

UNITED STATES DISTRICT COURT

for the

Northern District of California

FILED

Aug 05 2020

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

United States of America)

v.)

FARES ABDO AL EYANI,)

and)

SABA MOHSEN DHAIFALLAH,)

Case No. 3:20-mj-71075 MAG)

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.


On or about the date(s) of December 17, 2019 in the county of San Mateo and Alameda in the
Northern District of California, the defendant(s) violated:*Code Section*22 U.S.C. § 2778;
22 C.F.R. §§ 120-130; and,
18 U.S.C. § 2*Offense Description*Attempting to violate the Arms Export Control Act ("AECA")
and the International Trafficking in Arms Regulations ("ITAR")Maximum Sentence: 20 years
Maximum Length of Supervised Release: 3 years
Maximum Fine: \$1,000,000.00 or twice the gross gain or loss.
Special Assessment of \$100 per felony count.

This criminal complaint is based on these facts:

Please see the attached Affidavit of Special Agent Julie D. Delgado in Support of an Application for a Criminal Complaint and Arrest Warrants.

☒ Continued on the attached sheet.

Approved as to form:


AUSA Nicholas J. Walsh

s/

Complainant's signature

Julie D. Delgado, Special Agent, FBI

Printed name and title

Sworn to before me by telephone.

Date: August 5, 2020City and state: San Francisco, California*Judge's signature*

Joseph C. Spero, Chief U.S. Magistrate Judge

Printed name and title

**AFFIDAVIT OF SPECIAL AGENT JULIE D. DELGADO
IN SUPPORT OF AN APPLICATION FOR
A CRIMINAL COMPLAINT AND ARREST WARRANTS**

I, Julie D. Delgado, a Special Agent of the Federal Bureau of Investigation (“FBI”) and member of the Joint Terrorism Task Force (“JTTF”), being duly sworn, hereby declare as follows:

INTRODUCTION AND PURPOSE OF AFFIDAVIT

1. This affidavit is being submitted in support of an application for a criminal complaint charging FARES ABDO AL EYANI, of Oakland, California, and SABA MOHSEN DHAIFALLAH, also of Oakland, California, with attempting to violate the Arms Export Control Act (“AECA”), 22 U.S.C. § 2778, and its implementing regulations, the International Trafficking in Arms Regulations (“ITAR”), 22 C.F.R. §§ 120-130, and 18 U.S.C. § 2. In addition, this affidavit is also being submitted in support of an application for arrest warrants for both AL EYANI and DHAIFALLAH.

2. The statements contained in this affidavit are based on: (1) information uncovered during the investigation of this matter through witness interviews and from various financial records, email communications, and other documents; (2) information provided to me by other law enforcement officers; as well as (3) my personal observations, training, experience, and knowledge of this investigation.

3. Because this affidavit is being submitted for the limited purpose of securing a criminal complaint and arrest warrants, I have not included each and every fact known to me concerning this investigation. I have set forth only those facts that I believe are necessary to

establish probable cause to believe that on or about December 17, 2019, AL EYANI and DHAIFALLAH attempted to violate the AECA, 22 U.S.C. § 2778, and its implementing regulations, the ITAR, 22 C.F.R. §§ 120-130, and 18 U.S.C. § 2.

AGENT BACKGROUND

4. I am a Special Agent with the FBI assigned to investigate counterterrorism violations and corresponding crimes and have been so employed since May 2017. I am assigned to investigate allegations of material support to terrorists and any corresponding violations, such as money laundering, smuggling, and human trafficking. Prior to my current position as a Special Agent with the FBI, I was a California State legislative employee for 12 years and graduated with a Juris Doctorate from Lincoln Law School in Sacramento, California, in 2013.

5. My training included Basic Field Training Courses at the FBI Academy in Quantico, Virginia, as well as the Counterterrorism Baseline Operational Learning Tool course, a specific training for Counterterrorism Investigators. As an agent, I have received on-the-job training and experience in interview and interrogation techniques, arrest procedures, search warrant applications, and the execution of searches and seizures.

6. As an FBI agent, I am authorized to investigate violations of United States law and am a law enforcement officer with the authority to execute warrants issued under the authority of the United States. I am an investigator and law enforcement officer of the United States within the meaning of 18 U.S.C. § 2510(7).

