California district court denies criminal forfeiture of motorcycle gang's trademark. The government moved for a motion for preliminary order of forfeiture against the Mongol Nation motorcycle club and the Mongol Nation made post-trial motions. The jury had returned a verdict finding the Mongol Nation, an unincorporated association, guilty of RICO. The guilty verdict triggered the forfeiture phase of trial, in which the jury returned a Special Verdict finding certain property to be subject to criminal forfeiture, including the rights associated with collective membership marks and specific items of personal property bearing the marks. The Mongol Nation and its members display specific words and images on leather vests, flags, bandanas, belt buckles, and other property. Some of these words and images are registered with the United States Patent and Trademark Office, and one consists of the word "MONGOLS" and the drawn image of a Genghis Khan-type character with sunglasses and a ponytail, riding a motorcycle. This type of trademark allows an organization, union, club, or other type of association—be it the National Rifle Association, American Thyroid Association, Christian Deer Hunters Association, International Brotherhood of Teamsters, or Navy Seal Team – to prevent others from using the words or images in a way that violates trademark law. The court said it was beyond question that the government has a legitimate interest in attacking the economic roots of a criminal organization like the Mongol Nation. Although the government said its request was limited, the court said it was not enough to remedy the chilling effect the forced transfer of a symbol to the United States government would have on the Mongol Nation, its members, and society at large. The government was not forthright with the court and the public regarding whether the United States could feasibly use the Mongol Nation's collective membership marks or transfer the marks to a third party for their exclusive use. These statements were accompanied by public threats made by the U.S. Attorney regarding the government's intention to strip vests off members' backs. Because the forced transfer of symbols to the United States immediately would chill the Mongol Nation's and its members' continued rights to display or otherwise use the collective membership marks without fear of legal retaliation or payment of a licensing fee at any point following forfeiture, the forced transfer of the collective membership marks to the violated the First Amendment. The government's request also violated the Eighth Amendment's Excessive Fines Clause and was denied on that basis alone. The Mongol Nation was a convicted criminal entity, and its members pleaded guilty to heinous acts of murder, attempted murder, drug trafficking, and other crimes. But in this case the jury found that the government did not prove the requisite nexus between the collective membership marks and the substantive RICO offense; the jury found the collective membership marks forfeitable as to RICO conspiracy alone. The court held forfeiture of the rights associated with a symbol that has been in continuous use by an organization since 1969 was unjustified and grossly disproportionate to this offense. To hold otherwise sets a dangerous precedent that enables the government to target the associative symbols of organizations it chooses to prosecute for RICO conspiracy. For example, the United States brought multiple RICO actions against James Hoffa and the International Brotherhood of Teamsters to rid the union of "the hideous influence of organized crime." Today the Teamsters continue to own and use its collective membership mark, and the group's more than one million union members display their symbol on clothing, including on vests (albeit fleece, not leather). The court thus denied the request for a Preliminary Order of Forfeiture. However, the court conditionally granted the government's request to forfeit all body armor, firearms, and ammunition entered into evidence during trial and items of tangible personal property bearing the collective membership marks, including vests or "cuts," patches, clothing and documents, that

were in the custody of the United States. This requested forfeiture raised no constitutional concerns. *U.S. V. Mongol Nation*, No. CR 13-0106-DOC-1, 2019 WL 988432 (C.D. Cal. Feb. 28, 2019).

U.S. Supreme Court holds that Eighth Amendment Excessive Fines Clause is applicable to state forfeitures. Timbs pleaded guilty in Indiana state court to dealing in a controlled substance and conspiracy to commit theft. At the time of Timbs's arrest, the police seized his vehicle, a Land Rover SUV he purchased for about $42,000 with money he received from an insurance policy when his father died. The State engaged a private law firm to bring a civil suit for forfeiture of Timbs's Land Rover, charging that the vehicle had been used to transport heroin. Although finding that Timbs's vehicle had been used to facilitate violation of a criminal statute, the court denied the requested forfeiture, observing that Timbs had recently purchased the vehicle for more than four times the maximum $10,000 monetary fine assessable against him for his drug conviction. Forfeiture of the Land Rover, the court determined, would be grossly disproportionate to the gravity of Timbs's offense, hence unconstitutional under the Eighth Amendment's Excessive Fines Clause. The Court of Appeals of Indiana affirmed that determination, but the Indiana Supreme Court reversed, holding that the Excessive Fines Clause constrains only federal action and is inapplicable to state impositions. The Supreme Court reversed, holding that the Excessive Fines Clause was an "incorporated" protection applicable to the States under the Fourteenth Amendment's Due Process Clause. Like the Eighth Amendment's proscriptions of "cruel and unusual punishment" and "excessive bail," the protection against excessive fines guards against abuses of government's punitive or criminal-law-enforcement authority, a fundamental safeguard to our scheme of ordered liberty, with deep roots in our history and tradition. The Excessive Fines Clause is therefore incorporated by the Due Process Clause of the Fourteenth Amendment. *Timbs v. Indiana*, No. 17-1091, 2019 WL 691578, at *2–6 (U.S. Feb. 20, 2019).

Eighth Circuit holds that joint and several liability is applicable to forfeitures pursuant to §981(a)(1)(C). The court imposed a money judgment in the total amount of $1,142,942.32, including the costs to purchase drug paraphernalia, which the court found totaled $117,653.57, plus the costs to purchase "potpourri" related to the mail fraud conviction, which the court found totaled $1,025,288.75. Defendants argued the money judgment imposed jointly and severally against them (and their companies) should have been vacated because it was inconsistent with the jury's decision not to forfeit most of their property and contrary to the Supreme Court's decision in *Honeycutt v. United States*, where the Supreme Court held that forfeiture of property under 21 U.S.C. §853 is limited to property the defendant himself actually acquired as a result of the crime, and further held that joint and several liability was not appropriate for co-conspirators. Here, both defendants had ownership interests, worked together to operate the businesses, and shared in the proceeds obtained by engaging in criminal activity. While the court found no clear error in the court's determination that Defendants were equally culpable, it reversed that portion of the money judgment imposed jointly and severally relating to the conviction for conspiracy to distribute drug paraphernalia. The bulk of the total money judgment imposed related to the conviction for conspiracy to commit mail fraud regarding misbranded drugs, the "potpourri". The court noted a circuit split has developed on the question of whether *Honeycutt* applies to criminal forfeitures under §981(a)(1)(C). A review of the text and structure of the two statutes

reveals similarities and also notable differences. Unlike in §853, the term "proceeds" is defined in §981(a)(1)©. The two statutes being compared are similar in a sense that they both use the verb "obtained," which the Supreme Court placed great emphasis on when it limited forfeiture to personal liability. It is also notable that the requirement that property be "traceable" to the commission of the offense as contained in §981(a)(2)(A) is similar to §853's requirement that the property be "tainted," as described in *Honeycutt*. A material distinction is the lack of a reference to a "person" in §981. In contrast, §853 applies to property "the person obtained, directly or indirectly, as the result of" the crime. The Supreme Court noted that §853(a) defined forfeitable property solely in terms of personal possession or use. The plain language under §981 is broader than §853 and less focused on personal possession. As set forth in §981(a)(2)(A), property is subject to forfeiture if it is "traceable" to the crime. The statute does not contain any language that requires possession of the property by the defendant, either explicitly or implicitly. The court held that these differences are significant, and concluded that the reasoning of *Honeycutt* is not applicable to forfeitures under §981(a)(1)(C). It held that the district court did not err when imposing joint and several liability as to this portion of the money judgment. *United States v. Peithman*, No. 17-2721, 2019 WL 942825 (8th Cir. Feb. 27, 2019).

