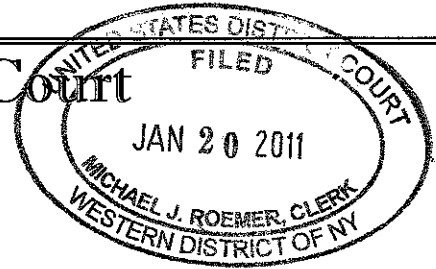


**United States District Court**  
for the  
Western District of New York



United States of America

v.

GARY HYDE

*Defendant*

Case No. 11-MJ-

505

**CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about March to September 2008 inclusive in the county of Monroe in the Western District of New York, and elsewhere, the defendant violated 18 U.S.C. §§ 545 and 2, an offense described as follows: the defendant, knowingly aided and abetted and willfully caused the importation in the United States of Chinese-manufactured AK rifle drum magazines, contrary to law.

This criminal complaint is based on these facts:

SEE ATTACHED AFFIDAVIT

☐ Continued on the attached sheet.

*Complainant's signature*

MARK HAGGERTY, Special Agent, ICE

*Printed name and title*

Sworn to before me and signed in my presence.

Date: January 20, 2011

City and State: Rochester, New York

*Judge's signature*

Hon. Jonathan W. Feldman, U.S. Magistrate Judge

*Printed name and title*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

---

**UNITED STATES OF AMERICA,**

11-MJ- 505

**-v-**

**AFFIDAVIT**

**GARY HYDE,**

**Defendant.**

---

**STATE OF NEW YORK    )  
COUNTY OF MONROE    ) SS:  
CITY OF ROCHESTER    )**

I, Mark Haggerty, affirm to the following facts:

1. I am a Special Agent with United States Homeland Security Investigations (hereinafter referred to as HSI) and its predecessor United States Immigration and Customs Enforcement (ICE), and have been so employed for approximately two and one half (2 ½) years. As a part of my duties as a Special Agent with HSI and formerly ICE, I investigate crimes involving counter proliferation, violations of export control laws and other customs violations.

2. Your affiant is the ICE HSI agent involved in the joint investigation by ICE and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) of Gary HYDE and others for violations of Federal importation laws. This affidavit is submitted in support of a Criminal Complaint charging Gary HYDE with violations of Title 18, United States Code, Sections 545

(Smuggling Goods Into the United States) and 2 (Aiding and Abetting), by aiding and abetting and willfully causing the fraudulent and knowing importation of Chinese-manufactured AK 47 rifle drum magazines contrary to law. I have not included herein each and every fact known to be concerning this investigation. I have set forth only those facts that I believe are necessary to support a criminal complaint and cause the issuance of a warrant for arrest charging Gary HYDE with the aforementioned violations.

*Applicable Criminal Statute and Regulations*

3. This investigation concerns alleged violations of Title 18, United States Code, Sections 545. This section makes it an offense to fraudulently or knowingly import or bring into the United States, any merchandise contrary to law, or receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law.

4. Title 27, Code of Federal Regulations, Section 447.42(a) (I) (iv) (A) provides that the ATF Form 6--Part 1 permit application to import into the United States an article on the U.S. Munitions Import List must contain the name and address of the manufacturer of the defense article to be imported.

5. Title 27, Code of Federal Regulations, Section 447.61(c) makes it an offense to willfully violate any provision of Part 447 of Title 27 of the Code of Federal Regulations, which Part

relates to the importation of arms, ammunition and implements of war.

6. Title 27, Code of Federal Regulations, Section 447.62 makes it an offense, in a permit application, to willfully make any untrue statement of a material fact or to fail to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

7. Title 27, Code of Federal Regulations, Section 447.63 makes it an offense to knowingly import into the United States contrary to law any article on the U.S. Munitions Import List.

#### Case Background

8. Section 38 of the Arms Export Control Act of 1976 ("AECA") authorizes the President of the United States, in furtherance of world peace and the security and foreign policy of the United States, to control the importation of items which have been designated as defense articles and to promulgate regulations for the import of such articles. 22 U.S.C. § 2778 (a) (1). The statute also provides that no designated defense articles may be imported without a license issued in accordance with the AECA and regulations issued there under. 22 U.S.C. § 2778(b) (2).

Authority under Section 38 has, in turn, been delegated to the Secretaries of State and Defense and the Attorney General. The delegation grants the Attorney General primary responsibility for issuing and administering permanent import controls of defense articles and the Attorney General has delegated implementation authority to the ATF.<sup>1</sup> See Exec. Order No. 11,958, 1977 WL

---

<sup>1</sup>Effective January 24, 2003, ATF was moved from the Department of the Treasury to the Department of Justice by the Homeland Security Act of 2002.

23589 (Pres.Exec.Order), 42 CFR4311, as amended by Exec. Order No. 13,284, 2003WL 24226260 (D.O.J.), 68 FR 4075; Appleton v. United States, 180 F.Supp.2d 177, 179 (D.D.C. 2002); B-West Imports, Inc. v. United States, 75 F.3d 633, 636 (Fed. Cir. 1996). The ATF regulations issued under the authority of Section 38 of the AECA that are concerned with the importation of arms, ammunition and implements of war are found at Part 447 of Title 27 of the Code of Federal Regulations.

9. Under those ATF regulations, the U.S. Munitions Import List ("List") enumerates articles subject to import controls. 27 C.F.R. § 447.21. Among the articles on the List are "Category I-Firearms" items, which include "Automatic firearms and all components and parts for such firearms to caliber .50 inclusive." According to ATF's Firearms Technology Branch Firearms Enforcement Officer Richard Vasquez, this category includes AK-47 rifle drum magazines.

10. The ATF regulations also provide that persons seeking to import into the United States defense articles on the List must obtain a permit from the agency through ATF's Firearms and Explosives Imports Branch prior to the actual importation of the item. See 27 C.F.R. § 447.41(a). ATF requires prospective importers of such defense articles, including AK-47 rifle drum magazines, to apply for a permit by completing and filing an ATF Form 6-Part I ("Form 6"), entitled "Application and Permit for Importation of Firearms Ammunition and Implements of War," which includes a certification by the applicant that states: "Under the penalties provided by law, I declare that I have examined this application, including the documents submitted in support of it, and, to the best of my knowledge and belief, it is true, correct, and complete." 27

C.F.R. § 447.42(a). Form 6 requires an applicant, among other things, to provide the name and address of the manufacturer of the article to be imported. The items listed on the Form 6 are scrutinized by ATF to determine if they originate from a country whose defense articles are banned from importation. When a permit is granted by ATF, the importer must present an ATF Form 6A, "Release and Receipt of Imported Firearms, Ammunition and Implements of War," to U.S. Department of Homeland Security, U.S. Customs and Border Protection ("CBP") officials to secure release of the imported product from CBP custody. See 27 C.F.R. § 447.45(a). Form 6A also requires the importer, among other things, to provide the name and country of the manufacturer of the defense article being imported.

11. Your affiant knows that China is one of the countries on the State Department's "proscribed list," a list of countries as to which it is "the policy of the United States to deny licenses and other approvals" for the importation of defense articles originating there. 27 C.F.R. § 447.52; 22 C.F.R. § 126.1(a). Accordingly, it is illegal to fraudulently or knowingly import, or caused to be imported, the Chinese-manufactured AK-47 rifle drum magazines central to this case.

Case Synopsis

12. Based on the evidence and information described below, your affiant was made aware by Special Agent John Esau, an agent from Homeland Security Investigations, Immigration and Customs Enforcement, who is currently involved in this investigation, that in 2007 Paul RESTORICK and Mil-Tec Marketing was contracted by a U.S. based company, General Defense

Corporation, to provide various arms, munitions, and firearms accessories for a U.S. Department of Defense contract. Mil-Tec Marketing was an international arms, ammunition, and accessories dealer located in Kent, United Kingdom. Among the items required by the contract were approximately 5,752 75-round AK-47 drum magazines. Throughout 2007, Paul RESTORICK enlisted the help of Karl KLEBER and Gary HYDE. Karl KLEBER and Gary HYDE traveled to China to purchase AK 47 drum magazines on behalf of Paul RESTORICK. The investigation has revealed that Karl KLEBER owns a 38% share in JAGO Ltd., an international arms, munitions, and firearms accessory dealer based in York, United Kingdom, while Gary HYDE and John Smith own 32% and 30%, respectively. Gary HYDE also runs York Guns, a United Kingdom-based international arms, munitions, and firearms accessory dealer. Karl KLEBER also runs TRANSARMS Handelsgesellschaft, MBH and Co. KG, a international arms, munitions, and firearms accessory dealer based in Worms, Germany. The investigation has also revealed that Karl KLEBER and Gary HYDE are also "Directors" of XMilitaria Ltd.

13. The investigation has revealed that Paul RESTORICK instructed Karl KLEBER and Gary HYDE to hide the country of origin of the drum magazines and to place false markings on them. When Paul RESTORICK attempted to provide samples of the drum magazines to representatives of General Defense Corporation prior to the delivery of the full shipment, the drum magazines were refused because their true country of origin was deemed suspicious. Karl KLEBER subsequently shipped the drum magazines to TRANSARMS in Germany and sold them to American Tactical Import (ATI), Rochester, New York. Karl KLEBER knowingly provided false information to officials at ATI which caused them to claim to the U.S. Government that the

country of origin for the drum magazines was Bulgaria. Following the sale of the drum magazines, Karl KLEBER distributed proceeds of the sale to Paul RESTORICK and/or Gary HYDE.

Case Investigation

14. In approximately December 2008, Special Agent Robin received information from ATF Industry Operations Inspector (IOI) Wilkins concerning the alleged importation of approximately 5,760 Chinese-manufactured AK-47 rifle drum magazines into Rochester, New York by ATI, a Federal Firearms Licensee (FFL). This occurred in August 2008, and the drum magazines were sold by TRANSARMS, an international arms broker company based in Germany, and were claimed by TRANSARMS and ATI to be manufactured by NITI (Bulgarian acronym for Science, Research and Technology Engineering) in Bulgaria. Subsequently, your affiant is aware that ATF Special Agent Dixon Robin spoke with ATF FTB Firearms Enforcement Officer (FEO) Richard Vasquez. Special Agent Robin learned that FEO Vasquez spoke with an official at Arsenal Inc., a Bulgarian firearms company with operations in both Bulgaria and the United States. FEO Vasquez learned that no 75 round AK-47 rifle drum magazines were ever manufactured in Bulgaria.

15. Your affiant is aware that Special Agent Robin has reviewed public records and ATF licensing information that show that Amchar Wholesale Inc. (hereafter referred to as "Amchar"), located at 100 Airpark Drive, Rochester, New York, 14624, is a current Federal Firearms Licensee (FFL). The company holds two licenses, one for the dealing of firearms and the other



for the manufacture of firearms and is owned and operated by Anthony DiChario. According to public records and research within ATF licensing records, your affiant has determined that American Tactical Imports (hereinafter referred to as ATI) is co-located with Amchar and also owned and operated by Anthony DiChario. ATI holds a license for the importation of firearms.

16. Your affiant has learned that on or about January 22, 2009, Special Agent Robin interviewed Amchar and ATI owner Anthony DiChario and Accounts Manager Susan Hurley regarding the drum magazine importation. DiChario and Hurley explained that ATI had purchased approximately 5,760 AK-47 drum magazines from TRANSARMS in August 2008. DiChario stated that he brokered the deal with TRANSARMS when they met at a trade show. DiChario stated that he believed he was purchasing Bulgarian-made AK-47 drum magazines. DiChario stated that he questioned the TRANSARMS representative concerning the origin of the magazines and was assured that they were not manufactured in China. DiChario stated that he was aware of the ban on importation of Chinese AK-47 drum magazines, and that he never knowingly violated this ban. DiChario stated that he was assured that the magazines ATI/Amchar was purchasing were manufactured in Bulgaria, and was given documentation containing the factory name and address where they were made. He pointed out on the paperwork later provided to Special Agent Robin that the name of the company that supposedly manufactured the magazines in question was NITI and that it was located in Kasnalak, Bulgaria.

17. DiChario further stated that the "Bulgarian-manufactured" magazines had a special stamp on them, a circle enclosing the numeral "10". During the interview, DiChario allowed Special

Agent Robin to examine one of the "Bulgarian" magazines. DiChario stated that he only had 49 left in stock, and that these were set aside for customers who had ordered them. During the interview, DiChario and Hurley provided copies of documents related to ATI's purchase of the magazines, which included copies of:

- a. TRANSARMS Bill of Lading dated August 20, 2008, listing "NITI AK47 DRUM MAGAZINES" and showing the importation of 45 cases of drum magazines into the United States from Hamburg, Germany;
- b. ATF Form 6, Application and Permit for Importation of Firearms Ammunition and Implements of War, dated April 10, 2008, completed by ATI (and approved by ATF on April 10, 2008) and requesting permission to import 10,000 drum magazines;
- c. ATF Form 6a, Release and Receipt of Imported Firearms, Ammunition and Implements of War, undated, listing 5,760 drum magazines under "NITI, 762x39 75rd Drum Magazines Pre-Ban unmarked 1992-1993, Category I(b)";
- d. TRANSARMS invoice, confirmation letter, and packing list regarding the magazines, dated August 12, 2008, detailing the sale of 5,760 AK-47 rifle drum magazines to ATI at \$60 each for a total of \$345,600. The confirmation letter states that ATI representative Guy Tinsley is witnessing the loading of the drum magazines into a container.

18. During the investigation, your affiant is aware that Special Agent Robin reviewed the above-described ATF Form 6, Application and Permit for Importation of Firearms Ammunition and Implements of War, number 08-02298, which was completed and submitted by ATI regarding the importation of the drum magazines from TRANSARMS in Germany. It shows "NITI, Kasnalak/Bulgaria" as the name and address of the manufacturer of the drum magazines. Records of U.S. Customs and Border Protection show that the drum magazines in question arrived into the Port of New York on September 1, 2008.

*The General Defense Corporation Lawsuit*

19. In July 2006, General Defense Corporation (GDC), a U.S. Department of Defense contractor providing firearms and accessories to fulfill contracts, was awarded a contract with Taos Industries, Madison, Alabama, to supply certain military weapons, parts, products and equipment. The list of goods to be provided included 5,052 AK-47 rifle drum magazines. In order to fulfill its contractual obligations with Taos Industries, on or about April 3, 2007, GDC subcontracted with Paul RESTORICK and Mil-Tec to obtain certain supplies related to the contract, including but not limited to, 5,752 75-round drum magazines. In June 2007, GDC sent an \$800,000 down payment to Paul RESTORICK and Mil-Tec in order to purchase the supplies for the subcontract. Paul RESTORICK and Mil-Tec were able to fulfill certain aspects of the contract with GDC. However, Paul RESTORICK and Mil-Tec were unable to supply the drum magazine portion of their contract, and only provided tripods as called for in the contract. Eventually, Taos cancelled its contract with GDC based on its failure to provide the promised products. On February 14, 2008, GDC also filed a lawsuit against Paul RESTORICK and Mil-Tec within the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, claiming breach of contract.

*The HMRC Investigation of Gary HYDE, York Guns and JAGO Ltd.*

20. Your affiant is aware that in 2010, Special Agent John Esau and Special Agent Robin learned that the United Kingdom's HMRC had initiated an investigation of Gary HYDE in 2007

and, in December 2007, had executed searches of JAGO, Ltd., York Guns, and Gary HYDE's residence.

21. Your affiant is aware that, in November of 2010, Special Agent Esau, along with Special Agent Robin, met with HMRC investigators in the United Kingdom in order to review evidence gathered in their investigation of Gary HYDE, JAGO, and York Guns. Special Agents Esau and Robin reviewed documents and electronic mailings which contained discussions that, in whole or in part, referenced the involvement of Paul RESTORICK, Gary HYDE, and Karl KLEBER in the purchase of Chinese-manufactured drum magazines and the intentional concealment of China as the drum magazine's true country of origin. The evidence reviewed by Special Agent Esau and Special Agent Robin showed that, during 2007, Paul RESTORICK, recruited Gary HYDE and Karl KLEBER to travel to China to have Gary HYDE and Karl KLEBER purchase drum magazines on his behalf and add false markings to conceal the true country of origin. Special Agent Esau and Special Agent Robin reviewed various communications from throughout 2007 wherein Paul RESTORICK impressed upon Gary HYDE that the drum magazines must not "smell of sweet and sour" or of "special fried", thus indicating his knowledge that he was not to provide Chinese-manufactured firearms accessories to GDC. At one point, a small sample of drum magazines was shipped to GDC representatives in Romania.

