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Asset Forfeiture Programs:
Corrective Actions Underway But
Additional Improvements Needed

Statement of
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Before the
Subcommittee on Crime,
House of Representatives



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DEPARTMENT OF JUSTICE AND
U.S. CUSTOMS SERVICE FORFEITURE PROGRAMS

SUMMARY OF STATEMENT BY
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GAO's 1986 and 1987 reviews of the Department of Justice's and U.S. Customs Service's forfeiture programs identified numerous problems, including that:

- Millions of dollars were being held in agency vaults for long periods when the money could have been deposited into U.S. Treasury accounts. For example, since we brought this issue to their attention over \$150 million has been deposited.
- Justice was holding real properties for long periods even though no economic return would be realized and sales of properties were often cancelled or significantly delayed.
- Surplus money was accumulating in Justice's Forfeiture Fund to be used at its discretion. For example, \$68 million remained in Justice's Fund at the end of fiscal year 1987.
- Customs' Forfeiture Fund accounting and reporting did not comply with Comptroller General standards required by the Federal Managers' Financial Integrity Act.

Action has been taken to resolve many of the problems. The agencies revised or established cash management policies to provide for more timely deposits of seized cash, a 9,500-case backlog in Justice's processing of seizure cases had been reduced to 3,300 cases as of January 31, 1988, and other improvements were made for better oversight. However, some problems have not been resolved.

- Customs needs to better assure that its field offices understand and are complying with the newly established policies and procedures for the expeditious depositing of seized cash because cash apparently continues to be held unnecessarily in agency vaults.
- Justice needs to identify and monitor defendant's equity in real property being forfeited to minimize the number of unprofitable properties being forfeited. Also, greater effort is needed to resolve the Title Insurance industry's reluctance to insure title to Justice's forfeited properties if the delays in finalizing sales are to be eliminated.
- Because Customs' accounting procedure stems from legislation which predates establishment of the Forfeiture Fund, Customs needs to propose to Congress the statutory amendments it believes are necessary to bring its Fund accounting into compliance with the Integrity Act's standards.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the Asset Forfeiture Programs operated by the Department of Justice and U.S. Customs Service. Forfeiture law is an important part of law enforcement strategies to combat drug traffickers and organized crime figures because it allows the government to take property such as cash, cars, boats, planes, and real property, that has been illegally used or acquired without compensating the owner. This is particularly true since the Comprehensive Crime Control Act of 1984 expanded the federal government's seizure authority and established Asset Forfeiture Funds to finance the management and disposal of seized and forfeited assets. As a result, the value of Justice's and Customs' seized asset inventories has grown tremendously, from \$33 million in 1979 to \$800 million in early 1988.

While the main purposes of the forfeiture programs are to destroy the economic power of criminals and their enterprises, the increasing value of assets being seized heightens the importance of having sound policies, good internal controls, and adequate staff to effectively manage and dispose of the assets. Effective program management maximizes the economic return to the government, increases the amounts and improves the timeliness of asset proceeds shared with state and local law enforcement agencies, and helps assure that innocent parties with valid interests in the property being forfeited are protected.

We have completed several reviews of Justice's and Customs' seized asset programs, including the handling of seized cash and the management of seized property.¹ This work identified numerous problems and issues warranting attention, such as the need for more expeditious depositing of cash, improvements in meeting legal requirements in the selling of real properties, and greater oversight and disclosure of asset fund operations.

Customs and Justice have taken action or have actions underway to resolve many of these problems, but others have yet to be addressed. I will focus my remarks today on improvements still needed in three areas.

- First, Customs needs to complete its follow up with its field offices to better assure that newly established policies and procedures for the expeditious depositing of seized cash are understood and complied with.
- Second, Justice needs to identify and monitor the defendant's equity in real property being forfeited and to satisfactorily demonstrate to title insurers that it has complied with all legal requirements for transfer of good title to the forfeited real property it offers for sale.
- Third, action can be taken to simplify and improve Customs' Forfeiture Fund accounting and help assure that the

¹A listing of prior GAO work is included in appendix I.

surplus funds accumulating annually in Justice's Fund are used as directed by Congress.

Let me briefly discuss each of these areas.

MAJOR PROGRESS IN DEPOSITING CASH
BUT SOME FOLLOW UP NEEDED

On March 13, 1987, we testified that Customs and the Drug Enforcement Administration (DEA) were unnecessarily holding millions of dollars of seized cash in vaults for long periods when the money could have been deposited into U.S. Treasury accounts. There were several causes for such delays. Customs, for example, had no national policy on seized cash management and information to account for on-hand cash and to monitor case status was inadequate. DEA's problems included a 9,500-case backlog in its processing of seizure cases which prevented prompt contributions to Justice's Forfeiture Fund and led to delays in the sharing of asset proceeds with state and local law enforcement agencies.

Customs and Justice were responsive to our recommendations. In January 1987, DEA established a task force to reduce its processing backlog, and in May 1987, Justice established a new policy requiring the justification and approval of seized cash being held more than 60 days after seizure. As of January 31, 1988, the backlog had been reduced to 3,300 cases. Customs established a national policy and inventory system and required

cash to be deposited within 10 workdays of non-evidentiary determination.

The amounts deposited into designated Treasury accounts have increased by \$150 million since we brought the problems to the agencies' attention. For example, the balance in Justice's account for assets pending forfeiture increased from \$48.9 million in October 1986 to \$168 million in December 1987. Customs' account, which was established in July 1987 as a result of our recommendation, had a balance of \$34 million as of February 10, 1988. Justice estimates that implementation of its program improvements will result in savings to the government of about \$10 million during fiscal year 1988. Using the same method of calculation for Customs' program improvements, we estimate Customs savings of \$2 million during fiscal year 1988.

Although Customs deposited the cash we previously identified as being held unnecessarily in storage and new policies and procedures were established to assure timely deposit of seized cash, it appears that Customs has been only partially successful in correcting the problem. In following up on the seized cash balances on-hand, we learned on February 19, 1988, that \$57 million was on-hand and classified as being held for evidentiary purposes. About \$18.3 million is being held in Miami. Headquarters officials told us these totals seemed to be too high. They are following up to determine whether the cash is

needed as evidence and whether additional changes should be made to Customs' procedures to assure that the field offices are complying with the new policy.

REAL PROPERTY ISSUES
REMAIN UNRESOLVED

On September 25, 1987, we testified that Justice was seizing and holding many real properties for long periods even though there was little likelihood an economic return would be realized. For example, 26 of the 47 real properties that we reviewed did not realize an economic return to the government and, in at least two instances, innocent mortgage holders incurred losses on the properties. The unprofitable disposals occurred because Justice seized and held the properties without adequately identifying and considering the interest that is forfeitable to the government-- the amount of the defendant's equity in the property. Further, Justice's criteria for determining whether it would be economically worthwhile to seize and process the properties to forfeiture is too low. In addition, Justice cannot readily identify the amount of liens and mortgages outstanding against its real properties, thus it lacks an accurate assessment of the inventory's potential economic return.

Also, real properties offered for sale by Justice often were withdrawn or, if sold, the sales were cancelled or significantly delayed before going to settlement. The delays occurred because Justice had not complied with all forfeiture requirements or

buyers could not obtain title insurance needed to finance their purchases when Justice could not demonstrate to the satisfaction of Title Insurers that it had clear title to the properties.

For example, 12 of 46 Florida properties offered for sale in November 1986 and January 1987 were withdrawn before the sale. At least five of these properties were withdrawn because court hearings to resolve third party interests in the forfeited properties had not been held. Furthermore, because of title problems, only 2 of 33 properties for which sales offers were accepted went to settlement within the 60 days specified in the sales contract. Twenty-one of the properties remained in the inventory as of August 28, 1987, and 10 were still in the inventory as of February 8, 1988.

Two of the five properties which were withdrawn from sale because the court hearings had not been held were Tampa District properties valued, at seizure, at more than \$1 million each. In February 1988, we updated the status of the two properties and learned that the required hearings still had not been held. One of the properties had gone to settlement even though the hearing was not held.

Further, little has been done since our September testimony to resolve the concerns the Title Insurance industry has concerning the validity of the government's title to forfeited properties.

According to the American Land Title Association, a Washington, D.C., based group that represents U.S. title companies, the industry's concerns center on whether Justice has complied with all legal forfeiture and other requirements for transfer of clear title, and the degree to which innocent parties, such as mortgage lenders, are protected in Justice's application of the "relation-back" provision in the forfeiture legislation. This provision specifies that title to the forfeited property is vested in the government when the act (crime) which led to the property being forfeited was committed. Essentially, the industry is concerned that if an innocent lender issues a mortgage on a property after the date of the illegal act, the lender's interest will not be recognized.

According to the Association's General Counsel, Justice has not been willing to guarantee that it would reimburse injured innocent parties for any title defects that arose because of its processing of the forfeiture, or to issue a definitive agency policy statement making it clear that Justice will not apply the "relation-back" provision to injure innocent parties with interests in the property being forfeited. He informed us on February 3, 1988, that given Justice's unwillingness to take these actions, the industry's reluctance to insure title to Justice's forfeited properties likely will continue.

We received Justice's comments on our real property recommendations this week; consequently, we have not had time to analyze them in detail and follow up on specific issues. Our preliminary assessment of its comments, however, indicates that Justice has taken some action, plans additional action, and disagrees with some recommendations. For example, Justice (1) established procedures for notifying all parties having a potential financial interest in the property, (2) plans to issue guidelines for contracting for legal services, and (3) disagrees that agency seizing criteria needs to be revised.

Based on our September 25, 1987, testimony and limited follow-up work, we continue to believe that the recommendations we made to the Attorney General at that time should be implemented. We recommended that the Attorney General:

- Revise agency criteria for determining whether it is economically worthwhile to seize real property to recognize the defendant's equity and costs anticipated to be incurred during the forfeiture of the property.
- Improve the adequacy and accuracy of real property information, including the reporting of defendant equity represented in the real property inventory.
- Assess the extent to which legal and management real estate knowledge and expertise is needed within Justice and make arrangements to obtain this knowledge and expertise in-house or through contracting. This will help to assure that (1) the

seizure of unprofitable properties can be avoided or quickly returned to the owner, or (2) title issues on profitable properties can be resolved while the property is being processed for forfeiture.

- Consider alternative measures for resolving title insurance companies' reluctance to insure forfeited real properties.
- Establish specified time frames for initiating the third party hearing process.

CONGRESSIONAL ACTION ENHANCES OVERSIGHT
OF JUSTICE FUND BUT CONTINUED
ATTENTION IS NEEDED

Notwithstanding the shortcomings in implementation, forfeiture programs have been money-makers. During fiscal years 1986 and 1987, about \$171 million in profits have been generated. Of this amount, \$103 million has been turned into the U.S. Treasury and another \$68 million remained in the Justice Fund as permitted by law.²

In our September 25, 1987, testimony we called congressional attention to the revenues which were rapidly accumulating in Justice's Fund and the need for annual financial audits. Beginning in fiscal year 1987, all of Justice's year-end funds remained in the Fund to be used at Justice's discretion. This is

²Other key financial data on asset forfeiture activities is contained in appendix II.

unlike Customs, which must transfer the surplus funds at year-end to the U.S. Treasury.

To assure adequate control and oversight of the increasing millions of dollars in Fund receipts and disbursements, we recommended that Congress

- limit the amount of funds that can be carried forward from one year to the next in Justice's Fund and provide for the transfer of funds in excess of the carryover to the Treasury General Fund or to some other congressionally acceptable fund, and
- require an annual financial audit of the Justice Fund according to generally accepted government auditing standards.

To strengthen its oversight, Congress enacted changes to the Justice Fund (Department of Justice Appropriation Act, 1988, Public Law 100-202). These changes limit fund disbursements to 50 percent of total amounts available for appropriation in fiscal year 1988. The Conference Report (H.R. Report 100-498) directs Justice to notify the Committees on Appropriations when the Fund is used to supplement appropriated expenditures. Such expenditures would include the purchase of evidence, automated data processing, and retrofitting of vehicles. The Report also directs Justice to report quarterly to these committees on the status of Fund deposits and disbursements.

The law also allows for the transfer of surplus funds at the end of fiscal year 1988 for the construction of correctional institutions. Justice is currently estimating a fiscal year 1988 year-end surplus of \$86 million. These legislative changes are contained in a continuing resolution which expires September 30, 1988. Upon its expiration, Congress will be faced with the question of how future surpluses should be used.

NEED FOR CHANGING CUSTOMS' FORFEITURE
FUND ACCOUNTING AND REPORTING

During our September 1987 testimony, we identified four specific areas which had to be improved if adequate control and oversight was to be exercised over Customs' forfeiture program.

First, Customs was not recording, as Justice does, all receipts and expenses into its Fund. According to Customs officials, Customs uses an administratively cumbersome accounting procedure of offsetting an asset's expenses against its sales proceeds before recording and depositing the balance into the Fund to comply with congressionally established spending limits. However, Customs' "netting" practice does not provide a thorough record of the Fund's operations or comply with Comptroller General accounting and reporting standards,³ required by the Federal Managers' Financial Integrity Act (Public Law 97-255).

³GAO Policy and Procedures Manual For Guidance of Federal Agencies, Title 2 - Accounting and Other Related Comptroller General's Requirements.

Second, the \$20 million Customs was authorized to carryover from one year to the next appeared to be unnecessarily high as a beginning Fund balance. Third, Customs' reports to Congress for fiscal year 1985 and 1986 were incomplete. Fourth, substantive improvements were needed in Customs' accounting system to improve the reliability of the receipts and expenses being charged against the Fund. For example, following its review of Customs' accounting system for fiscal year 1986, a certified public accounting firm reported that general ledger accounts for seized property are neither adequate nor being currently maintained and that contingent liabilities are not consistently recorded in the general ledger.

We made several recommendations, including that the Secretary of the Treasury require the Customs Commissioner to record and report all authorized Fund receipts and expenses consistent with the Comptroller General's standards.

Customs agreed with our recommendations but explained that the reasons for the "netting" procedures it used to account for program receipts and expenses stemmed from provisions in the Tariff Act of 1930. Customs said:

"Similar provisions were also in the Tariff Act of 1922 and, in addition, go back well over 100 years.... When the Customs Forfeiture Fund was established in 1984, these

underlying statutes were not changed and, consequently, the appropriation for the Fund took the 'netting' procedure into account in establishing a low annual appropriation..... These statutes would have to be amended if Customs were to alter its accounting practices in accordance with the report [GAO/T-GGD-87-27]."

Customs also favored the establishment of a carryover of \$10 million.

We therefore recommend that the Secretary of Treasury direct the Commissioner of Customs to propose to Congress the statutory amendments he believes are necessary to bring Customs' Fund accounting into compliance with the Financial Integrity Act's standards and to establish a lower Fund carryover, perhaps the \$10 million favored by Customs.

In closing, we would like to note that numerous persons within Justice and Customs are working to improve seized property management and they are to be commended for the numerous program improvements that have been made.

GAO REPORTS AND TESTIMONIES ON
ASSET SEIZURES AND FORFEITURE

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|----|--|---------------------------------------|
| 1. | <u>Seized Conveyances: Justice and Customs Correction of Previous Conveyance Management Problems</u> | GAO/GGD-88-30 February 3, 1988 |
| 2. | Statement of Gene L. Dodaro Before the Subcommittee on Federal Spending, Budget and Accounting, United States Senate, on Real Property Seizure and Disposal Program Improvements Needed | GAO/T-GGD-87-28 September 25, 1987 |
| 3. | Statement of Gene L. Dodaro Before the Subcommittee on Federal Spending, Budget and Accounting, United States Senate, on Asset Forfeiture Funds: Changes Needed to Enhance Congressional Oversight | GAO/T-GGD-87-27 September 25, 1987 |
| 4. | Statement of Gene L. Dodaro Before the Subcommittee on Federal Spending, Budget and Accounting, United States Senate, \$ Millions in Seized Cash Can Be Deposited Faster | GAO/T-GGD-87-7 March 13, 1987 |
| 5. | <u>Drug Enforcement Administration's Use of Forfeited Personal Property</u> | GAO/GGD-87-20 December 10, 1986 |
| 6. | Statement of Arnold P. Jones Before the Committee on the Budget, United States Senate, On Customs' Management of Seized and Forfeited Cars, Boats, and Planes | Statement April 3, 1986 |
| 7. | <u>Improved Management Processes Would Enhance Justice's Operations</u> | GAO/GGD-86-12 March 14, 1986 |
| 8. | <u>Better Care and Disposal of Seized Cars, Boats, and Planes Should Save Money and Benefit Law Enforcement</u> | GAO/PLRD-83-94 July 15, 1983 |
| 9. | <u>Asset Forfeiture - A Seldom Used Tool in Combatting Drug Trafficking</u> | GAO/GGD-81-51 April 10, 1981 |

KEY FINANCIAL DATA
ON ASSET FORFEITURE PROGRAM

| | <u>Justice</u> | <u>Customs</u> |
|---|----------------|----------------|
| Fiscal year 1987 Fund receipts | \$177,606,000 | \$49,800,000 |
| Fiscal year 1987 Fund disbursements | 114,366,000 | 17,500,000 |
| Transferred to U.S. Treasury (fiscal years 1986 and 1987) | 50,900,000 | 52,400,000 |
| Funds in Treasury holding accounts pending forfeiture ^{a/} | 168,000,000 | 34,000,000 |
| Amounts shared with state/local law enforcement agencies - fiscal years 1986 and 1987 | 63,920,000 | 17,200,000 |

^{a/}As of December 31, 1987, for Justice and February 10, 1988, for Customs.