

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FILED
5-2-2018
CLERK, U. S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES OF AMERICA

v.

Case No.: 3:18-cr-80-J-39708

Cts. 1-3: 18 U.S.C. § 1349

FANNY MELINA ZELAYA-MENDEZ Ct. 4: 8 U.S.C. § 1326
ROGER OMAR ZELAYA-MENDEZ

INDICTMENT

The Grand Jury charges:

COUNT ONE

(Wire Fraud Conspiracy – Fanny Melina Zelaya-Mendez)

A. Introduction

At all times material to this Indictment:

1. El Boqueron Construction Inc. (“El Boqueron”) was a corporation registered with the Florida Department of State. El Boqueron was created on or about June 17, 2016, and its principal place of business was at an address in Orange County, in the Middle District of Florida. Records of the Florida Department of State reflect that the only officer or director of El Boqueron at its creation was an individual with the initials L.G.F., who was listed as president.

2. The defendant, FANNY MELINA ZELAYA-MENDEZ, managed and directed El Boqueron. Records of the Florida Department of State reflect

that the defendant was added as vice president of El Boqueron on or about August 1, 2016.

3. Under Florida law, any contractor or subcontractor who engages in any public or private construction must secure and maintain workers' compensation insurance. See Fla. Stat. §§ 440.10(1)(a) & 440.38(1). A contractor must require a subcontractor to provide it with evidence that it has workers' compensation insurance for its workers. Fla. Stat. § 440.10(c). Failure to maintain workers' compensation insurance is a felony. Fla. Stat. § 440.105(4)(a) & (f).

4. Proof of workers' compensation insurance is generally provided in the form of a Certificate of Liability Insurance declaring that the subcontractor has the insurance coverage. The certificate states only that the subcontractor has workers' compensation insurance and does not include the number of workers or the amount of payroll covered by the insurance policy.

5. Pursuant to the scheme to defraud described below, the defendant, through El Boqueron, facilitated the employment in the construction industry of undocumented aliens living and working illegally in the United States. Construction contractors and subcontractors entered into agreements with El Boqueron by which El Boqueron provided workers, most of whom were undocumented aliens, for the contractors and subcontractors. By obtaining and

paying the workers through El Boqueron, which was a shell company, the contractors and subcontractors could disclaim responsibility for ensuring (1) that the workers were legally authorized to work in the United States, (2) that required state and federal payroll taxes were paid, and (3) that adequate workers' compensation insurance was provided.

B. Charge

From in or about July, 2016, through in or about January, 2017, in the Middle District of Florida, and elsewhere, the defendant,

FANNY MELINA ZELAYA-MENDEZ,

did knowingly and intentionally, combine, conspire, confederate, and agree with L.G.F. and with other persons, known and unknown, to transmit and cause to be transmitted by wire in interstate commerce writings, signs, signals, pictures, sounds, and communications, having devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent representations concerning workers' compensation insurance, as more fully described herein, for the purpose of executing such scheme and artifice and attempting to do so, in violation of Title 18, United States Code, Section 1343.

C. Manner and Means

The manner and means by which the conspirators carried out the conspiracy and the scheme and artifice to defraud included, but were not limited to, the following:

1. On or about July 20, 2016, L.G.F., on behalf of El Boqueron, caused to be submitted, by electronic mail (“e-mail”) in interstate commerce, a Florida Workers Compensation Application to NorGUARD Insurance Company (“NorGUARD”) in Wilkes-Barre, Pennsylvania, through Paychex Insurance Agency, Inc. (“Paychex”), located in Rochester, New York. The application falsely represented that the workers’ compensation insurance would cover an estimated annual payroll of \$100,000. NorGUARD is a subsidiary of Berkshire Hathaway GUARD Insurance Companies (“GUARD”). GUARD maintains an on-line Policy Service Center with servers located in Wilkes-Barre, Pennsylvania.

2. The submission of the workers’ compensation insurance application caused NorGUARD to issue a workers’ compensation insurance policy to El Boqueron covering the period from July 25, 2016, until July 25, 2017. The annual premium for the policy was approximately \$16,787, which was based on the information provided in the application, including the estimated payroll to be covered.

3. Although the workers' compensation premium was based on the representation that El Boqueron had a total annual payroll of \$100,000, the conspirators "rented" El Boqueron's Certificate of Liability Insurance ("COI") to construction contractors and subcontractors located in the Middle District of Florida, including contractors and subcontractors located in Duval, Clay, St. Johns, Putnam, and Flagler Counties in the Jacksonville Division of this District.

4. From on or about July 21, 2016, through on or about December 16, 2016, the conspirators requested, and caused to be requested, by electronic transmission in interstate commerce, dozens of COIs from Paychex in Rochester, New York, and the GUARD Policy Service Center in Wilkes-Barre, Pennsylvania, and provided the COIs, and caused them to be provided, to contractors and subcontractors in the Middle District of Florida. The purpose of providing the COIs to the contractors and subcontractors was to help carry out the scheme to defraud by falsely representing that El Boqueron had sufficient workers' compensation insurance, as required by Florida law.

5. Although NorGUARD believed it was providing coverage for the \$100,000 of payroll reflected in the workers' compensation insurance application, the conspirators' actions caused NorGUARD to in fact provide coverage for millions of dollars in payroll. If NorGUARD had known the amount of payroll

it was in fact covering, it would have charged a premium of approximately \$866,719.

6. The contractors and subcontractors wrote payroll checks to El Boqueron for work performed during discrete pay periods. The conspirators cashed the payroll checks, or caused them to be cashed, at a check cashing service and a federally insured financial institution.

7. During the period of the conspiracy, the conspirators cashed and caused to be cashed payroll checks totaling approximately \$5,385,092. The conspirators kept approximately 4% of the cash, or a total of approximately \$215,404, as a fee.

8. After cashing the payroll checks, the conspirators distributed the cash remaining after deduction of the fee, and caused it to be distributed, to construction crew leaders, who paid the workers in cash. Many of the workers were undocumented aliens working in the United States illegally.

9. Neither El Boqueron nor the contractors and subcontractors deducted state or federal payroll taxes, such as for Medicare and Social Security, from the workers' pay, in violation of state and federal law.

10. Neither El Boqueron nor the contractors and subcontractors provided adequate workers' compensation insurance for the workers, in violation of Florida law.

11. The contractors and subcontractors writing payroll checks to El Boqueron and the conspirators' cashing those checks and distributing the cash to the workers resulted in the concealment of the employment of undocumented aliens working illegally in the United States.

12. On or about October 13, 2016, L.G.F. was taken into custody by immigration authorities and placed into deportation proceedings.

13. On or about January 26, 2017, L.G.F., as a representative of El Boqueron, was served with a Stop-Work Order by the State of Florida, Department of Financial Services, Division of Workers' Compensation. The Stop-Work Order directed El Boqueron to cease all business operations for all worksites in Florida and alleged that El Boqueron had failed to secure the payment of workers' compensation by materially understating or concealing payroll, in violation of Florida law.

14. On or about July 25, 2017, L.G.F. was deported from the United States to Honduras.

All in violation of Title 18, United States Code, Section 1349.

COUNT TWO
(Wire Fraud Conspiracy – Fanny Melina Zelaya-Mendez)

A. Introduction

At all times material to this Indictment:

1. La Fuente Construction Inc. (“La Fuente”) was a corporation registered with the Florida Department of State. La Fuente was created on or about November 17, 2016, and its principal place of business was at an address in Orange County, in the Middle District of Florida.

2. The defendant, FANNY MELINA ZELAYA-MENDEZ, managed and directed La Fuente. Records of the Florida Department of State reflect that the defendant was the only officer or director of La Fuente.

