

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-against- :

11 Cr. 16 (CS)

DUNSTON FOOTE, et al., :

Defendants. :

----- X

**MEMORANDUM OF LAW RESPONDING TO
DEFENDANTS' MOTION TO SUPPRESS EVIDENCE**

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MEMORANDUM OF LAW RESPONDING TO DEFENDANTS' MOTION

The Government respectfully submits this Memorandum in Opposition to the pre-trial motion filed by the defendants to suppress "all evidence derived as a result of the August 4, 2010 wiretap authorization and the authorizations thereafter, on the ground that the application(s) failed to [] comply with the 'other investigative procedures' requirement." (Br. 1). For the reasons set forth below, the defendants' motion to suppress is meritless and should be denied without a hearing.

BACKGROUND

A. August 4, 2010 Affidavit

On August 4, 2010, the Government made an application to United States District Judge Cathy Seibel for authorization to intercept wire communications occurring over two cellular telephones utilized by Dunston Foote ("Target Cellphones 1 and 2"), pursuant to Title 18, United States Code, Section 2518. In its application, the Government identified its expectation that the wiretap intercepts would reveal: (i) the nature, extent and methods of operation of the known and unknown targets' narcotics-trafficking business; (ii) the identities of

the known and unknown targets, their accomplices, aiders and abettors, co-conspirators and participants in their illegal activities; (iii) the time and place of the receipt and distribution of contraband and money involved in those activities; (iv) the locations of items used in furtherance of those activities; (v) the existence and locations of records relating to narcotics trafficking; (vi) the location and source of resources used to finance their illegal activities; and (vii) the location and disposition of the proceeds from those activities. (8/4/10 Alcivar Redacted Aff. ¶ 14 (attached as Exhibit A)). In support of its application, the Government submitted a 47-page affidavit of Drug Enforcement Administration (“DEA”) Task Force Officer (“TFO”) Walter Alcivar.

In his affidavit, TFO Alcivar detailed information that had been gathered about the narcotics trafficking activity of Foote and his co-conspirators and set forth information constituting probable cause that Foote and his co-conspirators were: (i) involved in the distribution of multi-kilogram quantities of marijuana and cocaine; and (ii) using Target Cellphones 1 and 2 in connection with their narcotics trafficking. (*Id.* ¶¶ 16-45)¹.

In a 31-paragraph section of the affidavit at pages 27-41, TFO Alcivar set forth the basis for his conclusion that normal investigative procedures would be inadequate or unlikely to achieve the objectives of the investigation, and that electronic surveillance would be necessary. TFO Alcivar specifically discussed: (i) the use and limitation of physical surveillance, (*id.* ¶¶ 57-63); (ii) the possibility of arresting Foote and his co-conspirators, (*id.* ¶¶ 64-66); (iii) the use and limitation of confidential informants, (*id.* ¶¶ 67-73); (iv) the possibility of using

¹ The defendants do not argue that there was insufficient probable cause to believe that Foote and his co-conspirators were using Target Cellphones 1 and 2 to engage in narcotics trafficking.

undercover officers, (*id.* ¶¶ 74-75); (v) the use and limitations of pen register and telephone toll records, (*id.* ¶ 76); (vi) the possibility of interviewing and subpoenaing witnesses, (*id.* ¶¶ 77-78); and (vii) the possibility of executing search warrants, (*id.* ¶¶ 79-81).

The application was granted by the Court on August 4, 2010.

B. September 3, 2010 Affidavit

On September 3, 2010, TFO Alcivar sought authorization for the continued interception of communications on Target Cellphone 2 and authorization for the original interception of communications on a new cellular telephone -- Target Cellphone 3. (9/3/10 Alcivar Redacted Aff. ¶ 2 (attached as Exhibit B)).

In an approximately 16-page, 32-paragraph section of the affidavit at pages 35-50, TFO Alcivar set forth the basis for his conclusion that normal investigative procedures would be inadequate or unlikely to achieve the objectives of the investigation, and that electronic surveillance would be necessary. Specifically, TFO Alcivar discussed information learned during the initial period of interception and the need to intercept communications on Target Cellphones 2 and 3, stating, among other things, that: (i) the interceptions had not yet identified all the members of the Foote organization, the locations of all of the stash houses, the sources of financing and the locations of proceeds from narcotics trafficking, (*id.* ¶ 59); (ii) pole camera surveillance did not reveal the type or quantity of narcotics at the Foote and Seabring Houses, (*id.* ¶ 66); (iii) in person meetings of Foote and his co-conspirators had occurred indoors, (*id.* ¶ 68); (iv) the arrest of Foote and/or co-conspirators identified from electronic surveillance could jeopardize law enforcement's ability to determine their suppliers, (*id.* ¶ 73); (v) the CI had been marginalized because officers learned that the CI had been engaging in unauthorized, narcotics

related communications with Foote, (Exhibit C, ¶ 78)²; and (vi) while there was information that would likely allow the DEA to obtain search warrants for the Foote and Seabring Houses, executing search warrants at those locations would alert the Foote organization to the existence of the investigation prior to the DEA being able to determine the full scope of the organization's activities. (*Id.* ¶ 85).

The application was granted by the Court on September 3, 2010.

C. October 1, 2010 Affidavit

On October 1, 2010, TFO Alcivar sought authorization for the renewed interception of communications on Target Cellphones 1, 2 and 3 and authorization for the original interception of communications on a new cellular telephone -- Target Cellphone 4. (10/1/10 Alcivar Redacted Aff. ¶ 2 (attached as Exhibit D)).

In an approximately 20-page, 34-paragraph section of the affidavit at pages 55-74, TFO Alcivar set forth the basis for his conclusion that normal investigative procedures would be inadequate or unlikely to achieve the objectives of the investigation, and that electronic surveillance would be necessary. Specifically, TFO Alcivar discussed information learned during the two period of interception and the need to intercept communications on Target Cellphones 1-4, stating, among other things, that: (i) the interceptions had not yet identified all the members of the Foote organization, the locations of all of the stash houses, the sources of financing and the locations of proceeds from narcotics trafficking, (*id.* ¶ 80); (ii) pole camera surveillance did not reveal the type or quantity of narcotics that officers believed were being carried in large packages into and out of the Foote and Seabring Houses, (*id.* ¶ 86); (iii) Foote

² The copy of Agent Alcivar's September 3, 2010 Affidavit produced in discovery redacted paragraph 78.

and his co-conspirators were concerned about and discussing the likelihood that law enforcement officers were surveilling them in person meetings of Foote and his co-conspirators had occurred indoors, (*id.* ¶ 89(a)-©; (iv) the arrest of a co-conspirator, as occurred in the case of one individual, would lead to the destruction of evidence and the cessation of operations at a particular location, (*id.* ¶ 94); (v) the CI continued to be marginalized because officers learned that the CI had engaged in unauthorized, narcotics related communications with Foote, (Exhibit E, ¶ 101)³; and (vi) while there was information that would likely allow the DEA to obtain search warrants for two new additional locations, executing search warrants at those locations would alert the Foote organization to the existence of the investigation prior to the DEA being able to determine the full scope of the organization's activities. (*id.* ¶¶ 108-09).

The application was granted by the Court on October 1, 2010.

D. October 29, 2010 Affidavit

On October 29, 2010, Special Agent Mark Kadan sought authorization for the continued interception of communications on Target Cellphones 1-4. (10/29/10 Kadan Redacted Aff. ¶ 2 (attached as Exhibit F)).

In an approximately 22-page, 37-paragraph section of the affidavit at pages 76-97, Agent Kadan set forth the basis for his conclusion that normal investigative procedures would be inadequate or unlikely to achieve the objectives of the investigation, and that electronic surveillance would be necessary. Specifically, Agent Kadan discussed information learned during the prior periods of interception, stating, among other things, that: (i) the interceptions had not yet identified all the members of the Foote organization, the locations of all of the stash

³ The copy of Agent Alcivar's October 1, 2010 Affidavit produced in discovery redacted paragraph 101.

houses, the sources of financing and the locations of proceeds from narcotics trafficking, in part because the Foote organization made deliveries inside and near buildings where physical surveillance is challenging and used rental cars to evade surveillance, (*id.* ¶ 126); (ii) while pole camera surveillance had identified additional members of the Foote organization, pole camera surveillance did not reveal the type or quantity of narcotics that officers believed were being carried in large packages into and out of the Foote and Scabring Houses, (*id.* ¶¶ 133-34); (iii) Foote and his co-conspirators were still very much concerned about and discussing the likelihood that law enforcement officers were surveilling them, (*id.* ¶ 135(a)-(e)); (iv) the recent arrest of an individual in the same duplex as one of the co-conspirators had led to Foote removing incriminating evidence from one of his phone, (*id.* ¶ 140); (v) the CI continued to be marginalized because officers learned that the CI had engaged in unauthorized, narcotics related communications with Foote, (Exhibit G, ¶ 148)⁴; (vi) although an undercover officer (“UC”) had purchased marijuana from two street level dealers in the Foote organization, there was no expectation that the UC would be able to meet with and purchase marijuana from Foote’s supplier, (10/29/10 Kadan Redacted Aff. ¶¶ 150-53); and (vii) while there was information that would likely allow the DEA to obtain search warrants for five locations, executing search warrants at those locations would alert the Foote organization to the existence of the investigation prior to the DEA being able to determine the full scope of the organization’s activities. (*Id.* ¶¶ 157-58).

The application was granted by the Court on October 29, 2010.

⁴ The copy of Agent Kadan’s October 29, 2010 Affidavit produced in discovery redacted paragraph 148.

E. November 12, 2010 Affidavit

On November 12, 2010, Special Agent Mark Kadan sought authorization for the original interception of communications on Target Cellphone 5. (11/12/10 Kadan Redacted Aff. ¶ 7 (attached as Exhibit H)). In his affidavit, Agent Kadan detailed information that had been gathered about the narcotics trafficking activity of Rodney Mushington and his co-conspirators and set forth information constituting probable cause that Mushington and his co-conspirators were: (i) involved in the distribution of multi-kilogram quantities of marijuana and cocaine; and (ii) using Target Cellphone 5 in connection with their narcotics trafficking. (*Id.* ¶¶ 16-28).

In an approximately 25-page, 38-paragraph section of the affidavit at pages 27-51, Agent Kadan set forth the basis for his conclusion that normal investigative procedures would be inadequate or unlikely to achieve the objectives of the investigation, and that electronic surveillance would be necessary. Specifically, Agent Kadan discussed information learned during the prior periods of interception, and stated, among other things, that: (i) the interceptions had not yet identified all the members of the Foote organization, the locations of all of the stash houses, the sources of financing and the locations of proceeds from narcotics trafficking, in part because the Foote organization made deliveries inside and near buildings where physical surveillance is challenging and used rental cars to evade surveillance, (*id.* ¶ 36); (ii) while pole camera surveillance had identified an additional member of the Foote organization, pole camera surveillance did not reveal the type or quantity of narcotics that officers believed were being carried in large packages into and out of the Foote and Seabring Houses, (*id.* ¶ 44); (iii) visual surveillance had proven ineffective on one occasion while attempting to surveil the co-conspirators, (*id.* ¶ 44(a)); (iv) Foote and his co-conspirators were still very much concerned about and discussing the likelihood that law enforcement officers were surveilling them, (*id.* ¶

45(a)-(f)); (v) the recent arrest of an individual in the same duplex as one of the co-conspirators had led to Foote removing incriminating evidence from one of his phone, (*id.* ¶ 51(b)); (v) the CI continued to be marginalized because officers learned that the CI had engaged in unauthorized, narcotics related communications with Foote, (Exhibit I, ¶ 55 n.3)⁵; (vi) although an undercover officer (“UC”) had purchased marijuana from two street level dealers in the Foote organization, there was no expectation that the UC would be able to meet with and purchase marijuana from Foote’s supplier, (11/12/10 Kadan Redacted Aff. ¶¶ 60-63); and (vii) while there was information that would likely allow the DEA to obtain search warrants for approximately six locations, executing search warrants at those locations would alert the Foote organization to the existence of the investigation prior to the DEA being able to determine the full scope of the organization’s activities. (*Id.* ¶¶ 67-69).

The application was granted by the Court on November 12, 2010.

E. November 24, 2010 Affidavit

On November 24, 2010, Special Agent Mark Kadan sought authorization for the continued interception of communications on Target Cellphone 2. (11/24/10 Kadan Redacted Aff. ¶ 2 (attached as Exhibit J)).

In an approximately 22-page, 37-paragraph section of the affidavit at pages 27-46, Agent Kadan set forth the basis for his conclusion that normal investigative procedures would be inadequate or unlikely to achieve the objectives of the investigation, and that electronic surveillance would be necessary. Specifically, Agent Kadan discussed information learned

⁵ The copy of Agent Kadan’s November 12, 2010 Affidavit produced in discovery redacted footnote 3. The page containing the footnote is attached as Exhibit I, but is still redacted in part.

during the prior periods of interception, and stated, among other things, that: (i) the interceptions had not yet identified all the members of the Foote organization, the locations of all of the stash houses, the sources of financing and the locations of proceeds from narcotics trafficking, in part because the Foote organization made deliveries inside and near buildings where physical surveillance is challenging and used rental cars to evade surveillance, (*id.* ¶¶ 30-31); (ii) while pole camera surveillance had identified an additional member of the Foote organization, pole camera surveillance did not reveal the type or quantity of narcotics that officers believed were being carried in large packages into and out of three different locations, (*id.* ¶¶ 36-39); (iii) Foote and his co-conspirators were still very much concerned about and discussing the likelihood that law enforcement officers were surveilling them, (*id.* ¶ 40(a)-(b)); (v) arrests of Foote and “Frankie” were not likely to lead to the individuals who were supplying Foote and “Frankie” with wholesale amount of narcotics, (*id.* ¶ 57); (v) the CI continued to be marginalized because officers learned that the CI had engaged in unauthorized, narcotics related communications with Foote, (Exhibit K, ¶ 49 n.3)⁶; (vi) although an undercover officer (“UC”) had purchased marijuana from two street level dealers in the Foote organization, there was no expectation that the UC would be able to meet with and purchase marijuana from Foote’s supplier, (11/24/10 Kadan Redacted Aff. ¶ 54); and (vii) while there was information that would likely allow the DEA to obtain search warrants for six previously mentioned locations and an additional seventh location, executing search warrants at those locations would alert the Foote organization to the existence of the investigation prior to the DEA being able to determine the full scope of the organization’s activities. (*Id.* ¶ 59).

⁶ The copy of Agent Kadan’s November 24, 2010 Affidavit produced in discovery redacted footnote 3.

The application was granted by the Court on November 24, 2010.

F. December 14, 2010 Affidavit

On December 14, 2010, TFO Alcivar sought authorization for: (i) the continued interception of communications on Target Cellphone 5; and (ii) authorization for the original interception of communications on Target Cellphones 6-7. (12/14/10 Alcivar Redacted Aff. ¶ 3 (attached as Exhibit L)). In his affidavit, TFO Alcivar detailed information that had been gathered about the narcotics trafficking activity of Rodney Mushington, Steven Richard and their co-conspirators and set forth information constituting probable cause that Mushington, Richard and their co-conspirators were: (i) involved in the distribution of large quantities of narcotics; and (ii) using Target Cellphones 5-7 in connection with their narcotics trafficking. (*Id.* ¶¶ 15-64).

In an approximately 29-page, 54-paragraph section of the affidavit at pages 62-90, TFO Alcivar set forth the basis for his conclusion that normal investigative procedures would be inadequate or unlikely to achieve the objectives of the investigation, and that electronic surveillance would be necessary. Specifically, TFO Alcivar discussed information learned during the prior periods of interception, and stated, among other things, that: (i) the interceptions had not yet identified all the members of the Foote organization, the locations of all of the stash houses, the sources of financing and the locations of proceeds from narcotics trafficking, the source of firearms for the organization, in part because the Foote organization made deliveries inside and near buildings where physical surveillance is challenging and used rental cars to evade surveillance, (*id.* ¶¶ 72-74); (ii) while law enforcement had identified an additional target subject Steven Richard, pole camera and visual surveillance did not reveal the type or quantity of narcotics that officers believed were being carried in large packages into and out of three different locations, (*id.* ¶¶ 77-80); (iii) Mushington, Foote and their co-conspirators were still

very much concerned about and discussing the likelihood that law enforcement officers were surveilling them, (*id.* ¶ 81(a)-(b)); (iv) surveillance of the co-conspirators on the road or through cell site and GPS tracking had proven fruitful and useful, but only provided limited information, (*id.* ¶¶ 83-84); (v) law enforcement had searched the trash of three locations on multiple occasions and while obtaining some information, this technique would be limited in its use because of the location of the trash receptacles, (*id.* ¶¶ 87-90);(vi) arrests of conspirators would not necessarily result in the identification of all of the Foote organization's suppliers and could well lead to the destruction of evidence , (*id.* ¶¶ 91-95); (vii) the CI continued to be marginalized because officers learned that the CI had engaged in unauthorized, narcotics related communications with Foote, (Exhibit M, ¶ 96 n.8)⁷; (viii) although an undercover officer ("UC") had purchased marijuana from two street level dealers in the Foote organization, there was no expectation that the UC would be able to meet with and purchase marijuana from Foote's supplier, (12/14/10 Alcivar Redacted Aff. ¶¶ 101-02); and (ix) recent search warrants had been executed and law enforcement would be using information obtained from those searches as part of its investigation, but had learned that often packages were sent using fictitious addresses. (*Id.* ¶¶ 110-11).

The application was granted by the Court on December 12, 2010.

G. December 22, 2010 Affidavit

On December 22, 2010, Agent Kadan sought authorization for the continued interception of communications on Target Cellphone 2. (12/22/10 Redacted Aff. ¶ 2 (attached as Exhibit N)).

⁷ The copy of IFO Alcivar's December 12, 2010 Affidavit produced in discovery redacted footnote 8.

In an approximately 28-page, 48-paragraph section of the affidavit at pages 41-68, Agent Kadan set forth the basis for his conclusion that normal investigative procedures would be inadequate or unlikely to achieve the objectives of the investigation, and that electronic surveillance would be necessary. Specifically, Agent Kadan discussed information learned during the prior periods of interception, and stated, among other things, that: (i) the interceptions had not yet identified all the members of the Foote organization, the locations of all of the stash houses, the sources of financing and the locations of proceeds from narcotics trafficking, the source of firearms for the organization, in part because the Foote organization made deliveries inside and near buildings where physical surveillance is challenging and used rental cars to evade surveillance, (*id.* ¶¶ 53-55); (ii) while law enforcement had identified additional target subjects, pole camera and visual surveillance did not reveal the type or quantity of narcotics that officers believed were being carried in large packages into and out of three different locations, (*id.* ¶¶ 59-62); (iii) Foote and his co-conspirators were still very much concerned about and discussing the likelihood that law enforcement officers were surveilling them, (*id.* ¶ 66(a)); (iv) surveillance of the co-conspirators on the road or through cell site and GPS tracking had proven fruitful and useful, but only provided limited information, (*id.* ¶¶ 63-64); 70(a); (v) law enforcement had searched the trash of three locations on multiple occasions and while obtaining some information, this technique would be limited in its use because of the location of the trash receptacles and the need for real time information, (*id.* ¶¶ 73-76);(vi) arrests of conspirators would not necessarily result in the identification of all of the Foote organization's suppliers and could well lead to the destruction of evidence , (*id.* ¶¶ 77-80); (vii) the CI continued to be marginalized because officers learned that the CI had engaged in unauthorized, narcotics related

communications with Foote, (Exhibit O), ¶ 81 n.5)⁸; (viii) although an undercover officer (“UC”) had purchased marijuana from two street level dealers in the Foote organization, there was no expectation that the UC would be able to meet with and purchase marijuana from Foote’s supplier, (12/14/10 Alcivar Redacted Aff. ¶¶ 86-87); (ix) recent search warrants had been executed and law enforcement had used information obtained from those searches as part of its investigation, (*id.* ¶¶ 93-96); and (x) prior T-III monitoring has resulted in significant seizures, but the organization had continued to change their shipping methods and agents were still attempting to identify all the sources of supply. (*id.* ¶¶ 97).

The application was granted by the Court on December 24, 2010.

ARGUMENT

I. The Affidavits Properly Set Forth the Inadequacy of Other Investigative Procedures.

The defendants contend that the August 4, 2010 Affidavit (and the subsequent affidavits) failed to establish a prerequisite for the issuance of a wiretap order, to wit, that other investigative procedures had been tried and failed or appeared too dangerous or unlikely to succeed. *See* 18 U.S.C. Section 2518(1)(c). Specifically, the defendants assert, in large part, that because the CI “had already joined and penetrated the inner circle of the ‘Foote Organization,’” the Government failed to make the requisite statutory showing that it exhausted other investigative procedures. Their argument is meritless.

⁸ The copy of Agent Kadan’s December 24, 2010 Affidavit produced in discovery redacted footnote 5.

A. Applicable Law

1. The Wiretap Statute's Requirements

Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2522 (hereinafter "Title III") "permits courts to authorize electronic surveillance by Government officers in specified situations." *Dalia v. United States*, 441 U.S. 238, 240 (1979). Before authorizing a wiretap under Title III, a judicial officer must find that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous." 18 U.S.C. § 2518(3)(c); *see also* 18 U.S.C. § 2518(1)(c) (requiring an application for a wiretap to include "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous").

A court must take a "common sense approach" to this requirement. *United States v. Concepcion*, 579 F.3d 214, 218 (2d Cir. 2009). Thus, although "generalized and conclusory statements that other investigative procedures would prove unsuccessful" do not suffice, "the Government is not required to exhaust all conceivable investigative techniques before resorting to electronic surveillance." *Id.* (internal quotation marks omitted). "[T]he statute only requires that the agents inform the authorizing judicial officer of the nature and progress of the investigation and of the difficulties inherent in the use of normal law enforcement methods." *Id.* (quoting *United States v. Diaz*, 176 F.3d 52, 111 (2d Cir. 1999)).

"[T]here is no requirement that any particular investigation procedures be exhausted before a wiretap may be authorized." *United States v. Young*, 822 F.2d 1234, 1237 (2d Cir. 1987). "Merely because a normal investigative technique is theoretically possible, it does not follow that it is likely. What the provision envisions is that the showing be tested in a practical

and common sense fashion.” S. Rep. No. 1097, 90th Cong., 2d Sess., *reprinted in* 1968 U.S.C.C.A.N. 2190 (citations omitted); *see also United States v. Ruggiero*, 726 F.2d 913, 924 (2d Cir. 1984) (affidavits in support of wiretap applications are viewed in a common sense and realistic fashion).

2. Standard Of Review For Wiretap Authorizations

A reviewing court should not lightly substitute its judgment for that of the authorizing judge, as it must grant “considerable deference” to the district court judge who authorized the wiretap. *United States v. Concepcion*, 579 F.3d at 217 & n.1; *accord United States v. Yannotti*, 541 F.3d 112, 124 (2d Cir. 2008); *United States v. Diaz*, 176 F.3d at 110; *United States v. Solomonyan*, 452 F. Supp. 2d at 334, 344 (S.D.N.Y. 2006) (“[T]he issuing court’s determination of probable cause is entitled to ‘substantial deference’ . . .”). The proper focus of the inquiry is on whether the “issuing judicial officer had a substantial basis for the finding of probable cause.” *United States v. Concepcion*, 579 F.3d at 217 n.1.

The reviewing court’s role is to “decide if the facts set forth in the application were minimally adequate to support the determination that was made.” *Id.* at 217; *United States v. Yannotti*, 541 F.3d at 124; *see also United States v. Miller*, 116 F.3d 641, 663 (2d Cir. 1997). “[I]n determining the sufficiency of the application a reviewing court must test it in a practical and commonsense manner.” *United States v. Torres*, 901 F.2d 205, 231 (2d Cir. 1990) (quoting authority omitted). “[A]ny doubt about the existence of probable cause must be resolved in favor of upholding the issuing court’s order.” *United States v. Solomonyan*, 452 F. Supp. 2d at 344.

In reviewing alleged omissions and false statements regarding alternative investigative techniques in a wiretap application, the reviewing court applies *Franks*, evaluating whether the movant carried its burden of showing that a technique was deliberately omitted or

misstated and material to the statutory necessity finding. *United States v. Bianco*, 998 F.2d at 1112, 1127 (2d Cir. 1993); *see also United States v. Cartagena*, 593 F.3d 104, 110-11 (1st Cir. 2010).⁹

B. Discussion

1. Mushington's Allegation That The Affidavit Contains False Statements About the CI's Knowledge of the Foote Organization is Unfounded

The fallacy of Mushington's alternative investigative techniques argument is demonstrated by a review of the affidavits. In challenging the affidavits' description of the use of a confidential informant, Mushington argues (on behalf of himself and the other defendants) that the "successful infiltration of the 'Foote Organization' by the Task Force before the application for wiretap authorization clearly demonstrates that alternative techniques were successful . . . [because] the confidential informant had distributed both marijuana and cocaine himself, and had participated in consensual monitored conversations with core members of the conspiracy." (Br. 12-13).

Missing from Mushington's argument are TFO Alcivar's statements that "[i]ntercepted calls are likely to be useful in identifying co-conspirators who are *unknown to the CI* . . . [and] at this time there is no known confidential source that can provide information about *all* of the Foote Organization's sources of supply and their locations," (Exh. A, ¶¶ 67, 70

⁹ Although the defendants contend that the "August 4, 2010 affidavit and other declarations [including an AUSA affirmation] submitted to support the wiretaps were disingenuous, misleading and false because they failed to [satisfy the necessity requirement]," (Br. 8), the defendants do not rely on *Franks v. Delaware*, 438 U.S. 154 (1978). In essence, defendants argue that the affidavits are false because they disagree with TFO Alcivar and Agent Kadan's conclusion with regard to other investigative procedures. Indeed, the defendant's brief and counsel's declaration rely exclusively on the facts set forth in the affidavits.

(emphasis added)). Indeed, Mushington – a core member of the conspiracy – is not identified at all in the initial affidavit.

Here, in a marijuana conspiracy involving the distribution of thousands of pounds of marijuana by more than two dozen charged defendants from multiple locations, the CI had: (i) purchased only one pound of marijuana from Foote, (*id.* ¶¶ 32-37), at the CI's residence prior to the affidavit; and (ii) advised law enforcement that the Foote residence was being used to conduct narcotics activities.

Contrary to the defendants' argument that the CI had thoroughly penetrated the Foote organization, the affidavits and the Indictment make clear that electronic surveillance was necessary and instrumental in identifying: (i) the multiple locations and numerous members of the Foote organization unknown to law enforcement in early August 2010, (*compare* Exh. A ¶¶ 3, 79 (listing nine target subjects and the Foote residence) *with* Exh. N ¶¶ 3, 92 (listing over 80 target subjects and multiple locations); and (ii) the scope of the organization's activities – which according to the CI were many multiples of the one pound he purchased in July 2010.¹⁰ (*See* Exh. A, ¶ 20 "According to the CI, Foote received between one to eight packages [containing approximately 30 to 60 pounds] of marijuana each week."); *see, e.g., United States v. Serrano*, 450 F. Supp. 2d 227, 240 (S.D.N.Y. 2006) (rejecting defendant's claims that pre-wiretap techniques were successful in collecting evidence against him when measured against the objectives of the criminal investigation).

¹⁰ While stating that TFO Alcivar's statement that the CI has not participated in the day to day business of the Foote organization is "not true," (Ricco Decl. at 13), the defendants fail to meet their burden that TFO Alcivar's statement constituted an "intentional or reckless material misrepresentation[] [or] omission[] in the wiretap application[]." *Franks v. Delaware*, 438 U.S. at 155-56; *United States v. Bianco*, 998 F.2d 1112, 1125 (2d Cir. 1993).

Further, as the affidavits subsequent to the August 4, 2010 affidavit make clear, the CI's role in the investigation was marginalized because law enforcement learned through the wiretap on Target Cellphone 2 that the CI had engaged in unauthorized, narcotics-related communications with Foote. (*See* Exhs. C ¶ 78; E ¶ 101; G ¶ 148; I ¶ 55 n.3; K ¶ 49 n.3; M ¶ 96 n.3; O ¶ 81 n.5). As a result, the CI's unauthorized actions, in part, necessitated continued wiretaps.

2. TFO Alcivar Did Not Miscalc The Court About The Fact That Other Alternative Investigative Procedures Had Been Tried Or Appeared Unlikely to Succeed if Tried

In a lengthy twenty-five page portion of the August 4, 2010 affidavit, TFO Alcivar detailed the investigative steps that had been undertaken or contemplated during the investigation of the Foote organization.

First, he discussed the use of surveillance through the pole camera and physical surveillance of the Foote residence, (Exh. A, ¶¶ 58,60), and explained why physical surveillance would be a limited investigative tool. (*Id.* ¶ 61). Second, TFO Alcivar discussed why attempting to arrest members of the Foote organization likely would not be a productive investigative step. (*Id.* ¶¶ 64-66). Third, TFO Alcivar set forth why information from the CI and another individual would not reveal all of the sources of supply of the Foote organization or all aspects of its illegal activities. (*Id.* ¶¶ 67-73). Fourth, Alcivar discussed why there was no realistic possibility that an undercover agent would be able to gain access to Foote's source of supply. (*Id.* ¶ 75). Fifth, TFO Alcivar discussed that phone records had been used in the investigation but why phone records – due to the inability to identify with certainty the individuals having the conversation or the substance of the conversation – would not reveal the structure of the Foote organization. (*Id.* ¶ 76). Sixth, TFO Alcivar discussed why grand jury subpoenas and witness interview would

provide insufficient information in identifying the members of the Foote organization and their respective involvement in the narcotics trafficking activities. (*Id.* ¶¶ 77-78). Finally, TFO Alcivar explained why, even though the investigation had revealed information that would likely enable agents to obtain a search warrant for the Foote residence, executing a search warrant would harm the investigation. (*Id.* ¶¶ 79-81).

Unlike *United States v. Lilla*, 699 F.2d 99 (2d Cir. 1983), where the officer's affidavit failed to "reveal what, if any, investigative techniques were attempted prior to the wiretap request . . . [and] [instead . . . merely asserted that 'no other investigative method exists to determine the identity of individuals who might have been involved with [the defendant,' *id.* at 104, TFO Alcivar's discussed numerous conventional investigative methods and whether those techniques had been tried and failed, or were otherwise unlikely to succeed. There is no requirement for law enforcement to "run outlandish risks or to exhaust every conceivable alternative before socking a wiretap." *United States v. Cartagena*, 593 F.3d at 111. As the Court of Appeals stated in *Diaz*:

The purpose of the statutory requirements of § 2518 is not to preclude the government's resort to wiretapping "until after all other possible means of investigation have been exhausted by investigative agents; rather, [the statute] only require[s] that the agents inform the authorizing judicial officer of the nature and progress of the investigation and of the difficulties inherent in the use of normal law enforcement methods."

United States v. Diaz, 176 F.3d at 111 (quoting *United States v. Torres*, 901 F.2d at 231); see also *United States v. Deas*, No. 3:07cr73 (CFD), 2008 WL 4642636, at *4-5 (Oct. 21, 2008) (finding that necessity requirement had been satisfied, in part, where agent explained that pen registers were of limited utility and physical surveillance cannot extend into a drug dealer's home).

Given that “the sufficiency of a wiretap application must be reviewed in a practical and common sense manner and need be only minimally adequate to support the issuing judge’s determination of necessity,” *United States v. Trippe*, 171 F. Supp. 2d 230, 236 (S.D.N.Y. 2001) (internal quotation marks and citations omitted), the defendants’ arguments regarding the initial affidavit provide no basis for suppression.

3. The Agents Updated The Necessity Section Of Their Affidavits In The Successive Applications As The Facts Changed

Oddly, throughout their analysis of both the initial affidavit and later affidavits, the defendants fail to note that all of the information upon which they rely comes from the affidavits, *i.e.* it was disclosed to the authorizing judge. Their claim that law enforcement misled the authorizing judge is baseless because in the defendants’ view, disagreeing with the agents’ conclusions equates to misleading the Court – a unique but entirely incorrect premise especially when all the facts that form the basis for their claim were presented to the Court at the time the Court made its determination as to whether the Government had satisfied the necessity requirement.

Rather than analyzing each affidavit individually, counsel’s declaration often discusses multiple affidavits at the same time – presumably to show that an investigative method which had not been utilized earlier was later employed and achieved some success, *see e.g.*, use of undercover officers and search warrants. (See Ricco Decl. 20-22). First, to the extent, that law enforcement continued to try new methods, it belies the defendants’ argument that law enforcement was “refus[ing] to use alternative investigative techniques.” (Br. 18). Second, as set forth in further detail in each of the affidavits, simply because a technique was later productive for law enforcement, *i.e.*, search warrants, cell site location or GPS tracking, does not mean that

the technique alone or in combination with another methods was able to reveal the full scope of the organization's narcotics activities.

For the reasons discussed above, TFO Alcivar's explanations – in the initial affidavit – as to whether other investigative techniques had been tried and failed or why they reasonably appeared to be unlikely to succeed if tried in the successive applications were reasonable. *See United States v. Terry*, 702 F.2d 299, 310 (2d Cir. 1983) (holding that where “the factual justification for the [wiretap] order had not changed at the time when an extension was sought, it was unnecessary to vary the specific facts . . . in the renewal application”).

Moreover, the agents updated the availability of other investigative techniques in subsequent wiretap applications as developments occurred. (*See* Exh. B ¶ 66 (discovery of Seabring House), ¶ 78 (CI engaging in unauthorized, narcotics related communications); Exh. D, ¶ 89 (Foote and his co-conspirators were concerned about law enforcement surveillance), ¶ 94 (arrest of a co-conspirator); ¶¶ 108-09 (two new additional locations where narcotics activities were believed to be occurring); Exh. F ¶¶ 133-34 (pole camera surveillance identified additional members of the Foote organization), ¶¶ 135 (conspirators' concern about surveillance); ¶ 140 (removal of incriminating evidence by Foote), ¶¶ 150-53 (use of an undercover officer), ¶¶ 157-58 (additional locations where narcotics activities were believed to be occurring); Exh. H ¶ 44 (pole camera surveillance identified additional member of the Foote organization), ¶ 44(a) (inability to surveil conspirators), ¶¶ 67-69 (additional location where narcotics activities were believed to be occurring); Exh. J ¶¶ 36-39 (pole camera surveillance identified additional member of the Foote organization), ¶ 40 (conspirators concern about surveillance); ¶ 59 (additional location where narcotics activities were occurring); Exh. L ¶¶ 77-80 (identification of Steven Richard), ¶ 81 (conspirators' concern about surveillance), ¶¶ 83-84 (use of cell site and

GPS tracking); ¶¶ 87-90 (trash searches), ¶¶ 110-11 (execution of search warrants); Exh. N ¶¶ 63-64 (use of cell site and GPS tracking); ¶ 66(a) (conspirators' concern about surveillance), ¶ 96 (phone calls occurring after execution of search warrants), ¶ 97 (organization's plan to change shipping methods). These updates are plainly inconsistent with any desire to misrepresent facts regarding necessity to the issuing judge.

CONCLUSION

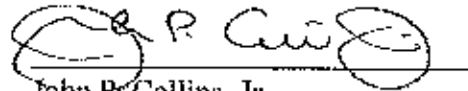
For the reasons discussed above, the defendants' motion to suppress should be denied, without a hearing.

Dated: White Plains, New York
November 30, 2011

Respectfully Submitted,

PREET BHARARA
United States Attorney

By:



John P. Collins, Jr.
Assistant United States Attorney
(914) 993-1919

AFFIRMATION OF SERVICE

JOHN P. COLLINS, JR., pursuant to Title 28, United States Code, Section 1746, hereby declares under the penalty of perjury:

That I am an Assistant United States Attorney in the Office of the United States Attorney for the Southern District of New York.

That on November 30, 2011, I caused one copy of the within Memorandum of Law Responding to Defendants' Motion to be filed electronically and thus served on all counsel by ECF.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: White Plains, New York
November 30, 2011

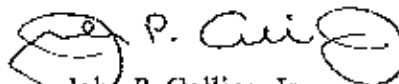

John P. Collins, Jr.

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION
OF THE UNITED STATES OF AMERICA
FOR AUTHORIZATION TO INTERCEPT WIRE
COMMUNICATIONS OCCURRING OVER THE
CELLULAR TELEPHONE ASSIGNED CALL NUMBER
(646) 633-3108, WITH INTERNATIONAL MOBILE
SUBSCRIBER IDENTITY NUMBER
310260724255672 ("TARGET CELLPHONE 1")
AND THE CELLULAR TELEPHONE ASSIGNED CALL
NUMBER (845) 746-0631 AND DIRECT CONNECT
NUMBER 173*345*8170, WITH INTERNATIONAL
MOBILE SUBSCRIBER IDENTITY NUMBER
316010168541895 ("TARGET CELLPHONE 2")
(collectively, the "TARGET CELLPHONES")

AFFIDAVIT IN
SUPPORT
OF APPLICATION FOR
AUTHORIZATION TO
INTERCEPT WIRE
COMMUNICATIONS

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:
SOUTHERN DISTRICT OF NEW YORK)

Walter Alcivar, a Task Force Officer with the
Westchester County Drug Enforcement Task Force, being duly sworn,
deposes and states:

INTRODUCTION

1. I am an "investigative or law enforcement officer
of the United States" within the meaning of Section 2510(7) of
Title 18, United States Code, that is, an officer of the United
States who is empowered by law to conduct investigations of and
to make arrests for offenses enumerated in Section 2516,
Title 18, United States Code. I have been a Task Force Officer
since November 2008 and am currently assigned to the Westchester
County Drug Enforcement Task Force (the "Task Force"), which is
comprised of special agents from the Drug Enforcement

Administration ("DEA") and police officers from local police departments. Since becoming a member of the Task Force, I have conducted numerous investigations of unlawful drug trafficking in violation of 21 U.S.C. §§ 841, 841(a)(1), 843(b), and 846, and have conducted or participated in wire and physical surveillance, surveillance of undercover transactions, the introduction of undercover agents, the execution of search warrants, debriefings of informants and reviews of taped conversations and drug records. I have also participated in investigations that have included the interception of wire communications, and I have reviewed taped conversations and drug records relating to narcotics trafficking. Through my training, education and experience, I have become familiar with the manner in which illegal drugs are transported, stored, and distributed and the methods of payment for such drugs.

2. I submit this affidavit in support of an application for an order pursuant to Section 2518 of Title 18, United States Code, authorizing the interception and recording of wire communications concerning offenses enumerated in Section 2516 of Title 18, United States Code -- that is, offenses involving the distribution of, and possession with intent to distribute, controlled substances, the use of wire facilities to facilitate the same, conspiracy to do the same and attempts to do the same, in violation of 21 U.S.C. §§ 841(a)(1), 843(b), and 846

(the "TARGET OFFENSES").¹

3. For the reasons set out in this affidavit, I believe that there is probable cause to believe that the TARGET OFFENSES have been committed, are being committed, and will continue to be committed by one or more of the following individuals: DUNSTON FOOTE, a/k/a "Killa," CLOVAL TAYLOR, a/k/a "Clove," DWIGHT MORGAN, FNU LNU, a/k/a "Frankie," FNU LNU, a/k/a "Steve," FNU LNU, a/k/a "Dirty," FNU LNU "Chris," ALLAND ZAMOR, TOREY EANES, a/k/a "Mello," a/k/a "Mellow," CONROY BROWN, and others as yet unknown (the "TARGET SUBJECTS"), and that particular communications concerning the TARGET OFFENSES will be obtained through interception of the TARGET CELLPHONES (defined in paragraph 7 below). Authorization is sought herein to intercept wire communications of the TARGET SUBJECTS, to and from the TARGET CELLPHONES, which are currently utilized by DUNSTON FOOTE, a/k/a "Killa."

4. The requested Order is sought for a period of time until the interception fully reveals the manner in which the TARGET SUBJECTS participate in the TARGET OFFENSES, or for a period of thirty (30) days, whichever occurs first, pursuant to Title 18, United States Code, Section 2518(5). Pursuant to

¹ Although not a predicate offense under 18 U.S.C. § 2516, there is probable cause to believe that the TARGET SUBJECTS (as subsequently defined herein) have aided and abetted and are aiding and abetting those substantive offenses, in violation of 18 U.S.C. § 2.

Section 2518(5) of Title 18, United States Code, it is further requested that the 30-day period be measured from the earlier of the date on which investigative or law enforcement officers begin to conduct interception pursuant to this Court's Order or ten days from the date of this Court's Order.

5. This case is being investigated by the DEA, the Task Force, the Spring Valley Police Department, the Ramapo Police Department, Suffern Police Department, Immigration and Customs Enforcement ("ICE"), and the United States Postal Service ("USPS"). I make this affidavit based on my personal participation in this investigation and based on reports made to me by other law enforcement officers, as well as information provided by the cooperating individuals discussed below. Except where otherwise noted, the information set forth in this affidavit has been provided to me by other law enforcement officers who have assisted in the investigation. Unless otherwise noted, wherever in this affidavit I assert that a statement was made, the statement was made by another law enforcement officer (who may have had either direct or hearsay knowledge of that statement) to whom I or other law enforcement officers have spoken or whose reports I have read and reviewed. Such statements are reported in substance and in part, unless otherwise indicated. Likewise, information resulting from surveillance sets forth either my personal observations or

information provided directly or indirectly through other law enforcement officers who conducted such surveillance.

6. Because this affidavit is being submitted for the limited purpose of securing an order authorizing the interception of wire communications, I have not included details of every aspect of this investigation to date. Facts not set forth herein are not being relied on in reaching my conclusion that orders should be issued. Nor do I request that this Court rely on any facts not set forth herein in reviewing this application for an order authorizing the interception of wire communications.

THE DESIGNATED TELEPHONES

7. There is probable cause to believe that DUNSTON FOOTE, a/k/a "Killa," is using, and will in the future use, in order to accomplish, to discuss and to commit the TARGET OFFENSES, the following cellular telephones: (1) the cellular telephone assigned call number (646) 633-3108, with International Mobile Subscriber Identity ("IMSI") Number 310260724255672, with prepaid service provided by IDT and network service provided by T-Mobile ("TARGET CELLPHONE 1")² and (2) the cellular telephone assigned call number (845) 746-0631 and direct connect number 173*345*8170, with IMSI Number 316010168541895, subscribed to "Steve James" at the subscriber address P.O. Box 54988, Irvine,

² Subscriber information was requested but is not available for TARGET CELLPHONE 1 because the service provider does not require subscriber information for prepaid phones, and none was provided for TARGET CELLPHONE 1.

CA 92619, with service provided by Sprint-Nextel ("TARGET CELLPHONE 2") (collectively, the "TARGET CELLPHONES").

8. In particular, there is probable cause to believe that FOOTE is using the TARGET CELLPHONES to make wire communications in furtherance of, in connection with, to facilitate, to accomplish, and to commit the TARGET OFFENSES.

9. It is requested that interception be permitted over the TARGET CELLPHONES, and any telephone numbers subsequently assigned to or accessed by or through the same IMSI numbers as the TARGET CELLPHONES, or assigned to the instrument bearing the same IMSI numbers as the TARGET CELLPHONES, as well as any IMSI numbers subsequently assigned to the instrument bearing the same telephone numbers assigned to the TARGET CELLPHONES. In addition, it is requested that background conversations, in the vicinity of the TARGET CELLPHONES while they are off the hook or otherwise in use, also be permitted to be intercepted.

10. I have been informed by other law enforcement personnel who are familiar with the applicable telephone technology that a "portable cellular telephone" (or a "mobile telephone") can be used both within a vehicle and outside a vehicle through the use of a portable battery pack. The cellular telephone system divides metropolitan areas into many small coverage areas, which are called "cells." As a vehicle in which

a portable cellular telephone is located, or the cellular telephone itself, is moved from one cell to another, transmitters within each cell and a master switching network permit "wire communications" to be completed. Each portable cellular telephone that does not contain party lines bears a unique IMSI number and an assigned telephone number. It is requested that interception be permitted over the TARGET CELLPHONES, and any other telephone numbers and telephones accessed through the above-listed IMSI numbers for the TARGET CELLPHONES, and any IMSI numbers, or the equivalent accessed through the telephone numbers assigned to the TARGET CELLPHONES.

11. Because of the mobility of portable cellular telephones, pursuant to Title 18, United States Code, Section 2518(3), authorization is requested for interception of wire communications within the Southern District of New York, and outside that jurisdiction but within the United States in the case of a mobile interception device.

12. It is anticipated that the TARGET SUBJECTS will use the TARGET CELLPHONES to place calls and relay messages to and from the Southern District of New York, as well as other locations. This belief is supported by the facts described below. Pursuant to United States v. Rodriguez, 968 F.2d 130 (2d Cir.) cert. denied, 506 U.S. 847 (1992), a court in the Southern District of New York is empowered to issue an Order for the

interception of wire communications over telephones located in other districts, as long as the interceptions of these communications are first heard in the Southern District of New York.

13. In connection with the telecommunication companies that provide the service for the TARGET CELLPHONES, all interceptions over the TARGET CELLPHONES will automatically be routed to White Plains, New York (Westchester County), regardless of where the telephone calls are placed to or from. Accordingly, all interceptions will first be heard in the Southern District of New York. During the requested wire surveillance, all monitoring will be performed in White Plains, New York, by law enforcement officers authorized under Section 2510(7) of Title 18, United States Code, including special agents with the DEA, officers with the Task Force, and law enforcement officers assisting in the investigation including but not limited to members of the Spring Valley Police Department, the Ramapo Police Department, the Suffern Police Department, ICE, the USPS and others, and government employees or individuals operating under a contract with the government, who will be acting under the supervision of investigative or law enforcement officers authorized to conduct the interception.

OBJECTIVES

14. There is probable cause to believe that the

interception of wire communications, the authorization for which is sought herein, will help to reveal: (i) the nature, extent and methods of operation of the TARGET SUBJECTS' narcotics-trafficking business; (ii) the identities of the TARGET SUBJECTS, their accomplices, aiders and abettors, co-conspirators and participants in their illegal activities; (iii) the time and place of the receipt and distribution of contraband and money involved in those activities; (iv) the locations of items used in furtherance of those activities; (v) the existence and locations of records relating to narcotics trafficking; (vi) the location and source of resources used to finance their illegal activities; and (vii) the location and disposition of the proceeds from those activities. In addition, these wire communications are expected to constitute admissible evidence of the commission of the TARGET OFFENSES.

PRIOR APPLICATIONS

15. I have been informed that reviews have been done of the electronic surveillance files of the DEA, ICE, the Federal Bureau of Investigation ("FBI"), and local law enforcement agencies.³ Based on these reviews, I have been informed that there have been no prior applications for Court authorization to intercept wire, oral, or electronic communications of the TARGET SUBJECTS, or over the TARGET CELLPHONES.

³ I have been informed that an ELSUR check was completed on or about August 2, 2010.

I. THERE IS PROBABLE CAUSE TO BELIEVE THAT THE TARGET SUBJECTS WILL USE THE TARGET CELLPHONES IN FURTHERANCE OF THE TARGET OFFENSES

A. Background of Investigation

16. Beginning in or about June 2010, the DEA, the Spring Valley Police Department, the Ramapo Police Department, the Suffern Police Department, ICE and the USPS initiated an investigation into a marijuana and cocaine trafficking organization (the "Foote Organization"). The DEA and other law enforcement officers working on the investigation have obtained information about the Foote Organization through, among other sources, a confidential informant (the "CI"),⁴ recorded telephone conversations, physical surveillance, and telephone records.

17. Other law enforcement officers and I spoke with the CI on numerous occasions in or about June and July 2010.

Among other things, the CI told me the following:

18. From in or about 2004 through in or about March 2010, the CI frequently (1) obtained marijuana and cocaine from DUNSTON FOOTE, a/k/a "Killa;" (2) cooked cocaine into crack for FOOTE; and (3) sold marijuana and crack for FOOTE on numerous occasions. According to the CI, CLOVAL TAYLOR, a/k/a "Clove,"

⁴ On or about [REDACTED] the CI was arrested in Spring Valley for possession of crack cocaine and was charged with Criminal Possession of a Controlled Substance in the Third Degree, in Rockland County Court. The CI has been providing information and cooperating with law enforcement in the hope of obtaining a more lenient sentence. I found the CI to be credible and the information the CI provided to be corroborated. Previously, the CI was convicted twice of state felony narcotics charges.

and FNU LNU, a/k/a "Frankie," also received drugs from and sold drugs for FOOTE during this time and continue to do so. The CI believes that FOOTE receives his supply of marijuana from three men that the CI know as "Steve," "Chris," and "Dirty," and that FOOTE receives his supply of cocaine from "Dirty."

19. During the time period mentioned above, the CI provided FOOTE with addresses in and around Spring Valley, New York, to which the marijuana and cocaine were mailed from FOOTE's sources of supply (the "Delivery Locations"). The CI was responsible for picking up the packages of drugs when they arrived at the Delivery Locations and delivering them to FOOTE. CLOVAL TAYLOR, a/k/a "Clove," told the CI that since the CI's arrest in [REDACTED], TAYLOR has been providing FOOTE with the addresses for the receipt of packages of marijuana, picking up the packages, and delivering them to FOOTE.

20. FOOTE sometimes told the CI whether the packages would contain cocaine or marijuana, and sometimes the CI inferred the contents of the packages based on, among other things, the size of the packages. According to the CI, FOOTE received between one to eight packages of marijuana each week via the mail at the Delivery Locations. The CI estimated that each package of marijuana contained approximately 30 to 60 pounds of marijuana.

21. When the packages of marijuana arrived at the Delivery Locations, the CI picked up the packages and met FOOTE

in person at a pre-arranged location. FOOTE and the CI then drove together to a location where FOOTE distributed the marijuana to, among others, the CI, CLOVAL TAYLOR, a/k/a "Clove," and FNU LNU, a/k/a "Frankie," who, in turn, sold the marijuana in and around Rockland County, New York. After the CI, TAYLOR, and FNU LNU, a/k/a "Frankie," sold the quantities of marijuana provided to them by FOOTE, they returned most of the proceeds from those sales to FOOTE and also kept some money from the drug sales for themselves.

22. FOOTE also received approximately one to three kilograms of cocaine each month via the mail at the Delivery Locations. When the packages of cocaine arrived at the Delivery Locations, the CI picked up the packages and met FOOTE at the CI's Residence, where the CI cooked the cocaine into crack for FOOTE. The CI then distributed some of the crack to FNU LNU, a/k/a "Frankie," and the CI and "Frankie" sold the crack to other drug dealers in and around Rockland County for FOOTE. The CI and "Frankie" gave most of the proceeds from their sales of crack to FOOTE and also kept some money from the drug sales for themselves.

23. The CI believes that certain employees of the United States Post Office assisted FOOTE with the shipment of packages containing drugs from the sources of supply to the Delivery Locations. The CI identified one of the Post Office

employees as an individual the CI knows as CONROY BROWN.⁵ In or about June 2010, the CI witnessed a physical altercation between BROWN, FOOTE, and FNU LNU, a/k/a "Frankie," related to BROWN's girlfriend or wife; since that time BROWN has not been involved in the shipment of drugs for the Foote Organization. According to the CI, FOOTE told the CI that a female Post Office employee now assists FOOTE and will contact FOOTE if law enforcement officers inquire about the contents of any packages.

24. Since the CI's arrest in [REDACTED], the CI has not been involved in drug dealing with FOOTE, CLOVAL TAYLOR, a/k/a "Clove," and FNU LNU, a/k/a "Frankie." However, the CI has continued to regularly socialize with these individuals. The CI frequently sees FOOTE, TAYLOR, and "Frankie" together and occasionally also sees them with FNU LNU, a/k/a "Chris," FNU LNU, a/k/a "Steve," and FNU LNU, a/k/a "Dirty." Based on what the CI has observed and heard, the CI believes that FOOTE, TAYLOR, "Frankie," "Chris," "Steve," and "Dirty" are continuing to work together as part of a narcotics distribution organization. As noted above, TAYLOR told the CI that TAYLOR has been providing FOOTE with the addresses for the receipt of packages of drugs,

⁵ According to a Detective with the Spring Valley Police Department ("SVPD Detective 1"), an individual identified as CONROY BROWN met with another SVPD officer and told that officer that BROWN was a postal worker in Spring Valley, that FOOTE sold marijuana, and that BROWN and FOOTE had a dispute regarding BROWN's wife. BROWN has not had any additional meetings with law enforcement.

picking up the packages, and delivering them to FOOTE since the CI was arrested.

25. The CI believes that FOOTE lives near or around Suffern, New York, and that FOOTE may keep drugs and proceeds from narcotics sales at his residence.

B. Visual Surveillance Of the Foote Residence

26. On or about June 18, 2010, a Detective-Sergeant with the Ramapo Police Department ("RPD Detective 1") observed two vehicles registered to FOOTE's wife parked outside a residence in the Village of Hillburn, which borders Suffern, New York (the "Foote Residence"). The vehicles included a grey BMW ("Vehicle 1") and a red Honda Accord ("Vehicle 2"). RPD Detective 1 and other law enforcement officers had a pole camera installed on a telephone pole near the Foote Residence, with the camera facing the front entrance to the Foote Residence, which began operating on or about June 28, 2010 (the "Pole Camera").

27. According to RPD Detective 1, RPD Detective 1 reviewed portions of the video obtained from the Pole Camera, and saw FOOTE carrying multiple plastic shopping bags from Vehicle 1 into and out of the Foote Residence. The plastic shopping bags appeared to contain square objects that, based on RPD Detective 1's training and experience, were consistent with the appearance of packages of marijuana.⁶

⁶ Based on my experience, I know that larger quantities of marijuana are often distributed in brick-shaped packages.

C. Drug-Related Activity Using The TARGET CELLPHONES

28. According to the CI, FOOTE has used the TARGET CELLPHONES for over a year. The CI said that FOOTE gave the CI the call number for TARGET CELLPHONE 1 and the direct connect number for TARGET CELLPHONE 2 in or about the Spring of 2009. The CI showed me the CI's cellphone, and I saw that the call number for TARGET CELLPHONE 1 and the direct connect number for TARGET CELLPHONE 2 are listed in the CI's cellphone under the name "Killa." Based on my experience in narcotics investigations, I know that drug dealers often use more than one cellphone in their drug distribution activities.

29. The CI stated that from in or about March 2009 through in or about March 2010, the CI called the call number for TARGET CELLPHONE 1 and the direct connect number for TARGET CELLPHONE 2 and spoke with FOOTE on the TARGET CELLPHONES on numerous occasions regarding the receipt and distribution of drugs. The CI said that he/she often called FOOTE on the TARGET CELLPHONES when the CI picked up a package of drugs. The CI also stated that, on at least one occasion, the CI gave FOOTE the address where the drugs should be sent via a text message that the CI sent to TARGET CELLPHONE 1.

30. The CI stated that the CI has seen and heard FOOTE use the TARGET CELLPHONES to order marijuana and cocaine on multiple occasions, and that FOOTE places and receives other

drug-related calls. On one occasion in or about June 2010, the CI heard FOOTE talking to a person that FOOTE called "Chris" on TARGET CELLPHONE 1. During that call, the CI heard FOOTE say, in substance, that FOOTE was ready and needed a place to "send to." The CI said that FOOTE and others spoke in code when they discussed drugs. The CI also said that the CI spoke to "Dirty," in FOOTE's presence, on TARGET CELLPHONE 1 on or about June 19, 2010.

31. In or about June 2010, the CI, acting under the supervision of law enforcement, called the TARGET CELLPHONES and spoke to FOOTE about obtaining marijuana from FOOTE for the CI sell.

D. Drug-Deals Arranged Using TARGET CELLPHONE 1

32. According to a Detective with the Spring Valley Police Department ("SVPD Detective 1"), on or about July 1, 2010, the CI called TARGET CELLPHONE 1 in SVPD Detective 1's presence, but received no answer. The CI then called a phone number that the CI said he/she knew to be the cellphone number for FNU LNU, a/k/a "Frankie," and spoke to "Frankie." The CI asked "Frankie" if "Frankie" knew where FOOTE was at that time. According to the CI, "Frankie" told the CI that he would call FOOTE and tell FOOTE to call the CI. Shortly thereafter, "Frankie" called the CI and said that FOOTE had not answered his phone.

33. Less than an hour later, in SVPD Detective 1's presence, the CI placed a consensually monitored and recorded phone call to TARGET CELLPHONE 1 and spoke with DUNSTON FOOTE, a/k/a "Killa," about purchasing marijuana from FOOTE. In sum and substance, the CI asked FOOTE if FOOTE was around the "crib," and FOOTE told the CI he was around, but to give him about an hour. The CI then asked FOOTE to bring "two small boys," and FOOTE responded "alright."⁷

34. According to SVPD Detective 1, after the call, the CI told SVPD Detective 1 that "two small boys" was code for two quarter pounds (or eight ounces) of marijuana.

35. Shortly thereafter, the CI, SVPD Detective 1, and other law enforcement officers went to the CI's residence in Spring Valley, New York (the "CI Residence"). Inside the CI Residence, SVPD Detective 1 searched the CI and installed a video and recording device on the CI's person. SVPD Detective 1 also gave the CI approximately \$600 in U.S. currency to be used to purchase the marijuana that the CI had requested from FOOTE.

36. SVPD Detective 1 and other law enforcement officers then conducted visual surveillance outside of the CI Residence. According to SVPD Detective 1, approximately one hour after the CI's conversation with FOOTE on TARGET CELLPHONE 1,

⁷ The call was predominantly in Patois, and the recording of that call was subsequently translated by the CI. I have reviewed the recording and it corroborates the CI's statements to SVPD Detective 1.

another law enforcement officer ("Officer 1") saw FOOTE arrive at the CI Residence in Vehicle 1, park in front of the CI Residence, and enter the front door of the CI Residence. After a short period of time, Officer 1 saw FOOTE walk out of the CI Residence and over to Vehicle 1, where FOOTE retrieved an object from inside Vehicle 1. Officer 1 saw FOOTE walk back inside the CI Residence holding an object. Soon thereafter, FOOTE left the CI Residence and drove away in Vehicle 1.

37. According to SVPD Detective 1, shortly after FOOTE left the CI Residence, the CI met with SVPD Detective 1 at a prearranged location and the CI handed SVPD Detective 1 a substance that appeared to be marijuana wrapped in plastic that the CI said was provided to the CI by FOOTE. The CI told SVPD Detective 1 that after FOOTE entered the CI Residence, the CI asked FOOTE for the "stuff" and told FOOTE that the CI's customer was waiting with the money. FOOTE then walked out of the front door and came back inside the CI Residence holding an object wrapped in plastic. FOOTE handed the CI the object, and the CI gave FOOTE \$600. I have reviewed the audio and video recording, which corroborate the CI's statements to SVPD Detective 1.

38. SVPD Detective 1 conducted a field test of the substance that the CI said he/she obtained from FOOTE, and it tested positive for the presence of marijuana and weighed approximately 7.8 ounces.

39. I have reviewed the telephone toll records for TARGET CELLPHONE 1 for July 1, 2010, which show that the cellphone number used by the CI contacted TARGET CELLPHONE 1 at the time that SVPD Detective 1 saw the CI place a call to FOOTE.

E. Drug-Deals Arranged Using TARGET CELLPHONE 2

40. According to SVPD Detective 1, on or about July 19, 2010, the CI placed a consensually monitored and recorded phone call to the direct connect number for TARGET CELLPHONE 2 and spoke with DUNSTON FOOTE, a/k/a "Killa," about purchasing marijuana from FOOTE. In sum and substance, during the CI's conversation with FOOTE, the CI requested "two small boys" and told FOOTE that the CI would meet FOOTE at the "down low" spot.⁶ After the call, the CI told SVPD Detective 1 that "down low" is code for the CI Residence.

41. Shortly thereafter, the CI, SVPD Detective 1, and other law enforcement officers went to the CI Residence. Inside the CI Residence, SVPD Detective 1 searched the CI and installed a video and recording device on the CI's person and gave the CI approximately \$600 in U.S. currency to be used to purchase the marijuana that the CI had requested from FOOTE.

42. SVPD Detective 1 and other law enforcement officers then conducted visual surveillance outside of the CI

⁶ The call was predominantly in Patois, and the recording of that call was subsequently translated by the CI. I have reviewed the recording and it corroborates the CI's statements to SVPD Detective 1.

Residence. According to SVPD Detective 1, Officer 1 saw FOOTE arrive at the CI Residence in Vehicle 1, park in front of the CI Residence, get out of Vehicle 1 holding an object, and walk inside the front door of the CI Residence.

43. According to SVPD Detective 1, the CI met with SVPD Detective 1 at a prearranged location soon after FOOTE arrived at the CI Residence. There, the CI handed SVPD Detective 1 a substance wrapped in plastic that the CI said was provided to the CI by FOOTE.⁹ According to the CI, FOOTE had given the CI the substance after FOOTE entered the CI Residence, and the CI gave FOOTE \$600.

44. SVPD Detective 1, conducted a field test of the substance that the CI said he/she had obtained from FOOTE, and it tested positive for the presence of marijuana and weighed approximately 8 ounces.

45. I have reviewed the telephone toll records for TARGET CELLPHONE 2 for July 19, 2010, which show that the cellphone number used by the CI contacted TARGET CELLPHONE 2 on the direct connect number at the time that SVPD Detective 1 saw the CI place a call to FOOTE.

F. Analysis of Telephone Records for the TARGET CELLPHONES

⁹ After meeting with SVPD Detective 1, the CI returned to the CI Residence, where FOOTE was waiting.

46. I have reviewed telephone toll records for TARGET CELLPHONE 1 for the time period June 30, 2010 through July 27, 2010 (the "Time Period"). There were approximately 1231 incoming and outgoing calls over TARGET CELLPHONE 1 during that 28-day Time Period, to or from approximately 56 different telephone numbers. Of those 56 phone numbers, at least 14 are cellular telephone numbers with New York area codes, and 37 are telephone numbers with Jamaican area codes.¹⁰ The telephone records for TARGET CELLPHONE 1 show calls to and from, among other numbers, the following numbers:

a. A cellular telephone assigned call number 845-538-5702, with pre-paid service provided by Sprint-Nextel since October 4, 2003, with the subscriber "Aland Zamor" and the most recent subscriber address of 46 Sharon Drive, Spring Valley, NY 10977 (the "Zamor Phone"): There was 1 contact between the Zamor Phone and TARGET CELLPHONE 1 during the Time Period, on or about July 6, 2010. Based on my review of records maintained by Sprint-Nextel and criminal history records, I believe the Zamor Phone is used by an individual named ALLAND ZAMOR, who resides in or around Spring Valley, New York. In January 2005, ALLAND ZAMOR was convicted of a felony narcotics offense in Rockland County Court, and, following his term of imprisonment on that conviction, ZAMOR was released from custody in October 2007.

¹⁰ According to the CI, FOOTE told the CI that he has a brother living in Jamaica who is also involved in dealing marijuana.

Prior to that conviction, ZAMOR was also arrested in Rockland County and charged with possession of marijuana in November 2003.

b. A cellular telephone assigned call number 917-767-8224, with pre-paid service provided by AT&T since June 2, 2010, with the subscriber "Torey Eanes" and the most recent subscriber address of 52 Edison Court, Apartment D, Monsey, NY 10952 (the "Eanes Phone"). There were 16 contacts between the Eanes Phone and TARGET CELLPHONE 1 during the Time Period, with the most recent contact occurring on or about July 20, 2010. Based on my review of records maintained by Sprint-Nextel and criminal history records, I believe the Eanes Phone is used by an individual named TOREY EANES, a/k/a "Mello," a/k/a "Mellow," who resides in or around Monsey, New York, in Rockland County. In January 2002, EANES was convicted of criminal sale of marijuana in Rockland County Court. According to SVPD Detective 1, information maintained by the Rockland County Police Information Network (the "RCPIN") showed that TOREY EANES, a/k/a "Mello," a/k/a "Mellow," was arrested in 2009 for possession of stolen property and, at the time of his arrest, EANES provided the subscriber address above (52 Edison Court, Apartment D, Monsey, NY 10952) as his place of residence. The CI told SVPD Detective 1 that a person the CI knows as "Mellow" used to purchase marijuana from FOOTE and that the CI has seen "Mellow" and FOOTE together on a number of occasions. According to SVPD Detective

1, the aliases "Mellow" and "Mellow" are listed in the RCPIN as aliases used by TOREY EANES based on information obtained during EANES's previous arrests and other contacts with law enforcement. SVPD Detective 1 viewed a photograph of EANES maintained by the SVPD and said that the CI's description of "Mellow" matched the physical appearance of EANES. SVPD Detective 1 also said that EANES is a known drug dealer in Spring Valley.

47. Other law enforcement officers and I have checked numerous databases in an effort to identify the users of the telephone numbers that have made contact with TARGET CELLPHONE 1, but, other than the telephone numbers used by the CI, ALLAND ZAMOR, and TOREY EANES, no other users have been identified to date. Nonetheless, based on my experience and my participation in this investigation, I believe that TARGET CELLPHONE 1 is being used by FOOTE for trafficking narcotics because:

a. According to the CI, the CI has been with FOOTE when FOOTE has used TARGET CELLPHONE 1 for arranging for the shipment or receipt of drugs on numerous occasions over the past year and has witnessed FOOTE speaking with other members of the Foote Organization on TARGET CELLPHONE 1 as recently as late May or early June 2010;

b. According to SVPD Detective 1 and my review of relevant recordings, the CI spoke with FOOTE on TARGET CELLPHONE 1 on July 1, 2010 and, during that call, the CI ordered

a quantity of marijuana from FOOTE, which FOOTE subsequently delivered to the CI.

48. I have reviewed telephone toll records for TARGET CELLPHONE 2 for the Time Period. There were approximately 2579 incoming and outgoing calls over TARGET CELLPHONE 2 during the Time Period, to or from approximately 76 different telephone numbers. Of those 76 phone numbers, at least 43 are cellular telephone numbers with New York area codes, and 5 are telephone numbers with Jamaican area codes. The telephone records for TARGET CELLPHONE 2 show calls to and from, among other numbers, the following:

a. A cellular telephone assigned call number 347-235-5855, with pre-paid service provided by Sprint-Nextel since April 29, 2009, with the subscriber "Joden Thompson" and subscriber address P.O. Box 54966, Irvine, CA 92619. According to the CI, a cellphone with call number 347-235-5855 is used by CLOVAL TAYLOR, a/k/a "Clove," a person who the CI knows deals drugs with FOOTE (the "Taylor Phone").¹¹ There were approximately 175 contacts between the Taylor Phone and TARGET CELLPHONE 2 during the Time Period. The most recent contact was on or about July 27, 2010.

¹¹ The CI showed me the CI's cellphone, and I saw that the call number for the Taylor Phone is listed in the CI's cellphone under the name "Clove."

b. A cellular telephone assigned call number 347-992-0442, with pre-paid service provided by Sprint-Nextel since May 12, 2009, with the subscriber "Colin Farrow" and subscriber address P.O. Box 54988, Irvine, CA 92619. According to the CI, a cellphone with call number 347-992-0442 is used by FNU LNU, a/k/a "Frankie," a person who the CI knows deals drugs with FOOTE (the "Frankie Phone").¹² There were approximately 63 contacts between the Frankie Phone and TARGET CELLPHONE 2 during the Time Period. The most recent contact was on or about July 27, 2010.

c. The "Zamor Phone" (described in paragraph 43(a)). There were 61 contacts between the Zamor Phone and TARGET CELLPHONE 2 during the Time Period. The most recent contact was on or about July 24, 2010.

49. Based on my experience, I believe that there were an unusually high number of incoming and outgoing calls on the TARGET CELLPHONES during the Time Period and that such call frequency is consistent with the use of the TARGET CELLPHONES as part of a drug distribution organization. In addition, the TARGET CELLPHONES both use prepaid services. Based on information I have learned from various cellphone service

¹² The CI showed me the CI's cellphone, and I saw that the call number for the Frankie Phone is listed in the CI's cellphone under the name "Frankie." According to SVPD Detective 1, the CI has called the Frankie Phone and has spoken with "Frankie" regarding the receipt and distribution of narcotics. The CI also stated that the CI has seen large quantities of marijuana at a residence where the CI believes "Frankie" lives.

providers, prepaid cellphone service does not require verification of the name or address of the subscriber. In my experience, individuals involved in the distribution of drugs often use prepaid cellphone services to evade law enforcement by providing a false name and/or address.

50. I have conducted an analysis to find common calls made by TARGET CELLPHONE 1 and TARGET CELLPHONE 2. From this analysis, I have learned that TARGET CELLPHONE 1 and TARGET CELLPHONE 2 have both had contacts with the following eight telephone numbers during the Time Period:

a. TARGET CELLPHONE 1 had contact with the phone number 718-600-7252 46 times, and TARGET CELLPHONE 2 had contact with the same number 149 times.

b. TARGET CELLPHONE 1 had contact with the phone number 845-290-0310 10 times, and TARGET CELLPHONE 2 had contact with the same number 17 times.

c. TARGET CELLPHONE 1 had contact with the phone number 845-494-4070 4 times, and TARGET CELLPHONE 2 had contact with the same number 304 times.

d. TARGET CELLPHONE 1 had contact with the phone number 845-521-6498 4 times, and TARGET CELLPHONE 2 had contact with the same number 7 times.

e. TARGET CELLPHONE 1 had contact with the phone number 845-538-5702 (the Zamor Phone) 1 time, and TARGET

CELLPHONE 2 had contact with the same number 61 times.

f. TARGET CELLPHONE 1 had contact with the phone number 845-608-3911 2 times, and TARGET CELLPHONE 2 had contact with the same number 152 times.

g. TARGET CELLPHONE 1 had contact with the phone number 845-764-3555 26 times, and TARGET CELLPHONE 2 had contact with the same number 1 time.

h. TARGET CELLPHONE 1 had contact with the phone number 876-382-8400 14 times, and TARGET CELLPHONE 2 had contact with the same number 1 time.

51. Based on the foregoing, I believe that the TARGET CELLPHONES are being used by DUNSTON FOOTE, a/k/a "Killa," to distribute narcotics. I believe that FOOTE will continue to use the TARGET CELLPHONES for these purposes in the future.

II. ALTERNATIVE INVESTIGATIVE PROCEDURES HAVE BEEN TRIED OR APPEAR UNLIKELY TO SUCCEED IF TRIED; THERE IS A NEED FOR THE INTERCEPTION OF WIRE COMMUNICATIONS OVER THE TARGET CELLPHONES

52. The principal goals of this investigation are to identify, locate, and arrest persons responsible for the distribution of marijuana and cocaine in and around Spring Valley, and to gather evidence against those responsible for running the organization and to identify and locate the sources that supply the Foote Organization with large quantities of narcotics. We are investigating not only the currently identified TARGET SUBJECTS, but also all of the narcotics

suppliers, other customers, distributors that work in the Foote Organization, and associates, as well as the locations at which the TARGET SUBJECTS store narcotics and the methods by which they operate their narcotics-trafficking business and how they dispose of the proceeds of that narcotics trafficking.

53. Intercepting wire communications over the TARGET CELLPHONES will assist law enforcement officers in fully revealing the nature and scope of the TARGET SUBJECTS' narcotics trafficking activities. Specifically, interceptions over the TARGET CELLPHONES may reveal the source or sources of supply for the Foote Organization. Such interceptions will enable the DEA and the other law enforcement groups with which the DEA is working to gather evidence that otherwise would not be able to be gathered by more traditional investigative techniques.

54. Other investigative techniques, described herein, have been tried, including the purchases of marijuana, physical surveillance, and the use of a confidential informant. While those efforts have been fruitful, interception over the TARGET CELLPHONES is required because other investigative techniques can not fully reveal the nature and scope of the TARGET SUBJECTS' narcotics trafficking activity. It is anticipated that interception over the TARGET CELLPHONES will assist in continuing to identify the means and methods by which the Foote Organization obtains a regular supply of marijuana and cocaine and the

individuals who are involved in the provision of that supply.

55. It is further anticipated that the interceptions of wire communications will assist in continuing to identify the location of stash houses, the source of financing for the organization, and the locations and dispositions of the proceeds from those activities. In addition, it is anticipated that new targets would be identified through intercepted communications and these intercepted communications would provide valuable evidence and intelligence about incoming narcotics shipments and on-going narcotics trafficking.

56. As discussed below, several other investigative techniques have been tried, or reasonably appear likely to fail if tried, or are likely to jeopardize the investigation if tried. In the absence of the requested authorization of wire interceptions occurring over the TARGET CELLPHONES, there are no means of determining the internal operations of the Foote Organization, including when, where, and how the Foote Organization obtains its supply of narcotics, the existence and locations of records relating to narcotics trafficking, the location and source of resources used to finance the illegal activities, and the location and disposition of the proceeds from those activities. It is only through the combination of wire surveillance, visual surveillance, and other investigatory tools that the agents expect to identify fully the nature and scope of

the organization. Accordingly, there is a compelling need in this case for wire surveillance of the TARGET CELLPHONES.

Physical Surveillance

57. Law enforcement officers of the DEA, the Task Force, the Spring Valley Police Department, the Ramapo Police Department, Suffern Police Department, and others have conducted, and are continuing to conduct (when appropriate), physical surveillance of members of the Foote Organization. Physical surveillance, coupled with the information from the CI, has been productive and has led to the identification of some individuals associated with the Foote Organization, including DUNSTON FOOTE, a/k/a "Killa," CLOVAL TAYLOR, a/k/a "Clove," and DWIGHT MORGAN. However, it is only through the combination of wire surveillance, physical surveillance, and other investigatory tools, however, that the agents expect to identify fully the nature and scope of the organization.

58. For example, RPD Detective 1 and other law enforcement officers have continued to conduct physical surveillance of the Foote Residence, described above, through the use of a pole camera. The pole camera surveillance of the Foote Residence has provided useful information in the investigation, including evidence of large packages of what appears to be narcotics being transported into and out of the Foote Residence by DUNSTON FOOTE, a/k/a "Killa." Based on the information I have

reviewed from that surveillance, I believe that the Foote Organization stores some of their supply of narcotics at the Foote Residence.

59. Pole camera surveillance alone, however, would not likely yield conclusive evidence of the scope of the distribution network of the Foote Organization, the roles of the co-conspirators, or the participation of members who do not go to the Foote Residence. In addition, while surveillance has revealed what appears to be narcotics-related activity at the Foote Residence, it has not revealed the type or quantity of drugs being transported by the Foote Organization for distribution, and such surveillance has not revealed where packages brought to the Foote Residence are being obtained. Physical surveillance of the Foote Residence has been useful to corroborate information provided by the CI regarding the drug-related activities of DUNSTON FOOTE, a/k/a "Killa," but does not provided the context or substance of the meetings between co-conspirators and does not reveal the nature of their communications, and is therefore insufficient to meet the goals of the investigation.

60. In addition, according to RPD Detective 1, the Foote Residence is located on a horse-shoe shaped road, near a park, in a remote location outside of Suffern, New York. Because of the location, law enforcement officers are not able to follow

FOOTE or any vehicles coming or going from the Foote Residence without alerting FOOTE or other TARGET SUBJECTS to their presence.

61. Surveillance is also a limited investigative tool because some of the TARGET SUBJECTS remain unidentified and there is limited information about the specific locations in which they operate. Moreover, based on my experience and training, and my participation in this investigation, narcotics traffickers are extremely surveillance-conscious. Accordingly, increased surveillance could alert the TARGET SUBJECTS to the existence of the investigation, and cause them to relocate or temporarily cease their illegal activities, thereby hindering the investigation. Furthermore, even if successful, surveillance will provide only limited corroboration of the illicit narcotics activities of the TARGET SUBJECTS.

62. It is expected that information that can be obtained from interceptions over the TARGET CELLPHONES will help law enforcement agents determine the identities of the subjects involved and track their activities, thereby enhancing the prospects for more fruitful physical surveillance of those activities. In addition, with the knowledge provided beforehand by wire surveillance that a meeting is to take place at a given location, it may be possible to establish physical surveillance at that location in advance, thus minimizing the risks of

discovery inherent in following subjects or remaining at target locations for extended periods of time. Wire surveillance would better enable law enforcement to coordinate physical and electronic surveillance of such drug transactions, potentially facilitating the seizure of narcotics and narcotics-related proceeds, and the arrest of TARGET SUBJECTS.

63. For the reasons described above, surveillance alone is insufficient to meet the goals of the investigation. Accordingly, there is a compelling need in this case for wire surveillance of the TARGET CELLPHONES.

Arrests

64. Attempting to arrest the TARGET SUBJECTS now would mean that several of the objectives of this investigation would be unfulfilled. Specifically, although some of the members of the Foote Organization have been identified through the CI, arresting them at this point would almost certainly cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or to change the locations, instrumentalities, and methods used to conduct their illegal activities.

65. Based on information obtained during the investigation thus far, I believe that DUNSTON FOOTE, a/k/a "Killa," deals with the organization's suppliers. Based on my

training, experience, and participation in the investigation, I believe that although it is possible that FOOTE would cooperate with law enforcement if arrested, it is by no means certain that he would do so. It is therefore uncertain whether arrests would lead to the identification of the Foote Organization's suppliers, or to evidence showing the participation of the suppliers in drug distribution.

66. Arresting the identified TARGET SUBJECTS and attempting to obtain their cooperation in investigating the narcotics trafficking of their criminal associates is an investigative route that, in my judgment and the judgment of other law enforcement officers involved, is not reasonably likely to result in law enforcement learning the identities of the organization's suppliers, the disposition of its narcotics proceeds, or the identities of the additional co-conspirators.

Use of Confidential Informants

67. This investigation has involved obtaining information from and the active use of a confidential informant who previously worked as a drug dealer in the Foote Organization, as described above. Although the CI has provided valuable and corroborated information, at this time there is no known confidential source that can provide information about all of the Foote Organization's sources of supply and their locations, all of the links in the chain of supply (including FOOTE's

connections at the Post Office), and all of the Foote Organization's workers and customers.

68. Narcotics organizations are generally highly compartmentalized, and it is usually impossible for an informant to gain access to all aspects of an organization's illegal activities. Thus, the use of confidential informants alone is typically inadequate to develop evidence about the TARGET SUBJECTS' suppliers and customers.

69. In addition, based on my experience as a narcotics investigator, I believe that drug traffickers are unlikely to discuss the full extent of their organization's activities or membership with any individual, subordinate member of the organization. Based on my experience, I also know that narcotics organizations are often highly protective of their sources of supply.

70. Intercepting calls over the TARGET CELLPHONES is likely to provide information and evidence that the CI cannot alone provide. Intercepted calls are likely to be useful in identifying co-conspirators who are unknown to the CI, and to provide evidence against the members of the Foote Organization. Intercepted calls are likely to be useful in identifying locations where drugs are stored which are unknown to the CI, and additionally are likely to be useful in providing evidence showing where drugs and drug proceeds are located at particular

instances, about which the CI's knowledge is necessarily limited. Intercepted calls are additionally likely to be useful in corroborating information provided by the CI.

71. Additionally, since his arrest in [REDACTED], the CI has not participated in the day-to-day drug business of the Foote Organization. It appears that DUNSTON FOOTE, a/k/a "Killa," and his co-conspirators have kept the CI from participating further in their drug distribution organization at this time.

72. The information provided on one occasion by CONROY BROWN also corroborates the information provided by the CI, but is subject to the same limitations discussed above. In addition, as stated by BROWN and the CI, BROWN is no longer participating in the drug trafficking conspiracy and would be unlikely to be able to gain access to information about the Foote Organization's drug distributions activities, sources of supply, and current members of the conspiracy.

73. Based on my knowledge of this investigation and my experience as a narcotics investigator, I believe that the interception of the communications of the TARGET CELLPHONES is essential to reveal the identities of co-conspirators and the structure and operation of the Foote Organization. Without the evidence obtained from court-authorized interceptions, I am confident that the objectives of this investigation cannot be

met.

Use of Undercover Agents

74. There is currently no expectation that an undercover officer would be able to determine the full scope of the TARGET SUBJECTS' operations, meet and identify all of the other TARGET SUBJECTS and their co-conspirators, or identify the TARGET SUBJECTS' narcotics suppliers and their confederates. I do not believe that an undercover officer could infiltrate the Foote Organization with the assistance of the CI, because the members of the Foote Organization have distanced themselves from the CI since his arrest. Any effort to do so would likely alert the TARGET SUBJECTS to the CI's cooperation, compromising the CI's safety and the goals of the investigation.

75. As detailed above, while the CI has been able to make purchases of drugs from DUNSTON FOOTE, a/k/a "Killa," due to the compartmentalized nature of the Foote Organization, there is no expectation that any undercover agent will be able to deal directly with FOOTE's sources of supply to purchase drugs or infiltrate the inner workings of the Foote Organization.

Telephone Toll Records

76. Telephone toll records have been and will be used in this investigation, but will provide only limited information. I have obtained and reviewed telephone toll records for the TARGET CELLPHONES and other cell phones believed to be used by

DUNSTON FOOTE, a/k/a "Killa," and other members of the Foote Organization. Phone records, however, do not enable law enforcement officers to identify with certainty the persons involved in the conversations or the significance of the communications in the context of ongoing narcotics trafficking. Among other problems, a telephone number appearing in the records may not be listed or subscribed in the name(s) or address(es) of the person(s) actually using the telephone. Furthermore, the use of calling cards and telephone access numbers often hides the ultimate numbers called, thereby preventing law enforcement from learning the participants involved in any particular communication. In addition, the review of telephone records will not, in itself, reveal the structure of the Foote Organization or its sources of supply.

Federal Grand Jury

77. The issuance of grand jury subpoenas is likely to be inadequate to obtain critical information about the timing and location of narcotics transactions. Witnesses who might provide additional relevant evidence to a grand jury have not been identified or would themselves be participants in the narcotics trafficking. Because such individuals would face prosecution themselves, it is unlikely that any of them would testify voluntarily. Nor would it be desirable at this time to seek immunity for such individuals and to compel their testimony.

Immunizing them could thwart the public policy that they be held accountable for their crimes. Furthermore, the issuance of grand jury subpoenas to other individuals would risk alerting the TARGET SUBJECTS to the ongoing investigation before their sources of supply are identified and located. Moreover, not all of the TARGET SUBJECTS have been identified and, in the absence of further evidence identifying co-conspirators and their respective involvement in the Foote Organization, it is difficult to determine whom to subpoena to the Grand Jury.

Witness Interviews

78. I believe that interviews of the TARGET SUBJECTS or their known associates would produce insufficient information as to the identities of all of the persons involved with the TARGET SUBJECTS in narcotics trafficking, the sources and locations of the drugs, the sources of financing, the locations of records and proceeds from the distribution of drugs, and other pertinent information regarding the TARGET OFFENSES. I also believe that any responses to the interviews, particularly interviews of those who are higher up in the organization, could contain a significant number of untruths, diverting the investigation with false leads or otherwise frustrating the investigation. I believe that questioning any of the remaining co-conspirators would alert the other co-conspirators, and cause a change in their methods of operation and the concealment or

destruction of evidence before all of the co-conspirators are identified, thereby compromising the investigation and resulting in the possible loss of valuable evidence, and the possibility of harm to the CI, whose identity may become known or whose existence may otherwise be compromised.

Search Warrants

79. The investigation has revealed information that would likely enable the DEA to obtain and execute a search warrants for the Foote Residence, described above. While executing search warrants at that location may result in the seizure of pertinent evidence, it would also alert the TARGET SUBJECTS to the existence of the investigation without the likelihood of determining the full scope of the organization's operations, particularly the organization's sources of supply, the identities of all of the co-conspirators, or other locations where narcotics are stashed.

80. Further information is needed to identify the means and methods by which the Foote Organization obtains a supply of narcotics, and the locations where the drugs and drug-distribution proceeds are transported and stored. The execution of a search warrant at the Foote Residence is not likely to lead to the identification of other locations used by the Foote Organization. Nor is it likely to lead to the identification of co-conspirators who participate in obtaining or selling the Foote

Organization's supply of drugs.

81. The locations where the TARGET SUBJECTS currently receive, hide, and distribute their narcotics and narcotics proceeds have not been fully identified. Moreover, without wire surveillance, law enforcement will not know when the locations contain narcotics, narcotics proceeds, and other evidence of the TARGET OFFENSES. I believe that wire surveillance will assist law enforcement in continuing to identify locations where narcotics and narcotics proceeds are currently stored, and determine when such contraband is at such locations, so that search warrants for such locations may be obtained while contraband is still present at the locations.

82. Accordingly, and because the above-described investigative techniques are limited in their applications, have been unsuccessful, or are unlikely to be successful, authorization to intercept wire communications over the TARGET CELLPHONES is necessary to identify and develop evidence against the TARGET SUBJECTS.

MINIMIZATION

83. All monitoring of wire communications over the TARGET CELLPHONES will be minimized in accordance with Chapter 119 of Title 18, United States Code.

84. The "investigative or law enforcement officers of the United States" and translators, if necessary, who are to

carry out the requested interception of wire communications, will be instructed concerning the steps they should take to avoid infringing upon any attorney-client privilege or other recognized privileges. In addition, all communications intercepted will be conducted in such a way as to minimize the interception of communications not otherwise criminal in nature or subject to interception under Chapter 119, Title 18, United States Code. All monitoring will cease when it is determined that the monitored conversation is not criminal in nature. Interception will be suspended immediately when it is determined through voice identification, physical surveillance, or otherwise, that TARGET SUBJECTS or any of their confederates, when identified, are not participants in the conversation, unless it is determined during the portion of the conversation already overheard that the conversation is criminal in nature. If an interception is minimized, monitoring agents shall spot check to insure that the conversation has not turned to criminal matters.

85. It is requested that the order provide that, if necessary, translators be authorized to assist in conducting this wire surveillance and to receive disclosure of intercepted communications. Certain subjects of this investigation may communicate with each other in a Jamaican dialect known as Patois. It is therefore necessary to secure the services of Patois-speaking agents and officers of the DEA, Task Force, ICE,

USPS, and the Spring Valley, Ramapo, and Suffern Police Departments, among other law enforcement agencies, in order to assist the agents in monitoring the wire surveillance and translating the intercepted communications. All such Patois-speaking officers will be "deputized" as DEA Task Force officers. It is further requested, pursuant to Section 2518(5), Title 18, United States Code, that in the event the intercepted communications are in a code or foreign language or foreign dialect, and an expert in that code or foreign language or dialect is not reasonably available during the interception period, that minimization may be accomplished as soon as practicable after such interception.

AUTHORIZATION REQUEST

86. Based on the foregoing, it is my opinion that the interception of wire communications occurring over the TARGET CELLPHONES, as specified above, is essential to uncover the full scope of the illegal activity described.

87. Inasmuch as the illegal operation described herein is a continuing conspiracy involving numerous persons as yet unidentified and unknown, it is requested that it be ordered, as more fully stated in the accompanying application, that authorization to intercept not terminate when the sought wire communications are first obtained, but continue until interception fully reveals the objectives set forth above, or for

a period of thirty (30) days, whichever is earlier. The 30-day period shall be measured from the earlier of the day on which investigative or law enforcement officers first begin to conduct the interception or 10 days from the date of this Court's Order.

88. Pursuant to the provisions of Title 18, United States Code, Sections 2518(4), it is requested that it be ordered that T-Mobile and Sprint-Nextel and any subsequent service provider which provides service to the TARGET CELLPHONES, furnish the technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with such services as the provider accords the persons whose communications are to be intercepted, including all dial digits (for both incoming and outgoing calls), pen register information, and audio interception capability whether the TARGET CELLPHONES are in roaming mode or otherwise. It is further requested that the service providers maintain service to the TARGET CELLPHONES for the period of interception and any extensions thereto. The assistance of the providers is required to accomplish the objectives of the requested interceptions. Reasonable expenses incurred pursuant to this activity will be processed for payment by the DEA.

