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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

United States of America,  
  
Plaintiff,  
  
v.  
  
Daniel David Rigmaiden,  
  
Defendant.

No. CR-08-0814-001-PHX-DGC  
**GOVERNMENT’S RESPONSE TO  
DEFENDANT’S MOTION  
REQUESTING EVIDENTIARY  
HEARING TO SETTLE  
CONTESTED ISSUES OF FACT  
GOING TO VALIDITY OF FOURTH  
AMENDMENT SEARCHES AND  
SEIZURES  
(DOCUMENT No. 901)**

The United States, through undersigned counsel, hereby responds to defendant’s Motion Requesting Evidentiary Hearing to Settle Contested Issues of Fact Going to Validity of Fourth Amendment Searches and Seizures (Document No. 901) as follows. The United States has no objection to the requested hearing. However, for the following reasons, the United States objects to defendant’s requests that certain witnesses be present at the hearing.

1. Use of Defendant’s Keys to Gain Access to His Apartment

As stated in the United States’ response to defendant’s motion to suppress, defendant was arrested well away from his apartment after he first attempted to flee apprehension pursuant to a valid arrest warrant. Defendant’s keys were seized incident to arrest and then used to: (1) verify they would open his apartment while the case agents had a valid search warrant for the apartment in hand, and (2) soon thereafter open the secured apartment pursuant to the execution

1 of the valid search warrant. There is no dispute that the defendant was arrested far from any  
2 reach of his apartment. A case agent can offer hearsay testimony to this effect. The four  
3 witnesses defendant wishes to call are irrelevant to the matters raised in defendant's collective  
4 motion to suppress.<sup>1/</sup>

5 2. Time Needed to Defeat Defendant's Encryption

6 While not agreeing that particular testimony by IRS-CI Special Agent Tracy Daun may  
7 be relevant on this matter in this case, IRS-CI Special Agent Daun will be available to testify at  
8 the hearing.

9 3. United States Examination of Defendant's Computers

10 IRS-CI Special Agent Daun will be available to testify at the hearing regarding the nature  
11 of the United States' search of defendant's computers. U.S. Postal Inspection Service Postal  
12 Inspector James Wilson was not provided with an image of any of defendant's computers to  
13 search; therefore, defendant is mistaken regarding his possible testimony regarding this issue.  
14 IRS-CI Special Agents Denise Medrano and Michael Fleischmann, and FBI Special Agent  
15 Richard Murray did have access to an image of some of defendant's computers for a limited  
16 period of time and did conduct a limited number of searches. While not agreeing that particular  
17 testimony by these agents may be relevant on this matter in this case, the agents will be available  
18 to testify at the hearing.

19 4. Whether Defendant Was Known to Anyone Under Any of His Aliases

20 The proposed testimony is irrelevant. The defendant was fugitive who assumed  
21 numerous false identities at various times including: (1) Travis Rupard with the subject aircard;  
22 (2) Steven Brawner with the subject apartment; (3) Aaron Johnson with an E-Gold account; (4)  
23 Patrick Stout with a Post Office Box located in Sacramento, California; (5) Daniel Aldrich with  
24 a storage unit; and (6) countless deceased persons in order to file fraudulent tax returns.

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26 <sup>1/</sup> The United States denies that defendant, an uncooperative fugitive who was willing  
27 to risk his life by running against traffic in order to evade apprehension, was "beaten into  
28 submission" at the time of his arrest.

1 Defendant, as a fugitive, could not have gotten as far as he did without interacting with a  
2 minimal number of people in order to simply live and continue his life of crime. However, while  
3 individuals may have known him under one of his many aliases, it is safe to say none of the  
4 proffered witnesses ever knew who he really was and defendant never left any of these  
5 individuals with a forwarding address and identity. In this case, there appears to be nothing the  
6 proffered witnesses could say to the contrary.

7 5. Accountability of Defendant Regarding the Subject Apartment With the Leasing  
8 Company

9 The proposed testimony is irrelevant. The defendant was fugitive who assumed  
10 numerous false identities as noted immediately above. If defendant had not been arrested,  
11 identified and detained pending trial, there is no way any representative of the subject  
12 apartment's leasing company could have reasonably been able to locate the defendant if he had  
13 simply decided to walk away from his lease. There is nothing the proffered witness could say  
14 to the contrary.

15 6. An Opportunity to Serve Defendant With a Copy of the N.D. Cal. 08-90330-MISC-RS  
16 Order

17 Defendant's proposed testimony regarding any opportunity the United States had to  
18 "serve" him with a copy of the N.D. Cal. 08-90330-MISC-RS Order is irrelevant. At that time,  
19 the United States: (1) was not required to serve a copy of the Order pursuant to the language  
20 contained in Order; (2) had no idea who defendant was; and (3) had no idea if anyone actually  
21 lived in the subject apartment since the daily usage of power was the equivalent of  
22 approximately one 120 watt electrical bulb. The facts are clear that the United States'  
23 investigation was focused on the subject apartment at the time a ruse Chinese food delivery was  
24 conducted in order to attempt to identify any occupant of the apartment at a particular date and  
25 time. No testimony is needed to verify these facts.

26 7. FBI Technical Agents

27 As stated in previous pleadings before this court, the identities and testimony of the FBI  
28 technical agents in the case is law enforcement sensitive. Therefore, the United States does not

1 intend to call or produce the agents at any hearing. In the alternative, the United States intends  
2 to call a supervisor of the technical agents who will be prepared to testify regarding non-law  
3 enforcement sensitive matters related to the conduct of the technical agents.

4 Respectfully submitted this 26<sup>th</sup> day of October, 2012.

5  
6 JOHN S. LEONARDO  
United States Attorney  
District of Arizona

7  
8 s/ Frederick A. Battista

9 FREDERICK A. BATTISTA  
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11  
12 Certificate of Service

13 I hereby certify that on October 26, 2012, I electronically transmitted the attached  
14 document to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice  
15 of Electronic Filing to the following CM/ECF registrant:

16 Philip Seplow  
Shadow Counsel for Defendant

17 A copy of the attached document was also mailed to:

18 Daniel David Rigmaiden  
Agency No. 10966111  
19 CCA-CADC  
PO Box 6300  
20 Florence, AZ 85132

21 s/ Frederick A. Battista  
Assistant U.S. Attorney  
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