

Approved: Cynthia K. Dunne
CYNTHIA K. DUNNE
Assistant United States Attorney

Before: HONORABLE GEORGE A. YANTHIS
Chief United States Magistrate Judge
Southern District of New York

11 MAG. 3037

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UNITED STATES OF AMERICA	:	SEALED COMPLAINT
- v -	:	Violation of
	:	18 U.S.C. § 371
	:	18 U.S.C. § 1503
	:	18 U.S.C. § 1512
ADEM ARICI, MARC E. VERZANI,	:	
Defendants	:	COUNTIES OF OFFENSES: WESTCHESTER\BRONX\ NEW YORK

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SOUTHERN DISTRICT OF NEW YORK, ss.:

Raymond DiPillo, being duly sworn, deposes and says that he is a Special Agent with the Department of Homeland Security, U.S. Immigration and Customs Enforcement /Homeland Security Investigations, and charges as follows:

Count One
(Conspiracy to Violate the Trading with the Enemy Act)

From in or about April 2011 through September 2011, in the Southern District of New York and elsewhere, MARC E. VERZANI and ADEM ARICI, the defendants, together with 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, Trading with the Enemy in violation of Title 50, United States Code Appendix, Sections 5(b) and 16.

It was a part and an object of the conspiracy that ADEM ARICI and MARC E. VERZANI, the defendants, would and did knowingly and willfully deal in and engage in transactions involving property in which Cuba and a Cuban national had an interest, in violation of Title 50 Appendix, Sections 5(b) and 16.

Overt Acts

In furtherance of the conspiracy and to effect the illegal object thereof, MARC E. VERZANI and ADEM ARICI, the defendants, together with others known and unknown, committed the following overt acts, in the Southern District of New York and elsewhere:

- a. In or about the summer of 2011, ARICI and VERZANI contacted a third party (the "Third Party") in Bronx County, New York, and asked him if he would be interested in traveling to Cuba in September 2011.
- b. On or about August 23, 2011, VERZANI caused to be wire transferred through Western Union approximately \$676 from New York, New York, to a travel agent in Cancun, Mexico to pay for airfare for himself and the Third Party from Cancun, Mexico to Havana,

Cuba.

- c. On or about September 5, 2011, VERZANI sent an email to the Third Party in Bronx County, New York, advising him, in coded language, of the cost of their airfare to Cuba.
- d. On or about September 6, 2011, VERZANI sent an email to the Third Party in Bronx County, New York, that included a travel itinerary confirming that VERZANI and the third party would travel to Cancun, Mexico on September 8, 2011.
- e. On or about September 7, 2011, VERZANI sent an email to the Third Party in Bronx County, New York, attaching a boarding pass for a flight to Cancun, Mexico for the third party on September 8, 2011.
- f. On or about September 8, 2011, VERZANI and the Third Party traveled to Havana, Cuba, *via* Cancun, Mexico.
- g. On or about September 13, 2011, VERZANI submitted a Declaration to the U.S. Department of Homeland Security falsely stating that Mexico was the only country he visited on his trip prior to returning to the United States.

(Title 18 United States Code, Section 371.)

Count Two
(Obstruction of Justice --Defendant Verzani)

On or about October 11, 2011, in the Southern District of New York, MARCE. VERZANI, the defendant, corruptly influenced, obstructed, impeded, and endeavored to influence, obstruct, and impede, the due administration of justice, to wit, VERZANI gave false and misleading sworn testimony at a hearing in White Plains, New York, before the Honorable Lisa Margaret Smith, United States Magistrate Judge, Southern District of New York, in a civil action entitled *In the Matter of Three Search Warrants Executed at Three Locations on April 29, 2010*, 11 Misc. 0271 (CS)(LMS) ("the Proceeding"), including false testimony that the only foreign countries he had been in with ADEM ARICI were Brazil and Argentina, whereas in truth and fact, in the previous month of September of 2011, VERZANI had unlawfully been with ARICI in Cuba, where he counseled ARICI about business matters, inspected the ARICI's business and real estate investments and looked at properties for potential purchase.

(Title 18, United States Code, Section 1503.)

Count Three
(Witness Tampering --Defendant Verzani)

From on or about October 12, 2011 through on or about October 18, 2011, in the Southern District of New York, MARCE. VERZANI, the defendant, knowingly used intimidation, threatened, and corruptly persuaded another person, and attempted to do so, and engaged in misleading conduct toward another person, with intent to hinder, delay, and prevent the communication to a law enforcement officer of the United States of information relating to the commission and possible commission of a Federal offense, to wit, VERZANI counseled a witness to falsely tell law

enforcement agents that the witness did not recall traveling to Cuba with VERZANI and to invoke his Fifth Amendment privilege against self incrimination if specifically asked whether he traveled to Cuba.

(Title 18, United States Code, Section 1512(b)(3).)

Count Four
(Witness Tampering –Defendant Arici)

On or about November 18, 2011, in the Southern District of New York and elsewhere, ADEM ARICI, the defendant, knowingly used intimidation, threatened, and corruptly persuaded another person, and attempted to do so, and engaged in misleading conduct toward another person, with intent to hinder, delay, and prevent the communication to a law enforcement officer of the United States of information relating to the commission and possible commission of a Federal offense, to wit, ARICI counseled a witness to falsely tell law enforcement agents, among other things, that the witness did not travel to Cuba, that he did not know ARICI, that he did not meet ARICI in Cuba and that he should refuse to speak with law enforcement agents about his trip to Cuba.

(Title 18, United States Code, Section 1512(b)(3).)

The bases for deponent's knowledge and for the foregoing charges are, in part, as follows:

1. I am a Special Agent for the Department of Homeland Security (“DHS”), U.S. Immigration and Customs Enforcement /Homeland Security Investigations (“HSI”). I have held that position since August 2010. Before that, I was a Deportation Officer with U.S. Immigration and Customs Enforcement (“ICE”) for approximately one year. Prior to that I was an Immigration Enforcement Agent with ICE for approximately three years. I hold a B.A. in criminal justice. Over the course of my career, I have participated in and conducted numerous criminal investigations involving violations of the laws of the United States, including the U.S. Immigration and Customs laws.

2. I have interviewed the third party referred to in Count One above who is hereafter referred to as the Cooperating Witness (“CW”). The CW has admitted to traveling unlawfully to Cuba. He has not to date been charged with a crime or entered into an agreement with the Government. The CW voluntarily has provided information to investigators that has been corroborated by documents and tape recordings that the CW consensually recorded under the supervision of HSI Agents. I am familiar with the facts and circumstances of this investigation from my involvement in the investigation, my review of documents and records, and discussions with other law enforcement agents involved in this case. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all of the facts that I have learned during the course of my investigation. Where the contents of documents, actions, statements and conversations are reported herein, they are reported in substance and in part, except where otherwise indicated.

--The Embargo Against Cuba

3. Since approximately 1962, the United States has maintained an economic embargo against Cuba through the enactment of various laws and regulations restricting United States trade and economic transactions with Cuba. These actions were intended to promote a peaceful transition to democracy in Cuba by depriving the Cuban government of United States dollars.

4. The Department of the Treasury, through the office of Foreign Assets Control (“OFAC”), is one of the departments of the United States government responsible for enforcing the

Cuban embargo. OFAC has exercised its responsibilities through the enforcement of the Cuban Assets Control Regulations (“CACR”), which were promulgated by the Department of the Treasury under the Trading with the Enemy Act, Title 50, United States Code, Appendix, Sections 1-6, 7-39, and 41-44. *See* 31 C.F.R. §§ 515.101-.901. Subject to narrow exceptions, the regulations prohibit all commercial transactions with Cuba or Cuban nationals unless licensed in advance by OFAC.

5. On or about July 29, 2011, I was assigned to an ongoing investigation involving allegations of unlawful travel to Cuba, in violation of the Trading With the Enemy Act, which generally prohibits Americans from traveling to Cuba and/or spending money in Cuba. In the course of this investigation I have reviewed government records, a transcript of the Proceeding, records and photographs seized pursuant to a court-authorized search warrant and have interviewed a number of witnesses.

