District of Columbia district court holds that 18 U.S.C. §981(a)(1)(C) applies extraterritorially to the extent that the underlying criminal statute or the specified unlawful activity applies to conduct abroad. The U.S. government sought forfeiture of over $250 million scattered throughout bank accounts located in Guernsey, Liechtenstein, Lithuania, Switzerland, and Antigua and Barbuda. Claimant Lazarenko was a prominent Ukrainian politician who, with the aid of various associates, acquired hundreds of millions of dollars through a variety of acts of fraud, extortion, bribery, misappropriation and/or embezzlement committed during the 1990s. Based on recent Supreme Court precedent regarding the extraterritorial reach of certain U.S. statutes, Lazarenko argued forfeiture was an impermissible application of U.S. law to foreign conduct. The Supreme Court developed a two-step framework for analyzing extraterritoriality issues: 1) whether the presumption against extraterritoriality has been rebutted - that is, whether the statute gives a clear, affirmative indication that it applies extraterritorially; and 2) if the statute is not extraterritorial, then whether the case involves a domestic application of the statute, looking to the statute's focus. If the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad; but if the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory. At issue here was whether the civil forfeiture statute, 18 U.S.C. §981, permits the government to seize property that is derived from or traceable to crimes that allegedly were committed in whole or in part abroad. The court said the text of §981(a)(1)(A) and (C) provides little indication that the two provisions apply extraterritorially, however its structure is similar to the RICO statute, 18 U.S.C. §1962, in which the Supreme Court held that some criminal violation predicates plainly apply to at least some foreign conduct. Therefore, the structure of §981(a)(1)(C) and the statutes that it incorporates clearly indicate that Congress intended that to apply to some conduct abroad, and thus that section applies extraterritorially to the extent that the underlying criminal statute or the specified unlawful activity applies to conduct abroad. The money laundering claims in this case were brought under §§981(a)(1)(A) and 1956(f), which have express extraterritorial provisions. Lazarenko conceded that a transfer from a foreign account to an account in a U.S. financial institution and a transfer from a U.S. account to a foreign financial institution occur in part in the United States under §1956(f). He argued, however, that to conclude that an electronic funds transfer through the U.S. constitutes conduct occurring in part in the U.S. sufficient to satisfy §1956(f) would allow the government to forfeit "proceeds of all crimes, anywhere in the world" simply because the actors used U.S. dollars that were then transferred through the U.S. financial system. The court concluded that Congress limited the extraterritorial reach of the money laundering statutes to crimes that involve monetary transactions derived from the proceeds of specified unlawful activity, and thus transactions that pass through a U.S. financial institution constitute conduct that occurs in part in the U.S. In the Court's view, this conduct is precisely what Congress intended to prevent in enacting the money laundering statutes – the use of U.S. financial institutions as clearinghouses for criminal money laundering. The court accordingly granted in part and denied in part Lazarenko's motion for partial judgment on the pleadings. *United States v. All Assets Held at Bank Julius*, No. CV 04-798 (PLF), 2017 WL 1508608 (D.D.C. Apr. 27, 2017).

New York district court finds that government conducted due diligence searching for traceable assets before seeking to forfeit substitute assets, but failed to show value of three lots was less than amount of judgment, and thus allowed substitution of only one lot. The government moved to substitute assets to include certain property of Christie, to be applied towards the forfeiture money judgment entered against him. The government argued the defendant transferred or sold to, or deposited drug proceeds with, a third party. However, the government inaccurately equated sending narcotics to co-conspirators with transferring narcotics proceeds to third parties for the purposes of 21 U.S.C. §853(p)(1)(B), arguing that where a defendant causes co-conspirators to receive crime proceeds, these actions constitute transfers to third parties. The court thus denied the motion based on this theory. The government did meet its burden under §853(p)(1)(A) because it conducted sufficient due diligence to locate Christie's assets to satisfy the forfeiture order. The Defendant resided in Jamaica until the time of his arrest, did not regularly travel to the U.S., and was not believed to have any bank accounts or other assets in the U.S.. The defendant suggested that the government must do more than state that it was unable to locate assets to satisfy the money judgment, but the agent set forth that he searched databases commonly utilized by law enforcement in an effort to locate assets and that these searches yielded negative results. These attempts to use customary law enforcement techniques and resources to locate the assets of the defendant satisfied the modest showing required by the substitute asset statutes. Christie also contended without showing which proceeds had been recovered from the other coconspirators or why proceeds that were in the hands of other co-conspirators were no longer available, the government potentially stands to recover an illegal windfall. The court acknowledged the government did not show any efforts to recover the proceeds from other conspirators or efforts to recover the proceeds from its cooperating witness, however it conducted the required due diligence to locate the assets connected to the crime, and the court did not designate joint and several liability in its judgments. Moreover, the statute did not require the government to show it first attempted to recover forfeitable proceeds from the co-conspirators, and Christie was being held responsible only for forfeiture of the criminal proceeds for which he was found responsible. Nevertheless, the government did not present evidence as to the present value of the properties it sought and therefore failed to show this amount was less than the $3,150,000 money judgment. Thus, the court granted the motion to substitute one lot, on the condition that any funds in excess of the money judgment be returned to Christie, and denied it as to the other two lots at issue. *United States v. Christie*, No. 08-CR-1244, 2017 WL 1293570 (S.D.N.Y. Apr. 7, 2017).

Maryland district court denies motion to set aside administrative forfeiture of currency because claimant was aware of notice of seizure and erroneously relied on attorney's advice to wait until sentencing to contest forfeiture. The United States Customs and Border Protection initiated administrative forfeiture proceedings against $5,414.00 seized from Ramos Duarte when he was arrested in San Ysidro, California. When CBP issued notice of the seizure and administrative forfeiture proceedings, Ramos Duarte was incarcerated at the Metropolitan Correction Center in San Diego, California. The notice stated he could file a petition for the remission of forfeiture or a claim to the property with pursuant to 18 U.S.C. §983(a)(2), and directed him to complete the Election of Proceedings Form and return it to CBP even if he decided to "abandon the property. Ramos Duarte was then transported to a final destination of Charles County, Maryland to face the criminal charges against him. He argued he could not file a

petition or claim before the expiration of the 30-day period because he was in transit and did not have access to his legal documents, including a 72-hour lockdown upon arrival for medical evaluation. He also said his attorney informed him (erroneously) the forfeiture issue could not be resolved until after his criminal matter was resolved. Relying on that advice, Ramos Duarte did not file a claim until after he was sentenced five months later. Meanwhile, CBP had administratively forfeited the $5,414 because it had not received a timely claim. Here, the government met its burden of showing that it took reasonable steps to provide actual notice to a federal prisoner at his place of pretrial detention, since Ramos Duarte conceded he received the notice. Nonetheless, Ramos Duarte argued equitable tolling should apply to allow his claim to be heard, because as soon as he reached Charles County Jail, his attorney told him not to move forward with the forfeiture claim. However, his definition of immediacy was questionable, as he stated that he filed a claim immediately after sentencing, when he actually did not file a claim until more than three months later. Moreover, neither a claim that his counsel provided ineffective assistance nor a party's lack of familiarity with the law is considered an extraordinary circumstance warranting equitable tolling. Ramos Duarte did not shown he exercised reasonable diligence, as he had the plain language of the notice itself in his possession when his attorney advised him otherwise. He also did not demonstrate that he showed the notice to his attorney, asked his attorney why his advice contradicted the explicit instructions in the notice, or made any other effort to reconcile the conflicting directions. Therefore, the court denied his motion to set aside the forfeiture. *United States v. Ramos Duarte*, No. CR PWG-10-308, 2017 WL 1207585 (D. Md. Apr. 3, 2017).

New Jersey district court holds claimant had standing to move for stay of civil forfeiture action without needing to first file answer. The government filed a criminal complaint against Tomer Yosef, a native and citizen of Israel, alleging he defrauded two investors in connection with a technology startup company through various misrepresentations to the investors about the operation and progress of the company, while taking much of the "investment" money for himself. He then used these ill-gotten funds to purchase a condominium apartment in New York. The government also filed a civil forfeiture complaint against the property, and Yosef filed a Notice of Claim of his ownership, however despite several stipulations by the parties extending the deadlines to respond to the complaint, Yosef had not yet filed an answer, but instead moved to stay this case pursuant to 18 U.S.C. §981(g)(2). The court first said that although claimants must carefully adhere to the procedural requirements for filing a claim, it must caution against overly-rigid application of the rules when assessing standing. The government conceded Yosef satisfied the first requirement of §981(g)(2) in light of the pending criminal case against him, but argued Yosef could not demonstrate the second and third requirements, i.e., the requisite standing and burden on his Fifth Amendment rights. It argued Yosef lacked statutory standing because his verified claim failed to satisfy the procedural requirements of Supplemental Rule G(5)(a) since it did not mention YG Holdings, the record title-holder of the Property, and thus did not demonstrate he exercised dominion and control over the property. It further argued Yosef's failure to file an answer rendered the court unable to determine whether there is Article III standing because the claimant is required to admit, deny, or invoke the Fifth Amendment for each paragraph in the complaint, and he also that he lacked statutory standing to seek a stay. It also disputed Yosef's contention that answering the Complaint would burden his Fifth Amendment rights, since he would be free to invoke the Fifth Amendment protections at any

time, including in his answer, and that admitting to or denying the facts in the complaint would not tell the government anything that it does not already know. Thus, although the government did not dispute the idea that civil discovery would burden the claimant's right against self-incrimination, it suggested there is less potential burden at the pleading stage. The court disagreed. Although a subsequent provision, §981(g)(3), references the impact of civil discovery described in §981(g)(2), the court did not read that provision as circumscribing its authority to grant a stay before an answer is filed. Thus, where the filing of an answer implicates the claimant's Fifth Amendment rights, a stay is authorized. In addition, the court concluded Yosef had Article III standing to seek a stay because of his ownership interest in the property, which was not seriously disputed by the government. He filed a verified claim stating his ownership interest, and the complaint explained that Yosef both formed and is the sole member of YG Holdings, the record title-owner of the Property. Further, the government's opposition brief describes YG Holdings as "an alter ego" Yosef "created to conceal his true ownership. This satisfied Article III standing requirements. Also, common sense compelled the court to conclude that Yosef had statutory standing to pursue a stay, since timely filed a verified claim of ownership, which is explicitly the most significant requirement for establishing statutory standing. Moreover, the policy concerns behind requiring strict compliance with the rules, *i.e.*, resolving disputes quickly and weeding out false claims, were not implicated here where the undisputed sole owner of the property timely filed a claim. Finally, Yosef's alleged criminal conduct was the backbone of the complaint, and thus compelling him to specifically admit or deny those allegations in an answer would burden his right against self-incrimination. The government's concession that discovery would burden those rights in fact bolstered Yosef's argument that this action was closely entwined with the related criminal proceeding against him. *United States v. Real Prop. Known as 212 E. 47th St., Apt. 4E, N.Y., N.Y.*, No. CV-168375-MLCDEA, 2017 WL 1496931 (D.N.J. Apr. 25, 2017).

Texas district court finds good cause to extend time for *pro se* claimant to file late claim since he filed timely answer and acted in good faith, and delay did not prejudice the government. The government filed a complaint for forfeiture against $48,880.00 seized by the United States Postal Inspection Service as part of an investigation into the importation of high-grade marijuana to the Killeen, Texas area. Claimant Joseph submitted an "Answer to Verified Complaint for Forfeiture," where he admitted or denied the factual allegations set out in the complaint, and then supplemented this answer correcting the case number listed in the case caption. The government filed a motion to strike Joseph's answers because he failed to file a verified claim pursuant to Rule G of the Supplemental Rules of the Federal Rules of Civil Procedure. It argued that because Joseph was served with notice on June 15, 2016, any claim he wished to file was due by July 20, 2016, but that no claim had been filed. The government attached to its motion three letters it sent to Joseph in support of its motion: the first two explained the requirements of Rule G and indicated that the government would move to strike the answer for failure to file the required claim, and the third letter returned Joseph's mailing, explaining that his latest submission failed because it was not filed with the court and did not set out the items required by the applicable court rule. The government did not provide the court with a copy of the mailing that it returned to Joseph, nor did it provide more information about the mailing's contents, but presumably his mailing was an attempt by Joseph to serve a claim on the appropriate government attorney. The government also argued that because Joseph failed to

submit a timely, proper claim, he had no statutory standing to contest the forfeiture. The Magistrate Judge granted the government's motion. The district court, however, concluded that it was clear error for the Magistrate Judge not to consider Joseph's *pro se* response to the government's motion to strike, and thus declined to adopt the Report and Recommendation. In that response, Joseph attached several documents he sent to government officials that purported to be claims of ownership. Joseph's "claim" he sent to the U.S. Attorney's Office identified the specific property he claims – the $48,880 in U.S. currency at issue in this action, identified Ephrain Joseph as the "[c]laimant," and stated that he was the owner of the Respondent Property. It was signed by Joseph and stated that the claim was made "under penalty of perjury." Finally, it stated that it was served on U.S. Attorney, Daniel M. Castillo, who was the lead government attorney, on January 19, 2017. The Court therefore concluded that Joseph's "original claim" met the requirements of Rule G.Fed. Supp. R. Civ. P. G(5)(a)(I)The court next construed Joseph's response to the government's motion to strike his answer as a motion to extend the time to file his claim under the "excusable neglect" test. The court first concluded that any possibility of prejudice to the government due to the late filing was minimal, since the government knew that Joseph was a potential claimant, knew or should have known that Joseph was attempting to file a claim when he filed an answer and supplement to his answer, well before Joseph's deadline for filing a claim in the action had passed. The delay also did not interfere with other deadlines, and no judgment or default judgment was entered. Moreover, there was substantial evidence that Joseph's delay was due to his genuine misunderstanding about how to properly file a claim, despite repeated attempts to do so. In addition, Joseph acted in good faith in his late filing. Accordingly, there was good cause to extend the time for Joseph's claim to be filed under Rule G. *United States v. $48,880, more or less, in United States Currency*, No. 6:15-CV-364-RP, 2017 WL 1493705 (W.D. Tex. Apr. 26, 2017).