

**Money Laundering
and Asset Recovery Section**



Asset Forfeiture Process

Version 4.0

Law Enforcement Sensitive

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Introduction

The Money Laundering and Asset Recovery Section (MLARS) Asset Forfeiture Process flipbook is a go-to resource for prosecutors, agents, and other law enforcement professionals needing a quick overview of the asset forfeiture process.

Version 4.0 supersedes all previous versions of the Asset Forfeiture flipbook.

Resources

- *Quick Release*: Monthly review of recent cases
- *Civil & Criminal Forfeiture Case Outlines*: Comprehensive topical index of outlined asset forfeiture cases
- *Excessive Fines Case Outline*
- Asset Forfeiture Process Chart
- Sample pleadings and jury instructions

Law enforcement personnel seeking additional resources on asset forfeiture should contact MLARS. MLARS also has a duty attorney available each business day to answer questions relating to money laundering, asset forfeiture, and financial investigations.

Program Goals

Asset forfeiture is the taking of property by the government, without compensation, because it was used or obtained in a manner contrary to the law.

Asset Forfeiture Program Goals

- To punish and deter criminal activity by depriving criminals of property used in or acquired through illegal activities.
- To promote and enhance cooperation among federal, state, local, tribal, and foreign law enforcement agencies.
- To recover assets that may be used to compensate victims when authorized under federal law.
- To ensure the Program is administered professionally, lawfully, and in a manner consistent with sound public policy.¹

To achieve these goals, DOJ should use asset forfeiture to the fullest extent possible to investigate, identify, seize, and forfeit the assets of criminals and their organizations while ensuring that due process rights of all property owners are protected. The effective use of both criminal and civil asset forfeiture is an essential component of DOJ's efforts to combat the most sophisticated criminal actors and organizations.

¹ [The Attorney General's Guidelines on the Asset Forfeiture Program](#) (July 2018).

Asset Forfeiture Authority and Theories

Authority for Forfeiture

The government's authority for forfeiture comes from specific statutes. The most common forfeiture statutes include:

- 21 U.S.C. §§ 853 and 881 (drugs);
- 18 U.S.C. § 924(d), 26 U.S.C. § 5872 (firearms);
- 18 U.S.C. §§ 981 and 982 (money laundering, fraud);
- 18 U.S.C. § 981(a)(1)(G) (terrorism);
- 18 U.S.C. § 1963 (RICO);
- 18 U.S.C. §§ 2253 and 2254 (child pornography); and
- 31 U.S.C. § 5332 (bulk cash smuggling)

Substantive Theories of Forfeiture

Each statute provides specific substantive theories for forfeiture of property. The government can forfeit property if it is:

- Proceeds of crime and property traceable to proceeds;
- Property that “facilitates” crime;
- Property “involved in” money laundering or human trafficking;
- Property affording an influence over any criminal enterprise (RICO)—(**criminal forfeiture only**); or
- Assets of domestic or foreign terrorists.

Asset Identification

A financial investigation should be performed to identify assets for potential forfeiture. As part of any financial investigation, prosecutors and investigators should work together to:

- Identify assets potentially subject to forfeiture;
- Determine the statutory basis for forfeiture;
- Coordinate with custodial agency: USMS in DOJ agency cases, and agency personnel in Treasury agency cases;
- Determine ownership of the assets;
- Determine current **net** value of all assets;
- Identify and investigate possible third party interests;
- Identify potential victims;
- Identify and investigate possible defenses to forfeiture;
- Ensure that criminal counts charged in the indictment provide adequate basis for forfeiture; and
- Use civil and/or criminal seizure warrants and/or civil or criminal restraining orders to preserve assets pre-indictment.

Seizure and Restraint of Assets

The following tools can be used to seize or restrain assets:

- Civil seizure warrant [18 U.S.C. § 981(b)];
- Civil restraining order [18 U.S.C. § 983(j)];
- Criminal restraining order [21 U.S.C. § 853(e)];
- Criminal seizure warrant (if restraining order would be insufficient) [21 U.S.C. § 853(f)];
- Warrantless seizure [18 U.S.C. § 981(b)]; and
- Search warrant

Seizure warrants authorize the seizure of specific property, but entry onto private property to effect the seizure requires consent, a search warrant, or a writ of entry. DOJ's [Asset Forfeiture Policy Manual](#) provides more specific guidance on seizures.

NOTE

Most often, assets are seized in connection with the execution of search warrants. However, if the asset was seized solely by search warrant, once the evidentiary value of the asset evaporates, the government must obtain a seizure warrant or restraining order to maintain custody of the asset. Consider using warrants with civil *and* criminal authority to hold property in a criminal forfeiture case. See 18 U.S.C. § 983(a)(3).

Seizures by State and Local Law Enforcement

Adopted forfeitures — or *adoptions* — occur when a state or local law enforcement agency seizes property under state law, without federal oversight or involvement, and requests that a federal agency take the seized asset into its custody and then forfeit the asset under federal law. DOJ's [Asset Forfeiture Policy Manual](#) provides more specific guidance on adoptions.

Forfeiture Should Follow the Prosecution

Longstanding DOJ policy provides that, when a state or local agency has seized property as part of an ongoing state criminal investigation and the criminal defendant(s) are being prosecuted in state court, any forfeiture action should generally be pursued in state court, assuming that state law authorizes the forfeiture.

Seizures by State and Local Law Enforcement

Effects of State Law on Adoptive Forfeitures

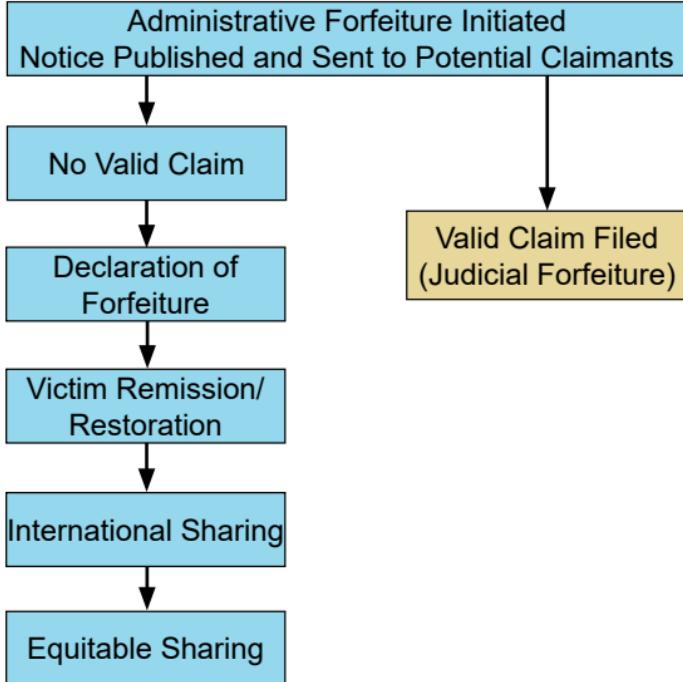
A number of states have laws that restrict the ability of state and local law enforcement to provide assets directly to the federal government for federal forfeiture. State and local law enforcement are required to certify on the adoption form that the seizure complies with state law before transferring the asset for federal adoption. Some states require an application to a state court for a turnover order by the state and/or local enforcement.

The following seizures are not adoptions and do not fall under the policies related to adoptions:

- Seizures by state or local authorities who are federally deputized task force officers working with federal authorities in a joint task force;
- Seizures that are the result of joint federal-state investigations or are coordinated with federal authorities as part of ongoing federal investigations; or
- Seizures pursuant to federal seizure warrants, obtained from federal courts authorizing a federal agent to take custody of assets originally seized by a state or local law enforcement agent not acting as a federal task force officer or as part of a joint investigation.

Administrative Forfeiture Process

ADMINISTRATIVE FORFEITURE



Administrative Forfeiture Overview

Administrative forfeiture is a “non-judicial” matter handled by an agency. It is important to note that not all agencies have administrative forfeiture authority. See 19 U.S.C. § 1602 et. seq.

Under 19 U.S.C. § 1607, administrative forfeiture can be used to forfeit:

- Personal property with a value of \$500,000 or less;
- Conveyances of controlled substances;
- Contraband; and
- Any amount of cash or other monetary instruments (funds seized from bank accounts are not considered cash or monetary instruments).

Administrative forfeiture is not available for:

- Real property (18 U.S.C. § 985);
- Foreign assets; and
- Personal property with a value of \$500,000 or greater.

Notice

The seizing agency must provide notice to all interested parties, either by a notice sent directly to the interested person or by published notice if the party is unknown or cannot be contacted otherwise. See 18 U.S.C. § 983(a)(1)(A)(i).

A Uniform Notice Form is available on forfeiture.gov.

If the government publishes the notice, it must be published via:

- Newspaper once a week for at least three consecutive weeks; or
- forfeiture.gov for at least 30 consecutive days.

See 19 U.S.C. § 1607(a) and 28 C.F.R. § 8.9(a).

The seizing agency must provide notice of the commencement of the administrative forfeiture to anyone with a potential interest within:

- 60 days of a seizure by a federal seizing agency [18 U.S.C. § 983(a)(1)(A)(i)]; **or**
- 90 days of a seizure adopted from a state or local agency [18 U.S.C. § 983(a)(1)(A)(iv)]. Go to **Tab 4: Seizures by State and Local Law Enforcement**.

Time limits for sending notice of the commencement of an administrative forfeiture may be extended pursuant to 18 U.S.C. § 983(a)(1).

Claims

Claimant(s) must file a claim with the seizing agency within:

- 35 days after notice was mailed; or
- 30 days after publication of notice ends.

See 18 U.S.C. § 983(a)(2)(B).

A valid claim must:

- Identify property claimed,
- State claimant's interest in property, and
- Be made under oath.

See 18 U.S.C. § 983(a)(2)(C).

A Uniform Claim Form is available on forfeiture.gov.

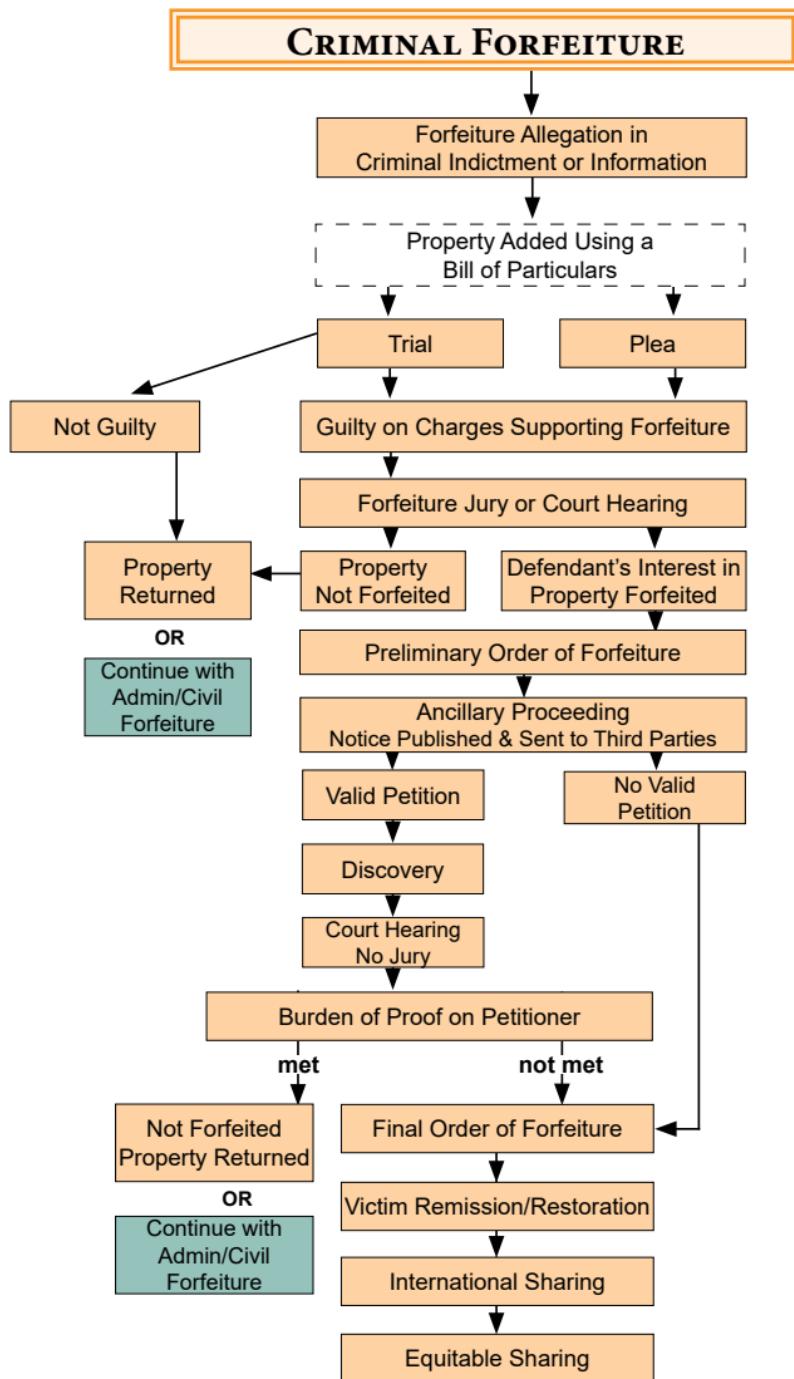
If a valid claim is not filed, the seizing agency declares the property administratively forfeited.

