

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA	:	JUDGE DONALD C. NUGENT
	:	
	:	
	:	
v.	:	CASE NO. 1:08 cr 506-006
	:	
ANTHONY VIOLA	:	<u>MOTION FOR RELIEF FROM</u>
Respondent.	:	<u>GOVERNMENTAL COLLECTION</u>
	:	<u>ACTION IN CONTRAVENTION OF</u>
	:	<u>COURT’S RESTITUTION JUDGMENT</u>

Now comes defendant, Anthony Viola, by and through undersigned counsel and moves this Honorable Court for an order GRANTING Viola’s Motion for Relief, which seeks 1) a declaration that the collection of Viola’s tax returns through TOP is in Contravention of the Court’s Restitution Judgment, 2) an order compelling the Government to return Viola all funds over taken by the government via offset of Viola’s Tax returns, and 3) order the government to produce an accounting of Viola’s joint and several restitution obligation in light of all payments made by joint and several obligors. The reasons in support of this motion are more fully set forth in the memorandum of law, attached hereto as if incorporated herein.

Respectfully submitted,

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Memorandum of Law

A. Relevant Background

Following a jury trial, Defendant Anthony Viola was found guilty on counts 1, 2, 3-20, and 22-36. This Court sentenced Defendant Anthony Viola to a term of prison, supervised release, and restitution on January 5, 2012 (See Doc #: 363 Filed: 05/30/13 PageID #: 4867). Preceding Defendant Viola's sentencing, each party was afforded due process, including notice and the right to be heard in advance of this Court's January 5, 2012 sentencing order. Specifically, the Government filed a sentencing memorandum which identified specific loss amounts in a detailed spreadsheet. (See Doc #: 335-1 Filed: 05/30/13 PageID #: 3892).

In the sentencing judgment, this Court ordered Viola to pay a total amount of \$1,256,528.49 payable to three named bank-victims. (See Doc #: 363 Filed: 01/13/12 PageID #: 4871). This Court's January 5, 2012 sentencing judgment constituted a final appealable order, upon which Defendant, Anthony Viola timely appealed both his conviction and sentence.¹ On May 30, 2013, the Government filed a Notice of Finalization of Restitution. (See Case: Doc #: 427 Filed: 05/30/13 PageID #: 9086). On July 11, 2013² this Court filed a Restitution Order which increased Viola's restitution amount from \$1,256,528.49 to \$2,649,865. (See Doc #: 428 Filed: 07/11/13 PageID #: 9086).

Throughout Viola's incarceration and supervision, he made consistent payments pursuant to this Court's payment plan. **See Exhibit 1; Payment Record During Incarceration.** On November 14, 2024, this Court ordered that;

Anthony Viola's term of supervised release shall expire on January 12, 2025, as scheduled, with a balance of restitution owing. Mr. Viola shall continue to make restitution payments through the Financial Litigation Program of the U.S. Attorney's Office, after the term of supervised release

¹ Notice of Appeal was filed 1/31/12, Defendant's Appellate Brief and Assignment of Errors was filed 3/25/2013, The Government's Reply was filed May 1, 2013.

² The imaging of this Court's dated signature appears to indicate that the order was issued July 11, 2012. However, the docket establishes that the order was filed July 11, 2013. Further, the Order references a May 30, 2013 filing by the government. Accordingly, this motion proceeds on reliance of the docket date July 11, 2013.

expires, until the balance is paid in full. Any interest requirement is hereby waived.

(See Doc #: 569 Filed: 11/14/24 PageID #: 11144) Viola has continued to make every single payment pursuant to this Court's order. **See Exhibit 2** May 2026 statement and **Exhibit 3** Restitution Payoff Statement. Nevertheless, Viola's tax returns have been seized. **See Exhibit 4** Notice of Tax Seizure. This seizure claims to be made to collect Viola's restitution debt through the Treasury Offset Program ("TOP"). Importantly, Viola is not and never has been a delinquent debtor.

B. The Treasury Offset Program

TOP is a federal program authorized by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, which permits the Treasury Department to collect delinquent debts owed to federal agencies. See 31 U.S.C. § 3716. Under TOP "Congress has subjected to offset all 'funds payable by the United States,' § 3701(a)(1), to an individual who owes certain delinquent federal debts." *Astrue v. Ratliff*, 560 U.S. 586, 589 (2010). The intricacies of TOP program have been described in the following terms:

The practice of withholding federal payment in satisfaction of a debt is known as an administrative offset." *Reeves v. Astrue*, 526 F.3d 732, 738 n. 3 (11th Cir. 2008). The Debt Collection Improvement Act of 1982, 31 U.S.C. §§ 3701 et seq., authorizes the Treasury Department "to collect non-tax debts by withholding funds paid out by other federal agencies." *Reeves*, 526 F.3d at 738 n. 3; see 31 U.S.C. § 3716(a); 31 C.F.R. § 285.5. Pursuant to the TOP, any federal agency with a claim against the debtor, after notifying the debtor that the debt is subject to administrative offset and providing an opportunity to dispute the debt or make arrangements to pay it, may collect the debt by administrative offset. See 31 U.S.C. § 3716(a), (c)(6). In order to do so, the creditor agency must certify to Treasury that the debt is eligible for collection by offset and that all due process protections have been met. See 31 C.F.R. § 285.5(d)(3)(ii), (d)(6). If properly certified, the Treasury Department must administratively offset the debt. See 31 U.S.C. § 3716(c)(1)(A).

Cleveland v. United States, No. 3:13-CV-281, 2020 WL 3976940, at *2 (M.D. Pa. July 14, 2020) (quoting *Johnson v. U.S. Dep't of Treasury*, 300 F. App'x 860, 862 (11th Cir. 2008) (footnotes omitted)). Yes, federal tax refunds are subject to offset. Under the Debt Collection Improvement Act (DCIA), the

Treasury Offset Program (TOP) is authorized to intercept and withhold tax refunds to collect delinquent debts on behalf of federal agencies, including the Department of Justice.

C. Law and Analysis

This issue was addressed by the Eastern District of Pennsylvania in *United State v. Taylor*, **CITATION**. In *Taylor*, the defendant filed an objection to TOPS seizure of her social security benefits to offset the restitution debt which was ordered as a result of her 2008 criminal convictions. Like Viola, Taylor had made all restitution payments as ordered and was not a delinquent debtor, reasoning that:

Because Taylor has complied with this Court's order and timely made \$100 restitution payments each year, Taylor contends the TOP offset is improper. Taylor objects to the Treasury Department's fifteen percent offset of her monthly Social Security benefits because it exceeds the \$100 per year restitution amount that the Court ordered her to pay pursuant to the Mandatory Victims Restitution Act ("MVRA"). In addition, she argues that TOP cannot apply to her because it only applies to delinquent debts and her debt is not delinquent because she has been making timely restitution payments. Notwithstanding that Taylor has made timely restitution payments in accordance with the Court's restitution payment plan, the government argues that Taylor's restitution debt is subject to TOP offset because she has not paid the entire \$3,300,000.00 owed for restitution. In the government's view, the Court's establishment of a payment plan for restitution pursuant to the MVRA does not preclude the government from undertaking a collection action against Taylor.

The MVRA applies to Taylor's conviction and provides that "the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant." 18 U.S.C. § 3664(f)(1)(A). It further directs that "the court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid." Id. § 3664(f)(2). "[T]he plain language of section 3664(f)—stating that 'the court shall' order restitution and specify the manner and schedule of payments—means that ordering restitution is a judicial function that cannot be delegated, in whole or in part." *United States v. Corley*, 500 F.3d 210, 225 (3d Cir. 2007), vacated and remanded on other grounds, 556 U.S. 303 (2009); see also *United States v. Lessner*, 498 F.3d 185, 201 (3d Cir. 2007) ("The district court's obligation to comply with § 3664(f)(2) may not be delegated to the probation office."). Thus, it is the court alone and not the government who possesses the statutory authority to order restitution and establish a payment plan for restitution. *United States v. Martinez*, 812 F.3d 1200, 1206 (10th Cir. 2015) ("[T]he statutory scheme directs the district court,

not the government, to direct how and when the defendant is to satisfy a restitution order.”)

“[U]nlike a civil judgment, the restitution order is the product of a ‘specific and detailed [statutory] scheme addressing the issuance ... of restitution orders arising out of criminal prosecutions.’” Id. at 1204 (quoting *United States v. Wyss*, 744 F.3d 1214, 1217 (10th Cir. 2014)). Section 3572(d) states that “[a] person sentenced to pay a fine or other monetary penalty, including restitution, shall make such payment immediately, unless, in the interest of justice, the court provides for payment on a date certain or in installments.” 18 U.S.C. § 3572(d)(1)..... It is evident from the structure and language of § 3572 that under an installment based restitution order, the restitution debt only becomes delinquent when a defendant’s installment payment is more than 30 days late.¹²

The Debt Collection Improvement Act provides: “Any Federal agency that is owed by a person a past due, legally enforceable nontax debt that is over 120 days delinquent . . . shall notify the Secretary of the Treasury of all such nontax debts for purposes of administrative offset” 31 U.S.C.A. § 3716(c)(6)(A). Thus, under TOP “Congress has subjected to offset all ‘funds payable by the United States,’ § 3701(a)(1), to an individual who owes certain delinquent federal debts.”¹³ *Astrue v. Ratliff*, 560 U.S. 586, 589 (2010) (emphasis added).... Because Taylor has timely made her restitution payments, her restitution debt is not delinquent, and the government cannot use TOP to collect on her debt.

I will grant Taylor’s motion for relief and declare the collection of restitution pursuant to the offset of Taylor’s Social Security benefits through TOP to be in contravention of the Court’s restitution judgment. I will also order the government to return to Taylor all funds taken by the government by offset of Taylor’s Social Security benefits.

United States v. Taylor, No. 2:06-cr-00658 (E.D. Pa. July 20, 2021) In summation the Court found that the government exceeded its authority and violated the Court’s restitution order when it offset Taylor’s benefits. *Taylor* is indistinguishable from the case at bar.

In addressing this issue, New York’s Southern District established that the Court also retains the authority to review administrative action that “threatens to thwart the proper execution of the collection of restitution ordered by [the] district court criminal sentence.” *United States v. Hughes*, 813 F.3d 1007, 1010, 421 U.S. App. D.C. 206 (D.C. Cir. 2016). *United States v. Amato*, S.D.N.Y. No. 01-CR-0058-LTS, 2025 U.S. Dist. LEXIS 6830, at *2 (Jan. 14, 2025). And numerous other Courts agree. *United States v. Hughes*,

813 F.3d 1007, 1010-11, 421 U.S. App. D.C. 206 (D.C. Cir. 2016) (finding that the use of TOP to offset the defendant's tax refunds was improper because the defendant was complying with the terms of the restitution order, and her restitution obligation was therefore not delinquent); *see also United States v. Martinez*, 812 F.3d 1200, 1205 (10th Cir. 2015) (finding, in context of garnishment proceeding, that "an installment-based restitution order does not render the total restitution amount due immediately," and, therefore, "a defendant subject to an installment-based restitution order need only make payments at the intervals and in the amounts specified by the order"); *United States v. Hughes*, 914 F.3d 947, 949 (5th Cir. 2019), *as revised* (Feb. 1, 2019), *as revised* (Feb. 14, 2019) ("When a restitution order specifies an installment plan, unless there is language directing that the funds are also immediately due, the government cannot attempt to enforce the judgment beyond its plain terms absent a modification of the restitution order or default on the payment plan."). *See Spina v. United States Attorney's Office*, S.D.N.Y. No. 21-cv-1556 (JGK), 2022 U.S. Dist. LEXIS 65758, at *2 (Apr. 7, 2022).

Here, Viola is subject to an installment plan, and he has made faithful payments. Therefore, he is not a delinquent debtor and is not subject to TOP offset. For all of the reasons set forth Anthony Viola, by and through undersigned counsel respectfully moves this Honorable Court to 1) declare the collection of Viola's tax returns through TOP to be in Contravention of the Court's Restitution Judgment, 2) order the Government to return Viola all funds over and above the payments required by judgment taken by the government via offset of Viola's Tax returns, and 3) require an accounting of Viola's joint and several restitution obligation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The foregoing was served upon all parties via the court's electronic filing system on the 3rd day of
June, 2026.

Respectfully submitted,

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