89. In addition, there is probable cause to believe that the location of the TARGET CELLPHONES at times determined by investigators will constitute or lead to evidence of the TARGET

OFFENSES. The ability to determine the location of DUNSTON FOOTE, a/k/a "Killa," and other co-conspirators will permit members of the investigative team to conduct surveillance of the TARGET SUBJECTS. Conducting such surveillance may enable investigators to identify additional evidence, co-conspirators, and locations of contraband.

90. Because the need for contemporaneous information concerning the intercepted communications is especially important in the present investigation, it is further requested that T-Mobile and Sprint-Nextel be ordered, pursuant to Federal Rule of Criminal Procedure 41 and 18 U.S.C. § 2703, to provide originating and terminating cell site information for the intercepted wire communications over the TARGET CELLPHONES, by permitting access to such information, as well as any available latitude/longitude or Global Positioning System ("GPS") information or E-911 System, for the intercepted wire communications, by permitting access to such information, at any time of day or night, for a period of thirty (30) days. There is probable cause to believe that the location of the TARGET CELLPHONES at times determined by investigators will constitute or lead to evidence of the TARGET OFFENSES.

91. It is further requested that T-Mobile and Sprint-Nextel, providers of electronic communications service as defined in Title 18, United States Code, Section 2510(15), shall disclose

to the United States and the DEA published and non-published subscriber information and toll records and information relevant to this investigation, that is, all such information pertaining to the telephone numbers associated with telephones, digital display devices, and mobile telephones used, if any, which may be requested in furtherance of the investigation, within 24 hours of said request, there being reason to believe that the contents of the information sought are relevant to a legitimate law enforcement inquiry.

92. It is further requested that any tracing operation and the use of caller identification service for the TARGET CELLPHONES be without geographical limit.

93. It is requested that this Affidavit, as it reveals an ongoing investigation, be sealed until further order of the Court in order to avoid premature disclosure of the investigation, guard against fugitives, and better ensure the safety of agents and others.

TFo Walter E. Alcivar
Walter Alcivar
Task Force Officer
WESTCHESTER COUNTY DRUG ENFORCEMENT
TASK FORCE
Village of Port Chester P.D.

Sworn to before me this
4th day of August 2010

Cathy Seibel
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT B

County Drug Enforcement Task Force (the "Task Force"), which is comprised of special agents from the Drug Enforcement Administration ("DEA") and police officers from local police departments. I am also an officer with the Port Chester Police Department. Since becoming a member of the Task Force, I have conducted numerous investigations of unlawful drug trafficking in violation of 21 U.S.C. §§ 841, 841(a)(1), 843(b), and 846, and have conducted or participated in wire and physical surveillance, surveillance of undercover transactions, the introduction of undercover agents, the execution of search warrants, debriefings of informants and reviews of taped conversations and drug records. I have also participated in investigations that have included the interception of wire communications, and I have reviewed taped conversations and drug records relating to narcotics trafficking. Through my training, education and experience, I have become familiar with the manner in which illegal drugs are transported, stored, and distributed and the methods of payment for such drugs.

2. I submit this affidavit in support of an application for an order pursuant to Section 2518 of Title 18, United States Code, authorizing the interception and recording -- in the case of TARGET CELLPHONE 2, the continued interception and recording and in the case of TARGET CELLPHONE 3 the original interception and recording -- of wire communications concerning

offenses enumerated in Section 2516 of Title 18, United States Code -- that is, offenses involving the distribution of, and possession with intent to distribute, controlled substances, the use of wire facilities to facilitate the same, conspiracy to do the same and attempts to do the same, in violation of 21 U.S.C. §§ 841(a)(1), 843(b), and 846 (the "TARGET OFFENSES").¹

3. For the reasons set out in this affidavit, I believe that there is probable cause to believe that the TARGET OFFENSES have been committed, are being committed, and will continue to be committed by one or more of the following individuals: DUNSTON FOOTE, a/k/a "Killa," CLOVAL TAYLOR, a/k/a "Clove," DWIGHT MORGAN, FNU LNU, a/k/a "Frankie," FNU LNU, a/k/a "Steve," FNU LNU, a/k/a "Dirty," FNU LNU "Chris," ALLAND ZAMOR, TOREY EAMES, a/k/a "Mello," a/k/a "Mellow," CONROY BROWN, KENMAR CHAMBERS, NATALIE BROWN, a/k/a "Danisha," RAYMOND DORSEY, a/k/a "Ray," a/k/a "Smoke," TROY MONTGOMERY, a/k/a "Scrapie," DROMYNEAK MONTGOMERY, a/k/a "Drammy," RAYMOND JACKSON, a/k/a "Migiva," and others as yet unknown (the "TARGET SUBJECTS"), and that particular communications concerning the TARGET OFFENSES will be obtained through interception of the TARGET CELLPHONES (defined in paragraph 7 below). Authorization is sought herein to

¹ Although not a predicate offense under 18 U.S.C. § 2516, there is probable cause to believe that the TARGET SUBJECTS (as subsequently defined herein) have aided and abetted and are aiding and abetting those substantive offenses, in violation of 18 U.S.C. § 2.

h. TARGET CELLPHONE 2 had contact with the phone number 845-548-5041 5 times, and TARGET CELLPHONE 3 had contact with the same number 4 times.

i. TARGET CELLPHONE 2 had contact with the phone number 347-403-7698 8 times, and TARGET CELLPHONE 3 had contact with the same number one time.

j. TARGET CELLPHONE 2 had contact with the phone number 845-282-3598 22 times, and TARGET CELLPHONE 3 had contact with the same number 22 times.

56. Based on the foregoing, I believe that the TARGET CELLPHONES are being used by DUNSTON FOOTE, a/k/a "Killa," and FNU LNU, a/k/a "Frankie," to distribute narcotics. I believe that FOOTE and FNU LNU, a/k/a "Frankie," will continue to use the TARGET CELLPHONES for these purposes in the future.

II. ALTERNATIVE INVESTIGATIVE PROCEDURES HAVE BEEN TRIED OR APPEAR UNLIKELY TO SUCCEED IF TRIED; THERE IS A NEED FOR THE INTERCEPTION OF WIRE COMMUNICATIONS OVER THE TARGET CELLPHONES

57. The principal goals of this investigation are to identify, locate, and arrest persons responsible for the distribution of marijuana and cocaine in and around Spring Valley, and to gather evidence against those responsible for running the organization and to identify and locate the sources that supply the Foote Organization with large quantities of narcotics. We are investigating not only the currently identified TARGET SUBJECTS, but also all of the narcotics

suppliers, other customers, distributors that work in the Foote Organization, and associates, as well as the locations at which the TARGET SUBJECTS store narcotics and the methods by which they operate their narcotics-trafficking business and how they dispose of the proceeds of that narcotics trafficking.

58. The interception of wire communications over TARGET CELLPHONE 1 and TARGET CELLPHONE 2 pursuant to the August 4 Order has provided valuable evidence against the TARGET SUBJECTS. Continued interception of wire communications over the TARGET CELLPHONE 2 and original interception of wire communications over TARGET CELLPHONE 3 are required, however, because the interception of wire communications to date have not fully revealed the nature and scope of the TARGET SUBJECTS' narcotics trafficking activity.

59. The interceptions to date have not identified, for example, the identities of all the members of the Foote Organization. DUNSTON FOOTE, a/k/a "Killa," and FNU LNU, a/k/a "Frankie," and others make deliveries inside and near buildings where physical surveillance is challenging. While the interceptions of wire communications over TARGET CELLPHONE 1 and TARGET CELLPHONE 2 has provided valuable information about the other members of the Foote Organization, additional interception is needed to confirm the identify of those individuals. The investigation has also not yet identified the suppliers for the

Foote Organization, the locations of all the organization's stash houses, the sources of financing for the organization, and the locations and disposition of the proceeds from the organization's narcotics trafficking activities. While the wire communication interceptions and physical surveillance, in combination, have provided valuable information about possible stash houses used by the Foote Organization, further interception is needed to confirm that the locations are stash houses and to identify other possible stash houses.

60. Intercepting wire communications over the TARGET CELLPHONES will assist law enforcement officers in fully revealing the nature and scope of the TARGET SUBJECTS' narcotics trafficking activities. Specifically, interceptions over the TARGET CELLPHONES may reveal the source or sources of supply for the Foote Organization. Such interceptions will enable the DEA and the other law enforcement groups with which the DEA is working to gather evidence that otherwise would not be able to be gathered by more traditional investigative techniques.

61. Other investigative techniques, described herein and in the August 4 Affidavit, have been tried, including the purchases of marijuana, physical surveillance, and the use of a confidential informant. While those efforts have been fruitful, interception over the TARGET CELLPHONES is required because other investigative techniques can not fully reveal the nature and

scope of the TARGET SUBJECTS' narcotics trafficking activity. It is anticipated that interception over the TARGET CELLPHONES will assist in continuing to identify the means and methods by which the Foote Organization obtains a regular supply of marijuana and cocaine and the individuals who are involved in the provision of that supply.

62. It is further anticipated that the interceptions of wire communications will assist in continuing to identify the location of stash houses, the source of financing for the organization, and the locations and dispositions of the proceeds from those activities. In addition, it is anticipated that new targets would be identified through intercepted communications and these intercepted communications would provide valuable evidence and intelligence about incoming narcotics shipments and on-going narcotics trafficking.

63. As discussed below, several other investigative techniques have been tried, or reasonably appear likely to fail if tried, or are likely to jeopardize the investigation if tried. In the absence of the requested authorization of wire interceptions occurring over the TARGET CELLPHONES, there are no means of determining the internal operations of the Foote Organization, including when, where, and how the Foote Organization obtains its supply of narcotics, the existence and locations of records relating to narcotics trafficking, the

location and source of resources used to finance the illegal activities, and the location and disposition of the proceeds from those activities. It is only through the combination of wire surveillance, visual surveillance, and other investigatory tools that the agents expect to identify fully the nature and scope of the organization. Accordingly, there is a compelling need in this case for wire surveillance of the TARGET CELLPHONES.

Physical Surveillance

64. Law enforcement officers of the DEA, the Task Force, the Police Departments of Spring Valley, Ramapo, Suffern, Clarkstown, and others have conducted, and are continuing to conduct (when appropriate), physical surveillance of members of the Foote Organization. Physical surveillance, coupled with the information from the CI, has been productive and has led to the identification of some individuals associated with the Foote Organization, including DUNSTON FOOTE, a/k/a "Killa," CLOVAL TAYLOR, a/k/a "Clove," DWIGHT MORGAN, NATALIE BROWN, a/k/a "Danisha," and RAYMOND DORSEY, a/k/a "Ray," a/k/a "Smoke," and TROY MONTGOMERY. However, it is only through the combination of wire surveillance, physical surveillance, and other investigatory tools, however, that the agents expect to identify fully the nature and scope of the organization.

65. For example, RPD Detective 1 and other law enforcement officers have continued to conduct physical

surveillance of the Foote Residence, described above, through the use of a pole camera and have established a pole camera at the Seabring House on August 26, 2010. The pole camera surveillance has provided useful information in the investigation, including evidence of large packages of what appears to be narcotics being transported into and out of the suspected stash houses by FOOTE and others and FOOTE's use of multiple cellphones and multiple vehicles.

66. Pole camera surveillance alone, however, would not likely yield conclusive evidence of the scope of the distribution network of the Foote Organization, the roles of the co-conspirators, or the participation of members who do not go to the Foote Residence. In addition, while surveillance has revealed what appears to be narcotics-related activity at the Foote Residence and Seabring House, it has not revealed the type or quantity of drugs being transported by the Foote Organization for distribution, and such surveillance has not revealed where packages brought to those locations are being obtained. Physical surveillance has been useful to corroborate information provided by the CI regarding the drug-related activities of the TARGET SUBJECTS but does not provided the context or substance of the meetings between co-conspirators and does not reveal the nature of their communications, and is therefore insufficient to meet the goals of the investigation.

67. In addition, because of the locations of the houses, law enforcement officers are not able to follow FOOTE or any vehicles coming or going from the Foote Residence or the Seabring House without alerting FOOTE or other TARGET SUBJECTS to their presence. Moreover, based on my experience and training, and my participation in this investigation, narcotics traffickers are extremely surveillance-conscious. Accordingly, increased surveillance could alert the TARGET SUBJECTS to the existence of the investigation, and cause them to relocate or temporarily cease their illegal activities, thereby hindering the investigation.

68. Surveillance is also a limited investigative tool because some of the TARGET SUBJECTS remain unidentified and there is limited information about the specific locations in which they operate. In addition, many of the meetings between the TARGET SUBJECTS has occurred in garages and indoors, where physical surveillance has not been possible. Thus, even if successful, surveillance will provide only limited corroboration of the illicit narcotics activities of the TARGET SUBJECTS.

69. It is expected that information that can be obtained from interceptions over the TARGET CELLPHONES will help law enforcement agents determine the identities of the subjects involved and track their activities, thereby enhancing the prospects for more fruitful physical surveillance of those

activities. In addition, with the knowledge provided beforehand by wire surveillance that a meeting is to take place at a given location, it may be possible to establish physical surveillance at that location in advance, thus minimizing the risks of discovery inherent in following subjects or remaining at target locations for extended periods of time. Wire surveillance would better enable law enforcement to coordinate physical and electronic surveillance of such drug transactions, potentially facilitating the seizure of narcotics and narcotics-related proceeds, and the arrest of TARGET SUBJECTS.

70. For the reasons described above, surveillance alone is insufficient to meet the goals of the investigation. Accordingly, there is a compelling need in this case for wire surveillance of the TARGET CELLPHONES.

Arrests

71. Attempting to arrest the TARGET SUBJECTS now would mean that several of the objectives of this investigation would be unfulfilled. Members of the Foote Organization have been identified through the CI and other means. Certain members of the Foote Organization were identified after entry of the August 4 Order, including RAYMOND DORSEY, a/k/a "Ray," a/k/a "Smoke," TROY MONTGOMERY, a/k/a "Scrapie," DROMYNEAK MONTGOMERY, a/k/a "Drammy," and RAYMOND JACKSON, a/k/a "Migiva." Arresting any of the TARGET SUBJECTS, including those identified after

entry of the August 4 Order, would almost certainly cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or to change the locations, instrumentalities, and methods used to conduct their illegal activities.

72. Based on information obtained during the investigation thus far, I believe that DUNSTON FOOTE, a/k/a "Killa," deals with the organization's suppliers. Based on my training, experience, and participation in the investigation, I believe that although it is possible that FOOTE would cooperate with law enforcement if arrested, it is by no means certain that he would do so. It is therefore uncertain whether arrests would lead to the identification of the Foote Organization's suppliers, or to evidence showing the participation of the suppliers in drug distribution.

73. Arresting the identified TARGET SUBJECTS and attempting to obtain their cooperation in investigating the narcotics trafficking of their criminal associates is an investigative route that, in my judgment and the judgment of other law enforcement officers involved, is not reasonably likely to result in law enforcement learning the identities of the organization's suppliers, the disposition of its narcotics proceeds, or the identities of the additional co-conspirators.

Use of Confidential Informants

74. This investigation has involved obtaining information from and the active use of a confidential informant who previously worked as a drug dealer in the Foote Organization, as described above. Although the CI has provided valuable and corroborated information, at this time there is no known confidential source that can provide information about all of the Foote Organization's sources of supply and their locations, all of the links in the chain of supply (including FOOTE's connections at the Post Office), and all of the Foote Organization's workers and customers.

75. Narcotics organizations are generally highly compartmentalized, and it is usually impossible for an informant to gain access to all aspects of an organization's illegal activities. Thus, the use of confidential informants alone is typically inadequate to develop evidence about the TARGET SUBJECTS' suppliers and customers.

76. In addition, based on my experience as a narcotics investigator, I believe that drug traffickers are unlikely to discuss the full extent of their organization's activities or membership with any individual, subordinate member of the organization. Based on my experience, I also know that narcotics organizations are often highly protective of their sources of supply.

77. Intercepting calls over the TARGET CELLPHONES is likely to provide information and evidence that the CI cannot alone provide. Intercepted calls are likely to be useful in identifying co-conspirators who are unknown to the CI, and to provide evidence against the members of the Foote Organization. Intercepted calls are likely to be useful in identifying locations where drugs are stored which are unknown to the CI, and additionally are likely to be useful in providing evidence showing where drugs and drug proceeds are located at particular instances, about which the CI's knowledge is necessarily limited. Intercepted calls are additionally likely to be useful in corroborating information provided by the CI.

78. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

79. Based on my knowledge of this investigation and my experience as a narcotics investigator, I believe that the interception of the communications of the TARGET CELLPHONES is essential to reveal the identities of co-conspirators and the structure and operation of the Foote Organization. Without the evidence obtained from court-authorized interceptions, I am confident that the objectives of this investigation cannot be

met.

Use of Undercover Agents

80. There is currently no expectation that an undercover officer would be able to determine the full scope of the TARGET SUBJECTS' operations, meet and identify all of the other TARGET SUBJECTS and their co-conspirators, or identify the TARGET SUBJECTS' narcotics suppliers and their confederates. I do not believe that an undercover officer could infiltrate the Foote Organization.

81. As detailed in the August 4 Affidavit, while the CI has been able to make purchases of drugs from DUNSTON FOOTE, a/k/a "Killa," due to the compartmentalized nature of the Foote Organization, there is no expectation that any undercover agent will be able to deal directly with FOOTE's sources of supply to purchase drugs or infiltrate the inner workings of the Foote Organization. Furthermore, the roles of the TARGET SUBJECTS in the conspiracy are also not clearly defined at this time and an undercover agent is likely to only be permitted access to the lower-level dealers, as opposed to the larger figures in charge of the sources of supply and distribution.

Telephone Toll Records

82. Telephone toll records have been and will be used in this investigation, but will provide only limited information. I have obtained and reviewed telephone toll records for the

TARGET CELLPHONES and other cell phones believed to be used by members of the Foote Organization. Phone records, however, do not enable law enforcement officers to identify with certainty the persons involved in the conversations or the significance of the communications in the context of ongoing narcotics trafficking. Among other problems, a telephone number appearing in the records may not be listed or subscribed in the name(s) or address(es) of the person(s) actually using the telephone. Furthermore, the use of calling cards and telephone access numbers often hides the ultimate numbers called, thereby preventing law enforcement from learning the participants involved in any particular communication. In addition, the review of telephone records will not, in itself, reveal the structure of the Foote Organization or its sources of supply.

Federal Grand Jury

83. The issuance of grand jury subpoenas is likely to be inadequate to obtain critical information about the timing and location of narcotics transactions. Witnesses who might provide additional relevant evidence to a grand jury have not been identified or would themselves be participants in the narcotics trafficking. Because such individuals would face prosecution themselves, it is unlikely that any of them would testify voluntarily. Nor would it be desirable at this time to seek immunity for such individuals and to compel their testimony.

Immunizing them could thwart the public policy that they be held accountable for their crimes. Furthermore, the issuance of grand jury subpoenas to other individuals would risk alerting the TARGET SUBJECTS to the ongoing investigation before their sources of supply are identified and located. Moreover, not all of the TARGET SUBJECTS have been identified and, in the absence of further evidence identifying co-conspirators and their respective involvement in the Foote Organization, it is difficult to determine whom to subpoena to the Grand Jury.

Witness Interviews

84. I believe that interviews of the TARGET SUBJECTS or their known associates would produce insufficient information as to the identities of all of the persons involved with the TARGET SUBJECTS in narcotics trafficking, the sources and locations of the drugs, the sources of financing, the locations of records and proceeds from the distribution of drugs, and other pertinent information regarding the TARGET OFFENSES. I also believe that any responses to the interviews, particularly interviews of those who are higher up in the organization, could contain a significant number of untruths, diverting the investigation with false leads or otherwise frustrating the investigation. I believe that questioning any of the remaining co-conspirators would alert the other co-conspirators, and cause a change in their methods of operation and the concealment or

destruction of evidence before all of the co-conspirators are identified, thereby compromising the investigation and resulting in the possible loss of valuable evidence, and the possibility of harm to the CI, whose identity may become known or whose existence may otherwise be compromised.

Search Warrants

85. The investigation has revealed information that would likely enable the DEA to obtain and execute search warrants for the Foote Residence and Seabring House, described above. In addition, the investigation has revealed information that would likely enable the DEA to obtain and execute search warrants for a location near Clinton Street in Spring Valley, New York that is used to store narcotics. While executing search warrants at those locations may result in the seizure of pertinent evidence, it would also alert the TARGET SUBJECTS to the existence of the investigation without the likelihood of determining the full scope of the organization's operations, particularly the organization's sources of supply, the identities of all of the co-conspirators, or other locations where narcotics are stashed.

86. Further information is needed to identify the means and methods by which the Foote Organization obtains a supply of narcotics, and the locations where the drugs and drug-distribution proceeds are transported and stored. The execution of a search warrant at the Foote Residence and/or Seabring House

is not likely to lead to the identification of other locations used by the Foote Organization. Nor is it likely to lead to the identification of co-conspirators who participate in obtaining or selling the Foote Organization's supply of drugs.

87. The locations where the TARGET SUBJECTS currently receive, hide, and distribute their narcotics and narcotics proceeds have not been fully identified. Moreover, without wire surveillance, law enforcement will not know when the locations contain narcotics, narcotics proceeds, and other evidence of the TARGET OFFENSES. I believe that wire surveillance will assist law enforcement in continuing to identify locations where narcotics and narcotics proceeds are currently stored, and determine when such contraband is at such locations, so that search warrants for such locations may be obtained while contraband is still present at the locations.

88. Accordingly, and because the above-described investigative techniques are limited in their applications, have been unsuccessful, or are unlikely to be successful, authorization to intercept wire communications over the TARGET CELLPHONES is necessary to identify and develop evidence against the TARGET SUBJECTS.

MINIMIZATION

89. All monitoring of wire communications over the TARGET CELLPHONES will be minimized in accordance with Chapter

EXHIBIT C

77. Intercepting calls over the TARGET CELLPHONES is likely to provide information and evidence that the CI cannot alone provide. Intercepted calls are likely to be useful in identifying co-conspirators who are unknown to the CI, and to provide evidence against the members of the Foote Organization. Intercepted calls are likely to be useful in identifying locations where drugs are stored which are unknown to the CI, and additionally are likely to be useful in providing evidence showing where drugs and drug proceeds are located at particular instances, about which the CI's knowledge is necessarily limited. Intercepted calls are additionally likely to be useful in corroborating information provided by the CI.

78. Additionally, since I and other law enforcement officers learned that the CI had engaged in unauthorized, narcotics-related communications with FOOTE that were intercepted over TARGET CELLPHONE 2, pursuant to the August 4 Order, we have marginalized the role of the CI in this investigation.

79. Based on my knowledge of this investigation and my experience as a narcotics investigator, I believe that the interception of the communications of the TARGET CELLPHONES is essential to reveal the identities of co-conspirators and the structure and operation of the Foote Organization. Without the evidence obtained from court-authorized interceptions, I am confident that the objectives of this investigation cannot be

EXHIBIT D

illegal drugs are transported, stored, and distributed and the methods of payment for such drugs.

2. I submit this affidavit in support of an application for an order pursuant to Section 2518 of Title 18, United States Code, authorizing (1) the renewed interception and recording of wire communications and the original interception and recording of electronic communications (i.e., text messages) over TARGET CELLPHONE 1, (2) the continued interception and recording of wire communications over TARGET CELLPHONE 2 and TARGET CELLPHONE 3, and (3) the original interception and recording of wire and electronic communications over TARGET CELLPHONE 4, concerning offenses enumerated in Section 2516 of Title 18, United States Code -- that is, offenses involving the distribution of, and possession with intent to distribute, controlled substances, the use of wire facilities to facilitate the same, conspiracy to do the same and attempts to do the same, in violation of 21 U.S.C. §§ 841(a)(1), 843(b), and 846, and 18 U.S.C. §§ 1956 and 1957 (the "TARGET OFFENSES").¹

¹ Although not a predicate offense under 18 U.S.C. § 2516, there is probable cause to believe that the TARGET SUBJECTS (as subsequently defined herein) have aided and abetted and are aiding and abetting these substantive offenses, in violation of 18 U.S.C. § 2. In addition, based on communications of the TARGET SUBJECTS intercepted pursuant to the August 4 and September 3 Orders (as subsequently defined herein), there is a reasonable basis to believe that some of the TARGET SUBJECTS have committed offenses involving bringing in or harboring certain aliens, in violation of 8 U.S.C. § 1324.

discuss the distribution of narcotics through voice and text communications. I believe that FOOTE will continue to use these TARGET CELLPHONES for these purposes in the future.

II. ALTERNATIVE INVESTIGATIVE PROCEDURES HAVE BEEN TRIED OR APPEAR UNLIKELY TO SUCCEED IF TRIED; THERE IS A NEED FOR THE INTERCEPTION OF WIRE COMMUNICATIONS OVER THE TARGET CELLPHONES

78. The principal goals of this investigation are to identify, locate, and arrest persons responsible for the distribution of marijuana and cocaine in and around Spring Valley, and to gather evidence against those responsible for running the organization and to identify and locate the sources that supply the Foote Organization with large quantities of narcotics. We are investigating not only the currently identified TARGET SUBJECTS, but also all of the narcotics suppliers, other customers, distributors that work in the Foote Organization, and associates, as well as the locations at which the TARGET SUBJECTS store narcotics and the methods by which they operate their narcotics-trafficking business and how they dispose of the proceeds of that narcotics trafficking.

79. The interception of wire communications over TARGET CELLPHONE 1, TARGET CELLPHONE 2, and TARGET CELLPHONE 3 pursuant to the August 4 and September 3 Orders has provided valuable evidence against the TARGET SUBJECTS. Renewed interception of wire communications and original interception of electronic communications over TARGET CELLPHONE 1; continued

interception of wire communications over TARGET CELLPHONE 2 and TARGET CELLPHONE 3; and original interception of wire and electronic communications over TARGET CELLPHONE 4 are required, however, because the interception of wire communications to date have not fully revealed the nature and scope of the TARGET SUBJECTS' narcotics trafficking activity.

80. The interceptions to date have not identified, for example, the identities of all the members of the Foote Organization. DUNSTON FOOTE, a/k/a "Killa," and FNU LNU, a/k/a "Frankie," and others make deliveries inside and near buildings where physical surveillance is challenging. While the interceptions of wire communications over TARGET CELLPHONE 1, TARGET CELLPHONE 2, and TARGET CELLPHONE 3 have provided valuable information about the other members of the Foote Organization, additional interception is needed to confirm the identify of those individuals. The investigation has also not yet identified the suppliers for the Foote Organization, the locations of all the organization's stash houses, the sources of financing for the organization, and the locations and disposition of the proceeds from the organization's narcotics trafficking activities. While the wire communication interceptions and physical surveillance, in combination, have provided valuable information about possible stash houses used by the Foote Organization, further interception is needed to confirm that the locations are stash houses and to

identify other possible stash houses.

81. Intercepting wire and electronic communications over the TARGET CELLPHONES will assist law enforcement officers in fully revealing the nature and scope of the TARGET SUBJECTS' narcotics trafficking activities. Specifically, interceptions over the TARGET CELLPHONES may reveal the source or sources of supply for the Foote Organization. Such interceptions will enable the DEA and the other law enforcement groups with which the DEA is working to gather evidence that otherwise would not be able to be gathered by more traditional investigative techniques.

82. Other investigative techniques, described herein and in the August 4 and September 3 Affidavits, have been tried, including the purchases of marijuana, physical surveillance, and the use of a confidential informant. While those efforts have been fruitful, interception over the TARGET CELLPHONES is required because other investigative techniques cannot fully reveal the nature and scope of the TARGET SUBJECTS' narcotics trafficking activity. It is anticipated that interception over the TARGET CELLPHONES will assist in continuing to identify the means and methods by which the Foote Organization obtains a regular supply of marijuana and cocaine and the individuals who are involved in the provision of that supply.

83. It is further anticipated that the interceptions of wire communications will assist in continuing to identify the

location of stash houses, the source of financing for the organization, and the locations and dispositions of the proceeds from those activities. In addition, it is anticipated that new targets would be identified through intercepted communications and these intercepted communications would provide valuable evidence and intelligence about incoming narcotics shipments and on-going narcotics trafficking.

84. As discussed below, several other investigative techniques have been tried, or reasonably appear likely to fail if tried, or are likely to jeopardize the investigation if tried. In the absence of the requested authorization of wire interceptions occurring over the TARGET CELLPHONES, there are no means of determining the internal operations of the Foote Organization, including when, where, and how the Foote Organization obtains its supply of narcotics, the existence and locations of records relating to narcotics trafficking, the location and source of resources used to finance the illegal activities, and the location and disposition of the proceeds from those activities. It is only through the combination of wire surveillance, visual surveillance, and other investigatory tools that the agents expect to identify fully the nature and scope of the organization. Accordingly, there is a compelling need in this case for wire surveillance of the TARGET CELLPHONES.

Physical Surveillance

85. Law enforcement officers of the DEA, the Task Force, the Police Departments of Spring Valley, Ramapo, Suffern, Clarkstown, and others have conducted, and are continuing to conduct (when appropriate), physical surveillance of members of the Foote Organization. As described in the August 4 and September 4 Affidavits, pole cameras have been installed outside of the Foote Residence and the Seabring House, where the Foote Organization is believed to receive, distribute, and store large quantities of drugs. The pole camera surveillance has provided useful information in the investigation, including evidence of large packages of what appears to be narcotics being transported into and out of the suspected stash houses by FOOTE and others and FOOTE's use of multiple cellphones and multiple vehicles.

86. For example, according to other law enforcement officers monitoring the pole cameras, FOOTE, "Frankie," CLOVAL TAYLOR, a/k/a "Clove," and other TARGET SUBJECTS have been seen carrying packages into and out of the Seabring House as recently as on or about September 23, 2010 and September 27, 2010. FOOTE has also been observed carrying packages from his Vehicle and various rental cars into or next to the Foote Residence on multiple occasions, including as recently as September 25, 2010. FOOTE has also been observed speaking on multiple cellphones, and he has been observed speaking on a cellphone on some occasions when no wire communications over TARGET CELLPHONE 1 and/or TARGET

CELLPHONE 2 were being intercepted, which I believe shows that he uses multiple cellphones.

87. Physical surveillance, coupled with the information from the CI, has been productive and has led to the identification of some individuals associated with the Foote Organization, including DUNSTON FOOTE, a/k/a "Killa," CLOVAL TAYLOR, a/k/a "Clove," DWIGHT MORGAN, NATALIE BROWN, a/k/a "Danisha," RAYMOND DORSEY, a/k/a "Ray," a/k/a "Smoke," TROY MONTGOMERY, RAYMOND JACKSON, a/k/a "Migiva," a/k/a "Diego," FITZROY KELLY NORRIS, JAVANIE JEFFREY GENTILES, SERGE DORCELY, a/k/a "Bounty," JOSEPH CARRACHIA, a/k/a "Carach," SOPHIA MOORE, SOPHIA JONES, a/k/a "Bridgette," MATTHEW DIAGNE, and DEBORAH GRIFFITH. However, it is only through the combination of wire surveillance, physical surveillance, and other investigatory tools, however, that the agents expect to identify fully the nature and scope of the organization.

88. Pole camera surveillance alone, however, would not likely yield conclusive evidence of the scope of the distribution network of the Foote Organization, the roles of the co-conspirators, or the participation of members who do not go to the Foote Residence. In addition, while surveillance has revealed what appears to be narcotics-related activity at the Foote Residence and Seabring House, it has not revealed the type or quantity of drugs being transported by the Foote Organization

for distribution, and such surveillance has not revealed where packages brought to those locations are being obtained. Physical surveillance has been useful to corroborate information provided by the CI regarding the drug-related activities of the TARGET SUBJECTS but does not provided the context or substance of the meetings between co-conspirators and does not reveal the nature of their communications, and is therefore insufficient to meet the goals of the investigation.

89. In addition, because of the locations of the suspected stash and distribution locations, law enforcement officers are not able to follow FOOTB or any vehicles coming or going from the Foote Residence or the Seabring House without alerting FOOTB or other TARGET SUBJECTS to their presence. Moreover, based on my experience and training, and my participation in this investigation, narcotics traffickers are extremely surveillance-conscious. For example:

a. As described above, on or about September 13, 2010, "Frankie," one of the TARGET SUBJECTS, placed an outgoing call over TARGET CELLPHONE 3 to TARGET CELLPHONE 4 and told FOOTB that "somebody called me and said two boys were following you." FOOTB told "Frankie" "nobody is following anybody, man. It's them they [the cops] are watching."

b. On or about September 16, 2010, "Frankie" received a call over TARGET CELLPHONE 3 and spoke with an

unidentified male ("UM") who told "Frankie" that there were some "boys" near you (Session 456). As stated above, based on my training and experience, I know that the term "boys" is often used by individuals engaged in illegal activity to refer to law enforcement officers.

c. On or about September 19, 2010, "Frankie" received a call over TARGET CELLPHONE 3 from 845-536-4832 and spoke with an individual identified as "Sophia" (Session 664). "Sophia" told "Frankie" that "that guy that just drive by is a police," and "Frankie said "yeah, I see him . . . because I saw his light flash." "Sophia" also told "Frankie" that "he has a camera on the door."

90. Accordingly, considering the TARGET SUBJECTS' sensitivity to law enforcement presence, increased physical surveillance could alert the TARGET SUBJECTS to the existence of the investigation, and cause them to relocate or temporarily cease their illegal activities, thereby hindering the investigation.

91. Surveillance is also a limited investigative tool because some of the TARGET SUBJECTS remain unidentified or are only partially identified and there is limited information about the specific locations in which they operate. In addition, many of the meetings between the TARGET SUBJECTS has occurred in garages and indoors, where physical surveillance has not been

possible. Thus, even if successful, surveillance will provide only limited corroboration of the illicit narcotics activities of the TARGET SUBJECTS.

92. It is expected that information that can be obtained from interceptions over the TARGET CELLPHONES will help law enforcement agents determine the identities of the subjects involved and track their activities, thereby enhancing the prospects for more fruitful physical surveillance of those activities. In addition, with the knowledge provided beforehand by wire and electronic surveillance that a meeting is to take place at a given location or a package is to be received on a certain date or at a certain place, it may be possible to establish physical surveillance at that location in advance, thus minimizing the risks of discovery inherent in following subjects or remaining at target locations for extended periods of time. Wire surveillance would better enable law enforcement to coordinate physical and electronic surveillance of such drug transactions, potentially facilitating the seizure of narcotics and narcotics-related proceeds, and the arrest of TARGET SUBJECTS.

93. For the reasons described above, surveillance alone is insufficient to meet the goals of the investigation. Accordingly, there is a compelling need in this case for wire surveillance of the TARGET CELLPHONES.

Arrests

94. Attempting to arrest the TARGET SUBJECTS now would mean that several of the objectives of this investigation would be unfulfilled. Members of the Foote Organization have been identified through the CI and other means. Certain members of the Foote Organization have been identified during the course of this investigation and, specifically, were identified after entry of the September 3 Order, including CASHIEMA GREEN a/k/a "Cash," O'NEILL WHITE, RICARDO MONESTIME, a/k/a "Mossy," MARLON MURPHY, a/k/a "Murph," RICARDO BEPOT, a/k/a "Bigga," FITZROY KELLY NORRIS, JAVANIE JEFFREY GENTILES, SERGE DORCELYX, a/k/a "Bounty," JOSEPH CARRACHIA, a/k/a "Carach," DARREN MCMURRIN, a/k/a "Fish," SOPHIA MOORE, EDDIE PAYNE, SOPHIA JONES, a/k/a "Bridgette," MATTHEW DIAGNE, JEAN DUFRESNE, and DEBORAH GRIFFITH. Arresting any of the TARGET SUBJECTS, including those identified after entry of the September 3 Order, would almost certainly cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or to change the locations, instrumentalities, and methods used to conduct their illegal activities. For example, on or about September 9, 2010, FITZROY NORRIS KELLY, one of the TARGET SUBJECTS, was arrested after leaving the Seabring House and was found to have approximately 113 grams of marijuana on his person. Based on intercepted

communications between FOOTE, "Frankie," and other TARGET SUBJECTS obtained pursuant to the September 3 Order, I know that FOOTE and "Frankie" told other TARGET SUBJECTS to "clean out" the Seabring House after learning about the arrest.¹² Shortly after that series of calls, individuals, including other TARGET SUBJECTS, were observed through the pole camera surveillance leaving the Seabring House, and at least one individual was carrying a package. Accordingly, I believe that arresting some of the identified participants in this conspiracy now would lead to the destruction of evidence, temporary movement of the Organization's stash and distribution locations, and cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or change the methods used to conduct

¹² Specifically, as described above, on or about September 9, 2010, at approximately 1:25 p.m., "Frankie" received an incoming call over TARGET CELLPHONE 3 from phone number 845-367-2548 and spoke with an Unidentified Male ("UM") (Session 169). During that call the UM told "Frankie" that the police just "picked up" a man a few blocks away from "Frankie." "Frankie" said "alright, let me go clean up the place then because this is where he is coming from." Based on my participation in this investigation and information I learned from local law enforcement, I know that FITZROY NORRIS KELLY was arrested just after leaving the Seabring house. I believe that, in response to learning about the arrest during the above-referenced phone call, "Frankie" intended to get rid of the drugs in the house. At approximately 1:33 p.m., FOOTE placed an outgoing call over TARGET CELLPHONE 2 to phone number 845-598-9741 and spoke with "Danisha" (Session 3059). During that call, FOOTE told "Danisha" that he was hearing vibes that he didn't like - specifically, that "Frankie" had called him and told him that "a little man just came and checked him . . . and got a thing and he got a call that they just sucked off the little man." FOOTE said "that's why I'm telling you all to get the place clean up." I believe that "sucked off" is slang for arrested and that, in response to learning about the arrest, "Frankie" called FOOTE and FOOTE told "Frankie" to get rid of the drugs in the house.

their illegal activities

95. Furthermore, based on information obtained during the investigation thus far, I believe that DUNSTON FOOTE, a/k/a "Killa," and FNU LNU, a/k/a "Frankie," deal with the organization's suppliers. Based on my training, experience, and participation in the investigation, I believe that although it is possible that FOOTE or "Frankie" would cooperate with law enforcement if arrested, it is by no means certain that they would do so. It is therefore uncertain whether arrests would lead to the identification of the Foote Organization's suppliers, or to evidence showing the participation of the suppliers in drug distribution.

96. Arresting the identified TARGET SUBJECTS and attempting to obtain their cooperation in investigating the narcotics trafficking of their criminal associates is an investigative route that, in my judgment and the judgment of other law enforcement officers involved, is not reasonably likely to result in law enforcement learning the identities of the organization's suppliers, the disposition of its narcotics proceeds, or the identities of the additional co-conspirators. Due to the highly compartmentalized nature of drug-trafficking conspiracies, I believe it is unlikely that lower-level distributors, or so-called "runners," would be able to provide information about the Foote Organization's sources of supply and

the locations or uses of the proceeds of their illegal activities.

Use of Confidential Informants

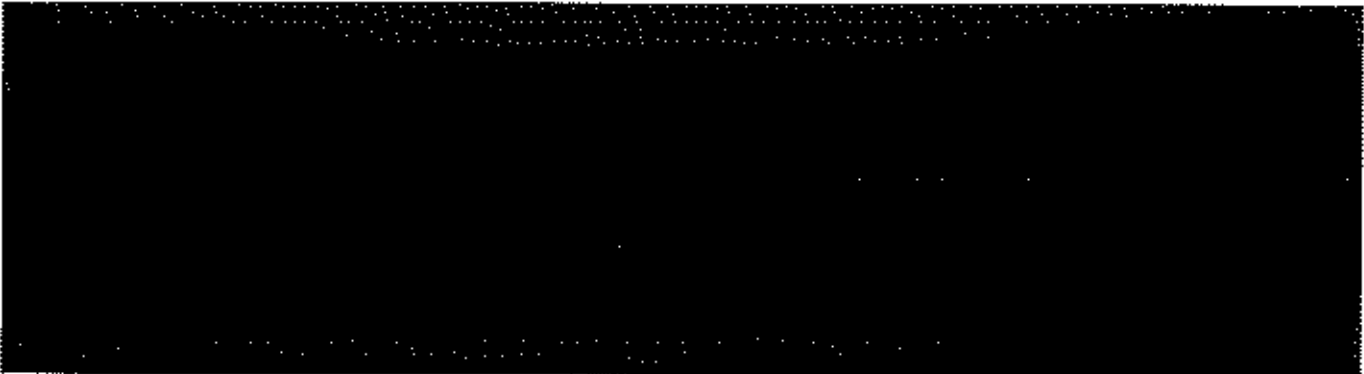
97. This investigation has involved obtaining information from and the active use of a confidential informant who previously worked as a drug dealer in the Foote Organization, as described in the August 4 and September 3 Affidavits. Although the CI has provided valuable and corroborated information, at this time there is no known confidential source that can provide information about all of the Foote Organization's sources of supply and their locations (some of which are believed to be in other states or countries), all of the links in the chain of supply (including connections at various mailing services), and all of the Foote Organization's workers and customers.

98. Narcotics organizations are generally highly compartmentalized, and it is usually impossible for an informant to gain access to all aspects of an organization's illegal activities. Thus, the use of confidential informants alone is typically inadequate to develop evidence about the TARGET SUBJECTS' suppliers and customers.

99. In addition, based on my experience as a narcotics investigator, I believe that drug traffickers are unlikely to discuss the full extent of their organization's activities or

membership with any individual, subordinate member of the organization. Based on my experience, I also know that narcotics organizations are often highly protective of their sources of supply.

100. Intercepting calls and, where requested, text messages over the TARGET CELLPHONES is likely to provide information and evidence that the CI cannot alone provide. Intercepted calls and texts are likely to be useful in identifying co-conspirators who are unknown to the CI, providing information about the receipt or distribution of drugs to which the CI is not privy, and to provide evidence against the members of the Foote Organization. Intercepted calls are likely to be useful in identifying locations where drugs are stored which are unknown to the CI, and additionally are likely to be useful in providing evidence showing where drugs and drug proceeds are located at particular instances, about which the CI's knowledge is necessarily limited. Intercepted calls are additionally likely to be useful in corroborating information provided by the CI.



102. Based on my knowledge of this investigation and my experience as a narcotics investigator, I believe that the interception of the communications of the TARGET CELLPHONES is essential to reveal the identities of co-conspirators and the structure and operation of the Foote Organization. Without the evidence obtained from court-authorized interceptions, I am confident that the objectives of the investigation cannot be met.

Use of Undercover Agents

103. There is currently no expectation that an undercover officer would be able to determine the full scope of the TARGET SUBJECTS' operations, meet and identify all of the other TARGET SUBJECTS and their co-conspirators, or identify the TARGET SUBJECTS' narcotics suppliers and their confederates. I do not believe that an undercover officer could infiltrate the Foote Organization.

104. As detailed in the August 4 and September 3 Affidavits, while the CI was able to make purchases of drugs from DUNSTON FOOTE, a/k/a "Killa," due to the compartmentalized nature of the Foote Organization, there is no expectation that any undercover agent will be able to deal directly with FOOTE's sources of supply to purchase drugs or infiltrate the inner workings of the Foote Organization. Furthermore, the roles of the TARGET SUBJECTS in the conspiracy are also not clearly defined at this time and an undercover agent is likely to only be

permitted access to the lower-level dealers, as opposed to the larger figures in charge of the sources of supply and distribution.

Telephone Toll Records

105. Telephone toll records have been and will be used in this investigation, but will provide only limited information. I have obtained and reviewed telephone toll records for the TARGET CELLPHONES and other cell phones believed to be used by members of the Foote Organization. Phone records, however, do not enable law enforcement officers to identify with certainty the persons involved in the conversations or the significance of the communications in the context of ongoing narcotics trafficking. Among other problems, a telephone number appearing in the records may not be listed or subscribed in the name(s) or address(es) of the person(s) actually using the telephone. Furthermore, the use of calling cards and telephone access numbers often hides the ultimate numbers called, thereby preventing law enforcement from learning the participants involved in any particular communication. In addition, the review of telephone records will not, in itself, reveal the structure of the Foote Organization or its sources of supply.

Federal Grand Jury

106. The issuance of grand jury subpoenas is likely to be inadequate to obtain critical information about the timing and

location of narcotics transactions. Witnesses who might provide additional relevant evidence to a grand jury have not been identified or would themselves be participants in the narcotics trafficking. Because such individuals would face prosecution themselves, it is unlikely that any of them would testify voluntarily. Nor would it be desirable at this time to seek immunity for such individuals and to compel their testimony. Immunizing them could thwart the public policy that they be held accountable for their crimes. Furthermore, the issuance of grand jury subpoenas to other individuals would risk alerting the TARGET SUBJECTS to the ongoing investigation before their sources of supply are identified and located. Moreover, not all of the TARGET SUBJECTS have been identified and, in the absence of further evidence identifying co-conspirators and their respective involvement in the Foote Organization, it is difficult to determine whom to subpoena to the Grand Jury.

Witness Interviews

107. I believe that interviews of the TARGET SUBJECTS or their known associates would produce insufficient information as to the identities of all of the persons involved with the TARGET SUBJECTS in narcotics trafficking, the sources and locations of the drugs, the sources of financing, the locations of records and proceeds from the distribution of drugs, and other pertinent information regarding the TARGET OFFENSES. I also

believe that any responses to the interviews, particularly interviews of those who are higher up in the organization, could contain a significant number of untruths, diverting the investigation with false leads or otherwise frustrating the investigation. I believe that questioning any of the remaining co-conspirators would alert the other co-conspirators, and cause a change in their methods of operation and the concealment or destruction of evidence before all of the co-conspirators are identified, thereby compromising the investigation and resulting in the possible loss of valuable evidence, and the possibility of harm to the CI, whose identity may become known or whose existence may otherwise be compromised.

Search Warrants

108. The investigation has revealed information that would likely enable the DEA to obtain and execute search warrants for the Foote Residence and Seabring House, described above. In addition, the investigation has revealed information that would likely enable the DEA to obtain and execute search warrants for a residence on Clinton Street (the "Clinton House") and a social club on North Main Street (the "Social Club") in Spring Valley, New York that are believed to be used by members of the Foote Organization to store and distribute narcotics. While executing search warrants at those locations may result in the seizure of pertinent evidence, it would also alert the TARGET SUBJECTS to

the existence of the investigation without the likelihood of determining the full scope of the organization's operations, particularly the organization's sources of supply, the identities of all of the co-conspirators, or other locations where narcotics are stashed.

109. I believe that the execution of search warrants would be premature at this stage of the investigation because further information is needed to identify the means and methods by which the Foote Organization obtains a supply of narcotics, and other locations where the drugs and drug-distribution proceeds are transported and stored. The execution of search warrants at the Foote Residence, the Seabring House, the Clinton House, and/or the Social Club is not likely to lead to the identification of other locations used by the Foote Organization. Nor is it likely to lead to the identification of co-conspirators who participate in obtaining or selling the Foote Organization's supply of drugs.

110. The locations where the TARGET SUBJECTS currently receive, hide, and distribute their narcotics and narcotics

proceeds have not been fully identified. Moreover, without wire surveillance, law enforcement will not know when the locations contain narcotics, narcotics proceeds, and other evidence of the TARGET OFFENSES. I believe that wire surveillance will assist law enforcement in continuing to identify locations where narcotics and narcotics proceeds are currently stored, and determine when such contraband is at such locations, so that search warrants for such locations may be obtained while contraband is still present at the locations.

111. Accordingly, and because the above-described investigative techniques are limited in their applications, have been unsuccessful, or are unlikely to be successful, authorization to intercept wire and electronic communications over the TARGET CELLPHONES is necessary to identify and develop evidence against the TARGET SUBJECTS.

MINIMIZATION

112. All monitoring of wire and electronic communications over the TARGET CELLPHONES will be minimized in accordance with Chapter 119 of Title 18, United States Code.

113. The "investigative or law enforcement officers of the United States" and translators, if necessary, who are to carry out the requested interception of wire communications, will be instructed concerning the steps they should take to avoid infringing upon any attorney-client privilege or other recognized

EXHIBIT E

membership with any individual, subordinate member of the organization. Based on my experience, I also know that narcotics organizations are often highly protective of their sources of supply.

100. Intercepting calls and, where requested, text messages over the TARGET CELLPHONES is likely to provide information and evidence that the CI cannot alone provide. Intercepted calls and texts are likely to be useful in identifying co-conspirators who are unknown to the CI, providing information about the receipt or distribution of drugs to which the CI is not privy, and to provide evidence against the members of the Foote Organization. Intercepted calls are likely to be useful in identifying locations where drugs are stored which are unknown to the CI, and additionally are likely to be useful in providing evidence showing where drugs and drug proceeds are located at particular instances, about which the CI's knowledge is necessarily limited. Intercepted calls are additionally likely to be useful in corroborating information provided by the CI.

101. Additionally, since I and other law enforcement officers learned that the CI had engaged in unauthorized, narcotics-related communications with FOOTE that were intercepted over TARGET CELLPHONES 1 and 2, pursuant to the August 4 Order, we have marginalized the role of the CI in this investigation.

EXHIBIT F

drugs.

2. I submit this affidavit in support of an application for an order pursuant to Section 2518 of Title 18, United States Code, authorizing (1) the continued interception and recording of wire and electronic communications (i.e., text messages) over TARGET CELLPHONE 1 and TARGET CELLPHONE 4; (2) the continued interception and recording of wire communications over TARGET CELLPHONE 2; and (3) the continued interception and recording of wire communications over TARGET CELLPHONE 3, concerning offenses enumerated in Section 2516 of Title 18, United States Code -- that is, offenses involving the distribution of, and possession with intent to distribute, controlled substances, the use of wire facilities to facilitate the same, conspiracy to do the same and attempts to do the same, in violation of 21 U.S.C. §§ 841(a)(1), 843(b), and 846; the distribution of firearms, possession of firearms by convicted felons and aliens, and use of firearms in furtherance of a narcotics-trafficking crime, in violation of 18 U.S.C. 922(a)(1)(A), 922(g)(1), 922(g)(5)(A), and 924(c); engaging in monetary transactions involving the proceeds of illegal activity and money laundering, in violation of 18 U.S.C. §§ 1956 and 1957; and obtaining and transferring fraudulent passports or other identification/immigration documents, bringing in or harboring certain aliens, conspiracy to do the same and attempts to do the

same, in violation of 18 U.S.C. § 1028 and 8 U.S.C. § 1324 (the "TARGET OFFENSES").¹

3. For the reasons set out in this affidavit, I believe that there is probable cause to believe that the TARGET OFFENSES have been committed, are being committed, and will continue to be committed by one or more of the following individuals: DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett," CLOVAL TAYLOR, a/k/a "Clove," DWIGHT MORGAN, FNU LNU, a/k/a "Frankie," FNU LNU, a/k/a "Steve," FNU LNU, a/k/a "Dirty," FNU LNU, a/k/a "Chris," ALLAND ZAMOR, TOREY EANES, a/k/a "Mello," a/k/a "Mellow," CONROY BROWN, KENMAR CHAMBERS, NATALIE BROWN, a/k/a "Danisha," RAYMOND DORSEY, a/k/a "Ray," a/k/a "Smoke," TROY MONTGOMERY, a/k/a "Scrapie," DROMYNEAK MONTGOMERY, a/k/a "Drammy," RAYMOND JACKSON, a/k/a "Migiva," CASHIEMA GREEN, a/k/a "Cash," O'NEIL WHITE, RICARDO MONESTIME, a/k/a "Mossy," MARLON MURPHY, a/k/a "Murph," RICARDO BEPOT, a/k/a "Bigga," FITZROY KELLY NORRIS, a/k/a "Ants," JAVANIE JEFFREY GENTILES, SERGE DORCELY, a/k/a "Bounty," JOSEPH CARRACHIA, a/k/a "Carach," DARREN MCMURRIN, a/k/a "Fish," SOPHIA MOORE, EDDIE PAYNE, SOPHIA JONES, a/k/a "Bridgette," MATTHEW DIAGNE, JEAN DUFRESNE, DEBORAH GRIFFITH, FNU LNU, a/k/a "Ruffy," FNU LNU, a/k/a "Mackerel,"

¹ Although not a predicate offense under 18 U.S.C. § 2516, there is probable cause to believe that the TARGET SUBJECTS (as subsequently defined herein) have aided and abetted and are aiding and abetting these substantive offenses, in violation of 18 U.S.C. § 2.

DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett," and other TARGET SUBJECTS to facilitate and discuss the TARGET OFFENSES through electronic communications and will continue to use TARGET CELLPHONE 2 in such a manner for these purposes in the future.

II. ALTERNATIVE INVESTIGATIVE PROCEDURES HAVE BEEN TRIED OR APPEAR UNLIKELY TO SUCCEED IF TRIED; THERE IS A NEED FOR THE INTERCEPTION OF COMMUNICATIONS OVER THE TARGET CELLPHONES

124. The principal goals of this investigation are to identify, locate, and arrest persons responsible for the distribution of marijuana and cocaine in and around Spring Valley, to gather evidence against those responsible for running the organization, to identify and locate the sources that supply the Foote Organization with large quantities of narcotics, to identify the proceeds of the Foote Organization's illegal activities and the means by which such proceeds are being distributed or laundered, to arrest individuals unlawfully possessing or using firearms and to seize those firearms, and to identify the individuals involved in the transfer of fraudulent identification documents and/or harboring of illegal aliens. We are investigating not only the currently identified TARGET SUBJECTS, but also all of the narcotics suppliers, other customers, distributors that work in the Foote Organization, and associates, as well as the locations at which the TARGET SUBJECTS store narcotics and the methods by which they operate their narcotics-trafficking business and how they dispose of the

proceeds of that narcotics trafficking.

125. The interception of communications over the TARGET CELLPHONES pursuant to the August 4, September 3, and October 1 Orders has provided valuable evidence against the TARGET SUBJECTS. Continued interception of wire and electronic communications over TARGET CELLPHONE 1 and TARGET CELLPHONE 4; continued interception of wire communications over TARGET CELLPHONE 2 and TARGET CELLPHONE 3; and original interception of electronic communications over TARGET CELLPHONE 2 are required, however, because the interception of communications to date have not fully revealed the nature and scope of the TARGET SUBJECTS' narcotics trafficking and other illegal activities.

126. The interceptions to date have not identified, for example, the identities of all the members of the Foote Organization. DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett," FNU LNU, a/k/a "Frankie," and others make deliveries inside and near buildings where physical surveillance is challenging and use rental cars to evade surveillance by law enforcement. While the interceptions of communications over the TARGET CELLPHONES has provided valuable information about the other members of the Foote Organization, additional interception is needed to confirm the identify of those individuals. The investigation has also not yet identified the suppliers for the Foote Organization, the locations of all the organization's stash

houses, the sources of financing for the organization, and the locations and disposition of the proceeds from the organization's narcotics trafficking activities. While the wire communication interceptions and physical surveillance, in combination, have provided valuable information about possible stash houses used by the Foote Organization, further interception is needed to confirm that certain locations are stash houses and to identify other possible stash houses.

127. Intercepting wire and electronic communications over the TARGET CELLPHONES will assist law enforcement officers in fully revealing the nature and scope of the TARGET SUBJECTS' narcotics trafficking and other illegal activities. Specifically, interceptions over the TARGET CELLPHONES may reveal the source or sources of supply for the Foote Organization. Such interceptions will enable the DEA and the other law enforcement groups with which the DEA is working to gather evidence that otherwise would not be able to be gathered by more traditional investigative techniques.

128. Other investigative techniques, described herein and in the August 4, September 3, and October 1 Affidavits, have been tried, including physical surveillance, purchases of drugs by an undercover officer, and the use of a confidential informant. While those efforts have been fruitful, interception over the TARGET CELLPHONES is required because other

investigative techniques cannot fully reveal the nature and scope of the TARGET SUBJECTS' narcotics trafficking activity. It is anticipated that interception over the TARGET CELLPHONES will assist in continuing to identify the means and methods by which the Foote Organization obtains a regular supply of marijuana and cocaine and the individuals who are involved in the provision of that supply.

129. It is further anticipated that the interceptions of wire and electronic communications will assist in continuing to identify the location of stash houses, the source of financing for the organization, and the locations and dispositions of the proceeds from those activities. In addition, it is anticipated that new targets would be identified through intercepted communications and these intercepted communications would provide valuable evidence and intelligence about incoming narcotics shipments and on-going narcotics trafficking.

130. As discussed below, several other investigative techniques have been tried, or reasonably appear likely to fail if tried, or are likely to jeopardize the investigation if tried. In the absence of the requested authorization of wire interceptions occurring over the TARGET CELLPHONES, there are no means of determining the internal operations of the Foote Organization, including when, where, and how the Foote Organization obtains its supply of narcotics, the existence and

locations of records relating to narcotics trafficking, the location and source of resources used to finance the illegal activities, and the location and disposition of the proceeds from those activities. It is only through the combination of wire surveillance, visual surveillance, and other investigatory tools that the agents expect to identify fully the nature and scope of the organization. Accordingly, there is a compelling need in this case for wire and electronic surveillance of the TARGET CELLPHONES.

Physical Surveillance

131. Law enforcement officers of the DEA, the Task Force, the Police Departments of Spring Valley, Ramapo, Suffern, Clarkstown, and others have conducted, and are continuing to conduct (when appropriate), physical surveillance of members of the Foote Organization. As described in the August 4, September 3, and October 1 Affidavits, pole cameras have been installed outside of the Foote Residence and the Seabring House, where the Foote Organization is believed to receive, distribute, and store large quantities of drugs. Since the October 1 Order was issued, a pole camera has also been installed outside of the residence of CLOVAL TAYLOR, a/k/a "Clove," one of the TARGET SUBJECTS (the "Taylor Residence"). The pole camera surveillance has provided useful information in the investigation, including evidence of large packages of what appears to be narcotics being transported

into and out of the suspected stash houses by FOOTE and others and FOOTE's use of multiple cellphones and rental vehicles.

132. For example, according to other law enforcement officers monitoring the pole cameras, from on or about October 1, 2010 through on or about October 20, 2010, a number of TARGET SUBJECTS have been observed arriving at the Seabring House, staying for a short period of time, and leaving with a package or bag, including, FITZROY KELLY NORRIS, a/k/a "Ants," a/k/a "Antsman," SERGE DORCELY, and SOPHIA MOORE, among others. On or about October 12, 2010, FOOTE, "Frankie," and DEBORAH GRIFFITH were observed transporting or assisting with the transporting of a large duffle bag from the FOOTE Residence to the Seabring House on or about October 12, 2010. In addition, on or about October 22, 2010, FOOTE was observed reversing a vehicle into the driveway of the Foote Residence, so that the car was very close to the residence, and removing an item from the trunk of the car, which he appeared to place in a garbage can in or near the garage. Communications intercepted over the TARGET CELLPHONES on the same day and the following day indicated that FOOTE had obtained a large quantity of marijuana from another TARGET SUBJECT, FNU LNU, a/k/a "Jaheim Hill," a/k/a "Struggo".

133. Physical surveillance, coupled with the information from other sources, has been productive and has led to the identification of some members of the Foote Organization.

Since the entry of the October 1 Order, new members have been identified, including ROBERT SAVAGE, a/k/a "Robert," HAROLD LUMA, PAUL FEARON, DAMION SMITH, JASON ALLEN, a/k/a "Papa," DERICK F. SAVAGE, STEVEN BARTHOLE, and ZOLANI WORRELL. However, it is only through the combination of wire surveillance, physical surveillance, and other investigatory tools, however, that the agents expect to identify fully the nature and scope of the organization.

134. Pole camera surveillance alone, however, would not likely yield conclusive evidence of the scope of the distribution network of the Foote Organization, the roles of the co-conspirators, or the participation of members who do not go to the Foote Residence. In addition, while surveillance has revealed what appears to be narcotics-related activity at the Foote Residence and Seabring House, it has not revealed the type or quantity of drugs being transported by the Foote Organization for distribution, and such surveillance has not revealed where packages brought to those locations are being obtained. Physical surveillance has been useful to corroborate information provided by the CI or obtained from calls intercepted pursuant to the various Orders regarding the drug-related activities of the TARGET SUBJECTS but does not provided the context or substance of the meetings between co-conspirators and does not reveal the nature of their communications, and is therefore insufficient to

meet the goals of the investigation. For example,

135. In addition, because of the locations of the suspected stash and distribution locations, law enforcement officers are not able to follow FOOTE or any vehicles coming or going from the Foote Residence or the Seabring House without alerting FOOTE or other TARGET SUBJECTS to their presence. Moreover, based on my experience and training, and my participation in this investigation, narcotics traffickers are extremely surveillance-conscious. For example, as noted in the pertinent calls described above:

a. On or about October 3, 2010, FOOTE told a UM that he didn't meet him as planned because "I come by there man, I see all of that cop around your area man, I don't want to come over that area . . . too much cops around." FOOTE told the UM, "check me by your boy at Seabring." (TARGET CELLPHONE 2 Session 5325).

b. On or about October 6, 2010, "Frankie" told a woman that "Javonie" gave the police "Frankie's" address when "Javonie" was arrested and that "Frankie" cannot go to the police station because he might be identified. (TARGET CELLPHONE 3 Session 206).

c. On or about October 8, 2010, "Danisha" called FOOTE and told him that "I am driving" and asked if it "is too open" to "park at the palisade." FOOTE responded that "it's not

too open." As stated above, based on my experience and participation in this investigation, I believe that FOOTE and "Danisha" were discussing meeting for the purpose of engaging in a drug transaction and wanted to be hidden from detection from law enforcement. (TARGET CELLPHONE 2 Session 5733).

d. On or about October 10, 2010, FOOTE spoke to "Frankie" and "Frankie" told FOOTE "one boy is on the block" and that "one black . . . pull somebody." As stated above, based on my experience and participation in this investigation, I believe that "boy" refers to a police officer and "pull somebody" means to arrest someone, and that "Frankie" was warning FOOTE that someone was arrested nearby. (TARGET CELLPHONE 2 Session 5807).

e. On or about October 19, 2010, "Frankie" called FOOTE and told FOOTE that "some boys came up top there . . . the same man that you went to check . . . he said the other boys that had come up there the last time with Buddha, the military boys . . . they full up there, so he just came to check if you were good." FOOTE responded, "ok, up there?" "Frankie" said, "yes, so don't go back that way . . . just leave up there." As stated above, based on my experience and participation in this investigation, I believe that "military boys" refers to police and that "Frankie" was warning FOOTE to stay away from a particular area because the police were around. (TARGET CELLPHONE 3 Session 1554).

136. Accordingly, considering the TARGET SUBJECTS' sensitivity to law enforcement presence, increased physical surveillance could alert the TARGET SUBJECTS to the existence of the investigation, and cause them to relocate or temporarily cease their illegal activities, thereby hindering the investigation.

137. Surveillance is also a limited investigative tool because some of the TARGET SUBJECTS remain unidentified or are only partially identified and there is limited information about the specific locations in which they operate. In addition, many of the meetings between the TARGET SUBJECTS has occurred in garages and indoors, where physical surveillance has not been possible. Thus, even if successful, surveillance will provide only limited corroboration of the illicit narcotics activities of the TARGET SUBJECTS.

138. It is expected that information that can be obtained from interceptions over the TARGET CELLPHONES will help law enforcement agents determine the identities of the subjects involved and track their activities, thereby enhancing the prospects for more fruitful physical surveillance of those activities. In addition, with the knowledge provided beforehand by wire and electronic surveillance that a meeting is to take place at a given location or a package is to be received on a certain date or at a certain place, it may be possible to

establish physical surveillance at that location in advance, thus minimizing the risks of discovery inherent in following subjects or remaining at target locations for extended periods of time. Wire surveillance would better enable law enforcement to coordinate physical and electronic surveillance of such drug transactions, potentially facilitating the seizure of narcotics and narcotics-related proceeds, and the arrest of TARGET SUBJECTS.

139. For the reasons described above, surveillance alone is insufficient to meet the goals of the investigation. Accordingly, there is a compelling need in this case for wire surveillance of the TARGET CELLPHONES.

Arrests

140. Attempting to arrest the TARGET SUBJECTS now would mean that several of the objectives of this investigation would be unfulfilled. As noted above, since the entry of the October 1 Order, additional members of the Foote Organization have been identified through surveillance and other means. Arresting any of the TARGET SUBJECTS would almost certainly cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or to change the locations, instrumentalities, and methods used to conduct their illegal activities. For example, on or about October 22, 2010, an

individual was arrested for crimes related to thefts from automobiles (the "Arrested Man") and consented to a search of his apartment, which was located on the first floor of a duplex on Lafayette Street. FITZROY KELLY NORRIS, one of the TARGET SUBJECTS, resides in the second floor apartment of the same building. During communications intercepted over TARGET CELLPHONE 2, FOOTE told "Danisha" that the "boys" had been outside and he thought there was going to be a raid by the police (Session 6847). FOOTE said that he ran inside and took the chip out of the phone and threw down the phone in case the officers were coming inside. FOOTE said the police went "downstairs" instead, but that he was trapped inside for a long time. FOOTE told "Danisha" that only his "645" phone was working then.

141. Accordingly, I believe that arresting some of the identified participants in this conspiracy now would lead to the destruction of evidence, temporary movement of the Organization's stash and distribution locations, and cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or change the methods used to conduct their illegal activities

142. Furthermore, based on information obtained during the investigation thus far, I believe that DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett," and FNU LNU, a/k/a "Frankie,"

deal with the organization's suppliers. Based on my training, experience, and participation in the investigation, I believe that although it is possible that FOOTE or "Frankie" would cooperate with law enforcement if arrested, it is by no means certain that they would do so. It is therefore uncertain whether arrests would lead to the identification of the Foote Organization's suppliers, or to evidence showing the participation of the suppliers in drug distribution.

143. Arresting the identified TARGET SUBJECTS and attempting to obtain their cooperation in investigating the narcotics trafficking of their criminal associates is an investigative route that, in my judgment and the judgment of other law enforcement officers involved, is not reasonably likely to result in law enforcement learning the identities of the organization's suppliers, the disposition of its narcotics proceeds, or the identities of the additional co-conspirators. Due to the highly compartmentalized nature of drug-trafficking conspiracies, I believe it is unlikely that lower-level distributors, or so-called "runners," would be able to provide information about the Foote Organization's sources of supply and the locations or uses of the proceeds of their illegal activities.

Use of Confidential Informants

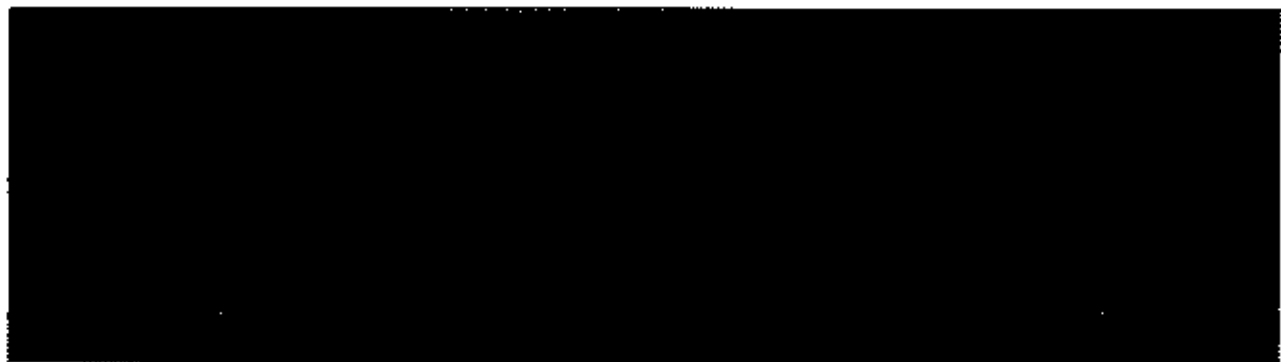
144. This investigation has involved obtaining information from and the active use of a confidential informant who previously worked as a drug dealer in the Foote Organization, as described in the August 4, September 3, and October 1 Affidavits. Although the CI has provided valuable and corroborated information, at this time there is no known confidential source that can provide information about all of the Foote Organization's sources of supply and their locations (some of which are believed to be in other states or countries), all of the links in the chain of supply (including connections at various mailing services), and all of the Foote Organization's workers and customers.

145. Narcotics organizations are generally highly compartmentalized, and it is usually impossible for an informant to gain access to all aspects of an organization's illegal activities. Thus, the use of confidential informants alone is typically inadequate to develop evidence about the TARGET SUBJECTS' suppliers and customers.

146. In addition, based on my experience as a narcotics investigator, I believe that drug traffickers are unlikely to discuss the full extent of their organization's activities or membership with any individual, subordinate member of the organization. Based on my experience, I also know that narcotics

organizations are often highly protective of their sources of supply.

147. Intercepting calls and, where requested, text messages over the TARGET CELLPHONES is likely to provide information and evidence that the CI cannot alone provide. Intercepted calls and texts are likely to be useful in identifying co-conspirators who are unknown to the CI, providing information about the receipt or distribution of drugs to which the CI is not privy, and to provide evidence against the members of the Foote Organization. Intercepted calls are likely to be useful in identifying locations where drugs are stored which are unknown to the CI, and additionally are likely to be useful in providing evidence showing where drugs and drug proceeds are located at particular instances, about which the CI's knowledge is necessarily limited. Intercepted calls are additionally likely to be useful in corroborating information provided by the CI.



149. Based on my knowledge of this investigation and my experience as a narcotics investigator, I believe that the

interception of the communications of the TARGET CELLPHONES is essential to reveal the identities of co-conspirators and the structure and operation of the Foote Organization. Without the evidence obtained from court-authorized interceptions, I am confident that the objectives of the investigation cannot be met.

Use of Undercover Agents

150. Since the entry of the October 1 Order, an undercover officer with the Spring Valley Police Department (the "UC") purchased quantities of marijuana from JASON ALLEN, a/k/a "Papa," and ZOLANI WORRELL, two TARGET SUBJECTS. Specifically, based on my review of reports and information obtained from other law enforcement officers, I know that:

a. On or about October 18, 2010, the UC called 845-689-3595, and spoke with an individual previously identified as JASON ALLEN, a/k/a "Papa." The UC had previously purchased marijuana from ALLEN in an unrelated investigation. The UC and ALLEN agreed to meet in order for the UC to purchase marijuana. The UC and ALLEN later met at a pre-arranged location, and the UC purchased approximately 19.1 grams of marijuana from ALLEN. During that meeting ALLEN indicated that he could obtain cocaine for the UC.

b. On or about October 19, 2010, the UC called

⁷ Before ALLEN was identified as a TARGET SUBJECT of this investigation, the UC had also purchased drugs from ALLEN in or about August and September 2010 as part of a separate investigation.

845-659-6915 and spoke with an unidentified male ("UM"). As part of a ruse, the UC referred to the UM by the alias used by the previous user of that phone number, from whom the UC had also purchased drugs. The UC asked to purchase marijuana from the UM, and they agreed to meet later that day. The UC and the UM met at a pre-arranged location and the UC purchased approximately 30.4 grams of marijuana from the UM. During that meeting the UM indicated that he could obtain cocaine for the UC. The UM was later identified as ZOLANI WORRELL, a known drug dealer.

151. Based on my conversations with SVPD Sergeant 1 and my review of intercepted communications, I believe that ALLEN and WORRELL obtain marijuana from "Frankie," FOOTE, and/or other members of the Foote Organization and resell it.

152. Although the UC was able to purchase drugs from street-level dealers associated with the Foote Organization, due to the compartmentalized nature of the Foote Organization, there is no expectation that any undercover agent will be able to deal directly with FOOTE's sources of supply to purchase drugs or infiltrate the inner workings of the Foote Organization. Furthermore, the roles of the TARGET SUBJECTS in the conspiracy are also not clearly defined at this time and an undercover agent is likely to only be permitted access to the lower-level dealers, as opposed to the larger figures in charge of the sources of supply and distribution.

153. There is currently no expectation that an undercover officer would be able to determine the full scope of the TARGET SUBJECTS' operations, meet and identify all of the other TARGET SUBJECTS and their co-conspirators, or identify the TARGET SUBJECTS' narcotics suppliers and their confederates. I do not believe that an undercover officer could infiltrate the Foote Organization.

Telephone Toll Records

154. Telephone toll records have been and will be used in this investigation, but will provide only limited information. I have obtained and reviewed telephone toll records for the TARGET CELLPHONES and other cell phones believed to be used by members of the Foote Organization. Phone records, however, do not enable law enforcement officers to identify with certainty the persons involved in the conversations or the significance of the communications in the context of ongoing narcotics trafficking. Among other problems, a telephone number appearing in the records may not be listed or subscribed in the name(s) or address(es) of the person(s) actually using the telephone. Furthermore, the use of calling cards and telephone access numbers often hides the ultimate numbers called, thereby preventing law enforcement from learning the participants involved in any particular communication. In addition, the review of telephone records will not, in itself, reveal the

structure of the Foote Organization or its sources of supply.

Federal Grand Jury

155. The issuance of grand jury subpoenas is likely to be inadequate to obtain critical information about the timing and location of narcotics transactions. Witnesses who might provide additional relevant evidence to a grand jury have not been identified or would themselves be participants in the narcotics trafficking. Because such individuals would face prosecution themselves, it is unlikely that any of them would testify voluntarily. Nor would it be desirable at this time to seek immunity for such individuals and to compel their testimony. Immunizing them could thwart the public policy that they be held accountable for their crimes. Furthermore, the issuance of grand jury subpoenas to other individuals would risk alerting the TARGET SUBJECTS to the ongoing investigation before their sources of supply are identified and located. Moreover, not all of the TARGET SUBJECTS have been identified and, in the absence of further evidence identifying co-conspirators and their respective involvement in the Foote Organization, it is difficult to determine whom to subpoena to the Grand Jury.

Witness Interviews

156. I believe that interviews of the TARGET SUBJECTS or their known associates would produce insufficient information as to the identities of all of the persons involved with the

TARGET SUBJECTS in narcotics trafficking, the sources and locations of the drugs, the sources of financing, the locations of records and proceeds from the distribution of drugs, and other pertinent information regarding the TARGET OFFENSES. I also believe that any responses to the interviews, particularly interviews of those who are higher up in the organization, could contain a significant number of untruths, diverting the investigation with false leads or otherwise frustrating the investigation. I believe that questioning any of the remaining co-conspirators would alert the other co-conspirators, and cause a change in their methods of operation and the concealment or destruction of evidence before all of the co-conspirators are identified, thereby compromising the investigation and resulting in the possible loss of valuable evidence, and the possibility of harm to the CI, whose identity may become known or whose existence may otherwise be compromised.

Search Warrants

157. The investigation has revealed information that would likely enable the DEA to obtain and execute search warrants for the Foote Residence and the Seabring House, described above. In addition, the investigation has revealed information that would likely enable the DEA to obtain and execute search warrants for KELLY'S Residence on Lafayette Street, and social clubs on North Main Street and North Madison Street in Spring Valley, New

York that are believed to be used by members of the Foote Organization to store and distribute narcotics. While executing search warrants at those locations may result in the seizure of pertinent evidence, it would also alert the TARGET SUBJECTS to the existence of the investigation without the likelihood of determining the full scope of the organization's operations, particularly the organization's sources of supply, the identities of all of the co-conspirators, or other locations where narcotics are stashed.

158. I believe that the execution of search warrants would be premature at this stage of the investigation because further information is needed to identify the means and methods by which the Foote Organization obtains a supply of narcotics, and other locations where the drugs and drug-distribution proceeds are transported and stored. The execution of search warrants at the locations described above is not likely to lead to the identification of other locations used by the Foote Organization. Nor is it likely to lead to the identification of co-conspirators who participate in obtaining or selling the Foote Organization's supply of drugs.

159. The locations where the TARGET SUBJECTS currently receive, hide, and distribute their narcotics and narcotics

proceeds have not been fully identified. Moreover, without wire surveillance, law enforcement will not know when the locations contain narcotics, narcotics proceeds, and other evidence of the TARGET OFFENSES. I believe that wire surveillance will assist law enforcement in continuing to identify locations where narcotics and narcotics proceeds are currently stored, and determine when such contraband is at such locations, so that search warrants for such locations may be obtained while contraband is still present at the locations.

160. Accordingly, and because the above-described investigative techniques are limited in their applications, have been unsuccessful, or are unlikely to be successful, authorization to intercept wire and electronic communications over the TARGET CELLPHONES is necessary to identify and develop evidence against the TARGET SUBJECTS.

MINIMIZATION

161. All monitoring of wire and electronic communications over the TARGET CELLPHONES will be minimized in accordance with Chapter 119 of Title 18, United States Code.

162. The "investigative or law enforcement officers of the United States" and translators, if necessary, who are to carry out the requested interception of wire communications, will be instructed concerning the steps they should take to avoid infringing upon any attorney-client privilege or other recognized

EXHIBIT G

organizations are often highly protective of their sources of supply.

147. Intercepting calls and, where requested, text messages over the TARGET CELLPHONES is likely to provide information and evidence that the CI cannot alone provide. Intercepted calls and texts are likely to be useful in identifying co-conspirators who are unknown to the CI, providing information about the receipt or distribution of drugs to which the CI is not privy, and to provide evidence against the members of the Foote Organization. Intercepted calls are likely to be useful in identifying locations where drugs are stored which are unknown to the CI, and additionally are likely to be useful in providing evidence showing where drugs and drug proceeds are located at particular instances, about which the CI's knowledge is necessarily limited. Intercepted calls are additionally likely to be useful in corroborating information provided by the CI.

148. Additionally, since I and other law enforcement officers learned that the CI had engaged in unauthorized, narcotics-related communications with FOOTE that were intercepted over TARGET CELLPHONES 1 and 2, pursuant to the August 4 Order, we have marginalized the role of the CI in this investigation.

149. Based on my knowledge of this investigation and my experience as a narcotics investigator, I believe that the

EXHIBIT H

have had either direct or hearsay knowledge of that statement) to whom I or other law enforcement officers have spoken or whose reports I have read and reviewed. Such statements are reported in substance and in part, unless otherwise indicated. Likewise, information resulting from surveillance sets forth either my personal observations or information provided directly or indirectly through other law enforcement officers who conducted such surveillance.

6. Because this affidavit is being submitted for the limited purpose of securing an order authorizing the interception of wire communications, I have not included details of every aspect of this investigation to date. Facts not set forth herein are not being relied on in reaching my conclusion that orders should be issued. Nor do I request that this Court rely on any facts not set forth herein in reviewing this application for an order authorizing the interception of wire communications.

THE DESIGNATED TELEPHONE

7. There is probable cause to believe that RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown," is using, and will in the future use, in order to accomplish, to discuss and to commit the TARGET OFFENSES, the cellular telephone assigned call number (914) 562-8426 and ESN number 268435456413922745, subscribed to Jaheim Hill at 326 South 6 Avenue, Mount Vernon, New York 10550, with service

provided by Virgin Mobile and network service provided by Sprint-Nextel ("TARGET CELLPHONE 5").

8. In particular, there is probable cause to believe that RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown," is using TARGET CELLPHONE 5 to make wire communications in furtherance of, in connection with, to facilitate, to accomplish, and to commit the TARGET OFFENSES.

9. It is requested that with regard to TARGET CELLPHONE 5, interception be permitted over the target telephone number, and any telephone numbers subsequently assigned to or accessed by or through the same ESN number as TARGET CELLPHONE 5, or assigned to the instrument bearing the same ESN numbers as TARGET CELLPHONE 5. In addition, it is requested that background conversations, in the vicinity of TARGET CELLPHONE 5 while it is off the hook or otherwise in use, also be permitted to be intercepted.

10. I have been informed by other law enforcement personnel who are familiar with the applicable telephone technology that a "portable cellular telephone" (or a "mobile telephone") can be used both within a vehicle and outside a vehicle through the use of a portable battery pack. The cellular telephone system divides metropolitan areas into many small coverage areas, which are called "cells." As a vehicle in which a portable cellular telephone is located, or the cellular

continued interception and recording of wire and electronic communications (i.e., text messages) over TARGET CELLPHONE 1 and TARGET CELLPHONE 4; (2) the continued interception and recording of wire communications and the original interception and recording of electronic communications over TARGET CELLPHONE 2; and (3) the continued interception and recording of wire communications over TARGET CELLPHONE 3 (the "October 29 Order"). Interception of wire and electronic communications pursuant to the October 29, 2010 Order began on October 29, 2010 and will expire on November 27, 2010. All interceptions are ongoing.

I. THERE IS PROBABLE CAUSE TO BELIEVE THAT THE TARGET SUBJECTS WILL USE TARGET CELLPHONE 5 IN FURTHERANCE OF THE TARGET OFFENSES

A. Background of Investigation

16. As detailed below and described in the Affidavits of Task Force Officer Walter Alciver submitted on August 4, 2010 in support of the application to intercept wire communications pursuant to the August 4 Order (the "August 4 Affidavit," attached hereto as Exhibit C); September 3, 2010 in support of the application to intercept and continue to intercept wire communications pursuant to the September 3 Order (the "September 3 Affidavit," attached hereto as Exhibit D); October 1, 2010 in support of the application to intercept and continue to intercept wire and electronic communications pursuant to the October 1 Order (the "October 1 Affidavit," attached hereto as Exhibit E);

and the affidavit of DEA Special Agent Mark Kadan submitted on October 29, 2010 in support of the application to intercept and continue to intercept wire and electronic communications pursuant to the October 29 Order (the "October 29 Affidavit," attached hereto as Exhibit F) there is probable cause to believe that the TARGET SUBJECTS are involved in the TARGET OFFENSES and are members of a marijuana and cocaine trafficking organization (the "Foote Organization") based in and around Spring Valley, New York.

17. As described in the August 4, September 3, October 1, and October 29 Affidavits, DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett;" FNU LNU, a/k/a "Frankie;" and other TARGET SUBJECTS use cellphones to coordinate the Foote Organization's drug dealing activity and transfer of the illegal proceeds thereof, in and around Spring Valley, New York. FOOTE and "Frankie" receive narcotics from suppliers and distribute narcotics to a number of customers and co-conspirators in and around Spring Valley, who then sell the narcotics to other customers. Physical surveillance and interception of wire communications have revealed that FOOTE and "Frankie" receive and deliver drugs from/to customers and co-conspirators at pre-arranged times and places. They also receive shipments of narcotics and send money via the mails, wires, and other co-conspirators. The deliveries and receipt of drugs and wire

transfers of money are coordinated through phone calls and text messages between FOOTE, "Frankie," and their co-conspirators over TARGET CELLPHONE 1, TARGET CELLPHONE 2, TARGET CELLPHONE 3, TARGET CELLPHONE 4 (collectively, the "TARGET CELLPHONES") and TARGET CELLPHONE 5. FOOTE, "Frankie," and their co-conspirators also discuss bringing in and harboring aliens, transferring fraudulent immigration documents, and the unlawful possession and use of firearms by the TARGET SUBJECTS over the TARGET CELLPHONES.

18. As detailed herein, and more fully described in the August 4, September 3, October 1, and October 29 Affidavits, there is probable cause to believe that the TARGET SUBJECTS are involved in the TARGET OFFENSES. Pursuant to the August 4 Order, authorization was received to intercept wire communications over TARGET CELLPHONE 1 and TARGET CELLPHONE 2. Interceptions over those 30 days confirmed that TARGET CELLPHONE 1 and TARGET CELLPHONE 2 are being used by the TARGET SUBJECTS and others to engage in narcotics trafficking activities. Pursuant to the September 3 Order, authorization was received to continue to intercept wire communications over TARGET CELLPHONE 2 and to begin to intercept wire communications over TARGET CELLPHONE 3. Pursuant to the October 1 Order, authorization was received to renew the interception of wire communications and to begin to intercept electronic communications over TARGET CELLPHONE 1; to

continue to intercept wire communications over TARGET CELLPHONE 2 and TARGET CELLPHONE 3; and to begin to intercept wire and electronic communications over TARGET CELLPHONE 4. Pursuant to the October 29 Order, authorization was received to continue to intercept wire and electronic communications over TARGET CELLPHONE 1 and TARGET CELLPHONE 4; to continue to intercept wire communications and to begin to intercept electronic communications over TARGET CELLPHONE 2; and to continue to intercept wire communications over TARGET CELLPHONE 3. Those interceptions are ongoing and have confirmed that the TARGET CELLPHONES are being used by the TARGET SUBJECTS and others to engage in narcotics trafficking, unlawful possession and use of firearms, money laundering, and immigration fraud. However, all of the goals of the Prior Court Orders have not yet been achieved. Thus, this application seeks an Order authorizing the original interception of wire communications over TARGET CELLPHONE 5.

C. Drug-Related Activity Using TARGET CELLPHONE 5

19. Based on my review of calls intercepted pursuant to the October 1 Order, I believe that TARGET CELLPHONE 5 was used in the following drug-related transactions or discussions:

20. On or about October 20, 2010, at approximately 7:46 p.m., FOOTE placed an outgoing call over TARGET CELLPHONE 2 to TARGET CELLPHONE 5 and spoke to a man identified on other

intercepted calls as "Struggo" (Session 6658). During the call, "Struggo" said, "the thing tomorrow . . . he was saying he has one five little boy on one of them . . . from a brother in Brooklyn . . . but it is not marked, so I guess you are going to have to chop it." Based on my experience and my participation in this investigation, I believe that "five little boy" refers to a quantity of narcotics and that "chop" means to process and package narcotics. I further believe that "Struggo" was telling FOOTE about a quantity of narcotics he was supplying to FOOTE.

21. At approximately 8:39 p.m., on the same day, FOOTE placed an outgoing call over TARGET CELLPHONE 2 to TARGET CELLPHONE 5 and spoke to "Struggo" (Session 6672). During the call, "Struggo" said, "when you touch that tomorrow, there will be two more there. My uncle's guy pushed two, but I didn't know about it until tonight." Later in the conversation, "Struggo" said, "those guys might just have two things for Rohan too, because I went over there this morning for Homeboy . . . the Homeboys got a two things this morning and they were telling me that Rohan and his guys got some things . . . so I know they will get things, because him and his girl got things, so I know more than likely they will have more things tomorrow." Finally, "Struggo" said, "the way he deals with it is the right way, anyway, you know . . . it shows that it's coming from different places." Based on my experience and my participation in this

investigation, I believe that "two" and "things" refer to a quantity of narcotics. When "Struggo" said "it's coming from different places" I believe he meant that narcotics were being shipped from different locations or addresses and that packages of narcotics were not always shipped directly to the final recipient.

