

OA091 (Rev. 12/03) Criminal Complaint

UNITED STATES DISTRICT COURT

United States Courts
Southern District of Texas
FILED

OCT 02 2008

Michael N. Milby, Clerk of Court

SOUTHERN

DISTRICT OF

TEXAS

UNITED STATES OF AMERICA

V.

JUAN PABLO GUTIERREZ

CRIMINAL COMPLAINT

Case Number: H-08-695M

(Name and Address of Defendant)

W

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. On or about November 7, 2006 in Harris County, in the Southern District of Texas defendant(s) did,

(Track Statutory Language of Offense)

in connection with the acquisition of a firearm from Carter's Country, a licensed dealer of firearms within the meaning of Chapter 44, Title 18 of the United States Code, willfully cause another person to knowingly make a false written statement that was intended to and did deceive Carter's Country as to a fact material to the lawfulness of such sale of the firearm to that person in that the defendant willfully caused that person to represent that he was the true purchaser of five Beretta, model M9, 9 mm pistols when in fact he was not,

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

I further state that I am a(n) Special Agent and that this complaint is based on the following facts:

Official Title

which are related in detail in the affidavit attached hereto and made a part of this complaint.

Continued on the attached sheet and made a part of this complaint:

Yes No

Carla D Mayfield
Signature of Complainant

Special Agent Carla D. Mayfield, ATF
Printed Name of Complainant

Sworn to before me and signed in my presence,

October 2, 2008

Date

at

Houston, Texas

City

State

Calvin Botley, U.S. Magistrate Judge

Name of Judge

Title of Judge

Calvin Botley
Signature of Judge

ATTACHMENT A

I, Special Agent Carla D. Mayfield, affiant, do hereby depose and state as follows:

I am a Special Agent of the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and have been so employed since June of 1988. I have attended formal training at the Federal Law Enforcement Training Center and the ATF National Academy in Glynco, Georgia.

My duties include the investigation of violations of the federal firearms laws. As a result of my training and experience as an ATF Special Agent, I am familiar with federal firearms laws and know that it is a violation of Title 18, United States Code, Section 922(a)(6) to knowingly make a false statement to a federally licensed firearms dealer that is material to the purchase of a firearm. It is also a violation of Title 18, United States Code, Section 2(b) to willfully cause another person to commit such an offense against the United States.

In January of 2007, after a routine inspection of Carter's Country, a federally licensed firearms dealer, by ATF Industry Operations Branch, numerous people were identified who had made suspicious purchases of firearms in that each purchased a large number of military-style firearms. In fact, each purchaser usually bought multiple firearms of the exact same make and model. The firearms of choice were Bushmaster rifles, Beretta pistols, FN pistols and FN rifles.

ATF was able to determine that, over a fifteen (15) month time frame, 23 suspected firearms traffickers purchased 339 firearms. At least forty (40) of these firearms have been recovered by police in the United Mexican States and at least three (3) have been recovered in Guatemala. The total expenditure to date has been approximately \$366,449.31.

A prolific purchaser associated with this organization is an individual identified as **Juan Pablo Gutierrez**, date of birth _____ an Hispanic male, whose current address is _____

Gutierrez used his Texas Driver's License Number _____ During a two month time frame, _____ purchase the following 20 firearms, five of which have been recovered at crime scenes inside the United Mexican States ("Mexico"), costing approximately \$17,801.03:

- On October 23, 2006, **Gutierrez** purchased two (2) Bushmaster .223 caliber rifles, one (1) FN 5.7 caliber pistol and one (1) H & K 9mm caliber pistol from Carter's Country #1, a federally licensed firearms dealer in Houston, Texas. The total amount of the sale was \$3,951.60.
 - According to information provided by Mexican law enforcement authorities, approximately six months later, both of the Bushmaster rifles were recovered among an arsenal of weapons in Campeche, Mexico which

were seized in connection with the arrest of twenty suspected kidnapers and narcotics traffickers by Mexican police.

