A BILL

To reform asset forfeiture laws.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the Forfeiture Act of 1997.

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1 **TITLE I—ADMINISTRATIVE FORFEITURES**

2 **SEC. 101. TIME FOR FILING CLAIM; WAIVER OF COST BOND.**

3 (a) In General.—Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended to read as follows:

4 “§ 608. Seizures; claims; judicial condemnation

5 “(a) Any person claiming seized property may file a

6 claim with the appropriate customs officer at any time

7 after the seizure: Provided, That such claim must be filed

8 not later than 30 days after the final publication of notice

9 of seizure. The claim shall be signed by the claimant under

10 penalty of perjury and shall contain a brief statement of
the nature and extent of the claimant’s ownership interest
in the property and how and when it was acquired.

“(b) Any claim filed pursuant to subsection (a) shall
include the posting of a bond to the United States in the
sum of $5,000 or 10 percent of the value of the claimed
property, whichever is lower, but not less than $250, with
sureties to be approved by the customs officer with whom
the claim is filed. No bond shall be required, however, if
the property is seized by the Attorney General and con-
sists of currency or other monetary instruments, or if the
claim is filed in forma pauperis with all supporting infor-
mation as required by the seizing agency. The Attorney
General and the Secretary of the Treasury, with respect
to matters within their respective jurisdiction, shall have
the authority to waive or reduce the bond requirement in
any additional category of cases where he or she deter-
mines that the posting of a bond is not required in the
interests of justice.

“(c) Upon the filing of a claim pursuant to this sec-
tion, the customs officer shall transmit the claim, with a
duplicate list and description of the articles seized, to the
United States attorney for a district in which a forfeiture
action could be filed pursuant to section 1355(b) of title
28, United States Code, who shall proceed to a condemn-
tion of the merchandise or other property in the manner
prescribed in the Supplemental Rules for Certain Admi-
ralty and Maritime Claims.”

(b) CONFORMING AMENDMENT.—Section 609 of the
Tariff Act of 1930 (19 U.S.C. 1609) is amended by strik-
ing “twenty” and inserting “30”.

SEC. 102. JURISDICTION AND VENUE.

(a) TRANSMITTAL TO THE UNITED STATES ATTOR-
NEY.—Section 610 of the Tariff Act of 1930 (19 U.S.C.
1610) is amended by striking “the district in which the
seizure was made” and inserting “a district in which a
forfeiture action could be filed pursuant to section 1355(b)
of title 28, United States Code”.

(b) ADMIRALTY RULES.—The Supplemental Rules
for Certain Admiralty and Maritime Claims are amend-
ed—

(1) in rule E(3), by inserting the following at
the end of paragraph (a): “This provision shall not
apply in forfeiture cases governed by 28 U.S.C.
1355 or any other statute providing for service of
process outside of the district.”; and

(2) in rule C(2), by inserting the following after
“that it is within the district or will be during the
pendency of the action.”: “If the property is located
outside of the district, the complaint shall state the
statutory basis for the court’s exercise of jurisdiction over the property’’.

SEC. 103. JUDICIAL REVIEW OF ADMINISTRATIVE FORFEITURES.

Section 609 of the Tariff Act of 1930 (19 U.S.C. 1609) is amended by adding the following new subsection:

“(d)(1) Where no timely claim to the seized property is filed, and a declaration of forfeiture is entered pursuant to this section by the seizing agency, the declaration shall be final and not subject to judicial review under any other provision of law except as follows: If a claimant, upon the filing of an action to set aside a declaration of forfeiture under this section, establishes by a preponderance of the evidence (A) that the seizing agency failed to take reasonable steps to provide the claimant with notice of the forfeiture, and (B) that the claimant had no actual notice of the forfeiture proceeding within the period for filing a claim, the district court shall order that the declaration of forfeiture be set aside pending forfeiture proceedings in accordance with sections 602 et seq.

“(2) The following shall be considered sufficient, but not necessary, to satisfy the requirement of taking reasonable steps to provide notice of the forfeiture:
“(A) sending, by mail or commercial carrier, notice of the forfeiture to the place where the claimant resides at the time the notice is sent;

“(B) serving notice of the forfeiture on the claimant’s attorney of record in the forfeiture case or in a related criminal case.

“(3) An action to set aside a declaration of forfeiture under this section must be filed within 2 years of the last date of publication of notice of the forfeiture of the property.”

SEC. 104. JUDICIAL FORFEITURE OF REAL PROPERTY.

Section 610 of the Tariff Act of 1930 (19 U.S.C. 1610) is amended by adding at the end the following sentence. “Notwithstanding any other provision of law, all forfeitures of real property and interests in real property shall proceed as judicial forfeitures as provided in this section.”

SEC. 105. PRESERVATION OF ARRESTED REAL PROPERTY.

Rule E of the Supplemental Rules for Certain Admiralty and Maritime Claims is amended by adding the following new subsection:

“(10) Preservation of property.—Whenever property is attached or arrested pursuant to the provisions of Rule E(4)(b) that permit the marshal or other person having the warrant to execute the
process without taking actual possession of the prop-
erty, and the owner or occupant of the property is
thereby permitted to remain in possession, the court,
on the motion of any party or on its own motion,
shall enter any order necessary to preserve the value
of the property, its contents, and any income derived
therefrom, and to prevent the destruction, removal
or diminution in value of such property, contents
and income. If the order is made necessary by exi-
gent circumstances, or if the order would not inter-
fere with the owner or occupant's use or enjoyment
of the property, it may be entered ex parte. Other-
wise the order may be entered only after notice and
an opportunity to be heard.”

SEC. 106. AMENDMENT TO FEDERAL TORT CLAIMS ACT EX-
CEPTIONS.

Section 2680(c) of title 28, United States Code, is
amended to read as follows:

“(c) Any claim arising in respect of the assessment
or collection of any tax or customs duty, or the detention
of any goods, merchandise, or other property by any law
enforcement officer performing any official law enforce-
ment function, except that the provisions of this chapter
and section 1346(b) of this title shall apply to any claim
based on the loss of, or negligent destruction or injury to,
goods, merchandise, or other tangible property while in the
possession, custody or control of any law enforcement
agency, if the property was seized for the purpose of for-
feiture and is neither forfeited nor the subject of a pending
forfeiture proceeding. For purposes of this subsection, the
definition of “law enforcement officer” in subsection (h)
shall apply.”

SEC. 107. PRE-JUDGMENT INTEREST.

(a) In General.—Section 2465 of title 28, United
States Code, is amended by—

(1) designating the present matter as sub-
section (a); and

(2) inserting the following new subsection:

“(b) Interest.—Upon entry of judgment for the
claimant in any proceeding to condemn or forfeit property
seized or arrested under any Act of Congress, the United
States shall be liable for post-judgment interest as set
forth in section 1961 of this title. The United States shall
not be liable for pre-judgment interest, except that in
cases involving currency or other negotiable instruments,
the United States shall disgorge to the claimant any funds
representing interest actually paid to the United States
from the date of seizure or arrest of the property that
resulted from the investment of the property in an inter-
est-bearing account or instrument. The United States
shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.’’

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any judgment entered after the date of enactment of this Act.

SEC. 108. SEIZURE WARRANT REQUIREMENT.

(a) IN GENERAL.—Section 981(b) of title 18, United States Code, is amended to read as follows—

“(b)(1) Any property subject to forfeiture to the United States under this section may be seized by the Attorney General. In addition, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

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

“(A) a complaint for forfeiture has been filed in the district court and the court has issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;
“(B) the seizure is made pursuant to a lawful arrest or search, or if there is probable cause to believe that the property is subject to forfeiture and another exception to the Fourth Amendment warrant requirement would apply; or

“(C) the property was lawfully seized by a state or local law enforcement agency and has been transferred to a Federal agency in accordance with State law.”

“(3) Notwithstanding the provisions of rule 41(a), Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, United States Code, and executed in any district in which the property is found. Any motion for the return of property seized under this section shall be filed in the district in which the seizure warrant was issued.

“(4) In the event of a seizure pursuant to paragraph (2) of this subsection, proceedings under subsection (d) of this section or an applicable criminal forfeiture statute shall be instituted as soon as practicable, taking into account the status of any criminal investigation to which the seizure may be related.
“(5) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act, the Attorney General may apply to any Federal judge or magistrate judge in the district where the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in rule 43(e), Federal Rules of Civil Procedure. The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.

“(6) Any owner of property seized pursuant to this section may obtain release of the property pending resolution of the forfeiture action upon payment of a substitute in an amount equal to the appraised value of the property, unless the seized property—
“(A) is contraband,

“(B) is evidence of a violation of the law,

“(C) by reason of design or other characteristic, is particularly suited for use in illegal activities, or

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

The substitute res must be in the form of a traveler’s check, money order, cashier’s check or irrevocable letter of credit made payable to the seizing agency. If such substitute res is provided, the court or in the case of administrative forfeiture, the seizing agency, shall have jurisdiction to proceed with the forfeiture of the substitute res in lieu of the property. If, at the conclusion of the forfeiture proceeding, the property is declared forfeited, the owner shall surrender the property and recover the substitute res, unless the Attorney General or the seizing agency elects to retain the substitute res in lieu of the property.”

(b) Drug Forfeitures.—Section 511(b) of the Controlled Substances Act (21 U.S.C. 881(b)) is amended to read as follows:

“(b) Any property subject to forfeiture to the United States under this section may be seized by the Attorney General in the manner set forth in section 981(b) of title 18, United States Code.
“(c) Conforming Amendment.—Section 518(d) of the Controlled Substances Act (21 U.S.C. 888(d)) is repealed.”

**TITLE II—JUDICIAL FORFEITURES**

**SEC. 201. TRIAL PROCEDURE FOR CIVIL FORFEITURE.**

(a) In General.—Chapter 46 of title 18, United States Code, is amended by inserting the following new section:

“§ 987. Judicial forfeiture proceedings

“(a) Complaint.—The Attorney General may file a civil forfeiture complaint in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims. In cases where the applicable law authorizes the institution of civil and criminal forfeiture proceedings in connection with an offense, the Attorney General shall have the discretion to determine whether to file a civil complaint under this section, a criminal complaint, indictment or information including a forfeiture count in accordance with the applicable criminal forfeiture statute, or both civil and criminal actions.

“(b) Time for Filing Complaint.—(1) If property is seized and a claim is filed pursuant to section 608 of the Tariff Act of 1930 (19 U.S.C. 1608), or if the seizure is referred to the Attorney General pursuant to section 610 (19 U.S.C. 1610), the Attorney General shall deter-
mine as soon as practicable whether a forfeiture action
should be instituted.

“(2) If the Attorney General determines not to insti-
tute a forfeiture action, he or she shall so advise the seiz-
ing agency. A decision not to institute a forfeiture action
shall not preclude the seizing agency from transferring or
returning the seized property to a State or local law en-
forcement authority for appropriate forfeiture action in ac-
cordance with State law. Nor shall a decision not to insti-
tute a forfeiture action imply that the action of the seizing
agency in seizing the property was in any way improper.

“(3) If the Attorney General determines that a for-
feiture action should be instituted, he or she shall institute
such action as soon as practicable, taking into account the
status of any criminal investigation to which the forfeiture
action may be related.

“(c) CLAIM AND ANSWER.—A claim and answer to
a civil forfeiture complaint shall be filed in accordance
with rule C of the Supplemental Rules for Certain Admi-
ralty and Maritime Claims and shall set forth the nature
and extent of the claimant’s ownership interest in the
property, the time and circumstances of the claimant’s ac-
quision of the interest in the property, and any addi-
tional facts supporting the claimant’s standing to file a
claim challenging the forfeiture action.
“(d) **STANDING.**—If the Government, at the time of trial or at any time prior to trial, files a motion to dismiss the claim for lack of standing, the court shall conduct a hearing, in the manner provided in rule 43(e), Federal Rules of Civil Procedure, and shall determine whether the claimant has established, by a preponderance of the evidence, that he or she has the requisite ownership interest in the property, as defined in section 983(c), to challenge the forfeiture action. If the court determines that a claimant lacks standing, it shall dismiss the claim with prejudice and enter a final judgment as to that claimant.

“(e) **BURDEN OF PROOF.**—At trial in a civil forfeiture case, the Government shall have the initial burden of proving that the property is subject to forfeiture by a preponderance of the evidence. If the Government proves that the property is subject to forfeiture, the claimant shall have the burden of proving by a preponderance of the evidence that he or she has an interest in the property that is not forfeitable under section 983 of this title. If the Government’s theory of forfeiture is that the property facilitated the commission of a criminal offense, the Government must establish that there was a substantial connection between the property and the offense.

