

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
ST. JOSEPH DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 12-06001-CR-SJ-GAF
	)	
SHERRI E. GUTIERREZ,	)	
	)	
BRENDA DE LA CRUZ,	)	
	)	
ELDER ENRIQUE ORDONEZ-CHANAS,	)	
	)	
RAFAEL HERNANDEZ-ORTIZ,	)	
	)	
SHAYNA R. VANVACTER,	)	
	)	
MELISSA L. SCALLIONS,	)	
	)	
Defendants.	)	

**MOTION OF THE UNITED STATES FOR A PRELIMINARY  
ORDER OF FORFEITURE, WITH SUPPORTING SUGGESTIONS**

The United States of America, by its undersigned counsel, respectfully submits its Motion for a Preliminary Order of Forfeiture in the above-entitled case for the reasons set forth in the following supporting suggestions. A proposed order is submitted with this motion.

**SUPPORTING SUGGESTIONS**

1. On September 25, 2012, a federal grand jury sitting in the Western District of Missouri, returned a forty-five count Superseding Indictment. Count One charged that Sherri E. Gutierrez, Brenda De La Cruz, Elder Enrique Ordonez-Chanas, Rafael Hernandez-Ortiz, Shayna R. Vanvacter, Melissa L. Scallions, and co-defendants knowingly and willfully conspired, combined, confederated and agreed with others both known and unknown to the grand jury, to

violate the laws of the United States specifically, transporting illegal aliens in violations of 8 U.S.C. § 1324(a)(1)(A)(ii); unlawful production of an identification document in violation of 18 U.S.C. § 1028(a)(1); unlawful transfer of the means of identification of another person, in violation of 18 U.S.C. § 1028(a)(7); and social security fraud in violation of 42 U.S.C. § 408(a)(7).

2. Count Two of the Superseding Indictment charged that the defendant Sherri E. Gutierrez, aiding and abetting others, both known and unknown to the grand jury, knowing and in reckless disregard of the fact that certain illegal aliens, Reyna Veronica Coutino-Dominguez, Ana Lidia Vazquez-Cruz and Irma Ramirez-Capote, had come to, entered and remained in the United States in violation of law, did transport and move the aliens within the United States by means of transportation and otherwise furtherance of such violation of law, for the purpose of commercial advantage and private financial gain, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii) and (a)(1)(A)(v)(II).

3. Count Three of the Superseding Indictment charged that the defendant Sherri E. Gutierrez, aiding and abetting others, both known and unknown to the grand jury, knowing and in reckless disregard of the fact that Reyna Veronica Countino-Dominguez, an illegal alien had come to, entered and remained in the United States in violation of law, did transport and move the alien within the United States by means of transportation and otherwise in furtherance of such violation of law, for the purpose of commercial advantage and private financial gain, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii) and (a)(1)(A)(v)(II).

4. Count Six of the Superseding Indictment charged that the defendant Rafael Hernandez-Ortiz, aiding and abetting others, both known and unknown to the grand jury,

knowing and in reckless disregard of the fact that certain illegal aliens, Mayra Edith Lopez-Barrios, Claudia Guadalupe Guzman-Soto and Claudia Ferm-Aguilaz, had come to, entered and remained in the United States in violation of law, did transport and move the aliens within the United States by means of transportation and otherwise in furtherance of such violation of law, for the purpose of commercial advantage and private financial gain, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii) and (a)(1)(A)(v)(II).

5. Count Eight of the Superseding Indictment charged that the defendant Sherri E. Gutierrez, aiding and abetting others, both known and unknown to the grand jury, did knowingly and without lawful authority, produce an identification document, to wit, a Missouri nondriver's license in the name of Jennifer Sarah Gutierrez, the production of the identification was in or affected interstate or foreign commerce, and the offense involved the production of an identification document that is or appears to be a driver's license or person identification card, in violation of 18 U.S.C. §§ 1028(a)(1), (b)(1) and 2.

