ADMINISTRATIVE FORFEITURE: History and Practice in the United States

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Introduction

Thank you for inviting me to speak at this Symposium

I have been asked to speak about the use of administrative forfeiture to recover the proceeds of crime and other forfeitable property in the United States.

- I have some experience in dealing with this issue as a former federal prosecutor who specialized in asset forfeiture matters

- And I am happy to share my experience with you and answer whatever questions you may have

The United States has a robust asset forfeiture program, designed to recover the proceeds of crime and other property used to commit – or to facilitate the commission – of criminal offenses

At the federal level, forfeitures can take three forms:

- Criminal Forfeiture – which occurs when a court imposes a forfeiture order as part of the defendant's sentence if he is convicted in a criminal case

- Civil (or Non-Conviction-Based) Forfeiture – which is a judicial proceeding in which a court finds that property is subject to forfeiture following a trial

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- and Administrative Forfeiture – which is a non-judicial proceeding in which a law enforcement agency seizes property and declares it to be forfeited to the United States if no one contests the forfeiture

I will discuss the policy reasons for making administrative forfeiture is made part of this legislative scheme, and will briefly outline how it works.

- Then I'll go a bit into the history of the practice, and discuss the reforms that were made 20 years ago to ensure that property owners were afforded due process

Among other things, I'll talk about:

- the types of property that are eligible for administrative forfeiture

- the deadlines the federal agencies must meet in commencing administrative forfeiture proceedings

- the notice that must be sent to property owners advising them of their right to contest the forfeiture

- the procedure for filing a claim – which brings the administrative forfeiture proceeding to a halt

- and the limited right to judicial review of a completed administrative forfeiture

In my outline, I have provided citations to the statutes, regulations and case law that governs this area of the law

- I realize that not everyone will be interested in getting into this topic in such detail, but I'm providing the citations for those who are

Overview of Administrative Forfeiture

In the United States, administrative forfeiture is used to clear title to property when no one files a claim contesting its forfeiture.

- It is basically a default proceeding handled entirely by a law enforcement agency – the FBI, DEA, IRS, Homeland Security, etc. – without any involvement of a court or even of a prosecutor's office

It works basically like this:

- The agency conducting a criminal investigation seizes property based on probable cause to believe that it was derived from or was used to commit a federal crime

- The seizure is generally made pursuant to a warrant, but there are exceptions to the warrant requirement, *e.g.,* when the property is seized incident to an arrest, or there are exigent circumstances

- For example, the seizure of a bank account would almost always be pursuant to a warrant

- But the seizure of cash from a traveler stopped with $60,000 in cash in his carry-on luggage at the airport would not

    - 18 U.S.C. § 981(b) (setting forth the warrant requirement and its exceptions)

The seizing agency then has a period of time – generally 60 days – to send notice to the property owner and other interested persons of the agency's intent to forfeit the property

- persons wishing to contest the forfeiture must do so by filing a claim within 35 days

- if they do so, the administrative forfeiture proceeding must stop, and the agency must refer the case to the federal prosecutor's office – the United States Attorney – to proceed with the case judicially

- but if no one files a claim, the agency has the authority to declare the property forfeited by default

- that declaration of forfeiture has the force and effect of a judicial decree, and transfers title to the property to the United States

    - 19 U.S.C. § 1609; *Malladi Drugs and Pharmaceuticals, Ltd. v. Tandy,* 552 F.3d 885, 887 (D.C. Cir. 2009) ("An administrative forfeiture has the same force and effect as a final decree and order of forfeiture in a judicial proceeding");

There is no right to judicial review of the merits of an administrative forfeiture on the merits

— the only right to judicial review concerns due process

— a property owner may seek to vacate the forfeiture on the ground that he was not given adequate notice of the forfeiture proceeding and the right to file a claim

— but he cannot ask the court to review the legality of the seizure or the legal basis for the forfeiture

— to challenge a forfeiture on those grounds, he would have had to file a timely claim

- 18 U.S.C. § 983(e) (setting forth the procedures and grounds for judicial review of administrative forfeiture)

Administrative forfeitures are "favored" because they provide "a mechanism for the Government and private parties to resolve their forfeiture-related disputes without the need for judicial actions."

