

## 2nd Circ. Ruling Shows Procedural Perils Of Civil Forfeiture

By **Elisha Kobre** (January 6, 2026)

In a decision that has caught the attention of prominent civil liberties organizations, the U.S. Court of Appeals for the Second Circuit handed down a ruling last month that underscores the unforgiving procedural complexities of civil asset forfeiture law.

U.S. v. Ross, decided on Dec. 4, illustrates how technical filing requirements can permanently extinguish property rights — even when the property owner claims complete innocence.

The case drew amicus briefs from the Cato Institute, the Institute for Justice, the Goldwater Institute, the Manhattan Institute, the Rutherford Institute and the Buckeye Institute — a rare coalition that signals the broader implications for civil forfeiture reform.



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### **The Facts: A \$29.6 Million Fraud Scheme**

Richard Stuart Ross, a Florida-licensed attorney, held client funds in a trust account at Regions Bank in Alabama. In October 2021, his account became the target of a sophisticated business email compromise scheme.

Fraudsters, posing as a legitimate subcontractor, tricked Rising Phoenix Holdings LLC into wiring \$29.6 million into Ross' trust account. Within days, most of the money was transferred out to banks in Mexico, California and Delaware.

When federal authorities discovered the fraud, they seized approximately \$4.9 million from Ross' account: \$4.18 million still in the account, and another \$722,327 that Regions Bank had recalled from a Mexican bank. The government alleged the seized funds were either direct proceeds of wire and computer fraud, or involved in money laundering operations.

Ross claimed that \$1.21 million of the seized funds were legitimately his — \$1.2 million from the sale of his personal residence and about \$12,000 in client funds. He filed a verified claim to that amount within the required 30-day deadline. But he filed no claim to the remaining \$3.69 million, arguing on appeal that as the account holder asserting an "innocent owner" defense, he had standing to contest all forfeitures from his account.

That calculation proved catastrophic.

### **The Procedural Trap: Partial Claims and Standing**

The heart of the Second Circuit's decision turned on a fundamental principle of civil forfeiture law: To challenge a forfeiture, a claimant must establish both constitutional standing under Article III, and statutory standing — and the latter requires filing a timely verified claim to the specific property at issue.

Ross argued that his innocent owner defense under Title 18 of the U.S. Code, Section 983(d)(1) — which provides that an "innocent owner's interest in property shall not be forfeited" — gave him standing to contest the forfeiture of all funds from his account.

The Second Circuit disagreed. Writing for the panel, U.S. Circuit Judge Reena Raggi held that the innocent owner statute "creates no exception" to normal standing requirements. Even innocent owners must file claims within 30 days to preserve their rights.

Because Ross only filed a claim to \$1.21 million, the court held that he lacked statutory standing to challenge the default forfeiture of the remaining \$3.69 million. The court could not consider whether the government had adequate proof for that forfeiture or whether those funds were truly subject to seizure. The procedural failure was fatal to the case and irreversible.

This holding drew the attention of civil liberties organizations precisely because it illustrates a recurring problem in civil forfeiture: the collision between substantive rights and rigid procedural requirements.

The Institute for Justice, for instance, has long argued that civil forfeiture places unfair burdens on property owners, and cases like Ross demonstrate how even represented claimants can lose property through technical missteps rather than any finding of wrongdoing.

### **The Attorney Fees Question: What Does "Substantially Prevail" Mean?**

The government eventually dismissed without prejudice the forfeiture proceedings against the \$1.21 million Ross had claimed and returned that money to him. Ross argued this meant "he substantially prevailed" under the Civil Asset Forfeiture Reform Act, which requires the government to pay attorney fees to claimants who substantially prevail.

Again, the Second Circuit disagreed. In a ruling that will shape future forfeiture litigation, the court held that dismissal without prejudice does not constitute prevailing because it "leaves the situation as if the action never had been filed." Without a judgment on the merits or even a dismissal with prejudice, there was no "material alteration of the legal relationship" between Ross and the government.

Critically, the court rejected what's known as the "catalyst theory" — the argument that a claimant prevails when the government's voluntary return of property was caused by the litigation. The decision noted that the U.S. Supreme Court "has clearly rejected a catalyst theory" in the civil rights context, and the Second Circuit extended that rejection to CAFRA.

The practical effect is stark: The government can seize property, force owners into litigation, then voluntarily dismiss and return the property while avoiding any fee liability. Because dismissals without prejudice leave open the possibility of refileing — subject to the five-year statute of limitations — claimants remain vulnerable even after getting their property back.

### **The Due Process Challenge: Discovery Stays in Parallel Investigations**

Ross also challenged the U.S. District Court for the Northern District of New York's five-month stay of civil discovery while a parallel criminal investigation proceeded.

The Second Circuit applied the four-factor test from the U.S. Supreme Court's 1972 decision in *Barker v. Wingo*, borrowed from Sixth Amendment speedy trial jurisprudence, and found no constitutional violation.

The stay was authorized by Title 18 of the U.S. Code, Section 981(g)(1), which requires

courts to stay civil forfeiture proceedings when discovery would "adversely affect the ability of the Government to conduct a related criminal investigation." The court found the parties, witnesses and circumstances in both proceedings were sufficiently similar, and the five-month delay — in the context of a 16-month proceeding involving complex international money transfers — was reasonable.

### **Key Takeaways for Practitioners**

Ross offers several critical lessons for attorneys handling civil forfeiture matters.

First, file comprehensive claims immediately. The 30-day deadline is unforgiving, and partial claims can result in permanent loss of property for which no claim was filed. When in doubt, claim everything and sort out ownership disputes later.

Second, dismissals without prejudice are litigation losses for fee purposes. Unless you obtain a judgment on the merits, a dismissal with prejudice or some other court order materially altering the legal relationship, CAFRA fees are unavailable — even if the government returns the property.

Third, parallel criminal investigations justify discovery stays. Courts will defer to the government's assertion that civil discovery could compromise criminal investigations, particularly in cases involving international transactions or ongoing fraud schemes.

Fourth, standing requirements apply to all defenses, including innocent owner claims. Procedural compliance is not optional, even for sympathetic claimants with strong substantive defenses.

The case serves as a sobering reminder that civil forfeiture remains one of the most procedurally perilous areas of federal litigation — which is precisely why civil liberties organizations continue to advocate for reform. Until those reforms arrive, property owners face a system where technical missteps can result in permanent property loss, regardless of innocence.

The decision also highlights the necessity to file comprehensive claims challenging forfeiture and to strictly comply with all procedural requirements to preserve claims. And it underscores the serious limitations on the recovery of CAFRA fees in civil forfeiture proceedings.

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