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A F F I D A V I T

I, James G. Chang, declare and state:

A. Introduction, Arrest Warrants to Be Issued, and Places to Be Searched

1. I am a Special Agent ("SA") of the Federal Bureau of Investigation ("FBI") and have been so employed since 1991. I am currently assigned to the National Security Division of the FBI, Los Angeles Field Office, and have been so assigned since 1995.

2. I was involved in the counterintelligence investigation of JOHN JOUNGWOONG YAI, also known as JOUNG-WOONG YAI, from December 1995 until the matter became a criminal investigation in 2001. Since the criminal investigation began, I have been the case agent or one of the case agents. Unless specifically stated herein, the information set forth in this affidavit was either observed by me or was communicated to me by other FBI or United States Customs Service ("USCS" or "Customs") personnel working on this matter.

3. This affidavit is made in support of a complaint against and arrest warrant for the following two individuals:

a. JOHN JOUNGWOONG YAI (sometimes hereinafter "YAI") for violation of Title 18, United States Code, Section 951 (Failure to Notify Attorney General of Foreign Agent Relationship), Title 18, United States Code, Section 1001 (False Statement within the Jurisdiction of the United States), and

Title 18, United States Code, Section 371 (Conspiracy to Make False Statement within the Jurisdiction of the United States).

b. SUSAN YOUNGJA YAI, also known as YOUNG JA YAI, (sometimes hereinafter "SUSAN YAI") for violation of Title 18, United States Code, Section 1001 (False Statement within the Jurisdiction of the United States) and Title 18, United States Code, Section 371 (Conspiracy to Make False Statement within the Jurisdiction of the United States).

4. This affidavit is also made in support of an application for search warrants for the following:

a. The premises located at [Redacted] Street, [Redacted], Santa Monica, California. These premises are further described as located within a two-story building, which from the [Redacted] Street side appears to be a brick and yellow-stucco building with brown trim, a brown wood shingle roof, and brick steps leading to the building.

b. Hotmail Corporation ("Hotmail"), 1065 La Avenida, Mountain View, California, and servers utilized by Hotmail.

5. The items to be seized are set forth in Section K of this affidavit.

B. Theory of Prosecution under 18 U.S.C. § 951

6. Because of the large amount of information that has been gathered in connection with this matter, and the length of this affidavit, I think it would be helpful to the court for me to set forth here a brief summary of how the evidence shows probable cause of the offense under 18 U.S.C. § 951 alleged herein. I do

not discuss here the charges that relate to the importation of currency (i.e., the false statement and conspiracy charges), as I do not think that they require any further explanation. I believe the evidence shows probable cause that YAI violated 18 U.S.C. § 951 by failing to notify the Attorney General of his foreign agent relationship as follows:

a. Title 18, United States Code, Section 951, and its implementing regulations, make it an offense for anyone, other than certain persons not relevant here (such as a diplomatic or consular official or attaché), to act "in the United States as an agent of a foreign government without giving prior notification to the Attorney General." 18 U.S.C. § 951(a). The statute contains an exemption for "any person engaged in a legal commercial transaction." 18 U.S.C. § 951(d)(4).

b. YAI was an agent of North Korea because he (1) received and responded to tasking by North Korea, most evidently tasking to recruit another agent or subagent, and (2) was paid by North Korea for his services. The facts demonstrating the agency relationship also include YAI's travel to North Korea and his work with and guidance of another person who was also an agent of North Korea.

c. In his agency relationship with North Korea, YAI was not a "person engaged in a legal commercial transaction" within the meaning of 18 U.S.C. § 951(d)(4), because the agency relationship involved a conspiracy for YAI illegally to obtain

top secret information and because YAI took steps in furtherance of obtaining such information.

d. The existence of a conspiracy to obtain top secret information can be inferred from YAI's multi-year covert relationship with North Korea, his responsiveness to tasking by North Korea, and his trips to meet North Korean officials in the People's Republic of China ("PRC") or North Korea. The conclusion that the obtaining of top secret information on behalf North Korea was an objective of the conspiracy is compelled by North Korea's tasking of YAI specifically to obtain top secret information -- tasking about which YAI informed one of his confederates, who was considering seeking a federal government job.

e. The following acts were committed by YAI or a confederate in furtherance of the plan to obtain top secret information: (1) YAI was tasked by North Korea to recruit another agent or subagent, (2) YAI did recruit that agent or subagent, (3) YAI provided information about that agent or subagent to his North Korean handlers, (4) YAI arranged the travel of that agent or subagent to meet with North Korean officials abroad, (5) YAI discussed with a confederate -- another agent or subagent with whom he shared an office -- her applying for government employment, including federal employment, and reported to her the positive reaction of North Korean officials to her getting a (non-federal) government job, (6) YAI discussed with that confederate her travelling to the PRC to meet with

North Korean officials, (7) YAI was tasked on multiple occasions by his North Korean handlers to get "top secret" information, and (8) North Korea told YAI to "engage in a lot of conversation with people above" (connoting people of a higher rank).

C. Background

7. I have seen a copy of YAI's U.S. passport, issued in November 1996, which identifies his given names as "John Joung Woong" and his last name as "YAI." I have also seen a copy of YAI's 1981 Certificate of Naturalization, which identifies his name as "John Joungwoong YAI." A document in YAI's Immigration and Naturalization Service ("INS") file states that his name was changed from "Joung Woong YAI" as part of his naturalization. YAI's Application to File Petition for Naturalization, dated September 25, 1980, requests this name change. It also contains YAI's statements that he can read, write, and speak English. Documents in YAI's INS file indicate that he was born and raised in South Korea, served in the army there, and lived there prior to his immigration to the United States. The INS file does not indicate that YAI has any family in or connection to Beijing or Shenyang in the PRC.¹

¹ YAI was born in Seoul, Korea, in 1943. From 1962 to early 1965, he attended Ko Myung Commercial High School, which FBI Intelligence Research Specialist Kyewon Ko, who attended Junior High School in Seoul, tells me based on her personal knowledge is in Seoul. YAI worked in Seoul in 1965. He served in the Korean Army from 1966 to 1969. He worked in Seoul from 1969 to 1975. He was married in Seoul in 1975. The preceding information comes from YAI's INS file.

8. During the period December 1996 until June 2000, YAI was the subject of surveillance under the Foreign Intelligence Surveillance Act ("FISA"), 50 U.S.C. § 1801 et seq. This surveillance, authorized by the FISA court in Washington, D.C. (established under the authority of 50 U.S.C. § 1803), included covert physical searches, interception of telephone and fax communication, and microphone listening. The counterintelligence investigation also included physical surveillance, which did not need FISA court authorization.

9. All the electronically intercepted conversations mentioned in this affidavit, unless otherwise specified herein, were in the Korean language. The translations of documents and conversations discussed herein were done by FBI Intelligence Research Specialist Kyewon Ko, who is fluent in both the Korean and English languages, or by other FBI personnel fluent in the Korean and English languages.

10. During the period beginning at least as early as November 1996 and continuing until March 9, 1999, YAI had an office located at 3100 West Eighth Street, Suite 210, Los Angeles, California ("YAI's office"). I know this from surveillance conducted by me and other FBI personnel working on this case -- the results of which I am personally familiar with -- and from telephone records. During this time period, YAI went to his office approximately four days a week, usually staying from approximately 9:00 a.m. until mid-afternoon.

11. During the period from approximately December 1995 to mid-2001, I or other FBI personnel conducted visual surveillance of YAI dozens of times. Many of those surveillances lasted eight hours or more.

12. FBI electronic and visual surveillance has disclosed that in the period beginning at least as early as November 1996 and continuing to March 1999, YAI shared his office with Person L, a female U.S. citizen who, according to California Department of Motor Vehicles records, has a date of birth in 1968.

13. Pursuant to FISA court authorization, FBI technical agents placed a hidden microphone in YAI's office on March 30, 1998, and activated it on April 2, 1998. The FBI deactivated the microphone on March 9, 1999, when YAI and Person L vacated YAI's office.

14. During the period of the FISA surveillance, the FBI found no evidence that YAI was employed by any entity other than the North Korean government. The surveillance conducted by the FBI during that time did not show that YAI regularly went to any place of work other than his office.

15. During the period of FISA surveillance, the FBI determined that YAI was involved in sending reports to North Korea (via the PRC) of information he obtained from publicly available sources in the United States.²

² I believe based on the evidence in the case that YAI has occasionally been untruthful in his reporting to North Korean intelligence, in a way that embellishes his reports. This has no effect on probable cause for search or arrest because any such falsehoods would not undermine the fact that YAI was an agent of a foreign power. For example, on May 29, 1999, FBI

16. I know from this investigation that YAI is married to SUSAN YOUNGJA YAI, also known as YOUNG JA YAI, and has been since April 1975. I have seen a copy of SUSAN YAI's U.S. passport, issued in June 1998, which lists her given names as "SUSAN YOUNGJA," and a copy of her June 1984 Certificate of Naturalization, which lists her name as "SUSAN YOUNGJA YAI." I have also seen a copy of her INS file, which does not indicate that she has any family in or connection to the cities of Beijing or Shenyang in the PRC.

17. Since October 1994, YAI has lived in five residences: first in an apartment at [Redacted] Ave, in El Segundo, California; then in an apartment at [Redacted] Avenue in Torrance, California; then in a house at [Redacted] Dr., Granada Hills, California; then in a house at [Redacted] Ave., Los Angeles, California; and finally at [Redacted] Street, [Redacted], Santa Monica, California, where he currently lives. I know the

electronic surveillance intercepted a fax sent from YAI's home, addressed to "Mr. Ahn," that discussed the disappearance of a person who was reportedly connected with North Korean intelligence. The author of the fax (that is, YAI) claimed to have checked with two people to verify this report and implied that those people were knowledgeable about South Korean intelligence. The author also suggested that the recipient of the fax check the passenger lists of American air carriers out of Beijing. Based on my knowledge of the FBI's electronic surveillance of YAI, I believe that YAI has invented his contacts with these two people concerning this North Korean defector. Nonetheless, I believe that YAI's communications to North Korea discussing those individuals further demonstrate that YAI was at the time an agent of a foreign government operating in the United States because he (1) purported to be providing inside information about the South Korean intelligence agency, and (2) recommended to the North Koreans (albeit possibly through the mechanism of falsely claiming that it is someone else's recommendation) a course of conduct designed to get information about the defection of a North Korean agent.

residences in which YAI lived in this time period through surveillance and telephone bill information. I know the following with regard to YAI's current residence:

a. Information from the Choicepoint law enforcement information database shows that on April 1, 2002, JOUNG YAI purchased a condominium at 909 Grant Street, Unit 1, Santa Monica, California.

b. Information from Verizon received on May 8, 2002, shows that on that date, "YOUNG J YAI" (SUSAN YAI) was the subscriber to a telephone at [Redacted] Street, [Redacted], Santa Monica, California.

c. FBI physical surveillance has seen YAI in the immediate area of this residence on various occasions, including July 11, 2002 (sweeping leaves from the driveway), July 18, 2002 (discarding trash behind the residence), and January 27, 2003 (leaving the residence in a minivan).

d. On January 24, 2003, I made a pretextual call to the telephone number subscribed to this residence and spoke to YAI, whose voice I recognize from the many recordings of conversations to which I have listened.

18. FBI Intelligence Research Specialist Ko has informed me that each of the following telephone numbers appears on at least one telephone bill for YAI's office, or for one or another residence in which YAI lived, in the time period between October 1994 and April 2000: 86-24-384-5505, 86-10-6532-5792

(hereinafter "the -5792 number"³), 86-24-625-7357, 86-10-6460-3991, and 86-10-6460-8065. These numbers are listed in paragraph 94c, below, in the list of items to be seized. The subscriber on the telephone line at YAI's office was Person L. I know from FBI records that the numbers beginning 86-10 are in Beijing, PRC, and the numbers beginning 86-24 are in Shenyang, PRC.⁴

19. After YAI and Person L vacated YAI's office on or about March 9, 1999, various calls were placed from YAI's residence in Granada Hills to telephone numbers in Beijing, PRC -- 86-10-6460-8065 (over 100 calls), 86-10-6460-3991 (two calls), or 86-10-6532-5792 (one call) (this is the -5792 number) -- in the time period between July 1999 and April 2000. (Each of these telephone numbers is listed in the above paragraph.) Some or all of these may have been fax calls. I believe that at some point

³ The -5792 number is similar to telephone numbers for the North Korean Embassy in Beijing listed in a U.S. State Department website, travel.state.gov/nkorea. All six telephone numbers listed in that website begin 8610-6532, as does the -5792 number.

⁴ I know from the map and Westlaw research that Shenyang is the provincial capital city of one of the two Chinese provinces that abut North Korea and that Shenyang is within approximately 125 miles of the Chinese-North Korean border. I know from Westlaw research the following, which shows that Shenyang has considerable connection to North Korea: (1) In April 2000, China and North Korea opened a civil air route from Pyongyang (the capital of North Korea) to Shenyang, with two flights a week on North Korea's Air Koryo ([Asian Economic News, Travel Trade Gazette Asia](#)), (2) Chinese officials said that North Korea built a 14-story hotel in Shenyang, China, for \$30 million and opened it in June 2000 ([World News Connection](#)), (3) an Associated Press story on November 1, 2001, stated that a company based in Shenyang and supported by the North Korean government said it installed server computers in Shenyang and Pyongyang in early October and is running an experimental e-mail service (AP), (4) the Shenyang Military Region is the closest of China's "military regions" to North Korea ([Asian Wall Street Journal](#)), and (5) North Korea has long had a presence in Shenyang ([South China Morning Post](#)).

soon after May 2000, YAI shifted from using fax to using e-mail to communicate with Beijing. I believe this based on the following:

a. On May 16, 2000, and May 23, 2000, FBI electronic surveillance intercepted two faxes, which were printouts of a total of ten e-mails, sent from YAI's home in Granada Hills to one or another telephone number in Beijing, PRC. It is apparent to me that what happened is YAI tried to send e-mails to his contact in Beijing, but addressed the e-mails to an incorrect and non-existent e-mail address (he addressed them to GreenEarth2000@yahoo.com when the correct address contained underlined spaces: Green_Earth_2000@yahoo.com).

b. The aforementioned May 16, 2000, outgoing fax, sent from YAI's home and intercepted by the FBI, contained a handwritten notation that stated, in part:

For now, I am sending you copies of what I saved in my computer.

I could not store 2 or 3 reports after I sent them.

Try to look for them in GreenEarth2000@yahoo.com.

c. On May 29, 2000, FBI electronic surveillance intercepted an incoming fax to YAI's home in Granada Hills. The fax was addressed to "Mr. Y." It stated in part:

I am receiving your proposals that you worked so diligently on. It is busy season right now, so please continue to use the air mail for a while.

And about the e-mail, it seems things will be normal when both sides make some more adjustments. But first I must inform you that the e-mail address for Mr. Shin has been changed to Green_Earth_2000@yahoo.com.

The fax line indicated that the fax was from the "Gudan Hotel" (written in English), with a telephone number in Beijing, PRC.

d. On June 6, 2000, the FBI obtained information from Yahoo! about the contents of YAI's e-mail box.⁵ One of the two incoming e-mails in that box was sent from Green_Earth_2000@yahoo.com on June 3, 2000. That e-mail was sent from someone using an internet service provider in Beijing, PRC. The e-mail account was created by a subscriber who gave Yahoo! "Shanghai" for "City" and "China" for "Country." In creating that e-mail account, the subscriber accessed Yahoo! from an internet service provider located in Beijing. In the "sent" folder for YAI's e-mail box, there were three e-mails addressed

⁵ This affidavit refers to "YAI's e-mail box." When I use that term, I refer to an e-mail set up by YAI's son, Dennis Yai, for YAI's use. On February 23, 2000, FBI electronic surveillance intercepted a telephone call between YAI and his son, whom YAI calls by a more familiar shortened name, "Denny," in that conversation. YAI asks, "What is the e-mail address that you set up? Dennis?" Later YAI asks, "Did you set up the e-mail address for me with 'Denniskim'?" The connection is poor and YAI indicates trouble hearing his son, so YAI asks, "Is it Denniskim22 Yahoo.com?" His son responds, "Yes." YAI then asks, "Is this the address for you?" and his son replies, "You can use it too." Although the e-mail address is "Denniskim22," it was set up by Dennis Yai using a pseudonym, as evidenced not only by that telephone conversation but also by a user profile from Yahoo! that indicates that the person establishing the e-mail account listed an alternate e-mail account of "dennisYai@aol.com," lived at the time in Berkeley, California (where Dennis Yai lived), and had the same birthday as Dennis Yai.

to the Green_Earth_2000@yahoo.com address that were sent between June 3 and June 6, 2000.

20. From Yahoo! the FBI was able to obtain e-mail information relating to e-mails sent to and from YAI's e-mail account (denniskim22@yahoo.com) for only the time periods December 20, 2000 - January 2001 and April 2001. The content of the e-mails is mainly gibberish -- a scramble of numbers, symbols, and letters. The header information and the addressee is comprehensible, however. This information reveals the following:

a. On January 15, 2001, an e-mail was received at YAI's e-mail account from an e-mail account (john.kk@xinmail.com) that at the time, according to information obtained by the FBI from a publicly available information database, used an internet service provider in Beijing, PRC.

b. Between December 22, 2000, and January 18, 2001, three e-mails were sent from YAI's e-mail account to that e-mail account (john.kk@xinmail.com). E-mails were sent to that e-mail account from YAI's e-mail account, or were received from that e-mail account by YAI's e-mail account, on nine days in April 2001.

c. E-mails sent from YAI's e-mail account (denniskim22@yahoo.com) were addressed to "Mr. Ahn" on April 3, 27 and 29, 2001, to "Mr. Bill" on April 5 and 23, 2001, to "Mr. Shin" on April 8, 2001. The e-mails sent on April 23, 27, and 29, 2001, were sent to "ksakjch@yahoo.co.kr," as was another e-mail sent on April 19, 2001, addressed to "Mr. Yoora."

[Affiant's Note: I believe YAI is still communicating with the same person or persons with whom he was communicating in April 2001, as information received from Hotmail on September 13, 2002, indicates that on September 1, 2002, YAI⁶ received two e-mails from e-mail address "ksakjch@hotmail.com," and that he received additional e-mails from that e-mail address on July 1, 8, and 14, August 5 and 25, and September 2.]

21. I believe based on my experience with this case that the reason YAI's e-mail correspondence was with an e-mail address

⁶ To be specific, Hotmail records indicate that these e-mails were received by e-mail address "Denniskim26@hotmail.com." I believe that this e-mail address is used by YAI because of the following:

On August 29, 2002, an undercover contact by FBI Intelligence Research Specialist Ko obtained from YAI what he said was his e-mail address. That address was "Denniskim26.com." YAI also wrote down "AOL" and said that Intelligence Research Specialist Ko should make sure that she has an AOL account in order to send him an e-mail.

On September 3, 2002, an FBI Special Agent sent e-mails to three e-mail addresses: (1) Denniskim26@Yahoo.com, (2) Denniskim26@aol.com, and (3) Denniskim26@hotmail.com. With regard to the first two, a message came back within three hours that the e-mails were undeliverable. With regard to the third address -- Denniskim26@hotmail.com -- no message had come back as of the early morning of September 11, 2000, either that the message was undeliverable or a response. This gave rise to an inference that the message was delivered to the Hotmail e-mail address.

Based on that inference, the government obtained a court order for the production of records directed at Hotmail pursuant to 18 U.S.C. § 2703(d). Hotmail records show that the account "Denniskim26@hotmail.com" was opened by a person who gave his name as "John Farce."

In addition, the Hotmail information shows two e-mails received (in July and August 2002) from a person who I know based on the FBI electronic and physical surveillance of YAI is a close acquaintance of YAI.

in Beijing, PRC, rather than an e-mail address in North Korea, was due to the extremely limited availability of e-mail access in North Korea. In this regard, I have seen results of online research of publicly available news stories from 2001 that indicate that only some high-ranking officials in Pyongyang, North Korea, were believed to have limited internet access through a communication network connected to China. Indeed, a story in The Washington Times dated February 12, 2001, attributes to a senior U.S. military official the statement that the North Korean leader has access to the internet, "'but he's the only one.'"

22. I believe that YAI's current residence contains items that were previously kept in YAI's office and former residences. I believe this based on the following:

a. On February 23, 2001, an FBI Surveillance Specialist went into YAI's home in Granada Hills on a pretext. Inside, he observed a room set up as an office containing two computers.

b. At no time during the visual surveillance of Yai, which took place primarily between December 1995 and mid-2001, did I or the other FBI personnel ever see YAI go to a storage facility. Nor to my recollection have I ever heard YAI refer to a storage facility in any of the thousands of intercepted conversations to which I have listened.

c. For a time YAI operated a snack and sandwich shop in Santa Monica, California. I do not believe that the evidence

sought by this search warrant was ever located in that shop. I visited the shop in April 2002, and observed that it is a small operation, with approximately 500 square feet of space open to the public. Moreover, on January 27, 2003, I called the snack shop and was told by the person I spoke with that YAI no longer works there.

d. On August 29, 2002, FBI Intelligence Research Specialist Ko went to YAI's snack shop in Santa Monica, California. YAI initiated a conversation in the Korean language with Intelligence Research Specialist Ko, who did not identify herself as an FBI employee. During the conversation, which took place in the snack shop, YAI stated the following:

(i). His true occupation is a writer; he writes mainly about political issues. He used to work as a reporter for two major newspaper companies in South Korea before moving to the United States. He does not submit any of his writing to the newspaper anymore. He has a high stack of all the writings he has done in the past saved at his home.

(ii). He uses the internet often and sends e-mails to others. He does not handwrite anything anymore, or save other documents in paper form, since he enters all his correspondence including [sic] address books and phone numbers in his computer and saves them on the hard drive of his computer. He can store whatever he wants in the computer and retrieve it without problem.

e. I expect that information showing YAI's e-mail communications with the PRC will be found on the computer hard drive based, in part, on the following:

(i). I have read a writing by James C. Smith, Ph.D., FBI Computer Scientist, dated July 15, 2002. That writing states as follows:

(a). "Far more information is retained on computer hard drives than most people realize. Computer forensics specialists are, generally, aware that evidence may be contained in computer files and even previously deleted computer files. In addition, it is common knowledge that computer evidence can also be recovered from ambient data storage, particularly[] 'file slack space,' 'swap areas' or 'virtual memory storage' on hard drives. Due to the transparency of ambient storage to the user, it is also more difficult to completely remove information than is generally thought. For these reasons (and many more), computer forensics specialists can often find evidence of, or even completely recover, lost or deleted information, even if it was intentionally deleted."

(b). "Based upon my knowledge, training, and experience, and the experience of other law enforcement personnel with whom I have spoken, I am aware that forensic evidence consisting of recoverable erased files, file fragments, purged or erased electronic communications . . . purged directory entries and other data may persist for periods exceeding one year following user action to delete, overwrite, remove, or replace."

(ii). On July 24, 2002, in my presence, Dr. Smith elaborated on his written statement by saying that although there are many variables at work, based on his experience it was more likely than not that such recoverable data would persist on a computer after a year and a half, even following user action to delete, overwrite, remove, or replace.

(iii). On August 22, 2002, FBI SAs Kamaeol R. Wong and Roger Y. Suey contacted YAI at his current place of business, the snack shop. I have learned from SA Wong that, posing as people discussing various computer issues, he and SA Suey elicited a statement from YAI that the computer system at YAI's residence was four years old -- purchased in the year 1999 -- and a statement from YAI that he uses the e-mail system.

23. On April 8, 1998, I was among a number of FBI agents who conducted a covert physical search, pursuant to FISA court authorization, at YAI's office. One of the items found in that search was a five-page document in the Korean language. This document was translated by FBI Intelligence Research Specialist Ko. It is entitled "Code Charts," and has two columns, one entitled "meaning" (or, literally, "base words") and one entitled "code words" (or, literally, "substitution words").

a. Among the base words or phrases listed on the code chart are "the White House," "the State Department," "the Pentagon," "secret operation," "military," "human target," "secret code," "covert surveillance," "top secret," "secret contact," "recruitment," "CIA," "FBI," "nuclear facility,"

"military exercise," and "Korea-US annual security meeting," and "invasion."

b. The code chart lists the names "Won," "Doe," "Adams," and "Paul" as code words for "Mr. YAI." The chart also lists multiple substitutions for the word "headquarters," namely "Chang," "Kang," "Peter," and "James." Other names meaning "headquarters" are crossed out -- namely "Steve" and "Joseph." I infer that the latter two names were code words for "headquarters" used at an earlier time.

c. Based on my training and experience, I know that people involved in covert activities often communicate by code, and often change those code words after some period of time. Indeed, the fact that this code chart contains words that are crossed out and replaced indicates to me that those code words were updated at some point. Based on my reading of documents in this case, I believe that the use of certain code words set forth on this particular list was discontinued at some point or points before April 2000. For example, faxes intercepted by the FBI that were sent from YAI's home in 1999 and 2000 are addressed to various names in addition to those on the code chart, namely "Mr. Chi," "Mr. Jefferson," "Mr. Robertson," "Mr. Bill," "Mr. John," "Mr. Oh," "Mr. Ahn," "Mr. Shin," and "Mr. Kim."

d. Throughout this affidavit I will include in brackets substitutions of code words taken from this code chart.

D. Payments from North Korea

Cash Discovered in December 1997: \$3,300

24. On December 16, 1997, FBI agents including me performed a covert physical search, pursuant to FISA court authorization, at YAI's office. Among the items found during the search were 33 \$100 dollar bills (U.S. currency). That money was found in an envelope that bore a handwritten notation in Korean reading:

"Embassy in Beijing (Reception)

011-86-10-532-1186

Mr. Koo's telephone number

011-8610-6532-5792 (used also as a fax number)"

Cash Discovered in April 1998: Additional \$8,500

The FBI's Discovery of the Money

25. In the covert physical search of YAI's office on April 8, 1998, I found 85 \$100 dollar bills (U.S. currency) in YAI's desk in an envelope bearing the printed address of "Hotel Erzherzog Rainer Wien, A-1041 Osterreich." I know that "Wien" is the German language name for "Vienna" and "Osterreich" is the German language name for "Austria." The searching agents found another envelope containing 15 \$100 bills in U.S. currency in a file cabinet behind what agents believe was Person L's desk. This was the same envelope that the agents found in December 1997, which is referred to in the previous paragraph.

YAI's April 1998 Trip to Vienna, Austria

26. An incoming fax to YAI's office intercepted on March 9, 1998, is addressed to "Mr. Won" [code for "YAI"]. It is from "Peter Kang" ["Peter" and "Kang" are both code for "headquarters"]. That fax stated, in part: "President ['company president' is on the code chart as the substitution for 'Kim Hak-min'] wants to have a meeting at Mr. Chi's company [code for 'Austria'] for one week (April 1 through April 4), thus he requests that Mr. Doe [code for 'YAI'] make necessary reservation and inform about the itinerary. . . . / I will let you know later about the place of the meeting and the phone number you will need."

27. A credit card charge slip found in the covert search of YAI's office on April 8, 1998, shows a purchase using a visa credit card in the name of YOUNG YAI (YAI's wife). The purchase was obviously of an airline ticket. The date of issue was March 14, 1998. The place of issue was Korea Travel International, Los Angeles. In a box for "complete routing," the following is written: "LAX/ATL/VIE/JFK/LAX." (I determined from an airline reference book that "VIE" is the airport code for Vienna, Austria; I know from experience that "LAX" is the airport code for Los Angeles International Airport.)

28. An incoming fax to YAI's office intercepted by FBI electronic surveillance on March 15, 1998, was addressed to "Mr. Won" [code for "YAI"]. That fax stated, in part: "I received your itinerary fine. It would be preferable that Mr. Kang [code for 'headquarters'] greet you, but in due concern for the health

[code for 'safety'], we have decided not to. Thus, when you arrive and settle in, call these local numbers, 894-2311 or 894-2313, and ask for Kim Chol-yong, and inform him of your location." Information from an FBI agent assigned to the Vienna office of the FBI states that those two telephone numbers are numbers for the North Korean Embassy in Vienna, Austria, and appear in public telephone directories.

29. There is a stamp in YAI's passport (a copy of which passport was obtained by the USCS in April 2000) that, according to the USCS Attaché in Vienna, Austria, shows that YAI departed a railroad station in Austria on April 4, 1998.

30. The December 16, 1997 and April 8, 1998 covert searches took place in YAI's absence from the premises searched. Pursuant to FISA court authorization, no notice of the search was given to YAI or anyone else using the premises.

**Cash Found by Customs Following YAI's April 2000 Trip
to the Czech Republic and Vienna: \$18,179**

**The Planned Travel and Meeting with a North Korean
Representative**

31. An incoming fax to YAI's office intercepted on April 6, 2000, stated in part: "[A]s Mr. Ji doesn't have his family at his residence now, it is requested that you get a hotel upon arrival at Mr. Ha's and call Mr. Kim at local phone 2432 0783 or fax 2431 8817 and inform him of the hotel name." Information from an FBI agent assigned to the FBI's office in Prague, Czech

Republic, states that a document from the Ministry of Foreign Affairs of the Czech Republic lists those numbers as being the telephone and fax numbers, respectively, for the embassy of the Democratic People's Republic of Korea (North Korea).

32. On April 11, 2000, FBI electronic surveillance intercepted a telephone conversation between YAI's wife SUSAN YAI and the YAI's daughter. SUSAN YAI told her daughter that she, SUSAN YAI, was going to Prague for three days and Austria for four days. SUSAN YAI said that she would be on tour with YAI. YAI got on the telephone with his daughter and stated that he and SUSAN YAI would be going to Vienna and Prague for a silver anniversary trip and that he, YAI, would "be attending a meeting there." YAI said he would give his daughter some money when he returned from his trip.

The Currency Importation

33. I have read a report from USCS Senior SA Kelley M.S. Wilson, which indicated as follows:

a. On April 30, 2000, YAI and his wife SUSAN YAI entered the United States at Los Angeles International Airport aboard a Swissair flight from Zurich, Switzerland. SUSAN YAI submitted a Customs Declaration Form (Form 6059B) that stated that they were not carrying over \$10,000.

b. YAI and SUSAN YAI were questioned by USCS Inspector Parker, who explained the Form 6059B reporting requirements to YAI and SUSAN YAI.

c. Customs examination of YAI and SUSAN YAI disclosed that they were carrying \$18,179 in United States currency.

d. This money was seized except for \$79, which was returned to the YAIs for immediate expenses.

34. I have read a statement by Customs Inspector Robert Parker, USCS, relating to the arrival of YAI and SUSAN YAI on April 30, 2000. The report includes the following information:

a. "I asked [YAI] . . . if he had more than \$10,000. The response from [YAI] was no I do not have more than \$10,000. The same question was asked to [SUSAN YAI]. Her answer was no. 'I do not have more than ten thousand dollars.' I then asked MR. and MRS. YAI do you have more than ten thousand dollars between the both of you. Both MR. and MRS. YAI responded . . . 'No we do not have more than \$10,000 dollars the answer was still no.' Again, I asked MR. YAI and MRS. YAI that if they were [sic] any cash, travelers check, stock or bonds in excess of ten thousand dollars. The answer again was no. On four (4) separate occasions, the [Customs Form] 6059B requirements were explained to pax [the passengers]. Both stated they understood the declaration requirements. It was also explained to the pax that . . . if more than \$10,000 is either being brought into or taken out of the U.S. in foreign or U.S. currency, travelers check or monetary instruments, it must be reported and a [Customs Form] 4790 must be filed with U.S. Customs."

b. "[YAI] was taken for a patdown, examination revealed that [YAI] had on [sic] his shirt pocket \$8,500, in one hundred dollar bills and \$68 in his wallet."

c. The report includes a statement of Customs Inspector Aliipule, which includes the following: "An examination of the passenger's [SUSAN YAI's] handbag revealed \$8,700 (87 x 100 USD) stored in passenger's sun glass case holder. The remaining \$911.00 USD was found inside the passenger's wallet. Total funds verified on passenger amounted to \$9611.00 USD."

