbroker.com. The records additionally showed, use (b) (6), (b) (7)(C) was registered with an email address of (b) (6), (b) (7)(C) a date of birth of (b) (6), (b) (7)(C) a home phone number of (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) and the **SUBJECT PROPERTY**, with a first and last name of Bryan Malinowski. There were no other identifiers on the account, or changes to those identifiers, since March 6, 2020.

60. On March 2, 2024, MALINOWSKI was observed by a S/A operating a table as a vendor at the G&S Promotions Gun Show, located at (b) (6), (b) (7)(C). The S/A observed MALINOWSKI with multiple handguns for sell, including the (b) (3) Public Law 112-55, 125 Stat 552

(b) (3) Public Law 112-55, 125 Stat 552 MALINOWSKI has previously purchased approximately four days prior on February 27, 2024.

61. The tracking device showed the **SUBJECT VEHICLE** at the gun show on all three days of the gun show, March 1, 2024, to March 3, 2024. The tracking device showed the **SUBJECT VEHICLE** return to the **SUBJECT PROPERTY** all three days before and after being at the gun show.

CONCLUSION

62. To date, MALINOWSKI has purchased over one hundred fifty (150) known firearms between May 2021 to February 27, 2024. On each ATF Form 4473 filled out for the purchase of each firearm, MALINOWSKI has the **SUBJECT PROPERTY** and phone number (b) (6), (b) (7)(C) listed. On each invoice recovered for firearm purchases, MALINOWSKI has the **SUBJECT PROPERTY**, and phone number (b) (6), (b) (7)(C) listed. As of February 27, 2024, approximately six (6) firearms are known to have been recovered in the commission of a crime, with another three (3) recovered through undercover purchases by ATF. For each ATF Form 4473, for all recovered firearms sold by MALINOWSKI, MALINOWSKI indicated he was the actual purchaser of the firearms and that the firearms were intended for him. Each observation of MALINOWSKI, he has been driving the **SUBJECT VEHICLE** when operating as a vendor at a gun show, and when he purchased firearms.

63. It has been your Affiant's experience during my (b) (6), (b) (7)(C) in law enforcement as an ATF S/A (b) (6), (b) (7)(C) that persons who possess firearms, engage in the business of dealing in firearms without a license, and/or store firearms in their residences, vehicles, and frequently keep firearms on their person. Unlike many other types of items, these individuals frequently maintain firearms in their personal collections for long periods of time, frequently for many years, and often have an emotional attachment to the ownership and possession of these firearms. Their firearms are usually kept secure because of their value to the possessor. Also, in your Affiant's experience, firearm owners also maintain certain documents and records pertaining to firearms acquisitions and dispositions, such as owner's manuals, receipts, and other documents of ownership of firearms, in their homes and/or vehicles for safekeeping, even if they are attempting to circumvent the Federal firearms laws. These documents and records, as well as supporting documents relating to purchases, sales, and inventories, such as receipts, invoices, and photographs, are frequently retained, even if they are evidence of violations of Federal firearms laws.

64. Further, in your Affiant's training and experience, persons who engage in the business of dealing firearms without a license often form information networks to buy and trade for firearms they cannot acquire from reputable and/or legitimate firearms dealers. Evidence of unlawful firearms transactions is often preserved on computers in e-mail accounts, sent and deleted e-mails, address books, contact lists, and attachments to e-mails, including pictures and files. These individuals also often maintain photographs and detailed descriptions of weapons they have sold or traded.

65. Based on your Affiant's prior experience with seizure of computers, to include cellular telephones, in order to properly retrieve and analyze all electronically stored (computer) data, to document and authenticate such data, and to prevent the loss of the data either from accidental or deliberate programmed destruction, requires analysis by a qualified computer specialist. To effect such accuracy and completeness requires the seizure of all computer equipment and peripherals which may be independent, and the software to operate the computer system and related instruction manuals which contain directions concerning the operation of the computer system and the software programs. For these reasons, it is believed that the seizure of the electronically stored data, as well as the computer on which it is stored, computer equipment, software, hardware, manuals, and other related items will be necessary to ensure that all relevant evidentiary data is located and seized.

