

DUE PROCESS ACT OF 2016

DECEMBER 23, 2016.—Committed to the Committee of the Full House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
 submitted the following

R E P O R T

[To accompany H.R. 5283]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5283) to amend title 18, United States Code, to reform certain forfeiture procedures, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The Amendment

The amendment is as follows:
 Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “DUE PROCESS Act of 2016” or the “Deterring Undue Enforcement by Protecting Rights of Citizens from Excessive Searches and Seizures Act of 2016”.

SEC. 2. GENERAL RULES FOR CIVIL FORFEITURE PROCEEDINGS.

Section 983(a) of title 18, United States Code, is amended—

(1) in the subsection heading, by striking “COMPLAINT” and inserting “COMPLAINT; INITIAL HEARING”;

(2) in paragraph (1)—

(A) in subparagraph (A)—

(i) in clause (i), by striking “60 days” and inserting “30 days”;

(ii) by striking clause (ii);

(iii) in clause (iii)—

(I) in the matter preceding subclause (I)—

(aa) by striking “60-day” and inserting “30-day”; and

(bb) by striking “does not file” and all that follows through “obtain” and inserting “obtains”; and

(II) in subclause (I), by striking “60 days” and inserting “30 days”;

(iv) in clause (iv), by striking “90 days” and inserting “60 days”;

(v) in clause (v), by striking “60 days” and inserting “30 days”; and

(vi) by adding at the end the following:

“(vi) The notice under this subparagraph shall include an address, which shall also be widely published, at which the seizing agency can receive until 5 p.m. on any business day an interested party’s claim contesting a seizure or forfeiture. The interested party may send such a claim to that address by courier or overnight mail. For the purpose of determining compliance with any deadlines in filing such a claim, an interested party completes the filing by placing the communication making the claim in the control of an independent third party delivery service such as a courier company or the United States mail. In determining whether any legal deadline for the filing of such a claim has been met a court shall allow for the equitable tolling of the deadline in appropriate cases.

“(vii) The seizing agency shall make publicly available for each nonjudicial forfeiture, with respect to which a request for mitigation or remission is made, a statement of the agency’s disposition of that request, redacted if necessary, including the reasons for the decision.”;

(B) in subparagraph (C)—

(i) by striking “60” and inserting “30”; and

(ii) by striking “which period may” and all that follows through “as necessary.”;

(C) by adding at the end the following:

“(G) Any notice described in subparagraph (A) that is provided to a party shall include notice of—

“(i) the right of the party to request an initial hearing in accordance with paragraph (5);

“(ii) the right of the party to be represented by counsel at the initial hearing described in clause (i) and any civil forfeiture proceeding under a civil forfeiture statute; and

“(iii) the right of the party to request that the party be represented by counsel at the initial hearing described in clause (i) and any civil forfeiture proceeding under a civil forfeiture statute if the party meets the requirements described in subsection (b).”;

(D) by striking “nonjudicial” each place it appears;

(3) in paragraph (2)(A), by striking “nonjudicial”;

(4) in paragraph (2)(B)—

(A) by striking “35 days” and inserting “65 days”; and

(B) by striking “30 days” and inserting “60 days”;

(5) so that subparagraph (A) of paragraph (3) reads as follows:

“(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint has been filed may extend the period for filing a complaint upon agreement of the parties.”; and

(6) by adding at the end the following:

“(5)(A) A party claiming property seized in a civil forfeiture proceeding under a civil forfeiture statute may request, not later than 30 days after the date on

which a notice described in paragraph (1)(A) is received or if notice is not received, not later than 30 days after the date of final publication of notice of seizure, an initial hearing to take place before a magistrate judge in the appropriate United States district court not later than the date on which a civil forfeiture proceeding under a civil forfeiture statute relating to the seized property commences.

“(B) If a party makes a request under subparagraph (A), a magistrate judge shall conduct an initial hearing not later than 10 days after the date on which the request is made.

“(C) At the initial hearing—

“(i) the magistrate judge shall—

“(I) inform the party in easily understood terms of—

“(aa) the right of the party to be represented by counsel at the initial hearing and any civil forfeiture proceeding under a civil forfeiture statute;

“(bb) the right of the party to request that the party be represented by counsel at the initial hearing and any civil forfeiture proceeding under a civil forfeiture statute if the magistrate judge finds that the party meets the requirements described in subsection (b);

“(cc) sufficiently detailed facts regarding the seizure of the property if the property was seized pursuant to a warrant described in the matter preceding subparagraph (A) of section 981(b)(2); and

“(dd) the right of the party to challenge the lawfulness of the seizure of the property, including on the grounds that at the time the property was seized—

“(AA) if the property was seized pursuant to a warrant described in the matter preceding subparagraph (A) of section 981(b)(2), the warrant was not supported by probable cause; or

“(BB) if the property was seized without a warrant described in subitem (AA), none of the exceptions described in subparagraphs (A) and (B) of section 981(b)(2) apply to the seizure of the property; and

“(II) if the party meets the requirements described in subsection (b), authorize counsel to represent the party or insure that the party is represented by an attorney for the Legal Services Corporation, as applicable, in accordance with that subsection; and

“(ii) the burden of proof is on the Government to establish that at the time the property was seized—

“(I) if the property was seized pursuant to a warrant described in the matter preceding subparagraph (A) of section 981(b)(2), the warrant was supported by probable cause; or

“(II) if the property was seized without a warrant described in subclause (I)—

“(aa) sufficiently detailed facts regarding the seizure of the property; and

“(bb) an exception described in subparagraphs (A) and (B) of section 981(b)(2) applies to the seizure of the property.

“(D) The magistrate judge shall enter an order for the immediate release of the seized property with prejudice to the right of the Government to commence a civil forfeiture proceeding at a later time if the magistrate judge finds that—

“(i) the requirements described in subparagraphs (A) through (E) of subsection (f)(1) are met; and

“(ii) the Government did not meet the burden of proof described in subparagraph (C)(ii).”.

SEC. 3. REPRESENTATION.

Section 983(b) of title 18, United States Code, is amended—

(1) in paragraph (1)(A), by striking “judicial”; and

(2) in paragraph (2)(A), by striking “judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence” and inserting “civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel”.

SEC. 4. BURDEN OF PROOF.

Section 983(c) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking “a preponderance of the evidence” and inserting “clear and convincing evidence”; and

(2) in paragraph (2), by striking “a preponderance of the evidence” and inserting “clear and convincing evidence”.

