

AO 91 (Rev. 5/85) Criminal Complaint

AUSA CAROLYN BELL

# United States District Court

FILED by <u>ka</u> D.C.
MAY 18 2009
STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - W.P.B.

SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

V.

JIMMY METELLUS

## CRIMINAL COMPLAINT

CASE NUMBER: 09-8127-AEV

(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 May 16, 2009 in Palm Beach County, in the Southern District of Florida defendant(s) (Track Statutory Language of Offense)

encouraging or inducing an alien to come to, enter, or reside in the United States, knowing or in reckless disregard that such entry will be in violation of the law; and places in jeopardy the life of any person; and which resulted in the death of any person,

in violation of Title 8 United States Code, Section(s) 1324(a)(1)(A)(iv) and B(iii) and (iv)

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

Please see attached Affidavit.

Continued on the attached sheet and made a part hereof:

Yes  No

[Signature]  
Signature of Complainant  
Jon Longo, Special Agent  
Immigration and Customs Enforcement Agency

Sworn to before me and subscribed in my presence,

May 16, 2009  
Date

at West Palm Beach, Florida  
City and State

ANN E. VITUNAC  
UNITED STATES MAGISTRATE JUDGE  
Name and Title of Judicial Officer

[Signature]  
Signature of Judicial Officer

**AFFIDAVIT**

I, Jon A. Longo, a Special Agent (S/A) of the United States Department of Homeland Security, Immigration & Customs Enforcement (ICE), Office of the Resident Agent in Charge in West Palm Beach (RAC/WP), being duly sworn, depose and state as follows:

1. I have been employed as a sworn Federal Special Agent with Immigration and Customs Enforcement (ICE) since July 2006. As a federal agent, I am authorized to investigate violations of laws of the United States and to execute warrants issued under the authority of the United States. I have received 23 weeks of training at the Federal Law Enforcement Training Center, which included the application of federal statutes, federal court procedures, and the techniques required to insure the admissibility of evidence at trial.
2. Your Affiant is familiar with the facts and circumstances surrounding this investigation as set forth herein, both from his own investigative efforts and from information obtained from other law enforcement officers with personal knowledge of the evidence and activities described herein. This affidavit is being submitted for the limited purpose of establishing probable cause to charge Jimmy METELLUS with the offense of Alien Smuggling that places in jeopardy the life of any person, and that results in the death of another person, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(iv) and (B)(iii) and (B)(iv). As such, it does not purport to set forth every fact

known to me regarding the investigation, but only those facts necessary to establish probable cause.

3. On or about May 13, 2009, at or about 1242 hours, a Good Samaritan reported to the United States Coast Guard (USCG) seeing people in the water approximately 16 miles east of Palm Beach County, Florida. As a result of the report, several marine and air assets from multiple Law Enforcement and Emergency Response agencies responded to the area in which the persons were reported. The Good Samaritan reported that the people he rescued stated that the vessel that they were traveling on had capsized and then sunk.
4. A massive search and rescue operation was conducted resulting in the discovery of twenty-five individuals. There are currently sixteen survivors and nine deceased persons who have been identified as having been on the capsized boat. One of the deceased women was pregnant with an approximately eight-month old fetus. The Palm Beach County Medical Examiner issued a separate death certificate for the fetus because of its potential viability. None of the persons encountered by law enforcement had visas or other travel documentation which would have lawfully permitted them to enter the United States nor were any found in the nearby waters.
5. With the exception of METELLUS, who is a Lawful Permanent Resident (LPR) of the United States, all of the survivors have been determined by United States Customs and Border Protection (CBP) Officers to be aliens who are removable or excludable from the United States, as per the

Immigration and Nationality Act (INA). Fifteen of the survivors, including METELLUS, are Haitian citizens and one is a Jamaican Citizen.

6. As of May 15, 2009, three of the deceased have been positively identified by family members and are reported by such to be citizens of Haiti. The remaining six deceased have yet to be positively identified.
7. On May 15, 2009, ICE Special Agents interviewed Survivor-1, a Haitian citizen rescued during the search and rescue effort. During the interview, Survivor-1 read, spoke, and understood English. Survivor-1 was read the Statement of Rights (MIRANDA) by Special Agents and indicated that he understood his rights. Survivor-1 read the Statement of Rights and initialed beside each line indicating that he understood each right. Special Agents asked Survivor-1 if he wished to waive his rights and answer questions and Survivor-1 agreed to waive his rights and answer questions. Special Agents asked Survivor-1 to recount the events leading up to his rescue at sea.
8. Survivor-1 stated that his brother paid \$4,000.00 to a man with a gold tooth who was organizing an alien smuggling venture from Nassau, Bahamas to the United States. Survivor-1's brother paid the \$4,000.00 in exchange for Survivor-1's transportation to the United States. Survivor-1 said that the plan was for the trip to be from Nassau, Bahamas to Bimini, Bahamas, and then to the United States. Survivor-1 said that he had been living in the Bahamas for approximately five months prior to attempting to be smuggled in to the United States.


9. Survivor-1 was shown pictures of all of the people who were rescued along with him by the U.S. Coast Guard. From those pictures, Survivor-1 positively identified Jimmy METELLUS as being in command of the vessel as it transited from Nassau, Bahamas, to Bimini, Bahamas, with approximately 30 people on board. Survivor-1 stated that, after leaving Nassau, the vessel had run out of fuel and was drifting for two to three days. Survivor-1 said that a small plane flew overhead and shortly afterwards a small boat with three people on it brought fuel to the drifting vessel. Survivor-1 said he heard METELLUS talking to the three in English. Survivor-1 stated that the vessel then traveled to a house on the water in Bimini, Bahamas, where he and the other passengers were off loaded one by one. The passengers spent the night in the house. The next day, METELLUS provided fish and rice to the migrants. Survivor-1 was shown a photograph of an individual known to local authorities as "SHINE". Survivor-1 immediately identified the picture; he stated "that is SHINE" and that SHINE's house was where they were fed and where they stayed overnight. Survivor-1 also stated that he saw METELLUS and SHINE talking together at the house. Survivor-1 said that METELLUS and the man with the gold tooth loaded the passengers back into the boat the second night. Survivor-1 said that METELLUS and the man with the gold tooth told the passengers to stay in the cabin of the boat and that the two of them stayed on deck.
10. On May 15, 2009, ICE Special Agents interviewed METELLUS. METELLUS was read the Statement of Rights (MIRANDA) by Special Agents and

indicated that he understood his Rights. A CBP Officer translated the rights to METELLUS, as well as parts of the interview between English and Creole. METELLUS stated that he understood each right and initialed beside each line. METELLUS reported that he could read and write as well as do basic math. Special Agents asked METELLUS if he wished to waive his rights and answer questions and METELLUS agreed to waive his rights and answer questions.

11. During the interview, METELLUS first denied that he was involved in smuggling any aliens to the United States. After he was shown a picture of SHINE, however, he identified SHINE as the person who had hired him to assist in smuggling the aforementioned migrants into the United States. METELLUS reported that he was living a difficult life in Haiti where he had seven children for whom he had to pay to feed and school. He reported that SHINE, as well as three other individuals, were the organizers of the smuggling event. METELLUS admitted that SHINE appointed him as one of the vessel's captains. METELLUS claimed that he was originally offered \$6,000.00 to pilot the vessel, but that he opted to be paid with free passage on the vessel to Miami, Florida instead. METELLUS claimed that he had lost his U.S. Lawful Permanent Resident (LPR) Alien Card and other travel documents during a hurricane in Haiti. He stated he did not know how to get a replacement LPR card so he did not have any way to fly into the U.S. legally. He said that the boat was going to Miami, Florida, and that he was going to beach it in Miami and leave it.

12. Both Survivor-1 and METELLUS were shown pictures of all of the deceased and confirmed that all of them were passengers on the capsized boat. A number of other survivors were interviewed by ICE agents and shown a sampling of pictures of the deceased. Those survivors confirmed that the deceased in the photographs they were shown were with them on the capsized boat.
13. Based on the foregoing, your affiant believes that there exists sufficient probable cause to charge Jimmy METELLUS with violating Title 8, United States Code, Section 1324 (a)(1)(A)(iv) and (B)(iii) and (B)(iv), encouraging or inducing an alien to come to, enter, or reside in the U.S. , knowing or in reckless disregard that such entry will be in violation of the law; and places in jeopardy the life of any person; and which resulted in the death of any person.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
Special Agent Jon A. Longo  
United States Immigration and Customs Enforcement

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 16<sup>TH</sup> DAY OF  
May, 2009, AT WEST PALM  
BEACH, FLORIDA.

  
ANN E. VITUNAC  
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

No. 09-8127-AEV

UNITED STATES OF AMERICA

vs.

JIMMY METELLUS,

Defendant.

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**CRIMINAL COVER SHEET**

- 1. Did this matter originate from a matter pending in the Northern Region of the United States Attorney's Office prior to October 14, 2003?     Yes     No
- 2. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to September 1, 2007?     Yes     No

Respectfully submitted,

R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

BY: Carolyn Bell

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