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U.S. DISTRICT COURT
SAN JUAN, PR

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

2018 SEP -6 PM 4:16

UNITED STATES OF AMERICA,

v.

Abel NAZARIO-QUINONES,
Defendant.

INDICTMENT

CRIMINAL NO. 18 - 574 (PAD)

VIOLATIONS:

Title 18 U.S.C. § 1001(a)(2)

Title 18 U.S.C. § 1343

(Thirty-nine Counts)

THE GRAND JURY CHARGES:

GENERAL ALLEGATIONS

At all times material to this Indictment, with all dates being approximate and all date ranges both approximate and inclusive:

Fair Labor Standards Act (FLSA)

1. The United States Department of Labor (DOL) was an agency and department of the United States responsible for enforcing federal laws, including minimum wage, overtime pay and recordkeeping under the Fair Labor Standards Act of 1938, as amended (FLSA). 29 U.S.C. § 201, et seq.

2. Section 11(a) of the FLSA empowers the Secretary to investigate the wages, hours, and practices of employment, to enter and inspect such places of employment, to question such employees, and investigate such facts, conditions, practices, or matters as may be deemed necessary or appropriate to determine whether any person has violated any provision of the FLSA. 29 U.S.C. §211(a).

3. Section 16(c) of the FLSA authorizes the Secretary to supervise the payment of unpaid minimum wages or the unpaid overtime compensation owing to any employee or

employees under Section Six or Seven of the FLSA and to bring an action in court to recover such amounts and an equal amount of liquidated damages. 29 U.S.C. §216(c).

4. The defendant, Abel Nazario-Quinones was first elected Mayor of Yauco, a small municipality in Southwest Puerto Rico, in 2000. He was subsequently re-elected in 2004, 2008, and 2012, serving sixteen consecutive years.

5. In May 2013, during a routine audit of the Municipality's records, the Puerto Rico Comptroller's Office discovered that municipal employees were required to work two (2) voluntary hours per day. This issue was referred to the DOL Wage and Hour Division (WHD), which determined that this voluntary work requirement was a violation of the FLSA.

6. On February 13, 2015, Nazario-Quinones as Mayor of Yauco, and an employer, signed a Back Wage Compliance Payment Agreement (Agreement) with the DOL WHD in which he agreed to pay back wages totaling \$588,961.43 to 177 municipal employees for the period of August 1, 2012 to July 31, 2014 according to a predetermined schedule listing each employee who was owed wages, the amount they were owed, and the date by which each employee had to be paid. The Agreement allowed the Municipality until February 2018 to complete all the payments.

7. The DOL WHD explained to Defendant that once he paid the back wages he needed to: (a) have each paid employee a DOL Form WH-58 entitled "Receipt for Payment of Back Wages, Liquidated Damages, Employment Benefits, or Other Compensation" to certify the receipt of the amounts owed to the employee, and (b) return the duly executed WH-58 Forms to the DOL WHD.

8. In the WH-58 Forms, the employees were to acknowledge, through their signature, the receipt of the unpaid wages under the FLSA pursuant to the Agreement. The WH-58 also required Defendant to sign an "Employer's Certification to Wage and Hours Division of the

Department of Labor” on behalf of the Municipality of Yauco where he certified that he completed the payment detailed in the form to the employee there identified and further certified that he has not and will not retaliate against the employee for accepting the payment.

9. Each WH-58 contained the following warning below the “Employer’s Certification to Wage and Hours Division of the Department of Labor” and the employer’s signature:

PENALTIES ... ARE PRESCRIBED FOR A FALSE STATEMENT OR MISREPRESENTATION UNDER U.S. CODE, TITLE 18, SEC. 1001.

10. In August 2016, during their next routine audit of the Municipality’s records, the Puerto Rico Comptroller’s Office learned that, although employees had been receiving lump sum payments according to the terms of the Agreement, the Municipality unilaterally began withholding the employees’ regular wages without the knowledge or consent of the DOL WHD. This issue was referred to the DOL WHD who, in November 2016, referred it to the DOL Office of Inspector General (OIG).

11. The DOL OIG ultimately identified 30 contract municipal employees who, by the end of his mayoral term in 2016, Defendant had certified, by submitting the required WH-58 Form, were paid their back wages pursuant to the Agreement. The DOL OIG also determined that those 30 contract municipal employees (holding various positions such as parks/cemetery maintenance, street sweepers, drivers, child care, and switchboard operator, to name a few), after receiving the wages to which they were entitled under the Agreement, had their regular pay withheld for certain periods of time at the direction of Defendant. The DOL OIG also determined that at the time Defendant paid these 30 contract municipal employees the wages to which they were entitled under the Agreement, he provided various explanations for the check.

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COUNTS 1 THROUGH 30**Making or Using Any False Writing or Document****Title 18, United States Code, Section 1001(a)(3)**

Paragraphs One through Eleven of this Indictment are re-alleged and incorporated as though fully set forth herein.

Between on or about February 1, 2015 and on or about December 31, 2016, in the District of Puerto Rico and within the jurisdiction of this Court, the defendant,

Abel NAZARIO-QUINONES,

did willfully and knowingly make and use a false writing and document, knowing the same to contain a materially false, fictitious, and fraudulent statement and entry in a matter within the jurisdiction of the executive branch of the Government of the United States, by falsely certifying in the WH-58 Forms detailed below, each forming a separate count, to the United States Department of Labor that he had paid back wages to the named employee and did not and would not take any retaliatory action against said employee.

Count	Statement Date	Employee	Check No.	Check Amount	Pay Withheld
1.	06/30/2016	A.B.C.	117307	\$4,599.25	\$1,874.74
2.	On or about and between 04/15/2015 and 12/31/2016	A.C.M.	100512	\$1,139.15	\$800.46
3.	05/21/2015	M.C.R.	099269	\$551.94	\$551.94
4.	On or about and between 04/29/2015 and 12/31/2016	A.C.S.	101798	\$1,822.94	\$1,874.74
5.	05/21/2015	S.C.C.	099288	\$1,048.64	\$1,093.92
6.	On or about and between 05/04/2015 and 12/31/2016	J.C.J.	101794	\$1,996.77	\$1,071.26

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Count	Statement Date	Employee	Check No.	Check Amount	Pay Withheld
7.	On or about and between 01/02/2016 and 12/31/2016	B.C.T.	110499	\$2,954.35	\$2,142.56
8.	05/06/2016	E.G.A.	101793	\$2,040.86	\$1,874.74
9.	02/08/2016	G.G.G.	101814	\$1,659.32	\$1,630.23
10.	02/08/2016	M.G.F.	100511	\$1,260.75	\$1,071.28
11.	On or about and between 01/02/2016 and 12/31/2016	A.I.T	111778	\$2,452.42	\$2,410.38
12.	On or about and between 04/05/2015 and 12/31/2016	L.L.L.	100516	\$1,181.06	\$1,071.28
13.	08/10/2015	A.M.B.	104641	\$1,871.03	\$2,142.52
14.	10/18/2016	S.M.D.	121433	\$4,173.30	\$1,071.26
15.	05/06/2016	A.M.L.	116734	\$4,754.89	\$2,685.12
16.	On or about and between 05/15/2015 and 12/31/2016	R.O.R.	101795	\$1,312.84	\$1,339.10
17.	05/06/2016	W.P.G.	116733	\$5,019.53	\$1,606.92
18.	On or about and between 02/15/2016 and 12/31/2016	C.Q.L.	113094	\$3,156.75	\$803.48
19.	05/06/2016	M.Q.V.	116078	\$3,180.92	\$1,818.74
20.	02/08/2016	J.R.B.	099265	\$731.27	\$502.17
21.	08/10/2015	M.R.R.	104643	\$2,219.04	\$2,659.68
22.	On or about and between 08/14/2015 and 12/31/2016	H.R.C.	105796	\$2,451.65	\$2,169.36
23.	08/10/2015	F.R.D.	104646	\$2,038.61	\$1,606.92
24.	02/08/2016	J.R.F.	101820	\$1,496.76	\$1,205.22

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Count	Statement Date	Employee	Check No.	Check Amount	Pay Withheld
25.	On or about and between 08/14/2015 and 12/31/2016	J.R.G.	105797	\$2,315.49	\$2,410.32
26.	08/10/2015	F.S.C.	104645	\$1,804.48	\$1,365.87
27.	08/10/2015	C.T.M.	104640	\$2,199.92	\$1,606.89
28.	06/30/2016	C.T.R.	117309	\$2,833.69	\$1,071.26
29.	On or about and between 05/01/2015 and 12/31/2016	D.Y.C.	101790	\$1,410.45	\$2,030.98
30.	On or about and between 04/15/2015 and 12/31/2016	H.Z.T.	100508	\$435.27	\$1,071.26
			101792	\$570.70	

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COUNTS 31 THROUGH 39

Wire Fraud

Title 18, United States Code, Section 1343

Paragraphs One through Eleven of this Indictment are re-alleged and incorporated as though fully set forth herein.

Between on or about February 1, 2015 and on or about December 31, 2016, in the District of Puerto Rico and within the jurisdiction of this Court, the defendant,

Abel NAZARIO-QUINONES,

did knowingly and with intent to defraud, devise a scheme and artifice to defraud by means of false and fraudulent pretenses, representations, and promises and transmit and caused to be transmitted in interstate commerce, by means of wire communications, certain writings, signs, signals, pictures and sounds, for the purpose of executing the scheme and artifice, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE SCHEME AND ARTIFICE

12. The purpose of the scheme and artifice was to provide each affected municipal contract employee the amount of money DOL WHD determined they were owed under the Agreement, while then holding back future wages of those employees thereby defrauding those employees of their rightfully earned pay for work performed for the Municipality of Yauco. The signed WH-58 Form containing materially false representations was then submitted to DOL WHD in order to make it appear as if Defendant was honoring the Agreement.

MANNER AND MEANS OF THE SCHEME AND ARTIFICE

13. On February 13, 2015, Defendant, as Mayor of Yauco and an employer, signed a Back Wage Compliance Payment Agreement (Agreement) with the DOL WHD in which he agreed

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to pay back wages totaling \$588,961.43 to 177 municipal employees for the period of August 1, 2012 to July 31, 2014 according to a predetermined schedule listing each employee who was owed wages, the amount they were owed, and the date by which each had to be paid. These employees had been working for the Municipality and had a portion of their hours improperly classified as volunteer hours in which they were not properly compensated. The Agreement allowed the Municipality until February 2018 to complete all the payments.

14. Between February 2015 and the end of his mayoral term in December 2016, Defendant presented each of the municipal contract employees, whose initials appear in Counts One through 30 above, with a check for the amount of wages DOL WHD determined they were owed and the WH-58 form for them to sign. When presenting the check and WH-58 Form, Defendant provided various explanations for the check.

15. Defendant signed the WH-58 Form and caused it to be electronically sent by the municipality to the DOL WHD, falsely certifying that the back wages were paid according to the Agreement and that no retaliation was, or would be, taken against the employee for accepting the payment when, in fact, Defendant directed the payroll department to withhold future earnings of these employees for varying lengths of time despite them continuing to work for the municipality.

USE OF THE WIRES

16. On or about the dates set forth in each count below, Defendant, for the purpose of executing and in furtherance of the aforesaid scheme and artifice to defraud by means of materially false and fraudulent pretenses, representations and promises, did knowingly transmit and cause to be transmitted in interstate commerce, by means of wire communications, certain writings, signs, signals, pictures, and sounds, to wit: the WH-58 Form emailed DOL WHD, as specified below:

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Count	Date/Time	WH-58 Employees
31.	05/21/2015	M.C.R.
32.	05/21/2015	S.C.C.
33.	05/06/2016	W.P.G. M.Q.V. A.M.L.
34.	05/06/2016	E.G.A.
35.	06/30/2016	A.B.C.
36.	06/30/2016	C.T.R.
37.	10/18/2016	S.M.D.

All in violation of Title 18, United States Code, Section 1343.

TRUE BILL

FOREPERSON

Dated: 09/06/18**Rosa Emilia RODRIGUEZ-VELEZ**

United States Attorney



Jose Capo-Iriarte
Assistant United States Attorney
Chief, Criminal Division


Scott Anderson

Assistant United States Attorney



Myriam Fernandez-Gonzalez
Assistant United States Attorney
Deputy Chief, Financial Fraud and
Corruption