

that there are exigent circumstances that permit the Government to seize the property without prior notice and an opportunity for the property owner to be heard.

(2) For purposes of paragraph (1)(B)(ii), to establish exigent circumstances, the Government shall show that less restrictive measures such as a *lis pendens*, restraining order, or bond would not suffice to protect the Government's interests in preventing the sale, destruction, or continued unlawful use of the real property.

(e) If the court authorizes a seizure of real property under subsection (d)(1)(B)(ii), it shall conduct a prompt post-seizure hearing during which the property owner shall have an opportunity to contest the basis for the seizure.

(f) This section—

(1) applies only to civil forfeitures of real property and interests in real property;

(2) does not apply to forfeitures of the proceeds of the sale of such property or interests, or of money or other assets intended to be used to acquire such property or interests; and

(3) shall not affect the authority of the court to enter a restraining order relating to real property.

(Added Pub. L. 106-185, §7(a), Apr. 25, 2000, 114 Stat. 214.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (c)(2)(B), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106-185, set out as an Effective Date of 2000 Amendment note under section 1324 of Title 8, Aliens and Nationality.

§ 986. Subpoenas for bank records

(a) At any time after the commencement of any action for forfeiture in rem brought by the United States under section 1956, 1957, or 1960 of this title, section 5322 or 5324 of title 31, United States Code, or the Controlled Substances Act, any party may request the Clerk of the Court in the district in which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in section 5312(a) of title 31, United States Code, to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena. The procedures and limitations set forth in section 985¹ of this title shall apply to subpoenas issued under this section.

(b) Service of a subpoena issued pursuant to this section shall be by certified mail. Records produced in response to such a subpoena may be produced in person or by mail, common carrier, or such other method as may be agreed upon by the party requesting the subpoena and the custodian of records. The party requesting the subpoena may require the custodian of records to submit an affidavit certifying the authenticity and completeness of the records and explaining

the omission of any record called for in the subpoena.

(c) Nothing in this section shall preclude any party from pursuing any form of discovery pursuant to the Federal Rules of Civil Procedure.

(d) ACCESS TO RECORDS IN BANK SECRECY JURISDICTIONS.—

(1) IN GENERAL.—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)), in which—

(A) financial records located in a foreign country may be material—

(i) to any claim or to the ability of the Government to respond to such claim; or

(ii) in a civil forfeiture case, to the ability of the Government to establish the forfeitability of the property; and

(B) it is within the capacity of the claimant to waive the claimant's rights under applicable financial secrecy laws, or to obtain the records so that such records can be made available notwithstanding such secrecy laws,

the refusal of the claimant to provide the records in response to a discovery request or to take the action necessary otherwise to make the records available shall be grounds for judicial sanctions, up to and including dismissal of the claim with prejudice.

(2) PRIVILEGE.—This subsection shall not affect the right of the claimant to refuse production on the basis of any privilege guaranteed by the Constitution of the United States or any other provision of Federal law.

(Added Pub. L. 102-550, title XV, §1523(a), Oct. 28, 1992, 106 Stat. 4063; amended Pub. L. 103-325, title IV, §411(c)(2)(E), Sept. 23, 1994, 108 Stat. 2253; Pub. L. 106-185, §17, Apr. 25, 2000, 114 Stat. 221.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (a), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

Section 985 of this title, referred to in subsec. (a), was enacted by Pub. L. 106-185, and relates to civil forfeitures of real property and not to procedures and limitations for subpoenas. The reference to section 985 was included in this section when it was enacted by Pub. L. 102-550, but at that time there was no section 985 of this title.

The Federal Rules of Civil Procedure, referred to in subsec. (c), are set out in Title 28, Appendix, Judiciary and Judicial Procedure.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-185 added subsec. (d).

1994—Subsec. (a). Pub. L. 103-325 substituted "section 5322 or 5324 of title 31" for "section 5322 of title 31".

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106-185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

¹ See References in Text note below.

§ 987. Anti-terrorist forfeiture protection

(a) RIGHT TO CONTEST.—An owner of property that is confiscated under any provision of law relating to the confiscation of assets of suspected international terrorists, may contest that confiscation by filing a claim in the manner set forth in the Federal Rules of Civil Procedure (Supplemental Rules for Certain Admiralty and Maritime Claims), and asserting as an affirmative defense that—

(1) the property is not subject to confiscation under such provision of law; or

(2) the innocent owner provisions of section 983(d) of title 18, United States Code, apply to the case.

(b) EVIDENCE.—In considering a claim filed under this section, a court may admit evidence that is otherwise inadmissible under the Federal Rules of Evidence, if the court determines that the evidence is reliable, and that compliance with the Federal Rules of Evidence may jeopardize the national security interests of the United States.

(c) CLARIFICATIONS.—

(1) PROTECTION OF RIGHTS.—The exclusion of certain provisions of Federal law from the definition of the term “civil forfeiture statute” in section 983(i) of title 18, United States Code, shall not be construed to deny an owner of property the right to contest the confiscation of assets of suspected international terrorists under—

- (A) subsection (a) of this section;
(B) the Constitution; or

(C) subchapter II of chapter 5 of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(2) SAVINGS CLAUSE.—Nothing in this section shall limit or otherwise affect any other remedies that may be available to an owner of property under section 983 of title 18, United States Code, or any other provision of law.

(Added Pub. L. 109-177, title IV, §406(b)(1)(B), Mar. 9, 2006, 120 Stat. 244.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure. The Supplemental Rules for Certain Admiralty and Maritime Claims, which are set out as part of the Federal Rules of Civil Procedure, were renamed the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

The Federal Rules of Evidence, referred to in subsec. (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 107-56, title III, §316(a)-(c), Oct. 26, 2001, 115 Stat. 309, which was set out as a note under section 983 of this title, prior to repeal by Pub. L. 109-177, §406(b)(2).

CHAPTER 47—FRAUD AND FALSE STATEMENTS

- Sec. 1001. Statements or entries generally.
1002. Possession of false papers to defraud United States.

- Sec. 1003. Demands against the United States.
1004. Certification of checks.
1005. Bank entries, reports and transactions.
1006. Federal credit institution entries, reports and transactions.
1007. Federal Deposit Insurance Corporation transactions.
[1008, 1009. Repealed.]
1010. Department of Housing and Urban Development and Federal Housing Administration transactions.
1011. Federal land bank mortgage transactions.
1012. Department of Housing and Urban Development transactions.
1013. Farm loan bonds and credit bank debentures.
1014. Loan and credit applications generally; renewals and discounts; crop insurance.
1015. Naturalization, citizenship or alien registry.
1016. Acknowledgment of appearance or oath.
1017. Government seals wrongfully used and instruments wrongfully sealed.
1018. Official certificates or writings.
1019. Certificates by consular officers.
1020. Highway projects.
1021. Title records.
1022. Delivery of certificate, voucher, receipt for military or naval property.
1023. Insufficient delivery of money or property for military or naval service.
1024. Purchase or receipt of military, naval, or veteran’s facilities property.
1025. False pretenses on high seas and other waters.
1026. Compromise, adjustment, or cancellation of farm indebtedness.
1027. False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974.
1028. Fraud and related activity in connection with identification documents and information.1
1028A. Aggravated identity theft.
1029. Fraud and related activity in connection with access devices.
1030. Fraud and related activity in connection with computers.
1031. Major fraud against the United States.
1032. Concealment of assets from conservator, receiver, or liquidating agent of financial institution.2
1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce.
1034. Civil penalties and injunctions for violations of section 1033.
1035. False statements relating to health care matters.
1036. Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport.
1037. Fraud and related activity in connection with electronic mail.
1038. False information and hoaxes.
1039. Fraud and related activity in connection with obtaining confidential phone records information of a covered entity.
1040. Fraud in connection with major disaster or emergency benefits.

AMENDMENTS

- 2008—Pub. L. 110-179, §2(b), Jan. 7, 2008, 121 Stat. 2557, added item 1040.
2007—Pub. L. 109-476, §3(b), Jan. 12, 2007, 120 Stat. 3571, added item 1039.

1Section catchline amended by Pub. L. 108-21 without corresponding amendment of chapter analysis.
2Section catchline amended by Pub. L. 111-203 without corresponding amendment of chapter analysis.