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6 IN THE DISTRICT COURT OF GUAM  
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8 UNITED STATES OF AMERICA, ) CRIMINAL CASE NO. 08-00008-001 & -002  
9 Plaintiff, )  
10 vs. )  
11 SONG JA CHA and IN HAN CHA, ) **REPORT & RECOMMENDATION**  
12 Defendants. ) **re Motions to Suppress**  
13 \_\_\_\_\_ )

14 This matter came before the court on various motions filed by the Defendants.<sup>1</sup> On  
15 June 2, 2008, the Chief Judge referred the following motions to the below-signed judge: a  
16 Motion for Return of Property and Motion to Suppress filed by Mrs. Cha (see Docket No. 70)  
17 and a Motion for Return of Property and Motion to Suppress filed by Mr. Cha (see Docket  
18 No. 72).<sup>2</sup> After several stipulated continuances submitted by the parties, the court held  
19 evidentiary hearings on December 12, 30, and 31, 2008. Representing the Government was  
20 Assistant U.S. Attorney Rosetta L. San Nicolas. Attorney Howard Trapp appeared on behalf of  
21 Mrs. Cha, and Mr. Cha was represented by attorney G. Patrick Civile. Upon review of the  
22 testimony and evidence adduced at the hearing, and with due consideration of the parties’  
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24 <sup>1</sup> The Defendants are husband and wife. They will collectively be referred to as the  
25 “Defendants,” but individually as either Mr. Cha or Mrs. Cha.

26 <sup>2</sup> At the December 31, 2008 hearing, the Defendants stated they did not want to further  
27 address their separately filed motions for return of property. The Defendants decided it would be  
28 best to have said motions addressed after a final determination had been made by the Chief Judge  
on their motions to suppress. Accordingly, the court will not address the Defendants’ motions  
for return of property in this Report & Recommendation.

1 argument and applicable caselaw, the court hereby issues the following report and recommends  
2 the Chief Judge grant the motion to suppress.

3 **FACTUAL FINDINGS<sup>3</sup>**

4 On or about January 13, 2008, Officer Thomas B. Manibusan<sup>4</sup> received a telephone call  
5 from his wife, Marisa.<sup>5</sup> Marisa told her husband that a Chuukese female<sup>6</sup> had come to their  
6 home with Marisa's cousin<sup>7</sup> asking for assistance. Officer Manibusan testified that his wife told  
7 him that Sonina knew Marisa was married to a police officer, and Sonina was hoping he could  
8 help her retrieve her passport, which she claimed the owner of the Blue House Lounge<sup>8</sup> was  
9 refusing to return. Officer Manibusan stated that he told his wife to tell Sonina to go to the Blue  
10 House Lounge and ask the owner to return the passport. Officer Manibusan was working as the  
11 shift supervisor that night so he could not leave, but he told his wife to tell Sonina to give the  
12 Tamuning-Tumon Precinct a call if she had any problems retrieving her passport. Marisa then  
13 informed her husband that she may go to the Blue House Lounge with them (Sonina and

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15 <sup>3</sup> To the extent that a finding of fact should be deemed a conclusion of law, or a  
16 conclusion of law deemed a finding of fact, it shall so be considered and incorporated.

17 <sup>4</sup> Officer Manibusan testified that he has been a police officer with the Guam Police  
18 Department ("GPD") for 28 years. He stated that he was assigned to the Tamuning-Tumon  
19 Precinct at the time of the incident in question here and had been so assigned for about nine  
20 years. Officer Manibusan further testified that during the past year he was re-assigned to the  
21 Guam Highway Patrol Division.

22 <sup>5</sup> Officer Manibusan testified that his wife is Chuukese.

23 <sup>6</sup> Officer Manibusan stated that he could not clearly recall the woman's name but  
24 believed her name was Selena. During the course of the hearing, he often referred to her as the  
25 "Chuukese female" or the "heavy set girl." Upon review of search warrant and application  
26 attached as Exhibit B to defendant In Han Cha's motion (Docket No. 72), it would appear that  
27 the complainant's name was Sonina Suwain. Accordingly, for ease of reference, the court will  
28 hereinafter refer to this individual as Sonina.

<sup>7</sup> Officer Manibusan did not know either the first and last names of his wife's cousin. He  
explained that although he could recognize her if he saw her, he does not have much interaction  
with her, and so he did not know her name.

<sup>8</sup> According to the various testimonies, the Blue House Lounge is a bar and karaoke  
lounge located along Marine Drive in the upper Tumon area.

1 Marisa's cousin) because they did not speak English that well.

2 Later that evening, Officer Manibusan was patrolling the upper Tumon area with Officer  
3 Mario Laxamana, and Officer Manibusan suggested they drive by the Blue House Lounge to see  
4 if everything was okay. As they approached the establishment, Officer Manibusan recognized a  
5 vehicle (a gold colored Chevy Aveo) in the parking lot as belonging to his wife's cousin. He  
6 then instructed Officer Laxamana to drive into the Blue House Lounge parking lot.

7 While pulling into the parking lot, Officer Manibusan noticed his wife's cousin and  
8 Sonina were by the front door to the Blue House Lounge speaking with the security guard  
9 posted outside. When Officer Manibusan exited the patrol vehicle, he saw Marisa exit from her  
10 cousin's car. Officer Manibusan noticed that the Blue House Lounge was open for business  
11 because the lights were turned on, the open sign was lit, and there were cars in the parking lot.  
12 Officer Manibusan could not hear what the women and the security guard were discussing, but  
13 Marisa told her husband that the guard would not let them in the establishment.

14 Officer Manibusan approached the security guard<sup>9</sup> and told him to go inside and tell the  
15 owner, Mrs. Cha,<sup>10</sup> to come out. According to Officer Manibusan's testimony, when Mrs. Cha  
16 came outside, he asked her if she had Sonina's passport. Mrs. Cha replied that the passport was  
17 sent back to Sonina's mother in Chuuk. After speaking with Sonina in the Chuukese language,  
18 Marisa<sup>11</sup> stated that Mrs. Cha could not have sent the passport to Sonina's mother because

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20 <sup>9</sup> This individual was later identified as Edwin Salazar, whom Mrs. Cha called as a  
21 witness.

22 <sup>10</sup> Officer Manibusan stated that over the years he had been at the Blue House Lounge  
23 about three or four times for routine checks while on patrol with the Tamuning-Tumon Precinct.  
24 He would go in, usually with another police officer, check if everything was okay, and then walk  
25 out. He may have had brief discussions with Mrs. Cha, who had introduced herself to him as the  
26 owner, but he never spoke with any of the employees or customers. Officer Manibusan stated  
27 that these periodic checks would only last a few minutes. He also testified that he noticed that  
28 most of the waitresses in the establishment were Chuukese women.

29 <sup>11</sup> Based on the testimony at the evidentiary hearings, it appears that Marisa acted as a  
30 Chuukese translator at the Blue House Lounge because none of the officers present spoke or  
31 understood the Chuukese language. Marisa also assisted with translations during the interviews  
32 conducted later at the Tamuning-Tumon Precinct.

1 Sonina’s mother was deceased. Officer Manibusan further testified that his wife said Sonina  
2 told her that two females<sup>12</sup> – Sonina’s cousins – were being held against their will inside the  
3 Blue House Lounge. Officer Manibusan then instructed Officer Tan<sup>13</sup> to check the  
4 establishment for the two women to determine whether they were being held against their will.

5 Mr. Salazar’s account of what transpired outside of the establishment is slightly  
6 different. According to Mr. Salazar, when the women first arrived, they asked to speak with  
7 Mrs. Cha about a passport. Mr. Salazar then went inside the Blue House Lounge to inform Mrs.  
8 Cha about the women, and when he went back out, he saw that Officers Manibusan and  
9 Laxamana had arrived. Officer Manibusan approached Mr. Salazar and told him to call his  
10 “boss” because he wanted to speak with her “now.” Mr. Salazar testified that Officer  
11 Manibusan spoke with an aggressive tone. Mr. Salazar went inside to call Mrs. Cha, and when  
12 they exited the establishment, Officer Manibusan pulled Mrs. Cha to the side and began to  
13 question her about the passport, again in an aggressive tone and using obscenities. When Mr.  
14 Salazar tried to interject on behalf of Mrs. Cha, Officer Manibusan yelled at Mr. Salazar and  
15 told him to stand away from them because he (Officer Manibusan) did not want to hear from  
16 Mr. Salazar. According to Mr. Salazar, when Mrs. Cha denied withholding the passport, Officer  
17 Manibusan said words to the effect that he knew what was going on at the Blue House Lounge  
18 and he wanted to know the truth about what was going on in there. When Mrs. Cha denied any  
19 wrongdoing, Officer Manibusan then radioed for further assistance. Thereafter other police  
20 officers (Officers Tan and J.J. Cruz and Sergeant Cress) arrived on the scene.

21 Officer Tan testified that Officer Manibusan told him to get the two females and bring  
22 them out so that the officers can determine whether the women were being held against their  
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24 <sup>12</sup> Officer Norbert Tan testified that these women were Cindy and Vivian.

25 <sup>13</sup> Officer Tan testified that he has been a GPD officer for approximately two years and  
26 that he was and still is assigned to the Tamuning-Tumon Precinct. He further testified that he  
27 arrived at the scene between 12:15 a.m. and 12:30 a.m. on January 13, 2008, after responding to  
28 a call by Officer Manibusan. This testimony is further corroborated by Mr. Salazar who stated  
that Officer Manibusan used his radio to call for assistance.

1 will. As instructed by Officer Manibusan, Officer Tan went into the establishment and asked  
2 the bartender if she knew where Cindy and Vivian were. The bartender pointed to a female  
3 individual serving drinks at a table in the corner, who was later identified as Cindy. After  
4 asking Cindy to step outside to answer a few questions, Officer Tan inquired as to the  
5 whereabouts of Vivian. Cindy said she did not know where Vivian was, so she inquired with  
6 the bartender about Vivian's whereabouts, and the bartender who pointed to the back area of the  
7 establishment (an extension to the bar). Officer Tan and Cindy proceeded to that area and Cindy  
8 called out for Vivian. Officer Tan then heard a voice coming from behind a door leading to  
9 Room 3. Officer Tan knocked on the door several times, and when the door opened, a woman  
10 later identified as Vivian appeared wearing a red dress. According to Officer Tan, Vivian  
11 looked disheveled, as if she had rushed to put on the dress because the bottom of the dress  
12 looked ruffled. Officer Tan asked if there was anyone else in the room with Vivian. As she  
13 stepped out, Officer Tan observed a male individual hiding behind another door. This person  
14 was later identified as Sonny. Officer Tan testified that Sonny was not wearing a shirt and his  
15 pants were "barely on." Officer Tan testified that Sonny's pants were unzipped, unbuckled and  
16 unbuttoned. Officer Tan then instructed Sonny to wait in the room while he escorted Cindy and  
17 Vivian out to the parking lot to Officer Manibusan.

18         Once outside Officer Tan told Officer Manibusan about the half-naked man he found in  
19 the back room. Officer Manibusan then called his duty supervisor to apprise him of the  
20 situation. Officer Tan then went back inside to find Sonny. He saw a male who resembled  
21 Sonny standing by the restroom area, but the man was wearing a shirt so Officer Tan was unsure  
22 whether he was Sonny. Officer Tan then proceeded back to Room 3, but Sonny was no longer  
23 there. Officer Tan asked the man by the restroom if he was the individual previously found in  
24 Room 3, but the man denied it. Officer Tan then escorted the male individual out to the parking  
25 lot and asked Vivian if he was the person in the room with her. Vivian responded "yes."<sup>14</sup>

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27         <sup>14</sup> Officer Tan testified that after Sonny was advised of and waived his rights, Sonny  
28 stated that he had a drink with Vivian and she was giving him a massage in the back room Sonny  
further stated that he and Vivian were only kissing in the back room. After this interview, Sonny

1           Officer Manibusan testified that at about 1:00 a.m. he asked Mrs. Cha to close down the  
2 establishment and secure the premises. Officer Manibusan stated that he did not want to  
3 embarrass Mrs. Cha by interviewing her out in the open about the suspected prostitution  
4 occurring at the establishment, so he asked her to shut down the establishment before  
5 proceeding down to the precinct to be interviewed. Officer Manibusan further stated that he  
6 then “asked” Mrs. Cha to give him a “tour” of the place, and he proceed to follow her inside as  
7 she showed them around.<sup>15</sup> During this “tour,” Mrs. Cha took police into the Defendants’  
8 private living quarters, including their bedroom, which adjoined the business establishment.  
9 Officer Manibusan said that during this “tour,” which lasted about 30 minutes, the police did not  
10 seize any items.

