

FILED
HARRISBURG

DEC 15 2008

IN THE UNITED STATES DISTRICT COURT OF PENNSYLVANIA
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARY E. D'ANDREA, CLERK

Deputy Clerk

IN RE SEALED MATTER

Case No. 1:08-CR-436

MOTION TO SEAL

AND NOW, the United States of America, by its undersigned counsel, moves pursuant to Rule 6 of the Federal Rules of Criminal Procedure to file the documents accompanying this Motion under seal for the reasons set forth in the accompanying sealed declaration in support of the government's motion to seal.

WHEREFORE, for the foregoing reasons, the United States moves to seal this Motion and the above-referenced pleadings. For the convenience of the Court, a proposed form of Order is attached.

Respectfully submitted,

MARTIN C. CARLSON
United States Attorney

BY: s/Christy H. Fawcett
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United States District Court

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MIDDLE DISTRICT OF PENNSYLVANIA

DEC 15 2008

In the Matter of the Seizure of

APPLICATION AND AFFIDAVIT FOR SEIZURE WARRANT
MARY E. DIANDREA, CLERK
Deputy Clerk

**THE 2008 TOYOTA HIGHLANDER,
VIN # JTEES41A18203071, REGISTERED TO
DUC CAO NGUYEN**

CASE NUMBER: 1:08-CR-436

[UNDER SEAL]

I, ROGER ROH, being duly sworn depose and say:

I am a(n) SPECIAL AGENT OF THE DEPARTMENT OF HOMELAND SECURITY (ICE) and have reason to believe that in the MIDDLE District of PENNSYLVANIA there is now certain property which is subject to forfeiture to the United States, namely (describe the property to be seized)

**THE 2008 TOYOTA HIGHLANDER, VIN # JTEES41A18203071,
REGISTERED TO DUC CAO NGUYEN**

which is (state one or more bases for seizure under the United States Code)

PROPERTY WHICH CONSTITUTES OR IS DERIVED FROM PROCEEDS TRACEABLE TO A SPECIFIED UNLAWFUL ACTIVITY (CONSPIRACY TO COMMIT FORCED LABOR TRAFFICKING, FORCED LABOR AND MARRIAGE FRAUD; FORCED LABOR; AND TRAFFICKING WITH RESPECT TO FORCED LABOR).

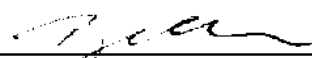
concerning a violation of Title 18, United States Code, Section(s) 371, 1589, 1590, 1594

The facts to support a finding of Probable Cause for issuance of a Seizure Warrant are as follows:

YOUR AFFIANT, BEING DULY SWORN, DEPOSES AND STATES THE FOLLOWING:

YOUR AFFIANT, ROGER ROH, IS A SPECIAL AGENT WITH THE DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE), CURRENTLY ASSIGNED TO THE OFFICE OF INVESTIGATIONS, SPECIAL AGENT IN CHARGE FOR PHILADELPHIA, PENNSYLVANIA, HUMAN SMUGGLING AND TRAFFICKING GROUP.
(Continued on 7 page Affidavit)

Continued on the attached sheet and made a part hereof: YES NO

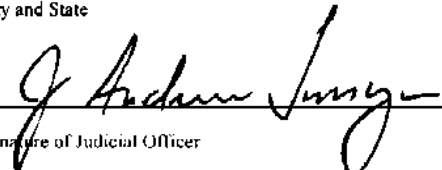

Signature of Affiant

Sworn to before me and subscribed in my presence,

DEC. 15, 2008
Date

at HARRISBURG, PENNSYLVANIA
City and State

J. ANDREW SMYSER, U.S. Magistrate Judge
Name and Title of Judicial Officer


Signature of Judicial Officer

AFFIDAVIT IN SUPPORT OF SEIZURE WARRANT

I. Purpose of the Affidavit

This affidavit is submitted in support of seizure warrants pursuant to 18 U.S.C. § 1594(b) for the following properties:

1. All of the funds and property in Commerce Bank, Account #537069783 in the names of Lynda PHAN and Tony PHAN.
2. All of the funds and property in Commerce Bank, Account #536654163 in the names of Lynda PHAN and Lucy VO.
3. 2008 Toyota Highlander with VIN# JTEES41A18203071 registered to Duc Cao NGUYEN.