6. Count Nine of the Superseding Indictment charged that the defendants Elder Enrique Ordonez-Chanas and Brenda De La Cruz, aiding and abetting each other and others, both known and unknown to the grand jury, did knowingly and without lawful authority, produce an identification document, to wit, a Missouri nondriver's license in the name of Adrian Garcia, the production of the identification document was in or affected interstate or foreign commerce, and the offense involved the production of an identification document that is or appears to be a driver's license or personal identification card, in violation of 18 U.S.C. §§ 1028(a)(1), (b)(1) and 2.

7. Count Ten of the Superseding Indictment charged that the defendants Elder Enrique Ordonez-Chanas and Brenda De La Cruz, aiding and abetting each other and others, both known and unknown to the grand jury, did knowingly and without lawful authority, produce an identification document, to wit, a Missouri nondriver's license in the name of Jesse Morales, Jr., the production of the identification document was in or affected interstate or foreign commerce, and the offense involved the production of an identification document that is or appears to be a driver's license or personal identification card, in violation of 18 U.S.C. §§ 1028(a)(1), (b)(1) and 2.

8. Count Eleven of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly and without lawful authority, produce an identification document, to wit, a Missouri nondriver's license in the names of Paul Anthony Jimenez, the production of the identification document was in or affected interstate or foreign commerce, and the offense involved the production of an identification document that is or appears to be a driver's license or personal identification card, in violation of 18 U.S.C. §§ 1028(a)(1), (b)(1) and 2.

9. Count Twelve of the Superseding Indictment charged that the defendants Elder Enrique Ordonez-Chanas and Brenda De La Cruz, aiding and abetting each other and others, both known and unknown to the grand jury, did knowingly and without lawful authority, produce identification documents, to wit, Missouri nondriver's licenses in the names of Daniel Thomas Corona, Kevin Adrian Diaz, Efrain Villarreal-Santos, the production of the identification documents was in or affected interstate or foreign commerce, and the offense involved the production of identification documents that are or appear to be driver's licenses or personal

identification cards, in violation of 18 U.S.C. §§ 1028(a)(1), (b)(1) and 2.

10. Count Thirteen of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly and without lawful authority, produce an identification document, to wit, a Missouri nondriver's license in the name of Jesse Baldera, the production of the identification document was in or affected interstate or foreign commerce, and the offense involved the production of an identification document that is or appears to be a driver's license or personal identification card, in violation of 18 U.S.C. §§ 1028(a)(1), (b)(1) and 2.

11. Count Fourteen of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly and without lawful authority, produce an identification document, to wit, a Missouri nondriver's license in the name of Rafael Joseph Mendez Alva III, the production of the identification document was in or affected interstate or foreign commerce, and the offense involved the production of an identification document that is or appears to be a driver's license or personal identification card, in violation of 18 U.S.C. §§ 1028(a)(1), (b)(1) and 2.

12. Count Fifteen of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly and without lawful authority, produce identification documents, to wit, Missouri nondriver's license in the names of Jasen Anthony Gill and Jesse Bosquez, the production of the identification documents were in or affected interstate or foreign commerce, and the offense involved the production of identification documents that are or appear to be driver's licenses or personal identification cards, in violation of 18 U.S.C. §§ 1028(a)(1), (b)(1) and 2.

13. Count Sixteen of the Superseding Indictment charged that the defendants Sherri E. Gutierrez and Shayna R. Vanvacter, aiding and abetting each other and others, both known and unknown to the grand jury, did knowingly and without lawful authority, produce an identification document, to wit, a Missouri nondriver's license in the name of Roel Aaron Garcia, the production of the identification was in or affected interstate or foreign commerce, and the offense involved the production of an identification document that is or appears to be a driver's license or personal identification card, in violation of 18 U.S.C. §§ 1028(a)(1), (b)(1) and 2.

14. Count Eighteen of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer without lawful authority, a means of identification of another person, to wit, a Texas birth certificate in the name of Steven Ray Saucedo, with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, to wit, false representation of United States citizenship in violation of 18 U.S.C. § 911, and the means of identification were transported in the mail in the course of the transfer, and the offense involved the transfer of identification documents that are or appear to be birth certificates, in violation of 18 U.S.C. § 1028(a)(7), (b)(1) and 2.

