| 1 | PHILLIP A. TALBERT United States Attorney | FILED | | |
|----|---|---|--|--|
| 2 | JOSEPH D. BARTON HENRY Z. CARBAJAL III | Sep 21, 2023 | | |
| 3 | Assistant United States Attorneys 2500 Tulare Street, Suite 4401 | CLERK, U.S. DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA | | |
| 4 | Fresno, CA 93721 Telephone: (559) 497-4000 | | | |
| 5 | Facsimile: (559) 497-4009 | | | |
| 6 | Attorneys for Plaintiff | | | |
| 7 | United States of America | | | |
| 8 | IN THE UNITED ST | TATES DISTRICT COURT | | |
| 9 | | RICT OF CALIFORNIA | | |
| 10 | | | | |
| 11 | UNITED STATES OF AMERICA, | CASE NO. 1:23-cr-00183-ADA-BAM | | |
| 12 | Plaintiff, | 18 U.S.C. § 286 – Conspiracy to Submit False Claims (One Count); 18 U.S.C. § 287 – Submission of False | | |
| 13 | v. | Claims (Nine Counts); 18 U.S.C. § 1028(a)(7) – Identity Theft (One Count); 18 U.S.C. §§ | | |
| 14 | MIGUEL MARTINEZ, AND VICTOR CRUZ, | 982(a)(2)(B) and 1028(b) – Criminal Forfeiture | | |
| 15 | Defendants. | | | |
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| 18 | <u>I N D)</u> | $I \subseteq T \subseteq N \subseteq N \subseteq M \subseteq N \subseteq M \subseteq M \subseteq M \subseteq M \subseteq M \subseteq M$ | | |
| 19 | COUNT ONE: [18 U.S.C. § 286 – Conspiracy to | Submit False Claims] | | |
| 20 | The Grand Jury charges: | | | |
| 21 | MIGUEL MARTINEZ and VICTOR CRUZ, | | | |
| 22 | defendants herein, as follows: | | | |
| 23 | I. <u>INTRODUCTION</u> | | | |
| 24 | At all relevant times: | | | |
| 25 | | UZ resided in Kern County, State and Eastern District of | | |
| 26 | California. | | | |
| 27 | | nd operated businesses in Kern County, State and | | |
| 28 | Eastern District of California. | | | |
| | INDICTMENT | 1 | | |

- 3. Defendant CRUZ owned and operated a tax preparation business in Kern County, State and Eastern District of California.
- 4. The Internal Revenue Service ("IRS") is an agency of the United States Department of the Treasury ("Treasury") that is responsible for administering and enforcing the tax laws of the United States, and collecting taxes owed to the United States.
- 5. A "means of identification" is any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual.

II. RELEVANT TAX INFORMATION

- 6. An individual is generally required to file a federal income tax return with the IRS every year to report the wages that he or she earned and to pay the required federal taxes. Returns may be filed through the mail or electronically over the Internet.
- 7. An employer is generally required to withhold various federal taxes from an employee's paychecks and to pay the taxes to the IRS on behalf of the employee. In doing so, the employer must obtain an Employer Identification Number ("EIN") from the IRS and file several forms with the IRS and other federal agencies.
 - 8. An EIN is a unique number that allows the IRS to identify a specific business.
- 9. The forms that an employer must file with the IRS and other federal agencies include what are formally known as Form W-2, Wage and Tax Statement, Form W-3, Transmittal of Wage and Tax Statements, Form 940, Employer's Annual Federal Unemployment Tax Return, and Form 941, Employer's Quarterly Federal Tax Return. Forms 940 and 941 are also sometimes generally referred to as payroll tax returns. One purpose of these forms is to report the wages an employer paid to, and the federal taxes the employer withheld from, its employees and therefore ensure that the employer and employees paid their fair share of federal taxes.
- 10. The federal taxes that an employer withholds from an employee's paychecks are credited against the employee's tax liabilities when the employee files his or her individual federal income tax return with the IRS, one of which is formally known as IRS Form 1040, United States Individual Income Tax Return.

