

15 MAG 3988

Approved: \_\_\_\_\_

ALEX ROSSMILLER

Assistant United States Attorney

Before: THE HONORABLE GABRIEL W. GORENSTEIN  
United States Magistrate Judge  
Southern District of New York

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UNITED STATES OF AMERICA : SEALED COMPLAINT  
:   
- v. - : Violations of 18 U.S.C.  
: §§ 371, 641, 1028A,  
TRISTON PHILLIP, : 1708, and 2  
GREGORY MERCADO, :   
a/k/a "George Merchant," and : COUNTY OF OFFENSE:  
JOSUE TORRES, : BRONX  
:   
Defendants. :   
:   
- - - - -X

SOUTHERN DISTRICT OF NEW YORK, ss.:

KAREN FLANAGAN, being duly sworn, deposes and says that she is a Special Agent with the Internal Revenue Service - Criminal Investigation (the "IRS"), and charges as follows:

COUNT ONE  
(Conspiracy to Steal Government Funds)

1. From at least in or about 2011 up to and including in or about November 2015, in the Southern District of New York and elsewhere, TRISTON PHILLIP, GREGORY MERCADO, a/k/a "George Merchant," and JOSUE TORRES, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, to wit, theft of government funds, in violation of Title 18, United States Code, Section 641.
2. It was a part and an object of the conspiracy that TRISTON PHILLIP, GREGORY MERCADO, a/k/a "George Merchant," and JOSUE TORRES, the defendants, and others known and unknown, would and did knowingly embezzle, steal, purloin, and convert to their use and the use of another, and without authority, sell, convey, and dispose of records, vouchers, money, and things of

value of the United States and a department and agency thereof, to wit, the Internal Revenue Service, which exceeded \$1,000, and did receive, conceal and retain the same with intent to convert it to their use and gain, knowing it to have been embezzled, stolen, purloined and converted, in violation of Title 18, United States Code, Section 641.

#### OVERT ACTS

3. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about March 12, 2015, TRISTON PHILLIP, the defendant, sent text messages to an individual not charged herein, that, in sum and in substance, and among other things, solicited names, dates of birth, and Social Security numbers.

b. On or about July 15, 2013, GREGORY MERCADO, a/k/a "George Merchant," the defendant, opened a TD Bank account, into which fraudulent tax refunds were subsequently electronically deposited.

c. On or about June 14, 2013, JOSUE TORRES, the defendant, sent an email to PHILLIP containing the names, Social Security numbers, and dates of birth of four individuals.

(Title 18, United States Code, Section 371.)

#### COUNT TWO

(Theft of Government Funds)

4. From at least in or about 2011 up to and including in or about November 2015, in the Southern District of New York and elsewhere, TRISTON PHILLIP, GREGORY MERCADO, a/k/a "George Merchant," and JOSUE TORRES, the defendants, did knowingly embezzle, steal, purloin, and convert to their use and the use of another, and without authority, did sell, convey, and dispose of records, vouchers, money, and things of value of the United States and of a department and agency thereof, to wit, the Internal Revenue Service, and did receive, conceal, and retain the same with intent to convert it to their use and gain, knowing it to have been embezzled, stolen, purloined and converted, to wit, PHILLIP, MERCADO, and TORRES caused fraudulently obtained tax refunds to be electronically deposited into bank accounts or onto prepaid debit cards.

(Title 18, United States Code, Sections 641 and 2.)

COUNT THREE

(Aggravated Identity Theft)

5. From at least in or about 2011 up to and including in or about November 2015, in the Southern District of New York and elsewhere, TRISTON PHILLIP, GREGORY MERCADO, a/k/a "George Merchant," and JOSUE TORRES, the defendants, knowingly did transfer, possess, and use, without lawful authority, a means of identification of another person, during and in relation to a felony violation enumerated in Title 18, United States Code, Section 1028A(c), to wit, PHILLIP, MERCADO, and TORRES used, transferred, and possessed the names and personal identifying information, including Social Security numbers, of other individuals in connection with the offenses charged in Counts One and Two of this Complaint.

(Title 18, United States Code, Sections 1028A(a)(1),  
1028A(b), and 2.)

