

Prosecutors Defend FBI Seizure of Equipment from Ray Martinez's Don Felito's Cookshop

Prosecutors argue the hood system was lawfully seized under a criminal warrant, alleging its connection to Ray Martinez's suspected illegal activity, and state Don Felito's has not proven it is a bona fide purchaser

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Former Police Commissioner Ray Martinez By. VIPD

Prosecutors have responded to a motion filed seeking the return of kitchen equipment seized as part of the FBI investigation into former VIPD Commissioner Ray Martinez.

The equipment was [seized in mid-December](#) from Don Felito's Cookshop pursuant to a warrant, prompting a motion by the attorney for the business requesting its return. The motion argued that

the seizure was improper because investigators failed to abide by the rules governing the civil seizure and forfeiture of property. The execution of the warrant was merely “an effort to embarrass Ray Martinez, the principal of Don Felitos,” argued attorney Michael Sheesley, because Mr. Martinez “would not come to a pre-indictment plea agreement with the United States regarding alleged criminal activity.”

However, in a response to Mr. Sheesley’s motion, the government argues that Don Felito’s “is not entitled to a return” of the seized equipment.

Firstly, prosecutors argue that there was no “callous disregard for the constitutional rights” of either Don Felito’s or Mr. Martinez personally. “The seizure of the Hood System was not an arbitrary seizure. The government sought and obtained a criminal seizure warrant that was supported by probable cause,” the response says, referring to the affidavit by the FBI Special Agent that accompanied the application for the seizure warrant. “Tenant does not and has not challenged the facts upon which the Magistrate Judge relied” in issuing the warrant, the response continues.

Further, prosecutors say, the motion does not articulate any justification for why “property purchased through criminal activity” should be returned to Don Felito’s. Indeed, the rule cited by Mr. Sheesley ostensibly precluding the seizure of the equipment does not apply in this case, the government argues, because the hood system that was taken is not real property but merely a trade fixture.

Secondly, the government argued that Don Felito’s has failed to show “that it is a bona fide purchaser for value of the Hood System at any point in time,” and has also failed to show “that he ever believed that the Hood System was purchased lawfully.” Prosecutors suggest that a new hood system can be “purchased free and clear of any basis for seizure by the government” and installed to replace the one that was removed by FBI agents, and thus the Cookshop’s interest in the equipment “is not superior to that of the government’s.”

Criminal charges, the government argues, will include a notice of forfeiture if and when brought against Mr. Martinez in the future. Should that occur, “Tenant will have adequate opportunity to assert its ‘innocent owner’ interest in the Hood System, at that time,” the government’s response argues.

Presiding judge Alan Teague will now have to decide on whose argument – that of Mr. Sheesley on behalf of Don Felito’s, or Michal Conley’s of the U.S. Attorney’s Office – will prevail in the matter.