



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

FR:TRP
F. #2020R00955

*271 Cadman Plaza East
Brooklyn, New York 11201*

June 10, 2024

By ECF

Honorable Frederic Block
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Anuli Okeke
Criminal Docket No. 22-20 (FB)

Dear Judge Block:

The government respectfully submits this letter in connection with the trial in the above-referenced case. The criminal forfeiture allegation set forth in the Indictment states that in the event that the defendant, Anuli Okeke is convicted of any of the offenses charged in Counts One through Four, the government will seek forfeiture of certain property. See Indictment, Dkt. #28 ¶¶ 5–8. The government submits that it intends to seek entry of a forfeiture money judgment should the defendant be convicted of any of the charges in the Indictment. As further detailed below, since the government seeks only entry of a forfeiture money judgment against the defendant, a jury determination of forfeiture is neither necessary nor warranted by law. Therefore, if the defendant is convicted at trial, there is no need to retain the jury for a forfeiture phase of the criminal trial.

I. There is No Constitutional Right to a Jury

Upon the defendant’s conviction of either Counts One through Four in the Indictment, forfeiture of criminal proceeds is mandatory pursuant to Title 28, United States Code, Section 2461(c). This section provides, in relevant part, “If the defendant is convicted of the offense giving rise to the forfeiture, the court *shall order* the forfeiture of the property as part of the sentence in the criminal case.” *Id.* (emphasis added). *See United States v. Monsanto*, 491 U.S. 600, 609 (1989) (finding the use of “shall order” in 21 U.S.C. § 853(a) rendered forfeiture mandatory under that statute and observing that “Congress could not have chosen stronger words to express its intent that forfeiture be mandatory . . .”; *United States v. Torres*, 703 F.3d 194, 204 (2d Cir. 2012) (finding that forfeiture was mandatory under 28 U.S.C. § 2461(c)).

As the Supreme Court has made clear in *Libretti v. United States*, 516 U.S. 29 (1995), there is no Sixth Amendment right to have a jury determine the amount of forfeiture.

Libretti at 49 (“Our cases have made abundantly clear that a defendant does not enjoy a constitutional right to jury determination as to the appropriate sentence to be imposed”). *Libretti* remains controlling precedent, despite subsequent Supreme Court rulings requiring a jury to find facts that increase “punishment beyond a previously specified range” because “in criminal forfeiture, there is no such previously specified range.” *United States v. Stevenson*, 834 F.3d 80, 86 (2d Cir. 2016) (finding that *Libretti* remains controlling precedent after *S. Union Co. v. United States*, 132 S. Ct. 2344 (2012), and holding that “[t]he calculation of the amount of forfeiture . . . remains within the province of the sentencing court.”); *United States v. Perkins*, 994 F. Supp. 2d 272, 275 (E.D.N.Y. 2014) (Irizarry, J.) (rejecting defendant’s request for a jury verdict on a criminal forfeiture money judgment); *United States v. Dolney*, 2005 WL 1076269, at * 11 (E.D.N.Y. May 3, 2005) (Garaufis, J.) (“[F]or purposes of forfeiture’s relationship to the Sixth Amendment, the only essential fact that must be found by the jury is the defendant’s guilt.”); see also *United States v. Lo*, 839 F.3d 777, 795 (9th Cir. 2016) (following *Libretti*); *United States v. Simpson*, 741 F.3d 539, 560 (5th Cir. 2014) (rejecting the argument that the amount of forfeiture must be submitted to a jury).

Accordingly, because criminal forfeiture is a mandatory part of a convicted defendant’s sentence, but is not part of a determinate sentencing regime, there is no constitutional right to a jury determination on the issue of criminal forfeiture.

II. There is No Legal Right to a Jury Determination of the Amount of a Forfeiture Money Judgment

While Rule 32.2(b)(5)(B) of the Federal Rules of Criminal Procedure permits either party to timely request a jury determination as to whether “the requisite nexus between the property and the offense committed by the defendant” has been established, where the government seeks only a forfeiture money judgment, forfeiture is to be determined by the Court.¹ Rule 32.2(b)(1)(A) states, “if the government seeks a personal money judgment [against the defendant], the court must determine the amount of money that the defendant will be ordered to pay.”

As the Court has previously recognized:

The only determination that must be made when the government seeks a money judgment is the amount that the defendant will be ordered to pay. If the government does not seek specific property, but rather a personal money judgment, the court itself

¹ Rule 32.2 was amended in 2009 in order to avoid an inadvertent waiver of a jury determination, while also providing timely notice to the court and the jurors themselves if they will be asked to make a forfeiture determination as to specific properties, in contrast to a forfeiture money judgment. See Fed. R. Crim. P. 32.2, Advisory Committee Notes, 2009 Amendments, Subdivision (b)(5)(A).

determines the amount of money that the defendant will be ordered to pay.

United States v. Perkins, 994 F. Supp. 2d 272, 275 (E.D.N.Y. 2014) (quotations and alterations omitted).

Indeed, the majority of courts that have addressed this issue, including those within this Circuit, have consistently held that Rule 32.2(b)(5) does not give either party the right to have the jury determine the amount of a forfeiture money judgment. *See United States v. Watts*, 934 F. Supp. 2d 451, 493 (E.D.N.Y. 2013) (Matsumoto, J.) (“Rule 32.2(b)(1) does not provide a right to a jury determination of the money judgment amount.”); *United States v. Bourne*, 08-CR-888, 2012 WL 526721 at *1 (E.D.N.Y. Feb. 15, 2012) (Garaufis, J.) (same); *United States v. Roberts*, 631 F. Supp. 2d 223, 225–26 (E.D.N.Y. 2009) (Irizarry, J.) (same); *United States v. Galestro*, 06-CR-285, 2008 WL 2783360 at *11 (E.D.N.Y. July 15, 2008) (Ross, J.) (same); *United States v. Gregoire*, 638 F.3d 962, 972 (8th Cir. 2011) (where government disclaims any intent to seek forfeiture of specific property, there is no issue for the jury); *United States v. Tedder*, 403 F.3d 836, 841 (7th Cir. 2005) (“Rule 32.2 does not entitle the accused to a jury determination on the amount of the forfeiture.”); *United States v. Reiner*, 393 F. Supp. 2d 52, 54–57 (D. Me. 2005) (same), *aff’d*, 500 F.3d 10 (1st Cir. 2007); *United States v. Harrell*, 11-CR-108, 2013 WL 525743 (M.D. Fla. Feb. 11, 2013) at *2 (distinguishing forfeiture of an *in personam* money judgment from forfeiture of specific property).

III. Conclusion

Here, because the government seeks only entry of a forfeiture money judgment against the defendant, a jury determination of forfeiture is neither necessary nor warranted by the law. Further, pursuant to Rule 32.2(b)(1)(A), the amount of a forfeiture money judgment must be determined by the Court. Accordingly, the government respectfully requests that the Court makes any forfeiture determination in the event that the defendant is convicted of any count of the Indictment at trial.

Respectfully submitted,

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cc: Counsel of Record (by ECF)