COUNT FOUR

(Theft and Receipt of Stolen Mail Matter)

6. From at least in or about March 2014 up to and including at least in or about March 2015, JOSUE TORRES, the defendant, knowingly did steal, take, and abstract, and by fraud and deception did obtain, and attempt so to obtain, from and out of mail, post offices, and stations thereof, letter boxes, mail receptacles, and mail routes and other authorized depositories for mail matter, and from letters and mail carriers, letters, postal cards, packages, bags, and mail, and did abstract and remove from such letters, packages, bags, and mail, articles and things contained therein, and did secrete, embezzle, and destroy such letters, postal cards, packages, bags, and mail, and articles and things contained therein, and did steal, take, and abstract, and by fraud and deception did obtain, letters, postal cards, packages, bags, and mail, and articles and things contained therein which had been left for collection upon and adjacent to collection boxes and other authorized depositories of mail matter, and did buy, receive, and conceal, and unlawfully have in his possession, letters, postal cards, packages, bags, and mail, and articles and things contained therein, which had been so stolen, taken, embezzled, and abstracted, knowing the same to have been stolen, taken, embezzled, and abstracted, to wit, TORRES caused mail to be

redirected to his address and the address of other individuals by filing false change of address forms.

(Title 18, United States Code, Sections 1708 and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

7. I am a Special Agent with the IRS and I have been personally involved in the investigation of this matter. This affidavit is based upon my own observations, conversations with other law enforcement officers and others, and my examination of reports and records prepared by others. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

#### Overview

8. From my involvement in this investigation, I have learned of a scheme in which TRISTON PHILLIP, GREGORY MERCADO, a/k/a "George Merchant," and JOSUE TORRES, the defendants, and others known and unknown, have stolen or attempted to steal more than \$3.8 million from the United States Government by obtaining fraudulent tax refunds ("Tax Refunds").

9. The Tax Refunds at issue in this investigation originated from Federal Forms 1040 U.S. Individual Income Tax Returns for at least tax years 2010, 2011, 2012, 2013, and 2014 ("Tax Returns") that were electronically filed using online tax return preparation and filing services, primarily TaxSlayer. TaxSlayer and other similar services are online tax return preparation software programs that allow for the preparation and filing of federal and state tax returns via the Internet for a fee. After a completed tax return is submitted via an online tax return preparation software program such as TaxSlayer, it is electronically transmitted to the IRS for processing.

10. Based on a review of a sampling of the Tax Returns involved in this scheme, including attempting to verify identifying information of individuals purportedly filing the Tax Returns and examining income and withholding information, I have learned that the Tax Returns involved in this scheme bear numerous indicia of fraud. For example, the review revealed the

use of personal identifying information of living individuals, including names, and their respective Social Security numbers, with addresses primarily in the Bronx, New York, that did not match the taxpayers' addresses. Further, the Federal Forms W-2 associated with the Tax Returns contained false income and withholding information that did not reflect the employment information of the respective taxpayer and which was never reported to the IRS. Many of the Tax Returns used the same employers and their respective Employer Identification Numbers ("EIN"), and certain home addresses were repeatedly used on the Tax Returns. The majority of Tax Returns also contained claims for false credits for itemized deductions on Forms Schedule A.

11. From my review of records maintained by the IRS, I have learned that the majority of the fraudulent Tax Returns were electronically filed from certain repeated internet protocol ("IP") addresses.

12. From my review of records maintained by an Internet Service Provider, I have learned that certain of the IP addresses were associated with the same physical residential address in the Bronx, New York, which is the address at which a co-conspirator not charged herein ("CC-1") resides and where TRISTON PHILLIP, the defendant, primarily resides ("Location-1").

13. Law enforcement agents searched trash disposed of at Location-1, which included a prepaid debit card in the name of an individual ("Victim-1").<sup>1</sup>

14. On or about April 17, 2015, law enforcement officers executed a court-authorized search warrant at Location-1, and as a result, they seized and searched a cellphone that TRISTON PHILLIP, the defendant, identified as belonging to him at the time of the search ("PHILLIP Cellphone-1").

15. From my review of text messages recovered from PHILLIP Cellphone-1, I have learned that on or about March 12, 2015, TRISTON PHILLIP, the defendant, sent the following text messages to an individual not charged herein:

a. "Can you get your hands on names dob and social??"

