

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Misc. No. 16-mj-3447

IN RE: COMPLAINT

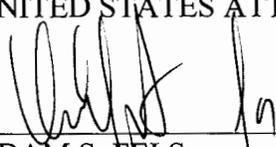
COVER SHEET

1. Did this matter originate from a matter pending in the Northern Region of the United States Attorney's Office prior to October 14, 2003? Yes No

2. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to September 1, 2007? Yes No

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By: 

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UNITED STATES DISTRICT COURT

for the

Southern District of Florida

United States of America

v.

JOSE ALEXANDER GUTIERREZ MORALES and ALFREDO A MONTILLA HERNANDEZ,

Case No. 16-mj-3447-McAliley

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of October 21, 2016 in the county of Miami-Dade in the Southern District of Florida, the defendant(s) violated:

Table with 2 columns: Code Section, Offense Description. Rows include 18 U.S.C. 371 (Conspiracy to export firearms...) and 18 U.S.C. 554 (Attempted smuggling of goods...)

This criminal complaint is based on these facts: SEE ATTACHED AFFIDAVIT.

Continued on the attached sheet.

Handwritten signature of Elvis Corrales

Complainant's signature

Elvis Corrales, Special Agent, HSI

Printed name and title

Sworn to before me and signed in my presence.

Date: 10/22/2016

Handwritten signature of Chris M. McAiley

Judge's signature

City and state: Miami, Florida

Chris M. McAiley, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF COMPLAINT

I, Special Agent Elvis Corrales, first being duly sworn, hereby state as follows:

1. I am a Special Agent with Homeland Security Investigation (HSI), currently assigned to the Miami Field Office and have been so employed since 2006. Among my duties as an HSI Special Agent, I am responsible for the investigation of violations of federal law, including investigating the illegal export from the United States of commodities, information, and services that are regulated by the U.S. government, such as goods that have military application and whose export is prohibited without a license from the Department of State. As a result of my training and experience, I have knowledge of the means and methods used by weapon traffickers and weapon-trafficking organizations to communicate with each other, to purchase, transport, store, and distribute weapons, and to conceal profits generated from those transactions.

2. I am an investigative or law enforcement officer of the United States within the meaning of Section 2510(7) of Title 18 of the United States Code; that is, an officer of the United States who is empowered by law to conduct investigations and make arrests for offenses enumerated in Titles 8, 18, 19, 21 and 22 of the United States Code.

3. I know, through training and experience, that: (a) it is common for weapon traffickers to utilize numerous concealment methods within various shipment commodities to transport weapons, munitions, and proceeds for the export, sale, and distribution of weapons and munitions; (b) it is common for weapon traffickers to conceal weapons and munitions within freight and utilize shipment consolidators, freight forwards, and commercial carriers (land, sea and air); (c) it is common for weapons traffickers to conceal and commingle weapons and munitions within other shipments to avoid customs and carrier shipment inspections in order to export weapons and munitions in violation of 18 U.S. Code § 554 (smuggling goods from the

United States), and 22 U.S. Code § 2778 (control of arms exports and imports).

4. My knowledge of the facts alleged in this affidavit arises from my personal knowledge and observations, my training and experience, and information obtained from other law enforcement officers. This affidavit does not include every fact known to me concerning this ongoing investigation. I have included only those facts and circumstances that I believe are sufficient to establish probable cause for the arrest of Jose Alexander **GUTIERREZ** Morales (herein after “**GUTIERREZ**”) and Alfredo A. **MONTILLA** Hernandez (herein after “**MONTILLA**”) both citizens of Venezuela and recently admitted into the United States on B1/B2 visas.

RELEVANT STATUTES

5. 22 U.S. Code § 2778(c) provides, in relevant part: “Any person who willfully violates any provision of this section, section 2779 of this title, a treaty referred to in subsection (j)(1)(C)(i), or any rule or regulation issued under this section or section 2779 of this title, including any rule or regulation issued to implement or enforce a treaty referred to in subsection (j)(1)(C)(i) or an implementing arrangement pursuant to such treaty . . . shall upon conviction be . . . imprisoned not more than 20 years...” 22 U.S. Code § 2778 also provides that all persons who broker the export or import of any defense article -- including firearms and ammunition -- must register with the United States Government, pay a registration fee, and obtain a license. An attempt to export firearms or ammunition without first obtaining the necessary registration and license constitutes a violation of 22 U.S. Code § 2778(c).

6. 18 U.S. Code § 554 provides, in relevant part: “whoever fraudulently or knowingly exports or sends from the United States, or attempts to export or send from the United States, any merchandise, article, or object contrary to any law or regulation of the United States, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or

sale of such merchandise, article or object, prior to exportation, knowing the same to be intended for exportation contrary to any law or regulation of the United States, shall be . . . imprisoned not more than 10 years....” Exporting or attempting to export firearms or ammunition without a license as provided in 22 U.S.C. §2778 would constitute an exportation or attempted exportation contrary to a law or regulation of the United States, and would therefore also constitute a violation of 18 U.S. Code § 554.

7. 18 U.S. Code § 371 provides, in relevant part: “If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.”

Facts Establishing Probable Cause for Arrest

8. On or about April 16, 2016, your affiant and U.S. Customs and Border Protection Officers at Miami International Airport (MIA), DHL international hub intercepted a shipment containing twenty-five (25) empty vehicle battery cases with glue residue, modified compartments, and carbon paper. This shipment was sent from Ender SOTO in Maracaibo, Venezuela to Miami, Florida. The listed consignee was as Colombian female identified as Martha CRUZ, at residential address 3835 SW 132 Avenue, Miami, Florida (hereinafter “CRUZ’s property”).

9. From on or about September 27, 2016 until on or about October 21, 2016, your Affiant and other law enforcement officers conducted frequent surveillance of CRUZ’s property and performed rolling surveillances of **GUTIERREZ, ALBERTO SOTO** (hereinafter “**ALBERTO SOTO**”), and **MONTILLA**.

10. On or about September 27, 29, and October 10, 2016, your Affiant, while

conducting surveillance of CRUZ's property, witnessed a male (later identified as **ALBERTO SOTO**) arriving at CRUZ's property driving a Silver 4 door Toyota Corolla bearing license plate GZUP75 (hereinafter "Corolla") and delivering and dropping off handguns, assault rifles and ammunition onto CRUZ's property.

11. On or about October 18, 2016, your Affiant witnessed three males, later identified as **GUTIERREZ, ALBERTO SOTO** and **MONTILLA**, entering CRUZ's property. **ALBERTO SOTO** arrived in the aforementioned Corolla; and **GUTIERREZ** and **MONTILLA** in a Grey Hyundai SUV bearing license plate HDSC19. During the course of the surveillance, **GUTIERREZ, ALBERTO SOTO** and **MONTILLA** were observed making multiple stops at local businesses, to include Home Depot, located at 11305 SW 40th Street Miami, FL 33165 and Dollar Tree Store, located at 11397 SW 40th St #2, Miami, FL 33165. Your Affiant later interviewed the store managers and loss prevention representatives of Home Depot and Dollar Tree store and obtained evidence that **GUTIERREZ, ALBERTO SOTO**, and **MONTILLA** had purchased packing supplies.

12. On or about October 20, 2016, at approximately 2200 hours, your Affiant witnessed **GUTIERREZ** and **MONTILLA** entering CRUZ's property and delivering and dropping off handguns onto CRUZ's property.

13. On or about October 21, 2016, at approximately 0720 hours, your Affiant once again located **GUTIERREZ** and **MONTILLA** at CRUZ's property driving the aforementioned Grey Hyundai SUV. At approximately 0730 hours, your Affiant witnessed a white older model Chevrolet two (2) door Pick-Up Truck (hereinafter "Truck") entering CRUZ's property. Shortly thereafter, at approximately 0750 hours, the Truck departed CRUZ's property with multiple boxes in green plastic wrap (hereinafter "Boxes") visible in the rear cargo hold. Your Affiant surveilled the Truck with the Boxes from CRUZ's property to Conavenca Freight Forwarders

(hereinafter "Conavenca") located at 6300 NW 97 Avenue, Miami, Florida.

