

I.

**MOTION TO SUPPRESS EVIDENCE OBTAINED DUE TO SEARCH WARRANT
UNSUPPORTED BY PROBABLE CAUSE**

CLIENT seeks to suppress the evidence seized during the search of his home because the search warrant was not supported by probable cause to believe there would be evidence of a crime at [address]. *See United States v. Grant*, 682 F.3d 827, 833 (9th Cir. 2012) (suppressing gun because search warrant not supported by probable cause that evidence of crime would be found at the premises searched pursuant to the warrant). In addition, because CLIENT was not shown a copy of the warrant at the time the search warrant was executed, all evidence seized should also be suppressed pursuant to Fed. R. Crim. P. 41(f) and *United States v. Gantt*, 194 F.3d 987 (9th Cir. 1999) *overruled on other grounds by United States v. Grace*, 526 F.3d 499 (9th Cir.2008) (en banc). Furthermore, because the search of his residence violated the Fourth Amendment, all evidence and fruits obtained pursuant to the unconstitutional search must be suppressed. *See Wong Sun v. United States*, 371 U.S. 471, 484 (1963).

A. The Search Warrant Fails to Show a Nexus Between the Alleged Criminal Activity and [Client]’s Residence.

The Fourth Amendment requires that warrants be based on probable cause. *See* U.S. CONST. Amend IV. Probable cause for a search requires a “fair probability that contraband or evidence of a crime will be found *in a particular place* based on the totality of circumstances.” *Dawson v. City of Seattle*, 435 F.3d 1054, 1062 (9th Cir. 2006) (emphasis added, citations omitted). To be constitutional, a warrant must establish a sufficient nexus between the criminal conduct alleged and the place where the items are supposed to be found. *See United States v. Anderson*, 851 F.2d 727, 729 (4th Cir. 1988). As the Ninth Circuit has explained:

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Probable cause to justify a search warrant exists when there is a sufficient showing that incriminating items are located on the property to which entry is sought. Probable cause to believe that a suspect has committed a crime is not by itself adequate to secure a search warrant for the suspect's home. There must exist reasonable cause to believe that the things listed as the objects of the search are located in the place to be searched.

United States v. Ramos, 923 F.3d 1346, (9th Cir. 1991) (citations omitted) *overruled on other grounds by United States v. Ruiz*, 257 F.3d 1030 (9th Cir. 2001) (en banc). In *Ramos*, though there was evidence that the defendant was engaged in drug-trafficking, the affidavit for the search warrant failed to demonstrate a link between the drug-trafficking and the defendant's residence—the subject of the search warrant. *Id.* at 1353.

Just as the warrant in *Ramos*, the warrant for CLIENT'S residence is not supported by probable cause. [CASE SPECIFIC FACTS]

CONNECTION TO STALE. *See Durham v. United States*, 403 F.2d 190 (9th Cir. 1968) (information that paraphernalia and counterfeit notes existed in defendant's trailer four months prior to issuance of a warrant deemed stale).

B. The Evidence Must Also Be Suppressed Because the Agents Failed to Show the Warrant to CLIENT.

Even if the warrant to search the residence is valid, the evidence must be suppressed because the agents failed to show the warrant to CLIENT prior to searching his house. *See Fed. R. Crim. P. 41(f); Gantt*, 194 F.3d at 1001. CLIENT was never shown the search warrant prior to the search of his residence—in fact the warrant was only provided to his wife several hours after he had been arrested and transported to the San Ysidro Port of Entry for questioning. In *Gantt*, the Ninth Circuit found that the Fed. R. Crim. P. 41 “requires service of the warrant at the outset of the search on persons present at the search of their premises” and found that post-search delivery of the warrant was insufficient given that the Rule exists to “provide the property owner assurance

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and notice during the search.” *Id.* Explaining its reasoning for suppressing evidence when Rule 41 was not complied with, the Ninth Circuit reasoned:

The search warrant requirement arose from the Founder's understanding that “[p]ower is a heady thing; and history shows that the police acting on their own cannot be trusted.” The citizen whose home is invaded without service of a warrant must suffer the invasion while still in doubt of its legality . . . Citizens deserve the opportunity to calmly argue that agents are overstepping their authority or even targeting the wrong residence.

Id. at 1002 (citations omitted). Though violations of Rule 41 do not automatically require suppression, it appears based on the facts and circumstances of the search and CLIENT'S arrest that the violation of the strictures of Rule 41 was deliberate. In executing the warrant, the agents did not even initially identify what agency they worked for, never showed CLIENT a copy of the warrant, and only produced a copy of the warrant to his Spanish-speaking wife hours after his arrest and transport. Because the violation of Rule 41 was deliberate, suppression is warranted. *See Gantt*, 194 F.3d at 1005.