

DISTRICT OF NEW MEXICO

AFFIDAVIT

I, Drew McCandless, Special Agent (SA) of the Federal Bureau of Investigation (FBI), United States Department of Justice, Washington, D.C., having been duly sworn, state:

INTRODUCTION

I am an investigative and law enforcement officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in Title 18 of the United States Code, including Sections 1956 and 1957, as amended.

I am a Special Agent of the FDI and have been so employed for over nine (9) years. I have been assigned to criminal squads specializing in crimes involving public corruption and money laundering. I have participated in the investigation of MICHAEL MONTOYA, ROBERT VIGIL, SAMANTHA SAIS-MONTOYA, and others.

LOCATION TO BE SEARCHED

This affidavit is being submitted in support of an application for authorization to search the New Mexico State Treasurer's Office 2019, Building K Galisteo Road, Santa Fe, New Mexico, further described as a one story tan stucco building. Located near the entrance to the business complex and on the rear of Building K is sign which states "Treasurer of the State of New Mexico" in a New Mexico state seal. Across the top of the front doors to the building is the following "New Mexico State Treasurer Office".

It is your Affiant's belief that MICHAEL A. MONTOYA, SAMANTHA SAIS-MONTOYA, ROBERT E. VIGIL, and others known and unknown are engaged in a racketeer influenced and corrupt organization, and have been active, leading participants in the organization since at least 1999. Furthermore, based on the facts set forth below, your Affiant believes that the

1 fruits, evidence, and instrumentalities of crimes committed by MONTOYA et al. against the United
2 States are presently concealed at this location including all outbuildings, sheds, garages, and vehicles
3 on the property.

4 5 THE NATURE OF THE CONSPIRACY

6 Your Affiant submits that based on the facts outlined in this affidavit, there is probable
7 cause to believe that MICHAEL A. MONTOYA, SAMANTHA SAIS-MONTOYA, ROBERT
8 E. VIGIL, and others known and unknown to me have unlawfully entered into, confederated,
9 conspired and agreed to acts which are in violation of federal laws, to wit: the interference with
10 interstate commerce under the color of official right, in violation of Title 18, United States Code,
11 Section 1951(a)(1); interstate transportation in aid of racketeering enterprise, in violation of Title 18,
12 United States Code, Section 1952(a), receiving income derived from a pattern of racketeering
13 activity, in violation of Title 18 Section 1962(a) and 1962(b) and the laundering of monetary
14 instruments and engaging in monetary transactions from specified unlawful activity, in violation of Title
15 18, United States Code, Sections 1956 and 1957.

16 As a result of my participation in this investigation and reports made to me by Special
17 Agents of Federal Bureau of Investigation, I am familiar with the circumstances of the offenses
18 described in this affidavit. The written statements contained in this affidavit are based in part on
19 information by Special Agents of the FBI and written reports provided by Special Agents of the FBI
20 and others in law enforcement, information provided by reliable Cooperating Witnesses(CWs),
21 public record information, bank records and on my experience and background as a Special Agent
22 of the FBI, as well as, that of my fellow FBI Special Agents and others in law enforcement, some of
23 whom possess over fifteen (15) years experience in public corruption and money laundering
24 investigations. I have set forth only those facts, information, and conversations, that I believe are
25 essential to establish the necessary foundation for an order authorizing a search warrant. On the basis
26 of this familiarity, I allege that the facts contained in the affidavit reveal a conspiracy being conducted
27 by MICHAEL A. MONTOYA, SAMANTHA SAIS-MONTOYA, ROBERT E. VIGIL, and
28 their associates, known and unknown, to interfere with interstate commerce under the color of official

1 right.

2 3 FACTS AND CIRCUMSTANCES

4 Municipal Finance

5 This investigation involves finance matters conducted by the New Mexico State Treasurer's
6 Office(NMSTO). The following paragraphs briefly explain the finance matters pertinent to this
7 investigation but are not exhaustive of the duties of the NMSTO.

8 There are primarily two levels of financial investments which the NMSTO manages: initial
9 or primary issue and secondary market investment. Initial issue is primarily bond issuance. Bond
10 issuance is one method by which government entities finance and raise funds for capital improvements
11 and the operation of public agencies. Bonds are written showing an issuer's (public entity's)
12 obligation to pay back, with interest, a principal of money at a specified later date. They are vehicles
13 by which governments borrow money. After the issuance of a bond, the issuer has a large pool of
14 assets/cash which it may not need for an extended period.

15 Secondary market investments are the investing of assets/cash after the bond proceeds
16 have been realized. They may include investing in US Government Securities, commercial paper
17 issued by private corporations, asset backed obligations and repurchase agreements. For purposes
18 of this affidavit only, repurchase agreements will be more fully explained. Repurchase agreements
19 are for the purchase of collateral using assets/cash which will be sold at a specified time in the future
20 at a specified price. The difference between the purchase price and resale price is the interest income
21 of the repurchase agreement. There are two kinds of repurchase agreements. Fixed repurchase
22 agreements allow the total assets to be invested for the entire investment period. Flexible repurchase
23 agreements allow for a draw down of the assets at specified times. For example, this method is used
24 by municipalities that need funds to build a road over time. Repurchase agreements are conducted
25 through brokerage firms. The firms provide bids to the NMSTO related to the interest rate they will
26 pay for the repurchase agreement. The firm with the highest rate normally receives the repurchase
27 agreement.

28 The following is a flexible repurchase agreement example. The state possesses bond

1 proceeds. The state must pay the interest on the bonds, for example 1.5%. Since the bond money
2 is not normally needed all at one time, the state can invest it in repurchase agreements. In flexible
3 repurchase agreements, the state establishes a draw schedule which outlines when the state will need
4 to withdraw money from the repurchase agreement. As the money is drawn down the balance
5 decreases and what remains is returned to the state at the end of the term of the repurchase
6 agreement. The term normally runs from six months to three years. A brokerage firm invests the
7 bond proceeds at a specified rate. This rate is often slightly above the bond interest rate. In general
8 these are low risk investments with low returns. One objective for the state is to have no cost for
9 issuing the bonds.

10 The NMSTO has approximately four billion dollars a year to invest. The NMSTO utilizes
11 financial or investment advisors to assist in the investment of these funds. The NMSTO employs in-
12 house investment advisors and contracts with outside investment advisors. The in-house advisors
13 are paid New Mexico State employees. The outside investment advisors deal primarily in repurchase
14 agreements and securities markets.