3. On or about January 30, 2017, the defendant filed an amendment with the Florida Department of State to change the principal office address and the mailing address of La Fuente to an address in Duval County, in the Middle District of Florida.

4. Under Florida law, any contractor or subcontractor who engages in any public or private construction must secure and maintain workers’ compensation insurance. See Fla. Stat. §§ 440.10(1)(a) & 440.38(1). A contractor must require a subcontractor to provide it with evidence that it has workers’ compensation insurance for its workers. Fla. Stat. § 440.10(c). Failure

to maintain workers' compensation insurance is a felony. Fla. Stat.

§ 440.105(4)(a) & (f).

5. Proof of workers' compensation insurance is generally provided in the form of a Certificate of Liability Insurance declaring that the subcontractor has the insurance coverage. The certificate states only that the subcontractor has workers' compensation insurance and does not include the number of workers or the amount of payroll covered by the insurance policy.

6. Pursuant to the scheme to defraud described below, the defendant, through La Fuente, facilitated the employment in the construction industry of undocumented aliens living and working illegally in the United States. Construction contractors and subcontractors entered into agreements with La Fuente by which La Fuente provided workers, most of whom were undocumented aliens, for the contractors and subcontractors. By obtaining and paying the workers through La Fuente, which was a shell company, the contractors and subcontractors could disclaim responsibility for ensuring (1) that the workers were legally authorized to work in the United States, (2) that required state and federal payroll taxes were paid, and (3) that adequate workers' compensation insurance was provided.

B. Charge

From in or about December, 2016, through in or about January, 2018, in the Middle District of Florida, and elsewhere, the defendant,

FANNY MELINA ZELAYA-MENDEZ,

did knowingly and intentionally, combine, conspire, confederate, and agree with other persons, known and unknown, to transmit and cause to be transmitted by wire in interstate commerce writings, signs, signals, pictures, sounds, and communications, having devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent representations concerning workers' compensation insurance, as more fully described herein, for the purpose of executing such scheme and artifice and attempting to do so, in violation of Title 18, United States Code, Section 1343.

C. Manner and Means

The manner and means by which the conspirators carried out the conspiracy and the scheme and artifice to defraud included, but were not limited to, the following:

1. On or about December 27, 2016, the defendant, on behalf of La Fuente, caused to be submitted, by electronic mail ("e-mail") in interstate commerce, a Florida Workers Compensation Application to NorGUARD Insurance Company ("NorGUARD") in Wilkes-Barre, Pennsylvania, through

Paychex Insurance Agency, Inc. (“Paychex”), located in Rochester, New York. The application falsely represented that the workers’ compensation insurance would cover an estimated annual payroll of \$85,800. NorGUARD is a subsidiary of Berkshire Hathaway GUARD Insurance Companies (“GUARD”). GUARD maintains an on-line Policy Service Center with servers located in Wilkes-Barre, Pennsylvania.

2. The submission of the workers’ compensation insurance application caused NorGUARD to issue a workers’ compensation insurance policy to La Fuente covering the period from December 19, 2016, until December 19, 2017. The annual premium for the policy was \$27,581, which was based on the information provided in the application, including the estimated payroll to be covered.

3. Although the workers’ compensation premium was based on the representation that La Fuente had a total annual payroll of \$85,800, the conspirators “rented” La Fuente’s Certificate of Liability Insurance (“COI”) to construction contractors and subcontractors located in the Middle District of Florida, including contractors and subcontractors located in Duval, Clay, St. Johns, Putnam, and Nassau Counties in the Jacksonville Division of this District.

4. From on or about January 4, 2017, through on or about December 11, 2017, the conspirators requested, and caused to be requested, by electronic transmission in interstate commerce, dozens of COIs from Paychex in Rochester, New York, and provided the COIs, and caused them to be provided, to contractors and subcontractors in the Middle District of Florida. The purpose of providing the COIs to the contractors and subcontractors was to help carry out the scheme to defraud by falsely representing that La Fuente had sufficient workers' compensation insurance, as required by Florida law.

