AO 91 (Rev. 5/85) Criminal Complaint

UNDER SEAL

United States District Court

EASTERN DISTRICT OF VIRGINIA

FILED
MAY - 3 2005
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA

v.

LAWRENCE ANTHONY FRANKLIN

CRIMINAL COMPLAINT

CASE NUMBER: 1:05m; 309

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about June 26, 2003 in Arlington county, in the Eastern District of Virginia defendant did, (Track Statutory Language of Offense)

lawfully having possession of, access to, control over, and being entrusted with information relating to the national defense, which defendant had reason to believe could be used to the injury of the United States and to the advantage of any foreign nation, willfully communicate, deliver and transmit that information relating to the national defense to persons not entitled to receive it,

in violation of Title 18 United States Code, Section 793(d).

I further state that I am a Special Agent of the Federal Bureau of Investigation (Official Title) and that this complaint is based on the following facts:

See Attached Affidavit

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No

Catherine M. Hanna

Signature of Complainant
Catherine M. Hanna
Special Agent
Federal Bureau of Investigation

Kevin Di Gregory, AUSA
Neil Hammerstron, AUSA
Thomas Reilly, Trial Attorney

Sworn to before me and subscribed in my presence,

May 3, 2005 at Alexandria, Virginia
Date City and State

BARRY R. PORETZ
UNITED STATES MAGISTRATE JUDGE
Name & Title of Judicial Officer
Eastern District of Virginia

Signature of Judicial Officer

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

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UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 1:05mj309
	)	
LAWRENCE ANTHONY FRANKLIN	)	

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT AND ARREST WARRANT

I, Catherine M. Hanna, being duly sworn, hereby state:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned to the Washington Field Office, and have been so employed for one and one half years. I am assigned to a squad responsible for counterespionage matters and have worked in this field since beginning at Washington Field Office. As a result of my involvement in counterintelligence investigations, and foreign counterintelligence training I have received, I am familiar with the tactics, methods and techniques of foreign intelligence services and their agents. I have also participated in the investigation of federal criminal violations and the execution of numerous arrest and search warrants.

2. As more fully described below, I respectfully submit that LAWRENCE ANTHONY FRANKLIN ("FRANKLIN") violated 18 U.S.C. § 793(d) in that, with reason to believe that the information could be used to the injury of the United States or to the advantage of a foreign nation, he communicated classified U.S. national defense information to a person not entitled to receive that information.

3. Information in this affidavit is based on my personal knowledge and on information provided to me by other law enforcement officers during this investigation. This affidavit relies on information provided by agencies of the United States Intelligence Community, which have cooperated with this investigation. This affidavit is not intended to be a complete statement of the investigation against FRANKLIN, but is for the limited purpose of setting out probable cause in support of a complaint charging him with a violation of Title 18, United States Code, Section 793(d)(transmitting defense information) and a warrant for his arrest.

Background

4. FRANKLIN is a United States citizen. FRANKLIN possesses a bachelor's degree, master's degree and a PhD. in Asian Studies. FRANKLIN resides in Kearneysville, West Virginia. He has been employed by the United States Department of Defense (DoD) since 1979.

5. FRANKLIN, at all times relevant to this affidavit, was employed at DoD in the Office of the Secretary of Defense (OSD), International Security Affairs, Office of Near East and South Asia, Office of Northern Gulf Affairs, Iran desk, and held a Top Secret security clearance with access to Sensitive Compartmented Information (SCI). FRANKLIN's security clearance and access to classified information was suspended on June 30, 2004.

6. FRANKLIN has served in the United States Air Force Reserves (USAFR) since August 14, 1976. He currently holds the rank of Colonel. Relative to his duties for the USAFR, FRANKLIN was assigned to the Defense Intelligence Agency (DIA) Defense HUMINT Services (DHS) and held a Top Secret clearance with SCI access.

7. Throughout his employment with the United States Government FRANKLIN has repeatedly signed written agreements to safeguard classified information. On or about July 31, 1979, FRANKLIN signed a DIA Secrecy Agreement, DIAR 50-2. In that document FRANKLIN acknowledged he understood that by virtue of his employment or association with the DIA he may be granted access to information, material, plans and intelligence which concern the security of the United States of America and which are classified by order of the President or as authorized by statute. In that document he acknowledged that he would never divulge any classified information relating to the national security without prior consent of the Director of the Defense Intelligence Agency or his designated representative. FRANKLIN further acknowledged that the burden is upon FRANKLIN to ascertain whether information is classified and who is authorized to receive it. FRANKLIN acknowledged that he had read and understood the provisions of the Espionage Act, including 18 U.S.C. § 793, 794 and 798.

8. On or about December 8, 1999, in connection with his USAFR position, FRANKLIN signed a Classified Information Nondisclosure Agreement, a Standard Form 312 (SF-312). In that document FRANKLIN acknowledged that he was aware that the unauthorized disclosure of classified information by him could cause irreparable injury to the United States or could be used to advantage by a foreign nation and that he would never divulge classified information to an unauthorized person. He further acknowledged that he would never divulge classified information unless he had officially verified that the recipient was authorized by the United States to receive it. Additionally, he agreed that if he was uncertain about the classification status of information, he was required to confirm from an authorized official that the information is unclassified before he could disclose it. He further acknowledged that any

unauthorized disclosure of classified information by him may constitute a violation, or violations of criminal laws, including 18 U.S.C. § 793, 794 and 798 and 50 U.S.C. § 783.

9. On or about June 5, 2001, FRANKLIN orally attested that he fully understood his responsibility to protect national security information and would adhere to the provisions of the SF-312. By doing so, FRANKLIN again acknowledged that he was aware that the unauthorized disclosure of classified information by him could cause irreparable injury to the United States or could be used to advantage by a foreign nation and that he would never divulge classified information to an unauthorized person. He again acknowledged that he would never divulge classified information unless he had officially verified that the recipient was authorized by the United States to receive it. Additionally, he again agreed that if he was uncertain about the classification status of information, he was required to confirm from an authorized official that the information is unclassified before he could disclose it. He again acknowledged that any unauthorized disclosure of classified information by him may constitute a violation, or violations of criminal laws, including 18 U.S.C. § 793, 794 and 798 and 50 U.S.C. § 783.

10. In addition, FRANKLIN signed a SCI Nondisclosure Statement on or about July 17, 2001, in conjunction with his employment at the DoD/OSD. FRANKLIN acknowledged that he was granted access to classified information protected as SCI and that he received a security indoctrination addressing the nature and protection of SCI information. In this document, FRANKLIN again acknowledged that he had been advised that the unauthorized disclosure of SCI by him could cause irreparable injury to the United States or be used to advantage by a foreign nation. He agreed he would never divulge anything marked as SCI or that he knew to be SCI to anyone who is not authorized to receive it without prior written authorization from the

United States Government. He acknowledged that he was obligated by law and regulation not to disclose any classified information in an unauthorized fashion. FRANKLIN again acknowledged that unauthorized disclosure of that information "may constitute violations of United States criminal laws, including the provisions of Sections 793, 794, 798, and 952, Title 18, United States Code." He further acknowledged that copies of Sections 793, 794, 798, and 952 had been made available to him for review and that any questions he had were answered by the briefing official.

Classified Information

11. Classified information is defined by Executive Order 12958, as amended by Executive Order 13292, as follows:

> Information in any form that (1) is owned by, produced by or for, or under the control of the United States Government; (2) falls within one or more of the categories set forth in Section 1.5 of the Order (including intelligence sources or methods, cryptology, military plans, and vulnerabilities or capabilities of systems, installations, projects, or plans related to the national security), and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security.

Under the Executive Order, the designation "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to national security. The designation "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to national security. The designation "Top Secret" shall be applied to information, the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Access to classified information at any level may be further restricted through compartmentation

in SCI categories. Classified information, of any designation, may only be shared with persons determined by an appropriate US Government official to be eligible for access to classified information, who have signed an approved non-disclosure agreement and who possess a need to know. If a person is not eligible to receive classified information, classified information may not be disclosed to that person.

12. Title 18, United States Code, Section 793(d) provides that it is unlawful for a person, who is in lawful possession of information relating to the national defense, which information the possessor has reason to believe could be used to the injury of the United States or the advantage of any foreign nation, to willfully communicate that information to any person not entitled to receive it.

FRANKLIN'S June 2003 Disclosure of Classified National Defense Information

13. On June 26, 2003, FRANKLIN had lunch at a restaurant in Arlington, Virginia, within the Eastern District of Virginia with US Person 1 (USPER 1) and US Person 2 (USPER 2). USPERS 1 and 2 are not US Government employees and at no time relevant to this affidavit did either possess a US Government security clearance or have authorized access to classified US Government information. FRANKLIN was aware that USPERS 1 and 2 were not US Government employees. FRANKLIN could not have verified that either USPERS 1 or 2 had a security clearance, as required before disclosing classified information, because, in fact, neither person possessed a US Government security clearance.

14. At that lunch, FRANKLIN verbally disclosed to USPERS 1 and 2 specific classified US Government information. This information related to potential attacks upon United

States forces in Iraq. FRANKLIN then told them that the information was "highly classified" and asked them not to "use" it.

15. The classified information FRANKLIN disclosed to USPERS 1 and 2 on June 26, 2003, related to potential attacks upon United States forces in Iraq. This information is classified Top Secret/SCI. Based on my training and experience as an FBI agent assigned to a counterintelligence squad, as well as information provided to me by the US Intelligence Community and other law enforcement officers, I am familiar with information that can be described as "relating to the national defense" pursuant to 18 U.S.C. § 793. I submit that the above-referenced information FRANKLIN disclosed concerning attacks on US forces relates to the national defense.

16. Additionally, based upon my experience, training, knowledge and discussions with members of the US Intelligence Community, the information FRANKLIN disclosed relating to potential attacks upon US forces in Iraq, could be used to the injury of the United States or to the advantage of a foreign country. Disclosure of this information could be used to injure the United States by, but not limited to, jeopardizing the continued viability of the sources and methods. Unauthorized disclosure could also be used to advantage by a foreign nation by, but not limited to, a country's discovery of our intelligence sources and methods and insight regarding the parameters of what United States knows. In addition, FRANKLIN has repeatedly acknowledged that disclosure of classified information by him such as this could cause irreparable injury to the United States or could be used to advantage by a foreign nation as this specific information involved intelligence sources and methods. Based upon FRANKLIN'S repeated acknowledgment that the unauthorized disclosure of classified information could be

used to injure the United States or to advantage of a foreign nation, FRANKLIN'S years of experience with classified information and the nature of the information he disclosed, probable cause exists that FRANKLIN had reason to believe this classified information could be used to injure the United States or to advantage by a foreign nation.

17. The information FRANKLIN disclosed to USPERS 1 and 2 was contained in a June 25, 2003, classified US Government document classified as Top Secret/SCI. The document is marked on the first and last pages with a caption in all capital letters clearly identifying it as "TOP SECRET" with a denomination of its SCI status.

18. The June 25, 2003 classified document was found in FRANKLIN's Pentagon office workspace during a June 30, 2004, search conducted of that space pursuant to a United States court-authorized criminal search warrant related to this investigation.

19. On or about June 30, 2004, FRANKLIN agreed to a voluntary and non-custodial interview with FBI Special Agents. In that interview, FRANKLIN admitted that he provided the classified information contained in the June 25, 2003 document to USPERS 1 and 2.

FRANKLIN's Other Violations of Laws and Regulations
Concerning Disclosure and Handling of Classified Information

20. The unauthorized disclosure detailed in paragraphs 13-19 above was not FRANKLIN's only disclosure of classified US Government information. Among other disclosures, FRANKLIN has also knowingly disclosed, without authorization, classified US Government information to a foreign official and members of the media.

21. On June 30, 2004, pursuant to FRANKLIN's written consent, and a United States court-authorized criminal search warrant issued in support of this investigation, a search was

conducted of FRANKLIN's residence in Kearneysville, West Virginia. Approximately 83 separate classified US Government documents were found at his house, each bearing headers and footers identifying the documents as classified US Government documents. Of these 83 documents, approximately 38 were classified Top Secret, approximately 37 were classified Secret, and approximately eight were classified Confidential. Approximately nine of these documents were found on computer disks located in FRANKLIN's house. The dates of these documents spanned three decades.

22. At no time was FRANKLIN's house an authorized location for the storage of classified US Government documents. Additionally, the documents were stored throughout the house in open and closed storage containers with at least one document in plain view.

Conclusion

23. Based on the foregoing, I respectfully submit that there is probable cause to believe that Lawrence Anthony Franklin knowingly and unlawfully disclosed classified information relating to the national defense, that is, with reason to believe that it could be used to the injury of the United States or to the advantage of a foreign nation, communicate, deliver, and transmit to persons not authorized to receive it, information relating to the national defense, in violation of 18 U.S.C. § 793(d). Accordingly, I request that a criminal complaint and arrest

warrant be issued charging Lawrence Anthony Franklin with violation of Title 18, United States Code, Section 793(d).

Catherine M. Hanna

Catherine M. Hanna
Special Agent
Federal Bureau of Investigation

Sworn to and subscribed before me
this 3rd day of May, 2005 in
Alexandria, Virginia.

UNITED STATES MAGISTRATE JUDGE