11           Again, Mr. Salazar’s version of the how the Blue House Lounge shut down that night  
12 differs from Officer Manibusan’s testimony. According to Mr. Salazar, Officer Cruz told him  
13 that the Blue House Lounge would have to close and that he (Mr. Salazar) had to tell all the  
14 customers to go away. Mr. Salazar then proceeded inside the Blue House Lounge and  
15 announced to the customers that the establishment was closing so everyone would have to leave.  
16 Officer Manibusan then came in and said that no one was allowed to leave until they spoke with  
17 the police. Mr. Salazar further testified that Officer Manibusan instructed everyone to produce  
18 identification and hand it over to the police. When one male individual stated that he did not  
19 have any identification, Mr. Salazar stated that Officer Manibusan proceeded to yell at him. Mr.  
20 Salazar testified that Officer Manibusan again spoke with an aggressive tone when he made  
21 these announcements to the patrons.<sup>16</sup> Mr. Salazar then proceeded to wait outside. After each

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23 was told he was free to leave. Officer Tan further testified that when Vivian was later  
24 interviewed, she said that she and Sonny were engaging in sexual activity in Room 3.

25           <sup>15</sup> According to Officer Manibusan, he asked Mrs. Cha to clear all patrons from the  
26 establishment because he did not want to further embarrass her. When asked why he wanted a  
27 tour, Officer Manibusan stated that he noticed that Officer Tan was conducting a scene check and  
28 so he asked for the “tour” because he just wanted to see the premises to satisfy his own curiosity.

<sup>16</sup> When asked to describe Officer Manibusan’s actions, Mr. Salazar testified that he  
would characterize him as being “rude.”

1 person was interviewed by the police officers, Mr. Salazar stated he observed the customers  
2 leave the Blue House Lounge one by one.

3 While outside Mr. Salazar noticed a male individual pull into the parking lot in a white  
4 police sport utility vehicle (“SUV”). The male individual took out a camera and asked Mr.  
5 Salazar for permission to take pictures. Mr. Salazar replied to the effect, “I guess. I don’t own  
6 the place.” The individual then proceeded to take pictures outside of the establishment.<sup>17</sup> Mr.  
7 Salazar stated that this occurred at about 1:45 a.m. Because Mr. Salazar remained outside, he  
8 was unsure whether the male with the camera also took pictures of the interior of the Blue  
9 House Lounge.<sup>18</sup>

10 What Officer Manibusan called a “tour” was described as a “scene check” by Officer  
11 Tan.<sup>19</sup> According to Officer Tan, at about 1:30 a.m. he conducted a “scene check” after all the  
12 patrons had left.<sup>20</sup> Officer Tan testified that the “scene check” of the premises (both the business  
13 establishment and the private living quarters of the Defendants) – as opposed to a “search” of  
14 the establishment – was performed after Officer Manibusan told him to conduct a “thorough”  
15 check.<sup>21</sup> Officer Tan stated that he did not seize or confiscate any items during this “scene  
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17 <sup>17</sup> Officer Manibusan testified that he did not recall seeing a photographer from GPD’s  
18 crime lab at the scene taking pictures. Officer Tan, however, testified that before he left he  
19 noticed that someone from CSI (crime scene investigation) was there with a camera. Officer  
20 Manibusan surmised that if there was someone present taking pictures, perhaps the desk sergeant  
called CSI to go to the Blue House Lounge to take pictures. The court notes that no pictures  
were introduced into evidence during the course of the evidentiary hearings.

21 <sup>18</sup> Mr. Salazar said he lost track of the man with the camera, but because the white police  
22 SUV was still in the parking lot, he assumed the man with the camera went inside the  
establishment.

23 <sup>19</sup> Officer Tan stated that scene checks are routine, to give the officers an opportunity to  
24 view the entire area so as to make it possible for them to later describe the scene if necessary.

25 <sup>20</sup> Officer Tan testified that he was not sure how the public left the establishment and  
26 who instructed the patrons to leave.

27 <sup>21</sup> Officer Manibusan denied instructing Officer Tan to conduct a “scene check,” and  
28 speculated that Sergeant Cress had instructed Officer Tan to perform such. Although Sergeant  
Cress is superior to Officer Manibusan, Officer Tan testified that Officer Manibusan was

1 check.”<sup>22</sup>

2 According to Officer Manibusan, after the “tour,” Mr. Cha secured the establishment,<sup>23</sup>  
3 and the police transported Sonina, Vivian and Cindy to the Tamuning-Tumon Precinct for  
4 interviews. The Defendants drove to the precinct separately in their private vehicle and  
5 transported other female employees to the precinct as instructed by the Officer Manibusan.  
6 Officer Manibusan testified that he did not instruct any officer to remain behind at the premises  
7 to guard it.

8 Mrs. Cha was not allowed to leave the precinct and was later arrested after further  
9 interviews of the female employees revealed possible prostitution activity occurring at the Blue  
10 House Lounge. Mr. Cha, however, was permitted to come and go at his discretion. At one  
11 point, Mr. Cha left the precinct to get food for Mrs. Cha.

12 At about 8:00 a.m., Mr. Cha called his attorney, Curtis Van de veld. According to Mr.  
13 Van de veld, Mr. Cha sounded distressed and informed him as to what had transpired that night.  
14 Mr. Van de veld further testified that Mr. Cha said he was “at the Blue House”<sup>24</sup> and that the  
15 police were still there and would not allow him to access the premises.<sup>25</sup> Mr. Van de veld  
16 explained that because it was a Sunday morning, he had no way of getting in touch with a judge

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18 instructing all officers (with the exception of Sergeant Cress) as to what to do and what duty to  
19 perform that night.

