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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION  
13

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 MARGARITA MONIR HOSSEINI,  
18

19 Defendant.  
20

Case No.: 5:15-CR-00271-FB

DEFENDANT'S NOTICE OF MOTION  
AND MOTION TO SUPPRESS ILLEGALLY  
SEIZED EVIDENCE AND  
DECLARATIONS OF TONY NASSER,  
ESQ, AND MARGARITA HOSSEINI IN  
SUPPORT

JUDGE: Hon. Fred Biery  
DIVISION.: San Antonio  
DATE: Docket Call - June 15, 2017  
TIME: 10:30 a.m.

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**NOTICE OF MOTION TO SUPPRESS**

Please take notice that Defendant Margarita Hosseini, through the undersigned attorney of record Robert E. Barnes, hereby notices for a hearing and moves to suppress evidence obtained by an illegal and illegally executed search and seizure and all fruits of such illegally obtained evidence. The motion is made upon the attached filed memorandum of points and authorities, the attached declarations and exhibits, the pleadings and fillings in this case, and the evidence adduced at the hearing on this matter.

Respectfully submitted this 7th day of June 2017.

BARNES LAW

By: /s/ Robert E. Barnes  
Robert E. Barnes

Attorney for Defendant  
Margarita Hosseini

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**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

The search warrant itself only authorized the seizure of limited financial records related to a tax investigation, but did not authorize custodial interrogations of any individuals or the seizure of any records beyond that itemized in the warrant. Critically, the attachments authorizing which items could be seized were never presented to anyone at the scene. This Constitutional infirmity of inadequate presentment was only exceeded by the IRS Agents' searching and seizing records and documents that were not included within the scope of the search warrant, and treating the search warrant precisely as courts have warned agents not to do—as arrest warrants for lawyer-less custodial interrogations under the most intimidating and threatening environs. Additionally, despite knowledge of third party taxpayer information within the records, the IRS Agents nonetheless searched and seized the records without making any attempt to segregate the files from those that could possibly be related to the search warrant. The on-scene special agents mirrored similar practices with multiple witnesses, using the search warrant like an arrest warrant, and conducting custodial interrogations of individuals at the scene, while removing security camera videotaping that could document their conduct. During the search, the IRS special agents searched and seized electronic data and a wide range of records without segregating privileged information, confidential information, private information, or protected information, records completely unrelated to the information permitted to be searched or seized in the warrant, and all without authorization from the supervisory officials of the Service or the Department of Justice.

These would-be cowboy IRS agents forgot that even cowboys live by the rules.

**II. FACTS****A. The Warrant Obtained On March 7, 2012**

On March 7, 2012, Internal Revenue Service-Criminal Investigation ("IRS-CI") Special Agent Juan Robles submitted a sworn affidavit to United States Magistrate Judge John W. Primomo for two search warrants for Margarita Hosseini's business, Rapid Return Tax Services, with offices located in San Antonio and Converse, Texas. (Ex. A, Affidavit In Support of Application for Search Warrant; Ex. B, Affidavit In Support of Application for Search Warrant

1 (the “Robles Affidavit”).) The same day, Judge Primomo issued a search warrant for the two  
 2 offices. (Exs. C, D (the “Search Warrant”).) However, the Robles Affidavit apparently was not  
 3 attached to the search warrant even though it was “incorporated to this warrant by reference” in  
 4 Attachment B to the search warrant. (Exs. C, D.) The agents executed the search warrant at the  
 5 San Antonio office and the Converse office on March 8, 2012, at 12:30 p.m. (Exs. C at p. 2, D at  
 6 p. 2; *see* Ex. E.) Neither Ms. Hosseini nor any of her employees were provided with a complete  
 7 copy of the search warrant before, during, or upon completion of the search on March 8, 2012,  
 8 though Ms. Hosseini requested a copy of the warrant and was given only the first page.  
 9 (Declaration of Margarita Hosseini (“Hosseini Decl.”) ¶ 3.) As discussed in greater detail below,  
 10 the searching agents deliberately concealed the Search Warrants to use the warrant as justification  
 11 for actions far outside what was permitted. (*See* Hosseini Decl. ¶¶ 4–12; Ex. E.)

12 **B. The Categories of the Items to be Seized, As Listed in the Search Warrant**

13 The Search Warrants authorize the seizure of the following:

14 General Instruction: “The following described items and records to be seized (also  
 15 described in the affidavit of the affiant, which is herein incorporated to this warrant by reference)<sup>1</sup>  
 16 are those records for tax years 2008, 2009, 2010 and 2011, relating to federal income tax returns  
 17 prepared by HOSSEINI and/or other return preparers at RAPID RETURN TAX SERVICES  
 18 containing Schedules C, Earned Income Tax Credit and/or Child Tax Credit.

19 These records will be comprised of papers, documents, and any other data or materials,  
 20 found either - physically or stored electronically on the computers listed below as follows:

- 21 a) File folders, envelopes, jackets, or similar articles and the contents thereof.
- 22 b) Copies of partial, completed, and/or drafts of federal income tax returns.
- 23 c) Personal information forms, or any other forms or documents containing information  
 24 obtained by HOSSEINI and/or other return preparers at RAPID RETURN TAX  
 25 SERVICES from clients for the preparation of their federal income tax returns.”

26 (Ex. C, Attachment B; Ex. D, Attachment B.)

27 Category 1 – Business Records: “Records pertaining to the business of HOSSEINI and/or

28 <sup>1</sup> No affidavit accompanies the executed search warrants. (*See* Exs. C, D.)

1 RAPID RETURN TAX SERVICES, which will include papers, documents, and any other data or  
2 materials found either physically or stored electronically in the computers listed below, as  
3 follows: a) Appointment books, calendars, diaries, notebooks, cash receipts, receipt books, phone  
4 directories, address books, and any other document or records that shows the identity, address,  
5 SSN, phone number, or other personal and/or financial data concerning clients whose federal  
6 income tax returns were prepared by HOSSEINI and/or other return preparers at RAPID  
7 RETURN TAX SERVICES. b) Any degrees, certificates, and honorary credentials showing  
8 accounting, business, and tax-related training and education received by HOSSEINI and/or her  
9 federal income tax return preparers. c) Any contracts, receipts of payment, or documentation  
10 relating to the storage of HOSSEINI and/or RAPID RETURN TAX SERVICES business records  
11 and/or files at a separate storage location.” (Ex. C, Attachment B, ¶ II; Ex. D, Attachment B, ¶ II.)

12 Category 2 – Computers and Electronic Devices: “Any computers or electronic devices  
13 that were or may have been used as a means to commit the offenses described on the warrant, or  
14 that were or may have been used to store or contain evidence of said offenses,” including  
15 “a) Records, documents, or materials of user attribution showing who used or owned the MEDIA  
16 at the time the things described in the warrant were created, edited, or deleted, such as logs,  
17 registry entries, saved usernames and passwords, documents, and browsing history; b) Passwords,  
18 encryption keys, and other access devices that may be necessary to access the MEDIA or data; c)  
19 Computer software, applications, or programs that may be necessary to access the MEDIA or  
20 data. d) Documentation and manuals that may be necessary to access the MEDIA or to conduct a  
21 forensic examination of the MEDIA.” (Ex. C, Attachment B, ¶ III–IV; Ex. D, Attachment B, ¶  
22 III–IV.)

