

**Wisconsin district court finds that although no civil forfeiture complaint was filed within 90-day deadline, government had independent basis for continuing to hold the property, having both indicted it and seized it under a criminal seizure warrant.** After his indictment, the defendant filed a motion for return of property. He argued the government was required to return the cash because it missed the 90-day deadline to file a civil forfeiture complaint and/or obtain a criminal seizure warrant after receiving his written claim to the property. CAFRA requires the government to “promptly release the property pursuant to regulations promulgated by the Attorney General,” and precludes it from taking any further action to effect the civil forfeiture of such property in connection with the underlying offense. The court agreed with the defendant that §983(a)(3)(B) required a prompt release of the property, but noted that the statute required the release to take place pursuant to regulations promulgated by the Attorney General. The court then observed that per 28 C.F.R. §8.13(a) the United States is not required to return property for which it has an independent basis for continued custody, including contraband or evidence of a violation of law. The court found that the government had an independent basis for continued custody of the property. For the three years prior to the arrest, the defendant reported taxable income of \$8,726, however the items seized (over \$520,000 in cash, valuable jewelry and gold) constituted evidence that the defendant (who worked in a tattoo shop and reported less than \$10,000 in taxable income every year) was violating the law. Thus, even though the government had not followed the civil forfeiture procedures under CAFRA and could no longer pursue its civil forfeiture case, the court concluded the government could proceed with a criminal forfeiture. On reconsideration, the defendant argued that factually, the government had no basis for continuing to hold the property as “evidence” because the government converted the money into cashier's checks five days after it was taken from the defendant, and didn't need to hold the money as evidence because it photographed the bills, made reports about the seizure and could produce testimony by the seizing agents at trial. But the court found the government had an independent basis for continuing to hold the property and was in lawful possession of the property, having both indicted it and seized it under a criminal seizure warrant. The court denied the defendant's motion to reconsider. *United States v. Palma*, 21-CR-14-PP, 2021 WL 3081171 (E.D. Wis. July 21, 2021).

**California district court enjoins government from civilly forfeiting property without first sending a forfeiture notice identifying the specific factual and legal basis for commencement of civil forfeiture proceedings.** US Private Vaults operated a facility in Beverly Hills housing over 800 safe deposit boxes. Ruiz rented box containing about \$57,000 in cash. The FBI raided USPV and seized the contents of all the safe deposit boxes there. Ruiz filed a claim with the FBI to retrieve his seized property. The FBI's only response to Ruiz was an email stating that the agency would contact him in 30–60 days. The government, however, did not return Ruiz's property, but instead indicated that it would seek to forfeit the property. Specifically, the government notified lawyers for USPV that it intended to forfeit the property of many USPV box-holders, including Ruiz's. Although some box holders received an individual notice from the government, Ruiz had not. He filed a declaration stating he desperately needed his money since he was currently unemployed, and had been living off the funds in my USPV box prior to the seizure. He also suffered from serious medical issues from a back injury and recently had a finger amputated. He currently was living off canned foods and other provisions

stockpiled at the beginning of the pandemic. The FBI then initiated an administrative forfeiture proceeding seeking to forfeit Ruiz's \$57,000 in cash. The court granted in part a TRO enjoining the government from civilly forfeiting his property without first sending a forfeiture notice identifying the specific factual and legal basis for commencement of civil forfeiture proceedings. Ruiz argued he was entitled to a preliminary injunction based on his likelihood of success on the merits of both his Fifth Amendment Due Process claim, and Fourth Amendment claim for unlawful seizure of his property. Ruiz did not challenge the constitutionality of the government's initial seizure of his property at this juncture. Though the court made no ruling as to the search and seizure, it stated that assuming the government was authorized to seize the nests of safety deposit boxes at USPV, then, by necessity, it was authorized to seize Ruiz's nest egg. However, the government argued it can be difficult and time consuming to return to that person the contents: two special agents (per FBI policy for handling valuables) would have to visit a secure valuables facility, in addition to at least one agent visiting the general storage facility, before meeting with the person to complete the return; the process also generates substantial paperwork, a slow bureaucratic process. The government also asserted, without further explanation, that it was keeping Ruiz's \$57,000 solely because "it was the subject of pending in rem administrative forfeiture proceedings." However, its notice listed purported statutory bases for forfeiture that were vague at best, i.e., it identified simply "Title 18 U.S.C. §981(a)(1)(C)", which lists 35 sections of the United States Code. A violation of any one of these code provisions can provide a basis for forfeiture, including influencing a loan officer, forgery, counterfeiting, uttering counterfeit obligations, smuggling, loan fraud, computer fraud, and bank fraud, among others, however the FBI Notice did not contain any specific factual or legal justification. The court thus said Ruiz satisfied all requirements for the issuance of a preliminary injunction. Note: After additional responses by the parties were filed, on August 3, 2021 the government agreed to return Ruiz's property. *Snitko et al v. United States, et al*, 2:21CV04405RGKMAR, 2021 WL 3139706 (C.D. Cal. July 23, 2021).

**Alabama district court denies government's motion to strike alleged late claim, finding that an administrative claim could be re-used in judicial proceedings to satisfy the requirements of Rule G(5)(a).** When the government files a civil forfeiture action, potential claimants are subject to a clearly established, two-step procedure for asserting a claim to the defendant property. First, the claimant must file a "claim," generally within 35 days after the government sends notice to the potential claimant. Second, the claimant must then file an "answer," generally within 21 days after filing his claim. The claimant here filed both a claim and an answer, but he did not do so in the right order or at the right times. These irregularities prompted the government to file a motion to strike the claimant's answer, amended answer and claim. The claimant responded with a motion to afford him leave to proceed with his claim. The government sent the claimant direct notice of the action on March 9, making the claimant's claim due on April 13, as the notice advised. Rather than file a claim, the claimant on April 13 filed an answer and an amended answer on April 14, including counterclaims against various law enforcement officials and entities, and on April 19, the claimant moved to implead them. On May 3, the government filed a brief in opposition to this motion, but did not object that the claimant failed to file a claim. The first time it raised any issue regarding the filing of a claim was on May 19 in a letter to counsel advising the claimant to "remedy this deficiency" by filing his claim no later than May 26, failing which the plaintiff would "address this issue directly with the Court." On

May 26, claimant's counsel left a voicemail for plaintiff's counsel stating that, due to his daughter's high school graduation that date, he would be unable to file a claim by the plaintiff's unilaterally imposed deadline. On May 27, the claimant filed what he styled a "claim." Attached as an exhibit to the claim was the "CAFRA Seized Asset Claim Form" the claimant had submitted in the administrative proceedings in December 2020. A claim under Supplemental Rule G(5) must 1) identify the specific property claimed; 2) identify the claimant; 3) state the claimant's interest in the property; 4) be signed by the claimant under penalty of perjury; and (5) be served on the government's attorney. Supplemental Rule G(5)(a)(i). The "claim" filed here did not satisfy the fourth requirement, but the attached administrative claim form checked all five boxes. As of May 27, therefore, the plaintiff had filed a claim compliant with the rule in every respect except timeliness. Then, on June 3, the claimant filed a "verified claim," which also satisfied all requirements. The government denied the claimant ever filed a claim, arguing that a claimant's statement of interest under the rule must include "reasonable facts establishing his interest" in the defendant property, i.e., name the legitimate business from which the funds were derived; identify the year the funds were earned; state whether taxes were paid, or are owed, on the funds; identify what lawful businesses paid the funds to the claimant or his business; identify the specific lawful goods and/or services for which the funds were paid; specify what amounts were paid for which goods and/or services; identify the mode of payment (e.g., cash); identify the dates of payment; and explain why payments were made in cash. However, the government identified no legal authority reading such an onerous requirement into Supplemental Rule G(5)(a)(i)(B). An assertion of ownership, such as legal title, is enough to satisfy the Rule. Multiple appellate courts have rejected the plaintiff's unsupported position. The government also offered no authority for the proposition that an administrative claim cannot be re-used in judicial proceedings. Nothing compelled the government to file its motion or to oppose the claimant's corresponding motion for leave to proceed with his claim; the plaintiff could have accepted the late filing of the claim as just one of those imperfect things that happen in litigation and moved on. Indeed, had the claimant filed his claim on May 26 rather than five business hours later, the plaintiff was on record that it would not have filed its motion and would not have raised any issue with the court regarding an untimely claim. The court thus held that the verified claims filed by the claimant on May 27 and June 3 were timely, and denied the government's motion. *United States v. \$60,028.00, More or Less, in U.S. Currency*, CV 21-0106-WS-N, 2021 WL 3179301 (S.D. Ala. July 26, 2021).