“(f) **AFFIRMATIVE DEFENSES.**—The claimant shall set forth all affirmative defenses, including constitutional
defenses, in his or her answer, as provided in rule 8, Federal Rules of Civil Procedure, and shall comply with discovery requests regarding such defenses in advance of trial.

“(g) MOTION TO SUPPRESS SEIZED EVIDENCE.—At any time after a claim and answer are filed, a claimant with standing to contest the seizure of the property may move to suppress such property in accordance with the normal rules regarding the suppression of evidence. If the claimant prevails on such motion, the property shall not be admitted into evidence as to that claimant at the forfeiture trial. However, a finding that property should be suppressed shall not bar the forfeiture of the property based on evidence obtained independently before or after the seizure.

“(h) USE OF HEARSAY AT PRE-TRIAL HEARINGS.—At any pre-trial hearing under this section, the court may accept and consider hearsay otherwise inadmissible under the Federal Rules of Evidence. The court shall not require the government to reveal the identity of any confidential informant at a pre-trial hearing if there are sufficient indicia of reliability regarding such testimony to allow the statement of such informant to be related by a law enforcement officer.
“(i) ADVERSE INFERENCE. — The assertion by the claimant of any fifth amendment privilege against compelled testimony in the course of the forfeiture proceeding, including pre-trial discovery, shall give rise to an adverse inference regarding the matter on which such privilege is asserted. The Government may rely on such adverse inference in support of its burden to establish the forfeitability of the property and in response to any affirmative defense. However, the government may not rely solely on such adverse inferences to satisfy its burden of proof.

“(j) STIPULATIONS. — Notwithstanding the claimant’s offer to stipulate to the forfeitability of the property, the Government shall be entitled to present evidence to the finder of fact on that issue before the claimant presents any evidence in support of any affirmative defense.

“(k) PRESERVATION OF PROPERTY SUBJECT TO FORFEITURE. — The court, before or after the filing of a forfeiture complaint and on the application of the Government, may:

“(1) enter any restraining order or injunction pursuant to section 413(3) of the Controlled Substances Act (21 U.S.C. 853(e));

“(2) require the execution of satisfactory performance bonds;

“(3) create receiverships;
“(4) appoint conservators, custodians, appraisers, accountants or trustees; or

“(5) take any other action to seize, secure, maintain, or preserve the availability of property subject to forfeiture under this section.

“(l) RELEASE OF PROPERTY TO PAY CRIMINAL DEFENSE COSTS.—

“(1) A person charged with a criminal offense may apply for the release of property seized for forfeiture to pay the necessary expenses of the person’s criminal defense. Such application shall be filed with the court where the forfeiture proceeding is pending.

“(2) When an application is filed pursuant to paragraph (1), the burden shall first be upon the applicant to establish that he has no access to other assets adequate for the payment of criminal defense counsel, and that the interest in property to be released is not subject to any claim other than the forfeiture. The Government shall have an opportunity to cross-examine the applicant and any witnesses he or she may present on this issue.

“(3) If the court determines that the applicant has met the requirements set forth in paragraph (2), the court shall hold a probable cause hearing at which the applicant shall have the burden of proving
the absence of probable cause for the forfeiture of
the property. If the court finds that there is no
probable cause for the forfeiture, it shall order the
release of the assets for which probable cause is
lacking. Otherwise, it shall dismiss the application.
The court shall not consider any affirmative defenses
to the forfeiture at the probable cause hearing.

“(m) Excessive Fines.—At the conclusion of the
trial and following the entry of a verdict of forfeiture, the
claimant may petition the court to determine whether the
excessive fines clause of the eighth amendment applies,
and if so, whether forfeiture is excessive. The claimant
shall have the burden of establishing that a forfeiture is
excessive by a preponderance of the evidence at a hearing
conducted in the manner provided in rule 43(e), Federal
Rules of Civil Procedure, by the court without a jury. If
the court determines that the forfeiture is excessive, it
shall adjust the forfeiture to the extent necessary to avoid
the Constitutional violation.

“(n) Applicability.—This section shall apply to any
judicial forfeiture action brought pursuant to this title, the
Controlled Substances Act, or the Immigration and Natu-
ratization Act of 1952. Section 615 of the Tariff Act of
1930 (19 U.S.C. 1615) shall not apply to forfeitures under
this section, nor shall this section apply to forfeitures under the customs laws.

“(o) ABATEMENT.—A civil forfeiture action or judgment under this or any other provision of federal law shall not abate because of the death of any person.”

(b) REBUTTABLE PRESUMPTIONS.—Section 981 of title 18, United States Code, is amended by adding the following new subsection:

“(k) REBUTTABLE PRESUMPTIONS.—(1) At the trial of an action brought pursuant to subsection (a)(1)(B), there is a presumption, governed by Rule 301 of the Federal Rules of Evidence, that the property is subject to forfeiture if the United States establishes, by a preponderance of the evidence, that such property was acquired during a period of time when the person who acquired the property was engaged in an offense against a foreign nation described in subsection (a)(1)(B) or within a reasonable time after such period, and there was no likely source for such property other than such offense.

“(2) At the trial of an action brought pursuant to subsection (a)(1)(A), there is a presumption, governed by rule 301 of the Federal Rules of Evidence, that the property was involved in a violation of section 1956 or 1957 of this title if the United States establishes, by a preponderance of the evidence, any three of the following factors:
“(A) the property constitutes or is traceable to more than $10,000 that has been or was intended to be transported, transmitted or transferred to or from a major drug-transit country, a major illicit drug producing country, or a major money laundering country, as those terms are determined pursuant to sections 481(e) and 490(h) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e) and 2291j(h));

“(B) the transaction giving rise to the forfeiture occurred in part in a foreign country whose bank secrecy laws have rendered the United States unable to obtain records relating to the transaction by judicial process, treaty or executive agreement;

“(C) a person more than minimally involved in the transaction giving rise to the forfeiture action (i) has been convicted in any State, Federal, or foreign jurisdiction of a felony involving money laundering or the manufacture, importation, sale or distribution of a controlled substance, or (ii) is a fugitive from prosecution for such offense; or

“(D) the transaction giving rise to the forfeiture action was conducted by, to or through a shell corporation not engaged in any legitimate business activity in the United States.
“(3) For the purposes of this paragraph, ‘shell corporation’ means any corporation that does not conduct any ongoing and significant commercial or manufacturing business or any other form of commercial operation.

“(4) The enumeration of presumptions in this subsection shall not preclude the development of other judicially created presumptions.”

(c) CONFORMING AMENDMENT.—Section 274(b)(5) of the Immigration and Naturalization Act (8 U.S.C. 1324(b)(5)) is amended—

“(1) by striking “the burden of proof shall lie upon such claimant, except that probable cause shall be first shown for the institution of such suit or action. In determining whether probable cause exists,”; and

“(2) by adding at the end the following sentence: “The procedures set forth in chapter 46 of title 18, United States Code, shall govern judicial forfeiture actions under this section.”

(d) CHAPTER ANALYSIS.—The chapter analysis for chapter 46 of title 18, United States Code, is amended by inserting the following at the appropriate place:

“987. Judicial forfeiture proceedings.”
SEC. 202. UNIFORM INNOCENT OWNER DEFENSE.

(a) In General.—Chapter 46 of title 18, United States Code, is amended by inserting after section 982 the following new section:

§ 983. Innocent owners

“(a) An innocent owner’s interest in property shall not be forfeited in any judicial action under any civil forfeiture provision of this title, the Controlled Substances Act, or the Immigration and Naturalization Act of 1952.

“(b)(1) With respect to a property interest in existence at the time the illegal act giving rise to forfeiture took place, a person is an innocent owner if he or she establishes, by a preponderance of the evidence—

“(A) that he or she did not know that the property was being used or was likely to be used in the commission of such illegal act, or

“(B) that upon learning that the property was being used or was likely to be used in the commission of such illegal act, he or she promptly did all that reasonably could be expected to terminate or to prevent such use of the property.

“(2) With respect to a property interest acquired after the act giving rise to the forfeiture took place, a person is an innocent owner if he or she establishes, by a preponderance of the evidence, that he or she acquired the property as a bona fide purchaser for value who at the
time of the purchase did not know and was reasonably
without cause to believe that the property was subject to
forfeiture. A purchaser is “reasonably without cause to be-
lieve that the property was subject to forfeiture” if, in
light of the circumstances, the purchaser did all that rea-
sonably could be expected to ensure that he or she was
not acquiring property that was subject to forfeiture.

“(3) Notwithstanding any provision of this section,
no person may assert an ownership interest under this sec-
tion in contraband or other property that it is illegal to
possess. In addition, except as set forth in paragraph (2),
no person may assert an ownership interest under this sec-
tion in the illegal proceeds of a criminal act, irrespective
of state property law.

“(c) For the purposes of this section—

“(1) an “owner” is a person with an ownership
interest in the specific property sought to be for-
feited, including but not limited to a lien, mortgage,
recorded security device or valid assignment of an
ownership interest. An owner does not include: (A)
a person with only a general unsecured interest in,
or claim against, the property or estate of another
person; (B) a bailee; (C) a nominee who exercises no
dominion or control over the property; or (D) a ben-
efiiciary of a constructive trust; and
“(2) a person shall be considered to have known that his or her property was being used or was likely to be used in the commission of an illegal act if the government establishes the existence of facts and circumstances that should have created a reasonable suspicion that the property was being or would be used for an illegal purpose.

“(d) If the court determines, in accordance with this section, that an innocent owner had a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court shall enter an appropriate order (1) severing the property; (2) transferring the property to the government with a provision that the government compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets, or (3) permitting the innocent owner to retain the property subject to a lien in favor of the government to the extent of the forfeitable interest in the property. To effectuate the purposes of this subsection, a joint tenancy or tenancy by the entireties shall be converted to a tenancy in common by order of the court, irrespective of state law.

“(e) If the person asserting a defense under subsection (b)(1) or (b)(2) is a financial institution, as de-
fined in section 20 of this title, there shall be a presum-
opposition, governed by rule 301 of the Federal Rules of Evi-
dence, that the institution acted “reasonably” if the insti-
tution establishes that it followed rigorous and regular in-
ternal procedures relating to the approval of any loan or
the acquisition of any property interest in accordance with
the standards for due diligence in the lending industry.
The presumption shall not apply if the government estab-
lishes that the financial institution had notice that the
property was subject to forfeiture before it acquired any
interest in the property.”

(b) Striking Superceded Provisions.—(1) Sec-
tion 981(a) of title 18, United States Code, is amended
by—

(A) striking subsection (a)(2) and renumbering
any subsections added by this Act accordingly; and

(B) striking “Except as provided in paragraph
(2), the” and inserting “The”.

(2) Sections 511(a) (4), (6) and (7) of the Controlled
Substances Act (21 U.S.C. 881(a) (4), (6) and (7)) are
amended by striking “, except that” and all that follows,
each time it appears.

(3) Sections 2254(a) (2) and (3) of title 18, United
States Code, are amended by striking “, except that” and
all that follows, each time it appears.
(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 46 of title 18, United States Code, is amended by inserting the following at the appropriate place:

``983. Innocent owners.’’

SEC. 203. STAY OF CIVIL FORFEITURE CASE.

(a) IN GENERAL.—Section 981(g) of title 18, United States Code, is amended to read as follows:

“(g)(1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if it determines that civil discovery or trial could adversely affect the government’s ability to conduct a related criminal investigation or the prosecution of a related criminal case.

“(2) Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if it determines that the claimant is the subject of a related criminal investigation or case, that the claimant has standing to assert a claim in the civil forfeiture proceeding, and that continuation of the forfeiture proceeding may infringe upon the claimant’s right against self-incrimination in the related investigation or case.

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

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

“(5) Any presentation to the court under this sub-
section that involves an on-going criminal investigation
shall be made by the Government ex parte and under seal.

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

“(7) A determination by the court that the claimant
has standing to request a stay pursuant to paragraph (2)
shall apply only to the provisions of this subsection and shall not preclude the Government from objecting to the claimant’s standing to the time of trial in accordance with Section 987(d) of this title.

“(8) An order imposing a stay pursuant to this subsection shall expire in 180 days unless the court determines, at the end of such time period, that there are compelling reasons why the stay should be continued. An order renewing a stay shall be reviewed by the court every 90 days unless the parties agree that such review is unnecessary.”

(b) DRUG FORFEITURES.—Section 511(i) of the Controlled Substances Act (21 U.S.C. 881(i)) is amended to read as follows:

“(i) The provisions of section 981(g) of title 18, United States Code, regarding the stay of the civil forfeiture proceeding shall apply to forfeitures under this section.”

