





# A Practical Guide to the Procedure of Civil Forfeiture

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**T**here is no way around this: forfeiture procedure is a mess. Scattered throughout the U.S. Code, it has neither a coherent structure nor an umpire clause to resolve multiple, easily identified statutory conflicts.

The rules are principally codified in the Civil Asset Forfeiture Reform Act (CAFRA) at 18 U.S.C. § 983. But they also make their way into Forfeiture Actions in Rem at 28a U.S.C. Rule G, into Return of Property to Claimant at 28 U.S.C. § 2465, into Supplemental Rules C and E, and into the Federal Rules of Civil Procedure (FRCP).

By its terms, Admiralty Rule G applies to forfeiture actions in rem under a federal statute and its Advisory Committee Notes state that “Rule G generally applies to actions governed by [CAFRA] and also to actions excluded from it.”<sup>1</sup>

Similarly, CAFRA incorporates by reference the Supplemental Rules for Certain Admiralty and Maritime Claims respecting the government’s complaint, the responsive claim filed by a claimant, bonds for the release of seized property, and FRCP Rule 11 sanctions respecting frivolous claims.<sup>2</sup> Further, § 1 of Rule G provides that, to the extent Rule G doesn’t apply, Supplemental Rules C and E and FRCP apply.

Notably, there is no umpire clause to determine which rule controls in cases of conflict that, as we will see, occur. Thus, the safest practice, in any particular case, is to identify any conflict and assume that you must satisfy the most restrictive reading.

## Forfeiture’s Broad Contours

The government can seize most any kind of property. Cars. Jewelry. Drugs, recreational and other. But the government mostly seizes money.

In a real-world case reported by Robert O’Harrow et al. in the *Washington Post* in 2014, police stopped a Chinese-American

restaurateur for a traffic infraction, discovered \$75,000 in cash raised from relatives to buy another Chinese restaurant, and seized the cash *without* filing any charges against the restaurateur. The restaurateur got his money back, but only after his lawyers spent 10 months slogging through forfeiture procedure, costing the restaurateur his restaurant deal.<sup>3</sup>

Or, as O’Harrow et al. also report, police stopped two Hispanic church leaders carrying cash to establish a church in El Salvador and seized the cash, *again without* charging the men with so much as a traffic infraction, let alone a criminal offense. Again, the church gets its money back, but months later and after the church’s lawyers slog through the same forfeiture procedure.<sup>4</sup>

While the government seizes money in many contexts, the most prevalent scenarios commence when a drug dog alerts to contaminated currency,<sup>5</sup> when someone fails to declare money when entering the country, or when someone makes multiple bank deposits of just less than \$10,000, slipping under the mandatory bank reporting limit (known as “structuring”).

After seizing the money, to perfect the government’s rights, the government must give notice of forfeiture, usually directly to claimants about whom it already knows and by publication to potential, but unknown, claimants.

Following *direct notice* of forfeiture, identified claimants have a short period in which to file a claim with the forfeiting agency. By contrast, following notice by *publication* of forfeiture, unidentified claimants have a longer period to file a claim, ending a set time after final publication of notice of forfeiture. In short, when the govern-

ment sends a claimant a forfeiture notice letter, the claimant has 35 days to file a claim. But when the government publishes notice of forfeiture, an unidentified claimant has the entire period of publication, plus 30 days, in which to file a claim.

Once the claimant files a claim, the government must either return the asset to the claimant or file a complaint in rem (much as in admiralty proceedings) against the seized property. After the government files a complaint, the claimant must file an answer (and a claim if not previously filed because, say, the government gave notice of forfeiture by publication that did not come to the claimant's attention).

On now to a detailed road map to civil forfeiture.

### Assets 'Involved In' a Crime

Civil forfeiture is available to the federal government against assets "involved in" drug crimes.<sup>6</sup> In addition to property forfeitable on account of involvement in drug crimes, also forfeitable is any other property if "involved in" a very long list of additional crimes, including money laundering, various types of fraud, counterfeiting, forgery, smuggling, embezzlement, explosives offenses, crimes of deception, terrorism, and treaty violations.<sup>7</sup>

The language describing the requisite nexus between a crime and seized property that is sufficient to trigger forfeiture varies from statute to statute, and may read as property "traceable to," "in exchange for," "derived from," or "obtained, directly or indirectly, from" the particular crime. Needless to say, in any particular case, the nexus between the seized property and any alleged illegal activity should be examined closely to determine whether the nexus fits within the particular statute's ambit.

The forfeiture applicable in connection with a terrorism violation under 18 U.S.C. § 2332b cuts as broad a swath as imaginable, even extending to "all assets, foreign or domestic," of any entity "planning or perpetrating" any such crime and "all assets foreign or domestic, affording any person a source of influence over any such entity...."<sup>8</sup> Would a large charitable contribution afford a donor "influence" over an entity pursuing two goals—one charitable, the other terroristic—where the donor had no idea that the entity serves dual goals? The language is certainly broad enough, though this author hopes a court would not give it such a broad reading.

### Seizure Warrants

Seizures generally must be made pursuant to a warrant obtained as a search warrant under the FRCP. However, exceptions swallow the general rule: warrantless seizures may be made if (a) a complaint has been filed and an arrest warrant in rem issued; (b) the government has probable cause to believe the property is subject to forfeiture and (1) the seizure is made pursuant to a lawful arrest or search or (2) a Fourth Amendment exception is available; or (c) it is a lawful adopted seizure.<sup>9</sup>

Under 18 U.S.C. § 981(b), by reference to 28 U.S.C. § 1355(b), the seizure warrant may be issued by any district court where any unlawful act or omission occurred or by the D.C. District Court in the case of foreign property. Under 18 U.S.C. § 981(b), by reference to 28 U.S.C. § 1355(b), and further reference to 28 U.S.C. § 1395, the seizure warrant may be issued by any district court where the forfeiture accrues, where the property is (including where it may be brought), or where the defendant is found.<sup>10</sup> Under Supplemental Rule C, 28a U.S.C. § (3)(a)(ii), the clerk, without involvement of the court, must issue a summons and warrant for arrest of the property

if the plaintiff or his attorney certifies "exigent circumstances exist that make court review impracticable." Finally, the warrant may be executed wherever the property is found.<sup>11</sup>

Note that Rule G merely provides that the government must obtain a warrant from the clerk or the court to arrest the property (if the property is realty, 18 U.S.C. § 985 controls). The warrant then must be delivered to an authorized person to execute unless the government has the property.<sup>12</sup>

### Judicial and Nonjudicial Forfeiture

The government may initiate forfeiture either judicially or nonjudicially, at its election. Though this may seem unbalanced in favor of the government, the filing of a claim nonjudicially (i.e., with the seizing agency) forces the government either to return the seized property or to file a complaint, thereby converting the proceeding to a judicial forfeiture. (For more, see "Filing a Claim; Nonjudicial Forfeiture, cont'd.," below.)

### Nonjudicial Forfeiture

Written notice to the claimant of forfeiture generally must be given (obviated if the government later files a judicial action) within 60 days of seizure.<sup>13,14</sup> For previously unidentified parties, the notice period is tolled, commencing only upon identification of the previously unidentified party. Further, a supervisory official for the seizing agency may extend notice for a period not to exceed 30 days. Finally, failure to comply with the notice requirements is not fatal to the government's forfeiture powers, since, though the government is obligated to return the property, that return is without prejudice to its power to start new forfeiture proceedings.<sup>15</sup>

### Filing a Claim; Nonjudicial Forfeiture, cont'd.

Claims generally must be filed by the deadline for filing a claim to the seized property set forth in the agency's personal notice letter to the claimant, but the deadline may not be earlier than 35 days after the date of the personal notice letter's mailing. However, if the claimant doesn't receive the personal notice letter, the claim must be filed within 30 days after final publication of notice of seizure.<sup>16</sup>

Though the claim need not be in a particular form, seizing agencies are required to make claim forms available. In any event, the claim must identify the property, state the claimant's interest, and be made under oath and penalty of perjury. However, in reformation of prior law, a bond is no longer required.<sup>17</sup>

Note that, while a claimant can pursue return of his property through the forfeiting agency's internal procedures, failing to timely file a claim (thereby triggering judicial forfeiture proceedings) may result in the claimant's loss of judicial remedies.<sup>18</sup>

### Venue

Venue, for any civil forfeiture, is governed by 28 U.S.C. § 1395, and is appropriate in the district where the forfeiture accrues, the claimant or the property is found, or the property is brought. In addition to the venue available under 28 U.S.C. § 1395, in drug-related forfeitures venue is appropriate under 21 U.S.C.A. § 881(J) in the district in which the claimant is found or in which a criminal prosecution is brought.

### The Government's Complaint

Within 90 days of the filing of the claim, the government must file a

complaint or return the property. If the government fails to do either, the government is required to release the property and may not take further action to seek the property's forfeiture.<sup>19</sup>

The complaint must be verified, state the grounds for jurisdiction and venue, describe the property, state the property's location if tangible, identify the applicable forfeiture statute, and state facts supporting the government's burden of proof.<sup>20</sup> Under Supplemental Rule C, 28a U.S.C. § (2), the complaint must also state that the property is or will be within the district, and under Supplemental Rule E, 28a U.S.C. § (2)(a), the complaint must be sufficiently detailed so that a claimant can investigate the facts of the case and draft his response.

### Notice of Forfeiture Action

After filing the complaint, the government must give notice of the action directly to any known potential claimants, stating the date notice is sent, the deadline for filing a claim, that an answer or motion must be filed within 21 days<sup>21</sup> after filing the claim (under Rule 12), and the name of the government's attorney in the matter. Direct notice must also be sent by reasonable means and may be sent to the claimant's attorney or the last address the claimant gave to the government's seizing agency. Further, the government must also give notice by publication, so that any potential unknown claimants have an opportunity to protect their interests.<sup>22</sup> Under Supplemental Rule C, 28a U.S.C. § 4, if the property is not released within 14 days of seizure, the government must give public notice by publication in a newspaper approved by court order and "having general circulation in the district."

### Post-Complaint Claims

After the filing of a complaint, any claimant may file a claim in accordance with the Supplemental Rules for Certain Admiralty and Maritime Claims.<sup>23</sup> Here the sequence, timing, and deadlines get complicated. The claim must be filed by the time (not to exceed 35 days) stated in any direct notice to the claimant.<sup>24</sup> If direct notice was not given, but the government published notice, the claim may not be filed more than 30 days after final publication of notice of the forfeiture action or no later than 60 days after first publication if published on a government internet forfeiture site.<sup>25</sup>

If the government did not give direct notice to the claimant *and* did not give notice by publication, there is some ambiguity in the rules. Under Rule G(5)(a)(ii), if the government has the property, the claim may not be filed more than 60 days after filing<sup>26</sup> of the complaint; if the government doesn't have the asset, the claim may not be filed more than 60 days after process<sup>27</sup> was executed on the asset.

CAFRA appears to provide a different answer when the government did not give direct notice to the claimant *and* did not give notice by publication. Section 983(a)(4)(A) provides that claims may be filed as "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." Supplemental Rule C(6)(a) provides that a "statement of interest" must be filed within 14 days of execution of process (or such time as the court allows).

The lack of a detailed umpire clause to control the interaction between Rule G and CAFRA is a bit problematic. Nevertheless, given CAFRA's § 983(a)(4)(A) acknowledgement of the Supplemental

Rules followed by a stated exception, the safest course appears to be to regard the filing requirements of 18 U.S.C. § 983(a)(4)(A) as superimposed on, and taking precedence where § 983(a)(4)(A) is more restrictive than, Rule G.

### Filing An Answer

Under 18 U.S.C. § 983(4)(B), an answer (as distinct from a claim) to the complaint must be filed within 20 days of filing of the claim, but under Rule G(5)(b) (and Supplemental Rule C(6)(a)(iv)), an answer to the complaint must be filed within 21 days of filing of the claim. Obviously, complying with the more restrictive deadline is the safer course of action, but it is noteworthy that filing an answer is not the same as filing a claim, and it is only with respect to filing of claims that CAFRA has arguably trumped the Supplemental Rules. Umpire clause, anyone?

Objections to venue and in rem jurisdiction are automatically waived if not raised in the answer.<sup>28</sup>

### The Government's Interrogatories

Rule G, 28a U.S.C. Supp. § 6, authorizes the government to serve interrogatories on a claimant limited to the claimant's identity and relationship to the seized property. If the claimant serves a motion to dismiss the forfeiture, the government must file its interrogatories within the next 21 days. Answers and objections to the interrogatories must then be filed within the 21 days next following service of the interrogatories. Finally, the government has 21 days after the interrogatories are answered (or objected to) to respond to a motion to dismiss.<sup>29</sup>

### Motions

Under Rule G, § 8, once a claimant has established standing, the claimant may file a 12(b) motion. At any time before trial, the government may move to strike a claim or answer for (a) the failure to comply with the rules respecting claims, answers, or the government's interrogatories or (b) the claimant's lack of standing. The government's motion to strike must be decided before any motion by the claimant to dismiss the forfeiture action.<sup>30</sup>

If the government seizes property, a claimant may file a petition to release the property and, if the petition is filed before judicial forfeiture commences, it may be filed where the property was seized or where the seizure warrant was issued.<sup>31</sup> If judicial forfeiture is later commenced in another district, the petition may be transferred to that district.<sup>32</sup>

Though the law is usually disposed to finality, a claimant who was entitled to notice, but didn't receive it, is entitled to have forfeiture set aside<sup>33</sup> by motion if the government reasonably should have known of the claimant's interest and the claimant didn't have sufficient reason to know of the seizure to timely file a claim.<sup>34</sup>

Note that granting of a motion to set aside is not equivalent to passing "Go" in the game of Monopoly; upon granting of the motion, the government may reinitiate forfeiture without regard to any statute of limitations. If the government reinitiates forfeiture proceedings nonjudicially, the government must reinitiate the proceedings within 60 days of granting of the motion; if the government reinitiates judicially, the government must commence forfeiture proceedings within six months of granting of the motion. Of course, this means that the government can miss the deadline for nonjudicial forfeiture and then simply opt for a judicial forfeiture.<sup>35</sup>

## Release of Seized Property; Relief for Hardship

CAFRA's provisions governing release of seized property on account of hardship imposed on the claimant are extremely elaborate.

First, the claimant and the property are subject to a number of prerequisites. The claimant must have a possessory interest in the property, have sufficient ties to the community,<sup>36</sup> and be subject to hardship<sup>37</sup> without possession of the property. Return of the property is not available if the property is currency,<sup>38</sup> will be used by the government as evidence, is particularly suited for illegal activity,<sup>39</sup> or is likely to be used by the claimant in criminal activity.<sup>40</sup>

Second, the claimant has a number of procedural obstacles to navigate. The claimant must first proceed before the agency seizing the property, stating the reasons why the claimant and property satisfy the prerequisites set forth in the preceding paragraph. If the agency does not release the property, the claimant then may file a petition in U.S. district court, again stating the reasons why the claimant and property prerequisites set forth in the preceding paragraph have been met, but also stating the steps the claimant has taken with the seizing agency to obtain release of the property.<sup>41</sup>

Third, return of the property may be subject to a variety of conditions, including property examination, obtaining a bond, obtaining insurance, and imposition of a government lien or *lis pendens* on the property.<sup>42</sup>

Under 18 U.S.C. § 983(g), proportionality is another defense to forfeiture. In essence, this CAFRA provision merely requires the court to determine whether the forfeiture is constitutionally excessive (gee, thanks). As such, it's mere surplusage: Even absent § 983(g), any claimant could mount the identical challenge that the forfeiture is constitutionally excessive.

## Burden of Proof

The government has the burden to prove the property is subject to forfeiture by a preponderance of the evidence. If the government's theory is that the property was used to facilitate a crime, the government must establish a substantial connection between the property and the crime. The government is not restricted to evidence it had at the time of seizure; it may use evidence subsequently obtained, even after filing of the complaint, to satisfy its burden of proof.<sup>43</sup>

Note that the burden of proof shifts if the claimant wishes to advance an innocent owner defense. Generally, this defense is available even if the property is otherwise "guilty" of a crime, provided the owner did not know of the crime or did what he reasonably could to prevent involvement of the property in the crime. Innocent owners include any bona fide purchaser (subject to exceptions for primary residences and property acquired through domestic relations law) who does not know that the property is subject to forfeiture.<sup>44</sup>

Where property seized is cash, there is some evidence of illegal activity, and the claimant is unable to account for the cash, the courts tend to find that the government has met its burden of proof for forfeiture.<sup>45</sup> However, where the claimant has a plausible reason for having the cash, courts frequently grant summary judgment to the claimant, even if a drug dog alerts for narcotics.<sup>46</sup> Other courts seem to completely discount a drug dog alert.<sup>47</sup>

## Consequences of a Judgment in Claimant's Favor

Upon entry of a judgment for a claimant, the seized property must be returned to the claimant and, if there was reasonable cause for the seizure, the persons making the seizure (including the prosecutor)

will not be liable and the claimant will be entitled to costs only as afforded by 28 U.S.C. § 2465(b). Under § 2465(b), the government is liable for reasonable attorney's fees, costs, post-judgment interest and, in the case of seized cash and equivalents, pre-judgment interest actually paid to the government or imputed interest at the 30-day Treasury Bill rate.<sup>48</sup>

Further, sovereign immunity is waived by the Federal Tort Claims Act, 28 U.S.C. 2680(c)(1), if "the property was seized for the purpose of forfeiture under any provision of federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense...."

## Points of Emphasis

A few points of emphasis when preparing your case:

- 1. Be Meticulous.** The civil forfeiture procedural rules are scattered throughout the U.S. Code and from time to time contradictory. So, when you lay out your case plan, including forfeiture deadlines, be meticulous.
- 2. File Claims Early.** If the government has not directly notified your client of an impending forfeiture (but has seized property), proceed as if your client has received such notice and file a claim within the 35-day notice period, but commencing at the date of seizure. As easy as it is to file a claim, there is simply no reason to wait. Moreover, waiting entails considerable down-side risk since notice periods can begin to run in various obscure ways, including by publication of notice in materials no one reads.
- 3. Don't Be Seduced by Apparent Receptivity.** Even if the seizing agency's internal procedures and personnel appear receptive to a discussion about returning the property, gather your facts and draft a claim so that you can expeditiously convert the proceedings to judicial forfeiture. As the *Malladi*:<sup>49</sup> claimant discovered, the claimant's obedience to the agency's internal procedures is no defense against the claimant's failure to meet statutory deadlines. ☉



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## Endnotes

<sup>1</sup>See the preface to the Advisory Committee Notes, second paragraph.

<sup>2</sup>See 18 U.S.C. §§ 983(a)(3)(A), (a)(4)(A), (f)(7)(A), and (h)(2).

<sup>3</sup>Robert O'Harrow Jr., Steven Rich & Gabe Silverman, *Stop and Seize*, WASH. POST, Sept. 6, 2014, available at [www.washingtonpost.com/sf/investigative/collection/stop-and-seize-2](http://www.washingtonpost.com/sf/investigative/collection/stop-and-seize-2). "Stop and Seize" is a comprehensive, six-part series detailing troubling use of civil forfeiture. The entire series is well worth a read in order to get a full picture of the factual contexts in which seizures (and subsequent forfeitures) occur. The other articles can be accessed through the URL above.

<sup>4</sup>*Id.*

<sup>5</sup>Drug contamination of the country's money supply has become quite a problem, with contamination estimates ranging from a low



of 15 percent in Bozeman, Mont., to a high of 75 percent in Los Angeles. *See U.S. v. United States Currency*, \$30,060, 39 F.3d 1039 (9th Cir. 1994); *United States v. \$5,000 in U.S. Currency*, 40 F.3d 846, 849-50 (6th Cir. 1994) (citing *Crime and Chemical Analysis*, 243 SCIENCE 1554, 1555 (1989)) RONALD K. SIEGEL, INTOXICATION, 293 (1989); Andrew E. Taslitz, *Does the Cold Nose Know? The Unscientific Myth of the Dog Scent Lineup*, 42 HASTINGS L.J. 15, 29 & n. 71 (1990); and a collection of cases for the contamination of the money supply).

<sup>6</sup>*See* 21 U.S.C. § 881(A).

<sup>7</sup>For the specific crimes, *see* 18 U.S.C. §§ 215, 471-81, 485-88, 501, 502, 1005-07, 510, 511, 542, 545, 553, 656, 657, 666, 670, 842, 844, 1001, 1006, 1014, 1028-32, 1341, 1343, 1344, 1956, 1957, 1960, 2119, 2312, 2313, 2332, and 2339.

<sup>8</sup>*See* 18 U.S.C. § 981(a)(1)(G).

<sup>9</sup>An “adopted” seizure is one made by a state agency, but the forfeiture itself is pursued by a federal agency. *See* 18 U.S.C. § 981(b).

<sup>10</sup>*See* 18 U.S.C. § 981(b).

<sup>11</sup>18 U.S.C. § 981(b)(3).

<sup>12</sup>*See generally* Rule G, § (3)(c)(ii)(A).

<sup>13</sup>There is conflict in the cases about whether the deadlines in the rules are hard or not: *Compare U.S. v. \$4,629.00 in U.S. Currency*, 359 F.Supp.2d 504 (W.D. Va.) (finding a failure of the government to comply with the deadline where the government attempted to comply and promptly remedied its error would not invalidate forfeiture) with *U.S. v. Assorted Jewelry with an Approximate Value of \$219,860.00*, 386 F.Supp.2d 9 (D. P.R. 2005) (finding that Government gave claimant 63 days’ notice of forfeiture, not the 60 days’ notice required by statute; accordingly, claimant’s motion to dismiss was granted with prejudice).

<sup>14</sup>A notice of 90 days is required in an “adoptive” seizure, being one in which a state agency seizes the property, but the United States government pursues its forfeiture. That is as deep as this article goes into adoptive seizures.

<sup>15</sup>*See* 18 U.S.C. § 983(a)(1).

<sup>16</sup>*See* 18 U.S.C. § 983(a)(2).

<sup>17</sup>*Id.*

<sup>18</sup>*See, e.g., Malladi Drugs & Pharm. v. Tandy*, 552 F.3d 885 (D.C. Cir. 2009).

<sup>19</sup>*See* 18 U.S.C. § 983(a)(3).

<sup>20</sup>*See* Rule G, 28a U.S.C. § (2).

<sup>21</sup>Note that 18 U.S.C. § 983(a)(4) specifies a 20-day period.

<sup>22</sup>Notice need not be published when the asset seized is of *de minimis* value. *See also* Rule G, 28a U.S.C. § (4).

<sup>23</sup>*See* 18 U.S.C. § 983(a)(4).

<sup>24</sup>*See* 18 U.S.C. § 983(a)(2)(B); Rule G, § 4(b)(ii)(B); and Rule G, § 5(a)(ii)(A).

<sup>25</sup>*See* Rule G, § 5(a)(ii)(B).

<sup>26</sup>Not counting any time the complaint was under seal or action was stayed before execution of a warrant under Rule G(3)(b).

