

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 11-CR-109

BINH NGUYEN, et al.,

Defendants.

BINH NGUYEN'S MOTION FOR RETURN OF PROPERTY

Binh Nguyen, by his attorney Michael J. Fitzgerald, pursuant to Fed. R. Crim. P. 41(g), moves the Court for an order requiring the government to return the following items of property seized from the defendant and held for criminal forfeiture (as set forth in the United States' Bill of Particulars For Forfeiture of Property, 10/6/11, Doc. #281):

- Item 19 A 2007 BMW SUV bearing vehicle identification number 5UXFE83547LZ39192, owned by Binh Nguyen;
- Item 22 An M&I Bank cashier's check in the amount of approximately \$19,827, seized from Binh Nguyen;
- Item 23 An M&I Bank cashier's check in the amount of \$79,700, seized from a safety deposit box owned by Binh Nguyen;
- Item 24 An M&I Bank cashier's check in the amount of \$129,912, seized from a safety deposit box owned by Binh Nguyen;
- Item 25 A white gold diamond ring seized from a safety deposit box owned by Binh Nguyen;

- Item 26 A white gold diamond bracelet seized from a safety deposit box owned by Binh Nguyen;
- Item 27 A white gold diamond tennis bracelet seized from a safety deposit box owned by Binh Nguyen; and
- Item 28 White gold diamond earrings seized from a safety deposit box owned by Binh Nguyen.

As grounds for this request, Binh Nguyen sets forth the following:

1. On May 17, 2011, the grand jury returned a four count indictment charging 24 defendants. The indictment included a forfeiture provision. Thirteen defendants, including Binh Nguyen, were charged in Count 2 with the offense commonly known as commercial gambling, contrary to 18 U.S.C. §1955.
2. The above-referenced items of property were seized from the defendant by government agents on or about May 25, 2011.
3. Shortly after the assets were seized, the United States Treasury Department - Internal Revenue Service - Criminal Investigation commenced administrative forfeiture proceedings against the property. Notice of forfeiture was provided to Binh Nguyen.
4. On or about August 17, 2011, and in a timely fashion, Binh Nguyen filed with the IRS a Seized Asset Claim Form and Request For Judicial Determination of Forfeiture with respect to the BMW X5 SUV (item 19), and the United States currency (items 22-24). His wife, Bach Yen Phan, did the same with respect to the jewelry (items 25-28).
5. On or about September 13, 2011, the IRS referred the administrative forfeiture matter to the United States Attorney's Office in the Eastern District of Wisconsin for

commencement of civil judicial forfeiture proceedings under 18 U.S.C. §981(b). No civil action was filed. Instead, the government pursued criminal forfeiture of the seized assets.

6. On October 6, 2011, the government filed a bill of particulars notifying the defendants of its intent to add to the forfeiture provision of the indictment various assets seized from the defendants, including Binh Nguyen's assets¹ outlined in this motion (Doc. #281, items 19, 22-28).

7. On October 26, 2011, the government filed a motion, pursuant to 18 U.S.C. §983(a)(3)(B)(ii)(II), for an order allowing the government to maintain custody of the seized assets pending possible criminal forfeiture (Doc. #288).

8. On November 22, 2011, the Court granted the request, permitting the United States Marshals Service and the Internal Revenue Service to "maintain and preserve the seized assets until this criminal case is concluded or pending further order of this Court" (Doc. #295).

9. On June 25, 2012, the government filed a motion to dismiss the indictment with respect to Binh Nguyen, and four other defendants (Doc. #370). On June 26, 2012, the Court granted the motion and dismissed the defendant's case (Doc. #376). The dismissal was not the result of a negotiated resolution with the defendant.

¹ For the purpose of this motion, all the assets seized from the defendant will be referred to collectively, including the jewelry belonging to his wife.

10. Given the dismissal of the indictment, and the absence of any related civil judicial forfeiture proceeding, there is no longer any legal basis for the government to maintain possession of Binh Nguyen's property.

11. Under 18 U.S.C. §983(a)(3), after an administrative forfeiture claim is filed, the United States has ninety days within which to: (1) return the asset to the defendant, (2) commence a civil judicial forfeiture action against the asset, or (3) commence a criminal forfeiture action containing an allegation that the property is subject to forfeiture.

12. As noted, Binh Nguyen filed his administrative forfeiture claims on August 17, 2011. The Internal Revenue Service accepted those claims. The ninety day time period for the government to file a civil judicial forfeiture action has elapsed, and the government did not seek nor obtain an extension of time to file a complaint. *See* 18 U.S.C. §983(a)(3)(A). The indictment containing the criminal forfeiture action has been dismissed. The government must promptly release the property, and may take no further action to effect its civil forfeiture. *See* 18 U.S.C. §983(a)(3)(B).

13. Accordingly, Binh Nguyen respectfully requests that the Court enter an order requiring the government to immediately return the above-referenced items of property to the defendant, as set forth in paragraphs 19 and 22-28 of the government's bill of particulars.