22. On October 21, 2010, at approximately 9:35 a.m., FOOTE placed an outgoing call over TARGET CELLPHONE 2 to TARGET CELLPHONE 5 and spoke to "Struggo" (Session 6695). During the call, "Struggo" asked, "What's going on? Did you guys go already?" FOOTE responded, "no, I'm just heading out now, on the highway, the 87." "Struggo" said, "I was going to have you pay him for those other two until I come see you, but . . ." Based on my experience and my participation in this investigation, I believe that "Struggo" was asking whether FOOTE had already picked up a quantity of narcotics. "Struggo" also indicated that he had intended to have FOOTE pay a third individual for "the other two," which I believe to be a quantity of narcotics.

a. From my conversations with a Sergeant of the Spring Valley Police Department ("SVPD Sergeant 1"), I learned that later that same day, other law enforcement officers participating in this investigation used cell site information to locate TARGET CELLPHONE 2 and found that it was located in an industrial area in New Jersey. A law enforcement officer conducting surveillance

in the vicinity later observed FOOTE driving a car on the Palisades Parkway and followed FOOTE back to his house at 9B Blakeslee Place, Hillburn, New York (the "Foote Residence"). A pole camera in the vicinity of the Foote Residence captured FOOTE backing up into the driveway so that the trunk of the car was very close to the garage. FOOTE then appeared to unload something from his trunk and put it into a garbage can in or near the garage.

23. That same day, at approximately 8:09 p.m., FOOTE received an incoming call over TARGET CELLPHONE 2 from TARGET CELLPHONE 5 and spoke to "Struggo" (Session 6714). During the call, "Struggo" said, "I will have to come and pick up them two things tomorrow." FOOTE said, "he say its 25 in it." "Struggo" said, "him say a 25 in each one." FOOTE responded, "yeh man, them feel heavy man." "Struggo" said, "he says totally its 44 . . . plus the 5 . . . would make it 49." Based on my experience and my participation in this investigation, I believe that 25, 44, 5, and 49 refer to pounds of marijuana and that FOOTE picked up approximately 49 pounds of marijuana in New Jersey earlier that day. I also believe that "Struggo" was arranging to meet FOOTE to pick up drugs and/or money.

24. On or about October 23, 2010, at approximately 5:10 p.m., FOOTE received an incoming call over TARGET CELLPHONE 2 from TARGET CELLPHONE 5 and spoke to "Struggo" (Session 6866).

During the call, "Struggo" told FOOTE that he was coming through but was waiting on "Homeboy" who was coming on "95." "Struggo" said that "Homeboy" had already "crossed the bridge." Based on my experience and my participation in this investigation, I believe that "Struggo" was saying that "Homeboy" was coming up "I-95" a major highway which runs, among other places, from Maryland to New York.

25. From my conversations with SVPD Sergeant 1, I learned that pole camera surveillance of the Foote Residence showed the following:

a. Later on October 23, 2010, at approximately 6:00 p.m., two cars were observed backing into the driveway of the Foote Residence: a 2009 silver Mercedes Benz with Maryland license plate 6EY J31 registered to Ryan Orette Hill, 885 Nalley Road, Hyattsville, Maryland and a Kia bearing New York license plate VGE 85J, which, according to SVPD Sergeant 1, matched the license plate and description of a car rented from a rental car company known as Enterprise in Wayne, New Jersey (the "Kia").

b. While the cars were in the driveway of the Foote Residence, cell site information for TARGET CELLPHONE 5 indicated that TARGET CELLPHONE 5 was in the vicinity of the Foote Residence.

c. The driver of the Mercedes was a woman (the "Mercedes Woman"), and the passenger in the Mercedes was a black

male (the "Mercedes Man"). The driver of the Kia was a tall black male wearing a hat (the "Kia Man"). The Kia Man got out of the car and walked toward the rear of the Foote Residence. Shortly thereafter, the Kia Man returned to the driveway with FOOTE. The trunk of the Mercedes was opened and the Mercedes Woman appeared to take a bag out of the Mercedes and put it on top of the trunk of the Mercedes. The Mercedes Woman then put the bag back in the Mercedes, and walked toward the rear of the Foote Residence. A short while later, the Mercedes Woman walked back toward the driveway, carrying another bag, which she put into the Mercedes. The original occupants of the Kia and Mercedes then drove away in their respective cars.

26. From my conversation with a Special Agent with the DEA ("DEA Agent 1") I learned the following:

a. On or about October 28, 2010, DEA Agent 1, along with other law enforcement officers, used cell site information to locate TARGET CELLPHONE 5 in the vicinity of 249 Thomas McGovern Drive, an address in the same industrial area of New Jersey in which TARGET CELLPHONE 2 was located on October 21, 2010. DEA Agent 1 and other law enforcement officers conducted surveillance of 249 Thomas McGovern Drive and observed a black male believed to be RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown," meeting with another unidentified black male.

b. In the last two weeks of October, the United Parcel Service of America ("UPS") delivered numerous boxes to 249 Thomas McGovern Drive. Each of the boxes weighed between 38 and 39 pounds and was shipped from an address in either Arizona or California. Based on my experience and my participation in his investigation, I believe that the packages contained shipments of marijuana.

27. On or about November 2, 2010, at approximately 12:08 p.m., FOOTE placed an outgoing call over TARGET CELLPHONE 1 to TARGET CELLPHONE 5 and spoke to "Struggo" (Session 1060). During the call, FOOTE said that "the thing is not too wonderful." "Struggo" said that "it's a lot of little dark up thing." FOOTE responded that, "it's a lot of complaints I am getting. I don't burst the next one yet to tell you how much number a blood claut." "Struggo" asked, "how much did you get out of the first one?" FOOTE said "3 of the small unit less 21." "Struggo" said he "was told it's 44." "Struggo" said, "what he says, it's 44, so I don't know." FOOTE said, "the things are bad dog, I am telling you star, I didn't know that's how it's bad. . . you can't pay that kind of money for that kind of something." Based on my experience and my participation in this investigation, I believe that "thing," "3" "21" and "44" all refer to quantities of marijuana. FOOTE and "Struggo" were discussing the poor quality of a shipment of approximately 44

pounds of marijuana. I further believe that "Struggo" asked how much usable marijuana FOOTE had gotten from the first box.

28. Based on the surveillance and intercepted calls described above, and based on my experience and participation in this investigation, I believe that "Struggo" and FOOTE are engaged in narcotics transactions and that the interactions described above are instances in which FOOTE and "Struggo," or others working at their direction, met for the purpose of exchanging narcotics and money.

F. Analysis of Telephone Records for TARGET CELLPHONE 5

29. I have reviewed telephone toll records for TARGET CELLPHONE 5 for the time period September 25, 2010 through October 24, 2010, (the "Time Period"). There were approximately 535 incoming and outgoing calls over TARGET CELLPHONE 5 during that 30-day Time Period, to or from approximately 63 different telephone numbers. Of those 63 phone numbers, at least 22 are cellular telephone numbers with New York area codes, 4 are telephone numbers with California area codes, 9 are telephone numbers with Florida area codes, 1 is a telephone with a Maryland area code, 1 is a telephone number with an Arizona area code, 1 is a telephone number with a North Carolina area code, and 5 are telephone numbers with a Jamaican area code. The telephone records for TARGET CELLPHONE 5 show calls to and from, among other numbers, the following numbers:

Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown," to discuss, facilitate, and engage in the distribution of narcotics. I believe that RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown," will continue to use TARGET CELLPHONE 5 for these purposes in the future.

II. ALTERNATIVE INVESTIGATIVE PROCEDURES HAVE BEEN TRIED OR APPEAR UNLIKELY TO SUCCEED IF TRIED; THERE IS A NEED FOR THE INTERCEPTION OF WIRE COMMUNICATIONS OVER TARGET CELLPHONE 5

33. The principal goals of this investigation are to identify, locate, and arrest persons responsible for the distribution of marijuana and cocaine in and around Spring Valley, to gather evidence against those responsible for running the organization, to identify and locate the sources that supply the Foote Organization with large quantities of narcotics.

34. We are investigating not only the currently identified TARGET SUBJECTS, but also all of the narcotics suppliers, other customers, distributors that work in the Foote Organization, and associates, as well as the locations at which the TARGET SUBJECTS store narcotics and the methods by which they operate their narcotics-trafficking business and how they dispose of the proceeds of that narcotics trafficking.

35. The interception of communications over the TARGET CELLPHONES pursuant to the August 4, September 3, October 1, and October 29 Orders has provided valuable evidence against the TARGET SUBJECTS. Interception of wire communications over TARGET

CELLPHONE 5 is required, however, because the interception of communications to date have not fully revealed the nature and scope of the TARGET SUBJECTS' narcotics trafficking and other illegal activities.

36. The interceptions to date have not identified, for example, the identities of all the members of the Foote Organization. DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett," FNU LNU, a/k/a "Frankie," and others make deliveries inside and near buildings where physical surveillance is challenging and use rental cars to evade surveillance by law enforcement. While the interceptions of communications over the TARGET CELLPHONES has provided valuable information about the other members of the Foote Organization, additional interception is needed to confirm the identify of those individuals. The investigation has also not yet identified all of the suppliers for the Foote Organization, the locations of all the organization's stash houses, the sources of financing for the organization, and the locations and disposition of the proceeds from the organization's narcotics trafficking activities. While the wire and electronic communication interceptions and physical surveillance, in combination, have provided valuable information about possible stash houses used by the Foote Organization, further interception is needed to confirm that certain locations are stash houses and to identify other possible stash houses.

37. Intercepting wire communications over TARGET CELLPHONE 5 will assist law enforcement officers in fully revealing the nature and scope of the TARGET SUBJECTS' narcotics trafficking and other illegal activities. Specifically, interceptions over TARGET CELLPHONE 5 may reveal the source or sources of supply for the Foote Organization, their method of transporting narcotics, and the locations at which they store narcotics. Such interceptions will enable the DEA and the other law enforcement groups with which the DEA is working to gather evidence that otherwise would not be able to be gathered by more traditional investigative techniques.

38. Other investigative techniques, described herein and in the August 4, September 3, October 1, and October 29 Affidavits, have been tried, including physical surveillance, purchases of drugs by an undercover officer, and the use of a confidential informant. While those efforts have been fruitful, interception over TARGET CELLPHONE 5 is required because other investigative techniques cannot fully reveal the nature and scope of the TARGET SUBJECTS' narcotics trafficking activity. It is anticipated that interception over TARGET CELLPHONE 5 will assist in continuing to identify the means and methods by which the Foote Organization obtains a regular supply of marijuana and cocaine and the individuals who are involved in the provision of that supply.

39. It is further anticipated that the interception of wire communications over TARGET CELLPHONE 5 will assist in continuing to identify the location of stash houses, the source of financing for the organization, and the locations and dispositions of the proceeds from those activities. In addition, it is anticipated that new targets would be identified through intercepted communications and these intercepted communications would provide valuable evidence and intelligence about incoming narcotics shipments and on-going narcotics trafficking.

40. As discussed below, several other investigative techniques have been tried, or reasonably appear likely to fail if tried, or are likely to jeopardize the investigation if tried. In the absence of the requested authorization of wire interceptions occurring over TARGET CELLPHONE 5, there are no means of determining the identities of the suppliers to the Foote Organization, their location, their source of narcotics, their methods of receiving, transporting and paying for narcotics, or the location of their narcotics supply. It is only through the combination of wire surveillance, visual surveillance, and other investigatory tools that the agents expect to identify fully the nature and scope of the organization. Accordingly, there is a compelling need in this case for wire interceptions of TARGET CELLPHONE 5.

Physical Surveillance

41. Law enforcement officers of the DEA, the Task Force, the Police Departments of Spring Valley, Ramapo, Suffern, Clarkstown, and others have conducted, and are continuing to conduct (when appropriate), physical surveillance of members of the Foote Organization. As described in the August 4, September 3, October 1, and October 29 Affidavits, pole cameras have been installed outside of the Foote Residence, "Frankie's" residence (the "Seabring House"), and CLOVAL TAYLOR'S Residence, where the Foote Organization is believed to receive, distribute, and store large quantities of drugs. The pole camera surveillance has provided useful information in the investigation, including evidence of large packages of what appears to be narcotics being transported into and out of suspected stash houses by FOOTE and others and FOOTE's use of multiple cellphones and rental vehicles.

42. For example, according to other law enforcement officers monitoring the pole cameras, from on or about October 1, 2010 through on or about October 20, 2010, a number of TARGET SUBJECTS have been observed arriving at the Seabring House, staying for a short period of time, and leaving with a package or bag, including, FITZROY KELLY NORRIS, a/k/a "Ants," a/k/a "Antsman," SERGE DORCELY, and SOPHIA MOORE, among others. On or about October 12, 2010, FOOTE, "Frankie," and DEBORAH GRIFFITH, a woman who resides with FOOTE, were observed transporting or

assisting with the transporting of a large duffle bag from the FOOTE Residence to the Seabring House on or about October 12, 2010. In addition, and as described in further detail above, on or about October 22, 2010, FOOTE was observed reversing a vehicle into the driveway of the Foote Residence, so that the car was very close to the residence, and removing an item from the trunk of the car, which he appeared to place in a garbage can in or near the garage. Communications intercepted over the TARGET CELLPHONES on the same day and the following day indicated that FOOTE had obtained a large quantity of narcotics from another TARGET SUBJECT, RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown." Finally, on November 2, 2010, FOOTE was observed removing a blue bag, only partially full, from the trunk of a car and bringing it into the Foote Residence. Less than an hour later, FOOTE was observed exiting the Foote Residence with the same blue bag. The bag appeared to be more full. FOOTE placed the blue bag into the trunk of the car.

43. Physical surveillance, coupled with the information from other sources, has been productive and has led to the identification of some members of the Foote Organization. Since the entry of the October 29 Order, new members have been identified, including CHESTER WISSEH-WEYH, FNU LNU, a/k/a "Justin." However, it is only through the combination of wire

I see all of that cop around your area man, I don't want to come over that area . . . too much cops around." FOOTE told the UM, "check me by your boy at Seabring." (TARGET CELLPHONE 2, Session 5325).

b. On or about October 6, 2010, "Frankie" told a woman that "Javonie" gave the police "Frankie's" address when "Javonie" was arrested and that "Frankie" cannot go to the police station because he might be identified. (TARGET CELLPHONE 3, Session 206).

c. On or about October 8, 2010, "Danisha" called FOOTE and told him that "I am driving" and asked if it "is too open" to "park at the palisade." FOOTE responded that "it's not too open." As stated above, based on my experience and participation in this investigation, I believe that FOOTE and "Danisha" were discussing meeting for the purpose of engaging in a drug transaction and wanted to be hidden from detection from law enforcement. (TARGET CELLPHONE 2, Session 5733).

d. On or about October 10, 2010, FOOTE spoke to "Frankie" and "Frankie" told FOOTE "one boy is on the block" and that "one black . . . pull somebody." As stated above, based on my experience and participation in this investigation, I believe that "boy" refers to a police officer and "pull somebody" means to arrest someone, and that "Frankie" was warning FOOTE that someone was arrested nearby. (TARGET CELLPHONE 2, Session 5807).

e. On or about October 19, 2010, "Frankie" called FOOTE and told FOOTE that "some boys came up top there . . . the same man that you went to check . . . he said the other boys that had come up there the last time with Buddha, the military boys . . . they full up there, so he just came to check if you were good." FOOTE responded, "ok, up there?" "Frankie" said, "yes, so don't go back that way . . . just leave up there." As stated above, based on my experience and participation in this investigation, I believe that "military boys" refers to police and that "Frankie" was warning FOOTE to stay away from a particular area because the police were around. (TARGET CELLPHONE 3, Session 1554).

f. On or about October 27, 2010, at approximately 1:07 p.m., "Frankie" received an incoming call on TARGET CELLPHONE 3 from 201-362-0218 and spoke to an unidentified male ("UM") (Session 1779). During the call, the UM said, "a man just called me and told me that a couple of the sheriff boys are right by my hallway door, but I'm not there." "Frankie" asked, "are they knocking on your door?" The UM said, "no, looks like they are about to go up in my hallway." "Frankie" said, "it don't have to be you." The UM said, "I'm glad I am not there." At approximately 3:27 p.m., "Frankie" placed a call over TARGET CELLPHONE 3 to the same number (201-362-0218) and spoke to the same UM (Session 1788). During the call, the UM said,

"everything is good so far, seems like the boys went upstairs above me." "Frankie" said, "you're not making any trouble." The UM said, "for real man, as you said, I'm not out there like that," "Frankie" said, "someone would have to definitely give you away." Based on my experience and my participation in this investigation, I believe that "boys" refers to police, and that "Frankie" and the UM were discussing the presence of police in the UM's building.

46. Accordingly, considering the TARGET SUBJECTS' sensitivity to law enforcement presence, increased physical surveillance could alert the TARGET SUBJECTS to the existence of the investigation, and cause them to relocate or temporarily cease their illegal activities, thereby hindering the investigation.

47. Surveillance is also a limited investigative tool because some of the TARGET SUBJECTS remain unidentified or are only partially identified and there is limited information about the specific locations in which they operate. In addition, many of the meetings between the TARGET SUBJECTS have occurred in garages and indoors, where physical surveillance has not been possible. Thus, even if successful, surveillance will provide only limited corroboration of the illicit narcotics activities of the TARGET SUBJECTS.

48. It is expected that information that can be

obtained from interceptions over TARGET CELLPHONE 5 will help law enforcement agents determine the identities of the subjects involved and track their activities, thereby enhancing the prospects for more fruitful physical surveillance of those activities. In addition, with the knowledge provided beforehand by wire surveillance that a meeting is to take place at a given location or a package is to be received on a certain date or at a certain place, it may be possible to establish physical surveillance at that location in advance, thus minimizing the risks of discovery inherent in following subjects or remaining at target locations for extended periods of time. Wire surveillance would better enable law enforcement to coordinate physical and electronic surveillance of such drug transactions, potentially facilitating the seizure of narcotics and narcotics-related proceeds, and the arrest of TARGET SUBJECTS.

49. For the reasons described above, surveillance alone is insufficient to meet the goals of the investigation. Accordingly, there is a compelling need in this case for wire interceptions over TARGET CELLPHONE 5.

Arrests

50. Attempting to arrest the TARGET SUBJECTS now would mean that several of the objectives of this investigation would be unfulfilled. As noted above, since the entry of the October 29 Order, additional members of the Foote Organization.

have been identified through surveillance and other means. Arresting any of the TARGET SUBJECTS would almost certainly cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or to change the locations, instrumentalities, and methods used to conduct their illegal activities.

51. For example, based on my conversation with SVPD Sergeant 1 and my review of communications intercepted pursuant to the September 3 Order and October 1 Order, I learned that:

a. On or about September 9, 2010, FITZROY NORRIS KELLY, one of the TARGET SUBJECTS, was arrested after leaving the Seabring House and was found to have approximately 113 grams of marijuana on his person. Shortly after the arrest, "Frankie" received an incoming call over TARGET CELLPHONE 3 from phone number 845-367-2548 and spoke with an Unidentified Male ("UM") (Session 169). During that call the UM told "Frankie" that the police just "picked up" a man a few blocks away from "Frankie." "Frankie" said "alright, let me go clean up the place then because this is where he is coming from." Based on my participation in this investigation and information I learned from local law enforcement, I know that FITZROY NORRIS KELLY was arrested just after leaving the Seabring house. I believe that, in response to learning about the arrest during the above-

referenced phone call, "Frankie" intended to get rid of the drugs in the house. At approximately 1:33 p.m., FOOTE placed an outgoing call over TARGET CELLPHONE 2 to phone number 845-598-9741 and spoke with "Danisha" (Session 3059). During that call, FOOTE told "Danisha" that he was hearing vibes that he didn't like - specifically, that "Frankie" had called him and told him that "a little man just came and checked him . . . and got a thing and he got a call that they just sucked off the little man." FOOTE said "that's why I'm telling you all to get the place clean up." I believe that "sucked off" is slang for arrested and that, in response to learning about the arrest, "Frankie" called FOOTE and FOOTE told "Frankie" to get rid of the drugs in the house.

b. On or about October 22, 2010, an individual was arrested for crimes related to thefts from automobiles ("Individual-1) and consented to a search of his apartment, which was located on the first floor of a duplex on Lafayette Street. FITZROY KELLY NORRIS, one of the TARGET SUBJECTS, resides in the second floor apartment of the same building. During communications intercepted over TARGET CELLPHONE 2, FOOTE told "Danisha" that the "boys" had been outside and he thought there was going to be a raid by the police (Session 6847). FOOTE said that he ran inside and took the chip out of the phone and threw down the phone in case the officers were coming inside. FOOTE

said the police went "downstairs" instead, but that he was trapped inside for a long time. FOOTE told "Danisha" that only his "646" phone was working then.

c. On or about October 24, 2010, TOREY EANES EANES, a/k/a "Mello," a/k/a "Mellow," was arrested by local law enforcement, during a stop that was not related to this investigation, and was arrested for possession of a firearm and marijuana.

52. Accordingly, I believe that arresting some of the identified participants in this conspiracy now would lead to the destruction of evidence, temporary movement of the Organization's stash and distribution locations, and cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or change the methods used to conduct their illegal activities

53. Furthermore, based on information obtained during the investigation thus far, I believe that DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett," and FNU LNU, a/k/a "Frankie," deal with the organization's suppliers, including RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown." Based on my experience and my participation in the investigation, I believe that although it is possible that FOOTE or "Frankie" would cooperate with law enforcement if

arrested, and would identify the other suppliers of the Foote Organization, it is by no means certain that they would do so. Similarly, although it is possible that RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown," would cooperate with law enforcement if arrested, it is by no means certain that he would do so, or that he has information about the Foote Organization's other suppliers. It is therefore uncertain whether arrests would lead to the identification of the Foote Organization's suppliers, or to evidence showing the participation of the suppliers in drug distribution.

54. Arresting the identified TARGET SUBJECTS and attempting to obtain their cooperation in investigating the narcotics trafficking of their criminal associates is an investigative route that, in my judgment and the judgment of other law enforcement officers involved, is not reasonably likely to result in law enforcement learning the identities of the organization's suppliers, the disposition of its narcotics proceeds, or the identities of the additional co-conspirators. Due to the highly compartmentalized nature of drug-trafficking conspiracies, I believe it is unlikely that lower-level distributors, or so-called "runners," would be able to provide information about the Foote Organization's sources of supply and the locations or uses of the proceeds of their illegal

activities.

Use of Confidential Informants

55. This investigation has involved obtaining information from and the active use of a confidential informant (the "CI")³ who previously worked as a drug dealer in the Foote Organization, as described in detail in the August 4, September 3, October 1, and October 29 Affidavits. Although the CI has provided valuable and corroborated information, at this time there is no known confidential source that can provide information about all of the Foote Organization's sources of supply and their locations (some of which are believed to be in other states or countries), all of the links in the chain of supply (including connections at various mailing services), and all of the Foote Organization's workers and customers.

56. Narcotics organizations are generally highly compartmentalized, and it is usually impossible for an informant to gain access to all aspects of an organization's illegal activities. Thus, the use of confidential informants alone is typically inadequate to develop evidence about the TARGET

SUBJECTS' suppliers and customers.

57. In addition, based on my experience as a narcotics investigator, I believe that drug traffickers are unlikely to discuss the full extent of their organization's activities or membership with any individual, subordinate member of the organization. Based on my experience, I also know that narcotics organizations are often highly protective of their sources of supply.

58. Intercepting calls over TARGET CELLPHONE 5 is likely to provide information and evidence that a confidential informant cannot alone provide. Intercepted calls are likely to be useful in identifying co-conspirators who are unknown to any single TARGET SUBJECT. Intercepted calls are also likely to be useful in providing information about the receipt or distribution of drugs, the locations where drugs are stored, and evidence showing where drugs and drug proceeds are located at particular instances, information to which individuals who are subordinate to FOOTE, "Frankie," and others are not privy, and to provide evidence against the members of the Foote Organization. Intercepted calls are additionally likely to be useful in corroborating information previously provided by the CI.

59. Based on my knowledge of this investigation and my experience as a narcotics investigator, I believe that the interception of the communications of TARGET CELLPHONE 5 is

essential to reveal the identities of co-conspirators, suppliers, and the structure and operation of the Foote Organization. Without the evidence obtained from court-authorized interceptions, I am confident that the objectives of the investigation cannot be met.

Use of Undercover Agents

60. Since the entry of the October 1 Order, an undercover officer with the Spring Valley Police Department (the "UC") purchased quantities of marijuana from JASON ALLEN, a/k/a "Papa," and ZOLANI WORRELL, two TARGET SUBJECTS. Specifically, based on my review of reports and information obtained from other law enforcement officers, I know that:

a. On or about October 18, 2010, the UC called 845-659-3595, and spoke with an individual previously identified as JASON ALLEN, a/k/a "Papa."⁴ The UC had previously purchased marijuana from ALLEN in an unrelated investigation. The UC and ALLEN agreed to meet in order for the UC to purchase marijuana. The UC and ALLEN later met at a pre-arranged location, and the UC purchased approximately 19.1 grams of marijuana from ALLEN. During that meeting ALLEN indicated that he could obtain cocaine for the UC.

b. On or about October 19, 2010, the UC called

⁴ Before ALLEN was identified as a TARGET SUBJECT of this investigation, the UC had also purchased drugs from ALLEN in or about August and September 2010 as part of a separate investigation.

surveillance, physical surveillance, and other investigatory tools, however, that the agents expect to identify fully the nature and scope of the organization.

44. Pole camera surveillance alone, however, would not likely yield conclusive evidence of the scope of the distribution network of the Foote Organization, the roles of the co-conspirators, or the participation of members, including suppliers, who do not go to the Foote Residence. In addition, while surveillance has revealed what appears to be narcotics-related activity at the Foote Residence and Seabring House, it has not revealed the type or quantity of drugs being transported by the Foote Organization for distribution, and such surveillance has not revealed where packages brought to those locations are being obtained. Physical surveillance has been useful to corroborate information provided by the CI and information obtained from calls intercepted pursuant to the Orders regarding the drug-related activities of the TARGET SUBJECTS but does not provide the context or substance of the meetings between co-conspirators and does not reveal the nature of their communications, and is therefore insufficient to meet the goals of the investigation. For example:

a. According to SVPD Sergeant 1, on October 27, 2010, SVPD Sergeant 1 and other law enforcement officers attempted to locate the user of TARGET CELLPHONE 5. TARGET

CELLPHONE 5 was tracked to a residence in the vicinity of South 6th Avenue in Mount Vernon, New York (the "Mount Vernon House"). Law enforcement officers observed a black male believed to be RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown," leave the Mount Vernon House in a rental vehicle (the "Rental Car") accompanied by another black male. The officers were unable to maintain uninterrupted surveillance of the Rental Car due to the urban environment. After relocating to the Rental Car, officers saw that the black male believed to be RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown," was driving alone.

45. In addition, because of the locations of the suspected stash and distribution locations, law enforcement officers are not able to consistently surveil and follow TARGET SUBJECTS or their vehicles coming or going from the Foote Residence, the Seabring House, the Taylor Residence, or the Mount Vernon House without alerting the TARGET SUBJECTS to their presence. Moreover, based on my experience and my participation in this investigation, I know that narcotics traffickers are extremely surveillance-conscious. For example, based on my review of communications intercepted pursuant to the October 1 Order, I know that:

a. On or about October 3, 2010, FOOTE told a UM that he didn't meet him as planned because "I come by there man,

845-659-6915 and spoke with an unidentified male ("UM"). As part of a ruse, the UC referred to the UM by the alias used by the previous user of that phone number, from whom the UC had also purchased drugs. The UC asked to purchase marijuana from the UM, and they agreed to meet later that day. The UC and the UM met at a pre-arranged location and the UC purchased approximately 30.4 grams of marijuana from the UM. During that meeting the UM indicated that he could obtain cocaine for the UC. The UM was later identified as ZOLANI WORRELL, a known drug dealer.

61. Based on my conversations with SVPD Sergeant 1 and my review of intercepted communications, I believe that ALLEN and WORRELL obtain marijuana from "Frankie," FOOTE, and/or other members of the Foote Organization and resell it.

62. Although the UC was able to purchase drugs from street-level dealers associated with the Foote Organization, due to the compartmentalized nature of the Foote Organization, there is no expectation that any undercover agent will be able to deal directly with FOOTE's sources of supply to purchase drugs or infiltrate the inner workings of the Foote Organization. Furthermore, the roles of the TARGET SUBJECTS in the conspiracy are also not clearly defined at this time and an undercover agent is likely to only be permitted access to the lower-level dealers, as opposed to the larger figures in charge of the sources of supply and distribution.

63. There is currently no expectation that an undercover officer would be able to determine the full scope of the TARGET SUBJECTS' operations, meet and identify all of the other TARGET SUBJECTS and their co-conspirators, or identify the TARGET SUBJECTS' narcotics suppliers and their confederates. I do not believe that an undercover officer could infiltrate the Foote Organization.

Telephone Toll Records

64. Telephone toll records have been and will be used in this investigation, but will provide only limited information. I have obtained and reviewed telephone toll records for the TARGET CELLPHONES, including TARGET CELLPHONE 5, and other cell phones believed to be used by members of the Foote Organization. Phone records, however, do not enable law enforcement officers to identify with certainty the persons involved in the conversations or the significance of the communications in the context of ongoing narcotics trafficking. Among other problems, a telephone number appearing in the records may not be listed or subscribed in the name(s) or address(es) of the person(s) actually using the telephone. Furthermore, the use of calling cards and telephone access numbers often hides the ultimate numbers called, thereby preventing law enforcement from learning the participants involved in any particular communication. In addition, the review of telephone records will not, in itself, reveal the

structure of the Foote Organization or its sources of supply.

Federal Grand Jury

65. The issuance of grand jury subpoenas is likely to be inadequate to obtain critical information about the timing and location of narcotics transactions. Witnesses who might provide additional relevant evidence to a grand jury have not been identified or would themselves be participants in the narcotics trafficking. Because such individuals would face prosecution themselves, it is unlikely that any of them would testify voluntarily. Nor would it be desirable at this time to seek immunity for such individuals and to compel their testimony. Immunizing them could thwart the public policy that they be held accountable for their crimes. Furthermore, the issuance of grand jury subpoenas to other individuals would risk alerting the TARGET SUBJECTS to the ongoing investigation before their sources of supply are identified and located. Moreover, not all of the TARGET SUBJECTS have been identified and, in the absence of further evidence identifying co-conspirators and their respective involvement in the Foote Organization, it is difficult to determine whom to subpoena to the Grand Jury.

Witness Interviews

66. I believe that interviews of the TARGET SUBJECTS or their known associates would produce insufficient information as to the identities of all of the persons involved with the

TARGET SUBJECTS in narcotics trafficking, the sources and locations of the drugs, the sources of financing, the locations of records and proceeds from the distribution of drugs, and other pertinent information regarding the TARGET OFFENSES. I also believe that any responses to the interviews, particularly interviews of those who are higher up in the organization, could contain a significant number of untruths, diverting the investigation with false leads or otherwise frustrating the investigation. I believe that questioning any of the remaining co-conspirators would alert the other co-conspirators, and cause a change in their methods of operation and the concealment or destruction of evidence before all of the co-conspirators are identified, thereby compromising the investigation and resulting in the possible loss of valuable evidence, and the possibility of harm to the CI, whose identity may become known or whose existence may otherwise be compromised.

Search Warrants

67. The investigation has revealed information that would likely enable the DEA to obtain and execute search warrants for the Foote Residence, the Seabring House, NORRIS's Residence on Lafayette Street, the Mount Vernon House, and social clubs on North Main Street and North Madison Street in Spring Valley, New York, that are believed to be used by members of the Foote Organization to store and distribute narcotics. While executing

search warrants at those locations may result in the seizure of pertinent evidence, it would also alert the TARGET SUBJECTS to the existence of the investigation without the likelihood of determining the full scope of the organization's operations, particularly the organization's sources of supply, the identities of all of the co-conspirators, or other locations where narcotics are stashed.

68. I believe that the execution of search warrants would be premature at this stage of the investigation because further information is needed to identify the means and methods by which the Foote Organization obtains a supply of narcotics, and other locations where the drugs and drug-distribution proceeds are transported and stored. The execution of search warrants at the locations described above is not likely to lead to the identification of other locations used by the Foote Organization. Nor is it likely to lead to the identification of co-conspirators who participate in obtaining or selling the Foote Organization's supply of drugs and may reside in other locations, including other states or countries.

69. The locations where the TARGET SUBJECTS currently receive, hide, and distribute their narcotics and narcotics

proceeds have not been fully identified. Moreover, without wire surveillance, law enforcement will not know when the locations contain narcotics, narcotics proceeds, and other evidence of the TARGET OFFENSES. I believe that wire surveillance will assist law enforcement in continuing to identify locations where narcotics and narcotics proceeds are currently stored, and determine when such contraband is at such locations, so that search warrants for such locations may be obtained while contraband is still present at the locations.

70. Accordingly, and because the above-described investigative techniques are limited in their applications, have been unsuccessful, or are unlikely to be successful, authorization to intercept wire communications over TARGET CELLPHONE 5 is necessary to identify and develop evidence against the TARGET SUBJECTS.

MINIMIZATION

71. All monitoring of wire communications over TARGET CELLPHONE 5 will be minimized in accordance with Chapter 119 of Title 18, United States Code.

72. The "investigative or law enforcement officers of the United States" and translators, if necessary, who are to carry out the requested interception of wire communications, will be instructed concerning the steps they should take to avoid infringing upon any attorney-client privilege or other recognized

EXHIBIT I

activities.

Use of Confidential Informants

55. This investigation has involved obtaining information from and the active use of a confidential informant (the "CI")³ who previously worked as a drug dealer in the Foote Organization, as described in detail in the August 4, September 3, October 1, and October 29 Affidavits. Although the CI has provided valuable and corroborated information, at this time there is no known confidential source that can provide information about all of the Foote Organization's sources of supply and their locations (some of which are believed to be in other states or countries), all of the links in the chain of supply (including connections at various mailing services), and all of the Foote Organization's workers and customers.

56. Narcotics organizations are generally highly compartmentalized, and it is usually impossible for an informant to gain access to all aspects of an organization's illegal activities. Thus, the use of confidential informants alone is typically inadequate to develop evidence about the TARGET

³ A CI provided information about the Foote Organization to law enforcement officers and purchased marijuana from FOOTE under the supervision of law enforcement, as discussed in detail in the August 4 Affidavit.

While the information provided by the CI has been corroborated through the interception of wire communications, visual surveillance, and other investigative tools, the calls from the CI were not made at the direction of law enforcement. Accordingly, the CI's role in the investigation has been marginalized.

EXHIBIT J

wire and physical surveillance, surveillance of undercover transactions, the introduction of undercover agents, the execution of search warrants, debriefings of informants and reviews of taped conversations and drug records. I have also participated in investigations that have included the interception of wire communications, and I have reviewed taped conversations and drug records relating to narcotics trafficking. Through my training, education and experience, I have become familiar with the manner in which illegal drugs are transported, stored, and distributed and the methods of payment for such drugs.

2. I submit this affidavit in support of an application for an order pursuant to Section 2518 of Title 18, United States Code, authorizing the continued interception and recording of wire communications over TARGET CELLPHONE 2, concerning offenses enumerated in Section 2516 of Title 18, United States Code -- that is, offenses involving the distribution of, and possession with intent to distribute, controlled substances, the use of wire facilities to facilitate the same, conspiracy to do the same and attempts to do the same, in violation of 21 U.S.C. §§ 841(a)(1), 843(b), and 846; the distribution of firearms, possession of firearms by convicted felons and aliens, and use of firearms in furtherance of a narcotics-trafficking crime, in violation of 18 U.S.C.

922(a)(1)(A), 922(g)(1), 922(g)(5)(A), and 924(c); engaging in monetary transactions involving the proceeds of illegal activity and money laundering, in violation of 18 U.S.C. §§ 1956 and 1957; and obtaining and transferring fraudulent passports or other identification/immigration documents, bringing in or harboring certain aliens, conspiracy to do the same and attempts to do the same, in violation of 18 U.S.C. § 1028 and 8 U.S.C. § 1324 (the "TARGET OFFENSES").¹

3. For the reasons set out in this affidavit, I believe that there is probable cause to believe that the TARGET OFFENSES have been committed, are being committed, and will continue to be committed by one or more of the following individuals: DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett," CLOVAL TAYLOR, a/k/a "Clove," DWIGHT MORGAN, FNU LNU, a/k/a "Frankie," FNU LNU, a/k/a "Steve," FNU LNU, a/k/a "Dirty," FNU LNU, a/k/a "Chris," ALLAND ZAMOR, TOREY EANES, a/k/a "Mello," a/k/a "Mellow," CONROY BROWN, KENMAR CHAMBERS, NATALIE BROWN, a/k/a "Danisha," RAYMOND DORSEY, a/k/a "Ray," a/k/a "Smoke," TROY MONTGOMERY, a/k/a "Scrapie," DROMYNEAK MONTGOMERY, a/k/a "Drammy," RAYMOND JACKSON, a/k/a "Migiva," CASHIEMA GREEN, a/k/a "Cash," O'NEIL WHITE, RICARDO MONESTIME, a/k/a "Mossy," MARLON

¹ Although not a predicate offense under 18 U.S.C. § 2516, there is probable cause to believe that the TARGET SUBJECTS (as subsequently defined herein) have aided and abetted and are aiding and abetting these substantive offenses, in violation of 18 U.S.C. § 2.

31. Intercepting wire communications over TARGET CELLPHONE 2 will assist law enforcement officers in fully revealing the nature and scope of the TARGET SUBJECTS' narcotics trafficking and other illegal activities. Specifically, interceptions over TARGET CELLPHONE 2 may reveal the source or sources of supply for the Foote Organization. Such interceptions will enable the DEA and the other law enforcement groups with which the DEA is working to gather evidence that otherwise would not be able to be gathered by more traditional investigative techniques.

32. Other investigative techniques, described herein and in the August 4, September 3, October 1, October 29, and November 12 Affidavits, have been tried, including physical surveillance, purchases of drugs by an undercover officer, and the use of a confidential informant. While those efforts have been fruitful, continued interception over TARGET CELLPHONE 2 is required because other investigative techniques cannot fully reveal the nature and scope of the TARGET SUBJECTS' narcotics trafficking activity. It is anticipated that interception over TARGET CELLPHONE 2 will assist in continuing to identify the means and methods by which the Foote Organization obtains a regular supply of marijuana and cocaine and the individuals who are involved in the provision of that supply.

33. It is further anticipated that the interceptions of wire communications will assist in continuing to identify the location of stash houses, the source of financing for the organization, and the locations and dispositions of the proceeds from those activities. In addition, it is anticipated that new targets would be identified through intercepted communications and these intercepted communications would provide valuable evidence and intelligence about incoming narcotics shipments and on-going narcotics trafficking.

34. As discussed below, several other investigative techniques have been tried, or reasonably appear likely to fail if tried, or are likely to jeopardize the investigation if tried. In the absence of the requested authorization of continued wire interceptions occurring over TARGET CELLPHONE 2, there are no means of determining the internal operations of the Foote Organization, including when, where, and how the Foote Organization obtains its supply of narcotics, the existence and locations of records relating to narcotics trafficking, the location and source of resources used to finance the illegal activities, and the location and disposition of the proceeds from those activities. It is only through the combination of wire surveillance, visual surveillance, and other investigatory tools that the agents expect to identify fully the nature and scope of the organization. Accordingly, there is a compelling need in

this case for continued wire surveillance of TARGET CELLPHONE 2.

Physical Surveillance

35. Law enforcement officers of the DEA, the Task Force, the Police Departments of Spring Valley, Ramapo, Suffern, Clarkstown, and others have conducted, and are continuing to conduct (when appropriate), physical surveillance of members of the Foote Organization. As described in the August 4, September 3, October 1, October 29, and November 12 Affidavits, pole cameras have been installed outside of some of the locations where the Foote Organization is believed to receive, distribute, and store large quantities of drugs, including the Foote Residence, the Seabring House, and Taylor Residence. The pole camera surveillance has provided useful information in the investigation, including evidence of large packages of what appears to be narcotics being transported into and out of the suspected stash houses by FOOTE and others, meetings between TARGET SUBJECTS, and FOOTE's use of multiple cellphones and rental vehicles.

36. For example, according to other law enforcement officers monitoring the pole cameras, from on or about October 20, 2010 through on or about November 16, 2010:

a. a number of TARGET SUBJECTS have been observed arriving at the Seabring House, staying for a short period of time, and leaving, often with a package or bag,

including, among others, FITZROY KELLY NORRIS, ZOLANI WORRELL, HEROLD LUMA, STEVEN BARTHOLE, DERRICK GARY GARWOOD, and ALLAND ZAMOR.

b. FOOTE and "Frankie" have been observed transporting bags and boxes into the Seabring House. For example, on or about November 1, 2010, FOOTE drove to the Seabring house and reversed the vehicle into the driveway so that the trunk was close to the garage. The garage door opened, "Frankie" removed a blue bag from the trunk of the car, and FOOTE drove away.

c. FOOTE has also been observed transporting bags and boxes into and out of various cars and the FOOTE Residence. For example, on or about November 15, 2010, FOOTE drove a rental vehicle to the Foote Residence, and reversed the vehicle into the driveway. FOOTE retrieved a blue bag with contents from the Foote Residence and placed it in the rental car's trunk; he then removed a different bag from the trunk, and went inside the Foote Residence.

d. TAYLOR has also been observed engaging in what appear to be hand-to-hand narcotics transactions in and around the TAYLOR Residence. For example, on November 15, 2010, an unknown black male was observed approaching the fence surrounding the TAYLOR Residence. TAYLOR met the black male by the fence and spoke to him briefly. TAYLOR then went to his car, reached into

it, returned to the fence and appeared to hand what had been retrieved from the car to the black male. The black male appeared to hand something to TAYLOR. The black male then walked away.

37. Communications intercepted over the TARGET CELLPHONES at or near the time of the events observed on the pole cameras described above indicated that FOOTE, "Frankie," and other TARGET SUBJECTS had either recently obtained a quantity of narcotics or had arranged to meet for a drug transaction.

38. Physical surveillance, coupled with the information from other sources, has been productive and has led to the identification of some members of the Foote Organization. Since the entry of the November 12 Order, new members have been identified, including TERRANCE CHEVANNES. However, it is only through the combination of wire surveillance, physical surveillance, and other investigatory tools, however, that the agents expect to identify fully the nature and scope of the organization.

39. Pole camera surveillance alone, however, would not likely yield conclusive evidence of the scope of the distribution network of the Foote Organization, the roles of the co-conspirators, or the participation of members who do not go to the suspected stash locations. In addition, while surveillance has revealed what appears to be narcotics-related activity at the

Foote Residence, the Seabring House, and the Taylor Residence, among other places, it has not revealed the type or quantity of drugs being transported by the Foote Organization for distribution, and such surveillance has not revealed where packages brought to those locations are being obtained. Physical surveillance has been useful to corroborate information obtained through other sources or from calls intercepted pursuant to the various Orders regarding the drug-related activities of the TARGET SUBJECTS, but does not provided the context or substance of the meetings between co-conspirators and does not reveal the nature of their communications, and is therefore insufficient to meet the goals of the investigation.

40. In addition, because of the locations of the suspected stash and distribution locations, law enforcement officers are not able to follow FOOTE or any vehicles coming or going from those locations without alerting FOOTE or other TARGET SUBJECTS to their presence. Moreover, based on my experience and training, and my participation in this investigation, narcotics traffickers are extremely surveillance-conscious. For example:

a. On or about November 4, 2010, at approximately 8:20 p.m., "Frankie" received an incoming call over TARGET CELLPHONE 3 from 845-406-5384 and spoke with a man identified as "Paul" in other intercepted calls (Session 1999). "Paul" asked "Frankie" "you alright?" and "Frankie" said "What's

going on?" "Paul" said "I see some . . . Christmas tree . . . I see some Christmas tree on your lane, you know?" "Frankie" said "I am going to check it out." "Frankie" then placed an outgoing call over TARGET CELLPHONE 3 to 845-517-5824 and spoke with a woman identified as "Bridgette" in other intercepted calls, believed to be SOPHIA JONES (Session 2001). "Frankie" asked "those boys on the road?" and told "Bridgette" to "look outside." "Bridgette" then said "at the end of the road." "Frankie" asked "which side?" and "Bridgette" said "to which part Jaime's bus stop is." "Bridgette" said "I do not know if it is something they pulled over or what." "Frankie" then placed an outgoing call over TARGET CELLPHONE 3 to 845-406-5384 and spoke with "Paul" (Session 2002). "Frankie" said "mhmm . . . say at the end of the road" and "Paul" said "yeah, alright, it is heads up I am giving you, you know?" Based on my experience and participation in this investigation, I believe that "Christmas tree" was used as a code for police, and that "Paul" warned "Frankie" that there were police officers on his street, which "Bridgette" confirmed.

b. On or about November 16, 2010, at approximately 10:11 p.m., FOOTE placed an outgoing call over TARGET CELLPHONE 2 to 518-308-7203 and spoke to an unidentified male (Session 8972). During that call, FOOTE asked "was it a white boy?" and the UM said "yeh man." The UM said "he is beside you . . . look him a look for some trouble man." FOOTE said "yeh

man, him gone after somebody on the exit here up at exit 14 the last 14 here." The UM said "yeh man, we good man, because home boy license good man, not even worried about nothing. Alright everything sort out." Based on my experience and participation in this investigation, I believe that FOOTE and the UM were discussing the presence of law enforcement at a time when they were involved in transporting narcotics.