23 Category 3 – Internet Communications with the IRS: “Records and things evidencing the  
24 use of Internet communications with the Internal Revenue Service, including: a) Routers,  
25 modems, and network equipment used to connect computers to the Internet; b) Records of Internet  
26 Protocol addresses used; c) Records of Internet activity, including firewall logs, caches, browser  
27 history and cookies, "bookmarked" or "favorite" web pages, search terms that the user entered into  
28 any Internet search engine, and records of user-typed web addresses. (Ex. C, Attachment B, ¶ V;



1 Ex. D, Attachment B, ¶ V.)

2 \\\

3 In addition to the above, the Search Warrant instructs the following: “the term [sic]  
4 ‘records’, ‘documents’, and ‘materials’ includes items in whatever form and by whatever means,  
5 the records, documents, or materials, and their drafts, or their modifications may have been  
6 created or stored.” (Ex. C, Attachment B, ¶ VI; Ex. D, Attachment B, ¶ VI.)

### 7 **C. The Government Exceeded the Scope of the Warrant**

8 According to the “Detail Inventory Listing of All Items at Search Warrant Site,” the items  
9 taken outside the scope of the Search Warrant from Ms. Hosseini’s Converse office included 2012  
10 employee schedules (Control # 12), backup disks marked 2007 and 2012 (Control # 18), Disks  
11 marked 2005–2007 (Control # 19), client files dated 2012 (Control # 40–41, 49, 62–65, 67), and  
12 February and March 2012 tax returns (Control # 43). (Ex. C, Detail Inventory Listing, pp. 4–5, 11,  
13 31, 16–17.) According to the inventory listing for the San Antonio office, items taken outside the  
14 scope of the warrant include Rapid Return Tax Service Cash Log for 2012 (Control # 3). (Ex. D,  
15 Detail Inventory Listing, p. 1.) Additionally, Ms. Hosseini’s and her children’s medical and  
16 educational records and personal check stubs inside a file cabinet labeled “personal” were also  
17 seized (Control # 30). (Hosseini Decl. ¶ 12; Ex. C, Detail Inventory Listing, p. 8.) Furthermore,  
18 the search warrant lacked sufficient particularity for computers or electronic evidence, and thus all  
19 such evidence was seized outside the scope of the warrant. (*See* Section IV.D., *infra.*) Last, all  
20 statements by Ms. Hosseini or her employees must be suppressed as outside of the scope of the  
21 Search Warrants and in violation of the Fourth and Fifth Amendments. (*See* Section IV.E., *infra.*)

### 22 **D. Charges in this Case**

23 Based almost entirely on the evidence gathered from the execution of the Search Warrants,  
24 Ms. Hosseini was indicted on April 15, 2015, in this district on twenty-seven counts of aiding and  
25 assisting in the preparation of false tax returns, in violation of 26 U.S.C. § 7602(2).

## 26 **III. ITEMS TO BE SUPPRESSED**

### 27 **A. All Items**

28 As expounded below, if the warrant is found to be a “general warrant” or the warrant is

1 found to have violated the presentment requirement set forth in *United States v. Marx*, 635 F.2d  
2 436, 440–41 (5th Cir. 1981), the Court should suppress all items seized from Ms. Hosseini’s two  
3 business offices on March 8, 2012, and all evidence derived therefrom.

4 **B. Documents Dated Before 2008 And After 2011, All Personal Records, All**  
5 **Electronic Evidence, And All Testimonial Statements**

6 Alternatively, for the reasons discussed below, this Court should also suppress all evidence  
7 outside of the scope of the search warrant that was illegally seized by the agents when they  
8 searched Ms. Hosseini’s offices on March 8, 2012. Specifically, Ms. Hosseini requests the Court  
9 to suppress the following items: Any and all personal medical and educational records of Ms.  
10 Hosseini or her children and/or personal check stubs which were taken from a filing cabinet  
11 labeled “personal” at the Converse office; any documents dated before 2008 or after 2011; all  
12 electronic evidence and evidence seized from a computer or hard drive; all testimonial statements  
13 by Ms. Hosseini or her employees; and all evidence derived from this information.

14 **IV. LEGAL DISCUSSION**

15 The Fourth Amendment protects “the right of the people to be secure in their persons,  
16 houses, papers and effects, against unreasonable searches and seizures” and this right “shall not be  
17 violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation,  
18 and particularly describing the place to be searched, and the persons or things to be searched.”  
19 (U.S. Const. amend. IV.) This imposes a three-fold process: first, probable cause to obtain the  
20 warrant; second, particularity in the warrant to restrict what is searched for and seized; and third,  
21 presentment of the warrant at the time of the search and before any seizure to permit on-site  
22 knowledgeable enforcement of the warrant’s search restraints. Specificity has two aspects--  
23 particularity and over-breadth. "Particularity" is about detail: the warrant must clearly describe  
24 what it seeks. "Breadth" is about scope: the warrant cannot include items for which there is no  
25 probable cause. Together, the particularly and breadth limitations prevent general searches of a  
26 person's properly. Thus, generic classifications in a warrant are acceptable only when a more  
27 precise description is not possible. (*See* Federal Guidelines for Searching and Seizing Computers  
28 at 53 (1994).) A violation of any of the these—probable cause; particularity; or presentment—

1 warrants suppression of the evidence. As one of our most honored jurists of our highest court  
2 opined, Justice Frankfurter, speaking for the Court in *McNabb v. United States*, 318 U.S. 332, 343  
3 (1943): “A democratic society in which respect for the dignity of all men is central, naturally  
4 guards against the misuse of the law enforcement process.”

5 “On a motion to suppress, the government bears the burden of showing that each  
6 individual act constituting a search or seizure under the Fourth Amendment was reasonable.”  
7 (*United States v. Ritter*, 416 F.3d 256, 261 (3d Cir. 2005).) The government must prove this by  
8 preponderance of the evidence. (*United States v. Matlock*, 415 U.S. 164, 177 (1974).)

### 9 **A. Standing**

10 An individual has standing to contest a search under the Fourth Amendment if that person  
11 had a reasonable expectation of privacy in the location searched. (U.S. Const., amend. IV; *see also*  
12 *Katz v. United States*, 389 U.S. 347 (1967); *Jones v. United States*, 362 U.S. 257, 261 (1960) [the  
13 movant must show that she was “a victim of search or seizure, one against whom the search was  
14 directed, as distinguished from one who claims prejudice only through the use of evidence  
15 gathered as a consequence of search or seizure directed at someone else.”].) On the day of the  
16 search, Ms. Hosseini was present at one of the two offices being searched, owned Rapid Return  
17 Tax Services, and had a reasonable expectation of privacy in the search locations. (Hosseini Decl.  
18 ¶ 2.) The seized items were taken solely from the Rapid Return Tax Services offices and Ms.  
19 Hosseini was identified in Attachment B to the Search Warrants as a target of the searches, along  
20 with “other return preparers.” (Ex. C, Attachment B; Ex. D, Attachment B.) Ms. Hosseini’s  
21 reasonable expectation of privacy in the items kept at her offices confers standing on her for  
22 purposes of this motion. (*See Jones, supra*, 362 U.S. at 261; *see also Pearl Meadows Mushroom*  
23 *Farm, Inc. v. Nelson*, 723 F. Supp. 432 (N.D. Cal. 1989) [owners or managers of business had  
24 standing to challenge entries into business premises under warrants providing for seizure of  
25 named employees and “others”]; *United States v. Morton Provision Co.*, 294 F. Supp. 35 (D. Del.  
26 1968) [sole proprietor of business had standing to object to search of private business records].)

