

PROTECTING SMALL BUSINESSES FROM IRS ABUSE (PART II)

HEARING BEFORE THE SUBCOMMITTEE ON OVERSIGHT OF THE COMMITTEE ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS SECOND SESSION

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PROTECTING SMALL BUSINESSES FROM IRS ABUSE (PART II)

WEDNESDAY, MAY 25, 2016

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to call, at 9:40 a.m., in Room B-318, Rayburn House Office Building, the Honorable Peter Roskam [chairman of the subcommittee] presiding.

[The advisory announcing the hearing follows:]



WAYS AND MEANS

CHAIRMAN KEVIN BRADY

Chairman Roskam Announces Hearing on Protecting Small Businesses from IRS Abuse (Part II)

House Committee on Ways and Means Subcommittee on Oversight Chairman Peter J. Roskam (R-IL) today announced that the Committee on Ways and Means Subcommittee on Oversight will hold a hearing on protecting small businesses from IRS abuse. The hearing will take place on Wednesday, May 25, 2016 at 9:30 AM in Room B-318 of the Rayburn House Office Building. The Subcommittee first examined this issue in a hearing on February 12, 2015.

Oral testimony at the hearing will be from the invited witnesses only. However, any individual or organization may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

Details for Submission of Written Comments:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select "Hearings." Select the hearing for which you would like to make a submission, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Wednesday, June 8, 2016**. For questions, or if you encounter technical problems, please call (202) 225-3625 or (202) 225-2610.

Formatting Requirements:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available at <http://www.waysandmeans.house.gov/>.



Chairman ROSKAM. The subcommittee hearing will come to order.

Welcome to the Ways and Means Oversight Subcommittee hearing on protecting small businesses from IRS abuse. This is version 2.0.

There is a line in “Les Mis,” one of the adaptations of Victor Hugo’s novel, where Inspector Javert, the guy that everybody hates, he says this: “Right or wrong, the law is the law and it must be obeyed.” Yet, the author comes up with a better approach, and he says: “Actually, the highest law is conscience.”

I agree that the law must be obeyed. But in a just government, and in a government that has a department named the Department of Justice, and a government of limited resources, we know that Federal agents and prosecutors must choose which violations to pursue, and when that decision is made they must examine the situation closely to decide if there has been a violation at all.

This is our subcommittee’s second hearing this Congress on the IRS’ use of its civil asset forfeiture authorities, and during our hearing last year, we heard testimony about how the IRS has used a law that is meant to catch drug runners and terrorists, and instead they have used it to punish farmers and small-business owners.

And the law I am talking about prohibits people from structuring their financial transactions to keep them below \$10,000 to avoid reporting requirements. Sometimes it may look like someone is structuring their bank deposits to avoid the reporting requirement, but as we heard from a Georgia store owner last year, Andrew Clyde, some businesses have insurance policies that only protect cash on hand up to \$10,000. So every time he got close to \$10,000, he would deposit his money.

Because the IRS thought that looked suspicious, they seized his entire bank account, \$900,000. They didn’t investigate whether Mr. Clyde was trying to avoid the reporting requirement before they took the savings. And after they seized the money, he explained the insurance policy to them and the IRS didn’t give the money back. And when Mr. Clyde took the matter to court, the government lawyer from the Department of Justice said that if he wouldn’t settle and give \$50,000, the government lawyer would try to prosecute him on criminal charges.

That is unethical, that is wrong, and it has happened in more than one case, lest we think that this is an aberration.

In other cases, we have seen sworn testimony that a bank teller asked a customer to keep deposits under \$10,000 to avoid additional paperwork for the bank. You can imagine this. This is not speculative. You can just imagine a bank teller saying: “Hey, it is a big hassle if you bring in \$10,000. Why don’t you bring in less money?” And in that instance, the customer didn’t know that it was illegal, or just thought that they were helping out the bank teller.

Other people didn’t want to be reported, they didn’t want to be reported to the IRS—by the way, who does—and they didn’t know it is illegal to avoid those reports.

The IRS knew that seizing money from farmers and store owners who appeared to be structuring their transactions wasn’t right unless they were doing it to come up to cover up other crimes. And

that is why the IRS announced a new policy in October of 2014 that it wouldn't seize money unless it was derived from an illegal source. Great news. Good policy change. It is a better policy than what the IRS was doing before, and we were pleased to hear about the acknowledged need to do better.

Now, a year and a half later, we want to know how things are going under that policy. And indeed, a new policy doesn't right all the wrongs. Those people whose assets were seized under the old policy were not treated fairly. Several of them have sent petitions to the IRS and the Department of Justice asking for justice and asking for their money back, the money that the IRS has acknowledged they shouldn't have taken in the first place. The IRS granted one of those petitions and gave \$154,000 back. From all accounts, the IRS did this because it was the right thing to do.

However, the Department of Justice has not provided any relief, either financially or procedurally, to those who have petitioned for return of their funds. Let's remember what we are talking about. It is not the government's money. It is, by everybody's acknowledgment, the money that belongs to these taxpayers. The petitioners deserve a fair, transparent review process and an answer.

Furthermore, every single member of this subcommittee—every single member of this subcommittee—has called upon the Department of Justice to review and the IRS to review all IRS civil asset forfeiture cases brought solely on the allegations of structuring. We have sent two letters asking for that review. I met with Mr. Weber—who we are going to hear from in the second panel, who is not here to hear, interestingly, apparently, although they were invited to attend, to hear from these witnesses, we will hear from Mr. Weber later—and the Department of Justice's representatives back in February and I reiterated that request in this room. And while we received letters in response, we haven't received answers.

And despite our request for a review of those cases brought under the previous policy and now the corrected policy, it doesn't appear that any comprehensive review has taken place. And I hope we get those answers today.

I would like to yield now to my friend and the distinguished gentleman from Georgia, the ranking member, Mr. Lewis.

Mr. LEWIS. Good morning. Good morning, Mr. Chairman, and Members of the Committee. I regret that I was running a little late, but I am sure Mr. Rangel and Mr. Davis were prepared to sit in. They know something about sitting down or sitting in and standing up. Thank you.

Mr. Chairman, I would like to thank you for holding this hearing. Thank you. I am pleased to have the Commissioner testifying before us today. I appreciate his hard work on behalf of the American people. The Commissioner brings truth and honesty to this key government agency. He is a thoughtful, hard-working public servant.

I would also like to thank the other witnesses for taking the time to be here today.

Under the law—under the law—banks are required to report deposits of more than \$10,000. As many of you know, taxpayers are barred from structuring their deposits of income earned from legal or illegal sources in a manner that seems to avoid the reporting re-

quirement. When small businesses appear to structure their deposits to evade bank reporting laws, the government can seize their bank accounts.

The press reports on these matters in 2014 brought this important oversight matter to the subcommittee's attention. In response, we held a hearing on this topic last February. In that hearing, we learned how many small businesses were simply making cash deposits from their daily operations. They were not engaged in any illegal activity, but were unintentionally captured by the law.

During the hearing, all subcommittee members agreed that while allowed under the law, the government should not seize the bank accounts of taxpayers where the cash being deposited was not earned from criminal activity.

In October 2014, the Federal Government changed its policy and agreed that in the future it will only seize assets where the deposits were earned from illegal sources. Since the hearing, the subcommittee members have written a number of letters requesting updates on the policy change. Together, we asked what can be done for those taxpayers whose assets were seized before the change.

I understand that the witnesses on the first panel have had their asset seized before the policy changed and both filed petitions to have their assets returned. I look forward to hearing more about their experiences.

Mr. Chairman and members, we must do more to resolve this issue for small businesses. It is the right thing to do. It is the just thing to do. I hope that we will be successful in securing a timely, fair, and bipartisan resolution of this important matter.

Again, I want to thank all of the witnesses for being here.

And again, Mr. Chairman, I want to thank you for holding this hearing.

Chairman ROSKAM. Thank you, Mr. Lewis. You have admonished this committee to do more and we intend to do more. And to help us do more we are going to hear from our witnesses in the first panel.

Calvin Taylor and Randy Sowers are both farmers in Maryland. The IRS seized thousands of dollars from each of them and they have both petitioned the government to get their money back. We will also hear from Rob Johnson, an attorney at the nonprofit law firm the Institute of Justice who has represented a number of individuals and small businesses whose assets have been seized.

Gentlemen, the committee has your written remarks, and I would like to now recognize you each for 5-minutes each.

So, Mr. Taylor, if we could start with you.

STATEMENT OF CALVIN TAYLOR, TAYLOR FARMS

Mr. TAYLOR. Thank you very much. I have here with me my wife, my lawyer—

Chairman ROSKAM. There is a button that says push down on the lower part of that mike. There, go.

Mr. TAYLOR. Okay. I don't use these on the farm.

With me today are my wife, my lawyer, Steve Gremminger, from the Gremminger Law Firm. We operate a diversified family farm on the Eastern Shore.

In 1984, when my wife was pregnant with our third child, we decided we wanted her to stay home and I needed more income. It didn't seem like much, but I planted four 1-acre boxes of silver queen sweet corn. Over the next few years that grew to almost 100 acres of hand-picked sweet corn, four produce stands of our own, other vegetables, and about 20 teenagers to get things harvested and sold, which can be a circus. We take seriously our role as a first employer, trying to teach them to be good employees. We try to help them understand the business, the fact that all of the money coming in is not profit, that we have invested money long before they get there to start working for us.

When they come in June, late June, we have about a 12-week window to get our income. I was surprised, September 16, 2011, my wife called and said IRS agents were at the house and wanted to talk to me. I went straight home.

When I got there, they told me the same thing they told her when she invited them into the house and offered them ice tea, that they didn't think we were in trouble, they didn't think we had done anything wrong, but they had some questions to ask about our banking practices. I have always felt like if you are running your business honest and above board, you should be able to sit down and talk to anybody about what you are doing and get it straightened out.

So we sat down. They asked questions and we answered questions all about our bank deposits. I had heard years ago from a friend that was in the automobile business, and I have heard since then from businesspeople, that if you deposit over \$10,000 there is a form filed to the IRS. Nobody wants their name reported to the IRS, even if you are as honest as you can be. So we had kept deposits under \$10,000.

They then told us that we were under investigation for structuring. We didn't know what structuring was or smurfing. They briefly explained it. Then they told us that they had already been to our bank and seized all of the money in our bank account, which left us with nothing. I thought of the bills that needed to be paid, the teenagers that hadn't cashed their checks yet. What kind of employer bounces checks off employees? My wife gasped because we just sent the invitations to my daughter's wedding the day before.

We called around. We got a recommendation. We hired Mr. Gremminger.

As those guys were leaving, one of them said, you need to hire a lawyer, and if you are innocent, you may get part of your money back. We were just dumbfounded after they left.

Mr. Gremminger then met with the attorney from that point on, the prosecutor. They wanted 4 years of financial information. We got that to them in the required time. He said, if they found anything wrong with our taxes, that we would be prosecuted.

After a few weeks, there was another meeting. The agents said they could find no evidence of wrongdoing on our taxes. And they also added that, "We don't think the Taylors knew they were doing anything wrong." And then the prosecutor turned and said, "Well, we won't prosecute if you will sign a civil forfeiture, asset forfeiture."

We are not just talking about the expense of defending myself against the government or the fact that jail time would very much likely be involved. I was just realistically looking at losing what I worked my life for and what my father worked his life for.

So there was no choice. I had to sign. We signed it. We went home. We went back to work. We tried to put it behind us.

Last February, we read of the meeting that you had here in 2015. We thought maybe this is a chance for justice. We sent letters to the Department of Justice and the IRS and we recently filed a petition. One thing that is really upsetting to me is we have a letter from the U.S. Attorney's Office after we sent our initial letter. The sentence that jumped out at me was when they told me they could still prosecute me for this.

Thomas Jefferson said something about a government being so big that it could take everything you have. It just seems very, very real to me right now.

Thank you for having me. If any of you ever want to visit us on the farm, you come on down.

[The prepared statement of Mr. Taylor follows:]

Testimony of Calvin W. Taylor, Jr. before the Subcommittee on Oversight of the United States House Ways and Means Committee

Chairman and Members of the Committee:

My name is Calvin W. Taylor, Jr. I am accompanied here today by my wife, Debora Taylor, and our attorney, Steven Gremminger of the Gremminger Law Firm. We appreciate the Committee and its staff inviting us to testify.

My wife and I live in Preston, Maryland. Together with members of our family, we operate C.W. Taylor Farms, LLC. We principally grow sweet corn and raise chickens. We also operate a few farm stands, known as Taylor's Produce, on the Maryland Eastern Shore, where we sell our corn as well as produce that we grow or buy from our neighbors. We hire local teenagers to work at the farm stands and help pick the vegetables. We pay our taxes and we obey the law.

On September 16, 2011, at approximately 11 a.m., an IRS Special Agent and a federal Task Force Officer knocked on the front door of our farmhouse. The farmhouse is our personal residence, where we raised our four children and where our seven grandchildren frequently visit. The IRS agents were not expected, and we had no warning that they were coming. My wife Debora Taylor answered the door. The agents asked her whether I was home. She told them I was likely out on the farm. I had been up since 4 am that day, had completed picking the sweet corn for the day, had checked multiple irrigation systems, and checked on the chickens. They asked her to find me, and she located me at a neighbor's farm, where I was buying peppers for the farm stands.

She invited the agents into our home. They sat at the kitchen table and waited. My wife Debora asked the agents what they were inquiring about, and they stated, "We just have some questions about Mr. Taylor's banking transactions." I got home about 15 minutes after they arrived, and I joined them at our kitchen table. **The very first thing that the agents told us was: "We do not think you have done anything wrong. We just have some questions about your banking transactions." The agents never suggested, nor were we ever offered, the option of consulting an attorney before speaking with them.**

Instead, the interrogation began. The agents questioned why we had changed the name of our business checking account in the last year. We explained that it was due to my father's death, and the farm became a LLC, a sole proprietorship, as opposed to a LLP, which had previously been a partnership with my dad. The agents said that they had traced the deposits to our joint bank account, and that it appeared that we had deposited \$699,255 in cash to the account over the last three-years.

They continued to interrogate us. They asked us why we so frequently made cash deposits to our joint bank account, and why the deposits were frequently in an amount just below \$10,000. I told them that I did so because it is common knowledge that if you make deposits over \$10,000, some form had to be filed. I told them I was told by someone at a bank years ago that if a cash deposit for more than \$10,000 was made, the bank would have to report it to the IRS "and who wants to get reported to the IRS?"

Our retail farm stands generate a substantial amount of cash from the sale of our corn (*best in the State of Maryland*) and the sale of the local produce grown by my family or by other farmers who are our neighbors. Prior to the seizure, the cash was collected, counted, and put together in amounts between \$9,000 and \$10,000. I then took the cash to the local bank and deposited it into the C.W. Taylor Farms, LLC account. (The agents told us they had visited some or all of the produce stands at some point in their investigation. One stated "*you have a good little business going there.*" The agents knew we sold produce, they had visited our farm stands, they saw that we handle cash, and that we have a legal source for the cash.) I think it is scandalous that the IRS and DOJ dedicated scant federal resources to investigating a farm family that grows corn and raises chickens, where there was no suggestion of illegality.

The agents spent about an hour with us, and they asked many questions. We cooperated fully and answered all their questions honestly and willingly, and we were not guarded in what we said. **Then out of the blue, they told us that I was under criminal investigation for "structuring" and "money laundering."** They asked us if we were familiar with a law called "structuring." We said we were not. They explained the law to us, including that violating this law was a felony. They also said that prior to

ringing our doorbell, and being invited into our home, they had served a Grand Jury subpoena on our joint bank account and seized all of the money in the account. The amount seized was reportedly \$90,175.48, leaving our business account balance at ZERO.

We did not know what “structuring” was prior to the seizure of our bank account or that it was a crime. We also did not know that I was the target of an ongoing criminal investigation prior to being told that by the IRS Agent. We were in shock and disbelief. **We were also finally told at that late point that we should hire a lawyer.** The agents also said that maybe, *after being investigated*, we could possibly get part of our money back—but we should not expect that to happen quickly. **My wife blurted out that we had mailed our oldest daughter's wedding invitations just the day before, and “how were we to pay for this and other bills?”** I was so upset that I got up and walked out of the room briefly and stated to them, **“how am I going to pay my fertilizer bills?”** **The agents replied this was not their problem.** In fact our daughter planned to marry about 6 weeks later; and, we were to pay for the wedding and the reception, to be held at our church. The seizure of our bank account left us with no money for family living expenses, for our daughter’s wedding, or to pay the many farm vendors. A farm generates the majority of its income over the summer months. 2011 was a very dry, hot summer, and I was exhausted at the end of the season, after working 19–20 hour days, monitoring and moving irrigation systems and overseeing the 500 acres of crops, the poultry operation (which requires intensive management during hot temperatures), four retail produce stands and supervising 20+ teenagers!!!! In August that year, there was a hurricane, which damaged many of the late season crops. One retail vegetable stand was still operating on September 16, 2011, and work was beginning to slow down, as the teenagers were back to school and college. To have our total income taken after such a trying and challenging year was overwhelming. All of this occurred on a Friday. *Who can find a lawyer on a Friday afternoon?*

The agents took unfair advantage of our natural inclination to be honest and helpful. When they arrived at our door, we had no reason to believe that we needed legal counsel. We were never given a “*Miranda* warning.” The agents certainly did not tell us prior to the interrogation and seizure that I faced

potential criminal prosecution with a statutory penalty of potentially 20 years in jail for each transaction proven to involve structuring.

We thereafter retained Steven Gremminger as our attorney. He confirmed the gravity of the offense that I was facing and went to work defending us.

As I understand it, Mr. Gremminger contacted the IRS Agent and the Assistant United States Attorney (AUSA) who was conducting the Grand Jury criminal investigation regarding me. He and his paralegal met with the AUSA and the IRS Special Agent at the U.S. Attorney's Office in Baltimore, Maryland on October 5, 2011. The prosecutor told them during the meeting that he and the DOJ were conducting a large volume of these types of cases regarding persons from Southern Maryland. He said that he had already completed asset forfeiture cases with fishermen, stockbrokers, car salesmen, repairmen and others. Each of these cases involved alleged structuring of cash transactions in order to avoid federal cash transaction reporting and, apparently, all of which involved legal sources of funds. The prosecutor shared a recent article from the *Baltimore Sun* concerning activities that he directed against Maryland citizens who used cash transactions, who he or his surrogates had caught, and who had agreed to the DOJ's civil forfeiture regime in order to avoid going to jail.

(I now understand that the intent of the structuring law is not to prosecute hard-working, taxpaying citizens, but is to pursue terrorists who seek to harm our nation. Once the government knew that we were not tax evaders or criminals, it was a reasonable expectation to receive our money back. It appears to us that the DOJ stretched the law to fund its budget with innocent taxpayer dollars. I wonder how the prosecutor sleeps at night.)

During the meeting, the prosecutor told my attorney that he could prosecute and convict me for "structuring" financial transactions as well as for "money laundering." My attorney stated that I had had knowingly committed any crime; said I had no intent to break the federal law; did not know that whatever I had done was a crime, much less was considered "structuring" or "money laundering" under federal law; and that I had not violated any ancillary federal law, such as tax evasion, terrorism, terrorist financing, or

drug trafficking. All our cash was obtained from sales of our farm produce and chickens, as was documented and reported legally for tax purposes.

I understand that my attorney showed the prosecutor a pamphlet published by the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) concerning the Currency Transaction Reporting requirements. (I now know that FinCEN encourages financial institutions to provide this pamphlet to their customers to keep unwary persons with legal sources of funds from structuring.) Neither the prosecutor nor the IRS agent had ever previously read or heard of the FinCEN pamphlet. (My wife and I had also never seen the pamphlet, which I now understand was produced by the federal government for the purpose of providing information to the public about the little-known but highly dangerous law of structuring.) The prosecutor told my attorney that if we produced all of our financial records, as well as the farm's financial records, to the IRS for review by the Special Agents who seized our bank account, *be and the USDOJ would consider not charging me with a crime*. But he also said that if the records that we soon "voluntarily" produced showed criminal activity, such as tax evasion, he would charge me criminally.

Thereafter, my attorney produced to the IRS and to the DOJ all of our and the C.W. Taylor Farms, LLC financial records for the prior three years, and the year of the seizure, 2011. This included all of the cash receipt logs from the C.W. Taylor Farms, LLC farm stands. The records had to be submitted in electronic form as requested by the IRS, which was both very time consuming and expensive.

It is my understanding that the IRS thoroughly examined our financial records that we "voluntarily" produced under threat of criminal prosecution. **It took the IRS Special Agent who visited us at our residence, seized our bank account, and served us with a Grand Jury subpoena about 2-3 weeks to find absolutely no evidence that we had any tax underpayment, much less that we had committed tax evasion.**

But the nightmare did not end there. Having been investigated by the federal government and found not to have knowingly committed any crime, my family and I had the reasonable expectation that no

criminal charges would be filed, that the investigation would be dropped, and that all our money would be returned. ***That did not happen.***

The prosecutor told my attorney that he had decided that he would not charge me with a crime, *but only if* I agreed to a civil forfeiture of a portion of the seized funds. I had to agree to the United States Attorney's proposal or face possible criminal prosecution under the Bank Secrecy Act that carried a potential prison term of 20 years for each transaction. The "deal" that I was offered was that I had to consent to the civil forfeiture of 5% of the amount the Justice Department and IRS alleged was deposited in a structured fashion from July 2008 through August 2011. The forfeiture amount was \$41,790. It was clear that if the "deal" was not accepted, *all bets were off*, including that I might be charged with the federal crimes of "structuring," "money laundering," or other charges.

Thereafter, the prosecutor sent a letter to my attorney making a formal settlement offer. **Under the circumstances, I had no choice but to agree to the DOJ and IRS keeping our legally earned money.** I faced potential criminal charges for crimes I did not know I had committed, but that a U.S. federal prosecutor nonetheless threatened to bring against me. So under duress, I agreed to the civil forfeiture the prosecutor and the U.S. Department of Justice dictated. I was forced to consent to a civil forfeiture of 5% of the funds deposited to the bank account over the previous 3 years and in 2011, \$41,790.

Adding insult to injury, the prosecutor advised my attorney that the "deal," which I accepted under duress, was the "best" deal he had offered to anyone. I feel that I had absolutely no rational choice but to agree to the unfair forfeiture. My family's option was literally to bet, and likely forfeit, our farm—the C.W. Taylor Farm, LLC. We decided that it was better to agree to allow the DOJ and IRS to confiscate the money that it illegally seized than to contest the forfeiture or potential criminal prosecution (or both)—which we thought almost assuredly could be decided in favor of the federal government. The potential cost of defending myself was astronomical, and it greatly exceeded our family's resources. Settling was an obvious and sensible business decision in the circumstances, made under duress in order to avoid criminal

prosecution and potentially, a long jail term. I understand that a judgment for the “agreed” terms of the forfeiture was subsequently entered by the U.S. District Court for the District of Maryland.

I think what the DOJ and IRS did to my family was reprehensible. The forfeiture action received attention from the news media. This caused my family personal embarrassment, emotional distress, and financial hardship. The IRS published a Statement of Seizure in the local newspapers. Two fellow farmers and businessmen contacted us about the forfeiture. On my attorney’s advice, we declined comment to the numerous press inquiries. The damage to our reputation, our health, and to our business was considerable, as was the cost of defending ourselves.

We recently filed a verified Petition with the U.S. Department of Justice asking it to return the money that was illegally seized from us, together with interest, attorney fees and other costs. The DOJ acknowledged our Petition, and it included a letter it says it sent last June, that appears to make a veiled threat to still prosecute me. We do not see how even if we should get our money back that we will ever be whole. This was a devastating and undeserved blow to our family that undermined our faith in the federal government, caused unwarranted embarrassment and harm to our family and our business, and was a very ugly chapter of our lives.

With all the illegal financial activity going on—such as drug dealing, human trafficking, and terrorist financing-- the DOJ and the IRS should have better things to do than stealing legally earned money from hardworking taxpayers.



Chairman ROSKAM. We will take you up on it. Thank you, Mr. Taylor.

Mr. Sowers.

**STATEMENT OF RANDY SOWERS, SOUTH MOUNTAIN
CREAMERY**

Mr. SOWERS. Good morning. Mr. Chairman, thank you for inviting me back for a second time. My story is about the same as Mr. Taylor's. We have been over this a lot of times.

My wife Karen is here today, and we have been working 35 years for this business that we have. It is a tough business. Just to get here this morning, I milked cows this morning at 12:30. We left home and came down here at 4 o'clock because I didn't want to miss the meeting and didn't want to get into traffic. I don't like driving in traffic, so we slept in the garage for 2 hours just to make sure we got here on time.

But we work every day. I mean, in 35 years we get very few days off. And we haven't had a day off since November except I was in the hospital, I had appendicitis that busted the other day and I got 4 days off. It is a nice vacation. They wouldn't let me out of the hospital.

But the same thing, I mean, these people come into your business, place of business. And farmers always try to do things the way we are supposed to do it. We don't need more trouble than we already have. The regulations change so often, you never know when you might be doing something wrong.

I don't disagree with the government coming in and looking at things, but they need to be more—like Mr. Taylor said. I mean, they come in. They make demands. They don't come in like they are just in there to check on you or to make sure you know what is going on and how to do it to keep yourself out of trouble.

And they do it in front of your employees, flashing their badges, demanding this and demanding that, instead of calling ahead and saying, "Look, this is what is going on. We need this information. Get it together. You know, we will meet and we will talk about it." But that is just not the way it happens.

And we were scared. We were scared from the beginning about being thrown in prison. I mean, we didn't know what to do. My lawyer didn't know anything about it. And how we got ahold of Paul Kamenar, I don't know. I mean, just an act of God, I guess, that he dealt with this kind of stuff before.

Our agent said too, I mean, you could tell they were besides themselves. They didn't, you know, want to be out there doing what they were doing, but it was their job. And they said this has gone this far, you know, you are going to have to continue this through the process.

So our lawyers called Cassella, who was the prosecutor, and he kind of walked through things and said this is the way it is going to happen. And that is the way we figured it was going to happen. I mean, we already had a date set for a grand jury. I mean, if we wanted to present our case we had to go to the grand jury. But they had what they needed. I mean, the bank teller told my wife to put the keep it under 10. That is what she did. We never had

over 10 too often. Once in a while she did, and that day she actually did have more than 10.

So she had no clue of what she was doing. We process milk, we do farmers markets, so we get a lot of cash. I mean, we just handle a lot of cash. And every Monday she deposits whatever it was, minus what she needed for what she had to have cash for her farmers market. So she couldn't deposit it all.

I wanted to tell everybody about it and I did tell everybody at the farmers markets, whoever I talked to, because I was upset and I wanted other people to be upset too. So I told everybody. But my lawyers told me I should keep my mouth shut, except for Paul.

And Paul, he is a go-getter like I am, wanted to tell everybody and do something about it. And everybody said, "Well, you know, you do that, they are going to send every agent they got in there to harass you. If you are going to do this, make sure you understand that that is what is going to happen."

So I really didn't do anything until we get the call from Baltimore City Paper, wanted to do a story, and I said, "You know, I really would love to tell you. I can't tell." He said, "Well, you know, I am going to do a story. It is not going to look good on your part."

So the reporter did a beautiful job. He just did a beautiful job. He put it just the way it was. And I think that is what started a lot of this rolling, because he did a good job.

We didn't have any choice but to take the \$29,000 settlement. I mean, I couldn't have hired lawyers and defended myself for less money than that. But when the paperwork came through, it wasn't the same as the Taylor's. We already knew what the Taylor's was and we asked, "Well, why is ours different?" And they said, "Well, because you went to the press." And we have an email from Cassella to my lawyer that it is because you went to the press, is why, you know, we are going to be tougher on you.

Like I say again, we scared to death. I mean, to think that they could throw my wife in jail for depositing cash in a bank. I mean, it was just unbelievable. Unbelievable.

We continue today to try to pay the bills. I mean, I am paying bills this week with money I am depending on getting for tonight's deliveries yet.

You know, farming is a tough job. Any business you run on your own, it is a tough job. I mean, this government needs, this country needs people like us. That is why the country is in bad shape. And they just need to let us do our jobs. I mean, we need some, you know, once in a while we need some guidance and we don't mind that, but it has got to come different than what this has come.

We filed to get our money back because they changed their mind and said, "Yeah, we were wrong." That is why we filed petitions. I haven't heard anything. I mean, I could use the \$29,000 right now for sure.

[The prepared statement of Mr. Sowers follows:]

**BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT**

Hearing on Protecting Small Businesses

From IRS Abuse, Part II

May 25, 2016

10:00 a.m.

Rayburn House Office Building

Room B318

Testimony of Randy Sowers

Good morning, Chairman Roskam, Ranking Member Lewis, and Members of the Committee. I am pleased to have this opportunity to appear for the second time before this Committee to talk about the IRS's use of civil forfeiture to take my bank account, as well as my fight today to get that money back.

I want to take this opportunity to thank the Committee for sending a letter signed by all the Members to the Secretary of the Treasury after I testified last year requesting that my money be returned. Your work on behalf of Americans wrongly targeted by the IRS is greatly appreciated.

My Farming Business

Along with my wife, Karen, I have owned and operated South Mountain Creamery, a well-known dairy farm in Frederick County, Maryland, for over three decades. Karen and I were both born in Frederick County; we both had grandparents who were farmers in Frederick County; and we met while participating in a local 4-H program. We opened our farm in 1981, when we purchased our first one hundred cows, and we bought the land where the creamery is located in 1987. For the first ten years, we mostly lived off Karen's income as a teacher, but in the 1990s the farm began to turn a profit. We put up our first chicken house in 1990, and Karen was able to quit her job as a teacher. Today, our farm produces and sells dairy products

and eggs throughout the surrounding area, not only at farmers' markets but also through a growing home delivery service.

Karen and I work practically around the clock to care for our animals. Every night, Karen and I go to sleep early and then wake up around midnight to milk the cows. We work through the night, until 4:30 or 5:00 a.m., and then we go back to sleep for a few hours before beginning our day. Our cows never take days off, so we repeat the same routine seven days a week and rarely take vacations.

For years, Karen and I have sold our products at farmers' markets. At some points we have sold at as many as seven markets, but we currently only sell at two. One market is held on Saturdays, and the other is held on Sundays. Both are in Baltimore. To get to a market, Karen and I pack up our truck and leave the farm by 4:30 a.m. for the drive into the city.

Because customers at farmers' markets typically pay in cash, Karen and I often have cash to deposit at the bank. After one particularly busy weekend in spring 2011, a bank teller told Karen that cash deposits over \$10,000 would require that the teller fill out unspecified "paperwork." From that point forward, Karen kept the size of our cash deposits under \$10,000 in order to make life easier for employees of the bank by avoiding what she believed was unnecessary red tape.

The Seizure

On February 29, 2012, two armed IRS agents came out to the farm to notify me that the IRS had seized the farm's entire bank account—over \$60,000. The agents explained that my money had been seized under the structuring laws. At that point, I had never before heard the term “structuring,” and I had no idea that depositing cash in the bank could even potentially be a federal crime. Nobody from the bank or the government warned me that under-\$10,000 bank deposits could lead to the seizure of our bank account. Indeed, nobody from the government contacted me about our bank deposits until *after* they seized our bank account.

The IRS agents who came to notify me about the seizure were apologetic in their manner and told me that they did not believe that Karen and I were criminals. However, the agents explained that a judge had already issued a warrant for the seizure of the bank account, and they said they had no choice but to carry through with the seizure.

The IRS agents also served me with a *criminal* grand jury subpoena seeking additional information about our bank deposits. I was shocked that the government would even consider bringing criminal charges when I had done nothing wrong.

Forced Settlement And Forfeiture

After the seizure, I contacted Dave Watt, who is the attorney for South Mountain Creamery, and Dave reached out to Stefan Cassella, the Assistant United States Attorney responsible for the seizure, in an attempt to resolve the case. Dave also enlisted the help of Paul Kamenar, a Washington, D.C. attorney experienced in federal civil and criminal enforcement, and Paul provided additional advice and assistance.

When Dave contacted Stefan Cassella, Mr. Cassella made clear that he expected the case would be resolved through a settlement. Mr. Cassella said that my attorneys should offer a settlement amount somewhere below the amount that had been seized, that Mr. Cassella would then counter, and that we would arrive at a forfeiture amount somewhere in the middle.

In the meantime, in April 2012, a reporter from *The City Paper* in Baltimore called me for comment about the seizure. I told the reporter the truth, which was that Karen and I had no idea that we were even potentially violating the law when we deposited our money in the bank.

Mr. Cassella filed a formal forfeiture complaint the very day after that article ran in *The City Paper*. And Mr. Cassella also informed my attorney, Dave Watt, that a forfeiture of \$29,500 was now his final settlement offer. When Mr. Cassella was asked why some terms of the settlement were less favorable than had been offered to Taylor Produce Farm on the Eastern

Shore, whose cash deposits were also seized under the structuring laws, Mr. Cassella candidly stated in an email: “Mr Taylor did not give an interview to the press.” I was being punished for exercising my First Amendment right to speak to the press.

When Mr. Cassella indicated that he was not open to further discussion, I felt I had little choice but to accept his offer. If I agreed to Mr. Cassella’s terms, I would have to forfeit about half of the \$60,000 seized. On the other hand, if I refused the offer I would have to go to court to fight for my money. A judicial proceeding would be expensive and time consuming. Even *without* going to court, I had already started to incur legal costs. At the same time, I needed whatever funds I could recover for my farming operation. For me to go to court to fight the seizure simply would not have been a rational business decision.

In weighing the government’s offer, I also had to consider the possibility that the government would attempt to seize additional money or even pursue criminal charges. The IRS agents who came to the farm told me that the judge who approved the seizure had given them authority to take anything up to \$243,455—the amount of cash deposited in the account over a period of eight months. In addition, as I already mentioned, the IRS agents who came to my farm served me with a criminal grand jury subpoena. I was

concerned that the government might take additional money or file criminal charges if I did not agree to Mr. Cassella's demands.

My concern about criminal charges was solidified further by the terms of the settlement offered by the government. In the agreement, the government stated that it would not pursue criminal structuring charges if I agreed to the forfeiture. This entire ordeal was taking an emotional toll on me and my wife, as the government was treating us as if we were criminals even though we had done nothing wrong.

Feeling I had no real choice, I agreed to forfeit \$29,500 to the United States government.

Fighting For Return Of My Money

In July 2015, I joined with the Institute for Justice to file a petition with the federal government seeking the return of my money. Dave Watt and Paul Kamenar also represented me in filing the petition.

It is my understanding that the IRS has announced a change of policy under which they are no longer seizing money in cases like mine. If the IRS realizes that it was wrong to take my money—and if the IRS would not take my money today—I do not think they should be allowed to keep it just because they took it before that policy change.

In my petition, I have asked the government to return the \$29,500 that was taken from me by the IRS. I worked hard to earn that money, and I do

not think the government should be allowed to keep it just because of how my wife and I deposited the legitimate proceeds of our business into the bank. I also hope that my petition can light a way for other people in similar circumstances to get their money back too.

I am a man of my word, and I stick to my agreements. But my “agreement” to give up \$29,500 was made under overwhelming pressure, including the implicit threat that federal prosecutors would try to put me in jail if I did not agree. I do not believe such an agreement is valid. To me, it was a case of extortion by the government.

Over 10 months have gone by since I filed my petition. I am still waiting for the government’s response.

Conclusion

The IRS took something that does not belong to them and that they had no right to take. Now I am asking them to do the right thing and give it back. Thank you for the opportunity to testify and for all your previous help in my struggle to get back money taken from me and others by the IRS.



Chairman ROSKAM. Mr. Sowers, thank you. We are going to have a chance to have many members that want to inquire of you, so why don't we leave it there for now.

Let me turn to Mr. Johnson.

STATEMENT OF ROBERT JOHNSON, INSTITUTE FOR JUSTICE

Mr. JOHNSON. Good morning. Chairman Roskam, Ranking Member Lewis, thank you for inviting me here to testify about the IRS' use of civil forfeiture to take money from small businesses that are accused of nothing more than doing business in cash.

My name is Robert Johnson. I am an attorney at the Institute for Justice. It is a nonprofit law firm that litigates cases across the country to protect property rights.

As the committee is aware, there has been a series of cases where the IRS has taken money, often entire bank accounts from small businesses, simply because they deposited cash in the bank in amounts under \$10,000. The IRS calls this structuring and it treats these businesses like criminals. But these are legitimate businesses that have done nothing wrong.

In October 2014, the IRS announced a policy change where they said they would no longer apply the structuring laws to these kinds of legitimate businesses. Henceforth, they would only apply the laws to real criminals engaged in real criminal activity. And in February of 2015, the IRS Commissioner appeared before this committee and actually apologized to people who had their money taken before that policy change.

Despite all of that, the IRS continues to hold money that was seized from property owners before these policy changes. Between 2007 and 2013, the IRS seized about \$43 million from over 600 people in cases where they alleged no criminal activity apart from the mere act of under-\$10,000 bank deposits or withdrawals. Those people are still waiting to get their money back.

One of those people is Randy Sowers, who is here to testify today, and you heard his story about how the IRS took \$29,500 from his business for no real reason. Randy joined with the Institute for Justice in July of 2015 to file a petition demanding the return of that money. Ten months have gone by. That petition is still pending with the Department of Justice and we have received no answer apart from a letter stating that they received the petition and are considering it.

Now, the IRS would not take that money today. They admitted they were wrong when they changed their policies. Now they need to do the right thing and they need to give that money back.

At the same time, the IRS also is continuing to take money and to try to force small businesses to forfeit money under the structuring laws. Just yesterday, the Institute for Justice announced a new lawsuit on behalf of Vocatura's Bakery, a third-generation family business in Norwich, Connecticut, that had \$68,000 seized for structuring in May 2013.

For the 3 years that followed that time, the IRS and Department of Justice held possession of that money and they did nothing to bring their case before a court. They didn't file criminal charges. They didn't file civil charges. They did nothing. But what they did

do was attempt to pressure the Vocaturas to agree to the voluntary forfeiture of those funds.

The structuring issue received significant attention in the press and the government dropped the issue for 18 months. But then in February of 2016, they sent the Vocaturas a proposed plea agreement demanding that they plead guilty to criminal structuring charges. And that is just earlier this year. And under this proposed plea, the Vocaturas would have agreed to forfeit \$68,000 that was seized from the bakery, as well as an additional \$160,000 in personal assets, and they would have faced between 3 to 4 years' time in prison.

The brothers rejected that plea agreement because they believed they had done nothing wrong, and immediately after they rejected the plea agreement the IRS served them with a subpoena, a criminal grand jury subpoena, demanding 8 years of financial records for the business, practically every record that has been generated by this business since January of 2008.

Yesterday, after the Institute for Justice filed suit on behalf of the Vocaturas, the IRS announced within hours that they were giving back the \$68,000 that they had seized, but they are continuing to go forward with their grand jury investigation.

In short, this is a problem that is far from solved. The IRS' change in policy needs to be codified in statute so that it is judicially enforceable and so that property owners, like the Vocaturas, can actually rely on it when their rights are not respected, and the IRS needs to give back money back that it took before its policy change. Again, this is money that the IRS would not take today if it was following its policy and it needs to give that money back.

Thank you again for the opportunity to testify.

[The prepared statement of Mr. Johnson follows:]

**BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT**

Hearing on Protecting Small Businesses

From IRS Abuse, Part II

May 25, 2016

10:00 a.m.

Rayburn House Office Building

Room B318

Testimony of Robert Everett Johnson

Good morning, Chairman Roskam, Ranking Member Lewis, and Members of the Committee. I am pleased to have the opportunity to talk to you about the issue of civil forfeiture, and specifically the IRS's use of so-called "structuring" laws to take money from small business owners who are guilty of nothing more than depositing money at the bank.

I am an attorney at the Institute for Justice, a public-interest law firm that litigates to protect property rights nationwide. I represent Randy Sowers—also testifying today—in his effort to recover funds taken by the IRS under the structuring laws.

I previously testified before this Committee in February 2015, and at that time the IRS had recently issued a change of policy designed to protect small business owners from abuse under the structuring laws. At that hearing, IRS Commissioner Koskinen apologized to individuals who were wrongly targeted for forfeiture merely because of their bank deposits.

Today, over one year later, the government still has not corrected its abuse of the structuring laws. The government has not returned money that was seized and forfeited *before* its policy change. Randy Sowers has filed a petition asking the government to return \$29,500 seized in May 2012, and the government has not answered that petition although more than 10 months have gone by since it was filed.

More than 600 individuals—who together had over \$43 million taken by the IRS because of how they deposited or withdrew money from the bank—also continue to wait for some measure of justice.

At the same time, small business owners *continue* to face persecution at the hands of federal prosecutors because of their bank deposits. Vocatura's Bakery, a third-generation family business located in Norwich, Connecticut, had over \$68,000 seized by the IRS in May 2013 under the structuring laws. The government has now held the Vocaturas' money for over three years without bringing its case before a judge—violating statutory deadlines set by Congress as well as internal DOJ policies. Just recently, in February 2016, the government pressured the Vocaturas to plead guilty to *criminal* structuring charges and to agree to forfeit both the initial \$68,000 seized by the IRS as well as an additional sum of approximately \$160,000. When the Vocaturas refused, federal prosecutors retaliated by serving the Vocaturas with an overbroad grand jury subpoena seeking *eight years* of almost every financial record generated by the business.

In short, much remains to be done. Property owners like Randy Sowers are still waiting to get back money that never should have been seized in the first place. And others, like the Vocatura family, continue to face IRS agents and federal prosecutors who want to take their money—and even put them in prison—because of how they deposit their hard-earned money in the bank.

Structuring: The Law Of Bank Deposits

As the Committee is by now well aware, so-called “structuring” laws criminalize everyday financial transactions that most Americans would never think could be a crime.

Federal law requires banks to file a currency transaction report with the U.S. Department of the Treasury for any cash transaction in excess of \$10,000 (an amount that has not been adjusted for inflation since first being set in the 1970s, when \$10,000 was equivalent to over \$60,000 today).¹ Federal structuring law, meanwhile, makes it unlawful for a bank customer to break up cash deposits or withdrawals into amounts below that \$10,000 threshold “for the purpose of evading” federal currency reporting.² A person who has violated this latter prohibition is said to have impermissibly “structured” cash transactions.

These laws were intended to target drug dealers and other hardened criminals engaged in money laundering or other criminal activity. In practice, however, the IRS has enforced the structuring laws against innocent Americans who have no idea that depositing cash in the bank could possibly get them in trouble with the law. For instance:

¹ 31 U.S.C. § 5313

² 31 U.S.C. § 5324.

- In August 2013, Carole Hinders, the proprietor of Mrs. Lady's Mexican Food, a small-town restaurant in Spirit Lake, Iowa, had more than \$32,000 seized by the IRS—the restaurant's entire bank account.³ Years ago, Carole's mother told her that depositing more than \$10,000 created a hassle for the bank. Carole had no idea that trying to make life easier for the bank might be a federal crime. After first attempting to pressure Carole to agree to forfeit a portion of the money, the IRS finally agreed to return all of Carole's money sixteen months after the seizure.
- In March 2013, Mark Zaniewski, the proprietor of Metro Marathon service station, in Sterling Heights, Michigan, had his business's entire bank account—over \$33,000—seized by the IRS.⁴ An IRS agent advised Mark that he should go ahead and deposit any additional funds belonging to Metro Marathon into the account to avoid bouncing checks to his vendors. Mark borrowed \$10,000 from his sister-in-law and also made additional deposits of credit card receipts into the account. Then, in early April 2013, the IRS seized all this newly deposited money (over \$37,000) from the account. Although Mark often deposits cash in

³ See *United States v. Thirty-Two Thousand Eight Hundred Twenty Dollars and Fifty-Six Cents in U.S. Currency*, No. 13-CV-4102 (N.D. Iowa).

⁴ See *United States v. Thirty-Three Thousand Two Hundred Forty-Four Dollars and Eighty-Six Cents in U.S. Currency*, No. 13-cv-13990 (E.D. Mich.).

amounts under \$10,000, he also sometimes deposits more than \$10,000; this pattern reflects the fact that he goes to the bank every few days to deposit cash to cover vendor bills and to safeguard surplus cash. Eight months after the seizure, the IRS finally agreed to return the money.

- In May 2012, Jeffrey, Richard, and Mitchell Hirsch, the proprietors of Bi-County Distributors, Inc., had over \$446,000 seized by the IRS—once again, the entire contents of their business’s bank account.⁵ The Hirsch brothers were advised by their own accountant to keep cash deposits under \$10,000 to reduce paperwork burdens for their banks, as banks today often close the accounts of customers that make frequent large cash deposits. The IRS held the Hirsch brothers’ money for thirty-two months, over two-and-a-half years, and repeatedly sought to negotiate a settlement under which the brothers would agree to forfeit a significant portion of the money. Finally, however, after the case attracted media scrutiny, the IRS agreed to return the money in full.

In all these cases, the individuals targeted by the IRS had no interest in concealing their activities from the government; each had a legitimate purpose for their banking practices. None of these individuals was ever

⁵ See *In the Matter of the Seizure of Four Hundred Forty Six Thousand Six Hundred Fifty One Dollars and Eleven Cents in U.S. Currency*, No. 14-mc-1288 (E.D.N.Y.).

accused of any crime other than depositing cash in the bank in amounts under \$10,000. Yet the government seized their money without warning and without asking any questions prior to the seizure. Then, the government forced them to fight for months or years to get their money back.

Shockingly, when the IRS engages in such tactics, it can use the money that it takes to pad its own budget. When the IRS uses civil forfeiture to take money for structuring violations, the money is deposited in the Treasury Forfeiture Fund.⁶ By law, the assets in the Treasury Forfeiture Fund are available “without fiscal year limitation” for use by the Secretary of the Treasury to fund the law enforcement activities of the IRS and other agencies within the Treasury Department—including to fund additional seizures.⁷ In other words, the money that the IRS takes from hardworking Americans can be put back to work to seize money from *additional* Americans.

In response to significant and negative press attention, including a front-page article in the *New York Times*, the IRS announced in October 2014 that it was adopting a new policy under which it would only pursue structuring cases where the money came from an illegal source. The DOJ adopted a similar policy in March 2015. These policy changes apply to both

⁶ See U.S. Dept. of Treasury, Treasury Executive Office for Asset Forfeiture, <http://1.usa.gov/1XrLor5>.

⁷ 31 U.S.C. § 9703(a).

civil and criminal forfeitures and are designed to prevent these types of cases from occurring in the future. But these policy changes are not binding on the agencies and could be reversed at any time. They also fail to provide meaningful legal protection, as they do not provide a statutory defense to property owners wrongly targeted for forfeiture. And, of course, these changes do nothing at all to help the hundreds of property owners who had their property taken before IRS and DOJ announced their policy changes.

The Government Continues To Harass Small Business Owners
Because Of Their Bank Deposits

Notwithstanding the IRS and DOJ policy change announcements, the government today continues to harass small business owners in the name of enforcing the structuring laws.

When this Committee last met to discuss this issue, in February 2015, Representative Holding asked the Commissioner of the IRS about a case in which the government was continuing to seek the forfeiture of more than \$107,000 taken from Lyndon McLellan, the owner of a convenience store in Robeson County, North Carolina.⁸ Commissioner Koskinen responded, “If that cases exists, then it’s not following the policy.” Yet, when the responsible federal prosecutor was informed about this exchange, he responded with an

⁸ See *United States v. \$107,702.66 in United States Currency*, No. 7:14-cv-295 (E.D.N.C.).

email stating that he was “concerned” that details about the case had been provided to Congress. He went on:

Whoever made [the documents] public may serve their own interest but will not help this particular case.

Your client needs to resolve this or litigate it. But publicity about it doesn’t help. It just ratchets up feelings in the agency.

My offer is to return 50% of the money. The offer is good until March 30th COB.⁹

The Institute for Justice subsequently took over as counsel for Lyndon in the forfeiture case. The government agreed to return the seized money *in full* despite having just recently demanded 50% of the funds—but only after the case received significant attention in the press.

Since that time, the government has continued to harass another small business—Vocatura’s Bakery, in Norwich, Connecticut—because of a pattern of under-\$10,000 bank deposits. As in Lyndon’s case, the seizure of the business’s funds occurred prior to the IRS and DOJ policy changes, but the government has continued to seek the forfeiture of the funds even after the policy changes were announced.

Vocatura’s Bakery is a third-generation family business. The current owners grew up in the bakery and can tell you stories about playing there as

⁹ A copy of this email is available online at <http://ij.org/r/wp-content/uploads/2015/05/westemail.pdf>.

kids. Today, they work around the clock to keep the bakery going. The baking is done mostly at night, and then the fresh bread is sold throughout the day. The Vocaturas do significant cash business at their retail store, and for years they made frequent under-\$10,000 cash deposits at the bank.

On May 1, 2013, a group of armed IRS agents and a U.S. Marshal showed up without advance warning at the bakery. From the start, the government conducted the case as a fishing expedition: The Vocaturas report that the agents asked a series of outlandish questions, including whether they were dealing drugs or running a prostitution ring out of the bakery. Then, at the end of the raid, the agents informed the Vocaturas that the government had seized the bakery's entire operating account—over \$68,000—under the structuring laws.

During the three years that have passed since the seizure, the government has done *nothing* to prove its case to a judge. The government has simply held the Vocaturas' money and applied steadily mounting pressure to convince the Vocaturas to agree to "voluntary" forfeiture of the funds. This approach violates federal law, which requires the government to commence civil or criminal forfeiture proceedings within 150 to 180 days

following a seizure.¹⁰ This approach also violates DOJ's March 2015 policy announcement, which states that a federal prosecutor "must either file a criminal indictment or a civil complaint against the asset" within "150 days of a seizure based on structuring" absent specific approval from the relevant United States Attorney.¹¹

Notably, after IRS abuse of the structuring laws began to attract significant attention in the press, the government went over a year without contacting the Vocaturas about the seizure. Then, on February 18, 2016, the government sent two of the Vocatura brothers proposed *criminal* plea agreements, under which the brothers would have to agree to waive their right to indictment by a grand jury and plead guilty to structuring. Under the agreements, the Vocaturas would have agreed to forfeit the initial \$68,000 seized by the IRS as well as an *additional* approximately \$160,000 that could be taken from the brothers' personal assets. The brothers also would have faced anywhere from 37 to 46 months in prison.

¹⁰ 18 U.S.C. § 983(a). The government has 60 days to send notice of a seizure to the property owner, at which point the property owner has 30 days to file a claim to the property. After a claim has been filed, the government has 90 days to either file a civil forfeiture proceeding or obtain a criminal indictment containing allegations that the property is subject to forfeiture.

¹¹ A copy of the DOJ's policy change memorandum is available at <http://1.usa.gov/1W8Mzg2>.

The Vocaturas rejected the government's proposed plea agreements, as they feel they have done nothing wrong. In response, one might have thought that the government would carry through with its threat of prosecution by seeking a criminal indictment. But the government did nothing of the sort. Instead, the responsible federal prosecutor informed the Vocaturas that, if they did not plead guilty to structuring, he would launch a criminal tax investigation into their business.

On May 10, 2016, the prosecutor followed through with his threat and served the Vocaturas with an incredibly overbroad grand jury subpoena seeking *eight years* of practically every record generated by the business. The subpoena demands the following for the period between January 1, 2008 and the present:

All books, general ledgers, records, bank statements, cancelled checks, deposit tickets, work papers, financial statements, correspondence, Form W-2's and Form 1099's issued, payroll records for any and all employees, list of employees with addresses and contact information, records of suppliers and distributors, cash receipts journals, and other pertinent documents furnished by or on behalf of [Vocatura's Bakery] for the preparation of state and federal tax returns and for any other entity in which [the owners of Vocatura's Bakery have] a financial interest . . .

All records, books of account, and other documents or papers relative to financial transactions of [Vocatura's Bakery] . . . [and]
...

All invoices, receipts, sales slips, and billing records for [the bakery's] clients/customers, including . . . all correspondence with this client/customer.

In other words, because the Vocaturas refused to agree to plead guilty to criminal charges of structuring, the government launched a fishing expedition into practically every aspect of the business—and launched this fishing expedition a full three years after the seizure of the bakery's money.

The IRS Still Holds Millions In Ill-Gotten Gains

At the same time that the government has continued to pursue forfeitures under the structuring laws, the government also has failed to return millions of dollars seized *before* the IRS and DOJ policy changes.

Through requests under the Freedom of Information Act, the Institute for Justice has obtained data from the IRS suggesting that the agency today holds tens of millions of dollars that it would not have seized under current policies. Between 2007 and 2013, the IRS forfeited about \$43 million in 618 cases in which the IRS reported no suspicion of criminal activity other than the mere fact of sub-\$10,000 cash deposits or withdrawals.¹²

In July 2015, the Institute for Justice launched an effort to recover money seized and forfeited under the structuring laws prior to the DOJ and

¹² See Dick M. Carpenter II, Ph.D and Larry Salzman, Institute for Justice, *Seize First, Question Later*, at 17 (2015). While *Seize First* does not break down these specific figures, they are derived from the same data that forms the basis for Figure 3 in the report.

IRS policy changes.¹³ The Institute filed petitions on behalf of two property owners: Randy Sowers, also testifying today, and a North Carolina convenience store owner named Khalid Quran who had over \$150,000 taken because he withdrew money from the bank in amounts under \$10,000.

These petitions—termed “petitions for remission or mitigation”—were filed under a provision of federal law that allows the government to return money even after it has been permanently forfeited to the government.¹⁴ They are administrative filings—submitted to IRS or DOJ, rather than to a court—asking the government to voluntarily return money that it took through civil forfeiture. In many ways, they are akin to a petition seeking a presidential pardon, except for civil forfeiture rather than the criminal law. The government has discretion to grant a petition for remission or mitigation, and thus to return forfeited money, whenever it determines that granting the petition would advance the interests of justice.

Significantly, the fact that a property owner “voluntarily” agreed to the forfeiture of funds in a settlement does not bar the government from returning those funds in response to a remission petition. The DOJ’s *U.S. Attorneys’ Manual* explains that “[t]he remission and mitigation process, like

¹³ Information about this effort, including relevant documents and correspondence, may be found at <http://ij.org/case/structuring-petition/>.

¹⁴ See 19 U.S.C. § 1618; 31 U.S.C. § 5321.

the pardon process in criminal cases, is completely independent of the litigation and case settlement process.”¹⁵

Nor should the existence of such settlement agreements be used as an excuse to avoid returning forfeited money. Property owners often had little choice other than to agree to the forfeiture of their funds: The cost to litigate would frequently swamp the amount of money at issue, as half of all seizures under the structuring laws between 2005 and 2012 were of amounts under \$34,000.¹⁶ And, as the Sowers case demonstrates, property owners also had to contend with the threat that they would be subject to *criminal* sanctions or additional property seizures if they did not agree to give up their money. Against these considerations, the government frequently offered to return half or more of the seized money in exchange for a “voluntary” agreement to forfeit the remainder.

The government also plainly has the resources to return this money. While past structuring forfeitures that would violate current policies likely total around \$43 million for the period between 2007 and 2013, the Treasury Forfeiture Fund today contains a far larger amount. At the close of Fiscal

¹⁵ *U.S. Attorneys’ Manual* § 9-113.400, available at <http://1.usa.gov/20klvJd>; see also *id.* (“No agreement, whether a settlement in civil judicial action or a plea agreement resolving both criminal charges and the forfeiture of assets, may contain any provision binding the Department and the agencies to a particular decision on a petition for remission or mitigation.”).

¹⁶ *Seize First*, *supra*, at 10.

Year 2015, the fund had a net position of \$6.1 *billion*.¹⁷ According to an internal Treasury audit, the fund closed 2015 “with \$4.6 billion in Gross Non-Exchange Revenues and a total of \$806.6 million for FY 2014, reflecting two, highly successful revenue years.”¹⁸ Pursuant to federal statute, these billions of dollars in forfeited assets can be used to return money that was wrongly seized from property owners.¹⁹

The IRS has, in fact, already granted one of the two petitions filed by the Institute for Justice. On February 18, 2016, the IRS agreed to return all of the money taken from Khalid Quran. Because Khalid’s forfeiture was processed as an administrative forfeiture—meaning the settlement occurred before the government had to file a forfeiture complaint in federal court—Khalid’s petition was decided by the IRS. By contrast, because Randy’s forfeiture was processed as a judicial forfeiture—meaning that the settlement occurred *after* a forfeiture complaint was filed—his petition is addressed to DOJ and will be decided by the Chief of DOJ’s Asset Forfeiture and Money Laundering Section.²⁰ As of today, the only response that Randy has received to his petition is a May 9, 2016 letter from DOJ stating that the agency has

¹⁷ See Office of Inspector General, Department of the Treasury, *Audit of the Department of the Treasury Forfeiture Fund’s Fiscal Years 2015 and 2014 Financial Statements* (Feb. 2016), available at <http://1.usa.gov/1RgaySn>.

¹⁸ *Id.* at 12.

¹⁹ 31 U.S.C. § 9705(a)(1)(E); see also *id.* § 9705(f)(2)(I)(ii).

²⁰ See 28 C.F.R. § 9.1(b)(2).

received a recommendation from IRS as to how to rule on the petition and is in the process of considering its own response.

If the IRS could return the \$150,000 taken from Khalid Quran, there is no reason the government could not also return the \$29,500 taken from Randy Sowers. Indeed, there is no reason the government could not return the tens of millions of dollars wrongly taken from hundreds of other property owners under the structuring laws. The government would not take that money under current DOJ and IRS policies. Indeed, IRS Commissioner Koskinen apologized for taking that money when he testified before this Committee in February 2015. Now the government should do the right thing and give that money back.

The IRS Evades Public Scrutiny

At the same time that the government has continued to pursue forfeitures under the structuring laws and has delayed return of previously-forfeited money, the IRS also has resisted efforts to bring transparency to this area of the law.

On March 3, 2015, the Institute for Justice submitted a Freedom of Information Act request to the IRS, seeking access to an IRS database that tracks the seizure and forfeiture of assets by the agency. The Institute previously requested access to a similar database maintained by DOJ, and DOJ granted access to its database without charging any fee. That database

formed the basis for an important series of *Washington Post* articles exploring DOJ's use of civil forfeiture.²¹ The IRS, however, was not nearly as accommodating: It responded to the Institute's request for access to *its* database by seeking to charge the Institute a \$753,760 fee because it claims the Institute is a "commercial use requester" even though the Institute is a 501(c)(3) non-profit that publishes its research reports for free online and has no "commercial use" for the data. This three-quarters-of-a-million dollar fee is so large that it amounts to a denial of the request.

The Institute filed an administrative appeal with the IRS on December 14, 2015, asking the IRS to reconsider its decision. On January 8, 2016, the IRS sent a letter stating that the Institute has no right to appeal the decision imposing the fee because the decision "is not a denial" of the request. At the same time, the IRS has made clear that the decision imposing the fee is its "final response" to the FOIA request and that it is "closing [its] file in regard to this matter." This is straight out of Kafka: The IRS maintains that it can impose a three-quarters-of-a-million dollar fee for access to information and that there is no right to appeal such a determination.

As a result, the Institute for Justice still has not been granted access to the data that it seeks more than a year after making the FOIA request.

²¹ *Stop and Seize*, Washington Post, <http://wapo.st/1u6TICK>.

Further Reform Remains Needed

In light of the foregoing, it should be clear that further reform of the structuring laws remains desperately needed. Abuse of small business owners continues today, even after IRS and DOJ policy changes, and reform also is necessary to return money wrongly seized and forfeited in the past.

Among other things, Congress should:

- Eliminate the profit incentive that underlies this phenomenon by providing that property seizures by the IRS shall go to the general fund, rather than being available to the IRS to fund its operations.
- Codify IRS and DOJ policy changes by amending the legal definition of structuring to make clear that a person does not violate the structuring laws unless transactions are structured to conceal some other form of illegal activity. This would ensure that individuals have a judicial remedy in cases where IRS and DOJ do not follow their new policies.
- Enact legislation directing IRS and DOJ to return property that would not be seized under current IRS and DOJ policies for structuring cases. While property can and should be returned via the remission and mitigation process, a legislative directive to return property would provide more concrete assurance that property will be returned.
- Provide individuals targeted for alleged structuring with a right to a prompt post-seizure hearing at which they may provide an explanation

for a pattern of under-\$10,000 deposits or otherwise contest the legality of the seizure.

- Create new reporting requirements to increase transparency. IRS should be directed to create a publicly-available database providing a real-time catalogue of seizures and forfeitures, as well as to issue periodic reports to inform Congress and the public about the agency's use of the forfeiture laws—including the types of forfeitures, the agencies involved, and the conduct that leads to forfeiture.

Conclusion

In closing, I want to thank the Committee for its continued interest and engagement in this topic. The Committee's actions—including the letters that the Committee has sent in support of property owners seeking return of wrongly-seized property—have played an important part in the progress that has already been made on this issue. I look forward to continuing to work with the Committee to secure justice for Americans wrongly targeted by the IRS under the structuring laws.

Thank you for the opportunity to testify.



Chairman ROSKAM. Thank you all for your testimony.

We will now turn to member questions. Mr. Meehan is recognized.

Mr. MEEHAN. Thank you, Mr. Chairman.

And I want to thank each of the witnesses here for your testimony.

Mr. Sowers, your explanation of just your day today and what you have already done, it appears to me you worked harder in 1 day than the United States Senate has done in the month of May.

But I am grateful for your being here with Mr. Taylor and telling your story. It is also a very revealing story. And you run a small business. Is this a family business?

Mr. SOWERS. Yes.

Mr. MEEHAN. How many generations have been associated with this?

Mr. SOWERS. We are the first.

Mr. MEEHAN. First generation, but this is farming. When you are working during the course of the week, it is using other students? You have produce stands and other kinds of things along the side of the road?

Mr. SOWERS. We are dairy farmers. We have a processing plant and home deliver milk in the tristate area here.

Mr. MEEHAN. Okay.

Mr. SOWERS. So it is something we started—we started farming in 1981, but we started processing 15 years ago.

Mr. MEEHAN. During the course of each week is it likely that you will generate more than \$10,000 that will be—

Mr. SOWERS. It is still cash in that neighborhood. It is not normally over 10. It can be, depending on what is going on and—

Mr. MEEHAN. Well, that is an important point. So you were dealing in an economy which is a local economy, which by tradition is a cash-based economy. Is it not?

Mr. SOWERS. Well, the farmers markets are cash based. Now, we do home delivery. Home delivery is mostly through credit card, so that is not—

Mr. MEEHAN. But that is not part of it. But at the end of the week, the point being, with this cash business that is what is—

Mr. SOWERS. We do farmers markets and we have a store on the farm, and a lot of that money is cash.

Mr. MEEHAN. But in many weeks will you have proceeds that will be less than \$10,000.

Mr. SOWERS. Most weeks it is less than 10.

Mr. MEEHAN. Most weeks. And so even if you want to, you wouldn't be able to put in more than \$10,000?

Mr. SOWERS. No. It just happened that day. We had a festival and we had extra cash.

Mr. MEEHAN. Had you ever heard of structuring before?

Mr. SOWERS. Never in my life, no.

Mr. MEEHAN. When the agents came to your home, did they ever talk to you about representation of an attorney?

Mr. SOWERS. Our attorney actually had just left, and I tried to call him and he didn't answer the phone. I didn't think it was a problem because I just wondered how long it would be before they show up wanting to know where all of the cash came from.

So I didn't have any problem talking to them. But they kind of shut down the investigation when I said, "Well, you know, sometimes I have \$12- or \$15,000 in cash." And then they kind of didn't talk anymore and showed me the paperwork that they had already seized my account.

Mr. MEEHAN. Mr. Taylor, you run a similar kind of business? You are a small farmer with produce stands?

Mr. TAYLOR. Yes, sir.

Mr. MEEHAN. And would it be your experience during the course of each week that you would generally generate more than \$10,000 worth of income to be deposited?

Mr. TAYLOR. Generally, yes, sir.

Mr. MEEHAN. Generally.

Mr. TAYLOR. During the summer, in the 12 weeks of the summer, I do generate a lot of cash.

Mr. MEEHAN. Okay. You generate the cash. But your interest then in depositing in the bank is to get it in there on a timely basis. But were you aware of structuring laws prior to that point in time?

Mr. TAYLOR. I had never heard of structuring laws, no.

Mr. MEEHAN. Okay. So this is, once again, you deal on a cash basis, which is generally the economy of the region?

Mr. TAYLOR. Yes.

Mr. MEEHAN. Mr. Taylor, when you were confronted with this and your money was seized, what kind of impact did that have on you and your business?

Mr. TAYLOR. Well, my daughter paid for more of her wedding than she should have.

Mr. MEEHAN. So you had a wedding coming up but you did not have the resources?

Mr. TAYLOR. Yes.

Mr. MEEHAN. What did it do to your reputation in the community?

Mr. TAYLOR. I believe it hurt—it didn't hurt it with people that really know me, but the general public that I deal with, we had a family member in a restaurant and heard a comment from the booth next door: "Well, I used to think those Taylors were pretty honest, but I guess not."

Mr. MEEHAN. So there is a presumption, if the government is looking at, there must be doing something that you are doing wrong.

Mr. TAYLOR. You get known as the people that had the problem with the IRS.

Mr. MEEHAN. Have you ever had any problem before that with any governmental entity or any other criminal justice issue in your lifetime?

Mr. TAYLOR. No, sir.

Mr. MEEHAN. So this is the first time that you found out, is when the agents from the IRS walk into your—meet your wife, she offers them ice tea?

Mr. TAYLOR. Yes, sir.

Mr. MEEHAN. Did you ever have any opportunity to consult a lawyer prior to the questioning by these agents?

Mr. TAYLOR. No, sir.

Mr. MEEHAN. Did they ever at any point in time suggest to you that you ought to consult a lawyer?

Mr. TAYLOR. As they were leaving.

Mr. MEEHAN. As they were leaving. You had spoken to them for some period of time.

Mr. TAYLOR. We talked to them for over an hour. When they let us know that they had seized our money already, then we stopped answering questions and we said we need to get a lawyer.

Mr. MEEHAN. But by that point in time they had told you that they had seized your money and you now need a lawyer in order to be able to deal with them?

Mr. TAYLOR. Yes.

Mr. MEEHAN. Mr. Taylor, Mr. Sowers, thank you for your testimony, and I regret that you are in this situation.

Mr. TAYLOR. Thank you.

Mr. SOWERS. Thank you.

Chairman ROSKAM. Mr. Lewis.

Mr. LEWIS. Thank you very much, Mr. Chairman.

I want to thank you for being here.

I grew up on a farm. Farming is hard work. It is very difficult. It can depend on the weather, whether you produce, what type of living you make. I am very sympathetic toward what has happened to the two of you.

Mr. Taylor, I want to know, how has this affected not just your business, but your life and your family, the life of your family?

Mr. TAYLOR. Well, you are always looking over your shoulder. When you think you are doing the right thing you are still wondering, "Am I going to hear from somebody that I am doing the wrong thing?"

I have always tried to be very honest and upright in everything I do. And I just really—well, I don't have much faith in the government.

Mr. LEWIS. You have lost faith?

Mr. TAYLOR. In the government.

Mr. LEWIS. Really?

Mr. TAYLOR. Yes, sir.

Mr. LEWIS. You feel like you have been mistreated, that you have been wronged?

Mr. TAYLOR. Yes. They took my money with no notice and then they kept it, even though they found nothing wrong. They just kept it because they could. It is just not right.

Mr. LEWIS. What is the total amount that you feel like—

Mr. TAYLOR. They kept from me \$41,790. They seized \$93,000 that day. They kept \$41,790. My son quit taking wages for the rest of the year. He lived on some savings that he had built up. We didn't have any cash to start the next year with. We had to start using an operating loan which adds \$5,000 to \$8,000 to my interest expense each year. And I just this year got my son reimbursed for the wages he gave up in 2011.

Mr. LEWIS. Mr. Sowers, you testified before the subcommittee some time ago. Was it last year?

Mr. SOWERS. In February.

Mr. LEWIS. February.

Mr. SOWERS. Yes.

Mr. LEWIS. Has anything changed, anything you would like to tell us today that you didn't tell us before? Have there been any changes?

Mr. SOWERS. Well, I still think sometimes I am being harassed by the government when Department of Labor showed up the day before Christmas, you know, same thing, flashing their badges to my employees and demanding things. Those records are public record. I mean, there is nothing like we could hide anything. I mean, again, we weren't doing anything wrong, we didn't think.

But it has been 4 months, and the last thing we got out of them was they show up 1 day and say, "Here is the settlement that we think you ought to take, and if you don't agree to do this today, then we are going to start proceedings against you."

Mr. LEWIS. How long have you been farming?

Mr. SOWERS. Thirty-five years.

Mr. LEWIS. Mr. Taylor, how long have you been in business?

Mr. TAYLOR. Well, officially, about 40 years. I have been there all my life.

Mr. LEWIS. So it has been a way of life, and this is the first time something like this happened to you in 35 years or to you in 40 years?

Mr. TAYLOR. Yes, sir.

Mr. SOWERS. First time, yes.

Mr. LEWIS. So you are reaching out to your government for help.

Mr. SOWERS. Yes. I mean, we shouldn't be afraid of the government. We should depend on you. I mean, like I say, we don't do things wrong to do things wrong. Sometimes we do and we have to be told about it. But when they come out and fine you and don't care whether they put you out of business or not with what they are doing, it is not right.

Mr. LEWIS. Thank you both for being here. Thank you.

I yield back, Mr. Chairman.

Chairman ROSKAM. Thank you, Mr. Lewis.

Mr. Holding.

Mr. HOLDING. Thank you, Mr. Chairman.

Mr. Johnson, I understand that Mr. Sowers and Mr. Taylor and others have submitted petitions to get their money back, even though their cases have been closed. Is that correct?

Mr. JOHNSON. That is correct.

Mr. HOLDING. So would you explain the process by which they are trying to get their money back now? How does this work?

Mr. JOHNSON. These are called petitions for remission or mitigation. There is a statute that actually dates back to the first Congress that has been on the books for a long time that says that the government can give back money that was taken through civil forfeiture. This is a very well-established process. It is kind of like a pardon petition. It allows, even if you have a case where a case has been settled or decided by a court, just as the President may decide to pardon somebody who has been convicted, the agencies or government entities that have forfeited money can, as a matter of grace, return money to people that should not have been taken.

Mr. HOLDING. So, I mean, to be absolutely clear here, the IRS and DOJ have the authority to return these funds, correct?

Mr. JOHNSON. There is no question that they have the authority and there is also no question that they have the means. In 2015, the IRS put out a report saying that the Treasury Forfeiture Fund, the fund where these funds are deposited, currently holds about \$6.1 billion.

Mr. HOLDING. And we know of a case where the IRS has, indeed, returned these funds, correct?

Mr. JOHNSON. That is correct.

Mr. HOLDING. Can you explain a little bit about that case for me?

Mr. JOHNSON. Yes. So that was another petition that was filed by the Institute for Justice on behalf of a property owner named Khalid Quran, who runs a convenience store in North Carolina, and he had over \$150,000 taken by the IRS, permanently forfeited. We filed a petition saying that in light of the policy change, this money should be returned, and they did so. The IRS returned in full all the \$150,000.

And yet, what is surprising is that although the IRS has done the right thing for Ken and returned his \$150,000, the Department of Justice still has not done the right thing for Randy. And there are many other property owners who are still waiting for justice as well.

Mr. HOLDING. Mr. Johnson, you are probably aware that under this administration the guideline sentences for certain drug offenses have been revised down, particularly the crack cocaine sentencing guidelines. You know, if you are convicted today for possession or distribution of crack cocaine, your sentence is going to be much lower than it would have been in times past. You are aware of that, aren't you?

Mr. JOHNSON. Yes.

Mr. HOLDING. Are you also aware that U.S. Attorney's Offices around the country are spending a tremendous amount of time going through, finding convicted criminals who are in prison serving sentences and seeing if those new guidelines will apply, thereby reducing their sentences and letting them out of prison early?

Mr. JOHNSON. Yes.

Mr. HOLDING. So, obviously, the Department of Justice has the time and bandwidth to do that. But we are wondering here today whether the Department of Justice has the time and bandwidth to go back and return the funds that have been seized under rules that they have now disavowed, correct?

Mr. JOHNSON. Yeah, I think that is a great point. I mean, all we are asking in Randy's case or in the Taylors' case is for them to give back money to people who have actually gone ahead and filed a petition. But what the Department of Justice really should be doing is much more. They should be identifying people who are eligible to file a petition and they should be sending those people notice, informing them that they have the right to try to get their money back.

Mr. HOLDING. Thank you Mr. Johnson.

Mr. Chairman, I yield back.

Chairman ROSKAM. Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman, for holding this hearing.

And I am so embarrassed in being part of a government—I am proud to be an American and being a Member of Congress, but these horror stories, it is hard to believe that this could happen in our country. The whole idea that the Justice Department is taking time out to right the wrong for people that have been in prison for committing crimes—it doesn't justify it—has absolutely nothing to do with them not fulfilling their moral responsibilities to treat Americans and taxpayers with the dignity that they deserve.

Mr. Chairman, it is painful for me to see that this torture continues without coming to a shrieking halt, finding out who is responsible for it, and we, as Members of Congress and the Ways and Means Committee, not being able to guarantee these citizens that this should not have happened and we are going to correct it.

I am a former prosecutor. The law makes a lot of sense when you are dealing with criminals, drug dealers, with millions of dollars in cash and not being held accountable so they put it in the bank. It is less than \$10,000 so they don't have to report it. We are talking about criminals.

The opposite side of that coin are hard-working Americans that make us proud to have a family of people who do different things to make the country greater, and, historically, the farmers have been the heart of this great Nation.

Mr. Johnson, you have a list of American taxpayers that have been almost criminally treated by the Federal Government. As a lawyer, what have you done besides cause these people to be able to come here and to tell us, what are you suggesting, because, to me, we should as a committee and as a Congress bring the Treasury Department here with a list of these names and not ask for justice between now and the next hearing, but to have justice now and return of these funds with the penalties that are involved, with the inconvenience and the pain it has caused to your business and your reputation, and more importantly, to find out who made these decisions.

You don't have to be a lawyer or a lawmaker to know this is morally wrong. This amounts to stealing somebody's property by using coercion and the power of government. Just because it is the government doesn't mean that it is right. It makes it even worse.

So, Mr. Chairman, I hope that we have enough self-esteem in terms of our influence to be able to tell these gentlemen they don't have to worry about this happening to them or anybody else, that we feel the obligation, because it is our reputation that is tarnished, we are part of this government, and that we have to exonerate ourselves in finding out who caused this horrible thing to happen to you two and the members of the list.

And I promise you, Mr. Chairman, that these heroes that have gone through all of this pain on behalf of the people that don't have the time and cannot come here with likeable stories.

So thank you for your courage. This is what makes you great Americans. And I can assure you that as I leave this Congress, I cannot think of anything that I would want to do except to set this record straight and to have you, Mr. Taylor, to restore your confidence in the government. As we say in the neighborhood, we just screwed up. And someone should pay for this. And you should be

proud at the end of the day that we dedicated ourselves to restore your dignity as well as that of our great country.

And thank you for these hearings, Mr. Chairman.

Chairman ROSKAM. Thank you, Mr. Rangel.

Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman, thank you for hosting this hearing.

Wow. That is the most I can say. But we have uncovered a lot of disturbing items in this subcommittee, but this one definitely tops the icing on a lot of items.

One of the things that is the most troubling to me is that in these cases it looks like government attorneys handling the forfeitures have threatened to bring criminal charges to the businesses, to the business owners, if they did not agree to forfeit your money.

Mr. Taylor, did that happen to you?

Mr. TAYLOR. Yes, I believe it did.

Mr. SMITH. Mr. Sowers, did that happen to you?

Mr. SOWERS. Yes, definitely. And if I wouldn't have taken the settlement, they said they would have gone after the whole amount that we deposited for that summer, which was somewhere around \$300,000. So—

Mr. SMITH. And Mr. Sowers, in your situation, is it true that the U.S. attorney even tried to push harder settlement agreements because you spoke to the media?

Mr. SOWERS. Yes, that is true.

Mr. SMITH. Mr. Chairman, I would like to submit into the record the email that documents that from the U.S. attorney in this situation.

Chairman ROSKAM. Without objection, so ordered.

[The information follows:]

From: **David L. Watt, Esq.** dwatt@dwattlaw.com
 Subject: FW: Settlement Agreement
 Date: February 5, 2015 at 8:21 AM
 To: **Neely, Amanda** Amanda.Neely@mail.house.gov



Amanda,

Please see the email correspondence below referencing the settlement discussions with US Attorney. Also, I have attached an article written by Mr. Cassella outlining the strategy/methods of the government in pursuing asset forfeiture cases.

Dave

David L. Watt, Esq.
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From: Cassella, Stefan (USAMD) [<mailto:Stefan.Cassella@usdoj.gov>]
Sent: Tuesday, May 29, 2012 2:06 PM
To: David L. Watt, Esq.
Subject: RE: Settlement Agreement

Mr. Taylor did not give an interview to the press.

Stef

Stefan D. Cassella
 Assistant U.S. Attorney
 Chief, Asset Forfeiture and Money Laundering Section
 36 S. Charles Street, 4th Floor
 Baltimore, MD 21201
 410 209-4986

From: David L. Watt, Esq. [<mailto:dwatt@dwattlaw.com>]
Sent: Tuesday, May 29, 2012 1:41 PM
To: Cassella, Stefan (USAMD)
Subject: RE: Settlement Agreement
Importance: High

Stef,

I think we can still wrap this up before you leave on your trip. My client is still troubled by the "acknowledge" language, since he believes that he is admitting that there was reasonable cause. In the meantime, I've obtained the settlement in the Taylor Produce case (attached to this email), which is very similar to the Sowers' case, and there is no language regarding the Taylors' acknowledgement that there was reasonable cause for the seizure. We would even be satisfied with the same WHEREAS clauses as those in the Taylor agreement. I have a hard time explaining to my client why he is being treated differently, especially where your initial concern was that the government agents not be liable for any claims for the seizure (which we have covered in paragraph 5).

I hate to see this carried over til Mid-June since my clients really need the funds for their farming operations. Please reconsider your position and see if we can to an agreement on this final point this afternoon.

Thanks,

Dave

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From: Cassella, Stefan (USAMD) [<mailto:Stefan.Cassella@usdoj.gov>]
Sent: Tuesday, May 29, 2012 12:37 PM
To: David L. Watt, Esq.
Subject: RE: Settlement Agreement

David,

Sorry we couldn't get this worked out before I have to leave on my trip. We're not quite there: Mr. Sowers doesn't have to admit that he did anything wrong, but he does have to acknowledge that there was a reasonable basis for the seizure.

I'll be gone until June 11 but then we'll go almost immediately into trial. It should be over by July 1, so we can pick it up then. In the meantime, I will not object to your withholding your claim until July. If Mr. Sowers should change his mind and agree to sign the last version of the letter I sent, we can get it filed right away.

Stef

Stefan D. Cassella
Assistant U.S. Attorney

Assistant U.S. Attorney
 Chief, Asset Forfeiture and Money Laundering Section
 36 S. Charles Street, 4th Floor
 Baltimore, MD 21201
 410 209-4986

From: David L. Watt, Esq. [<mailto:dwatt@dwattlaw.com>]
Sent: Friday, May 25, 2012 2:57 PM
To: Cassella, Stefan (USAMD)
Subject: RE: Settlement Agreement
Importance: High

Stef,

I think we're almost there, but a couple of concerns. As I suggested in my May 15 email, my clients wanted language that they deny wrongdoing and did not want to admit there was reasonable cause. Again, one of my client's chief concerns is the perception in the marketplace. The latest draft replaces "admit" with "acknowledge" that reasonable cause existed, but in my client's view, this is the same thing. I originally would have preferred an affirmative "deny any wrongdoing", whereas you have "admit no wrongdoing." I know your chief concern is to ensure that government agents would not be subject to suit for seizure, but I think that's covered under Paragraph 5, so I don't believe the "acknowledge" clause is even necessary at this point.

Perhaps the easiest way to wrap this up before you go before you go abroad (vacation?) is to simply delete the "acknowledge" phrase in the 2nd WHEREAS clause since the 1st WHEREAS clause recites your filing which presumably was done with reasonable cause. So, the final version could keep the 1st WHEREAS clause reciting the government's suit, the 2nd WHEREAS clause would include my client's denial and then everything else is fine.

To sum it up, the 2nd WHEREAS clause in its entirety would be:

WHEREAS, the claimants deny any wrongdoing on their part; and

I know we're up against the deadline for filing a claim (again, I believe it's May 31, 2012), and we'd really like to wrap this up either today or at least by Tuesday (5/29/2012), so that we don't have to file a continuance.

Let me know if you have any questions.

Thanks,

Dave

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From: Cassella, Stefan (USAMD) [<mailto:Stefan.Cassella@usdoj.gov>]
Sent: Friday, May 25, 2012 8:55 AM
To: David L. Watt, Esq.
Subject: Settlement Agreement

Dave,

Here is what I hope is the final draft of the agreement. I am leaving in mid-week on an overseas trip. If you have your clients sign the agreement and return it to me on Tuesday, I can get it filed in court before I leave; otherwise I can get it filed after I return.

Stef



Mr. SMITH. Thank you.

It is absolutely unacceptable. It is absolutely ridiculous. And no American should ever be treated that poorly by their government in any situation.

Mr. Johnson, have you heard of government attorneys threatening criminal charges in other cases like this?

Mr. JOHNSON. I absolutely have. As I was mentioning earlier, we recently launched a lawsuit on behalf of Vocatura's Bakery, whose owners, the Vocatura family, were threatened with criminal structuring charges bringing a criminal forfeiture of over \$200,000, as well as up to 4 years in prison. And David Vocatura, one of the Vocatura brothers, is here with me today. He is in the audience. This is shocking, it is wrong, and it is still going on today, and it has to stop.

Mr. SMITH. Have there been threats of IRS audits of people's businesses if they don't settle the cases?

Mr. JOHNSON. Again, in the Vocatura case, this is shocking, but the day that they refused to agree to this plea agreement, to plead guilty to structuring, they were told that they would be subjected to a criminal tax investigation of their business.

Mr. SMITH. Can you think of any others?

Mr. JOHNSON. So one case that I found shocking, it is slightly different, but in the Ken Quran case, for instance, after they got their money back, the day after they got their money back, they received a letter from the IRS saying that they were being subjected to a money laundering audit for their compliance with money laundering laws.

Mr. SMITH. Thank you.

Mr. Chairman, this is absolutely egregious. It is horrible. I look forward to asking the IRS some further questions in the second panel. I yield back.

Chairman ROSKAM. Mr. Davis of Illinois.

Mr. DAVIS. Thank you, Mr. Chairman. And I, too, want to thank you for calling the hearing. And I want to thank our witnesses for coming.

Yes, we are indeed a part, if only a small part, of this government. And I, for one, want to apologize to both of you on behalf of that part of the government that I am. Your experiences should have never happened.

Let me ask you, did you feel any sense of concern for you on the part of those who were investigating or interacting with you in telling you what your situation was?

Mr. Taylor.

Mr. TAYLOR. No, sir, no. When we expressed concern about the bills that were due, the checks that were outstanding, the wedding coming up, they said it politely, but they said, "That is none of our concern."

Mr. DAVIS. Mr. Sowers.

Mr. SOWERS. Well, the bank that sent the money to the IRS, I mean, we had checks bouncing, and we tried to get some answers from them on what are we supposed to do about that. And we couldn't find anybody that could give us an answer. So we were just like in limbo. We didn't know what to do.

Mr. DAVIS. And after it was determined that you had not committed any kind of criminal offense, did anybody ever express any sense of discomfort or any sense of, "We are sorry this has happened," or, "It is unfortunate that this has happened"? Did you ever get any of that from anybody?

Mr. SOWERS. I mean, from the first two agents that showed up, and, like I say, you could tell that they weren't really interested in being there, it was just their job. And they knew that it was wrong, they knew what we were going to have to go through. But there wasn't anything they could do about it.

Mr. DAVIS. Well, at least that is one feeling, that they were doing their job.

Mr. SOWERS. Yeah.

Mr. DAVIS. And that is what they had to do.

Mr. Taylor.

Mr. TAYLOR. No, sir, I did not hear any concern of anyone involved about what had happened.

Mr. DAVIS. You expressed that you had lost some confidence in the government. Is there any way that that breach can be repaired, in your mind?

Mr. TAYLOR. Well, certainly, if I get my money back, I would feel a lot better about it. If you see that there is a problem and it gets corrected, that would serve to restore your confidence in the government as a whole.

Mr. DAVIS. Well, I certainly hope that you are going to be able to get your money back. And I can assure you that anything I can be supportive of or can do to help make sure that that would happen for not only the two of you, but others who have fallen into this situation, we would do it. I certainly empathize with you in terms of just the feeling, and I am sure there are others who have had that feeling, that somehow or another you have been unjustifiably treated. And the only way that justice can be restored is that you do, in fact, get your money back, as you say.

And, Mr. Chairman, again, I thank you for the hearing, and I yield back.

Chairman ROSKAM. Mr. Reed.

Mr. REED. Thank you, Mr. Chairman.

And thank you to our witnesses here today. As echoed by my colleagues, I share the anger, the frustration that has been put on evidence here today.

I join with my colleague from New York, Mr. Rangel, in saying we should join together and find justice for these individuals and the thousands that they represent across America.

And I hope you stick around, Mr. Sowers and Mr. Taylor, because we have the IRS Commissioner come in right after you are done, and we will ask him this question. So we are going right to the top to see if we can't get justice for at least you here today.

And, Mr. Johnson, I look forward to getting that list also from you so that we can go after other folks and get justice in this situation.

I think it is important to read this email that was entered into the record and take a moment to reflect on what is being said here. So, Mr. Sowers, this is an email between your attorney, David

Watt, and Stefan Cassella, who was the U.S. attorney who was in charge of your case, Correct?

Mr. SOWERS. Yes.

Mr. REED. And in working with Mr. Cassella from the U.S. Attorney's Office, your attorney is trying to work out the terms of your agreement, et cetera, and finalizing the agreement. That is correct?

Mr. SOWERS. Yes.

Mr. REED. All right. So he says, "I have obtained"—this is Mr. Watt talking on your behalf—"I have obtained a settlement in the Taylor case"—which is Mr. Taylor's case, Taylor Produce case—"attached to this email, which is very similar to the Sowers case and there is no language regarding the Taylors' acknowledgement that there was reasonable cause for the seizure. We would even be satisfied with the same 'whereas' clause as those in the Taylor agreement. I have a hard time"—and your attorney put this in bold and underlined—"I have a hard time explaining to my client why he is being treated differently."

Mr. Cassella's response is very telling, because in that email, it says, in bold and underlined in response to your attorney, "As a representation of the United States Government," this U.S. attorney has the audacity to use the power of his office to tell you, Mr. Sowers, "Mr. Taylor did not give an interview to the press."

So when you heard that, is that your government telling you to shut your mouth, don't exercise your freedom of speech rights? Is that your government with a badge and a weapon telling you to shut your mouth as we will take more of your money away? Is that how you interpret it? Because that is the way I interpret it.

Mr. SOWERS. That is exactly the way I interpreted it.

Mr. REED. That is appalling in this day and age that we have got people in power abusing that power like that.

So I am going to give the benefit of the doubt to maybe some of these agents that were there who said that they didn't want to be there. It sounds like you treated them kindly. You opened your home to them.

Mr. SOWERS. That is what God taught me to do.

Mr. REED. Amen.

So when you were having that conversation did you ever ask them, "Then why are you here?"

Mr. SOWERS. They have a job to do. They have families too.

Mr. REED. So did they tell you who told them to be there?

Mr. SOWERS. They were from the Treasury is all I knew. They didn't say anything else about it.

Mr. REED. Did they give you any indication as to why they were coming after you, why they were there in the room, even though they didn't want to be there?

Mr. SOWERS. Well, they never gave me an indication of what they really were after until the comment about the \$12,000 to \$15,000, and then I learned what they were there for.

Mr. REED. Okay.

Mr. Taylor, how about that hour conversation that you had in your testimony to them? Did the agents give you any indication as why they were there, what they were trying to do?

Mr. TAYLOR. No, sir, they were just asking questions. As I say, they started off by saying I was not in trouble hadn't done anything wrong, they just had some questions.

Mr. REED. So these agents who we are trying to believe are just innocent participants in this, just doing their job, there was no pressure. You don't think these guys were under any pressure maybe from their higher-ups to achieve something there by coming into your home to take your money? Any speculation as to maybe why they were there?

Mr. SOWERS. I think that it is not the first time they did it so they knew exactly what was going to happen.

Mr. REED. Are you aware that when they take your money where that money goes?

Mr. SOWERS. Well, I have heard stories.

Mr. REED. What have you heard?

Mr. SOWERS. Some of it goes into local—

Mr. REED. Goes right back in their budget, doesn't it?

Mr. SOWERS. That they don't have to go to through a lot of loopholes to get money. They just can get it and use it.

Mr. REED. Mr. Taylor, are you aware where the money goes when they seize it?

Mr. TAYLOR. I have read articles.

Mr. REED. What is your understanding of it?

Mr. TAYLOR. It is used for police departments, for their budget, for items they can't get from the government.

Mr. REED. How about those same agents? How about the same IRS that is coming after you to take your money? Are you aware that that money goes right back to the IRS to a large degree—

Mr. TAYLOR. Yes, sir.

Mr. REED [continuing]. For them to do this to other people?

Mr. TAYLOR. Yes, sir.

Mr. REED. Do you think that is right?

Mr. TAYLOR. No.

Mr. REED. Do you think that creates an incentive maybe for the IRS to be in your room to take your money?

Mr. TAYLOR. Definitely.

Mr. REED. Think we should do something about that as policy-makers here in Washington, D.C.? With that, I yield back. Thank you.

Chairman ROSKAM. Mr. Crowley.

Mr. CROWLEY. Thank you, Mr. Chairman. Thank you for holding this hearing, as well, today.

Mr. Sowers, we have met before, the last time you were here before the hearing. And I would say welcome back, but I know you are not here to discuss a good experience—well, welcome back despite that—but, rather, quite frankly, a bad experience that you have gone through. I hope to get your situation resolved as soon as possible, because law-abiding citizens like yourself should not have the experience that you have had with your government, with our government.

All of us up here are on the same page on this issue of fixing and preventing these seizures from happening to law-abiding citizens like yourself—and, Mr. Taylor, that would go for you as well;

I don't mean to exclude you—making sure that you get full restoration and restitution of your assets.

The policy of the government seizing assets and never charging people with a crime turns the basic principles of American justice of innocent until proven guilty on its head. I believe the IRS needs to go through its old files and return all the funds wrongly seized from Americans. And I would work with any and all of my colleagues on both sides to see that that actually does take place.

I have a quick question about—is it “Vocatura’s” Bakery?

Mr. JOHNSON. “Vocatura’s” Bakery.

Mr. CROWLEY. Vocatura’s Bakery. And that is in Norwich in Connecticut?

Mr. JOHNSON. That is correct.

Mr. CROWLEY. When did the government seize their assets?

Mr. JOHNSON. The assets in that case were seized in 2013, before the policy change.

Mr. CROWLEY. So the policy changed in October of 2014, correct?

Mr. JOHNSON. Yes.

Mr. CROWLEY. And that is my understanding, as well, that the policy did change in 2014.

What I would suggest, again, is we'll get to the bottom of this and see to it that those moneys are restored to their rightful place with the citizen of the United States.

So, with that, Mr. Chairman, I will just yield back the balance of my time.

Chairman ROSKAM. Thank you, Mr. Crowley.

Mr. Rice.

Mr. RICE. Thank you, Mr. Chairman.

Mr. Johnson, I want to start with you. This institute that you work with, are you limited to tax controversies?

Mr. JOHNSON. No. The Institute for Justice is a nationwide public interest law firm that litigates in a number of areas, one of which is property rights, which is what brings us to this particular issue.

Mr. RICE. Yeah. With the cascade of scandals that have arisen in the Federal Government and the level of incompetence and outright wrongdoing over the last 5 years, I am not surprised that Mr. Taylor has lost some faith in the government. I sure as hell have.

How about you? You deal with the government all the time.

Mr. JOHNSON. It is very difficult dealing with Federal prosecutors, in particular, in these cases, who have sworn an oath to uphold the law and are supposed to be enforcing the law but come across more like schoolyard bullies than law enforcement officers.

Mr. RICE. You know, these folks, to my understanding, have admitted that the money was taken wrongfully from these people. Is that correct? With this change in policy, they have admitted that.

Mr. JOHNSON. Exactly.

Mr. RICE. And what is their justification for holding the money?

Mr. JOHNSON. Well, I would say, in these cases, they would say that it is too late, that it is already over. But we have filed petitions, and we have asked to get the money back. So, really, they have no justification.

Mr. RICE. If these folks here had withheld money from the IRS for the last few years and the IRS discovered it was their money and they came to them and said, "Too late," what do you think the IRS would do?

Mr. JOHNSON. I don't think the IRS would be too keen on that.

Mr. RICE. Let me ask you this. Mr. Taylor, when they came to you, did they ask you to produce records to show that you didn't have any underlying criminal activity?

Mr. TAYLOR. No, sir.

Mr. RICE. They didn't? They didn't want to look at your receipts and your expenses to prove your income and all that kind of stuff?

Mr. TAYLOR. Not the gentleman that came to the house.

Mr. RICE. Okay.

Mr. TAYLOR. But the prosecuting attorney did want 4 years of financial records.

Mr. RICE. Okay.

Mr. TAYLOR. Which we got it there by the time that they asked for it.

Mr. RICE. What do you think they would have done if you had said, "No, I'm not going to give you those records"?

Mr. TAYLOR. I might not be sitting here today.

Mr. RICE. Probably in prison, wouldn't you?

What do you think they would have done if you would have said, "Well, I lost them"?

Mr. TAYLOR. I don't know what they would do.

Mr. RICE. What do you think they would have done if you just said, "Oh, well, I destroyed my hard drive. It crashed"?

Mr. TAYLOR. I have heard that before.

Mr. RICE. You probably wouldn't be sitting here, would you?

Mr. TAYLOR. No.

Mr. RICE. You know, these public officials, they are supposed to operate on a higher plane, right? They are not supposed to abuse the public trust. But, by their own admission, they are stealing from you.

Is it any wonder why people have lost faith in the government? This level of—it is not incompetence. I mean, it is certainly incompetent, but it is way beyond that. It is not negligence, is it, Mr. Johnson? It is far beyond that. How would you characterize this?

Mr. JOHNSON. I would say that the IRS is taking people's money because the IRS wants that money to fund its own budgets.

Mr. RICE. It is malicious. It is wrongdoing. It is criminal. Our government is acting as the criminal here. It is amazing that people have what faith they do in the government. And it is not just the IRS. Look across all these bureaucracies. Look at the VA, for God's sake.

So, my friends, I sure am sorry for what you had to deal with, and I will do my part, if offered the opportunity, to fix this problem.

Thank you very much. I yield back.

Chairman ROSKAM. Mr. Marchant.

Mr. MARCHANT. Thank you, Mr. Chairman.

Mr. Sowers, Mr. Taylor, since this has happened to you, did you get any guidance from these agents or the agency on how you should conduct your business going forward? Did they say, "Wait

till you have \$10,000 saved up and make your deposits"? Did they offer any—for all those people listening out there now that are conducting their business the way you guys have, I mean, did you change the way that you did business?

Mr. TAYLOR. I have changed. I have a cash transaction report filed every week when I deposit money.

Mr. MARCHANT. Yeah.

Mr. TAYLOR. The only advice I got was from a lawyer and reading what I could about the whole idea of what I had done and what I should be doing.

Mr. MARCHANT. So, now, most of your transactions are over \$10,000 so they get put into the system?

Mr. TAYLOR. I sometimes save it until I do have over \$10,000.

Mr. MARCHANT. Yeah. Yeah, that is what I was asking.

Mr. TAYLOR. Right.

Mr. MARCHANT. I mean, this has made you conscious, and it has been something that now, every day, you have to think about.

Mr. TAYLOR. I have had more tellers learn how to do a cash transaction report.

Mr. MARCHANT. Yeah. Yeah. I would imagine.

How about you, Mr. Sowers?

Mr. SOWERS. I really hate to say, but I don't deposit cash anymore. I am afraid to do it.

Mr. MARCHANT. Yeah.

Just for my information, if somebody gives you a check, do they treat that differently than cash?

Mr. SOWERS. Checks don't make any difference. It is just the cash.

Mr. MARCHANT. Yeah. So, on that deposit slip, they pick up just the cash number. They don't treat a check as cash.

Mr. SOWERS. Yes. That is all. I mean, the cash is the only thing they are concerned about.

Mr. MARCHANT. Yeah. Because I think there are millions of Americans out there that are conducting their business innocently, thinking that they are complying with every single law, and, still, just an innocent mishandling or making a deposit the way they don't want you to make it is subjecting them to some criminal action.

Mr. Johnson, how many petitions are currently pending before the government for reimbursement or forgiveness or return the money?

Mr. JOHNSON. So I am aware of two, the Taylor and the Sowers petitions. There was a third, the Quran petition. The IRS granted that petition. And, again, it raises the question, if they can grant one, why can't they grant the other two.

Mr. MARCHANT. So of the thousands of—how many billion dollars did you say was in the fund?

Mr. JOHNSON. So there are \$6.1 billion in the fund as of the close of the 2015 fiscal year.

Mr. MARCHANT. Yet there are only three petitions pending to get their money back?

Mr. JOHNSON. Well, so, in terms of the structuring cases, we know that there are about 600 cases that fall into this category of people who had their money taken who wouldn't have it taken

today. The problem is we don't know who those people are. We know that they exist, but the records are anonymized so that we can't identify them and speak to them, and they may not know that they have the right to try to get their money back.

Mr. MARCHANT. And this fund where the money goes, is it a general revenue fund or is it a dedicated fund that can't be touched by anybody?

Mr. JOHNSON. It is the Treasury Forfeiture Fund, which is available to the IRS to fund its own activities, its own law enforcement activities. So what the IRS is doing here is it is taking money from people and then it is using that money to fund its own budget without having to come to Congress to ask for an appropriation of funds.

Mr. MARCHANT. You suggested that there was a way for Congress to statutorily stop this. Would you repeat that?

Mr. JOHNSON. Yeah, I think Congress needs to do two things. One is it needs to codify the policy change that the IRS has announced, to change the definition of "structuring" so that in order to be convicted or have your money taken for structuring you have to actually have been engaged in some other crime.

The other thing that Congress can do is actually direct the IRS to return funds in cases that don't meet the policy so that people have a judicial right to get that property back rather than depending on the petition procedure that we currently are pursuing.

Mr. MARCHANT. Mr. Chairman, I hope that that is the goal of our committee, to do that. And thank you.

Chairman ROSKAM. It absolutely is, and legislation is imminent.

Mr. Kelly, bring us home.

Mr. KELLY. Thank you, Mr. Chairman. And thanks for holding this hearing today and allowing me to be here.

To both Mr. Taylor and Mr. Sowers, thank you for standing up and actually talking about your story. I am an automobile dealer, and every time I get the chance to talk about the IRS, my son calls me and says, "Dad, please be careful. I don't want them coming in the store."

I know one thing for sure: The issue that we are talking about today should be a national outrage. It just shouldn't be a concern of this committee. The whole country should be standing up and staying, "Not in our country, not at this time, not on our watch."

It is stunning to me, the arrogance of the IRS. Now, I know that we have to have a way of collecting revenue. And I am not painting everybody with the same brush. But for you to sit where you are sitting—and we have a form called the 8300 Form, where, if it is 10 grand or more, we have to report it.

So I am talking to the garage today, and I said to Stephanie, "So tell me—for us to be in compliance." She goes, "You know what? I even watch for any other signs that may look like somebody is structuring." And I am saying, you are talking about guys that make steel down the street for us, guys that make railroad cars, guys that stand on their feet all day and girls that do stuff all day long to make a living, and those are the people we are really worried about?

Just from where you are, Mr. Taylor and Mr. Sowers, talk about the loss that you have incurred, not just in the fact that they could shut you down, but you are not paid interest on that money that was frozen. You don't have—your loss in your communities of your reputation and how you have to go back and try to repair that. This is the part, I think, that we are missing. Because we are talking about people—real people, people who get up every day with one reason and one reason only, and that is to take care of their kids, their community, their churches, and their schools. And then we have an agency that comes in and says, "Yeah, you're the guys we're looking for because you don't know how to deposit money. You're the bad guys."

Mr. Taylor, tell me how that has affected you in your community—Mr. Sowers, you in your community—and the arrogance that this agency could come in to do it.

I don't give a damn if they said they were sorry or not. They knew exactly what they were doing to you, and they knew exactly where it was leading. And you know what else they knew? They knew you didn't have the money to ante up to fight them, and that is why you would settle.

Look at this up on the board. You know, we call it a shakedown back home, but this is what I think they are doing. If you can just take a look at—extortion is the practice of obtaining money, property, or services through coercion, force, or threats. It is synonymous with "shakedown."

Do either of feel like you got a shakedown?

Mr. SOWERS. Certainly I got a shakedown.

And I guess the biggest impact it had on me was a story the local paper did that makes you sound like you are a criminal. And my daughter just the other day told me, "You know, you must be doing something wrong; you're always in trouble." But she has known me for 40 years, and she knows I have a big mouth and I don't stand back when somebody is doing something wrong, to tell everybody.

And that is what happened. I told everybody that walked up to my table at the farmer's market what happened. And those people are upset. I mean, people are upset.

Mr. KELLY. Yeah. Yeah.

Mr. SOWERS. I mean, I know I do everything the way I should do it or—and I don't really care what other people think. But, you know, that is just the way it is. I mean, people think—

Mr. KELLY. So let me ask you, because I know how badly you were hurt, but so—now, checks were bouncing, right?

Mr. SOWERS. Yes.

Mr. KELLY. Okay. I live in a small town too. You bounce a check, and I guarantee you those tellers say, "You hear what happened up at Kelly's? Their checks are bouncing." That goes through that community like wildfire. I bet in your community a guy that has been an upstanding citizen—you and your wife raised a wonderful family, a wonderful business. I bet your name went through that community so fast.

You know who couldn't give a damn about it? People in the IRS. They don't care how much they crush you. They don't care how much they demean you. They don't care what the grinder is they

put you through. You know why? Because they have absolute power to do it, and it has corrupted them absolutely.

If you can, Mr. Taylor, tell me how this has affected you. And, please, this is your day to tell your story to America of what is happening right now on our shores. This is not Germany with the Gestapo coming in or Russia with the KGB coming in. This is right here in America, right here with our own government.

So, Mr. Taylor, how much has this hurt you?

Mr. TAYLOR. I am not sure I can quantify how much it has hurt me.

Mr. KELLY. And I know you can't.

Mr. TAYLOR. And all I know is I just have to live my life the way I know how to live it, trying to do things right. And, sooner or later, people will realize that something went wrong there and it wasn't with me. I can't fight it. I just have to move on.

Mr. KELLY. Okay. Well, I just want to offer you something—and, Chairman, I want to thank you so much for this.

Because you know what? The truth of the matter is you can't go in that arena and fight for yourself. But you know what you can do? You can elect people to go and represent you in this government that is looking out for your best interests. You need champions that are going to rise up to say, "You have hurt our people. You have done terrible wrong to our people, and it has to be remedied."

The fact that we have a hearing is one thing. There is no way we can go back and repair your reputations. There is no way we can go back and repair the damage we have done to you just as a person. Your wives are with you today. It hurts not just you, your business, your family, but your grandchildren and your children. It affects you in the community.

And this is all because of somebody thinking that you structured a deposit in order to hoodwink the IRS. That is absolutely preposterous, and it is not allowed to stand in America, especially not at this time and certainly not on our watch.

Thank you guys for having the gumption and the courage to stand up and tell your story.

Chairman ROSKAM. Thank you, Mr. Kelly.

You know, as I have been listening and watching you both and watching your wives here and just the chance to visit with you before the hearing and so forth, your presence and your willingness to tell your story is very encouraging, actually, because what you are doing is you are bearing witness to a deeper virtue of this country. In other words, you are standing up for American ideals. And whether you realize it or not, you are holding on to an American ideal and you are reflecting that back to a lot of other people, saying, "This isn't right. There is something that is off about this."

And, you know, when you were talking a minute ago, Mr. Sowers, about trouble and one of your kids teasing you about being in so much trouble, Mr.—

Mr. SOWERS. Oh, she wasn't teasing.

Chairman ROSKAM. Well, I take your point.

But Mr. Lewis kind of nudged me and—there was a hashtag that he had yesterday; it is called "good trouble." And he knows something about good trouble. And you are sort of in good trouble, in

a way. And I am not trying to be dismissive or cavalier about that or dismissive about the pain and the difficulty that you are going through, but what I am telling you is the strength that you are reflecting to us is a good thing, and it is encouraging.

There is another thing that is important. We are on your side. We are rooting for you. We are on your team. And we are going to hear from the other team in a couple minutes. Stick around. It is going to be an interesting discussion.

And, Mr. Johnson, I have a question for you, just to go into a little bit more detail. You mentioned in your testimony that, you know, there is data and so forth on lists and others who have been impacted by this. Can you walk us through—because we have to get to this. We need to sort this out, and your insight on what is available and so forth is very important.

So, in terms of scope and scale, I have heard you discuss generally three numbers. One number was the number of people that you have reason to believe have been similarly situated as the Taylors and the Sowers. And that number was about 600 people, 600 cases?

Mr. JOHNSON. That is correct.

Chairman ROSKAM. How did you come to that number? How have you come to that conclusion?

Mr. JOHNSON. So we came to that through a FOIA request to the IRS where they provided us with access to some data about structuring forfeitures. We sought additional data that could help us to identify, you know, more information about what the IRS is doing with civil forfeiture and to have even greater information. And the IRS responded to us and said that, before they could turn over all of the data that they would have, we would have to pay a fee of a quarter-million dollars for access to that data. They basically said that the Institute for Justice, which is a nonprofit organization, falls within the commercial-use category of FOIA requests, which is complete nonsense.

And then when we tried to appeal that decision, they said to us, “Well, it is not final because we haven’t actually denied you access to the data, so you have no right to appeal.”

Chairman ROSKAM. Good grief. I mean, the pattern that they have run these folks through, they are just overlaying this pattern on FOIA requests. Good grief. Judas, man.

So, by not giving you an answer, they deny you the capacity to appeal. Is that right?

Mr. JOHNSON. Right. By saying that, “Well, we will give you the information, but you have to pay us this outlandish amount of money,” then they are claiming—

Chairman ROSKAM. Who lays awake at night at the IRS thinking about this stuff? Who lays awake at night thinking about, “Hmm, how can we stick it to people and not give them information to which they are entitled?”

Okay. That is new information for me. It is probably new information for this entire panel. And we need to deal with it. So that is the—

Mr. RANGEL. Mr. Chairman.

Chairman ROSKAM. Yes.

Mr. RANGEL. Could you inquire as to what information he actually has?

Chairman ROSKAM. I will yield to Mr. Rangel.

Mr. RANGEL. Thank you.

I know what you can't get. And I agree with the chairman, that is outrageous. But this 600 people have cases in front of the IRS. Do you have that information for us?

Mr. JOHNSON. We know that there are——

Mr. RANGEL. No, no, no, no.

Mr. JOHNSON. Right, but we don't——

Mr. RANGEL. You know. But how can we know what you know? Do you have a list of names?

Mr. JOHNSON. So we don't have a list of names. What——

Mr. RANGEL. What do you have?

Mr. JOHNSON. What we know is that the IRS' database identified 600 cases between 2007 and 2013 where there is no allegation of any criminal wrongdoing apart from structuring and that, in those cases, they took about \$43 million from those people.

Mr. RANGEL. Well, you stick around too, because——

Chairman ROSKAM. That is right.

Mr. RANGEL [continuing]. It is very difficult for us to ask for information when we cannot identify wrongdoing. But this committee will be able to give you—without paying a fee, we will get access to whatever you can help us to get that information from. But we need your help in order to determine whether these 600 cases—because what we have here, Mr. Chairman, are two different cases. We have the Justice Department, which we have cases that we have to call on them separately, but we can handle the IRS part of it this morning.

Thank you.

Chairman ROSKAM. Mr. Johnson, to echo, then, on Mr. Rangel's inquiry, so we have that 600 cases. Then the \$43 million figure is the number that you came to understand was captured by the IRS as a result of those 600 cases.

Mr. JOHNSON. Exactly.

Chairman ROSKAM. And then you mentioned a fund. And so I just don't want us to be thinking that there is \$6 billion out there. So there is a fund generally at the IRS that has \$6 billion in it that is what?

Mr. JOHNSON. That is called the Treasury Forfeiture Fund. And that is the fund into which the Treasury Department puts all of its forfeitures under the civil and criminal forfeiture——

Chairman ROSKAM. Could be cases that we would be very sympathetic to. In other words, it could be drug forfeiture cases; it could be, you know, mafia front groups and all that sort of stuff. So that would be also within that fund, that \$6 billion?

Mr. JOHNSON. Right. That is all forfeitures by the entire Treasury Department.

Chairman ROSKAM. I understand. So, for our purposes, we want to focus in—based on your representation, we want to focus in on the cases and the \$43 million. Is that right?

Mr. JOHNSON. The point of mentioning the \$6.1 billion is that that is money that is available to the IRS to return assets to peo-

ple. The amount of money that needs to be returned is by no means \$6.1 billion.

Chairman ROSKAM. I understand. So, if we were to hear, for example—so your point in raising that is, if we were to hear, for example, from the Federal Government, DOJ or anybody else, that we don't have the money, your point is, yes, you do have the money, and that is an obtuse argument. Is that right?

Mr. JOHNSON. Exactly.

Chairman ROSKAM. Okay.

We have been joined by Mr. Renacci.

Mr. RICE. Mr. Chairman, can I ask one question?

Chairman ROSKAM. I will yield quickly, and then—yes. Quickly.

Mr. RICE. Mr. Johnson, the 600 cases that you have identified where there is no allegation of wrongdoing, how did you identify those?

Mr. JOHNSON. So, again, what we requested from the IRS through FOIA is data from what they call their AFTRAK database, which just tracks the forfeitures of assets by the IRS—

Mr. RICE. And you specifically asked for those that had no allegation of wrongdoing?

Mr. JOHNSON. So one thing that the database includes is a box that they can either check or not check where it says that they suspect criminal wrongdoing in addition to structuring. And so we know that there are about 600 cases where they did not check that box. In other words, they themselves indicated in their own database that the only reason they were pursuing those funds was because there was structuring.

Mr. RICE. But there very well could be, and probably are, thousands of other cases that, like in these guys' cases, they signed these agreements to avoid criminal prosecution, but there could be no validity to it.

Chairman ROSKAM. Let me reclaim the time. We will keep moving. And this is a line of inquiry that we will have with the second panel.

Mr. Renacci has joined us.

Mr. Renacci.

Mr. RENACCI. Thank you, Mr. Chairman. I am just going to yield at this time.

Chairman ROSKAM. Okay.

Thank you all.

Mr. CROWLEY. Mr. Chairman, can I—just one more—

Chairman ROSKAM. I will yield.

Mr. CROWLEY [continuing]. Followup just in terms of the 600 cases.

Just following up Mr. Rangel's queries as well, do you have a list of the 600 cases?

Mr. JOHNSON. So the data that we obtained from the IRS is anonymized. So we don't know—

Mr. CROWLEY. No. Okay.

Mr. JOHNSON [continuing]. Who those people are. We just know that they exist.

Mr. CROWLEY. Okay.

Well, Mr. Chairman, I think, if that is the case, we should inquire as to how we can access that information.

Chairman ROSKAM. Yes.

Mr. CROWLEY. Because I think, if that is the case, we would like to have that information in terms of who those individuals are.

Mr. JOHNSON. Absolutely.

Chairman ROSKAM. Perfect segue to the second panel.

Mr. LEWIS. Mr. Chairman.

Chairman ROSKAM. Mr. Lewis.

Mr. LEWIS. Before we leave these two witnesses, I just want to take a moment to thank you for being brave and courageous, joining Mr. Johnson to come before us today. I think we learned a great deal that could be helpful not just to you but to taxpayers all across our country. So thank you.

Chairman ROSKAM. I know that every member reflects Mr. Lewis's sentiment.

And, Mrs. Sowers and Mrs. Taylor, thank you for your role in this as well.

Thank you to the witnesses.

And we will reconvene shortly with the second panel.

[Recess.]

Chairman ROSKAM. Thank you.

We would now like to invite the second panel of witnesses to the table.

Our second panel is comprised of three witnesses from the government who are responsible for the IRS' use of its civil asset forfeiture authority and who handle these cases when they go to court. So it obviously doesn't start and end with the IRS. These cases have started with the IRS, but they obviously are turned over to the Department of Justice to be pursued. And that is the nature of this inquiry today.

IRS Commissioner John Koskinen is with us; IRS Civil Investigation Chief Rich Weber is with us—I am sorry, Criminal Investigation Chief Richard Weber is with us; and DOJ Department Assistant Attorney General Kenneth Blanco.

The committee has received your written remarks.

A little bit of the back story: We had hoped that you were able to hear the testimony of the prior panel, and it is my understanding that you were able to hear the overwhelming majority of it. That was important to us.

And I also just want to clear up one thing, and that is, in terms of the Commissioner's participation today, there was a press story that was involving the other committee of interest right now. There was a press story that sort of put this committee in a position of taking a disproportionate amount of time and attention.

We had invited Mr. Weber to come as a witness. Commissioner Koskinen, you had said you would like to come. You are always welcome, obviously, as the Commissioner of the IRS, to come here. I just wanted it clear that it was at your request that you are here today, and you are always welcome.

And, at that, let's open it up for 5 minutes. And I am pleased to recognize you, Commissioner Koskinen.

STATEMENT OF JOHN KOSKINEN, COMMISSIONER, INTERNAL REVENUE SERVICE

Mr. KOSKINEN. Thank you, Mr. Chairman.

First, yeah, we talked about this a couple weeks ago, about this hearing. So my only point was I had committed to be here. I am delighted to be here. You are our oversight committee, and when you hold a hearing, I am anxious to be here as we go.

I am sorry for the miscommunication about whether we should be here or not. Your staff was very helpful, and so we were able to hear about an hour and 10 minutes of the first panel. So we got, I think, the bulk of the issue. And we do take this very seriously, and I am delighted to have the opportunity to testify here again before this committee.

As you know, over a year ago, about a year and a half ago, we changed our policy in this area and made it clear that there would—even though structuring still remains a crime on the books, if you have structured your deposits in a way that avoids the reporting requirement but it is not with illegal source funding, as of a year and a half ago, there are no more seizures by the IRS. And I think that is important to know, that we have reached out to do that.

As I said when I testified here last February, I guess it was, we apologize to anybody who had innocently gotten themselves into the middle of this and committed that we would do whatever we could to work this forward. And I am delighted to do that.

I would clarify one other thing before I get into my statement, which is: There has been a lot of talk about the forfeiture fund. Those funds don't come directly to the IRS. We get less than 2 percent of those funds. It is about, on average, over the last 5 years, it has been \$20 million or \$22 million, you know, out of an \$11 billion budget. So we don't have a direct incentive that if we get more money it comes to us. We don't see the money at all. And if it goes to the TEOAF fund, we get a very small percentage of it, and it goes to law enforcement purposes.

So I think it is important to understand IRS agents don't have a financial incentive. They are not measured in any way under the Restructuring Act, either on the civil or criminal side, according to whatever collections are taken as a result of their activities. Those are not performance measures anywhere. I sign a quarterly authorization and statement that no one is measured by the amount of money they collect in any part of the IRS.

So we do take this very seriously. The need to support the Federal Government's efforts against financial crimes, such as money laundering and terrorist financing, are important. And in our efforts, though, we strive for a balanced approach designed to ensure fairness and respect for the rights of individuals under the law.

The balanced approach extends to our efforts in regard to the crime of structuring, in which cash transactions are intentionally manipulated so they fall below the \$10,000 reporting threshold established under the Bank Secrecy Act. This reporting requirement is one of several used by law enforcement agencies to uncover illegal activities in the U.S. and abroad.

Structuring may occur for any number of reasons. Individuals may want to conceal cash generated from illegal activities, such as drug dealing, or the cash may come from a legal source but the person is trying to evade taxes. Whatever the reason, the law is clear

that structuring cash transactions to evade the reporting requirements is a crime.

Under the law, the IRS and every other Federal law enforcement agency has the authority in structuring cases to investigate criminally and seize assets involved in the structuring. But the law also includes procedures we must follow to safeguard the rights of individuals and ensure that the seizure action is appropriate.

Before any action can go forward, before any IRS agent can take an action, Federal agents must first prepare a seizure warrant affidavit that is reviewed by the appropriate U.S. attorney's office, and then the warrant is presented to a Federal judge who approves or denies it. Only if the judge authorizes the warrant and the activity by finding there is probable cause to believe the property is involved in a crime can the seizure and forfeiture proceedings take place.

As I noted, after reviewing our activities, we did a year and a half ago change the policy and note we would no longer pursue the seizure and forfeiture of funds, while illegal under the structuring act, that were solely legal-source structuring cases, not derived from illegal sources, unless there were exceptional circumstances, and there haven't been any since the policy.

By concentrating on illegal-source structuring violations, we are now able to devote more of our resources, obviously, to investigating the most egregious Federal violations, including those cases where structuring activity is indicative of more serious crimes.

The change in policy doesn't render prior seizures unlawful, as structuring is still today a Federal felony regardless of the source of funds. We will continue to investigate structuring violations as they relate to other financial crimes, including tax and money laundering violations. But we believe that our policies change will help ensure consistency in how IRS structuring investigations and related seizures are conducted and ensure, to the extent we can, fairness to the taxpayers.

As I noted earlier while I was here a year and a half ago, we have apologized to anyone innocently caught up in this, and we are doing our best, going forward, to make sure that we remediate those conditions.

The question has arisen as to how the IRS is treating cases where legal-source funds were seized prior to the October 17 policy. And, since that date, we have considered approximately 75 cases, including petitions from property owners for mitigation.

In administrative cases, where we have control, where it did not actually go—the taxpayer didn't take it to court, we make a decision at the senior level within our Criminal Investigation Division, not at the level of the IRS agent involved in the case, on the merits of whether to return the funds to the property owner. In judicial cases—that is, where the seizure went to court for one reason or another—the Department of Justice has control. And, in those cases, we make recommendations after reviewing the case to the Department of Justice about how the case should be handled.

We recognize that seizure and forfeiture, as noted, are powerful law enforcement tools and must be administered in a fair and ap-

propriate manner. We understand we have a duty not only to uphold the law but to protect the rights of individuals as well.

We look forward to working with property owners who come forward and file petitions—we are processing those to this day—and will continue working to ensure that we handle all the cases with fairness and respect for taxpayers' rights in every instance.

Mr. Chairman, that concludes my statement, and I would be happy to take questions.

[The prepared statement of Mr. Koskinen follows:]

**WRITTEN TESTIMONY OF
JOHN A. KOSKINEN
COMMISSIONER
INTERNAL REVENUE SERVICE
AND
RICHARD WEBER
CHIEF, CRIMINAL INVESTIGATION
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT
ON FINANCIAL TRANSACTION STRUCTURING
MAY 25, 2016**

I. Introduction

Chairman Roskam, Ranking Member Lewis, and members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the implementation of policy changes concerning seizure and forfeiture activities involving legal source structuring. The IRS's Criminal Investigation division (IRS-CI) plays an important role in the detection and deterrence of financial crimes such as structuring, and the enforcement of the asset forfeiture laws. These laws aim to divest criminals of the fruits of their crimes, restore fraudulently obtained funds to crime victims, and punish those who would wantonly violate federal criminal law.

Financial crimes weaken the U.S. financial system and threaten the integrity of our tax system, as funds from legal and illegal sources go untaxed and contribute to the tax gap. As the sole law enforcement agency responsible for investigating violations of our nation's criminal tax laws and supporting federal tax compliance, IRS-CI plays a vital role in fighting financial crimes, and has a long history of working in partnership with law enforcement organizations at the federal, state, and local levels. IRS-CI agents have become known as the best financial investigators in the government, and their skills are often sought by other law enforcement agencies and prosecutors. IRS-CI agents focus their efforts on such priorities as tax evasion, money laundering, public corruption, and terrorist financing. IRS-CI's conviction rate, which stands at 93 percent, is one of the highest amongst law enforcement agencies.

II. History

Since 1970, laws have been implemented to combat money laundering and other financial crimes. Specifically, in 1970, the *Bank Secrecy Act* ("BSA"), 31 U.S.C. § 5311 *et. seq.*, established a reporting and recordkeeping system to assist federal law enforcement and regulatory agencies in the detection, monitoring, and tracing of certain monetary transactions. These requirements have a high degree of usefulness in criminal, tax, regulatory investigations or proceedings, and the conduct of intelligence or counterintelligence activities, including analysis to protect against international terrorism. These requirements are imposed on individuals, financial institutions, and non-financial trades and businesses relative to monetary

transactions and banking relationships. BSA requirements include reporting currency transactions exceeding \$10,000. To circumvent BSA reporting requirements, criminals routinely manipulate cash transactions to fall below the \$10,000 reporting threshold.

In 1986, as part of the *Money Laundering Control Act of 1986*, Congress added a structuring provision to Title 31 (31 U.S.C. § 5324) which criminalized structuring for the purpose of evading the reporting requirement, and made a person who willfully violated the law subject to possible fines and imprisonment. Structuring can be used to conceal illegal cash-generating activities, such as drug dealing, and to conceal income earned legally in order to evade the payment of taxes.

Regardless of the source of funds, structuring financial transactions to evade BSA reporting requirements is a felony under Title 31. In 1994, in response to the Supreme Court's decision in *Ratzlaf v. United States*, 510 U.S. 135 (1994), Congress, as part of the *Money Laundering Suppression Act of 1994*, clarified the intent necessary to establish a structuring violation pursuant to 31 U.S.C. § 5324. In order to prove an act of structuring, the government must establish that the defendant knew of the relevant reporting requirements and structured his or her transaction for the purpose of evading those reporting requirements. Depending on the facts and circumstances presented, a conspicuous pattern of cash deposits or withdrawals may constitute circumstantial evidence that the bank's account holder acted with an illegal purpose.

III. Mitigation Process Prior to October 2014

Section 5317(c)(2) of Title 31, United States Code authorizes forfeiture of property involved in transactions or attempted transactions in violation of 31 U.S.C. §§ 5313(a) or 5324(a) in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to 18 USC § 981. While the structuring statute does not distinguish between the structuring of legal or illegal sourced funds, in 1991, the Assistant Secretary (Enforcement), Department of the Treasury, approved mitigation guidelines for 18 U.S.C. § 981 seizures and forfeitures relating to 31 U.S.C. §§ 5313(a) and 5324 violations. The IRS's implementation of these guidelines recognized that the forfeiture of monies earned from a legal source remains a very sensitive area of enforcement operations and that great care must be exercised in applying the power given to us by Congress. Specifically, IRS procedures provided partial relief in cases involving a first offense, a legitimate funding source, and no criminal conviction. The IRS procedures also required IRS-CI to consider additional mitigating or aggravating factors. This process was used until the implementation of a policy change on October 17, 2014.

IV. The October 2014 Policy Change

The October 17, 2014 policy states that "IRS-CI will no longer pursue the seizure and forfeiture of funds associated solely with 'legal source' structuring cases unless: (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case has been approved at the Director of Field Operations (DFO) level. The policy involving seizure and forfeiture in 'illegal source' structuring cases remains unchanged by this memorandum." On March 31, 2015, the Attorney General issued similar Guidance Regarding the Use of Asset

Forfeiture Authorities in Connection with Structuring Offenses to all Heads of Department Components and United States Attorneys. We believe the IRS's current policy strikes a balance between the needs of law enforcement and the rights of property owners. By concentrating on illegal source structuring violations, we are now able to devote our limited resources to investigating the most egregious federal violations, including those cases where structuring activity is indicative of other, more serious crimes.

This change in policy does not render prior seizures unlawful, as structuring is still a federal felony regardless of whether the source of the funds is legal or illegal. Rather, the policy is intended to more closely realign IRS priorities by focusing on other criminal violations within its jurisdiction. IRS-CI will continue to investigate structuring violations as they relate to other financial crimes, including tax and money laundering violations.

V. New Process Going Forward

In addition to this policy change, the IRS elevated the review and approval process for Petitions for Remission or Mitigation in certain Title 31 structuring seizure cases. Currently, all Petitions involving certain Title 31 structuring cases that are filed with a local IRS field office will be elevated through a CI area executive for ultimate consideration by the Chief, Criminal Investigation. The Chief will either render a decision on granting relief or make a recommendation through the respective United States Attorney's Office for consideration by the Asset Forfeiture and Money Laundering Section ("AFMLS"), Department of Justice, Criminal Division.

It is important to note that the IRS does not act alone in pursuing structuring violations. All warrants to seize structured funds are reviewed by an Assistant United States Attorney and then approved by a federal judge after a finding of probable cause. Once a seizure takes place, the applicable civil or criminal forfeiture process follows, pursuant to the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), which established time limitations and other statutory rights for individuals whose property is seized.

If a property owner elects to pursue an administrative resolution, the IRS has control of the matter and may adjudicate the property owner's petition. By contrast, if the property owner files a claim, the matter is referred to the United States Attorney's Office, which must file, in federal district court, a civil complaint for forfeiture within 90 days of the property owner's filing of a claim, thereby converting the administrative proceeding into a judicial matter. From that point forward, the United States Attorney's Office has control of the case.

Chairman Roskam, Ranking Member Lewis, and members of the Subcommittee, we appreciate the opportunity to testify on this important topic and would be happy to take your questions.

Chairman ROSKAM. Mr. Weber.

Mr. WEBER. No statement, sir.

[The prepared statement of Mr. Weber follows:]

**WRITTEN TESTIMONY OF
JOHN A. KOSKINEN
COMMISSIONER
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AND
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I. Introduction

Chairman Roskam, Ranking Member Lewis, and members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the implementation of policy changes concerning seizure and forfeiture activities involving legal source structuring. The IRS's Criminal Investigation division (IRS-CI) plays an important role in the detection and deterrence of financial crimes such as structuring, and the enforcement of the asset forfeiture laws. These laws aim to divest criminals of the fruits of their crimes, restore fraudulently obtained funds to crime victims, and punish those who would wantonly violate federal criminal law.

Financial crimes weaken the U.S. financial system and threaten the integrity of our tax system, as funds from legal and illegal sources go untaxed and contribute to the tax gap. As the sole law enforcement agency responsible for investigating violations of our nation's criminal tax laws and supporting federal tax compliance, IRS-CI plays a vital role in fighting financial crimes, and has a long history of working in partnership with law enforcement organizations at the federal, state, and local levels. IRS-CI agents have become known as the best financial investigators in the government, and their skills are often sought by other law enforcement agencies and prosecutors. IRS-CI agents focus their efforts on such priorities as tax evasion, money laundering, public corruption, and terrorist financing. IRS-CI's conviction rate, which stands at 93 percent, is one of the highest amongst law enforcement agencies.

II. History

Since 1970, laws have been implemented to combat money laundering and other financial crimes. Specifically, in 1970, the *Bank Secrecy Act* ("BSA"), 31 U.S.C. § 5311 *et. seq.*, established a reporting and recordkeeping system to assist federal law enforcement and regulatory agencies in the detection, monitoring, and tracing of certain monetary transactions. These requirements have a high degree of usefulness in criminal, tax, regulatory investigations or proceedings, and the conduct of intelligence or counterintelligence activities, including analysis to protect against international terrorism. These requirements are imposed on individuals, financial institutions, and non-financial trades and businesses relative to monetary

transactions and banking relationships. BSA requirements include reporting currency transactions exceeding \$10,000. To circumvent BSA reporting requirements, criminals routinely manipulate cash transactions to fall below the \$10,000 reporting threshold.

In 1986, as part of the *Money Laundering Control Act of 1986*, Congress added a structuring provision to Title 31 (31 U.S.C. § 5324) which criminalized structuring for the purpose of evading the reporting requirement, and made a person who willfully violated the law subject to possible fines and imprisonment. Structuring can be used to conceal illegal cash-generating activities, such as drug dealing, and to conceal income earned legally in order to evade the payment of taxes.

Regardless of the source of funds, structuring financial transactions to evade BSA reporting requirements is a felony under Title 31. In 1994, in response to the Supreme Court's decision in *Ratzlaf v. United States*, 510 U.S. 135 (1994), Congress, as part of the *Money Laundering Suppression Act of 1994*, clarified the intent necessary to establish a structuring violation pursuant to 31 U.S.C. § 5324. In order to prove an act of structuring, the government must establish that the defendant knew of the relevant reporting requirements and structured his or her transaction for the purpose of evading those reporting requirements. Depending on the facts and circumstances presented, a conspicuous pattern of cash deposits or withdrawals may constitute circumstantial evidence that the bank's account holder acted with an illegal purpose.

III. Mitigation Process Prior to October 2014

Section 5317(c)(2) of Title 31, United States Code authorizes forfeiture of property involved in transactions or attempted transactions in violation of 31 U.S.C. §§ 5313(a) or 5324(a) in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to 18 USC § 981. While the structuring statute does not distinguish between the structuring of legal or illegal sourced funds, in 1991, the Assistant Secretary (Enforcement), Department of the Treasury, approved mitigation guidelines for 18 U.S.C. § 981 seizures and forfeitures relating to 31 U.S.C. §§ 5313(a) and 5324 violations. The IRS's implementation of these guidelines recognized that the forfeiture of monies earned from a legal source remains a very sensitive area of enforcement operations and that great care must be exercised in applying the power given to us by Congress. Specifically, IRS procedures provided partial relief in cases involving a first offense, a legitimate funding source, and no criminal conviction. The IRS procedures also required IRS-CI to consider additional mitigating or aggravating factors. This process was used until the implementation of a policy change on October 17, 2014.

IV. The October 2014 Policy Change

The October 17, 2014 policy states that "IRS-CI will no longer pursue the seizure and forfeiture of funds associated solely with 'legal source' structuring cases unless: (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case has been approved at the Director of Field Operations (DFO) level. The policy involving seizure and forfeiture in 'illegal source' structuring cases remains unchanged by this memorandum." On March 31, 2015, the Attorney General issued similar Guidance Regarding the Use of Asset

Forfeiture Authorities in Connection with Structuring Offenses to all Heads of Department Components and United States Attorneys. We believe the IRS's current policy strikes a balance between the needs of law enforcement and the rights of property owners. By concentrating on illegal source structuring violations, we are now able to devote our limited resources to investigating the most egregious federal violations, including those cases where structuring activity is indicative of other, more serious crimes.

This change in policy does not render prior seizures unlawful, as structuring is still a federal felony regardless of whether the source of the funds is legal or illegal. Rather, the policy is intended to more closely realign IRS priorities by focusing on other criminal violations within its jurisdiction. IRS-CI will continue to investigate structuring violations as they relate to other financial crimes, including tax and money laundering violations.

V. New Process Going Forward

In addition to this policy change, the IRS elevated the review and approval process for Petitions for Remission or Mitigation in certain Title 31 structuring seizure cases. Currently, all Petitions involving certain Title 31 structuring cases that are filed with a local IRS field office will be elevated through a CI area executive for ultimate consideration by the Chief, Criminal Investigation. The Chief will either render a decision on granting relief or make a recommendation through the respective United States Attorney's Office for consideration by the Asset Forfeiture and Money Laundering Section ("AFMLS"), Department of Justice, Criminal Division.

It is important to note that the IRS does not act alone in pursuing structuring violations. All warrants to seize structured funds are reviewed by an Assistant United States Attorney and then approved by a federal judge after a finding of probable cause. Once a seizure takes place, the applicable civil or criminal forfeiture process follows, pursuant to the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), which established time limitations and other statutory rights for individuals whose property is seized.

If a property owner elects to pursue an administrative resolution, the IRS has control of the matter and may adjudicate the property owner's petition. By contrast, if the property owner files a claim, the matter is referred to the United States Attorney's Office, which must file, in federal district court, a civil complaint for forfeiture within 90 days of the property owner's filing of a claim, thereby converting the administrative proceeding into a judicial matter. From that point forward, the United States Attorney's Office has control of the case.

Chairman Roskam, Ranking Member Lewis, and members of the Subcommittee, we appreciate the opportunity to testify on this important topic and would be happy to take your questions.

Chairman ROSKAM. Mr. Blanco.

STATEMENT OF KENNETH BLANCO, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. BLANCO. Good morning, Chairman Roskam, Vice Chairman Meehan, Ranking Member Lewis, and Members of the Subcommittee. Thank you for the opportunity to appear today to discuss the important topic of civil asset forfeiture and structuring.

As a 27-year veteran prosecutor and Deputy Assistant Attorney General overseeing a variety of areas, including asset forfeiture and money laundering, I am honored to represent the Department of Justice today and to address the Department's commitment to ensuring the Federal asset forfeiture laws are appropriately and effectively used and consistent with the civil liberties and the rule of law.

Asset forfeiture and the structuring laws are a critical tool that serves a number of compelling law enforcement purposes, including detecting and deterring other illegal activity. The Bank Secrecy Act assists law enforcement in the detection of criminal conduct by requiring financial institutions to file reports concerning financial transactions in excess of \$10,000.

The criminal structuring laws, as enacted by Congress, are intended to prevent individuals from evading these important reporting requirements. The government is required to prove three elements for a structuring charge, namely that the defendant structured his transactions, knew of the reporting requirements, and intended to evade the reporting requirements.

It is important to note that structuring is not a strict liability crime, and an individual who inadvertently divvies up his money to deposit or withdraw cannot be liable simply for structuring because he lacks the intent to evade the reporting requirement.

Congress has authorized a variety of sanctions, both civil and criminal, for structuring violations, including forfeiture of the structured funds. In a civil action to forfeit property linked to crime, including a structuring violation, the government has the burden to prove by a preponderance of the evidence that a crime occurred and that the seized property was connected to that crime.

Even after the government has proven its case, the law entitles any individuals with standing to assert a claim that they are innocent owners of the property at issue and defeat the government's claim.

After a forfeiture is completed, a petitioner can seek the return of property by filing a petition for remission or mitigation. Remission and mitigation do not contest the forfeiture. In effect, those petitions are tools to request a pardon for the forfeited property. The Department has procedures in place for considering and fairly resolving each of these petitions.

Those who commit structuring violations do not qualify for remission because they are not innocent owners under the terms of the law. Such petitions might, however, qualify for mitigation, which is a decision to pardon some portion of the forfeited property based on a holistic view of the case.

The factors the Department considers when evaluating mitigation include: the existence of a prior record or evidence of similar conduct; whether the violation includes a drug offense or drug crime; the violator's cooperation with law enforcement on the related matter; was the violation isolated and not part of a larger scheme; and the necessity of the forfeiture to achieve a legitimate forfeiture purpose.

In order to protect and maintain the integrity of the work our career prosecutors and career agents do, I cannot comment on any pending litigation or specific case today. But I can tell you the Department continues to thoroughly review and appropriately rule on any current and newly filed petitions for remission or mitigation, including those involving structuring violations.

I would also like to highlight the Department's ongoing and comprehensive review of forfeiture practices and policies over the past 18 months. As part of that review, on March 31, 2015, the Department issued a policy limiting the use of asset forfeiture to authorities in connection with structuring offenses in most cases to instances where a defendant has been criminally charged or there is evidence of additional criminal activity beyond the crime of structuring.

The new policy also imposes important protections after a seizure has taken place, including a directive to return the funds if the prosecutor at any time determines there is insufficient evidence to prevail at trial and imposing a deadline for filing a criminal indictment or civil complaint against the forfeited funds.

This policy is a significant change that exceeds the requirements of the law, and it underscores the Department of Justice's commitment to fighting crime and returning money to victims while protecting civil liberties and ensuring due process.

I thank the subcommittee for their interest in this matter. I look forward to fielding any questions from the committee.

[The prepared statement of Mr. Blanco follows:]

Testimony of Kenneth A. Blanco
Deputy Assistant Attorney General, Criminal Division
U.S. Department of Justice
Before the Subcommittee on Oversight
Committee on the Ways and Means
U.S. House of Representatives
May 25, 2016

Chairman Roskam, Vice-Chairman Meehan, Ranking Member Lewis, and distinguished members of the Committee. Thank you for the opportunity to appear before the Committee today to discuss the important topics of asset forfeiture and structuring. I am honored to represent the Department of Justice (the Department) at this hearing and to address the Department's commitment to ensuring that federal asset forfeiture laws are appropriately and effectively used in structuring cases, consistent with civil liberties and the rule of law.

Introduction

Asset forfeiture and the structuring laws are critical legal tools that serve a number of compelling law enforcement purposes. The Bank Secrecy Act assists law enforcement in the detection of criminal conduct by requiring financial institutions to file reports concerning suspicious financial transactions in excess of \$10,000. The structuring laws enacted by Congress are intended to prevent individuals from evading reporting requirements under the Bank Secrecy Act. Indeed, as Congress itself has noted, the purpose of the Bank Secrecy Act, including the structuring offenses, codified at 31 U.S.C. § 5324, is "to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism." 31 U.S.C. § 5311. When structuring occurs, it deprives law enforcement of this critical information, which is why Congress made structuring a criminal offense.

The Department's ongoing internal review of the Asset Forfeiture Program includes the structuring policy issued by the Department last year. The Department is eager to foster better understanding of asset forfeiture in structuring cases and promote a constructive dialogue about sensible ways to improve the Asset Forfeiture Program. While the Department is proud of its enforcement of the structuring laws, we are aware of concerns raised about certain seizure and forfeiture practices in connection with structuring violations. The Department welcomes the opportunity to address those concerns here today. Asset forfeiture and its use in structuring cases play a unique and multifaceted role in our legal system, and the Department is constantly looking for ways in which the Asset Forfeiture Program can be improved.

Overview of Structuring

Congress created the structuring offenses "to aid the government's efforts to uncover and prosecute crime and fraud." *United States v. Malewicka*, 664 F.3d 1099, 1107 (7th Cir. 2011). Generally speaking, structuring occurs when, instead of conducting a single transaction in an amount that would require a report to be filed or record made by a domestic financial institution,

the violator conducts a series of currency transactions, keeping each individual transaction at an amount below applicable thresholds to evade reporting or recording. By structuring transactions to avoid reporting requirements, a criminal causes the government to lose valuable information about the use of the financial system and potential unlawful activity. In addition, the criminal's structuring affects the financial institution's duty to file the appropriate currency transaction reports, which are necessary to the investigation and prosecution of criminal and regulatory offenses.

The structuring laws are critical tools that law enforcement employs to safeguard the security and stability of our nation's financial system. For this reason, structuring is a stand-alone criminal offense. The government is required to prove three elements for a structuring charge under 31 U.S.C. § 5324(a), namely that the defendant: (1) structured his transactions, (2) knew of the reporting requirements, and (3) intended to evade the reporting requirements. It is important to note that structuring is not a strict liability crime. Congress included an intent provision in § 5324 in order to "shield innocent conduct from prosecution." *United States v. Taylor*, 816 F.3d 12, 23 (2d Cir. 2016). An individual who inadvertently divides up his deposits or withdrawals cannot be liable for structuring because he lacks the intent to evade the reporting requirements. This point bears repeating – the structuring offense is not a trap for the unwary. If the government cannot prove that an individual intended to evade reporting requirements, then the government cannot prevail, regardless of whether the proceeding is a civil forfeiture of the structured money or a criminal prosecution of the owner of the funds for structuring.

Structuring is often a tool used to mask additional, serious criminal activity. Terrorists, transnational organized crime groups, and other criminal actors frequently structure transactions to hide the proceeds and facilitate the commission of their criminal activity. For example, in 2003 in *United States v. Alamoudi*, a structuring investigation resulted in the disruption of terrorism. Abdurahman Alamoudi was arrested for engaging in prohibited financial transactions with Libya, and then indicted for a variety of charges, including money structuring. While detained pre-trial, he admitted that he took money from the Qaddafi regime in Libya to arrange the assassination of the de facto ruler of Saudi Arabia. In accordance with his guilty pleas in 2004, Alamoudi admitted that he had attempted to structure the funds he received from the Qaddafi regime into his U.S. bank account in order to evade cash reporting requirements. Alamoudi was sentenced to 23 years in prison upon his convictions. The structuring investigation was one of the charges that led to the discovery of the assassination plot after Alamoudi's arrest.

Another area where the ability to prevent structuring is invaluable is the government's effort to target funnel accounts. A funnel account is a bank account used by criminals to quickly move the proceeds of their criminal activity across geographic regions. Criminal organizations of all types, including drug cartels, human traffickers, sophisticated financial fraudsters, and trade-based money launderers use funnel accounts to avoid bulk cash transportation of their criminal proceeds, which is perceived to carry a higher risk of being seized by law enforcement or lost by money couriers. In making the required deposits and withdrawals from the account, couriers will often structure the transactions to avoid the currency reporting requirements. While funnel accounts are frequently used to move criminal proceeds, often it is not clear from the account activity itself what the crime is. Thus, this is an area where traditional investigative

work combined with civil forfeitures furthers the goal of disrupting major criminal organizations. Indeed, in some cases, structuring may be the only criminal offense available for prosecution.

Overview of Forfeiture Law

Though some have called forfeiture an unusual legal concept, the fact is that forfeiture has been an integral part of American jurisprudence dating back to the nation's founding. One of the first acts of Congress in 1789 was to enact a forfeiture statute subjecting vessels and cargoes to civil forfeiture for violation of the customs laws. Congress codified the traditional maritime law principle that a ship involved in crime was subject to forfeiture even if the owner was not criminally charged or convicted. The vessel was civilly forfeited as an instrumentality of the offense so that it could not be reused in criminal activity. Since that time, forfeiture has been broadened to a wider range of criminal conduct in an effort to deter criminal activity and compensate victims of crime. Although the concept and terminology may seem unusual and unfamiliar to some, the legal and policy basis for civil forfeiture is not.

1. Types of Asset Forfeiture

There are three types of asset forfeiture – criminal, civil, and administrative. While each is governed by different authorities and practices, all three require that the government bear the burden of proof. For comparative purposes, it is useful to briefly review criminal and administrative forfeiture to help highlight the features of the civil forfeiture process.

a. Criminal Forfeiture

Criminal forfeiture is an action against a defendant that includes notice of the intent to forfeit property in a criminal indictment. A criminal conviction is required, and forfeiture is part of the defendant's sentence. Criminal forfeiture is limited to the property interests of the defendant, including any proceeds earned by the defendant's illegal activity. Further, criminal forfeiture is generally limited to the property involved in the particular counts on which the defendant is convicted. As part of sentencing, a court may order the forfeiture of a specific piece of property listed in the indictment, of a sum of money as a money judgment, or other property as substitute property. After proving guilt beyond a reasonable doubt, the government must establish by a preponderance of the evidence the requisite connection between the crime of conviction and the asset. After a preliminary order of forfeiture is entered, a separate, ancillary proceeding begins to determine any third-party ownership interests in the property the government seeks to forfeit. While the defendant himself cannot contest the forfeiture in this proceeding, often others connected to the defendant (such as family members and associates) do contest the forfeiture.

b. Administrative Forfeiture

Administrative forfeiture, which is part of the civil forfeiture regime, refers to the process by which property is forfeited to the United States without filing a case in federal court. Rather, the forfeiture process occurs before a law enforcement agency that has control of the assets. The law provides many procedural safeguards, including strict time limits, to govern administrative forfeiture and protect the interests and rights of property holders. Any seizure of property subject to administrative forfeiture must be based on probable cause in accordance with the

Fourth Amendment to the U.S. Constitution. Real property cannot be administratively forfeited, nor can personal property worth more than \$500,000 unless certain limited, statutory exceptions apply, such as if the personal property is a conveyance used to import a controlled substance.

Following seizure, the government is required to send direct written notice of the administrative forfeiture proceeding to every person who appears to have an interest in the seized property and whose identity is known to the government. To ensure notice to interested persons whose identities are not known to the government, the government publishes notice of the administrative forfeiture proceeding on a dedicated website www.forfeiture.gov. If anyone files a claim with the administrative agency contesting the forfeiture, the agency refers the case to a United States Attorney's Office, which then has to decide whether to proceed with a judicial forfeiture action or to return the property. If no claim is filed, the administrative forfeiture still is not finalized until it has been reviewed for legal sufficiency by agency counsel.

c. Civil Forfeiture

Civil judicial forfeiture is an *in rem* proceeding brought against property that was derived from or used to commit an offense, rather than against a person who committed an offense. Unlike criminal forfeiture, no criminal conviction is required, although the government is still required to prove, in federal court, that the property was linked to criminal activity.

The *in rem* form of the action allows the court to gather anyone with an interest in the property in the same case and resolve all the issues with the property at one time. In a civil forfeiture case, the government is the plaintiff, the property is the defendant, and any person who claims an interest in the property is a claimant. The civil forfeiture action proceeds like a normal civil action, except for some special rules that apply only to forfeiture cases, set forth in the Federal Rules of Civil Procedure.

In fact, civil forfeiture can be an important sanction and deterrent for criminal activity if the government determines the appropriate outcome for the crime is monetary alone as opposed to a criminal conviction, which carries potential imprisonment as well as larger monetary penalties in the form of both forfeiture and punitive fines. This is often the case with structuring violations, which if prosecuted criminally are punishable by up to five years in prison, combined with forfeiture of the structured funds and criminal fines. Where the government seeks to ensure an individual or business does not continue evading the reporting requirements, but at the same time, wishes to avoid the additional consequences inherent in a felony conviction, the ability to civilly forfeit a portion of the structured funds represents an important middle ground in the government's enforcement efforts.

i. Why Use Civil Forfeiture?

The Department would like to highlight certain circumstances and categories of cases that would not be possible without civil forfeiture.

Property in the possession of a third party:

- Either by design or accident, criminally-tainted property is often in the possession of someone other than the person who committed the crime. The most sophisticated

criminals frequently hide assets in the possession of third parties, like family members or trusted confederates. In such cases, civil forfeiture enables the government to recover property when criminal prosecution of the possessor of the property may not be appropriate or feasible.

As Justice Kennedy observed of statutes authorizing civil forfeiture, “[these] statutes are not directed at those who carry out the crimes, but at owners who are culpable for the criminal misuse of the property. The theory is that the property, whether or not illegal or dangerous in nature, is hazardous in the hands of this owner because either he uses it to commit crimes, or allows others to do so. The owner can be held accountable for the misuse of the property.” *United States v. Ursery*, 518 U.S. 267, 294 (1996) (concurring opinion; internal citation omitted).

Criminals located outside the United States who cannot be prosecuted while outside our jurisdiction:

- **Terrorists** — In the *Bridge Investments* case, the government is seeking to forfeit a \$6.5 million investment account owned by an al Qaeda operative who is located outside the United States.
- **Kleptocrats** — In the *Obiang* case, the government secured the forfeiture of \$10.3 million in corruption proceeds from a sitting Vice President of Equatorial Guinea, Teodoro Nguema Obiang Mangue, as well as an additional \$20 million to be given to a charitable organization for the benefit of the people of Equatorial Guinea.
- **Fugitives** — In the *Benitez* case, involving a \$110 million Medicare fraud orchestrated by three brothers, the brothers escaped to Cuba, where they remain fugitives. Two civil forfeiture actions resulted in the recovery and civil forfeiture of millions of dollars of property, including a hotel, a water park, 30 vehicles, a car rental agency, houses, condos, and apartments.

The internet has opened new avenues for international organized criminals to commit crimes in the United States without leaving foreign countries that are safe havens from extradition. Civil forfeiture can be the only tool to secure their ill-gotten gains and return them to victims, or otherwise to deter and punish such conduct.

Criminal defendant is deceased:

- In the *Enron* case, Kenneth Lay died after he was convicted by a jury but before he could be sentenced. Civil forfeiture was the only way to secure millions of dollars of Lay’s assets, which were then used to compensate victims of the Enron fraud.

Living or perishable property:

- In the case of Michael Vick, the government was able to use civil forfeiture to move quickly to protect the abused dogs, rather than waiting for the criminal case to be fully resolved. The United States civilly forfeited 52 pit bulls, many of which were then adopted.

Impossible to identify a defendant:

- Stolen art and other items of cultural significance often appear in an auction house with no clear path to the person or group that originally stole the artifact. There are many such examples, including in the *Argentinean Sauropod* case involving three rare dinosaur eggs stolen from Argentina and brought to the United States. Despite being unable to identify the smugglers, the U.S. government was able to civilly forfeit the stolen eggs and return them to Argentina.

ii Assisting Victims of Crime

Not only does asset forfeiture punish criminals by removing their tools and illicit proceeds, it also enables the government to compensate the victims of crime. In fact, asset forfeiture laws, including civil asset forfeiture laws, are frequently the most effective tool in recovering the proceeds and property of crime for victims. Since 2000, the Department has returned over \$4.1 billion in assets to the victims of crime through asset forfeiture, of which \$1.8 billion was recovered through civil forfeiture. In addition, the Department expects to distribute approximately \$4 billion civilly forfeited as a result of the Madoff investigation and related forfeiture proceedings involving the estate of Madoff's partner Jeffrey Picower in 2010, JP Morgan Chase Bank in 2014, and other actions tied to the Madoff fraud scheme. Once the process needed to resolve more than 60,000 Madoff claims is complete, the total amount of victim compensation provided through forfeiture will stand at more than \$8 billion. At that point, victim compensation from forfeited funds will far exceed the nearly \$5.9 billion of forfeited funds that have been shared by the Department with state and local law enforcement partners to fight crime as part of the Equitable Sharing Program.

There are two primary reasons why forfeiture is sometimes the only way to assist victims:

First, civil forfeiture laws allow for seizure, after a judicial finding of probable cause that the seized property represents the proceeds of crime, or a court order to preserve assets pending a final resolution of the forfeiture case. Criminal defendants rarely have any illicit proceeds available by the time they are convicted and sentenced, when the court will order restitution. In the pre-conviction phase, civil asset forfeiture tools provide what is often the only means of preserving property subject to forfeiture so that it can ultimately be returned to the victims of the crime.

Second, over the years, the U.S. Marshals Service has developed a very efficient forfeiture management regime to maintain and eventually sell forfeited property. In cases where there are victims of the offense giving rise to forfeiture, this results in a much higher return for those victims.

2. Civil Forfeiture Proceedings in Structuring Cases

Congress has authorized forfeiture of funds used in a § 5324 structuring violation under 31 U.S.C. § 5317(c). Subsection (c)(1) authorizes criminal seizure and forfeiture of "all property, real or personal, involved in the offense and any property traceable thereto" for any violation or conspiracy to commit any violation of § 5324; subsection (c)(2) authorizes civil seizure and forfeiture of any property "involved in" or "traceable to" a violation of § 5324. For

the government to seize funds under either provision, the government must show probable cause that the funds were involved in or traceable to the structuring offense.

Moreover, civil seizures under § 5317(c)(2) require the intervention and approval of a court. Structuring seizures must be made “in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to [18 U.S.C. § 981(a)(1)(A)].” 31 U.S.C. § 5317(c)(2). The seizure or restraint of property under 18 U.S.C. § 981(a)(1)(A) is governed by 18 U.S.C. § 981(b), which requires the government to seize property “pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.” 18 U.S.C. § 981(b)(2). A court will only issue a search warrant upon a showing of probable cause by the government. Fed. R. Crim. P. 41(d)(1). Before the government can seize any structured funds, it must make a showing to the court that there is probable cause to believe the funds were structured in a manner intended to avoid a reporting requirement. Thus, the government is required to prove, and a court to find, probable cause before any seizure based on structuring. And probable cause is the very same legal standard required to obtain a search warrant or an arrest warrant.

3. Protections for Individuals Who Wish to Contest a Seizure or Forfeiture

In a civil action to forfeit property linked to crime, including a structuring violation, the government has the burden of proving by a preponderance of the evidence that a crime occurred, and that the seized property was connected to that crime. If the government is seeking to forfeit the proceeds of a structuring offense, it must establish that the property was obtained directly or indirectly as a result of the commission of the offense giving rise to forfeiture, and any property traceable thereto. 18 U.S.C. § 981(a)(2)(A). If the government is seeking forfeiture based on a theory that the property facilitated or was “involved in” crime, it must establish that there was a substantial connection between the property and the structuring. 18 U.S.C. § 983(c)(3).

Even if the government meets its burden of establishing the nexus between the property and the offense that forms the basis for the forfeiture, that does not necessarily end the inquiry. The law entitles any individuals with standing to assert a claim that they are innocent owners of the property at issue, after the government has proven its case. 18 U.S.C. § 983(d)(1). There are two types of innocent owner defenses: one applicable to persons who owned the property when the illegal activity was occurring, and the other applicable to persons who acquired their interest in the property after the illegal conduct occurred.

Congress provided two ways in which persons who owned an interest in the property when the illegal activity was occurring can prevail on an innocent owner defense. By a preponderance of the evidence, they can show they did not know of the illegal conduct. Or, if they did know, they can show that upon learning of the conduct they did all that reasonably could be expected, under the circumstances, to terminate the illegal use of the property, including giving timely notice of the conduct to law enforcement and revoking, or making a good faith attempt to revoke, permission of those engaged in the illegal conduct to continue using the property or taking other reasonable steps to discourage or prevent such illegal use. 18 U.S.C. § 983(d)(2).

Persons who acquired an interest in the defendant property after the illegal conduct occurred must show that they qualify as a bona fide purchaser for value of the interest and that,

at the time they acquired the interest, they did not know and were reasonably without cause to believe that the property was subject to forfeiture. 18 U.S.C. § 983(d)(3). The innocent owner defense is unavailable as to property that qualifies as contraband or other property that is illegal to possess. 18 U.S.C. § 983(d)(4).

Further, as part of the comprehensive reforms included in the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), a claimant in a civil forfeiture case may be entitled to counsel or attorneys' fees and costs. A claimant is entitled to appointed counsel if the claimant already has appointed counsel in a related criminal proceeding, or if the defendant property is the primary residence and the claimant is financially unable to obtain representation (18 U.S.C. § 983(b)(1) and (2)). CAFRA also provides that when a claimant substantially prevails in a civil forfeiture action, to the government is liable for his or her attorneys' fees and litigation costs. 28 U.S.C. § 2465(b).

I. Department of Justice Review of the Asset Forfeiture Program and Issuance of New Structuring Policy

As evidence of its commitment to improving the Asset Forfeiture Program, over the past 18 months the Department has been engaged in a comprehensive review of forfeiture practices and policies. The goal of this review is to ensure that the Department is allocating its resources to address the most serious criminal threats and that federal asset forfeiture authorities are appropriately and effectively used in that effort, consistent with civil liberties and the rule of law.

On March 31, 2015, the Department issued a policy limiting the use of asset forfeiture authorities in connection with structuring offenses under 31 U.S.C. § 5324(a). That policy restricts the use of civil or criminal forfeiture for structuring offenses until after a defendant has been criminally charged. Under the new policy, in the absence of criminal charges, judicially authorized warrants to seize structured funds can only be sought in two ways. Under the first method, the prosecutor must develop probable cause of additional federal criminal activity and that determination must be approved by a supervisor. Otherwise, a prosecutor may ask a judge to issue a seizure warrant in structuring cases only if either the U.S. Attorney or the Chief of the Criminal Division's Asset Forfeiture and Money Laundering Section (AFMLS) personally determines that seizure would serve a compelling law enforcement interest.

The new policy also imposes important protections after a seizure has taken place. The policy requires that, if a prosecutor determines that there is insufficient admissible evidence to prevail in a criminal or civil trial, within seven days the prosecutor must direct a seizing agency to return the funds. The policy also imposes a 150-day deadline to file a criminal indictment or civil complaint against the funds seized, or otherwise directs a return of the full amount of the seized funds. In addition, the policy requires a formal, written settlement agreement vetted by a federal prosecutor for settlements of structuring offenses. As explained at its implementation, the policy applied prospectively only and was "intended to ensure that [the Department's] investigative resources are appropriately and effectively allocated to address the most serious structuring offenses, consistent with Departmental priorities." The policy serves to guide the exercise of investigative and prosecutorial discretion in future cases.

The Department's review of asset forfeiture is still ongoing. Other reforms include the January 2015 Attorney General Order prohibiting the adoptive forfeiture of property seized by

state and local law enforcement, except in cases implicating public safety. More recently, in March 2016, the Department issued a Policy Directive requiring additional approvals when civilly forfeiting property used to facilitate a crime to ensure that the rights of property owners are appropriately balanced with compelling law enforcement interests. We believe these carefully crafted changes have significantly improved the program, and should leave little doubt that, where appropriate, the Department will address concerns.

II. Petitions for Remission and Mitigation

After a forfeiture is complete, owners, lienholders, or victims can seek the return of property by filing a petition for remission or mitigation. This process “does not serve to contest the forfeiture, but rather is a request for an executive pardon of the property based on the petitioner’s innocence or, for a wrongdoer, on a plea for leniency.” *United States v. Ruth*, 65 F.3d 599, 604 n.2 (7th Cir. 1995). The Department has procedures in place for considering and fairly resolving petitions for remission and mitigation of completed forfeitures. The Department designed regulations to offer owners and lienholders a way to pursue their interests in forfeited property without requiring them to litigate those interests in court. These regulations also provide a mechanism for victims of the crimes underlying a forfeiture to seek recovery for certain losses.

The regulations, codified at 28 C.F.R. § 9, require that when the Department or one of its law enforcement agencies initiates an administrative or judicial forfeiture action, it must send a notice of seizure and intent to forfeit seized property to persons who have a recognized ownership interest in seized property, such as title owners and lienholders. The regulations require that the notice provide, among other things, information describing the remission process, such as when and where a petitioner may submit a petition for remission or mitigation.

The Department rules on petitions for remission once a forfeiture is completed. The seizing agency decides petitions in administrative forfeitures, and AFMLS decides petitions in judicial forfeitures. Where the Department decides petitions for remission, it does so in accordance with its remission regulations. As part of reviewing any remission or mitigation petition, under 28 C.F.R. § 9.5(a)(4), the official ruling on the petition must “presume a valid forfeiture and shall not consider whether the evidence is sufficient to support the forfeiture.” In order to qualify for remission, the owner or lienholder must establish that he or she “has a valid, good faith, and legally cognizable interest in the seized property as owner or lienholder as defined in this part and is an innocent owner within the meaning of 18 U.S.C. §§ 983(d)(2)(A) or 983(d)(3)(A).” 28 C.F.R. § 9.5(a). Given these criteria, individuals who are seeking return of funds forfeited in structuring cases may not qualify for remission.

However, when a petitioner does not otherwise qualify for remission, the Department may decide whether mitigation would be appropriate under its specific mitigation regulations. Where a petitioner seeks mitigation but was involved in the commission of the offense underlying forfeiture, those regulations provide as follows:

The ruling official may in his or her discretion grant mitigation to a party involved in the commission of the offense underlying the forfeiture where certain mitigating factors exist, including, but not limited to: the lack of a prior record or evidence of similar criminal conduct; if the violation does not include drug

distribution, manufacturing, or importation, the fact that the violator has taken steps, such as drug treatment, to prevent further criminal conduct; the fact that the violation was minimal and was not part of a larger criminal scheme; the fact that the violator has cooperated with federal, state, or local investigations relating to the criminal conduct underlying the forfeiture; or the fact that complete forfeiture of an asset is not necessary to achieve the legitimate purposes of forfeiture.

28 C.F.R. § 9.5(b)(2).

Throughout our process of reviewing petitions for remission and mitigation, the Department is focused on ensuring fairness and consistency, as well as instilling public confidence in these and other cases. Although we cannot comment on any pending litigation or specific cases, the Department continues to thoroughly review and appropriately rule on any current and newly filed petitions for remission or mitigation, including those involving structuring violations.

Conclusion

With respect to the specific topic of civil forfeiture of property involved in the crime of structuring, the policy adopted over a year ago has already effectively eliminated such forfeiture actions unless the defendant is first criminally charged or prosecutor can establish the presence of additional criminal activity separate from the crime of structuring. This is a significant change that exceeds the requirements of the law, and it underscores the Department of Justice's commitment to fighting crime and returning money to victims while protecting civil liberties and ensuring due process. The Department looks forward to working with the Congress to identify other ways to improve the Asset Forfeiture Program and our enforcement of structuring violations in a manner consistent with these ideals. I thank the Subcommittee for its interest in these critical issues, and am happy to answer any questions.

Chairman ROSKAM. Thank you both for your statements.

Just as a little bit of a prelude—and I will come to Mr. Meehan very, very quickly, but we are having this hearing because of a briefing that I found just incredibly dissatisfying in February of this year. And, you know, the Internal Revenue Service made a decision that I think is a fantastic decision, and that was, look, don't treat these underlying offenses that are not criminal cases in this way. And they made a good decision, and people said, "Terrific." Mr. Weber made the announcement. It was in *The New York Times* and so forth. And, across the aisle, there was a sense of, "This is a good thing."

Then I asked for a briefing. Because, you know, it just sort of occurs to one, well, what happens if that was then and this is now? So, in other words, somebody is caught up in this, and are they just going to go through the legal meat grinder of getting caught up? And isn't there a way out for people who wouldn't—this wouldn't apply to them in the future?

And in this room in February, I thought it was going to be a 15-minute meeting. I thought it was going to be, "Hey, Mr. Roskam, you know, we've disposed of these cases, and here's this process, and it's all done, and all is good," and that I was going to get on my plane and go home to Chicagoland and that was it.

But it was just one of these meeting that I came out of an hour and a half later, and I was completely dissatisfied. And I told the three representatives from the IRS and I told the three representatives of the Department of Justice, I said, "I am more fearful of you now than I was when I walked into the room." And the fear that I was manifesting was kind of reflected in my own constituency, and that is: Look, there is no pursuit of justice here. And it was obtuse. It was this—it was like a weird Kafka novel script, frankly. I thought, "We can do a lot better than that."

And so, if you listened to the first round of questions, what you are hearing is a wide range of political opinion, a wide range of life experience, a wide range of geography that is all saying one thing: "Do justice. And pursue it and make it happen and be aggressive about it."

And there is always, you know, sort of one reason or another, or we can't talk about this, and we can't talk about that. And we are not asking anybody here to do anything that they don't have the authority to do. But you have the authority to fix this, and you have the authority to do something extraordinarily great here.

And the extraordinary greatness would be to restore the confidence of Mr. and Mrs. Sowers, to restore the confidence of Mr. and Mrs. Taylor, and all kinds of people out there, where they say, "You know what? This government, it responded. And when it was brought to a level where people said this is an important thing, the government responded."

And we have to get this done. There is an urgency to this. Because if we don't, then what happens? The government becomes delegitimized in people's eyes. Really, it becomes very, very, very corrosive. So this is something we have to deal with.

And I am convinced that we can do some good here. I am convinced that our subcommittee and those in the executive branch with authority have the capacity together to do justice.

I yield to Mr. Meehan.

Mr. MEEHAN. Thank you, Mr. Chairman.

Mr. Blanco, you cannot comment on specific cases, but we can. And we sat here and listened to the testimony of two farmers. And as you go through the litany of the kinds of issues—whether there was prior conduct, whether it is drug proceeds, whether they were cooperating, whether it may be an isolated incidence, whether it is necessary to effectuate a criminal purpose—I purposely elicited testimony from them about their experience, and on every factor there is a complete absence of the kind of aggravating circumstances associated with their matter.

Now, we are going to talk about policies moving forward, but we are in this gap of time in which the Department of Justice, which has been handed a great percentage of the responsibility to deal with these issues, it now lies with you and those who work with you.

Now, you talk about cases in which there is a preponderance of the evidence. We have also heard testimony from the individual who was here before about some 618 cases in which the Department of Justice, by its own identification, from the Freedom of Information request, identified that that file contained by the DOJ's failure to check off the box that they had no suspicion of criminal activity. That is \$43 million worth of dollars that have been seized from American citizens, small-business owners, in which IRS agents showed up.

Now, I am aware today because of public information which was made about the extreme activity going on in the Department of Justice as we speak. Whether it is a policy decision, others can argue about. But there are scores of attorneys, maybe more, throughout the Department of Justice voraciously going through the records of convicted criminals, who are currently sitting in prisons, trying to find ways in which we can suggest that somehow those convictions weren't completely just and we have to undo some percentage of that.

We will let that issue go. What I want to stand for is the fact that, as we speak today, there is significant effort going on in this Department of Justice to go through the records of convicted criminals to see if we can change their load. And yet we have before us people, no criminal suspicion, assets which have been seized, 618 cases. What is being done to look at the cases for those 618? Because in the same case, justice delayed is justice denied. We are looking at years of delay for some of these individuals.

Mr. Blanco, what do you know about the efforts looking into the 618 cases for individuals who have not been suspected of criminal activity, one of the criteria that you have for a seizure?

Mr. BLANCO. Congressman, my understanding is, with the testimony this morning, is those cases were IRS cases. Not all of these cases would have come to the Department of Justice. Some of those cases could have been handled administratively. So I don't think all those cases are ours.

And, also, the \$43 million would have gone into the TEOAF and not necessarily to the Department of Justice.

Mr. MEEHAN. That is not what I am—where it goes, the money, I am not interested in. Well, maybe we will have—since we have

Mr. Weber, Mr. Koskinen, the three of you can sit and resolve this issue.

But, Mr. Koskinen, you testified that you have had 75 cases, but that falls woefully short of the 618 which have been reported, and those only because we have been able to have a FOIA request to identify those. 75, 618. What do you know about what efforts have been undertaken to fairly and appropriately resolve these outstanding issues?

Mr. KOSKINEN. My understanding of the 618 is the box hasn't been checked, therefore they are going to be criminally prosecuted. But they doesn't mean that those cases don't have illegal sourcing being used as part of the structuring.

And our files don't distinguish, at this point, looking backwards, is which of those would in fact meet the criteria we are talking about here and which of them actually, while there is not a criminal prosecution, did have evidence of—

Mr. MEEHAN. But why wouldn't somebody be required to identify the potential criminal nature for the seizure in the record?

Mr. KOSKINEN. Remember, these were cases that were filed before our policy was changed. And, ultimately, the Department of Justice files—

Mr. MEEHAN. Well, I know that. This is why this is of concern. I go back to the point, justice delayed, justice denied. That is fine, we move forward, and we can talk about the policy moving forward. But you see we are talking about cases from 2007 to 2013.

We have a farmer here who is looking to pay for a wedding. We have somebody, the bills have not stopped coming in for the \$49,000 that this farmer is looking to get back which has been wrongfully seized.

Mr. KOSKINEN. Yes. And as I have noted, we have looked at—we have received petitions, more than just the couple that were referred to. As noted, as I said, if they were administrative—that is, they didn't go into the court system—we have control. If they went into—

Mr. MEEHAN. My time is up, but I know—

Mr. KOSKINEN. I would be happy to answer the question, though. I think we can—

Mr. MEEHAN. Well, but IRS is blaming it on Justice, Justice is blaming it on IRS. Let's—

Mr. KOSKINEN. I am not blaming it on anybody. I am just telling you what we can do. And what we can do is we have reviewed 75 cases either with petitions or that were caught in the middle and—

Mr. MEEHAN. Can you get back to us on the status of 618 which are part of our record correctly?

Mr. KOSKINEN. I would be delighted to do that to the extent we have that information.

Mr. MEEHAN. Thank you.

Chairman ROSKAM. Mr. Lewis.

Mr. LEWIS. Thank you very much, Mr. Chairman.

Let me thank the witnesses for being here today.

I have been on this committee for some time, and I have never, ever seen in a very long time this degree, this spirit of togetherness. On this issue, we are on one accord.

Citizens, taxpayers, landowners, farmers coming, pleading with their government to help them. They feel like they have been wronged. This is not their first time coming in to testify before us. They have invested their livelihood, everything they have. And they have been told by their government, by the IRS, Department of Justice, by somebody that we are coming to get you. They feel like they haven't done any wrong.

So I understand that both the IRS and the DOJ updated their policies for assets being seized without proving criminality. In general, is it fair to say that, unless there is evidence of criminal activity, that your agency would not bring seizure charges that are solely based on structure of bank deposit?

Mr. KOSKINEN. That is correct.

Mr. LEWIS. Well, Mr. Commissioner, DOJ, tell me, how do you inform these people that are hurting, that are suffering? How do you inform them? When do you make it right for them? How long does it take? How long must people wait?

Mr. BLANCO. Is your question directed to me?

Mr. LEWIS. Any member of the panel.

Mr. BLANCO. Great.

Congressman, prior to a petition for mitigation, a couple of things have already occurred. And what has already occurred is that agents, prosecutors, and a judge has found that the individual has structured funds and that those funds were structured to a crime of structuring.

So, at this point, when somebody comes for mitigation, what we are looking at is evaluating the case under the factors that I have seen. And what ends up happening, Congressman, is it is not just one person making that decision. There are career—

Mr. LEWIS. But how long does it take for one person or two or three people to make the decision?

Mr. BLANCO. Good question, Congressman.

What I have seen in my 27 years is, with respect to Justice and all matters of law enforcement, it does take time. There is a thorough review of the matter to make sure that we are doing the right thing, as the Congressman has mentioned earlier. It is about doing the right, and it is always about doing the right thing.

Clearly, the government should never be in the business of taking money from people who have never violated the law. That is very clear. And I think everybody in this room believes the same thing.

But it is a process that we must go through. There are career agents who are looking at cases that are pending before the Department of Justice, career prosecutors. And it will be made—the decision will be made by a career prosecutor. And there are layers.

Mr. LEWIS. When we find out that the people didn't do anything wrong, do we amend? Do we say we are sorry? How do you make them whole again?

Mr. BLANCO. Congressman, at the point that we are at right now in many of these pending cases, there has already been a finding that there was probable cause that the funds used were attached to a crime, and this crime was the crime of structuring. It is still a Federal crime.

And so, given that, there is mitigation in this process. And what we are talking about is pardoning the rest of the money that was not already given back to the individual. And that takes some time. Mr. LEWIS. Well, I don't want to get involved in maybe a particular case, but I am not sure—maybe, Mr. Chairman, you can help me out here somewhat—that a letter, an email was sent to someone saying we are treating you different because you did an interview. Is that right in America? Don't we have—people are free to say what they want to say during an interview with a member of the press? Because you did an interview, so we are going to go after you. I mean, we are not going to be—we are going to be hard on you.

Mr. BLANCO. Congressman, I will tell you this. My family are immigrant exiles in this country, and my grandmother always said one thing to me: "We didn't come to this country to be silent." So nobody believes stronger in the ability of U.S. citizens or anybody else to speak up against their government. And I think everybody in this room feels the same way.

I am not going to comment on any particular case that is standing before the Department of Justice. You know I can't do that. But I can tell you that people have a right to be able to say what they want when they want and to whom they want in this country. And I think that is something that we all can stand by.

Mr. LEWIS. Mr. Chairman, I yield back. Thank you.

Chairman ROSKAM. Mr. Blanco, just for your benefit, Mr. Lewis and I wrote to the Attorney General, brought this to the Attorney General's attention, the issue that Mr. Reed raised. And it is part of this, you know, larger contours of these people who are just run roughshod by this process. And so we will have an opportunity to inquire further—

Mr. BLANCO. Okay.

Chairman ROSKAM [continuing]. After we hear from all the members.

Mr. Holding.

Mr. HOLDING. Thank you, Mr. Chairman.

Mr. Weber, will you restate your title, please?

Mr. WEBER. Sure. Chief of Criminal Investigation at the IRS.

Mr. HOLDING. And you are a sworn law enforcement officer, correct?

Mr. WEBER. I am not a law enforcement officer. As Chief, I am not an 1811 special agent.

Mr. HOLDING. Okay. But the agents that work for you are sworn—

Mr. WEBER. They are, yes.

Mr. HOLDING. They are 1811s, which—an 1811 in kind of the parlance of the law enforcement community means that you have a badge, carry a gun, serve warrants, and so forth, correct?

Mr. WEBER. That is correct. I have a badge. I don't have a gun.

Mr. HOLDING. Got it.

So the actions of your department, you know, IRS Criminal Investigations, who is ultimately responsible for your actions?

Mr. WEBER. Well, as Chief of CI, I would be responsible for the actions of my agents. I report up to a deputy commissioner and then to the Commissioner, who ultimately oversees the entire IRS.

Mr. HOLDING. But you, as Chief, report to a deputy commissioner, correct?

Mr. WEBER. I do.

Mr. HOLDING. So that is your direct report.

Mr. WEBER. Yes, sir.

Mr. HOLDING. This deputy commissioner, does he have any law enforcement background?

Mr. WEBER. I don't believe so. I believe he was with the IRS for 30-plus years on the civil side, but he may have had some supervisory responsibility over the criminal side before the Restructuring Act.

Mr. HOLDING. So this deputy commissioner is a longtime IRS employee, but he is not a Presidential appointee, is he?

Mr. WEBER. No.

Mr. HOLDING. Can you think of any other Federal law enforcement agency that directly reports to a non-Presidential appointee other than you?

Mr. WEBER. I am not aware of one.

Mr. HOLDING. So how often do you have to report to this deputy commissioner?

Mr. WEBER. Often, in terms of meetings, in terms of communication—

Mr. HOLDING. Let me ask, what is the protocol?

Mr. WEBER. I have a monthly meeting with the Deputy Commissioner. I have a monthly meeting with the Commissioner. I routinely report on the activities of everything that is going on within CI.

Mr. HOLDING. So if you need additional resources for your department, what do you do? Who do you talk to?

Mr. WEBER. That would be the Deputy Commissioner and the Commissioner. And, actually, the entire senior executive team is involved in decisions regarding budget appropriations.

Mr. HOLDING. So have you had any difficulty getting additional resources when you have asked for them?

Mr. WEBER. That is probably a difficult question for me to answer. You know, I think the budget cycle for the IRS has been especially difficult during the 4 years that I have been here. So I think it has been difficult for every part of the IRS, not just Criminal Investigations.

Mr. HOLDING. So, I mean, your criminal investigation department, it competes for resources with the rest of the IRS and the other things that they do, correct?

Mr. WEBER. We do.

Mr. HOLDING. So how much of your work, your criminal investigations, are on tax-related investigations versus, you know, other types of investigations?

Mr. WEBER. Approximately 70, 73 percent of our work is related to tax investigations. The other work would be on the money-laundering side, public corruption, terrorist financing, money laundering connected to drug trafficking, identity theft, cyber crimes.

Mr. HOLDING. And I can speak from personal experience that, you know, the agents of the IRS Criminal Investigations, you know, are top agents. I mean, when I was a United States attorney, we always wanted to have an IRS CI agent, you know, on our most

difficult cases, whether it is a corruption case, terrorism case. They are very, very capable agents.

Mr. WEBER. Thank you. Thank you, Congressman. I have worked with all of the agencies as a former Federal prosecutor. I have a lot of respect for the other agencies, but I do believe that IRS CI special agents are the best financial investigators in the world. So I appreciate that comment.

Mr. HOLDING. Well, it is borne out by a lot of experience and results.

Mr. Chairman, I will tell you, this investigation of IRS' civil asset forfeiture authorities has brought to light to me some problems that I didn't know of with IRS CI regarding the resources they have and the supervision and so forth. And I don't think that housing a criminal investigative agency that investigates a wide variety of crimes, as we have heard here—everything from tax crimes to public corruption, terrorism—under the IRS makes much sense.

And as this committee and this Congress examine ways to improve the Tax Code and the structure of the IRS, you know, I think it is important to give the Criminal Investigations of the IRS the resources it needs, as well as accountability. And I don't think this can be done in an agency, like the IRS, that is scandal-ridden, that is plagued with a bureaucracy that seems to be somewhat unaccountable.

And that is why I have introduced the CI Realignment Act, which would create an independent bureau of criminal investigation housed under main Treasury, taking the criminal investigations out from under the IRS. So I look forward to working on that.

Thank you.

Chairman ROSKAM. Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman.

I thank all of you for giving us your understanding of the law, but, quite frankly, that is not the problem we have today, Mr. Blanco. We all understand the law. We, together, are a part of government. We answer to constituents. They are our political family. And when one of them are mistreated, they come to us for a solution to that problem.

You are part of this family. So to say that it takes a long time to right a wrong—no, it doesn't. Because we are the political structure of that government, and we have a 2-year contract. And so, therefore, it is not your love and respect for a person's right to speak out against government. We have a problem. And the best way we can handle it is to come together to share it and not to talk about how long it takes to resolve it.

I would like to believe that this is one of the things, the terrible things, that fell between the cracks because some agent, some person misunderstood and made one big mistake. But no. Someone said there are 600 cases, and then I think the answer was, "Not exactly." Someone said that this is happening to millions of people, and they said, "Well, that's the different between IRS and Treasury."

You know, as a former assistant U.S. attorney, when a judge asks, was the government ready, they don't ask whether IRS is ready or whether Justice is ready. They say the United States Government. That is us.

So please don't talk about how long it is going to take in the regular course of procedure to determine whether or not our government committed a crime, made a mistake, or that you need our help in order to change the law.

So when someone asks how long does it take and you knew we were coming, why wasn't this put on the special detail? No, don't take away agents—people away from those that are trying to bring some justice to the statutory situation. That is not what we are talking about. But when you know we have a problem and you know you are coming before this committee, why in God's heaven didn't you have somebody get on these 600 cases?

Are there 600 cases, Mr. Blanco, or do you know?

Mr. BLANCO. Congressman, I don't know. That is——

Mr. RANGEL. Did you hear that there was an accusation that it could be 600 cases?

Mr. BLANCO. I heard that today during the testimony.

Mr. RANGEL. That is the first time you heard about it?

Mr. BLANCO. First time I heard about it.

Mr. RANGEL. Did anyone, did you ever hear that there was accusation that what happened today with these two witnesses was the tip of the iceberg and that some people got caught in this before you changed the policy? Did you know that there was this accusation?

Mr. KOSKINEN. I noted, when we changed the policy—and we were the first law enforcement agency that changed that policy—a year and a half ago, we understood that there would be some cases that were in process.

Mr. RANGEL. Did you go out of your way to pull out those cases because you felt that the policy was wrong, an injustice has been done, not to these 2 people, but to—I think you used 70.

Mr. KOSKINEN. Seventy-five.

Mr. RANGEL. Seventy-five.

Mr. KOSKINEN. And we looked at all the cases that were caught where they had not——

Mr. RANGEL. As far as those 75, aren't you in a position to come before this committee and say that, "Yes, some mistakes were made, we changed our policy, 75 people we looked into, and this is our report," without violating any—can't you tell us that—you know, I cannot believe that two farmers had deposits less than \$10,000, and someone reported it or someone found out about it, they technically violated the old law, they milked cows and whatever farmers do—pray to chickens—and someone said that we are going to have to look into this from a criminal or even a civil thing.

Now, you and I know why we have this structure. Law is for people who want to avoid the law. And so, if you know that we have 75 cases, why don't we have 75 explanations of what happened? Why can't you make us feel like we made a mistake and we are correcting it?

And this 600 figure, Mr. Blanco, is that we are supposed to have—and, Mr. Chairman, you may have to help me—600 cases that the forfeiture bureau said that they have and where they have checked off a box that is saying that, to their knowledge, there is no criminal activity involved to refer it to be prosecuted. And no

one seems to know where these cases—you don't know about these 600 cases?

Mr. KOSKINEN. As I noted, of those 600, there is a box that is whether they are going to be criminally prosecuted. The box does not explain to you whether, in fact, there is illegal sourcing as part of that.

Mr. RANGEL. Listen, you have 600 cases——

Mr. KOSKINEN. Right.

Mr. RANGEL [continuing]. That are in question. You know where they are. And Mr. Lewis said, how long, how long, how long is it going to take? Now, let me make it abundantly clear. This is not going to take as long as you think it is going to take. I have never seen the bipartisanship on this committee on anything, and I am going to take advantage of it. I am going to take advantage of it. It is not going to take the regular length that it takes to investigate the so-called 600 cases, period. And we are not going to do injustices to other investigations that Justice has.

Now, you may come and throw up your hands and say, "We don't have resources to do it." This is just one of those things. Six hundred cases is bigger than you ever would think. But you have to tell us something. You have to find those 600 cases. You are going to find out which one of these people were suggested to be a drug dealer.

You know, you couldn't pull these farmers out of central casting in terms of representing what America wants to look like, you know. And so they didn't come from my neighborhood, I know that. Because I could understand why you would be giving them a hard time for that. But we have a case now for America. We could not have done better in picking out two Americans that got a bad deal from our government. That is our government.

And so, whoever follows me, you tell them what you are going to do. Don't tell us what the law is. It is good law.

Mr. KOSKINEN. We can give you the exact response to all 75.

Mr. RANGEL. What happened to the 600?

Mr. KOSKINEN. The 600, as I noted, a number of those do not meet these criteria. A number of those were people where there was not enough evidence to convict them of crimes——

Mr. RANGEL. Okay.

Mr. KOSKINEN [continuing]. But there was clear indications that the money was illegal-sourced.

Mr. RANGEL. Okay. Somebody just told us that they have to pay you to find out whether or not there is evidence of criminality. This committee doesn't have to pay you to find that out, do we?

Mr. KOSKINEN. No.

Mr. RANGEL. No, right?

Mr. KOSKINEN. The FOIA——

Mr. RANGEL. No, no, no. We don't want to know the names, but someone is going to say that it may not be a sufficient violation of the law for it to be prosecuted, but there is sufficient evidence that some wrongdoing is there. We want to know. Someone else wanted to know, and they said that you told them that, in order to get the 600, they had to pay a quarter of a million dollars. Now, we don't have to pay for that, right?

Mr. KOSKINEN. No. And nor does——

Mr. RANGEL. Forget him.

Mr. KOSKINEN [continuing]. Most people.

Mr. RANGEL. Us. We don't have to pay for it.

Mr. KOSKINEN. You don't have to pay for that.

Mr. RANGEL. So we are going to be able to determine, with your help, how many of these 600 people have some evidence of wrongdoing, right?

Mr. KOSKINEN. Right. It will be, as I say, because the file—you will have to go through every file——

Mr. RANGEL. I understand that.

Mr. KOSKINEN [continuing]. Because a number of—our experience is——

Mr. RANGEL. Listen, if this was our grandkids that was going through this, we will find some way to expedite it. These are our grandkids. They vote, you know?

Mr. KOSKINEN. Our experience is the hearings that this committee held a year and 14 months ago, the work that has gone, the visibility, the visibility that has gone when we remitted, there aren't many people out there who don't know that, in fact, we are entertaining petitions. And so the people who have any claim at all——

Mr. RANGEL. We are not waiting for them to petition.

Mr. KOSKINEN. We can——

Mr. RANGEL. We want to know how many of these cases there is some evidence of wrongdoing, whether it is criminal or not. And we want, categorically, immediately, the disposition of the 75 cases.

Mr. KOSKINEN. We can give you that.

Mr. RANGEL. And we are going to have a press conference. We will do all of the notification. And you are not going to embarrass us any further. Because we have to find some way to get the weight off of us. You know that.

So please help us to help our constituents, to help our country. And then on the question as to whether you don't have the resources to do it, because we know how badly the Congress has treated you, talk about that. But don't say it can't be done. We expect for it to be done.

Thank you for your patience.

Chairman ROSKAM. Thank you, Mr. Rangel.

Just for the record, people don't know that money is being remitted. We had to tell some of our own witnesses about this process. So there is work to be done, to Mr. Rangel's point.

And, Mr. Blanco, just for the record, every member of this subcommittee wrote to the Department of Justice in March of this year and requested a complete and thorough review. So, at the end, one of the inquiries I will make of you is what is happening on that.

So I would like to yield to Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Like the chairman said, in October 2014, the IRS announced a new policy, that it would only seize structured assets that came from an illegal source.

During our hearing last year, Mr. Koskinen, you agreed with Congressman Holding that, if the IRS seizes assets of a person, they could go to court and argue the government doesn't have cause if the document doesn't show the funds came from an illegal

source. You said, and I quote, "Private citizens should have the ability to do that."

A few weeks later, though, you said in a letter to the committee that, quote, "Decisions above what specific evidence is included within a warrant affidavit ultimately falls within the discretion of the U.S. Attorneys Office, in consultation with law enforcement agents. In the interest of operational considerations, the assistant U.S. attorney and case agents may have sound reason for not including certain evidence in a seizure warrant affidavit involving illegal-source investigations. So the evidence of a legal source may not be included in every seizure warrant affidavit."

I would like to enter your letter and the letter that the committee sent in response into the record, Mr. Chairman.

Chairman ROSKAM. Without objection, so ordered.

[The information follows:]

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STAFF DIRECTOR

Congress of the United States

U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

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JANICE MAYES,
MINORITY CHIEF COUNSEL

March 5, 2015

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Koskinen,

Thank you for your testimony to the Ways and Means Subcommittee on Oversight on February 11, 2015, regarding the Internal Revenue Service's use of civil asset forfeiture laws. To help the Subcommittee better understand how the IRS is implementing its new policy to "no longer pursue the seizure and forfeiture of funds associated solely with 'legal source' structuring cases," barring exceptional circumstances,¹ please answer the following questions by March 19, 2015:

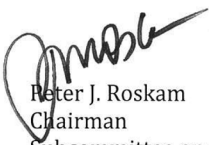
1. In the case *United States v. \$107,702.66 in U.S. Currency*, No. 7:14-CV-295 (E.D.N.C., filed Dec. 24, 2014), in which the IRS seized funds from Lyndon Bruce McLellan, Darlene Hunt, Mary Bruce Floyd, and L&M Convenience Mart, Inc., the affidavit in support of the seizure did not cite any evidence that the funds came from an illegal source. *See* Affidavit, attached. Did the IRS apply its new policy before seizing the funds?
2. Are there other cases in which the IRS has seized legal-source funds on suspicion of structuring on or after October 25, 2014? How many? What was the reason for any such seizures?
3. Going forward, in light of the new policy, can we expect that affidavits filed in support of applications for seizure warrants will include evidence of illegal source? If not, how can we be assured that the IRS is enforcing the new policy?

¹ *Statement of Richard Weber, Chief of I.R.S. Criminal Investigation*, N.Y. TIMES, Oct. 25, 2014.

Additionally, please provide copies of any trainings, communications, or memoranda distributed to IRS personnel explaining how the new policy should be implemented by March 19, 2015.

Thank you for your assistance in this matter. If you have any questions, please contact Oversight Subcommittee staff at 202-225-5522.

Sincerely,

A handwritten signature in black ink, appearing to read "Roskam", with a large, stylized initial "R" that loops around the first part of the name.

Peter J. Roskam
Chairman
Subcommittee on Oversight

cc: Rep. John Lewis
Attachment

Attachment

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:14-CV-295

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	COMPLAINT FOR FORFEITURE
	:	<u>IN REM</u>
\$107,702.66 IN UNITED STATES	:	
CURRENCY SEIZED FROM LUMBEE	:	
GUARANTY BANK ACCOUNT NUMBER	:	
82002495,	:	
	:	
Defendant.	:	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, states as follows:

1. This is a civil action in rem brought to enforce the provisions of 31 U.S.C. § 5317, providing for the forfeiture of any property involved in violations of 31 U.S.C. § 5324, and any property traceable to such violation or conspiracy.
2. This Court has jurisdiction over this matter by virtue of 28 U.S.C. §§ 1345 and 1355. Venue in this district is proper by virtue of 28 U.S.C. §1395.
3. The defendant is \$107,702.66 in United States currency seized from Lumbee Guaranty Bank Account Number 82002495.
4. The defendant is located within the jurisdiction of this Court, it being in the Eastern District of North Carolina. It is presently in the custody of the Internal Revenue Service in Raleigh, North Carolina.

5. The potential claimants in this action are: Lyndon Bruce McLellan, L&M Convenience Mart, Inc., Darlene Hunt and Mary Bruce Floyd.

6. The facts and circumstances supporting the seizure and forfeiture of the defendant are contained in the previously filed application in support of seizure warrant made by Task Force Officer Andrew Pappas, Internal Revenue Service-Criminal Investigation (IRS-CI), which resulted in the issuance of a seizure warrant by Magistrate Judge Robert B. Jones, Jr. as to the subject bank account and is currently filed under seal at the U. S. District Court for the Eastern District of North Carolina, Court No. 7:14-MJ-1120. Such facts constitute probable cause for the forfeiture of the defendant property.

7. The defendant is forfeitable to the United States pursuant to the provisions of 31 U.S.C. § 5317.

WHEREFORE, the United States of America prays that a warrant of arrest in rem issue for the arrest of the defendant; that due notice be given to all parties to appear and show cause why the forfeiture should not be decreed; that judgment be entered declaring the defendant forfeited to the United States of America for disposition according to law; and that the United States of America be granted such other relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Respectfully submitted this 23rd day of December, 2014.

THOMAS G. WALKER
United States Attorney

BY: /s/ Stephen A. West
STEPHEN A. WEST
Assistant United States Attorney
Attorney for Plaintiff
Civil Division
310 New Bern Avenue, Suite 800
Federal Building
Raleigh, NC 27601-1461
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
E-mail: steve.west@usdoj.gov
NC State Bar No. 12586

VERIFICATION

I, Stephen A. West, Assistant United States Attorney for the Eastern District of North Carolina, declare under penalty of perjury, as provided by 28 U.S.C. Section 1746, the following:

That the foregoing Complaint for Forfeiture is based on reports and information furnished to me by Task Force Officer Andrew Pappas of the Internal Revenue Service-Criminal Investigation (IRS-CI), and to the best of my information and belief, is true and correct.

This the 23rd day of December, 2014.

/s/ Stephen A. West
STEPHEN A. WEST
Assistant United States Attorney
Civil Division

SEALED

FILED

AO 108 (Rev. 06/09) Application for a Warrant to Seize Property Subject to Forfeiture

UNITED STATES DISTRICT COURT

JUL 20 2014

for the
Eastern District of North CarolinaJULIA A. RICHARDS, CLERK
US DISTRICT COURT, EDC
BY DEP. CLKIn the Matter of the Seizure of
(briefly describe the property to be seized)
Funds in Lumbee Guaranty Bank account number
82002495 up to \$463,289

Case No. 7:14-MJ- 1120 - RJ

APPLICATION FOR A WARRANT
TO SEIZE PROPERTY SUBJECT TO FORFEITURE

I, a federal law enforcement officer or attorney for the government, request a seizure warrant and state under penalty of perjury that I have reason to believe that the following property in the Eastern District of North Carolina is subject to forfeiture to the United States of America under 31 U.S.C. § 5317 (describe the property):
Funds in Lumbee Guaranty Bank account number 82002495 up to \$463,289

The application is based on these facts:

☒ Continued on the attached sheet.

Applicant's signature

Andrew Pappas, Task Force Officer, IRS-CI

Printed name and title

Sworn to before me and signed in my presence.

Date: July 29, 2014

Judge's signature

City and state: Wilmington, North Carolina

Robert B. Jones, Jr., United States Magistrate Judge

Printed name and title

1. I, Andrew Pappas, a Special Agent with the North Carolina State Bureau of Investigation ("NCSBI"), and Federal Task Force Officer with the United States Treasury Department, Internal Revenue Service, Criminal Investigation ("IRS-CI"), being duly sworn, depose and state the following:
2. I have been a Special Agent with NCSBI for more than ten (10) years. I am currently detailed as a Federal Task Force Officer with IRS-CI. In connection with both positions, I have received training in the investigation of financial crimes. I am currently assigned to the Financial Crime Investigations Unit of the State Bureau of Investigation. I have been a licensed North Carolina Certified Public Accountant since October 2007.
3. Since becoming a Task Force Officer with IRS-CI and as a Special Agent with the State Bureau of Investigation, I have been involved in numerous federal cases involving the investigation of money laundering and Bank Secrecy Act violations.
4. This affidavit is made in support of an application for a seizure warrant for any and all funds contained in Lumbee Guaranty Bank account number 82002495 held in the name of L&M CONVENIENT MART, INC., a convenience store operating in Robeson County, NC. The facts and information in this affidavit are based upon my personal knowledge as well as the observations of other law enforcement agents and others involved in this investigation. The affidavit contains information necessary to support this application. It is not intended to include each and every fact and matter observed by me or known to the Government.
5. Investigative activity to date revealed that Lyndon McLellan is the President of L&M CONVENIENT MART, INC., which is located at 1309 Lakeview Road in Fairmont, North Carolina.
6. Title 31 U.S.C. Section 5324 and its related regulations states that when a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of U.S. Coins or currency (e.g. "Cash" in an amount greater than \$10,000), the institution shall file a Currency Transaction Report ("CTR") for each cash transaction, such as, by way of example, a deposit, withdrawal, exchange of currency or other payment or transfer by, through or to a financial institution. CTRs are filed with the Financial Crimes Enforcement Network on forms that require, among other things, the identity of the individual who conducted the transaction and the individual or organization for whom the transaction was

completed. These regulations also require that multiple transactions be treated as a single transaction if the financial institution has knowledge that they are by, or on behalf of, the same person, and they result in currency either received or disbursed by the financial institution totaling more than \$10,000 during any one business day. CTRs are often used by law enforcement to uncover a wide variety of specified unlawful activities including gambling, subsidy fraud, narcotics trafficking, and additionally, the laundering of proceeds from said crimes. Many individuals involved in these illegal activities are aware of such reporting requirements and take active steps to cause financial institutions to fail to file CTRs. These active steps are often referred to as "structuring" and involve making multiple cash deposits or withdrawals, in amounts less than or equal to \$10,000. Structuring is prohibited by Title 31 U.S.C. Section 5324(a)(3) and involves activity not only involving proceeds of illegal activities, but also legal source income. The law is clear in that "structuring" in and of itself is a Felony violation.

