

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA** : **CRIMINAL NO.** \_\_\_\_\_  
**v.** : **DATE FILED:** \_\_\_\_\_  
**NIKOLAOS FRANGOS** : **VIOLATIONS:**  
**GEORGE CAPUZELLO** : **18 U.S.C. § 371 (conspiracy to falsify**  
**MIKHAIL ZUBIALEVICH,** : **information before an agency - 1 count)**  
- a/k/a "Russian Mike," : **18 U.S.C. § 1512(b)(3) (witness tampering-**  
: **1 count)**  
: **8 U.S.C. § 1324(a)(1)(A)(iii) (harboring**  
: **an alien - 1 count)**  
: **18 U.S.C. § 1623 (perjury- 1 count)**  
: **18 U.S.C. § 1001 (false statements-**  
: **1 count)**  
: **18 U.S.C. § 2 (aiding and abetting)**

**INDICTMENT**

**COUNT ONE**  
**(Conspiracy to Obstruct Justice)**

**THE GRAND JURY CHARGES THAT:**

At all times relevant to this indictment:

**The Defendants**

1. The Liberty-Alpha Joint Venture (the "Joint Venture") was a joint venture composed of Liberty Maintenance, Inc. and Alpha Painting Company.
2. Defendant NIKOLAOS FRANGOS was a part owner of Liberty Maintenance, Inc. and a principal of the Joint Venture.
3. Defendant GEORGE CAPUZELLO was a foreman for the Joint Venture, and was

assigned to supervise a painting crew on the Girard Point Bridge project.

4. Defendant MIKHAIL ZUBIALEVICH, a/k/a “Russian Mike,” was an employee of the Joint Venture and was assigned to a painting crew under the direct supervision of defendant GEORGE CAPUZELLO.

The Girard Point Bridge Contract and Protection of Peregrine Falcons

5. On or about September 22, 2009, the Joint Venture secured a \$ 70 million contract with the Pennsylvania Department of Transportation for the repair and refurbishment of the Girard Point Bridge in Philadelphia, Pennsylvania (the Girard Point Contract”).

6. The Girard Point Contract was financed 100% by the United States Department of Transportation (“US DOT”) using federal highway funds under the American Recovery and Reinvestment Act of 2009.

7. The Girard Point Bridge had been, for many years, a nesting site for peregrine falcons, a species protected by the federal Migratory Bird Treaty Act and the Pennsylvania Endangered Species Act.

8. The Girard Point Contract recognized that there were strong national and state interests in preserving peregrine falcons, and in safeguarding their nesting site on the Girard Point Bridge. As a consequence, the contract required the Joint Venture to hire a qualified expert, a “dedicated observer,” to monitor the habitat and nesting areas frequented by peregrine falcons on the Girard Point Bridge.

9. As one of its “Special Provisions,” and in order to avoid adverse impacts to the peregrine falcons resident on the Girard Point Bridge, the Girard Point Contract provided that the Joint Venture would refrain from working in the areas of the falcons’ nests during nesting season:

“From March 1 to June 30 (restricted period), no work will occur under the lower deck and the outside trusses within a two-bay wide buffer on each side of the falcon nesting location (restricted zone).”

10. The Girard Point Contract granted authority to the dedicated observer to terminate the restricted period early, or to extend it beyond June 30, “based upon actual observed progress of the nesting or fledging process.” Any such decisions were to be reviewed and approved by the Pennsylvania Game Commission.

The Disturbance of the Falcons and the Abandonment of their Nest

11. In accordance with the terms of the Girard Point Contract, the Joint Venture retained an expert, identified here as A.M., to monitor the work on the Girard Point Bridge and to assure that the provisions of the Girard Point Contract intended to protect the lives and habitat of the falcons were fully honored by the Joint Venture and its employees. As part of his duties, A.M. observed the progress of the work, evaluated its impact on the Peregrine Falcons, and wrote periodic monitoring reports that were provided to, among others, defendant NIKOLAOS FRANGOS and responsible officials of PennDOT and the Pennsylvania Game Commission.

12. In a monitoring report dated February 20, 2011, A.M. reported that adult Peregrine Falcons had remained in the area of the Girard Point Bridge all winter, but that they had not been observed on the bridge itself, likely due to the fact that much of the bridge structure was blocked off by fencing. He also reported that two nesting boxes had been mounted under the lower deck of the Girard Point Bridge, in essentially the same locations as in the previous year.

13. On February 24, 2011, defendant NIKOLAOS FRANGOS responded to the monitoring report by email, advising that some of the fencing had been removed and that he hoped

to remove more shortly.

14. On May 3, 2011, the Habitat Protection Section Chief of the Pennsylvania Game Commission sent a letter and email to, among others, defendant NIKOLAOS FRANGOS and responsible officials at PennDOT warning that the “special conditions” of the Girard Point Contract were not being adhered to, and that “[a]ny further interference with the peregrine falcon nest will likely cause the nest to be abandoned,” in violation of the Pennsylvania Code and the federal Migratory Bird Act.

15. By May 22, 2011, Peregrine Falcons had in fact established a nest on the Girard Point Bridge in the south nesting box located an area of the Girard Point Bridge known as “FB 75.” FB 75, which stands for “floor beam 75,” was within the “restricted zone” as described in the Girard Point Contract.

16. On June 3, 2011, a progress meeting was held at the Girard Point Bridge Project site. Among those present were defendant NIKOLAOS FRANGOS, A.M. and responsible officials of PennDOT. In advance of this meeting, the project manager for the Girard Point Bridge Project circulated an agenda to, among others, defendant FRANGOS. That agenda included the following action item: “Peregrine Falcon Nesting & Work Area Limitations – Incubation started near FB 75.” Those limitations had been spelled out in the past by A.M. as including no work at all between floor beams 73 to 91.

17. On June 4, 2011, defendant GEORGE CAPUZELLO directed two members of his crew, defendant MIKHAIL ZUBIALEVICH, a/k/a “Russian Mike,” and Walter Morgan, a/k/a “Walter Eduardo Morgan Gomez,” who is charged elsewhere, to carry tools and equipment along the catwalk that ran underneath the Girard Point Bridge deck, in the area of floor beams 76 and 77, and next to the nesting box where the Peregrine Falcons were incubating their egg. The catwalk and the area of floor beams 76 and 77 was within the “restricted zone” as described in the Girard Point Contract. Defendant CAPUZELLO also directed defendant ZUBIALEVICH and Morgan to perform grinding or sanding in that same area, which caused loud noises.

18. As a result of the actions of defendant GEORGE CAPUZELLO, defendant MIKHAIL ZUBIALEVICH, a/k/a “Russian Mike,” and Walter Morgan, a/k/a “Walter Eduardo Morgan Gomez,” the Peregrine Falcons became frightened and disturbed, and abandoned their nest in the area of FB 75. As a consequence, the Peregrine Falcon egg that had been laid in that nest was abandoned and did not hatch.

19. A.M. was at the Girard Point Bridge Project on June 4, 2011, and observed two workmen walk back and forth on the catwalk past the falcons’ nesting box, use power tools, and frighten the falcons away. A.M. obtained photographs of personnel on the Girard Point Bridge in the area of the Peregrine Falcon nesting box.

20. On June 6, 2011, A.M. sent an email, with photographs, documenting that workmen had entered and worked within the restricted zone, and had disturbed and driven away the Peregrine Falcons. Copies of the email were sent to defendant NIKOLAOS FRANGOS; the PennDOT project manager, an individual identified here as “Project Manager;” and responsible

officials of Pennsylvania Game Commission, including Wildlife Conservation Officer Jerrold Czech, Jr., a sworn law enforcement officer of the Pennsylvania Game Commission.

21. On June 7, 2011, defendant NIKOLAOS FRANGOS wrote an email to the Project Manager in response to A.M.'s email report of June 6, 2011 concerning the disturbance of the Peregrine Falcons. In his email, defendant FRANGOS represented that "the workers that were observed walking the catwalk were suspended without pay for 3 days."

22. On June 8, 2011, Officer Czech wrote an email to the Project Manager and defendant NIKOLAOS FRANGOS requesting a meeting at the offices of the U.S. Fish & Wildlife Service, in Philadelphia, PA. That meeting was ultimately held on Monday, June 13, 2011. Among others, defendant FRANGOS, the Project Manager, Officer Czech, and A.M. attended. In addition, Kevin Donnell, a Special Agent of the United States Fish and Wildlife Service, was present for and hosted the meeting.

23. At the June 13, 2011 meeting, both Officer Czech and Agent Donnell identified themselves as criminal investigators, said that they were conducting criminal investigations of the disturbance of the Peregrine Falcons on the Girard Point Bridge on June 4, 2011, and that one of the penalties for the violations was imprisonment of up to six months. Officer Czech and Agent Donnell asked for the names of the employees responsible for the violations. Defendant NIKOLAOS FRANGOS promised to provide those names. That meeting ended at or about 11 a.m.