If a claim is filed, the seizing agency must stop the administrative forfeiture proceeding and refer the matter to a federal prosecutor.

Within 90 days of the agency's receipt of the claim, the prosecutor must (1) file a civil forfeiture proceeding, (2) include the property in a criminal indictment or information, or (3) return the property. See 18 U.S.C. § 983(a)(3)(A).

Failure to file a complaint or include the property in an indictment or information to initiate a judicial forfeiture action within 90 days requires the return of the property and prohibits further civil judicial forfeiture action. Time limits may be extended by court order.

Criminal Forfeiture Process



Criminal Forfeiture Overview

Criminal forfeiture is

- An *in personam* action against a person,
- Available only against property in which defendant(s) has an interest that has a nexus to the underlying crime,
- Part of the sentence in a criminal case, and
- Mandatory where the elements have been proven.

Indictment

A forfeiture allegation must be included in the indictment or information [Fed. R. Crim. P. 32.2(a)].

Where applicable, the allegation should include language indicating that the government will seek substitute assets and a forfeiture money judgment for proceeds that have not been located [21 U.S.C. § 853(p), 18 U.S.C. § 982(b), Fed. R. Crim. P. 32.2(b)(1)(A)].

When forfeitable assets are subsequently identified prior to conviction, a bill of particulars is filed.

If real property is identified in an indictment or bill of particulars, the government should immediately record a *lis pendens* in the local property records. Where there is danger that the property will be destroyed, the government may ask the court to enter a restraining order or injunction to preserve it for forfeiture. See 18 U.S.C. § 853(e)).

Trial Proceedings (Fed. R. Crim. P. 32.2)

Criminal Forfeiture Procedural Rules

Criminal forfeiture procedural rules come from two sources. First, the procedures of 21 U.S.C. § 853 (criminal forfeiture statute for drug offenses) are incorporated by reference into other criminal forfeiture statutes under 18 U.S.C. § 982(b) and 28 U.S.C. § 2461(c). Second, Federal Rule of Criminal Procedure 32.2 sets forth the rules that govern the criminal forfeiture process. Practitioners should familiarize themselves with § 853 and Rule 32.2 as well as Rule 32.2's Advisory Committee notes.

Plea Agreements

In order to complete a criminal forfeiture, defendant(s) must plead guilty to a criminal offense that supports the criminal forfeiture allegation(s) in the charging document and the assets sought must have a nexus to that offense. Always check with a forfeiture attorney to ensure the proper language is included in the plea agreement.

Trial Proceedings (Fed. R. Crim. P. 32.2)

A criminal forfeiture trial is always bifurcated, or separated, into two phases: guilt and forfeiture.

Guilt Phase

- **If the defendant is found not guilty**, there is no criminal forfeiture, although the administrative or civil judicial forfeiture may continue.
- **If the defendant is found guilty** of crimes supporting forfeiture, the forfeiture phase follows.

Forfeiture Phase

- Either party may request the jury from the guilt phase be retained during the forfeiture phase to determine the forfeitability of specifically identified assets. There is no right to a jury if the government is only seeking a money judgment. See Fed. R. Crim. P. 32.2(b)(5).
- If neither party asks to retain the jury, the judge will decide forfeiture. The judge may make these determinations directly after the jury returns a guilty verdict, or anytime before sentencing.
- The government must establish requisite nexus between crime of conviction and asset. No nexus, no forfeiture! See Fed. R. Crim. P. 32.2(b)(1)(A).
- Standard of proof is by a preponderance of the evidence. See *Libretti v. United States*, 516 U.S. 29 (1995).
- May rely on trial evidence and additional evidence. See Fed. R. Crim. P. 32.2(b)(1)(B).

The court must issue a preliminary order of forfeiture (POF) upon a guilty plea or guilty verdict. See Fed. R. Crim. P. 32.2(b).

Sentencing and Judgment

Ensure that all criminal forfeitures are included in the court's oral pronouncement and in the written judgment at defendant(s) sentencing.

Ancillary Proceeding

After the POF is entered, ancillary proceedings begin to determine third party ownership interests in the directly traceable and substitute assets.

During the ancillary proceeding:

- Notice of POF is sent to potential third parties (lienholders, partners, spouses, etc.);
- POF is published on forfeiture.gov for at least 30 consecutive days; and
- Third parties with interest in the property must file petitions contesting the forfeiture within 30 days [21 U.S.C. § 853(n)(2)].

