

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEIZURE WARRANT**

I, Geoffrey J. Kelly, being duly sworn state the following:

INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") and have been so employed for more than twenty-six years. Prior to my employment with the FBI, I served for three years as a police officer with the Metropolitan Transportation Authority Police Department in New York City. Since February 1996, I have been assigned to the Boston Division of the FBI. I am currently assigned to the Lakeville Resident Agency in Lakeville, Massachusetts, where my primary duty is the investigation of violent criminal offenses and the theft of art & cultural antiquities. I am a member of the FBI's Art Crime Team ("ACT") and have been affiliated with this team since its formation in 2004. In this capacity, I am responsible for investigating the theft of art and cultural antiquities that have been stolen from museums and/or have traveled in interstate or foreign commerce. I have received specialized training in stolen art and cultural property investigations and I have worked with local, state, national, and international law enforcement agencies investigating the theft and trafficking of art and cultural antiquities. Throughout my career, I have participated in hundreds of violent crime and art theft investigations and during these investigations, I have executed search and arrest warrants, utilized informants, interviewed witnesses, and conducted surveillances. I am a federal law enforcement officer within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws and duly authorized by the Attorney General to request a seizure warrant.

PURPOSE OF THE AFFIDAVIT

2. I am investigating the transportation and receipt of stolen goods in interstate and foreign commerce in violation of 18 U.S.C. §§ 2314 and 2315.

3. I am submitting this affidavit in support of an application for a seizure warrant, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), for the following property:

- a. Document signed by Don Hernan De Cortés Marques Del Valle a/k/a Hernando Cortés a/k/a Hernan Cortés on April 27, 1527 regarding certain rose sugar (the “Cortés Document”).

4. This affidavit is submitted for the limited purpose of establishing probable cause to believe that the Cortés Document constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. §§ 2314 and/or 2315 and is subject to seizure and forfeiture to the United States 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

5. This affidavit is based on my personal knowledge, training and experience, information provided by other law enforcement offices and government employees, and information gathered during this investigation including interviews of witnesses, the review of documents, and conversations with other law enforcement officers. This affidavit is not intended to set forth all of the information that I have learned during this investigation but includes only the information necessary to establish probable cause for the requested seizure warrant.

AUTHORITY FOR SEIZURE

6. 18 U.S.C. § 2314 provides in pertinent part that “[w]hoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud,” shall be subject to criminal penalties.

7. 18 U.S.C. § 2315 provides in pertinent part that “[w]hoever receives, possesses, conceals, stores, barter, sells, or disposes of any goods, wares, or merchandise, securities, or

money of the value of \$5,000 or more ... which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken,” shall be subject to criminal penalties.

8. Pursuant to 18 U.S.C. § 981(a)(1)(C), “any property, real or personal, which constitutes or is derived from proceeds traceable,” to a violation of 18 U.S.C. §§ 2314 and/or 2315 is subject to forfeiture to the United States. Both 18 U.S.C. §§ 2314 and 2315 are forfeiture predicates through 18 U.S.C. § 981(a)(1)(C), which, by reference, incorporates offenses listed in 18 U.S.C. § 1961(1), including 18 U.S.C. §§ 2314 and 2315.

9. This Court has authority to issue a seizure warrant, pursuant to 18 U.S.C. § 981(b)(2), which states that “seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.” This Court also has authority to issue a seizure warrant pursuant to 21 U.S.C. § 853(f), as incorporated by 28 U.S.C. § 2461(c), which authorizes “the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that [a restraining order] may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.”

10. Furthermore, this Court has jurisdiction to enter the requested seizure warrant in the District of Massachusetts because a forfeiture action may be filed in this District. Title 18, United States Code, Section 981(b)(3) states:

Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section

1355(b) of title 28, and may be executed in any district in which the property is found.

Pursuant to Section 1355(b) of Title 28, a forfeiture action may be filed in the District of Massachusetts because, as set forth below, acts or omissions giving rise to the forfeiture occurred here.

PROBABLE CAUSE

11. On June 6, 2022, a representative of the Archivo General de la Nación de México (“General Archives of Mexico”), located in Mexico City, Mexico, contacted the FBI and reported that the Archives had located a document that was currently up for auction on the website of RR Auction that they believed was stolen from their files. The document was signed by Don Hernan de Cortés Marqués del Valle also known as (“aka”) Hernando Cortés aka Hernan Cortés.

12. RR Auction is a domestic limited liability company registered in the State of Massachusetts under the name R & R Auction of Massachusetts LLC. I am aware that RR Auction has offices in Massachusetts and New Hampshire.

13. I reviewed the website for RR Auction and located Lot # 168, which was titled “Hernando Cortes Document Signed.” The website described the item further as follows:

“Incredibly rare payment for "rose sugar" by conquistador Cortes

Spanish conquistador (1485-1547) who initiated the conquest of the Aztec Empire on behalf of King of Castile and Holy Roman Emperor Charles V, and, in so doing, assumed an instrumental role in the first phase of the Spanish colonization of the Americas. Excessively rare manuscript DS in Spanish, signed “Hernando Cortes,” one page, 8.5 x 6, April 27, 1527. Document issued to his majordomo, Nicolas de Palacios Rubios, instructing him to give to Maestre Francisco twelve gold pesos for certain pink sugar that he is carrying for the pharmacy and to take note for his accounts. In full (translated): "Palacyos Rubyos: give Master Francisco twelve gold pesos, of the gold that is circulating, which are for a certain rose sugar for the apothecary that he keeps, and get a receipt for your discharge. Done on the 27th of April of the year 1527."

The reverse bears a handwritten receipt acknowledging fulfillment of the request, in full (translated): "I, Master Francisco, received from you, Palasio Rubios, the twelve gold pesos referred to on the other side, and they are for the rose sugar. And I signed it with my name as the truth, today, the 13th of May of the year 1527." Docketed along the edge and verified by Cortes's 'witness of assistance.' In fine condition. The consignor notes that this document was displayed in a museum in the Midwest for over 20 years."

The website also included a photograph front and back of the Cortés Document. A copy of the website page with the Cortés Document is attached at Exhibit 1. One of the corners of the Cortés Document appears to have been torn or removed.

14. As of June 8, 2022, 22 bids placed on Lot #168 and the bid price was at \$18,626. The auction was scheduled to end on June 15, 2022. After being contacted by the FBI, RR Auction agreed to withdraw Lot #168 from the auction and removed Lot #168 from their website.

15. An Assistant Legal Attaché for the FBI reached out to the representative for the General Archives of Mexico to obtain further information as to why they believed the Cortés Document was stolen from the Archives. She replied in Spanish with five points to support their claim. The following is a draft translation of what was written:

1. The description of the document allows us to conclude that it belongs to the volume 362, docket 203, of the documents of The Hospital de Jesús registered in this archive, since the file is described in the Information System of Registration, Administration, Normalization and Digitization of Archives of the Nacional Archive of Mexico as follows:
 - Hospital de Jesús / Volume 362/ Docket 203 / Single File: Central American Expedition / Year 1527 / Pages: 1 – 287. Central American Expedition, contains receipts and payment letters with 39 autograph signatures of Don Hernando de Cortés Marqués del Valle and 1 autograph signature of Andrés de Tapia, Conquistador.
2. The information in the document matches with the information of the file, relating to the payment releases that Cortés ordered for the organization of the navy in the South Sea.

- The payment offered by the auction house matches to the payment of twelve gold pesos ordered to be delivered to Maestre Francisco to buy pink sugar for the army apothecary, dated April 27, 1527 and is related to the payment referred on the page 14 of the file that is still kept by the Nacional Archive of Mexico. As evidence the document refers to the same matter, it is addressed to Master Francisco and it is likely that it was written by the same notary public.
 - This information was corroborated by a Spanish historian who has collaborated with the Nacional Archivo of Mexico to identify the documents of Hernan Cortes offered through various internet pages.
3. The file is paged and include 91 sheets of which 18 are missing, corresponding to pages 3, 9, 10, 11, 12, 13, 15, 19, 20, 24, 28, 29, 30, 33, 49, 50, 60 and 72.
 4. The foliation of the pages is located in most of the documents in the upper right part, marked in red, so a physical inspection of the offered document is required to identify if the folio number was erased or the page was mutilated.
 5. The document published by the auction house shows that one of its edges was restored. It is an evidence of the cut that was made to the file which could have been eliminated.

16. I am aware that over several years, colonial-era documents, including those signed by Cortés, that are believed to have been stolen from the General Archives of Mexico have been placed for auction in the United States. A number of these documents have been recovered and repatriated to Mexico, including 15 handwritten papers recovered and returned to Mexico in 2021.¹

¹ See, e.g., McGreevy, Nora, *Colonial-Era Papers Stolen From Mexico's National Archive Return Home*, SMITHSONIAN MAGAZINE, Sept. 28, 2021 (available at <https://www.smithsonianmag.com/smart-news/mexico-documents-colonial-cortes-stolen-recovered-180978767/>); Jorgic, Drazen, *Amateur Sleuths Traced Stolen Cortés Papers to U.S. Auctions. Mexico Wants Them Back*, REUTERS, May 13, 2021 (available at <https://www.reuters.com/world/mexico-wants-back-stolen-corts-papers-auctioned-us-2021-05-13/>).

17. I am aware that a FBI Special Agent contacted RR Auction and spoke with an attorney who represents the company. The attorney further advised that the Cortés Document had been consigned to RR Auction by a consignor (“Consignor 1”), who lives in Florida. Consignor 1 had informed RR Auction that he had purchased the Cortés Document in 2019 from an auction house in Beverly Hills, California (“Auction House 1”). Auction House 1 sold the Cortés Document on behalf of another consignor (“Consignor 2”) who lives in the Midwest.

18. The Cortés Document is currently in the possession of RR Auction and stored at their New Hampshire office located at 1 State Route 101A, Suite 3, Amherst, New Hampshire. Prior to being transported to New Hampshire, the Cortés Document was in RR Auction’s custody in Massachusetts. Communications between RR Auction personnel and Consignor 1 occurred from Massachusetts.

CONCLUSION

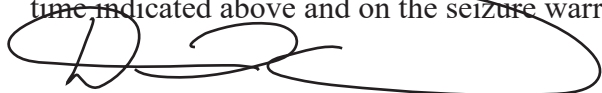
19. Based on the foregoing, I have probable cause to believe that the Document signed by Hernando Cortés on April 27, 1527 regarding certain rose sugar constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. §§ 2314 and/or 2315, and is subject to seizure pursuant to 18 U.S.C. §§ 981(a)(1)(C), 981(b) and 28 U.S.C. § 2461(c) and to 21 U.S.C. § 853(f), as incorporated by 28 U.S.C. § 2461(c).

Sworn to under the pains and penalties of perjury,

Geoffrey Kelly ^{DLC}
Geoffrey J. Kelly
Special Agent, FBI

Subscribed and sworn to before me on June 29, 2022

Notice is hereby provided that, pursuant to Federal Rule of Criminal Procedure 4.1, the affiant was sworn and the contents of the affidavit subscribed to by telephone on the date and time indicated above and on the seizure warrant issued by the Court.



HON. DONALD L. CABELL
United States Magistrate Judge