- 11. An individual who is ineligible for a Social Security Number ("SSN") may obtain an Individual Tax Identification Numbers ("ITIN") from the IRS. An ITIN is a tax processing number that allows the individual to file federal income tax returns and therefore comply with federal tax laws. To obtain an ITIN, an individual must file what is formally known as Form W-7, Application for Individual Taxpayer Identification Number, with the IRS.
- 12. If the amount of an employer's federal tax withholdings for an employee exceeds the employee's tax liabilities for the year, the employee receives a tax refund for that year.
- 13. Federal tax refunds can be paid in various ways, including by Treasury checks mailed to the taxpayers and advanced refund checks. An advanced refund check is issued by, or through, a private tax preparer to the taxpayer using a third-party financial institution. The tax preparer initiates the tax refund by issuing, or causing to be issued, the advanced refund check to the taxpayer, who may instantly cash or deposit the check. The IRS then deposits the taxpayer's tax refund to an account setup by the tax preparer at the third-party financial institution, which reimburses the tax preparer for advancing the tax refund to the taxpayer. This allows the taxpayer to receive his or her tax refund more quickly. The taxpayer may be charged a fee for this service.

III. CONSPIRACY

14. Beginning no later than in or around November 2019, and continuing through until in or around June 2023, in the State and Eastern District of California, and elsewhere, defendants MARTINEZ and CRUZ, and others known and unknown to the grand jury, agreed, combined, and conspired to defraud the United States, and a department and agency thereof, by obtaining, and aiding in obtaining, the payment and allowance of false, fictitious, and fraudulent claims, on behalf of the conspirators and others, through the submission of false, fictitious, and fraudulent claims for individual income tax refunds to the IRS, Treasury, and United States.

IV. MANNER AND MEANS OF THE CONSPIRACY

- 15. Defendants MARTINEZ and CRUZ, and others known and unknown to the grand jury, used the following manner and means, among others, to accomplish the object of the conspiracy:
- 16. Defendant MARTINEZ, and others known and unknown to the grand jury, procured the means of identification for other individuals for the purpose of obtaining EINs for fabricated businesses

in those individuals' identities from the IRS without the individuals' authorization. They then filed, and caused to be filed, applications for EINs for fabricated businesses in those individuals' identities and received the EINs from the IRS.

- 17. Defendant MARTINEZ, and others known and unknown to the grand jury, procured identification documents for foreign nationals and others who were unable to obtain SSNs, for the purpose of obtaining ITINs for those individuals from the IRS. They then filed, and caused to be filed, Forms W-7 for those individuals and received their ITINs from the IRS.
- 18. Defendants MARTINEZ and CRUZ, and others known and unknown to the grand jury, subsequently used the EINs for the fabricated businesses, and the ITINs for the foreign nationals and others, to file false, fictitious, and fraudulent tax forms and individual federal income tax returns, including Forms W-2, W-3, From 940, 941, and 1040s, with the IRS that falsely reported wages the fabricated businesses paid to, and federal taxes the fabricated businesses withheld from, the foreign nationals and others. This resulted in fraudulent tax refunds being paid out by the IRS, Treasury, and United States through Treasury checks and advanced refund checks.
- 19. Defendants MARTINEZ and CRUZ kept track of the false, fictitious, and fraudulent tax forms and individual federal income tax returns that they filed, and the fraudulent tax refunds that were paid out, through various means, including by use of specific spreadsheets and folders on computers.
- 20. Defendant MARTINEZ, and others known and unknown to the grand jury, caused the Treasury checks to be mailed to addresses over which they had access and control in Kern County and Fresno County, State and Eastern District of California, and elsewhere.
- 21. Defendants MARTINEZ and CRUZ, and others known and unknown to the grand jury, caused the advanced refund checks to be delivered to defendant MARTINEZ and others who were under defendant MARTINEZ's control, in Kern County, State and Eastern District of California, including INDIVIDUAL ONE.
- 22. Defendant MARTINEZ, and others known and unknown to the grand jury, caused the Treasury checks and advanced refund checks to be cashed at businesses in Kern County, State and Eastern District of California, and elsewhere, including LIQUOR STORE ONE.