If a timely petition is filed, the court:

- May permit discovery [Fed. R. Crim. P. 32.2(c)(1)(B)]; and
- Must hold a hearing [21 U.S.C. § 853(n)(4)], where:
 - The court presides (no jury);
 - Burden of proof is on the petitioner, by a preponderance of the evidence [21 U.S.C. § 853(n)(6)]; and
 - The petitioner will prevail upon proof of:
 - The right, title, or interest vesting in the petitioner rather than the defendant, or superior right, title, or interest in the asset at the time of the acts giving rise to the forfeiture [21 U.S.C. § 853(n)(6)(A)]; or
 - Subsequent bona fide purchaser for value without cause to believe asset was subject to forfeiture [21 U.S.C. § 853(n)(6)(B)].

A final order of forfeiture (FOF), vesting all right, title, and interest to the United States, is issued:

- Upon the resolution of third party petitions, or
- If no petitions are filed.

Special Issues

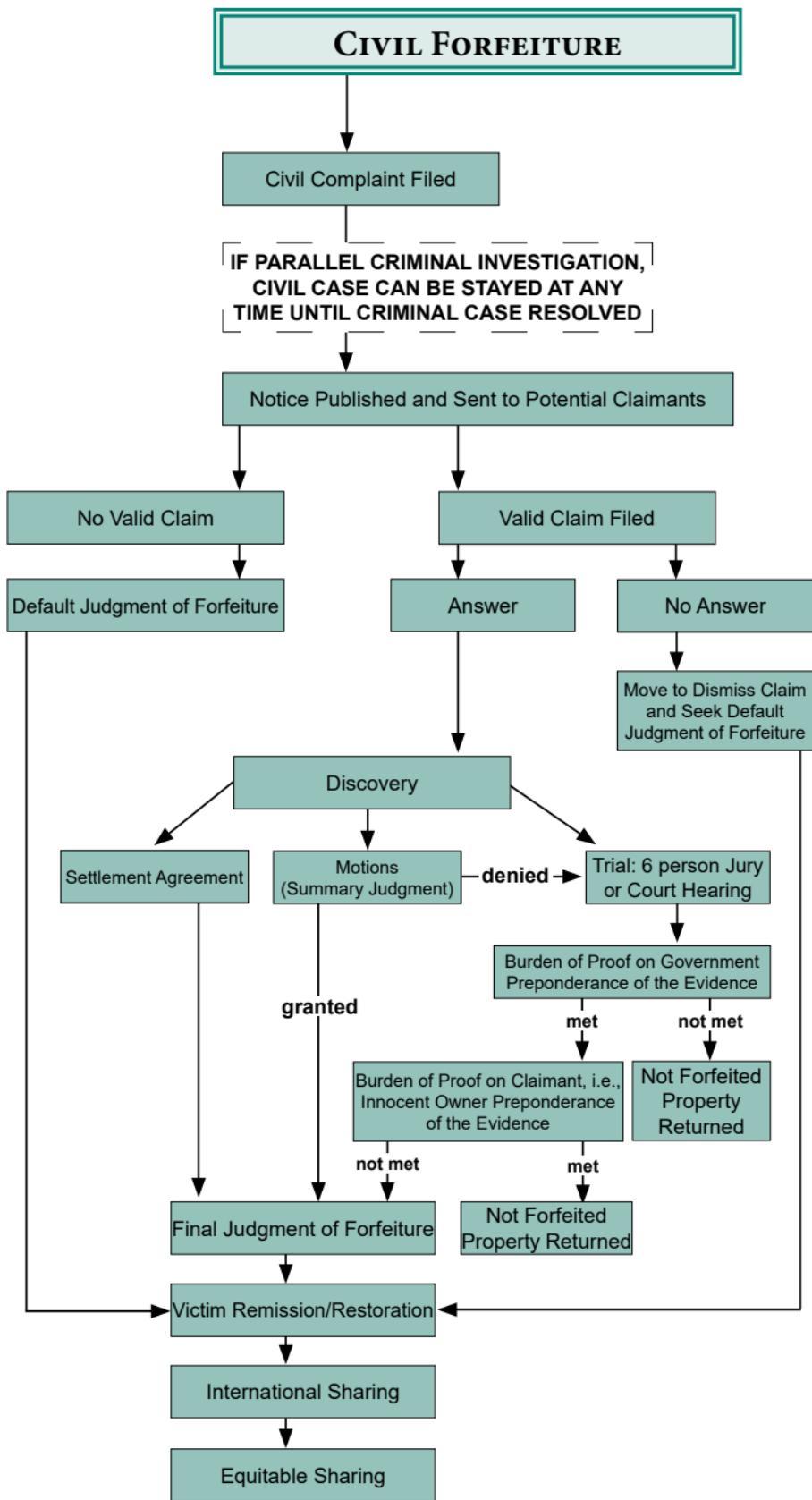
Substitute Assets & Forfeiture Money Judgments [21 U.S.C. § 853(p) and Fed. R. Crim. P. 32.2(b)]