35. I have seen a copy of the Customs Declaration, Form 6059B, dated by Customs April 30, 2000. The instruction at the beginning of the form says: "Each arriving traveler or responsible family member must provide the following information (only ONE written declaration per family is required)." Question 12 of the form says: "I am (we are) carrying currency or monetary instruments over \$10,000 U.S., or foreign equivalent." The box for "No" is checked next to that question. The form is signed SUSAN YAI and bears the handwritten date "4/30/00."

36. I have seen a copy of a Customs Form 4609 signed by SUSAN YAI and dated April 30, 2000. The form says: "I petition for the release of the seized above-described merchandise and for relief from the personal penalty incurred because of the following mitigating circumstances." Below that, SUSAN YAI has handwritten: "I misunderstand the currency report + made a

mistake. Our understanding was over \$10,000- per person should be reported. We apologize for our misunderstanding."

The Telling of the False Story

37. YAI also submitted to Customs a letter dated May 18, 2000, which has a "received" stamp dated May 31, 2000, and states in part:

This is a petition for relief from forfeiture of the seized money for \$18,100 regarding above reference case No. Moneys are carried by ourselves when I and my wife departed Los Angeles to Vienna, Austria on April 22, 2000 for our 25th wedding anniversary celebration trip. We saved cash for this special occasion for 3-4 years. Also our children gave some moneys for anniversary gift.

We intended to purchase some fine jewelry and watches in Europe or airport duty free shop. But we could not find anything we wanted to purchase That's why we brought back most our moneys when we returned home on April 30, 2000. We misunderstood the currency reporting system because of our lack of knowledge and first time we carried large amount of cash during our life time.

38. On August 8, 2000, YAI and SUSAN YAI were interviewed at the offices of the USCS in Los Angeles. Present at the interview were Senior SA Wilson and two other SAs of the USCS. One of the SAs -- Senior SA Peter Kwon -- was fluent in the

Korean language and translated when necessary. Both YAI and SUSAN YAI were advised that the interview was an official proceeding and that it was important to be complete and accurate in all statements and submissions. SUSAN YAI was shown a copy of 18 U.S.C. § 1001 (False statements or entries). She read the statute aloud and said she understood it. The SA who spoke Korean translated the statute for YAI, who said he understood it. The following occurred:

a. SUSAN YAI was shown a copy of the Customs declaration Form 6059B and stated that she recognized it as the one she submitted on April 30, 2000, acknowledging that the signature on the form was hers and that she had filled out the form.

b. SUSAN YAI stated that she and her husband had been saving cash for the trip and they had each taken out \$10,000 in currency with them. She stated that they did not know of the currency reporting requirements, they did not see any of the advisory signs, and no one advised them of the filing requirements. She said that she misunderstood the question on the form and believed that it was \$10,000 per person.

c. YAI said he did not understand the currency reporting requirements.

d. SUSAN YAI stated that the source of the funds was from a combination of the following: a bonus from the bank, a state income tax refund check, a federal income tax refund check, sales of stock, money from their son, and cash gifts received by

Yai from Americans involved in the adoption of Korean children, in connection with his duties at the Korean American Cultural Association.

e. SUSAN YAI was shown a copy of the petition for relief from the seizure of their currency that she had submitted to Customs. The petition was unsigned at the time it was filed and SUSAN YAI signed it at the interview.

39. On August 10, 2000, YAI and SUSAN YAI went to the USCS office in Long Beach, California and signed declarations concerning the money. The declarations were prepared by USCS SA Wilson.

a. YAI's declaration, which YAI signed, stated in pertinent part as follows:

I, Joung Yai, who after being duly sworn states the following:

I have been in the United States for 25 years, I am a United States Citizen, and was naturalized in 1981 or 1982. I have not received any formal education in the United States.

* * * *

My wife, Susan, and I traveled to Vienna, Austria for an eight day vacation on the occasion of our twenty-fifth wedding anniversary. My wife and I had been saving money for the vacation.

When we departed the United States we each had \$10,000 in United States currency on our persons. My

wife and I did not submit a currency declaration form at the time of our departure. We did not know of the currency reporting requirements, did not see any of the advisory signs, nor did anyone advise us of the filing requirements.

On returning to the United States my wife prepared and signed our Customs Declaration Form (FORM 6059B). In filling out the form, she marked NO to Question 12 - "I am (We are) carrying currency or monetary instruments over \$10,000 U.S., or foreign equivalent." We misunderstood the question and believed that it was \$10,000 per person. . . . When I was asked by the Customs Inspector if we were carrying over \$10,000, I answered no because I thought it was \$10,000 each. I did not understand the currency reporting requirements.

I have submitted a petition for relief of the seizure of the currency, which I submitted to Customs. Attached to the petition are copies of supporting documents reflecting the source of the currency.

* * * *

The source of the funds was from a combination of personal savings:

[listing sources and amounts]

* * * *

THE CONTENTS OF THIS STATEMENT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF

b. SUSAN YAI's declaration, which she signed, stated in pertinent part as follows:

I, Susan YAI, who after being duly sworn state the following:

I emigrated to the United States in 1977. I am a United States citizen and was naturalized in approximately 1984. . . . I have been employed by the Hanmi Bank, in Los Angeles, since 1986. About a year ago I was promoted to Vice President and Branch Manager of the Mid Olympic Office. In my capacity as branch manager I am familiar with the filing requirements for cash transactions exceeding \$10,000. I am also familiar with techniques used to avoid the reporting requirements, such as multiple transactions below the reporting amount, and the need to report these suspicious transactions.

On April 30, 2000, my husband and I entered the United States at Los Angeles International Airport aboard Swissair Flight SR 106 from Zurich. I prepared and submitted our Customs Declaration Form (FORM 6059B). In filling out the form, I marked NO to Question 12 - "I am (We are) carrying currency or monetary instruments over \$10,000 U.S., or foreign equivalent." I misunderstood the question and believed that it was \$10,000 per person. . . . When I was asked by the Customs Inspectors if we were carrying

over \$10,000, I answered no because I thought it was \$10,000 each.

I have been shown a copy of the Customs Declaration Form (FORM 6059B) and it is a copy of the form that I submitted upon our arrival at LAX on April 30, 2000. I recognize the signature as mine.

The purpose of our trip was a vacation for our twenty-fifth wedding anniversary. We traveled to Vienna, Austria One day we traveled to Prague. . . . My husband and I had been saving cash for the trip and we had each taken out \$10,000 in currency with us when we departed the United States. We did not file a report when we departed. We did not know of the currency reporting requirements, did not see any of the advisory signs, nor did anyone advise us of the filing requirements.

We had taken this large amount of currency with us to purchase jewelry for future marriages of our children. We found that the jewelry selections were fewer in Europe, and the prices were just as expensive as in the United States. So we brought the currency back to the United States. We did not use traveler's checks because they are expensive and it is more convenient to carry cash.

The source of the funds was from a combination of personal savings:

[listing sources and amounts]

* * * *

THE CONTENTS OF THIS STATEMENT ARE TRUE AND
CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

The Contrivance of the False Story

40. On May 17, 2000, FBI electronic surveillance intercepted a telephone conversation between YAI and SUSAN YAI. YAI received the call at his home in Granada Hills, California. In part, the conversation went as follows:

SUSAN YAI (SY): If you have to make an appointment, when can you go?

YAI: Ah, tomorrow, the day after tomorrow?

SY: The day after tomorrow is Friday, right?

YAI: That is right.

* * * *

SY: Why don't you ask the travel agency where we purchased the ticket Do not ask them specifically about this matter, but ask them if we are supposed to report to someone if we carry more than \$10,000 in cash out of the airport. . . . Ask them that. . . . If they tell us we do not have to report to anyone, then all we have to say is we carried the money out of here.

YAI: I understand. I will ask them.

41. Also on May 17, 2000, immediately after the conversation described in the previous paragraph, FBI electronic

surveillance intercepted a telephone conversation involving YAI, which, in part, went as follows:

YAI: I purchased a ticket from there a while ago and am I supposed to report to anyone if I carry more than \$10,000 when I leave the airport?

UNIDENTIFIED FEMALE: We do not know about the money issue, but as far as I know, you are supposed to report when it is over \$10,000.

* * * *

YAI: I know you are supposed to report when you arrive, but I am not sure if you are supposed to report up to \$10,000 when you go out

UNIDENTIFIED FEMALE: Well, I am not sure either.

42. Also on May 17, 2000, immediately after the conversation described in the previous paragraph, FBI electronic surveillance intercepted a telephone conversation involving YAI, in which YAI asked another person whether he was supposed to report carrying more than \$10,000 when he leaves the airport. The unidentified female to whom YAI spoke checked with someone else and then told YAI that it was not clear and suggested that he call KAL (Korean Airlines).

43. Also on May 17, 2000, immediately after the conversation described in the previous paragraph -- and beginning six minutes after YAI's first conversation with his wife described in paragraph 40 -- FBI electronic surveillance intercepted another telephone conversation between YAI and his

wife. YAI was still at his home in Granada Hills. The conversation went in part as follows:

YAI: According to the travel agency, we do not have to report to anyone if one person carries up to \$10,000.

SUSAN YAI (SY): Um. What about more than that?

YAI: For more than that, it is better to report, but most people do not report when they leave they say.

SY: Um.

YAI: Yes. So, I think it is okay to tell them we carried the money out of here.

SY: Um.

YAI: I think it is better to say we carried the money out of here to buy something . . . but just brought the money back.

SY: Um. I understand.

YAI: Okay.

44. On July 24, 2000, FBI electronic surveillance intercepted a telephone conversation between YAI and SUSAN YAI. YAI was at his home in Granada Hills. YAI and SUSAN YAI discussed whether they should go to Customs together. The following conversation ensued:

SUSAN YAI (SY): [I]f I go they may ask me what I am.

YAI: Yes.

SY: If I say I am a branch manager of a bank, and telling them I didn't know about those things does not . . .

YAI: Yes.

SY: Make any sense.

YAI: Shall I then go by myself?

SY: Well, I believe you're saying you didn't know

YAI: Yes.

SY: Something to that effect

YAI: Yes.

SY: Just tell a story.

YAI: Just took the money out and brought it back.

SY: Yes. . . .

E. YAI's Recruitment of Person C as an Agent

45. In the covert physical search of YAI's office on December 16, 1997, the FBI found a piece of typewritten correspondence dated November 25, 1997, addressed to "Mr. Won" [code for "YAI"]. It was from Peter Kang ["Peter" and "Kang" are both code for "headquarters"]. The correspondence included the statement, "it would be preferable that you find a student inside the church [code for 'Washington' (D.C.)]."⁷

46. On March 12, 1998, FBI electronic surveillance intercepted a fax sent from YAI's office to a telephone number in Beijing, namely, the -5792 number. The fax was addressed to "Mr. Peter" [code for "headquarters"]. The fax stated in part:

⁷ The code chart says simply "Washington" but clearly means Washington, D.C. This conclusion is not only logical based on the context of this and other conversations but is further demonstrated by the fact that at an earlier point in this particular typewritten correspondence the Korean words for "capital city's church" appear, and over the word "church" is handwritten the word "Washington" in Korean.

