

**FILED**

**MAY - 1 2012**

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

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

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 FREDERICK SIMMS, )  
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 2904 7th Street, SE )  
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 Washington, DC 20032 )  
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 )  
 Plaintiff, )  
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 )  
 v. )  
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 )  
 THE DISTRICT OF COLUMBIA, )  
 )  
 Office of the Attorney General )  
 )  
 441 4th Street, NW )  
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 Washington, DC 20001 )  
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 )  
 CATHY LANIER, CHIEF OF POLICE, )  
 )  
 300 Indiana Avenue NW )  
 )  
 Washington, DC 20001 )  
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 )  
 VINCENT GRAY, MAYOR )  
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 1350 Pennsylvania Avenue, NW, Suite 316 )  
 )  
 Washington, DC 20004 )  
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 )  
 Defendants. )  
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 \_\_\_\_\_ )

Case No. \_\_\_\_\_  
 Case: 1.12-cv-00701  
 Assigned To : Sullivan, Emmet G.  
 Assign. Date : 5/1/2012  
 Description: TRO/PI

**COMPLAINT**

1. Plaintiff Frederick Simms, by and through his attorneys, brings this action for injunctive and declaratory relief against Defendants the District of Columbia, the Chief of Police of the Metropolitan Police Department (“MPD”), and the Mayor of the District of Columbia from their unconstitutional policy of seizing private vehicles and retaining them indefinitely pending potential civil forfeiture proceedings, without providing property owners with a prompt, post-deprivation hearing before a neutral arbiter.

2. Mr. Simms alleges as follows, based on personal knowledge as to matters in which he has personal involvement and information and belief as to all other matters.

**Nature of the Action**

3. Mr. Simms is a D.C. resident whose car was seized by MPD officers after MPD officers claimed to find a firearm in a bag inside the vehicle on May 29, 2011.

4. Mr. Simms was acquitted by a jury of all charges arising out of the incident on December 7, 2011. When Mr. Simms sought to retrieve his vehicle at the impoundment lot, he was informed by the MPD that police intended to attempt to take legal ownership of his car through the District's civil forfeiture laws.

5. D.C.'s civil forfeiture scheme does not provide for a prompt, post-deprivation hearing in which property owners can test the validity of the District's warrantless seizure of their vehicles, and can challenge the validity of the District's continued retention of the vehicle pending a determination on the merits of any forfeiture action. In accordance with MPD and District policy, Mr. Simms has received no such hearing since the seizure and impoundment of his car.

6. Mr. Simms was instead told that in order merely to challenge the forfeiture of his car, he must pay a bond of over \$1,200 dollars to the MPD. Mr. Simms applied for a waiver of the bond on account of indigence, submitting extensive financial records in support of his request. An MPD official reduced the bond to \$800—an amount Mr. Simms cannot afford.

7. As a matter of District policy, payment of that sum is required before the District will even file its initial civil suit formally to forfeit the vehicle in Superior Court. Because Mr. Simms cannot pay the bond, he is afforded *no* opportunity to challenge the ultimate forfeiture of his car by the District. Under D.C.'s statutory civil forfeiture scheme and District policy, the MPD may sell the car at auction if the bond is not paid within 30 days of the owner receiving notice of the forfeiture.

8. Mr. Simms has suffered and continues to suffer grave hardships flowing from the loss of his car. He is experiencing difficulty taking his 11-month-old daughter to daycare and appointments. He was forced to move away from his mother's home in D.C. in order to rent an apartment nearer to his job in Sterling, Virginia. Eventually, he moved back to D.C. and now faces a daily commute of between one-and-a-half to two hours each way. And that job, which requires him to travel to several geographic locations, is in jeopardy because his employer requires employees to have a reliable vehicle. Moreover, he is forced to continue making loan payments on a car that is not in his possession while paying additional costs associated with obtaining alternate transportation.

9. The District's policy of seizing vehicles pursuant to D.C.'s civil forfeiture statute without a prompt, post-deprivation opportunity to challenge the District's initial seizure and continued retention of the vehicle pending any potential forfeiture litigation violates Mr. Simms's right to procedural due process under the Fifth Amendment to the United States Constitution.

10. The District's policy that forces indigent property owners to pay a "penal sum" before even being able to commence the legal process to challenge the police seizure of their property violates Mr. Simms's right to due process under the Fifth Amendment to the United States Constitution.

