

ORIGINAL

1 JENNIFER SHASKY CALVERY
 Chief, Asset Forfeiture and
 2 Money Laundering Section (AFMLS)
 LINDA M. SAMUEL
 3 Deputy Chief, AFMLS
 DANIEL H. CLAMAN
 4 Assistant Chief, AFMLS
 JANET C. HUDSON (Cal. Bar No. 113996)
 5 Senior Trial Attorney, AFMLS
 Criminal Division
 6 United States Department of Justice
 1400 New York Avenue, N.W., 10th Floor
 7 Washington, D.C. 20530
 Telephone: (202) 514-1263
 8 Janet.Hudson2@usdoj.gov

9 ANDRÉ BIROTTE, JR.
 United States Attorney
 10 STEVEN R. WELK (Cal. Bar No. 149883)
 Assistant United States Attorney
 11 312 North Spring Street, 14th Floor
 Los Angeles, California 90012
 12 Telephone: (213) 894-6166
Steven.Welk@usdoj.gov

13 Attorneys for Plaintiff
 14 UNITED STATES OF AMERICA

15 UNITED STATES DISTRICT COURT

16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17	UNITED STATES OF AMERICA,)	No. CV 11-03582-GW
18	Plaintiff,)	
19	vs.)	EX PARTE APPLICATION FOR
20	ONE WHITE CRYSTAL-COVERED "BAD)	POST-COMPLAINT ORDER TO SEIZE,
21	TOUR" GLOVE AND OTHER MICHAEL)	SECURE, AND MAINTAIN DEFENDANT
22	JACKSON MEMORABILIA; ONE)	ASSETS LOCATED OUTSIDE THE
23	GULFSTREAM G-V JET AIRPLANE)	UNITED STATES
24	DISPLAYING TAIL NUMBER VPCES;)	
25	REAL PROPERTY LOCATED ON)	[UNDER SEAL]
26	SWEETWATER MESA ROAD IN MALIBU,)	
27	CALIFORNIA; ONE 2007 BENTLEY)	
28	AZURE; ONE 2008 BUGATTI VEYRON;)	
	ONE 2008 LAMBORGHINI)	
	MURCIELAGO; ONE 2008 ROLLS)	
	ROYCE DROPHEAD COUPE; ONE 2009)	
	ROLLS ROYCE DROPHEAD COUPE; ONE)	
	2009 ROLLS ROYCE PHANTOM COUPE;)	
	ONE 2011 FERRARI 599 GTO;)	
	Defendants.)	

Lodged proposed order

CLERK U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 LOS ANGELES

2011 MAY 18 PM 2:53

FILED

1 JENNIFER SHASKY CALVERY
Chief, Asset Forfeiture and
2 Money Laundering Section (AFMLS)
LINDA M. SAMUEL
3 Deputy Chief, AFMLS
DANIEL H. CLAMAN
4 Assistant Chief, AFMLS
JANET C. HUDSON (Cal. Bar No. 113996)
5 Senior Trial Attorney, AFMLS
Criminal Division
6 United States Department of Justice
1400 New York Avenue, N.W., 10th Floor
7 Washington, D.C. 20530
Telephone: (202) 514-1263
8 Janet.Hudson2@usdoj.gov

9 ANDRÉ BIROTTE, JR.
United States Attorney
10 STEVEN R. WELK (Cal. Bar No. 149883)
Assistant United States Attorney
11 312 North Spring Street, 14th Floor
Los Angeles, California 90012
12 Telephone: (213) 894-6166
Steven.Welk@usdoj.gov

13 Attorneys for Plaintiff
14 UNITED STATES OF AMERICA

15 UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,) No. CV 11-03582-GW
18 Plaintiff,)
19 vs.) **EX PARTE APPLICATION FOR**
20 ONE WHITE CRYSTAL-COVERED "BAD) **POST-COMPLAINT ORDER TO SEIZE,**
TOUR" GLOVE AND OTHER MICHAEL) **SECURE, AND MAINTAIN DEFENDANT**
21 JACKSON MEMORABILIA; ONE) **ASSETS LOCATED OUTSIDE THE**
GULFSTREAM G-V JET AIRPLANE) **UNITED STATES**
22 DISPLAYING TAIL NUMBER VPCES;) [UNDER SEAL]
REAL PROPERTY LOCATED ON)
23 SWEETWATER MESA ROAD IN MALIBU,)
CALIFORNIA; ONE 2007 BENTLEY)
24 AZURE; ONE 2008 BUGATTI VEYRON;)
ONE 2008 LAMBORGHINI)
25 MURCIELAGO; ONE 2008 ROLLS)
ROYCE DROPHEAD COUPE; ONE 2009)
26 ROLLS ROYCE DROPHEAD COUPE; ONE)
2009 ROLLS ROYCE PHANTOM COUPE;)
27 ONE 2011 FERRARI 599 GTO;)
28 Defendants.)

lodged proposed order


2011 MAY 18 PM 2:53
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES, CA

FILED

1 The United States of America, by its undersigned attorneys,
2 applies, pursuant to 18 U.S.C. § 983(j)(1)(A), for a post-
3 complaint order to seize, secure, and maintain six defendant
4 vehicles and the defendant Gulfstream jet, all currently located
5 outside the United States. A memorandum of points and
6 authorities in support of this ex parte application and a
7 proposed order are also submitted herewith.

8
9 DATED: May 18, 2011

Respectfully submitted,
JENNIFER SHASKY CALVERY, CHIEF
ASSET FORFEITURE AND MONEY
LAUNDERING SECTION
LINDA M. SAMUEL
Deputy Chief, AFMLS
DANIEL H. CLAMAN
Assistant Chief, AFMLS

13
14 
JANET C. HUDSON
Senior Trial Attorney, AFMLS
Criminal Division
United States Department of Justice

16
17 ANDRÉ BIROTTE, JR.
United States Attorney
STEVEN WELK
Assistant United States Attorney

18
19 Attorneys for Plaintiff
20 UNITED STATES OF AMERICA

21
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. BACKGROUND

3 On April 26, 2011, the United States filed a Verified
4 Complaint for Forfeiture *in Rem* in this case, alleging that
5 various assets are subject to seizure and forfeiture to the
6 United States pursuant to 18 U.S.C. §§ 981(a)(1)(A) and
7 981(a)(1)(C), for violations of 18 U.S.C. §§ 1956 and 1957 and
8 conduct constituting an offense against a foreign nation
9 enumerated in 18 U.S.C. §§ 1956(c)(7)(B)(ii) and (iv).

10 As indicated in the complaint, several of the defendant
11 assets are at present outside the United States. Complaint,
12 ¶¶ 10, 84-85, 91-94. Therefore, it will be necessary for the
13 United States to obtain the assistance of the foreign country
14 where the defendants are located in order to execute the Warrant
15 of Arrest *In Rem* as to these defendant assets, and to ensure the
16 availability of the defendant assets for forfeiture.

17 The defendant assets located outside the United States
18 consist of the defendant Gulfstream jet and six of the defendant
19 luxury vehicles. The last known location of the six defendant
20 vehicles was Paris, France. According to its filed flight plans,
21 the defendant Gulfstream jet recently flew from Brazil to
22 Argentina, then to Equatorial Guinea, from there to Paris,
23 France, and from there back to Equatorial Guinea.

24 Both the Gulfstream jet and the six defendant vehicles are
25 potentially highly mobile. The vehicles could be driven from
26 France to any number of countries, such as England, Belgium, the
27 Netherlands, Germany, Italy, or Spain, within a few hours. The
28 vehicles could also be shipped to anywhere in the world,

1 including countries with which the United States does not have a
2 Mutual Legal Assistance Treaty or other cooperation agreement.
3 The jet is even more mobile, and could leave its current location
4 for another country at any time without notice.