How are you, Professor Robert? Mr. Won's [code for "YAI's"] very basic condition for recruiting a student is looking out for the future and that person could take over Mr. Won's [code for "YAI's"] business. I have worked on it for a long time and anguished over it. There are two or three persons whom I have been working on for while. In Mr. Won's [code for "YAI's"] opinion, the person has to possess a high quality presence; at least or higher than a U.S. university education, absolutely fluent in English and Korean, young with clear ideology, and has potential to work in the church [code for "Washington" (D.C.)].

It was Mr. Won's [code for "YAI's"] plan to find a person who has those qualities, and once the person is found, Won [code for "YAI"] will introduce the person to Professor Robert and have him give the person training, so that person can do our business. . . . I have successfully found an excellent, young high quality person who lacks nothing for becoming a student who has potential for a long range plan.

47. On March 14, 1998, FBI electronic surveillance intercepted a fax sent from YAI's office to the -5792 number. As was the case with the March 12 fax, the March 14 fax was addressed to "Mr. James" [code for "headquarters"]. It was signed "From Adams" [code for "YAI"]. It stated in part:

The effort to effectively turn student C, who I told you about yesterday, into a trusted brother is continuing, and the prospects are good. That is why I am spending a lot of time on this. I have not given him any projects on the missionary work yet. I believe it is better to have the pastor give him the blessing himself, and then give him directions. . . .

Starting in April, it is hot season to travel, and so airline seats are limited. Airfares have become expensive too. That is why I requested the meeting sometime in February or March. . . . [T]he schedule is as follows. If pastor Peter ["Peter" is code for "headquarters"] can come to greet him on that day, that will be very helpful.

48. On March 16, 1998, FBI electronic surveillance intercepted a fax sent from YAI's office to the -5792 number. The fax was addressed to "Mr. Chang" [code for "headquarters"] It began, "I would like to give you more information about my new student." It named Person C, born in Seoul in 1969. It stated: "I believe that [Person C] can be a good candidate since our future workers should be able to speak English well, use computers efficiently, be young and their ideology is beneficial and reliable to our causes." The fax continued: "I would like to request to you Mr. Chang [code for 'headquarters'] that you meet with [Person C] as soon as you can. [Person C] agreed that he would travel there whenever he can. Since [Person C] has to

use his vacation time for his travel, it would be better if you let us know when he needs to travel." The fax was "From Won" [code for "YAI"].

49. In the covert search of YAI's office on April 8, 1998, searching agents found three pages of handwritten notes in Korean writing. In a portion entitled "Things to Discuss," the notes say: "To turn student C into a brother," and indented under that, "Possibility of visiting headquarters office."⁸

50. On May 16, 1998, the hidden microphone in YAI's office picked up a conversation between YAI and Person L that included the following:

YAI: The long term plan is to hook him [Person C] up with his friends in Washington, D.C. who are going to school there.

* * * *

PERSON L: Is there any possibility that he can get a job in Washington as a reporter?

YAI: Historically, for spies, if the head leaders fall, everyone falls also.

51. On May 25, 1998, FBI electronic surveillance intercepted a conversation between YAI and Person C. In that

⁸ I conclude that these handwritten notes very likely were made by YAI. They were found in YAI's office, which he shares only with Person L. Although I am not a handwriting expert and this document has not been examined by one, the Korean language handwriting appears to me to be written by the same person as other Korean language writing that I know or have strong reason to believe was written by YAI. In addition, the subject matter indicates that the notes were written by YAI.

conversation, YAI asked Person C what his birthday is, when he came to the United States, whether he graduated from junior high school in Korea, whether he was attending a computer school right now, and other questions. YAI stated: "I received a request to get more information about you, that is why I am asking you these questions." YAI further stated: "I made a reservation for the 12th. It is very important that you keep this date. Do not forget. You cannot miss this date."

52. Later on May 25, 1998, FBI electronic surveillance intercepted a fax sent from YAI's office to the -5792 number. The fax was addressed to "Respectable Mr. Chang" [code for 'headquarters']. It provided personal data for "C," including his name (the name of Person C). It further stated in part:

C is a bilingual person that is absolutely needed for our business. . . . He is an ideal candidate for recruitment who comes with good computer skills that is vital for today's living and has credentials of a reporter -- a big plus. Also he is unmarried, which means he can provide an opportunity to do business in the church [code for "Washington" (D.C.)] down the road and he has a number of old friends who work in the church [code for "Washington" (D.C.)]. . . . You will be receiving photos and the vacation [code for "visiting homeland"] date via a friend soon.

53. On May 26, 1998, FBI electronic surveillance intercepted a telephone call between YAI and China Vision, a

travel agency. In the English language conversation, YAI said he needed to make a reservation for Person C for travel to Beijing on July 12 with a return to Los Angeles on July 19.

54. On June 10, 1998, FBI electronic surveillance intercepted a fax sent from YAI's office to the -5792 number. The fax was addressed "To: Respectable Mr. Chang [code for 'headquarters']." It stated in part: "The following is the post Kim-Clinton summit news conference and it is from Student C. The content is already revealed to the public, I am sending it since it came from C and the important point is to prove that C is now working for us. / It is only a basic elementary activity by C, but I firmly believe that it will change after his meeting with you, Mr. Chang [code for 'headquarters']". Here is a man waiting to be our man -- please encourage him and guide him to be self-confident and to be proud when you meet him."

55. On July 20, 1998, FBI electronic surveillance intercepted a fax sent from YAI's office to the -5792 number. The fax was addressed "To Mr. Chang [code for 'headquarters']". It stated in part:

Although it was a short trip, disciple C came back from his summer vacation [code for "visiting homeland"] yesterday. I received the letter you sent through him. I picked him up from the airport

He indicated it was a valuable experience, although a nervous one. Disciple believes he had a precious experience at Mr. Kim's. It was obvious that he had a

new outlook in life. . . . He also mentioned that he met with the deputy director and had a long talk with him. . . . Disciple will do his job well

I think you can trust disciple C. . . . He expressed in several versions how he is so eager to give every bit of efforts for the revolutionary cause. I am thinking that he should have a more relaxing and longer vacation [code for "visiting homeland"] next year. . . . It may not be possible for him to engage in high level work, but with his competence and under the circumstances, he will do a fine job.

56. On December 21, 1998, FBI electronic surveillance intercepted a telephone conversation in which YAI told Person C that he was thinking about dropping by and leaving "something" with Person C. YAI added: "I will leave it at your office, so please take it with you and take care of it for me. O.K.?"

57. On May 13, 1999, FBI electronic surveillance intercepted a telephone conversation between YAI and Person C. That conversation included the following:

a. YAI asked Person C if he ordered the airline tickets and Person C said yes.

b. YAI said: "I got a letter from them, and I told them that everything is going well. I told them that the plan for the summer vacation [code for 'visiting homeland'] is right on schedule."

c. YAI said: "I will tell you about the contact person and how to make arrangement to visit places."

F. YAI's Handling of Person L as an Agent

YAI and Person L Discuss Person L's Obtaining a Government Job and Traveling to Korea

58. On April 1, 1998, FBI electronic surveillance intercepted a telephone conversation between YAI and Person L in which Person L stated that she is in training right now. Person L stated, "They investigate Welfare Frauds, those husbands who ran away without paying child support and so on." Later in the conversation, YAI said, "Then you will not be able to make the trip this year, right?" I believe this refers to a trip to the PRC and/or North Korea. Shortly thereafter, YAI stated that he has to pack and suggested that he and Person L meet after he gets back from his trip, YAI said he is coming back the night of the seventh. The following conversation also took place:

YAI: I wrote a letter already telling them that you got a job with the county District Attorney's Office . . . and . . .

PERSON L: Stop talking about it.

YAI: I wrote them that I will tell them more about it when I get there.

PERSON L: I understand. Have a good trip.

59. Later that same day, April 1, 1998, FBI electronic surveillance intercepted a telephone conversation between YAI and Person L, which included the following:

a. Person L said that she was "not fully hired yet" and "they will have to conduct a two-month background check."

b. Person L said: "Do not tell anyone as if I am hired. Just tell them that I am receiving training right now, and there are some more checks that need to be done. Tell them it will take about two months." [Affiant's note: I believe that by the term "them," Person L is referring to the North Korean officials that YAI is about to meet with on his trip.]

c. Person L said that she thinks the job is a very good one but says she "should not make any telephone calls from work" because she thinks "they are all recorded." YAI agreed: "Yes. They are recorded." Person L goes on to say that security is very tight.

d. Person L said that some people who applied to her office have also applied to the FBI. She adds: "They will work here and they will try to go over to the FBI, since it is similar investigative organization." YAI and Person L discuss the similarity between her office and the FBI.

e. Person L wished YAI a good trip.

60. In the covert search of YAI's office on April 8, 1998, searching agents found three pages of handwritten notes in Korean writing. In a portion entitled "Things to Discuss," the notes list: "Caran's current situation," with the word "Caran" written in English. I note that "Karen" is a code word for Person L, according to the code chart. Indented underneath that entry is

the phrase "Getting a job at California District Attorney's Office."

61. On April 18, 1998, the covert microphone in YAI's office picked up a conversation between YAI and Person L. The following occurred in that conversation:

a. YAI and Person L discussed when Person L could travel, in order, in Person L's words, "to talk to them." YAI said: "They said any time is fine within the next 2 to 3 months." Because of the constraints of Person L's work, they discussed how Person L could travel to China and back over a three-day weekend. YAI told Person L to call the travel agency and find out about flying to Japan on Friday night and then to China the following day. Person L suggested postponing the trip to October, and says, "I can go there in October this year and in April next year."

b. Person L stated that someone at work told her to fill out an application for the FBI at the federal building and that she "will get hired within a year." Person L elaborated: "They need Chinese speakers and people like me who can speak Korean. I heard people wait up to five years to be hired by the federal government. So I think I should apply to places in Washington, D.C. as soon as possible." YAI asked about the need to speak good English, and the following conversation took place:

PERSON L: I am an alien. I speak the poorest English. I found out there is a position available for a Korean speaker to work at the Library of Congress. They need

someone to research for the Korean gang and crime problem and stuff. That is about the only position I can think of with the federal government that I can get hired soon. They must need someone who can be in charge of Korean books and stuff.

The office I am working for right now is a law enforcement office. So I heard it is very easy for me to get hired by another law enforcement agency later on. . . .

Honey, you do not think they would like for me to pursue a career in law enforcement, right? Maybe they will like me to work in a library.

Do they like it? Does Mr. Koo⁹ like the fact that I got hired?

YAI: He said that is good.

PERSON L: They said it is good?

YAI: It is a good stable job.

