

The Mongol Nation Case

RICO Forfeiture / First Amendment / Excessive Fines / Standing

Forfeiture of a trademark used by a motorcycle club while engaging in a RICO conspiracy would violate the First Amendment rights of the club and its members to freely express their association with one another.

Forfeiture of an emblem that has immense intangible value to the members of a motorcycle club would be grossly disproportionate to the gravity of a conspiracy to commit murder, attempted murder, drug trafficking and other crimes.

Individual members of an organization whose First Amendment rights would be implicated by the forfeiture of the organization's property have standing to object to the forfeiture even though they have no ownership interest in the property.

United States v. Mongol Nation, 2019 WL 988432 (C.D. Cal. Feb. 28, 2019).

C.D. Cal. * A jury found the Mongol Nation, a motorcycle club, guilty of a substantive RICO offense and a RICO conspiracy. Among the predicate acts that formed the pattern of racketeering were “heinous acts of murder, attempted murder, drug trafficking and other crimes.”

In the forfeiture phase of the trial, the Government asked the jury to find that various weapons, ammunition, body armor, motorcycles, and other items of personal property were subject to forfeiture in connection with the RICO offenses. In addition, the Government asked the jury to forfeit Defendant's trademark or “collective membership mark,” which was a graphic consisting of the work “MONGOLS” and the drawn image of a Genghis Khan-type character with sunglasses and a ponytail, riding a motorcycle, with the letter “M.C.” appearing below the motorcycle. In the Government's view, the mark was subject to forfeiture as a “potent emblem” of a criminal organization that was used to “stoke fear in the public.”

The jury returned a special verdict finding that the weapons, body armor and most of the other personal items, as well as the mark, were subject to forfeiture in connection with the RICO conspiracy but did not find any property subject to forfeiture with respect to the substantive RICO offense.

When the Government moved for a preliminary order of forfeiture, however, Defendant opposed it, citing, *inter alia*, its own First Amendment rights and those of its members in the collective membership mark. The court granted the order with respect to the personal property, but denied it with respect to mark on both First and Eighth Amendment grounds.

As a threshold matter, the Government objected to Defendant's assertion of the rights of its individual members on standing grounds. The individual members were not

the owners of the mark, the Government said, and thus lacked standing to contest its forfeiture. But the court held that “the Government conflates ownership with First Amendment standing.”

That someone does not own the property that is subject to forfeiture in a criminal case, the court said, does not mean that his First Amendment rights will not be violated if the property is forfeited to the Government. Here, the forfeiture of the collective membership mark would deprive the individual members of the Mongol Nation of their right to express their association with the motorcycle club., and their ability to defend that First Amendment right is not dependent on their standing to intervene in the criminal case to oppose the forfeiture on ownership grounds. So, the Government’s standing objection was overruled.

Turning to the First Amendment issue, the court held that the right of the club and its members to “express their identity through the noncommercial display of symbols constitutes speech subject to First Amendment protections,” and that the forfeiture of that right would “function as a prior restraint on free speech” and “as a content-based restriction on speech.” “Though the symbol may at times function as a mouthpiece for unlawful or violent behavior,” the court said, “this is not sufficient to strip speech of its First Amendment protection.”

The court also denied the preliminary order of forfeiture on the ground that the forfeiture of the mark would be grossly disproportionate to the gravity of the offense in violation of the Excessive Fines Clause of the Eighth Amendment.

First, the court noted that the jury found the mark forfeitable only in connection with the RICO conspiracy and not in connection with the substantive offense. The court acknowledged that a conspiracy to commit murder, attempted murder, drug trafficking and other crimes “is a serious offense,” but held that it could not justify the forfeiture of a symbol that has been in “continuous use for decades” and has “immense intangible, subjective value to the Mongol Nation and its members.” Indeed, so important is the symbol that many members of the club have “permanently tattooed the images on their backs and elsewhere.”

Moreover, the court found that the connection between the mark and the RICO conspiracy was somewhat attenuated. While individual members of the Mongol Nation may have displayed the symbols while committing crimes, the court said, the Defendant association did not actually use the rights associated with the mark in furtherance of those crimes.

Given the forfeitures already imposed on Defendant – *viz.*, the weapons, ammunition, body armor and items of personal property seized during raids – the court concluded that “the forfeiture of the collective membership marks is grossly disproportionate to the gravity of the RICO conspiracy,” and denied the motion for the preliminary order of forfeiture. *SDC*

Contact: AUSA Steve Welk

Comment: There is a lot to process here. First, I personally find it hard to believe that the forfeiture of a mere trademark – even one so subjectively important to one’s identity that he would have it tattooed on his back – could be grossly disproportionate to pattern stretching over decades of murder, attempted murder, distributing heroin and methamphetamine, and other acts instilling fear in the public. But that’s just me. Or is it. See *United States v. Dicter*, 198 F.3d 1284, 1292 n.11 (11th Cir. 1999) (forfeiture of an intangible asset of great personal importance to the defendant, such as his medical license, is not unconstitutionally excessive; the personal impact of the forfeiture on the defendant is not one of the factors the court considers in determining if a forfeiture is excessive).

On a purely legal level, I do not recall another case where the inventory of other property subject to forfeiture – such as a cache of weapons and ammunition – factored into the Eighth Amendment analysis such that the forfeiture of an additional item would become excessive if it would not have been excessive otherwise. Nor do I recall a case where the fact that the forfeiture was based on a conspiracy and not a substantive offense – even though the substantive offense was also proved – meant that the gravity of the offense was reduced in the excessiveness analysis.

Finally, the court’s First Amendment analysis – treating the RICO forfeiture of expressive items used in the commission of the RICO offense, or forfeited as the assets of a RICO enterprise, as a prior restraint and as a content-based infringement on speech – runs counter to the Supreme Court’s decision in *Alexander v. United States*, 509 U.S. 544 (1993), on those points.

It will be interesting to see if the Government decides to appeal. *SDC*