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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Case No. 2:21-cv-04405-RGK-MAR

**PAUL SNITKO, JENNIFER
SNITKO, JOSEPH RUIZ, TYLER
GOTHIER, JENI VERDON-
PEARSONS, MICHAEL STORC,
AND TRAVIS MAY,**

Plaintiffs,

v.

**UNITED STATES OF AMERICA,
TRACY L. WILKISON, in her
official capacity as Acting United
States Attorney for the Central
District of California, and KRISTI
KOONS JOHNSON, in her official
capacity as an Assistant Director of
the Federal Bureau of Investigation,**

Defendants.

**PLAINTIFFS JENI VERDON-
PEARSONS, MICHAEL STORC,
TRAVIS MAY, AND JOSEPH
RUIZ'S NOTICE OF EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*(Filed Concurrently with Declarations
and Exhibits of Robert Frommer and
Robert E. Johnson; and Proposed
Orders)*

Judge: Hon. R. Gary Klausner
Complaint Filed: May 27, 2021
Amended Complaint Filed: June 9, 2021

1 **PLEASE TAKE NOTICE** that Plaintiffs Jeni Verdon-Pearsons, Michael
2 Store, Travis May, and Joseph Ruiz apply, *ex parte*, for a temporary restraining
3 order (“TRO”) and an order to show cause regarding the issuance of a preliminary
4 injunction against Defendants the United States of America, Tracy L. Wilkinson
5 (official capacity), and Kristi Koons Johnson (official capacity). Defendants have
6 commenced civil forfeiture proceedings against these Plaintiffs—as well as
7 hundreds of other USPV box holders—without providing notice of the factual or
8 legal basis for the forfeiture. Plaintiffs now face a looming deadline to respond to
9 that forfeiture notice, and, depending on how they respond, they will be at risk of
10 losing their property forever. Plaintiffs urgently require this Court’s intervention so
11 that they can know the purported factual and legal basis for the government’s
12 forfeiture actions.¹

13 The government’s failure to provide notice of the factual and legal basis for
14 the forfeitures violates black letter due process principles. A property owner who is
15 targeted for civil forfeiture is entitled to notice of the “particular statutory
16 provisions and regulations they are accused of having violated.” *Gete v. INS*, 121
17 F.3d 1285, 1297 (9th Cir. 1997). The government’s notice does not meet that basic
18 requirement: The notice cites a laundry list of general forfeiture statutes, which
19 authorize forfeiture for a broad variety of offenses—including counterfeiting, fraud,
20 smuggling, embezzlement, and many others—but does not identify the *specific*
21 offense that the government believes justifies forfeiture. Box holders are thus left to
22 guess at the basis for the forfeiture action.

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25 ¹ This TRO application is separate and distinct from Plaintiffs’ pending
26 motion for a preliminary injunction. *See* D.E. 26. The motion for a preliminary
27 injunction seeks relief on behalf of USPV box holders whose property is *not* being
28 targeted for civil forfeiture and yet remains in the possession of the federal
government. *See* D.E. 26-1 at 17-18. By contrast, this TRO application seeks relief
on behalf of USPV box holders whose property *is* being targeted for civil forfeiture.

1 Emergency relief is necessary to remedy this due process violation. The
2 forfeiture notice sent by the government to attorneys for U.S. Private Vaults gives a
3 deadline of June 24, 2021 to respond to the attempted forfeiture, and individual
4 forfeiture notices sent by the government likewise give a deadline of either June 24
5 or June 25. If property owners do not respond before that deadline—or if the
6 agency decides they have not responded correctly—they are at risk of losing their
7 property forever. In light of that looming deadline, property owners need to know
8 the basis for the forfeiture in order to “understand the true nature of the
9 [government’s] charges and afford them a fair opportunity to prepare a proper
10 defense to the threatened forfeiture.” *Gete*, 121 F.3d at 1298.

11 The proposed temporary restraining order would bar the federal government
12 from forfeiting property based on notices that do not identify the factual and legal
13 basis for the forfeiture. The order would not finally determine whether *any* property
14 is subject to forfeiture, but it would bar the government from forfeiting property
15 based on constitutionally deficient civil forfeiture notices.

