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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- v. -

ROSS WILLIAM ULBRICHT,  
a/k/a "Dread Pirate Roberts,"  
a/k/a "DPR,"  
a/k/a "Silk Road,"

Defendant,

ANY AND ALL ASSETS OF SILK ROAD,  
INCLUDING BUT NOT LIMITED TO THE  
SILK ROAD HIDDEN WEBSITE AND ANY  
AND ALL BITCOINS CONTAINED IN  
WALLET FILES RESIDING ON SILK ROAD  
SERVERS, INCLUDING THE SERVERS  
ASSIGNED THE FOLLOWING INTERNET  
PROTOCOL ADDRESSES:

46.183.219.244; 109.163.234.40;  
193.107.86.34; 193.107.86.49;  
207.106.6.25; AND 207.106.6.32;

And all property traceable  
thereto,

Defendants-in-rem.

SEALED EX PARTE  
APPLICATION FOR A SECOND  
POST-COMPLAINT PROTECTIVE  
ORDER PURSUANT TO  
18 U.S.C. § 983(j)(1)

No. 13 Civ. 6919 (JPO)

ECF Case

The United States, through its counsel, hereby moves for a protective order to seize, secure, maintain, and preserve the availability for civil forfeiture of certain Bitcoins traceable to the Silk Road Hidden Website (the "Subject Bitcoins").

The requested protective order is designed to ensure that the Subject Bitcoins remain available for forfeiture. The United States also submits that the entry of the requested protective order will vest this Court with sufficient actual and/or constructive control of the Subject Bitcoins to establish this Court's in rem jurisdiction over the Subject Bitcoins.

The Civil Forfeiture Complaint

On September 30, 2013, the United States commenced this civil action seeking, among other things, forfeiture of the following property:

ANY AND ALL ASSETS OF SILK ROAD, INCLUDING BUT NOT LIMITED TO:

- a. THE SILK ROAD HIDDEN WEBSITE;
- b. ANY AND ALL BITCOINS CONTAINED IN WALLET FILES RESIDING ON SILK ROAD SERVERS (the "DEFENDANT BITCOINS"), INCLUDING THE SERVERS ASSIGNED THE FOLLOWING INTERNET PROTOCOL ADDRESSES:  
46.183.219.244; 109.163.234.40; 193.107.86.34;  
193.107.86.49; 207.106.6.25; AND 207.106.6.32;

and all property traceable thereto (collectively, the "Defendants in Rem"). The civil action seeks forfeiture of the

Defendants in Rem pursuant to Title 18, United States Code, Section 981(a)(1)(A), on the grounds that they constitute property involved in money laundering transactions, in violation of 18 U.S.C. § 1956. The verified civil complaint (the "Complaint") is attached hereto as Exhibit A and is fully incorporated herein by reference.

As alleged in the Complaint, from in or about January 2011, up to and including September 2013, the SILK ROAD HIDDEN WEBSITE served as an online marketplace where illegal drugs and other illicit goods and services were regularly bought and sold by the site's users. From its inception to its closure, the SILK ROAD HIDDEN WEBSITE was owned and operated by ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the Defendant in Personam, who was charged by criminal complaint, 13 Mag. 2328 (FM), (the "Criminal Complaint") with violations of Title 21, United States Code, Section 846 and Title 18, United States Code, Sections 1030 and 1956 in connection with his operation of the SILK ROAD HIDDEN WEBSITE.

As alleged in the Complaint, during its two-and-a-half years in operation, the SILK ROAD HIDDEN WEBSITE was used by several thousand drug dealers and other unlawful vendors to distribute hundreds of kilograms of illegal drugs and other illicit goods and services to well over a hundred thousand buyers, and to launder hundreds of millions of dollars deriving

from these unlawful transactions. All told, the SILK ROAD HIDDEN WEBSITE generated sales revenue totaling over 9.5 million Bitcoins and collected commissions from these sales totaling over 600,000 Bitcoins. Although the value of Bitcoins varied significantly during the site's lifetime, these figures were, at the time the Complaint was filed, equivalent to approximately \$1.2 billion in sales and approximately \$80 million in commissions. All of these Bitcoins are subject to forfeiture as proceeds of the illegal activity conducted on Silk Road.

The Bitcoin Wallets on Ulbricht's Computer Hardware

On October 1, 2013, ULBRICHT, the Defendant in Personam, was arrested in San Francisco, California, on the charges alleged in the Criminal Complaint. At the time of his arrest, ULBRICHT was using a [REDACTED] laptop computer, model [REDACTED] (the "Laptop"), which was seized in connection with his arrest. ULBRICHT's residence was also searched pursuant to a search warrant. Agents found there, among other things, several pieces of computer hardware belonging to ULBRICHT (collectively, with the Laptop, "Ulbricht's Computer Hardware"), including:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Pursuant to a search warrant, Ulbricht's Computer Hardware is presently being forensically analyzed by law enforcement officials. To date, [REDACTED] federal law enforcement agents have recovered a Bitcoin wallet containing at least approximately 144,336 Bitcoins, equivalent to approximately \$30 million based on current exchange rates.

[REDACTED]

[REDACTED]

[REDACTED]

Probable Cause That the Subject Bitcoins  
Are Traceable to SilkRoad

For the reasons set forth below, any and all Bitcoins found in any and all Bitcoin wallets residing on Ulbricht's Computer Hardware - i.e., the Subject Bitcoins - are forfeitable to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(A), as property traceable to property involved in money laundering and attempted money laundering transactions, in violation of Title 18, United States Code, Section 1956.

As alleged in the Complaint, ULBRICHT controlled and oversaw all aspects of Silk Road. ULBRICHT maintained the computer infrastructure and programming code underlying the Silk Road website; he determined vendor and customer policies, including deciding what could be sold on the site; he managed a small staff of online administrators who assisted with the day-

to-day operation of the site; and he alone controlled the massive profits generated from the operation of the business.

As further alleged in the Complaint, the contents of the Silk Road web server included ULBRICHT's own user account page, which reflected, among other things, his history of Bitcoin transactions on the site. ULBRICHT's transaction history reflects that he received a continuous flow of Bitcoins into his Silk Road account. For example, on July 21, 2013 alone, ULBRICHT received approximately 3,237 separate transfers of Bitcoins into his account, totaling approximately \$19,459. Virtually all of these transactions were labeled "commission" in the "notes" appearing next to them, indicating that the money represented commissions from Silk Road sales. ULBRICHT's account page further displayed the total amount of Bitcoins deposited in his Silk Road account, which, as of July 23, 2013, equaled more than \$3.4 million.

Thus, it is clear that ULBRICHT received a steady stream of commissions from Silk Road in the form of Bitcoins that would explain the roughly \$30 million in Bitcoins [REDACTED]. Furthermore, the Government's investigation has not uncovered any legitimate sources of income for ULBRICHT at the time of his arrest. Certainly, ULBRICHT had no legitimate source of income that could possibly explain his possession of 144,336 Bitcoins - comprising more than one percent of all

Bitcoins in circulation.

Accordingly, there is probable cause to believe that the Subject Bitcoins are property traceable to the operation of Silk Road.

#### Procedure in Civil Forfeiture Cases

Should this case proceed to trial, the primary phase<sup>1</sup> will involve two issues: (1) whether the Government has proved, by a preponderance of the evidence, that the Defendants in Rem (including the Subject Bitcoins) are subject to forfeiture to the United States because they were involved in money laundering transactions, and (2) whether any claimants to the Defendants in Rem have proved, by a preponderance of the evidence, that they are "innocent owners" of any part of the Defendants in Rem.<sup>2</sup> If the Government proves that the Defendants in Rem are subject to forfeiture, any part of the Defendants in Rem not shown to be owned by innocent owners will be adjudged fully forfeitable.<sup>3</sup>

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<sup>1</sup> The parties have the right to request a jury for the primary phase. The United States has not requested a jury at this time.

<sup>2</sup> An "innocent owner" defense would require a claimant to prove that he "did not know of the conduct giving rise to forfeiture; or upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property." 18 U.S.C. § 983(d)(2)(A); see also *von Hofe v. United States*, 492 F.3d 175, 180 (2d Cir. 2007) (quoting *id.*).

<sup>3</sup> The Government also seeks civil money laundering penalties against the Defendant in Personam, which would require the Government to prove that the Defendant in Personam committed money laundering and prove the value of the property involved in

Following the primary phase of a trial, claimants would be entitled to request a proportionality hearing at which they would bear the burden of establishing that forfeiture of the entire amount of the Defendants in Rem would be "grossly disproportionate by a preponderance of the evidence at a hearing conducted by the court without a jury." 18 U.S.C. § 983(g). By postponing the proportionality determination until after the primary phase has been completed, Section 983(g) ensures that the Court considers a claim that forfeiture is excessive only after the full gravity and magnitude of the alleged offenses have been detailed at trial. See, e.g., *United States v. 8 Gilcrease Lane*, 587 F. Supp. 2d 133, 148 n.10 (D.D.C. 2008) ("a §983(g) petition to determine whether a forfeiture is constitutionally excessive should be considered only after a forfeiture has been decreed"); *United States v. All Funds . . . Held in the Name of Kobi Alexander*, 617 F. Supp. 2d 103, 129-30 (E.D.N.Y. 2007); *United States v. \$109,086.00 in U.S. Currency*, No. Civ.A. H-04-3727, 2005 WL 1923613, at \*4 n.1 (S.D. Tex. Aug. 10, 2005) (a challenge to forfeiture on Eighth Amendment grounds cannot be made until "after the precise amount of the property forfeited and the evidence of underlying offense are in the record and can properly be compared"); *United States v. One*

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that money laundering activity, but which would not involve an "innocent owner" inquiry. See 18 U.S.C. § 1956(b)(1).

Parcel . . . 32 Medley Lane, No. 3:01CV2290 (MRK), 2005 WL 465421, at \*1 (D. Conn. Feb. 11, 2005) (in denying attempt to litigate Eighth Amendment issue during the trial proper, holding that whether a civil forfeiture is constitutionally excessive will be determined by the court following a finding that the property is subject to forfeiture and that claimant is not an innocent owner), *aff'd in part, rev'd in part sub nom. von Hofe v. United States*, 492 F.3d 175 (2d Cir. 2007). Analogously, in criminal cases, Eighth Amendment challenges to forfeiture are raised at the time of sentencing, not during trial. *See, e.g., United States v. Galante*, No. 3:06CR161 (EBB), 2006 WL 3826701, at \*4 (D. Conn. Nov 28, 2006).

#### Discussion

The United States submits this application for a protective order, pursuant to Title 18, United States Code, Section 983(j)(1)(A), to preserve the availability of the Defendants in Rem for civil forfeiture.

##### **A. Applicable Law**

The Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"), Pub. L. No. 106-185, 114 Stat. 202 (2000), provides broad powers for district courts to issue orders to preserve property for forfeiture. Section 983(j)(1)(A) of Title 18, United States Code, authorizes courts to issue protective orders after the filing of a civil forfeiture complaint. It states:

(j) (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants, or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to civil forfeiture-

(A) upon the filing of a civil forfeiture complaint alleging that the property with respect to which the order is sought is subject to civil forfeiture.

18 U.S.C. § 983(j)(1)(A). Courts in this district have issued protective orders to preserve property for civil forfeiture. See, e.g., *United States v. SAC Capital Advisors, L.P., et al.*, 13 Civ. 5182 (Aug. 9, 2013) (Sullivan, J.); *United States v. Lebanese Canadian Bank SAL, et al.*, 11 Civ. 9186 (Dec. 15, 2011) (Holwell, J.); *United States v. Egan*, 10 Mag. 238 (Feb. 22, 2010) (Berman, J.); *United States v. All Right, Title and Interest . . . 650 Fifth Avenue Company*, No. 08 Cv. 10934 (Dec. 18, 2008) (Holwell, J.).

Section 983(j)(1)(A) closely tracks the language in its criminal analogue, 21 U.S.C. § 853(e)(1)(A), which governs post-indictment protective orders in criminal forfeiture cases.<sup>4</sup>

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<sup>4</sup> 21 U.S.C. § 853(e)(1)(A) provides:

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of

Courts in this Circuit regularly impose restraining orders pursuant to 21 U.S.C. § 853(e) to ensure that the forfeiture penalties mandated by federal law will not be frustrated by dissipation of a defendant's assets. *See, e.g., United States v. Regan*, 858 F.2d 115, 119-21 (2d Cir. 1988); *United States v. Scheinberg, et al.*, 10 Cr. 336 (S.D.N.Y. Apr. 18, 2011) (Kaplan, J.); *United States v. Egan*, 10 Cr. 191 (S.D.N.Y. Apr. 19, 2010) (Keenan, J.); *United States v. Banki*, 10 Cr. 08 (S.D.N.Y. Jan. 7 & 8, 2010) (Keenan, J.); *United States v. Brodwin*, S1 00 Cr. 182 (Feb. 16, 2001) (Koeltl, J.). By entering a restraining order, the Court can preserve the *status quo* pending the jury's verdict and the outcome of any proportionality hearing. *See Regan*, 858 F.2d at 119-21.<sup>5</sup>

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property described in subsection (a) of this section for forfeiture under this section--

(A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section.

<sup>5</sup> This post-complaint application can be made *ex parte*. Compare 18 U.S.C. § 983(j)(1)(A) (providing for restraining order "upon the filing of a civil forfeiture complaint alleging that the property with respect to which the order is sought is subject to civil forfeiture") with *id.* § 983(j)(1)(B) (providing for restraining order "prior to the filing of such a complaint, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines

B. Proposed Protective Order

Here, the Government requests a protective order that imposes measures designed to preserve the availability of the the Subject Bitcoins for forfeiture.

The requested protective order (attached hereto as Exhibit B) includes the following provisions:

1. The United States is authorized to seize the Subject Bitcoins pending the outcome of this civil proceeding, by transferring the full account balance in each wallet on Ulbricht's Computer Hardware to Bitcoin addresses controlled by the United States.
2. The United States shall maintain and preserve the Subject Bitcoins pending the outcome of this civil action.
3. Service of a copy of this protective order shall be made on the Defendant's attorney by regular mail.
4. The Court hereby finds that the entry of this protective order vests the Court with in rem jurisdiction over the Subject Bitcoins.

These provisions are reasonable because they would ensure that the Subject Bitcoins remain available for

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[certain factors]"); see also 21 U.S.C. § 853(e)(1)(A), (e)(1)(B) (analogous language for criminal forfeiture); *United States v. Monsanto*, 924 F.2d 1186, 1193 (2d Cir. 1991) ("[N]otice and a hearing need not occur before an *ex parte* restraining order is entered pursuant to section 853(e)(1)(A)."); *United States v. Melrose E. Subdivision*, 357 F.3d 493, 499 (5th Cir. 2004) (calling § 853(e) the "criminal analogue" of § 983(j) and applying § 853(e) caselaw to interpret § 983(j)).

forfeiture.<sup>6</sup> Without such provisions, the Subject Bitcoins can be remotely transferred to any other computer device in the world and made inaccessible to the United States.

In addition, the requested protective order recites that the entry of the order will vest this Court with sufficient actual and/or constructive control over the the Subject Bitcoins to establish this Court's in rem jurisdiction over the Subject Bitcoins. See Supplemental Admiralty and Maritime Claims Rule G(3)(b)(iii) ("[A] warrant is not necessary if the property is subject to a judicial restraining order."); *SAC Capital Advisors, L.P.*, 13 Civ. 5182 (RJS); *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 57 (1993) (in real property case, noting "As *The Brig Ann* held, all that is necessary in order to institute and perfect proceedings in rem, is that the thing should be actually or constructively within the reach of the Court. And as we noted last Term, fairly read, *The Brig Ann* simply restates the rule that the court must have actual or constructive control of the res when an in rem forfeiture suit is initiated." (internal quotation marks, brackets and citations omitted)); see also *id.* at 58 ("The Government's legitimate interests at the inception of forfeiture proceedings are to ensure that the property not be sold, destroyed, or used

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<sup>6</sup> The proposed protective order does not limit the ability of the United States to forfeit any and all assets of Silk Road.

for further illegal activity prior to the forfeiture judgment. These legitimate interests can be secured without seizing the subject property." ).

[REDACTED]

Conclusion

For the foregoing reasons, the Government respectfully requests that the Court enter the requested protective order.

Dated: New York, New York  
October 24, 2013

Respectfully submitted,

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