

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 09-20346-CR-MARTINEZ

UNITED STATES OF AMERICA

vs.

JUAN DIAZ,

Defendant.

_____ /

MOTION FOR A PRELIMINARY ORDER OF FORFEITURE

The United States of America moves for entry of a Preliminary Order of Forfeiture pursuant to Rule 32.2(b)(2) of the Federal Rules of Criminal Procedure and in support thereof submits the following points and authorities:

1. On April 22, 2009, the United States filed an Information (DE 1) charging JUAN DIAZ, (hereinafter referred to as “defendant”), with conspiracy to violate the laws of the United States, in violation of Title 18, United States Code, Section 371.

2. The Information sought forfeiture, pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 21, United States Code, Section 853, and Title 28, United States Code, Section 246, of any property that constitutes proceeds or was derived from proceeds traceable to a commission of an offense, in the sum of \$1,028,851.95 in United States currency.

3. On May 15, 2009, pursuant to a written plea agreement (DE15), the defendant entered a plea of guilty to the information and agreed to forfeit to the United States all of his right, title, and interest in the above property as property that constitutes proceeds or was derived from

proceeds traceable to the commission of the conspiracy offense to which the defendant had pled guilty.

4. Title 18, United States Code, Section 981(a)(1)(C), Title 21, United States Code, Section 853, and Title 28, United States Code, Section 246, provide for forfeiture of any property which constitutes or is derived from proceeds traceable to, *inter alia*, a violation in this case of Title 18, United States Code, Section 371.

5. In cases where the government is seeking a personal money judgment, Fed.R.Crim.P. 32.2(b)(1)(A) provides that after the acceptance of a guilty plea the court must determine the amount that the defendant will be ordered to pay. The court's determination may be based on evidence in the record including any written plea agreement or information submitted by the parties and accepted by the court as relevant and reliable. Fed.R.Crim.P. 32.2(b)(1)(B). Based on the defendant's guilty plea, and consent to forfeiture of his interest in the property, the total amount is \$1,028,851.95 in United States currency.

6. Accordingly, given the defendant's agreement regarding forfeiture as part of his plea agreement, this Court is authorized to find that the defendant's interest in the above property is forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 21, United States Code, Section 853, and Title 28, United States Code, Section 246.

7. Fed. R. Crim. P. 32.2(b)(3) provides that if the court finds that property is subject to forfeiture:

It must promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment, directing the forfeiture of specific property and directing the forfeiture of any substitute property if the government has met the statutory criteria

without regard to any thir party's interest in all or part of it.

The order submitted in this matter provides for the forfeiture of all defendants' right, title and interest in the property listed therein, and for inclusion of the order of forfeiture as part of the defendant's sentence and judgment in this case, pursuant to Title 21, United States Code, Section 853 and Rule 32.2 of the Federal Rules of Criminal Procedure.

CONCLUSION

Accordingly, based on the foregoing, and the other matters of record in these proceedings, and for good cause shown, the United States requests that entry of the attached proposed preliminary order of forfeiture. The United States also request that, at sentencing, the money judgment be included in the defendant's sentence and judgement.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

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SOUTHERN DISTRICT OF FLORIDA

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By: s/ Kevin Gerrity

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2010, the undersigned electronically filed the foregoing document, with defense counsel and the Clerk of the Court using CM/ECF.

s/ Kevin Gerrity
KEVIN GERRITY
Trial Attorney

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UNITED STATES OF AMERICA

vs.

JUAN DIAZ,

Defendant.

_____ /

PRELIMINARY ORDER OF FORFEITURE

THIS CAUSE is before the Court upon motion of the United States for entry of a preliminary order of forfeiture. Being fully advised in the premises and based on the motion of the United States and the record in this matter and for good cause shown thereby, the Court finds as follows with respect to forfeiture in this action as to defendant JUAN DIAZ (hereinafter referred to as “defendant”):

1. The Information sought forfeiture, pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 21 United States Code, Section 853, and Title 28, United States Code, Section 246, of any property that constitutes proceeds or was derived from proceeds traceable to a commission of an offense, in the sum of \$1,028,851.95 in United States currency.

2. On May 15, 2009, pursuant to a written plea agreement (DE15), the defendant entered a plea of guilty to the information and agreed to forfeit to the United States all of his right, title, and interest in the above property as property that constitutes proceeds or was derived from proceeds traceable to the commission of the conspiracy offense to which the defendant had pled guilty.

Therefore, in consideration of the Plea Agreement between the defendant and the United States and upon motion of the United States and for good cause shown thereby, it is hereby:

ORDERED that:

1. All right, title and interest of defendant JUAN DIAZ in the sum of \$1,028,851.95 in United States currency, for which he is joint and severally liable, is hereby forfeited to the United States of America pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 21 United States Code, Section 853, and Title 28, United States Code, Section 246.

It is further ORDERED pursuant to Fed. R. Crim. P. 32.2(b)(4), that at sentencing this shall be incorporated into the defendant's sentence and included in the judgement entered with respect to the defendant.

DONE AND ORDERED at Miami, Florida this _____ day of _____, 2010

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE