

D.C. district court orders criminal forfeiture of \$40 million per offense assessed concurrently, which included bank funds that “facilitated” money laundering violation.

The district court ordered the defendants each to forfeit approximately \$39.7 million (for health care fraud offenses) and \$40 million (for money laundering offenses) to be assessed concurrently, meaning that money forfeited counts toward their forfeiture judgments for both health care fraud and money laundering. In total, therefore, each were to forfeit approximately \$40 million. The court also ordered them to forfeit cash, vehicles, jewelry, and real property, with the values of the forfeited properties to be credited on a fifty-fifty basis toward each of their forfeiture money judgments. Defendants first argued the relevant statutes did not authorize forfeiture of the entire \$80 million, since they require forfeiture of property that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the health care fraud offense. They said this does not cover the total proceeds obtained by their health care company, Global, because the Medicaid payments it received for certain legitimate services were not connected to the health care fraud offenses. The court held that their argument overlooked the breadth of the forfeiture statute, since “gross proceeds traceable to” the fraud includes the total amount of money brought in through the fraudulent activity, with no costs deducted or set-offs applied. And whereas other forfeiture statutes allow credit for “lawful services,” the statute for health care fraud does not. Because the pervasive fraud was integral to each and every Medicaid payment to Global, the district court properly determined that the total payments constituted or were derived, directly or indirectly, from gross proceeds traceable to each of their health care fraud offenses. The district court also found that the funds transferred out of Global’s accounts were “involved in” the offense because they facilitated the money laundering conspiracy. Finally, given the close match between the amounts of the illicit funds and the ensuing judgments, the penalties were not “grossly disproportional” to the defendants’ crimes, and the district court did not plainly violate the Excessive Fines Clause by ordering forfeitures without considering their ability to pay them. *United States v. Bikundi*, No. 16-3066, 2019 WL 2426147 (D.C. Cir. June 11, 2019).

Oregon district court orders over \$1 million criminal forfeiture judgment, but reduces it slightly based on bonafide compensation received that were not proceeds of the crime. In a Motion for Entry of a Preliminary Order of Forfeiture, the government sought a money judgment of \$1,071,425.95, forfeiture of three specific assets as proceeds traceable to her convictions, and forfeiture of the specific assets as substitute property to fulfill any outstanding money judgment. Defendant opposed the personal money judgment, arguing that such judgments are no longer viable under the Supreme Court's decision in *Honeycutt v. United States*. Defendant also argued the government did not properly deduct from the sought-after judgment bona fide expenses made in the usual course of business. The court found that, after considering Defendant's bona fide health expenses paid in the usual course of business, a personal money judgment in the amount of \$1,025,235.33 was proper, and that the funds from the sale of property were properly subject to specific asset forfeiture since it was more likely than not purchased exclusively with proceeds of Defendant's crime. The court, however, declined to order the forfeiture of those funds as substitute property. The court was persuaded that the government proved that Defendant possessed the proceeds of her crimes of conviction, so it was proper to seek a money judgment. It found that the money judgment should be reduced by \$46,190.62 based on bona fide compensation, expenses that were not proceeds of Defendant's crime. The court found, however, that Defendant was not entitled to an offset for her purported salary. The government provided

compelling evidence linking the payments made on real property to the proceeds of Defendant's theft, so it was more likely than not this property was purchased solely with stolen funds, and the revenue from the sale of the property was derived from forfeitable proceeds. Thus, the government was entitled to specific asset forfeiture of \$364.01 and \$451,006.95. Finally, since the court had already determined that these assets were forfeitable as specific, the government's request for substitute asset forfeiture was denied. *United States v. Ayala*, No. 3:16-CR-00495-HZ, 2019 WL 2518122 (D. Or. June 18, 2019).

Seventh Circuit affirms civil forfeiture judgment because claimant did not challenge government's procedural violations, but criticizes government for not adhering to the prescribed standards for administrative forfeiture. The government arrested Martov for wire fraud and seized several items of his personal property. In exchange for Martov's guilty plea, the government agreed not to pursue criminal forfeiture, but it never agreed to forgo administrative forfeiture proceedings, which it had already initiated by sending notice to him and his attorney. Martov responded to the government's notice by filing claims for the car and guns. The government denied both claims and declared the property forfeited. Martov then brought this action in the district court, seeking the return of the property. The government had sent certified mail to Martov at his prison address and to his lawyer regarding cash and a watch in May 14. The government did the same for the car in December 2015 — after 21 months had passed since the government's seizure, a plain violation of the 60-day deadline in 18 U.S.C. §983(a)(1)(A)(I). Martov never filed claims for the watch or cash, and the government declared them forfeited, but he did file claims for the car and guns, triggering certain statutory protections. Specifically, the government had 90 days from the date of Martov's claim to file a complaint, or return the property. The government missed that deadline, waiting five months before denying Martov's claim for the car and five guns. When denying his claim, the government informed Martov that he had 10 days to “request reconsideration.” When the 10-day deadline passed without word from Martov, the government entered what it called a “Declaration of Abandonment,” stating that a claim for the property was received and denied and that title to the property had vested in the United States. On appeal Martov again invoked Rule 41(g) and argued the government illegally seized his property and then violated the plea agreement by using the tools of administrative forfeiture to take title to it. The court held the forfeiture proceedings were civil, and thus Federal Rule of Criminal Procedure 41 did not apply. Martov also never challenged the adequacy of the government's administrative forfeiture notice. He also omitted any specific challenges to the government's notice letters, or more generally, a due process challenge to the government's conduct or the scheme it established for executing administrative forfeitures. He therefore failed to offer any valid basis upon which the court could grant relief. The court observed that a future case may require consideration of the scope and limits, jurisdictional or otherwise, of a challenge to an administrative forfeiture. Some challenges may sound in due process and others in statutory terms. Because these issues were not before the court here, the court said their development would have to await another case. Nevertheless, it said that at several junctures the government fell short of adhering to the standards Congress prescribed in 18 U.S.C. §983 for implementing administrative forfeiture. For example, the government did not meet statutory deadlines on several occasions. Also, the government never filed a complaint for forfeiture in federal court. As soon as Martov filed claims for the car and guns, §983 imposed a clear obligation on the government to file a complaint for forfeiture or return the property

pending the filing of a complaint. Also concerning was that the government never warned Martov that choosing not to seek reconsideration would result in forfeiting the property. Since Martov did not contest the forfeiture on any of these grounds in his correspondence with the government, before the district court, or on appeal, so they offered no basis for relief. *Martov v. United States*, No. 18-3424, 2019 WL 2495812 (7th Cir. June 17, 2019).

Tennessee district court vacates preliminary order of forfeiture because failure to include the forfeiture in the sentencing judgment was more than a mere clerical error, and government did not seek to correct the sentence or appeal. A Preliminary Order of Forfeiture was entered on September 10, 2003, providing that the defendant Canela forfeit \$200,000.00 or any other property up to that amount. Almost two years later, the court entered an Amended Preliminary Order of Forfeiture, applying \$38,000 seized by the government to the \$200,000 judgment. Shortly thereafter, the court entered a Final Order of Forfeiture as to the \$38,000. No final order of forfeiture of the remaining \$162,000 was ever entered. Also, the issue of forfeiture was never even mentioned – by the government, defense counsel, or the court – a single time during the entirety of the sentencing hearing. Although the Judgment referenced the finding of guilt for Criminal Forfeiture, it contained no reference to the amount of the forfeiture awarded. It did not incorporate by reference or otherwise the Preliminary Order of Forfeiture of Substitute Assets or, indeed, the Final Order of Forfeiture of the \$38,000. Neither party appealed. After Canela was released from prison and the court granted his motion for early termination of supervised release, Canela was a free man, having fully served his sentence. However, from the government’s perspective at least, a forfeiture money judgment of \$162,000 still hung over his head. No further payments were made toward the money judgment since that time. In August 2009, more than a year later, Canela purchased real property in Orlando, Florida as a family home, and stated that no funds derived from his conviction were used to purchase the property. Fast forward nine years when, on January 29, 2019, the government filed a Motion for Entry of a Preliminary Order of Forfeiture of Canela’s interest in the house as a substitute asset, to partially reduce or pay in full the remaining balance of the forfeiture judgment. It was unclear whether Canela received notice of that motion, and he did not file a response to it. The court granted the motion, which effectively terminated Canela’s interest in the property. Mrs. Canela filed a timely Petition, which the government moved to dismiss. The court held that there was no monetary forfeiture judgment in effect in Canela’s case for the government to execute, the government never sought to amend the Judgment to incorporate forfeiture, and amending the judgment now would constitute a gross injustice and violation of Canela’s constitutional rights. First, there was no final order of money forfeiture and no forfeiture judgment in effect in this case. Even if the government had moved to amend the judgment, and even if it were to file such a motion now, amendment would not be warranted. The failure to include the forfeiture in the Judgment was more than a mere “clerical error,” since more notice was required under the circumstances. The government did not seek to correct the sentence and did not appeal. As a result, Canela’s sentence did not include forfeiture. The government lacked the authority to effect the forfeiture of the property, and thus the court was required to vacate the Preliminary Order of Forfeiture. *United States v. Canela*, No. 3:02-CR-00072, 2019 WL 2543503 (M.D. Tenn. June 20, 2019).

Ohio district court grants summary judgment for government because claimant said he would answer questions only testing the legality of the seizure and refused to answer

discovery questions regarding his assertion of ownership. Wells was a ticketed passenger on a flight departing Cleveland Hopkins International Airport destined for Houston, Texas. Routine screening of his carry-on luggage alerted for the presence of an organic bulk mass, leading TSA to conduct an examination of the luggage. After discovering several rubber-banded bundles of mixed-denomination U.S. currency, TSA notified the Cleveland Police Department, which referred the matter to Homeland Security Investigations. After the government filed a Complaint for Forfeiture under 21 U.S.C. § 881(a)(6) and Wells filed a Verified Claim, the government moved for summary judgment. Wells contended the mere assertion of ownership set forth in his verified claim was sufficient to confer standing. However, Wells refused to respond to any questions in discovery supporting his naked assertion that he was the owner, and invoked his 5th Amendment privilege against self-incrimination. At deposition, he again invoked the Fifth Amendment and refused to answer any questions supporting his assertion of ownership – his lawyer announced Wells would only answer questions regarding circumstances at the airport and testing the legality of the seizure. Consequently, the court granted summary judgment for the government on the issue of standing. *United States v. \$39,000.00 in U.S. Currency*, No. 1:18 CV 1753, 2019 WL 2395611 (N.D. Ohio June 6, 2019).