

In this case, however, an excessive fines analysis is not just premature – it is irrelevant. The United States asserts that the defendant property in this case is forfeitable as proceeds of criminal activity. See Complaint, Counts I & II. The excessive fines analysis does not apply to forfeiture of criminal proceeds. See United States v. Real Property Located at 22 Santa Barbara Dr., 264 F.3d 860, 874-75 (9th Cir. 2001) (the Eighth Amendment does not apply to the forfeiture of drug proceeds; all property traceable to such proceeds is forfeitable even though the property doubled in value due to appreciation); United States v. Powell, 2 Fed. Appx. 290, 294 (4th Cir. 2001) (forfeiture of proceeds is never excessive; for this purpose, proceeds and property traceable to proceeds are the same thing); United States v. Betancourt, 422 F.3d 240, 251 (5th Cir. 2005) (the fact that property acquired with drug proceeds has appreciated in value has no Eighth Amendment significance; drug dealer who used fraction of proceeds from \$76,000 drug offense to purchase lottery ticket must forfeit all \$5.4 million in lottery winnings); United States v. 1948 South Martin Luther King Dr., 270 F.3d 1102, 1115 (7th Cir. 2001) (Eighth Amendment does not apply to forfeiture of property purchased with drug proceeds); United States v. One Parcel of Real Property Known as 16614 Cayuga Road, 69 Fed. Appx. 915, 919-20 (10th Cir. 2003) (the forfeiture of proceeds can never be constitutionally excessive); United States v. One Parcel...Lot 41, Berryhill Farm, 128 F.3d 1386 (10th Cir. 1997) (same, collecting cases); United States v. Real Property...Parcel 03179-005R, 287 F. Supp.2d 45, 59-60 (D.D.C. 2003) (forfeiture of property purchased with criminal fraud proceeds does not violate the excessive fines clause even if the property has substantially appreciated in value; to hold otherwise would reward a defendant who invested his criminal proceeds by allowing him to retain the capital gain).

CONCLUSION

For the foregoing reasons, the United States respectfully submits that claimant's Petition to Determine Proportionality should be DENIED. A proposed order is attached.

Respectfully submitted,

/s/ Jeffrey A. Taylor

JEFFREY TAYLOR, DC Bar No. 498610
UNITED STATES ATTORNEY

/s/ William R. Cowden

WILLIAM R. COWDEN, DC Bar No. 426301
VASU B. MUTHYALA, CA Bar No. 210462
Assistant United States Attorneys
Criminal Division, Asset Forfeiture Unit
555 Fourth Street, N.W., Fourth Floor
Washington, DC 20530
(202) 307-0258
william.cowden@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Opposition to be served by means of the Court's ECF system on this 29th of September 2008 upon claimants' counsel of record.

/s/ William R. Cowden

WILLIAM R. COWDEN

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

UNITED STATES OF AMERICA,)	
Plaintiff,)	Civil Action No. 08-1345 (RMC)
)	ECF
v.)	
)	ORDER DENYING PETITION TO
8 GILCREASE LANE, QUINCY)	DETERMINE PROPORTIONALITY
FLORIDA 32351, ET AL.,)	
Defendants.)	
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)	
Thomas A. Bowdoin, Jr.,)	
Bowdoin/Harris Enterprises, Inc. &)	
Adsurfdaily, Inc.,)	
Claimants.)	
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ORDER

Upon consideration of the Petition to Determine Proportionality at the outset of this case, the Opposition thereto, and the entire record herein, it is this _____ day of _____, 2008, HEREBY Ordered that the Petition is DENIED.

ROSEMARY M. COLLYER
United States District Judge