66. Based on the foregoing information, your Affiant believes that concealed within the **SUBJECT PROPERTY** (to include the residence, safes, and electronic devices) located at (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and the **SUBJECT VEHICLE**, which are further described in Attachments A1 and A2, are items that constitute evidence, fruits, instrumentalities, and things otherwise criminally possessed in violation of Title 18, USC §§ 922(a)(1)(A) and 922(a)(6). The Affiant further believes that a search of the **SUBJECT PROPERTY** and the **SUBJECT VEHICLE** will result in the discovery of items that constitute evidence, fruits, and instrumentalities of these violations, specifically, the items listed in Attachment B.

REQUEST FOR SEALING

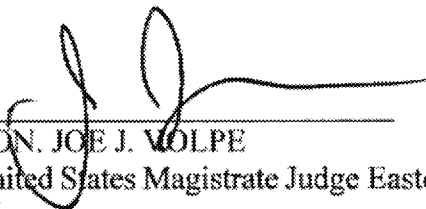
67. Your Affiant further request that the Court order that all papers in support of this application, including the affidavit and search warrant, be sealed until further order of the Court. These documents discuss an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may give targets an opportunity to flee/continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, notify confederates, or otherwise seriously jeopardize the investigation.

FURTHER YOU AFFIANT STATETH NOT.

Issued by telephone pursuant to Rule 4.1 and 41(d)(3)
of the Federal Rules of Criminal Procedure

(b) (6), (b) (7)(C)

Subscribed and sworn to before me on this 6th day of MARCH, 2024.

