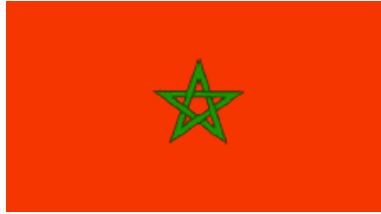


# UNITED STATES OF AMERICA REPUBLIC

Continental Congress Assembled



## PUBLIC LAW 111-41

Amended: 26 February 2017

### TO ESTABLISH LAWS FOR FORFEITURE

Pursuant to the United States of America Republic Constitution Amendment 19, Section 2, Clause 2, wherein it states; *“The United States of America Republic shall make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States of America Republic, or any Department or Officer thereof”*, there shall hereby be designated “Forfeiture” provisions to serve this purpose. This amendment shall go into immediate force.

Introduced as **Senate Joint Resolution 41**, with **43** co-sponsors and as **House Joint Resolution 41** with **43** co-sponsors, a request was delivered before the Continental Congress to honor and therefore establish laws for “Forfeiture”.

The resolution suffered no amendments, no exclusions, no demands that it became law.

**The First Continental Congress of the United States of America Republic** publicly declared “2015” as the national **"Year of the United States of America Republic"**. The document known as Public Law **111-41** was signed and enacted into law on **2 February 2017** by the following **SIGNATORIES to this Legislative Act in Attendance**;

General Congress Assembled, United States of America Republic

1. *President, Christopher-Cannon: Bey*
2. *Speaker of the House, Sharon-Green: El*
3. *USAR Secretary of State, Ross Woody Jr.: Bey*



4. *USAR Attorney General, K-Charles: Bey*
5. *Chief Justice, Illinois, Romulus Dorsey: El*
6. *Foreign Affairs Minister, Texas, Rafael-Vazquez: El*
7. *Recorder of Deeds, Illinois, Taiwan-Smith: Bey*
8. *Governor, Arizona, Dexter-Johnson: Bey*
9. *Governor, California, G. Riller: El*
10. *Governor, Georgia, Mandel Williams: El*
11. *Governor, Louisiana, Eric Wannamaker: Bey*
12. *Governor, Maryland - Altie Archer: Bey*
13. *Governor, Missouri, Floyd-Harris: Bey*
14. *Governor, North Carolina, Nasir Ma'at: El*
15. *Governor, Virginia, Darnell Brown: Bey*
16. *Governor, Michigan, Napoleon-Kendall: Bey*
17. *Governor, Mississippi, Welton-Turk: Bey*
18. *Lieutenant Governor, Georgia, Timothy Jackson: El*
19. *Lieutenant Governor, North Carolina, Yisrael (Carol)-Murray: Bey*
20. *Lieutenant Governor, Ohio, Galen Carson: Bey*
21. *Lieutenant Governor Virginia, Rich Wilson: Bey*
22. *Assistant Governor, Georgia, Christopher Hill: Bey*
23. *Assistant Governor, Ohio, Anthony Hammond: Bey*
24. *Assistant Governor, North Carolina, Sean-Ikard: Bey*
25. *Secretary of State, California, Demeitric Mason: El*
26. *Secretary of State, Georgia, Maureen Willis: Bey*
27. *Public Minister, Missouri, Linda Ann-Bashful: El*
28. *Public Minister, Missouri, Maurice-Reynolds: Bey*
29. *Public Minister, Florida, William L.-Salter III.: Bey*
30. *Representative, Colorado, Ajoa Nash-Conner: Bey*
31. *Senator, Georgia, Ronnell-Gray: Bey*



32. *Senator, Ohio, Reginald-Purnell: Bey*
33. *Senator, Colorado, Kakuyon: El*
34. *Senator/Liaison - Georgia, Tara-Hill: Bey*
35. *Senator, Illinois, Clayton Ronald-Henderson: El*
36. *Senator, North Carolina, Hope Ma'at El*
37. *Vicegerent Commissioner, Leslie-Atkins: El*
38. *Vicegerent Chief, Illinois, Saadiq: Bey*
39. *Vicegerent, Arizona, Jorge-Bravo: Bey*
40. *Vicegerent, Colorado, Evelyn-Gordon: Bey*
41. *Vicegerent, Georgia, Akil: Bey*
42. *Vicegerent, Michigan, Damon-Lewis: El*
43. *Vicegerent, Ohio, Andwele-Montgomery: Bey*

It reads as follows:

**PUBLIC LAW 111-41, on 26 February 2017**

**JOINT RESOLUTION**

**Authorizing and requesting the President**

**to proclaim and** establish provisions in accordance with the **Constitution** and **Laws** of the **United States of America Republic**.

**WHEREAS** the Moorish American People have made a unique contribution in shaping the United States of America Republic as a distinctive and blessed nation of people and citizens;

**WHEREAS** the Moorish American People are a People of deeply-held religious convictions springing from the Holy Scriptures of the Holy Koran of the Moorish Science Temple of America and the Learning, Teachings and Truth of the Holy Prophet Noble Drew Ali. The Holy Prophet Noble Drew Ali led his People back to the Principles and standards of their ancient forefathers' Free National Principles and Standards;

**WHEREAS** the Principles of Love, Truth, Peace, Freedom and Justice inspired concepts of civil government that are contained in our Declaration of Independence and Constitution of the United States of America Republic;

**WHEREAS the Moorish American People**, are now in great comprehension that, as a Nation of People being Nationwide in scope to achieve peace as well as unity as a single



harmonious Nation, there must be uniform Laws for the Nation. The Constitution and Laws of the **United States of America Republic** are "*the Rock on which our Republic rests*";

**WHEREAS** the history of our Nation clearly illustrates the value of a Nation to be able to create and pass its own Laws are beneficial to a Society to Enforce the Laws of the Nation. This is not to remove or change the **Moorish American People** from voluntarily applying or extending the learning, teachings and truth of the Holy Koran of the Moorish Science Temple of America in the lives of individuals, families, or in our society as a nation of People;

**WHEREAS** this Nation now faces great challenges that will test this Nation as it has never been tested before; and

**WHEREAS** that renewing our knowledge of Law, Divine and National, and having faith in Our Universal Creator through Holy Scriptures of the Koran of the Moorish Science Temple of America, the Holy Bible and the Great Qu'ran of Mohammed as we honor all the divine Prophets Jesus, Mohammed, Buddha and Confucius. Therefore, the **Constitution and Laws of the United States of America Republic** and knowledge of the aforementioned Holy Scriptures can only strengthen our nation. I, President Christopher H- Cannon: Bey, therefore establish with the consent of the Continental Congress the provisions as the **Laws of the United States of America Republic**:

**NOW, THEREFORE, be it Resolved** by the Continental Congress of the United States of America Republic in Continental Congress assembled, That the President is authorized and requested to designate the administration of said laws.

LEGISLATIVE HISTORY-**PL.111. Res. 41**  
CONGRESSIONAL RECORD, Vol. #(2017):

**26 February 2017** considered  
and passed by the Continental  
Congress.



# TITLE I – CRIMINAL CODE

## CHAPTER 30

### FORFEITURE

<b><u>Section No.</u></b>	<b><u>Description</u></b>
981a.	Definitions.
981.	Civil forfeiture.
982.	Criminal forfeiture.
983.	General rules for civil forfeiture proceedings.
984.	Civil forfeiture of fungible property.
985.	Civil forfeiture of real property.
986.	Subpoenas for bank records.
987.	Anti-terrorist forfeiture protection.



# TITLE 1 – CRIMINAL CODE

## CHAPTER 30


### FORFEITURE

#### SECTION 981 a. Definitions:

**Forfeiture:** A common definition is, something which the right is lost by the commission of a crime or fault or losing of something by way of penalty. A deprivation or the destruction of a right as a consequence of the non-performance of a previously made obligation or agreed-upon condition.

**U.S.A.R. National Rules of Civil Procedure.** The U.S.A.R. National Rules of Civil Procedure (NCP) are a set of rules that govern the procedure in all “civil” actions and proceedings in the United States of America Republic’s courts Nationwide, except as otherwise stated in the Rules<sup>1</sup>. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

**U.S.A.R. National Rules of Criminal Procedure.** The U.S.A.R. National Rules of Criminal Procedure (NCRP) are a set of rules that govern the procedure in all criminal actions and proceedings in the United States of America Republic courts Nationwide, except as otherwise stated in the Rules [see footnote 1]. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

**U.S.A.R. National Rules of Evidence.** The U.S.A.R. National Rules of Evidence (NRE) are a set of rules that govern all introductions of evidence at civil and criminal trials within the trial courts of United States of America Republic. The current rules were initially passed in Continental Congress Assembled in 2016 and 2017, and are continuously being drafted by the United States of America Republic Superior Courts. 

#### SECTION 981. Civil forfeiture

(a)(1) The following property is subject to forfeiture to the United States of America Republic:

- (A) Any property, real or personal, involved in a transaction or attempted transaction in violation of U.S.A.R. Title 1 Criminal Code sections 1956, 1957 or 1960, or any property traceable to such property.
- (B) Any property, real or personal, within the jurisdiction of the United States of America Republic, constituting, derived from, or traceable to, any proceeds

<sup>1</sup> Additional Rules will be added to the National Rules of Civil Procedure which direct the proceedings not applicable in this Title.



obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such an offense, if the offense— involves trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or the manufacture, importation, sale, or distribution of a controlled substance (as that term is defined for purposes of the laws for Controlled Substances), or any other conduct described in section 1956(c)(7)(B); would be punishable within the jurisdiction of the foreign nation by death or imprisonment for a term exceeding 1 year; and would be punishable under the laws of the United States of America Republic by imprisonment for a term exceeding 1 year, if the act or activity constituting the offense had occurred within the jurisdiction of the United States of America Republic.

