

United States District Court

FILED

Western DISTRICT OF Texas

MAR 21 2008

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

UNITED STATES OF AMERICA

V.

**Jonatan LOPEZ Gutierrez,
John AVELAR (AKA Juan AVELAR), and
Jose AMADOR Villalpando**

CRIMINAL COMPLAINT

CASE NUMBER: 08-15627


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 February 28, 2008, through March 20, 2008, in the Western District of Texas and elsewhere the defendant(s) did knowingly and intentionally conspire with each other and others to acquire by providing false information to a firearms dealer; receive and possess firearms by an non-immigrant visa holder, and export firearms from the United States to the Republic of Mexico,

in violation of Title 18 United States Code, Section(s) 371, 554, 922(a)(6), and 922(g)(5)(B)

I further state that I am an U.S. Immigration and Customs Enforcement Special Agent and that this complaint is based on the following facts:

See Attached Affidavit

Continued on the attached and made a part of this complaint: Yes No



Signature of Complainant

Jesus Lowenberg, Senior Special Agent
Printed Name of Complainant

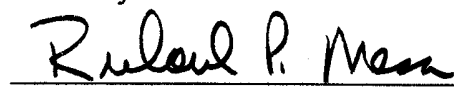
Sworn to before me and signed in my presence,

March 21, 2008
Date

At El Paso Texas
City State

Richard P. Mesa
Name of Judge

U.S. Magistrate Judge
Title of Judge



Signature of Judge

On February 28, 2008, John AVELAR placed an order with a sales clerk at a local gun store located in the Western District of Texas to purchase five (5) each DPMS, model AP4 .308 caliber rifles; five (5) each DPMS, model A-15 Panther Lite, .223 caliber rifles; and five (5) each Bushmaster, model Carbon 15, .223 caliber pistols for a total of fifteen (15) firearms. The total purchase price for the order AVELAR placed with the clerk was \$16,000.00 including sales tax. The store did not have all the firearms in its inventory, and agreed to order them from its source of supply. The clerk asked AVELAR for a deposit prior to placing the order. AVELAR responded that he would pay the entire amount due at that time. AVELAR volunteered to the clerk that not all the firearms were for him, and then gave the clerk the names of the individuals who would be picking up the firearms when they arrived. These names were the same names as persons who had previously purchased similar firearms models and calibers of firearms at that same gun store. AVELAR then paid the entire amount due in cash.

On March 19, 2008, at approximately 4:00 p.m., AVELAR traveled alone from his residence at 680 Milton Henry, El Paso, Texas to the local gun store. AVELAR was driving a black Honda Ridgeline with a dealership tag on the window. Once inside, AVELAR told the sales clerk that contrary to what he had earlier told the clerk, AVELAR himself would be picking up any and all of the available DPMS, model A-15, .223 caliber rifles previously ordered on February 28, 2008. Additionally, the clerk informed AVELAR that another firearm he had ordered earlier had also arrived. Thereafter, AVELAR also received a TNW Inc. brand, model AAM3, semi-automatic fifty (.50) caliber semi-automatic firearm with serial number 000799. While at the local gun store, AVELAR completed the ATF Form 4473 as required by federal firearms statutes for all six (6) firearms. On the ATF Form 4473, question 12a states, "Are you the actual buyer of the firearm(s) listed on this form?" If instead the firearm is being purchased for another person, especially if that person is prohibited or excluded by law from receiving, or possessing a firearm, then that is a material fact which would prohibit the sale of that firearm. In order for the firearms to be transferred from the Federal Firearms Licensee who was operating the local gun store, AVELAR would have to answer yes for each of the six (6) firearms. After completing the required paperwork inside the local gun store, AVELAR was observed carrying firearm boxes from the gun store into the Honda Ridgeline he arrived in. AVELAR also purchased assorted ammunition during his visit to the store. AVELAR departed the gun store and drove his vehicle past his residence heading directly to mile marker 7 on Artcraft Road near Santa Teresa, New Mexico.

Upon reaching mile marker 7 off of Artcraft Road, AVELAR turned onto an uninhabited stretch of land that opened up to a deserted area near a cliff known to law enforcement officers as a make-shift shooting range. After a short period of time, a white cargo van approached AVELAR's vehicle and parked. Two individuals exited the van and met with AVELAR. AVELAR and the individuals unloaded several of the firearms from the Honda Ridgeline and began shooting what appeared to be a .50 caliber semi-automatic firearm, a rifle, and a pistol.

The surveillance observed AVELAR using a camera to videotape the other two individuals shooting and posing with the firearms.

After AVELAR and two individuals finished shooting the various firearms, they loaded them back into the Honda Ridgeline. AVELAR alone got back into the Honda Ridgeline, while the two other individuals entered the white van. Both vehicles exited the area and proceeded towards Interstate 10. While conducting surveillance, agents identified the van as having a Texas registration.

AVELAR, driving the Honda, and the white van drove from mile marker 7 directly to storage unit, located at Sunland Park Self Storage, 3820 Constitution Drive, El Paso, Texas 79922.

While at the storage facility, agents observed all three the individuals moving items out of and into the white van. After a short period of time, AVELAR entered the Honda Ridgeline, while the two individuals got back into the white van. AVELAR departed the storage facility and traveled in the direction of Artcraft Road. Agents maintained surveillance of the white van as it left that facility believing that the firearms were now in the white van and AVELAR'S whereabouts were unknown for several hours.

The white van exited the storage facility, and proceeded to enter I-10 eastbound until it exited at the Downtown exit and proceeded south, eventually attempting to enter into Mexico.

When the driver of the white van stopped to pay the toll booth attendant prior to exiting the United States into Mexico, Immigration and Custom Enforcement Agent Jesus Lowenberg approached the van and identified himself as a Customs law enforcement agent. An oral declaration was obtained from Jonatan LOPEZ-Guiterrez, the driver of the white van. LOPEZ stated he was going to Mexico and provided a negative monetary declaration. LOPEZ stated he had no explosives, and when specifically asked whether he had any firearms or weapons, he stated in the affirmative. LOPEZ and his passenger, Jose AMADOR Villalpando, were identified as being non-immigrant aliens. LOPEZ and AMADOR were removed from the white van. Neither LOPEZ or AMADOR had any documents to reflect that they had sought to properly export the firearms from the United States into the Republic of Mexico.

Inspection of the white van resulted in the discovery of several weapons hidden underneath roofing shingles. Further inspection resulted in a total of six (6) DPMS, model A-15, .223 caliber rifles bearing serial numbers FH18565, FH14862, FH14860, FH18570, FH14861, and FH14853. Agents also located and seized one TNW Inc., U.S. Government model AAM3, semi-automatic .50 caliber firearm with serial number 000799. LOPEZ and AMADOR were taken to the Immigration and Customs Enforcement (ICE) Office to be interviewed and subsequently arrested.

LOPEZ and AMADOR are both citizens and nationals of the Republic of Mexico. Both were in possession of Border Crossing Cards, a form of a non-immigrant visa. Federal firearms laws prohibit non-immigrant aliens from possessing firearms or ammunition, unless they have a hunting license. Neither has a hunting license. Aliens to the United States are only authorized to receive or possess a firearm in limited circumstances which were not present in this case. AVELAR is, upon information and belief, a United States Citizen and on basis could permissibly purchase the firearms provided he met all the other legal requirements.

Once at the ICE Office, agents advised LOPEZ of his Miranda rights. LOPEZ agreed to provide a statement without an attorney present. During questioning LOPEZ stated he has been illegally exporting firearms from the United States into Mexico since June 2007. LOPEZ further stated that he told Juan AVELAR, which firearms to purchase. LOPEZ then informed the agents that he would provide AVELAR with the money to purchase the firearms for LOPEZ to take to Mexico and sell to others.

AVELAR would then go to the gun store, complete the ATF Form 4473, and take possession of the firearms selected by and paid for by LOPEZ. AVELAR would then provide the firearms to LOPEZ, who would then "smuggle" the firearms into Mexico. LOPEZ stated that AVELAR would earn approximately \$100.00 to \$150.00 for each gun he purchased. LOPEZ stated AVELAR acquired firearms for him on numerous occasions totaling approximately 50 firearms.

As to the .50 caliber firearm found and seized by agents on March 19, 2008, LOPEZ stated he found the firearm on the internet and asked AVELAR to purchase it for him. LOPEZ provided AVELAR with the money to purchase the firearm for him and where to order it. AVELAR then ordered it and had the firearm transferred to a local gun store.

AMADOR was also advised of his Miranda rights and agreed to be interviewed without the presence of an attorney. AMADOR stated that he was aware there were guns in the vehicle. AMADOR admitted that he assisted AVELAR and LOPEZ in hiding the firearms under the roofing shingles. AMADOR also admitted that he had provided the agents with false information because he was scared. AMADOR provided a written statement.

After the information described above was learned from interviewing LOPEZ and AMADOR, agents decided to travel to AVELAR 'S residence located at 680 Milton Henry, El Paso, Texas 79932. The residence had been under surveillance after AVELAR called LOPEZ, on LOPEZ's cellular telephone, during LOPEZ's interview with agents. LOPEZ, under the direction of interviewing agents, agreed to meet AVELAR at AVELAR'S residence. Surveillance was maintained

because of fear AVELAR might flee into Mexico if he became aware of the aforementioned seizures.

Upon arrival to AVELAR's house, the agents encountered AVELAR outside the residence armed with a loaded .223 caliber rifle in his hands and a loaded Taurus 9mm pistol inside his waistband. The agents took AVELAR into custody and performed a security sweep of the residence for officer safety. During the security sweep inside the residence, agents observed numerous gun boxes throughout the residence. Some of the gun boxes observed in the residence were similar in appearance to the gun boxes agents observed AVELAR carrying out of the gun store earlier in the day on March 19, 2008.

AVELAR invoked his right to counsel. No interview was conducted and AVELAR was transported to the El Paso County Detention Facility.