

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ANTHONY HARDY,)
)
 803 E. Boot Road)
 Westchester PA 19380)
)
 DONNELL MONTS,)
)
 20 Channing Street NW)
 Washington, D.C. 20001)
)
 AND MEMBERS OF THE CLASS,)
)
 On behalf of all others)
 similarly situated,)
)
 Plaintiffs,)
)
 v.)
)
 GOVERNMENT OF THE)
 DISTRICT OF COLUMBIA)
)
 SERVE:)
 Adrian M. Fenty, Mayor)
 1350 Pennsylvania Avenue NW)
 Suite 316)
 Washington, D.C. 20004)
)
 Defendant.)

Civil Action No. _____

CLASS ACTION

**COMPLAINT FOR INDIVIDUAL MONEY DAMAGES AND CLASS INJUNCTIVE AND
EQUITABLE RELIEF
WITH JURY DEMAND**

INTRODUCTION

1. Under the District of Columbia Forfeiture Statute, D.C. Code § 48-905.02, the Government of the District of Columbia (“District”) may seize all cash or currency allegedly related to a violation of the Controlled Substances Act.

2. The D.C. Forfeiture Statute further permits the District to “forfeit” the currency if probable cause exists to believe the currency is subject to forfeiture, but requires that the Mayor cause notice to be made to the affected party of the seizure and intent to forfeit the property. The District must publish notice for 2 weeks, and must provide “written notice of the seizure together with information applicable to the procedures for claiming the property.” D.C. Code § 48-905.02 (d)(3)(A). Notice “shall be by registered or certified mail, return receipt requested.”

3. If the affected person files a claim and bond within 30 days, the District may return the property, or file a civil forfeiture action. D.C. Code § 48-905.02(d)(3)(C) & (D). A forfeiture action “shall be instituted promptly,” D.C. Code § 48-905.02(c), and at the latest must be brought within one year [of the disposition of the underlying charges], D.C. Code § 12-301(5).

4. The D.C. Forfeiture Statute implements and protects important due process rights available under the Fifth Amendment to the United States Constitution.

5. The District has enacted forfeiture notice regulations that are consistent with the statute. 6A DCMR § 805 (requiring notice by publication and registered or certified mail).

6. During the relevant period covered by this Complaint, the District has had a policy and/or practice of forfeiting and keeping the currency of arrestees without providing the notice required by the D.C. Forfeiture Statute and related regulations.

7. This is an action brought by Anthony Hardy and Donnell Monts on behalf of themselves and on behalf of the class defined below injured (or presently subject to injury) by the Government of the District of Columbia's policy, pattern, and/or practice of seizing money from persons arrested by the Metropolitan Police Department (MPD) and retaining money after disposition of charges stemming from the arrest without notice and/or the lack of opportunity to be heard, in violation of the Fifth Amendment of the Constitution.

8. Plaintiffs bring this action against the Government of the District of Columbia under

Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. §1983, to enforce the Fifth Amendment for injuries suffered by them and putative class members.

JURISDICTION AND VENUE

9. This Court has jurisdiction under 28 U.S.C. §1331 and 28 U.S.C. §1343(3)-(4).

10. Venue is proper in this jurisdiction pursuant to 28 U.S.C §1391(b) because the events or omissions underlying the claims occurred in this judicial district.

PARTIES

11. The named Plaintiffs, Anthony Hardy and Donnell Monts, are citizens of the United States and are or were residents of the State of Maryland.

12. The Defendant is a local municipal corporation and a 42 U.S.C. § 1983 “person.”

EVENTS

13. Named Plaintiff Hardy was arrested on or about December 20, 2006, in the District of Columbia by MPD for alleged narcotics violations. Mr. Hardy was booked by the MPD and the information on the PD 251 and other data about him and the arrest was entered into CJUS, the MPD electronic booking system. On or about March 21, 2007, Mr. Hardy’s case was dismissed and the disposition was entered in the Superior Court’s electronic docketing system.

14. In connection with the arrest, the MPD seized \$127 from Mr. Hardy. The arresting officers completed a PD 251 arrest report and a PD 81 memorializing the seizure of \$127 in cash from Mr. Hardy. On or about February 15, 2007, Mr. Hardy demanded a return of his property by filing a Motion for Return of Property.