62. On May 16, 1998, the covert microphone in YAI's office picked up a conversation between YAI and Person L. Person L stated that she is sure she can get a job somewhere else "after this" -- if nothing else then at a bank, but maybe at the

⁹ The reader should recall that Koo was mentioned in a handwritten notation in the Korean language on an envelope containing \$100 bills that was found in the covert search of YAI's office on April 8, 1998. The first line of the document stated "Embassy in Beijing." The next line contained a telephone number in Beijing and the same number that was written on the envelope containing 15 \$100 bills that was found in the office in that same search. The next line says "Mr. Koo's telephone number." The next line contains the -5792 number followed by the notation, in parentheses, "used also as a fax number."

Department of Health and Human Services in Washington, D.C., noting that "people are more concerned with domestic problems these days." She said "maybe I can work for or run into some politicians if I work in Washington, D.C." Person L said "I think INS and FBI will be very difficult to get in since they do a very tough background investigation." YAI replied, "No, just look for a domestic job."

63. On May 19, 1999, FBI electronic surveillance intercepted a telephone conversation between YAI and Person L. The following are excerpts of that conversation:

PERSON L: I sent the communication to let them know that I will be leaving on Sunday as scheduled.

* * * *

PERSON L: We received a letter letting us know that they got the information I sent about a month ago about my travel, right?

YAI: No, that is not what they said. They said they would like to receive simple information one more time about the travel . . .

PERSON L: Are you saying they did not receive my letter?

YAI: I know. It is strange. I think there is a problem.

* * * *

YAI: So why don't you call them tonight . . . Why don't you call Mrs. Koo and let her know that you are leaving on the 30th.

PERSON L: I cannot call tonight because my mother will be there.

* * * *

PERSON L: I wonder if they did not let the people in China know that they received the letter.

YAI: I am not sure. Just call them again.

PERSON L: I understand. You don't think I need to send them another letter?

YAI: No, just call them and let them know that you will call them when you arrive there on the 30th and check into a hotel.

**Additional Information about Person L's Efforts to Get
a Government Job**

64. On August 25, 1997, FBI electronic surveillance intercepted a telephone call from Person L to an unknown government agency. The conversation took place in English. The person at the government agency told Person L: "These are government jobs in government offices. . . . Everything from entry level to advanced positions are currently available." Person L stated that she was preparing for the civil service exam.

65. On October 6, 1997, FBI electronic surveillance intercepted a telephone conversation between YAI and Person L. Person L stated: "I had an interview with the court today." Person L noted that it was not a full time job and paid "a lot less money" -- not more than \$1,000 a month. Person L asked YAI

if she should take the job if she got it, even though it was less money. Person L said: "Even if it is a temporary job for a year, I think it is better to work at the courthouse." YAI replied that he did not think it made any difference, and said "[y]ou see the internet over there and everything."

66. On January 22, 1998, FBI electronic surveillance intercepted a telephone conversation between YAI and Person L, in which Person L told YAI that she would not be able to come over for lunch because she had to go to the Los Angeles District Attorney's office to take a test to be hired as a clerk.

67. On March 9, 1998, FBI electronic surveillance intercepted a telephone call from Person L to the Los Angeles Municipal Court in which she discussed her application for a Deputy Municipal Court Clerk position.

68. On March 26, 1998, FBI electronic surveillance intercepted a telephone conversation between YAI and Person L in which Person L stated that she might hear something from the INS very soon and then asked YAI, "Do you think I should just go there?" Later in the conversation YAI asked, "Is this the State Attorney's Office?" Person L replied, "No. It is County District Attorney's Office. They do civil matters such as family law cases. They are family support unit." YAI replied, "That is O.K." Later in the conversation, Person L speaks of going to work there but finding something else, and says, "For example,

the Census information that the Department of Commerce has is very good information."¹⁰

G. YAI Is Tasked by North Korea to Obtain Information that Is Not in the Public Domain, Including "Top Secret" Information

69. FBI electronic surveillance intercepted various faxes sent to YAI's office that tasked YAI with obtaining information not in the public domain, including "top secret" information. These are as follows:

a. *May 5, 1997, fax to YAI's office.* The fax was addressed to "Mr. Doe" [code for "YAI"]. It stated in part: "The company president [code for 'Kim Hak-Min'] . . . has pointed out that Mr. Doe [code for 'YAI'] has made too many proposals about medicine [code for 'source,' in the sense of 'basis of information'] that is already well known, and the types of goods are not varied enough. He said it would be better to propose several newer good medicines¹¹ that are a little more interesting

¹⁰ On a date in August 2002, Person L was seen by FBI surveillance in Alexandria, Virginia, exiting the apartment complex in which she lived and getting into a car bearing diplomatic license plates registered to a diplomatic agent attached to the Embassy of the Republic of Korea (South Korea) in Washington, D.C. With Person L as a passenger, the car was driven to the parking lot of a store in Falls Church, Virginia. On a date in June 2002, that same car had been observed by FBI surveillance outside the apartment complex in which Person L lived, and two unknown females had been seen exiting the apartment complex and getting into the car. I mention this not to support probable cause but out of an abundance of caution. It is difficult to say what inferences can be drawn from these facts.

¹¹ According to the code list found in the covert search in 1998, "good medicine" means "financial resources." This substitution does not make sense, however, in the context of this fax. I infer, therefore, that either this is some kind of an error or the meaning of these coded words was different at the time this particular fax was sent.

[code for 'undisclosed (not sold to public)'] and inexpensive [code for 'top secret']."

b. *July 23, 1997, fax to YAI's office.* The fax was addressed to "Mr Won" [code for "YAI"]. It stated in part: "The reports have been generally acceptable, but the president ['company president' is on the code chart as the substitution for 'Kim Hak-min'] requests that as was mentioned during the signing of the contract [code for 'report'¹²], maintain a good relationship with your friends. And it is important to work on medical proposals that are not known. Another important thing is to send all future correspondences, suggestions and applications [code for 'letters'], etc. to Mr. Yoo's residence [code for 'China (Beijing)'] because of the poor business conditions at Mr. Ha's home [code for 'Shenyang, China']." The fax was signed "Peter Kang" ["Peter" and "Kang" are both code for "headquarters"].

c. *January 13, 1998, fax to YAI's office.* The fax was addressed to "Mr. Won" [code for "YAI"]. It stated in part: "Our company president [code for 'Kim Hak-min'] requests that Mr. Doe [code for 'YAI'] provide us with information regarding the new president of the South company, future plans, situations with the new agreements, prospect of the new president's relationship

¹² The word "report" does not make sense in this context. I believe this is another instance of some kind of discrepancy.

with Mr. Chang's company ['Chang' is code for 'headquarters'], and the pay rate of the secret service personnel during the February birthday celebration." The fax continued: "It was suggested that the items might not be accepted unless the items were inexpensive [code for 'top secret'], interesting [code for 'undisclosed (not sold to public)'], and have a lot of variety."

d. *February 17, 1998, fax to YAI's office.* The fax was addressed to "Mr. Won" [code for "YAI"]. It stated in part: "I would appreciate it if you do not under any circumstances work on medical proposals that are widely known and public, but rather focus solely on inexpensive [code for 'top secret'] and interesting [code for 'undisclosed (not sold to public)'] items." The fax was signed "Peter Kang" ["Peter" and "Kang" are both code for "headquarters"].

e. *May 14, 1998, fax to YAI's office.* The fax was addressed to "Mr. Doe" [code for "YAI"]. It stated in part: "Recently, the quality of proposals has improved, however, please pay more attention to medicines [code for 'sources,' in the sense of bases of information] that are not well known at Mr. Kook's company ['Mr. Kook's residence' is code for 'the United States']." The fax was signed "Peter Kang" ["Peter" and "Kang" are both code for "headquarters"].

70. On April 18, 1998, less than two weeks after YAI's return from a trip to Europe, FBI electronic surveillance intercepted a conversation between YAI and Person L in their office, which included the following:

YAI: I heard that things they receive need to be approved by the people in the communication unit. They have to approve them before they submit them to upper people.

They used to have someone in Pyongyang who would determine that, but now they told me they increased the number of people in the analytical section. They are the ones who review the stuff and determine if they are new information or not.

What they are saying is that even if they do not see them in Beijing, they might see them in North Korea.

* * * *

YAI: Before they would just send everything up. But now, there are people who analyze the items and they would only submit the ones that they feel are new items they have not seen before.

That is why they told me not to send anything that is already publicly disclosed, but (pause) even if they are disclosed, things that people do not get to read.

* * * *

YAI: They are looking for things that are not public. They want about 100 or 150 reports a year. I finished about 160 last year.

* * * *

YAI: Of about 100 of them, about 40% get submitted. They told me two of your reports got submitted recently.

PERSON L: Just two?

YAI: I mean recently.

* * * *

YAI: Just submit once a week.

71. In the covert search of YAI's office on April 8, 1998, searching agents found three pages of handwritten notes in Korean writing, mentioned earlier. That writing says, in part: "Do not send anything that has been revealed in the newspaper or radio. (Engage in a lot of conversation with people above [connoting people of a higher rank], and things that we do not see in homeland.)."

H. Travel to North Korea and/or the PRC by YAI, Person L, and Person C

Travel to North Korea Is Highly Restricted

72. I have seen a print-out dated May 21, 2002 from the U.S. State Department website, travel.state.gov/nkorea. That website contains the following information:

a. "Tourism in North Korea is permitted only in officially organized groups authorized by the Government of North Korea. Independent tourism is not permitted."

b. "U.S. passports are valid for travel to North Korea. North Korean visas are required for entry Prospective travelers to North Korea must obtain in advance a

Chinese visa valid for at least two entries prior to their arrival in the region."

c. "There is no North Korean embassy or consulate in the United States. U.S. citizens and residents planning travel to North Korea must obtain North Korean visas in third countries."

73. The internet site www.lonelyplanet.com states in connection with visas to North Korea: "If you're from the US or South Korea you can pretty much forget about it."

YAI's Travel

74. The copy of YAI's passport (issued in November 1996) obtained by USCS in April 2000 reveals a visa stamp issued on January 14, 1997, by the PRC consulate in Los Angeles, California. Superimposed on that visa is a stamp showing entry into the PRC on February 7, 1997, and another stamp showing exit from Beijing on February 17, 1997. FBI SA Sharon Kuo, who can read and speak Chinese and English fluently, translated the Chinese writing on this visa.

75. There is strong evidence that YAI traveled to North Korea between his entry into and exit from the PRC in February 1997 mentioned in the above paragraph:

a. On February 28, 1997, shortly after YAI's return from the PRC, FBI electronic surveillance intercepted a telephone conversation between YAI and an acquaintance of his referred to herein as Person K. The following are excerpts of that conversation:

YAI: I came out after 2 days. The incident was too big to stay around.

* * * *

YAI: I went in on the 8th and I left on Wednesday in a hurry. They were forcing me out. They told me to leave right away. [Affiant's note: In 1997, the Wednesday following February 8 was February 12.]

PERSON K: I went in on the 11th.

YAI: I heard that. I also read the newspaper too. They had the picture in the newspaper as well.

PERSON K: The news story was printed on the 12th.

* * * *

YAI: I have so much to tell you. . . .

* * * *

PERSON K: Let's meet at some place where there are not any Korean people around.

b. I know the following from research on the internet:

(i). On February 12, 1997, National Public Radio's "All Things Considered" had a story about the defection of Hwang Jang Jop from North Korea.

(ii). A New York Times News Summary, dated February 13, 1997, states: "South Korea reported that a top North Korean leader was in its consulate in Beijing and had asked

for asylum. If confirmed, the defection of Hwang Jang Yop¹³ would be a spectacular coup for Western intelligence services. North Korea suggested that Mr. Hwang, the top theoretician of its ideology of self-reliance and the former tutor of its leader, Kim Jong Il, had been kidnapped."

76. On May 18, 1998, FBI electronic surveillance intercepted a telephone conversation between YAI and the same individual mentioned in the previous paragraph, Person K. The following are excerpts of that conversation:

YAI: I thought you went to the Najin-Sunbong area.

[Affiant's note: This is an area in North Korea.]

PERSON K: Mr. Kim went there.

YAI: You still need a visa to go there, right?

PERSON K: You get an invitation card, which is the visa.

* * * *

YAI: I have a question. Northwest goes to China, right?

PERSON K: Yes. There is a daily flight.

* * * *

YAI: What do you normally fly on?

* * * *

YAI: By the way, did you meet with the representatives when they came last time?

PERSON K: Why?

¹³ I know based on my familiarity with the Korean language, in which I am fluent, that "Yop" is the correct English language spelling of this individual's name, and the spelling "Jop" is an error.

YAI: Just curious.

PERSON K: You know, it is better not to ask questions about things like that.

YAI: Did you meet with them?

PERSON K: Again . . . it is good not to ask about things like that over the phone. It is O.K. if we are talking to each other in person

77. The copy of YAI's passport (issued in November 1996) obtained by USCS in April 2000 reveals a visa stamp issued on January 4, 1999, by the PRC consulate in Los Angeles, California. Superimposed on that visa stamp are two other stamps -- one containing the name Beijing and dated January 22, 1999 (which must be the entry stamp) and one dated January 31, 1999 (which must be the exit stamp). Neither superimposed stamp is fully legible. FBI SA Kuo translated the Chinese writing on this visa.

78. On January 12, 1999, shortly before YAI's January 1999 trip, FBI electronic surveillance intercepted a telephone conversation between YAI and an acquaintance of his, herein referred to as "Person M." The following is an excerpt from that conversation:

PERSON M: When are you leaving? On the 21st?

YAI: Yes. I got the visa. I just have to go. Why?

PERSON M: Just curious.

YAI: Do not tell anyone about it.

PERSON M: Of course. I will not tell anyone.

79. On February 5, 1999, shortly after YAI's January 1999 trip, FBI electronic surveillance intercepted a telephone conversation between YAI and this same individual, Person M. The following are excerpts from that conversation:

PERSON M: This is [Person M]. Did you have a good trip?

YAI: Yes. Thank you. Is anything up?

PERSON M: I tried to go in there too. I applied, but they did not give me the permission because I applied too late.

YAI: Are you going for the birthday celebration?¹⁴

PERSON M: Yes.

* * * *

YAI: I went in there and they seem to be working very hard to improve the economy and everything. Let's meet sometime next week if you are not going there.

80. Information from USCS shows that YAI arrived by plane at Los Angeles from Beijing on March 26, 2001.

¹⁴ It is apparent to me that YAI and Person M are referring to a birthday celebration for the current or former leader of North Korea. North Korea has a cult of personality surrounding its leader, Kim Jong Il, and his father, Kim Il Sung, the former leader of North Korea who died in 1994. The birthday of each of these individuals is marked by major celebration in North Korea. I know these things based on my work for more than seven years on an FBI national security squad heavily involved in counterintelligence against operatives of the North Korean government and from my attention to news concerning North Korea.

It is apparent to me that the birthday celebration referred to in this conversation is not a celebration for a leader of another country, for example the PRC or South Korea. YAI and Person M are speaking in the Korean language. South Korea, unlike North Korea, does not have lavish birthday celebrations for its leaders.

I know from internet research that current leader Kim Jong Il's birth date is February 16, 1942. I know from a reference book that former leader Kim Il Sung's birthday is April 15.

Person L's Travel

81. In the covert physical search of YAI's office (also shared by Person L) on December 16, 1997, FBI agents discovered a U.S. passport of Person L's issued in October 1989, and made a photocopy of it. This passport contains visas issued by the PRC consulate in Los Angeles in 1991, 1992, and 1993. It shows travel by Person L to the PRC in 1991 (two entries into Beijing in that year), 1992, and 1993. In December 1993, Person L submitted a form to the U.S. Department of State claiming that she had lost her passport.

82. On July 3, 1997, FBI electronic surveillance intercepted a telephone conversation between Person L and China Travel Service. The conversation took place in English. Person L asked to make a reservation for a flight from Los Angeles to Beijing departing on August 2, returning August 13.

83. Travel by Person L to the PRC is mentioned in paragraphs 61a and 63, above. Paragraph 61a describes a conversation between YAI and Person L on April 18, 1998, in which YAI told Person L to call the travel agency and find out about flying to Japan on Friday night and then to China the following day. Paragraph 63 involves a conversation between YAI and Person L in which, in the course of a discussion of Person L's travel, Person L says "I wonder if they did not let the people in China know that they received the letter."

84. On July 24, 1997, FBI electronic surveillance intercepted a fax sent from YAI's office.¹⁵ The fax was addressed "To Mr. Peter" [code for "headquarters"]. It was signed "From Won" [code for "YAI"]. It stated, "I received your letter addressed to Karen [code for Person L] and also one to me. . . . As I informed you of Claudia's [code for Person L's] travel schedule through the friend [code for 'via airmail'], she is expected to arrive at Mr. Yoo's home [code for 'China (Beijing)'] as her travel schedule hasn't changed."

85. On August 6, 1997, FBI electronic surveillance intercepted a fax sent to YAI's office. The fax was addressed to "Mr. Won" [code for "YAI"]. It was signed, "Best regards, Peter Kang" ["Peter" and "Kang" are both code for "headquarters"]. The fax says "Miss Karen [code for Person L] has arrived at Mr. Cho's [code for 'homeland/country,' or 'Pyongyang'] without any problem. / The president ['company president' is on the code chart as the substitution for 'Kim Hak-min'] will send a letter through her." [Affiant's note: An incoming fax to YAI's office intercepted on March 9, 1998, discussed in paragraph 26 above, told YAI that the "[p]resident" wanted to meet with him in Austria at the beginning of April.]

86. On September 8, 1998, FBI electronic surveillance intercepted a conversation between Person L and China Travel

¹⁵ I cannot be sure of the telephone number to which this fax was sent, but another fax sent from YAI's office and addressed to "Mr. Peter" eight days later, in the same hour of the day, was sent to the -5792 number, in Beijing.

Service. The conversation took place in English. Person L made a reservation for a flight for one person to Beijing departing on the "26th," returning on the "29th." When the person at China Travel Service asked, "Only three days?", Person L responded, "Only three days."

Person C's Travel

87. Travel by Person C in 1998 and 1999 is mentioned in paragraphs 47-49, 51-55, and 57, above. From the context it appears that Person C was meeting (or was planning to meet) government officials in the PRC or North Korea.

I. YAI Has Not Notified the Attorney General of His Foreign

Agent Relationship

88. Title 18, United States Code, Section 951(a), states, and did state at all times from July 1, 1997, through the date of this affidavit: "Whoever, other than a diplomatic or consular officer or attaché, acts in the United States as an agent of a foreign government without prior notification to the Attorney General if required in subsection (b), shall be [guilty of a felony]." Section 951(b), which is referenced in that language, states, and did state from July 1, 1997, through the date of this affidavit: "The Attorney General shall promulgate rules and regulations establishing requirements for notification."

89. The regulations referred to by that statute are set forth in Title 28 of the Code of Federal Regulations, Part 73.

a. 28 C.F.R. § 73.1(c) stated at all times from July 1, 1997, through at least July 1, 2001: "The term *prior notification* means the notification letter, telex, or facsimile must be received by the addressee named in § 73.3 prior to commencing the services contemplated by the parties."

b. 28 C.F.R. § 73.3 states, and did state at all times from July 1, 1997, through at least July 1, 2001: "Notification shall be made by the agent in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of the Registration Unit of the Criminal Division [of the Department of Justice]," except as follows:

(i). Agents engaged in law enforcement investigations or regulatory agency activity shall make notification in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of Interpol-United States National Central Bureau.

(ii). Agents engaged in intelligence, counterintelligence, espionage, counterespionage or counterterrorism assignment or service shall make notification in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of the nearest FBI Legal Attache.

(iii). Agents engaged in judicial investigations pursuant to treaties or other mutual legal assistance requests or letters rogatory shall make notification to the Attorney General,

directed to the attention of the Office of International Affairs, Criminal Division.

90. Section 951(d), now and at all times from July 1, 1997, through the date of this affidavit, defined the term "agent of a foreign government" as "an individual who agrees to operate within the United States subject to the direction or control of a foreign government or official, except that such term does not include -- (1) a duly accredited diplomatic or consular officer of a foreign government, who is so recognized by the Department of State; (2) any officially and publicly acknowledged and sponsored official or representative of a foreign government; (3) any officially and publicly acknowledged and sponsored member of the staff of, or employee of, an officer, official, or representative described in . . . (1) or (2) who is not a United States citizen; or (4) any person engaged in a legal commercial transaction [except for certain agents of Cuba or certain people convicted of or who have pleaded nolo contendere to certain crimes]."

91. 28 C.F.R. 73.1(f) states, and did state at all times from July 1, 1997, through the date of this affidavit: "The term legal commercial transaction, for the purpose of 18 U.S.C. 951(d)(4), means any exchange, transfer, purchase or sale, of any commodity, service or property of any kind, including information or intellectual property, not prohibited by federal or state legislation or implementing regulations."

92. I have seen a Certification of Non-Existence of Record containing a statement signed by Marshall R. Williams, then Chief of the Registration Unit, Internal Security Section, Criminal Division, U.S. Department of Justice. Mr. Williams stated therein the following:

a. That he is the official who supervises the unit that is responsible for all records filed with and maintained at the Department of Justice under the Foreign Agents Registration Act (FARA), 22 U.S.C. § 611 et seq. as well as the official responsible for the administration of 18 U.S.C. § 951 and for determining whether an agent has filed the notice required by that statute.

b. That only a portion of notices are maintained by his office, and that notices may also be filed with the U.S. State Department or with other components of the U.S. Department of Justice, namely the Office of International Affairs, the United States Central Bureau (Interpol), and the Legal Attaches of the FBI.

c. That a diligent search of records at relevant components of the U.S. Department of Justice covering the time period from at least July 1, 1992, to July 1, 2002, disclosed no record of registration under the FARA and no record of notice under 18 U.S.C. § 951 by anyone with the name JOHN JOUNGWOONG YAI, JOHN YAI, JOUNG-WOONG YAI, or JOHN JOUNG-WOONG YAI.

d. That a diligent search of the U.S. Department of State's Accreditation Office covering the time period from at

least July 1, 1992, to July 1, 2002, disclosed no record of anyone with the name JOHN JOUNGWOONG YAI, JOHN YAI, JOUNG-WOONG YAI, or JOHN JOUNG-WOONG YAI.

J. The Seizure of Computer Equipment

93. Based upon my training and experience and information related to me by agents and others involved in the forensic examination of computers, I know that computer data can be stored on a variety of systems and storage devices including hard disk drives, floppy disks, compact disks, magnetic tapes, and memory chips. I also know that during the search of the premises it is not always possible to search computer equipment and storage devices for data for a number of reasons, including the following:

a. Searching computer systems is a highly technical process that requires specific expertise and specialized equipment. There are so many types of computer hardware and software in use today that it is impossible to bring to the search site all of the necessary technical manuals and specialized equipment necessary to conduct a thorough search. In addition, it may also be necessary to consult with computer personnel who have specific expertise in the type of computer, software application or operating system that is being searched.

b. Searching computer systems requires the use of precise, scientific procedures that are designed to maintain the integrity of the evidence and to recover "hidden," erased, compressed, encrypted or password-protected data. Computer

hardware and storage devices may contain "booby traps" that destroy or alter data if certain procedures are not scrupulously followed. Since computer data is particularly vulnerable to inadvertent or intentional modification or destruction, a controlled environment, such as a law enforcement laboratory, is essential to conducting a complete and accurate analysis of the equipment and storage devices from which the data will be extracted.

c. The volume of data stored on many computer systems and storage devices will typically be so large that it will be highly impractical to search for data during the execution of the physical search of the premises. A single megabyte of storage space is the equivalent of 500 double-spaced pages of text. A single gigabyte of storage space, or 1,000 megabytes, is the equivalent of 500,000 double-spaced pages of text. Storage devices capable of storing fifteen gigabytes of data are now commonplace in desktop computers. Consequently, each non-networked, desktop computer found during a search can easily contain the equivalent of 7.5 million pages of data, which, if printed out, would completely fill a 10' x 12' x 10' room to the ceiling.

d. Computer users can attempt to conceal data within computer equipment and storage devices through a number of methods, including the use of innocuous or misleading filenames and extensions. For example, files with the extension ".jpg" often are image files; however, a user can easily change the

extension to ".txt" to conceal the image and make it appear that the file contains text. Computer users can also attempt to conceal data by using encryption, which means that a password or device, such as a "dongle" or "keycard," is necessary to decrypt the data into readable form. In addition, computer users can conceal data within another seemingly unrelated and innocuous file in a process called "steganography." For example, by using steganography a computer user can conceal text in an image file which cannot be viewed when the image file is opened. Therefore, a substantial amount of time is necessary to extract and sort through data that is concealed or encrypted to determine whether it is evidence, contraband or instrumentalities of a crime.

K. Items to Be Seized

94. The items to be seized from the premises located at 909 Grant Street, Unit 1, Santa Monica, California, consist of the following evidence of violation of Title 18, United States Code, Section 951 (Failure to Notify Attorney General of Foreign Agent Relationship), Title 18, United States Code, Section 1001 (False Statement within the Jurisdiction of the United States), and Title 18, United States Code, Section 371 (Conspiracy to Make False Statement within the Jurisdiction of the United States):

- a. Any and all passports issued to YAI.
- b. Any and all documents that refer or relate to foreign travel by YAI to any destination at any time, or to foreign travel by anyone to the People's Republic of China, North Korea, Japan, or Europe in the period from January 1, 1997,

through the date of the execution of the search warrant, including but not limited to airline tickets, itineraries, receipts for expenditures abroad or travel services, frequent flyer data, notes, and charge slips for charges incurred abroad.

c. Any and all documents that constitute or refer to communications to or from: (i) North Korea (also known as the Democratic People's Republic of Korea) or the People's Republic of China; (ii) telephone numbers 86-24-384-5505, 86-10-6532-5792, 86-24-625-7357, 86-10-6460-3991, or 86-10-6460-8065, 86-10-6464-8707; (iii) "Chang," "Kang," "Peter," "James," "Steve," "Joseph," "Bill," "John"; any of those names preceded by the word "Mr."; "Mr. Chi," "Mr. Jefferson," "Mr. Robertson," "Mr. Oh," "Mr. Ahn," "Mr. Shin," "Mr. Yoora," or "Mr. Kim"; or the Korean language translation of any of the foregoing names; or (iv) website addresses "Green_Earth_2000@yahoo.com," "john.kk@xinmail.com," "ksakjch@yahoo.co.kr," or "ksakjch@hotmail.com."

d. Any and all documents that constitute or contain code books, code lists, or code charts.

e. Any and all documents that contain a discussion or description of techniques, methods, or tactics for obtaining information, including classified information.

f. Any and all documents that refer to or contain the name of: (i) any embassy located in the People's Republic of China, (ii) any North Korean embassy or consulate, or (iii) any component of the North Korean government.

g. Any and all documents that refer or relate to: (i) foreign travel by SUSAN YOUNGJA YAI, (ii) United States laws relating to inbound currency reporting requirements, or (iii) the importation of currency into the United States on or about April 30, 2000, by YAI and/or by SUSAN YOUNGJA YAI, the seizure of that currency, or any efforts to recover that currency or prevent its forfeiture.

95. The items to be seized from Hotmail, 1065 La Avenida, Mountain View, California, and servers utilized by Hotmail, consist of the following evidence of violation of Title 18, United States Code, Section 951 (Failure to Notify Attorney General of Foreign Agent Relationship): For the period May 1, 2001, to the date of execution on Hotmail of this search warrant, any and all e-mails (including attachments) that had been sent between e-mail address "Denniskim26@hotmail.com," on the one hand, and e-mail addresses "ksakjch@hotmail.com," "Green_Earth_2000@yahoo.com," "ksakjch@yahoo.co.kr," or "john.kk@xinmail.com," on the other.

96. As used in paragraph 94 hereof, listing the items to be seized from the residence, the term "documents" includes not only writings on paper but images, programs, applications, or other materials containing information created, modified, or stored in any form. That term includes documents in any language.

97. In searching for data capable of being read, stored or interpreted by a computer, law enforcement personnel executing this search warrant will employ the following procedure:

a. Upon securing the premises, law enforcement personnel trained in searching and seizing computer data (the "computer personnel") will make an initial review of any computer equipment and storage devices to determine whether these items can be searched on-site in a reasonable amount of time and without jeopardizing the ability to preserve the data.

b. If the computer personnel determine it is not practical to perform an on-site search of the data within a reasonable amount of time, then the computer equipment and storage devices will be seized and transported to an appropriate law enforcement laboratory for review. The computer equipment and storage devices will be reviewed by appropriately trained personnel in order to extract and seize any data that falls within the list of items to be seized set forth herein.

c. In searching the data, the computer personnel may examine all of the data contained in the computer equipment and storage devices to view their precise contents and determine whether the data falls within the items to be seized as set forth herein. In addition, the computer personnel may search for and attempt to recover "deleted," "hidden" or encrypted data to determine whether the data falls within the list of items to be seized as set forth herein.

d. If the computer personnel determine that the data does not fall within the list of items to be seized pursuant to this warrant or is not otherwise legally seized, the government will return these items within a reasonable period of time not to

exceed 60 days after the date of seizure unless further authorization is obtained from the Court.

e. In order to search for data that is capable of being read or interpreted by a computer, law enforcement personnel will need to seize and search the following items, subject to the procedures set forth above:

(i). Any computer equipment and storage device capable of being used to commit, further or store evidence of the offense listed above;

(ii). Any computer equipment used to facilitate the transmission, creation, display, encoding or storage of data, including word processing equipment, modems, docking stations, monitors, printers, plotters, encryption devices, and optical scanners;

(iii). Any magnetic, electronic or optical storage device capable of storing data, such as floppy disks, hard disks, tapes, CD-ROMs, CD-R, CD-RWs, DVDs, optical disks, printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers, electronic notebooks, and personal digital assistants;

(iv). Any documentation, operating logs and reference manuals regarding the operation of the computer equipment, storage devices, or software.

(v). Any applications, utility programs, compilers, interpreters, and other software used to facilitate

direct or indirect communication with the computer hardware, storage devices or data to be searched;

(vi). Any physical keys, encryption devices, dongles and similar physical items that are necessary to gain access to the computer equipment, storage devices, or data; and

(vii). Any passwords, password files, test keys, encryption codes or other information necessary to access the computer equipment, storage devices, or data.

L. Conclusion

98. Based on the contents of this affidavit and my training and experience in counterintelligence work, I conclude that Yai was working for the North Korean intelligence service, and not any other component of the North Korean government. The coded means of communication, the repeated travel to the homeland (or a closely allied country), the meetings abroad, the payments in cash, and Yai's description of the handling of the information in China and North Korea (see paragraph 70 hereto), are characteristic of an agent of an intelligence service.

99. Based on the contents of this affidavit, I conclude that there is probable cause to believe that JOHN JOUNGWOONG YAI, also known as JOUNG-WOONG YAI, has violated Title 18, United States Code, Section 951 (Failure to Notify Attorney General of Foreign Agent Relationship), Title 18, United States Code, Section 1001 (False Statement within the Jurisdiction of the United States), and Title 18, United States Code, Section 371

(Conspiracy to Make False Statement within the Jurisdiction of the United States).

100. Based on the contents of this affidavit, I conclude that there is probable cause to believe that SUSAN YOUNGJA YAI, also known as YOUNG JA YAI, has violated Title 18, United States Code, Section 1001 (False Statement within the Jurisdiction of the United States) and Title 18, United States Code, Section 371 (Conspiracy to Make False Statement within the Jurisdiction of the United States).

101. Based on the contents of this affidavit, I further conclude that there is probable cause to believe that evidence of violation of Title 18, United States Code, Section 951 (Failure to Notify Attorney General of Foreign Agent Relationship), Title 18, United States Code, Section 1001 (False Statement within the Jurisdiction of the United States), and Title 18, United States Code, Section 371 (Conspiracy to Make False Statement within the

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Jurisdiction of the United States) will be found at the locations to be searched.

JAMES G. CHANG
Special Agent -- FBI

Subscribed and sworn to before me
on this _____ day of _____, 2003.

UNITED STATES MAGISTRATE JUDGE