– The Defendants’ Travel to Cuba

6. The CW has admitted to myself and other federal agents that on or about September 8, 2011, he traveled to Cuba through Mexico together with MARC E. VERZANI, the defendant, in order to bypass the restrictions of the United States Customs laws with regard to the TWEA embargo against Cuba. According to the CW, VERZANI and the CW were in Cuba from September 8, 2011 through September 13, 2011 and during their visit to Cuba, which was arranged by VERZANI, they met up with ADEM ARICI, the defendant, who is a naturalized U.S. Citizen, and who advised the CW that he has invested millions of dollars in Cuban real estate and businesses. Most of the CW’s statements have been corroborated by travel records I have reviewed and by recorded conversations between the CW and VERZANI and the CW and ARICI that were made under my supervision and the supervision of other federal agents between October 12, 2011 and November 18, 2011.

7. According to the CW, he was invited in the summer of 2011 to travel to Cuba by MARC E. VERZANI and ADEM ARICI, the defendants. The CW advised me that prior to leaving for Cuba, VERZANI advised the CW that VERZANI could assist the CW in purchasing land in Cuba very reasonably and that the CW should bring some cash along for a down payment to purchase property. VERZANI further advised the CW that VERZANI would also bring money along with the intention of purchasing property.

8. The CW further stated that MARC E. VERZANI, the defendant, arranged for and paid for the flight and the related fees from Cancun, Mexico to Havana, Cuba, by wire transferring the money to a Mexican travel agent through a Western Union money transmitter. I have reviewed records obtained from Western Union which confirm that on or about August 23, 2011, VERZANI caused to be wire transferred through Western Union approximately \$676 from New York, New York, to Cancun, Mexico. I have reviewed a cancelled check dated September 8, 2011, in the amount of \$692 written by the CW to VERZANI that appears to have been deposited. According to the CW, the check he wrote to VERZANI represents the CW’s reimbursement to VERZANI for the cost of his airfare and visa to Cuba.

9. I have also received and reviewed emails provided to me by the CW that he in turn received from MARC E. VERZANI, the defendant, relating to the subject of their Cuban trip. Those emails confirm the details provided by the CW relating to the payments made for the trip and the dates of travel. Specifically, on or about September 5, 2011, VERZANI sent an email to the CW advising him in coded language, among other things, of the cost of their airfare to Cuba.

10. The CW has provided me with a Delta Airlines travel itinerary which was provided to him by MARC E. VERZANI, the defendant, *via* an email dated September 6, 2011. The travel itinerary reveals that on or about September 8, 2011, VERZANI was to travel from LaGuardia airport on Delta flight 886 to Cancun, Mexico. According to the CW, when he and VERZANI arrived in Mexico, they proceeded to a desk in the Cancun Airport where they picked up their prepaid tickets to Havana, Cuba. The CW has informed me that VERZANI had made the

arrangements for the trip to Cuba and that VERZANI told him that VERZANI had traveled to Cuba several months earlier.

11. The CW has advised me that when he and MARC E. VERZANI, the defendant, arrived in Cuba, they were met by a Cuban National ("John Doe") who the CW learned works for ADEM ARICI, the defendant. The CW further stated that John Doe drove him and VERZANI to their hotel, where they exchanged their U.S. dollars for Cuban currency.

12. The CW has further advised me that while he was in Cuba he and MARC E. VERZANI, the defendant, decided not to purchase Cuban real estate but that he, VERZANI and ADEM ARICI, the defendant, spent money on food, drinks, transportation, entertainment and personal services.

13. The CW has further advised me that during his trip to Cuba, he and MARC E. VERZANI, the defendant, met with ADEM ARICI, the defendant, who showed them a hotel that he stated he was building and a house that he stated that he owned. The CW was present when ARICI discussed problems he was experiencing with one of his Cuban business partners and the CW overheard VERZANI advising ARICI on how to deal with the issues ARICI was experiencing in the operation of his hotel.

