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CRIMINAL COMPLAINT

UNITED STATES DISTRICT COURT	CENTRAL DISTRICT OF CALIFORNIA	FILED JUL 26 2016 CENTRAL DISTRICT OF CALIFORNIA DEPUTY
UNITED STATES OF AMERICA v. CESAR ERNESTO GUTIERREZ	DOCKET NO.	
	MAGISTRATE'S CASE NO. M 16 U1508	

Complaint for violation of Title 18, United States Code, Sections 554(a), 2(a) (Aiding and Abetting the Smuggling of Goods from the United States)

NAME OF MAGISTRATE JUDGE HONORABLE ALICIA G. ROSENBERG	UNITED STATES MAGISTRATE JUDGE	LOCATION Los Angeles, California
DATE OF OFFENSE April 22, 2016	PLACE OF OFFENSE Los Angeles County	ADDRESS OF ACCUSED (IF KNOWN)

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

[18 U.S.C. §§ 554(a), (2)(a)]

On April 22, 2016, in Los Angeles County, within the Central District of California, and elsewhere, defendant CESAR ERNESTO GUTIERREZ ("GUTIERREZ") knowingly aided and abetted Huang Ching Liu, also known as ("aka") "Chady Liu" ("Liu"), and Wen Shou Wei Chen, aka "Zen" ("Chen"), who fraudulently and knowingly attempted to export and send from the United States merchandise, articles, and objects, namely, African elephant ivory, knowing that such exportation was contrary to law. Specifically, GUTIERREZ knowingly aided and abetted Liu and Chen in their fraudulent and knowing attempt to export and send from the United States 41 sections of pool cues, purchased from GUTIERREZ, and made in part from African elephant ivory, in violation of Title 16, United States Code, Sections 1538(a)(1)(G), 1540(b)(1) and Title 50, Code of Federal Regulation, Section 1740(e).

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: N/A

Being duly sworn, I declare that the foregoing is true and correct to the best of my knowledge.	SIGNATURE OF COMPLAINANT JESICA ESPINOZA
	OFFICIAL TITLE Special Agent – U.S. Fish and Wildlife Service

Sworn to before me and subscribed in my presence,

SIGNATURE OF MAGISTRATE JUDGE ⁽¹⁾ ALICIA G. ROSENBERG	DATE July 26, 2016
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⁽¹⁾ See Federal Rules of Criminal Procedure 3 and 54

AFFIDAVIT

I, Jessica Espinoza, being duly sworn, declare and state as follows:

I. INTRODUCTION

1. I am a Special Agent ("SA") with the United States Department of Interior, Fish and Wildlife Service ("FWS"), assigned to the Torrance, California field office. I have been employed by the FWS as a Special Agent since 2011. During my employment with FWS I have conducted and participated in numerous investigations pertaining to violations of federal and state wildlife laws. Prior to joining the FWS as a Special Agent, I served as an investigative case specialist for FWS. I attended the Federal Law Enforcement Training Center Criminal Investigator Training Program ("CITP") Academy and FWS Special Agent Basic School ("SABS"). My training at CITP and SABS included classes with a focus on smuggling of wildlife products. During the past year, I have been involved in the investigation of at least ten individuals involved in the smuggling of wildlife species protected under the Endangered Species Act. Specifically, I have participated in investigations with individuals who have imported and exported ivory, sea turtle shells, parrots, Asian song birds, coral, and butterflies in the pet trade through undeclared shipments in the mail, containers in cargo vessels, body smuggling of wildlife, and concealed in airline passenger's luggage. I have also assisted in the criminal prosecution of online traffickers in endangered and threatened wildlife species and their parts. I have coordinated

enforcement operations and surveillance of the illegal activities of wildlife smugglers operating in Los Angeles and abroad.

II. PURPOSE OF AFFIDAVIT

2. This affidavit is made in support of a criminal complaint charging defendant Cesar Ernesto GUTIERREZ ("GUTIERREZ") with violation of 18 U.S.C. §§ 554(a), (2)(a) (Aiding and Abetting the Smuggling of Goods from the United States).

3. African elephant is listed as a threatened species and Asian elephant is listed as an endangered species in the endangered and threatened wildlife list set forth in 50 C.F.R. § 17.11. With respect to endangered Asian elephant, under 16 U.S.C. § 1538(a)(1)(A) of the Endangered Species Act ("ESA"), it is illegal for any person subject to the jurisdiction of the United States to import any endangered wildlife into, or export any endangered wildlife from, the United States. As used in the ESA, the term "wildlife" includes "any part, product, egg, or offspring thereof, or the dead body or parts thereof." 16 U.S.C. § 1532(8).

