

Ben W. Muse
Assistant Federal Defender
FEDERAL PUBLIC DEFENDER
FOR THE DISTRICT OF ALASKA
188 W. Northern Lights Blvd., Suite 700
Anchorage, Alaska 99503
Phone: (907) 646-3400
Fax: (907) 646-3480
Email: benjamin_muse@fd.org

Counsel for Defendant Sergey Nefedov

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SERGEY NEFEDOV,

Defendant.

Case No. 3:24-cr-00059-SLG-MMS

**CLOSING ARGUMENT FOLLOWING FRANKS HEARING ON MOTION TO
SUPPRESS EVIDENCE COLLECTED THROUGH THE EXECUTION OF SW
3:23-mj-00161-MMS**

In this case, the government initiated a criminal investigation into Mr. Nefedov based on a mistaken belief that Mr. Nefedov violated export regulations by attempting to export snow machines to Russia in November 2022 without a license. But, in November 2022, no license was required.

The mistake originated from a “licensing determination” drafted by Ronald Rolfe,¹ a licensing officer with the Bureau of Industry and Security. Little is known about Mr. Rolfe. In his licensing determination, he cites to a completely inapplicable regulatory

¹ Gov. Exh. D-2.

provision applying only to North Korea (Supplement 1 to 15 C.F.R. 746.4) and states that, based on this provision, a license was required to export snow machines to Russia.

While BIS Special Agent Jeffry Homuth is experienced in interpreting and enforcing export regulations, this is not the case where he did his dead level best to interpret a particularly inscrutable regulatory provision. Rather, in this case he evidently did not even try to personally discern whether the regulations applied to the conduct of exporting snow machines to Russia before seeking a warrant to seize and search Mr. Nefedov's personal data, despite having more than three months to do so.² Instead, SA Homuth defaulted completely to the opinion of Rolfe, a man he did not know anything about beyond the fact that he was a licensing officer.³ In applying for the warrant at issue in this case, SA Homuth did not make this unquestioning reliance on Rolfe's opinion explicit—he adopts it as his own without attribution. It is common sense that one should check the guidance of another before adopting it as their own in a pleading before the court, be it a warrant application or motion. But further, Homuth was seemingly aware that a different regulation—15 C.F.R. 746.10—applied to exports to Russia because he cited to it in his warrant application.

As this pleading will detail, SA Homuth's misstatement/omission in the warrant was reckless—he had obvious reasons to doubt the information he included—and the Court should grant Mr. Nefedov's motion to suppress. Further, the evidentiary hearing revealed

² Feb. 24 Tran. at 65.

³ Feb. 24 Tran. at 76-77.

additional reckless omissions Homuth made in his warrant application: because of the sanctions, (a) most legal exports to Russia during the period in question were sent via a third country; (b) monetary transactions from Russia through China to the U.S. were also common.

If the proper information were presented by SA Homuth in the Google/Yahoo warrants, there would be no credible argument for probable cause.

ARGUMENT

I. Homuth’s Misstatements/Omissions Regarding the Regulations Were Reckless

“[U]nfortunately, the Supreme Court in *Franks* gave no guidance concerning what constitutes a reckless disregard for the truth in Fourth Amendment cases, except to state that ‘negligence or innocent mistake is insufficient.’”⁴ Some circuits have concluded that

//
//
//
//
//
//
//

⁴ *United States v. Davis*, 617 F.2d 677, 694 (D.C. Cir. 1979).

recklessness is an objective determination⁵ and that view has at least been endorsed by the 9th Circuit.⁶

As the Third Circuit explained concerning omissions and assertions in *Wilson v. Russo*, “omissions are made with reckless disregard if an officer withholds a fact in his ken that ‘[a]ny reasonable person would have known that this was the kind of thing the judge would wish to know.’”⁷ An assertion is made with reckless disregard when “viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported.”⁸ The 10th Circuit has opined ‘[a] factfinder may infer reckless disregard from circumstances evincing obvious reasons to doubt the veracity of the allegations.’”⁹ “Recklessness occurs

⁵ See, e.g., *United States v. Marino*, 2024 WL 1430697 at *3 (11th Cir. 2024)(citing *United States v. Kirk*, 781 F.2d 1498, 1503 (11th Cir. 1986)); *Stonecipher v. Valles*, 759 F.3d 1134, 1142 (10th Cir. 2014) (“The burden is on the plaintiff to ‘make a substantial showing of deliberate falsehood or reckless disregard for truth’ by the officer seeking the warrant. This test is an objective one ... ‘[a] factfinder may infer reckless disregard from circumstances evincing obvious reasons to doubt the veracity of the allegations.’”) (then citing *Wilson v. Russo* with approval); *United States v. Clapp*, 46 F.3d 795, 801 (8th Cir. 1995) (holding that the test for determining whether an affiant's false statements were made with reckless disregard for the truth is "whether, viewing all of the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported."); *Wilson v. Russo*, 212 F.3d 781, 788 (3d Cir. 2000).

⁶ See *United States v. Hays*, 17 F.3d 397 (9th Cir. 1993)(“Recklessness may be inferred “where the omitted information was ‘clearly critical’ to the probable cause determination”)(citing *Rivera v. U.S.*, 928 F.2d 592, 604 (2d Cir.1991)).

⁷ *Russo*, 212 F.3d at 788.

⁸ *Id.* (citing *Clapp*, 46 F.3d at 801 n. 6.)

⁹ *Valles*, 759 F.3d at 1142.

when an officer ‘should have recognized the error, or at least harbored serious doubts’ about the information,” says the 11th Circuit.¹⁰

In *U.S. v. Alford*, the District Court reviewed the objective approach to recklessness, and opined that recklessness is present when an “officer acted with such carelessness that he was subjectively aware of the fact that his conduct could cause key inaccuracies—even if he did not know which inaccuracies” and gave the following examples:

An officer who copy-pastes random paragraphs of his notes into his affidavit without knowing which paragraphs—or an officer who feeds his notes into an artificial intelligence chatbot and asks it to generate an affidavit of probable cause, without reviewing the output before submitting it—does not know what, if anything, has been omitted. But based on his conduct, the officer is subjectively aware of the substantial risk that such an omission will occur and misrepresent the truth to the magistrate if he does not review his work.¹¹

A. SA Homuth’s Conduct in Drafting the Warrant Established Recklessness

In this case, SA Homuth initiated an investigation into the shipment of snow machines in November 2022. He applied for the warrant in March 2023 after he received an erroneous license determination claiming that the snow machines were a luxury good under regulations only applicable to exports to North Korea (15 C.F.R. 746.4, Supplement 1).

The evidence clearly establishes that SA Homuth is an experienced agent with subject matter expertise in interpreting and enforcing export regulations.¹² His emails and

¹⁰ *Marino*, 2024 WL 1430697, at *3.

¹¹ *United States v. Alford*, 764 F. Supp. 3d 191, 247 (M.D. Pa. 2025)

¹² Feb. 24 Tran. 7, 10-16; Exh. D-1.

his testimony illustrate this expertise.¹³ He was aware of how to research these regulations using ECFR.¹⁴ It seems impossible that an experienced agent would not have at least consulted the regulations to evaluate whether an investigation was worth his time under the circumstances when he initiated it in November 2022 or at any time before he drafted the warrants at issue in March 2023.¹⁵

From this warrant application, it appears he even identified that another regulation was applicable: he references 15 C.F.R. 746.10, the correct regulation concerning exports to Russia (and a regulation not referenced in the license determination¹⁶).

13. As of March 16, 2022, under Part 746.10 of the Export Administration Regulations (EAR), a license from the Bureau of Industry & Security is required for the export of luxury goods to Russia. Snowmobiles are listed as a luxury good specified in Supplement No. 1 to Part 746 under section (g)(3).

It appears from the way in which this was drafted—the inclusion of the reference to 746.10—that SA Homuth doubted the information he received in the license determination and was seeking some way in which to reconcile it with his own interpretation of the regulations. In doing so, he presents a misleading depiction of the law. The Court can see that 746.10¹⁷ clearly instructs the reader to reference Supplement 5—which at the time—

¹³ Gov. Exhs. 6-9.

