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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 UNITED STATES OF AMERICA,

CR 14-196 CRB

11 Plaintiff,

NOTICE OF MOTION TO DISMISS FOR
SELECTIVE PROSECUTION; MOTION TO
12 COMPEL PRODUCTION OF DOCUMENTS;
REQUEST FOR EVIDENTIARY HEARING

12 v.

13 KWOK CHEUNG CHOW, aka
RAYMOND CHOW,

14 Defendant.
15 _____/

Date: August 21, 2015
Time: 10:30 p.m.
Dept: Hon. Joseph C. Spero

16 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE UNITED STATES
ATTORNEY FOR THE NORTHERN DISTRICT OF CALIFORNIA:
17

18 PLEASE TAKE NOTICE that on the date and at the time indicated above, KWOK
19 CHEUNG CHOW, through counsel, will and hereby does move this Court for an order
20 dismissing the Indictment filed against him due to the Government's politically tainted selective
21 prosecution or, at a minimum, for an order to compel this discovery shedding light on the
22 spurious charging decisions made by the United States Attorney in this matter.

23 The instant prosecution must be dismissed because Chow was targeted and selectively
24 prosecuted for associating with the Ghee Kung Tong, a fraternal organization in San Francisco,
25 the Chinese Free Masons, his outspoken and open dialogue relating to past criminal activity and
26 ties, and his increasing legitimate political influence. This prosecution is in violation of his right
27 to free assembly and free speech guaranteed under U.S. Const. amends. I and XIV, and the
28 Equal Protection Clause of the Fifth Amendment. U.S. Const. amend. V.

1 Defendant requests such information that would reveal the true motivations behind
2 prosecuting Chow, who maintains factual innocence, and those political figures whose conduct
3 was criminal according to the FBI. Finally, Chow asks for an evidentiary hearing so that persons
4 with knowledge regarding the decision to prosecute certain individuals can be questioned as
5 consistent with the Confrontation Clause. The charging decision must be justified.

6 This motion is predicated on the non-exhaustive and select files and records herein,
7 including relevant excerpts from discovery pursuant to paragraph 15 of the Protective Order
8 issued in this case¹, and on the following memorandum of points and authorities and declaration
9 of counsel.

10 Dated: August 3, 2015

11 /s/CURTIS L. BRIGGS
12 J. TONY SERRA
13 CURTIS L. BRIGGS
14 GREG M. BENTLEY
15 Attorneys for Defendant
16 KWOK CHEUNG CHOW

¹/ Attached as Exhibit 3.

1 **SUMMARY OF THE ARGUMENT**

2 “To the extent that you’re going to exercise your discretion, it’s easier to do that
3 when it hasn't seen the light of day. It is harder to ignore if you're the government
when it was all over the news.”~Melinda Haag, United States Attorney

4 Even a formerly notorious gang leader turned community leader is entitled to exercise
5 his First Amendment right to free assembly in any lawful organization without retaliation, is
6 entitled to exercise his free speech and talk to the press and media, and should not be prosecuted
7 due his or her positive political support from the community—in fact reform should be rewarded.
8 Raymond Chow was selectively prosecuted for exercising his constitutional right to associate
9 with the Ghee Kong Tong, his participation and self promotion in the media, as well as his
10 increasing political influence which was perceived as at threat to the establishment. Mr. Chow
11 was denied such Constitutional protection and, accordingly the Indictment against him must be
12 dismissed. U.S. v. Armstrong (1996) 517 U.S. 456, United States v. U.S. Dist. Ct., Cent. Dist. of
13 Cal., 717 F.2d 478, 480 (9th Cir. 1983), U.S. v. Marshall (9th Cir. 1976) 532 F.2d 1279, Wayte
14 v. U.S. (1985) 470 U.S. 598. However, should that argument not prevail, defense further asserts
15 that such evidence is discoverable pending appeal under the Due Process Clause of the Fifth and
16 Fourteenth Amendments and applicable case law, including Brady v. Maryland, 373 U.S. 83
17 (1963); Kyles v. Whitley, 514 U.S. 419 (1995); and their progeny, to the extent that such
18 evidence contains material and exculpatory information. Once those with knowledge of the
19 charging decision are identified, the Court should order a hearing so that those persons can be
20 questioned to fully investigate this defense. Anything less is a denial Chow’s Constitutional
21 rights and it would be injurious to the public to further suppress the truth about this case to the
22 citizens of San Francisco.

23 **STATEMENT OF FACTS**

24 Federal authorities descended on Chinatown with massive highly funded federal
25 surveillance resources specifically targeting the American-Chinese “threat” with no actual
26 suspicion of criminality. They were armed only with racist assumptions.² The timing was
27 serendipitous for the Government because massive resources were required to investigate Chow

28 _____
²Domain Management and ACLU docs.

1 because as there was no evidence of criminal conduct on his part. Instead of walking away from
2 the table the Government doubled-down as has become the pattern when it comes to Chow. It
3 was about the same time Chow debuts on a well known television documentary discussing his
4 past as a gang leader and flaunting his freedom as his revenge to the Government. He did so
5 because he needed the money and he hoped to build his public image in preparation of selling
6 his movie rights.

