

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
AUG 24 2011	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____ DEPUTY	

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA

CRIMINAL COMPLAINT

v.

CASE NUMBER

Caleb Joshua Malboeuf, and  
David Wayne Malboeuf,

11-04234 M-PLT-MEA

Defendants.

I, the undersigned complainant being duly sworn, state the following is true and correct to the best of my knowledge and belief:

**Count 1**

On or about May 29, 2011, in the District of Arizona, Greenlee County, defendants Caleb Joshua Malboeuf and David Wayne Malboeuf, having kindled or caused to be kindled a fire on Federal lands in the Apache National Forest, did then leave a fire unattended and unextinguished, in violation of Title 18, United States Code, Sections 1856 and 2.

**Count 2**

On or about May 29, 2011, in the District of Arizona, Greenlee and Apache Counties, defendants Caleb Joshua Malboeuf and David Wayne Malboeuf without authorization caused timber, trees, slash or grass to burn on Federal lands in the Apache National Forest, in violation of Title 36, Code of Federal Regulations, Section 261.5(c) and Title 18, United States Code, Section 2.

**Count 3**

On or about May 29, 2011, in the District of Arizona, Greenlee County, defendants Caleb Joshua Malboeuf and David Wayne Malboeuf, left a fire without completely extinguishing it on Federal lands on the Apache National Forest, in violation of Title 36, Code of Federal Regulations Section 261.5(d) and Title 18 United States Code, Section 2.

**Count 4**

On or about May 29, 2011, in the District of Arizona, Greenlee and Apache Counties, defendants Caleb Joshua Malboeuf and David Wayne Malboeuf caused and failed to maintain control of a fire that was not a prescribed fire and that damaged the National Forest System, in violation of Title 36, Code of Federal Regulations Section 261.5(e) and Title 18 United States Code, Section 2.

**Count 5**

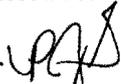
On or about May 29, 2011, in the District of Arizona, Greenlee County, defendants Caleb Joshua Malboeuf and David Wayne Malboeuf, built, maintained or used a campfire on Federal lands on the Apache National Forest without removing all flammable material from around the campfire adequate to prevent its escape, in violation of Title 36, Code of Federal Regulations, Section 261.5(f) and Title 18, United States Code, Section 2.

I further state that I am a Special Agent with the United States Forest Service and that this complaint is based on the following facts:

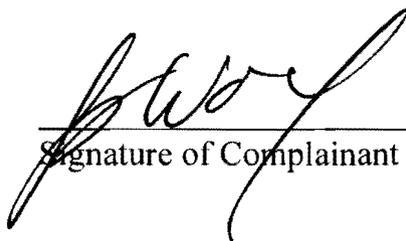
**See attached affidavit of Probable Cause:**

Continued on the attached sheet and made a part hereof:

Yes       No

AUTHORIZED BY: AUSA Patrick J. Schneider 

Lucas Woolf, Special Agent  
United States Forest Service  
Name of Complainant

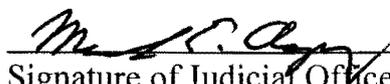
  
\_\_\_\_\_  
Signature of Complainant

Sworn to before me and subscribed in my presence,

August 24, 2011 \_\_\_\_\_ at

Flagstaff, Arizona  
\_\_\_\_\_  
City and State

Mark E. Aspey, United States Magistrate Judge  
Name and Title of Judicial Officer

  
\_\_\_\_\_  
Signature of Judicial Officer

AFFIDAVIT

I, Lucas R. Woolf, being first duly sworn, hereby depose and state as follows:

**INTRODUCTION AND AGENT BACKGROUND**

1. I make this affidavit in support of a complaint associated with crimes occurring on or affecting National Forest System lands within the state of Arizona, Apache National Forest.

2. I am a Special Agent with the United States Forest Service, and have been since April 2007. I am a federal law enforcement officer as that term is defined in Rule 41(a)(2)(C) of the Federal Rules of Criminal Procedure and have been so since 2003. I have attended over 1,800 hours of in-service training since becoming a federal law enforcement officer and criminal investigator. My training and experience have afforded me the knowledge of investigating and determining the origin and cause of wildland fires. I am currently assigned to the Southwest region of the United States Forest Service, encompassing National Forest System lands in the states of Arizona and New Mexico. In the course of my official duties, I am charged with the investigation of crimes occurring on or affecting National Forest Systems lands and property within the Districts of Arizona and New Mexico

3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause and does not set forth all of my knowledge about this matter.

Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of:

- Title 18, United States Code, Section 1856 - Whoever, having kindled or caused to be kindled, a fire in or near any forest, timber, or other inflammable material upon any lands owned, controlled or leased by, or under the partial, concurrent, or exclusive jurisdiction of the United States, leaves said fire without totally extinguishing the same, or permits or suffers said fire to burn or spread beyond his control, or leaves or suffers said fire to burn unattended...
- Title 36, Code of Federal Regulations, Section 261.5(c)-Causing timber, trees, slash or grass to burn on Federal Lands.
- Title 36, Code of Federal Regulations, Section 261.5(d) - Leaving a fire without completely extinguishing it.
- Title 36, Code of Federal Regulations, Section 261.5(e) - Causing and failing to maintain control of a fire that is not a prescribed fire that damages the National Forest System.
- Title 36, Code of Federal Regulations, Section 261.5(f) - Building, attending, maintaining, or using a campfire without removing all flammable material from around the campfire adequate to prevent its escape.

have been committed by Caleb Joshua Malboeuf and David Malboeuf. The following information was developed in connection with the investigation into the human caused start of a wildland fire (Wallow Fire) on or about May 29, 2011, within the boundaries of the Apache National Forest, Greenlee County within the District of Arizona.

**PROBABLE CAUSE**

4. On May 29, 2011 the start of a wildland fire (Wallow Fire) was reported on the Alpine Ranger District of the Apache National Forest, Bear Wallow Wilderness, south of the town of Alpine, AZ. As of this date the Wallow Fire has burned more than 538,000 acres of National Forest System and other lands, 32 residential structures, 4 commercial properties, and 36 outbuildings in Apache and Greenlee Counties in Arizona. In addition, fire suppression costs associated with the Wallow Fire are in excess of \$79,000,000.00.

Your affiant responded to the area of the Wallow Fire on the afternoon of May 29, 2011 to begin the investigation of its origin and cause. A 2001 Toyota Corolla registered to David Malboeuf was observed parked at the Bear Wallow Trailhead (approximately 2 miles from the Wallow Fire) on the evening of May 29, 2011. Your affiant issued a "Be On the Lookout" (BOLO) for the occupants of David's vehicle, as it was the only vehicle parked at any of the trailheads that access the Bear Wallow Wilderness. The occupants of this vehicle were later discovered on Forest Road 25 near Wildcat Crossing (approximately 5 miles from the Wallow Fire) on the morning of May 30, 2011 by Apache County Sheriff's Office Chief Deputy Brannon Eagar. Chief Deputy Eagar notified your affiant of his discovery and arranged to meet at the Bear Wallow Trailhead with the occupants of the vehicle.

5. On May 30, 2011 your affiant and U.S. Forest Service Law Enforcement Officer (LEO) Martin Orona conducted witness interviews of Caleb Joshua Malboeuf and David Malboeuf regarding the Wallow Fire. The Malboeufs both related very similar

accounts of their observations and activities in relation to their camping and hiking trip into the Bear Wallow Wilderness beginning on May 28, 2011. The Malboeufs stated that they began their camping and hiking trip from the Bear Wallow Trailhead on Saturday, May 28, 2011. They hiked down into the wilderness and set up camp just below the confluence of the North and South Forks of Bear Wallow Creek, which is in Greenlee County. They stated that they built a campfire in a campfire ring that evening and cooked dinner over the fire. The Malboeufs stated that they let the fire go out on its own that evening and took no action to extinguish it. The next morning, May 29, 2011, at around 8:00 AM they built another fire in the same campfire ring and cooked breakfast over the fire. They then stayed in camp until 11:00 AM or noon before leaving camp to go down canyon for a hike. They stated that they believed their campfire was out because David threw a candy wrapper in the fire just prior to their departure and it did not melt. When asked by your affiant how they extinguished their fire prior to leaving camp, Caleb stated that because they were in camp for three to four hours after cooking over the fire, the fire had burned out on its own. The Malboeufs then stated that they left camp and hiked down canyon for approximately one to two miles. During their trip back up canyon to their camp they could smell and see smoke coming from the proximity of their camp. When they were a few hundred yards from their camp they saw that a fire was burning on both sides of the drainage and up canyon from their camp. They tried to return to camp to cut their dogs loose, which they had left tied up in camp, but could not get close because of the fire and smoke. They then decided to run from the area and head

down canyon towards the Black River, where they remained overnight. The next morning they hiked up river to Wildcat Crossing (intersection of Forest Road 25 and the Black River) and received a ride from an Apache County Deputy back to their vehicle, which was parked at the Bear Wallow Trailhead.

