

**D.C. district court orders claimant to disclose his tax returns since protective order in the case mitigated his confidentiality concerns.** The U.S. sought forfeiture of over \$250 million dollars scattered throughout bank accounts located in Antigua, Barbuda, Guernsey, Liechtenstein, Lithuania, and Switzerland. The defendant Lazarenko was a prominent Ukrainian politician who, with the aid of various associates, acquired hundreds of millions of United States dollars through a variety of acts of fraud, extortion, bribery, misappropriation and/or embezzlement' committed during the 1990s. During discovery the government submitted requests for production of financial and tax records relating to Lazarenko's asserted interest in the in rem assets. Lazarenko responded with specific objections that his tax records were privileged under the confidentiality provisions of 26 U.S.C. §6103, and that he did not possess any foreign bank account records. The parties could not resolve the discovery dispute and the United States moved to compel. The magistrate judge found that Lazarenko's tax and other financial records from 1992 to 1999 records were relevant to both forfeitability and Lazarenko's standing, and thus discoverable. Lazarenko then filed objections with the district court, which agreed with that ruling. Section 6103 prevents the Internal Revenue Service from disclosing any records to the government directly, so ordering Lazarenko to disclose his tax records to the United States was the only way for it to discover thorough and detailed information regarding the nature, source, and amount of any income Lazarenko received from the assets. The court also noted that the protective order in the case mitigated Lazarenko's confidentiality concerns. *United States v. All Assets Held at Bank Julius*, No. CV 04-0798 (PLF), 2017 WL 189165 (D.D.C. Jan. 17, 2017).

**D.C. district court refuses to strike civil forfeiture claims after claimants failed to timely answer amended complaint because of attorney error, since their answer to original complaint apprised government of their response to vast majority of allegations that remained in amended complaint.** The government moved to strike civil forfeiture claims for a lack of statutory standing because 1) claimants failed to file an answer to the amended complaint, and 2) Lecia and Ekaterina Lazarenko failed to “verify” their claim under penalty of perjury because the notarized power of attorney forms they signed did not cause them to swear to the underlying truthfulness of the claim and did not place them “at risk of a false statement.” The government argued the claimants' failure to file an answer to the amended complaint prejudiced it in discovery by increasing the length and cost of litigation and causing it to guess as to the allegations claimants contested because the amended complaint expanded the scope of the criminal conduct alleged. Claimants admitted they failed to file an answer as a result of an oversight by their counsel, and attached a declaration from their attorney stating he remembered a letter from the United States inviting him to late-file claimants' answer, but that he failed to follow-up or to insure that the Answer was filed. Claimants also argued Lecia and Ekaterina Lazarenko's notarized power of attorney forms were sufficient to meet the verification requirements of the Supplemental Rules and, in any event, there was no danger of false claims because the government knew they asserted beneficial ownership of the funds held in the defendant bank accounts. The court found that the claimants failed to file or seek leave to late-file an answer to the amended complaint in the almost 11 years since the United States filed its amended complaint. Claimants' proffered reason for failing to file a new answer to the amended complaint – attorney error – was most likely an insufficient excuse. Nevertheless, the excused claimants' failure to file an answer because it did not at all prejudice the government. Claimants had filed an answer to the original complaint that apprised the government of their

response to the vast majority of the allegations that remained in the amended complaint. As for the verification issue, Supplemental Rule G(5)(a)(i)(C)'s signature requirement was added to the Supplemental Rules 18 months after claimants filed a second claim in this case that fully complied with the then-existing language of Supplemental Rule C(6)(a)(iii). Thus, striking their claims would not be just and practicable. *United States v. All Assets Held at Bank Julius, Baer & Co., Ltd.*, No. CV 04-0798, 2017 WL 65554 (D.D.C. Jan. 6, 2017).

**Kentucky district court holds that gross proceeds from untaxed cigarettes were subject to forfeiture, but reduces forfeiture money judgments that violated Eighth Amendment Excessive Fines Clause.** Defendants were convicted of conspiracy to commit mail fraud, wire fraud, and money laundering. The indictment alleged Defendants engaged in a scheme to obtain untaxed cigarettes ship those cigarettes to customers throughout the United States, wherein they failed to report their cigarette sales to federal, state, and local governments, in violation of the Jenkins Act and PACT Act. Consequently, the taxing authorities were unable to collect excise taxes from their citizen-customers or from Defendants. The indictment also contained forfeiture allegations pursuant to 18 U.S.C. §981(a)(1)(C) and 18 U.S.C. § 982(a)(1), seeking a money judgment forfeiture in the amount of \$34,934,514.12 against Defendant Carman, \$726,495.22 against the Coscias defendants, and \$6,271,917.33 against Defendant Smith, representing the proceeds directly attributable to each defendant's specific business operation. The court first held that, as a coconspirator, each defendant is jointly and severally liable for the forfeiture of the full amount of the proceeds of the conspiracy. Therefore, a money judgment is not limited to what each defendant actually received. Defendants contended that the money judgment forfeiture should have been based on net, rather than gross, proceeds. Defendants, however, were dealing in unstamped, or untaxed, cigarettes. It is inherently unlawful under state and federal laws to possess cigarettes bearing no evidence of the payment of applicable taxes. Therefore, the cigarettes were "illegal goods," and the gross proceeds therefrom were subject to forfeiture according to §981(a)(2)(A). The court further held that the requested money judgment forfeiture against Defendant Smith was excessive under the Eighth Amendment since it was nearly 63 times the fine recommended under the Guidelines, the harm caused was merely economic, and Smith did not play a major role in the conspiracy. The Court thus reduced it 75% to \$1,567,979.33. The court also found that Defendant Anthony Coscia played a minor role in the conspiracy, was less culpable than his wife, Julie Coscia (whose judgment was not reduced), and did not realize a great profit, and thus reduced his money judgment forfeiture 67% to \$251,623.42. For similar reasons, the Court reduced the money judgment forfeiture for Defendant Carman by one-half, to \$17,467,257.06. *United States v. Maddux*, No. CR 14-20-DLB, 2017 WL 187156 (E.D. Ky. Jan. 17, 2017).

**Ninth Circuit affirms denial of motion for return of currency where administrative claim was received by DEA one day late.** DEA at SFO International airport agents seized \$99,500 in cash from Okafor's carry-on bag. The DEA sent Okafor a notice on May 1, 2013, informing him that the money was subject to forfeiture, with a deadline for him to file a claim to contest the forfeiture was June 5, 2013. Okafor asserted that on June 4, 2013 his attorney tendered Okafor's claim to FedEx for overnight delivery to the DEA. The DEA, however, did not receive the claim until June 6. Thus, the DEA deemed Okafor's claim untimely. Okafor's attorney sent several letters to the DEA requesting that the agency consider Okafor's claim as timely filed. The DEA

construed these letters as a petition for remission, which it denied. The agency then administratively forfeited the property and issued a declaration of forfeiture. Okafor subsequently filed a motion for return of property under Federal Rule of Criminal Procedure 41(g), arguing that the DEA had wrongfully deemed his claim untimely and that the district court should exercise its equitable jurisdiction to toll the filing deadline. The government opposed the motion on the ground that, under the Civil Asset Forfeiture Reform Act, the district court lacked jurisdiction to consider Okafor's motion. The district court held that it had equitable jurisdiction to consider Okafor's motion, but, on the merits, held that Okafor had failed to establish extraordinary circumstances warranting equitable tolling of the statutory filing deadline, and denied the motion. On appeal, the court found that once a declaration of forfeiture has been issued, the exclusive remedy for setting aside the declaration is a motion under 18 U.S.C. §983(e), to move to set aside a declaration of forfeiture if the party did not receive written notice. The court then held that §983(e) is a claim-processing rule, and there is no clear jurisdictional limitation in CAFRA, so the district court correctly determined that it had jurisdiction to hear Okafor's motion for equitable relief. Nevertheless, the court further held that it does not recognize run-of-the mill mistakes as grounds for equitable tolling because doing so would essentially equitably toll limitations periods for every person whose attorney missed a deadline, and affirmed the district court's denial of Okafor's Rule 41(g) motion. *Okafor v. United States*, No. 14-17087, 2017 WL 127561 (9th Cir. Jan. 13, 2017).

**Tennessee district court denies motion to strike claims for lack of standing because government did not first move to compel responses to special interrogatories.** The government filed a complaint against \$77,090 in currency seized at Nashville International Airport. Each claimant had filed an administrative claim with the DEA related to the funds; Tompkins claimed an ownership and possessory interest in the entirety of the seized funds and Banks claimed an ownership and possessory interest in \$10,000. Tompkins' judicial claim revised his earlier assertion of ownership of the full amount, and instead asserted a possessory interest over all of the funds but an ownership interest in only \$67,090, with the remainder belonging to Banks. Banks' claim similarly asserted a possessory interest in all of the funds, but asserts ownership of just \$10,000, with the rest belonging to Tompkins. The government served claimants with special interrogatories seeking a wide array of information about their assets, sources of income, and associations, as well as the events surrounding the seizure. Claimants individually responded to the interrogatories with some responsive details, but declined to produce the majority of the information requested, instead raising a number of objections. According to Claimants' counsel, they heard nothing more from the government about the objections until he contacted its counsel to inquire about the status of their claims. An additional month and a half later, the government sent Claimants letters taking issue with the interrogatory responses. Each letter alleged that the responses did “not appear to be a good faith answer” to the special interrogatories and warned that the Claimant's allegedly inadequate response “could be the basis for a motion to dismiss after a hearing for lack of standing.” The government next filed a motion asking the court to strike Claimants' claims due to their lack of constitutional or statutory standing because they did not establish a colorable claim that Tompkins possessed the funds as anything other than a money courier for unidentified true owners. Based on the materials before the Court, Tompkins established a colorable claim that the funds were his and Banks's. Further evidence and fact-finding could, of course, undermine that colorable claim, and

the Court's ruling in no way prevented the government from continuing to argue that Tompkins was a money courier. At this stage, however, Tompkins' possession of the funds, his proffered explanation for where they came from, and the lack of any detailed, admissible direct evidence suggesting that Tompkins was specifically a courier – as opposed to being merely generically associated with criminal activity – were sufficient to make his and Tompkins' claims constitutionally permissible for the court to consider. Also, the claimants did not ignore or refuse to respond to the government's interrogatories, but merely responded with objections that the government deemed unfounded, overzealous, or overbroad. Faced with these objections, the government could have moved to compel Claimants to provide the information it demanded. Such a motion would have entitled it to an adversarial consideration of Claimants' objections and a judicial determination of what information Claimants were or were not required to produce. Instead, the government sought to skip ahead to the harshest possible sanction, striking of Claimants' claims. Nothing in the Supplemental Rules, the precedents of the Circuit, or the interest of justice mandated such a draconian response. Nor could the Court see what purpose such an unyielding regime would serve, other than to discourage future claimants from objecting to interrogatory responses out of fear that an adverse ruling would cost them not merely their rights to withhold information but their claims altogether. The court thus denied the motion to strike. *United States v. \$77,090.00 United States Currency*, No. 3:14, CV-01290, 2017 WL 413799 (M.D. Tenn. Jan. 31, 2017).

**Massachusetts district court voids DEA declaration of forfeiture because administrative claim contained language sufficient to meet penalty of perjury statutory requirement that it was claim rather than a petition for remission or mitigation.** Pro se claimant Jackson moved for return of a 2006 Land Rover Range Rover vehicle seized by the DEA. Upon receiving a notice of administrative forfeiture, Jackson twice attempted to file a sworn claim of ownership with the DEA, which would have required the government to, within 90 days, either file a complaint for forfeiture in the district court or release the property. However, the DEA rejected both of Jackson's submissions as invalid on the basis that her claim was not made under oath, subject to penalty of perjury, and that it was not clear whether she was filing a claim or a petition for remission or mitigation. Receiving no further submission from Jackson, the government filed a declaration of forfeiture. The question was whether the government deprived Jackson of a “fair chance” to present her claim by rejecting her submission as invalid. The court held that no particular formalities are required for there to be a valid oath. Jackson's first submission began with the statement: “kindly accept this notice as my official request to claim my property.” Jackson then identified the vehicle at issue and stated that she was the vehicle owner. Below her signature and above the notary's signature was a line that stated: “Sworn to before me this 23 day of February 2012.” Courts have found statements to be validly sworn given a similar lack of formalities. Taking into consideration that Jackson was filing pro se, the court concluded that Jackson's first submission contained language sufficient to meet the statutory requirement of being made under penalty of perjury. Moreover, the language in that submission that it was “my official request to claim my property” was a crystal clear statement that Jackson was making a “claim” rather than a petition for “remission” or “mitigation.” Therefore, the court held that the declaration of forfeiture was void and that the DEA must return the property or begin judicial forfeiture in the district court. *United State of America v. Byron Jones & Meaghan Murphy*, No. CR 12-10084-PBS, 2017 WL 421644 (D. Mass. Jan. 31, 2017).