### 27 **B. The Search Warrant Was A “General Warrant” And Thus All Of The Seized** 28 **Evidence Should Be Suppressed**

1 By failing to attach the Robles Affidavit to the Search Warrants and without enumerating  
2 any crimes in the warrants, combined with the language that references the offenses described in  
3 the affidavit, the search warrants are effectively “general warrants” that are void under the Fourth  
4 Amendment. (*United States v. Layne*, 43 F.3d 127, 132 (5th Cir. 1995).<sup>2</sup>) As the Fifth Circuit has  
5 articulated, “[t]o test whether the particularity requirement is satisfied requires the court to ‘ask if  
6 the description in the warrant would permit an executing officer to reasonably know what items  
7 are to be seized.’” (*Ibid.*) For a supporting affidavit to be considered, it must not only be explicitly  
8 referenced in the search warrant, but it must also be attached to the warrant for the agents  
9 executing the search to be aware of the content therein. (*Ibid.*, citing *United States v. Beaumont*,  
10 972 F.2d 553, 560–61 (5th Cir. 1992) [affidavit simply accompanying search warrant without  
11 explicit reference to the affidavit in the warrant is not in compliance with the requirements of the  
12 Fourth Amendment]; *Groh v. Ramirez*, 540 U.S. 551, 557–58 (2004) [the referenced documents  
13 must “accompan[y] the warrant.”]; Internal Revenue Manual (“IRM”) § 9.4.9.3 (02-09-2005)  
14 [specifically highlighting “the need for a warrant to contain on its face or in an incorporated *and*  
15 *attached* search warrant application, sufficient information to instruct both the executing officer  
16 and the occupant of the place to be searched of the nature of the alleged violation(s) and the  
17 description of the items to be seized.” (emphasis added); “It is imperative that the special agent  
18 review the prepared search warrant to ensure all the proper information from the Application and  
19 Affidavit for Search Warrant is contained in the search warrant issued by the court.”]; *United*  
20 *States v. Bridges*, 344 F.3d 1010 (9th Cir. 2003).)

21 Indeed, the requirement that the referenced documents accompany the warrant is  
22 constitutionally significant. The Fourth Amendment's warrant requirement serves the “high  
23 function” of interposing a judge “between [a] citizen and the police.” (*McDonald v. United States*,  
24 335 U.S. 451, 455 (1948).) But this “high function is not necessarily vindicated when some other  
25 document, somewhere, says something about the objects of the search,” but that document does  
26 not accompany the warrant thereby leaving the executing officers with the discretion to determine

27 <sup>2</sup> “The Fourth Amendment prohibits general warrants authorizing officials to rummage through a  
28 person’s possessions looking for any evidence of a crime. A warrant must particularly describe the  
place to be searched and the person or thing to be seized.” (citations omitted.)

1 for themselves the items they will seize. (*Groh, supra*, 540 U.S. at 557.) As recognized by the  
2 Supreme Court of the United States, “the purpose of the particularity requirement is not limited to  
3 the prevention of general searches. A particular warrant also ‘assures the individual whose  
4 property is searched or seized of the lawful authority of the executing officer, his need to search,  
5 and the limits of his power to search.’” (*Groh, supra*, 540 U.S. at 561.)

6 Here, the Robles Affidavit apparently did not accompany the Search Warrants (*see* Exs. A,  
7 B), thus the Search Warrants contained only a description of a location to be searched and an  
8 incomplete list of items to be seized (Exs. C, D). Because no supporting affidavit was attached,  
9 even though it is referenced in Attachment B to the Search Warrants, no crimes were identified in  
10 the Search Warrants. (*See* Exs. C, D.) This is particularly problematic because the Search  
11 Warrants reference the criminality discussed in the affidavit to describe the categories of  
12 documents sought. (Ex. C, Attachment B, ¶ III [“Any computers or electronic devices that were or  
13 may have been used as a means to commit *the offenses described on the warrant*, or that may have  
14 been used to store or contain evidence *of said offenses*.” (emphasis added)]; Ex. D, Attachment B,  
15 ¶ III [same].) This reference to offenses in the affidavit without the affidavit accompanying the  
16 search warrant made the warrant overbroad and without sufficient particularity. As the Ninth  
17 Circuit recognized, “[i]f . . . the scope of the warrant is ‘not limited to’ the specific records listed  
18 on the warrant, it is unclear what its precise scope is or what exactly it is that the agents are  
19 expected to be looking for during the search.” (*Bridges, supra*, 344 F.3d at 1017–18.)

20 Even if the Robles Affidavit sufficiently describes the items to be seized, an adequate  
21 description of items to be seized as set forth in a search warrant application “does not save the  
22 warrant from its facial invalidity.” *Groh, supra*, 540 U.S. at 557.

23 In sum, the Search Warrants failed to state what criminal activity was being investigated  
24 by the government and the categories of documents specified in the search warrant relied upon  
25 knowledge of the offenses discussed in the unincorporated Robles Affidavit. “Such warrants are  
26 suspect because ‘nothing on the face of the warrant tells the searching officers for what crime the  
27 search is being undertaken.’” (*Bridges, supra*, 344 F.3d at 1017–18.) The Robles Affidavit may not  
28 be relied upon to give precision or clarity to the warrants because it did not accompany the Search

1 Warrants. Thus, the Search Warrants authorize a general seizure of documents from Ms.  
2 Hosseini's businesses and are unconstitutional under the Fourth Amendment for this reason.

3 **C. The Evidence Seized Incident To The Execution Of The Search Warrant**

4 **Should Be Suppressed According To *United States v. Marx* and Its Progeny.**

5 **i. Requirements of Presentment**

6 The Court should suppress the seized evidence because the government violated Fifth  
7 Circuit law and intentionally circumvented the warrant presentment requirements, thus prejudicing  
8 Ms. Hosseini. Specifically, the government deliberately deprived Ms. Hosseini of the ability to see  
9 the search warrant and object to items seized beyond the scope of the warrant in real time, thereby  
10 allowing the government agents an unlimited search and allowing the agents to interrogate and  
11 intimidate those present without limitation. The government's intentional actions acted to vitiate  
12 Ms. Hosseini of her Fourth Amendment rights under *United States v. Marx*, 635 F.2d 436, 440-41  
13 (5th Cir. 1981), *United States v. Neal*, 182 Fed. Appx. 366, 371 (5th Cir. 2006), and Rule 41.