24. From in or about June 4, 2011 to in or about April 30, 2013, in Philadelphia, in the Eastern District of Pennsylvania, defendants

**NIKOLAOS FRANGOS,  
GEORGE CAPUZELLO, and  
MIKHAIL ZUBIALEVICH, a/k/a “Russian Mike,”**

conspired and agreed, together and with others known and unknown to the grand jury, to commit an offense against the United States, that is, in a matter within the jurisdiction of the United States Fish and Wildlife Service and the United States Department of Transportation, to knowingly and wilfully falsify, conceal, and cover up by any trick, scheme, and device a material fact, namely that Walter Morgan, a/k/a “Walter Eduardo Morgan Gomez,” had been one of the workers responsible for disturbing the Peregrine Falcons on the Girard Point Bridge on June 4, 2011, in violation of Title 18, United States Code, Section 1001.

#### **MANNER AND MEANS**

25. It was part of the conspiracy that the Joint Venture employed many unauthorized aliens to work for it on the Girard Point Bridge Project..

It was further a part of the conspiracy that:

26. Defendant NIKOLAOS FRANGOS did not want PennDOT, the US DOT, or law enforcement authorities to learn that the Joint Venture employed unauthorized aliens.

27. Defendant NIKOLAOS FRANGOS and defendant GEORGE CAPUZELLO knew that one of those unauthorized aliens was Walter Morgan, a/k/a “Walter Eduardo Morgan Gomez.”

28. Defendant NICK FRANGOS and defendant GEORGE CAPUZELLO knew that Walter Morgan, a/k/a “Walter Eduardo Morgan Gomez,” had been one of the workers responsible for disturbing the Peregrine Falcons on the Girard Point Bridge on June 4, 2011.

29. On or about June 13, 2011, defendant NIKOLAOS FRANGOS and defendant GEORGE CAPUZELLO approached an individual, identified here as J.W., who was then employed by the Joint Venture. J.W. had not been working on June 4, 2011, and was not involved in the disturbance of the Peregrine Falcons on that day.

30. Defendant NIKOLAOS FRANGOS and defendant GEORGE CAPUZELLO persuaded J.W. to say that he had been one of the workmen who had frightened the Peregrine Falcons while working on the Girard Point Bridge on June 4, 2011 when that was not true.

31. Defendant NIKOLAOS FRANGOS and defendant GEORGE CAPUZELLO coached J.W. on what to say to Officer Czech and SA Donnell so that they would believe that J.W. had been one of the workmen who had frightened the Peregrine Falcons while working on the Girard Point Bridge on June 4, 2011 when that was not true.

#### **OVERT ACTS**

In furtherance of the conspiracy and to accomplish its object, defendants NIKOLAOS FRANGOS, GEORGE CAPUZELLO, and MIKHAIL ZUBIALEVICH, a/k/a “Russian Mike” committed the following overt acts, among others, in the Eastern District of Pennsylvania:

1. On June 13, 2011, at or about 1:37 p.m., defendant NIKOLAOS FRANGOS sent an email to Officer Czech and the Project Manager in which he purported to identify the three employees responsible for the violations.

2. On June 24, 2011, defendant GEORGE CAPUZELLO drove defendant MIKHAIL ZUBIALEVICH, a/k/a "Russian Mike," and J.W to offices of the U.S. Fish & Wildlife Service, in Philadelphia, PA.

3. On June 24, 2011, defendant GEORGE CAPUZELLO gave a statement to SA Donnell of the U.S. Fish & Wildlife Service, in Philadelphia, PA.

4. On June 24, 2011, defendant MIKHAIL ZUBIALEVICH, a/k/a "Russian Mike," gave a statement to SA Donnell of the U.S. Fish & Wildlife Service, in Philadelphia, PA.

5. On June 24, 2011, J.W. gave a statement to SA Donnell of the U.S. Fish & Wildlife Service, in Philadelphia, PA.

6. On April 23, 2013, defendant GEORGE CAPUZELLO gave false testimony before a federal grand jury sitting in Philadelphia, Pennsylvania.

7. On April 30, 2013, defendant MIKHAIL ZUBIALEVICH, a/k/a "Russian Mike," gave false testimony before a federal grand jury sitting in Philadelphia, Pennsylvania.

All in violation of Title 18, United States Code, Section 371.

**COUNT TWO**  
**(Witness Tampering)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 23 and 25 through 31 of Count One are incorporated here.
2. Between on or about June 4, 2011 and on or about June 24, 2011, in Philadelphia, in

the Eastern District of Pennsylvania, defendants

**NIKOLAOS FRANGOS and  
GEORGE CAPUZELLO**

did knowingly use intimidation, threaten, and corruptly persuade J.W., a person known to the grand jury, with the intent to hinder, delay, or prevent the communication to a law enforcement officer of the United States, namely Special Agent Kevin Donnell, of information relating to the commission or possible commission of a federal Offense, namely a violation of the Migratory Bird Treaty Act, in violation of Title 16, United States Code, Sections 703 and 707.

All in violation of Title 18, United States Code, Sections 1512(b)(3) and 2.