APPLICABLE LAW

7. The commercial export of arms, ammunitions, implements of war and defense articles and services from the United States is governed by the Arms Export Control Act (“AECA”), 22 U.S.C. § 2778, and its attendant regulations, the International Traffic in Arms Regulations (“ITAR”), 22 C.F.R. §§ 120-130.

8. The AECA authorizes the President, among other things, to control the export of “defense articles” deemed critical to the national security and foreign policy interests of the United States. The AECA also authorizes the President to designate goods as “defense articles,” require licenses for the export of such articles, and promulgate regulations for the export of such articles. By executive order, the President has delegated this authority to the United States Department of State, Bureau of Political-Military Affairs, Directorate of Defense Trade Controls (“DDTC”). Accordingly, the DDTC promulgates regulations under the AECA, known as the ITAR.

9. The ITAR implements the provisions of the AECA and establishes the framework for regulating the export of defense articles. The ITAR defines an “export” as the sending or taking of a defense article out of the United States in any manner. See 22 C.F.R. § 120.17(a). The ITAR defines a “defense article” to be any item on the United States Munitions List (“USML”). The ITAR contains the USML. The USML sets forth 21 categories of defense articles and defense services that are subject to export-control.

10. Persons desiring to export items on the USML from the United States to a place overseas must register with the DDTC and obtain individual export licenses for each shipment abroad prior to the export, as set forth in 22 C.F.R. §§ 122 and 123. At all times relevant to this

Complaint, it was a violation of the AECA and the ITAR to export or attempt to export defense articles on the USML without a license or written authorization from the DDTC.

11. The AECA makes it unlawful for anyone to willfully violate any provision of 22 U.S.C. § 2778 or any rule or regulation issued under that section. See 22 U.S.C. § 2778(c). Specifically, it is a crime for any exporter to willfully fail to obtain an export license before exporting a defense article to another country. See 22 U.S.C. § 2778(c) and 22 C.F.R. § 127.1(a)(1). Pursuant to the ITAR, it is a violation for a person to conspire to export or to cause to be exported any defense article without a license. See 22 C.F.R. § 127.1. It is also unlawful for any person to “knowingly or willfully attempt, solicit, cause, or aid, abet, counsel, demand, induce, procure, or permit the commission of any act prohibited by 22 U.S.C. § 2778,” or any regulation issued there under. 22 C.F.R. § 127.1(e).

STATEMENT OF PROBABLE CAUSE

12. This investigation concerned the acquisition of firearms and night vision devices, and the subsequent attempt to ship those items in three shipping containers from the Port of Oakland, in the Northern District of California, to the Sultanate of Oman, in the second half of 2019. The investigation prevented the illegal export of those controlled items from being successful.

A. Background of the People and Entities in this Investigation

13. FARES ABDO AL EYANI was SABA MOHSEN DHAIFALLAH’s husband, a Yemeni national, a Legal Permanent Resident of the United States, and a resident of Oakland, California, in the Northern District of California.

14. SABA MOHSEN DHAIFALLAH was AL EYANI's wife, a United States citizen, and a resident of Oakland, California, in the Northern District of California.

15. eBay Inc. ("eBay") was an American multinational e-commerce corporation based in San Jose, California, that facilitates consumer-to-consumer and business-to-consumer sales through its website.

16. PayPal Holdings, Inc. ("PayPal"), was an American company based in San Jose, California, operating a worldwide online payments system that supports online money transfers and serves as an electronic alternative to traditional paper methods like checks and money orders.

17. Oath Holdings, Inc. ("Oath"), was an American email provider headquartered in Sunnyvale, California that succeeded Yahoo! Holdings, Inc., and provided email addresses ending in @yahoo.com.

18. Factory Outlet Stores Holding LLC ("Factory Outlet Stores") was an American company based in New York, New York, retails consumer products, including electronics, refrigerators, stoves, fitness devices, and other items at the website <https://www.factoryoutletstore.com/>.

19. American Technologies Network, Corp., also known as ATN Corporation, was an American company headquartered in South San Francisco, California. ATN Corporation manufactures and sells high-resolution digital optical devices, including night vision and thermal imaging optical devices, such as rifle scopes, binoculars, and monoculars.

