

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL DOCKET NO. 07-103

v. * SECTION: "L"

JAMES PERDIGAO *

* * *

**MOTION AND BRIEF OF THE UNITED STATES
FOR ISSUANCE OF A PRELIMINARY ORDER OF FORFEITURE**

NOW INTO COURT comes the United States of America, by and through the undersigned Assistant United States Attorney, who respectfully submits its Motion for Issuance of a Preliminary Order of Forfeiture in the above-captioned case. In support thereof, the United States avers as follows:

1. On October 29, 2008, a Federal Grand Jury sitting in the Eastern District of Louisiana, returned a Second Superseding Indictment against the defendant, JAMES PERDIGAO, charging the defendant with violations of 18 U.S.C. §§1341, 1344, 2314, 1957, 1503(a), 1030(a)(2)(c) and 2701(a)(1) and 26 U.S.C. §§7201 and 7206(1).

2. The Second Superseding Indictment sought forfeiture, pursuant to 18 U.S.C. §§1344, 1957 and 982 for Bank Fraud and Money Laundering; and 18 U.S.C. §§1341, 2314 and 981 (a)(1)(C), made applicable through 28 U.S.C. §2461(c), for Mail Fraud and Interstate Transportation of Stolen Property.

3. On October 31, 2008, the defendant pled guilty to Counts 1, 13, 31-40, 41-50, 51-55, 56 and 60-61 of the Second Superseding Indictment pursuant to a plea agreement. Defendant also signed a Consent Decree for Forfeiture in which he reiterates his agreement to the forfeiture of the following assets:

Two cashier's checks totaling \$1,195,000 seized from defendant on October 15, 2004, plus any and all accrued interest;

\$25,052.27 U.S. Currency seized from defendant on October 15, 2004, plus any and all accrued interest;

\$9,099,610.59 U.S. Currency plus any and all accrued interest;

\$18,999,971.20 U.S. Currency from defendant's Credit Suisse account plus any and all accrued interest; and

\$316,275.42 U.S. Currency from defendant's Credit Suisse account plus any and all accrued interest.

4. The Court's jurisdiction in this matter is founded upon 18 U.S.C. §981, made applicable through 28 U.S.C. §2461, which

provides that with respect to any person convicted of violations of 18 U.S.C. §§1341 and 2314,

[t]he Court shall order the forfeiture of the property in accordance with the procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section.

5. The Court's jurisdiction in this matter is also founded upon 18 U.S.C. §982(a)(2), which provides that with respect to any person convicted of a violation of 18 U.S.C. §1344,

[t]he Court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate . . . of [section 1344] of this title, affecting a financial institution, shall order that the person forfeit to the United States any property, constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation. (Emphasis added).

6. The Court's jurisdiction in this matter is also founded upon 18 U.S.C. §982(a)(1), which provides that with respect to any person convicted of a violation of 18 U.S.C. §1957,

[t]he Court, in imposing sentence on a person convicted of an offense in violation . . . of [section 1957] of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property. (Emphasis added).

7. Rules 32.2(b)(1), (b)(2), and (b)(3), of the Federal Rules of Criminal Procedure, provide that:

(1) As soon as practicable after entering a guilty verdict or accepting a plea of guilty or *nolo contendere* on any count in an Indictment or Information with regard to which criminal forfeiture is sought, the Court must determine what property is subject to forfeiture under the applicable statute. If forfeiture of specific property is sought, the Court must determine whether the Government has established the requisite nexus between the property and the offense. If the Government seeks a personal money judgment against the defendant, 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 already in the record, including any written plea agreement or, if the forfeiture is contested, on evidence or information presented by the parties at a hearing after the verdict or finding of guilt.

(2) 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 or directing the forfeiture of specific property without regard to any third party's interest in all or part of it. 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).

(3) 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. At sentencing - or at any time before sentencing if the defendant consents - the order of forfeiture becomes final as to the defendant and shall be made part of the sentence and included in the judgment. The Court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.

8. Based upon the evidence set forth in the Plea Agreement, Factual Basis and Consent Decree for Forfeiture, the United States has established the requisite nexus between the properties and the offenses to which the defendant has pled guilty. Accordingly, those properties are subject to forfeiture to the United States pursuant to 18 U.S.C. §§1344, 1957 and 982 for Bank Fraud and Money Laundering; and 18 U.S.C. §§1341, 2314 and 981 (a)(1)(C), made applicable through 28 U.S.C. §2461(c), for Mail Fraud and Interstate Transportation of Stolen Property.

9. Upon the issuance of a Preliminary Order of Forfeiture, the United States will provide notice to all interested third parties, at www.forfeiture.gov, of the United States' intent

to dispose of the properties in such manner as the Attorney General may direct, pursuant to 21 U.S.C. §853(n).

WHEREFORE, the United States respectfully requests that this Court enter judgment of criminal forfeiture by issuing the proposed Preliminary Order of Forfeiture, forfeiting to the United States of America the properties described above and ordering the United States Marshal to seize forthwith and maintain the forfeited properties and dispose of them in accordance with law.

Respectfully submitted,

JIM LETTEN
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2008, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all defense counsel of record.

/s/ Loan "Mimi" Nguyen
LOAN "MIMI" NGUYEN
Assistant United States Attorney