

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

Case No. 2:22-cr-39-SPC-NPM

DANIEL JOSEPH TISONE

UNOPPOSED MOTION TO STRIKE PETITION FOR REMISSION (DOC. 80)

The United States moves, unopposed, to strike the Bank of Clarke County's Petition for Remission (Doc. 80) pursuant to 21 U.S.C. § 853(n) and 28 C.F.R. § 9.4(e). The United States has conferred with Michael R. Sklaire, counsel for Bank of Clarke County (the Bank), who has indicated he has no opposition to this motion. In support of its motion, the United States submits the following memorandum of law.

MEMORANDUM OF LAW

On February 13, 2023, following the Court's entry of an order of forfeiture and preliminary order of forfeiture for direct assets that included funds seized from an account at the Bank (Doc. 69), the Bank filed a timely "Petition for Remission," seeking the "remission" of the \$64,813.43 seized from the account as "both a party owner and as a victim of fraud perpetrated by" the defendant. Doc. 80. The pleading attached a Petition for Remission Form that the Bank had previously submitted to the Federal Bureau of Investigations, also seeking remission of these funds in the parallel administrative forfeiture proceedings involving these funds.

Title 21 U.S.C. § 853(n) provides the sole means by which third parties can litigate their right to property subject to criminal judicial forfeiture. The statute provides the specific criteria that claims must possess in order to be valid. *See* 21 U.S.C. § 853(n)(3). In contrast, 28 C.F.R. § 9.4(e) allows persons to petition the Attorney General for the return of property already forfeited to the United States. 18 U.S.C. § 981 states that the “Attorney General shall have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.”

Because the Bank’s petition did not meet the requirements of 21 U.S.C. 853, and appeared, instead, to be a request for remission directed to the Attorney General, the United States contacted Mr. Sklaire to clarify the purpose of the filing. Mr. Sklaire confirmed that the Bank is not contesting the forfeiture proceedings. Rather, the Bank intended to file the Petition for Remission for the Attorney General’s consideration.

The United States will construe the Bank’s petition filed at Docket 80 as a timely submitted Petition for Remission and will forward it to the appropriate reviewing authorities.

Wherefore, the United States asks that the Court strike Docket 80, construing it as a Petition for Remission over which the Court lacks jurisdiction.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel of record.

s/Suzanne C. Nebesky
SUZANNE C. NEBESKY
Assistant United States Attorney