

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	GOVERNMENT’S MOTION
	:	IN SUPPORT OF PROPOSED
-v.-	:	PRELIMINARY ORDER OF
	:	FORFEITURE OF
ERIC STEVENSON,	:	<u>SUBSTITUTE ASSETS</u>
	:	
Defendant.	:	S2 13 Cr. 161 (LAP)
	:	
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The United States of America hereby moves pursuant to Rule 32.2(e) of the Federal Rules of Criminal Procedure and Title 21, United States Code, Section 853(p), for the entry of a Preliminary Order of Forfeiture of Substitute Assets to include certain property of Eric Stevenson, as a substitute asset, to be applied towards the forfeiture money judgment that was entered against him on or about May 21, 2014.

**I. Background**

On August 15, 2013, Eric Stevenson (the “defendant”) was charged in a six-count Superseding Indictment, 13 Cr. 161 (LAP) (the “Indictment”), with, among others, conspiracy to commit honest services mail fraud, in violation of 18 U.S.C. § 1349 (Count One), conspiracy to commit bribery and violate the Travel Act in violation of 18 U.S.C. § 371 (Count Two), bribery in violation of 18 U.S.C. § 666(a)(1)(B) (Count Three), and extortion under color of official right in violation of 18 U.S.C. § 1951 (Count Five).

The Indictment included a forfeiture allegation as to Counts One through Three and Five requiring the defendant to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds

traceable to the commission of the said offenses, including but not limited to a sum of \$22,000 in United States currency, representing the amount of proceeds obtained as a result of the offenses charged in Counts One through Three and Five of the Indictment. The Indictment also included a substitute asset provision providing notice that if as a result of the defendant's actions or omissions forfeitable property is unable to be located or obtained the United States will seek, pursuant to 21 U.S.C. § 853(p), the forfeiture of any other property of the defendant.

On or about September 17, 2013, the Government filed a Forfeiture Bill of Particulars, providing notice that the property for which the Government sought forfeiture includes the proceeds from any pension fund to which Stevenson may be entitled as a result of his employment as a member of the New York State Assembly.

On or about January 13, 2014, the defendant was convicted of Counts One through Three and Five of the Indictment after a jury trial.

On May 21, 2014, the defendant was sentenced and ordered to forfeit a sum of money of \$22,000. On that day, the court issued a written Order of Forfeiture imposing a \$22,000 money judgment against the defendant (the "Money Judgment"), representing the amount of proceeds obtained as a result of the offenses charged in Counts One through Three and Five of the Indictment.

## **II. The Location of Additional Assets**

As set forth in the Declaration of Criminal Investigator Robert W. Ryan (the "Ryan Declaration"), the United States has not been able to locate, obtain or collect the proceeds of the defendant's offenses.

However, the United States has located the following asset of the defendant:

Any and all contributions, funds, benefits, rights to disbursements, or other property held on behalf of, or distributed to, ERIC

STEVENSON, by the New York State and Local Retirement System, Membership Number 50297431, and all property traceable thereto.

(the "Substitute Asset").<sup>1</sup> The United States is seeking to forfeit the defendant's interest in any payments or disbursements to the defendant from the Substitute Asset and to have these payments from the Substitute Asset, once forfeited, applied towards the defendant's outstanding Money Judgment.

For the following reasons, the Government respectfully requests that all of the defendant's right, title and interest in the Substitute Asset, including any benefits to be paid from the Substitute Asset, be forfeited to the United States and applied towards the Money Judgment.

### **III. Discussion**

Stevenson is subject to an unsatisfied forfeiture money judgment and as a result, the United States is authorized to forfeit substitute assets, including New York State pension contributions held on his behalf. As a result of his conviction of Counts One through Three and Five of the Indictment, Stevenson is subject to a money judgment in the amount of \$22,000, imposed pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c). Section 981(a)(1)(C) requires the forfeiture of "all property, real and personal, which constitutes or is derived from proceeds traceable to" a qualifying offense. Section 981(a)(1)(C) is made applicable to criminal cases by Section 2461(c), which incorporates the procedures of 21 U.S.C. § 853.