SEC. 5. RIGHT TO REQUEST HEARING ON PRETRIAL RESTRAINT OF PROPERTY TO RETAIN COUNSEL OF CHOICE.

(a) TITLE 18.—Section 1963(d) of title 18, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

“(1)(A) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

“(i) upon the filing of an indictment or information charging a violation of section 1962 and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

“(ii) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

“(I) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

“(II) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

“(B)(i) Upon motion of a defendant charged with a violation of section 1962 for which criminal forfeiture is ordered under this section and against whom the order is entered, supported by an affidavit, the court shall hold a hearing to determine whether to modify or rescind, in whole or in part, an order entered under subparagraph (A) to allow the defendant to use the property subject to the order to retain counsel of choice.

“(ii) At the hearing, the court shall consider—

“(I) the weight of the evidence against the defendant with respect to the violation of section 1962 for which criminal forfeiture is ordered under this section;

“(II) the weight of the evidence with respect to whether the property will be subject to forfeiture under this section;

“(III) the history and characteristics of the defendant; and

“(IV) the nature and circumstances of the case.

“(C) An order entered pursuant to subparagraph (A)(ii) shall be effective for not more than 90 days, unless—

“(i) extended by the court for good cause shown; or

“(ii) an indictment or information described in subparagraph (A)(i) has been filed.”; and

(2) in paragraph (2), by inserting “that the defendant committed a violation of section 1962 for which criminal forfeiture may be ordered under this section and probable cause to believe” after “believe”.

(b) CONTROLLED SUBSTANCES ACT.—Section 413(e) of the Controlled Substances Act (21 U.S.C. 853(e)) is amended—

(1) by striking paragraph (1) and inserting the following:

“(1)(A) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

“(i) upon the filing of an indictment or information charging a violation of this title or title III for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

“(ii) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

“(I) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

“(II) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

“(B)(i) Upon motion of a defendant charged with a violation of section 1962 for which criminal forfeiture is ordered under this section and against whom the order is entered, supported by an affidavit sufficient to demonstrate a genuine need for

the defendant to use the property subject to an order entered under subparagraph (A) to retain counsel of choice, the court shall hold a hearing to determine whether to modify or rescind, in whole or in part, the order to allow the defendant to use the property to retain counsel of choice.

- “(ii) At the hearing, the court shall consider—
- “(I) the weight of the evidence against the defendant with respect to the violation of this title or title III for which criminal forfeiture is to be ordered under this section;
 - “(II) the weight of the evidence with respect to whether the property will be subject to forfeiture under this section;
 - “(III) the history and characteristics of the defendant; and
 - “(IV) the nature and circumstances of the case.
- “(C) An order entered pursuant to subparagraph (A)(ii) shall be effective for not more than 90 days, unless—
- “(i) extended by the court for good cause shown; or
 - “(ii) an indictment or information described in subparagraph (A)(i) has been filed.”; and
- (2) in paragraph (2), by inserting “that the defendant committed a violation of this title or title III for which criminal forfeiture may be ordered under this section and probable cause to believe” after “believe”.

SEC. 6. RECOVERY OF ATTORNEYS FEES.

Section 2465(b) of title 28, United States Code, is amended—

- (1) in paragraph (1), by striking “substantially”; and
- (2) by adding at the end the following:

“(3) If the claim is resolved by a settlement in which the claimant prevails, the claimant is entitled to attorneys fees under this subsection to the same extent that the claimant would be if a judgment were issued in the proceeding for the property recovered under the settlement. The payment of attorneys fees under this subsection may not be waived as a part of any settlement with the claimant. That payment is not subject to any offset or deduction by the United States in connection with any claim the United States may have against the claimant.

“(4) For the purposes of this subsection, a claimant prevails if the claimant recovers more than 50 percent, by value, of the money or other property that is claimed.”.

SEC. 7. ANNUAL AUDIT OF CIVIL FORFEITURES.

The Inspector General shall annually conduct an audit of a representative sample of Federal civil forfeitures under statutes described in section 983(i) of title 18, United States Code, to ensure those forfeitures are constitutionally sound and consistent with the letter and spirit of the law. The Department of Justice Inspector General shall report the results of the audit to the Attorney General and to Congress. Such report shall also include the fiscal status of the Asset Forfeiture Fund and Treasury Forfeiture Fund, including any projected growth or shrinking of the Funds in future years, and the viability of the Funds.

SEC. 8. PUBLICLY AVAILABLE DATABASES.

(a) QUARTERLY UPDATED DATABASE ON DETAILS OF FORFEITURES.—The Attorney General shall establish and maintain, with updates on a quarterly basis, a publicly available database that describes with respect to seizures for all Federal civil forfeiture containing the following:

- (1) For each such seizure:
 - (A) Unit of an agency responsible for the seizure, and the location, including at a minimum the State, city, and judicial district where and date when the seizure took place.
 - (B) The type of initial seizure (such as during a stop based on probable cause, or pursuant to a Federal warrant).
 - (C) The nature and value of the seized property.
 - (D) In what manner forfeiture of seized property was conducted (whether by a civil or administrative proceeding, through settlement, or otherwise).
 - (E) Whether a forfeiture of the seized property was of the entire property, or only a part, and if partial, the proportion of the whole that was forfeited.
 - (F) The disposition of the seized property, the date of forfeiture, if any, and the date the disposition took place.
 - (G) What type of criminal activity any forfeited property relates to.
 - (H) Whether any forfeited money was returned to the victim of a crime in connection with which the forfeiture occurred, and the amount returned.
 - (I) The status of any concurrent or related criminal proceeding against the owner of the property, any pending case under title 11 in which the owner of record of the property is the debtor, and any pending civil case in which a receiver has been ordered to take control of the property.

- (J) Whether the forfeiture was contested.
 - (K) Whether the innocent owner made a claim on the property.
 - (L) The total expenses associated with the forfeiture.
 - (M) The total net proceeds of the forfeiture.
 - (N) Demographic information on the person or persons subject to the seizure.
- (2) A statistical breakdown for each agency of the cases of remission and mitigation, including—
- (A) the numbers of requests for remission and mitigation that were—
 - (i) fully granted;
 - (ii) partially granted; or
 - (iii) returned; and
 - (B) with respect to requests that were partially granted—
 - (i) the average percentage of the value of seized property that was returned to the owner; and
 - (ii) what percentage of requests resulted in returned property in each of the following categories:
 - (I) More than zero but less than 25 percent of the property was returned.
 - (II) 25 percent or more of the property was returned, but less than 50 percent.
 - (III) 50 percent or more of the property was returned, but less than 75 percent.
 - (IV) 75 percent or more of the property was returned, but less than 100 percent.
- (3) Any money given from the Asset Forfeiture Fund or Treasury Forfeiture Fund to State or local law enforcement for Joint Law Enforcement Operations (commonly referred to as “JLEO”) funding, or for any other purpose, and the name of the State or local entity receiving that funding.
- (b) REAL-TIME DATABASE TO ASSIST PERSONS WHOSE PROPERTY IS SEIZED.—
- (1) ESTABLISHMENT.—The Attorney General shall establish and maintain, with updates on a real-time basis, a database, organized by State and county, with respect to each Federal seizure of real and personal property for Federal civil forfeiture under statutes described in section 983(i) of title 18, United States Code.
 - (2) DESIGN.—The Attorney General shall design the database to allow any interested party, including any owner, creditor, or lienholder, to determine whether that party has an interest in any such property and to inform that party, and the general public, on the specifics of how to contest each seizure before the forfeiture.
- (c) HEADS OF AGENCIES TO SUBMIT INFORMATION FOR DATABASES.—Not less frequently than quarterly, on a schedule determined by the Attorney General, the head of each Federal agency shall submit to the Attorney General a report that provides, in such form as the Attorney General may prescribe, the information the Attorney General is required to include in the databases established under this section.
- SEC. 9. STANDARD OF PROOF RELATING TO POSSIBLY INNOCENT OWNERS.**
- (a) BURDEN OF PROOF.—Paragraph (3) of section 983(c) of title 18, United States Code, is amended to read as follows:
- “(3) if the Government’s theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish by clear and convincing evidence that—
- “(A) there was a substantial connection between the property and the offense; and
 - “(B) the owner of any interest in the seized property—
 - “(i) intentionally used the property in connection with the offense;
 - “(ii) knowingly consented to the use of the property by another in connection with the offense; or
 - “(iii) knew that the property was being used in connection with the offense.”
- (b) INNOCENT OWNER DEFENSE.—
- (1) SECTION 983(d)(1).—Paragraph (1) of section 983(d) of title 18, United States Code, is amended to read as follows:
 - “(1) An innocent owner’s interest in property shall not be forfeited under any civil forfeiture statute. The Government shall have the burden of proving that the claimant is not an innocent owner by clear and convincing evidence.”

(2) SECTION 983(d)(2)(A)(i).—Paragraph (2)(A)(i) of section 983(d) of title 18, United States Code, is amended by inserting “or consent to” after “did not know of”.

SEC. 10. PROPORTIONALITY.

Section 983(g) of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting “or otherwise disproportional to the gravity of the offense” before the period at the end; and

(2) by amending paragraph (2) to read as follows:

“(2) In making this determination, the court shall consider, in addition to the analysis as to whether the forfeiture is constitutionally excessive, the value of the property, the seriousness of the offense, the level of the claimant’s culpability in the offense giving rise to forfeiture, the claimant’s prior record, the claimant’s financial condition, and whether the forfeiture statute is intended to address the type of conduct alleged as the basis for forfeiture.”.

SEC. 11. SEARCH AND FORFEITURE OF MONETARY INSTRUMENTS.

Section 5317(c) of title 31, United States Code, is amended by striking paragraph (2) and inserting the following:

“(2) CIVIL FORFEITURE.—

“(A) IN GENERAL.—Any property involved in a violation of section 5313 or 5316, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18.

“(B) STRUCTURING.—Any property involved in a violation of section 5324, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18 only if the property to be seized and forfeited is derived from an illegal source or if the structuring offense was used to conceal violations of other criminal laws.”.

SEC. 12. EFFECTIVE DATE AND APPLICABILITY.

This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act and apply only with respect to seizures made on or after that date. Seizures made before that date shall continue to be governed by the law as it existed without regard to this Act or the amendments made by this Act.

Purpose and Summary

H.R. 5283, the “Deterring Undue Enforcement by Protecting Rights of Citizens from Excessive Searches and Seizures Act of 2016,” or “DUE PROCESS Act,” implements procedural reforms to ensure fairness and continued effectiveness of Federal forfeiture and adoptions. The bill seeks to build on changes and incorporate lessons learned from the Civil Action Forfeiture Reform Act (CAFRA) in 2000.

Background and Need for the Legislation

In early 2015, Chairman Goodlatte and Ranking Member Conyers created a Criminal Justice Reform Initiative at the Judiciary Committee to address the significant Congressional interest in criminal justice reform from Members who do and do not serve on the Judiciary Committee. The purpose of the Initiative was to develop bipartisan legislation to address several facets of the federal criminal justice system, including over-criminalization, sentencing reform, prison and reentry reform, protecting citizens through improved criminal procedures and policing strategies, and civil asset forfeiture reform. In addressing these issues, the Committee has relied on the work of the Over-Criminalization Task Force, which held nine hearings on a variety of criminal justice topics during the

113th Congress, as well as the information provided to the Committee by interested Members during the Committee's public listening session in June 2015.

In recent years, there have been many reported incidents in which innocent Americans have had their property or money improperly seized by law enforcement. While asset forfeiture is a useful law enforcement tool, abuses of it clearly show that reform is needed to better protect innocent Americans' property swept up by forfeiture.

In order to strengthen protections for Americans' property, the DUE PROCESS Act provides much needed reforms to Federal civil asset forfeiture programs, increases accountability and oversight of seizures and forfeitures, and strengthens protections for Americans whose property has been seized by law enforcement agencies.

Hearings

The Committee on the Judiciary held no hearings on H.R. 5283. However, on February 11, 2015, the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations held a hearing to examine asset forfeiture procedures and practices, entitled "Federal Asset Forfeiture: Uses and Reforms."

Committee Consideration

On May 23, 2016, the Committee met in open session and ordered the bill H.R. 5283 favorably reported, with an amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 5283.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

With respect to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, an estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 was not submitted to the Committee before the filing of the report.

Duplication of Federal Programs

No provision of H.R. 5283 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 5283 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. § 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5283 will protect innocent citizens from unwittingly being ensnared in civil asset forfeiture, while at the same time protecting civil asset forfeiture as a tool for law enforcement to use against criminals and criminal organizations.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5283 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

Section 1. Short Title.

This section cites the short title of the bill as the “DUE PROCESS Act (DPA) of 2016.”

Section 2. General Rules for Civil Forfeiture Proceedings.

One of the most important changes in CAFRA was the creation of a timeline governing the process from seizure to forfeiture. The ability to force timely adjudication mitigates the hardship to innocent owners and expedites title transfer to the government in the event of a valid forfeiture.

To that end, the DPA broadens the applicability of the CAFRA timelines, adjusts the timeframes in light of the past sixteen years of real world experience, and implements new protections to ensure property owners have the opportunity to contest seizures.

Expanding the CAFRA Timelines. The CAFRA timelines currently apply only in nonjudicial (administrative) forfeitures. This was likely a typographical error, but the result is that property owners lose the benefits of CAFRA in some of the highest value forfeiture proceedings. The DPA ensures that the statutory timelines apply equally in all types of forfeiture proceedings.

Deadline for Notice from the Government. Under current law, the government has 60 days to provide notice of a seizure to a property owner. The DPA reduces this to 30 days. When the Federal Government adopts a state seizure, the notice period is 60 days. The

Department of Justice (DOJ) can extend this period for an additional 30 days for good cause. A court can extend the period for an additional 30 days based on specified factors.

Required Notice. DPA creates new notice requirements, which include an address where a property owner can contest a seizure and a duty to inform property owners of their rights—created in the DPA—to request an initial hearing, to be represented by counsel at that hearing, and to have counsel provided if the property owner is indigent.

For purposes of deadlines, a property owner’s notice is considered received when it is mailed and the law expressly allows for equitable tolling of deadlines when appropriate.

Property Owner’s Response. The DPA extends the period that property owners have to respond to a seizure. In the case of personal notice, the property owner has 65 days (increased from 35 days), and in the case of publicized notice, 60 days (increased from 30).

Filing of a Claim. The government has 90 days after an objection is filed to commence forfeiture proceedings. Under current law, a court can extend this time period upon motion of the government. Under the DPA, the period can be extended only upon agreement of both parties.

Initial Hearing. Upon request, a property owner is entitled to an initial hearing. At the hearing, a magistrate judge shall inform the property owner of his right to be represented by counsel and the right to be provided counsel under specified circumstances for indigent property owners. The judge shall order the immediate release of property if the seizure was not made according to law or if the property owner meets the requirements of section 983(f)(1).

Transparency on Administrative Forfeitures. A seizing agency must publicize its disposition of remission and mitigation requests.

Section 3. Representation.

The right of indigent property owners to have counsel provided to them is extended to all civil forfeiture proceedings. Under current law, indigent property owners are only entitled to counsel at judicial proceedings despite the fact that a majority of forfeitures are resolved administratively.

Section 4. Burden of Proof.

Recognizing the punitive nature of civil forfeiture proceedings, the DPA raises the government’s burden of proof from “preponderance of the evidence” to “clear and convincing evidence.” This is still lower than the criminal standard of “beyond a reasonable doubt.”

Section 5. The Right to Retain Counsel of Choice.

Section 5 is the bill’s only reform of criminal forfeiture. In *Kaley v. United States*, the Supreme Court ruled that a criminal defendant is not constitutionally entitled to an evidentiary hearing to contest the factual predicate of a pretrial restraint on assets even when that money is necessary to pay for his defense.

The DPA reverses the *Kaley* decision and bolsters the Sixth Amendment right to counsel. If the government restrains assets pretrial, a defendant can move for a hearing to determine whether

the seizure should be modified or rescinded to preserve the defendant's right to counsel. At the hearing, the court must consider (1) the weight of the evidence against the defendant, (2) the weight of the evidence with respect to the forfeiture, (3) the history and characteristics of the defendant, and (4) the nature and circumstances of the case.

Section 6. Recovery of Attorney's Fees.

Allows for recovery of attorney's fees when civil forfeiture cases are resolved through settlement assuming the settlement amount is greater than 50% of the seized property's value.

Section 7. Annual Audit of Civil Forfeitures.

The DPA requires the DOJ Inspector General to conduct an annual audit of a sample of Federal civil forfeitures to ensure that they are consistent with the Constitution and the law. The IG's report shall also include an assessment of the fiscal health of the Asset Forfeiture Fund, as well as a projection on any expected growth or reduction.

Section 8. Publicly Available Databases.

The DPA requires the Attorney General to establish and maintain two forfeiture-related databases. One database is a real-time catalogue of Federal forfeitures to assist persons whose property has been seized.

The second database provides broad details on forfeiture to inform Congress and the public of the types of forfeiture, the agencies involved, and the conduct that leads to forfeiture of property.

Section 9. Monetary Instruments and Structuring.

This section codifies already implemented DOJ/IRS policy related to structuring and forfeiture. Structuring is a crime only if cash deposits or withdrawals are done with the intent of avoiding government reporting requirements.

The IRS, however, had frequently used civil forfeiture to seize property when it identified patterns of deposits or withdrawals that were consistent with structuring even when it lacked sufficient evidence to file criminal charges or identify other criminal activity.

Last year, DOJ and IRS announced that they would only charge people with structuring if the funds that were being structured were from illegal sources (*e.g.*, drug trafficking) or the structuring was done to further or hide criminal activity (*e.g.*, tax evasion).

This section codifies that policy and only allows civil forfeiture in structuring cases when the property to be seized is derived from an illegal source or otherwise used to conceal illegal activity.

Section 10. Standard of Proof Relating to Innocent Owners.

The DPA provides additional protection to innocent owners. If the government is attempting to forfeit property under a civil forfeiture statute because the property was used in the commission of a crime, the government must prove that (1) there was a substantial connection between the property and the offense; and (2) the owner of the seized property intentionally used the property in the offense, knowingly consented to its criminal use, or reasonably

should have known that the property might be used in connection with the offense.

Section 11. Proportionality.

Under current law, a judge may reduce the value of a forfeiture only when the forfeiture is so grossly disproportionate to the underlying wrongdoing that it rises to the level of a constitutional violation under the Eighth Amendment. The DPA gives judges greater latitude to reduce the size of a forfeiture penalty based on the following factors: the value of the property, the seriousness of the offense, the culpability of the claimant, the claimant's prior record, the claimant's financial condition and need to support a family, and the intent of the forfeiture statute in question.

Section 12. Effective Date.

