Kathy

U.S. Department of Justice
Criminal Division
Asset Forfeiture and Money Laundering Section

Quick Release

A Monthly Survey of Federal Forfeiture Cases

Volume 10, No. 7 July 1997

Legislation

■ **House committee sends Civil Asset Forfeiture Reform Act to the House floor for action later this summer. Bill would make major changes to forfeiture procedure.**

On June 20, 1997, the Judiciary Committee of the U.S. House of Representatives approved H.R. 1965, a bill entitled the Civil Asset Forfeiture Reform Act, and sent it to the House floor for action later this summer. The bill, which was introduced by the Committee Chairman Henry Hyde (R-Ill.) and the Ranking Minority Member John Conyers (D-Mich.), represents a compromise between the original Hyde bill, H.R. 1835, which was perceived as anti-law enforcement, and H.R. 1745, the forfeiture bill drafted by the Department of Justice and introduced by Representative Charles Schumer (D-N.Y.).

From the Department of Justice's perspective, H.R. 1965 is a vast improvement over the original Hyde bill. *See* discussion in May/June 1997 issue of *Asset Forfeiture News*. Like any compromise, it contains provisions the Department of Justice would be inclined to oppose—such as the abolition of the cost bond in administrative forfeiture cases, and provisions giving the court discretion to appoint counsel for civil claimants and to return seized property to claimants pending trial to avoid potential hardships. But these provisions and others were amended significantly in the compromise version of the bill to mitigate their adverse effects. At the same time, H.R. 1965 contains most of the pro-law enforcement civil forfeiture provisions from H.R. 1745, including a provision authorizing forfeiture of the proceeds of most federal (and some state and foreign) crimes. Accordingly, the Department of Justice has stated that it will support H.R. 1965 provided there are no further amendments adverse to the interests of law enforcement.

At the same time, the original supporters of the Hyde bill—principally the National Association of Criminal Defense Lawyers (NACDL), the Cato Institute and the ACLU—have announced their strong opposition to H.R. 1965 which they perceive as a sell-out to law enforcement. *See Comment, infra.* Several members of the Judiciary Committee have expressed their desire to amend the bill when it reaches the House floor to strengthen the "due process" reforms and to remove what they view as provisions that go too far in enhancing the Government's forfeiture powers.

The following summary of the Committee's action at the June 20 "mark-up" of H.R. 1965 provides some insight into the politics of the upcoming legislative proceedings.

Committee Mark-up of H.R. 1965

Chairman Hyde began the meeting by emphasizing that he still fully supported his original bill, H.R. 1835, but that he recognized that the Department of Justice was strongly opposed and would likely recommend a presidential veto. Therefore, after "long and difficult negotiations," he said he is now supporting H.R. 1965 which the Department of Justice supports. The compromise, he said, makes the prospects for forfeiture reform "very good."

Hyde also emphasized that the compromise embodies the seven core provisions that he has insisted on: shifting the burden of proof to the Government; appointment of counsel for civil claimants; release of property pending trial in hardship cases; longer time periods to file claims; a uniform innocent owner defense; tort recovery for damage to property; and elimination of the cost bond. To achieve Department of Justice agreement to these seven principles, he said he agreed to use the preponderance of the evidence standard instead of "clear and convincing evidence." He also has agreed to limitations on the appointment of counsel and release of property, and to include things that the Department of Justice considered important, including forfeiture of the proceeds of any crime constituting "specified unlawful activity," as defined in 18 U.S.C. § 1956; defining "proceeds" as gross, not net; and the pretrial restraint of substitute assets in criminal cases. He also said he had agreed that the reforms would not apply to traditional forfeitures by the U.S. Customs Service under titles 19 and 31 "to avoid having the bill die a slow death in the Ways and Means Committee." Customs cases under titles 18 and 21 would be covered by the bill.

Finally he said that the bill was a "delicately balanced" compromise, and that any gust of wind could knock it over. So he asked members to exercise restraint in offering amendments.

Representative Conyers said that he agreed with the Chairman. Addressing the liberal Democrats who are opposed to the bill, he said, "there are times you have to work hard to produce something real small." The bill, he said, does not do nearly as much as he would like to reform civil forfeiture, but it does make "modest changes in existing law" that they should support. He concluded by saying that the bill was the result of "tough negotiating," and urged member to "leave it like it is as much as you can."

Republican Amendments

The Chairman then opened the bill to amendments, starting with the Republicans.

Representative Bryant (R-Tenn.) had three amendments: 1) to put a $125/hr cap on the amount that could be paid to court-appointed counsel; 2) to codify the fugitive disentitlement doctrine; and 3) to amend the provision regarding the return of seized cash to avoid a hardship to strike the clause that allows the cash to be returned if necessary to keep a business in operation. All three were defeated.

The case summaries and comments in ***Quick Release*** are intended to assist government attorneys in keeping up-to-date with developments in the law. They do not represent the policy of the Department of Justice, and may not be cited as legal opinions or conclusions binding on any government attorneys.

The *Quick Release* is a monthly publication of the Asset Forfeiture and Money Laundering Section, Criminal Division, U.S. Department of Justice, (202) 514-1758.

Chief ..... *Gerald E. McDowell*
Deputy Chief and Special Counsel to the Chief ..... *G. Allen Carver, Jr.*
Assistant Chief ..... *Stefan D. Cassella*
Editor ..... *Denise A. Mahalek*
Design ..... *Denise A. Mahalek*
Index ..... *Todd Blanche*
Production ..... *Todd Blanche*

Your forfeiture cases, both published and unpublished, are welcome. Please fax your submission to Denise Mahalek at (202) 616-1344 or mail it to:

Quick Release
Asset Forfeiture and Money Laundering Section
Criminal Division
U.S. Department of Justice
1400 New York Avenue, NW
Bond Building, Room 10100
Washington, DC 20005

Next Representative Barr (R-Ga.) announced that he had a number of amendments that he would not offer in committee but would offer later on the House floor. They were the following: 1) to return to the clear and convincing evidence standard; 2) to strike the section defining "proceeds" as gross proceeds; 3) to strike a series of criminal forfeiture improvements including the provision making criminal forfeiture available in all cases where civil forfeiture is already available; and 4) striking the pretrial restraint of substitute assets.

Finally, Representative Hutchinson (R-Ariz.) proposed striking the provision authorizing appointment of counsel in civil forfeiture cases all together. The amendment was defeated.

Democratic Amendments

The Democrats prefaced their amendments by noting, as Representative Jackson-Lee (D-Tex.) stated, that the pendulum had swung too far to the side of law enforcement in forging the compromise. They insisted that instead of offering amendments today, and having them voted down, they would simply state what amendments they had in mind, and would ask that they be included in a managers' amendment before the bill is voted on by the full House.

Representative Hyde said that the "delicate compromise" could be threatened by amendments that could cause the Department of Justice to back off of its support. But Representative Conyers, contrary to his earlier statements, said that he agreed there were additional things that needed to be considered to get the defense bar to support the bill.

The first Democratic amendment was offered by Representative Delahunt (D-Mass.) who moved to strike the provision in the appointment of counsel section that allows the Government to cross-examine the claimant. Representative Frank (D-Mass.) agreed with the amendment, but suggested if the provision couldn't be stricken entirely, the cross-examination should be limited to the claimant's ability to afford counsel, and should not touch upon his standing or the frivolousness of his claim. They withdrew the amendment when Hyde agreed to discuss it further in the context of a manager's amendment later on.

Representative Scott (D-Va.) then listed a long series of amendments that he and other liberal Democrats thought should be added through a manager's amendment. These included the following: 1) eliminating the value of the property as one of the criteria that the court should consider in appointing counsel (Frank agreed with Scott, but Hyde and Representative McCollum (D-Fla.) were opposed); 2) returning to the clear and convincing standard; 3) striking the provisions allowing the Government to ask the court to extend the filing deadlines for good cause; 4) barring the use of hearsay in pretrial hearings—*e.g.* on motions to suppress; 5) striking the provision allowing the Government to put on evidence regarding the underlying crime even if the claimant stipulates to forfeitability; 6) striking the requirement that the claimant have community ties sufficient to ensure that property returned to him pending trial will be available for forfeiture; and 7) striking "gross proceeds."

In response to all of this, Chairman Hyde said that he would be willing discuss these proposals but that if he attempted to please everyone, the "house of cards" would fall. But Conyers said that the amendments sounded reasonable, and Frank said that if the Department of Justice did not show some flexibility, he would "go public" to make sure the White House knew how unfair the Department's negotiators were being.

Committee Vote

The Committee then voted to report the bill without amendment 26-1. Representative Barr was the lone dissenter. No time was set for floor action, but it is expected that the Committee will file a formal Report on the bill on or about July 14, 1997, and that action by the full House will occur either before the House adjourns for its summer recess on August 1, or after it returns in September.

—SDC

Comment: The text of H.R. 1965 is available on the Library of Congress's website: *http://thomas.loc.gov.* An outline of the bill appears *infra*, and a more detailed section by section analysis is available on the Asset Forfeiture Bulletin Board.

The Department's contact person regarding forfeiture legislation is AFMLS Assistant Chief Stefan D. Cassella, CRM07(cassella).

Following the Judiciary Committee's action on H.R. 1965, the NACDL issued a press release condemning the bill as a sell-out to law enforcement. The following is an excerpt from the NACDL statement:

> "After careful review, the NACDL rejects the important *but severely flawed* civil asset forfeiture reform effort reported out of the House Judiciary Committee late last week. The measure purports to address the basic unfairness and inequities of existing asset forfeiture laws, but what was at first an outstanding bill with widespread bi-partisan support in the House has been seriously compromised by the Department of Justice and other law enforcement entities who unfairly benefit from these laws at the expense of innocent citizens.
>
> " 'The so-called reform measure reported out late last week in many respects *expands* rather than contracts the kind of confiscatory governmental powers the bill's sponsors sought to eliminate,' said NACDL President-Elect Gerald B. Lefcourt. . . . As reported out, H.R. 1965 is worse than no bill at all. . . . In particular, the Department of Justice wants to use the pretext of civil forfeiture reform to gain drastic new authority under *criminal* forfeiture statutes. Additionally, Department of Justice now wants the power to . . . file a forfeiture complaint *without probable cause* to believe the property is forfeitable, and then impose costly discovery burdens on citizens to try and develop a case during the pretrial stages. . . . No wonder H.R. 1965 as now written is actively supported by the Department of Justice, while leaving many of its original supporters wondering why fundamental reforms were so severely compromised.' " —*SDC*

Highlights of the Civil Asset Forfeiture Reform Act

The following summary describes the most significant provisions in H.R. 1965 as reported by the House Judiciary Committee. The major "reform" provisions from the original Hyde bill, H.R. 1835, are mostly found in Sections 2 through 4; the balance of the bill is derived mainly from H.R. 1745, the Department of Justice's forfeiture bill.

Section 1

- short title.

Section 2

- Government must send notice of administrative forfeiture within 60 days of seizure; must apply to federal judge for extension of time;
- sets a two-year limit on the time for a person who did not receive notice to move to vacate the forfeiture and restart the administrative forfeiture proceeding;
- claimant has 30 days from receipt of notice to file a claim; claim must set forth nature and extent of interest in the property;
- if a claim is filed, U.S. Attorney has 90 days to file civil forfeiture complaint or include criminal forfeiture in an indictment, unless the time limit is extended by the court for good cause;
- court may appoint counsel to represent any claimant in a civil forfeiture case who is unable to afford counsel, after first determining that claimant has standing and claim is not frivolous; Government may cross-examine the claimant at a hearing;
- burden of proof in civil forfeiture cases is on the Government by a preponderance of the evidence; claimants retain the burden of proof as to affirmative defenses;

- innocent owners are protected in all civil forfeiture cases; innocent owner is defined as a person who 1) at the time the offense occurred, did not know of the offense, or took all reasonable steps to stop it; or 2) acquired the property after the offense and was a bona fide purchaser without reason to know that the property was subject to forfeiture;
- authorizes courts to issue pretrial orders in civil forfeiture cases to preserve property pending trial;
- provides that 8th Amendment challenges to forfeiture judgments are to be addressed to the court, not the jury, and are to be made post-trial, not in a pretrial motion to dismiss;
- directs the court to release seized property back to the claimant pretrial if necessary to avoid a substantial hardship; excludes currency, property seized as evidence, and property likely to be used to commit additional crimes; and
- authorizes civil and criminal forfeiture of the proceeds of any offense constituting "specified unlawful activity" for purposes of the money laundering statute; defines "proceeds" to mean gross proceeds, not net profits.