15. The District designated as “forfeited” and kept the seized money. However, the District never provided notice of forfeiture of the money seized, nor brought a forfeiture proceeding within one year. The District of Columbia continues to violate Mr. Hardy's Due Process Rights by failing to return said money.

16. Named Plaintiff Monts was arrested by the District of Columbia MPD on or about July 26, 2006 for alleged narcotics violations. Mr. Monts was booked by the MPD and the information on the PD 251 and other data about him and the arrest was entered into CJUS, the MPD electronic booking system. On or about June 6, 2007, Mr. Monts pled guilty to one count of possession of heroin and was sentenced to a period of incarceration and the disposition was entered in the Superior Court's electronic docketing system.

17. In connection with the arrest, the MPD seized \$823 in cash from Mr. Monts. The arresting officers completed a PD 251 arrest report and a PD 81 memorializing the seizure of the \$823 from Mr. Monts.

18. The District designated as "forfeited" and kept the seized money. However, the District never provided notice of forfeiture of the money seized, nor brought a forfeiture proceeding within one year. The District of Columbia continues to violate Mr. Monts Due Process Rights by failing to return said money.

CLASS ACTION ALLEGATIONS

19. The Named Plaintiffs bring this action on behalf of themselves and pursuant to Rule 23(a) and (b)(2)-(b)(3) of the Federal Rules of Civil Procedure, and on behalf of all persons similarly situated.

20. The class is comprised of each person (a) who was (or in the future prior to judgment will be) arrested by the MPD, (b) whose case was closed not more than 4 years before the filing of this Complaint and not less than 1 year before judgment is entered in this case, (c) who had money seized by the MPD (c) that was kept by the District (d) without notice to the person of the forfeiture and the right to contest the forfeiture, by certified or registered mail to the person's last known or discoverable address.

21. Certification of this class under Federal Rule of Civil Procedure 23(b)(2) is appropriate

because the District of Columbia has a pattern and practice that has uniformly affected all members of the class, and injunctive relief against the District will benefit each and every plaintiff and class member.

22. The class is entitled to injunctive relief, for example, setting up an independent monitor to supervise the District's return of seized money and provision of adequate notice and opportunity to be heard, and other relief as specified below.

23. There are no individual questions on the issue of liability other than whether an individual's money or property has been seized and held more than one year after the disposition of the case without notice and an opportunity to be heard, and the answer to that question can be determined by ministerial inspection of the District's records.

24. Computer records are available for inspection on the question of when a person was arrested (CJUS) and when a person's case was disposed of (Superior Court System).

25. Paper records memorialize when and how much money was seized from a person (PD 81), whether notice was sent, and whether the money was returned (MPD records).

26. Computer records exist evidencing deposit of money into an account required by D.C. Code § 23-532, and any payments to the owners of the currency after disposition of cases.

27. Among the questions of law and fact common to the class are:

- a. whether the District has a policy, practice, and/or custom of seizing money from citizens and retaining it without notice and an opportunity to be heard;
- b. whether the Constitution prohibits the District from seizing money from citizens and retaining it without notice and an opportunity to be heard;
- c. whether the District has a pattern and practice of being deliberately indifferent to the rights of arrested persons from whom it seizes money by seizing money from them and retaining it without notice and an opportunity to be heard; and

- d. whether the plaintiffs and the members of the class and future members are entitled to relief, and, if so, what is the nature of that relief.

28. The class is so numerous that joinder of all members is impracticable. The exact number of class members is presently unknown, but is likely to consist of at least several thousand people, and likely substantially more than that.

29. The Named Plaintiffs' claims are typical of the claims of the other members of the class, as Plaintiffs and all other members of the class were injured by exactly the same means, that is, by unconstitutional seizures and retentions.

30. The Named Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel who are competent and experienced in complex federal civil rights class action litigation.

31. The Named Plaintiffs have no interests that are contrary to or in conflict with those of the class.

32. Common issues predominate over individualized questions.

33. A class action would be superior to any other method available for resolving the claims of class members, and is likely the only realistic means of adjudicating claims given the relatively small amount of individual claims.

PLAINTIFF HARDY FACTS

34. On December 20, 2006, the District of Columbia Metropolitan Police stopped a vehicle driven by the Plaintiff, Anthony Hardy, on the 2500 Block of Benning Road, NE because it allegedly had illegal tinted windows.

35. The police officer approached the vehicle and allegedly saw a brown paper bag in the rear driver side of the floorboard. The brown bag allegedly contained alcohol.

36. The police placed Mr. Hardy under arrest for possession of an open container of

alcohol.

37. After arresting Mr. Hardy, the officer allegedly discovered narcotics from the trunk of the vehicle, and Mr. Hardy was charged with possession of narcotics.

38. In connection with the arrest of Mr. Hardy, the officer seized \$127 cash from the Plaintiff.

39. On or about March 21, 2007, the Plaintiff Hardy's case was dismissed.

40. The District of Columbia never provided notice of the forfeiture of the money seized within one year thereafter, failed to allow the Plaintiff an opportunity to be heard, and used or continues to hold Mr. Hardy's money.

41. The time in which the District had to provide notice to Mr. Hardy and bring a forfeiture action has expired, such that the District has waived any forfeiture of the property.

PLAINTIFF MONTS FACTS

42. On or about July 26, 2006 the MPD arrested Mr. Monts for alleged narcotics violations on the 400th Block of 51st Street, NE.

43. On or about July 26, 2006, the MPD alleged that Mr. Monts distributed narcotics to an undercover police officer.

44. In connection with that arrest, the MPD seized \$823 in cash from Mr. Monts.

45. The arresting officers completed a PD 251 arrest report and a PD 81 memorializing the seizure of \$823 from Mr. Monts.

46. Mr. Monts was booked by the MPD and the information on the PD 251 and other data about him and the arrest was entered into CJUS, the MPD electronic booking system.

47. On or about, June 6, 2007, Mr. Monts pled guilty to one count of possession of heroin and was sentenced to a period of incarceration, and the disposition was entered in the Superior Court's electronic docketing system.

48. The District of Columbia never provided notice of the forfeiture of the money seized within the mandated time frame, failed to allow the Plaintiff Monts an opportunity to be heard, and used or continues to hold Mr. Monts' money.

49. The time in which the District had to provide notice to Mr. Monts and bring a forfeiture action has expired, such that the District has waived any forfeiture of the property.

COUNT ONE

FIFTH AMENDMENT PROCEDURAL DUE PROCESS VIOLATION

50. All prior paragraphs are incorporated herein by reference as if fully set forth herein.

51. By keeping or using the Named Plaintiffs' and Class Members' money without adhering to procedural due process safeguards, such as notice and the opportunity to be heard prior to a governmental taking, the District of Columbia violated the Plaintiffs' and Class Members' Fifth Amendment Right to Due Process of Law.

52. The District's policy and/or practice caused each Named Plaintiff and Class Member the loss of money to which each is entitled to have returned to him or her upon the expiration of one year after the disposition of the underlying criminal case.

WHEREFORE, Plaintiffs and the members of the class respectfully request:

1. That the Court certify this action to proceed as a class action under Rules 23(b)(2) and (b)(3);
2. That the Court declare the challenged policy, pattern, and/or practice of the District of Columbia to be in violation of the Plaintiffs' Constitutional Rights;
3. That the Court order the District of Columbia to cease its policy, pattern, and/or practice of seizing money from persons arrested by the MPD and retaining money after disposition of the underlying charges, without notice and an opportunity to be heard;

4. That the Court order the District of Columbia to return all money unlawfully retained, plus restitution for loss of use;
5. That the Named Plaintiffs and Class Members be awarded compensatory damages and judgment in an amount not less than the amount of money taken and kept from each person, plus damages for the loss of use of the money;
6. That the Plaintiffs be awarded reasonable attorney's fees and costs.

Respectfully Submitted,

/s/Henry A. Escoto/s/
Henry A. Escoto, DC BAR # 448408
806 7th Street, NW, Suite 301
Washington, DC 20001
(202) 898-4700
hescoto@msn.com

/s/Sean R. Day/s/
Sean R. Day, DC Bar # 452420
8505 Baltimore Avenue, Suite 201
College Park, MD 20740
(301) 220-2270
sean@dayincourt.net

Attorneys for Plaintiffs Hardy and Monts
and the Proposed Class

JURY DEMAND

The Plaintiffs hereby demand a trial by jury.

/s/Henry A. Escoto/s/
Henry A. Escoto
Attorney for Plaintiffs