Your affiant submits there is probable cause to believe that the contents of the bank accounts constitute property derived from the proceeds Lynda Dieu PHAN, Duc Cao NGUYEN and others obtained, directly or indirectly, as the result of violations of Title 18 U.S.C. § 371, criminal conspiracy to commit forced labor trafficking, forced labor, and marriage fraud; 18 U.S.C. § 1589, forced labor; and 18 U.S.C. § 1590, trafficking with respect to forced labor, and the above-listed vehicle currently located in the Middle District of Pennsylvania, was used to commit and facilitate the commission of such violations, therefore, should be forfeited to the United States of America pursuant to 18 U.S.C. § 1594(b).

II. Affiant Continued From Application...

I have been employed as a Special Agent with the Department of Homeland Security, Immigration and Customs Enforcement for the past six years. Prior to the creation of the Department of Homeland Security in 2003, I was employed as a Special Agent with the Department of Justice, Immigration and Naturalization Service for eight years. My duties include the investigation of violations of immigration laws involving alien smuggling and human trafficking and to identify assets for seizure and forfeiture action. I have received specialized legal training in the areas of money laundering and asset forfeiture. I have conducted numerous investigations related to alien smuggling, money laundering and asset forfeiture.

As a result of the aforementioned investigations, your affiant has examined financial documents relating to the defendants, Lynda PHAN and Duc Cao NGUYEN. The information and facts contained in this affidavit are based upon my own personal knowledge and that conveyed to me by other law enforcement officers and confidential sources and my review of records, documents, and other evidence obtained during this investigation. This affidavit contains information necessary to support probable cause for this application and

does not contain every material fact that I have learned during the course of this investigation. However, no information known to me that would tend to negate probable cause has been withheld from this affidavit.

III. Probable Cause

On August 8, 2008, the Human Smuggling and Trafficking (HST) Group of the Special Agent in Charge, Immigration and Customs Enforcement (ICE) in Philadelphia, Pennsylvania executed Federal search warrants at the residence and business owned by Lynda PHAN to search for identification documents of a Vietnamese national identified in this affidavit as A.V. The search resulted in business records relating to the payroll and employee records of Da Vi Nail Salon and to the employment of the Vietnamese national identified in this affidavit as A.V. and a Vietnamese national identified in this affidavit as T.V. and documentary evidence relating to marriage fraud schemes organized by Lynda Dieu Phan.

On August 4, 2008, ICE Special Agents interviewed A.V. A.V. was living in Vietnam until approximately the age of 20 with her aunt. A.V. stated that during the year 2000, Lynda Dieu Phan made arrangements with A.V.'s aunt to bring A.V. to the U.S. to work in Lynda Dieu Phan's nail salon. A.V. was told that Lynda Dieu Phan would make all of the arrangements for her to come to the U.S. and that she could work for Lynda Dieu Phan when she arrived to pay back the money for her plane ticket and her immigration paperwork. A.V. was told to pretend that Justin Phan (Lynda Dieu Phan's brother) was her boyfriend and that they were going to get married.

A.V. entered the United States on August 6, 2004 through JFK International Airport in New York, NY as a Conditional Fiancee of a United States Citizen (CF1). A.V. stated that shortly after she entered the United States, she was married to Justin Phan. A.V. stated that she never lived with Justin and the marriage was never consummated; he lived in another house with his girlfriend and children. A.V. stated that Lynda Dieu Phan took her to an immigration attorney in York, PA, who filed immigration applications for A.V. based upon the marriage to Justin Phan. A.V. stated that she was never allowed to hold any of her immigration documents and that Lynda Dieu Phan kept them all in her possession. A.V. explained that Lynda Dieu Phan would charge her varying amounts of money as fees for the attorney handling her immigration paperwork. A.V. was able to pay Lynda Dieu Phan some of this money with some of the tips she earned working at Lynda Dieu Phan's nail salon.