15 The outside investment advisors act as middle men in the repurchase agreement between
16 the NMSTO and brokers. Once the NMSTO decides to invest in a repurchase agreement, the
17 investment advisor contacts three brokers who each provide an interest rate bid for the repurchase
18 agreement. The investment advisor advises the NMSTO of the rates and the State Treasurer
19 decides which broker wins the repurchase agreement. The winning broker executes a contract with
20 the NMSTO. The outside advisor is paid a commission from the brokerage firm that won the
21 repurchase agreement bid. The commission is based on the size and duration of the contract.
22 Although the NMSTO does not pay the outside advisor commission, it is aware of the commission
23 structure. The contract between the NMSTO and its outside advisors references the rate of
24 commission and maximum allowed commission. The individual repurchase agreements with the
25 winning broker, that the NMSTO must approve and sign, also reference these commissions.
26 Generally the commission has ranged between 3.75 and 5 basis points per deal from 1999 to the
27 present. This translates to \$37,500 to \$50,000 commission on a \$100 million repurchase agreement.
28

CASE BACKGROUND

This investigation was predicated on a Cooperating Witness(CW1) who advised that MICHAEL A. MONTOYA, former New Mexico State Treasurer, and ROBERT E. VIGIL, current New Mexico State Treasurer, received "kickbacks" from Investment Advisors who invested New Mexico State funds at the Treasurer's direction. This allegation was independently confirmed by another Cooperating Witness(CW2). Your Affiant believes that both CW1 and CW2 have provided extensive reliable information due to the fact that much of the information was already known to Special Agents of the FBI and other law enforcement and has been corroborated to the extent possible by law enforcement and public record source information as well as financial records. CW1 and CW2 have provided reliable information including but not limited to addresses, telephone numbers, and motor vehicle information which has been corroborated through independent means including utility records, property records, telephone records and Department of Motor Vehicles records.

CW1 has provided information and documents which have been corroborated by independent sources and CW1 has made numerous consensual recordings, which have proven accurate. It should be noted that CW1 was under investigation by the United States Secret Service for manufacturing counterfeit money and a driver's license. The charges were dropped as the xeroxed money contained sports hero pictures and was intended for Christmas gifts. CW1 cooperated with the FBI, but was terminated from the New Mexico State Treasurer's Office(NMSTO) due to mis-use of state property.

CW2 has also provided information which has been independently corroborated through bank records, travel records and interviews and has made numerous consensual recordings which have been independently corroborated through telephone records and surveillance. CW2 has plead guilty to a violation of Title 18 United States Code 1951, commonly referred to as the Hobbs Act. On September 1, 2005 CW2 was indicted on securities fraud by the State of New Mexico Attorney General's Office.

Montoya State Treasurer tenure

1 MICHAEL MONTOYA was elected New Mexico State Treasurer in November 1994.
2 took office in January 1995 and served until December 2002. Shortly after taking office
3 MONTOYA began contracting with outside investment advisors. The first investment advisors
4 assisted in establishing repurchase agreement for use by the NMSTO. The investment advisor
5 position was advertised through a Request for Proposal(RFP) for investment advisor services. The
6 investment advisor was selected by a committee within the NMSTO with input from MONTOYA.
7 After selection, the investment advisor signed a contract with the State of New Mexico. The
8 contracts were approved by the New Mexico Board of Finance which oversees the operations of
9 the NMSTO.

10 The first investment advisor provided investment advisor services for approximately 18-24
11 months starting in 1995. Although CW1 did not personally receive kickbacks for MONTOYA on
12 the first advisor's behalf, CW1 did learn from MONTOYA that the first advisor paid campaign
13 contributions to MONTOYA in exchange for investment business.

14 The second investment advisor also provided investment advisor services for approximately
15 two years. MONTOYA directed CW1 to meet with the second advisor both in California and New
16 Mexico for the explicit purpose of receiving kickbacks. On approximately three occasions, CW1
17 received \$15,000-\$30,000 in cash directly from the second advisor. CW1 provided this cash
18 directly to MONTOYA. CW1 had no other relationship with the second investment advisor other
19 than to receive cash.

20 The third investment advisor was PETER SIMONS. SIMONS is a cooperating witness
21 and has been immunized from prosecution in this investigation. SIMONS served as advisor from
22 approximately October 1997 till November 1999. SIMONS was introduced to MONTOYA
23 through a third party. After the introduction, SIMONS completed a response to a RFP for
24 investment advisor which he knew was merely a formality to being selected. According to SIMONS,
25 during the first meeting with MONTOYA, SIMONS was led to believe by MONTOYA that there
26 would be an additional requirement. According to MONTOYA, this requirement is "the way we do
27 business" in New Mexico. The requirement was that MONTOYA would participate in the
28 revenues(commissions) earned by SIMONS. SIMONS paid MONTOYA 16.6% of his

1 commissions.

2 SIMONS personally delivered cash to MONTOYA on three separate occasions, ranging
3 from \$4,000-\$10,000. On one occasion SIMONS traveled to New Mexico, was picked up by
4 MONTOYA, was driven by MONTOYA to the NMSTO building in Santa Fe and handed
5 MONTOYA an envelope containing \$100 bills, in his car in the parking lot of the NMSTO.
6 SIMONS also delivered money to CW1 approximately six times in ever increasing amounts. CW1
7 confirms that he was instructed by MONTOYA to fly to Los Angeles, CA for the sole purpose of
8 obtaining the payments. CW1 returned to New Mexico with these cash payments and delivered
9 them directly to MONTOYA.

10 The fourth investment advisor was KENT NELSON. From January 2000 till December
11 2002, NELSON received approximately \$3.8 million in commissions. He paid approximately \$2.5
12 million in payments to CW2. CW2 initially provided MONTOYA's portion of the cash to CW1,
13 CW1 then delivered cash to MICHAEL MONTOYA or made purchases of assets e.g. vehicles,
14 using MONTOYA's payment but putting the assets in CW1's name so as to avoid detection of
15 unexplained wealth for MONTOYA. As MONTOYA became more familiar with CW2,
16 MONTOYA allowed CW2 to pay MONTOYA directly in cash and checks. MONTOYA received
17 approximately \$1.1 million from NELSON's commissions.

18 19 Kent Nelson

20 The following illustrates the process through which MONTOYA solicited kickbacks and
21 received his payments using KENT NELSON as investment advisor. CW2 met MONTOYA in
22 1999 through a mutual friend. CW2 has never been an employee with the NMSTO and has never
23 had any official relationship with the NMSTO. MONTOYA and CW2 discussed potential business
24 dealings with the state. Although CW2 was not a broker or investment advisor, MONTOYA asked
25 him if he knew any investment advisors. At this time SIMONS was the investment advisor and was
26 not aware that a replacement advisor was being sought by MONTOYA. MONTOYA, CW1 and
CW2 had several meetings together regarding the investment advisor position. At one such meeting
MONTOYA explicitly stated that he wanted 30% of the investment advisor's commission, that the

1 investment advisor was to pay the taxes on the 30% and that CW1, CW2 and the investment advisor
2 would split the remainder of the commission. At one point in these conversations, MONTOYA made
3 the a statement to the following effect: "You deal with me and want my business, you give a cut."

4 Shortly thereafter, CW2 met KENT NELSON, an investment advisor from San Diego,
5 California. CW2 set up a meeting with MONTOYA and NELSON. After the meeting,
6 MONTOYA advised CW2 that NELSON would "work" CW2 understood MONTOYA to mean
7 that NELSON would pay kickbacks to MONTOYA. NELSON responded to a Request for
8 Proposal for an investment advisor and NELSON knew that CW2 was working with MONTOYA
9 to secure the contract. NELSON also contacted MONTOYA directly with questions regarding
10 areas in the RFP where he lacked experience. MONTOYA advised him on how to answer the
11 questions. CW2 provided NELSON with SIMONS' response to the RFP. A copy of SIMONS'
12 RFP response indicated that SIMONS had participated in over 375 bond proceed
13 reinvestments(repurchase agreements). NELSON, up to that point in his career, had never done a
14 repurchase agreement and was working with individual investors. NELSON won the contract and
15 began to work as the investment advisor for the NMSTO in approximately December 1999. As the
16 investment advisor, NELSON was entitled to the commissions generated from the repurchase
17 agreements.