- *United States v. Ninety-Three (93) Firearms*, 330 F.3d 414, 422 (6th Cir. 2003).

– once the Government has the defendant property in its possession, administrative forfeiture allows the Government to obtain clear title to the property that is valid against the entire world – often within a matter of weeks – without the need to have any contact with the judiciary, if all potential claimants are properly notified and no one files a timely claim.

- *Malladi Drugs and Pharmaceuticals, Ltd. v. Tandy,* 552 F.3d 885, 889-90 (D.C. Cir. 2009) (administrative forfeiture efficiently settles disputes over seized property, "serving the agency's interest in finality and the owner's interest in expeditious return of its property");

- *In re: Application for Warrant to Seize One 1988 Chevrolet Monte Carlo*, 861 F.2d 307, 310 (1st Cir. 1988) (administrative forfeitures conserve judicial resources by allowing Government to use "simpler, quicker, less expensive administrative procedure[s]");

- *United States v. $57,960.00 in U.S. Currency*, 58 F. Supp. 2d 660, 666 (D.S.C. 1999) (administrative forfeitures are favored because they are less formal and expensive than judicial forfeiture proceedings);

- *United States v. McDaniel*, 2008 WL 1816455 (S.D. Ga. Apr. 22, 2008) ("bringing administrative proceedings first is a favored practice, as these proceedings decrease the need for the Government to bring judicial proceedings");

So, how often is this procedure used?

Virtually, every seizure of property for forfeiture in a federal criminal case begins as an administrative forfeiture

— And 80 percent of the time, no one files a claim

As one court noted, the reason most forfeitures are uncontested is that "drug traffickers know better than to stake claims to contraband and drug proceeds;"

— it is "far more sensible for such criminals to disclaim any interest in the property and avoid possible prosecution."

- *In re Seizure of $82,000 More or Less*, 119 F. Supp. 2d 1013, 1019 (W.D. Mo. 2000).

In terms of dollars, the last time I looked, which was several years ago, the agencies in the Dept of Justice were forfeiting on the order of $2 billion per year in criminally-tainted property, of which about 30 percent was recovered administratively

Property Eligible for Administrative Forfeiture

What types of property are eligible for administrative forfeiture?

— Virtually any property subject to forfeiture under the applicable asset forfeiture statute can be forfeited administratively if it falls into one of the following categories

- Currency in any amount;

- vehicles, vessels or aircraft used to transport illegal drugs, regardless of value; and

- other personal property having a value of $500,000 or less

Some things to notice about this list:

- real property is *not* eligible for administrative forfeiture; all forfeitures of real property must be judicial

- there is no limit on the value of currency that can be forfeited administratively, but bank accounts are not currency

- a bank account containing more than $500,000 must be forfeited judicially

    - *Omidi v. United States,* 851 F.3d 859 (9th Cir. 2017) (bank accounts holding $100 million were not eligible for administrative forfeiture under § 1607, citing *Asset Forfeiture Law in the United States* (2d ed. 2013), § 4-3);

    - *Chaim v. United States,* 692 F. Supp.2d 461, 466 (D.N.J. 2010) (a bank account containing more than $500,000 is not eligible for administrative forfeiture);

    - *In re Funds on Deposit,* 919 F. Supp.2d 169, 174-75 (D. Mass. 2012) (noting that Government could not commence administrative forfeiture because the value of the property exceeded $500,000, and holding that bank account balances are not monetary instruments and therefore do not fall within the exception; amounts in separate accounts are aggregated for purposes of the $500,000 limit).

As recently as the 1980s, these thresholds for administrative forfeiture were much lower

- But in 1990, Congress raised the cap on administrative forfeitures of personal property from $100,000 to $500,000 and eliminated the cap on administrative forfeitures of currency entirely.