41. Accordingly, considering the TARGET SUBJECTS' sensitivity to law enforcement presence, increased physical surveillance could alert the TARGET SUBJECTS to the existence of the investigation, and cause them to relocate or temporarily cease their illegal activities, thereby hindering the investigation.

42. Surveillance is also a limited investigative tool because some of the TARGET SUBJECTS remain unidentified or are only partially identified and there is limited information about the specific locations in which they operate. In addition, many of the meetings between the TARGET SUBJECTS has occurred in garages and indoors, where physical surveillance has not been possible. Thus, even if successful, surveillance will provide only limited corroboration of the illicit narcotics activities of the TARGET SUBJECTS.

43. It is expected that information that can be obtained from interceptions over TARGET CELLPHONE 2 will help law

enforcement agents determine the identities of the subjects involved and track their activities, thereby enhancing the prospects for more fruitful physical surveillance of those activities. In addition, with the knowledge provided beforehand by wire surveillance that a meeting is to take place at a given location or a package is to be received on a certain date or at a certain place, it may be possible to establish physical surveillance at that location in advance, thus minimizing the risks of discovery inherent in following subjects or remaining at target locations for extended periods of time. Wire surveillance would better enable law enforcement to coordinate physical and electronic surveillance of such drug transactions, potentially facilitating the seizure of narcotics and narcotics-related proceeds, and the arrest of TARGET SUBJECTS.

44. For the reasons described above, surveillance alone is insufficient to meet the goals of the investigation. Accordingly, there is a compelling need in this case for continued wire surveillance of TARGET CELLPHONE 2.

Arrests

45. Attempting to arrest the TARGET SUBJECTS now would mean that several of the objectives of this investigation would be unfulfilled. As noted above, since the entry of the November 12 Order, additional members of the Foote Organization have been identified through surveillance and other means.

Arresting any of the TARGET SUBJECTS would almost certainly cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or to change the locations; instrumentalities, and methods used to conduct their illegal activities.

46. Accordingly, I believe that arresting some of the identified participants in this conspiracy now would lead to the destruction of evidence, temporary movement of the Organization's stash and distribution locations, and cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or change the methods used to conduct their illegal activities

47. Furthermore, based on information obtained during the investigation thus far, I believe that DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett," and FNU LNU, a/k/a "Frankie," deal with the organization's suppliers. Based on my training, experience, and participation in the investigation, I believe that although it is possible that FOOTE or "Frankie" would cooperate with law enforcement if arrested, it is by no means certain that they would do so. It is therefore uncertain whether arrests would lead to the identification of the Foote Organization's suppliers, or to evidence showing the

participation of the suppliers in drug distribution.

48. Arresting the identified TARGET SUBJECTS and attempting to obtain their cooperation in investigating the narcotics trafficking of their criminal associates is an investigative route that, in my judgment and the judgment of other law enforcement officers involved, is not reasonably likely to result in law enforcement learning the identities of the organization's suppliers, the disposition of its narcotics proceeds, or the identities of the additional co-conspirators. Due to the highly compartmentalized nature of drug-trafficking conspiracies, I believe it is unlikely that lower-level distributors, or so-called "runners," would be able to provide information about the Foote Organization's sources of supply and the locations or uses of the proceeds of their illegal activities.

Use of Confidential Informants

49. This investigation has involved obtaining information from and the active use of a confidential informant ("CI") who previously worked as a drug dealer in the Foote Organization, as described in the August 4, September 3, October 1, October 29, and November 12 Affidavits. Although the CI provided valuable and corroborated information, at this time there is no known confidential source that can provide information about all of the Foote Organization's sources of

supply and their locations (some of which are believed to be in other states or countries), all of the links in the chain of supply (including connections at various mailing services), and all of the Foote Organization's workers and customers.³

50. Narcotics organizations are generally highly compartmentalized, and it is usually impossible for an informant to gain access to all aspects of an organization's illegal activities. Thus, the use of confidential informants alone is typically inadequate to develop evidence about the TARGET SUBJECTS' suppliers and customers.

51. In addition, based on my experience as a narcotics investigator, I believe that drug traffickers are unlikely to discuss the full extent of their organization's activities or membership with any individual, subordinate member of the organization. Based on my experience, I also know that narcotics organizations are often highly protective of their sources of supply.

52. Intercepting calls over TARGET CELLPHONE 2 is likely to provide information and evidence that a CI cannot alone provide. Intercepted calls are likely to be useful in identifying co-conspirators who are unknown to the CI, providing

information about the receipt or distribution of drugs to which the CI is not privy, and to provide evidence against the members of the Foote Organization. Intercepted calls are likely to be useful in identifying locations where drugs are stored which are unknown to the CI, and additionally are likely to be useful in providing evidence showing where drugs and drug proceeds are located at particular instances, about which the CI's knowledge is necessarily limited. Intercepted calls are additionally likely to be useful in corroborating information provided by a CI.

53. Based on my knowledge of this investigation and my experience as a narcotics investigator, I believe that the interception of the communications of TARGET CELLPHONE 2 is essential to reveal the identities of co-conspirators and the structure and operation of the Foote Organization. Without the evidence obtained from court-authorized interceptions, I am confident that the objectives of the investigation cannot be met.

Use of Undercover Agents

54. As described in detail in the October 29 Order, an undercover officer with the Spring Valley Police Department (the "UC") purchased quantities of marijuana from JASON ALLEN, a/k/a "Papa," and ZOLANI WORRELL, two TARGET SUBJECTS. However, due to the compartmentalized nature of the Foote Organization, there is no expectation that any undercover agent will be able to deal

directly with FOOTE's sources of supply to purchase drugs or infiltrate the inner workings of the Foote Organization. Furthermore, the roles of the TARGET SUBJECTS in the conspiracy are also not clearly defined at this time and an undercover agent is likely to only be permitted access to the lower-level dealers, as opposed to the larger figures in charge of the sources of supply and distribution.

55. There is currently no expectation that an undercover officer would be able to determine the full scope of the TARGET SUBJECTS' operations, meet and identify all of the other TARGET SUBJECTS and their co-conspirators, or identify the TARGET SUBJECTS' narcotics suppliers and their confederates. I do not believe that an undercover officer could infiltrate the Foote Organization.

Telephone Toll Records

56. Telephone toll records have been and will be used in this investigation, but will provide only limited information. I have obtained and reviewed telephone toll records for the TARGET CELLPHONES and other cell phones believed to be used by members of the Foote Organization. Phone records, however, do not enable law enforcement officers to identify with certainty the persons involved in the conversations or the significance of the communications in the context of ongoing narcotics trafficking. Among other problems, a telephone number appearing

in the records may not be listed or subscribed in the name(s) or address(es) of the person(s) actually using the telephone. Furthermore, the use of calling cards and telephone access numbers often hides the ultimate numbers called, thereby preventing law enforcement from learning the participants involved in any particular communication. In addition, the review of telephone records will not, in itself, reveal the structure of the Foote Organization or its sources of supply.

Federal Grand Jury

57. The issuance of grand jury subpoenas is likely to be inadequate to obtain critical information about the timing and location of narcotics transactions. Witnesses who might provide additional relevant evidence to a grand jury have not been identified or would themselves be participants in the narcotics trafficking. Because such individuals would face prosecution themselves, it is unlikely that any of them would testify voluntarily. Nor would it be desirable at this time to seek immunity for such individuals and to compel their testimony. Immunizing them could thwart the public policy that they be held accountable for their crimes. Furthermore, the issuance of grand jury subpoenas to other individuals would risk alerting the TARGET SUBJECTS to the ongoing investigation before their sources of supply are identified and located. Moreover, not all of the TARGET SUBJECTS have been identified and, in the absence of

further evidence identifying co-conspirators and their respective involvement in the Foote Organization, it is difficult to determine whom to subpoena to the Grand Jury.

Witness Interviews

58. I believe that interviews of the TARGET SUBJECTS or their known associates would produce insufficient information as to the identities of all of the persons involved with the TARGET SUBJECTS in narcotics trafficking, the sources and locations of the drugs, the sources of financing, the locations of records and proceeds from the distribution of drugs, and other pertinent information regarding the TARGET OFFENSES. I also believe that any responses to the interviews, particularly interviews of those who are higher up in the organization, could contain a significant number of untruths, diverting the investigation with false leads or otherwise frustrating the investigation. I believe that questioning any of the remaining co-conspirators would alert the other co-conspirators, and cause a change in their methods of operation and the concealment or destruction of evidence before all of the co-conspirators are identified, thereby compromising the investigation and resulting in the possible loss of valuable evidence, and the possibility of harm to the CI, whose identity may become known or whose existence may otherwise be compromised.

Search Warrants

59. The investigation has revealed information that would likely enable the DEA to obtain and execute search warrants for the Foote Residence, the Seabring House, and the Taylor Residence, where pole cameras are installed, as described above. In addition, the investigation has revealed information that would likely enable the DEA to obtain and execute search warrants for KELLY's Residence on Lafayette Street, social clubs on North Main Street and North Madison Street in Spring Valley, New York that are believed to be used by members of the Foote Organization to store and distribute narcotics, as well as a location at an industrial park in New Jersey where FOOTE has been observed picking up boxes believed to contain narcotics. While executing search warrants at those locations may result in the seizure of pertinent evidence, it would also alert the TARGET SUBJECTS to the existence of the investigation without the likelihood of determining the full scope of the organization's operations, particularly the organization's sources of supply, the identities of all of the co-conspirators, or other locations where narcotics are stashed.

60. I believe that the execution of search warrants at the suspected stash house locations would be premature at this stage of the investigation because further information is needed to identify the means and methods by which the Foote Organization obtains a supply of narcotics, and other locations where the

drugs and drug-distribution proceeds are transported and stored. The execution of search warrants at the locations described above is not likely to lead to the identification of other locations used by the Foote Organization. Nor is it likely to lead to the identification of co-conspirators who participate in obtaining or selling the Foote Organization's supply of drugs.

61. The locations where the TARGET SUBJECTS currently receive, hide, and distribute their narcotics and narcotics proceeds have not been fully identified. Moreover, without wire surveillance, law enforcement will not know when the locations contain narcotics, narcotics proceeds, and other evidence of the TARGET OFFENSES. I believe that wire surveillance will assist law enforcement in continuing to identify locations where narcotics and narcotics proceeds are currently stored, and determine when such contraband is at such locations, so that search warrants for such locations may be obtained while contraband is still present at the locations.

62. Search warrants were executed on or about November 17, 2010, November 19, 2010, November 22, 2010, and November 23, 2010. Each search warrant was executed for a package or packages shipped via UPS from California or Arizona to an address in an industrial area of New Jersey (the "Package" and the "NJ Business") where, according to cell site location information, surveillance by other law enforcement officers, and intercepted

calls, I believe FOOTE had previously traveled in late October to obtain a large quantity of narcotics.⁴ In addition, based on cell site location information and surveillance by other law enforcement officers, I also believe that RODNEY MUSHINGTON, another TARGET SUBJECT, traveled to the NJ Business in late October to engage in narcotics-trafficking activity. Each of the packages (of several similar packages sent from the same address to the NJ Business) appeared similar to packages that officers have seen FOOTE carrying into and out of the Foote Residence and the Seabring House. Upon opening the packages pursuant to a warrant, each package was found to contain approximately 34-41 pounds of marijuana.

63. Calls intercepted pursuant to the November 12 Order revealed that MUSHINGTON and FOOTE were concerned about a missing package on or about November 17 and November 19. Thus, wire surveillance has assisted and will continue to assist law enforcement in identifying the sources of the narcotics obtained by the Foote Organization and the participants in the chain of supply.

⁴ From my conversations with UPS employee and other law enforcement officers, I learned that in the last two weeks of October, UPS delivered numerous boxes to the NJ Business, each weighing approximately 40 pounds and shipped from an address in either Arizona or California. I have learned that UPS is conducting an investigation of packages sent to the NJ Business based upon, among other things, information that: (1) fictitious addresses are being used to send some of the boxes; and (2) the delivery of some of the packages are not acknowledged by a signature even though they are being delivered to a business. Based on my experience and my participation in his investigation, I believe that the packages contained shipments of marijuana.

64. Accordingly, and because the above-described investigative techniques are limited in their applications, have been unsuccessful, or are unlikely to be successful, authorization to continue to intercept wire communications over TARGET CELLPHONE 2 is necessary to identify and develop evidence against the TARGET SUBJECTS.

MINIMIZATION

65. All monitoring of wire communications over TARGET CELLPHONE 2 will be minimized in accordance with Chapter 119 of Title 18, United States Code.

66. The "investigative or law enforcement officers of the United States" and translators, if necessary, who are to carry out the requested interception of wire communications, will be instructed concerning the steps they should take to avoid infringing upon any attorney-client privilege or other recognized privileges. In addition, all communications intercepted will be conducted in such a way as to minimize the interception of communications not otherwise criminal in nature or subject to interception under Chapter 119, Title 18, United States Code. All monitoring will cease when it is determined that the monitored conversation is not criminal in nature. Interception will be suspended immediately when it is determined through voice identification, physical surveillance, or otherwise, that TARGET SUBJECTS or any of their confederates, when identified, are not

EXHIBIT K

supply and their locations (some of which are believed to be in other states or countries), all of the links in the chain of supply (including connections at various mailing services), and all of the Foote Organization's workers and customers.³

50. Narcotics organizations are generally highly compartmentalized, and it is usually impossible for an informant to gain access to all aspects of an organization's illegal activities. Thus, the use of confidential informants alone is typically inadequate to develop evidence about the TARGET SUBJECTS' suppliers and customers.

51. In addition, based on my experience as a narcotics investigator, I believe that drug traffickers are unlikely to discuss the full extent of their organization's activities or membership with any individual, subordinate member of the organization. Based on my experience, I also know that narcotics organizations are often highly protective of their sources of supply.

52. Intercepting calls over TARGET CELLPHONE 2 is likely to provide information and evidence that a CI cannot alone provide. Intercepted calls are likely to be useful in identifying co-conspirators who are unknown to the CI, providing

³ As noted in the previous Affidavits, since I and other law enforcement officers learned that the CI had engaged in unauthorized, narcotics-related communications with FOOTE that were intercepted over TARGET CELLPHONES 1 and 2, pursuant to the August 4 Order, we have marginalized the role of the CI in this investigation.

EXHIBIT L

2516 of Title 18, United States Code -- that is, offenses involving the distribution of, and possession with intent to distribute, controlled substances, the use of wire facilities to facilitate the same, conspiracy to do the same and attempts to do the same, in violation of 21 U.S.C. §§ 841(a)(1), 843(b), and 846 and the distribution of firearms, possession of firearms by convicted felons and aliens, and use of firearms in furtherance of a narcotics-trafficking crime, in violation of 18 U.S.C. 922(a)(1)(A), 922(g)(1), 922(g)(5)(A), and 924(c) and engaging in monetary transactions involving the proceeds of illegal activity and money laundering, in violation of 18 U.S.C. §§ 1956 and 1957 (the "TARGET OFFENSES").¹

3. For the reasons set out in this affidavit, I believe that there is probable cause to believe that the TARGET OFFENSES have been committed, are being committed, and will continue to be committed by one or more of the following individuals: DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett," CLOVAL TAYLOR, a/k/a "Clove," DWIGHT MORGAN, FNU LNU, a/k/a "Frankie," FNU LNU, a/k/a "Steve," FNU LNU, a/k/a "Dirty," FNU LNU, a/k/a "Chris," ALLAND ZAMOR, TOREY BANES, a/k/a "Mello," a/k/a "Mellow," CONROY BROWN, KENMAR CHAMBERS, NATALIE BROWN,

¹ Although not a predicate offense under 18 U.S.C. § 2516, there is probable cause to believe that the TARGET SUBJECTS (as subsequently defined herein) have aided and abetted and are aiding and abetting those substantive offenses, in violation of 18 U.S.C. § 2.

a/k/a "Danisha," RAYMOND DORSEY, a/k/a "Ray," a/k/a "Smoke," TROY MONTGOMERY, a/k/a "Scrapie," DROMYNEAK MONTGOMERY, a/k/a "Drammy," RAYMOND JACKSON, a/k/a "Migiva," CASHIEMA GREEN, a/k/a "Cash," O'NEIL WHITE, RICARDO MONESTIME, a/k/a "Mossy," MARLON MURPHY, a/k/a "Murph," RICARDO BEPOT, a/k/a "Bigga," FITZROY NORRIS KELLY, a/k/a "Ants," JAVANIE JEFFREY GENTILES, SERGE DORCELY, a/k/a "Bounty," JOSEPH CARRACHIA, a/k/a "Carach," DARREN MCMURRIN, a/k/a "Fish," SOPHIA MOORE, EDDIE PAYNE, SOPHIA JONES, a/k/a "Bridgette," MATTHEW DIAGNE, JEAN DUFRESNE, DEBORAH GRIFFITH, FNU LNU, a/k/a "Ruffy," FNU LNU, a/k/a "Mackerel," a/k/a "Bayja," a/k/a "Wanger," a/k/a "Wainjah," DERRICK GARY GARWOOD, a/k/a "Binghy," FNU LNU, a/k/a "Gaza," FNU LNU, a/k/a "Georgie," FNU LNU, a/k/a "Kirk," FNU LNU, a/k/a "Colin," FNU LNU, a/k/a "Pops," ANGELA FORBES, a/k/a "Angela," a/k/a "Sue," a/k/a "Maxin Bennet," a/k/a "Maxin McMurray," FNU LNU, a/k/a "Monica," ROBERT SAVAGE, HAROLD LUMA, FNU LNU, a/k/a "Indian," PAUL PEARON, DAMION SMITH, JASON ALLEN, a/k/a "Papa," FNU LNU, a/k/a "Skippy," FNU LNU, a/k/a "Darlton," FNU LNU, a/k/a "B-train," DERICK F. SAVAGE, REGINALD NOEL, a/k/a "Reg," a/k/a "Reggie," FNU LNU, a/k/a "Bree," FNU LNU, a/k/a "Teggay," STEVEN BARTHOLE, ZOLANI WORRELL, FNU LNU, a/k/a "Tara," FNU LNU, a/k/a "Adrienne," RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown," GILBERT CYRUS, a/k/a "Junkie," FNU LNU, a/k/a "Elaine," FNU LNU, a/k/a "Dana,"

FNU LNU a/k/a "Cornell," FNU LNU, a/k/a "Pablo," FNU LNU, a/k/a "Bugs," FNU LNU, a/k/a "Deego," FNU LNU, a/k/a "Rohan," FNU LNU, a/k/a "Homeboy," CHESTER WISSEH-WEYH, FNU LNU, a/k/a "Justin," MICHAELANGELO ZAMOR, a/k/a "Micky," TERRANCE CHEVANNES, FNU LNU, a/k/a "McGiva," FNU LNU, a/k/a "Black," a/k/a "Blackie," STEVEN RICHARD, a/k/a "Troy," FNU LNU, a/k/a "Cat," FNU LNU, a/k/a "Quarter," FNU LNU, a/k/a "Sam," FNU LNU, a/k/a "Bazil," FNU LNU, a/k/a "Claire," FNU LNU, a/k/a "Skiller," and others as yet unknown (the "TARGET SUBJECTS"), and that particular communications concerning the TARGET OFFENSES will be obtained through interception of TARGET CELLPHONE 5, TARGET CELLPHONE 6, and TARGET CELLPHONE 7 (defined in paragraph 7 below).

Authorization is sought herein to continue to intercept wire communications of the TARGET SUBJECTS, to and from TARGET CELLPHONE 5, which is currently used by RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown," and to begin to intercept wire communications of the TARGET SUBJECTS to and from TARGET CELLPHONE 6, which is also currently used by MUSHINGTON, and TARGET CELLPHONE 7, which is currently used by an individual identified as STEVEN RICHARD, a/k/a "Troy."

4. The requested Order is sought for a period of time until the interception fully reveals the manner in which the TARGET SUBJECTS participate in the TARGET OFFENSES, or for a

15. As detailed below and described in the Affidavits of Task Force Office Walter Alciver submitted on August 4, 2010 in support of the application to intercept wire communications pursuant to the August 4 Order (the "August 4 Affidavit," attached hereto as Exhibit C); September 3, 2010 in support of the application to intercept and continue to intercept wire communications pursuant to the September 3 Order (the "September 3 Affidavit," attached hereto as Exhibit D); October 1, 2010 in support of the application to intercept and continue to intercept wire and electronic communications pursuant to the October 1 Order (the "October 1 Affidavit," attached hereto as Exhibit E); and the affidavits of DEA Special Agent Mark Kadan submitted on October 29, 2010 in support of the application to intercept and continue to intercept wire and electronic communications pursuant to the October 29 Order (the "October 29 Affidavit," attached hereto as Exhibit F); November 12, 2010 in support of the application to intercept wire communications pursuant to the November 12 Order (the "November 12 Affidavit," attached hereto as Exhibit G); and November 24, 2010 in support of the application to intercept wire communications pursuant to the November 24 Order (the "November 24 Affidavit," attached hereto as Exhibit H), there is probable cause to believe that the TARGET SUBJECTS are involved in the TARGET OFFENSES and are members of a

narcotics trafficking organization (the "Foote Organization") based in and around Spring Valley, New York.

16. As described in the August 4, September 3, October 1, October 29, November 12 and November 24 Affidavits, DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett;" FNU LNU, a/k/a "Frankie; RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown;" and other TARGET SUBJECTS use cellphones to coordinate the Foote Organization's drug dealing activity and transfer of the illegal proceeds thereof, in and around Spring Valley, New York. FOOTE and "Frankie" receive narcotics from suppliers and distribute narcotics to a number of customers and co-conspirators in and around Spring Valley, who then sell the narcotics to other customers. Physical surveillance and interception of wire communications have revealed that FOOTE and "Frankie" receive and deliver drugs from/to customers and co-conspirators at pre-arranged times and places. They also receive shipments of narcotics and send money via the mails, wires, and other co-conspirators. MUSHINGTON arranges through, among other sources, RICHARD, for shipments of narcotics to be sent via the United Parcel Service and Federal Express to locations in and around the tri-state area, including New Jersey. Some of these shipments are received and distributed by FOOTE and by MUSHINGTON. Physical surveillance and interception of wire communications have revealed that MUSHINGTON

travels to New Jersey to retrieve packages of narcotics and that he pays for the narcotics by, among other things, wiring or transferring money to his suppliers' accounts. The deliveries and receipt of drugs and wire or other transfers of money are coordinated through phone calls and text messages between FOOTE, MUSHINGTON, RICHARD, and their co-conspirators over the TARGET CELLPHONES and other cellphones that have been the subject of the Prior Court Orders described herein.

17. As detailed herein, and more fully described in the August 4, September 3, October 1, October 29, November 12, and November 24 Affidavits, there is probable cause to believe that the TARGET SUBJECTS are involved in the TARGET OFFENSES. Pursuant to the August 4 Order, authorization was received to intercept wire communications over TARGET CELLPHONE 1 and TARGET CELLPHONE 2. Interceptions over those 30 days confirmed that TARGET CELLPHONE 1 and TARGET CELLPHONE 2 are being used by the TARGET SUBJECTS and others to engage in narcotics trafficking activities. Pursuant to the September 3 Order, authorization was received to continue to intercept wire communications over TARGET CELLPHONE 2 and to begin to intercept wire communications over TARGET CELLPHONE 3. Pursuant to the October 1 Order, authorization was received to renew the interception of wire communications and to begin to intercept electronic communications over TARGET CELLPHONE 1; to continue to intercept

wire communications over TARGET CELLPHONE 2 and TARGET CELLPHONE 3; and to begin to intercept wire and electronic communications over TARGET CELLPHONE 4. Pursuant to the October 29 Order, authorization was received to continue to intercept wire and electronic communications over TARGET CELLPHONE 1 and TARGET CELLPHONE 4; to continue to intercept wire communications and to begin to intercept electronic communications over TARGET CELLPHONE 2; and to continue to intercept wire communications over TARGET CELLPHONE 3. Pursuant to the November 12 Order, authorization was received to begin to intercept wire communications over TARGET CELLPHONE 5. Pursuant to the November 24 Order, authorization was received to continue to intercept wire communications over TARGET CELLPHONE 2.

18. Interceptions over TARGET CELLPHONE 2 and TARGET CELLPHONE 5 are ongoing and have confirmed that the TARGET CELLPHONES are being used by the TARGET SUBJECTS and others to engage in narcotics trafficking, unlawful possession and use of firearms, money laundering, and immigration fraud. However, all of the goals of the Prior Court Orders have not yet been achieved. Thus, this application seeks an Order authorizing the continued interception of wire communications over TARGET CELLPHONE 5 and the original interception of communications over TARGET CELLPHONE 6 and TARGET CELLPHONE 7.

C. Pertinent Communications Involving the TARGET CELLPHONES

19. Set forth below are summaries of some of the pertinent conversations involving the TARGET CELLPHONES intercepted pursuant to the Prior Court Orders. Specifically, the summaries below contain: (1) pertinent communications intercepted over TARGET CELLPHONE 5 pursuant to the November 12 Order; (2) pertinent communications involving TARGET CELLPHONE 7, intercepted over TARGET CELLPHONE 5 pursuant to the November 12 Order; and (3) pertinent communications involving TARGET CELLPHONE 6, intercepted over TARGET CELLPHONE 2 pursuant to the October 29 and November 24 Orders. The summaries listed below, however, do not constitute a complete list of the pertinent intercepted conversations involving the TARGET CELLPHONES. These summaries contain a sample of the intercepted calls that demonstrate that TARGET CELLPHONES have been used by the TARGET SUBJECTS to commit the TARGET OFFENSES. The following descriptions are based upon my review of the logs and preliminary summaries completed by the monitoring agents. Based on my training and experience and my discussions with other law enforcement officers involved in this investigation, I have included interpretations of certain conversations.

(1) Pertinent Communications Intercepted Over TARGET CELLPHONE 5 Pursuant to the November 12 Order:

20. On or about November 16, 2010, at approximately 8:05 p.m., MUSHINGTON placed an outgoing call over TARGET

CELLPHONE 5 to 347-476-3341 and spoke to an individual identified on previous intercepted calls as "McGiva" (Session 92). During the call, "McGiva" said, "I did twelve, you hear . . . I did twelve of them." MUSHINGTON asked, "today is what? Wednesday?" "McGiva" said, "today is Tuesday . . . so Homeboy is supposed to be getting through today." Based on my experience and participation in this investigation, I believe that "McGiva" works with MUSHINGTON to arrange for marijuana to be shipped from California and Arizona to the East Coast. I also believe that "twelve" is a reference to a quantity of narcotics.

21. On or about November 17, 2010, at approximately 10:13 a.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 347-476-3341 and spoke to an individual identified on previous intercepted calls as "McGiva" (Session 186). During the call, MUSHINGTON asked, "did Homeboy get through last night?" "McGiva" said, "Yeah man, Homeboy got the things and already left . . . give my boy the things awhile now." MUSHINGTON said, "boy, the thing they've been getting from the other day, they aren't so wonderful at all . . . they can work still, but they are not wonderful . . . it is the time still, because I saw some men with some things, and it were the same thing." "McGiva" said, "we are going to need something nice you know . . . because of the people he's going through . . . it's not one or two boy he deals with." Based on my experience and

participation in this investigation, I believe that MUSHINGTON and "Mcgiva" were discussing a narcotics transaction and the poor quality of the narcotics they had previously received.

22. On or about November 17, 2010, at approximately 3:37 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 347-476-3341 and spoke to an individual identified on other calls as "Mcgiva" (Session 234). During the call, "Mcgiva" said, "Home Boy say to ask your boy if his thing is over because his thing is short." MUSHINGTON said, "ok, because spoke to him a while ago, he said that he has not looked at it, but I am going to call him back now." Based on my experience and participation in this investigation, I believe that "Mcgiva" and MUSHINGTON were discussing "Homeboy" having received a shipment of narcotics smaller than what he had expected.

23. On or about November 19, 2010, at approximately 9:01 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 347-476-3341 and spoke to an individual identified on other intercepted calls as "Mcgiva" (Session 357). During the call, "Mcgiva" said, "I hit off the same eight ten today, you hear?" MUSHINGTON said, "you can't do that man, remember, that the place is locked up next week . . . next week is a holiday man, Thursday the place is locked, Wednesday is the last day the man is working B." "Mcgiva" said, "yeah."

MUSHINGTON said, "we are still coming back still, you know, but you shouldn't hit it for it to sit in the place." "Mcgiva" said, "so it is just going to hold this week and the whole of next weekend." MUSHINGTON asked, "how much did you say he beat off?" "Mcgiva" said, "it is the same, eight one." Based on my experience and participation in this investigation, I believe that MUSHINGTON and "Mcgiva" were discussing a shipment of narcotics to a specific business location, and that MUSHINGTON told "Mcgiva" that the location would be closed over Thanksgiving. I also believe that "eight one" is a reference to a quantity of narcotics, that "beat off" means "send out" and that "Mcgiva" told MUSHINGTON the quantity of narcotics which was being shipped to the location.

24. On or about November 20, 2010, at approximately 12:05 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 240-481-8657 and spoke to an individual identified on the call as "Sam" (Session 362). During the call, MUSHINGTON said, "he want to send in a next girl." "Sam" asked, "he's not sending back that one?" MUSHINGTON said, "no . . . she just come the other day still you know . . . he have them traveling regular." Later in the conversation, "Sam" said, "I have some cheese here for him and he don't call me, and I have been calling him." MUSHINGTON said, "the little boys, you did get rid of them already? The first little boys?" "Sam" said,

"no, I had to mix them . . . the thing why I mix it . . . it's brown." MUSHINGTON said, "it's like a some yard something. That's the way it goes. I wouldn't mind he get me because the something that Homeboy get boy he says boy it's wrenk and nice." Based on my experience and participation in this investigation, I believe that MUSHINGTON and the UM were discussing a third party's use of women to transport narcotics or other contraband. I also believe that "cheese" and "little boys" are code for a quantity of narcotics, that "wrenk" means strong, and that MUSHINGTON and "Sam" were complaining about the quality of narcotics they had received.

25. On or about November 21, 2010, at approximately 10:07 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 917-600-1898 and spoke to an unidentified male ("UM") (Session 388). During the call, MUSHINGTON asked, "it is in the morning your thing is landing, right?" The UM said, "yeah." MUSHINGTON said, "I will contact you in the morning." Based on my experience and participation in this investigation, I believe that MUSHINGTON and the UM were discussing shipments of narcotics scheduled to arrive on November 22, 2010.

26. On or about November 22, 2010, at approximately 9:59 a.m., MUSHINGTON placed an outgoing call over TARGET CELLPHONE 5 to 347-476-3341 and spoke to an individual identified on other intercepted calls as "McGiva" (Session 454). During the

call, MUSHINGTON said, "I am on the way . . . I am right up the block." "McGiva" responded, "alright, I am in front of the store." A few minutes later, MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from the same number (347-476-3341) and again spoke to an individual identified on other intercepted calls as "McGiva" (Session 455). During the call, MUSHINGTON asked, "where are you?" "McGiva" said, "I am in the front, where are you? Is that you in the black thing there?" MUSHINGTON said, "yeah, I am coming out." Based on my experience and participation in this investigation, I believe that MUSHINGTON and "McGiva" were meeting for the purpose of engaging in a narcotics transaction.

27. On or about November 23, 2010, at approximately 11:35 a.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 917-600-1998 and spoke to an unidentified male ("UM") (Session 593). During the call, the UM asked if the thing had come in yet for MUSHINGTON's friend. MUSHINGTON said the thing had not come in yet and that he was still waiting. Based on my experience and participation in this investigation, I believe that MUSHINGTON and the UM were discussing a shipment of narcotics which had not arrived.

28. On or about November 23, 2010, at approximately 12:52 p.m., MUSHINGTON placed an outgoing call over TARGET CELLPHONE 5 to 917-229-2188 and spoke to an individual identified

on other intercepted calls as "Cat" (Session 602). During the call, the UM said, "most likely it is tomorrow." MUSHINGTON asked, "but basically, what is he saying? So what is he on? A different unit or what?" "Cat" said, "no man, he is saying either it is on a different unit . . . his supervisor tell him that a whole lot of stuff was left back in the building . . . so a lot of stuff did not go on his truck, cause his truck was full. . . He say he was at one spot to deliver and he was there for about thirty minutes, he took out about 100 plus boxes," MUSHINGTON asked, "you do not think he would come back today though?" "Cat" said "he is not going to go there and come back." Based on my experience and participation in this investigation, I believe "Cat" works with MUSHINGTON in arranging for marijuana to be shipped from California and Arizona to the East Coast, and specifically, that "Cat" frequently works at the New Jersey Warehouse to which MUSHINGTON has marijuana shipped. I also believe that MUSHINGTON and the "Cat" were discussing a shipment of narcotics which had not arrived and that "Cat" said the shipment would likely arrive the next day because the delivery truck was too full today.

29. On or about November 23, 2010, at approximately 6:59 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 323-590-4844 and spoke to an unidentified male ("UM") (Session 653). During the call, MUSHINGTON said, "it's a

lot of them. A lot of them because it's the same thing happen last year at the same time . . . look like too much of them because when the boy came today he was saying that the boy say his thing was full you know . . . and him call . . . management and . . . management was saying a lot of thing is left back in the building." Later in the conversation, MUSHINGTON said, "right now I can't take losing anything." The UM said, "don't want to think that way right now." MUSHINGTON said, "I am just keeping my fingers cross for tomorrow." Based on my experience and participation in this investigation, I believe that MUSHINGTON and the UM were discussing a missing shipment of marijuana. I also believe that MUSHINGTON told the UM that last year there was also an occasion when narcotics shipments were late or missing and that it might be that the UPS truck was too full to deliver the boxes because management said there were a lot of boxes left in the building.

30. On or about November 24, 2010, at approximately 2:05 p.m., MUSHINGTON placed an outgoing call over TARGET CELLPHONE 5 to 347-459-8003 and spoke to an unidentified male ("UM") (Session 790). During the call, MUSHINGTON said, "I do not know what the fuck is going on . . . it wants to look like it must be the driver playing games . . . she put a trace on it, it says reschedule . . . she call the people them at zone . . . cause her thing is coming from zone . . . cause they are trying

to track it to find out where it is . . . it is not the boys them who have it, if it is the boy, you understand what I am saying? . . . it is sixteen I am supposed to get you know." Based on my experience and participation in this investigation, I believe that "boys" refers to the police, that "sixteen" refers to a quantity of narcotics, that "zone" refers to Arizona, and that MUSHINGTON and the UM were discussing a shipment of narcotics which had not arrived. I also believe that MUSHINGTON said the delivery driver might be responsible for the missing narcotics, that he did not believe the police were responsible, and that a woman put a trace on the delivery to find narcotics coming from Arizona.

31. On or about November 24, 2010, at approximately 3:59 p.m., MUSHINGTON placed an outgoing call over TARGET CELLPHONE 5 to 917-299-2188 and spoke to an individual identified on other intercepted calls as "Cat" (Session 814). During the call, the UM said, "what he have to do . . . is stop the stupid one man and just ten at a time good, ten at a time and not go over that." MUSHINGTON said, "huh." The UM said, "I said, we have to stick with one like it is running six, eight and ten done, you know?" MUSHINGTON said, "yeah man, from six man you don't need to go over that." Based on my experience and participation in this investigation, I believe that the UM and MUSHINGTON were discussing a shipment of more than ten boxes of

marijuana that were missing and that they both agreed that no more than ten boxes should be sent at a time.

32. On or about November 26, 2010, at approximately 6:09 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 954-655-0288 and spoke to an individual identified during the call as "Maxine" (Session 1106). During the call, MUSHINGTON said, "I give it to "Dickey . . . and I say . . . you see you can move the thing and you see if you are not making a dollar off it . . . And you know what the man looked at me and told me? The man looked at me and told me . . . every time you touch this thing here, you have to make something off it . . . I say, you are not a true friend man." "Maxine" said, "you are a good boy, he told me that you are the only man who ever put all a hundred." Based on my experience and participation in this investigation, I believe that MUSHINGTON said that if "Dickey" sold certain narcotics he would make a profit. I also believe that "Maxine" said that "Dickey" said MUSHINGTON is the only one who always sells him the full amount of narcotics for which he had paid and does not short him.

33. On or about November 26, 2010, at approximately 6:51 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 917-299-2188 and spoke to an individual identified on other calls as "Cat" (Session 1109). During the call, "Cat" asked, "you have that thing there . . . that thing

there from Wednesday? . . . the thing that you picked up." MUSHINGTON said, "if I have the paper or I have the box?" "Cat" said, "the paper." MUSHINGTON said, "yeah man, I have the paper." Later in the conversation, "Cat" said, "the man say he is supposed to overnight the thing today for tomorrow." MUSHINGTON said, "that is what he was telling me this morning." Based on my experience and participation in this investigation, I believe that MUSHINGTON and "Cat" were discussing a previously delivered shipment of narcotics and an expected shipment of narcotics.

34. On or about November 26, 2010, at approximately 11:31 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 347-459-8003 and spoke to an unidentified male ("UM"). During the call, the UM asked, "the youth that gave you the thing, you did not vise him yet?" MUSHINGTON said, "no, tomorrow." The UM asked, "so what you say?" MUSHINGTON said, "I tell him . . . that I do not like what he did cause he is telling me like he has a man that want it right away . . . I tell him when it is my thing, it is a different thing." Later in the conversation, MUSHINGTON said, "he is telling me that he put it out on loan." Based on my experience and participation in this investigation, I believe that MUSHINGTON provided a quantity of narcotics to a third party on consignment and that MUSHINGTON was upset because the third party had not yet sold the drugs and

repaid him.

35. On or about November 28, 2010, at approximately 12:24 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 347-575-0522 and spoke to an unidentified male ("UM") (Session 1345). During the call, MUSHINGTON said, "I want to tell you that a last night, the boy them take it away." The UM asked, "who, police?" MUSHINGTON said, "my youth run leave them, my youth blaze leave them last night and abandoned it but they found it and towed it but nothing was in it . . . I am here calling to report it." The UM said, "oh, ok." MUSHINGTON said, "he run leave them . . . because he has his steel you know." The UM said, "him run out and lock it up." MUSHINGTON said, "no man, he did not leave the key in it . . . a good thing man . . . if you don't have the key to show, they are going to ask, where is the key . . . they are going to say your lying you must know who." Based on my experience and participation in this investigation, I believe that "steel" means "gun" and that MUSHINGTON said that his "youth" was driving MUSHINGTON's car, was pulled over by the police, ran away from the police and abandoned the car because the "youth" had a gun in the car. I also believe that MUSHINGTON said he was going to report the car stolen and that it is good that he had the key to the car because otherwise the police would think that he must know who was driving it.

36. On or about November 29, 2010, at approximately 9:14 a.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 917-299-2188 and spoke to an individual identified on other intercepted calls as "Cat" (Session 1456). "Cat" asked, "how we stay?" MUSHINGTON said, "it is showing that it push out . . . it is showing that it out . . . but my youth going to reach over there, thing he is picking up a van." Later in the conversation, MUSHINGTON said, "my little man that driving it . . . pull him the other night, the man run left them B, Gun Hill Road, the man run left them go on the 95 . . . because him claim that him have him tool on him you know . . . I go pick him up . . . and circle and see if I see the unit . . . when I go there is the boy them I see surrounding it . . . is flatbed the boy them is putting it on . . . I had to just let my baby mother call in yesterday and report it." Based on my experience and participation in this investigation, I believe that "tool" refers to gun, that "boy" refers to police, MUSHINGTON and "Cat" were discussing an incident in which a third party driving MUSHINGTON's car fled when pulled over by the police because he had a gun in the car. I also believe that MUSHINGTON said he went to pick up the third party and saw the police loading his car onto a flat bed so he had his child's mother report the car as stolen.

37. On or about November 29, 2010, at approximately

3:41 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 917-600-1898 and spoke to an unidentified male ("UM") (Session 1504). During the call, MUSHINGTON said, "I want to tell you that just half of it drop." The UM asked, "so what happen to those other guys?" MUSHINGTON said, "nothing don't drop for them, it is just half of my own drop." The UM asked, "what, five?" MUSHINGTON said, "three. Is six was to come, only three come because the catty was to get a four cents and none of her own don't drop at all now . . . I don't know what's going on, if it is tie . . . up in the system or what, but I am just glad that something out of my own come." Based on my experience and participation in this investigation, I believe that MUSHINGTON said that he had only received half of his expected shipment. I also believe that "catty" is slang for a woman, that "four cent" refers to a quantity of narcotic, and that MUSHINGTON said that a woman was also expecting a shipment of narcotics that had not arrived.

38. On or about November 29, 2010, at approximately 9:25 p.m., MUSHINGTON placed an outgoing call over TARGET CELLPHONE 5 to 917-600-1898 and spoke to an unidentified male ("UM") (Session 1552). During the call, MUSHINGTON asked, "do you have any case . . . one of the case that we use . . . case, suitcase." The UM said, "no, I don't have it here . . . where are you going with a suitcase this time of night?" MUSHINGTON

said, "what we do man." The UM said, "it's done already?" MUSHINGTON, said, "no, no, no, no, it's for my brethren." Based on my experience and participation in this investigation, I believe that MUSHINGTON was discussing a suitcase used to transport contraband such as narcotics or narcotics proceeds.

39. On or about November 30, 2010, at approximately 11:23 a.m., MUSHINGTON placed an outgoing call over TARGET CELLPHONE 5 to 347-476-3341 and spoke to an individual identified on other intercepted calls as "McGiva" (Session 1620). During the call, MUSHINGTON said, "the boss says ground zero, not one thing came off." "McGiva" asked, "nothing came off?" MUSHINGTON said, "no sir. I'm sorry can't get three little things and get rid of the people in the place." Based on my experience and participation in this investigation, I believe that MUSHINGTON and "McGiva" were discussing a missing shipment of narcotics and that MUSHINGTON said that MUSHINGTON said nothing had arrived.

40. On or about November 30, 2010, at approximately 12:19 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 240-481-8657 and spoke to an unidentified male ("UM") (Session 1624). During the call, the UM asked, "you didn't hear anything from those people?" MUSHINGTON said, "no, nothing came today, probably tomorrow . . . it is showing that it's rescheduled." The UM said, "oh, like tomorrow then." MUSHINGTON said, "yeah . . . two more is suppose to come today

also." Based on my experience and participation in this investigation, I believe that MUSHINGTON said an expected shipment of narcotics had not arrived, that the United States Parcel Service ("UPS") tracking system showed the boxes as being rescheduled, and that two additional boxes of narcotics were scheduled to arrive.

