

UNITED STATES DISTRICT COURT
for the
District of New Jersey

ORIGINAL FILED
MAR 25 2015
WILLIAM T. WALSH, CLERK

United States of America)
v.)
KIRBY CHUNG SANTOS)
)
)
)
)
)

Case No.
15-2024 (JS)

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 2008 through October 2013 in the county of Ocean in the
 District of New Jersey, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. Section 371	See Attachment A

This criminal complaint is based on these facts:

See Attachment B

Continued on the attached sheet.


Complainant's signature
Special Agent Timothy Carey, DHS-HSI
Printed name and title


Sworn to before me and signed in my presence.

Date: 03/25/2015

City and state: Camden, New Jersey


Judge's signature
U.S. Magistrate Judge Joel Schneider
Printed name and title

CONTENTS APPROVED
UNITED STATES ATTORNEY

By: 
Matthew T. Smith, Assistant U.S. Attorney

Date: March 25, 2015

ATTACHMENT A

From in or about 2008 and continuing through in or about October 2013, in Ocean County, in the District of New Jersey and elsewhere, the defendant,

KIRBY CHUNG SANTOS,

did knowingly and willfully conspire and agree with Co-Conspirator 1 and others to export from the United States, defense articles, without first obtaining the required export license or written approval from the United States Department of State, Directorate of Defense Trade Controls, contrary to Title 22, United States Code, Section 2278 and Title 22, Code of Federal Regulations, Sections 120-130 and 121.1.

In furtherance of this conspiracy and to effect its object, the following overt act was committed in the District of New Jersey and elsewhere:

On or about August 19, 2013, KIRBY CHUNG SANTOS purchased firearms parts from a distributor in Kentucky and requested that the parts be sent to an address in Toms River, New Jersey.

In violation of Title 18, United States Code, Section 371.

ATTACHMENT B

AFFIDAVIT

A. BACKGROUND INTO THE INVESTIGATIVE AGENT AND AGENCY

1. I, Timothy Carey (the "affiant"), state that I am a Special Agent with the U.S. Department of Homeland Security (DHS), Homeland Security Investigations ("HSI"). I have personally participated in this investigation and am aware of the facts contained herein based upon my own investigation, including a review of documents obtained during the investigation, as well as information provided to me by other law enforcement officers. Since this Affidavit is submitted for the sole purpose of establishing probable cause to support issuance of a complaint, I have not necessarily included each and every fact known by me or the Government concerning this investigation.

2. I have been a Special Agent with the DHS or a predecessor agency since 2001. I am currently assigned to the Marlton, New Jersey Resident Office. I have participated in, and conducted, many criminal investigations (both as a case agent and undercover agent) involving the illegal export of items that violate the Arms Export Control Act, the Export Administration Regulations, the International Traffic in Arms Regulations, the laws prohibiting the smuggling of goods from the United States, and the International Emergency Economic Powers Act. My other law enforcement experience includes direct involvement with investigations pertaining to smuggling, making false statements on

shipping export declarations, narcotics, antiquity smuggling, child pornography, criminal re-entry, illegal arms possession and sale, prostitution, transnational gangs, money laundering, counter proliferation investigations, document and immigration benefit fraud, and intellectual property rights. I have specialized training through the Federal Law Enforcement Training Center, including on U.S. export controls, border search authority, counter proliferation investigations, undercover operations, high technology investigations, crime-scene processing, and other relevant disciplines.

3. While working for DHS, I have been trained in, among other things, criminal investigative techniques and export-control investigations. I have received considerable training and have personal experience, as both a lead investigator and an undercover agent, with identifying the techniques, methods, and procedures employed by groups, organizations, companies, corporations, and individuals to export or attempt to export goods and commodities in violation of U.S. law. I am familiar with the federal laws relating to the unlawful export of controlled, American-manufactured arms, technology, and commodities from the United States as specified and regulated by the United States Department of State, Directorate of Defense Trade Control, the United States Department of Commerce, Bureau of Industry and Security, and the United States Department of Treasury, Office of Foreign Assets Controls. Furthermore, I am empowered by law to investigate, apply for and execute search warrants as well as make arrests for violations of federal law, including the unlawful export of controlled

U.S.-origin arms, technology, and commodities to destinations outside the U.S. as specified in the unlawful sales, shipments, and exports of restricted United States Munitions List items. While working for DHS, I have been the lead investigator, the lead undercover agent and a participant in numerous investigations involving violations of the import-export laws of the United States. I have also participated in numerous investigations of violations of U.S. law relating to the unlawful export of controlled United States-origin arms, technology, and commodities restricted for export for reasons of national security, foreign policy, anti-terrorism and embargoed destinations.

