

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 12-06001-03-04-05-06-11-CR-SJ-GAF
)	
STEPHEN E. VANVACTER,)	
)	
SARA M. GONZALEZ,)	
)	
CHRISTINA GONZALEZ,)	
)	
JESSICA M. GONZALEZ,)	
)	
and)	
)	
NELSON DARISEO BAUTISTA-OROZCO,)	
)	
Defendants.)	

**AMENDED MOTION OF THE UNITED STATES FOR A PRELIMINARY
ORDER OF FORFEITURE, WITH SUPPORTING SUGGESTIONS**

The United States of America, by its undersigned counsel, respectfully submits its Amended Motion for a Preliminary Order of Forfeiture in the above-entitled case for the reasons set forth in the following supporting suggestions. A proposed order is submitted with this motion.

SUPPORTING SUGGESTIONS

1. On January 10, 2012, a federal grand jury sitting in the Western District of Missouri, returned a forty-count Indictment. Count One charged that the defendants Stephen E. Vanvacter, Sara Gonzalez, Christina Gonzalez, Jessica Gonzalez, Nelson Dariseo Bautista-Orozco, and co-defendants knowingly and willfully conspired, combined, confederated and agreed with others known and unknown to the grand jury, to violate the laws of the United States

specifically, transporting illegal aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(ii); unlawful production of an identification document in violation of 18 U.S.C. § 1028(a)(1); unlawful transfer of the means of identification of another person in violation of 18 U.S.C. § 1028(a)(7); and social security fraud in violation of 42 U.S.C. § 408(a)(7).

2. Count Six of the Indictment charged that the defendant Sara Gonzalez, aiding and abetting others, both known and unknown to the grand jury, knowing and in reckless disregard of the fact that certain illegal aliens, had come to, entered and remained in the United States in violation of law, did transport and move the aliens within the United States by means of transportation and otherwise in furtherance of such violation of law, for the purpose of commercial advantage and private financial gain, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii), and (a)(1)(A)(v)(II).

3. Count Ten of the Indictment charged that the defendant Stephen E. Vanvacter, aiding and abetting others, both known and unknown to the grand jury, did knowingly and without lawful authority, produce an identification document, to wit, a Missouri nondriver's license in the name of Paul Anthony Jimenez, the production of the identification document was in or affected interstate or foreign commerce, and the offense involved the production of an identification document that is or appears to be a driver's license or personal identification card, in violation of 18 U.S.C. §§ 1028(a)(1),(b)(1) and 2.

4. Count Fourteen of the Indictment charged that the defendant Nelson Dariseo Bautista-Orozco, aiding and abetting others, both known and unknown to the grand jury, did knowingly and without lawful authority, produce identification documents, to wit, Missouri nondriver's licenses in the names of Jasen Anthony Gill and Jesse Bosquez, the production of the

identification documents were in or affected interstate or foreign commerce, and the offense involved the production of identification documents that are or appear to be driver's licenses or personal identification cards, in violation of 18 U.S.C. §§ 1028(a)(1), (b)(1) and 2.

5. Count Sixteen of the Indictment charged that the defendant Sara Gonzalez, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer without lawful authority, a means of identification of another person, to wit, a Texas birth certificate in the name of Steven Ray Saucedo, with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation federal law, to wit, false representation of United States citizenship in violation of 18 U.S.C. § 911, and the means of identification were transported in the mail in the course of the transfer, and the offense involved the transfer of identification documents that are or appear to be birth certificates, in violation of 18 U.S.C. §§ 1028(a)(7), (b)(1) and 2.

6. Count Twenty-Two of the Indictment charged that the defendant Stephen Vanvacter, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer without lawful authority, a means of identification of another person, to wit, a Texas birth certificate in the name of Paul Anthony Jimenez, with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, to wit, false representation of United States citizenship in violation of 18 U.S.C. § 911, and the means of identification were transported in the mail in the course of the transfer, and the offense involved the transfer of identification documents that are or appear to be birth certificates, in violation of 18 U.S.C. §§ 1028(a)(7) (b)(1) and 2.

7. Count Twenty-Three of the Indictment charged that the defendant Nelson Dariseo

Bautista-Orozco, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer without lawful authority, a means of identification of another person, to wit, Texas birth certificates in the names of Jasen Anthony Gill and Jesse Bosquez, with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, to wit, false representation of United States citizenship in violation of 18 U.S.C. § 911, and the means of identification were transported in the mail in the course of the transfer, and the offense involved the transfer of identification documents that are or appear to be birth certificates, in violation of 18 U.S.C. §§ 1028(a)(7), (b)(1) and 2.

