

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

UNITED STATES OF AMERICA	§	
	§	
Plaintiff	§	
v.	§	CIVIL ACTION NO. 7:14-CV-942
	§	
ALL FUNDS ON DEPOSIT AT SUN SECURED	§	
ADVANTAGE, ACCOUNT NUMBER: *3748	§	
HELD AT THE BANK OF NT BUTTERFIELD &	§	
SON LTD. IN BERMUDA	§	
	§	
and	§	
	§	
57 CREEKBEND DRIVE	§	
BROWNSVILLE, TEXAS 78521	§	
	§	
Defendants	§	

MOTION FOR LEAVE TO FILE AMENDED VERIFIED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, the United States of America, by and through its United States Attorney for the Southern District of Texas and the undersigned Assistant United States Attorney, and respectfully requests leave of court to amend its verified complaint for forfeiture pursuant to Fed. R. Civ. P. 15(a). In support of this request the United States the following:

I.

Relevant procedural history:

1. Plaintiff's original Verified Complaint for Civil Forfeiture in Rem was filed on November 10, 2014. On January 16, 2015, Claimant Maria Castaneda-Torres filed her claim to 57 Creekbend, Brownsville, Texas, hereinafter Defendant Real Property. (Dkt. No 12). Her answer to the law suit was filed on February 4, 2015. (Dkt. No. 14).

2. At the request of the parties, the Court granted requests for a stay of civil proceedings. (Dkt. Nos. 16 & 20). Thereafter, the case remained on the Court's docket without incident until July 9, 2015 when a scheduling conference was held and an order entered. (Dkt. No. 26). Said order sets forth a deadline of December 4, 2015 to file amended pleadings. Pending before the Court is Claimant Castaneda-Torres's Motion for Judgment on the Pleadings under Rule 12(c). (Dkt. No. 27) Said motion complains that the Verified Complaint fails to specifically identify the violations of Mexican law which support the underlying money laundering statutes authorizing forfeiture. Without otherwise addressing the merits of Claimant's motion, Plaintiff now seeks leave of Court to file its amended pleading attached hereto as Exhibit "A".

II.

Authorization for leave to Amend Pleadings:

Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend pleadings "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a); *United States ex. rel. Marcy v. Rowan Companies, Inc.*, 520 F.3d 384, 392 (5th Cir. 2008); *See Foman v. Davis*, 371 U.S. 178, 182(1962). The Fifth Circuit has concluded that Rule 15(a) "evinces a bias in favor of granting leave to amend." *Carroll v. Fort James Corp.*, 470 F.3d 1171, 1175 (5th Cir. 2006). *See also Jacobsen v. Osborne*, 133 F. 3d 315, 318 (5th Cir. 1998). While the decision to grant or deny leave to amend is within the sound discretion of the Court, "unless there is a substantiated reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial." *Dussouy v. Gulf Coast Inv. Corp.*, 660 F. 2d 594, 598 (5th Cir. 1981). The factors a court may consider in determining whether substantial reasons exist to deny an amendment include: 1) whether there has been undue delay; 2) bad faith or dilatory motive on

the part of the movant; 3) repeated failure to cure deficiencies by amendments previously allowed; 4) undue prejudice to the opposing party; and 5) futility of amendment. *See Jacobsen* at 318. None of these factors exist in the instant case. Plaintiff is timely filing its request for leave to amend. Claimant has suggested no bad faith or dilatory motive and none exists. Indeed, the amendments made to the pleading attached hereto address the basis of Claimant's Rule 12(c) motion and identify the specific Mexican law violations supporting the underlying money laundering statutes authorizing forfeiture. (Mot. Ex. "A", para. 19) Moreover, the requested amendments satisfy several of Claimant's previously submitted discovery requests. Claimant cannot be said to be unduly prejudiced by receiving the exact information it complains is lacking in the original Verified Complaint for forfeiture.

Without more, Plaintiff requests that leave to file the attached Amended Verified Complaint for Forfeiture in Rem be granted in the interest and furtherance of justice .

Respectfully Submitted,

KENNETH MAGIDSON
UNITED STATES ATTORNEY

By:

s/Mary Ellen Smyth
Mary Ellen Smyth
Assistant United States Attorney
Southern District of Texas
11204 McPherson Road, Suite 100A
Laredo, Texas 78045
(956) 723-6523

CERTIFICATE OF SERVICE

On this the 4th day of December, 2015, the foregoing Motion for Leave to file Amended Pleadings has been sent to Claimant Maria Castaneda Torres by and through her attorney of record, Benigno “Trey” Martinez via electronic case filing and USPS to 1201 East Van Buren St., Brownsville, Texas 78520.

s/Mary Ellen Smyth
Mary Ellen Smyth
Assistant United States Attorney

EXHIBIT

“A”

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	§	
	§	
Defendants		

VERIFIED AMENDED COMPLAINT FOR CIVIL FORFEITURE IN REM

The United States of America, Plaintiff, files this action for forfeiture of all funds on deposit at Sun Secured Advantage, Account Number *3748, held at the Bank of NT Butterfield & Son Ltd., in Bermuda; and for the forfeiture of the real property at 57 Creekbend Drive, Brownsville, Texas, (the defendant properties). The United States alleges on information and belief:

NATURE OF ACTION

1. This civil action *in rem* brought to enforce the provisions of:

(a) 18 U.S.C. § 981(a)(1)(A), which provides for the forfeiture of real and personal property involved in a transaction or attempted transaction in violation of 18 U.S.C. §§ 1956 and 1957, and property traceable to such property;

(b) 18 U.S.C. § 981(a)(1)(B), which provides for the forfeiture of real and personal property located in the United States constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, and property that is used to facilitate such offense (i) if the offense involves conduct defined as specified unlawful activity in 18 U.S.C. § 1956(c)(7)(B); and (ii) the offense would be punishable by imprisonment for more than one year (a) within the jurisdiction of the foreign nation and (b) under the laws of the United

States if the act or activity constituting the offense had occurred within the jurisdiction of the United States; and/or

(c) 18 U.S.C. § 981(a)(1)(C), which provides for the forfeiture of real and personal property which constitutes or is derived from proceeds traceable to specified unlawful activity, or a conspiracy to commit such offense.

DEFENDANTS PROPERTY

2. The defendant properties subject to forfeiture are:

(a) all funds on deposit at Sun Secured Advantage, Account Number *3748, held at the Bank of NT Butterfield & Son Ltd., in Bermuda (“defendant currency”), and consisting of \$2,810,539.60 as of October 10, 2014; and

(b) real property, improvements and appurtenances, titled to Maria Castaneda-Torres, located at 57 Creekbend Drive, Brownsville, Texas (“defendant real property”) and legally described as:

Lot Twelve (12), Block Three (3), Land-o-Lakes Subdivision, in the City of Brownsville, Cameron County, Texas, according to the map or plat thereof recorded in Volume 28, Page 23, Map of Records of Cameron County, Texas.

JURISDICTION AND VENUE

3. This Court has jurisdiction under 28 U.S.C. §§ 1345 and 1355. This court has *in rem* jurisdiction over the defendant properties under 28 U.S.C. §§ 1355(b) and 1395 (b). Venue is proper in this district pursuant to 28 U.S.C. § 1355(b).

FACTUAL BASIS FOR FORFEITURE

4. Erick Agustin Silva Santos (Silva) is a citizen of Mexico. From 2008 through 2010, Silva was the mayor of the city of Matamoros. Since 2002, Silva has held various political positions in the State of Tamaulipas, Mexico. He was the Regional Program Coordinator for the Government of Tamaulipas from December 2006 through May 2007, Federal Deputy from August 2004 through November 2006, Chairman of the Municipal Leadership Committee for the PRI Political Party from November 2003 through July 2004, and Secretary of Social Development for Matamoros from January 2002 through October 2003.

5. Silva served as the mayor of Matamoros from 2008 through 2010, and his annual salary in United States dollars was about \$100,000. *Maria Castaneda-Torres was not employed before and during the relevant time period discussed herein.*

6. Maria Castaneda-Torres (Castaneda) is alleged to be Silva's common law spouse. In January 2003, Silva and Castaneda opened a joint savings account, **account number *3501**, at JP Morgan Chase Bank, a U.S. financial institution located in Brownsville, Texas (joint savings account *3501). Prior to Silva's mayoral campaign in 2007, the *average monthly* balance in this account was approximately \$15,000. At the end of May, 2007, the account balance was \$6,439.42. Silva's campaign began in June 2007 and he was elected mayor on November 11, 2007. Between November 11, 2007 and December 31, 2007, \$872,268.10 was deposited into the account. After Silva took office in January 2008 until the account was closed in October 2008, \$1,545,288 was deposited into the account. The increase in account balance was because of deposits and transfers of (1) financial contributions received by Silva in return for the award of municipal contracts, (2) unlawful kickbacks from municipal contracts, and (3) unlawful proceeds from the approval of false invoices for municipal contracts all resulting in the illicit enrichment of Silva, the newly elected mayor of Matamoros.

7. \$940,000.00 of funds on deposit in JP Morgan Chase account *3501 funded an annuity in an offshore Bermuda account, account number *1479 (annuity account). Joint savings account *3501 continued to fund offshore annuity account *1479 while Silva was the mayor of Matamoros. Between March 5, 2008 through May 7, 2008 account *3501 received \$83,403.00 cash deposits. During June 2008, account *3501 also received four wire transfers of foreign exchange credits totaling \$294,175.94 in United States dollars. The combined cash and foreign exchange wire credits totaled \$377,578.94. On June 25, 2008 account *3501 transferred \$385,000.00 to the offshore annuity account *1479. On July 7, 2008 account *3501 received another foreign exchange wire credit in the amount of \$287,839.44 United States dollars. On July 30, 2008 account *3501 transferred \$290,000.00 to offshore annuity account *1479. The accumulated balance in the annuity account following these credits plus interest was approximately \$1,615,000.

8. As mayor, Silva awarded millions of dollars in municipal contracts to Mexican companies that had made large campaign contributions to his campaign. In awarding these contracts, Silva disregarded bidding processes and municipal policy.

9. The city of Matamoros spent about \$721,428,371 Mexican pesos on public projects in 2008 through 2010. Silva received kickbacks of 10-20 percent of the value of the municipal contracts from the companies awarded the contract. The amount of money Silva received as kickbacks is estimated at \$72,142,837 to \$144,285,674 in Mexican pesos, or approximately \$5,329,544 to \$10,659,088 in United States dollars.

10. In another scheme, designed to steal, misappropriate or embezzle public funds, SILVA also defrauded the City of Matamoros by utilizing false invoices. The fraudulent scheme began prior to Silva taking office. SILVA awarded contracts for fictitious municipal projects to Mexican company owners who made campaign contributions in return for public works contracts and whom he (SILVA) trusted or to companies that only existed on paper. These companies then submitted false invoices to the City of Matamoros for work that was never completed or was completed by another legitimate company at a lesser legitimate cost. After these false invoices were paid by the City of Matamoros, SILVA received the value of the invoice minus any claimed fee to the Mexican companies that were complicit in the scheme. SILVA employed the false invoices scheme within six (6) months of his (SILVA's) becoming mayor on January 1, 2008. Funds identified by U.S. law enforcement agents specific to this scheme exceed approximately \$2,000,000.00 (USD). The money he received was deposited, by wire transfer and other means, into bank accounts at financial institutions in the United States, including Inter National Bank, J.P. Morgan Chase Bank, Texas National Bank, and Plains Capital Bank.

11. On July 2, 2008, Silva opened a checking account *9798 at Inter National Bank, in Brownsville, Texas. Silva was the sole owner of the account and had full signatory authority. Over \$400,000 was deposited into this account, including a wire transfer for \$120,523 on January 15, 2009 and a check made payable to him for \$286,880 on January 7, 2010. The check was written from a bank account that was opened at Banco Banorte, a Mexican financial institution which has a corresponding banking relationship with Inter National Bank. Agents reviewed the visa application of the account owner and determined that the owner of said account claimed to be a heavy equipment mechanic making \$12,000 pesos per month (approximately \$1,200 U.S. dollars).

12. On July 16, 2008, Silva and his brother Hector Silva Santos (Santos) opened two accounts in the name Aceros Industriales de Matamoros S.A. de C.V. at JP Morgan Chase Bank

in Brownsville, Texas (Aceros account). In August, 2008 account *4266 received foreign exchange credits of Mexican pesos to U.S. dollars via nine wire transfers totaling \$791,855.76.

13. Aceros Industriales de Matamoros S.A. de C.V. did not legitimately earn the money deposited into its JP Morgan Chase Bank account in Brownsville, Texas. Bank records indicate that Aceros Industriales de Matamoros S.A. de C.V. wasn't incorporated in Mexico until June, 2008, just one month prior to opening the accounts at JP Morgan Chase Bank.

14. Silva renewed his non-immigrant visa in March 2009. As part of the renewal process, Silva stated he was employed by the city of Matamoros, Mexico. Based on average historical currency exchange rates, Silva declared his annual salary was about \$100,000.

15. On August 6, 2009, Silva and Castaneda transferred \$1,691,472.15 from the Bermuda annuity account to the Aceros account. Silva and Castaneda also completed an authorization form at JP Morgan Chase Bank for an offshore investment account representing their annual income as \$400,000 and net worth as \$3.7 million.

16. On September 30, 2009, Silva wire transferred \$2.4 million from the Aceros account at JP Morgan Chase Bank in Brownsville, Texas, to the Sun Secured Advantage, Account Number *3748, at Bank of NT Butterfield & Son Ltd.

17. On September 30, 2010, SILVA withdrew \$183,730.46 (USD) from xxx9798 in the form of Inter National Bank Cashier's Check #207477 which CASTANEDA used to purchase the 57 Creekbend Drive Brownsville, TX 78521 (hereinafter referred to as SUBJECT PROPERTY) for \$183,730.46 (USD). At the closing for the SUBJECT PROPERTY, CASTANEDA used the Inter National Bank Cashier's Check #207477 to fully fund the purchase price of the SUBJECT PROPERTY. The subject property is titled in her name only.

18. There is no known legitimate source of earnings to account for the acquisition of the defendant properties.

19. The improper award of municipal contracts, false invoicing of municipal contracts, and the kickbacks Silva received violated the laws of Mexico and were punishable by more than one year of imprisonment.

Specifically, **Article 216** of the Tamaulipas Penal Code in effect during the time Silva was running for mayor and during his tenure made it a crime for a public servant to engage in bribery or "cohecho" which conduct is described as accepting, either personally or through a third party, money or any other thing of value in exchange for doing –or refraining from doing-

any action related to an individual's role as a public servant. In Tamaulipas, Mexico, the mayor of a municipality (in Spanish, *presidente municipal*) is considered a public servant, per article 149 of the state's constitution, and article 208 of the state's penal code.

Article 217 of the Tamaulipas Penal Code sets forth the punishment range for the offense of bribery by a public official. The minimum punishment for said offense was 2-6 years imprisonment and a fine in cases where the amount of the value of the bribe did not exceed the equivalent of 3,000 days of minimum wage (approximately \$12,500 USD); or 6 to 14 years in prison and a fine when the amount of the bribe did exceed 3,000 days of minimum wage. The value of "kick back" payments received by Silva place him in a punishment category of 6-14 years.

Article 417 of the Tamaulipas Penal Code defines the crime of "fraude" (translated as fraud). A fraudulent scheme involves deception by the author, coauthors and participants, resulting in an improper benefit or profit for him or others involved and is detrimental or causes a loss to the public funds of the municipality. The crime of fraud can be committed by anybody, not just public servants and is consistent with the U.S. crime of theft, misappropriation or embezzlement of public funds.

Article 419 of the Tamaulipas Penal Code sets forth the punishment for the crime of *fraude* as follows: a) 3 months to 2 years in prison plus a fine in cases where the amount of the fraud does not exceed the equivalent of 150 days of minimum wage (approximately \$625 USD); b) 2 to 6 years in prison plus a fine if the amount of the fraud exceeds 150 days of minimum wage but not 300 (between \$625 and \$1,250 USD, approximately) or it cannot be quantified; or c) 6 to 12 years in prison plus a fine if the amount of the fraud exceeds 300 days of minimum wage (approximately \$ 1,250 USD). The monetary amount of fraud perpetrated by Silva and others as set forth in paragraph 10 herein place Silva in the punishment category of 6-12 years imprisonment.

Article 226 of the Penal Code of Tamaulipas makes it a crime if a public servant improperly awards public works contracts, concessions, licenses, permits or authorizations for his own benefit or the benefit of the public servant's spouse, close relatives or any person with whom the public servant has a friendship or business relationship. This offense is entitled "*ejercicio abusivo de funciones*"(translated, abusive exercise of functions). A mayor that awards public work contracts to companies that made campaign contributions with disregard of the

bidding process and municipal policy commits the crime of *ejercicio abusivo de funciones*. Contracting of public works in all municipalities in Tamaulipas—including Matamoros—are regulated by the *Ley de Obras Públicas y Servicios Relacionados con las Mismas para el Estado de Tamaulipas* (translated, Public Works and Related Services Law for the State of Tamaulipas), which details the processes that must be followed.

Article 227 of the Tamaulipas Penal Code sets forth the punishment for the crime of “*ejercicio abusivo de funciones*” as follows: a) 2 to 6 years in prison plus a fine in cases where the amount of the improperly awarded contract does not exceed the equivalent of 3,000 days of minimum wage; b) 6 to 14 years in prison plus a fine in cases where the amount of the contract exceeds the equivalent of 3,000 days of minimum wage; or c) 6 months to 3 years in prison plus a fine in cases where the amount of the contract cannot be determined. The amount paid on invoices for the improperly awarded contracts place Silva in the punishment category of 6-14 years imprisonment.

Article 230 of the Penal Code of Tamaulipas, provides that a public servant who cannot demonstrate the legitimate augmentation of his assets or the legitimate origin of the properties under his name, or those not under his name but for which he conducts himself as the owner, during his tenure as public servant as prescribed by the *Ley de Responsabilidades de los Servidores Públicos*, commits the crime of “*enriquecimiento ilícito*” (translated, illicit enrichment). *Enriquecimiento ilícito* is the only crime that is described in the Mexican Federal Constitution; Article 230 of the Penal Code of Tamaulipas—and similar articles in all state and federal penal codes—develops the principles set out in the Federal Constitution in all matters related to *enriquecimiento ilícito*.

The punishment for the crime of “*enriquecimiento ilícito*” is set out in **Article 231** of the Penal Code as follows: a) forfeiture of assets; b) 2 to 6 years in prison plus a fine if the amount of the augmentation in assets or value of properties does not exceed 3,000 days of minimum wage (approximately \$12,500 USD); or c) 6 to 14 years in prison plus a fine if the amount of the augmentation in assets or value of properties exceeds 3,000 days of minimum wage. The amount of illicit enrichment reflected in the financial records referenced herein places Silva in the punishment category of 6-14 years imprisonment.

CONCLUSION

20. The defendant properties are subject to forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(A), 18 U.S.C. § 981(a)(1)(B), and 18 U.S.C. § 981(a)(1)(C).

NOTICE TO ANY POTENTIAL CLAIMANT

YOU ARE HEREBY NOTIFIED if you assert an interest in the property subject to forfeiture and want to contest the forfeiture, you must file a verified claim which fulfills the requirements set forth in Rule G of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. The verified claim must be filed no later than thirty five (35) days from the date this complaint is sent, in accordance with Rule G(5).

An answer or motion under Fed.R.Civ.P. 12 must be filed no later than twenty one (21) days after filing the claim. The claim and answer must be filed with the United States District Clerk for the Southern District of Texas, and a copy must be served upon the undersigned Assistant United States Attorney at the address provided in this complaint.

WHEREFORE, the United States of America requests that judgment of forfeiture be entered against the defendant properties, and for such costs and other relief to which the United States may be entitled.

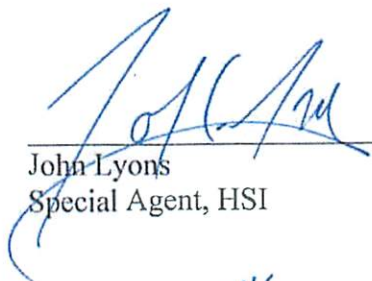
Respectfully Submitted,

KENNETH MAGIDSON
United States Attorney

By: /s/ Mary Ellen Smyth
Mary Ellen Smyth
Assistant United States Attorney
11204 McPherson, Suite 100A
Laredo, Texas 78045
(956) 723-6423

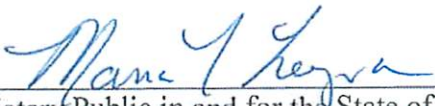
VERIFICATION

I, John Lyons, a Special Agent with Homeland Security Investigations (HSI), hereby declare under penalty of perjury that I am one of the agents responsible for the investigation concerning this litigation. I have read the above Amended Complaint for Forfeiture. Based upon the investigation conducted by myself and other agents of the Department of Homeland Security, Homeland Security Investigations (HSI) of which I have knowledge, the facts contained in the Complaint for Forfeiture, paragraphs 4-18, are true and correct to the best of my knowledge and belief.



John Lyons
Special Agent, HSI

Sworn and subscribed before me, the undersigned authority on this 4th day of December 2015



Notary Public in and for the State of Texas



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BROWNSVILLE, TEXAS 78521	§	
	§	
Defendants	§	

ORDER

On this day the Court, having considered Plaintiff’s Motion for Leave to File an Amended Verified Complaint for Forfeiture, finds in the interest of justice that said motion should be GRANTED.

It is therefore, ORDERED, that the amended pleading attached as Exhibit “A” to Plaintiff’s motion be filed among the papers in this cause.

Signed in McAllen, Texas on this the _____ day of December, 2015.

RANDY CRANE
U.S. DISTRICT COURT JUDGE