

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

UNITED STATES OF AMERICA,

Plaintiff,

v.

TWO THOUSAND, ONE HUNDRED
THIRTY-FIVE (2,135)
KILOGRAMS OF KRATOM,

Defendant *In Rem*.

VERIFIED COMPLAINT OF FORFEITURE *IN REM*

Plaintiff, the United States of America, hereby files this Verified Complaint of Forfeiture *In Rem* and in support alleges that:

I. INTRODUCTION AND DEFENDANT *IN REM*

1. This is a civil action for forfeiture *in rem* against two thousand, one hundred thirty-five (2,135) kilograms of Kratom (the “Defendant *In Rem*” or the “Defendants”) that were imported into the United States more fully described as:

Two shipments under Airway Bill No. 074-2011-3730 containing a total of 80 boxes of approximately 2,135 kilograms of Kratom, with an appraised domestic value of \$747,250.00 that were seized on or about November 16, 2018.

The Defendants are currently located in Miami-Dade County, Florida, which is within the Southern District of Florida.

2. The Defendants are subject to civil forfeiture pursuant to Title 19, United States Code, Section 1595a(c)(1)(A) as merchandise that is “smuggled or clandestinely imported or introduced” in violation of Title 19, United States Code, Sections 1481 (invoice), 1484 (entry of

merchandise), and 1485 (declaration), and pursuant to Title 19, United States Code, Section 1584(a) as merchandise not included or accurately described in a manifest.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this subject matter pursuant to Title 28, United States Code, Sections 1345 and 1355.

4. This Court has *in rem* jurisdiction over the Defendant pursuant to Title 28, United States Code, Section 1355.

5. This Court has venue pursuant to Title 28, United States Code, Sections 1355 and 1395 as the acts or omissions giving rise to the forfeiture occurred in this District, and because the Defendants are located in this District.

III. FACTUAL ALLEGATIONS

6. According to the Drug Enforcement Administration (the “DEA”), the substance Kratom is derived from a tropical tree native to Southeast Asia. Human consumption of the trees’ leaves results in “stimulant effects in low doses and sedative effects in high doses, and can lead to psychotic symptoms, and psychological and physiological dependence.”¹ To consume Kratom, the leaves of the tree are crushed and then smoked, brewed with tea, or placed into gel capsules.²

7. In recent years, the DEA has noticed a significant increase in the abuse of Kratom in the United States. The DEA has found that the substance is “abused by oral ingestion in the form of a tablet, capsule, or extract. Kratom leaves may also be dried or powdered and ingested as a tea, or the [K]ratom leaf may be chewed.”³ Although the DEA has listed Kratom as a Drug and Chemical of Concern, it is not controlled under the Federal Controlled Substances Act.

¹ See A DEA Resource Guide, *Drugs of Concern*, U.S. Department of Justice and Drug Enforcement Administration, 84, (2017 Edition).

² See *id.*

³ See *id.*

8. The Food and Drug Administration (“FDA”) currently has two active Import Alerts pertaining to the importation of products known to contain Kratom. The first alert, **Alert No. 54-15**, was created in response to a noticed “increase in the number of shipments of dietary supplements and bulk dietary ingredients that are, or contain Kratom.”⁴ The second alert, **Alert No. 66-41**, was aimed at combating “the marketing or promotion of unapproved drugs to individuals residing in the United States.”⁵ Import **Alert No. 54-15** explained that “there does not appear to be a history of use or other evidence of safety establishing that [K]ratom will reasonably be expected to be safe as a dietary ingredient,” and that there are “serious concerns regarding the toxicity of [K]ratom in multiple organ systems.”

9. The Import Alerts directed FDA officials to detain the product without physical examination. If the United States Customs and Border Protection (“CBP”) identified merchandise properly classified as Kratom upon entry into the United States, CBP Officers were directed to notify FDA officials so that they can conduct their own laboratory analysis of the substance. Otherwise, unless smuggled or otherwise unlawfully imported, Kratom is not prohibited from entry into the United States if properly identified.

10. In or around October 2018, the Defendants arrived in two partial shipments at Miami International Airport (“MIA”) in Miami, Florida, under Airway Bill No. 074-2011-3730. The first shipment arrived on or about October 2, 2018, onboard Martin Air Flight No. 6121, and the second shipment arrived on or about October 4, 2018, onboard Martin Air Flight No. 6141. These shipments of Kratom constitute the Defendants.

11. CBP’s Agriculture and Prepared Products Center of Excellence and Expertise and Pharmaceuticals, Health, and Chemicals Center of Excellence and Expertise were notified about

⁴ See https://www.accessdata.fda.gov/cms_ia/importalert_1137.html.

⁵ See https://www.accessdata.fda.gov/cms_ia/importalert_190.html.

these shipments. CBP Agricultural Specialist Allison Spicher-Hernandez and Supervisory CBP Officer Manuel Garcia inspected the first shipment on or about October 3, 2018 at the Martin Air warehouse located at MIA. CBP Agriculture Specialists Timothy Kirkland and Michael Gilson inspected the second shipment on or about October 4, 2018.

12. During both inspections, the CBP Agriculture Specialists discovered a green powdery substance that was suspected to be Kratom. The CBP Agricultural Specialists extracted a sample of the powder from each shipment and submitted it to the CBP Savannah Laboratory for analysis and identification. Laboratory analysis established that the powder samples showed “the presence of mitragynine, an alkaloid found in the plant species *mitragyna speciosa* (Kratom).”

13. CBP Officers then wrapped the shipments and weighed them. CBP seized the 80 boxes on or about November 16, 2018, containing a total of 2,135 kilograms of Kratom. CBP Senior Import Specialist Sarah Sawyer appraised their domestic value at \$747,250.00.

14. The importer of record for the Defendants was “AMG Commerce, LLC.” The Florida Department of State website does not have records for this entity; however, a similar named entity, AMG Commerce, LLC (“AMG”), was organized in or around August 2016, with a residential address in Florida.

15. The Entry/Immediate Delivery (CBP Form 3461) filed by LK Customs Brokerage, on behalf of AMG, the importer of record, falsely declared that the shipments contained 80 boxes of “Colorfast Green,” valued at an estimated \$6,000.00 total. The merchandise was identified under the Harmonized Tariff Schedule of the United States Code 3204.90.0000, defined as “synthetic organic coloring matter.” The declared country of origin was Indonesia. Notably, Colorfast Green is a toxic chemical that is suspected of causing genetic defects and is hazardous on skin contact. Personal protective equipment is recommended for handling. This is direct

contrast to Kratom, which is only known to be used for human consumption.

16. In administrative proceedings, CBP's Office of Fines, Penalties, and Forfeitures sent notices of seizure on or about November 30, 2018 to the importer of record, AMG Commerce, LLC; the shipper, CV. Bali Made; and the customs broker, JK Freight Logistics, Inc. As of the date of this filing, none of the aforementioned have responded to CBP.

17. Based on the foregoing, the Defendants are subject to forfeiture to the United States pursuant to Title 19, United States Code, Sections 1595a(c)(1)(A) and 1584(a).

WHEREFORE, Plaintiff, the United States of America, requests that any and all persons having any claim to the Defendant be directed to file and serve their verified claims and answers as required by Rule G(5) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, or suffer default thereof, and further requests that this Honorable Court declare the Defendants condemned and forfeited to the United States of America and for such other and further relief as this Court may deem just, necessary, and proper.

Respectfully submitted,


ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

By: 
RICHARD O.I. BROWN
ASSISTANT US ATTORNEY
500 East Broward Blvd., Suite 700
Fort Lauderdale, Florida 33394
Admin. Bar No. A5500257
TEL: (954) 660-5779
FAX: (954) 356-7610
Email: richard.brown@usdoj.gov

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Robert M. Del Toro, hereby verify and declare under penalty of perjury that I am a United States Customs and Border Protection Director for the United States Department of Homeland Security, and that I have read the foregoing Verified Complaint for Forfeiture *In Rem* and state that the contents are true to be best of my knowledge and belief.

