

TJS:ANW
F.#2015R01260

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

17M306

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UNITED STATES OF AMERICA

FILED UNDER SEAL

- against -

COMPLAINT AND
AFFIDAVIT IN
SUPPORT OF
APPLICATION FOR
ARREST WARRANT

ROBERT BURGOS and
VANESSA BURGOS,

Defendants.

(18 U.S.C. § 545)

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EASTERN DISTRICT OF NEW YORK, SS:

THOMAS LORING, being duly sworn, deposes and states that he is a Special Agent with the United State Fish and Wildlife Service, duly appointed according to law and acting as such.

On or about June 11, 2015, within the Eastern District of New York and elsewhere, the defendants ROBERT BURGOS and VANESSA BURGOS did fraudulently, knowingly and intentionally import and bring into the United States prohibited wildlife, to wit: twelve (12) Fischer Lovebirds, which are listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"), and all of which are prohibited from importation without valid permit by the Endangered Species Act, Title 16, United States Code Section 1538(c)(1), and by 50 C.F.R. Parts 14 and 23.

(Title 18, United States Code, Section 545)

The source of your deponent's information and the grounds for his belief are as follows:¹

1. I am a Special Agent with the United States Fish and Wildlife Service ("FWS") and have been employed as a Special Agent since July 2010. I was previously employed with the FWS Division of Refuges as a Law Enforcement Refuge Officer for seven years. I have received specialized training and possess experience in the enforcement of federal laws, including the Lacey Act and the Endangered Species Act. I have participated in numerous federal investigations, either as a case agent/officer or in various support roles, including investigations involving the unlawful smuggling, killing, transport, possession, and sale of wildlife. I have participated in the service of arrest and search warrants.

2. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause to arrest and does not set forth all of my knowledge about this matter. Unless otherwise indicated, statements attributed to individuals in this affidavit are set forth in sum, substance and in part.

I. FEDERAL LAWS RELATING TO TRAFFICKING IN WILDLIFE

3. The FWS enforces several laws and regulations relating to trafficking in wildlife including the Endangered Species Act, Title 16, United States Code, Sections 1538 et seq.; the Convention on International Trade in Endangered Species of Wild Fauna and Flora

¹ Because the purpose of this Complaint is to set forth only those facts necessary to establish probable cause to arrest, I have not described all the relevant facts and circumstances of which I am aware.

(“CITES”); the Lacey Act Amendments of 1981, Title 16, United States Code, Sections 3371 et seq.; and Title 18, United States Code, Section 545.

4. CITES is an international treaty that provides protection to fish, wildlife, and plants that may become imperiled due to the demands of international markets. CITES has been signed by over 170 countries around the world. The United States has implemented CITES as part of the Endangered Species Act and the regulations promulgated thereunder. See 16 U.S.C. § 1538(c)(1) (providing that it shall be “unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of [CITES], or to possess any specimens traded contrary to the provisions of [CITES] and the regulations promulgated thereunder”); 50 C.F.R. Parts 14 and 23 (regulations implementing CITES).

5. Based on my training and experience I know that species protected under CITES are listed in a series of appendices: Appendices I, II and III. Appendix II includes species that, although not currently threatened with extinction, may become so without trade controls. Under Appendix II of CITES, a species may be imported to the United States from a foreign country only if, prior to importation, the importer possesses a valid CITES export or re-export permit from the foreign country of origin.

6. An animal species listed as protected under CITES cannot be imported into the United States without prior notification and approval from the FWS. Under CITES, signatory countries may limit the export of specific animal species for ecological or other reasons. Regulations promulgated by the FWS do not permit such limited species to be imported into the United States. In order for the FWS to approve importation of a CITES-

protected animal species, the importer must submit to FWS accurate copies of packing lists and CITES permits issued by the exporting country regarding the shipment to be imported.

Moreover imported animal species shipments valued over \$2,000 are subject to certain tariff duties, and require Formal Customs Clearance under United States law. Under Formal Customs Clearance, United States Customs and Border Protection (“CBP”) requires a customs bond be paid, essentially to function as an insurance policy to guarantee payment of the duties.

7. Several federal laws criminalize the importation, export, or possession of wildlife trafficked in violation of federal laws and regulations, including CITES. Among them, Title 18, United States Code, Section 545 makes it a felony for a person to fraudulently or knowingly import or bring into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law.

II. BACKGROUND OF THE INVESTIGATION

8. Based on my training and experience, I understand that the commercial trade of certain species of birds may lead to a decline in their population and be detrimental to the species. Specifically, the Fischer Lovebirds (*Agapornis fischeri*) are listed under Appendix II of CITES. In this affidavit, I refer to these species of birds collectively as the “Protected Lovebirds.”

9. FWS is investigating an unlawful conspiracy to traffic in Protected Lovebirds and to launder the proceeds of and conduct financial transactions to promote the unlawful trafficking of Protected Lovebirds.

10. In or about late June 2015, FWS received information from an individual² that a shipment of Rosy-Faced Lovebirds imported by Aviary La Familia, INC. that arrived at JFK International Airport in Queens, New York (“JFK”) on June 11, 2015, which was being held at the United States Department of Agriculture (“USDA”)-Animal and Plant Health Inspection Service Veterinary Services, New York Animal Import Quarantine Center, was actually a shipment of Protected Lovebirds.³

11. I reviewed the FWS import paperwork associated with the June 11, 2015 shipment of twelve (12) Rosy-Faced Lovebirds, which indicated that the lovebirds were imported into the United States from Madrid, Spain by Aviary La Familia, INC., which is located in Florida. The import paperwork stated that the Rosy-Faced Lovebirds were captive-raised and from Spain. The shipment had not been inspected by FWS.

