

**ORIGINAL**

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**CRIMINAL COMPLAINT**

UNITED STATES DISTRICT COURT	CENTRAL DISTRICT OF CALIFORNIA
UNITED STATES OF AMERICA v.  SONY DONG	<div style="border: 1px solid black; padding: 5px; display: inline-block;">                 FILED CLERK, U.S. DISTRICT COURT NO.   <b>APR 14 2009</b>                  MAGISTRATE'S CASE NO.  <b>09-0722M</b>                  CENTRAL DISTRICT OF CALIFORNIA                  BY             </div>

Complaint for violations of Title 18, United States Code, Section 545 (Importing Wildlife Contrary to Law).

NAME OF MAGISTRATE JUDGE <b>HONORABLE FERNANDO M. OLGUIN</b>	UNITED STATES MAGISTRATE JUDGE	LOCATION Los Angeles, CA
DATE OF OFFENSE April 13, 2009	PLACE OF OFFENSE Los Angeles County	ADDRESS OF ACCUSED (IF KNOWN)


COMPLAINANT'S STATEMENT OF FACTS CONSTITUTING THE OFFENSE OR VIOLATION:

On or about April 13, 2009, in Los Angeles County, within the Central District of California, and elsewhere, defendant SONY DONG did fraudulently and knowingly import and bring merchandise, namely, fourteen live birds, into the United States, contrary to law. Specifically, defendant imported and brought said birds into the United States contrary to law, that is, (1) without reporting or declaring the birds to officials of the United States Bureau of Customs and Border Protection and United States Fish and Wildlife Service, in violation of Title 19, Code of Federal Regulations, Section 148.11, and Title 50, Code of Federal Regulations, Section 14.61; and (2) without a permit in violation of Title 18, United States Code, Section 42(a)(1) and Title 50, Code of Federal Regulations, Sections 16.12(a) and 16.22.

BASIS OF COMPLAINANT'S CHARGE AGAINST THE ACCUSED:

See attached affidavit which is incorporated as part of this complaint.

MATERIAL WITNESSES IN RELATION TO THIS CHARGE:

Being duly sworn, I declare that the foregoing is true and correct to the best of my knowledge.	SIGNATURE OF COMPLAINANT <b>PAUL MONTOURI</b> 
	OFFICIAL TITLE SPECIAL AGENT - U.S. FISH AND WILDLIFE SERVICE

Sworn to before me and subscribed in my presence,

SIGNATURE OF MAGISTRATE JUDGE(1)  	DATE April 14, 2009
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1) See Federal Rules of Criminal Procedure rules 3 and 54.

[AUSA M. WILLIAMS]  REC: DETENTION

A F F I D A V I T

I, Paul Montuori, being duly sworn, hereby depose and state the following:

**A. INTRODUCTION**

1. I am a Special Agent ("SA") of the United States Fish and Wildlife Service ("USFWS") and have been so employed since October 2008. I was previously employed by the State Department as a SA for approximately 9 years. I have conducted and participated in a number of investigations involving violations of wildlife law, including complex investigations of illegal trade of wildlife in both international and interstate commerce. My duties also include the enforcement of the Endangered Species Act and the Lacey Act. I also enforce regulations of the Wild Bird Conservation Act and of the Convention on International Trade in Endangered Species of Fauna and Flora, an international treaty to which the United States is a signatory country. I am presently assigned to the Torrance, California, office of the USFWS.

2. I have personally participated in this investigation and have witnessed many of the facts and circumstances described herein. In addition, I have received information from other federal and state law enforcement officials. I have also reviewed documents obtained during the course of the investigation.

3. The statements contained in this affidavit are based on my own observations and review of documents, or reliable information provided to me by other law enforcement personnel or persons otherwise knowledgeable concerning the circumstances described herein. Because this affidavit is being submitted for the limited purpose of obtaining a criminal complaint, I have not included every fact known to me concerning this investigation. I have set forth only those facts and circumstances that I believe are necessary to establish probable cause for a criminal complaint.

**B. PURPOSE OF THE AFFIDAVIT**

4. This affidavit is submitted in support of a criminal complaint charging SONY DONG ("DONG") with violating Title 18, United States Code, Section 545 (Importing Wildlife Contrary to Law).

5. I am familiar with the information contained in this affidavit based upon the investigation that I have conducted and my conversations with other law enforcement officers who have engaged in numerous investigations involving wildlife crimes.

6. This affidavit is intended to show that there is sufficient probable cause for the requested criminal complaint and does not purport to set forth all my knowledge of, or investigation into, this matter.

C. OVERVIEW OF APPLICABLE WILDLIFE PROTECTION STATUTES AND REGULATIONS

8. 18 U.S.C. § 42(a)(1) prohibits the importation of certain injurious birds into the United States without a permit. The red-whiskered bul-bul is listed as a federal injurious bird that may not be imported or transported into the United States without a permit from the appropriate official. 50 C.F.R. §§ 16.12(a) and 16.22.

9. Federal law also requires that all wildlife, including birds, be declared to Customs and Border Protection "CBP" at the port of first arrival in the United States. 19 C.F.R. § 148.11. Federal law also requires that upon the importation of any wildlife, importers or their agents must file a completed Declaration for Importation or Exportation of Fish and Wildlife (Form 3-177) with the USFWS. 50 C.F.R. § 14.61. In addition, a USFWS or CBP officer must clear all wildlife imported into the United States prior to the release of the wildlife from detention by CBP officers. 50 C.F.R. § 14.52(a). In order to obtain this clearance, the importer is required to provide the CBP or USFWS officer with: (i) all shipping documents (including bills of lading, waybills and packing lists or invoices); (ii) all permits, licenses or other documents required by the laws or regulations of the United States; (iii) all permits or other documents required by the laws or regulations of any foreign country; (iv) the wildlife being imported or exported; and (v)

any documents and permits required by the country of export or re-export for the wildlife. 50 C.F.R. § 14.52(c)(1) - (5).

10. United States customs law also prohibits the smuggling of merchandise into the United States. For instance, 18 U.S.C. § 545 states, in pertinent part, that it is unlawful to fraudulently or knowingly import or bring into the United States any merchandise contrary to law, or to 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.

11. Based on my training and experience, birds that are illegally imported from Vietnam are known to be potential carriers of avian influenza.

**D. THE INVESTIGATION**

12. On December 16, 2008, the USFWS was notified by Customs and Border Protection ("CBP") Officer Shirvani that luggage belonging to DONG<sup>1</sup> was abandoned at the Los Angeles International Airport. Officer Shirvani indicated that the luggage had arrived the previous day on an EVA Air flight from Vietnam and contained 18 birds. The luggage had a small sticker with a bar code on it that baggage handlers used to confirm that it belonged to DONG.

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<sup>1</sup>Based on my review of DONG's criminal history report, DONG has been convicted of the following, among other things: (1) possession of burglary tools, a misdemeanor, in 2002; and (2) receiving stolen property, a felony, in 2002.

Officer Shirvani stated that DONG responded "no," in Vietnamese, to the question asking if he had any "meats, animals, or animal/wildlife products" on the U.S. Customs and Border Protection Customs Declaration, OMB No. 1651-0009.

13. On December 16, 2008, a USFWS SA arrived at the airport and observed 18 Asian song birds, including shama thrush (Copsychus malabaricus) and hwa mei (Garrulax canorus), that had been removed from bamboo cages found in DONG's luggage. The SA observed that there were thirteen live birds and five dead birds.

14. On December 16, 2008, CBP Officer Steve Hawrylack told the USFWS that DONG had traveled to Vietnam six times in 2008. Officer Hawrylack provided the following information regarding DONG's travel history:

Date of Departure	Date of Return
1. 12/08/2008	12/15/2008
2. 9/29/2008	10/06/2008
3. 9/16/2008	9/20/2008
4. 6/08/2008	7/16/2008
5. 5/15/2008	5/26/2008
6. 3/04/2008	4/08/2008
7. 2/11/2009	2/26/2009

15. The Law Enforcement Management Information System ("LEMIS") was checked during the course of the investigation, the most recent time being February 24, 2009. Based on my training

and experience, I know that LEMIS is a USFWS database that, among other things, tracks and records declarations provided by the importer. A search of LEMIS indicated that DONG does not have a declaration for importing birds into the United States.

**E. DONG'S ARREST AT LOS ANGELES INTERNATIONAL AIRPORT WITH CONCEALED BIRDS**

16. In early April 2009, CBP Officer Hawrylack indicated that he searched the CBP databases and determined that DONG had flown to Vietnam on April 3, 2009, and was scheduled to return on April 13, 2009, on China Air Flight 8.

17. On April 13, 2009, after DONG arrived at LAX as scheduled, CBP Officer Eva Lingenfelter conducted a secondary inspection of DONG. Officer Lingenfelter asked DONG to lift his pant leg for further inspection and she noticed bird feathers and droppings on DONG's socks. Agents also observed the birds' tail feathers moving at the time.

18. DONG was arrested and taken to the customs quarantine area. At the quarantine area, DONG was advised of his Miranda rights in both English and Vietnamese. DONG waived his rights orally and agreed to speak with the agents. DONG also waived his Miranda rights in Vietnamese a second time in writing.

**F. SEARCH AND INTERVIEW OF DONG**

19. After DONG was placed under arrest and transported to the quarantine area, USFWS agents searched DONG and discovered 14 live birds attached to two flat pieces of cloth that were wrapped

around DONG's calves. Included in the 14 live birds were three red-whiskered bul-buls<sup>2</sup>, four magpie robins, and six shama thrush.

20. During the search by USFWS agents, DONG stated the following:

a. he previously brought birds into the United States in checked luggage, but that he abandoned the luggage at LAX because he knew it was illegal to bring the birds into the United States;

b. he admitted that about one month ago, he smuggled additional birds into the United States on his legs using the same method that he used on April 13, 2009; and

c. he initially denied selling the birds he previously imported, but later admitted that he sold them for \$300-\$400 per bird.

21. During the subsequent recorded interview of DONG conducted by USFWS agents, DONG stated the following, among other things:

a. he did not declare the birds on the customs form because he knew he would "get caught;"

b. he knew that he was required to declare all "animals" on the customs form when he brought them into the United States;

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<sup>2</sup>Red-whiskered bul-buls are listed as federal injurious birds that may not be imported without a permit. See 18 U.S.C. § 42(a)(1); 50 C.F.R. §§ 16.12(a) and 16.22.



c. he knew that it is illegal to bring the birds into the United States from Vietnam;

d. he admitted to smuggling birds into the United States in December 2008, February 2009, and on April 13, 2009;

e. he admitted to purchasing all the birds he transported into the United States from Vietnam for approximately \$50 per bird; and

f. he admitted to selling three birds that he had transported from Vietnam to another person for approximately \$1,000 in February 2009.

22. DONG was taken into custody after the interview and remains in custody.


23. I reviewed the U.S. Customs and Border Protection Customs Declaration, OMB No. 1651-0009, that DONG completed on April 13, 2009. DONG answered "no" to the question asking if he had any "meats, animals, or animal/wildlife products."

24. On April 14, 2009, USFWS agents searched the Service Permit Information Tracking System, a database which tracks all the permits issued by the USFWS, for any permits associated with DONG. No permits were found that would allow DONG to import birds into the United States.

**G. CONCLUSION**

25. Based on the facts set forth herein, and based on my training, education, experience, and participation in this investigation, I respectfully submit that there is probable cause

to believe that SONNY DONG has violated 18 U.S.C. § 545  
(Importing Wildlife Contrary to Law).

  
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Paul Montuori  
Special Agent  
U.S. Fish and Wildlife Service

Subscribed and sworn to before me  
this 14 day of April, 2009.

  
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UNITED STATES MAGISTRATE JUDGE