<sup>27</sup>Or, if the property is realty, 60 days after the government’s compliance with 18 U.S.C. § 985(c).

<sup>28</sup>*See* Rule G, 28a U.S.C. § (5)(b).

<sup>29</sup>*Id.*

<sup>30</sup>*Id.*

<sup>31</sup>*See* 18 U.S.C. § 983(f)(3) and Rule G, § 8(d).

<sup>32</sup>*See* Rule G, § 8(d).

<sup>33</sup>Forfeiture is ultimately subject to finality, as a claimant’s motion

may not be granted more than five years after the date of final publication of seizure notice.

<sup>34</sup>*See* 18 U.S.C. § 983(e).

<sup>35</sup>*Id.*

<sup>36</sup>This, of course, is a difficult provision for a claimant whose property is seized while he is traveling.

<sup>37</sup>Such hardship must also outweigh any risk to the property on account of return to the claimant.

<sup>38</sup>Unless the claimant is a “legitimate” business.

<sup>39</sup>Presumably, this applies to such property as firearms, lock picks, and the like, but the provision is extremely open-ended.

<sup>40</sup>*See* 18 U.S.C. § 983(f).

<sup>41</sup>Even if the claimant successfully clears these procedural hurdles, the process is likely to be time-consuming: the agency has 15 days to process the claimant’s request and the U.S. District Court has 30 days, which may be extended. *See* 18 U.S.C. § 983(f).

<sup>42</sup>*Id.*

<sup>43</sup>*See* 18 U.S.C. § 983(c).

<sup>44</sup>*See* 18 U.S.C. § 983(d).

<sup>45</sup>*See, e.g., U.S. v. \$89,980.00 United States Currency*, 2012 WL 6020041 (S.D. Tex. 2012) (finding that where claimant drove off in a vehicle the DEA observed being dismantled and reassembled in the course of a drug investigation, a drug dog alerted to drugs in and around the vehicle, cash was found concealed in the car’s bumpers, and the claimant was unable to account for the cash, the government had met its burden of proof) and *U.S. v. \$252,300.00 in United States Currency*, 484 F.3d 1271 (10th Cir. 2007) (Where drug dog alerted to claimant’s cash and claimant could not account for the cash, the government had met its burden of proof); *but see U.S. v. \$124,700 in U.S. Currency*, 458 F.3d 822 (8th Cir. 2006) (finding that where drug dog alerted to claimant’s cash and car, coupled with other “suspicious” factors, the government had met its burden of proof, even though the case failed to note any evidence of a crime).

<sup>46</sup>*See, e.g., U.S. v. \$242,484.00*, 318 F.3d 1240, 1248 (11th Cir. 2003) (finding that where claimant had a plausible explanation for the cash, claimant had never been charged with or investigated in connection with a drug crime, was traveling under her own name, and was associated with a business and had a plausible explanation for honestly having the cash, claimant was entitled to a directed verdict).

<sup>47</sup>*See, e.g., U.S. v. United States Currency*, \$30,060.00, 39 F.3d 1039 (9th Cir. 1994) (finding that claimant was entitled to summary judgment, even though a drug dog alerted to the cash and claimant gave false accounts of money’s source and claimant’s employment record); *see also \$191,910 in U.S. Currency*, 16 F.3d 1051, 1062 n. 21. (9th Cir. 1994); *United States v. \$639,558 in U.S. Currency*, 955 F.2d 712, 714 n. 2 (D.C. Cir. 1992); *Jones v. DEA*, 819 F.Supp. 698, 719-21 (M.D.Tenn. 1993); *United States v. \$80,760 in U.S. Currency*, 781 F.Supp. 462, 475-76 (N.D. Tex. 1991), *aff’d* 978 F.2d 709 (5th Cir. 1992).

<sup>48</sup>*See generally* 28 U.S.C. § 2465.

<sup>49</sup>*Malladi Drugs & Pharms. Ltd. v. Tandy*, 538 F. Supp. 2d 162 (D.C. 2008).