

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon.
 :
 v. : Criminal No.
 :
 GERARDO FERNANDEZ : 18 U.S.C. §§ 1512(c)(2),
 1623(a)

INDICTMENT

The Grand Jury in and for the District of New Jersey,
sitting in Newark, charges that:

COUNT 1
(Perjury)

1. At all times relevant to this Indictment,
defendant GERARDO FERNANDEZ was an elected member of the City
Council for the City of Passaic, New Jersey ("Passaic City
Council"). Members of the Passaic City Council, among other
things, were empowered to vote on ordinances and resolutions,
including those relating to municipal contracts, brought before
the Council.

2. On or about March 22, 2007, the Passaic City
Council held a meeting ("March 22nd Council Meeting") and
considered two resolutions (the "Insurance Resolutions") naming
an insurance brokerage firm as the authorized insurance broker
with respect to certain City of Passaic insurance contracts.
During the March 22nd Council Meeting, defendant GERARDO
FERNANDEZ, along with three other members of the Passaic City

Council, voted against, and thereby defeated, each of the Insurance Resolutions.

3. Approximately three hours before voting against the Insurance Resolutions, defendant GERARDO FERNANDEZ received a telephone call from Jonathan Soto ("Soto"), one of the members of the Passaic City Council who voted against the Insurance Resolutions. During this telephone conversation, defendant GERARDO FERNANDEZ and Soto discussed, in substance and in part, (i) that defendant GERARDO FERNANDEZ would vote against the Insurance Resolutions at the March 22nd Council Meeting; (ii) that Soto would vote against the Insurance Resolutions at the March 22nd Council Meeting; (iii) that the City of Passaic Mayor, Samuel Rivera ("Rivera"), wanted the Insurance Resolutions to be defeated at the March 22nd Council Meeting; and (iv) that, subsequent to his conversation with Soto, defendant GERARDO FERNANDEZ would call Rivera to confirm that defendant GERARDO FERNANDEZ would vote against the Insurance Resolutions.

4. Shortly after the telephone conversation with Soto, and prior to the March 22nd Council Meeting, defendant GERARDO FERNANDEZ telephoned Rivera to confirm that defendant GERARDO FERNANDEZ would vote against the Insurance Resolutions.

5. Beginning in or about June 2006 and continuing through in or about December 2007, a federal Grand Jury sitting in Trenton, New Jersey, conducted an investigation into possible

violations of federal criminal laws including Title 18, United States Code, Sections 371 (conspiracy), 666 (bribery), 1341 and 1346 (mail fraud), and 1951 (interference with commerce through extortion under color of official right), in the District of New Jersey, including in Passaic County. The circumstances surrounding the rejection of the Insurance Resolutions by the Passaic City Council were material to the Grand Jury's investigation.

Defendant GERARDO FERNANDEZ'S Grand Jury Testimony

6. On or about November 14, 2007, defendant GERARDO FERNANDEZ testified before the aforementioned Grand Jury in Trenton. Prior to this testimony, the foreperson of the Grand Jury administered the oath to defendant GERARDO FERNANDEZ and defendant GERARDO FERNANDEZ swore to tell the truth regarding the testimony he was about to give.

7. During his testimony, defendant GERARDO FERNANDEZ falsely testified, in substance and in part, that he never spoke to Soto or Rivera with respect to the Insurance Resolutions prior to the March 22nd Council Meeting.

8. On or about November 14, 2007, in Mercer County, in the District of New Jersey, and elsewhere, defendant

GERARDO FERNANDEZ

while under oath and testifying in a proceeding before a grand jury of the United States in the District of New Jersey,

knowingly made false material declarations in response to certain questions, as follows:

(A) Q: Now, prior to the vote on the [Insurance Resolutions], do you recall talking to anybody about these two resolutions?

A: No.

Q: Did you talk to Mr. Soto about these resolutions prior to?

A: No.

* * * *

Q: What about Mayor Rivera?

A: No.

* * * *

(B) Q: Now, with respect to Mr. Soto, did Mr. Soto ever discuss with you any matters related to insurance brought before the Passaic City Council?

A: No.

Q: Did he ever discuss with you who he intended to vote for with respect to contracts or insurance?

A: No.

Q: Did he ever discuss with you who he wanted you to vote for?

A: No.

Q: So it's your testimony that you never discussed with Mr. Soto anything related to insurance matters brought before the Passaic City Council?

A: Yes.

* * * *

Q: And it's your testimony that you never discussed with Mayor Rivera any matters related to insurance brought before the Passaic City Council?

A: Yes.

* * * *

(C) Q: With respect to insurance matters, did Mr. Soto ever try to influence any vote of yours with respect to insurance matters brought before the Passaic City Council?

A: No.

Q: Did he ever discuss with you in any way any matters related to insurance brought before the Passaic City Council?

A: No.

Q: If he had done that, do you think you would recall that?

A: Absolutely. I would have slapped him.

Q: I'm sorry?

A: I said I would have slapped him. Because I don't tell anybody how to vote. I don't want anybody telling me how to vote either.

Q: So if he had asked you to do that, you would have . . .?

A: I would remember.

* * * *

(D) Q: . . . Now, we've talked about three votes related to insurance matters [including the Insurance Resolutions], and you testified that you did not talk to any other members of the City Council with respect to these three votes; is that correct?

A: That's right.

Q: And when I say talked to them, you did not talk to them in person; is that correct?

A: That's correct.

Q: You did not talk to them over the telephone?

A: That's correct.

Q: And that would be Jonathan Soto; is that correct?

A: Yes.

* * * *

Q: And Samuel Rivera?

A: That's right.

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In violation of Title 18, United States Code, Section
1623(a).

COUNT 2
(Obstruction of Justice)

1. Paragraphs 1 to 7 and the testimony detailed in paragraph 8(A) through (D) of Count 1 of this Indictment are realleged as if set forth in full herein.

2. On or about November 14, 2007, in Mercer County, in the District of New Jersey and elsewhere, defendant

GERARDO FERNANDEZ

did knowingly, willfully, and corruptly attempt to obstruct, influence and impede an official proceeding, namely, a federal Grand Jury proceeding regarding an investigation of possible violations of federal criminal laws.

In violation of Title 18, United States Code, Section 1512(c)(2).

A TRUE BILL

FOREPERSON

CHRISTOPHER J. CHRISTIE
UNITED STATES ATTORNEY