

AO91 (Rev. 10/03) Criminal Complaint

JLB
JAN 13 2009
Clerk of Court

UNITED STATES DISTRICT COURT

SOUTHERN

DISTRICT OF

TEXAS

UNITED STATES OF AMERICA
V.
FERNANDO MAYA BASURTO

CRIMINAL COMPLAINT

Case Number: H-09-031M

(Name and Address of Defendant)

un Sealed
Public and unofficial staff access
to this instrument are
prohibited by court order.

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

Count One: On or about 4/8/2002 to 11/29/2004 in Harris County, in the Southern District of Texas defendant(s) did,

knowingly and willfully conspire and agree with another person to commit an offense against the United States, that is, to knowingly and for the purpose of evading the reporting requirements of Title 31, Section 5313(a) of the United States Code, and the regulations promulgated thereunder, in particular Title 31 Code of Federal Regulations Section 103.22, structure and assist in structuring transactions with domestic financial institutions, contrary to Title 31, United States Code Section 5324(a)(3) and (d),

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

Count Two: On or about 5/24/2004 in Harris County, in the Southern District of Texas defendant(s) did,

did knowingly and for the purpose of evading the reporting requirements of Title 31, Section 5313(a) of the United States Code, and the regulations promulgated thereunder, in particular Title 31 Code of Federal Regulations Section 103.22, structure and assist in structuring transactions with domestic financial institutions in violation of Title 31 United States Code, Section(s) 5324(a)(3) and (d).

I further state that I am a(n) Special Agent of the Federal Bureau of Investigation and that this complaint is based on the facts related in the affidavit attached hereto and made a part of this complaint.

See Attached Affidavit of Special Agent Kendall Hopper

Kendall Z. Hopper
Signature of Complainant

Kendall Hopper
Printed Name of Complainant

Sworn to before me and signed in my presence,

Date January 13, 2008

Magistrate Judge Frances Stacy
Name and Title of Judicial Officer

City and State Houston, TX
Frances A. Stacy
Signature of Judicial Officer

Affidavit in Support of Criminal Complaint and Arrest Warrant for Fernando Maya Basurto

I, KENDALL HOPPER, being duly sworn, hereby depose and state:

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") in the Houston Field Office. I have been a Special Agent since September 2002. I am charged with the duty of investigating violations of the laws of the United States. During my tenure as a Special Agent with the FBI, I have been involved in the execution of arrests and search warrants, and conducted investigations of corporate fraud, securities fraud, wire fraud, mail fraud, the Foreign Corrupt Practices Act, money laundering, and currency violations.

2. This affidavit is made in support of a criminal complaint and arrest warrant charging the defendant, FERNANDO MAYA BASURTO, with: (a) Conspiracy to Structure Transactions, in violation of 18 U.S.C. § 371; and (b) Structuring Transactions to Avoid Reporting Requirements, in violation of 31 U.S.C. § 5324(a)(3) and (d).

3. The information contained within this affidavit is based upon my personal knowledge, as well as information obtained during this investigation from other sources, including: (a) bank records obtained from Bank of America, Wells Fargo, and JP Morgan; (b) emails and business records obtained from ABB, Ltd.; (c) Currency Transaction Reports, and (d) other evidence obtained during the course of this investigation. This affidavit does not purport to set forth all of my knowledge of, or investigation into, this matter and only sets forth sufficient details to establish probable cause for the criminal complaint and arrest warrant. Where conversations and events are referred to herein, they are related in substance and in part. Where figures and calculations are set forth herein, they are approximate.

INTRODUCTION

4. Under Title 31, United States Code, Section 5313(a), and Title 31, Code of Federal Regulations, Section 103.22, U.S. financial institutions are required to file a Currency Transaction Report (“CTR”) for each transaction of currency, including of deposits and withdrawals, of more than \$10,000. Based on my training and experience, a person who wants to avoid having a financial institution file a CTR concerning a financial transaction involving that person will often conduct multiple transactions of \$10,000 or less to evade this requirement. Such conduct is typically knowing as “structuring” or, more colloquially, “smurfing,” and it is in violation of Title 31, United States Code, Section 5324(a)(3) and (d).

5. The anti-bribery provisions of the Foreign Corrupt Practices Act (“FCPA”), codified at Title 15, United States Code, Sections 78dd-1, *et seq.*, among other things, make it unlawful for any “domestic concern,” or for any officer, director, employee, or agent of such domestic concern, to knowingly make use of any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any foreign official for purposes of influencing any act or decision of such foreign official in his (or her) official capacity, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person. 15 U.S.C. § 78dd-2(a) and (g).

6. The definition of a “domestic concern” under the FCPA includes: (a) any individual who is a citizen, national, or resident of the United States; and (b) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State

of the United States or a territory, possession, or commonwealth of the United States. 15 U.S.C. § 78dd-2(h).

7. Based on my training and experience, individuals and companies who want to pay bribes to foreign officials in connection with international business often use agents, representatives, or “consultants” as intermediaries between themselves and the foreign officials to facilitate and conceal the bribe payments, in violation of the Foreign Corrupt Practices Act. Based on my training and experience, bribes are often paid in cash to conceal the payments and hinder law enforcement’s ability to trace the money.

FACTUAL BACKGROUND

8. On April 18, 2005, ABB, Ltd., a corporation headquartered and incorporated in Switzerland, made a voluntary disclosure through its outside counsel to the Department of Justice, the Federal Bureau of Investigation, and the staff of the Securities and Exchange Commission regarding possible violations of the FCPA by one of ABB, Ltd.’s subsidiaries, ABB, Inc. ABB, Inc. was incorporated under the laws of the State of Delaware, and one unit of ABB, Inc. did business as ABB Network Management (“ABB NM”). ABB NM had its principal place of business in Sugar Land, Texas, and its primary purpose was to provide products and services to electrical utilities for network management in power generation, transmission, distribution, and consumption. Many of ABB NM’s clients were foreign governmental utilities. ABB NM did business in a number of its foreign markets through agent representatives.

9. One of the disclosures made by ABB, Ltd. concerned some suspicious payments to one of ABB NM’s representatives, Equipos y Sistemas de México, S.A. de C.V. (“ESIMEX”). ESIMEX was a Mexican company located in Mexico City, Mexico. ABB NM had a contractual relationship

with ESIMEX. According to the contract, ESIMEX would be ABB NM's representative in Mexico, including being ABB NM's representative to the Mexican government utilities Comisión Federal de Electricidad ("CFE") and Luz y Fuerza. One of the principals of ESIMEX was the defendant FERNANDO MAYA BASURTO. One of the other principals was BASURTO's father.

10. For ESIMEX's representational services, the contract provided that ABB NM would pay ESIMEX a percentage of the revenue generated from business with Mexican government utilities, that is, CFE and Luz y Fuerza. However, ABB Ltd.'s internal investigation revealed that ABB NM did not only pay ESIMEX by sending wires or checks to ESIMEX's corporate bank account in Mexico at BBVA Bancomer, but also made a series of U.S. wire transfers to various individuals and U.S. bank accounts. Although the individual named recipients of the wire transfers were not always BASURTO, BASURTO had signature authority on five of the nine accounts to which funds were sent. BASURTO's father's wife, Yolanda Portillo Basurto, had signature authority over the other four accounts. Indeed, it appears the other named individuals whose accounts received wires were all family and friends of BASURTO. In total, ABB NM wired approximately \$1,001,804 to U.S. accounts on behalf of BASURTO's company, ESIMEX, a company that ostensibly did its work in Mexico.

11. From emails supplied by ABB, Ltd., I learned that it was BASURTO who instructed individuals at ABB NM to make the wire transfers to himself and his family and friends, including providing the names, account numbers, and amounts.

12. During the course of my investigation, I obtained and reviewed records for eleven U.S. bank accounts, the nine U.S. accounts to which ABB NM wired funds and two related accounts uncovered during the investigation. The investigation revealed that nearly half the money wired to

these accounts by ABB NM, approximately \$497,823.49, was withdrawn in cash between April 8, 2002 and November 29, 2004 in at least 91 separate transactions. This does not include withdrawals from ATMs.

13. From additional review of the records of these eleven U.S. accounts, I learned that defendant BASURTO and/or Yolanda Portillo de Basurto were one of the signatories on all of the eleven accounts and therefore at least one of the two was authorized to withdraw funds from all the U.S. accounts to which ABB NM sent funds. Of the transactions for which the banks were able to determine the identity of the person who made the withdrawal, all but eight of the withdrawals were made by BASURTO or Yolanda Portillo de Basurto. Of the eight additional withdrawals, four were made by BASURTO's father and three were made by Andres Portillo Basurto, who also appears to be a relation of BASURTO.

14. Examining each of the 91 withdrawals, I determined that *all but one of the withdrawals were for \$10,000 or less* and therefore fell under the threshold for filing a CTR. The vast majority of these withdrawals occurred in Houston, Texas, or La Jolla, California.

15. I also determined that, during the period under investigation, the majority of the funds in these eleven accounts—roughly 90%—came from a single source, ABB NM, excluding internal transfers among the accounts. Moreover, on several occasions, BASURTO alone and sometimes with Yolanda Portillo de Basurto, withdrew far more than \$10,000 in a single day in multiple withdrawals of \$10,000 or less from multiple accounts and multiple banks and/or branches of banks.

16. For example, on Tuesday, December 31, 2002, BASURTO made the following withdrawals:

Date	Time	Amount	Bank	Account	Location
December 31, 2002	12:03 pm	\$6,000	Bank of America	xx519	7680 Girard Ave. La Jolla, California
December 31, 2002	12:13 pm	\$5,000	Wells Fargo	xx766	7714 Girard Ave. La Jolla, California

On Thursday, January 2, 2003, the next business day, BASURTO made the following additional cash withdrawals:

Date	Time	Amount	Bank	Account	Location
January 2, 2003	12:31 pm	\$5,000	Wells Fargo	xx766	7714 Girard Ave. La Jolla, California
January 2, 2003	12:45 pm	\$5,000	Bank of America	xx519	7680 Girard Ave. La Jolla, California
January 2, 2003	12:46 pm	\$5,000	Bank of America	xx772	7680 Girard Ave. La Jolla, California

In sum, BASURTO withdrew \$26,000 in cash over two business days using three different accounts and two withdrawal locations.

