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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDREW MARNELL,

Defendant.

No 2:20-CR-00319-RGK

**UNITED STATES OF AMERICA'S APPLICATION FOR AN ORDER DIRECTING THE IRS TO TURN OVER FUNDS SEIZED BY FEDERAL LAW ENFORCEMENT AGENTS FROM DEFENDANT ANDREW MARNELL TO THE CLERK OF THE COURT FOR APPLICATION TO DEFENDANT'S CRIMINAL MONETARY OBLIGATIONS**

[Proposed] **ORDER.**

Hearing Date: None

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Plaintiff United States of America respectfully applies to the Court, pursuant to 18 U.S.C. § 3664(m)(1)(A)(ii), for an order directing the IRS to turn over funds it holds to the Clerk of the Court to be applied to the criminal restitution judgment of defendant Andrew Marnell ("Defendant").

## II. BACKGROUND

On November 3, 2023, the Court ordered Defendant to pay $5,627,076.33 in restitution. (Dkt. 99). The United States seeks an order requiring the IRS to turn over to the Clerk of the Court all funds in its possession which were lawfully seized from Defendant and to apply these funds to Defendant's restitution obligation.

IRS seized from Defendant, and has in its possession, the following funds:

| | |
|---|---|
| Account, Interactive Brokers, LLC: | $526.32 |
| Account, Interactive Brokers LLC: | $165,894.19 |
| Account, Interactive Brokers, LLC: | $3,321.90 |
| Account, Charles Schwab Corporation: | $25,185.37 |
| Account, Charles Schwab Corporation: | $1,341,709.67 |
| Account, Aspiration Financial: | $5,217.77 |
| Account, Aspiration Financial, LLC: | $324.84 |

The United States requests that the Court issue an order directing the IRS to turn over to the Clerk of the Court the seized funds and to apply these funds to the Defendant's outstanding restitution balance.

## III. THE COURT SHOULD GRANT THE GOVERNMENT'S APPLICATION

The United States Attorney's Office is responsible for collecting unpaid fines and restitution. *See* 18 U.S.C. § 3612(c). The United States may enforce a judgment imposing criminal monetary penalties, including restitution, using the practices and procedures for enforcement of civil judgments under federal or state law. Such a judgment "may be enforced against all property or rights to property" of the defendant, with few exemptions. *Id.*, § 3613(a) & (f). Once a court enters judgment in a criminal case, a lien arises in favor of the United States on "all property and rights to property" of the defendant. 18 U.S.C. § 3613(c). Accordingly, upon the entry of the Judgment against Defendant, a lien arose against her "property and rights to property" in the amount ordered in the Judgment.[1]

As set forth above, the IRS lawfully seized funds from Defendant. Any property lawfully seized by the government is subject to any legitimate continuing interest it has in the property. *United States v. Mills*, 991 F.2d 609, 612 (9th Cir. 1993) (finding restitution order created legitimate government interest to defeat defendant's request for return of lawfully seized cash). Further, the government's legitimate interest in the property takes precedence over the subject's ownership interest in the property seized. *Id.* The government may establish a legitimate interest by demonstrating "a cognizable claim of ownership or right to possession adverse to that of the defendant." *Id.*

In *Mills*, the Ninth Circuit recognized that a valid restitution order "gives the government a sufficient cognizable claim of ownership to defeat a defendant's Rule 41(e) motion for return of property if that property is needed to satisfy the terms of the restitution order." *Id.*; *see also United States v. Kaczynski*, 416 F.3d 971, 974 (9th Cir. 2005) (noting that "because a restitution order is enforceable as a lien on all of a defendant's property, a court may order that a defendant's property already in the government's possession be applied to his restitution debt."). Here, the government has the equivalent interest it had in *Mills*: Collecting the restitution obligation imposed against Defendant. *See Mills*, 991 F.2d at 612. Accordingly, the government has a legitimate interest in the lawfully seized funds held by the IRS.

Because the United States has an obligation to collect criminal judgments on behalf of victims and has a valid lien against all of Defendant's real and personal

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[1] The 18 U.S.C. § 3613(c) lien applies to both a defendant's real and personal property. *United States v. Murphy*, 2015 WL 2445050, at *1 (N.D. Ill. May 20, 2015) (stating that "[u]nlike an ordinary judgment lien which when recorded simply binds real property, a § 3613 judgment lien extends to both real and personal property.")

property, any assets being held by a government agency in which a defendant has a substantial interest are subject to the government's continuing interest in the satisfaction of that judgment. *Kaczynski*, 416 F.3d at 974; 18 U.S.C. §§ 3613(a), (f) and 3664(m)(1)(A)(ii).

Based on the above, the Court should order the IRS to turn over the seized funds to the Clerk of the Court for purposes of applying the funds to Defendant's criminal monetary obligations.

## IV. CONCLUSION

Based on the foregoing, the Court should issue the order submitted with this application.

DATED: February 6, 2024

Respectfully submitted,

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