- If the government is unable to locate assets forfeited in the POF, or if the court enters a separate forfeiture money judgment, the government may seek to forfeit substitute assets not directly forfeitable, up to the value of the missing assets, under 21 U.S.C. § 853(p). The government must establish that, as a result of any act or omission of defendant(s), the asset: (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.
- If the court enters an order, it must conduct an ancillary proceeding to determine any third party interests [Fed. R. Crim. P. 32.2(e)(2)].
- Forfeiture money judgments equal to the amount of proceeds that defendant(s) obtained from the offense or property involved in money laundering offenses can be obtained in *criminal* forfeiture cases even if the proceeds cannot be traced to particular assets. These judgments are enforceable against any assets of defendant(s) through the procedures in 21 U.S.C. § 853(p).

Honeycutt v. United States, 137 S.Ct. 1626 (2017)

- The Supreme Court unanimously held that, under 21 U.S.C. § 853(a), the government cannot hold all members of a conspiracy jointly and severally liable for a forfeiture money judgment in the full amount of the criminal proceeds derived from the conspiracy. Instead, the government has to prove what proceeds each member of the conspiracy obtained. DOJ guidance and recent caselaw apply *Honeycutt* beyond § 853 and define when defendant(s) obtain proceeds for purposes of criminal forfeiture. But the principles of *Honeycutt* have been applied differently to money laundering forfeitures under 18 U.S.C. § 982(a)(1) and (b)(2). Practitioners should consult DOJ guidance.

Civil Forfeiture Process



Civil Forfeiture Overview

Civil forfeiture is

- An *in rem* action against property only, without regard to any criminal proceeding;
- Proven by showing that the property was derived from or used to commit a crime; and
- Pursued simultaneously with a related criminal case (if applicable).

Before initiating and pursuing a civil forfeiture action against property used or intended to be used to facilitate criminal activity, prosecutors should review DOJ's policy regarding civil forfeiture actions brought against property that was used to facilitate the commission of a crime, or property that constitutes the instrumentalities of a crime. DOJ's [Asset Forfeiture Policy Manual](#) provides more specific guidance.

Complaint [Supp. Rule G(2)]

To begin a civil forfeiture, a complaint for forfeiture is filed with the court. The complaint:

- Must be verified (sworn);
- Must state jurisdiction and venue, which is where property is found, where underlying criminal acts occurred, or where related criminal charges were filed [28 U.S.C. §§ 1355, 1395; 18 U.S.C. § 981(h); 21 U.S.C. § 881(j)];
- Must describe property with particularity;
- Must identify where property was seized and where it is located;
- Must identify statutory authority for forfeiture;
- Must state facts to support "reasonable belief" that the government can meet its trial burden; and
- May be filed under seal to protect the investigation.

The complaint must be filed within 90 days after the claim was filed in administrative proceedings [18 U.S.C. § 983(a)(3)]. If no administrative forfeiture proceedings are initiated, then DOJ policy states the complaint should be filed within 150 days of seizure (but there is no explicit statutory filing deadline). DOJ's [Asset Forfeiture Policy Manual](#) provides more specific guidance.

Arrest Warrant (Supp. Rule G)

In most civil judicial cases, for personal property, the court issues a warrant of arrest in rem, which the seizing agency then executes.

The government ordinarily does not physically seize real property prior to civil forfeiture. Instead, under 18 U.S.C. § 985, the government obtains in rem jurisdiction by filing the complaint, posting notice of the complaint on the property, and serving the notice and complaint on the property owner. The government may also record a notice of lis pendens under state law. Lis pendens is not considered a seizure of real property, only public notice. Duration of the lis pendens varies by state and may require periodic renewal.

Real Property

Real property seizures—where the owner(s)/defendant(s) can be dispossessed, locks can be changed, rents can be intercepted, and the government can take over management of the property—are rare. They require:

- Pre-seizure planning with USMS; and
- Pre-seizure hearing with notice to owner(s) [18 U.S.C. § 985(d)(1)(B)(i)].

In exigent circumstances, such as evidence of continued criminal activities or imminent destruction/deterioration of real property, without prior notice, the court must conduct a prompt post-seizure hearing. See 18 U.S.C. § 985(d)(1)(B)(ii), (d)(2), and (e)].

Notice, Claim, and Answer

Notice of Action [Supp. Rule G(4)]

The public generally, and known potential claimants specifically, must be informed of pending forfeiture actions.

- A Uniform Notice Form is available on forfeiture.gov.
- The notice of forfeiture action is published on forfeiture.gov.
- Prosecutor sends notice to all known possible claimants, title holders, lien holders, and mortgage holders.
- The affidavit or certificate of service is filed with the court, evidencing the government's compliance with the notice requirements [Supp. Rule G(4)(b)].

Claim and Answer [Supp. Rule G(5)(A), (B)]

To contest a civil forfeiture, a person with an interest in the property must file a claim *and* an answer.

A Uniform Claim Form is available on forfeiture.gov.

The claim must:

- Identify claimant(s) and specify property claimed;
- State the extent of interest claimed;
- Be signed by claimant(s), not counsel, under penalty of perjury;
- Be served on the designated government attorney; and
- Be filed in U.S. District Court within:
 - the time stated in notice; or
 - 30 days after last date of publication by newspaper; or
 - 60 days after first date of publication on forfeiture.gov.

The answer must:

- Respond to each allegation in the complaint;
- Raise affirmative defenses; and
- Be filed within 21 days after filing the claim.

NOTE

Filing a claim in the administrative proceeding is no substitute for filing a claim in the civil judicial forfeiture proceeding.

Discovery and Motions

All discovery tools authorized under the Federal Rules of Civil Procedure are available in a civil judicial forfeiture action. Discovery tools include:

- Interrogatories (Fed. R. Civ. P. 33);
- Depositions (Fed. R. Civ. P. 30);
- Document requests (Fed. R. Civ. P. 34);
- Requests for admissions (Fed. R. Civ. P. 36); and
- Subpoenas to third parties (Fed. R. Civ. P. 45).

Special interrogatories are available in forfeiture cases regarding the claimant's identity and relationship to the property [Supp. Rule G(6)]. Special interrogatories:

- May be served any time after a claim is filed;
- Must be served within 21 days after claimant's motion to dismiss is filed and serves to extend the government's response deadline to a pending motion to dismiss;
- Must be responded to by claimant within 21 days; and
- Are used to determine claimant's standing, which may form the basis for a government motion to strike the claim for lack of standing.

NOTE

Observe local civil rules regarding discovery.

Civil forfeiture proceedings are exempt from Federal Rules of Civil Procedure mandatory disclosure requirements [Fed. R. Civ. P. 26(a)(1)(B)].

Trial

- Either party may request a six-person jury.
- The government must establish by a preponderance of the evidence that the asset is subject to forfeiture [18 U.S.C. § 983(c)].
- The government must establish a “substantial connection” between the property and the offense, if seeking forfeiture of facilitating property [18 U.S.C. § 983(c)].
- Claimant(s) must establish defenses by a preponderance of the evidence; one of the most common defenses is innocent ownership [18 U.S.C. § 983(d)].
- The court enters a judgment of forfeiture if the government prevails.
- Claimant(s) may bring a post-judgment challenge to the forfeiture on the grounds that it is constitutionally excessive [18 U.S.C. § 983(g)].

Settlement

Civil forfeiture cases are frequently resolved by settlement following coordination among criminal and forfeiture prosecutors and the seizing agency. DOJ's [Asset Forfeiture Policy Manual](#) provides more specific guidance.

Common Defense Motions

Motion to Suppress [Supp. Rule G(8)(a)]

- May be filed, on Fourth Amendment grounds, by claimant(s) with standing to contest the lawfulness of the seizure in order to prevent the use of seized property as evidence in the forfeiture action; and
- Does not affect the forfeitability of the property if forfeiture can be based on independently derived evidence.

Motion to Dismiss [Supp. Rule G(8)(b)]

- May be filed by claimant(s) with standing to contest the forfeiture on any grounds set forth in Fed. R. Civ. P. 12(b)(6); and
- May not be used to dismiss a complaint on the grounds that the government lacked probable cause at the time it filed the complaint (except in the Ninth Circuit).

Motion for Return of Property [Fed. R. Crim. P. 41(g)]

- May be filed by a person who has standing to challenge the seizure of property and who then bears the burden of proof; and
- Should be denied by the court once forfeiture proceedings have been commenced because the forfeiture proceeding provides an adequate remedy at law.

Motion for Release for Hardship [Supp. Rule G(8)(d) and 18 U.S.C. § 983(f)(1)(D)]

- Must demonstrate:
 - Claimant's possessory interest in the property;
 - Claimant's sufficient ties to the community;
 - The government's continued possession constitutes a hardship; and
 - Claimant's hardship outweighs the risk that the property will be damaged, lost, or destroyed.
- Does not apply to contraband, currency, or electronic funds.

Motion for Stay [18 U.S.C. § 981(g)]

- The court shall grant claimant's motion if:
 - Claimant(s) are the subject of a related criminal investigation or case;
 - Claimant(s) have standing in the forfeiture case; and
 - The forfeiture case will burden the right of claimant(s) against self-incrimination in the related criminal case.

Common Government Motions

Motion to Strike Claim or Answer [Supp. Rule G(8)]

- Can be filed at any time before trial for:
 - Failure to file a valid claim and/or answer; or
 - Failure to establish statutory and/or Article III standing; or
 - Failure to answer special interrogatories; and
- Must be decided before any motion to dismiss by claimant(s).

Motion for Default Judgment (Fed. R. Civ. P. 55)

- Is filed when the deadline for filing claims and answers has expired and no claims and answers were filed; and
- Is a two-step process:
 1. Request entry of default by the clerk; and
 2. Move for entry of default judgment by the court.

Motion for Judgment on the Pleadings [Fed. R. Civ. P. 12(c)]

- Considering materials in the pleadings, is granted when court finds no material issues of fact and government is entitled to judgment as a matter of law.

Motion for Summary Judgment (Fed. R. Civ. P. 56)

- Is granted if there is no genuine dispute as to any material fact, and the government is entitled to judgment as a matter of law;
- Can address all or part of a claim or defense; and
- Can be brought at any time until 30 days after the close of discovery.

Motion for Fugitive Disentitlement (28 U.S.C. § 2466)

- May cause the court to disallow a claim upon a finding that:
 - Claimant(s) are a fugitive in a related criminal proceeding;
 - Claimant(s) have notice and/or knowledge that a warrant has been issued for their apprehension;
 - Claimant(s), in order to avoid prosecution:
 - Purposefully leave U.S. jurisdiction;
 - Decline to enter or reenter the United States to submit to its jurisdiction; or
 - Otherwise evade the court where criminal case is pending; and
 - Claimant(s) are not confined or in custody anywhere.

Motion to Stay [18 U.S.C. § 981(g)]

- Shall be granted if civil discovery would adversely affect the ability of the government to conduct a related criminal investigation or prosecution.

Special Issues

Attorney's Fees

Attorney's fees, limited to reasonable fees and costs, may be ordered against the government in civil cases when claimant(s) substantially prevail [28 U.S.C. § 2465(b)].

Entitlement to Counsel

Claimant(s) are entitled to appointed counsel if:

- The defendant real property is the primary residence and claimant(s) are financially unable to obtain representation; or
- Claimant(s) already have appointed counsel in a related criminal proceeding [18 U.S.C. § 983(b)].

Grand Jury

Grand jury material may be shared with the civil forfeiture prosecutor (Fed. R. Crim. P. 6(e); 18 U.S.C. § 3322).

Parallel Proceedings

Civil and criminal forfeitures may proceed simultaneously.

Disposition of Forfeited Property

Victims

Mechanisms to return funds to the victims of the crime underlying forfeiture include *remission* and *restoration*.

- **Remission** is a petition for redress of loss related to the underlying forfeiture proceedings and is decided by the Chief of MLARS.
 - Petitions for remission can also be submitted for administrative forfeitures and are ruled on by the counsel for the seizing agency. See 28 C.F.R. § 9.1.
- **Restoration** is a government agreement to apply forfeited funds to the court-ordered restitution in a related criminal case upon DOJ approval and is decided by the Chief of MLARS.

DOJ's [Asset Forfeiture Policy Manual](#) and *Returning Forfeited Assets to Victims of Crime* provide more specific guidance.

International Sharing

- Is the transfer of forfeited property to a foreign government;
- Is commensurate with the foreign government's degree of participation in the forfeiture; and
- Requires DOJ approval and concurrence with Treasury and State.

DOJ's [Asset Forfeiture Policy Manual](#) provides more specific guidance.

Equitable Sharing [18 U.S.C. § 981(e) and 21 U.S.C. § 881(d)]

- Is the transfer of forfeited property to a state or local law enforcement agency;
- Is subordinate to victim claims;
- Is commensurate with the agency's degree of participation in the forfeiture; and
- Must be used for law enforcement purposes only.

See [Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies](#) (2018).

NOTE

Some state laws limit or prohibit equitable sharing.