

For Immediate Release
July 28, 2011

**CONSULTANTS TO FORMER NEW MEXICO SECRETARY OF STATE CHARGED
WITH THEFT OF GOVERNMENT PROPERTY AND OBSTRUCTION OF
JUSTICE IN FEDERAL SUPERSEDING INDICTMENT**

***New Charges Allege that Armando C. Gutierrez and Joseph C. Kupfer
Stole \$2,500,993 in Federal HAVA Funds***

ALBUQUERQUE – United States Attorney Kenneth J. Gonzales announced that, on July 27, 2011, a federal grand jury returned an eleven-count superseding indictment that adds **Armando C. Gutierrez**, 63, of Corpus Christi, Texas, as a defendant in the criminal case charging **Joseph C. Kupfer**, 48, and his wife **Elizabeth D. Kupfer**, 49, residents of Rio Rancho, New Mexico, with federal tax evasion offenses.

The superseding indictment, which was publicly posted earlier today, adds conspiracy and theft of government property charges involving federal “Help America Vote Act” (HAVA) funds administered by former New Mexico Secretary of State Rebecca Vigil-Giron (NM SoS) against Gutierrez and Joseph Kupfer. It also adds obstruction charges against Gutierrez in connection with a federal audit and a federal investigation into the alleged misuse of federal HAVA funds. The superseding indictment seeks forfeiture of any property that constitutes, or is derived from, proceeds traceable to the offenses charged, including Gutierrez’s Corpus Christi residence, and a money judgment in the amount of \$2,500,993, the amount allegedly involved in the offenses charged. At the time of the events alleged in the superseding indictment, Gutierrez and Joseph Kupfer were providing consulting services to the NM SoS under HAVA contracts, and Elizabeth Kupfer was an employee of the New Mexico Attorney General’s Office (NM AGO) who was detailed to work for the NM SoS.

Joseph and Elizabeth Kupfer were arraigned on the federal tax evasion charges in the

original indictment on December 28, 2010, and were released under pretrial supervision pending trial. The United States District Court has not yet set a date for Gutierrez and the Kupfers to be arraigned on the superseding indictment.

According to the superseding indictment, following the passage of HAVA in 2002, States received federal funding to educate voters about the electoral process, increase voter registration, and meet new standards for election administration and voting systems. Between April 2003 and December 2006, the NM SoS administered almost \$20 million of federal HAVA funds through a number of contracts, including a multi-million dollar contract for voting-related advertising that was awarded to A. Gutierrez and Associates, Inc. (AGA), a company owned by Gutierrez, and three small contracts for increasing voting accessibility for the disabled that were awarded to Kupfer Consulting (KC), a business owned and operated by Joseph Kupfer.

The superseding indictment alleges that Gutierrez and Joseph Kupfer conspired together and with each other to defraud the United States by stealing federal HAVA funds and converting the funds for their own use. Gutierrez and Kupfer are accused of unlawfully obtaining federal HAVA funds for work they did not perform and services they did not provide by: (i) making fraudulent amendments to the AGA contract; (ii) submitting false invoices for services that AGA and KC never provided; (iii) attempting to obstruct an audit by the Election Assistance Commission (EAC); and (iv) attempting to conceal the federal HAVA funds that Gutierrez and Joseph Kupfer stole.

According to the superseding indictment, in April 2004, the NM SoS awarded a voting-related advertising contract to AGA. By its terms, the AGA contract was to terminate on December 30, 2006, could not exceed \$4 million, and required the written approval of the NM SoS before AGA could retain subcontractors. Thereafter, the AGA contract was amended in

May 2006 to include an additional \$1,762,000 in federal HAVA funds, and again in October 2006 to add another \$186,750 in federal HAVA funds. Between September 2004 and October 2006, AGA received a total of \$6,271,810 in federal HAVA funds from the State of New Mexico but Gutierrez allegedly submitted documentation supporting only \$3,385,151 in services and costs, resulting in an overpayment of \$2,500,993 to which AGA was not entitled.

In addition to the three small contracts (\$20,000 in 2003; \$20,000 in 2004; and \$30,000 in 2005) awarded to KC by the NM SoS, the superseding indictment alleges that AGA made a series of nine payments totaling \$746,375 in federal HAVA funds to Joseph Kupfer between October 2004 and November 2006. According to the superseding indictment, Gutierrez and Joseph Kupfer allegedly knew that the payments far exceeded the value of any work that Kupfer ever actually performed for AGA under the HAVA contract, and the NM SoS AGA contract file contained no documentation reflecting that AGA had retained Joseph Kupfer and KC as a subcontractor.

The superseding indictment alleges that, in early 2007, the EAC, an independent bipartisan commission established by HAVA to assist States with HAVA compliance and distribution of federal HAVA funds, began an audit into the use of federal HAVA funds by the NM SoS. The AGA HAVA contract was the primary focus of the EAC's audit because AGA could not provide documentation to the EAC auditors to support the federal HAVA funds AGA received for services allegedly provided to the State of New Mexico. In an effort to provide documentation for the federal HAVA funds AGA received, AGA allegedly provided 187 fraudulent invoices totaling \$1,137,000 that purported to represent payment to media vendors when in fact AGA never paid any vendors based on these invoices. AGA also allegedly submitted documents that purported to modify the AGA contract by (i) changing it from a fixed

hourly rate contract to a cost-plus-percentage-of cost contract, and (ii) permitting AGA to hire subcontractors without written approval of the NM SoS. These documents, however, were not in the files of the NM SoS, the New Mexico Department of Finance and Administration (NM DFA) or the NM AGO, and were not approved by the NM DFA as required by New Mexico law.