16 To the extent necessary to provide broad injunctive relief covering other
17 USPV box holders, Plaintiffs also move for certification of a putative class
18 comprising all renters of U.S. Private Vaults safe deposit boxes who (a) had
19 property within their safe-deposit box seized by the federal government on or
20 around March 22, 2021; (b) have identified themselves to the FBI since the seizure;
21 (c) whose property is now the subject of a purported administrative forfeiture
22 proceeding; and (d) whose property is still in the possession of the federal
23 government. *See* First Am. Compl. ¶ 142 (defining this proposed class as a subclass
24 of the broader putative class). This is a paradigmatic case for certification under
25 Federal Rule of Civil Procedure 23(b)(2), as Plaintiffs seek injunctive relief that is
26 common to the proposed class and all other requirements for certification are also
27 satisfied. Certification would be granted only for the limited purpose of providing
28 preliminary relief.

1 Because Plaintiffs take the position that the Court can enter broad injunctive
2 relief *without* provisionally certifying a class, Plaintiffs have prepared two proposed
3 orders to submit along with this application. The first proposed order provides relief
4 without certifying a class, and the second provides relief while also provisionally
5 certifying a class.

6 On June 15, 2021, I contacted the Office of the United States Attorney for the
7 Central District of California to provide notice of this *ex parte* application pursuant
8 to Local Rule 7-19. Specifically, as requested by the website for the U.S Attorney's
9 Office, I emailed notice of this application to usacac.civil-tronotice@usdoj.gov. In
10 addition, I orally advised Assistant United States Attorney Andrew Brown of this
11 application and asked if the government acceded to the application. Following such
12 advice, AUSA Brown stated the government's opposition. At Mr. Brown's request,
13 I also provided an advance copy of this Notice and Memorandum to Mr. Brown at
14 2:13 p.m. PST so that he could begin work on the government's opposition brief.

15 This *ex parte* application for a temporary restraining order is based on this
16 application, the attached Memorandum of Points and Authorities, the Declaration of
17 Robert Frommer, the Declaration of Robert E. Johnson and exhibits thereto, the two
18 proposed *ex parte* orders lodged here, the pleadings and papers on file with the
19 Court, and any further briefing and arguments of counsel.

20 Dated: June 15, 2021

Respectfully Submitted,

21
22 /s/ Robert Frommer

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1 **I. INTRODUCTION**

2 After breaking open hundreds of safe deposit boxes at U.S. Private Vaults
3 (“USPV”), the government has now commenced administrative civil forfeiture
4 proceedings against the contents of over 400 of those boxes. That includes the
5 boxes of Plaintiffs Joseph Ruiz, Jeni Verdon-Pearsons, Michael Storc, and Travis
6 May.

7 The forfeiture notices sent to these USPV box holders all suffer from a single
8 overarching defect: None states the legal or factual basis for the government’s
9 forfeiture action. The notices cite a laundry list of forfeiture laws, but those laws
10 authorize forfeiture for a broad variety of offenses, including counterfeiting, fraud,
11 smuggling, embezzlement, and many others. The notices do not inform box holders
12 of the *specific* alleged offense underlying the forfeiture action. Box holders are thus
13 left to guess what the government is accusing them of having done.

14 The government’s slapdash civil forfeiture proceedings do not comport with
15 basic requirements of due process. As a matter of due process, property owners
16 targeted for forfeiture are entitled to notice of the “particular statutory provisions
17 and regulations they are accused of having violated.” *Gete v. INS*, 121 F.3d 1285,
18 1297 (9th Cir. 1997). Because the government’s forfeiture notices to USPV
19 customers do not meet that basic requirement, they are invalid on their face.

20 This Court’s intervention is required, on an emergency basis, to end these
21 invalid civil forfeiture proceedings. The government has set a deadline of June 24,
22 2021, to respond to its invalid forfeiture notice. Property owners who do not
23 respond in time may lose their property forever. And even property owners who *do*
24 respond are at risk of losing their property, either because they file a petition for
25 remission or mitigation that is denied by the seizing agency (a decision that is not
26 subject to appeal) or because they file a claim that is in some way defective (for
27 instance, because it does not include language stating that it is submitted under
28 oath). Property owners should not be put in that position without the government

1 first meeting its threshold obligation to articulate the factual and legal basis for the
2 forfeiture.

