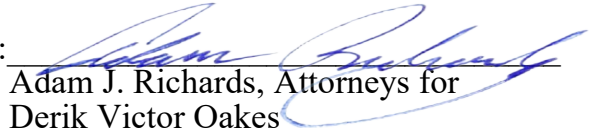


1 on this notice of motion and motion, memorandum of points and authorities, and any
2 evidence and argument presented at the hearing on this matter.

3
4 Dated: May 10, 2021

LAW OFFICE OF ADAM J. RICHARDS

5 By: 
6 Adam J. Richards, Attorneys for
7 Derik Victor Oakes

8 **INTRODUCTION AND RELEVANT FACTS¹**

9 Mr. Oakes is a resident of El Dorado County. It is alleged that Mr. Oakes purchased
10 parts from JNC Manufacturing (“JNC”), an online seller of firearm-related items, between
11 June 2017 and July 2018 though no specific date has ever been confirmed or ascertained. The
12 parts are referred to as an incomplete or “80% Glock Switch” or “80% Glock Auto Switch”
13 kit. The government asserts that these metallic parts, if completed through the processes of
14 precise machining and potential even welding, may function to render a Glock handgun into a
15 machinegun capable of select fire.

16 The type of kit purchased by Mr. Oakes was submitted by JNC in 2012 to the Bureau
17 of Alcohol, Tobacco, Firearms, and Explosives (“BATFE”) to determine and receive a ruling
18 on whether the kit constituted a machinegun under the National Firearms Act or Gun Control
19 Act. (Federal Warrant Affidavit, p. 4 par. 9, Exhibit C) In a letter dated December 5, 2012
20 from the BATFE Firearms Technology Branch Chief John R. Spencer, stated in relevant part:

21 The Exhibit was examined in FTB [Firearms Technology Branch] and
22 found to be an unfinished parts kit for a Glock machinegun-conversion
23 device commonly known as a *Glock Switch* or *Glock Chip*,
24 accompanied by a set of instructions for completing the machining
25 operations.

24 ¹ The following recitation of facts is based in part on the federal warrant affidavit referenced herein and
25 appended hereto as Exhibit ‘C’ as well as on various law enforcement reports received from the Office of the
District Attorney and is included here for the purpose of this motion only. Defendant does not concede the
veracity of any statements contained within the warrant affidavit, police reports, or other documents prepared
by law enforcement.

1 **As received, the device has not reached the stage of completion to**
2 **be considered a firearm, thus, it is not subject to the provisions of**
3 **either the Gun Control Act or National Firearms Act.**

3 (Letter – Department of Justice, Bureau of Alcohol, Tobacco,
4 Firearms, and Explosives – Firearms Technology Branch, December 5,
5 2012, Exhibit B)

5 This letter was posted on JNC’s website and appears to still be as of the filing of this
6 motion (See JNC website printout showing button link to “Glock Kit ATF Approval”, Exhibit
7 D) In summary, the kit sold by JNC, an “80% Glock Auto Switch” kit, was determined by the
8 BATFE to **not** be a machinegun, a firearm, or otherwise restricted. (See BATFE, FTB letter,
9 Exhibit B) JNC continued to sell this kit from the time of the evaluation in 2012 through
10 2018. The 80% Auto Switch parts sold during that time period through 2018 did not differ
11 from the parts submitted to the BATFE FTB in 2012 for analysis and which were determined
12 to not be a machinegun or a firearm.

13 According to the federal warrant affidavit in this matter, the BATFE again approached
14 JNC concerning the kits in 2018. (Warrant Affidavit, p. 4 par. 9, Exhibit C) The BATFE
15 Firearms and Ammunition Technology Division (“FATD”) (formerly the Firearms
16 Technology Branch [“FTB”]) again evaluated the parts sold by JNC. The BATFE, FATD
17 wholly reversed its position in 2018 on these kits and determined that the combination of
18 parts was now a machinegun. (*Id.* at p. 4, par. 7, Exhibit C). This, despite the fact that the kit
19 was identical to that submitted for review in 2012 by JNC with respect to the auto switch
20 components and despite the BATFE’s duty as a government agency to provide consistent,
21 reliable, and accurate information. As a result of this determination, customer lists were
22 obtained from JNC for those people who allegedly purchased these kits. Various BATFE
23 offices were tasked with contacting customers around the country who purchased these kits to
24 initiate seizure of the parts.

25 Particularly relevant to this motion is that upon the BATFE’s 180 degree change in

1 position, i.e. the JNC kits were not machineguns according to the BATFE one day, and the
2 next day they were, is that the BATFE utterly refused or failed to provide any notice of any
3 kind to the public. The BATFE implements several channels and procedures by and through
4 which it notifies the public of changes in policy, rules, and implementation of current laws
5 and regulations. One process widely used by the BATFE is the rule-making process which
6 allows and arguably requires the BATFE to publicly update Bureau policies and
7 determinations with respect to various technologies and products in the context of the
8 BATFE's interpretations and application of law. (27 C.F.R. 70.701(d)(2); 28 C.F.R.
9 0.133(a)(2); see e.g. Bumpstock -Type Devices, 27 CFR Parts 447, 478, and 479 [Docket No.
10 2018R-22F; AG Order No. 4367-2018] RIN 1140-AA52 - BATFE,
11 <https://www.govinfo.gov/content/pkg/FR-2018-12-26/pdf/2018-27763.pdf> - reclassified as a
12 machinegun a previously lawful product which did not come within the definitions of the
13 NFA; notice via rulemaking.) Another method by which the BATFE may notify the public
14 and licensees of changes to policy and enforcement is the Industry Open Letter system which
15 is described by the BATFE as follows:

16 ATF periodically publishes Open Letters to the industries it regulates in
17 order to remind or assist licensees with understanding their regulatory
18 compliance responsibilities under the laws and regulations administered
19 by ATF. Open Letters do not have the force and effect of federal
20 statutes or Department of Justice regulations, and are not final agency
21 actions. They may also be rescinded or modified at ATF's discretion.

(BATFE <https://www.atf.gov/rules-and-regulations/open-letters>, Exh E)

21 A third example by which the BATFE puts the public on notice of changes or updates
22 to policy (along with other business) is publication in the Federal Register which is required
23 by law to be published daily and which, according to the BATFE, is also placed on the
24 BATFE website shortly after the Government Printing Office makes it available. The BATFE
25 website states the following with respect to this notice method:

1 Like all Federal agencies, ATF publishes official notices of its actions in
2 the Federal Register, a publication of the Government Printing Office.
3 The Federal Register is published Monday through Friday (except
4 Federal holidays), both on paper and online. Here is the address of the
5 Federal Register online:
6 <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>.

7 When you access the Federal Register online, you can search by subject
8 or use their “Browse Feature,” to view the Table of Contents of any
9 recent issue. Using either of these means, you can view a document as
10 either a text file or as a PDF file, using Adobe Acrobat ®.

11 In addition, we place a copy of these documents on the ATF website
12 shortly after the Federal Register makes the documents available
13 through their website. When you access a notice or advance notice of
14 proposed rulemaking on our website, you will see directions on how to
15 submit a comment to us. You will also be able to view comments
16 submitted to ATF via the Federal Rulemaking portal at
17 <http://www.regulations.gov>.

18 As part of publishing a document, the Federal Register places a copy of
19 the manuscript “on file” in their office the day before it is printed.
20 Members of the public may view the document at that time. Call the
21 Federal Register for details. Their number is 202-741-6000.

22 (BATFE Federal Register – Publication Policy <https://www.atf.gov/rules-and-regulations/federal-register-actions>, Exhibit A)

23 The BATFE refused or otherwise failed to provide any notice to consumers through
24 any of the channels used for publication that the devices which they had previously
25 determined to be lawful were now considered machineguns.² Worse, and salient to this
26 motion, at no time did the BATFE provide notice to Mr. Oakes or his then-attorney, Kimber
27 Goddard, that they were seeking to seize from him an 80% Glock Auto Switch he had
28 purchased from JNC or that it had been reclassified as of 2018 as a machinegun. (See
29 Declaration of Kimber Goddard, p. 2, par. 8, Exhibit F)

30 Agents purportedly made an attempt to contact Mr. Oakes at his home to seize the

31 ² No evidence of such notice or publication has been provided by the Government upon demand by the
32 Defense and a diligent search of all online electronic resources reveals no disclosure by the BATFE of the
33 2018 report classifying the JNC kit as a machinegun following the 2012 determination that they were legal and
34 not machineguns.

1 Item. No one appeared to be home. Agents attempted to communicate with someone on a
2 Ring Doorbell Camera but were unable to as described in the warrant. (See Warrant
3 Affidavit, p. 5, par. 14, Exhibit C). The only communication between the BATFE and Mr.
4 Oakes or his counsel, prior to execution of the search warrant, occurred on or about April 30,
5 2019 between Mr. Goddard and BATFE attorney Melissa Delvecchio which is recounted in
6 the warrant affidavit. The warrant affidavit intimates that Mr. Oakes, through his counsel,
7 was notified of what was being sought and why. Specifically, affiant Bietz writes “ATF
8 attorney Melissa Delvecchio told Goddard that the item was illegal to possess the item (sic)
9 because it is a machinegun under federal law.” (Warrant Affidavit, p. 6, par. 15, lns 6-8,
10 Exhibit C) Kimber Goddard confirms that at no time did Ms. Delvecchio or anyone else
11 notify him of what item was being sought and why other than that “it” was a machinegun and
12 “it” must be seized. Mr. Goddard responded that neither he nor Mr. Oakes had knowledge of
13 a machinegun, did not possess one, and could not surrender what they did not have.
14 (Declaration of Goddard, p. 2, par 8, Exhibit F) This misleading statement resulted in a
15 magistrate judge unlawfully issuing a search warrant based on misrepresentations which
16 evidence a reckless disregard for the truth and omissions by Agent Bietz. A warrant must be
17 based on accurate information, not ambiguity and misrepresentations. (*Franks, supra*, 438
18 U.S. 154) The breach of those requirements requires suppression of the fruits of the warrant.

19 **A. Refusal to Provide Warrant Materials**

20 In addition to the BATFE’s failure to place the public or Mr. Oakes on notice that the
21 item he purchased from JNC was now, by executive fiat, considered a machinegun by the
22 BATFE, the BATFE, through the El Dorado County District Attorney, has refused to provide
23 relevant warrant materials thereby depriving Mr. Oakes of his ability to effectively and
24 competently challenge the lawfulness of the warrant. The entire basis for probable cause for
25 the initial federal search warrant obtained against Mr. Oakes is the BATFE FATD’s 2018

1 purported reclassification as machineguns the kits sold by JNC which were previously
2 declared lawful and **not** machineguns by the BATFE in 2012. In a letter dated April 20, 2021,
3 defense counsel for Mr. Oakes requested copies of any and all documents pertaining to the
4 determination made by the BATFE in 2018 which reclassified the kits sold by JNC as
5 machine guns. (See Letter to El Dorado District Attorney, April 20, 2021, Exhibit G) Defense
6 counsel was notified by Deputy District Attorney Miles Perry by e-mail on April 28, 2021
7 that the BATFE refused to provide any copies or documents relating to the 2018 report
8 claiming some type of privilege or confidentiality. This refusal to provide support for the very
9 basis of probable cause for the search warrant commands dismissal of the pending complaint
10 (*People v. Brophy* (1992) 5 Cal. App. 4th 932)

11 **POINTS AND AUTHORITIES**

12 **I.**

13 **DUE PROCESS REQUIRES SUPPRESSION OF THE FRUITS OF THE WARRANT**
14 **AND DISMISSAL**

15 Mr. Oakes has a due process protected right to discovery necessary to fully litigate a
16 Penal Code §1538.5 motion, on pain of dismissal. *People v. Brophy* (1992) 5 Cal.App.4th
17 932, 937-938. *Brophy* addresses plain notions of fairness to a defendant who seeks to
18 challenge the lawfulness of a warrant but has been thwarted in his efforts by government
19 refusal to provide those things which are necessary to make such a challenge. In *Brophy*, the
20 prosecutor, on behalf of the United States Postal Service, refused to provide documents
21 demanded in discovery which consisted of the standard procedure for profiling and opening
22 suspicious packages. The basis for the defense's demand is that a postal worker opened
23 defendant's package and, upon the basis of what was located inside, multiple warrants were
24 obtained to search various premises. The trial court chose not to impose the sanction of
25 dismissal for the government's failure to comply with the demand and order to provide the

1 procedures. (*Id.* at 938) Thus, defendant was left “no additional evidence that we are able to
2 present to the court in support of that motion” following the federal government’s refusal to
3 provide the documents sought. (*Id.* at 937) The Court of Appeal found this “fundamentally
4 unfair” and concluded the government’s refusal to provide documents resulted in insufficient
5 facts before the court as to the lawfulness of the package search and the trial court never
6 began the analytical process properly applied to a suppression motion. (*Id.* at 938)

7 Here, we have an analogous situation. The very foundation and genesis of probable
8 cause for the warrant in this matter is a report prepared in 2018 by the BATFE Firearms and
9 Ammunition Technology Division which reclassified the kits sold by JNC, one of which was
10 supposedly bought by Mr. Oakes, as machineguns. The FATD, previously known as the
11 Firearms Technology Branch, had previously evaluated and tested the exact same kit and
12 determined that it was not a machinegun. Mr. Oakes brought this motion to suppress
13 evidence, among other things, but has been deprived of the ability to access, analyze, and
14 challenge the very report which, overnight turned him into a felon without notice and
15 ultimately resulted in the invasion of his home by federal agents. This deprivation of evidence
16 is particularly egregious given the BATFE’s prior report from 2012 upon which JNC
17 Manufacturing and Mr. Oakes relied stating that the kits were not machineguns and were
18 perfectly legal to sell and possess. There was no publication to Mr. Oakes or anyone else that
19 the kit had been deemed a machinegun in a secret report from the BATFE.

20 The court should issue a strong rebuke to the federal agents who have invaded this
21 county to enforce arbitrary and capricious technicalities of innocuous parts kits which one
22 day were deemed by the federal government to be kosher and the next can land you in federal
23 prison for ten years on whim of a technical branch of the BATFE. If the ever-encroaching
24 federal government wishes to enforce such laws in El Dorado County, they should at least be
25 required to provide the basis for their invasions of the residences of its citizens rather than
harbor a secret report which forms the sole basis for a search of one of its citizens.

1 II.

2 **ALL EVIDENCE SEIZED PURSUANT TO THE SEARCH WARRANT FOR**
3 **DEFENDANT’S RESIDENCE AND ALL DIRECT AND INDIRECT FRUITS**
4 **THEREOF MUST BE SUPPRESSED BECAUSE THE WARRANT VIOLATED**
5 **THE UNITED STATES AND CALIFORNIA CONSTITUTIONS IN THAT**
6 **PROBABLE CAUSE DID NOT EXIST DUE TO THE STALENESS OF THE**
7 **EVIDENCE IN SUPPORT OF THE WARRANT.**

8 The Fourth Amendment to the United States Constitution provides: “The right of the
9 people to be secure in their persons, houses, papers, and effects, against unreasonable
10 searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable
11 cause, supported by Oath or affirmation, and particularly describing the place to be searched,
12 and the persons or things to be seized.” U.S. Const., Fourth Amendment. “The ‘physical
13 entry of the home is the chief evil against which the wording of the Fourth Amendment is
14 directed.’” (*Payton v. New York* (1980) 445 U.S. 573, 585–586.) A warrant to search an
15 individual's home shall not be issued unless the magistrate determines there is a “fair
16 probability that...evidence of a crime will be found in a particular place.” (*Illinois v. Gates*
17 (1983) 462 U.S. 213, 238.) The task of the issuing magistrate is simply to make a practical,
18 common sense decision whether, given all the circumstances set forth in the affidavit before
19 him, there is a fair probability that contraband or evidence of a crime will be found in a
20 particular place. (*Id.*)

21 According to the United States Supreme Court and the California Supreme Court, a
22 warrant cannot lawfully issue based upon facts that are stale and not connected in time to
23 establish probable cause at the time a warrant is issued. Specifically, in *Alexander v. Superior*
24 *Court (The People)*, the California Supreme Court held:

25 As a general rule, information is stale, and hence unworthy of
weight in the magistrate's consideration of an affidavit, **unless**
the information consists of "facts so closely related to the
time of the issue of the warrant as to justify a finding of
probable cause at that time."

1 (Emphasis added.) (*Alexander v. Superior Court* (1973) 9 Cal.3d 387,
2 393 (citing *Sgro v. United States* (1932) 287 U.S. 206, 210; *People v.*
3 *Sheridan* (1969) 2 Cal.App.3d 483, 490); see also, *People v. Hulland*
4 (2003) 110 Cal.App.4th 1646, 1652.)

4 The search warrant at issue in *Alexander v. Superior Court, supra*, was based upon
5 information from an informant and police surveillance. The information provided by the
6 informant was over one year old and determined to be stale and therefore unworthy of weight
7 in determining the existence of probable cause. (*Alexander v. Superior Court, supra*, 9 Cal.3d
8 at 393.) Other cases have prescribed much shorter time periods which were unreasonably
9 stale. The Court reasoned that there was no information to justify the determination that the
10 alleged illegal activity continued for more than one year. The *Alexander* Court explained its
11 reasoning as follows:

12 No clear cut rule, of course, tells us when the time span must be
13 deemed too attenuated. "The length of the time lapse alone is not
14 controlling since even a brief delay may preclude an inference of
15 probable cause in some circumstances while in others a relatively
16 long delay may not do so. Nonetheless, there are obviously some
17 limits." [Citation omitted.] The information given by Informant
18 No. Two was over one year old; the informant recites no special
19 circumstances that would justify a man of ordinary prudence to
20 conclude that the alleged illegal activity had persisted for more
21 than a year. Hence, the information was stale.

18 (*Id.*)

19 "The question of staleness turns on the facts of each particular case. If circumstances
20 would justify a person of ordinary prudence to conclude that an activity had continued to the
21 present time, then the passage of time will not render the information stale." (*People v.*
22 *Hulland, supra*, 110 Cal.App.4th at 1652.) "The continuity of the offense is the single most
23 important factor in the determination of whether the probable cause is valid or stale"
24 (*People v. Wilson* (1986) 182 Cal. App. 3d 742, 755 (citing, 2 La Fave, Search and Seizure
25 (1978), section 3.7, page 686).

1 In the case at hand, the warrant application and affidavit were submitted to a
2 magistrate on or about July 10, 2019. The warrant states that the most recent possible date of
3 the alleged acquisition of the purported contraband 80% Glock Auto kit by Mr. Oakes was
4 more than one year prior to the submission of the affidavit! And that the parts could have
5 possibly been acquired as early as June, 2017, more than two years prior! (Warrant Affidavit,
6 p. 5, par. 11, lns 3-9) The warrant affidavit states that the information they obtained does not
7 actually contain any date indicating when Mr. Oakes purportedly purchased the parts. (*Id.*)
8 There is nothing in the warrant which would bolster the notion that Mr. Oakes would continue
9 to possess a particular item one to two years later. This is particularly true given that gun
10 owners often buy, sell, and trade items to further their collections of “prized possessions” as
11 Agent Bietz phrased it in his warrant affidavit. (Warrant Affidavit, p. 7, par. 19, Exh C) The
12 uncertainty of the acquisition date and the passage of at least one year, if not two, coupled
13 with the lack of facts articulated in the warrant which would suggest that Mr. Oakes still had
14 the parts dictate the warrant lacked probable cause for staleness.

15 III.

16 **THE GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE DOES NOT** 17 **APPLY BECAUSE THE OFFICER COULD NOT HAVE HELD AN OBJECTIVELY** 18 **REASONABLY GOOD FAITH BELIEF THAT PROBABLE CAUSE EXISTED DUE** **TO THE INORDINATELY LONG DELAY BETWEEN ESTIMATED PURCHASE** **OF THE ITEM AND SUBMISSION OF THE AFFIDAVIT**

19 Notwithstanding the deficient probable cause for the search warrant executed for
20 defendant’s residence, the People may argue that the fruits of the warrant are saved by the
21 good faith exception to the exclusionary rule as outlined in *United States v. Leon*, 468 U.S.
22 897 (1984). This exception provides that evidence obtained in violation of the Fourth
23 Amendment need not be suppressed where the officer executing the warrant did so in
24 objectively reasonable reliance on the warrant's authority. (*Id.*) In evaluating the officer's
25 reliance in this regard, the court may not rely on the fact that a warrant was issued in

1 assessing objective reasonableness of the officer's conduct in seeking the warrant.” (*People v.*
2 *Camarella* 54 Cal.3d 592, 596 (1991). Rather, the test for determining if this exception
3 applies is “whether a reasonably well trained officer would have known that the search was
4 illegal despite the magistrate's authorization.” (*Leon, supra.* at pp. 922–923, fn. 23) The
5 officer's reliance on the warrant is not reasonable if the record reflects that “(1) the issuing
6 magistrate was misled by information that the officer knew or should have known was false;
7 (2) the magistrate wholly abandoned his or her judicial role; (3) the affidavit was so lacking
8 in indicia of probable cause that it would be entirely unreasonable for an officer to believe
9 such cause existed; or (4) the warrant was so facially deficient that the executing officer could
10 not reasonably presume it to be valid. (*Id.*)

11 In this regard, the question is not the subjective good faith of the officer. The standard
12 is “whether a *reasonably well trained* officer would have known the search was illegal
13 despite the magistrate’s determination.” (*Id.* at 922, emphasis added) That standard “requires
14 officers to have a reasonable knowledge of what the law prohibits.” (*People v. McNeill*, 96
15 Cal.App.4th 1302, 1308 (2002), quoting *Leon*, 468 U.S. at 920, fn. 20) No reasonable officer
16 could claim to be unaware of the basic rules established by the courts. (*Groh v. Ramirez*, 540
17 U.S. 551, 564 (2004). The requirements for obtaining a valid search warrant are a body of
18 law with which police officers are expected to be conversant. (*People v. McNeill, supra*, 96
19 Cal. App. 4th 1309 (2002). Thus, the officers are presumed to have been aware of the basic
20 rule established by *Gates* and its progeny.

21 Here, the suppression is compelled because the affidavit offered in support of the
22 warrant is so lacking in indicia of probable cause that it was objectively unreasonable for
23 Agent Bietz to believe such cause existed. The warrant lacks indicia of probable
24 cause due to the staleness of the information relied upon to procure the warrant and the dearth
25 of particularized facts which would lead a reasonably well trained officer to objectively
believe the evidence of the crime would still be there.

1 Staleness has been held to be sufficient to impute that an officer had knowledge that a
2 warrant was so lacking in indicia of probable cause that it would be objectively unreasonable
3 for him believe probable cause existed. (*People v. Hulland*, 110 Cal. App. 4th 1646, 1656
4 (Cal. App. 2d Dist. 2003). This is true even if staleness is the sole detriment to probable
5 cause for issuance of the warrant. (*Id.*)

6 When faced with potentially stale information, only special circumstances will justify
7 an officer of ordinary prudence to conclude that the alleged illegal activity had persisted from
8 the time of the stale information to the present. (*People v. Mikesell*, 46 Cal. App. 4th 1711,
9 1717 (1996). If these special circumstances are articulated in the warrant affidavit, then the
10 passage of time has not deprived the old information of all value. (*Id.*)

11 Here, no special circumstances were articulated that would support the inference that
12 the illegal activity had persisted since the purchase of the kit in 2017 or 2018. The lack of
13 special circumstances is apparent on the face of the warrant affidavit. The probable cause
14 recitation is predicated solely on records obtained from a seller of parts showing that Mr.
15 Oakes had purchased a kit between one and two years prior. There is no evidence or
16 articulation that Mr. Oakes continued to possess the kit such as other purchase activity of
17 other kits or similar information. Special Agent Bietz does not even state in the affidavit if
18 Mr. Oakes owns any firearms other than this kit which was only held to be a firearm and
19 machinegun in the secret report prepared by the BATFE FATD in 2018. In essence, the only
20 piece of information in support of probable cause to search Mr. Oakes is that he purchased a
21 kit between one and over two years before Agent Bietz submitted the affidavit with no
22 special circumstances to save the search in this case. The staleness of this warrant is striking
23 and flies in the face of reasonableness. Invading the home of an American Citizen in El
24 Dorado County based solely on a purchase he made between one and two years prior and
25 which device was previously deemed legal is outrageous under the circumstances present
here.

1 The government hid the ball in not notifying anyone, including Mr. Oakes, that the
2 item he had purchased lawfully and had become unlawful. And, moreover, that the
3 magistrate wasn't informed of the lack of notice and, worse, that the appears to have been
4 misled.

5 IV.

6 **THE FEDERAL WARRANT TO SEARCH DEFENDANT'S RESIDENCE AND**
7 **OTHER PLACES LACKS PROBABLE CAUSE BECAUSE IT INDUCED THE**
8 **MAGISTRATE BASED ON FACTS THAT WERE IN RECKLESS DISREGARD OF**
9 **THE TRUTH, OMITTED INFORMATION WHICH NEGATES A FINDING OF**
10 **PROBABLE CAUSE, OR WERE INTENDED TO MISLEAD THE MAGISTRATE.**

11 A.

12 **A DEFENDANT IS ENTITLED TO CONTROVERT FACTUAL STATEMENTS**
13 **CONTAINED IN AN AFFIDAVIT IN SUPPORT OF A WARRANT**

14 Penal Code § 1539 provides in part:

15 “(a) If a special hearing be held in the superior court pursuant to Section
16 1538.5, or if the grounds on which the warrant was issued be
17 controverted and a motion to return property be made..., the judge or
18 magistrate must proceed to take testimony in relation thereto... .”