14. I have reviewed photographs seized pursuant to a court-authorized search of the CW's laptop and they reflect that MARC E. VERZANI, the defendant, was in Cuba with a number of people, including, but not limited to, ADEM ARICI, the defendant. The CW has advised me that the photographs were taken during their September 2011 trip to Cuba. Among other things, the photographs reflect automobiles with Cuban license plates and Cuban landmarks and ARICI's hotel.

15. As U.S. citizens, ADEM ARICI and MARC E. VERZANI, the defendants, were required to obtain licenses from OFAC before engaging in any financial transaction with a Cuban national. I have checked with officials from OFAC and their licensing databases reveal no record of ARICI or VERZANI having ever applied for a license to engage in financial transactions with the Cuban government or Cuban nationals as of November 29, 2011. OFAC databases further reveal that ARICI had previously been specifically advised about OFAC's Cuban licensing requirement. Specifically, in or about 2004, ARICI was the subject of an OFAC investigation into unlicensed Cuban travel. During that investigation, ARICI was specifically advised, in writing, of the OFAC licensing requirement and he was directed to the CACR.

- VERZANI'S False Testimony in a Civil Proceeding

16. I have reviewed records and transcripts of the Proceeding that are in the custody of the United States Attorney's Office for the Southern District of New York ("the Records"). The Records of the Proceeding reflect that on or about June 23, 2011, ADEM ARICI, the defendant, caused an attorney to file a Petition pursuant to Rule 41 of the Federal Rules of Criminal Procedure in White Plains federal court for the return of property seized from three business locations pursuant to search warrants issued by Magistrate Judge George Yanthis. *In the Matter of Three Search Warrants Executed at Three Locations on April 29, 2010*, 11 Misc. 0271 (CS)(LMS). Among other things, the petition alleged that ARICI needed the records to prepare initial and amended federal income tax returns. The matter was ultimately assigned to Judge Cathy Seibel who referred the case to Judge Lisa Margaret Smith for a report and recommendation. The parties submitted briefs and affidavits and appeared before Judge Smith on or about July 29, 2011. The Court found that there were disputed issues of fact regarding whether or not ARICI had standing to seek access to the documents and whether he needed the records for the reasons he set forth in his Rule 41 petition. The Court scheduled a hearing on the disputed issues of fact on August 25, 2011, which was subsequently adjourned at the request of ARICI until October 11, 2011.

17. According to the Records of the Proceeding, on or about October 11, 2011, the parties

appeared before Judge Smith to present evidence in support of their respective claims. Counsel for ADEM ARICI, the defendant, called MARC E. VERZANI, the defendant, to testify at the hearing. Among other things, VERZANI testified under oath in substance and in part that (1) he has been representing certain business entities whose records had been seized during the execution of the search warrants, (2) he was personally aware that records critical to ARICI's needs had been seized by the Government, (3) the Government had improperly prevented him from accessing those records and, (4) the Government had improperly prevented him from obtaining documents and information from the accountant who had prepared income tax returns for business entities owned, in part, by ARICI.

18. According to the transcript of the Proceeding, on cross examination, the Government asked questions of MARC E. VERZANI, the defendant, and specifically asked about his foreign travel with ADEM ARICI, the defendant. In response to specific questions, VERZANI denied that he had ever represented ARICI in connection with any foreign matter and falsely testified that the only foreign countries he had been in with ARICI were Brazil and Argentina. In truth and fact, according to information from the CW which was corroborated by photographs seized during a court authorized search of the CW's laptop, just weeks before, VERZANI had unlawfully traveled to Cuba for business and pleasure, met with ARICI in Cuba, and counseled ARICI on matters relating to the construction of his new Cuban hotel.

19. According to a transcript of the October 11, 2011 hearing, MARC E. VERZANI, the defendant, was asked the following questions about his relationship with ADEM ARICI, the defendant, and he gave the following answers, found at page 123 of the official court transcript:

Q: You said that you've traveled with Mr. ARICI to Argentina and Brazil?

A: Correct.

