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## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 13-00704-1, 2 JSW

v.

**NOTICE OF QUESTIONS FOR  
HEARING**VALENTIN CORTEZ GARCIA and ULYSES  
CORTEZ CONTRERAS,Defendants.  

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE  
NOTICE OF THE FOLLOWING QUESTIONS FOR THE HEARING SCHEDULED ON  
JUNE 24, 2014 at 1:00 p.m.:

The Court has reviewed the parties' papers and does not want to hear the parties reargue matters addressed in those papers. If the parties intend to rely on authorities not cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these authorities reasonably in advance of the hearing and to make copies available at the hearing. If the parties submit such additional authorities, they are ORDERED to submit the citations to the authorities only, with reference to pin cites and without argument or additional briefing. *Cf.* N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral argument to explain their reliance on such authority.

**Contreras Motion to Suppress Evidence**

1. What material facts does Defendant contend are in dispute, with respect to whether the silencer was located in plain view?

1 2. Does Defendant have any authority to suggest that the amount of time that elapses  
2 before an item is alleged to have been found in plain view is legally significant to the  
3 analysis?

4 **Motion to Traverse and Quash the Search Warrant and Suppress Evidence**

5 As a threshold matter, the Government has discussed facts regarding three purchases  
6 that are not discussed in the Search Warrant Affidavit. Unless the Government can provide  
7 legal authority as to why those facts would be relevant to the instant motion, the Court shall not  
8 consider them and it shall not hear argument about those facts.

9 1. Would the Government agree that the sole nexus to the Defendants’ residence is Officer  
10 Jacobo’s statement regarding his experience and consultation with other officers, as set  
11 forth at page VCG-UCC-0198 of the Affidavit in Support of the Search Warrant?

12 2. “Expert opinion may also be considered in the totality of the circumstances analysis for  
13 probable cause. ... [H]owever, if the government presents expert opinion about the  
14 behavior of a particular class of persons, for the opinion to have any relevance, the  
15 affidavit must lay a foundation which shows that the person subject to the search is a  
16 member of the class.” *United States v. Underwood*, 725 F.3d 1076, 1081-82 (9th Cir.  
17 2013).

18 Defendant Garcia argues, in reply, that Officer Jacobo failed to establish that the  
19 firearms traffickers - the class of persons at issue - would keep evidence of their illegal  
20 fire arms sales at their homes, because he stated that he has learned that “persons who  
21 possess and purchase firearms and ammunition do so for their personal use and as such  
22 keep the firearms for an extended period of time [and] ... are typically maintained on  
23 their persons or in their residences....” (Search Warrant Affidavit at VCG-UCC-0198.)

24 What is Defendant’s best argument that the following paragraphs do not suggest that  
25 firearms traffickers would keep evidence of illegal gun sales at their residences?

26 3. The Ninth Circuit has held that “[b]ased on the nature of the evidence and the type of  
27 offense, a magistrate may draw reasonable inferences about where evidence is likely to  
28 be kept.” *United States v. Garza*, 980 F.2d 546, 551 (9th Cir. 1992). It has also


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repeatedly concluded that, in cases of drug dealing, evidence is likely to be found in a dealer's residence. *See, e.g., United States v. Gil*, 58 F.3d 1414, 1418-19 (9th Cir. 1995) (citing cases). The Government relies on a number of these cases to support its argument that there was probable cause to search Defendants' residence. (*See* Opp. Br. at 13:12-20.) Defendant argues that these cases are "inapposite and unpersuasive." Although this is not a drug case, does Defendant have any authority to suggest that the principle articulated by the Ninth Circuit could not be extrapolated to gun cases?

4. What is the Government's best argument that the fact that the agents made the purchases from a lawful parts business would not have been material to the determination that probable cause existed to search the residence?

**IT IS SO ORDERED.**

Dated: June 23, 2014

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE