

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



UNITED STATES OF AMERICA,
Plaintiff,

v.

AWILDO JIMENEZ-MERCADO,
Defendant.

INDICTMENT

CRIMINAL NO. 23- 440 (FAB)

CRIMINAL VIOLATIONS:

Count 1: 33 U.S.C. §§ 1311(a), 1319(c)(2)(A)

Count 2: 33 U.S.C. §§ 403, 406

TWO COUNTS

INDICTMENT

THE GRAND JURY CHARGES:

At all times material to this Indictment:

Introduction

1. Defendant **AWILDO JIMENEZ-MERCADO** was a resident of the Commonwealth of Puerto Rico.
2. Defendant **AWILDO JIMENEZ-MERCADO** exhibited dominion and control of a property to the Southwest of Camino del Indio in the Las Mareas area of Salinas, Puerto Rico (“the Property”). The Property was adjacent to, shared a border with, and extended into the Jobos Bay National Estuarine Research Reserve, as pictured in Figures 1 and 2 below.
3. Defendant **AWILDO JIMENEZ-MERCADO** operated a hospitality and guest house business known as “Hidden Paradise” on the Property. Hidden Paradise consisted of a

pool, outdoor dining areas, and housing units for rent, amongst other amenities. The housing units were offered as short-term rentals on various online marketplaces.



Figure 1: The Property in January 2020



Figure 2: The Property in September 2023

The Reserve

4. The Jobos Bay National Estuarine Research Reserve (hereinafter “the Jobos Bay Reserve” or “the Reserve”) was designated as a Marine Protected Area in 1981 by the National Oceanic and Atmospheric Administration and is a part of a nation-wide National Estuarine Research Reserve System in which scientists conduct long-term research, water-quality monitoring, and education. 15 C.F.R. § 921.2. The Jobos Bay Reserve comprises approximately 2,800 acres of coastal ecosystems in the Southern coastal plain of Puerto Rico, and includes navigable waters, coral reefs, seagrass beds, shoreline, mangrove forests, tidal flats, wetlands, and islands. The Reserve provides a habitat and home to endangered and threatened species of wildlife including the brown pelican, peregrine falcon, hawksbill turtle, and West Indian manatee. The Reserve is also commercially important for marine recreation, commercial, and recreational fishing, and ecotourism.
5. Mangroves are a group of tropical plants and trees that grow in coastal intertidal zones within the navigable waters of the United States and have adapted to having their roots submerged by daily tides. Mangrove roots rise above the sea and enable the trees to handle the daily rise and fall of tides. Mangrove trees stabilize shorelines, slow and prevent erosion, and protect the land — and the people who live there — from waves, currents, storm surges, tides, and winds, including hurricanes. The root systems of mangroves also provide a habitat for thousands of species of fish and other organisms seeking food and shelter from predators. Mangroves, seagrass beds, and coral reefs are part of an overall ecosystem necessary for healthy coastal areas.

6. Wetlands are areas that are inundated and saturated by surface water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. 33 C.F.R. § 328.3(c)(1). Wetlands generally include swamps, marshes, bogs, and similar areas. Mangrove forests located inland of the coastline are one type of wetland. Wetlands provide flood protection and help control erosion. Wetlands are among the most productive ecosystems in the world, comparable to rain forests and coral reefs. An immense variety of species of microbes, plants, insects, amphibians, reptiles, birds, fish, and mammals are known to live within wetland ecosystems.

Legal Framework

7. The Clean Water Act was enacted by Congress in 1972 to protect and maintain the integrity of the waters of the United States. The Clean Water Act's main purpose is to ensure the restoration and maintenance of the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).
8. The Clean Water Act prohibits the discharge of any pollutant into waters of the United States except in compliance with the statute. Specifically, Section 301 of the Clean Water Act, 33 U.S.C. § 1311, prohibits the discharge of pollutants into waters of the United States by any person, except in accordance with the requirements of the relevant permitting program, including Section 404, 33 U.S.C. § 1344, which regulates the discharge of dredged and fill material into wetlands.
9. A discharge of a pollutant means, in part, any addition of any pollutant to navigable waters from any point source. 33 U.S.C. § 1362(12).

10. The term “pollutant” includes dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. § 1362(6).
11. The term “point source” includes any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14).
12. The term “navigable waters” is defined as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
13. The term “fill material” is defined as any pollutant which replaces portions of the waters of the United States with dry land or which changes the bottom elevation of a water body for any purpose. Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States. 33 C.F.R. § 323.2(e). “Dredged material” is defined as material that is excavated or dredged from waters of the United States. 33 C.F.R. § 323.2(c).

COUNT 1
(Clean Water Act)
33 U.S.C. §§ 1311(a) and 1319(c)(2)(A)

14. Paragraphs 1 through 13 are hereby re-alleged as if set forth herein.

15. Between in or about January 2020, through in or about December 2023, in the District of Puerto Rico and elsewhere,

AWILDO JIMENEZ-MERCADO,

the defendant herein, knowingly discharged and knowingly caused the discharge of pollutants, specifically soil and fill material, from a point source, specifically trucks, excavation and earth moving equipment, into navigable waters of the United States that made up and surrounded the Property, without having obtained a permit under the authority of the Clean Water Act.

All in violation of Title 33, United States Code, Sections 1311(a) and 1319(c)(2)(A), and Title 18, United States Code, Section 2.

COUNT 2

(Rivers and Harbors Act)

33 U.S.C. §§ 403 and 406

16. Paragraphs 1 through 6 are hereby re-alleged as if set forth herein.

Legal Framework

17. The Rivers and Harbors Act of 1899 prohibits the creation and building of any structures within the navigable waters of the United States without authorization from the Secretary of the Army acting through the Army Corps of Engineers. 33 U.S.C. § 403.

18. Navigable waters of the United States are defined as those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. 33 C.F.R. § 329.4.

THE CHARGE

19. Between on or about January 2022, through on or about at least February 2022, in the District of Puerto Rico and elsewhere,

AWILDO JIMENEZ-MERCADO,

the defendant herein, did build and cause to be built, structures, specifically a dock, within the navigable waters of the United States that adjoined and surrounded the Property, without authorization by the Secretary of the Army acting through the Army Corp of Engineers, to build said structures.

All in violation of Title 33, United States Code, Sections 403 and 406, and Title 18, United States Code, Section 2.

TRUE BILL

[REDACTED]

FOREPERSON

12/6/2023

Date

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