(c) GUIDELINES.—Within 180 days after the effective date of this section, the Attorney General and the Secretary of the Treasury shall jointly promulgate guidelines governing the preservation of the value of property subject to forfeiture in a case that has been stayed pursuant to section 511(i) of the Controlled Substances Act (21 U.S.C. 881(i)) or section 981(g) of title 18, United States Code. The guidelines shall take into account the interests of both
the Government and the claimant in avoiding the deprecia-
tion, destruction or dissipation of the property pending
conclusion of the forfeiture proceeding.

SEC. 204. APPLICATION OF FORFEITURE PROCEDURES.

(a) IN GENERAL.—Chapter 46 of title 18, United
States Code, is amended by adding the following section:

“§ 988. Application of forfeiture procedures

“(a) CIVIL FORFEITURES.—Whenever a statute in
this title provides for the civil forfeiture of property with-
out specifying the procedures governing a judicial forfeit-
ure action, the provisions of this chapter relating to civil
forfeitures shall apply.

“(b) CRIMINAL FORFEITURES.—Whenever a statute
in this title provides for the criminal forfeiture of property
without specifying the procedures governing such forfeit-
ures, the provisions of this chapter relating to criminal for-
feitures shall apply.”

(b) CONFORMING AMENDMENT.—The chapter analy-
sis for Chapter 46, of title 18, United States Code, is
amended by adding the following:

“988. Application of Forfeiture Procedures.”

SEC. 205. CIVIL INVESTIGATIVE DEMANDS.

(a) IN GENERAL.—Chapter 46 of title 18, United
States Code, is amended by adding at the end of the fol-
lowing new section:
§ 985. Civil investigative demands

(a) For the purpose of conducting an investigation in contemplation of any civil forfeiture proceedings, the Attorney General may—

(1) administer oaths and affirmations;

(2) take evidence; and

(3) by subpoena, summon witnesses and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such subpoena may require the attendance of witnesses and the production of any such records from any place in the United States at any place in the United States designated by the Attorney General.

(b) Except as provided in this section, the procedures and limitations that apply to civil investigative demands in subsections (g), (h), and (j) of section 1968 of title 18, United States Code, shall apply with respect to civil investigative demands issued under this subsection. Process required by such subsections of section 1968 to be served upon `the custodian' shall be served on the Attorney General. Failure to comply with an order of the court to enforce such demand shall be punishable as civil or criminal contempt.
“(c) In the case of a civil investigative demand for which the return date is less than 5 days after the date of service, no person shall be found in contempt for failure to comply by the return date if such person files a petition under subsection (b) not later than 5 days after the date of service.

“(d) A civil investigative demand may be issued pursuant to this section in furtherance of an investigation directed toward the forfeiture of an asset at any time up to the filing of a civil forfeiture complaint with respect to that asset, except that no demand relating to a given asset may be served upon any person who files a claim to that asset pursuant to section 1608 of title 19, United States Code, once such claim is filed. Once a given asset is made the subject of a civil forfeiture complaint, all further discovery regarding the forfeiture of that asset shall proceed in accordance with the Federal Rules of Civil Procedure. Investigation relating to the forfeiture of assets not subject to a claim or to a forfeiture complaint may proceed pursuant to this section at any time.

“(e) In this section, ‘Attorney General’ means any attorney for the Government employed by the Department of Justice as defined by rule 54(e) of the Federal Rules of Criminal Procedure, and shall not include an attorney,
agent or other employee of any agency of the Depart-
ment.’’

(b) Conforming Amendment.—The chapter analy-
sis for chapter 46 of title 18, United States Code is
amended by adding the following at the appropriate place:

“985. Civil investigative demands.’’

(c) Obstruction of Civil Investigative De-
mand.—Section 1505 of title 18, United States Code, is
amended by inserting “section 985 of this title or” before
“the Anti-trust Civil Process Act”.

(d) Right to Financial Privacy Act Amend-
ment.—Section 1120(b)(1)(A) of the Right to Financial
Privacy Act (12 U.S.C. 3420(b)(1)(A)) is amended by in-
serting “or civil investigative demand” after “a grand jury
subpoena’’.

(e) Fair Credit Reporting Act Amendment.—
Paragraph (1) of section 604 of the Fair Credit Reporting
Act (15 U.S.C. 1681b) is amended by striking “or” and
inserting “, or a civil investigative demand” after “grand
jury’’.

SEC. 206. ACCESS TO RECORDS IN BANK SECRECY JURIS-
DICTIONS

Section 986 of title 18, United States Code, is
amended by adding the following new subsection:
“ACCESS TO RECORDS LOCATED ABROAD

“(d) In any civil forfeiture case, or in any ancillary proceeding in any criminal forfeiture case governed by section 413(n) of the Controlled Substances Act (21 U.S.C. 853(n)), where—

“(1) financial records located in a foreign country may be material (A) to any claim or to the ability of the government to respond to such claim, or (B) in a civil forfeiture case, to the Government’s ability to establish the forfeitability of the property; and

“(2) it is within the capacity of the claimant to waive his or her rights under such secrecy laws, or to obtain the records him or herself, so that the records can be made available, the refusal of the claimant to provide the records in response to a discovery request or take the action necessary otherwise to make the records available shall result in the dismissal of the claim with prejudice. This subsection shall not affect the claimant’s rights to refuse production on the basis of any privilege guaranteed by the Constitution or Federal laws of the United States.”

SEC. 207. ACCESS TO OTHER RECORDS.

Section 6103(i)(1) of the Internal Revenue Code (26 U.S.C. 6103(i)(1)) is amended—
(1) in subparagraph (A)(i) by inserting “or related civil forfeiture” after “enforcement of a specifically designated Federal criminal statute”; and

(2) in subparagraph (B)(iii) by inserting “or civil forfeiture investigation or proceeding” after “Federal criminal investigation or proceeding”.

SEC. 208. DISCLOSURE OF GRAND JURY INFORMATION TO FEDERAL PROSECUTORS.

Section 3322(a) of title 18, United States Code, is amended—

(1) by striking “civil forfeiture under section 981 of title 18, United States Code, of property described in section 981(a)(1)(C) of such title” and inserting “any civil forfeiture provision of Federal law”; and

(2) by striking “concerning a banking law violation”.

SEC. 209. CURRENCY FORFEITURES.

Section 511 of the Controlled Substances Act (21 U.S.C. 881) is amended by inserting the following new subsection:

“CURRENCY FORFEITURES

“(m) At the trial of an action brought pursuant to subsection (a)(6), if the Government establishes by a preponderance of the evidence that the property subject to forfeiture—
“(1) is currency or other monetary instruments that was found in close proximity to a measurable quantity of any controlled substance; or

“(2) is currency or other monetary instruments in excess of $10,000 that was being transported at an airport or other port of entry, on an interstate highway, or on the coastal waters of the United States, and the person in possession of the property disclaims knowledge or ownership of the property, or offers an explanation for his or her possession of the property that is false,

there shall be a presumption, governed by rule 301 of the Federal Rules of Evidence, that the property is the proceeds of a violation of the Controlled Substances Act. As provided in rule 301 of the Federal Rules of Evidence, the burden of proof shall at all times be on the United States to establish that the property is subject to forfeiture.”

TITLE III—PROPERTY SUBJECT TO FORFEITURE

SEC. 301. FORFEITURE OF PROCEEDS OF FEDERAL OFFENSES.

(a) Civil Forfeiture.—Section 981(a)(1) of title 18, United States Code, is amended—
(1) in subparagraph (C) by striking “of section 215” and all that follows up to the period and inserting “of any offense in this title or a conspiracy to commit such offense”; and

(2) by striking subparagraphs (D), (E) and (F).

(b) CRIMINAL FORFEITURE.—Section 982(a) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking “violate—” and subparagraphs (A) and (B) and inserting “violate any offense in this title,”; and

(2) by striking paragraphs (3), (4), (5) and the first paragraph (6), enacted by Public Law 104–191.

SEC. 302. UNIFORM DEFINITION OF “PROCEEDS”.

(a) CIVIL FORFEITURE.—Section 981(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking “gross receipts” and “gross proceeds” wherever those terms appear and inserting “proceeds”; and

(2) by adding the following after paragraph (2):

“(3) In this section, ‘proceeds’ means any and all property of any kind obtained, directly or indirectly, at any time as the result of the commission of the offense giving rise to forfeiture, and any prop-
erty traceable thereto. ‘Proceeds’ is not limited to
the net gain or profit realized from the commission
of the offense.”

(b) CRIMINAL FORFEITURE.—Section 982 of title 18,
United States Code, is amended—

(1) in subsection (a), by striking “gross re-
cceipts” and “gross proceeds” wherever those terms
appear and inserting “proceeds”; and

(2) by adding the following paragraph to the
end of subsection (b):

“(3) In this section, ‘proceeds’ means any and
all property of any kind obtained, directly or indi-
rectly, at any time as the result of the commission
of the offense giving rise to forfeiture, and any prop-
erty traceable thereto. Where the offense involves a
scheme, a conspiracy, or a pattern of criminal activ-
ity, ‘proceeds’ includes any and all property obtained
from the entire course of conduct constituting such
scheme, conspiracy, or pattern. ‘Proceeds’ is not lim-
ited to the net gain or profit realized from the com-
mission of the offense.”

(c) CONTROLLED SUBSTANCES.—(1) Section 511 of
the Controlled Substances Act (21 U.S.C. 881) is amend-
ed by adding the following new subsection:
“(k) In this section, ‘proceeds’ means any and all property of any kind obtained, directly or indirectly, at any time as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto. ‘Proceeds’ is not limited to the net gain or profit realized from the commission of the offense.”

(2) Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding the following new subsection:

“DEFINITION OF PROCEEDS

“(q) In this section, ‘proceeds’ means any and all property of any kind obtained at any time, directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto. Where the offense involves a scheme, a conspiracy, or a pattern of criminal activity, ‘proceeds’ includes any and all property obtained from the entire course of conduct constituting such scheme, conspiracy, or pattern. ‘Proceeds’ is not limited to the net gain or profit realized from the commission of the offense.”

(d) Rico.—Subsection 1963(a) of title 18, United States Code, is amended by adding the following at the end: “In this section, ‘proceeds’ means any and all property obtained from the entire pattern of racketeering activity or unlawful debt collection and is not limited to net profits.”
SEC. 303. FORFEITURE OF FIREARMS USED IN CRIMES OF VIOLENCE AND FELONIES.

(a) CIVIL FORFEITURE.—Section 981(a)(1) of title 18, United States Code, is amended by inserting after subparagraph (C) the following:

“(D) Any firearm (as defined in section 921(a)(3) of this title) used or intended to be used to commit or to facilitate the commission of any crime of violence (as defined in section 16 of this title) or any felony under Federal law.”

(b) CRIMINAL FORFEITURE.—Section 982(a) of title 18, United States Code, is amended by inserting after subparagraph (2) the following:

“(3) The court, in imposing a sentence on a person convicted of any crime of violence (as defined in section 16 of this title) or any felony under Federal law, shall order that the person forfeit to the United States any firearm (as defined in section 921(a)(3) of this title) used or intended to be used to commit or to facilitate the commission of the offense.”

(c) DISPOSAL OF FORFEITED PROPERTY.—Section 981(e) of title 18, United States Code, is amended by adding at the end the following sentence: “Any firearm forfeited pursuant to subsection (a)(1)(D) or section
982(a)(3) of this title shall be disposed of by the seizing agency in accordance with law.”

(d) Authority To Forfeit Property Under Section 924(d).—Section 924(d) of title 18, United States Code, is amended by adding the following new paragraph:

“(4) Whenever any firearm is subject to forfeiture under this section because it was involved in or used in a violation of subsection (c), the Secretary of the Treasury shall have the authority to seize and forfeit, in accordance with the procedures of the applicable forfeiture statute, any property otherwise forfeitable under the laws of the United States that was involved in or derived from the crime of violence or drug trafficking crime described in subsection (c) in which the forfeited firearm was used or carried.”

(e) 120-Day Rule for Administrative Forfeiture.—Section 924(d)(1) of title 18, United States Code, is amended by adding the following after the last sentence:

“If the Government institutes an administrative forfeiture action within the 120-day period, and a claim is then filed that requires that a judicial forfeiture action be filed in Federal court, the Government must file the judicial action within 120 days of the filing of the claim. The time during which any related criminal indictment or informa-
tion is pending shall not be counted in calculating either
of the 120-day periods referred to in this subsection.”

SEC. 304. FORFEITURE OF PROCEEDS TRACEABLE TO FA-
CILITATING PROPERTY IN DRUG CASES.

(a) CONVEYANCES.—Section 511(a)(4) of the Con-
trolled Substances Act (21 U.S.C. 881(a)(4)) is amend-
ed—

(1) by inserting “, and any property traceable
to such conveyances” after “property described in
paragraph (1), (2), or (9)”;

(2) in subparagraph (A) by inserting “, and no
property traceable to such conveyance,” before
“shall be forfeited”; and

(3) in subparagraphs (B) and (C) by inserting
“and no property traceable to such conveyance” be-
fore “shall be forfeited”.

