Office of the Attorney General
Washington, D. C. 20530

May 16, 2011

The Honorable John A. Boehner
Speaker
United States House of Representatives
Washington, DC 20515

Re: United States v. Lucio Ramirez, Nos. 10-12785 & 10-13249 (11th Cir.)

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that on April 29, 2011, the Department of Justice determined not to seek further review of the unpublished decision of the court of appeals in the above-referenced case. A copy of the decision is enclosed.

Defendant Lucio Ramirez was convicted on 103 counts of structuring financial transactions in order to evade reporting requirements, in violation of 31 U.S.C. 5324(a)(3) and (d). Ramirez owned a car dealership, and his convictions were based on evidence showing that, between August 1, 2006, and March 29, 2007, he made over a hundred cash deposits to a bank account in amounts ranging from $9,000 to $9,900, just below the statutory reporting threshold of $10,000. The total amount of money that Ramirez deposited through those transactions was $967,100.

Section 5317(c)(1)(A) of Title 31 provides that in "imposing sentence for any violation" of Section 5324, the court "shall order the defendant to forfeit all property, real or personal, involved in the offense and any property traceable thereto." At Ramirez's sentencing, the government argued that Ramirez was required to forfeit the entire $967,100 "involved in" his offenses. Ramirez did not dispute that $967,100 was "involved in" his offenses, but he argued that forfeiture of the entire amount would violate the Excessive Fines Clause of the Eighth Amendment.

The district court ordered Ramirez to forfeit $1,000 per violation, for a total of $103,000. The court found that amount represented "the appropriate financial penalty adequate to satisfy the concerns raised by the conduct for which [Ramirez] was convicted, as well as by the purpose of the Sentencing [G]uidelines." 6:09-cr-00045-MSS-KRS, Docket entry No. 131, at 4 (M.D. Fla. June 1, 2010). The court observed that because it had not ordered forfeiture of the entire $967,100, "the constitutional question is essentially rendered moot." Id. at 3; see id. at 9 ("[I]t would be difficult to argue the penalty in this case is excessive under the 8th Amendment if the Court doesn't first impose an excessive penalty. So we never get to the constitutional question."); ibid. ("The Court is not engaging in a constitutional analysis in this case, because we never reached the constitutional question in light of the fine not bumping up against the constitutional question.").

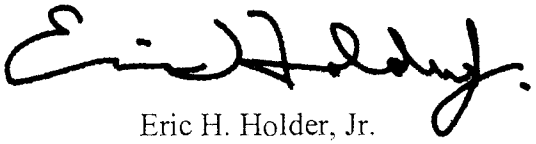
On appeal, the government argued that Section 5317(c)(1)(A) is mandatory: it requires that a sentencing court "shall order the defendant to forfeit all property, real or personal, involved in the offense." The government therefore argued that the district court in this case was required to order forfeiture of the entire $967,100 "involved in" the defendant's offenses, unless the court determined that such an amount would violate the Eighth Amendment. See United States v. Seher, 562 F.3d 1344, 1370-1371 (11th Cir. 2009). In the government's view, the district court had not resolved the constitutional question, and the case should therefore be remanded for the district court to determine whether a forfeiture order of $967,100 would constitute an excessive fine under the Eighth Amendment.

The court of appeals disagreed with the government's reading of the district court's opinion. According to the court of appeals, "[t]he district court considered the amount 'involved in' Ramirez's structuring crime and determined that a forfeiture of the entire $967,100 would violate the Excessive Fines Clause." United States v. Ramirez, Nos. 10-12785 & 10-13249, 2011 WL 1228357, at *1 (11th Cir. Apr. 4, 2011). The court of appeals held that "[t]he district court did not err when it determined that a forfeiture of the entire $967,100 involved in Ramirez's structuring crimes would be excessive and unconstitutional." Id., at *2; see ibid. ("[A] forfeiture of that magnitude would be grossly disproportional to Ramirez's crime.").

The Department has defended the constitutionality of Section 5317(c)(1)(A) in this case, and it will continue to do so in other cases. In this case, however, neither a petition for rehearing nor a petition for a writ of certiorari is warranted. The court of appeals' decision is unpublished, and it therefore does not establish circuit precedent. See 11th Cir. R. 36-2. In addition, the court of appeals' decision holds only that Section 5317(c)(1)(A) is unconstitutional as applied to the facts of this particular case. The decision below therefore does not create a conflict with any decision of any other court of appeals, and it does not preclude the government from continuing to argue that the statute is constitutional as applied in other cases in the Eleventh Circuit. Although the government continues to believe that forfeiture of $967,100 would not have been excessive in this case, the particular facts here could allow for a contrary conclusion. The government did not introduce any evidence linking Ramirez's unlawful deposit structuring to other illegal activity, and Ramirez reported the deposits on his tax returns and paid the appropriate taxes. A petition for a writ of certiorari would be due on July 5, 2011.

Please let me know if we can be of further assistance in this matter.

Sincerely,



Eric H. Holder, Jr.
Attorney General