7. Pursuant to Title 31 U.S.C. Section 5324, it is a crime for an individual to (1) "cause or attempt to cause a domestic financial institution to fail to file a report required under Section 5313(a)", (2) "cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact", (3) "structure or assist in structuring, any transaction with one or more domestic financial institutions" for the purpose of evading the reporting requirements of Title 31 U.S.C. 5313(a).
8. I have obtained and reviewed bank records for L&M CONVENIENT MART, INC. Lumbee Guaranty Bank account number 82002495. An analysis of these bank records revealed cash deposit transactions, between January 4, 2011 and April 24, 2014, totaling more than \$2,000,000. All but one of the aforementioned cash deposits were in cash increments below \$10,000. In all, I have identified a total of three hundred one (301) individual deposit transactions made on or near consecutive days involving cash increments of less than \$10,000. During the aforementioned period, 2011 through 2013, one hundred sixteen (116) individual cash deposit transactions ranging in amounts from \$9,077 to \$9,999 were analyzed and reviewed as part of the structuring investigation. A sample of the identified structured cash deposit transactions for L&M CONVENIENT MART, INC. account number 82002495 are as follows:

Date	Cash Deposit	Time	Account
Wednesday, December 5, 2012	\$9,999	2:16 p.m.	82002495
Thursday, December 6, 2012	\$5,561	11:52 a.m.	82002495
Thursday, May 23, 2013	\$9,950	2:27 p.m.	82002495
Friday, May 24, 2013	\$4,725	3:57 p.m.	82002495
Thursday, June 6, 2013	\$9,971	4:55 p.m.	82002495
Friday, June 7, 2013	\$9,308	3:11 p.m.	82002495
Thursday, June 27, 2013	\$9,333	5:05 p.m.	82002495
Friday, June 28, 2013	\$6,066	3:36 p.m.	82002495
Thursday, July 18, 2013	\$9,560	3:47 p.m.	82002495
Friday, July 19, 2013	\$8,634	4:13 p.m.	82002495
Friday, August 2, 2013	\$6,410	3:54 p.m.	82002495
Monday, August 5, 2013	\$9,343	3:19 p.m.	82002495
Friday, August 9, 2013	\$9,107	2:44 p.m.	82002495
Friday, August 16, 2013	\$9,574	4:44 p.m.	82002495
Thursday, August 22, 2013	\$8,039	3:24 p.m.	82002495
Friday, August 23, 2013	\$3,856	2:54 p.m.	82002495
Friday, August 30, 2013	\$6,030	3:24 p.m.	82002495
Thursday, September 5, 2013	\$7,938	2:20 p.m.	82002495
Wednesday, September 11, 2013	\$5,552	3:01 p.m.	82002495
Friday, September 13, 2013	\$4,841	3:54 p.m.	82002495
Wednesday, September 18, 2013	\$6,143	3:19 p.m.	82002495
Friday, September 20, 2013	\$2,597	2:35 p.m.	82002495
Wednesday, September 25, 2013	\$8,434	2:58 p.m.	82002495
Friday, September 27, 2013	\$952	3:01 p.m.	82002495
Thursday, October 3, 2013	\$5,375	2:03 p.m.	82002495
Friday, October 4, 2013	\$4,880	3:42 p.m.	82002495
Friday, October 11, 2013	\$6,425	4:30 p.m.	82002495
Wednesday, October 16, 2013	\$7,533	4:30 p.m.	82002495
Tuesday, October 22, 2013	\$9,909	3:10 p.m.	82002495
Friday, October 25, 2013	\$9,993	4:00 p.m.	82002495
Friday, November 1, 2013	\$9,988	3:54 p.m.	82002495
Wednesday, November 6, 2013	\$9,913	11:45 a.m.	82002495
Friday, November 8, 2013	\$8,917	4:31 p.m.	82002495
Thursday, November 14, 2013	\$5,002	4:05 p.m.	82002495
Friday, November 15, 2013	\$7,412	3:08 p.m.	82002495
Friday, November 22, 2013	\$4,444	2:55 p.m.	82002495
Wednesday, November 27, 2013	\$7,079	4:30 p.m.	82002495
			(continued)

Date	Cash Deposit	Time	Account
Thursday, December 5, 2013	\$9,565	3:10 p.m.	82002495
Friday, December 6, 2013	\$6,906	4:28 p.m.	82002495
Wednesday, December 11, 2013	\$9,080	3:40 p.m.	82002495
Friday, December 13, 2013	\$2,900	3:01 p.m.	82002495
Wednesday, December 18, 2013	\$9,277	2:01 p.m.	82002495
Friday, December 20, 2013	\$4,491	3:49 p.m.	82002495
Tuesday, December 24, 2013	\$7,417	1:45 p.m.	82002495
Friday, December 27, 2013	\$7,164	2:14 p.m.	82002495
Thursday, January 2, 2014	\$9,993	4:09 p.m.	82002495
Friday, January 3, 2014	\$3,888	4:25 p.m.	82002495
Friday, January 10, 2014	\$7,808	5:31 p.m.	82002495
Wednesday, January 15, 2014	\$9,840	1:54 p.m.	82002495
Friday, January 17, 2014	\$8,430	5:14 p.m.	82002495
Wednesday, January 22, 2014	\$9,920	2:43 p.m.	82002495
Friday, January 24, 2014	\$3,260	2:54 p.m.	82002495
Thursday, January 30, 2014	\$9,523	3:13 p.m.	82002495
Friday, January 31, 2014	\$1,145	3:12 p.m.	82002495
Monday, February 10, 2014	\$3,615	4:52 p.m.	82002495
Friday, February 14, 2014	\$9,726	4:19 p.m.	82002495
Friday, February 21, 2014	\$9,975	4:45 p.m.	82002495
Thursday, February 27, 2014	\$9,910	3:49 p.m.	82002495
Friday, February 28, 2014	\$9,904	3:14 p.m.	82002495
Thursday, March 6, 2014	\$9,988	4:13 p.m.	82002495
Friday, March 7, 2014	\$9,126	4:42 p.m.	82002495
Thursday, March 13, 2014	\$7,518	3:02 p.m.	82002495
Friday, March 14, 2014	\$8,482	3:56 p.m.	82002495
Friday, March 21, 2014	\$7,955	4:36 p.m.	82002495
Friday, March 28, 2014	\$9,978	5:31 p.m.	82002495
Tuesday, April 1, 2014	\$9,941	4:25 p.m.	82002495
Friday, April 4, 2014	\$9,930	4:58 p.m.	82002495
Wednesday, April 9, 2014	\$9,498	2:50 p.m.	82002495
Friday, April 11, 2014	\$9,990	5:13 p.m.	82002495
Thursday, April 17, 2014	\$4,564	4:39 p.m.	82002495
Friday, April 18, 2014	\$6,914	2:47 p.m.	82002495
Thursday, April 24, 2014	\$9,982	4:31 p.m.	82002495

9. Furthermore, I have spoken with a representative of Lumbee Guaranty Bank who confirmed the existence of account number 82002495 and that the account is in fact maintained in the name of L&M CONVENIENT MART, INC. by authorized signors LYNDON MCLELLAN, President; Mary Floyd, Vice-President; and Darlene Hunt, Secretary.

10. Additionally, I have spoken with Special Agent Charles Butler of the United States Department of Agriculture – Office of Inspector General, regarding his contact with LYNDON MCLELLAN on November 7, 2008. SA Butler interviewed LYNDON MCLELLAN on that date regarding allegations of structured cash withdrawals made from McLellan Grocery, a grocery store owned by LYNDON MCLELLAN that operates in Orrum, North Carolina.

11. Pursuant to that interview, LYNDON MCLELLAN informed SA Butler of his knowledge that any transaction over \$10,000 was reported. Furthermore, LYNDON MCLELLAN signed a Notification of Law on November 7, 2008, indicating he understood the Federal laws pertaining to structuring. The Notification of Law warned LYNDON MCLELLAN that continued violation of the laws could result in prosecution and/or seizure and forfeiture of all property involved in, or traceable to, such violation.

12. Pursuant to the structuring violations committed, as set forth above, it is submitted that L&M CONVENIENT MART, INC. financial accounts, including but not limited to the following are subject to forfeiture pursuant to Title 31 U.S.C. Section 5317 and Title 18 U.S.C. Sections 981 and 984.

Financial Accounts Subject to Seizure

Including but not limited to:

- Lumbee Guaranty Bank account number 82002495
Held in the name of L&M Convenient Mart, Inc.

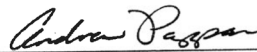
13. Title 31 U.S.C. Section 5317 provides for the forfeiture of any property involved in a violation of Title 31 U.S.C. Section 5324, or any conspiracy to commit such violation, and any property traceable to any such violation or conspiracy. Further, Title 18 U.S.C. Section 984 provides that the United States may seek the forfeiture of any funds found within an account at a financial institution that received the forfeitable funds in the preceding year, up to the total amount sought for forfeiture, regardless of whether said funds can be traced back to the specific offense. The structured funds forfeitable pursuant to Title 31 U.S.C. Section 5317 and Title 18 U.S.C. Sections 981 and 984 totals \$463,289 from Lumbee Guaranty Bank account number 82002495 for the period of August 2, 2013 through April 24, 2014.

14. In accordance with Title 18 U.S.C. Section 984(a)(1), in a forfeiture in rem the Government need not identify the specific property involved in the offense and it is not to be a defense that the property is removed and replaced by identical

property. Pursuant to Title 18 U.S.C. § 984(a)(2), "any identical property found in the same place or account as the property involved in the offense" is subject to forfeiture.

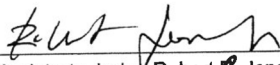
15. Lumbee Guaranty Bank is a domestic financial institution as defined by Title 31 U.S.C. Section 5312 with its headquarters in Pembroke, North Carolina. Lumbee Guaranty Bank is insured by the Federal Deposit Insurance Corporation ("FDIC"). Lumbee Guaranty Bank in Pembroke, NC is located in the Eastern District of North Carolina.
16. Based on the facts set forth in this affidavit, it is submitted that there is probable cause to believe that a representative of L&M CONVENIENT MART, INC. repeatedly structured cash transactions exceeding \$2,000,000 into increments less \$10,000 in order to evade the reporting requirements of Title 31 U.S.C. 5313(a) and the related Code of Federal Regulations, all in violation of Title 31 U.S.C. Section 5324.
17. Any and all funds contained within Lumbee Guaranty Bank account number 82002495 held in the name of L&M CONVENIENT MART, INC. are, therefore, forfeitable pursuant to Title 31 U.S.C. Section 5317 and Title 18 U.S.C. Sections 981 and 984, which provide for the forfeiture of any property involved in a violation of Title 31 U.S.C. Section 5324, or any conspiracy to commit any such violation of Title 31 U.S.C. Section 5324, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy.

I declare under penalty of perjury that the foregoing is true and correct.
Respectfully submitted this 29 day of July 2014.



Andrew Pappas, Special Agent
North Carolina State Bureau of Investigation (NCSBI)
U. S. Treasury Department (IRS-CI) – Task Force
Officer

Sworn to and subscribed by me this 29 day of July, 2014



U.S. Magistrate Judge Robert B. Jones, Jr.
Eastern Judicial District of North Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

SEALED

NO. 7:14-MJ-1120 EJ

FILED

IN RE: SEIZURE WARRANT FOR :
Funds in Lumbee Guaranty Bank :
Account Number 82002495 up :
to \$463,289 :

JUL 29 2014

JULIE A. RICHARDS, CLERK
US DISTRICT COURT, MCHC
BY CLK DEP. CLK

ORDER SEALING APPLICATION AND AFFIDAVIT FOR
SEIZURE WARRANT

Upon motion of the United States, for good cause shown, and for the reasons and facts stated in the motion to seal it is hereby ORDERED that the above-referenced Application and Affidavit for Seizure Warrant, and all attachments, the Motion to Seal, and this Order filed therewith, be sealed by the Clerk except that certified copies be provided to the Office of the United States Attorney and/or the U. S. Treasury Department, Internal Revenue Service - Criminal Investigation upon request.

This the 29 day of July, 2014.

Robert E. Jones, Jr.
ROBERT E. JONES, JR.
United States Magistrate Judge

Copy to Agent

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:14-MJ-

IN RE: SEIZURE WARRANT FOR :
: Funds in Lumbee Guaranty Bank :
Account Number 82002495 up :
to \$463,289 :

MOTION TO SEAL APPLICATION AND AFFIDAVIT FOR
SEIZURE WARRANT

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby moves this Honorable Court for an Order sealing the Application and Affidavit for Seizure Warrant, and all attachments, regarding the above-referenced matter, and this Motion to Seal, and the Order to Seal, and in support thereof, shows unto the Court as follows:

1. A task force officer of the U. S. Treasury Department, Internal Revenue Service - Criminal Investigation made application for seizure warrant on July 28, 2014, regarding the above-referenced item.
2. The affidavit submitted in support of the seizure warrant contain substantial background information concerning an ongoing investigation being conducted by U. S. Treasury

Department, Internal Revenue Service - Criminal Investigation. Disclosure of the affidavit would alert potential targets of the existence, scope, and details of the investigation and, therefore, would pose a risk of flight or the destruction of additional evidence and may otherwise compromise the investigation. See Baltimore Sun Co. v. Goetz, 886 F.2d 60 (4th Cir. 1989).

WHEREFORE, the Government moves for an Order sealing the Application and Affidavit for Seizure Warrant, and this Motion to Seal, until further order by this Court, except that a certified copy of the same be provided to the Office of the United States Attorney and the U. S. Treasury Department, Internal Revenue Service - Criminal Investigation upon request.

Respectfully submitted, this 28th day of July, 2014.

THOMAS G. WALKER
United States Attorney


JOSHUA B. ROYSTER
Assistant United States Attorney
Civil Division
310 New Bern Avenue, Suite 800
Raleigh, NC 27601-1461
Telephone: (919) 856-4530
Fax: (919) 856-4821
NC State Bar No. 28785

ORIGINAL SEALED

AO 109 (Rev. 12/09) Warrant to Seize Property Subject to Forfeiture

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

JUL 29 2014

JULIE A. RICHARDS, CLERK
US DISTRICT COURT, MEAC
BY: [Signature] DMP CLK

In the Matter of the Seizure of)
 (Briefly describe the property to be seized))
 Funds in Lumbee Guaranty Bank account number)
 82002495 up to \$463,289)

Case No. 7:14-MJ-

1120-13

WARRANT TO SEIZE PROPERTY SUBJECT TO FORFEITURE

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests that certain property located in the Eastern District of North Carolina be seized as being subject to forfeiture to the United States of America. The property is described as follows:
 Funds in Lumbee Guaranty Bank account number 82002495 up to \$463,289

I find that the affidavit(s) and any recorded testimony establish probable cause to seize the property.

YOU ARE COMMANDED to execute this warrant and seize the property on or before 8/14/2014
 (not to exceed 14 days)

☒ in the daytime – 6:00 a.m. to 10:00 p.m.☐ at any time in the day or night, as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must also give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

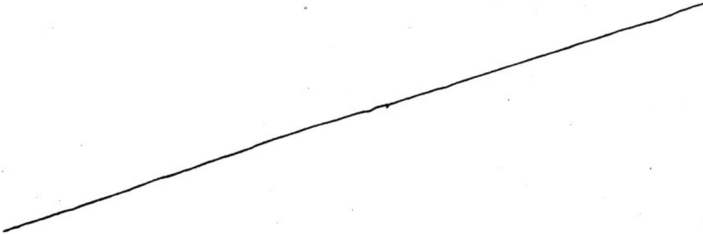
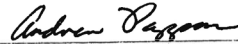
An officer present during the execution of the warrant must prepare, as required by law, an inventory of any property seized and the officer executing the warrant must promptly return this warrant and a copy of the inventory to United States Magistrate Judge any United States Magistrate Judge within the Eastern District of North Carolina
 (name)

☐ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box) ☐ for days (not to exceed 30).

☐ until, the facts justifying, the later specific date of .Date and time issued: July 29, 2014
12:33 p.m.[Signature]
Judge's signatureCity and state: Wilmington, North CarolinaRobert B. Jones, Jr., United States Magistrate Judge
Printed name and title

Copy to Agent

AO 109 (Rev. 12/09) Warrant to Seize Property Subject to Forfeiture (Page 2)

Return		
Case No.: 7:14-MJ- 1120-RJ	Date and time warrant executed: 7/30/14 9:10a.m.	Copy of warrant and inventory left with: Crystal Collins
Inventory made in the presence of: Crystal Collins and Theresa Locklear, Lumber Guaranty Bank		
Inventory of the property taken: Lumber Guaranty Bank Cashier's Check # 9870 payable to US Treasury Dept. for \$107,702.66, Remitter: L & M Convenient Mart, Lumber Guaranty Bank Account number 82002495 		
Certification		
I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.		
Date: 8/4/14	 Executing officer's signature Andrew Pappas, IRS-CI TFO Printed name and title	

Mr. SMITH. Thank you.

I take it that your revised version is correct?

Mr. KOSKINEN. The revised version is correct, but I think the original statement was correct. What I said was, under the process, no matter what the evidence is in there, anyone whose assets are seized has the right to, in fact, go to court.

And, in fact, that is the distinction of, if they come to us and it is an administrative proceeding, we can, when they make a petition, remit the funds directly. If they have gone to court or the process has gone to court, it is within the U.S. attorney's jurisdiction.

And that is what my letter says, that it is up to the U.S. attorney as to how much evidence is in the case. But the citizen, as I said at my hearing, has the right to come to court and challenge the validity of the seizure, challenge any other claims that are being made.

Mr. SMITH. Citizens have due process, of course.

Mr. KOSKINEN. Yes, of course.

Mr. SMITH. Absolutely. Thank goodness for the Constitution.

But, Mr. Weber, this question is for you. You are the one implementing this policy. If the IRS does not include evidence that money came from an illegal source in an affidavit, shouldn't the property owner be able to argue that the affidavit was deficient and his property shouldn't have been seized?

Mr. WEBER. So it is not required, Congressman, for the specific allegations of illegality of the source of funds to be in the affidavit. So there are circumstances where the agent and the prosecutor make a determination that the source of funds is tied to an illegal activity. And those are the only cases and investigations that my agents are allowed to work with respect to structuring seizures now.

But there may be a decision by the prosecutor working that case that they are not going to include certain evidence and information with respect to the illegality within the affidavit. That doesn't necessarily mean that that case is not an illegal-source structuring case.

Mr. SMITH. So, without requiring that information, you all can present an affidavit to any citizen without proof or documenting that it came from an illegal source. So that is what you are saying.

Mr. WEBER. Under our current policy—

Mr. SMITH. Under your current policy, you could go after any citizen and not provide in the affidavit that it is from solely an illegal source?

Mr. WEBER. Under the current policy, yes, there is no requirement that—

Mr. SMITH. Unacceptable.

Mr. WEBER [continuing]. That information would be detailed in the affidavit.

Mr. KOSKINEN. I am not a law enforcement person, but there are cases—

Mr. SMITH. The question is to Mr. Weber.

Mr. KOSKINEN. Okay.

Mr. SMITH. That is interesting.

Okay. I have another question then. The IRS' October 2014 policy includes an exception for exceptional circumstances. What happened to due process? What counts as exceptional?

Mr. WEBER. So a couple things, Congressman.

So, in the year and a half that that policy has been implemented, we have had not—we haven't had one situation where a special agent in charge has requested from headquarters the exception to be applied in their case. So we have not had one of those cases.

In my view, what we have told our field offices—we have 25 field offices across the country, and we have told our SACs that it would be in the rarest of situations that we would approve—and that has to be approved by Washington, in executive and headquarters—under the rarest of situations.

If it was a case that hypothetically could be connected to terrorism, where there is information or evidence where the property may be going overseas, we may not have the specific evidence or proof that it is tied to terrorism or illegal activity, they have committed the crime of structuring, but that property is going to be heading over to another country, that may be a situation—with the approval of the U.S. Attorneys Office and the approval of a headquarters executive, that may be approved.

We haven't had a single case in the 1½ years that the policy has been implemented.

Mr. SMITH. Okay.

Mr. WEBER. And I don't think there will be any of those—

Mr. SMITH. One quick question for Mr. Blanco. In my prior questioning of the folks that testified, I submitted into the record an email that showed that a U.S. attorney, it seemed like, was giving harsher penalties in a settlement agreement because an individual went and spoke to the media.

Is there any policy in the Justice Department that makes harsher penalties to anyone that you are investigating or researching if they speak to the media?

Mr. BLANCO. Not that I am aware of.

Mr. SMITH. Okay. Thank you.

Chairman ROSKAM. Mr. Crowley.

Mr. CROWLEY. I appreciate especially Mr. Smith's last question, because I think that pertains to two of the witnesses in the first panel that made that allegation.

It wasn't as definitive. It is just, to your knowledge, you don't know of that. But you don't know if that does—that that may very well happen within the Justice Department is what you may have also suggested.

Mr. BLANCO. Without commenting on any pending case in any part of the Department of Justice, in my 27 years I am not aware of any policy that would treat any citizen or noncitizen in this country differently because their voice was heard in a publication.

Mr. CROWLEY. I will yield.

Chairman ROSKAM. Mr. Blanco, in light of that, what would your recommendation be to the Department of Justice if it came to your attention that somebody did something like that that shouldn't have ever happened in your 27 years of experience?

Mr. BLANCO. Congressman, you are really close to me commenting on a particular—

Chairman ROSKAM. I am not asking you to comment on a particular case.

Mr. BLANCO. Congressman, I can't comment on that. You know that.

Chairman ROSKAM. I yield back.

Mr. CROWLEY. I would suggest not in any case, but if you became aware, hypothetically, that someone in your department had done that or made that statement, would you believe that they were in violation of the law, that they themselves were being oppressive?

Mr. BLANCO. You are putting me in a bad spot, Congressman. You know I can't talk about those issues.

What I can tell you is the following. I can say this, that no citizen or noncitizen should ever been treated differently because their voices were heard. That is what I will tell you. You can take from that—

Mr. CROWLEY. That is interesting. That is interesting.

For a point of information, just to clarify for the committee's sake, Mr. Johnson requested a FOIA request with the IRS and not with the Justice Department. Is that correct?

Chairman ROSKAM. I think that is right, yes.

Mr. CROWLEY. Mr. Johnson, you are nodding yes.

Okay. So I don't necessarily expect that you would have that request before you, et cetera. Because Commissioner Koskinen has mentioned 75 cases. They may very well be a part of the 600 that Mr. Johnson is speaking of. Is that correct?

Mr. KOSKINEN. I am reasonably confident that they are.

Mr. CROWLEY. That they are.

In terms of when a case is deemed as being structure alone, with no criminal intent, just that a person who is a farmer has \$8,000 sitting in their house, they are not comfortable with that, they will bring it to their bank, and it happens a couple of times, and the bank reports it, therefore that is what brings the attention and focus, so there is no—they are not drug dealers, they are not terrorists, not doing anything else, and it is a structure—you could be deemed as structuring, but that is not the intent, they don't have that intent—

Mr. BLANCO. May I just quickly, Congressman?

Mr. CROWLEY. Uh-huh.

Mr. BLANCO. You wouldn't be a structurer, because you would have to have the intent to evade.

Mr. CROWLEY. Understood. But what they may be doing and what your interpretation of what they were doing may be two different things.

But you then deem that it is not really criminal activity, and they are pardoned, right? You mentioned something about pardoning?

Mr. BLANCO. There is a procedure that we use. It is a petition to file, and it is called mitigation.

Mr. CROWLEY. Do they get all their money back?

Mr. BLANCO. It depends. They could. They could get nothing back. They could get part of it back. They could get all of it back.

Mr. CROWLEY. So, if they did nothing—if they had no criminal intent, what they were doing was they just simply were uncomfort-

able having the money in their house, putting it in a bank so it is more secure—but they could potentially be found—they could be pardoned for it because there was no criminal intent, but they may not get any money back. So the question of do they get their money back with interest is not even a—shouldn't even be in query at this point, I suppose.

The key job of this committee is to determine wrongs or injustices and use all of our abilities address those wrongs and injustices. And I think, in the spirit of Mr. Lewis, I haven't seen it done in such a bipartisan way as I have today, myself. So I want to thank my colleagues on the other side of the aisle.

A lot has happened since we last met on this topic back in February, as was mentioned earlier. I still think that a lot more needs to be done.

At our last hearing, I think we were all disturbed to learn that the IRS, as well as the U.S. attorney and the Federal judges, had the ability to seize American's bank accounts while never charging the account holders with a particular crime. This policy turns the basic principle of American justice of innocent until proven guilty, as I mentioned earlier, on its head.

At that hearing, the Commissioner did apologize for the past abuses of the agency, abuses that did not occur on his watch, and took quick and early action in his tenure as the Commissioner of the IRS to reverse the rules used by the agency in civil asset forfeitures. And for that, we are very, very grateful. But we also learned that Congress must also get involved to change the underlying laws that allowed these past seizures of legally acquired funds to happen.

Yesterday, Mr. Roskam and I, Chairman Roskam and I, introduced bipartisan legislation to fix the law and prevent the seizures of bank accounts of law-abiding citizens. Our bill would prohibit the IRS from undertaking any civil asset forfeiture related to structuring unless the funds were derived from an illegal source or the funds were structured to conceal other criminal activity, which got to my initial question to you, Mr. Blanco.

We also require the IRS to notify an account holder of a seizure within 30 days of that seizure and guarantee a post-seizure hearing within 30 days to see if there was justification to seize the assets and, if not, to return them forthwith to the account holder.

But passage of this bill won't solve all of the problems particularly for the past victims of asset seizures, such as the people as we had with us in panel 1 or behind you today. The people in panel 1 are victims and not criminals. And they need to be made whole of any funds that were wrongly seized and, I would suggest, with interest.

That is why this subcommittee also needs to make sure the IRS goes through its old files and returns all the funds wrongly taken from law-abiding citizens in these civil asset forfeitures, and done swiftly and quickly.

Civil asset forfeiture is an important tool, as we have all recognized, that the IRS and other Federal agencies need in order to go after ill-gotten funds from drug dealers, human traffickers, terrorists, and other criminals. But we need strong protections in place to ensure that these seizures never target law-abiding citizens. It

has become oppressive. We also need to correct past seizures. And I look forward to hearing from you in the future as to how we can further strengthen the law to make sure that law-abiding American citizens are not put through this oppression in the future.

I would like to ask specifically, or just real quickly, in terms of the bakery issue in Connecticut. I have been in communication with Congressman Joe Courtney. He has assured me that he will address this issue, adding his weight to make sure that full restitution takes place.

And, finally, Mr. Chairman, I want to also address the larger issue that is outside the purview of this committee but not of our Congress: the need for comprehensive criminal justice reform overall.

You know, this is just another portion of it that doesn't get as much highlight in terms of the media today. As this hearing shows, the government can seize your money without pressing charges. But there are too many cases of the government seizing not only people's money but their freedoms as well.

We need to address and clean up the problems in civil asset forfeiture. Representative Roskam and I have a bill that would do that. But we also need to enact comprehensive criminal justice reform across the board, both civilly as well as criminally.

And, with that, I yield back the balance of my time.

Chairman ROSKAM. Mr. Reed.

Mr. REED. Thank you, Mr. Chairman.

And, Commissioner, you and I go way back, and I have always given you the benefit of the doubt.

And, first of all, Mr. Taylor is behind you, over your right shoulder. Mr. Sowers I think you have already apologized to, if I got your testimony at the last hearing correct. You may want to have a conversation with Mr. Taylor. An apology goes a long way still in America. So maybe, on behalf of the IRS, you may have that conversation.

Second, I appreciate you taking the bait. When I talked about the financial incentive of the IRS, you made it perfectly clear in your testimony that that had in no way influenced any of your agents or any of your activities in the IRS. Now, I don't concede that point. I think that may still be there. And I haven't been in D.C. that long, but \$22 million, as you testified to, that 2 percent of those recovery funds going into the agency's budget, is still a lot of money to a lot of Americans. \$22 million is a lot of money. Maybe you have been in D.C. quite some time and to you that is chump change, but I will tell you, to most Americans, that is a lot of money.

And, at the end of the day, that leads me to the conclusion that, if there is not a rational reason why the agents are doing this for financial purposes for the budget, that I still believe is potentially there, then what you are conceding is that these agents are abusing their authority, they are abusing their position.

And so I want to go to one thing here. Because after the last testimony, or last hearing, there was an additional exchange. And I would like to offer in preparation for my testimony an email that was between Steve West, Assistant United States Attorney, and a

Michael Petty, who represented an individual in the prior testimony.

And so I seek unanimous consent to enter that into the record.

Chairman ROSKAM. Without objection, so ordered.

[The information follows:]

Robert Johnson

From: Henry Lewis <HLewis@lewis-lewis-cpas.com>
Sent: Thursday, March 12, 2015 3:45 PM
To: Robert Johnson
Subject: FW: House hearing

Rob,
 Here are the emails that were sent to Mike Petty, and Steve West and the email I received back from Steve West. Look forward to hearing from you.
 Thanks,
 Henry

From: West, Steve (USANCE) [<mailto:Steve.West@usdoj.gov>]
Sent: 03/12/2015 2:42 PM
To: Michael Petty
Cc: <HLewis@lewis-lewis-cpas.com>
Subject: RE: House hearing

Mike,

I'm a bit concerned. At your request, I provided you a copy of the application for seizure warrant, which remains under seal with the Court, and now it appears it has been made available to a congressional committee? I do not know who did that, and I am accusing no one, but it was not from our office and could only have come from your clients. That was certainly not my intent in making this available. My intent was for you and your clients to be able to actually know the facts so you could review them and have an intelligent discussion with me. Whoever made it public may serve their own interest but will not help this particular case.

Your client needs to resolve this or litigate it. But publicity about it doesn't help. It just ratchets up feelings in the agency.

My offer is to return 50% of the money. The offer is good until March 30th COB.

Thanks,

Steve West
 Assistant United States Attorney
 Asset Forfeiture Coordinator
 310 New Bern Avenue
 Federal Building, Suite 800
 Raleigh, NC 27601
 (919) 856-4048 (direct)
 (919) 856-4821 (fax)
steve.west@usdoj.gov

From: Michael Petty [<mailto:mpetty@michaelpettylaw.com>]
Sent: Thursday, March 12, 2015 8:24 AM

To: West, Steve (USANCE)
Cc: <HLewis@lewis-lewis-cpas.com>
Subject: Fwd: House hearing

Steve,

This attachment is something that I believe you will find informative in considering your position in Lyndon McLellen's case. Let me know when we can speak about this. Thanks and I hope you are well.
Mike Petty

Begin forwarded message:

From: "Henry Lewis" <HLewis@lewis-lewis-cpas.com>
Date: March 10, 2015 at 4:39:05 PM EDT
To: <mpetty@michaelpettylaw.com>
Subject: FW: House hearing
Reply-To: <HLewis@lewis-lewis-cpas.com>

Here it is.

From: Larry Salzman [<mailto:lsalzman@ij.org>]
Sent: 02/18/2015 9:26 AM
To: HLewis@lewis-lewis-cpas.com
Subject: House hearing

Dear Henry,

The hearing that I mentioned in an earlier email with the IRS Commissioner in the House of Representatives was put online. The affidavit in Mr. McLellen's case is discussed at roughly minute 57:00 through 1:00:33s. It may be of interest to you and may be helpful for your attorney in speaking with Mr. West.

The hearing is recorded here: <http://www.ustream.tv/recorded/58691793>

Larry Salzman
Attorney*
Institute for Justice
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Tel: (703) 682-9320, ext. 298
Fax: (703) 682-9321
lsalzman@ij.org
*Licensed only in California

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[Forget previous vote](#)

Mr. REED. So this is the attorney for one of the other individuals that was involved in the last hearing. And this was after the hearing, and this is from Mr. West, United States attorney, to Michael Petty, the attorney for the individual involved in that case.

And what it says in here was—they were sharing some information about the hearing. And Mr. West indicates, “My intent was for you and your clients to be able to actually know the facts so you could review them and have an intelligent discussion with me. Whoever made it public may serve their own interests, but it will not help this particular case. Your client needs to resolve this or litigate it, but publicity about it doesn’t help. It just ratchets up feelings in the agency. My offer is to return 50 percent of the money.”

That is the exact email from one of your U.S. attorneys, Mr. Blanco.

Mr. BLANCO. I would imagine it is an assistant U.S. attorney.

Mr. REED. Assistant U.S. attorney.

When it says “ratchets up feelings” because someone is talking about their case publicly—and you heard my questioning previously and Mr. Smith’s questioning about the email that was sent in the other case. These are two different cases, but it seems like there is a theme developing here.

So if it is not for financial purposes, as I may think—and my opinion is still there, but the Commissioner doesn’t believe it is going on—it sounds like a U.S. attorney is a little upset people are talking about their situation publicly.

And I know, as you indicated in your response to testimony, that puts you in a bad spot. And you know what? I don’t give a damn.

Mr. BLANCO. Not a bad spot. An inappropriate spot, Congressman.

Mr. REED. Inappropriate. No, I think your testimony was a bad spot.

Mr. BLANCO. Okay. It is inappropriate.

Mr. REED. Inappropriate.

So if a U.S. attorney is chastising someone from a previous congressional hearing that discussed their case publicly, would you say that is appropriate behavior by the United States Attorneys Office?

Mr. BLANCO. So I am not going to comment on that. I don’t know where that is in—

Mr. REED. Not about this case. But just publicly talking about it.

Mr. BLANCO. I am not going to comment on that.

Mr. REED. Not going to answer the question. Not going to answer the question to the American people.

Mr. BLANCO. As I mentioned earlier, I think when people speak up they should not be punished. That is what I told you.

Mr. REED. So if someone is using their position to go after somebody for speaking up publicly, your official testimony to this is that is not appropriate. Right?

Mr. BLANCO. Congressman, if that is the way you want to interpret it, that is fine. I don’t think power of the government should be used against anybody if they speak up. I think I have been pretty clear about that.

Mr. REED. And if you uncover that, if we uncover that, what would you recommend we do about that?

Mr. BLANCO. I can't recommend on behalf of the Department, Congressman. That is something that I will take back with me now that you have mentioned it today.

Mr. REED. Mr. Commissioner, how about your IRS agents? Would you feel that is an appropriate action by some of your IRS agents dealing with these cases?

Mr. KOSKINEN. No. And I have no evidence that there is a case of that. And if there is a case of that, it is inappropriate. I think Mr. Blanco is right. We spend a lot of time training, in particular, as Congressman Holding knows, our revenue agents, officers, and criminal investigators about the importance of their work and the seriousness of protecting taxpayers' rights.

Mr. REED. One last point, if I could, Chairman.

Chairman ROSKAM. Sure.

Mr. REED. The other thing that is frustrating here is you all are hiding behind due process and saying that individuals can take their case to court. But you understand; these are hardworking Americans. It is going to cost them tens of thousands of dollars to hire a lawyer, go win their day in court and stand with you. And you know what your agents are telling them? I will give you 50 cents on the dollar.

Mr. KOSKINEN. I have not—

Mr. REED. That is legal? That is a shakedown.

Mr. KOSKINEN. I have not suggested these people need to go to court. As I say, we have entertained petitions and will continue to entertain them and treat them quickly and efficiently.

Mr. REED. No, but you said that is what is available to them and they can pursue that as their avenue of recourse. But you understand, these people have to pay money to lawyers. They have to take time away from their farms. They have to come here to D.C. to meet with you. And then what you guys do—what you guys do is you have their cash. And what you say to them is, "You know what? I'll be kind to you today. I'll give you 50 cents on your dollar."

Mr. KOSKINEN. That is not—

Mr. REED. You don't have a right to the money. You don't have a right to the money.

Mr. KOSKINEN. That—

Mr. REED. Because as what is indicated here, you don't have an illegal basis—or you don't have a basis in law where you can say these guys are engaged in illegal acts. Mr. Taylor and Mr. Sowers, they are just farming.

Mr. KOSKINEN. Right. We do not have—

Mr. REED. And what you are doing is telling them, "We'll settle it up with you."

Mr. KOSKINEN. We don't have a position of giving people 50 percent of their money back. That is not our case.

Mr. REED. With that, I yield back.

Mr. KOSKINEN. And I would also state, just to make sure the record is clear as to why we may have a disagreement, of that \$6 billion, the vast majority of that is illegal funds from drug traffickers, money launderers, terrorists trying to finance it. The vast

majority of that is there. It has been seized so that it would not continue to be used for—

Mr. REED. But \$22 million goes back into your coffers.

Chairman ROSKAM. Mr. Rice.

Mr. KOSKINEN. And \$22 million of that comes to us subject to the jurisdiction of the Treasury Department, about 2 percent of those funds. So it is clearly not what we are chasing.

Mr. RICE. Thank you, Mr. Chairman.

These 600 cases where the box hasn't been checked that there is any—I am speaking to you, Mr. Commissioner—the box hadn't been checked there is any underlying criminal activity—

Mr. KOSKINEN. That is not what the box is. The box is checked that there is a not a criminal prosecution. It doesn't tell you what the underlying circumstances are.

Mr. RICE. Okay. Is there an ongoing process where you are reviewing those 600 cases right now?

Mr. KOSKINEN. No. The ongoing process we have had is we have reached out and reviewed any case that was decided before the policy was implemented and has not been concluded. And there are a number of those. And then we have reviewed the petitions that have come in, of which there have been a number. And all of those reviews—

Mr. RICE. Okay.

Mr. KOSKINEN [continuing]. Have been handled—

Mr. RICE. But the 75 cases you mentioned, that is the petitions?

Mr. KOSKINEN. That 75 is, in effect, included—we didn't make—those aren't new cases. Those are part of the inventory.

Mr. RICE. So how many of these 600 cases has the IRS taken upon itself to review, determined that they were in the wrong, that the taxpayer's money was taken illegally, and has returned the money to the taxpayer?

Mr. KOSKINEN. We have reviewed, as I say, the ones that were pending before and not concluded.

Mr. RICE. Okay.

Mr. KOSKINEN. There are about 50 of those. We have reviewed those and either made remissions or recommendations.

Mr. RICE. Okay. So those were already pending, or the taxpayers brought them to your attention. How many, again—let's ask the question again—

Mr. KOSKINEN. No, we reached out to the bulk of those.

Mr. RICE. How many of these 600 cases that weren't pending, okay—

Mr. KOSKINEN. All right.

Mr. RICE [continuing]. That were decided before this policy change, has the IRS taken it upon itself to go on and check and make sure we didn't take these people's money illegally and decided that we were wrong and returned the money to the taxpayer? How many?

Mr. KOSKINEN. At this point, the 75 are part of that 600, those are the cases—

Mr. RICE. Those were the ones that were already pending. Let's throw those out.

Mr. KOSKINEN. No, those are actually some reasonable number of petitions. So anyone who has petitioned we have taken and given an appropriate response.

Mr. RICE. Okay, I understand if they are petitions, but—

Mr. KOSKINEN. Beyond the 75 that we have reviewed, we have not reviewed the other part of that inventory.

Mr. RICE. Okay. Is there a plan to start? I mean, are we going to start that soon? Or are we going to—are we just going to wait until these taxpayers come to us, realize, figure it out, I don't know, somehow, by magic, that we have changed our policy and wait for them to come to us? Or are we going to aggressively go out and try to locate where we have taken these people's money inappropriately?

Mr. KOSKINEN. At this point, again, these are part of the reason the FOIA request for the entire files is there, massive files. A big chunk of them, a majority of them, are initially, when we looked at them, as cases come in, criminal sourcing. So we do not have a plan at this point.

Mr. RICE. Mr. Johnson here from the Institute for Justice, he is worried about these 600 files, and he has filed a FOIA request, and you have told him, "Yeah, we'll give you the information if you pay us a quarter of a million dollars."

Mr. KOSKINEN. The FOIA charges—the media pay no charges. The FOIA charges, we are obligated to charge the cost of production. So I don't know what his FOIA request was, but for the amount to be that much, that large, he must have asked for a lot of material. Because it is just simply a question of what does it cost to produce. We actually—

Mr. RICE. All right. So what we have done here—he has identified 600-plus cases where there is apparently no underlying criminal activity, that people's money has been seized. I think the Fourth Amendment says that you can't seize people's money without probable cause.

Mr. KOSKINEN. Yes, that is correct. And probable cause was—

Mr. RICE. And before your policy change, I guess you were relying for probable cause on the act of structuring in itself and not any underlying crime. But we have decided that is wrong. So maybe what we should do is kind of reverse the presumption here and say, if we don't have probable cause to seize based on some underlying crime, these people need to be getting their money back. And we need to be notifying these 600 people that, hey, perhaps we acted wrongfully here.

Because I will tell you—how long have you been the Commissioner of the IRS now?

Mr. KOSKINEN. Two and a half years.

Mr. RICE. Uh-huh. And we had this discussion last time you were here, that we just continue to see scandal after scandal after scandal after scandal.

Mr. Johnson, I believe it was, said earlier—you know, whose faith in the government has been eroded. I think that is absolutely justifiable. I think the American people's faith in the government has been eroded. I think that is a lot of the frustration you see in

the election, in the primaries in both parties right now. People are sick of it.

And you guys, particularly you guys with the badges, you have an elevated level of duty to the public. You hold the public's trust, and you are eroding that trust.

How long does it take, Mr. Koskinen, to stop the scandals? You have been there 2½ years. How much longer is it going to take?

Mr. KOSKINEN. Again, as the chairman noted, we changed the policy on our own a year and a half ago dealing with this.

Mr. RICE. Yeah.

Mr. KOSKINEN. It has not been a scandal. The law is clear. If you intentionally structure deposits, it is a violation of the law. The issue here is not that that is not a violation of law. The issue here—

Mr. RICE. These fellows have been trying to get their money back longer than that. I mean, we have 600 people who we are sitting here saying today we don't know if we took their money wrongfully or not. And we are not actively going out to try to determine that.

Mr. KOSKINEN. We will pursue that, but I would stress that it was not wrongfully taken at the time. The law is clear—the law is clear today—that if you intentionally structure your deposits you are violating the criminal law.

The fact that the policy before that allowed a seizure when no illegal source of the funding has been changed does not mean that structuring is no longer a crime. Now what we are saying is, if you intentionally structure but the source of the funds is legal, so you are simply hiding the assets or trying to protect yourself or avoiding taxes, we won't seize the funds. That doesn't mean intentionally violating the law is no longer a violation of the law.

Chairman ROSKAM. Mr. Marchant.

Mr. MARCHANT. Commissioner, what is the conduit that the—

Chairman ROSKAM. I am sorry, Mr. Marchant. I made an error. It is Mr. Davis' turn, of Illinois. I regret that.

Mr. Davis, I apologize. I recognize you.

Mr. DAVIS. That is quite all right, Mr. Chairman.

And thank you, gentlemen, very much.

Commissioner, the policy was changed because of recognition that there were individuals who might be unduly penalized. And now we are hoping that, with this policy change, individuals who fit that category will no longer have this problem.

But we also have the problem of trying to retrieve the assets that individuals have already had forfeited, taken from them. And I guess, no matter what it is that we do in the future, those individuals are still going to feel that their money was taken from them without just cause.

And so I guess we are trying to figure out a way—

Mr. KOSKINEN. Right.

Mr. DAVIS [continuing]. How do we legally—how do we get their money back in their pockets, back in their family accounts.

We have indicated that, of course, the courts are a refuge of last resort, that you can end up in court.

Mr. Blanco, let me ask you, is it not true that prosecutors often-times make recommendations to the court? And so it occurred to me that there might be a way that the agency, through its prosecutors, makes some recommendations to the court that might get these individuals their money back, and, at the very least, they would feel a different way or a greater sense of not having been violated.

Does that sound like any kind of possibility that prosecutors could take in court situations?

Mr. BLANCO. Congressman, we actually have a process where the agencies, in particular the IRS, and also the U.S. attorneys offices get together to decide whether or not those factors that I mentioned earlier exist in mitigation cases, whether or not the money should be returned.

Those recommendations come to the Asset Forfeiture Section of the Criminal Division of the Department of Justice, where a career prosecutor makes the decision whether or not the mitigation—taking into account the recommendation—whether or not these funds should be mitigated.

So there is that process in place, and we are working that process in every matter or every petition that we receive, whether from the IRS or other agencies. So there is that possibility, yes.

Mr. DAVIS. Could that also include court costs, in terms of expenses for the individuals who have had to come into court to try and get the matter resolved?

Mr. BLANCO. Congressman, I am unaware of us doing that in the past. But let me look into that and see whether we have done that in the past, and I can get back with you on that.

Mr. DAVIS. It seemed to me that all of us are actually in agreement that there are two things we want to do. One, we want to prevent these instances from ever reoccurring or from happening again; and find a way to compensate the individuals who have been or, at the very least, feel that they have been violated.

And I think, if there is—I have been told, if there is righteousness in the heart, there is beauty in the character. And I think the character of our government should be that we would find a way to make sure that we don't leave any citizens with the feeling that they have been violated by their government.

I thank you gentlemen and yield back.

Chairman ROSKAM. Mr. Marchant.

Mr. MARCHANT. Thank you, Mr. Chairman.

Before we leave the issue of how a person files a petition, Commissioner, do you know how many people are actively filing petitions now to get their money back, of this group? It might be 600, it might be 1,000, or it might be 75.

Mr. KOSKINEN. As I was saying, the 75 include people who have filed petitions as well as those that we actually reached out ourselves to review out of that 600.

Mr. MARCHANT. And then, so that I understand exactly how the process works, it never gets to the U.S. Attorneys Office until you have gone through that complete process?

Mr. KOSKINEN. Yeah. They can petition to Justice if they like. As I said, if the process itself initially, in the past, before the policy, was one where the taxpayer came to us to mitigate or nego-

tiate, that is an administrative case, and we have total control of that, and those are the ones we have mitigated.

To the extent that the taxpayer went to court or the case went to court and became judicial, handled by the U.S. attorney, who originally has to obviously review it to allow the seizure, that then is a case where we will make a recommendation but the case is within the control of the Justice Department.

Mr. MARCHANT. But Mr. Blanco testified earlier that, in the cases that get to you, it is strictly a mitigation. It is strictly, you used the word "pardon." It is assumed that the party was guilty of structuring, and it is purely a pardon/forgiveness mitigation, not—we are no longer trying the fact that they didn't structure.

Mr. BLANCO. That is correct, Congressman. And making a very short version, because there is also remission that has to do with victims and innocent owners. But what we are talking about today is mitigation, and you are right about that.

Mr. MARCHANT. So the people that actually prevail at the end, if they can afford it or have the perseverance to do it, still are very stigmatized. Because the assumption going into your department was that they were guilty of structuring—

Mr. BLANCO. Congressman, there was a—

Mr. MARCHANT [continuing]. In the strictest terms.

Mr. BLANCO. There was a finding that there was probable cause that the person did the structuring and did it knowing that there was a rule against structuring and did it to evade that rule. So there is that probable cause that was found. So you are right. They do come into that process, and, in coming into the process, those funds have already been seized and forfeited.

Mr. MARCHANT. And getting past that filter, coming to your filter, is it 10 cases, is it 20, I mean, out of the United States—

Mr. BLANCO. Well, I don't know that yet. We will see. We have petitions that are already in place for mitigation. Some of them are pending positions that we are looking at. This process has been in place for a number of years. This is nothing new. And we will see how many petitions we get.

Mr. MARCHANT. But to obviously address the concerns of this committee, both sides, it isn't 600 or 700 cases that are immediately before you. I mean, it is a manageable number of cases that are before you that can be looked at in a reasonable amount of time. And I know there are way different definitions of "reasonable amount of time" in the government, but—

Mr. BLANCO. Right.

Mr. MARCHANT. And you heard me ask the previous witnesses, you know, how have they altered their way of doing business now. And, to me, the government actually puts itself at a disadvantage when law-abiding citizens decide to alter their way of doing business so that they don't fall into this great filter, this funnel.

You know, we have this conduit that was—I mean, we don't have IRS agents driving up and down rural roads in Virginia and Maryland looking for people selling stuff on the side of the road. That isn't the way they got into the system, right?

Mr. KOSKINEN. No. And, in fact—

Mr. MARCHANT. The system captured them—

Mr. KOSKINEN [continuing]. They can continue to do business the way they did. What has to be filed simply is a simple bank report. Structuring is if you intentionally avoid the reporting. If you want to continue to deposit \$10,000, \$8,000 regularly, you can simply have the bank file the report.

So it is not as if you have to change the way you have done the business. You can keep doing the business the way you did. The question here is whether the report is being filed.

Mr. MARCHANT. And we appreciate the policy change. My concern, with the chairman's, is that the next IRS Commissioner, the next administration, can change that policy and can go back to this kind of activity.

And, Mr. Chairman, I know that is a great concern of yours, it is of mine, it should be of every American, that before we end this subject, we have to kind of—we have to make sure that this is just not a policy decision. It has to be the law.

Thank you.

Chairman ROSKAM. Mr. Kelly.

Mr. KELLY. Thank you, Mr. Chairman.

Mr. Koskinen, do you think a legal doctrine that allows law enforcement officials at either the Federal or State level to confiscate a family's cash, car, home, or business without ever being charged with a crime is a good thing? It is just a yes or no.

Mr. KOSKINEN. That is what the law is. The law says, if you violate the—

Mr. KELLY. You don't need to build me a watch. Just tell me what time it is. Is it a yes or a no?

Mr. KOSKINEN. I am sorry, the question—

Mr. KELLY. All right. Here is my point. We are seizing people's assets because we think they may have done something wrong. We are talking about due process here—

Mr. KOSKINEN. There has to be a probable cause finding by a U.S. attorney, and—

Mr. KELLY. Somebody selling corn and tomatoes isn't the same as a member of a terrorist group, okay?

Now, if you look up on the wall here—because this is what I believe is going on. This is extortion. The practice of obtaining money, property, or services through coercion, force, or threats is synonymous with a shakedown.

Now, I know that really rankles the IRS. And it should. But it should not just rankle the IRS; it should rankle every single American. Because you know what? We all work for the same people. We are all trying to get to the same end.

This isn't grilling you for the sake of grilling you. This is a fact that Americans' rights have been taken from them by an agency that somehow equates a guy who gets up at 12:30 in the morning to milk cows is the same as a guy who structures some type of a scheme in order to be a terrorist.

Mr. KOSKINEN. And that is why we have changed the policy.

Mr. KELLY. Listen, I am not asking you about that.

Mr. KOSKINEN. We have changed the policy.

Mr. KELLY. I am going to ask Mr. Weber.

So when you sit down, Mr. Weber, with the people you work with, do you all sit down and say, sometimes we look at what we

do and I think that we are really far from where we are supposed to be?

Mr. WEBER. Yeah. That is why I changed the policy a year and a half ago.

Mr. KELLY. Okay. But, now, all those folks that you have deemed under a possible structure, you seized their assets, right?

Mr. WEBER. We don't seize based upon a possible structuring, Congressman. What we do is we work with the U.S. Attorneys Office—

Mr. KELLY. They haven't been convicted of anything, though.

Mr. WEBER. And they don't have to be, pursuant to the law that has been on the books for 30 years.

Mr. KELLY. I understand.

Mr. WEBER. So what we do is—

Mr. KELLY. I understand.

Mr. WEBER [continuing]. We go to the U.S. Attorneys Office—

Mr. KELLY. I understand.

Mr. WEBER [continuing]. There, we get a warrant signed by a judge—

Mr. KELLY. Mr. Weber, I understand. It is wrong. It is wrong. You can say it is—hey, just because it is the law doesn't make it right.

Mr. WEBER. Right.

Mr. KELLY. It is wrong. You know it is wrong, and the people you work with know it is wrong.

So what I would suggest is you do the same type of a look inside that Congress does of what is it that we are doing that is actually hurting people, how are we keeping people from reaching the American Dream, and shouldn't we maybe turn around and fix it.

I am not coming after you because I don't like you. I am coming after you because this is absolutely insane, that we have to have a committee meeting to talk about people who are being wronged. Their assets are being seized. You keep their money. In some cases, they get some of it back. In some cases, they get none of it back. Who determines that? In some cases, we say to them, "Hey, you know what? Give me 50 cents on the dollar, and you can go away."

You are seizing money from real people. Real people. Americans. These are not people who are terrorists. These are not people who are running some kind of a drug chain. And you know it. You know it.

There is an article in The Washington Post I would like to put in, Mr. Chairman, and it does have to do with the asset seizures fueling police spending.

[The information follows:]

Asset seizures fuel police spending



Story by Robert O'Harrow Jr., Steven Rich, Shelly Tan
Published on October 11, 2014

Police agencies have used hundreds of millions of dollars taken from Americans under

federal civil forfeiture law in recent years to buy guns, armored cars and electronic surveillance gear. They have also spent money on luxury vehicles, travel and a clown named Sparkles.

ABOVE: In Douglasville, Ga, population 32,000, an armored personnel carrier costing \$227,000 was bought using money taken from Americans under civil forfeiture laws.

The details are contained in thousands of annual reports submitted by local and state agencies to the Justice Department's Equitable Sharing Program, an initiative that allows local and state police to keep up to 80 percent of the assets they seize. The Washington Post obtained 43,000 of the reports dating from 2008 through a Freedom of Information Act request.

Stop and Seize: In recent years, thousands of people have had cash confiscated by police without being charged with crimes. The Post looks at the police culture behind the seizures and the people who were forced to fight the government to get their money back.

Part 1: After Sept. 11, 2001, a cottage industry of private police trainers emerged to teach aggressive techniques of highway interdiction to thousands of local and state police.

Part 2: One training firm started a private intelligence-sharing network and helped shape law enforcement nationwide.

Part 3: Motorists caught up in the seizures talk about the experience and the legal battles that could take over a year.

Part 5: Highway seizure in Iowa fuels debate about asset-forfeiture laws.

Part 6: D.C. police plan for future seizure proceeds years in advance in city budget documents.

Chat transcript: The reporters behind "Stop and Seize" answered readers' questions about the investigative series.

The documents offer a sweeping look at how police departments and drug task forces across the country are benefiting from laws that allow them to take cash and property without proving a crime has occurred. The law was meant to decimate drug organizations, but The Post found that it has been used as a routine source of funding for law enforcement at every level.

"In tight budget periods, and even in times of budget surpluses, using asset forfeiture dollars to purchase equipment and training to stay current with the ever-changing trends in crime fighting helps serve and protect the citizens," said Prince George's County, Md., police spokeswoman Julie Parker.

Brad Cates, a former director of asset forfeiture programs at the Justice Department, said the spending identified by The Post suggests police are using Equitable Sharing as "a free floating slush fund." Cates, who oversaw the program while at Justice from 1985 to 1989, said it has enabled police to sidestep the traditional budget process, in which elected leaders create law enforcement spending priorities.

“All of this is fundamentally at odds with the U.S. Constitution,” said Cates, who recently co-wrote an article calling for the program’s abolition on The Post’s editorial page. “All of this is at odds with the rights that Americans have.”

Of the nearly \$2.5 billion in spending reported in the forms, 81 percent came from cash and property seizures in which no indictment was filed, according to an analysis by The Post. Owners must prove that their money or property was acquired legally in order to get it back.

The police purchases comprise a rich mix of the practical and the high-tech, including an array of gear that has helped some departments militarize their operations: Humvees, automatic weapons, gas grenades, night-vision scopes and sniper gear. Many departments acquired electronic surveillance equipment, including automated license-plate readers and systems that track cellphones.

The spending also included a \$5 million helicopter for Los Angeles police; a mobile command bus worth more than \$1 million in Prince George’s County; an armored personnel carrier costing \$227,000 in Douglasville, Ga., population 32,000; \$5,300 worth of “challenge coin” medallions in Brunswick County, N.C.; \$4,600 for a Sheriff’s Award Banquet by the Doña Ana County (N.M.) Sheriff’s Department; and a \$637 coffee maker for the Randall County Sheriff’s Department in Amarillo, Tex.

Sparkles the Clown was hired with asset forfeiture proceeds by police in the Village of Reminderville, Ohio, where she painted children’s faces at a community relations event. (Ron Fowler)

Sparkles the Clown was hired for \$225 by Chief Jeff Buck in Reminderville, Ohio, to improve community relations. But Buck said the seizure money has been crucial to sustaining long-term investigations that have put thousands of drug traffickers in prison.

“The money I spent on Sparkles the Clown is a very, very minute portion of the forfeited money that I spend in fighting the war on drugs,” he told The Post.

About 5,400 departments and drug task forces have participated in the Equitable Sharing Program since 2008. Justice spokesman Peter Carr said the program is an effective weapon to fight crime but should not be considered “an alternative funding source for state and local law enforcement.”

“It removes the tools of crime from criminal organizations, deprives wrongdoers of the proceeds of their crimes, recovers property that may be used to compensate victims, and deters crime,” he said in a statement. “Any funds received through the equitable sharing program are meant to enhance and supplement, not supplant or replace an agency’s appropriated budget and resources.”

Money for gear, training

A local or state police agency can seize cash or property under federal law through the Equitable Sharing Program when a federal agency such as the Drug Enforcement Administration or Immigration and Customs Enforcement agrees to adopt the seizure under federal law. Federal agencies generally are allowed to keep 20 percent or more of the seizure after an adoption.

‘Your property is guilty until you prove it innocent’

In the wake of Sept. 11, 2001, an aggressive brand of policing called “highway interdiction,” which involves authorities seizing money and property during traffic stops, has grown in popularity. Thousands of people not charged with crimes are left fighting legal battles to regain their money.

(Gabe Silverman/The Washington Post)

In September, The Post reported that police across the country became more aggressive in their use of federal civil asset forfeiture laws after the Sept. 11, 2001, terrorist attacks. Officials at Justice and the Department of Homeland Security encouraged a technique known as highway interdiction to help in the fight against drugs and terror.

There have been 61,998 cash seizures on highways and elsewhere since 9/11 without search warrants or indictments and processed through the Equitable Sharing Program, according to an analysis of Justice data obtained by The Post.

Equitable Sharing participants must follow rules contained in a 50-page Equitable Sharing guide that require the proceeds of seizures to be used “by law enforcement agencies for law enforcement purposes only.”

Permissible uses include overtime pay, training, building construction and improvements and equipment — everything from file cabinets and fitness gear to automatic weapons, surveillance systems and cars. They also can use proceeds to buy food and drinks at conferences or during disaster operations.

Police generally may not pay ongoing salaries or otherwise support annual budgets. One exception allows for departments to pay salaries of newly hired officers for one year or officers assigned to a drug task force as a replacement “so long as the replacement officer does not engage in the seizure of assets or narcotics law enforcement as a principal duty.”

The Justice Department has about 15 employees assigned to overseeing compliance. Five employees review thousands of annual reports for discrepancies. Justice employees also use analytical tools to search for spending patterns. Several attorneys review all sharing requests for \$1 million or more, Carr said, adding that the locals also do their own audits.

The annual reports from local and state police are required to help “promote public confidence” in the program and to protect against “waste, fraud and abuse,” the guidelines say. But the forms provide few details about what is actually purchased, according to documents and interviews.

That is in part because the department leaves it up to local officials to decide how to categorize their spending. There is little room to provide line-item detail.

Justice's inspector general's office has conducted 25 audits on spending since 2008, an average of four a year, examining more than \$18 million in Equitable Sharing spending, roughly three-quarters of 1 percent of the money spent during that time. Justice has challenged millions of dollars in spending as unsupported or unallowable.

One audit examined about \$3.4 million in Equitable Sharing funds that the Oklahoma Highway Patrol spent from July 2009 to June 2012.

The audit found \$1.9 million in unallowable and unsupported expenditures relating to salaries, overtime pay, construction, fees paid to contractors and the use of two Ford F-150 pickup trucks by non-law enforcement personnel.

Oklahoma authorities did not return calls seeking comment.

Auditors found the Mesa County, Colo., Sheriff's Office paid thousands for projectors, scanner equipment and other items that were not intended for law enforcement. They also paid for 20 lawyers in the Mesa County prosecutor's office to attend a conference at the Keystone ski resort. Auditors questioned more than \$78,000 in spending.

The Mesa Sheriff's Office also did not respond to calls from The Post.



Mr. KELLY. And I know, Mr. Koskinen, it was only \$22 million or \$23 million. And, honest to God, back where I am from, that is a lifetime of ultimate success, okay? So it is not peanuts. But here is——

Mr. KOSKINEN. It is a very different situation than——

Mr. KELLY [continuing]. What I want to get to though. Listen, I want to tell you something. When we can get to the point that we look at each other and decide we are going to do what is right for the American people, not that somehow people are going to ask you “gotcha” questions—because I know that is what happened to the Taylors and the Sowers. It was all “gotcha” stuff.

These people come in, sit down at your kitchen table, have a glass of iced tea, talk a little bit about this, a little bit about that. The next thing you know, you better have a lawyer the next time we talk. And the meter starts to run. And it continues to run, and it continues to run. And you know the people who don’t have to worry about picking up the tab on the bill? You all. The same people that fund you fund all the different legal activity. Every single penny comes from hardworking American taxpayers.

Mr. Weber, please, I am talking to you. I know you don’t want to look at me on this. And, listen, I understand that. I understand that. But here is what I want to get to. There has to be some point in time that we do the right thing for the American people because that is basically who we are. That is the very fabric of who we are as a people.

Just as a biblical reference, you know why David went in to fight the Philistines? Do you know why David went to fight the Philistines? Because he went to feed his army, the Israelite army that was afraid to go into the valley against Goliath because Goliath was so big, Goliath was so intimidating. Nobody would go out. David—his dad says, “Hey, take corn, take water. They need your help.”

He goes there, and you know what he finds? Nobody in the army is willing to go into the valley. Nobody. You know what David says? He goes out himself. You know what he declares? “Is there not a just cause? Is there not a cause?”

And I would hope that each member of the IRS understands that we are not painting you all as being bad people. But you are having a dramatic effect and a negative effect on the American people. And I think, as Kenny just talked about, when we, as a government, no longer stand up for the rights of individuals and freedom, we have turned our back on 1.4 million people in uniform that gave their lives that we could practice our type of government today.

This is not coming at the IRS because we don’t like you. This is coming after the IRS because you have hurt our people—our people, together, all of us. And I think that is the thing that we have to start understanding. It is not a me-versus-you. It is not you versus the American people. But, at some point, doesn’t somebody say, is there not a cause? And can we not take a wrong and make it a right?

You don’t pay them for loss of income. You don’t pay them interest. You don’t pay them for damage to their reputation. What you do is say, “Hey, we may give you some of it back. Maybe we won’t. Depends how I’m feeling.” Okay.

And I am so sick and tired of hearing about it is legal. There is a hell of a difference between what is legal and what is right. You all know that. I know it. I have suffered it in my personal business life.

And that is why we are here. This is America's House, representing every single American, including every member of the IRS, by the way. I do appreciate your service. But I think, when we realize—when we realize that we are doing the wrong thing, stand up and just say, “We were wrong, and we’re going to make it right.” That is so basic and what we believe as Americans. It just is so fundamental. And there truly is a cause.

Mr. Chairman, I yield back.

Chairman ROSKAM. Thank you, Mr. Kelly.

I want to thank the panel for your testimony today. I want to thank our witnesses for your journey and your willingness. As I said before, you really do exemplify and reflect some things that are very, very powerful. And you evoke a very strong feeling in all of us, and we are trying to sort out how it is that we get to the right place.

I want to thank my members on this committee, who have really risen to an occasion to try and do a right thing.

Let me just close by asking a couple of questions.

Mr. Blanco, I am trying to size you up, and I can't quite figure it out, which is maybe, you know, part of one of your gifts, but you are fairly sphinx-like. I can't figure out if you are playing straight with me or if you are hustling me. And I will continue to be mystified by it, and part of it is some of your answers.

But here is a question that you can answer as it relates to the allegations of misconduct. Mr. Lewis and I wrote to the Department in March of 2015. We brought these questions to the attention of the Attorney General. We made representations that were really echoed by a number of other members today.

And way down deep, you know this stuff is wrong, but you can't—you know, you have to put your game face on, and I get that. But here is a question that you can answer. Have these cases that we have brought to your attention, have they been reviewed? The attorney misconduct cases, have they been reviewed?

Mr. BLANCO. Let me say two things.

Yes. One is that we have our review process, which is an independent part of the Department of Justice, our OPR section, Office of Professional Responsibility. I know via letter that you have been informed that at least one of those cases that you spoke about, maybe two—I am not certain, and I don't want to say that they all have or they haven't been referred to OPR for review.

I can tell you this—and you are going to size me up, which is great. I can tell you that every allegation of misconduct by any employee of the Department of Justice is taken very seriously.

Chairman ROSKAM. Okay. That is not my question.

Mr. BLANCO. And I can tell you that OPR is going to do their review of cases that you have referred to Department of Justice.

Chairman ROSKAM. Okay. That is why I can't figure you out. Because I have given you a complete opportunity to say, “Congressman Roskam, I've got good news for you. Every allegation, everything that you've brought to the attention with Mr. Lewis has been

reviewed and disposed of and we have dealt with it.” And you can’t give me a straight answer on that.

Mr. BLANCO. I will tell you this. I can get back to you on those answers. I just don’t want to give you the information that is inaccurate.

Chairman ROSKAM. All right. That is fair.

Mr. BLANCO. And I am happy to do that.

Chairman ROSKAM. Can we have the answer by the end of the week?

Mr. BLANCO. You can have it probably by the end of the day.

Chairman ROSKAM. Fantastic. Thank you. That is helpful, and I appreciate that.

So this is a question now, just more broadly. You have heard that the Sowers are pending for 10 months. And, listen, there is not a person here that is going to—if you are asked to describe the Sowers’ case—and you don’t have to acknowledge this, but I just know intuitively. If you are describing the Sowers’ case in other circumstances and the Taylors’ case in other circumstances, you are going to be pretty sympathetic to it, upon the telling of this case.

And so the question then is, if you are sympathetic to it—and I think you are, and you want this to go away—it doesn’t make any sense to me that this should take 10 months, that they should just be hanging out there for 10 months.

So is there a date certain or can you make a representation to this subcommittee about when you can have these cases, not the process but the individual cases, reviewed so that they can be disposed of?

Mr. Blanco.

Mr. BLANCO. You want a specific date? I can’t give you a specific date.

Chairman ROSKAM. Give me a frame of reference. Give me a season of the year. Give me an epoch. You know, give me a—you know what I am saying.

Mr. BLANCO. I do know what—

Mr. RANGEL. Mr. Chairman, would you yield?

Chairman ROSKAM. I will yield.

Mr. RANGEL. I am trying to be a friend, but maybe if they can’t—

Chairman ROSKAM. Turn your mike on.

Mr. RANGEL. If they can’t give us any idea how long it would take to repair this emergency situation—which stains the government, it stains the executive branch, and it stains us—maybe we should set a date for our next hearing. I hope they don’t want that. But we can have a press conference and let the whole world know that we are having a hearing over 600 taxpayers. I don’t know how many taxpayers we have, but that is an infinitesimal number for the integrity of the Service.

So I just say that I hope they can come up with some answer, but I will be encouraging the chair to help them thinking—if they can’t come up with an answer, “I don’t know,” we can tell them when they come back to tell us again they just don’t know.

Chairman ROSKAM. Mr. Blanco, what can you tell us about how long this will take?

Mr. BLANCO. I can tell you that we are looking at those matters that have been referred to us. We have, as I mentioned, a process. We are working as expeditiously as possible. Nobody wants to give an answer as quickly as I do, and we are trying to work there as quickly as we can.

One thing I will say, Congressman—and I feel very deeply about this—you know, justice should not be rushed. It is a very thorough process. It is a process that I think is a fair process and a just process. And, at the end of the day, we will use those factors, we will follow the facts where they take us, and we will make a decision.

Chairman ROSKAM. Okay, that is just not good enough. Do you understand that? So let me just—because you are not going to give me an answer today. What I am communicating to you, on behalf of this whole subcommittee: That is not good enough. It is obtuse, it is evasive, it is condescending—not to us, but it is condescending to these people.

And can I just tell you that when we had the briefing with DOJ and the IRS in February in this room, when I asked where was the money, for example, for the people to whom everybody agrees the money should be restored, by the way, I was told, “Well, Congressman, the money has been dissipated into the system.” I said, “Dissipated into the system? What does that mean?” Because if my constituents spend tax money that they owe the government, what does the government do? The government takes their house and puts them in prison. That is what happens.

So do you understand the level of frustration? Sort of these non-answers, obtuse briefings, the passive-aggressive nature about trying to get information from your staff. We are basically stiff-armed. You tell the chairman, you tell the ranking member, you tell basically the entire subcommittee, “We’re not that interested in what you have to say.” You pat us on the heads. You say, “Off with you. Be lively. We’re going to do our business.”

And now what you have done is you have brought a subcommittee together that can’t agree about what time of day it is. We can’t agree on the Affordable Care Act. We cannot agree on the Iran sanctions deal. We cannot agree on tort reform and tax reform and entitlement reform. But we are all together in thinking you are the problem and they are the good guys and that you are not bringing your game.

The same sense of urgency—Mr. Rangel said it best. If this were our kids or our grandkids, if this was one of your kids or my kids, we would be scandalized, we would be outraged, and this wouldn’t happen.

And so the capacity to treat people in the dismissive way in which the departments have treated them is the part that all of us really find just jarring, actually, just really, really jarring.

And so it is very unsatisfying, the nature of where this stands. The Internal Revenue Service made a decision to change this policy, and we as a group said that is a good thing. Now, it only goes to show that the review process needs to be reevaluated, but not just the process, not just that feeling of, “Oh, we’ve got really sharp people working on this, Congressman Roskam, we’ve got our A team all over this,” because the A team is not all over this. It has clearly been completely dismissed. It is off to the sidelines.

And the subtext or the notion that everybody is going to lawyer up and come running? You wouldn't come running back in if you got your head kicked in by a Federal agency that is stomping all over your property and giving you a hard time and threatening criminal prosecution. It is scandalous, it is outrageous, and yet the remedy of this is, "Make it go away."

Do the right thing. Do the right thing according to the Rangel standard. Go through case by case by case. Don't be passive-aggressive and jerking the guys around who are told this is a commercial enterprise. This is not a commercial enterprise, their FOIA request. It is a group that is trying to bring justice. They are not making any money. They are a 501(c)-something, and they deserve this information. And, as I said, we are going to get to this information.

So why don't we do the right thing? And that is restore the confidence in these people, where they go, "You know what? Yeah, it was a hummer. We really got jerked around by the Federal Government. But we were able to bring attention to things, and things were made right."

And your disposition, in particular, as it relates to the DOJ, is just completely unsatisfying. And so I find it simply amazing that the simple response of, "Hey, we're reviewing every case, here's the date certain when they will be reviewed, and we're going to give you an answer, and we're going to get this disposed of and get it off our backs"—just let's be done with this. But the simple remedy is let's do it and let's do it with dispatch.

So, again, I want to thank the members for their participation today.

To the Taylors and to the Sowers, we are sticking with you. And you reflect a larger group. And we are going to do our best to make sure that a coequal branch of government is held to account, what we think is an abuse.

And, with that, the committee is adjourned.

[Whereupon, at 12:53 p.m., the subcommittee was adjourned.]

[Questions for the record follow:]



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 09 2016

The Honorable Peter Roskam
Chairman
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Kenneth A. Blanco, Deputy Assistant Attorney General of the Criminal Division, before the House Ways and Means Subcommittee on Oversight on May 25, 2016, for a hearing on IRS Civil Asset Forfeiture Authorities and Cases. We hope that this information is of assistance to the Committee.

Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

A handwritten signature in dark ink, appearing to read "P. Kadzik".

Peter J. Kadzik
Assistant Attorney General

Enclosure

cc: The Honorable John Lewis
Ranking Member

Questions for the Record
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
May 25, 2016

Questions Posed by Representative Peter Roskam

- 1) On March 31, 2015, DOJ adopted a policy under which it would limit application of the structuring laws to “illegal-source” structuring cases. With respect to that change:
 - a) Does DOJ continue to litigate “legal-source” structuring cases (either civil or criminal) that were initiated *before* this policy change? If so, please identify the cases by court and docket number.

Response:

On March 31, 2015, the Department of Justice (the Department) issued a policy limiting the use of asset forfeiture authorities in connection with structuring offenses under 31 U.S.C. § 5324(a). Under the new policy, in the absence of criminal charges, judicially authorized warrants to seize structured funds can only be sought in two ways. Under the first method, the prosecutor must identify and articulate probable cause of additional federal criminal activity and that determination must be approved by a supervisor. Otherwise, a prosecutor may ask a judge to issue a seizure warrant in structuring cases only if either the U.S. Attorney or the Chief of the Criminal Division’s Asset Forfeiture and Money Laundering Section (AFMLS) personally determines that seizure would serve a compelling law enforcement interest.

The policy adopted over a year ago has already effectively eliminated civil forfeiture actions related to violations of the structuring laws except in cases in which (1) the defendant is first criminally charged, (2) a prosecutor can establish probable cause that the structured funds were generated by unlawful activity or that the structured funds were intended for use in, or to conceal or promote, ongoing or anticipated unlawful activity, or (3) a top ranking prosecutor personally certifies that there are compelling law enforcement circumstances which justify seeking a warrant from a federal judge. This significant change exceeds the requirements of the law and underscores the Department’s commitment to fighting crime and returning money to victims while protecting civil liberties and ensuring due process.

The Department does not have a precise automated method to gather the requested information. The Department’s automated system tracks cases by the criminal statute that was violated. Because structuring is itself a federal criminal statute, there was no requirement or practice, prior to the implementation of the March 2015 policy, for agents and prosecutors to separately document which structuring cases also involved evidence of additional criminal activity. Nevertheless, having reviewed available information regarding pending cases, the Department is not aware of any pending criminal prosecutions or civil forfeiture actions pursuant to 31 U.S.C. § 5324(a) filed prior to the March 2015 policy in which there is not some indication that the

structured funds were generated by unlawful activity or that the structured funds were intended for use in, or to conceal or promote, ongoing or anticipated unlawful activity.

- b) Has DOJ initiated any “legal source” structuring cases (either civil or criminal) *after* this policy change? If so, please identify the cases by court and docket number.**

Response:

The Department has reviewed available information and believes there have been three criminal prosecutions initiated after March 31, 2015, where the sole alleged violation is a violation of 31 U.S.C. § 5324(a) and no link to additional federal criminal activity has been alleged in the court filings. Of those three criminal cases, one was voluntarily dismissed by the Department and the remaining two involved individuals and/or entities who have compliance responsibilities under the Bank Secrecy Act. Further, the Department is unaware of any civil forfeiture complaints filed after March 31, 2015, in which the only basis for forfeiture is a violation of 31 U.S.C.

§ 5324(a) and there is not probable cause that the structured funds were generated by unlawful activity or that the structured funds were intended for use in, or to conceal or promote, ongoing or anticipated unlawful activity.

- c) Has DOJ filed any civil forfeiture complaints since March 31, 2015, in which the only basis for forfeiture is an alleged violation of the structuring laws? If so, please identify the cases by court and docket number.**

Response:

See response above.

- d) Has DOJ initiated any criminal prosecutions since March 31, 2015, in which the only alleged offense is a violation of the structuring laws? If so, please identify the cases by court and docket number.**

Response:

See response above.

- e) Has DOJ entered into settlement agreements or plea agreements since March 31, 2015, in which the only alleged offense resolved by the agreement is an alleged violation of the structuring laws? If so, please identify the cases by court and docket number.**

Response:

See response above.

- f) What mechanism does DOJ have in place to ensure that its actions comply with the March 31 policy change?**

Response:

The policy itself provides several safeguards to ensure compliance. If a prosecutor wants to seize funds when no criminal charges have been filed, the prosecutor must identify and articulate probable cause of additional federal criminal activity and that determination must be (1) approved by a supervisor and (2) memorialized in the prosecutor's records. Otherwise, a prosecutor may ask a judge to issue a seizure warrant in structuring cases only if either the U.S. Attorney or the Chief of AFMLS personally determines that seizure would serve a compelling law enforcement interest. Such approval then must be communicated to AFMLS.

- 2) **After the IRS and DOJ changed their policies regarding structuring violations, some property owners have filed petitions for remission or mitigation seeking return of money that was seized before the policy changes. With respect to these petitions:**
- a) **How many petitions for remission or mitigation have been submitted to DOJ since October 17, 2014, in cases where money was forfeited based on alleged violations of the structuring laws?**

Response:

AFMLS, as the central decision maker for petitions filed in judicial cases, annually receives and decides hundreds of petitions for both remission and mitigation. The overwhelming majority of these are petitions for remission from victims of crime seeking to recover losses they have suffered. A much smaller number of petitions for mitigation are filed by property owners and lienholders. Since October 17, 2014, AFMLS has received five petitions for remission and/or mitigation in structuring cases.

These numbers only include the petitions that have been filed directly with or received by AFMLS, the central decision maker for judicial petitions. They do not include petitions currently under review by the Internal Revenue Service (IRS) or U.S. Attorney's Offices.

- b) **How many such petitions has DOJ finally decided? How many remain to be decided?**

Response:

Of the five petitions received by AFMLS, two have been decided. One of the petitions granted remission to a victim of embezzlement because the proceeds from the crime were being illegally structured. As to the second petition, the Department denied the petition for remission, but granted the petition for mitigation. Three petitions for remission and/or mitigation in structuring cases remain pending.

- c) **What standards does DOJ intend to apply when determining whether to return funds in response to such petitions? Will DOJ return funds in all cases where money would not be seized under the policy change announced on March 31, 2015?**

Response:

Owners, lienholders, or victims can seek the return of forfeited property by filing a petition for remission or mitigation. This process has been described by the courts as a pardon process, but for property instead of individuals. This process is governed by regulations to ensure that the Department fairly considers and resolves petitions. These regulations are designed to offer owners, lienholders, and victims a way to pursue their interests in forfeited property without requiring them to litigate those interests in court.

The regulations, codified at 28 C.F.R. § 9, require that the Department or one of its law enforcement agencies send a notice of seizure and intent to forfeit seized property to persons who have a recognized ownership interest in seized property, such as titled owners and lienholders. The regulations require that the notice provide, among other things, information describing the remission process, such as when and where a petitioner may submit a petition for remission or mitigation.

In order to qualify for remission, the owner or lienholder must establish that he or she has a valid, good faith, and legally cognizable interest in the seized property as owner or lienholder and is an innocent owner within the meaning of the statute. 28 C.F.R. § 9.5(a). Given these criteria, individuals who knowingly evaded currency reporting requirements by structuring do not qualify for remission because they are not innocent owners under the statute.

Currency structurers, however, may qualify for mitigation under the Department's specific mitigation regulations. The Department reviews several factors to determine whether to grant or deny mitigation to a party involved in the commission of the offense. Those factors include:

- the lack of a prior record or evidence of similar criminal conduct;
- if the violation does not include drug distribution, manufacturing, or importation, the fact that the violator has taken steps, such as drug treatment, to prevent further criminal conduct;
- the fact that the violation was minimal and was not part of a larger criminal scheme;
- the fact that the violator has cooperated with federal, state, or local investigations relating to the criminal conduct underlying the forfeiture; or
- the fact that complete forfeiture of an asset is not necessary to achieve the legitimate purposes of forfeiture.

28 C.F.R. § 9.5(b)(2). The Department will thoroughly review and appropriately rule on any current and newly filed petitions for remission or mitigation, including those involving structuring violations. Throughout our process of reviewing petitions for remission and mitigation, we are focused on ensuring fairness and consistency, as well as instilling public confidence in these and other cases. As part of our review process, we solicit and carefully consider recommendations from the seizing agency as well as the relevant U.S. Attorney's Office. In our experience, these stakeholders often have access to information that is relevant to claims presented in the petitions.

- d) With respect to those petitions that have not been resolved, when does DOJ expect to issue its decision?**

Response:

Although we do not have a specific timeline for resolving petitions, we take seriously our obligation to thoroughly and quickly decide matters that are ripe for decision. Factors that affect how long it takes to review a particular petition may include the age of the case, the complexity of the facts, the need for any back-and-forth discussions with the petitioner, the law enforcement agency, and/or the relevant U.S. Attorney's Office, as well as, in some cases, the need to resolve legal issues presented by the petition.

- 3) **For any structuring-related petitions for remission or mitigation submitted to DOJ after October 17, 2014, please provide separately *for each petition*:**
- a) The date of the underlying seizure.
 - b) The amount of currency seized in the underlying seizure.
 - c) The date of the underlying forfeiture.
 - d) The amount of currency forfeited in the underlying forfeiture.
 - e) Whether the underlying forfeiture was administrative, civil judicial, or criminal.
 - f) Whether any crime other than structuring was alleged to justify the forfeiture.
 - g) The date the petition was submitted.
 - h) The date the IRS provided its recommendation on the petition.
 - i) Whether IRS recommended return of the seized funds and, if so, how much the IRS recommended should be returned.
 - j) The date the petition was resolved (if it has been resolved).
 - k) The amount of money returned in response to the petition (if any).

Response:

Consistent with longstanding policy, the Department will not comment on pending matters including the timing or substance of any individual pending petitions.

- 4) **While some property owners have submitted petitions for remission or mitigation, other property owners may not be aware that they have any right to do so. With respect to the latter property owners:**
- a) **Has DOJ undertaken any kind of review to identify those property owners? Does DOJ have any plans to undertake such a review?**

Response:

The regulations for the remission and mitigation process, codified at 28 C.F.R. § 9, require that the Department or one of its law enforcement agencies send a notice of seizure and intent to forfeit seized property to persons who have a recognized ownership interest in seized property, such as titled owners and lienholders. The regulations require that the notice provide, among other things, information describing the remission process, such as when and where a petitioner may submit a petition for remission or mitigation. In addition to the notice required by the regulations, in June 2016, the IRS mailed letters in more than 600 forfeiture matters based on

structuring violations, notifying recipients of their ability to file new or renewed petitions for mitigation.

- b) Has DOJ taken any steps to notify those property owners that they have a right to file a petition for remission or mitigation? Does DOJ have any plans to provide such notice?**

Response:

See response above.

- c) In how many cases before the policy change did DOJ forfeit money based solely on alleged *legal-source* structuring? If the DOJ does not currently have that information, what plans does DOJ have to obtain that information?**

Response:

Prior to the implementation of the March 2015 policy, the Department did not have a specific policy of memorializing which cases involved (1) evidence of the crime of structuring and (2) evidence of additional criminal activity. Although such evidence may have existed in the underlying investigation, there was no obligation on the part of agents or prosecutors to collect or memorialize such evidence given that structuring is by itself a federal criminal offense. In June 2016, the IRS mailed letters in more than 600 forfeiture matters based on structuring violations, notifying recipients of their ability to file new or renewed petitions for mitigation. We are advised by the IRS that a subset of those matters are civil forfeiture cases, petitions related to which would be decided by the Department. The Department does not know, however, nor does the IRS believe it has a solid basis to tell us, how many petitions for mitigation to expect as a result of this process, or how many of those petitions are likely to merit initial or additional mitigation. Rather, we expect to know significantly more after the period for filing new or renewed petitions has closed and the IRS or the Department have received and had an opportunity to review the petitions. In the meantime, we intend to work closely with the IRS to ensure a careful and well-coordinated approach that will permit efficient and consistent decision making.

- 5) In recent years, several high profile structuring-related cases have emerged in which federal prosecutors failed to initiate civil or criminal forfeiture proceedings within the deadlines set by 18 U.S.C. § 983, and instead held onto seized property for years while attempting to negotiate a settlement. With respect to these cases:**

- a) Has DOJ conducted an audit to identify cases where the agency is currently holding money in violation of the deadlines set by 18 U.S.C. § 983?**

Response:

The March 2015 policy addresses this issue. The policy requires that, within 150 days of seizure based on structuring, a prosecutor must either file a criminal indictment or a civil complaint

against the asset. The criminal charge or civil complaint can be based on an offense other than structuring. If no criminal charge or civil complaint is filed within 150 days of seizure, then the prosecutor must direct the seizing agency to return the full amount of the seized money to the person from whom it was seized by no later than the close of the 150-day period. Once directed, the seizing agency will promptly initiate the process to return the seized funds. Only a U.S. Attorney or the Chief of AFMLS can grant an exception if needed to meet the needs of the criminal investigation.

b) Does DOJ have any plans to conduct any such audit?

Response:

See response above.

c) What mechanisms does DOJ have in place to prevent prosecutors from holding seized property in violation of the deadlines set by 18 U.S.C. § 983?

Response:

The new policy imposes important protections after a seizure has taken place. The policy requires that, if a prosecutor determines that there is insufficient admissible evidence to prevail in a criminal or civil trial, within seven days the prosecutor must direct a seizing agency to return the funds. The policy also imposes a deadline to file a criminal indictment or civil complaint against the funds seized, or otherwise directs a return of the full amount of the seized funds. The criminal charge or civil complaint can be based on an offense other than structuring.

6) Does DOJ have a policy or practice of issuing grand jury subpoenas to individuals or businesses after they refuse to plead guilty to structuring?

Response:

Both Department policy and federal law prohibit a prosecutor from using the grand jury's subpoena power to harass or intimidate any person, including by issuing a "grand jury subpoena to coerce a plea bargain, when that use has no relation to a proper purpose of the grand jury." *United States v. (Under Seal)*, 714 F.2d 347, 350 (4th Cir. 1983).

a) What mechanisms does DOJ have in place to ensure that the power to issue grand jury subpoenas is not used to pressure property owners to agree to guilty pleas?

Response:

See response above.

[Submissions for the record follow:]



**Statement for the Record
Cognitive Care Alliance
600 Maryland Avenue, SW, Suite 835W Washington, DC 20024
Ways & Means Hearing
Implementation of the Medicare Access & CHIP Reauthorization Act
May 25, 2016**

The Cognitive Care Alliance, representing over 92,000 physicians from 8 cognitive specialty societies shares the Ways & Means Committee's concerns about the implementation of the Medicare Access & CHIP Reauthorization Act (MACRA). MACRA fundamentally changes the physician payment system, paying physicians based on quality and value rather than volume. However, for MACRA to succeed changes must be made to the resource-based relative value scale (RBRVS) on which the Merit-Based Incentive Payment System (MIPS) and alternative payment models (APMs) will continue to rely.

Though responsible for the accuracy and validity of the fee schedule, the Centers for Medicare and Medicaid Services (CMS) currently utilizes a relative value scale that fails to accurately capture the complex work of non-procedural physician office visits. We have urged CMS to conduct a national research study of cognitive work to address the deficiencies of the RBRVS. With a well-constructed, valid, and representative knowledge-base, new service codes can be defined and provided with appropriate valuations that recognize the complexities and demands of current cognitive medical practice.

Our members, representing the specialties of primary care, endocrinology, infectious disease, gastroenterology, hepatology, neurology, and rheumatology are united in our concern that the existing evaluation and management (E/M) codes do not accurately define discrete levels of cognitive service, do not capture the broad range of cognitive services, and undervalue the critical role that careful evaluation and consideration have in ensuring the safe provision of appropriate, effective, and high quality healthcare services to patients.

The result of this misvaluation is evident in the primary care workforce shortage, which remains a national crisis despite steps taken by CMS. However, the agency has not recognized the impact of the E/M service code deficiencies on other physician specialties, all of which rely on complex integration and thoughtful analysis in their work. We believe that ultimately workforce shortages will have a particularly negatively impact for all the subspecialties represented by our membership of cognate physician groups.

The value proposition of the Medicare Access and CHIP Reauthorization Act (MACRA) will remain unattainable if the foundational deficiencies of Resource-Based Relative Value Scale (RBRVS) are not addressed in a systematic and sustainable fashion.

MACRA requires a balanced workforce, one that not only provides necessary interventions and procedures, but also has a sufficient number of physicians to decide when and if interventions are appropriate. For MACRA to succeed, cognitive physicians must serve as health care advocates for the individual patients who comprise the “populations” served. Primary care physicians must manage the complex interactions in patients who have multiple simultaneous conditions, multiple medications, multiple providers, and multiple tests ordered. Cognitive specialists must have an enormous depth of knowledge in order to judiciously apply interventions that range from procedures to high risk and high cost biologic and pharmacologic therapies. There is a “complexity density” within the work of cognates that is not properly identified or valued in the existing fee schedule.

New models of care delivery must be built from trustworthy building blocks. CMS must prioritize the reworking of the E/M service codes using a strong evidence base. With a well-constructed and valid representative knowledge-base, new service codes can be defined and provided with appropriate relative valuations that recognize the complexities and demands of current medical practice.

This is a “Five Win” opportunity for providers and for the Department of Health and Human Services:

1. For the all those who bill for cognitive services, new evidence-based services definitions will allow physicians to finally have code choices that accurately and completely capture their work.
2. For the cognate providers and those who build new health care delivery models, new valuations will provide equitable payment for equal work intensity.
3. For those who want more straightforward and efficient documentation expectations, new codes can be developed with new guidelines that reduce unneeded clutter and redundancy.
4. For the Office of the National Coordinator, new documentation guidelines can lead to the development of the “electronic footprint” for each service code. This “footprint” can set the reporting expectation for the vendors and simplify the EHR requirements for physicians.
5. For the Agency for Healthcare Quality and Research, an in-depth understanding of the actual content of cognitive services can become the base from which need quality metrics are developed, ones that capitalize on the value added by cognitive work.

Each and every one of these justifications for the needed research will benefit Medicare beneficiaries by ensuring access, improving physician focus on medical decision making, and facilitating the development of valid measures of quality care. They will also help ensure that MACRA succeeds.

As long as MACRA’s payment system relies of fee for service, the problems of the RBRVS will have an impact on physicians’ success in MACRA. The Ways & Means Committee should force CMS to address these deficiencies in order to ensure patients have access to the care and physicians they require.

Cognitive Care Alliance Member Organizations:

American Academy of Neurology
American Association of the Study of Liver Diseases
American College of Rheumatology
American Gastroenterological Association
Coalition of State Rheumatology Organizations
Endocrine Society
Infectious Diseases Society of America
Society of General Internal Medicine





INSTITUTE FOR JUSTICE

February 16, 2016

The Honorable Loretta Lynch
 Attorney General of the United States
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, DC 20530

Dear Madam Attorney General:

I am writing to inquire about the status of a petition for remission or mitigation submitted to your agency on July 16, 2015, on behalf of citizens seeking the return of \$29,500 seized and forfeited under the structuring laws.

Petitioners Randy and Karen Sowers are victims of a former DOJ policy—abandoned in March 2015—under which the agency pursued forfeiture of money belonging to Americans accused of nothing more than depositing or withdrawing cash in amounts under \$10,000 (so-called “legal source structuring”). Under current DOJ policy, the agency would not pursue forfeiture of Randy and Karen’s funds. If it would be wrong to take the money today, it is equally wrong to keep it. Randy and Karen are therefore asking to have their money returned.

As detailed in the enclosed petition for remission or mitigation, Randy and Karen run a dairy farm in rural Maryland. Randy and Karen keep a grueling schedule, waking every day in the middle of the night to care for their cows, and they hardly ever take days off. They are not criminals; they are hard-working Americans who have built a successful business through hard work and perseverance. Shockingly, in February 2012, the IRS seized their entire bank account. The IRS took that money without accusing them of any crime, apart from the mere act of depositing lawfully-earned cash in the bank in amounts under \$10,000.

Randy testified before the House Ways and Means Oversight Subcommittee in February 2015. At that hearing, IRS Commissioner John Koskinen stated that there was “no doubt” that Randy had “been aggrieved” and offered an apology. Meanwhile, Chairman Peter Roskam stated that Randy and others like him had “hand[ed] over thousands of fairly earned dollars to the IRS all without having done anything wrong,” while Ranking Member John Lewis stated that he also “want[ed] to apologize” for the government’s treatment of Randy.

On August 11, 2015, the members of the House Ways and Means Oversight Subcommittee sent a letter to Treasury Secretary Jacob Lew—copied to your office—urging

The Honorable Loretta Lynch
February 16, 2016
Page 2 of 3

your agency to review Randy and Karen's petition, as well as petitions filed by others in similar circumstances, and to "return funds as appropriate in cases that do not meet the IRS's current policy that the funds must have come from an illegal source."

At this point, Randy and Karen have waited over six months for an answer to their petition. Nobody from DOJ has contacted Randy or Karen, or their attorneys, to request additional information related to the petition. Indeed, the petition has generated no response from your agency of any kind.

While we appreciate your thorough consideration of the petition, we wish to underscore the burden caused by any unnecessary delay in the return of these funds. The government seized Randy and Karen's money in February 2012—now over four years ago. Randy and Karen have waited years for the government to correct this grave injustice and should not have to wait years more to receive an answer to their petition.

Thank you for your time and careful attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. E. Johnson", followed by a horizontal line.

Robert Everett Johnson
Attorney
Institute for Justice

Enc: Letter from Ways & Means Subcommittee on Oversight (August 2015)
Petition for Remission or Mitigation (July 2015)

cc: Members of the House Ways & Means Oversight Subcommittee
The Honorable Peter J. Roskam
The Honorable John Lewis
The Honorable Patrick Meehan
The Honorable George Holding
The Honorable Jason Smith
The Honorable Tom Reed
The Honorable Tom Rice
The Honorable Kenny Marchant
The Honorable Joseph Crowley
The Honorable Charles Rangel
The Honorable Danny Davis

The Honorable Loretta Lynch
February 16, 2016
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Former Members of the House Ways & Means Oversight Subcommittee
The Honorable Mike Kelly
The Honorable Kristi Noem
The Honorable Jim Renacci

The Honorable John A. Koskinen, Commissioner, Internal Revenue Service

The Honorable Rod J. Rosenstein, U.S. Attorney, District of Maryland

Mr. M. Kendall Day, Chief, U.S. Department of Justice AFMLS



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JOYCE Y. MEYER,
STAFF DIRECTOR

Congress of the United States

U.S. House of Representatives

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JANICE MAYES,
MINORITY CHIEF COUNSEL

August 11, 2015

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Lew:

As members of the House Ways and Means Subcommittee on Oversight, we are writing to urge you to exercise the discretion conferred to you under 19 U.S.C. § 1618 and 31 U.S.C. § 5321(c) to remit the funds seized from Randy and Karen Sowers pursuant to the attached petition filed with the Department of Justice. We also ask you to review other cases in which the Internal Revenue Service seized funds on the suspicion that the account holders violated the structuring statute¹ and return funds as appropriate in cases that do not meet the IRS's current policy that the funds must have come from an illegal source.

On February 11, 2015, the Subcommittee held a hearing to examine the IRS's use of its civil asset forfeiture authority to seize funds in cases in which the IRS believed monetary transactions had been structured to avoid IRS reporting requirements. As you know, the statute that prohibits structuring was designed to help interdict money laundering, drug trafficking, and terror financing schemes, not innocent Americans who simply make frequent cash deposits. However, in the course of our investigation we heard from numerous small business owners whose funds the IRS seized solely for this reason. The IRS and the Department of Justice attorneys who pursued these cases would then offer to settle if the small business owners would agree to relinquish a portion of the seized funds—even though in many of these cases, the DOJ and IRS conceded that the small business owners had done nothing wrong.

At our hearing, Randy Sowers, a Maryland dairy farmer, testified that after the IRS seized \$67,000 from his farm's account in 2012 because his wife, Karen, often made large cash deposits of proceeds from farmer's markets. A bank teller told Mrs. Sowers that it would reduce paperwork if she deposited the funds in increments under \$10,000. Mrs. Sowers did so, believing she was making life easier for the teller, not because she intended to violate federal law. Then, in the course of settlement negotiations, Mr. Sowers told their

¹ 31 U.S.C. § 5324 (prohibiting structuring of financial transactions to avoid IRS reporting requirements).

Secretary Lew
August 11, 2015
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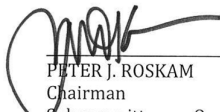
story to a reporter who published an article on the Sowers' plight. The attorney prosecuting the case then stated in an e-mail that the terms of the settlement agreement were harsher than in other, similar cases because Mr. Sowers had exercised his First Amendment right and spoken to the press. Ultimately, the Sowers settled their case for \$29,500 because they needed the remainder of the funds to run their farm.

In his testimony, IRS Commissioner Koskinen apologized to everyone who had been treated unfairly. And, in fact, several months before the hearing, the IRS changed its policy to prohibit seizures based on suspicions of structuring unless the funds came from an illegal source or there were other, exceptional circumstances.² That policy change, however, came too late to help the victims of the IRS's abusive seizure practices. Now, Treasury still holds funds seized from innocent small business owners who settled their cases only because they could not afford to do otherwise.

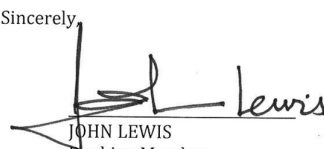
As the Treasury Secretary, you have the opportunity to right the wrong done to these small business owners. As discussed in the attached petition on behalf of Randy and Karen Sowers, you have the discretion to return the seized funds to their rightful owners. The IRS's October 2014 policy change is tantamount to an admission that it never should have seized funds that were not associated with an illegal source. The Sowers and others like them should be treated with the same fairness applied to cases going forward. We ask that you grant this petition and review other, similar cases and return the seized funds expeditiously.

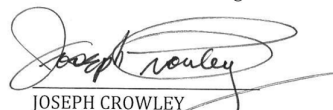
Thank you for your attention to this important matter. If you have any questions about our request, please contact Oversight Subcommittee staff at (202) 225-3783.

Sincerely,


PETER J. ROSKAM
Chairman
Subcommittee on Oversight


MIKE KELLY
Subcommittee on Oversight


JOHN LEWIS
Ranking Member
Subcommittee on Oversight

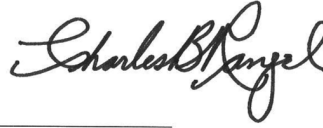

JOSEPH CROWLEY
Subcommittee on Oversight

² Statement of Richard Weber, Chief of I.R.S. Criminal Investigation, N.Y. TIMES, Oct. 25, 2014.

Secretary Lew
August 11, 2015
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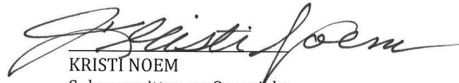
PATRICK MEEHAN
Subcommittee on Oversight



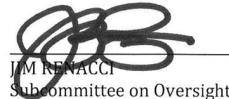
CHARLES RANGEL
Subcommittee on Oversight



JASON SMITH
Subcommittee on Oversight



KRISTI NOEM
Subcommittee on Oversight



JIM RENACCI
Subcommittee on Oversight

CC:

The Honorable Loretta Lynch
United States Attorney General

The Honorable Rod J. Rosenstein
United States Attorney, District of Maryland

The Honorable John Koskinen
Internal Revenue Service Commissioner

Mr. M. Kendall Day
Acting Chief
United States Department of Justice Asset Forfeiture and Money Laundering Division

Enclosure:

Sowers Petition



**BEFORE THE
UNITED STATES DEPARTMENT OF JUSTICE**

**PETITION FOR REMISSION OR MITIGATION
OF RANDY AND KAREN SOWERS**

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Pursuant to 19 U.S.C. § 1618 and 31 U.S.C. § 5321(c), Randy and Karen Sowers hereby petition the United States Department of Justice and the Internal Revenue Service to remit or mitigate \$29,500 that was seized from their bank account on or about February 28, 2012, and ordered forfeited by the United States District Court for the District of Maryland on May 30, 2012. Those funds would not be seized—much less forfeited—under current government policy. Now, the government should do the right thing and give the money back.

INTRODUCTION

Randy and Karen Sowers run a dairy farm in Frederick County, Maryland, in the same rural community where they were born, married, and lived their entire lives. Both Randy and Karen had grandparents who were farmers, and they met while participating in 4-H programs. They purchased their first 100 cows together in 1981. Since then, they have worked virtually without pause to care for their animals and grow the operation. More than 30 years after opening their farm, Randy and Karen still wake before dawn every day to milk their cows.

In February 2012, the IRS seized the entire bank account for Randy and Karen's farm, containing \$62,936.04. The government took the money because Randy and Karen deposited cash earned at farmers' markets into their account in amounts under \$10,000. Federal law requires banks to report cash transactions over \$10,000 and makes it a crime ("structuring") to deposit cash in amounts under \$10,000 in order to evade that reporting requirement. This law was intended to target drug dealers, tax evaders, and other criminals seeking to conceal their activities from the government. But, in Randy and Karen's case, the law was applied to innocent business owners guilty of nothing more than doing business in cash. Randy and Karen deposited cash in amounts under \$10,000 only because a bank teller told Karen that doing so would avoid unnecessary, unspecified paperwork. Apart from that act of depositing cash, the government has never even *alleged* that Randy and Karen did anything unlawful.

After taking Randy and Karen's money, the government presented them with an offer they could not afford to refuse. Randy and Karen could go to court and fight for months or even years to contest the forfeiture—likely spending more in attorney fees than the amount that had been seized—or they could agree to forfeit \$29,500 of the approximately \$63,000 that was taken. Even though Randy and Karen believed they had done nothing wrong, they needed the seized money for their farming operations and could not afford a protracted legal battle to prove their innocence. So, like many other property owners faced with this choice, Randy and Karen reluctantly agreed to forfeit \$29,500 of their hard-earned money.

While the government still holds that \$29,500, the government today would not even *initiate* forfeiture proceedings against Randy and Karen. Cases like Randy and Karen's have been harshly condemned, including by Members of Congress at a hearing this spring where Randy was called to testify. *See, e.g.*, Exhibit C at 86 (statement of Rep. Crowley) ("Mr. Sowers . . . I don't think you, nor any of the gentlemen before us today, deserve to be treated by your Government, by the IRS, in the way in which you have been."). In the face of this criticism, both the IRS and the DOJ recently announced policy changes under which they will no longer seek to forfeit money under the structuring laws where—as here—the money involved in the allegedly structured transactions is derived from lawful activity. *See* Exhibits A, B. As the IRS Commissioner explained at the same congressional hearing at which Randy testified, this policy will "ensure fairness for taxpayers" and "protect the rights of individuals" by "making sure that taxpayers get appropriately protected." Exhibit C at 11, 15. The policy change implicitly recognizes that what happened to Randy and Karen was not fair, was not appropriate, and did not adequately respect Randy and Karen's constitutional rights to property and due process.

Having recognized that what happened to Randy and Karen was wrong, the government should do the right thing and give the money back. The government has ample authority to correct this injustice: Congress has authorized the return of forfeited money, under the remission and mitigation procedure, so long as it will promote the interests of justice. *See* 19 U.S.C. § 1618; 31 U.S.C. § 5321(c). And DOJ regulations recognize that return of forfeited money is appropriate where it “will promote the interest of justice and will not diminish the deterrent effect of the law.” 28 C.F.R. § 9.5(b)(1)(i). In light of current policy, the DOJ and IRS evidently have determined that seizure of money from people like Randy and Karen is neither just nor necessary to deter criminal behavior. So there can be no question that return of property is merited under the standards for remission and mitigation.

When Randy testified before Congress, Representative John Lewis told Randy, “as one Member of Congress and a member of this committee, I want to apologize to you for . . . what the IRS did to you.” Exhibit C at 93. Under the remission and mitigation procedure, the government can offer something even better than an apology: The petition should be granted, and the money should be returned.

STATEMENT OF FACTS

A. Randy And Karen’s Dairy Farm Business

For over thirty years, Randy and Karen Sowers have run a dairy farm in Frederick County, Maryland. Exhibit D (“Randy Dec.”) ¶ 2. They both grew up in Frederick County, just miles from where their farm is located today. *Id.* They opened the farm in 1981, and in 2000, after selling through middlemen for years, they began selling milk directly to consumers under the name “South Mountain Creamery.” *Id.* ¶¶ 2, 4. South Mountain Creamery delivers milk, eggs, and other dairy products to the doorsteps of homes throughout large parts of Maryland,

Virginia, and the District of Columbia. *Id.* ¶ 4. In 2011, the farm was certified humane by Humane Farm Animal Care. *Id.*

Randy and Karen wake up every day around midnight to milk the cows and work through the night until about 4:30 or 5:00 a.m. *Id.* ¶ 3. Then they head back to bed to catch a few hours' rest before beginning their morning shift. *Id.* Randy and Karen maintain that schedule every day of the week, without weekends or days off, and only rarely take vacations. *Id.*

In addition to delivering their products directly to customers, Randy and Karen also sell at farmers' markets. *Id.* ¶ 5. The number of markets that they attend has fluctuated over the years. *Id.* At some points they have sold at as many as seven different markets, but today they sell at only two markets in Baltimore—one on Saturdays and another on Sundays. *Id.* To get to a farmers' market, Randy and Karen must pack up their truck and leave the farm by 4:30 a.m. for the drive into Baltimore. *Id.*

B. Randy And Karen's Cash Deposits

Because of the nature of their business, Randy and Karen often deposit cash in the bank. Randy Dec. ¶ 6; *see also* Exhibit E ("Karen Dec.") ¶ 3. After all, customers at farmers' markets frequently pay in cash. Randy Dec. ¶ 6. The size of Randy and Karen's cash deposits varies depending on the number of farmers' markets that they visit and the amount of milk, eggs, and other products that they sell. *Id.* Sometimes Randy and Karen have less than \$10,000 in cash to deposit, but sometimes they have more. *Id.*

After one particularly busy weekend in spring 2011, a bank teller told Karen that cash deposits over \$10,000 would require "paperwork." Karen Dec. ¶ 4; *see also* Randy Dec. ¶ 7. The teller suggested that this paperwork would be time-consuming for bank personnel to fill out and that Karen could make life easier for bank employees by keeping the size of her deposits under \$10,000. Karen Dec. ¶ 4. Karen did not know what this paperwork consisted of. *Id.* The teller

said nothing at all about the IRS, and, for all Karen knew, the paperwork might have been required by internal bank rules with no connection whatsoever to the federal government. *Id.* Karen generally kept some cash on hand to make change and to help cover expenses at the store, and, given the teller's advice, it seemed reasonable to hold enough cash in reserve to keep the size of the deposits under \$10,000. *Id.* Karen did this to avoid red tape at the bank—not to hide information from the IRS. *Id.* ¶ 5; *see also* Randy Dec. ¶ 7.

C. The Seizure And Subsequent Retaliation For Speaking To The Press

On February 29, 2012, two government agents came to Randy and Karen's farm without any prior warning and informed them that the government had seized their farm's entire bank account—in total, \$62,936.04—based on a pattern of under-\$10,000 cash deposits. Randy Dec. ¶ 8; *see also* Exhibit G (affidavit supporting seizure warrant). After a brief interview, the agents said that they did not believe Randy and Karen were criminals. Randy Dec. ¶ 8. Nevertheless, the agents made it clear that the government would not be returning the seized money. *Id.* The agents also served Randy and Karen with a grand jury subpoena, raising the possibility that Randy and Karen could be prosecuted *criminally* for structuring their bank deposits. *Id.*; *see also* Exhibit H.

Alarmed by this visit, Randy contacted his attorney, David Watt, who in turn reached out early the following week to Stefan Cassella, the responsible Assistant United States Attorney. *See* Exhibit F (“Watt Dec.”) ¶ 4.¹ After Mr. Watt explained the situation, Mr. Cassella indicated that the government would need to examine the Sowers' financial records but that—so long as that examination turned up nothing unlawful—the case could likely be resolved through negotiation. *Id.* Mr. Cassella explained that each side would propose some amount below the total sum seized and that the parties would then agree upon an amount for the forfeiture. *Id.*

¹ Mr. Watt also enlisted the assistance of Paul Kamenar, a Washington, D.C. attorney with experience in civil and criminal enforcement. Watt Dec. ¶ 9.

In the meantime, although Randy and Karen did not seek out press attention, Randy did respond to inquiries about the case from the press. Randy Dec. ¶ 13. In April 2012, a reporter from *The City Paper* in Baltimore learned about the case from court filings and contacted Randy. *Id.* Randy told the reporter:

We had no idea there was supposedly a law against it—we were just doing it the way we figured we were supposed to, making deposits every week . . . We’re farmers, we struggle every day to pay bills. We don’t know what else to do. Now we just feel like putting [our cash] in a can somewhere.

Exhibit I (Van Smith, *South Mountain Creamery’s Bank Account Seized as Part of Money Laundering Crack Down*, City Paper, Apr. 18, 2012).²

The same day this article appeared in the paper, Mr. Watt contacted Mr. Cassella to continue settlement negotiations. Randy and Karen had fully complied with the government’s request for financial information, and Mr. Watt expected Mr. Cassella to be willing to resolve the case on favorable terms in light of that disclosure. Watt Dec. ¶ 6. Instead, Mr. Cassella stated that they now had a “problem” because Randy had spoken with the press. *Id.* ¶ 7. Mr. Cassella indicated that he could not be seen to exercise any leniency in Randy’s case—lest that be interpreted as somehow giving in to media pressure—and stated that he would be forced to file a formal forfeiture complaint as a result. *Id.* ¶ 7. One day after this conversation, Mr. Cassella did in fact file a forfeiture complaint. *Id.* ¶ 8; *see also* Exhibit J.

Mr. Cassella was still willing to settle the case out of court after *The City Paper* ran its article, but he made clear in that same conversation with Mr. Watt that he was no longer willing

² Steven Levin, a former Assistant United States Attorney for the District of Maryland, was quoted in that same article saying the following about the structuring laws: “The emphasis is on basically seizing money, whether it is legally or illegally earned. . . . It can lead to financial ruin for business owners, and there’s a potential for abuse here by the government, where they use it basically as a means of seizing money.” Exhibit I at 2. Another former Assistant United States Attorney, Gerard Martin, exclaimed: “South Mountain Creamery! . . . They’re going after South Mountain Creamery! That’s an icon. That’s like going after mom and apple pie.” *Id.*

to negotiate the settlement amount. Watt Dec. ¶ 7. Instead, Mr. Cassella told Mr. Watt that Randy and Karen would have to forfeit \$29,500. *Id.*

Mr. Cassella also insisted that any settlement agreement include a concession that the government had “reasonable cause” to seize the money. Watt Dec. ¶ 10. When Mr. Watt objected to that language, Mr. Cassella said that it was standard in these types of settlements. *Id.* However, Mr. Watt obtained a copy of an agreement recently negotiated by Mr. Cassella in a similar case (also involving a farmer accused of structuring) that did *not* contain such language. *Id.* ¶ 11. Mr. Watt emailed Mr. Cassella to ask about the difference, and Mr. Cassella responded that the farmer in the earlier case “did not give an interview to the press.” Exhibit K.

D. The Forfeiture Of Randy And Karen’s Money

Faced with an ultimatum to either accept the forfeiture of \$29,500 or proceed to court, Randy and Karen felt they had little choice. *See* Randy Dec. ¶ 15. Fighting the forfeiture of the money would have taken months or even years. *Id.*³ The cost to fight the forfeiture in court almost certainly would have dwarfed the amount at issue. *Id.* And, in the meantime, the money would have remained in the possession of the government—although it was money that Randy and Karen needed for their business. *Id.* For Randy and Karen, the only logical thing to do was to accept the government’s offer.

That logic was confirmed by the possibility, raised by the grand jury summons, of *criminal* prosecution for structuring. *Id.* ¶ 16. And Randy and Karen also had to consider the possibility that the government could seek the forfeiture of a far larger amount of money, as authorized by the seizure warrant. *Id.* While Randy and Karen firmly believed they had done

³ Between 2005 and 2012, the average time from seizure to forfeiture in civil judicial structuring cases was 460 days. The longest case in that period took over 2,390 days to resolve. *See* Dick M. Carpenter II and Larry Salzman, *Seize First, Question Later: The IRS and Civil Forfeiture* 19 (2015).

nothing wrong, they could not ignore the possibility that the government would go after additional money or even pursue criminal charges.

This harsh logic led to a single conclusion: Although Randy and Karen did not understand why they should be punished for the mere act of depositing lawfully-earned money in the bank, they agreed to the forfeiture of nearly half the contents of their bank account. Under the terms of the settlement agreement submitted to the court in May 2012, Randy and Karen agreed to forfeit \$29,500. *See* Exhibit L. As Mr. Cassella had insisted, the agreement stated that there was “reasonable cause to seize the defendant currency.” *Id.* However, the agreement was clear that Randy and Karen “admit no wrongdoing,” *id.*, and nothing in the agreement purported to bar the filing of a petition for remission or mitigation.

The seizure and forfeiture of their bank account was extremely difficult for Randy and Karen. Randy was forced to scramble to replace money that he had planned to use to buy supplies for that year’s crops and ultimately had to divert money that he otherwise would have used to pay off debts or grow the business. Randy Dec. ¶ 17. Meanwhile, although Karen has always been careful to avoid bouncing checks, she found herself forced to explain to business partners why scheduled transactions were not going through. Karen Dec. ¶ 7. The bank where they had done business over a decade summarily closed their account. *Id.* Randy and Karen worried that people would assume they must have committed a serious violation of the law to have had their money seized, and in fact they became aware that they were the subject of hurtful gossip in their community. *Id.* Karen found the situation so stressful that she suffered physical effects. *Id.* And Randy was left wondering how something like this could possibly happen in America. Randy Dec. ¶ 19.

ARGUMENT

I. The Government Has Authority To Return Randy And Karen’s Money, And There Are No Procedural Barriers To Granting The Petition.

Although the forfeiture of Randy and Karen’s money is complete, the government retains the ability to make this situation right. In recognition of the “extraordinarily broad scope of federal forfeiture laws and the harsh results they sometimes occasion,” Congress has established a procedure—called a petition for remission or mitigation—that allows property owners to seek return of property that has been forfeited to the federal government. 2 David B. Smith, *Prosecution and Defense of Forfeiture Cases*, § 15.01 (2015). Randy and Karen now invoke that procedure to ask the government to return the money it has taken.

A. The Government Has Statutory Authority To Return The Money.

The government’s statutory authority to return Randy and Karen’s money is plain and clear. The general provision governing petitions for remission or mitigation dates back to the First Congress, *see* Smith, *supra*, § 15.01, and authorizes the Secretary of the Treasury (“the Secretary”) to grant a petition whenever he “finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture.” 19 U.S.C. § 1618. The Secretary has broad discretion to “remit or mitigate the same upon such terms and conditions as [the Secretary] deems reasonable and just.” *Id.* More specifically, Congress has provided that the Secretary “may remit *any part* of a forfeiture under . . . section 5317 of this title,” which in turn is the provision authorizing forfeiture for structuring violations of the sort at issue here. 31 U.S.C. § 5321(c) (emphasis added).

As the governing statutes make plain, Congress intended to confer broad authority to return forfeited money whenever doing so would advance the interests of justice. The statutes do not limit the factors that officials may consider in deciding whether to grant a petition for

remission or mitigation; officials charged with deciding a petition can grant relief whenever they find the existence of “such mitigating circumstances as to justify the remission or mitigation.” 19 U.S.C. § 1618. In other words, the law confers “virtually unreviewable discretion to ameliorate the harshness of forfeiture statutes in appropriate cases.” *United States v. United States Currency in the Amount of \$2,857.00*, 754 F.2d 208, 214 (7th Cir. 1985). And, as the Supreme Court has observed, that grant of discretion was intended to ensure that the forfeiture laws “impose a penalty only upon those who are *significantly involved* in a criminal enterprise.” *United States v. United States Coin and Currency*, 401 U.S. 715, 721-22 (1971) (emphasis added). The only limitation on this grant of statutory authority is the government’s sense of justice.

The government, moreover, has authority to return *all* of the property. The relevant statute is clear that the government has discretion to choose to “remit *any part* of a forfeiture.” 31 U.S.C. § 5321(c) (emphasis added). When that language is read in conjunction with applicable DOJ regulations, it becomes clear that the phrase “any part” encompasses the sum total of the forfeiture. Remission of the entire amount of the forfeiture is authorized where a petitioner is an innocent owner. *See* 28 C.F.R. § 9.5(a). And regulations pertaining to *mitigation* likewise allow return of the entire property, at least so long as return is paired with imposition of non-monetary conditions. *See* 28 C.F.R. § 9.5(b)(3) (stating that mitigation may be premised on “a monetary condition *or* the imposition of other conditions relating to the continued use of the property”). The government might, for instance, require Randy and Karen to sign a notification stating that they are now aware of the structuring laws. While Randy and Karen do not believe they should have to enter into any kind of agreement to get their property back—as it is their property and should never have been taken in the first place—they are willing to sign such a paper if it is the only way to secure the return of the entire amount of the forfeited property.

B. Randy And Karen's Agreement To Forfeit The Money Does Not Bar Their Petition.

Nothing in Randy and Karen's settlement agreement bars this petition. To be sure, the agreement releases the government from any "claims, damages, losses, and action resulting from or arising out of the seizure and release of the defendant property." Exhibit L ¶ 5. But that language is plainly intended to shield the government from liability that might be imposed by a court; it speaks of "damages" or an "action" and does not mention a request for the government to *voluntarily* return the property via remission or mitigation.

More broadly, an agreement to forfeit property does not bar the government from voluntarily returning the forfeited property via remission or mitigation. A petition for remission or mitigation is an entirely separate procedure from the underlying forfeiture. *See* Internal Revenue Manual § 9.7.7.4 ("Petitions for remission or mitigation are separate and independent of (administrative or judicial) or criminal forfeiture proceedings."). So, while the agreement concededly bars Randy and Karen from contesting the validity of the forfeiture, the filing of a petition for remission or mitigation "does not serve to contest the forfeiture, but rather is a request for an executive pardon of the property." *Ibarra v. United States*, 120 F.3d 472, 475 (4th Cir. 1997). A petition for remission or mitigation "seeks relief from forfeiture on fairness grounds," *United States v. German*, 76 F.3d 315, 318 (10th Cir. 1996), and is a "plea for leniency," Internal Revenue Manual § 9.7.7.4. Randy and Karen admit their property has been legally forfeited to the government, but now they ask the government to nonetheless do the right thing and give the property back.

The availability of remission or mitigation after settlement of a forfeiture proceeding is akin to the availability of an executive pardon after a criminal plea agreement. Presidents routinely issue pardons to petitioners who have pleaded guilty to a criminal offense. *See, e.g.,*

Todd Spangler, *Detroit Man's Drug Sentence Among 46 Commuted by Obama*, Detroit Free Press, July 13, 2015, <http://www.freep.com/story/news/local/michigan/2015/07/13/obama-commutes-sentence/30090465/> (reporting that President Obama pardoned a man who “pleaded guilty to conspiracy to distribute”); Philip Rucker, *Obama Grants Pardons to 17 People for Nonviolent Offenses*, Wash. Post, Mar. 1, 2013, http://www.washingtonpost.com/politics/obama-grants-pardons-to-17-people-for-nonviolent-offenses/2013/03/01/1932107e-82bf-11e2-a350-49866afab584_story.html (reporting that President Obama pardoned a “fishing magnate who pleaded guilty more than 20 years ago”).⁴ In short, an agreement not to contest a judicial proceeding does not bar a later request for executive clemency. Here, regardless of the settlement agreement resolving the earlier forfeiture proceeding, the IRS has authority to issue a similar type of pardon to return Randy and Karen’s hard-earned money.

C. Randy And Karen’s Petition Is Timely.

Finally, applicable DOJ regulations establish that Randy and Karen’s petition is timely notwithstanding the time that has elapsed since the forfeiture of the money.

DOJ regulations state that a petition for remission or mitigation pertaining to a civil judicial forfeiture “will be considered *any time* after notice *until* such time as the forfeited property is placed into official use, sold, or otherwise disposed of according to law.” 28 C.F.R. § 9.4(a) (emphasis added). Thus, although the notice sent to a property owner “shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission and mitigation within 30 days,” *id.*, applicable regulations make clear that this 30-day deadline is merely advisory and does not draw a hard line after which the petition will no longer

⁴ See also Ethan Trex, CNN, 11 Notable Presidential Pardons (Jan. 5, 2009), http://edition.cnn.com/2009/LIVING/wayoflife/01/05/mf.presidential.pardons/index.html?eref=rss_us (discussing pardons granted by Presidents Ronald Reagan and Bill Clinton following guilty pleas).

be considered. So long as the property has not been “placed into official use, sold, or otherwise disposed of according to law,” it is available to be returned to its owner at any time.

Although the money taken from Randy and Karen presumably has been deposited into the Treasury Forfeiture Fund, that fact alone cannot be sufficient to establish that the money has been “placed into official use, sold, or otherwise disposed of according to law.”⁵ Under federal law, money placed in the Treasury Forfeiture Fund is “available to the Secretary . . . for . . . [p]ayment of amounts authorized by law with respect to remission and mitigation.” 31 U.S.C. § 9705(a)(1)(E). That same statute lists the various types of “disposition” that can be made of money placed in the Treasury Forfeiture Fund: “sale, *remission*, cancellation, placement into official use, sharing with State and local agencies, and destruction.” *Id.* § 9705(f)(2)(I)(ii) (emphasis added). These provisions plainly convey Congress’s understanding that money contained within the Treasury Forfeiture Fund would be available to satisfy petitions for remission or mitigation. It would violate manifest congressional intent to interpret the timeliness provisions such that a petition for remission or mitigation is no longer timely once money has been placed in the Treasury Forfeiture Fund, as that would be tantamount to saying that money in the fund is *not* in fact available for a purpose authorized by Congress.

DOJ regulations confirm the point. The provision governing timeliness clearly states that remission and mitigation applies to “*forfeited* property,” 28 C.F.R. § 9.4(a) (emphasis added), which would be nonsensical if deposit into the Treasury Forfeiture Fund qualified as disposition

⁵ Petitioners lack information regarding the present whereabouts of the forfeited funds, but if regular procedures have been followed the funds should have been deposited into the Treasury Forfeiture Fund. As of September 2014, the Treasury Forfeiture Fund held net assets of \$7.5 billion. See Department of the Treasury, Treasury Forfeiture Fund Accountability Report Fiscal Year 2014, at 14 (2015), *available at* <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Documents/TFF%20FY%202014%20Final%20Accountability%20Reports%20508.pdf>.

of the property for purposes of the subsequent clause. When property has been forfeited by the IRS, it is required by law to be deposited in the Treasury Forfeiture Fund; it would make no sense to allow remission of “forfeited” property if money placed in the Treasury Forfeiture Fund were necessarily unavailable for that purpose because it had already been “disposed of” within the meaning of the relevant timeliness provisions.⁶

Finally, this conclusion is bolstered by the general statute authorizing petitions for remission or mitigation. That law states that a petition is timely so long as it is filed “*before the sale*” of the property seized by the government. 19 U.S.C. § 1618 (emphasis added). Currency is “sold” when it is exchanged by the government for some other good or service—in other words, when it is spent. So long as currency remains in the government’s possession, it has not been “sold” and thus remains the proper subject of a petition for remission or mitigation. And there can be no question that currency in the Treasury Forfeiture Fund remains within the government’s possession.

II. Because The Forfeited Money Is The Legitimate Proceeds Of Randy And Karen’s Lawful Dairy Farm Business, It Should Be Returned In Its Entirety.

Under DOJ regulations pertaining to mitigation, the government has authority to return the *entire* amount of the forfeited property in conjunction with the imposition of a non-monetary condition—for instance, that Randy and Karen sign a document stating that they are now aware

⁶ Further confirmation of this conclusion is provided by policy guidance issued by the Treasury Executive Office for Asset Forfeiture concerning the management of the Treasury Forfeiture Fund. Those guidelines state that, “[o]nce [an] agency is aware of a petition [for remission or mitigation], it must ensure that the funds are obligated so that the funds are not available to be expended for another purpose.” Department of the Treasury, Guidelines for Treasury Forfeiture Fund Agencies on Refunds Pursuant to Court Orders, Petitions for Remission, or Restoration Requests 7 (2008), *available at* <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Documents/bluebook.pdf>. These policy guidelines plainly contemplate that money that has been forfeited and moved into the Treasury Forfeiture Fund will be available to satisfy remission petitions.

of the structuring laws. Mitigation is generally appropriate where return of the property “will promote the interest of justice and will not diminish the deterrent effect of the law.” 28 C.F.R. § 9.5(b)(1)(i); *see also* Internal Revenue Manual § 9.7.7.4.6.1.A. Moreover, DOJ regulations establish other factors that come into play in cases where the petitioner was involved in the commission of the offense underlying the forfeiture, including, among other things, “lack of a prior record” and that the “[v]iolation was minimal and was not part of a larger criminal scheme.” 28 C.F.R. § 9.5(b)(2); *see also* Internal Revenue Manual § 9.7.7.4.6.2. Under these provisions, return of the entire amount of the forfeited property is the appropriate remedy.

A. Return Of The Property Will Promote The Interest Of Justice, Will Not Diminish The Deterrent Effect Of The Law, And Is Necessary To Prevent Extreme Hardship.

DOJ regulations establish that mitigation is appropriate where it will “promote the interest of justice,” “not diminish the deterrent effect of the law,” and “avoid extreme hardship.” 28 C.F.R. § 9.5(b)(1)(i). In light of current government policy, there can be no question that this standard has been satisfied in this case.

If the policy announced by the IRS in October 2014 and confirmed by the DOJ in March 2015 had been in place just a few years earlier, the government would never even have *attempted* to seize the money that has been taken from Randy and Karen. Current IRS policy, a copy of which is attached as Exhibit A, limits application of the structuring laws to “illegal-source” cases, meaning cases where the structured funds are derived from otherwise illegal activity. Current DOJ policy, meanwhile, states that the government will not seek forfeiture absent “probable cause that the structured funds were generated by unlawful activity or that the structured funds were intended for use in, or to conceal or promote, ongoing or anticipated unlawful activity.” Exhibit B. By contrast, the funds seized from Randy and Karen were derived

from their legitimate dairy farm business. *See* Randy Dec. ¶ 9; Karen Dec. ¶ 3. Randy and Karen are not criminals; they are law-abiding, tax-paying small business owners. The government has never suggested anything to the contrary, including in the seizure affidavit, *see* Exhibit G, or its forfeiture complaint, *see* Exhibit J. Randy and Karen are thus exactly the kinds of people supposed to be shielded from forfeiture actions by current policy.

1. The Interests Of Justice

The government's policy change represents recognition by the IRS and DOJ that forfeiture under the structuring laws promotes the "interest of justice" *only* where the funds are derived from illegal activity. As the IRS Commissioner explained, in testimony before the House Ways & Means Oversight Subcommittee, the policy change will "ensure fairness for taxpayers" and "protect the rights of individuals" by "making sure that taxpayers get appropriately protected." Exhibit C at 11, 15. While the structuring law itself sweeps more broadly than the new IRS policy, the IRS has recognized through its policy that the statute's broad scope encompasses innocent businesspeople guilty of nothing more than doing business in cash. Such people were not the intended focus of the structuring law, and justice is not served by application of the law in such cases.

All of this is particularly true in the case of Randy and Karen, who had *no* interest in hiding from the federal government, and who merely sought to avoid what they understood to be unnecessary red tape at the bank when depositing the cash proceeds of their legitimate business. Karen Dec. ¶ 5; Randy Dec. ¶ 7. Doing business in cash is emphatically not a crime. *See* 31 U.S.C. § 5103 ("United States coins and currency . . . are legal tender for all debts, public

charges, taxes, and dues.”). No possible interest of justice is served by taking money from Randy and Karen simply because they deposited their own hard-earned money into the bank.⁷

2. The Deterrent Effect Of The Law

The government’s policy change likewise serves as definitive evidence that returning Randy and Karen’s money would “not diminish the deterrent effect of the law.” If forfeiture was necessary for deterrence, the IRS would presumably continue to seize property in such cases today. Given that the IRS has adopted a policy of forbearing from such forfeitures, the IRS has plainly concluded that there is no need for forfeiture in such cases to deter unlawful activity. And, indeed, the IRS Commissioner told Congress that the new policy prohibiting structuring seizures in legal-source cases would strike “the right balance between law enforcement and trying to protect taxpayers.” Exhibit C at 26. The recent policy change definitively establishes that the government’s interest in deterrence would not be advanced by keeping Randy and Karen’s money.

And this makes good sense. Where individuals are not engaged in illegal activity, the IRS has no apparent interest in deterring deposits or withdrawals under \$10,000. The act of depositing or withdrawing money from the bank is not itself harmful to society; there is nothing inherently dangerous or destructive about sub-\$10,000 cash transactions. *See Ratzlaf v. United States*, 510 U.S. 135, 144 (1994) (“[C]urrency structuring is not inevitably nefarious.”).

⁷ This commonsense conclusion is bolstered by federal regulations, which make clear that the government has no real interest in receiving Currency Transaction Reports for legitimate businesses like Randy and Karen’s. Under federal law, banks are not required to file Currency Transaction Reports for businesses that have maintained a bank account for two months, often engage in large cash transactions, and are registered to do business in the state. *See* 31 C.F.R. § 1020.315(b)(6). Had Randy and Karen been appropriately advised by their bank, they may very well have fit within this exception to federal currency transaction reporting requirements. If the government did not need to receive the reports *at all*, the “evasion” of the filing of the reports cannot possibly have caused any serious injury to the government.

Structuring is significant only because it provides a means for criminals to evade bank reporting laws. The government obviously has an interest in uncovering criminal behavior, and once such behavior has been uncovered the government may proceed under the structuring laws. But, in legal-source cases, there is no criminal behavior to deter.

Moreover, even if deterrence were desirable in legal-source cases, forfeitures are unlikely to achieve that result, as property owners in legal-source cases are likely to engage in structuring *only* if they are unaware of the possible penalties that could result. People who engage in structuring in legal-source cases are typically unaware that such activity is unlawful—or, at a minimum, are unaware of the consequences that such behavior can bring. People who are unaware that structuring violates the law are unlikely to be deterred from engaging in structuring, no matter how harsh the penalty.

Once again, all of this is particularly true in Randy and Karen’s case. Randy and Karen did not know that structuring was illegal. Randy Dec. ¶ 10; Karen Dec. ¶ 6. They also had no desire to hide anything from the United States government. Randy Dec. ¶ 7; Karen Dec. ¶ 5. Randy and Karen simply stumbled into this situation because they followed some bad advice from a bank teller. Randy Dec. ¶ 7; Karen Dec. ¶ 4. No interest in deterrence is served by punishing people who—like Randy and Karen—are not even aware that they are potentially breaking the law.

3. Hardship

Finally, to take \$29,500 from Randy and Karen, when the IRS would not even subject Randy and Karen to *any* penalty if their conduct were uncovered today, is undoubtedly an “extreme hardship.” Randy and Karen worked hard to earn their money, waking in the middle of the night every day to milk their cows, and then traveling in the early morning to sell their dairy

products at farmers' markets. *See, e.g.*, Randy Dec. ¶ 3. Apart from the act of depositing money in the bank, they have never been accused of doing *anything* wrong. For the government to take \$29,500 of their hard-earned money simply because they sought to avoid what they believed to be unnecessary red tape is a punishment that defies common sense and finds no justification whatsoever in basic norms of justice. Such arbitrary punishment is a hardship that no American should have to bear.

B. Factors Listed In Governing DOJ Regulations Support Return Of All The Forfeited Money To Randy And Karen.

In addition to the general standard discussed above, DOJ regulations set forth a non-exclusive list of factors that become relevant where a petitioner was involved in the commission of the offense underlying the forfeiture. *See* 28 C.F.R. § 9.5(b)(2). These factors all support return of the forfeited money to Randy and Karen.

First, Randy and Karen have no prior criminal record, and there is no evidence of any similar conduct in the past. 28 C.F.R. § 9.5(b)(2); *see also* Internal Revenue Manual § 9.7.7.4.6.2.A. Randy and Karen are not criminals. *See* Randy Dec. ¶ 9; Karen Dec. ¶ 5. They are hardworking entrepreneurs who earned the forfeited money tending to their cows and selling their products at farmers' markets. The government has never suggested that Randy and Karen are guilty of any offense other than depositing money in the bank, and in fact Randy and Karen are *not* guilty of any offense beyond making sub-\$10,000 cash deposits.

Second, Randy and Karen's alleged violation "was minimal and was not part of a larger criminal scheme." 28 C.F.R. § 9.5(b)(2); *see also* Internal Revenue Manual § 9.7.7.4.6.2.B. To the extent that Randy and Karen's cash deposits violated the structuring laws, that violation was minimal in nature. Randy and Karen were not seeking to keep anything secret from the IRS; they merely sought to avoid unspecified "paperwork" burdens. Randy Dec. ¶ 7; Karen Dec. ¶ 5. For

all they knew, these were *internal* paperwork requirements lacking any connection whatsoever to the IRS or the United States government. *Cf. United States v. \$79,650.00 Seized From Bank of America Account*, No. 1:08-cv-01233, 2010 WL 1286037, at *4-5 (E.D. Va. Mar. 29, 2010) (denying summary judgment to the government in a structuring case because, although claimant admitted knowing that the bank had to fill out a form if he deposited more than \$10,000, he did not know it was a government form). And, again, there is no “larger criminal scheme” in this case. In fact, there is no “criminal scheme” at all. Randy and Karen are dairy farmers, not criminal masterminds.⁸

Third, Randy and Karen have “cooperated with Federal, state, or local investigations.” 28 C.F.R. § 9.5(b)(2); *see also* Internal Revenue Manual § 9.7.7.4.6.2.C. At the time the government seized the money, it asked for bank records and other financial documents. Randy and Karen provided all that information willingly and without delay. Randy Dec. ¶ 12. Since that time, the government has never asked for additional information and—as far as Randy and Karen are aware—has conducted *no* further investigation of Randy and Karen’s business. *Id.* Randy and Karen nevertheless stood ready to answer any questions from the IRS, and they remain ready to answer any reasonable requests for information from the agency today. There has never been *any* request from the IRS that Randy and Karen have not fully honored.

Fourth, and finally, “forfeiture . . . is not necessary to achieve the legitimate purposes of forfeiture.” 28 C.F.R. § 9.5(b)(2); *see also* Internal Revenue Manual § 9.7.7.4.6.2.D. Forfeiture is legitimate only as a punishment for criminal behavior, which is precisely why the only legitimate

⁸ Once again, this commonsense conclusion is bolstered by federal regulations providing that Currency Transaction Reports *are not required* for legitimate businesses like Randy and Karen’s. *See supra* n. 7. If the currency transaction reporting system had worked as it was designed to work, the government still would not have received the reports that Randy and Karen were accused of “evading.”

form of forfeiture is *criminal* (as opposed to civil) forfeiture. But, as the forfeiture complaint in this case made clear, Randy and Karen are not even suspected of a crime—unless one counts the act of depositing money in the bank as a “crime.” *See* Exhibit J; *see also* Exhibit G (affidavit supporting seizure warrant). Randy and Karen run a legitimate dairy farm, and they deposited money earned through legitimate business activity. Randy Dec. ¶ 9; Karen Dec. ¶ 3. Taking money from hardworking small business owners, simply because they deposit their own hard-earned money in the bank, is not a “legitimate” purpose of forfeiture. This factor thus also supports the return of Randy and Karen’s money.

C. IRS Guidelines For Mitigation Likewise Support Return Of The Forfeited Money To Randy And Karen.

IRS internal guidelines for mitigation likewise support return of all the forfeited money to Randy and Karen. Although this petition is properly directed to the DOJ under regulations governing petitions for remission or mitigation in civil judicial forfeiture cases, those same regulations direct the DOJ to solicit an initial recommendation from the seizing agency as to the disposition of the petition—and thus make clear that the standards of the seizing agency are relevant to the decision whether to grant relief. *See* 28 C.F.R. § 9.4(f).

IRS guidelines establish a base penalty of 10 percent of the entire amount involved in the structuring offense in cases where the structuring was a “[f]irst offense,” where the money was from a legitimate source, and where the property owner was not criminally convicted. *See* Internal Revenue Manual Exhibit 9.7.7-5(II). All three factors are present in this case. Randy and Karen had never been admonished for structuring prior to this offense; the money was from Randy and Karen’s legitimate business; and Randy and Karen were not criminally convicted of structuring and, apart from the act of structuring itself, were never accused of *any* crime.

From this 10 percent base penalty, the guidelines provide for reductions based on a variety of mitigating factors. *See* Internal Revenue Manual Exhibit 9.7.7-5(II)(B). Some factors call for a subtraction of 2 percent of the total amount of the structured transactions from the base penalty; some call for a subtraction of 3 percent; and others call for a subtraction of 9 percent. *Id.* Because Randy and Karen can establish mitigating circumstances adding up to more than the 10 percent base penalty, Randy and Karen can establish that the entire amount of the property should be returned.

First, Randy and Karen are entitled to a 3 percent reduction in the penalty based on the “[i]nexperience in banking matters” factor. Internal Revenue Manual Exhibit 9.7.7-5(II)(B)(2). Although Randy and Karen own a business, they are hardly experienced in banking matters. *See* Randy Dec. ¶ 10; Karen Dec. ¶ 6. Their interaction with banks is limited to the role of a customer—primarily depositing and withdrawing money from their account. They have never had any reason to study federal banking regulations. And, prior to the seizure of their money, they never had any reason to be aware that structuring is a crime or that depositing money in the bank could put them in violation of the structuring law.

Second, Randy and Karen are entitled to a 2 percent reduction based on the “[c]ooperation with IRS officials” factor. Internal Revenue Manual Exhibit 9.7.7-5(II)(B)(3). As explained above, Randy and Karen have cooperated with the IRS at every turn. Randy and Karen produced all the information requested by the government at the time of the seizure and have stood ready to produce any other information upon request. *See* Randy Dec. ¶ 12. Indeed, Randy and Karen remain willing to comply with any reasonable requests for information posed by law enforcement. There has never been any instance where Randy and Karen have failed to cooperate with IRS requests.

Third, and finally, Randy and Karen are entitled to up to a 9 percent reduction based on the catch-all “[h]umanitarian factor.” Internal Revenue Manual Exhibit 9.7.7-5(II)(B)(5). The government took \$29,500 of Randy and Karen’s money, although they were never accused of any misconduct other than following the advice of a bank teller to keep cash deposits under \$10,000. Randy and Karen worked hard—seven days a week, up well before the break of dawn—to earn that money. *See, e.g.*, Randy Dec. ¶ 3. They were forced to scramble to keep their business running after the money was seized. *See id.* ¶ 17; Karen Dec. ¶ 7. Now, the government recognizes that taking Randy and Karen’s hard-earned money was a mistake. Under current DOJ and IRS policies, the seizure and forfeiture of Randy and Karen’s money would never have been approved. Yet the government continues to hold their money simply because it seized the money *before* realizing the error of its ways.

To deprive Randy and Karen of tens of thousands of dollars that they could use to grow their business, simply because their case predated the government’s policy change, is the essence of arbitrary punishment. To the government, which holds billions of dollars in the Treasury Forfeiture Fund, tens of thousands of dollars is perhaps a small sum. But Randy and Karen could put this money to good use to purchase additional land, expand their business, and secure the future for their farm and their grandchildren. *See* Randy Dec. ¶ 18; Karen Dec. ¶ 8. The ends of justice would be served by a decision to return the forfeited money to its lawful owners and to lift the unwarranted penalty that the government has imposed.

III. At The Very Minimum, The Government Should Return A Substantial Portion Of Randy And Karen’s Money.

While the foregoing analysis of governing statutes and IRS internal policies demonstrates the appropriateness of returning *all* the money seized from Randy and Karen, at a minimum those same authorities support return of *some* of the money. *See* 28 C.F.R. § 9.5(b). The

government has authority to return any portion of the money that it thinks would be appropriate to further the interests of justice. 31 U.S.C. § 5321(c). DOJ regulations and internal authorities from the IRS make clear that, in this case, the appropriate portion to return is the entire amount that has been forfeited. But it would be impossible to read those authorities and conclude that Randy and Karen are entitled to return of *none* of the currency.

CONCLUSION

After Randy testified about his ordeal before the House subcommittee charged with oversight of the IRS, committee members from all sides of the political spectrum expressed outrage. Chairman Peter Roskam stated that Randy and others like him had “hand[ed] over thousands of fairly earned dollars to the IRS all without having done anything wrong,” Exhibit C at 4, while Ranking Member John Lewis stated that he “want[ed] to apologize” for the government’s treatment of Randy, *id.* at 93. The Commissioner of the IRS, meanwhile, testified that there was “no doubt” that Randy and others like him “have been aggrieved” and stated: “I would apologize for anyone—not just in this area—anyone who is not treated fairly.” *Id.* at 56, 58. Now, Randy and Karen are asking for something more concrete than an apology. The government has authority to correct its mistake. The government should exercise that authority to give back the money that Randy and Karen worked so hard to earn.

Upon information and belief, I swear that the facts stated herein are true.

RESPECTFULLY SUBMITTED, this 16th day of July, 2015.



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STATEMENT OF PETITIONERS

I hereby declare under penalty of perjury that Scott Bullock and Robert Everett Johnson have authority to represent me in this proceeding; that I have reviewed the petition; and that it is truthful and accurate in every respect.

A handwritten signature in cursive script, appearing to read "Randy Sowers", written over a horizontal line.

Randy Sowers, Petitioner

A handwritten signature in cursive script, appearing to read "Karen Sowers", written over a horizontal line.

Karen Sowers, Petitioner

**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT A



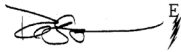
CRIMINAL INVESTIGATION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

October 17, 2014

MEMORANDUM FOR SPECIAL AGENTS IN CHARGE
CRIMINAL INVESTIGATION

FROM

Rebecca A. Sparkman 
Director, Operations Policy and Support
Criminal Investigation SE:CI:OPS

SUBJECT

IRS Structuring Investigation Policy Changes

The purpose of this memorandum is to set forth IRS-CI policy concerning seizure and forfeiture activities involving "legal source" structuring.

IRS-CI will no longer pursue the seizure and forfeiture of funds associated solely with "legal source" structuring cases unless: (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case has been approved at the Director of Field Operations (DFO) level. The policy involving seizure and forfeiture in "illegal source" structuring cases remains unchanged by this memorandum.

In cases where legal source income is involved in alleged structuring activity, consideration should be given to initiating a Title 26 criminal tax investigation. In certain circumstances, the structuring activity can be treated as an affirmative act of evasion under 26 U.S.C. § 7201,¹ evidence of willfulness, an overt act of conspiracy (18 U.S.C. § 371), or it may support Title 31 violations. This policy update will ensure that CI continues to focus our limited investigative resources on identifying and investigating violations within our jurisdiction that closely align with CI's mission and key priorities.

Individuals who are structuring cash deposits or withdrawals are more often than not doing so in an attempt to conceal the existence and source of the funds from the U.S. Government. While the structuring activities violate 31 U.S.C. § 5324, the activity should be treated as just an indicator that another violation of law might have occurred. Therefore, authorized investigative activities should be performed to determine the source of the funds and if there are other related violations of law that should be investigated prior to initiating a seizure of funds related to the criminal activities.

¹ See *United States v. Mounkes*, 204 F.3d 1024, 1030 (10th Cir. 2000)

IRS-CI continues to be committed to investigating criminal violations of the federal anti-money laundering and Bank Secrecy statutes. Our partnerships with state, local and county law enforcement agencies through IRS-CI led Financial Crimes Task Forces (FCTFs) provide CI with valuable resources to further the commitment to investigate violations of these laws. The primary focus of FCTFs is to conduct significant criminal investigations of anti-money laundering and Bank Secrecy violations occurring in their area of responsibility and related statutes.

The applicable Internal Revenue Manual sections, the Suspicious Activity Report Review Team, and the FCTF Standard Operating Procedures will be revised to include this guidance as soon as practical. If you have any questions regarding this policy, please contact Global Financial Crimes Director XXXXXXXXXXXXXXXXXXXX.

cc: CI Senior Staff
CT Counsel

**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT B



U.S. Department of Justice
Criminal Division

Asset Forfeiture and Money Laundering Section

Washington, D.C. 20530

POLICY DIRECTIVE 15-3

TO: Heads of Department Components
United States Attorneys

FROM: M. Kendall Day, Chief *MKD 3/3/15*
Asset Forfeiture and Money
Laundering Section

SUBJECT: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses

Title 31, United States Code, Section 5324(a) prohibits evasion of certain currency transaction-reporting and record-keeping requirements, including structuring schemes. Generally speaking, structuring occurs when, instead of conducting a single transaction in currency in an amount that would require a report to be filed or record made by a domestic financial institution, the violator conducts a series of currency transactions, willfully keeping each individual transaction at an amount below applicable thresholds to evade reporting or recording. On October 17, 2014, the Internal Revenue Service-Criminal Investigation (IRS-CI) issued guidance on how it will conduct seizures and forfeitures in its structuring cases, and specifically in what it calls “legal source” structuring cases. Pursuant to the IRS guidance, IRS-CI will not pursue seizure and forfeiture of funds associated only with “legal source” structuring unless: (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case is approved by the Director of Field Operations.

As part of the Department’s ongoing review of the federal asset forfeiture program, the Department has conducted its own review of forfeiture in structuring cases, including analysis of the new IRS-CI policy. The guidance set forth in this memorandum, which is the result of that review, is intended to ensure that our investigative resources are appropriately and effectively allocated to address the most serious structuring offenses, consistent with Departmental priorities. The guidance applies to all federal seizures for civil or criminal forfeiture based on a violation of the structuring statute, except those occurring after an indictment or other criminal charging instrument has been filed.¹

¹ These guidelines apply to all structuring activity whether it constitutes “imperfect structuring” chargeable under 31 U.S.C. § 5324(a)(1) or “perfect structuring” chargeable under 31 U.S.C. § 5324(a)(3). See *Charging Imperfect Structuring: 31 U.S.C. § 5324(a)(1) or (a)(3) or Both?*, Money Laundering Monitor, at 1 (Oct.-Dec. 2014) (available at [AFMLS Online](#)).

1. Link to Prior or Anticipated Criminal Activity

If no criminal charge has been filed and a prosecutor has not obtained the approval identified below, a prosecutor shall not move to seize structured funds unless there is probable cause that the structured funds were generated by unlawful activity or that the structured funds were intended for use in, or to conceal or promote, ongoing or anticipated unlawful activity. For these purposes, “unlawful activity” includes instances in which the investigation revealed no known legitimate source for the funds being structured. Also for these purposes, the term “anticipated unlawful activity” does not include future Title 26 offenses. The basis for linking the structured funds to additional unlawful activity must receive appropriate supervisory approval and be memorialized in the prosecutor’s records.²

Where the requirements of the above paragraph are not satisfied, unless criminal charges are filed, a warrant to seize structured funds may be sought from the court only upon approval from an appropriate official, as follows:

- For AUSAs, approval must be obtained from their respective U.S. Attorney. The U.S. Attorney may not delegate this approval authority.³
- For Criminal Division trial attorneys or other Department components not partnering with a U.S. Attorney’s Office, approval must be obtained from the Chief of the Asset Forfeiture and Money Laundering Section (AFMLS). The Chief of AFMLS may not delegate this approval authority.

The U.S. Attorney or Chief of AFMLS may grant approval if there is a compelling law enforcement reason to seek a warrant, including, but not limited to, reasons such as: serial evasion of the reporting or record keeping requirements; the causing of domestic financial institutions to file false or incomplete reports; and violations committed, or aided and abetted, by persons who are owners, officers, directors or employees of domestic financial institutions.

If the U.S. Attorney or Chief of AFMLS approves the warrant, the prosecutor must send a completed “Structuring Warrant Notification Form” to AFMLS by e-mail at AFMLS.Structuring@usdoj.gov. A copy of that form is attached.

These requirements are effective immediately. For any case in which seizure was effected prior to the issuance of this memorandum, the forfeiture may continue so long as it otherwise comports with all other applicable law and Department policy.

² In order to avoid prematurely revealing the existence of the investigation of the additional unlawful activity to the investigation’s targets, there is no requirement that the evidence linking the structured funds to the additional unlawful activity be memorialized in the seizure warrant application.

³ Although this authority is ordinarily non-delegable, if the U.S. Attorney is recused from a matter or absent from the office, the U.S. Attorney may designate an Acting United States Attorney to exercise this authority, in the manner prescribed by regulation. See 28 C.F.R. § 0.136.

2. No Intent to Structure

There may be instances in which a prosecutor properly obtains a seizure warrant but subsequently determines that there is insufficient admissible evidence to prevail at either civil or criminal trial for violations of the structuring statute or another federal crime for which forfeiture of the seized assets is authorized. In such cases, within seven (7) days of reaching this conclusion, the prosecutor must direct the seizing agency to return the full amount of the seized money. Once directed, the seizing agency will promptly initiate the process to return the seized funds.

3. 150-Day Deadline

Within 150 days of seizure based on structuring, if a prosecutor has not obtained the approval discussed below, a prosecutor must either file a criminal indictment or a civil complaint against the asset.⁴ The criminal charge or civil complaint can be based on an offense other than structuring. If no criminal charge or civil complaint is filed within 150 days of seizure, then the prosecutor must direct the seizing agency to return the full amount of the seized money to the person from whom it was seized by no later than the close of the 150-day period. Once directed, the seizing agency will promptly initiate the process to return the seized funds.

With the written consent of the claimant, the prosecutor can extend the 150-day deadline by 60 days. Further extensions, even with consent of the claimant, are not allowed, unless the prosecutor has obtained the approval discussed below.

An exception to this requirement is permissible only upon approval from an appropriate official as follows:

- For AUSAs, approval must be obtained from their respective U.S. Attorney. The U.S. Attorney may not delegate this approval authority, except as discussed in footnote 3, *supra*.
- For Criminal Division trial attorneys or other Department components not partnering with a U.S. Attorney's Office, approval must be obtained from the Chief of AFMLS. The Chief of AFMLS may not delegate this approval authority.

If additional evidence becomes available after the seized money has been returned, an indictment or complaint can still be filed.

4. Settlement

Settlements to forfeit and/or return a portion of any funds involved in a structuring investigation, civil action, or prosecution, must comply with the requirements set forth in the *Asset Forfeiture Policy Manual* and the *United States Attorneys' Manual*. See *Asset Forfeiture*

⁴ This deadline does not apply to administrative cases governed by the independent time limits specified by the Civil Asset Forfeiture Reform Act.

Memorandum for Component Heads and United States Attorneys Page 4
Subject: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with
Structuring Offenses

Policy Manual (2013), Chap. 3; *United States Attorneys' Manual* § 9-113.000 *et seq.* In addition, settlements must be in writing, include all material terms, and be signed by a federal prosecutor. Informal settlements, including those negotiated between law enforcement and private parties, are expressly prohibited.

This memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion, and does not alter in any way the Department's authority to enforce federal law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of 31 U.S.C. § 5324(a). This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution.

**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT C

RPTR MAAR

EDTR CRYSTAL

PROTECTING SMALL BUSINESS FROM IRS ABUSE

Wednesday, February 11, 2015

House of Representatives,

Subcommittee on Oversight,

Committee on Ways and Means,

Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room B-318, Rayburn House Office Building, Hon. Peter Roskam [chairman of the subcommittee] presiding.

Chairman Roskam. Now the hearing will come to order. And welcome to the Oversight Subcommittee on protecting small businesses from IRS abuse with IRS Commissioner John Koskinen on the first panel. And on the second panel, we will hear from Mr. Sowers, Mr. Hirsch, and Mr. Clyde, all small businesses who have had their assets seized by the IRS. In addition, we will hear from Mr. Johnson, a resident expert in this area of the law.

We are here to exam the IRS' use and abuse of its civil asset forfeiture authority. And what is it exactly? Under current law, federal agencies like the IRS can seize people's assets without any proof of wrongdoing. Now, this law was supposed to stop criminal enterprises and recover ill-gotten gains, but the IRS has used it to seize the bank accounts of people suspected of structuring, that is, of making cash deposits worth less than \$10,000 to avoid reporting requirements.

This is a crime that most folks have never heard of. The small business people will tell you it casts a pretty wide net and it is catching a lot of innocent people. It is catching a Mexican restaurant owner, a gas station owner, dairy farmers. Many small business people then have had to fight expensive court battles to get even a portion of their money back, even though they didn't do anything wrong.

These small businesses keep getting caught in the snares largely because they are just that, they are small. They do a lot of transactions in cash because, believe it or not, we are

still a very cash-driven economy. And in a typical year, American consumers do more than a trillion dollars in cash transactions. And under the Bank Secrecy Act, it is illegal to structure or split up transactions in order to avoid a requirement to report those worth more than \$10,000. To be clear, it makes it a crime to fail to file a report on certain transactions.

Take an example. Say I am a restaurant owner and I take \$8,000 to the bank on Friday and \$2,000 on Monday simply because I don't like to keep a lot of cash in my register. I am not structuring. But if I do it because the bank teller says I can avoid filling out forms if deposits are smaller than \$10,000, then I am guilty even if I don't know it is a crime. In either case, it may look like I am trying to avoid the reporting requirement, and that is enough for the bank to file a Suspicious Activity Report.

At that point, the IRS can file a warrant and say it has probable cause to believe that assets are involved in a crime and then it can seize the account. That is it. The IRS doesn't have to give notice to the account holder for seizing the assets, and the IRS doesn't have to prove that the person is actually guilty of anything, just that the account probably is involved in structuring.

And after the IRS seizes the assets, the account holder isn't entitled to any sort of expedited hearing. So even if he did absolutely nothing wrong, it can literally take years of legal

proceedings for the account holder to get some or all of his assets back, and many people simply can't afford a long, drawn-out fight. So what do they do? They settle, handing over thousands of fairly earned dollars to the IRS all without having done anything wrong.

We are going to hear from some of those victims today, and I know that there are many others out there who wanted to be here, like Carole Hinders, a restaurant owner in Iowa, Mark Zaniewski, a gas station owner in Michigan, but they couldn't take time away because of family and business needs. But we have received their statements for the record.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Roskam. We also learned yesterday that the Treasury Inspector General for Tax Administration plans an audit of the IRS' practices in this area, so this inquiry will be forthcoming.

And for the witnesses who traveled here to tell your stories, thank you for your time. We know that as small business owners you are not drawing a salary here while you testify.

We are also looking forward to hearing from Commissioner Koskinen who I hope will be able to explain how this has been going on and what the IRS is doing to stop it.

With that, I would like to yield to the ranking member for his opening statement.

[The statement of Chairman Roskam follows:]

***** COMMITTEE INSERT *****.

Mr. Lewis. Thank you very much, Mr. Chairman, for holding this hearing on the Internal Revenue Service. I am very pleased that we have the Commissioner with us today. I also thank the witnesses on the second panel for testifying today.

[Audio gap.]

The taxpayers came to our attention through press reports at the end of last year. We were concerned that in many of the press reports --

[Audio gap.]

The taxpayers were small businesses that made cash deposits from daily operation. We also were concerned that these taxpayers did not have a right to request a hearing in court within a reasonable period of time after their assets were seized.

I am glad that the agency took action last October. The new IRS policy only allows the agents to seize assets in certain cases. I look forward to hearing more about this change today.

In closing, Mr. Chairman, I would like to state that I am very concerned about the full effect of the agency's budget cuts on taxpayer service and enforcement. I think that we can all agree that American taxpayers deserve the best possible assistance. In the last year, the agency's funding was reduced by nearly \$350 million. It is now at the lowest level of funding since fiscal year 2008. The growing gap between the agency's increased workload and the shrinking budget has led the National Taxpayer Advocate to state that the declining quality of taxpayer service

is the most serious problem facing the agency.

Mr. Chairman, I said in the past and I say it again today, it is impossible to get blood from a turnip. We can do better and we must do better. Thank you. And I yield back.

Chairman Roskam. Thank you, Mr. Lewis.

[The statement of Mr. Lewis follows:]

***** COMMITTEE INSERT *****

Chairman Roskam. Commissioner Koskinen, thank you for your time today and for joining us. The committee has received your written statement and it will be made part of the formal hearing record. You have 5 minutes to deliver your remarks, and you may begin whenever you are ready.

**STATEMENT OF THE HONORABLE JOHN KOSKINEN, COMMISSIONER,
INTERNAL REVENUE SERVICE, WASHINGTON, D.C.**

Mr. Koskinen. Thank you, Chairman Roskam, Ranking Member Lewis, and members of the subcommittee. Thank you for the opportunity to testify here today about an important subject.

Chairman Roskam. Commissioner, could you pull the mike a little closer to you?

Mr. Koskinen. Sure. How is that?

The IRS has sole jurisdiction to investigate criminal violations related to federal tax crimes. In addition, the IRS works together with various federal law enforcement agencies to combat other serious financial crimes, including money laundering, Bank Secrecy Act violations, and terrorist financing. In these efforts, we strive for a balanced approach that takes into account the need for fairness and respect for the rights of individuals under the law.

The ongoing battle against financial crimes has been helped by passage of laws that provide law enforcement with tools to

uncover hidden criminal activities. One of the most significant laws is the Bank Secrecy Act of 1970 which, as the chairman noted, requires financial institutions to report on individuals who engage in cash transactions exceeding \$10,000. These and other similar reports constitute a robust set of data widely used by law enforcement agencies to uncover illegal activities both domestically and around the world.

To circumvent these reporting requirements, individuals sometimes engage in structuring where they intentionally manipulate cash transactions to fall below the \$10,000 reporting threshold. Structuring may occur for any number of reasons. Individuals may want to conceal cash generated from illegal activities, such as drug dealing. Or the cash may come from legal sources, but the person is trying to hide it to evade taxes. Whatever the reason, the law is clear, it is a crime to structure cash transactions for the purpose of evading the reporting requirement.

Under the law, the IRS has the authority in structuring cases to investigate criminally and seize the assets involved in the structuring. But the law also includes procedures we must follow to safeguard the rights of individuals and ensure the seizure action is appropriate. Before an action can go forward, IRS agents must first prepare a seizure warrant affidavit that is reviewed by the appropriate U.S. attorney's office. The warrant then is presented to a federal judge who approves or denies it.

If the judge authorizes the warrant, only then can the seizure and forfeiture proceedings take place.

After reviewing our activities last year, the IRS announced in October that it would focus resources on cases that are more closely aligned with our strategic priorities. Specifically, the IRS will no longer pursue the seizure and forfeiture of funds associated solely with legal structuring cases or legal source structuring cases unless there are exceptional circumstances justifying the seizure and forfeiture and the case has been approved beyond the approvals from the U.S. attorney and the judge by a senior headquarter's executive at the IRS.

While the act of structuring, whether the funds are from a legal or illegal source, is against the law, IRS special agents, henceforth, will view the act as simply an indicator of whether more serious crimes may be occurring. This ensures that the IRS continues to focus its limited investigative resources on identifying and investigating tax violations within its jurisdictions that closely align with the IRS missions and key priorities.

No one should conclude from this change that the IRS is backing away from enforcing the laws written by Congress by appropriately investigating both the source of funds and the purpose of the structuring when these cases arise. When the evidence indicates criminal wrongdoing has occurred, structuring will still be investigated and prosecuted where appropriate,

often together with other crimes, such as tax evasion and money laundering.

We recognize that seizure and forfeiture are powerful law enforcement tools and must be administered in a fair and appropriate manner. The IRS understands and embraces the fact that we have a duty not only to uphold the law, but to protect the rights of individuals as well. We believe that our policy change will help ensure consistency in how IRS structuring investigations and related seizures are conducted and will also ensure fairness for taxpayers. In short, if a taxpayer is not violating the law and engaged in illegal sourcing, they have nothing to fear with regard to the seizure of their assets.

This concludes my statement. I would be happy to take your questions.

Chairman Roskam. Thank you, Commissioner.

[The statement of Mr. Koskinen follows:]

***** INSERT 1-1 *****

Chairman Roskam. I will first recognize Mr. Marchant on the majority side, and I intend to ask my questions at the end.

Mr. Marchant. Thank you, Mr. Chairman.

Welcome, Commissioner. I was Monday in my district and held a meeting of about 50 people and thought we were going to have a very nice lunch. As it turns out, I was the lunch.

Mr. Koskinen. I know that feeling.

Mr. Marchant. And as much as I tried to talk about any other subject that we were working on in Congress, this group wanted to talk about the IRS. So as much as we may have thought the whole Lois Lerner event and the events of last year have passed, they have not in the minds of our constituents.

Today we are here to talk about abuse, we feel like it is an abuse of small business owners. Last year, a woman from Iowa, her name is Sue Martinek, came to our committee and reported to us that the IRS had targeted her pro-life group for extra scrutiny before it got its tax-exempt status. She even told us that her group was asked to tell the IRS about what they prayed about at their prayer meetings before the meeting.

Now we hear about another Iowa woman who has been targeted by the IRS for doing nothing wrong. Unfortunately, Carole Hinders, she can't be with us today. She has an adult child that is sick and requires that she be with her. And she did not really have the money to travel down here from Iowa to tell her story. But she would like to tell it. This is Carole here on the screen.

She owns a Mexican food restaurant. I guess with all the Texans coming up here for the presidential election that Mexican food is a popular item in Iowa.

Carole owned her small business and she has owned it for 38 years. For 38 years, she has only accepted cash payments. And for 38 years, she has regularly gone to the bank and made deposits so that she did not keep large amounts of cash on hand.

In August of 2013, with no warning, no letter, no prompting, her bank account for \$33,000 was frozen, and the IRS informed her that she was structuring or was being suspected of structuring. It took her almost a year and a half to get her money back. And even so, she had to close her restaurant because she just could not afford to continue operating.

Why would it take a year and a half to get her money back, Commissioner?

Mr. Koskinen. It shouldn't take a year and a half. There is a limited, unfortunately, I think, too limited period of time for anyone whose assets have been seized to come directly to the U.S. attorney and the IRS and administratively make a claim. That timeframe is less than 45 days. So what happens generally is people make their claim in the legal proceedings, at which point we lose control of it, it becomes a legal case. And in the courts, it takes much longer than it would otherwise. But there is no reason --

Mr. Marchant. Once they seize that account, does the IRS

agent have any burden of proof that they must provide to the person that the money has been seized, or his or her attorney or their accountant, is there any burden of proof that they have to immediately provide to the taxpayer to justify the account being frozen?

Mr. Koskinen. As noted earlier, we have to, an IRS agent has to have the matter reviewed by the U.S. attorney's office and a judge has to find that there is probable cause that there has been a criminal violation before the seizure takes place. Once the asset is seized, if it goes into the judicial proceeding -- which I say takes place very quickly, there is a limited time in which you can do that and most people simply go to court -- once there, then the government, represented by the Justice Department, has to prove by a preponderance of the evidence that the seizure was appropriate, that it was, in fact, the result of a violation of the criminal law.

Mr. Marchant. So when does the burden to determine whether the money was seized lawfully, I mean whether it was lawfully earned or not, when does that burden of proof have to be shown? Does it have to be shown to the judge before the money is seized or is it proved in a court case afterwards?

Mr. Koskinen. We have to show probable cause to a judge before the seizure. And then in the court case, the government has to prove by a preponderance of the evidence that, in fact, the seizure was appropriate.

Mr. Marchant. Thank you, Commissioner.

Thank you.

Chairman Roskam. Mr. Lewis is recognized.

Mr. Lewis. Thank you, Mr. Chairman.

Mr. Commissioner, thank you for being here today, and thank you for your great and good work. Can you tell us when did the new policy come into place.

Mr. Koskinen. Pardon?

Mr. Lewis. When did the new policy --

Mr. Koskinen. The new policy, we reviewed the matter during last year. And in October, we instituted the new policy that if there was not evidence of illegal sourcing for the funding, forfeiture would not be taken.

Mr. Lewis. Why did the IRS change its policy?

Mr. Koskinen. We started looking at it earlier last year because it turned out there was no uniform policy across the country. Different U.S. attorney's offices had different proceedings and different judges responded differently. In some cases, if there was not illegal sourcing, a seizure would not be allowed. In other cases, if there was no evidence of illegal sourcing, the seizure could still go forward. And after reviewing it, we decided the better policy, to some extent making sure that taxpayers get appropriately protected, the better policy if we are going to have a standard would be that we would only have asset seizures when there was evidence of criminal

sourcing, a source of criminality for the funds themselves. The review took several months. In October, we made that policy announcement.

Mr. Lewis. Could you list for us some of the examples of exceptional circumstances?

Mr. Koskinen. An exceptional circumstance would be, without illegal sourcing, would be large volumes of transactions. The case of \$8,000 on a Friday and \$2,000 on a Monday would not be that. But if every day someone was magically showing up with \$8,000 or \$9,000 regularly during the course of a week and that took place --

Mr. Lewis. So if there is some pattern?

Mr. Koskinen. If there is some long-term pattern. And, again, I would stress that that will not be a decision made by an agent in the field. That will only be a decision made by a senior executive at the IRS in our Criminal Investigation Division.

We do not expect that to happen often. But it would be where there is a unique circumstance, where there is a regular pattern of violations and it is clear that while we can't tell initially what the source of those fundings is, whether it is illegal or not, the fact that it is occurring every day over a period of time would be a significant change and an exceptional circumstance from the cases that we are talking about here today.

Mr. Lewis. Mr. Commissioner, you heard me say that I am

deeply concerned about how the budget cuts have affected the IRS in this filing season. Will you tell us what impact the budget cuts are having?

Mr. Koskinen. Well, the impact is of great concern to us, is on both sides of what I call the compliance coin. On the one hand, we now have 5,000 fewer revenue agents, officers, and criminal investigators. So our enforcement of many crimes, tax evasion, collection is down.

But equally significant and important to overall compliance rates is that because we have 13,000 fewer people, headed towards having 15,000 or 16,000 fewer, we simply don't have enough people to answer the phone. So our level of customer service in this, a very complicated filing season is the worst it has been in years. And the people who care most about that are the IRS employees who want to provide information and support to taxpayers.

But the level of our service in this filing season, which is going very well, I am delighted to report, thanks to the good work of our employees, the level of service is still below 50 percent. That means your chances of getting through to a live assister are less than 50 percent. And that is just a miserable level of service and one that we don't think taxpayers deserve.

And there is nothing we can do. We have been as efficient as we can. We have moved as many people to the Web site as we can. We have apps if you want to know about your refund, if you want to get transcripts, if you want to actually make a payment,

you can do that all online. We are trying to be as efficient as we can and move as many people there as we can, but the net result is we still have far more people calling than we are able to handle appropriately.

Mr. Lewis. Thank you, Mr. Commissioner.

And I yield back, Mr. Chairman.

Chairman Roskam. Thank you, Mr. Lewis.

Mr. Kelly is recognized.

Mr. Kelly. Thank you, Mr. Chairman.

Mr. Koskinen, good to see you.

You know, in my life, running a small business and then trying to comply with everything that we have to do, one of the things that I have always worried about is -- and you made reference to your working with less money and it is making it harder for you to serve people. The fact that the Tax Code is so big requires having more people to try to help people navigate it.

As a small business person, and we talked a little bit about Ms. Hinder, so \$33,000 you seized from her. And maybe that is not that much to the IRS. But there is another person that will appear on the panel, \$900,000.

In my business, in my business, having access to capital is critical. So when somebody can seize those assets based on their interpretation or their belief that somehow you have been helping somebody launder money -- I have always related having cash in my store to having blood in my body. Without that cash,

you are dead.

So when the IRS does it, whether it is a seizure or an audit, but when you can seize somebody's assets based on somebody saying, you know what, I think these people are involved in something, you can kill them as a person, as an entity, as a business. Is that not true?

Mr. Koskinen. That is true. But we don't do it just thinking about it.

Mr. Kelly. No, no, no. Listen, it is solely, you are the judge and the jury when you decide to go after these folks.

Mr. Koskinen. That is not true.

Mr. Kelly. It is true.

Mr. Koskinen. No, it isn't.

Mr. Kelly. Commissioner, you and I have met before. You and I have met before. You told me at one time the definition that you look at when it comes to taxpayers, those that want to pay tax and those who do not want to pay tax. I would tell you that in the private sector there is nothing more chilling than any kind of communication from the IRS.

First of all, we don't have access to capital. Once you seize those accounts, how would I go to my lender and say, you know what, they seized my bank accounts, I still want to keep my business open, I haven't been found guilty of anything but it is under suspicion.

Now, I understand you walked us through how that works. But

the reality of it is, for Carole Hinders, who is she going to get to fight that battle for her? How is she going to stay open when you have seized her accounts? And these are the exact people that we are looking for to keep the country going forward. These are the people that supply all the coal for the furnace that heats the whole country.

I don't understand this. I really don't. How can you be guilty on a suspicion? This flies in the face of everything we are as a country. Have you ever been in that position where somebody could come in and seize your assets? It is a yes or no. If it hasn't happened to you, it hasn't happen to you.

Mr. Koskinen. I am sure we are all in that position.

Mr. Kelly. No, no, no. But have you actually been in it where somebody seized your assets because they think you may have been guilty of some wrongdoing?

Mr. Koskinen. No.

Mr. Kelly. Okay. Would you think it was an overreach if somebody had that ability to do that to you?

Mr. Koskinen. If they could do it on their own and without any evidence that I had done anything wrong, I think it would be --

Mr. Kelly. No, no, no. That is not it. They haven't been found guilty of anything yet. This is on the suspicion they may have done something wrong.

Mr. Koskinen. As you say, I think it is important for the

record to know we don't make that decision by ourselves. It takes the U.S. attorney and a federal judge to agree that there is probable cause.

Mr. Kelly. I understand. But it is not the due process of law that we have. As individuals in this country, citizens are protected from an overreach by a government that can find them guilty without ever having it. The suspicion of it is one thing. The ability to shut down a business or a person, limit their access to capital, and put them in a position. If you have ever had to sit across from a lender and try to explain who you are and where you are and why you need them, they say, all your assets have been seized, is that correct? And you say, yeah, they have, but. No buts, we can't help you.

Mr. Koskinen. Right. And I think it is an important issue.

Mr. Kelly. It is not important. I have got to tell you it is far beyond important. Important is dismissive. It is frickin' critical. We are killing these people on a suspicion that they may have done something wrong. This flies in the face of everything this country was built on from day one. And if are going to sit there and tell me that somehow you went through a process that allowed you to seize assets of people who are getting up every morning, putting their feet out over the bed, going to work to put a roof over the heads of their children, food on the table, clothes on their backs, and getting ready for the future, but that is okay because, see, we went through a process that

allowed us to seize those assets. So we are going to find out if they are guilty or not.

And how long does that process take? How long would it take before I would find out if I am still allowed to be in business because the IRS says, you may be guilty of something, I am going to shut you down. What is the average time?

Mr. Koskinen. I don't know what the average time is.

Mr. Kelly. Okay. I will tell you what, you would if you were in business and somebody did that to you. I got to tell you, access to capital, access to cash, the same as having access to keep your body running when you run out of blood. It is incredible that this organization can do that on a suspicion of wrongdoing, shut somebody down, seize their assets, and put them in a position where they can't possibly survive. You talk about waterboarding, this is waterboarding at its worst.

Thank you. And I yield back.

Chairman Roskam. Mr. Rangel is recognized.

Mr. Rangel. May the record indicate that I have the same amount of emotion that Mr. Kelly does if certainly something like this has happened. Let's see whether I can defend our country and the agency in any way possible.

First of all, under this new policy change, nothing like this could probably happen again?

Mr. Koskinen. Our hope is and our plan is and our expectation thus far is that nothing will happen like this.

Mr. Rangel. Second, under the existing law, there is nothing in the existing law that says there has to be criminal intent, the law?

Mr. Koskinen. Actually the law passed by the Congress says that you don't have to have a criminal intent to violate the law. You simply have to be not providing information as required by the law.

Mr. Rangel. And so the judges and the assistant U.S. attorney said that if taxpayers, if there is no evidence of illegal sources or anything, still they would go through the process merely because the law said it was before you changed the policy?

Mr. Koskinen. The policy was that it is a violation of the law to structure your assets and your deposits. And if you have structured your deposits under the law, it is a violation.

Mr. Rangel. And structured means that a consistency that is below \$10,000?

Mr. Koskinen. Correct.

Mr. Rangel. And from that, you infer that you can seize someone's property without showing any evidence that they intended to violate the law, that was the policy?

Mr. Koskinen. That was the policy. That is the law actually. You have to have an intent to avoid the reporting requirements. You don't necessarily have to have an intent to --

Mr. Rangel. So you are trying to say that it is the Congress that enacted this law. That just doesn't make any sense at all

that you should do this to anybody, anybody that has no criminal intent and for whatever reason wants to structure their deposits in a bank and there is no evidence of wrongdoing. That law to me is unconstitutional, unreasonable, and stupid. So the only way that you can do this is by having tax reform, I would think. Do you have any other ways to change this besides changing the policy?

Mr. Koskinen. Well, as I say, we have changed the policy from our standpoint. Historically only in a third of the cases of investigations were there ever seizures to begin with, and the average of those seizures was well over \$100,000. But the policy would say and does say and has been in effect since last fall that if there is no evidence of criminal sourcing --

Mr. Rangel. That is good and it makes me feel good. I hope it makes Mr. Kelly feel a little better.

This never should have happened in the first place is what I am saying. And I hope you would agree that whether or not it was within the law or not, it is wrong without any criminal evidence to seize somebody's property merely because it falls within the four corners of the law because the law doesn't make any sense, there is nothing wrong in doing this. I am a former assistant U.S. attorney. Every case I have seen is people buying luxury cars, expensive jewelry, and a vendor putting in deposits of over \$9,900 dollars, a bunch of crooks.

Mr. Koskinen. Yes.

Mr. Rangel. Now we find a bunch of innocent people doing the same thing for nonillegal purposes and you are enforcing bad law.

Mr. Koskinen. And we are actually making it clear that if you haven't done anything illegal --

Mr. Rangel. Well, you are making it clear now, Commissioner. But common sense and decency would say when the Congress screws up, we expect you people to come back to us and say this is not working. You have done this in policy. And there has to be some way that we can tell the people that have been victims of poor judgment that we regret that this happened. So let's move on and agree that we should reform the tax system.

Thank you. I yield back the balance of my time.

Chairman Roskam. Thank you, Mr. Rangel.

Mr. Meehan is recognized.

Mr. Meehan. Thank you, Chairman. Thank you, Director, for being here today.

You identified that you spoke to The New York Times and changed this policy publicly. What were the reasons for the changing of the policy?

Mr. Koskinen. The changing of the policy, as I noted, earlier last year, as we began to look into the situation, it was clear that there was no single policy and that if we were presenting evidence in some jurisdictions to U.S. attorneys and courts there would be a seizure, in other jurisdictions, there

wouldn't. So we looked at the entire question of how this law is applied and came up with the decision that the right balance between law enforcement and trying to protect taxpayers was when there was no evidence that the funds were from illegal sources there would be no seizure.

Mr. Meehan. So that is the inconsistency you are trying to say that existed?

Mr. Koskinen. We decided we needed to have a standard policy at the IRS in when we would request seizures, and the policy would be we would not request a seizure if there was no evidence of criminal sourcing.

Mr. Meehan. Do you think there were abuses of this policy in the cases that you oversaw?

Mr. Koskinen. I am not familiar with individual cases, but I take Mr. Kelly's and everybody's concern that if a business has legitimate reasons for depositing cash regularly in amounts that avoid otherwise the Bank Secrecy Act, if they have got legitimate reasons for that, then they should not be subject to seizures. And that is our policy.

Mr. Meehan. Because, I mean, I can see the value in a program like this as a former prosecutor. But you can also see the ease with which this can be manipulated to get ends that are -- because it is an easier way to go.

Probable cause, you mentioned this a couple of times, what is the underlying probable cause.

Mr. Koskinen. The underlying probable cause at this point would be we have evidence that there is criminal sourcing involved.

Mr. Meehan. That is. So now it is going to be criminal sourcing. When we did these before, the probable cause, you know, you said --

Mr. Koskinen. Probably cause before would have been --

Mr. Meehan. Just the simple act of structuring?

Mr. Koskinen. Structuring, exactly.

Mr. Meehan. Okay, alone. So this does not tie back. Now we are going to make sure that it is a two-step process, that it includes at the initial determination that there has to be some kind of evidence presented to the judge and by the U.S. attorney before there will be a seizure that will be initiated?

Mr. Koskinen. That is correct.

Mr. Meehan. Okay. I tried to figure out where these -- are you aware in 2012 -- of course for the statistics that I have seen, there have been five times as many structuring-related seizures as there were in 2005, five times as many. Half of the total were for less than \$34,000. Does that look to you like the kind of big drug-related or terrorist-related incident that we are trying to prevent?

Mr. Koskinen. The average of the seizures in the evidence, the data I have, the average is well over \$100,000.

Mr. Meehan. That is the average because you have some big

seizures and I get you. But half the people are less than \$34,000.

Mr. Koskinen. And under this policy, if that \$34,000 had no indication it was coming from criminal violations, there would be no seizure.

I would note for the record, 60 percent of the cases when there is a seizure nobody shows up. Which means that in 60 percent of the cases there are criminals who don't even want to see the light of day and are happy to give up the money. And part of the reason for the seizure is to try to, in effect, undercut the ability of organized crime, drug dealers and terrorists --

Mr. Meehan. But 80 percent of these cases were civil cases. They weren't criminal, 80 percent were civil.

Mr. Koskinen. Yes. Because to have a criminal case, you have to have a criminal defendant. And, as you know, in drug cases, in terrorist financing cases and other times, oftentimes we can't get the individual. So we are stuck with the civil procedure and forfeiture, which is against the asset.

Mr. Meehan. What do you mean we can't get the guy so we are stuck with the civil? I mean, this is due process. This is America.

Mr. Koskinen. We will seize the asset in many cases and the owner of that asset will disappear, will not show up. Sixty percent of the cases, the owner of the asset does not show up. That means in 60 percent of the cases one could surmise that they had a good reason for not showing up, that they, in fact, did

not want to subject themselves to further legal enforcement.

Mr. Meehan. We are going to hear from Mr. Clyde later. I went through some of his testimony. And in the course of it, he did show up. He showed up numerous times because they were being leveraged, a \$900,000 seizure of his business was negotiated down numerous times, which by the final time the IRS came to him and said you will settle for \$109,000.

Mr. Koskinen. The IRS did not do that. The negotiations on settlement, once it goes to court, are within the realm of the Justice Department and the U.S. attorney. The only time we settle is if in that window of administrative proceedings, before you have to go to court, you come to see us, you will settle with us. And it is a handful of cases.

Mr. Meehan. So you are putting this on the U.S. attorney. That may be. Here is my problem with this because, again, we are using the system. And this is going to be his testimony. I read the testimony. He said they came back and they offered to settle for only \$109,000, and they reminded me this case could easily go criminal against me personally during discovery.

Now, you know it is unethical to leverage a civil case by threatening a criminal prosecution.

Mr. Koskinen. That is correct.

Mr. Meehan. That is correct.

Mr. Koskinen. And I don't think that is an IRS agent that did that.

Mr. Meehan. Is Mr. Clyde lying when he is testifying that this happened to him?

Mr. Koskinen. Does he specify that it was an IRS agent that told him that?

Mr. Meehan. He specifies that he was leveraged that if he did not settle for \$109,000 this could be a criminal case.

Mr. Koskinen. It is exactly as you say. We would not threaten him. And I don't think that is an IRS agent.

Mr. Meehan. Thank you, Mr. Koskinen. I appreciate it.

Chairman Roskam. Mr. Crowley is recognized.

Mr. Crowley. I think the big distinction then, Commissioner, would be whether it was the prosecutor or the IRS agent, agent of the IRS who was making that innuendo, which is, I think, a very valid point.

Commissioner, welcome. But I think you recognize by the angst on both sides of the aisle that this is a bipartisan issue of concern of overreach by the IRS. And while we haven't officially heard from the witnesses on panel two, I have read their testimony, it is horrifying to me as an American.

I think most Americans, if not all Americans, who read those stories about the IRS, as well as the U.S. attorney and federal judges who have the ability to seize Americans' bank assets for no legitimate reason, all the while never charging them with a crime. That policy robbed hard-working people of their cash without any proof of crime. And whether you are Democrat or

Republican, green, purple, red, or blue, it is wrong.

The people before us on panel two are victims. They are not criminals. We all recognize the IRS is a powerful agency. And at times, that power is justified to crack down on what Mr. Meehan was speaking about in terms of terror financing or drug laundering or tax evasion itself. But that power must be measured and used appropriately to get to criminals and not trap innocent American citizens.

That is why I hope that these civil asset forfeitures against people who committed no crime appears to be something of the past. Could you explain the changes you undertook as Commissioner on civil asset forfeiture?

Mr. Koskinen. As I noted, the changes since I have been there, we looked at reports that had come in about varying policies across the country, reviewed the entire policy, and decided that the appropriate policy was if we didn't have evidence of criminal sourcing for the funding there would not be a seizure. And there have been cases, some jurisdictions where that was already the policy. Other jurisdictions, it was not the policy and there were seizures. And I am sure some of the people you will hear from were in those jurisdictions.

We decided the right policy was to have a uniform policy and not have seizures unless there is evidence that you, in fact, were involved in criminal activities. We will continue to investigate, as we will, evidence, but we will actually proceed,

and in some cases it has turned out to be a very good development of the policy because instead of simply relying on a seizure to begin with, we have actually uncovered with further investigation more criminal activity.

So the policy decision was to have a uniform policy and to make this decision that it would be uniform, that if you weren't engaged and there was no evidence you were engaged in criminal activities and the source of funds was from criminal activities, you would not be at risk of a forfeiture.

Mr. Crowley. I do hope that that policy, as you said, is effective. And if not, I think the Congress will continue, we will continue to have oversight regardless.

I would like to get your thoughts on the bipartisan legislation written by Sandy Levin, the ranking member of the committee, to allow effected taxpayers the right to a probable cause hearing within 14 days or have the IRS return the seized funds. What are your thoughts on that?

Mr. Koskinen. As I say, I think the ability to come in, in an administrative way, without having to hire a lawyer and go to court, that timeframe under the law is in the range of 30 days. And I think that is too short. I think that we ought to give people the chance to come in, before they have to hire a lawyer and go to court, to make their case. As I say, hopefully we won't have these cases going forward. And so I have no problem as a general matter with making sure people --

Mr. Crowley. More a matter of time.

Mr. Koskinen. My concern is whether 14 days is going to be too short even for the taxpayer. But if it were some reasonably short period of time, I think that taxpayers ought to have a chance to show up. As I say, 60 percent of them historically, even under the old policy, didn't show up, but that was an indicator of what they were about. But I agree totally that these are important matters. It is important to make sure that innocent taxpayers are not dragged into a system inadvertently. And if they, even with our policy, if they think they have been wrongly included, they should have a prompt way to be able to raise that issue.

Mr. Crowley. I appreciate it, Mr. Chairman. I have limited time.

Like many of my constituents, I read with disgust and shock the stories reporting the IRS rehired a number of former employees who had troubling work records during their previous stint at the IRS. Please tell me that these stories are incorrect, that they have not been rehired.

Mr. Koskinen. Historically, in the 2009 to 2012 area, there were a handful of people with prior employment problems, primarily seasonal employees -- we hire 8,000 to 10,000 seasonals a year -- who had prior issues. We have agreed with the IG's report on this, and I have had meetings in the last few weeks to make sure that we look at very carefully, particularly those who have been willful violators of the Tax Code, to ensure that we consider

that before any hiring decision is made. And so the handful of cases the IG found I think will not occur. And those were a handful out of the 73,000 hired over those several years.

Mr. Crowley. Mr. Chairman, let me just say for the record that I appreciate the response by the Commissioner. But I do think that more investigation of this is warranted. And I would associate myself with your letter dated February 6 asking about current hiring practices at the IRS. And with that, I yield back the balance of my time.

Mr. Koskinen. And we are responding and we will respond promptly to that letter.

Mr. Crowley. Thank you, Mr. Commissioner.

Chairman Roskam. Mr. Holding.

Mr. Holding. Thank you, Mr. Chairman.

A few specific questions about the new policy. One, the new policy that is dated, what, October of 2014 --

Mr. Koskinen. October, yeah, 2014.

Mr. Holding. October 17.

Mr. Koskinen. The date is actually October 17, yes.

Mr. Holding. Okay. Is it retroactive to cases that were in the works pending beforehand?

Mr. Koskinen. No. It is not retroactive in the sense that if there are cases before that, they are in the judicial process, and they will be resolved however the judicial process would resolve them.

Mr. Holding. Right. So there could be plenty of legally sourced structuring cases prior to the date of your new policy. Do you think it is fair that people who are prior to your policy are being treated differently to folks subsequent to your policy?

Mr. Koskinen. Well, I think that, as I say, our hope is going forward no one runs into this problem.

Mr. Holding. But is it fair to the people who happen to have been caught in the web before you changed the policy?

Mr. Koskinen. Well, as I say, at this point, they are, as noted, and it is unfortunate if it takes that long, but they are in a process that allows them through the courts to raise their challenges and their defenses.

Mr. Holding. The U.S. attorney could step in and withdraw the case.

Mr. Koskinen. They could do that.

Mr. Holding. There is plenty of precedent for that. The crack resentencing guidelines, they decided, you know, on a department basis to apply these things retroactively. Would you advocate applying your policy retroactively.

Mr. Koskinen. I always try to be careful not to tell another agency what their policy ought to be. But it is, I think, appropriate for the Justice Department to consider that.

Mr. Holding. Well, you are telling them what their policy ought to be with your new policy.

Mr. Koskinen. I was going to make that point earlier. I

should stress there are a wide range of federal agencies, the Drug Enforcement Agency, the Justice Department, the FBI, and others who have seizure authority. Our policy, all we can do is make a policy for the Internal Revenue Service. My understanding is the Justice Department is looking at our policy in terms of applying it itself in other cases. But I can't tell you that our policy will be the policy other agencies follow. It is just the policy we think is right, that draws the right balance.

Mr. Holding. To follow up on one of your answers to Mr. Meehan, are you saying that under the new policy that you have to aver that we have probable cause to believe that an illegal act is taking place other than the act of structuring?

Mr. Koskinen. Yes.

Mr. Holding. Okay. You sure about that?

Mr. Koskinen. That is what I am advised by the people who run the Criminal Investigation Division.

Mr. Holding. I have taken a look, the staff pulled for me a case from North Carolina, from my former prosecutorial district, after your policy change. And I have read through the affidavit and the associated documents. There is no allegation of illegal activity other than the act of structuring. And I believe if you looked at cases, there has been no change in practice of alleging some illegal act.

Mr. Koskinen. If that case exists, then it is not following the policy I have been advised. I had lengthy meetings with the

senior leadership of our Criminal Investigation Division which handles this and have been assured that that is the policy, that people have been trained and advised about it. So if somebody is not following the policy --

Mr. Holding. Do you know how your policy --

Mr. Koskinen. Pardon?

Mr. Holding. Do you know how your policy is being communicated to the U.S. attorney's offices.

Mr. Koskinen. The U.S. attorney isn't the one that is making the decision for us. We present the case --

Mr. Holding. Well, the U.S. attorney is the one who takes it to court for you. I mean, that is your gatekeeper to getting due process.

Mr. Koskinen. Right. And so what we have done is had the policy -- it has been a public policy -- people, we have announced it, it has been in the press. We would not go to the U.S. attorney under this policy unless we had the case that fit the criteria.

Mr. Holding. So do you think that your new policy creates a situation where if I am a claimant, I am reading through the affidavit against the thing, the sum of money, and it does not aver a criminal act on my part that I have, that I can go to the judge and say this is an insufficient affidavit here, it doesn't allege any criminal activity other than the act of structuring.

Mr. Koskinen. My understanding is that private citizens should have the ability to do that. Our policy is that we would

not --

Mr. Holding. So you have created a defense, your policy creates a defense, is what you are saying?

Mr. Koskinen. Yes.

Mr. Holding. How do you anticipate that the --

Mr. Koskinen. I guess I should answer to be careful. If you are structuring to avoid the reporting requirement, it is still a crime.

Mr. Holding. I understand that. But what you are saying, under your new policy --

Mr. Koskinen. Under our policy, we are not going to seize --

Mr. Holding. -- I have a defense.

Mr. Koskinen. To the seizure --

Mr. Holding. -- to that seizure --

Mr. Koskinen. -- that we have not provided any evidence --

Mr. Holding. -- by saying that you haven't alleged, you haven't presented any probable cause that there is an underlying criminal act on my part other than structuring.

Mr. Koskinen. Structuring, that is correct. That is our policy.

Mr. Holding. All right. Mr, Chairman, I yield back.

Chairman Roskam. Mr. Smith is recognized.

Mr. Smith. Thank you, Mr. Chairman.

Commissioner, I would like to start out reading the IRS mission statement. It says that the IRS' mission is to provide

America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all. Your mission is not to enforce all laws, it is to enforce tax laws, correct?

Mr. Koskinen. Correct. Although we do cooperate on task forces with drug dealing and others at the request of other agencies.

Mr. Smith. You don't enforce drug laws, you cooperate.

Mr. Koskinen. We cooperate.

Mr. Smith. You enforce tax laws.

Mr. Koskinen. We enforce tax laws.

Mr. Smith. Not banking laws?

Mr. Koskinen. Banking laws to the extent that bank security, if there are laws that provide us or require us to, in fact, be aware of violations of the law. But basically our primary function, as I said, we are the only agency --

Mr. Smith. What does that mean?

Mr. Koskinen. -- that enforces tax laws.

Mr. Smith. So you don't enforce banking laws? You just look at banking laws?

Mr. Koskinen. Yes. We are aware of banking laws. We are on task forces because we are a law enforcement agency. We have law enforcement powers. And we participate in joint task forces at the request of other agencies because our agents are very good at tracking money.

Mr. Smith. Okay.

Mr. Koskinen. We probably are the best people to deal with complicated financial structures of anybody in the government.

Mr. Smith. All right.

Mr. Koskinen. So U.S. attorneys are forever asking us to be involved in cases.

Mr. Smith. I get it.

I have looked at the Treasury Forfeiture Fund Accountability Report for 2013, and it appears that the IRS cases that the report touts are some that are related to your mission, such as tax evasion and unlawful tax shelter cases. But structuring payments is not a tax crime, correct, it is a banking law?

Mr. Koskinen. It is a banking law, the Bank Secrecy Act, correct.

Mr. Smith. Okay. So how often do you find evasion, tax evasion cases from structuring cases?

Mr. Koskinen. I can't give you a number. But any number of people are in business structuring their deposits so we don't get reports of how much cash they have. The highest level of underreporting in the tax gap, which I will testify about this afternoon, is small and medium-sized businesses where we have no other third-party reporting historically.

Mr. Smith. So you have no number?

Mr. Koskinen. I have no numbers about what percentage of the cases we are dealing with are tax evasion, other than that

is the primary purpose of our activities.

Mr. Smith. So the primary purpose of your activities is looking at structuring to find tax evasion, but you have no idea of what amount of number those cases are, is that what you are saying?

Mr. Koskinen. Which ones turns out to be tax evasion cases as opposed to drug cases or terrorism cases, no, because we actually are involved in those cases as well. But I can find out if we can get you that data, and we would be happy to provide it.

Mr. Smith. I think that would be data the committee would like.

Mr. Koskinen. We would be delighted to get you the data about how the cases break down.

Mr. Smith. Okay. So is the IRS devoting any time to enforcing banking laws at all?

Mr. Koskinen. Yes. As I say, we participate at the request particularly of U.S. attorneys and the Tax Division of the Justice Department and others in a range of cases. We are involved in money laundering cases, we have been involved in drug cases, we have been involved in terrorist financing cases at the request of various agencies because we have a very skillful and qualified set of criminal investigators.

Mr. Smith. So you have been involved in some drug cases?

Mr. Koskinen. Yes.

Mr. Smith. What is your involvement in any structuring cases in the State of Colorado?

Mr. Koskinen. I don't have that data.

Mr. Smith. I would be very interested and I think the committee would be interested to see if the federal law is being enforced under the structuring in the IRS Code.

Mr. Koskinen. I would be happy to. Again, the data would show last year we had 146, the last fiscal year, 146 seizures. So it is not as if we have thousands of these cases. But I would be delighted to get you the data to the extent we have it on Colorado.

Mr. Smith. Out of those 146 cases, were any in the State of Colorado?

Mr. Koskinen. That I don't know. But I will get you the information.

Mr. Smith. I would like to have that.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Smith. Thank you, Mr. Chairman.

Chairman Roskam. Representative Noem.

Mrs. Noem. Commissioner, it is important to set goals for an agency. I believe that it is important. Do you believe that that is important, to have goals as well?

Mr. Koskinen. Yes.

Mrs. Noem. I have been reading through your Forfeiture Fund annual report, and it is interesting to me that the IRS has set its goals based on the number of seizures, based on the size of seizures, and based on the amount of money in seizures.

Mr. Koskinen. That is not a goal of the IRS. In fact, the law prohibits us to have goals tied to actually collections. So none of our employees are measured by the dollars they collect.

Mrs. Noem. Well, that is the concern that I have, because based on my evaluation of the report and the fund is that that is what the goals of the IRS are. And that concerns me if you are going to be basing it --

Mr. Koskinen. That is a report from the Treasury Department. That is not an IRS fund. We do not control that fund.

Mrs. Noem. But the data would be the same. I mean, the data indicates --

Mr. Koskinen. We have volumes of data, some of which I am going to provide to this committee, about the number of cases, the amount of seizures. But those are not goals that are measured for performance of our agents. Those are the results of our

activities.

Mrs. Noem. So could you clarify for me then does the IRS have any goals that would indicate it is going after lawfully earned money?

Mr. Koskinen. We have no goals at all that would tie anybody's performance, including the agency's performance, to collections under any of those activities.

Mrs. Noem. Are your agents motivated at all by goals set by the agency to put points on the board?

Mr. Koskinen. None at all. It is illegal for us to have goals that cause any agent and any IRS employee anywhere in the organization to have a goal tied to collections.

Mrs. Noem. Is part of their evaluation for doing their job based on any kind of dollars of seizures that they have produced, by seizures that they have been a part of, or the size of those seizures? Is that a part of their evaluation as their work as an agent?

Mr. Koskinen. That is a very important question. I am glad you asked it. It is never a part of their evaluation. We are across the board prohibited from, whether it is a revenue agent, a collection agent, somebody sending you a notice, we are prohibited from having anybody rewarded on the basis of the dollars they collect. That is important for taxpayers to understand.

Mrs. Noem. So even if an agent is in a situation where they

have seized an amount of dollars but yet they settled for less, that is not going to be a part of their evaluation as to doing their job duties?

Mr. Koskinen. A, that settlement is not an IRS settlement. B, even if it were, it would not be part of their evaluation.

Mrs. Noem. Okay.

Mr. Koskinen. We settle cases. We have revenue agents negotiating with taxpayers across the country. What their settlements are is never toted up in terms of performance and never measured in terms of performance.