6. On June 7, 2011 your affiant conducted a follow-up phone interview with Caleb Malboeuf regarding the Wallow Fire and items that he and David left in their camp. Caleb stated that they left two dogs (Blue Heelers) tied up in camp. Each dog had a collar with tags that had Caleb and David's names on them. They also left behind their camping equipment which consisted of two backpacks, one of which Caleb described as a "Badlands" brand pack, bedding wrapped in plastic, a .22 caliber pistol, and a Marlin 30-30 rifle. Caleb reiterated that their camp was located approximately  $\frac{1}{4}$  to  $\frac{1}{2}$  mile down creek from the confluence of the North and South Forks of Bear Wallow Creek.

7. On June 8, 2011 U.S. Forest Service Special Agent (SA) Bryan Bowen received signed affidavits from both Caleb and David Malboeuf in regard to the Wallow Fire. These affidavits relayed the same information as Caleb and David Malboeuf stated to your affiant and LEO Orona on May 30, 2011. In addition, Caleb listed a Badlands Pack, Garmin GPS, sleeping bag, Thermarest, Smith sunglasses, Ruger .22 pistol, and other miscellaneous items as property that he left behind in camp. David also listed items that he left behind in camp, which included his dog, Olympus camera, a backpack, 30-30 Marlin rifle, sleeping bag, air mattress, a lighter, water filter, headlamp, inflatable pillow, and food.

8. On June 12, 2011 your affiant and U.S. Forest Service Law Enforcement Officers (LEO) Chad Scussel, Mark Camisa, Robin Theis, and Dan Adams conducted an on scene origin and cause investigation at the area of origin of the Wallow Fire. This fire investigation team learned from first responding fire fighting personnel, fire lookout tower smoke reports, and aerial firefighting resources that the Wallow Fire originated in the bottom of the Bear Wallow Drainage in Township 3N, Range 28E, Section 16. This intelligence led the fire investigation team into the general area of origin of the Wallow Fire. A systematic origin and cause investigation revealed the Wallow Fire as originating from an escaped campfire that was left unattended and unextinguished. This investigation revealed that there had been no attempt to clear any flammable materials from around the campfire to prevent its escape. Numerous items directly associated with this campfire were discovered. These items included a 30-30 Marlin rifle, a .22 Ruger pistol, "Badlands" brand backpack, Garmin GPS, two lighters, two toothbrushes, a burned camera, burned backpack, burned sleeping gear, and two Blue Heeler dogs tied to trees. One dog was deceased and had a collar around its neck with David Malboeuf's contact information on it. The second dog was still alive and had a collar around its neck with Caleb Malboeuf's name and phone numbers on it. The point of origin for the Wallow Fire identified by this fire investigation team is described as down creek from the confluence of Bear Wallow Creek and the South Fork of Bear Wallow Creek, between Bear Wallow Creek and Forest Trail #63 (Bear Wallow Trail), Bear Wallow Wilderness on the Alpine Ranger District of the Apache National Forest, Greenlee County

Arizona (Township 3N, Range 28E, Section 16/ Latitude 33 36' 02" Longitude 109 27' 4.5"). All members of this fire investigation team are fully qualified wildland fire investigators, per U.S. Forest Service policy standards, and have completed the required training and experience standards set forth by the National Wildfire Coordinating Group (NWCG).

9. On June 18, 2011 U.S. Forest Service Law Enforcement Officers (LEO) Dusty Olson, Geoff Osborn, and Cathy Van Camp conducted a secondary and independent on scene origin and cause investigation at the area of origin of the Wallow Fire. A systematic origin and cause investigation revealed the Wallow Fire as originating from an escaped campfire, which had been left unattended and unextinguished. This investigation also revealed that there had been no attempt to clear any flammable materials from around the campfire to prevent its escape. The point of origin for the Wallow Fire that this secondary fire investigation team identified is described as being down creek of the confluence of Bear Wallow Creek and the South Fork of Bear Wallow Creek, between Bear Wallow Creek and Forest Trail #63 (Bear Wallow Trail), Bear Wallow Wilderness on the Alpine Ranger District of the Apache National Forest, Greenlee County Arizona (Township 3N, Range 28E, Section 16/ Latitude 33 36' 02" Longitude 109 27' 4.5"). All members of this second fire investigation team are also fully qualified wildland fire investigators, per U.S. Forest Service policy standards, and have completed the required training and experience standards set forth by the National Wildfire Coordinating Group (NWCG).

