Form No.:	CRM1005
Document:	Application and Affidavit for Criminal Seizure Warrant for Personal Property, 21 U.S.C. § 853(f)

Application for Criminal Seizure Warrant for Personal Property—21 U.S.C. § 853(f)

Include the following language in the Application for Criminal Seizure Warrant:

"The United States asserts that the Court should issue a Criminal Seizure Warrant as authorized under 21 U.S.C. § 853(f) because:

1. There is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture, and

2. An order under 21 U.S.C. § 853(e) may not be sufficient to assure the availability of the property for forfeiture."

Include the following language in an application filed <u>before</u> an indictment is returned:

"The Affidavit attached hereto and incorporated herein sets forth probable cause to forfeit the property and the reasons why an order under 21 U.S.C. § 853(e) may be inadequate."

Include the following language in an application filed <u>after</u> and indictment is returned:

"On [date], an Indictment was returned which alleges that all of the interest of the defendant [name] in the property to be seized is subject to forfeiture in the event of conviction. The return of the Indictment constitutes the requisite probable cause for the forfeiture of the property.
The Affidavit attached hereto and incorporated herein sets forth the reasons why an order under 21 U.S.C. § 853(e) may be inadequate."

"An order under 21 U.S.C. § 853(e) may not be sufficient to assure the availability of the property for forfeiture because there is reason to believe that the property is in the custody of the defendant, which custodian cannot reasonably be relied on to abide by an order to maintain the property in substantially the same condition as it is at the present time in order that it will be available for forfeiture because [___]."

"A protective order under 21 U.S.C. § 853(e) may not be sufficient to assure the availability of the property for forfeiture because there is reason to believe that the property is not in the custody of a traditional financial institution but is in the custody of [___], which custodian cannot reasonably be relied on to abide by an order to maintain the property in substantially the same condition as it is at the present time because [__]."

In appropriate cases you may want to add to the Application and/or Affidavit:

"The United States requests that the Court in the warrant define the contents of the account as all principal, deposits, interest, dividends, and other amounts credited to the account on and after execution of the warrant up to final liquidation of the account. The United States further requests that the Court in the warrant authorize the [agency] to effect the seizure of the contents of the account by the [agency], in its discretion, directing the financial institution at which the account is established to do any of the following without further order of the Court:

1. To freeze the contents of the account in place and to refuse the withdrawal of any amount from the account by anyone other than the [agency], and while any contents of the account are frozen in place to accrue any deposits, interest, dividends, and any other amount credited to the account until the [agency] directs that the contents of the account be finally liquidated and no contents remain;

2. To liquidate some or all of the contents of the account at one or more times and upon any liquidation of any contents to turn over the liquidated amount to the [agency].

The United States seeks this authorization in order to maximize the value of the contents seized from the account considering that the account may be an interest-bearing account, a timed account, an account to which a penalty for early withdrawal applies, or have some other aspect affecting its value."

Form No.:	CRM1006
Document:	Criminal Seizure Warrant for Personal Property, 21 U.S.C. § 853(f)

Criminal Seizure Warrant for Seizure of Personal Property—21 U.S.C. § 853(f)

Include the following language in the proposed Criminal Seizure Warrant:

"The United States has, in its Application and Affidavit in support thereof, made the requisite showings under 21 U.S.C. § 853(f) that:

1. There is probable cause to believe that the real property to be seized would, in the event of conviction of the defendant, be subject to forfeiture, and

2. An order under 21 U.S.C. § 853(e) may not be sufficient to assure the availability of the real property for forfeiture.

Therefore, the United States is authorized to seize the real property to assure its availability for forfeiture."

In appropriate cases you may want to include in the Criminal Seizure Warrant:

"The contents of the account shall consist of all principal, deposits, interest, dividends, and other amounts credited to the account on and after execution of the warrant up to final liquidation of the account. The [agency] is hereby authorized, without further order of the Court, to effect the seizure of the contents of the account by, in its discretion, directing the financial institution at which the account is established to do any of the following:

1. To freeze the contents of the account in place and to refuse the withdrawal of any amount from the account by anyone other than the [agency], and while any contents of the account are frozen in place to accrue any deposits, interest, dividends, and any other amount credited to the account until the [agency] directs that the contents of the account be finally liquidated and no contents remain;

2. To liquidate some or all of the contents of the account at one or more times at the direction of the [agency], and upon any such liquidation of any contents to turn over the liquidated amount to the [agency]. Any such direction of the [agency] shall be deemed to be the direction of the Court under this warrant."

Form No.:	CRM1105
Document:	*Ex Parte* Post-indictment Application for Restraining Order, 21 U.S.C. § 853(e)(1)(A)
Comments:	Upon return of an indictment or criminal information that includes a forfeiture charge, the United States may file a motion for a restraining order against the assets subject to forfeiture under section 853(e)(1)(A). The indictment should be returned under seal until the court has issued the restraining order and law enforcement agents have served it so that the defendant does not prematurely learn of the Government's intent to forfeit his assets. As a general rule, a *lis pendens* should also be filed where real property is involved as soon as possible after the indictment's return. However, if the indictment is returned under seal the practitioner should look to state law of the state where the real property is situated to determine whether a *lis pendens* may be filed **before** the indictment is unsealed.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF

UNITED STATES OF AMERICA,) **UNDER SEAL**
)
v.) Criminal Action No.
)
JOHN DOE,)
)
Defendant.)

GOVERNMENT'S *EX PARTE* APPLICATION
FOR POST-INDICTMENT RESTRAINING ORDER

COMES NOW the United States, by and through the United States Attorney for this District, and makes application to this Court, pursuant to 21 U.S.C. § 853(e)(1)(A), for a restraining order to preserve the availability of certain property that is subject to forfeiture in the above-styled criminal action. As grounds therefor, the government states as follows:

1. That pursuant to 21 U.S.C. § 853(e)(1), this Court is authorized to enter a restraining order or injunction, require the execution of satisfactory performance bond, or take any other action to preserve the availability of property subject to forfeiture.

2. That on [insert date], [John Doe] was indicted by a federal grand jury for this district on charges of [illegal cocaine trafficking], in violation of [21 U.S.C. §§ 841 and 846]. *See* United States v. John Doe, [Case No. 0000]. As part of said Indictment, the United States is seeking the criminal forfeiture

under [21 U.S.C. § 853] of certain property; to-wit: [identify property] in which [John Doe] holds an interest.

3. That said Indictment alleges that the property with respect to which the order is sought would, in the event of [John Doe's] conviction, be subject to forfeiture under [21 U.S.C. § 853]. [Optional: The [affidavit/declaration] of [Case Agent] is submitted herewith in further support of the Government's application for a restraining order.]

4. That the federal grand jury's indictment of [John Doe], which specifically identified property as being subject to forfeiture under [21 U.S.C. § 853], establishes sufficient probable cause for the issuance of this restraining order.

5. That destruction or the transfer, movement, conveyance, or encumbrance of the subject property by the defendant or any third party could render said property unavailable for forfeiture.

6. That any third party claims to the subject property may be properly brought and resolved in ancillary proceedings conducted by this Court following the execution of a Preliminary Order of Forfeiture and service of notice to all interested parties in accordance with the provisions of federal forfeiture law.

LEGAL MEMORANDUM

Pursuant to [21 U.S.C. § 853], a person convicted of a violation of [21 U.S.C. §§ 841 and 846], in addition to any other penalty, shall forfeit to the United States:

> any property constituting, or derived from any proceeds that person obtained, directly or indirectly, as a result of that violation; and
>
> any of that person's property used or intended to be used to commit, or facilitate the commission of such violation.

In order to assure the availability of property for forfeiture upon conviction, 21 U.S.C. § 853(e)(1) provides that the court may enter a restraining order upon the filing of an indictment. Title 21, United States Code, Section 853(e), in pertinent part, provides:

> (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property…for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation…for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; …

Pre-trial restraint of assets under 21 U.S.C. § 853(e) has been approved by the United States Supreme Court and the United States Court of Appeals for the Eleventh Circuit. In United States v. Monsanto, 491 U.S. 600, 109 S.Ct. 2657 (1989), the district court restrained, under 21 U.S.C. § 853, a defendant from disposing of his house, his apartment and $35,000 in cash prior to trial. The Supreme Court upheld the pre-trial restraint, noting:

"[I]t would be odd to conclude that the Government may not restrain property, such as the home and apartment in respondent's possession, based on a finding of probable cause, when we have held that …, the Government may restrain persons where there is a finding of probable cause to believe that the accused has committed a serious offense."

Id., at 615-16.

In the same year as the Monsanto decision, the Eleventh Circuit recognized the right of the United States to seek pre-trial restraint of forfeitable assets:

To preserve forfeitable assets for a possible conviction, the district court may restrain the defendant from using…assets before trial. The restraints may be imposed by way of a restraining order, an injunction, the execution of a performance bond, or a temporary seizure of certain assets which, because of their liquidity, can be readily transferred or hidden.

United States v. Bissell, 866 F.2d 1343, 1349 (11th Cir.), *cert. denied*, 493 U.S. 876 (1980).

In determining whether to issue a restraining order, "[t]he return of the indictment by the federal grand jury…represents a determination of probable cause sufficient to issue a restraining order under 21 U.S.C. § 853(e)(1)(A)…." United States v. Sellers, 848 F.Supp. 73, 75 (E.D. La. 1994); *accord*, In re Billman, 915 F.2d 916, 919 (4th Cir. 1990), *cert. denied*, 500 U.S. 952 (1991) ("[T]he government may 'seize property based on a finding of probable cause to believe that the property will ultimately be proven forfeitable,'(citation omitted). The probable cause found by the grand jury satisfies the government's burden of proving the allegations of the indictment."). As noted in the legislative history of the Comprehensive Crime Control Act of 1984.

For the purposes of issuing a restraining order, the probable cause established in the indictment or information is to be determinative of any issue regarding the merits of the government's case on which the forfeiture is to be based.

S.Rep. No. 225, 98th Cong., 2d Sess. 203 (1984), *reprinted in* 1984 U.S. Code Cong. & Admin. News 3182, 3386.

In the present case, the federal grand jury's indictment of [John Doe], which specifically identified property as being subject to forfeiture, establishes sufficient probable cause for the issuance of a restraining order. The United States seeks to preserve the status quo of the subject property to prevent its alienation or dissipation. The purpose of pre-trial restraint of property is to preserve the availability of property that can be forfeited after trial. In re Billman, 915 F.2d at 921.

Wherefore, for the foregoing reasons, the Government requests this Court to enter a protective order immediately restraining, prohibiting, and enjoining [John Doe] and his agents, servants, employees, attorneys, family members and those persons in active concert or participation with him, and those persons, financial institutions, or entities who have any interest or control over the subject property from attempting or completing any action that would affect the availability, marketability or value of said property, including but not limited to selling, assigning, pledging, distributing, encumbering, wasting, secreting or otherwise disposing of, or removing from the jurisdiction of this Court, all or any part of their interest, direct or indirect, in the subject property.

The Government further requests that the property owner(s) be required to maintain the present condition of any real property subject to the restraining order, including timely payment of all mortgage payments, and insurance, utilities, taxes, and assessments until further order of this Court. The Government requests authorization to enter said real properties to videotape conditions in order to verify that said properties are being maintained.

The Government further requests that any financial institutions holding any accounts subject to this Order be prohibited from taking offsets against such accounts, and that they continue to credit any deposits, interest, dividends, or other credits to such accounts in the normal course of business, and such deposits, interest, dividends, and other credits shall be subject to this Order. [Optional: Payments from bank accounts for automated drafts initiated prior to the date of entry of this Order, and payments upon checks delivered to third parties before the date of entry of this Order are excepted from restraint for ten (10) days from the date of entry of this Order.] In addition, upon receiving notice of this Order, that each financial institution be required to promptly inform the Government as to the account balances at the time of notice, and thereafter supplement such information by reporting to the Government any changes to the accounts, and by responding promptly to requests by the Government for information on the accounts' current status.

The Government further requests that any financial institutions holding mortgages on real properties subject to this Order be required to respond promptly to requests by the Government for information on said mortgages' current status.

The Government further requests that within ten (10) days of receipt of this Order, [John Doe] repatriate any and all properties subject to this Order that are located outside of the United States over which he has any direct or indirect interest or control, including but not limited to, all such assets that are directly owned by him as well as all such assets that indirectly owned by or credited to his benefit through his agents, nominees or business entities controlled by him. The Government requests that said properties be deposited pending trial in the registry of this Court, or with the [United States Marshals Service/Secretary of the Treasury], in an interest-bearing account, if appropriate, in accordance with 21 U.S.C. § 853(e)(4).

The Government further requests that the [U.S. Marshal/Secretary of Treasury or his designee] be directed to promptly serve a copy of this Restraining Order upon [John Doe], and [identify all other appropriate individuals and/or financial institutions], and make a return thereon reflecting the date and time of service.

The Government further requests that this Restraining Order remain in full force and effect until further order of this Court.

Respectfully submitted,

____

United States Attorney

____

Assistant United States Attorney

Form No.:	CRM1106
Document:	*Ex Parte* Post-indictment Restraining Order, 21 U.S.C. § 853(e)(1)(A)
Comments:	Section 853(e) does not set forth any hearing requirements incidental to the issuance of a post-indictment restraining order, and no circuit requires that an adversarial hearing be held prior to the issuance of such an order. The circuits are divided, however, regarding whether due process requires an adversarial hearing **following** the issuance of a post-indictment restraining order under § 853(e)(1)(A). The practitioner is advised to check the current law on this issue for his or her circuit.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF

UNITED STATES OF AMERICA,	)	**UNDER SEAL**
	)	
v.	)	Criminal Action No.
	)	
JOHN DOE,	)	
	)	
Defendant.	)	

POST-INDICTMENT RESTRAINING ORDER

The United States has made an *ex parte* application to this Court, pursuant to 21 U.S.C. § 853(e)(1)(A), for a restraining order to preserve the availability of certain property that is subject to forfeiture in the above-styled criminal action. Upon consideration of the Government's application, [the verified materials submitted in support thereof—if appropriate], and the Indictment of [John Doe], it appears to the Court that there is reasonable cause to enter a restraining order to preserve the subject property based upon the following:

1. That a federal grand jury of this district has returned an Indictment against [John Doe] on charges of [illegal trafficking of cocaine], in violation of [21 U.S.C. §§ 841 and 846]. Furthermore, said Indictment alleges criminal forfeiture under [21 U.S.C. § 853] of certain property; to-wit: [identify property], in which [John Doe] holds an interest.

2. That the federal grand jury's indictment of [John Doe], which specifically identified property as being subject to forfeiture under [21 U.S.C. § 853], establishes sufficient probable cause for the issuance of this restraining order.

3. That in the event [John Doe] is convicted of the charges alleged in said Indictment, the subject property would be subject to forfeiture under [21 U.S.C. § 853].

4. That the need to preserve the availability of the subject property through the entry of the order requested herein outweighs the hardship on any party against whom the order is to be entered.

5. That any third party claims to the subject property may be properly brought and resolved in ancillary proceedings conducted by this Court following the execution of a Preliminary Order of Forfeiture in accordance with the provisions of federal forfeiture law.

THEREFORE, IT IS HEREBY ORDERED AND DECREED:

That, effective immediately, [John Doe], his agents, servants, employees, attorneys, family members and those persons in active concert or participation with him, and those persons, financial institutions, or other entities who have any interest or control over the subject property are hereby

RESTRAINED, ENJOINED, AND PROHIBITED, without prior approval of this Court and upon notice to the United States and an opportunity for the United States to be heard, from attempting or completing any action that would affect the availability, marketability or value of said property, including but not limited to selling, transferring, assigning, pledging, distributing, encumbering, wasting, secreting, depreciating, damaging, or in any way diminishing the value of, all or any part of their interest, direct or indirect, in the following property:

[Identify the property subject to this Order]

IT IS FURTHER ORDERED that the property owner(s) are required to maintain the present condition of any real property subject to this Order, including timely payment of all mortgage payments, and insurance, utilities, taxes, and assessments until further order of this Court. The Government is hereby authorized to enter said real properties to videotape conditions in order to verify that said properties are being maintained.

IT IS FURTHER ORDERED that any financial institutions holding any accounts subject to this Order shall take no offsets against such accounts. They shall continue to credit any deposits, interest, dividends, or other credits to such accounts in the normal course of business, and such deposits, interest, dividends, and other credits shall be subject to this Order. [Optional: Payments from bank accounts for automated drafts initiated prior to the date of entry of this Order, and payments upon checks delivered to third parties before the date of entry of this Order are excepted from restraint for ten (10) days from the date of entry of this Order.] In addition, upon receiving notice of this Order, each financial institution shall promptly inform the Government as to the account balances at the time of notice, and shall thereafter supplement such information by reporting to the Government any changes to the accounts, and by responding promptly to requests by the Government for information on the accounts' current status.

IT IS FURTHER ORDERED that any financial institutions holding mortgages on real properties subject to this Order shall respond promptly to requests by the Government for information on said mortgages' current status.

IT IS FURTHER ORDERED, pursuant to the provisions of 21 U.S.C. § 853(e)(4), that within ten (10) days of receipt of this Order, [John Doe] shall repatriate and deposit with the registry of this Court any and all properties subject to this Order located outside of the United States over which he has any direct or indirect interest or control, including but not limited to, all such assets that are directly owned by him as well as all such assets that indirectly owned by or credited to his benefit through his agents, nominees or business entities controlled by him. Said properties shall be deposited pending trial in the registry of this Court, or with the [United States Marshals Service/Secretary of the Treasury], in an interest-bearing account, if appropriate.

IT IS FURTHER ORDERED that the United States or any Subject of this Order may seek modifications of this Order if it is deemed necessary by them to preserve their interest in the subject property.

IT IS FURTHER ORDERED that any Subject of this Order shall be permitted to execute a satisfactory performance bond pursuant to [21 U.S.C. § 853(e)(1)] as an alternative to the restraint of the subject property. After notice to the United States and an opportunity to be heard, the Court shall determine whether any proposed bond is a satisfactory performance bond.

IT IS FURTHER ORDERED that the [U.S. Marshal/Secretary of Treasury or his designee] shall promptly serve a copy of this Restraining Order upon [John Doe], [identify all other appropriate individuals and/or financial institutions], and shall a make a return thereon reflecting the date and time of service.

THIS RESTRAINING ORDER shall remain in full force and effect until further order of this Court.

DONE this the _______ day of _________________, 2001.

____

United States District Judge

Form No.:	CRM2002
Document:	Indictment/Information Forfeiture Allegations, Rule 32.2(a), 21 U.S.C. §§ 841(a)(1), 846, and 853, Drug Criminal Forfeiture
Comments:	Please review the summary of "indictments" at the beginning of this packet.

CRIMINAL FORFEITURE

COUNT _____ [FORFEITURE]

or

FORFEITURE ALLEGATION

Upon conviction of one or more of the controlled substance offenses alleged in Count(s) [__] of this Indictment, defendant(s) [________], shall forfeit to the United States pursuant to 21 U.S.C. § 853, any property constituting, or derived from, proceeds obtained, directly or indirectly, as a result of the said violation[s] and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of the said violation[s], including but not limited to the following:

[Completely describe the property]

1. MONEY JUDGMENT

   A sum of money equal to $ [________] in United States currency, representing the amount of proceeds obtained as a result of the offense, [specify the offense] [if applicable: for which the defendants are jointly and severally liable].

2. REAL PROPERTY

   All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at [________________], more particularly described as:

3. CONVEYANCE

   [Year, make, model, license and vehicle identification number.]

4. CURRENCY

   Approximately $ [_________] in United States currency.

5. SAFE DEPOSIT BOX

   All those items of value discovered and seized on or about [Date] from safe deposit box [Number], located at [Bank], rented by [Name] which includes: [list items]

6. JEWELRY

   Precious gemstones, precious metals, and jewelry seized on or about [Date] from the residence/business of [Name] the defendant(s), located at [Address], which includes the following: [list items]

7. BANK ACCOUNT

   All United States currency funds or other monetary instruments credited to account number [Number] in the name of [Account holder's name], located at [Address].

8. LIST AND DESCRIBE ALL OTHER PROPERTY

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above, including but not limited to the following:

[List and describe any known assets of the defendant(s) to be substituted]

Form No.:	CRM2003
Document:	Indictment/Information Forfeiture Allegations, Rule 32.2(a), Money Laundering Criminal Forfeiture, 18 U.S.C. §§ 982(a)(1), 1956 or 1957
Comments:	Please review the summary box of "indictments" at the beginning of this packet.

MONEY LAUNDERING CRIMINAL FORFEITURE
18 U.S.C. §§ 982(a)(1), 1956 or 1957

COUNT _____ [FORFEITURE]

or

FORFEITURE ALLEGATION

Pursuant to Title 18, United States Code, Section 982(a)(1), each defendant who is convicted of one or more of the offenses set forth in Counts [___] through [___] shall forfeit to the United States the following property:

a. All right, title, and interest in any and all property involved in each offense in violation of Title 18, United States Code, Section 1956 [or 1957], or conspiracy to commit such offense, for which the defendant is convicted, and all property traceable to such property, including the following: (1) all money or other property that was the subject of each transaction, transportation, transmission or transfer in violation of Section 1956 [or 1957]; (2) all commissions, fees and other property constituting proceeds obtained as a result of those violations; and (3) all property used in any manner or part to commit or to facilitate the commission of those violations.

[Completely describe the property]

1. MONEY JUDGMENT
   A sum of money equal to the total amount of money involved in each offense, or conspiracy to commit such offense, for which the defendant is convicted. If more than one defendant is convicted of an offense, the defendants so convicted are jointly and severally liable for the amount involved in such offense.

2. REAL PROPERTY
   All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at [________________], more particularly described as:

3. CONVEYANCE
   [Year, make, model, license and vehicle identification number.]

4. CURRENCY

   Approximately $ [________] in United States currency.

5. SAFE DEPOSIT BOX

   All those items of value discovered and seized on or about [Date] from safe deposit box [Number], located at [Bank], rented by [Name] which includes: [list items]

6. JEWELRY

   Precious gemstones, precious metals, and jewelry seized on or about [Date] from the residence/business of [Name] the defendant(s), located at [Address], which includes the following: [list items]

7. BANK ACCOUNT

   All United States currency funds or other monetary instruments credited to account number [Number] in the name of [Account holder's name], located at [Address].

8. LIST AND DESCRIBE ALL OTHER PROPERTY

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above, including but not limited to the following:

9. SUBSTITUTE ASSETS

   Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), each defendant shall forfeit substitute property, up to the value of the amount described in paragraph 1, if, by any act or omission of the defendant, the property described in paragraph 1, or any portion thereof, cannot be located upon the exercise of due diligence; has been transferred, sold to or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty.

All in accordance with Title 18, United States Code, Section 982(a)(1), and Rule 32.2(a), Federal Rules of Criminal Procedure.

Form No.:	CRM2004
Document:	Forfeiture Allegations for Currency Reporting Offenses, 31 U.S.C. §§ 5317(c) and 5324(a)
Comments:	Please review the summary box on "indictments" at the beginning of this packet. This forfeiture provision is applicable to crimes committed after October 26, 2001. For prior crimes, use this form citing 18 U.S.C. § 982(a)(1) rather than 31 U.S.C. § 5317(c).

CURRENCY REPORTING/STRUCTURING CRIMINAL FORFEITURE

COUNT ______ [FORFEITURE]

or

FORFEITURE ALLEGATION

Upon conviction of one or more of the offenses alleged in Count(s) [___] of this Indictment, defendant(s) [___________] shall forfeit to the United States pursuant to 31 U.S.C. § 5317(c)(1), all property, real and personal, involved in the offense(s), and any property traceable thereto, including but not limited to the following:

[Completely describe the property]

1. MONEY JUDGMENT

   A sum of money equal to $ [________] in United States currency, representing the amount of money involved in the offense, [specify the offense] [if applicable: for which the defendants are jointly and severally liable].

2. REAL PROPERTY

   All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at [_________________], more particularly described as:

3. CONVEYANCE

   [Year, make, model, license and vehicle identification number.]

4. CURRENCY

   Approximately $ [_________] in United States currency.

5. SAFE DEPOSIT BOX

   All those items of value discovered and seized on or about [Date] from safe deposit box [Number] located at [Bank], rented by [Name] which includes: [list items]

6. JEWELRY

Precious gemstones, precious metals, and jewelry seized on or about [Date] from the residence/business of [Name] the defendant(s), located at [Address], which includes the following: [list items]

7. BANK ACCOUNT

All United States currency funds or other monetary instruments credited to account number [Number] in the name of [Account holder's name], located at [Address].

8. LIST AND DESCRIBE ALL OTHER PROPERTY

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above, including but not limited to the following:

[List and describe any known assets of the defendant(s) to be substituted]

Form No.:	CRM2005
Document:	Indictment/Information Forfeiture Allegations, Rule 32.2(a), 18 U.S.C. § 982 or 981(a)(1)(C) and 28 U.S.C. § 2461(c), Proceeds of Specified Unlawful Activity (SUA), Criminal Forfeiture
Comments:	Please review the summary of "indictments" at the beginning of this packet. The proceeds of any offense constituting a "specified unlawful activity" as defined in Title 18, section 1956(c)(7), or a conspiracy to commit the offense are forfeitable in the criminal proceeding. Criminal forfeiture of proceeds of several of these offenses is authorized in two separate sections of the code: 18 U.S.C. § 982(a)(2)-(5) and 18 U.S.C. § 981(a)(1)(C)-(F) [Criminal forfeiture is authorized under this civil statute by 28 U.S.C. § 2461(c).] Carefully review which statute you wish to use; the forfeitable property may be labeled "gross receipts," "proceeds," or "gross proceeds" depending on the statute you select. The term "proceeds" is defined, for purposes of 18 U.S.C. § 981(a)(1), in subsection (a)(2) of that statute. Some of these provisions have been in place for several years; others were added by CAFRA, which became effective August 23, 2000, and still others were added by the USA PATRIOT Act, which became effective October 26, 2001. To avoid *ex post facto* issues, please review the dates of the crimes and the effective dates of the relevant provisions.

PROCEEDS OF CRIME CRIMINAL FORFEITURE

COUNT ______ [FORFEITURE]

or

FORFEITURE ALLEGATION

Upon conviction of one or more of the offenses alleged in Count(s) [___] of this Indictment, defendant(s) [___________] shall forfeit to the United States pursuant to 18 U.S.C. § 982, [or 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)] any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violation(s), including but not limited to the following:

[Completely describe the property]

1. MONEY JUDGMENT

   A sum of money equal to $ [________] in United States currency, representing the amount of proceeds obtained as a result of the offense, [specify the offense] [if applicable: for which the defendants are jointly and severally liable].

2. REAL PROPERTY

   All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at [________________], more particularly described as:

3. CONVEYANCE

   [Year, make, model, license and vehicle identification number.]

4. CURRENCY

Approximately $ [_________] in United States currency.

5. SAFE DEPOSIT BOX

All those items of value discovered and seized on or about [Date] from safe deposit box [Number], located at [Bank], rented by [Name] which includes: [list items]

6. JEWELRY

Precious gemstones, precious metals, and jewelry seized on or about [Date] from the residence/ business of [Name] the defendant(s), located at [Address], which includes the following: [list items]

7. BANK ACCOUNT

All United States currency funds or other monetary instruments credited to account number [Number] in the name of [Account holder's name], located at [Address].

8. LIST AND DESCRIBE ALL OTHER PROPERTY

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above, including but not limited to the following:

[List and describe any known assets of the defendant(s) to be substituted]

Form No.:	CRM2007
Document:	Indictment/Information Forfeiture Allegations, Rule 32.2(a), 18 U.S.C. § 982(a)(7), Health Care Fraud, Criminal Forfeiture
Comments:	Please review the summary box of "indictments" at the beginning of this packet. Please see 18 U.S.C. § 24 for the definition of "Federal health care offense." It includes violations of 18 U.S.C. §§ 669, 1035, 1347, 1518, 287, 371, 664, 666, 1001, 1027, 1341, 1343, and 1954.

HEALTH CARE FRAUD CRIMINAL FORFEITURE

COUNT _____ [FORFEITURE]

or

FORFEITURE ALLEGATION

Upon conviction of one or more of the Federal health care offenses alleged in Count(s) [___] of this Indictment, defendant(s) [___________] shall forfeit to the United States pursuant to 18 U.S.C. § 982(a)(7), all property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense, including but not limited to the following:

[Completely describe the property]

1. MONEY JUDGMENT

   A sum of money equal to $ [________] in United States currency, representing the amount of proceeds obtained as a result of the offense, [specify the offense] [if applicable: for which the defendants are jointly and severally liable].

2. REAL PROPERTY

   All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at [________________], more particularly described as:

3. CONVEYANCE

   [Year, make, model, license and vehicle identification number.]

4. CURRENCY

   Approximately $ [________] in United States currency.

5. SAFE DEPOSIT BOX

   All those items of value discovered and seized on or about [Date] from safe deposit box [Number], located at [Bank], rented by [Name] which includes: [list items]

6. JEWELRY

   Precious gemstones, precious metals, and jewelry seized on or about [Date] from the residence/business of [Name] the defendant(s), located at [Address], which includes the following: [list items]

7. BANK ACCOUNT

   All United States currency funds or other monetary instruments credited to account number [Number] in the name of [Account holder's name)], located at [Address].

8. LIST AND DESCRIBE ALL OTHER PROPERTY

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above, including but not limited to the following:

[List and describe any known assets of the defendant(s) to be substituted]

Form No.:	CRM2009
Document:	Indictment/Information Forfeiture Allegations, Rule 32.2(a), 18 U.S.C. § 924(d), 28 U.S.C. § 2461(c), Firearms Criminal Forfeiture
Comments:	Please review the summary box of "indictments" at the beginning of this packet. The USA PATRIOT Act, effective October 26, 2001, provides that the proceeds of unlawful importation of firearms in violation of 18 U.S.C. § 922(l) and the proceeds of firearms trafficking in violation of 18 U.S.C. § 924(n) are subject to forfeiture. Please use Form CRM2005 to forfeit those proceeds. This form is designed to accomplish a forfeiture of firearms and ammunition pursuant to 18 U.S.C. § 924(d) only.

FIREARMS CRIMINAL FORFEITURE

COUNT _____ [FORFEITURE]

or

FORFEITURE ALLEGATION

Upon conviction of one or more of the offenses alleged in Count(s) [___] of this Indictment, defendant(s) [______________] shall forfeit to the United States pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), all firearms and ammunition involved in the commission of the offense, including but not limited to the following:

Firearm or Ammunition

[Describe each firearm or ammunition]

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 28 U.S.C. § 2461(c), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above, including but not limited to the following:

[List and describe any known assets of the defendant to be substituted]

Form No.:	CRM2010
Document:	Indictment/Information Forfeiture Allegations, Rule 32.2(a), 18 U.S.C. § 982(a)(6), Alien Smuggling, Criminal Forfeiture
Comments:	If you are considering seizing and forfeiting a business, please read the summary of "indictments" at the beginning of this packet and contact the staff at the Asset Forfeiture Money Laundering Section in the Department of Justice for assistance prior to the seizure.

ALIEN SMUGGLING CRIMINAL FORFEITURE

COUNT _____ [FORFEITURE]

or

FORFEITURE ALLEGATION

Upon conviction of one or more of the offenses alleged in Count(s) [___] of this Indictment, defendant(s) [______________] shall forfeit to the United States pursuant to 18 U.S.C. § 982(a)(6), all conveyances used in the commission of the violation, all property, real and personal, that constitutes or is derived from or is traceable to proceeds obtained directly or indirectly from the commission of the offense, and all property, real or personal, that was used to facilitate, or was intended to be used to facilitate the commission of the offense, including but not limited to the following:

[Completely describe the property]

1. MONEY JUDGMENT

   A sum of money equal to $ [________] in United States currency, representing the amount of proceeds obtained as a result of the offense, [specify the offense] [if applicable: for which the defendants are jointly and severally liable].

2. REAL PROPERTY

   All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at [________________], more particularly described as:

3. CONVEYANCE

   [Year, make, model, license and vehicle identification number.]

4. CURRENCY

   Approximately $ [________] in United States currency.

5. SAFE DEPOSIT BOX

   All those items of value discovered and seized on or about [Date] from safe deposit box [Number], located at [Bank], rented by [Name] which includes: [list items]

6. JEWELRY

   Precious gemstones, precious metals, and jewelry seized on or about [Date] from the residence/business of [Name] the defendant(s), located at [Address], which includes the following: [list items]

7. BANK ACCOUNT

   All United States currency funds or other monetary instruments credited to account number [Number] in the name of [Account holder's name], located at [Address].

8. LIST AND DESCRIBE ALL OTHER PROPERTY

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to18 U.S.C. § 982(b) and 21 U.S.C. § 853(p), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above, including but not limited to the following:

[List and describe any known assets of the defendant to be substituted]

Form No.:	CRM2013
Document:	Indictment/Information Forfeiture Allegations, Rule 32.2(a), Terrorism Criminal Forfeiture, 18 U.S.C. § 981(a)(1)(G)
Comments:	Please review the summary box of "indictments" at the beginning of this packet. This statute authorizes forfeiture of *all* assets of any individual, entity or organization engaged in planning, or perpetrating any act of domestic or international terrorism and all assets, foreign and domestic, affording any person a source of influence over any such entity or organization; and all assets acquired or maintained with the intent and for the purpose of supporting, planning conducting or concealing an act of terrorism; and all assets derived from, involved in or used to commit any act of terrorism. Domestic and international terrorism are defined in 18 U.S.C. § 2331.

TERRORISM FORFEITURE

18 U.S.C. §§ 981(a)(1)(G), 2331 and 28 U.S.C. § 2461(c)

COUNT _____ [FORFEITURE]

or

FORFEITURE ALLEGATION

1. The violations alleged in Counts [___] through [____] of this Indictment are realleged and incorporated by reference herein for the purpose of alleging forfeiture to the United States of America pursuant to the provisions of Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 981(a)(1)(G).

2. The violations of Title 18, United States Code, Section [____] alleged in Counts [___] through [____] of this Indictment were acts of international terrorism, as that term is defined in Title 18, United States Code, Section 2331, against the United States and its citizens.

3. The [Terrorist Organization] was an entity or organization engaged in planning and perpetrating act of international terrorism against the United States and its citizens.

4. As a result of the offenses alleged in Counts [___] through [___] of this Indictment, the defendants, as individuals engaged in planning and perpetrating acts of international terrorism against the United States and its citizens, shall forfeit to the United States all right, title, and interest in all of their assets, foreign or domestic. 18 U.S.C. § 981(a)(1)(G)(i).

5. As a result of the offenses alleged in Counts [___] through [___] of this Indictment, the defendants shall forfeit to the United States all right, title, and interest in any and all of their assets, foreign or domestic, that afford them a source of influence over the [Terrorist Organization]. 18 U.S.C. § 981(a)(1)(G)(i).

6. As a result of the offenses alleged in Counts [___] through [___] of this Indictment, the defendants shall forfeit to the United States all right, title and interest in all assets, foreign or domestic, acquired or maintained by the defendants with the intent and for the purpose of supporting, planning, conducting, and concealing acts of international terrorism against the United States and its citizens.
18 U.S.C. § 981(a)(1)(G)(ii)

7. As a result of the offenses alleged in Counts [___] through [___] of this Indictment, the defendants shall forfeit to the United States all right, title and interest in all assets, foreign or domestic, all assets derived from, involved in, and used and intended to be used to commit acts of international terrorism against the United States and its citizens.
18 U.S.C. § 981(a)(1)(G)(iii).

8. As a result of the offenses alleged in Counts [___] through [___] of this Indictment, the defendants shall pay to the United States a money judgment equal to the value of the assets subject to forfeiture under paragraphs 4 through 7. Rule 32.2(b)(1), Fed. R. Crim. P.

[Completely describe the property]

1. MONEY JUDGMENT
A sum of money equal to $ [________] in United States currency, representing the amount of proceeds obtained as a result of the offense, [specify the offense] [if applicable: for which the defendants are jointly and severally liable].

2. REAL PROPERTY
All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at [______________], more particularly described as:

3. CONVEYANCE
[Year, make, model, license and vehicle identification number.]

4. CURRENCY
Approximately $ [_______] in United States currency.

5. SAFE DEPOSIT BOX
All those items of value discovered and seized on or about [Date] from safe deposit box [Number], located at [Bank], rented by [Name] which includes: [list items]

6. JEWELRY

Precious gemstones, precious metals, and jewelry seized on or about [Date] from the residence/business of [Name] the defendant(s), located at [Address], which includes the following: [list items]

7. BANK ACCOUNT

All United States currency funds or other monetary instruments credited to account number [Number] in the name of [Account holder's name], located at [Address].

8. [LIST AND DESCRIBE ALL OTHER PROPERTY]

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 28 U.S.C. § 2461(c), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above, including but not limited to the following:

[List and describe any known assets of the defendant to be substituted]

Criminal Forfeiture, in violation of Title 28, United States Code, Section 2461(c) and Title 18 United States Code, Section 981(a)(1)(G).

Form No.:	CRM2014
Document:	Forfeiture Allegations for Bulk Cash Smuggling, 31 U.S.C. § 5332
Comments:	Please review the summary of "indictments" at the beginning of this packet. This section became effective October 26, 2001.

BULK CASH SMUGGLING CRIMINAL FORFEITURE
31 U.S.C. § 5332(b)

COUNT ______ [FORFEITURE]

or

FORFEITURE ALLEGATION

Upon conviction of one or more of the offenses alleged in Count(s) [___] of this Indictment, defendant(s) [___________] shall forfeit to the United States pursuant to 31 U.S.C. § 5332(b) & (c)(3), all property, real and personal, involved in the bulk cash smuggling offense(s), and all property traceable to such property. Such property includes, but is not limited to, 1) the currency or other monetary instruments that were concealed or intended to be concealed; 2) any article, container or conveyance used, or intended to be used, to conceal or transport the currency or other monetary instrument; and 3) any other property used, or intended to be used, to facilitate the offense. In particular, the following property is subject to forfeiture:

[Completely describe the property]

1. MONEY JUDGMENT
   A sum of money equal to $ [________] in United States currency, representing the amount of money involved in the offense, [for which the defendants are jointly and severally liable].

2. REAL PROPERTY
   All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at [________________], more particularly described as:

3. CONVEYANCE
   [Year, make, model, license and vehicle identification number.]

4. CURRENCY
   Approximately $ [_________] in United States currency.

5. SAFE DEPOSIT BOX

All those items of value discovered and seized on or about [Date] from safe deposit box [Number], located at [Bank], rented by [Name] which includes: [list items]

6. JEWELRY

Precious gemstones, precious metals, and jewelry seized on or about [Date] from the residence/ business of [Name] the defendant(s), located at [Address], which includes the following: [list items]

7. BANK ACCOUNT

All United States currency funds or other monetary instruments credited to account number [Number] in the name of [Account holder's name], located at [Address].

8. LIST AND DESCRIBE ALL OTHER PROPERTY

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above, including but not limited to the following:

[List and describe any known assets of the defendant to be substituted]

Form No.:	CRM2015
Document:	Indictment/Information Forfeiture Allegations, 18 U.S.C. § 1960, Unlicensed Money Transmitting Business
Comments:	Please review the summary of "indictments" at the beginning of this packet. Before including any ongoing business in a forfeiture allegation, prosecutors should consult with the Asset Forfeiture and Money Laundering Section and the U.S. Marshals Service regarding the policy on seizures and forfeitures of businesses.

UNLICENSED MONEY TRANSMITTING BUSINESS CRIMINAL FORFEITURE
18 U.S.C. §§ 982(a)(1), 1960

COUNT _____ [FORFEITURE]

or

FORFEITURE ALLEGATION

Upon conviction of one or more of the offenses alleged in Count(s) [____] of this Indictment, defendant(s) [______________] shall forfeit to the United States pursuant to 18 U.S.C. § 982(a)(1)(A) all property, real and personal, involved in a violation of 18 U.S.C. § 1960 and all property traceable to such property, including but not limited to the following:

[Completely describe the property]

1. MONEY JUDGMENT
   A sum of money equal to $ [________] in United States currency, representing the amount of money involved in the offense, [specify the offense] [if applicable: for which the defendants are jointly and severally liable].

2. REAL PROPERTY
   All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at [_______________], more particularly described as:

3. BUSINESS
   The business known as [________________________] which was owned by [_____________] and operated in violation of Section 1960.

4. CURRENCY
   Approximately $ [_________] in United States currency.

5. SAFE DEPOSIT BOX

All those items of value discovered and seized on or about [Date] from safe deposit box [Number], located at [Bank], rented by [Name] which includes: [list items]

6. BANK ACCOUNT

All United States currency funds or other monetary instruments credited to account number [Number] in the name of [Account holder's name], located at [Address].

7. LIST AND DESCRIBE ALL OTHER PROPERTY

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above, including but not limited to the following:

[List and describe any known assets of the defendant to be substituted]

Form No.:	CRM4001
Document:	Government's Memorandum Regarding Special Verdict Form

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF

UNITED STATES OF AMERICA,	)	**UNDER SEAL**
	)	
v.	)	Case No.
	)	
JOHN DOE,	)	
	)	
Defendant.	)	

GOVERNMENT'S MEMORANDUM REGARDING SPECIAL FORFEITURE VERDICT

Jury Determination

The indictment in this case includes a notice of forfeiture. Entry of an order of forfeiture in a criminal case is considered a part of sentencing. Libretti v. United States, 116 S. Ct. 356, 363 (1995); United States v. Sandini, 816 F.2d 869, 873 (3d Cir. 1987). Nevertheless, the factual determination as to whether any property was involved in or derived from an offense is a matter submitted to the jury if either party so requests. *See* Rule 32.2(b)(4). On ______, 2002, Defendant/Government requested that the forfeiture be submitted to the jury pursuant to the Rule.

The only issue for the jury is whether the government "has established the requisite nexus between the property and the offense." Fed. R. Crim.P. 32.2(b)(4). The jury itself does not order forfeiture; nor does it consider third-party claims. Fed. R. Crim.P. 32.2(b), (c). In this regard, the government is submitting proposed jury instructions and a proposed special verdict form. The jury's special verdict will serve as the basis for this Court to enter a preliminary order of forfeiture. Fed.R.Crim.P. 32.2(b)(2), (3). The final order of forfeiture will follow notice and advertisement of the preliminary order and will address any third-party claims. Fed.R.Crim.P. 32.2(b)(2), (c).

The jury does not consider whether the defendant has an interest in the property to be forfeited; nor does the jury determine the extent of the defendant's interest in any property to be forfeited. These matters are considered by the court in the ancillary proceedings, following the jury's special verdict and entry of the preliminary order of forfeiture. Fed.R.Crim.P. 32.2(b), (c); Advisory Committee Note to Subsection (b).

Burden of Proof

In *Libretti v. United States*, 516 U.S. 29 (1995), the Supreme Court held that criminal forfeiture constitutes an aspect of the sentence imposed in a criminal case. As such, as with all sentencing issues, the burden of proof is by a preponderance of the evidence. Even before *Libretti*, the circuits had determined that criminal forfeiture is a sentencing matter. Similarly, notwithstanding the Supreme Court's description in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), all courts that have considered the burden of proof for criminal forfeiture have held that the Government's burden in the forfeiture phase of the trial is preponderance of the evidence. *See United States v. Vera*, 278 F.3d 672 (7th Cir. 2002) (preponderance of the evidence standard still applies); *United States v. Corrado*, 227 F.3d 543 (6th Cir. 2000) (*Apprendi* does not apply to criminal forfeiture); *United States v. Najjar*, ___ F.3d ___, 2002 WL 1792090 (4th Cir. Aug. 6, 2002) (standard of proof for RICO forfeiture remains preponderance of the evidence); *United States v. Cabeza*, 258 F.3d 1256 (11th Cir. 2001) (preponderance of the evidence standard applies); *Ida v. United States,* 2002 WL 1203855 (S.D.N.Y. 2002) (preponderance still applies in the Second Circuit); *United States v. Davis*, 177 F. Supp.2d 470 (E.D. Va. 2001) (follows *Corrado* and *Cabeza*, preponderance still applies in the Fourth Circuit); and *United States v. Cianci*, ___ F. Supp.2d ___, 2002 WL 1987635 (D.R.I. Aug. 8, 2002) (because forfeiture is part of sentencing, preponderance of the evidence applies to RICO forfeitures).

Accordingly, the government requests that the Court instruct the jury on the preponderance of the evidence standard.

Respectfully submitted,

____

United States Attorney

____

Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. Mail, to [Attorney for Defendant], located at ________________, on this ________ day of [Month, Year].

____

Assistant U.S. Attorney

Form No.:	CRM5001
Document:	Motion for a Preliminary Order of Forfeiture
Comments:	This form is being provided for use in those districts which must file a motion for preliminary order of forfeiture either because of local rule or practice.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Case No.
	)	
JOHN DOE,	)	
	)	
Defendant.	)	

MOTION OF THE UNITED STATES FOR A PRELIMINARY ORDER OF FORFEITURE, WITH SUPPORTING SUGGESTIONS

The United States of America , by its undersigned counsel, respectfully submits its Motion for a Preliminary Order of Forfeiture in the above-entitled case for the reasons set forth in the following supporting suggestions. A proposed order is submitted with this motion.

Supporting Suggestions

1. On [Date], a federal grand jury sitting in the [_________] District of [_________], returned a [__]-count Indictment against the defendant, [_________]. Count [___] charged that the defendant [describe the violation] in violation of [________] U.S.C. § [____].

2. Count [____] of the Indictment sought forfeiture, pursuant to [____] U.S.C. § [____], of: [describe the property subject to forfeiture using the language of the applicable statute], including but not limited to: [list the specific property identified in the Indictment/Information]. Count [___] also sought a personal money judgment against the defendant(s) for [Amount of money judgment] in that such sum in the aggregate, [describe basis for money judgment *e.g.*, constituted or was derived from the proceeds of the offenses]. [The defendants will be jointly and severally liable for the money judgment.]

3. On [Date], the defendant [Name] entered into a plea agreement with the United States in which he/she agreed to plead guilty/nolo contendere to Counts [____] and [_____] of the Indictment/Information charging violations of [____] U.S.C. § [____] and to forfeit to the United States the above-described property. [and consented to the entry of a money judgment in the amount of ___.]

OR

3. On [Date], a jury found the defendant(s) [Name(s)] guilty of Count(s) [_____] of the Indictment. The jury also determined that the United States established the requisite nexus between the above-described property and the offenses(s) committed by the defendant(s) and that the defendant(s) [Names] was liable to pay [Amount] as a personal money judgment in the amount of $[___] [for which they will be jointly and severally liable. (if more than one defendant)] [[1]]

4. The Court's jurisdiction in this matter is founded upon [___] U.S.C. § [___], which provides that: [fill in applicable forfeiture language]

5. Rule 32.2 (b)(1), (b)(2), and (b)(3), Federal Rules of Criminal Procedure, provide that:

   (1) As soon as practicable after entering a guilty verdict or accepting a plea of guilty or *nolo contendere* on any count in an indictment or information with regard to which criminal forfeiture is sought, the court shall determine what property is subject to forfeiture under the applicable statute. If forfeiture of specific property is sought, the court shall determine whether the government has established the requisite nexus between the property and the offense. If the government seeks a personal money judgment against the defendant, the court shall determine the amount of money that the defendant will be ordered to pay. The court's determination may be based on evidence already in the record, including any written plea agreement or, if the forfeiture is contested, on evidence or information presented by the parties at a hearing after the verdict or finding of guilt.

   (2) If the court finds that property is subject to forfeiture, it shall promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment or directing the forfeiture of specific property without regard to any third party's interest in all or part of it. Determining whether a third party has such an interest shall be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

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[1] [This paragraph will need to be changed if the defendant elected to have a bench trial or if he/she chose to have the court determine the forfeiture aspects.]

(3) The entry of a preliminary order of forfeiture authorizes the Attorney General (or a designee) to seize the specific property subject to forfeiture; to conduct any discovery the court considers proper in identifying, locating, or disposing of the property; and to commence proceedings that comply with any statutes governing third-party rights. At sentencing—or at any time before sentencing if the defendant consents—the order of forfeiture becomes final as to the defendant and shall be made part of the sentence and included in the judgment. The court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.

6. Based upon the evidence set forth in the plea agreement (presented at the hearing held on [Date]), the United States has established the requisite nexus between the property and the offense to which the defendant(s) has/have pleaded guilty [of which the defendant(s) has/have been found guilty]. Accordingly, that property is subject to forfeiture to the United States pursuant to [___] U.S.C. § [___].

7. Upon the issuance of a Preliminary Order of Forfeiture and pursuant to [___] U.S.C. § [___], the United States Marshals Service/Department of Treasury will publish at least once for three successive weeks in a newspaper of general circulation, notice of this Order, notice of the Marshal's/Department of Treasury's intent to dispose of the property in such manner as the Attorney General/Department of Treasury may direct and notice that any person, other than the defendant [___________], having or claiming a legal interest in the property must file a petition with the Court (and serve a copy on [___], Assistant United States Attorney) within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the property, under the grounds set forth in 21 U.S.C. §§ 853(n)(6)(A) and (B) shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title or interest in the forfeited property and any additional facts supporting the petitioner's claim and the relief sought. The United States may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the Preliminary Order of Forfeiture, as a substitute for published notice as to those persons so notified.

8. In accordance with the provisions of [___] U.S.C. § [___] and Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, the United States requests that it be permitted to undertake whatever discovery is necessary to identify, locate, or dispose of property subject to forfeiture, or substitute assets for such property.

9. The United States further requests that the court enter an order continuing the restraining order entered by this court on [Date] pursuant to [statute, *e.g.,* 21 U.S.C. § 853(e)] and that it also restrains

the following property which was not previously restrained, until the entry of a final order of forfeiture and the resolution of any appeals regarding a final order of forfeiture.
[List additional property such as substitute assets that are not being seized.]

WHEREFORE, the United States respectfully requests that this Court enter a Preliminary Order of Forfeiture forfeiting to the United States the property described in Count [___] of the Indictment/Information and order the United States Marshals Service/Department of Treasury to seize and maintain custody of the forfeited property and dispose of it in accordance with the law.

The United States further requests the Court to enter an order directing a money judgment in the amount of $ [_________] against the defendant(s).

Respectfully submitted,

____
United States Attorney

____
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing motion and proposed order were mailed this day of _________, 200[__], to:

Attorney for Defendant ____________________________

____
Assistant United States Attorney

Form No.:	CRM5002
Document:	Preliminary Order of Forfeiture, 21 U.S.C. § 853(g)
Comments:	Rule 32.2(c)(2) provides that the preliminary order becomes final if no third party claim is filed, "if the court finds that the defendant...had an interest in the property...." Thus, even if no third party claim is filed, a final order should be entered in which the court makes a finding that the defendant had an interest in the forfeited property.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF

UNITED STATES OF AMERICA,	)	PRELIMINARY ORDER OF FORFEITURE
	)	Fed. R. Crim. P. 32.2(b)
v.	)	
	)	Criminal Docket No.
JOHN DOE,	)	
	)	
Defendant.	)	

_______________, D.J.:

IT IS HEREBY ORDERED THAT:

1. As the result of [the guilty verdict/guilty plea/plea of *nolo contendere*] on Counts [___] of the [Indictment/Information], for which the Government sought forfeiture pursuant to [18 U.S.C. § 982/18 U.S.C. § 1963/21 U.S.C. § 853/28 U.S.C. § 2461(c)/31 U.S.C. §§ 5317(c) or 5332], defendant shall forfeit to the United States:

   a. [money laundering cases:] all property involved in or traceable to offenses involving 31 U.S.C. §§ 5313(a), 5316, 5324 or 5332 or 18 U.S.C. §§ 1956, 1957 or 1960;

   b. [cases authorizing forfeiture of proceeds, *e.g.,* 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2)-(a)(8):] all property constituting, or derived from, proceeds/gross proceeds the defendant obtained directly or indirectly, as the result of such violations;

   c. [cases authorizing forfeiture of facilitating property, *e.g.,* 21 U.S.C. § 853(a)(2):] all property used or intended to be used in any manner or part to commit or facilitate the commission of the offense.

2. The Court has determined, based on [the evidence already in the record/defendant's plea agreement/on evidence or information presented at a post-trial hearing on the forfeiture allegation in the Indictment/Information], that the following property is subject to forfeiture pursuant to [list statute], [that the defendant had an interest in such property][1] and that the government has established the requisite nexus between such property and such offenses:

   a. *List property, e.g.,* (1) funds on deposit in account number [____________] maintained in the name of [________] at [_______] Bank as [property involved in/proceeds traceable to/as property used to facilitate etc.]; (2) real property and premises located at [_____________] as [property involved in/proceeds traceable to/as property used to facilitate etc.] ; and (3) one vehicle bearing VIN [____________] as [property involved in/proceeds traceable to/as property used to facilitate etc.] [all the property referenced to above are hereinafter referred to collectively as the Subject Property], etc.

[Alternatively, if the defendant has requested the determination be made by a jury: The jury has determined that the government has established the requisite nexus between the property and the offense(s) committed by the defendant, and therefore, the following property is subject to forfeiture:______________].

3. [Alternatively/In addition, (if specific forfeitable property has not yet been identified)]

   a. As a result of the offenses in Count(s) [___], for which defendant was [convicted/entered a plea of guilt/*nolo contendere*], a money judgment in the amount of $ [___________] shall be entered against defendant as the amount of the [property constituting or derived from any proceeds obtained directly or indirectly/property used to commit or facilitate the commission/property involved in such offense, etc.—track the language of the relevant statute].

   b. Defendant shall also forfeit [*any property involved in/proceeds traceable to/ property used to facilitate etc.*—track the language of the relevant statute] the offense(s) for which he has been convicted, which property has not yet been identified or located.

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[1] Rule 32.2(b) provides that the court must defer determining whether or not the defendant has an interest in the forfeited party until the ancillary proceeding when third parties are entitled to contest the forfeiture on the ground that the property belongs to them, and not to the defendant. However, if no third party files a claim, the court must make a determination that the defendant (or some combination of defendants) has an interest in the property before the preliminary order of forfeiture becomes final. *See* Rule 32.2(c)(2). In some situations, it may be advisable to foreclose the separate determination of interest under Rule 32.2 by having the court make that determination "up front" upon entering the preliminary order of forfeiture. In other situations, *e.g.,* where the defendant is planning to object to the order of forfeiture on the ground that the property belongs to a third party, it may be better to take advantage of Rule 32.2(b) and postpone the determination of interest until the ancillary proceeding.

4. Upon the entry of this Order, the [United States/Attorney General (or a designee); Secretary of the Treasury (or a designee)—if case is a Treasury case] is authorized to seize [list the property subject to forfeiture], and to conduct any discovery proper in identifying, locating or disposing of the property subject to forfeiture, in accordance with Fed. R. Crim. P. 32.2(b)(3).

5. Upon entry of this Order, the [United States/Attorney General (or a designee); Secretary of the Treasury (or a designee)—if case is a Treasury case] is authorized to commence any applicable proceeding to comply with statutes governing third party rights, including giving notice of this Order.

6. The United States shall publish notice of the order and its intent to dispose of the property in such a manner as the [United States/Attorney General (or a designee); Secretary of the Treasury (or a designee)—if case is a Treasury case] may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the Subject Property. No such notice is required to the extent that this Order consists solely of a money judgment against the defendant. Rule 32.2(c)(1).

7. [Include only if the preliminary order lists specific property and is not simply a money judgment.] Any person, other than the above named defendant, asserting a legal interest in the Subject Property may, within thirty days of the final publication of notice [*note*–single publication may be appropriate] or receipt of notice, whichever is earlier, petition the court for a hearing without a jury to adjudicate the validity of his alleged interest in the Subject Property, and for an amendment of the order of forfeiture, pursuant to [18 U.S.C. § 1963(*l*); 21 U.S.C. § 853(n); or 18 U.S.C. § 982(b)(1), 31 U.S.C. §§ 5317(c) or 5332, or 28 U.S.C. § 2461(c) which incorporate 21 U.S.C. § 853(n)].

8. Pursuant to Fed. R. Crim. P. 32.2(b)(3), this Preliminary Order of Forfeiture shall become final as to the defendant at the time of sentencing [or before sentencing if the defendant consents] and shall be made part of the sentence and included in the judgment. [Include only if the preliminary order lists specific property and is not simply a money judgment: If no third party files a timely claim, this Order shall become the Final Order of Forfeiture, as provided by Fed. R. Crim. P. 32.2(c)(2).]

9. [Include only if the preliminary order lists specific property and is not simply a money judgment.] Any petition filed by a third party asserting an interest in the Subject Property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the Subject Property, the time and circumstances of the petitioner's acquisition of the right, title or interest in the Subject Property, any additional facts supporting the petitioner's claim and the relief sought.

10. [Include only if the preliminary order lists specific property and is not simply a money judgment.] After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Civil Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

11. [Include only if the preliminary order lists specific property and is not simply a money judgment.] The United States shall have clear title to the Subject Property following the Court's disposition of all third-party interests, or, if none, following the expiration of the period provided in [18 U.S.C. § 1963(*l*) or 21 U.S.C. § 853(n)(2), which is incorporated by 18 U.S.C. § 982(b), 31 U.S.C. §§ 5317(c) and 5332, and 28 U.S.C. § 2461(c)] for the filing of third party petitions.

12. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

13. The Clerk of the Court shall forward four certified copies of this order to Assistant U.S. Attorney _____________, U.S. Attorney's Office, ____________________.

SO ORDERED:

Dated:

____

Honorable
United States District Judge

Form No.:	CRM5010
Document:	Forfeiture Sentencing Memorandum
Comments:	A memorandum like this may be useful to remind a court of the steps it must take under Rule 32.2, Fed. R. Crim. P., to accomplish criminal forfeiture of the defendant's interest in property. Local practice may differ, but it is a good idea to attach to the judgment order the legal description of any real property that is forfeited.

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
	)	
v.	)	**UNITED STATES' SENTENCING**
	)	**MEMORANDUM REGARDING FORFEITURE**
	)	
	)	J.

The United States files this sentencing memorandum addressing forfeiture issues at sentencing on [__________].

On [_______________] the defendant plead guilty to Count [___] of an Indictment charging him with possessing marijuana with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). Included in Count [___] was an allegation that the defendant's interest in the named real property and U.S. currency ["the property"] was forfeited to the United States under 21 U.S.C. § 853(a).

18 U.S.C. § 853(a) states:

> The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II of this chapter, that the person forfeit to the United States all property described in this subsection.

As part of the plea agreement in this case, the defendant agreed that the property was used to facilitate the commission of the offense of conviction and agreed not to contest the forfeiture of the property to the United States under 21 U.S.C. § 853(a).

Pursuant to Rule 32.2(b)(2), Fed. R. Crim. P., on [________], the Court issued a preliminary order of forfeiture against the defendant's interest in the property.

At sentencing, pursuant to Rule 32.2(b)(3), Fed. R. Crim. P., the preliminary "order of forfeiture becomes final as to the defendant and shall be made a part of the sentence and included in the judgment."

At sentencing the Court is required to pronounce orally the forfeiture of the defendant's interest in the property as part of the sentence imposed on the defendant and to include language forfeiting the defendant's interest in the property as part of the sentence in the judgment order. *See United States v. Gaviria*, 116 F.3d 1498 (D.C. Cir. 1997) (failure to announce the forfeiture portion of the defendant's sentence in his presence, as required by Rule 43(a), means that forfeiture order must be vacated); *United States v. Shannon*, 87 F.3d 1325, 1996 WL 341352 (9th Cir. 1996) (Table) (order of forfeiture vacated because judge failed to mention forfeiture at sentencing, even though forfeiture was included in indictment and plea agreement and court amended judgment eight days after sentencing to include order of forfeiture); *United States v. Gilbert*, 244 F.3d 888 (11th Cir. 2001) (forfeiture must be imposed in a proceeding where defendant has the right to allocution).

The United States asks that the Court orally pronounce at sentencing and enter in the "Forfeiture" section of the judgment order imposing sentence the following: "Under 21 U.S.C. § 853(a), the defendant has forfeited all of his right, title, and interest in the U.S. currency and real property described in Count [___] of the Indictment, the legal description for said real property being set forth in Attachment A to this Judgment" and attach to the Judgment as Attachment A the legal description supplied with this Memorandum.

Respectfully submitted,

____

United States Attorney

____

Assistant United States Attorney

____

Honorable

United States District Judge

Form No.: CRM7001
Document: Motion for a Final Order of Forfeiture
Comments: This form is being provided for use in those districts which must file a motion for a final order of forfeiture either because of local rule or practice.

IN THE UNITED STATES DISTRICT COURT FOR THE
___________DISTRICT OF ___________
__________ DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.
	)	
_________________,	)	
	)	
Defendant.	)	

MOTION OF THE UNITED STATES FOR A FINAL ORDER OF FORFEITURE, WITH SUPPORTING SUGGESTIONS

The United States of America, by its undersigned counsel, respectfully submits its Motion for a Final Order of Forfeiture in the above-entitled case for the reasons set forth in the following supporting suggestions. A proposed order is submitted with this motion.

Supporting Suggestions

1. In Count [___] of the Indictment/Information in this case, the United States sought forfeiture of the following property pursuant to [___] U.S.C. § [___] : [Describe the property named in the Indictment/Information including if applicable, a general description of the property, as well as the specific property sought to be forfeited.]

2. On [Date], the defendant [___] entered into a plea agreement with the United States in which he/she agreed to forfeit to the United States the above-described property [and consented to the entry of a money judgment in the amount of _________.]

OR

2. On [Date], a jury found the defendant(s) [Name(s)] guilty of Count(s) [___] of the Indictment. The jury further determined that the United States established the requisite nexus between the above-described property and the offense(s) committed by the defendant(s)[1] and that the defendant(s) [Name(s)] should be ordered to pay [Amount] as a personal money judgment [for which they will be jointly and severally liable (if more than one defendant)].

3. By virtue of the plea agreement [guilty verdict and the jury's finding of the requisite nexus between the above-described property and the offenses committed by the defendant(s) and that the money judgment should be entered against the defendant(s)], this Court entered a Preliminary Order of Forfeiture regarding the above-described property [and money judgment] [[2]] on [Date].

4. By virtue of [the plea agreement/the evidence presented at the criminal trial and ancillary hearing] the United States has established that the defendant(s) [__________] has/have an interest in the property subject to forfeiture.

5. In accordance with [___] U.S.C. § [____], the United States Marshals Service/Department of Treasury properly published notice of the forfeiture of the above-described property and the requirements for filing a claim for the property for three consecutive weeks on [Date], [Date], and [Date], in [Publication], a daily newspaper of general circulation published in [____] County, [_____]. An Affidavit of Publication was filed herein on [Date], specifying the details of this publication. Written notice was also sent to [___] on [Date] by certified mail, return receipt requested. [___________] acknowledged receipt of the notice as evidenced by the Domestic Return Receipt. (Copies of the notice and the Domestic Return Receipt are attached hereto). Pursuant to [___] U.S.C. § [____], any person asserting a legal interest in the property subject to forfeiture may, within thirty (30) days of the final publication of notice, or of receipt of actual notice, whichever is earlier, petition the Court for a hearing to adjudicate the validity of his/her alleged interest in the property.

---

[1] [This sentence will need to be changed if the defendant elected to have a bench trial or if he/she chose to have the court determine the forfeiture aspects.]

[2] [If you are only seeking a money judgment, it is not necessary to obtain a preliminary order of forfeiture and a final order of forfeiture. The provision of notice is not required for a money judgment and you may obtain an order of forfeiture without going through the steps of a preliminary order of forfeiture and then a final order of forfeiture. However, if you are seeking the forfeiture of specific property as well as the money judgment it may be easier to keep the requests for forfeiture of specific property and the money judgment together in both the motion for a preliminary order of forfeiture and the motion for a final order of forfeiture.]

6. No claims were filed within that thirty-day period. Therefore, any third-party interests are barred by failure of those parties to file a timely petition. [_______ filed a timely petition which the court dismissed, pursuant to the government's motion, for lack of standing/failure to state a claim/or any other lawful reason; the court dismissed after the ancillary hearing; the court granted in part and denied in part by awarding the petitioner __________.]

Accordingly, the United States respectfully requests that this Court enter a final order of forfeiture as proposed in the attached order.

Respectfully submitted,

____

United States Attorney

____

Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing motion and proposed order were mailed this [__________] day of [_____________], [____], to:

Attorney for the defendant

Attorney for third-party petitioner

____

Assistant United States Attorney

Form No.:	CRM7002
Document:	Final Order of Forfeiture Ancillary Hearing

UNITED STATES DISTRICT COURT
________ DISTRICT OF ___________

UNITED STATES OF AMERICA,)
- against -) FINAL ORDER OF FORFEITURE
) *(after ancillary hearing)*
________________________,) Fed. R. Crim. P. 32.2(c)(2)
Defendant)
) Criminal Docket No.
________________________,)
Petitioner)
)

_____________, D.J.:

This Court entered a Preliminary Order of Forfeiture on [______], ordering Defendant(s) [__________] to forfeit certain property (the Subject Property). Notice of the Preliminary Order of Forfeiture was given by publication on [_____________], notice was served upon [_________] [and by any other means used]. On [___________], Petitioner(s) [__________] filed a timely petition alleging an interest in [specify property] and seeking an amendment of the Preliminary Order of Forfeiture.

Based on the evidence presented at [a hearing held on ________________, the criminal trial in this matter], this Court makes the following determination:

Petitioner has [established/failed to establish], by a preponderance of the evidence, that he/she has a [superior right, title or interest in/or was a *bona fide* purchaser for value of] [specific property].

NOW THEREFORE, IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT:

1. The Preliminary Order of Forfeiture entered in the above captioned action on [_______], [Year], is

a. [final, this Court having found that the defendant(s) convicted in the case had an interest in the forfeitable property under the [applicable statute] and all right, title and interest to the property described in the Preliminary Order of Forfeiture [list property] is hereby condemned, forfeited and vested in the United States of America, and shall be disposed of according to law;]

OR , if court amends in full or partial favor of the petitioner:

b. [amended as follows.] [Identify specific property as to which petitioner has prevailed] shall be returned to Petitioner as soon as practicable (if no appeal by defendant has been filed)]. Alternatively, [specific property] shall not be transferred to Petitioner until the decision on appeal becomes final, or unless the defendant consents in writing or on the record.

2. [Except as provided above in paragraph 1,] the United States has clear title to all the Subject Property as set forth in the Preliminary Order of Forfeiture dated [__________].

3. The Court shall retain jurisdiction to enter any orders necessary to amend or enforce this order.

DATED:

SO ORDERED:

____

United States District Judge

Form No.:	CRM7004
Document:	Final Order of Forfeiture Where No Third Party Petition Filed

UNITED STATES DISTRICT COURT
______ DISTRICT OF ___________

UNITED STATES OF AMERICA,	)	
	)	FINAL ORDER OF FORFEITURE
- against -	)	(*no timely third party petitions filed*)
____________________________	)	Fed. R. Crim. P. 32.2(c)(2)
Defendant	)	
	)	Criminal Docket No.
	)	
	)	
	)	

____________, D.J.:

WHEREAS, on [___________], this Court entered a Preliminary Order of Forfeiture, ordering defendant(s) to forfeit [list property identified in the Preliminary Order] [the Subject Property], and

WHEREAS, the United States caused to be published in [_________], a newspaper of general circulation, notice of this forfeiture and of the intent of the United States to dispose of the property in accordance with the law and as specified in the Preliminary Order, and further notifying all third parties of their right to petition the Court within thirty (30) days for a hearing to adjudicate the validity of their alleged legal interest in the property; and

WHEREAS, notice was served upon [________] by [_________]; and

WHEREAS, no timely claim has been filed; and

WHEREAS, the Court finds that defendant(s) had an interest in the property that is subject to forfeiture pursuant to [fill in appropriate statute];

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that [list all the the properties set forth in the Preliminary Order] are hereby forfeited to the United States of America pursuant to [Title __, United States Code, § ____].

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all right, title and interest to the property described above is hereby condemned, forfeited and vested in the United States of America, and shall be disposed of according to law; and

IT IS FURTHER ORDERED that the United States District Court shall retain jurisdiction in the case for the purpose of enforcing this Order; and

IT IS FURTHER ORDERED that the Clerk of the Court shall forward four certified copies of this Order to the United States Attorney's Office, [_______________], Attention: Assistant U.S. Attorney [_______________].

SO ORDERED:

Dated:

____

Honorable

United States District Judge

Form No.: CRM10001
Document: Forfeiture Language for Criminal Plea Agreements
Comments: This language may be used in criminal plea agreements to memorialize the defendant's consent to forfeiture. It contains language that covers property that may be forfeited administratively, civilly as well as in the criminal proceeding. Depending on how far back the criminal conduct started, replace the "blanks" with an appropriate number of years. Any specifically identified property should be listed in the appropriate place. Be aware that criminal defendants will sometimes consent to forfeit property in which they have no interest, and the government will end up having to litigate with one claiming to be an innocent owner. Thorough investigation of who actually holds title before a plea agreement is negotiated can help avoid this problem.

While ethical considerations prohibit using a criminal process to obtain an advantage in a civil case, DOJ policy is to encourage resolution of all forfeiture issues as part of the criminal prosecution to the extent possible. These and other considerations are discussed in Chapter 3 of the *Asset Forfeiture Policy Manual* in the section on settlement. Key points of that policy are: 1) the Government should not agree to release property subject to forfeiture in order to coerce a guilty plea; 2) the Government should not agree to dismiss criminal charges in order to coerce a forfeiture settlement; 3) where the claimant/defendant has negotiated a plea agreement and concurrently wishes to forfeit the property subject to a civil forfeiture action, any civil settlement should be independently documented in addition to using the language below in the plea agreement.

Note that the form as drafted refers to the defendant waiving any claim to property to be forfeited in a state forfeiture proceeding. The same considerations noted above apply with respect to using a criminal prosecution to coerce a settlement in a related state proceeding.

1. The defendant agrees to identify all assets over which the defendant exercises or exercised control, directly or indirectly, within the past [______] year[s], or in which the defendant has or had during that time any financial interest. The defendant agrees to take all steps as requested by the United States to obtain from any other parties by any lawful means any records of assets owned at any time by the defendant. The defendant agrees to undergo any polygraph examination the United States may choose to administer concerning such assets and to provide and/or consent to the release of the defendant's tax returns for the previous five years. Defendant agrees to forfeit to the United States all of the defendant's interests in any asset of a value of more than $1000 that, within the last [____] year[s], the defendant owned, or in which the defendant maintained an interest, the ownership of which the defendant fails to disclose to the United States in accordance with this agreement.

2. The defendant agrees to forfeit all interests in any [drug related, money laundering-related, etc.] asset that the defendant currently owns, has previously owned or over which the defendant currently, or has in the past, exercised control, directly or indirectly, and any property the defendant has transferred, as well as any property that is traceable to, derived from, fungible with, or a substitute

for property that constitutes the proceeds of his offense, including but not limited to the following specific property:

[List any specifically identified property here]

Defendant warrants that defendant is the sole owner of all of the property listed above, and agrees to hold the United States, its agents and employees harmless from any claims whatsoever in connection with the seizure or forfeiture of property covered by this agreement.

3. The defendant further agrees to waive all interest in any such asset in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.

4. The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. Defendant acknowledges that all property covered by this agreement is subject to forfeiture as [proceeds of illegal conduct] [property facilitating illegal conduct] [property involved in illegal conduct giving rise to forfeiture] [substitute assets for property otherwise subject to forfeiture].