3 To be clear, the requested temporary restraining order would not necessarily
4 bar the government from forfeiting the contents of *any* USPV box. The order would
5 simply bar the government from forfeiting the contents of USPV boxes based on
6 civil forfeiture notices that fail to state the factual or legal basis for the forfeiture.
7 To the extent that the government has a factual and legal basis to subject these
8 boxes to civil forfeiture, the government could perhaps seek to pursue forfeiture on
9 that basis. But, as a matter of due process, the government cannot be allowed to
10 press forward with civil forfeiture proceedings without first articulating the factual
11 and legal basis supposedly supporting the forfeiture.

12 **II. BACKGROUND**

13 **A. Plaintiffs' Safe Deposit Boxes.**

14 Plaintiff Joseph Ruiz is currently unemployed following a significant injury.
15 He stored \$57,000 in cash in his safe deposit box, including money that he received
16 as proceeds of a settlement following his injury.

17 Plaintiff Jeni Verdon-Pearsons works at a nonprofit theater in Los Angeles,
18 and Michael Storc works as a transportation coordinator in the film industry. They
19 are a married couple. Jeni and Michael stored approximately \$20,000 worth of
20 silver in their box, which they purchased as an investment and were saving for
21 retirement.

22 Plaintiff Travis May is the Founder and CEO of TollFreeForwarding.com,
23 which is a successful telecommunications business that generates millions of
24 dollars in annual profits. Travis stored both gold and approximately \$63,000 in cash
25 in his box, which he viewed as a rainy-day fund in case of emergencies.

26 **B. The USPV Seizure.**

27 The seizure warrant for the USPV raid authorized the FBI to seize USPV's
28 "business equipment," including the "nests of safety deposit boxes and keys," but

1 specifically stated that the “warrant *does not authorize* a criminal search or seizure
2 of the contents of the safety deposit boxes.” Ex. A at 7 (emphasis added).²

3 The warrant application did state that the government would conduct a limited
4 search of the boxes to “look for contact information or something which identifies
5 the owner,” and stated that, under official FBI policies, the inspection “should
6 extend no further than necessary to determine ownership.” Ex. B at 10 n.1. The
7 warrant likewise contemplated that, “in accordance with their written policies,
8 agents shall inspect the contents of the boxes in an effort to identify their owners in
9 order to notify them so that they can claim their property.” Ex. A at 7.

10 **C. The FBI’s First Claim Process.**

11 Following the seizure, the FBI posted a notice on the window at the USPV
12 facility directing box holders to “go to the following link to initiate a claim for your
13 US Private Vaults box.” Ex. C at 12. The link provided on the notice directed
14 property owners to a website with a form—asking for identifying information and
15 contact details—and stated that box holders should “provide the following
16 information” in order to “make a claim for property stored at U.S. Private Vaults in
17 Beverly Hills, California.” Ex. D at 14.

18 Plaintiffs have cooperated with the FBI’s request. Joseph Ruiz received an
19 email on April 8, 2021, which stated, “Thank you for submitting your claim with
20 regard to property at U.S. Private Vaults.” Ex. E at 17. The email assured Joseph
21 that “FBI agents and staff are working diligently, in a methodical and systematic
22 way, to process all claims.” *Id.* And it stated that, “[w]ithin the next 30 to 60 days,
23 someone from the FBI will contact you either to make arrangements to return your
24 property, or to request additional information.” *Id.* Jeni Verdon-Pearsons received
25 the same email on April 19, 2021. Ex. F at 19.

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² Citations to “Ex.” refer to the exhibits to the Declaration of Robert E. Johnson filed contemporaneously with this application.

1 **D. The Government’s Forfeiture Proceedings.**

2 Rather than returning the contents of the boxes—or even contacting box
3 holders, as promised by the emails sent in response to the claims—the government
4 is now seeking to take the contents of over 400 boxes using civil forfeiture. As
5 Justice Thomas has explained, civil forfeiture allows law enforcement to “seize
6 property with limited judicial oversight and retain it for their own use” and has “led
7 to egregious and well-chronicled abuses.” *Leonard v. Texas*, 137 S. Ct. 847, 848
8 (2017) (Thomas, J., respecting the denial of certiorari).³

9 The government sent attorneys for USPV a single forfeiture notice that lists
10 the boxes that the government intends to forfeit, and USPV subsequently posted a
11 copy of that notice to its website. Ex. G at 22–39. In addition, the government sent
12 individualized forfeiture notices to at least some of the box holders whose property
13 has been targeted for civil forfeiture. *See* Ex. H at 42–44 (notice sent to Jeni
14 Verdon-Pearsons); Ex. I at 47–49 (notice sent to Michael Storc); Ex. J at 51–52
15 (notice sent to Travis May). These individualized notices differ from the USPV
16 omnibus notice only insofar as they are limited to the property of the specific
17 individual receiving the notice and do not list the other boxes targeted for civil
18 forfeiture.

19 The notices sent by the government to USPV box holders do not identify the
20 factual or legal basis for the forfeiture proceedings. The notices do not state *any*
21 factual basis for the forfeiture, except that the assets “were seized on March 22,
22 2021 by the FBI at U.S. Private Vaults in Beverly Hills, California.” Ex. G at 24;
23 Ex. H at 44; Ex. I at 49; Ex. J at 51. And, as legal authority, the notices all cite the
24 same laundry list of provisions:

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27 ³ For a broader overview of the federal government’s use of civil forfeiture,
28 see Lisa Knepper et al., Institute for Justice, *Policing for Profit: The Abuse of Civil
Asset Forfeiture* (3d. ed. 2020), <https://ij.org/report/policing-for-profit-3/>.

- 1 • 18 U.S.C. § 981(a)(1)(C): This provision authorizes civil forfeiture for a broad
2 variety of federal criminal laws, including corruptly influencing a loan
3 officer, forgery, counterfeiting, uttering counterfeit obligations, smuggling,
4 embezzlement, theft of medical products, loan fraud, computer fraud, and
5 bank fraud (among others). The citation in the letter does not indicate which
6 of those crimes—if any—form the basis for the forfeiture.
- 7 • 19 U.S.C. §§ 1602–1619: These provisions of the customs laws set out
8 procedures to be followed in all civil forfeiture proceedings.
- 9 • 18 U.S.C. § 983: This provision codifies the Civil Asset Forfeiture Reform
10 Act of 2000 and sets out deadlines and other procedures to be followed in all
11 civil forfeiture proceedings.
- 12 • 28 C.F.R. Parts 8 and 9: These regulations set out procedures to be followed
13 by the Department of Justice in all forfeiture cases.

14 Ex. G at 24; Ex. H at 44; Ex. I at 49; Ex. J at 51. The notices thus do not specify
15 either the factual or legal basis underpinning the government’s determination to
16 subject the property to civil forfeiture proceedings. Box holders are simply left to
17 guess at the government’s basis—if any—for commencing these civil forfeiture
18 proceedings.

19 **III. LEGAL STANDARD**

20 “The standard for issuing a temporary restraining order is identical to the
21 standard for issuing a preliminary injunction.” *Six v. Newsom*, 462 F. Supp. 3d
22 1060, 1067 (C.D. Cal. 2020) (marks and citation omitted). “Therefore, a plaintiff
23 seeking a TRO must establish that he is likely to succeed on the merits, that he is
24 likely to suffer irreparable harm in the absence of preliminary relief, that the
25 balance of equities tips in his favor, and that an injunction is in the public interest.”
26 *Niu v. United States*, 821 F. Supp. 2d 1164, 1167 (C.D. Cal. 2011) (marks and
27 citation omitted). “When the government is a party, the last two factors (equities
28

1 and public interest) merge.” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640,
2 668 (9th Cir. 2021).

3 **IV. ARGUMENT**

4 This application seeks a TRO barring the government from proceeding with
5 administrative civil forfeiture proceedings against USPV box holders without first
6 articulating the factual and legal basis for the forfeiture. Part A explains that
7 Plaintiffs are likely to prevail on their claim that the government’s civil forfeiture
8 notices violate due process insofar as they fail to state the factual or legal basis for
9 the civil forfeiture. Part B explains that the other factors favor a grant of a
10 temporary restraining order. And Part C explains that the Court can—if
11 necessary—certify a provisional class in order to provide the requested classwide
12 injunctive relief.

13 **A. Plaintiffs Are Likely To Prevail On Their Claim That The** 14 **Forfeiture Notices Violate Due Process.**

15 The constitutional requirement of notice, as a matter of due process, includes
16 the right to “sufficient notice concerning the factual and legal bases for”
17 deprivations of property rights. *Gete v. INS*, 121 F.3d 1285, 1297 (9th Cir. 1997);
18 *see also Al Haramain Islamic Found., Inc. v. U.S. Dep’t of Treasury*, 686 F.3d 965,
19 987 (9th Cir. 2012); *Ordonez v. Stanley*, 495 F. Supp. 3d 855, 864 (C.D. Cal. 2020).
20 The forfeiture notices sent by the government to USPV box holders, however, fall
21 short of that basic requirement.

22 The Ninth Circuit’s decision in *Gete* shows that, as a matter of due process,
23 the government must notify Plaintiffs of the basis for the forfeiture actions. In that
24 case, plaintiffs sued to challenge administrative forfeiture notices sent by INS to
25 property owners. 121 F.3d at 1287. The plaintiffs claimed the barebones notice sent
26 by INS did not “give sufficient notice concerning the factual and legal bases” for
27 the forfeiture actions. *Id.* at 1297. The Ninth Circuit agreed, explaining that
28 “ambiguous factual circumstances may in many cases cause [property] owners to

1 guess incorrectly why their [property] has been seized, thus preventing them from
2 responding effectively to the unspecified accusations of criminal wrongdoing that
3 underlie a forfeiture.” *Id.* at 1298. The Ninth Circuit thus held that due process
4 requires the government to disclose “the factual bases for seizures” as well as “the
5 specific statutory provision allegedly violated.” *Id.*

6 The Ninth Circuit’s decision in *Al Haramain* also applies that due process
7 requirement. In that case, the Office of Foreign Assets Control (“OFAC”) froze the
8 plaintiff’s assets, apparently because OFAC believed the plaintiff was funding
9 terrorists. 686 F.3d at 970. The plaintiff had notice that its assets were frozen;
10 among other things, OFAC put out a press release and also sent the plaintiff a letter.
11 *Id.* at 973–74. But the plaintiff nonetheless argued that it had not received sufficient
12 notice, as a matter of due process, because the government had “refused to disclose
13 its reasons for investigating and designating [the plaintiff], leaving [the plaintiff]
14 unable to respond adequately.” *Id.* at 984–85. Notwithstanding the government’s
15 national security interests in the anti-terrorism context, the Ninth Circuit agreed that
16 the plaintiff was entitled to, “at a minimum, a terse and complete statement of
17 reasons.” *Id.* at 986. And, while the government argued in response that the plaintiff
18 could likely guess the reasons for the designation, the Ninth Circuit also stated that
19 “the opportunity to guess at the factual and legal bases for a government action
20 does not substitute for actual notice of the government’s intentions.” *Id.* at 986–87;
21 *see also KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner*, 647 F.
22 Supp. 2d 857, 906 (N.D. Ohio 2009) (likewise concluding that OFAC’s failure to
23 provide notice of the basis for an asset freeze violated due process). If the alleged
24 terrorists in *Al Haramain* were entitled to notice of the factual and legal basis for
25 the government’s actions, surely the same is true of USPV box holders.

26 The forfeiture notices sent by the government to USPV box holders fall well
27 short of what is required by *Gete* and *Al Haramain*. First, the forfeiture notices do
28 not set forth the “factual bases” for the seizure of the property or the attempted

1 forfeiture. *Gete*, 121 F.3d at 1298. Indeed, the *only* fact the notice sets forth is that
 2 the FBI seized the property from the USPV facility. *See* Ex. G at 24; Ex. H at 44;
 3 Ex. I at 49; Ex. J at 51. And while the notices cite a long laundry list of statutes and
 4 regulations, *none* actually identify “the specific statutory provision allegedly
 5 violated.” 121 F.3d at 1298. Instead, they point to general statutes that authorize
 6 civil forfeiture for a whole host of criminal offenses (including counterfeiting,
 7 uttering counterfeit obligations, bank fraud, and computer fraud—among others)
 8 and to other provisions that merely set out procedures to be followed in civil
 9 forfeiture cases. *See* Ex. G at 24; Ex. H at 44; Ex. I at 49; Ex. J at 51.

10 Defendants’ deficient notices fail to provide property owners with due
 11 process. They leave owners in the dark about the specific legal or factual bases for
 12 the government’s attempted forfeiture, forcing owners to guess at what criminal
 13 offense the government is accusing their property of being involved in. Under *Gete*
 14 and *Al Haramain*, Defendants’ hundreds of faulty forfeiture notices cannot stand.

15 **B. The Remaining Factors Favor Grant Of A Temporary Restraining**
 16 **Order.**

17 1. Equitable Relief Is Necessary To Prevent Irreparable Harm.