A.V. worked first at Nail Palace and later at Da Vi Nail Salon, both located in York, PA, and operated by Lynda Dieu Phan. A.V. would work from 10:00 a.m. until 9:00 p.m. Monday through Saturday and 12:00 p.m. to 5:00 p.m. on Sunday. A.V. did not receive any vacation time and the only days that she did not go to work were days that the mall was closed for a holiday. A.V. never received a payment for any of the time she worked in the nail salons. The only money that she received was the money given to her by the customers as a tip. A.V. stated that she would use this money to buy personal things and to pay Lynda Dieu Phan for extra expenses such as lawyer fees and the cost of a bunk bed. A.V. was told by

Lynda Dieu Phan that she would have to work for three years to pay her back for the expenses incurred in bringing her to the U.S., for her food, and for living in Lynda Dieu Phan's house. In addition to the time working at the nail salons, A.V. would cook and clean in Lynda Dieu Phan's house. A.V. explained that she would bring food to the nail salon with her and that she could not leave the nail salon during the day. She would only get a break during the day when there were no customers in the nail salon. A.V. also stated that she could not go to the store on her own; she always had to go with Lynda Dieu Phan.

Approximately six months after A.V. arrived in the United States, a second female Vietnamese national identified in this affidavit as T.V., also came to live in Lynda Dieu Phan's house. A.V. stated that Lynda Dieu Phan had also arranged for T.V. to come to the U.S. through a fraudulent marriage. T.V. was married to Duc Cao Nguyen after coming to the United States. Duc Cao Nguyen is Lynda Dieu Phan's boyfriend and the father of Lynda Dieu Phan's child. A.V. explained that Lynda Dieu Phan presents Duc Cao Nguyen as her husband to all of the customers at the nail salon. T.V. came to share a room with A.V. at Lynda Dieu Phan's house and T.V. worked at the Da Vi Nail Salon inside the Wal-Mart located at 1800 Loucks Road, York, PA. T.V. worked at this nail salon while A.V. worked at Nail Palace in the West Manchester Mall until May 14, 2008 when the Nail Palace closed. Both A.V. and T.V. then worked in Da Vi Nail Salon. A.V. explained that T.V. was not paid for her work at the nail salons and that she also had to give some of her tip earnings to Lynda Dieu Phan. Although A.V. and T.V. were forced to pay for bunk beds, there were no mattresses on the beds, only hard wood, so they slept on the floor of their room.

A.V. explained that she would be in trouble if Lynda Dieu Phan saw her talking to the customers. Lynda Dieu Phan told A.V. not to tell the customers anything about herself. When Lynda Dieu Phan was not in the nail salon, A.V. and T.V. would talk to the customers and tell them what was happening to them. On occasion, A.V. and T.V. would receive cards or presents from the customers and they would have to hide them from Lynda Dieu Phan so that she would not become angry. A.V. stated that during her first year Lynda Dieu Phan threatened to send her back if she made mistakes or caused problems. Lynda Dieu Phan also said that if A.V. told anyone what was going on, A.V. would go to jail.

After working for Lynda Dieu Phan for over three years, A.V. had fulfilled her initial agreement to work for Lynda Dieu Phan. At the end of this three year period, Lynda Dieu Phan did not advise A.V. that she had finished her obligation. A.V. continued to work for Lynda Dieu Phan without complaining. A.V. stated that on November 16, 2007, she confronted Lynda Dieu Phan about beginning to be paid for the hours that she works at the nail salon. Lynda Dieu Phan began charging A.V. \$200.00 per month in rent to live in the room at Lynda Dieu Phan's house. Lynda Dieu Phan would also charge A.V. varying amounts for the gas, water, and electric bills, totaling approximately \$300.00 per month. Lynda Dieu Phan would also tell A.V. that she owed other amounts of money to pay lawyer fees and other fees. The amounts that Lynda Dieu Phan demanded from A.V. were inconsistent, ranging from \$5000.00 to \$10,000.00 at different times for the cost of plane tickets and immigration fees.

Between November 16, 2007 and June 1, 2008, Lynda Dieu Phan did not pay A.V. for any of the continued work at the Nail Salon. Through the years of work, A.V. and T.V. had become friends with several of their customers. When Lynda Dieu Phan was not at the nail salon, A.V. and T.V. would talk to the customers about their situation. A.V. began to realize that Lynda Dieu Phan had not filed any immigration paperwork for her and that her conditional residence status had expired in April of 2008. A.V. became fearful that she was now illegally present in the United States. She had paid Lynda Dieu Phan an unknown amount of money for lawyer fees and no paperwork had been completed for her. On June 1, 2008, A.V. decided to leave Lynda Dieu Phan's house with the help of one of her customers. At 1:30 a.m. A.V. escaped from Lynda Dieu Phan's house with her personal belongings wrapped in a sheet. A.V. explained that there are approximately 10 nail salon customers who know about her situation.

A.V. stated that Lynda Dieu Phan's house was located at 565 Sandpiper Lane in New Cumberland, PA. Public Access database queries of the residence located at 565 Sandpiper Lane in New Cumberland, PA lists Lynda Phan, Tony Phan, Duc Phan, and Duc Nguyen as being associated with the address. Surveillance at this residence on August 4, 2008 at approximately 1330 hours showed a gray Toyota highlander parked in the driveway with PA registration FVF-6853. This vehicle is registered to Duc Cao Nguyen at 565 Sandpiper Lane in New Cumberland, PA 17070.

On August 8, 2008, the date the search warrants were executed, T.V. provided a statement to investigators concerning the circumstances of her arrival in the U.S. and her working and living conditions subsequent to coming to the United States. Her statement was consistent with the information provided by A.V. and detailed above.

On December 10, 2008, the Grand Jury returned an Indictment charging Lynda Dieu Phan, Justin Phan, and Duc Cao Nguyen with criminal conspiracy to commit forced labor trafficking, forced labor and marriage fraud, in violation of 18 U.S.C. § 371; forced labor, in violation of 18 U.S.C. § 1589; trafficking with respect to forced labor, in violation of 18 U.S.C. § 1590; marriage fraud, in violation of 8 U.S.C. § 1325(c); and forfeiture. The forfeiture count included the forfeiture of the automobile and bank accounts described herein.

IV. Wages Owed to T.V. and A.V.

Based upon the calculations from the U.S. Department of Labor Employment Standards Administration Wage and Hour Division, a period of September 2004 to May 2008, A.V. is owed approximately \$200,168.00 in wages including overtime. T.V. is owed from a period of March 2005 to August 8, 2008, approximately \$186,704.00 in wages including overtime.

V. Statutory Authority

18 U.S.C. § 1594. General Forfeiture Provisions. (Trafficking in persons)

(a) Whoever attempts to violate section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section.

(b) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

(1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

VI. The Bank Accounts

Commerce Bank Account #536654163

On April 14, 2004, Lynda PHAN opened Commerce Bank Account #536654163 Business Checking. On June 23, 2004, Lynda PHAN revised the account name to be listed as Da Vi Nails with the mailing address of 6520 Carlisle Pike South #550, Mechanicsburg, PA 17050. The signature card listed Lynda PHAN and Lucy VO. From November 2004 to August 2008, there were 2955 credit card deposits totaling \$401,354.38 and 47 deposits (personal checks from customers written to Da Vi Nails) totaling \$13,748.24. There were 383 checks written from this account totaling \$374,477.34. Of the 383 checks written, 18 were written payable to Lynda PHAN totaling \$93,650.00. There was also a check in the amount of \$5,000.00 that was written to Gemcraft Homes as a deposit for the purchase of 565 Sandpiper Lane. Based upon your affiant's review of this account, there is reason to believe the contents of this account is derived from proceeds of the criminal conspiracy, forced labor, and human trafficking and contains co-mingled funds and/or is substitute assets.

Commerce Bank Account #537069783

On August 15, 2005, Lynda PHAN and Tony PHAN opened Commerce Account #537069783. From August 2005 to September 2008, there were 40 checks written to pay the mortgage (both principal and interest) of 565 Sandpiper Lane in the amount of \$187,589.20.

On November 4, 2005, Check 93 was written in the amount of \$7,918.00 for Lot 147, 565 Sandpiper Lane. There were 3 checks deposited totaling \$18,602.00 from Da Vi Nails to Lynda PHAN. On March 10, 2008, a 3 month Certificate of Deposit in the amount of \$220,000.00 was opened under #204606. On May 16, 2008, a 6 month Certificate of Deposit in the amount of \$182,249.00 was opened. On November 12, 2008, a customer service representative of Commerce Bank stated the certificate of deposit was due for renewal on November 16, 2008 and there was no indication from Lynda PHAN if the certificate of deposit was not being renewed for the same time period. Based upon your affiant's review of this account, there is reason to believe the contents of this account is derived from proceeds of the criminal conspiracy, forced labor, and human trafficking and contains co-mingled funds and/or is substitute assets

2008 Toyota Highlander with VIN# JTEES41A18203071

On November 28, 2007, Duc NGUYEN purchased the 2008 Toyota Highlander with VIN# JTEES41A18203071 in Harrisburg, PA for the purchase price of \$28,796.00. Since T.V. and A.V. had no others means of transporting themselves to the nail salons, Lynda PHAN and Duc Cao NGUYEN transported T.V. and A.V. in this vehicle along with another vehicle registered to Lynda PHAN. Based upon your affiant's review of financial documents and statements of T.V. and A.V. made related to this vehicle, there is reason to believe this property was used to commit and facilitate the criminal conspiracy, forced labor, and human trafficking.