- (C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of certain sections<sup>2</sup> within this Title or any offense constituting “specified unlawful activity” (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.
- (D) Any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, from a violation of— section 666(a)(1) (relating to National program fraud); section 1001 (relating to fraud and false statements); section 1031 (relating to major fraud against the United States of America Republic); section 1032 (relating to concealment of assets from conservator or receiver of insured financial institution); section 1341 (relating to mail fraud); or (vi) section 1343 (relating to wire fraud), if such violation relates to the sale of assets acquired or held by the National Deposit Insurance Corporation, as conservator or receiver for a financial institution, or any other conservator for a financial institution appointed by the Office of the U.S.A.R. Currency Comptroller or the National Credit Union Administration, as conservator or liquidating agent for a financial institution.
- (E) With respect to an offense listed in subsection (a)(1)(D) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations or promises, the gross receipts of such an offense shall include all property, real or personal, tangible or intangible, which thereby is obtained, directly or indirectly.
- (F) Any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, from a violation of— section 511 (altering or removing motor vehicle identification numbers); section 553 (importing or exporting stolen motor vehicles); section 2119 (armed robbery of automobiles); section 2312 (transporting stolen motor vehicles in interstate commerce); or section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce).
- (G) All assets, foreign or domestic— of any individual, entity, or organization engaged in planning or perpetrating any National crime of terrorism (as

<sup>2</sup> Certain Sections means Sections: 215, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 656, 657, 670, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, or 1344 of Title 1.



defined in section 2332b(g)(5)) against the United States of America Republic, citizens or residents of the United States of America Republic, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;  
 acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing any National crime of terrorism (as defined in section 2332b(g)(5) against the United States of America Republic, citizens or residents of the United States of America Republic, or their property;  
 derived from, involved in, or used or intended to be used to commit any National crime of terrorism (as defined in section 2332b(g)(5)) against the United States of America Republic, citizens or residents of the United States of America Republic, or their property; or  
 of any individual, entity, or organization engaged in planning or perpetrating any act of international terrorism (as defined in section 2331) against any international organization (as defined in section 209 of the U.S.A.R. State Department Fundamental Authorizations<sup>3</sup>) or against any foreign Government. Where the property sought for forfeiture is located beyond the territorial boundaries of the United States of America Republic, an act in furtherance of such planning or perpetration must have occurred within the jurisdiction of the United States of America Republic.

- (H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title.

(2) For purposes of paragraph (1), the term “proceeds” is defined as follows:

In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care fraud schemes, the term “proceeds” means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

In cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term “proceeds” means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The direct costs shall not include any part of the overhead expenses of the entity providing the goods or services, or any part of the income taxes paid by the entity.

In cases involving fraud in the process of obtaining a loan or extension of credit, the court shall allow the claimant a deduction from the forfeiture to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim.

(b)(1) Except as provided in section 985, any property subject to forfeiture to the United States of America Republic under subsection (a) may be seized by the U.S.A.R. Attorney General and, in the case of property involved in a violation investigated by the U.S.A.R.

<sup>3</sup> Similar to: S.O.S. Basic Authorities Act of 1956 (22 U.S.C. 4309(b))





Treasury Secretary or the U.S.A.R. Mail Service Master, the property may also be seized by the U.S.A.R. Treasury Secretary or the U.S.A.R. Mail Service Master, respectively.

(2) Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the National Rules of Criminal Procedure, except that a seizure may be made without a warrant if—

(A) a complaint for forfeiture has been filed in the United States of America Republic district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

(B) there is probable cause to believe that the property is subject to forfeiture and— the seizure is made pursuant to a lawful arrest or search; or

another exception to the Fourth Amendment warrant requirement would apply; or  
(C) the property was lawfully seized by a State or local law enforcement agency and transferred to a National agency.

(3) Notwithstanding the provisions of rule 41(a) of the *National Rules of Criminal Procedure*, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any Province in which a forfeiture action against the property may be filed under section 1355(b) of Title 2 [*National Rules of Civil Procedure*], and may be executed in any Province in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(4) (A) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States of America Republic under this section or under any U.S.A.R. laws for Controlled Substances, the U.S.A.R. Attorney General may apply to any National judge or magistrate judge in the Province in which the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in rule 43(e) of the National Rules of Civil Procedure.

(B) The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States of America Republic that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the U.S.A.R. Attorney General, the U.S.A.R. Treasury Secretary, or the Mail Service Master, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever



property is seized under this subsection, the U.S.A.R. Attorney General, the U.S.A.R. Treasury Secretary, or the Mail Service Master, as the case may be, may— place the property under seal; remove the property to a place designated by him; or require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of such property under this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the U.S.A.R. Attorney General, the U.S.A.R. Treasury Secretary, or the Mail Service Master, as the case may be. The U.S.A.R. Attorney General shall have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.

(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the U.S.A.R. Attorney General, the U.S.A.R. Treasury Secretary, or the Mail Service Master, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine—

(1) to any other National agency;

(2) to any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property;

(3) in the case of property referred to in subsection (a)(1)(C), to any National financial institution regulatory agency—  
to reimburse the agency for payments to claimants or creditors of the institution; and  
to reimburse the insurance fund of the agency for losses suffered by the fund as a result of the receivership or liquidation;

(4) in the case of property referred to in subsection (a)(1)(C), upon the order of the appropriate National financial institution regulatory agency, to the financial institution as restitution, with the value of the property so transferred to be set off against any amount later recovered by the financial institution as compensatory damages in any State or National proceeding;

(5) in the case of property referred to in subsection (a)(1)(C), to any National financial



institution regulatory agency, to the extent of the agency's contribution of resources to, or expenses involved in, the seizure and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property;

(6) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; or

(7) In the case of property referred to in subsection (a)(1)(D), to the **Resolution Trust 3 Corporation**, the National Deposit Insurance Corporation, or any other National financial institution regulatory agency (as defined in section 8(e)(7)(D) of the National Deposit Insurance Act).

The U.S.A.R. Attorney General, the U.S.A.R. Treasury Secretary, or the Mail Service Master, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the U.S.A.R. Attorney General, the U.S.A.R. Treasury Secretary, or the Mail Service Master pursuant to paragraph (2) shall not be subject to review. The United States of America Republic shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-National agency. The U.S.A.R. Attorney General, the U.S.A.R. Treasury Secretary, or the Mail Service Master may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the U.S.A.R. Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States of America Republic in favor of State or local proceedings, the United States of America Republic may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States of America Republic in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States of America Republic shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials. The United States of America Republic shall not be liable in any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection.

(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States of America Republic upon commission of the act giving rise to forfeiture under this section.

(g)(1) Upon the motion of the United States of America Republic, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.



(2) Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that—  
the claimant is the subject of a related criminal investigation or case;  
the claimant has standing to assert a claim in the civil forfeiture proceeding; and  
continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

(3) With respect to the impact of civil discovery described in paragraphs (1) and (2), the court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow one party to pursue discovery while the other party is substantially unable to do so.

(4) In this subsection, the terms “related criminal case” and “related criminal investigation” mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is “related” to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.

(5) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(6) Whenever a civil forfeiture proceeding is stayed pursuant to this subsection, the court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect.

(7) A determination by the court that the claimant has standing to request a stay pursuant to paragraph (2) shall apply only to this subsection and shall not preclude the Government from objecting to the standing of the claimant by dispositive motion or at the time of trial.

(h) In addition to the venue provided for in section 1395 of title 2 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(i)(1) Whenever property is civilly or criminally forfeited under this chapter, the U.S.A.R. Attorney General or the U.S.A.R. Treasury Secretary, as the case may be, may transfer the



forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—  
has been agreed to by the Secretary of State;  
is authorized in an international agreement between the United States of America Republic and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 481(h) of the Foreign Assistance Act of 1961.

A decision by the U.S.A.R. Attorney General or the U.S.A.R. Treasury Secretary pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subsection, bear all expenses incurred by the United States of America Republic in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the U.S.A.R. Attorney General or the U.S.A.R. Treasury Secretary may, in his discretion, set.

The provisions of this section shall not be construed as limiting or superseding any other authority of the United States of America Republic to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States of America Republic to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

(j) For purposes of this section—



the term “U.S.A.R. Attorney General” means the U.S.A.R. Attorney General or his delegate; and  
 the term “U.S.A.R. Treasury Secretary” means the U.S.A.R. Treasury Secretary or his delegate.

**(k) INTERBANK ACCOUNTS.—**

**(1) IN GENERAL.—**

**IN GENERAL.—**For the purpose of a forfeiture under this section or under the Laws for Controlled Substances (21 U.S.C. 801 et seq.), if funds are deposited into an account at a foreign financial institution (as defined in section 984(c)(2)(A) of this title), and that foreign financial institution (as defined in section 984(c)(2)(A) of this title) has an interbank account in the United States of America Republic with a covered financial institution (as defined in section 5318(j)(1) of title 31), the funds shall be deemed to have been deposited into the interbank account in the United States of America Republic, and any restraining order, seizure warrant, or arrest warrant in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title), may be restrained, seized, or arrested.

**AUTHORITY TO SUSPEND.—**The U.S.A.R. Attorney General, in consultation with the U.S.A.R. Treasury Secretary, may suspend or terminate a forfeiture under this section if the U.S.A.R. Attorney General determines that a conflict of law exists between the laws of the jurisdiction in which the foreign financial institution (as defined in section 984(c)(2)(A) of this title) is located and the laws of the United States of America Republic with respect to liabilities arising from the restraint, seizure, or arrest of such funds, and that such suspension or termination would be in the interest of justice and would not harm the national interests of the United States of America Republic.

**(2) NO REQUIREMENT FOR GOVERNMENT TO TRACE FUNDS.—**If a forfeiture action is brought against funds that are restrained, seized, or arrested under paragraph (1), it shall not be necessary for the Government to establish that the funds are directly traceable to the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)(A) of this title), nor shall it be necessary for the Government to rely on the application of section 984.

**(3) CLAIMS BROUGHT BY OWNER OF THE FUNDS.—**If a forfeiture action is instituted against funds restrained, seized, or arrested under paragraph (1), the owner of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title) may contest the forfeiture by filing a claim under section 983.

**(4) DEFINITIONS.—**For purposes of this subsection, the following definitions shall apply:  
**INTERBANK ACCOUNT.—**The term “interbank account” has the same meaning as in section 984(c)(2)(B).  
**OWNER.—**

**(i) IN GENERAL.—**Except as provided in clause (ii), the term “owner”—



- (I) means the person who was the owner, as that term is defined in section 983(d)(6), of the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)(A) of this title) at the time such funds were deposited; and
- (II) does not include either the foreign financial institution (as defined in section 984(c)(2)(A) of this title) or any financial institution acting as an intermediary in the transfer of the funds into the interbank account.

(ii) EXCEPTION.—The foreign financial institution (as defined in section 984(c)(2)(A) of this title) may be considered the “owner” of the funds (and no other person shall qualify as the owner of such funds) only if—  
 the basis for the forfeiture action is wrongdoing committed by the foreign financial institution (as defined in section 984(c)(2)(A) of this title); or  
 the foreign financial institution (as defined in section 984(c)(2)(A) of this title) establishes, by a preponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign financial institution (as defined in section 984(c)(2)(A) of this title) had discharged all or part of its obligation to the prior owner of the funds, in which case the foreign financial institution (as defined in section 984(c)(2)(A) of this title) shall be deemed the owner of the funds to the extent of such discharged obligation.

## **SECTION 982. Criminal forfeiture**

(a)(1) The court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States of America Republic any property, real or personal, involved in such offense, or any property traceable to such property.

(2) The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate—section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of this title, affecting a financial institution, or section 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 555, 842, 844, 1028, 1029, or 1030 of this title, shall order that the person forfeit to the United States of America Republic any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.

(3) The court, in imposing a sentence on a person convicted of an offense under—  
 section 666(a)(1) (relating to National program fraud); section 1001 (relating to fraud and false statements); section 1031 (relating to major fraud against the United States of America Republic); section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of insured financial institution); section 1341 (relating to mail fraud); or section 1343 (relating to wire fraud), involving the sale of assets acquired or held by the the National Deposit Insurance Corporation, as conservator or receiver for a financial institution or any other conservator for a financial institution appointed by the Office of the U.S.A.R. Currency Comptroller, or the National Credit Union



Administration, as conservator or liquidating agent for a financial institution, shall order that the person forfeit to the United States of America Republic any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, as a result of such violation.

With respect to an offense listed in subsection (a)(3) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations, or promises, the gross receipts of such an offense shall include any property, real or personal, tangible or intangible, which is obtained, directly or indirectly, as a result of such offense.

The court, in imposing sentence on a person convicted of a violation or conspiracy to violate— section 511 (altering or removing motor vehicle identification numbers); section 553 (importing or exporting stolen motor vehicles); section 2119 (armed robbery of automobiles); section 2312 (transporting stolen motor vehicles in interstate commerce); or section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce); shall order that the person forfeit to the United States of America Republic any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, as a result of such violation.

(6)(A) The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or section 555, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title, or a violation of, or conspiracy to violate, section 1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States of America Republic, regardless of any provision of State law—any conveyance, including any vessel, vehicle, or aircraft used in the commission of the offense of which the person is convicted; and any property real or personal—that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the offense of which the person is convicted; or that is used to facilitate, or is intended to be used to facilitate, the commission of the offense of which the person is convicted.

(B) The court, in imposing sentence on a person described in subparagraph (A), shall order that the person forfeit to the United States of America Republic all property described in that subparagraph.

The court, in imposing sentence on a person convicted of a National health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

The court, in sentencing a defendant convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344, or of a conspiracy to commit such an offense, if the offense involves telemarketing (as that term is defined in section 2325), shall order that the defendant forfeit to the United States of America Republic any real or personal property—used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.





(b)(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).

