## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

In the Matter of the Application of

### ELLIOT MADISON AND ELENA MADISON

for an order, pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure returning property unlawfully seized from the premises

33-28 88th Street, Queens, New York, on October 1, 2009

MARTIN R. STOLAR, pursuant to 28 U.S.C. 1742, hereby declares:

- 1. I am the attorney for ELLIOT AND ELENA MADISON, owners of the premises 33-28 88th Street, Queens, New York, and submit this declaration in support of their motion, pursuant to F.R.Crim.P., Rule 41(g) for the return of certain property seized from their premises on October 1, 2009 pursuant to a search warrant issued by a magistrate Judge of this Court.
- 2. The search warrants executed at the premises and the inventories provided by the seizing agents are annexed to this declaration as Exhibit A. Upon information and belief, the search of the premises commenced at approximately 6 AM on October 1, 2009 and concluded at approximately 10 PM of the same day.
- 3. Upon information and belief, the seized items include political writings, notes, political associates and ideas, materials protected by the attorney-client and social work priivileges, as well as property belonging to other persons residing in the premises which have no connection to any pending or contemplated criminal investigation and which constitute the

private property of such other persons.

4. Both ELLIOT AND ELENA MADISON are political activists dealing with social justice issues as well as para-legal support workers for those contemplating political action and those arrested as a result of political demonstration activity.

ELLIOT MADISON is a social worker employed for the past 10 years by

Fountain House, a psych-social rehabilitation program with its principal office in Manhattan,

New York. He has two Masters degrees from the University of Wisconsin, including one in

Cultural Anthropology, supervises at least 15 employees of Fountain House and carries a social

work caseload of approximately 108 individuals.

ELENA MADISON is an urban planner employed for the past 10 years by the Project for Public Spaces and is currently an Assistant Vice-President of the organization. She holds a Masters degree in Urban Planning from Hunter College in New York City.

- 5. Both of the Madisons describe themselves as political anarchists and advocate and associate with others who advocate that political philosophy as it is applied to social and political justice issues facing all Americans. They have also been involved in providing legal assistance to others interested in expressing political points of view through demonstration and other activity and include in their work providing legal assistance to those who may be arrested at political demonstrations. This work is accomplished through a confederation known as "The Peoples' Law Collective."
- 6. Among the items seized from the premises are: (1) computers, cellphones and notes and documents containing the name and other identifying information of political associates of the Madisons', associations which are protected by the First Amendment to the Constitution of the United States; (2) records of social work clients of Mr. Madison which are

confidential; (3) anarchist literature and books, including writings of fiction and non-fiction authored by Mr. Madison; (4) property of other residents of the premises including a confidential U.S. Government computer in the custody of resident Jennifer Sobeleski which contains confidential information for a study funded by the U.S. Department of Health, computers, cameras, discs and tapes of filmmakers and residents Jamie and Irina Weiss, and business records and materials of resident Michael Wallschlager relevant to his delivery business and his radio talk show entitled "This Week in Radical History."

- 7. The search conducted by the agents lasted approximately 16 hours and swept up a number of documents and other properties having nothing to do with the governments investigation into what the search warrant characterizes as violations of "federal rioting laws". This application seeks a protective order prohibiting the indexing, analysis or examination of the seized materials and the appointment of a special master to review the seized materials to separate out that which is protected by the First Amendment, applicable privileges and irrelevance to the government's investigation and turn over to the investigating agents only those materials which are deemed to have evidentiary value. The illegality of the search is in the overbreadth of the seizures and the vagueness of the term "federal rioting laws".
- 8. ELLIOT MADISON was arrested by Pennsylvania State Police on September 24, 2009 in the suburbs of Pittsburgh, PA on September in connection with the police response to individuals and organizations protesting governmental policies at the recent G-20 meeting in Pittsburgh.

A copy of the criminal complaint covering that arrest is annexed as Exhibit B and includes the unusual charges of "hindering prosecution" by using computers and cellphones to communicate with demonstrators at the G-20 meetings.

9. Irreparable harm is likely to come if this order is not granted by allowing law enforcement to rummage through First Amendment protected materials as well as privileged materials. Materials containing political associates as well as their identifying information is also protected, as much as the membership lists of <u>NAACP v. Button</u> were.

10. No prior application for the relief requested in this application has been made to this or any other Court.

WHEREFORE, your declarant requests that the relief requested in the Order to Show Cause be granted.

