

H.R. 1702: Mr. THOMPSON of Mississippi, Ms. LEE, and Mr. GUTIERREZ.
 H.R. 1739: Mr. PALLONE.
 H.R. 1764: Ms. KAPTRU.
 H.R. 1812: Mr. ACKERMAN.
 H.R. 1814: Mr. HASTINGS of Washington, Mr. ANDREWS, Mr. TANNER, Mr. STUMP, Mr. GOODE, Mr. PETERSON of Pennsylvania, Mr. HOBSON, Mr. PRICE of North Carolina, Mr. CLEMENT, Mr. ROGAN, Mr. COMBEST, and Mr. LIPINSKI.

H.R. 1824: Mr. HILL of Montana.
 H.R. 1827: Mr. SCHAFER and Mr. LAZIO.
 H.R. 1838: Mr. EHRLICH, Mrs. MYRICK, Mr. GARY MILLER of California, Mr. ENGLISH, Mr. BLILEY, Mrs. MORELLA, Mr. CRANE, Mr. HEFLEY, and Mr. DEAL of Georgia.
 H.R. 1842: Mr. REYES, Mr. INSLEE, and Mr. SKELTON.
 H.R. 1861: Mr. NUSSLE.
 H.R. 1862: Mr. HOLDEN.
 H.R. 1871: Mr. DIAZ-BALART, Mr. CAPUANO, and Mr. ROMERO-BARCELO.
 H.R. 1874: Mr. METCALF and Mr. SOUDER.
 H.R. 1884: Mr. ROMERO-BARCELO.
 H.R. 1932: Ms. DELAUR.
 H.R. 1967: Ms. WOOLSEY.
 H.R. 1990: Mrs. MYRICK, Ms. KILPATRICK, Mr. DUNCAN, and Mr. MCINNIS.

H.R. 2028: Mr. ARMEY and Mr. McNULTY.
 H.R. 2038: Mr. SHAW.
 H.R. 2056: Mr. HAYWORTH, Mr. COOK, Mr. SAXTON, and Mr. SHOWS.

H.R. 2066: Mr. DICKEY, Mr. MORAN of Kansas, Mrs. EMERSON, Mr. SHOWS, Mr. MCHUGH, and Mr. COOKSEY.

H.R. 2077: Mr. OLVER, Mrs. TAUSCHER, and Mr. WEXLER.

H.R. 2096: Mr. THOMPSON of Mississippi, Mr. BRADY of Pennsylvania, Mr. TOWNS, Mr. OWENS, and Mrs. McCARTHY of New York.

H.R. 2116: Mr. COOKSEY and Mr. RODRIGUEZ.
 H.R. 2136: Mr. CHAMBLISS and Mr. CALAHAN.

H.R. 2175: Mr. FROST.
 H.R. 2216: Mr. DELAHUNT, Ms. KILPATRICK, Mr. MEEHAN, Mr. HOBSON, Mrs. NORTHUP, and Mr. KASICH.

H.R. 2243: Mr. CAMPBELL.
 H.R. 2260: Mr. BARTLETT of Maryland and Mr. CALVERT.

H.R. 2265: Mr. BONIOR, Mr. FORBES, Mr. DELAHUNT, Mr. PAUL, Mr. FATTAH, Mr. MATSUI, Mr. STARK, Mr. DOYLE, Mr. CONYERS, Mr. BORSKI, and Mr. THOMPSON of Mississippi.

H.R. 2282: Mr. SHOWS.

H.R. 2283: Mr. GILCHREST and Ms. BROWN of Florida.

H.J. Res. 35: Mr. GOODLATTE.
 H.J. Res. 43: Mr. GOODLATTE.
 H.J. Res. 55: Mr. SMITH of Michigan.

H. Con. Res. 60: Mr. LAHOOD, Ms. HOOLEY of Oregon, Ms. LEE, and Mr. DAVIS of Florida.

H. Con. Res. 74: Ms. KILPATRICK.
 H. Con. Res. 77: Ms. HOOLEY of Oregon and Mr. GEJDENSON.

H. Con. Res. 107: Mr. NORWOOD.

H. Con. Res. 113: Mr. THOMPSON of Mississippi.

H. Con. Res. 124: Mr. ACKERMAN, Mr. DEFAZIO, Mr. HINCHEY, and Mr. HASTINGS of Florida.

H. Con. Res. 130: Mr. MALONEY of Connecticut, Mr. EVANS, Mrs. CLAYTON, and Mr. STUPAK.

H. Res. 89: Mr. FORBES.
 H. Res. 169: Mr. LUTHER.

H. Res. 187: Ms. ROS-LEHTINEN, Mr. McNULTY, and Mr. FARR of California.

H. Res. 211: Mrs. JOHNSON of Connecticut, Ms. PRYCE of Ohio, Mr. SPENCE, Mr. MARTINEZ, Mr. JENKINS, and Mr. GIBBONS.

H. Res. 212: Mr. SHERMAN, Mr. RUSH, Ms. SCHAKOWSKY, and Mrs. MALONEY of New York.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:

H.R. 804: Mr. FOLEY.
 H.R. 815: Mr. CONYERS.
 H.R. 987: Mr. TRAFICANT.

AMENDMENTS

Under clause 8 of rule XVIII, proposed amendments were submitted as follows:

H.R. 1658
 OFFERED BY: MR. GILMAN

AMENDMENT No. 1: Page 6, line 5 insert before the semicolon the following:

“, was not willfully blind to such conduct, and did not demonstrate a deliberate indifference to such conduct”.

H.R. 1658
 OFFERED BY: MR. GILMAN

AMENDMENT No. 2: Page 6, line 5 insert before the semicolon the following:

“, was not willfully blind to such conduct, or did not consent or was not privy to such conduct”.

H.R. 1658
 OFFERED BY: MR. GILMAN

AMENDMENT No. 3: Page 15, insert after line 8 the following:

SEC. 7. CIVIL FORFEITURE FOR PASSPORT AND VISA RELATED OFFENSES.

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

(1) in subsection (a)(1), by inserting after subparagraph (F) the following:

“(G) Any property, real or personal—
 (i) used, or intended to be used, in committing or facilitating the commission of, or

“(ii) constituting, derived from, or traceable to any proceeds obtained, directly or indirectly, from,

an offense or conspiracy to commit an offense under section 1541, 1542, 1543, 1544, or 1546 of this title of an offense, or conspiracy to commit an offense under section 1028 of this title, if either conspiracy or offense was committed in connection with passport or visa issuance.”; and

(2) in subsection (b)(1)—

“(C) subject to forfeiture to the United States under subsection (a)(1)(G) of this section in a case investigated by the Secretary of State may be seized by the Secretary of State.”;

(3) by striking “the Attorney General, the Secretary of the Treasury, or the Postal Service” each place it appears (other than in subsection (b)(1)(C)) and inserting “the Attorney General, the Secretary of the Treasury, the Postal Service, or the Secretary of State”;

(4) in subsection (i), by striking “the Attorney General or the Secretary of the Treasury” each place it appears and inserting “Attorney General, Secretary of the Treasury, or the Secretary of State”;

(5) in subsection (j)—

(A) by striking “and” at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting “; and”; and

(C) by adding at the end the following:

“(3) the term ‘Secretary of State’ means the Secretary of State or the Secretary’s delegate.”; and

(6) by adding after subsection (j) the following:

“(k) Notwithstanding any other provision of law, at the discretion of the Secretary of State and the Attorney General, property forfeited pursuant to a law enforced or administered by a Department of State law enforcement component may be deemed forfeited pursuant to a law enforced or administered by a Department of Justice law enforcement component.”.

H.R. 1658

OFFERED BY: MR. HUTCHINSON

AMENDMENT No. 4: Page 2, line 12, strike “(A)”.
 Page 3, strike lines 1 through 8.

Page 15, insert after line 8 the following:
SEC. 7. CHALLENGES TO ADMINISTRATIVE FORFEITUURES.

Section 981 of title 18, United States Code, is amended by adding at the end the following:

“(I) CHALLENGES TO ADMINISTRATIVE FORFEITUURES.—

(1) Any motion to set aside a declaration of forfeiture entered pursuant to section 609 of the Tariff Act of 1930 (19 U.S.C. 1609), as incorporated by subsection (d), must be filed not later than 2 years after the entry of the declaration of forfeiture. Such motion shall be granted if—

“(A) the moving party had an ownership or possessory interest in the forfeited property, and the Government failed to take reasonable steps to provide such party with notice of the forfeiture; and

“(B) the moving party did not have actual notice of the seizure within sufficient time to file a claim within the time period provided by law.

“(2) If the court grants a motion made under paragraph (1), it shall set aside the declaration of forfeiture as to the moving party’s interest pending forfeiture proceedings in accordance with section 602 et seq. of the Tariff Act of 1930 (19 U.S.C. 1602 et seq.), which proceedings shall be instituted within 60 days of the entry of the order granting the motion.

“(3) If, at the time a motion made under this paragraph (1) is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government shall institute forfeiture proceedings under paragraph (2) against a substitute sum of money equal to the value of the forfeited property at the time it was disposed of, plus interest.

“(4) The institution of forfeiture proceedings under paragraph (2) shall not be barred by the expiration of the statute of limitations under section 621 of the Tariff Act of 1930 (19 U.S.C. 1621) if the original publication of notice was initiated before the expiration of such limitations period.

“(5) A motion made under this subsection shall be the exclusive means of obtaining judicial review of a declaration of forfeiture entered by a seizing agency.

“(6) This subsection shall apply to any administrative forfeiture under this section, and to any administrative forfeiture under the Controlled Substances Act, or under any other provision of law that incorporates the provisions of the customs laws.”

H.R. 1658

OFFERED BY: MR. HUTCHINSON

AMENDMENT No. 5: Page 4, strike line 23 and all that follows through line 16 on page 5 and redesignate paragraphs (5), (6), (7), and (8) as paragraphs (4), (5), (6), and (7), respectively.

H.R. 1658

OFFERED BY: MR. HUTCHINSON

AMENDMENT No. 6: Page 5, line 20, strike “by clear and convincing evidence” and insert “by a preponderance of the evidence”.

H.R. 1658

OFFERED BY: MR. HUTCHINSON

AMENDMENT No. 7: Page 5, strike line 22 and all that follows through line 5 on page 9.

Page 15, after line 8 insert the following:

SEC. 7. INNOCENT OWNER DEFENSE.

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

§ 983. Innocent owners

“(a) An innocent owner’s interest in property shall 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 the person establishes, by preponderance of the evidence—

“(A) that the person 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, the person 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 the person establishes, by a preponderance of the evidence, that the person 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 believe that the property was subject to forfeiture if, in light of the circumstances, the purchaser did all that reasonably 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 section 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 section in the illegal proceeds of a criminal act, irrespective of State property law.

“(c) For the purposes of this section—

“(i) an ‘owner’ is a person with an ownership interest in the specific property sought to be forfeited, 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, unless the bailor is identified, and the bailor has authorized the bailee to claim in the forfeiture proceeding, pursuant to the Supplemental Rules for Admiralty and Maritime Claims;

“(C) a nominee who exercises no dominion or control over the property; or

“(D) a beneficiary 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 has 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) serving 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 if neither (1) or (2) is reasonably practical under all of the circumstances; and

“(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.”.

H.R. 1658

OFFERED BY: MR. HUTCHINSON

AMENDMENT NO. 8: Page 9, strike line 6 and all that follows through line 2 on page 11.

Page 15, insert after line 8 the following:

SEC. 7. RETURN OF SEIZED PROPERTY.

Section 981 of title 18, United States Code, is amended by adding the following at the end:

“(k)(1) **SUPPRESSION OF EVIDENCE.**—A party with standing to challenge a seizure and forfeiture under this section may move to suppress the use of the property as evidence on the ground that the Government lacked probable cause at the time of the seizure. Suppression of the property as evidence shall not affect the right of the Government to proceed with a forfeiture action based on independently derived evidence.

“(2) **RETURN OF SEIZED PROPERTY.**—A person with standing to challenge the forfeiture of property seized under this section may file a motion for the return of the property in the manner described in Rule 41(e), Federal Rule of Criminal Procedure. If such motion is filed, the court shall conduct a hearing within 90 days and shall order the release of the property, pending trial on the forfeiture and the entry of judgment, unless—

“(A) the Government establishes probable cause to believe that the property is subject to forfeiture, based on all information available to the Government at the time of the hearing;

“(B) the Government has filed a civil forfeiture complaint against the property, and a magistrate judge has determined there is probable cause for the issuance of a warrant of arrest in rem pursuant to the Supplemental Rules for Admiralty and Maritime Claims;

“(C) a grand jury has returned an indictment that includes an allegation that the property is subject to criminal forfeiture;

“(D) the person filing the motion had notice of the Government’s intent to forfeit the property administratively pursuant to 19 U.S.C. 1608, and failed to file a claim to the property within the specified time period;

“(E) the property is contraband or other property that the moving party may not legally possess; or

“(F) the property is needed as evidence in a criminal investigation or prosecution.”.

“(3) **COMPLAINT; MOTION TO DISMISS.**—A party with standing to challenge a forfeiture under this section may move to dismiss the complaint for failure to comply with Rule E(2) of the Supplemental Rules, or on any other ground set forth in Rule 12(b) of the Federal Rules of Civil Procedure. Notwithstanding the provision of section 615 of the Tariff Act of 1930 (19 U.S.C. 1615), a party may not move to dismiss the complaint on the ground that the evidence in the possession of the Government at the time it filed its complaint was insufficient to establish the forfeitability of the property.

H.R. 1658

OFFERED BY: MR. HUTCHINSON

AMENDMENT NO. 9: Page 14, strike line 20 and all that follows through line 8 on page 15.

Page 15, insert after line 8 the following:

SEC. 6. APPLICABILITY.

(a) **IN GENERAL.**—Unless otherwise specified in this Act, the amendments made by this Act apply to forfeiture proceedings com-

menced on or after the date of the enactment of this Act.

(b) **ADMINISTRATIVE FORFEITURES.**—The amendments in this Act relating to seizures and administrative forfeitures shall apply to seizures and forfeitures occurring on or after the 60th day after the date of the enactment of this Act.

(c) **CIVIL JUDICIAL FORFEITURES.**—The amendments in this Act relating to 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 date of the enactment of this Act.

H.R. 1658

OFFERED BY: MR. HUTCHINSON

AMENDMENT NO. 10: Page 15, insert after line 8 the following:

SEC. 8. FUGITIVE DISENTITLEMENT.

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

“§ 2467. Fugitive disentitlement

“Any person who, in order to avoid criminal prosecution, purposely leaves the jurisdiction of the United States, declines to enter or re-enter 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.”

(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”.

H.R. 1658

OFFERED BY: MR. HUTCHINSON

[Amendment in the Nature of a Substitute]

AMENDMENT NO. 11: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Civil Asset Forfeiture Reform Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Creation of general rules relating to civil forfeiture proceedings.
- Sec. 3. Compensation for damage to seized property.
- Sec. 4. Prejudgment and postjudgment interest.

SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL FORFEITURE PROCEEDINGS.

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

“§ 983. Civil forfeiture procedures

(a) **ADMINISTRATIVE FORFEITURES.**—(1)(A) In any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the agency conducting a seizure of property must send written notice of the seizure under section 607(a) of the Tariff Act of 1930 (19 U.S.C. 1607(a)), such notice together with information on the applicable procedures shall be sent not later than 60 days after the seizure to each party known to the seizing agency at the time of the seizure to have an ownership or possessory interest, including a lienholder’s interest, in the seized article. If a party’s identity or interest is not determined until after the seizure but is determined before a declaration of forfeiture is entered, such written notice and information shall be sent to such interested party not later than 60 days after the seizing agency’s determination of the identity of the party or the party’s interest.

“(B) If the Government does not provide notice of a seizure of property in accordance with subparagraph (A), it shall return the property pending the giving of such notice.

“(2) The Government may apply to a Federal magistrate judge (as defined in the Federal Rules of Criminal Procedure) in any district where venue for a forfeiture action would lie under section 1355(b) of title 28 for an extension of time in which to comply with paragraph (1)(A). Such an extension shall be granted based on a showing of good cause.

“(3) A person with an ownership or possessory interest in the seized article who failed to file a claim within the time period prescribed in subsection (b) may, on motion made not later than 2 years after the date of final publication of notice of seizure of the property, move to set aside a declaration of forfeiture entered pursuant to section 609 of the Tariff Act of 1930 (19 U.S.C. 1609). Such motion shall be granted if—

“(A) the Government failed to take reasonable steps to provide the claimant with notice of the forfeiture; and

“(B) the person otherwise had no actual notice of the seizure within sufficient time to enable the person to file a timely claim under subsection (b).

“(4) If the court grants a motion made under paragraph (3), it shall set aside the declaration of forfeiture as to the moving party’s interest pending forfeiture proceedings in accordance with section 602 et seq. of the Tariff Act of 1930 (19 U.S.C. 1602 et seq.), which proceedings shall be instituted within 60 days of the entry of the order granting the motion.

“(5) If, at the time a motion under this subsection is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government shall institute forfeiture proceedings under paragraph (4). The property which will be the subject of the forfeiture proceedings instituted under paragraph (4) shall be a sum of money equal to the value of the forfeited property at the time it was disposed of plus interest.

“(6) The institution of forfeiture proceedings under paragraph (4) shall not be barred by the expiration of the statute of limitations under section 621 of the Tariff Act of 1930 (19 U.S.C. 1621) if the original publication of notice was completed before the expiration of such limitations period.

“(7) A motion made under this subsection shall be the exclusive means of obtaining judicial review of a declaration of forfeiture entered by a seizing agency.

“(b) FILING A CLAIM.—(1) Any person claiming such seized property may file a claim with the appropriate official after the seizure.

“(2) A claim under paragraph (1) may not be filed later than 30 days after—

“(A) the date of final publication of notice of seizure; or

“(B) in the case of a person receiving written notice, the date that such notice is received.

“(3) The claim shall set forth the nature and extent of the claimant’s interest in the property.

“(c) FILING A COMPLAINT.—(1) In cases where property has been seized or restrained by the Government and a claim has been filed, the Attorney General shall file a complaint for forfeiture in the appropriate court in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims not later than 90 days after the claim was filed, or return the property pending the filing of a complaint. By mutual agreement between the Government and the claimants, the 90-day filing requirement may be waived.

“(2) The Government may apply to a Federal magistrate judge (as defined in the Fed-

eral Rules of Criminal Procedure) in any district where venue for a forfeiture action would lie under section 1355(b) of title 28 for an extension of time in which to comply with paragraph (1). Such an extension shall be granted based on a showing of good cause.

“(3) Upon the filing of a civil complaint, the claimant shall file a claim and answer in accordance with the Supplemental Rules for Certain Admiralty and Maritime Claims.

“(d) APPOINTMENT OF COUNSEL.—(1) If the person filing a claim is financially unable to obtain representation by counsel and requests that counsel be appointed, the court may appoint counsel to represent that person with respect to the claim. In determining whether to appoint counsel to represent the person filing the claim, the court shall take into account—

“(A) the nature and value of the property subject to forfeiture, including the hardship to the claimant from the loss of the property seized, compared to the expense of appointing counsel;

“(B) the claimant’s standing to contest the forfeiture; and

“(C) whether the claim appears to be made in good faith or to be frivolous.

“(2) The court shall set the compensation for that representation, which shall be the equivalent to that provided for court-appointed representation under section 3006A of this title, and to pay such cost, there are authorized to be appropriated such sums as are necessary as an addition to the funds otherwise appropriated for the appointment of counsel under such section.

“(3) The determination of whether to appoint counsel under this subsection shall be made following a hearing at which the Government shall have an opportunity to present evidence and examine the claimant. The testimony of the claimant at such hearing shall not be admitted in any other proceeding except in accordance with the rules which govern the admissibility of testimony adduced in a hearing on a motion to suppress evidence. Nothing in this paragraph shall be construed to prohibit the admission of any evidence that may be obtained in the course of civil discovery in the forfeiture proceeding or through any other lawful investigative means.

“(e) BURDEN OF PROOF.—In all suits or actions brought for the civil forfeiture of any property, the burden of proof at trial is on the United States to establish, by a preponderance of the evidence, that the property is subject to forfeiture. If the Government proves that the property is subject to forfeiture, the claimant shall have the burden of establishing any affirmative defense by a preponderance of the evidence.

“(f) INNOCENT OWNERS.—(1) An innocent owner’s interest in property shall not be forfeited in any civil forfeiture action.

“(2) With respect to a property interest in existence at the time the illegal conduct giving rise to the forfeiture took place, the term ‘innocent owner’ means an owner who—

“(A) did not know of the conduct giving rise to the forfeiture; or

“(B) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

“(3) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term ‘innocent owner’ means a person who, at the time that person acquired the interest in the property, was a bona fide purchaser for value and was at the time of the purchase reasonably without cause to believe that the property was subject to forfeiture.

“(B) Except as provided in paragraph (4), where the property subject to forfeiture is real property, and the claimant uses the

property as his or her primary residence and is the spouse or minor child of the person who committed the offense giving rise to the forfeiture, an otherwise valid innocent owner claim shall not be denied on the ground that the claimant acquired the interest in the property—

“(i) in the case of a spouse, through dissolution of marriage or by operation of law, or

“(ii) in the case of a minor child, as an inheritance upon the death of a parent, and not through a purchase. However, the claimant must establish, in accordance with subparagraph (A), that at the time of the acquisition of the property interest, the claimant was reasonably without cause to believe that the property was subject to forfeiture, and was an owner of the property, as defined in paragraph (6).

“(4) Notwithstanding any provision of this section, no person may assert an ownership interest under this section—

“(A) in contraband or other property that is illegal to possess; or

“(B) in the illegal proceeds of a criminal act unless such person was a bona fide purchaser for value who was reasonably without cause to believe that the property was subject to forfeiture.

“(5) For the purposes of paragraph (2) of this subsection a person does all that reasonably can be expected if the person takes all steps that a reasonable person would take in the circumstances to prevent or terminate the illegal use of the person’s property. There is a rebuttable presumption that a property owner took all the steps that a reasonable person would take if the property owner—

“(A) gave timely notice to an appropriate law enforcement agency of information that led to the claimant to know the conduct giving rise to a forfeiture would occur or has occurred; and

“(B) in a timely fashion, revoked permission for those engaging in such conduct to use the property or took reasonable steps in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

The person is not required to take extraordinary steps that the person reasonably believes would be likely to subject the person to physical danger.

“(6) As used in this subsection—

“(A) the term ‘civil forfeiture statute’ means any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense.

“(B) the term ‘owner’ means a person with an ownership interest in the specific property sought to be forfeited, including a lien, mortgage, recorded security device, or valid assignment of an ownership interest. Such term does not include—

“(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

“(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

“(iii) a nominee who exercises no dominion or control over the property;

“(C) a person shall be considered to have known that the person’s property was being used or was likely to be used in the commission of an illegal act if the person was willfully blind.

“(7) If the court determines, in accordance with this subsection, 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—

“(A) severing the property;

“(B) 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

“(C) 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, that will permit the Government to realize its forfeitable interest if the property is transferred to another person.

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.

“(8) An innocent owner defense under this subsection is an affirmative defense.

“(g) MOTION TO SUPPRESS SEIZED EVIDENCE.—At any time after a claim and answer are filed in a judicial forfeiture proceeding, a claimant with standing to contest the seizure of the property may move to suppress the fruits of the seizure in accordance with the normal rules regarding the suppression of illegally seized evidence. If the claimant prevails on such motion, the fruits of the seizure shall not be admitted into evidence as to that claimant at the forfeiture trial. However, a finding that evidence 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 in which the governing standard is probable cause, the court may accept and consider hearsay otherwise inadmissible under the Federal Rules of Evidence.

“(i) 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.

“(j) 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 in the manner set forth in section 413(e) 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.

“(k) EXCESSIVE FINES.—(1) At the conclusion of the trial and following the entry of a verdict of forfeiture, or upon the entry of summary judgment for the Government as to the forfeitability of the property, 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.

“(2) The claimant may not object to the forfeiture on Eighth Amendment grounds

other than as set forth in paragraph (1), except that a claimant may, at any time, file a motion for summary judgment asserting that even if the property is subject to forfeiture, the forfeiture would be excessive. The court shall rule on such motion for summary judgment only after the Government has had an opportunity—

“(A) to conduct full discovery on the Eighth Amendment issue; and

“(B) to place such evidence as may be relevant to the excessive fines determination before the court in affidavits or at an evidentiary hearing.

“(l) PRE-DISCOVERY STANDARD.—In a judicial proceeding on the forfeiture of property, the Government shall not be required to establish the forfeitability of the property before the completion of discovery pursuant to the Federal Rules of Civil Procedure, particularly Rule 56(f) as may be ordered by the court or if no discovery is ordered before trial.

“(m) APPLICABILITY.—The procedures set forth in this section apply to any civil forfeiture action brought under any provision of this title, the Controlled Substances Act, or the Immigration and Naturalization Act.”

(b) RELEASE OF PROPERTY.—Chapter 46 of title 18, United States Code, is amended to add the following section after section 984:

§ 985. Release of property to avoid hardship

“(a) A person who has filed a claim under section 983 is entitled to release pursuant to subsection (b) of seized property pending trial if—

“(1) the claimant has a possessory interest in the property sufficient to establish standing to contest forfeiture and has filed a non-frivolous claim on the merits of the forfeiture action;

“(2) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

“(3) the continued possession by the United States Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the claimant from working, leaving the claimant homeless, or preventing the functioning of a business;

“(4) the claimant's hardship outweighs the risk that the property will be destroyed, damaged, lost, concealed, diminished in value or transferred if it is returned to the claimant during the pendency of the proceeding; and

“(5) none of the conditions set forth in subsection (c) applies;

“(b)(1) The claimant may make a request for the release of property under this subsection at any time after the claim is filed. If, at the time the request is made, the seizing agency has not yet referred the claim to a United States Attorney pursuant to section 608 of the Tariff Act of 1930 (19 U.S.C. 1608), the request may be filed with the seizing agency; otherwise the request must be filed with the United States Attorney to whom the claim was referred. In either case, the request must set forth the basis on which the requirements of subsection (a)(1) are met.

“(2) If the seizing agency, or the United States Attorney, as the case may be, denies the request or fails to act on the request within 20 days, the claimant may file the request as a motion for the return of seized property in the district court for the district represented by the United States Attorney to whom the claim was referred, or if the claim has not yet been referred, in the district court that issued the seizure warrant for the property, or if no warrant was issued, in any district court that would have jurisdiction to consider a motion for the return of

seized property under Rule 41(e), Federal Rules of Criminal Procedure. The motion must set forth the basis on which the requirements of subsection (a) have been met and the steps the claimant has taken to secure the release of the property from the appropriate official.

“(3) The district court must act on a motion made pursuant to this subsection within 30 days or as soon thereafter as practicable, and must grant the motion if the claimant establishes that the requirements of subsection (a) have been met. If the court grants the motion, the court must enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including permitting the inspection, photographing and inventory of the property, and the court may take action in accordance with Rule E of the Supplemental Rules for Certain Admiralty and Maritime Cases. The Government is authorized to place a lien against the property or to file a lis pendens to ensure that it is not transferred to another person.

“(4) If property returned to the claimant under this section is lost, stolen, or diminished in value, any insurance proceeds shall be paid to the United States and such proceeds shall be subject to forfeiture in place of the property originally seized.

“(c) This section shall not apply if the seized property—

“(1) is contraband, currency or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a business which has been seized,

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

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

“(4) is likely to be used to commit additional criminal acts if returned to the claimant.”

“(d) Once a motion for the release of property under this section is filed, the person filing the motion may request that the motion be transferred to another district where venue for the forfeiture action would lie under section 1335(b) of title 28 pursuant to the change of venue provisions in section 1404 of title 28.”

(c) CHAPTER ANALYSIS.—The chapter analysis for chapter 46 of title 18, United States Code, is amended—

(1) by inserting after the item relating to section 982 the following:

“983. Civil forfeiture procedures”; and

(2) by inserting after the item relating to section 984 the following:

“985. Release of property to avoid hardship”.

(f) CIVIL FORFEITURE OF PROCEEDS.—Section 981(a)(1) of title 18, United States Code, is amended—

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

(B) by adding the following after paragraph (1):

“(2) For purposes of paragraph (1), the term ‘proceeds’ means property of any kind obtained, directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the commission of the offense. In a case involving the forfeiture of

proceeds of a fraud or false claim under paragraph (1)(C) involving billing for goods or services part of which are legitimate and part of which are not legitimate, the court shall allow the claimant a deduction from the forfeiture for the amount obtained in exchange for the legitimate goods or services. In a case involving goods or services provided by a health care provider, such goods or services are not 'legitimate' if they were unnecessary.

"(3) For purposes of the provisions of subparagraphs (B) through (H) of paragraph (1) which provide for the forfeiture of proceeds of an offense or property traceable thereto, where the proceeds have been commingled with or invested in real or personal property, only the portion of such property derived from the proceeds shall be regarded as property traceable to the forfeitable proceeds. Where the proceeds of the offense have been invested in real or personal property that has appreciated in value, whether the relationship of the property to the proceeds is too attenuated to support the forfeiture of such property shall be determined in accordance with the excessive fines clause of the Eighth Amendment."

SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROPERTY.

(a) **TORT CLAIMS ACT.**—Section 2680(c) of title 28, United States Code, is amended—

(1) by striking "law-enforcement" and inserting "law enforcement"; and

(2) by inserting before the period the following: ", except that the provisions of this chapter and section 1346(b) of this title do apply to any claim based on the destruction, injury, or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if the property was seized for the purpose of forfeiture under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense but the interest of the claimant is not forfeited".

(b) DEPARTMENT OF JUSTICE.—

(1) **IN GENERAL.**—With respect to a claim that cannot be settled under chapter 171 of title 28, United States Code, the Attorney General may settle, for not more than \$50,000 in any case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Department of Justice acting within the scope of his or her employment.

(2) **LIMITATIONS.**—The Attorney General may not pay a claim under paragraph (1) that—

(A) is presented to the Attorney General more than 1 year after it occurs; or

(B) is presented by an officer or employee of the United States Government and arose within the scope of employment.

SEC. 4. PREJUDGMENT AND POSTJUDGMENT INTEREST.

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

(1) by inserting "(a)" before "Upon"; and

(2) adding at the end the following:

"(b) INTEREST.—

"(I) **POST-JUDGMENT.**—Upon entry of judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense, the United States shall be liable for post-judgment interest as set forth in section 1961 of this title.

"(2) **PRE-JUDGMENT.**—The United States shall not be liable for prejudgment interest in a proceeding under any provision of Fed-

eral law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense, except that in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, the United States shall disgorge to the claimant any funds representing—

"(A) 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 interest-bearing account or instrument; and

"(B) for any period during which no interest is actually paid, an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate described in section 1961.

"(3) **LIMITATION ON OTHER PAYMENTS.**—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."

H.R. 1658

OFFERED BY: MR. HYDE

AMENDMENT NO. 12: Page 8, line 10, redesignate paragraph (8) as paragraph (9), and insert after line 9 the following:

"(8) When a State or local law enforcement agency participated directly in the seizure or forfeiture of property forfeited under any civil forfeiture statute, that part of the property to be transferred to any State and local entities shall be distributed according to the rules set forth in that State's law or Constitution as to property forfeited under the State forfeiture law.

H.R. 1658

OFFERED BY: MR. HYDE

AMENDMENT NO. 13: Page 11, strike line 3 and all that follows through line 3 on page 12 and redesignate sections 4, 5, and 6 as sections 3, 4, and 5, respectively.

Page 12, line 17, strike "forfeiture" and insert "forfeiture under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense".

Page 13, beginning in line 20 strike "under any Act of Congress" and insert "under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense".

Page 13, line 25, strike "pre-judgment interest" and insert "pre-judgment interest in a proceeding under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense".

Page 14, line 17, strike "any intangible benefits" and insert "any intangible benefits in a proceeding under any provision of Federal law (than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense".

H.R. 1658

OFFERED BY: MRS. MEEK OF FLORIDA

AMENDMENT NO. 14: Page 15, insert after line 8 the following:

SEC. 7. FORFEITURE FOR ALIEN SMUGGLING.

Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

"(l)(1) Any conveyance, including any vessel, vehicle, or aircraft which has been used or is being used in commission of a violation of section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)); and

"(2) Any property, real or personal that—

"(A) constitutes, is derived from, or is traceable to the proceeds obtained, directly or indirectly, from the commission of a violation of section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)); or

"(B) is used to facilitate, or is intended to be used to facilitate, the commission of a violation of such section.

H.R. 1658

OFFERED BY: MR. PAUL

AMENDMENT NO. 15: Strike all after the enacting clause and insert the following:

SECTION 1. FORFEITURE CONDITION.

No property may be forfeited under any civil asset forfeiture law unless the property's owner has first been convicted of the criminal offense that makes the property subject to forfeiture. The term "civil forfeiture law" refers to any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense.

H.R. 1658

OFFERED BY: MR. SWEENEY

AMENDMENT NO. 16: Page 4, strike lines 9 through 11 and insert the following:

"(F) A claim filed under subparagraph (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 Attorney General. No bond shall be required if the property is seized by the Attorney General and a timely claim is filed *in forma pauperis* with all supporting information as required by the Attorney General. The Attorney General has the authority to waive or reduce the bond requirement in any additional category of cases where the Attorney General determines that posting bond is not required in the interests of justice.

H.R. 1658

OFFERED BY: MR. SWEENEY

AMENDMENT NO. 17: Page 6, line 5 insert before the semicolon the following: ", was not willfully blind to such conduct, and did not demonstrate a deliberate indifference to such conduct".

H.R. 1658

OFFERED BY: MR. SWEENEY

AMENDMENT NO. 18: Page 6, strike line 14 and all that follows through page 7, line 13 and insert the following: "was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value)".

H.R. 1658

OFFERED BY: MR. SWEENEY

AMENDMENT NO. 19: Page 14, strike line 25 and all that follows through page 15, line 8.

H.R. 1658

OFFERED BY: MR. SWEENEY

[Amendment to the Hutchinson Substitute]

AMENDMENT NO. 20: In subsection (b) of the proposed section 983 of title 18, United States Code, add at the end the following:

"(4) A claim filed under paragraph (1) 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 Attorney General. No bond shall be required if the property is seized by the Attorney General and if the claim is filed *in forma pauperis* with all supporting information as required by the Attorney General. The Attorney General has the authority to waive or reduce the bond requirement in any additional category of cases where the Attorney General determines that posting bond is not required in the interests of justice.