- 23. Defendant MARTINEZ, and others known and unknown to the grand jury, solicited and received advice from IRS EMPLOYEE ONE regarding how to avoid the IRS' fraud detection systems. IRS EMPLOYEE ONE's advice included information about the IRS' monetary thresholds so that the tax returns defendant MARTINEZ and others filed would not be deemed suspicious and be flagged by the IRS for suspected fraud.
- 24. In or around June 2023, defendant MARTINEZ was found by authorities with over \$750,000 in Treasury checks made out to other individuals, and the means of identification for more than 200 individuals, in his possession, custody, and control.
- 25. As a result of the conspiracy, defendants MARTINEZ and CRUZ, and others known and unknown to the grand jury, caused the submission of thousands of false claims for individual income tax refunds, totaling over \$25,000,000, to be presented to the IRS, Treasury, and United States, and caused the IRS, Treasury, and United States to incur more than \$2,300,000 in actual losses.
- 26. In carrying out the conspiracy, defendants MARTINEZ and CRUZ, and others known and unknown to the grand jury, acted willfully and with the intent to defraud.

All in violation of Title 18, United States Code, Section 286.

COUNTS TWO THROUGH TEN: [18 U.S.C. § 287 – Submission of False Claims]

The Grand Jury further charges:

MIGUEL MARTINEZ and VICTOR CRUZ,

defendants herein, as follows:

- 27. Paragraphs 1 through 13 and 15 through 26 are incorporated by reference as though fully set forth herein.
- 28. On or about the dates set forth below, in the State and Eastern District of California, defendants MARTINEZ and CRUZ made and presented, and caused to be made and presented, to a department and agency of the United States, a claim upon and against the United States, and a department and agency thereof, knowing such claim to be false, fictitious, and fraudulent, through the submission of false, fictitious, and fraudulent claims for individual income tax refunds to the IRS, Treasury, and United States as follows:

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| Count | Defendant | IRS Form | Tax Year | Date Filed |
|-------------------------|-------------------|-----------------------------|----------|------------|
| TWO | MARTINEZ | Form 1040 for G.G. and B.A. | 2020 | 12/18/21 |
| THREE MARTINEZ and CRUZ | | Form 1040 for G.G. and B.A | 2021 | 2/18/22 |
| FOUR MARTINEZ | | Form 1040 for L.D. | 2020 | 5/9/22 |
| FIVE | MARTINEZ and CRUZ | Form 1040 for L.D. | 2021 | 4/11/22 |
| SIX | MARTINEZ | Form 1040 for J.C. and M.V. | 2017 | 8/10/21 |
| SEVEN MARTINEZ | | Form 1040 for J.C. and M.V. | 2018 | 3/28/22 |
| EIGHT MARTINEZ | | Form 1040 for J.C. and M.V. | 2019 | 3/28/22 |
| NINE | MARTINEZ | Form 1040 for J.C. and M.V. | 2020 | 3/28/22 |
| TEN | MARTINEZ and CRUZ | Form 1040 for J.C. and M.V. | 2021 | 4/11/22 |

All in violation of Title 18, United States Code, Section 287.

COUNT ELEVEN: [18 U.S.C. § 1028(a)(7) – Identity Theft]

The Grand Jury further charges:

MIGUEL MARTINEZ,

defendant herein, as follows:

- 29. Paragraphs 1 through 13 and 15 through 28 are incorporated by reference as though fully set forth herein.
- 30. On or about January 26, 2023, in Kern County, State and Eastern District of California, defendant MARTINEZ did knowingly possess and use, in and affecting interstate and foreign commerce, without lawful authority, a means of identification of another person, to wit: a photograph of L.D.'s Mexican identification card with L.D.'s name and date of birth, knowing that the means of identification belonged to another actual person, with the intent to commit, and to aid and abet, and in connection with, any unlawful activity that constitutes a violation of federal law, to wit: violations of Title 18, United States Code, Sections 286 and 287.