12. On or about July 2, 2015, USDA sent photographs of the lovebirds in the June 11, 2015 shipment to FWS. On the same date, FWS sent those photographs to a forensic ornithologist at the FWS National Forensics Laboratory. See, e.g., Exhibit A. On or about July 6, 2015, the forensic ornithologist advised FWS that the lovebirds were not Rosy-Faced Lovebirds but were, in fact, Protected Lovebirds.

13. Based on my review of the FWS import paperwork, I learned that Aviary La Familia, INC. has a commercial import/export license issued by FWS. I reviewed the

² Based on my conversations with another FWS agent, the individual has been a reliable source of information in connection with other investigations into the illegal import/export of wildlife. The individual is not paid for his/her information and is not acting at the direction of FWS.

³ Rosy-Faced Lovebirds (*Agapornis roseicollis*) are similar to the Protected Lovebirds in size, shape and color but are not CITES-protected animal species and therefore a CITES permit is not required to be issued by the exporting country.

application that was submitted for Aviary La Familia, INC.'s commercial import/export license which revealed that the defendant VANESSA BURGOS is the principal officer of the company.

14. On or about July 15, 2015, I interviewed the defendant VANESSA BURGOS after she voluntarily appeared at FWS's New York office without an appointment.⁴ The defendant VANESSA BURGOS stated that she owned Aviary La Familia, INC. and that her husband, the defendant ROBERT BURGOS, helped her run the business. The defendant VANESSA BURGOS further informed FWS agents that she imported Rosy-Faced Lovebirds from Spain to sell because they can be brought into the United States by law and explained that when you get an import/export license you have to know what birds you cannot bring into the United States. The defendant VANESSA BURGOS also stated that she knew that Rosy-Faced Lovebirds are not protected but that other lovebirds are protected. The defendant VANESSA BURGOS stated that she used Facebook to coordinate the import of lovebirds and she provided me with the Facebook user ID associated with the Facebook account she used. The defendant VANESSA BURGOS stated that she and the defendant ROBERT BURGOS traveled to Madrid, Spain to pick out the lovebirds for the June 11, 2015 shipment.

15. Subsequent to the interview, I searched the Facebook page that the defendant VANESSA BURGOS referenced during her interview and observed photographs of the defendant VANESSA BURGOS. I also observed photographs of the Protected Lovebirds

⁴ On or about July 14, 2015, FWS contacted the defendant VANESSA BURGOS by phone to arrange for a meeting to discuss the lovebirds in the June 11, 2015 shipment. FWS further advised the defendant VANESSA BURGOS to check her schedule and call back to set a date for the meeting. No date for the meeting was set during the telephone call.

in a Facebook post dated June 9, 2015 stating "Thank you . . . for the Indonesia opaline."

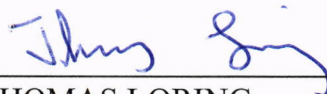
Based on my conversations with other FWS agents, I know that Indonesia opaline is a term used to describe a color of the Protected Lovebirds. I further observed Facebook photographs and posts dated June 10, 2015 stating that the photographs were taken in Indonesia. During my review of the Facebook page and approximately twenty minutes after the interview with the defendant VANESSA BURGOS ended, the Facebook page was no longer accessible.

16. Travel records for the defendants ROBERT BURGOS and VANESSA BURGOS revealed that they purchased two round trip tickets from JFK to Madrid, Spain, departing JFK on May 31, 2015 and returning on June 11, 2015. The travel records also revealed that the defendants ROBERT BURGOS and VANESSA BURGOS purchased two round trip tickets from Madrid, Spain to Jakarta, Indonesia, departing Madrid, Spain on June 1, 2015 and returning on June 7, 2015.

17. In connection with this investigation, FWS obtained a court-authorized search warrant for the Facebook account that the defendant VANESSA BURGOS mentioned during her July 15, 2015 FWS interview. A search of that Facebook account revealed that on or about April 27, 2015, the defendant ROBERT BURGOS contacted an individual located in Indonesia and stated that there would not be a problem with importing the shipment of the Protected Lovebirds if the paperwork were changed to state that the shipment contained Rosy-Faced Lovebirds. The individual in Indonesia replied that a CITES permit is not needed for Rosy-Faced Lovebirds and that he could arrange for the paperwork to state Rosy-Faced Lovebirds. A search of the Facebook account also revealed that on or about April 28, 2015, the defendant ROBERT BURGOS further advised the individual in Indonesia that the only way

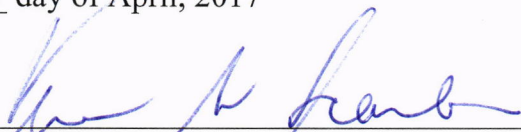
to get the birds from Indonesia was to ship the birds to another country first because the United States was restricting the importation of birds from Indonesia.

WHEREFORE, your deponent respectfully requests that the defendants
ROBERT BURGOS and VANESSA BURGOS, be dealt with according to law.



THOMAS LORING
Special Agent, United States Fish and Wildlife
Service

Sworn to before me this
6 day of April, 2017



THE HONORABLE VERA M. SCANLON
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

EXHIBIT A