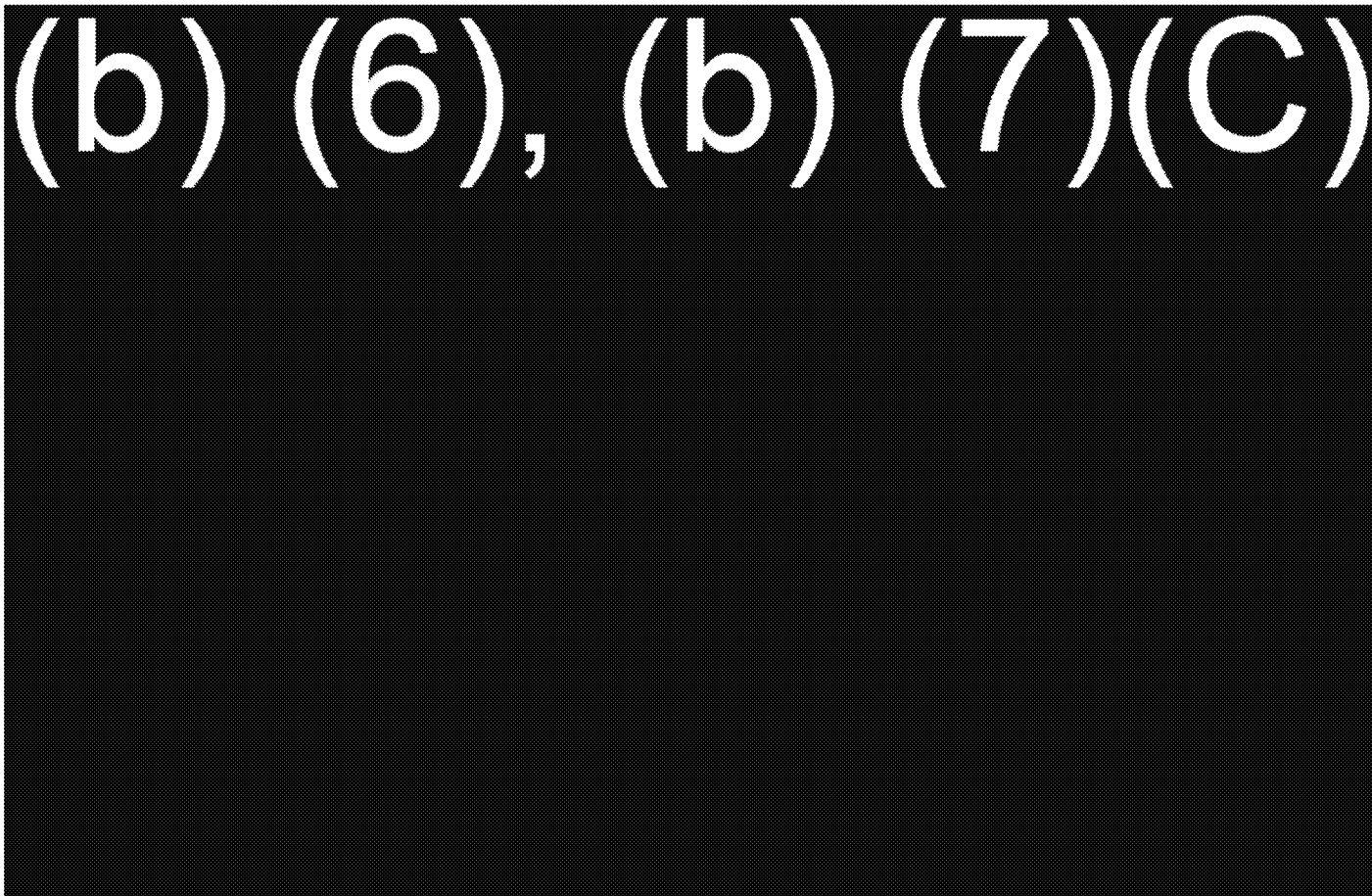


HON. JOE J. VOLPE
United States Magistrate Judge Eastern District of Arkansas

ATTACHMENT A1
DESCRIPTION OF THINGS TO BE SEARCHED

- 1) (b) (6), (b) (7)(C) Little Rock, Arkansas 72223 (SUBJECT PROPERTY);
- 2) iPhone SE Space Gray 128GB with International Mobile Equipment Identifier (IMEI) Number (b) (6), (b) (7)(C) and International Mobile Subscriber Identity (IMSI) (b) (6), (b) (7)(C)
- 3) iPhone SE 20 256GB black with IMEI Number (b) (6), (b) (7)(C) and IMSI Number (b) (6), (b) (7)(C)
- 4) Other cellular and electronic devices.

SUBJECT PROPERTY is further described as a split-level residence, with light colored stucco type siding on the upper portion of the residence and rock finish on the lower portion. The property has a rock finished mailbox on the curb line just west of the driveway, with the number [REDACTED] written in black on a white block. The driveway runs along the southeastern side of the residence to the garage, that faces east. The **SUBJECT'S PROPERTY** is shown below:



Photographs of **SUBJECT PROPERTY** taken February 8, 2024

This warrant authorizes the forensic examination of the phone(s) for the purpose of identifying electronically stored information described in Attachment B.

**ATTACHMENT A2
DESCRIPTION OF THINGS TO BE SEARCHED**

- 1) A white 2022 Toyota Highlander, with Vehicle Identification Number (b) (6), (b) (7)(C) (SUBJECT VEHICLE); and
- 2) Other cellular and electronic devices located in the SUBJECT VEHICLE to include: an iPhone SE Space Gray 128GB with International Mobile Equipment Identifier (IMEI) Number (b) (6), (b) (7)(C) and International Mobile Subscriber Identity (IMSI) Number (b) (6), (b) (7)(C) and an iPhone SE 20 256GB black with IMEI Number (b) (6), (b) (7)(C) and IMSI Number (b) (6), (b) (7)(C)

The SUBJECT VEHICLE is shown below:



Photograph of SUBJECT VEHICLE (b) (7)(E) taken March 3, 2024

This warrant authorizes a vehicle search warrant, as well as the forensic examination of the phone for the purpose of identifying electronically stored information described in Attachment B.

ATTACHMENT B
INFORMATION TO BE SEIZED

All property, records, and information described in Attachment A that constitutes evidence, fruits, and instrumentalities of violations of 18 U.S.C. §§ 922(a)(1)(A) and 922(a)(6) including:

- a. Firearms, firearm parts and accessories, ammunition;
- b. Electronic devices and all internet browsing history, as well as telephonic, text, and electronic mail messages regarding the unlawful acquisition, transportation, disposition, and/or transfer of firearms; information regarding the payment(s) for firearms or payment for the acquisition, transportation, disposition, and/or transfer of firearms; the acquisition, transportation, sale, or distribution of controlled substances, or the acquisition, transfer, or concealment of assets, money, or proceeds by any means;
- c. All bank records, wire transfer records, bank statements, tax records, tax returns, financial records and notes, checks, credit card bills, account information, and other financial records;
- d. Correspondence, notations, logs, receipts, journals, books, records, and other documents noting the price, quantity and/or times when firearms or controlled substances were obtained and/or sold;
- e. Any and all address books, telephone records, telephone books, date books, calendars, payment records, and telephone call logs and other items reflecting names, addresses, and telephone numbers;
- f. Records reflecting the purchase or lease of real estate, vehicles, or other items, obtained with the proceeds from the sale of firearms and related activities;
- g. Records of off-site locations to store records, firearms, or controlled substances, including safe deposit keys, records, receipts, rental agreements for storage facilities;
- h. Records of mail and communication services;
- i. Mementos, including photographs, and other historical keepsake items which document the association of co-conspirators, with each other and other suspected associates involved in the transportation/shipment of firearms, receipt/possession/sale of firearms; or conspiracy to commit said offenses as well property or assets purchased with illegal proceeds;
- j. Lists of sources of supply, customers, and related identifying information;
- k. Types, amounts, and prices of firearms and controlled substances, as well as dates, places, and amounts of specific transactions;
- l. Text messages and other communications stored on electronic devices relating to the above-referenced offenses or identification of co-conspirators;
- m. Any information related to the co-conspirators, customers, and fences (including names,

addresses, phone numbers, or any other identifying information);

- n. Evidence of user attribution showing who used or owned the cellular telephones or electronic devices described in Attachment A at the time the things described in this warrant were created, edited, or deleted, such as logs, phonebooks, photographs, saved usernames and passwords, documents, spreadsheets, and browsing history; and
- o. Evidence regarding the user's location and all location information that may be obtained from cellular telephones and GPS devices.

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

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

IN THE MATTER OF THE SEARCH OF THE
RESIDENCE LOCATED AT (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(SUBJECT PROPERTY) and A WHITE 2022
TOYOTA HIGHLANDER, WITH VEHICLE
IDENTIFICATION NUMBER (VIN)

(b) (6), (b) (7)(C)

(SUBJECT
VEHICLE)

Case No. 4:24sw00062 JJV

4:24sw00063 JJV

Filed Under Seal

UNITED STATES' MOTION TO SEAL SEARCH WARRANT,
APPLICATION, AND SEARCH WARRANT AFFIDAVIT

The United States of America requests an order of the Court sealing this Motion, the Search Warrant, the Application for Search Warrant, the Search Warrant Affidavit, the Inventory Return, and the Order to Seal, in the above captioned and numbered matter. In making this request to seal the search warrant papers, the United States relies on the facts and statements set forth in, or on the face of, all of the search warrant papers and this motion, including the Affidavit for the Search Warrant. As set forth in the Affidavit, this matter concerns allegations of violations of Title 18, United States Code, Sections Title 18, United States Code § 922(a)(1)(A) and Title 18, United States Code § 922(a)(6).

Moreover, the United States submits that the following statements of law are applicable to this request.

1. *The search warrant in the case should be sealed.*

The search warrant identifies **the property to be searched** as it must, and, thus, provides an easy means by which to identify a potential subject of a criminal investigation. This

revelation would adversely affect the privacy interests of the potential subjects. Moreover, the search warrants indirectly reveal information regarding the scope and focus of a grand jury investigation.

2. *The Application for the Search Warrant, and its supporting affidavit, should also be sealed for a number of reasons.*

A. The government has a compelling interest in maintaining the integrity of an ongoing criminal investigation by denying public access to the details of the ongoing criminal investigation in this matter. The interest of the United States in this regard has been recognized by the United States Court of Appeals for the Eighth Circuit. Certain Interested Individuals v. Pulitzer Publishing Company, 895 F.2d 460 (8th Cir. 1990) (Gunn II); In re Search Warrant for Secretarial Area Outside Office of Gunn, 855 F.2d 569, 574 (8th Cir. 1988) (Gunn I). The current investigation is in a critical stage and disclosure of the search warrant application and affidavit would provide details of the nature, scope and direction of the government's criminal investigation in this matter. Revelation of this material would not only make it available to the general public but to the potential subjects of the investigation.