7 Surveillance began shortly thereafter leading to a full scale operation in 2009 which,
8 according to discovery, it appears was solely for political reasons as evidenced by the fact that
9 the only FBI documentation from that time period relates to Chow's political success. The
10 investigation stagnated quickly and is characterized by literally years of attempting to lure Chow
11 into breaking the law to no avail.³ In fact, the agent provocateurs were never able to get Chow
12 to knowingly engage in any criminal conduct.⁴ Two years into the operation the government
13 brought in a new UCE and focused on Chow's associates to advance their objectives.⁵ Four years
14 later and still bankrolled by the taxpayer, Government has admitted that the political corruption
15 investigation instigated contrary to desire of the government;⁶ what it has not admitted is that it
16 resulted in snagging at least a dozen bottom feeding political types. These well known locals
17 were inching each other out of the way for the next bundle of cash.

18 Despite widespread reporting in the press, not one politician implicated actually had
19 enough respect for themselves, the community, or our democratic process, to come forward and
20 admit involvement.⁷ Each of these "public servants" were allowed to progress through the
21 November 2014 election process unscathed because of a protective order issued in this case.⁸
22 Instead the public was allowed to stew in the indicted parties alleged culpability after a blast of

23
24 ³/ Exhibit 1: Section A

25 ⁴Delete after all citations are added

26 ⁵Siu's 302?

27 ⁶/ Delete after all citations are added

28 ⁷/ Insert Breed, Cohen, Lee's denial, law suit. (Make Exhibit 2)

⁸/Add protective order as Exhibit 3 and cite to it here

1 media headlines, while people who actually were in a position to do damage while betraying the
2 public trust remained nameless—all in the context of what was sold as a public corruption and
3 organized crime investigation.

4 These investigations consisted of electronic, physical, and aerial surveillance, wiretaps,
5 body wires, covert audio and video recording in apartments and vehicles, confidential human
6 informants, boating trips, Las Vegas trips, numerous fake identities, real estate investors, the
7 restaurant industry, over two million dollars in faux money laundering, and over \$50,000 in
8 payments to local elected and appointed public officials. The FBI shipped truckloads of fake-
9 stolen liquor and cigarettes across the country, contracted murder for hire on fake people, and
10 agents paraded around with \$20,000 watches posing as nouveau multi-cultural La Cosa Nostra.⁹
11 Yet, despite all of what the Government claimed to be damning evidence against all the
12 defendants, the reality is that the evidence was at least as damning to the unindicted politicians
13 and in Mr. Chow’s case, the whereabouts of anything incriminating is still a mystery.

14 As the indictments came in, it became clear that certain individuals, starting with Mr.
15 Chow, were targeted for their perceived political allegiances, political and communal
16 association with the Hung Moon Ghee Kong Tong, while others were not indicted due to their
17 political affiliations, potential of disruptive fallout, social connections and more. Another
18 illustration is the fact that the Government successfully engaged both Senator Yee and Mayor
19 Ed Lee in bribery scandals, yet only indicted Yee who was Lee’s opponent and who posed the
20 threat of diverting Chinatown political support away from Ed Lee and David Chiu. It has yet to
21 be established, but appearances are such that the United States Attorney was complicit with
22 local politicians to rid Chinatown of any alternate voices including Chow.

23 The Government is targeting Chow for exercising his First Amendment right to free
24 assembly and free association with the Ghee Kong Tong.¹⁰ The Ghee Kong Tong is over 150
25

26 ⁹/Add 302's As Exhibit 19 and cite to it here

27 ¹⁰/ AUSA Frentzen was so disinterested in any real criminality on the part of Chow that
28 he neglected to even mention Chow as a target intercepted in the first and only wiretap
application applied and signed for by Frentzen which was wiretap 6 of 8, Bates 400830. It seems
no technicality was going to prevent this prosecution of Chow.

1 years old, and was formed by Chinese immigrants to help other immigrants find housing, work,
2 support and was, for many, the only means of survival in America. The San Francisco Ghee
3 Kong Tong is a federally recognized non-profit corporation with a mission to support the well-
4 being of the community and promote Chinese culture. The organization is a community-based
5 organization, and Chow is the “Dragonhead,” akin to the President of the organization. His
6 dedication is noteworthy, as he uses his position in his Tong to enhance community welfare
7 despite his own personal financial hardships.¹¹

8 Mr. Chow’s individual right to come together with other members of the Chinese
9 community in San Francisco and collectively express, promote, pursue, and defend their ideas, is
10 recognized as a human right, political right and civil liberty, and he attended hundreds of
11 community events a year starting in 2006.¹²

12 Despite Mr. Chow dedicating his life to helping the community, speaking as a part of
13 gang prevention workshops, and promoting Chinese culture ideals, the government has been
14 mounting the present attack on Chow dating back to at least 2008.¹³ In a 2008 docudrama,
15 “Gangland”, Chow spoke out in an unbridled manner, explaining his past, but with the inability
16 to announce past tense in English, Chow stated “I run this city” among other attestations. This
17 was an affront to the city, an insult to San Francisco politicians. His attitude was cavalier and at
18 times brash, and defense contends that discovery, if necessary, will reveal a systematic attempt
19 to entrap and selectively prosecute Mr. Chow because of his past criminal activity as replayed
20 time and time again on “Gangland”, and present affiliation and association with the San
21 Francisco Ghee Kong Tong.

22 In fact, the indictment and the press releases from the Government that followed show an
23 extremely high price paid for any person even remotely connected to Chow; including three
24 African-Americans who were slanderously branded Chinese Freemason racketeers in exchange
25

26 _____
27 ^{11/} See Declaration fo Curtis L. Briggs.

28 ^{12/} See Declaration of Curtis L. Briggs.

^{13/} Need screenshot for this. Get screenshot and add to Exhibit 1: Section B

1 for an extremely unusual non-cooperation agreement and light sentence, relatively speaking.¹⁴
2 In Senator Yee's case, he was identified by the prosecution to the media as someone who was
3 involved in "organized crime" merely because he issued an accommodation to Chow's
4 organization during this investigation.¹⁵

5 Further evidence of the targeting of Mr. Chow is the effect of the selective prosecution in
6 this case. There is a bewildering yet fitting theme that came to light when looking at those who
7 were implicated and charged, and those who were not. It is clear that among the indicted
8 defendants and those implicated yet not charged, those who skirted charges were part of the
9 political "in crowd," individuals who were all at one time appointed, connected, extremely
10 closely associated with Melinda Haag, Gavin Newsom, Willie Brown, Annemarie Conroy, or
11 Diane Fienstein, creating the appearance and potential reality that the integrity of those decisions
12 to indict, or not indict, was undermined by either *de facto* improper influence or the United
13 States Attorney's perceived negative socio-political consequences by the unindicted person's
14 known political allies. This is not the first time Melinda Haag has been accused of political
15 interference since she took the position in 2010 as stated by members of Congress:

16 "We are very concerned to learn earlier this week that, despite the U.S. Attorney's request
17 for permission from the Justice Department to proceed with indictments, this request was
18 recently denied without explanation, despite the backing of both the FBI and the U.S.
19 Attorney's Office. We are deeply concerned that political pressure may be a factor and are
20 formally requesting an investigation into the circumstances of the Justice Department's
21 actions with regard to this case." — Rep. Frank Wolf and Rep. Lamar Smith.¹⁶

22 With less than four years as head prosecutor of the Northern District at the time of this
23 indictment, the stench of political corruption undermining the integrity of the charging process
24 against Mr. Chow is intolerable.¹⁷ It has taken far less to ignite countries into chaos and civil

24 ^{14/} Cite to docket of Jackson, Jackson, and Sullivan. (Find relevant docket and add as
25 Exhibit 4)

26 ^{15/} A proclamation the Ghee Kung Tong routinely earned without undercover operatives
27 orchestrating it.

28 ^{16/} <http://freedomoutpost.com/2013/03/eric-holder-plays-fast-furious-loose-with-space-weapons-technology/#oBvSft66tIYj74sw.99> (Add as Exhibit 5)

¹⁷Insert Grassley to Haag, Grassley to DOJ, Briggs to Grassley

1 war, and people get seriously injured over systemic corruption in prosecutions dictated by
2 politics world-wide. The result is never fair. This Defendant requests such information that
3 would shed light and justify the disparity in prosecution and also to send a message to the
4 community that democracy still has a pulse, albeit weak.

5 A prosecutor's discretion is subject to constitutional constraints. One of these
6 constraints, imposed by the Equal Protection Component of the Due Process Clause of the Fifth
7 Amendment, is that the decision whether to prosecute may not be based on an unjustifiable
8 standard as that which the Government applied in the present proceedings. For the foregoing
9 reasons, in addition to granting discovery, the present Indictment must be dismissed.

10 **ARGUMENT**

11 **I.**

12 **THE PRESENT INDICTMENT MUST BE DISMISSED**
13 **BECAUSE THE DECISION TO PROSECUTE RAYMOND**
14 **CHOW WAS DISCRIMINATORY IN EFFECT AND INTENT**

15 The Indictment against Mr. Chow must be dismissed on grounds of selective prosecution
16 because of the Government's discriminatory effect and intent in deciding to prosecute Mr.
17 Chow. The United States Attorney indicted Mr. Chow in retaliation for the exercise of his right
18 to free assembly and speech guaranteed under U.S. Const. amends. I and XIV.¹⁸ Although the
19 First Amendment does not explicitly mention freedom of association, the Supreme Court ruled,
20 in National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449
21 (1958), that the freedom of assembly was protected by the First Amendment and further held in
22 Roberts v. United States Jaycees stated that "implicit in the right to engage in activities protected
23 by the First Amendment" is "a corresponding right to associate with others in pursuit of a wide
24 variety of political, social, economic, educational, religious, and cultural ends." Roberts v.
25 United States Jaycees, 468 U.S. 609 (1984). A First Amendment without the right of assembly
26 would leave a major gap in a framework of freedoms designed to allow us all to participate fully
27 in the "marketplace of ideas," as first set forth nearly 100 years ago in Abrams v. United States,

28 ¹⁸ See 302's (Add them as Exhibit 6)

1 250 U.S. 616, 630 (1919). This uncontroverted right of assembly reaches into political and
2 cultural organizations, including Chinese tongs, including the Ghee Kong Tong.