¹⁴ Feb. 24 Tran. at 16.

¹⁵ Fed. 24 Tran at 16-17.

¹⁶ Gov. Exh. 2.

¹⁷ Exh. D-9.

March 2023—stated that snow machines valued at less than \$50,000 were not luxury goods (*i.e.*, all the snow machines at issue in this case).¹⁸ There is so little ambiguity that it suggests that SA Homuth just did not do the work of actually reading and considering the regulation. But he frames his affidavit in a way to suggest that the analysis was his as a BIS agent with years of regulatory enforcement experience. It would have been simple to state that he was relying on the work of another—*i.e.*, Rolfe’s license determination. SA Homuth testified that he did not know the person who wrote the license determination and had no idea whether they were credible.¹⁹ There is no evidence that a license determination is even intended to be relied on for something as serious as a criminal prosecution. How different is this meaningfully different from querying Lexis Protégé, Westlaw Advantage, or even ChatGPT for legal analysis? The risk of relying on such an opinion is obvious, and the reliance is reckless.

B. SA Homuth’s Conduct Following the Drafting of the Warrant Shows Circumstantial Evidence of Recklessness

SA Homuth’s conduct after March 2023 calls into question his objectivity, raises the specter of bias, and provides circumstantial evidence of his recklessness.

First, Count 3 in the superseding indictment is based on “false statements” Nefedov allegedly made on a BIS-711 form.²⁰ It states that on this form: “NEFEDOV falsely identified the ultimate consignee as a company in South Korea and the purchaser as a

¹⁸ Exh. D-11.

¹⁹ Feb. 24 Tran. at 76-77.

²⁰ Exh. D-4 at 28.

company in Hong Kong, when in truth and fact, as NEFEDOV then knew, the snow machines were destined for Russia and end users in Russia.²¹



At the second grand jury presentation, it appears the grand jury was shown a copy of the BIS -711 in a PowerPoint, and then SA Homuth testified:

Government: For Count Three, it's when Mr. Nefedov literally signs his signature and says, yeah, yeah, yeah, these are now going to Busan in South Korea; is that accurate?

SA Homuth: Yes, that's accurate.

But that's not accurate.

The BIS-711 form reads:

STATEMENT OF ULTIMATE CONSIGNEE AND PURCHASER		
<small>We certify that all of the facts contained in this statement are true and correct to the best of our knowledge and we do not know of any additional facts which are inconsistent with the above statement. We shall promptly send a supplemental statement to the U.S. Exporter, disclosing any change of facts or intentions set forth in this statement which occurs after the statement has been prepared and forwarded, except as specifically authorized by the U.S. Export Administration Regulations (16 CFR parts 730-774), or by prior written approval of the Bureau of Industry and Security, we will not reexport, resell, or otherwise dispose of any items approved on a license supported by this statement (1) to any country not approved for export as brought to our attention by means of a list of leading commercial invoices, or any other means, or (2) to any person if we know that it will result directly or indirectly, in disposition of the items contrary to the representations made in this statement or contrary to Export Administration Regulations.</small>		
6. SIGNATURE OF OFFICIAL OF ULTIMATE CONSIGNEE	7. NAME OF PURCHASER	YIELD BRIGHT INDUSTRIAL LIMITED
NAME OF OFFICIAL CHOI DONG HYUN	SIGNATURE OF PURCHASER	
TITLE OF OFFICIAL OWNER	NAME OF OFFICIAL	ALEXANDER KRASI
DATE (mmmm.dd.yyyy)	TITLE OF OFFICIAL	OWNER
NOVEMBER, 28.2022	DATE (mmmm.dd.yyyy)	NOVEMBER, 28.2022
<small>CERTIFICATION FOR USE OF U.S. EXPORTER - We certify that no corrections, additions, or alterations were made on this form by us after the form was signed by the (ultimate consignee/purchaser)</small>		
8. NAME OF EXPORTER	SIGNATURE OF PERSON AUTHORIZED TO CERTIFY FOR EXPORTER	
ALASKA SLED TOURS LLC		
NAME OF PERSON SIGNING THIS DOCUMENT	TITLE OF PERSON SIGNING THIS DOCUMENT	DATE (mmmm.dd.yyyy)
SERGEY NEFEDOV	OWNER	NOVEMBER, 28.2022
<small>We acknowledge that the making of any false statements or concealment of any material fact in connection with this statement may result in imprisonment or fine, or both and denial, in whole or in part, of participation in U.S. exports and reexports.</small>		

At the evidentiary hearing, SA Homuth testified:

Q. What misstatement did Mr. Nefedov make when he signed this [BIS-711] form? What's the false statement?

²¹ Exh. D-4 at 28.