14 The relevant federal rule, now denominated Rule 41(f)(1)(C), provides that the "officer  
15 executing the warrant must give a copy of the warrant and a receipt for the property taken to the  
16 person from whom, or from whose premises, the property was taken or leave a copy of the warrant  
17 and receipt at the place where the officer took the property." (Fed. R. App. P., R. 41(f)(1)(C).) But,  
18 this rule "must be interpreted in the light of the important policies underlying the warrant  
19 requirement – to provide the property owner assurance and notice during the search. The Supreme  
20 Court has repeatedly held that an essential function of the warrant is to 'assure[] the individual  
21 whose property is searched or seized of the lawful authority of the executing officer, his need to  
22 search, and the limits of his power to search.'" (*United States v. Gantt*, 194 F.3d 987, 1001 (9th Cir.  
23 1999) (internal citations omitted); see *Groh*, *supra*, 540 U.S. at 561-62.) The Ninth Circuit thus  
24 found that there can be "no doubt that the essential functions of the search warrant include assuring  
25 the subject of the search that her privacy is invaded only under a legal warrant and notifying her of  
26 the extent of the officer's authority . . . If a person is present at the search of her premises, agents  
27 are faithful to the 'assurance' and 'notice' functions of the warrant only if they serve the warrant at

28

1 the outset of the search.” (*Gantt, supra*, 194 F.3d at 1001–02.<sup>3</sup> For this reason, the Supreme Court  
 2 has stated that it is “incumbent upon the officer executing a search warrant to ensure the search is  
 3 lawfully authorized and lawfully conducted.” (*Groh, supra*, 540 U.S. at 562; *see also* IRM 9.4.9.3  
 4 (02-09-2005) [“It is imperative that the special agent review the prepared search warrant...”].)

5 As interpreted by the Fifth Circuit, the defendant has the burden to “demonstrate[] legal  
 6 prejudice or that non-compliance with the rule was intentional or in bad faith.” (*Neal, supra*, 182  
 7 Fed. Appx. at 371, *citing Marx, supra*, 635 F.2d at 441.) “In order to show prejudice in this context,  
 8 a defendant must show that because of the violation of Rule 41 he was subjected to a search that  
 9 might not have occurred or would not have been so abrasive had the rule been followed.” *Marx,*  
 10 *supra*, 635 F.2d at 440–41. In *Marx*, the Fifth Circuit found that the government did not violate the  
 11 presentment requirement where a search warrant was provided to the defendant’s attorney the day  
 12 after the search was executed because the defendant failed to show that the delay in presentment  
 13 was intentional and deliberate and failed to show that the defendant was prejudiced by the delay.  
 14 (*Marx, supra*, 635 F.2d at 440–41; *cf Gantt, supra*, 194 F.3d at 994–95, 1000 [the government  
 15 violated the presentment requirement by failing to present the defendant with a “complete copy of  
 16 the warrant at the outset of the search of her apartment”],<sup>4</sup> *United States v. Williamson*, 439 F.3d  
 17 1125, 1132–33 (9th Cir. 2006) [the searching agent’s failure to provide a copy of the search warrant  
 18 was erroneous in light of *Gantt* and Rule 41; though the agent had a copy of the search warrant in  
 19 his lap while discussing with the defendant about the search as it was progressing, the agent did not  
 20 provide a copy of the warrant to the defendant or his mother].)

## 21 **ii. Suppression Is The Appropriate Remedy**

22 Three situations require suppression when there has been a Rule 41 violation: “(1) the  
 23 violation rises to a ‘constitutional magnitude;’ (2) the defendant was prejudiced ...; or (3) officers  
 24 acted in ‘intentional and deliberate disregard’ of a provision in the Rule.” (*Williamson, supra*, 439

25 \_\_\_\_\_  
 26 <sup>3</sup> The United States Supreme Court has since stated in *Groh v. Ramirez* that “neither the Fourth  
 27 Amendment nor Rule 41 of the Federal Rules of Criminal Procedure requires the executing officer  
 28 to serve the warrant on the owner before commencing the search.” (*Groh v. Ramirez*, 540 U.S. 551,  
 562 n. 5 (2004).) However, IRS policy still instructs officers to read the search warrant to whomever  
 is in control of the premises “[u]pon entry.” (IRM § 9.4.9.3.5 (10-05-2007).)

<sup>4</sup> Overruled on other grounds by *United States v. W.R. Grace*, 526 F.3d 499 (9th Cir. 2008).



1 F.3d at 1133; *see Marx, supra*, 635 F.2d at 440–41.) Applying this test, suppression is not warranted  
2 where a defendant does not allege the Rule 41 violation rose to the level of a constitutional violation  
3 and fails to show legal prejudice or intentional non-compliance, thus failing to discharge his burden.  
4 (*Neal, supra*, 182 Fed. Appx. at 371–72; *accord Marx, supra*, 635 F.2d at 440–41.)

5 Here, the government elevated its violation to a constitutional violation because core  
6 principles of the Fourth Amendment were violated in two ways. First, the very reasonableness of  
7 the search was violated—the agents conspired to withhold presentment of the search warrant at both  
8 search locations, despite Ms. Hosseini asking for a copy of the warrant. (Hosseini Decl. ¶ 3.)  
9 Second, the searched person’s ability to be informed at the key time about the scope of the warrant  
10 and the resulting limits on the government’s power to search and seize items from the premises  
11 were thoroughly violated. Nothing can be more fundamental—the right to know when interacting  
12 with the government what the limits of the government’s powers are.

13 Additionally, Ms. Hosseini was prejudiced by the deliberate methods used by the  
14 government. The government knew what the scope of the warrant was, but she and her employees  
15 did not. Not knowing what the government could and could not seize that day, Ms. Hosseini and  
16 her employees submitted to individual interrogations and Ms. Hosseini was threatened with criminal  
17 prosecution if she did not confess—without a lawyer present. (Hosseini Decl. ¶¶ 4, 7–9.) As the  
18 search progressed, the searching agents used the concealed search warrant as if it were an arrest  
19 warrant, restricting the freedom of Ms. Hosseini and her employees. Ms. Hosseini was never told  
20 that she could leave the office and Ms. Hosseini was only permitted to step outdoors after she had  
21 begun smoking a cigarette inside the office and agreed to have a searching agent supervise her  
22 smoking and the searching agents would not let her employees leave. (Hosseini Decl. ¶ 10.) As seen  
23 on the recording, the agents escorted one employee to the restroom and moved the employees  
24 around the office as the search progressed. (*Ibid.*; Ex. E, file entitled “Converse-Front Office” at  
25 13:22:10–20, 13:26:20–13:27:00, 13:27:25–13:27:47; 13:29:15–20.) Additionally, the government  
26 used the search warrant as justification to disable the security camera system at Ms. Hosseini’s  
27 offices to conceal the illegal and orchestrated activities that occurred during the search (Ex. E, file  
28 entitled “Converse-Back Office” at 13:10:30–13:11:02, 13:11:50–13:12:10; Ex. E, file entitled



1 “Converse-Front Office” at 13:28:22–end), the Search Warrants do not contemplate a security  
2 system or video surveillance in any of the three categories of instruction (*see* Exs. C, D). These  
3 interrogations, threats, and conduct of the searching agents left Ms. Hosseini and her employees  
4 distraught, confused, and fearful for their well-being and safety. (Hosseini Decl. ¶ 5; *see* Ex. E, file  
5 entitled “Converse-Front Office” at 13:30:00–08 [Ms. Hosseini’s husband asking what the officers  
6 will do once the cameras are turned off, if the “officers are gonna beat us or something.”].)

7 Had Ms. Hosseini been provided with a complete copy of the search warrant, the  
8 interrogations and disabling of the video camera system would not have occurred because those  
9 activities are clearly outside the scope contemplated by the Search Warrants (*See* Exs. C, D.)  
10 Notably, unlike in *Marx*, Ms. Hosseini nor her attorney did not receive a copy of the complete search  
11 warrant for years after the search, until it was requested by Barnes Law. (Hosseini Decl. ¶ 13.)

12 Furthermore, the entire search should be suppressed for the independent reason that the  
13 officers acted in ‘intentional and deliberate disregard’ of Rule 41. Myriad acts indicate that the  
14 failure to present the search warrant to Ms. Hosseini was a carefully considered and calculated  
15 decision. First, most telling, Ms. Hosseini was never read a copy of the search warrant, and when  
16 Ms. Hosseini asked for a copy of the search warrant she was given only *the first page*. (Hosseini  
17 Decl. ¶ 3.) No authority even hints that giving a partial warrant is a possible response to a request  
18 for a search warrant by a person with proper standing to contest the search. Indeed, the agents’  
19 actions are directly in violation of the regulations for IRS searches, (*see, e.g.*, IRM § 9.4.9.3.5<sup>5</sup>;  
20 IRM § 9.4.9.3.5.3<sup>6</sup>), and the Federal Rules of Criminal Procedure, (Fed. R. Cr. P., R. 41(f)(C)<sup>7</sup>).

21 Second, at the second Rapid Return Tax Services office, located in San Antonio where Ms.  
22 Hosseini was not present, the searching officers similarly did not read the search warrant to anyone  
23 present nor provide a complete copy as is required. (Hosseini Decl. ¶ 3.) To take a page out of the  
24 IRS’s own guidebook, a “pattern of consistent failure” or “consistent concealment” is a reliable  
25 “indicator of fraud.” (IRM § 25.1.2.3 (06-09-2015).) Here, the IRS agents did not fail to follow IRS

26 <sup>5</sup> “Upon entry, [] the search warrant will be read to whoever is in control of the premises.”

27 <sup>6</sup> “A copy of the search warrant and inventory [] will be left at the premises or with a person in  
control of the premises.”

28 <sup>7</sup> “The officer executing the warrant must give a copy of the warrant and a receipt for the property  
to the person from whom, or from whose premises, the property was taken or leave a copy...”

1 regulations and the Federal Rules of Criminal Procedure in just one search, all searches in this  
2 investigation at all locations were legally and procedurally deficient.

3 Third, as discussed in the preceding paragraphs, the searching agents conspired to conceal  
4 the search warrant and ignore IRS procedures for the express purpose of harassing and interrogating  
5 Ms. Hosseini and her employees in violation of the Fourth and Fifth Amendments. Standard IRS  
6 procedure is to secure the premises “[u]pon entry.” (IRM § 9.4.9.3.5 (10-05-2007); *see also* IRM  
7 §§ 9.4.9.3.2 (02-11-2013), 9.4.9.3.2.2 (08-02-2010), 9.4.9.3.5.3 (03-27-2013).) However, though  
8 the Search Warrants only authorized seizure of business records and information, the IRS agents  
9 kept Ms. Hosseini and her employees inside the location to be searched while the search was  
10 ongoing, would not let the employees leave, did not read any rights to the employees even though  
11 they were being individually interrogated by the officers, and Ms. Hosseini was threatened with  
12 criminal prosecution and criminal punishment if she did not confess, all without an attorney present.  
13 (Hosseini Decl. ¶¶ 7–8; *see* Ex. E, file entitled “Converse-Front Office” at 13:13:30–13:15:20;  
14 13:26:20–13:27:00; 13:27:25–47.) The agents did not just conceal the Search Warrants to  
15 accomplish these goals, but also intimidated Ms. Hosseini to shut off her video surveillance system  
16 at the Converse office, after which their intimidation tactics and unconstitutional interrogations of  
17 her employees became more belligerent. (Hosseini Decl. ¶¶ 5–6.)

18 Fourth, and finally, as discussed further in Section D, below, the Search Warrants were  
19 deficient as to all computer and electronic evidence, which would have been apparent to all agents.

20 Because of the various checks and balances employed in the approval process for IRS search  
21 warrants, these deficiencies, errors, and omissions must have been known by, at minimum, the lead  
22 Special Agent on the matter, Juan Robles. (IRM § 9.4.9.3 (02-09-2005)<sup>8</sup>; *see also* *Layne, supra*, 43  
23 F.3d 132; IRM § 9.4.9.3 (02-09-2005).)

24  
25 \_\_\_\_\_  
26 <sup>8</sup> “It is the special agent’s responsibility to proof all documents... It is imperative the special agent  
27 review the prepared search warrant to ensure all proper information from the Application and  
28 Affidavit for Search Warrant is contained in the search warrant issued by the court. The warrant  
must be sufficient on its face or refer to an affidavit that is sufficiently incorporated therein, and  
specifically set forth: the violations being investigated, a description of the person/premises to be  
searched, [and] a description of the items to be seized.” (emphasis in original)

1           There can be no doubts as to the agents' intentions, since strict procedures and customs  
2 govern the agents' conduct by written notice in the Internal Revenue Manual. First, the search  
3 warrant must be "read to whoever is in control of the premises." (*See* IRM 9.4.9.3.5 (10-05-2007).)  
4 This includes all the items authorized to be searched in the attachment to conform to the presentment  
5 clause of the Fourth Amendment. Secondly, the agents must follow a strict segregation plan to  
6 protect privileged and intimate private information. *See* IRM 9.4.9.3.5 (10-05-2007). At all times,  
7 "special agents must use the least intrusive means possible to obtain evidence." (*See* IRM 9.4.9.6.1  
8 (10-05-2007).) As repeated throughout, an agent who seizes information or documentation not  
9 described with particularity in the warrant itself is "not entitled to qualified immunity from liability"  
10 as the IRS itself concedes. (*See* IRM 9.4.9.3 (Note) (02-09-2005).)

11           In sum, the government's choices were deliberate and intended to maneuver around the Fifth  
12 Circuit's and the Constitution's requirements for a search, thereby placing Ms. Hosseini at a  
13 disadvantage and off-balance to elicit a confession without an attorney present as a simultaneous  
14 search of her two offices occurred by approximately a dozen armed law enforcement officers. The  
15 search was rife with constitutional error, the Rule 41 violation was intentional and deliberate, had  
16 the IRS agents provided a copy of the search warrant the search likely would not have occurred in  
17 the manner it did or would not have been so abrasive, and suppression is the proper remedy. The  
18 seized evidence and the fruits of the seized evidence should be suppressed.

#### 19           **D. Seizures Occurred Outside the Scope of the Warrant**

20           If the Court is not inclined to suppress all evidence seized because of the *Marx*/Rule 41  
21 violation, then the Court should suppress the documents dated before 2008 or after 2011, Ms.  
22 Hosseini's personal medical and educational records of her and her children and personal check  
23 stubs taken from a filing cabinet labeled "personal," and all electronic evidence from seized  
24 computers because the Magistrate Judge did not authorize the seizure of this evidence or the Search  
25 Warrants lacked particularity and, thus, these items fell outside the scope of the Search Warrants.

#### 26           **i. Scope Of The Warrants**

27           In analyzing whether a warrant authorizes seizure of certain items, courts consider, among  
28 other things, whether the warrant was sufficiently particular to "ensure that the executing officer is

1 able to distinguish between those items which are to be seized and those which are not.” *United*  
2 *States v. Hill*, 19 F.3d 984, 987 (5th Cir. 1994).

3 In short, the Search Warrants authorized agents to search and seize only particular items  
4 described in the search warrant, which generally only included specific documents and similar  
5 items, such as business records, tax forms, receipts, and computer devices and data. (*See* Exs. C,  
6 D.) The scope of the warrant is strictly limited to the items listed in the search warrant itself and  
7 nothing more. Even under the broadest interpretation of the Search Warrants here, documents dated  
8 outside of the years specified in the search warrant and personal medical and educational records  
9 could not be interpreted to have been within of the scope of the search.

10 As to computers and electronic evidence, myriad restrictions are placed upon searches and  
11 seizures of such items because of the widespread nature of information contained in a modern  
12 computer. (*See* IRM § 9.4.9.6 (10-05-2007).<sup>9</sup>) Moreover, information stored in an electronic source  
13 is protected by the First and Fourth Amendments, the Wiretap Act (18 USC § 2510–2521), the  
14 Electronic Communications Privacy Act of 1986 (18 USC § 2701–2711), the Privacy Protection  
15 Act (42 USC § 2000aa), Rule 41, the Federal Rules of Evidence (F.R.E. §§ 901, 1001, 1002) and  
16 the Internal Revenue Manual. Accordingly, to navigate these various protections, “[t]he search  
17 warrant must describe with particularity the hardware components of the computer and the software  
18 and data stored within the computer.” (*Id.* § 9.4.9.3.1.3 (10-05-2007).) Additionally, any non-  
19 relevant information must be sequestered according to an explicit and detailed procedure established  
20 before the search is authorized. (*Id.* § 9.4.9.3.1.2 (10-05-2007).<sup>10</sup>) Furthermore, before obtaining a  
21 search warrant, the special agent should consider whether the computer needs to be taken or imaged  
22 or whether “[t]he best evidence is a paper document or a paper computer print out” and must  
23 specifically “[d]evelop probable cause for evidence contained in computers” and “for *each*  
24 *component* of the computer.” (*Id.* § 9.4.9.7 (10-05-2007).)

25 \_\_\_\_\_  
26 <sup>9</sup> “The search and seizure of data contained in computers, computer networks, and other electronic  
27 storage mediums (such as "e-mail") present special circumstances for consideration to insure the  
28 legality of the search and seizure.”

<sup>10</sup> A positive statement must be included in the search warrant that no work product material exists  
on the computer. If protected material exists on the computer, state how the material is going to  
remain protected.”

1 Here, the Search Warrants were wholly defective to meet the requirements to search or seize  
2 electronic data. The only limitation as to electronic evidence, or “media,” was the following:

3 As to any seized MEDIA:

4 a) The government shall make *an exact copy of all data and other electronically*  
5 *stored information* from the seized MEDIA within 10 business days after the  
6 warrant is executed. *Upon written request by the owner* of the seized MEDIA,  
7 the government shall provide the owner with a copy of any requested data and  
8 electronically stored information that does not constitute contraband or  
9 instrumentalities of a crime. The government shall provide such copy to the  
10 owner within a reasonable time after a written request is made. If the  
11 government withholds any data or electronically stored information requested by  
12 the owner, the government shall identify the data and information withheld and  
13 explain why it was not produced. The government and the owner shall negotiate  
14 the procedures for providing copies of data and electronically-stored information,  
15 which may require the owner to provide blank storage media at his or her  
16 expense.

17 b) *The reasonable time period for providing the owner with a copy of any requested*  
18 *data and electronically stored information includes the time required for the*  
19 *government to analyze the data and information to determine whether they*  
20 *contain contraband or instrumentalities of a crime.* Although the court has not set  
21 a specific time period for such production, the government shall provide the  
22 owner with a copy of the requested data and electronically stored information as  
23 soon as practicable under the existing circumstances.

24 c) At the conclusion of the criminal investigation and any related criminal  
25 proceedings, the government shall return the seized MEDIA, and any data and  
26 information contained thereon, to the owner, except for any MEDIA, data, and  
27 information which are contraband or instrumentalities of the crime or which are  
28 subject to forfeiture under federal or state law.

1 (Ex. C, Attachment B, ¶ VII; Ex. D, Attachment B, ¶ VII (emphasis added).)

2 Evident from this language, no sequestering of information was even considered  
3 before the search was executed, and the warrant requires that the defendant provide a  
4 “written request” for information “that does not constitute contraband or instrumentalities  
5 of a crime.” (*Ibid.*) This is exactly the opposite of what must be employed to seize  
6 electronic information; the burden is on the *government, not the owner*, to identify the  
7 incriminating software and data stored within the computer and each component of the  
8 computer that have probable cause to be seized. (IRM § 9.4.9.3.1.3 (10-05-2007).) Last,  
9 the Search Warrants are devoid of any positive statement that no work product material  
10 exists on the computer. (*Id.* § 9.4.9.3.1.2 (10-05-2007).)

11 Accordingly, these items are beyond the scope of the warrant and should be suppressed.

12 **ii. Not contraband**

13 While an exception to the rule of specificity for warrants exists for evidence of a crime that  
14 is contraband, it must be “immediately apparent” to the agent that the item is contraband. *Texas v.*  
15 *Brown*, 460 U.S. 730, 737 (1983). Documents dated 2007 or earlier or 2012 or later and medical  
16 and educational records seized by the government do not carry a brand of illegality—that is, they  
17 are not contraband *per se*. Moreover, it would not be unusual for a sole proprietor, who manages  
18 and operates the main office of her business, to maintain personal records in her secure office. In  
19 order for the agents to have immediately recognized that these documents were contraband, and not  
20 simply personal materials held by a business owner, the agents would have had to scrutinize the  
21 contents of the documents carefully, which is exactly the type of general exploratory search  
22 prohibited by the Fourth Amendment. *See Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971).  
23 Indeed, courts regularly suppress documents taken which are dated outside of the dates specified in  
24 a search warrant. *See e.g., Hill, supra*, 19 F.3d at 986, 990 [where a warrant authorized the seizure  
25 of documents dated January 1986 through May 1992, “all items dated before 1986” were properly  
26 suppressed].) Here, the government will not be able to prove the seized items were seizable as  
27 contraband. The search warrant authorized a search for specific evidence relating to an alleged tax-  
28 preparer Schedule C scheme for the tax years 2008, 2009, 2010, and 2011. This specific authority

1 cannot be subsequently expanded to include anything that, upon close inspection, could be of  
2 potential interest to the government.

3 Similarly, it would be impossible for unknown electronic information stored within a  
4 computer to be “immediately apparent” as contraband. (*See* Exs. C & D [the warrants do not  
5 specifically identify what information is to be seized from the computers].)

6 Furthermore, the search warrant inventory does not note that any evidence was seized  
7 pursuant to an exception to the Fourth Amendment warrant requirement—each item was “Seized  
8 Per Warrant.” (*See* Exs. C, D.)

9 Because this information was beyond the scope of the Search Warrants, and because these  
10 types of documents do not constitute contraband per se, this evidence should be suppressed.

### 11 **iii. Not in plain view**

12 Any reliance on the “plain view” exception to the warrant requirement is similarly  
13 unfounded. Where officers properly executing a valid search warrant observes an item “having an  
14 incriminating character that is ‘immediately apparent,’” then the item may be seized even if  
15 unnamed in the warrant. (*Hill, supra*, 19 F.3d at 990.) The U.S. Supreme Court set forth three  
16 requirements for a valid plain view seizure: (1) there must be a legitimate prior justification for the  
17 officer's presence; (2) the discovery must be “inadvertent;” and (3) it must be “immediately apparent  
18 to the police that they have evidence before them.” (*Coolidge v. New Hampshire, supra*, 403 U.S.  
19 at 466, 469.) In *Arizona v. Hicks*, the Supreme Court defined “immediately apparent” to mean that  
20 there must be probable cause to believe that the object of the intrusion is contraband or evidence of  
21 a crime. (*Arizona v. Hicks*, 480 U.S. 321 (1987).)

22 Here, the plain view exception does not apply. Specifically, the educational and medical  
23 records and personal check stubs were in a filing cabinet labeled “personal” and the computer files  
24 were unknown to the searching agents. (Hosseini Decl. ¶ 12.) Furthermore, the search warrant  
25 inventory does not note that any evidence was seized pursuant to an exception to the Fourth  
26 Amendment warrant requirement—each item was “Seized Per Warrant.” (*See* Exs. C, D.)

## 27 **E. The Custodial Interrogation Of Ms. Hosseini Nor Her Employees Was Not** 28 **Authorized By The Search Warrants And Was In Violation Of The Fifth**



1                   **Amendment**

2           The Fourth Amendment provides that “[t]he right of the people to be secure in their persons,  
3 houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and  
4 no Warrants shall issue, but upon probable cause . . . and particularly describing the . . . persons or  
5 things to be seized.” U.S. Const., Amdt. IV. Accordingly, in order to place a person into custody,  
6 absent exigent circumstances, law enforcement officers must have probable cause and a warrant,  
7 especially where inside a person’s home. *See United States v. Mendenhall*, 446 U.S. 544, 554  
8 (1980); *Payton v. New York*, 445 U.S. 573 (1980); *Steagald v. United States*, 451 U.S. 204 (1981);  
9 *Hayes v. Florida*, 470 U.S. 811 (1985); *see also Kaupp v. Texas*, 538 U.S. 626 (2003).

10           The Fifth Amendment provides that “[n]o person . . . shall be compelled in any criminal case  
11 to be a witness against himself.” (U.S. Const. amend. V.) As the U.S. Supreme Court has explained:

12                   [T]he Court adopted a set of prophylactic measures to protect a suspect's Fifth  
13 Amendment right from the “inherently compelling pressures” of custodial  
14 interrogation. The Court observed that “incommunicado interrogation” in an  
15 “unfamiliar,” “police-dominated atmosphere” involves psychological pressures  
16 “which work to undermine the individual's will to resist and to compel him to speak  
17 where he would not otherwise do so freely.” Consequently, it reasoned, “[u]nless  
adequate protective devices are employed to dispel the compulsion inherent in  
custodial surroundings, no statement obtained from the defendant can truly be the  
product of his free choice.”

18 *Maryland v. Shatzer*, 559 U.S. 98, 103, 130 S.Ct. 1213 (2010), quoting *Miranda v. Arizona*, 384  
19 U.S. 436, 86 S.Ct. 1602 (1966), (citations omitted). For this reason, the prosecution may not use  
20 statements . . . stemming from custodial interrogation unless the accused has been informed of and  
21 freely waived his or her Fifth Amendment privileges. (*Miranda v. Arizona*, 384 U.S. 436, 444–45  
22 (1966).) A *Miranda* waiver must be “voluntarily, knowingly, and intelligently” given.” (*Ibid.*) The  
23 government bears the burden of establishing a defendant waived his *Miranda* rights by a  
24 preponderance of the evidence. (*Berghuis v. Thompkins*, 560 U.S. 370, 383 (2010).) The remedy  
25 for a *Miranda* violation is exclusion of the statement. Additionally, under fruit of the poisonous tree  
26 doctrine, all resultant evidenced derived from the excluded statement must also be suppressed.

27           During the execution of the search warrant, the IRS agents restricted Ms. Hosseini’s and her  
28 employee’s movement and would not let them leave the building for most of the search, while



1 simultaneously interrogating Ms. Hosseini and her employees on an individual basis while  
 2 approximately a dozen armed law enforcement officers conducted an unlimited search of her  
 3 business offices. (Hosseini Decl. ¶¶ 3–12.) During Ms. Hosseini’s interrogation, she was confined  
 4 to her desk by the interviewing agents. (*Id.* ¶¶ 7–8.) Furthermore, Ms. Hosseini is not aware of any  
 5 policy statements or *Miranda* warnings having been read to any of her employees. (*Id.* ¶ 9.) By the  
 6 IRS definition of an “arrest,” the IRS agents used the concealed Search Warrants as justification to  
 7 arrest Ms. Hosseini and her employees to conduct custodial interrogations of each individual  
 8 without an attorney present or a knowledgeable waiver of their Fifth Amendment rights. (IRM  
 9 § 9.4.12.4 (12-10-2001).<sup>11</sup>) The Search Warrants never conferred authority to arrest anyone.

10 Thus, for this reason, all testimonial statements of Ms. Hosseini or her employees should be  
 11 suppressed for violating the Fifth Amendment and exceeding the scope of the search warrants.  
 12 Additionally, any evidence derivatively obtained from the statements of Ms. Hosseini or her  
 13 employees should also be suppressed as fruit of the poisonous tree and the government should bear  
 14 the burden of showing that all evidence to be introduced at trial was obtained independent of any  
 15 statements by Ms. Hosseini or her employees.

## 16 V. CONCLUSION

17 For the reasons discussed above, Defendant Ms. Hosseini respectfully requests this Court to  
 18 suppress the evidence obtained from the search of her business, Rapid Return Tax Services, because  
 19 the searching agents intentionally and deliberately violated the Rule 41 presentment requirement,  
 20 which resulted in prejudice to Ms. Hosseini, and alternately to suppress documents dated prior to  
 21 2008 or post-2011 and any seized medical or educational records of Ms. Hosseini or her children  
 22 because those items are outside the scope of the Search Warrants.

23 Respectfully submitted this 7th day of June 2017.

24 /s/ Robert E. Barnes  
 25 ROBERT E. BARNES  
 26 Attorney for Defendant  
 Margarita Hosseini

27 \_\_\_\_\_  
 28 <sup>11</sup> “Arrest means to take custody of a person accused of a crime for the purpose of holding or  
 detaining him/her to answer a criminal charge.”

