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CENTRAL DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

by MPJ

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10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

11-00110

13 IN THE MATTER OF THE SEIZURE)  
OF THE INTERNET DOMAIN NAME )  
14 "DAJAZ1.COM" )  
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CR MISC. NO. **11-00110**  
EX PARTE APPLICATION FOR ORDER  
EXTENDING FOR SIXTY DAYS THE  
DEADLINE FOR FILING COMPLAINT  
FOR FORFEITURE; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF AUSA STEVEN R.  
WELK  
[UNDER SEAL]

21 The United States of America ("the government") hereby  
22 applies to this court for an order extending for sixty days the  
23 time within which to file a civil forfeiture complaint against  
24 the asset listed above (the "seized asset"), which was seized on  
25 November 24, 2010. This application is made pursuant to the  
26 Court's inherent authority to control its dockets and 18 U.S.C.  
27 § 983.  
28


1 As explained below, there is an on-going criminal  
2 investigation concerning the above-listed asset that arises out  
3 of the same facts which supported the seizure of the asset. See  
4 Welk Decl. There is currently a deadline of May 16, 2011 for the  
5 filing of a civil forfeiture complaint against the asset.  
6 However, the government believes that the filing of a complaint  
7 while the criminal investigation is on-going will have an adverse  
8 effect on the investigation. The government requests a sixty-day  
9 extension of the filing deadline (to July 15, 2011) in order to  
10 protect the criminal investigation.

11 This application is made ex parte and under seal so as not  
12 to expose the existence and scope of the criminal investigation,  
13 which would likely be seriously jeopardized by the filing of a  
14 forfeiture complaint.

15 DATED: May 9, 2011

16 Respectfully submitted,

17 ANDRÉ BIROTTE JR.  
18 United States Attorney  
19 ROBERT E. DUGDALE  
20 Assistant United States Attorney  
21 Chief, Criminal Division



21 STEVEN R. WELK  
22 Assistant United States Attorney  
23 Chief, Asset Forfeiture Section

24 Attorneys for Plaintiff  
25 United States of America  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION AND STATEMENT OF FACTS

4 By this application, the United States of America ("the  
5 government") requests a sixty (60) day extension of the deadline  
6 to file a judicial complaint for forfeiture against the domain  
7 name "DAJAZ1.com," which was seized pursuant to a federal seizure  
8 warrant on November 24, 2010 in connection with what is believed  
9 to have been serious and repeated violations of federal law  
10 relating to the distribution of copyrighted intellectual property  
11 (the "seized asset" or "domain name").

12 Following the seizure of the domain name by agents of  
13 Immigration and Customs Enforcement ("ICE"), the Department of  
14 Homeland Security, Customs and Border Protection ("CBP")  
15 initiated administrative forfeiture proceedings against it. The  
16 owner of the domain name, Andre Nasib, submitted a claim in the  
17 administrative proceedings, requesting that the matter be  
18 referred to the U.S. Attorney's Office in this district (the  
19 "USAO") for judicial forfeiture proceedings. In the meantime,  
20 ICE continued its investigation.

21 The USAO has determined that further criminal investigation  
22 is appropriate and so the investigation is still on-going. The  
23 current deadline for the filing of a civil forfeiture complaint  
24 is May 16. The governing statute, discussed below, authorizes  
25 the court to extend the filing deadline where the filing of the  
26 complaint would have an adverse effect on a related criminal  
27 investigation. The requested deadline would be July 15, 2011.

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II.

ARGUMENT

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2  
3       There are two potential grounds for granting the relief  
4 requested by the government here. First, the Court possesses the  
5 inherent authority to extend filing deadlines because it has the  
6 power to control the disposition of the causes on its docket with  
7 economy of time and effort for itself, counsel and litigants.  
8 See, e.g., Landis v. North American Co., 299 U.S. 248, 254, 57 S.  
9 Ct. 163, 81 L.Ed 153 (1936). In addition, 18 U.S.C. § 983(a),  
10 which governs the procedural aspects of federal administrative  
11 and judicial civil forfeiture proceedings, provides specific  
12 authority for the extension of a deadline for the filing of a  
13 judicial civil forfeiture complaint. Section 983(a)(3)(A)  
14 provides that

15       Not later than 90 days after [an administrative] claim  
16 has been filed, the Government shall file a complaint  
17 for forfeiture[,] . . . except that a court in the  
18 district in which the complaint will be filed may  
19 extend the period for filing a complaint for good cause  
20 shown or upon agreement of the parties.

21       Generally speaking, where the government seizes property for  
22 forfeiture, the seizing agency is required to send notice of the  
23 seizure and the agency's intent to commence administrative (i.e.,  
24 non-judicial) forfeiture proceedings within 60 days. An owner of  
25 the seized property who wishes to contest the forfeiture may  
26 submit an administrative claim to the agency, which filing has  
27 the effect of suspending the administrative proceedings so that  
28 the matter may be referred to the USAO of the district in which  
the seizure occurred. The quoted provision above requires the

1 government to file a complaint within 90 days of the submission  
2 of the administrative claim.

3 Here, claimant Nasib submitted an administrative claim on  
4 February 15, 2011, making the government's complaint due on May  
5 16, 2011. However, the filing of a complaint would require the  
6 government to reveal, not only in the complaint itself but in the  
7 disclosures that necessarily would follow, information concerning  
8 the on-going criminal investigation. The disclosure of that  
9 information would likely have an adverse effect on the  
10 investigation, if for no other reason than it would indicate the  
11 direction and scope of the investigation.

12 Under the circumstances, good cause exists for the requested  
13 sixty day extension. While "good cause" is not defined in § 983  
14 (a) (3) (A), another extension provision in § 983 (authorizing  
15 extension of the administrative notice deadline) includes  
16 specific examples of proper bases for an extension, including  
17 situations where sending notice to the owner "may have an adverse  
18 result, including . . . seriously jeopardizing an investigation .  
19 . . ." § 983 (a) (1) (D) (v).<sup>1</sup>

20  
21 <sup>1</sup>18 U.S.C. § 983 (a) (1) (C) and (D) provide:

22 (C) Upon motion by the Government, a court may extend the  
23 period for sending notice under subparagraph (A) for a  
24 period not to exceed 60 days, which period may be further  
25 extended by the court for 60-day periods, as necessary, if  
the court determines, based on a written certification of a  
supervisory official in the headquarters office of the  
seizing agency, that the conditions in subparagraph (D) are  
present.

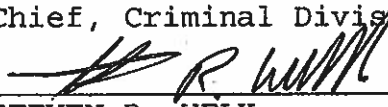
26 (D) The period for sending notice under this paragraph may  
27 be extended only if there is reason to believe that notice  
28 may have an adverse result, including-

1 For the foregoing reasons, the government requests that the  
2 court grant a sixty day extension (from May 16 to July 15, 2011)  
3 of the time within which the government is required to file a  
4 forfeiture complaint against the seized asset.

5 DATED: May 9, 2011

6 Respectfully submitted,

7 ANDRÉ BIROTTE JR.  
8 United States Attorney  
9 ROBERT E. DUGDALE  
10 Assistant United States Attorney  
11 Chief, Criminal Division

12   
13 STEVEN R. WELK  
14 Assistant United States Attorney  
15 Chief, Asset Forfeiture Section

16 Attorneys for Plaintiff  
17 United States of America  
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- 23 (i) endangering the life or physical safety of an  
24 individual;
- 25 (ii) flight from prosecution;
- 26 (iii) destruction of or tampering with evidence;
- 27 (iv) intimidation of potential witnesses; or
- 28 (v) otherwise seriously jeopardizing an investigation  
or unduly delaying a trial.

DECLARATION OF AUSA STEVEN R. WELK

I, Steven R. Welk, declare:

1. I am an Assistant United States Attorney for the Central District of California, and am the attorney primarily responsible for the representation of the United States in connection with this matter. The facts stated herein are within my personal knowledge or were made known to me through official law enforcement sources that I believe to be reliable, and I believe them to be true.

2. This matter involves the government's seizure and efforts to effect the forfeiture of an internet domain name. The domain name was seized pursuant to a federal seizure warrant on or about November 24, 2010 for violation of federal laws relating to the distribution of copyrighted intellectual property. The seizure was made by agents of Immigration and Customs Enforcement.

3. Following the seizure, the Department of Homeland Security, Customs and Border Protection, initiated timely administrative forfeiture proceedings against the domain name, and sent direct notice to the owner of the asset. On February 15, 2011, claimant Andre Nasib submitted a timely administrative claim, and the matter was referred to my attention at the U.S. Attorney's Office. In the meantime, ICE continued its investigation.

4. By this application, the government requests a sixty (60) day extension of the deadline to file a judicial complaint for forfeiture against the domain name. I have met with the

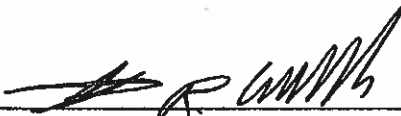
1 investigating agent, agency counsel and another prosecutor in  
2 this office, and it has been determined that further criminal  
3 investigation is appropriate. The investigation is still on-  
4 going. The current deadline for the filing of a civil forfeiture  
5 complaint is May 16. I believe that the disclosures that would  
6 be required in the complaint and in further proceedings in a  
7 civil judicial forfeiture case would have an adverse effect on  
8 the related criminal investigation. The requested extended  
9 deadline is July 15, 2011.

10

11 I declare under penalty of perjury under the laws of the  
12 United States that the foregoing is true and correct. Executed  
13 this 9<sup>th</sup> day of May, 2011 in Los Angeles, California

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STEVEN R. WELK

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