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F.#2013R00278

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

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UNITED STATES OF AMERICA

- against -

ARIEL MARALIT,
REX GENE MARALIT and
WILFREDO MARALIT,

Defendants.

INDICTMENT
CR 13-0534

CR. No. _____
(T. 18, U.S.C., §§ 371,
922(a)(1)(A), 922(e),
924(a)(1)(D), 924(d),
981(a)(1)(C), 2 and 3551
et seq.; T. 21, U.S.C.,
§ 853(p); T. 22, U.S.C.,
§§ 401(a), 2778(b)(2)
and 2778(c); T. 22,
C.F.R., Parts 121 and
127; T. 28, U.S.C.,
§ 2461(c))

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THE GRAND JURY CHARGES:

ROSS, J.

INTRODUCTION

LEVY, M.J.

At all times relevant to this Indictment, unless
otherwise indicated:

1. The export of defense related articles was
regulated by the Arms Export Control Act, Title 22, United States
Code, Section 2778 ("AECA"). Section 2778(a) authorized the
President of the United States to control the import and export
of defense articles and to establish a United States Munitions
List (the "USML"), which designated and defined the defense
articles subject to these controls. Section 2778(b) required any
person engaged in the business of manufacturing or exporting any
defense articles to register with the government. Section

2778(c) established criminal penalties for any willful violation of Section 2778 or any rule or regulation promulgated thereunder.

2. The United States Department of State ("the State Department") implemented these statutory provisions by adopting the International Traffic in Arms Regulations ("ITAR"), Title 22, Code of Federal Regulations, Parts 120 et seq. These regulations established the USML and required an export license for the export of any items on the list.

3. Category I of the USML expressly applied to "Firearms, Close Assault Weapons and Combat Shotguns." See 22, C.F.R. § 121.1. Category I(a) of Section 121.1 pertained to "Nonautomatic and semi-automatic firearms to caliber .50 inclusive (12.7 mm)." Category I(c) of Section 121.1 pertained to "Firearms or other weapons (e.g., insurgency-counterinsurgency, close assault weapons systems) having a special military application regardless of caliber." In addition, Category I(g) of Section 121.1 pertained to "Barrels, cylinders, receivers (frames) or complete breech mechanisms for the articles in paragraphs (a) through (d) of this category" and Category I(h) pertained to "Components, parts, accessories and attachments for the articles in paragraphs (a) through (g) of this category." Section 123.1 of the Code of Federal Regulations provided that "Any person who intends to export . . . a defense article must obtain the approval of the Directorate of Defense

Trade Controls prior to the export . . . unless the export . . . qualifies for an exemption under the provisions of this subchapter." 22 C.F.R. § 123.1(a).

4. Military-style rifles in calibers .50, .30, .223, 7.62mm, 5.7mm and 5.56mm, and handguns in calibers .40, 9mm and 5.7mm, as well as components and accessories for these weapons, were defense articles within the meaning of Category I of the USML. The State Department issued a license determination indicating that firearms in these specific calibers, among others, were designated defense articles, as defined in Category I(a) of the USML, at the time of the conduct charged in this Indictment. Accordingly, the shipment of these weapons, as well as components of and accessories for these weapons, out of the United States required the issuance of a license from the State Department prior to export.

COUNT ONE
(Conspiracy to Violate the AECA)

5. The allegations contained in paragraphs one through four are realleged and incorporated as if fully set forth in this paragraph.

6. In or about and between January 2009 and September 2013, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants ARIEL MARALIT, REX GENE MARALIT and WILFREDO MARALIT, together with others, did knowingly and willfully conspire to export from the

United States to the Philippines defense articles, designated on the USML, to wit: firearms and firearms components, including, among others, a Barrett M82A1 .50 caliber semi-automatic rifle, a Remington Model 700 SPS .308 caliber tactical sniper rifle, a P.S.A. 5.56mm semi-automatic rifle, FN SCAR .308 caliber assault rifles, 5.7mm FN Herstal pistols, as well as magazines and accessories for such weapons (hereafter "the Specified Weapons"), without first obtaining the required license or written approval from the State Department, contrary to Title 22, United States Code, Sections 2778(b)(2) and 2778(c) and Title 22, Code of Federal Regulations, Parts 121 and 127.

7. It was part of the conspiracy that the defendants ARIEL MARALIT, REX GENE MARALIT and WILFREDO MARALIT, together with others, arranged for the purchase and export of defense articles listed in Categories I(a), I(c), I(g) and I(h) of the USML, including the Specified Weapons and other firearms and firearm components, from the United States to the Philippines without first obtaining an export license from the State Department.

8. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendants ARIEL MARALIT, REX GENE MARALIT and WILFREDO MARALIT, together with others, committed and caused the commission of, among others, the following:

OVERT ACTS

a. On or about July 16, 2009, the defendant ARIEL MARALIT sent an email to the defendants REX GENE MARALIT and WILFREDO MARALIT from an internet protocol ("IP") address in the Philippines, with the subject line "buying orders," that listed proposed purchase prices, sale prices, and net profits per person for specified firearms.

b. On or about August 13, 2009, the defendant WILFREDO MARALIT submitted a bid to purchase a 5.7mm FN Herstal pistol through an online firearms marketplace.

c. On or about August 14, 2009, the defendant WILFREDO MARALIT sent an email to a firearms seller providing contact information for the defendant REX GENE MARALIT.

