

FILED
At Albuquerque NM

JUL 27 2011

MATTHEW J. DYKMAN
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ARMANDO G. GUTIERREZ,
JOSEPH C. KUPFER and
ELIZABETH D. KUPFER
a/k/a **DAISY E. KUPFER,**

Defendants.

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)
)
) CRIMINAL NO. 10-3383 WJ
)
) Count 1: 18 U.S.C. § 371: Conspiracy;
)
) Count 2: 18 U.S.C. § 641:
) Theft of Government Property;
)
) Counts 3-5: 18 U.S.C. §§ 641 and 2:
) Theft of Government Property; Aiding and
) Abetting;
)
) Count 6: 18 U.S.C. § 1516:
) Obstruction of Federal Audit;
)
) Count 7: 18 U.S.C. § 1503:
) Obstruction of Justice;
)
) Count 8: 18 U.S.C. § 1957:
) Engaging in Monetary Transactions in Property
) Derived From Specified Unlawful Activity; and
)
) Counts 9-11: 26 U.S.C. § 7201 and
) 18 U.S.C. § 2:
) Income Tax Evasion and Aiding and Abetting.

SUPERCEDING INDICTMENT

The Grand Jury charges:

Introduction

1. In 2002, the U.S. Congress passed the Help America Vote Act (HAVA) to educate voters about the electoral process and increase voter registration. States received federal funding under HAVA to meet the new standards for election administration and voting systems.
2. The New Mexico Secretary of State (SoS) administered almost \$20 million of

HAVA funds from April 1, 2003, through December 31, 2006, through at least five contracts implementing various requirements of the HAVA.

3. The NM SoS advertised a Request for Proposals (RFP) for one such contract of HAVA funds on August 8, 2004. The proposed contract was for voting-related advertising. The defendant, **ARMANDO G. GUTIERREZ**, owns A. Gutierrez and Associates, Inc. (AGA), and submitted a response to the RFP on behalf of AGA on August 20, 2004.

4. The defendant, **ARMANDO G. GUTIERREZ**, stated in his response to the RFP that AGA would comply with the RFP by charging \$75 per hour for its services and by billing on a net cost basis. That is, AGA was permitted to bill only the actual costs it incurred while performing its obligations under the contract. The AGA RFP response also confirmed that AGA was "self-contained," i.e., there would be no need for subcontractors, but if any subcontractors were needed, the NM SoS would approve their hiring in advance and in writing.

5. AGA was selected on August 24, 2004, and the defendant, **ARMANDO G. GUTIERREZ**, signed the contract on August 31, 2004. The contract became effective on September 9, 2004 after receiving the required approval from the New Mexico Department of Finance and Administration (DFA).

6. According to its terms, the contract was to terminate on December 30, 2006, and was not to exceed \$4 million, plus New Mexico gross receipts tax. The contract terms, *inter alia*:

- A. Required the NM SoS to approve subcontractors in writing before final selection;
- B. Required compliance with the RFP and with AGA's response to the RFP,

which included a \$75 hourly rate for AGA's services and reimbursement of AGA for the net costs that AGA actually expended;

- C. Required AGA to transmit a detailed and certified statement of services, time, and charges to the NM SoS within thirty days after the end of the month during which the services were performed;
- D. Required AGA to justify its expenses with receipts, and to maintain said receipts for three years thereafter;
- E. Allowed the NM SoS to recover excessive or illegal payments; and
- F. Embodied the entire agreement between the parties as of the effective date of the contract, September 9, 2004.

7. The contract was amended twice, through a first amendment titled "Amendment 1" for an additional \$1,762,000 that excluded New Mexico gross receipts tax, and a second amendment titled "Amendment 2" for an additional \$186,750 that included New Mexico gross receipts tax.

- A. Amendment 1 was retained in the files of the NM SoS office, labeled as an amendment, and printed on NM SoS letterhead.
- B. Amendment 1 was properly submitted to and approved by DFA. The final signature on Amendment 1 was by the DFA on May 18, 2006.
- C. Amendment 2 was retained in the files of the NM SoS office, labeled as an amendment, and printed on NM SoS letterhead.
- D. Amendment 2 was properly submitted to and approved by DFA. The final signature on Amendment 2 was by the DFA on October 6, 2006.

8. From September 2004 through October 2006, AGA invoiced and received a total of approximately \$6,271,810 of federal HAVA funds from the State of New Mexico. Under the terms of the contract, a portion of the total amount was for reimbursement of gross receipts taxes AGA was required to pay to the State. After subtracting monies allotted for payment of New Mexico gross receipts taxes, the contract amount should have been approximately \$5,886,144. This amount should have included services that AGA had provided to the State of New Mexico, plus the net costs AGA had incurred. But, the documentation of AGA's services provided and costs incurred support a contract amount of only \$3,385,151. Therefore, AGA received an excessive payment of at least \$2,500,993.

9. None of the AGA employees mentioned in AGA's response to the RFP actually performed work on AGA's HAVA contract.

10. AGA billed the NM SoS gross media prices rather than the net costs that AGA actually paid and that the contract required AGA to bill.

11. AGA billed the State of New Mexico for its services far in excess of the amount that AGA was permitted to bill under the terms of the \$75 per hour flat rate contract. For example, had AGA billed according to the contract rate of \$75 per hour for 40-hour weeks working only on the HAVA contract from September 9, 2004, through December 30, 2006, AGA would have been paid only approximately \$363,600 for its services. Had AGA billed only the net costs it incurred in the performance of its duties under the contract, it would have been paid only approximately \$3,021,551. The total amount AGA should have billed the State of New Mexico for its services and costs is \$3,385,151 rather than \$5,886,144. Therefore, AGA was overpaid approximately \$2,500,993.

12. The defendant, **JOSEPH C. KUPFER**, who owns and does business as Kupfer Consulting (KC), was awarded three HAVA contracts by the NM SoS valued at \$20,000, \$20,000, and \$30,000, respectively, in or about 2003, 2004, and 2005, for projects related to increasing voting accessibility for the disabled.

13. From October 2004 through November 2006, the defendant, **JOSEPH C. KUPFER**, dba KC, received a total of approximately \$746,375 from AGA under the HAVA contract.

14. There is no documentation in the AGA contract file maintained at the NM SoS office that AGA had retained the defendant, **JOSEPH C. KUPFER**, dba KC, as a subcontractor.

15. The Election Assistance Commission (EAC) is an independent bipartisan commission created by the U.S. Congress and established by the HAVA to assist the states regarding HAVA compliance and to distribute HAVA funds to the states. The EAC Commissioners are appointed by the President and confirmed by the U.S. Senate.

16. In early 2007, the EAC began an audit of the use of federal HAVA funds by the NM SoS to ascertain how the HAVA funds had been spent. AGA's HAVA contract was the primary focus of the EAC's 2007-2008 audit.

17. AGA could not provide documentation to the EAC auditors to support the approximately \$5,886,144 it received in HAVA funds for the services AGA allegedly rendered to the State of New Mexico.

18. During the EAC audit of 2007-2008, the defendant, **ARMANDO G. GUTIERREZ**, produced the following documents that were not in the files of the NM SoS, the DFA, or the NM Attorney General's Office (AGO):

A. A purported original letter dated August 26, 2004, which was printed on AGA letterhead and signed by both the defendant, **ARMANDO G. GUTIERREZ**, and by the former NM SoS. Although bearing the signature of the then-NM SoS, no one else at the NM SoS office, the NM AGO, or the DFA, reported knowing about this letter.

1. The August 26, 2004, letter purported to replace or modify the original contract by replacing the agreed upon rate of \$75 per hour with a “flat rate of 17% for administrative costs associated with the performance of our media services contract.”
2. The August 26, 2004, letter purported to replace or modify the original contract to allow AGA to hire subcontractors on an as-needed basis without written approval from the NM SoS.
3. New Mexico law required the DFA to approve all modifications to AGA’s HAVA contract. Unlike Amendments 1 and 2 of AGA’s HAVA contract, which were submitted to and approved by the DFA, the DFA never received or approved the purported August 26, 2004, letter.
4. The purported changes contained in the August 26, 2004, letter would have transformed AGA’s HAVA contract into a cost-plus-percentage-of-cost contract, which is a type of contract that would have been prohibited under the New Mexico Procurement Code.

5. The purported August 26, 2004, letter would have substantively changed the agreement with AGA from an hourly rate to a percentage fee. A new RFP process would have been required before any substantive changes could have been made to the original contract.
- B. A binder containing approximately 187 AGA invoices sequentially numbered #106-289, which were dated September 10, 2004, through November 1, 2006, totaling approximately \$1,137,000 that purported to represent expenses AGA paid to its media vendors. In fact, AGA never paid any vendors based on these invoices. Consequently, the EAC disallowed the 187 invoices in its audit calculations.
- C. An invoice purportedly from Univision to AGA for \$300,000, which was dated January 31, 2006.
 1. The invoice was provided to the EAC and to the IRS as a cost incurred by AGA.
 2. AGA never paid this amount to Univision.
 3. The EAC disallowed the invoice in its audit calculations.
- D. An invoice purportedly from KASA Fox 2 to AGA for \$25,000, which was dated January 26, 2006.
 1. The invoice was provided to the EAC and to the IRS as a cost incurred by AGA.
 2. AGA never paid this amount to KASA.

3. The EAC disallowed the invoice in its audit calculations.

19. During the EAC audit of 2007-2008, the former NM SoS produced the following document that was not in the files of the NM SoS, the DFA, or the NM AGO:

A purported original memorandum that was dated September 2, 2004, addressed to the former NM SoS, from the defendant, **ARMANDO G. GUTIERREZ**, printed on AGA letterhead and signed by the former NM SoS. Other than the former NM SoS, no one else at the NM SoS office, the NM AGO, or the DFA reported knowing about this memorandum.

1. The purported September 2, 2004, memorandum stated that the defendant, **ARMANDO G. GUTIERREZ**, would “produce and direct all” of the advertising spots and negotiate and manage costs to keep them “within reason.”
2. State law required the D.F.A to approve any modification of the HAVA contract for the modification to have been valid. The DFA never approved the purported September 2, 2004, memorandum that purported to modify AGA’s HAVA contract.

20. Even if AGA had been permitted to charge a “flat rate of 17% for administrative costs” under its contract, AGA still would have been overpaid at least \$1,117,573.

21. After the contract’s termination date of December 30, 2006, AGA paid its last vendor bill on or about June 1, 2007, for work that had been completed in October 2006. This meant that AGA had no more outstanding bills to reduce AGA’s overpayment of at least \$1,117,573.

22. The former NM SoS and the defendant, **ARMANDO G. GUTIERREZ**, effectively treated AGA's HAVA contract as a *de facto* prepayment contract. Therefore, all excessive monies or overpayments made to AGA were due and owing back to the NM SoS at the end of the contract as of December 30, 2006. The defendant, **ARMANDO G. GUTIERREZ**, never returned any such monies to the NM SoS.

23. The EAC completed its audit with the issuance of its Final Audit Report on May 27, 2008. As a result of the audit, the EAC disallowed the State of New Mexico from being able to claim the approximately \$6,271,810 in federal HAVA funds that had been paid to AGA as valid HAVA expenses.

24. In response to Federal grand jury subpoenas that were issued subsequent to the EAC audit, the following documents were produced which were not in the files of the NM SoS, the DFA, or the NM AGO, nor had they been provided to the EAC, despite the EAC's repeated requests during its audit for AGA's documentation supporting the costs AGA charged on the HAVA contract:

Both AGA and KC produced nine (9) purported invoices from KC to AGA dated from October 2004 through November 2006, as alleged support for nine (9) payments totaling approximately \$746,375 that KC had received from AGA from October 2004 through November 2006.

1. The KC invoices were addressed to AGA, "HAVA Project."
2. The last three KC invoices, which AGA paid on August 30, 2006, October 1, 2006, and November 10, 2006, totaling \$236,605, were largely for a poll worker training video. However, another

subcontractor, not KC, produced that video and was paid approximately \$75,000 by AGA.

3. The EAC was unaware that KC had performed any work for AGA under AGA's HAVA contract.

25. The defendants, **JOSEPH C. KUPFER** and **ELIZABETH D. KUPFER**, are married and resided in Sandoval County, in the District of New Mexico, during calendar years 2004 through 2006.

26. For the years 2004 through 2006, defendant **JOSEPH C. KUPFER** received income under his social security number as the sole proprietor for Kupfer Consulting.

27. The defendants, **JOSEPH C. KUPFER** and **ELIZABETH D. KUPFER**, reported income to Kupfer Consulting on their joint personal tax returns as a Schedule C entity.

28. The defendants, **JOSEPH C. KUPFER** and **ELIZABETH D. KUPFER**, through Kupfer Consulting, generated significant revenues during 2004 through 2006 of approximately \$1,304,421, of which they reported on their tax returns only approximately \$502,541.

29. The Internal Revenue Service ("IRS") is an agency within the United States Department of Treasury responsible for the assessment and collection of federal income taxes from individuals, businesses, and other tax-paying entities.

30. For the years 2004 through 2006, the defendants, **JOSEPH C. KUPFER** and **ELIZABETH D. KUPFER**, took steps to conceal from the IRS a significant amount of the taxable revenues generated by Kupfer Consulting, including the following:

- (A) **JOSEPH C. KUPFER** and **ELIZABETH D. KUPFER** failed to file in 2005 and 2006, respectively, a timely Form 1040, U.S. Individual Income Tax Return, for calendar years 2004 and 2005;
- (B) **JOSEPH C. KUPFER** and **ELIZABETH D. KUPFER** knowingly provided incomplete information to their tax preparer by not disclosing to him substantial portions of their income for 2004, 2005, and 2006, thereby knowingly causing him to prepare for them deficient and incomplete tax returns for 2004, 2005, and 2006;
- (C) **JOSEPH C. KUPFER** and **ELIZABETH D. KUPFER** filed a Form 1040, U.S. Individual Income Tax Return, for each calendar year, 2004, 2005, and 2006, omitting from these returns a total of at least \$768,333 in income that had been paid to Kupfer Consulting during calendar years 2004, 2005, and 2006.

Count 1

The Conspiracy

31. Paragraphs 1-30 of this Indictment are incorporated by reference as though set forth fully herein.

32. Beginning at least on or about August 20, 2004, and continuing through at least on or about July 1, 2011, in Bernalillo County, Santa Fe County, and Sandoval County, in the District of New Mexico, and elsewhere, the defendants, **ARMANDO G. GUTIERREZ** and **JOSEPH C. KUPFER**, did unlawfully, knowingly and willfully conspire, combine, confederate, and agree together and with each other and with other individuals both known and unknown to the Grand Jury to:

- (1) defraud the United States, and any agency thereof in any manner and for any purpose, and;
- (2) commit an offense against the United States, to wit: to willfully and knowingly embezzle, steal, purloin and convert to their own use and the use of another, money and property of the United States, namely, federal HAVA funds administered by the NM SoS, in a value greater than \$1,000.00, in violation of 18 U.S.C. § 641;

and one or more of such persons did any act to effect the object of the conspiracy.

Objective of the Conspiracy

33. Both defendants knew the essential objective of the conspiracy was to defraud the United States, and to steal, embezzle, purloin, and convert to their own use and benefit, and to the use and benefit of another, federal HAVA funds to which neither defendant was entitled.

Manner and Means of the Conspiracy

34. The manner and means by which the defendants, **ARMANDO G. GUTIERREZ** and **JOSEPH C. KUPFER**, sought to accomplish the conspiracy included, among other things, the following:

- A. Obtaining federal HAVA funds without having performed work or services in exchange for all payments;
- B. Providing fraudulent amendments to the contract;
- C. Providing false invoices for services AGA never provided to NM SoS, and for services AGA never received from vendors and subcontractors;
- D. Providing false invoices for services that KC never provided to AGA;
- E. Attempting to subvert the EAC audit of the AGA HAVA contract; and

- F. Attempting to conceal the HAVA funds that the defendants, **ARMANDO G. GUTIERREZ** and **JOSEPH C. KUPFER** stole, embezzled, purloined, and converted.

Overt Acts

35. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed in the District of New Mexico, and elsewhere:

36. On or about September 10, 2004, the day after the contract became effective, the defendant, **ARMANDO G. GUTIERREZ**, submitted an AGA invoice to the NM SoS for \$2 million under the HAVA contract without any supporting receipts. AGA deposited the resulting \$2 million check in AGA's bank account on or about October 5, 2004.

37. On or about October 1, 2004, the defendant, **ARMANDO G. GUTIERREZ**, paid the defendant, **JOSEPH C. KUPFER**, dba KC, \$140,000, and the AGA check was deposited in KC's bank account on October 6, 2004. Both defendants knew that this payment to KC far exceeded the value of any work that the defendant, **JOSEPH C. KUPFER**, ever actually performed for AGA under the HAVA contract.

38. In or about 2005, the defendant, **ARMANDO G. GUTIERREZ**, although required to do so, failed to issue an IRS Form 1099 to the defendant, **JOSEPH C. KUPFER**, dba KC, for the \$140,000 that AGA had paid KC during 2004.

39. On or about January 18, 2005, the defendant, **ARMANDO G. GUTIERREZ**, paid the defendant, **JOSEPH C. KUPFER**, dba KC, \$30,000. The defendant, **JOSEPH C. KUPFER**, dba KC, caused the AGA check to be deposited in KC's bank account on January 31, 2005. Both defendants knew that this payment to KC far exceeded the value of any work that

the defendant, **JOSEPH C. KUPFER**, ever actually performed for AGA under the HAVA contract.

40. On or about July 15, 2005, the defendant, **ARMANDO G. GUTIERREZ**, submitted an AGA invoice to the NM SoS for another \$2 million under the HAVA contract, again without any supporting receipts. AGA caused the resulting \$2 million check to be deposited in AGA's bank account on or about July 27, 2005. Based on costs AGA claims to have incurred by this date, AGA still had at least \$483,986 remaining from the first \$2 million payment.

41. On or about July 27, 2005, the defendant, **ARMANDO G. GUTIERREZ**, paid the defendant, **JOSEPH C. KUPFER**, dba KC, another \$140,000, and the AGA check was deposited in KC's bank account on July 29, 2005. Both defendants knew that this payment to KC far exceeded the value of any work that the defendant, **JOSEPH C. KUPFER**, ever actually performed for AGA under the HAVA contract.

42. In or about 2006, the defendant, **ARMANDO G. GUTIERREZ**, although required to do so, failed to issue an IRS Form 1099 to the defendant, **JOSEPH C. KUPFER**, dba KC, for the \$170,000 that AGA had paid KC during 2005.

43. On or about January 23, 2006, the defendant, **ARMANDO G. GUTIERREZ**, paid the defendant, **JOSEPH C. KUPFER**, dba KC, \$30,000. The defendant **JOSEPH C. KUPFER**, dba KC, caused the AGA check to be deposited in KC's bank account on January 27, 2006. Both defendants knew that this payment to KC far exceeded the value of any work that the defendant, **JOSEPH C. KUPFER**, ever actually performed for AGA under the HAVA contract.

44. On or about May 10, 2006, the defendant, **ARMANDO G. GUTIERREZ**, and the former NM SoS signed Amendment 1 for an additional amount not to exceed \$1,762,000 excluding New Mexico gross receipts tax.

45. In May 2006, the defendant, **ARMANDO G. GUTIERREZ**, submitted an undated AGA invoice to the NM SoS for payment of \$1,712,000. The defendant, **ARMANDO G. GUTIERREZ**, provided no supporting receipts. AGA received the \$1,712,000 as requested and AGA caused the resulting \$1,712,000 check to be deposited in AGA's bank account on or about May 31, 2006. Based on costs AGA claims to have incurred by this date, AGA still had at least \$1,767,159 remaining from the \$4 million payment.

46. On or about May 30, 2006, the defendant, **ARMANDO G. GUTIERREZ**, paid the defendant, **JOSEPH C. KUPFER**, dba KC, \$139,770. The defendant, **JOSEPH C. KUPFER**, dba KC, caused the AGA check to be deposited in KC's bank account on June 2, 2006. Both defendants knew that this payment to KC far exceeded the value of any work that the defendant, **JOSEPH C. KUPFER**, ever actually performed for AGA under the HAVA contract.

47. On or about August 22, 2006, the defendant, **ARMANDO G. GUTIERREZ**, paid the defendant, **JOSEPH C. KUPFER**, dba KC, \$30,000. The defendant, **JOSEPH C. KUPFER**, dba KC, caused the AGA check to be deposited in KC's bank account on August 23, 2006. Both defendants knew that this payment to KC far exceeded the value of any work that the defendant, **JOSEPH C. KUPFER**, ever actually performed for AGA under the HAVA contract.

48. On or about August 23, 2006, the defendant, **ARMANDO G. GUTIERREZ**, and the former NM SoS signed Amendment 2 for an additional \$186,750 including New Mexico gross receipts tax.

