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8 **United States District Court**
9 **Central District of California**
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 \$208,420.00 IN U.S. CURRENCY,

15 Defendant.
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Case No. 2:20-CV-01156-ODW (RAOx)

**ORDER DENYING CLAIMANT'S
MOTION TO STAY CASE [23]**

17 **I. INTRODUCTION**

18 On February 5, 2020, Plaintiff United States of America (“the Government”)
19 initiated this *in rem* forfeiture action against Defendant \$208,420.00 in U.S. Currency
20 (“Defendant Currency”). (*See* Compl., ECF No. 1.) Claimant Stephanie Smith
21 contends that the Defendant Currency constitutes lawful rent proceeds and moves for
22 a mandatory stay pursuant to 18 U.S.C. § 981(g)(2). (*See generally* Mot. Stay
23 (“Motion” or “Mot.”), ECF No. 23.) For the following reasons, Smith’s Motion is
24 **DENIED.**¹
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28 ¹ Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 **II. BACKGROUND**

2 In 2017, law enforcement officers received information that three commercial
3 properties Smith owned in San Bernardino, California, were being used for illegal
4 indoor marijuana growing operations. (Compl. ¶¶ 8, 11.) Subsequently, officers
5 executed a search warrant on the properties and discovered approximately 35,221
6 mature marijuana plants. (*Id.* ¶ 13.) On February 20, 2019, officers searched Smith’s
7 residence and found the Defendant Currency in the backyard inside an ammunitions
8 can. (*Id.* ¶ 20.) The Government alleges the Defendant Currency “constitutes
9 traceable proceeds of illegal narcotic transactions and/or was involved in illegal
10 money laundering transactions.” (*Id.* ¶ 21.)

11 The Government initiated this action against the Defendant Currency, asserting
12 that it is subject to forfeiture based on its connection to unlawful activity. (*See*
13 *generally* Compl.) Smith moved for a mandatory stay, claiming there is a related
14 criminal investigation against her, and this civil forfeiture action burdens her Fifth
15 Amendment right against self-incrimination. (*See generally* Mot.) Smith also claims
16 the Defendant Currency “constitutes lawful rent proceeds.” (*See* Am. Verified Claim,
17 ECF No. 26.) The Motion is fully briefed. (*See* Opp’n, ECF No. 25; Reply, ECF
18 No. 27; Surreply, ECF No. 33.) On August 12, 2020, the Court granted Smith’s
19 ex parte application to stay discovery pending resolution of this Motion. (*See* Order,
20 ECF No. 24.)

21 **III. LEGAL STANDARD**

22 Under the Civil Asset Forfeiture Reform Act of 2000, courts must grant a
23 claimant’s request to stay a civil forfeiture action where the claimant shows that she:
24 (1) “is the subject of a related criminal investigation or case”; (2) “has standing to
25 assert a claim in the civil forfeiture proceeding”; and (3) failure to stay the case will
26 burden her right against self-incrimination in the related criminal investigation or case.
27 *See* 18 U.S.C. § 981(g)(2).

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IV. DISCUSSION

Smith contends that the Court must stay this forfeiture action because, among other things, she is the subject of a criminal investigation that is closely related to this case. (*See* Mot. 5–6.) The Government counters, asserting that Smith has failed to demonstrate that she is the subject of any criminal investigation. (*See* Opp’n 6–7.) The Government is correct.

Pursuant to 18 U.S.C. § 981(g)(4): “the terms ‘related criminal case’ and ‘related criminal investigation’ mean *an actual prosecution or investigation in progress at the time at which the request for the stay . . . is made.*” (emphasis added). Smith submits several documents to support her claim that she is currently the subject of a related criminal investigation, including: (1) notices of violation from the City of San Bernardino served in November 2017; (2) copies of discovery requests and responses concerning an action in state court that were served in 2018; (3) a search warrant from the San Bernardino Police dated February 19, 2019; and (4) the docket from a criminal case closed in June 2019. (*See* Decl. of Ben Eilenberg, Exs. A–G, ECF Nos. 23-2–23-8.) However, none of these documents demonstrate an actual investigation or case in progress when Smith moved to stay this civil forfeiture action. *Cf. United States v. Proceeds from Sale of a Condo. Located at Ritz-Carlton in Los Angeles, California*, No. SACV15CV01110JVSDFMX, 2018 WL 6318833, at *3 (C.D. Cal. Oct. 23, 2018) (finding a mandatory stay warranted where the claimants demonstrated they were indicted in a closely related criminal case just two months before moving to stay the civil forfeiture proceeding).

The Government correctly notes that, “at best, [Smith] has shown that the San Bernardino Police Department conducted a criminal investigation of [her] between November 2017 and June 2019.” (Opp’n 7.) Relevantly, the Government represents that “there is no actual federal criminal drug investigation in progress regarding [Smith].” (*Id.*) Thus, there is no evidence that any agency—state or federal—was conducting a related criminal investigation or case involving Smith after June 2019.

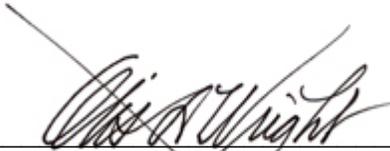
1 Smith's failure to demonstrate the existence of a related ongoing criminal
2 investigation or case in progress when she filed the Motion defeats her claim that she
3 is entitled to a mandatory stay.² (See Mot. 5-6.) Accordingly, the Motion is
4 **DENIED.**

5 **V. CONCLUSION**

6 For the foregoing reasons, the Court **DENIES** Smith's Motion. (ECF No. 23.)
7 Additionally, the stay of discovery in this action is hereby **LIFTED.**

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9 **IT IS SO ORDERED.**

10
11 February 18, 2021

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15 **OTIS D. WRIGHT, II**
16 **UNITED STATES DISTRICT JUDGE**

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² Based on the Court's determination that a stay is not warranted, it need not consider Smith's remaining arguments concerning standing and the Fifth Amendment.