VI. Conclusion

Based on the aforementioned facts, there is probable cause to believe the following properties:

1. All of the funds and property in Commerce Bank, Account #537069783 in the names of Lynda PHAN and Tony PHAN.
2. All of the funds and property in Commerce Bank, Account #536654163 in the names of Lynda PHAN and Lucy VO.
3. 2008 Toyota Highlander with VIN# JTEES41A18203071 registered to Duc Cao NGUYEN.

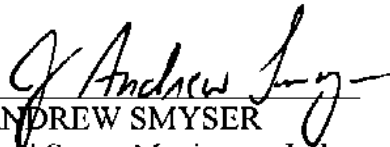
constitutes property derived from the proceeds that Lynda Dieu Phan, Duc Cao Nguyen and others obtained, directly or indirectly and contains co-mingled funds and/or is substitute assets, as the result of violations set forth herein, and the above-listed vehicle currently located in the Middle District of Pennsylvania, was used to commit and facilitate the commission of violations set forth herein.

Your affiant is requesting to seize the above-described automobile and bank accounts in accordance with 18 U.S.C. § 981(a)(1)(C) and § 1956(c)(7).



ROGER ROH
Special Agent
Department of Homeland Security
Immigration and Customs Enforcement

Subscribed and sworn before me on this
15TH day of DECEMBER,
2008, in Harrisburg, Pennsylvania.



J. ANDREW SMYSER
United States Magistrate Judge

FILED
HARRISBURG

DEC 15 2008

IN THE UNITED STATES DISTRICT COURT MARY E. D'ANDREA, CLERK
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA Per _____
Deputy Clerk

IN THE MATTER OF THE SEIZURE OF
THE 2008 TOYOTA HIGHLANDER, VIN
JTEES41A18203071, REGISTERED
TO DUC CAO NGUYEN

Case No. 1:08-CR-436

DECLARATION IN SUPPORT OF MOTION TO SEAL

AND NOW, the United States of America, by its undersigned counsel, submits the following Declaration in Support of the Government's Motion to Seal, pursuant to Rule 6 of the Federal Rules of Criminal Procedure.

1. Your declarant states that, in the view of your declarant this Declaration and the following documents should be filed under seal:

- | | |
|-------------------------------------------------------------------|--------------------------------------------------------------------------------|
| <input type="checkbox"/> Indictment | <input type="checkbox"/> Complaint |
| <input type="checkbox"/> Complaint, Arrest Warrant, and Affidavit | <input checked="" type="checkbox"/> Seizure Warrant, Application and Affidavit |
| <input type="checkbox"/> Plea Agreement | <input type="checkbox"/> Seizure Warrant |

2. The United States requests that the above-referenced documents, and this Motion, remain under seal pending:

- The arrest of the Defendant(s);
- Further Order of Court;
- Written notification by the United States that these pleadings no longer need to remain filed under seal; or
- Until a return is made of the seizure warrant by the executing agents.

3. In support of this Motion, the United States alleges that filing these pleadings under seal is necessary in order to:

- Preserve the integrity of this ongoing case;
- Ensure the safety of investigative personnel;
- Protect the identity of potential witnesses;
- Allow for the seizure of evidence;
- Permit the arrest of those charged with violations of criminal laws; or
- Allow this defendant to complete the cooperation aspects of the plea agreement.
- Avoid unfair prejudice to the defendants

WHEREFORE, for the foregoing reasons, the United States moves to seal this Declaration and the above-referenced pleadings. For the convenience of the Court, a proposed form of Order is attached.

Respectfully submitted,

MARTIN C. CARLSON
United States Attorney

BY: s/Christy H. Fawcett
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MARTIN C. CARLSON
United States Attorney

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