22. Specifically, your affiant is aware that Special Agent Esau and Special Agent Robin reviewed several email communications from February of 2007 from Paul RESTORICK to Gary HYDE wherein the subject matter of "AK drum magazines" is discussed as it pertains to

obtaining prices, as well requesting that no markings appear on the requested material or packaging. Further, the documents included several email communications from February of 2007 between Gary HYDE and Yin Weiguo discussing the prices of the "AK drum mags" as well as requests from YinWeoguo for information regarding "shipping marks."

23. Further, your affiant is aware that Special Agent Esau and Special Agent Robin reviewed a copy of an email communication from Paul RESTORICK to Gary HYDE, dated April 20, 2007, discussing Gary HYDE bringing back a sample of the drum magazine and Paul RESTORICK stating that, "That is the item that worries me more as it may smell of sweet & sour." Further, your affiant is aware that Special Agent Esau and Special Agent Robin reviewed a copy of an email communication from Paul RESTORICK to Gary HYDE, dated June 20, 2007, discussing Paul RESTORICK authorizing Gary HYDE to go ahead because he had received a deposit. Paul RESTORICK further stated, "Please DOUBLE CHECK that they know that this must NOT smell of special fried and check also the markings that you have told them to stamp on them." Paul RESTORICK further requested that Gary HYDE bring back a sample of the drum magazine with Bulgarian markings on it because he could sell a container load if he did.

24. Further, your affiant is aware that Special Agent Esau and Special Agent Robin reviewed copies of invoices and packing lists from China Xinshidai Company, a broker of firearms and firearms accessories located in Beijing, China, dated November 1, 2007, detailing the sale and delivery of 1,000 AK 47 75 round drum magazines to JAGO Ltd. Further, your affiant is aware that Special Agent Esau and Special Agent Robin reviewed copies of documents

detailing various trips to China during the time period from March 17, 2006 through March 25, 2008 by Karl Kleber, as well as copies of business cards detailing Yin Wei Guo as Manager of China Jing An Import & Export Corporation, Beijing, China, and Wang Fei as Deputy Manager of China Jing An Import & Export Corporation, Beijing, China.

*The BKA Investigation of Karl KLEBER and TRANSARMS*

25. Your affiant has learned that in 2009, Special Agent Robin and ICE Special Agent Mark Reimann were notified that the BKA had initiated an investigation of Karl KLEBER and TRANSARMS in 2008, and had concluded their investigation with the execution of searches of TRANSARMS and Karl KLEBER's residences in Germany and Portugal, and interviews with Karl KLEBER and his employees. During the investigation, the BKA had conducted a court-sanctioned wire tap of Karl KLEBER's cellular telephone and the main business line to TRANSARM.

26. In April 2010, BKA investigators provided Special Agents Robin and Reimann with access to intercepted and recorded telephone calls and electronic mail conducted between Karl KLEBER and/or Karl KLEBER's employees, as well as other individuals. The review of this evidence showed that between March 2008 and March 2009, TRANSARMS and/or Karl KLEBER were involved in, minimally, two purchases of several thousand Chinese-manufactured drum magazines, and the attempted third purchase/shipment of Chinese drum magazines. It is your affiant's opinion that, based on the review of evidence in this case, these shipments were

made from China eventually to Germany, and the first shipment of Chinese drum magazines was knowingly exported from Germany to ATI in the United States (as described above). The evidence indicates that Karl KLEBER knowingly caused ATI officials to falsely declare on ATF F 6 forms that the Chinese-manufactured drum magazines were of Bulgarian origin.

*Evidence of Chinese Manufactured Drum Magazines Shipped to ATI in August 2008*

27. Specifically, your affiant is aware that Special Agent Robin and Special Agent Reimann reviewed the documents and communications (as seized by the BKA) which revealed the shipment of approximately 5000 AK-47 drum magazines from China Xinshidai Company, Beijing, China, to TRANSARMS, on or about March 5, 2008, and listing the handling agent as JAGO Ltd. The review of the evidence also revealed communications between ATI and TRANSARMS in April, May and June of 2008 wherein the parties discuss the proposed shipment of approximately 10,000 drum magazines from TRANSARMS to ATI, as well as communications containing End Use Certifications for the ammunition and drum magazines to be purchased from TRANSARMS. The information also involved recorded conversations between Karl KLEBER Paul RESTORICK, Guy Tinsley, an ATI representative in Europe, and others which occurred at various points in time between June and August of 2008, wherein they discuss the shipment and delivery of approximately 5000 drum magazines, as well as the future shipment of more drum magazines. The communication also involved discussions regarding costs incurred by JAGO, Ltd. for delivery of the drum magazines, as well as the involvement of Gary HYDE, Karl KLEBER and Paul RESTORICK in the deal. The evidence included copies of

TRANSARMS requests to the German government, dated May 5 and June 18, 2008, to export drum magazines to ATI. The evidence reviewed by Special Agent Reimann and Special Agent Robin also included a recorded conversation, dated October 7, 2008, between Gary HYDE and Karl KLEBER discussing the need to assess the profits made by the drum magazine sale. The evidence reviewed by Special Agent Reimann and Special Agent Robin also contained a copy of email, dated August 27, 2008, between Paul RESTORICK and Karl KLEBER discussing a drum magazine sale to Amchar, the General Defense Corporation lawsuit, and sending a facsimile of the ATI/Amchar invoice to Gary HYDE and Paul RESTORICK. Finally, the evidence by Special Agent Reimann and Special Agent Robin included a copy of email, dated October 17, 2008, from Karl KLEBER to Gary HYDE requesting copies of invoices from JAGO. Ltd. on the 5,760 drum magazine sale in order to calculate Paul RESTORICK's portion of the profit from the sale.

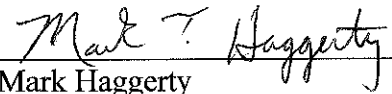
28. During the review of evidence, BKA investigators also informed Special Agents Robin and Reimann that, according to their research of German customs records, TRANSARMS had not imported any products from any entity in Bulgaria since 2008. The BKA investigators also reported that according to their investigation, NITI made no drum magazine deliveries to TRANSARMS between 2004 and 2008.

29. BKA investigators explained that at no time during the execution of the searches conducted at TRANSARMS and other locations did they find any evidence of stores of drum magazines and/or production facilities for drum magazines.

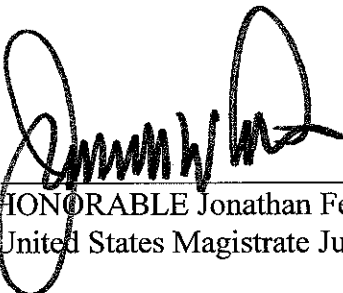


30. To date, your affiant has not been made aware of any evidence of TRANSARMS purchasing drum magazines from any country other than China.

31. Based on the above information, I submit there is probable cause to believe that on or about March to September 2008 inclusive, in the Western District of New York, and elsewhere, Gary HYDE were in violation of Title 18 United States Code, Sections 545 and 2 by knowingly aiding an abetting and willfully causing the importation into the United States of Chinese-manufactured AK 47 rifle drum magazines, contrary to law, that is, in violation of Title 27, Code of Federal Regulations, Sections 447.42(a)(1)(iv)(A), 447.61(c), 447.62 and 447.63.

  
\_\_\_\_\_  
Mark Haggerty  
Special Agent  
Immigration and Customs Enforcement, Homeland  
Security Investigations

Sworn to and subscribed to  
before me this **20** day of  
January, 2011 at Rochester, NY.

  
\_\_\_\_\_  
HONORABLE Jonathan Feldman  
United States Magistrate Judge