18 A temporary restraining order preventing the government from civilly
 19 forfeiting the property of U.S. Private Vaults customers through the use of these
 20 constitutionally defective notices is necessary to prevent irreparable harm. As
 21 explained above, the government’s notices violate due process by failing to apprise
 22 box holders of the specific factual or legal basis for the attempted forfeiture. “[T]he
 23 deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”
 24 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*,
 25 427 U.S. 347, 373 (1976)).

26 Here, the government is threatening to take away box holders’ property
 27 forever. Yet the deficient notices fail to provide the factual and legal basis behind
 28 that threat, thereby making it impossible for box holders to appropriately respond.

1 As the Ninth Circuit explained in *Gete*, property owners need to know the basis for
2 the forfeiture in order to “understand the true nature of the [government’s] charges
3 and afford them a fair opportunity to prepare a proper defense to the threatened
4 forfeiture,” including to “prepare reasonably informed petitions for remission,
5 mitigation, and reconsideration.” 121 F.3d at 1298. If the Court does not grant a
6 temporary restraining order, property owners will face a looming deadline to make
7 a decision whether to file a claim, submit a petition, or else simply walk away from
8 their property. And if property owners make a wrong step when navigating that
9 process, they risk losing their property forever.⁴

10 Other courts in this circuit have enjoined similarly deficient notices. Upon
11 remand in *Gete*, for instance, the district court issued a preliminary injunction
12 requiring that the government provide owners with “notice of the factual and legal
13 bases for a forfeiture.” *Gete v. INS*, No. C94-881Z, 1999 U.S. Dist. LEXIS 11806,
14 at *17 (W.D. Wash. July 22, 1999). It did so after holding that “the irreparable harm
15 that presumably flows from any constitutional violation” required immediate
16 equitable relief. *Id.* The same is true here. Before deciding how to proceed, property
17 owners are, at a minimum, entitled to know the basis for the government’s decision
18 to commence civil forfeiture proceedings. Equitable relief will therefore prevent the
19 government from depriving property owners of that basic due process right.

21
22 ⁴ If property owners do not respond at all to the notice, their property will be
23 automatically forfeited without any involvement by a judge. Or, if property owners
24 decide to submit a petition for remission or mitigation—and the petition is denied
25 by the agency in full or in part—the decision denying the petition generally will not
26 be subject to judicial review. *See Conservation Force v. Salazar*, 646 F.3d 1240,
27 1242 (9th Cir. 2011). And even if property owners opt to contest the forfeiture by
28 filing a claim, the agency may still reject the claim if it determines that it was not
submitted in the proper form or is otherwise deficient. *See* Ex. K at 54 (email from
government explaining that “[c]laims are reviewed for validity and timeliness by
the seizing agency’s legal staff” and that “[s]uccessful filing of your claim does not
ensure your claim is valid.”).

1 2. The Balance Of Equities Favors Injunctive Relief, And An Injunction
 2 Would Be In The Public Interest.

3 An injunction would be in the public interest, as “it is always in the public
 4 interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695
 5 F.3d at 1002. An injunction also would ensure the government’s compliance with
 6 the narrow scope of the magistrate’s seizure warrant and therefore respect for the
 7 judiciary’s role under the Fourth Amendment. An injunction also would cause no
 8 possible harm to the government: If the government believes there is a specific
 9 legal and factual basis to commence civil forfeiture proceedings against a particular
 10 property owner, the government could issue a revised notice stating those bases.

11 **C. To The Extent Necessary To Provide The Requested Injunctive**
 12 **Relief, The Court Should Certify A Provisional Class.**

13 The Court can grant the requested injunctive relief without certifying a class,
 14 as the relief this motion seeks is “no broader than the constitutional violation.”
 15 *Clement v. Cal. Dep’t of Corr.*, 364 F.3d 1148, 1152 (9th Cir. 2004); *see also Davis*
 16 *v. Astrue*, 874 F. Supp. 2d 856, 868 (N.D. Cal. 2012). In *Clement*, for example, the
 17 Ninth Circuit upheld a statewide injunction enjoining enforcement of a particular
 18 prison policy, reasoning that, although *Clement* was a single inmate at a single
 19 prison, “it would be inefficient and unnecessary for prisoners in each California
 20 state prison to separately challenge the same [prison] policy.” 364 F.3d at 1153.
 21 Because the Ninth Circuit in *Clement* said the district court could provide broad
 22 equitable relief without certifying a class, this Court may do the same.

23 However, if the Court concludes that it should certify a provisional class so as
 24 to provide U.S. Private Vaults’ owners with the requested injunctive relief,
 25 Plaintiffs propose the following provisional class, which is a subclass of the broader
 26 putative class proposed by the Complaint:

27 **All renters of U.S. Private Vaults safe deposit boxes who (a) had property**
 28 **within their safe-deposit box seized by the federal government on or**

1 **around March 22, 2021; (b) have identified themselves to the FBI since the**
2 **seizure; (c) whose property is now the subject of a purported**
3 **administrative forfeiture proceeding; and (d) whose property is still in the**
4 **possession of the federal government.**

5 See First Am. Compl. ¶ 142 (seeking certification of this subclass).

6 Provisional class certification allows a district court to certify a class for the
7 narrow and limited purpose of issuing preliminary injunctive relief. *See, e.g., Meyer*
8 *v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1043 (9th Cir. 2012); *see also*
9 *Ahlman v. Barnes*, 445 F. Supp. 3d 671, 682 (C.D. Cal. 2020) (explaining that
10 “[c]ourts in the Ninth Circuit routinely grant provisional class certification for
11 purposes of entering injunctive relief.” (marks omitted)). Where necessary to
12 prevent constitutional injury, courts have granted provisional class certification for
13 the limited purpose of entering a temporary restraining order. *See, e.g., Zepeda*
14 *Rivas v. Jennings*, 445 F. Supp. 3d 36, 38 (N.D. Cal. 2020) (granting provisional
15 class certification and entering a TRO); *Alcantara v. Archambeault*, No. 20CV0756
16 DMS (AHG), 2020 WL 2315777, at *10 (S.D. Cal. May 1, 2020) (same). Such
17 provisional relief, moreover, is appropriate here because this is a straightforward
18 case for certification under Rule 23(b)(2).

19 1. This Is An Appropriate Case For Class-Wide Injunctive Relief Under
20 Rule 23(b)(2).

21 This is an appropriate case for certification under Rule 23(b)(2) because the
22 government “has acted or refused to act on grounds that apply generally to the
23 class, so that final injunctive relief or corresponding declaratory relief is appropriate
24 respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). The class as defined
25 includes USPV box holders who have come forward in their own names to retrieve
26 their property and who are now subject to administrative forfeiture proceedings.
27 And the proposed preliminary injunctive relief would benefit that entire class in the
28

1 same way: by forcing the government to state the specific factual and legal basis
2 that it believes justifies the forfeiture of the owner's property.

3 It is critical to note that this motion does not actually seek an order compelling
4 the return of *any* particular property; instead, it only asks that the government
5 provide owners with the specific factual and legal bases that undergird the
6 government's decision to commence forfeiture proceedings. Therefore, any
7 argument by the government that this claim cannot be adjudicated on a class-wide
8 basis is ill-conceived. After all, if the government thinks that it has a sufficient legal
9 and factual basis to begin forfeiture proceedings as to a specific property owner,
10 then the proposed relief would not bar the government from attempting to pursue
11 forfeiture on that factual basis.

12 But at this stage, class-wide relief is appropriate since none of the forfeiture
13 notices the government sent to U.S. Private Vaults owners provide *any*
14 individualized notice of the factual or legal bases for the government's actions. That
15 overarching failure is common to the class as a whole, although the individual
16 circumstances of class members' cases may differ in other respects. "Plaintiffs do
17 not seek any individualized determination by this Court of whether they are entitled
18 to release, and do not request a different injunction for each class member" and
19 instead "ask the Court to determine whether [the government's] systematic actions,
20 or failures to act, . . . amount to violations of the class members' constitutional or
21 statutory rights." *Fraihat v ICE*, 445 F. Supp. 3d 709, 741 (C.D. Cal. 2020). This is
22 therefore a paradigmatic 23(b)(2) class.

23 2. This Case Satisfies The Prerequisites For Certification Under Rule 23(a).

24 In addition to all the foregoing, this case also satisfies the necessary
25 prerequisites for class certification under Rule 23(a).

26 *a. Numerosity*: "In general, courts find the numerosity requirement satisfied
27 when a class includes at least 40 members," and the Ninth Circuit has found the
28 requirement satisfied for a class with just 20 members. *Rannis v. Recchia*, 380 F.