11. Mr. Simms seeks declaratory and injunctive relief.

### **Jurisdiction and Venue**

12. This is a civil rights action arising under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, *et seq.*, and the Fifth Amendment to the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

13. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

**Parties**

14. Plaintiff Frederick Simms is a 26-year-old resident of the District of Columbia.

15. Mr. Simms was determined to be indigent and was represented by the Public Defender Service of the District of Columbia in his criminal matter. Mr. Simms was acquitted of all charges after a jury trial.

16. Mr. Simms is employed by AAAA Storage in Sterling, Virginia. He has worked there for nearly four years.

17. Mr. Simms has a 11-month-old daughter, whom he raises with his fiancée.

18. Defendants did not provide Mr. Simms with a prompt, post-deprivation hearing to challenge the validity of the initial seizure of Mr. Simms's car. Moreover, at no time did Mr. Simms have the opportunity to ask a neutral decisionmaker for the return of his car pending the forfeiture proceedings, and at no point was the District required to justify continued retention of the car pending any potential litigation.

19. Defendants have required that Mr. Simms pay the police an \$800 bond in order to challenge the forfeiture of his car despite the fact that he cannot afford that requirement. Defendants' policy is to refrain from beginning forfeiture proceedings until an owner pays the bond, and the statute permits defendants to dispose of the vehicle if the bond is not paid within 30 days.

20. Vincent Gray is the Mayor of the District of Columbia and is responsible for implementing the policies of the District of Columbia as they relate to property seized by District police officers pursuant to the District's statutory civil forfeiture scheme. He is sued in his official capacity.

21. Cathy Lanier is the Chief of the Metropolitan Police Department of the District of Columbia and is responsible for executing the policies of the District of Columbia as they relate to property seized by District police officers pursuant to the District's statutory civil forfeiture scheme. She is sued in her official capacity.

22. The District of Columbia is the municipal entity employing the Mayor and the Chief of the Metropolitan Police Department.

### **Factual Background**

#### **A. Civil Forfeiture in the District of Columbia**

23. Over the last several years, the MPD has seized and forfeited millions of dollars in private property. D.C. law allows the MPD to keep much of the financial proceeds of the forfeitures that its officers pursue. D.C. Code § 48-905.02(d)(4)(B).

24. Civil forfeiture in the District of Columbia is governed by the procedures set forth in D.C. Code § 48-905.02.<sup>1</sup>

25. Under the civil forfeiture statute, seized property "shall not be subject to replevin, but is deemed to be in the custody of the Mayor." D.C. Code § 48-905.02(d)(2).

26. Pursuant to District policy, after the MPD seizes a piece of private property, the MPD notifies the owner of the seized property that he or she is not permitted to challenge the seizure and forfeiture in court unless the person pays to the MPD a "bond" in the amount of 10% of the value of the property (as that value is determined by the police). The bond, which the District calls a "penal sum," must be no less than \$250 and no greater than \$2,500. D.C. Code § 48-905.02(d)(3)(B).

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<sup>1</sup> There are several other statutory provisions pertaining to forfeiture. Each of those employs the procedures outlined in § 48-905.02, which is part of the District's laws pertaining to "controlled substances." Forfeiture of firearms is additionally covered by D.C. Code § 7-2507.06a.

27. It is the policy and practice of the District of Columbia to begin no legal process until the bond is paid.

28. It is the policy and practice of the District of Columbia to make no initial showing of probable cause before a neutral and independent decisionmaker that the property is forfeitable, and to offer no justification before a neutral and independent decisionmaker for retaining possession of the vehicle during the pendency of the proceedings, notwithstanding the hardships suffered by owners deprived of their vehicles for months and the availability of alternative, less restrictive means to protect the District's interests.

29. It is the policy and practice of the Metropolitan Police Department to require claimants to pay the "penal" bond. Though a claimant may apply for waiver or reduction of the bond if he or she is indigent, it is wholly within the discretion of individual officers of the Metropolitan Police Department whether to grant a waiver or reduction in the bond. According to FOIA disclosures, the MPD does not have any standard procedures requiring officers to notify owners that the bond can be waived or reduced for the indigent. Nor does MPD have any formal standards regarding how indigence is to be determined.

30. Once the bond is paid, the District of Columbia will wait months before initiating the legal process in Superior Court to forfeit the vehicle.

31. Once the District of Columbia initiates proceedings by filing a Libel of Information seeking forfeiture, the claimant, who is not provided with an attorney, is forced to litigate the civil action on his or her own if he or she cannot afford a lawyer, including filing an answer, engaging in civil discovery and, ultimately, conducting a trial. At trial, the evidentiary burden is placed on the individual property owner to prove that his or her property is *not* subject to forfeiture by a preponderance of the evidence. D.C. Code § 48-905.02(d)(3)(G).

32. Although D.C. law provides that “[a]n innocent owner’s interest in a conveyance which has been seized shall not be forfeited . . .”, D.C. Code § 7-2507.06a(c); D.C. Code § 48-905.02(a)(7)(A), at no point before the civil forfeiture trial—which can take place months or years after the seizure—are owners given any opportunity to demonstrate that they are “innocent.” An innocent owner in D.C. thus cannot promptly challenge the judgment of the police officer who decided on the scene that his or her car should become property of the District.

33. The MPD has a direct financial stake in erecting obstacles in front of claimants seeking return of their property. The proceeds from seizing private property go to paying the MPD’s expenses, including seizure operations themselves. D.C. Code § 48-905.02(d)(4)(B). Moreover, the leftover proceeds “shall be used, and shall remain available until expended regardless of the expiration of the fiscal year in which they were collected, to finance law enforcement activities of the Metropolitan Police Department . . . .” *Id.*

**B. The Seizure of Mr. Simms’s Vehicle**

34. Officers seized Mr. Simms’s car after they claimed to find a firearm in a bag inside the vehicle on May 29, 2011. The car was taken to the MPD’s impound lot in Southwest D.C.

35. Mr. Simms was charged with one count of Unlawful Possession of a Firearm pursuant to D.C. Code § 22-4503(a)(1), one count of Carrying a Pistol Without a License pursuant to D.C. Code § 22-4504(a), one count of Possession of an Unregistered Firearm pursuant to D.C. Code § 7-2502.01, and one count of Unlawful Possession of Ammunition pursuant to D.C. Code § 7-2506.01(3).

36. Mr. Simms was determined by the court to be indigent, and he was appointed a trial attorney from the Public Defender Service.

37. Mr. Simms was acquitted of all charges on December 7, 2011, after a jury trial in the Superior Court for the District of Columbia.

38. That same day, Mr. Simms went to the MPD impound lot seeking return of his car. A police officer informed Mr. Simms that he would be required to pay a bond of over \$1,200 in order to challenge the MPD's decision to take possession of his car. However, payment of this bond, he was told, would not actually result in return of his vehicle because his vehicle was subject to civil forfeiture.

39. No officer informed Mr. Simms that the bond would be waived or reduced if he were indigent.

40. After finding out that he could file for a waiver of the bond on the ground of indigence, Mr. Simms submitted an application for waiver with the MPD. When he arrived at the impound lot, he was told by an MPD officer to get his application notarized and to return with three years of tax returns. Mr. Simms got the application notarized and obtained and attached copies of his tax returns from 2009, 2010, and 2011. He submitted the required documents on March 19, 2012. For about two weeks he heard nothing. Finally, he went back to the police station and was informed that his bond would be reduced to \$800.

41. Because Mr. Simms cannot afford either amount, the civil proceedings to determine whether his vehicle is forfeitable under the statute cannot begin, and his vehicle is in danger of being declared forfeited. *See* D.C. Code § 48-905.02(d)(3)(C).

**C. Mr. Simms's Reliance on His Vehicle**



42. Mr. Simms depended on his vehicle in order to fulfill his obligations to his job and to his family. In the absence of his vehicle, he has been forced to rent cars, use public transportation, and take taxicabs in order to fulfill those obligations, at great personal difficulty and financial cost.

43. Before his car was seized, Mr. Simms lived in Southeast D.C. with his mother. The deprivation of his car forced him temporarily to relocate to Northern Virginia, in order to be closer to work. He has now had to move back to Southeast D.C. and again confronts a daily commute that involves taking a bus to the Anacostia Metro station, a train to L'Enfant Plaza, a bus to a Park & Ride in Herndon, VA near Dulles Airport, and then a ride from a coworker or a cab to his job in Sterling, VA. This commute takes a total of an hour-and-a-half to two hours each way every day and can cost a total of \$40.

44. Mr. Simms is an assistant manager at AAAA Storage. His job, which requires him to travel to various AAAA Storage locations, is threatened by his lack of access to a vehicle. On days on which he is required to travel to a location not readily accessible by public transportation, he has had to rent cars to keep his job, despite the fact that the car rental fees often approximate his daily wages. Mr. Simms earns \$12 per hour.

45. Mr. Simms has also experienced difficulties raising his 11-month-old child, including being able to take her to daycare every day, as she requires, being able to take her to medical and other necessary appointments, and being able to buy groceries and other necessities for the family.

**D. Mr. Simms's Financial Hardship and Application for A Waiver of the Bond**

46. Mr. Simms cannot afford to pay the "penal sum" of \$800. Between child care costs, transportation costs, payments on his car loan, rent, and other monthly expenses, he is

unable to afford the sum required before the District may even begin legal proceedings in his potential civil forfeiture case.

47. The decision by an MPD officer not to waive Mr. Simms's bond was not explained or justified.

**E. No Avenue of Relief is Available to Mr. Simms**

48. Because Mr. Simms cannot pay the bond, the District of Columbia may treat his vehicle as forfeited under the statute.

49. Mr. Simms has no other legal remedy to seek the return of his car. The asset forfeiture statute bars all actions for replevin. D.C. Code § 48-905.02(d)(2).

50. The asset forfeiture statute provides no process for claimants seeking to challenge the seizure of their property or its continued retention, other than the proceedings instituted by the Attorney General upon the payment of the "penal sum."

**Claims for Relief**

**One: The Seizure and Continued Retention of Mr. Simms's Vehicle Without a Prompt, Post-Deprivation Hearing Before A Neutral Decision-Maker Violates Procedural Due Process.**

51. Plaintiff incorporates by reference the allegations in paragraphs 1-50 above.

52. The District of Columbia has deprived Mr. Simms of procedural due process under the Fifth Amendment to the United States Constitution by failing to provide a prompt post-deprivation hearing at which the District is required to make before a neutral decisionmaker the statutory showing of probable cause to seize the vehicle, and at which the District is required to justify the MPD's continued retention of the vehicle pending any potential civil forfeiture proceedings.

**Two: Requiring Mr. Simms, Who is Indigent, To Pay A Sum In Order to Challenge the Seizure of His Vehicle Violates Due Process.**

53. Plaintiff incorporates by reference the allegations in paragraphs 1-52 above.

54. The District of Columbia deprived Mr. Simms of his rights under the Fifth Amendment to the United States Constitution by requiring him, an indigent claimant, to pay a substantial “penal sum” in order to commence a challenge to the taking of his vehicle by police.

**Three: The Mayor and the MPD’s Financial Conflict of Interest in Asset Forfeitures Violates Due Process.**

55. Plaintiff incorporates by reference the allegations in paragraphs 1-54 above.

56. Because the Metropolitan Police Department and the Mayor have a financial stake in the outcome of asset forfeiture proceedings, their decisionmaking power over Mr. Simms’s indigence and bond determination, as well as their decision to seize and retain his vehicle pending any civil forfeiture proceedings, violates due process under the Fifth Amendment to the United States Constitution.

**Request for Relief**

WHEREFORE, Plaintiff requests that this Court issue a judgment against Defendants:

- a. Preliminarily and permanently enjoining Defendants from retaining Mr. Simms’s vehicle unless and until Defendants provide the process required by the Fifth Amendment;
- b. Declaring that due process requires a vehicle owner like Mr. Simms to be provided a prompt post-seizure hearing at which the owner can contest the validity of the initial seizure and the validity of the District’s continued retention of the vehicle pending any forfeiture litigation;
- c. Declaring that the District’s policy resulting in requiring indigent property owners to pay a “penal sum” before the District initiates any civil forfeiture proceedings violates the Fifth Amendment;
- d. Declaring that Defendants’ financial interest in civil forfeiture renders Defendants’ decisionmaking with respect to the seizure and retention of private property constitutionally infirm under the Fifth Amendment; and
- e. Granting any other relief this Court deems just and proper.

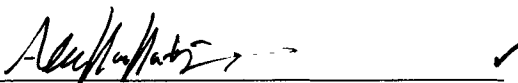
Respectfully submitted,

 TM

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