(b) REAL PROPERTY.—Section 511(a)(7) of the Con-
trolled Substances Act (21 U.S.C. 881(a)(7)) is amended
by inserting “, and any property traceable to such prop-
erty” after “one year’s imprisonment”.

(c) NEGOTIABLE INSTRUMENTS AND SECURITIES.—
Section 511(a)(6) of the Controlled Substances Act (21
U.S.C. 881(a)(6)) is amended by inserting “, and any
property traceable to such property” after “this sub-
chapter” the second time it appears.
SEC. 305. FORFEITURE FOR ALIEN SMUGGLING.

(a) CRIMINAL FORFEITURE AUTHORITY.—Section 982(a) of title 18, United States Code, is amended—

(1) by redesignating the second paragraph (6) as paragraph (7);

(2) by inserting “sections 274(a), 274A(a)(1) or 274A(a)(2) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1324(a), 1324A(a)(1) and 1324A(a)(2)),” before “section 1425” the first time it appears;

(3) in subparagraph (A)(i), by striking “subsection (a)” and inserting “the offense”; and

(4) in subparagraph (A)(ii) (I) and (II), by striking “subsection (a)” through “of this title” and inserting “the offense”.

(b) CIVIL FORFEITURE.—Section 274(b) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1324(b)) is amended—

(1) by amending paragraphs (1) and (2) to read as follows:

“(b) SEIZURE AND FORFEITURE.—(1) The following property shall be subject to seizure and forfeiture:

“(A) any conveyance, including any vessel, vehicle, or aircraft, which has been or is being used in the commission of a violation of subsection (a); and
“(B) any property, real or personal, (i) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of a violation of subsection (a), or (ii) that is used to facilitate, or is intended to be used to facilitate, the commission of a violation of subparagraph (a)(1)(A).

“(2) Any property subject to forfeiture to the United States under this section may be seized by the Attorney General in the manner set forth in section 981(b) of title 18, United States Code.”; and

(2) in paragraphs (4) and (5) by striking “a conveyance” and “conveyance” each place the phrase or word appears and inserting “property”.

SEC. 306. FORFEITURE OF PROCEEDS OF CERTAIN FOREIGN CRIMES.

Section 981(a)(1)(B) of title 18, United States Code, is amended by—

(1) inserting “(i)” after “against a foreign nation involving”; and

(2) inserting “(ii) any other conduct described in section 1956(c)(7)(B),” after “(as such term is defined for purposes of the Controlled Substances Act)”.

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SEC. 307. FORFEITURE OF PROPERTY USED TO FACILITATE FOREIGN DRUG CRIMES.

Section 981(a)(1)(B) of title 18, United States Code, is amended by inserting “, or any property used to facilitate an offense described in subparagraph (i)” at the end before the period.

SEC. 308. FORFEITURE FOR VIOLATIONS OF SECTION 6050I AND 1960.

(a) Sections 981(a)(1)(A) and 982(a)(1) of title 18, United States Code, are amended by inserting “, or of section 6050I of the Internal Revenue Code of 1986 (26 U.S.C. 6050I)” after “of title 31”.

(b) Section 981(a)(1)(A) of title 18, United States Code, is amended by striking “or 1957” and inserting “, 1957 or 1960”.

SEC. 309. CRIMINAL FORFEITURE FOR MONEY LAUNDERING CONSPIRACIES.

Section 982(a)(1) of title 18, United States Code, is amended by inserting “, or a conspiracy to commit any such offense” after “of this title”.

SEC. 310. ARCHAEOLOGICAL RESOURCES PROTECTION ACT.

Section 8(b) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470gg(b)) is amended by—

(1) inserting “all proceeds derived directly or indirectly from such violation or any property trace-
able thereto,” before “and all vehicles” in the un-numbered paragraph;

(2) inserting “proceeds,” before “vehicles” in paragraph (3); and

(3) inserting the following at the end of the subsection: “If a forfeiture count is included within an indictment in accordance with the Federal Rules of Criminal Procedure, and the defendant is convicted of the offense giving rise to the forfeiture, the forfeiture may be ordered as part of the criminal sentence in accordance with the procedures for criminal forfeitures in chapter 46 of title 18, United States Code. Otherwise, the forfeiture shall be civil in nature in accordance with the procedures for civil forfeiture in said chapter 46 of title 18.”

SEC. 311. FORFEITURE OF INSTRUMENTALITIES OF TERRORISM, TELEMARKETING FRAUD, AND OTHER OFFENSES.

(a) CIVIL FORFEITURE.—Section 981(a)(1) of title 18, United States Code, is amended by adding the following subparagraphs:

“(E)(i) Any computer, photostatic reproduction machine, electronic communications device or other material, article, apparatus, device or thing made, possessed, fitted, used or intended to be used on a
continuing basis to commit a violation of sections 513, 514, 1028 through 1032, and 1341, 1343 and 1344 of this title, or a conspiracy to commit such offense, and any property traceable to such property.

“(ii) Any conveyance used on two or more occasions to transport the instrumentalities used in the commission of a violation of sections 1028 and 1029 of this title, or a conspiracy to commit such offense, and any property traceable to such conveyance.

“(F) Any conveyance, chemicals, laboratory equipment, or other material, article, apparatus, device or thing made, possessed, fitted, used or intended to be used to commit—

“(i) an offense punishable under Chapter 113B of this title (relating to terrorism);

“(ii) a violation of the National Firearms Act (26 U.S.C. chapter 53);

“(iii) a violation of any of the following sections of the federal explosives laws: subsections (a) (1) and (3), (b) through (d), and (h)(1) of section 842, and subsections (d) through (m) of section 844; or

“(iv) any other offense enumerated in section 2339A(a) of this title;
or a conspiracy to commit any such offense, and any property traceable to such property.”

(b) CRIMINAL FORFEITURE.—Section 982(a) of title 18, United States Code, is amended by inserting the following new paragraph:

“(4)(A) The court, in imposing a sentence on a person convicted of a violation of sections 513, 514, 1028 through 1032, and 1341, 1343 and 1344 of this title, or a conspiracy to commit such offense, shall order the person to forfeit to the United States any computer, photostatic reproduction machine, electronic communications device or other material, article, apparatus, device or thing made, possessed, fitted, used or intended to be used to commit such offense, and any property traceable to such property.

“(B) The court, in imposing a sentence on a person convicted of a violation of section 1028 or 1029 of this title, or a conspiracy to commit such offense, shall order the person to forfeit to the United States any conveyance used on two or more occasions to transport the instrumentalities used to commit such offense, and any property traceable to such conveyance.

“(5) The court, in imposing a sentence on a person convicted of—
“(A) an offense punishable under chapter 113B of this title (relating to terrorism);

“(B) a violation of the National Firearms Act (26 U.S.C. chapter 53);

“(C) a violation of any of the following sections of the Federal explosives laws: subsections (a) (1) and (3), (b) through (d), and (h)(1) of section 842, and subsections (d) through (m) of section 844; or

“(D) any other offense enumerated in section 2339A(a) of this title;

or a conspiracy to commit any such offense, shall order the person to forfeit to the United States any conveyance, chemicals, laboratory equipment, or other material, article, apparatus, device or thing made, possessed, fitted, used or intended to be used to commit such offense, and any property traceable to such property.”

SEC. 312. FORFEITURE OF VEHICLES USED FOR GUN RUNNING.

(a) CIVIL FORFEITURE.—Section 981(a)(1) of title 18, United States Code, is amended by adding the following subparagraph:

“(G)(i) Any conveyance used or intended to be used to commit a gun running offense, or conspiracy
to commit such offense, and any property traceable to such property.

(ii) For the purposes of this section, a gun running offense is a violation of any of the following sections of this title involving five or more firearms: section 922(i) (transporting stolen firearms); section 924(g) (travel with a firearm in furtherance of racketeering); section 924(k) (stealing a firearm); and section 924(m) (interstate travel to promote firearms trafficking).

(b) CRIMINAL FORFEITURE.—Section 982(a) of title 18, United States Code, is amended by inserting the following new paragraph:

“(6) The court, in imposing a sentence on a person convicted of a gun running offense, as defined in section 981(a)(1)(G), or a conspiracy to commit such offense, shall order the person to forfeit to the United States any conveyance used or intended to be used to commit such offense, and any property traceable to such conveyance.”

SEC. 313. FORFEITURE OF CRIMINAL PROCEEDS TRANSPORTED IN INTERSTATE COMMERCE.

Section 1952 of title 18, United States Code, is amended by adding the following subsection:
“(d)(1) Any proceeds distributed or intended to be
distributed in violation of subsection (a)(1) or a conspiracy
to commit such violation, or any property traceable to such
property, is subject to forfeiture to the United States in
accordance with the procedures set forth in section 981
of this title.

“(2) The court, in imposing sentence on a person con-
victed of an offense in violation of subsection (a)(1) or
a conspiracy to commit such offense, shall order that the
person forfeit to the United States any proceeds distrib-
uted or intended to be distributed in the commission of
such offense, or any property traceable to such property,
in accordance with the procedures set forth in section 982
of this title.”

SEC. 314. FORFEITURES OF PROCEEDS OF FEDERAL FOOD,
DRUG, AND COSMETIC ACT VIOLATIONS.

Chapter 9 of title 21, United States Code, is amended
by adding the following two new sections:

“§ 311. Civil forfeiture of proceeds of Federal Food,
Drug, and Cosmetic Act Violations

“(a) Any property, real or personal, that constitutes,
or is derived from or is traceable to the proceeds obtained
directly or indirectly from a criminal violation of, or a con-
spiracy to commit a criminal violation of, a provision of
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301–395) shall be subject to judicial forfeiture to the United States.

“(b) The provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures shall extend to a seizure or forfeiture under this section, insofar as applicable and not inconsistent with the provisions hereof, except that such duties as are imposed upon the Secretary of the Treasury under chapter 46 shall be performed with respect to seizures and forfeitures under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Secretary of Health and Human Services.

§ 312. Criminal forfeiture of proceeds of Federal Food, Drug, and Cosmetic Act violations

“(a) Any person convicted of a violation of, or a conspiracy to violate, a provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301–395) shall forfeit to the United States, irrespective of any provision of State law, any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation. The court, in imposing sentence on such person, shall order that the person forfeit to the United States all property described in this subsection.

“(b) Property subject to forfeiture under this section, any seizure and disposition thereof, and any administra-
tive or judicial proceeding in relation thereto, shall be gov-
erned by the provisions of section 413 of the Comprehen-
sive Drug Abuse Prevention and Control Act of 1970 (21
U.S.C. 853), except for subsection 413(d) which shall not
apply to forfeitures under this section.”

SEC. 315. FORFEITURE FOR FOOD STAMP FRAUD.

Section 15 of the Food Stamp Act of 1977 (7 U.S.C.
2024) is amended by adding at the end the following new
subsection:

“(i) Civil Forfeiture.—

“(1) Any property, real or personal—

“(A) used in a transaction or attempted
transaction, to commit or to facilitate the com-
mision of a violation (other than a mis-
demeanor) of subsection (b) or (c), or

“(B) constituting, derived from, or trace-
able to proceeds of a violation of subsection (b)
or (c), shall be subject to forfeiture to the Unit-
ed States.

“(2) The provisions of chapter 46 of title 18,
relating to civil forfeitures shall extend to a seizure
or forfeiture under this subsection, insofar as appli-
cable and not inconsistent with the provisions of this
subsection, except that such duties as are imposed
upon the Secretary of the Treasury under chapter
46 shall be performed with respect to seizures and
forfeitures under this section by such officers,
agents, and other persons as may be designated for
that purpose by the Secretary of Agriculture.”

SEC. 316. FORFEITURE FOR ODOMETER TAMPERING OF-
FENSES.

(a) CRIMINAL FORFEITURE.—Section 982(a)(5) of
title 18, United States Code, is amended—

(1) by striking “or” at the end of subparagraph
(D);

(2) by inserting “or” after the semicolon at the
end of sub-paragraph (E);

(3) by inserting the following after sub-para-
graph (E), as amended:

“(F) section 32703 of title 49, United
States Code (motor vehicle odometer tamper-
ing);”; and

(4) by adding the following after the last pe-
period: “If the conviction was for a violation described
in subparagraph (F), the court shall also order the
forfeiture of any vehicles or other property involved
in the commission of the offense.”

(b) CIVIL FORFEITURE.—Section 981(a)(1)(F) of
title 18, United States Code, is amended—

(1) by striking “or” at the end of clause (iv);
(2) by striking the period at the end of clause (v) and inserting ‘‘; or’’;
(3) by inserting the following after clause (v), as amended:

“(vi) section 32703 of title 49, United States Code (motor vehicle odometer tampering).”; and

(4) by adding the following after the last period: “In the case of a violation described in clause (vi), any vehicles or other property involved in the commission of the offense shall also be subject to forfeiture.”