5 If these assets are not restrained in some way, the
6 government's effort to forfeit them could be easily thwarted by
7 simply moving them from one country to another, forcing the
8 government to go through repeated time-consuming processes of
9 requesting assistance from one foreign government after another.
10 Alternatively, these assets could be shielded from forfeiture by
11 simply moving them to a country that does not have a cooperative
12 bilateral relationship with the United States.

13 In order to ensure that the assets located abroad will be
14 available for forfeiture, it will be necessary for foreign
15 authorities to restrain the assets and either return them to the
16 United States, or maintain control of them during the pendency of
17 the forfeiture action. Proper maintenance of these assets is
18 particularly important; the defendant luxury vehicles and jet are
19 high value assets that can significantly depreciate if they are
20 not properly maintained and secured. Therefore, the government
21 respectfully requests that this court order that the defendant
22 assets located abroad be seized, secured, and maintained, or
23 delivered into the custody of the United States to be secured and
24 maintained by U.S. authorities, and direct that the Attorney
25 General or his designee request that foreign authorities take
26 such measures as may be appropriate to enforce such order.

27
28

1 II. THIS COURT HAS AUTHORITY TO ISSUE THE ORDER UNDER 18
2 U.S.C. § 983(J)(1)(A) BASED ON A FINDING OF PROBABLE
3 CAUSE

4 Title 18, United States Code, Section 983(j)(1)(A) (enacted
5 as part of the Civil Asset Forfeiture Reform Act of 2000
6 ("CAFRA")), gives the district court broad authority to issue
7 orders to preserve the availability of property subject to civil
8 forfeiture, following the filing of a forfeiture complaint. It
9 provides:

10 (1) Upon application of the United States, the court
11 may enter a restraining order or injunction, require
12 the execution of satisfactory performance bonds, create
13 receiverships, appoint conservators, custodians,
14 appraisers, accountants, or trustees, or take any other
15 action to seize, secure, maintain, or preserve the
16 availability of property subject to civil forfeiture-

17 (A) upon the filing of a civil
18 forfeiture complaint alleging that the
19 property with respect to which the order is
20 sought is subject to civil forfeiture

21 18 U.S.C. § 983(j)(1)(A).

22 This provision is nearly identical to a similar statute that
23 allows the issuance of orders in the context of a criminal
24 forfeiture, after an indictment is returned. See 21 U.S.C. §
25 853(e)(1)(A):

26 (1) Upon application of the United States, the court
27 may enter a restraining order or injunction, require
28 the execution of a satisfactory performance bond, or
29 take any other action to preserve the availability of
30 property described in subsection (a) of this section
31 for forfeiture under this section -

32 (A) upon the filing of an indictment or
33 information charging a violation of this subchapter
34 . . . for which criminal forfeiture may be ordered
35 . . .

36 This similarity was intentional. Congress intended the
37 restraining order provision for civil forfeiture to function in

1 the same way as the restraining order provision for criminal
2 forfeiture. As the legislative history concerning a prior
3 version of CAFRA noted, the objective of the provision that
4 became 983(j) was to allow the court to "enter any restraining
5 order or injunction in the manner set forth in . . . 21 U.S.C. §
6 853(e)." H. Rep. 105-358(1).

7 The proper standard for issuance of an order pursuant to §
8 983(j)(1)(A) is probable cause, just as it is under § 853(e) in a
9 criminal forfeiture case. United States v. Melrose East
10 Subdivision, 357 F. 3d 493, 505 (5th Cir. 2004); United States v.
11 Monsanto, 491 U.S. 600, 615 (1989). In a criminal case, this
12 probable cause showing is met by the issuance of an indictment.
13 "[U]nder § 853(e)(1)(A), the indictment itself establishes the
14 merits of the government's case" and "[f]or the purposes of
15 issuing a restraining order, the probable cause established in
16 the indictment . . . is to be determinative of any issue
17 regarding the merits of the government's case on which the
18 forfeiture is to be based." United States v. Real Property in
19 Waterboro, 64 F.3d 752, 756 (quoting 1984 U.S.C.C.A.N. at 3386).