49. On or about September 5, 2006, the defendant, **ARMANDO G. GUTIERREZ**, paid the defendant, **JOSEPH C. KUPFER**, dba KC, \$50,000. The defendant, **JOSEPH C. KUPFER**, dba KC, caused the AGA check to be deposited in KC's bank account on September 6, 2006. Both defendants knew that this payment to KC far exceeded the value of any work that the defendant, **JOSEPH C. KUPFER**, ever actually performed for AGA under the HAVA contract.

50. On or about October 10, 2006, the defendant, **ARMANDO G. GUTIERREZ**, submitted an AGA invoice to the NM SoS for payment of \$186,750 including gross receipts tax. The defendant, **ARMANDO G. GUTIERREZ**, provided no supporting documentation. AGA caused the resulting \$186,750 check to be deposited in AGA's bank account on or about October 30, 2006. Based on costs incurred by this date, AGA still had at least \$1,966,073 remaining from the prior \$4 million payments on the original contract and the \$1,712,000 payment on Amendment 1.

51. Also on or about October 10, 2006, the defendant, **ARMANDO G. GUTIERREZ**, paid the defendant, **JOSEPH C. KUPFER**, dba KC, \$50,000. The defendant, **JOSEPH C. KUPFER**, dba KC, caused the AGA check to be deposited in KC's bank account on October 19, 2006. Both defendants knew that this payment to KC far exceeded the value of any work that the defendant, **JOSEPH C. KUPFER**, ever actually performed for AGA under the HAVA contract.

52. On or about November 13, 2006, the defendant, **ARMANDO G. GUTIERREZ**, paid the defendant, **JOSEPH C. KUPFER**, dba KC, \$136,605. The defendant, **JOSEPH C. KUPFER**, dba KC, caused the AGA check to be deposited in KC's bank account on November 17, 2006. Both defendants knew that this payment to KC far exceeded the value of any work that the defendant, **JOSEPH C. KUPFER**, ever actually performed for AGA under the HAVA contract.

53. In or about 2007, the defendant, **ARMANDO G. GUTIERREZ**, although required to do so, failed to issue an IRS Form 1099 to the defendant, **JOSEPH C. KUPFER**, dba KC, for the \$436,375 that AGA had paid KC during 2006.

54. In or about April 2007, the defendant, **ARMANDO G. GUTIERREZ**, submitted to the EAC auditors the purported August 26, 2004, letter, which he falsely represented as an official amendment to the HAVA contract.

55. On or about May 15, 2007, the defendant, **JOSEPH C. KUPFER**, filed his tax return for 2004, but omitted the \$140,000 that KC had received from AGA during 2004.

56. On or about May 15, 2007, the defendant, **JOSEPH C. KUPFER**, filed his tax return for 2005, but omitted the \$170,000 that KC had received from AGA during 2005.

57. On or about June 12, 2007, the defendant, **ARMANDO G. GUTIERREZ**, provided to the EAC auditors the binder of approximately 187 false AGA invoices. The defendant, **ARMANDO G. GUTIERREZ**, produced these invoices only after the EAC auditors informed him that the invoices AGA had previously submitted did not support AGA's receipt of over \$6 million under the HAVA contract.

58. On or about June 13, 2007, the EAC received the memorandum that the defendant, **ARMANDO G. GUTIERREZ**, purportedly prepared on or about September 2,

2004, and had the former NM SoS sign. The September 2, 2004, memorandum falsely represented another official amendment to the HAVA contract.

59. On or about October 15, 2007, the defendant, **JOSEPH C. KUPFER**, filed his tax return for 2006, but omitted the \$436,375 that KC had received from AGA during 2006.

60. On or about March, 23, 2009, the defendant, **JOSEPH C. KUPFER**, explained to the IRS other unreported income in 2006, but chose not to address the \$436,375 of unreported KC income in 2006.

61. On or about August 13, 2009, the defendant, **ARMANDO G. GUTIERREZ**, provided to the NM AGO nine fraudulent KC invoices to AGA. He had not provided these KC invoices to the EAC auditors during the 2007-2008 audit despite the EAC's repeated requests for documentation from AGA to justify AGA's costs under the HAVA contract.