3 A defendant seeking relief on a claim of selective prosecution must show some evidence
4 of both discriminatory effect and discriminatory intent. To succeed on a claim of selective
5 prosecution, a defendant must demonstrate that (1) similarly situated person have not been
6 prosecuted (United States v. Bass (2002) 536 U.S. 862, 864), and (2) that he was selected for
7 prosecution on the basis of an impermissible ground, such as race, religion or the exercise of a
8 constitutional right. United States v. DeTar (9th Cir. 1987) 832 F.2d 1110.

9 Moreover, United States v. Armstrong (1996) 517 U.S. 456, 464-465 explains that:

10 [A] prosecutor's discretion is "subject to constitutional constraints." One of these
11 constraints, imposed by the equal protection component of the Due Process
12 Clause of the Fifth Amendment,, is that the decision whether to prosecute may
13 not be based on 'an unjustifiable standard such as race, religion, or other arbitrary
14 classification.' A defendant may demonstrate that the administration of a criminal
15 law is 'directed so exclusively against a particular class of persons ... with a mind
16 so unequal and oppressive' that the system of prosecution amounts to a practical
17 denial of equal protection of the law.

18 Yick Wo v. Hopkins (1886) 118 U.S. 356, 373. (internal citations omitted)

19 A. Discriminatory Intent

20 To show discriminatory intent, Chow must demonstrate that he was selected for
21 prosecution on the basis of an impermissible ground, such as race, religion or the exercise of a
22 constitutional right. United States v. DeTar (9th Cir. 1987) 832 F.2d 1110. The intent of
23 selective prosecution violates the Equal Protection Clause "where the decision to prosecute is
24 made either in retaliation for the exercise of a constitutional right, such as the right to free
25 speech or to the free exercise of religion." Esmail v. Macrane (7th Cir. 1995) 53 F.3d 176, 179.

26 In the present case, the Government targeted Chow, in violation of his First Amendment
27 rights, in light of his assembly and ongoing association with the political and community based,
28 San Francisco Chinese organization, known as the Ghee Kong Tong thus violating U.S. Const.
amends. I and XIV., and U.S. Const. Amend. V.

Specific reasons the Government targeted Chow are because he was attempting to profit
off of his life story though book and movie rights; because he appeared on "Gangland" and

1 members of the prosecution team interpreted this as an insult; because Chow was promoted to
2 Dragonhead of the Ghee Kung Tong and quickly developed respect; because Chow attempted to
3 administrate Chinatown Market Night more effectively than others had done so before; because
4 Chow generated political support and momentum as is evidenced by legitimate demonstrations
5 organized by Chow at City Hall, which caused such resentment it led politicians like David Chiu
6 to wear a body wire to try to set Chow up.

7 1. Chow's Life Story Was Worth Millions

8 The story is simple: in 1991 Congress called on the United States Attorney to rid this
9 country of Peter Chong and Raymond Chow.¹⁹ Almost twenty-five years later, both men are
10 free, and the government stands incompetent after having essentially spent nearly three decades
11 torching through countless millions of taxpayer dollars with nothing to show for it but a solid
12 lack of confidence in our public servants with a remedy that has yet to be forthcoming. The
13 Government was so fixated on prosecuting Chow that they produced a blockbuster of their own:
14 Operation Whitesuit. With not one crime occurring without the undercover agent's invention,
15 financing, and urging, it was a giant flop. The actors did not know their lines as evidenced by
16 the actual recordings. Every FBI Agent and United States Attorney who took part in the
17 downward departure of Raymond Chow in 2002 and the attempted imprisonment of Peter
18 Chong which failed for good in 2007 is now the butt of the next generations' jokes—not exactly a
19 success story for prosecutorial discretion and professionalism in the execution of an operation.

20 In a combination of jealousy and pride, qualities usually not associated with entire
21 massively funded bureaucracies, Chow's potential Hollywood success was too much for FBI
22 and Northern District leadership. One of the first items of Chow's in the latest prosecution that
23 was surreptitiously taken by a confidential informant and turned over to the FBI were the audio
24 recordings Chow used to memorialize his life story²⁰. There was hardly a conversation between
25 Chow and the undercover agent that did not involve Chow discussing his book.²¹ Even in late

26 _____
27 19

28 ²⁰/ Exhibit 1: Section C

²¹/ Exhibit 1: Section D

1 2010, before the undercover agent finally found someone in Chinatown who was associated with
2 Chow and was willing to commit a crime behind Chow's back at the undercover's direction, the
3 FBI recorded *not one* mention of a crime in contemplation anywhere near Chow but he never
4 missed an opportunity to discuss his book and movie deal and newfound political clout in
5 Chinatown. It was Senator Yee, in an unrelated part of the case, explaining what a magnet
6 Chow was for law enforcement, that said his sources claimed the FBI felt like Chow was
7 "kicking sand" in their face by trying to sell the rights to his story and that Chow needed to "lay
8 low" if he wanted the heat off.²²

9 Raymond Chow's life story represented, in the eyes of some agents and prosecutors, a
10 failure on their part. One aspect of that failure was the calamity of allowing Chow to beat the
11 United States Attorney and the FBI in a 52 count highly publicized RICO prosecution. Then the
12 regrettable mistake of allowing Chow out of prison more than a decade sooner than scheduled in
13 exchange for his assistance in prosecuting Peter Chong who successfully won his appeal and
14 was released (not coincidentally) in 2007. Salt in the wound stung even more after two failed
15 deportation attempts. One other aspect of the smoldering ashes of pride was the failure to keep
16 Chow poor enough to be susceptible to invitations to engage in crime via cash kick backs by
17 undercover agents because even this was frustrated when they underestimated the discipline and
18 commitment Chow had to living a law abiding life.