Subsequent to the EAC audit and in response to federal grand jury subpoenas, AGA and KC allegedly submitted fraudulent invoices that purported to support the nine payments totaling \$746,375 that KC received from AGA between October 2004 and November 2006. Three of these invoices sought payment in the amount of \$236,605 for production of a poll worker training video that was actually produced by another subcontractor at the cost of \$75,000. The superseding indictment alleges that these invoices had not been submitted to the EAC during its audit and were not in the files of the NM SoS, the NM DFA or the NM AGO.

According to the superseding indictment, during the years 2004 through 2006, Joseph Kupfer received income from KC, including federal HAVA funds, and Joseph and Elizabeth Kupfer reported income from KC on their joint personal tax returns. During those three years, the Kupfers allegedly received \$1,304,421 in revenue from KC but reported only \$502,541 on their tax returns. The Kupfers are charged with concealing approximately \$768,333 in income by providing incomplete information to their tax preparer and thus avoiding paying taxes on that amount, and signing false and fraudulent tax returns and submitting those returns to the Internal Revenue Service.

In announcing the superseding indictment, United States Attorney Gonzales said, "The message behind this superseding indictment is that those who do business with government agencies will be held to the same high standards as government officials. By entering into

contracts to provide services paid for with taxpayers' monies, these private citizens become duty bound to provide honest services for the monies they receive. In this case, the defendants are charged with stealing more than \$2,500,000 dollars in taxpayers' monies and failing to provide any services for that money. When anyone, including public official and government contractors, abuse the public's trust in this way, they corrupt the system and erode the public's confidence in their government. I want to thank the New Mexico Attorney General's Office for initiating the investigation that led to this superseding indictment, and commend the FBI and IRS for undertaking the painstaking, comprehensive and complex investigation that permits us to hold the defendants responsible for stealing from the public they contracted to serve."

Carol K.O. Lee, Special Agent in Charge of the Albuquerque Division of the FBI, added, "I would like to recognize the Internal Revenue Service and the New Mexico Attorney General's Office for the help they provided to the FBI in this important investigation. Public corruption is one of the FBI's highest priorities because it undermines our country's security and the trust its citizens have in their government. Billions of dollars are wasted along the way. The FBI and its law enforcement partners will continue to aggressively investigate and bring to justice all those who betray the trust of the American people. Although we have an array of investigative tools at our disposal, the FBI still depends greatly on the assistance of the public. New Mexico residents who have any information about potential wrongdoing by a public official are asked to call the FBI's Public Corruption hotline at 505-889-1580."

"Public officials and individuals who contract with and receive funds from the government hold positions of trust in the eyes of the public. That trust is broken when these officials and individuals commit crimes. Mr. Gutierrez' company received \$6,271,810 of federal monies for the Help America Vote Act, of which \$2,500,993 was allegedly fraudulently

billed/obtained. This indictment serves as a reminder that no one is above the law,” stated IRS Criminal Investigation Special Agent in Charge, Dawn Mertz.

The case was investigated by the Internal Revenue Service, Criminal Investigation Division, and the Federal Bureau of Investigation, with assistance from the New Mexico Attorney General’s Office, and is being prosecuted by Assistant United States Attorneys Tara C. Neda and Cynthia L. Weisman.

Summary of the Superseding Indictment

Count 1 alleges that, from August 2004 through July 2011, Gutierrez and Joseph Kupfer conspired to defraud the United States of federal HAVA funds administered by the NM SoS.

Count 2 alleges that, in December 2006, Gutierrez stole federal HAVA funds to which he was not entitled and converted those funds to his own use.

Counts 3, 4 and 5 allege that Joseph Kupfer stole HAVA funds to which he was not entitled on three separate occasions and that he converted those funds to his own use. Kupfer allegedly stole \$50,000 in September 2006 (Count 3), \$50,000 in October 2006 (Count 4), and \$136,605 in November 2006 (Count 5).

Count 6 alleges that, in June 2007, Gutierrez obstructed an official federal audit of federal HAVA funds disbursed to the New Mexico Secretary of State by submitting false, fraudulent and fictitious invoices.

Count 7 alleges that, in September 2009, Gutierrez obstructed justice and attempted to impede the administration of justice in a federal grand jury when he responded to federal grand jury subpoenas.

Count 8 alleges that, in July 2007, Gutierrez laundered \$630,000 in funds derived from the theft of government property by wiring the funds from a financial institution to a title

company.

Counts 9, 10 and 11 allege the three tax evasion offenses charged in the original indictment against Joseph and Elizabeth Kupfer, namely, (9) for tax year 2004, the Kupfers failed to report \$140,000 in income thus evading \$51,054 in taxes; (10) for tax year 2005, the Kupfers failed to include \$170,000 in income thus evading \$64,751 in taxes; and (11) for tax year 2006, the Kupfers failed to include \$458,333 in income thus evading \$170,470 in taxes.

The maximum penalty for a conviction on each of Counts 1 and 6 is five years' imprisonment, and ten years of imprisonment for a conviction on each of the other nine counts. The defendants also may be fined up to \$250,000 on each count of conviction with the exception of Count 8, which provides for a fine up to twice the value of the funds at issue, or \$1,260,000.

In August 2009, Gutierrez, Joseph Kupfer, Elizabeth Kupfer and Rebecca Vigil-Giron, who is not charged in the federal case, were indicted on numerous state offenses, including fraud, money laundering, tax fraud and kickback offenses. All four have entered not guilty pleas to the state charges which are pending trial in the Second Judicial District Court (Bernalillo County) for the State of New Mexico.

Charges in indictments are only accusations. Criminal defendants are presumed innocent unless proven guilty beyond a reasonable doubt.

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