

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

AO 91 (Rev. 02/09) Criminal Complaint

UNITED STATES DISTRICT COURT

10 NOV -4 AM 9:05

for the  
District of New Mexico

CLERK - LAS CRUCES

United States of America )  
v. )

Diego PENA )  
 )  
 )  
 )

Case No. 10 MJ 2871

Defendant

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 of 11/02/2010 in the county of Luna in the Judicial District of New Mexico, the defendant violated 21 U. S. C. § 841 (a)(1)

x an offense described as follows:

Knowingly and intentionally possess with the intent to distribute a controlled substance, a quantity more than 40 kilograms, to wit: approximately 42.36 Kilograms (93.4 Pounds) of Marijuana, a schedule I substance and

This criminal complaint is based on these facts:  
See Attachment A

Continued on the attached sheet.



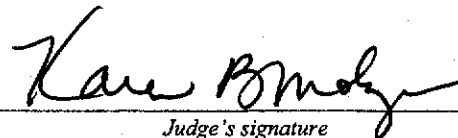
Complainant's signature

Nadia Fercha, Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: 11/04/2010



Judge's signature

City and state: Las Cruces, New Mexico

U.S. Magistrate Judge

**Karen B. Molzen**

Printed name and title

## Attachment A

### **FACTS:**

On November 2, 2010, Agents of the Truth or Consequences Border Patrol Station were conducting checkpoint operations on New Mexico Highway 26 at Mile Marker 10, (GPS: N 32.36591 W -107.617) eastbound. This highway naturally circumvents Border Patrol Checkpoints located on Interstate 25 and Highway 185. At approximately 3:30 pm, Patrol Agent in Charge (PAIC) Hector Maese was working the primary position; Agent Rodolfo Gutierrez Jr. was working pre-primary duties with his detection canine. New Mexico Highway 26 is a route commonly used by smugglers of both humans and narcotics. At approximately this time, a white Ford Mustang bearing New Mexico license plate LND946 was approaching the primary inspection area and Agent Gutierrez Jr., with his detection canine Jacko-A (CCEP# 031026). While in the pre-primary area, the canine alerted to the rear bumper of the above described vehicle.

Agent Gutierrez Jr. communicated to the primary agent Maese of the alert and requested Maese to send the vehicle to the secondary inspection area. PAIC Maese asked the driver, later identified as Diego PENA (DOB: 06/07/1982) as to his citizenship to which PENA answered that he was a U.S. Citizen. PENA stated he was going to work in Albuquerque, New Mexico traveling from Deming, New Mexico.

In the secondary area, Agent Gutierrez Jr. approached the vehicle and asked PENA for consent to perform a vehicle search with the detection canine. PENA gave his consent verbally and the canine once again alerted to the rear and front bumper areas. PENA stated he recently had body work done on the vehicle and stated that only the front bumper was repaired and painted.

A registration check on the vehicle returned to the driver PENA with an address of 1006 S. 9<sup>th</sup> St., Deming, New Mexico. A stolen vehicles check was performed on the vehicle and resulted in a negative response. The 72 hour lane check revealed the Ford Mustang with license plate LND 946, crossed at the Columbus Port of Entry at 11:42 am Eastern Time and additionally had twelve (12) other crosses since October 13, 2010.

During the vehicle search, Agent Gutierrez Jr. noticed finger print marks inside the trunk area between the carpet and exterior wall, which appeared out of the ordinary. Agent Gutierrez Jr. also noticed that the front bumper had screws inserted in areas where they did not belong. The screws were holding a piece of thin foam, screwed onto the bumpers. As Agent Gutierrez

Jr. further examined the rear bumper area, he noticed a bundle wrapped in brown packaging tape concealed in the rear and front bumper. Subsequently, PENA was arrested and read his rights by Agent Gutierrez Jr. at approximately 3:40 pm, as witnessed by Agent Antonio Carrillo.

PENA and the vehicle were taken to the Truth or Consequences Border Patrol Station for processing. After removing the front and rear bumpers, agents discovered a total of 90 bundles wrapped in brown packaging tape concealing a green leafy substance. The green leafy substance field tested positive for Marijuana. The total weight of the 90 bundles was 93.4 pounds (42.36 kilograms) and valued at \$74,720.00 U.S. Currency.

PENA was processed by Border Patrol agents. A check through NCIC revealed that PENA had no wants or warrants, as well as no criminal history.

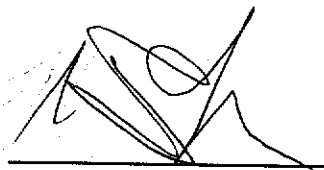
DEA Special Agent Nadia Fercha was contacted and informed of PENA's arrest and seizure. AUSA Alfred Perez authorized Federal prosecution of PENA for Possession with Intent to Distribute Marijuana.

Agent Carrillo transported PENA and the 90 bundles of Marijuana to the Las Cruces Border Patrol Station where he subsequently turned PENA and the 90 bundles of Marijuana into the custody of DEA SAs Fercha and Jesus Martinez.

At approximately 11:00 pm, SA Martinez and Fercha read PENA his rights from a DEA 71 form, in which PENA acknowledged and waived his rights by signing. Agents interviewed PENA regarding the 90 bundles of Marijuana discovered in his vehicle. The following is the statement given by PENA: PENA stated he had been in Palomas, Mexico for approximately a month when he was approached by an unidentified Hispanic male on November 1, 2010. The unidentified male asked PENA if he wanted to work (according to PENA "work" referred to the transportation of Marijuana) for a payment of \$8,000.00 U.S. Currency. PENA accepted the job because he claimed needed the money and PENA stated, the Ford Mustang was subsequently taken by the unidentified male for approximately one (1) hour. When PENA's vehicle was returned, PENA stated he believed drugs were in the vehicle however he was unable to see the drugs. PENA was instructed to drive to Albuquerque, New Mexico, exit at Rio Bravo and park the vehicle next to a red semi truck in the Walmart parking lot located on Rio Bravo and Coors. PENA was to leave the keys in the vehicle and go into the Walmart for approximately 30 minutes. The unidentified male informed PENA the travel time should take approximately five (5) hours before PENA arrived in Albuquerque, New Mexico.

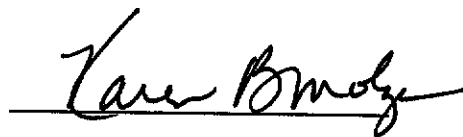
Based upon the above information, Special Agents believe that Diego PENA did possess with intent to distribute a controlled substance, to wit 42.36 kilograms (93.4 pounds) of marijuana, a Schedule I controlled Substance, in violation of Title 21 USC 841.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Nadia Fercha', written over a horizontal line.

Nadia Fercha

DEA Special Agent

A handwritten signature in black ink, appearing to read 'Lawrence Bromberg', written over a horizontal line.

U.S. Magistrate Judge