d. On or about December 1, 2011, the defendant ARIEL MARALIT sent an email to the defendant REX GENE MARALIT from an IP address in the Philippines, indicating that ARIEL MARALIT had identified a buyer in the Philippines for a Remington 700 SPS .308 caliber rifle and a Barrett M82A1 .50 caliber semi-automatic rifle.

e. On or about December 1, 2011, the defendant ARIEL MARALIT sent an email to the defendant REX GENE MARALIT from an IP address in the Philippines providing instructions for shipping the Barrett M82A1 .50 caliber semi-automatic rifle to the Philippines.

f. On or about December 9, 2011, the defendant REX GENE MARALIT, together with others, purchased a Barrett M82A1 .50 caliber semi-automatic rifle.

g. On or about December 19, 2011, the defendant REX GENE MARALIT took possession of a Barrett M82A1 .50 caliber semi-automatic rifle and a Remington 700 .308 caliber SPS rifle from a licensed firearms dealer in Pennsylvania.

h. On or about December 19, 2011, the defendant REX GENE MARALIT falsely represented on an ATF Form 4473 that he was the actual buyer of a Barrett M82A1 .50 caliber semi-automatic rifle and a Remington 700 .308 caliber SPS rifle.

i. On or about December 25, 2011, the defendant REX GENE MARALIT sent an email to the defendant ARIEL MARALIT attaching a copy of a United States Postal Service international shipping form and receipt for shipping fees, falsely representing the contents of a parcel as "industrial sliding door track."

j. In or about December 2012, the defendant REX GENE MARALIT shipped multiple firearms and firearms components from the United States to the Philippines via John F. Kennedy International Airport in Queens, New York.

k. On or about December 6, 2011, the defendant REX GENE MARALIT sent a text message to a licensed firearms dealer in Pennsylvania.

1. On or about March 5, 2013, the defendant WILFREDO MARALIT took possession of a P.S.A. 5.56mm semi-automatic rifle from a licensed firearms dealer in California.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNT TWO
(AECA Violation)

9. The allegations contained in paragraphs one through four are realleged and incorporated as if fully set forth in this paragraph.

10. In or about and between January 2009 and September 2013, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants ARIEL MARALIT, REX GENE MARALIT and WILFREDO MARALIT, together with others, did knowingly and willfully export from the United States to the Philippines one or more defense articles, designated on the USML, to wit: the Specified Weapons and other firearms and firearm components, without first obtaining the required license or written approval from the State Department.

(Title 22, United States Code, Sections 2778(b)(2) and 2778(c); Title 22, Code of Federal Regulations, Parts 121 and 127; Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT THREE
(Unlicensed Dealing in Firearms)

11. In or about and between January 2009 and September 2013, both dates being approximate and inclusive, within the

Eastern District of New York and elsewhere, the defendants ARIEL MARALIT, REX GENE MARALIT and WILFREDO MARALIT, together with others, not being licensed importers, licensed manufacturers or licensed dealers of firearms, did knowingly and willfully engage in the business of dealing in firearms, and in the course of such business did ship, transport and receive one or more firearms in interstate and foreign commerce.

(Title 18, United States Code, Sections 922(a)(1)(A), 924(a)(1)(D), 2 and 3551 et seq.)

COUNT FOUR
(Illegal Shipment of Firearms)

12. In or about and between January 2009 and September 2013, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants ARIEL MARALIT, REX GENE MARALIT and WILFREDO MARALIT, together with others, did knowingly and willfully deliver and cause to be delivered to one or more common carriers for transportation and shipment in interstate and foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers and licensed collectors, packages and containers in which there were one or more firearms without written notice to the carrier that such firearms were being transported and shipped.

(Title 18, United States Code, Sections 922(e), 924(a)(1)(D), 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION AS TO COUNTS ONE AND TWO

13. The United States hereby gives notice to the defendants charged in Counts One and Two that, upon their conviction of either offense, the government will seek forfeiture in accordance with (a) Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offenses to forfeit any and all property, real or personal, constituting or derived from proceeds obtained directly or indirectly as a result of such offenses, and (b) Title 22, United States Code, Section 401 and Title 28, United States Code, Section 2461(c), which require the forfeiture of arms and munitions of war and other articles exported or shipped in violation of law, and any vessel, vehicle, or aircraft containing the same or which has been or is being used in exporting or attempting to export such arms and munitions of war or other articles in violation of law.

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

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred to, or deposited with, a third party;
- 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 divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 28, United States Code, Section 2461(c); Title 18, United States Code, Section 981(a)(1)(C); Title 22, United States Code, Section 401(a); Title 21, United States Code, Section 853(p))

CRIMINAL FORFEITURE ALLEGATION AS TO COUNTS THREE AND FOUR

15. The United States hereby gives notice to the defendants charged in Counts Three and Four that, upon their conviction of either offense, the government will seek forfeiture in accordance with Title 18, United States Code, Section 924(d) and Title 28, United States Code, Section 2461(c), which require the forfeiture of any firearm or ammunition involved in or used in any knowing violation of such offenses.

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

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

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 divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any

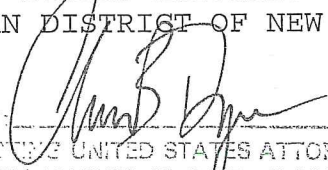
other property of the defendants up to the value of the
forfeitable property described in this forfeiture allegation.

(Title 28, United States Code, Section 2461(c); Title
18, United States Code, Section 924(d); Title 21, United States
Code, Section 853(p))

A TRUE BILL


FOREPERSON

LORETTA E. LYNCH
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK


ACTIVE UNITED STATES ATTORNEY
FLUJLIANT TO 28 C.F.R. 0.136