(2) The substitution of assets provisions of subsection 413(p) shall not be used to order a defendant to forfeit assets in place of the actual property laundered where such defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense unless the defendant, in committing the offense or offenses giving rise to the forfeiture, conducted three or more separate transactions involving a total of \$100,000 or more in any twelve month period.

### **SECTION 983. General rules for civil forfeiture proceedings**

(a) NOTICE; CLAIM; COMPLAINT.—

(1)(A)

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

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

(iii) If, before the 60-day period expires, the U.S.A.R. Government does not file a civil judicial forfeiture action, but does obtain a criminal indictment containing an allegation that the property is subject to forfeiture, the Government shall either— send notice within the 60 days and continue the nonjudicial civil forfeiture proceeding under this section; or terminate the nonjudicial civil forfeiture proceeding, and take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

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

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



- (B) A supervisory official in the headquarters office of the seizing agency may extend the period for sending notice under subparagraph (A) for a period not to exceed 30 days (which period may not be further extended except by a court), if the official determines that the conditions in subparagraph (D) are present.
- (C) Upon motion by the Government, a court may extend the period for sending notice under subparagraph (A) for a period not to exceed 60 days, which period may be further extended by the court for 60-day periods, as necessary, if the court determines, based on a written certification of a supervisory official in the headquarters office of the seizing agency, that the conditions in subparagraph (D) are present.
- (D) The period for sending notice under this paragraph may be extended only if there is reason to believe that notice may have an adverse result, including—  
endangering the life or physical safety of an individual; flight from prosecution; destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation or unduly delaying a trial.
- (E) Each of the National seizing agencies conducting nonjudicial forfeitures under this section shall report periodically to the Committees on the Judiciary of the House of Representatives and the Senate the number of occasions when an extension of time is granted under subparagraph (B).
- (F) If the Government does not send notice of a seizure of property in accordance with subparagraph (A) to the person from whom the property was seized, and no extension of time is granted, the Government shall return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. The Government shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

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

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

A claim shall—

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

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



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

- (3)(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.
- (B) If the Government does not—  
file a complaint for forfeiture or return the property, in accordance with subparagraph (A); or before the time for filing a complaint has expired—  
obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and  
take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute,  
the Government shall promptly release the property pursuant to regulations promulgated by the U.S.A.R. Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.
- (C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture is the only forfeiture proceeding commenced by the Government, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.
- (D) No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.
- (4)(A) In any case in which the Government files in the appropriate United States of America Republic district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.
- (B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

(b) REPRESENTATION.—



- (1)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.
- (B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as— the person’s standing to contest the forfeiture; and whether the claim appears to be made in good faith.
- (2)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence, the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim.
- (B) (i) At appropriate times during a representation under subparagraph (A), the Legal Services Corporation shall submit a statement of reasonable attorney fees and costs to the court.  
(ii) The court shall enter a judgment in favor of the Legal Services Corporation for reasonable attorney fees and costs submitted pursuant to clause (i) and treat such judgment as payable under section 2465 of title 2, United States of America Republic Code, regardless of the outcome of the case.
- (3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.
- (c) BURDEN OF PROOF.—In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property—  
the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture;  
the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture; and  
if the Government’s theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.
- (d) INNOCENT OWNER DEFENSE.—
- (1) An innocent owner’s interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.
- (2)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term “innocent owner” means an owner who—did not know of the conduct giving rise to forfeiture; or



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

- (B) (i) For the purposes of this paragraph, ways in which a person may show that such person did all that reasonably could be expected may include demonstrating that such person, to the extent permitted by law—gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and in a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.
- (ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.
- (3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term “innocent owner” means a person who, at the time that person acquired the interest in the property—was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and did not know and was reasonably without cause to believe that the property was subject to forfeiture.
- (B) An otherwise valid claim under subparagraph (A) shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if— the property is the primary residence of the claimant; depriving the claimant of the property would deprive the claimant of the means to maintain reasonable shelter in the community for the claimant and all dependents residing with the claimant; the property is not, and is not traceable to, the proceeds of any criminal offense; and the claimant acquired his or her interest in the property through marriage, divorce, or legal separation, or the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate, except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subparagraph to the value necessary to maintain reasonable shelter in the community for such claimant and all dependents residing with the claimant.
- (4) Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.
- (5) If the court determines, in accordance with this section, that an innocent owner has a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court may enter an appropriate order— severing the property; transferring the property to the Government with a provision that the Government



compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or permitting the innocent owner to retain the property subject to a lien in favor of the Government to the extent of the forfeitable interest in the property.

(6) In this subsection, the term “owner”—  
means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest; and  
does not include—a person with only a general unsecured interest in, or claim against, the property or estate of another;  
a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or  
a nominee who exercises no dominion or control over the property.

(e) MOTION TO SET ASIDE FORFEITURE.—

(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person’s interest in the property, which motion shall be granted if—

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

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

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

(B) Any proceeding described in subparagraph (A) shall be commenced—  
if nonjudicial, within 60 days of the entry of the order granting the motion; or  
if judicial, within 6 months of the entry of the order granting the motion.

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

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

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

(f) RELEASE OF SEIZED PROPERTY.—

(1) A claimant under subsection (a) is entitled to immediate release of seized property if—  
the claimant has a possessory interest in the property;



the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;  
 the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless; the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and  
 none of the conditions set forth in paragraph (8) applies.

(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) are met.

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

(B) The petition described in subparagraph (A) shall set forth—  
 the basis on which the requirements of paragraph (1) are met; and  
 the steps the claimant has taken to secure release of the property from the appropriate official.

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

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

(6) If—  
 a petition is filed under paragraph (3); and  
 the claimant demonstrates that the requirements of paragraph (1) have been met,  
 the district court shall order that the property be returned to the claimant, pending completion of proceedings by the Government to obtain forfeiture of the property.

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

(A) the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including—permitting the inspection, photographing, and inventory of the property; fixing a bond in



accordance with rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and requiring the claimant to obtain or maintain insurance on the subject property; and

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

(8) This subsection shall not apply if the seized property—  
is contraband, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;  
is to be used as evidence of a violation of the law;  
by reason of design or other characteristic, is particularly suited for use in illegal activities; or

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

(g) PROPORTIONALITY.—

The claimant under subsection (a)(4) may petition the court to determine whether the forfeiture was constitutionally excessive.

In making this determination, the court shall compare the forfeiture to the gravity of the offense giving rise to the forfeiture.

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

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

(h) CIVIL FINE.—

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

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

In addition to the limitations of section 1915 of title 2, United States of America Republic Code, in no event shall a prisoner file a claim under a civil forfeiture statute or appeal a judgment in a civil action or proceeding based on a civil forfeiture statute if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility,





brought an action or appeal in a court of the United States of America Republic that was dismissed on the grounds that it is frivolous or malicious, unless the prisoner shows extraordinary and exceptional circumstances.

(i) CIVIL FORFEITURE STATUTE DEFINED.—In this section, the term “civil forfeiture statute”— means any provision of U.S.A.R. National Law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense; and does not include— various tariff acts and revenue codes as later defined.

(j) RESTRAINING ORDERS; PROTECTIVE ORDERS.—

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

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

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

there is a substantial probability that the United States of America Republic will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

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

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

The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the U.S.A.R. National Rules of Evidence.

## **SECTION984. Civil forfeiture of fungible property**



(a)(1) In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution (as defined in section 20 of this title), or precious metals—  
it shall not be necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture; and  
it shall not be a defense that the property involved in such an offense has been removed and replaced by identical property.

(2) Except as provided in subsection (b), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

(b) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 1 year from the date of the offense.

(c)(1) Subsection (a) does not apply to an action against funds held by a financial institution in an interbank account unless the account holder knowingly engaged in the offense that is the basis for the forfeiture.

(2) In this subsection—  
the term “financial institution” includes a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(7))); and  
the term “interbank account” means an account held by one financial institution at another financial institution primarily for the purpose of facilitating customer transactions.

(d) Nothing in this section may be construed to limit the ability of the Government to forfeit property under any provision of law if the property involved in the offense giving rise to the forfeiture or property traceable thereto is available for forfeiture.

## **SECTION 985. Civil forfeiture of real property**

(a) Notwithstanding any other provision of law, all civil forfeitures of real property and interests in real property shall proceed as judicial forfeitures.

(b)(1) Except as provided in this section—  
real property that is the subject of a civil forfeiture action shall not be seized before entry of an order of forfeiture; and  
the owners or occupants of the real property shall not be evicted from, or otherwise deprived of the use and enjoyment of, real property that is the subject of a pending forfeiture action.

(2) The filing of a lis pendens and the execution of a writ of entry for the purpose of conducting an inspection and inventory of the property shall not be considered a seizure under this subsection.



(c)(1) The Government shall initiate a civil forfeiture action against real property by—  
 filing a complaint for forfeiture;  
 posting a notice of the complaint on the property; and serving notice on the property  
 owner, along with a copy of the complaint.

(2) If the property owner cannot be served with the notice under paragraph (1) because  
 the owner—  
 is a fugitive; resides outside the United States of America Republic and efforts at service  
 pursuant to rule 4 of the National Rules of Civil Procedure are unavailing; or  
 cannot be located despite the exercise of due diligence, constructive service may be made  
 in accordance with the laws of the State in which the property is located.

(3) If real property has been posted in accordance with this subsection, it shall not be  
 necessary for the court to issue an arrest warrant in rem, or to take any other action to  
 establish in rem jurisdiction over the property.

(d)(1) Real property may be seized prior to the entry of an order of forfeiture if—  
 the Government notifies the court that it intends to seize the property before trial; and  
 the court—  
 issues a notice of application for warrant, causes the notice to be served on the property  
 owner and posted on the property, and conducts a hearing in which the property owner  
 has a meaningful opportunity to be heard; or  
 makes an ex parte determination that there is probable cause for the forfeiture and that  
 there are exigent circumstances that permit the Government to seize the property without  
 prior notice and an opportunity for the property owner to be heard.

(2) For purposes of paragraph (1)(B)(ii), to establish exigent circumstances, the  
 Government shall show that less restrictive measures such as a lis pendens, restraining  
 order, or bond would not suffice to protect the Government's interests in preventing the  
 sale, destruction, or continued unlawful use of the real property.

If the court authorizes a seizure of real property under subsection (d)(1)(B)(ii), it shall  
 conduct a prompt post-seizure hearing during which the property owner shall have an  
 opportunity to contest the basis for the seizure.

This section—

applies only to civil forfeitures of real property and interests in real property;  
 does not apply to forfeitures of the proceeds of the sale of such property or interests, or of  
 money or other assets intended to be used to acquire such property or interests; and  
 shall not affect the authority of the court to enter a restraining order relating to real  
 property.

## **SECTION 986. Subpoenas for bank records**

At any time after the commencement of any action for forfeiture in rem brought by the  
 United States of America Republic under section 1956, 1957, or 1960 of this title, section  
 5322 or 5324 of title 31, United States of America Republic Code, or the Laws for  
 Controlled Substances, any party may request the Clerk of the Court in the district in



which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in section 5312(a) of title 31, United States of America Republic Code, to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena. The procedures and limitations set forth in section 985 of this title shall apply to subpoenas issued under this section.

Service of a subpoena issued pursuant to this section shall be by certified mail. Records produced in response to such a subpoena may be produced in person or by mail, common carrier, or such other method as may be agreed upon by the party requesting the subpoena and the custodian of records. The party requesting the subpoena may require the custodian of records to submit an affidavit certifying the authenticity and completeness of the records and explaining the omission of any record called for in the subpoena.

Nothing in this section shall preclude any party from pursuing any form of discovery pursuant to the National Rules of Civil Procedure.

#### ACCESS TO RECORDS IN BANK SECRECY JURISDICTIONS.—

(1) IN GENERAL.—In any civil forfeiture case, or in any ancillary proceeding in any criminal forfeiture case governed by section 413(n) of the Laws for Controlled Substances (21 U.S.C. 853(n)), in which—

- (A) financial records located in a foreign country may be material—  
to any claim or to the ability of the Government to respond to such claim; or  
in a civil forfeiture case, to the ability of the Government to establish the forfeitability of the property; and
- (B) it is within the capacity of the claimant to waive the claimant's rights under applicable financial secrecy laws, or to obtain the records so that such records can be made available notwithstanding such secrecy laws,  
the refusal of the claimant to provide the records in response to a discovery request or to take the action necessary otherwise to make the records available shall be grounds for judicial sanctions, up to and including dismissal of the claim with prejudice.

(2) PRIVILEGE.—This subsection shall not affect the right of the claimant to refuse production on the basis of any privilege guaranteed by the Constitution of the United States of America Republic or any other provision of National law.

#### **SECTION 987. Anti-terrorist forfeiture protection**

(a) RIGHT TO CONTEST.—An owner of property that is confiscated under any provision of law relating to the confiscation of assets of suspected international terrorists, may contest that confiscation by filing a claim in the manner set forth in the National Rules of Civil Procedure (Supplemental Rules for Certain Admiralty and Maritime Claims), and asserting as an affirmative defense that—



the property is not subject to confiscation under such provision of law; or the innocent owner provisions of section 983(d) of title 18, United States of America Republic Code, apply to the case.

(b) EVIDENCE.—In considering a claim filed under this section, a court may admit evidence that is otherwise inadmissible under the National Rules of Evidence, if the court determines that the evidence is reliable, and that compliance with the National Rules of Evidence may jeopardize the national security interests of the United States of America Republic.

(c) CLARIFICATIONS.—

(1) PROTECTION OF RIGHTS.—The exclusion of certain provisions of National law from the definition of the term “civil forfeiture statute” in section 983(i) of title 1, United States of America Republic Code, shall not be construed to deny an owner of property the right to contest the confiscation of assets of suspected international terrorists under— subsection (a) of this section; the Constitution; or subchapter II of chapter 5 of title 5, United States of America Republic Code (commonly known as the “Administrative Procedure Legislation”).

(2) SAVINGS CLAUSE.—Nothing in this section shall limit or otherwise affect any other remedies that may be available to an owner of property under section 983 of title 18, United States of America Republic Code, or any other provision of law.

**[End of Resolution]**