Section 3

- amends the Federal Tort Claims Act to allow owners to sue to recover damages for negligent damage to property when in government custody.

Section 4

- allows claimants who prevail in forfeiture actions to recover pre-judgment interest if the property was cash or other property sold in an interlocutory sale.

Section 5

- requires that seizures for forfeiture be pursuant to a warrant, unless a Fourth Amendment exception applies;
- authorizes out-of-district seizures, with Rule 41(e) motions for return of seized property to be filed in the district where the warrant was issued; and
- allows assets in the United States of a person arrested abroad to be frozen for 30 days pending acquisition of evidence supporting probable cause for seizure and forfeiture.

Sections 6 - 8

- facilitates Government's access to financial records held in bank secrecy jurisdictions, tax records, and grand jury information already in Government's possession.

Section 9

- authorizes the Attorney General to use property forfeited in civil forfeiture cases to pay restitution to victims.

Section 10

- creates a procedure for the enforcement of foreign forfeiture judgments.

Section 11

- makes foreign business records admissible in civil cases.

Section 12

- amends the Admiralty Rules to give the claimant 20 days to file claim and answer; and
- repeals 21 U.S.C. § 888.

Section 13

- exempts certain Customs cases from the new procedures.

Section 14

- all changes in the law to apply prospectively.

Section 15

- conforms various venue and jurisdiction statutes to 28 U.S.C. § 1355(b), which permits Government to file a civil forfeiture action in the district where the underlying offense occurred.

Sections 16 - 18

- amends 18 U.S.C. § 986 to authorize subpoenas for bank records in all civil forfeiture cases, and makes other technical amendments.

Section 19

- expands the Attorney General's authority to share forfeited property with foreign governments.

Section 20

- authorizes forfeiture of property used to facilitate foreign drug crimes.

Section 21

- authorizes forfeiture of property *traceable to* property used to facilitate domestic drug crimes.

Section 22

- authorizes forfeiture of proceeds of any foreign crime that is included as a money laundering predicate in 18 U.S.C. § 1956(c)(7)(B).

Sections 23 - 25

- makes minor and technical amendments to statutes relating to forfeiture of gambling machines, vehicles with obliterated serial numbers, and 21 U.S.C. § 877.

Section 26

- extends the statute of limitations for civil forfeiture to five years from date of discovery of the offense, or two years from discovery of the involvement of the property in the offense, whichever is longer.

Section 27

- clarifies that it is a criminal offense to remove or destroy property to prevent its seizure for forfeiture.

Section 28

- clarifies that when *in personam* judgments are entered in criminal forfeiture cases, no ancillary proceeding is necessary.

Section 29

- corrects legislative drafting errors that omitted incorporating procedures for criminal forfeiture for numerous statutes enacted since 1990.

Section 30

- authorizes criminal forfeiture in any case where civil forfeiture is authorized.

Section 31

- enhances tools available to Government to locate assets subject to criminal forfeiture; and
- authorizes 18 U.S.C. § 986 subpoenas in criminal forfeiture cases.

Section 32

- authorizes criminal forfeiture for money laundering conspiracies.

Section 33

- corrects drafting errors in criminal forfeiture provisions for alien smuggling and other immigration offenses.

Section 34

- gives judges authority to order a criminal

defendant to repatriate assets subject to criminal forfeiture.

Section 35

- clarifies when the Government's interest in substitute assets vests for purposes of defining third party's right to contest forfeiture of substitute assets.

Section 36

- authorizes forfeiture of proceeds for violations of the Archeological Resources Protection Act.

Section 37

- authorizes forfeiture of instrumentalities of terrorism, telemarketing fraud and other offenses.

Section 38

- authorizes forfeiture of criminal proceeds transported in interstate commerce in violation of 18 U.S.C. § 1952.

Section 39

- authorizes forfeiture in Food, Drug and Cosmetic Act cases.

Section 40

- enhances the forfeiture provisions for counterfeiting paraphernalia.

Section 41

- closes a loophole that can be used to defeat forfeiture through bankruptcy.

Section 42

- allows the Government to collect a criminal forfeiture judgment in the same manner as a criminal fine or a judgment in a civil action.

Section 43

- clarifies that the Government need not obtain a new criminal seizure warrant for property already in Government custody when pursuing criminal forfeiture.

Section 44

- incorporates provisions of the Admiralty Rules for criminal forfeiture to permit delivery of property to the U.S. Marshals Service.

Section 45

- authorizes forfeiture in odometer tampering cases.

Section 46

- authorizes pretrial restraint of substitute assets in criminal cases; exempts property needed to pay attorneys fees and living expenses.

Section 47

- provides that in post-restraint hearings in criminal cases the defendant may not ask the court to look behind the grand jury's finding of probable cause to believe the underlying crime was committed.

Criminal Forfeiture

- **Because a defendant is liable for the acts of his co-conspirators, a defendant must forfeit his interest in property used by his co-conspirators to commit a drug offense.**

David White and his co-defendants owned one-quarter interests in a farm as tenants in common. All of the co-defendants, including White, participated in a conspiracy to use the farm to distribute marijuana, but White did not live on the farm nor use the farm personally to commit any illegal act. All illegal acts involving the farm were committed by a co-defendant.

When White was convicted of the conspiracy offense, the district court ordered the forfeiture of his interest in the farm. *See United States v. Dethlefs*, 934 F. Supp. 475 (D. Me. 1996). On appeal, White argued that because criminal forfeiture is an *in personam* action, the forfeiture should have been limited to property that he used personally to commit the offense. His point was that criminal forfeiture is different from a civil *in rem* case in which the action is directed against the property and the Government can forfeit any property regardless of who the owner is, as long as the nexus between the property and the offense is established.

The **First Circuit** acknowledged the distinction between *in personam* and *in rem* forfeitures, but it declined to rule that criminal forfeitures are limited to property that a defendant personally uses to commit an offense. To the contrary, criminal forfeiture is a part of sentencing, and a defendant in a criminal case is liable at sentencing for the acts of his co-conspirators. Thus, because White's co-conspirators used the farm to distribute marijuana, and White was a member of the conspiracy, his interest in the property was subject to *in personam* forfeiture as if he had used the farm for an illegal purpose himself.

Moreover, criminal forfeiture has an *in rem* component. All that a court is required to find is that there is a nexus between the property and the offense. Once that nexus is established, any defendant convicted of the offense must forfeit his interest in the property whether he personally used the property to commit the offense or not. This rule, the court held, is analogous to the rule in proceeds forfeiture cases that all defendants are jointly and severally liable for the forfeiture of the proceeds, regardless of how much money each defendant actually received. —*SDC*

United States v. White, ___ F.3d ___, 1997 WL 338602 (1st Cir. June 24, 1997). Contact: AUSA Jonathan Toof, AME01(jtoof).

Probable Cause / Burden of Proof / Due Process

- **Ninth Circuit finds lack of probable cause in airport seizure of currency from drug courier.**

- **Panel, in *dicta*, suggests that the probable cause standard in civil forfeiture cases may be unconstitutional.**

An airline employee tipped-off law enforcement agents that one "Jacinto Rodriguez" had purchased a one-way ticket for cash from Dallas to Ontario, California. Agents met the plane when it arrived in California and removed from the plane a bag checked by "Rodriguez." A trained canine alerted to the bag and the agents thereafter placed the bag on a baggage carrousel. When "Rodriguez" went to the claim the bag, the agents approached him and asked for identification.

"Rodriguez" behaved nervously. He produced a California driver's license and an alien resident's card. The former was in the name of "Jacinto Rodriguez," but the latter was in the name of Francisco Lombera, which turned out to be the traveler's true name. When asked about "bulges" in his pants, Lombera told the agents that he was carrying $2,000 in cash in his pockets.

Lombera agreed to accompany the agents to an office and consented to the search of the bag. He was able to open a combination lock on the bag but told the agents that he did not have a key to a second lock. The agents ultimately obtained a duplicate key, unlocked the bag, and found $49,576 wrapped inside a pair of jeans. Lombera denied he owned the money but declined to sign a waiver of ownership and refused to speak further. He was released and not charged with a crime. He had, however, once been detained (but not charged) in a drug-related investigation.

Despite his initial denial, Lombera later filed a claim to the money. The district court found probable cause and ordered the money forfeited. Lombera appealed. Prior to oral argument, the **Ninth Circuit** panel *sua sponte* directed the parties to brief the constitutionality of the burden of proof under 19 U.S.C. § 1615, and ultimately reversed the forfeiture judgment on grounds that there was no probable cause for the forfeiture under 21 U.S.C. § 881(a)(6).

Examining each item of evidence individually, the court held that none of the evidence satisfied the standard of probable cause. The canine alert was entitled to little weight, the court said, because of the widespread contamination of currency with drug residues. The fact that the claimant had once been detained in a drug-related investigation did not provide a credible link between the money and the drugs because he had never been charged. The panel held that the fact the claimant fit the "drug courier profile" established only a reasonable suspicion, not probable cause. Finally, it held that the claimant's use of a fake driver's license, his evasive and dishonest answers to questions, and his general nervous behavior were indicative of some illegal activity, but not necessarily of drug trafficking.

Two of the judges went on to opine in *dictum* that the probable cause standard *may* be unconstitutional as violative of due process. They relied on the decisions in *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993); *Santosky v. Kramer*, 455 U.S. 745 (1982); *Addington v. Texas*, 441 U.S. 418 (1979); and *Mathews v. Eldridge*, 424 U.S. 319 (1976) as having changed constitutional doctrine "a good bit" since the Ninth Circuit upheld the constitutionality of the burden of proof under 19 U.S.C. § 1615 in *United States v. One 1970 Pontiac GTO*, 529 F.2d 65 (9th Cir. 1976). They further cited *Austin v. United States*, 509 U.S. 602 (1993), as broadening the constitutional protections applicable to civil forfeiture.

Finally, they held that allowing the Government to forfeit on the basis of probable cause was an "historical anomaly," adding that "[w]e would find it surprising were the Constitution to permit such an important decision to turn on the a meager burden of proof like probable cause." However, they "[left] the ultimate resolution of this question for another day." Judge Hall, separately concurring on the absence of probable cause, refused to join this *dictum* and criticized the majority for addressing an issue which the appellant had failed to raise in his briefs. —*HSH*

United States v. $49,576.00 U.S. Currency, ___ F.3d ___, 1997 WL 345961 (9th Cir. June 25, 1997) Contact: AUSA Carla Ford, ACAC03(cford).

Comment: The panel's finding of "no probable cause" is quite dubious. The primary flaw is that rather than evaluating the "totality of the evidence" as a court is supposed to do in determining probable cause, the panel parses each item of evidence individually in terms of its probative value. The panel holds, in essence, that the evidence, viewed separately and *seriatim*, failed to establish probable cause for forfeiture under 21 U.S.C. § 881(a)(6). This is, of course, an improper approach to the probable cause determination and not once does the panel evaluate the evidence in its totality.

This decision should be contrasted with the unpublished panel decision in *United States v. $88,654.00 in U.S. Currency*, 1997 WL 312546 (9th Cir. Jun. 3, 1997) (summarized *infra*), decided only three weeks prior to *$49,576*, in which the panel, employing the correct "totality of the circumstances" approach, found probable cause in highly analogous circumstances.

The constitutional dictum is troubling and the fact that the panel ordered the issue briefed *sua sponte* indicates a readiness to reach the merits by two of the judges. Their suggestion that there may be a meritorious due process challenge to the probable cause standard, however, is highly doubtful. For one thing, the probable cause standard has governed most federal civil forfeitures for more than 200 years and not once has the Supreme Court ever hinted that it might be unconstitutional. Indeed, the Court has alluded to the standard in a number of its recent forfeiture cases—including *James Daniel Good Real Property*—without ever suggesting disapproval. The cases cited in this *dictum* are inapposite. Furthermore, the dictum relies on the "quasi-criminal" nature of forfeiture without once discussing the recent decisions in *Bennis v. Michigan*, 116 S. Ct. 994 (1996), and *United States v. Ursery*, 116 S. Ct. 2135, (1996), in which majorities of the Court (in *Ursery*, a decided 8-1 majority) cited the non-punitive, remedial purposes of civil forfeitures. (*Ursery*, in which *all nine justices* agreed that civil forfeiture under 21 U.S.C. § 881(a)(6) is entirely remedial, is given a mere "But see" cite in the *dictum* with no explanatory parenthetical).

One circuit very recently affirmed the constitutionality of the probable cause standard. *See United States v. One Beechcraft King Air 300 Aircraft*, 107 F.3d 829 (11th Cir. 1997). However, another circuit opined in *dictum* before *Ursery* was decided that *Austin* and *Good* call into question the constitutionality of the probable cause standard. *See United States v. One Parcel of Property Located at 194 Quaker Farms Road*, 85 F.3d 985 (2d Cir.), *cert. denied*, 117 S. Ct. 304 (1996). This issue may well have to be resolved by the Supreme Court where recent precedent appears favorable.

—*HSH*

Probable Cause

■ **"Totality of the circumstances" test supports finding of probable cause to forfeit currency seized at an airport from a drug courier.**

Claimant made reservations for a flight from Michigan to Arizona at 12:55 a.m. for a 6:42 a.m. departure. He paid for his ticket in cash and did not check any bags. Upon deplaning in Arizona, claimant diverted his eyes when a uniformed officer standing at the end of the jetway looked at him and then looked back at the officer while proceeding through the airport concourse. He was stopped and consented to a search of his bags. $83,654.00 was found in his garment bag, and a trained canine alerted to the presence of drug residue on the currency.

Claimant gave conflicting statements regarding how much money he was carrying or his reasons for traveling to Arizona. He was unable to provide names and numbers for alleged "business contacts" that he mentioned. He claimed that the money derived from the recent sale of furniture and other personal items. The Michigan address he provided was located in a "crack cocaine" neighborhood where numerous drug arrests had been made. Telephone toll records, obtained after Drug Enforcement Administration had commenced administrative forfeiture proceedings but before the Government filed its forfeiture complaint, showed a number of calls from the residential telephone at this address to known drug traffickers in Tucson in the weeks prior to the seizure. The district court found probable cause for forfeiture on this evidence, including the telephone toll records. The **Ninth Circuit** unanimously affirmed.

The panel, after reciting the evidence described above, succinctly concluded that "under the totality of the circumstances," the Government had probable cause for the forfeiture under 21 U.S.C. § 881(a)(6).

The panel held that the telephone toll records were properly admitted even though they were obtained by the Government after Drug Enforcement Administration had commenced administrative forfeiture proceedings. It explained that Ninth Circuit law bars the Government only from introducing evidence obtained after the forfeiture complaint is filed. *See United States v. $191,910 U.S. Currency*, 16 F.3d 1051 (9th Cir. 1994).

—HSH

United States v. $88,653.00 in U.S. Currency, 1997 WL 312546 (9th Cir. Jun. 3, 1997) (unpublished). Contact: AUSA Henry Brown, AAZT01(hbrown).

Comment: The panel in this case applies the correct "totality of the circumstances" approach in determining probable cause and reaches a result diametrically opposite that reached by another panel of the same circuit in *$49,576.00 U.S. Currency*, summarized *supra*.

—HSH

Probable Cause / Rule 41(e) / Motion to Amend Complaint

- **Claimant cannot challenge Government's probable cause for the forfeiture until the time of trial, unless there is an undue delay in the filing of the complaint.**

- **The Government is not limited to establishing forfeitability under the theory it asserted at the time of the seizure or at the time it filed its original complaint; a motion to amend the complaint should be granted unless the Government explicitly disavowed the alternative theory and thereby waived it.**

Claimant was stopped in a New York airport by Drug Enforcement Administration agents. He was travelling from Dallas on a ticket purchased with cash shortly before departure, and otherwise fit the drug courier profile. When the claimant consented to the search of his suitcase, the agents found $146,800 wrapped in newspapers and manilla envelopes.

Claimant explained that he had received the money from "Pablo" in Texas and was supposed to pick up an additional $300,000 in New York and deposit the total in 25 different bank accounts, all in amounts under $10,000. He said that he worked for a Venezuelan currency trader who bought and sold U.S. currency on the black market. At this point, the agents seized the cash under 21 U.S.C. § 881(b) as drug proceeds subject to forfeiture under section 881(a)(6).

Claimant filed a claim and cost bond and the Government filed a complaint *in rem* against the currency. The claimant then filed a Rule 41(e) motion for the return of the seized currency, alleging a lack of probable cause for the seizure. The issue was whether the challenge to the seizure was properly raised.

The district court noted that all seizures must comply with the Fourth Amendment's probable cause requirement. If the Government seizes property without probable cause, there may be "evidentiary consequences in subsequent proceedings." For example, an illegal seizure can result in the suppression of evidence at trial, but it will not result in any bar against the forfeiture. *See United States v. Daccarett*, 6 F.3d 37 (2d Cir. 1993).

An illegal seizure may also result in the return of the property to the claimant pending trial. Normally, the Government "need not demonstrate that it had probable cause for the seizure until the forfeiture trial." But if "the claimant properly raises the issue of the government's probable cause for seizure before the forfeiture trial, and if the claimant demonstrates that the government lacked probable cause at the time of seizure, the property may be returned to the claimant until the forfeiture trial is held." *See Marine Midland Bank v. United States*, 11 F.3d 1119 (2d Cir. 1993). Even so, the property would still be subject to the forfeiture action.

But the issue remains: other than in a suppression motion, how and when may a claimant "properly raise" a challenge to the Government's probable cause prior to trial? The court ruled that a Rule 41(e) motion is *not* the proper method. A district court lacks jurisdiction to grant a Rule 41(e) motion as long as the claimant has an adequate remedy at law. *See United States v. One 1987 Jeep*, 972 F.2d 472 (2d Cir. 1992). Because the claimant will be able to challenge the Government's probable cause in the forfeiture trial, he may not raise his challenge pretrial in a Rule 41(e) motion.

The claimant may, however, challenge the Government's probable cause pretrial if the Government fails to institute forfeiture proceedings "promptly" following the seizure, as required by section 881(b). Such a hearing is required, however, only if the delay rises to the level of a due process violation. In this case, the Government filed the complaint less than five months after the seizure. An

additional six months then elapsed before the case was ready for trial, but that delay was attributable to pretrial motions practice. Finally, the probable cause issue would be litigated shortly in the context of a motion for summary judgment. Hence, the court concluded that a pretrial probable cause hearing was unwarranted.

The second issue in the case concerned the Government's motion to amend the complaint to include a money laundering theory of forfeiture under 18 U.S.C. § 981(a)(1)(A). The claimant objected to the amendment on the ground that the Government should be limited, at trial, to establishing the forfeitability of the property under the theory that the Government asserted at the time it seized the property. In other words, the claimant asserted, if the seizure was based on a section 881 theory, the property may only be forfeited under section 881; and conversely, if the Government lacked probable cause under section 881 at the time the seizure occurred, it may not later forfeit the property under some other theory.

The court rejected this argument and permitted the Government to amend the complaint. The Government is not required to select a theory of forfeiture when a seizure occurs. Nor must the Government "be held to have irrevocably and exclusively elected to pursue the probable cause theory it asserted in its original complaint." The court continued, "To prove that the Government had waived its right to proceed under § 981 . . . claimant would have to demonstrate the Government's intentional disavowal of a money laundering argument." But in this case, the evidence showed that just three months after filing the complaint, the Government announced its intention to add the money laundering theory at a status conference. Thus, there was no reason not to permit the Government to amend the complaint. —*SDC*

United States v. U.S. Currency in the Amount of $146,800, 1997 WL 269583 (E.D.N.Y. Apr. 28, 1997) (unpublished). Contact: AUSA Tracey Salmon Smith, ANYE03(tsmith).

Comment: This summary is a revised version of the summary that appeared in the June issue of the *Quick Release* based on the unpublished slip opinion.

Rule 41(e)

- **Rule 41(e) motion is inappropriate if the Government has filed a civil forfeiture action and the claimant therefore has an adequate remedy at law.**
- **Where the claimant files a Rule 41(e) motion between the time of the seizure and the Government's filing of a forfeiture complaint, the motion will be stayed for 60 days to give the Government an opportunity to file.**

Property owners filed a Fed. R. Crim. P. 41(e) motion in the Eastern District of Louisiana for the return of currency seized during the execution of a search warrant issued by a federal judge in the Middle District of Louisiana. The seized currency was taken to the Eastern District, and administrative forfeiture proceedings were commenced in the Eastern District after the Rule 41(e) motion was filed.

The court first ruled that a Rule 41(e) motion would not lie because there was no pending criminal case, only an investigation. Accordingly, the court treated the motion as a civil equitable action for the

return of property. It then noted that such an action should not be entertained if the plaintiffs have an adequate remedy at law and that they probably have one—a civil forfeiture action. To ensure that the remedy is adequate, the court ruled, based on the facts that the Government has had possession of the property for 30 days and has been investigating the case for months, that plaintiff's suit would be stayed for only 60 days at this time. At the end of the 60 days, if the Government has not filed a civil forfeiture complaint, both sides are to submit briefs.

The Government argued that there was no venue in the Eastern District for plaintiff's action. However, the opinion contains no discussion of the venue issue, perhaps because the Government's venue argument may have been addressed only to a Rule 41(e) motion, which must be brought in the district where the property was seized. —*BB*

In re: FBI Seizure of Cash and Other Property From Edwin W. Edwards, 1997 WL 327129 (E.D. La. June 12, 1997) (unpublished). Contact: AUSA Peter Strasser, ALAE01(pstraser) or AUSA Steve Irwin, ALAE01(sirwin).

Cost Bonds / Adverse Inference

- **Federal courts have jurisdiction under the Administrative Procedures Act and Due Process Clause to review an agency's denial of *in forma pauperis* status to a claimant in an administrative forfeiture proceeding.**

- **When a person seeking *in forma pauperis* status invokes his non-testimonial privilege in declining to respond to an agency request for additional financial data, the agency may draw an adverse inference from the refusal.**

- **Department of Justice policy directives create no enforceable rights for litigants and do not apply to Customs administrative forfeitures anyway.**

A homeowner brought suit challenging the administrative forfeiture of money seized from his home. He argued that the U.S. Customs Service had denied him due process by arbitrarily and capriciously rejecting his request for *in forma pauperis* status, thereby requiring him to file a cost bond. The district court dismissed the suit. The **Eleventh Circuit** affirmed, explaining that it had jurisdiction under the Due Process Clause and the Administrative Procedures Act to review the administrative forfeiture proceeding for compliance with due process requirements.

The court held that the U.S. Customs Service had adequately reviewed appellant's *in forma pauperis* claim and had reasonable grounds for denying it. The U.S. Customs Service had reviewed the income and living expenses reported by appellant. Since his living expenses significantly exceeded his income, Customs questioned how appellant could afford those living expenses. Appellant refused to respond on the grounds of possible self-incrimination.

The Eleventh Circuit explained that requiring a cost bond is reasonable. It deters those with frivolous claims. And it is also reasonable to require *in forma pauperis* petitioners to provide supporting data. If *in forma pauperis* petitions were granted routinely, the court said, the exemption from the cost bond would swallow up the statutory requirement.

The court then held that the U.S. Customs Service had given the appellant ample opportunity to explain how he could be indigent in light of the income and cost data he had submitted. When appellant invoked his non-testimonial privilege, Customs was entitled to make reasonable adverse inferences therefrom. It did, and since appellant failed to meet his burden of establishing his indigency, Customs reasonably denied him *in forma pauperis* status. A person who asserts his Fifth Amendment privilege in a civil forfeiture case, the court held, does so knowing that he may thereby fail to establish a fact on which he has the burden of proof.

The court also rejected appellant's argument that the U.S. Customs Service did not follow Policy Directive 93-2 in handling his *in forma pauperis* request. A policy directive is an internal rule that creates no enforceable rights. Moreover, the U.S. Customs Service is not bound by the directives of another agency, *i.e.*, the Department of Justice. —*BB*

Arango v. U.S. Dept. of the Treasury, ___ F.3d ___, 1997 WL 306993 (11th Cir. June 24, 1997). Contact: AUSA Neal Stephens, AFLS03(nstephen).

Comment: This is not the first case to declare that the courts have discretion to review the denial of an *in forma pauperis* petition in an administrative forfeiture proceeding. *See, e.g., Jones v. U.S. DEA*, 801 F. Supp. 15 (M.D. Tenn. 1992); *United States v. Gharazeddine*, Crim. No. 90-10024-WD (D. Mass. Dec. 17, 1991) (unpublished). Prior decisions have also found a constitutional requirement that indigent persons be allowed to filed claims in administrative forfeiture proceedings without filing bonds. *Wiren v. Eide*, 542 F.2d 757 (9th Cir. 1976); *Lee v. Thornton*, 538 F.2d 27 (2d Cir. 1976). —*BB*

Standing

■ **Straw owner, who acquired real property for $1 in admitted attempt to avoid civil forfeiture, lacked standing.**

Claimants in this civil forfeiture case were father and son. The father was the prior owner of the defendant real property, but had conveyed it to his son some time in the past. The son had exclusive ownership and control of the property when he was arrested for drug manufacturing operations. When the Government filed its civil forfeiture action, however, the son conveyed the property back to his father for $1 in an attempt to give the father standing to file an innocent owner claim and thus protect the property from forfeiture.

The district court denied the father's claim for lack of standing, and the **Second Circuit** affirmed. The father, the court held, was a mere straw owner, while the son exercised dominion and control over the property and was the true owner. Notwithstanding the deed conveying legal ownership to his father, the son continued in possession and management of the property, received all rental payments, was responsible for leasing when vacancies occurred, paid all bills and taxes, and made all repairs.

The father pointed to two factors that he said supported his standing. First, the father remained responsible for the mortgage payments on the property dating back to his original ownership. But the court found this was unimportant given the

Government's assurance that the mortgage would be paid out of the proceeds of the sale of the property once the forfeiture was complete. If the mortgage was paid, the father's obligation would be extinguished; therefore the mortgage obligation was insufficient to give the father standing.

Second, the father argued that he had conveyed the property to his son in the first place on the condition that the son would manage it responsibly or return it to his father. Thus, the father asserted that the son held the property for him in constructive trust. But the court rejected this argument as unsupported by any evidence that any conditions had been placed on the original conveyance of the property to the son.

Finally, the court affirmed dismissal of the son's claim. The sole issue raised by the son was that the seizure of the property by the Government violated his Fourth Amendment rights. The court agreed that the Fourth Amendment applies to civil forfeiture proceedings, but it rejected the constitutional argument on the merits. The court also noted that the Government was probably correct in objecting to the son's claim as untimely, since the son did not file his claim until the father's claim was dismissed for lack of standing. But the court did not reach this question.

—SDC

United States v. Premises and Real Property . . . 500 Delaware Street, ___ F.3d ___, 1997 WL 242151 (2d Cir. Apr. 29, 1997).
Contact: AUSA Anne Van Graafeiland, ANYWR01(avangraa).

Delay / Due Process

- **Unexplained two-year delay in denial of claimant's petition for remission plus unexplained year-long lapse between claimant's filing of claim and cost bond and Government's filing complaint for judicial forfeiture, during which time key witness for claimant died, violated due process standards of *U.S. v. $8,850*.**

On July 8, 1991, U.S. Customs agents seized $274,481 from a bank account belonging to the claimant and his brother. By letter of August 5, 1991, Customs informed the claimant of his right to petition for remission. Customs denied the claimant's petition by a letter dated May 6, 1993, almost two years later. The record provided no explanation or justification for the two years to process the petition.

Additionally and "of more concern to the Court," the record showed that in June 1993, Customs advised the claimant of his right to file a claim and cost bond pursuant to 19 U.S.C. § 1608 to contest the forfeiture in a judicial proceeding, and that claimant filed his claim and bond in July 1993. However, the complaint for forfeiture was not filed until August 1994. The Government acknowledged that the case was referred to the U.S. Attorney in July 1994, but offered no explanation to justify what the court described as a "one year gap of total inactivity."

During this delay, claimant's brother, the co-owner of the bank account from which the money was seized, had died. The court found that Customs' own discussion of the case at the time of its denial of the claimant's petition for remission indicated that claimant's now deceased brother had been a crucial witness concerning the legitimate source of the seized currency. The court found that the death of this witness created a "prejudice factor" to be considered.

The court concluded that, given the unexplained delay in the Government's filing of the complaint for

judicial forfeiture, there was a violation of claimant's due process rights. Consequently, the court granted claimant's motion and ordered the return of the seized money. Without additional discussion, the court stated that it based its ruling on the standards set forth in *United States v. $8,850*, 461 U.S. 555 (1983) (test to determine whether delay in instituting judicial forfeiture action violated due process consists of balancing four factors: the length of the delay; the reason or reasons justifying the delay; whether the claimant has asserted his right to a judicial hearing; and the prejudice resulting from the delay to claimant's ability to defend his or her interest in the property).

—JHP

United States v. $274,481, Civil 94-2128CCC (D.P.R. May 29, 1997). Contact: AUSA Miguel Fernandez, DPR01(mfernand).

Comment: A discussion of *U.S. v. $8,850* and its four-factor test for determining when delayed judicial forfeiture proceedings violate due process can be found in AFMLS Trial Attorney Joseph H. Payne's article, "Delays in Filing Judicial Forfeiture Actions Against Seized Property—How Long is Too Long?" in *Asset Forfeiture News* (March/April 1996).

Firearms

- **Return of seized firearms and ammunition to the defendant or his delegate pursuant to 18 U.S.C. § 924(d)(1) when the defendant's firearms violation conviction has been vacated is required only if such return would not place the defendant or his delegate in violation of the law.**

- **UZI assault weapon may not be returned to defendant's delegate because 18 U.S.C. § 922(v) makes it illegal for anyone to possess such weapons unless they are covered by the "grandfather clause" applicable to persons in lawful possession of the weapon on the date of enactment of section 922(v).**

After reversal on appeal of his conviction under 18 U.S.C. § 922(g)(1)—possession of firearms or ammunition by a person convicted of a crime punishable by more than one year of imprisonment—the defendant moved pursuant F. R. Crim. P. 41(e), and 18 U.S.C. § 924(d)(1) for the return of his ammunition and four firearms. Section 924(d)(1) requires return of seized firearms and ammunition to the defendant or his delegate when the defendant's firearms violation conviction has been vacated, unless such return would place the defendant or his delegate in violation of the law.

Defendant had pled guilty to other felony charges. Consequently, as permitted by section 924(d)(1), the defendant designated a delegate, who had never been convicted of a crime and possessed a valid state firearms identification card, to receive possession of his firearms and ammunition.

The Government did not oppose delivery of one of the firearms and its ammunition to the defendant's delegate, and the Government's initial opposition to the delivery to the delegate of two of the firearms and their ammunition on the basis that the defendant did not own them at the time of his arrest was resolved by the defendant's presentation of evidence of purchase prior to his arrest. As to the fourth weapon and its ammunition, the Government pointed out that it was an "UZI," a semiautomatic assault weapon as defined in 18 U.S.C. § 921(30)(A)(ii), possession of which is illegal under 18 U.S.C. § 922(v)(1). However, section 922(v)(1) does not apply to the possession of a semiautomatic assault weapon "otherwise lawfully possessed under Federal law on the date of the enactment of this subsection [September 13, 1994]." 18 U.S.C. § 922(v)(2).

The court found that section 922(v)(2) allows "continued possession" of an UZI lawfully possessed on September 13, 1994, and that defendant's delegate did not qualify for section 922(v)(2)'s exception because the delegate had not possessed the UZI on September 13, 1994. Consequently, because the delegate's possession of the UZI would place the delegate in violation of section 922(v)(1), return of the UZI to defendant's delegate was not permitted under section 924(d)(1). As to the UZI ammunition, the court ordered its delivery to the delegate because its possession was not prohibited by section 922(v)(1). The court went on to conclude also that the defendant himself would not qualify for section 922(v)(2)'s exception because of a state felony conviction for forgery that made his possession of the UZI on September 13, 1994, illegal under section 922(g)(1).

—*JHP*

United States v. Indelicato, ___ F. Supp. ___, 1997 WL 278000 (D. Mass. May 16, 1997).
Contact: AUSA Paula J. DeGiacomo, AMA01(pdegiaco).

EAJA Fees

- **Counsel was limited to an award of attorney's fees at the rate provided for in EAJA where he failed to show that there were no other qualified counsel available and where he did not qualify for higher hourly rates due to specialized expertise.**
- **Pursuant to EAJA, claimants were entitled to an award of attorney's fees at the statutorily capped rate plus an appropriate cost of living adjustment based upon the consumer price index for all urban consumers in effect at the midpoint of the litigation.**
- **Claimants were not entitled to an award of attorney's fees for the period during which claimants appeared *pro se*.**
- **Where a certificate of reasonable cause has been issued, claimants are not entitled to an EAJA award of costs, but only of attorneys fees and expenses.**

The United States District Court for the Eastern District of Pennsylvania had previously held in this civil forfeiture case that, although there was probable cause to initiate the forfeiture proceeding, claimants were entitled to fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, *et seq.* Both sides moved for reconsideration.

The court had held that although the Government's pre-litigation position was substantially justified, its litigating position was not. The Government's motion for reconsideration of this holding was denied. Upon reconsideration, the court could find no manifest error of law or fact in its prior holdings, and the Government presented no newly discovered evidence.

Claimants argued that the agent's affidavit was insufficient to establish probable cause for forfeiture as it did not reference money laundering or the money laundering statutes. However, the court held that the affidavit did identify money laundering by reference and, therefore, adequately supplied the requisite probable cause. Additionally, the civil forfeiture complaint incorporated the criminal indictment which explicitly invoked the money laundering statutes. Thus, claimants' motion for reconsideration of the issuance of the certificate of reasonable cause was denied.

Claimants' motion for reconsideration of the court's denial of the payment of attorney's fees at more than market rates was also denied. Contrary to his allegations, claimants' counsel was not forced to represent claimants in this case. Rather, he could have either turned down the representation or subsequently moved to withdraw. Claimants' counsel had no support for his argument that there were no other qualified counsel available. Finally, counsel did not qualify for higher hourly rates pursuant to the "special factors" exception to the statutory rate, as he had no previous experience in the forfeiture area.

Pursuant to EAJA, the court had awarded claimants attorney's fees at the statutorily capped rate of $75 per hour plus an appropriate cost of living adjustment. Claimants' moved for an upward adjustment of this rate to reflect accurately the current cost of living. The court refused, however, to award any attorney's fees for the period during which claimants appeared *pro se* even though they were allegedly being assisted at that time by the counsel who would later represent them.

Finally, the court held that since a certificate of reasonable cause had been issued, claimants could not obtain an EAJA award of costs, but only of attorneys fees and expenses. So, while claimants could not recover their court filing fees, they could recover expenses for expert witness fees, engineering and other studies and tests, telephones and postage.

—MSB

United States v. Eleven Vehicles, __ F. Supp. __, 1997 WL 324441 (E.D. Pa. May 30, 1997). Contact: AUSA Pamela Foa, APAE01(pfoa).

Administrative Forfeiture / Section 888

■ Notice provisions of 21 U.S.C. § 888(b) apply to vehicles seized as proceeds under section 881(6).

On September 25, 1996, federal and state law enforcement seized two vehicles parked at Claimant's residence based upon probable cause that the vehicles were purchased with funds from Claimant's narcotics trafficking. Written notice was mailed to claimant on November 18, 1996, who then filed a claim and cost bond. Thereafter, the matter was referred to the United States Attorney and a complaint was filed on January 31, 1997.

Claimant moved to dismiss the action on the ground that Government did not provide written notice of the seizures at the "earliest practical opportunity," as required by 21 U.S.C. § 888(b), because notice was sent 54 days after seizure. The

Government defended on the ground that section 888 applies to conveyances seized under section 881(a)(4) only, and not vehicles seized as proceeds under section 881(a)(6).

The court disagreed, holding that section 888(b) applied to the vehicles seized as proceeds based upon the reasoning in *United States v. Indoor Cultivation Equipment,* 55 F.3d 1311 (7th Cir. 1995), a case holding that the provisions of section 888 apply to conveyances seized under a proceeds or a facilitation theory. The court rejected the claimant's motion to dismiss, however, finding that the 54-day delay was not so egregious as to warrant dismissal, and instead directed that the vehicles be released to claimant provided a bond was posted in the amount equal to the vehicles' value. —*LGE*

United States v. One 1996 Toyota Camry Sedan, 963 F. Supp. 903 (C.D. Cal. 1997). Contact: AUSA Nora Manella, ACAC02(nmanella).

Quick Notes

■ Notice

Drug Enforcement Administration complied with all statutory and constitutional due process requirements when it published notice of an administrative forfeiture in *USA Today*, and sent notice by certified mail to the claimants' last know addresses and to the prison facilities where they were incarcerated. "That plaintiffs now claim they did not receive notice of the forfeitures does not negate the constitutional adequacy of the notices given since the Government is not required to ensure actual receipt of notice that is properly mailed."

Gonzalez v. United States, 1997 WL 278123 (S.D.N.Y. May 23, 1997) (unpublished). Contact: AUSA Nicole LaBarbera, ANYS02(nlabarbe).

■ Notice

Drug Enforcement Administration seized claimant property and complied with all requirements regarding notice of the administrative forfeiture proceeding. Plaintiff failed to file a claim, but subsequently challenged the forfeiture on the ground that he did not read or write English, and thus did not understand the notice. The court ruled that such allegations were inadequate to raise a challenge to the constitutional sufficiency of the notice. Accordingly, the court lacked jurisdiction to review the administrative forfeiture.

Quinones v. U.S. Dept. of Justice, DEA, 1997 WL 337242 (N.D. Ill. Jun. 17, 1997). Contact: AUSA Craig Oswold, AILN02(coswold).

■ Bankruptcy / Homestead Exemption

In a case decided last fall but only recently published, a bankruptcy court held that a civil forfeiture action is an exercise of the Federal Government's police power and so is not stayed by a filing in bankruptcy. In addition, the court held that federal forfeiture law, as an act of supremacy, preempts the homestead exemption found in the Florida constitution. Accordingly, the court held that "neither the debtor's bankruptcy nor his claim of homestead exemption prevented the forfeiture of the property to the United States."

In re: Brewer, ___ B.R. ___, 1996 WL 901366 (Bankr. S.D. Fla. Oct. 9, 1996). Contact: AUSA Bill Beckerleg, AFLS01(wbeckerl).

■ Rule 41(e)

Claimants filed a Rule 41(e) motion to recover seized cash that was the subject of a civil forfeiture complaint. The court denied the motion, holding that F. R. Crim. P. 54(b)(5) makes clear that the Criminal Rules do not apply to civil forfeiture proceedings. If the claimants want relief, they must seek in under the Tucker Act, 28 U.S.C. §§ 1346(a)(2) and 1491(a)(1), or the Federal Tort Claims Act, 28 U.S.C. §§ 2674 *et seq*, assuming those statutes apply, but not under Rule 41(e).

United States v. $12,854.00 in U.S. Currency, 1997 WL 335805 (D.D.C. Jun. 5, 1997). Contact: AUSA William Cowden, ADC01(wcowden).

Topical Index

Following is a listing of cases that have appeared in *Quick Release* during 1997, broken down by topic. The issue in which the case summary was published follows the cite.

• Indicates cases found in this issue of *Quick Release*

Abatement

United States v. One Hundred Twenty Thousand Seven Hundred Fifty One Dollars ($120,751.00), 102 F.3d 342 (8th Cir. 1996) — Jan 1997

Administrative Forfeiture

• ***United States v. One 1996 Toyota Camry Sedan***, 963 F. Supp. 903 (C.D. Cal. 1997) — July 1997

Ademoye v. United States, 1997 WL 218212 (E.D.N.Y. Apr. 11, 1997) (unpublished) — June 1997

Owens v. United States, 1997 WL 177863 (E.D.N.Y. Apr. 3, 1997) (unpublished) — June 1997

Boero v. Drug Enforcement Administration, 111 F.3d 301 (2d Cir. 1997) — May 1997

Garcia v. United States, Civil No. 96-0656-R; Crim. No. 901274-R (S.D. Cal. Mar. 19, 1997) (unpublished) — May 1997

In re $844,520.00 in United States Currency, No. 95-0674-CV-W-4 (W.D. Mo. Feb. 27, 1997) (unpublished) — May 1997

Powell v. DEA, 1997 WL 160683 (S.D.N.Y. Apr. 7, 1996) (unpublished) — May 1997

Ezennwa v. United States, 1997 WL 63318 (E.D.N.Y. 1997) (unpublished) — Apr 1997

United States v. Rodgers, 108 F.3d 1247 (10th Cir. 1997) — Apr 1997

Bye v. United States, 105 F.3d 856 1997 WL 38160 (2d Cir. 1997) — Mar 1997

Olivo v. United States, 1997 WL 23181 (S.D.N.Y. Jan. 22, 1997) (unpublished) — Mar 1997

Stasio v. United States, 1997 WL 36981 (E.D.N.Y. Jan. 17, 1997)

Ikelionwu v. United States, No. 95-CV-4622 (EHN) (S.D.N.Y. Jan. 3, 1997) — Feb 1997

Scott v. United States, 1996 WL 748428 (D.D.C. Dec. 19, 1996) — Feb 1997

United States v. Deninno, 103 F.3d 82 (10th Cir. 1996) Jan 1997

Vasquez v. United States, 1996 WL 692001 (S.D.N.Y. Dec. 3, 1996) Jan 1997

Adoptive Forfeiture

In re $844,520.00 in United States Currency,No. 95-0674-CV-W-4 (W.D. Mo. Feb. 27, 1997) (unpublished) May 1997

Edney v. City of Montgomery, ___ F. Supp. ___ 1997 WL 120020 (M.D. Ala. Feb. 28, 1997) Apr 1997

Adverse Inference

- *Arango v. U.S. Dept. of the Treasury*, 1997 WL 306993 (11th Cir. June 24, 1997) July 1997

Airport Seizures

United States v. One Lot of U.S. Currency ($36,634), 103 F.3d 1048 (1st Cir. 1997) Feb 1997

United States v. Funds in the Amount of $9,800, 952 F. Supp. 1254 (N.D. Ill. 1996) Feb 1997

Amendment of Complaint

United States v. $146,800, 96-CV-4882 (E.D.N.Y. Apr. 28, 1997) (unpublished) June 1997

Ancillary Proceeding

United States v. Ken International Co., Ltd.,1997 WL 229114 (9th Cir. May 2, 1997) June 1997

United States v. Rutgard,1997 WL 174102 (9th Cir. Apr. 9, 1997) (unpublished) June 1997

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Banque Indosuez), ___ F. Supp. ___ 1997 WL 177549 (D.D.C. Mar. 25, 1997) May 1997

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of American Express Bank II), ___ F. Supp. ___ 1997 WL 202891 (D.D.C. Apr. 22, 1997) May 1997

United States v. Ribadeneira, 105 F.3d 833 (2d Cir. 1997) Mar 1997

United States v. BCCI Holdings (Luxembourg) S.A.(Petition of Pacific Bank), ___ F. Supp. ___ 1997 WL _____ (D.D.C. Feb. 13, 1997) Mar 1997

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Security Pacific International Bank), ___ F. Supp. ___ 1997 WL _____ (D.D.C. Jan. 17, 1997) Feb 1997

Attorney's Lien

United States v. Murray, 1997 WL 136452 (D. Mass. 1997) (unpublished) — May 1997

Bankruptcy

- *In re: Brewer*, ___ B.R. ___, 1996 WL 901366 (Bankr. S.D. Fla. Oct. 9, 1996) — July 1997

United States v. Ken International Co., Ltd.,1997 WL 229114 (9th Cir. May 2, 1997) — June 1997

Bifurcated Proceedings

United States v. Ruedlinger, 1997 WL 161960 (D. Kan. Mar. 7, 1997) (unpublished) — May 1997

Bill of Particulars

United States v. Bellomo, 954 F. Supp. 630 (S.D.N.Y. 1997) — Feb 1997

Bona Fide Purchaser

United States v. Toyfoya, No. CR-93-0505-EFL (N.D. Cal. Mar. 27, 1997) (unpublished) — June 1997

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of American Express Bank II), ___ F. Supp. ___ 1997 WL 202891 (D.D.C. Apr. 22, 1997) — May 1997

Burden of Proof

- *United States v. $49,576.00 U.S. Currency*, ___ F.3d ___, 1997 WL 345961 (9th Cir. June 25, 1997) — July 1997

United States v. One Beechcraft King Air 300 Aircraft, 107 F. 3d 829 (11th Cir. 1997) — Apr 1997

United States v. Rogers, 102 F.3d 641 1996 WL 726841 (1st Cir. Dec. 23, 1996) — Jan 1997

Civil Rights Violation

Hines v. LeStrange, 1997 WL 37543 (N.D. Cal. 1997) — Mar 1997

CMIR Forfeiture

United States v. Delgado, No. 96-593-CR-Moore (S.D. Fla. Jan. 15, 1997) — Mar 1997

United States v. $46,588.00 in United States Currency, 103 F.3d 902 (9th Cir. 1996) — Jan 1997

Collateral Estoppel

Scott v. United States, 1996 WL 748428 (D.D.C. Dec. 19, 1996) — Feb 1997

Collection of Judgment

United States v. Bongiorno, 106 F.3d 1027 (1st Cir. 1997) — Mar 1997

Constructive Trust

United States v. Ribadeneira, ___ F.3d ___ 1997 WL 33524 (2d Cir. Jan. 30, 1997) — Mar 1997

Cost Bond

- *Arango v. U.S. Dept. of the Treasury*, 1997 WL 306993 (11th Cir. June 24, 1997) — July 1997

Criminal Forfeiture

- *United States v. White*, ___F.3d ___, 1997 WL 338602 (1st Cir. June 24, 1997) — July 1997

United States v. Rosario, 110 F.3d 293 (2d Cir. 1997) — May 1997

United States v. Ruedlinger, 1997 WL 161960 (D. Kan. Mar. 7, 1997) (unpublished) — May 1997

United States v. Ramsey, 1997 U.S. App. Lexis 565 (7th Cir. Jan. 9, 1997) (unpublished) — Mar 1997

United States v. McHan, 101 F.3d 1027 (4th Cir. 1996) — Jan 1997

United States v. Rogers, 102 F.3d 641 (1st Cir. 1996) — Jan 1997

Cross Claims

United States v. All Right . . . in the Contents of . . . Accounts at Morgan Guaranty Trust Co., 1996 WL 695671 (S.D.N.Y. Dec. 5, 1996) — Jan 1997

Default Judgment

United States v. Property Identified as 25 Pieces of Assorted Jewelry, 1996 WL 724938 (D.D.C. Dec. 4, 1996) — Feb 1997

Delay in Filing Complaint

- *United States v. $274,481*, Civ. 94-2128CCC (D.P.R. May 29, 1997) — July 1997

United States v. Computer Equipment Valued at $819,026 Seized from Susco International, 1996 WL 684431 (E.D.N.Y. Nov. 20, 1996) — Jan 1997

Discovery

United States v. Seven Pieces of Assorted Jewelry, No. 96-6628-Civ-Ryskamp (S.D. Fla. Apr. 10, 1997) (unpublished) — June 1997

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Banque Indosuez), ___ F. Supp. ___ 1997 WL 177549 (D.D.C. Mar. 25, 1997) — May 1997

United States v. One Tract of Real Property . . . Little River Township, 1997 WL 71719 (4th Cir. Feb. 20, 1997) (unpublished) — Apr 1997