19 Among the prosecutors who failed in their objectives with Chow were Brian Stretch and
20 William Schaefer among others. Brian Stretch, who is on record saying that Chow's conduct in
21 2002 was "exemplary" and that he agreed that Chow's S-Visa should have been processed as
22 early as 2005²³, was thrust into a jet stream of upward mobility at the U.S. Attorney's Office on
23 the back of actions the office took prosecuting Chow before it became apparent they failed in
24 2007.²⁴ In fact, in the wake of the latest swipe the Government is taking to satisfy their fetish
25

26 ^{22/} Exhibit 1: Section E

27 ^{23/} DO WE HAVE A CITATION FOR THIS?(Find screenshot and add to Exhibit 1:
28 Section F)

^{24/} <http://www.justice.gov/usao-ndca/senior-leadership> (Add as Exhibit 7)

1 with Chow, with Chow in custody, Stretch will ascend to the highest position replacing
2 Melinda Haag in September.²⁵

3 One of the aspects of Chow's circumstances that was never justified, likely because it
4 was inescapably embarrassing, is why those individual prosecutors worked so hard to prevent
5 the government from following through with their agreement to give Chow an S-Visa and a new
6 identity in the mid-2000's.²⁶ At the time, their objective was to likely keep Chow in Chinatown
7 so that Chong's supporters could attempt to kill him, and they could be embroiled in a larger
8 RICO case than before so they could save face and usher in a new wave of promotions.

9 The best indicator that Chow's incarceration or death was a fixation of the Government
10 is that the chance to get rid of Chow, or to assist Chow, or to ignore Chow, was always at the
11 Government's disposal and they could have easily given him his new identity but instead while
12 Chow sued two times in two years in federal court to get out of Chinatown and on with his new
13 life, the Government, Brian Stretch specifically, stood fast and kept Chow close by.²⁷ In the
14 process they diminished the United States Government in the eyes of those considering
15 cooperation with law enforcement, an already highly controversial but relied on practice in the
16 federal system, and they violated principles of Natural Law in regard to their treatment of Chow.
17 It was a gamble but it was worth it to put away the kingpin Peter Chong. It was worth it until
18 Schaeffer, a fading light after the deal was cut to free Chow in 2002, and Stretch, now in his
19 management chair with city wide views, had to explain to their colleagues how they let Chow
20 and Chong get away as they watched Chow on "Gangland" with a thick Cantonese accent
21 exclaiming to the audience "I run this city."²⁸

22 Not only was releasing Chow early in exchange for Peter Chong's conviction difficult to
23

24 ^{25/} Approximately ten days after a FOIA appeal prevailed regarding communications
25 between Haag and unindicted parties in this investigation, Haag has, without warning or an
26 alternative career plan, decided to step down. See Exhibits B and C. (Change Exhibits B and C
to Exhibits 8 and 9 before attaching.)

27 ^{26/} Make Docket Exhibit 10 and cite here

28 ^{27/} Make Docket Exhibit 10 and cite here

^{28/} Hypothesis

1 justify on its face, but especially so shortly after Peter Chong was freed as one of the biggest
2 “one that got away” gangsters of all time. He flew as a free man home to China in 2007. As the
3 Government had realized, it had essentially chased its tail for decades; Chong was settling in to
4 a first-class plane ride home with complementary refreshments.

5 Chow, tired of being indigent and not allowed to work, confined to the Bay Area due to
6 an ICE ankle monitor, began to promote his life story as a means of financial success.²⁹ Part of
7 what Chow did was to become highly visible as an ex-gang leader who survived even the FBI’s
8 grasp in “Gangland” for a mere \$2,000. He spoke of his sexual exploits, narcotics trafficking,
9 and yet he developed a cult following and celebrity status. Teenagers love Chow. Unlike the
10 FBI, he is pop culture icon.

11 As people speculated about his criminal activities which were actually non-existent,
12 Chow devoted his free time to community service. It was not long before Chow was intervening
13 in racial violence, feeding the poor, helping people get drug treatment, and perhaps the biggest
14 grain of sand in the government’s eye was his passionate and devoted and well covered in the
15 press lecture series to school children. While Mayor Ed Lee and United States Attorney
16 Melinda Haag were cosponsoring anti-bullying campaigns³⁰, co-authoring letters to the public,
17 and hosting Batman in Gotham City to help one child, it was Chow who was the real life super
18 hero because he had the strength and reputation to stand toe-to-toe with the population that
19 needed assistance helping many; and unlike the United States Attorney, Chow was getting
20 results.³¹

21 Without actual meaningful discovery it will never be known, but it can be speculated
22 because of the amount of Government resources devoted to tracking Chow’s Hollywood
23 progress that the agents and prosecutors who wanted to save face, were all but ignited into fury
24 every time they saw Chow on the news, nicely dressed, speaking to children about the ills of
25

26 ^{29/} Exhibit 1: Section G

27 ^{30/} A few months after Ed Lee’s trusted staffers and he stopped taking money from UCE
28 4773. (Add relevant material as Exhibit 11)

31/ Cite to media (Add as Exhibit 12)

1 gangs and drugs. Chow was doing more to keep the community safe than the Government. That
2 does not bode well for bureaucratic survival.