15. Count Nineteen of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer without lawful authority, a means of identification of another person, to wit, Texas birth certificates in the names of Tito Alaquinez, James Paul Coronado, Jason Flores, Branden James Garza, Adrian Maurice Ortegon and Elias Andrade III, with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of

Federal law, to wit, a false representation of United States citizenship in violation of 18 U.S.C. § 911, and the means of identification were transported in the mail in the course of transfer, and the offense involved the transfer of identification documents that are or appear to be birth certificates, in violation of 18 U.S.C. §§ 1028(a)(7), (b)(1) and 2.

16. Count Twenty of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown the grand jury, did knowingly transfer without lawful authority, a means of identification of another person, to wit, Texas birth certificates in the names of Juan Garses, Juan Gallardo, Jr., Anthony Cisneros, and Christopher Alexander Perez, an Alabama birth certificate in the name of Jeremy Wayne Vargas, and a California birth certificate in the name of Joe Louis Melendez, with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, to wit, false representation of United States citizenship in violation of 18 U.S.C. § 911, and the means of identification were transported in the mail in the course of the transfer, and the offense involved the transfer of identification documents that are or appear to be birth certificates, in violation of 18 U.S.C. §§ 1028(a)(7), (b)(1) and 2.

17. Count Twenty-One of the Superseding Indictment charged that the defendants Elder Enrique Ordonez-Chanas and Brenda De La Cruz, aiding and abetting each other and others, both known and unknown to the grand jury, did knowingly transfer without lawful authority, a means of identification of another person, to wit, Texas birth certificates in the names of Jesse Morales, Jr., John Rene Espinoza-Garcia, George Munoz, Jr., and Daniel Thomas Corona, and an Illinois birth certificate in the name of Adrian Garcia, with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of

Federal law, to wit, false representation of United States citizenship in violation of 18 U.S.C. § 911, and the means of identification were transported in the mail in the course of the transfer, and the offense involved the transfer of identification documents that are or appear to be birth certificates, in violation of 18 U.S.C. §§ 1028(a)(7), (b)(1) and 2.

18. Count Twenty-Two of the Superseding Indictment charged that defendants Elder Enrique Ordonez-Chanas and Brenda De La Cruz, aiding and abetting each other and others, both known and unknown to the grand jury, did knowingly transfer without lawful authority, a means of identification of another person, to wit, Texas birth certificates in the name of Jacob Ramos, Kevin Adrian Diaz, Gilbert Arrendondo, Rodolfo Guerra, Jr., Efrain Villarreal-Santos, John Eric Sanchez, and Billy Trinidad Ochoa, with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, to wit, false representation of United States citizenship in violation of 18 U.S.C. § 911, and the means of identification were transported in the mail in the course of the transfer, and the offense involved the transfer of identification documents that are or appear to be birth certificates, in violation of 18 U.S.C. § 1028(a)(7), (b)(1) and 2.

19. Count Twenty-Three of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer without lawful authority, a means of identification of another person, to wit, Texas birth certificates in the name of Rafael Joseph Mendez Alva III and Jesse Baldera, with the intent to commit or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, to wit, false representation of United States citizenship in violation of 18 U.S.C. § 911, and the means of identification were transported in the mail in

the course of the transfer, and the offense involved the transfer of identification documents that are or appear to be birth certificates, in violation of 18 U.S.C. §§ 1028(a)(7), (b)(1) and 2.

20. Count Twenty-Four of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer without lawful authority, a means of identification of another person, to wit, a Texas birth certificate in the name of Paul Anthony Jimenez, with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, to wit, false representation of United States citizenship in violation of 18 U.S.C. § 911, and the means of identification were transported in the mail in the course of the transfer, and the offense involved the transfer of identification documents that are or appear to be birth certificates, in violation of 18 U.S.C. §§ 1028(a)(7), (b)(1) and 2.