4. With respect to threatened African elephant, under 16 U.S.C. § 1538(a)(1)(G) of the ESA, it is illegal to violate any regulation pertaining to such species or to any other threatened species of fish or wildlife listed pursuant to the ESA. It is unlawful to export any African elephant, or part thereof, from the United States. 50 C.F.R. § 17.40(e)(2)(i). Raw and worked African elephant ivory is also regulated. Worked ivory may only

be exported from the United States with a permit. 50 C.F.R. § 17.40(e)(3)(ii)(B). Raw ivory may not be exported from the United States for commercial purposes under any circumstances. 50 C.F.R. § 17.40(e)(3)(ii)(C).

5. Title 18, United States Code, Section 554 provides that it is illegal to fraudulently or knowingly export or send from the United States, or attempt to export or send from the United States, any merchandise, article, or object contrary to any law or regulation of the United States, or receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise, article or object, prior to exportation, knowing the same to be intended for exportation contrary to any law or regulation of the United States.

6. The facts set forth in this affidavit are based upon 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 for the requested warrant and does not purport to set forth all of my knowledge of or investigation into this matter. Unless specifically indicated otherwise, all conversations and statements described in this affidavit are related in substance and in part only.

III. SUMMARY OF INVESTIGATION

7. I am currently conducting a criminal investigation of GUTIERREZ who owns and operates a business constructing pool cues, known as Ginacue, located at 5424 Vineland Avenue, North

Hollywood, California ("Ginacue") and using the email address of ginacue@yahoo.com ("Ginacue Account"). GUTIERREZ is under investigation for aiding and abetting the attempted exportation of wildlife parts or products from the United States through the Los Angeles International Airport, ("LAX") or by international mail, contrary to law. The investigation has indicated that GUTIERREZ has aided and abetted Huang Ching Liu ("LIU") and Wen Shou Wei Chen ("CHEN") in the export of wildlife items such as pool cues composed in part of elephant ivory by: (1) failing to file the required declarations with the FWS, (2) failing to obtain the required permits under CITES in the case of a CITES protected species and, (3) in the case of the endangered and threatened species, transporting, offering to sell, and selling in foreign commerce ivory pool cues for commercial purposes. 16 U.S.C. §§ 1538(a) (1) (A), (E)-(G), 1540(b)(1).

IV. STATEMENT OF PROBABLE CAUSE

A. Summary of Probable Cause

8. On April 22, 2016, LIU, a Taiwanese National, and CHEN, a Chinese National, were arrested at the LAX for attempting to export custom pool cues with inlayed elephant ivory. I interviewed LIU and learned that the ivory pool cues had been purchased in Los Angeles from GUTIERREZ.

9. On April 27, 2016 during an interview, LIU told me that he had purchased the ivory pool cues from "Ernie" GUTIERREZ on April 17, 2016 for his customers in China. LIU described picking up the cues at GUTIERREZ's business, Ginacue. During the April 27, 2016 interview, LIU stated that he saw ivory at

Ginacue. On May 11, 2016, I interviewed CHEN who identified the location of Ginacue on a Google Map Screenshot. CHEN also told me that he visited Ginacue with LIU on April 17, 2016 and saw unfinished ivory. I was told by LIU during his interview, and by CHEN during his interview, that GUTIERREZ knew that the ivory inlaid pool cues were going to Taiwan.

10. On May 2, 2016, I performed a consensual search of LIU's email account, and I learned that LIU and GUTIERREZ communicated regularly via email and conducted business via email. I reviewed emails that contained invoices for the sale of ivory inlaid pool cues made by GUTIERREZ and sold to LIU for LIU's customers in China and Taiwan.

11. In addition, on May 27, 2016, I reviewed financial records from GUTIERREZ's Union Bank account and verified wire transfer payments made by LIU to GUTIERREZ for the ivory inlaid and custom pool cues sold by GUTIERREZ to LIU.

12. On June 3, 2016, LIU was interviewed and reviewed financial records and confirmed that every wire transfer, with the exception of one, to GUTIERREZ from 2010 to the present was for the purchase or repair of ivory inlaid pool cues.

13. On June 15, 2016, I executed a search warrant at the Ginacue business and found documents containing invoices for pool cue orders for other international Ginacue customers.

B. Arrest of CHEN and LIU

14. On April 22, 2016 LIU and CHEN were arrested at LAX for attempting to export 44 sections of pool cues made in part from elephant ivory. At 3:20 p.m. on that day, FWS Resident

Agent in Charge ("RAC"), Erin Dean, and I confirmed that LIU and CHEN had checked in at LAX for their flight on Eva Airways and learned that CHEN had four luggage bags checked under his name. Based on my training and experience, I know that when individuals travel together their luggage is often checked in at the airline under one passenger's name. Customs and Border Protection ("CBP") Officers Baldwin and Grissom then assisted me in exercising our border search authority and inspected the four checked bags.

15. CBP Officers Baldwin and Grissom and I opened the four bags and found 44 sections of pool cues that appeared to contain ivory. I personally inspected all 44 pool cue sections and empty pool cue cases that were in three of the four checked bags. The fourth bag contained clothing and personal items.

16. Based on my training and experience, I observed Schreger lines that are contained in elephant and mammoth ivory. Polished cross-sections of elephant and mammoth ivory dentine display unique lines that are characteristic of the species called Schreger lines. I determined that three of the three bags contained pool cues with ivory consistent with elephant or mammoth. I immediately photographed three of the 44 sections of the pool cues with what appeared to be ivory found in three of the four checked bags. I sent those photographs to Dr. Edgard Espinoza, forensic chemist and Deputy Director of the National Fish and Wildlife Laboratory in Ashland, Oregon ("the laboratory"), for provisional identification of the ivory. Dr. Espinoza determined that the ivory in the pool cues showed

characteristics consistent with elephant ivory. I sent the pool cues to the laboratory, and on May 11, 2016 the laboratory confirmed that the custom pool cues contained elephant ivory.

17. At the time of their arrest, LIU and CHEN identified GUTIERREZ as the primary source of the majority of the pool cues in their possession as further described in the affidavit. One pool cue CHEN brought from Taiwan and one pool cue was to be repaired by CHEN for Peter Tonkin, his customer in the United States, at his shop in Taiwan after CHEN returned home to Taiwan.

a. LIU described GUTIERREZ as being a famous custom pool cue maker with a reputation as the greatest "living" pool cue maker. LIU stated that GUTIERREZ would characterize the pool cues that he sold to LIU and in LIU's possession at the time of arrest as being made from ivory components, specifically elephant ivory. LIU stated that GUTIERREZ makes high end custom pool cues under the brand name, Ginacue, and that the business was named after GUTIERREZ's daughter, Gina. LIU said that 41 sections of pool cues containing ivory that he had in his possession on April 22, 2016 were purchased from GUTIERREZ for approximately \$75,000 to \$85,000.

b. LIU stated that on April 17, 2016, he traveled from the Super Billiards Expo in Oaks, Pennsylvania, to GUTIERREZ's pool cue "shop" located in North Hollywood to pick up the pool cues that he had previously purchased from GUTIERREZ for his customers in China. LIU also indicated that he had been a collector of pool cues for many years before opening his own

custom cue business and online cue business (www.PCcues.com) in Taiwan. LIU also indicated that he and GUTIERREZ had met and exchanged emails, and that LIU had been to GUTIERREZ's shop before. LIU also said that he arranged the meeting with GUTIERREZ and visited GUTIERREZ' shop Ginacue with his business partner, CHEN, on April 17, 2016.¹

18. During my meeting with LIU on April 22, 2016, LIU said that he still had pool cues on order from GUTIERREZ. During LIU's visit to GUTIERREZ's shop on April 17, 2016, GUTIERREZ suggested that he could go as far as Hawaii to meet LIU to deliver the remaining cues because Hawaii was still a part of the United States. LIU said that he told GUTIERREZ that it would not be much closer for LIU in terms of geography.

19. LIU also explained to me on April 22, 2016 that he sold pool cues made by GUTIERREZ on his website, www.pccues.com. LIU stated that ivory pool cues can sell for a higher price in China than in the United States. LIU also said he made about five to ten percent profit on the Ginacue pool cues he sold.

20. LIU also stated on April 22, 2016, that GUTIERREZ has other international customers that he sells to as well and recalled an incident when GUTIERREZ sent LIU an invoice in an email as a .pdf attachment. According to LIU the email attachment contained invoices for other Ginacue customers. LIU

¹ CHEN is an accomplished custom pool cue maker and sells his pool cues under the brand name Zen Custom Cue. CHEN's pool Zen pool cues are sold by LIU online at www.PCcues.com. The business is located in Taiwan.

remembered that three of the customers on the Ginacue invoices sent by GUTIERREZ were located in Japan and Taiwan.

21. On April 24, 2016, I conducted internet research on GUTIERREZ and discovered an article written in 1994 and published by the LA Times titled: "Chalk Him Up for Greatness: Ernie Gutierrez - Master Cue Maker." The second sentence of the article stated, "Gutierrez is world-famous in his own right—crafting ornate custom cues with elaborate materials, including ivory, gold, jewels, and rare and exotic woods." I also learned that the business, Ginacue, is listed in the International Cue Makers Association web page as being located in North Hollywood.

22. On April 27, 2016, I met with LIU and showed LIU a photo line-up containing six photographs, one of which depicted GUTIERREZ' California driver's license photo. LIU positively identified GUTIERREZ from the photo spread as the person who sold him the elephant ivory pool cues that LIU attempted to export on April 22, 2016. LIU also identified a Google Street View screen shot of 5424 Vineland Avenue in North Hollywood as the location of GUTIERREZ's shop. LIU was familiar with the location and clarified that there was a fence in front of the business, not shown in the picture, and stated that GUTIERREZ had a dog in the shop as well.

