

**SEALED**

AO91 (Rev. 8/01) Criminal Complaint

**UNITED STATES DISTRICT COURT  
District of Nebraska**

**FILED**  
US DISTRICT COURT  
DISTRICT OF NEBRASKA  
**MAY 29 2009**  
**OFFICE OF THE CLERK**

UNITED STATES OF AMERICA

v.

**CRIMINAL COMPLAINT**

ESTEBAN DANIEL HERNANDEZ

Case Number: 8:09MJ114

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief.

On or about May 21, 2009 in Douglas County, in the \_\_\_\_\_  
(Date)

District of Nebraska defendant

knowingly sold a firearm, that is, a Barrett Model 99A1, .50 caliber sniper rifle, serial# 4953, and 10 rounds of .50 caliber ammunition, to a confidential informant, knowing and having reasonable cause to believe that said confidential informant had been convicted of a crime punishable by imprisonment for a term exceeding one year; and


in connection with the acquisition of a firearm, a Barrett Model 99A1, .50 caliber sniper rifle, serial# 4953, and 10 rounds of .50 caliber ammunition, from the Bullet Hole, a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious written statement to the Bullet Hole, which statement was intended and likely to deceive the Bullet Hole, as to a fact material to the lawfulness of such sale of the said firearm and ammunition to the defendant under chapter 44 of Title 18, in that the defendant answered "yes" to question 11(a) on ATF Form 4473 that he was the actual transferee/buyer of the firearm,

in violation of Title 18 United States Code, Section(s) 922(d), 924(a)(2) and 922(a)(6).

I further state that I am a(n) ICE Special Agent and that this complaint is based on the  
Official Title

following facts:

Continued on the attached sheet and made a part of this complaint: (X) Yes ( ) No

  
Signature of Complainant

Brent Morral  
Printed Name of Complainant

Sworn to before me and signed in my presence,

MAY 29, 2009 at  
Date

Omaha, Nebraska  
City and State

F. A GOSSETT, U.S. Magistrate Judge  
Name and Title of Judicial Officer

  
Signature of Judicial Officer

*AFFIDAVIT*

Brent Morral, Special Agent, U.S. Immigration and Customs Enforcement, being duly sworn on oath, deposes and states:

1. This affidavit seeks the authority to seize the person of Esteban Daniel HERNANDEZ. Esteban HERNANDEZ is described as a Hispanic male, date of birth of October 31, 1985, six foot one inch, approximately 300 pounds in weight, black hair, brown eyes, social security number 553-87-6589. Esteban HERNANDEZ resides at 5523 South 33<sup>rd</sup> Street, Omaha Nebraska 68107.

I am a Special Agent ("SA") with U.S. Immigration and Customs Enforcement ("ICE"), within the Department of Homeland Security, and have been so employed since December 2003. I am currently assigned to the ICE Office of Investigations in Omaha, Nebraska, where I investigate violations of federal law, focusing on crimes committed by transnational street gangs, to wit, narcotics and firearms trafficking.

I have received specialized training pertaining to gangs and gang organization, narcotics trafficking, and electronic and physical surveillance procedures at the Federal Law Enforcement Training Center in Glynco, Georgia. I have received gang training since then, and I continually receive on-the-job training involving gang investigative techniques. I have conducted and participated in numerous investigations involving gang members. Through these investigations, my training and experience, and conversations with other agents and law enforcement personnel, including the Omaha

Police Department Gang Unit, I have become familiar with the methods used by gang members to distribute drugs, sell firearms, and to collect illicit proceeds, and thus finance additional gang activity.

By virtue of my employment as a Special Agent, I have performed various tasks, which include, but are not limited to:

Functioning as a surveillance agent and thereby observing and recording movements of persons involved in criminal activities, including drug and firearm trafficking.

Interviewing witnesses, admitted gang members, and cooperating individuals relative to various gang and criminal activities and the distribution of drugs.

2. Based on your affiant's training and experience as an ICE Special Agent, your affiant knows:

- d.) That it is unlawful for persons who are convicted felons to possess or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. And as such, it is unlawful for a person to knowingly transfer a firearm or ammunition to a known felon, as stated in Title 18 United States Code, Section 922(d)
- e.) That it is unlawful for a person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed dealer, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such dealer with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition, as stated in Title 18 United States Code, Section 922(a)(6).

The information contained in this affidavit was developed during an investigation conducted by ATF Special Agent Paul A. White of the Omaha Field Office regarding Esteban HERNANDEZ.

- a. During the week of May 20, 2009, ATF Confidential Informant (CI) was contacted by LOPEZ, Ignacio, an illegal alien and prior deported person. LOPEZ is currently indicted in reference to a joint investigation by ATF, Immigration and Customs Enforcement (ICE) and Omaha Police Department (OPD) into several groups of Surenos gang members in and around Omaha, Lincoln and Columbus Nebraska. LOPEZ has made a previous sale of firearms to the CI with the knowledge that the CI is a convicted felon. LOPEZ contacted the CI indicating LOPEZ knew a person identified as HERNANDEZ, Esteban who has a clean criminal record that was willing to purchase firearms from pawn and gun shops for the CI. This solicitation was in no way originated by the CI. Under control of law enforcement agents, the CI agreed to meet with HERNANDEZ.
- b. On 5/21/09, the CI drove and picked up LOPEZ and HERNANDEZ and drove to the business of the Bullet Hole, a federally licensed firearms dealer located in La Vista, Nebraska. During this drive, the CI conversed with LOPEZ and HERNANDEZ. HERNANDEZ indicated to the CI that he was willing to purchase firearms from the gun dealers for the CI. The CI during this conversation indicated to HERNANDEZ that the CI was convicted felon and that the CI's cousin wanted to obtain a .50 caliber sniper rifle for the purpose of taking it to Mexico to a drug cartel. HERNANDEZ indicated that this was no problem and was still willing to purchase firearms for the CI.

HERNANDEZ indicated that the CI would pay HERNANDEZ \$200 for HERNANDEZ for making the firearm purchase for the CI. Upon arrival at the firearms dealer in La Vista, the CI, HERNANDEZ and LOPEZ entered the business and looked at a Barrett, .50 caliber sniper rifle on display and determined the cost of the rifle at approximately \$4,200. After viewing the rifle, all three of them left.

- c. Later that day, the CI contacted HERNANDEZ and told him he had the money for the rifle. The CI picked up HERNANDEZ in the CI's vehicle and drove to the business of the Bullet Hole. During this drive, the CI handed HERNANDEZ the money to purchase the rifle. Upon arrival, the CI and HERNANDEZ arrived at the business and entered. Upon entering the business, HERNANDEZ went to the display counter where he indicated to the employee that he wished to purchase the .50 caliber rifle on display. The employee provided HERNANDEZ with the ATF Form 4473 Firearms Transaction Record as required by federal law to be filled out for all purchases of firearms from a federally licensed firearm dealer. HERNANDEZ provided the employee with his Nebraska issued Drivers License in the name of HERNANDEZ, Esteban. The employee of the firearm licensee properly conducted the transaction as prescribed by federal law. HERNANDEZ completed the transaction, paid for the rifle and left the business with the rifle and placed it in the CI's vehicle. HERNANDEZ purchased a Barrett, Model 99A1, .50 caliber sniper rifle, Serial Number# 4953 and 10 rounds of .50 caliber ammunition for \$4,430.98.
- d. The CI then drove HERNANDEZ back to his residence of 5523 South 33<sup>rd</sup> Street in Omaha and dropped him off. The CI paid HERNANDEZ the \$200 as originally agreed. The CI and



HERNANDEZ discussed additional purchase of firearms in the near future. HERNANDEZ indicated to the CI that he would be willing to make additional purchases for the CI. The CI left the address of HERNANDEZ with the rifle in the CI's vehicle where he then proceeded to a predetermined location and was debriefed and the rifle taken into law enforcement custody. HERNANDEZ by purchasing the rifle and transferring it to the CI knowing the CI to be a convicted felon was in violation of Title 18 USC 922(d).


- e. Special Agent White contacted the Bullet Hole business and obtained copies of the ATF Form 4473 filled out by HERNANDEZ. In filling out the form, HERNANDEZ marked "YES" to question 11a: Are you the actual transferee/buyer of the firearm(s) listed on this form? By marking this answer, HERNANDEZ lied on the form in violation of federal law Title 18 USC 922(a)(6).

- B) Your affiant respectfully submits that there is probable cause to believe that Esteban HERNANDEZ knowingly transferred a firearm and ammunition to a known felon and intentionally lied in filling out the ATF Form 4473 in purchasing the firearm for the CI and not himself, in violation of Title 18, United States Code, Section 922(a)(6) and Section 922(d).

Dated the 29th of May, 2009.

  
\_\_\_\_\_  
Brent Morral  
Special Agent,

Subscribed and sworn before me this 29th day of May, 2009.

  
\_\_\_\_\_  
F. A. GOSSETT  
U.S. Magistrate Judge