18 CW2 provided an example of the commission split. On a \$100 million placement,
19 NELSON would receive 5 basis points or \$50,000 commission. 30% of the \$50,000 went to
20 MONTOYA. The remainder went to pay the taxes, CW1, CW2 and NELSON.¹ For the first
21 approximately nine months, MONTOYA did not trust CW2 enough to receive payments directly
22 from him. CW2 received payment via cash transfers and wire transfers from NELSON. CW2 kept
23 his share and provided cash to CW1 for both CW1 and MONTOYA.

24 For example, bank records of NELSON and CW2 have been obtained via Federal Grand
25 Jury subpoenas and confirm the transfer of funds between the two accounts. These transfers
26

27 ¹ According Internal Revenue Service tax records, NELSON did not file taxes from 1998 to 2002. In
28 2003, NELSON income tax filing indicates income far below what he received in the previous years. It is
your Affiant's opinion that NELSON used the tax portion to purchase assets.

1 occurred shortly after the receipt of commissions by NELSON. For example on July 19, 2002,
2 NELSON received a \$295,000 commission deposit. On July 22, 2002, NELSON transferred
3 \$223,500 into CW2's bank account. Of note is that the majority of transfers were cash withdrawals
4 made by NELSON and then deposited into CW2's account. The effect is that there is no immediate
5 identification of who the cash went to or where it came from, thus disguising its origin. CW2 confirms
6 that transfers from NELSON were for payments to MONTOYA for financial contracts.

7 After approximately nine months, MONTOYA began to receive his cut directly from
8 CW2. CW2 estimates that MONTOYA received approximately \$1.1 million in an 18 month
9 period. Approximately 66% of NELSON's commissions were sent to CW2 during MONTOYA's
10 tenure.

11 CW1 maintained spreadsheets made contemporaneously, which were provided to the
12 FBI, of the amounts owed and paid to MONTOYA from NELSON commissions. Also referenced
13 in these spreadsheets are notes relating to NELSON whereby CW2 needs to discuss MONTOYA's
14 cut with NELSON and see if balances were correct. Also referenced in the spreadsheets were
15 payments to VIGIL's campaign for State Treasurer.

16 Toward the end of MONTOYA's term, MONTOYA stated to CW2 that if VIGIL won
17 the election VIGIL would do the same thing regarding the commission cuts. CW2 understood this
18 to mean that VIGIL would provide repurchase agreement business to NELSON in exchange for a
19 portion of the commissions received by NELSON. Additionally, according to CW1, when
20 MONTOYA was leaving office at the end of 2002, he told NELSON that he would continue to have
21 VIGIL provide business to NELSON if MONTOYA still received his cut.

22 23 VIGIL State Treasurer tenure

24 From 2000 till his election as State Treasurer, ROBERT VIGIL was the Deputy State
25 Treasurer under MONTOYA. In his position as Deputy State Treasurer to MONTOYA, VIGIL
26 approved and signed repurchase agreements that showed commissions to NELSON and he also
27 often represented the NMSTO in various finance meetings with state officials. VIGIL was elected
28 as State Treasurer in November 2002 and took office in January 2003. Like MONTOYA, VIGIL

1 extracted payments or campaign contributions as a condition of doing business with the NMSTO.
2 From January 2002 to March 2005, NELSON received \$585,393 in commissions from repurchase
3 agreements. He transferred approximately \$324,010 to CW2, who then provided VIGIL with
4 campaign contributions and cash. CW2 began recording his/her conversations with VIGIL in the
5 summer of 2003 and continued to record conversations in cooperation with the FBI in 2004 and
6 2005.

7 In the fall of 2003, CW1 was investigated by United States Secret Service for
8 manufacturing counterfeit money at the NMSTO. CW1 recorded several conversations with
9 MICHAEL MONTOYA in December 2003 regarding what he should say if the investigation
10 expanded to other areas. During this time much of the NMSTO funds were tied up in longer term
11 deals which MONTOYA had completed prior to leaving office and which generated larger
12 commissions. The effect of the investigation and the financial deals completed by MONTOYA was
13 that VIGIL did not have large amounts of funds to distribute until November/December 2004.

14 On or about April 7, 2004, CW2 made a consensually recorded telephone call to KENT
15 NELSON. During this conversation NELSON and CW2 talked about VIGIL's hesitancy to do
16 financial deals after the legal issues with CW1. Based on interviews with CW2, this conversation
17 also discussed that \$35,000 had already been paid to VIGIL, that VIGIL only contacts CW2 and
18 NELSON when he needs money and that he added security cameras to the NMSTO even though
19 the security was unrelated to the manufacturing of counterfeit money by CW1.

20 21 Campaign contributions

22 According to CW2, kickbacks to VIGIL often occurred in the form of expensive tickets
23 for political fund raisers; the purchase of wood and supplies to build an additional room on VIGIL's
24 home; and donations to charities, such as Big Brothers Big Sisters, in which VIGIL's wife VIOLA,
25 participates. VIGIL is well aware that certain regulations severely restrict campaign contribution by
26 brokers, but he has devised several ways around the regulations. For example, G-37, titled Political
27 Contributions and Prohibitions on Municipal Securities Business, is intended to promote free trade
28 by prohibiting brokers, dealers and municipal securities dealers from engaging in municipal securities

1 business after contributing more than \$250 dollars to an official who exercises control over municipal
2 financing. The following conversations demonstrate VIGIL's frustration and anger with brokers who
3 would not contribute and often cited G-37. VIGIL even states at one point that MONTROYA had
4 not tested the waters on charitable contributions relating to broker contributions. Although altruistic
5 in appearance, the charitable contributions had the same effect as cash; they were quid pro quo for
6 business with the New Mexico State Treasurer's Office.

7 VIGIL's knowledge of the contribution requirements is evident in the following
8 conversations.

9 On or about March 23, 2004, CW2 had a consensually recorded conversation with
10 ROBERT VIGIL. The following is excerpted from this conversation.

11 VIGIL: One thing went to shit, I mean he, we went, I have this one broker
12 that (UI) send him some uh tickets to a you know charity.

13 CW2: Yeah

14 VIGIL: (UI) one, one, one (UI)

15 CW2: Who's that?

16 VIGIL: Uh U-B-S.

17 CW2: Oh U-B-S? What does U-B-S stand for?

18 VIGIL: I don't know, but...

19 CW2: Union...

20 VIGIL: ...bunch of maybe they call him and say that. G-37 doesn't allow
21 him to do that no. Where is there a law that doesn't allow you to
22 help kids you know? Bunch of bullshit, but...

23 CW2: (UI) ask him to help you for a charity or something?

24 VIGIL: 'Cause you know they don't help you. See for for (UI) they say
25 oh I'm a G-37. I can't do that. Okay well (UI) Michael never
26 never tested them with charities(emphasis added) so (UI)
27 small company but, so I just (UI) That's one (UI) so they came
28 down and took me to dinner. I didn't even wanna talk to them.

1 I said fuck I (UI) brought me to the office, so George told her
2 said yeah (UI) so I gotta go back and ask George there's a.
3 there's these brokers (UI) too much money and (UI) why in the
4 fuck did you have (UI) why don't you tell me which brokers are
5 telling that know. Sure aren't your friends. They're, I don't think
6 there's any brokers that (UI) George because none of your
7 broker friends ever give me a piece of shit(emphasis added)
8 and I never asked them for nothin'.

9 Later in the conversation:

10 VIGIL: I haven't even decided yet. He he's been working on it, but I
11 didn't know why it's taking him so long so (UI) how to, how to
12 make money for himself uh he's trying to figure out a way how to
13 set himself up. I said shit, can't even go to my party (UI) how
14 do I expect (UI) I'm already giving you plenty of
15 money.(emphasis added) You don't need to make any more.

16 CW2: He wants more money. No.
17 Well I'm not much to complain, but you know I'm just just
18 you know since the golf tournament I personally I gave you
19 close to nine thousand dollars then 'cause, I paid for it and
20 I gave you five, then I gave you three thousand dollars for
21 my brother and then for the basketball tournament, but I
22 didn't, 'cause the only two deals that I got was the fifty
23 million that Kent got one in January, and then he got that
24 one for twenty-five million, but hey that's that's not much
25 now. (emphasis added) That breaks me even.

26 (Overtalking)

27 CW2: (UI) something...

28 VIGIL: (UI) Kent has made us some pretty good money.(emphasis

added)

CW2: Shit he's made some damn, well the last two deals he he split it with Michael, that's why, and I told him if he got, if you do one or you can do it June and July if they come up (UI) He says uh you know he'll give me, give me the portion that that that's coming to me. I need something...

VIGIL: I know he's been, like I say he's been uh, he's made some made some pretty good money (UI)

CW2: But has he taken care of you well or not?(emphasis added)

VIGIL: No (UI) not much for me. I mean uh I mean I can't can't complain (UI) (emphasis added)

On or about June 8, 2004, CW2 made a consensually recorded telephone call to ROBERT VIGIL. The following are excerpted from this call.

CW2: So what is VIOLA collecting money for what uh fund raiser?

VIGIL: We're doin' a, we're doin' Big Brother Big Sister (UI)

CW2: Oh Big Brother, Big Sister.

VIGIL: (UI)

CW2: Should a asked me and I'd a helped her out.

VIGIL: Well no we, there's a lot of these guys (UI)

CW2: Yeah.

VIGIL: (UI) I I can't ask 'em for political campaigns(emphasis added) so they (UI)

CW2: Yeah.

VIGIL: Might as well ask them for something, (emphasis added) but...

And later in the conversation:

CW2: You know I'll give you a shit, between Ken and I well I'll

1 give you a third of what we get.(emphasis added)

2 VIGIL: Yeah I mean I I just, I (UI)

3 CW2: Could help you build your fence or whatever.

4 VIGIL: No what I need is I need to build up my campaign

5 fund.(emphasis added) That's the bottom line.

6 CW2: Some, I'll give you a third for your campaign fund.(emphasis

7 added)

8 VIGIL: Oh I I hope you (UI) you know...

9 CW2: Ye...

10 VIGIL: ...(UI) sure you know like I say once...

11 CW2: Robert, that's not a problem. We will help you in October.

12 VIGIL: So I'm gonna, soon as I get my fire out I'll get you

13 some(emphasis added), see if you can start contactin' some of

14 the (UI)

15 CW2: Uh you get 'em for me, you know I'll do it for your (UI)

16 And further in the conversation, it becomes apparent that campaign contributions are not the only

17 means of payment:

18 CW2: No if if you, if you see the rates grow, you can do a flex repo.

19 Whatever we do, I'll give you a third on that(emphasis

20 added) and I'll...

21 VIGIL: I know once, once the rates go up and it's it's just I mean the

22 spread between, you know I I mean (UI) but we didn't, I mean

23 we didn't, we tried to uh I mean, yeah we're getting a lot of money

24 in our (UI) just the the way it was structured. It was how, it was

25 howto, I couldn't even done the the TRANS on it. It was like uh

26 see...

27 CW2: Well if you can do something that works out, I appreciate it, but

28 I'll make a deal for you come in for a place.

1 VIGIL: (UI)

2 CW2: Yeah I'll give it to you in cash or whatever and whatever's
3 gonna benefit you.

4 VIGIL: Yeah I'll play that.

5 CW2: 'Cause to be honest with you, I really in a situation where I need
6 some help now.

7
8 On or about August 16, 2004 two FBI employees(UCE) acting in an undercover capacity
9 made a consensually recorded telephone call to VIGIL. During this call the UCE and VIGIL talked
10 about the set up of brokers and advisors in the NMSTO. The following is excerpted from this
11 conversation.

12 VIGIL: No different than what you're doing. I, I, I don't know how, how
13 they handle that, uhm, that's why I say, I'm sure they're not set up
14 for that kind of, or they are, or they're not. I don't, I don't know
15 how they, you know. In the...in the equity business, what you're
16 seeing is, is they're called more consultants. Okay?

17 UCE 1: Uh huh.

18 VIGIL: And, and, you know, I, and I see that, not so much in my, in my
19 side, but I see that a lot like S-I-C(State Investment Council), you
20 know, you have what, well you see a lot of them actually, big time
21 third party consultants.

22 UCE 2: Well that's....

23 VIGIL: That, that's what it's become. I mean, out there it's become a
24 third party consultant world. So that the third parties basically
25 aren't, aren't, ah, aren't restri, restricted for a large part for
26 what they do with their money, and that, that's basically. I
27 mean, in my field of the political environment, that's what I
28 see happening. Okay?(emphasis added)

1 UCE 1: Uh huh.

2 VIGIL: Because you have this broker, G-37, people can't make
3 contributions so, so, what they, what they've gone around
4 with is they've gotten this consultant, third party consultant
5 group, ah, that's what they're using. (emphasis added) I
6 mean, that, so that, ah, in essence, I mean, you see it in the, ah, in.
7 in specifically, I mean, they use a lot of those like, ah, like a third
8 party will become a, I guess they contract with three, four, five,
9 six different firms, and I guess they promote their business.
10 (Emphasis added) Right?

11
12 On or about August 16, 2004, CW2 had a consensually recorded conversation with
13 ROBERT VIGIL. The following is excerpted from this conversation. Earlier in this conversation
14 CW2 and VIGIL discussed previous kickbacks to former New Mexico Treasurer MICHAEL
15 MONTOYA and campaign contributions.

16 VIGIL: He does the TRANS deals. Remember he's the one that, used to
17 be on MICHAEL's (UI). He wanted to do the reinvestment too.
18 He never gave he never gave MICHAEL a single penny.

19 CW: I don't know I think you know MICHAEL said he got some from
20 him but a every time that a...

21 VIGIL: No he...

22 CW: ...every time KENT did a trans he would make that much money
23 but he'd give MICHAEL a third.

24 VIGIL: Well KENT hasn't said me nothing for two times I've given
25 him stuff.

26 CW: Last time he got something you gave him twenty-five
27 million. Doesn't make very much on that.

1 In your Affiant's experience, and through conversations with Cooperating Witnesses.
2 conversations with the Undercover Employees and as indicated in the above transcripts, VIGIL is
3 well aware of the restrictions regarding campaign contributions from brokers and is aware that
4 advisors are being used to avoid those rules. VIGIL is also discussing how brokers now "promote"
5 their business by having third party advisors contribute in excess of campaign limitations by G-37.
6 The conversations also demonstrate VIGIL's anger when NELSON has not paid him after receiving
7 deals.

