

FILED**MAY 07 2020****Mark C. McCartt, Clerk
U.S. DISTRICT COURT****UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**IN RE: MATTER OF CERTAIN
PENDING ADMINISTRATIVE
FORFEITURE PROCEEDINGS

GENERAL ORDER 20-12

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Per the attached request, the United States has applied, pursuant to 18 U.S.C. § 983, for an Order granting a 60-day blanket extension of the statutory deadlines by which the government is required to (1) commence administrative forfeiture proceedings against seized property; and (2) commence civil judicial forfeiture actions following submission of timely administrative claims in such proceedings.

On March 13, 2020, President Trump declared a national emergency, effective as of March 1, 2020, due to the Novel Coronavirus Disease (“COVID-19”) pandemic.¹ As noted in this Court’s General Orders 20-05, 20-06 and 20-10, the Centers for Disease Control and Prevention (“CDC”) and other public health authorities have advised the taking of precautions to reduce the possibility of exposure to the virus and slow the spread of the disease. To allow federal employees to engage in social distancing to slow the spread of the virus, on March 15, 2020, U.S. Attorney General William Barr implemented a “maximum telework” policy, which includes all DOJ law enforcement components. Similar orders were issued by the Departments of Homeland Security and Treasury. As a result, virtually all asset forfeiture personnel working in the headquarters facilities of the Agencies in and around Washington, DC are teleworking, as are the overwhelming majority of the attorneys and staff at the U.S. Attorney’s Office in this district.

As explained in the government’s request and supporting declaration, the COVID-19 disease has continued to spread, and it is becoming increasingly difficult, and soon may

¹ On March 29, 2020, the President extended the period of recommended social distancing and non-essential activity through the end of April.

be impossible, for the Agencies to carry out their responsibilities for processing thousands of pieces of time-sensitive mail, providing timely, direct written notice to thousands of potential claimants, and making the necessary referrals to the U.S. Attorney's Offices across the country.

The government agencies with administrative forfeiture authority (collectively, the "Agencies") include the Federal Bureau of Investigation ("FBI"), Drug Enforcement Administration ("DEA"); the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"); Customs and Border Protection ("CBP"), which is also responsible for processing seizures by Immigration and Customs Enforcement/Homeland Security Investigations ("HSI"), U.S. Border Patrol, the U.S. Secret Service ("USSS"); Internal Revenue Service – Criminal Investigation ("IRS-CI"); and the United States Postal Service ("USPS"). On an annual basis, the Agencies initiate and process tens of thousands of administrative forfeitures. Those efforts generate massive amounts of paperwork, and require regular, close physical interaction among office personnel in each Agency's headquarters office to prepare notice letters, correction letters, denial letters, the mailing envelopes for all of those letters, and the preparation of notice by publication for each targeted asset on the government's dedicated forfeiture website (www.forfeiture.gov).

In addition, Agency employees and contractors physically handle large volumes of mail from the public on a daily basis, including hand-written letters, claims, petitions for remission or mitigation, and requests for reconsideration. Although the seizing Agencies are capable of processing claims and petitions submitted electronically, the overwhelming majority of all submissions (approximately 85%) still come through the mail. The submission of timely administrative claims requires the Agencies to refer those matters to the U.S. Attorney's Offices across the country, and trigger separate deadlines relating to the filing of judicial forfeiture actions in the district courts. The government has requested a blanket 60-day extension of those 90-day filing deadlines as well.

The Court finds that the working conditions described in the government's request

are inconsistent with the social distancing guidelines of the CDC and other health and public safety officials, the government's own guidelines for workplace safety, and the explicit requirements of mandatory declarations of state and local governments in the Northern District of Oklahoma.

The Agencies have certified to the Court that in light of the COVID-19 pandemic, their compliance with the 60 and 90-day statutory deadlines for commencing administrative forfeiture with respect to federal and adoptive seizures, respectively, is likely to endanger the life or physical safety of the government employees and contractors responsible for carrying out the duties of the Agency administrative forfeiture programs, as described at 18 U.S.C. § 983(a)(1)(A)(i), justifying the extension of those deadlines pursuant to 18 U.S.C. § 983(a)(1)(C). Specifically, the government has demonstrated that that the ongoing national emergency triggered by the pandemic, and the resulting need for social distancing and heightened controls on physical contact with objects that may present a risk of contamination, constitute good cause for a finding that requiring the noticing of seizures and referral of claims may endanger the life or health of the government asset forfeiture attorneys and staff (at both the Agencies and the U.S. Attorney's Offices) responsible for reviewing cases, issuing notices, and processing submitted claims and petitions. All of these factors support an order pursuant to § 983(a)(1)(C) and (3)(A) granting the 60-day blanket extensions described herein.


WHEREFORE, IT IS ORDERED that (1) for all federal seizures of property that occurred or will occur in the Northern District of Oklahoma between February 3, 2020, and April 30, 2020, the deadline established by 18 U.S.C. § 983(a)(1)(A) (i) for any seizing Agency to commence administrative forfeiture proceedings against such property shall be and hereby is extended for a period of 60 days; (2) for all seizures of property by state or local law enforcement agencies in the Northern District of Oklahoma between January 3, 2020, and April 30, 2020, which seizures are thereafter federally adopted, the deadline established by 18 U.S.C. § 983(a)(1)(A) (iv) for the adopting Agency to commence

administrative forfeiture proceedings against such property shall be and hereby is extended for a period of 60 days; and (3) the 90-day deadline established at 18 U.S.C. § 983(a)(3)(A) for the filing of a civil forfeiture complaint (or inclusion of an asset in a criminal indictment) following an Agency's receipt of a timely administrative claim between February 3, 2020, and April 30, 2020, is hereby extended to 150 days instead of the statutory 90-day period. To the extent that any Agency executed a 30-day extension of any administrative notice deadline pursuant to 18 U.S.C. § 983(a)(1)(B) on or before March 31, 2020, the deadline for the sending of the required notice is extended for 60 days from the current deadline.

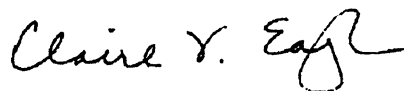
Good cause appearing therefore, and for the reasons stated above, the government's request is GRANTED.

In accordance with the provisions of 18 U.S.C. § 983(a)(1)(C), further extensions of no more than 60 days each may be granted as necessary, upon an appropriate showing.

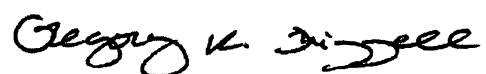
IT IS SO ORDERED this 7th day of May 2020.



JOHN E. DOWDELL
CHIEF UNITED STATES DISTRICT JUDGE



CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE



GREGORY K. FRIZZELL
UNITED STATES DISTRICT JUDGE



TERENCE C. KERN
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

IN RE MATTER OF
CERTAIN PENDING ADMINISTRATIVE
FORFEITURE PROCEEDINGS

**EX PARTE MOTION FOR ORDER EXTENDING CERTAIN
STATUTORY DEADLINES FOR ADMINISTRATIVE AND
CIVIL JUDICIAL FORFEITURE PROCEEDINGS AND ACTIONS**

The United States of America, pursuant to 18 U.S.C. § 983, requests that this Court grant a 60-day blanket extension of the statutory deadlines by which the government is required to (1) commence administrative forfeiture proceedings against seized property; and (2) commence civil judicial forfeiture actions following submission of timely administrative claims. This application is based on the provisions of § 983 authorizing the Court to extend the specific deadlines involved under circumstances expressed in the statute, and the current national health emergency, as declared by the president on March 13, 2020. In support of its motion, the Government submits the following memorandum of law.

MEMORANDUM OF LAW

I. Background

The Department of Justice's three law enforcement agencies with administrative forfeiture authority—the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Drug Enforcement Administration, and the Federal Bureau of Investigation (collectively, the DOJ seizing agencies)—are authorized to seize property subject to forfeiture under federal law, and to commence administrative forfeiture proceedings, subject to certain statutory

limitations. 19 U.S.C. §§ 1602-1621. The regulations governing these seizures, administrative forfeitures, and the remission or mitigation of Department of Justice forfeitures are found at 28 C.F.R., Parts 8 and 9.

The United States Postal Inspection Service is authorized by law to commence administrative forfeiture proceedings pursuant to 18 U.S.C. § 3061, and participates in the Department of Justice asset forfeiture program. In addition, three federal law enforcement agencies with administrative-forfeiture authority participate in the Department of Treasury asset forfeiture program. These include the Internal Revenue Service within the Treasury Department, as well as the United States Secret Service and Customs and Border Protection (CBP) within the Department of Homeland Security (DHS).¹

With limited exceptions, most aspects of federal administrative and judicial forfeiture actions are governed by the provisions of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Public Law 106-185, 114 Stat. 202. One key aspect of CAFRA is the establishment of a statutory deadline for commencing an administrative forfeiture proceeding—60 days from the date of seizure for federal seizures and 90 days from the seizure date for adopted seizures (those initially made by a state or local law enforcement agency). 18 U.S.C. § 983(a)(1)(A)(i), (iv). The procedures for extending that deadline and the deadlines for subsequent steps in the administrative and judicial forfeiture proceedings are set forth in 18 U.S.C. § 983(a)(1).

An administrative forfeiture is commenced when the seizing agency sends notice of

¹ CBP processes administrative forfeiture proceedings for seizures made by U.S. Border Patrol as well as for seizures by Homeland Security Investigations (HSI), another DHS agency.

the forfeiture proceeding to potential claimants. The standard method is to send notice by certified mail, return receipt requested, or by commercial delivery with confirmation of receipt. Some agencies also send notice by first-class mail. The agencies use certified mail or commercial delivery for two reasons: (1) to increase the likelihood that the intended recipient, in fact, receives timely notice, and (2) to provide the seizing agency with confirmation of delivery. Where a claim contesting that administrative forfeiture has been filed, the seizing agency then must forward the matter within 90 days to the appropriate U.S. Attorney's Office for further action. 18 U.S.C. § 983(a)(3)(A). In addition to, or instead of, submitting an administrative claim, a party may submit a petition for remission or mitigation of the forfeiture. These petitions are described in the notice letters that commence the administrative forfeiture proceeding, and are required to be submitted to the agency in a similar manner to a claim.

Each year, the DOJ seizing agencies commence approximately 27,500 to 31,700 administrative forfeitures. The non-DOJ agencies also commence a thousands of administrative forfeitures. CBP alone commenced over 22,000 CAFRA forfeitures last fiscal year. Those forfeitures generate massive amounts of paperwork and require the regular, close physical interaction among office personnel in each agency's headquarters office to prepare notice letters, correction letters, denial letters, the mailing envelopes for all of those letters, and the notice by publication for each forfeiture on the government's dedicated forfeiture website (www.forfeiture.gov). In addition, these employees physically handle large volumes of mail from the public on a daily basis, including hand-written letters, claims, petitions for remission or mitigation, and requests for reconsideration.

Although the seizing agencies are capable of processing claims and petitions submitted electronically, the overwhelming majority of submissions (approximately 85% or more, depending on the agency) still comes through the mail.

On March 13, 2020, President Trump declared a national emergency, effective as of March 1, 2020, due to the Novel Coronavirus Disease (COVID-19) pandemic. To allow federal employees to engage in social distancing to slow the spread of the virus, on March 15, 2020, the Attorney General implemented a “maximum telework” policy, which includes all DOJ law enforcement components. As a result, virtually all asset forfeiture personnel working in the headquarters facilities of the DOJ seizing agencies in the Washington, DC area are teleworking, as are the overwhelming majority of asset forfeiture personnel around the country. The non-DOJ seizing agencies similarly are maximizing telework. As the COVID-19 disease continues to spread, it is becoming increasingly difficult, and soon may be impossible, for the seizing agencies to comply with the guidance promulgated by the Centers for Disease Control and Prevention and other public health authorities regarding reducing the possibility of exposure to the virus and slowing the spread of the disease and receive mail and process the large volume of time-sensitive documents; comply with the statutory deadline requirements for providing notice to potential claimants and petitioners; and refer any contested matters to U.S. Attorney’s Offices across the country for their consideration.

II. Legal Authority

Pursuant to 18 U.S.C. § 983(a)(1)(B), a “supervisory official in the headquarters office of each seizing agency may extend the period for sending notice” of an

administrative forfeiture action to interested parties under certain conditions for a period not to exceed 30 days. The supervisory official may extend the 30-day period “only if there is reason to believe that sending notice may have an adverse result,” including: endangering the life or physical safety of an individual. 18 U.S.C. §§ 983(a)(1)(D). Upon motion by the Government, “a court may extend the [30-day] period for sending notice for a period not to exceed 60 days, which period may further extended by the court for 60-day periods, as necessary,” based on the presence of any of these same conditions described in 18 U.S.C. §§ 983(a)(1)(D).

Once notice of an administrative forfeiture is sent, a claim may be filed by the deadline set forth in the notice (which must be at least 35 days after the date the letter is mailed) or, if the notice is not received, not later than 30 days after the date of final publication of the notice of seizure. *See* 18 U.S.C. § 983(a)(2)(B). Then, not later than 90 days after a timely claim is received, the Government must file a civil forfeiture complaint or obtain a criminal indictment alleging that the seized property is subject to forfeiture. *See* 18 U.S.C. § 983(a)(3)(A)-(C). If the Government fails to take these steps, it must return the property and is barred from completing a civil forfeiture. *See* 18 U.S.C. § 983(a)(3)(B). There is, however, one exception. “[A] district court in the district in which the civil forfeiture complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.” 18 U.S.C. § 983(a)(3)(A).²

² This Court has jurisdiction and venue over the civil forfeiture of assets seized in the Northern District of Oklahoma as well as those subject to forfeiture for crimes that occurred here. Pursuant to 28 U.S.C. § 1355, a civil forfeiture action may be brought in the district in which any of the acts or omissions giving rise to the forfeiture occurred, or any district for which venue is provided in section 1395. Section 1395, in turn, provides that venue exists in any district in which the property is found or brought. 28 U.S.C. § 1395(b)

Section 983(a)(1)(D) extensions are entered routinely by supervisory officials or by district courts, as appropriate, on a case-by-case basis. Similarly, district courts routinely grant section 983(a)(3)(A) motions to extend the deadline to file civil forfeiture complaints. Because of the current trajectory of the coronavirus and the likely spread of COVID-19 if greater safety measures are not taken, it is reasonable to believe that the continued regular operation of the seizing agencies' administrative forfeiture programs may endanger the lives or physical safety of numerous employees and contractors responsible for processing administrative forfeiture matters. At the same time, it is impossible for the Government to identify every seized asset for which notice must be sent or each claim requesting initiation of a judicial forfeiture action without requiring agency personnel to work closely together in their offices while handling mail from all over the United States. For this reason, and in recognition of the unique situation presented by the ongoing pandemic, the Government makes this unusual request for a 60-day blanket extension of all noticing and filing deadlines for assets seized or adopted by a federal seizing agency that are eligible for administrative forfeiture. Given the sensitivity of the issue, if this request is granted, the Government is waiving its right to have the supervisory officials at the headquarter offices of the federal seizing agencies extend the filing deadline by 30 days under section 983(a)(1)(B).

Instead of authorizing a 30-day extension at the agency-level, and as reflected in the attached declarations of those officials, the Government is requesting that the Court issue a 60-day blanket extension of all noticing deadlines for assets (1) seized by a federal seizing agency between February 3 and April 30, 2020, for which a judicial forfeiture could be

brought in the Northern District of Oklahoma; (2) adopted by a federal seizing agency but seized by a state or local agency between January 3 and March 30, 2020 in the Northern District of Oklahoma; or (3) for which, due to a prior extension by the supervisory official at the agency, a notice of administrative forfeiture had to be mailed by April 3, 2020, based upon a determination that there is reason to believe that requiring notices of administrative forfeitures may endanger the life or physical safety of an individual—specifically, requiring the notices may endanger the life or health of the asset forfeiture staff necessary to review and prepare cases and issue the notices in light of the global coronavirus pandemic. For the same reasons, the Government further requests that all current 90-day deadlines in place pursuant to § 983(a)(3)(A) (or that will arise through April 30) be extended by 60 days, so that the deadline for the government to take one of the actions described in that provision is 150 days, rather than 90 days.

The Government asks the Court to find that the ongoing national emergency triggered by the pandemic, and the resulting need for social distancing and heightened controls on physical contact with objects that may present a risk of contamination, constitute good cause for a finding that requiring the noticing of seizures and referral of claims may endanger the life or health of the government asset forfeiture attorneys and staff at the federal seizing agencies responsible for reviewing cases, issuing notices, and processing submitted claims and petitions. All of these factors support an order pursuant to § 983(a)(1)(C) and (3)(A) granting the 60-day blanket extension sought by this application.

The Government notes that “the Judicial Conference, the administrative policy-

making body for the federal courts, found on March 29, pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), that ‘emergency conditions due to the national emergency declared by the President with respect to COVID-19 will materially affect the functioning of the federal courts generally’”

<https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic>. In response to the epidemic, federal courts at all levels have adopted temporary procedures designed to safeguard court staff, litigants, and the public from exposure to COVID-19. These procedures recognize that the use of the mail and paper submissions is problematic within the context of the risks posed by the pandemic and the measures needed to mitigate those risks. <https://www.uscourts.gov/about-federal-courts/court-website-links/court-orders-and-updates-during-covid19-pandemic> (linking to all temporary court policies).

If the application is granted, the deadline for commencing administrative forfeiture proceedings against a federally-seized asset seized on February 3, 2020 would be extended from April 3, 2020, to June 2, 2020; (2) the commencement deadline for an adoptive (that is, non-federal) seizure that occurred on January 3, 2020, would be extended from April 2, 2020, to June 1, 2020; and (3) the 90-day deadline for the filing of a civil forfeiture complaint (or inclusion of an asset in a criminal indictment) following the agency’s receipt of a timely administrative claim would be extended to 150 days instead of the statutory 90-day period. The corresponding dates for seizures occurring on the last day of the period requested (April 30, 2020) would be August 28, 2020 (federal seizures), and September 27, 2020 (adoptive seizures).

The unprecedented nature and scope of the current crisis understandably means that there is no existing authority directly on point. However, the one Circuit Court opinion on the issue holds that motions for extensions of time are properly filed *ex parte* under circumstances that fall within the scope of the statute. *See United States v. Real Property Located at 475 Martin Lane*, 545 F.3d 1134, 1141 (9th Cir. 2008). And there is authority for the proposition that where the government is unable to act as a result of an Act of God or other events beyond its control, the granting of relief in the form of an extension is appropriate. *See, e.g., United States v. \$55,140 in U.S. Currency*, No. 5:04cv407–SPM/AK, 2005 WL 6577605 (N.D. Fla. Jan 20, 2005) (shutting down of the U.S. Attorney’s Office for 2 weeks due to the effects of a hurricane constitutes good cause for the extension of the 90-day deadline; and a motion to extend a deadline under § 983(a)(3)(A) may be filed after the deadline has expired).

Moreover, nothing in the plain text of the statute prohibits the relief requested, bolstering the proposition that the scope of the extension authority articulated in the statute is a matter of the Court’s discretion. Also, the Government is requesting finite relief, as contemplated by § 983(a)(1)(C) (“a court may extend the period for sending notice . . . for a period not to exceed 60 days, which period may be extended by the court for 60 day periods, as necessary”). The Government will request additional extensions, as appropriate, but if the crisis resolves in the meantime, the requested extension will expire by its own terms.

Finally, while the requested extension will admittedly create some delay in the receipt of administrative notice by claimants and the commencement of some judicial

forfeiture cases, it will also serve to insulate those claimants from the potentially dire consequences of missing the deadline for submitting timely administrative or judicial claims during this time of national emergency.

III. Conclusion

For the foregoing reasons, the Government respectfully requests this Court to find that the requested order is necessary and appropriate to protect the health and safety of all individuals responsible for the daily processing of claims, petitions, referrals and correspondence, and serves the best interests of the public and the United States of America, and that the relief may be further extended by this Court, as necessary.

Respectfully submitted,

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