5. Although NorGUARD believed it was providing coverage for the \$85,800 of payroll reflected in the workers' compensation insurance application, the conspirators' actions caused NorGUARD to in fact provide coverage for millions of dollars in payroll. If NorGUARD had known the amount of payroll it was in fact covering, it would have charged a premium of approximately \$4,581,164.

6. The contractors and subcontractors wrote payroll checks to La Fuente for work performed during discrete pay periods. The conspirators cashed the payroll checks, or caused them to be cashed, at check cashing services and federally insured financial institutions.

7. During the period of the conspiracy, the conspirators cashed and caused to be cashed payroll checks totaling approximately \$14,801,044. The

conspirators kept approximately 4% of the cash, or a total of approximately \$592,041, as a fee.

8. After cashing the payroll checks, the conspirators distributed the cash remaining after deduction of the fee, and caused it to be distributed, to construction crew leaders, who paid the workers in cash. Many of the workers were undocumented aliens working in the United States illegally.

9. Neither La Fuente nor the contractors and subcontractors deducted state or federal payroll taxes, such as for Medicare and Social Security, from the workers' pay, in violation of state and federal law.

10. Neither La Fuente nor the contractors and subcontractors provided adequate workers' compensation insurance for the workers, in violation of Florida law.

11. The contractors and subcontractors writing payroll checks to La Fuente and the conspirators' cashing those checks and distributing the cash to the workers resulted in the concealment of the employment of undocumented aliens working illegally in the United States.

All in violation of Title 18, United States Code, Section 1349.

COUNT THREE
**(Wire Fraud Conspiracy – Fanny Melina Zelaya-Mendez and
Roger Omar Zelaya-Mendez)**

A. Introduction

At all times material to this Indictment:

1. Omar Construction Services Inc. (“Omar Construction”) was a corporation registered with the Florida Department of State. Omar Construction was created on or about October 16, 2017, and its principal place of business was at an address in Duval County, in the Middle District of Florida. Records of the Florida Department of State reflect that the only officer or director of Omar Construction was the defendant ROGER OMAR ZELAYA-MENDEZ, who was listed as president.

2. The defendant FANNY MELINA ZELAYA-MENDEZ managed and directed Omar Construction.

3. Under Florida law, any contractor or subcontractor who engages in any public or private construction must secure and maintain workers’ compensation insurance. See Fla. Stat. §§ 440.10(1)(a) & 440.38(1). A contractor must require a subcontractor to provide it with evidence that it has workers’ compensation insurance for its workers. Fla. Stat. § 440.10(c). Failure to maintain workers’ compensation insurance is a felony. Fla. Stat. § 440.105(4)(a) & (f).

4. Proof of workers' compensation insurance is generally provided in the form of a Certificate of Liability Insurance declaring that the subcontractor has the insurance coverage. The certificate states only that the subcontractor has workers' compensation insurance and does not include the number of workers or the amount of payroll covered by the insurance policy.

5. Pursuant to the scheme to defraud described below, the defendants, through Omar Construction, facilitated the employment in the construction industry of undocumented aliens living and working illegally in the United States. Construction contractors and subcontractors entered into agreements with Omar Construction by which Omar Construction provided workers, most of whom were undocumented aliens, for the contractors and subcontractors. By obtaining and paying the workers through Omar Construction, which was a shell company, the contractors and subcontractors could disclaim responsibility for ensuring (1) that the workers were legally authorized to work in the United States, (2) that required state and federal payroll taxes were paid, and (3) that adequate workers' compensation insurance was provided.

B. Charge

From in or about November, 2017, through in or about April, 2018, in the Middle District of Florida, and elsewhere, the defendants,

FANNY MELINA ZELAYA-MENDEZ,
ROGER OMAR ZELAYA-MENDEZ,

did knowingly and intentionally, combine, conspire, confederate, and agree with each other and with other persons, known and unknown, to transmit and cause to be transmitted by wire in interstate commerce writings, signs, signals, pictures, sounds, and communications, having devised and intended to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent representations concerning workers' compensation insurance, as more fully described herein, for the purpose of executing such scheme and artifice and attempting to do so, in violation of Title 18, United States Code, Section 1343.

C. Manner and Means

The manner and means by which the conspirators carried out the conspiracy and the scheme and artifice to defraud included, but were not limited to, the following:

1. On or about November 10, 2017, the defendant ROGER OMAR ZELAYA-MENDEZ, on behalf of Omar Construction, caused to be submitted, by electronic mail ("e-mail") in interstate commerce, a Florida Workers Compensation Application to NorGUARD Insurance Company ("NorGUARD") in Wilkes-Barre, Pennsylvania, through Paychex Insurance Agency, Inc. ("Paychex"), located in Rochester, New York. The application falsely represented that the workers' compensation insurance would cover two

employees and an estimated annual payroll of \$120,800. NorGUARD is a subsidiary of Berkshire Hathaway GUARD Insurance Companies (“GUARD”). GUARD maintains an on-line Policy Service Center with servers located in Wilkes-Barre, Pennsylvania.

2. The submission of the workers’ compensation insurance application caused NorGUARD to issue a workers’ compensation insurance policy to Omar Construction covering the period from November 6, 2017, until November 6, 2018. The annual premium for the policy was \$23,285, which was based on the information provided in the application, including the number of employees and estimated payroll to be covered.

3. Although the workers’ compensation premium was based on the representation that Omar Construction had two employees and a total annual payroll of \$120,800, the conspirators “rented” Omar Construction’s Certificate of Liability Insurance (“COI”) to construction contractors and subcontractors located in the Middle District of Florida, including contractors and subcontractors located in Duval, Clay, St. Johns, Putnam, and Nassau Counties in the Jacksonville Division of this District.

4. From on or about December 7, 2017, through on or about April 6, 2018, the conspirators requested, and caused to be requested, by electronic transmission in interstate commerce, dozens of COIs from Paychex in Rochester,

New York, and the GUARD Policy Service Center in Wilkes-Barre, Pennsylvania, and provided the COIs, and caused them to be provided, to contractors and subcontractors in the Middle District of Florida. The purpose of providing the COIs to the contractors and subcontractors was to help carry out the scheme to defraud by falsely representing that Omar Construction had sufficient workers' compensation insurance, as required by Florida law.

5. Although NorGUARD believed it was providing coverage for the two employees and \$120,800 of payroll reflected in the workers' compensation insurance application, the conspirators' actions caused NorGUARD to in fact provide coverage for millions of dollars in payroll. If NorGUARD had known the amount of payroll it was in fact covering, it would have charged a premium of approximately \$1,235,958.

6. The contractors and subcontractors wrote payroll checks to Omar Construction for work performed during discrete pay periods. The conspirators cashed the payroll checks, or caused them to be cashed, at a check cashing service and a federally insured financial institution.

7. During the period of the conspiracy, the conspirators cashed and caused to be cashed payroll checks totaling approximately \$6,693,378. The conspirators kept approximately 4% of the cash, or a total of approximately \$267,735, as a fee.

8. After cashing the payroll checks, the conspirators distributed the cash remaining after deduction of the fee, and caused it to be distributed, to construction crew leaders, who paid the workers in cash. Many of the workers were undocumented aliens working in the United States illegally.

9. Neither Omar Construction nor the contractors and subcontractors deducted state or federal payroll taxes, such as for Medicare and Social Security, from the workers' pay, in violation of state and federal law.

10. Neither Omar Construction nor the contractors and subcontractors provided adequate workers' compensation insurance for the workers, in violation of Florida law.

11. The contractors and subcontractors writing payroll checks to Omar Construction and the conspirators' cashing those checks and distributing the cash to the workers resulted in the concealment of the employment of undocumented aliens working illegally in the United States.