20 Based upon the near identity of the language of the
21 provisions and the clear Congressional intent to mirror
22 § 853(e)(1)(A), the same rule should apply for the issuance of
23 restraining orders for civil forfeiture cases pursuant to
24 § 983(j)(1)(A). Thus, this court has authority to make a finding
25 of probable cause based upon its review of the Verified Complaint
26 for Forfeiture and to issue an *ex parte* order based upon that
27 finding.

28

1 III. THE ORDER SOUGHT BY THE UNITED STATES SERVES THE
2 INTERESTS UNDERLYING § 983(J)(1)(A)

3 As set forth in the language of the statute itself, the
4 objective of § 983(j)(1)(A) is to "preserve the availability of
5 property subject to civil forfeiture." Even before CAFRA, the
6 Supreme Court has recognized that in civil forfeiture cases the
7 Government has "legitimate interests at the inception of
8 forfeiture proceedings . . . to ensure that the property not be
9 sold, destroyed, or used for further illegal activity prior to
10 the forfeiture judgment." United States v. James Daniel Good
11 Real Property, 510 U.S. 43, 58 (1993); see also Monsanto, 491
12 U.S. at 612-613 (protective order in criminal forfeiture case
13 ensures property available and that forfeiture provisions can be
14 carried out). The order sought by the United States in this case
15 serves these interests directly.

16 The proposed order directs that any persons with actual
17 notice of this Order by personal service or otherwise, and any
18 other legal or natural persons acting on their behalf, be
19 prohibited, enjoined, and restrained from taking any action that
20 could impair the value or availability of the defendant
21 Gulfstream jet and six defendant vehicles without prior approval
22 of this Court and upon notice to the United States and an
23 opportunity for the United States to be heard. The proposed
24 order also provides that the Attorney General or his designee
25 shall request that the appropriate foreign authorities "take such
26 measures as may be necessary to seize, secure, maintain, and
27 preserve the availability" of the six vehicles and Gulfstream
28 jet, including delivering said assets into the custody of the

1 United States to be secured and maintained by U.S. authorities.

2 These restrictions are intended to ensure that the
3 Defendants *in Rem* will remain available for forfeiture. As high-
4 value assets, they will require appropriate measures to preserve
5 their value. Also, the risk that these assets may disappear is a
6 particular concern given that they are located abroad and are
7 highly mobile.

8 In addition, because the assets are outside the United
9 States, issuance of the proposed order is also sought in order to
10 provide foreign authorities with a basis for initiation of
11 independent domestic restraint proceedings. Accordingly, the
12 proposed order includes a specific finding of probable cause and
13 directs the Attorney General or his representative to make
14 requests to the appropriate foreign authorities for execution of
15 the order.

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 IV. CONCLUSION

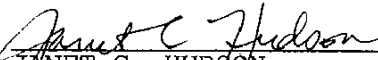
2 For all of the foregoing reasons, the United States
3 respectfully requests that this Court enter the requested order.

4 The United States also requests that this application and
5 the order be sealed pursuant to the Court's sealing order filed
6 on April 28, 2011, except that the government may disclose this
7 Order to appropriate foreign authorities for purposes of
8 requesting mutual legal assistance and for execution of this
9 order.

10 Respectfully submitted,

11 DATED: May 18, 2011

JENNIFER SHASKY CALVERY, CHIEF
ASSET FORFEITURE AND MONEY
LAUNDERING SECTION
LINDA M. SAMUEL
Deputy Chief, AFMLS
DANIEL H. CLAMAN
Assistant Chief, AFMLS

12
13
14
15
16 
17 JANET C. HUDSON
Senior Trial Attorney, AFMLS
Criminal Division
United States Department of Justice
18
19
20
21
22
23
24
25
26
27
28