Mrs. Noem. Your Criminal Investigation Division has field offices, correct?

Mr. Koskinen. Across the country.

Mrs. Noem. Are they evaluated based on what kind of seizures they have participated in and investigated in?

Mr. Koskinen. Absolutely not.

Mrs. Noem. How are they evaluated?

Mr. Koskinen. They are evaluated on a set of normal performance measures in terms of their activities.

Mrs. Noem. So if they are not performing well and they are not getting very many seizures or aren't producing very many seizures, is that reflective on the work that they are doing and are they then motivated to go after easy cases or easy seizures?

Mr. Koskinen. You have to understand the seizure investigations are about 5 percent of the work of the Criminal

Investigation Division and about a third of those result in seizures. So in two-thirds of our investigations there is no seizure. And the investigations totally are about 5 percent of their activity.

So we are involved with identity theft, tracing criminals. We have thrown 2,000 people in jail for, thanks to cooperation with the Justice Department who prosecutes those cases, for identity theft. So the vast majority of their time is not spent on seizures or on those investigations.

Mrs. Noem. See, here is what concerns me about your new policy, is because it says that there could be exceptional circumstances that would change the policy if that was necessary. So if they are short on goals, if there are not many seizures happening, it could easily be declared that there are exceptional circumstances that could be utilized to raise those number of seizures and the amount of dollars that would be captured.

Mr. Koskinen. The number of seizures is not a performance goal. So they have no incentive to do that. The second point to remember is no agent and no field office has the ability to make that determination. It is made by a senior executive at headquarters in the Criminal Investigation Division to make sure that they really are exceptional circumstances to change the policy.

Mrs. Noem. And is that written policy that every agent and every member of the Criminal Investigation Division team would

know and be very clear of?

Mr. Koskinen. Every agent has been advised about that, it is being put into our Revenue Manual that everybody follows. Once that policy was initiated last fall, it was distributed and shared throughout the agency. Every agent should be aware of that policy.

Mrs. Noem. So to your knowledge, there has been no evaluation processes that have been gone through where seizures were discussed or talked about or even the settlements that resulted from those seizures.

Mr. Koskinen. Settlements and dollar. As I say, it is illegal and I think it is appropriately illegal for us to measure anybody's performance by their collection activity.

Mrs. Noem. Thank you, Mr. Commissioner.

I yield back.

RPTR ZAMORA

EDTR SECKMAN

[11:01 a.m.]

Mrs. Noem. I yield back.

Chairman Roskam. Mr. Johnson is recognized.

Mr. Johnson of Texas. Thank you, Mr. Chairman.

Thank you for letting me join you today.

Mr. Commissioner, welcome. I am here to try to give voice to my angry constituents, who are angry over the President's unconstitutional Executive amnesty. And here is the truth of the matter: Obama's Executive amnesty isn't just about immigration; it is about taxes also. And that is what I want to ask you about today.

This is what the President had to say back in November when he announced his Executive amnesty: Quote, "Now, here is the thing, we expect people who live in this country to play by the rules."

The President later on said that among the requirements for getting his amnesty is, quote, "you are willing to pay your fair share of taxes."

Mr. Commissioner, I have got some questions regarding the Earned Income Tax Credit, a refundable tax credit that can result in thousands of dollars in cash back from the IRS. First question, isn't it true that in order to claim the EITC, the tax filer,

along with the dependents, must provide a Social Security number, yes or no?

Mr. Koskinen. That is correct.

Mr. Johnson of Texas. So, in other words, no number, no EITC?

Mr. Koskinen. That is also correct.

Mr. Johnson of Texas. And just to confirm, if you are here illegally in the United States, you can't get a Social Security number; is that true or false?

Mr. Koskinen. That is also true, but you can file taxes, which hundreds of thousands of illegal immigrants do.

Mr. Johnson of Texas. Isn't it another requirement of the EITC that income must be earned, yes or no?

Mr. Koskinen. Yes.

Mr. Johnson of Texas. So, in other words, one needs to work in order to be eligible for EITC. So I think we have made it clear that the EITC is only for those who can legally work for the United States. But isn't it true that Obama's Executive amnesty will allow some who have been here illegally to get Social Security numbers? Yes or no?

Mr. Koskinen. They can do that, but the law -- EITC and the law in general about working is we encourage -- the law encourages and our process encourages illegal immigrants to pay taxes. And as I say, we have almost 700,000 ITINs, as they are called, out there, and people illegally in the country have been paying taxes for some time.

Mr. Johnson of Texas. But with the Social Security number, they can claim EITC?

Mr. Koskinen. That is correct.

Mr. Johnson of Texas. Okay. Now, I heard you say last week that an illegal who gets a Social Security number, thanks to Obama's Executive amnesty, can actually claim EITC for years in which he was illegal by filing amended returns. Is that correct?

Mr. Koskinen. That is correct. They would have to have been working in those years. As you noted, you can only get the EITC if you are working. The law doesn't say "legally working." The law simply says it is tied to people working. So if you have not worked in the past, you won't be eligible for EITC, whether you got a Social Security number or not.

Mr. Johnson of Texas. Well, say such an individual gets a Social Security number in February of this year, what is the maximum Earned Income Tax Credit that this individual can get if he files his return, including amended returns, as per the statute of limitations, by April 15?

Mr. Koskinen. If you are a single person, the maximum you can get is in the range of about \$600. The maximum you can get if you are a family with three children or more is close to \$6,000. So if you are an individual worker, you would get \$600 this year. And if you had worked for the previous 3 years, you could file an amended return and get another \$1,800.

Mr. Johnson of Texas. Well, Joint Tax tells us that

individual could get a total of \$23,800 for the year 2012 through 2014.

Mr. Koskinen. You would have to be married, have more than three children. And if you were filing an amended return and had worked for those 3 years, you would be able to get that amount.

Mr. Johnson of Texas. Well, the truth is, I say thanks to Obama's amnesty, illegals will be getting thousands of dollars from the IRS. And I feel like that is kind of outrageous, and it is wrong. It is not fair. It is not right.

So let me make it clear, I represent hardworking, law-abiding Texas taxpayers and elsewhere in my district. I took an oath to support and defend the Constitution, and I think these amnesty rewards -- and that is what they are -- need to be stopped.

Thank you, Mr. Chairman.

Mr. Koskinen. Thank you.

Chairman Roskam. Commissioner, you mentioned to Mr. Holding that the new policy involved a defense. Did you mean a legal defense when you said that?

Mr. Koskinen. Well, what I meant was -- you know, I am not a practicing lawyer; I haven't been for some time -- is that our policy is that if there is not evidence of illegal sourcing, we cannot establish, will not try to establish probable cause. So a --

Chairman Roskam. I understand that. So, but just to be clear, that gives the IRS all the ability to make the initiative.

In other words, a defendant is not able, based on that policy statement, able to come in and assert, Hey, the New York Times reported that the IRS isn't going to do this anymore. Do you follow me? So it is not an actual defense. It is a discretion.

Mr. Koskinen. That is a good point. And as I tried to make clear as well, if the structuring has taken place, it is a violation of the law. We are simply saying that we are not going to go after an asset seizure if there is no indication of illegal activity. But the law still says that if you are consciously trying to avoid having a bank file above \$10,000, what is called an currency transaction report, if you are trying to avoid that, that is a violation of the law that Congress has passed. We are simply saying, if there is no legal activities, we are not seizing your assets in that case.

Chairman Roskam. So will you be amending the Internal Revenue Manual to reflect that?

Mr. Koskinen. Yes, we have already instructed the agents, but we are going to change the Internal Revenue Manual and try to make sure across the country that that is a uniform policy and uniformly applied.

Chairman Roskam. What is the timing on that, on the change to the Internal Revenue Manual?

Mr. Koskinen. I saw some place an expectation that it is going to take years. I mean, it takes us -- in fact, if it is not in the IRM, it will be there very quickly. Changing the

manual, it does not take forever.

Chairman Roskam. Okay. So you would expect that done in 2015, for example?

Mr. Koskinen. Certainly, well before the end of this quarter, if it isn't already done.

Chairman Roskam. Excellent.

One of the things that I think Mr. Weber said at the time was for the change was an argument about an allocation of resources. So if, theoretically, if the IRS were to get all the resources that it was requesting, I mean, that suggests that they could maybe go back to the legal source structuring. Can you assure us that that is not going to happen?

Mr. Koskinen. I can assure that we have no intention of going back to seizing assets where there is legal source structuring.

Chairman Roskam. Okay. I want to contrast, to follow up on Mr. Kelly's line of inquiry a little bit, and that is to really highlight this power relationship and how it has unique in the seizure situation and contrast it with an audit, for example. You know, if a taxpayer gets notice from the IRS that there is an audit, it is a different process. Can you walk through the taxpayer protections that someone has for an audit that they don't have in a seizure, for example?

Mr. Koskinen. Well, as I say, in the seizure, we should not forget, while it takes too long sometimes, there is a court process that is available to a taxpayer immediately. So they have the

protections of the legal protection of the legal service and the court process. The fact, in some cases, it may take too long, I think, is an appropriate concern, but it is not as if they are out there without the ability to immediately go to court and make their case.

But in the audit, to get to your point, we will send you a notice if we find there is a problem. I would stress that we do that on the basis of computerized analysis and matchings. We will send you a notice and say, Hey, we think there is an issue here. You then can write us back and say, yep, I agree and here and it is over, or you will say, nope, that is fine, and we will then get two or three correspondences by letter.

As I said, if you hear from us for the first time by phone, you are not hearing from us. The phone scams going on and people making threats over the phone from the IRS are just that, scams.

Chairman Roskam. But to that point, I mean, the audit is for a discrete period of time, isn't it?

Mr. Koskinen. It is usually for a given year, and it is about a specific issue. We will then, if we can't by correspondence do that, we will then have a Revenue agent or officer will show up and set a meeting with you.

Chairman Roskam. My point is, there is a lot more certainty. There is certainty as it relates to what is the subject of this inquiry? What is the duration of the inquiry? I can prepare for this. And, you know, you still have -- the taxpayer in this case

would still have access to all their resources and everything until it is ultimately disposed of.

Mr. Koskinen. Exactly. And if they disagree with us when we come to a final assessment, they can go through our appeals process and then they can go to court. So there are --

Chairman Roskam. So you can understand then how somebody feels fundamentally different about an IRS inquiry that looks and feels different. The seizure is fundamentally different. All the power is with the IRS. All the power to come in and say, There is something going on.

And I think part of what I want to draw your attention to -- and it was in your own testimony. In your written testimony, you said the purpose of these sorts of efforts is to disrupt and dismantle criminal enterprises. I mean --

Mr. Koskinen. Correct.

Chairman Roskam. -- without any question, there is nobody on this panel that is going to quarrel with the use of government power to disrupt criminal enterprises. And yet, the witnesses that are going to come after you today are not criminals. They didn't do anything remotely related to the type of enterprise that you were citing in your testimony.

I am going to read to you from congressional testimony from the Department of Justice Head of Asset Forfeiture, the Asset Forfeiture Fund. He said this about the forfeiture law: Forfeiture undeniably provides both a deterrent against crime

and a measure of punishment for the criminal. Many criminals fear the loss of their vacation homes, fancy cars, businesses, and bloated bank accounts far more than the prospect of a jail sentence.

But take, you know, Mrs. Hinder's story. There is nothing remotely related to that type of criminal activity in Mrs. Hinder's story, or in the witnesses that we are going to hear from today, Mr. Clyde or Mr. Hirsch or Mr. Sowers. So you have an opportunity here before these people. Would you, on behalf of the IRS, be willing to apologize to them for the way in which they have been treated and working forward, even reengaging with Mr. Holding's inquiry about doing your best to influence the U.S. attorneys in these cases? But would you be willing to apologize to these people on behalf of the IRS?

Mr. Koskinen. Well, I am not allowed to know any of the details of individual cases, which is appropriate, so I can't talk about individual cases. I can assure you --

Chairman Roskam. But you have notice about who our witnesses are. So I am not asking you to disclose anything, but you know their stories are public and they have been aggrieved. There is no question, right?

Mr. Koskinen. There is no doubt about that, and I regret -- we take, as the mission statement says, very seriously our responsibility to taxpayers. The IRS does have a lot of enforcement powers. Even when you get a letter from us, it is

not a fun day in your life, and we try to take and balance that as much as we can. We pulled together early last year a taxpayer bill of rights to try to let taxpayers know --

Chairman Roskam. But, I mean, just so we are clear --

Mr. Koskinen. So my sense is, going forward under this policy, we should not people in the circumstances of the witnesses following us. And that is the goal for the policy. To the extent that people have gotten wrapped up in this system and it has taken too long to resolve it, I regret that. That is a problem with the system. The question was asked, shouldn't there be a way for people able, however they got there, to come in quickly?

Fourteen days may be a little short, but there ought to be a way efficiently for people to be able to come in and make their claim.

As I say, 60 percent of the people just disappear who are the criminal types who we are chasing. But even with the policy, I do think that we ought to make sure that there is a way for people efficiently and quickly to be able to say, Well, okay, there is an allegation of criminal issues or, in fact, if some agent doesn't follow the policy, to be able to come in in a reasonable period of time and be able to make their case without hiring lawyers, without waiting for a year or 2 --

Chairman Roskam. Mr. Commissioner --

Mr. Koskinen. -- are out of the question.

Chairman Roskam. The IRS grabbed these taxpayers by their throat and squeezed them and squeezed them and squeezed them

without mercy and nearly ruined them and made their lives miserable. Would you be willing today on behalf of the IRS to apologize to those taxpayers who were so abused?

Mr. Koskinen. Anyone who actually was not engaged in structuring, was not engaged in processing and laundering illegally gained funds who ended up stuck in the system, some of it beyond our control, I think, deserve an apology.

Chairman Roskam. And would that apology come today from you, the Commissioner of the IRS, to them?

Mr. Koskinen. I would apologize for anyone -- not just in this area -- anyone who is not treated fairly under the Code I apologize to. Our goal is to make sure that taxpayers in all circumstances are treated fairly; they are treated the same way. It goes back to the issues about determinations for (c)4 cases. I have said from the start, I apologized there for anybody who got caught up in those delays.

Taxpayers have to be comfortable they are all going to get treated fairly, the same way as anybody else, no matter who they are, what organization they belong to, who they voted for in the last election. If you hear from us or if you are dealing with us, you should be comfortable you are going to be treated the same way and fairly as everybody else.

And to the extent that the system makes mistakes, we should recognize those. And I am sorry the mistakes happened, if they happened, and I am happy to apologize to say if taxpayers have

gotten themselves into a situation that is not their fault, they are not consciously structuring and avoiding taxes -- there are a lot of people out there structuring to avoid letting us know what they earned. If they paid their taxes, they weren't doing anything consciously illegal and they got wrapped up in the system, that was a mistake and I apologize for that.

Chairman Roskam. So, to be clear, it is your intention to have the new policy reduced to writing and part of the manual within the next quarter?

Mr. Koskinen. It will be by the end of this quarter, and as I say, we have instructed agents already. This is a policy that has not been under -- you know, quietly done. It has been in the press. We have talked to our offices. Again, with Congressman Holding, if somebody is not following that policy, that is a mistake. And while we don't hold people and measure their progress by how much they collect, we do measure their progress by following our policies. We have terminated a large number of employees every year who don't follow the policies and procedures because we take them very seriously.

Chairman Roskam. Once it is in the manual, the new policy, for example, would it be within the discretion of the next IRS Commissioner? Let's say that that person had a different disposition than you, would they have the authority to go back and revisit that and say, Look, we are going to move back into this legal-source approach?

Mr. Koskinen. You could do that.

Chairman Roskam. So that would require a change in the statute to remedy against that?

Mr. Koskinen. You have got me for the next 3 years, and then, thereafter, you might need to deal with the statute.

Chairman Roskam. I just want to follow up on one thing that you mentioned to Mr. Meehan, and that was, you said that we don't settle. We, the IRS, are not involved in the settlement process.

Mr. Koskinen. Unless you come in in that short administrative period.

Chairman Roskam. So what is that time period?

Mr. Koskinen. Somebody will tell me, but it is about 30 or 35 days. The statute is set up so you can come in administratively to the U.S. attorney and the IRS. Otherwise, it goes -- you file a claim in court. A large number of people go straight to the court if they are going to do that.

The number of cases in 3 years, I asked about that, I think we have had seven who showed up in that timeframe making the case. And, in fact, in five of them, it turned out there was evidence that there was a criminal violation, and so there was no settlement. So the discussions about people settling their cases and giving up large amounts are discussions that don't take place with the IRS as a general matter.

Chairman Roskam. Commissioner, I think you have heard from both sides of the aisle here and you have heard a great deal of

concern. The stories that we are going to hear in the subsequent panel -- and I know you have another commitment and you are not able to stay -- but I would commend you to have your staff summarize those stories in their actual accounts, because the agency that you are now tasked with heading, you are now tasked with leading, has basically come off like Inspector Javert -- you know what I mean -- with very little flexibility, very little concern and, as Mr. Rangel said, you know, looking within the four corners of the document without looking at the totality of the situation.

So I appreciate the exchange today and your willingness to come and spend time with the subcommittee, and we look forward to continuing a dialogue with you in the future.

Mr. Koskinen. Well, I appreciate it, and I appreciate the discussion. As I said, this is an important matter. We take it seriously. I think the concerns are legitimate and appropriate. It is part of what drove us to the policy that we will continue to follow and deal with. And I think taxpayers, as I say, again, your point is they need to feel they are going to get treated fairly and appropriately.

And somebody early on noted, I do distinguish -- and we do as an agency -- if you are trying to become compliant, across the board, we are anxious to work with you. You don't have to hire somebody off late-night TV. We are going to try to work with you. It is the people who are consciously deciding they are going to cheat, they are going to avoid taxes, they are going to

participate in criminal ventures that we should be applying our resources against, and we are trying to make sure that that is the division that is made.

And so we are, as I say, we have a taxpayer bill of rights we went out of our way to provide to taxpayers to make sure that they understand that they are an important part of our process and we take their rights very seriously.

So I appreciate the discussion and the conversation.

Chairman Roskam. Thank you, Commissioner, for appearing before us today.

Members are advised that they may submit written questions to be answered later in writing.

Those questions and your answers would be made part of the formal record of today's hearing, Commissioner.

And as the Commissioner knows, I wrote seeking information about the IRS' contract with CGI. Thanks for the response we received on Monday, and I note that there are a number of items that are missing, including the documents requested. Would you and your staff be willing to work with us to satisfy the document request?

Mr. Koskinen. Yes, in fact, we hope to satisfy without any further work. It just takes a little longer. And I wanted to get a response back to you quickly. And we will get you all of those documents, and we will make sure that your staff are comfortable that they have got everything you asked for.

Chairman Roskam. Thank you.

We will now turn to our second panel.

Thank you, Commissioner.

Mr. Koskinen. Thank you.

Mr. Rangel. I want to thank you so much for bringing up these things that happen to innocent people. It seems as though that Congress gave them the authority to do these vicious things against people who never intended to violate the law. So, even though your question is, could another Commissioner change it, I think maybe on the suspension calendar, we could correct this and make certain that nobody without criminal intent be subject to this type of behavior. But I want to congratulate you for bringing it up.

Chairman Roskam. Thank you. I think that there is a lot of interest, Mr. Rangel, on this issue across the spectrum. And I am committed to working with you and others to make this right.

Mr. Sowers, Mr. Hirsch, Mr. Clyde, and Mr. Johnson, thank you for your time today. The committee has received your written statement and it will be made part of the formal hearing record. You will be recognized in sequential order, and you have 5 minutes to deliver your oral remarks.

Mr. Sowers, you may begin when you are ready.

STATEMENT OF RANDY SOWERS, OWNER, SOUTH MOUNTAIN
CREAMERY, MIDDLETOWN, MARYLAND

Mr. Sowers. Good morning, Mr. Chairman, members of the committee --

Chairman Roskam. Mr. Sowers, why don't you pull that mike a little bit closer to you. And is the light on down below?

Mr. Sowers. Okay. It is on.

Good morning, Mr. Chairman, members of the committee, and thank you for inviting me this morning to testify. It gets me out of the cold. Two months working in the cold, it is kind of nice being warm a little bit.

My name is Randy Sowers, and I am a dairy farmer by trade. My wife of 40 years is here with me today. We started farming in 1981. Our parents weren't farmers. We started on our own. We had one -- or two children. One of them is still on the farm with us.

We did rent a farm in Frederick County and, later on, in 1987, got to buy that farm. Farming is a tough business to be in and many a time almost to the verge of not being able to make it. But we are here. Twenty years after we started, we invested \$1 million and built a processing plant. We process milk and home deliver it to more than 8,000 customers in the Greater Washington

area.

So that brings us to why we had this cash we were depositing, because to promote ourselves, we would do farmers markets. That got us out there, give people samples, sold them our products, told them who we were. And we got a lot of cash at the time. We were doing five or six markets a week. In the beginning, the cash just got deposited kind of with the rest of the income from our business.

This year -- it was 4 years ago, I think, I am not sure about the date, but -- and we are vertically integrated. We do everything from start to finish. All of our animals we raise ourselves. We produce all of the milk, the meat, beef, pork, whatever we sell, and distribute to the people. But this year -- or 4 years ago, my wife went to the bank one day, and she had \$12,000 in cash because we do a festival. So we had a little bit of extra cash that week. And when she went to deposit it, the teller told her, Well, next time, just keep it under \$10,000, and I don't have to fill out a form. So that is what she did. Not that it was normally more than 10. I mean, it was in that neighborhood, but she has to keep cash on hand for those five markets to have, you know, money to give people when we make change. So that is why it didn't all get deposited, and most of the time, it wouldn't have been over \$10,000.

But the markets we do now, we leave at 3 in the morning and go, but that is actually a late time for us because we usually

get up 12:30 every morning and milk. And we have both been up milking cows every day since the 1st of November. So a 12-hour day for us is a short day. Anyway, we had the Treasury Department show up one day. And I thought one of these days, they would probably show up and want to know where I was getting the cash.

I never thought about it. Our lawyer was there, and he had just left. I tried to call him back, and he didn't come back. So I didn't think it was a problem, and I just talked to these people. And they did as me questions. The two agents were pretty good. I didn't have a problem with those guys. I think they saw right away we weren't criminals, and they pretty much said that.

But he said, you know, we took your money. I said, what? Yeah. We seized your money. And, you know, I was really taken aback by that. I couldn't believe, you know, they would just come in and take my money with no prior notice. And we thought it was going to be easy to remedy this thing because we gave them what they needed. I mean, my wife wrote down every week what we got from the farmers markets, and that is how we reported it. And we turned that in. That is what they wanted. They wanted some other things, and we turned it in right away.

But it seemed like when my lawyer talked to the Justice Department that they thought, too, it wouldn't be a big problem, that we would settle this thing and, you know, he would throw a number out and we would throw a number out. And I was down at my neighbor's doing a job one day, and I got a call from a guy

from Baltimore City Paper. And he wanted to ask me questions about this case because he saw it come out of the docks in Baltimore.

And I said, Well, my lawyer don't want me to talk to anybody about this. But he said, Well, I am going to do the story. It don't look good on your part, so it is up to you whether you want to tell me the story. I was itching to tell somebody the story anyway. So I told him the whole thing, and he did a beautiful job in the paper of explaining what had happened.

Well, it seemed to be after that that my lawyer was talking to the guy from the Justice Department and things had changed then. He said since, you know, I went to the press, then we were different than most people, and he was going to, you know -- we were going to have to pay what he wanted, and there wasn't going to be any question about that.

So we finally settled for \$29,000. I mean, they took 66, and actually they took some more they weren't supposed to take, but that is where it ended. And we thought it was done. But after that, they did send IRS out to talk to my accountant, asking him different questions that we didn't, you know, understand. And my accountant said that they told him that he shouldn't tell me that they had contacted him.

So I thought the government was supposed to protect me. I didn't think they were supposed to come out and try to put me out of business, because that is what they could have done easy enough. And we are just hardworking farmers. I mean, we don't

have time to be criminals. We have got a thousand animals to take care of. And, you know, we have to take care of them. And that is what we do. And we love doing it. That is why we do it. We wouldn't do it if we didn't love it. It is too tough a job.

So I think the Government ought to give my money back. And I want to thank my lawyers that did help and took a little bit of the pain away. I mean, it was kind of tough sometimes getting some sleep when you know they could charge you with a felon -- as felons, and some people have been charged with that when they fault them.

Chairman Roskam. Well, thank you, Mr. Sowers. That is very, very helpful and we appreciate it. And I know that our members will have a number of questions for you and further inquire.

Mr. Sowers. Thanks a lot.

[The statement of Mr. Sowers follows:]

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Chairman Roskam. Mr. Hirsch.

**STATEMENT OF JEFF HIRSCH, OWNER, BI-COUNTY DISTRIBUTORS,
RONKONKOMA, NEW YORK**

Mr. Hirsch. Good morning, Chairman, and members of the committee. My name is Jeff Hirsch, and I am the owner of with Bi-County Distributors with two of my brothers. We sell candy, tobacco goods, and paper goods. On May 2012, we went to the bank that morning, and the teller said that our account was frozen. Me and my two brothers didn't know what was going on. We made phone calls. And, finally, we got a letter later that day stating our account was seized by the IRS.

So we made phone calls and we called this Detective Kearns that was on the letter, and we asked him, What Is going on? We are doing nothing wrong. And he said to contact an attorney because I asked him to come on down, take a look at my operation. And he wouldn't come down to take a look. So we contacted an attorney in New York City, and Mr. Potashnik, and he was working on the case for 2 years.

And he was getting frustrated because he kept making phone calls. They gave him the runaround. We met with them twice with this district attorney. And it just looked like they were fishing for anything they could. And there was nothing there. So he advised me to hire a forensic accountant. So we did. We hired

Baker Tilly in New York City, and they did our books for 2011 and half of 2012. And they came back with the clean bill of health. It was a 40-page report. And still they wouldn't give us back our money.

It was getting very frustrating. It has been 2 years and 9 months. We finally settled with them -- with the IRS -- January 20 of 2015. They are giving us back all our money. And, as of today, we haven't received it in the bank account. So we are still waiting.

But, in the meantime, they were just, in the 2 years 9 months, just giving us the runaround. And after 2 years, Mr. Potashnik just didn't know what to do anymore. And we found the Institute for Justice. And they handled our case.

It is an embarrassing moment when you have got to go to your vendors, and you ask them to extend you more credit for the week. And I have been in the business 27 years. So they all know me. They know what type of business we are running. They know we are honest people. So a couple of them have been helping us out for the 2 years and 9 months. And we still owe these people money. So the money that we are receiving from the Government will be going back to these vendors.

So I just hope that nobody in this country or person has to go through something like this. It is embarrassing. You really can't put a word for it. It has just been a long 2 years, almost 3. Thank you.

Chairman Roskam. Thank you, Mr. Hirsch.

[The statement of Mr. Hirsch follows:]

***** INSERT 2-2 *****

Chairman Roskam. Mr. Clyde.

**STATEMENT OF ANDREW CLYDE, CEO, CLYDE ARMORY, BOGART,
GEORGIA**

Mr. Clyde. Thank you, Chairman, Honorable Members of Congress, thank you for the invitation to tell my story. I am Andrew Clyde. I own Clyde Armory, which is a small Federally licensed firearms store owned in Athens, Georgia. On Friday, April 12, 2013, two IRS agents showed up at my door and served me with a seizure warrant saying that they had already taken \$940,313 from my company's bank account that morning, which was most of what I had.

I started Clyde Armory in my home in 1991. I worked hard and put in long hours to grow the company. I hired my first employee in 2002, and today we have 25 employees. I have been blessed to live the American dream. In 2003, I made my first combat deployment to Iraq as a Navy Reserve, and those employees carried the business while I served.

In 2004, I obtained my first insurance policy. That policy had a \$10,000 cap for covering my loss of cash outside the business. To date, my insurance policy has the same \$10,000 cap. To reduce risk, my company policy on carrying cash to the bank mirrors my insurance policy.

In late 2012, the President proposed new gun laws. During

the following 5 months, we experienced incredible sales with much of it being in cash. That meant we took in over \$1 million in cash. We also helped my company policy of not depositing more than \$10,000 in cash in the bank at any one time. At the IRS agent's deposition, he acknowledged that there was no floor for a structured transaction. That meant any deposit under \$10,000 could be considered structuring. For us, it was as low as \$1,628.

When the agents visited me, I had no idea what the term "structuring" even meant, and I had no knowledge that there was a law that prohibited structuring. The agents educated me on structuring and also told me that it was a felony -- a felony. Yet, if they were right, I would lose everything I had worked for because you cannot have a gun business and have a felony.

The seizure had the potential to devastate me. The timing was 3 days before April 15, when my 2012 taxes and 2013 estimated taxes were due. After I had paid both tax bills and my next employee payroll, I had no money left to run my business. By the grace of Almighty God, I was able to borrow \$80,000 from my banker at Wells Fargo to keep my business alive. I immediately canceled the product orders that I could and also canceled our new computer system. If the business did not survive, then neither would my employee's jobs. And they had families too.

At the initial meeting with the Government, which was 6 days later, my accountant and attorney showed them that this was all legal money and properly reported. But the Government already

knew the money was clean, but that didn't matter because in their interpretation of the law, it makes no distinction between legal or illegal cash. And the Government wasn't going to give it back, not at least without their cut.

On May 7, in an email to my attorney, the Government said, and I quote, "I have authority to resolve this case by forfeiting \$325,000 to the United States and returning the balance to your client. This offer to resolve the matter already takes into consideration Mr. Clyde's contention that the cash was legitimately earned and that appropriate withholdings were made, two matters that we will not challenge."

Despite acknowledging in writing the cash was legitimate, the Government still attempted coercive tactics saying that I could be criminally prosecuted for the misdeed. They also said that if a suit was filed, it could ruin my reputation in the community; and that if anything was found out during discovery, it could easily change to a personal criminal case against me. The clear intent was to force me to cave, and I refused.

Again, by the grace of God, we got a hearing on July 22, and the judge exercised creativity to force the Government to return \$440,000 of my funds. While the amount allowed me to immediately buy inventory for the hunting season, it was not a long-term fix. I needed the remaining \$500,000; 3 days before the trial, I forfeited \$50,000 to settle the case. It was my tactical retreat so I could live to fight another day.

I did not serve three combat tours in Iraq only to come home and be extorted by my Government's use of civil forfeiture laws, but that is what I feel they have done to me and I need you to stop it from happening to anyone else. When I asked the U.S. attorney why he was doing this, his response was, I am just following the law. So he laid the responsibility right at the feet of Congress. So I am here to ask you to change the law and prevent them from ever going after legal-source money again and then restore those of us who have been abused.

Honorable Members of Congress, you are our last remaining line of battle. Thank you for the invitation to tell my story.

Chairman Roskam. Thank you, Mr. Clyde.

[The statement of Mr. Clyde follows:]

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Chairman Roskam. Mr. Johnson.

STATEMENT OF ROBERT JOHNSON, ATTORNEY, INSTITUTE FOR
JUSTICE, ARLINGTON, VIRGINIA

Mr. Johnson. Thank you, Chairman Roskam, Ranking Member Lewis, and members of the subcommittee. Thank you for inviting me to testify today about the IRS' use of civil forfeiture to take money from honest, hardworking, small-business owners. Nothing I can say can speak as powerfully as the stories of the other members of the panel, but I want to begin by putting their stories in some context based on information that we received from the IRS through a Freedom of Information Act request.

Between 2005 and 2012, the IRS seized money under the structuring laws in 2,500 cases. The IRS seized \$242 million from Americans under the structuring laws. And a the third of cases, the IRS reported that it suspected no criminal activity other than the mere act of making sub-\$10,000 cash transactions.

Now, the Commissioner referred, in his testimony, to protections that are available by law, but those protections are less robust in practice than the Commissioner may believe. It is true that before money can be seized, it is necessary for a law enforcement officer to fill out an affidavit. And this affidavit is often filled out by local law enforcement officers working as part of joint task forces with the IRS. They are

exercising Federal law enforcement activity, a law enforcement authority that has been delegated to them by the IRS, but these are local police officers filling out these affidavits.

And what they will allege in the affidavit is a mere pattern of sub-\$10,000 deposits, and that is the only information that is in the affidavit. The mere fact that there is a pattern of sub-\$10,000 deposits over a period of time. Before bringing that affidavit to court to seize property, they give no warning to the property owner. There is no notice that the property may be seized. And there is no meaningful investigation that is conducted to determine if there might be some legitimate business practice explaining that pattern of sub-\$10,000 deposits.

Now, when that warrant application was brought to a magistrate judge, that is an ex parte proceeding, meaning that there is no opportunity for the property owner to present a defense to explain why they might be depositing money in the bank in amounts under \$10,000. In many cases, people have all kinds of reasons that they are depositing money in the bank in those small amounts.

It may be the case that there is an insurance policy that only covers up to \$10,000. Or, in many cases, people simply are told by their own banks that sub-\$10,000 deposits are easier for the bank; they avoid paperwork burdens. Banks may even close people's accounts if they make frequent deposits over \$10,000 because that creates a burden for the bank. So there is no serious

investigation to determine whether those explanations may be present, and there is no opportunity to present that defense at the hearing before the seizure.

Finally, once the seizure has happened, property owners simply must wait. The law does establish deadlines: 30 days -- 60 days to file an administrative hearing, and then 30 days after that, you can file a claim. But those deadlines are routinely disregarded because the law provides no meaningful enforcement mechanism to ensure that they are actually followed, because if the Government doesn't follow them, although it is required to return the property debts without prejudice to take in property again at a later time.

The reality, as a result of this, is that property owners simply are forced to settle. Some statistics that underlie those facts. Of the \$242 million seized between 2005 and 2012, \$116 million of that was not forfeited by the IRS. What that means is that the IRS is seizing substantial amounts of money that it ultimately cannot justify keeping.

The Commissioner also mentioned the policy change. I think it is important to underscore that that policy change includes this loophole for exceptional circumstances. And the Commissioner made clear that it will be considered exceptional if there is a pattern of deposits over a long period of time. And that is something that we see in almost all of these cases. So almost every case here today, I think every case here today

would qualify as exceptional under that new policy.

I thank you for inviting me to testify and welcome your questions.

Chairman Roskam. Thank you, Mr. Johnson.

[The statement of Mr. Johnson follows:]

***** INSERT 2-4 *****

Chairman Roskam. On the majority side, we will go to Mr. Marchant.

Mr. Marchant. Thank you, and thank you for traveling to Washington today and sharing your story, each one of you.

I think what I would like to do, many of you have already discussed some of these facts in your opening statement, but if you would go down the line, starting with Mr. Clyde, and answer the following questions: How much money did the IRS take from you? How much did you get back? How long did it take you to get it back? How much money did you spend on lawyers and accountants?

Mr. Clyde. Okay, sir, they took \$940,313 from me. It took me right at 5 months to finally get it back. At the 4-month mark, we had a judicial hearing, and I got \$440,000 back. And then, right before the trial, because the judge gave me an expedited trial because that was the only way he could get me money back was through an expedited trial, 3 days before the trial I gave up \$50,000 to get my other \$450,000 back. It cost me, including the forfeiture, the \$50,000 forfeiture, in pre-tax income, it cost me \$149,336 to defend myself.

Mr. Marchant. Okay. Thank you.

Mr. Hirsch.

Mr. Hirsch. They took \$446,000 out of the bank. It took us 2 years, 9 months to get it back, and we are still waiting to get it back. We settled with them. We didn't have to give them anything because we did nothing wrong. We proved that.

And what was the last?

Mr. Crowley. How much did it cost you?

Mr. Hirsch. It cost us, between accounting and lawyer fees, about \$60,000 and also we had to break a \$50,000 CD to keep the business running, and we had to lower our inventory so we could keep this business still going.

Mr. Marchant. Thank you.

Mr. Sowers.

Mr. Sowers. They took around \$62,000, but at the time, they told me that I could use that account and nothing would happen to it. But my wife had made another deposit of \$5,000 after that, and the bank sent that to them too, so I guess it was actually \$67,000. I don't think it took much more than 4 or 5 months to get it back. I don't remember. It has been 4 years ago.

At that time of year, our sales are down in our home delivery businesses and we are putting out crops. So it was kind of tough not having it. But people know me. In farming, sometimes they will hold off for their money. So we did all right on that one.

My lawyer I have on a retainer anyway. So he pretty much had to do the work because we already paid him. Anyway, our accountant, I am sure he charged me for what he did, which wasn't much because we had the information they needed to show what cash we actually were taking and we weren't evading taxes or anything like that.

Mr. Marchant. So did each one of you, just the mechanics

of this, you then had to go set up another operating account in your bank. You couldn't continue to operate that account. Did they close your physical bank account down or just take the money out of it?

Mr. Clyde. They just took the money, sir.

Mr. Marchant. So you could immediately go back to that same account and continue to do business out of that same account?

Mr. Clyde. That is correct, we could.

Mr. Marchant. And the same with all of you?

Mr. Hirsch. Same.

Mr. Sowers. Actually, the account we were depositing money in was in a different bank than we normally use, and for some reason, that summer, it seemed like we were doing a little bit better. And we were trying to put some money back. So we were putting it in that account trying to, you know, hide it a little bit. So it wasn't our main account. If it would have been, we would have been out of business because there was probably \$168,000 to \$200,000 on that account, which we pay employees and everything else out of it. So it actually was good that they --

Mr. Marchant. Were you given assurances by the IRS that you could go back and continue to make deposits and they would not be back a week later or a month later to do exactly the same thing?

Mr. Clyde. No, sir, I had no assurances of that. In fact, I asked them that that exact question: What prevents you from doing this? Nothing.

Mr. Marchant. So it was very disruptive to your business --

Mr. Clyde. Incredibly.

Mr. Marchant. -- to your psyche, to know that you --

Mr. Clyde. Yes, sir.

Mr. Marchant. In fact, a lot of people would respond exactly the opposite and then try to arrange things where they could not find the money and seize it, which seems to be very counterproductive.

Mr. Clyde. Uh-huh.

Mr. Marchant. Thank you, Mr. Chairman.

Chairman Roskam. With leave of Mr. Lewis, we will go to Mr. Crowley.

Mr. Crowley. Thank you, Mr. Chairman.

Thank you, Mr. Lewis.

Firstly, let me say that I have great empathy for all of you and what you have gone through.

And, Mr. Hirsch, I was going to offer to interpret for you for my colleagues, given that wonderful New York accent. You seemed to have pulled it off on your own.

In your testimony, you made reference to the fact that the IRS began an auditing of your business in the middle of your dispute with the IRS. Is that correct?

Mr. Hirsch. Yes. When we were trying to settle this, the 2011 case, in July 2014, they decided to audit my 2012 books, which they already knew that half the year was already done through

the forensic accountant that came out with the clean bill of health. So it is like a little salt in the wound. And we are still going through that today, and everything looks like it is going good on it.

Mr. Crowley. So the audit is continuing? In other words, the IRS continues to audit you --

Mr. Hirsch. Yes.

Mr. Crowley. -- even though they have come to settle with you, they indicated to you they are going to return to you the moneys that they took from you, correct?

Mr. Hirsch. Right. So they are auditing the next year, so it was 2011, they took, you know, the money they took. So 2012 is the audit right now.

Mr. Crowley. I thought it was an interesting question what my colleague asked, and I had a similar question, that was the expense that it cost you. In other words, you said it was about \$60,000?

Mr. Hirsch. Yes.

Mr. Crowley. Overall, including in terms of the CD lost and the penalties paid and the attorneys' fees?

Mr. Hirsch. That was without CD.

Mr. Crowley. Attorneys' fees?

Mr. Hirsch. The attorneys' fees and the accountant fees came to about \$60,000. And then there was the loss of the CD, which was \$50,000.

Mr. Crowley. And you had to lower your inventory, and that had an affect on your business itself?

Mr. Hirsch. Yes, it made it work a little harder. We put in a 12-hour day right now. So instead of 12 hours --

Mr. Crowley. It affected your profits and your ability to employee people?

Mr. Hirsch. Yes. We have a part-timer. So it is me, my two brothers, and a part-timer, four of us.

Mr. Crowley. In regards to what you said the IRS took and what they have agreed to repay you, you have yet to receive that money back. Is that correct?

Mr. Hirsch. Right.

Mr. Crowley. Have they given you any indication of what date you ought to expect receiving that money back?

Mr. Hirsch. No, not --

Mr. Crowley. So really, in theory, they have indicated they are going to give you money back, but they still hold onto that money?

Mr. Hirsch. Right.

Mr. Crowley. And you are not receiving any interest, nor is the company receiving interest, on the money they are holding from you right now?

Mr. Hirsch. No, we had to sign an agreement with them that we wouldn't collect any interest on it.

Mr. Crowley. Okay. I think that is something of interest

as well, I think, to the committee as well.

As I said, I have empathy for you all.

Mr. Sowers, my in-laws are from Montana. You remind me very much of folks, the farming family, the ranching family, you remind me very much of those folks as well. You describe the work as hard, arduous. It is something you love, and it is what keeps you going. So I appreciate what you do, what the American farmers do for your country. I don't think you, nor any of the gentlemen before us today, deserve to be treated by your Government, by the IRS, in the way in which you have been.

I think, Mr. Chairman, we should also look at the possibility of when someone who is innocently accused and moneys are wrongfully withheld and it has been adjudicated and the IRS has been found without cause to having held their resources, that the responsibility ought to be on the Government to pay not only back the resources withheld with interest but also any legal fees that those individuals went through because that in and of itself can decimate a small business -- as the gentleman, Mr. Clyde from Georgia, had mentioned, the ability to make payroll, the ability to do everything one has to do to maintain a business. That is something I think we should be looking at as well in terms of any legislation moving forward. I would be happy to work with you on that as well.

And I thank the gentleman for yielding me the time.

Thank you, all.

Chairman Roskam. That is a great point, and, you know, the irony is the IRS charges interest.

Mr. Kelly is recognized.

Mr. Kelly. I thank the chairman.

I thank you all for appearing.

Mr. Sowers, you look like a lot of the people I represent back in western Pennsylvania.

And, Mr. Clyde, I hear the way you are talking about what happened to you and Mr. Hirsch. There is a family called the Logan brothers that did the same type of business in my town. They have all passed, but they were very big in our town because they just constantly reinvested in the community and did a lot of things from a charitable standpoint.

But I think the real story here today is how it affected you as an American citizen. You have been violated by your government in something that you have trusted in all your life and thought to be true. All of a sudden, you find out that those same people are the people now that are coming in. I think sometimes the confusion is, who do we represent? I do not represent the United States Government. I represent 705,687 people from Pennsylvania's District Three. I don't know if they are Republicans, Democrats, independents or people saying, I don't care, just leave me alone.

I have watched you. The Harpster family up near State College does what you do. I have got so many people that do what

you do. I am an automobile guy. And one of the things I went through was having a dealership taken from me by the Government, not because I couldn't meet the standards, not because I didn't have the money, but because they decided to do that. They cost me \$60,000 and over a year of not being able to sleep and then going through Cash for Clunkers while the Government was holding \$700,000 of my money.

But they said, Well, we will get it to you when we can get it to you. That was all money that I had to use to pay off my lender because the product that I sold was collateral and had to be paid in full. Just from your experience, wouldn't you like to just sit across from somebody or somebody that comes in from the Government that talks to you that has actually walked in your shoes, as opposed to saying, Look, I am just following the law?

I mean, this is an incredible violation of you as an American citizen. And I get tired of people come in from Government agencies saying, Oh, listen, you don't understand how it goes. I said, I do understand how it goes; you don't.

After what you have been through. And you have talked about how much money you lost, but what about your loss of faith in the Government?

Mr. Sowers. Loss of what?

Mr. Kelly. Faith and belief.

Mr. Sowers. I don't deposit cash in the bank anymore. I won't.

Mr. Kelly. You, Mr. Sowers, if you came in -- people that I represent back home, they will come in and buy a car and say, you know what, Kelly, talked to the wife, we can afford about \$225, \$230 a month. What would I have to put down to keep that payment there? God help me if I say to them, you know what, you have got to put down about \$12,000 in cash. They will say, so if I put down \$12,000, I can save about two and a quarter, two and a half? Yeah, you can do that.

You know what I have just helped them do? I am involved in a structuring. By you coming to me and telling me what you can afford and me telling you, I got to say, Hey, listen, you know what, Sowers, you kind of do what you want, you know where the payment is. And I can't tell you this at the time. If you come in and you give me a check for \$10,000 or give me cash for \$12,000 or whatever it is that you give me and I put it toward the deal to structure a deal that makes sense for you and the missus. To meet all your obligations, I have got to file this form 8300, which is affectionately called -- this is incredible -- a suspicious transaction.

I am going to tell the United States Government, I have got a dairy farmer who wanted to keep his payment down and I didn't really tell him, I told him, you know, at some point, I probably have to report this, but I have got almost a year to do it. But you go ahead if you want to do it, but I can't say that I helped you with. I mean, I don't know that the general public understands

what it is, and listen, I have been in front of Mr. Koskinen before. If you have never been in that person's shoes, you have no idea -- between sleepless nights and wondering about how you are going to meet your obligations.

Now, you were all able to go to your lenders. Why did they extend your credit? Because they knew you. Isn't it amazing that the people you do business with every day know you and trust you but your own government does not and is willing to shut you down because of a suspicious transaction.

Mr. Clyde. Yes, sir, that is correct.

Mr. Kelly. Absolutely incredible. What I go back to is I think the main loss here is the loss of faith and trust we have in a form of government that is the gold standard for the world, but yet we are violating our own citizens on an everyday basis and asking them to say, Hey, listen, still believe in me, still believe in me, still believe in me. You have got to feel like David going against Goliath. And you talk about how -- but you know what, Mr. Goliath, the IRS has unlimited resources to fight you.

Mr. Clyde. Yes, sir.

Mr. Kelly. You are limited by what you can do. So when they say, Listen, we are going to work with you on this -- what you had to settle for, you had to give up money to get them off your back. You know why? Because as soon as it starts, the meter is running. And I have dealt with a lot of great lawyers who have

helped me through a lot of great problems, but it has always been at my expense; their time, my money.

I applaud you for coming. You know, most people won't do what your doing. In fact, my son is back home running the dealership right now. He says, "For God's sake, Dad, quit talking about the IRS. Next thing is they are going to be in here." And I say, Hey, Brandan, if they come in, that is okay. We will still fight them tooth or nail. I had to fight to get the damn dealership back from the Government to begin with, and we already were meeting all the expectations.

So I know what you are doing. I know who you are fighting. I know where your hearts are. I thank you for coming here today. You are truly brave people, and you are the real patriots. Thank you.

Chairman Roskam. Ranking Member Lewis is recognized.

Mr. Lewis. Thank you, Mr. Chairman.

Mr. Chairman, I want to thank all of the witnesses for being here today. Thank you, as a previous speaker said, for being courageous and being very brave to be here. I know you are taking time from your work. You are hard-working and very busy people.

Mr. Clyde, I see that you are from the great State of Georgia.

Mr. Clyde. Yes, sir.

Mr. Lewis. I want to welcome you. You are from a great city, Athens, where the University of Georgia is located.

Mr. Sowers, I know you are a great farmer. I grew up on a

farm. I am very sympathetic to the predicament you find yourself. I grew up on a farm that my father bought in 1944 when I was only 4 years old, but I remember. They bought 110 acres of land for \$300, and we still own that land today. It was very hard work grabbing peanuts, picking cotton, pulling corn. And I used to fall behind when I was out there picking the cotton and gathering the peanuts. And my mother would have said, Boy, you are falling behind. And I would have said, This is hard work. And she would have said, Boy, hard work never killed anybody. I said, Well, it is about to kill me.

Now, also, on the farm, it was my responsibility to care for the chickens. And I fell in love with raising chickens. And as a little boy, I wanted to be a minister. So, from time to time, with the help of my brothers and sisters and cousins, we would gather all of our chickens together in the chicken yard. And my brothers and sisters and cousins would line the outside of the chicken yard, and I would start speaking or preaching to the chickens.

And so I am interested in knowing, did you raise any chickens?

Mr. Sowers. I have 17,000.

Mr. Lewis. My God. That is a very large congregation. I know you don't try to baptize any of those.

Mr. Sowers. Maybe. Chickens are certified humane, free-range, everything everybody wants.

RPTR MAAR

EDTR SECKMAN

Mr. Lewis. That is wonderful. And let me just ask you, has anyone from the IRS, except for today, has anyone, Mr. Clyde, Mr. Hirsh, Mr. Sowers, ever said I'm sorry, we made a mistake, we made a blunder?

Mr. Sowers. As I said, the two agents that showed up, I think they were apologizing a little bit. They knew what was coming down the line and even though they knew there was no intent. But they said now that it is this far, it has got to go the rest of the way. They didn't say they were sorry. But I think they were, you know, they knew what I was going to have to go through.

Mr. Lewis. Mr. Hirsch?

Mr. Hirsch. No, no one ever said they were sorry to us.

Mr. Lewis. Mr. Clyde?

Mr. Clyde. No, sir. No one ever said they were sorry to me.

Mr. Lewis. Well, as one Member of Congress and a member of this committee, I want to apologize to you for what the, a piece of my government, what the IRS did to you. I wish you well.

I don't have any questions, Mr. Chairman.

Chairman Roskam. Thank you.

Mr. Meehan is recognized.

Mr. Meehan. A new appreciation for the foul conduct of the

IRS, I guess.

Mr. Clyde, I was sort of struck by your testimony. You have served our Nation in the Armed Forces. You took how many tours overseas?

Mr. Clyde. Three combat tours, sir.

Mr. Meehan. Do you have family, Mr. Clyde?

Mr. Clyde. I am single. But, yes, I have family, a mom and dad.

Mr. Meehan. So you left family back here operating the business while you were overseas?

Mr. Clyde. Actually, it was just my employees that operated my business.

Mr. Meehan. When you returned and you took this position and then you identified what went on with you, when the IRS agents came to speak to you and the U.S. attorney's representative came to speak to you, you described that you were leveraged in your negotiations.

Mr. Clyde. Oh, yes, sir.

Mr. Meehan. Can you explain to me what they said to you?

Mr. Clyde. Yes, sir. They told me that -- in fact, it is in the court transcripts -- they said that discovery hadn't been made yet. Okay. And if they found anything in discovery, that it could easily transition from a civil forfeiture case to a criminal case against me. And that came at least twice, after the first -- well, after each offer actually -- the first offer

of taking only \$325,000 as a forfeiture and then the second offer after the judge made them, forced them to give back 440 to me -- then the IRS offered to settle now only for \$109,000 this time -- both times the comment was made, And if we find anything else in discovery -- because discovery hadn't happened yet -- that we will, we can go against you criminally. Absolutely.

Mr. Meehan. Did you feel like a criminal?

Mr. Clyde. They made me feel like a criminal. But there is no way I am a criminal.

Mr. Meehan. If you resolved the case, did you have a concern that there may have been people that believed you were a criminal?

Mr. Clyde. Absolutely. Yes, sir.

Mr. Meehan. Did you ever talk to anybody in a supervisory capacity when you were being leveraged in that manner in the U.S. Attorney's Office about their demands that you consider that implication and resolve the case?

Mr. Clyde. The only contact we had with the U.S. Attorney's Office was through the assistant, one of the assistant or really two of the assistant U.S. attorneys.

Mr. Meehan. Well, it is reprehensible activity, Mr. Clyde. It is a violation of the code of ethics to be calling you a criminal to leverage a civil proceeding. And they did you wrong.

But, Mr. Johnson, you have walked through this process with numerous of these people. As an attorney who understands, what

needs to be proven in a circumstance like this to suggest that somebody has violated the structuring crime?

Mr. Johnson. Well, I think that is an important question because the law really does demand something more than a mere pattern of deposits. The structuring law applies to people who have a purpose of evading the bank reporting requirements established by the Bank Secrecy Act. And I don't think anybody on this panel had that purpose. I don't think anybody on this panel actually violated the law. Yet the IRS is pursuing them anyway.

It is true that the structuring law contains very few protections for property owners and can sweep up people who do not know that it is illegal to try to hide something from the Government and are hiding something simply because they don't want --

Mr. Meehan. So there is no mens rea, so to speak. It is just this is a strict construction of the fact that you just did this act. They don't have to demonstrate that you were trying to elude some oversight by virtue of doing it?

Mr. Johnson. The people who get swept up by the structuring law who actually may be guilty of structuring but who most people would say have done nothing wrong are people who simply don't want the Government knowing what they are up to. And most people would say that is not a crime. But under the structuring law, that actually is a crime. And these people have no idea that they

are potentially breaking the law. But, again, the people on this panel, that is not even their case. These are people who literally didn't even want to hide anything from the Government.

Mr. Meehan. Mr. Chairman, I have just a couple quick questions I would like to get a response to just so we can create a record. There is something called the Civil Asset Forfeiture Reform Act. It requires a response within 60 days. From your experience, does that happen?

Mr. Johnson. No. In my experience, the Government routinely disregards the deadline set by the Civil Asset Forfeiture Reform Act.

Mr. Meehan. Notwithstanding that there is a law that requires that that be done within 60 days, the enforcement act?

Mr. Johnson. Yes. The problem is that the law simply does not provide any penalty for the Government if it disregards those deadlines because any penalty that is provided is simply toothless.

Mr. Meehan. The law contemplates hardship hearings in circumstances in which it is available to individuals that are targeted under certain structuring laws, are those available to somebody who deals exclusively in cash?

Mr. Johnson. No.

Mr. Meehan. So you may have a circumstance in which, again, the hardship opportunity is not available to you because you run a cash business?

Mr. Johnson. Right. That is absolutely right. The hardship hearing would be available for any kind of noncash seizure, for most kinds of noncash seizures. But the law specifically says that there is no hardship hearing available if you are --the money, if it was cash that was seized.

Mr. Meehan. Certain procedures here have been identified by the IRS Commissioner in which he said he has told prosecutors and others that they may not bring these cases. But we have seen evidence that affidavits don't necessarily have to come exclusively from Federal prosecutors. They may come from State police officers. They may come from local police officers, is that accurate?

Mr. Johnson. That is accurate. And I think another important point to make is that those local, State and local officers have a financial incentive in the enforcement of the law because under what is called equitable sharing, 80 percent of the money that is seized by the Federal Government can be returned to local law enforcement agencies.

Mr. Meehan. Do you have secure a conviction to get the cash?

Mr. Johnson. No.

Mr. Meehan. Mr. Chairman, thank you.

Chairman Roskam. Mr. Holding.

Mr. Holding. Thank you, Mr. Chairman.

I want to thank the witnesses for being here to tell your story. It is incredibly important that the people know.

Mr. Johnson, right now if the IRS seizes your client's money, you can't get into court immediately to fight the seizure, correct?

Mr. Johnson. That is right. People have to wait months or even years. In Jeff's case, the Government held his money for over 2 and a half years and never gave him any hearing before any judge.

Mr. Holding. I was doing a little calculation, 974 days. That is a long time.

Mr. Hirsch. A long time.

Mr. Holding. And they still haven't given it back to you?

Mr. Hirsch. No, not yet.

Mr. Holding. Last year, former Chairman Camp and Ranking Member Levin introduced a bill that would allow people whose assets have been seized to contest the seizure on an expedited basis within 2 weeks. I am sure the victims here today would have wanted to be able to go to court in that expedited manner and contest their seizure.

So you, Mr. Johnson, as an attorney, representing folks who are in this predicament, do you think this would be an improvement over the current procedure?

Mr. Johnson. I think it would absolutely be a major improvement to allow people the opportunity for a prompt hearing, both to contest the seizure and also to present evidence of hardship.

Mr. Holding. And also, per the Commissioner, perhaps evidence that an illegal act hasn't been -- a predicate illegal act -- hadn't been committed under his new policy.

Mr. Johnson. I think it is important that the policy be codified into law so that it would actually be a defense in such a proceeding. As it stands, as the members of the commission have noted, it is simply a discretionary matter with the IRS. Also, as I was saying earlier, the exception for exceptional cases is so broad that it really makes the policy potentially meaningless in practice.

Mr. Holding. So, in addition to codifying that affirmative defense, can you think of some other ways that the law should be reformed in order to protect against abuses by the IRS of folks such as we have here today?

Mr. Johnson. I think one of the most important reforms that could be made would be to eliminate the profit motive that is inherent in civil forfeiture. When the IRS seizes money, that money goes into a dedicated fund that is then available to the IRS without any congressional appropriation, to fund law enforcement expenses.

What this means is that the IRS is seizing money from innocent Americans and it is using that same money to fund additional seizures. This creates a clear incentive for abuse by the IRS. And, at the same time, through equitable sharing, that money can also go to local and State officers who are involved in the

seizure, giving those officers a profit incentive as well. So I think that eliminating that profit incentive would be a major step toward reforming this area of the law.

Mr. Holding. We should point out that the majority of seizures are from criminals at the end of the day. What we need to protect against are these instances when the IRS or another form of law enforcement overreaches and ends up catching within a web people who haven't done anything wrong.

Mr. Johnson. I think that is true. Although I would again emphasize that of the \$242 million that was seized by the IRS under the structuring law, \$116 million -- so almost half -- was never forfeited. And what that suggests is that IRS is seizing substantial sums that it ultimately can't justify keeping in a court of law.

Mr. Holding. Mr. Chairman, I yield back.

Chairman Roskam. Mr. Smith.

Mr. Smith. Mr. Johnson, just real quick, in the Institute for Justice that was released in a report just recently said 59 percent of the seizure cases were actually valid I guess. So what I am interested in is in the other 41 percent. Do you have statistics showing how fast the 41 percent was returned in a timeline or anything like that?

Mr. Johnson. We don't have statistics on how long it takes for the IRS to give people back their money. But I think that, just based on experience, it can take a very long amount of time.

In cases that we have litigated at the Institute for Justice, it took Jeff 32 months to get his property back. Carole Hinders, it took 18 months. For Mark Zaniewski, who owns a service station in Michigan, it took 8 months. And for Terry Dehko, who owns a supermarket, also in Michigan, it took 11 months. So we are talking about months, if not years, in which business owners are forced to go without working the capital for their business. These are months or years that people simply may not have, which is why so many of these cases end up settling.

Mr. Smith. Could you put a number on how many businesses have been shut down because of the IRS' actions?

Mr. Johnson. I just don't have that information. But I think that it is probably substantial.

Mr. Smith. Thank you, Mr. Chairman.

Chairman Roskam. Ms. Noem.

Mrs. Noem. Mr. Sowers, you are a man after my own heart. I spent my life in farming. But we did crops and cattle, beef cattle. So you work harder than we do. Dairy cattle are a lot of work. So I appreciate you taking the time to be here. And I am glad to see your family is in business with you. I was completely formed by all the hours I spent working alongside of my dad. And that is a blessing to have.

But, Mr. Johnson, I just wanted to ask you a couple of quick questions. Do you believe that the IRS' new policy is good enough?

Mr. Johnson. No. I don't believe that it is good enough.

And I say that for a number of reasons. One is that the policy contains this loophole for exceptional circumstances. And previously what I would have said is that is troublingly undefined. After the Commissioner's testimony today, I would say that the actual meat that he put on the bones of that exception is even more troubling. He said that a long-term pattern of sub-\$10,000 deposits would be considered an exceptional circumstance. But that really is the norm in structuring cases. When people have reasons to deposit under \$10,000 because, for instance, they have an insurance policy that covers only up to \$10,000, that is something that they will do over a long period of time. And there is nothing exceptional about that.

I think it is also important to note that the policy only covers the IRS. And as the Commissioner stated, there are other agencies that enforce the structuring laws. And those agencies are not bound. So I think it is very important that that policy be codified into law to bind the IRS fully without any exception for, quote, "exceptional cases" and to bind other agencies as well.

Mrs. Noem. I agree. And do you believe it should be retroactive?

Mr. Johnson. I absolutely believe it should be retroactive, yes.

Mrs. Noem. How far back do you think it should go?

Mr. Johnson. You know, I think it could go back to the

beginning of these kinds of cases. Forfeiture in structuring cases has only existed since 1992. So this has been around relatively recent.

Mrs. Noem. Thank you.

I yield back.

Chairman Roskam. Thank you very much.

Mr. Johnson, Ms. Noem inquired of the Commissioner in the earlier testimony regarding the motive of agents and so forth. And he was, you know, like, Look, don't worry, they are not motivated by some evaluation and so forth. But what you have testified to is something far more powerful, far more motivating, and far more insidious, that is, a profit motive. Could you highlight that?

Mr. Johnson. Absolutely. So when the IRS seizes money, that money goes into an account, the Treasury Forfeiture Fund. And that money is available to the IRS to fund their law enforcement activities by the Federal law. And so the IRS has access to this money that otherwise they would have to come to Congress and obtain appropriation. They might or might not be able to get that. Whereas if they seize the money, they can circumvent that entire process and build up their budget without having to come to Congress. And, obviously, that is incredibly attractive to the IRS. It is also a problem at the State and local level because of the equitable sharing process. You have local --

Chairman Roskam. How does that work, equitable sharing?

Mr. Johnson. Sure. So what equitable sharing is, it means when the Government seizes property and there is participation by State and local officers, as there generally is in structuring cases because these cases are investigated and pursued by joint task forces of State, local and Federal officials, then the State agencies that are involved can keep up to 80 percent of the money that is seized. And for a State and local law enforcement agency that may have difficulty otherwise getting access to Federal funds, that is an incredibly powerful incentive.

Chairman Roskam. Carole Hinders is one of your clients?

Mr. Johnson. Yes.

Chairman Roskam. I looked at the affidavit that was sworn out in her case. And I am amazed at how de minimis these claims are. So the person that swore out the affidavit says, I mean, they are asserting their expertise: My education includes a bachelor's degree in sociology from the University of Iowa. Hey, God bless the sociology majors. But you know what I am saying? I mean, there are other things, and I am obviously kind of over-characterizing this. But then there are these assertions about deposits that are -- they don't look nefarious at all. They look like this is normal business transactions.

You are familiar with this document I assume. Can you speak to that at all, how these, how do the affidavits strike you that you have seen? And then can you give a little bit more color

commentary on the ex parte communication? In other words, you are not able, the defendant in this case is not able to assert themselves at any time until there is a trial presumably.

Mr. Johnson. Right. So, unfortunately, I don't think that Carole Hinders' affidavit is all that unusual. And there are a couple things about it that you pointed out that I think are pretty common. One is that it is filled out by a member of State or local law enforcement, who may have very little real background in investigating these kinds of offenses. The Commissioner spoke about how the IRSCI is one of the most --

Chairman Roskam. Criminal Investigations.

Mr. Johnson. Right. Is one of the most respected investigative branches. But in the structuring area, really these cases are being investigated and pursued in most cases by State and local officials who may have very little background in this.

And then in terms of the barebones allegations, that is very common. What you see in these affidavits that are being brought before magistrates to justify the seizure is literally, here is my training, here is what the law says, and then here is a list of transactions taken from a bank statement, all of which are under \$10,000, in some amount. And that is considered to be sufficient to give rise to probable cause, which is a very low standard, to then seize somebody's entire bank account.

And, again, as you know, with the ex parte hearings, when

that warrant is brought before a judge, that affidavit is brought before a judge, there is no opportunity for the property owner to say, Hey, wait a minute.

Chairman Roskam. There is nobody else there, right?

Mr. Johnson. Yes. There is nobody else there. It is just the --

Chairman Roskam. Here is the paper, Your Honor. This is what I am asserting. I am a sociology major from Iowa.

Mr. Johnson. Exactly. What would be incredibly valuable, obviously, to any property owner would be an opportunity to say, Look, sure, there is a bunch of \$10,000 deposits. But I have got an insurance policy. It only covers up to \$10,000. Presented with that, what may look suspicious turns out to be just business as usual. But there is no opportunity for anybody to say that to the judge before the seizure occurs.

Chairman Roskam. In the Commissioner's testimony, Mr. Johnson, in his written testimony, he talked about a 93 percent conviction rate, which, you know, if you read that, you would think, at first blush, that is pretty impressive, 93 percent. We are in a 51 percent business as politicians. So 93 percent is a big number for us. But that doesn't really tell the whole story, does it?

Mr. Johnson. No. It absolutely doesn't. So of the seizures, the \$242 million that was seized between 2005 and 2012, as I mentioned earlier, \$116 million was never forfeited. That

certainly doesn't sound like a 93 percent rate. That is much closer to a 50 percent rate. In half of the cases between 2005 and 2012, some portion of the money ultimately wasn't forfeited. So, again, that means you are much closer to a 50 percent rate. Many of those cases are probably settlements. These cases aren't going to trial. So when he refers to the 93 percent rate, I imagine he is referring to cases that actually go to trial. Actually, in a third of all cases where money was seized for structuring between 2005 and 2012, none of the money was ultimately forfeited. So the IRS took the money, may have held it for months, years, and then ultimately determined, as they did with Jeff, Look, we don't actually have a real case here, we are going to have to give this money back. But, meanwhile, they have turned people's lives upside down, made their lives incredibly difficult for a long period, maybe even put businesses out of business.