**DECLARATION OF MARGARITA HOSSEINI IN SUPPORT OF DEFENDANT**

**MARGARITA HOSSEINI'S MOTION TO SUPPRESS**

I, Margarita Hosseini, declare as follows:

1. I am the defendant in this case, and I am familiar with the files, pleadings, and facts of my case. If called upon as a witness I could and would competently testify to the following facts based upon my own personal knowledge or information and belief.

2. I am the owner of Rapid Return Tax Services. Often, I work directly from my office located in Converse, Texas. On March 8, 2012, I was working from the Converse office. Because I rent the offices I often leave my personal and/or sensitive belongings in the office, including but not limited to financial, medical, and educational records that have nothing to do with my business preparing tax returns.

3. On March 8, 2012, when the IRS raided my offices, the IRS agents never provided a complete copy of the search warrant nor read the warrant to me personally or to any of my employees at the Converse office or the San Antonio office. I asked for a copy of the search warrant at or around approximately 6:00 p.m. on March 8, 2012, and the agent I asked quickly conferred with his fellow agents in voices too quiet to overhear and then provided me with only the first page of the search and seizure warrant. Before they left, they asked me to give the one page I had been provided back to them, but I told them that I had already given it to my husband, David, and he left the building with it.

4. While the search was going on I was confused about what was going on and did not know that there was a limit to what the IRS agents could take or do that day. I was actually told that my office was the "property of the IRS" by one of the agents. This appears on the video recording of my interrogation at approximately 13:18:20. Because I was under the impression that the IRS agents could take whatever they wanted, I did not object when they started asking me and my employees questions and participated with the interview.

5. When the IRS agents initially entered my office, the IRS agents tried to get David and I to turn off the video cameras because it was IRS "policy," but David refused. Eventually,

1 about twenty minutes after the IRS agents entered my office, the IRS agents evidently changed  
2 their mind and told my husband, David, the camera system had to be turned off for the “officers’  
3 safety.” This actually made me and David very nervous and uncomfortable and David asked the  
4 officer if we were going to be hurt. My employees looked uncomfortable as well.

5 6. After the IRS agents forced David to turn off the video camera system, the IRS  
6 agents’ started acting worse than they had before.

7 7. Before the camera system was turned off, I was already being interrogated by two  
8 agents in my office. I was never told that I could leave and believed that I was not allowed to, and,  
9 as I already explained, I did not know there was a limit to what the IRS could take or do, so I  
10 answered their questions as best as I could. I was told that if I did not confess to the crime then I  
11 would go to jail for a “very, very long time” and the agents kept telling me that smart people  
12 cooperate with the IRS. The IRS agents put documents in front of me that showed me other tax  
13 preparers that went to jail for many years and kept telling me that they had a video of me  
14 admitting to a crime and that a jury would convict me because of that video, that I really had no  
15 choice but to cooperate. I had no idea what they were talking about, but they kept pushing me and  
16 pushing me. The agents told me that they “do this shit all the time” and that I needed to “fucking  
17 cooperate.” Eventually, one agent began telling me that I was pissing him off and keeping him  
18 from his family, so I started to think how I can just make this one man happy and keep him from  
19 coming after me. I just wanted to tell him what he wanted to hear, but I was not going to tell him I  
20 did something that I did not do.

21 8. After the camera system was turned off, the agents interviewing me became even  
22 more mean and began threatening me more and more. The officers kept pushing me and  
23 threatening me for approximately three more hours after the video cameras were turned off, for  
24 about three and a half hours total. This whole time I was in the corner of my office behind my  
25 desk with two IRS agents with guns and bulletproof vests between me and the only door out of the  
26 room. Finally, I couldn’t take the threats anymore and they wouldn’t even review any returns that  
27 they felt had issues with me. I had to stop by demanding an attorney and they even kept on asking  
28 “why, are you guilty? Cooperate and you won’t go to jail.” I just reiterated I wanted to clear up

1 their concerns and cooperate but, if cooperating was admitting to what I didn't do, I wanted an  
2 attorney.

3 9. When I watched the recordings of the search, I learned that the IRS agents were  
4 also asking all my employees questions. However, I noticed that the IRS agents never read any of  
5 my employees the same "policy statement" that they read to me, which told me that I could hire  
6 an attorney and that what I said could be used against me. One of the employees tried to go to the  
7 bathroom and was escorted to the bathroom door by an IRS agent who then stood guard by the  
8 door. Also, in the San Antonio office, the IRS agents were reviewing tax returns with my manager  
9 of that office, Theresa, but they refused to do so when speaking with me.

10 10. The IRS agents would not let me or my employees leave the office. Eventually,  
11 because I was so stressed, really wanted a cigarette, and the IRS agents wouldn't let me leave, I  
12 just began smoking a cigarette in my office. Once I started smoking, an IRS agent let me outside  
13 under the condition that I agree to let someone supervise me while I smoked my cigarette. They  
14 wouldn't leave me alone.

15 11. Finally, I got so fed up with how the IRS agents were treating everyone that I told  
16 all of my employees to go home.

17 12. By the end of the search, the IRS agents had searched me and my employees'  
18 purses and David's personal bag. The IRS agents seized my and my children's medical records,  
19 my children's educational records, and my personal check stubs from a black file cabinet in the  
20 back of the Converse office that was labeled "personal." The IRS agents also told me they would  
21 make a copy of all information on all the computers in the office. The IRS agents basically took  
22 everything.

23 13. Finally, years after the IRS raided my office, Barnes Law noticed that the search  
24 warrant I had been provided was incomplete and requested a complete copy of the search warrant.  
25 I was never provided with a complete copy before then.

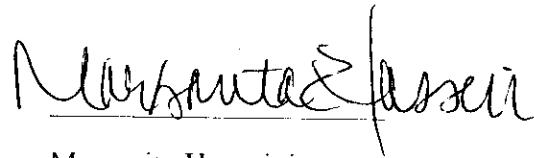
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I declare under penalty of perjury that the foregoing is true and correct. Executed on this  
7th day of June 2017 in Converse, Texas.



Margarita Hosseini

**DECLARATION OF TONY NASSER, ESQ. IN SUPPORT OF DEFENDANT**

**MARGARITA HOSSEINI'S MOTION TO SUPPRESS**

I, Tony Nasser, Esq., declare as follows:

14. I am an attorney at law duly authorized to practice law before the Western District of Texas, and I am an attorney of record for the Plaintiff in this instant case. I am familiar with the files, pleadings, and facts in this case, and if called upon as a witness I could and would competently testify to the following facts based upon my own personal knowledge or information and belief.

15. A true and correct copy of the application for a search warrant prepared by IRS Special Agent Juan Robles to search the office of Rapid Return Tax Services located at 8275 FM-78, Suite 5, Converse, Texas 78109 is attached hereto as Exhibit A.

16. A true and correct copy of the application for a search warrant prepared by IRS Special Agent Juan Robles to search the office of Rapid Return Tax Services located at 1313 SE Military Drive, Suite 103, San Antonio Texas, 78214 is attached hereto as Exhibit B.

17. A true and correct copy of the executed search and seizure warrant that was returned to the U.S. Magistrate Judge for Rapid Return Tax Services' Converse office is attached hereto as Exhibit C.

18. A true and correct copy of the executed search and seizure warrant that was returned to the U.S. Magistrate Judge for Rapid Return Tax Services' San Antonio office is attached hereto as Exhibit D.

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