B. The disclosure of the search warrant application and affidavit would expose the identities of persons who have provided information in connection with this investigation. The United States Supreme Court has recognized that the government has an important interest in maintaining the anonymity of persons providing information concerning criminal activity to law enforcement. McCray v. Illinois, 386 U.S. 300 (1967). Consequently, persons who act as mere tipsters and who provide information to support a finding of probable cause for the issuance of a search warrant or an arrest warrant do not have to be disclosed even within the context of a formal criminal trial. Id. Moreover, those individuals who provide information

which is utilized in an affidavit in support of a search warrant have a legitimate and reasonable expectation that their confidentiality and privacy will be protected by the government. See, e.g., In re EyeCare Physicians of America, 100 F.3d 514, 519 (7th Cir. 1996); In re Search Warrant for 2934 Anderson Morris Road, 48 F. Supp. 2d 1082 (N.D. Ohio 1999); In re Search Warrants Issued on June 11, 1988, 710 F. Supp. 701, 704-05 (D.C. Minn. 1989).

C. Disclosure of the contents of the search warrant affidavit will identify potential government witnesses. The United States is not even required to disclose the identity of its witnesses within the context of a criminal trial except under very limited circumstances. The search warrant affidavit in this case specifically identifies persons who have provided information in connection with the investigation. If the contents of the affidavit are disclosed, the identities of these potential witnesses will be revealed, again, not only to the public at large but to the potential subjects of the investigation.

D. As stated above, this investigation is in the pre-indictment stages. No indictments have been returned and no charges have been filed against any person by complaint or otherwise.

3. The inventory return filed with the Court following the execution of the search warrant should also be sealed at this stage of the investigation to protect the affected party's privacy rights. While the United States is obligated by Rule 41(f), F.R.C.P. to leave a copy of the warrant and the inventory at the location searched, doing so does not place those documents in the hands of third persons, only in the hands of the very person or persons who have a privacy interest entitled to Constitutional protection.

As to the privacy interests set forth above, the Eighth Circuit has recognized that the privacy interests of the parties affected by the search warrant must be considered. The disclosure of the contents of the search warrant papers could damage the reputations and careers of people implicated in criminal conduct and could possibly even damage the character and reputations of innocent third parties prior to the institution of any formal charges. The courts have recognized that such a result should be avoided if possible. In re EyeCare Physicians of America, 100 F.3d 514, 519 (7th Cir. 1996); In re Up North Plastics, 940 F. Supp. 229, 232 (D.C. Minn. 1996); In re Search Warrants Issued on June 11, 1988, 710 F. Supp. 701, 704-705 (D.C. Minn. 1989); Gunn II, supra at 466-67. Under the circumstances, the Court must consider the procedural posture of the government's criminal investigation in any decision to disclose or seal the contents of the search warrant papers in this case. Gunn II directly addresses the competing Constitutional rights in the release of information regarding search warrants. The government and Pulitzer had agreed to release the information to the public. McDonnell Douglas and Gunn sought to have the information sealed because of their right of privacy. The Court stated,

[w]here no indictments have issued against persons allegedly involved in criminal activity, there is a clear suggestion that, whatever their truth, the Government cannot prove these allegations. The court of public opinion is not the place to seek to prove them. If the Government has such proof, it should be submitted to a grand jury, an institution developed to protect all citizens from unfounded charges. All citizens, whatever their real or imagined past history, are entitled to the protection of a grand jury proceeding.

Id. at 466. The Court balanced the two constitutional rights in conflict, the qualified First Amendment right of access and the qualified Fourth Amendment right to privacy and declared neither of them absolute. The determining factor for the Court in weighing in favor of sealing the search materials was the fact that an indictment had not been obtained. The Court concluded:

“In sum, we think the pre-indictment status of the government’s criminal investigation tips the balance decisively in favor of the privacy interests and against disclosure of even redacted versions of the search warrant affidavits *at this time*.” *Id.* at 467. (emphasis in original).

No Less Restrictive Means are Available

General Order 22 requires that the Government address why less restrictive means to sealing all search warrant documents are not available. Less restrictive means may include redaction of names and personally identifying information, line-by-line redaction of facts and events, or extraction of excerpts from search warrant documents. Courts have ruled that these less restrictive means do not adequately protect the interests of the government or individuals in a number of instances.

First, the Eighth Circuit in Gunn I, explains that “line-by-line redaction is not practicable,” noting that “[v]irtually every page contains multiple references to wiretapped telephone conversations or to individuals other than the subjects of the search warrants or reveals the nature, scope and direction of the government’s ongoing investigation.” 855 F.2d at 574.

Second, less restrictive means are not sufficient to protect privacy interests of individuals named in the search warrant documents. Courts have held that redaction of individuals names does not “protect the identities of various individuals due to the context in which they are mentioned.” In re Search Warrant for 2934 Anderson Morris Road Niles, Ohio, 48 F. Supp. 1082, 1084 (N.D. Ohio 1999). This protection of individuals identifiable through “context” is followed by the Eighth Circuit in Gunn II. In Gunn II, the Eighth Circuit continued to maintain the seal of the documents in Gunn I, as the privacy interest of individuals named in “even the

redacted versions of the search warrant affidavits” outweighed the public’s First Amendment qualified right of access. See Gunn II, 895 F.2d at 466.

Third, less restrictive means of extracting excerpts is not an effective alternative to sealing the entire document where it contains “detailed, specific information which, if disclosed, would compromise the ongoing government investigation.” In the Matter of the Search of Office Suites for World and Islam Studies, 925 F. Supp. 738, 743-44 (M.D. Fla. 1996). In the Matter of the Search of Office Suites for World and Islam Studies, the district court found that the affidavits are “designed to support probable cause and each section builds on the next”, and “[v]irtually every page of the affidavit contains references to conversations and events, and reveals the nature and scope of the on-going government investigation, including individuals not the subject of the search warrant.” Id. at 744. Further the court found that extraction of excerpts was inadequate to protect the government’s interests, as “even a portion of the affidavit would reveal, either explicitly or by inference, the scope and direction of the Government’s investigation.” Id.

WHEREFORE, for each of the above reasons, the United States respectfully requests that the Court enter an order which: (1) seals this motion pending further order of the Court; (2) seals the search warrant, the application for the search warrant, the affidavit in support of the application, the inventory return, and the order to seal until formal charges have been filed as a result of the investigation by criminal complaint or indictment, or until such time as a motion is made to the Court setting forth why the sealing of the search material is no longer justified by the foregoing reasons.

(END OF TEXT. SIGNATURE PAGE ATTACHED)

Respectfully submitted,

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United States Attorney

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

IN THE MATTER OF THE SEARCH OF THE RESIDENCE LOCATED AT (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (SUBJECT PROPERTY) and A WHITE 2022 TOYOTA HIGHLANDER, WITH VEHICLE IDENTIFICATION NUMBER (VIN) (b) (6), (b) (7)(C) (SUBJECT VEHICLE)	Case No. 4:24sw00062 JJV 4:24sw00063 JJV <u>Filed Under Seal</u>
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UNITED STATES' MOTION TO SEAL SEARCH WARRANT,
APPLICATION, AND SEARCH WARRANT AFFIDAVIT

The United States of America requests an order of the Court sealing this Motion, the Search Warrant, the Application for Search Warrant, the Search Warrant Affidavit, the Inventory Return, and the Order to Seal, in the above captioned and numbered matter. In making this request to seal the search warrant papers, the United States relies on the facts and statements set forth in, or on the face of, all of the search warrant papers and this motion, including the Affidavit for the Search Warrant. As set forth in the Affidavit, this matter concerns allegations of violations of Title 18, United States Code, Sections Title 18, United States Code § 922(a)(1)(A) and Title 18, United States Code § 922(a)(6).

Moreover, the United States submits that the following statements of law are applicable to this request.

1. *The search warrant in the case should be sealed.*

The search warrant identifies **the property to be searched** as it must, and, thus, provides an easy means by which to identify a potential subject of a criminal investigation. This

revelation would adversely affect the privacy interests of the potential subjects. Moreover, the search warrants indirectly reveal information regarding the scope and focus of a grand jury investigation.