Executed on this 2nd day of January 2020.


for ROBERT M. DEL TORO, DIRECTOR
FINES, PENALTIES AND FORFEITURES
U.S. CUSTOMS AND BORDER PROTECTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MISC. CASE NO. _____

UNITED STATES OF AMERICA,

Plaintiff,

v.

TWO THOUSAND, ONE HUNDRED
THIRTY-FIVE (2,135)
KILOGRAMS OF KRATOM

Defendant.
_____ /

CIVIL COMPLAINT COVER SHEET

1. Did this matter originate from a matter pending in the Northern Region of the United States Attorney's Office prior to October 14, 2003? _____ Yes X No

2. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to September 1, 2007? _____ Yes X No

Respectfully submitted,

ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

BY: s/Richard O.I. Brown
RICHARD O.I. BROWN
ASSISTANT U.S. ATTORNEY
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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS United States of America</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) AUSA Richard O.I. Brown 500 E Broward Blvd., Suite 700 Ft. Lauderdale, FL 33394</p>	<p>DEFENDANTS TWO THOUSAND, ONE HUNDRED THIRTY-FIVE (2,135) KILOGRAMS OF KRATOM</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p>
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(d) Check County Where Action Arose: DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated <i>or</i> Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input checked="" type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input checked="" type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities' Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

TITLE 28 USC § 1345 and 1355

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **CHECK YES only if demanded in complaint:** **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 1/6/2020 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY: RECEIPT # _____ AMOUNT _____ APPLYING IFP _____

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

UNITED STATES OF AMERICA,

Plaintiff,

v.

TWO THOUSAND, ONE HUNDRED
THIRTY-FIVE (2,135)
KILOGRAMS OF KRATOM

Defendant *In Rem*.

WARRANT OF ARREST *IN REM*

TO: DEPARTMENT OF HOMELAND SECURITY
FOR THE SOUTHERN DISTRICT OF FLORIDA
OR ANY OTHER AUTHORIZED FEDERAL LAW ENFORCEMENT OFFICER

WHEREAS, on January 6, 2020, the United States of America filed a Verified Complaint for Forfeiture *In Rem* against, Two Thousand, One Hundred Thirty- Five (2,135) Kilograms of Kratom, (fully described in the Complaint, hereinafter "the defendant property") for the violations of law enumerated in said Complaint;

WHEREAS, according to said Complaint, the Defendant property is in the Government's possession, custody or control; and

WHEREAS, Supplemental Rule G(3)(B)(i) provides that "the clerk must issue a warrant to arrest the property if it is in the government's possession, custody or control."

NOW THEREFORE, you are hereby commanded to take the defendant property into your possession for safe custody. If the character or situation of the defendant property is such

that the taking of actual possession is impracticable, you shall execute this process by affixing a copy thereof to the defendant property in a conspicuous place and by leaving a copy of the Complaint and process with the person having possession.

YOU ARE FURTHER commanded to cite and admonish the owner and/or possessor of the defendant **property**, and any person or firm known to claim any interest therein, (1) to file, *no later than 35 days from the date notice of the Complaint and Warrant was sent*, a Verified Claim in accordance with Rule G(5), of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions; (2) to file an answer or other responsive pleading to the Complaint, no later than twenty one [21] days after the filing of the Claim. The Verified Claim, Answer or responsive pleading must be filed with the *Clerk of the Court*, United States District Court, 299 East Broward Blvd., Fort Lauderdale, FL 33301, and a copy of said Claim and Answer or responsive pleading must also be served upon the United States Attorney's Office, 500 East Broward Blvd., Suite 700, Ft. Lauderdale, Florida 33394, Attention: Richard O.I. Brown, Assistant United States Attorney. The Claim must identify the specific property claimed, identify the claimant and state the claimant's interest in the property and be signed by the claimant upon penalty of perjury; and that upon failure of the owner, possessor or any party claiming an interest in the defendant property to fully comply with Supplemental Rule G, the defendant property may

be forfeited to the United States by default and without further notice or hearing.

AND YOU ARE FURTHER commanded to make due and prompt return of this Warrant to this Court upon its execution.

STEVEN M. LARIMORE, CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DATED: _____

BY: _____
DEPUTY CLERK

Copy to:
AUSA Richard O.I. Brown (2 certified copies)