

FILED

UNITED STATES DISTRICT COURT

for the
District of New Mexico

10 OCT -8 AM 9:09

CLERK - LAS CRUCES

United States of America
v.
Barbara Ann APODACA

Case No. 10-2437 MJ

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 10/2002-08/2007 in the county of Luna in the
District of New Mexico, the defendant(s) violated:

Table with 2 columns: Code Section, Offense Description. Rows include 42 U.S.C. § 408(a)(5) and 18 U.S.C. § 641.

This criminal complaint is based on these facts:

Continued on the attached sheet.

Handwritten signature of Bianca N. Mendez

Complainant's signature

Bianca N. Mendez, Special Agent, SSA/OIG/OI
Printed name and title

Sworn to before me and signed in my presence.

Date: October 8, 2010

Handwritten signature of Karen B. Molzen

Judge's signature

City and state: Las Cruces, NM

Karen B. Molzen, U.S. Magistrate Judge
Printed name and title

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AFFIDAVIT

I, Bianca N. Mendez, having been duly sworn, do hereby state and depose as follows:

1. I am employed as a Special Agent (SA) with the Office of the Inspector General, Office of Investigations, Social Security Administration in El Paso, Texas. I have been so employed since 2006. I was previously employed as a SA with the United States Air Force Office of Special Investigations in Las Vegas, Nevada for approximately two years. In connection with my official duties, I investigate criminal violations of Title 42 of the United States Code involving fraud, waste and abuse of Social Security programs. I also investigate employee misconduct within the Social Security Administration and violations of identity theft statutes under Title 18 of the United States Code. I have received specialized training in the enforcement of these statutes. I have also testified in judicial proceedings and presented for prosecution violations of the aforementioned Titles.
2. Based on the information in this affidavit, I believe there is probable cause to support a finding that Barbara APODACA (a.k.a. Barbara Ann HERNANDEZ [hereafter referred to as APODACA]) has violated the provisions of Title 42 United States Code, Section 408(a)(5)- Misuse of Title II (Social Security Administration) benefits by a representative payee and Title 18 United States Code, Section 641- Theft of Government Funds. Except as explicitly set forth below, I have not, in this affidavit distinguished between the facts of which I have personal knowledge and facts to which I have hearsay knowledge. I have not set forth each and every fact learned during the course of this investigation, but simply those facts, which I believe, are necessary to establish probable cause for issuance of ~~an arrest warrant~~ ^{from} ~~an~~ ^a ~~summons~~ ^{summons}. The information set forth in this affidavit was derived from my own investigation.
3. In 09/2007, a Social Security Administration (SSA) Teleservice Representative informed me that Yolanda Archuleta's mother-in-law, APODACA, received survivor's benefit for Y. Archuleta's children, Moses, Joe, Rudy, and Jason Trejo, from on or about 06/2001-08/2007; however, the children were not in APODACA's care and custody from on or about 09/2002 and continuing.
4. A review of SSA Records reflected that the Trejo Children were eligible to receive benefits off their deceased father's (Joe Trejo) record, as he passed away on 06/09/2000. The Trejo children's Benefits were initiated on 06/2001 as a result of an application for survivor's benefits, dated 12/15/2001, and received by the SSA on 01/03/2002. This application is contained in Joe Trejo's SSA claims folder and during a subsequent interview of APODACA, she admitted to submitting this application. At the time APODACA submitted the application, the children were in APODACA's care and custody. APODACA agreed to promptly notify the SSA if she was no longer responsible for the care and welfare of any of the children for whom she was filing and if any of the children left her care or custody, or changed their addresses. The Trejo children left APDOACA's care on or about 09/2002 and began residing with their mother, Y. Archuleta, with the exception of Moses Trejo, who

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lived with his aunt, Fofu Tuilefano (aka Theresa Archuleta-Y. Archuleta's sister-in-law) from 09/2007-11/2008.

5. APODACA was advised of her representative payee reporting requirements when she submitted the initial application for survivors' benefits and on her 01/03/02 application to be selected as payee for the Trejo children. I obtained the following additional representative payee reports (Form SSA-6230) that APODACA completed and signed on 06/12/2003, 06/19/2005, 02/20/2006, and 02/20/2007, while serving as the representative payee for the Trejo children. In all the forms, APODACA claimed she was using the survivors' benefits for the care and support of the Trejo children.
6. On 06/12/03, APODACA completed and signed a representative payee report (Form SSA-6230), where she did not clearly indicate whether the children resided with her from 02/01/02 through 01/31/03. APODACA stated that she used \$2,598.00 out of the \$10,620.00 in funds she received during the reporting period for the care and support of the children during the reporting period. APODACA stated that she and her financial institution attempted to contact the SSA. APODACA indicated that the checks were going to the bank for a home loan, which was to be in the name of the four children (account 10093941).
7. On 06/19/05, APODACA completed and signed a representative payee report for the period of 02/01/04 through 01/31/05. When APODACA was asked whether all the children resided with her during the reporting period, she marked, "No." APODACA stated that she used the entire \$11,016.00 in funds she received during the reporting period for the care and support of the children. APODACA indicated that she paid rent (\$462.00 and \$310.00 land and trailer), paid bills, and purchased food for the kids.
8. On 02/20/06, APODACA completed and signed a representative payee report for the period of 02/01/05 through 01/31/06. APODACA indicated that all four children did not reside with her during the reporting period. APODACA stated that she used the entire \$11,320.00 in funds she received during the reporting period for the care and support of the children. APODACA noted in the remarks section that the money was used to pay for land and a trailer in Deming, NM (\$20,000.00 in payments and \$475.00 per month for a truck payment).
9. On 02/20/07, APODACA completed and signed a representative payee report for the period of 02/01/06 through 01/31/07. APODACA indicated that all four children resided with her during the reporting period. APODACA stated that she used the entire \$11,792.00 in funds she received during the reporting period for the care and support of the children. APODACA noted in the remarks section that the money was used to pay for land at 2445 2nd Street, Deming, NM, and for a truck payment.
10. On 04/29/09, Deming Public Schools Administrative Assistant to Instructional Services Linda Reyes provided me with copies of school records for the Trejo children, which reflected Jason Trejo and Moses Trejo were enrolled at Deming Elementary School for the 2001-2002 school year; however, they were withdrawn from school on 09/20/02. Joe Trejo

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and Rudy Trejo were enrolled at Deming Elementary School for the 2001-2002 school year; however, they were withdrawn from school on 12/11/02.

11. On 09/17/07 and 02/24/10, I interviewed Y. Archuleta, who advised that Moses, Jason, Rudy, and Joe Trejo all resided with her since 2002. Moses Trejo previously resided with Y. Archuleta's sister-in-law, Fofu Tuilefano (a.k.a. Theresa Archuleta -married to Archuleta's brother), for approximately six months in 2007. Y. Archuleta and her children were homeless for some time and Y. Archuleta was not aware that APODACA had applied for and received SSA benefits on behalf of the Trejo children.

Y. Archuleta's sister, Susana Archuleta, assisted her with obtaining SSN cards for her children and told Y. Archuleta that the children were receiving SSA benefits off their deceased father's SSA record. Y. Archuleta applied to become their representative payee when she discovered that the children were receiving benefits. APODACA did not provide Y. Archuleta with any of the SSA funds that she received on behalf of the Trejo children and did not provide any other assistance for the children, since they resided with Y. Archuleta.

12. 03/12/2010, I conducted a voluntary interview of APODACA, who signed an affidavit explaining her involvement in this case and willingness to cooperate in this investigation. APODACA admitted to the following during our interview:

APODACA admitted that in approximately 09/2002, Y. Archuleta picked up Jason and Moses Trejo and took them back to California to reside with her. APODACA further admitted that in approximately 12/02, Archuleta's boyfriend traveled to Deming, NM to pick up Rudy and Joe, and took them back to California. APODACA did not report to the SSA when the Trejo children left her custody and/or care, and that they had returned to reside with Y. Archuleta in California.

APODACA continued to receive the SSA benefits for the Trejo children via direct deposit to her First Savings Bank account until approximately 08/07. APODACA continued to receive SSA representative payee accounting forms and made false statements when she stated that the Trejo children resided with her after 2002 and that she used their SSA benefits for their care and support. APODACA did not send or provide any of the SSA funds to Archuleta or the Trejo children when they left her care. APODACA knew that she should have reported to the SSA that the Trejo children left her care and were residing with Archuleta in CA, and knew that she should not have received the Trejo children's SSA funds after they left her care.

APODACA accepted full responsibility for misusing the \$53,918 in SSA funds that she received on behalf of the Trejo children from approximately 10/02-08/07, and converting their benefits to her own personal use.

13. Based on the forgoing, I submit sufficient probable cause exists to believe that Barbara Ann APODACA has violated the provisions of Title 42 United States Code, Section 408(a)(5)-

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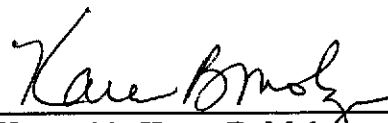
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Misuse of Title II (Social Security Administration) benefits by a representative payee and
Title 18 United States Code, Section 641-Theft of Government Funds.



Bianca N. Mendez
Special Agent
Social Security Administration
Office of the Inspector General
Office of Investigations

Sworn to before me and subscribed in my presence, this 8th day of October, 2010.



Honorable Karen B. Molzen
U.S. Magistrate Judge