20 <sup>22</sup> Officer Tan’s “scene check” was so meticulous and detailed that he even noted there  
21 were “multiple cases of beer neatly stacked by brand – 27 Miller Lites, 4 Buds, and 9  
22 Budweisers.”

23 <sup>23</sup> According to Mr. Salazar, he asked Mrs. Cha for the keys to the premises and  
24 proceeded to assist her in locking the doors and securing the establishment.

25 <sup>24</sup> Mr. Van de veld said that Mr. Cha was not specific as to whether he was inside or  
26 outside the premises when he called that morning, but Mr. Van de veld assumed that Mr. Cha  
27 was calling from outside the premises based on their conversation.

28 <sup>25</sup> The United States called Officer John Anthony Leon Guerrero Perez, the affiant on the  
search warrant application, as a witness at the December 30, 2008 evidentiary hearing. Officer  
Perez testified that based on his review of the police reports, the police secured the Blue House  
premises at about 9:22 a.m. when Officer Steven Topasna was posted outside the Blue House.

1 then. Mr. Van de veld said he would go to the Blue House as soon as he was available<sup>26</sup> to  
2 monitor the police activity and take notes of his observations, in the event he would need to  
3 protect his client's rights in the future. Mr. Van de veld received one or two other calls from  
4 Mr. Cha while at the golf course, and Mr. Van de veld reassured him that he would stop by the  
5 Blue House on the way home from the golf course.

6 At about 12:45 p.m., Mr. Van de veld and his golf partners proceeded to the Blue House  
7 Lounge. Upon arrival, Mr. Van de veld spoke with the officer present,<sup>27</sup> who told him that the  
8 premises had been "detained" since early morning, about midnight. According to Mr. Van de  
9 veld, the officer also stated that no one was allowed to enter or exit the premises. Mr. Van de  
10 veld then asked on what authority were the police "detaining" the premises, to which the officer  
11 replied that Mr. Van de veld should direct all questions to the shift supervisor, Officer  
12 Manibusan.<sup>28</sup> Mr. Van de veld was advised that Officer Manibusan was at the Tamuning-  
13 Tumon Precinct. Mr. Van de veld had to drop his colleagues back to Hagatna, so he left the  
14 number of his cellular phone with the officer and asked the officer to have Officer Manibusan  
15 call him. Shortly after leaving the premises, at about 1:00 p.m., Officer Manibusan called Mr.  
16 Van de veld and informed him that the premises were being "detained" and had been so  
17 "detained" since about 1:00 a.m. Officer Manibusan also advised Mr. Van de veld that the  
18 people present at the Blue House were still currently at the precinct being interviewed.  
19 According to Mr. Van de veld, Officer Manibusan further stated that the case had been turned  
20 over to the criminal investigation section ("CIS"), and CIS was in the process of obtaining a  
21 search warrant.

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23 <sup>26</sup> Mr. Van de veld was at the golf course with two colleagues when Mr. Cha called that  
24 morning. Because Mr. Van de veld had transported the two individuals to the golf course, he  
25 believed it would be rude to leave just then in response to Mr. Cha's call.

26 <sup>27</sup> Mr. Salazar also testified that when he drove by the Blue House Lounge between 12:30  
27 and 1:00 p.m. that afternoon, he saw a patrol car parked in front of the establishment and an  
28 officer sitting by the front door on a stool.

<sup>28</sup> Mr. Van de veld testified that the officer identified his shift supervisor as "Sergeant  
Manibusan." For purposes of consistency, the court will refer to him as "Officer Manibusan."

1 Mr. Van de veld next returned to the Blue House Lounge at about 2:30 p.m. At that  
2 time, Officer Yi was guarding the Blue House, and Mr. Cha and an individual named Ike  
3 Camacho were also present. Mr. Van de veld asked if Officer Yi had any further information  
4 about the search warrant, and Officer Yi replied that he had no information and Mr. Van de veld  
5 would have to speak with the shift supervisor. Officer Yi also advised Mr. Van de veld that  
6 there had been a shift change so Officer Manibusan was no longer on shift but that Sergeant  
7 Quenga was now in charge. Mr. Van de veld then requested to speak with Sergeant Quenga,  
8 and Officer Yi radioed in the request.

9 Sometime between 3:15 and 3:30 p.m., Sergeant Quenga arrived at the Blue House  
10 premises and advised Mr. Van de veld that some people were still being interviewed at that  
11 time. Mr. Van de veld further testified that Sergeant Quenga informed him that he (Sergeant  
12 Quenga) was not involved in obtaining the search warrant but that CIS was working on it.  
13 Sergeant Quenga also said that no one from CIS had arrived at the precinct to pick up the police  
14 reports.

15 Mr. Van de veld testified that he told Sergeant Quenga that he was concerned about Mr.  
16 Cha's health.<sup>29</sup> Mr. Van de veld asked Sergeant Quenga if Mr. Cha could go into the residence  
17 to obtain his testing equipment and insulin, but Sergeant Quenga stated that he could not  
18 authorize it since someone from CIS would have to authorize such entry. Mr. Van de veld then  
19 inquired when Sergeant Quenga would next be speaking with someone at CIS. According to  
20 Mr. Van de veld, Sergeant Quenga said that although CIS was called hours ago, CIS still had not  
21 done anything. Mr. Van de veld testified that Sergeant Quenga informed him that CIS said  
22 someone would be by to pick up the completed police reports at about 4:00 p.m. Mr. Van de  
23 veld then requested that Sergeant Quenga keep him advised about the progress in obtaining the

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25 <sup>29</sup> Mr. Van de veld testified that when he first saw Mr. Cha that afternoon at about  
26 1:00 p.m., he noticed that Mr. Cha was very pale and was perspiring heavily with noticeable  
27 beads of perspiration on Mr. Cha's forehead. Mr. Van de veld knew that Mr. Cha was diabetic,  
28 so he asked Mr. Cha when he last checked his blood sugar. Mr. Cha responded that he last  
checked it the day before. Mr. Cha further informed Mr. Van de veld that his testing equipment  
and insulin were located inside the residence.