3 2. Success As Dragonhead Provoked the Government

4 As the United States Attorney's Office and the FBI were marinating in the aftermath of
5 their charging decisions over the Chong debacle, the semi-elite ruling class of San Francisco
6 took note of Chow's rise to success as a community leader. It was through no fault of Chow's,
7 as revealed in this investigation, that the FBI could not solve the very public assassination of the
8 previous Dragonhead of the Chinese Freemasons.³² This stung as badly as the Golden Dragon
9 Massacre years before because it was widely televised. Chow's attendance as the only person in
10 white at the funeral, sparked public discussion, which inevitably made the FBI look as though
11 they were incompetent because how else could they not catch Chow. Due to a lack of
12 understanding of cultural traditions, the Government had to explain how Chow could flout their
13 authority while indigent and on an ankle monitor. Every time they turned around, Chow was on
14 television and getting stronger and stronger. The fact that they named this Operation Whitesuit
15 is telling as to the resentment the FBI has towards Chow going back to the former Dragonhead's
16 funeral due to Chow's homage in a white suit.³³

17 Chow finally took over the ailing Market Night in 2009. This is what pushed the
18 Government from saturated surveillance to provocateur. Chow and his dutiful Tong members
19 went to other market nights and observed, took notes, and began to implement changes which
20 led to success. This was too much for local politicians. Gavin Newsom pulled funding from
21 Market Night because of Supervisor David Chiu's public fit which amounted to nothing more
22 than a child crying for their favorite blanket—in his case the support of his constituents. Chiu's
23 desperation and fear, not of Raymond Chow himself, but of the political support he was gaining,
24 is evident from the FBI and media reports surrounding Market Night.³⁴

25

26 ^{32/} Media (Add as Exhibit 13)

27 ^{33/} Media (Add as Exhibit 14)

28 ^{34/}Media. Add as Exhibit 15

1 Chow was administering Market Night even though Chow only took \$1 a year as pay.³⁵
2 Newsom was very public about pulling funding. But it was young ex-prosecutor supervisor,
3 David Chiu, who showed just how low the FBI and the local politicians would stoop to get
4 Chow out of their way by wearing a bodywire and secretly trying to provoke Chow into
5 threatening him at a public anniversary banquet.³⁶ Much can be said about the establishment's
6 all out fear and paranoia by reviewing the numerous FBI reports addressing Chow's political
7 clout.³⁷ Chiu's resentment of Chow's ability to get people to turn out to lawfully demonstrate is
8 telling, and it is exactly the perverse mentality of political entitlement that made this group of
9 San Francisco's leadership think it would be okay not to indict the "in crowd"; apparently
10 thinking it would go without question by a judge or at least one defense team out of twenty-nine.

11 ³⁸

12 B. Discriminatory Effect

13 To demonstrate the discriminatory effect of a prosecution, a defendant must also
14 demonstrate that similarly situated person have not been prosecuted. (United States v. Bass,
15 (2002) 536 U.S. 862, 864). The discriminatory effect of the present prosecution is shown in
16 the fact that other similarly situated individuals, who are operating in a (more in this case)
17 culpable manner, have not been charged with Chow.

18 Generally, the FBI violated a federal law known as the Hatch Act, 5 U.S.C. §§ 7321-
19 7326 (2015), by allowing dozens of undercover agents to make official campaign contributions
20 to mayoral candidates in 2011, brazenly usurping congressional will.³⁹ The FBI then targeted
21 mayorial candidates and political persons and, in fact, bribed them, bought guns from them, and
22

23 ^{35/} Add pages below as Exhibit 16

24 <http://www.sfgate.com/bayarea/article/Mayor-sinks-Shrimp-Boy-market-3229114.php>;
25 <http://www.sfgate.com/bayarea/article/Change-at-Chinatown-market-under-city-scrutiny-3229809.php>; http://abclocal.go.com/story?section=news/local/san_francisco&id=6859162

26 ^{36/} Exhibit 1: Section H

27 ^{37/} Exhibit 6

28 ^{38/} Exhibit 1: Section I

³⁹ Delete footnote once all citations have been added.

1 caught at least one district attorney candidate laundering campaign donations back and forth
2 with Senator Leland Yee. Yet, as an ultimate affront to justice, Melinda Haag carved out from
3 prosecution those who committed crime and have more overwhelming evidence against them
4 than many of the charged defendants, particularly Chow.

5 Specifically, the FBI alleged in discovery that Ed Lee took substantial bribes in exchange
6 for favors and that Human Rights Commissioners, Nazly Mohajer and Zula Jones, hustled in
7 these bribes for the Mayor. The United States Attorney asked for a RICO charge on Keith
8 Jackson and Leland Yee for similar conduct. Lee, Mohajer, and Jones remain unindicted.⁴⁰
9 Zula Jones, already the subject of a previous federal investigation which ended up being thrown
10 out by a sympathetic judge, is reported by the FBI explaining that Willie Brown taught Ed Lee
11 how to do business: “You pay to play here. We got it. We know this. We are the best at this
12 game uh better than New York. We do it a little more sophisticated than New Yorkers. We do it
13 without the mafia.”⁴¹

14 Sharmin Bock, an Alameda County District Attorney, was also given an unexplainable
15 pass. She was picked up on the wiretap on multiple occasions conspiring with Leland Yee to
16 exchange donations to defeat campaign finance limits while she was running for District
17 Attorney.⁴² She remains unindicted and, in fact, she is still a prosecutor. One of the unindicted
18 parties stated “If you need some help in Alameda, we can use her you know. She is a fucking
19 DA.”⁴³

20 Sululagi Palega, a director of the MTA, formed a bond with UCE 4599. During a
21 meeting at Waterbar Restaurant on the Embarcadero, Palega agreed to provide numerous
22 weapons to the undercover agent so that the agent could protected his illegal narcotics
23 business.⁴⁴ Palega sold at least one firearm to the man who the FBI claims was allegedly an

24
25 ⁴⁰ Delete footnote once all citations have been added.

26 ⁴¹/ Exhibit 1: Section J

27 ⁴²/ Exhibit 1: Section K

28 ⁴³/ Exhibit 1: Section L

⁴⁴/ Exhibit 1: Section M

1 Italian Mafioso.⁴⁵ Prior to the sale taking place, Palega used a City of San Francisco car to come
2 and go from a meeting at Town Hall with UCE 4599 at which Palega provided an update on his
3 ability to procure assault rifles, hand grenades, and ammunition.⁴⁶ He handed the UCE a Sees
4 Candy box with a gun in it and said “Enjoy the candy.”⁴⁷ He remains unindicted.

5 Reverend Amos Brown⁴⁸, Reverend Arnold Townsend⁴⁹, Derf Butler⁵⁰, Malia Cohen⁵¹,
6 and London Breed⁵² were all implicated in dramatic pay to play schemes including calling into
7 doubt the efficiency and real purpose of the One Stop Career Center in the Fillmore. Derf Butler
8 is reported as saying "Okay, however you want it, it's fine with me. Cause you know the main
9 thing is we get someone that understands it's pay to play."⁵³ Butler, an ex-felon at the heart of
10 several controversies, is a close associate of London Breed who is a supervisor in a district
11 where young children join gangs and are murdered before they can ever ‘pay to play.’ Butler
12 allegedly takes Breed shopping for clothes and touts himself as something akin to a pimp
13 explaining to Jackson that you have to teach an official how to be corrupt.⁵⁴

14 If what was reported by the FBI is true about Arnold Townsend, vice-president of the
15 NAACP during this investigation, Townsend was unapologetically on the payroll of CHS-11 for
16 Townsend's apparent political influence. Not only were they not investigated to the point they
17 were indicted, Breed and Cohen were allowed to misrepresent the extent of their involvement in
18 this investigation. Breed totally unscathed claiming she had met with the agent once or twice but

19
20 ^{45/} Exhibit 1: Section N

21 ^{46/} Exhibit 1:Section O

22 ^{47/} Exhibit 1: Section P

23 ^{48/} Exhibit 1: Section Q

24 ^{49/} Exhibit 1: Section R

25 ^{50/} Exhibit 1: Section S

26 ^{51/} Exhibit 1: Section T

27 ^{52/} Exhibit 1: Section U

28 ^{53/} Exhibit 1: Section S

^{54/} Exhibit 1: Section T

1 knew he was a hustler ended up being “thick as thieves.”⁵⁵

2 Contrary to other similarly situated individuals who have not faced prosecution, Chow
3 was operating at all times in a lawful manner. People like Zula Jones are not first time
4 offenders⁵⁶ and they have already been implicated in similar conduct which is rumored to have
5 resolved as a result of judicial misconduct in the local courts. Mohajar reportedly called the
6 UCE and explained the process by which she launders Ed Lee’s campaign money before she
7 realized she had called the wrong number.⁵⁷ That is how one acts when they are above the law.
8 Ed Lee was not even elected into office before he was reported to the United States Attorney as
9 conducting campaign money laundering in two separate incidents. He took over \$20,000 from
10 federal agents in his first four months in office and hit the ground running as mayor with an
11 enormous amount of reported gifts including paid trips across the world. According to Jones
12 and Mohajar, Ed Lee knew he was taking money illegally.⁵⁸

13 Moreover, defense asserts that discovery, if produced, will reveal that Annemarie
14 Conroy used her position of influence to cull political figures out of the prosecution, and
15 selectively prosecute others. Conroy is the U.S. Attorney in charge of External Affairs and is the
16 Law Enforcement Coordinator, and she was appointed as a San Francisco Supervisor by Gavin
17 Newsom. She went to work for Willie Brown, and London Breed was her assistant while she
18 helped Brown part out Treasure Island.

19 The Government is retaliating against Chow for not fading into the shadows or placing
20 himself in a position to be incarcerated for life, but rather exercising his right to free speech; the
21 Government should be assisting reformed criminals and not tempting them, if not for any other
22 reason than to reinforce behavior that makes society safer instead of the other way around.
23 Defense asserts that it has been the vendetta of the Government to keep Mr. Chow behind bars
24 for the rest of his life. In 2006, he was arrested and charged with extortion, incarcerated for ten

25 55

26 56/ Add as Exhibit 16

27 57/ Exhibit 1: Section V

28 58/ Exhibit 1: Section V

1 months, and thereafter released. ICE tried to deport him twice since 2002 to no avail. Defense
2 asks for an unredacted ICE file as part of this discovery order. Rarely is an American-Asian
3 arrested that they are not asked about Raymond Chow. The Government has never lost its lust
4 for him.

5 Presently, despite a life dedicated to his community, reforming the youth of Chinatown,
6 and lawful activity as the Dragonhead of the Ghee Kong Tong, the Government is targeting and
7 prosecuting Mr. Chow and the vindictiveness can be out of the prosecutor's voice at the
8 detention hearing as quotes were exaggerated and misrepresented. This vindictiveness can be
9 seen at every step of the prosecution from seating all arrestees in a circle around Chow in the
10 'war room' when booking codefendants, to having Chow housed farther than any in-custody
11 codefendant, to requiring judicial intervention just to see his discovery. When asked if Chow
12 could trade the original manuscript of his life story seized by the FBI for a copy due to
13 sentimental reasons about his life's work, the prosecution rejected the request. See United
14 States v. McWilliams (9th Cir. 1984) 730 F.2d 1218, 1221 (personal vindictiveness on the part
15 of the charging prosecutor would support a claim of discriminatory prosecution); Esmail v.
16 Macrane (7th Cir. 1995) 53 F.3d 176, 179 (selective prosecution is also actionable "where the
17 power of government is brought to bear on a harmless individual merely because a powerful
18 state or local official harbors a malignant animosity toward him"); Indiana State Teachers Ass'n
19 v. Board of School Commissioners (7th Cir. 1996) 101 F.3d 1179, 1181 (where people identical
20 in relevant ways are treated differently, the disadvantaged person can state an equal protection
21 claim).

22 Protection against selective prosecution not only safeguards important individual rights
23 but also buttresses the integrity of the justice system itself. Abuse of prosecutorial power
24 undermines public confidence in the justice system and alienates groups within society.
25 "Therefore, the judicial system has a stake in discouraging improper selective prosecution and
26 should do so both by granting a remedy in the rare case in which a defendant establishes a

1 constitutional violation and by airing allegations of selective prosecution.”⁵⁹ This is the rare
2 case. Chow is reformed. There is no danger in allowing him to go free.

3 The government’s actions amount to selective prosecution and the Superseding
4 Indictment must be dismissed accordingly.

5 II.

6 MR. CHOW IS ENTITLED TO DISCOVERY
7 TO INVESTIGATE HIS SELECTIVE PROSECUTION CLAIM

8 The Government’s actions regarding this prosecution, standing alone, requires dismissal
9 of the present Indictment. However, in the alternative, discovery of all records relating to the
10 government’s decision to commence federal prosecution against Mr. Chow must be disclosed to
11 Defense counsel. United States v. Armstrong (1996) 517 U.S. 456 (U.S. 1996). . U.S. v.
12 Armstrong (1996) 517 U.S. 456, United States v. U.S. Dist. Ct., Cent. Dist. of Cal., 717 F.2d
13 478, 480 (9th Cir. 1983), U.S. v. Marshall (9th Cir. 1976) 532 F.2d 1279, Wayte v. U.S. (1985)
14 470 U.S. 598. The Government refuses to disclose this information.

15 CONCLUSION

16 Every single American needs an efficient, fair, healthy, and effective federal law
17 enforcement agency, and in the bigger picture, wether that person be a criminal defendant or a
18 criminal defense attorney, or a prosecutor, or a judge, it is contrary to every citizen’s best
19 interest to allow political meddling from interfering with FBI investigations. This is abusive and
20 disrespectful of those line agents who risk their lives day in and day out and to those who place
21 an extreme degree of importance on professionalism and integrity.

22 Politics free prosecutions are critical to Assistant United States Attorneys who are not on
23 the political fast track, but the AUSA’s who work eighty hour weeks and sacrifice time away
24 from their children so that they can put the real bad guys in jail. The devastating effect of the
25 interoffice pressure to maintain a high profile prosecution while defense attorneys and press

26
27 ^{59/} Poulin, Anne Bowen, Prosecutorial discretion and selective prosecution: enforcing
28 protection after United States v. Armstrong,
<http://law-journals-books.vlex.com/vid/prosecutorial-selective-enforcing-armstrong-53723571>,
accessed July 18, 2015. (Add as Exhibit 18)

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DECLARATION OF COUNSEL

I, CURTIS BRIGGS, declare:

I am an attorney licensed to practice in the State of California and before this court, and I am one of the attorneys of record for defendant KWOK CHEUNG CHOW.

It is my information and belief that the facts and statements set forth in the accompanying document are true and correct to the best of my knowledge and belief, and are based upon a review of all the discovery provided in the case, interviews with my client, my own investigation, and further information and belief.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on August 3, 2015, at San Francisco, California.

CURTIS BRIGGS

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, CR 14-196 CRB

Plaintiff,

v.

PROPOSED ORDER

KWOK CHEUNG CHOW, aka
RAYMOND CHOW,

Defendant.

_____ /

Upon request of defendant and good cause appearing,

IT IS HEREBY ORDERED that the Indictment filed against Kwok Cheung Chow is
dismissed or in the alternative, all communications regarding the charging decisions.

DATED:

HON. JOSEPH C. SPERO
U. S. District Court Judge