2. *The Application for the Search Warrant, and its supporting affidavit, should also be sealed for a number of reasons.*

A. The government has a compelling interest in maintaining the integrity of an ongoing criminal investigation by denying public access to the details of the ongoing criminal investigation in this matter. The interest of the United States in this regard has been recognized by the United States Court of Appeals for the Eighth Circuit. Certain Interested Individuals v. Pulitzer Publishing Company, 895 F.2d 460 (8th Cir. 1990) (Gunn II); In re Search Warrant for Secretarial Area Outside Office of Gunn, 855 F.2d 569, 574 (8th Cir. 1988) (Gunn I). The current investigation is in a critical stage and disclosure of the search warrant application and affidavit would provide details of the nature, scope and direction of the government's criminal investigation in this matter. Revelation of this material would not only make it available to the general public but to the potential subjects of the investigation.

B. The disclosure of the search warrant application and affidavit would expose the identities of persons who have provided information in connection with this investigation. The United States Supreme Court has recognized that the government has an important interest in maintaining the anonymity of persons providing information concerning criminal activity to law enforcement. McCray v. Illinois, 386 U.S. 300 (1967). Consequently, persons who act as mere tipsters and who provide information to support a finding of probable cause for the issuance of a search warrant or an arrest warrant do not have to be disclosed even within the context of a formal criminal trial. Id. Moreover, those individuals who provide information

which is utilized in an affidavit in support of a search warrant have a legitimate and reasonable expectation that their confidentiality and privacy will be protected by the government. See, e.g., In re EyeCare Physicians of America, 100 F.3d 514, 519 (7th Cir. 1996); In re Search Warrant for 2934 Anderson Morris Road, 48 F. Supp. 2d 1082 (N.D. Ohio 1999); In re Search Warrants Issued on June 11, 1988, 710 F. Supp. 701, 704-05 (D.C. Minn. 1989).

C. Disclosure of the contents of the search warrant affidavit will identify potential government witnesses. The United States is not even required to disclose the identity of its witnesses within the context of a criminal trial except under very limited circumstances. The search warrant affidavit in this case specifically identifies persons who have provided information in connection with the investigation. If the contents of the affidavit are disclosed, the identities of these potential witnesses will be revealed, again, not only to the public at large but to the potential subjects of the investigation.

D. As stated above, this investigation is in the pre-indictment stages. No indictments have been returned and no charges have been filed against any person by complaint or otherwise.

3. The inventory return filed with the Court following the execution of the search warrant should also be sealed at this stage of the investigation to protect the affected party's privacy rights. While the United States is obligated by Rule 41(f), F.R.C.P. to leave a copy of the warrant and the inventory at the location searched, doing so does not place those documents in the hands of third persons, only in the hands of the very person or persons who have a privacy interest entitled to Constitutional protection.

As to the privacy interests set forth above, the Eighth Circuit has recognized that the privacy interests of the parties affected by the search warrant must be considered. The disclosure of the contents of the search warrant papers could damage the reputations and careers of people implicated in criminal conduct and could possibly even damage the character and reputations of innocent third parties prior to the institution of any formal charges. The courts have recognized that such a result should be avoided if possible. In re EyeCare Physicians of America, 100 F.3d 514, 519 (7th Cir. 1996); In re Up North Plastics, 940 F. Supp. 229, 232 (D.C. Minn. 1996); In re Search Warrants Issued on June 11, 1988, 710 F. Supp. 701, 704-705 (D.C. Minn. 1989); Gunn II, supra at 466-67. Under the circumstances, the Court must consider the procedural posture of the government's criminal investigation in any decision to disclose or seal the contents of the search warrant papers in this case. Gunn II directly addresses the competing Constitutional rights in the release of information regarding search warrants. The government and Pulitzer had agreed to release the information to the public. McDonnell Douglas and Gunn sought to have the information sealed because of their right of privacy. The Court stated,

[w]here no indictments have issued against persons allegedly involved in criminal activity, there is a clear suggestion that, whatever their truth, the Government cannot prove these allegations. The court of public opinion is not the place to seek to prove them. If the Government has such proof, it should be submitted to a grand jury, an institution developed to protect all citizens from unfounded charges. All citizens, whatever their real or imagined past history, are entitled to the protection of a grand jury proceeding.

Id. at 466. The Court balanced the two constitutional rights in conflict, the qualified First Amendment right of access and the qualified Fourth Amendment right to privacy and declared neither of them absolute. The determining factor for the Court in weighing in favor of sealing the search materials was the fact that an indictment had not been obtained. The Court concluded:

“In sum, we think the pre-indictment status of the government’s criminal investigation tips the balance decisively in favor of the privacy interests and against disclosure of even redacted versions of the search warrant affidavits *at this time.*” Id. at 467. (emphasis in original).