23. LIU also stated on April 27, 2016 that GUTIERREZ is "known for his ivory" and that, during his visit to Ginacue on April 17, 2016, he and GUTIERREZ talked about ivory laws. GUTIERREZ told LIU that his ivory was "legal," and that he did not agree with the ivory ban would soon be implemented by the

state of California. LIU said that he and GUTIERREZ also discussed whether LIU should take the ivory pool cues on the plane with him back to Taiwan. LIU said that during his visit to Ginacue on April 17, 2016, he saw a pallet of 40-50 unfinished forearms (a part of a pool cue). LIU described that some of the forearms had inlaid ivory in them, while others had not yet been finished.

C. Email Searches

24. LIU gave me consent to search his email account: poolchady@gmail.com. LIU identified this email account as the one he used to email GUTIERREZ regarding his pool cue orders for his customers in China. LIU stated that GUTIERREZ used an email account, ginacue@yahoo.com, but added that this email account could be at Hotmail or gmail.

25. On May 2, 2016 I performed a consent search of LIU's email account, poolchady@gmail.com and located email correspondence in LIU's account that listed "Ernie" GUTIERREZ associated with the Ginacue account. I reviewed each of the following emails exchanged between LIU in Taiwan and GUTIERREZ at Ginacue in North Hollywood, California.

a. An email sent on December 5, 2012 from the Ginacue account to LIU that referenced a sale that GUTIERREZ made to Rung-Yuh Hung, an individual in Taiwan, who I believe to be the same individual as Hung who, in 2000, sent an undeclared ivory pool cue to GUTIERREZ (see par. 29, below). In the email, GUTIERREZ stated that there was a miscommunication, and that Hung did not like the cue so GUTIERREZ offered to sell it to

LIU. In that same email to LIU, GUTIERREZ stated, ". . . as you know, cues with ivory components can't come to the US . . ."

b. An email sent on December 10, 2015 from LIU to the Ginacue account which referenced LIU's plans to pick up some pool cues that he ordered from GUTIERREZ. In that email, LIU stated, "If they are near finished I might plan a trip to LA to pick them up in person. The ivory ban makes it harder to ship ivory cues overseas." The email chain also included attachments of GUTIERREZ's invoices of the cues that LIU purchased and a spreadsheet created by LIU listing all the cues that LIU ordered from GUTIERREZ for the last three years that LIU hoped to pick up. All the Ginacue pool cues were described as containing ivory in two spreadsheets that LIU prepared which were attached to LIU's emails.

c. An email chain which included, an email sent on January 27, 2016 from the Ginacue account to LIU referenced the fact that GUTIERREZ had 12 cues ready for LIU to pick up after February 10, 2016. In that email, GUTIERREZ stated that he would start working on the remainder of LIU's order after February 10, 2016. The attachments to this email included invoices provided by GUTIERREZ as well as LIU's own records of the orders he had placed and which cues were ready for pick up. The cues that were ready for pick up were identified in GUTIERREZ' invoices as ready.²

² On June 3, 2016, LIU was interviewed, and LIU confirmed that all but one of the cues identified as ready for pick were included in the cues that were found in LIU's luggage on April

d. An email chain that included an email sent on March 23, 2016 from the Ginacue account to LIU referenced seven invoices of orders made by LIU for pool cues from Ginacue. The invoices were listed as invoice numbers 2279, 2280, 2281, 2328, 2336, 2345, and 2372 and were attached to the email. The invoices described that LIU ordered a total of 29 pool cues, 11 of which were marked as "ready." In the March 23, 2016 email, GUTIERREZ asked LIU to send a money transfer to his bank and listed the bank information as: "CESAR E GUTIERREZ, UNION BANK, 16638 VENTURA BLVD., ENCINO CALIF. 91436, S.W.I.F.T BOF-CUS33MPK, ROUTING # 122000496, ACCT.# XXXXX326." Later the same day, LIU wrote an email back to the Ginacue account asking how much GUTIERREZ wanted him to pay and stating that he was now planning to pick the cues up personally.

e. On March 24, 2016, GUTIERREZ sent an email from the Ginacue account to LIU stating that he would need the balance for the following three invoices: invoice 2281 for \$30,275.00, invoice 2328 for \$23,205.00 and invoice 2372 for \$18,454.00. On March 25, 2016, LIU sent an email to the GINACUE EMAIL and stated that the wire process would "be commenced on Monday." On April 1, 2016, GUTIERREZ sent an email to LIU from the GINACUE EMAIL which stated that GUTIERREZ had just left his bank and had received the money transfer.

22, 2016. As noted above, those pool cues were seized at LAX and tested and confirmed to contain elephant ivory.

f. Between April 2, 2016 and April 7, 2016, GUTIERREZ used the Ginacue account to exchange emails with LIU to set up a meeting time for LIU to stop by GUTIERREZ's shop to pick up the cues. They agreed to meet on April 17, 2016 at 3:30 p.m.

g. An email sent on April 21, 2016 from the Ginacue account to LIU referenced LIU and CHEN's visit to GUTIERREZ's shop on April 17, 2016 and stated that LIU is a "retailer of Ginacues." This email included as an attachment, invoice number 2491, showing the purchase of one of GUTIERREZ's 50th anniversary cues for \$15,000 and stating that the cue was "shipped" on April 17, 2016.

26. On May 27, 2016, I reviewed bank records associated with the account GUTIERREZ listed in the March 23, 2016 described in paragraph 25d above. I confirmed that in March of 2016, GUTIERREZ received a wire transfer from "LIU HUANG CHING" at in Taiwan for of \$71,934.00.

27. On April 28, 2016, I discovered that the website for the International Cue Maker's Association, www.internationalcuemakers.com, lists "Ginacue, Ernie Gutierrez, 5424 Vineland Ave, North Hollywood, CA 91601 USA, Telephone 818-509-0454," and also states GUTIERREZ is a cue maker who started in 1961 and was inducted into the International Cue Makers Association Hall of Fame in 2014.

D. Additional Ivory Violations

28. On April 29, 2016, I conducted a check of the FWS Law Enforcement Management Information System ("LEMIS"), a FWS

system that tracks all lawfully declared imports and exports containing wildlife, any undeclared imports or exports that are found, and the actions taken in the event of the discovery of an undeclared import or export containing wildlife. I learned that there were two prior incidents in which undeclared shipments of pool cues containing elephant ivory that were sent to GUTIERREZ from overseas were seized by law enforcement.

29. On April 29, 2016, I reviewed LEMIS reports prepared by Supervisory Wildlife Inspector Chris Andrews and learned that in 2000, an undeclared pool cue containing elephant ivory was shipped to "Ernie Gutierrez" and "Ginacue" by his Taiwanese customer, Rung-Yuh Hung. This cue was seized and GUTIERREZ received a Notice of Proposed Forfeiture letter notifying GUTIERREZ that the cue was unlawfully imported without the required CITES permits.³ The letter gave GUTIERREZ the option to

³ African elephant and Asian elephant species are protected under an international treaty known as the Convention on the International Trade in Endangered Species of Wild Fauna and Flora ("CITES"). "CITES" is a treaty that provides protection to fish, wildlife, and plants that may become imperiled due to the demands of international markets. CITES has been signed by over 150 countries around the world, including the United States as well as all countries in the European Union and South America. CITES is implemented, and certain violations of CITES are made criminal, under the authority of the Endangered Species Act ("ESA") and the regulations promulgated thereunder. 16 U.S.C. §§ 1538(c)(1), 1540(b)(1); 50 C.F.R. parts 14 and 23.

A species listed as protected under CITES cannot be exported from the United States without prior notification to, and clearance from, the USFWS. 16 U.S.C. § 1538(c), 50 C.F.R. §§23.2, 23.27(a), (b). Species protected under CITES are listed in a series of appendices (Appendices I, II, and III). The level of trade restrictions and regulations applicable to a

abandon the property. No response to the letter was ever received; consequently, an administrative forfeiture action was initiated. The proposed forfeiture was posted for three consecutive weeks after which the pool cue was administratively forfeited and sent to the FWS Property Repository.

30. On April 29, 2016, I reviewed LEMIS reports prepared by Special Agent Steve Tuttle and learned that in September of 2001, an undeclared pool cue containing ivory was shipped from Japan to "Mr. Ernie Gutierrez" and was found and seized by the FWS. FWS Special Agent FWS Stephen Tuttle contacted GUTIERREZ by phone and told GUTIERREZ that the shipment had been seized because it contained elephant ivory and did not have a CITES permit. SA Tuttle learned that the pool cue was sent to GUTIERREZ for repair from a Japanese customer. GUTIERREZ was then sent a letter at the Ginacue business address in North Hollywood, titled "Notice of Seizure and Proposed Forfeiture" that stated that a pool cue containing elephant ivory was unlawfully imported without the required CITES permits. The letter gave GUTIERREZ the option to abandon the property. The same letter was sent to GUTIERREZ's Japanese customer. The

particular species is governed by the specific appendix that lists the species.

Ivory from African elephant (*Loxodonta africana*) and Asian elephant (*Elephas maximus*) are listed under CITES Appendix I. Under Appendix I, a species may be exported from the United States to a foreign country only if, prior to exportation, the exporter possesses an export permit or re-export certificate from the United States and an import permit from the country of import. 16 U.S.C. § 1538(c), 50 C.F.R. § 23.20.

Japanese customer submitted a Petition for Remission of the pool cue, but that petition was denied by the U.S. Solicitor's Office.⁴ The pool cue was then sent to the FWS Property Repository.