21. Count Twenty-Five of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer without lawful authority, a means of identification of another person, to wit, Texas birth certificates in the names of Jasen Anthony Gill and Jesse Bosquez, with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, to wit, false representation of United States citizenship in violation of 18 U.S.C. § 911, and the means of identification were transported in the mail in the course of transfer, and the offense involved the transfer of identification documents that are or appear to be birth certificates, in violation of 18 U.S.C. §§ 1028(a)(7), (b)(1) and 2.

22. Count Twenty-Seven of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the

grand jury, did knowingly possess a Social Security card with the intent to sell or alter it, to wit, a Social Security card in the name of Steven Ray Saucedo, for the purpose of obtaining anything of value from any person or for any other purpose, in violation of 42 U.S.C. § 408(a)(7)(C) and 18 U.S.C. § 2.

23. Count Twenty-Eight of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly possess Social Security cards with the intent to sell or alter the cards to wit, Social Security cards in the names of Tito Alaqueinez, James Paul Coronado, Jason Flores, Branden James Garza, Adrian Maurice Ortegon and Elias Andrade III, for the purpose of obtaining anything of value from any person or for any other purpose, in violation of 42 U.S.C. § 408(a)(7)(C) and 18 U.S.C. § 2.

24. Count Twenty-Nine of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly possess Social Security cards with the intent to sell or alter the cards, to wit, Social Security cards in the names of Juan Garses, Juan Gallardo, Jr., Anthony Cisneros, Christopher Alexander Perez, Jeremy Wayne Vargas, and Joe Louis Melendez, for the purpose of obtaining anything of value from any person or for any other purpose, in violation of 42 U.S.C. § 408(a)(7)(C) and 18 U.S.C. § 2.

25. Count Thirty of the Superseding Indictment charged that the defendants Elder Enrique Ordonez-Chanas and Brenda De La Cruz, aiding and abetting each other and others, both known and unknown to the grand jury, did knowingly possess Social Security cards with the intent to sell or alter the cards, to wit, Social Security cards in the names of Jesse Morales, Jr.,

John Rene Garcia, George Munoz, Jr., Daniel Thomas Corona, and Adrian Garcia, for the purpose of obtaining anything of value from any person or for any other purpose, in violation of 42 U.S.C. § 408(a)(7)(C) and 18 U.S.C. § 2.

26. Count Thirty-One of the Superseding Indictment charged that the defendants Elder Enrique Ordonez-Chanas and Brenda De La Cruz, aiding and abetting each other and others, both known and unknown to the grand jury, did knowingly possess Social Security cards with the intent to sell or alter the cards, to wit, Social Security cards in the names of Jacob Ramos, Kevin Adrian Diaz, Gilbert Arrendondo, Rodolfo Guerra, Jr., Efrain Villarreal-Santos, John Eric Sanchez, and Billy Trinidad Ochoa, for the purpose of obtaining anything of value from any person or for any other purpose, in violation of 42 U.S.C. § 408(a)(7)(C) and 18 U.S.C. § 2.

27. Count Thirty-Two of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly possess Social Security cards with the intent to sell or alter the cards, to wit, Social Security cards in the names of Rafael Joseph Mendez Alva III, and Jesse Baldera, for the purpose of obtaining anything of value from any person or for any other purpose, in violation of 42 U.S.C. § 408(a)(7)(C) and 18 U.S.C. § 2.

28. Count Thirty-Three of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly possess Social Security cards with the intent to sell or alter the cards, to wit, Social Security cards in the names of Jasen Anthony Gill and Jesse Bosquez, for the purpose of obtaining anything of value from any person or for any other purpose, in violation of

42 U.S.C. § 408(a)(7)(C) and 18 U.S.C. § 2.

29. Count Thirty-Four of the Superseding Indictment charged that Sherri E. Gutierrez, aiding and abetting others, both known and unknown to the grand jury, did knowingly possess a Social Security card with the intent to sell or alter it, to wit, a Social Security card in the name of Jeremiah Kriebs, for the purpose of obtaining anything of value from any person or for any other purpose, in violation of 42 U.S.C. § 408(a)(7)(C) and 18 U.S.C. § 2.

30. Count Thirty-Five of the Superseding Indictment charged that the defendant Sherri E. Gutierrez, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer, possess and use without lawful authority, a means of identification of another person, to wit, a Missouri nondriver's license in the name of Jennifer Sarah Gutierrez, during and in relation to a felony offense, that being the unlawful production of an identification document, in violation of 18 U.S.C. §§ 1028A and 2.

31. Count Thirty-Seven of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer, possess and use without lawful authority, a means of identification of another person, to wit, a Social Security card in the name of Steven Ray Saucedo, during and in relation to a felony offense, that being social security fraud, in violation of 18 U.S.C. §§ 1028A and 2.

32. Count Thirty-Eight of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer, possess and use without lawful authority, a means of identification of another person, to wit, Social Security cards in the names of Tito Alaquez,

James Paul Coronado, Jason Flores, Branden James Garza, Adrian Maurice Ortegon and Elias Andrade III, during and in relation to a felony offense, that being social security fraud, in violation of 18 U.S.C. §§ 1028A and 2.

33. Count Thirty-Nine of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer, possess and use without lawful authority, a means of identification of another person, to wit, Social Security cards in the names of Juan Garses, Juan Gallardo, Jr., Anthony Cisneros, Christopher Alexander Perez, Jeremy Wayne Vargas, and Joe Louis Melendez, during and in relation to a felony offense, that being social security fraud, in violation of 18 U.S.C. §§ 1028A and 2.

34. Count Forty of the Superseding Indictment charged that the defendants Elder Enrique Ordonez-Chanas and Brenda De La Cruz, aiding and abetting each other and others, both known and unknown to the grand jury, did knowingly transfer, possess and use without lawful authority, a means of identification of another person, to wit, Social Security cards in the names of Jesse Morales, Jr., John Rene Garcia, George Munoz, Jr., Daniel Thomas Corona, and Adrian Garcia, during and in relation to a felony offense, that being social security fraud, in violation of 18 U.S.C. §§ 1028A and 2.

35. Count Forty-One of the Superseding Indictment charged that the defendants Elder Enrique Ordonez-Chanas and Brenda De La Cruz, aiding and abetting each other and others, both known and unknown to the grand jury, did knowingly transfer, possess and use without lawful authority, a means of identification of another person, to wit, Social Security cards in the names of Jacob Ramos, Kevin Adrian Diaz, Gilbert Arrendondo, Rodolfo Guerra, Jr., Efrain Villarreal-

Santos, John Eric Sanchez, and Billy Trinidad Ochoa, during and in relation to a felony offense, that being social security fraud, in violation of 18 U.S.C. §§ 1028A and 2.

36. Count Forty-Two of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer, possess and use without lawful authority, a means of identification of another person, to wit, Social Security cards in the names of Rafael Joseph Mendez Alva III, and Jesse Baldera, during and in relation to a felony offense, that being a social security fraud, in violation of 18 U.S.C. §§ 1028A and 2.

37. Count Forty-Three of the Superseding Indictment charged that the defendant Elder Enrique Ordonez-Chanas, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer, possess and use without lawful authority, a means of identification of another person, to wit, Social Security cards in the names of Jasen Anthony Gill and Jesse Bosquez, during and in relation to a felony offense, that being social security fraud, in violation of 18 U.S.C. §§ 1028A and 2.

38. Count Forty-Four of the Superseding Indictment charged that the defendants Sherri E. Gutierrez and Shayna R. Vanvacter, aiding and abetting each other and others, both known and unknown to the grand jury, did knowingly transfer, possess and use without lawful authority, a means of identification of another person, to wit, a Missouri nondriver's license in the name of Roel Aaron Garcia, during and in relation to a felony offense, that being the unlawful production of an identification document, in violation of 18 U.S.C. §§ 1028A and 2.

39. The Forfeiture Allegation of the Superseding Indictment sought forfeiture, pursuant to 8 U.S.C. § 1324(b), of any conveyance, the gross proceeds, or any property traceable

to such conveyance or proceeds involved in the transportation of illegal aliens in violation of 8 U.S.C. § 1324(a); pursuant to 18 U.S.C. § 982(a)(6)(A) of any conveyance and any real or personal property that constitutes, is derived from, or is traceable to the proceeds obtained directly or indirectly, or was used or intended to be used to facilitate a violation of 8 U.S.C. § 1324(a), that is, transporting illegal aliens, pursuant to 18 U.S.C. §§ 1028(b)(5) and (g) of any personal property used or intended to be used in a violation of 18 U.S.C. § 1028, that is fraud related to false identification; and pursuant to 18 U.S.C. § 982(a)(2)(B) any property constituting, or derived from, proceeds obtained directly or indirectly as violation of 18 U.S.C. § 1028, including but not limited to:

\$28,981.67 in United States currency from Arvest Bank account number 61192957, Arvest Bank account number 42841395, and Arvest Bank account 42825052.<sup>1</sup>

The Forfeiture Allegation also sought a personal money judgment against the defendants for \$5,250,000.00 in United State currency, in that such sum in the aggregate, constitutes or is derived from proceeds traceable to offenses alleged in Counts One through Twenty-Five, pursuant to 8 U.S.C. § 1324(b), and 18 U.S.C. §§ 982(a)(6)(A), and 1028(b)(5). The defendants and their co-conspirators will be jointly and severally liable for the money judgment.

40. On April 8, 2013, the defendant Elder Enrique Ordonez-Chanas entered into a plea agreement with the United States in which he agreed to plead guilty to Counts One and Thirty-Seven of the Superseding Indictment charging violations of 18 U.S.C. §§ 371 and 1028A; and to forfeit to the United States the above-described property. The defendant also agreed to

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<sup>1</sup> The \$28,981.67 in United States currency seized from Arvest Bank account numbers 61192957, Arvest Bank account number 42841395, and Arvest Bank account number 42825052 were administratively forfeited by U.S. Customs and Border Protection on August 3, 2012.

forfeit to the United States \$1,701 in United States currency seized from the defendant at the time of his arrest. The defendant Elder Enrique Ordonez-Chanas also consented to the entry of a money judgment in the sum of \$5,250,000.00.

41. On April 10, 2013, the defendant Sherri E. Gutierrez entered into a plea agreement with the United States in which she agreed to plead guilty to Counts One and Thirty-Five of the Superseding Indictment charging violations of 18 U.S.C. §§ 371 and 1028A; and consented to the entry of a money judgment in the sum of \$5,250,000.00.

42. On April 29, 2013, the defendant Rafael Hernandez-Ortiz entered into a plea agreement with the United States in which he agreed to plead guilty to Count One of the Superseding Indictment charging violations of 18 U.S.C. § 371; and consented to the entry of a money judgment that will be determined by the Court at sentencing, but not to exceed \$5,250,000.00.

43. On April 29, 2013, the defendant Shayna R. Vanvacter entered into a plea agreement with the United States in which she agreed to plead guilty to Count One of the Superseding Indictment charging violations of 18 U.S.C. § 371; and consented to the entry of a money judgment in the sum of \$5,250,000.00.

44. On May 14, 2013, the defendant Melissa L. Scallions entered into a plea agreement with the United States in which she agreed to plead guilty to Count One of the Superseding Indictment charging violations of 18 U.S.C. § 371; and consented to the entry of a money judgment in the sum of \$5,250,000.00.

45. On May 14, 2013, the defendant Brenda De La Cruz entered into a plea agreement with the United States in which she agreed to plead guilty to Counts One and Forty of the

Superseding Indictment charging violations of 18 U.S.C. §§ 371 and 1028A; and consented to the entry of a money judgment that will be determined by the Court at sentencing, but not to exceed \$5,250,000.00.

46. The Court's jurisdiction in this matter is founded upon 8 U.S.C. § 1324(b), 18 U.S.C. §§ 982(6)(A), and 1028(b)(5), which provides that:

Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a) of this section, the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

18 U.S.C. § 982(6)(A) provides that:

The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, of section...1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States regardless of any provision of State law-

- (1) any conveyance, including any vessel, vehicle, or aircraft used in the commission of the offense of which the person is convicted; and
- (2) any property real or personal, that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commissions of the offense of which the person is convicted; or
- (3) that is used to facilitate, or is tended to be used to facilitate, the commission of the offense of which the person is convicted.

18 U.S.C. § 1028(b)(5) provides that:

In the case of any offense under subsection forfeiture to the United States of any personal property used or intended to be used to commit the offense.

47. In discussing 21 U.S.C. § 853<sup>2</sup> and the related provision for forfeiture under 18

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<sup>2</sup>The procedural provisions of 21 U.S.C. § 853 are made applicable to actions brought pursuant to 18 U.S.C. § 982 by 18 U.S.C. § 982(8)(b)(1).

U.S.C. § 1963 (RICO), the Senate Report notes that this language "emphasizes the mandatory nature of criminal forfeiture, requiring the Court to order forfeiture in addition to any other penalty imposed." S. Rep. No. 225 98th Cong., 2d Sess. 200, 211, reprinted in 1984 U.S. Code Cong. & Ad. News 3383, 3394. Thus, according to the relevant statute, the Court must enter a Preliminary Order of Forfeiture in favor of the United States and against the defendant's interests in property found to have been acquired, maintained, or used in violation of the underlying forfeiture statute. Alexander v. United States, 509 U.S. 544, 562-563 (1993); United States v. Monsanto, 491 U.S. 600, 606-607 (1989); United States v. Carpenter, 317 F. 3d 618, 626 (6<sup>th</sup> Cir. 2003); United States v. Hill, 167 F.3d 1055, 1073-74 (6<sup>th</sup> Cir. 1999); United States v. Bieri, 68 F.3d 232, 235 (8<sup>th</sup> Cir. 1995).

48. The forfeiture of a certain proceeds dollar amount, as here, is considered an in personam money judgment against the defendant that can be satisfied from any property held by or for the benefit of the defendant. See United States v. Huber, 404 F. 3d 1047, 1056(8th Cir. 2005); United States v. Baker, 227 F.3d 955, 970 (7<sup>th</sup> Cir. 2000); United States v. Candelaria-Silva, 166 F. 3d 19, 42 (1<sup>st</sup> Cir. 1999); United States v. Simmons, 154 F. 3d 765, 769-770 (8<sup>th</sup> cir. 1998); United States v. Robilotto, 828 F.2d 940 (2d Cir. 1987); United States v. Navarro-Ordas, 770 F.2d 959, 970 (11th Cir. 1985); United States v. Conner, 752 F.2d 566 (11th Cir. 1985); United States v. Ginsburg, 773 F.2d 798 (7th Cir. 1985).

49. Rule 32.2(b)(1)(A) and (B), 32.2(b)(2)(A) and (B), and 32.2(b)(3), Federal Rules of Criminal Procedure, provide that:

(b)(1)(A) As soon as practicable after a verdict or finding of guilty, or after a plea of guilty or *nolo contendere* is accepted, on any count in an indictment or information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the

applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense. If the government seeks a personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay.

(b)(1)(B) The court's determination may be based on evidence already in the record, including any written plea agreement, and any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable. If the forfeiture is contested, on either party's request the court must conduct a hearing after the verdict or finding of guilty.

(b)(2)(A) If the court finds that property is subject to forfeiture, it shall promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment, directing the forfeiture of specific property, and directing the forfeiture of any substitute property if the government has met the statutory criteria. The court must enter the order without regard to any third party's interest in the property. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

(b)(2)(B) Unless doing so is impractical, the court must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant under Rule 32.2(b)(4).

(b)(2)(C) If, before sentencing, the court cannot identify all the specific property subject to forfeiture or calculate the total amount of the money judgment, the court may enter a forfeiture order that:

- (i) lists any identified property;
- (ii) describes other property in general terms; and
- (iii) states that the order will be amended under Rule 32.2(e)(1) when additional specific property is identified or the amount of money judgment has been calculated.

(b)(3) The entry of a preliminary order of forfeiture authorizes the Attorney General (or a designee) to seize the specific property subject to forfeiture; to conduct any discovery the court considers proper in identifying, locating, or disposing of the property; and to commence proceedings that comply with any statutes governing third-party rights. The court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.

50. Based upon the evidence set forth in the plea agreements, the United States has established the requisite nexus between the property and the offense to which the defendants have plead guilty. Accordingly, that property is subject to forfeiture to the United States pursuant to 18 U.S.C. § 982(6)(a) and 1028(b)(5). Also, based upon the evidence set forth in the plea agreements, the Government has shown that the defendants Elder Enrique Ordonez-Chanas, Sherri E. Gutierrez, Rafael Hernandez-Ortiz, Shayna R. Vanvacter, and Melissa L. Scallions received \$5,250,000.00 in United States currency, as a result of conspiracy to transport illegal aliens, to unlawfully produce identification documents, and commit social security fraud. The amount of money derived from the conspiracy to transport illegal aliens, to unlawfully produce identification documents, and to unlawfully transfer the means of identification of another person, and to commit social security fraud for which the defendants Rafael Hernandez-Ortiz and Brenda De La Cruz have been convicted will be determined at sentencing. Therefore, the United States has established the requisite nexus for a money judgment in that amount against the defendants Sherri E. Gutierrez, Brenda De La Cruz, Elder Enrique Ordonez-Chanas, Rafael Hernandez-Ortiz, Shayna R. Vanvacter, and Melissa L. Scallions.

51. Upon the issuance of a Preliminary Order of Forfeiture and pursuant to 21 U.S.C. § 853, the United States will publish for at least 30 consecutive days on the government's official web site, [www.forfeiture.gov](http://www.forfeiture.gov), notice of the Preliminary Order of Forfeiture, notice of the United States intent to dispose of the property in such manner as the Secretary of Treasury may direct and notice that any person, other than the defendants Sherri E. Gutierrez, Brenda De La Cruz, Elder Enrique Ordonez-Chanas, Rafael Hernandez-Ortiz, Shayna R. Vanvacter, and Melissa L. Scallions having or claiming a legal interest in the property must file a petition with the Court

(and serve a copy on Jess Michaelson, Assistant United States Attorney) within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the property, shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title or interest in the forfeited property and any additional facts supporting the petitioner's claim and the relief sought. The United States may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the Preliminary Order of Forfeiture, as a substitute for published notice as to those persons so notified.

52. In accordance with the provisions of 21 U.S.C. § 853 and Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, the United States requests that it be permitted to undertake whatever discovery is necessary to identify, locate, or dispose of property subject to forfeiture, or substitute assets for such property.

WHEREFORE, the United States respectfully requests that this Court enter a Preliminary Order of Forfeiture forfeiting to the United States the \$1,701 in United States currency and order the Department of Treasury to seize and maintain custody of the forfeited property and dispose of it in accordance with the law.

The United States further request the Court to enter an order directing a money judgment against the defendants Sherri E. Gutierrez, Elder Enrique Ordonez-Chanas, Shayna R. Vanvacter and Melissa L. Scallions in the amount of \$5,250,000.00, and a money judgment against Rafael Hernandez-Ortiz and Brenda De La Cruz that will be determined at sentencing. They will be jointly and severally liable

Respectfully submitted,

Tammy Dickinson  
United States Attorney

By

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2013, the foregoing motion was electronically filed with the Clerk of the Court using the CM/ECF system for electronic delivery to all counsel of record.

/s/ Jess E. Michaelsen  
Jess E. Michaelsen  
Assistant United States Attorney