

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE RESTRAINT OF ALL ASSETS)
CONTAINED OR FORMERLY)
IN CERTAIN INVESTMENT) Misc. Action No. 11-452 (CKK)
ACCOUNT NUMBERS AT UBS)
FINANCIAL SERVICES, INC.)

**UNITED STATES' MEMORANDUM IN OPPOSITION TO PONSFORD OVERSEAS
LTD.'S AND TULA FINANCE LTD.'S EMERGENCY MOTION TO DISSOLVE
RESTRAINING ORDER AND FOR A HEARING ON THE GOVERNMENT'S
SECOND MOTION TO AMEND THE RESTRAINING ORDER**

Attorneys for Applicant
UNITED STATES OF AMERICA

A.J. de Kluiver
Tracy M. Mann

Asset Forfeiture and Money
Laundering Section
U.S. Department of Justice
1400 New York Avenue NW
Washington, D.C. 20005
Telephone: (202) 514-1263
Fax: (202) 514-5522

Date: April 24, 2012

Table of Authorities

Statutes

28 U.S.C. § 2467.....	<i>passim</i>
18 U.S.C. § 983(j).....	<i>passim</i>

Treaties

Treaty Between the United States of America and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters, U.S.-Neth., June 12, 1981, 35 U.S.T. 1361.....	3
Agreement Between the Government of the Kingdom of the Netherlands and the Government of the United States of America Regarding Mutual Cooperation in the Tracing, Freezing, Seizure and Forfeiture of Proceeds and Instrumentalities of Crime and the Sharing of Forfeited Assets, U.S.-Neth., Nov. 20, 1992, T.I.A.S. No. 12,482.....	3

Cases

Memorandum Order, <i>In re</i> Enforcement of a Restraining Order by the High Court (<i>Luan</i>), Case No. 1:11-mc-00208(GK) (D.D.C. Apr. 4, 2012) (attached).....	12
---	----

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
IN RE RESTRAINT OF ALL ASSETS)	
CONTAINED OR FORMERLY)	
IN CERTAIN INVESTMENT)	Misc. Action No. 11-452 (CKK)
ACCOUNT NUMBERS AT UBS)	
FINANCIAL SERVICES, INC.)	
_____)	

UNITED STATES’ MEMORANDUM IN OPPOSITION TO PONSFORD OVERSEAS LTD.’S AND TULA FINANCE LTD.’S EMERGENCY MOTION TO DISSOLVE RESTRAINING ORDER AND FOR A HEARING ON THE GOVERNMENT’S SECOND MOTION TO AMEND THE RESTRAINING ORDER

The United States of America, by and through its undersigned attorneys, respectfully submits this Opposition to Ponsford Overseas Ltd.’s and Tula Finance Ltd.’s (the “Shell Companies”) Emergency Motion to Dissolve Restraining Order and for a Hearing on the Government’s Second Motion to Amend the Restraining Order and Memorandum in Support Thereof filed with the Court on April 9, 2012 (Docket No. (“DN”) 9). On April 9, 2012, the United States filed a Second Motion to Amend the Restraining Order (DN 8) in response to a formal treaty request from Curaçao to register and enforce a January 19, 2012, order of the Court of First Instance of Curaçao (the “January Order”), which authorizes the seizure of assets contained in certain investment accounts as the criminal property of the Shell Companies, as opposed to the criminal property of Robertico Alejandro dos Santos (“dos Santos”). Pursuant to 28 U.S.C. § 2467, the United States seeks enforcement of the January Order as the basis for the continued restraint of assets contained in the UBS investment accounts nominally held by the Shell Companies in light of a recent Curaçao Court decision vacating an earlier order, dated July 14, 2011 (the “July Order”), which also directed the restraint of these same accounts, but on the

basis that property belongs to dos Santos personally. Because the United States has sought to amend this Court's Restraining Order effectively to substitute the vacated July Order with the valid and currently in-force January Order as the legal basis for the U.S. Restraining Order, the Shell Companies' Motion to Dissolve the Restraining Order is moot and should be denied.

Nor are the Shell Companies entitled to a hearing on the United States' Second Motion to Amend the Restraining Order. As set forth herein and in the Declaration of Jasper Marc Mul of the Public Prosecutor's Office in Curaçao (annexed hereto as Exhibit A), a criminal financial investigation—a proceeding parallel to the criminal investigation into dos Santos and the Shell Companies—has been initiated in Curaçao and there is a procedure pursuant to Curaçao law by which the Shell Companies may challenge the restraint of their U.S.-based assets under the January Order, should this Court enforce it. As they have done successfully with the July Order, the Shell Companies are entitled to pursue a challenge to the January Order through the established process in Curaçao. Accordingly, the Curaçao Court of First Instance (“Curaçao Court”) is the appropriate forum to hear any such challenge to the January Order and to determine the merits of the applicable foreign proceedings upon which this ancillary enforcement action is based.

BACKGROUND

I. The Enforcement Proceeding Pursuant to 28 U.S.C. § 2467(d)(3) Before this Court

The instant ancillary enforcement action initially arose from a formal treaty request by the Curaçao central authority dated July 29, 2011, seeking enforcement of the July Order issued by the Curaçao Court to restrain assets contained in three corporate investment accounts at UBS Financial Services Inc., in Miami, Florida, held for the benefit of Curaçao national, Robertico

Alejandro dos Santos.¹ Dos Santos, his wife, Jacqueline Marguerite Zengerink-dos Santos, and certain British Virgin Islands-registered companies that dos Santos owns or controls, including the Shell Companies, are the principal subjects of a four-year criminal investigation in Curaçao into, among other things, a large-scale illegal gambling and money laundering operation in the Dutch Caribbean.

On August 23, 2011, this Court issued an initial Restraining Order pursuant to 28 U.S.C. § 2467, registering and enforcing the July Order of the Curaçao Court against approximately \$27 million of suspected criminal proceeds contained in the three corporate accounts at UBS. On November 2, 2011, this Court amended the August 23, 2011, Restraining Order to include enforcement of additional Curaçao restraining orders targeting two related UBS investment accounts held by dos Santos and his wife in their own names with a value of approximately \$1.6 million.²

Pursuant to a fourth mutual legal assistance request from Curaçao dated February 1, 2012, and an official letter from the Public Prosecutor dated April 5, 2012, the United States

¹ See Treaty Between the United States of America and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters, U.S.-Neth., art. 1, June 12, 1981, 35 U.S.T. 1361 (obligating the parties to afford mutual criminal assistance in investigations and prosecutions); Agreement Between the Government of the Kingdom of the Netherlands and the Government of the United States of America Regarding Mutual Cooperation in the Tracing, Freezing, Seizure and Forfeiture of Proceeds and Instrumentalities of Crime and the Sharing of Forfeited Assets, U.S.-Neth., arts. 2-3, Nov. 20, 1992, T.I.A.S. No. 12,482 (obligating the parties to “institute provisional measures, such as freezing and seizure” and to “take all measures to enforce a forfeiture order of a court of the requesting Party affecting proceeds and instrumentalities of crime”). Both accords apply to Curaçao, which formally adopted them following its independence and the dissolution of the Netherlands Antilles in October 2010.

² The United States moved to amend the August 23, 2011, Restraining Order pursuant to a second mutual legal assistance request from Curaçao, dated September 6, 2011, which requested enforcement of additional restraining orders issued by the Curaçao Court on September 1, 2011, against the two UBS accounts held by dos Santos and his wife (the “September Orders”).

applied to this Court for the registration and enforcement of a supplemental restraining order – the January Order – issued by the Curaçao Court. *See* Second Motion to Amend, DN 8. The January Order, certified for enforcement by the Assistant Attorney General on April 5, 2012, specifically targets the three corporate investment accounts at UBS held in the names of the Shell Companies and Caribbean Investment Group Ltd.,³ rather than restraining them as assets owned or controlled by dos Santos. As a result, the assets subject to the January Order, as well as their criminal origin, remains the same. The United States’ Second Motion to Amend is pending.

II. The Curaçao Proceedings

On June 16, 2011, upon the application of the Public Prosecutor’s Office (“PPO”), the Curaçao Court issued an authorization for the Public Prosecutor to conduct a formal, criminal financial investigation pursuant to Article 177a of the Code of Criminal Procedure of Curaçao, for the purpose of determining the gains criminally obtained by dos Santos and other named suspects in the criminal investigation in anticipation of confiscation (i.e. forfeiture) thereof, pursuant to Article 1:77 of the Criminal Code (formerly, Article 38e of the Netherlands Antilles Criminal Code). *See* Mul Decl. ¶ 22. With this authority, the Public Prosecutor began a parallel, asset-focused investigation, known in Curaçao as a *Strafrechtelijk Financieel Onderzoek* (“SFO”), in connection with the criminal investigation of dos Santos and others for, *inter alia*, money laundering, forgery, and tax fraud. *See* Mul Decl. ¶¶ 15-21. The Curaçao Court’s authorization to the Public Prosecutor on June 16, 2011, constitutes an express acknowledgment by the Court that there is reasonable suspicion to believe that dos Santos has committed felonies that are punishable by four or more years imprisonment or other crimes that have generated

³ The assets contained in Caribbean Investment Group Ltd.’s UBS account were transferred in their entirety to the UBS Tula Finance Ltd. account, a fact that the Curaçao authorities learned after commencing their criminal financial investigation.

substantial illicit proceeds. *See* Mul Decl. ¶¶ 16-17. The SFO is initiated to determine whether any assets have been criminally obtained, and serves as the foundation for the post-conviction forfeiture proceeding. *See* Mul Decl. ¶¶ 18-19. Under Curaçao law, a forfeiture order can only be issued by the Court once a criminal defendant has been convicted, and the assets identified and restrained as part of the SFO serve as the basis for any such forfeiture order. *Id.*

On the basis of evidence obtained during authorized searches and additional investigation conducted by law enforcement, the PPO filed a request with the Curaçao Court pursuant to Article 129a of the Code of Criminal Procedure of Curaçao to seize the assets contained in the three corporate investment accounts at UBS held in the names of Caribbean Investment Group Ltd., Ponsford Overseas Limited, and Tula Finance Ltd., for the benefit of dos Santos. *See* Mul Decl. ¶¶ 31-32, 35. On July 14, 2011, the Curaçao Court granted the PPO's request and entered the July Order authorizing the seizure of funds contained in the three UBS accounts. *See* Mul Decl. ¶ 36.

Because the investigation revealed that dos Santos owned or controlled assets in the United States, the Public Prosecutor properly applied for an order from the Curaçao Court under Article 119a.⁴ *See* Mul Decl. ¶ 26. Article 119a provides that when a felony or any crime producing a significant monetary benefit is suspected, property can be restrained to preserve

⁴ In a purely domestic SFO, the Public Prosecutor himself has the authority under Article 119 of the Curaçao Code of Criminal Procedure to restrain evidence and suspected criminal proceeds, as is common for public prosecutors in many non-American criminal justice systems. *See* Code of Criminal Procedure of Curaçao, Art. 119:

Seizure –

1. Open to seizure are all objects and claims that may be conducive to disclose the truth or to demonstrate criminally obtained gains, within the meaning of Article 38e of the Criminal Code of the Netherlands Antilles.
2. Also open to seizure are all objects and claims the confiscation or forfeiture thereof may be ordered.

criminally obtained assets that may be subject to Article 1:77 forfeiture.⁵ In turn, Article 1:77 is Curaçao's confiscation provision which permits the forfeiture of criminally obtained gains identified through an SFO belonging to a suspect who has been convicted of a felony. *See* Mul Decl. ¶ 14. Article 1:77 confiscations follow a criminal conviction, are instituted by application of the Public Prosecutor, and result in a separate judicial decision granting or denying the forfeiture. In anticipation of an eventual conviction and to preserve the availability of assets for forfeiture, the Public Prosecutor sought and obtained authorization from the court to open an SFO, commenced an investigation to determine whether assets were criminally obtained by the suspects, and sought and obtained four separate authorizations for seizure from the examining judge in charge of the execution of criminal cases at the Curaçao Court.⁶ *See* Mul Decl. ¶¶ 19-22, 31. The opening of an SFO initiates forfeiture proceedings, because Article 1:77 post-

⁵ *See* Code of Criminal Procedure of Curaçao, Article 119a(2):

Seizure –

...

In case of suspicion of or sentence on account of a felony, which according to legal classification is punishable with a term of imprisonment of a maximum of four years or more, or a felony, through which a benefit in money of some importance can be obtained, *objects can be confiscated to maintain the right of recovery for the obligation which, on account of that felony, is to be imposed to pay the Land [Kingdom] an amount of cash to withdraw the criminally obtained assets, as referred to in article 38e of the Criminal Code of the Netherlands Antilles.*

(emphasis added).

⁶ The first authorization was issued on July 14, 2011, directing the seizure of assets contained in the three corporate investment accounts at UBS. The United States concedes that the July Order is no longer in effect. The second and third authorizations were issued on September 1, 2011, directing the seizure of assets contained in two investment accounts held at UBS by dos Santos and his wife. These authorizations are not at issue in any motion pending before this Court. The fourth authorization was issued on January 19, 2012, directing the seizure of assets held by Caribbean Investment Group Ltd. and the Shell Companies as named suspects in the investigation.

conviction confiscation necessarily relies upon the information obtained in and the assets preserved during the course of the SFO. *See* Mul Decl. ¶ 20.

On December 15, 2011, dos Santos' Curaçao counsel filed a motion in the Curaçao Court to lift the July Order pursuant to Article 150 of the Curaçao Criminal Code. On January 12, 2012, the Public Prosecutor applied to the Curaçao Court on the grounds that the Shell Companies and, earlier, Caribbean Investment Group Ltd., were formally named as suspects in the investigation. The Curaçao Court entered the January Order on the basis of the Public Prosecutor's application and the evidence presented in the proces-verbal. Upon issuance of this order, the Public Prosecutor invited Curaçao counsel for the Shell Companies to challenge the January Order as part of the same Article 150 proceeding in which their complaint against the July Order restraining the same assets was then pending. *See* Mul Decl. ¶¶ 43, 46-47. The Shell Companies' Curaçao counsel declined. *See* Mul Decl. ¶ 48.

On February 22, 2012, Curaçao counsel for the Shell Companies (who also represents dos Santos) filed two additional motions to lift the July Order—this time, on behalf of the Shell Companies rather than on behalf of dos Santos in his personal capacity. . *See* Mul Decl. ¶ 42. On February 29, 2012, arguments were heard on all three motions filed by Curaçao counsel in opposition to the July Order. *See* Mul Decl. ¶ 48. On March 14, 2012, Curaçao counsel for the Shell Companies and Caribbean Investment Group Ltd. challenged the January Order by filing three petitions pursuant to Article 43, when Article 150 explicitly provides for complaints against seizures. *See* Mul Decl. ¶ 49.

On April 4, 2012, the Curaçao Court issued two decisions (the "April 4th Rulings") addressing challenges to both the July Order and the January Order. Translated versions of the April 4th Rulings are annexed hereto as Exhibit B. With respect to the three complaints against

the July Order, the court held that dos Santos' *personal* challenge was inadmissible because the seizure affected the Shell Companies. *See* Exhibit B; Mul Decl. ¶ 52. However, the Court sustained the challenge by the Shell Companies because the Public Prosecutor had not shown, beyond a reasonable doubt, that the seized assets did not belong to them.⁷ *See* Mul Decl. ¶ 51. Thus, the July Order was vacated by the Curaçao Court.

The second April 4th decision held that the Article 43 petitions of the Shell Companies and Caribbean Investment Group Ltd. were inadmissible because they were submitted under an inapplicable provision of law. *See* Exhibit B; Mul Decl. ¶ 54. As the Curaçao Court explained, Article 43 petitions are not the proper vehicle by which to challenge a validly issued seizure authorization under the doctrine of exhaustion of remedies. *See* Exhibit B. Instead, the Curaçao Court points to Article 150 as the provision allowing complaints against seizures. *Id.* The Curaçao Court references the January Order in section 1.1 of its second decision, but does not lift or in any way modify the validity of that order. *Id.* To date, the Shell Companies have not filed the proper complaints prescribed by Article 150 of Curaçao's Criminal Code in order to challenge the January Order.⁸

⁷ Under Curaçao civil law, assets placed in the name of a corporation are strongly presumed to be owned by that corporation and the Public Prosecutor bears the burden of showing otherwise. Because the Public Prosecutor filed for non-disclosure in the dos Santos' investigation, and because dos Santos had not yet been arrested and confronted with evidence establishing that he in fact owns and controls the corporate accounts at UBS, the Public Prosecutor was unable to introduce such evidence to rebut the defense's challenge to the July Order. *See* Mul Decl. ¶¶ 39, 53. Now that dos Santos has been arrested and confronted with evidence obtained during the course of the criminal investigation, the Public Prosecutor is able to present such evidence to the issuing judge in the event of any challenge to the January Order to support findings that dos Santos and the Shell Companies have engaged in money laundering and other criminal conduct.

⁸ The proper procedure, the filing of a complaint under Article 150, should be familiar to Shell Companies' Curacao counsel as this is the procedure by which they successfully challenged the July Order.

On April 4, 2012, dos Santos was arrested in Curaçao, in connection with the PPO's ongoing investigation, for money laundering, forgery of illegal lottery tickets, and tax fraud. *See* Mul Decl. ¶¶ 87-89. He has been released on the condition that he continues to make himself available for questioning. *See* Mul Decl. ¶ 87. The United States has been informed that Curaçao law enforcement authorities have interrogated dos Santos on multiple occasions since the time of his arrest, and he has admitted, among other things, that he is indeed the sole beneficial owner of the Shell Companies.

On April 5, 2012, the PPO sent an official letter notifying the United States of the Curaçao Court's April 4th Rulings and renewing its request that the United States seek to amend this Court's Restraining Order to enforce the January Order. *See* Mul Decl. ¶ 39.

The April 4th Rulings do not affect the September Orders restraining the personal accounts of dos Santos and his wife. Those orders remain in effect.

ARGUMENT

I. The United States Has Sought to Amend the Restraining Order to Enforce a Valid Foreign Order Pursuant to Section 2467 and the Shell Companies' Motion to Dissolve Is Therefore Moot

The Shell Companies' motion to dissolve the restraining order is moot and should be denied. The United States does not dispute that the July Order has been vacated and can no longer serve as the basis for the restraint of approximately \$27 million in assets contained in investment accounts nominally held by the Shell Companies for the benefit of dos Santos. However, the United States timely moved to amend the Restraining Order to maintain the restraint of the UBS investment accounts on the basis of a current and valid order issued by the Curaçao Court on January 19, 2012, and certified by the Assistant Attorney General on April 5, 2012.

Section 2467 authorizes the United States to enforce restraining orders and forfeiture judgments on behalf of other jurisdictions that are issued as a result of the applicable criminal or forfeiture proceedings initiated pursuant to the laws of the jurisdiction requesting the restraint. *See* 28 U.S.C. § 2467(d)(3)(A)(i) (“To preserve the availability of property subject to civil or criminal forfeiture under foreign law, the Government may apply for, and the court may issue, a restraining order *at any time before or after the initiation of forfeiture proceedings* by a foreign nation.”) (emphasis added). The purpose of § 2467 is to enable the United States to render forfeiture assistance, notwithstanding the fact that the United States and a jurisdiction requesting treaty assistance may have very different legal systems. In recognition of this, on December 22, 2010, Congress amended § 2467(d)(3) to provide that references to the phrase “civil forfeiture” or the “filing of a complaint” in 18 U.S.C. § 983(j)(1)(A), “shall be deemed to refer to the applicable foreign criminal or forfeiture proceedings.” 28 U.S.C. § 2467(d)(3)(A)(ii)(II)(aa). Section 2467, as amended, now clearly provides that once the relevant “foreign criminal or forfeiture proceedings” are pending, no pre-restraint hearing is required, and a U.S. restraining order can be issued, as in this case, against assets located within the jurisdiction of the United States based upon the Attorney General’s certification of a foreign court order. *See* § 2467(b)(2) (certification by the Attorney General or his designee) and § 2467(d)(3)(A)(ii)(II)(aa) (referencing foreign criminal or forfeiture proceedings).

The Shell Companies erroneously rely on the Curaçao Court’s first April 4th Ruling vacating the July Order to support their request for the immediate release of the assets nominally held by the Shell Companies at UBS without regard to the valid, currently in-force January Order. As set forth in the Mul Declaration, the first April 4th Ruling does not in any way nullify the validity or effect of the January Order. *See* Mul Decl. ¶ 55. Indeed, the Curaçao Court

issued a second decision on April 4th denying the Shell Companies' challenge to the January Order as inadmissible due its reliance on Article 43.⁹ The second April 4th Ruling makes it clear that the Shell Companies will have to file separate complaints under Article 150 of the Curaçao Criminal Code to properly challenge the seizure of their assets under the January Order. To date, the Shell Companies have not pursued this remedy, and the January Order remains in effect.

In response to the Curaçao Court's first April 4th Ruling vacating the July Order and pursuant to the formal request of the central authority for Curaçao, the United States has moved to amend the Restraining Order to register and enforce the valid January Order and to continue the restraint of assets subject to this Court's initial restraining order issued on August 23, 2011. The Assistant Attorney General of the United States has certified the January Order, finding that it meets the criteria for enforcement pursuant to § 2467. *See* § 2467(b)(2) (the Attorney General's decision to certify that enforcement of a foreign order is "in the interest of justice" is not subject to review). Unless the January Order is vacated by the Curaçao Court, or unless this Court determines that the Curaçao Court acted in a manner incompatible with due process or lacked subject matter jurisdiction to issue the restraining order, or that the January Order was obtained by fraud, the United States' request to maintain the restraint of assets held at UBS by the Shell Companies on the basis of the January Order should be granted. *See* 28 U.S.C. § 2467(d)(3)(A)(ii)(I) and Second Motion to Amend, DN 8. Because the United States has timely moved to amend the Restraining Order based on the valid, certified January Order, the Shell

⁹ The Shell Companies' characterization of the Curaçao Courts holding, that "the challenge to the entry of the January 19, 2012 authorization was not ripe, because no assets have been restrained pursuant to that authorization," is inaccurate. *See* Mem. in Sup. of Mot. to Dissolve 5, DN 9. Article 150 provides the opportunity to challenge a seizure authorization by the Curaçao court, and the fact that a United States court has not yet restrained any assets on the basis of enforcement of the January Order has no bearing on the Order's validity (or ability to be challenged) in its issuing country.

Companies' Motion to Dissolve is moot and should therefore, be denied.¹⁰

II. The Shell Companies Are Not Entitled to a Hearing on the United States' Second Motion to Amend the Restraining Order

Section 2467 provides that the Government may seek enforcement of a foreign restraining order “*at any time before or after the initiation of forfeiture proceedings by a foreign nation.*” 28 U.S.C. § 2467(d)(3)(A)(i) (emphasis added). A restraining order issued pursuant to § 2467 must be issued “in a manner consistent with subparagraphs (A), (C), and (E) of paragraph (1) and the procedural due process protections” under 18 U.S.C. §983(j). 28 U.S.C. § 2467(d)(3)(A)(ii)(I). For purposes of applying § 983(j) to restraining orders issued pursuant to § 2467, references civil forfeiture or the filing of a complaint “shall be deemed to refer to the applicable foreign criminal or forfeiture proceedings.” § 2467(d)(3)(A)(ii)(II)(aa).

The Shell Companies conclude without explanation that 18 U.S.C. § 983(j)(1)(A) does not apply to the instant action. *See* Mem. in Sup. of Mot. to Dissolve 10, DN 9. Instead, the Shell Companies contend that this Court should apply § 983(j)(1)(B) which, after notice to persons appearing to have an interest in the property and an opportunity for a hearing, provides for a 90-day restraining order based upon certain showings. However, “983(j)(1)(B) applies at the pre-filing stage of ‘foreign criminal or forfeiture *proceedings*’ where there is no proceeding of any type yet pending in the foreign country in which to challenge the restraint of forfeitable assets.” *See* Memorandum Order at 3, *In re* Enforcement of a Restraining Order by the High Court (*Luan*), Case No. 1:11-mc-00208(GK) (D.D.C. Apr. 4, 2012), DN 14 (attached hereto as Exhibit C) (emphasis added). Because proceedings have been instituted in Curacao in which the

¹⁰ The criminal proceedings in Curacao would be prejudiced if the current Restraining Order were dissolved prior to this Court's adjudication of the pending Second Motion to Amend. The assets subject to restraint are funds and securities that could be easily dissipated by the criminal defendant, dos Santos, who controls the Shell Companies' UBS accounts.

Shell Companies may challenge the January Order, their argument that they are entitled to a hearing pursuant to § 983(j)(1)(B) must fail.

As demonstrated in the United States' initial application for a restraining order and the Mul Declaration, dos Santos and three of his companies, including the Shell Companies, are the primary suspects in an ongoing, court-authorized criminal financial investigation (the SFO) into suspected money laundering and other criminal activities. On April 4, 2012, dos Santos was arrested in Curaçao and he has since been interrogated on multiple occasions (with counsel present), during which he has confessed to committing multiple criminal violations. Pursuant to Article 119a, the Curaçao Court is authorized to issue a restraining order against foreign assets to preserve criminal proceeds that may be subject to Article 1:77 forfeiture whenever a felony or any crime producing a significant monetary benefit is suspected.

In the instant action, the initiation of the “applicable foreign criminal or forfeiture proceedings” referenced in § 2467(d)(3)(A)(ii)(II)(aa) occurred in June 2011, when the Curaçao Court authorized the opening of a parallel criminal financial investigation, the SFO, into potentially significant ill-gotten gains suspected to be generated by one or more felonies dos Santos is suspected of having committed. Upon accepting the allegations made by the PPO based on evidence obtained during the course of a nearly four-year investigation, the UBS assets belonging to Caribbean Investment Group Ltd. and the Shell Companies were ordered restrained by the Curaçao Court, as they are now subject to the SFO and must be preserved and made available for satisfying any eventual confiscation order under Article 1:77. Contrary to the Shell Companies' argument, § 983(j)(1)(B) has no application here as the “pre-filing” circumstances that would trigger this provision are not present.

Moreover, § 2467 requires that foreign restraining orders “shall be issued *in a manner*

consistent with . . . the procedural due process protections for a restraining order under Section 983(j) of title 18.” (emphasis added). *See* 28 U.S.C. § 2467(d)(3)(A)(ii)(I). Thus, § 2467 does not require that the foreign country follow the specific procedures or pleading requirements applicable to United States civil forfeiture filings as mandated under United States law. To require a foreign restraining order entered in a foreign criminal forfeiture proceeding instituted under foreign law to comply with all the terms set forth in § 983(j) and other parts of the U.S. civil forfeiture statutory scheme would run afoul of the plain language of § 2467 and clear Congressional intent. Such a procedure for the ancillary action to enforce a foreign order is appropriate as it would be illogical to expect that foreign law or procedure would exactly mirror the statutory procedures of U.S. law.

The January Order issued by the Curaçao Court is a valid pre-trial restraining order, pursuant to the laws of Curaçao, against the criminal suspects, including, *inter alia*, the Shell Companies and their sole beneficial owner, dos Santos. The Shell Companies may challenge the January Order in the applicable foreign proceeding – the criminal proceeding and parallel SFO currently pending in Curaçao – and nothing in the second April 4th Rulings preclude them from doing so. Indeed, the second April 4th Ruling specifically provides that “[t]he Court is of the opinion that Article 43 of the Code of Criminal Procedure is not available for the relief sought, now that the Code of Law, in Article 150 of the Code of Criminal Procedure, contains a provision regarding complaints about seizures.” *See* Exhibit B, April 4th Rulings. The Shell Companies have exercised this right of challenge available under Article 150 successfully against the July Order, and there is no reason why they cannot now follow the same procedure to challenge the January Order.

III. The Shell Companies' Remedy to Challenge the January Order Rests with the Curaçao Court

The Shell Companies fail to appreciate that the instant matter pending in this Court—the United States' Second Motion to Amend the Restraining Order—is an ancillary enforcement proceeding filed to protect the Curaçao Court's jurisdiction over the captioned assets by restraining and preserving those assets located in the United States pending the conclusion of the Curaçao criminal and forfeiture proceedings. This is not a domestic forfeiture action in which the United States is seeking restraint of the captioned assets under U.S. law, and the statutory scheme of § 2467 does not contemplate having a U.S. court determine the forfeitability of such assets under Curaçao law. Indeed, § 2467 contemplates that a challenge to a foreign order on the merits should be heard in the foreign court, and expressly provides that enforcement of a foreign restraining order may not be challenged "on any ground that is the subject of parallel litigation involving the same property that is pending in a foreign court." 28 U.S.C. § (d)(3)(C).

As directed by the statute, if the basis for the January Order is at issue, the Shell Companies may contest the grounds for issuance of that order in the pending proceedings in Curaçao, as the Public Prosecutor has invited them to do. The Shell Companies have the legal right and opportunity to appeal the January Order in the Curaçao Court in the same manner that they successfully challenged the July Order. The Shell Companies, who are represented by dos Santos' local counsel in the Curaçao proceedings, may avail themselves of the legal remedy provided in Article 150 and contest the merits of the January Order in the appropriate legal forum, rather than attempt to circumvent that process by challenging it in the instant U.S. enforcement action.

CONCLUSION

The limited grounds on which the Shell Companies may challenge a foreign restraining

Washington, D.C. 20005
Telephone: (202) 514-1263
Fax: (202) 514-5522

Attorneys for Applicant
UNITED STATES OF AMERICA