8
9 Payments

10 On or about May 2, 2005, a Cooperating Witness (CW3) personally delivered \$11,500
11 in cash to VIGIL in exchange for future repurchase agreement business. CW3 is known to your
12 Affiant and the above payment, and preceding telephone conversations, were corroborated by FBI
13 surveillance and monitoring. On April 22, 2005 CW3 called VIGIL. In this conversation, VIGIL
14 first told CW3 that he needed \$1,500 minimum to cover the costs of a fund-raising dinner. VIGIL
15 later reiterates, "at least that", in referring to the \$1,500. VIGIL later stated that he was owed
16 \$10,000 by CW2. CW3 had already paid CW2 \$43,000 at the end of March 2005 and was
17 surprised that CW2 owed VIGIL money.

18 CW3 arranged to meet VIGIL the following week to discuss business. In VIGIL's State
19 of New Mexico Treasurer's Office vehicle, CW3 provided two separate payments to VIGIL. One
20 payment was for \$1,500 and was to be used for a campaign fund-raising dinner for VIGIL's next
21 State Treasurer campaign. This was provided in \$100 bills in an envelope. The second payment was
22 \$10,000 cash specifically for future business with the NMSTO. During the conversation between
23 CW3 and VIGIL, CW3 specifically stated that he could not give the \$10,000 without future business.
24 VIGIL took the envelope containing \$100 bills, looked inside and placed the cash under the front seat
25 of the car and immediately stated that the business was no problem. At the end of the conversation
26 VIGIL told CW3 that a repurchase agreement would be available at the end of the week or early the
27 following week. VIGIL called CW3 the following week to begin the repurchase agreement.
28

1 On or about August 24, 2005, CW3 personally delivered \$1,900 to VIGIL as payment
2 for a recently completed repurchase agreement. Additionally VIGIL instructed CW3 as to
3 distribution of an additional \$3,000. CW3 is known to your Affiant and the above payment, and
4 preceding telephone conversations, were corroborated by FBI surveillance and monitoring.

5 On or about August 21, 2005 CW3 placed a consensually recorded call to ROBERT
6 VIGIL. During this call, CW3 and VIGIL talked about the small commission CW3 was to receive
7 from the repurchase agreement just completed by CW3 for the NMSTO. CW3 noted his
8 commission as approximately \$13,300. This was significantly less than anticipated. During the
9 conversation with VIGIL, VIGIL stated, at least three times, that he was surprised at the small
10 amount of the commission. CW3 offered to fly to New Mexico to visit VIGIL. After hearing the
11 commission amount, VIGIL stated that a plane ticket was costly and maybe CW3 should not come
12 to New Mexico and should send him a check instead. CW3 had not mentioned any payments to
13 VIGIL prior to this statement.

14 Each time that VIGIL stated that the commission was small, he followed it by asking for
15 money. In one instance VIGIL stated that he had some requests that CW3 could help with by
16 sending checks. Toward the end of the conversation, VIGIL stated that he gets requests for money
17 from other campaigns and he would contact CW3 to pay those monetary requests.

18 On August 22, 2005 CW3 placed a consensually monitored telephone call to ROBERT
19 VIGIL. During this call VIGIL advised CW3 that he was available to meet on August 24, 2005. On
20 August 24, 2005, VIGIL picked up CW3 at the Albuquerque airport. While parked in a New
21 Mexico State Treasurer's car, VIGIL reiterated that CW3's commission was less than expected.
22 CW3 attempted to provide \$5,000 in cash to VIGIL. VIGIL took \$1,900 in cash and began to
23 instruct CW3 as to where portions of the remaining \$3,000 of his money should be paid.
24 Specifically VIGIL stated that he donates to numerous campaigns throughout New Mexico in
25 exchange for their help in his campaign. VIGIL instructed CW3 that he would call CW3 with the
26 requests for donations and that CW3 would write the appropriate check and send it to VIGIL.
27 VIGIL advised that he had already promised \$1,000 to one campaign. At one point in the meeting,
28 VIGIL provided specific campaigns to which he wanted donations made including his own State

1 Treasurer campaign. Immediately after receiving the \$1,900 in cash, VIGIL talked about funds
2 available soon for investment and discussed the availability of future repurchase agreements at length
3 with CW3.

4
5 CW3 has also provided information which has been independently corroborated through
6 bank records, travel records and interviews and has made numerous consensual recordings which
7 have been independently corroborated through telephone records and surveillance. CW3 is
8 scheduled to plead guilty on September 14, 2005 to a violation of Title 18 United States Code 1341;
9 using the mails in furtherance of a scheme to defraud by depriving the people of the State of New
10 Mexico the intangible right of honest services by their public officials.

11 12 Other Illegal Acts

13 During the last four months of MONTOYA's term in office, MONTOYA's focus was to
14 generate as many commissions for NELSON as possible, thus providing him with more cash. One
15 of the investments MONTOYA attempted was to invest in mutual funds. Although this was against
16 the state investment policy, higher commissions are paid on these transactions. MONTOYA was
17 able to complete one mutual fund purchase using NELSON. The deal produced approximately
18 \$828,700 in commissions to NELSON. In early 2003, after receiving the commission, the New
19 Mexico Board of Finance became concerned with the purchase and VIGIL rescinded the purchase.
20 This caused NELSON to return his commission and MONTOYA did not receive his portion of the
21 commission. The commissions from this investment would have paid MONTOYA for several years
22 after leaving office. CW2 estimates that the commissions for this deal were worth approximately
23 \$800,000 over the life of the purchase. According to CW1 and CW2, MONTOYA has never
24 forgiven VIGIL for withdrawing the deals and feels that VIGIL owes him the commissions from these
25 deals.

26 During VIGIL's term, he has struggled with ways to pay MONTOYA the money owed
27 from the rescinded deal. VIGIL first offered MONTOYA a Deputy Treasurer position which he
28 refused. Then, in a consensually recorded conversation between CW2 and VIGIL on or about

1 March 23, 2004, VIGIL stated that MONTOYA was trying to get him to hire SAIS. The pay
2 offered by VIGIL was \$47,000 but MONTOYA wanted approximately \$60,000. VIGIL's
3 response to CW2 was that you know that SAIS would never come to work and SAIS was not hired.

4 In another attempt to funnel money to MONTOYA, VIGIL was asked to funnel business
5 to NELSON whom VIGIL believed had hired SAIS as an employee. In a recorded conversation
6 on or about August 16, 2004, CW2 asked if MONTOYA had asked VIGIL to give business to
7 NELSON. VIGIL responded that MONTOYA has not but SAIS has. In a previous conversation,
8 VIGIL noted that MONTOYA used SAIS as his conduit to VIGIL. Later in this same conversation,
9 VIGIL said to CW2 "tell KENT to send me a little bit of money"; "just so he contributes to my
10 campaign."

11 In 2005 the question of NELSON hiring SAIS is again brought up. In a recorded
12 conversation on or about February 2, 2005, CW2 and VIGIL discussed NELSON hiring SAIS in
13 response to MONTOYA pressuring NELSON for money. VIGIL stated that NELSON should hire
14 SAIS, paying her \$500 to \$1,000 per month. VIGIL stated she should be hired as a third party
15 consultant. This is the same terminology used by VIGIL with FBI Undercover Employees when
16 describing how to avoid campaign laws. Additionally, the amount(\$1,000) suggested by VIGIL
17 to pay SAIS is used in the extortion described below.

18 During a conversation with a Cooperating Witness (CW4), who is cooperating with the
19 FBI, which was recorded and surveilled by Special Agents of the FBI, SAIS and MONTOYA told
20 CW4 that VIGIL had not followed through on two instances where SAIS was supposed to receive
21 payments from NELSON. These payments were in support of the money owed to MONTOYA by
22 VIGIL.

23 In the summer of 2004, another opportunity to pay MONTOYA using SAIS arose. The
24 NMSTO was considering a position for a new securities lending oversight manager(SLOM).
25 Securities lending is another investment vehicle which is allowed by state investment policy but not
26 previously used by the NMSTO. The SLOM position would receive commissions much like the
27 investment advisor position. VIGIL told CW2 that SAIS would work for the SLOM who was
28 already selected. VIGIL foresaw this as a way to consistently pay MONTOYA.

1 CW4 was a part time employee who worked closely with VIGIL on the Request for
2 Proposal(RFP) for the SLOM and intended to apply for the position. CW4 believed that he would
3 win the SLOM position long before it was advertised. Part of this belief was based on VIGIL's
4 soliciting CW4 to hire a friend's wife who needed a job and stating CW4 should hire her after he won
5 the bid. CW4 ignored these requests as he did not need any employees. According to CW2, CW4
6 was the "selected" advisor referenced by VIGIL in the summer of 2004. Although CW4 was
7 "selected" by VIGIL in the summer of 2004, CW4 was unaware of VIGIL's intention until they began
8 to work on the RFP in late 2004.

9 In between the summer of 2004 and the issuance of the RFP in April 2005, VIGIL hired
10 SAIS in January 2005 as a lobbyist for the NMSTO during the state legislative session. According
11 to CW2, this was merely another way to pay MONTROYA, as SAIS had no lobbying experience.
12 VIGIL paid SAIS approximately \$12,000.

13 On or about April 15, 2005, the RFP for the SLOM position was advertised. On April
14 15, 2005, CW4 resigned his position with the NMSTO to pursue the SLOM position. CW4
15 provided to the FBI copies of the RFP, his response to the RFP and letters with the NMSTO related
16 to hiring SAIS. CW4 also recorded conversations with VIGIL, SAIS and ANN MARIE
17 GALLEGOS. GALLEGOS is the Deputy Assistant Treasurer who was the contact point for the
18 SLOM RFP.

19 Shortly after resigning, CW4 received increased pressure from VIGIL to hire SAIS. CW4
20 did not feel that it was a request, but rather an ultimatum. In early May 2005, CW4 received notice
21 that he was selected as the SLOM. On or about this time, CW4 recorded a conversation with
22 GALLEGOS. During this conversation GALLEGOS tells CW4 that the hiring of SAIS is "his call".
23 She also states that CW4 could help them, meaning VIGIL, out with a problem by hiring SAIS. At
24 the end of the conversation GALLEGOS states that she cannot force him to hire SAIS but
25 GALLEGOS thinks that it would take a lot of pressure off VIGIL.

26 After being told he won the bid, VIGIL told CW4 to come to an agreement with SAIS.
27 VIGIL advised that SAIS would take \$1,000 per month. CW4 refused stating that SAIS did not
28 possess any special skills and was not needed. VIGIL insisted and CW4 met with SAIS. SAIS told

1 CW4 that VIGIL owed MONTOYA "political favors" and that the money was for MONTOYA.
2 SAIS stated that she wanted a \$55,000 salary to start immediately. SAIS did not offer to perform
3 any work functions. CW4 could not justify paying SAIS \$55,000 and refused. After further
4 conversations with VIGIL and GALLEGOS, CW4 met again with SAIS where he offered 40% of
5 the net profits. SAIS refused stating that she wanted 40% of the gross profits. CW4's last offer was
6 40% of the net profits. Based on his conversations with VIGIL and SAIS, CW4 completed an
7 addendum to the RFP, based on his last offer, for a potential subcontractor position for SAIS. Other
8 than this addendum, there is no mention of SAIS in the RFP, response to the RFP or the SLOM
9 contract

10 On May 27, 2005, CW4 signed a Professional Service contract for the SLOM position.
11 The contract was to begin July 1, 2005. On June 13, 2005 CW4 telephoned VIGIL. During that
12 conversation, VIGIL stated that if CW4 did not hire SAIS, he would pull the SLOM contract. CW4
13 understood that SAIS was to receive whatever she asked for in order for CW4 to keep the SLOM
14 contract. CW4 did not believe VIGIL would pull the contract as it was not logical to pay SAIS.
15 CW4, in a letter dated June 13, 2005, referenced the conversation with VIGIL and previous
16 conversations with GALLEGOS and stated that both VIGIL and GALLEGOS have indicated that
17 if CW4 did not give SAIS whatever compensation she requested that VIGIL would reissue the RFP
18 for the SLOM regardless of the signed contract by CW4. In a letter dated June 23, 2005,
19 GALLEGOS states, in part, that failure to reach an agreement with SAIS would result in the SLOM
20 contract offer being withdrawn by July 8, 2005. Finally DAVE ROMERO, attorney for the
21 NMSTO, sent a letter dated July 15, 2005 which terminated any contract with CW4.

22 Approximately two weeks later, at the direction of the FBI, CW4 contacted SAIS to
23 renegotiate her percentage of the commissions. SAIS advised that VIGIL would reinstate the
24 SLOM contract if they came to an agreement. CW4 met with SAIS and MONTOYA, and in a
25 recorded conversation, MONTOYA stated that VIGIL owes him and VIGIL has only paid \$20,000
26 for all he has done for VIGIL. CW4, SAIS, and MONTOYA agreed upon 40% of gross
27 commissions to be paid to SAIS on behalf of MONTOYA. SAIS later advised that VIGIL was to
28 reissue the RFP notwithstanding their agreement. On or about August 10, 2005 a new RFP was

1 issued for the SLOM and a newly created Information Technology(IT) position was added for
2 SAIS. Also changed in the RFP was the provision for the SLOM to pay a third party for services
3 as well as now allowing for subcontractors. Based on conversations with CW4 and your Affiant's
4 knowledge of the investigation, these changes to the RFP were instituted to more easily pay SAIS
5 using outside contractors like the SLOM.

6 VIGIL during his tenure in office has used his position as New Mexico State Treasurer
7 to extort campaign contributions and payments from those wishing to do business with the NMSTO;
8 has used his position to force the hiring of specific persons in exchange for contracts with the
9 NMSTO and has used his position to facilitate the payment of kickbacks owed to the previous State
10 Treasurer MICHAEL MONTOYA.