The forfeiture of substitute assets is authorized by 21 U.S.C. § 853(p), which provides that, if any forfeited property "(A) cannot be located upon the exercise of due diligence; (B) has

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<sup>1</sup> While the defendant is not a vested member entitled to pension distributions under the rules governing the Substitute Asset because he did not have a minimum of five years of service, the defendant is entitled to a refund of the contributions made to the plan. The defendant's contribution balance is \$7,774.74, of which approximately \$4,259.69 is securing the balance of a loan the defendant drew.

been transferred, sold to or deposited with a third party; (C) has been placed beyond jurisdiction of the Court; (D) has been substantially diminished in value; or (E) has been commingled with other property which cannot be divided without difficulty,” as a result of the defendant’s own actions or omissions, 21 U.S.C. § 853(p)(1), the “court shall order the forfeiture of any other property of the defendant, up to the value of property” so transferred or moved by the defendant, § 853(p)(2).

Additionally, Rule 32.2(e)(1) of the Federal Rules of Criminal Procedure further provides that-

[o]n the government’s motion, the court may *at any time* enter an order of forfeiture or amend an existing order of forfeiture to include property that:

...

(B) is a substitute property that qualifies for forfeiture under an applicable statute.

Fed. R. Crim. P. 32.2(e)(1) (emphasis added).<sup>2</sup>

Thus, the court must order the forfeiture of substitute assets to satisfy a money judgment where, as a result of the defendant’s actions or omissions, the United States is unable to locate or obtain the specific proceeds. *See* Fed. R. Crim. P. 32.2(e)(2)(A) (“If the government shows that the property is subject to forfeiture under Rule 32.2(e)(1), the court *must* . . . enter an order forfeiting that property, or amend an existing preliminary order of forfeiture to include it . . . .” (emphasis added)); Fed. R. Crim. P. 32.2(e)(1)(B) (designating as subject to forfeiture “substitute

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<sup>2</sup> This Court retains jurisdiction to amend a forfeiture order to add substitute assets during the pendency of the appeal. *See United States v. Ferrario-Pozzi*, 368 F.3d 5, 11 (1st Cir. 2004) (citing *United States v. Hurley*, 63 F.3d 1, 23 (1st Cir. 1995) for proposition that “appeal does not deprive district court of jurisdiction to amend existing order of forfeiture to include substitute assets”); *see also* Fed. R. Crim. P. 32.2(e) (providing that forfeiture order can be amended “at any time”).

property that qualifies for forfeiture under an applicable statute”); *United States v. Alamoudi*, 452 F.3d 310, 314 (4th Cir. 2006) (“Section 853(p) is not discretionary . . . . When the Government cannot reach the property initially subject to forfeiture, federal law requires a court to substitute assets for the unavailable tainted property”); *United States v. Capoccia*, No. 03 Cr. 35, 2009 WL 273301, at \*2 (D. Vt. Feb. 4, 2009) (citing *id.*); 21 U.S.C. § 853(p) (authorizing forfeiture of substitute assets when forfeitable property, inter alia, “as a result of any act or omission of the defendant— (A) cannot be located upon the exercise of due diligence; (B) has been transferred or sold to, or deposited with, a third party”).<sup>3</sup>

If there are other persons who claim an interest in the Substitute Asset, they will have an opportunity to challenge the Government’s entitlement to the Substitute Asset in the ancillary hearing phase of these proceedings. *See* 21 U.S.C. § 853(n); Fed. R. Crim. P. 32.2(c). Under Section 853(n) and Rule 32.2(e)(2), the government must provide notice of its intent to dispose of the property to known interested parties. Persons alleging an interest in the forfeited property then have 30 days, from the date of last publication or actual notice, within which to petition this

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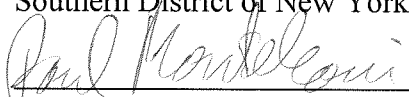
<sup>3</sup> The fact that the Substitute Asset consists of pension contributions does not affect its forfeitability under Section 853(p). As part of a governmental plan, the Substitute Asset is not covered by ERISA. *See* 29 U.S.C. §§ 1002(32), 1003(b)(1). Any protections potentially applicable under state law, *see* N.Y. Const. art. V § 7; N.Y.C. Admin. Code § 13-181, are preempted by federal law from interfering with forfeiture under Section 853(p). *See, e.g., United States v. Lot 5, Fox Grove, Alachua County, Fla.*, 23 F.3d 359, 363 (11th Cir. 1994) (finding that civil forfeiture statute preempts Florida law preventing homes from forced sale); *United States v. Peterson*, 821 F. Supp. 2d 576, 588 (S.D.N.Y. 2011) (citing *id.*); *United States v. Galante*, No. 06 Cr. 161 (EBB), 2006 WL 3826701, at \*2 (D. Conn. Nov. 28, 2006) (finding state law would be preempted to the extent it required modification of restraining order and diminution in value of assets for which forfeiture was sought); *United States v. One Household Finance Check*, 769 F. Supp. 69, 73 (D. Conn. 1991) (preempting Connecticut law, allowing forfeiture of funds represented by check); *United States v. Speed Joyeros, S.A.*, 410 F. Supp. 2d 121, 125 (E.D.N.Y. 2006) (“This result under applicable federal conflicts of law principles is consistent with the general federal practice in forfeiture matters of referring to the law of the jurisdiction that created the property right to determine the petitioner’s legal interest. The *effect* of that property interest—i.e., whether it satisfies the requirements of the federal forfeiture statute—is necessarily a matter of federal law.”).

Court for a hearing to determine the validity of their claims. 21 U.S.C. § 853(n)(2). If there are no petitions filed or a petition is denied, the Court will enter a final order forfeiting the substitute property to the United States. The property will not be disposed of by the Government until all third party claims are resolved by the Court.

**IV. Conclusion**

The United States accordingly requests that its motion for forfeiture of substitute property be granted and that an order be entered forfeiting all of the defendant's right, title and interest in the Substitute Asset.

Dated: New York, New York  
August 28, 2014

PREET BHARARA  
United States Attorney for the  
Southern District of New York  
By:   
PAUL M. MONTELEONI  
Assistant United States Attorney  
One St. Andrew's Plaza  
New York, New York 10007  
(212) 637-2219

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	DECLARATION OF CRIMINAL
	:	INVESTIGATOR
- v. -	:	<u>ROBERT W. RYAN</u>
	:	
ERIC STEVENSON,	:	S2 13 Cr. 16 (LAP)
	:	
Defendant.	:	
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STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

ROBERT W. RYAN, under penalty of perjury, declares:

1. I am a Criminal Investigator with the United States Attorney’s Office for the Southern District of New York (the “SDNY”), and have been in that position for over 7 years. Previously, I was a Special Agent with the U.S. Department of Housing and Urban Development-Office of the Inspector General (“HUD-OIG”) for 3 years, and prior to that I was a Special Agent with Internal Revenue Service - Criminal Investigation (“IRS-CI”) for 14 years. While with the SDNY, HUD-OIG, and IRS-CI, I have participated in multiple investigations of fraud, kickback, and money laundering offenses, among others.

2. I respectfully make this declaration in connection with the Government’s application for a Substitute Asset Order of Forfeiture as to the following property: Any and all contributions, funds, benefits, rights to disbursements, or other property held on behalf of, or distributed to, ERIC STEVENSON, by the New York State and Local Retirement System, Membership Number 50297431, and all property traceable thereto. From my review of the case file, I am familiar with the facts and circumstances of this forfeiture case. Because this declaration is being submitted for a limited purpose, I have not included in it everything I know

about this forfeiture case. Where the contents of documents and the actions, conversations, and statements of others are related herein, they are related in substance and in part.

**Background**

3. On August 15, 2013, Eric Stevenson (the “defendant”) was charged in a six-count Superseding Indictment, 13 Cr. 161 (LAP) (the “Indictment”), with, among others, conspiracy to commit honest services mail fraud, in violation of 18 U.S.C. § 1349 (Count One), conspiracy to commit bribery and violate the Travel Act in violation of 18 U.S.C. § 371 (Count Two), bribery in violation of 18 U.S.C. § 666(a)(1)(B) (Count Three), and extortion under color of official right in violation of 18 U.S.C. § 1951 (Count Five).

4. The Indictment included a forfeiture allegation as to Counts One through Three and Five requiring the defendant to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the said offenses, including but not limited to a sum of \$22,000 in United States currency, representing the amount of proceeds obtained as a result of the offenses charged in Counts One through Three and Five of the Indictment.

5. The Indictment also included a substitute asset provision providing notice that if as a result of the defendant’s actions or omissions forfeitable property is unable to be located or obtained the United States will seek, pursuant to 21 U.S.C. § 853(p), the forfeiture of any other property of the defendant.

6. On or about September 17, 2013, the Government filed a Forfeiture Bill of Particulars, providing notice that the property for which the Government sought forfeiture includes the proceeds from any pension fund to which Stevenson may be entitled as a result of his employment as a member of the New York State Assembly.



7. On or about January 13, 2014, the defendant was convicted of Counts One through Three and Five of the Indictment after a jury trial.

**The Order of Forfeiture and the Substitute Asset**

8. On May 21, 2014, the defendant was sentenced and ordered to forfeit a sum of money of \$22,000. On that day, the Court signed a written Order of Forfeiture imposing a \$22,000 money judgment against the defendant (the "Money Judgment"), representing the amount of proceeds obtained as a result of the offenses charged in Counts One through Three and Five of the Indictment.

9. Since the date of the entry of the Order of Forfeiture, despite the exercise of due diligence in investigating the assets of the defendant, the Government has been unable to locate the proceeds of the defendant's offenses.

10. I have conducted an investigation into any other assets that the defendant might have to satisfy the Money Judgment against him. To date, the Government has located the following asset of the defendant:

Any and all contributions, funds, benefits, rights to disbursements, or other property held on behalf of, or distributed to, ERIC STEVENSON, by the New York State and Local Retirement System, Membership Number 50297431, and all property traceable thereto.<sup>1</sup>

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<sup>1</sup> While the defendant is not a vested member entitled to pension distributions under the rules governing the Substitute Asset because he did not have a minimum of five years of service, the defendant is entitled to a refund of the contributions made to the plan. The defendant's contribution balance is \$7,774.74, of which approximately \$4,259.69 is securing the balance of a loan the defendant drew.

I declare under penalty of perjury that the foregoing is true and correct, pursuant to 28 U.S.C. § 1746.

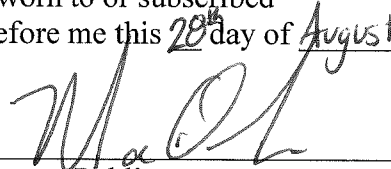
Dated: New York, New York  
August 28, 2014



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ROBERT W. RYAN  
Criminal Investigator  
United States Attorney's Office,  
Southern District of New York

Sworn to or subscribed  
before me this 28<sup>th</sup> day of August 2014



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Notary Public

MARCO DASILVA  
Notary Public, State of New York  
No. 01DA6145603  
Qualified in Nassau County  
My Commission Expires May 8, 2018

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:
	:
-v.-	:
	:
ERIC STEVENSON,	:
	:
Defendant.	:
	:
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PRELIMINARY ORDER  
OF FORFEITURE OF  
SUBSTITUTE ASSETS

S2 13 Cr. 161 (LAP)

WHEREAS, on August 15, 2013, Eric Stevenson (the “defendant”) was charged in a six-count Superseding Indictment, 13 Cr. 161 (LAP) (the “Indictment”), with, among others, conspiracy to commit honest services mail fraud, in violation of 18 U.S.C. § 1349 (Count One); conspiracy to commit bribery and violate the Travel Act in violation of 18 U.S.C. § 371 (Count Two); bribery in violation of 18 U.S.C. § 666(a)(1)(B) (Count Three); and extortion under color of official right in violation of 18 U.S.C. § 1951 (Count Five);

WHEREAS, the Indictment included a forfeiture allegation requiring the defendant to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One and Two of the Indictment, including but not limited to a sum of \$22,000 in United States currency, representing the amount of proceeds obtained as a result of the offenses charged in Counts One through Three and Five of the Indictment;

WHEREAS, the Indictment also included a substitute asset provision providing notice that if as a result of the defendant’s actions or omissions forfeitable property is unable to

be located or obtained the United States will seek, pursuant to 21 U.S.C. § 853(p), the forfeiture of any other property of the defendant;

WHEREAS, on or about September 17, 2013, the Government filed a Forfeiture Bill of Particulars, providing notice that the property for which the Government sought forfeiture includes the proceeds from any pension fund to which Stevenson may be entitled as a result of his employment as a member of the New York State Assembly;

WHEREAS, on or about January 13, 2014, the defendant was convicted of Counts One through Three and Five of the Indictment after a jury trial;

WHEREAS, On May 21, 2014, the defendant was sentenced and ordered to forfeit a sum of money of \$22,000 and on that day, the court issued a written Order of Forfeiture imposing a \$22,000 money judgment against the defendant (the "Money Judgment"), representing the amount of proceeds obtained as a result of the offenses charged in Counts One through Three and Five of the Indictment;

WHEREAS, the Money Judgment against the defendant remains fully unpaid;

WHEREAS, as a result of acts and omissions of the defendant, the Government, despite its exercise of due diligence, has been unable to locate or obtain the full proceeds of the offenses of the defendant's conviction;

WHEREAS, the Government has identified the following specific asset in which the defendant has an ownership interest:

Any and all contributions, funds, benefits, rights to disbursements, or other property held on behalf of, or distributed to, ERIC STEVENSON, by the New York State and Local Retirement System, Membership Number 50297431, and all property traceable thereto.

(the "Substitute Asset"); and

WHEREAS, the United States is authorized, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853(p), to seek forfeiture of all of the defendant's right, title and interest in the Substitute Asset, as assets of Eric Stevenson to be applied in partial satisfaction of the money judgment against him;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. All of the defendant's right, title and interest in the Substitute Asset is hereby forfeited to and vested in the United States of America, as substitute assets, pursuant to 18 U.S.C. § 981(a)(1)(C), 21 U.S.C. § 853(p), and 28 U.S.C. § 2461, subject to the provisions of 21 U.S.C. § 853(n).

2. Any funds or payments subsequently seized from the Substitute Asset shall be applied to the Money Judgment entered against the defendant.

3. The United States is hereby authorized to take possession of the Substitute Asset and to hold such Substitute Asset in its secure custody and control.

4. All financial institutions and third parties having notice of this Preliminary Order of Forfeiture of Substitute Assets shall cooperate with the United States or its designee in turning over the Substitute Asset pursuant to this Preliminary Order of Forfeiture of Substitute Assets.

5. Pursuant to 21 U.S.C. § 853(n)(1), the United States Marshals Service forthwith shall publish at least once for three successive weeks, in a newspaper of general circulation, notice of this Preliminary Order of Forfeiture of Substitute Assets, notice of the United States's intent to dispose of the Substitute Asset in such manner as the United States may direct, and notice that any person, other than the defendant, having or claiming a legal interest in

the above listed Substitute Asset must file a petition with the Court within 30 days of the final publication of notice or of receipt of actual notice, whichever is earlier.

6. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the Substitute Asset, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title or interest in the Substitute Asset and any additional facts supporting the petitioner's claim and the relief sought.

7. The United States may also, to the extent practicable, provide direct written notice to any person known to have an alleged interest in the Substitute Asset that is the subject of this Preliminary Order of Forfeiture of Substitute Assets, as a substitute for published notice as to those persons so notified.

8. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of Preliminary Order of Forfeiture of Substitute Assets, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of the property, including depositions, interrogatories, requests for production of documents and to issue subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

9. Upon adjudication of all third-party interests, this Court will enter a final order of forfeiture pursuant to 21 U.S.C. § 853(n)(7) and Fed. R. Crim. P. 32.2(c)(2), in which all interests will be addressed.

Dated: New York, New York  
\_\_\_\_\_, 2014

SO ORDERED:

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HONORABLE LORETTA A. PRESKA  
UNITED STATES DISTRICT JUDGE