E. Additional Interviews

31. On May 11, 2016, I met with CHEN, and CHEN indicated that he also attended the meeting between LIU and GUTIERREZ on April 17, 2016, at Ginacue. According to CHEN, GUTIERREZ helped LIU package the pool cues containing ivory that LIU purchased from GUTIERREZ for the purpose of LIU traveling from LAX to Taiwan. CHEN indicated that GUTIERREZ secured a black duffle bag containing some of the cues he sold to LIU by wrapping duct tape around the entire bag. CHEN also described how GUTIERREZ placed bubble wrap in a second rectangular roller bag to help cushion the pool cues. CHEN also stated that GUTIERREZ would not have packaged the pool cues in that manner had he not been helping LIU's prepare for his trip to Taiwan.

32. During the April 27, 2016 meeting with CHEN, I showed CHEN a photo containing six photographs, one of which depicted a picture of GUTIERREZ' California driver's license photo. CHEN positively identified GUTIERREZ from the photo spread as the person who sold him the elephant ivory pool cues. CHEN also identified a Google Street View screen shot of the Ginacue shop on Vineland Avenue in North Hollywood as the location of

⁴ The U.S. Solicitor's Office is a part of the United States Department of the Interior and handles all matters involving civil forfeiture, including U.S. Fish & and Wildlife Service civil matters.

GUTIERREZ's "shop." CHEN said the location looked like the location of GUTIERREZ's shop.

33. CHEN described the shop as a large room full of machines used to make custom pool cues and a room off to the side that was an office. CHEN stated that there was a computer in the office and that it was necessary to have a computer to run the pool cue machines. CHEN explained that the machines could all be run by a computer and that the cue maker uses design software programs to tell the machines what designs to carve.

34. CHEN said that when he and LIU arrived at GUTIERREZ' shop on April 17, 2016, GUTIERREZ was working on a piece of ivory in one of his machines. CHEN described it as a large flat piece. CHEN said he knew it was ivory due to its appearance and smell. CHEN explained that ivory has a distinct smell when it is being worked that is very different from a smell that any ivory substitute produces.

35. CHEN said he took some photos of the shop on his cell phone during his April 17, 2016, visit. CHEN gave me consent to view the photos on his cell phone. On May 19, 2016, I reviewed the photos and saw five pictures of GUTIERREZ's shop. One photo depicted GUTIERREZ posing with LIU with a view of the workshop in the background. The background depicted a large room full of industrial looking machines. The other four photos depicted various sections of unfinished pool cues. All five photos had metadata showing that the photos were taken on April 17, 2016.

36. On Friday, June 3, 2016, I interviewed LIU and learned that the 41 sections of the 12 ivory inlayed pool cues were purchased from GUTIERREZ (11 of the 12 LIU had pre-ordered and the 12th cue was purchased by LIU on April 17, 2016. Each pool cue had either two or three shafts that contained ivory. The base, also known as the butt, contained ivory. Specifically, wire transfer payments had been made in advance of LIU's arrival at Ginacue on or about April 17, 2016. LIU reviewed financial statements from February 2016 and showed me a wire transfer in the amount of \$71,934 from LIU to GUTIERREZ for the 11 custom pool cues ordered for LIU's customers in China.

37. LIU stated that initially he had not planned to fly to the United States to attend the Super Billards Expo in Oaks, Pennsylvania. At that time, LIU and GUTIERREZ had discussed the possibility of GUTIERREZ mailing the 11 ivory inlayed pool cues to an address in Los Angeles belonging to an acquaintance of LIU. LIU said that GUTIERREZ knew that if he used the Los Angeles mailing address the pool cues would then be shipped to LIU in China to be sold to his customers in China.

F. Other Ginacue Pool Cues Sold to International Customers

38. During the April 22, 2016 and June 3, 2016 interviews, LIU told me that he was aware that GUTIERREZ had many customers located overseas, including Asia, the United Kingdom, and Canada. LIU said that he had received an email in or around 2012 sent in error by GUTIERREZ that contained a PDF attachment listing other overseas customers buying his pool cues. Based on my experience and training, I believe that GUTIERREZ was making

arrangements for at least five overseas customers listed in that PDF document to receive Ginacue custom pool cues by, for example postal shipments or by arranging for his international customers to travel to the United States to pick up 15 out of 16 ivory inlayed pool cues. LIU told me that he knew of individuals from China who traveled from China to the U.S. recently to pick up 50th Anniversary pool cues from GUTIERREZ.

39. During the June 3, 2016 interview, LIU also told me that after he and GUTIERREZ had exchanged emails regarding preliminary arrangements to ship the 12 ivory inlayed pool cues to the Los Angeles address, LIU decided to fly to the United States and attend the Super Billiards Expo. LIU stated that he then made arrangements to travel from the Expo to Los Angeles to Ginacue to pick up the 12 ivory inlayed custom cues personally. Further, there were 13 previously ordered custom ivory inlayed cues that were not yet ready for LIU to pick up for LIU's customer's in China. LIU stated that he had already paid deposits on those orders and still owed money to GUTIERREZ.