INDICTMENT 6

FORFEITURE ALLEGATION: [18 U.S.C. §§ 982(a)(2)(B) and 1028(b) – Criminal Forfeiture] 1 Upon conviction of the offense alleged in Count Eleven of this Indictment, defendant 2 1. MIGUEL MARTINEZ shall forfeit to the United States, pursuant to Title 18, United States Code, 3 Section 982(a)(2)(B), any property constituting or derived from proceeds obtained directly or indirectly, 4 as a result of such violations; and pursuant to Title 18, United States Code, Section 1028(b), any 5 personal property used or intended to be used to commit the offense, including but not limited to: 6 a. A sum of money equal to the total amount of proceeds obtained as the result of the 7 offenses, for which defendant is convicted. 8 If any property subject to forfeiture, as a result of the offense alleged in Count Eleven of 9 2. this Indictment, for which defendant is convicted: 10 cannot be located upon the exercise of due diligence; 11 has been transferred or sold to, or deposited with, a third party; 12 has been placed beyond the jurisdiction of the court; 13 has been substantially diminished in value; or 14 e. has been commingled with other property which cannot be divided without difficulty, 15 it is the intent of the United States, pursuant to 18 U.S.C. §§ 982(b)(1) and 1028(g), incorporating 21 16 U.S.C. § 853(p), to seek forfeiture of any other property of said defendant, up to the value of the 17 18 property subject to forfeiture. A TRUE BILL. 19 20 /s/ Signature on file w/AUSA 21 **FOREPERSON** 22 PHILLIP A. TALBERT 23 United States Attorney 24 25 KIRK E. SHERRIFF Chief, Fresno Office 26 Assistant United States Attorney 27 28

| No. 1:23-cr-00183-ADA-BAM | |
|--|------------------|
| UNITED STATES DISTRICT COURT FILED Sep 21, 202: CLERK, U.S. DISTRICT OF CALL CASTERN DISTRICT OF CALL | 3 |
| Eastern District of California | |
| Criminal Division | |
| THE UNITED STATES OF AMERICA vs. | |
| MIGUEL MARTINEZ AND VICTOR CRUZ | |
| INDICTMENT | |
| VIOLATION(S): 18 U.S.C. § 286 – Conspiracy to Submit False Claims (One Count); 18 U.S.C. § Submission of False Claims (Nine Counts); 18 U.S.C. § 1028(a)(7) – Identity Theft (One Count); 18 U. 982(a)(2)(B) and 1028(b) – Criminal Forfeiture | 287 – S.C. §§ |
| A true bill, | |
| Foreman. | |
| Filed in open court this day | |
| of, A.D. 20 | |
| Clerk. | |
| Bail, \$ _ AS PREVIOUSLY SET FOR DEFENDANT MARTINEZ; PLEASE ISSUE NO WARRANT FOR REMAINING DEFENDANT | O BAIL |
| Sheila K. Oberts | |

