

United States District Court
Southern District of Texas
FILED

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA

v.

MANUEL GOMEZ BARBA,

THOMAS BRIAN LAWSON,

Defendants

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CRIMINAL No.

11 CR 87

UNDER SEAL

~~Sealed
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prohibited by court order.~~

INDICTMENT

**UNSEALED
PER ORDER**

THE GRAND JURY CHARGES THAT:

COUNT ONE

(Title 18, United States Code, Section 371 – Conspiracy)

A. INTRODUCTION

At all times material to this Indictment:

1. The Gun Control Act

a. A “firearms dealer” is any person engaged in the business of selling, renting, leasing, or loaning firearms. The Gun Control Act states that no person shall deal in firearms until he or she has filed an application to do so with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (hereafter “ATF”) and received a Federal Firearms License (hereafter “FFL”) issued by the ATF. Each Federal Firearms Licensee (hereafter “licensed dealer” or “FFL”) must maintain records of the receipt, sale, or other disposition of firearms at his place of business as long as the business is in operation. Upon the closing of such business, the FFL must forward all of the required firearms records to the ATF Out of Business Section where they are maintained

indefinitely.

b. The law requires that each FFL must maintain in a bound book the record of every firearm receipt, sale, or other disposition. Such record must include the name and address of the person to whom the dealer sells or otherwise disposes of any firearm. The ATF may inspect the premises, inventory, and records of the FFL without reasonable cause or a warrant to ensure the FFL's compliance with record keeping requirements or to trace a firearm sold by the FFL that later was involved in a crime.

2. **The ATF Form 4473 (Firearm Transaction Record):**

a. The ATF Form 4473 (hereafter "Form 4473") is a document used and maintained by the FFL to create a written record of each firearm sale or disposition. The Form 4473 is completed in part by the FFL and in part by a firearms purchaser at the time a firearm is sold or otherwise disposed of. The Form 4473 memorializes that an FFL has taken all precautions required by the ATF and his license to make sure he does not transfer a firearm to a person who is prohibited from possessing it. Accordingly, among other things, the Form 4473 records that a firearms purchaser identified himself to the FFL with a valid identification bearing his photograph. The Form 4473 also requires that the purchaser truthfully answer a series of questions about the firearms transaction.

b. One important question asked of the firearms purchaser is, "Are you the actual buyer of the firearm(s) listed on this form?" The block on the Form 4473 containing this question goes on to warn that, "You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you." The Form 4473 next refers the firearms purchaser to "Notice 1," which is printed on the

form and which provides a hypothetical example of an unlawful firearms purchase on behalf of another person. This question and its related warning and explanation is to put the purchaser on notice that buying a firearm on behalf of another person is prohibited and prevent unlawful third-party purchases. FFLs must keep each executed Form 4473 at their place of business and must make them available to the ATF for inspection.

c. The purpose of the Form 4473 is threefold. The first is to cause FFLs and prospective firearm purchasers alike to take note of any legal impediments to the consummation of a firearms sale before deciding to proceed. The second is to acquire sufficient information about the purchaser to enable the Federal Bureau of Investigation (hereafter "FBI"), through its National Instant Background Checking System (hereafter "NICS"), to perform a criminal history check of the purchaser to verify he or she is not prohibited from possessing a firearm on account of a prior felony conviction or status as an illegal alien, among several other prohibitions. The third purpose of the ATF Form 4473 is to create a traceable record of the sale of a firearm, which permits law enforcement officers in an on-going criminal investigation involving a firearm as evidence to trace the firearm to its last-known owner.

d. The information provided by the purchaser of a firearm on the Form 4473 must be true and accurate. It is a felony offense for any person to knowingly provide false information on a Form 4473.

B. OBJECT OF THE CONSPIRACY

Beginning on or about June 1, 2010 and continuing thereafter until September of 2010, in the Houston Division of the Southern District of Texas and elsewhere,

MANUEL GOMEZ BARBA,

THOMAS BRIAN LAWSON,

defendants herein, did knowingly combine, conspire, confederate, and agree with each other and other persons known and unknown to the Grand Jury, in connection with the acquisition of firearms from multiple licensed dealers of firearms within the meaning of that term in Chapter 44 of Title 18 of the United States Code, to knowingly make false written statements and representations to said licensed dealers with respect to information required by the provisions of Chapter 44 of Title 18, United States Code, to be kept in the records of the respective licensed dealers in that the defendants, who aided and abetted one another, represented on ATF Forms 4473 that they were the actual buyers of the firearms, when in fact, as the defendants well knew, they were not the actual buyers of the firearms, in violation of Title 18, United States Code, Section 924(a)(1)(A).

C. MANNER AND MEANS OF THE CONSPIRACY

It was part of the conspiracy that:

- (1) The coconspirators, aiding and abetting each other, would and did purchase firearms from Federally licensed firearms dealers (FFLs) and falsely represent that they were the actual buyers of the firearms.
- (2) The coconspirators would and did purchase said firearms on behalf of others known and unknown to the Grand Jury.
- (3) MANUEL GOMEZ BARBA (BARBA) would and did organize the purchases of the firearms.

(4) The coconspirators would be directed by BARBA, as to the FFL in which to purchase the firearms.

(5) BARBA, or one of his agents, paid one or more of the other coconspirators once the firearms were purchased and delivered to BARBA, or his agents

(4) The coconspirators would and did purchase specific types of firearms as requested by BARBA, who gave the coconspirators money to purchase the firearms and promised them payment for doing so.

(5) The coconspirators would and did purchase these firearms knowing that the serial numbers would be obliterated, so the firearms would be untraceable.

(6) The coconspirators would and did purchase these firearms knowing that they would be transported to Mexico for use by the Gulf Cartel and persons to whom transfer of such firearms was prohibited by Federal law.

(7) The coconspirators would and did purchase these firearms knowing that BARBA could not purchase the firearms himself, since he was a prohibited person.

(8) The coconspirators purchased approximately forty-four (44) firearms during the conspiracy.

D. OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, the coconspirators performed and caused to be performed, among others,

(1) The overt acts alleged in Counts Two through Four of this Indictment.

In addition, among others:

(2) On May 26, 2010, _____, acting under the direction of

BARBA, purchased ten (10) AK-47 type rifles from J.J.'s Pawn Shop, a FFL, in Beaumont, Texas.

(3) On June 6, 2010, C.G. purchased four (4) Century Arms WASR-10 7.62 x 39mm caliber semi-automatic rifles from Katy Arms, a FFL, for BARBA, who was a prohibited person.

(4) On June 6, 2010, C.G. purchased five (5) firearms, to wit: one (1) Century Arms WASR-10 7.62 x 39mm caliber semi-automatic rifle and four (4) Century Arms, DRACO pistols, from Bachman Pawn, a FFL, for BARBA, who was a prohibited person.

(5) On August 20, 2010, acting under the direction of BARBA, purchased ten (10) Century Arms WASR-10 7.62 x 39mm caliber semi-automatic rifles from J.J.'s Pawn Shop, a FFL, in Beaumont, Texas and delivered the firearms to BARBA'S residence in Baytown, Texas.

In violation of Title 18, United States Code, Section 371.

COUNT TWO
(False Statement to a Federal Firearms Licensee)

On or about June 5, 2010, in the Houston Division of the Southern District of Texas,

MANUEL GOMEZ BARBA,

defendants herein, aided and abetted by one another, knowingly made a false statement and representation to the Federal Firearms Licensee listed below, who was a person licensed under the provisions of Chapter 44 of Title 18, United States Code, with respect to information required by the provisions of Chapter 44 of Title 18 of the United States Code to be kept in the records of the Federal Firearms Licensees listed below, in that the defendant executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473 (Firearms Transaction Record) to the effect that Sergio

Escobedo was the actual buyer of the firearms involved in each of the below transactions when in fact, as the defendants then well knew, he was not the actual buyer of the firearms, and the transactions are more particularly described below:

<u>Count</u>	<u>Date of Purchase</u>	<u>Federal Firearms Licensee</u>	<u>Firearms Purchased</u>
Two	6/05/2010	Katy Arms	Six (6) Century Arms, WASR-10, 7.62 x 39mm caliber semi-automatic rifles

In violation of Title 18, United States Code, Section 924(a)(1)(A) and 2.

COUNT THREE
(False Statement to a Federal Firearms Licensee)

On or about June 5, 2010, in the Houston Division of the Southern District of Texas,

MANUEL GOMEZ BARBA,
THOMAS BRIAN LAWSON,

defendants herein, aided and abetted by one another, knowingly made a false statement and representation to the Federal Firearms Licensee listed below, who was a person licensed under the provisions of Chapter 44 of Title 18, United States Code, with respect to information required by the provisions of Chapter 44 of Title 18 of the United States Code to be kept in the records of the Federal Firearms Licensees listed below, in that the defendant executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473 (Firearms Transaction Record) to the effect that Thomas Brian Lawson was the actual buyer of the firearms involved in each of the below transactions when in fact, as the defendants then well knew, he was not the actual buyer of the firearms, and the transactions are more particularly described below:

<u>Count</u>	<u>Date of Purchase</u>	<u>Federal Firearms Licensee</u>	<u>Firearms Purchased</u>
Three	6/05/2010	Katy Arms	Six (6) Century Arms, WASR-10, 7.62 x 39mm caliber semi-automatic rifles

In violation of Title 18, United States Code, Section 924(a)(1)(A) and 2.

COUNT FOUR
(False Statement to a Federal Firearms Licensee)

On or about June 6, 2010, in the Houston Division of the Southern District of Texas,

MANUEL GOMEZ BARBA,

defendants herein, aided and abetted by one another, knowingly made a false statement and representation to the Federal Firearms Licensee listed below, who was a person licensed under the provisions of Chapter 44 of Title 18, United States Code, with respect to information required by the provisions of Chapter 44 of Title 18 of the United States Code to be kept in the records of the Federal Firearms Licensees listed below, in that the defendant executed a Bureau of Alcohol, Tobacco, and Firearms Form 4473 (Firearms Transaction Record) to the effect that Blandon Darrick Shaffer was the actual buyer of the firearms involved in each of the below transactions when in fact, as the defendants then well knew, he was not the actual buyer of the firearms, and the transactions are more particularly described below:

<u>Count</u>	<u>Date of Purchase</u>	<u>Federal Firearms Licensee</u>	<u>Firearms Purchased</u>
Four	6/06/2010	Katy Arms	At least Three (3) Century Arms, WASR-10, 7.62 x 39mm caliber semi-automatic rifles

In violation of Title 18, United States Code, Section 924(a)(1)(A).

**COUNT FIVE
(Receiving Firearm While Under Indictment)**

From on or about June 5, 2010 and continuing until on or about August 10, 2010, in the Houston Division of the Southern District of Texas and elsewhere,

MANUEL GOMEZ BARBA,

defendant herein, then being under indictment for a crime punishable by imprisonment for a term exceeding one year, to wit: possession with intent to deliver methamphetamine and possession with intent to deliver 20-80 units of lysergic acid diethylamide, did knowingly receive in and affecting commerce, one or more firearms, namely, one or more Century Arms, model WASR-10, 7.62 x 39mm caliber semi-automatic rifles, which had been shipped in interstate and foreign commerce.

In violation of Title 18, United States Code, Section 922(n).

NOTICE OF CRIMINAL FORFEITURE

Pursuant to Title 18, United States Code, Section 924(d)(1) and Title 28, United States Code, Section 2461, the United States of America hereby gives notice that all firearms and ammunition involved in, used in, or intended to be used in the commission of the offenses in

violation of Title 18, United States Code, Sections 371 and 924(a)(1)(A), which are charged in Counts One through Four, are subject to forfeiture.

SUBSTITUTE ASSETS

In the event that any of the property subject to forfeiture, as a result of any act or omission of any of the Defendants:

- a. cannot be located upon exercise of due diligence;
- b. has been placed beyond the jurisdiction of the Court;
- c. has been transferred or sold to, or deposited with a third party;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States to seek forfeiture of any other property of the Defendants up to the value of such property pursuant to 21 U.S.C. § 853(p).

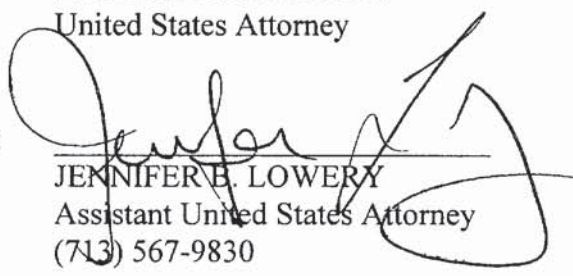
A TRUE BILL: 

Original Signature on File


FORERPERSON OF THE GRAND JURY

JOSE ANGEL MORENO
United States Attorney

By:


JENNIFER B. LOWERY
Assistant United States Attorney
(713) 567-9830