62. On or about September 21, 2009, the defendant, **ARMANDO G. GUTIERREZ**, provided to an agent of the Internal Revenue Service (IRS) the purported Univision invoice to AGA dated January 31, 2006, and the purported KASA invoice to AGA dated January 26, 2006. The defendant, **ARMANDO G. GUTIERREZ**, had also provided these invoices to the EAC auditors during the 2007-2008 audit.

63. On or about September 22, 2009, the defendant, **JOSEPH C. KUPFER**, also provided to an agent of the IRS the purported KC invoices to AGA, in support of the \$746,375 that KC received from AGA under the HAVA contract, although he had not reported the \$746,375 on his federal tax returns filed in 2007.

64. On or about July 1, 2011, the defendant, **ARMANDO G. GUTIERREZ**, provided to the IRS the nine fraudulent KC invoices to AGA. He had not provided these KC

invoices to the EAC auditors during the 2007-2008 audit despite the EAC's repeated requests for documentation from AGA to justify AGA's costs under the HAVA contract.

65. On or about July 1, 2011, the defendant, **ARMANDO G. GUTIERREZ**, provided to the IRS a chart entitled "AGA: SOS/HAVA INCOME/EXPENSES PRODUCTION" purported to represent AGA's costs incurred and services provided under the HAVA contract. He had not provided this chart the EAC auditors during the 2007-2008 audit despite the EAC's repeated requests for documentation from AGA to justify AGA's costs under the HAVA contract. He had not provided this chart to the NM AGO despite the state grand jury subpoena in 2008 for AGA's documentation under the HAVA contract.

In violation of 18 U.S.C. § 371.

Count 2

66. Paragraphs 1-30 and 32-65 of this Indictment are incorporated by reference as though set forth fully herein.

67. On or about December 30, 2006, in Bernalillo County and Santa Fe County, in the District of New Mexico, and elsewhere, the Defendant, **ARMANDO G. GUTIERREZ**, willfully and knowingly did steal, embezzle, purloin and knowingly convert to his use and the use of another money and property of the United States, namely, HAVA funds from the EAC, a department or agency of the United States, in excess of what he had earned under the HAVA contract, in an amount the aggregate total of which exceeds \$1,000.00, to which he knew he was not entitled.

In violation of 18 U.S.C. § 641.

Counts 3-5

68. Paragraphs 1-30 and 32-65 of this Indictment are incorporated by reference as though set forth fully herein.

69. On or about the following dates, in Bernalillo County and Sandoval County, in the District of New Mexico, and elsewhere, the Defendant, **JOSEPH C. KUPFER**, dba KC, willfully and knowingly did steal, embezzle, purloin and convert to his use and the use of another money and property of the United States, namely, HAVA funds from the EAC, a department or agency of the United States, all the while knowing that he did not perform services sufficient to earn these funds, in an amount the aggregate total of which exceeds \$1,000.00, to which he knew he was not entitled, as follows:

Count 3	September 6, 2006, deposit into KC account of \$50,000 AGA check dated August 30, 2006
Count 4	October 19, 2006, deposit into KC account of \$50,000 AGA check dated October 1, 2006
Count 5	November 17, 2006, deposit into KC account of \$136,605 AGA check dated November 10, 2006

In violation of 18 U.S.C. §§ 641 and 2.

Count 6

70. Paragraphs 1-30 and 32-65 of this Indictment are incorporated by reference as though set forth fully herein.

71. On or about June 12, 2007, in Bernalillo County, in the District of New Mexico, and elsewhere, the defendant, **ARMANDO G. GUTIERREZ**, with the intent to deceive or defraud the United States, endeavored to influence, obstruct, and impede a Federal auditor in the performance of official duties relating to a person, entity, and program receiving in excess of \$100,000, directly and indirectly, from the United States in a one-year period under a contract, to

wit: provided to auditors with the EAC Office of Inspector General while auditing the federal HAVA funds disbursed to the New Mexico SoS a binder of false, fictitious and fraudulent invoices in support of the defendant, **ARMANDO G. GUTIERREZ**' receipt of HAVA funds.

In violation of 18 U.S.C. § 1516.

Count 7

72. Paragraphs 1-30 and 32-65 of this Indictment are incorporated by reference as though set forth fully herein.

73. On or about July 1, 2011, in Bernalillo County, in the District of New Mexico, and elsewhere, the defendant, **ARMANDO G. GUTIERREZ**, did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due administration of justice in a Federal grand jury in the District of New Mexico by providing in response to a Federal grand jury subpoena a chart entitled "AGA: SOS/HAVA INCOME/EXPENSES PRODUCTION."

In violation of 18 U.S.C. § 1503.

Count 8

74. Paragraphs 1-30 and 32-65 of this Indictment are incorporated by reference as though set forth fully herein.

75. On or about July 30, 2007, in the District of New Mexico, and elsewhere, the defendant, **ARMANDO G. GUTIERREZ** did knowingly engage and attempt to engage in a monetary transaction by, through, and to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, namely, transfer of \$630,000 by wire to a title company, such funds having been derived from a specified unlawful activity, namely, Theft of Government Property.

In violation of 18 U.S.C. § 1957.

Counts 9-11

76. Paragraphs 1-30 and 32-65 of this Indictment are incorporated by reference as though set forth fully herein.

77. Knowing and cognizant of the foregoing facts and the legal duty deriving therefrom, on or about the dates stated below, in the District of New Mexico, the defendants, **JOSEPH C. KUPFER** and **ELIZABETH D. KUPFER**, did willfully and intentionally attempt to evade and defeat a large part of the income tax due and owing by them to the United States for the tax years 2004-2006, including the amounts set forth below, by, among other things, preparing and causing to be prepared, and by signing and causing to be signed, false and fraudulent U.S. Individual Income Tax Returns, Form 1040s, which were filed with the IRS, and in each false income tax return, stating their taxable income when, in fact, as the defendants then and there knew, they were omitting a substantial part of their taxable income, resulting in additional tax due and owing to the United States of at least the total approximate amount of \$286,175:

<u>Count</u>	<u>Tax Year</u>	<u>Date Return Filed</u>	<u>"Taxable Income" Stated on Return</u>	<u>Income Omitted From Return</u>	<u>"Total Tax Amount" Stated on Return</u>	<u>Taxes Due and Owing - Omitted From Return</u>
9	2004	5/15/07	\$125,969	\$140,000	\$38,578	\$51,054
10	2005	5/15/07	\$170,625	\$170,000	\$52,402	\$64,651
11	2006	10/15/07	\$125,734	\$458,333	\$39,861	\$170,470
					TOTAL =	\$286,175

In violation of 26 U.S.C. § 7201 and 18 U.S.C. § 2.

FORFEITURE ALLEGATION

78. The allegations contained in Counts 1 through 5 and 7 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

79. The allegations contained in Count 8 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to 18 U.S.C. § 982(a)(1).

80. Upon conviction of one or more of the offenses alleged in Counts 1 through 5 and 7 of this Indictment, the defendants, **ARMANDO G. GUTIERREZ** and **JOSEPH C. KUPFER**, shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offense.

81. Upon conviction of the offense alleged in Count 8 of this Indictment, the defendant, **ARMANDO G. GUTIERREZ**, shall forfeit to the United States pursuant to 18 U.S.C. § 982(a)(1), any property, real or personal, involved in such offense, and any property traceable to such property.

82. Property to be forfeited to the United States includes, but is not limited to, the following:

MONEY JUDGMENT:

A sum of money equal to at least \$2,500,993 in United States currency, representing the amount of money derived from or involved in the offenses alleged in Counts 1 through 5 and 7, for which the defendants are jointly and severally liable.

REAL PROPERTY

5934 King Trail, Corpus Christi, TX 78414, which is more particularly described as follows:

Lot Five (5), Block Eight (8), King Estates Unit 2, a Subdivision of the City of Corpus Christi, Nueces County, Texas, as shown by the map or plat thereof recorded in Volume 57, Pages 106, 107 and 108, Map Records of Nueces County, Texas.

SUBSTITUTE ASSETS


If any of the above described forfeitable property, as a result of any act or omission of the defendants:

- A. cannot be located upon exercise of due diligence;
- B. has been transferred or sold to, or deposited with, a third person;
- C. has been placed beyond the jurisdiction of the Court;
- D. has been substantially diminished in value; or
- E. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1) and 28 U.S.C. § 2461(c), to seek forfeiture of any other property of defendants up to the value of the forfeitable property described above.

A TRUE BILL:

/s/
FOREPERSON OF THE GRAND JURY



Assistant United States Attorney
07/25/11 4:24pm