Disposition of Property

United States v. Kramer, 957 F. Supp. 223 (S.D. Fla. 1997) — May 1997

Double Jeopardy

United States v. Amlani, 111 F.3d 705 (9th Cir. 1997) — May 1997

United States v. Jones, 111 F.3d 597 (8th Cir. 1997) — May 1997

United States v. Perez, 110 F.3d 265 (5th Cir. 1997) — May 1997

United States v. Vaughn, 111 F.3d 610 (8th Cir. 1997) — May 1997

United States v. Emmons, 107 F.3d 762 (10th Cir. 1997) — Mar 1997

Due Process

- *United States v. $274,481*, Civ. 94-2128CCC (D.P.R. May 29, 1997) — July 1997
- *United States v. $49,576.00 U.S. Currency*, ___ F.3d ___, 1997 WL 345961 (9th Cir. June 25, 1997) — July 1997

United States v. One Samsung Computer, 1997 WL 104974 (E.D. La. March 7, 1997) (unpublished) — Apr 1997

Scott v. United States, 1996 WL 748428 (D.D.C. Dec. 19, 1996) — Feb 1997

United States v. Computer Equipment Valued at $819,026 Seized from Susco International, 1996 WL 684431 (E.D.N.Y. Nov. 20, 1996) — Jan 1997

EAJA Fees

- *United States v. Eleven Vehicles*, ___ F. Supp. ___, 1997 WL 324441 (E.D. Pa. May 30, 1997) — July 1997

Town of Sanford v. United States,___ F. Supp. ___, 1997 WL 205825 (D. Me. Apr. 8, 1997) June 1997

Creative Electric, Inc, v. United States, 1997 WL 109210 (N.D.N.Y. Mar. 28, 1997) (unpublished) May 1997

United States v. $5,000 in U.S. Currency, 1997 U.S. App. LEXIS 280 (6th Cir. Jan. 3, 1997) (unpublished) Mar 1997

Excessive Fines

United States v. Bajakajian, No. 96-1487, ___S. Ct. ___, 1997 WL134399 (May 27, 1997) (granting certiorari) June 1997

United States v. Toyfoya, No. CR-93-0505-EFL (N.D. Cal. Mar. 27, 1997) (unpublished) June 1997

United States v. One Parcel of Real Estate at 10380 S. W. 28th Street, (S.D. Fla. 1997) (unpublished) May 1997

Ezennwa v. United States, 1997 WL 63318 (E.D.N.Y. 1997) (unpublished) Apr 1997

United States v. Alexander, 100 F.3d 853 (8th Cir. 1997) Apr 1997

United States v. Property Identified as 1813 15th Street, N.W., 956 F. Supp. 1029 (D.D.C. 1997) Apr 1997

United States v. Tencer, 107 F.3d 1120 (5th Cir. 1997) Apr 1997

United States v. Delgado, No. 96-593-CR-Moore (S.D. Fla. Jan. 15, 1997) Mar 1997

United States v. One Parcel of Property (Edmonson),106 F.3d 336 (10th Cir. 1997) Mar 1997

United States v. One 1988 Prevost Liberty Motor Home, 952 F. Supp. 1180 (S.D. Tex. 1996) Mar 1997

United States v. Property Identified as 25 Pieces of Assorted Jewelry, 1996 WL 724938 (D.D.C. Dec. 4, 1996) Feb 1997

King v. United States, ___ F. Supp. ___ No. CS-95-0331-JLQ (E.D. Wash. July 2, 1996) Jan 1997

United States v. Deninno, 103 F.3d 1027 (10th Cir. 1996) Jan 1997

United States v. 5307 West 90th Street, 955 F. Supp. 881 (N.D. Ill. 1996) Jan 1997

United States v. $350,000, 1996 WL 706821 (E.D.N.Y. Dec. 6, 1996) Jan 1997

Facilitating Property

United States v. Tencer, 107 F.3d 1120 (5th Cir. 1997) — Apr 1997

United States v. Rogers, 102 F.3d 641 (1st Cir. 1996) — Jan 1997

Fair Market Value

United States v. One Parcel Property Located at 414 Kings Highway, No. 5:91-CV-158 (D. Conn. July 3, 1996) — Jan 1997

False Statements

United States v. Tracy, 108 F.3d (2d Cir. 1997) — Apr 1997

Federal Debt Collections Procedures Act

United States v. Murray, 1997 WL 136452 (D. Mass. 1997) (unpublished) — May 1997

Firearms

- *United States v. Indelicato*, ___ F. Supp. ___, 1997 WL 278000 (D. Mass. May 16, 1997) — July 1997

Good Hearing

United States v. One 1988 Prevost Liberty Motor Home, 952 F. Supp. 1180 (S.D. Tex. 1996) — Mar 1997

Good Violation

United States v. All Assets and Equipment of West Side building Corp., 1997 WL 187319 (N.D. Ill. Apr. 10, 1997) (unpublished) — June 1997

United States v. 408 Peyton Road, S.W., ___ F.3d___, 1997 WL 212209 (11th Cir. May 15, 1997) — June 1997

Cameron v. Drug Enforcement Administration, 995 F. Supp. 92 (D.P.R. 1997) — Apr 1997

United States v. All Assets and Epuipment of West Side Building Corp., 1997 U.S. Dist. LEXIS 150 (N.D. Ill. Jan. 9, 1997) — Mar 1997

United States v. Marsh, 105 F.3d 927 (4th Cir. 1997) — Mar 1997

United States v. Real Property Located at Incline Village, CV-N-90-0130-ECR (D. Nev. Jan. 30, 1997) — Mar 1997

Habeas Corpus

Hines v. LeStrange, 1997 WL 37543 (N.D. Cal. 1997) — Mar 1997

Hearsay

United States v. $271,070.00 in United States Currency, 1997 WL 106307 (N.D. Ill. Feb. 12, 1997) — Apr 1997

Illegal Seizure

United States v. Rogers, 102 F.3d 641 (1st Cir. 1996) — Jan 1997

Innocent Owner

Town of Sanford v. United States,___ F. Supp. ___, 1997 WL 205825 (D. Me. Apr. 8, 1997) — June 1997

United States v. One Tract of Real Property . . . Little River Township, 1997 WL 71719 (4th Cir. Feb. 20, 1997) (unpublished) — Apr 1997

United States v. Property Identified as 1813 15th Street, N.W., 956 F. Supp. 1029 (D.D.C. 1997) — Apr 1997

United States v. One 1988 Prevost Liberty Motor Home, 952 F. Supp. 1180 (S.D. Tex. 1996) — Mar 1997

United States v. One Parcel Property at Lot 22, 1996 WL 695404 (D. Kan. Nov. 15, 1996) — Jan 1997

Interest

United States v. $133,735.30, Civil No. 93-1423-JO (D. Or. Jan 13, 1997) — Feb 1997

In Rem Jurisdiction

United States v. $46,588.00 in United States Currency, 103 F.3d 902 (9th Cir. 1996) — Jan 1997

Interlocutory Sale

United States v. One Parcel Property Located at 414 Kings Highway, No. 5:91-CV-158 (D. Conn. July 3, 1996) — Jan 1997

Joint and Several Liability

United States v. McHan, 101 F.3d 1027 (4th Cir. 1996) — Jan 1997

Jurisdiction

Edney v. City of Montgomery, ___ F. Supp. ___ 1997 WL 120020 (M.D. Ala. Feb. 28, 1997) — Apr 1997

Laches

Vance v. United States, ___ F. Supp. ___ 1997 WL 183825 (E.D. Mich. Apr. 3, 1997) — May 1997

Ikelionwu v. United States, No. 95-CV-4622 (EHN) (S.D.N.Y. Jan. 3, 1997) — Feb 1997

Legitimate Source Defense

United States v. $15,200 in United States Currency, No. EV 96-60-C R\H (S.D. Ind. Dec. 31, 1996) (unpublished) — Mar 1997

Lis Pendens

United State v. Scardino, 956 F. Supp. 774 (N.D. Ill. 1997) — Feb 1997

United States v. St. Pierre, 950 F. Supp. 334 (M.D. Fla. 1996) — Feb 1997

Marshals Service

United States v. Matthews, 106 F.3d 1092 (2d Cir. 1997) — Mar 1997

Marital Privilege

United States v. Yerardi, Crim. No. 93-10278 (REK) (D. Mass. May 5, 1997) (unpublished) — June 1997

Money Laundering

United States v. Tencer, 107 F.3d 1120 (5th Cir. 1997) — Apr 1997

United States v. One 1988 Prevost Liberty Motor Home, 952 F. Supp. 1180 (S.D. Tex. 1996) — Mar 1997

Motion for Return of Property

Stasio v. United States, 1997 WL 36981 (E.D.N.Y. Jan. 17, 1997) — Mar 1997

Motion to Amend Complaint

- *United States v. U.S. Currency in the Amount of $146,800*, 1997 WL 269583 (E.D.N.Y. Apr. 28, 1997) — July 1997

Motion to Dismiss

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Banque Indosuez), ___ F. Supp. ___ 1997 WL 177549 (D.D.C. Mar. 25, 1997) May 1997

Notice

- *Gonzalez v. United States*, 1997 WL 278123 (S.D.N.Y. May 23, 1997) (unpublished) July1997
- *Quinones v. U.S. Dept. of Justice, DEA*, 1997 WL 337242 (N.D. Ill. Jun. 17, 1997) July 1997

Owens v. United States, 1997 WL 177863 (E.D.N.Y. Apr. 3, 1997) (unpublished) June 1997

Town of Sanford v. United States,___ F. Supp. ___, 1997 WL 205825 (D. Me. Apr. 8, 1997) June 1997

Boero v. Drug Enforcement Administration, 111 F.3d 301 (2d Cir. 1997) May 1997

Powell v. DEA, 1997 WL 160683 (S.D.N.Y. Apr. 7, 1996) (unpublished) May 1997

United States v. Cupples, 112 F.3d 318 (8th Cir. 1997) May 1997

United States v. One Samsung Computer, 1997 WL 104974 (E.D. La. March 7, 1997) (unpublished) Apr 1997

United States v. Rodgers, 108 F.3d 1247 (10th Cir. 1997) Apr 1997

Bye v. United States, 105 F.3d 856 (2d Cir. 1997) Mar 1997

Olivo v. United States, 1997 WL 23181 (S.D.N.Y. Jan. 22, 1997) (unpublished) Mar 1997

Scott v. United States, 1996 WL 748428 (D.D.C. Dec. 19, 1996) Feb 1997

Vasquez v. United States, 1996 WL 692001 (S.D.N.Y. Dec. 3, 1996) Jan 1997

Particularity

United States v. $59,074.00 in U.S. Currency, 959 F. Supp. 243 (D.N.J. 1997) May 1997

Parallel Civil Forfeiture

United States v. DeCato, 1997 WL 136339 (D. Mass. Feb. 20, 1997) (unpublished) May 1997

United States v. Jones, 111 F.3d 597 (8th Cir. 1997) May 1997

Personal Jurisdiction

United States v. All Right ... in the Contents of ... Accounts at Morgan Guaranty Trust Co., 1997 WL 220309 (S.D.N.Y. May 1, 1997) (unpublished) — June 1997

Plea Agreements

United States v. Walker,112 F.3d 163 (4th Cir. 1997) — June 1997

Post-conviction Discovery

United States v. Yerardi, Crim. No. 93-10278 (REK) (D. Mass. May 5, 1997) (unpublished) — June 1997

Post and Walk

United States v. 408 Peyton Road, S.W., ___ F.3d___, 1997 WL 212209 (11th Cir. May 15, 1997) — June 1997

United States v. Real Property at 286 New Mexico Lane, 1996 WL 732561 (M.D. Fla. Dec. 19, 1996) — Jan 1997

Pre-Trial Restraint

United States v. St. Pierre, 950 F. Supp. 334 (M.D. Fla. 1996) — Feb 1997

Probable Cause

- *United States v. $88,653.00 in U.S. Currency*, 1997 WL 312546 (9th Cir. Jun. 3, 1997) — July 1997
- *United States v. $49,576.00 U.S. Currency*, ___ F.3d ___, 1997 WL 345961 (9th Cir. June 25, 1997) — July 1997
- *United States v. U.S. Currency in t he Amount of $146,800*, 1997 WL 269583 (E.D.N.Y. Apr. 28, 1997) — July 1997

United States v. Washington,1997 WL 198046 (D. Kan. Jan. 17, 1997) (unpublished) — June 1997

United States v. Property Identified as 1813 15th Street, N.W., 956 F. Supp. 1029 (D.D.C. 1997) — Apr 1997

United States v. $271,070.00 in United States Currency, 1997 WL 106307 (N.D. Ill. Feb. 12, 1997) — Apr 1997

United States v. One Lot of U.S. Currency ($36,634), 103 F.3d 1048 (1st Cir. 1997) — Feb 1997

United States v. Funds in the Amount of $9800, 952 F. Supp. 1254 (N.D. Ill. Dec. 23, 1996) — Feb 1997

United States v. Property Identified as 25 Pieces of Assorted Jewelry, 1996 WL 724938 (D.D.C. Dec. 4, 1996) — Feb 1997

United States v. Funds in the Amount of Twelve Thousand Dollars ($12,000.00) et al., 1996 WL 717454 (N.D. Ill. Dec. 9, 1996) — Jan 1997

United States v. $8,800 in U.S. Currency, 945 F. Supp. 521 (W.D.N.Y. 1996) — Jan 1997

Proceeds

United States v. McHan, 101 F.3d 1027 (4th Cir. 1996) — Jan 1997

Real Property

United States v. Real Property Described in Deeds, ___ F. Supp. ___, 1997 WL 222289 (W.D.N.C. Feb. 20, 1997) — June 1997

Relation Back Doctrine

Town of Sanford v. United States,___ F. Supp. ___, 1997 WL 205825 (D. Me. Apr. 8, 1997) — June 1997

United State v. Scardino, 956 F. Supp. 774 (N.D. Ill. 1997) — Feb 1997

Remission Petitions

Burke v. United States, No. 95-D-642-N (M.D. Ala. Apr. 9, 1997) (unpublished) — May 1997

Res Judicata

United States v. DeCato, 1997 WL 136339 (D. Mass. Feb. 20, 1997) (unpublished) — May 1997

United States v. Murray, 1997 WL 136452 (D. Mass. 1997) (unpublished) — May 1997

Cameron v. Drug Enforcement Administration, 995 F. Supp. 92 (D.P.R. 1997) — Apr 1997

Restitution

United States v. $350,000, 1996 WL 706821 (E.D.N.Y. Dec. 6, 1996) — Jan 1997

Restraining Orders

United States v. Bellomo, 954 F. Supp. 630 (S.D.N.Y. 1997) — Feb 1997

United States v. Gigante, 948 F. Supp. 279 (S.D.N.Y. 1996) — Jan 1997

RICO

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Pacific Bank), ___ F. Supp. ___ 1997 WL _____ (D.D.C. Feb. 13, 1997) — Mar 1997

United States v. Bellomo, 954 F. Supp. 630 (S.D.N.Y. 1997) — Feb 1997

Right of Set-off

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Security Pacific International Bank), ___ F. Supp. ___ 1997 WL _____ (D.D.C. Jan. 17, 1997) — Feb 1997

Right to Counsel

United States v. St. Pierre, 950 F. Supp. 334 (M.D. Fla. 1996) — Feb 1997

United States v. Deninno, 103 F.3d 82 (10th Cir. 1996) — Jan 1997

Rule 41(e)

- *In re: FBI Seizure of Cash and Other Property From Edwin W. Edwards*, 1997 WL 327129 (E.D. La. June 12, 1997) (unpublished) — July 1997
- *United States v. U.S. Currency in the Amount of $146,800*, 1997 WL 269583 (E.D.N.Y. Apr. 28, 1997) — July 1997
- *United States v. $12,854.00 in U.S. Currency*, 1997 WL 335805 (D.D.C. Jun. 5, 1997) — July 1997

Ademoye v. United States, 1997 WL 218212 (E.D.N.Y. Apr. 11, 1997) (unpublished) — June 1997

United States v. $146,800, 96-CV-4882 (E.D.N.Y. Apr. 28, 1997) (unpublished) — June 1997

Corinthian v. United States, CV-96-0945 (CPS) (E.D.N.Y. Mar. 13, 1997) (unpublished) — May 1997

Vance v. United States, ___ F. Supp. ___ 1997 WL 183825 (E.D. Mich. Apr. 3, 1997) — May 1997

United States v. Lamplugh, 956 F. Supp. 1204 (M.D. Pa. 1997) — Apr 1997

United States v. Solis , 108 F.3d 722 (7th Cir. 1997) — Apr 1997

Rule 60(b)

United States v. Ken International Co., Ltd.,1997 WL 229114 (9th Cir. May 2, 1997) — June 1997

Garcia v. United States, Civil No. 96-0656-R; Crim. No. 901274-R (S.D. Cal. Mar. 19, 1997) (unpublished) — May 1997

United States v. One Samsung Computer, 1997 WL 104974 (E.D. La. March 7, 1997) (unpublished) — Apr 1997

United States v. Property Identified as 25 Pieces of Assorted Jewelry, 1996 WL 724938 (D.D.C. Dec. 4, 1996) — Feb 1997

United States v. $350,000, 1996 WL 706821 (E.D.N.Y. Dec. 6, 1996) — Jan 1997

Section 888

- *United States v. One 1996 Toyota Camry Sedan*, 963 F. Supp. 903 (C.D. Cal. 1997) — July 1997

Scott v. United States, 1996 WL 748428 (D.D.C. Dec. 19, 1996) — Feb 1997

United States v. A 1966 Ford Mustang, 945 F. Supp. 149 (S.D. Ohio 1996) — Feb 1997

Standing

- *United States v. Premises and Real Property . . . 500 Delaware Street*, ___F.3d___, 1997 WL 242151 (2d Cir. Apr. 29, 1997) — July 1997

United States v. Ken International Co., Ltd.,1997 WL 229114 (9th Cir. May 2, 1997) — June 1997

United States v. Real Property Described in Deeds, ___ F. Supp. ___, 1997 WL 222289 (W.D.N.C. Feb. 20, 1997) — June 1997

United States v. 47 West 644 Route 38,___ F. Supp. ___, 1997 WL 208373 (N.D. Ill. Apr. 25, 1997) — June 1997

United States v. $271,070.00 in United States Currency, 1997 WL 94722 (N.D. Ill. Mar. 3, 1997) (unpublished) — Apr 1997

Olivo v. United States, 1997 WL 23181 (S.D.N.Y. Jan. 22, 1997) (unpublished) — Mar 1997

United States v. All Funds on Deposit ... in the Name of Kahn, 955 F. Supp. 23 (E.D.N.Y. 1997) — Mar 1997

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Pacific Bank), ___ F. Supp. ___ 1997 WL _____ (D.D.C. Feb. 13, 1997) — Mar 1997

United States v. One 1988 Prevost Liberty Motor Home, 952 F. Supp. 1180 (S.D. Tex. 1996) — Mar 1997

United States v. Ribadeneira, 105 F.3d 833 (2d Cir. 1997) — Mar 1997

Scott v. United States, 1996 WL 748428 (D.D.C. Dec. 19, 1996) — Feb 1997

Statute of Limitations

Corinthian v. United States, CV-96-0945 (CPS) (E.D.N.Y. Mar. 13, 1997) (unpublished) — May 1997

Vance v. United States, ___ F. Supp. ___ 1997 WL 183825 (E.D. Mich. Apr. 3, 1997) — May 1997

Vasquez v. United States, 1996 WL 692001 (S.D.N.Y. Dec. 3, 1997) — Jan 1997

Subject Matter Jurisdiction

Ademoye v. United States, 1997 WL 218212 (E.D.N.Y. Apr. 11, 1997) (unpublished) — June 1997

Ezennwa v. United States, 1997 WL 63318 (E.D.N.Y. 1997) (unpublished) — Apr 1997

Substantial Connection

United States v. Real Property Described in Deeds, ___ F. Supp. ___, 1997 WL 222289 (W.D.N.C. Feb. 20, 1997) — June 1997

Substitute Assets

United States v. Scardino, 956 F. Supp. 774 (N.D. Ill. 1997) — Feb 1997

United States v. Gigante, 948 F. Supp. 279 (S.D.N.Y. 1996) — Jan 1997

Summary Judgment

United States v. 47 West 644 Route 38,___ F. Supp. ___, 1997 WL 208373 (N.D. Ill. Apr. 25, 1997) — June 1997

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Banque Indosuez), ___ F. Supp. ___ 1997 WL 177549 (D.D.C. Mar. 25, 1997) — May 1997

United States v. Property Identified as 1813 15th Street, N.W., 956 F. Supp. 1029 (D.D.C. 1997) — Apr 1997

United States v. $271,070.00 in United States Currency, 1997 WL 106307 (N.D. Ill. Feb. 12, 1997) — Apr 1997

Suppression

United States v. 47 West 644 Route 38,___ F. Supp. ___, 1997 WL 208373 (N.D. Ill. Apr. 25, 1997) — June 1997

Taxes

King v. United States, ___ F. Supp. ___ No. CS-95-0331-JLQ (E.D. Wash. July 2, 1996) Jan 1997

Traceable Property

United States v. Real Property Described in Deeds, ___ F. Supp. ___, 1997 WL 222289 (W.D.N.C. Feb. 20, 1997) June 1997

Untimely Claim

Garcia v. United States, Civil No. 96-0656-R; Crim.No.901274-R (S.D. Cal. Mar. 19, 1997) (unpublished) May 1997

Warrantless Seizure

United States v. Washington, 1997 WL 198046 (D. Kan. Jan. 17, 1997) (unpublished) June 1997

Alphabetical Index

Following is an alphabetical listing of cases that have appeared in *Quick Release* during 1997. The issue in which the case summary was published follows the cite.

Ademoye v. United States, 1997 WL 218212 (E.D.N.Y. Apr. 11, 1997) (unpublished)	June 1997
Arango v. U.S. Dept. of the Treasury, 1997 WL 306993 (11th Cir. June 24, 1997)	July 1997
Boero v. Drug Enforcement Administration, 111 F.3d 301 (2d Cir. 1997)	May 1997
Burke v. United States, No. 95-D-642-N (M.D. Ala. Apr. 9, 1997) (unpublished)	May 1997
Bye v. United States,105 F.3d 856 (2d Cir. 1997)	Mar 1997
Cameron v. Drug Enforcement Administration, 995 F. Supp. 92 (D.P.R. 1997)	Apr 1997
Corinthian v. United States, CV-96-0945 (CPS) (E.D.N.Y. Mar. 13, 1997) (unpublished)	May 1997
Creative Electric, Inc, v. United States, 1997 WL 109210 (N.D.N.Y. Mar. 28, 1997) (unpublished)	May 1997
Edney v. City of Montgomery, 960 F. Supp. 270 (M.D. Ala. 1997)	Apr 1997
Ezennwa v. United States, 1997 WL 63318 (E.D.N.Y. 1997)	Apr 1997
Garcia v. United States, Civil No. 96-0656-R; Crim. No. 901274-R (S.D. Cal. Mar. 19, 1997) (unpublished)	May 1997
Gonzalez v. United States, 1997 WL 278123 (S.D.N.Y. May 23, 1997) (unpublished)	July1997
Hines v. LeStrange, 1997 WL 37543 (N.D. Cal. 1997)	Mar 1997
Ikelionwu v. United States, No. 95-CV-4622 (EHN) (S.D.N.Y. Jan. 3, 1997)	Feb 1997
In re: Brewer, ___ B.R. ___, 1996 WL 901366 (Bankr. S.D. Fla. Oct. 9, 1996)	July 1997
In re: FBI Seizure of Cash and Other Property From Edwin W. Edwards, 1997 WL 327129 (E.D.La. June 12, 1997) (unpublished)	July 1997
In re $844,520.00 in United States Currency, No. 95-0674-CV-W-4 (W.D. Mo. Feb. 27, 1997) (unpublished)	May 1997
King v. United States, ___ F. Supp. ___ No. CS-95-0331-JLQ (E.D. Wash. July 2, 1996)	Jan 1997

Olivo v. United States, 1997 WL 23181 (S.D.N.Y. Jan. 22, 1997) (unpublished)	Mar 1997
Owens v. United States, 1997 WL 177863 (E.D.N.Y. Apr. 3, 1997) (unpublished)	June 1997
Powell v. DEA, 1997 WL 160683 (S.D.N.Y. Apr. 7, 1996) (unpublished)	May 1997
Quinones v. U.S. Dept. of Justice, DEA, 1997 WL 337242 (N.D. Ill. Jun. 17, 1997)	July 1997
Stasio v. United States, 1997 WL 36981 (E.D.N.Y. Jan. 17, 1997)	Mar 1997
Scott v. United States, 1996 WL 748428 (D.D.C. Dec. 19, 1996)	Feb 1997
Town of Sanford v. United States, 961 F. Supp. 16 (D. Me. 1997)	June 1997
United States v. A 1966 Ford Mustang, 945 F. Supp. 149 (S.D. Ohio 1996)	Feb 1997
United States v. Alexander, 100 F.3d 853 (8th Cir. 1997)	Apr 1997
United States v. All Assets and Epuipment of West Side Building Corp., 1997 U.S. Dist. LEXIS 150 (N.D. Ill. Jan. 9, 1997)	Mar 1997
United States v. All Funds on Deposit ... in the Name of Kahn, 955 F. Supp. 23 (E.D.N.Y. 1997)	Mar 1997
United States v. All Right...in the Contents of ...Accounts at Morgan Guaranty Trust Co., 1997 WL 220309 (S.D.N.Y. May 1, 1997) (unpublished)	June 1997
United States v. All Right . . . in the Contents of . . . Accounts at Morgan Guaranty Trust Co., 1996 WL 695671 (S.D.N.Y. Dec. 5, 1996)	Jan 1997
United States v. Amlani, 111 F.3d 705 (9th Cir. 1997)	May 1997
United States v. Bajakajian, 117 S. Ct. 1841 (May 27, 1997) (granting certiorari)	June 1997
United States v. BCCI Holdings (Luxembourg) S.A. (Petition of American Express Bank II), (D.D.C. 1997)	May 1997
United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Pacific Bank), 961 F. Supp. 282 (D.D.C. 1997)	Mar 1997
United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Banque Indosuez), ___ F. Supp. ___ 1997 WL 177549 (D.D.C. Mar. 25, 1997)	May 1997
United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Security Pacific International Bank), ___ F. Supp. ___ 1997 WL _____(D.D.C. Jan. 17, 1997)	Feb 1997
United States v. Bellomo, 954 F. Supp. 630 (S.D.N.Y. 1997)	Feb 1997
United States v. Bongiorno, 106 F.3d 1027 (1st Cir. 1997)	Mar 1997

United States v. Computer Equipment Valued at $819,026 Seized from Susco International, 1996 WL 684431 (E.D.N.Y. Nov. 20, 1996)	Jan 1997
United States v. Cupples, 112 F.3d 318 (8th Cir. 1997)	May 1997
United States v. DeCato, 1997 WL 136339 (D. Mass. Feb. 20, 1997) (unpublished)	May 1997
United States v. Delgado, No. 96-593-CR-Moore (S.D. Fla. Jan. 15, 1997)	Mar 1997
United States v. Deninno, 103 F.3d 82 (10th Cir. 1996)	Jan 1997
United States v. Eleven Vehicles, ___ F. Supp. ___, 1997 WL 324441 (E.D. Pa. May 30, 1997)	July 1997
United States v. Emmons, 107 F.3d 762 (10th Cir. 1997)	Mar 1997
United States v. Funds in the Amount of Twelve Thousand Dollars ($12,000.00) et al., 1996 WL 717454 (N.D. Ill. Dec. 9, 1996)	Jan 1997
United States v. Gigante, 948 F. Supp. 1048 (S.D.N.Y. 1996)	Jan 1997
United States v. Indelicato, ___ F. Supp. ___, 1997 WL 278000 (D. Mass. May 16, 1997)	July 1997
United States v. Jones, 111 F.3d 597 (8th Cir. 1997)	May 1997
United States v. Ken International Co., Ltd.,1997 WL 229114 (9th Cir. May 2, 1997)	June 1997
United States v. Kramer, 957 F. Supp. 223 (S.D. Fla. 1997)	May 1997
United States v. Lamplugh, 956 F. Supp. 1204 (M.D. Pa. 1997)	Apr 1997
United States v. Marsh, 105 F. 3d 927 (4th Cir. 1997)	Mar 1997
United States v. Matthews, 106 F.3d 1092 (2d Cir. 1997)	Mar 1997
United States v. McHan, 101 F.3d 1027 (4th Cir. 1996)	Jan 1997
United States v. Murray, 1997 WL 136452 (D. Mass. 1997) (unpublished)	May 1997
United States v. One Beechcraft King Air 300 Aircraft, 107 F. 3d 829 (11th Cir. 1997)	Apr 1997
United States v. One Hundred Twenty Thousand Seven Hundred Fifty One Dollars ($120,751.00), 102 F.3d 342 1996 WL 699761 (8th Cir. 1996)	Jan 1997
United States v. One Lot of U.S. Currency ($36,634), 103 F.3d 1048 (1st Cir. 1997)	Feb 1997
United States v. One Parcel of Property (Edmonson), 106 F.3d 336 (10th Cir. 1997)	Mar 1997

United States v. One Parcel Property at Lot 22, 1996 WL 695404 (D. Kan. Nov. 15, 1996)	Jan 1997
United States v. One Parcel of Real Estate at 10380 S. W. 28th Street, (S.D. Fla. Mar, 18, 1997) (unpublished)	May 1997
United States v. One Parcel Property Located at 414 Kings Highway, No. 5:91-CV-158 (D. Conn. July 3, 1996)	Jan 1997
United States v. One Tract of Real Property . . . Little River Township, 1997 WL 71719 (4th Cir. Feb. 20, 1997) (unpublished)	Apr 1997
United States v. One 1988 Prevost Liberty Motor Home, 952 F. Supp. 1180 (S.D. Tex. Dec. 3, 1996)	Mar 1997
United States v. One 1996 Toyota Camry Sedan, 963 F. Supp. 903 (C.D. Cal. 1997)	July 1997
United States v. One SamsungComputer, 1997 WL 104974 (E.D. La. Mar. 7, 1997) (unpublished)	Apr 1997
United States v. Perez, 110 F.3d 265 (5th Cir. 1997)	May 1997
United States v. Premises and Real Property . . . 500 Delaware Street, ___F.3d___, 1997 WL 242151 (2d Cir. Apr. 29, 1997)	July 1997
United States v. Property Identified as 25 Pieces of Assorted Jewelry, 1996 WL 724938 (D.D.C. Dec. 4, 1996)	Feb 1997
United States v. Property Identified as 1813 15th Street, N.W., 956 F. Supp. 1029 (D.D.C. 1997)	Apr 1997
United States v. Ramsey, 1997 U.S. App. Lexis 565 (7th Cir. Jan. 9, 1997) (unpublished)	Mar 1997
United States v. Real Property Described in Deeds, 962 F. Supp. 734, (W.D.N.C. 1997)	June 1997
United States v. Real Property Located at Incline Village, CV-N-90-0130-ECR (D. Nev. Jan. 30, 1997)	Mar 1997
United States v. Real Property at 286 New Mexico Lane, 1996 WL 732561 (M.D. Fla. Dec. 19, 1996)	Jan 1997
United States v. Ribadeneira, 105 F.3d 833 (2d Cir. 1997)	Mar 1997
United States v. Rodgers, 108 F.3d 1247 (10th Cir. 1997)	Apr 1997
United States v. Rogers, 102 F.3d 641 (1st Cir. 1996)	Jan 1997
United States v. Rosario, 111 F.3d 293 (2d Cir. 1997)	May 1997

United States v. Ruedlinger, 1997 WL 161960 (D. Kan. Mar. 7, 1997) (unpublished)	May 1997
United States v. Rutgard,1997 WL 174102 (9th Cir. Apr. 9, 1997) (unpublished)	June 1997
United States v. Scardino, 956 F. Supp. 774 (N.D. Ill. 1997)	Feb 1997
United States v. Seven Pieces of Assorted Jewelry, No. 96-6628-Civ-Ryskamp (S.D. Fla. Apr. 10, 1997) (unpublished)	June 1997
United States v. Solis , 108 F.3d 722 (7th Cir. 1997)	Apr 1997
United States v. St. Pierre, 950 F. Supp. 334 (M.D. Fla. 1996)	Feb 1997
United States v. Tencer, 107 F.3d 1120 (5th Cir. 1997)	Apr 1997
United States v. Toyfoya, No. CR-93-0505-EFL (N.D. Cal. Mar. 27, 1997) (unpublished)	June 1997
United States v. Tracy, 108 F.3d 473 (2d Cir. 1997)	Apr 1997
United States v. U.S. Currency in the Amount of $146,800, 1997 WL 269583 (E.D.N.Y. Apr. 28, 1997)	July 1997
United States v. Vaughn, 111 F.3d 610 (8th Cir. 1997)	May 1997
United States v. Walker,112 F.3d 163 (4th Cir. 1997)	June 1997
United States v. Washington,1997 WL 198046 (D. Kan. Jan. 17, 1997) (unpublished)	June 1997
United States v. White, ___F.3d ___, 1997 WL 338602 (1st Cir. June 24, 1997)	July 1997
United States v. Yerardi, Crim. No. 93-10278 (REK) (D. Mass. May 5, 1997) (unpublished)	June 1997
United States v. 47 West 644 Route 38, 962 F. Supp. 1081 (N.D. Ill. 1997)	June 1997
United States v. 408 Peyton Road, S.W., 112 F.3d 1106 (11th Cir. 1997)	June 1997
United States v. 5307 West 90th Street, 955 F. Supp. 881 (N.D. Ill. 1996)	Jan 1997
United States v. $5,000 in U.S. Currency, 1997 U.S. App. LEXIS 280 (6th Cir. Jan. 3, 1997) (unpublished)	Mar 1997
United States v. $8,800 in U.S. Currency, 945 F. Supp. 521 (W.D.N.Y. 1996)	Jan 1997
United States v. Funds in the Amount of $9,800, 952 F. Supp. 1254 (N.D. Ill. 1996)	Feb 1997
United States v. $12,854.00 in U.S. Currency, 1997 WL 335805 (D.D.C. Jun. 5, 1997)	July 1997
United States v. $15,200 in United States Currency, No. EV 96-60-C R/H (S.D. Ind. Dec. 31, 1996) (unpublished)	Mar 1997

United States v. $46,588.00 in United States Currency, 103 F.3d 902 (9th Cir. 1996)	Jan 1997
United States v. $49,576.00 U.S. Currency, ___ F.3d ___, 1997 WL 345961 (9th Cir. June 25, 1997)	July 1997
United States v. $59,074.00 in U.S. Currency, 959 F. Supp. 243 (D.N.J. 1997)	May 1997
United States v. $88,653.00 in U.S. Currency, 1997 WL 312546 (9th Cir. Jun. 3, 1997)	July 1997
United States v. $146,800, 96-CV-4882 (E.D.N.Y. Apr. 28, 1997) (unpublished)	June 1997
United States v. $271,070.00 in United States Currency, 1997 WL 94722 (N.D. Ill. Mar. 3, 1997) (unpublished)	Apr 1997
United States v. $271,070.00 in United States Currency, 1997 WL 106307 (N.D. Ill. Feb. 12, 1997)	Apr 1997
United States v. $274,481, Civ. 94-2128CCC (D.P.R. May 29, 1997)	July 1997
United States v. $133,735.30, Civil No. 93-1423-JO (D. Or. Jan 13, 1997)	Feb 1997
United States v. $350,000, 1996 WL 706821 (E.D.N.Y. Dec. 6, 1996)	Jan 1997
Vance v. United States, ___ F. Supp. ___ 1997 WL 183825 (E.D. Mich. Apr. 3, 1997)	May 1997
Vasquez v. United States, 1996 WL 692001 (S.D.N.Y. Dec. 3, 1996)	Jan 1997