B. INTRODUCTION TO LAWS REGULATING IMPORTS AND EXPORTS FROM THE UNITED STATES

4. In furtherance of the security and foreign policy interests of the United States, the United States regulates and restricts the export of arms, munitions, implements of war and defense articles, pursuant to the Arms Export Control Act (hereinafter, "AECA"). See 22 U.S.C. § 2778. The regulations governing such exports are the International Traffic in Arms Regulations (hereinafter, "ITAR"). See 22 C.F.R. §§ 120-130. The ITAR contain a list of defense articles subject to control called the United States Munitions List (hereinafter, "USML"). See 22 C.F.R. § 121.1.

5. According to the AECA, no defense article can be exported or otherwise transferred to a foreign country without a license from the United States Department of State, Directorate of Defense Trade Controls (hereinafter, the "DDTC"). See 22 U.S.C. § 2778(b).

6. Moreover, it is a crime to knowingly smuggle goods out of the United States. Smuggling is defined as “fraudulently or knowingly exporting or sending from the United States, or attempt[ing] to export or send from the United States, any merchandise, articles, or object contrary to any law or regulation of the United States...,” as defined by 18 U.S.C. § 554(a).

7. 5.56mm rifle upper receivers, .40 caliber pistol barrels, and 9mm pistol barrels (collectively hereinafter “firearms parts”) are USML Category (I) defense articles.

C. THE CO-CONSPIRATORS

8. KIRBY CHUNG SANTOS (hereinafter, “KIRBY SANTOS”) is an individual located in The Republic of the Philippines (hereinafter, “the Philippines”) who purchased firearm parts from suppliers in the United States and directed the suppliers to deliver them to addresses in the United States, including an address in Toms River, New Jersey (hereinafter, the “Toms River Address”). The Toms River Address is the home of one of KIRBY SANTOS’ co-conspirators (hereinafter “Co-Conspirator 1”). At the direction of KIRBY SANTOS, Co-Conspirator 1 received the firearms parts purchased by KIRBY SANTOS, repackaged them and sent them to the Philippines for ultimately delivery to KIRBY SANTOS.

9. Co-Conspirator 1 is a resident of New Jersey who lived at the Toms River Address. Co-Conspirator 1 received defense articles, i.e., firearm parts, purchased by KIRBY SANTOS and others located in the Philippines from

suppliers in the United States. Co-Conspirator 1 re-packaged and falsely labeled the contents of the package and exported the firearms parts to the Philippines on behalf of KIRBY SANTOS and other co-conspirators for ultimately delivery to KIRBY SANTOS.

10. Co-Conspirator 1 often received the firearms parts at the Toms River Address under a false name to conceal his true identity. He used the same false name when shipping the firearms parts to the Philippines for ultimately delivery to KIRBY SANTOS.

11. Forum A was an on-line forum ("Forum A") used by defendant KIRBY SANTOS, Co-Conspirator 1, and others to meet electronically, discuss the sales and shipment of firearms and firearms parts from the United States to the Philippines. Forum A also otherwise facilitated communication between KIRBY SANTOS, Co-Conspirator 1, and others.

12. In October of 2013, agents from DHS and the Bureau of Alcohol, Tobacco, Firearms, and Explosives interviewed Co-Conspirator 1. During the interview, Co-Conspirator 1 admitted to export violations. Since then, Co-Conspirator 1 has signed plea and cooperation agreements wherein he has agreed to plead guilty to conspiracy to violate the Arms Export Control Act, and is cooperating with agents. Since Co-Conspirator 1's cooperation began in 2013, agents seized thirty (30) 5.56mm rifle barrels, forty (40) 5.56mm magazines, and numerous USML firearms parts all destined to the Philippines.

13. At no time during the conspiracy did KIRBY SANTOS,

Co-Conspirator 1, or their other co-conspirators apply for or obtain a license or written authorization from DDTC to export defense articles from the United States to the Philippines.

D. THE CONSPIRACY AND THE OVERT ACTS

14. Beginning as early as 2008 and continuing through October 2013, in the District of New Jersey and elsewhere, KIRBY SANTOS, did knowingly and intentionally conspire and agree with Co-Conspirator 1 and others to violate the laws of the United States; to wit, the following statutes and regulations: (a) Title 22, United States Code, Section 2778, and 22, Code of Federal Regulations, Section 127.1, knowingly and willfully exporting defense articles from the United States without first obtaining an export license or written approval from DDTC; and (b) Title 18, United States Code, Section 554, smuggling goods from the United States.

15. The goal of the conspiracy was to purchase firearms parts in the United States and ship them to the Philippines without the required DDTC license.