G. Business Premises Search Warrant Executed on Ginacue and Interview of GUTIERREZ

40. On June 15, 2016, I along with other FWS special agents, executed a search warrant on Ginacue located at 5424 Vineland Avenue, North Hollywood, California. The search uncovered documents, many pieces of elephant ivory in various stages of production to be used in pool cues, and finished pool cues containing elephant ivory components.

41. At approximately 3:38 p.m. on that day, I interviewed GUTIERREZ with FWS SA James Markley at the Carl's Junior located at 10900 Magnolia Boulevard in North Hollywood. GUTIERREZ' wife was present. GUTIERREZ admitted to selling his customer, LIU, pool cues containing elephant ivory. GUTIERREZ stated that he works with elephant ivory "off and on." GUTIERREZ said that ten to fifteen percent of his pool cues contained elephant ivory, but that every pool cue he sold to LIU on April 17, 2016 contained elephant ivory. GUTIERREZ said he had done business with LIU previously. GUTIERREZ described that in those previous dealings with LIU, he had shipped the pool cues to an address in Florida.⁵ During the June 15, 2016 interview, GUTIERREZ said that the first time that LIU had ever come to pick up the cues from him personally was at the April 17, 2016 meeting.

42. In that same interview, GUTIERREZ also admitted that he had some other international customers. GUTIERREZ advised that those customers either picked the pool cues up at "the shop" or bought them at pool cue shows. I understood "the shop" to mean Ginacue in North Hollywood. GUTIERREZ said he had never shipped pool cues to international customers; however, GUTIERREZ did admit that he had shipped pool cues to customers in other states. GUTIERREZ said he used Fed Ex and UPS to ship pool cues. GUTIERREZ then explained that most of the time, the customers picked up the pool cues from him.

⁵ In his interview on June 3, 2016, LIU had also referenced a mailbox in Florida that was used for shipment of pool cues from Ginacue to LIU for pool cues ordered by his customers in China and Taiwan.

43. GUTIERREZ also identified Cue Components, run by Joe Barringer ("Barringer"), in Florida as the source of the ivory used in his pool cues. GUTIERREZ stated that ivory is not always available and that he won't buy it unless it is legal. GUTIERREZ said that he had "certifications" from Barringer because GUTIERREZ knew that FWS would ask about it. I asked GUTIERREZ what the "certifications" said, and GUTIERREZ responded that I would have to read the letters. GUTEIRREZ stated that Cue Components had been supplying ivory to GUTIERREZ for use in his pool cues since about 2010 or 2011. I asked GUTIERREZ how much ivory he had purchased from Barringer, and GUTIERREZ stated, "I think I got two full tusks from him in Los Angeles."

44. GUTITERREZ described that once he received a full tusk he would then cut it up and made the pool cue parts. GUTIERREZ said he did not have any full tusks currently because he knew that the California law banning the sale of ivory would go into effect "at the end of this month."

45. GUTIERREZ guessed that the last time Barringer shipped him tusks was in 2011. GUTIERREZ described receiving two tusks, taller than him, and further stated that both tusks together were "over a hundred pounds." GUTIERREZ described them as "full" tusks. GUTIERREZ said that all of the ivory he used in pool cues since he received the tusks from Barringer was from those two tusks.

46. GUTIERREZ confirmed that he had not received ivory from any sources other than Barringer. GUTIERREZ then explained

that "there's not too many people you can call up and have pre-ban ivory."⁶

47. During the June 15, 2016 interview, I also asked GUTIERREZ what he knew about ivory laws applying to international trade. GUTIERREZ responded, "for international, I know it's not supposed to go out." I then asked GUTIERREZ if he knew where LIU was from. GUTIERREZ initially denied knowing that LIU was from Taiwan but later admitted, "I know where he is from, I don't know where he lives, and at this point, I think I want to let my attorney" GUTIERREZ said something inaudible and then provided contact information for his attorney, Mike Adelson. I stopped all questioning at that point.

48. Without prompting, GUTIERREZ spontaneously said that LIU was "a foreigner that may or may not live here" and said again, "I don't know where he lives." GUTIERREZ then said, "I know that he is from Taiwan, I know that in the past I have shipped cues to him in Florida, so its selling stuff to Florida, I didn't know what his plans was with these particular cues and as far as I'm concerned the ivory is legal, I try to be as legal as possible. Now that the laws are changing, well I'm changing too because I don't want to have problems." GUTIERREZ then

⁶"Pre-ban ivory" is not a defined legal term. It is a term used in the wildlife trade to refer to ivory that was imported before the Asian elephant (1976) and African elephant (1978) were listed pursuant to the Endangered Species Act. Sellers will classify their ivory as "pre-ban" to give commercial buyers of elephant ivory some hope or false assurance that the transaction is legal.

described that he has been looking for other suitable materials to replace ivory and said it was kind of a relief because he wouldn't have to worry about "this kind of thing."