The DPA will be effective when adopted. Seizures made prior to enactment will be forfeited under current law.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 46—FORFEITURE

* * * * *

§ 983. General rules for civil forfeiture proceedings

(a) NOTICE; CLAIM; COMPLAINT; *INITIAL HEARING*.—

(1)(A)(i) Except as provided in clauses (ii) through (v), in any **[nonjudicial]** civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than **[60 days]** *30 days* after the date of the seizure.

[(ii) No notice is required if, before the 60-day period expires, the Government files a civil judicial forfeiture action against the property and provides notice of that action as required by law.]

(iii) If, before the **[60-day]** *30-day* period expires, the Government **[does not file a civil judicial forfeiture action, but does obtain]** *obtains* a criminal indictment containing an allegation that the property is subject to forfeiture, the Government shall either—

(I) send notice within the **[60 days]** *30 days* and continue the **[nonjudicial]** civil forfeiture proceeding under this section; or

(II) terminate the **[nonjudicial]** civil forfeiture proceeding, and take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(iv) In a case in which the property is seized by a State or local law enforcement agency and turned over to a Federal law enforcement agency for the purpose of forfeiture under Federal law, notice shall be sent not more than **[90 days]** *60 days* after the date of seizure by the State or local law enforcement agency.

(v) If the identity or interest of a party is not determined until after the seizure or turnover but is determined before a declaration of forfeiture is entered, notice shall be sent to such interested party not later than **[60 days]** *30 days* after the determination by the Government of the identity of the party or the party's interest.

(vi) The notice under this subparagraph shall include an address, which shall also be widely published, at which the seizing agency can receive until 5 p.m. on any business day an interested party's claim contesting a seizure or forfeiture. The interested party may send such a claim to that address by courier or overnight mail. For the purpose of determining compliance with any deadlines in filing such a claim, an interested party completes the filing by placing the communication making the claim in the control of an independent third party delivery service such as a courier company or the United States mail. In determining whether any legal deadline for the filing of such a claim has been met a court shall allow for the equitable tolling of the deadline in appropriate cases.

(vii) The seizing agency shall make publicly available for each nonjudicial forfeiture, with respect to which a request for mitigation or remission is made, a statement of the agency's disposition of that request, redacted if necessary, including the reasons for the decision.

(B) A supervisory official in the headquarters office of the seizing agency may extend the period for sending notice under subparagraph (A) for a period not to exceed 30 days (which period may not be further extended except by a court), if the official determines that the conditions in subparagraph (D) are present.

(C) Upon motion by the Government, a court may extend the period for sending notice under subparagraph (A) for a period not to exceed **[60]** *30* days, **[which period may be further 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.

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

(i) endangering the life or physical safety of an individual;

- (ii) flight from prosecution;
- (iii) destruction of or tampering with evidence;
- (iv) intimidation of potential witnesses; or
- (v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(E) Each of the Federal seizing agencies conducting [non-judicial] forfeitures under this section shall report periodically to the Committees on the Judiciary of the House of Representatives and the Senate the number of occasions when an extension of time is granted under subparagraph (B).

(F) If the Government does not send notice of a seizure of property in accordance with subparagraph (A) to the person from whom the property was seized, and no extension of time is granted, the Government shall return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. The Government shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

(G) Any notice described in subparagraph (A) that is provided to a party shall include notice of—

- (i) the right of the party to request an initial hearing in accordance with paragraph (5);
- (ii) the right of the party to be represented by counsel at the initial hearing described in clause (i) and any civil forfeiture proceeding under a civil forfeiture statute; and
- (iii) the right of the party to request that the party be represented by counsel at the initial hearing described in clause (i) and any civil forfeiture proceeding under a civil forfeiture statute if the party meets the requirements described in subsection (b).

(2)(A) Any person claiming property seized in a [nonjudicial] civil forfeiture proceeding under a civil forfeiture statute may file a claim with the appropriate official after the seizure.

(B) A claim under subparagraph (A) may be filed not later than the deadline set forth in a personal notice letter (which deadline may be not earlier than [35 days] 65 days after the date the letter is mailed), except that if that letter is not received, then a claim may be filed not later than [30 days] 60 days after the date of final publication of notice of seizure.

(C) A claim shall—

- (i) identify the specific property being claimed;
- (ii) state the claimant's interest in such property; and
- (iii) be made under oath, subject to penalty of perjury.

(D) A claim need not be made in any particular form. Each Federal agency conducting nonjudicial forfeitures under this section shall make claim forms generally available on request, which forms shall be written in easily understandable language.

(E) Any person may make a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

(3)(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admi-

rality and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.】 *(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint has been filed may extend the period for filing a complaint upon agreement of the parties.*

(B) If the Government does not—

(i) file a complaint for forfeiture or return the property, in accordance with subparagraph (A); or

(ii) before the time for filing a complaint has expired—

(I) obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and

(II) take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute,

the Government shall promptly release the property pursuant to regulations promulgated by the Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.

(C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture is the only forfeiture proceeding commenced by the Government, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

(D) No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.

(4)(A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

(B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

(5)(A) *A party claiming property seized in a civil forfeiture proceeding under a civil forfeiture statute may request, not later than 30 days after the date on which a notice described in paragraph (1)(A) is received or if notice is not received, not later than 30 days after the date of final publication of notice of seizure, an initial hearing to take place before a magistrate judge in the appropriate United States district court not later than*

the date on which a civil forfeiture proceeding under a civil forfeiture statute relating to the seized property commences.

(B) If a party makes a request under subparagraph (A), a magistrate judge shall conduct an initial hearing not later than 10 days after the date on which the request is made.

(C) At the initial hearing—

(i) the magistrate judge shall—

(I) inform the party in easily understood terms of—

(aa) the right of the party to be represented by counsel at the initial hearing and any civil forfeiture proceeding under a civil forfeiture statute;

(bb) the right of the party to request that the party be represented by counsel at the initial hearing and any civil forfeiture proceeding under a civil forfeiture statute if the magistrate judge finds that the party meets the requirements described in subsection (b);

(cc) sufficiently detailed facts regarding the seizure of the property if the property was seized pursuant to a warrant described in the matter preceding subparagraph (A) of section 981(b)(2); and

(dd) the right of the party to challenge the lawfulness of the seizure of the property, including on the grounds that at the time the property was seized—

(AA) if the property was seized pursuant to a warrant described in the matter preceding subparagraph (A) of section 981(b)(2), the warrant was not supported by probable cause; or

(BB) if the property was seized without a warrant described in subitem (AA), none of the exceptions described in subparagraphs (A) and (B) of section 981(b)(2) apply to the seizure of the property; and

(II) if the party meets the requirements described in subsection (b), authorize counsel to represent the party or insure that the party is represented by an attorney for the Legal Services Corporation, as applicable, in accordance with that subsection; and

(ii) the burden of proof is on the Government to establish that at the time the property was seized—

(I) if the property was seized pursuant to a warrant described in the matter preceding subparagraph (A) of section 981(b)(2), the warrant was supported by probable cause; or

(II) if the property was seized without a warrant described in subclause (I)—

(aa) sufficiently detailed facts regarding the seizure of the property; and

(bb) an exception described in subparagraphs (A) and (B) of section 981(b)(2) applies to the seizure of the property.

(D) The magistrate judge shall enter an order for the immediate release of the seized property with prejudice to the right

of the Government to commence a civil forfeiture proceeding at a later time if the magistrate judge finds that—

- (i) the requirements described in subparagraphs (A) through (E) of subsection (f)(1) are met; and
- (ii) the Government did not meet the burden of proof described in subparagraph (C)(ii).

(b) REPRESENTATION.—

(1)(A) If a person with standing to contest the forfeiture of property in a **judicial** civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

(B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as—

- (i) the person's standing to contest the forfeiture; and
- (ii) whether the claim appears to be made in good faith.

(2)(A) If a person with standing to contest the forfeiture of property in a **judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence** civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim.

(B)(i) At appropriate times during a representation under subparagraph (A), the Legal Services Corporation shall submit a statement of reasonable attorney fees and costs to the court.

(ii) The court shall enter a judgment in favor of the Legal Services Corporation for reasonable attorney fees and costs submitted pursuant to clause (i) and treat such judgment as payable under section 2465 of title 28, United States Code, regardless of the outcome of the case.

(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

(c) BURDEN OF PROOF.—In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property—

(1) the burden of proof is on the Government to establish, by **a preponderance of the evidence** *clear and convincing evidence*, that the property is subject to forfeiture;

(2) the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by **a preponderance of the evidence** *clear and convincing evidence*, that property is subject to forfeiture; and

[(3) if the Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.]

(3) if the Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish by clear and convincing evidence that—

(A) there was a substantial connection between the property and the offense; and

(B) the owner of any interest in the seized property—

(i) intentionally used the property in connection with the offense;

(ii) knowingly consented to the use of the property by another in connection with the offense; or

(iii) knew that the property was being used in connection with the offense.

(d) INNOCENT OWNER DEFENSE.—

【(1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.】

(1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The Government shall have the burden of proving that the claimant is not an innocent owner by clear and convincing evidence.

(2)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term "innocent owner" means an owner who—

(i) did not know of or consent to the conduct giving rise to forfeiture; or

(ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

(B)(i) For the purposes of this paragraph, ways in which a person may show that such person did all that reasonably could be expected may include demonstrating that such person, to the extent permitted by law—

(I) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

(II) in a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

(ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

(3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term "innocent owner" means a person who, at the time that person acquired the interest in the property—

(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and

(ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.
 (B) An otherwise valid claim under subparagraph (A) shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if—

(i) the property is the primary residence of the claimant;
 (ii) depriving the claimant of the property would deprive the claimant of the means to maintain reasonable shelter in the community for the claimant and all dependents residing with the claimant;
 (iii) the property is not, and is not traceable to, the proceeds of any criminal offense; and
 (iv) the claimant acquired his or her interest in the property through marriage, divorce, or legal separation, or the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate,
 except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subparagraph to the value necessary to maintain reasonable shelter in the community for such claimant and all dependents residing with the claimant.

(4) Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.

(5) If the court determines, in accordance with this section, that an innocent owner has a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court may enter an appropriate order—

(A) severing the property;

(B) transferring the property to the Government with a provision that the Government compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

(C) permitting the innocent owner to retain the property subject to a lien in favor of the Government to the extent of the forfeitable interest in the property.

(6) In this subsection, the term “owner”—

(A) means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest; and

(B) does not include—

(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

(iii) a nominee who exercises no dominion or control over the property.

(e) MOTION TO SET ASIDE FORFEITURE.—

(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who

does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person's interest in the property, which motion shall be granted if—

(A) the Government knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with notice; and

(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

(2)(A) Notwithstanding the expiration of any applicable statute of limitations, if the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without prejudice to the right of the Government to commence a subsequent forfeiture proceeding as to the interest of the moving party.

(B) Any proceeding described in subparagraph (A) shall be commenced—

(i) if nonjudicial, within 60 days of the entry of the order granting the motion; or

(ii) if judicial, within 6 months of the entry of the order granting the motion.

(3) A motion under paragraph (1) may be filed not later than 5 years after the date of final publication of notice of seizure of the property.

(4) If, at the time a motion made under paragraph (1) is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government may institute proceedings against a substitute sum of money equal to the value of the moving party's interest in the property at the time the property was disposed of.

(5) A motion filed under this subsection shall be the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture statute.

(f) RELEASE OF SEIZED PROPERTY.—

(1) A claimant under subsection (a) is entitled to immediate release of seized property if—

(A) the claimant has a possessory interest in the property;

(B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

(C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

(D) the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

(E) none of the conditions set forth in paragraph (8) applies.

(2) A claimant seeking release of property under this subsection must request possession of the property from the appro-

appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) are met.

(3)(A) If not later than 15 days after the date of a request under paragraph (2) the property has not been released, the claimant may file a petition in the district court in which the complaint has been filed or, if no complaint has been filed, in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(B) The petition described in subparagraph (A) shall set forth—

(i) the basis on which the requirements of paragraph (1) are met; and

(ii) the steps the claimant has taken to secure release of the property from the appropriate official.

(4) If the Government establishes that the claimant's claim is frivolous, the court shall deny the petition. In responding to a petition under this subsection on other grounds, the Government may in appropriate cases submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(5) The court shall render a decision on a petition filed under paragraph (3) not later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

(6) If—

(A) a petition is filed under paragraph (3); and

(B) the claimant demonstrates that the requirements of paragraph (1) have been met, the district court shall order that the property be returned to the claimant, pending completion of proceedings by the Government to obtain forfeiture of the property.

(7) If the court grants a petition under paragraph (3)—

(A) the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including—

(i) permitting the inspection, photographing, and inventory of the property;

(ii) fixing a bond in accordance with rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and

(iii) requiring the claimant to obtain or maintain insurance on the subject property; and

(B) the Government may place a lien against the property or file a *lis pendens* to ensure that the property is not transferred to another person.

(8) This subsection shall not apply if the seized property—

(A) is contraband, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

(B) is to be used as evidence of a violation of the law;

(C) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

(D) is likely to be used to commit additional criminal acts if returned to the claimant.

(g) PROPORTIONALITY.—

(1) The claimant under subsection (a)(4) may petition the court to determine whether the forfeiture was constitutionally excessive or otherwise disproportional to the gravity of the offense.

[(2) In making this determination, the court shall compare the forfeiture to the gravity of the offense giving rise to the forfeiture.]

(2) *In making this determination, the court shall consider, in addition to the analysis as to whether the forfeiture is constitutionally excessive, the value of the property, the seriousness of the offense, the level of the claimant's culpability in the offense giving rise to forfeiture, the claimant's prior record, the claimant's financial condition, and whether the forfeiture statute is intended to address the type of conduct alleged as the basis for forfeiture.*

(3) The claimant shall have the burden of establishing that the forfeiture is grossly disproportional by a preponderance of the evidence at a hearing conducted by the court without a jury.

(4) If the court finds that the forfeiture is grossly disproportional to the offense it shall reduce or eliminate the forfeiture as necessary to avoid a violation of the Excessive Fines Clause of the Eighth Amendment of the Constitution.

(h) CIVIL FINE.—

(1) In any civil forfeiture proceeding under a civil forfeiture statute in which the Government prevails, if the court finds that the claimant's assertion of an interest in the property was frivolous, the court may impose a civil fine on the claimant of an amount equal to 10 percent of the value of the forfeited property, but in no event shall the fine be less than \$250 or greater than \$5,000.

(2) Any civil fine imposed under this subsection shall not preclude the court from imposing sanctions under rule 11 of the Federal Rules of Civil Procedure.

(3) In addition to the limitations of section 1915 of title 28, United States Code, in no event shall a prisoner file a claim under a civil forfeiture statute or appeal a judgment in a civil action or proceeding based on a civil forfeiture statute if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous or malicious, unless the prisoner shows extraordinary and exceptional circumstances.

(i) CIVIL FORFEITURE STATUTE DEFINED.—In this section, the term “civil forfeiture statute”—

(1) means any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense; and

(2) does not include—

(A) the Tariff Act of 1930 or any other provision of law codified in title 19;

(B) the Internal Revenue Code of 1986;

(C) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);

(D) the Trading with the Enemy Act (50 U.S.C. 4301 et seq.), the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), or the North Korea Sanctions Enforcement Act of 2016; or

(E) section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

(j) RESTRAINING ORDERS; PROTECTIVE ORDERS.—

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants, or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to civil forfeiture—

(A) upon the filing of a civil forfeiture complaint alleging that the property with respect to which the order is sought is subject to civil forfeiture; or

(B) prior to the filing of such a complaint, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(2) An order entered pursuant to paragraph (1)(B) shall be effective for not more than 90 days, unless extended by the court for good cause shown, or unless a complaint described in paragraph (1)(A) has been filed.

(3) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when a complaint has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to civil forfeiture and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 14 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(4) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

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CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

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§ 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law—

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (1) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

【(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

【(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

【(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

【(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.】

(1)(A) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(i) upon the filing of an indictment or information charging a violation of section 1962 and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(ii) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(I) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(II) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(B)(i) Upon motion of a defendant charged with a violation of section 1962 for which criminal forfeiture is ordered under this section and against whom the order is entered, supported by an affidavit, the court shall hold a hearing to determine whether to modify or rescind, in whole or in part, an order entered under subparagraph (A) to allow the defendant to use the property subject to the order to retain counsel of choice.

(ii) At the hearing, the court shall consider—

(I) the weight of the evidence against the defendant with respect to the violation of section 1962 for which criminal forfeiture is ordered under this section;

- (II) *the weight of the evidence with respect to whether the property will be subject to forfeiture under this section;*
- (III) *the history and characteristics of the defendant; and*
- (IV) *the nature and circumstances of the case.*

(C) *An order entered pursuant to subparagraph (A)(ii) shall be effective for not more than 90 days, unless—*

- (i) *extended by the court for good cause shown; or*
- (ii) *an indictment or information described in subparagraph (A)(i) has been filed.*

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe *that the defendant committed a violation of section 1962 for which criminal forfeiture may be ordered under this section and probable cause to believe* that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on

behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to—

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of

property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (1), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(1)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to

the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

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CONTROLLED SUBSTANCES ACT

TITLE II—CONTROL AND ENFORCEMENT

* * * * *

PART D—OFFENSES AND PENALTIES

* * * * *

CRIMINAL FORFEITURES

PROPERTY SUBJECT TO CRIMINAL FORFEITURE

SEC. 413. (a) Any person convicted of a violation of this title or title III punishable by imprisonment for more than one year shall

forfeit to the United States, irrespective of any provision of State law—

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 408 of this title (21 U.S.C. 848), the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this title or title III, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

MEANING OF TERM "PROPERTY"

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

THIRD PARTY TRANSFERS

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

REBUTTABLE PRESUMPTION

(d) There is a rebuttable presumption at trial that any property of a person convicted of a felony under this title or title III is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that—

(1) such property was acquired by such person during the period of the violation of this title or title III or within a reasonable time after such period; and

(2) there was no likely source for such property other than the violation of this title or title III.

PROTECTIVE ORDERS

(e) (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of this title or title III for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.】

(1)(A) *Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—*

(i) upon the filing of an indictment or information charging a violation of this title or title III for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(ii) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(I) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(II) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(B)(i) *Upon motion of a defendant charged with a violation of section 1962 for which criminal forfeiture is ordered under this section*

and against whom the order is entered, supported by an affidavit sufficient to demonstrate a genuine need for the defendant to use the property subject to an order entered under subparagraph (A) to retain counsel of choice, the court shall hold a hearing to determine whether to modify or rescind, in whole or in part, the order to allow the defendant to use the property to retain counsel of choice.

(ii) At the hearing, the court shall consider—

(I) the weight of the evidence against the defendant with respect to the violation of this title or title III for which criminal forfeiture is be ordered under this section;

(II) the weight of the evidence with respect to whether the property will be subject to forfeiture under this section;

(III) the history and characteristics of the defendant; and

(IV) the nature and circumstances of the case.