16. The conspiracy was accomplished as follows. First, KIRBY SANTOS and his co-conspirators used credit cards and other forms of payment to purchase firearm parts from suppliers located in the United States (including J&T Distributing from Winchester, Kentucky, Rainier Arms from Auburn, Washington and Midway Corporation from Columbia, Missouri). KIRBY

SANTOS directed the suppliers to send the firearms parts to an address in the United States in order to make it appear that the sale was a domestic sale. In general, KIRBY SANTOS had the suppliers send the firearms parts to the Toms River Address.

17. The conspirators (including KIRBY SANTOS) used Forum A and other electronic means to coordinate the illicit transactions. KIRBY SANTOS and Co-Conspirator 1 used false identities when communicating on Forum A.

18. In total, the conspirators exported from the United States at least \$200,000 worth of defense articles, without the required export license from DDTC.

19. In support of the conspiracy, KIRBY SANTOS and Co-Conspirator 1 did the following acts:

- a. On or about August 23, 2010, KIRBY SANTOS purchased firearm parts, including 5.56mm caliber rifle barrels, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$1,826.80 for the shipment.
- b. On or about October 5, 2010, KIRBY SANTOS purchased firearm parts, including 5.56mm caliber rifle barrels, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$1,825.43 for the shipment.

- c. On or about December 3, 2010, KIRBY SANTOS purchased firearm parts, including 5.56mm caliber rifle barrels barrels and “flattop” 5.56mm caliber rifle upper receivers, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1’s false name at the Toms River Address and paid approximately \$4,600.00 for the items.¹
- d. On or about February 8, 2011, KIRBY SANTOS purchased firearm parts, including 5.56mm caliber rifle barrel, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1’s false name at the Toms River Address and paid approximately \$750 for the items.
- e. On or about February 14, 2011, KIRBY SANTOS purchased firearm parts, including “flattop” 5.56mm caliber rifle upper receivers, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1’s false name at the Toms River Address and paid approximately \$3,600 for the items.
- f. On or about April 4, 2011, KIRBY SANTOS purchased firearm parts, including “flattop” 5.56mm caliber rifle upper receivers, from a distributor located in Kentucky, requested that the parts be sent to

¹ A “flattop” upper receiver has a flat accessory rail between the buttstock and forward grips in place of the traditional carrying handle. The rail is typically used to mount optics like telescopic sites.

Co-Conspirator 1's false name at the Toms River Address and paid approximately \$3,600 for the items.

- g. On or about June 3, 2011, KIRBY SANTOS purchased firearm parts, including "flattop" 5.56mm caliber rifle upper receivers, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$3,600 for the items.
- h. On or about July 1, 2011, KIRBY SANTOS purchased firearm parts, including 5.56mm caliber rifle barrels, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$1,670 for the items.
- i. On or about July 1, 2011, KIRBY SANTOS purchased firearm parts, including a 5.56mm caliber rifle barrel, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$185.57 for the items.
- j. On or about August 8, 2011, KIRBY SANTOS purchased firearm parts, including "flattop" 5.56mm caliber rifle upper receivers from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$1080.00 for the items.

- k. On or about August 16, 2011, KIRBY SANTOS purchased firearm parts, including “flattop” 5.56mm caliber rifle upper receivers, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1’s false name at the Toms River Address and paid approximately \$2,576.85 for the items.
- l. On or about June 27, 2012, KIRBY SANTOS purchased firearm parts, including 5.56mm caliber rifle barrels, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1’s false name at the Toms River Address and paid approximately \$1,855.00 for the items.
- m. On or about August 4, 2012, KIRBY SANTOS purchased firearm parts, including “flattop” 5.56mm caliber rifle upper receivers, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1’s false name at the Toms River Address and paid approximately \$1,400.00 for the items.
- n. On or about August 24, 2012, KIRBY SANTOS purchased firearm parts, including “flattop” 5.56mm caliber rifle upper receivers, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1’s false name at the Toms River Address and paid approximately \$6,408.00 for the items.
- o. On or about October 26, 2012, KIRBY SANTOS purchased firearm parts, including “flattop” 5.56mm caliber rifle upper receivers, from a

distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$792.00 for the items.

- p. On or about August 26, 2012, KIRBY SANTOS purchased firearm parts, including "flattop" 5.56mm caliber rifle upper receivers, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$1,800.00 for the items.
- q. On or about January 15, 2013, KIRBY SANTOS purchased firearm parts, including "flattop" 5.56mm caliber rifle upper receivers, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$4,150.00 for the items.
- r. On or about April 9, 2013, KIRBY SANTOS purchased firearm parts, including "flattop" 5.56mm caliber rifle upper receivers, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$2,490.00 for the items.
- s. On or about May 23, 2013, KIRBY SANTOS purchased firearm parts, including "flattop" 5.56mm caliber rifle upper receivers, from a distributor located in Kentucky, requested that the parts be sent to

Co-Conspirator 1's false name at the Toms River Address and paid approximately \$1,660.00 for the items.

- t. On or about August 19, 2013, KIRBY SANTOS purchased firearm parts, including "flattop" 5.56mm caliber rifle upper receivers and 5.56mm caliber rifle barrels, from a distributor located in Kentucky, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$5,799.00 for the items.
- u. On or about August 1, 2013, an individual residing in Washington State, on behalf of KIRBY SANTOS, purchased firearm parts, including 9mm caliber pistol barrels, from a distributor located in Missouri, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$693.02 for the items.
- v. On or about August 25, 2013, an individual residing in Washington State, on behalf of KIRBY SANTOS, purchased firearm parts, including 9mm caliber pistol barrels, from a distributor located in Missouri, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$550.03 for the items.
- w. On or about September 2013, Co-Conspirator 1 received a package from a distributor located in Missouri containing firearm parts, including 5.56mm caliber rifle upper receivers. On or about September 2013, Co-Conspirator 1 sent a package containing firearm

parts, including 5.56mm caliber rifle upper receivers, to the Philippines for ultimate delivery to KIRBY SANTOS.

- x. On or about April 19, 2012, KIRBY SANTOS purchased firearm parts, including 5.56mm caliber rifle upper receivers, from a distributor located in Washington, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$4,955.18 for the items.
- y. On or about June 26, 2012, KIRBY SANTOS purchased firearm parts, including 5.56mm caliber rifle upper receivers, from a distributor located in Washington, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$3,450.00 for the items.
- z. On or about July 23, 2012, KIRBY SANTOS purchased firearm parts, including barrels and 5.56mm caliber rifle upper receivers, from a distributor located in Washington, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$2,406.82 for the items.
- aa. On or about January 16, 2013, KIRBY SANTOS purchased firearm parts, including barrels, from a distributor located in Washington, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$500.00 for the items.

- bb. On or about May 14, 2013, KIRBY SANTOS purchased firearm parts, including 5.56mm caliber rifle upper receivers, from a distributor located in Washington, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$1753.08 for the items.
- cc. On or about May 2013, Co-Conspirator 1 received a package containing 5.56mm rifle upper receivers purchased by KIRBY SANTOS from a firearms distributor. Documentation was sent with the package containing the firearm parts and including an export compliance notice, containing the following language as follows:

Rainier Arms Export Compliance - Products sold by Rainier Arms, LLC may be subject to export controls administered by the U.S. Department of Commerce or the U.S. Department of State and require an export license to be shipped outside of the United States. Export or re-export without prior authorization from the U.S. Government is prohibited. For additional information, please contact the Rainier Arms Export Compliance Team by calling 1-253-218-2999 or emailing sales@rainierarms.com.

- dd. In or about May 2013, Co-Conspirator 1 sent these 5.56mm rifle upper receivers to the Philippines for ultimate delivery to KIRBY SANTOS.
- ee. On or about May 30, 2013, KIRBY SANTOS purchased firearm parts, including 5.56mm caliber rifle upper receivers, from a distributor located in Washington, requested that the parts be sent to

Co-Conspirator 1's false name at the Toms River Address and paid approximately \$1,825.00 for the items.

ff. On or about July 31, 2013, KIRBY SANTOS purchased firearm parts, including 5.56mm rifle upper receivers, from a distributor located in Washington, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$861.88 for the items.

gg. On or about August 31, 2013, KIRBY SANTOS purchased firearm parts, including 5.56mm caliber rifle upper receivers and 5.56mm caliber rifle barrels, from a distributor located in Washington, requested that the parts be sent to Co-Conspirator 1's false name at the Toms River Address and paid approximately \$2,290.00 for the items.

20. According to Co-Conspirator 1, KIRBY SANTOS paid Co-Conspirator 1 for his role in the conspiracy by providing him with cash payments, by paying money to relatives of Co-Conspirator 1 in the Philippines, and through other methods.

21. After Co-Conspirator 1 began cooperating with the Government, Co-Conspirator 1 made a number of consensually-monitored telephone calls with KIRBY SANTOS. Because the conversations were in Tagalog, a language commonly spoken in the Philippines, I have reviewed written translations of the telephone calls. In summary and in part, during these telephone calls, Co-Conspirator 1 and KIRBY SANTOS discuss the shipment of firearms parts by Co-Conspirator 1 to the Philippines for ultimate delivery to KIRBY SANTOS.

E. CONCLUSION

22. Based upon the above, I submit that there exists probable cause to believe KIRBY SANTOS knowingly and willfully conspired and agreed with Co-Conspirator 1 and others to export defense articles from the United States without the required export license or written approval from the United States Department of State, Directorate of Defense Trade Controls, contrary to Title 22, United State Code, Section 2278 and Title 22, Code of Federal Regulations, Sections 120-130 and 121.1, and in violation of Title 18, United States Code, Section 371.