

WHEN IS CIVIL FORFEITURE THE ONLY ALTERNATIVE

1. when the wrongdoer is dead or is incompetent to stand trial;
 - *United States v. \$465,789.31 Seized From Term Life Ins. Policy*, 150 F. Supp.3d 175 (D. Conn. 2015) (proceeds of Ponzi scheme obtained by defendant who died after entering guilty plea);
 - *United States v. \$7,599,358.09*, 2013 WL 3086107 (D.N.J. June 18, 2013)(proceeds of fraud seized from defendant who promised to provide workmen's comp insurance but did not, and committed suicide before trial);
 - In the Madoff case, much of the forfeiture was done civilly because one of Madoff's partners was deceased
 - In such cases, civil forfeiture is the only way for the Government to use its powers to recover the property for the victims.
2. when the defendant is a fugitive or a foreign national beyond jurisdiction of the United States;
 - *United States v. \$506,069.09 Seized from First Merit Bank*, ___ Fed. Appx. ___, 2016 WL 6211978 (6th Cir. Oct. 25, 2016) (proceeds of illegally dispensing pain killers by doctor who fled to Pakistan), aff'g 2014 WL 7185585 (N.D. Ohio Dec. 16, 2014);
 - *United States v. Real Property Known As 7208 East 65th Pl.*, 185 F. Supp.3d 1288 (N.D. Okla. 2016) (property of fugitive who defrauded terminally-ill cancer patients and fled to Mexico following indictment);
3. when the statute of limitations has run on the criminal case;
4. when we have recovered the property but do not know who committed the crime giving rise to the forfeiture;
 - *United States v. \$1,790,021 in U.S. Currency*, 261 F. Supp. 2d 310, 318 (M.D. Pa. 2003) (when courier denies any knowledge of \$1.7 million in currency concealed in his truck, and states that he was on his way to Mexico);
5. when the defendant pleads guilty to a crime different from the one giving rise to the forfeiture;
 - because criminal forfeiture is part of the defendant's sentence, the Government can get a criminal forfeiture order only if the defendant is convicted of the particular crime that generated the property

6. when there is no federal criminal case because the defendant has already been convicted in a state or foreign or tribal court;
7. when there is no criminal case because the interests of justice do not require a conviction;
 - Not every crime requires a conviction
 - There is something called prosecutorial discretion
 - Sometimes a civil punishment is sufficient;
 - There are enough people in jail
 - Sometimes imposing a civil sanction is just the right thing to do
 - *United States v. 6 Firearms, Accessories and Ammunition*, 2015 WL 4660126 (W.D. Wash. Aug. 5, 2015) (firearms purchased by elderly woman for convicted-felon son; forfeited civilly in lieu of prosecution of mother);
8. when the evidence is insufficient to prove that the defendant committed the offense beyond a reasonable doubt;
9. when the defendant uses someone else's property to commit the crime and that person is not an innocent owner.
 - *United States v. One Red 2003 Hummer H2*, 2017 WL 35454 (W.D.N.Y. Jan. 4, 2017) (forfeiting vehicle used by owner's son to transport illegal drugs; civil forfeiture necessary to forfeit interest of third party even though person in possession was charged criminally);