

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

*

CRIMINAL NO. 17-151

v.

*

SECTION: "F"

ALAYN ALVAREZ CASTRO

*

MAGISTRATE: 2

* * *

FACTUAL BASIS

The defendant, **ALAYN ALVAREZ CASTRO**, (hereinafter "**CASTRO**") has agreed to plead guilty as charged to Count One, that is, conspiracy to commit access device fraud, in violation of Title 18, United States Code, Section 1029(b)(2), of the superseding indictment currently pending against him. This Factual Basis does not attempt to set forth all of the facts known to the United States at this time. The limited purpose of this Factual Basis is to demonstrate that there exists a sufficient legal basis for **CASTRO**'s guilty plea. By their signatures below, the parties expressly agree that there is a factual basis for the guilty plea that the defendant will tender pursuant to the plea agreement. The parties also agree that this Factual Basis may, but need not, be used by the United States Probation Office and the Court in determining the applicable advisory guideline range under the United States Sentencing Guidelines or the appropriate sentence under 18 U.S.C. § 3553(a). The defendant agrees not to object to any fact set forth below being used by the Court or the United States Probation Office to determine the applicable advisory guideline range or the appropriate sentence under 18 U.S.C. § 3553(a). The parties' agreement does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have agreed not to

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object. Such facts, however, must be relevant to the Court's guideline computations, to the 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

The United States and **CASTRO** do hereby stipulate and agree that the allegations in the superseding indictment and the following facts are true and correct and that, should this matter have proceeded to trial, the government would have proven them beyond a reasonable doubt, through the introduction of competent testimony and admissible tangible and documentary exhibits.

The defendant, **ALAYN ALVAREZ CASTRO**, was a Cuban national who resided in the State of Florida.

Merchant A was an international business with locations in the Eastern District of Louisiana and elsewhere that accepted credit and debit cards for payment.

The term "access device" meant any card, plate, code, account number, electronic serial number, personal identification number, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument).

The term "counterfeit access device" meant any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device. The term "unauthorized access device" meant any access device that was lost, stolen, expired, revoked, canceled, or obtained with intent to defraud. The term "produce" included design, alter, authenticate, duplicate, or assemble. The term "traffic" meant transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of.

A “means of identification” was any name or number that could be used, alone or in conjunction with any other information, to identify a specific individual, including a name, credit card number, and date of birth.

Beginning at a time unknown, but at least on or about April 9, 2017, and continuing through on or about July 24, 2017, in the Eastern District of Louisiana, and elsewhere, the defendants, YUSNIEL HERNANDEZ PEREZ, YADIER ALUIJAS FERNANDEZ, ALAYN ALVAREZ CASTRO, and HENRY DAVID MARTINEZ, together with others, both known and unknown, did knowingly, intentionally, and unlawfully combine, conspire, confederate, and agree, in a manner affecting interstate commerce, to knowingly, and with intent to defraud:

- a. produce, use, and traffic in one or more counterfeit access devices, in violation of Title 18, United States Code, Section 1029(a)(1); and
- b. possess fifteen or more devices which were counterfeit or unauthorized access devices, in violation of Title 18, United States Code, Section 1029(a)(3).

Among the manner and means by which the defendants and their co-conspirators carried out the conspiracy, co-conspirators obtained counterfeit access devices that had been produced using stolen credit and debit card numbers. It was part of the conspiracy that co-conspirators installed and caused to be installed skimming devices in gasoline pumps in the Eastern District of Louisiana and elsewhere. It was part of the conspiracy that co-conspirators retrieved and caused to be retrieved information, including credit and debit card numbers, from skimming devices in gasoline pumps in the Eastern District of Louisiana and elsewhere. It was part of the conspiracy that co-conspirators shared among each other the locations of the skimming devices under their control. It was further part of the conspiracy that co-conspirators possessed fifteen or

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more counterfeit and unauthorized access devices, including both genuine and altered gift and prepaid cards. It was also part of the conspiracy that co-conspirators would and did distribute counterfeit and unauthorized access devices among themselves. It was part of the conspiracy that co-conspirators would and did use and attempt to use counterfeit and unauthorized access devices to purchase goods and gift cards, including at the locations of Merchant A.

