



Court Places Limits on DOJ's Asset Forfeiture Powers

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The D.C. Circuit recently handed a significant victory to anyone with assets in the U.S. – especially anyone under investigation in another country for violation of that country's laws. As [reported on the Blog of Legal Times](#), the D.C. Circuit issued a decision on July 16 holding that the Department of Justice could not seize the assets of two funds pending Brazil's investigation of the funds' owners, Daniel and Veronica Dantas.

Brazilian banker Daniel Dantas and his sister, Veronica, are under investigation in Brazil for scheming to defraud the Brazilian financial system, engage in insider trading, and launder the proceeds of their crimes. In 2008, while the investigation was underway, the Government of Brazil formally requested that the U.S. Government seize the funds' assets located in Connecticut and New York. The DOJ responded by filing applications for restraining orders with the D.C. Circuit. The DOJ requested the restraining orders based on a section of the Patriot Act that authorizes federal district courts to issue restraining orders to "preserve the availability of property subject to a foreign forfeiture or confiscation judgment." 28 U.S.C. 2467(d)(3).

Twice, the district court denied DOJ's requests on grounds that the provision does not permit seizure of assets before a foreign government issues a final order compelling payment of money representing the proceeds of a crime or the forfeiture of property traceable to the crime. Because the Brazilian authorities had not completed their investigation of the Dantas, no forfeiture or confiscation judgment had yet been entered. Thus, the district court held, the statute did not authorize seizure. Under the district court's interpretation,



the provision does not authorize the indefinite seizure of U.S. funds based on a possibility they might be subject to future confiscation by a foreign government.

On appeal, DOJ argued for an expansive interpretation of the statute based on the statutory scheme, legislative history and policy considerations. In its well-reasoned decision, the D.C. Circuit rejected DOJ's arguments, explaining that the statute contemplates a two-stage process. The first stage involves a confiscation or forfeiture judgment against a person; the second judgment specifically identifies the property to be confiscated. Given this context, the provision authorizes seizure of funds in the U.S. to preserve property subject to a foreign forfeiture or confiscation judgment, but only after the foreign government has issued a judgment against the person, i.e., the first stage judgment. In such cases, property in the U.S. may be seized pending an investigation and judgment with respect to the property to be seized, i.e., the second stage judgment.

Cases of this type are relatively rare. The D.C. Circuit noted there have been, on average, about one a year. Nonetheless, the decision is important for the definite limit it places on the U.S. Government's power to seize assets—a power that over the last decade has expanded considerably and often with seemingly little standing in its way.

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