

AO 91 (Rev. 02/09) Criminal Complaint

*Felony*

UNITED STATES DISTRICT COURT  
for the  
Southern District of Texas

United States District Court  
Southern District of Texas  
FILED

JUN 17 2009

Michael M. Milby  
Clerk of Court

United States of America )  
v. )  
Gilberto LEAL )  
(Year of birth 1981; United States Citizen) )  
Defendant )

Case No. *B-09-784-MJ*

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 of 03/14/2008 in the county of Cameron in the Southern District of Texas, the defendant violated Title 18 U. S. C. § 924(a)(1)(A), an offense described as follows:

in that the defendant, Gilberto LEAL, did intentionally and knowingly make a false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter.

This criminal complaint is based on these facts:

From on or about March 14, 2008 through September 30, 2008 in the Southern District of Texas, Gilberto LEAL made false statements and representations regarding his residence and the identity of the actual purchaser of approximately 20 firearms on at least 13 ATF Forms 4473 to Federal Firearms Licensees. ATF Form 4473 is a record that must be kept by persons licensed under Title 18, United States Code, Chapter 44. (See ATTACHMENT A as a continuation)

Continued on the attached sheet.

*[Signature]*

Complainant's signature

Craig W. Saier, ATF Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: 06/17/2009

*[Signature]*

Judge's signature

City and state: Brownsville, Texas

Ronald G. Morgan, United States Magistrate Judge

Printed name and title

*MAXIMUM TERM OF IMPRISONMENT - 5 YEARS  
MAXIMUM FINE \$250,000  
SUPERVISED RELEASE - 3 YEARS*

ATTACHMENT A

1. Your affiant is a Special Agent (S/A) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), temporarily assigned to the ATF Brownsville Satellite Office, and has served as an ATF Special Agent since July of 2000. Prior to employment with the Bureau of Alcohol, Tobacco, Firearms and Explosives, I was employed with the United States Immigration and Naturalization Service for four years as an Immigration Inspector.
2. I am a graduate of the Federal Law Enforcement Training Center and the ATF National Academy; as a result of my training and experience as an ATF Special Agent, I am familiar with Federal criminal laws and know that it is a violation of Title 18, United States Code, Section 924(a)(1)(A) for a person to knowingly make any false statement or representation with respect to the information required by that chapter to be kept in the records of a person licensed under that chapter. The following facts are personally known or have been told to me by other law enforcement officers and witnesses.
3. In September of 2008, ATF agents received information from a sales clerk at a local Federal Firearms Licensee about suspicious firearms purchases by Gilberto LEAL. ATF agents began an investigation and obtained copies of eight ATF Forms 4473, Firearms Transaction Transfer Record, pertaining to firearms purchased by LEAL. On the ATF Forms 4473 LEAL listed his residence as [REDACTED]. On or about October 6, 2008, agents unsuccessfully attempted to contact Gilberto LEAL at [REDACTED]. Agents met with Gilberto LEAL'S grandparents who stated Gilberto LEAL did not live at [REDACTED] and had not resided there in several years.
4. On October 14, 2009, ATF Special Agents and Immigration and Customs Enforcement (ICE) Special Agents interviewed Gilberto LEAL at the Gateway International Bridge, Brownsville Port of Entry. The agents advised LEAL of his *Miranda* rights. LEAL agreed to continue to speak with the agents.
5. LEAL made admissions regarding his purchase of numerous firearms from Federal Firearms Licensees (FFLs) on behalf of another individual, who he identified by name to the agents. Based on the name provided by LEAL, agents determined this person is a citizen of Mexico. Based on his immigration status I know from my training and experience this person cannot purchase, acquire or possess firearms in the United States. LEAL admitted being paid to purchase the firearms and admitted to transferring the firearms to the person who paid him to acquire them. LEAL said he was driven to gun stores in Brownsville, McAllen, Harlingen and Pharr and provided with the money to purchase the firearm(s) and LEAL was paid \$300 on each occasion.
6. Agents showed LEAL copies of eight ATF Forms 4473, Firearms Transaction Transfer Record, bearing LEAL'S name and signature, as well as other biographical information. The forms pertained to LEAL'S purchases of fourteen (14) firearms from five (5) separate Federal Firearms Licensees (FFLs). The purchases are described as:



<u>Date</u>	<u>Federal Firearms Licensee</u>	<u>Type of Firearm(s) purchased</u>
03/22/2008	Glick Twins, McAllen, TX	.223-caliber DPMS rifle
05/06/2008	Academy Sports #30 Brownsville, TX	.223-caliber DPMS rifle
07/28/2008	Academy Sports #131, McAllen, TX	.223-caliber Bushmaster rifle
08/01/2008	Academy Sports #30, Brownsville, TX	.223-caliber Bushmaster rifle
08/04/2008	Academy Sports #34, McAllen, TX	.223-caliber S & W rifle
08/29/2008	Chuck's Gun Shop, Brownsville, TX	.223-caliber Bushmaster rifle
09/16/2008	Glick Twins, Pharr, TX	.223-caliber Olympic rifle
09/30/2008	Chuck's Gun Shop, Brownsville, TX	9-mm Beretta pistol
		.223-caliber DPMS rifle
		9-mm Beretta pistol
		9-mm Beretta pistol

LEAL reviewed each of the forms and placed his signature on the forms acknowledging that he made the purchases of these firearms. LEAL also wrote on each of the forms that the purchases were for the person he previously identified.

7. LEAL also admitted he did not reside at [REDACTED], Texas. LEAL provided this address as his residence on the eight ATF Forms 4473 for the aforementioned purchases of the fourteen firearms from Federal Firearms Licensees (FFLs). ATF Form 4473 requires that the buyer of a firearm provide their current residence address.

8. Additionally, on all eight ATF Forms 4473 LEAL answered "Yes," to the question which asks: "Are you the actual buyer of the firearm(s) listed on this form? **Warning: 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** (emphasis appears on form)." LEAL admitted he was actually buying the firearms on behalf of the person he identified to the agents, contrary to his written answer on the form he completed.

9. The interviewing agents asked LEAL to provide a written statement. LEAL wrote a three page statement regarding his firearms purchases that contained similar admissions to the prior interview. LEAL was not arrested and left the Port of Entry at the conclusion of the interview.

10. Agents continued the investigation and found additional firearms purchases by LEAL from other Federal Firearms Licensees. Agents obtained copies of the ATF Forms 4473 completed by LEAL for these purchases. These forms indicate the following purchases by LEAL:

<u>Date</u>	<u>Federal Firearms Licensee</u>	<u>Type of Firearm(s) purchased</u>
03/14/2008	Chuck's Gun Shop, Brownsville, TX	.223-caliber High Standard rifle
		.223-caliber High Standard rifle

05/01/2008	Chuck's Gun Shop, Brownsville, TX	.223-caliber Olympics Arms rifle
08/25/2008	Johnny's Hardware, Harlingen, TX	5.7-mm FN pistol
09/08/2008	Danny's Pawn, McAllen, TX	9-mm Beretta pistol
09/16/2008	Johnny's Hardware, Harlingen, TX	9-mm Beretta pistol

I have reviewed these forms and LEAL listed his address as [REDACTED] on each of the forms. On all these forms LEAL answered "Yes," to the question that asks: "Are you the actual buyer of the firearm(s) listed on this form?" **Warning: 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** (emphasis appears on form)." LEAL admitted he was actually buying the firearms on behalf of another person, contrary to his written answer on the form he completed.

