Fifth Circuit in interlocutory appeal affirms district court order denying motion to lift pretrial restraint on bank accounts and real property because there was probable cause and a reasonable belief that it would meet its trial burden. Defendants were charged in a scheme to sell a designer drug known as "spice" as "herbal incense," "potpourri," or "aroma therapy" and then laundering the proceeds through related businesses. Although these products were labeled as "synthetic cannabinoid free" and "not for human consumption," the indictment alleged they contained synthetic cannabinoids that were a controlled substance. The government executed civil seizure warrants against Claimants' accounts at UBS Financial Services. The government filed a civil forfeiture suit against UBS accounts totaling more than $7 million allegedly used to receive proceeds of the spice scheme and conceal unlawful activity. The complaint also listed several pieces of real property as defendants and filed notices of lis pendens pursuant to 18 U.S.C. §985. Claimants filed a motion asking the district court to lift the pretrial restraints on their UBS accounts and real property, arguing the government failed to show probable cause the property was subject to forfeiture. The district court denied the motion, and Claimants filed an interlocutory appeal. The parties first disputed whether the court had jurisdiction over this appeal. Claimants invoked 28 U.S.C. § 1292(a)(1), which allows interlocutory appeal of orders "granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions." The government argued §1292(a)(1) did not apply because no injunction was involved. The court disagreed, concluding jurisdiction existed because the district court's order had "the practical effect" of granting or denying an injunction. Also, the court has invoked §1292(a)(1) to review orders releasing real property from a lis pendens. As for the merits, the government may restrain property prior to trial when there is probable cause to think the property is forfeitable. The probable cause standard "is not a high bar," requiring "only the kind of fair probability on which reasonable and prudent people, not legal technicians, act." The district court had asked whether the government's complaint "demonstrated with sufficient particularity for the current stage of the proceedings that Defendants intentionally commingled tainted funds with untainted funds for the purpose of facilitating the alleged money laundering." The court said the district court required the government to go beyond the basic pleading standards for ordinary civil complaints and to plead enough facts to support "a reasonable belief" that it will meet its trial burden as to forfeiture based on money laundering. Therefore, there was enough in the government's complaint to show probable cause and to also support "a reasonable belief" that it can meet its burden at trial as to whether the disputed untainted property was involved with money laundering. Claimants also argued the district court erred by not requiring the government to show probable cause to think there is "a substantial connection" between untainted funds in the UBS accounts and money laundering as required by 18 U.S.C. § 983(c)(3). Although the district court did not specifically discuss this requirement, the court said the government alleged facts supporting a reasonable belief that it will be able to prove a substantial connection. Finally, the grand jury's indictment undoubtedly alleged that the claimants' use of the mail and wires was incident to an essential part of the scheme or a step in the plot. Thus, the order was affirmed. *United States v. Real Prop. Located at 1407 N. Collins St., Arlington, Texas*, No. 17-10624, 2018 WL 3941631 (5th Cir. Aug. 16, 2018).

Kansas district court denies motion to dismiss since the property seizure did not initiate a nonjudicial civil forfeiture proceeding but added to a judicial one, so the 90-day time period under CAFRA was inapplicable to that additional defendant personal property. The government filed a complaint for forfeiture of real property alleging it was involved in a money laundering transaction and constituted proceeds traceable to drug violations. He previously was charged with conspiracy to distribute and possession with intent to distribute methamphetamine, and filed a motion for return of personal property in the criminal action. After the court denied his motion, Claimant filed a claim in this action and a motion to appoint counsel, which was granted, along with an extension of time to file an answer. The government then filed an amended complaint adding the personal property to this action. Claimant filed an answer and moved to dismiss the personal property and for an order returning the personal property on the grounds the government failed to timely file its complaint regarding that property under CAFRA. He argued the government was required to file a complaint naming the personal property within 90 days because the government did not amend its complaint to include the personal property for several months, in violation of 18 U.S.C. § 983(a)(3). The government argued that section was not triggered by Claimant's judicial claim (or his claim made in the criminal proceeding) because this is a judicial action and the personal property was not seized in a "nonjudicial forfeiture proceeding." The court said the plain statutory language supported the government's position. Under section 983(a)(2), "claim" has a specific meaning, i.e., it is a claim for property that was seized in a "nonjudicial forfeiture proceeding under a civil forfeiture statute." Section 983(a)(3) then provides that if such a claim is made, the government must file a complaint in a judicial proceeding. Claimant's motion did not contend that the items of personal property were seized in a nonjudicial forfeiture proceeding, and they were not parties to a nonjudicial forfeiture proceeding. Rather, they were seized or delivered to the government in connection with his criminal case and a related criminal case. Since section 983(a) is only applicable to property seized in nonjudicial forfeiture proceedings, and the government's seizure of the property in connection with the criminal action did not initiate a nonjudicial civil forfeiture proceeding, the 90-day time period under CAFRA was inapplicable to the personal property, so the motion to dismiss and for return of property was denied. *United States v. 6544 Sni-a-Bar-Rd., Kansas City, Missouri*, No. 16-1116-JWB, 2018 WL 3730031 (D. Kan. Aug. 6, 2018).

Seventh Circuit implicitly suggests that the government's immediate deposit of seized cash into government account may subject it to a spoliation argument, since it would deprive a claimant from testing the currency and contesting an alleged dog alert. Law enforcement seized $100,120 in cash from a passenger on an Amtrak train and the federal government initiated a civil forfeiture proceeding. The passenger and the owner of the funds, neither of whom were ever charged with committing any crime, joined the suit as claimants. After 14 years and two appeals, a jury found the currency was substantially connected to a drug transaction and entered a verdict for the government. On appeal, the claimants argued the government converted the seized currency to a cashier's check to prevent them from performing chemical tests for the presence of drugs on the currency, and the government countered that it was only following a Department of Justice policy not to hold large amounts of cash. However, after the district court ruled against the claimants on their spoliation argument and entered summary judgment for the government, the claimants did not challenge the spoliation ruling in that appeal. By failing to

raise the issue when they had every reason to do so, they implicitly acquiesced to and waived their claim. Accordingly, the claimants could not challenge the decision on spoliation and have the dog-sniff evidence barred – although the court implicitly suggested that the argument might have been successful if not waived. The court also concluded it was not irrational for the jury to find the $100,120 was subject to forfeiture. The suspect purchased a one-way ticket with cash just two days before his trip, reserved a private room, and was traveling to a city known as a source for drugs, all of which fit the contours of a drug-courier profile. Besides the drug dog's alert were inconsistent and implausible explanations the claimants gave for why the suspect was on the train and his intended use for the money. *United States v. Funds in the Amount of One Hundred Thousand & One Hundred Twenty Dollars ($100,120.00)*, No. 16-3238, 2018 WL 4000996 (7th Cir. Aug. 22, 2018).

Texas district court dismisses two defendant bank accounts without prejudice because of failure to allege that criminal activity involving accounts occurred within one year before filing of complaint. The court found that the government's complaint failed to allege sufficient factual detail, the government filed an amended complaint and gave the claimants access to an affidavit providing the facts underlying the seizure of the claimants' money, i.e., the claimants obtained the funds while violating various immigration laws by making false statements in visa-application forms. The claimants responded in motions to dismiss that the government's amended complaint insufficiently alleged that the claimants committed a crime and, even if it did, failed to connect the seized funds to a crime. The complaint pleaded that the claimants violated 18 U.S.C. §1546 by lying on forms submitted to obtain visas for information-technology workers. The government also pleaded the claimants violated 18 U.S.C. §1957 for engaging in a monetary transaction in criminally derived property of a value greater than $10,000 and derived from specified unlawful activity. When the alleged criminal conduct occurred also is relevant, since 18 U.S.C. §984 provides that, if the seized property consists of funds in a financial institution, the government need not identify the specific property involved in the offense, and it is not a defense that the property has been removed and replaced by identical property, as long as the criminal conduct justifying forfeiture occurred no more than a year before it "commences" a forfeiture action. The court held that the government commences a forfeiture action under §984(b) only when it initiates a civil action by filing a complaint in court. The government commences a civil forfeiture proceeding only when it files its complaint in court, not by seizing property. The court then held that the government met its Supplemental Rule G(2) burden of pleading with respect to just two if the accounts, since it pleaded that the accounts violated §1957 within one year of its commencement of this proceeding for those accounts. It dismissed the other two accounts without prejudice, holding it must file a new complaint curing defects within fourteen days. *United States v. $73,947.35 in United States Currency*, No. 3:18-CV-213-B, 2018 WL 3956447 (N.D. Tex. Aug. 17, 2018).

Illinois district court denies hardship petition to release claimant's RV since he purchased a new pick-up truck with cash and living in and using his RV while traveling around the country for his business did not demonstrate sufficient ties to a community. Barber was traveling westbound on 1-70 in Madison County, Illinois when police officers, purportedly operating as agents of the Drug Enforcement Administration OCDETF Highway Interdiction Initiative, pulled him over for a traffic stop and seized his RV, U.S. currency and other

miscellaneous property. He made a request for immediate possession of his property upon the DEA's Local field Office in compliance with 18 U.S.C. §983(f), which provides that if the property is not released within 15 days from the request, he may file a petition for release of the property in the district court in which the items were seized. Barber received no response from the DEA nor was any of his property released besides the license plate off of his RV, so he moved in court for release of the seized property. He argued retention of his RV vehicle rendered him homeless and exacerbated a lung condition, Idiopathic Pulmonary Fibrosis, and a great hardship because he used his RV as a traveling place of business – merchandising of concert paraphernalia and musical performances at events. He added that the two seized cell phones also were used in this business. The government asserted they will be used as evidence of the transportation a controlled substance. There was no dispute of the first factor of section 983(f)(1), that Barber had a possessory interest in the RV; the vehicle was titled to him. The next factor, whether he had sufficient ties to the community to provide assurance that the property would be available at the time of trial, was not as easily dealt away with, since his type of perpetual travel did not show he had significant ties with a community. Because Barber did not call one particular location home, instead traveling consistently around the country, it was dubious whether the property would be available for a future trial. The next factor was whether the continued possession of the seized property by the government would cause substantial hardship to the claimant, such as preventing him from working or leaving him homeless. The court, however, was not convinced the hardship caused by loss of use of the RV was as severe as Barber contended. While the court understood that having a vehicle as large as an RV would render more ease of mobility in consistently transporting musical equipment, such movement without an RV was not impossible, since Barber purchased a 2018 Toyota Tundra 4x4 just 14 days after the seizure with a cashier's check, inferring he had ready access to ample cash. His rebuttal that a pick-up truck was not a perfect substitute for an RV because of more limited space and safety to the instruments, the evidence did not demonstrate that the release of the seized vehicle was necessary to prevent substantial hardship. Barber continued to travel and attend the music festivals, even continuing his business – albeit, at a reduced capacity – but this did not demonstrate substantial hardship. Also, while he might prefer to use the RV as his dwelling, he was in a financial position that would allow him to find an appropriate residence other than the RV, preservation was more than a minor concern due to the transitory nature of any vehicle, let alone one used specifically to travel state to state. The court had a great concern the RV, if released, would not be available at a trial or any subsequent forfeiture proceeding, so any hardship created by retaining the property was outweighed by those risks. Further, the government contended the RV was being used to convey a controlled substance in a hidden compartment locked with a 3-digit combination lock, which would forbid release under §983 (f)(8). *In re Seizure of One 2018 Forest River Forester 2391 Recreational Vehicle ("RV")*, No. 18-MC-0039-DRH, 2018 WL 3795939 (S.D. Ill. Aug. 9, 2018).