19 Penal Code § 1540 provides in part:

20 “If it appears that the property taken is not the same as that described in
21 the warrant, or that there is no probable cause for believing the existence
22 of the grounds on which the warrant was issued, the magistrate must
23 cause it to be restored to the person from whom it was taken.”

24 In *Franks v. Delaware* (1978) 438 U.S. 154, the United States Supreme Court held
25 that a defendant may challenge the veracity of a facially valid warrant affidavit upon a
specific primary showing that 1) the affiant made statements that were deliberately false or in
reckless disregard of the truth; and 2) the affidavit's remaining content is insufficient to
justify a finding of probable cause. The *Franks* court stated the guiding principles as
follows:

1 “... where the defendant makes a substantial preliminary showing that a
2 false statement knowingly or intentionally, or with reckless disregard
3 for the truth, was included by the affiant in the warrant affidavit, and if
4 the allegedly false statement is necessary to the finding of probable
5 cause, the Fourth Amendment requires that a hearing be held at the
6 defendant's request.” (*Franks v Delaware* (1978) 438 U.S. 154, 155-
7 156, 57 L.Ed.2d 667)

8 The rule of *Franks* is also applicable to affidavits marred by omissions of facts;
9
10 Material omissions from a warrant affidavit may be treated in the same way as material
11 misstatements of fact. (*United States v Lefkowitz* (1980, 9th Circ.) 618 F2d 1313, 1317, n 4.
12 *People v Luttenberger* (1990) 50 Cal.3d 1)

13 **B.**

14 **THE INITIAL BURDEN ON THE DEFENDANT TO**
15 **ESTABLISH THAT MISSTATEMENTS OR OMISSIONS IN THE AFFIDAVIT**
16 **ARE INTENTIONAL OR RECKLESS IS BY A**
17 **PREPONDERANCE OF THE EVIDENCE**

18 In *People v Cook* (1978) 22 Cal.3d 67 at pp. 89, 90 and 91 the California Supreme
19 Court held that the burden on the defendant of establishing that misstatements in the affidavit
20 are intentional is by a preponderance of the evidence. “[W]hen the defendant charges that the
21 misstatements were deliberate, i.e., that the affiant knew they were false at the time he made
22 them[,] ... the defendant should retain both the burden of producing evidence of the affiant's
23 knowledge of falsity (Evidence Code §550) and the ultimate burden of proof on that issue
24 (Evid. Code, § 500).” (*People v Cook* (1978) 22 Cal.3d 67 at p. 89) The defendant need only
25 prove the affiant's knowledge by a preponderance of the evidence that a sworn misstatement
made with conscious indifference to whether it is true or false is deemed the equivalent of an
allegation actually known to be untrue. (*Id.* at 90) It is not necessary to prove the affiant made
the allegations with the specific intent to deceive the magistrate. (*Id.* at 91) A warrant may
also be attacked in the same manner with the same burden on the ground that information
“which might otherwise negate a finding of probable” was omitted from the affidavit. (*Id.* at
93 citing *Theodor v. Sup. Ct* (1972) 8 cal.3d 77 fn 1).

1 C.

2 **BATFE SPECIAL AGENT DANIEL BIETZ PRESENTED “FACTS” TO THE**
3 **MAGISTRATE THAT WERE IN RECKLESS DISREGARD OF THE TRUTH,**
4 **OMITTED INFORMATION WHICH NEGATES A FINDING OF PROBABLE**
5 **CAUSE, OR WERE INTENDED TO MISLEAD THE MAGISTRATE**

6 Special Agent Daniel Bietz submitted an application to the Honorable Magistrate
7 Judge Carolyn K. Delaney on or about July 10, 2021 for a warrant to search the home and
8 vehicles of Defendant Oakes. The application included a number of attachments including an
9 “Affidavit in Support of Search Warrant.” Special Agent Bietz states in the affidavit “I have
10 not included every detail of every aspect of the investigation. Rather, I have set forth only
11 those facts that I believe are necessary to establish probable cause. I have not excluded any
12 information known to me that would defeat a determination of probable case.” (Affidavit in
13 Support of Search Warrant, p. 2, par. 3, Exhibit C) Were the foregoing true, no warrant would
14 have issued in this matter.

15 **i. Special Agent Bietz Excluded From the Warrant That Mr. Oakes Received No**
16 **Notice of What Item Was Sought or That the Item Had Been Classified as a**
17 **Machinegun**

18 As set out more fully in the statement of facts in this matter (see Page 5), Mr. Oakes
19 was never notified of what item the BATFE sought to seize or, more importantly, that the
20 item, to wit, a 80% Glock Auto Switch kit, had been reclassified by the BATFE as a
21 machinegun. His counsel was told by BATFE attorney Melissa Delvecchio that Mr. Oakes
22 was in possession of an illegal item and that the ATF needed to seize it. (*Id.* p. 6, par. 15,
23 Exhibit C; see also Declaration of Goddard p. 2 par. 7, Exhibit F) Attorney Goddard explains
24 that the BATFE provided insufficient information upon which to respond or act with no
25 mention of an 80% Glock Auto Switch or any specificity whatsoever. Throughout the warrant

1 affidavit, the kits are referred to as the “item” and the “product” where it is clear that the item
2 being referred to is the kits. Affiant Bietz writes “ATF attorney Melissa Delvecchio told
3 Goddard that “**the item** was illegal to possess the item (sic) because it is a machinegun under
4 federal law.” (Warrant Affidavit, p. 6, par. 15, lns 6-8, Exhibit C) Anyone reading this
5 document would infer that Mr. Goddard was informed what “the item” was beyond the
6 generic moniker of “a machinegun.” However, Kimber Goddard confirms that at no time did
7 Ms. Delvecchio or anyone else notify him of what “item” was being sought and why “it” was
8 a machinegun and “it” must be seized. (Declaration of Goddard p. 2 par. 7, Exhibit F) As
9 discussed herein, this material omission and reckless disregard for the whole truth of this
10 portion of the affidavit mortally wounds probable cause.

11 The lack of effort by the BATFE to provide notice to Mr. Oakes or to the public
12 through other channels by which they inform the public of changes in enforcement or
13 interpretation such as the Rulemaking Process, Open Letters, or the Federal Register results
14 in fundamental unfairness and a legal defense to the search and any potential charges which
15 could stem from the seizure. Specifically, under federal law³ it must be proven that a
16 defendant had knowledge of a weapon’s physical properties as a machinegun to obtain a
17 conviction for possession of the firearm. (*Staples v. U.S.* (1994) 511 U.S. 600, 619). In
18 *Staples* a citizen was found in possession of a firearm which he believed was a semiautomatic
19 firearm but which in fact was shown during testing after seizure of the gun to be a
20 machinegun. The defendant was convicted after the judge rejected his proposed jury
21 instruction to require any proof (beyond reasonable doubt or otherwise) that he had
22 knowledge of the characteristics of the firearm which brought it within the proscriptions of
23 the NFA. The United States Supreme Court reversed the conviction holding that the

24
25

 ³ Remember, this is a federal warrant.

1 Government should have been required to prove that petitioner knew of the features of his
2 AR-15 that brought it within the scope of the Act. (*Id.*)

3 Here, there is no evidence that Mr. Oakes had any knowledge the kit he had purchased
4 one or two years prior was a machine gun. The parts do not resemble a firearm, let alone a
5 machinegun and the government had previously determined these parts to not constitute a
6 machinegun. In fact, it would have been impossible for Mr. Oakes to know that information
7 given that the BATFE maintains as a closely guarded secret the report prepared by the
8 BATFE's FATD which reclassified the kit as a machinegun and utterly failed or refused to
9 publish any information regarding their flip-flopping on the JNC 80% Glock Auto Kit.

10 Agent Bietz at once omits and misrepresents this key fact in the warrant affidavit and
11 includes language which a reasonable person would interpret to suggest that Mr. Oakes or his
12 attorney were in fact put on notice of the specific device, referred to as "the item", in the
13 affidavit.

14 It is equally offensive to notions of probable cause purportedly generated by Agent
15 Bietz's statements that he excludes the fact that the report in which the BATFE flip-flopped is
16 confidential and had not, and apparently will never be, shared with the public.

17 Finally, Attorney Kimber Goddard never stated that they (he and Mr. Oakes) were not
18 interested in cooperating with the ATF. He merely stated that they could not surrender what
19 they did not have.

20 The totality of this adversarial evasiveness and misrepresentation of materials facts
21 and statements strikes at the heart of probable cause for the warrant. But for the material
22 misrepresentations and omissions, the warrant lacked probable cause.

23 ///

24 ///

25 ///

1 warrant, which was based solely and exclusively on observations and items seized following
2 execution of the federal search warrant, shall also be suppressed.

3 **CONCLUSION**

4 The federal search warrant lacked probable cause due to the staleness of the
5 information. The officer should have known that due to the passage of between one year to
6 over two years! before securing a search warrant, the information was rendered so stale as to
7 cause the warrant to lack any indicia of probable cause. There were no special circumstances,
8 such as evidence of continuing illegal activity by the defendant, articulated in the warrant
9 affidavit that would override the staleness and lack of probable cause of the warrant.


10 Additionally, the government's refusal to provide the purported 2018 report which
11 flip-flopped the BATFE's position to declare the JNC kit to be a machine gun deprives Mr.
12 Oakes of his ability to challenge the warrant. The remedy is dismissal.

13 Finally, the misrepresentations and omissions contained within the warrant affidavit
14 unduly induced the magistrate to sign a warrant which, but for those misrepresentations and
15 omissions, lacked sufficient probable cause.

16 The Court should, upon a finding that the federal search warrant is invalid for any of
17 the reasons stated herein, suppress all things seized, observed, or otherwise obtained as a fruit
18 of that warrant. Additionally, upon a finding that the federal search warrant is invalid for any
19 reason stated herein, the state "piggy back" and its fruits must also be suppressed.

20
21 Dated: May 10, 2021

LAW OFFICE OF ADAM J. RICHARDS

22 By: 
23 Adam J. Richards, Attorneys for
24 Derik Victor Oakes
25

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Exhibit A – BATFE Federal Register – Publication Policy <https://www.atf.gov/rules-and-regulations/federal-register-actions>

Exhibit B – Letter and Report of Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives – Firearms Technology Branch, December 5, 2012

Exhibit C – Federal Search and Seizure Warrant and Affidavit, Case No.: 2-19-SW0607-CKD Declaration of Kimber Goddard, Esq.

Exhibit D – Printout of JNC Manufacturing Home Page with button link to 2012 ATF letter <https://www.jncmanufacturing.com/>

Exhibit E – BATFE Open Letters - <https://www.atf.gov/rules-and-regulations/open-letters>

Exhibit F – Declaration of Kimber Goddard

Exhibit G – Letter-Law Office of Adam J. Richards to El Dorado District Attorney, April 20, 2021

EXHIBIT

A

Federal Register Actions



Like all Federal agencies, ATF publishes official notices of its actions in the Federal Register, a publication of the Government Printing Office. The Federal Register is published Monday through Friday (except Federal holidays), both on paper and online. Here is the address of the Federal Register online:
<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>.

When you access the Federal Register online, you can search by subject or use their “Browse Feature,” to view the Table of Contents of any recent issue. Using either of these means, you can view a document as either a text file or as a PDF file, using Adobe Acrobat ®.

In addition, we place a copy of these documents on the ATF website shortly after the Federal Register makes the documents available through their website. When you access a notice or advance notice of proposed rulemaking on our website, you will see directions on how to submit a comment to us. You will also be able to view comments submitted to ATF via the Federal eRulemaking portal at <http://www.regulations.gov>.

As part of publishing a document, the Federal Register places a copy of the manuscript “on file” in their office the day before it is printed. Members of the public may view the document at that time. Call the Federal Register for details. Their number is 202-741-6000.

- [Rulemaking Notices](#)
- [Forms and Information Collection Notices](#)
- [General Notices](#)

Last Reviewed April 29, 2020

EXHIBIT

B



DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND
EXPLOSIVES

**Firearms Technology
Branch**

DATE: 12/5/2012

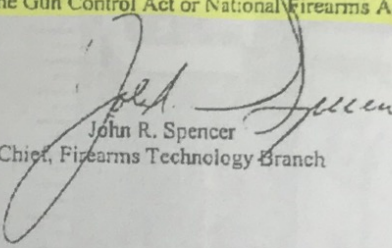
YOUR: 787035-13-0005

FTB: 2013-025-GR

Special Agent Brad L. Devlin
Bureau of Alcohol, Tobacco,
Firearms and Explosives
1201 N.E. Lloyd Boulevard, Room 700
Portland, Oregon 97232

The Firearms Technology Branch (FTB) received a technical examination request under your above-referenced investigation number for a group of firearms parts (Exhibit I). The Exhibit was examined in FTB and found to be an unfinished parts kit for a Glock machinegun-conversion device, commonly known as a *Glock Switch* or *Glock Chip*, accompanied by a set of instructions for completing the machining operations.

As received, the device has not reached the stage of completion to be considered a firearm; thus, it is not subject to the provisions of either the Gun Control Act or National Firearms Act.


John R. Spencer
Chief, Firearms Technology Branch

00915

p.8

RECEIVED 03/21/2018 10:44AM
7025418879

Point Blank Props, Inc

Mar 21 18:09:26a

2013-025-GR

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

Firearms Technology Evidence Transmittal Form

1. To: Bureau of Alcohol, Tobacco, Firearms and Explosives
Firearms Technology Branch
244 Needy Road
Martinsburg, West Virginia 25401
2. From: RAC Brad Devlin, Portland, Ore
Page 1 of 1
Phone # () 503 331-7850

3. Title of Investigation: JNC MANUFACTURING
4. Investigation Number: 787035-13-0005

5. Number of Packages: 1
6. Expedite (explain in comments section)

7. Intra-Agency Routing After Laboratory Examination (mark an "X" in appropriate box)
Explosives Technology Branch ATF Ammunition, MD Lab Return to Contributor Other

8. Attachments included in this submission (mark an "X" in appropriate boxes) *Attach Preliminary/Status ATF F 3120.2.
ATF F 3400.16 Photographs Diagrams Other (Explain in comments section)

Use Evidence Log/Inventory Numbers	Explosives/Bomb Trace Evidence	Fingerprints	Firearms	Toolmarks	9. Comments/Special Instructions	
					NFA determination needed on suspected Glock auto sear kit. ROI attached. Directions with photos on how to machine parts included in evidence package.	
Exhibit #					Description/Remarks	
1			x		Firearm parts, small baggie containing parts for select fire auto sear kit for Glock pistol. Instructions included.	

10. Submitted by (Name): Brad Devlin
11. Title and Office: RAC, Portland, Ore Group II
12. Date: 10/17/12
13. Reviewed by (Name):
14. Title and Office:
15. Date:

ATF B-Form 331.3
Revised August 2006

00909



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Firearms Technology Branch
Report of Technical Examination

Firearms Programs
Division

Washington, D.C. 20226

Phone: (202) 927-7910

TO:

Special Agent Brad Devin
Bureau of Alcohol, Tobacco and Firearms

1201 N.E. Lloyd Blvd, Room 700

Portland, OR 97232

DATE:

YOUR: 787035-13-0005

RE: JNC Manufacturing

OUR: 2013-025

GR

DATE EXHIBITS RECEIVED: 10/18/2012

DELIVERED BY: 7992 1884 2280

TYPE OF EXAMINATION REQUESTED:

Test, Examination, Classification

EXHIBITS:

Autot Bear (Glack)

ID:

184531

80600

EXHIBIT

C

UNITED STATES DISTRICT COURT

for the Eastern District of California

SEALED

In the Matter of the Search of)
)
3527 Lambeth Drive)
Rescue, California 95673)

Case No. 2:19-SW-0607-CKD

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

SEE ATTACHMENT A, attached hereto and incorporated by reference.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (identify the person or describe the property to be seized):

SEE ATTACHMENT B, attached hereto and incorporated by reference.

YOU ARE COMMANDED to execute this warrant on or before 7/24/19 (not to exceed 14 days)
[checked] 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: any authorized U.S. Magistrate Judge in the Eastern District of California.

[] 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: 7/10/2019 1:15 pm

Handwritten signature of Carolyn K. Delaney

City and state: Sacramento, California

Carolyn K. Delaney, U.S. Magistrate Judge
Printed name and title

ATTACHMENT A

Description of the Location to be Searched

The residence located at 3527 Lambeth Drive Rescue, California 95673.



3527 Lambeth Drive Rescue, California is located on the north side of Lamberth Drive in a suburban neighborhood of single family homes. The Target Location is a tan two-story single family residence with white trim. The number "3527" is affixed to building just to the left of the garage. The front door is located on the west side of the building to the left of the garage.

The authority to search this location includes:

1. The person of:
 - a. Derik OAKES
2. The following vehicles registered to the Derik OAKES at the subject residence:

Dark Colored 1989 Ford Utility Vehicle License Plate 3UOK450

1966 Ford 2 Door Vehicle Vehicle License Plate OAKES66

Black 2005 Dodge Truck Vehicle License Plate 909EVE

White Chevy SUV Vehicle License Plate 143GPU

White Ford Sedan Vehicle License Plate 7JZY415

3. All rooms, annexes, attics, basements, garages, carports, outside yard, curtilage, mailboxes, trash containers, debris boxes, storage lockers and areas, cabinets, sheds and outbuildings associated with the premises and shall extend into desks, safes, briefcases, purses, trash receptacles, electronic storage devices, and other storage locations within the premises in which items in Attachment B may be found.

The search of this location shall also authorize officers conducting the search to require the production of identification of any person reasonably believed by the officers to have possession and control of the premises. Any and all persons within the premises shall be subject to a pat down safety search to ensure officer safety.

The search of this location, in the interest of public safety and common law enforcement practice, shall allow law enforcement officers to make any weapon on the property safe by removing the source of ammunition and ensuring that there are no rounds of ammunition in the chamber.

ATTACHMENT B

Items to be seized

1. "Select Fire" 80 percent GLOCK Conversion Kit
2. Physical Evidence of acquiring, building and/or re-building machine guns including but not limited to:
 - a. Machine guns assembled or in the process of being re-assembled
 - b. Machine gun parts to include un assembled and/or de-milled machine gun and/or firearm receiver pieces
3. Communications (computer based or otherwise) and writings:
 - a. Any letters, journals, correspondence, video, audio or text communication, in written or digital form with respect to: JNG Manufacturing
 - b. Documents relating to the purchase and/or procurement of aforementioned parts
 - c. Documents and/or literature relating to the processes of gunsmithing and/or manufacturing/remanufacturing of machine guns
 - d. Bank deposit records, checking account records, and other financial documentation showing the purchase of machine guns of machinegun parts

**ORIGINAL
FILED**

UNITED STATES DISTRICT COURT

JUL 10 2019

for the
Eastern District of California

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

In the Matter of the Search of)
)
)
3527 Lambeth Drive)
Rescue, California 95673)
)
)

Case No. **2:19-SW-0607-CKD**

SEALED

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, attached hereto and incorporated by reference.

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

SEE ATTACHMENT B, attached hereto and incorporated by reference

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

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

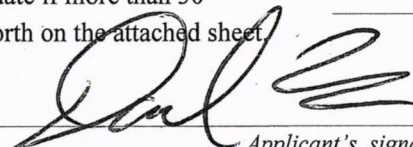
The search is related to a violation of:

<i>Code Section</i>	<i>Offense Description</i>
26 U.S.C § 5861(d)	Possession of an unregistered firearm as defined by the National Firearms Act (NFA)
26 U.S.C § 5861(i)	Possession of a NFA firearms not identified by serial number or identification as required by the National Firearms Act

The application is based on these facts:

SEE AFFIDAVIT, attached hereto and incorporated by reference.

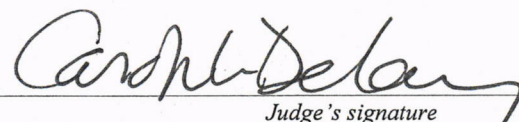
- Continued on the attached sheet.
- Delayed notice of _____ days (give exact ending date if more than 30 _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.


Applicant's signature

ATF Special Agent Daniel Bietz
Printed name and title

Sworn to before me and signed in my presence.

Date: 7/10/2019


Judge's signature

City and state: Sacramento, California

Carolyn K. Delaney, U.S. Magistrate Judge
Printed name and title

1 MCGREGOR W. SCOTT
United States Attorney
2 MICHAEL W. REDDING
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2700
Facsimile: (916) 554-2900
5

6 Attorneys for Plaintiff
United States of America
7

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 In the Matter of the Search of:

11 3527 Lambeth Drive
12 Rescue, California 95673
13

CASE NO.

AFFIDAVIT IN SUPPORT OF SEARCH
WARRANT

14 **AFFIANT BACKGROUND**

- 15 1. I, Daniel Bietz a duly sworn Special Agent with the United States Department of Justice, Bureau of
16 Alcohol, Tobacco, Firearms and Explosives (“ATF”), assigned to the Sacramento Field Office, have
17 been employed with the ATF since May 2016. I am a graduate of the Federal Law Enforcement
18 Training Center and the ATF National Academy. While there, I received 7 months of training in the
19 investigative techniques and enforcement of Federal firearms and explosives law. Additionally, I
20 previously served as a Combat Engineer in the United States Army and California National Guard
21 earning the rank of Sergeant. As a Combat Engineer, I gained significant experience in the
22 identification, maintenance and use of both firearms and explosives.
23
24 2. My current duties and responsibilities with the ATF include investigating violations of Federal
25 criminal laws.
26

27 ///

28 ///

1 Based on my training and experience, I am familiar with Title 26, United States Code, Section
2 5861(d) which makes it a violation for any person to possess a firearm as defined by the National
3 Firearms Act which has not been registered to them. I am also familiar with Title 26, United States
4 Code, Section 5861(i) which makes it a violation to possess a firearm as defined by the National
5 Firearms Act that is not identified by a serial number as required by the National Firearms Act.
6 Additionally, I have personally discussed the facts of this case with a California Peace Officer and
7 Special Agents with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), all of whom
8 have extensive experience with investigations related to Federal firearms laws.
9

10 3. Because I am submitting this affidavit for the limited purpose of establishing probable cause for a
11 search warrant for the SUBJECT PREMISES, I have not included every detail of every aspect of the
12 investigation. Rather, I have set forth only those facts that I believe are necessary to establish
13 probable cause. I have not, however, excluded any information known to me that would defeat a
14 determination of probable cause. The information contained in this affidavit is based upon my
15 personal knowledge, my training and experience, my review of documents and investigative reports,
16 as well as information gathered by or obtained from other law enforcement officers and other
17 cooperating individuals.
18
19

20 INTRODUCTION

21 4. This affidavit is submitted in support of a search warrant authorizing the search of Derik OAKES
22 (hereinafter "OAKES") and 3527 Lambeth Drive Rescue, California hereafter referred to as the SUBJECT
23 PREMISES (See Attachment A).

24 5. Based upon my training, experience, and knowledge of this investigation, I submit there is probable
25 cause to believe that within the SUBJECT PREMISES there are fruits, evidence, and instrumentalities (as
26 more fully described in Attachment B) of the following Federal Offenses:
27
28

- 1 a. 26 U.S.C § 5861(d) (Possession of a firearm as defined by the National Firearms Act (NFA), that
2 is not registered in the National Firearm Registry);
3 b. 26 U.S.C § 5861(i) (Possession of a NFA firearms not identified by serial number or
4 identification as required by the National Firearms Act);
5

6 6. A firearm is defined under the National Firearms Act, 26 U.S.C. §5845 (a) (1) as:

7 “a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a
8 shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels
9 of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length;
10 (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26
11 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in
12 subsection (e); (6) a machinegun; (7) any silencer (as defined in section 921 of title 18, United States
13 Code); and (8) a destructive device. The term ‘firearm’ shall not include an antique firearm or any
14 device (other than a machinegun or destructive device) which, although designed as a weapon, the
15 Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is
16 primarily a collector's item and is not likely to be used as a weapon.”
17
18

19
20 **FACTS SUPPORTING PROBABLE CAUSE**

21 7. In February of 2018 ATF Special Agents of the Phoenix Field Office seized two 80 percent GLOCK
22 machinegun conversion kits. 80 percent machinegun conversion kits are considered to be partially
23 completed by the manufacture and require the buyer to compete the kit in order to become a
24 functional machinegun. This moniker does not reflect the technical decision of the ATF as to the
25 legal definition of the device as a machinegun.
26
27
28

1 The suspect in the Phoenix Field Office investigation stated that he had received the firearms parts
2 from "JNC Manufacturing," a weapons manufacturer in Oregon. The GLOCK conversion kits were
3 submitted to the ATF Firearms and Ammunition Technology Branch (FATD). The ATF FATD
4 determined that the items recovered from the Phoenix Field Office search warrant were machineguns
5 as defined by the National Firearms Act.

6
7 8. Agents from the ATF Phoenix Office advised Agents from the ATF Portland field office that JNC
8 Manufacturing was suspected of selling NFA firearms. An investigation by ATF Portland Field
9 Office revealed that JNC Manufacturing sold 80 Percent GLOCK machinegun conversion kits on
10 their website.

11 9. On March 16, 2018 ATF Special Agent (SA) Anthony Schodowski, SA Roland Jacobs, and Resident
12 Agent in Charge (RAC) Ben Scroll interviewed Nathan JONES. JONES is the owner of JNC
13 Manufacturing and a licensed Federal Firearms Licensee and a Special Occupational Tax Payer
14 permitted to sell NFA firearms. During the interview it was revealed that JONES produces and sells
15 three different GLOCK conversion kit products; "Select Fire", "Auto" and "Roni". JONES had
16 submitted the "Select Fire" GLOCK conversion kit to the ATF in 2012 and the ATF Firearms
17 Technology Branch (FTB) (now known as FATD) had determined that product was not considered a
18 Machinegun under the National Firearms Act. ATF contacted FATD and confirmed this to be true.
19 JONES agreed to allow SA Schodowski to submit the three 80 Percent GLOCK Conversion Kit
20 versions to FATD.
21

22
23 10. In 2018, ATF FATD determined that all three products produced by JNC Manufacturing ("Select
24 Fire", "Auto" and "Roni") were firearms (machineguns) as defined by the National Firearms Act.

25 11. On July 27, 2018 ATF SA Schodowski, Oregon United States Attorney's Office, Nathan JONES and
26 his attorney Shawn Kollie met in the Oregon United States Attorney's office in Portland, Oregon and
27 conducted a proffer for information.
28

1 Defense counsel provided a list of 240 names and addresses of people who had purchased the 80
2 percent GLOCK conversion kits. Derik OAKS of 3527 Lambeth Drive Rescue, California 95673
3 was listed as having purchased a "Select Fire" 80 percent GLOCK conversion kit. Information
4 received from the defense counsel did not provide the date that OAKES is believed to have
5 purchased the items. However, JNC manufacturing stated when providing the information that they
6 were only able to retrieve records from sales that had occurred over the 13 months prior. The
7 information was received in July of 2018. This places OAKES purchases between June 2017 and
8 July 2018. OAKES resides in Rescue, California, a city located in the Eastern District of California.

9
10 12. I performed a search of public and law enforcement databases and located the following: "Derik V
11 OAKES (DOB: 9/1/1976) of 3527 Lambeth Drive Rescue, California 95673." As this information is
12 consistent with the information provided by JONES, I believe this OAKES is the same person who
13 purchased the "Silver Fire" 80 percent GLOCK conversion kit from JNC Manufacturing.

14
15 13. On November 11, 2018 ATF Portland opened a case concerning OAKES and referred it to the
16 Sacramento Field Office which is responsible for covering Rescue, California.

17 14. On April 23, 2019 ATF Special Agents Lowe, Laguna and Wright attempted to contact OAKES at
18 3527 Lambeth Drive, Rescue California 95673 in order to retrieve the item and have OAKES sign a
19 Warning Notice informing OAKES of the law concerning the purchase of NFA firearms. The agents
20 rang the doorbell and could hear someone speaking faintly through a Ring camera mounted over the
21 garage. The Agents presented their badges to the remote video audio security device and identified
22 themselves as law enforcement. When the ATF agents attempted to speak further a siren was
23 activated. Whoever was controlling the doorbell appeared to be using the sound to drown out the
24 Special Agents when they attempted to speak. ATF Special Agent Matthew Wright left a business
25 card at the residence and the team departed. In the following days the ATF was contacted by
26 Kimber Goddard who claimed to be legal counsel for OAKES.
27
28

1 15. On April 30, 2019 ATF SA Daniel Bietz requested ATF in-house counsel Melissa Delvecchio
2 contact Kimber Goddard to facilitate the return of the 80 percent GLOCK Conversion Kit. Melissa
3 Delvecchio called Goddard. During the conversation, Goddard confirmed that he was representing
4 OAKES. Melissa Delvecchio advised Goddard that his client was in possession of an illegal item
5 and that ATF needed to seize it. Goddard replied something to the effect of, "says you". ATF
6 attorney Melissa Delvecchio told Goddard that the item was illegal to possess the item because it is a
7 machinegun under federal law. Goddard replied that the government had no evidence or proof of
8 that. Melissa Delvecchio asked Goddard if based on the conversation Goddard and his client had no
9 interest in cooperating with ATF. Goddard replied, "No," indicating they were not interested in
10 cooperating with ATF.
11

12 16. On May 28, 2019 surveillance video was recorded of a man matching OAKES's description, driving
13 a vehicle which distinctly matched a vehicle registered to OAKES park in front of the community
14 mail box and retrieve mail. A still frame of the surveillance video can be found below.
15



17. This vehicle matches the description of a vehicle registered to OAKES. Below is an image of the California DMV registration belonging to OAKES and a photo taken from a license plate reader. Note the similar fire helmet sticker on rear windscreen on the image above and the image below.

4DRNSFUDQLZ.IV
DATE: 05/22/19 TIME: 11:55
INSURANCE INFORMATION ON FILE
REG VALID FROM: 03/02/19 TO 03/02/20
LIC#:7JZY415 YRMD:09 MAKE:FORD BTM :4D VIN :2FAHP71V29X140332
R/O :OAKES DERIK, 3527 LAMBETH DR CITY:RESCUE C.C.:09 ZIP#:95672
SOLD:00/00/09 RCID:03/09/19 OCID:12/05/16 LOCD:3
TYPE:11 POWR:G VEH :12 BODY:0 CLAS:AD *-YR:16
REC STATUS:
11/05/18 SMOG DUE 03/02/20
04/22/16 PREV LIC 7JZU189



18. The man reentered the driver's seat of the vehicle and proceeded to turn down the driveway of 3527 Lambeth Drive, Rescue, California.

19. Based on my training, knowledge and experience, persons who possess firearms consider them to be prized possessions and store them in both easy to access locations, close at hand, or often in locked safes, vaults and cabinets with other valuables.

20. Based on my training, knowledge and experience persons who possess firearms often keep them in their vehicles and may even keep them in vehicles that belong to others but which are controlled by them.

The following vehicles are registered to OAKES at 3527 Lambeth Drive Rescue, California 95673.

- a. Dark Colored 1989 Ford Utility Vehicle License Plate 3UOK450
- b. 1966 Ford 2 Door Vehicle License Plate OAKES66

1 c. Black 2005 Dodge Truck Vehicle License Plate 909EVE

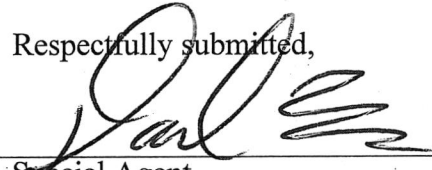
2 d. White Chevy SUV Vehicle License Plate 143GPU

3 e. White Ford Sedan Vehicle License Plate 7JZY415

4 21. Accordingly, based on the foregoing information, I believe there is probable cause to believe that
5 OAKES is in possession of an unregistered NFA firearm is stored at 3527 Lambeth Drive Rescue,
6 California 95673.
7

8 I swear under penalty of perjury, that the foregoing information is true and correct to the best of my
9 knowledge, information and belief.
10

11 Respectfully submitted,

12 
13 _____
14 Special Agent
15 ATF Special Agent Daniel Bietz

16 Subscribed and sworn to before me on: 7/10/2019

17 
18 _____
19 The Honorable Carolyn K. Delaney
20 UNITED STATES MAGISTRATE JUDGE

21 APPROVED AS TO FORM BY:

22 
23 _____
24 MICHAEL W. REDDING
25 ASSISTANT UNITED STATES ATTORNEY
26
27
28

ATTACHMENT A

Description of the Location to be Searched

The residence located at 3527 Lambeth Drive Rescue, California 95673.



3527 Lambeth Drive Rescue, California is located on the north side of Lamberth Drive in a suburban neighborhood of single family homes. The Target Location is a tan two-story single family residence with white trim. The number "3527" is affixed to building just to the left of the garage. The front door is located on the west side of the building to the left of the garage.

The authority to search this location includes:

1. The person of:
 - a. Derik OAKES
2. The following vehicles registered to the Derik OAKES at the subject residence:

Dark Colored 1989 Ford Utility Vehicle License Plate 3UOK450

1966 Ford 2 Door Vehicle Vehicle License Plate OAKES66
Black 2005 Dodge Truck Vehicle License Plate 909EVE
White Chevy SUV Vehicle License Plate 143GPU
White Ford Sedan Vehicle License Plate 7JZY415

3. All rooms, annexes, attics, basements, garages, carports, outside yard, curtilage, mailboxes, trash containers, debris boxes, storage lockers and areas, cabinets, sheds and outbuildings associated with the premises and shall extend into desks, safes, briefcases, purses, trash receptacles, electronic storage devices, and other storage locations within the premises in which items in Attachment B may be found.

The search of this location shall also authorize officers conducting the search to require the production of identification of any person reasonably believed by the officers to have possession and control of the premises. Any and all persons within the premises shall be subject to a pat down safety search to ensure officer safety.

