

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

: CASE NO: 1:19-CR-052

: JUDGE BARRETT

SIMON DAVIS,

Defendant.

**MOTION OF UNITED STATES OF AMERICA
TO AUTHORIZE PAYMENT FROM INMATE TRUST ACCOUNT**

The United States of America, by and through the undersigned Assistant United States Attorney, pursuant to 18 U.S.C. §§ 3613(a) and 3664(n), requests this Court to enter an Order authorizing the Bureau of Prisons to turn over to the Clerk of Court all funds held in the inmate trust account for the above named defendant as payment towards the criminal monetary penalties imposed in this case. In support of this Motion, the government avers as follows:

1. Defendant, SIMON DAVIS (“Defendant”) pled guilty to an indictment charging him with possession of child pornography. (Doc. No. 16)
2. On November 20, 2019, this Court sentenced Defendant to a total of 36 months. This Court also ordered Defendant to pay a \$100.00 special assessment and \$5,000.00 JVTA assessment. *Id.*
3. As of February 5, 2021, there is a remaining balance of \$5,000.00 on the debt.

4. Defendant remains in federal custody and is currently assigned to the United States Penitentiary (Elkton FCI) in Lisbon, Ohio. He is scheduled to be released from federal custody in 2022.

5. The United States Attorney's Office for this district was recently informed that Defendant currently maintains substantial funds in his inmate trust account maintained by the Bureau of Prisons ("BOP").¹ In accordance with its regulations, BOP deposited these funds into Defendant's trust account and it currently maintains in its possession, custody, or control approximately \$5,000.00 in funds belonging to Defendant. By this motion, the United States seeks entry of an Order authorizing BOP to turn over these funds to the Clerk of Court as payment towards Defendant's outstanding criminal monetary penalties.

6. Title 18 United States Code § 3613 sets forth the procedures for the United States to enforce criminal monetary penalties, including restitution and criminal fines. *See* 18 U.S.C. §§ 3613(a), 3613(f)(government enforces restitution in the same manner as a fine). In particular, the statute provides that a sentence imposing restitution constitutes a lien in favor of the government against all of the defendant's property and rights to property. 18 U.S.C. § 3613(c). Thus, the United States' lien would attach to Defendant's interest in funds held by BOP in his inmate trust account. *See also* 18 U.S.C. § 3613(a)(government enforces restitution against all property and rights to property of the defendant); 18 U.S.C. § 3664(m)(government may use all available and reasonable means to collect restitution).

¹ The purpose of inmate trust account or commissary account is to allow the BOP to maintain inmates' monies while they are incarcerated, including monies received by the inmate from prison employment and outside sources. 28 C.F.R. §§ 506.1, 545.11. Family, friends, or other sources must deposit funds for the benefit of the inmate into these accounts. *Id.* Deposits intended for the inmate's account must be mailed directly to the BOP's centralized commissary account. 28 C.F.R. § 540.23.

7. More importantly, the Mandatory Victims Restitution Act, 18 U.S.C. § 3663A, et seq. (“MVRA”), which applies here, requires that the defendant’s resources received from any source during his term of incarceration must be applied to his outstanding restitution and/or fine obligation. Specifically, 18 U.S.C. § 3664, which provides the procedures for the imposition and enforcement of restitution and/or fine, states:

If a person obligated to provide restitution, or pay a fine, receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.

18 U.S.C. § 3664(n)(emphasis added). *See also United States v. Cunningham, et al.*, 866 F. Supp.2d 1050, 1061-62 (S.D. Iowa 2012)(entire amount of defendant’s disability retirement payments could be garnished while defendant was incarcerated as necessary and appropriate to effectuate § 3664(n) and the restitution order).

8. The government also submits that an Order authorizing the turnover of Defendant’s property is appropriate here and the United States is not required to rely upon other formal collection remedies such as garnishment of or execution upon property to obtain these funds. The funds at issue currently are in the United States’ possession and the United States has a valid lien over this property.

9. Furthermore, because the property is cash, it does not fall within any applicable categories of the exempt property that a defendant may claim in a criminal case. *See* 18 U.S.C. § 3613(a)(1)(setting forth the applicable IRS property exemptions for criminal cases). For criminal debts such as fines and restitution, federal law provides that the only categories of exempt property are: (1) wearing apparel and school books; (2) fuel, provisions, furniture, and personal effects; (3) books and tools of a trade, business, or profession; (4) unemployment benefits; (5) undelivered

mail; (6) annuity or pension payments under certain, specified federal statutes; (7) workmen's compensation; (8) judgments for support of minor children; (9) certain service-connected disability payments; and (10) assistance under the Job Training Partnership Act. 18 U.S.C. § 3613(a)(1). Accordingly, Defendant cannot properly claim that the funds held in his inmate trust account are exempt from payment².

10. The United States submits that the requested relief is reasonable and appropriate in this instance where Defendant has accumulated funds in his inmate trust account yet has not satisfied his debt. Also, without this relief, BOP will be required to allow Defendant access to these funds. This would allow Defendant, or others, the opportunity to possibly dissipate, conceal, or transfer the funds without first paying the fine.

11. Defendant is scheduled to remain incarcerated until 2022. As long as Defendant remains incarcerated, the funds which have accumulated in his inmate trust account should be used to satisfy his debt.

12. Accordingly, the United States respectfully requests that the Court grant the Motion and Order that BOP turn over the funds in Defendant's inmate trust account, minus \$300.00 that will remain in said account for Defendant's miscellaneous expenses, to the Clerk of Court to be applied towards Defendant's debt.

² By statute, challenges to a garnishment of the defendant's property are limited to: (1) the probable validity of any claim of exemption and (2) compliance with any statutory requirement for the issuance of the post-judgment remedy granted. 28 U.S.C. § 3202(d); *United States v. Lazzari*, 2014 WL 197739 (M.D. Fla. January 15, 2014).

WHEREFORE, for the reasons explained above, the United States requests that this Court grant its motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of United States of America to Authorize Payment from Inmate Trust Account was filed with the Clerk of Court using the CM/ECF system and mailed by United States Postal Service to Simon Davis (Reg. No. #78309-061), Elkton FCI, P.O. Box 129, Lisbon, Ohio 44432, this 9th day of February, 2021.



DANIEL A. BROWN (0023147)
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

United States of America,

Plaintiff,

v.

Case No. 1:19cr052

Simon Davis,

Judge Michael R. Barrett

Defendant.

ORDER

This matter is before the Court on Plaintiff's Motion to Authorize Payment from Inmate Trust Account (Doc. 24)

On March 10, 2021, this Court issued an Order (Doc. 25) providing twenty-one (21) days for the defendant to file a response, otherwise, the Court will consider the matter unopposed. There being no response by the defendant as of this date, the Motion (Doc. 24) is indeed considered unopposed and is therefore **GRANTED**.

IT IS SO ORDERED.

s/Michael R. Barrett

Michael R. Barrett, Judge
United States District Court