

Ohio district court denies motion to lift stay for the same reasons it originally granted the stay two years earlier, since little had changed since then. The government filed a civil forfeiture action against various assets believed to be associated with an illegal gambling operation. Zwick filed an answer but not a verified claim. The government moved to stay the civil forfeiture action pending return of an indictment and resolution of a related criminal investigation, supported by an affidavit from an AUSA who averred that a stay was necessary to protect the government's criminal investigation from the expansive scope of civil discovery. The motion further provided that “the outcome of any criminal proceeding will likely determine the outcome of the instant case; namely, the forfeiture sought in the instant case would be litigated as part of the criminal case.” The court granted the stay and administratively closed the case. Two years later, Zwick sought a partial lifting of the stay to permit her to pursue her purported rights to \$20,000 and a 2017 Mercedes GLC. She argued that the continuing deprivation of these assets resulted in a hardship to her because she was currently leasing a vehicle and the lease would run out in less than a year, and she required both the vehicle and the cash to provide and care for two children for whom she had partial custody. She complained that over two years the posture of the case had not changed at all, at least as it pertained to her. The court first noted that Zwick filed an answer but failed to file a verified claim, so it did not appear that she had statutory standing to challenge the court's stay or the government's underlying forfeiture action. Nevertheless, because the government had not moved for default against her, the court addressed the merits of her request for partial relief from the stay. While Zwick complained that little has changed since the court first imposed the stay, the government's ongoing criminal investigation had resulted in the filing of a criminal action. The superseding indictment charged various defendants with participation in an illegal gambling operation, fraud, and tax evasion. Zwick was not been charged as a defendant, although she was identified in the civil forfeiture complaint as a co-conspirator. Nevertheless, the superseding indictment included a forfeiture provision that identified both the \$20,000 in U.S. Currency and the 2017 Mercedes GLC as assets subject to forfeiture. The court found that, for the same reasons it originally granted the stay, continuation of the stay was appropriate. Even though Zwick was not charged in the related criminal case, her access to discovery in the civil action could still provide an avenue for the defendants in the criminal action to obtain otherwise unavailable documents and information. Accordingly, civil discovery would adversely affect the prosecution of the criminal case, making a continuation of the stay proper. *United States v. \$1,117,369.00 in U.S. Currency*, 5:18-CV-2927, 2021 WL 6124204 (N.D. Ohio Dec. 28, 2021).

Tennessee district court dismisses ancillary petition that was deficient both procedurally and on its merits. Defendant and others were charged with conspiracy to distribute cocaine and other related violations, and sought criminal forfeiture. Defendant agreed to plead guilty to a lesser-included offense and admitted that assets seized by the government – including a Smith & Wesson .380 pistol – were directly traceable to the offenses and were forfeitable. Petitioner filed a petition in the ancillary proceeding one day after the statutory limit. The court agreed the petition was not timely filed and therefore should be dismissed on that ground. The petition was deficient in other respects. Petitioner failed to sign it under penalty of perjury, making the petition insufficient on its face. Furthermore, Petitioner only asked for the return of the property and failed to set forth the nature and extent of the interest in the property, or the time and circumstances of her acquisition of the interest in the property, as required by 21 U.S.C. 853(n),

so the court held that it also should be dismissed on that ground. *United States v. Dejuan Porter*, 319CR150TAVDCP2, 2021 WL 5989033 (E.D. Tenn. Dec. 1, 2021), *report and recommendation adopted sub nom. U.S. v. Robinson*, 3:19-CR-150-TAV-DCP, 2021 WL 5988423 (E.D. Tenn. Dec. 17, 2021).

New York district court grants decedent's mother leave to substitute for her claimant son in civil forfeiture action. The government filed a civil forfeiture under 21 U.S.C. § 881(a)(6), alleging that \$16,037.00 was subject to civil forfeiture. Nazier McFadden filed a claim for the defendant currency. Nazier moved to dismiss, and the government amended the complaint. Nazier filed a supplemental memorandum of law in support of his motion to dismiss, and the magistrate judge issued a Report and Recommendation finding that Nazier's motion should be denied. Nazier objected, and the court heard oral argument from both sides. However, because Nazier had died in the meantime, the court requested additional briefing on the issue of standing. Upon learning that the claimant's mother had petitioned to be named administrator of McFadden's estate, and that upon appointment would move for substitution, the court stayed the case pending substitution. Rule 25(a)(1) provides that if a party dies and the claim is not extinguished, the court may order substitution of the proper party upon the motion by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed. In briefing the issue of whether Nazier's estate needed to be substituted as the claimant, the parties disagreed about whether there had been a formal suggestion of death that triggered the 90-day window to substitute. Counsel for the decedent maintained that there had not, but the government argued that the decedent's supplemental memorandum on standing was a formal suggestion of death that triggered the 90-day window (thus arguing the substitution was untimely). The court agreed with the decedent, since a suggestion of death can be made only by a party or by the decedent's successor or representative. Counsel for a decedent did not serve in that role, and therefore did not have the authority to make a suggestion of death, unless and until he is acting for the estate. Even if this Court found that the supplemental memorandum filed by Nazier's counsel otherwise met Rule 25(a)(1)'s requirements for a suggestion of death, it still would be ineffective. That said, the failure to properly file and serve a suggestion of death did not prevent the administrator of her late son's estate from moving to be substituted for her son as the claimant. Because upon Nazier's death, his attorney no longer had authority to act upon his behalf, and because there was no indication that the mother had retained that attorney to represent her in this matter, the motion to substitute was not properly filed. Accordingly, the motion to substitute was denied without prejudice with leave for the mother to file such motion. *U.S. v. \$16,037.00 U.S. Currency*, 19-CV-01056-LJV-MJR, 2021 WL 5917135 (W.D.N.Y. Dec. 15, 2021).

D.C. district court denies January 6th defendant's motion to release seizure order because he failed to even make the threshold showing that he could not pay for rent or other household necessities without access to the seized assets. Defendant John Sullivan was charged in a multi-count superseding indictment arising from his participation in the events at the U.S. Capitol on January 6, 2021. He moved to release the seizure order related to his bank account in Utah and to forbid seizures of other accounts, and requested a post-deprivation, pretrial hearing to challenge the sufficiency of the government's evidence supporting the seizure

of assets. A magistrate judge had approved two sealed warrants authorizing the government's seizure of \$89,875 in Mr. Sullivan's bank and Venmo accounts based on a supporting affidavit stating that the funds Sullivan obtained by filming and selling footage of the January 6, 2021 Capitol riots would not have existed but for Sullivan's illegal participation in and encouragement of the riots, property destruction, and violence inside the U.S. Capitol. His indictment included a forfeiture allegation. Sullivan sought a hearing on the government's seizure of assets he claims he needs to pay his rent and other household necessities. He did not argue that access to the seized assets was necessary for an effective exercise of the Sixth Amendment right to counsel, but that the proceeds of the bank account were not the product of criminal activity alleged in the indictment. The court held that a pretrial hearing would not be warranted, since Sullivan had not made the threshold showing that he could not pay for rent or other household necessities without access to the seized assets. He submitted a declaration that merely provided a "summary" of his monthly household needs totaling \$4,800 a month, as well as a partial listing of sources of income. He did not provide any further information relevant to his ability to pay rent, including what his other sources of income may entail. He provided no documentation regarding his employment, or was there any information regarding how much he earned or the value of any assets he may have. And significantly, He also did not dispute that he had at least one other bank account in which he retained a positive balance. At the least, this information suggested he enjoyed assets beyond those seized by the government that he could use toward paying for rent and his other household necessities. *U.S. v. Sullivan*, CR 21-78 (EGS), 2021 WL 5769452 (D.D.C. Dec. 6, 2021).