

U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED APR 12 2018
WILLIAM W. BLEVINS
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA


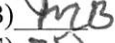

UNITED STATES OF AMERICA * CRIMINAL NO. 18-23
v. * SECTION: "L"
MISAEL BERNAL *
a/k/a Misael Bernal-Hernandez *
* * *

FACTUAL BASIS

The defendant, **MISAEL BERNAL, a/k/a Misael Bernal-Hernandez** (hereinafter "**BERNAL**"), has agreed to plead guilty as charged to the one-count indictment charging him with possession of a firearm and ammunition by an alien illegally present in the United States in violation of Title 18, United States Code, Sections 922(g)(5)(A) and 924(a)(2).

Should this matter have gone to trial, the government would have proven, through the introduction of competent testimony and other admissible evidence, the following facts, beyond a reasonable doubt, to support the allegations in the indictment now pending against the defendant:

On December 26, 2017, officers of the New Orleans Police Department were dispatched via a 911 call to 5512 Patio Way, New Orleans, Louisiana, in relation to a man firing a weapon into the air. When they arrived at the address, they encountered **BERNAL** who matched the caller's description of the subject and noticed spent 9mm shell casings in the driveway. An officer then searched **BERNAL** for safety purposes and located a box of 9mm ammunition (manufactured by Fiocchi) in the right front pocket of his jeans. The officers later received

AUSA (JM) 
Defendant (MB) 
Defense Counsel (SS) 

permission via a search warrant to enter his residence and they found a black Hi-Point, Model C-9, 9mm semi-automatic handgun, bearing serial number P1387653 (without the magazine) on the dining room table. The witness who called 911 indicated that **BERNAL** seemed to be distraught and was periodically shooting into the air. He was booked with illegal use of a firearm and possession of a stolen firearm.

An Immigration and Customs Enforcement (“ICE”) agent was later notified that **BERNAL** made bond in Orleans Parish, but was transferred to Jefferson Parish on an outstanding Jefferson Parish DUI warrant and may be in the country illegally. The agent encountered **BERNAL** at the Jefferson Parish Correctional Center and ran various database checks and determined that he was an illegal alien, had been previously removed, and had no permission to reenter. An ICE agent would testify that once **BERNAL** was inside of the ICE office, record checks were run through various U.S. Department of Homeland Security databases in order to verify his citizenship and status. The defendant’s biographic information was run through the Automated Biometric Identification System and showed that he was previously removed on April 30, 2013. These record checks further confirmed that the defendant was an illegal alien, citizen of Guatemala and illegally present in the United States.

Further documentation from ICE records contained in the defendant’s Alien File, including a Warrant of Removal/Deportation, complete with the defendant’s fingerprints, photographs and signature, would demonstrate that the defendant, **BERNAL**, was removed from the United States to Guatemala on April 30, 2013. A qualified ICE Fingerprint Specialist would testify that the fingerprints of the individual documented in the Alien File containing the Warrant of Removal/Deportation and the fingerprints of the defendant were a match. Documentation

from the Alien File would further show that the defendant is an alien and not a citizen or national of the United States.

Testimony of an official from U.S. Citizenship and Immigration Services regarding record checks conducted through the Computer Linked Application Information Management System (“CLAIMS”) would show that the defendant, **BERNAL**, did not receive consent from the U.S. Attorney General or his designated successor, the Secretary of the Department of Homeland Security, to apply for readmission or receive permission to reenter the United States since the time of the defendant’s previous removal.

Following his arrest, the ICE agents had the gun examined by a special agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) to determine where it was manufactured and to have it test fired. The ATF trace revealed that the Hi-Point firearm was manufactured in Ohio. The trace also revealed that the gun was reported as stolen. A test fire confirmed that the Hi-Point pistol was a functioning firearm. An agent would also testify that the spent casings and the ammunition found in his pocket were manufactured by Fiocchi. Fiocchi ammunition is manufactured in Italy, as well as in Missouri.