TITLE IV—MISCELLANEOUS FORFEITURE AMENDMENTS

SEC. 401. USE OF FORFEITED FUNDS TO PAY RESTITUTION TO CRIME VICTIMS AND REGULATORY AGENCIES.

Section 981 of title 18, United States Code, is amended—

(1) by amending subsection (e)(6) to read as follows:

“(6) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; or”;}
(2) in subsections (e)(3), (4) and (5), by striking “in the case of property referred to in subsection (a)(1)(C)” and inserting “in the case of property forfeited in connection with an offense resulting in a pecuniary loss to a financial institution or regulatory agency”; and

(3) in subsection (e)(7), by striking “in the case of property referred to in subsection (a)(1)(D)” and inserting “in the case of property forfeited in connection with an offense relating to the sale of assets acquired or held by any Federal financial institution or regulatory agency, or person appointed by such agency, as receiver, conservator or liquidating agent for a financial institution”.

SEC. 402. ENFORCEMENT OF FOREIGN FORFEITURE JUDGMENT.

(a) IN GENERAL.—Chapter 163 of title 28, United States Code, is amended by inserting the following new section:

“§ 2466. Enforcement of foreign forfeiture judgment

“(a) DEFINITIONS.—As used in this section—

“(1) ‘Foreign nation’ shall mean a country that has become a party to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereafter ‘the United Na-
tions Convention’) or a foreign jurisdiction with
which the United States has a treaty or other formal
international agreement in effect providing for mu-
tual forfeiture assistance.

“(2) ‘Value based confiscation judgment’ shall
mean a final order of a foreign nation compelling a
defendant, as a consequence of his or her criminal
conviction for an offense described in article 3, para-
graph 1, of the United Nations Convention, to pay
a sum of money representing the proceeds of such
offense, or property the value of which corresponds
to such proceeds.

“(b) Review by Attorney General.—A foreign
nation seeking to have its value based confiscation judg-
ment registered and enforced by a United States district
court under this section must first submit a request to
the Attorney General or his or her designee. Such request
shall include:

“(1) a summary of the facts of the case and a
description of the criminal proceeding which resulted
in the value-based confiscation judgment;

“(2) certified copies of the judgment of convic-
tion and value-based confiscation judgment;

“(3) an affidavit or sworn declaration establish-
ing that the defendant received notice of the pro-
ceedings in sufficient time to enable him or her to
defend against the charges that the value-based
confiscation judgment rendered is in force and is not
subject to appeal;

“(4) an affidavit or sworn declaration that all
reasonable efforts have been undertaken to enforce
the value-based confiscation judgment against the
defendant’s property, if any, in the foreign country;
and

“(5) such additional information and evidence
as may be required by the Attorney General or his
or her designee.

The Attorney General or his or her designee, in consulta-
tion with the Secretary of State or his or her designee,
shall determine whether to certify the request, and such
decision shall be final and not subject to either judicial
review or review under the Administrative Procedures Act,
5 U.S.C. 551 et seq.

“(c) JURISDICTION AND VENUE.—Where the Attor-
ney General or his or her designee certifies a request
under subsection (b), the foreign nation may file a civil
proceeding in United States district court seeking to en-
force the foreign value based confiscation judgment as if
the judgment had been entered by a court in the United
States. In such a proceeding, the foreign nation shall be
the plaintiff and the person against whom the value-based confiscation judgment was entered shall be the defendant. Venue shall lie in the district court for the District of Columbia or in any other district in which the defendant or the property that may be the basis for satisfaction of a judgment under this section may be found. The district court shall have personal jurisdiction over a defendant residing outside of the United States if the defendant is served with process in accordance with rule 4 of the Federal Rules of Civil Procedure.

“(d) ENTRY AND ENFORCEMENT OF JUDGMENT.—

(1) Except as provided in paragraph (2), the district court shall enter such orders as may be necessary to enforce the value-based confiscation judgment on behalf of the foreign nation where it finds that all of the following requirements have been met:

“(A) the value-based confiscation judgment was rendered under a system which provides impartial tribunals or procedures compatible with the requirements of due process of law;

“(B) the foreign court had personal jurisdiction over the defendant;

“(C) the foreign court had jurisdiction over the subject matter;
“(D) the defendant in the proceedings in
the foreign court received notice of the proceed-
ings in sufficient time to enable him or her to
defend; and

“(E) the judgment was not obtained by
fraud.

Process to enforce a judgment under this section will be
in accordance with rule 69(a) of the Federal Rules of Civil
Procedure.

“(e) Finality of Foreign Findings.—Upon a
finding by the district court that the conditions set forth
in subsection (d) have been satisfied, the court shall be
bound by the findings of facts insofar as they are stated
in the foreign judgment of conviction and value-based
confiscation judgment.

“(f) Currency Conversion.—Insofar as a value
based confiscation judgment requires the payment of a
sum of money, the rate of exchange in effect at time when
the suit to enforce is filed by the foreign nation shall be
used in calculating the amount stated in the judgment
submitted for registration.”

(b) Conforming Amendment.—The chapter analy-
sis for chapter 163, title 28, United States Code, is
amended by inserting the following at the end:

“2466. Enforcement of foreign forfeiture judgment”
SEC. 403. MINOR AND TECHNICAL AMENDMENTS RELATING TO 1992 FORFEITURE AMENDMENTS.

(a) CRIMINAL FORFEITURE.—Section 982(b) of title 18, United States Code, is amended in subsection (b)(2), by striking “The substitution” and inserting “With respect to a forfeiture under subsection (a)(1), the substitution”.

(b) FUNGIBLE PROPERTY.—Section 984 of title 18, United States Code, is amended—

(1) by striking subsection (a) and redesignating the remaining subsections as (a), (b), and (c), respectively;

(2) by amending subsection (b) (as redesignated) to read as follows:

“(b) The provisions of this section may be invoked only if the action for forfeiture was commenced by a seizure or an arrest in rem within two years of the offense that is the basis for the forfeiture.”;

(3) by amending subsection (c)(1) (as redesignated) to read as follows:

“(c)(1) Subsection (a) shall not apply to an action against funds held by a financial institution in an inter-bank account unless the account holder knowingly engaged in the offense that is the basis for the forfeiture.”;

(4) by adding the following new paragraph to subsection (c) (as redesignated):
“(3) As used in this subsection, a ‘financial institution’ includes a foreign bank, as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978.”; and

(5) by adding the following new subsection:

“(d) Nothing in this section is intended to limit the ability of the Government to forfeit property under any statute where the property involved in the offense giving rise to the forfeiture or property traceable thereto is available for forfeiture.”

(c) **Subpoenas for Bank Records.**—Section 986(a) of title 18, United States Code, is amended by—

(1) striking “section 1956, 1957 or 1960 of this title, section 5322 or 5324 of title 31, United States Code” and inserting “section 981 of this title”; and

(2) striking the last sentence.

d) **Civil Money Laundering Enforcement.**—Section 1956(b) of title 18, United States Code, is amended—

(1) by redesignating the present matter as paragraph (1), and the present paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(2) by inserting the following new paragraphs:
“(2) For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution registered in a foreign country, that commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States; Provided, That service of process upon such foreign person is made under the Federal Rules of Civil Procedure or the laws of the country where the foreign person is found.

“(3) The court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.”

(e) Definition of Financial Institution.—Section 5312(a)(2) of title 31, United States Code, is amended by redesignating subparagraphs (Y) and (Z) as (Z) and (AA), respectively, and by inserting the following new subparagraph after subparagraph (X):

“(Y) a bail bondsman,”.

(f) Section 981(d) of title 18, United States Code, is amended by striking “sale of this section” and inserting “sale of such property.”
SEC. 404. CIVIL FORFEITURE OF COINS AND CURRENCY IN
CONFISCATED GAMBLING DEVICES.

Section 7 of Public Law 81–906 (15 U.S.C. 1177) is amended—

(1) by inserting “Any coin or currency contained in any gambling device at the time of its seizure pursuant to the preceding sentence shall also be seized and forfeited to the United States.” after the first sentence; and

(2) in the last sentence, by inserting “, coins, or currency” after “gambling devices”.

SEC. 405. DRUG PARAPHERNALIA TECHNICAL AMENDMENTS.

(a) Section 511(a)(10) of the Controlled Substances Act (21 U.S.C. 881(a)(10)) is amended by striking “857 of this title” and inserting “422 of this subchapter (21 U.S.C. 863)”.

(b) Section 422 of the Controlled Substances Act (21 U.S.C. 863) is amended:

(1) by deleting subsection (c); and

(2) by redesignating subsections (d), (e), and (f) to be subsections (c), (d), and (e).
SEC. 406. AUTHORIZATION TO SHARE FORFEITED PROPERTY WITH COOPERATING FOREIGN GOVERNMENTS.

(a) In General.—Section 981(i)(1) of title 18, United States Code, is amended by striking “this chapter” and inserting “any provision of Federal law”.

(b) Conforming Amendment.—Section 511(e)(1) of the Controlled Substances Act is amended by striking “; or” and all of subparagraph (E) and inserting a period.

SEC. 407. FORFEITURE OF COUNTERFEIT PARAPHERNALIA.

Section 492 of title 18, United States Code, is amended—

(1) by striking the third and fourth undesignated paragraphs;

(2) bydesignating the remaining paragraphs as subsections (a) and (b);

(3) by adding the following new subsections:

“(c) For the purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of such property, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or
alleged to have been incurred, under this section, except
that the duties as are imposed upon the customs officer
or any other person with respect to the seizure and forfeit-
ure of property under the customs laws shall be performed
with respect to seizures and forfeitures of property under
this section by such officers, agents, or other persons as
may be authorized or designated for that purpose by the
Secretary of the Treasury.

“(d) All seizures and civil judicial forfeitures pursu-
ant to subsection (a) shall be governed by the procedures
set forth in chapter 46 of this title pertaining to civil for-
feitures. The Attorney General shall have sole responsibil-
ity for disposing of petitions for remission or mitigation
with respect to property involved in a judicial forfeiture
proceeding.

“(e) A court in sentencing a person for a violation
of this chapter or of sections 331–33, 335, 336, 642, or
1720 of this title, shall order the person to forfeit the
property described in subsection (a) in accordance with the
procedures set forth in section 982 of this title.”; and

(4) in subsection (b), as so designated by this
section, by striking “fined not more than $100” and
inserting “fined under this title”.

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SEC. 408. CLOSING OF LOOPHOLE TO DEFEAT CRIMINAL FORFEITURE THROUGH BANKRUPTCY.

Section 413(a) of the Controlled Substances Act (21 U.S.C. 853(a)) is amended by inserting “, or of any bankruptcy proceeding instituted after or in contemplation of a prosecution of such violation” after “shall forfeit to the United States, irrespective of any provision of State law”.

SEC. 409. STATUTE OF LIMITATIONS FOR CIVIL FORFEITURE ACTIONS.

(a) In General.—Section 621 of the Tariff Act of 1930 (19 U.S.C. 1621) is amended by inserting “, or in the case of forfeiture, within five years after the time when the involvement of the property in the alleged offense was discovered” after “within five years after the time when the alleged offense was discovered”.

(b) FIRREA Cases.—Section 981(a) of title 18, United States Code, is amended by adding at the end a new paragraph, as follows:

“(3) An action seeking the forfeiture of property described in subparagraph (a)(1)(C) arising out of an offense affecting a financial institution or the conservator or receiver of a financial institution may be commenced not later than ten years after the discovery of the involvement of the property in the act giving rise to the forfeiture. This paragraph shall apply to any forfeiture action not barred by the expi-
ration of the limitation period provided by section 621 of the Tariff Act of 1930 (19 U.S.C. 1621) at the time this paragraph became effective.”

SEC. 410. ASSETS FORFEITURE FUND AND PROPERTY DISPOSITION.

