

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CRIMINAL NO. EP-11-CR-0431-FM
	§	
AHMED ADIL ABDALLAT,	§	
	§	
Defendant.	§	

GOVERNMENT’S APPLICATION IN SUPPORT OF MONEY JUDGMENT

The United States of America, by and through the United States Attorney for the Western District of Texas and the undersigned Assistant United States Attorneys, respectfully submits this memorandum in advance of Defendant AHMED ADIL ABDALLAT’s sentencing, which is scheduled to be held on Wednesday, January 18, 2012. As explained below, the United States will be seeking a money judgment in the amount of \$116,392.84, representing the amount of proceeds obtained as a result of the defendant’s conversion offense.

Background

On February 23, 2011, Defendant AHMED ADIL ABDALLAT (“ABDALLAT” or the “defendant”), was charged in Indictment EP-11-CR-0431-FM with misuse of a diplomatic passport, in violation of 18 U.S.C. § 1544 (Counts One through Eight), and conversion of public money, in violation of 18 U.S.C. § 641 (Count Nine).

The Indictment included a Notice of Government’s Demand for Forfeiture, providing notice of the Government’s intent to seek forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), of any property, real and personal, that constitutes or was derived from proceeds traceable

to the offense charged in Count Nine.

On October 13, 2011, the defendant pled guilty before the Honorable Richard P. Mesa, United States Magistrate Judge, to Counts One, Two, and Nine of the Indictment, pursuant to a plea agreement with the Government. This Court accepted his plea on November 9, 2011. [Doc. 50].

Under the terms of the plea agreement, the defendant admitted that the Factual Basis was true and correct. As reflected in the Factual Basis, Abdallat was an Intelligence Research Specialist with DHS/Homeland Security Investigations (HSI), in El Paso, Texas. The Defendant admitted that, between in or about February 15, 2009 through September 10, 2010, he submitted travel vouchers that included fraudulent travel and/or fraudulent expenditures.¹

The Government seeks a forfeiture money judgment of \$116,392.84, representing the amount of proceeds obtained as a result of the defendant's conversion of public money.

DISCUSSION

A. Applicable Law

Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, once a criminal defendant is convicted of the offenses giving rising to the forfeiture allegations — either by trial or plea — the district court must make a determination as to what property is subject to forfeiture under the applicable statute and enter a preliminary order of forfeiture. Rule 32.2 provides in relevant part:

(1) In General. As soon as practicable after a verdict or finding of guilty, or after a plea of guilty or *nolo contendere* is accepted, on any count in an indictment or information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the

¹ As reflected in the objections submitted by Abdallat to the Presentence Investigation Report, the parties dispute the amount of loss.

government has established the requisite nexus between the property and the offense. If the government seeks a personal money judgment, 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 already in the record, including any written plea agreement or, if the forfeiture is contested, on evidence or information presented by the parties at a hearing after the verdict or finding of guilt.

(2) Preliminary Order. If the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment or directing the forfeiture of specific property without regard to any third party's interest in all or part of it. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

Fed. R. Crim. P. 32.2(b).

2. Burden of Proof

Criminal forfeiture is "an aspect of sentencing." *Libretti v. United States*, 516 U.S. 29, 49 (1995). Because fact-finding at sentencing is established by a preponderance of the evidence, the preponderance standard applies to criminal forfeiture. *E.g., United States v. Gasanova*, 332 F.3d 297, 301 (5th Cir. 2003). Accordingly, the Government must prove by a preponderance of the evidence the amount of proceeds underlying the proposed personal money judgment.

3. Property Subject to Forfeiture

As noted above, Count Nine of the Indictment charged the defendant with conversion of public money, in violation of 18 U.S.C. § 641. Under the applicable law, the Court must order that the defendant forfeit all property derived from the proceeds of this offense.

The forfeiture statute pertaining to conversion of public money is 18 U.S.C. § 981(a)(1)(C), which subjects to civil forfeiture:

Any property, real or personal, which constitutes or is derived from proceeds traceable to . . . any offense constituting "specified unlawful

activity” (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

18 U.S.C. § 981(a)(1)(C). The term “specified unlawful activity” in turn, includes, among other things, conversion of public funds. *See* 18 U.S.C. § 1956(c)(7)(A) (“specified unlawful activity” includes “an offense under . . . section 641 (relating to public money, property, or records)”).

Although Section 981 is a civil forfeiture provision, 28 U.S.C. § 2461 provides that a court is required to order forfeiture as part of the sentence in a criminal case where federal law provides for civil forfeiture but there is no parallel criminal forfeiture provision. *See* 28 U.S.C. § 2461(c) (“the court *shall* order the forfeiture of the property as part of the sentence in the criminal case”) (emphasis added).

In addition to seeking forfeiture of specific property that was derived from a crime, the Government may obtain a money judgment against the defendant to recover the amount of the defendant’s proceeds. *See, e.g., United States v. Olguin*, 643 F.3d 384, 395-98 (5th Cir. 2011) (district court was permitted to order money judgment in narcotics case under 21 U.S.C. § 853); *United States v. Baker*, 227 F.3d 955, 970 (7th Cir. 2000) (a forfeiture order may include a money judgment for the amount of money involved in an offense; the money judgment acts as a lien against the defendant personally for the duration of his prison term and beyond); *United States v. Patel*, No. 06-60006, 2009 WL 1579526, at *21 (W.D. La. June 3, 2009) (rejecting defendant’s contention that court was not authorized to enter a personal money judgment for the proceeds of the defendant’s health care fraud).

A money judgment is appropriate even if the defendant did not retain the proceeds of his crime or does not have the resources to pay the money judgment. *E.g., United States v. Day*, 524 F.3d 1361, 1377-78 (D.C. Cir. 2008) (amount of money judgment is not limited to “those assets in

the defendant's possession at the time forfeiture is ordered") (citing cases); *United States v. Vampire Nation*, 451 F.3d 189, 201-02 (3d Cir. 2006) (forfeiture judgment may be entered for the full amount of criminal proceeds, even if the defendant is unable to satisfy the judgment at the time of sentencing; otherwise, defendants would be able to "dissipate those proceeds and avoid liability for the ill-gotten gains"); *United States v. Hall*, 434 F.3d 42, 59 (1st Cir. 2006) (district court may order the defendant to forfeit a sum of money equal to the drug proceeds that he earned but did not retain); *United States v. Casey*, 444 F.3d 1071, 1074-76 (9th Cir. 2006) (because forfeiture is mandatory, a defendant who has already spent the proceeds of his drug offense must pay a money judgment; otherwise he will have been allowed to enjoy the fruits of his crime, which would be inconsistent with the remedial purpose of the statute).

B. The Proposed Money Judgment

Here, the Government seeks the entry of a personal money judgment against the Defendant in the amount of \$116,392.84, representing the proceeds derived from the conversion of public money offense charged in Count Nine.

The Government also seeks restitution in the amount of \$116,392.84. To the extent that the Defendant attempts to argue that the Court should not order both forfeiture and restitution, his argument should be rejected, as explained below.

Forfeiture and restitution are separate penalties, and both are mandatory pursuant to statute. *See* 28 U.S.C. § 2461(c) ("the court *shall* order the forfeiture of the property as part of the sentence in the criminal case") (emphasis added); 18 U.S.C. § 3663A(a)(1) (when the defendant is convicted of causing an identifiable victim to suffer pecuniary loss, the district court "*shall* order, in addition to . . . any other penalty authorized by law, that the defendant make restitution to the victim of the offense") (emphasis added). In addition, these penalties are distinct remedies that serve different

purposes. “Restitution is remedial in nature, and its goal is to restore the victim’s loss. Forfeiture, in contrast, is punitive; it seeks to disgorge any profits that the offender realized from his illegal activity.” *United States v. Webber*, 536 F.3d 584, 602-03 (7th Cir. 2008).

For these reasons, the Fifth Circuit has upheld a district court’s entry of both an order forfeiture and an order of restitution. In *United States v. Taylor*, 582 F.3d 558, 566 (5th Cir. 2009), the defendant argued that the district court should not have imposed forfeiture in addition to restitution, and in any event should have reduced any forfeiture by the amount of restitution. The Fifth Circuit disagreed. The Court held that the district court’s order of both restitution and forfeiture was permissible and that the district court “properly adhered to the *mandatory* language found within the statutory schemes” when ordering both forfeiture and restitution. *Id.* at 566 (emphasis added). The Fifth Circuit further held that a defendant is not entitled to offset restitution by the amount of forfeiture. *Id.* at 568.

In *Taylor*, the Fifth Circuit also considered whether the forfeiture and restitution orders in that case constituted a “double recovery” to the victim. The victim in that case was the Federal Emergency Management Agency (“FEMA”), an executive agency under control of the United States Department of Homeland Security. Because FEMA is under the control of the Department of Homeland Security and is distinct from the Department of Justice, the Court determined that the forfeiture and restitution orders would not result in double recovery to the government.

In this case, the Government anticipates that any forfeited funds will be deposited into the Department of Treasury Forfeiture Fund (“TFF”). TFF, which was created pursuant to 31 U.S.C. § 9703, is the receipt account for non-tax forfeitures made pursuant to laws enforced or administered by law enforcement bureaus that participate in TFF, including the Internal Revenue Service-Criminal

Investigation, ICE, Secret Service, Customs and Border Protection, and other agencies. Payments from TFF are determined by the Department of Treasury, and must be made for one of the law enforcement purposes authorized by statute. 31 U.S.C. § 9703.² Although these payments include allotments to the law enforcement agencies that contributed to TFF (including the victim in this case, ICE), TFF is used for a number of purposes, including expenses arising from the seizure and forfeiture of property and distributions to state and local law enforcement agencies. The undersigned Assistant U.S. Attorney (Anna Arreola) has spoken with legal counsel for the Treasury Executive Office for Asset Forfeiture, who advised that overall contributions to TFF may influence the size of an allotment, but that participating agencies do not receive dollar for dollar the amounts that they contributed.³ Counsel further advised that allotments are made on a reimbursable basis. That is, the agency does not directly receive TFF funds, but instead receives reimbursement upon the agency's submission to Treasury of an invoice documenting that a proper expense was incurred.⁴

² See also Dept. of Treasury, Office of the Under Secretary for Enforcement, "Guidelines for Seized and Forfeited Property," available at <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/pages/index.aspx> .

³ See also "Treasury Forfeiture Fund Accountability Report, Fiscal Year 2011," available at <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Pages/annual-reports.aspx> .

⁴ *Id.* at 35-36.

Accordingly, restitution and forfeiture in this case will not result in double recovery to the government.⁵

For these reasons, the United States respectfully moves the Court to enter a money judgment in the amount of \$116,392.84 in United States currency, representing the amount of proceeds obtained as a result of the offense charged in Count Nine. The United States further requests that at the time of the Defendant's sentencing, the money judgment be included in the Judgment in a Criminal Case. The United States further moves this Court to order, pursuant to Federal Rule Criminal Procedure 32.2(e) and 21 U.S.C. § 853(p) (as incorporated by 28 U.S.C. § 2461(c)), that the United States is not limited to the money judgment, but that the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant, up to the amount of the money judgment.

⁵ In some instances, non-cash personal property that is forfeited may be put into official use by the investigative agency responsible for the seizure. In this case, the United States will not be using forfeited personal properties for official use. Instead, the United States will be seeking permission from this Court to apply funds seized from one of the Defendant's bank accounts as a substitute asset to satisfy the money judgment.

In addition, the Attorney General has authority under 21 U.S.C. § 853(i) to transfer forfeited property toward victim restitution. In the event that any forfeited funds are applied to victim restitution, the defendant will receive credit toward his restitution order for those payments.

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2012, a true and correct copy of the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF System, which will transmit notification of such filing to the following CM/ECF participant:

Mary Stillinger, Attorney for Ahmed Adil Abdallat
4911 Alameda Avenue
El Paso, Texas 79905

/s/
Anna E. Arreola
Assistant United States Attorney

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MONEY JUDGMENT OF FORFEITURE

Before the Court is the United States of America’s Motion for Entry of a Money Judgment of Forfeiture, pursuant to the provisions of 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Rule 32.2 of the Federal Rules of Criminal Procedure. This Court, being fully apprised in all its premises, finds that the United States has proven by a preponderance of the evidence that the below described money judgment represents the amount of proceeds derived from the violation of 18 U.S.C. § 641, to which Defendant AHMED ADIL ABDALLAT pled guilty, and that said Motion is meritorious and should be, and hereby is, in all thing GRANTED. IT IS THEREFORE

ORDERED that all right, title and interest of Defendant AHMED ADIL ABDALLAT in the following:

A sum of money equal to \$116,392.84 in United States currency, representing the amount of proceeds obtained as a result of the offense charged in Count Nine of the Indictment, to which the defendant pled guilty

(hereinafter, the “Money Judgment”) shall be, and hereby is, FORFEITED to the United States of America; and IT IS FURTHER

ORDERED that the United States of America, through the Attorney General, the Department of Homeland Security and/or Homeland Security Investigations, and/or their lawfully designated agents and agencies, including Fines, Penalties and Forfeiture, shall execute upon the Money Judgment in accordance with law, and shall seize and take custody, control and possession of the Money Judgment from Defendant AHMED ADIL ABDALLAT; and IT IS FURTHER

ORDERED that the United States of America is not limited to the Money Judgment, but that the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of Defendant AHMED ADIL ABDALLAT, up to the amount of the Money Judgment; and IT IS FURTHER

ORDERED that at the time of sentencing Defendant AHMED ADIL ABDALLAT, the forfeiture of the Money Judgment shall be included in the Judgment in a Criminal Case.

Dated: January ____, 2012
El Paso, Texas

HONORABLE FRANK MONTALVO
UNITED STATES DISTRICT JUDGE