All in violation of Title 18, United States Code, Section 1349.

COUNT FOUR

On or about April 6, 2018, in the Middle District of Florida, the defendant,
ROGER OMAR ZELAYA-MENDEZ,
a citizen of Honduras and an alien in the United States, was found unlawfully
present in the United States without first having obtained the consent of the
Attorney General or the Secretary of Homeland Security for the United States to
apply for admission to or re-enter the United States after having been deported
and removed from the United States on or about February 13, 2009, and on or
about July 20, 2012.

In violation of Title 8, United States Code, Section 1326.

FORFEITURES

1. The allegations contained in Counts One through Three of this
Indictment are incorporated by reference for the purpose of alleging forfeitures
pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28,
United States Code, Section 2461(c).

2. Upon conviction of a conspiracy to violate Title 18, United States
Code, Section 1343, in violation of Title 18, United States Code, Section 1349, the
defendants, FANNY MELINA ZELAYA-MENDEZ and ROGER OMAR
ZELAYA-MENDEZ, shall forfeit to the United States, pursuant to 18 U.S.C.

§ 981(a)(1)(C) and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offense.

3. The property to be forfeited includes, but is not limited to, the following:


- a. A sum of money equal to at least \$215,404 in United States currency, which represents the approximate amount of proceeds the defendant FANNY MELINA ZELAYA-MENDEZ obtained as a result of the conspiracy and scheme to defraud alleged in Count One.
- b. A sum of money equal to at least \$592,041 in United States currency, which represents the approximate amount of proceeds the defendant FANNY MELINA ZELAYA-MENDEZ obtained as a result of the conspiracy and scheme to defraud alleged in Count Two.
- c. A sum of money equal to at least \$267,735 in United States currency, which represents the approximate amount of proceeds the defendants, FANNY MELINA ZELAYA-MENDEZ and ROGER OMAR ZELAYA-MENDEZ, obtained as a result of the conspiracy and scheme to defraud alleged in Count Three.
- d. The sum of approximately \$286,135 in U.S. currency seized from the defendant ROGER OMAR ZELAYA-MENDEZ on April 6, 2018.
- e. A black 2014 Dodge Ram pick-up truck, VIN 1C6RR6FG9ES265023, valued at approximately \$13,250, seized from the defendant ROGER OMAR ZELAYA-MENDEZ on April 6, 2018.

4. If any of the property described above, 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,

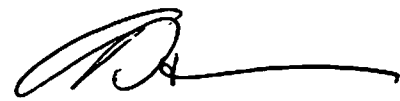
the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL,

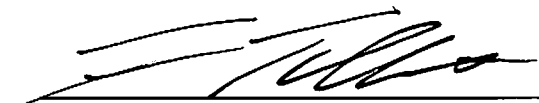


Foreperson

MARIA CHAPA LOPEZ
United States Attorney

By: 

ARNOLD B. CORSMEIER
Assistant United States Attorney

By: 

FRANK TALBOT
Assistant United States Attorney
Chief, Jacksonville Division

No.

UNITED STATES DISTRICT COURT
Middle District of Florida
Jacksonville Division

THE UNITED STATES OF AMERICA

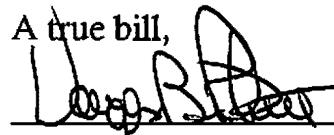
vs.

FANNY MELINA ZELAYA-MENDEZ
ROGER OMAR ZELAYA-MENDEZ

INDICTMENT

Violations: 18 U.S.C. § 1349
8 U.S.C. § 1326

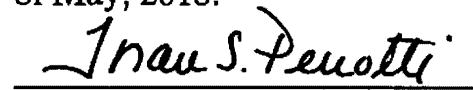
A true bill,



Foreperson

Filed in open court this 2nd day

of May, 2018.



Clerk

Bail \$ _____