- On October 26, 2006, **Gutierrez** purchased two (2) FN 5.7 caliber pistols and one (1) Colt, .38 caliber pistol from Carter's Country #4, a federally licensed firearms dealer in Houston, Texas. The total amount of the sale was \$2,920.16.
- On November 7, 2006, **Gutierrez** purchased five (5) Beretta, Model M9, 9mm caliber pistols Carter's Country #2, a federally licensed firearms dealer in Houston, Texas. The total amount of the sale was \$2,597.30.
 - According to information provided by Mexican law enforcement authorities, approximately seven (7) months later, one of these firearms was recovered in Santiago Tuxtla, Veracruz, Mexico along with an arsenal of weapons recovered from an overturned pickup truck.
 - According to information provided by Mexican law enforcement authorities, approximately eight (8) months later, one of these firearms was recovered in Orizaba, Veracruz, Mexico at a joint military-PGR checkpoint. These firearms were part of a larger arsenal and were also found along with a quantity of marijuana.
- On December 12, 2006, **Gutierrez** purchased four (4) Bushmaster .223 caliber rifles from Carter's Country #2, a federally licensed firearms dealer in Houston, Texas. The total amount of the sale was \$4,221.19.
 - According to information provided by Mexican law enforcement authorities, approximately one year later, one of these firearms was recovered in Campeche, Mexico when eleven suspected "Zetas" were detained after assaulting police. "Los Zetas" is the short-hand Spanish name for a group of enforcers for the Gulf Cartel Mexican drug trafficking organization.
- On December 14, 2006, **Gutierrez** purchased three (3) Bushmaster .223 caliber rifles from Carter's Country #2, a federally licensed firearms dealer in Houston, Texas. The total amount of sale was \$3,084.70.
- On December 16, 2006, **Gutierrez** purchased one (1) Bushmaster .223 caliber rifle from Carter's Country #3, a federally licensed firearms dealer in Houston, Texas. The total amount of sale was \$1,026.08.

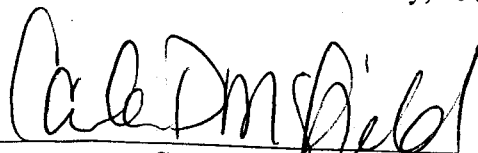
On July 15, 2008, ATF Group Supervisor Kirk Tinker and I interviewed a cooperating witness who stated that he/she purchased some firearms as a so-called "straw-purchaser" for **Juan Pablo Gutierrez** on two occasions in 2006. He/she had been paid a fee to buy what firearms **Gutierrez** ordered and to hand them over to **Gutierrez** immediately

thereafter. He/she stated that **Gutierrez** provided him/her cash and told him/her which guns to buy. He/she stated that after he/she purchased guns on one occasion **Gutierrez** immediately gave them to his cousin, whose identity was unknown to the cooperating witness. The cooperating witness told **Gutierrez** that he/she was worried about the guns being traced to him/her. **Gutierrez** told him/her not to worry, because **Gutierrez'** cousin had assured that the serial numbers had been removed, making such a trace difficult. The cooperating witness knows **Gutierrez** personally and has identified his photograph.

For each transaction, the cooperating witness filled out an ATF Form 4473 (Firearms Transaction Record) in which he/she falsely stated each time that he/she was the actual purchaser of the firearms at issue and was not buying them on behalf of another person. Specifically, the false written statement was his "Yes" answer to question "11a" on the form, which read, "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." His/her false statements were made to Carter's Country #1 and #4 stores, both federally licensed firearms dealers, and were material to the sale of the firearms described in this paragraph, because the sales would not have been legal and would not have occurred had Carter's Country's employees known the truth. The statements, which were made contemporaneously with the firearms sales, were intended to mislead Carter's Country and actually did mislead it. In all, cooperating witness purchased a total of eight Beretta, Model M-9, 9 mm caliber pistols for a total of approximately \$4,131 in cash on behalf of **Gutierrez**. The sales occurred November 7, 2006 and November 14, 2006.

Juan Pablo Gutierrez violated Title 18, United States Code, Sections 2(b) and 922(a)(6) on or about November 7, 2006 when he willfully caused the cooperating witness to violate Title 18, United States Code, Section 922(a)(6) (False Material Statement to a Federal Licensee) by paying him/her to complete and sign an ATF Form 4473, Firearms Transaction Record, making a false material statement intended to mislead the licensee in connection with the purchase of five Beretta, Model M-9, 9mm caliber pistols as described in the paragraphs above in detail. **Gutierrez** willfully disregarded the law in causing this offense to occur. Despite his knowledge from his own prior experience in purchasing firearms for trafficking to Mexican end-users that the law required a firearms purchaser to answer the questions on ATF Form 4473 honestly and that the law did not permit others to purchase firearms on the behalf of a third-party, he nevertheless induced the cooperating witness to commit the offense by promise of payment for doing so.

Based on the above information, your affiant believes that on November 7, 2006 **Juan Pablo Gutierrez** violated Title 18, United States Code, Sections 2(b) and 922(a)(6). These violations occurred within Houston, Harris County, in the Southern Judicial District of Texas.



Carla D Malfield
Special Agent, ATF

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE

Bae Breey
United States Magistrate Judge

10/2/08
Date