1 App’x 646, 651 (9th Cir. 2010). In this case, the government has commenced
2 forfeiture proceedings against over 400 safe deposit boxes at USPV, leaving no
3 doubt that this prerequisite is met.

4 *b. Commonality:* The requirement of commonality is also satisfied because
5 “the constitutional issue at the heart of each class member’s claim for relief is
6 common.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1123 (9th Cir. 2010). Here, the
7 common constitutional question for all proposed class members is whether due
8 process requires the government to provide owners with notice regarding the
9 specific factual and legal basis for commencing forfeiture proceedings against their
10 property. And, as explained above, the motion properly does not seek to adjudicate
11 any individualized issues beyond that common constitutional claim. “Each class
12 member claims entitlement to a minimally adequate” procedure to secure return of
13 their property, and, as a result, any “factual differences [within the class] are not of
14 the sort that likely affect entitlement to relief.” *Fraihat*, 445 F. Supp. 3d at 738.

15 *c. Typicality:* The typicality requirement “requires only that the
16 representative’s claims are reasonably co-extensive with those of absent class
17 members; they need not be substantially identical.” *Rodriguez*, 591 F.3d at 1124
18 (marks omitted). That requirement is satisfied here, as both movants and other
19 members of the class all raise “similar constitutionally-based arguments and are
20 alleged victims of the same practice of prolonged detention.” *Id.* The movants and
21 proposed class representatives all had their property seized by the government; all
22 filed claims with the government to recover their property; and are all now
23 confronted with constitutionally-deficient administrative forfeiture notices. As a
24 result, they “have the same claims and face the same or similar harms arising from
25 the same course of conduct” as the other members of the proposed class. *Fraihat*,
26 445 F. Supp. 3d at 738–39.

27 *d. Adequacy:* Finally, to determine adequacy of representation, “the Court asks
28 whether the proposed class representatives and their counsel have any conflicts of

1 interest with any class members and whether the proposed class representatives and
2 their counsel will prosecute the action vigorously on behalf of the class.” *Fraihat*,
3 445 F. Supp. 3d at 739. There is no conflict here: The proposed class
4 representatives here seek the exact same relief that they are requesting on behalf of
5 the class as a whole—namely, an order that the government state the basis for its
6 continued detention of their property or, failing that, give the property back. And
7 the proposed class counsel have extensive experience litigating class actions,
8 including a major class action involving the adequacy of government procedures
9 following property seizures. *See* Declaration of Robert Frommer in Support of *Ex*
10 *Parte* Application for a Temporary Restraining Order. The requirement of adequacy
11 is therefore satisfied.

12 **V. CONCLUSION**

13 For the foregoing reasons, the Court should issue a temporary restraining order
14 barring the government from proceeding with administrative civil forfeiture
15 proceedings against USPV box holders without providing constitutionally-adequate
16 notice of the asserted legal and factual basis for the forfeiture.

17 Dated: June 15, 2021

Respectfully Submitted,

18
19 /s/ Robert Frommer

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PROOF OF SERVICE

I am admitted *pro hac vice* for purposes of this action. I am over the age of 18 and not a party to this action. My business address is 901 N. Glebe Rd., Suite 900, Arlington, VA 22203. My electronic service address is rfrommer@ij.org. On the execution date below and in the manner stated herein, I caused service of a true and correct copy of **PLAINTIFFS JENI VERDON-PEARSONS, MICHAEL STORC, TRAVIS MAY, AND JOSEPH RUIZ'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES**, with supporting Declarations, exhibits, and proposed orders on all interested parties in this action as follows:

BY MAIL. By depositing in a sealed envelope in the United States mail with postage thereon fully prepaid to the following address:

Tracy L. Wilkison
Civil Process Clerk
United States Attorney's Office
Federal Building
300 N. Los Angeles Street, Suite 7516
Los Angeles, CA 90012

United States of America
c/o U.S. Attorney General
Merrick Garland
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Kristi Koons Johnson
Federal Bureau of Investigation
Assistant Director in Charge
11000 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90024

BY E-MAIL. By electronic mail transmission to the offices of the following addressee(s):

andrew.brown@usdoj.gov

usacac.civil-tronotice@usdoj.gov

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 15, 2021, at Arlington, Virginia.

/s/ Robert Frommer