

1 DENNIS K. BURKE
United States Attorney
2 District of Arizona
JESSE FIGUEROA
3 Assistant United States Attorney
LIZA M. GRANOFF
4 Assistant United States Attorney
United States Courthouse
5 405 W. Congress Street, Suite 4800
Tucson, Arizona 85701
6 Telephone: 520-620-7300
Email: jesse.figueroa@usdoj.gov
7 Email: liza.granoff@usdoj.gov
Attorneys for Plaintiff

8
9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 (1) Manuel Osorio-Arellanes;
aka Manuel Arellanes,
15 aka "Paye,"
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20 Defendants.
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CR-11-0150-TUC-DCB-JCG

SUPERSEDING INDICTMENT

Violations:

VICTIM CASE

18 U.S.C. § 1111 and § 1114 (Second Degree Murder);

18 U.S.C. § 371 (Conspiracy to Assault a Federal Officer);

18 U.S.C. § 924(c) (Use and Carrying a Firearm in Furtherance of a Crime of Violence);

18 U.S.C. § 111 (Assault on a Federal Officer);

18 U.S.C. § 922(g)(5)(A) (Possession of a Firearm by a Prohibited Person);

18 U.S.C. § 922(g)(1) (Possession of a Firearm by a Prohibited Person); and

8 U.S.C. § 8 U.S.C. § 1326 (a) and (enhanced by 8 U.S.C. § 1326(b)(1) and (b)(2) (Re-Entry After Deportation)

25 THE GRAND JURY CHARGES:
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COUNT ONE
SECOND DEGREE MURDER

On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona, Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," [REDACTED] [REDACTED] did unlawfully kill with malice aforethought United States Border Patrol Agent Brian Terry while Agent Terry was engaged in or on account of the performance of his official duties, in violation of Title 18, United States Code, Sections 1111 and 1114.

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COUNT TWO
CONSPIRACY TO ASSAULT A FEDERAL OFFICER

From a time unknown to on or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona, Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," [REDACTED] [REDACTED], named herein as defendants and co-conspirators, did knowingly and intentionally combine, conspire, confederate and agree with each other and other persons known and unknown to the Grand Jury, to commit an assault, that is, Assault of a Federal Officer, to wit: United States Border Patrol Agents Brian Terry, Timothy Keller, Gabriel Fragoza and William Castano, officers of the United States, while said officers were engaged in and on account of the performance of their official duties, in violation of Title 18, United States Code, Sections 111(a) and 111(b).

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OBJECT AND MEANS

1. It was an object of the conspiracy that one or more of the co-conspirators would intentionally and forcibly assault, resist, oppose, impede, intimidate and interfere with any person and any officer or employee of the United States while such person was engaged in or on account of the performance of official duties.

1 2. To accomplish an object of the conspiracy, one or more of the co-conspirators
2 would intentionally and forcibly assault resist, oppose, impede, intimidate and
3 interfere with any person and any officer or employee of the United States while
4 such person was engaged in or on account of the performance of official duties
5 while at least two of the defendants were each armed with deadly weapons, to
6 wit: assault rifles, in violation of Title 18, United States Code, Sections 111(a)
7 and 111(b).

8 **OVERT ACTS**

9 3. In furtherance of the conspiracy, one or more of the co-conspirators committed,
10 in the District of Arizona and elsewhere, overt acts including, but not limited to,
11 those acts described more fully below.

12 4. On or about December 14, 2010:

- 13 a. Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," [REDACTED]
14 [REDACTED] and
15 others traveled together to the area of Mesquite Seep;
16 b. Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," [REDACTED]
17 [REDACTED] and
18 others were patrolling the area in single file formation at or near Mesquite
19 Seep;
20 c. At least two of the defendants possessed assault rifles;
21 d. At least two of the defendants carried the assault rifles at the "ready" position
22 when they encountered the Border Patrol agents;
23 e. At least two of the defendants shot at the Border Patrol agents after the
24 agents had identified themselves as police;

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

1 **COUNT THREE**
2 **USING AND CARRYING A FIREARM IN FURTHERANCE OF A CRIME**
3 **OF VIOLENCE**

4 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
5 Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," [REDACTED]
6 [REDACTED], during and in relation to a crime
7 of violence, to wit: Conspiracy to Assault a Federal Officer as charged in Count Two of this
8 indictment, in violation of Title 18, United States Code, Sections 111(a), 111(b), and 371,
9 did knowingly use and carry two 7.62 x 39mm Romanian assault rifles, Model GP WASR-
10 10/63, and did possess those firearms and further brandished the firearms in furtherance of
11 such a crime, in violation of Title 18, United States Code, Section 924(c).

