

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
JAN 11 2011	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY

SEALED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America, <p style="text-align: right;">Plaintiff,</p> v. 1. David Diaz-Sosa, (Counts 1-4), 2. Jorge De Jesus-Casteneda, (Counts 1-4), and 3. Emilia Palomina-Robles, (Counts 1-3), <p style="text-align: right;">Defendants.</p>	
---	--

NO. CR 10-0322-PHX-JAT

**SUPERSEDING
INDICTMENT**

VIO: 18 U.S.C. § 371,
 26 U.S.C. §§ 5861(d) and 5871, and
 18 U.S.C. § 924(h)
 (Conspiracy to Possess Unregistered
 Firearms (Machine Guns), and
 Transfer Firearms for Use in a Drug
 Trafficking Crime)
 Count 1

21 U.S.C. § 846
 (Conspiracy to Possess with Intent
 to Distribute Methamphetamine)
 Count 2

21 U.S.C. §§ 841(a)(1) and
 (b)(1)(B)(viii)
 (Possession with Intent to Distribute
 Methamphetamine)
 Count 3

18 U.S.C. § 2332g(a)(1), (b)(1),
 (b)(4), (b)(5) and (c)(1)
 (Conspiracy to Acquire and Export
 an Anti-Aircraft Missile)
 Count 4

21 U.S.C. § 853 and 28 U.S.C. §
 2461
 (Forfeiture Allegation)

1 THE GRAND JURY CHARGES:

2 **INTRODUCTION**

3 At all times material to this Indictment:

4 1. Defendant DAVID DIAZ-SOSA maintained contact with a confidential informant
5 (“CI”) and undercover agents (“UC agents”) with both the Bureau of Alcohol, Tobacco,
6 Firearms and Explosives (“ATF”), and the Drug Enforcement Administration (“DEA”). This
7 contact related to DAVID DIAZ-SOSA’s desire to possess and acquire military grade weaponry
8 on behalf of an associate—identified as Enrique LNU (Last Name Unknown)—for export and
9 transfer to the Republic of Mexico, and to members of a Mexican drug trafficking organization
10 (“DTO”).

11 2. Defendant EMILIA PALOMINA-ROBLES—at DAVID DIAZ-SOSA’s
12 direction—acted as a courier delivering approximately 4.5 pounds of methamphetamine to the
13 CI in Las Vegas, Nevada, as a partial down payment for military grade weaponry. On a later
14 date, in Phoenix, in the District of Arizona, EMILIA PALOMINO-ROBLES—at Enrique LNU’s
15 direction—acted as a courier delivering \$139,000 to the CI and the UC agents in exchange for
16 negotiated military grade weaponry.

17 3. Defendant JORGE DE JESUS-CASTENEDA arrived along with DAVID DIAZ-
18 SOSA at a pre-arranged location in Phoenix, in the District of Arizona, to facilitate the delivery
19 of methamphetamine to secure a further down payment for military grade weaponry. JORGE
20 DE JESUS-CASTENEDA possessed approximately 10 pounds of methamphetamine in a car that
21 he had driven, and retrieved the methamphetamine from that car at the direction of DAVID
22 DIAZ-SOSA. DAVID DIAZ-SOSA and JORGE DE JESUS-CASTENEDA then were led into
23 a UC ATF warehouse where the previously negotiated weapons were displayed. DAVID DIAZ-
24 SOSA and JORGE DE JESUS-CASTENEDA then “flashed” (showed) the methamphetamine
25 in an effort to complete the weapons deal.

26 //

27 //

28

COUNT 1

(Conspiracy to Possess Unregistered Firearms (Machine Guns), and Transfer Firearms for Use in a Drug Trafficking Crime)

18 U.S.C. § 371

4. The factual allegations in paragraphs 1-3 of the Indictment are incorporated by reference and re-alleged as though fully set forth herein.

5. Beginning on a date unknown to the grand jury, but no later than November 23, 2009, and continuing to February 17, 2010, within the District of Arizona and elsewhere, defendants DAVID DIAZ-SOSA, EMILIA PALOMINA-ROBLES and JORGE DE JESUS-CASTANEDA, together and with others known and unknown, did knowingly combine, conspire, confederate, and agree to:

(a) possess machine guns: to wit, one (1) 7.62-mm, M-60, Saco-Lowell Shops U.S., Serial Number: HM057, and one (1) 7.62-mm, M-60, Saco-Lowell Shops U.S., Serial Number: FF488, both of which are firearms as defined in Title 26, United States Code, Section 5845(a)(6) and (b), which firearms were not registered to them in the National Firearms Registration and Transfer Record as required by Title 26, United States Code, Section 5841; in violation of Title 26, United States Code, Sections 5861(d) and 5871; and

(b) transfer firearms: to wit, one (1) 7.62-mm, M-60, Saco-Lowell Shops U.S., Serial Number: HM057, and one (1) 7.62-mm, M-60, Saco-Lowell Shops U.S., Serial Number: FF488, knowing that the firearms would be used in a drug trafficking crime (Possession with Intent to Distribute Methamphetamine); in violation of Title 18, United States Code, Section 924(h).

OBJECT OF THE CONSPIRACY

6. The object of the conspiracy was to obtain and possess military grade weaponry, and to then export and transfer that weaponry to the Republic of Mexico, and supply that weaponry to a Mexican drug trafficking organization.

MANNER AND MEANS OF THE CONSPIRACY

7. The manner and means employed by defendants DAVID DIAZ-SOSA, and other

1 coconspirators unknown to the grand jury, to effect the objects of the conspiracy were as
2 follows:

3 (a) Beginning in or about November 2009, DAVID DIAZ-SOSA began
4 attempts to acquire military grade weapons on behalf of an associate, later
5 identified as Enrique LNU, for export to the Republic of Mexico to supply
6 to members of a Mexican drug cartel.

7 (b) Beginning in or about November 2009, and ending on or about February
8 17, 2010, DAVID DIAZ-SOSA acted as the primary broker and point of
9 contact for the purchase of military grade weaponry on behalf of Enrique
10 LNU, and a Mexican drug cartel.

11 (c) On or about November 25, 2009, at the direction of DAVID DIAZ-SOSA,
12 EMILIA PALOMINA-ROBLES delivered a down-payment of
13 approximately 4.5 pounds of methamphetamine to a CI in Las Vegas for
14 the pre-negotiated weaponry.

15 (d) On or about February 17, 2010, at the direction of DAVID DIAZ-SOSA,
16 JORGE DE JESUS-CASTENEDA acted as a transporter, and supplier of
17 approximately 10 pounds of methamphetamine as a further down payment
18 for pre-negotiated weaponry.

19 (e) On or about February 17, 2010, at the direction of Enrique LNU, EMILIA
20 PALOMINA-ROBLES delivered \$139,000 to be applied toward the
21 purchase of pre-negotiated weaponry.

22 **OVERT ACTS**

23 8. In furtherance of the aforesaid conspiracy, and to effect the objects of the
24 conspiracy, defendants DAVID DIAZ-SOSA, EMILIA PALOMINA-ROBLES, DAVID DE
25 JESUS-CASTENEDA and other coconspirators unknown to the grand jury, committed, or
26 caused to be committed, overt acts, including but not limited to the following:

27 (a) Beginning in or about November 2009, and ending on or about February 17, 2010,
28

1 DAVID DIAZ-SOSA participated in negotiations on behalf of Enrique LNU and a Mexican drug
2 cartel to possess military grade weaponry for export and transfer to the Republic of Mexico and
3 to members of that Mexican drug cartel.

4 (b) Beginning in or about November 2009, and ending on or about February 17, 2010,
5 DAVID DIAZ-SOSA provided an electronic mail address to the CI and UC agents to facilitate
6 the weapons brokering, and along with Enrique LNU monitored the electronic mail address to
7 view various available weapons and determine which weapons DAVID DIAZ-SOSA would
8 purchase.

9 (c) Beginning in or about November 2009, and ending on or about February 17, 2010,
10 DAVID DIAZ-SOSA had numerous conversations with the CI and UC agents to discuss the
11 brokering of various military grade weaponry. Further, DAVID DIAZ-SOSA met with the CI,
12 and UC agents on several occasions to discuss the terms of the weapons brokering. During at
13 least one meeting, the CI and UC agents spoke with Enrique LNU using DAVID DIAZ-SOSA's
14 telephone to further discuss the details of purchasing, possessing, exporting, and transferring
15 various weapons to the Republic of Mexico and to a Mexican drug cartel. Included among those
16 negotiations were the following weapons at the following prices: (1) one Dragon fire anti-tank
17 weapon negotiated at \$100,000; (2) two AT-4s (an 84-mm unguided, portable, single-shot
18 recoilless smoothbore weapon) negotiated at \$20,000; (3) one Law Rocket (a Light Anti-Tank
19 Weapon) negotiated at \$20,000; (4) one Stinger Missile (a personal portable infrared homing
20 anti-aircraft surface-to-air missile) negotiated at \$200,000; (5) two Def Tech grenade launchers
21 ("Def Tech" is a manufacturer of 40 mm grenade launchers) negotiated at \$20,000; (6) twelve
22 40 mm grenades negotiated at \$2,000; (7) two M-60 (a 7.62 caliber machine gun) negotiated
23 at \$20,000; (7) one .30 caliber machine gun negotiated at \$10,000; and (8) three cases of hand
24 grenades negotiated at \$5,000.

25 (d) Beginning in or about November 2009, and ending on or about November 25,
26 2009, DAVID DIAZ-SOSA directed EMILIA PALOMINA-ROBLES to deliver
27 methamphetamine as a down-payment for the negotiated weapons. EMILIA PALOMINA-
28

1 ROBLES delivered approximately 4.5 pounds of methamphetamine to a CI in Las Vegas,
2 Nevada.

3 (e) Beginning in or about February 2, 2010, and ending on or about February 17,
4 2010, the CI and UC agents told DAVID DIAZ-SOSA they would accept
5 “crystal”—methamphetamine—and deduct the cost of that “crystal” from the total cost of the
6 weapons. To that end, DAVID DIAZ-SOSA told the CI and UC agents he could obtain quality
7 methamphetamine.

8 (f) On or about February 17, 2010, DAVID DIAZ-SOSA and JORGE DE JESUS-
9 CASTENEDA arrived at a pre-arranged location with approximately 10 pounds of
10 methamphetamine to complete the negotiations for the weapons.

11 (g) On or about February 17, 2010, EMILIA PALOMINA-ROBLES—at the direction
12 of Enrique LNU—arrived at a pre-arranged location in a car containing \$139,000 that Enrique
13 had indicated was to be used toward the purchase of various pre-negotiated weapons.

14 All in violation of Title 18, United States Code, Section 371.

15 **COUNT 2**

16 **(Conspiracy to Possess with Intent to Distribute Methamphetamine)**

17 **21 U.S.C. § 846**

18 9. The factual allegations in paragraph 1-3 of the Indictment are incorporated by
19 reference and re-alleged as though fully set forth herein.

20 10. Beginning on a date unknown to the grand jury, but no later than November 23,
21 2009, and continuing to February 17, 2010, within the District of Arizona and elsewhere,
22 defendants, DAVID DIAZ-SOSA, JORGE DE JESUS-CASTANEDA, EMILIA PALOMINA-
23 ROBLES, together and with others known and unknown, did knowingly combine, conspire,
24 confederate, and agree to possess with intent to distribute 500 grams or more of a mixture or
25 substance containing a detectable amount of methamphetamine, a schedule II controlled
26 substance in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A)(viii).

27 //

28

1 **OBJECT OF THE CONSPIRACY**

2 11. The object of the conspiracy was to obtain and possess military grade weaponry,
3 and to then export and transfer that weaponry to the Republic of Mexico, and supply that
4 weaponry to a Mexican drug trafficking organization.

5 **MANNER AND MEANS OF THE CONSPIRACY**

6 12. The manner and means employed by defendants DAVID DIAZ-SOSA, EMILIA
7 PALOMINA-ROBLES, and JORGE DE JESUS-CASTANEDA, and other coconspirators
8 unknown to the grand jury, effect the objects of the conspiracy are described in paragraph 7,
9 subparagraphs (a)-(e) of the Indictment. These manner and means are incorporated by reference
10 and re-alleged as though fully set forth herein.

11 **OVERT ACTS**

12 13. In furtherance of the aforesaid conspiracy, and to effect the objects of the
13 conspiracy, defendants DAVID DIAZ-SOSA, EMILIA PALOMINA-ROBLES, JORGE DE
14 JESUS-CASTANEDA, and other coconspirators unknown to the grand jury, committed, or
15 caused to be committed, the overt acts set forth in Count One of this Indictment, which are fully
16 incorporated by reference herein.

17 All in violation of Title 21, United States Code, Section 846.

18 **COUNT 3**

19 **(Possession with Intent to Distribute Methamphetamine)**

20 **21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(viii)**

21 14. The factual allegations in paragraph 1-3 of the Indictment are incorporated by
22 reference and re-alleged as though fully set forth herein.

23 15. Beginning on a date unknown to the grand jury, but no later than November 23,
24 2009, and continuing to February 17, 2010, within the District of Arizona defendants, DAVID
25 DIAZ-SOSA, JORGE DE JESUS-CASTANEDA, EMILIA PALOMINA-ROBLES, and others
26 known and unknown to the grand jury, did knowingly possess with intent to distribute 500 grams
27 or more of a mixture and substance containing a detectable amount of methamphetamine, a
28 Schedule II controlled substance.

1 In violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(B)(viii).

2 **COUNT 4**

3 **(Conspiracy to Acquire and Export an Anti-Aircraft Missile)**

4 16. The factual allegations in paragraphs 1-3 of the Indictment are incorporated by
5 reference and re-alleged as though fully set forth herein.

6 17. Beginning on a date unknown to the grand jury, but no later than November 23,
7 2009, and continuing to February 17, 2010, within the District of Arizona and elsewhere,
8 defendants, DAVID DIAZ-SOSA and JORGE DE JESUS-CASTANEDA together and with
9 others known and unknown, in an offense occurring in and affecting interstate commerce, did
10 knowingly combine, conspire, confederate, and agree to knowingly produce, construct, otherwise
11 acquire, transfer directly or indirectly, receive, possess, import, export, or used or possessed and
12 threatened to use; (a) an explosive and incendiary rocket and missile that is guided by a system
13 designed to enable the rocket and missile to seek and proceed toward energy radiated and
14 deflected from an aircraft and toward an image locating an aircraft, and otherwise direct and
15 guide the rocket and missile to an aircraft; (b) a device designed or intended to launch or guide
16 said rocket or missile; and (c) a part and combination of parts designed and redesigned for use
17 in assembling and fabricating said rocket, missile, and device.

18 In violation of Title 18, United States Code, Sections 2332g(a)(1), (b)(1), (b)(4), (b)(5)
19 and (c)(1).

20 **OBJECT OF THE CONSPIRACY**

21 18. The object of the conspiracy was to obtain and possess military grade weaponry,
22 and to then export and transfer that weaponry to the Republic of Mexico, and supply that
23 weaponry to a Mexican drug trafficking organization.

24 **MANNER AND MEANS OF THE CONSPIRACY**

25 19. The manner and means employed by defendants DAVID DIAZ-SOSA, JORGE
26 DE JESUS-CASTANEDA and other coconspirators unknown to the grand jury, effect the
27 objects of the conspiracy are described in paragraph 7, subparagraphs (a)-(e) of the Indictment.

28

1 These manner and means are incorporated by reference and re-alleged as though fully set forth
2 herein.

3 **OVERT ACTS**

4 20. In furtherance of the aforesaid conspiracy, and to effect the objects of the
5 conspiracy, defendants DAVID DIAZ-SOSA, JORGE DE JESUS-CASTANEDA and other
6 coconspirators unknown to the grand jury, committed, or caused to be committed, the overt acts
7 set forth in Count One of this Indictment, which are fully incorporated by reference herein.

8 **FORFEITURE ALLEGATION**

9 21. The factual allegations in paragraph 1-3 of the Indictment are incorporated by
10 reference and re-alleged as though fully set forth herein. Further, the allegations of Counts 2-3
11 of this Indictment are re-alleged and incorporated by reference herein.

12 22. Pursuant to Title 21, United States Code, Section 853 and Title 28, United States
13 Code, Section 2461, and as a result of the offense(s) charged in Counts 2 and 3 of this
14 Indictment, the defendants shall forfeit to the United States of America all right, title, and
15 interest in (1) any property constituting, or derived from, any proceeds the person obtained,
16 directly or indirectly, as the result of said offense and (2) any of the defendants' property used,
17 or intended to be used, in any manner or part, to commit, to facilitate the commission of said
18 offense, as to which property the defendant is jointly and severally liable, including but not
19 limited to: a money judgement should be issued in an amount commensurate with each
20 defendants' involvement with the listed violation(s).

21 If any of the above-described forfeitable property, as a result of any act or omission of the
22 defendant:

- 23 (1) cannot be located upon the exercise of due diligence;
24 (2) has been transferred or sold to, or deposited with, a third party;
25 (3) has been placed beyond the jurisdiction of the court;
26 (4) has been substantially diminished in value; or
27 (5) has been commingled with other property which cannot be divided without difficulty;
28

1 it is the intent of the United States to seek forfeiture of any other property of said defendant up
2 to the value of the above-described forfeitable property, pursuant to 21 U.S.C. Section 853(p).

3 Pursuant to Title 21, United States Code, Section 853 and Title 28, United States Code,
4 Section 2461, and Rule 32.2.(a), Federal Rules of Criminal Procedure.

5
6 A TRUE BILL

7
8 /s/
9 FOREPERSON OF THE GRAND JURY
Date: January 11, 2011

10
11
12 DENNIS K. BURKE
United States Attorney
13 District of Arizona

14 /s/
15 JOSH PATRICK PARECKI
Assistant U.S. Attorney