**COUNT THREE**  
**(Harboring an Alien)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 23 and 25 through 31 of Count One are incorporated here.
2. From June 4, 2011 and on or about June 24, 2011, in Philadelphia, in the Eastern

District of Pennsylvania, defendants

**NIKOLAOS FRANGOS,  
GEORGE CAPUZELLO, and  
MIKHAIL ZUBIALEVICH, a/k/a “Russian Mike,”**

for the purpose of private financial gain, knowingly and in reckless disregard of the fact that Walter Morgan, a/k/a “Walter Eduardo Morgan Gomez,” had come to, entered and remained in the United States in violation of law, concealed, harbored and shielded that alien from detection by immigration and other law enforcement authorities, and aided and abetted the concealing, harboring, and shielding of that alien, in a place, namely the Girard Point Bridge.

All in violation of Title 8, United States Code, Sections 1324(a)(1)(A)(iii), 1324(a)(1)(B)(i), and 1324(a)(1)(A)(v)(II).

**COUNT FOUR**  
**(Perjury by George Capuzello)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 23 and 25 through 31 of Count One are incorporated here.
2. On or about April 30, 2013, in Philadelphia, within the Eastern District of

Pennsylvania, defendant

**GEORGE CAPUZELLO,**

while under oath in a proceeding before the federal grand jury of the United States District Court for the Eastern District of Pennsylvania, knowingly made false declarations in response to questions asked to him with respect to the material matter as described in Paragraph 3 of this Count as follows:

Q. Who is Walter Morgan?

A. He was a painter.

Q. Was he on your crew?

A. Yes. Sometimes he was. Sometimes he would work with the riggers. Sometimes he would work for me. He was a, sort of, floater between crews.

Q. Was he not one of the two men who you directed to carry the air hose underneath the bridge?

A. No. I just said as a blanket statement I need a couple of guys to take it across. I didn't know who went. I'm not there all the time. I just tell them what needs to be done and I go to another part of the bridge.

Q. So, you had no idea who it was that carried the hose across the bridge?

A. I didn't see who did it, no. I wasn't there when it actually happened.

Q. Where were you when it actually happened?

A. I was on the road deck. There are a lot of guys I have to take care of.

- Q. So, you just said I want two guys to do it?
- A. I just said you guys need to take the hose across to the other side.
- Q. Which two guys did you point to?
- A. I didn't.
- Q. So, who was there on the day that you said that?
- A. Probably my whole crew.
- Q. Including Joe Warren?
- A. Joe Warren; Mike; Morgan; yes.
- Q. So, when your boss asked you who did it, why did you say Joe Warren if you didn't know?
- A. Because I didn't know exactly who did it. When they came up I was like who did it, and that's who they said did it.
- Q. That's when who said did it?
- A. Whoever was there: Joe and Mike.
- Q. So, Joe and Mike told you that they were the ones who did it?
- A. Yes.
- Q. On the day that it happened?
- A. I think so. I can't really remember exactly how it went.
- Q. But you remember Joe Warren being there on the day that it happened?
- A. Yes. Joe was there.

3. The underlined testimony of defendant GEORGE CAPUZELLO, as set forth in Paragraph 2 of this Count, as defendant CAPUZELLO then well knew and believed, was false, in that defendant CAPUZELLO knew at the time he made these statements that he had chosen Walter

Morgan and defendant MIKHAIL ZUBIALEVICH, a/k/a "Russian Mike," to carry the air hose underneath the Girard Point Bridge on the day that the Peregrine Falcons were frightened, he knew that Joe Warren was not present that day, and he knew that Walter Morgan and not Joe Warren had been the worker who, along with defendant ZUBIALEVICH, carried the air hose underneath the Girard Point Bridge on the day that the Peregrine Falcons were frightened.

In violation of Title 18, United States Code, Section 1623.

**COUNT FIVE**  
**(False Statements by Mikhail Zubialevich)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 23 and 25 through 31 of Count One are incorporated here.
2. On or about June 24, 2011, in Philadelphia, within the Eastern District of

Pennsylvania, defendant

**MIKHAIL ZUBIALEVICH, a/k/a "Russian Mike,"**

in a matter within the jurisdiction of the Fish and Wildlife Service, an agency of the executive branch of the United States, knowingly and willfully made materially false, fictitious, and fraudulent statements and representations in that defendant ZUBIALEVICH falsely identified "Joe" as the other worker with whom he had carried the air hose underneath the Girard Point Bridge on the day that the Peregrine Falcons were frightened.

In violation of Title 18, United States Code, Section 1001.

**A TRUE BILL:**

\_\_\_\_\_  
**FOREPERSON**

  
\_\_\_\_\_  
**ZANE DAVID MEMEGER**  
United States Attorney