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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASSIE WILL-DARNALL,

Defendant.

SANDRA WILL,

Third Party Claimant.

Case No.: 5:24-CR-00292-PCP

THIRD PARTY CLAIMANT SANDRA WILL'S SUPPLEMENTAL AUTHORITY IN SUPPORT OF ANCILLARY PETITION

Court: Courtroom 8, 4th Floor
Hearing Date: March 25, 2026
Hearing Time: 10:00 a.m.

Third Party Claimant Sandra Will submits supplemental authority in support of her Amended Petition for Ancillary Proceeding, specifically the U.S. Supreme Court's recent decision in *Ellingburg v. United States*, 607 U.S. ___, 2026 WL 135982 (Jan. 20, 2026). Dkt. 104.

Ms. Will's petition argued that the government's effort to forfeit the homes violated the Eighth Amendment's prohibition on "excessive fines." Dkt. 104 at 13-16. She explained that because Ms. Will-Darnall had been ordered to pay restitution in the full amount of her losses, and the government could place liens on properties controlled by Ms. Will-Darnall and garnish her wages in order to recover that restitution amount, it would be unconstitutionally excessive to also order forfeiture of the homes as an additional means to recover the same money Ms. Will-Darnall fraudulently obtained. *Id.* at 16.

The government has consistently challenged this argument, asserting that "courts routinely hold that imposition of restitution and forfeiture together in a single judgment does not constitute an excessive fine because requiring a defendant to disgorge no more than twice the proceeds of her crimes cannot be disproportionate to the harm inflicted on the defendant's victims." Dkt. 77 at 19; *see also* Dkt. 91 at 6; Dkt. 115 at 12. It has also cited in connection with both Ms. Will's ancillary petition and Ms. Will-Darnall's sentencing the Ninth Circuit case *United States v. Newman*, 659 F.3d 1235 (9th Cir. 2011) for the proposition that the payment of "both restitution and criminal forfeiture…is not an impermissible 'double recovery.'" *Newman*, 659 F.3d at 1240; *see* Dkt. 105 at 3; *see also* Dkt. 77 at 20. Based on *Newman*, the government has asserted that "forfeiture and restitution are separate and do not offset each other." Dkt. 105 at 3.

The Supreme Court's decision in *Ellingburg* makes clear this is not the law. There, the Supreme Court was deciding "whether restitution under the [Mandatory Victims Restitution Act, "MVRA"] is criminal punishment" for purposes of the Ex Post Facto Clause to the U.S. Constitution. 2026 WL 135982, at *2. The Eighth Circuit concluded it was not, but the Supreme Court reversed. *Id.* It noted that the United States government "agree[d]" that "MVRA restitution is criminal punishment." *Id.* It explained the "MVRA labels restitution as a 'penalty' for a criminal 'offense.'" *Id.* (quoting 18 U.S.C. § 3663A(a)(1)). Restitution is ordered at sentencing and it is the "government, not the victim, [that] is the party adverse to the defendant." 2026 WL 135982, at *2. It also noted that

restitution was punishment because "forfeiture under 18 U.S.C. § 982(a)(1)—like restitution under the MVRA—occurs at the culmination of a criminal proceeding and requires conviction of an underlying crime," and the Court had long held that "forfeiture…is criminal punishment." *Id.* at *3 (citing *United States v. Bajakajian*, 524 U.S. 321, 328 (1998)).

After *Ellingburg*, it is clear that *Newman* is no longer good law and the government cannot seek both restitution and forfeiture of the same money, because such a double recovery would amount to an unconstitutional double punishment. To understand why that is so, it is important to note that *Newman* reached its result by finding that restitution was a civil, not criminal, remedy. The Court stated "Criminal forfeiture is also separate from restitution, which serves an entirely different purpose." *Newman*, 659 F.3d at 1241. While "Congress conceived of forfeiture as punishment for the commission of various [crimes]…The purpose of restitution ..., however, is not to punish the defendant, but to make the victim whole again by restoring to him or her the value of the losses suffered as a result of the defendant's crime." *Id.* (emphasis, citations and quotations omitted). The Ninth Circuit's belief that the purpose of "restitution…is not to punish the defendant" is clearly incorrect after *Ellingburg*.

Now that *Ellingburg* has clarified that restitution under the MVRA is "criminal punishment" for purposes of the Constitution, it is clear that ordering restitution and forfeiture of the same amounts of money for the same reasons would violate the Double Jeopardy Clause of the Fifth Amendment. That Clause states "No person shall ... be subject for the same offence to be twice put in jeopardy of life or limb." U.S. CONST. AMEND. V. Beyond prohibiting multiple prosecutions, the Double Jeopardy Clause also "'protects against multiple punishments for the same offense.'" *United States v. Camacho*, 413 F.3d 985, 988 (9th Cir. 2005) (quoting *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969)).

Here, the government obtained a restitution order under the MVRA for the amount of money fraudulently obtained by Ms. Will-Darnall, which formed the basis of Ms. Will-Darnall's conviction.[1] It also sought forfeiture of the properties to recoup that same amount of money for the

[1] The MVRA authorizes restitution in cases involving "an offense against property" under Title 18, as well as "any offense committed by fraud or deceit." 18 U.S.C. § 3663A(c)(1)(A)(ii).

same reasons it sought restitution, namely Ms. Will-Darnall's fraud convictions. Indeed, the government has acknowledged that it is seeking forfeiture of the homes as "substitute property" to sell and to then use the proceeds of the sale to cover the balance of the forfeiture money judgment issued against Ms. Will-Darnall for the amount of loss tied to her crimes. Dkt. 115 at 4-5. Under these circumstances, it is clear that restitution and forfeiture constitute "multiple punishments for the same offense" in violation of the Fifth Amendment. *Camacho*, 413 F.3d at 988. Since Ms. Will-Darnall has already been punished with a restitution order, it is unconstitutional to also punish her by forfeiting the properties for the same crimes to recoup the same money covered by the restitution order. In turn, imposing an illegal double financial punishment would constitute an Excessive fine under the Eighth Amendment.

Thus, Ms. Will respectfully requests this Court to amend the forfeiture order to remove 111 Belwood Gateway given the existence of a MVRA restitution order for the full amount of the government's losses.

A copy of the opinion in *Ellingburg* follows this brief.

Dated: January 28, 2026

Respectfully submitted,

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s/ Hanni M. Fakhoury
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