UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v. Case No. 3:23-cr-48-TJC-LLL

CHRISTOPHER LEO DARAGJATI

UNITED STATES' MOTION FOR PRELIMINARY ORDER OF FORFEITURE FOR PROCEEDS

The United States moves the Court, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2(b)(2), to enter as soon as practical, a preliminary order of forfeiture for proceeds in the amount of $200,000, representing the amount of proceeds the defendant admits he obtained as a result of the offenses charged in Counts One, Eleven, and Thirteen of the Indictment.

The United States further asks that the orders of forfeiture become final as to the defendant upon entry. In support of its motion, the United States submits the following memorandum of law.

MEMORANDUM OF LAW

I. Statement of Facts

A. Allegations Against the Defendant

1. The defendant was charged in an Indictment, in pertinent part, with wire fraud, in violation of 18 U.S.C. § 1343 (Counts One and Thirteen), aggravated

identity theft, in violation of 18 U.S.C. § 1028A[1] (Counts Four and Twelve), and theft of government property, in violation of 18 U.S.C. § 641 (Count Eleven). Doc. 1.

2. The Indictment contained forfeiture allegations putting the defendant on notice that, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), the United States would seek an order of forfeiture in the amount of $200,000.00 representing the proceeds he obtained as a result of the offense charged in Counts, One, Eleven, and Thirteen. *Id.*

B. Finding of Guilt and Admission Related to Forfeiture

3. On July 20, 2023, the defendant pleaded guilty to Counts One, Four, Eleven, Twelve and Thirteen. Docs. 24, 27. The sentencing for the defendant is set for October 26, 2023. Doc. 29.

4. In his Plea Agreement (Doc. 26), the defendant specifically agreed to immediately and voluntarily forfeit the sum of $200,000 in proceeds, which he admits he personally obtained as a result of the commission of the offenses. *Id.* at 7-8.

4. The defendant further agreed that as a result of his acts and omissions, the proceeds not recovered by the United States through the forfeiture of the directly traceable assets were transferred to third parties and cannot be located by the United States upon the exercise of due diligence. *Id.*

5. Moreover, the defendant also agreed that since the criminal proceeds have been transferred to third parties and cannot be located by the United States

[1] There is no forfeiture provision for aggravated identity theft (18 U.S.C. § 1028A).

upon the exercise of due diligence, the preliminary and final orders of forfeiture should authorize the United States Attorney's Office to conduct discovery (including depositions, interrogatories, requests for production of documents, and the issuance of subpoenas), pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, to help identify, locate, and forfeit substitute assets. *Id.* at 8. Accordingly, the defendant also agreed the United States is entitled to forfeit any of the defendant's property as substitute assets to satisfy the Preliminary Order of Forfeiture for Proceeds, and that the order of forfeiture would be final upon entry. *Id.* at 8- 9.

C. Admissions of Fact

6. In the Factual Basis of his Plea Agreement, (Doc. 26 at 23-28) the defendant admitted to a factual basis which describes the conduct underlying the charges in the Indictment and provides support for the forfeiture. Specifically, the defendant admitted that in committing the offenses involving the use of various stolen identities of genuine individuals to commit fraud, the defendant personally obtained $200,000. *Id.* at 28.

II. <u>Applicable Law</u>

A. Forfeiture Authority

Criminal forfeiture in this case is governed by 18 U.S.C. § 981(a)(1)(C), which provides for the civil forfeiture of any property, real or personal, that constitutes or is derived from proceeds traceable to a violation of any offense constituting "specified unlawful activity" (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense. A violation of 18 U.S.C. §§ 641 and 1343 are a "specified unlawful activity" under 18 U.S.C. § 1956(c)(7). *See* 18 U.S.C. § 981(a)(1)(C) and 18 U.S.C. § 1956(c)(7)(D). Pursuant to 28 U.S.C. § 2461(c), the United States is authorized to forfeit criminally any property that may be forfeited civilly, and the procedures for the forfeiture and disposition of such property are governed by 21 U.S.C. § 853.

B. Court's Determination of Forfeiture

Rule 32.2(b)(1)(A), Fed. R. Crim. P., requires that as soon as practical after a verdict or finding of guilty, or after a plea of guilty is accepted, the Court must determine what property is subject to forfeiture under the applicable statute. Fed. R. Crim. P. 32.2(b)(1)(A). When the government seeks to forfeit specific property, the Court must determine whether the government has established the requisite nexus between the property and the defendant's crimes. *Id.*

For cases in which a defendant no longer has the actual dollars or property traceable to proceeds in his possession, or the government cannot locate those assets, the obligation to forfeit simply takes the form of an order of forfeiture in favor of the United States. *See United States v. Padron*, 527 F.3d 1156, 1161-62 (11th Cir. 2008). Rule 32.2(b)(1) provides that the court must determine the amount of money that the defendant will be ordered to pay. The Court's determination may be based on evidence submitted by the parties and accepted by the Court as relevant and reliable. Fed. R. Crim. P. 32.2(b)(1)(B). As the defendant has admitted in his plea agreement, he obtained $200,000 in proceeds as a result of the commission of the offenses. Doc. 26 at 7-8.

The defendant further admitted that the criminal proceeds have been transferred to third parties and cannot be located by the United States. *Id.* at 8. Because the United States could not locate the specific property constituting or derived from the proceeds the defendant obtained from his participation in wire fraud and theft of government property, the United States seeks an order of forfeiture against the defendant in the amount of $200,000, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2).

If the Court finds that at least $200,000 was obtained by the defendant, and that he has dissipated those proceeds, then it is appropriate for the Court to enter preliminary order of forfeiture for proceeds against the defendant in that amount pursuant to Rule 32.2(b)(2).

III. <u>Conclusion</u>

For the reasons stated above, the United States requests that, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2(b), the Court enter a Preliminary Order of Forfeiture for Proceeds against the defendant in the amount of $200,000.

The United States further requests that, because the $200,000 in proceeds were dissipated by the defendant, the United States may seek, as a substitute asset, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), forfeiture of any of the defendant's property up to the value of $200,000.

The United States further requests that, in accordance with his Plea Agreement (Doc. 26 at 9), the Preliminary Order of Forfeiture for Proceeds and Specific Assets become final as to the defendant at the time it is entered.

As required by Fed. R. Crim. P. 32.2(b)(4)(B), the United States requests that the Court include the forfeiture when orally pronouncing the sentence and include the forfeiture order in the judgment. *See* Fed. R. Crim. P. 32.2(b)(4)(B) and *United States v. Kennedy*, 201 F.3d 1324, 1326 (11th Cir. 2000).

The United States further requests that the Court retain jurisdiction to address any third-party claim that may be asserted in these proceedings, to enter any further order necessary for the forfeiture and disposition of such property, and to order any substitute assets forfeited to the United States up to the amount of the order of forfeiture.

Respectfully Submitted,

ROGER B. HANDBERG
United States Attorney

s/Mai Tran

By: MAI TRAN
Assistant United States Attorney
Florida Bar No. 100982
300 N. Hogan Street, Suite 700
Jacksonville, Florida 32202
Telephone: (904) 301-6300
Facsimile: (904) 301-6310
E-Mail: mai.tran2@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 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/Mai Tran
MAI TRAN
Assistant United States Attorney