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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO 09-20347-CR-MARTINEZ

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTONIO PEREZ,

Defendant.

**UNITED STATES' MOTION FOR A
PRELIMINARY ORDER OF FORFEITURE**

The United States of America moves for entry of a preliminary order of forfeiture, pursuant to Title 18, United States Code, Section 981(a)(1)(C), as made applicable by Title 28, United States Code, Section 2461(c), and the procedures set forth at Title 21, United States Code, Section 853 and 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 **Antonio Perez** (hereinafter referred to as "defendant") with conspiracy to commit a violation of the Foreign Corrupt Practices Act, in violation of Title 18, United States Code, Sections 371 and 1956(a) and Title 15, United States Code, Section 78dd-2.

2. The Information further sought the forfeiture, pursuant to Title 18, United States Code, Section 981(a)(1)(C), as made applicable by Title 28, United States Code, Section 2461(c), of any property, constituting or derived from proceeds obtained from the commission of the violation, including the sum of \$36,375.00 in United States currency.

3. On April 27, 2009, pursuant to a written plea agreement (DE #13), 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 constituting or derived from proceeds obtained from the commission of the offense to which the defendant had pled guilty.

4. Title 18, United States Code, Section 981(a)(1)(C), provides for forfeiture of any property which constitutes or is derived from proceeds traceable to, *inter alia*, a violation of Title 15, United States Code, Section 78dd.

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 of money 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).

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) and Title 21, United States Code, Section 853(a).

7. Fed. R. Crim. P. 32.2 (b)(2) 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 third party's interest in all or part of it. The court must enter the order without regard to any third party's interest in the property. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

8. Fed. R. Crim. P. 32.2(b)(3) provides:

The entry of a preliminary order of forfeiture authorizes the Attorney General (or a designee) to seize the specific property subject to forfeiture;

to conduct any discovery the court considers proper in identifying, locating or disposing of the property; and to commence proceedings that comply with any statutes governing third-party rights. The court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.

9. In addition, in regard to the sentencing of the defendant, Fed. R. Crim. P. 32.2(b) (4)

provides:

At sentencing — or at any time before sentencing if the defendant consents — the preliminary forfeiture order becomes final as to the defendant. If the order directs the defendant to forfeit specific property, it remains preliminary as to third parties until the ancillary proceeding is concluded under Rule 32.2(c).

The court must include the forfeiture when orally announcing the sentence or must otherwise ensure that the defendant knows of the forfeiture at sentencing. The court must also include the forfeiture order, directly or by reference, in the judgment, but the court's failure to do so may be corrected at any time under Rule 36.

10. The Order submitted in this matter provides for the forfeiture of all of the defendant's right, title and interest in the property listed therein; for inclusion of the order of forfeiture as part of the defendant's sentence and the judgment in this case; for publication of notice of the forfeiture of the same in these proceedings; permits the institution of discovery by the government to locate assets ordered forfeited and/or to expedite ancillary proceedings for the adjudication of third party petition claims if any; and provides for the final forfeiture of the property noted therein if no petitions are filed; all pursuant to Title 21, United States Code, Section 853 and Rule 32.2 of the Federal Rules of Criminal Procedure.

CONCLUSION

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

Respectfully submitted,

JEFFREY H. SLOMAN
ACTING UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

HEREBY CERTIFY that, on December 30, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Arimentha R. Walkins
ARIMENTHA R. WALKINS
ASSISTANT U.S. ATTORNEY

ARW:md

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.09-20347-CR-MARTINEZ

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTONIO PEREZ,

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 **ANTONIO PEREZ** (hereinafter referred to as “defendant”):

1. In the Information (DE #1) in the above-styled case, the government sought forfeiture, pursuant to Title 18, United States Code, Section 981(a)(1)(C), as made applicable by Title 28, United States Code, Section 2461(c), of any property constituting or derived from proceeds traceable to the commission of the violation of the Foreign Corrupt Practices Act, Title 15, United States Code, Section 78dd, including the sum of \$36,375.00 in U.S. currency.

2. On April 27, 2009, pursuant to a written plea agreement (DE #13), the defendant pled guilty to the Information, and agreed to forfeit to the United States all of his right, title and interest in the above property as constituting or derived from proceeds obtained from the commission of the offense to which he 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 **ANTONIO PEREZ** in the sum of **\$36,375.00 in United States currency** is hereby forfeited to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C), as made applicable by Title 28, United States Code, Section 2461(c), and Title 21, United States Code, Section 853.

2. The Internal Revenue Service, or any duly authorized law enforcement official, as soon as practicable, shall seize and take custody of the property identified herein above as forfeited under this order, pursuant to Title 21, United States Code, Section 853(g).

3. The United States shall publish notice of this Order in accordance with Federal Rules of Criminal Procedure 32.2(b)(6). The notice shall state that any person, other than the defendant, having or claiming a legal interest in the property ordered forfeited by this Order must file a petition with the Court for a hearing to adjudicate the validity of the petitioner's alleged interest in the property; the petition shall be signed by the petitioner under penalty of perjury, shall set forth the nature and extent of the petitioner's right, title and interest in the forfeited property and the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property; and shall set forth any additional facts supporting the petitioner's claim and the relief sought.

4. The United States shall provide, to the extent practicable, direct written notice to any person who reasonably appears to have standing to contest the forfeiture of the property that is subject of this Order of Forfeiture, in addition to any published notice.

5. The United States is further authorized, pursuant to Title 21, United States Code, Section 853(m) and Fed. R. Crim. P. Rule 32.2(c)(1), to conduct any discovery necessary, including depositions, to identify, locate or dispose of the property ordered forfeited herein or in order to expedite ancillary proceedings related to any third party petition claims filed with respect to the forfeited property.

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

It is further **ORDERED** that upon adjudication of all third-party interests, if any, this Court will enter a Final Order of Forfeiture pursuant to Title, 21, United States Code, Section 853(n), in which all interests will be addressed. If no claims are filed within thirty (30) days of the final date of publication or receipt of actual notice, whichever is earlier, then, pursuant to 21 U.S.C. § 853(n)(7), this Order shall be deemed a final order of forfeiture, and the Internal Revenue Service, or any duly authorized law enforcement official, shall dispose of the property forfeited hereunder according to law.

DONE AND ORDERED at Miami, Florida this ____ day of _____ 200__.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE