

UNITED STATES DISTRICT COURT
for the
Western District of Texas

FILED

APR 13 2009

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY REV
DEPUTY CLERK

United States of America
v.

Case No.

Oswaldo TOSTADO-Gonzalez
Gabriel GONZALEZ-Gonzalez

09-M-2619 G
(1,2)

Defendant

CRIMINAL COMPLAINT

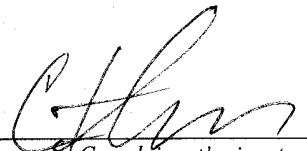
I, the undersigned complainant, being duly sworn state the following is true and correct to the best of my knowledge and belief. Beginning on or about December 3, 2008, and continuing through and including April 11, 2009 in El Paso county, in the Western District of Texas and elsewhere, defendants did, knowingly and intentionally, conspire with each other and others known and unknown, to attempt to purchase for export from the United States merchandise and articles, to wit: firearms, knowing that the purchase of such merchandise and articles were for export from the United States contrary to any law or regulation of the United States.

in violation of Title 18 United States Code, Section(s) 371, 554(a).

This criminal complaint is based on these facts:

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet.


Complainant's signature

Christopher E. Ulmer - ICE Special Agent
Printed Name and title

Sworn to before me and signed in my presence.

Date: April 13, 2009


Judge's signature

City and state: El Paso, Texas

Norbert J. Garney - U.S. Magistrate Judge
Printed name and title

AFFADIVT IN SUPPORT OF CRIMINAL COMPLAINT

US v. Osvaldo **TOSTADO** and Gabriel **GONZALEZ**

On December 3, 2008, El Paso Police Department (EPPD) Detectives contacted the El Paso ICE Office of Investigations with information they received concerning efforts by a Mexican national wanting to illegally export various automatic weapons. The Detectives stated that the Mexican national was only known to them as "R".

On December 20, 2008, El Paso ICE Agents, EPPD Detectives, RAC Las Cruces ICE Agents and RAC Las Cruces ATF Agents set up a controlled meeting in Las Cruces, New Mexico, with two Mexican nationals, later identified as Gabriel **GONZALEZ** and Osvaldo **TOSTADO**, who had expressed interested in purchasing a variety of weapons and ammunition they wanted to illegally exported to Mexico. The two Mexican nationals, Gabriel **GONZALEZ** and Osvaldo **TOSTADO**, met with two undercover agents and provided a detailed list requesting firearms and ammunition totaling approximately \$2,000,000.00 in value. Both **TOSTADO** and **GONZALEZ** are citizens and nationals of Mexico and were legally admitted to the United States with a non-immigrant visa, B-1 / B-2.

Thereafter, the investigation continued with telephone calls and discussions occurred, and on January 29, 2009, El Paso ICE Agents and EPPD Detectives seized \$148,045.00 in U.S. currency paid to undercover agents as a down payment towards the purchase of firearms to be illegally exported to Mexico at a later date. Osvaldo **TOSTADO** delivered the U.S. currency at a prearranged time to the two undercover agents in a green duffel bag in the parking lot of a restaurant in El Paso, Texas.

On February 11, 2009, El Paso ICE Agents along with the EPPD again scheduled a meeting with persons involved in the conspiracy to show them some of the firearms that were being procured as requested. This meeting to "flash" or show the firearms thus far acquired to Gabriel **GONZALEZ** was conducted at a warehouse facility in El Paso, Texas. A variety of firearms were provided as "flash" by the combined law enforcement team. During this meeting, Gabriel **GONZALEZ** personally physically handled firearms as part of his inspection. Gabriel **GONZALEZ** was told by the undercover agents that the firearms he was viewing had a street value of over \$500,000.00.

On March 5, 2009, undercover agents again acquired flash firearms to show Gabriel **GONZALEZ** and two unidentified Mexican nationals who accompanied him to the scheduled meeting at a warehouse in El Paso, Texas. The meeting between **GONZALEZ**, his unidentified companions, and undercover agents was under surveillance by agents of the combined law enforcement team. A different variety of firearms were provided by for **GONZALEZ** and the two Mexican nationals to personally inspect the weapons by physically handling the firearms. Discussions continued concerning when, where, and how much would be paid for the total cache of firearms, as well as discussions about who and how the firearms would be illegally export to Mexico.

Thereafter, on April 11, 2009, **TOSTADO** and **GONZALEZ** arrived to negotiate the final payment of the firearms. They explained they wanted to select only certain firearms from the total gathered and pay only for those, contrary to their original negotiations. **GONZALEZ** and **TOSTADO** informed undercover agents that they would store the firearms in El Paso, Texas, until the Mexican Military left the Juarez, Chihuahua, Mexico area. After the military would leave, they would illegally smuggle the weapons into Mexico.

TOSTADO and **GONZALEZ** were then arrested and transported to the ICE offices for processing.

Oswaldo **TOSTADO** was read his Miranda rights to which he replied he understood and signed. **TOSTADO** agreed to waive his constitutional rights and speak with the agents without the presence of legal counsel. **TOSTADO** stated that he was in El Paso, Texas, to shop for clothing and other goods and was to return to Mexico with the goods. **TOSTADO** stated that he was present in El Paso, Texas area in December 2008 and that the sole purpose for being so was to buy Christmas presents. Agents informed **TOSTADO** that he was photographed and videoed at the meeting in Las Cruces, New Mexico. **TOSTADO** stated that he had been there but that **GONZALEZ** had done all the talking with the two undercover agents.

TOSTADO admitted that he had given a green duffel bag to a man on January 29, 2009, at a restaurant in El Paso, Texas. **TOSTADO** stated that he did not know what was in the bag but he had been paid \$100.00 to deliver the bag.

GONZALEZ was read his Miranda rights to which he replied he understood and signed. **GONZALEZ** agreed to waive his constitutional rights speak with the agents without the presence of legal counsel. **GONZALEZ** stated that he was in El Paso, Texas, because he was registering a pickup truck for border plates in Mexico. When questioned about the Las Cruces, New Mexico, meeting where **GONZALEZ** provided a request list for weapons, **GONZALEZ** stated that he was in California on December 20, 2008. **GONZALEZ** was informed of the fact that the men he had met with were undercover federal agents and the meeting was recorded on video and audio. **GONZALEZ** stated that the agents were lying because he was in California. **GONZALEZ** was informed that agents had other photos and videos of him at other warehouses and **GONZALEZ** stated that the agents had him confused with someone else.

TOSTADO provided a written statement stating that he was present in Las Cruces, New Mexico on December 20, 2008, and that he did hand over the bag to a man.

Included, but not exclusive of the items sought to be purchased by **TOSTADO** and **GONZALEZ**, were three hundred (300) AR-15 or AR -16 rifles; three hundred (300) short barreled .223 rifles; ten (10) Barrett .50 caliber rifles; two (2) 40 millimeter grenade machineguns; ten (10) .45 caliber handguns with silencers; ten (10) .40 caliber handguns with silencers, and large amounts of various caliber ammunition.