17. Another example occurred on February 14, 2003, when defendant BASURTO made the following cash withdrawals:

Date	Time	Amount	Bank	Account	Location
February 14, 2003	Unknown	\$2,000	Wells Fargo	xx766	Unknown Wells Fargo branch
February 14, 2003	9:30 am	\$10,000	Bank of America	xx772	5171 San Felipe St. Houston, Texas
February 14, 2003	2:06 pm	\$10,000	Bank of America	xx772	5348 Westheimer Rd. Houston, Texas

In sum, BASURTO withdrew \$22,000 in cash in a single day using two different accounts and three different withdrawal locations, all of which occurred in the Southern District of Texas.

18. In yet another example on February 5, 2004, BASURTO made the following cash withdrawals:

Date	Time	Amount	Bank	Account	Location
February 5, 2004	12:11 pm	\$9,000	Bank of America	xx519	5348 Westheimer Rd. Houston, Texas
February 5, 2004	12:46 pm	\$9,000	Wells Fargo	xx766	1300 Post Oak Blvd., Suite 1150 Houston, Texas

The next day, BASURTO made the following additional cash withdrawal:

Date	Time	Amount	Bank	Account	Location
February 6, 2004	1:04 pm	\$9,000	Bank of America	xx414	5348 Westheimer Rd. Houston, Texas

On that same day, BASURTO's father's wife, Yolanda Portillo de Basurto also made a cash withdrawal:

Date	Time	Amount	Bank	Account	Location
February 6, 2004	1:51 pm	\$7,000	Bank of America	xx513	5348 Westheimer Rd. Houston, Texas

In sum, BASURTO and Yolanda Portillo de Basurto withdrew \$34,000 in cash over two days using four different accounts at two different withdrawal locations, all in the Southern District of Texas.

19. Additionally on March 31, 2004, BASURTO made the following cash withdrawals:

Date	Time	Amount	Bank	Account	Location
March 31, 2004	9:07 am	\$9,500	Wells Fargo	xx010	1300 Post Oak Blvd., Suite 1150 Houston, Texas
March 31, 2004	9:27 am	\$5,000	Bank of America	xx414	5348 Westheimer Rd. Houston, Texas

In sum, BASURTO withdrew \$14,500 in cash in one day using two different accounts at two different banks in the Southern District of Texas.

20. An additional example occurred on May 24, 2004 when BASURTO made the following cash withdrawals:

Date	Time	Amount	Bank	Account	Location
May 24, 2004	9:44 am	\$3,000	Bank of America	xx414	5348 Westheimer Rd. Houston, Texas
May 24, 2004	10:00 am	\$10,000	Bank of America	xx772	5171 San Felipe St. Houston, Texas
May 24, 2004	10:15 am	\$3,000	Wells Fargo	xx766	1300 Post Oak Blvd. Suite 1150 Houston, Texas
May 24, 2004	10:15 am	\$3,000	Wells Fargo	xx010	1300 Post Oak Blvd. Suite 1150 Houston, Texas

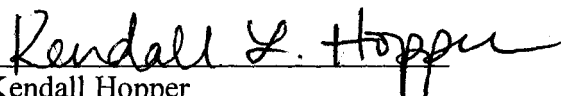
BASURTO therefore withdrew \$19,000 in cash in one day using four different accounts at three withdrawal locations, all of which occurred in the Southern District of Texas.

21. Based on the foregoing, and my training and experience, I believe that there is probable cause to believe that:

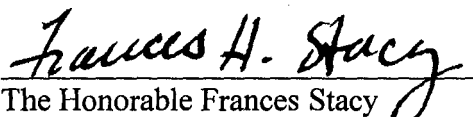
- a. from on or about April 8, 2002 to on or about November 29, 2004, in the Southern

District of Texas and elsewhere, FERNANDO MAYA BASURTO did knowingly and willfully conspire and agree with another person to commit an offense against the United States, that is, to knowingly and for the purpose of evading the reporting requirements of Title 31, Section 5313(a) of the United States Code, and the regulations promulgated thereunder, in particular Title 31 Code of Federal Regulations Section 103.22, structure and assist in structuring transactions with domestic financial institutions, contrary to Title 31, United States Code Section 5324(a)(3) and (d); and

b. on or about May 24, 2004 in the Southern District of Texas, FERNANDO MAYA BASURTO did knowingly and for the purpose of evading the reporting requirements of Title 31, Section 5313(a) of the United States Code, and the regulations promulgated thereunder, in particular Title 31 Code of Federal Regulations Section 103.22, structure and assist in structuring transactions with domestic financial institutions contrary to Title 31, United States Code Section 5324(a)(3) and (d) and Title 18, United States Code Section 2.


Kendall Hopper
Special Agent
Federal Bureau of Investigation
Houston Field Office

Subscribed and sworn to before me this
13 day of January 2009.


The Honorable Frances Stacy
United States Magistrate Judge