Q: Have you been with him in any other country?

A: No.

These and other false and misleading responses concealed from the Court VERZANI's illegal travel to Cuba. These responses and others also concealed the true nature of the relationship between VERZANI and ARICI, which relationship included the commission of a crime together.

- The Defendants' Corrupt Persuasion of a Witness

20. On or about October 12 and October 17, 2011, in the Southern District of New York, under my supervision the CW consensually recorded telephone conversations with MARC E. VERZANI, the defendant, in which the CW told VERZANI that he had been contacted by law enforcement agents from DHS. The CW was instructed by federal agents, in substance and in part, to tell VERZANI that the DHS agents wanted the CW to come to their offices for an interview. Although the CW had been approached by DHS agents, he had already been interviewed when he told VERZANI that agents wanted him to come to their offices. During the conversations between the CW and VERZANI, the two discussed their recent trip to Cuba. VERZANI suggested that the CW could answer any questions he wants to answer but also stated that the CW could falsely state that he could not remember: "If you don't want to answer, you can simply say 'I have no idea.'" In an October 17, 2011 conversation, VERZANI told the CW to meet with him in person in order to discuss further what he should say to DHS agents.

21. On or about October 18, 2011, in the Bronx and Westchester County, the CW met with and consensually recorded a conversation with MARC E. VERZANI, the defendant. I have listened to this recording. During this conversation, VERZANI, in substance, admitted that in September of 2011 he had unlawfully traveled to Cuba and that he had met up with ADEM ARICI, the defendant, and others during the trip. During this meeting, VERZANI and the CW further discussed what the CW should tell law enforcement agents from DHS, who had purportedly

contacted the CW for information. VERZANI repeatedly coached the CW, in part and substance, how to lie to law enforcement agents about his foreign travel. Specifically:

- VERZANI told the CW to tell agents that he did not remember or did not recall his travel history and explained, "It's not a lie [to say] you don't remember..."
- When the CW asked VERZANI what he should say if law enforcement agents specifically ask him about his foreign travel, VERZANI instructed him to answer questions as follows: "I've been to Mexico. Have you been anywhere else? I don't remember.... I don't recall.... You don't have to admit to any travel or to any events of any type. You don't have to admit to it, they have to prove it, that's the theory."
- The CW asked: "What if they ask me where I was traveling in September?" VERZANI responded: "You went to Mexico."
- Discussing how he should respond if agents followed up and asked if he went anywhere else, VERZANI instructed the CW to respond "I don't remember."
- The CW asked how he should respond if agents directly asked him whether or not he had traveled to Cuba and VERZANI told him that if they asked that question then he should invoke his Fifth Amendment right to refuse to answer any further questions.

22. On or about November 17, 2011, ADEM ARICI, the defendant, left a message for the CW, advising him that he wanted to talk to him and requested that he call him back. On or about November 18, 2011, in the Southern District of New York, under the supervision of DHS agents, the CW consensually recorded two telephone conversations with ADEM ARICI, the defendant. During these discussions, the CW told ARICI that he had been contacted by law enforcement agents from DHS. The CW was instructed by federal agents, in substance and in part, to tell ARICI that his meeting with DHS agents had been postponed, that he had retained an attorney to advise him on the matter, and that neither he nor his attorney knew what the meeting was about.

23. During the first November 18, 2011 recorded conversation, ARICI asked what the CW was going to tell the DHS agents. The CW responded in substance that you can't lie to a federal agent. ARICI agreed but then proceeded to counsel the CW to lie to federal agents by stating in substance that if you say you don't know something the agents would not have any proof to the contrary. Several minutes later, ARICI called the CW back and directed the CW not to answer any questions about the Cuba trip and to say that he doesn't know anything about ARICI and did not meet him.

WHEREFORE, deponent prays that a warrant be issued for the arrest of MARC E. VERZANI, and ADEM ARICI, the defendants, and that they be arrested and imprisoned or bailed as the case may be.


Raymond DiPillo
Special Agent, Department of Homeland Security

Sworn to before me this
30 day of November, 2011.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK