UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. 1:24-cr-00009-JMS-MKK
	)	
MAXIMILIANO PILIPIS,	)	
	)	
Defendant.	)	

MAXIMILIANO PILIPIS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS COUNTS 1-5 OF THE INDICTMENT AND IN OPPOSITION TO THE GOVERNMENT'S APPLICATION FOR A RESTRAINING ORDER

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The government is attempting to extract an astronomical payday[1] from Defendant Maximiliano Pilipis ("Pilipis") based on a never-before-seen, shoe-horned, and ultimately defective money laundering case. But the government's case – including the Superseding Indictment, the applications for restraining orders and seizure warrants, and the civil forfeiture – all fail for one simple reason: AurumXchange.com's ("Aurum") failure to register as a money transmitting business was not a crime during the time it was in operation from 2009-2013. The government's position relies entirely on their misapplication of licensure requirements and misunderstanding of market activity that occurred over a decade ago.

Even if it was a crime from 2009-2013, the government cannot charge unlicensed operation of a money transmitting business under 18 U.S.C. § 1960 *or* seize the alleged proceeds, because the statutes of limitation for the § 1960 violation and the related civil forfeiture have long since run. Despite being well aware of Aurum's operation since at least 2010 and conducting a robust government-led investigation into market participants that were actually facilitating criminal proceeds and activity culminating in more than 20 well-publicized criminal indictments in 2013 and 2014, the government never charged Pilipis with anything. Pilipis had no reason to think that his own money was the product of any illegal activity; Aurum's operations were not illegal and the government never suggested they were. Now, in an effort to secure a colossal windfall 14 years later given the rise of the value of Bitcoin, the government claims that Pilipis's act of cashing his own Bitcoin on five specific instances in 2019, 2020, and 2021 constitutes money laundering pursuant to 18 U.S.C. § 1957 based on 18 U.S.C. § 1960(b)(1)(B) as the Specified Unlawful Activity ("SUA"). It is under this flawed theory that the government now seeks to restrain not just the money allegedly "involved in" the money

[1] *See* Exhibit 1 – Financial Information. Pilipis has separately requested to file Exhibit 1 under seal due to the sensitivity and confidentiality of the information therein. [*See* Filing No. 78.]

laundering offenses and explicitly referenced in Counts 1-5 (all of which has already been seized) but also *all* of the *uncashed* Bitcoin it alleges flowed from Aurum's operation – despite the fact that the uncashed Bitcoin has nothing to do with the alleged money laundering.

But the Court need not reach the question of the propriety of the restraint. Instead, it should simply dismiss Counts 1 through 5 of the Indictment because Aurum's failure to obtain a license for its commercial operations – the government's only alleged SUA at issue – was not a crime before 2013. On March 18, 2013, for the first time, the Financial Crimes Enforcement Network ("FinCEN"), the entity the government alleges had jurisdiction to regulate Aurum, stated that a newly defined virtual currency "exchanger" like Aurum would be considered a "money services business" and would be subject to registration requirements. [Filing No. 77-2 at 1.] Prior to that time, when Aurum was operating, the question of whether virtual currency exchangers were required to register was, at most, unclear; the terms "convertible virtual currency" and "exchanger" had never been defined by FinCEN, nor any other U.S. financial services regulator, prior to the new 2013 pronouncement.

For these reasons, Pilipis, by and through his undersigned counsel, files his Motion to Dismiss Counts 1-5 of the Indictment and opposition to the government's application for a post-indictment restraining order (the "Motion") requesting that this Court dismiss Counts 1-5 of the Indictment, dissolve the temporary restraining order entered on May 7, 2024 (the "TRO"), deny the government's application for a permanent restraining order, and return all seized and restrained property to Pilipis. In support of the Motion, Pilipis submits this memorandum of law.

INTRODUCTION AND BACKGROUND

According to the Superseding Indictment, Max Pilipis operated Aurum, a virtual currency exchange, from approximately 2009 to 2013. [Filing No. 66 ¶ 14.] Aurum's purpose was to permit

an individual to exchange Bitcoin and other cryptocurrencies for U.S. currency or vice versa. *Id*. Aurum's transactions were solely single-party buy or sell transactions between Aurum on one side, and the customer on the other. Similar to making a purchase on eBay or Amazon, Aurum's customers purchased Bitcoin from Aurum or sold Bitcoin to Aurum; in return, Aurum received funds from that customer or sent Bitcoin to that customer. Aurum did not send funds between customers or provide money transmission services from customers to third parties.

Prior to March 2013, sellers of Bitcoin, like Aurum, were not required to be licensed as money transmission businesses with FinCEN because they were not considered to be "money transmitters" under existing FinCEN guidance. Critically, on March 18, 2013, FinCEN issued document FIN-2013-G001, entitled "Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies." [Filing No. 77-2 at 2.] This guidance was issued, according to FinCEN, to "clarify the applicability of the regulations implementing the Bank Secrecy Act ("BSA") to persons creating, obtaining, distributing, exchanging, accepting, or transmitting virtual currencies." [Filing No. 77-2 at 1.] In testimony on November 18, 2013, then-FinCEN Director Jennifer Shasky Calvery confirmed that this was a "new, expanded definition of money transmission" and "would bring new financial entities under the purview of FinCEN's regulatory framework." [Filing No. 77-3 at 14.] Multiple other official, contemporaneous government statements confirm that the March 18, 2013 FinCEN announcement regarding exchangers constituted a material change to applicable licensing requirements: it defined a new basis for requiring virtual currency sellers to register with FinCEN. As a result of this pronouncement, Aurum ceased operations in or about May or June 2013 and thus did not violate any registration requirements for virtual currency exchangers. Without § 1960 as an SUA, Counts 1-5 of the Superseding Indictment collapse and must be dismissed.

Undeterred by the lack of illegal conduct in this case, and in an effort to make an end-run around the obvious statute of limitations problem, the government now seeks to prosecute Pilipis over ten years after Aurum ceased operations under a phony theory of money laundering. This in spite of the fact that federal law enforcement investigated Pilipis fourteen years ago, never identified any actual illegality or illegal proceeds, never charged him, never civilly forfeited the property, and never gave him any reason to believe that cashing the Bitcoin could be considered money laundering or the proceeds of any illegal activity in any way. Further, the investigation into Pilipis coincided with the federal government's investigation of other crypto-market participants in the same time period and asset class, culminating in the well-known 2013 and 2014 indictments and subsequent conviction of those actually responsible for supporting and facilitating illicit activity and money laundering. Pilipis was investigated simultaneously in connection with these markets and asset classes and was neither charged nor convicted of any such illegality or money laundering, nor was Aurum ever cited by FinCEN for a failure to register or obtain a license.

Even with the benefit of years of hindsight, the government makes no attempt to explain how it can restrain the property described in items 2(b), (c), and (e) under "Forfeiture Allegations" in Superseding Indictment (the "Disputed Property") given that it is not "involved in" or otherwise sufficiently connected to any of the five alleged acts of money laundering. [*See* Filing No. 66 at 9–10.] The government agrees that the property listed in 2(e) – the uncashed Bitcoin –are in separate wallets. *See id*. There are no allegations that those uncashed Bitcoin had any connection to the five alleged acts of money laundering at all. The property listed in 2(b) and 2(c) constitute the proceeds of Bitcoin that Pilipis cashed for the purpose of paying his counsel and also have no connection with and nothing to do with the five alleged counts of money

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