11 12 NEED FOR SEARCH WARRANT

13 Based upon your Affiant's knowledge, training, and experience, and participation in other
14 public corruption and money laundering investigations, and based on observations during this
15 investigation, your Affiant knows that:

16 A. individuals who participate in racketeering activities routinely conceal in their residences,
17 businesses and in the residences of their co-conspirators and associates, large amounts of currency,
18 financial instruments, precious metals, jewelry, automobile titles and other items of value and/or
19 proceeds of racketeering and money laundering activities and evidence of financial transactions
20 relating to obtaining, transferring, secreting, or spending large sums of money made from engaging in
21 kickbacks, money laundering and other illegal activities.

22 According to CW1, CW1 purchased sports memorabilia, cars and other items using the
23 proceeds from the racketeering activity on behalf of MONTOYA. These items were
24 routinely kept at MONTOYA's residence, storage and properties. Additionally,
25 MONTOYA did not deposit the cash paid to him into any bank accounts. NELSON
26 has purchased two vehicles, several properties and started an investment account from
27 the proceeds of racketeering activity.

28 B. individuals who engage in racketeering activities receive profits and that they attempt to legitimize

1 these profits. To accomplish these goals, these individuals utilize false and fictitious business records,
2 foreign and domestic banks, securities, cashier's checks, money drafts, letters of credit, brokerage
3 houses, real estate shell corporations and business fronts.

4 MONTROYA routinely used others to hide his illegal proceeds. According to CW1, cash
5 was deposited into ROZELLA HAYNES'(MONTROYA's sister) bank account to be
6 withdrawn for him. This included the purchase of the six acre Sichler Road property
7 which was purchased by CW1 and HAYNES for MONTROYA. Vehicles were
8 purchased in the name of CW1 to avoid the appearance of assets for MONTROYA.
9 NELSON issued false IRS 1099 forms to CW2 detailing the kickback monies.
10 NELSON provided the forms several years after the start of the kickbacks to
11 MONTROYA, and was inaccurate in the amounts paid to CW2.

12 C. that persons who engage in illegal activity are not unlike any other individual in our society in that
13 they maintain documents and records. These documents and records will normally be retained for
14 long periods of time, regardless of whether their value to the individual has diminished. Often times,
15 this type of evidence is generated, maintained and subsequently forgotten about. Hence, documents
16 that one would normally think a prudent person would destroy because of their incriminating nature,
17 are still possessed months, or even years, after they come into the possession of the subject. Often
18 times, these individuals do not even realize the incriminating nature of the documents they keep. In
19 fact, I have participated in the execution of search warrants where documentary evidence dating back
20 for ten years has been found. It is also my experience that the larger and more complex a criminal
21 enterprise is, the more documentary evidence is generated during its course of commission.

22 CW1 advised that he provided spreadsheets detailing payments to and from
23 MONTROYA, the VIGIL campaign, KENT NELSON and others. Copies of these
24 spreadsheets have been provided to the FBI. CW1 provided copies of the spreadsheets
25 to MONTROYA and CW2. The NMSTO maintains records of all transactions for the
26 state. This includes contracts entered into with all financial advisors as well as municipal
27 finance details, RFPs, meeting notes and other items necessary to the daily operation of the
28 NMSTO.

1 D. money launderers often purchase and/or title their assets in fictitious names, aliases or the names
2 of relatives, associates or business entities, especially those with some means of legitimate income,
3 who have established a credit history, whose sole purpose is that of a "nominee" title holder to avoid
4 detection of these assets by government agencies. Even though these assets are in names other than
5 the subject, they are, in fact, the true owners; and continue to utilize and exercise dominion and
6 control of these assets.

7 1595 Sicler, Los Lunas, NM was purchased for MONTOYA by ROZELLA HAYNES
8 and CWI, using money provided by MONTOYA. MONTOYA often used CWI to
9 purchase items for him.

10 E. money launders often utilize sophisticated electronic and communication equipment to assist them
11 in their racketeering enterprise, e.g. computers, facsimile machines, digital, alpha and voice pagers,
12 portable and cellular telephones, currency counting machines, telephone answering machines,
13 electronic storage devices such as personal data assistants and audio and video surveillance and
14 counter-surveillance equipment. Computer storage devices, such as diskettes, tapes, laser disks,
15 compact digital disks, personal data assistants and others, can store the equivalent of thousands of
16 pages of information. Especially when the user wants to conceal criminal evidence, he/she often
17 stores it in random order with deceptive file names. This requires searching authorities to examine
18 all the stored data. This sorting process can take weeks or months, depending on the volume of data
19 stored, and it would be impractical to attempt this kind of data search on site.

20 All of the subjects in this case have utilized a computer. NELSON carries two laptop
21 computers and completes most of his business on them. NELSON also uses the computers
22 at his home office. The NMSTO conducts business by email, generates documents and
23 maintains detailed transaction accounts. VIGIL conducts NMSTO business and campaign
24 business using email. MONTOYA uses a computer to purchase items on line and to email
25 VIGIL at the NMSTO. SAIS has used the computer to access the NMSTO website for
26 RFP information.

27 F. money launders often take, or cause to be taken, photographs of themselves, members of their
28 organization, professionals who provide money laundering services, travel destinations, and their

1 assets. These photographs are usually maintained by the subjects in their residences or other
2 locations over which they exercise dominion and control; and

3 CWI provided a picture of a vehicle that he purchased on behalf of MONTOYA.

4 G. it is your Affiant's experience that kickbacks are often paid using currency so as to be untraceable
5 and along with the manner in which the currency is handled, carried and concealed, may establish a
6 connection between the questionable currency and a kickback transaction. In your Affiant's
7 experience unexplained wealth is probative evidence of crimes motivated by greed, e.g. public
8 corruption.

9 According to bank records obtained through Federal Grand Jury subpoena, prior to being
10 elected State Treasurer, MONTOYA's financial situation was such that his sister,
11 ROZELLA HAYNES had to co-sign loans. After election as the State Treasurer, CWI
12 purchased vehicles for MONTOYA using \$30,000-40,000 cash provided by
13 MONTOYA. CWI has been told by MONTOYA that he purchased tens of thousands
14 of dollars of sports memorabilia. CWI has seen the memorabilia located in the storage
15 facility that MONTOYA rents. CWI has made numerous trips to Las Vegas, NV with
16 MONTOYA. SAIS's bank records support withdrawals of cash in Las Vegas, NV.

17
18 Your Affiant believes that probable cause exists for issuance of a search warrant in this
19 case. Probable cause is derived from surveillance, physical evidence, review of reports, bank
20 records, analysis of information received from telephone companies, from conversations with
21 confidential sources previously identified herein who have personal knowledge of the events
22 described. Based on my experience and training, and from the experience gained from discussions
23 with other law enforcement officers whom I know to have been primarily involved in investigations
24 of public corruption and money laundering, I know that the items listed in Attachment A constitute
25 evidence and fruits of ongoing and continuing involvement in public corruption, racketeering and the
26 laundering of the proceeds.

27
28 New Mexico State Treasurer's Office 2019 Galisteo Road, Santa Fe, NM

1 Over the terms of former New Mexico State Treasurer MICHAEL MONTOYA and
2 current New Mexico State Treasurer ROBERT VIGIL, kickbacks and bribes have been paid to
3 MONTOYA and VIGIL based upon investments conducted on behalf of the State Treasurer's Office
4 and on behalf of the State of New Mexico. As a state government office, the New Mexico State
5 Treasurer's Office is likely to have stored documents and records from the underlying investments
6 from which these kickbacks and bribes were paid. CW1 and CW4, who both worked in the
7 NMSTO, advised that both computer and hard copy records are kept at the NMSTO.

8 9 SPECIFICS OF SEARCH AND SEIZURE OF COMPUTER SYSTEMS

10 Based upon the Affiant's knowledge, training, and experience and the experience of other
11 law enforcement personnel, your Affiant knows that searches and seizures of evidence from
12 computers commonly require agents to seize most or all computer items(hardware, software and
13 instructions) to be processed later by a qualified computer expert in a controlled environment. This
14 is almost always true because of the following:

15 Computer storage devices(such as hard disks, diskettes, compact digital disks and others)
16 can store the equivalent of thousands of pages of information. Especially when the user wants to
17 conceal criminal evidence, he/she often stores it in random order with deceptive file names. This
18 requires searching authorities to examine all the stored data to determine whether it is included in the
19 warrant. This sorting process can take weeks or months, depending on the volume of data stored,
20 and it would be impractical to attempt this kind of data search on site.

21 Searching computer systems for criminal evidence is a highly technical process requiring
22 expert skill and a properly controlled environment. The vast array of computer hardware and
23 software available requires even computer experts to specialize in some systems and applications, so
24 it is difficult to know before a search which expert should analyze the systems and its data.

25 The search of a computer system is an exacting and scientific procedure which is designed
26 to protect the integrity of the evidence and to recover even "hidden", crased, compressed, password-
27 protected, or encrypted files. Since computer evidence is extremely vulnerable to tampering or
28 destruction(both from external sources or from destructive code imbedded in the system as a "booby

1 trap") the controlled environment of a laboratory is essential to its complete and accurate analysis.

2 In order to fully retrieve data from a computer system, the analyst needs all magnetic
3 storage devices as well as the central processing unit(CPU). In addition the analyst needs all the
4 system software(operating systems or interfaces and hardware drivers) and any applications software
5 which may have been used to create the data(whether stored on hard drives or on external media).

6 In addition there is probable cause to believe that the computer and its storage devices, the
7 monitor, keyboard, and modem are all instrumentalities of the crimes of money laundering and
8 racketeering which is in violation of law and should be seized as such.

9 10 DEFINITIONS

11 The term "computer" used herein, is defined pursuant to Title 18, United States Code,
12 Section 1030 (e)(1), as "an electronic, magnetic, optical, electrochemical, or other high speed data
13 processing device performing logical or storage functions, and includes any data storage facility or
14 communication facility directly related to or operating in conjunction with such a device".

15 The terms "records", "documents", and "materials" include all information recorded in any
16 form, visual or aural including the originals and all non-identical copies thereof, whether different from
17 the original by reason of any notation made on such copies or otherwise, including, but not limited to
18 the following:

19 a. Written or printed matter of any kind, correspondence , memoranda, notes,
20 diaries, statistics, letters, telephone toll records, telegrams, contracts, reports, checks, statements,
21 receipts, summaries, pamphlets, books, ledgers, journals, registers, records, vouchers, slips, bills,
22 calendars, pads, notebooks, files, logs, lists, bulletins, credit materials, databases, teletypes, invoices,
23 worksheets.

24 b. The terms "records", "documents", and "materials" include all of the foregoing
25 in whatever form and by whatever means the records, documents, or materials, their drafts, or their
26 modifications may have been created or stored, including but not limited to, any handmade form with
27 any implement on a surface either directly or indirectly; any photographic form; any mechanical form
28 such typing; any electrical, electronic, or magnetic form(such as tape recordings, cassettes or compact

1 discs or any information on an electronic or magnetic storage device such as floppy diskettes, CD-
2 ROMS, optical discs, printer buffers, smart cards, memory calculators, electronic dialers, Bernoulli
3 drives, or electronic notebooks, as well as printouts or readouts from any magnetic device).

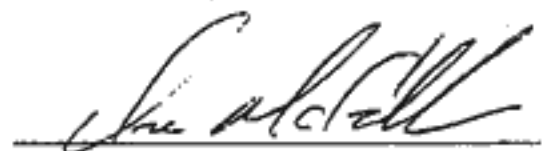
4 The Affiant also knows that computer hardware, software, documentation, passwords and
5 data security devices may be important to criminal investigation in two distinct and important respects:
6 (1) the objects themselves may be instrumentalities, fruits, or evidence of crime and/or (2) the objects
7 themselves may have been used to collect and store information about a crime (in the form of
8 electronic data). Rule 41 of the Federal Rules of Criminal Procedure permits the government to
9 search and seize computer hardware, software, documentation, passwords, and data security devices
10 which are (1) instrumentalities, fruits, or evidence of crime or (2) storage devices for information
11 about crime.

12 Rule 41 of the Federal Rules of Criminal Procedure authorize the government to seize and
13 retain evidence and instrumentalities of a crime for reasonable time, and to examine, analyze, and test
14 them. In consultation with the FBI computer examiner, the numbers of hours needed to examine and
15 analyze the computers onsite is large. If after examination it is determined that there is no evidence
16 on the computers, they will be returned.

17 In order to completely and accurately retrieve data maintained in the computer software,
18 all items to be seized will be processed by a qualified computer examiner at the issuance of this search
19 warrant.

20
21 It is your Affiant's opinion, expertise and experience, and based on the results of the
22 investigation of this particular organization, that MICHAEL A. MONTOYA, SAMANTHA SAIS-
23 MONTOYA, ROBERT E. VIGIL, and others known and unknown, have unlawfully entered into,
24 confederated, conspired and agreed to acts which are in violation of federal laws, to wit: the
25 interference with interstate commerce under the color of official right, in violation of Title 18, United
26 States Code, Section 1951(a)(1); interstate transportation in aid of racketeering enterprise, in
27 violation of Title 18, United States Code, Section 1952(a), receiving income derived from a pattern
28 of racketeering activity, in violation of Title 18 Section 1962(a), 1962(b) and 1962(d) and the

1 laundering of monetary instruments and engaging in monetary transactions from specified unlawful
2 activity, in violation of Title 18, United States Code, Sections 1956 and 1957. Moreover, this
3 investigation has revealed that MONTOYA, et. al. and co-conspirators have been committing the
4 above offenses on a continuous basis since 1999. Specifically, this investigation has revealed from
5 source information, record checks, financial records, and surveillance that each of the techniques
6 described above has occurred in this case, e.g. associates, and family members have moved money,
7 stored money, or had the assets of these conspirators put in their names. Therefore, there is probable
8 cause to believe that the types of records to be sought will be found in the aforementioned location.

9
10
11
12 

13
14 DREW MCCANDLESS, SPECIAL AGENT
15 FEDERAL BUREAU OF INVESTIGATION
16

17
18 Sworn to before me, this 13 day of Sept, 2005

19 
20

21 UNITED STATES MAGISTRATE JUDGE

22 DISTRICT OF NEW MEXICO
23 RICHARD L. PUGLISI
24 U.S. MAGISTRATE JUDGE
25
26
27
28