No Less Restrictive Means are Available

General Order 22 requires that the Government address why less restrictive means to sealing all search warrant documents are not available. Less restrictive means may include redaction of names and personally identifying information, line-by-line redaction of facts and events, or extraction of excerpts from search warrant documents. Courts have ruled that these less restrictive means do not adequately protect the interests of the government or individuals in a number of instances.

First, the Eighth Circuit in Gunn I, explains that “line-by-line redaction is not practicable,” noting that “[v]irtually every page contains multiple references to wiretapped telephone conversations or to individuals other than the subjects of the search warrants or reveals the nature, scope and direction of the government’s ongoing investigation.” 855 F.2d at 574.

Second, less restrictive means are not sufficient to protect privacy interests of individuals named in the search warrant documents. Courts have held that redaction of individuals names does not “protect the identities of various individuals due to the context in which they are mentioned.” In re Search Warrant for 2934 Anderson Morris Road Niles, Ohio, 48 F. Supp. 1082, 1084 (N.D. Ohio 1999). This protection of individuals identifiable through “context” is followed by the Eighth Circuit in Gunn II. In Gunn II, the Eighth Circuit continued to maintain the seal of the documents in Gunn I, as the privacy interest of individuals named in “even the

redacted versions of the search warrant affidavits” outweighed the public’s First Amendment qualified right of access. See Gunn II, 895 F.2d at 466.

Third, less restrictive means of extracting excerpts is not an effective alternative to sealing the entire document where it contains “detailed, specific information which, if disclosed, would compromise the ongoing government investigation.” In the Matter of the Search of Office Suites for World and Islam Studies, 925 F. Supp. 738, 743-44 (M.D. Fla. 1996). In the Matter of the Search of Office Suites for World and Islam Studies, the district court found that the affidavits are “designed to support probable cause and each section builds on the next”, and “[v]irtually every page of the affidavit contains references to conversations and events, and reveals the nature and scope of the on-going government investigation, including individuals not the subject of the search warrant.” Id. at 744. Further the court found that extraction of excerpts was inadequate to protect the government’s interests, as “even a portion of the affidavit would reveal, either explicitly or by inference, the scope and direction of the Government’s investigation.” Id.

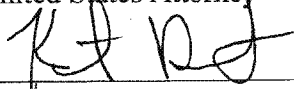
WHEREFORE, for each of the above reasons, the United States respectfully requests that the Court enter an order which: (1) seals this motion pending further order of the Court; (2) seals the search warrant, the application for the search warrant, the affidavit in support of the application, the inventory return, and the order to seal until formal charges have been filed as a result of the investigation by criminal complaint or indictment, or until such time as a motion is made to the Court setting forth why the sealing of the search material is no longer justified by the foregoing reasons.

(END OF TEXT. SIGNATURE PAGE ATTACHED)

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

IN THE MATTER OF THE SEARCH OF THE
RESIDENCE LOCATED AT (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
(SUBJECT PROPERTY) and A WHITE 2022
TOYOTA HIGHLANDER, WITH VEHICLE
IDENTIFICATION NUMBER (VIN)
(b) (6), (b) (7)(C) (SUBJECT
VEHICLE)

Case No. 4:24sw00062 JJV
4:24sw00063 JJV

Filed Under Seal

ORDER TO SEAL SEARCH WARRANT PAPERS

The United States of America has filed a motion to seal the Search Warrant, the Application for Search Warrant, the Search Warrant Affidavit, the Inventory Return, its Motion to Seal, this Order, and all other pertinent search warrant papers in the above captioned and numbered matter. The Court finds that the above described papers should be and they are, hereby sealed until formal charges have been filed as a result of the investigation by criminal complaint or indictment, or until such time as a motion is made to the Court setting forth why the sealing of the search material is no longer justified. The Court finds, as established in the United States' Motion to Seal, that there exist compelling interests that outweigh the public's qualified First Amendment right of access and, FURTHER, that no less restrictive alternative to sealing is appropriate or practical.



Joe J. Volpe
UNITED STATES MAGISTRATE JUDGE

Dated this 6th day of March, 2024.