Defendants **ALAYN ALVAREZ CASTRO** and others, including YUSNIEL HERNANDEZ PEREZ, YADIER ALUIJAS FERNANDEZ, HENRY DAVID MARTINEZ, Coconspirator A, and Coconspirator B, effected the various objects of the conspiracy. ALAYN ALVAREZ CASTRO was the principal installer of skimming devices in the gas station pumps. Defendant **ALAYN ALVAREZ CASTRO**, and others within the conspiracy, gave counterfeit access devices to other members of the conspiracy.

In furtherance of the conspiracy, and to effect the objects thereof, members of the conspiracy and others known and unknown, committed or caused to be committed the overt acts below, among others, within the Eastern District of Louisiana and elsewhere:

Defendants YUSNIEL HERNANDEZ PEREZ, YADIER ALUIJAS FERNANDEZ, **ALAYN ALVAREZ CASTRO**, and HENRY DAVID MARTINEZ obtained counterfeit access devices.

On or about April 9, 2017, the cellular telephone belonging to defendant YUSNIEL HERNANDEZ PEREZ was used to send photographs of gift cards to at least three individuals. These gift cards had been purchased and had value added to them using stolen credit and debit card numbers. Sending photographs of the cards allowed other individuals to use the cards at

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locations of Merchant A across the country to spend the proceeds obtained by the use of stolen credit and debit cards.

On or about April 28, 2017, defendant YUSNIEL HERNANDEZ PEREZ sent photographs of gift cards to at least three individuals, including defendant **ALAYN ALVAREZ CASTRO**. These gift cards had been purchased and had value added to them using stolen credit and debit card numbers. Sending photographs of the cards allowed other individuals to use the cards at locations of Merchant A across the country to spend the proceeds obtained by the use of stolen credit and debit cards.

On or about April 29 and April 30, 2017, defendant YUSNIEL HERNANDEZ PEREZ received the photograph of gift cards from another individual. These gift cards had been purchased and had value added to them using stolen credit and debit card numbers. Defendant YUSNIEL HERNANDEZ PEREZ forwarded these photographs of gift cards to defendant **ALAYN ALVAREZ CASTRO**. Sending photographs of the cards allowed other individuals to use the cards at locations of Merchant A across the country to spend the proceeds obtained by the use of stolen credit and debit cards.

On or about May 11, 2017, defendant YUSNIEL HERNANDEZ PEREZ traveled to the Baton Rouge, Louisiana area from Houston, Texas.

On or about May 11, 2017, defendant **ALAYN ALVAREZ CASTRO** sent the approximate location of a credit card skimmer in the Baton Rouge, Louisiana area to defendant YUSNIEL HERNANDEZ PEREZ.

On or about May 17, 2017, defendant YUSNIEL HERNANDEZ PEREZ traveled to the Eastern District of Louisiana from Houston, Texas and returned the same day.

On or about May 17, 2017, defendant **ALAYN ALVAREZ CASTRO** sent the location of a credit card skimmer in the Eastern District of Louisiana to defendant YUSNIEL HERNANDEZ PEREZ.

On or about June 3, 2017, defendant **ALAYN ALVAREZ CASTRO** traveled to the Phoenix, Arizona metropolitan area where he and at least two coconspirators caused the placement of multiple skimming devices in gas pumps. Cell site data would be introduced to show that defendant **ALAYN ALVAREZ CASTRO**'s cellular telephone was located near at least one location where skimmers were installed in Scottsdale, Arizona. Previously, defendant **ALAYN ALVAREZ CASTRO** had agreed with coconspirators to travel with him to Phoenix, Arizona metropolitan area to place skimming devices.

On or about June 4, 2017, defendant **ALAYN ALVAREZ CASTRO** traveled to Las Vegas, Nevada and then to Houston, TX.

On or about June 5, 2017, agents of the Arizona Department of Agriculture, Weights and Measures Services Division located at least three skimmers at a Scottsdale, Arizona gas station. DNA evidence would show that defendant **ALAYN ALVAREZ CASTRO** had been in contact with skimmers recovered these gas pumps, which were immediately adjacent to the approximate location where cell site data showed **ALAYN ALVAREZ CASTRO**'s cellular telephone had been on June 3, 2017.

On or about June 9, 2017, defendants **ALAYN ALVAREZ CASTRO** and YUSNIEL HERNANDEZ PEREZ traveled to the Baton Rouge and New Orleans, Louisiana areas from Houston, Texas.

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On or about June 10 and June 11, 2017, defendant **ALAYN ALVAREZ CASTRO** sent the approximate addresses of two Houston-area gas stations to a coconspirator.

On or about June 11, 2017, defendants **ALAYN ALVAREZ CASTRO** and **YUSNIEL HERNANDEZ PEREZ** returned to Houston, Texas from the Baton Rouge and New Orleans, Louisiana areas.

On or about June 13, 2017, defendant **ALAYN ALVAREZ CASTRO** traveled to the Phoenix, Arizona metropolitan area.

On or about June 14, 2017, defendant **ALAYN ALVAREZ CASTRO** flew from the Phoenix, Arizona metropolitan area to Miami, Florida.

On or about July 22, 2017, defendants **YUSNIEL HERNANDEZ PEREZ**, **YADIER ALUIJAS FERNANDEZ**, and **HENRY DAVID MARTINEZ** traveled to the Baton Rouge, Louisiana area and Eastern District of Louisiana, including to the locations of skimming devices previously sent by **ALAYN ALVAREZ CASTRO**, and returned to Houston, Texas.

On or about July 23, 2017, defendants **YUSNIEL HERNANDEZ PEREZ**, **YADIER ALUIJAS FERNANDEZ**, and **HENRY DAVID MARTINEZ** used counterfeit access devices to make purchases in the Baton Rouge, Louisiana area.


On or about July 24, 2017, defendants **YUSNIEL HERNANDEZ PEREZ**, **YADIER ALUIJAS FERNANDEZ**, and **HENRY DAVID MARTINEZ** traveled in Jefferson Parish, Louisiana in the same vehicle.

On or about July 24, 2017, defendants **YUSNIEL HERNANDEZ PEREZ**, **YADIER ALUIJAS FERNANDEZ**, and **HENRY DAVID MARTINEZ** entered merchants in the Jefferson Parish, Louisiana area, including a location of Merchant A. While at one of Merchant A's

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locations in Harvey, Louisiana, each of the defendants, YUSNIEL HERNANDEZ PEREZ, YADIER ALUIJAS FERNANDEZ, and HENRY DAVID MARTINEZ, used counterfeit access devices to make purchases.

On or about July 24, 2017, defendant YUSNIEL HERNANDEZ PEREZ hid approximately twelve cards in his shoe, of which approximately six were gift cards that had stored value on them and approximately six were cards that had been encoded with stolen credit or debit card numbers. YUSNIEL HERNANDEZ PEREZ also possessed approximately 14 additional counterfeit access devices in the area around his seat in the vehicle in which he and his coconspirators were traveling. On or about July 24, 2017, defendant YADIER ALUIJAS FERNANDEZ hid approximately 45 counterfeit access devices in a sock stuffed into the area around his genitals.

At their arrest on or about July 24, 2017, defendants YUSNIEL HERNANDEZ PEREZ, YADIER ALUIJAS FERNANDEZ, and HENRY DAVID MARTINEZ possessed approximately 79 counterfeit access devices and 11 gift cards, onto which they had added value using counterfeit access devices, with the total aggregate value of \$7,614.18. As set forth above, the government's evidence would prove that there were more than five participants in the conspiracy to commit access device fraud. 

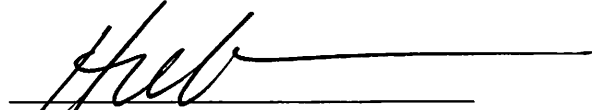
Evidence, including video recordings, access device-making equipment, photographs, bank records, reports of DNA tests, and other documents and tangible objects would be introduced at trial to prove the facts as set forth above. In addition, the testimony of employees and agents of the Secret Service, Jefferson Parish Sheriff's Office, Scottsdale Police Department,

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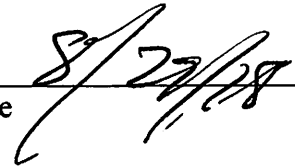


Arizona Department of Agriculture, Weights and Measures Services Division, and other competent witnesses would be introduced at trial to prove the facts set forth above.

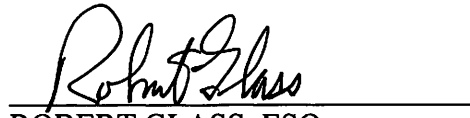
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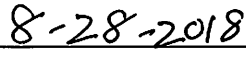
HAYDEN M. BROCKETT
Assistant United States Attorney



Date



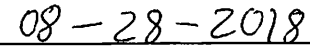
ROBERT GLASS, ESQ.
Attorney for Defendant



Date



ALAYN ALVAREZ CASTRO
Defendant



Date