According to its sponsor, the intent of the legislation was to increase the efficiency of handling small-value forfeitures and forfeitures that are generally uncontested while retaining the requirement that "forfeitures involving more valuable property must be processed through the judicial system."

- The sponsor was a U.S. Senator from Delaware named Joseph R. Biden, who has since gone on to higher office

    - *Congressional Record*, daily ed., October 4, 1989 at S12622 (Statement of Sen. Biden);

A Little History

Administrative forfeiture was invented long ago as part of the Customs laws

- Customs agents would seize property that was being imported (or smuggled) illegally and hold it until the owner paid a "cost bond" and claimed the property

- In the 1970s when asset forfeiture was extended to drug cases – and later to virtually all federal criminal cases – Congress simply adopted the procedures from the Customs laws *mutatis mutandis*

By 2000, however, there was a consensus that the Customs laws contained procedures that unfairly favored the Government and were ill-suited to cases involving bank accounts, currency and other personal property

— So, Congress substantially revised the administrative forfeiture process when it enacted 18 U.S.C. §§ 983(a)(1) and (2) as part of the Civil Asset Forfeiture Reform Act (CAFRA) in 2000

- *Langbord v. U.S. Dept. of Treasury,* 832 F.3d 170, 182 n.4 (3rd Cir. 2016) (*en banc*) (explaining administrative forfeiture before and after CAFRA and citing *Asset Forfeiture Law in the United States* (2d ed. 2013) at 158, 256).

— For example, the Customs laws contained no deadlines by which the seizing agency had to commence the administrative forfeiture process

— And they required the property owner to post a cost bond equal to $5,000 or 10 percent of the value of the property, whichever was lower, before he could get his day in court

CAFRA eliminated the cost bond and required the seizing agency to commence the forfeiture proceeding within 60 days of the seizure

— but allowing for extensions of time where there was an ongoing criminal investigation or other good cause

- 18 U.S.C. § 983(a)(1) and 28 C.F.R. § 8.9 (setting forth the statutory deadlines and the regulations implementing them);

- *Harris v. United States,* 2010 WL 2370757, *2 (E.D. Pa. June 8, 2010) (supervisory official in the DEA was authorized to grant a 30-day extension of the notice deadline to avoid jeopardizing a criminal investigation);

- *In Re Matter of: Certain Administrative and Civil Forfeiture Proceedings*, 2020 WL 6035903 (D.N.M.I. Apr. 20, 2020) (extending all deadlines in § 983(a)(1) and (3) by intervals of 60 days in light of the Covid-19 pandemic);

CAFRA also extended the deadline for property owners to respond to the notice of the administrative forfeiture

— Under the current version of the law, a person who receives notice by mail of the administrative forfeiture of his property has 35 days to respond

— A person who learns of the forfeiture proceeding only from the publication of notice on the Government's forfeiture website, www.forfeiture.gov, has 30 days from the last day of publication

- 18 U.S.C. § 983(a)(2)(B); 28 C.F.R. § 8.10(a).

If the Government does not comply with the statutory deadline, and no exception applies, it must return the seized property to the person from who it was seized unless it immediately commences a judicial forfeiture proceeding

- 18 U.S.C. § 983(a)(1)(F); *Asset Forfeiture Policy Manual,* Ch. 5, § II.B.4 (2019) (setting forth the recommended procedure for filing a civil judicial forfeiture following the inadvertent failure to commence a timely administrative forfeiture proceeding);

- *United States v. $11,500.00 in U.S. Currency,* 797 F. Supp. 2d 1092, 1100-01 (D. Or. 2011) (denying claimant's motion for summary judgment in the civil forfeiture case; that the Government missed the 60-day deadline for sending notice of administrative forfeiture does not bar it from filing a civil judicial forfeiture action), aff'd 710 F.3d 1006, 1016 (9th Cir. 2013);

- *United States v. One 2017 Mercedes Benz GLC300,* 2018 WL 4964635 (E.D. Wis. Oct. 15, 2018) (Congress intended administrative forfeiture and judicial forfeiture to be separate remedies; "failure of the first [for missing the deadline] does not doom the second");

Due Process

As I mentioned earlier, there is no judicial review of an administrative forfeiture based on the merits of the case

- The only basis for overturning an administrative forfeiture is that the property owner was not given adequate notice of the forfeiture proceeding or otherwise was denied due process

- So, the almost exclusive focus in administrative forfeiture proceeding is on the adequacy of the notice

- If the property owner was given adequate notice – or it he had *actual* notice of the forfeiture proceeding, the court will say, "you should have filed a claim, so we're done here"

So, what constitutes adequate notice?

Content of the Notice

The notice must:

- describe the seized property being forfeited;

- state the date, statutory basis, and place of seizure;

- identify the appropriate official of the seizing agency with whom a claim must be filed,

- and state the deadline for filing a claim.

    - 28 C.F.R. § 8.9(a) and (b).

    - *Mohammad v. United States*, 169 Fed. Appx. 475, 482 (7th Cir. 2006) (holding that the form DEA uses to send notice of administrative forfeiture is constitutionally adequate);

    - *United States v. Brome,* 942 F.3d 550 (2nd Cir. 2019)(that the notice gave the wrong date for the seizure of the property did not render the notice inadequate where it otherwise provided claimant with enough information to apprise him of the pending forfeiture action);

    - *Adames v. United States*, 171 F.3d 728, 730 n.2 (2d Cir. 1999) (published notice that lists only amount seized and not the date and location of seizure is not adequate).

Persons to Whom Notice Must Be Sent

The statute requires that notice of administrative forfeiture be sent "to each party who appears to have an interest in the seized article."

- Generally, that includes the person from whom the property was seized,
- the owner of the premises from which it was seized,
- the titled owner of the property,
- lienholders (but not unsecured creditors),
- and any other person known to the Government to have an interest.
    - 19 U.S.C. § 1607(a);
    - *United States v. Ritchie*, 342 F.3d 903, 911 (9th Cir. 2003) (if a gun is seized from someone's home, the Government must send notice to the homeowner, even if it appears that a third party, not the homeowner, is the person with an interest in the gun)*;*
    - *United States v. Assorted Jewelry*, 386 F. Supp. 2d 9, 12-13 (D.P.R. 2005) (owner of property was entitled to notice of seizure even though property was not seized from his direct possession);
    - *Bethany College v. United States,* 2015 WL 7430798, *4 (N.D. W. Va. Nov. 19, 2015) (if, through further investigation, DEA had learned that money seized from drug dealer was actually money embezzled from an innocent victim, it would have been required to send notice to that victim);
    - *Jacobs v. United States*, 2002 WL 31386533, at *2 (D. Md. Jan. 31, 2002), *aff'd w/o op.* 2002 WL 802196 (4th Cir. 2002) (Government complied with due process when it sent notice to registered owner of seized vehicle; it was not required to send notice to person who now claims to be the true owner but who says he purchased and registered the vehicle in third party's name, nor was it required to send or post notice referencing the registered owner's known aliases or contact his relatives);
    - *Kadonsky v. United States*, 3 Fed. Appx. 898, 902-03 (10th Cir. 2001) (payee on check is entitled to receive notice of forfeiture of check);
    - *United States v. Colon*, 993 F. Supp. 42, 44 (D.P.R. 1998) (sending notice to defendant alone was inadequate where Government was on notice that another party's name appeared as the owner of record of the seized bank account);

– But the Government is not required to send written notice to persons who deny ownership of the property;

- *Settle v. United States,* 2012 WL 3891616, *2 (E.D. Mo. Sept. 7, 2012) (claimant who signed a disclaimer of ownership when the money was seized was not entitled to notice);

- *Arango v. United States*, 1998 WL 417601, at *2-3 (N.D. Ill. 1998) (person who denies ownership of seized currency at the time it is seized cannot seek judicial review of administrative forfeiture on ground that he did not receive personal notice);

