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Crime Doesn't Pay, But Defendants Still Left with the Bill



The U.S. Court of the Appeals for the Ninth Circuit [recently held](#) that criminal defendants who gain unlawful proceeds from certain offenses must pay back those proceeds—even when they no longer possess them.

More specifically, the government may obtain "personal money judgments" that can be satisfied through the defendants' untainted (and currently unidentified or even future) assets. This ruling—reaffirming prior case law recently called into question—will impact defendants in cases involving economic crimes and forfeiture. ***The District Court*** In *United States v. Nejad* (Case No. 18-30082), the defendant committed several offenses through which he gained over \$150,000 in illicit proceeds. At the time of his conviction, though, the defendant no longer possessed the proceeds from his crimes. Rather than seeking forfeiture of identifiable "substitute property," as the government often does, the government instead requested—and received—a personal money judgment against the defendant for a total amount of approximately \$150,000. ***The Ninth Circuit*** On appeal to the Ninth Circuit, the defendant argued that the district court erred by awarding the government a personal money judgment through which it could collect in the future. The defendant asked the Ninth Circuit to overrule its prior precedent that allowed such personal money judgments, citing the U.S. Supreme Court's recent opinion in [Honeycutt v. United States, 137 S. Ct. 1626 \(2017\)](#). In *Honeycutt*, the Supreme Court held that courts may not impose joint-and-several liability for certain forfeiture judgments given that the governing forfeiture law did not *explicitly* authorize joint-and-several liability. Relying on *Honeycutt*, the defendant in *Nejad* similarly argued that the governing forfeiture law did not *explicitly* authorize personal money judgments and thus the Government could not obtain one. The Ninth Circuit, in an opinion by Judge Watford, rejected this argument. The Court reasoned that its prior precedent permitting personal money judgments is not "clearly irreconcilable" with *Honeycutt*, and that courts may award personal money judgments against certain criminal defendants when the defendants no longer possess the illicit proceeds of their crimes. The Ninth Circuit also clarified the process for the government to obtain and enforce a personal money judgment. First, the government must identify some untainted property in order to enforce a personal money judgment. The government then must return to the district court and establish certain statutory requirements applicable to criminal forfeiture. Only then may the court "amend the forfeiture order to include the newly identified substitute property." ***The Nejad Opinion in***

Future White Collar Cases Although the Ninth Circuit's ruling may be viewed as a tepid endorsement that invites other challenges to the Circuit's forfeiture case law, *Nejad* is expected to embolden prosecutors who wish to seek forfeiture of proceeds that defendants no longer possess. Absent further challenge, the government now may pursue a defendant's assets (and future assets) in lieu of the missing proceeds from the crime.

Authors

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