The search of this location, in the interest of public safety and common law enforcement practice, shall allow law enforcement officers to make any weapon on the property safe by removing the source of ammunition and ensuring that there are no rounds of ammunition in the chamber.

ATTACHMENT B

Items to be seized

1. "Select Fire" 80 percent GLOCK Conversion Kit
2. Physical Evidence of acquiring, building and/or re-building machine guns including but not limited to:
 - a. Machine guns assembled or in the process of being re-assembled
 - b. Machine gun parts to include un assembled and/or de-milled machine gun and/or firearm receiver pieces
3. Communications (computer based or otherwise) and writings:
 - a. Any letters, journals, correspondence, video, audio or text communication, in written or digital form with respect to: JNG Manufacturing
 - b. Documents relating to the purchase and/or procurement of aforementioned parts
 - c. Documents and/or literature relating to the processes of gunsmithing and/or manufacturing/remanufacturing of machine guns
 - d. Bank deposit records, checking account records, and other financial documentation showing the purchase of machine guns of machinegun parts

1 MCGREGOR W. SCOTT
United States Attorney
2 MICHAEL REDDING
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2700
Facsimile: (916) 554-2900

5
6 Attorneys for Plaintiff
United States of America

SEALED

**ORIGINAL
FILED**

JUL 10 2019

8 IN THE UNITED STATES DISTRICT COURT CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
9 EASTERN DISTRICT OF CALIFORNIA BY DEPUTY CLERK

10 IN THE MATTER OF THE APPLICATION
11 OF THE UNITED STATES OF AMERICA
FOR THE SEARCH OF:

12 3527 Lambeth Drive Rescue, California 95673

CASE NO. 2:19-SW-0607-CKD

13 ~~PROPOSED~~ ORDER RE: REQUEST TO SEAL
DOCUMENTS

14 UNDER SEAL

15 SEALING ORDER

16 Upon application of the United States of America and good cause having been shown,
17 IT IS HEREBY ORDERED that the search warrant and search warrant affidavit underlying the
18 search warrant in the above-entitled proceeding shall be filed under seal and shall not be disclosed to
19 any person, unless otherwise ordered by this Court.

20
21 Dated: 7/10/2019

22 
23 Hon. Carolyn K. Delaney
24 U.S. MAGISTRATE JUDGE

EXHIBIT

D

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HELLO

EXHIBIT

E

Open Letters

ATF periodically publishes Open Letters to the industries it regulates in order to remind or assist licensees with understanding their regulatory compliance responsibilities under the laws and regulations administered by ATF. Open Letters do not have the force and effect of federal statutes or Department of Justice regulations, and are not final agency actions. They may also be rescinded or modified at ATF's discretion.

For more information, see "[Memorandum for All Components: Prohibition of Improper Guidance Documents](#)," from Attorney General Jefferson B. Sessions III, November 16, 2017.

[Open Letters to the Firearms Industry](#)

[Open Letters to the Explosives Industry](#)

Last Reviewed August 5, 2019

EXHIBIT

F

ADAM J. RICHARDS, State Bar No. 249872
LAW OFFICE OF ADAM J. RICHARDS
2530 J Street, Suite 320
Sacramento, California 95816
Telephone: (916) 399-3486
Facsimile: (916) 823- 3307
adam@ajrlaw.net

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ELDORADO

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

DERIK VICTOR OAKES,

Defendant.

) Case No.: P20CRF0146

)

) **DECLARATION OF KIMBER**
) **GODDARD, ESQ.**

)

)

)

)

)

)

)

)

)

)

I, Kimber Goddard, declare:


1. I am a duly licensed attorney authorized to practice law in the State of California.
2. I am a semi-retired trusts and estate planning attorney.
3. Derik Victor Oakes is my nephew.

4. In April, 2019 Mr. Oakes contacted me regarding persons who had approached his home and left a business card at his door purportedly from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”).
5. Mr. Oakes asked if I would contact the party who left the card at his residence. I agreed and left a message for who I recall to be Special Agent Matthew Wright. Agent Wright did not answer the call and I left a voicemail identifying myself and that I was an attorney calling on behalf of Derik Oakes.
6. On or about April 30, 2019 I received a call from someone who introduced herself as Melissa Delvecchio. She asked if I represented Derik Oakes to which I responded “yes, for the purpose of the call” or words to that effect.
7. The call lasted for approximately one minute wherein Ms. Delvecchio announced immediately following our introduction in what I would describe as a calculated confrontational, intimidating, and accusatory manner that Mr. Oakes had an illegal machine gun and they wanted it. I was surprised by the statement and the tenor of the accusation. Ms. Delvecchio stated generally that Mr. Oakes possessed an illegal machine gun. She did not state anything about parts, Glock Auto Switch, conversion kits, or anything which would suggest to me, or Mr. Oakes for that matter, what specifically they were seeking or believed was a machine gun. She provided no information other than that it was their belief Mr. Oakes had a machine gun and he must surrender it. I have learned in the aftermath of Mr. Oakes’s arrest they were seeking what they term a Glock Auto Switch.

8. I stated to her that Mr. Oakes did not have a machine gun and we could not surrender what he did not have to which she responded "If you won't give it to us, we will do what we have to do then" or words to that effect. She reiterated that they knew he had an illegal machine gun. The call was then concluded.
9. I did not tell her that we would not cooperate. I also did not respond to her statement that Mr. Oakes possessed a machine gun with "Says you" or words to that effect; I do not communicate with anyone, let alone counsel, in that manner. I did reiterate that Mr. Oakes did not have a machine gun. Without information from Ms. Delvecchio or anyone else, neither I nor Mr. Oakes were able to identify what it was the ATF was seeking or believed was a machine gun until they entered his home under the auspices of their search warrant.
10. I received no further contact via telephone or writing from Ms. Delvecchio or anyone else purportedly from the ATF after April 30, 2019.
11. I was aware Mr. Oakes possessed a variety of rifles and handguns none of which to my knowledge functioned or were used as machine guns.

I declare under penalty of perjury that the foregoing is true and correct, except as to matters stated upon information and belief, and as to those matters, I believe them to be true.

Executed this 5th day of May 2021, at Sacramento, California.



Kimber Goddard, Esq.

EXHIBIT

G

LAW OFFICE OF
ADAM J. RICHARDS

2530 J Street, Ste. 320
Sacramento, California 95816
TELEPHONE (916) 399-3486
FACSIMILE (916) 823-3307

April 20, 2021

El Dorado County District Attorney's Office
Deputy District Attorney Miles Perry
778 Pacific Street
Placerville, CA 95667

Re: People v. Derik Oakes
Case No. P20CRF0146
Next Court Date: May 25, 2021; preliminary hearing May 27, 2021
REQUEST FOR ADDITIONAL DISCOVERY

Dear Mr. Perry:

Thank you for providing to me a copy of the federal warrant and other documents sought in my previous request for discovery dated March 18, 2021. The federal warrant references a determination made in 2012 by the Bureau of Alcohol Tobacco and Firearms, Firearms Technology Branch ("FTB" now the "FTAB"), of which I have a copy, which concluded that the device manufactured and sold by JNC Manufacturing referred to as an 80% Glock Switch and which was purchased by Mr. Oakes, was **not** considered a machine gun. The warrant also references a determination made by the FTAB in 2018 which, according to the warrant, concluded the exact opposite of the Bureau's determination and instead holding that the 80% Glock Switch was a machine gun. Please provide the following with respect to this purported 2018 determination:

1. Copies of any documents pertaining to the determination made by FTAB in 2018 with respect to the device sold by JNC Manufacturing referred to as an '80% Glock Switch' or 'Glock Auto Switch' or similar, including, but not limited to, opinion letters, laboratory results, technical findings, legal citations or memoranda, criteria or rationale for the reclassification of the device, and any other opinions or conclusions pertaining to the device sold by JNC manufacturing referred to above.
2. The names, qualifications, and mailing addresses of any laboratory technician, technical analyst, expert, or other ATF personnel or outside contractors who authored or approved all or part of the 2018 determination pertaining to the device previously manufactured and sold by JNC Manufacturing referred to as an '80% Glock Switch', 'Glock Auto Switch', or similar.

Please provide me with the above-requested materials at your first opportunity. If you disagree that you are required to provide any of the above items to me, to the extent that they exist or are available to you, please provide me with a written response indicating which items will not be produced and the reasons. Should you have any questions, I can discuss the reasons why I need any of the above items in the interest of avoiding the necessity for the filing of a formal motion for discovery.

El Dorado County District Attorney's Office
Re: Discovery Request April 20, 2021
Oakes P20CRF0146
Page | 2

I look forward to discussing this matter with you further.

Sincerely,


ADAM J. RICHARDS
adam@ajrlaw.net