

*United States v. Original Manuscript Dated November 19, 1778*, [No. 96 CIV. 6221 \(LAP\) \(S.D.N.Y. Feb. 22, 1999\) \(1999 WL 97894\)](#).

Location: Property imported from Mexico into the United States

Applicable Laws: [Convention on Cultural Property Implementation Act](#) (CCPIA) ([19 U.S.C. §§ 2601](#))

Where Laws Apply: The CCPIA allows the United States to consider requests from any state party to the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Transport, Export and Transfer or Ownership of Cultural Property to impose import restrictions on archaeological or ethnological material when pillage of these materials places a nation's cultural heritage in jeopardy.

Holding: The initial burden of proof under the CCPIA rests on the government to show that forfeiture is appropriate. Once it has been established, the claimant may then show evidence that the object is not subject to forfeiture or assert any affirmative defenses, such as the innocent owner defense.

*Overview:*

In 1996, an original manuscript dated November 19, 1778 bearing the signature of Junipero Serra, a Spanish Franciscan friar, was co-signed to Sotheby's in the United States by claimant Dana Toft. The General Director of the Mexican National Archives was notified by a third party that the manuscript up for auction at Sotheby's might be the same manuscript missing from the Mexican National Archives. Toft had purchased the manuscript from Duane Douglas, who claimed to have acquired it at a Mexico City flea market and had not declared it to customs upon entry into the United States. The Mexican National Archives asserted a claim of ownership over the manuscript and requested its return.

The United States has acceded to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Transport, Export and Transfer or Ownership of Cultural Property. It was implemented domestically in the United States by the Convention on Cultural Property Implementation Act (CCPIA). Section 2609(a) of the CCPIA provides that, "Any designated archaeological or ethnological material or articles of cultural property, as the case may be, which is imported into the United States in violation of the section 2606 of this title or section 2607 of this title shall be subject to seizure and forfeiture."

Section 2607 states:

No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which is stolen from such institution after the effective date of this

chapter, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the United States.

Upon examining evidentiary requirements, the Court found that the United State holds the initial burden of establishing their case. In order to establish a prima facie case for forfeiture, the government only needs to demonstrate probable cause. After the government has demonstrated probable cause, the claimant may present evidence that the item is not subject to forfeiture or may assert any affirmative defenses.

Toth asserted the innocent owner/purchaser defense, however, the court found that he was not an innocent purchaser but, rather, “willfully blind.” In order to be an innocent owner, the claimant must establish that he was not willfully blind to illegal activity in order to maintain the innocent owner defense.” (*United States v. All Funds Presently on Deposit*, [832 F.Supp. 542, 564 \(S.D.N.Y. 1993\)](#)). The court found that Douglas’s actions, his lack of documentation of the history of the manuscript, and his failure to inquire into where the manuscript came from was highly suspicious and that Toth could not establish that he is an innocent owner under such circumstances. The court granted the Government’s motion for summary judgment, granting forfeiture of all right, title and interest in the original manuscript dated November 19, 1778.