

**JUDGE DAVID BRIONES**  
**UNITED STATES DISTRICT COURT**  
**WESTERN DISTRICT OF TEXAS** 2011 JUN 13 PM 3:13  
**EL PASO DIVISION**

CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_  
DEPUTY

**UNITED STATES OF AMERICA,** )  
 )  
 ) **Petitioner,** )  
 )  
 ) **v.** )  
 )  
 ) **SMITH AND WESSON MODEL 5906** )  
 ) **9MM PISTOL, SERIAL NO. TDK2263, and** )  
 )  
 ) **24 ROUNDS, MORE OR LESS, OF** )  
 ) **9MM AMMUNITION,** )  
 )  
 ) **Respondents.** )

**CIVIL ACTION NO.** \_\_\_\_\_

**EP 11 CV 0253**

**VERIFIED COMPLAINT FOR FORFEITURE**

Comes now Petitioner, United States of America, acting by and through the United States Attorney for the Western District of Texas and the undersigned Assistant United States Attorney, pursuant to Rule G, Supplemental Rules of Federal Rules of Civil Procedure, and respectfully states as follows:

**I.**  
**NATURE OF THE ACTION**

1. This action is brought by the United States of America seeking forfeiture to the United States of the properties described below:

- (1) One Smith and Wesson Model 5906 9mm pistol, serial no. TDK2263, and
- (2) Approximately 24 rounds of 9mm ammunition

(collectively, the "Respondent Properties").

**II.**  
**STATUTORY BASIS FOR FORFEITURE**

2. This is a civil forfeiture action *in rem* brought against the Respondent Properties for a violation of 18 U.S.C. § 922(g)(3). The Respondent Properties are subject to forfeiture to the United States of America pursuant to 18 U.S.C. § 924(d)(1), which states in part:

Any firearm or ammunition involved in or used in any knowing violation of subsection . . . (g) . . . of section 922. . . or knowing violation of section 924, . . . shall be subject to seizure and forfeiture . . .

18 U.S.C. § 924(d)(1). Section 992(g)(3), in turn, makes it unlawful for any person “who is an unlawful user of or addicted to any controlled substance . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” Section 924(a)(2) provides that any person who knowingly violates § 922(g) shall be fined and/or imprisoned not more than 10 years.

**III.**  
**JURISDICTION AND VENUE**

3. Under 28 U.S.C. § 1345, this Court has jurisdiction over an action commenced by the United States, and under 28 U.S.C. § 1355(a), jurisdiction over an action for forfeiture. This Court has *in rem* jurisdiction over the Respondent Properties under 28 U.S.C. §§ 1355(b) and 1395(b). Venue is proper in this district pursuant to 28 U.S.C. § 1355(b)(1)(A), because the acts or omissions giving rise to the forfeiture occurred in this District, and pursuant to 28 U.S.C. §§ 1355(b)(1)(B) and 1395(b) because the Respondent Properties were seized in this District.

4. The Respondent Properties were seized in Sierra Blanca, Texas on or about February 16, 2011 and turned over to the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). The

Respondent Properties have remained in the custody of ATF, within the jurisdiction of the United States District Court, Western District of Texas, El Paso Division, and shall remain within the jurisdiction of the court pending litigation of this case.

**IV.**  
**FACTS IN SUPPORT OF FORFEITURE**

5. On or about February 16, 2011, a 2002 Yukon LX bearing California license plates (the "Vehicle") entered the United States Border Protection Checkpoint in Sierra Blanca, Texas. The driver and sole occupant was Anthony Gutierrez ("Gutierrez").

6. During primary inspection, a United States Border Patrol K-9 alerted to the seams of the driver's side door of the Vehicle. The Vehicle was referred to secondary inspection. A search of the Vehicle led to the discovery of a rolled marijuana cigarette in the center console ashtray, which later field tested positive for marijuana. Gutierrez was arrested for possession of marijuana. Law enforcement also found three additional rolled marijuana cigarettes in a brown bag behind the driver's seat.

7. The Respondent Properties were found in a brown soft handgun case behind the passenger's seat.

8. The marijuana and the Respondent Properties were seized.

9. Gutierrez was read his *Miranda* rights and agreed to waive those rights and answer questions without the presence of an attorney. Gutierrez stated, in substance and in part, the following.

- a. Gutierrez was en route from California to Austin, Texas, where he is relocating. He and his brother had packed the vehicle and a twenty-two (22) foot Penske moving truck with his belongings. Gutierrez had placed an unknown amount of marijuana into his vehicle, rolled into four (4) marijuana cigarettes, as well as a 9mm Smith and Wesson pistol with ammunition. Gutierrez added that he had purchased the firearm from a CA police officer approximately 15 years earlier.

b. Gutierrez obtained the marijuana using his Medical Marijuana Dispensary Card sometime in 2010 in Livermore, California. Gutierrez stated that he smokes marijuana “every once in awhile” and has done so “on and off for about five (5) years.” Gutierrez also stated that he had last smoked marijuana between Tuesday, February 15, 2011 and Wednesday, February 16, 2011.

10. The firearm was not manufactured in the State of Texas.

11. The Respondent Properties are subject to forfeiture pursuant to 18 U.S.C. § 924(d)(1)

because they constitute firearms and/or ammunition involved in and used in a knowing violation of 18 U.S.C. § 922(g)(3), in that a person who is an unlawful user of and/or addicted to a controlled substance shipped and/or transported the Respondent Properties in interstate commerce, possessed the Respondent Properties in and affecting commerce, and received the Respondent Properties which had been shipped and transported in interstate commerce.

V.  
**PRAYER**

WHEREFORE, Petitioner, United States of America, prays that due process issue to enforce the forfeiture of the Respondent Properties, that due notice pursuant to Rule G(4) be given to all interested parties to appear and show cause why forfeiture should not be decreed<sup>1</sup>, that a warrant for an arrest *in rem* be ordered, that the Respondent Properties be forfeited to the United States of

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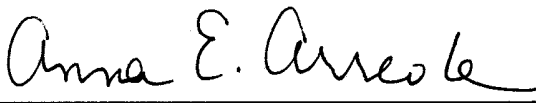
<sup>1</sup> Appendix A, which is being filed along with this complaint, will be sent to those known to the United States to have an interest in the Respondent Properties.

America, that the Respondent Properties be disposed of in accordance with the law and for any such further relief as this Honorable Court deems just and proper.

Dated: June 13, 2011  
El Paso, Texas

Respectfully submitted,

JOHN E. MURPHY  
United States Attorney

By: 

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**VERIFICATION**

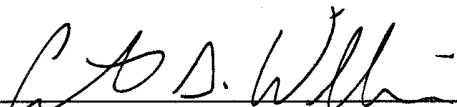
Special Agent, Curtis Williams, declares and says that:

1. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives, assigned to the El Paso Field Office, and I am the investigator responsible for the accuracy of the information provided in this complaint.

2. I have read the above Verified Complaint for Forfeiture. Based upon my review of government documents and my conversations with others, I know that the information contained in the Verified Complaint for Forfeiture has been furnished by official government sources, and that based upon information and belief, that the allegations contained in the Verified Complaint for Forfeiture are true.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this the 13<sup>th</sup> day of June, 2011.

  
\_\_\_\_\_  
Special Agent Curtis Williams  
Bureau of Alcohol, Tobacco, Firearms and Explosives