8. Count Twenty-Five of the Indictment charged that the defendant Sara Gonzalez, aiding and abetting others, both known and unknown to the grand jury, did knowingly possess a Social Security card with the intent to sell or alter it, to wit, a Social Security card in the name of Steven Ray Saucedo, for the purpose of obtaining anything of value from any person or for any other purpose, in violation of 42 U.S.C. § 408(a)(7)(C) and 18 U.S.C. § 2.

9. Count Thirty-One of the Indictment charged that the defendant Nelson Dariseo Bautista-Orozco aiding and abetting others, both known and unknown to the grand jury, did knowingly possess Social Security cards with the intent to sell or alter the cards, for the purpose of obtaining anything of value from any person or for any other purpose, in violation of 42 U.S.C. § 408(a)(7)(C) and 18 U.S.C. § 2.

10. Count Thirty-Four of the Indictment charged that the defendant Sara Gonzalez, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer, possess and use without lawful authority, a means of identification of another person, during and in relation to a felony offense, that being social security fraud, in violation of 18 U.S.C.

§§ 1028A and 2.

11. Count Forty of the Indictment charged that the defendant Nelson Dariseo Bautista-Orozco, aiding and abetting others, both known and unknown to the grand jury, did knowingly transfer, possess and use without lawful authority, a means of identification of another person, during and in relation to a felony offense, that being social security fraud, in violation of 18 U.S.C. §§ 1028A and 2.

12. The Forfeiture Allegation of the Indictment sought forfeiture pursuant to 8 U.S.C. § 1324(b) of any conveyance, the gross proceeds, or any property traceable to such conveyance or proceeds involved in the transportation of illegal aliens in violation of 8 U.S.C. § 1324(a); pursuant to 18 U.S.C. § 982(a)(6)(A) of any conveyance and any real or personal property that constitutes, is derived from, or is traceable to the proceeds obtained directly or indirectly, or was used or intended to be used to facilitate a violation of 8 U.S.C. § 1324(a), that is, transporting illegal aliens; pursuant to 18 U.S.C. §§ 1028(b)(5) and (g) of any personal property used or intended to be used in a violation of 18 U.S.C. § 1028, that is fraud related to false identification; and pursuant to 18 U.S.C. § 982(a)(2)(B) any property constituting, or derived from, proceeds obtained directly or indirectly as a violation of 18 U.S.C. § 1028, including, but not limited to \$5,250,000.00 in United States currency.

13. On May 7, 2012, the defendant Christina Gonzalez entered into a plea agreement with the United States in which she agreed to plead guilty to Count One of the Indictment charging violations of 18 U.S.C. § 371; and consented to the entry of a money judgment that will be decided by the court. On November 5, 2012, the United States issued an order of forfeiture for a money judgment for the sum to be determined at sentencing. The Judgment In a Criminal

Case filed on December 5, 2012, finalized and imposed a money judgment in the amount of \$150,000.00 in United States currency.

14. On July 24, 2012, the defendant Sara M. Gonzalez entered into a plea agreement with the United States in which she agreed to plead guilty to Count One of the Indictment charging violations of 18 U.S.C. § 371; and consented to the entry of a money judgment in the amount of \$5,250,000.00 in United States currency for which she will be jointly and severally liable with other co-defendants.

15. On August 31, 2012, the defendant Stephen E. Vanvacter entered into a plea agreement with the United States in which he agreed to plead guilty to Count One of the Indictment charging violations of 18 U.S.C. § 371; and consented to the entry of a money judgment in the amount of \$5,250,000.00 in United States currency for which he will be jointly and severally liable with other co-defendants.

16. On September 4, 2012, the defendant Jessica M. Gonzalez entered into a plea agreement with the United States in which she agreed to plead guilty to Count One of the Indictment charging violations of 18 U.S.C. § 371; and consented to the entry of a money judgment in the amount of \$5,250,000.00 in United States currency for which she will be jointly and severally liable with other co-defendants.

17. On September 12, 2012, the defendant Nelson Dariseo Bautista-Orozco entered into a plea agreement with the United States in which he agreed to plead guilty to Counts One and Forty of the Indictment charging violations of 18 U.S.C. §§ 371 and 1028A; and to the Forfeiture Allegation of the Indictment. The defendant Nelson Dariseo Bautista-Orozco was involved in a conspiracy that generated \$5,250,000.00 in proceeds from the offenses alleged in One through

Twenty-Three of the Indictment. A participant in a criminal conspiracy is liable for all proceeds of the conspiracy reasonably traceable by him, without regard to whether he received those proceeds personally. *See United States v. Elder*, 682 F.3d 1065, 1071 (8th Cir. 2012).

18. The Court's jurisdiction in this matter is founded upon 8 U.S.C. § 1324(b), 18 U.S.C. § 982(6)(A), and 18 U.S.C. § 1028(b)(5), and 8 U.S.C. § 1324(b) provides that:

Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a) of this section, the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

18 U.S.C. § 982(6)(A) provides that:

The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, of section...1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States, regardless of any provision of State law -

(1) any conveyance, including any vessel, vehicle, or aircraft used in the commission of the offense of which the person is convicted; and

(2) any property real or personal, that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the offense of which the person is convicted; or

(3) that is used to facilitate, or is tended to be used to facilitate, the commission of the offense of which the person is convicted.

18 U.S.C. § 1028(b)(5) provides that:

In the case of any offense under subsection(a), forfeiture to the United States of any personal property used or intended to be used to commit the offense.

19. The United States has not, as of this date, identified specific assets that were derived from the offenses for which the defendants have been convicted. Nor has the United States yet identified any property of the Defendants that could be forfeited as a substitute asset in

accordance with 21 U.S.C. § 853(p).

20. Accordingly, the United States seeks the entry of an Amended Order of Forfeiture consisting of a personal money judgments against the defendants Sara M. Gonzalez, Stephen E. Vanvacter, Jessica M. Gonzalez, and Nelson Dariseo Bautista-Orozco in the amount of \$5,250,000.00; and a personal money judgment against the defendant Christina M. Gonzalez in the amount of \$150,000.00.

21. The entry of an Amended Order of Forfeiture in the form of a personal money judgment is specifically authorized by Rule 32.2(b)(1) and (c)(1) of the Federal Rules of Criminal Procedure. Such orders of forfeiture are commonplace. *See United States v. Baker*, 227 F.3d 955 (7th Cir. 2000) (a forfeiture order may include a money judgment for the amount of money involved in the money laundering offense; the money judgment acts as a lien against the defendant personally for the duration of his prison term and beyond); *United States v. Candelaria-Silva*, 166 F.3d 19 (1st Cir. 1999) (criminal forfeiture order may take several forms: money judgment, directly forfeitable property, and substitute assets); *United States v. Davis*, 177 F. Supp.2d 470 (E.D. Va. 2001) (same, following *Candelaria-Silva*); *United States v. Conner*, 752 F.2d 566, 576 (11th Cir. 1985) (because criminal forfeiture is *in personam*, it follows defendant; it is a money judgment against the defendant for the amount of money that came into his hands illegally; the Government is not required to trace the money to any specific asset); *United States v. Ginsburg*, 773 F.2d 798, 801-02 (7th Cir. 1985) (*en banc*) (criminal forfeiture is a personal judgment that requires the defendant to pay the total amount derived from the criminal activity, “regardless of whether the specific dollars received from that activity are still in his possession”); *United States v. Amend*, 791 F.2d 1120, 1127 (4th Cir. 1986) (same); *United States*

v. Robilotto, 828 F.2d 940, 949 (2d Cir. 1987) (following *Conner* and *Ginsburg*; the court may enter a money judgment for the amount of the illegal proceeds regardless of whether defendant retained the proceeds); *United States v. Navarro-Ordas*, 770 F.2d 959, 969 (11th Cir. 1985) (court may enter “personal money judgment” against the defendant for the amount of the illegally obtained proceeds); *United States v. Voigt*, 89 F.3d 1050, 1084, 1088 (3d Cir. 1996) (the Government is entitled to a personal money judgment equal to the amount of money involved in the money laundering offense); *United States v. Holland*, 160 F.3d 377, 380 (7th Cir. 1998) (defendant ordered to pay judgment equal to value of property concealed from bankruptcy court and subsequently laundered); *United States v. Corrado*, 227 F.3d 543 (6th Cir. 2000) (*Corrado I*) (remanding case to the district court to enter money judgment for the amount derived from a RICO offense); *United States v. Saccoccia*, 823 F. Supp. 994, 1006 (D.R.I. 1993) (money judgment for the amount laundered, \$136 million, entered against each defendant), *aff’d*, 58 F.3d 754 (1st Cir. 1995); *United States v. Sokolow*, 1995 WL 113079 at *1 (E.D. Pa. 1995) (because money is fungible, the Government need not receive the identical money involved in the money laundering offense so long as the amount involved is known), *aff’d*, 81 F.3d 397 (3d Cir. 1996); *United States v. Cleveland*, 1997 WL 537707 at *11 (E.D. La. 1997) (the Government is entitled to a money judgment equal to the amount of money that defendant laundered in money laundering case); *United States v. Stewart*, 1998 WL 720063 (E.D. Pa. 1998) (court enters money judgment for “aggregate sum of all money laundering counts for which defendant was convicted”), *aff’d as modified*, 185 F.3d 112 (3d Cir. 1999); *United States v. Henry*, 850 F. Supp. 681, 683 (M.D. Tenn. 1994) (court enters money judgment for \$191,206, which was the amount of Medicare fraud proceeds defendant was convicted of laundering), *aff’d*, 64 F.3d 664, 1995

WL 478635 (6th Cir. 1995) (Table); *United States v. Delco Wire and Cable Co., Inc.*, 772 F. Supp. 1511 (E.D. Pa. 1991) (criminal forfeiture is “like a money judgment that runs against the defendant until satisfied in full”; judgment entered for \$10 million, which was the amount of the racketeering proceeds).

22. Once the Order of Forfeiture is entered, the Government may move at any time, pursuant to Rule 32.2(e)(1)(B), to amend the Order to forfeit specific property of the defendant, having a value up to the amount of the money judgment, as substitute assets. *See United States v. Candelaria-Silva*, 166 F.3d 19 (1st Cir. 1999) (once the Government has obtained a money judgment, it may forfeit defendant’s real property in partial satisfaction of that judgment); *United States v. Baker*, 227 F.3d 955 (7th Cir. 2000) (same); *United States v. Numisgroup Intl. Corp.*, 169 F. Supp. 2d 133 (E.D.N.Y. 2001) (Rule 32.2(e) authorizes forfeiture of substitute assets to satisfy a money judgment, including a judgment based on the value of the missing proceeds and the value of the missing facilitating property); *United States v. Harrison*, 2001 WL 803695 (N.D. Ill. 2001) (entry of money judgment as part of preliminary order of forfeiture gives Government opportunity later to satisfy the judgment by seeking forfeiture of substitute assets; Rule 32.2(e)); *United States v. Davis*, 177 F. Supp.2d 470 (E.D. Va. 2001) (if property cannot be forfeited as directly traceable to the offense, it can be forfeited as a substitute asset and used to satisfy the money judgment).

23. In accordance with the provisions of 21 U.S.C. § 853(p) and Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, the United States requests that it be permitted to undertake whatever discovery is necessary to identify, locate, or dispose of property subject to forfeiture, or substitute assets for such property.

WHEREFORE, by virtue of the plea agreements and the determination of the amount of money derived from the offenses for which the defendants Christina Gonzalez, Sara M. Gonzalez, Stephn E. Vanvacter, Jessica M. Gonzalez, and Nelson Dariseo Bautista-Orozco have been convicted, a money judgment should be entered against the defendants.

WHEREFORE, the United States respectfully requests that this Court enter an order directing a money judgment in the amount of \$150,000.00 in United States currency against the defendant Christina Gonzalez. The United States also request that the court enter an order directing a money judgment in the amount of \$5,250,000.00 in United States currency against Sara M. Gonzalez, Stephen E. Vanvacter, Jessica M. Gonzalez, and Nelson Dariseo Bautista-Orozco.

Respectfully submitted,

David M. Ketchmark
Acting United States Attorney

By

/s/ Jess E. Michaelsen
Jess E. Michaelsen, #52253
Assistant United States Attorney
400 E. 9th Street, Fifth Floor
Kansas City, Missouri 64106
Telephone: (816) 426-3122

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2012, the foregoing motion was electronically filed with the Clerk of the Court using the CM/ECF system for electronic delivery to all counsel of record.

/s/ Jess E. Michaelsen
Jess E. Michaelsen
Assistant United States Attorney