20. JPMorgan Chase Bank, N.A., doing business as Chase Bank or often as Chase, is a national bank headquartered in Manhattan, New York, that constitutes the consumer and

commercial banking subsidiary of the U.S. multinational banking and financial services holding company, JPMorgan Chase.

21. Wells Fargo & Company was an American multinational financial services company headquartered in San Francisco, California. The firm's primary operating subsidiary was the national bank Wells Fargo Bank, N.A., ("Wells Fargo") with its main office in Sioux Falls, South Dakota.

22. Shipping International, Inc., doing business as TTG Shipping, was a freight forwarding company located in Oakland, California, in the Northern District of California. Freight forwarders are entities that organize shipments for individuals or corporations to get goods from one place to another, usually on behalf of a manufacturer seeking to send goods to a market, customer, or final point of distribution. A forwarder does not move the goods but acts as an expert in the logistics network. International freight forwarders have additional expertise in preparing and processing customs documentation and performing activities pertaining to international shipments. As a result of this expertise, many individuals and corporations shipping goods internationally will use a freight forwarder.

B. AL EYANI and His Wife DHAIFALLAH Worked Together to Purchase Night Vision Rifle Scopes, Night Vision Monoculars, and Night Vision Goggles in August, September, and October 2019

23. On August 26, 2019, a woman called a San Mateo County, California gun store and attempted to order ten ATN-brand night vision rifle scopes over the phone. A store employee indicated that the woman would have to appear in person to make her proposed purchase.

24. An analysis of DHAIFALLAH's mobile phone toll records shows she called the San Mateo County gun store on August 26, 2019. Those records also indicate that on August 26, 2019, DHAIFALLAH called a different gun store in San Mateo County, California, as well as an importer and manufacturer of night vision rifle scopes named ATN Corporation located in South San Francisco, California. When later interviewed, an employee at the second gun store in San Mateo County recalled a woman called seeking as many as 20 night vision rifle scopes in the same general time frame.

25. An analysis of DHAIFALLAH's PayPal records indicates that also on August 26, 2019, between 11:45 a.m. and 1:00 p.m., DHAIFALLAH ordered \$6,325.58 worth of "ATN X-Sight II" night vision rifle scopes from Factory Outlet Stores, and \$6,484.18 worth of a slightly different type of "ATN X-Sight II" night vision rifle scope directly from ATN Corporation.

26. A review of PayPal records for DHAIFALLAH's PayPal account also reveals it was linked to a Yahoo! email account ending in 22. A review of email records for the Yahoo! email account ending in 22 revealed correspondence from PayPal and Factory Outlet Stores indicating that the \$6,325.58 purchase noted above was for ten ATN X-Sight II HD 5-20x Digital Day/Night Rifle Scopes. A review of email records for the Yahoo! email account ending in 22 revealed correspondence from an employee at ATN Corporation indicating that the \$6,484.18 purchase noted above were for "ten X-Sight HD scopes through our website."

27. A review of records for DHAIFALLAH's PayPal account reveals a Chase Bank credit card ending in 5185 was added to the PayPal account on August 27, 2017, using the name of DHAIFALLAH as the cardholder.

28. Records from Chase Bank reviewed during this investigation identified the Chase Sapphire credit card, account ending in 5185, but the Chase Bank records show the cardholder as

AL EYANI at his and DHAIFALLAH's Oakland address. The credit card statements for credit card ending in 5185 confirm the purchases made via PayPal from ATN Corporation for \$6,484.19 on August 26, 2019, and from Factory Outlet Stores for \$6,325.58 with a posting date of August 27, 2019.

29. A review of cell site location information for DHAIFALLAH's mobile phone and AL EYANI's mobile phone revealed that the husband and wife were not together when the purchases were made. DHAIFALLAH's mobile phone was pinging at a tower near their Oakland apartment while AL EYANI's mobile phone was travelling through Oakland, connecting to towers close to the 880 Freeway heading south, and then later to towers near Lake Merritt in Oakland.

30. The next day, on August 27, 2019, AL EYANI ordered and paid for ten "ATN X-Sight II" night vision rifles scopes in person at the original San Mateo County gun store. According to a store employee, a bulk purchase of night vision rifle scopes by an individual was uncommon. Additionally, AL EYANI first attempted to pay for the scopes utilizing a combination of cash and a credit card. That card was not in AL EYANI's name and the transaction was therefore denied by store staff. AL EYANI asked where the nearest Wells Fargo bank branch was located, and he was told one was down the street. AL EYANI left the store, returned within an hour with \$5,460 in cash, and made the purchase. Because the scopes were not in stock at that time, AL EYANI was informed that they would be ordered and that he would be notified when they arrived for him to pick them up.

31. Records reviewed during this investigation identified a Wells Fargo checking account ending in 6719 in the name of a close friend of AL EYANI with the mailing address of AL EYANI's and DHAIFALLAH's Oakland apartment. A review of the Wells Fargo account

statements reveals payments for AL EYANI's credit cards and to DHAIFALLAH's university from the Wells Fargo checking account ending in 6719 between January and October 2019. A comparison of the statements for the Wells Fargo checking account ending in 6719 with DHAIFALLAH's PayPal account records shows that some of her PayPal purchases were funded by a debit card ending in 8807 – the only debit card linked to the Wells Fargo checking account ending in 6719. Accordingly, although not in their name, the Wells Fargo account ending in 6719 was used by AL EYANI and DHAIFALLAH.

32. The investigation reveals that the above-referenced Wells Fargo checking account was accessed by AL EYANI to make the August 27, 2019 purchase. A review of Wells Fargo financial statements for August 27, 2019, revealed the beginning balance in Wells Fargo account ending 6719 was \$364.80. At approximately 10:33 a.m. on August 27, 2019, there was a \$200.00 deposit at a Wells Fargo Branch located in Oakland. The next transaction identified in Wells Fargo account ending in 6719 was a money transfer from "Fares 16 NY" utilizing the debit card ending 8807 for \$1,280.50. Analysis of financial records indicated that the transaction occurred at approximately 12:51 p.m. At approximately 1:05 p.m., the records showed a \$1,400 cash withdrawal using the debit card ending 8807 from the Wells Fargo branch located at 875 El Camino Real in San Bruno.

33. The cell site location information for AL EYANI's mobile phone corroborates the actions described above: the morning of August 27, 2019, AL EYANI's mobile phone travelled across the Bay Bridge and down Interstate 280 south toward the San Mateo County gun store, as indicated by connections to cell towers. At approximately 1:04 p.m., AL EYANI's mobile phone connected to the closest tower to the Wells Fargo branch located at 875 El Camino Real in

San Bruno, which is consistent with him getting cash to make his purchase, and the mobile phone then later connected to tower in the vicinity of the San Mateo County gun store.

34. A review of cell site location information for DHAIFALLAH's mobile phone indicates that DHAIFALLAH's mobile phone connected to a tower at the San Francisco State University campus, in San Francisco, during this time period.

35. That same day, August 27, 2019, DHAIFALLAH called both the Factory Outlet Store and ATN Corporation, per her mobile phone records. On August 28, 2019, DHAIFALLAH's PayPal records indicate that both Factory Outlet Stores and ATN Corporation refunded the money she paid them on August 26, 2019. By reasonable inference, it appears that because AL EYANI was able to obtain ten night vision rifle scopes for \$5,451.58 from the San Mateo County gun store, a price lower than the online prices of \$6,325.58 and \$6,484.18, DHAIFALLAH sought a refund for her online purchases.

36. As noted above, DHAIFALLAH's PayPal account reveals a Chase Bank credit card ending in 5185 was added to the PayPal account on August 27, 2017, using the name of DHAIFALLAH as the cardholder.

37. As noted above, records from Chase Bank reviewed during this investigation identified the Chase Sapphire credit card, account ending in 5185, but the Chase Bank records show the cardholder as AL EYANI at his and DHAIFALLAH's Oakland address. A review of credit card statements for credit card ending in 5185 confirms the August 28, 2019 refund credited via PayPal from ATN Corporation for \$6,484.19, and the August 29, 2019, refund credited via PayPal from Factory Outlet Stores for \$6,325.58.

38. A review of email records for the Yahoo! email account ending in 22, which was linked to DHAIFALLAH's PayPal account, revealed an email sent on August 27, 2019 at 9:22

a.m. from ATN Corporation confirming the earlier order of ten X-Sight HD scopes through its website and requesting the purchaser complete and return an export compliance form.

39. The August 27, 2019 email from ATN Corporation stated, “The form simply states that you are aware the product(s) being purchased are subject to federal prosecution if exported or brought outside of the United States.”

40. The attached export compliance form explained that, “Export of night vision equipment and optical sighting equipment (including user manuals) is controlled by the U.S. Department of State Directorate of Defense Trade Controls...” and specifically cited ITAR. It went on to notify the purchaser that “**all** of the products obtained from ATN Corp. are subject to one or more of the export control laws and regulations of the U. S. Government....” (bold and underline emphasis in original).

41. On September 3, 2019, DHAIFALLAH’s eBay and PayPal account records indicate that she purchased on eBay 19 “5x40 Infrared Night Vision Monocular 8GB DVR Telescopes for Hunting Surveillance” for \$1,983.60. An email was sent to the Yahoo! account ending in 22 at 12:02 a.m. that same day confirming the purchase and showing a shipping address of AL EYANI and DHAIFALLAH’s Oakland apartment.

42. On September 9, 2019, a woman who sounded similar to the woman who had called on August 26, 2019, again using the phone number ending in 9639, called the same San Mateo County gun store to inquire about whether the ten night vision rifle scopes AL EYANI had purchased had arrived at the store for pick up. At that time, an employee stated they were not. Later that day, a store employee called AL EYANI directly at his mobile phone number that he gave the store and informed him that the ten night vision rifle scopes were available for pick up.

43. On September 10, 2019, AL EYANI returned to the San Mateo County gun store right as the store opened to pick up his ten rifle scopes. Store staff provided an “Export Compliance Form” printed from ATN Corporation’s website, notifying AL EYANI of the export regulations for the scopes. AL EYANI signed the form, which stated the signee understood that, “it is unlawful to export or re-export, or attempt to export or re-export, any of these products, for which a license or written approval from the U.S. Government is required, without first obtaining any license or written approval.” Store staff made a copy of the signed form and provided it to AL EYANI as he completed the pick-up.

44. FBI agents witnessed AL EYANI place the ten rifle scopes in the trunk and back seat of his registered vehicle directly after exiting the gun store. Agents attempted to conduct surveillance on AL EYANI after he left the store but were unsuccessful because AL EYANI drove too quickly on the Interstate to follow him safely.

45. Nonetheless, a review of cell site location information for AL EYANI’s mobile phone establishes his general whereabouts during this time. The cell site location information establishes that at approximately 11:09 a.m., AL EYANI’s mobile phone connected to a tower near the San Mateo County gun store, and at approximately 11:27 a.m. his mobile phone connected to a series of towers suggesting he was travelling east over the Bay Bridge. At 11:32 a.m., it was connected to a tower near his residence in Oakland.

46. A review of cell site location information reveals DHAIFALLAH’s mobile phone was connected to a tower at the San Francisco State University campus when AL EYANI was at the San Mateo County gun store.

47. On October 13, 2019, DHAIFALLAH’s eBay and PayPal account records indicate that she purchased ten “NVG Night Vision Goggles IR Infrared Technology” for

\$1,900.00, plus \$175.75 in sales tax. A PayPal receipt sent to the Yahoo! email address ending in 22 at 11:36 a.m. identified DHAIFALLAH as the purchaser. An email at 11:37 a.m. confirmed the purchase and the shipping address as AL EYANI's and DHAIFALLAH's Oakland apartment. The items were shipped, according to another email, the next day by Federal Express. A fourth email indicated that the ten night vision goggles were delivered to AL EYANI's and DHAIFALLAH's apartment in Oakland at 4:42 p.m. on October 21, 2019.

48. Also on October 13, 2019, DHAIFALLAH's eBay and PayPal account records indicate that she purchased seven "Call of Duty Night Vision Goggles w. Collectable Stand" for \$1,130.15, plus \$104.54 in sales tax. A PayPal receipt sent to the Yahoo! email address ending in 22 at 11:45 a.m. identified DHAIFALLAH as the purchaser. Another email at the same time from eBay confirmed the purchase and shipping address as AL EYANI's and DHAIFALLAH's Oakland apartment. The items were shipped, according to another email, the next day by Federal Express. A fourth email indicated that the seven night vision goggles were delivered to AL EYANI's and DHAIFALLAH's apartment in Oakland at 6:25 p.m. on October 17, 2019.

C. In November 2019, the Investigation Uncovers a Shipping Container Containing Firearms in AL EYANI's Name Destined for the Sultanate of Oman from the Port of Oakland

49. On November 12, 2019, United States Customs and Border Protection ("CBP") identified an outbound shipping container at the Port of Oakland connected to AL EYANI. In particular, the shipping paperwork provided by the freight forwarder listed AL EYANI's name and telephone number as the exporter. The shipping container was scheduled to depart November 15, 2019, destined for the Sultanate of Oman.

50. The departure date for the shipping container was delayed. On November 18, 2019, CBP searched the shipping container and discovered four disassembled firearms, composed of three handguns and one rifle, wrapped in aluminum foil and interspersed between car parts packed inside the passenger compartment of one of four vehicles inside the shipping container. One of the handguns did not have a serial number, the serial number of the rifle had been removed, and the serial numbers on the remaining two handguns were registered in Virginia and Arizona. Additionally, two magazines and 39 rounds of ammunition, in two different calibers, were also found.

51. According to DDTC, the three handguns were controlled on the USML under Category I(a) and a State Department license was required for export or temporary import.

52. According to DDTC, the rifle was controlled on the USML under Category I(a) and a State Department license was required for export or temporary import.

53. According to DDTC, at least one of the magazines was controlled on the USML under Category I(h) and a State Department license was required for export or temporary import.

54. According to DDTC, the ammunition was controlled on the USML under Category III(a) and a State Department license was required for export or temporary import.

55. An export license check by DDTC determined that AL EYANI did not possess the necessary license to export the weapons.

56. Furthermore, AL EYANI did not disclose he was exporting firearms. AL EYANI declared in customs paperwork that the contents of the shipping container were four automobiles, three motorcycles, and \$1,000 in “household goods.” The value of the rifle discovered likely exceeds \$1000 by itself.

57. The weapons were removed and the rest of the shipment was released to travel to the Sultanate of Oman. The shipment eventually arrived at its destination on or about January 14, 2020.

58. A review of the shipping documents for the shipping container identified the receiver of the shipping container in the Sultanate of Oman as an individual with the initials M.M.M.Z., and listed the phone number ending in 1107.

D. In December 2019, the Investigation Uncovers Two Container Shipments Containing Night Vision Devices Destined for the Sultanate of Oman from the Port of Oakland

59. On December 16, 2019, FBI surveillance of AL EYANI observed AL EYANI at Harold's Auto Body and Paint in Oakland. Prior surveillance indicated that AL EYANI worked at that location. At approximately 1:14 p.m., FBI surveillance observed AL EYANI return to Harold's Auto Body and Paint driving a dark-colored Toyota Prius. AL EYANI was then observed removing from the Prius a brown cardboard box with white and purple shipping labels on the top. AL EYANI was then observed placing the box inside the trunk of a lime green Kia Soul, paper tag ending 59x. AL EYANI then drove to Shipping International, Inc., doing business as TTG Shipping, located in Oakland. TTG is a freight forwarder. While there, FBI surveillance observed him interacting with a TTG employee and then leaving in the lime green Kia Soul, paper tag ending 59x.

60. On December 17, 2019, CBP identified two shipping containers associated with AL EYANI at the Port of Oakland destined for the Sultanate of Oman. The freight forwarder for those two containers was TTG Shipping. The shipping paperwork for the two containers listed as the exporter the wife of a close friend of AL EYANI, but also his own name in a parenthetical.

The document also provided AL EYANI's telephone number as the exporter telephone contact number. The recipient of the two shipments was an individual new to the investigation with the initials A.A.H.A. A.A.H.A. was a Yemeni national. However, the recipient's listed phone number was the same number ending in 1107 that was listed for the individual with the initials M.M.M.Z. on AL EYANI's earlier, November 2019, Oakland shipment paperwork.

61. On December 20, 2019, CBP conducted an outbound border search of the two shipping containers identified at the Port of Oakland. They contained eight vehicles packed with suitcases full of personal effects and household goods.

62. Within three of the eight vehicles, the search uncovered boxes containing 44 goggles, monoculars, and rifle scopes. Forty of those items were night vision capable. None of these items were declared on the export forms. CBP detained all 44 items for export license determinations.

63. Based upon serial number comparison, seven of the 40 night vision capable devices were the same "ATN X-Sight II" night vision rifle scopes purchased and later picked up by AL EYANI at the San Mateo County gun store on September 10, 2019. Five of those rifle scopes were in a box in a Porsche Cayenne. Two of the rifle scopes were in the trunk of a lime green Kia Soul, paper tag ending 59x, in a brown cardboard box with white and purple shipping labels on the top. That box appeared to be the same brown cardboard box with white and purple shipping labels on the top that FBI surveillance observed AL EYANI put in the trunk of the same lime green Kia Soul, paper tag ending 59x, on December 16, 2019.

64. According to DDTC, ATN X-Sight II 3-14x rifle scopes were controlled on the USML under Category XII(c)(2)(iii) and a State Department license pursuant to the ITAR was required for export or temporary import.

65. According to DDTC, a diligent check was conducted to identify registration and license history that would have allowed either or both AL EYANI and DHAIFALLAH to export controlled items out of the United States. The DDTC search revealed there were no records indicating either AL EYANI or DHAIFALLAH had applied for or received an export license that would have allowed them to export ATN X-Sight II HD 3-14x rifle scopes out of the United States legally.

66. The remaining 33 night vision capable items were submitted for license determinations to the DDTC. According to DDTC, the remaining 33 night vision capable items were not subject to export license requirements pursuant to ITAR.

67. Nonetheless, the remaining 33 night vision capable items appear to correspond in part with the items DHAIFALLAH purchased on eBay using PayPal in September and October 2019. For example, 16 of the items are labeled “5x40 Infrared Night Vision Monocular 8GB DVR Telescopes for Hunting Surveillance,” corresponding with DHAIFALLAH’s purchase of 19 of these items on September 3, 2019. Eleven of the items are “Call of Duty Night Vision Goggles” and the collectable stands were discovered as well, corresponding with DHAIFALLAH’s purchase of seven of these items on October 13, 2019.

68. The seized items were removed and the rest of the shipment was released to travel to the Sultanate of Oman. The two shipping containers departed on January 6, 2020, and arrived in the Sultanate of Oman on or about February 14, 2020.

E. Forensic Examination of the Seized Items Connects AL EYANI by Fingerprint to the Night Vision Scopes

69. On January 29, 2020, the four firearms and ammunition found in AL EYANI's November 2019 shipping container, as well as the seven night vision rifle scopes AL EYANI purchased and were found in the December 2019 shipping container (with the packaging), were sent to the FBI Laboratory for forensic processing.

70. On March 26, 2020, the FBI laboratory completed its latent fingerprint analysis. Ten latent prints suitable for comparison were collected. Those ten latent prints came from the cardboard box with white and purple shipping labels that was found in the trunk of a lime green Kia Soul, paper tag ending 59x, during the December 20, 2019 CBP container search. As noted earlier, FBI surveillance witnessed AL EYANI place a brown cardboard box with white and purple shipping labels in the trunk of a lime green Kia Soul with paper tag ending 59x on December 16, 2019.

71. Of those ten latent prints, nine were fingerprints and one was a palm impression print. All nine of the fingerprints collected were identified as AL EYANI's when they were compared against a prior fingerprint card of AL EYANI. The palm impression print was deemed inconclusive.

CONCLUSION

72. Based on the foregoing facts, my training and experience, and consultation with other agents and officers experienced in export investigations, there is probable cause to believe that on or about December 17, 2019, AL EYANI and DHAIFALLAH attempted to violate the

AECA, 22 U.S.C. § 2778 et seq., and its implementing regulations, the ITAR, 22 C.F.R. §§ 120-130, and 18 U.S.C. § 2.

73. For the reasons stated above, I respectfully request that the Court issue the requested criminal complaint and two arrest warrants.

I declare under penalty of perjury that the above is true and correct to the best of my knowledge and belief.

s/

Julie D. Delgado
Special Agent
Federal Bureau of Investigation

Sworn to before me by telephone this 5th day of August 2020.



THE HONORABLE JOSEPH C. SPERO
CHIEF UNITED STATES MAGISTRATE JUDGE