10. On July 16, 2011 your affiant conducted a non-custodial interview of David Malboeuf, at his residence in Tucson, AZ, regarding the Wallow Fire. David continued to be cooperative, forthcoming, and consistent with his account of his camping trip with Caleb Malboeuf into the Bear Wallow Wilderness beginning on May 28, 2011. In addition to David's earlier account (see paragraph 5) of his trip into the Bear Wallow Wilderness, David stated that he and Caleb built a cooking fire in an established campfire ring in their camp for the purpose of cooking dinner. David said that they did not remove any flammable material away from this campfire ring before building their fire and that the campfire ring only contained old ashes. David also reiterated that they took no action to extinguish their campfire that night and allowed the fire to go out on its own. David then stated that on Sunday morning, around 08:00 AM, he built another cooking fire within the same campfire ring for the purpose of cooking breakfast. Once again, David stated that he and Caleb stayed in camp until around noon before leaving camp for a hike. Prior to leaving, he threw a "Gummie Bear" wrapper on the fire and noticed that the wrapper did not melt, thus making him believe that the fire was out and no longer contained any heat. David said that because of this assumption they did not take any action to extinguish their fire prior to their departure. David also mentioned that he was surprised by how fast the wood they used in their campfire burned up, thus reassuring him that their campfire was out and that the wood was totally consumed.

11. On July 23, 2011 your affiant conducted a non-custodial interview of Caleb Malboeuf, near his residence in Benson, AZ, regarding the Wallow Fire. Caleb also

continued to be cooperative, forthcoming, and consistent with his account of his camping and hiking trip with David Malboeuf into the Bear Wallow Wilderness beginning on May 28, 2011. In addition to Caleb's earlier account (see paragraph 5) of their camping and hiking trip into the Bear Wallow Wilderness Caleb stated that he remembers them camping in a well used campsite. It consisted of a flat area adjacent to Bear Wallow Creek, and contained an existing rock campfire ring. Caleb pointed out to your affiant, on an Apache National Forest map, where he believed their camp was located. He indicated their camp to be in Township 3N, Range 28E, Section 16, just below the confluence of the North and South Forks of Bear Wallow Creek. Caleb went on to say that the campfire ring is where he and David built their cooking fires on both Saturday and Sunday. He indicated that they did not need to clear any flammable material away from the campfire ring because it was a well used campsite and no brush was near the ring. Caleb said that David started the fire on Sunday morning for the purpose of cooking breakfast and not for recreational use. Consequently, it was a relatively small fire. Caleb again stated that they took no action to extinguish their campfires on Saturday and Sunday because they had attended the fires long enough that they felt confident that the fires went out on their own. Caleb again mentioned David throwing a wrapper on the fire prior to their departure from camp on Sunday, and said that the wrapper did not "shrive!" or melt which indicated to Caleb that the fire was out and contained no heat. Caleb went on to mention that the weather conditions were "windy all day," but that he was not concerned about their fire escaping because he believed it was out and that there were no hot coals available to blow out of the campfire ring. Caleb also said that they had not taken a

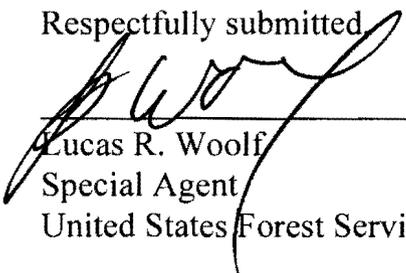
shovel or bucket with them into the wilderness, and had not used water or dirt to extinguish the cooking fires.

Both Caleb and David Malboeuf stated to your affiant that they are experienced campers and are very familiar with the Apache National Forest, frequenting the forest for years. Caleb and David both stated that they believe they took every precaution needed to prevent the escape of their campfire and that in no way did they intend to cause a forest fire.

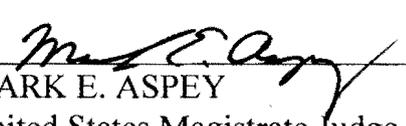
**CONCLUSION**

12. This Court has jurisdiction in regards to this investigation because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, this Court is “a district court of the United States . . . that has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

Respectfully submitted,

  
\_\_\_\_\_  
Lucas R. Woolf  
Special Agent  
United States Forest Service

Subscribed and sworn to before me  
On August 24, 2011:

  
\_\_\_\_\_  
MARK E. ASPEY  
United States Magistrate Judge