11. As part of this investigation I have reviewed two ATF Firearms Trace Summaries regarding firearms purchased by Gilberto LEAL in 2008 that were later recovered in Mexico. On or about October 19, 2008, a .223-caliber DPMS rifle, serial number FH17541, was recovered in Mexico. Gilberto LEAL purchased this rifle on or about March 22, 2008 at Glick Twins in Pharr, Texas. On or about November 27, 2008, a .223-caliber Olympic Arms rifle, serial number KJ6778, was recovered in Mexico. Gilberto LEAL purchased this firearm on or about May 1, 2008 at Chuck's Gun Shop in Brownsville, Texas.

12. I have reviewed all the ATF Forms 4473 referenced in this affidavit. All the forms were completed and the firearms purchased by LEAL at Federal Firearms Licensees occurred between on or about March 14, 2008 through September 30, 2008. On all the forms LEAL listed his address as [REDACTED] and stated he was not purchasing the firearms on behalf of someone else.

13. On June 9, 2009, I interviewed Frances Leal, Gilberto LEAL'S sister. Frances Leal told me that [REDACTED] is her parents' house. Frances Leal said Gilberto LEAL did not reside at [REDACTED] and that her brother and other family members use the address to receive mail. Frances Leal said Gilberto LEAL had not lived at [REDACTED] for many years and specifically had not resided there in 2008.

14. On June 16, 2009, I contacted Andres Leal-Rodriguez, Gilberto LEAL'S grandfather. Andres Leal-Rodriguez told me Gilberto LEAL does not and has not resided at [REDACTED] Texas for many years. Andres Leal-Rodriguez estimated it had been at least 15 years since Gilberto LEAL lived at [REDACTED]. I specifically asked Andres Leal-Rodriguez if Gilberto LEAL resided there in 2008 and Andres Leal-Rodriguez said he did not.

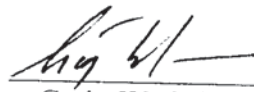
15. I, along with ATF S/A Michael Parten, then spoke to Gilberto LEAL outside his grandfather's residence. I asked LEAL if he recalled speaking with ATF and ICE agents a few months ago regarding his purchase of numerous firearms at Federal Firearms Licensees in the area. LEAL said he did. I asked LEAL if he told the agents that he

purchased numerous firearms for another person at Rio Grande Valley gun stores. LEAL said he did. I also asked if LEAL listed his address as [REDACTED] on the forms he completed when he acquired the firearms. LEAL said he did. LEAL admitted he did not reside at that address at the time he purchased firearms for the previously identified person.

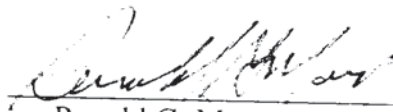
16. I referenced LEAL'S prior interview by ATF and ICE special agents in October of 2008 and asked LEAL how many of the firearms he purchased were purchased on behalf of another person, specifically the person he previously identified as paying him to make firearms purchases. LEAL said, "All of them."

17. All the Federal Firearm Licensees referenced in this affidavit possessed valid licenses at the time LEAL made false statements to acquire firearms in 2008. Federal Firearms Licensees are required to maintain certain records, which includes ATF Form 4473, relative to the acquisition, disposition, sale and/or transfer of firearms pursuant to Title 18, United States Code, Chapter 44.

18. Based on the foregoing, I believe there is probable cause to conclude that between March 14, 2008 and September 30, 2008, Gilberto LEAL knowingly made false statements or representations on multiple ATF Forms 4473 about his residence and for whom he was acquiring the firearms when he acquired approximately 20 firearms. The ATF Forms 4473 are records that are required to be kept by Federal Firearms Licensees. Therefore, I believe Gilberto LEAL knowingly made false statements or representations with respect to the information required to be kept in the records of more than one Federal Firearms Licensee, in violation of Title 18, U.S.C., Section 924(a)(1)(A).

  
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Craig W. Saier  
Special Agent, ATF

SWORN TO and SUBSCRIBED before me this 17<sup>th</sup> day of June, 2009 at  
Brownsville, Texas.

  
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Ronald G. Morgan  
U.S. Magistrate Judge