Manner of Sending Notice

Most of the litigation in this area concerns the manner of sending notice

– The constitutional standard, established by the Supreme Court, is that notice must be reasonably calculated to apprize interested parties of the pendency of the action and must be sent by means and in a manner that would be employed by one actually desirous of achieving notice

- *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950); *Dusenbery v. United States*, 534 U.S. 161, 167 (2002) (applying the *Mullane* standard to notice of administrative forfeiture);

- 28 C.F.R. § 8.9(b)(1) (requiring that personal written notice be sent "in a manner reasonably calculated to reach" potential claimants);

- *United States v. Gonzalez-Gonzalez*, 257 F.3d 31, 36 (1st Cir. 2001) ("the touchstone is reasonableness: the Government must afford notice sensibly calculated to inform the interested party of the contemplated forfeiture and to offer him a fair chance to present his claim of entitlement");

- *VanHorn v. Florida,* 677 F. Supp. 2d 1288, 1295 (M.D. Fla. 2009) (summarizing law on the constitutional standard for providing notice in administrative forfeiture cases, collecting cases);

The key point is that the Government does not need to show that the notice was actually received

– if the Government does what a reasonable person would do to achieve notice, the notice will be regarded as sufficient, even if the intended recipient does not receive it.

– thus, it will be sufficient in most cases for the Government to send the notice by certified mail to an address that the Government believes to be valid.

- *Dusenbery*, 534 U.S. at 172-73 (under the *Mullane* standard, the method of sending notice must be reasonably calculated to provide actual notice to the potential claimant, but the Government is not required to prove that the claimant actually received the notice);

- *Valderrama v. United States*, 417 F.3d 1189, 1197 (11th Cir. 2005) (reasonable notice requires only that the Government attempt to provide actual notice; it does not require that the Government demonstrate that the notice was received);

- *Albajon v. Gugliotta*, 72 F. Supp. 2d 1362, 1370 (S.D. Fla. 1999) (notice sent to various addresses on claimant's identifications and mailed after claimant was released from jail is sufficient to satisfy due process, even if claimant never received notice);

- *Berrum v. United States*, 2003 WL 21078040, at *5 (N.D. Ill. May 13, 2003) (actual notice is not required; sending notice to the jail where defendant was confined, to his three residences, and to his attorney was sufficient);

- *Brown v. United States*, 2002 WL 1339102, at *3 (S.D.N.Y. June 18, 2002) (notice mailed to residence where claimant's wife and children lived was adequate, even though claimant himself had been deported to Jamaica)

If the Government learns that its first attempt at giving notice has miscarried, however, due process requires that it make another attempt

– It does not have to make heroic efforts to locate the potential claimant, but it does have to make a reasonable effort

– For example, the Government can comply with the "additional steps" requirement by checking law enforcement data bases for an additional address, contacting the local police department, or sending the notice to the potential claimant's attorney.

- *VanHorn v. DEA,* 677 F. Supp.2d 1299, 1310 (M.D. Fla. 2009) (what the Government is required to do under *Jones v. Flowers* if notice sent by certified mail is unclaimed will vary from case to case; simply checking databases for additional addresses was sufficient where claimant resided at the address to which the certified notices were sent and had actual notice of the seizure);

- *Turner v. Attorney General,* 579 F. Supp.2d 1097, 1107-08 (N.D. Ind. 2008) (when first attempt to send notice was returned undelivered, FBI was required by *Jones v. Flowers* to take additional steps; checking the NCIC database to see if claimant was in federal custody was sufficient; that the negative report was inaccurate – because claimant actually was in custody – does not mean the FBI did not act reasonably in relying on the report);

- *Meadows v. United States,* 2013 WL 3836260 (N.D. Fla. July 24, 2013) (after notice sent to address claimant gave at the time of seizure miscarried, DEA sent notice to second address and received signed receipt; that being so, DEA cannot be faulted for not sending notice to yet a third address in U.S. Attorney's file, or for not contacting claimant by phone);

In addition, the Government is required, by statute, to publish notice of an administrative forfeiture in a newspaper of general circulation or on the Government's internet website, www.forfeiture.gov.

— these days, publication is almost exclusively on the internet

- 28 C.F.R. § 8.9(a); *United States v. Nguyen,* 2017 WL 4478012 (W.D. Ky. Oct. 6, 2017) (upholding validity of publication of notice on www.forfeiture.gov); *Harper v. United States,* 2016 WL 4994996 (E.D.N.Y. Aug.3, 2016) (same).

Many cases involve the adequacy of notice of administrative forfeiture sent to prisoners

— this reflects the overwhelming number of administrative forfeiture cases that involve a parallel criminal case, as well as the axiom that prisoners are notoriously litigious.

In *Dusenbery v. United States* the Supreme Court held that in a forfeiture case in which a potential claimant is a prisoner, the Government satisfies the requirements of due process if –

— it sends notice of the forfeiture proceeding to the prisoner where he is incarcerated, and

— the facility has procedures in place to effect delivery of the mail to the prisoners.

- *Marshall v. United States,* 2010 WL 5678675, *3 (M.D.N.C. Oct. 26, 2010) (to satisfy the notice requirements when the potential claimant is a prisoner, the Government need only send the notice to the jail where the prisoner is housed, and show that the jail has procedures in place to see that mail is promptly delivered to prisoners; that the jail's mail delivery system may have failed in a particular instance does not

render the Government's attempts to give notice constitutionally inadequate) (collecting cases);

- *United States v. Howell,* 354 F.3d 693, 696 (7th Cir. 2004) (sending notice to two addresses from which they were returned undelivered, but not to the one on claimant's driver's license, and not to the jail where DEA knows claimant was held, was inadequate);

- *Alli-Balogun v. United States*, 281 F.3d 362, 365-66 (2d Cir. 2002) (sending notice to prison 2 weeks after claimant was transferred to another prison violated claimant's due process rights under *Dusenbery*);

- *United States v. Edwards*, 185 Fed. Appx. 231, 232 (4th Cir. 2006) (sending notice to a jail in Detroit, when defendant was actually held in Virginia, and was making an appearance in court there, did not comport with due process).

Judicial Review of Administrative Forfeiture

As I have said, there is no judicial review of an administrative forfeiture based on the merits of the case

- The only basis for review is that the Government denied the claimant due process by failing to provide him with adequate notice of the administrative forfeiture proceeding and the right to contest it

  - *United States v. Eubanks,* 169 F.3d 672, 674 (11th Cir. 1999) ("it is inappropriate for a court to exercise equitable jurisdiction to review the merits of a forfeiture matter when the petitioner elected to forego the procedures for pursuing an adequate remedy at law");

  - *Valderrama v. United States*, 417 F.3d 1189, 1196 (11th Cir. 2005) (claimant may only seek relief under section 983(e) when the Government has failed to comply with the notice requirements; he may not challenge the forfeitability of the property);

  - *United States v. Pickett,* 2011 WL 3876974, * (E.D.N.Y. Sept.1, 2011) (review under § 983(e) is limited to challenges to the adequacy of notice; the court lacks subject matter jurisdiction to review the sufficiency of the evidence supporting the forfeiture, even though the evidence was later suppressed in a related case);

In CAFRA, Congress enacted a specific statute to deal with the claims made by property owners seeking to overturn administrative forfeitures based on lack of adequate notice

- 18 U.S.C. § 983(e)

– to prevail on the merits of a challenge filed under that statute, the claimant must show two things:

– that the Government knew or should have known of the claimant's interest in the property but "failed to take reasonable steps" to provide him with notice

– and that the claimant "did not know or have reason to know of the seizure within sufficient time to file a timely claim."

- 18 U.S.C. § 983(e)(1)(A) and (B).