14. Your Affiant witnessed the delivery of the aforementioned Boxes from the rear cargo hold of the Truck to Conavenca. Upon delivery of the Boxes to Conavenca, your Affiant notified his counterparts at Customs and Border Protection ("CBP"), who in turn performed an extended outbound border search of Conavenca. The Boxes from the rear cargo hold of the Truck were located with black plastic wrapped around and banded on a wooden pallet prepared for export. The pallet prepared for export (hereinafter "SHIPMENT") was, according to a receipt found in Conavenca, destined for Venezuela. Notably, there was no Shipper's Export Declaration indicating that the SHIPMENT contained firearms or ammunition and including the license number for the shipper, as would be required to legally export firearms or ammunition.

15. CBP officers x-rayed the shipment containing six (6) Boxes. The Boxes appeared to contain numerous automobile batteries. CBP officers then unwrapped and inspected the shipment. Upon inspection, CBP discovered the battery cases with glue residue and modified compartments stuffed with eight (8) handguns, approximately 23,500 rounds of ammunition and nineteen (19) high capacity magazines inside. Your affiant is aware that the battery cases inspected are the same exact battery cases that were intercepted on April 16, 2016, at DHL international hub. CBP Officers immediately took custody and seized the aforementioned items along with the concealment material.

16. Shortly thereafter, also on or about October 21, 2016, your Affiant stopped the Truck with the assistance of the City of Doral Police Department and interviewed the driver. The driver of the Truck stated that a male by the name of "EMBER" from Venezuela requested the retrieval of the SHIPMENT from CRUZ's property. The driver also described **GUTIERREZ** and **MONTILLA** as the subjects who turned over the SHIPMENT for delivery to Conavenca.

17. Subsequent to the delivery, inspection and discovery of the munitions, also on or

about October 21, 2016, HSI agents with the assistance of CBP and Miami Dade Police Department encountered **GUTIERREZ** and **MONTILLA** in a Grey Hyundai SUV and placed them under arrest. During the search incident to arrest of **GUTIERREZ** and **MONTILLA**, two (2) handguns, four (4) AR-15 assault rifles (taken apart) and 1,721 rounds were found within the Grey Hyundai registered and driven by **MONTILLA** and occupied by **GUTIERREZ**.

18. Following the arrest on or about October 21, 2016, your Affiant approached **GUTIERREZ** and **MONTILLA**, both of whom waived their *Miranda* rights in writing, and both of whom agreed to speak to Special Agents without an attorney. During the subsequent interview, **GUTIERREZ** and **MONTILLA** admitted that they knowingly and willfully agreed with each other to, and attempted to, export from the United States to Venezuela without a license eight (8) handguns, approximately 23,500 rounds of ammunition and nineteen (19) high capacity magazines. **GUTIERREZ** and **MONTILLA** also acknowledged that they concealed and packed the handguns, ammunition and magazines into the battery cases within the SHIPMENT to illegally export the munitions, and furthermore that they understood it was against the law to do so. Furthermore, **GUTIERREZ** and **MONTILLA** also stated that the items found within the Grey Hyundai SUV at the time of the arrest were purchased for export within the near future.

Conclusion

19. Based upon the foregoing, your Affiant submits there is probable cause to believe that **GUTIERREZ** and **MONTILLA** did commit the following violations of federal statutes: 1) conspiracy to export without the necessary license handguns, ammunition, high capacity magazines, in violation of 22 U.S. Code § 2778(c) and conspiracy to smuggle goods from the United States contrary to law or regulation of the United States, in violation of 18 U.S. Code § 554; all in violation of 18 U.S. Code 371 and 2) attempting to smuggle goods from the United

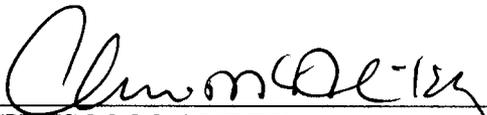
States contrary to law or regulation of the United States, in violation of 18 U.S. Code § 554.

FURTHER AFFIANT SAYETH NAUGHT.



Elvis Corrales
Special Agent, Homeland Security Investigations

Subscribed to and sworn before me on this 22nd day of October, 2016:



CHRIS M. McALILEY
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF FLORIDA