North Carolina district court, invoking equitable tolling, allows filing of forfeiture complaint 91 days after administrative claim arrived in CBP's mail room. The government filed a civil forfeiture action against $40,000.00 in U.S. currency it alleged constituted drug proceeds. The claimant moved for summary judgment, arguing the government's complaint did not comply with 18 U.S.C. §983(a)(3)(A)'s requirement that civil forfeiture complaints be filed within 90 days after a claim has been filed in administrative forfeiture proceedings. Following receipt of a U.S. Customs and Border Protection(CBP) "notice of seizure and information to claimants CAFRA form," claimant filed an administrative claim by certified mail, addressed to the Fines, Penalties, & Forfeitures office in Charlotte, NC. The notice did not indicate that any particular person should be referenced in the correspondence. Tracking information available through the USPS website indicated the parcel was delivered to "Front Desk/Reception" on May 4, 2017. The signature on the certified mail receipt belonged to Kendrick, a CBP technician in the main port office in Charlotte, North Carolina, an office that is separate from the FP&F office, although both are located in the same building. Kendrick assisted with the receipt and distribution of incoming mail. Incoming mail for the CBP facility is sorted and then placed into an internal mailbox for the appropriate employee or office listed on the address. A FP&F office employee typically retrieves incoming mail from the internal FP&F mailbox once each business day. The mail is then stamped with the FP&F date stamp once it is received by the FP&F office. The claim package submitted by claimant was stamped with a "received" date of May 5, 2017, indicating that it was received by the FP&F office that date. The government's was filed against the property on August 3, 2017, which is the 90th day after claimant's claim was stamped "received" by the Charlotte FP&F office and the 91st day after claimant's claim letter was delivered by USPS. The CBP notice of seizure states only that "[a]ll correspondence should be addressed to the FP&F Office." The court said that outside of the Fourth Circuit, a consensus has not formed as to whether the operative date is the date that the claim is received by a mailroom or an official within the applicable agency. Here, while the building mailroom received the complaint on May 4, 2017, as verified by claimant through a tracking number, it does not appear that this constitutes delivery to and receipt by the "appropriate official," as stated by statute. The

building mailroom sorted but did not appear to open, accept, or review the contents of the mail. The court stated that even if it deemed arrival at the mailroom as the claim "filed," it would equitably toll the deadline by one day and consider the government's complaint timely filed. The government acted in good faith reliance on the date-stamp provided by the agency as accurately reflecting the date the claim was received by "the appropriate official." No other date was supplied by CPB in its claim referral package to the U.S. Attorney, and the government filed its forfeiture complaint within 90 days of that date. There also was no clear precedent in the circuit or district rejecting the position that the stamped date is the operative date. Finally, there was no indication that the government did not act with diligence in prosecuting the action, and the balancing of harms also weighed in favor of equitable tolling. Prejudice to claimant of a one-day delay in the filing of the complaint was limited. In contrast, dismissal of the government's complaint would have a draconian effect on the its case, forcing it to release the currency and bar it from any further action to effect the civil forfeiture of that property. Thus, the court denied the claimant's motion for summary judgment. *United States v. $40,000.00 in United States Currency*, No. 5:17-CV-398-FL, 2019 WL 507476 (E.D.N.C. Feb. 8, 2019).

New York district court vacates criminal final order of forfeiture because of lack of notice and reopens civil forfeiture action. Petitioner filed a Rule 60(b) motion to vacate the Court's Final Order of Forfeiture previously entered against $167,600 in U.S. Currency, arguing it was void and that the government's failure to notify Petitioner of the civil forfeiture action justified the return of the currency to Petitioner along with an award of attorneys' fees. The government joined in the motion to vacate the judgment but opposed further relief. The court granted Petitioner's motion to vacate but denied Petitioner's request for the prompt "equitable" return of the $167,600 and reserved judgment on his request for attorneys' fees. When a final judgment or order is vacated under Rule 60(b), the moving party is relieved from that order or judgment, however the rule did not provide for the equitable relief requested here. Rather, vacatur of the judgment reopened the civil forfeiture action, which had to be resolved on the merits. Finally, Petitioner's request for attorneys' fees was premature because a "final judgment" had not yet been entered in the case. Notably however, the government conceded it failed to provide Petitioner with the required notice of the civil forfeiture action under Rule G(4)(b). Moreover, it previously conceded it had failed to provide the required notice to at least two other potential claimants. In both those cases, the seized property was returned to the requesting claimants. The government had not yet explained the disparate treatment of Petitioner's demand for the seized currency as compared to other potential claimants involved in the action. These facts made it somewhat difficult to see how the government's position was substantially justified. *United States v. $65,000 in U.S. Currency*, No. 113CV0773NAMRFT, 2019 WL 452043 (N.D.N.Y. Feb. 5, 2019).