1 search warrant, and Sergeant Quenga agreed.

2 Mr. Van de veld said he next spoke with Sergeant Quenga about one-and-a-half hours  
3 later. Sergeant Quenga told Mr. Van de veld that CIS had finally picked up the police reports  
4 after 4:00 p.m. and that the request to permit Mr. Cha to access to his residence to obtain his  
5 medical items had been passed on to CIS.<sup>30</sup> Sometime after 7:00 p.m., CIS personnel arrived at  
6 the Blue House and escorted Mr. Cha into the residence so that he could retrieve his testing  
7 equipment and insulin. Mr. Cha then realized that he was out of insulin. By that time it was too  
8 late for Mr. Cha to go to refill his prescription.

9 At about 10:00 p.m. another shift change occurred. Mr. Van de veld remained with Mr.  
10 Cha at the Blue House until about 1:00 a.m. the following morning (January 14, 2008). Mr.  
11 Van de veld proceeded home to get some sleep.

12 Officer Perez was employed with GPD for almost 11 years and was currently assigned to  
13 CIS. According to Officer Perez, on January 13, 2008, he was not scheduled to be on duty that  
14 day but about 9:20 a.m. he received a call from his supervisor, Anthony Camacho, advising him  
15 that he was being activated and that he should report to the CIS office at Tiyan at about noon.  
16 According to Officer Perez, Officer Camacho informed him that police officers had responded  
17 to the Blue House because of some issue involving a passport. Officer Camacho further told  
18 Officer Perez that CIS was being activated because preliminary investigations uncovered the  
19 possibility of human trafficking offenses.

20 Officer Perez arrived early for the noon briefing, and he spoke with Officer Bia Nanoto,  
21 a Chuukese police officer with GPD. Officer Nanoto told Officer Perez that he had been  
22 activated earlier that morning to act as a translator for the various interviews of the Chuukese  
23 females. Officer Nanoto then briefly relayed the information he had gathered to Officer Perez.  
24 Other officers began to arrive, and shortly thereafter Officer Camacho began to brief the CIS  
25 officers as to what had transpired. According to Officer Perez, this briefing lasted about 90  
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27 <sup>30</sup> Officer Perez testified that he was aware of Mr. Van de veld's request to have Mr. Cha  
28 retrieve his medicine and blood glucose meter from the residence.

1 minutes. Officer Camacho advised them that the police reports were still being prepared.  
2 Officer Perez was thereafter tasked with drafting the application for a search warrant of the  
3 premises.

4           Officer Perez testified that he told Officer Camacho that he needed to obtain copies of all  
5 the reports so that he could prepare the application. While he waited for the reports to be  
6 finalized, Officer Perez began preparing the application by changing the caption on a previous  
7 affidavit he had prepared and by updating information concerning his background and  
8 experience. Officer Perez testified that he expected to receive the completed police reports  
9 by 3:00 p.m., but when he did not receive them by that time, he called the precinct and asked to  
10 speak with either Officer Laxamana or Officer Tan. The desk watch officer told Officer Perez  
11 that they were still in interviews. Officer Perez testified that he did not receive all the police  
12 reports until sometime after 6:30 p.m. Officer Perez began his review by reading the  
13 “preliminary report” prepared by Officer Laxamana. Officer Perez stated he chose to read  
14 Officer Laxamana’s report first because Officer Laxamana was one of the first two officers at  
15 the scene. He reviewed each report, and proceeded to draft portions of the application as he  
16 completed his review of each report.

17           Officer Perez testified that he was never told that time was of the essence in drafting the  
18 application for search warrant. Officer Perez stated that he had been advised that the premises  
19 had been secured earlier and would be so secured until such time as the search warrant was  
20 obtained. Thus, Officer Perez did not believe he needed to hurry and obtain the search warrant.  
21 Officer Perez further testified that his sense of urgency to finalize the search warrant application  
22 was because the police could only execute the warrant during “daylight hours,” which ended  
23 at 10:00 p.m. In Officer Perez’s experience, judges only authorized search warrants after  
24 daylight hours in cases involving firearms or narcotics. This case involved neither firearms nor  
25 controlled substances. Officer Perez also stated that it was his personal preference to read all  
26 the reports and include as much information as possible on the application for search warrant.  
27 Officer Perez said this was his practice because he wanted his affidavit to be as accurate as  
28 possible and because he wanted to be prepared in the event the reviewing judge had any

1 questions for him.

2 When Officer Camacho called Officer Perez at 9:15 p.m. inquiring about the status of  
3 the drafting of the search warrant application, Officer Perez stated that he had just finished  
4 reading Officer Laxamana's report<sup>31</sup> and that he could not complete the application in time to  
5 permit execution of the search warrant during daylight hours. A few minutes later, Officer  
6 Camacho called Officer Perez again and told him that he (Officer Camacho) had just spoken  
7 with the Chief Prosecutor, Philip J. Tydingco, about the matter. Officer Camacho instructed  
8 Officer Perez that Mr. Tydingco wanted to review the completed search warrant application first  
9 thing the following morning before it was presented to a judge at the Superior Court of Guam.<sup>32</sup>

10 Officer Perez stated that he thereafter continued drafting the application. He testified  
11 that it was not until about 10:00 p.m. that he began reading Officer Tan's report. Officer Perez  
12 finally left the CIS office at about 4:00 a.m. on January 14, 2008, after he had completed the  
13 application. He thereafter went home, but returned to work at about 7:50 a.m. to pick up the  
14 documents he had left at the office. He then proceeded to the Justice Building where he met  
15 with Assistant Attorney General Diane Corbett, who reviewed the application and found it  
16 satisfactory. Officer Perez then proceeded to the Judicial Center in search of a judge who could  
17 review and grant the application for a search warrant.<sup>33</sup> Finally, at about 10:25 a.m. the search  
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19 <sup>31</sup> Upon questioning by the court, Officer Perez testified that Officer Laxamana's report  
20 was about seven (7) pages long.

21 <sup>32</sup> Officer Perez testified that in his past experiences, he never had to show a search  
22 warrant application to a prosecutor before presenting it to a judge. According to Officer Perez,  
23 the only reason why he waited to bring the matter to a judge was because Mr. Tydingco had  
24 requested that his office review the application before its submission to a judge. Officer Perez  
25 testified that had he finished the application at 10:00 p.m., he would have preferred to present it  
26 directly to a judge, even if it meant having to go to a judge's home. Unfortunately, Officer Perez  
27 did not finish drafting the application until about 4:00 a.m., so he did not want to disturb a judge  
28 at that hour.

26 <sup>33</sup> Officer Perez testified that he called the chamber staff of one judge at about 8:15 a.m.  
27 but was advised that the judge was not in yet. Officer Perez had also been subpoenaed to appear  
28 at an unrelated court proceeding that morning, so after he was released from his subpoena, he  
then sought an audience with the next available judge who could review the search warrant

1 warrant was issued.

2 At about 1:15 p.m. on January 14, 2008, Officer Amaguin called Mr. Van de veld to  
3 inform him that the search warrant had been authorized. Officer Amaguin stated that CIS  
4 wanted to execute the search warrant at 2:00 p.m. and requested Mr. Cha's presence at the  
5 premises to unlock the doors. Mr. Van de veld requested that the search warrant execution be  
6 postponed<sup>34</sup> until 4:00 p.m. because he had to attend a court hearing.<sup>35</sup> Officer Amaguin denied  
7 the request and stated that the police would have to break down the doors if they were locked.  
8 Mr. Van de veld and Mr. Cha arrived at the Blue House Lounge between 2:50 and 3:00 p.m.  
9 The police had already begun the search of the premises, and said search continued until  
10 about 1:00 a.m. the following morning.

### 11 CONCLUSIONS OF LAW

12 In their pleadings, the Defendants challenge the lack of probable cause for (1) the  
13 warrantless initial entry into the Blue House Lounge in the early morning hours of January 13,  
14 2008, and (2) the search warrant that was eventually issued on January 14, 2008. At the  
15 conclusion of the hearing held on December 31, 2008, the Defendants conceded that the police  
16 had probable cause. The only argument propounded by the Defendants at the conclusion of the

17 \_\_\_\_\_  
18 application.

19 <sup>34</sup> Mr. Van de veld testified that Mr. Cha was concerned about large sums of cash he had  
20 hidden throughout the house. According to Mr. Van de veld, Mr. Cha had received the money a  
21 few days prior to the incident, and the money was to be used for a cash bid. Mr. Van de veld and  
22 Mr. Cha were afraid that the money may go missing after a search of the premises was  
23 conducted. Mr. Van de veld testified that he first expressed this concern to Sergeant Quenga  
24 when Sergeant Quenga arrived at the Blue House at about 3:30 p.m. on January 13. Sergeant  
25 Quenga said he would pass the information on to CIS. Mr. Van de veld also stated that he raised  
26 this issue again when CIS personnel arrived to escort Mr. Cha into the residence that evening.  
27 Unfortunately, when Officer Amaguin arrived at 3:00 p.m. the following afternoon to execute the  
28 search warrant, Officer Amaguin told Mr. Van de veld that no one told him about the cash in the  
residence. During the search warrant execution, Mr. Cha was permitted to accompany the  
officers into the residence and pointed out where the cash was hidden.

<sup>35</sup> By this time Mrs. Cha had been arrested, and Mr. Van de veld anticipated that Mrs.  
Cha would be brought before the Superior Court sometime later that afternoon. Mr. Van de veld  
stated that Mr. Cha had to be at court to help secure his wife's release.

1 evidentiary hearings was that the premises (both the business establishment and the private  
2 residence) were unlawfully and unreasonably seized for over 30 hours before police obtained a  
3 search warrant to search the premises. Defense counsel argued that suppression of all evidence  
4 obtained during the search warrant execution was warranted because the premises were  
5 unlawfully seized for a period of time longer than reasonably necessary for the police, acting  
6 with diligence, to obtain a warrant. The United States, on the other hand, asserted that the  
7 seizure of the premises for that period of time was not unreasonable while the police, acting  
8 with diligence, worked to obtain the warrant.

9 In Segura v. United States, 468 U.S. 796 (1984), the Supreme Court acknowledged the  
10 differences between searches and seizures. The Court stated that “[d]ifferent interests are  
11 implicated by a seizure than by a search. A seizure affects only the person’s possessory  
12 interests; a search affects a person’s privacy interests.” Id. at 806 (citations omitted). Because  
13 of the “generally less intrusive nature of a seizure, . . . *the Court has frequently approved*  
14 *warrantless seizures of property, on the basis of probable cause, for the time necessary to*  
15 *secure a warrant*, where, a warrantless search was either held to be or likely would have been  
16 held impermissible.” Id. (citations omitted; emphasis added).

17 In Segura, the defendants challenged the warrantless entry and securing of their  
18 apartment from within while agents sought to obtain a search warrant. The Segura case  
19 involved a 19 hour delay between the time the apartment was seized until a warrant was  
20 secured. The Supreme Court eventually concluded that there was no evidence on bad faith on  
21 the part of the officers in terms of purposely delaying the securing of a warrant and that “delay  
22 in securing a warrant in a large metropolitan center , , , is not uncommon.” Id. at 812. Thus, the  
23 Court found that this 19-hour seizure was not unreasonable under the Fourth Amendment.

24 More importantly, in Segura, both defendants, whose possessory interests were  
25 interfered with by the seizure, were under arrest and in police custody throughout the entire  
26 period the officers occupied their apartment. The Court noted that “interference with their  
27 possessory interests in the apartment and its contents was . . . virtually nonexistent.” Thus,  
28 under those limited circumstances, the court was not prepared to say that the seizure was

1 unreasonable under the Fourth Amendment. The same can not be said here.

2 In Illinois v. McArthur, 531 U.S. 326 (2001), police officers had probable cause to  
3 believe that a home contained contraband, which was evidence of a crime. The officers  
4 reasonably believed that defendant McArthur, the home resident, would destroy the evidence if  
5 left alone and not restrained. The officers refused to allow him to reenter his residence for about  
6 two hours until they diligently obtained a warrant. During that two hour period, the police did  
7 allow him entry into the residence but only if accompanied by a police officer. Given the nature  
8 of the intrusion and the police officers' diligence in obtaining a search warrant within a  
9 reasonable period of time, the Court found the brief seizure to be reasonable.

10 In McArthur, the Court recognized four factors which were critical in reaching their  
11 conclusion. First, the police had probable cause to believe that the defendant's home contained  
12 evidence of contraband, namely unlawful drugs. Second, the police had good reason to believe  
13 that the defendant would destroy the drugs if left alone, unrestrained, before the procurement of  
14 the search warrant. Third, the police made "reasonable efforts to reconcile their law  
15 enforcement needs with the demands of personal privacy. It only prevented the defendant from  
16 entering his home unless accompanied by a police officer. Fourth, the "police imposed the  
17 restraint for a limited period of time, namely two hours." Id. at 332.

18 Applying those factors to the present case, the court finds the police had probable cause  
19 to believe that the business premises contained evidence of a crime, possibly prostitution –  
20 indeed defense counsel conceded as much during their closing argument. Unlike McArthur,  
21 however, here the police had no probable cause to believe that the residence contained any  
22 contraband.

23 As to the second factor, the court finds there was no reason to fear that Mr. Cha would  
24 destroy evidence within the business premises or within his home quarters. There were no drugs  
25 within the premises. Furthermore, he was not under arrest. He accompanied and drove his wife  
26 to the Tamuning-Tumon Precinct when his wife alone was directed to go there. While at the  
27 precinct, he was allowed to leave there and did so on one occasion unaccompanied to get food  
28 for his wife.

1 With regard to the third factor, the court finds that the police did not make reasonable  
2 efforts to reconcile their law enforcement needs with the demands of personal privacy. Mr. Cha  
3 was at his residence at least by 8:00 a.m. on January 13, 2008, when he called his attorney  
4 because he could not get into his residence to get his testing equipment and insulin. There was a  
5 police guard at Mr. Cha's residence and the officer did not allow Mr. Cha entry into his  
6 residence. The officer appeared to have explained that he was not authorized to allow anyone  
7 entry into the premises. Despite inquiries from his attorney throughout the day, Mr. Cha was  
8 still not able to get entry into his residence until a CIS officer came to the premises much later in  
9 the evening and allowed him entry into his residence. This occurred approximately eleven (11)  
10 hours after his initial attempt to gain entry into his residence. This complete denial of entry to  
11 his home for eleven hours hardly compares with the police action in McArthur where the  
12 defendant was permitted to reenter his residence accompanied by a police officer whenever he  
13 wanted prior to the procurement of the search warrant. Mr. Cha certainly had a possessory  
14 interest in his home that was substantially interfered with by the police. Unlike the defendants  
15 in Segura, Mr. Cha was not under arrest in police custody; yet, he categorically was not allowed  
16 to enter his home until CIS determined it so.

17 Applying the third factor to Mrs. Cha, the court notes that she was detained throughout  
18 the entire 33-hour period. Her possessory interest in her home can be said to be minimal. The  
19 same however, cannot be said regarding her possessory interest in the business establishment.  
20 While she may have been detained and arrested, she could have authorized the re-opening of the  
21 business and could have requested her husband to do so. Because of the seizure, the business  
22 was not able to open. While the allegations that she operated a prostitution house constitute a  
23 criminal offense, the opening of the lounge for the sale of alcoholic spirits is not illegal.

24 Finally, in applying the fourth factor the court finds 33 hours until procurement of the  
25 search warrant to be unreasonable. In McArthur, the Court found two hours to be a reasonable  
26 time frame in restricting the defendant from reentering his home without a police escort while  
27 the police diligently sought the warrant. In this case, it appears from the testimony presented  
28 that the police officers did not know they had a duty to diligently move to secure the search

1 warrant. More importantly, Officer Perez, the officer tasked with drafting the search warrant,  
2 did not know that he had a duty to diligently pursue the drafting and eventual approval of the  
3 warrant by a detached magistrate. He had facts within his knowledge with which he could draft  
4 a search warrant with probable cause since he was at the briefing on the morning of January 13  
5 when certain information was first divulged. But not knowing there was a sense of urgency, he  
6 waited until the police reports were all completed before he began drafting the warrant  
7 application. Officer Perez cannot solely be faulted for delaying the drafting of the information  
8 because he did not know there was urgency to do so. He testified that had he known there was a  
9 sense of urgency, he would have acted much sooner. But there was a sense of urgency and a  
10 duty of diligence because the possessory interests of Mr. Cha to the home and Mrs. Cha to the  
11 business enterprise were being interfered with by the police.

12 In this case, the court finds that the seizure of the premises, which includes the Blue  
13 House Lounge business establishment along with the adjoining private residence of the  
14 Defendants, occurred at about 1:30 a.m. on January 13, 2008. While the United States asserts  
15 that a seizure did not occur until 9:22 a.m. when Officer Topasna was posted outside of the Blue  
16 House Lounge, such an assertion is contradicted by the testimony of Mr. Van de veld, which  
17 establishes that the police were guarding the Blue House Lounge as early as 8:00 a.m. when Mr.  
18 Cha called him to inform him that the police would not permit him to access his residence. The  
19 court bases its finding on the fact that at 1:30 a.m., Officer Manibusan ordered that the Blue  
20 House Lounge cease its operations. Without such an order, the establishment would have stayed  
21 open for a few more hours, until 4:00 a.m. Officer Manibusan also directed all customers to  
22 leave the premises but only after they had been interviewed by the police. Officer Manibusan  
23 further demanded that Mrs. Cha secure the premises. The Defendants did as they were  
24 instructed to do by Officer Manibusan. Furthermore, even the GPD officers themselves  
25 acknowledged to Mr. Van de veld that the premises had been “detained” since about 1:00 a.m.  
26 that morning. The Defendants’ possessory rights to their business establishment and their home  
27 had been significantly interfered with by the police’s actions that morning. Thus, the court  
28

1 concludes that the seizure of the premises began at about 1:30 a.m.<sup>36</sup>

2 The Defendants acknowledge that the police had probable cause to secure the premises  
3 at that time. However, “a seizure reasonable at its inception because based upon probable cause  
4 may become unreasonable as a result of its duration or for other reasons.” Segura, 468 U.S. at  
5 812. The duration of the warrantless seizure here lasted approximately 33 hours – from about  
6 1:30 a.m. on January 13, 2008, to about 10:30 a.m. on January 14, 2008, when the search  
7 warrant was issued.

8 While it does not concede that the duration of the warrantless seizure was for a period in  
9 excess of 30 hours, the United States asserts that the police acted diligently in completing their  
10 investigation and then drafting the affidavit of probable cause to support the issuance of the  
11 warrant. Additionally, the United States contends that the period of delay between 4:00 a.m.  
12 (when Officer Perez finished drafting the application) and 10:30 a.m. (the time when the  
13 warrant was eventually issued) should be not be held against it because Officer Perez could not  
14 seek a judge’s approval given the time, and the earliest he could seek an audience with a judge  
15 was at about 10:30 a.m. on January 14, 2008.

16 The court respectfully disagrees with the United States’ assertions. In this case, even  
17 without reviewing a single written police report, Officer Perez had sufficient information  
18 following his noon briefing to establish probable cause to support a warrant. Officer Perez  
19 spoke with Officer Nanoto, who was personally present during the interviews with the Chuukese  
20 females who described the alleged prostitution scheme occurring at the Blue House Lounge.  
21 During the briefing, Officer Perez also learned of Officer Tan’s discovery of a half-naked man  
22 in the back room with Vivian, who later admitted that they were engaging in sexually activity.  
23 Armed with this information received from fellow officers who heard the statements personally,  
24 Officer Perez could have sought a search warrant immediately, however, he chose not to take  
25 such action. Rather than wait for written reports to be prepared for his review, Officer Perez

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27 <sup>36</sup> Even if the court accepted the United States’ contention that the seizure began at  
28 9:22 a.m., the duration of such a seizure would still be approximately 25 hours, and for the  
reasons discussed *infra*, such a time frame is unreasonable under the circumstances present here.

1 could have also personally attended the interviews of the alleged victims, which he had been  
2 advised were ongoing. Again, he chose not to. Officer Perez testified that he wanted to wait for  
3 the written reports because he only had the alleged victims pseudonyms and not their actual  
4 names. Officer Perez stated that in the past when he referred to an unidentified individual in a  
5 search warrant application as a source of information or “SOI,” the reviewing judge always  
6 questioned him about the SOI’s identity. The court notes that many search warrant applications  
7 contain information relating to an unidentified SOI or confidential informant, or even  
8 individuals identified by their pseudonyms when the police do not know their real names. The  
9 court has never denied a request for a search warrant based on the fact that an application  
10 contains a pseudonym as opposed to an individual’s real name, and the court finds it odd that  
11 any judge would do so.

12       Officer Perez let his “personal preferences” dictate the speed at which he reacted to the  
13 situation. Officer Perez knew that the premises had been secured since early that morning, yet  
14 he did feel the need to hurry and obtain a warrant. Officer Perez admitted that while at the  
15 police academy, he was never taught that “time was of the essence” once the police have  
16 secured a premises, that the police had to act with deliberate haste to obtain the warrant. Officer  
17 Perez knew that Mr. Cha wanted to obtain his medication and blood glucose meter from the  
18 residence, yet this did not prompt him to work quicker. Mr. Cha was denied access to his home  
19 for several hours to retrieve his insulin and testing equipment, but the police did not even give  
20 this a second thought. “The sanctity of the home is not to be disputed,” Segura, 468 U.S. at 810,  
21 especially under these circumstances when an individual’s physical well being depends on his  
22 ability to access his home to retrieve the equipment and medicine he needs. Instead, Officer  
23 Perez’s sense of urgency was driven by the need to meet a 10:00 p.m. deadline to execute the  
24 warrant during daylight hours. When it appeared that he could not meet the 10:00 p.m.  
25 deadline, Officer Perez continued in his relaxed fashion to review every written police report.  
26 Officer Perez himself stated that he did not feel the need to rush anymore because Mr.  
27 Tydingco, the Chief Prosecutor, had also directed that the Attorney General’s office review the  
28 application “in the morning” before it was presented to a judge. This nonchalant attitude simply

1 does not comport with the Supreme Court’s mandate that police act with due diligence in  
2 obtaining a warrant once the premises are secured. Police officers on Guam know that when  
3 exigent circumstances are present and there is an urgency to obtain a search warrant, a detached  
4 magistrate may be located at any hour to approve a warrant application.

5 In its closing arguments, the United States cited to cases wherein courts have upheld  
6 seizures which lasted longer than the 33 hours at issue here. The court finds these cases to be  
7 inapplicable to the facts before the court because those cases dealt with the seizures of parcels  
8 sent in the mail, whereas here the court is faced with the situation where the police have seized  
9 not only a business establishment but a home. The United States can not contest the fact that for  
10 several hours Mr. Cha was denied his possessory interest to his home and the medicine and  
11 equipment he needed which were secured therein. The interference with Mr. Cha’s possessory  
12 interests cannot be characterized as being “minimal” as argued by the United States. It was  
13 incumbent upon the police to secure a search warrant as quickly as they could. Although the  
14 warrantless seizure here was supported by probable cause, this did not relieve the police of their  
15 duty to act promptly in securing a warrant in the instant case. Under the totality of the  
16 circumstances presented here, the court finds that the police officers did not act with due  
17 diligence in obtaining the warrant.

### 18 RECOMMENDATION

19 Because the court finds that the premises were seized much longer than reasonably  
20 necessary for the police, acting with due diligence, to obtain a warrant, the court hereby  
21 recommends that the Defendants’ motions to suppress be granted.

22 IT IS SO RECOMMENDED.



23 /s/ **Joaquin V.E. Manibusan, Jr.**  
24 **U.S. Magistrate Judge**  
25 **Dated: Feb 19, 2009**