Dated: New York, NY October 2, 2009

Martin'R. Stolar

\_\_\_\_ DISTRICT OF \_\_

In the Matter of the Search of

### United States District Court

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or property so described is now concealed on the person issuance of this warrant.	estimony establish probable cause to believe that the person on or premises above-described and establish grounds for the
YOU ARE HEREBY COMMANDED to search on or be	efore October 6, 2009
(not to exceed 10 days) the person or place named ab and making the search in the daytime - 6:00 A.M. to seize same, leaving a copy of this warrant and recei	Date ove for the person or property specified, serving this warrant 10:00 P.M. and if the person or property be found there to pt for the person or property taken, and prepare a written ly return this warrant to <u>DUTY MAGISTRATE</u> As required United States Judge or Magistrate
Date and Time Issued	Brooklyn, New York
Name and Title of Judicial Officer	Signature of Judicial Officer

### RIDER A

PROPERTY TO BE SEIZED AT PREMISES KNOWN AND DESCRIBED AS 3328
88TH STREET, QUEENS, NEW YORK AND ALL LOCKED OR CLOSED CONTAINERS
THEREIN:

Computers, hard-drives, floppy discs and other media used to store computer-accessible information, cellular phones, personal digital assistants, electronic storage devices and related peripherals, black masks and clothing, maps, correspondence and other documents, financial records, notes, ledgers, receipts, papers, photographs, telephone and address books, identification documents, indicia of residency and other documents and records that constitute evidence of the commission of rioting crimes or that are designed or intended as a means of violating the federal rioting laws, including any of the above items that are maintained within other closed or locked containers, including safes and other containers that may be further secured by key locks (or combination locks) of various kinds.

In the Matter of the Search of

## United States District Court

\_\_\_\_\_ DISTRICT OF \_\_\_\_\_\_ NEW YORK

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I am satisfied that the affidavit(s) and any recorded tes	stimony establish probable cause to believe that the person n or premises above-described and establish grounds for the
YOU ARE HEREBY COMMANDED to search on or bef	
(not to exceed 10 days) the person or place named above	Date ve for the person or property specified, serving this warrant
and making the search in the daytime - 6:00 A.M. to 1	0:00 P.M. and if the person or property he found there to
seize same, leaving a copy of this warrant and receipt	t for the person or property taken, and prepare a written
inventory of the person or property seized and promptly by law.	return this warrant to <u>DUTY MAGISTRATE</u> As required United States Judge of Magistrate
October 1, 2009 3:20 pm at	Brooklyn New York
Date and Time Issued Honorable Viktor V. Pohorelsky, Magistrate Judge, EDNY	City and Stay M
Name and Title of Judicial Officer	Signature of Judicial Officer

### RIDER A

PROPERTY TO BE SEIZED AT THE ENTIRE PREMISES KNOWN AND DESCRIBED AS 3328 88TH STREET, QUEENS, NEW YORK, INCLUDING THE GARAGE, GREENHOUSE AND RESIDENTIAL DWELLING AND COMPUTER AND ALL LOCKED OR CLOSED CONTAINERS THEREIN:

Computers, hard-drives, floppy discs and other media used to store computer-accessible information, cellular phones, personal digital assistants, electronic storage devices and related peripherals, black masks and clothing, hammers, pipes and other rioting tools, maps, correspondence and other documents, financial records, notes, ledgers, receipts, papers, photographs, telephone and address books, identification documents, indicia of residency and other documents and records that constitute evidence of the commission of rioting crimes or that are designed or intended as a means of violating the federal rioting laws, including any of the above items that are maintained within other closed or locked containers, including safes and other containers that may be further secured by key locks (or combination locks) of various kinds.

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CEORGE, SPIRIT OF 36, DAVILL MCGUMAN  ROOM K: 2 POSTERS	
1 CAT POSTER, MAGNETS, FLYER	5
PHOTOS, KODAK OISPOSABLE CAMERA	
NEN MEXICO LICENSE PLATE	
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ROOM H.	<del></del> ,.
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Received By: (Signature) Received From: (Signature)	

FD-597 (Rev 8-11-94)

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Page \_\_\_\_\_\_of \_\_\_\_\_

ile #	
On (date) /0/01/2009	item(s) listed below were Received From
	Returned To
	☐ Seized
Name)	
Street Address) 33-28 88 STREET	Jackson Heights, MY (Queens)
City) Jackson Height's (Queens) N	Joekson Heighls, MY (Queens)
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Description of Item(s): One (1) gluss a colored substance wrapped in rubbar band. One (1) glass gray colored substance. Captains winds	entaner with Unknown grey
colored substance wrapped in	1 Grown paper happins within
rubber band, Une (1) glas	S Container with Unknown
gray colored substance.	ne (1) box with corked
glass vials	
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	eived From: Maril S dooling

## UNITED STATES DEPARTMENT OF JUSTICE FEDERAL BUREAU OF INVESTIGATION Receipt for Property Received/Returned/Released/Seized \*

File # 266H-N7-301000 On (date) 10/11/2009 item(s) listed below were: Received From Returned To Released To Seized (Name) (Street Address) Room E. Notelooks, business Colds Garles Al Received By: Received From:

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	Case 1:09-mc-00647-DLI	Document 1	Filed 10/02/09	Page 24 of 40.		
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FD-597 (Rev	8-11-94)			Page	of	1
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## UNITED STATES DEPARTMENT OF JUSTICE FEDERAL BUREAU OF INVESTIGATION Receipt for Property Received/Returned/Released/Seized

item(s) listed below were: Received From Returned To Released To Seized Received From:

· FD-597 (Rev 8-11-94)

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File # 2004-NY-50100				w
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(Street Address) 32-28 88 4 Street Sack on He pts Week	NV	<u> "</u>
(City) (Vecas		
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(Name) ROOM I	<del>~</del> ·			<del> </del>
(Street Address) 33-28 88 <sup>1</sup> ).	51_	g. mag.		
(City) Jackson 113hh	Queens	· •	<u>.</u>	
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Description of Item(s): Paperwork	, Noterly	ukz, hal	dwill	ten
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File # 766H - N'Y - 301000	· ·
On (date) 10/1/2009	item(s) listed below were: Received From
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(Street Address) 33-28 88th Street	
(City) Trokson Heights, NY	
Description of Item(s): 1 Dell closhed or computer 5/4 9875341	1 from Room M.
3 Lenovo laptop computer s/n 13-(5P8X from Room M	1
@ Dell laptop computer sln 31 V DNG1 (rom Room M	
19) Trekstor external hard drive s/h 968968277 from	Room M
6 Maxtor 1216 GB external hard drive s/n 2HAPZYN	/ <b>2</b>
16 Trekstor blue USB drive from Room M	
VO Sanisk cruzer 4 GB USB drive from Room M	
V(8) Sandisk Chuzer 16 GB USB drine from Room M	<b>2m</b> €2.5
VQ Sardisk + GB SDAC cord from Room M	and the second s
- Foodisk 4 GB WHIO I SOHE raid from Room M	
(1) Homa blue 468 drive str 14826:0808 from For	om M (ww)
V(12) Onys 2GB black MP3 player from Room M	
13. Motorola 1294 ellphone boostmobile from Room M	1 (with charges) Sugges
V(19) While iphone with girl picture on the back from Room	M Chush charges
V (15) Somsung Voda (one cellphone s/h R277928948M fro	
V(B) Panasonic digital camera DMC-LX3 S/n F48LABHZA	•
V 1 Sandisk 26B micros D road in a Nikon ramera bag fre	
V (18)2 Sandisk 2 (118 11 Ha I ; D cook in Nikon camera hang from	
V(19) Kingston IGB SD (and in Noton Comera bog from Room	
- 10 Niton 140x degital common with a 24B scribs tor	
Received By: January Meceived From: (Signature)	

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File #		
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(Name)		
(Street Address) 3.26 BTF ST.	·	
(City) THEKSEN HEIGHTS, NY	·	
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Description of Item(s): D Newspers and Backlets		
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CU Arus pagers and backlets		
@ Boets, tacklets, newspipers; pins, silver tape	Durch"	
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UNITED STATES DEPARTMENT OF JUSTICE FEDERAL BUREAU OF INVESTIGATION Receipt for Property Received/Returned/Released/Seized  item(s) listed below were Received From Released To Scized  On (date)  On (date)  Lun G  Street Address)  Street Address)  Street Address)  Obscription of Item(s): (user Fulder Address), (user Splicy and the gulfs)  City)  Obscription of Item(s): (user Fulder Address)  Address Asserted decements March of Item Address Asse	597 (Rev 8-11-94)	cument 1 Filed 10/02/09 P	Pageof
On (date) 10/01/69 item(s) listed below were:    Received From   Returned To   Released To   Seized    Name   Rown G    Street Address   73-28 88th Street   Jackson Heights    City   Discress   NY    Description of Item(s): (usen Fuller w/distance)   (un sylloy example of the glasses)   10 graphs   10 gra	FEDERAL BY Receipt for Property	UREAU OF INVESTIGATIC y Received/Returned/Release	N
Received From Returned To Released To Seized  Name) Reserved From Returned To Released To Seized  Street Address) 3-28 8th Street Jockson Highlights  City) Description of Item(s): Green Fulder while minds, I'm Sylley Enamly to g which to	File # <u>#20011-20</u> y- 301000		•
Returned To Released To Seized  Name) Released To Seized  Street Address) 3-28 88 th Street, Jockson Houghts  City) Description of Item(s): Green Fulder while man's, Com Splay Enam 1 to g which to	On (date) 10/01/04	<u>,</u>	item(s) listed below were:
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Street Address) 33-28 88th Street, Jackson Heights  City) Observe, NY  Description of Item(s): Green Fulder w/date ments, Com Sylley and I be greated to	Name) Rom G		
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Received By: (Signature)

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## UNITED STATES DEPARTMENT OF JUSTICE

## FEDERAL BUREAU OF INVESTIGATION Receipt for Property Received/Returned/Released/Seized

(Name)  (Street Address) 32.28 88.41 St  (City) JACKEN Heights, My  Description of Item(s):  11 Gasmasks  5 Separate air filters  4 Arm pads  5 Geggls  1 Stingshot  8 Factnasks  1 bottles  1 plashe container in black cluffel bray  Documents framphick notebooks  Philips digital drine  15 Tillers  2 masks  1 trortainer holding filter & mask  L Test tubes  5 druppers  3 beefers  1 funnel	F118 #	and	
(Name)  (Street Address) 32.28 88 +1 St  (City) Jacker Heights, Ny  Description of Item(s):  11 Gasmasks  5 Separati air filters  4 Arm pads  5 Geggles  1 Stragshot  8 Factmasks  1 bottles  1 plashe container in black duffel bay  Documents pumphlek notebooks  Philips digital durine  15 Tillers  2 masks  1 tortainer holding litter & mask  L Test tupes  5 druppers  3 heeters  1 funnel	On (date) $\frac{16}{10}$ $\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$ $\frac{1}{2}$		
(Street Address) 33 38 88 41 St  (City) Jackson Heights, Ny  Description of Item(s):  11 Gasmasks  5 Separatic air filters  4 Hrm pads  7 leg pads  5 Gegalis  1 Slingshot  8 Factoriasks  1 bottles  1 plashe container in black duffel bag  Documents / pumphlek / notebooks  Philips digital duice  15 Tillers  2 masks  1 torrainer holding litter & mask  1 test tubes  5 druppers  3 beefers  1 funnel		Returned Released	To
Description of Item(s):  11 Gasmasks  5 Separati air filters  4 Arm pads  7 leg pads  5 Goggils  1 Slingshot  8 Factmasks  1 bottles  1 plashe container in Hack Chiffel bay  Documents pumptlek notebooks  Philips digital druine  15 Titlers  2 masks  1 tortainer holding filter & mask  1 test tobes  5 druppers  1 funnel	(Name)		·
Description of Item(s):  11 Gasmasks  5 Separati air filters  4 Arm pads  7 leg pads  5 Goggils  1 Slingshot  8 Factmasks  1 bottles  1 plashe container in Hack Chiffel bay  Documents pumptlek notebooks  Philips digital druine  15 Titlers  2 masks  1 tortainer holding filter & mask  1 test tobes  5 druppers  1 funnel	(Street Address) 33 28 88 +1 St	<u>ک</u>	
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(City) Jackson He	ights N		
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File #	1- 20/000		
On (date) (), +	ober 1, 2009		item(s) listed below were:  Received From Returned To Released To Seized
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(Street Address) 33	-18 SBHL Street	3	
(City) Ja	extraor Heights N		
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Address: 5624 5	STEUBENVILLE	PIKE		DEFEN	DANT.			(NAME	and AD	DRESS).	•	
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(The attorney for to filing. See Pa	rihe Commonwer .R.Grim.P. 507),	alth may require t	hat the complem	nt, arrest v	verrant a	fidavit, or b	oth be a	pproved by	r the attor	ney for the	Сотлопие	ealth prior
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		[24 482] - 24 12 - 24 12					(enpdi/	Islon Code	) (F	race-Politic	cal Subdivisi	on)
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		POLICE CRIMINAL COMPLAINT
Docket Number:	Date Filed: OTN/LiveScan Number	Complaint/incident Number
	G 478007-5	B03-1728049
Defendant Name	First: Middle: MAC	Last: MADISON

1. Your affiant is Trooper Mark YAKICIC; a investigative or law enforcement officer of the Commonwealth of Pennsylvania and United States within the meaning of section 5702 of the Pennsylvania Crimes Code and Section 2510(7) of Title 18, United States Code, as such, and am empowered by law to conduct investigations and to make arrests for offenses enumerated in Section 2516 of Title 18, United States Code.

I have been a member of the Pennsylvania State Police for in excess of twenty two (22) years. During this time, I have worked in the patrol function and as a plain clothes criminal investigator. I am currently assigned to the Bureau of Criminal Investigations, Special Investigations Unit - West, On 09-24-09, the Pennsylvania State Police

- 2. On 09-24-09 Tpr. Glen Hopey & Cpl Greg Kravitsky, acting on information received Re. criminal activity related to the Pittsburgh G20 Summit protests, obtained and served a search warrant on the at room 238, Carefree Inn, 100 Kisow Drive, Pittsburgh, PA 15205, which was described as a 2-story commercial L-shaped building, white stucco exterior, red and brown shingle roof with brown colored motel room doors.
- 3. As a result of this search, the defendant and his co-conspirator, Michael Thomas Wallschlaeger, were discovered within the said room. Both were observed seated infront of personal computers and telecommunication equipment, wearing headphones and microphones, with various maps, contact numbers and police and EMS scanners. It was further observed that they had been communicating with various protestors, and protest groups, both by us of cellular communications equipment and internet based communications, more commonly known as "Twitter". The observed "Twitter" communications were noted to be relevant to the direction of the movement of Protestors, and protest groups, in order to avoid apprehension, and to inform the protestors and groups of the movements and actions of law enforcement in response to the actions of those protestors and protest groups.
- 4. Initial computer forensics examination of the computer equipment varivies the aforementioned information. The aforementioned information confirms the use of the aforementioned equipment by the defendant, and Wallschlaeger, as other than its' normal, lawfully intended use, as well as for that of the directions of others in avoidance of apprehension for criminal acts committed during protest(s) of the G20 Summit.

I, TPR. MARK YAKICIC , BEING DULY SW THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAN	ORN ACCORDING TO THE LAW, DEPOSE AND SAY
KNOWLEDGE, INFORMATION AND BELIEF.	THE AND CORRECT TO THE BEST OF MY
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	(Signature of Affiant)
Sworn to me and subscribed before me this ラグル day	of SEPT . Zug
Date	, MagIsterial District Judge
My commission expires first Monday of January,	
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<del></del>		:	POLICE CRIMINAL COMPLAINT
Docket Number:	Date Filed: OTN/LiveScan Number G 478007-5		Complaint/Incident Number B03-1728049
Defendant Name	First: ELLIOT	Middle: MAC	Last: MADISON

The acts committed by the accused are described below with each Act of Assembly or statule violated, if appropriate: (Sel forth a brief summery of the focts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the stat late(s) violated, without more, is not sufficient. In a summary case, you must ble the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegadly violated.)

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			POLICE CRIMINAL COMPLAINT
Docket Number:	Date Filed:	OTN/LiveScan Number G 478007-5	Complaint/incident Number B03-1728049
Defendant Name	First:	. Middle: MAC	Last: MADISON

Defendant Name	First: CLLIOT		Middle: MAC	Last: MADISON	
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POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: OTN/LiveScan Numb	er	Complaint/Incident Number B03-1728049	
Defendant Name			ast MADISON	

### AFFIDAVIT of PROBABLE CAUSE

#### WHEN:

a) Date when Affiant received information

09/24/2009

b) Date when the source of information (Police Officers, Informant, Victim, Co-Defendant, Defendant, etc.) received information: 09/24/2009

### 2. HOW:

- How Affiant knows this particular person dommitted crime: (personal observation, defendant's admissions, etc.);
   Observation of Tpr. Glen Hopey, Glenn Bard & Cpl. Greg Kravitsky.
- b) How the source of information knows this particular person committed the crime:

Observation of Tpr. Glen Hopey, Glenn Bard & Cpl. Greg Kravitsky, resultant of a search warrant.

c) How both Affiant and/or source of information knows that a particular crime has been committed: Observation of Tpr. Glein Hopey, Glein Berd & Cpt. Greg Kravitsky, resultant of a seerch warrant.

### 3. WHAT CRIMES:

18 5105 A2 HINDERING APPREHENSION OR PROSECUTION 18 7512 A CRIMINAL USE OF COMMUNICATION FACILITY 18 907 A POSSESSING INSTRUMENTS OF CRIME - CRIMINAL INSTRUMENTS GENERALLY

### 4. WHERE CRIME(S) COMMITTED:

100 KISOW DR, PITTSBURGH, PA 15205

### 5. WHY AFFIANT BELIEVES THE SOURCE OF INFORMATION:

Source is presumed reliable, i.e. other Police Officer, Eyewitness, Victim of Crime, etc.

Source has given information in the past which has led to arrest and/or conviction

Defendant's reputation for criminal activity

This source made declaration against his/her penal interest to the above offense

X Affiant and/or other Police Officers corroborated details of the information