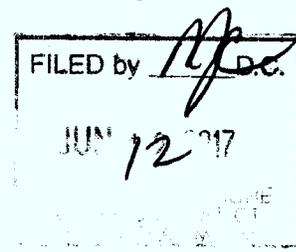


Served



UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. ~~17-MJ-02836-TORRES~~

17-22197 MC-VNA

IN THE MATTER OF THE EXTRADITION OF RICARDO ALBERTO MARTINELLI BERROCAL

FILED UNDER SEAL

COMPLAINT (18 U.S.C. § 3184)

I, the undersigned Assistant United States Attorney, being duly sworn, state on information and belief that the following is true and correct:

- 1. In this matter, I represent the United States in fulfilling its treaty obligation to Panama.
2. There is an extradition treaty in force between the United States and Panama, the Treaty Between the United States of America and the Republic of Panama Providing for the Extradition of Criminals, U.S.-Pan., May 25, 1904, 34 Stat. 2851 (the "Treaty"). The United States and Panama are also parties to the U.N. Convention Against Corruption, Dec. 9, 2003, S. Treaty Doc. No. 109-6, 2349 U.N.T.S. 41; and the Convention on Cybercrime, Jan. 7, 2004, Council of Eur., T.I.A.S. No. 13174, C.E.T.S. No. 185.
3. Pursuant to the Treaty, the Government of Panama has submitted a formal request through diplomatic channels for the extradition of Ricardo Alberto Martinelli Berrocal ("Martinelli Berrocal").
4. According to the information provided by the Government of Panama, Martinelli Berrocal is charged with (1) interception of telecommunications without judicial authorization, in violation of Article 167 of the Criminal Code of Panama; (2) tracking, persecution, and surveillance without judicial authorization, in violation of Article 168 of the same code; (3)

embezzlement by theft and misappropriation, in violation of Article 338 of the same code; and (4) embezzlement of use, in violation of Article 341 of the same code. Harry Diaz, a Justice of the Criminal Chamber of the Supreme Court of Justice of the Republic of Panama, issued an indictment against Martinelli Berrocal for these offenses on October 9, 2015.

5. The offenses were committed within the jurisdiction of Panama. After Martinelli Berrocal failed to appear in court when summoned for a hearing on the charges, on December 21, 2015, the Supreme Court of Justice issued an order for Martinelli Berrocal's arrest.

6. The indictment and detention order were issued on the basis of the following facts, as alleged in the formal extradition documents sent from Panama to the United States:

Martinelli Berrocal served as the President of Panama from July 2009 to July 2014. During that period, specifically, from 2012 to May 2014, he misappropriated government resources to illegally intercept and record the private communications of at least 150 individuals whom he identified as "targets," including his political allies and opponents, and family members thereof; judges of Panama's Supreme Court of Justice and Electoral Tribunal; journalists; businessmen, including Martinelli Berrocal's business rivals; union activists; professional and civic association leaders; Martinelli Berrocal's mistress; and others. Using equipment purchased with public funds, and using members of Panama's National Security Council ("NSC"), Martinelli Berrocal created and oversaw a sophisticated program that involved illegal wiretapping and other forms of surveillance through which he violated the privacy of his "targets," learning intimate details of their personal and professional lives without their knowledge or consent, and without authorization under Panamanian law.

Pursuant to Article 29 of the Political Constitution of the Republic of Panama and Article 311 of the Criminal Proceeding Code of the Republic of Panama, private communications may not be intercepted or recorded, electronic surveillance may not be conducted, and information may not be extracted from computers, cellular phones, and other electronic devices, unless proper judicial authorization has been obtained. No such authorization was sought or obtained in this case for the activities conducted by Martinelli Berrocal with respect to his “targets.”

Rather than operating through proper channels, Martinelli Berrocal secretly commandeered the NSC, “a consultant and advisory body to the President of the Republic, on public security and national defense,” as described in Article 1 of Executive Decree 263, for his own devices. On March 19, 2010, Martinelli Berrocal enacted Executive Decree 263 to reorganize the NSC so as to concentrate power in himself as the president, who was authorized under the Decree to convene and chair the NSC and to appoint and remove its members (Arts. 3, 6, & 20). Functionally, Martinelli Berrocal directed all matters and policies of the NSC.

Martinelli Berrocal created a special, covert unit within the NSC known as “Special Services,” which included Ronny Rodríguez (“Rodríguez”), who was then the Chief of Intelligence and Deputy Director of the NSC, and two other NSC employees, William Pitti (“William”) and Ismael Pitti (“Ismael”). The unit reported directly to, and all of its activities were governed by, Martinelli Berrocal. The Special Services officers referred to Martinelli Berrocal as “el Jefe” (“the

Boss”) or “RM,” rather than referring to him by name or title, given the confidential nature of their work for him.

The Special Services unit established an office on the top floor of an NSC building called “150” (“Building 150”), which was accessible only by its three members with an electronic key card. The office housed three computers, a server, a printer, and other equipment that supported a “PC Surveillance System” called “Pegasus.” This system was used to intercept telephone calls, emails, and instant messages; to extract data, such as contacts lists and calendars, and video from computer hard-drives and cellular phone memory cards; to trace the GPS location of cellular phones; and to remotely activate microphone and video functions of electronic devices so as to capture ambient conversations and actions taking place in the vicinity of a device. Also integrated with the system were two laptops, at least one of which was provided to Martinelli Berrocal.

The system was purchased using public funds that had been allocated to the Social Investment Fund. Specifically, US \$ 13,475,000 of those funds were used to purchase Pegasus and its associated equipment from M.L.M. Protection Ltd. (“MLM”), a private Israeli company. The contract between the Social Investment Fund and MLM was for a project entitled “Security Technology and Provision of Equipment and Installation, Training and Maintenance of the Same,” which was outwardly intended to meet social interest needs and to improve the quality of life for underprivileged persons. MLM employees provided training on Pegasus to the Special Services unit, and returned periodically to service and update the system. The system also relied on broadband Internet service, along

with related antennae and fiber optic cables, which were purchased for US \$2,400 per month (plus additional costs) from a company called Liberty Technologies Corp., through a contract entered into by William under the pseudonym "Guillermo Guerra." The cables were concealed within tubes inside the ventilation ducts of Building 150, and their presence was not disclosed to the NSC's Computer Department.

Martinelli Berrocal used Pegasus for wiretapping and surveillance of his "targets." He provided a list of the individuals he had identified as "targets" to Rodríguez, who in turn shared the list with William and Ismael. The Special Services officers then remotely installed the system on each target's telephone, either by electronically pushing a package of files that were installed directly on the phone or by sending the target a text message containing a link that would initiate installation when the target clicked on it, depending on the type of phone. They would also send each target an email with a link that would allow them to "hack" into the target's computer and gain access to its contents. Following its installation on the target's devices, Pegasus silently functioned to allow for covert information gathering.

Each Special Services officer was assigned to specific targets. They monitored and reviewed the information on those targets collected through Pegasus, and then produced daily written reports summarizing that information, including what was being discussed in the course of the target's communications, and where and with whom the target was meeting. These reports were separate from the daily reports prepared by the NSC's Public Order division, which

contained information regarding national security available from public sources and judicially authorized surveillance of people identified as public threats.

Rodríguez personally delivered the Special Services reports to Martinelli Berrocal in a sealed manila envelope every morning, except when Martinelli Berrocal was out of the country, in which case the reports were not printed out until his return. Certain information was reported to Martinelli Berrocal (via Rodríguez) immediately, including information damaging to the reputation of Martinelli Berrocal's political opponents. Martinelli Berrocal sometimes responded with specific instructions, such as requesting that the information be recorded onto a CD and given to him. He also sometimes instructed that particularly sensational audio or video—such as a political opponent having sexual intercourse, or another political opponent being accused of infidelity by her husband—be uploaded to YouTube, which was done via a public computer so that the computer's Internet Protocol address could not be traced back to the Special Services' office. Rodríguez occasionally reported to William and Ismael that “el Jefe is happy with our work and sends you this bonus,” and provided each officer with an envelope full of money, usually in the amount of US \$2,000.

On repeated occasions, Martinelli Berrocal discussed the information he had illegally intercepted. For example, he complained to Erasmo Pinilla Castellero, then President of the Electoral Tribunal, about an email exchange between the latter and members of the Democratic Revolutionary Party. He also fired his attorney, Rosendo Enrique Rivera, based on private communications between Mr. Rivera and a third party. In addition, during an interview given on

the Telémetro news program, Martinelli Berrocal threatened that he had “the dossier and pedigree on everyone, everything in this country” and that he knew “what each person has done and not done.”

Shortly following the elections which took place on May 4, 2014, when Martinelli Berrocal was about to leave office, Rodríguez and William removed the surveillance equipment from Building 150 after business hours one evening. The only items that were left behind were a laptop, from which information had been deleted (but was later recovered forensically), and the printer, which had been inventoried and paid for out of the NSC budget. William poured acid on the printer to destroy it out of concern that it contained back-up copies of all of the information previously printed on the device. At Rodríguez’s request, a black metal rack that had contained the computer server was relocated to the offices of Super 99, a supermarket company owned by Martinelli Berrocal, located at Monte Oscuro in Panama City.