49. I then told GUTIERREZ if he wanted to continue answering questions, he needed to tell me, but that I was not going to ask any more questions at this time. GUTIERREZ said that he would rather let someone else answer for him because he wasn't sure if he was "doing right or wrong." SA Markley and I said that we respected GUTIERREZ and understood. Then, GUTIERREZ without prompting stated, "If I knew what I was walking into, I mean, I do know what happened, I don't know how it happened, it did surprise me that he picked up the cues but he said he was gonna go to Vegas anyway, he would stop by and pick them up, I can't tell what his intentions were, you know, once it leaves my shop, as long as I don't put a UPS or Fed Ex stamp and send it out to Taiwan or Japan or whatever, I feel I'm doing no wrong as long as I have the materials I acquired correctly."

50. When I executed the search warrant at Ginacue, I located a folder which contained a post-it note bearing handwritten notes. Those notes, together with other information contained in the folder, indicated that GUTIERREZ had received five wire transfers from customers in China and Japan. The folder contained, among other items, the following: four invoices, numbered 2345, 2386, 2387, and 2445, were for a customer, Teiei; one invoice, numbered 2326, was for a customer, Hideo Ohara; and one invoice, numbered 2447, was for a customer,

Cai Wanyu. Based on the information contained in the handwritten notes and invoices, I was able to conclude that GUTIERREZ had received payments, in whole or in part, from international customers for each of the invoices contained in the folder.

a. Each of the invoices found in the folder indicated that parts of pool cues had been constructed from "IvoryS" or "Ivs."

b. The folder also contained the three invoices for LIU that are described in paragraph 25, above. These three invoices, together, were for the pool cues which were in LIU's possession at the time of his arrest on April 22, 2016. Despite the fact that the cues found in LUI's possession were found to contain ivory, these invoices also indicated that the pool cues were made from "IvoryS" and "Ivs."

c. Based upon my work in this investigation, and my training and experience, I believe that the terms, "IvoryS" and "Ivs" may have been inserted on the invoices in order to falsely claim that sections of the cues were made from an ivory substitute.

51. During the execution of the search warrant, I also found a folder labeled "Cue Components." It contained a letter to GUTIERREZ from Barringer stating that Barringer was providing provenance for GUTIERREZ's past ivory purchases from Barringer.⁷

⁷ Provenance is paperwork or documents used to prove the age of a certain item. The person claiming the benefit of an ESA exception must prove the age of the item. Such proof can be in

The documents showed two instances in which Barringer purchased tusks from customers as well as a screen shot of two cleared checks. The first set of documents detail a September 16, 2011 sale from John Espinosa ("Espinosa"), an antique dealer, to Barringer of two elephant tusks that Espinosa had purchased from an estate sale of H.B. Braddy. The documents include an invoice from an African Safari company dated October 12, 1973. The second set of documents include an invoice from an October 2011 sale from Christina Cole ("Cole") to Barringer of one tusk. In an email chain between Cole and Barringer included in the documents, Cole described that she was selling the tusk on behalf of her father who purchased it at an auction in 1979 in Long Beach, California.


52. The screen shots of the cleared checks showed that Barringer received two checks from GUTIERREZ. The first check, number 2060, was dated September 16, 2011, was for \$17,750.00 and contained a memo line that stated, "Pool Cue Materials 115.6 lbs." The second check, number 2091, was dated October 22, 2011, was for \$8,250.00 and contained a memo line that stated, "Pool Cue Materials 51.2 lbs."

the form of testing using scientifically approved aging methods by a laboratory or facility accredited to conduct such tests, a qualified appraisal, or another method that documents the age by establishing the provenance of the article. The provenance may be determined through a detailed history of the article, including, but not limited to, family photos, ethnographic fieldwork, or other information that authenticates the article and assigns the work to a known period of time or, where possible, to a known artist.

53. On July 18, 2016, I reviewed GUTIERREZ's bank records and found that check number 2060 was written to Cue Components for the amount of \$17,750.00 and contained a memo line that stated, "Pool Cue Materials." GUTIERREZ's bank records showed that check 2091 was written to Cue Components for the amount of \$8,250.00 and contained a memo line that stated, "Pool Cue Materials 51.2 lbs."

V. CONCLUSION

54. Based on the foregoing facts, I believe there is probable cause that GUTIERREZ has violated 18 U.S.C. §§ 554(a), (2)(a) (Aiding and Abetting the Smuggling of Goods from the United States) and Section 371 (Conspiracy to Smuggle Goods).



JESICA ESPINOZA, Special Agent
U.S. Fish and Wildlife Service

Subscribed to and sworn before
me on July 26, 2016.

ALICIA G. ROSENBERG

HONORABLE ALICIA G. ROSENBERG
United States Magistrate Judge