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APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE
COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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December 15, 2025

Rebecca Castaneda
The Castaneda Law Firm, PLLC
506 N ARMENIA AVE
TAMPA, FL 33609

Appeal Number: 23-13776-CC
Case Style: USA v. Michael Prime
District Court Docket No: 8:19-cr-00540-JSM-AAS-1

NO ACTION / DEFICIENCY NOTICE

Notice that no action will be taken on Petition for rehearing en banc (with panel rehearing) filed by Attorney Rebecca Castaneda for Appellant Michael Prime.

Reason(s) no action being taken on filing(s): This case is closed.

No deadlines will be extended as a result of your deficient filing. **If you refile a corrected document out of time (after its due date), it must be accompanied by an appropriate motion, i.e.,** a motion to file out of time, a motion to reinstate if the case has been dismissed, and/or a motion to recall the mandate if the mandate has issued.

CORRECTIVE ACTION

For motions for reconsideration or petitions for rehearing that are not permitted, no corrective action is required or permitted. Your filing will not be considered.

For mistaken filings, to have your document considered, **you must file the document in the correct court.**

For CIP deficiencies, you must file a CIP on the Court's docket, complete the web-based CIP, or both before or at the same time you refile your document. For all other deficiencies, to have your document considered, you **must refile the entire document** after all the deficiencies identified above have been corrected and you **must include** any required items identified above **along with** the refiled document. No action will be taken if you only provide the missing items without refileing your entire document.

In addition, **if the corrected document is refiled out of time (after its due date), it must be accompanied by an appropriate motion, i.e.,** a motion to file out of time, a motion to reinstate if the

case has been dismissed, and/or a motion to recall the mandate if the mandate has issued.

Clerk's Office Phone Numbers

General Information: 404-335-6100

Attorney Admissions: 404-335-6122

Case Administration: 404-335-6135

Capital Cases: 404-335-6200

CM/ECF Help Desk: 404-335-6125

Cases Set for Oral Argument: 404-335-6141

Notice No Action Taken

APPENDIX B

FOR PUBLICATION

**IN THE UNITED STATES
COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 23-13776

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

MICHAEL PRIME,
Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:19-cr-00540-JSM-AAS-1

Before JILL PRYOR, GRANT, and MARCUS, Circuit
Judges.

GRANT, Circuit Judge:

Michael Prime was arrested in 2019 for counterfeiting and identity theft after police found piles of evidence connected to his crimes: fake credit cards, fake driver's licenses, laptops, and the like. Over four years later, he requested the return of an orange external hard drive that was seized, claiming that it

contained the cryptographic keys necessary to access close to 3,443 bitcoin—now worth over \$345 million.

The problem? At least three times before—in his financial disclosure statement, in his interview with the probation office, and at his sentencing hearing—Prime had represented that he owned very little bitcoin. And the government had relied on these representations, abandoning its search for the bitcoin. Prime’s story remained the same when he went to recover his devices after he got out of prison: he never told the government one of the hard drives contained valuable bitcoin. And the government, consistent with its ordinary practices and after giving notice to Prime, wiped what devices it could. The rest, including the hard drive in question here, were destroyed. For years, Prime denied that he had much bitcoin at all. And bitcoin was not on the list when he sought to recover missing assets after his release from prison. Only later did Prime claim to be a bitcoin tycoon.

By then it was too late. Whether it contained bitcoin or not, the hard drive had been destroyed by the government. Prime now claims that the United States, because it destroyed the hard drive containing his bitcoin key, owes him roughly \$345 million in bitcoin. The district court, citing Prime’s delays and denials, concluded that laches barred his bitcoin request. We agree and affirm.¹

¹ We deny the government’s motion for summary affirmance as moot.

I.

Responding to a domestic dispute, deputies from the Hillsborough County Sheriff's Office found Michael Prime on the roof of his house holding a loaded 9mm handgun. He told them his name was "Johnathan Strong" and offered up a counterfeit Washington driver's license bearing that name. But after entering the home with consent from Prime's wife, deputies saw "stacks of credit cards, an embosser, and other items used to make counterfeit credit cards." And a search of the house unearthed still more evidence:

- 1,744 counterfeit credit and debit cards;
- 1,490 blank cards of varying color, some containing magnetic stripes and debit card chips;
- 37 counterfeit driver's licenses and IDs;
- counterfeit social security card templates;
- paper containing embedded blue and red fibers similar to U.S. currency paper;
- laptops, tablets, hard drives, and electronic media storage devices; and
- card printers, a laminator, a credit card cutter, and a laser engraver.

The electronic devices, in turn, housed nearly 300 credit and debit card numbers, images of driver's

licenses and social security cards, and more. These devices also revealed dark-web sales of credit cards and IDs. Plus guns—“unregistered, new, and untraceable,” as Prime’s online listings put it.

After his arrest, Prime admitted to choking his wife, making counterfeit credit cards and IDs, and building Glock-style firearms from parts he purchased online. He admitted that he sold the counterfeit items online and accepted Bitcoin currency as payment. He also explained that he was paid \$1,000 per month in bitcoin to work for a website that sold stolen credit card information. His total bitcoin holdings, he said, had been approximately 3,500 bitcoin, which he had used to pay for assets, including vehicles and boats.

Federal agents then obtained warrants authorizing the seizure of Prime’s cryptocurrency, but their attempts were fruitless. After his first two tries, one agent reported in October 2018, that “no cryptocurrency, private keys or recovery seeds” were found and that “no contents were located or seized from any Coinbase account.” A third attempt in February 2019 fared no better—agents were “unable to gain access” to any “cryptocurrency wallet.”

Given the overwhelming evidence implicating Prime, it is unsurprising that he pleaded guilty to access device fraud, aggravated identity theft, and illegal possession of a firearm. And as part of his November 2019 plea agreement, he agreed to “make a full and complete disclosure of all assets over which [he] exercise[d] control directly or indirectly.” His plea repeated his previous claim to “approximately 3,500

Bitcoin.”

But after the plea, Prime changed his tune—he no longer claimed to own a significant amount of cryptocurrency. In February 2020, as part of an asset investigation, Prime submitted a financial disclosure reporting ownership of only \$200 to \$1,500 in bitcoin. And less than two weeks later, he told the probation office that \$1,500 in the cryptocurrency—amounting to a small fraction of a single bitcoin—was “his only remaining asset.”

Prime’s June 2020 sentencing hearing brought more of the same. In response to the government’s statement that it could not locate any bitcoin, his counsel conceded that Prime’s original estimation of his bitcoin holdings was “not supported by the evidence.” And after acknowledging that the government had a year and a half to “find some great amount of bitcoin,” his attorney admitted that, “frankly, at this juncture [the bitcoin] doesn’t exist other than what [Prime] had from his mining days in Seattle back almost ten years ago, a lot of which was used to purchase the assets that were seized by the Government in this case.”

The district court sentenced Prime to sixty-five months’ imprisonment. He served about two years in prison before he was transferred to a halfway house in July of 2022. Around that time, the Secret Service sent three letters to Prime, telling him that certain electronic devices could be wiped and returned to him if he responded within thirty days with his passwords. Prime responded and asked for a pick-up time. But the

devices never changed hands—three days before he was set to meet with the Secret Service, Prime filed suit instead.

Prime’s motion, framed as a request for counsel and denied by the district court, mentioned “boats and cars”—but not bitcoin or a hard drive. Eventually, Prime secured private counsel and filed another motion, this time seeking the return of an external hard drive that he said contained nearly 3,443 bitcoin. Fed. R. Crim. P. 41(g). The district court denied this motion too, concluding that the property had been “properly destroyed,” that Prime was “not entitled to anything back,” and that laches barred his claim. This is his appeal.

II.

When a district court denies a Rule 41(g) motion, we apply three standards of review. We review conclusions of law de novo, factual findings for clear error, and the “balancing of the equities” for abuse of discretion. *United States v. Howell*, 425 F.3d 971, 973 (11th Cir. 2005); *United States v. De La Mata*, 535 F.3d 1267, 1279 (11th Cir. 2008).

III.

When a litigant seeking the return of property “invokes Rule 41(g) after the close of all criminal proceedings, the court treats the motion for return of property as a civil action in equity.” *Howell*, 425 F.3d at 974. In ruling on that motion, the district court considers “all the equitable considerations in order to

make a fair and just decision.” *Id.* And even if the property has been “lost or destroyed,” the district court retains the “authority to fashion an equitable remedy.” *United States v. Potes Ramirez*, 260 F.3d 1310, 1315 (11th Cir. 2001).

Here, the government raised laches, an “equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed in asserting the claim.” *Laches*, Black’s Law Dictionary (12th ed. 2024); *see also* Restatement (First) of Restitution § 148(1) (A.L.I. 1937). To establish laches, the government must show (1) “a delay in asserting a right or a claim,” (2) that “the delay was not excusable,” and (3) that it caused the government “undue prejudice.” *United States v. Barfield*, 396 F.3d 1144, 1150 (11th Cir. 2005). Check, check, check.

First, Prime failed to assert his claim to the bitcoin for more than three years. In fact, he repeatedly denied it. Although Prime’s 2019 plea agreement recounted his earlier claim that he owned 3,500 bitcoin, his post-plea statements were worlds apart from that assertion. Start with his February 2020 financial disclosure. At that time, he reported owning only \$200 to \$1,500 in bitcoin. Next came his interview with the probation office, where he said that “his only remaining asset” was \$1,500 in bitcoin.

Prime tries to explain away these representations. He now claims that he never specified the amount of bitcoin that he owned in his financial disclosure, instead simply reporting that the market value of a single bitcoin at that time was between \$200

and \$1,500. We don't buy it. For one thing, that valuation is preposterous—the value of a single bitcoin in February 2020 fluctuated between about \$8,500 and \$10,500. For another, Prime promised in his plea agreement that his financial statement and disclosures would be “complete, accurate and truthful” and would include “all assets” in which he had “*any interest*” or over which he exercised “control, directly or indirectly” (emphasis added). In other words, he needed to disclose the amount of bitcoin he owned—not estimate (incorrectly) the contemporaneous value of a single bitcoin.

Also, Prime says that he only reported \$1,500 in bitcoin during his interview with the probation office because he did not have it in his possession at that time. That's why, he says, he did not report his boats and other seized property as assets either. But that explanation is inconsistent with the plea agreement's requirement that he report all assets in which he had “*any interest*” (emphasis added). And Prime's other statements in that interview show that he understood the requirement. He told the probation office that the “two boats and two vehicles” the government had seized “represented the majority of his assets”—something that could not have been true if he also owned bitcoin worth tens of millions of dollars. So he counted those assets even though they were not in his possession at the time.

And we are only halfway through Prime's inconsistent post-plea representations. Consider two more. At sentencing, Prime's attorney acknowledged that his original claim to “some great amount of

bitcoin” was “not supported by the evidence.” In fact, he admitted that the bitcoin was largely nonexistent, “other than what [Prime] had from his mining days in Seattle back almost ten years ago, a lot of which was used to purchase the assets that were seized by the Government in this case.” And in August 2022, when Prime asked the court to appoint counsel to help him request the return of seized items, the motion mentioned boats and cars—but not bitcoin or an orange external hard drive. He would not file his Rule 41(g) motion requesting the return of those items until more than a year later.

All that to say, Prime waited more than three years after his plea to raise any claim at all about the bitcoin he now says was on his hard drive. And in the meantime, he and his attorney repeatedly disclaimed its existence. That is textbook delay; the first laches prong is satisfied.

Second, the delay was not excusable. Prime offers no justification for his repeated assertions that he owned very little bitcoin. Instead, he says the roughly fourteen months between his back-and-forth with Secret Service agents in the summer of 2022 and his Rule 41(g) filing should not count as delay because at that time he was separately communicating with the government about the return of his bitcoin. But even if those alleged communications could have mitigated his filing requirements (which they could not), this time period accounts for less than half of Prime’s delay.

And in any event, the only evidence in the record

of his negotiations with the government does not mention bitcoin or the orange external hard drive. The same is true for the August 2022 motion to appoint counsel—no reference to bitcoin. Put simply, there was no excuse (or even explanation) for Prime’s delay.

Third, and finally, the delay prejudiced the government. Early in the process, the government executed three warrants, but those searches came up empty. Later, the hard drive allegedly containing the bitcoin was destroyed, along with other electronic evidence, because Prime would not cooperate with the government to remove “contraband evidence” contained on his devices.²

We have little difficulty concluding that the government would not have destroyed the hard drive if it had thought that it contained millions of dollars in bitcoin. But now that the hard drive is destroyed, the government cannot return it. To the extent that the bitcoin ever existed (and we have our doubts), the government would now have to find and hand over almost 3,443 replacement bitcoin to make Prime

² The district court found that the hard drive was “destroyed.” On appeal, Prime complains that the government failed to provide evidence of that destruction. And without such evidence, he argues, the district court could not determine whether the bitcoin was destroyed. *See Potes Ramirez*, 260 F.3d at 1314. But Prime forfeited this argument by failing to raise it before the district court. *See Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004).

whole.³ That is prejudice in anyone's book—now to the tune of over \$345 million.

The sum of it is this: Because Prime's inexcusable delay prejudiced the government, laches bars his claim.

* * *

Even if the bitcoin existed—and that's a big if—awarding Prime an equitable remedy here would be inequitable. His delay in claiming a right to the bitcoin and requesting its return bars his suit. We **AFFIRM** the district court's judgment.

³ We need not and do not decide whether the bitcoin would have been subject to forfeiture if it existed.

APPENDIX C

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

8:19-cr-540-JSM-AAS-1

Tampa

November 14, 2023

9:41 a.m.

UNITED STATES OF AMERICA,
PLAINTIFF,

v.

MICHAEL PRIME,
DEFENDANT.

**TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE
JAMES S. MOODY, JR.
UNITED STATES SENIOR DISTRICT JUDGE**

APPEARANCES:

For the Government:

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MS. SUZANNE C. NEBESKY

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App. 15

Tampa, FL 33602-4798

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

(Proceedings commenced at 9:41 a.m.)

THE COURT: Good morning. Identify yourselves
for the record, please.

MS. RIEDEL: Good morning, Your Honor. Mandy
Riedel and Suzanne Nebesky for the United States.

MS. CASTANEDA: Good morning, Your Honor.
Rebecca Castaneda for Mr. Prime who is seated to my
right. And at counsel table with me is Joel Salinas, our
paralegal.

THE COURT: This is your motion. You may
proceed.

MS. CASTANEDA: Thank you, Your Honor.

We have filed this in an effort to have the return of seized property. Our motion is lengthy and it's detailed. I'm happy to address portions of it if you would like, Your Honor.

The client is here. I'd like to actually call him if there's questions about specific parts of this. I don't see the agents here. I was hoping they would be here so I could question them as well.

Essentially, almost a hundred million dollars in crypto was taken from the defendant in the course of his criminal case. It was not properly noticed. Based upon the pleadings filed in this case, it appears the United States has taken the position that it's been destroyed, he's not entitled to have it back, but does not cite to any specific basis that allows for that seizure to occur.

This is a federal case. It went through procedural due process. There are rules in place. There are policies in place that the United States government must follow. They are there for a reason. They followed some of them in this case. There are orders of forfeiture, motions for forfeiture. The government was very well aware that the defendant had this. It seems as though they're now saying they didn't know that he had this, he's coming to the table with unclean hands.

You have a defendant before you that was charged by way of an information. There was actually a complaint filed in this case that referenced the exact amount of Bitcoin, I think within maybe 50 Bitcoin that he has stated that they have seized and he'd like

back. They have known from the outset he has had this. It was on his financial affidavit. It was referenced in his plea agreement. And he proffered multiple times and was cooperative in this case. He actually received a 5K for it.

The United States government expressed interest when he was released from prison at being a cooperator after. He turned ATF agents on crypto and various electronic mechanisms for surveillance and pretending to be different people on the dark web.

Nevertheless, when he was released from BOP custody, he was not given back his property. The biggest thing he cares about right now is the hardware wallet that apparently the United States has destroyed that contains almost \$100 million of Bitcoin on it, Your Honor.

THE COURT: So now he wants a hundred million dollars in Bitcoin back.

MS. CASTANEDA: He would like his hardware wallet that holds the keys to all of the addresses for the Bitcoin. So we have an extensive chart of all the wallet addresses. This was disclosed to the government. They knew about it. He talked about it. They negotiated that it would not be seized.

THE COURT: You know that question called for a yes or a no.

MS. CASTANEDA: Yes, Your Honor.

THE COURT: And that's the 3,500 Bitcoin that you have in your motion.

MS. CASTANEDA: It is approximately.

THE COURT: Even though his own lawyer said he had 50 Bitcoin.

MS. CASTANEDA: I would review the transcript from the sentencing and what they talked about in terms of where that was obtained. I wasn't his counsel at the time, so I can't speak to exactly what he stated.

THE COURT: Well, obviously he would have gotten that from Mr. Prime, right?

MS. CASTANEDA: Well, Your Honor, this wallet that has this was given -- was seized from the United States government, and they had it in their possession, and they were aware of what was on it because he told them in proffers, and they still had it.

So when Ms. Riedel -- I read the sentencing minutes -- discussed that they knew he had some, that he was going to keep it, it wasn't going to be taken from him, and then counsel talked about the amount, I'm not sure whether there was potentially a disconnect or why his counsel stated that, but it's always been disclosed that he had this, and it's been from the moment of his initial complaint.

THE COURT: One of the seizure warrants talked about seizing all of the Bitcoin, didn't it?

MS. CASTANEDA: It did, and those were never disclosed to the defendant. The first time he's ever seen any of those was when they filed it in their opposition.

THE COURT: What about the case that the government cited that said that I don't even have jurisdiction?

MS. CASTANEDA: It's incorrect, Your Honor. It's a federal case before the Court. They seized something in the course of this particular case. This is the only mechanism for it to be heard. It's a Rule 41 for property that was seized in the course of his criminal case.

It mentioned Hillsborough County and -- Hillsborough County potentially having it. Hillsborough County was involved in this case because he was arrested for a domestic violence issue. Whatever was seized by Hillsborough County ultimately ended up in the hands of the federal government, because they executed search warrants on those exact things, and then they later stated they destroyed that. There is no other mechanism for us to request the return of this other than what has been filed.

THE COURT: What says the government?

MS. RIEDEL: Thank you, Your Honor.

First, just for point of clarification that the Court obviously already seized upon, the government didn't

take any of Mr. Prime's Bitcoin. And based on the complete review of the record, it's doubtful that he has any Bitcoin.

Had there been any recoverable Bitcoin, we would have been able to seize it pursuant to the seizure orders that the Court referenced. Ultimately, the United States abandoned its efforts to try to recover Bitcoin because of various representations by counsel. For example, in an email during plea negotiations, Mr. Prime's counsel said to us, it makes it highly unlikely that there is not a substantial amount of Bitcoin remaining, and that as to the accounts of Mr. Prime that show a high balance, they are not his to spend. Prime went to a website called BitInfoCharts.com or some other similar cite that allows you to search for block chain account addresses with high Bitcoin balances, not his. Prime selected one worth about \$15 million and posted it to his account for the purpose of showing off to potential girlfriends and women. It's viewable but not a spendable number. The public -- all the public can access this information.

This was reiterated, as the Court noted, during sentencing where Mr. Prime's counsel on his behalf represented that he really didn't have very much Bitcoin, if at all. In his financial disclosures to the United States, he indicated that the boats and cars we seized were essentially all of his assets, and he also represented that to United States Probation in his PSR.

Only now are we getting the argument that there is a treasure trove of Bitcoin available which, frankly,

if it existed, the United States should have been able to seize to return to the victims of his crimes and seized pursuant to the fact that it was the proceeds of his illegal conduct.

The factual basis for these motions are all based upon the statements of an inveterate fraudster who perpetually lied to law enforcement, used fake identities, and is now wanting this Court to take action.

The second point is that Bitcoin is separate from the physical hardware that the United States and local law enforcement seized. Bitcoin doesn't exist in hard copy form. It only exists in digital form. And so there were hard drives and other devices seized. Those are not forfeitable. They were not forfeited. These are contraband and evidence.

When Mr. Prime is trying to get those materials back, as evidenced in a letter that we attached as an exhibit to the Court when we were responding to his motion for counsel, he was advised that if he provided the password so that those items could be wiped, it could be turned over to him; otherwise, they would have to be destroyed.

Mr. Prime chose not to provide the passwords. Accordingly, this contraband evidence that contained stolen PII and the proceeds of his crimes and other access to the dark web that he used to commit federal offenses could not be returned to him. So those items were destroyed, the ones that could not be wiped. That's where we are.

And I would point out that Rule 41 applies to active criminal cases of which this isn't one. This case has been closed. He had the opportunity when he was represented not by one but two counsel to challenge the collection of evidence, and he chose not to at that time. So for all of those reasons, we do not think that Mr. Prime has an actionable claim here.

THE COURT: He was paid in Bitcoin for the criminal conduct that was involved in this case, right?

MS. CASTANEDA: Not completely, Your Honor. He was also paid lawfully in mining it. So when you mine Bitcoin, it's just your head creating a mathematical equation and getting it. If we were all smart enough to do it, we could do it. And that was, I think, what his attorney pointed out at sentencing as well, that he mined Bitcoin as well.

THE COURT: Says who?

MS. CASTANEDA: His counsel did on the record.

THE COURT: Well, his counsel on the record said that Mr. Prime claimed to have mined Bitcoin back in the Seattle days or something like that.

MS. CASTANEDA: Yes.

THE COURT: But he also said he didn't believe that he had any Bitcoin, and all of this is coming from Mr. Prime, a convicted fraudster. And now you're telling me that even though prior counsel didn't believe him, you do.

MS. CASTANEDA: Your Honor, he's here. We can put him on the stand. I don't know what his prior counsel told him, but whether he's a convicted fraudster or not, he has the rights to procedural due process. And Your Honor and I just had a very contested hearing in a loss amount to determine if the amount was correct, was there commingling and how those funds are separated. He has the right to be able to prove all of that if the United States is going to take it. And his case, he's still on supervised release. This isn't a super old case.

THE COURT: So if he got paid in Bitcoin for his criminal conduct, how are you arguing that the Bitcoin that remains, if any, was not the result of criminal conduct?

MS. CASTANEDA: I don't know if he did. I'd like to see the evidence if that's what the government states happened. And if that came from Mr. Prime during a proffer, then it's improper for the United States government to raise it in a hearing, but we have a cooperative defendant who came in and he got a 5K. So to get a 5K, you can't withhold assets and you can't be untruthful and you can't lie. He had three levels of acceptance of responsibility.

We have incompetent agents that took electronics that they didn't think anything was on, and the defendant didn't even know that was their position until he goes to get it back, and the government then gives returns that says, oh, there was nothing on here. They obviously knew something was on there because it was in his plea agreement. And they obviously

believed that he had some sort of Bitcoin because it was in the initial complaint. And in the course of plea negotiations, they ultimately decided not to pursue the forfeiture of it.

And the United States can't do that. If they are going to seize assets of a defendant, especially crypto, which Department of Justice policy says has got to be judicially forfeited, that has to occur through a process, and he was not entitled to that.

THE COURT: The complaint filed by the government back in 2018 said that he was paid a thousand dollars per month as compensation for his fraudulent conduct, right?

MS. CASTANEDA: That's what it says, yes. That's what the government alleged at that time.

THE COURT: So the Bitcoin would be the fruit of criminal conduct, and you are now saying he is entitled to get that fruit back.

MS. CASTANEDA: We can't prove that it was the fruit of criminal conduct. It may have been. That opportunity has passed. That opportunity for us to go through and figure out what was Bitcoin and what wasn't, people speak in proffers, and the government -- I believe he was indicted via an information. He sat down and spoke with the government openly. They put it in a complaint and they filed it. Then they later charged him, and then he had a plea agreement which still references the Bitcoin.

So if the United States is going to seize something of substantial value or even, by their on policy, Crypto currency just in general, they have to follow the procedure. And they had the opportunity to do so. They chose not to do that. And he did not realize until he received notice in BOP custody that they weren't going to give him -- actually, I don't think he's received anything back. Even on the letters they said, we're going to give you back this iPhone, the printers. He hasn't received anything. And some of the items that were listed were never originally put on the register of items seized. And then he also received items that were never even on paper anywhere. He got back oars and things from the yacht.

The government has been completely incompetent in the seizure of this case. And I'm not trying to be disrespectful, but that's the truth. They seized electronics which are not just contraband. If they have a value, they cannot be destroyed. They have to be noticed just like in a boat case. You have we're going to destroy the kilos of cocaine. Defense counsel has a right to that notice because you have the right to dispute it. Obviously cocaine is an easy one. We're not disputing illegal contraband.

The clothing that the gentlemen wear on the boats, everything in evidence or contraband or anything determined to be related to the case has got to be noticed if it's going to be destroyed. That did not happen here, and the government made an egregious mistake in this case.

THE COURT: What says the government about

notice?

MS. RIEDEL: Your Honor, at the time -- and I'll just point out that Mr. Prime negotiated in this case for an information, well represented by counsel, and got significant benefits. So I feel like there's a big conflation between a search and seizure and a seizure of assets, like, for example, something that has value.

Search warrants for evidence were conducted in this case. Search warrant returns were done. Those were returned in discovery to defense counsel. Defense counsel then entered into plea negotiations and advised their client and their client accepted a plea agreement waiving defenses. Those defenses include the opportunity to object to the collection of evidence, including search and seizure. That is done.

Then the other thing that seems to be constantly confused is the seizure of assets or the forfeiture of assets, things of value. The United States then separately attempted to get things of value, boats, cars, and Bitcoin. Boats and cars were all noticed. The Bitcoin we could never get.

As to the return of property that was seized pursuant to search warrants and that was contraband and that was done when the case is over, like any type of property, Mr. Prime was noticed via letter. For example, the letter that was attached to government's response in opposition to defendant's motion for counsel, which was Document 77. We attached it. The Secret Service says here are the devices that we have. If you want them, they need to be able to be wiped;

otherwise, we have to destroy them.

Because Mr. Prime attempted to enter into a cooperative relationship, which had varying degrees of success, he called the agents and just chatted with them. So not everything was recorded in letters, although he was noticed by letter of these properties. And in the letter it says, again, we can't give you property that isn't wiped.

In those conversations back and forth, Mr. Prime refused to provide passwords that would allow the Secret Service to wipe it to give the property back, and so it was destroyed.

In every single case where evidence is collected, the agents don't hold on to it indefinitely. It's been more than five years since the collection of this. They did provide notice in the search warrant returns. Those returns were produced in discovery. He waived his defenses to object to the collection of evidence and the disposition of evidence when he pled guilty pursuant to a written plea agreement.

Now we're coming back and conflating these ideas of physical evidence and mythical Bitcoin, which he's saying we didn't properly seize. We attempted to seize it. It didn't exist. We ultimately forewent that because defense counsel in good faith represented that the Bitcoin was mythological, and so did Mr. Prime in his under-oath statements to this Court, to probation, and to our office.

THE COURT: It seems like he was noticed, Ms.

Castaneda.

MS. CASTANEDA: Your Honor, those notices that he was provided were when he was in BOP custody. He had already been sentenced. And when he took action, those letters state, "Please advise us if you would like the return of your property." He did that. He actually received three of the same letters, short time. Two had the same information. One had different assets in it. He provided them notice that he would like all of those back.

What was missing were electronics and other items, including this crypto, but he still hasn't even received those things on that letter back. He went to Secret Service to get those back. They showed him broken electronics in a bag and said, you can't have this. He asked where's all the other things I have, and they basically told him you don't get anything back, take it up with the Court.

And they are aware that he has this crypto because he did give them passwords. He proffered with them. And then the agents reviewed his crypto holdings while he was incarcerated. It was one of the exhibits we put down.

The agents are the only ones that have that information. They are aware that he has it, and they hold it. And that's why I put in my motion it's very concerning. They didn't say they have destroyed anything until after he got out. If you don't know that the government is going to withhold something permanently, which is where your notice comes from,

you have no way of contesting it. So he was not aware of these things the government was holding that he would not get back until they sent him the letter, the dysfunctional notice that has some things they're going to give back, some things they're not. He then says, where's the rest of it? I think he had two in-person meetings with the agents. And that's where in the email trail he keeps asking, where are my things, where are my things, and they keep spinning him around. And they say to him, we'll get with our computer guy. Well, that shouldn't be up to the agents if that's the government policy. And you don't get to just wipe electronic things because it's your opinion it was evidence or contraband. It still goes through a forfeiture process, just like the boats that had to go through an asset forfeiture process. And in my opinion, that wasn't followed properly. That was something that during the course of the plea negotiations he ultimately dropped, but those are -- in the government's eyes, that's contraband as well.

THE COURT: Well, you're seeking the boat back as well, right?

MS. CASTANEDA: We put that in there, Your Honor, to show that that wasn't even followed properly. Those boats have specific value, and they are supposed to be forfeited a specific way. And the government didn't even get that part right. They're supposed to notice that as well, but because he brought that up in the case, because he knew they weren't going to give those back, that became a contested issue. And so he ultimately, because I think he was threatened with additional charges, decided to just

drop the boats.

THE COURT: Well, if the computers have been destroyed, what are you really seeking? You can't get the computers back. They've been destroyed.

MS. CASTANEDA: We can prove that he holds this amount of Bitcoin and that the government, according to Department of Justice policy on point for this, is required to make him whole. And it doesn't have to be the amount like U.S. dollar. It's Bitcoin. It's Bitcoin that he wants, and we have all the wallet addresses. And I can even have an expert testify that these are accurate as to the amount and how they are traced back to him.

THE COURT: So what he wants now is a hundred million dollars from the government?

MS. CASTANEDA: He wants 3,442 Bitcoin, Your Honor.

THE COURT: Okay. And why am I hearing about this now? It's 2023. The complaint was filed in 2018, and he was convicted when?

MS. CASTANEDA: 2020, Your Honor. So he did jail time. About two and a half weeks before he was --

THE COURT: But he also filed a complaint seeking his things back, and then he withdrew it.

MS. CASTANEDA: I think he was -- he was asking for appointed counsel, CJA counsel. And Judge

Sansone -- I believe the United States filed an opposition explaining why that didn't need to be returned. And then Judge Sansone ultimately did not appoint him CJA counsel. So he was incarcerated. Two and a half weeks before he was to be released, Secret Service sent him the notice saying these are how you get your things back. And then he then responds to them, and then they string him along for approximately six, seven months, and then he retained me. And in good faith I attempted to confer with the United States and work this out. So we went back and forth on different documents. They understandably needed some time to investigate. I pushed back on some things they had said. They said, let's look again. They did it again, and then we ultimately filed. But there has never been a lapse in time from the moment he was provided with notice of what they were intending to return to him.

THE COURT: He could have filed something when he got the notice.

MS. CASTANEDA: So according to that notice, what's required, to play along with the government's rules, is that you send back a letter saying I want these things.

THE COURT: No. According to the notice, if he gives the passwords, they'll wipe the computers and give them back to him.

MS. CASTANEDA: He did give the passwords.

THE COURT: Well, they say he didn't.

MS. CASTANEDA: That's not true. And the client is here and you can put him under oath. And I was really hoping the agents would be here so I could ask them, but he did. And then the email string I exhibited you can see, and it's between the client and Secret Service. He keeps asking them, where are my things? And they keep responding, we'll get back to you. I have to check with our computer guy; not you didn't do this, you don't get it. And they didn't direct him to the U.S. Attorney's Office. It was the agent and the defendant attempting to resolve it. And ultimately the agents just started ignoring him. After he showed up in the Secret Service parking lot to get items -- they had a designated time and place -- and they didn't give him anything on that list, nothing on the list. Then he decided this is not correct, something is wrong, and then he hired counsel. And I think it took us five or six months to work together and try to resolve the issue. Obviously I don't want to file anything I don't need to. And then we ultimately had to be before Your Honor.

THE COURT: Well, at one point he claimed he had 50 Bitcoin. At another point he claimed he had 1,500 Bitcoin. Now he claims he had 3,500 Bitcoin. And all of that could be fruits of his criminal conduct. So it's just amazing that you'll stand up here and ask for the government to pay you a hundred million dollars to a guy who was convicted of fraud.

Anyway, I find that he was given notice and that they were properly destroyed. He's not entitled to anything back and that laches applies. He filed a petition earlier to get things back. He could have included everything that he wanted back in his

petition, and then he voluntarily withdrew it.

So he can't now be heard to claim different facts than he claimed existed at the time of his sentencing and say that laches doesn't apply when he filed a petition to get some things back and then withdrew it.

MS. CASTANEDA: I don't believe he was aware that they were going to hold on to those items.

THE COURT: It doesn't matter what he's aware of. The question is, couldn't he -- didn't he have the right to file whatever he wanted to claim in that petition, and the answer is yes.

MS. CASTANEDA: I don't believe it had arisen yet. He hadn't gotten out yet, so he didn't know what they weren't going to give back.

THE COURT: Well, he filed that petition.

MS. CASTANEDA: He did.

THE COURT: How can you argue that he couldn't file a petition? He did. He filed a petition. He asked for certain things back. Now he says he didn't ask for everything back. Then he voluntarily withdrew it. And now two years later or whatever it is he wants to do it again.

MS. CASTANEDA: He did not -- I don't believe the cause of action to ask for those things back had arisen because he hadn't been told he wasn't getting them back yet. So he hadn't been noticed on here's all

the things you're getting back.

And it's a hardware electronic wallet. So according to their policy, he can't keep -- obviously he can't keep firearms and weapons, and those were in the specific detailed final forfeiture order, but the electronics is what they held. And that's what he's asking for back is the electronics. So when he filed for the boats, he had no way of knowing they weren't going to give him the electronics. And then they sent him a notice before he was released from BOP custody which still didn't have that on there. But nevertheless, he followed their policy that says provide us with a letter saying you want it back. He did that. I think he did it twice because they sent him several notices. Then he tried to meet with the agents to get all those back, appeared at Secret Service, and they still didn't even give him what he was supposed to have back on that letter.

So the 3,500 Bitcoin, Your Honor, has been the amount the government has believed he's had from the beginning. It's in his complaint. And then I believe his counsel mentioned a different amount of Bitcoin at his sentencing, which I'm not sure if that's where the 50 is coming from, but his actual complaint, Your Honor, even references 100 Bitcoin, and they ultimately decided not to require him to forfeit it. It says in here that he consents to the civil forfeiture of 100 Bitcoin, and it's lined through, and it was a negotiated plea agreement.

So to then now have the United States not give him back electronics, even following their own policy,

he provided the passwords, I think -- I mean, it is a tremendous mistake. It's a high value mistake, but nevertheless it is not proper. It was not noticed. He was not given an opportunity to contest that. He was not aware they were going to keep holding it. And then when he was, that's when he began sending the notices in response to their notices and hired counsel. He's on supervised release. This is an active case that here you have jurisdiction for it. The paper trail for this case for forfeiture is inappropriate and it's not -- it doesn't meet the standards of what's required in criminal court. He's entitled to contest things. He's entitled to due process. He's entitled to things that are seized that aren't returned properly. And the government now takes this position -- because it's almost a hundred million dollars. But taking a low end of things, if they know he's mined 12 Bitcoin, he's still allowed to have the 12 Bitcoin back, but they're not giving anything back, even what was on that notice. So I think the paper trail ethically and honestly supports the argument that we filed.

THE COURT: For all the reasons I've stated, including laches, I find that he has no claim to get these items back and deny your claim.

We're adjourned.

(Proceedings concluded at 10:10 a.m.)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

REPORTER TRANSCRIPT CERTIFICATE

I, Tracey Aurelio, Official Court Reporter for the United States District Court, Middle District of Florida, certify, pursuant to *Section 753, Title 28, United States Code*, that the foregoing is a true and correct transcription of the stenographic notes taken by the undersigned in the above-entitled matter (Pages 1 through 24 inclusive) and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States of America.

/s Tracey Aurelio

Tracey Aurelio, RMR, RDR, CRR
Official Court Reporter
United States District Court
Middle District of Florida
Tampa Division
Date: December 11, 2023