- *Bermudez v. City of New York Police Department,* 2008 WL 3397919, *4 (S.D.N.Y. Aug. 11, 2008) (to prevail under 983(e), plaintiff must show Government did not take reasonable steps to provide notice, and that he did not have actual notice of the seizure in time to file a timely claim);

- *United States v. Russell*, 2006 WL 2786883 (M.D. Ala. 2006) (the movant must show not only that the Government failed to send him proper notice, but also that he did not know of the seizure in time to file a claim);

- *Harrington v. DEA*, 2006 WL 897221, *4 (E.D. Ky. 2006) (under § 983(e)(1), claimant must show that the Government s attempts to provide notice were inadequate *and* that claimant was not aware of the seizure).

The Government will satisfy be able to rebut the challenge to the administrative forfeiture on the first point by showing that it complied with the due process standard that I noted earlier

— Alternatively, the Government will prevail on the challenge to the administrative forfeiture if it shows that despite its failure to provide adequate notice, the claimant *had actual notice* of the seizure and had time to file a valid claim

- *Matthews v. DEA*, 629 Fed. Appx. 723 (6th Cir. 2015) ("the operation of the statute turns largely on one factor: whether the property owner received adequate notice;" if it is undisputed that the claimant received notice, he has no claim under § 983(e));

- *Upshaw v. U.S. Customs Service*, 153 F. Supp. 2d 46, 51 (D. Mass. 2001) (relief under § 983(e) denied notwithstanding agency s alleged failure to send notice where claimant had actual notice of administrative forfeiture in time to file a claim);

- *Taylor v. United States,* 2016 WL 3920238 (N.D. Miss. July 18, 2016) (claimant cannot prevail under § 983(e) if he had knowledge of the seizure and of the DEA's intent to forfeit his property)

In addition, the challenge to the administrative forfeiture must be filed within 5 years of the declaration of forfeiture

— This prevents prisoners who have lots of time on their hands from waiting years after the seizure of their property to complain that they were never given notice of the administrative forfeiture proceeding.

- *Ford-Bey v. United States,* 2020 WL 32991, *9 (D.D.C. Jan. 2, 2020) (declining to equitably toll the 5-year deadline in § 983(e)(3));

- *Tamez v. United States,* 2018 WL 4921731 (S.D. Tex. Oct. 10, 2018) (even if equitable tolling were available, court will not toll 5-year statute of limitations in § 983(e)(3) if plaintiff has not diligently pursued his rights);

If the claimant succeeds in showing that the notice of the forfeiture proceeding was inadequate, the remedy is not to release the property to him,

— but to restart the entire process, allowing him the opportunity to file the claim that he failed to file in the first instance

- *United States v. $10,000 in U.S. Currency,* 613 Fed. Appx. 97 (3rd Cir. 2015) (Government's filing a new civil forfeiture proceeding after claimant successfully moves to vacate administrative forfeiture under § 983(e) does not deprive claimant of due process; claimant's prior successful motion to vacate administrative forfeiture does not exempt him from following the requirement to file a claim and answer if he wishes to contest the new civil forfeiture action);

- *United States v. Nguyen,* 2017 WL 4478012 (W.D. Ky. Oct. 5, 2017) (granting motion to vacate administrative forfeiture for lack of adequate notice without prejudice to commencing new action);

- *Brown v. United States,* 2012 WL 2370120, *3 n.5 (D. Md. June 20, 2012) (the remedy under § 983(e) is to vacate and refile the forfeiture, not the return of the property).

Conclusion

Administrative forfeiture is a useful tool for clearing court dockets and expeditiously disposing of forfeitable property when the forfeiture is uncontested.

- Courts like it because it means they don't have to spend time dealing with cases in which the Government is the only party and the forfeiture is unopposed

- The key, however, is making sure that everyone with a potential interest in the property had adequate notice of the right to file a claim and bring the administrative forfeiture proceeding to a halt

- Assuming due process is given, administrative forfeiture can be an enormously effective law enforcement tool