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<sup>1</sup> From my review of IRS records, I have learned that Victim-1's identity was used to file a fraudulent tax year 2014 Tax Return, submitted electronically via an IP address associated with Location-1.

b. "INCOME TAX!!!! DON'T MATTER IF THEY NOT WORKING OR DIDN'T WORK FOR THE YEAR I CUD MAKE EM LOOK LIKE THEY DID and get a REFUND BACK BRRO!"

c. "How you think I cop that x5? My job ain't paying that kind of money nigga"

d. "While you waiting on niggaas to do insurance and whatever else you do brr0 I know you don't need me but dam it's money in that too. If you already up on that scam then my bad but that's what I do bro. I don't mean to tell this but ob February 4 that just past last month I caught 37,000 off five names"

16. As a result of a court-authorized search warrant, law enforcement agents have reviewed records relating to certain email accounts, including the following:

a. The email account "whizwave@yahoo.com" (the "PHILLIP Yahoo Account"), believed to be used by TRISTON PHILLIP, the defendant.

b. The email account "whizwave@gmail.com" (the "PHILLIP Gmail Account"), believed to be used by PHILLIP.

c. The email account "gmerchant8718@yahoo.com" (the "MERCADO Yahoo Account"), believed to be used by GREGORY MERCADO, a/k/a "George Merchant," the defendant.

d. The email account "josue.torres@gmail.com" (the "TORRES Gmail Account"), believed to be used by JOSUE TORRES, the defendant.

e. The email account "torres.josue@icloud.com" (the "TORRES Icloud Account"), believed to be used by TORRES.

17. Based on my review of records maintained by Yahoo, Google, and Apple, I have learned the following:

a. The PHILLIP Gmail Account is registered to "Triston Phillip," includes in its registration information PHILLIP Cellphone-1 and a secondary recovery email listed as the PHILLIP Yahoo Account, and has been accessed from IP addresses associated with Location-1.

b. The PHILLIP Yahoo Account includes in its registration information PHILLIP Cellphone-1 and has been accessed from IP addresses associated with Location-1.

c. The MERCADO Yahoo Account is registered to "George Merchant," an alias of GREGORY MERCADO, a/k/a "George Merchant," the defendant.

d. The TORRES Gmail Account is registered to the name "Josue C. Torres" and includes in its registration information a phone number ("TORRES Cellphone-1").<sup>2</sup>

e. The TORRES Icloud Account is registered to the name "Josue Torres" and includes in its registration information TORRES Cellphone-1.

18. From my review of records relating to the email accounts described above in paragraphs 16 and 17, I have learned the following:

a. TRISTON PHILLIP, GREGORY MERCADO, a/k/a "George Merchant," and JOSUE TORRES, the defendants, used email to communicate with each other, and with other co-conspirators not charged herein, about using stolen identity information, filing fraudulent tax returns, and collecting the proceeds of illicit tax refunds resulting from the fraudulent returns.

b. For example, on or about July 4, 2014, GREGORY MERCADO, a/k/a "George Merchant," the defendant, sent an email to a co-conspirator not charged herein that stated, in relevant part: "i get bitches that work as secretaries or whatever that can get print outs of ppls personal infos like full u know wit out gettin in trouble [. . .] bought so much shit off this shit. I love it its the best thing that ever happened to me in my life. Im so into this that if the feds ever rushed me id happily sit and do my time. come back out and just continue."

c. On or about June 14, 2013, JOSUE TORRES, the defendant, sent an email from the TORRES Gmail Account to the PHILLIP Gmail Account containing the names, Social Security numbers, and dates of birth of four individuals.<sup>3</sup>

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<sup>2</sup> From my review of records maintained by Sprint, I have learned that TORRES Cellphone-1 is registered to "Josue Torres."

<sup>3</sup> From my review of IRS records, I have learned that three of those individuals subsequently had fraudulent Tax Returns for

d. On or about November 23, 2012, JOSUE TORRES, the defendant, sent an email to undisclosed recipients that stated, in relevant part: "this is latinchulobx on adam4adam Josue. Hey, I did one of the last tax returns for the 2012 season and the whole thing is available (see the available balance). There is \$4806.00 available. My portion or fee is \$2500.00." An attachment to that email included a bank account statement in the name of an individual ("Victim-2") reflecting a deposit and available account balance of \$4,806.<sup>4</sup>

#### THE PHILLIP ACCOUNTS

19. From my review of records maintained by Bank of America, I have learned the following:

a. In or about February 2014, TRISTON PHILLIP, the defendant, opened at least two personal bank accounts at Bank of America via its online banking services ("the Phillip BOA Accounts") in the name of an individual ("Victim-3"), listing in Victim-3's purported registration the following information: Location-1 as the home address; PHILLIP Cellphone-1 as the contact phone number; and the PHILLIP Yahoo Account as the contact email address.

b. Between February 2014 and March 2014, the PHILLIP BOA Accounts were accessed online at certain times from an IP address associated with Location-1 and a certain IP addressed used repeatedly in the scheme ("IP Address-1").

c. In or about March 2014 a fraudulent Tax Refund totaling approximately \$9,400 was electronically deposited into one of the Phillip BOA Accounts.

20. From my review of records relating to the PHILLIP Yahoo Account, I have learned that the PHILLIP Yahoo Account received emails from Bank of America addressed to Victim-3, regarding online banking notifications associated with the PHILLIP BOA Accounts.

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tax year 2012 filed with their identifying information, and that the Tax Refunds resulting from those filings were directed to a bank account held by CC-1.

<sup>4</sup> From my review of IRS records, I have learned that a fraudulent Tax Return was filed in the name of Victim-2 for tax year 2011 claiming a Tax Refund in the amount of \$4,806.



21. From my communications with an IRS Tax Fraud Investigative Analyst (the "IRS Analyst") and from my review of IRS records, I have learned that approximately \$182,000 in fraudulent Tax Refunds was directed to be electronically deposited into the PHILLIP BOA Accounts.

#### THE MERCADO ACCOUNTS

22. Based on my review of records from Citizens Bank and TD Bank, I have learned the following:

a. In or about March 2013, GREGORY MERCADO, a/k/a "George Merchant," the defendant, opened a personal bank account at a Citizens Bank branch (the "MERCADO Citizens Account"), in the name of "Gregory Mercado," and between in or about April 2013 and in or about August 2013, approximately \$39,000 in fraudulent Tax Refunds was electronically deposited into the MERCADO Citizens Account.

b. Between in or about July 2013 and in or about November 2014, MERCADO opened four personal bank accounts at a TD Bank branch in the name of "Gregory Mercado" (the "MERCADO TD Bank Accounts") (collectively with the MERCADO Citizens Account, the "MERCADO Accounts"). Between in or about July 2013 and in or about February 2014, approximately \$12,800 in fraudulent Tax Refunds was electronically deposited into the MERCADO TD Bank Accounts. In the registration information for the MERCADO TD Bank Accounts, the signature card lists as the contact email address "gmerchant8718@gmail.com."

23. Based on my review of records maintained by Google, I have learned that gmerchant8718@gmail.com is registered to "George Merchant."

24. From my communications with an IRS Analyst and from my review of IRS records, I have learned that approximately \$880,000 in fraudulent Tax Refunds was directed to be electronically deposited into the Mercado Accounts.

#### THE CC-1 ACCOUNTS

25. From my review of records maintained by JP Morgan Chase, I have learned that between in or about September 2011 and in or about June 2013, CC-1 opened at least two personal bank accounts at JP Morgan Chase (the "CC-1 Chase Accounts"). Between in or about May 2013 up to in or about July 2013,

approximately eleven Tax Refunds, totaling approximately \$40,000, were electronically deposited into the CC-1 Chase Accounts.

26. From a review of records maintained by TD Bank, I have learned that between in or about July 2013 and in or about January 2014, CC-1 opened three personal bank accounts at TD Bank (the "CC-1 TD Bank Accounts"). Between in or about August 2013 up to in or about April 2014, approximately six Tax Refunds, totaling approximately \$35,000, were electronically deposited into the CC-1 TD Bank Accounts.

27. From a review of records maintained by Capital One, I have learned that between in or about April 2013 and in or about January 2014, CC-1 opened two personal bank accounts at Capital One (the "CC-1 Capital One Accounts"). Between in or about June 2013 up to in or about June 2014, approximately 13 Tax Refunds, totaling approximately \$43,000, were electronically deposited into the CC-1 Capital One Accounts.

28. Based on my communications with an IRS Analyst, I have learned that more than 400 Tax Returns were filed directing the Tax Refunds to be electronically deposited into bank accounts controlled by CC-1 and/or prepaid debit cards. The majority of these Tax Refunds were stopped by the IRS due to suspected fraudulent activity, including inaccuracies in the data submitted with the Tax Return as compared to the actual taxpayer information.

29. I have interviewed five individuals in whose names Tax Refunds were deposited or intended to be deposited into the bank accounts controlled by CC-1. None of these individuals authorized the respective Tax Return to be filed on their behalf and each of them informed me that the information included in the Tax Returns using their respective identities was false. Each of these individuals reported that the following information in their purported returns was incorrect: address, W-2 information, bank account information, phone number, and Form Schedule A information.

#### ADDITIONAL VICTIMS

30. From my review of IRS records, I have learned that in or about January 2014, a fraudulent return was filed in the name of an individual ("Victim-4"). The fraudulent return in the name of Victim-4 was filed using TaxSlayer via IP Address-1.

31. From my review of IRS records, I have learned that the Tax Refund for the fraudulent Tax Return filed under the name of Victim-4 was directed to one of the MERCADO TD Bank Accounts.

32. From my review of records maintained by Yahoo, I have learned that on or about March 13, 2014, a Yahoo email account containing Victim-4's first and last name was registered from IP Address-1 and the registration information included PHILLIP Cellphone-1.

33. From my review of emails relating to the TORRES Gmail Account, I have learned that on or about March 22, 2014, an email sent from the TORRES Icloud Account to the TORRES Gmail Account contained the name of Victim-4 in the subject line and attachments that included a TransUnion personal credit report in the name of Victim-4 dated March 22, 2014, and a Navy Federal Credit Union membership application confirmation dated March 21, 2014, for three accounts opened in the name of Victim-4. Additionally, on March 27, 2014, an email sent from the TORRES Gmail Account to the TORRES Gmail Account had the subject line "[Victim-4] sig card" and attached a copy of a signature card document for JP Morgan Chase bank accounts held in the name of Victim-4 and at the address of Location-1.

34. From my review of emails to and from the PHILLIP Yahoo Account, I have learned that on or about April 13, 2014, the PHILLIP Yahoo Account received an email from American Airlines, addressed to the name of Victim-4, that confirmed air travel and ticket payment details for PHILLIP and CC-1 from New York John F. Kennedy Airport to St. Thomas in the U.S. Virgin Islands. From my review of Capital One records, I have learned that an account held in the name of Victim-4 at Location-1 reflected charges on or about April 13, 2014, consistent with the details from this travel confirmation email.

35. The search of PHILLIP Cellphone-1, described above at paragraph 14, revealed a recovered photograph of a check reorder form for a JP Morgan Chase bank account in the name of Victim-4, with the address as Location-1.

36. From my review of IRS records, I have learned that the Tax Refund for the fraudulent Tax Return filed under the name of an individual ("Victim-5") was directed to one of the MERCADO TD Bank Accounts.

37. From my review of emails to and from the TORRES Gmail Account, I have learned that on or about August 17, 2014, JOSUE TORRES, the defendant, received an email from "torres.josue@me.com" with the subject line containing the first initial and last name of Victim-5 and attachments including a photo of a registration document from a hospital with patient information for Victim-5.

38. From my review of emails relating to TORRES Gmail Account, I have learned that on or about August 18, 2014, TORRES sent an email from the TORRES Gmail Account to the TORRES Gmail Account with the subject line "[first initial and last name of Victim-5] demographics/nfcu." The body of the email included the name, address, phone numbers, date of birth, and Social Security number of Victim-5, and an attached membership application confirmation dated August 17, 2014, from Navy Federal Credit Union with three accounts opened in the name of Victim-5, two of which ended in the numbers 8534 and 8542 (the "Two Victim-5 Accounts").

39. I have reviewed a surveillance photo obtained from TD Bank of TORRES accessing one of the CC-1 TD Bank Accounts on or about August 20, 2014, to deposit fraudulent checks, drawn on the Two Victim-5 Accounts.

#### THEFT OF MAIL

40. Based on my review of records maintained by Capital One, I have learned that at least five online Change of Address submissions (the "TORRES Address Changes") were processed by the U.S. Postal Service ("USPS") and were paid for using three Capital One credit cards (the "TORRES Credit Cards"), accounts for which each were opened on or about September 24, 2014, and each of which is registered to the name "Josue Torres" and associated with TORRES Cellphone-1.

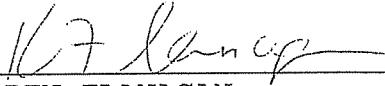
41. Based on my review of USPS records, I have learned the following:

a. Each of the five TORRES Address Changes caused mail to be sent to a certain address in the Bronx, New York (the "TORRES Bronx Address").

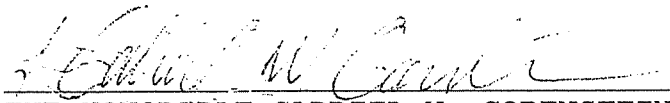
b. On or about March 27, 2014, an online Change of Address was submitted electronically in the name of Victim-4, to have mail for Victim-4 forwarded to the TORRES Bronx Address.

Subsequently, on or about April 14, 2014, the forwarding address for mail in the name of Victim-4 was changed to Location-1.

WHEREFORE the deponent prays that TRISTON PHILLIP, GREGORY MERCADO, a/k/a "George Merchant," and JOSUE TORRES, the defendants, be arrested and imprisoned or bailed, as the case may be.

  
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KAREN FLANAGAN  
Special Agent  
Internal Revenue Service  
Criminal Investigation

Sworn to before me this  
5th day of November, 2015

  
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THE HONORABLE GABRIEL W. GORENSTEIN  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK