

UNITED STATES DISTRICT COURT

Western DISTRICT OF Texas

UNITED STATES OF AMERICA

v.

FILED

CRIMINAL COMPLAINT

Miguel MARTINEZ-Yu
Octavio BOJORQUEZ

JAN 26 2009

CASE NUMBER:

09-614M-01+02

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

(Name and address of defendant)

I the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about August 15, 2008 through August 23, 2008 in El Paso County, in the Western District of Texas, defendant(s) did, (Track Statutory Language of Offense)

Conspire to make a false statement or representation with respect to the information required to be kept in the records of a Federal Firearms Licensee.

in violation of Title 18 United States Code, Section(s) 371 to violate 924(a)(1)(A).

I further state that I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives and that this complaint is based on the following facts:

See Attachment

Continued on the attached sheet and made a part hereof: YES NO

[Signature]

Signature of Complainant
Scott Cruickshank
Special Agent, ATF

Sworn to before me and subscribed in my presence,

January 26, 2009

El Paso, Texas

Date

at

City and State

Richard P. Mesa, U.S. Magistrate Judge

[Signature]

Name and Title of Judicial Officer

Signature of Judicial Officer

United States of America

vs

Miguel MARTINEZ-Yu
Octavio BOJORQUEZ

I, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agent (SA) Scott Cruickshank, submit this affidavit for the limited purpose of obtaining a criminal complaint. This affidavit sets forth only those facts and circumstances necessary to establish probable cause for the issuance of the requested criminal complaint. This affidavit does not contain every material fact that I have learned during the course of this investigation. The information contained in this affidavit is based on personal knowledge and information provided to me by other United States law enforcement officials who also conducted this investigation.

On November 15, 2007, Octavio BOJORQUEZ purchased five FNH, Model Five Seven, 5.7x28 caliber pistols from an El Paso, Texas area Federal Firearms Licensee (FFL).

On February 29, 2008, BOJORQUEZ purchased 4 more FNH, Model Five Seven, 5.7x28 caliber pistols from the same FFL.

On August 15, 2008, Miguel MARTINEZ-Yu initially completed an ATF Form 4473, Firearms Transaction Record Part I-Over-the Counter Form (4473) at the same FFL that BOJORQUEZ had previously purchased 9 FNH Five Seven pistols. The 4473 must be completed by an individual during the purchase of a firearm from a licensed firearms dealer. The purchaser is also required by law to complete the form completely and truthfully.

During completion of the 4473 on August 15, 2008, MARTINEZ used an Eastside El Paso, Texas address and wrote that he was a resident of Texas. He also answered "Yes" to question 11(a) on the 4473, which asks, "Are you the actual purchaser of the firearm(s) listed on this form? **WARNING: You are not the actual purchaser if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearms to you.**" The FFL then conducted an online background check on MARTINEZ. The background check was delayed.

On August 21, 2008, according to the 4473, MARTINEZ returned to the store and completed the purchase of the following firearm:

- FNH, Model Five-Seven, 5.7 caliber pistol, serial number 386153420

While MARTINEZ was at the store on August 21, 2008, according to another 4473 initially dated August 21, 2008, MARTINEZ attempted to purchase more firearms. He initially completed the 4473, again using the same Eastside El Paso, Texas address and

wrote that he was a resident of Texas. He also answered "Yes" to question 11(a) on the 4473, which asks, "Are you the actual purchaser of the firearm(s) listed on this form? **WARNING: You are not the actual purchaser if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearms to you.**" The FFL then conducted an online background check on MARTINEZ. This background check was also delayed.

On Saturday, August 23, 2008, MARTINEZ returned to the store and completed the purchase of four more FNH pistols. The firearms are described as follows:

- FNH, Model Five-Seven, 5.7 caliber pistol, serial number 386154629
- FNH, Model Five-Seven, 5.7 caliber pistol, serial number 386153584
- FNH, Model Five-Seven, 5.7 caliber pistol, serial number 386153931
- FNH, Model Five-Seven, 5.7 caliber pistol, serial number 386154073

According to both 4473s completed by MARTINEZ, he used a Texas Driver's license, # 24921735, and a Permanent Alien Resident Card, A# 058-207-709, as identification. MARTINEZ provided Texas Gas Service bills in the name of Miguel A. Martinez, with the Eastside El Paso address, as a proof of residency.

Further investigation revealed that MARTINEZ also has a Texas Identification Card, # 09291953, with an address of Ajonjoli No 5712, Juarez, Mexico.

The FNH, Model Five Seven, 5.7x28 caliber pistol is one of the weapons of choice of Mexican Drug Trafficking Organizations and is commonly referred to as the "Mata policia" or "Cop Killer" due to its reputation that it fires a bullet that can penetrate the body armor commonly worn by law enforcement. These firearms commonly retail in the El Paso, Texas area for approximately \$1,100.00 to \$1,200.00 per firearm.

On January 24, 2009, ATF Special Agents (SAs) initially interviewed MARTINEZ at his place of employment. MARTINEZ is a contract janitor at a U.S. Government Facility. MARTINEZ said that he lives in Juarez, Mexico and has never lived in the United States. He was then asked about the firearms that he purchased. He initially claimed they were at his residence in Juarez, Mexico.

During further questioning, MARTINEZ provided the following information: He did purchase the five firearms in question from the FFL. He was not able to name the make, model or caliber of the firearms. He did not know anything about firearms. He was not the actual purchaser and purchased them at the request of his wife's cousin, by the name of BOJORQUEZ. BOJORQUEZ took him to the gun shop, provided MARTINEZ with money for the firearms and told him which ones to purchase. MARTINEZ completed the 4473s with the assistance of BOJORQUEZ. Once he completed the purchase, MARTINEZ turned the firearms over to BOJORQUEZ and never saw them again. MARTINEZ also never lived at the Eastside El Paso address and has lived his whole life in Juarez, Mexico. The Eastside

El Paso address belongs to his sister and he just used the address when he was applying for Permanent Residence in the U.S.

MARTINEZ was shown a picture of Octavio BOJORQUEZ. MARTINEZ identified BOJORQUEZ as the person for whom he purchased the firearms.

ATF Agents then interviewed BOJORQUEZ. BOJORQUEZ initially claimed that he purchased the firearms from MARTINEZ. He then admitted that he asked MARTINEZ to purchase the firearms for him because he did not want anymore of the firearms in his name. BOJORQUEZ said that MARTINEZ does not know anything about firearms and he took MARTINEZ to the gun store, provided him with the money to purchase the firearms and told him which ones to purchase. BOJORQUEZ also said that he accompanied MARTINEZ into the store. He said he did not assist MARTINEZ in completing the 4473. BOJORQUEZ said that he paid MARTINEZ \$1,200.00 for purchasing the firearms for him. He also said that all the FNH pistols mentioned, 14 pistols in total with an approximate retail value of almost \$17,000.00 including sales tax, were no longer in his possession.

Based on all of the forgoing information, I believe there is probable cause to believe that Miguel MARTINEZ-Yu and Octavio BOJORQUEZ conspired to cause a Federal Firearms Licensee to maintain a false record in violation of Title 18 United States Code Section 371.

AUSA Greg McDonald approved the arrest of MARTINEZ and BOJORQUEZ