41. On or about November 30, 2010, at approximately 1:14 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 347-459-8003 and spoke to an unidentified male ("UM") (Session 1629). MUSHINGTON said that a third party was driving his car and it was pulled over by the police. MUSHINGTON said, "I am telling you man, it's just the father works still you know man because usually him would take the thing and go carry it go deal with it, you know." Based on my experience and participation in this investigation, I believe that "father" refers to God, and that MUSHINGTON said that it was lucky that when the third party was pulled over he did not have any contraband in the car, because he would usually have been carrying money or narcotics.

42. On or about December 1, 2010, at approximately 1:43 p.m., MUSHINGTON received an incoming call from an unknown connection and spoke to an unidentified male ("UM"). (Session 1757). During the call, MUSHINGTON said, "I wanted you to send off the box like a dummy box . . . just put some paper or . . .

some book in it or something . . . and see what is going on, see if it is going to come through . . . yeh man, some book in it or some paper . . . send off the same size box." Based on my experience and participation in this investigation, I believe that MUSHINGTON asked the UM to send a box of papers and books the same size as the usual box of narcotics in order to see if the box would be delivered. MUSHINGTON also said that "Homeboy" asked why the UPS tracking indicates that a missing shipment of narcotics was "rescheduled" but still hadn't arrived.

43. On or about December 2, 2010, at approximately 10:13 a.m., MUSHINGTON placed an outgoing call over TARGET CELLPHONE 5 to 917-299-2188 and spoke to an individual identified on other intercepted calls as "Cat" (Session 1868). During the call, MUSHINGTON said, "they said they will put a trace but they are saying within three to four business days, then we will call them back and see what is going on . . . even the man tell him that he does not know why he needs the brown boy because the white boy them if you call them they can tell you where your things are." "Cat" said, "when you push too much of them one time [UI]." Based on my experience and participation in this investigation, I believe that "brown boys" refers to UPS and "white boys" refers to Federal Express and "push" means "send." I also believe that MUSHINGTON and "Cat" discussed a missing shipment of narcotics, that MUSHINGTON said UPS was tracking the

shipment but that Federal Express was better at tracking packages and that "Cat" said the missing packages might be the result of too many packages being sent at one time.

44. On or about December 2, 2010, at approximately 10:16 a.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 917-299-2188 and spoke to an individual identified on other intercepted calls as "Cat" (Session 1869). During the call, "Cat" asked, "Movie Star did shot something for Monday and he call me and said he want shot for Friday and I told him, no, plan to do it for Monday and I'll hear exactly what's going on by Monday." MUSHINGTON asked, "how much you say him shot?" "Cat" said, "about four, cause he does not go more than four or six, but I think is four him shot." "Cat" also asked, "you check it back and it say them same . . . reschedule, right?" MUSHINGTON said, "yeah." "Cat" said, "apparently them can't find it." Based on my experience and participation in this investigation, I believe that "shot" means "sent." that "Movie Star" refers to a supplier in California, and that "Cat" said four boxes of narcotics were scheduled to arrive, but that he told the supplier not to send them until he figured out what happened with a previous missing shipment of narcotics.

45. On or about December 4, 2010, at approximately 12:02 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 347-843-7435 and spoke to an unidentified male

("UM") (Session 2177). During the call, MUSHINGTON said he went up to Spring Valley because he needs some "papers." Based on my experience and participation in this investigation, I believe that "papers" is code or slang for "money."

46. On or about December 4, 2010, at approximately 4:37 p.m., MUSHINGTON placed an outgoing call to 954-655-0226 and spoke to an individual identified on other intercepted calls as "Maxine" (Session 2207). During the call, MUSHINGTON said, that the boys have "mashed him up" for the holidays big time and that every Christmas the thieves are out. MUSHINGTON said that he had been running his business smoothly for a long time. MUSHINGTON said he told an unidentified male ("UM") that the UM has to listen and follow instructions. MUSHINGTON said that when he tells the UM to send four, the UM must send four, and not eight because they overload the system and get people looking out. Later in the conversation, MUSHINGTON told "Maxine" about a doctor man he controls and said that the doctor is like a pharmacy you can get anything you want. Based on my experience and participation in this investigation, I believe that MUSHINGTON was complaining about missing shipments of narcotics and said that he told the person shipping the narcotics that when MUSHINGTON tells him to ship four boxes of narcotics, the shipper must ship four and not eight.

47. On or about December 9, 2010, at approximately 12:12 p.m., MUSHINGTON placed an outgoing call over TARGET CELLPHONE 5 to 347-476-3341 and spoke to an individual identified on other intercepted calls as "McGiva" (Session 2912). During the call, "McGiva" said, "he said it is five of them, he said he turned them back you know, him don't know how they drop you know, may he is gone to look at them." Based on my experience and my participation in this investigation, I believe that "McGiva" told MUSHINGTON that 5 boxes of narcotics had been turned back by the shipper but that some had been delivered anyway.

48. On or about December 9, 2010, at approximately 12:21 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 917-299-2188 and spoke to an individual identified on other intercepted calls as "Cat" (Session 2918). During the call, "Cat" said, "they chop off the label off of it and got rid of it." MUSHINGTON said, "what the tape is, white tape?" "Cat" said, "it's tape with white paper and brown paper we use, all him have to do is check and trace which one is our." MUSHINGTON said, "he is checking still you know, the reason why I'm asking is because one was to come yesterday, but . . . him tell me that the youth turn back one of them." Later in the conversation, MUSHINGTON said, "no man, no, no man, nothing more not coming for today man, that's why I told you that you must see where it is coming from, if it says Santa Ana . . . because you

know when they do their thing you know is white, is white tape they put around it." Based on my experience and my participation in this investigation, I believe that "Cat" and FOOTE were discussing a shipment of narcotics being sent to them from California.

(2) Pertinent Communications Involving TARGET CELLPHONE 7 Intercepted Pursuant to the November 12 Order:

49. From my review of toll records for TARGET CELLPHONE 7, I know that from November 8, 2010 through December 7, 2010, there have been approximately 200 contacts between TARGET CELLPHONE 5 and TARGET CELLPHONE 7. Some of the pertinent communications between TARGET CELLPHONE 5 and TARGET CELLPHONE 7, intercepted pursuant to the November 12 Order, are summarized below.

50. On or about November 15, 2010, at approximately 11:34 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from TARGET CELLPHONE 7 and spoke to a man identified as STEVEN RICHARD, a/k/a "Troy" (Session 3). During the call, MUSHINGTON said, "a little man came in with some new things . . . and he said that he wants five bills for one, because since the other day, he was telling me that he wants two more. I said yow . . . a man has some new things, brand brand new in the box." RICHARD asked, "you did not grab anything?" MUSHINGTON said, "I grabbed one of them a while ago." The UM asked, "it is what? 9th Street?" MUSHINGTON said, "45th Street . . . I grabbed one for

him also. I grabbed a 40 Street for him too." Based on my experience and participation in this investigation, I believe that STEVEN RICHARD, a/k/a "Troy" works with MUSHINGTON to arrange shipments of marijuana from California and Arizona to the East Coast, and that RICHARD may be one of MUSHINGTON's suppliers. I also believe that "9th Street," "45th Street," and "40 Street" each refer to a caliber of gun and that MUSHINGTON and RICHARD were discussing the purchase of firearms.

51. On or about November 17, 2010, at approximately 1:21 p.m., MUSHINGTON placed an outgoing call over TARGET CELLPHONE 5 to TARGET CELLPHONE 7 and spoke to RICHARD (Session 218). During the call, MUSHINGTON said, "I am on the ends now, how much paper do you want me to . . ." RICHARD said, "six, I am going to put one in, one and five . . . yeah, I am going to end it right now . . . around Chase." MUSHINGTON said, "just text the information, why? The two of them are Chase." Based on my experience and participation in this investigation, I believe that "Chase" refers to Chase bank, and that MUSHINGTON and RICHARD were discussing MUSHINGTON making a payment to the RICHARD for narcotics MUSHINGTON had or would receive.

52. On or about November 17, 2010, at approximately 1:33 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from TARGET CELLPHONE 7 and spoke to RICHARD (Session 224). During the call, RICHARD said, "the last one you see the

Thomas A the I send you back one just now . . . you see the one zero A the wrong one a the eight seven six A the right one for Thomas . . . the one oh one is for chovia." MUSHINGTON said, "ok, the eight seven six it start eight seven six." RICHARD said, "yeh, it start with eight seven six, that one is for Thomas." MUSHINGTON said, "but that is for chase." RICHARD said, "that's the first one I sent you, the one that I sent you first is for chovia." MUSHINGTON said, "a Thomas I am putting the two of them in . . . the Thomas is for five." RICHARD said, "Thomas is for five and Gibbs is for one." Based on my experience and participation in this investigation, I believe that "chase" and "chovia" refer to Chase Bank and Wachovia Bank and that MUSHINGTON and RICHARD were discussing payments by MUSHINGTON for narcotics.

53. On or about November 18, 2010, at approximately 7:45 p.m., MUSHINGTON received an incoming call from TARGET CELLPHONE 7 and spoke to RICHARD (Session 349). During the call, RICHARD said, "yeh, I will have to try and sort it out early because the boy say its by the third, suppose to be here because he say that its on the water already." Based on my experience and participation in this investigation, I believe that MUSHINGTON and RICHARD were discussing the arrival of a shipment of narcotics and that RICHARD said the narcotics were already in transit.

54. On or about November 21, 2010, at approximately 11:12 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from TARGET CELLPHONE 7 and spoke to RICHARD (Session 399). During the call, MUSHINGTON asked, "the thing them are when man, Tuesday and Wednesday?" RICHARD said, "yeah, yeah, yeah." Based on my experience and participation in this investigation, I believe that MUSHINGTON and RICHARD were discussing a shipment of narcotics scheduled to arrive on November 22, 2010 and November 23, 2010.

55. On or about December 3, 2010, at approximately 12:50 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from TARGET CELLPHONE 7 and spoke to RICHARD (Session 2035). During the call, MUSHINGTON said that "they" are up here but they used to deal with the thing in Florida. MUSHINGTON said, they set up a company . . . get an account, and they used to do it two at a time, but they got greedy, like these guys and started doing five a week and got fucked. Based on my experience and participation in this investigation, I believe that MUSHINGTON told RICHARD about an unidentified group of individuals who are now working in the tri-state area, but used to operate in Florida, and who used to ship quantities of narcotics but got in trouble when they shipped too many boxes at the same time.

56. On or about November 27, 2010, at approximately

4:48 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from TARGET CELLPHONE 7 and spoke to RICHARD (Session 1218). During the call, RICHARD said that "Panther's" number was given to "Cakey" and he is glad "Panther" is calling him because "Panther" owes MUSHINGTON money for a one thing which he gave to Chigga." Based on my experience and participation in this investigation, I believe that RICHARD and MUSHINGTON was discussing a narcotics transaction.

57. On or about November 27, 2010, at approximately 5:38 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from TARGET CELLPHONE 7 and spoke to RICHARD (Session 1226). During the call, MUSHINGTON said, "this morning Walter woman call me too, she is asking me what my thing is saying . . . cause she trace out her blood claut . . . it is four things she has . . . because they put the trace on it now, they put exception, say something . . . they are too hasty man . . . you have to give the thing time." RICHARD said, "yeah . . . at the time when you call them, they can't do nothing until, over . . . until Monday, so what they sense you are going to call them . . . you call them now, you just pressuring the thing more." Based on my experience and participation in this investigation, I believe that "four thing" refers to a quantity of narcotics and that MUSHINGTON and RICHARD were discussing a missing shipment of narcotics which a woman had tried to trace. I also believe that

MUSHINGTON and RICHARD agreed that they should wait until Monday and not try and track the packages.

(3) Pertinent Communications Involving TARGET CELLPHONE 6 Intercepted Pursuant to the October 29 and November 24 Orders:

58. On or about November 15, 2010, at approximately 12:14 p.m., FOOTE placed an outgoing call over TARGET CELLPHONE 2 to TARGET CELLPHONE 6 and spoke to an individual he identified as "Struggo," believed to be RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown" (Session 8753). During the call, FOOTE asked, "our boy, he's good?" MUSHINGTON said, "he's there but all now he don't put his hand on nothing." FOOTE said, "you have to say it's two, two and a quarter." MUSHINGTON said, "alright," FOOTE said, "three two," MUSHINGTON said, "it's short a quarter then . . . I did get thirty three and a half on my own." FOOTE said, "it's over . . . out at . . . small one over still over the quarter still, it's six. . . so it's still short about three." MUSHINGTON said, "about that still because what did I get . . . I get really ah . . . ten. Two over half, I get seven." FOOTE said, "so this one is short three for the half, so it's two plus one. Yeah, it's the same thing. . . that one looks good . . . it finish already that's how good it looks." Based on my experience and my participation in this investigation, I believe that "two," "two and a quarter," "three two," "a quarter," "thirty-three and a

half," "six," "three," "seven," "ten," and "one," all refer to quantities of narcotics and that FOOTE and MUSHINGTON were discussing a shipment of narcotics which was short. I also believe that FOOTE said the quality of the narcotics was so good that it had all already been sold.

59. On or about November 15, 2010, at approximately 9:48 p.m., FOOTE placed an outgoing call over TARGET CELLPHONE 2 to TARGET CELLPHONE 6 and spoke to MUSHINGTON (Session 8809). During that call, FOOTE asked MUSHINGTON what he was up to and MUSHINGTON said it was all "little boys" and that he was trying to call the man but he was not picking up. MUSHINGTON said that his guy from Florida got caught up in Arizona. FOOTE told MUSHINGTON that his guys got stuff from Albany on Saturday and they wanted to know if they could "do a thing" tomorrow. MUSHINGTON said the stuff doesn't have to be great, as long as it can be "worked." FOOTE said he went to Albany on Saturday and came back on Sunday. MUSHINGTON said he wanted to get some "solid things" from there. Based on my experience and my participation in this investigation, I believe that FOOTE and MUSHINGTON were discussing the sources from which they recently obtained narcotics and the quality of narcotics.

60. On or about November 16, 2010, at approximately 9:06 p.m., MUSHINGTON placed an outgoing call over TARGET CELLPHONE 6 to TARGET CELLPHONE 2 and spoke to FOOTE (Session

8957), During the call, MUSHINGTON said, "those youths . . . they shot from today." FOOTE asked, "it is today they shot?" MUSHINGTON said, "yeah, Giver youth them, they shot a portion today." FOOTE said, "ok." MUSHINGTON said, "the boy them shot today, let them tell you where it is coming from, you know?" FOOTE said, "yeah . . . location, yeah." MUSHINGTON said, "Homeboy them get something already and shoot." FOOTE said, "it is a hundred, you know." Later in the conversation, MUSHINGTON said, "I do not like to put money in their hand still, cause . . . Homeboy there, I am hearing he is a little craft still, but I am just going to watch him, you know." MUSHINGTON also said, "it is me getting their thing you know, cause I do not let them over there you know, it is me." Finally, MUSHINGTON said, "the gal there lose all a box a day too . . . so the gal call me and ask me if . . . I say listen . . . let me tell you something homegirl . . . much things is coming through this . . . here for me to hold on a little one something." Based on my experience and my participation in this investigation, I believe that "shot" means "send," "100" refers to a quantity of narcotics, and that FOOTE and MUSHINGTON were discussing a shipment of narcotics. I also believe that MUSHINGTON said he did not trust Homeboy and therefore did not like to pay him. Furthermore, I believe that MUSHINGTON said a girl's box of narcotics was missing, that she asked MUSHINGTON about the box, and that MUSHINGTON said he is

getting too many shipments of narcotics to have held on to one box.

61. On or about November 17, 2010, at approximately 3:31 p.m., FOOTE placed an outgoing call over TARGET CELLPHONE 2 to TARGET CELLPHONE 5 and spoke to MUSHINGTON (Session 9038). During the call, "MUSHINGTON" said, "it is the youth here . . . I was depositing some papers for him that I have for him but because it is pure big bills I did not want . . . you see what I am saying? But I did it still . . . get the little paper that I have changing out but have to deposit it back into the account." FOOTE said, "alright then you will have to go . . . in the weekend or something man, you probably can just give me a link and let me give you some of them things and you get them change out same way." Based on my experience and my participation in this investigation, I believe that MUSHINGTON and FOOTE were discussing the laundering of drug proceeds.

62. On or about November 19, 2010, at approximately 10:32 a.m., FOOTE placed an outgoing call over TARGET CELLPHONE 2 to TARGET CELLPHONE 6 and spoke to MUSHINGTON (Session 9175). During the call, FOOTE said, "tell my youth that we are in front here." MUSHINGTON said, "I totally forgot that you said that you had two coming in today, you know I thought that it was Monday." Later in the conversation, MUSHINGTON said, "he called me but it cut off, it looks like he see's you . . . let me call him back on

the next phone there." FOOTE said, "he is on the front there. I don't know if he sees me." MUSHINGTON said, "it is two of them, right?" FOOTE said, "no, three of them." MUSHINGTON asked, "and two for Monday?" FOOTE said, "yeah, yeah, two for Monday." MUSHINGTON said, "I am going to be up there Monday still because them boy there have something coming." Based on my experience and participation in this investigation, I believe that FOOTE was picking up three boxes of narcotics and that he had two additional boxes arriving on Monday.

63. On or about November 26, 2010, at approximately 4:40 pm, FOOTE placed an outgoing call over TARGET CELLPHONE 2 to 347-403-7693 and spoke with MUSHINGTON (Session 10006). During that call, MUSHINGTON told FOOTE that "Homeboy" said that they have been rescheduled for Monday and MUSHINGTON is keeping his fingers crossed. FOOTE said that was what "Homeboy" was telling him too. MUSHINGTON said that he had spoken to "Chigga's brother" "because that is what he does" and that he was saying things were slow because of the holidays. MUSHINGTON said that if those boys' things come he wants to take it away and does not want to give them nothing if it comes. MUSHINGTON then said that all of his (a third person's) things came and none of his came. FOOTE told MUSHINGTON that his "little dogs" are calling him and right now he does not have a thing to give them because he had set up a thing and the men messed up. MUSHINGTON said that he

put a trace on their thing and it is telling this and that. MUSHINGTON said that the eight that the other man had coming today was turned back at the man's direction. MUSHINGTON said that they are flooding this thing and he does not like that and if the other men's things come, he is not giving them nothing. MUSHINGTON said that they are going back over there on Monday and he is planning on loading up everything in FOOTE's car if it comes. MUSHINGTON and FOOTE discussed whether the driver may be responsible. MUSHINGTON told FOOTE that the driver cannot reschedule things and when the driver comes to work, a list of what is on his truck is placed on the board and it is sometimes scanned as being on the truck when it is not actually on that truck. Based on my experience and participation in this investigation, I believe that MUSHINGTON and FOOTE were discussing packages of marijuana that were shipped to New Jersey via UPS that FOOTE and MUSHINGTON did not receive.³

64. Based on the surveillance and intercepted calls described above, and based on my experience and participation in this investigation, I believe that FOOTE, MUSHINGTON, and RICHARD are engaged in a narcotics-trafficking conspiracy and use the TARGET CELLPHONES in to commit, to further, and to discuss their narcotics trafficking activities as well as conduct in violation

³ As discussed in more detail below, law enforcement officers, pursuant to a search warrant, seized a number of packages containing marijuana which were shipped via UPS to a location in New Jersey.

of the federal firearms and money laundering laws.

F. Analysis of Telephone Records for TARGET CELLPHONE 6

65. I have reviewed telephone toll records for TARGET CELLPHONE 6 for the time period October 23, 2010 through December 5, 2010 (the "Time Period"). As noted above, "John Clark" is listed as the subscriber for TARGET CELLPHONE 6. However, from listening to calls intercepted over the TARGET CELLPHONES and comparing the voice of the users, I believe that the person using TARGET CELLPHONE 5 is the same person using TARGET CELLPHONE 6. There were approximately 1,075 incoming and outgoing calls over TARGET CELLPHONE 6 during that 44-day Time Period, to or from approximately 107 different telephone numbers. Of those 107 phone numbers, at least 65 are cellular telephone numbers with New York area codes, 2 are telephone numbers with California area codes, 5 are telephone numbers with Florida area codes, 2 are telephones with a Maryland area code, 2 are telephone numbers with New Jersey area codes, 2 are telephone numbers with Connecticut area codes, and 4 are telephone numbers with a Jamaican area code. The telephone records for TARGET CELLPHONE 6 show calls to and from, among other numbers, the following numbers:

- a. A cellular telephone assigned call number (323) 590-4844. There was 1 call between TARGET CELLPHONE 6 and (323) 590-4844 during the Time Period, which took place on

[REDACTED]

68. Based on the foregoing, I believe that TARGET CELLPHONE 5 and TARGET CELLPHONE 6 are being used by RODNEY MUSHINGTON, a/k/a "Jaheim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown," to discuss, facilitate, and engage in the distribution of narcotics with other TARGET SUBJECTS, and TARGET CELLPHONE 7 is being used by STEVEN RICHARD to discuss, facilitate, and engage in the distribution of narcotics with other TARGET SUBJECTS. I believe that MUSHINGTON and RICHARD will continue to use the TARGET CELLPHONES for these purposes in the future.

II. ALTERNATIVE INVESTIGATIVE PROCEDURES HAVE BEEN TRIED OR APPEAR UNLIKELY TO SUCCEED IF TRIED; THERE IS A NEED FOR THE INTERCEPTION OF WIRE COMMUNICATIONS OVER THE TARGET CELLPHONES

69. The principal goals of this investigation are to identify, locate, and arrest persons responsible for the distribution of marijuana and cocaine in and around Spring Valley, to gather evidence against those responsible for running the organization, to identify and locate the sources that supply the Foote Organization with large quantities of narcotics, and to identify those sources suppliers.

suppliers, other customers, distributors that work in the Foote Organization, and associates, as well as the locations at which the TARGET SUBJECTS store narcotics and the methods by which they operate their narcotics-trafficking business and how they dispose of the proceeds of that narcotics trafficking.

71. The interception of communications over TARGET CELLPHONE 1, 2, 3, 4, and 5 pursuant to the August 4, September 3, October 1, October 29, November 12 and November 24 Orders has provided valuable evidence against the TARGET SUBJECTS.

Interception of wire communications over the TARGET CELLPHONES is required, however, because the interception of communications to date have not fully revealed the nature and scope of the TARGET SUBJECTS' narcotics trafficking and other illegal activities.

72. The interceptions to date have not identified, for example, the identities of the individuals supplying MUSHINGTON and RICHARD with narcotics, all of the members of the Foote Organization, or of their other suppliers. Based on attempted surveillance conducted by other law enforcement officers, I know that FOOTE, "Frankie," MUSHINGTON, and others make deliveries inside and near buildings where physical surveillance is challenging and use rental cars to evade surveillance by law enforcement. While the interceptions of communications over TARGET CELLPHONES 1, 2, 3, 4 and 5, has provided valuable information about the other members of the Foote Organization,

additional interception is needed to confirm the identify of those individuals. The investigation has also not yet identified all of the suppliers for the Foote Organization, the locations of all the organization's stash houses, the sources of financing for the organization, and the locations and disposition of the proceeds from the organization's narcotics trafficking activities. While the wire and electronic communication interceptions and physical surveillance, in combination, have provided valuable information about possible stash houses used by the Foote Organization, further interception is needed to confirm that certain locations are stash houses and to identify other possible stash house, particularly those used by the organization's suppliers.

73. Intercepting wire communications over the TARGET CELLPHONES will assist law enforcement officers in fully revealing the nature and scope of the TARGET SUBJECTS' narcotics trafficking and other illegal activities. Specifically, continued interceptions of wire communications over the TARGET CELLPHONE 5 and original interception of wire communications over TARGET CELLPHONE 6 and TARGET CELLPHONE 7 may reveal higher-level sources of supply for the organization, their methods of transporting narcotics, and the locations at which RICHARD, MUSHINGTON, FOOTE, and their suppliers store narcotics. In addition, continued interceptions of wire communications over the

TARGET CELLPHONE 5 and original interception of wire communications over TARGET CELLPHONE 6 and TARGET CELLPHONE 7 may reveal information regarding their method of transporting narcotics, the source of financing for the organization, and the locations and dispositions of the proceeds from those activities. Such interceptions will enable the DEA and the other law enforcement groups with which the DEA is working to gather evidence that otherwise would not be able to be gathered by more traditional investigative techniques.

74. Other investigative techniques, described herein and in the August 4, September 3, October 1, October 29, November 12 and November 24 Affidavits, have been tried, including physical surveillance, purchases of drugs by an undercover officer, and the use of a confidential informant. While those efforts have been fruitful, interception over the TARGET CELLPHONES is required because other investigative techniques cannot fully reveal the nature and scope of the TARGET SUBJECTS' narcotics trafficking activity. It is anticipated that interception over the TARGET CELLPHONES will assist in continuing to identify the means and methods by which the Foote Organization obtains a regular supply of narcotics and the individuals who are involved in the provision of that supply, and the means and methods by which MUSHINGTON and other members of the Foote Organization purchase or obtain firearms.

75. It is further anticipated that the interception of wire communications over the TARGET CELLPHONES will assist in identifying new target subjects and these intercepted communications would provide valuable evidence and intelligence about incoming narcotics shipments and on-going narcotics trafficking.

76. As discussed below, several other investigative techniques have been tried, or reasonably appear likely to fail if tried, or are likely to jeopardize the investigation if tried. In the absence of the requested authorization of wire interceptions occurring over the TARGET CELLPHONES, there are no means of determining the identities of the suppliers to the Foote Organization, their location, their source of narcotics, their methods of receiving, transporting and paying for narcotics, or the location of their narcotics supply. It is only through the combination of wire surveillance, visual surveillance, and other investigatory tools that the agents expect to identify fully the nature and scope of the organization. Accordingly, there is a compelling need in this case for wire interceptions of the TARGET CELLPHONES.

Physical Surveillance

77. Law enforcement officers of the DEA, the Task Force, the Police Departments of Spring Valley, Ramapo, Suffern, Clarkstown, and others have conducted, and are continuing to

conduct (when appropriate), physical surveillance of members of the Foote Organization. As described in the Affidavits described herein (and attached as Exhibits), pole cameras have been installed outside of the residence of DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett," (the "Foote Residence"), "Frankie's" residence (the "Seabring House"), and CLOVAL TAYLOR'S Residence (the "Taylor Residence"), where the Foote Organization is believed to receive, distribute, and store large quantities of drugs. The pole camera surveillance has provided useful information in the investigation, including evidence of large packages of what appears to be narcotics being transported into and out of suspected stash houses by FOOTE and others and FOOTE'S use of multiple cellphones and rental vehicles.

78. For example, according to other law enforcement officers monitoring the pole cameras, from on or about November 1, 2010 through on or about December 1, 2010, a number of TARGET SUBJECTS have been observed arriving at the Seabring House, staying for a short period of time, and leaving with a package or bag, including, FITZROY NORRIS KELLY, a/k/a "Ants," a/k/a "Antsman," HEROLD LOMA, and STEVEN BARTHOLE, among others. On or about November 1, 2010, FOOTE and "Frankie," were observed transporting or assisting with the transporting of a large bag from the trunk of a car driven by FOOTE into the garage of the Seabring House. On or about November 12, 2010, a black male

driving a white vehicle was observed arriving in front of the Taylor Residence. TAYLOR was observed approaching the vehicle, giving something to the driver and receiving something in return. On November 29, 2010, FOOTE was observed backing a van up to the garage of the Seabring House. The passenger of the van took a large box from the rear of the van and carried it into the Seabring House garage. A few hours later, FOOTE was observed in the garage holding what appeared to be crumpled paper, such as would be used in packaging. An unknown individual was observed walking out of the Seabring House garage carrying two brown boxes of a size as would have both fit into the larger box previously removed from the van.

79. Physical surveillance, coupled with the information from other sources, has been productive and has led to the identification of some members of the Foote Organization. Since the entry of the November 24 Order, new members have been identified, including STEVEN RICHARD, a/k/a "Troy." However, it is only through the combination of wire surveillance, physical surveillance, and other investigatory tools, however, that the agents expect to identify fully the nature and scope of the organization.

80. Pole camera surveillance alone, however, would not likely yield conclusive evidence of the scope of the distribution network of the Foote Organization, the roles of the co-

conspirators, or the participation of members, including suppliers, who do not go to the stash locations. In addition, while surveillance has revealed what appears to be narcotics-related activity at the Foote Residence, Seabring House, and Taylor Residence it has not revealed the type or quantity of drugs being transported by the Foote Organization for distribution, and such surveillance has not revealed where packages brought to those locations are being obtained. Physical surveillance has been useful to corroborate information provided by other sources, including information obtained from calls intercepted pursuant to the Orders regarding the drug-related activities of the TARGET SUBJECTS but does not provide the context or substance of the meetings between co-conspirators and does not reveal the nature of their communications, and is therefore insufficient to meet the goals of the investigation.

81. In addition, because of the locations of the suspected stash and distribution locations, law enforcement officers are not able to consistently surveil and follow TARGET SUBJECTS or their vehicles coming or going from the Foote Residence, the Seabring House, or the Taylor Residence without alerting the TARGET SUBJECTS to their presence. Moreover, based on my experience and my participation in this investigation, I know that narcotics traffickers are extremely surveillance-conscious. For example, based on my review of communications

intercepted pursuant to the November 12 and 24 Orders, I know that:

a. On or about November 28, 2010, at approximately 12:24 p.m., MUSHINGTON received an incoming call over TARGET CELLPHONE 5 from 347-575-0522 and spoke to an unidentified male ("UM") (Session 1345). During the call, MUSHINGTON said, "I want to tell you that a last night, the boy them take it away." The UM asked, "who, police?" MUSHINGTON said, "my youth run leave them, my youth blaze leave them last night and abandoned it but they found it and towed it but nothing was in it . . . I am here calling to report it." The UM said, "oh, ok." MUSHINGTON said, "he run leave them . . . because he has his steel you know." The UM said, "him run out and lock it up." MUSHINGTON said, "no man, he did not leave the key in it . . . a good thing man . . . if you don't have the key to show, they are going to ask; where is the key . . . they are going to say your lying you must know who." Based on my experience and participation in the investigation, I believe that "steel" means "gun" and that MUSHINGTON said that his "youth" was driving MUSHINGTON's car, was pulled over by the police, ran away from the police and abandoned the car because the "youth" had a gun in the car. I also believe that MUSHINGTON said he was going to report the car stolen and that it is good that he had the key to the car because otherwise the police would think that he must

know who was driving it.

b. On or about December 4, 2010, at approximately 9:33 pm, FOOTE placed an outgoing call over TARGET CELLPHONE 2 to 347-313-5326 and spoke with an individual identified in other intercepted calls as "Clove," believed to be CLOVAL TAYLOR, a/k/a "Clove" (Session 10388). During that call, "Clove" told FOOTE that the police were just on the block and they shined a light on the house. "Clove" said that "Jerky" was in the house. FOOTE asked "Clove" if the police were in the block and if the guys are in the house. "Clove" said that something is in the process between tonight and in the morning through to next week, anything could happen. Based on my experience and participation in this investigation, I believe that FOOTE and "Clove" were discussing a large number of unrelated arrests that took place in Spring Valley on Friday, December 3.

82. Accordingly, considering the TARGET SUBJECTS' sensitivity to law enforcement presence, increased physical surveillance could alert the TARGET SUBJECTS to the existence of the investigation, and cause them to relocate or temporarily cease their illegal activities, thereby hindering the investigation.

83. Surveillance is also a limited investigative tool because some of the TARGET SUBJECTS remain unidentified or are

only partially identified and there is limited information about the specific locations in which they operate. In addition, many of the meetings between the TARGET SUBJECTS have occurred in garages and indoors, where physical surveillance has not been possible. Thus, even if successful, surveillance will provide only limited corroboration of the illicit narcotics activities of the TARGET SUBJECTS. For example:

a. On or about November 29, 2010, law enforcement agents conducted surveillance in the vicinity of a New Jersey business, to which FOOTE and MUSHINGTON have boxes of narcotics shipped, and from which they retrieve boxes of narcotics (the "NJ Location"). One of the DEA Agent's conducting surveillance, ("DEA Agent 1") observed something being loaded from a loading dock into the trunk of a van which appeared to be driven by FOOTE. Another DEA Agent ("DEA Agent 2") observed an unknown male in a leather jacket get into a Trailblazer parked in the vicinity of the NJ Location. The same male was observed on November 19, 2010 loading boxes from the NJ Location into a car driven by FOOTE. Agents attempted to follow the Trailblazer but were forced to abandon surveillance after the Trailblazer drove at more than 90 miles per hour.

84. In addition to physical surveillance, law enforcement has also monitored the actions of FOOTE, "Frankie," MUSHINGTON and others using cell site tracking of their

cellphones, including but not limited to the use of a signal timing/triangulation system and global positioning system ("GPS"). The data from cell site and GPS tracking has been useful in determining the locations to which the TARGET SUBJECTS travel. For example, the tracking of FOOTE and WASHINGTON's phones was useful in identifying the NJ Location to which they ship marijuana. Although law enforcement has learned various location information through the GPS and cell site tracking, such tracking, unlike the interceptions requested herein, does not provide information regarding what happens once the TARGET SUBJECTS arrive at the various locations.

85. It is expected that information that can be obtained from interceptions over the TARGET CELLPHONES will help law enforcement agents determine the identities of the subjects involved and track their activities, thereby enhancing the prospects for more fruitful physical surveillance of those activities. In addition, with the knowledge provided beforehand by wire surveillance that a meeting is to take place at a given location or a package is to be received on a certain date or at a certain place, it may be possible to establish physical surveillance at that location in advance, thus minimizing the risks of discovery inherent in following subjects or remaining at target locations for extended periods of time. Wire surveillance would better enable law enforcement to coordinate physical and

electronic surveillance of such drug transactions, potentially facilitating the seizure of narcotics and narcotics-related proceeds, and the arrest of TARGET SUBJECTS.

86. For the reasons described above, surveillance alone is insufficient to meet the goals of the investigation. Accordingly, there is a compelling need in this case for wire interceptions over TARGET CELLPHONE 5.

Trash Search

87. The search of discarded trash is sometimes useful as a method of acquiring evidence of criminal activity. During the course of this investigation, other law enforcement officers have searched or attempted to search a number of the suspected stash and distribution locations used by members of the Foote Organization, including the Foote Residence, the Seabring House, and the Taylor Residence. For example, on at least three occasions, including as recently as last week, law enforcement has attempted to search the trash outside of the Foote Residence. According to SVPD Sergeant 1, during these searches, law enforcement officers found a single western union receipt, and, on a different occasion, an empty brown shipping boxes from which the shipping labels had been removed. Based on my experience, I know that narcotics traffickers often avoid discarding narcotics packaging and other evidence of their illegal activities in their personal trash in order to avoid detection by law enforcement.

88. Moreover, the locations used by the members of the Foote Organization described above are occupied by multiple residents and, as discussed above, are in locations where it has proven difficult to approach the houses without being observed by the TARGET SUBJECTS. The risk of being seen sorting through trash is increased in a multi-resident dwelling or multi-unit building, and is likely to attract attention that could alert the TARGET SUBJECTS to the investigation.

89. Other possible locations from which trash might be retrieved in this investigation are businesses or private clubs that are often located in buildings that are also occupied by other businesses. Thus, the separation of the TARGET SUBJECTS' trash from the trash of other occupants of the building is difficult, if not impossible. In addition, without knowing the identity or residence of other TARGET SUBJECTS, searching the trash of all co-conspirators is precluded.

90. Accordingly, searches of trash alone is unlikely to yield evidence that will meet the goals of this investigation. When discarded items can be recovered, the significance of such items (e.g., a Western Union receipt and cardboard boxes) requires context that is best provide through real-time interception of the wire communications of the TARGET SUBJECTS.

Arrests

91. Attempting to arrest the TARGET SUBJECTS now

would mean that several of the objectives of this investigation would be unfulfilled. As noted above, since the entry of the November 24 Order, additional members of the Foote Organization have been identified through surveillance and other means.

Arresting any of the TARGET SUBJECTS would almost certainly cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or to change the locations, instrumentalities, and methods used to conduct their illegal activities.

92. For example, based on my conversation with a Sergeant of the Spring Valley Police Department ("SVPD Sergeant 1") and my review of communications intercepted pursuant to the September 3 Order and October 1 Order, I learned that:

a. On or about September 9, 2010, FITZROY NORRIS KELLY, one of the TARGET SUBJECTS, was arrested after leaving the Seabring House and was found to have approximately 113 grams of marijuana on his person. Shortly after the arrest, "Frankie" received an incoming call over TARGET CELLPHONE 3 from phone number 845-367-2548 and spoke with an Unidentified Male ("UM") (Session 169). During that call the UM told "Frankie" that the police just "picked up" a man a few blocks away from "Frankie." "Frankie" said "alright, let me go clean up the place then because this is where he is coming from." Based on my

participation in this investigation and information I learned from local law enforcement, I know that FITZROY NORRIS KELLY was arrested just after leaving the Seabring house. I believe that, in response to learning about the arrest during the above-referenced phone call, "Frankie" intended to get rid of the drugs in the house. At approximately 1:33 p.m., FOOTE placed an outgoing call over TARGET CELLPHONE 2 to phone number 845-598-9741 and spoke with "Danisha" (Session 3039). During that call, FOOTE told "Danisha" that he was hearing vibes that he didn't like - specifically, that "Frankie" had called him and told him that "a little man just came and checked him . . . and got a thing and he got a call that they just sucked off the little man." FOOTE said "that's why I'm telling you all to get the place clean up." I believe that "sucked off" is slang for arrested and that, in response to learning about the arrest, "Frankie" called FOOTE and FOOTE told "Frankie" to get rid of the drugs in the house.

b. On or about October 22, 2010, an individual was arrested for crimes related to thefts from automobiles ("Individual-1") and consented to a search of his apartment, which was located on the first floor of a duplex on Lafayette Street. FITZROY NORRIS KELLY, one of the TARGET SUBJECTS, resides in the second floor apartment of the same building. During communications intercepted over TARGET CELLPHONE 2, FOOTE

told "Danisha" that the "boys" had been outside and he thought there was going to be a raid by the police (Session 6847). FOOTE said that he ran inside and took the chip out of the phone and threw down the phone in case the officers were coming inside. FOOTE said the police went "downstairs" instead, but that he was trapped inside for a long time. FOOTE told "Danisha" that only his "646" phone was working then.

c. On or about October 24, 2010, TOREY EANES EANES, a/k/a "Mello," a/k/a "Mellow," was arrested by local law enforcement, during a stop that was not related to this investigation, and was arrested for possession of a firearm and marijuana.

d. On or about December 4, 2010, at approximately 9:33 pm, FOOTE placed an outgoing call over TARGET CELLPHONE 2 to 347-313-5326 and spoke with an individual identified in other intercepted calls as "Clove," believed to be CLOVAL TAYLOR, a/k/a "Clove" (Session 10388). During that call, "Clove" told FOOTE that the police were just on the block and they shined a light on the house. "Clove" said that "Jerky" was in the house. FOOTE asked "Clove" if the police were in the block and if the guys are in the house. "Clove" said that something is in the process between tonight and in the morning through to next week, anything could happen. Based on my experience and participation in this investigation, I believe that FOOTE and "Clove" were discussing a

large number of unrelated arrests that took place in Spring Valley on Friday, December 3.

93. Accordingly, I believe that arresting some of the identified participants in this conspiracy now would lead to the destruction of evidence, temporary movement of the Organization's stash and distribution locations, and cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or change the methods used to conduct their illegal activities.

94. Furthermore, based on information obtained during the investigation thus far, I believe that DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett," and FNU LNU, a/k/a "Frankie," work through, among others, RODNEY MUSHINGTON, a/k/a "Jabeim Hill," a/k/a "Diego," a/k/a "Struggo," a/k/a "Mark Brown," to obtain their supply of narcotics. Based on my experience and my participation in the investigation, I believe that although it is possible that FOOTE, "Frankie," or MUSHINGTON would cooperate with law enforcement if arrested, and would identify the other suppliers of the Foote Organization, it is by no means certain that they would do so. It is therefore uncertain whether arrests would lead to the identification of the Foote Organization's suppliers, or to evidence showing the participation of the suppliers in drug distribution.

95. Arresting the identified TARGET SUBJECTS and attempting to obtain their cooperation in investigating the narcotics trafficking of their criminal associates is an investigative route that, in my judgment and the judgment of other law enforcement officers involved, is not reasonably likely to result in law enforcement learning the identities of the organization's suppliers, the disposition of its narcotics proceeds, or the identities of the additional co-conspirators. Due to the highly compartmentalized nature of drug-trafficking conspiracies, I believe it is unlikely that lower-level distributors, or so-called "runners," would be able to provide information about the Foote Organization's sources of supply and the locations or uses of the proceeds of their illegal activities.

Use of Confidential Informants

96. This investigation has involved obtaining information from and the active use of a confidential informant (the "CI")³ who previously worked as a drug dealer in the Foote Organization, as described in detail in the August 4, September 3, October 1, and October 29, November 12, and November 24 Affidavits. Although the CI has provided valuable and

corroborated information, at this time there is no known confidential source that can provide information about all of the Foote Organization's sources of supply and their locations (some of which are believed to be in other states or countries), all of the links in the chain of supply (including connections at various mailing services), and all of the Foote Organization's workers and customers.

97. Narcotics organizations are generally highly compartmentalized, and it is usually impossible for an informant to gain access to all aspects of an organization's illegal activities. Thus, the use of confidential informants alone is typically inadequate to develop evidence about the TARGET SUBJECTS' suppliers and customers.

98. In addition, based on my experience as a narcotics investigator, I believe that drug traffickers are unlikely to discuss the full extent of their organization's activities or membership with any individual, subordinate member of the organization. Based on my experience, I also know that narcotics organizations are often highly protective of their sources of supply.

99. Intercepting calls over the TARGET CELLPHONES is likely to provide information and evidence that a confidential informant cannot alone provide. Intercepted calls are likely to be useful in identifying co-conspirators who are unknown to any

single TARGET SUBJECT. Intercepted calls are also likely to be useful in providing information about the receipt or distribution of drugs, the locations where drugs are stored, and evidence showing where drugs and drug proceeds are located at particular instances, information to which individuals who are subordinate to FOOTE, "Frankie," and others are not privy, and to provide evidence against the members of the Foote Organization. Intercepted calls are additionally likely to be useful in corroborating information previously provided by the CI.

100. Based on my knowledge of this investigation and my experience as a narcotics investigator, I believe that the interception of the communications of the TARGET CELLPHONES is essential to reveal the identities of co-conspirators, suppliers, and the structure and operation of the Foote Organization. Without the evidence obtained from court-authorized interceptions, I am confident that the objectives of the investigation cannot be met.

Use of Undercover Agents

101. Although an undercover officer ("UC") was able to purchase drugs from street-level dealers associated with the Foote Organization on two occasions in mid-October 2010,⁹ due to

⁹ Specifically, as described in the October 29 Affidavit, a UC purchased marijuana from JASON ALLEN and ZOLANI WORRELL on or about October 18, 2010 and October 19, 2010, respectively. Based on my conversations with other law enforcement officers and my review of intercepted communications, I believe that ALLEN and WORRELL obtain marijuana from "Frankie," FOOTE, and/or other members of the Foote Organization and resell it.

the compartmentalized nature of the Foote Organization, there is no expectation that any undercover agent will be able to deal directly with FOOTE's sources of supply to purchase drugs or infiltrate the inner workings of the Foote Organization.

Furthermore, the roles of the TARGET SUBJECTS in the conspiracy are also not clearly defined at this time and an undercover agent is likely to only be permitted access to the lower-level dealers, as opposed to the larger figures in charge of the sources of supply and distribution.

102. There is currently no expectation that an undercover officer would be able to determine the full scope of the TARGET SUBJECTS' operations, meet and identify all of the other TARGET SUBJECTS and their co-conspirators, or identify the TARGET SUBJECTS' narcotics suppliers and their confederates. I do not believe that an undercover officer could infiltrate the Foote Organization.

Telephone Toll Records

103. Telephone toll records have been and will be used in this investigation, but will provide only limited information. I have obtained and reviewed telephone toll records for TARGET CELLPHONES 1, 2, 3, 4, 5, 6, and 7 and other cell phones believed to be used by members of the Foote Organization. Phone records, however, do not enable law enforcement officers to identify with certainty the persons involved in the conversations or the

significance of the communications in the context of ongoing narcotics trafficking. Among other problems, a telephone number appearing in the records may not be listed or subscribed in the name(s) or address(es) of the person(s) actually using the telephone. Furthermore, the use of calling cards and telephone access numbers often hides the ultimate numbers called, thereby preventing law enforcement from learning the participants involved in any particular communication. In addition, the review of telephone records will not, in itself, reveal the structure of the Foote Organization or its sources of supply.

Federal Grand Jury

104. The issuance of grand jury subpoenas is likely to be inadequate to obtain critical information about the timing and location of narcotics transactions, the participants in the conspiracy, and the source of drug-related proceeds. Intercepted communications between FOOTE and other co-conspirators have provided information that led to the issuance of grand jury subpoenas for certain records, including bank account records, email subscriber information, and wire transfers of money from specific Western Union locations to Jamaica. While some of the information obtained via subpoena has been useful to corroborate information obtained over intercepted calls, the grand jury process is unlikely to be useful in developing evidence concerning the TARGET SUBJECTS and the internal operations of the

narcotics-trafficking enterprise. For example, bank records have been obtained for accounts in the name of DEBORAH GRIFFITH, who also resides at the Foote Residence, and have shown that FOOTE and GRIFFITH do not maintain significant cash balances in the bank accounts that have been identified. In addition, many of the TARGET SUBJECTS true names or banking information is not known and, in my experience, drug dealers do not tend to keep the proceeds of their illegal activities in legitimate accounts. Likewise, records showing transfers of specific amounts of money at or near the time of cryptic conversations in which reference numbers or dollar amounts are provided have been helpful to confirm the subject of those conversations, but cannot reveal the source of the money or the purpose of the wire transfer.

105. Witnesses who might provide additional relevant evidence to a grand jury have not been identified or would themselves be participants in the narcotics trafficking. Because such individuals would face prosecution themselves, it is unlikely that any of them would testify voluntarily. Nor would it be desirable at this time to seek immunity for such individuals and to compel their testimony. Immunizing them could thwart the public policy that they be held accountable for their crimes. Furthermore, the issuance of grand jury subpoenas to other individuals would risk alerting the TARGET SUBJECTS to the ongoing investigation before their sources of supply are

identified and located. Moreover, not all of the TARGET SUBJECTS have been identified and, in the absence of further evidence identifying co-conspirators and their respective involvement in the Foote Organization, it is difficult to determine whom to subpoena to the Grand Jury.

Witness Interviews

106. I believe that interviews of the TARGET SUBJECTS or their known associates would produce insufficient information as to the identities of all of the persons involved with the TARGET SUBJECTS in narcotics trafficking, the sources and locations of the drugs, the sources of financing, the locations of records and proceeds from the distribution of drugs, and other pertinent information regarding the TARGET OFFENSES. I also believe that any responses to the interviews, particularly interviews of those who are higher up in the organization, could contain a significant number of untruths, diverting the investigation with false leads or otherwise frustrating the investigation. I believe that questioning any of the remaining co-conspirators would alert the other co-conspirators, and cause a change in their methods of operation and the concealment or destruction of evidence before all of the co-conspirators are identified, thereby compromising the investigation and resulting in the possible loss of valuable evidence, and the possibility of harm to the CI, whose identity may become known or whose

existence may otherwise be compromised.

Search Warrants

107. The investigation has revealed information that would likely enable the DEA to obtain and execute search warrants for the Foote Residence, the Seabring House, and the Taylor Residence, where pole cameras are installed, as described above. In addition, the investigation has revealed information that would likely enable the DEA to obtain and execute search warrants for other venues and residences that are believed to be used by members of the Foote Organization to store and distribute narcotics, as well as the NJ Location. While executing search warrants at those locations may result in the seizure of pertinent evidence, it would also alert the TARGET SUBJECTS to the existence of the investigation without the likelihood of determining the full scope of the organization's operations, particularly the organization's sources of supply, the identities of all of the co-conspirators, or other locations where narcotics are stashed.

108. I believe that the execution of search warrants at the suspected stash house locations would be premature at this stage of the investigation because further information is needed to identify the means and methods by which the Foote Organization obtains a supply of narcotics, and other locations where the drugs and drug-distribution proceeds are transported and stored.

The execution of search warrants at the locations described above is not likely to lead to the identification of other locations used by the Foote Organization. Nor is it likely to lead to the identification of co-conspirators who participate in obtaining or selling the Foote Organization's supply of drugs.

109. The locations where the TARGET SUBJECTS currently receive, hide, and distribute their narcotics and narcotics proceeds have not been fully identified. Moreover, without wire surveillance, law enforcement will not know when the locations contain narcotics, narcotics proceeds, and other evidence of the TARGET OFFENSES. I believe that wire surveillance will assist law enforcement in continuing to identify locations where narcotics and narcotics proceeds are currently stored, and determine when such contraband is at such locations, so that search warrants for such locations may be obtained while contraband is still present at the locations.

110. Search warrants were executed on or about November 17, 2010, November 19, 2010, November 22, 2010, and November 23, 2010. Each search warrant was executed for a package or packages shipped via UPS from California or Arizona to an address in an industrial area of New Jersey (the "Package" and the "NJ Business") where, according to cell site location information, surveillance by other law enforcement officers, and intercepted calls, I believe FOOTE had previously traveled in late October to

obtain a large quantity of narcotics.¹⁰ In addition, based on cell site location information and surveillance by other law enforcement officers, I also believe that RODNEY MUSHINGTON, another TARGET SUBJECT, traveled to the NJ Business in late October to engage in narcotics-trafficking activity. Each of the packages (of several similar packages sent from the same address to the NJ Business) appeared similar to packages that officers have seen FOOTE carrying into and out of the Foote Residence and the Seabring House. Upon opening the packages pursuant to a warrant, each package was found to contain approximately 34-41 pounds of marijuana.

111. Calls intercepted pursuant to the November 12 and November 24 Orders revealed that MUSHINGTON and FOOTE were concerned about a missing package on or about November 17 and November 19 and about a number of missing packages on November 23. Thus, wire surveillance has assisted and will continue to assist law enforcement in identifying the sources of the narcotics obtained by the Foote Organization and the participants in the chain of supply.

¹⁰ From my conversations with UPS employee and other law enforcement officers, I learned that in the last two weeks of October, UPS delivered numerous boxes to the NJ Business, each weighing approximately 40 pounds and shipped from an address in either Arizona or California. I have learned that UPS is conducting an investigation of packages sent to the NJ Business based upon, among other things, information that: (1) fictitious addresses are being used to send some of the boxes; and (2) the delivery of some of the packages are not acknowledged by a signature even though they are being delivered to a business. Based on my experience and my participation in his investigation, I believe that the packages contained shipments of marijuana.

112. Accordingly, and because the above-described investigative techniques are limited in their applications, have been unsuccessful, or are unlikely to be successful, authorization to continue to intercept wire communications over TARGET CELLPHONE 2 is necessary to identify and develop evidence against the TARGET SUBJECTS.

MINIMIZATION

113. All monitoring of wire communications over the TARGET CELLPHONES will be minimized in accordance with Chapter 119 of Title 18, United States Code.

114. The "investigative or law enforcement officers of the United States" and translators, if necessary, who are to carry out the requested interception of wire communications, will be instructed concerning the steps they should take to avoid infringing upon any attorney-client privilege or other recognized privileges. In addition, all communications intercepted will be conducted in such a way as to minimize the interception of communications not otherwise criminal in nature or subject to interception under Chapter 119, Title 18, United States Code. All monitoring will cease when it is determined that the monitored conversation is not criminal in nature. Interception will be suspended immediately when it is determined through voice identification, physical surveillance, or otherwise, that TARGET SUBJECTS or any of their confederates, when identified, are not

EXHIBIT M

95. Arresting the identified TARGET SUBJECTS and attempting to obtain their cooperation in investigating the narcotics trafficking of their criminal associates is an investigative route that, in my judgment and the judgment of other law enforcement officers involved, is not reasonably likely to result in law enforcement learning the identities of the organization's suppliers, the disposition of its narcotics proceeds, or the identities of the additional co-conspirators. Due to the highly compartmentalized nature of drug-trafficking conspiracies, I believe it is unlikely that lower-level distributors, or so-called "runners," would be able to provide information about the Foote Organization's sources of supply and the locations or uses of the proceeds of their illegal activities.

Use of Confidential Informants

96. This investigation has involved obtaining information from and the active use of a confidential informant (the "CI")⁸ who previously worked as a drug dealer in the Foote Organization, as described in detail in the August 4, September 3, October 1, and October 29, November 12, and November 24 Affidavits. Although the CI has provided valuable and

⁸ As noted in the previous Affidavits, since I and other law enforcement officers learned that the CI had engaged in unauthorized, narcotics-related communications with FOOTE that were intercepted over TARGET CELLPHONES 1 and 2, pursuant to the August 4 Order, we have marginalized the role of the CI in this investigation.

EXHIBIT N

wire and physical surveillance, surveillance of undercover transactions, the introduction of undercover agents, the execution of search warrants, debriefings of informants and reviews of taped conversations and drug records. I have also participated in investigations that have included the interception of wire communications, and I have reviewed taped conversations and drug records relating to narcotics trafficking. Through my training, education and experience, I have become familiar with the manner in which illegal drugs are transported, stored, and distributed and the methods of payment for such drugs.

2. I submit this affidavit in support of an application for an order pursuant to Section 2518 of Title 18, United States Code, authorizing the continued interception and recording of wire communications over TARGET CELLPHONE 2, concerning offenses enumerated in Section 2516 of Title 18, United States Code -- that is, offenses involving the distribution of, and possession with intent to distribute, controlled substances, the use of wire facilities to facilitate the same, conspiracy to do the same and attempts to do the same, in violation of 21 U.S.C. §§ 841(a)(1), 843(b), and 846; the distribution of firearms, possession of firearms by convicted felons and aliens, and use of firearms in furtherance of a narcotics-trafficking crime, in violation of 18 U.S.C.

922(a)(1)(A), 922(g)(1), 922(g)(5)(A), and 924(c); engaging in monetary transactions involving the proceeds of illegal activity and money laundering, in violation of 18 U.S.C. §§ 1956 and 1957; and obtaining and transferring fraudulent passports or other identification/immigration documents, bringing in or harboring certain aliens, conspiracy to do the same and attempts to do the same, in violation of 18 U.S.C. § 1028 and 8 U.S.C. § 1324 (the "TARGET OFFENSES").¹

3. For the reasons set out in this affidavit, I believe that there is probable cause to believe that the TARGET OFFENSES have been committed, are being committed, and will continue to be committed by one or more of the following individuals: DUNSTON FOOTE, a/k/a "Killa," a/k/a "Steve Bennett," CLOVAL TAYLOR, a/k/a "Clove," DWIGHT MORGAN, FNU LNU, a/k/a "Frankie," FNU LNU, a/k/a "Steve," FNU LNU, a/k/a "Dirty," FNU LNU, a/k/a "Chris," ALLAND ZAMOR, TOREY EANES, a/k/a "Mello," a/k/a "Mellow," CONROY BROWN, KENMAR CHAMBERS, NATALIE BROWN, a/k/a "Danisha," RAYMOND DORSEY, a/k/a "Ray," a/k/a "Smoke," TROY MONTGOMERY, a/k/a "Scrapie," DROMYNEAK MONTGOMERY, a/k/a "Drammy," RAYMOND JACKSON, a/k/a "Migiva," CASHIEMA GREEN, a/k/a "Cash," O'NEIL WHITE, RICARDO MONESTIME, a/k/a "Mossy," MARLON

¹ Although not a predicate offense under 18 U.S.C. § 2516, there is probable cause to believe that the TARGET SUBJECTS (as subsequently defined herein) have aided and abetted and are aiding and abetting these substantive offenses, in violation of 18 U.S.C. § 2.

"Steve Bennett," and other TARGET SUBJECTS to facilitate and discuss the distribution of narcotics through cellphone communications. I believe that FOOTE will continue to use TARGET CELLPHONE 2 for these purposes in the future.

II. ALTERNATIVE INVESTIGATIVE PROCEDURES HAVE BEEN TRIED OR APPEAR UNLIKELY TO SUCCEED IF TRIED; THERE IS A NEED FOR THE CONTINUED INTERCEPTION OF COMMUNICATIONS OVER TARGET CELLPHONE 2

51. The principal goals of this investigation are to identify, locate, and arrest persons responsible for the distribution of marijuana and cocaine in and around Spring Valley, to gather evidence against those responsible for running the organization, to identify and locate the sources that supply the Foote Organization with large quantities of narcotics, to identify the proceeds of the Foote Organization's illegal activities and the means by which such proceeds are being distributed or laundered, to arrest individuals unlawfully possessing or using firearms and to seize those firearms, and to identify the individuals involved in the transfer of fraudulent identification documents and/or harboring of illegal aliens. We are investigating not only the currently identified TARGET SUBJECTS, but also all of the narcotics suppliers, other customers, distributors that work in the Foote Organization, and associates, as well as the locations at which the TARGET SUBJECTS store narcotics and the methods by which they operate their narcotics-trafficking business and how they dispose of the

proceeds of that narcotics trafficking.

52. The interception of communications over the TARGET CELLPHONES pursuant to the Prior Court Orders has provided valuable evidence against the TARGET SUBJECTS. Continued interception of wire communications over TARGET CELLPHONE 2 is required, however, because the interception of communications to date have not fully revealed the nature and scope of the TARGET SUBJECTS' narcotics trafficking and other illegal activities.

53. The interceptions to date have not identified, for example, the identities of all the members of the Foote Organization, including many of the higher-level suppliers, who are known only by their aliases and described as "FNU LNU" in the list of the TARGET SUBJECTS.

54. FOOTÉ, MUSHINGTON, "Frankie," and others make deliveries inside and near buildings where physical surveillance is challenging and often use rental cars to evade surveillance by law enforcement. While the interceptions of communications over the TARGET CELLPHONES has provided valuable information about the other members of the Foote Organization, additional interception is needed to confirm the identify of those individuals. The investigation has also not yet identified all of the suppliers for the Foote Organization, the locations of all the organization's stash houses, the sources of financing for the organization, and the locations and disposition of the proceeds.

from the organization's narcotics trafficking activities. While the wire communication interceptions and physical surveillance, in combination, have provided valuable information about possible stash houses used by the Foote Organization, further interception is needed to confirm that certain locations are stash houses and to identify other possible stash houses.

55. Intercepting wire communications over TARGET CELLPHONE 2 will assist law enforcement officers in fully revealing the nature and scope of the TARGET SUBJECTS' narcotics trafficking and other illegal activities. Specifically, interceptions over TARGET CELLPHONE 2 may reveal the source or sources of supply for the Foote Organization. Such interceptions will enable the DEA and the other law enforcement groups with which the DEA is working to gather evidence that otherwise would not be able to be gathered by more traditional investigative techniques.

56. Other investigative techniques, described herein and in the Prior Affidavits, have been tried, including physical surveillance, purchases of drugs by an undercover officer, and the use of a confidential informant. While those efforts have been fruitful, continued interception over TARGET CELLPHONE 2 is required because other investigative techniques cannot fully reveal the nature and scope of the TARGET SUBJECTS' narcotics trafficking activities, or the identities of co-conspirators or

suppliers who do not visit the known stash locations. It is anticipated that interception over TARGET CELLPHONE 2 will assist in continuing to identify the means and methods by which the Foote Organization obtains a regular supply of marijuana and the individuals who are involved in the provision of that supply.

57. It is further anticipated that the interceptions of wire communications will assist in continuing to identify the location of stash houses, the source of financing for the organization, and the locations and dispositions of the proceeds from those activities. In addition, it is anticipated that new targets would be identified through intercepted communications and these intercepted communications would provide valuable evidence and intelligence about incoming narcotics shipments and on-going narcotics trafficking.

58. As discussed below, several other investigative techniques have been tried, or reasonably appear likely to fail if tried, or are likely to jeopardize the investigation if tried. In the absence of the requested authorization of continued wire interceptions occurring over TARGET CELLPHONE 2, there are no means of determining the internal operations of the Foote Organization, including when, where, and how the Foote Organization obtains its supply of narcotics, the existence and locations of records relating to narcotics trafficking, the location and source of resources used to finance the illegal

activities, and the location and disposition of the proceeds from those activities. It is only through the combination of wire surveillance, visual surveillance, and other investigatory tools that the agents expect to identify fully the nature and scope of the organization. Accordingly, there is a compelling need in this case for continued wire surveillance of TARGET CELLPHONE 2.

Physical Surveillance

59. Law enforcement officers of the DEA, the Task Force, the Police Departments of Spring Valley, Ramapo, Suffern, Clarkstown, and others have conducted, and are continuing to conduct (when appropriate), physical surveillance of members of the Foote Organization. Physical surveillance, coupled with the information from other sources, has been productive and has led to the identification of some members of the Foote Organization. Since the entry of the November 24 Order, new members have been identified, including STEVEN RICHARD, a/k/a "Troy," and MORRIS JACKSON, a/k/a "Cat." RICHARD is believed to be one of the higher-level suppliers of the Foote Organizations, and JACKSON is believed to be one of the individuals working for MUSHINGTON to coordinate the delivery of packages containing narcotics. Since the November 24 Order, a number of new TARGET SUBJECTS who are not yet identified have been intercepted during communications relating to narcotics distribution activities. It is only through the combination of wire surveillance, physical

surveillance, and other investigatory tools, however, that the agents expect to identify fully the nature and scope of the organization.

60. As described in the Prior Affidavits, pole cameras have been installed outside of some of the locations where the Foote Organization is believed to receive, distribute, and store large quantities of drugs, including the Foote Residence, the Seabring House, and the Taylor Residence. The pole camera surveillance has provided useful information in the investigation, including evidence of large packages of what appears to be narcotics being transported into and out of the suspected stash houses by FOOTE and others, meetings between TARGET SUBJECTS, and FOOTE's use of multiple cellphones and rental vehicles.

61. For example, according to other law enforcement officers monitoring the pole cameras, since on or about November 18, 2010, the following activity, among other things, has been observed:

a. On November 29, 2010, FOOTE was observed leaving the Foote Residence in his car, a BMW, and returning a few hours later in a van that was determined to be a rented vehicle (the "Rental Van"). An unidentified man ("UM") was in the passenger's seat of the Rental Van. FOOTE reversed the Rental Van into the driveway of the Foote Residence, carried a

box from the back van to the back of the house; and got into the car. FOOTE and the UM then drove away. Shortly thereafter, on the same day, FOOTE arrived at the Seabring House driving the Rental Van, and reversed into the driveway and up to the garage of the Seabring House. The UM in passenger's seat of the Rental Van took a large box from the rear of the van and carried it into the Seabring House garage. A few hours later, FOOTE was in the garage holding what appeared to be crumpled packaging paper. The UM walked out of the Seabring House garage carrying two smaller brown boxes of a size as would have both fit into the larger box previously removed from the van. Based on my participation in this investigation, I know that the boxes and packaging that was observed on the pole camera is consistent with the packaging of marijuana that was seized at that NJ Location, as described in the November 24 Affidavit.

b. Communications intercepted over TARGET CELLPHONE 2 at or near the time of the events observed on the pole cameras monitoring the Foote Residence and the Seabring House, described above, indicated that FOOTE had recently obtained a package of narcotics.

c. On November 18, 2010, ZOLANI WORRELL, one of the TARGET SUBJECTS, drove to the TAYLOR Residence, parked in front of the house, and got out of the car. WORRELL waited at the top of the driveway of the TAYLOR Residence. A few minutes

later, TAYLOR arrived by car at his residence and pulled up behind WORRELL's vehicle. WORRELL walked over to TAYLOR's car and got inside the car. Less than a minute later, WORRELL got out of TAYLOR's car, got back inside his own car, and drove away. Based on my experience investigating narcotics distribution organizations, I believe the interaction between TAYLOR and WORRELL was consistent with a drug deal.

62. Pole camera surveillance alone, however, would not likely yield conclusive evidence of the scope of the distribution network of the Foote Organization, the roles of the co-conspirators, or the participation of members who do not go to the suspected stash locations. In addition, while surveillance has revealed what appears to be narcotics-related activity at the Foote Residence, the Seabring House, and the Taylor Residence, among other places, it has not revealed the type or quantity of drugs being transported by the Foote Organization for distribution, and such surveillance has not revealed where packages brought to those locations are being obtained.

63. In addition to physical surveillance, law enforcement has also monitored the actions of FOOTE, "Frankie," MUSHINGTON and others using cell site tracking of their cellphones, including but not limited to the use of a signal timing/triangulation system and global positioning system ("GPS"). The data from cell site and GPS tracking has been

useful in determining the locations to which the TARGET SUBJECTS travel. For example, the tracking of FOOTE and MUSHINGTON's phones was useful in identifying the NJ Location to which they ship marijuana. Although law enforcement has learned various location information through the GPS and cell site tracking, such tracking, unlike the interceptions requested herein, does not provide information regarding what happens once the TARGET SUBJECTS arrive at the various locations.

64. GPS tracking of the TARGET SUBJECTS' vehicles is unlikely to provide additional assistance. Although certain vehicles used by the TARGET SUBJECTS have been identified, including, (i) the 2009 tan Toyota Highlander Suburban with New York license plate ESY3390, registered to Natalee Brown, 60E Eckerson Drive, #30A, Spring Valley, New York 10977, believed to be used by NATALLE BROWN, a/k/a "Danisha," (ii) the 2000 gray BMW four-door sedan, with New York license plate EXZ6630, registered to Deborah Griffith, 16 Ormian Drive, Pomona, NY 10970, believed to be used by DEBORAH GRIFFITH and FOOTE, (iii) the 2007 light gray Toyota Sequoia, with New York license plate DYL2173, registered to Sophia Jones at Seabring Street, Spring Valley, New York 10977, believed to be used by SOPHIA JONES, a/k/a "Bridgette," and "Frankie," and (iv) the 2008 red Honda Accord, with New York license plate EKK6845, registered to Deborah Griffith, 16 Ormian Drive, Pomona, New York 10970, believed to be

used by GRIFFITH and FOOTE, the investigation suggests that the FOOTE, "Frankie," and MUSHINGTON usually use rental vehicles to transport narcotics. Moreover, to the extent the TARGET SUBJECTS do use their own vehicles, they typically also carry their own phones and their movements can be tracked via the gps tracking of their cellphones without the use of gps tracking of their cars.

65. Physical surveillance has been useful to corroborate information obtained through other sources or from calls intercepted pursuant to the various Orders regarding the drug-related activities of the TARGET SUBJECTS, but does not provided the context or substance of the meetings between co-conspirators and does not reveal the nature of their communications, and is therefore insufficient to meet the goals of the investigation.

66. In addition, because of the locations of the suspected stash and distribution locations, law enforcement officers are not able to follow the members of the Foote Organization coming or going from those locations without alerting FOOTE or other TARGET SUBJECTS to their presence. Moreover, based on my experience and training, and my participation in this investigation, narcotics traffickers are extremely surveillance-conscious. For example:

a. As described above (Session 10388), on or about December 4, 2010, "Clove" warned FOOTE that the police were

just on the block and they shined a light on the house. "Clove" said that "Jerky" was in the house. FOOTE asked "Clove" if the police were in the block and if the guys are in the house. "Clove" said that something is in the process between tonight and in the morning through to next week, anything could happen. Based on my experience and participation in this investigation, I believe that FOOTE and "Clove" were discussing a large number of unrelated arrests that took place in Spring Valley on Friday, December 3.

67. Accordingly, considering the TARGET SUBJECTS' sensitivity to law enforcement presence, increased physical surveillance could alert the TARGET SUBJECTS to the existence of the investigation, and cause them to relocate or temporarily cease their illegal activities, thereby hindering the investigation.

68. It is expected that information that can be obtained from interceptions over the TARGET CELLPHONES will help law enforcement agents determine the identities of the subjects involved and track their activities, thereby enhancing the prospects for more fruitful physical surveillance of those activities. In addition, with the knowledge provided beforehand by wire surveillance that a meeting is to take place at a given location or a package is to be received on a certain date or at a certain place, it may be possible to establish physical

surveillance at that location in advance, thus minimizing the risks of discovery inherent in following subjects or remaining at target locations for extended periods of time. Wire surveillance would better enable law enforcement to coordinate physical and electronic surveillance of such drug transactions, potentially facilitating the seizure of narcotics and narcotics-related proceeds, and the arrest of TARGET SUBJECTS.

69. For the reasons described above, surveillance alone is insufficient to meet the goals of the investigation. Accordingly, there is a compelling need in this case for wire interceptions over TARGET CELLPHONE *6. Myk*

70. Surveillance is also a limited investigative tool because some of the TARGET SUBJECTS remain unidentified or are only partially identified and there is limited information about the specific locations in which they operate. In addition, many of the meetings between the TARGET SUBJECTS has occurred in garages, inside vehicles, and indoors, where physical surveillance has not been possible. Thus, even if successful, surveillance will provide only limited corroboration of the illicit narcotics activities of the TARGET SUBJECTS. For example:

a. On or about November 29, 2010, law enforcement agents conducted surveillance in the vicinity of a New Jersey business, to which FOOTE and MUSHINGTON have boxes of narcotics

shipped, and from which they retrieve boxes of narcotics (the "NJ Location"). One of the DEA Agent's conducting surveillance, ("DEA Agent 1") observed something being loaded from a loading dock into the trunk of a van which appeared to be driven by FOOTE. Another DEA Agent ("DEA Agent 2") observed an unknown male in a leather jacket get into a Trailblazer parked in the vicinity of the NJ Location. The same male was observed on November 19, 2010 loading boxes from the NJ Location into a car driven by FOOTE. Agents attempted to follow the Trailblazer but were forced to abandon surveillance after the Trailblazer drove at more than 90 miles per hour.

71. It is expected that information that can be obtained from interceptions over TARGET CELLPHONE 2 will help law enforcement agents determine the identities of the subjects involved and track their activities, thereby enhancing the prospects for more fruitful physical surveillance of those activities. With the knowledge provided beforehand by wire surveillance that a meeting is to take place at a given location or a package is to be received on a certain date or at a certain place, it may be possible to establish physical surveillance at that location in advance, thus minimizing the risks of discovery inherent in following subjects or remaining at target locations for extended periods of time. Wire surveillance would better enable law enforcement to coordinate physical and electronic

surveillance of such drug transactions, potentially facilitating the seizure of narcotics and narcotics-related proceeds, and the arrest of TARGET SUBJECTS.

72. For the reasons described above, surveillance alone is insufficient to meet the goals of the investigation. Accordingly, there is a compelling need in this case for continued wire surveillance of TARGET CELLPHONE 2.

Trash Search

73. The search of discarded trash is sometimes useful as a method of acquiring evidence of criminal activity. During the course of this investigation, other law enforcement officers have searched or attempted to search a number of the suspected stash and distribution locations used by members of the Foote Organization, including the Foote Residence, the Seabring House, and the Taylor Residence. For example, on at least three occasions, law enforcement has attempted to search the trash outside of the Foote Residence. According to SVPD Sergeant 1, during these searches, law enforcement officers found a single western union receipt, and, on a different occasion, empty brown shipping boxes from which the shipping labels had been removed. Based on my experience, I know that narcotics traffickers often avoid discarding narcotics packaging and other evidence of their illegal activities in their personal trash in order to avoid detection by law enforcement.

74. Moreover, the locations used by the members of the Foote Organization described above are occupied by multiple residents and, as discussed above, are in locations where it has proven difficult to approach the houses without being observed by the TARGET SUBJECTS. The risk of being seen sorting through trash is increased in a multi-resident dwelling or multi-unit building, and is likely to attract attention that could alert the TARGET SUBJECTS to the investigation.

75. Other possible locations from which trash might be retrieved in this investigation are businesses or private clubs that are often located in buildings that are also occupied by other businesses. Thus, the separation of the TARGET SUBJECTS' trash from the trash of other occupants of the building is difficult, if not impossible. In addition, without knowing the identity or residence of other TARGET SUBJECTS, searching the trash of all co-conspirators is precluded.

76. Accordingly, searches of trash alone is unlikely to yield evidence that will meet the goals of this investigation. When discarded items can be recovered, the significance of such items (e.g., a Western Union receipt and cardboard boxes) requires context that is best provide through real-time interception of the wire communications of the TARGET SUBJECTS.

Arrests

77. Attempting to arrest the TARGET SUBJECTS now

would mean that several of the objectives of this investigation would be unfulfilled. As noted above, since the entry of the November 24 Order, additional members of the Foote Organization have been identified through surveillance and other means. Arresting any of the TARGET SUBJECTS would almost certainly cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or to change the locations, instrumentalities, and methods used to conduct their illegal activities.

78. Accordingly, I believe that arresting some of the identified participants in this conspiracy now would lead to the destruction of evidence, temporary movement of the Organization's stash and distribution locations, and cause other members of the Foote Organization, including the sources of supply and unidentified coconspirators, to temporarily cease their illegal activities or change the methods used to conduct their illegal activities

79. Furthermore, based on information obtained during the investigation thus far, I believe that FOOTE, "Frankie," MUSHINGTON, and RICHARD deal with the organization's suppliers. Based on my training, experience, and participation in the investigation, I believe that although it is possible that these so-called "core members" would cooperate with law enforcement if

arrested, it is by no means certain that they would do so. It is therefore uncertain whether arrests would lead to the identification of the Foote Organization's suppliers, or to evidence showing the participation of the suppliers in drug distribution.

80. Arresting the identified TARGET SUBJECTS and attempting to obtain their cooperation in investigating the narcotics trafficking of their criminal associates is an investigative route that, in my judgment and the judgment of other law enforcement officers involved, is not reasonably likely to result in law enforcement learning the identities of the organization's suppliers, the disposition of its narcotics proceeds, or the identities of the additional co-conspirators. Due to the highly compartmentalized nature of drug-trafficking conspiracies, I believe it is unlikely that lower-level distributors, or so-called "runners," would be able to provide information about the Foote Organization's sources of supply and the locations or uses of the proceeds of their illegal activities.

Use of Confidential Informants

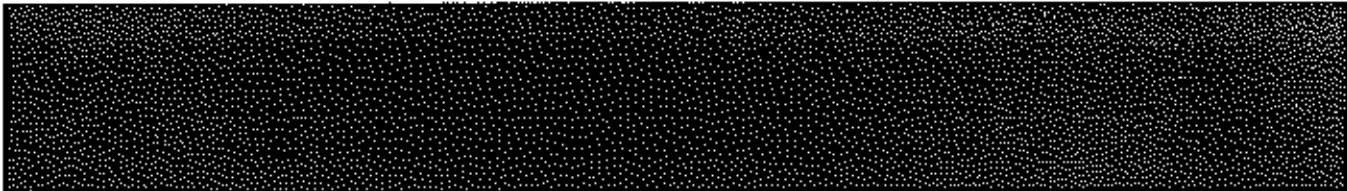
81. This investigation has involved obtaining information from and the active use of a confidential informant ("CI") who previously worked as a drug dealer in the Foote Organization, as described in the Prior Affidavits. Although the

CI provided valuable and corroborated information, at this time there is no known confidential source that can provide information about all of the Foote Organization's sources of supply and their locations (some of which are believed to be in other states or countries), all of the links in the chain of supply (including connections at various mailing services), and all of the Foote Organization's workers and customers.⁵

82. Narcotics organizations are generally highly compartmentalized, and it is usually impossible for an informant to gain access to all aspects of an organization's illegal activities. Thus, the use of confidential informants alone is typically inadequate to develop evidence about the TARGET SUBJECTS' suppliers and customers.

83. In addition, based on my experience as a narcotics investigator, I believe that drug traffickers are unlikely to discuss the full extent of their organization's activities or membership with any individual, subordinate member of the organization. Based on my experience, I also know that narcotics organizations are often highly protective of their sources of supply.

84. Intercepting calls over TARGET CELLPHONE 2 is



likely to provide information and evidence that a CI cannot alone provide. Intercepted calls are likely to be useful in identifying co-conspirators who are unknown to the CI, providing information about the receipt or distribution of drugs to which the CI is not privy, and to provide evidence against the members of the Foote Organization. Intercepted calls are likely to be useful in identifying locations where drugs are stored which are unknown to the CI, and additionally are likely to be useful in providing evidence showing where drugs and drug proceeds are located at particular instances, about which the CI's knowledge is necessarily limited. Intercepted calls are additionally likely to be useful in corroborating information provided by a CI.

85. Based on my knowledge of this investigation and my experience as a narcotics investigator, I believe that the interception of the communications of TARGET CELLPHONE 2 is essential to reveal the identities of co-conspirators and the structure and operation of the Foote Organization. Without the evidence obtained from court-authorized interceptions, I am confident that the objectives of the investigation cannot be met.

Use of Undercover Agents

86. Based on my participation in this investigation, I know that an undercover officer ("UC") was able to purchase drugs from street-level dealers associated with the Foote Organization

on two occasions in mid-October 2010,⁶ However, due to the compartmentalized nature of the Foote Organization, there is no expectation that any undercover agent will be able to deal directly with FOOTE's sources of supply to purchase drugs or infiltrate the inner workings of the Foote Organization. Furthermore, the roles of the TARGET SUBJECTS in the conspiracy are also not clearly defined at this time and an undercover agent is likely to only be permitted access to the lower-level dealers, as opposed to the higher-level figures in charge of the sources of supply and distribution.

87. There is currently no expectation that an undercover officer would be able to determine the full scope of the TARGET SUBJECTS' operations, meet and identify all of the other TARGET SUBJECTS and their co-conspirators, or identify the TARGET SUBJECTS' narcotics suppliers and their confederates. I do not believe that an undercover officer could infiltrate the Foote Organization.

Telephone Toll Records

88. Telephone toll records have been and will be used in this investigation, but will provide only limited information. I have obtained and reviewed telephone toll records for the

⁶ Specifically, as described in the October 29 Affidavit, a UC purchased marijuana from JASON ALLEN and ZOLANI WORRELL on or about October 18, 2010 and October 19, 2010, respectively. Based on my conversations with other law enforcement officers and my review of intercepted communications, I believe that ALLEN and WORRELL obtain marijuana from "Frankie," FOOTE, and/or other members of the Foote Organization and resell it.

TARGET CELLPHONES and other cell phones believed to be used by members of the Foote Organization. Phone records, however, do not enable law enforcement officers to identify with certainty the persons involved in the conversations or the significance of the communications in the context of ongoing narcotics trafficking. Among other problems, a telephone number appearing in the records may not be listed or subscribed in the name(s) or address(es) of the person(s) actually using the telephone. Furthermore, the use of calling cards and telephone access numbers often hides the ultimate numbers called, thereby preventing law enforcement from learning the participants involved in any particular communication. In addition, the review of telephone records will not, in itself, reveal the structure of the Foote Organization or its sources of supply.

Federal Grand Jury

89. The issuance of grand jury subpoenas is likely to be inadequate to obtain critical information about the timing and location of narcotics transactions, the participants in the conspiracy, and the source of drug-related proceeds. Intercepted communications between FOOTE and other co-conspirators have provided information that led to the issuance of grand jury subpoenas for certain records, including bank account records, email subscriber information, and wire transfers of money from specific Western Union locations to Jamaica. While some of the

information obtained via subpoena has been useful to corroborate information obtained over intercepted calls, the grand jury process is unlikely to be useful in developing evidence concerning the TARGET SUBJECTS and the internal operations of the narcotics-trafficking enterprise. For example, bank records have been obtained for accounts in the name of DEBORAH GRIFFITH, who also resides at the Foote Residence, and have shown that FOOTE and GRIFFITH do not maintain significant cash balances in the bank accounts that have been identified. In addition, many of the TARGET SUBJECTS true names or banking information is not known and, in my experience, drug dealers do not tend to keep the proceeds of their illegal activities in legitimate accounts. Likewise, records showing transfers of specific amounts of money at or near the time of cryptic conversations in which reference numbers or dollar amounts are provided have been helpful to confirm the subject of those conversations, but cannot reveal the source of the money or the purpose of the wire transfer.

90. Witnesses who might provide additional relevant evidence to a grand jury have not been identified or would themselves be participants in the narcotics trafficking. Because such individuals would face prosecution themselves, it is unlikely that any of them would testify voluntarily. Nor would it be desirable at this time to seek immunity for such individuals and to compel their testimony. Immunizing them could

thwart the public policy that they be held accountable for their crimes. Furthermore, the issuance of grand jury subpoenas to other individuals would risk alerting the TARGET SUBJECTS to the ongoing investigation before their sources of supply are identified and located. Moreover, not all of the TARGET SUBJECTS have been identified and, in the absence of further evidence identifying co-conspirators and their respective involvement in the Foote Organization, it is difficult to determine whom to subpoena to the Grand Jury.

Witness Interviews

91. I believe that interviews of the TARGET SUBJECTS or their known associates would produce insufficient information as to the identities of all of the persons involved with the TARGET SUBJECTS in narcotics trafficking, the sources and locations of the drugs, the sources of financing, the locations of records and proceeds from the distribution of drugs, and other pertinent information regarding the TARGET OFFENSES. I also believe that any responses to the interviews, particularly interviews of those who are higher up in the organization, could contain a significant number of untruths, diverting the investigation with false leads or otherwise frustrating the investigation. I believe that questioning any of the remaining co-conspirators would alert the other co-conspirators, and cause a change in their methods of operation and the concealment or

destruction of evidence before all of the co-conspirators are identified, thereby compromising the investigation and resulting in the possible loss of valuable evidence, and the possibility of harm to the CI, whose identity may become known or whose existence may otherwise be compromised.

Search Warrants

92. As described in the Prior Affidavits, the investigation has revealed information that would likely enable the DEA to obtain and execute search warrants for the Foote Residence, the Seabring House, and the Taylor Residence, where pole cameras are installed, as described above. In addition, the investigation has revealed information that would likely enable the DEA to obtain and execute search warrants for other locations used by members of the Foote Organization to distribute narcotics, as well as a location at a business in an industrial park in New Jersey where FOOTE has been observed receiving packages believed to contain narcotics (the "NJ Location"). While executing search warrants at those locations may result in the seizure of pertinent evidence, it would also alert the TARGET SUBJECTS to the existence of the investigation without the likelihood of determining the full scope of the organization's operations, particularly the organization's sources of supply, the identities of all of the co-conspirators, or other locations where narcotics are stashed.

93. I believe that the execution of search warrants at the suspected stash house and drug distribution locations would be premature at this stage of the investigation because further information is needed to identify the means and methods by which the Foote Organization obtains a supply of narcotics, and other locations where the drugs and drug-distribution proceeds are transported and stored. The execution of search warrants at the locations described above is not likely to lead to the identification of other locations used by the Foote Organization. Nor is it likely to lead to the identification of co-conspirators who participate in obtaining or selling the Foote Organization's supply of drugs.

94. The locations where the TARGET SUBJECTS currently receive, hide, and distribute their narcotics and narcotics proceeds have not been fully identified. Moreover, without wire surveillance, law enforcement will not know when the locations contain narcotics, narcotics proceeds, and other evidence of the TARGET OFFENSES. I believe that wire surveillance will assist law enforcement in continuing to identify locations where narcotics and narcotics proceeds are currently stored, and determine when such contraband is at such locations, so that search warrants for such locations may be obtained while contraband is still present at the locations.

95. As described in the November 24 Affidavit, search

warrants were executed on certain packages sent to the NJ Location in mid-November, 2010. Each of the packages (of several similar packages sent from the same address to the NJ Business) appeared similar to packages that officers have seen FOOTE carrying into and out of the Foote Residence and the Seabring House. Upon opening the packages pursuant to a warrant, each package was found to contain approximately 34-41 pounds of marijuana.

96. During calls intercepted pursuant to the November 24 Order since the execution of those search warrants, some of which are described above, FOOTE and other TARGET SUBJECTS have discussed missing packages, have contacted their sources of supply about the missing packages, have discussed past problems they encountered in mailing packages of narcotics, and have consulted each other about alternative shipping methods they may try in the near future. Thus, wire surveillance has assisted and will continue to assist law enforcement in identifying the sources of the narcotics obtained by the Foote Organization, the methods they have used and will use in the future to obtain the supply, and the participants in the chain of supply.

Prior T-III Applications

97. Since interception began pursuant to the August 4 Order on TARGET CELLPHONE 2, agents have been able to identify many members of the Foote Organization and have more recently

been able to identify some of the Foote Organization's suppliers. For example, agents believe that the user of TARGET CELLPHONE 7 works with and/or supplies narcotics to MUSHINGTON, who supplies narcotics to FOOTE. In addition, agents believe that the user of TARGET CELLPHONE 7 may obtain narcotics from Mexican drug traffickers operating in California. Agents have also identified some of the methods used to transport narcotics, including boxes shipped via UPS and Federal Express from locations in Arizona and California to East Coast locations including the NJ Location. Using information obtained from, among other sources, calls intercepted over TARGET CELLPHONE 2, agents have seized, pursuant to a search warrant, approximately 475 pounds of marijuana, shipped in approximately seventeen individual boxes. The TARGET SUBJECTS, however, continue to change their shipping methods and as a result of the seizure described above have been intercepted discussing switching from UPS to Federal Express or utilizing other methods of shipping, including freight. Agents anticipate making arrests in this investigation in the near future. However, in order to fully identify the chain of suppliers and to track shipments of marijuana to FOOTE, MUSHINGTON, "Frankie" and others, continued interception of TARGET CELLPHONE 2 is necessary. In addition, the exact weight and quantity of narcotics that are being distributed by and among the TARGET SUBJECTS has not been determined, and agents are still attempting

to determine the identity additional sources of supply and customers of FOOTE, "Frankie," and MUSHINGTON. With continued interception, agents will be able to, through surveillance, identify additional targets. The agents will also be able to more precisely determine the magnitude of the on-going narcotics conspiracy.

98. Accordingly, and because the above-described investigative techniques are limited in their applications, have been unsuccessful, or are unlikely to be successful, authorization to continue to intercept wire communications over TARGET CELLPHONE 2 is necessary to identify and develop evidence against the TARGET SUBJECTS.

MINIMIZATION

99. All monitoring of wire communications over TARGET CELLPHONE 2 will be minimized in accordance with Chapter 119 of Title 18, United States Code.

100. The "investigative or law enforcement officers of the United States" and translators, if necessary, who are to carry out the requested interception of wire communications, will be instructed concerning the steps they should take to avoid infringing upon any attorney-client privilege or other recognized privileges. In addition, all communications intercepted will be conducted in such a way as to minimize the interception of communications not otherwise criminal in nature or subject to

EXHIBIT O

CI provided valuable and corroborated information, at this time there is no known confidential source that can provide information about all of the Foote Organization's sources of supply and their locations (some of which are believed to be in other states or countries), all of the links in the chain of supply (including connections at various mailing services), and all of the Foote Organization's workers and customers.⁵

82. Narcotics organizations are generally highly compartmentalized, and it is usually impossible for an informant to gain access to all aspects of an organization's illegal activities. Thus, the use of confidential informants alone is typically inadequate to develop evidence about the TARGET SUBJECTS' suppliers and customers.

83. In addition, based on my experience as a narcotics investigator, I believe that drug traffickers are unlikely to discuss the full extent of their organization's activities or membership with any individual, subordinate member of the organization. Based on my experience, I also know that narcotics organizations are often highly protective of their sources of supply.

84. Intercepting calls over TARGET CELLPHONE 2 is

⁵ As noted in the prior Affidavits, since I and other law enforcement officers learned that the CI had engaged in unauthorized, narcotics-related communications with FOOTE that were intercepted pursuant to the August 4 Order, we have marginalized the role of the CI in this investigation.