(a) TECHNICAL AMENDMENTS.—Section 524 of title 28, United States Code, is amended—

(1) in paragraph (c)(1) by striking “and” at the end of subparagraph (H), by striking the second subparagraph (I) that begins with “after all reimbursements” and ends with “correctional institutions”, and by inserting “and” following the semicolon at the end of the remaining subparagraph (I);

(2) in paragraph (c)(3), by deleting “(F)” and inserting “(G)”;

(3) in subparagraph (e)(4)(C) by deleting “(g)(4)(A)(ii)”;

(4) in subparagraph (e)(8)(A), by striking “(A)(iv), (B), (F), (G), and (H)” and inserting “(A)(ii), (B), (F), and (G)”;

(5) by repealing paragraph (c)(6), and renumbering paragraphs (c)(7) through (c)(11) as paragraphs (c)(6) through (c)(10).
(b) Disposal of Forfeited Property.—Section 524(c)(8) of title 28, United States Code, as redesignated by this section, is amended to read as follows:

“(8) Following the completion of procedures for the forfeiture of property pursuant to any law enforced or administered by the Department, the Attorney General, under such terms and conditions as the Attorney General shall specify, is authorized to:

“(A) destroy the property if it is unsuitable for public use or sale, or uneconomical to market;

“(B) transfer the property to any lienholder (including taxing authorities) or mortgagee in lieu of the compromise and payment of a valid lien or mortgage against the property;

“(C) disburse all or part of an amount forfeited as restoration to any victim of the offense giving rise to the forfeiture, or any other offense that was part of the same scheme, conspiracy, or pattern of criminal activity, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity, in accordance with the relevant forfeiture statute;
“(D) dispose of the property by public sale or any other commercially feasible means; or request the General Services Administration to take custody of the property and to dispose of it in accordance with law;

“(E) place the property into official use or transfer the property to any other federal agency for official use;

“(F) transfer the property to foreign governments pursuant to section 981(i) of title 18, United States Code;

“(G) transfer the property, or the net proceeds of sale of the property, to State or local law enforcement agencies that participated directly in any of the acts that led to the seizure or forfeiture of the property, in accordance with section 981(e) of title 18, United States Code; section 511(e)(3) of the Controlled Substances Act (21 U.S.C. 881(e)(3)); or any other provision of law pertaining to the equitable sharing of forfeited property;

“(H) transfer real or personal property that is uneconomical to store, maintain, or market to a State or local government agency for use to support drug abuse treatment, drug and
crime prevention and education, housing, job
skills, and other community-based public health
and safety programs, upon agreement by the
recipient government to accept liability for the
compromise or settlement of any mortgages,
liens, petitions or other claims against the prop-
erty;

“(I) make any other disposition authorized
by law; and

“(J) warrant clear title to any subsequent
purchaser or transferee of such property.

The Attorney General shall make due provision for
the property rights of innocent persons in disposing
of forfeited property. Election of the method of dis-
position is solely within the discretion of the Attor-
ney General. Final orders of judgment for damages
arising from any warranty of title by the Attorney
General shall be satisfied pursuant to section 1304
of title 31, United States Code, in the same manner
and to the same extent as other judgments for dam-
ages. A decision by the Attorney General pursuant
to this subsection shall not be subject to review.”

(e) Deposit From Settlement in Lieu of For-
feiture.—Section 524(c)(4)(A) of title 28, United States
Code, is amended by inserting “, or from any settlement in lieu of forfeiture,” before “under any law”.

(d) Deposits into the Fund.—Section 524(c)(4)(B) of title 28, United States Code, is amended by inserting “, and all amounts representing reimbursement or recovery of costs paid by the Fund” immediately prior to the semicolon.

(e) Payment of Foreign Judgments.—Section 524(c)(1) of title 28, United States Code, is amended by inserting the following new subparagraph (J) immediately following subparagraph (I):

“(J) at the discretion of the Attorney General, payments to return forfeited property repatriated to the United States by a foreign government or others acting at the direction of a foreign government, and interest earned on such property, subject to the following conditions:

“(i) a final foreign judgment entered against a foreign government or those acting at its direction, which foreign judgment was based on the measures, such as seizure and repatriation of property, that resulted in deposit of the funds into the Fund;
“(ii) such foreign judgment was entered and presented to the Attorney General within five years of the date that the property was repatriated to the United States;

“(iii) the foreign government or those acting at its direction vigorously defended its actions under its own laws; and

“(iv) the amount of the disbursement does not exceed the amount of funds deposited to the Fund, plus interest earned on such funds pursuant to section 524(c)(5) of title 28 United States Code, less any awards and equitable shares paid by the Fund to the foreign government or those acting at its direction in connection with a particular case.”.

(f) Excess Surplus Funds.—Section 524(e)(7) of title 28, United States Code, as redesignated by this section, is amended by deleting all versions of subparagraph “(E)” and inserting the following in place thereof:

“(E) Subject to the notification procedures contained in section 605 of Public Law 103–317, and after satisfying the transfer requirement in subparagraph (B) of this paragraph, any excess unobligated balance remaining in
the Fund on September 30, 1996, and on September 30
of each fiscal year thereafter, shall be available to the At-
torney General, without fiscal year limitation, for any Fed-
eral law enforcement, litigative/prosecutive, and correc-
tional activities, or any other authorized purpose of the
Department of Justice. Any Amounts provided pursuant
to this subparagraph may be used under authorities avail-
able to the organization receiving the funds.”

(g) Remission and Mitigation.—Section
524(c)(1)(E) of title 28, United States Code, is amended
to read as follows:

“(E) disbursements authorized in connec-
tion with remission or mitigation procedures or
other actions pursuant to the Attorney Gen-
eral’s statutory authority relating to property
forfeited under any law enforced or adminis-
tered by the Department of Justice;”

SEC. 411. CLARIFICATION OF SECTION 877 OF TITLE 21,
UNITED STATES CODE.

Section 507 of the Controlled Substances Act (21
U.S.C. 877) is amended to add at the end the following
sentence: “This section does not apply to any findings,
conclusions, rulings, decisions, or declarations of the At-
torney General, or any designee of the Attorney General,
relating to the seizure, forfeiture, or disposition of forfeited property brought under this subchapter.”

SEC. 412. CERTIFICATE OF REASONABLE CAUSE.

Section 2465 of title 28, United States Code, is amended—

(1) by striking “property seized” and inserting “property seized or arrested”; and

(2) by striking “seizure” each time it appears and inserting “seizure or arrest”.

SEC. 413. CONFORMING TREASURY AND JUSTICE FUNDS.

(a) Section 9703(c) of title 31, United States Code, is amended by striking “subsection (g)(2)” and inserting “subsection (g)(1)” and by deleting “in excess of $10,000,000 for a fiscal year.”

(b) Section 9703(g) of title 31, United States Code, is amended—

(1) in paragraph (1), by striking “subsection (a)(1)” and inserting “subsections (a)(1) and (c)”;

and

(2) in paragraph (2), by striking “subsections (a)(2) and (c)” and inserting “subsection (a)(2)”.

c) DEPOSIT FROM SETTLEMENT IN LIEU OF FORFEITURE.—Section 9703(d) of title 31, United States Code, is amended by inserting “or from any settlement
in lieu of forfeiture,” before “under any law” each time it appears.

(d) Subsection 524(c)(6) of title 28, United States Code, is amended by adding the following sentence to the end thereof: “Amounts transferred by the Secretary of Treasury pursuant to section 9703 of title 31, or by the Postmaster General pursuant to section 2003 of title 39, shall be available to the Attorney General for Federal law enforcement and criminal prosecution purposes of the Department of Justice.”

SEC. 414. DISPOSITION OF PROPERTY FORFEITED UNDER CUSTOMS LAWS.

Section 616A of the Tariff Act of 1930 (19 U.S.C. 1616a) is amended—

(1) by adding the following new paragraph to subsection (c):

“(4) Whenever property is civilly or criminally forfeited by or for the United States Customs Service, including administrative forfeiture under the provisions of this title, the Secretary of the Treasury may dispose of the property in accordance with law, including—

“(A) by selling the property through any commercially feasible means, provided that the
property is not required to be destroyed by law
and is not harmful to the public; or

“(B) by requesting the General Services
Administration to take custody of the property
and to dispose of it in accordance with law.”;

and

(2) by amending the title of the section to read
as follows: “RETENTION, TRANSFER, OR DIS-
POSITION OF FORFEITED PROPERTY”.

SEC. 415. TECHNICAL AMENDMENTS RELATING TO OBLIT-
ERATED MOTOR VEHICLES IDENTIFICATION

NUMBERS.

Section 512 of title 18, United States Code, is
amended—

(1) in subsection (b), by inserting “and the pro-
visions of chapter 46 of this title relating to civil ju-
dicial forfeitures” before “shall apply”; and

(2) in subsection (a)(1), by striking “does not
know” and all that follows up to the semicolon and
inserting “is an innocent owner as defined in section
983 of this title”.

SEC. 416. FUGITIVE DISENTITLEMENT.

(a) In General.—Chapter 163 of title 28, United
States Code, is amended by inserting the following new
section:
§ 2467. Fugitive disentitlement

“Any person who, in order to avoid criminal prosecution, purposely leaves the jurisdiction of the United States, declines to enter or reenter the United States to submit to its jurisdiction, or otherwise evades the jurisdiction of the court where a criminal case is pending against the person, may not use the resources of the courts of the United States in furtherance of a claim in any related civil forfeiture action or a claim in third-party proceedings in any related criminal forfeiture action.”

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 163 of title 28, United States Code, is amended by inserting the following at the end:

“2467. Fugitive disentitlement.”

SEC. 417. ADMISSIBILITY OF FOREIGN BUSINESS RECORDS.

(a) IN GENERAL.—Chapter 163 of title 28, United States Code, is amended by adding at the end the following new section:

§ 2468. Foreign records

“(a) In a civil proceeding in a court of the United States, including civil forfeiture proceedings and proceedings in the United States Claims Court and the United States Tax Court, a foreign record of regularly conducted activity, or copy of such record, obtained pursuant to an official request, shall not be excluded as evidence by the hearsay rule of a foreign certification, also obtained pursuant—
ant to the same official request or subsequent official re-
quest that adequately identifies such foreign record, at-
tests that—

“(1) such record was made, at or near the time
of the occurrence of the matters set forth, by (or
from information transmitted by) a person with
knowledge of those matters;

“(2) such record was kept in the course of a
regularly conducted business activity;

“(3) the business activity made such a record
as a regular practice; and

“(4) if such record is not the original, such
record is a duplicate of the original;

unless the source of information or the method or cir-
cumstances of preparation indicate lack of trust-
worthiness.

“(b) A foreign certification under this section shall
authenticate such record or duplicate.

“(c) As soon as practicable after a responsive plead-
ing has been filed, a party intending to offer in evidence
under this section a foreign record of regularly conducted
activity shall provide written notice of that intention to
each other party. A motion opposing admission in evidence
of such record shall be made by the opposing party and
determined by the court before trial. Failure by a party
to file such motion before trial shall constitute a waiver of objection to such record or duplicate, but the court for cause shown may grant relief from the waiver.

“(d) As used in this section, the term—

“(1) ‘foreign record of regularly conducted activity’ means a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, maintained in a foreign country;

“(2) ‘foreign certification’ means a written declaration made and signed in a foreign country by the custodian of a record of regularly conducted activity or another qualified person, that if falsely made, would subject the maker to criminal penalty under the law of that country;

“(3) ‘business’ includes business, institution, association, profession, occupation, and calling of every kind whether or not conducted for profit; and

“(4) ‘official request’ means a letter rogatory, a request under an agreement, treaty or convention, or any other request for information or evidence made by a court of the United States or an authority of the United States having law enforcement responsibility, to a court or other authority of a foreign country.”
(b) Conforming Amendment.—The chapter analysis for chapter 163 of title 28, United States Code, is amended by inserting the following at the end:

"2468. Foreign records."

SEC. 418. DESTRUCTION OR REMOVAL OF PROPERTY TO PREVENT SEIZURE.

(a) Section 2232(a) of title 18, United States Code, is amended by—

(1) inserting "or seizure" after "Physical interference with search";

(2) inserting "including seizure for forfeiture," after "after seizure";

(3) striking "searches and seizures" after "authorized to make" and inserting "searches or seizures";

(4) striking "or" after "wares,"; and

(5) inserting "or other property, real or personal," after "merchandise."

(b) Section 2232(b) of title 18, United States Code, is amended by—

(1) inserting "or seizure" after "Notice of search";

(2) striking "searches and seizures" after "authorized to make" and inserting "searches or seizures";
(3) inserting “, including seizure for forfeiture,” after “likely to make a search or seizure”; and
(4) inserting “real or personal,” after “merchandise or other property,”.

SEC. 419. PROSPECTIVE APPLICATION

(a) In General.—Unless otherwise specified in this section or in another provision of this Act, all amendments in this Act shall apply to forfeiture proceedings commenced on or after the effective date of this Act.

(b) Administrative Forfeitures.—All amendments in this Act relating to seizures and administrative forfeitures shall apply to seizures and forfeitures occurring on or after the sixtieth day after the effective date of this Act.

(c) Civil Judicial Forfeitures.—All amendments in this Act relating to the judicial procedures applicable once a civil forfeiture complaint is filed by the government shall apply to all cases in which the forfeiture complaint is filed on or after the sixtieth day after the effective date of this Act.

(d) Criminal Forfeiture.—All amendments in this Act relating to the procedures applicable in criminal forfeiture cases shall apply to cases in which the indictment or information is filed on or after the effective date of this Act.
(e) Substantive Law.—All amendments in this Act expanding substantive forfeiture law to make property subject to civil or criminal forfeiture which was not previously subject to forfeiture shall apply to offenses occurring on or after the effective date of this Act.

TITLE V—CRIMINAL FORFEITURE

SEC. 501. UNIFORM PROCEDURES FOR CRIMINAL FORFEITURE

(a) In General.—Section 982(b)(1) of title 18, United States Code, is amended to read as follows:

“(b)(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related administrative or judicial proceeding, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except for subsection 413(d) which shall not apply to forfeitures under this section.”

(b) RICO.—Section 1963 of title 18, United States Code, is amended by repealing subsections (b) through (m) and inserting the following after subsection (a):

“(b) The forfeiture of property under this section, including any seizure and disposition of the property and any related administrative or judicial proceeding, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of
1970 (21 U.S.C. 853), except for subsection 413(d) which shall not apply to forfeitures under this section.”

(c) OBSCenity.—Section 1466 of title 18, United States Code, is amended by repealing subsections (b) through (n) and inserting the following after subsection (a):

(b) The forfeiture of property under this section, including any seizure and disposition of the property and any related administrative or judicial proceeding, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except for subsection 413(d) which shall not apply to forfeitures under this section.”

(d) Child Pornography.—Section 2253 of title 18, United States Code, is amended by repealing subsections (b) through (o) and inserting the following after subsection (a):

“(b) The forfeiture of property under this section, including any seizure and disposition of the property and any related administrative or judicial proceeding, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except for subsection 413(d) which shall not apply to forfeitures under this section.”
(c) Espionage.—Section 794(d)(3) of title 18, United States Code, is amended to read as follows:

“(3) The forfeiture of property under this section, including any seizure and disposition of the property and any related administrative or judicial proceeding, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except for subsection 413(d) which shall not apply to forfeitures under this section.”

(f) Firearms.—Section 3665 of title 18, United States Code, is amended by—

(1) redesignating the first unnumbered paragraph as subsection (a)(1) and the second unnumbered paragraph as subsection (a)(2); and

(2) by adding the following subsection at the end:

“(b) The forfeiture of property under this section, including any seizure and disposition of the property and any related administrative or judicial proceeding, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except for subsection 413(d) which shall not apply to forfeitures under this section.”

(g) Food Stamp Fraud.—15(h) of the Food Stamp Act of 1977 (7 U.S.C. 2024(h)) is amended—
(1) by striking paragraphs (1), (2) and (3) and inserting the following:

“(1) The court, in imposing sentence on any person convicted of a violation of subsection (b) or (c), shall order, in addition to any other sentence imposed under this section and irrespective of any provision of State law, that the person forfeit to the United States—

“(A) any of such person’s property used in a transaction or attempted transaction, to commit or to facilitate the commission of such violation (other than a misdemeanor); and

(B) any property, real or personal, constituting, derived from, or traceable to any proceeds such person obtained directly or indirectly as a result of such violation.

“(2) All property subject to forfeiture under this subsection, any seizure and disposition thereof, and any proceeding relating thereto, shall be governed by section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853, with the exception of subsection (d) which shall not apply to forfeitures under this section.”; and
(2) by redesignating paragraph (4) as paragraph (3).

(h) IMMIGRATION OFFENSES.—The second paragraph (6) of subsection 982(a) of title 18, United States Code, is amended by striking ``(A)'' and all of subparagraph (B).

SEC. 502. USE OF CRIMINAL FORFEITURE AS AN ALTERNATIVE TO CIVIL FORFEITURE.

Section 2461 of title 28, United States Code, is amended by adding the following subsection:

“(c) Whenever a forfeiture of property is authorized in connection with a violation of an Act of Congress, and any person is charged in an indictment or information with such violation but no specific statutory provision is made for criminal forfeiture upon conviction, the government may include the forfeiture in the indictment or information in accordance with the Federal Rules of Criminal Procedure, and upon conviction, the court shall order the forfeiture of the property in accordance with the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).”
SEC. 503. FEDERAL RULES OF CRIMINAL PROCEDURE.

(a) In General.—The Federal Rules of Criminal Procedure are amended by inserting the following new rule after rule 32.1:

§ 32.2 Criminal forfeiture

“(a) Indictment and Information.—No judgment of forfeiture may be entered in a criminal proceeding unless the indictment or the information alleges that the defendant or defendants have an interest in property that is subject to forfeiture in accordance with the applicable statute.

“(b) Hearing and Entry of Preliminary Order of Forfeiture After Verdict.—Within 10 days of entering a verdict of guilty or accepting a plea of guilty or nolo contendere on any count in the indictment or information for which criminal forfeiture is alleged, the court must determine what property is subject to forfeiture because of its relationship to the offense. The determination may be based on evidence already in the record, including any written plea agreement, or on evidence adduced at a post-trial hearing. If the court finds that property is subject to forfeiture, it must enter a preliminary order directing the forfeiture of whatever interest each defendant may have in the property, without determining what that interest may be. A determination of the extent of each defendant’s interest in the property will be deferred until any
third party claiming an interest in the property has petitioned the court pursuant to statute for consideration of the claim. If no such petition is timely filed, the property is presumed to be the property of the defendant or defendants and is forfeited in its entirety.

“(c) PRELIMINARY ORDER OF FORFEITURE.—The entry of a preliminary order of forfeiture will authorize the Attorney General to seize the property subject to forfeiture, to conduct such discovery as the court may deem proper to facilitate the identification, location or disposition of the property, and to commence proceedings consistent with any statutory requirements pertaining to third-party rights. At the time of sentencing (or at any time before sentencing if the defendant consents), the order of forfeiture becomes final as to the defendant, and must be made a part of the sentence and included in the judgment. The court may include in the order of forfeiture whatever conditions are reasonably necessary to preserve the property value pending any appeal.

“(d) ANCILLARY PROCEEDINGS.—(1) If, as prescribed by statute, a third party files a petition asserting an interest in the forfeited property, the court must conduct an ancillary proceeding. In that proceeding, the court may entertain a motion to dismiss the petition for lack of standing, for failure to state a claim upon which relief
could be granted, or for any other ground. For purposes of the motion, all facts set forth in the petition must be assumed to be true.

“(2) If a motion referred to in paragraph (1) is denied, or if no such motion is made, the court may permit the parties to conduct discovery in accordance with the Federal Rules of Civil Procedure to the extent that the court determines such discovery to be necessary or desirable to resolve factual issues before conducting an evidentiary hearing. At the conclusion of this discovery, either party may seek to have the court dispose of the petition on a motion for summary judgment in the manner described in rule 56 of the Federal Rules of Civil Procedure.

“(3) At the conclusion of the ancillary proceeding, the court must enter a final order of forfeiture amending the preliminary order as necessary to take into account the disposition of any third-party petition.

“(4) If multiple petitions are filed in the same case, an order dismissing or granting fewer than all of the petitions is not appealable until all petitions are resolved, unless the court determines that there is no just reason for delay and directs the entry of final judgment with respect to one or more but fewer than all of the petitions.
“(e) Stay of Forfeiture Pending Appeal.—If the defendant appeals from the conviction or order of forfeiture, the court may stay the order of forfeiture upon such terms as the court finds appropriate to ensure that the property remains available in case the conviction or order of forfeiture is vacated. But the stay will not delay the conduct of the ancillary proceeding or the determination of the rights or interests of any third party. If the defendant’s appeal is still pending when the court determines that the order of forfeiture must be amended to recognize third party’s interest in the property, the court must amend the order of forfeiture but must refrain from directing the transfer of any property or interest to the third party until the defendant’s appeal is final, unless the defendant, in writing, consents to the transfer of the property or interest to the third party.

“(f) Substitute Property.—If the applicable forfeiture statute authorizes the forfeiture of substitute property, the court may at any time entertain a motion by the Government to order forfeiture of substitute property. If the Government makes the requisite showing, the court must enter an order forfeiting the substitute property, or must amend an existing preliminary or final order to include that property.”
(b) CONFORMING AMENDMENTS.—(1) Rules 7(c)(2), 31(e), and 32(d)(2), Federal Rules of Criminal Procedure, are repealed.

(2) Rule 38(e), Federal Rules of Criminal Procedure, is amended by striking “3554,” and by striking “Criminal Forfeiture” in the heading.

(c) ORDER OF FORFEITURE.—Section 3554 of title 18, United States Code, is amended—

(1) by striking “an offense described in section 1962 of this title or in title II or III of the Comprehensive Drug Abuse Prevention and Control Act of 1970” and inserting “an offense for which criminal forfeiture is authorized”; and

(2) by inserting “pursuant to the Federal Rules of Criminal Procedure,” after “shall order,”.

SEC. 504. PRE-TRIAL RESTRAINT OF SUBSTITUTE ASSETS.

Section 413(e)(1) of the Controlled Substances Act (21 U.S.C. 853(e)(1)) is amended by striking “(a)” and inserting “(a) or (p)”.

SEC. 505. REPATRIATION OF PROPERTY PLACED BEYOND THE JURISDICTION OF THE COURT.

(A) ORDER OF FORFEITURE.—Section 413(p) of the Controlled Substance Act (21 U.S.C. 853(p)) is amended by inserting the following at the end: “In the case of property described in paragraph (3), the court may, in addi-
tion, order the defendant to return the property to the jurisdiction of the court so that it may be seized and forfeited.”

(b) **Pre-trial Restraining Order.**—Section 413(e) of the Controlled Substance Act (21 U.S.C. 853(e)) is amended by adding the following after paragraph (3):

“(4) Pursuant to its authority to enter a pre-trial restraining order under this section, including its authority to restrain any property forfeitable as substitute assets, the court may also order the defendant to repatriate any property subject to forfeiture pending trial, and to deposit that property in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account. Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence for the offense giving rise to the forfeiture under the obstruction of justice provision of section 3C1.1 of the United States Sentencing Guidelines.”.

**SEC. 506. HEARINGS ON PRE-TRIAL RESTRAINING ORDERS; ASSETS NEEDED TO PAY ATTORNEY’S FEES.**

Section 413(e) of the Controlled Substances Act (21 U.S.C. 853(e)) is amended—
(1) in paragraph (3), by adding the following after the period: “The court shall issue any protective order necessary to prevent the premature disclosure of any ongoing law enforcement operation or investigation or the identity of any witness at the hearing. In addition, in any case involving an ongoing investigation, the court shall permit the presentation of evidence in camera or under seal. Rule 65, Federal Rules of Civil Procedure, shall not apply to restraining orders issued under this subsection.”; and

(2) by adding the following new paragraph:

“(5)(A) When property is restrained pre-trial subject to paragraph (1)(A), the court may, at the request of the defendant, hold a pre-trial hearing to determine whether the restraining order should be vacated or modified with respect to some or all of the restrained property because—

“(i) it restrains property that would not be subject to forfeiture even if all of the facts set forth in the indictment were established as true;

“(ii) it causes a substantial hardship to the moving party and less intrusive means exist to preserve the subject property for forfeiture; or
“(iii) the defendant establishes that he or she has no assets, other than the restrained property, available to exercise his or her constitutional right to retain counsel, and there is no probable cause to believe that the restrained property is subject to forfeiture.

“(B) If the defendant files a motion under subparagraph (A)(iii), the court shall require the defendant to establish that he has no access to other assets adequate for the payment of criminal defense counsel before conducting any probable cause inquiry. The Government shall have an opportunity to cross-examine the defendant and any witnesses he or she may present on this issue. If the court determines that the defendant has established that he has no access to other assets, it shall hold a hearing to determine whether there is probable cause for the forfeiture of the defendant’s property. If the court determines that no probable cause exists for the forfeiture of an asset, it shall modify the restraining order to the extent necessary to permit the defendant to use that asset to retain counsel.

“(C) In any hearing under this paragraph where probable cause is at issue, the court shall limit its inquiry to the existence of probable cause
for the forfeiture, and shall neither entertain chal-
 lenges to the validity of the indictment, nor require
 the Government to produce additional evidence re-
 garding the facts of the case to support the grand
 jury’s finding of probable cause regarding the crimi-
nal offense giving rise to the forfeiture. In all cases,
 the party requesting the modification of the restrain-
 ing order shall bear the burden of proof.

“(D) A person other than the defendant who
 has a legal interest in the restrained property may
 move to modify or vacate the restraining order for
 the reasons stated in subparagraph (A)(ii). In ac-
 cordance with subsection (k), however, such person
 may not object to a restraining order on grounds
 that may be asserted only in the ancillary hearing
 pursuant to subsection (n).

“(E) If the property restrained is subject to for-
 feiture as substitute assets, the court shall exempt
 from the restraining order assets needed to pay at-
torneys fees, other necessary cost-of-living expenses,
 and expenses of maintaining the restrained assets.”.

SEC. 507. CRIMINAL SEIZURE WARRANTS.

Section 413(f) of the Controlled Substances Act (21
U.S.C. 853(f)) is amended to read as follows:
“(f) Property subject to forfeiture under this section may be seized pursuant to section 981(b) of title 18, United States Code. If property subject to criminal forfeiture under this section is already in the custody of the United States or any agency thereof, it shall not be necessary to seize or restrain the property for the purpose of criminal forfeiture.”.

SEC. 508. STANDARD OF PROOF FOR CRIMINAL FORFEITURE.

Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding the following new subsection after subsection (p):

“(q) STANDARD OF PROOF.—In any forfeiture action under this section, the party bearing the burden of proof shall be required to prove the matter at issue by a preponderance of the evidence.”.

SEC. 509. DISCOVERY PROCEDURE FOR LOCATING FORFEITED ASSETS.

(a) POST-CONVICTION DISCOVERY.—Section 413(m) of the Controlled Substances Act (21 U.S.C. 853(m)) is amended by—

(1) adding the following at the end before the period: “to the extent that the provisions of the rule are consistent with the purposes for which discovery is conducted under this subsection”; and
(2) adding the following additional sentence:

“Because this subsection applies only to matters occurring after the defendant has been convicted and his property has been declared forfeited, the provisions of rule 15 requiring the consent of the defendant and the presence of the defendant at the deposition shall not apply.”

(b) BANK RECORDS.—Section 986 of title 18, United States Code, is amended—

(1) in subsection (a) by striking “in rem”; and

(2) in subsection (c) by inserting “or Criminal” after “Civil”.

SEC. 510. COLLECTION OF CRIMINAL FORFEITURE JUDGMENT.

Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding the following subsection after subsection (q):

“(r) COLLECTION OF CRIMINAL FORFEITURE JUDGMENT.—In addition to the authority otherwise provided in this section, an order of forfeiture may be enforced—

“(1) in the manner provided for the collection and payment of fines in subchapter B of chapter 229 of title 18, United States Code; or

“(2) in the same manner as a judgment in a civil action.”
SEC. 511. APPEALS IN CRIMINAL FORFEITURE CASES.

(a) Pre-Trial Dismissal of Forfeiture Count.—Section 3731 of title 18, United States Code, is amended in the first unnumbered paragraph by inserting “, or dismissing a forfeiture count in whole or in part,” after “order of a district court dismissing an indictment or information”.

(b) Review of a Sentence.—Section 3742 of title 18, United States Code, is amended by inserting the following new subsection:

“(i) Forfeiture Orders.—The Government may file a notice of appeal in the district court of any decision, judgment, or order of a district court denying a forfeiture in whole or in part, or mitigating a forfeiture for constitutional reasons, except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.”

SEC. 512. NON-ABATEMENT OF FORFEITURE WHEN DEFENDANT DIES PENDING APPEAL.

Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding at the end the following new subsection:

“(s) Nonabatement of Forfeiture Order.—An order of forfeiture under this section shall not abate by reason of the death thereafter of any or all of the defendants or petitioners or potential petitioners.”
SEC. 513. STANDING OF THIRD PARTIES TO CONTEST CRIMINAL FORFEITURE ORDERS.

Section 413(n)(2) of the Controlled Substances Act (21 U.S.C. 853(n)(2)), is amended by designating the present matter as subparagraph (A) and by adding the following paragraphs at the end:

“(B) Notwithstanding any provision of this section, no person may assert a legal right, title or interest under this section in contraband or other property that it is illegal to possess. In addition, except as set forth in subsection (n)(6)(B), no person may assert an ownership interest under this section in the illegal proceeds of a criminal act, irrespective of State property law.

“(C) For the purposes of this section, a ‘legal interest’ includes, but is not limited to, a lien, mortgage, recorded security device or valid assignment of an ownership interest. A ‘legal interest’ does not include: (i) a general unsecured interest in, or claim against, the property or estate of the defendant; (ii) a bailment; (iii) a possessory interest or title held by a nominee who exercises no dominion or control over the property; or (iv) a constructive trust.”

SEC. 514. MOTION AND DISCOVERY PROCEDURES FOR AN-CILLARY HEARINGS.

Section 413(n)(4) of the Controlled Substances Act (21 U.S.C. 853(n)(4)) is amended by designating the
present matter as subparagraph (A), and by inserting the following new subparagraphs:

“(B) Before conducting a hearing, the court may entertain a motion to dismiss the petition for lack of standing, for failure to state a claim upon which relief could be granted under this section, or for any other ground. For the purposes of such motion, all facts set forth in the petition shall be assumed to be true.

“(C) If a motion referred to in subparagraph (B) is denied, or if no such motion is made, the court may, in its discretion, permit the parties to conduct discovery in accordance with the Federal Rules of Civil Procedure to the extent that the court determines such discovery to be necessary or desirable to resolve factual issues before the hearing. At the conclusion of such discovery, either party may seek to have the court dispose of the petition on a motion for summary judgment in the manner described in rule 56 of the Federal Rules of Civil Procedure.

“(D) Any order disposing of a petition pursuant to a motion or pursuant to a hearing on the merits of the claim shall be appealable in accordance with the Federal Rules of Appellate Procedure applicable
to civil cases. However, where multiple petitions are filed in the same case, an order dismissing or granting fewer than all of the petitions shall not be appealable until all petitions are resolved, unless the court expressly determines that there is no just reason for delay and directs the entry of final judgment with respect to one or more but fewer than all of the petitions.

“(E) The district court shall retain jurisdiction over a petition filed pursuant to this subsection notwithstanding any appeal filed by the defendant in the criminal case.”

SEC. 515. INTERVENTION BY THE DEFENDANT IN THE ANCILLARY PROCEEDING.

Section 413(n) of the Controlled Substances Act (21 U.S.C. 853(n)) is amended by adding the following after paragraph (7):

“(8) If the defendant has filed a timely appeal from a conviction under this section and the appeal is pending, any person filing a petition under this subsection shall serve a copy of the petition upon the defendant, and the defendant shall have a right to intervene in the ancillary proceeding with respect to the petition in accordance with rule 24 of the Federal Rules of Civil Procedure solely for the purpose
of contesting the petitioner’s alleged interest in the
property ordered forfeited. The defendant shall have
20 days from the date of service of the petition to
intervene. If the defendant does not intervene within
such time period, he or she shall have waived the
right to challenge in any forum any adjudication of
the petitioner’s interest in the property pursuant to
this subsection, regardless of the outcome of the ap-
peal.

“(9) A hearing provided for in this subsection
shall be limited to an adjudication of the validity of
the petitioner’s legal right, title or interest in the
property ordered forfeited, and shall not provide a
forum to relitigate the forfeitability of the prop-
erty.”

SEC. 516. IN PERSONAM JUDGMENTS.

Section 413(n)(1) of the Controlled Substances Act
(21 U.S.C. 853(n)(1)) is amended by adding the following
sentence at the end “To the extent that the order of for-
feiture includes only an in personam money judgment
against the defendant, or includes only property constitut-
ing contraband, no proceeding under this subsection shall
be necessary.”
SEC. 517. RIGHT OF THIRD PARTIES TO CONTEST FORFEITURE OF SUBSTITUTE ASSETS.

(a) IN GENERAL.—Section 413(c) of the Controlled Substances Act (21 U.S.C. 853(c)), as amended by this Act, is further amended by—

(1) inserting the following after the first sentence: “All right, title and interest in property described in subsection (p) of this section vests in the United States at the time an indictment, information or bill of particulars specifically describing the property as substitute assets is filed.”; and

(2) by striking “Any such property that is subsequently transferred to a person other than the defendant” and inserting “Any property that is transferred to a person other than the defendant after the United States’ interest in the property has vested pursuant to this subsection”.

(b) CONFORMING AMENDMENT.—Section 413(n)(6) of the Controlled Substances Act (21 U.S.C. 853(n)(6)) is amended by adding at the end the following sentence: “In the case of substitute assets, the petitioner must show that his interest in the property existed at the time the property vested in the United States pursuant to subsection (c), or that he subsequently acquired his interest in the property as a bona fide purchaser for value as provided in this subsection.”
SEC. 518. FORFEITABLE PROPERTY TRANSFERRED TO THIRD PARTIES.

Section 413(c) of the Controlled Substances Act (21 U.S.C. 853(c)), as amended by this Act, is further amended by designating the present matter as paragraph (1) and adding the following new paragraph:

“(2) If, as provided in paragraph (1), property transferred to a transferee is ordered forfeited and the transferee fails to establish that he is a bona fide purchaser, but the transferee is unable, due to the transferee’s act or omission, to turn the property over to the United States, the transferee shall owe the United States a sum of money up to the value of the property transferred by the defendant, plus interest from the time of the transfer. Once the ancillary proceedings regarding the transferee’s claim to be a bona fide purchaser are concluded, the district court that issued the order of forfeiture shall issue a judgment in favor of the United States and against the transferee for the amount of money to which the United States is entitled.”

SEC. 519. FORFEITURE THIRD PARTY INTERESTS IN CRIMINAL CASES.

(a) In General.—Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding the following after subsection (s):

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“(t) FORFEITURE OF THIRD PARTY INTERESTS.—In
lieu of filing a parallel civil forfeiture action, the govern-
ment may seek the forfeiture of a third party’s interest
in property subject to forfeiture under this section at the
conclusion of the ancillary proceeding described in sub-
section (n). Such proceeding shall be an in rem proceeding
in which the third party shall first have the burden of es-
tablishing a legal interest in the property pursuant to sub-
section (n), after which the government shall have the bur-
den of establishing the forfeitability of the third party’s
interest in the manner provided for civil forfeitures in
chapter 46, title 18, United States Code, and the third
party shall have the burden of establishing an innocent
owner defense pursuant to such chapter.’’

(b) CONFORMING AMENDMENT.—Section 413(n)(6)
of the Controlled Substances Act (21 U.S.C. 853(n)(6))
is amended by adding “, unless the government notifies
the court that it will seek to forfeit the petitioner’s interest
pursuant to subsection (t)” after “in accordance with its
determination”.

SEC. 520. SEVERANCE OF JOINTLY HELD PROPERTY.

Section 413 of the Controlled Substances Act (21
U.S.C. 853) is amended by adding the following after sub-
section (t):
“(u) SEVERANCE OF JOINTLY HELD PROPERTY.—
If the court determines, pursuant to subsection (n) or (t), that a third party had a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court shall enter an appropriate order (1) severing the property; (2) transferring the property to the government with a provision that the government compensate the third party to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets, or (3) permitting the third party to retain the property subject to a lien in favor of the Government to the extent of the forfeitable interest in the property. To effectuate the purposes of this subsection, a joint tenancy or tenancy by the entireties shall be converted to a tenancy in common by order of the court, irrespective of State law.”

SEC. 521. VICTIM RESTITUTION.
Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding at the end the following new subsection:
“(v) VICTIMS AND RESTITUTION.—
“(1) The defendant may not use property subject to forfeiture under this section to satisfy an order of restitution. However, if there are identifi-
able victims entitled to restitution from the defendant, and the defendant has no assets other than the property subject to forfeiture with which to pay restitution to the victims, the Government may move to dismiss the forfeiture allegations before entry of a judgment of forfeiture to allow the property to be used by the defendant to pay restitution in whatever manner the court determines to be appropriate if it grants the Government’s motion.

“(2) If an order of forfeiture is entered pursuant to this section and the defendant has no assets other than the forfeited property to pay restitution to identifiable victims who are entitled to restitution, the Government shall restore the forfeited property to the victims pursuant to subsection (i)(1) once the ancillary proceeding under subsection (n) has been completed and the costs of the forfeiture action have been deducted. On the motion of the Government, the court may enter any order necessary to facilitate the distribution of the property under this subsection.

“(3) For purposes of this subsection, a ‘victim’ is a person other than a person with a legal right, title, or interest in the forfeited property sufficient to satisfy the standing requirements of subsection
(n)(2) who may nevertheless be entitled to restitution from the forfeited funds pursuant to 28 CFR part 9.8. A person shall be considered a ‘victim’ if the person is the victim of the offense giving rise to the forfeiture, or of any offense that was part of the same scheme, conspiracy, or pattern of criminal activity, including in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity.”.

SEC. 522. DELIVERY OF PROPERTY TO THE MARSHALS SERVICE.

Section 413(j) of the Controlled Substances Act (21 U.S.C. 853(j)) is amended by inserting “, and rule C(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims,” before “shall apply to a criminal forfeiture”.