GPO 863 525

Case 1:23-cr-00183-ADA-BAM Document 26-1 Filed 09/21/23 Page 2 of 5

| DEFENDANT INFORMATION I | RELATIVE TO A CE | RIMINAL ACTION IN U.S. DISTRICT COURT |
|---|--|---|
| SY COMPLAINT INFORMATION SUPERSEDING: Case No. OFFENSE CHARGED | ■ INDICTMENT | Name of District Court, and/or Judge/Magistrate Judge Location (City) EDCA Fresno, CA |
| PLEASE SEE INDICTMENT | ☐ Petty ☐ Minor ☐ Misdemeanor ☐ Felony | DEFENDANT U.S. vs. MIGUEL MARTINEZ Address { |
| 11000 | S.C. Citation Indictment | Birth Date |
| Name of Complainant Agency, or Person (& Title. SA LOGAN MELTON, IRS-CI □ person is awaiting trial in another Federal or S of court □ this person/proceeding is transferred from ano FRCrP □ 20 □ 21 □ 40. □ this is a reprosecution of charges previously dismissed which were dismissed on motion of: □ U.S. Att'y □ Defense □ this prosecution relates to a pending case involving this same defendant □ prior proceedings or appearance(s) before U.S. Magistrate Judge regarding this defendant were recorded under | state Court, give name | IS NOT IN CUSTODY 1) |
| Name and Office of Person Furnishing Information on THIS FORM U.S. Att'y | Z □ Other U.S. Agency | Or if Arresting Agency & Warrant were not Federal Mo. Day Year DATE TRANSFERRED TO U.S. CUSTODY |
| Name of Asst. U.S. Att'y (if assigned) JOSEPH D. BARTO | | ☐ This report amends AO 257 previously submitted |

United States v. Miguel Martinez Penalties for Indictment

COUNT ONE:

VIOLATION:

18 U.S.C. § 286 – Conspiracy to Submit False Claims

PENALTIES:

Up to ten years imprisonment

Up to \$250,000 fine

Up to three years supervised release

\$100 special assessment

COUNTS TWO THROUGH TEN:

VIOLATION:

18 U.S.C. § 287 – Submission of false claims

PENALTIES:

Up to five years imprisonment

Up to \$250,000 fine

Up to three years supervised release

\$100 special assessment

COUNTS ELEVEN:

VIOLATION:

18 U.S.C. § 1028(a)(7) - Identity theft

PENALTIES:

Up to five years imprisonment

Up to \$250,000 fine

Up to three years supervised release

\$100 special assessment

FORFEITURE ALLEGATION:

As stated in the charging document.

Case 1:23-cr-00183-ADA-BAM Document 26-1 Filed 09/21/23 Page 4 of 5

| DEFENDANT INF | ORMATION RELATIVE TO A C | RIMINAL ACTION IN U.S. DISTRICT COURT | | |
|---|--|---|--|--|
| BY COMPLAINT IN SUPERSEDING: OFFENSE CHARG | | Name of District Court, and/or Judge/Magistrate Judge Location (City) EDCA Fresno, CA | | |
| PLEASE SEE INDICTME | NT | DEFENDANT — U.S. vs. VICTOR CRUZ Address { | | |
| Place of offense KERN COUNTY | U.S.C. Citation Please see Indictment | Birth Date | | |
| of court | another Federal or State Court, give name cransferred from another district per 1 | IS NOT IN CUSTODY 1) ■ Has not been arrested, pending outcome of this proceeding If not detained, give date any prior summons was served on above charges 2) □ Is a Fugitive 3) □ Is on Bail or Release from (show District) IS IN CUSTODY 4) □ On this charge 5) □ On another conviction 6) □ Awaiting trial on other charges □ Fed'l ☑ State If answer to (6) is "Yes," show name of institution Has detainer □ Yes □ If "Yes," give date filed Mo. □ Day Year DATE OF | | |
| Name and Office of Person Furnishing Information on THIS FORM | MELINA ORTIZ ■ U.S. Att'y □ Other U.S. Agency PH D. BARTON | Or if Arresting Agency & Warrant were not Federal Mo. Day Year DATE TRANSFERRED TO U.S. CUSTODY This report amends AO 257 previously submitted | | |

PLEASE ISSUE NO BAIL WARRANT.

United States v. Victor Cruz Penalties for Indictment

COUNT ONE:

VIOLATION:

18 U.S.C. § 286 – Conspiracy to Submit False Claims

PENALTIES:

Up to ten years imprisonment

Up to \$250,000 fine

Up to three years supervised release

\$100 special assessment

COUNTS THREE, FIVE, AND TEN:

VIOLATION:

18 U.S.C. § 287– Submission of false claims

PENALTIES:

Up to five years imprisonment

Up to \$250,000 fine

Up to three years supervised release

\$100 special assessment

FORFEITURE ALLEGATION:

As stated in the charging document.