An audit conducted by the Comptroller General concluded that the loss to the state sustained as a result of the purchase and disappearance of the surveillance equipment amounted to US \$ 10,861,857.48.

7. Martinelli Berrocal maintains a residence in Miami-Dade County, Florida. Therefore, it is believed that Martinelli Berrocal may currently be found within the boundaries of the Southern District of Florida, and therefore within the jurisdiction of this Court.

8. Susan Benda, an attorney in the Office of the Legal Adviser of the U.S. Department of State, has provided the U.S. Department of Justice with a declaration authenticating a copy of the diplomatic note by which the request for extradition was made and a

copy of the Treaty, stating that the offenses for which extradition is demanded are provided for by the Treaty, and confirming that the documents supporting the request for extradition are properly certified by the principal U.S. diplomatic or consular officer in Panama, in accordance with 18 U.S.C. § 3190, so as to enable them to be received into evidence.

9. The declaration from the U.S. Department of State with its attachments, including a copy of the diplomatic note from Panama, a copy of the Treaty, and the certified documents submitted in support of the request, (marked collectively as Government's Exhibit #1) are filed with this complaint and incorporated by reference herein.

10. Martinelli Berrocal would be likely to flee if he learned of the existence of a warrant for his arrest.

WHEREFORE, the undersigned requests that a warrant for the arrest of the aforementioned person be issued in accordance with 18 U.S.C. § 3184 and the extradition treaty between the United States and Panama, so that the fugitive may be arrested and brought before this Court to the end that the evidence of criminality may be heard and considered and that this complaint and the attached warrant be placed under the seal of the Court until such time as the warrant is

executed.

Respectfully submitted,

BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY

By:


ADAM S. FELLS
Assistant United States Attorney

Sworn to before me and subscribed in my presence this 12th day of June, 2017 at Miami,
Florida.


EDWIN G. TORRES
UNITED STATES MAGISTRATE JUDGE

FILED by [Signature] D.C.

JS 44 (Rev. 07/16) FLSD Revised 07/01/2016

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS UNITED STATES OF AMERICA

DEFENDANTS In The Matter of STEVEN M. LARIMORE
JOSEPH CARDO
ALBERTO MARTINEZ
DENISE MAMAL

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Miami, FL
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Adam Fels, AUSA
99 N.E. 4th Street, Miami, FL 33132 (305) 961-9325

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known) 17-22197 MC UNH

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in one Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in one Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input checked="" type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

- | | | | | |
|---|--|--|--|---|
| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
| <input type="checkbox"/> 110 Insurance | PERSONAL INJURY | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 375 False Claims Act |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a)) |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 315 Airplane Product Liability | | PROPERTY RIGHTS | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 320 Assault, Libel & Slander | | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 330 Federal Employers' Liability | | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 340 Marine | | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 345 Marine Product Liability | | LABOR | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 350 Motor Vehicle | PERSONAL PROPERTY | <input type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 480 Consumer Credit |
| <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 195 Contract Product Liability | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 751 Family and Medical Leave Act | <input type="checkbox"/> 850 Securities/Commodities/Exchange |
| <input type="checkbox"/> 196 Franchise | | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 790 Other Labor Litigation | <input checked="" type="checkbox"/> 890 Other Statutory Actions |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 440 Other Civil Rights | Habeas Corpus: | SOCIAL SECURITY | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 463 Alien Detainee | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 510 Motions to Vacate Sentence | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 896 Arbitration |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 443 Housing/Accommodations | Other: | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 444 Employment - w/Disabilities - Other | <input type="checkbox"/> 530 General | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 448 Education | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 865 RSI (405(g)) | |
| | | <input type="checkbox"/> 540 Mandamus & Other | FEDERAL TAX SUITS | |
| | | <input type="checkbox"/> 550 Civil Rights | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | |
| | | <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | |
| | | <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | |
| | | <input type="checkbox"/> 462 Naturalization Application | | |
| | | <input type="checkbox"/> 465 Other Immigration Actions | | |

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Re-filed (See VI below)
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation Transfer
- 7 Appeal to District Judge from Magistrate Judge
- 8 Multidistrict Litigation - Direct File
- 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO

VII. CAUSE OF ACTION 18 U.S.C. 3184
Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** **CHECK YES only if demanded in complaint:**
JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
DATE 6-12-17 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY
RECEIPT # AMOUNT IFP JUDGE MAG JUDGE