12 **COUNT FOUR**
13 **ASSAULT ON A FEDERAL OFFICER**

14 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
15 Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye" did intentionally and forcibly
16 assault, resist, oppose, impede, intimidate and interfere with United States Border Patrol
17 Agent Timothy Keller, officer of the United States, with a deadly or dangerous weapon, to
18 wit: an assault rifle, while said officer was engaged in and on account of the performance of
19 his official duties, in violation of Title 18, United States Code, Sections 111(a) and 111(b).

20 **COUNT FIVE**
21 **ASSAULT ON A FEDERAL OFFICER**

22 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
23 [REDACTED] did intentionally and
24 forcibly assault, resist, oppose, impede, intimidate and interfere with United States Border
25 Patrol Agents Brian Terry, Timothy Keller, Gabriel Fragoza, and William Castano, officers
26 of the United States, with a deadly or dangerous weapon, to wit: an assault rifle, while said

1 officers were engaged in and on account of the performance of their official duties, in
2 violation of Title 18, United States Code, Sections 111(a) and 111(b).

3 **COUNT SIX**
4 **ASSAULT ON A FEDERAL OFFICER**

5 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
6 [REDACTED] did intentionally and forcibly assault, resist, oppose, impede, intimidate
7 and interfere with United States Border Patrol Agents Brian Terry, Timothy Keller, Gabriel
8 Fragoza, and William Castano, officers of the United States, with a deadly or dangerous
9 weapon, to wit: an assault rifle, while said officers were engaged in and on account of the
10 performance of their official duties, in violation of Title 18, United States Code, Sections
11 111(a) and 111(b).

12 **COUNT SEVEN**
13 **USING AND CARRYING A FIREARM IN FURTHERANCE OF**
14 **A CRIME OF VIOLENCE**

15 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona;
16 Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," during and in relation to a crime
17 of violence, to wit: Assault on a Federal Officer, as charged in Count Four of this
18 indictment, in violation of Title 18, United States Code, Sections, 111(a) and 111(b), did
19 knowingly use and carry two 7.62 x 39mm Romanian assault rifles, Model GP WASR-10/63,
20 and did possess those firearms and further brandished the firearms in furtherance of such a
21 crime, in violation of Title 18, United States Code, Section 924(c).

22 **COUNT EIGHT**
23 **USING AND CARRYING A FIREARM IN FURTHERANCE OF**
24 **A CRIME OF VIOLENCE**

25 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
26 [REDACTED], during and in relation to a
27 crime of violence, to wit: Assault on a Federal Officer, as charged in Count Five of this

1 indictment, in violation of Title 18, United States Code, Sections, 111(a) and 111(b), did
2 knowingly use and carry two 7.62 x 39mm Romanian assault rifles, Model GP WASR-10/63,
3 and did possess those firearms and further brandished the firearms in furtherance of such a
4 crime, in violation of Title 18, United States Code, Section 924(c).

5 **COUNT NINE**
6 **USING AND CARRYING A FIREARM IN FURTHERANCE OF**
7 **A CRIME OF VIOLENCE**

8 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
9 [REDACTED] during and in relation to a crime of violence, to wit: Assault on a Federal
10 Officer, as charged in Count Six of this indictment, in violation of Title 18, United States
11 Code, Sections, 111(a) and 111(b), did knowingly use and carry two 7.62 x 39mm Romanian
12 assault rifles, Model GP WASR-10/63, and did possess those firearms and further brandished
13 the firearms in furtherance of such a crime, in violation of Title 18, United States Code,
14 Section 924(c).

15 **COUNT TEN**
16 **POSSESSION OF A FIREARM BY A PROHIBITED PERSON**

17 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
18 Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," an alien who was illegally and
19 unlawfully in the United States, did knowingly possess a firearm, to wit: a 7.62 x 39mm
20 Romanian assault rifle, Model GP WASR-10/63, bearing serial number 1971CZ3775 and
21 twenty-five 7.62 x 39mm rounds of ammunition, said firearm and ammunition being in and
22 affecting commerce in that they were previously shipped and transported into the State of
23 Arizona from another state or foreign country, in violation of Title 18, United States Code,
24 Sections 922(g)(5)(A) and 924(a)(2).

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1 COUNT ELEVEN
2 POSSESSION OF A FIREARM BY A PROHIBITED PERSON

3 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
4 Manuel Osorio-Arellanes, aka Manuel Arellanes, having been convicted of the felony crime
5 of Aggravated Assault on December 1, 2006 in Maricopa County, Arizona did knowingly
6 possess a firearm, to wit: a 7.62 x 39mm Romanian assault rifle, Model GP WASR-10/63,
7 bearing serial number 1971CZ3775 and twenty-five 7.62 x 39mm rounds of ammunition,
8 said firearm and ammunition being in and affecting commerce in that they were previously
9 shipped and transported into the State of Arizona from another state or foreign country, in
10 violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

11 FORFEITURE ALLEGATION

12 Upon conviction of Counts One through Eleven of this Superseding Indictment, the
13 defendants, Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," [REDACTED]
14 [REDACTED], shall forfeit to the
15 United States pursuant to Title 18, United States Code, Section 924(d) and Title 28, United
16 States Code, Section 2461(c), any firearms and ammunition involved in the commission of
17 the offense, including, but not limited to: two 7.62 x 39 mm Romanian assault rifles, model
18 GP WASR 10/63, bearing serial numbers 1971CZ3775 and 1983AH3977, and seventy-five
19 7.62 x 39 mm rounds of ammunition.

20 If any of the property described above, as a result of any act or omission of the
21 defendants:

- 22 a. cannot be located upon the exercise of due diligence;
23 b. has been transferred or sold to, or deposited with, a third party;
24 c. has been placed beyond the jurisdiction of the court;
25 d. has been substantially diminished in value; or

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e. has been commingled with other property which cannot be divided without difficulty,

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property, including, but not limited to, all property, both real and personal, owned by the defendants.

All pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c).

COUNT TWELVE
RE-ENTRY OF A DEPORTED ALIEN

On or about December 14, 2010, at or near Nogales, in the District of Arizona, Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," an alien, entered and was found in the United States of America after having been denied admission, excluded, deported, and removed therefrom at or near Nogales, Arizona on or about June 14, 2010, and not having obtained the express consent of the Attorney General or the Secretary of the Department of Homeland Security to reapply for admission thereto, in violation of Title 8, United States Code, Section 1326, enhanced by Title 8, United States Code, Section 1326(b)(1).

COUNT THIRTEEN
RE-ENTRY OF A DEPORTED ALIEN

On or about December 14, 2010, at or near Nogales, in the District of Arizona, [REDACTED] [REDACTED], an alien, entered and was found in the United States of America after having been denied admission, excluded, deported, and removed therefrom at or near Nogales, Arizona on or about February 25, 2010, and not having obtained the express consent of the Attorney General or the Secretary of the Department of Homeland Security to reapply for admission thereto, in violation of Title 8, United States Code, Section 1326, enhanced by Title 8, United States Code, Section 1326(b)(2).

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COUNT FOURTEEN
RE-ENTRY OF A DEPORTED ALIEN

On or about December 14, 2010, at or near Nogales, in the District of Arizona, [REDACTED] an alien, entered and was found in the United States of America after having been denied admission, excluded, deported, and removed therefrom at or near Nogales, Arizona on or about October 19, 2010, and not having obtained the express consent of the Attorney General or the Secretary of the Department of Homeland Security to reapply for admission thereto, in violation of Title 8, United States Code, Section 1326, enhanced by Title 8, United States Code, Section 1326(b)(2).

A TRUE BILL

[REDACTED]
Presid

DENNIS K. BURKE
United States Attorney
District of Arizona


Assistant U.S. Attorney

APR 20 2011

REDACTED FOR
PUBLIC DISCLOSURE