(C) An order entered pursuant to subparagraph (A)(ii) shall be effective for not more than 90 days, unless—

(i) extended by the court for good cause shown; or

(ii) an indictment or information described in subparagraph (A)(i) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe *that the defendant committed a violation of this title or title III for which criminal forfeiture may be ordered under this section and probable cause to believe* that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(4) ORDER TO REPATRIATE AND DEPOSIT.—

(A) IN GENERAL.—Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

(B) FAILURE TO COMPLY.—Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.

WARRANT OF SEIZURE

(f) The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (e) may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

EXECUTION

(g) Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

DISPOSITION OF PROPERTY

(h) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale of any other any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

AUTHORITY OF THE ATTORNEY GENERAL

(i) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this title, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, in accordance with the provisions of section 511(e) of this title (21 U.S.C. 881(e)), of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

APPLICABILITY OF CIVIL FORFEITURE PROVISIONS

(j) Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 511(d) of this title (21 U.S.C. 881(d)) shall apply to a criminal forfeiture under this section.

BAR ON INTERVENTION

(k) Except as provided in subsection (n), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

JURISDICTION TO ENTER ORDERS

(l) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

DEPOSITIONS

(m) In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time any place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

THIRD PARTY INTERESTS

(n)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order

of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, and additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of this claim to the property and cross-examine witnesses who appear at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under the section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(o) The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(p) FORFEITURE OF SUBSTITUTE PROPERTY.—

(1) IN GENERAL.—Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant—

(A) cannot be located upon the exercise of due diligence;

- (B) has been transferred or sold to, or deposited with, a third party;
- (C) has been placed beyond the jurisdiction of the court;
- (D) has been substantially diminished in value; or
- (E) has been commingled with other property which cannot be divided without difficulty.

(2) **SUBSTITUTE PROPERTY.**—In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

(3) **RETURN OF PROPERTY TO JURISDICTION.**—In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.

(q) The court, when sentencing a defendant convicted of an offense under this title or title III involving the manufacture, the possession, or the possession with intent to distribute, of amphetamine or methamphetamine, shall—

(1) order restitution as provided in sections 3612 and 3664 of title 18, United States Code;

(2) order the defendant to reimburse the United States, the State or local government concerned, or both the United States and the State or local government concerned for the costs incurred by the United States or the State or local government concerned, as the case may be, for the cleanup associated with the manufacture of amphetamine or methamphetamine by the defendant, or on premises or in property that the defendant owns, resides, or does business in; and

(3) order restitution to any person injured as a result of the offense as provided in section 3663A of title 18, United States Code.

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TITLE 28, UNITED STATES CODE

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PART VI—PARTICULAR PROCEEDINGS

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CHAPTER 163—FINES, PENALTIES AND FORFEITURES

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§ 2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest

(a) Upon the entry of a judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of Federal law—

(1) such property shall be returned forthwith to the claimant or his agent; and

(2) if it appears that there was reasonable cause for the seizure or arrest, the court shall cause a proper certificate thereof to be entered and, in such case, neither the person who made the seizure or arrest nor the prosecutor shall be liable to suit or judgment on account of such suit or prosecution, nor shall the claimant be entitled to costs, except as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), in any civil proceeding to forfeit property under any provision of Federal law in which the claimant **【substantially】** prevails, the United States shall be liable for—

(A) reasonable attorney fees and other litigation costs reasonably incurred by the claimant;

(B) post-judgment interest, as set forth in section 1961 of this title; and

(C) in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale—

(i) interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument; and

(ii) an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate applicable to the 30-day Treasury Bill, for any period during which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence), commencing 15 days after the property was seized by a Federal law enforcement agency, or was turned over to a Federal law enforcement agency by a State or local law enforcement agency.

(2)(A) The United States shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.

(B) The provisions of paragraph (1) shall not apply if the claimant is convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law.

(C) If there are multiple claims to the same property, the United States shall not be liable for costs and attorneys fees associated with any such claim if the United States—

(i) promptly recognizes such claim;

(ii) promptly returns the interest of the claimant in the property to the claimant, if the property can be divided without difficulty and there are no competing claims to that portion of the property;

(iii) does not cause the claimant to incur additional, reasonable costs or fees; and

(iv) prevails in obtaining forfeiture with respect to one or more of the other claims.

(D) If the court enters judgment in part for the claimant and in part for the Government, the court shall reduce the award of costs and attorney fees accordingly.

(3) *If the claim is resolved by a settlement in which the claimant prevails, the claimant is entitled to attorneys fees under this sub-*

section to the same extent that the claimant would be if a judgment were issued in the proceeding for the property recovered under the settlement. The payment of attorneys fees under this subsection may not be waived as a part of any settlement with the claimant. That payment is not subject to any offset or deduction by the United States in connection with any claim the United States may have against the claimant.

(4) For the purposes of this subsection, a claimant prevails if the claimant recovers more than 50 percent, by value, of the money or other property that is claimed.

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TITLE 31, UNITED STATES CODE

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SUBTITLE IV—MONEY

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CHAPTER 53—MONETARY TRANSACTIONS

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SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

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§ 5317. Search and forfeiture of monetary instruments

(a) The Secretary of the Treasury may apply to a court of competent jurisdiction for a search warrant when the Secretary reasonably believes a monetary instrument is being transported and a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement. The Secretary shall include a statement of information in support of the warrant. On a showing of probable cause, the court may issue a search warrant for a designated person or a designated or described place or physical object. This subsection does not affect the authority of the Secretary under another law.

(b) SEARCHES AT BORDER.—For purposes of ensuring compliance with the requirements of section 5316, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States.

(c) FORFEITURE.—

(1) CRIMINAL FORFEITURE.—

(A) IN GENERAL.—The court in imposing sentence for any violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit such violation, shall order the defendant to forfeit all property, real or personal, involved in the offense and any property traceable thereto.

(B) PROCEDURE.—Forfeitures under this paragraph shall be governed by the procedures established in section 413 of the Controlled Substances Act.

【(2) CIVIL FORFEITURE.—Any property involved in a violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.】

(2) CIVIL FORFEITURE.—

(A) *IN GENERAL.*—Any property involved in a violation of section 5313 or 5316, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18.

(B) *STRUCTURING.*—Any property involved in a violation of section 5324, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18 only if the property to be seized and forfeited is derived from an illegal source or if the structuring offense was used to conceal violations of other criminal laws.

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