Homuth. The false statement would be that he’s certifying that the individuals who were receiving it as the ultimate consignee would be the ultimate recipient of this shipment.

Q. Okay. Where does he certify that in this form?

Homuth. He signs his name to the signature block where it states: “Signature of person authorized to certify for exporter.”²²

Mr. Nefedov clearly certified that “no corrections, additions, or alterations were made on the form [by him] after the form was signed by the (ultimate consignee)(purchaser).” He did not aver—as the others did—that the snow machines were going to South Korea. He did not make a false statement or “conceal a material fact in connection” with the Statement of *Ultimate Consignee* and *Purchaser* (not U.S. exporter). This testimony by SA Homuth at the grand jury and during the evidentiary hearing suggests a biased and partial view of the facts of this case.

In addition, SA Homuth was questioned regarding testimony at the grand jury that Nefedov made false statements to a freight forwarder.²³ He was asked specifically about paragraph bbb of the superseding indictment, which reads:

On or about November 3, 2022, and November 14, 2022, NEFEDOV and SHUMOVICH caused false and misleading information to be communicated to U.S. Company 1 and placed into the Electronic Export Information paperwork to ship snow machines to Hong Kong. Specifically, NEFEDOV told U.S. Company 1 when initially requesting a rate for shipment that the snow machines were destined for Hong Kong.²⁴

²² Feb 24 Tran. at 53.

²³ Feb. 24 Tran. at 54.

²⁴ Exh. D-4 at 25.

SA Homuth insisted that by merely asking for a shipping quote to an undisputed destination of the snow machines, Nefedov made a false statement.²⁵ It remains unclear how—as Nefedov was actually exporting the snow machines to Hong Kong—this would be a false statement. It does not appear that Nefedov claimed the Hong Kong company as the ultimate consignee or even knew what this term meant when he was corresponding with the freight forwarder.

Finally, though the extent of SA Homuth’s involvement remains unclear, the government’s decision not to disclose the error in the license determination on which several warrants,²⁶ an indictment,²⁷ and other filings,²⁸ were based to opposing counsel or the court colors the behavior in this case. If this error were an innocuous and understandable mistake, why not disclose it to the defense when it was discovered?

From Homuth’s testimony, it’s unclear when he discovered the error in the license determination. When he was questioned about when he realized this error, he referenced an email—Government’s Exhibit 6—from May 2024 (Nefedov was indicted in June 2024).²⁹ This email contains an exchange between Homuth and the government as to whether Supplement 1(which applies only to North Korea) was truly applicable in Mr. Nefedov’s case.³⁰ Homuth testified that he may have realized the error in the license

²⁵ Feb. 24 Tran. at 56-59.

²⁶ Exh. D-1 and D-5.

²⁷ Exh. D-3.

²⁸ E.g., Dkt. 153.

²⁹ Feb. 24 Tran. at 33.

³⁰ Gov. Exh. 6.

determination as early as May 2024.³¹ On June 7, 2024, he emailed with an attorney from the Department of Commerce.³² It appears, by this point, he had realized the inapplicability of the North Korea regulations but sought to obscure the error “to avoid potential pros issues with changing” the “license determination.”³³ He suggested that the government should look into adding references to the correct regulations as “supplements,” rather than replacing the erroneous reference to Supplement 1.³⁴ It’s not clear what this email references, but on June 7, 2024, a warrant was obtained for Mr. Nefedov’s residence, and he was indicted on June 11, 2024.³⁵ Both the warrant application and indictment reference Supplement 5 (though not the version in place between September 2022 and May 2023) as well as the clearly inapplicable Supplement 1 to 15 C.F.R. 746.4.³⁶

Defense counsel identified the error in the regulations cited in the warrant applications, indictment, and other pleadings, and called a June 5, 2025, meeting with the government to explain this mistake to the government (because it seemed impossible that, given their pleadings, it could have known its error).³⁷ SA Homuth was there.³⁸ No representative of the government disclosed to counsel that the government had been aware

³¹ Feb. 24 Tran. at 34

³² Gov. Exh. 7.

³³ Gov. Exh. 7.

³⁴ Gov. Exh. 7.

³⁵ Exhs. D-3, D-5.

³⁶ Exhs. D-3 at, D-5 at 26.

³⁷ Feb. 24 Tran. at 35.

³⁸ Feb. 24 Tran. at 35.

of this error for potentially a year.³⁹ In fact, the government did not disclose that they were aware of this error until *Jencks* material was provided before the evidentiary hearing in this case.

After the June 5, 2025, meeting, when the government knew that the defense knew of its error, SA Homuth emailed counsel for the government late at night, opining on the continuing validity of the Google/Yahoo warrants and outlining different theories under which Nefedov and Shumovich could still be prosecuted.⁴⁰

This conduct, taken together, speaks to recklessness. It shows that SA Homuth suffered from bias and was not impartial and objective in his consideration of the facts of this case. It explains why he would casually adopt an erroneous statement of law from another, like a license determination, that aligned with his objective, without question, when he was perfectly capable of discerning the scope of the regulations on his own (as he ultimately did).

II. The Evidentiary Hearing Revealed That SA Homuth Recklessly Omitted Additional Material Information from His Search Warrant Affidavit

At the evidentiary hearing, SA Homuth testified that, from his general expertise as a BIS Agent, after the Russian sanctions went into effect in March 2022, most freight forwarders would not ship most things to Russia based on the burden of legal compliance.⁴¹

³⁹ Feb. 24 Tran. at 35.

⁴⁰ Gov. Exh. 9.

⁴¹ Feb. 24 Tran. at 61.

He testified that the sanctions were not a complete prohibition on all exports to Russia.⁴² He testified that it was frequent for even permissible items to be exported to Russia from the U.S. via a third country during this time.⁴³

SA Homuth also testified at grand jury that it was not unusual for money from Russia to be sent to Hong Kong, converted to renminbi, and then sent to the United States because money could not be wired directly from Russia.⁴⁴ This would seemingly have been necessary to facilitate even legal transactions.⁴⁵

The strong implication of Homuth's warrant application in this case is that the contract between the Russian Company and the Hong Kong Company, and the shipment of these snow machines to Hong Kong, was inherently suspect and a strong indication of intent to evade sanctions. But by SA Homuth's own testimony, it was not. *This is how business was normally conducted.* These facts were clearly within SA Homuth's "ken" and it is obvious that this contextual information is the kind of thing the judge would wish to know in evaluating a warrant application.⁴⁶ This omitted information was material and should have been disclosed in the warrant application. It is highly relevant contextual information to the mental state of the parties involved.

⁴² Feb. 24 Tran. at 61.

⁴³ Feb. 24 Tran. at 62.

⁴⁴ Exh. D-8 at 33.

⁴⁵ Exh. D-8 at 33.

⁴⁶ See *Russo*, 212 F.3d at 788 (“omissions are made with reckless disregard if an officer withholds a fact in his ken that ‘[a]ny reasonable person would have known that this was the kind of thing the judge would wish to know.’”).

CONCLUSION

For the reasons herein, the Court should grant Mr. Nefedov's Motion to Suppress [Dkt. 320].

DATED at Anchorage, Alaska this 11th day of March, 2026.

Respectfully submitted,
FEDERAL PUBLIC DEFENDER
DISTRICT OF ALASKA

/s/ Ben W. Muse
Ben W. Muse
Assistant Federal Defender

Certificate of Service:

I hereby certify that I electronically filed the foregoing and any attachments with the Clerk of Court for the United States District Court for the District of Alaska by using the district's CM/ECF system on March 11, 2026. All participants in this case are registered CM/ECF users and will be served by the district's CM/ECF system.

/s/ Ben W. Muse