Chairman Roskam. Mr. Hirsch, you haven't been able to get your money back, right?

Mr. Hirsch. Not yet.

Chairman Roskam. Why not?

Mr. Hirsch. We are still waiting. We settled with them January 20, 2015. And my lawyer right next to me was still -- they said they have up to 60 days to put it back into the account.

Chairman Roskam. And they just happen to have an audit interest now in you? You are such an interesting person and such an interesting business, that of all the fruited plain, of all

the businesses that are out there, they have said, Hey, let's see what those Hirsch brothers are up to, is that basically what you are dealing with now?

Mr. Hirsch. That is what we are dealing with now. And in the 27 years that we have been in business, we pay our taxes, do the right thing, and we never have been audited before.

Chairman Roskam. Never audited before. Now you have come under their scrutiny. You have won basically on this thing. You are going to get your money back. And in 27 years of business, they have never audited you. And now you are incredibly attractive to them. And they are all over you, is that right?

Mr. Hirsch. Right.

Chairman Roskam. Mr. Sowers, what happened, how did the Government react when you talked to the press?

Mr. Sowers. My lawyer talked to the guy from -- I guess he is a, what do they say, prosecuting these cases, the prosecutor. And they gave us the \$29,000 settlement number. And then my lawyer says, Well, we think that is a little high. We are thinking about \$5,000. And then he said, Well, you know, that is not in the cards anymore because your client talked to the press. And now we are going to have to do something different.

But actually, they told us -- and I asked my lawyer about that this morning, and I am sure it came up -- if we would have went to trial, they would have went after the whole \$360,000 that I had deposited in that account over that 32 weeks. So that was

another scare tactic to say, Okay, you want to go against us? We will just take it all and not \$29,000.

Chairman Roskam. So they are upping the ante because you talked to the press?

Mr. Sower. That is what we figured. We do have a --

Chairman Roskam. It is not complicated. I don't think your calculation is off.

Mr. Sower. We actually have an email from him to my lawyers stating that.

Chairman Roskam. Really?

Mr. Sowers. Yes.

Chairman Roskam. Who was that from?

Mr. Johnson. I believe it is from Stefan Cassella, that's the U.S. attorney.

Mr. Sowers. Yes.

Chairman Roskam. And he disclosed? Tell me about the email. What was the nature of the email?

Mr. Sowers. There should be a copy here of it somewhere.

Mr. Johnson. It is an email from Stefan Cassella, who I believe was an assistant U.S. attorney at the time. And there is an email below it from David Watt, who was Mr. Sowers' attorney, who says that, I think we can still wrap this up before you leave on your trip. My client is still troubled by the, quote, "acknowledge language," referring to some language in the proposed settlement, since he believes he is admitting there was

reasonable cause to seize the money. In the meantime, I have obtained a settlement in the Taylor Produce case, which is attached. And it is very similar to Sowers' case. And there is no such language in that settlement.

So he says, We would be satisfied with the exact same language from the Taylor case. Why can't we just do what was done in the Taylor case?

And Mr. Cassella's response to that is, Mr. Taylor did not give an interview to the press.

Chairman Roskam. I would ask unanimous consent to insert that into the record. And can you provide that to the committee?

Mr. Johnson. Yes.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Roskam. Mr. Johnson, just quickly, your client Mark Zaniwski in Michigan had an experience. Can you just give us a nutshell basically what his journey was quickly?

Mr. Johnson. Absolutely. It is truly shocking what happened to him. He had about \$30,000 seized by the IRS. He owns a service station in Michigan. The IRS seized his money because he was depositing it under \$10,000 because he simply would deposit whenever he got up to an amount that he thought was enough cash to deposit. Sometimes he would deposit under. Sometimes it was over \$10,000.

The IRS takes his money. He says to them, I have vendors who are going to be taking money out of my bank account; what do I do to prevent the checks from cashing?

They said, Well, it is not really our problem. We are not closing the account. If you want to keep using it, that is fine.

So he says, Okay, well, I am going to put more money in it.

They said, Okay, that's fine.

So he goes to his sister-in-law, he gets a 10,000-dollar loan from his sister-in-law. He also deposits credit card receipts into the account, money that is not even cash receipts. He deposits this into the accounts, another \$30,000.

The IRS then comes back and seizes that money as well. And what they said to him was, Now that we have all of this money, we would be happy to agree to a settlement agreement under which we will return the money that we seized the second time if you

let us keep the money that we seized the first time.

Chairman Roskam. So they are basically saying, Hey, you messed up, you trusted us?

Mr. Johnson. And we are going to leverage that to make you settle.

Chairman. Roskam. And the same thing happened to you, Mr. Sowers, wasn't that right? The \$62,000 and then the subsequent \$5,000?

Mr. Sower. Yes. And that account had stuff coming off of it. And the bank was sending me letters saying or calling me and saying, Look, this thing needs money put in it.

And I said, Well, you know what happened, you all know what happened. But it didn't seem like anybody at PNC Bank knew what had happened. And I never did find out from PNC. And they finally closed the account on their own, not because I wanted it closed, but they closed it. So we had to transfer all that stuff to other accounts.

Chairman Roskam. I want to thank our second panel.

For those of you who have walked this journey, we are very regretful that we have had to have this hearing. But we are glad that we have a forum that we can tell this type of story.

It is this committee's job on a bipartisan basis to expose abuse of the Federal Government. When the Federal Government abuses its citizens, that is the interest of this subcommittee in particular. And you have our commitment on a bipartisan basis

to do everything that we can to stand up for you.

I will note that everybody hates lawyers until they need lawyers, you know what I am saying? Just saying. But there is a poignancy, and I just want to close with this, we have heard other witnesses in the past who have come in and have testified before the whole committee on similar situations, not with structuring, but where they have been abused.

And I have been inspired by those witnesses. We hear from a lot of people. We will hear from think tank people and we will hear from professional people and smart people and this people and that people. But what really gets my attention and inspires me is people who have kept faith in their country when they perceive that their country was not keeping faith with them. And that is what you have done. You have kept faith with your country because you realized this isn't the way this is supposed to be. This isn't the way -- this isn't why I was deployed. This isn't what I was standing up for. This isn't the hard work of putting together a family business. This isn't working with my wife and creating this business over a period of time. It is not supposed to be this way. And you were faithful. And now what is happening is your country is kind of trying to come over the hilltop and try to rescue you and be a part of fixing this.

So your willingness to stand up, your willingness to be sophisticated and smart about how you have done it, and your willingness to share with us your story means now you are handing

something off to us. And that responsibility is not lost on any member of this committee. I know I speak for my friend, the ranking member, Mr. Lewis, you have our assurance that we are going to do everything that we can to make sure that this is something that we put a stop to and that the Internal Revenue Service recognizes that it is a creature of Congress and it is responsible to the American public. The public delegates their authority to us, and then we delegate the authority to the IRS. And if they are operating outside of that delegated authority, they are going to deal with it.

So thank you all.

And Members are reminded that they have the requisite period of time to supplement the record today.

With that, the committee is adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT D

**DECLARATION OF RANDY SOWERS
IN SUPPORT OF PETITION FOR REMISSION OR MITIGATION**

I, RANDY SOWERS, declare under penalty of perjury that the following is true.

1. I am a citizen of the United States and resident of the State of Maryland. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

2. Along with my wife, Karen, I have owned and operated a dairy farm in Frederick County, Maryland, for the last thirty-four years. Karen and I were both born in Frederick County; we both had grandparents who were farmers in Frederick County; and we met while participating in a local 4-H program. We opened our farm in 1981, when we purchased our first one hundred cows, and we bought the land where the creamery is located in 1987. For the first ten years, we primarily lived off Karen's income as a teacher, but in the 1990s the farm began to turn a profit. We put up our first chicken house in 1990, and Karen was able to quit her job as a teacher.

3. Karen and I work practically around the clock to care for our animals. Every night, Karen and I go to sleep early and then wake up around midnight to milk the cows. We work through the night, until 4:30 or 5:00 a.m., and then we go back to sleep for a few hours before beginning our day. Our cows never take days off, so we repeat the same routine seven days a week and rarely take vacations.

4. In 2000, after years of selling through middlemen, Karen and I decided to open our own distribution company, called "South Mountain Creamery." South Mountain Creamery delivers milk and other dairy products directly to consumers throughout large parts of Maryland, Virginia, and the District of Columbia. Because we sell directly, our customers know where their milk comes from and can even come visit the farm to see how the animals are treated. Area schoolchildren also come to the farm to see the animals and even feed milk to young calves, and

kids also can see a live video feed of our cows on the Animal Planet website. In 2011, our chicken farming operation was certified humane by Humane Farm Animal Care.

5. For years, Karen and I have sold our products at farmers' markets. At some points we have sold at as many as seven markets, but we currently only sell at two. One market is held on Saturdays, and the other is held on Sundays. Both are held in Baltimore. To get to a market, Karen and I pack up our truck and leave the farm by 4:30 a.m. for the drive into the city. We sell at farmers' markets because it is another way to get our products to potential customers and because it helps us spread the word about South Mountain Creamery.

6. Karen and I do significant business in cash, and as a result we often have cash to deposit in the bank. Customers at farmers' markets typically pay in cash. And when we sell milk or other dairy products to visitors at our farm, those are cash sales as well. Sometimes we have less than \$10,000 to deposit, but sometimes we have more than \$10,000 cash to deposit.

7. It is my understanding from Karen that, after one particularly busy weekend in spring 2011, a bank teller told Karen that cash deposits over \$10,000 would require "paperwork." Karen told me about this conversation later that same day. I understand that Karen kept the size of cash deposits under \$10,000 following that conversation in order to avoid red tape at the bank. Neither Karen nor I have any interest in keeping information from the IRS. We run a legitimate business, and we always pay our taxes in full.

8. On February 29, 2012, two government agents came out to the farm to notify me that the government had seized the farm's entire bank account—over \$60,000. The agents were apologetic in their manner and told me that they did not believe that Karen and I were criminals. However, the agents explained that a judge had already issued a warrant for the seizure of the bank account, and they said that they had no choice but to carry through with the seizure. In

addition, the agents served me with a criminal grand jury subpoena. I was shocked that the government would even consider bringing criminal charges when I had done nothing wrong.

9. The money that the government seized was all related to our lawful dairy farm business. None of the money in the account was derived from or intended for use in unlawful activity. Karen and I are dairy farmers, not criminals, and we have never been engaged in *any* criminal activity. Apart from a few tickets for not wearing a seatbelt, I have never had any trouble with the law.

10. Before the government took my money, I had no idea that depositing money in the bank could even potentially be a crime. I had never heard of the offense of “structuring,” and I was not aware of federal bank reporting requirements or laws relating to the evasion of those requirements. And, before my money was taken, I never had any reason to study federal banking regulations. Other than as a customer, I have no experience with the banking system.

11. I contacted Dave Watt, who is the attorney for South Mountain Creamery, the same day that the government agents visited my farm. Mr. Watt reached out to Stephan Cassella, the Assistant United States Attorney responsible for the seizure, in an attempt to resolve the case. Mr. Watt also enlisted the help of Paul Kamenar, an attorney experienced in federal civil and criminal enforcement, and Mr. Kamenar provided additional advice and assistance during negotiations with Mr. Cassella.

12. The grand jury subpoena served on me by the government requested that we provide access to various financial documents, including bank records. Karen and I fully complied with that request through our attorney. We also would have been willing to comply with any other reasonable requests for information from the government, although the government made no additional requests.

13. In April 2012, a reporter from *The City Paper* in Baltimore called me for comment about the seizure. The reporter told me that he had learned about the seizure through public court filings. I had not intended to seek out publicity, but when the reporter said that he was running the story whether I commented or not I decided to give my side of the story to make sure that people got the full picture. I told the reporter the truth, which was that Karen and I had no idea that we were even potentially violating the law when we deposited our money in the bank.

14. Mr. Cassella filed a formal forfeiture complaint the very next day after that article ran in *The City Paper*. I understand that Mr. Cassella also informed my attorney, Mr. Watt, that a forfeiture of \$29,500 was now his final settlement offer. It was my understanding that I would have to settle the case on less favorable terms because I had exercised my First Amendment right to speak to the press.

15. When Mr. Cassella indicated that he was not open to further negotiation, I felt that I had little choice but to accept his offer. If I agreed to Mr. Cassella's terms, I would forfeit \$29,500 but would recover \$33,436. On the other hand, if I refused the offer I would have to go to court to fight for my money. A judicial proceeding would be expensive, and the cost to pay an attorney to litigate the case almost certainly would have exceeded the amount at issue. Indeed, even without going to court, I had already started to incur legal costs in connection with the seizure. There is no question that, had I gone to court, those costs would have been far larger. In the meantime, I also needed whatever funds I could recover for my farming operation. For me to go to court to fight the seizure simply would not have been a rational business decision.

16. In weighing the government's offer, I also had to consider the possibility that the government would attempt to seize additional money or even pursue criminal charges. The IRS

agents who came to the farm told me that the judge who approved the seizure had given them authority to take anything up to \$243,455—the amount of cash deposited in the account over a period of eight months. In addition, the agents served me with a criminal grand jury subpoena. I was concerned that the government might take additional money or file criminal charges if I did not agree to Mr. Cassella's demands.

17. The money the government took was money that we were planning to use to keep our business running. We planned to use the money to pay for seeds, fertilizer, and other supplies to grow our crops to feed our animals. After the government took the money, we had to work to put together additional funds to meet those expenses. We were able to find the money that we needed to keep the business going, but it was money that we otherwise could have used to pay off debt or make other investments to grow our business.

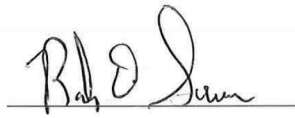
18. Karen and I have plans to buy additional land for our farm. That additional acreage would make it possible for us to reduce our use of fertilizers and genetically modified crops, which in turn would allow us to sell our products to a wider market. If the government were to return our money, we would use it to help pursue that dream.

19. I still find it difficult to believe that what happened to me could happen in America. I strongly believe that nobody should have their entire bank account taken by the government simply because of how they deposited their money in the bank. I have continued speaking to the press about my ordeal in the years following the forfeiture because it is important to me to make sure that people know what is going on and to ensure that the law is changed so that nobody else will be subject to the same injustice.

20. The substance of this declaration is my own, and the statements in it are based on my own personal knowledge except where otherwise indicated. I have had the assistance of counsel in preparing this declaration.

21. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of July, 2015.

A handwritten signature in black ink, appearing to read "Randy Sowers", is written over a horizontal line.

Randy Sowers

**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT E

**DECLARATION OF KAREN SOWERS
IN SUPPORT OF PETITION FOR REMISSION OR MITIGATION**

I, KAREN SOWERS, declare under penalty of perjury that the following is true.

1. I am a citizen of the United States and resident of the State of Maryland. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

2. Along with my husband, Randy Sowers, I own and operate a dairy farm in Frederick County, Maryland. Randy and I have always been interested in farming. We met while participating in a 4-H program and we opened our farm together in 1981.

3. One of my jobs on the farm is to handle bank deposits. We do a great deal of business in cash, mostly at farmers' markets, and so I often deposit large amounts of cash in the bank. Generally the amount of cash that we have to deposit is under \$10,000, but on occasion the amount of cash that we have to deposit is over \$10,000. All of the cash that I deposit in the bank comes from our dairy farm business.

4. After one particularly busy weekend in spring 2011, during which we held a special event at our farm to sell our dairy products as well as prepared food, I went to the bank with over \$10,000 in cash to deposit. At that time, the bank teller told me that bank deposits over \$10,000 would require "paperwork" by the bank. The teller indicated that this paperwork would be time-consuming for bank personnel, and she suggested that it would be easier if I could keep the size of deposits under \$10,000. I never saw this paperwork and did not know what it consisted of. The teller said nothing at all about the IRS, and for all I knew she could have been concerned about internal bank paperwork with no connection at all to the federal government. I honestly was not concerned about the details. I just thought that, if it was easier for bank employees, it was no trouble for me to limit the size of my deposits. I generally keep cash on

hand to cover day-to-day expenses at the farm and to make change for customers at the farm or at farmers' markets, and it was easy for me to keep additional cash in reserve to limit the size of my cash deposits.

5. My intention in limiting the size of my deposits was to avoid red tape at the bank, not to hide anything from the IRS or any other federal government entity. Neither Randy nor I have any interest in keeping information from the IRS. We run a dairy farm—not a criminal enterprise—and we always pay our taxes in full.

6. Before the government seized the bank account, I had no idea that “structuring” laws existed or that depositing money in the bank could even potentially be a crime. I am by no means an expert in federal banking regulation; my experience with the banking system is limited to the role of a customer.

7. Having the government take our money was an incredibly difficult experience. I am very careful to never allow checks to bounce, but after the government seized our money we did have scheduled payments on the account that did not go through. The bank where we had maintained our account for over a decade closed the account without any prior notice. It was embarrassing to have to explain to creditors why payments did not go through, particularly as I worried that people would assume Randy and I must have done something wrong for the government to take our money. And, in fact, I did learn of several distressing rumors about Randy and me that circulated through our small, rural community. I was very nervous and stressed during that time, and that even caused me to suffer digestion problems.

8. Randy and I have long dreamed of purchasing additional land so that we can be sure that our grandchildren will be able to farm and our creamery will continue. In addition to the land we own, we currently rent land to grow food for our animals, and it is important for us to

own more land to secure the future of the farm. If we were to recover the money that was taken, we would use the money to help pursue that dream.

9. The substance of this declaration is my own, and the statements in it are based on my own personal knowledge except where otherwise indicated. I have had the assistance of counsel in preparing this declaration.

10. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of July, 2015.

A handwritten signature in cursive script, appearing to read "Karen Sowers", written over a horizontal line.

Karen Sowers

**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT F

**DECLARATION OF DAVID L. WATT, ESQ.
IN SUPPORT OF PETITION FOR REMISSION OR MITIGATION**

I, DAVID L. WATT, declare under penalty of perjury that the following is true.

1. I am a citizen of the United States and resident of the State of Maryland. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

2. I am an attorney in Frederick County, Maryland, and for many years have provided legal assistance to Randy and Karen Sowers in connection with their business. Randy and Karen pay me a retainer for my services. I was counsel to Randy and Karen during the time of the seizure and forfeiture of their bank account in 2012.

3. After Randy was informed that the government had seized his bank account, on February 29, 2012, Randy reached out to me for my advice and assistance.

4. Because the seizure warrant identified Assistant United States Attorney Stefan D. Cassella as the responsible attorney, I contacted Mr. Cassella the following week to discuss the case. I explained to Mr. Cassella that my clients were not engaged in any unlawful activity, always fully reported their income on their tax returns, and had no idea that they were even potentially doing anything illegal when they deposited money in the bank. Mr. Cassella advised that the investigation would continue via the grand jury process, as Randy and Karen had been served with a grand jury subpoena requesting production of various financial documents. If the examination of those documents revealed nothing unlawful, however, Mr. Cassella stated that he expected the matter could be settled through negotiation. Specifically, Mr. Cassella stated that I would be able to offer a settlement amount below the entire sum that had been seized, that Mr.

Cassella would counter, and that we would then arrive at a negotiated settlement amount with no further legal action.

5. A short time after this conversation, Randy received a call from a reporter with *The City Paper* in Baltimore who had seen a copy of the seizure warrant on the court's docket. Randy gave a statement to the reporter.

6. On April 18, 2012, the same day that the article was published in *The City Paper*, I contacted Mr. Cassella to continue our discussions regarding settlement. Randy and Karen had provided the information requested by the grand jury subpoena, and I expected that Mr. Cassella would now be open to a favorable settlement. I told Mr. Cassella that my clients were willing to forfeit \$5,000 to settle the matter.

7. Mr. Cassella rejected my \$5,000 settlement offer out of hand and advised that we now had a "problem" because Randy had "spoken to the press." Mr. Cassella stated that, if he did not file a formal forfeiture complaint, people might believe that press coverage had influenced the government's handling of the case. In addition, Mr. Cassella stated that he was still open to a settlement, but that he was no longer willing to negotiate the forfeiture amount. Mr. Cassella stated that the amount of the forfeiture in any settlement would have to be \$29,500.

8. On April 19, 2012, the day following this conversation, Mr. Cassella did in fact file a complaint seeking to forfeit the money seized from Randy and Karen's bank account.

9. I subsequently contacted Paul Kamenar, a Washington, D.C. attorney who has experience in federal civil and criminal enforcement matters, for advice and consultation.

10. With my clients' approval, I informed Mr. Cassella that we were willing to settle the case for a \$29,500 forfeiture because my clients needed the funds for their farming operations and did not want to engage in lengthy and costly litigation. Mr. Cassella then provided us with a

draft settlement agreement, which, among other things, contained language that required my clients to acknowledge that the government had “reasonable cause” to initiate the case. In a series of email exchanges, I informed Mr. Cassella that the provision acknowledging the existence of “reasonable cause” was unacceptable, as it seemed to amount to a concession that my clients knowingly violated the law. Mr. Cassella insisted that this provision was standard in these kind of settlement agreements.

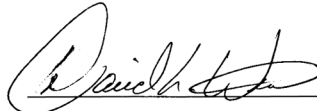
11. With the assistance of Paul Kamenar, I obtained other settlement agreements negotiated by Mr. Cassella, including one involving a similar case in which a farmer was accused of violating the structuring laws. I was surprised to see that this agreement did not contain any reference to “reasonable cause” to seize the forfeited money.

12. I emailed Mr. Cassella on May 29, 2012, to ask why my clients were being treated differently from this other farmer. Mr. Cassella replied, contrary to his earlier explanation that such language is standard, that “Mr. Taylor did not give an interview to the press.”

13. The substance of this declaration is my own, and the statements in it are based on my own personal knowledge except where otherwise indicated.

14. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of July, 2015.

A handwritten signature in black ink, appearing to read "David L. Watt", written over a horizontal line.

David L. Watt

**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT G

Case 1:12-mj-01105-SKG Document 3 Filed 03/19/12 Page 1 of 5 SKG

AT BALTIMORE
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEIZURE WARRANT

I, Michael Aiosa ("your affiant"), a Federal Task Force Officer for the Internal Revenue Service, Criminal Investigation Division ("IRS-CID"), being duly sworn, deposes and states:

BACKGROUND

1. Your affiant is a Federal Task Force Officer ("TFO") with IRS-CID and has served in that capacity since October of 2010. Your affiant's official responsibilities include conducting investigations of possible criminal violations of the Bank Secrecy Act (Title 31, United States Code), the Money Laundering Control Act (Title 18, United States Code), and other related offenses. I am empowered by law to investigate and to execute search and seizure warrants, as well as make arrests, for offenses involving the structuring of currency deposits to evade the reporting requirements outlined in Title 31 of the United States Code.
2. While performing my duties, your affiant has participated in several investigations involving violations of Title 31 and Title 18 of the United States Code. Your affiant has participated in executing several search and seizure warrants related to these types of investigations.
3. Your affiant has successfully completed four training seminars conducted by the Department of the Treasury, the Internal Revenue Service, and the Department of Justice. The training included courses in criminal law, criminal investigative techniques, search and seizure warrants, financial investigative techniques, money laundering, accounting, and tax.
4. Prior to being detailed as a Federal TFO, your Affiant, has been a member of the Baltimore County Police Department since 1994. In May 2007, your Affiant was assigned to the Drug Enforcement Administration as a Task Force Officer until August 2010. In October 2010, your Affiant was assigned to the Internal Revenue Service as a Task Force Officer.
5. Your Affiant has made countless arrests for violations of the controlled dangerous substance laws, has been involved in the execution of numerous search warrants, and has been an Affiant or co-Affiant on more than 50 search and seizure warrants.
6. In my current assignment as a Task Force Officer, your Affiant has developed expertise in the review and analysis of financial information, including the analysis of bank records and monetary instruments.
7. Unless otherwise stated, the information in this affidavit is either personally known to your affiant or has been provided to your affiant by other law enforcement officers and/or is based on a review of various documents and records as more particularly described herein.

PROPERTY TO BE SEIZED

8. This affidavit is submitted in support of the Application made by the United States of America for a Seizure Warrant authorizing the seizure of United States currency totaling \$243,455 contained in PNC bank account number 5595196112 held in the name of Randy Sowers and Karen Sowers. For the reasons stated herein, there is probable cause to believe that such monies are subject to seizure and forfeiture to the United States pursuant to 31 U.S.C. § 5317(c)(1) and (2), on the grounds that they constitute property involved in or traceable to cash deposits structured to avoid currency reporting requirements in violation of 31 U.S.C. § 5324(a)(1) and (3).

CURRENCY TRANSACTION REPORTS AND STRUCTURING

9. Title 31, U.S.C. § 5313 and 31 C.F.R. 1010 of the Bank Secrecy Act (BSA) require any financial institution that engages with a customer in a currency transaction (i.e., a deposit or withdrawal) in excess of \$10,000 to report the transaction to the Internal Revenue Service on Department of the Treasury FinCEN Form 104, Currency Transaction Report ("CTR"). These regulations also require that multiple transactions be treated as a single transaction if the financial institution has knowledge that they are by, or on behalf of, the same person, and they result in currency either received or disbursed by the financial institution totaling more than \$10,000 during any one business day.
10. CTRs are often used by law enforcement to uncover a wide variety of illegal activities including narcotics trafficking, money laundering, and tax evasion. Many individuals involved in these illegal activities are aware of such reporting requirements and take active steps to attempt to cause financial institutions to fail to file CTRs. These active steps are often referred to as "smurfing" or "structuring."
11. As explained by the Fourth Circuit Court of Appeals in *United States v. Peterson*, 607 F.3d 975 (4th Cir. 2010), structuring can take several forms. Making multiple deposits of \$10,000 or less into the same bank on the same day, with the total exceeding \$10,000, is called "imperfect structuring" because the bank's obligation to file a CTR is triggered notwithstanding the customer's intent to evade it. Making multiple deposits into *different* banks on the same day, with no one deposit exceeding \$10,000, but with the total being in excess of that amount, is called "perfect structuring" because no one bank has a duty to file a CTR. Imperfect structuring is a violation of 31 U.S.C. 5324(a)(1), and perfect structuring is a violation of 31 U.S.C. 5324(a)(3). *Peterson*, 607 F.3d at 981.
12. Not all structuring offenses involve breaking up sums in excess of \$10,000 into smaller amounts on a single day. To the contrary, under 31 C.F.R. 1010.100(xx) a person may commit "serial structuring" if he or she deposits or withdraws

\$10,000 or less each day over a period of several days (or longer) with the intent to evade the reporting requirement. Serial structuring is a violation of 31 U.S.C. 5324(a)(3). *Peterson*, 607 F.3d at 979. See *United States v. Van Allen*, 524 F.3d 814, 820-21 (7th Cir. 2008).

13. In order to establish a violation of 31 U.S.C. § 5324(a), the government must prove that a person structured or assisted in structuring, or attempted to structure or assist in structuring, any transaction with one or more domestic financial institutions for the purpose of evading the reporting requirements of section 5313(a) or any regulation prescribed under such sections.

FACTS SUPPORTING PROBABLE CAUSE

14. RANDY SOWERS and KAREN SOWERS own and operate a dairy farm as well as a dairy product and food distribution company known as SOUTH MOUNTAIN CREAMERY located at 8305 Bolivar Road, Middletown Maryland 21769.
15. Records maintained by PNC reveal that account number 5595196112 in the name of RANDY SOWERS AND KAREN SOWERS (FARM ACCOUNT) was opened on February 27, 1984. The signature card dated February 27, 1984, lists the authorized signers as RANDY D. SOWERS and KAREN B. SOWERS. The account was originally opened at Farmers & Mechanics National Bank, Frederick MD. In June 2007 the account was converted to a PNC personnel checking account.
16. Based on the information outlined in this affidavit, as well as my training, knowledge, and experience, it is your affiant's belief that the cash deposited into PNC account number 5595196112 was acquired in amounts exceeding \$10,000 and broken up into separate deposits in amounts less than \$10,001, or was deposited in a series of transactions in amounts less than \$10,001, in an attempt to evade triggering the CTR reporting requirement.
17. From May 16, 2011 through December 6, 2011, a total of 27 individual currency deposits totaling \$243,455.00 were made into RANDY SOWERS and KAREN SOWERS PNC account. Attachment A is a schedule of the cash deposits made during this period of time and clearly shows the structured manner in which the deposits were made. A further analysis of RANDY SOWERS and KAREN SOWERS cash deposits from May 16, 2011 through December 6, 2011 reveals the following:
- Of the 27 individual currency deposits that were made into the account,
- i. \$9,500-\$10,000 was deposited 10 times
 - ii. \$9,000-\$9,499 was deposited 12 times
 - iii. \$8,000-\$8,999 was deposited 3 times

18. Attachment A reflects instances where cash was repeatedly deposited in amounts just below the CTR reporting requirement threshold (i.e. between \$8,000 and \$10,000). As mentioned in paragraph 12, such activity is often referred to as "serial structuring" and is a violation of Title 31 U.S.C. § 5324(a)(3) because by consistently keeping cash deposits just below the CTR reporting requirement of \$10,001, and not depositing more than \$10,000 in any one banking day, the bank did not have a duty to file a CTR. Taking such steps demonstrates knowledge of the \$10,001 reporting requirement threshold and a concerted effort to keep cash deposits just below that amount.

APPLICABLE FORFEITURE PRINCIPLES

19. Based on my training and experience, I know that 31 U.S.C. § 5317(c) provides for the civil and criminal forfeiture of "any property involved in a violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy." I also know that the civil forfeiture of such property is governed by the procedures in 18 U.S.C. § 981, and that criminal forfeiture is governed by the procedures in 21 U.S.C. § 853.
20. Based on my training and experience, I know that in order to obtain a seizure warrant in a forfeiture case, the government has the initial burden of showing probable cause to believe that a substantial connection exists between the property and the criminal activity (in this case, violations of the currency transaction reporting requirements of 31 U.S.C. § 5324(a)(1) and (3)). *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248, 251 (E.D. Va. 1993). See 18 U.S.C. § 981(b); 21 U.S.C. 853(f). I am further advised that "probable cause" means simply a reasonable ground for belief that goes beyond mere suspicion but need not amount to prima facie proof. *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. at 251-52. This standard requires courts to make a practical, common sense decision whether, given all the circumstances, a fair probability exists that the property to be forfeited was involved in or was the subject of a transaction violating 5324. Id. See also *United States v. Thomas*, 913 F.2d 1111, 1114 (4th Cir. 1990).
21. Based on my training and experience, I also know that pursuant to 31 U.S.C. § 5317(c), civil and criminal forfeiture is triggered by the structuring of cash deposits in violation of 31 U.S.C. § 5324(a)(1) and (3). To prove a violation of that statute, the Government is required to prove only that a currency transaction or series of currency transactions exceeding \$10,000 was structured within the meaning of 31 C.F.R. 1010.100(xx), and that the person conducting the transaction intended to evade the currency reporting requirement. It is not necessary to show that the person knew that structuring was illegal. *United States v. Ismail*, 97 F.3d 50, 56 (4th Cir. 1996). Accordingly, this affidavit need only show probable cause to believe that the currency deposits into RANDY SOWERS and KAREN SOWERS

accounts were divided into amounts less than \$10,001 and deposited with the intent to avoid the filing of CTRs.

22. Based on the information set forth in this affidavit, there is probable cause to believe that all of the deposits listed on Attachment A were part of a pattern of financial transactions conducted with the intent to evade the currency reporting requirements, and that accordingly, all of the funds involved in those offenses are subject to forfeiture pursuant to Section 5317(c). Accordingly, your affiant submits that there is probable cause to seize the following amounts from the following bank accounts:

\$243,455 in PNC Bank account number 5595196112, in the name of RANDY SOWERS and KAREN SOWERS.

23. Property subject to civil forfeiture may be seized pursuant to 18 U.S.C. § 981(b), and property subject to criminal forfeiture may be seized pursuant to 21 U.S.C. § 853(f). In cases where the Government is not certain at the time of the seizure if it will pursue civil or criminal forfeiture, courts may issue the seizure warrant under both statutes. *See United States v. Lewis*, 2006 WL 1579855, *4 (D. Minn. 2006). The probable cause showing is the same for Sections 981(b) and 853(f), except that the latter also requires a showing that a restraining order "may not be sufficient to assure the availability of the property for forfeiture."
24. Based on my training and experience, I know that restraining orders served on banks sometimes fail to preserve the property for forfeiture because the bank representative receiving the restraining order fails to put the necessary safeguards in place to freeze the money in time to prevent the account holder from accessing the funds electronically, or fails to notify the proper personnel as to the existence of the order, or the bank exercises its own right of setoff to satisfy an outstanding debt owed to the bank by the account holder. In contrast, where electronic funds are concerned, a seizure warrant guarantees that the funds will be in the Government's custody once the warrant is served. Moreover, I have contacted the bank and know that the current balance in the subject bank account is well below the amount reflected in the structured deposits, indicating that a large portion of the forfeitable property has already been taken from the account. *See United States v. Dupree*, 2011 WL 1004824, *12 (E.D.N.Y. Mar. 18, 2011) (the Government may satisfy § 853(f) by showing that some of the criminal proceeds deposited into a bank account have already been depleted because that illustrates that the funds not only could be moved, but that some of them already *have been* moved)."

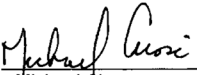
CONCLUSION

25. Based on the foregoing, your affiant submits that there is probable cause to believe that the \$243,455 in cash deposited into RANDY SOWERS and KAREN SOWERS account from May 16, 2011 to December 6, 2011, was structured in a

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manner designed to evade the filing of a CTR, which is required for all cash transactions over \$10,000. Based on the foregoing, your affiant further submits that the transactions were conducted with a domestic financial institution and are in violation of 31 U.S.C. § 5324(a)(1) and (3).

26. Wherefore, it is hereby requested that task Force Officers and Special Agents of the Internal Revenue Service be authorized to seize, pursuant to 18 U.S.C. § 981(b) and 21 U.S.C. § 853(f), \$243,455 in PNC Bank account number 5595196112, in the name of RANDY SOWERS and KAREN SOWERS, as property involved in or traceable to deposits structured to avoid currency reporting requirements in violation of 31 U.S.C. § 5324(a)(1) and (3), which is subject to forfeiture to the United States pursuant to the provisions of 31 U.S.C. § 5317(c).


Michael Aiosa
Task Force Officer, IRS-CID

SUBSCRIBED AND SWORN TO BEFORE ME THIS 27th day of February, 2012.


United States Magistrate Judge

**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT H

UNITED STATES DISTRICT COURT
for the
District of Maryland

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: RANDY SOWERS an
KAREN SOWERS
t/a SOUTH MOUNTAIN CREAMERY
8305 BOLIVAR ROAD
MIDDLETOWN, MARYLAND 21769

USAO No. 2010R00861

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

THIS SUBPOENA IS FOR RECORDS ONLY-- PERSONAL APPEARANCE NOT REQUIRED.

Place: United States Courthouse 101 West Lombard St. Baltimore, MD 21201	Date and Time: April 3, 2012, 10:00 A.M.
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You must also bring with you the following documents, electronically stored information, or objects
(blank if not applicable):

Please provide all records in your control, possession or custody relating to the source and later disbursement of \$243,455 in U.S. Currency deposited into account number 5595196112 in the name of RANDY SOWERS and KAREN SOWERS (FARM ACCOUNT) at PNC Bank between May 1, 2011 and the present.

You have the right to present the records directly to the Grand Jury. If you choose to waive that right, you may present the records directly to AUSA Stefan D. Cassella, U.S. Attorney's Office, 36 S. Charles Street, Baltimore, MD 21201. Any questions, please call TFO Mike Aiosa, 443-506-9215.

Date: February 23, 2012

CLERK OF COURT


Signature of U.S. Attorney or Deputy Clerk

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

Rod J. Rosenstein U.S. Attorney District of Maryland	Stefan D. Cassella Assistant U.S. Attorney 36 S. Charles Street 4th Fl. Baltimore, MD 21201 (410) 209-4800	TFO Mike Aiosa 443-506-9215
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**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT I

7/11/2015

South Mountain Creamery's bank account seized as part of money-laundering crackdown - Baltimore City Paper

South Mountain Creamery's bank account seized as part of money-laundering crackdown

By Van Smith

APRIL 18, 2012

South Mountain Creamery, the Frederick County dairy farm and food-distribution company, is a fixture of Baltimore-area farmers markets, particularly the Waverly market on Saturdays or the one on Sundays, downtown under the Jones Falls Expressway. South Mountain co-owner Randy Sowers is now in the hot seat with the feds, because in late February, the Internal Revenue Service's Criminal Investigations Division (IRS-CID) used a federal anti-money-laundering statute to seize the contents of a PNC bank account Sowers says was the depository of cash earned by his company's farmers-market business.

Sowers has not been charged with a crime, and says he expects to learn soon whether or not he will be. As for getting his money back—nearly \$70,000, a fraction of the nearly quarter-million dollars in cash deposits the feds say Sowers laundered between May and December last year—well, based on the experiences of others in his position, he'll likely not see it again, at least not all of it.

Baltimore County Police officer Michael Aiosa, who has been detailed as an IRS-CID task-force member since October 2010, signed the six-page affidavit used to get the seizure warrant to empty the account, of which Sowers and his daughter-in-law, Karen Sowers, are co-signatories. The affidavit says cash deposits were broken down into increments of under \$10,001 each, causing PNC to not generate required "currency transaction reports" (CTRs) that financial institutions must file with regulators when they receive or disburse more than \$10,000 in a single cash transaction. Under 31 U.S.C. 5324, federal law prohibits such conduct, which is called "structuring."

Sowers, who did not seek publicity about his predicament but spoke to a reporter after the search warrant in the court records came to City Paper's attention, says he deposited the cash he'd made in the increments in which it had been earned. If the deposited amounts often ended up being a little under \$10,001, he explained, that's just the way it worked out and he no intention of breaking the law.

"We had no idea there was supposedly a law against it—we were just doing it the way we figured we were supposed to, making deposits every week," Sowers explains. "We weren't laundering money," he adds. "We're farmers, we struggle every day to pay bills. We don't know what else to do. Now we just feel like putting [our cash] in a can somewhere."

Sowers' attorney, David Watt, says his client "probably shouldn't have said anything" when contacted by City Paper, and declined to comment further, saying, "We don't want to act like we're trying to influence the goings-on" by talking with the press.

Historically, the anti-structuring statute has been used by prosecutors as an ancillary charge with other accusations of nefarious behavior, such as drug dealing or terrorism. And it still is. But over the last few years, prosecutors have started to use it more regularly as a standalone charge—an observation noted by defense attorneys that Maryland U.S. Attorney Rod Rosenstein confirms.

Syracuse University's Transactional Records Access Clearinghouse, a data center about federal court cases, reports that in fiscal year 2011 Maryland brought 14 of the nation's 99 structuring cases, making it the top state for such

7/11/2015

South Mountain Creamery's bank account seized as part of money-laundering crackdown - Baltimore City Paper

prosecutions. Nationally, the numbers have been rising; the 2011 figures are up 8.8 percent from the year before and up 57.1 percent from five years ago.

Greater prosecutorial emphasis on enforcing the anti-structuring statute has resulted in a rise in money seizures, civil-forfeiture cases, and criminal charges against small businesses and the people who own them. Typical targets handle a lot of cash, and in Maryland gas stations, liquor stores, and used-car dealerships have landed in expensive trouble, losing money through seizures, criminal penalties, and legal bills.

South Mountain is not the first seasonal-produce market to find itself targeted for structuring recently. Taylor's Produce Stand, on the Eastern Shore, was stung last year after the feds seized about \$90,000 from its bank accounts. In December, pursuant to a civil-forfeiture settlement agreement after no criminal charges were filed, the stand's owners got back about half of the seized money.

Two members of the defense bar who handle structuring cases, Gerard Martin and Steven Levin, both former Maryland assistant U.S. attorneys, say they have noticed the anti-structuring enforcement trend emerging in Maryland over the last several years.

"The emphasis is on basically seizing money, whether it is legally or illegally earned," Levin says. "It can lead to financial ruin for business owners, and there's a potential for abuse here by the government, where they use it basically as a means of seizing money, and I think we've seen that happen."

"South Mountain Creamery!" Martin exclaims when contacted by phone. "They're going after South Mountain Creamery! That's an icon. That's like going after mom and apple pie." Then he settles in to ruminate on the general trends, saying cases typically arise because financial institutions "are required to tell the government about it" when they suspect a pattern of structured cash deposits. Then, "the government gets a search warrant and takes every nickel out of the guy's bank account," Martin continues, adding that "structuring is generally an indication that there is something going wrong, but the government doesn't always find another crime," such as drug dealing or tax evasion.

"There are a lot of legitimate reasons why a liquor store or a gas station would be depositing \$9,500 in cash a day," Martin says. "Sometimes the numbers just work out that way. But it is usually not an accident that it is happening."

Rosenstein says that anti-structuring efforts "are an increasing area of emphasis for the Justice Department, and there has been an influx of resources" to investigate and prosecute it. Thus, he says, "I'd be disappointed if there wasn't an uptick" in prosecutions, given the additional resources.

Post-Sept. 11 changes to banking laws, Rosenstein continues, have prompted financial institutions to report suspicious financial doings more vigilantly, and as a result, investigators and prosecutors now have "a treasure trove of information" about transactions, which provides them with "potential leads for finding criminal activities." Structuring is often a red flag for other crime since, Rosenstein says, "typically people who go through all those lengths" to make multiple cash deposits of just under \$10,000, sometimes at multiple bank branches on the same day, are trying to hide something. But, he continues, "There's a possibility that somebody did it innocently, and we are always open to that."

Sowers spoke at length about being targeted for structuring. In essence, he thinks the government used an exotic legal gimmick to suck hard-earned money out of his business just as he's facing bills for hay and other spring-time expenses farmers incur—but he admits that, if there's a law against what he did, "well, it looks like we did break the law," even if he didn't mean to.

7/11/2015

South Mountain Creamery's bank account seized as part of money-laundering crackdown - Baltimore City Paper

The seizure and the resulting legal limbo as he awaits the prosecutor's charging decision has "scared us to death," he says. And the banking headaches that resulted from an emptied account have been never-ending, including bounced checks, mucked-up automatic withdrawals, and the resulting overdraft fees.

"It makes me look bad," Sowers says.

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**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT J

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Northern Division

UNITED STATES OF AMERICA,

Plaintiff,

- against -

Civil No. _____

62,936.04 in U.S. Currency,

Defendant.

-----X

VERIFIED COMPLAINT FOR FORFEITURE

Plaintiff, United States of America, by its attorneys, Rod Rosenstein, United States Attorney for the District of Maryland, and Stefan D. Cassella, Assistant U.S. Attorney, brings this complaint and alleges as follows in accordance with Supplemental Rule G(2) of the Federal Rules of Civil Procedure:

NATURE OF THE ACTION

1. This is a civil forfeiture action against U.S. currency involved in violations of 31 U.S.C. § 5324(a) that is subject to forfeiture pursuant to 31 U.S.C. § 5317(c)(2).

THE DEFENDANTS IN REM

2. The defendant is \$62,936.04 in U.S. Currency.
3. The defendant property was seized from PNC Bank account number ****6112 on or about February 28, 2012.

JURISDICTION AND VENUE

4. Plaintiff brings this action *in rem* in its own right to forfeit and condemn the defendant property. This Court has jurisdiction over an action commenced by the United States

under 28 U.S.C. § 1345, over an action for forfeiture under 28 U.S.C. § 1355(a), and over this particular action under 31 U.S.C. § 5317(c)(2).

5. This Court has *in rem* jurisdiction over the defendant property under 28 U.S.C. 1355(b).
6. Venue is proper in this district pursuant to 28 U.S.C. §1355(b)(1), because the acts or omissions giving rise to the forfeiture occurred in this district and pursuant to 28 U.S.C. § 1395 because the property is located in this district.

BASIS FOR FORFEITURE

7. The defendant currency is subject to forfeiture pursuant to 31 U.S.C. § 5317(c)(2) because is was involved in a violation of 31 U.S.C. § 5324(a)(3), which makes it an offense to structure currency transactions with a domestic financial institution for the purpose of evading the reporting requirements of section 5313 of Title 31, United States Code, and the regulations promulgated thereunder.
8. To the extent that it is necessary to do so, Plaintiff intends to rely on the provisions of 18 U.S.C. § 984 to establish that the defendant property is the property involved in the violation of 31 U.S.C. § 5324(a)(3) described below.

FACTS

9. Randy Sowers and Karen Sowers, dba South Mountain Creamery, 8305 Bolivar Road, Middletown, MD 21769, maintained account number ****6612 at PNC Bank. The account was designated as the "Farm Account."
9. Between May 6, 2011 and February 27, 2012, Randy and/or Karen Sowers deposited, or caused to be deposited, \$295,220 in U.S. Currency, all in the form of cash, into the PNC Account in approximately 36 separate transactions, each in an amount just under \$10,001.

10. As set forth in Attachment A, which is incorporated herein, the deposits were contemporaneous with the receipt of cash from sales at farmers' markets that occurred between May and November, 2011, except that on each occasion when the cash receipts from the farmers' market exceeded \$10,000, less than \$10,000 was deposited into the PNC account.
11. For example, cash sales totaling \$12,176 on June 23, 25 and 26, 2011, were followed by a deposit of \$9,300 on June 29. And cash sales of \$12,785 on July 9, 2011 were followed by the deposit of \$9,000 on July 11.
12. The holding back of cash receipts in excess of \$10,000 indicates a knowledge of the Currency Transaction Reporting requirement and an intent to evade it.
13. During 2011, the Sowers received a total of \$320,465 in cash sales from the farmers' markets. Because they held back cash receipts in excess of \$10,000 when making weekly deposits, they had deposited only \$237,455 in cash into the PNC Bank account by the end of the farmers' market season in November 2011.
14. The Sowers deposited this remaining cash in periodic deposits from December 6, 2011 through February 27, 2011, the day before the defendant currency was seized from the PNC Account pursuant to a seizure warrant issued by the district court. All of these deposits were made after receipts from farmers' market sales had ceased.
15. At the time of the seizure, the Sowers had deposited \$295,220 of the \$320,465 in farmers' market receipts, leaving a balance not-yet deposited of \$25,245.
16. Randy Sowers was interviewed by Task Force Officer Michael Aiosa and Special Agent Tanisha Pryce on February 29, 2012. At that time, Sowers stated that during the farmers'

market “season,” his weekly cash receipts were on the order of \$12,000 to \$14,000 per week, but that he kept his cash deposits under \$10,000 intentionally so as not to “throw up red flags.”

17. Sowers further stated that he was advised by a teller at the bank that the deposit of more than \$10,000 in cash would lead to the filing of a form, and that he decided from that point forward not to make deposits in excess of \$10,000.
18. Sowers further stated that as of the date of the interview he still had approximately \$20,000 in cash remaining from the previous farmers’ market season that he had not yet integrated into the banking system. This amount corresponds to the \$25,245 difference between the amounts deposited as of February 27, 2012 and the \$320,465 in cash receipts from the 2011 farmers’ market season.
19. Based on the foregoing, there are sufficient facts to support a reasonable belief that the defendant funds were involved in an intentional scheme or plan to hold back cash receipts to amounts under \$10,000 to evade the Currency Transaction Reporting requirement, and that such funds are therefore forfeitable to the United States pursuant to 31 U.S.C. § 5324(a)(3) and 5317(c).

WHEREFORE, the plaintiff prays that all persons who reasonably appear to be potential claimants with interests in the defendant property be cited to appear herein and answer the complaint; that the defendant property be forfeited and condemned to the United States of America; that upon Final Decree of Forfeiture, the Secretary of the Treasury dispose of the

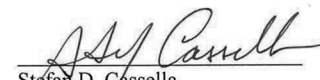
defendant property according to law; and that the plaintiff have such other and further relief as this Court deems proper and just.

Dated: April 19, 2012

Respectfully submitted,

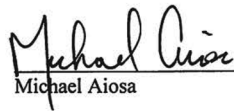
Rod J. Rosenstein
UNITED STATES ATTORNEY
District of Maryland

By:


Stefan D. Cassella
Assistant U.S. Attorney
36 South Charles Street
Fourth Floor
Baltimore, MD 21201
410 209-4986

VERIFICATION

I, Michael Aiosa, declare under penalty of perjury as provided by 28 U.S.C. § 1746, that the facts set forth in the foregoing Complaint for Forfeiture *in rem* are true and correct to the best of my knowledge and belief.


Michael Aiosa

Memo

DATE: April 19, 2012
TO: Deborah Trotter, IRS
FROM: Alan J. Pfeiffenberger
FSA Data Analyst
RE: U.S. v. \$62,936.04 U.S. CURRENCY
Civil Action No.
CATS ID: 12-IRS-000512
IRS CASE #: 1000248776

The United States has filed a forfeiture action against \$62,936.04 U.S. CURRENCY. A copy of the Complaint for Forfeiture is attached.

Notice of this seizure will be published at www.forfeiture.gov pursuant to Rule G of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims.

Thank you.

Attachment

IRS Case # 1000248776

Department of the Treasury
Federal Law Enforcement Agencies
PROCESS RECEIPT AND RETURN

PLAINTIFF UNITED STATES OF AMERICA		COURT CASE NUMBER	
DEFENDANT \$62,936.04 U.S. Currency		TYPE OF PROCESS Verified Complaint in Rem	
SERVE AT	Name Of Individual, Company, Corporation, Etc. to Serve or Description of Property to Seize 12-IRS-000512 ~ 1000248776		
	Address (Street or RFD / Apt. # / City, State, and Zip Code)		
Send NOTICE OF SERVICE copy to Requester: Alan J. Pfeifferberger, Data Analyst U.S. Attorney's Office 36 S. Charles Street, 4th floor Baltimore, Maryland 21201		Number Of Process To Be Served In This Case.	
		Number Of Parties To Be Served In This Case.	
		Check Box If Service Is On USA	
SPECIAL INSTRUCTIONS or OTHER INFORMATION TO ASSIST IN EXPEDITING SERVICE (includes Business and Alternate Addresses, Phone Numbers, and Estimated Availability times.) Arrest property. Fill in the date of arrest in this process receipt and return our copy.			
Signature of Attorney or other Originator requesting service on behalf of [☒] Plaintiff [☐] Defendant		Telephone No. (410) 209-4800	Date Apr 19, 2012
SIGNATURE OF PERSON ACCEPTING PROCESS:			Date
SPACE BELOW FOR USE OF TREASURY LAW ENFORCEMENT AGENCY			
I acknowledge receipt for the Total # of Process Indicated.	District of Origin No. _____	District to Serve No. _____	SIGNATURE OF AUTHORIZED TREASURY AGENCY OFFICER:
Date			
I hereby Certify and Return That I [☐] PERSONALLY SERVED, [☐] HAVE LEGAL EVIDENCE OF SERVICE, [☐] HAVE EXECUTED AS SHOWN IN "REMARKS", the Process Described on the Individual, Company, Corporation, Etc., At The Address Shown Above or at the Address Inserted Below.			
[☐] I HEREBY CERTIFY AND RETURN THAT I AM UNABLE TO LOCATE THE INDIVIDUAL, COMPANY, CORPORATION, ETC. NAMED ABOVE.			
NAME & TITLE of Individual Served if not shown above:		[☐] A Person of suitable age and discretion then residing in the defendant's usual place of abode.	
ADDRESS: (Complete only if different than shown above.)		Date of Service	Time of Service [☐] AM [☐] PM
		Signature, Title and Treasury Agency	
REMARKS:			

TD F 90-22.48 (6/96)

Make (5) copies after form is signed. SEND ORIGINAL + 4 COPIES to TREASURY AGENCY. Retain Copy #5 for your file.

JS 44 (Ecv.7/95) Case 1:12-cv-01216-CIVIL COVER SHEET Filed 04/19/12 Page 1 of 1

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Rod J. Rosenstein, United States Attorney
Stefan D. Cassella, Assistant United States Attorney
United States Attorney's Office
36 S. Charles Street, 4th floor
Baltimore, Maryland 21201
(410) 209-4800

DEFENDANTS

\$62,936.04 U.S. Currency

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Frederick County

(IN U.S. PLAINTIFF CASES ONLY)

ATTORNEYS (IF KNOWN) BY DEPUTY

WDQ12 CV 1216

II. BASIS OF JURISDICTION (PLACE "X" IN ONE BOX ONLY)

- [X] 1 U.S. Government Plaintiff
 [] 2 U.S. Government Defendant
 [] 3 Federal Question (U.S. Government Not a Party)
 [] 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- PTF DEF PTF DEF
 Citizen of This State [] [] Incorporated or Principal Place of Business in Another State [] []
 Citizen of Another State [] [] Incorporated and Principal Place of Business in Another State [] []
 Citizen or Subject of a Foreign Country [] [] Foreign Nation [] []

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

VERIFIED COMPLAINT FOR FORFEITURE

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/ PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instruments ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veterans' Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury	PERSONAL INJURY ☐ 362 Personal Injury Med. Malpractice ☐ 365 Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Prod. Liab. PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Prod. Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure or Property 21 U.S.C. 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☒ 690 Other	☐ 422 Appeal 28 U.S.C. 158 ☐ 423 Withdrawal 28 U.S.C. 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patents ☐ 840 Trademark	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce/ICC Rates/etc ☐ 460 Deportation ☐ 470 Racketeer Influenced Corrupt Organizations ☐ 810 Selective Service ☐ 850 Securities/Commodities Exchange ☐ 875 Customer Challenge 12 U.S.C. 3140
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 440 Other Civil Rights	PRISONER PETITION ☐ 510 Motions to Vacate Sentence ☐ 530 Habeas Corpus ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Other (including 1983 Actions)	☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY ☐ 861 HRA (1950f) ☐ 862 Black Lung(923) ☐ 863 DIWC/DIWW (405(a)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(a)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS - Third Party 26 U.S.C. 7609	☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determin. Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes ☐ 890 Other Statutory Actions

VI. ORIGIN
 [X] 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate

VII. REQUESTED IN DEMAND
 CHECK IF THIS IS A CLASS ACTION
 Request for Jury Trial: ☐ yes ☒ no

VII. RELATED CASE(S) (See instructions):

Stefan D. Cassella, Assistant United States Attorney
SIGNATURE OF ATTORNEY OF RECORD

DATE April 19, 2012

Stefan D. Cassella

ATTACHMENT A					
SCHEDULE OF CASH DEPOSITS FOR RANDY SOWERS & KAREN SOWERS					
PNC ACCOUNT NO. 6112					
April 26, 2011 THROUGH February 27, 2012					
DEPOSIT DATE	FARMERS MARKET		CASH DEPOSIT	ACCOUNT	TIME
	CASH RECEIPTS				
Saturday, May 07, 2011	10,467.00				
Saturday, May 14, 2011	11,196.00				
Monday, May 16, 2011			9,520.00	6112	2:46 PM
Saturday, May 21, 2011	11,389.00				
Monday, May 23, 2011			8,695.00	6112	11:29 AM
Saturday, May 28, 2011	9,865.00				
Wednesday, June 01, 2011			9,000.00	6112	9:47 AM
Saturday, June 04, 2011	13,284.00				
Thursday, June 09, 2011	405.00				
Saturday, June 11, 2011	13,181.00				
Thursday, June 16, 2011	1,216.00				
Saturday, June 18, 2011	7,461.00				
Tuesday, June 21, 2011			9,500.00	6112	2:02 PM
Thursday, June 23, 2011	875.00				
Saturday, June 25, 2011	8,301.00				
Sunday, June 26, 2011	5,000.00				
Wednesday, June 29, 2011			9,300.00	6112	2:43 PM
Saturday, July 02, 2011	8,901.00				
Friday, July 08, 2011			9,720.00	6112	1:14 PM
Saturday, July 09, 2011	12,785.00				
Monday, July 11, 2011			9,000.00	6112	1:37 PM
Saturday, July 16, 2011	12,259.00				
Monday, July 18, 2011			9,000.00	6112	2:15 PM
Saturday, July 23, 2011	12,922.00				
Saturday, July 30, 2011	11,512.00				
Wednesday, August 03, 2011			9,000.00	6112	11:57 AM
Saturday, August 06, 2011	12,805.00				
Monday, August 08, 2011			8,800.00	6112	10:55 AM
Thursday, August 11, 2011			9,900.00	6112	2:52 PM
Saturday, August 13, 2011	12,452.00				
Friday, August 19, 2011			9,900.00	6112	9:39 AM
Saturday, August 20, 2011	13,704.00				

ATTACHMENT A SCHEDULE OF CASH DEPOSITS FOR RANDY SOWERS & KAREN SOWERS PNC ACCOUNT NO. ██████████6112 April 26, 2011 THROUGH February 27, 2012				
DEPOSIT DATE	FARMERS MARKET CASH RECEIPTS	CASH DEPOSIT	ACCOUNT	TIME
Monday, August 22, 2011		9,000.00	6112	11:30 AM
Saturday, August 27, 2011	7,671.00			
Monday, August 29, 2011		9,000.00	6112	UNK
Saturday, September 03, 2011	12,824.00			
Saturday, September 10, 2011	12,547.00			
Monday, September 12, 2011		9,500.00	6112	12:09 PM
Saturday, September 17, 2011	12,837.00			
Monday, September 19, 2011		9,940.00	6112	12:26 PM
Friday, September 23, 2011		9,400.00	6112	10:36 AM
Saturday, September 24, 2011	12,912.00			
Wednesday, September 28, 2011		9,000.00	6112	10:44 AM
Saturday, October 01, 2011	7,472.00			
Monday, October 03, 2011		9,200.00	6112	2:29 PM
Saturday, October 08, 2011	12,033.00			
Wednesday, October 12, 2011		9,500.00	6112	9:45 AM
Saturday, October 15, 2011	5,203.00			
Monday, October 17, 2011		10,000.00	6112	3:08 PM
Saturday, October 22, 2011	11,081.00			
Monday, October 24, 2011		9,000.00	6112	2:15 PM
Saturday, October 29, 2011	6,677.00			
Saturday, November 05, 2011	8,220.00			
Monday, November 07, 2011		9,680.00	6112	10:14 AM
Saturday, November 12, 2011	3,775.00			
Monday, November 14, 2011		9,000.00	6112	11:26 AM
Saturday, November 19, 2011	8,528.00			
Monday, November 21, 2011		8,150.00	6112	2:29 PM
Saturday, November 26, 2011	8,705.00			
Monday, November 28, 2011		5,750.00	6112	10:33 AM
Tuesday, December 06, 2011		6,000.00	6112	10:27 AM
Tuesday, December 13, 2011		4,400.00	6112	1:40 PM
Tuesday, December 27, 2011		10,000.00	6112	1:44 PM
Tuesday, January 03, 2012		5,000.00	6112	1:59 PM
Thursday, January 12, 2012		2,000.00	6112	1:52 PM

ATTACHMENT A				
SCHEDULE OF CASH DEPOSITS FOR RANDY SOWERS & KAREN SOWERS				
PNC ACCOUNT NO. 6112				
April 26, 2011 THROUGH February 27, 2012				
FARMERS MARKET				
DEPOSIT DATE	CASH RECEIPTS	CASH DEPOSIT	ACCOUNT	TIME
Tuesday, January 17, 2012		4,000.00	6112	10:45 AM
Monday, January 30, 2012		4,000.00	6112	10:54 AM
Monday, February 13, 2012		6,345.00	6112	2:00 PM
Wednesday, February 22, 2012		6,020.00	6112	10:30 AM
Monday, February 27, 2012		10,000.00	6112	11:19 AM
	320,465.00	295,220.00		

**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT K

From: Cassella, Stefan (USAMD) [<mailto:Stefan.Cassella@usdoj.gov>]
Sent: Tuesday, May 29, 2012 2:06 PM
To: David L. Watt, Esq.
Subject: RE: Settlement Agreement

Mr. Taylor did not give an interview to the press.

Stef

Stefan D. Cassella
Assistant U.S. Attorney
Chief, Asset Forfeiture and Money Laundering Section
36 S. Charles Street, 4th Floor
Baltimore, MD 21201
410 209-4986

From: David L. Watt, Esq. [<mailto:dwatt@dwattlaw.com>]
Sent: Tuesday, May 29, 2012 1:41 PM
To: Cassella, Stefan (USAMD)
Subject: RE: Settlement Agreement
Importance: High

Stef,

I think we can still wrap this up before you leave on your trip. My client is still troubled by the "acknowledge" language, since he believes that he is admitting that there was reasonable cause. In the meantime, I've obtained the settlement in the Taylor Produce case (attached to this email), which is very similar to the Sowers' case, and there is no language regarding the Taylors' acknowledgement that there was reasonable cause for the seizure. We would even be satisfied with the same WHEREAS clauses as those in the Taylor agreement. I have a hard time explaining to my client why he is being treated differently, especially where your initial concern was that the government agents not be liable for any claims for the seizure (which we have covered in paragraph 5).

I hate to see this carried over til Mid-June since my clients really need the funds for their farming operations. Please reconsider your position and see if we can to an agreement on this final point this afternoon.

Thanks,

Dave

David L. Watt, Esq.
Law Offices of David L. Watt, LLC
3280 Urbana Pike, Suite 207
Jlamsville, MD 21754
(301) 639-5629

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issues contained in this written communication or in any attachment has not been written nor is it intended to be used, and cannot be used, for the purpose of (i) avoiding Federal, state or local tax penalties that may be imposed by the Internal Revenue Service or applicable state or local tax provisions.

From: Cassella, Stefan (USAMD) [<mailto:Stefan.Cassella@usdoj.gov>]
Sent: Tuesday, May 29, 2012 12:37 PM
To: David L. Watt, Esq.
Subject: RE: Settlement Agreement

David,

Sorry we couldn't get this worked out before I have to leave on my trip. We're not quite there: Mr. Sowers doesn't have to admit that he did anything wrong, but he does have to acknowledge that there was a reasonable basis for the seizure.

I'll be gone until June 11 but then we'll go almost immediately into trial. It should be over by July 1, so we can pick it up then. In the meantime, I will not object to your withholding your claim until July. If Mr. Sowers should change his mind and agree to sign the last version of the letter I sent, we can get it filed right away.

Stef

Stefan D. Cassella
 Assistant U.S. Attorney
 Chief, Asset Forfeiture and Money Laundering Section
 36 S. Charles Street, 4th Floor
 Baltimore, MD 21201
 410 209-4986

From: David L. Watt, Esq. [<mailto:dwatt@dwattlaw.com>]
Sent: Friday, May 25, 2012 2:57 PM
To: Cassella, Stefan (USAMD)
Subject: RE: Settlement Agreement
Importance: High

Stef,

I think we're almost there, but a couple of concerns. As I suggested in my May 15 email, my clients wanted language that they deny wrongdoing and did not want to admit there was reasonable cause. Again, one of my client's chief concerns is the perception in the marketplace. The latest draft replaces "admit" with "acknowledge" that reasonable cause existed, but in my client's view, this is the same thing. I originally would have preferred an affirmative "deny any wrongdoing", whereas you have "admit no wrongdoing." I know your chief concern is to ensure that government agents would not be subject to suit for seizure, but I think that's covered under Paragraph 5, so I don't believe the "acknowledge" clause is even necessary at this point.

Perhaps the easiest way to wrap this up before you go before you go abroad (vacation?) is to simply delete the "acknowledge" phrase in the 2nd WHEREAS clause since the 1st WHEREAS clause recites your filing which presumably was done with reasonable cause. So, the final version could keep the 1st WHEREAS clause reciting the government's suit, the 2nd WHEREAS clause would include my client's denial and then everything else is fine.

To sum it up, the 2nd WHEREAS clause in its entirety would be:

WHEREAS, the claimants deny any wrongdoing on their part; and

I know we're up against the deadline for filing a claim (again, I believe it's May 31, 2012), and we'd really like to wrap this up either today or at least by Tuesday (5/29/2012), so that we don't have to file a continuance.

Let me know if you have any questions.

Thanks,

Dave

David L. Watt, Esq.
Law Offices of David L. Watt, LLC
3280 Urbana Pike, Suite 207
Ijamsville, MD 21754
(301) 639-5629

NOTICE: This email is a confidential communication of the Law Offices of David L. Watt, LLC and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you have received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose the contents of the e-mail or any attachments to anyone else. If you are not an existing client of the Law Offices of David L. Watt, LLC, (1) nothing in this e-mail establishes an attorney/client relationship between you and the Law Offices of David L. Watt, LLC unless the e-mail contains a specific statement to that effect, (2) nothing in this e-mail shall be deemed, nor should you interpret anything in this e-mail to be legal advice, and (3) do not disclose anything to the Law Offices of David L. Watt, LLC that you expect to be held in confidence. Any advice concerning Federal, state and local tax issues contained in this written communication or in any attachment has not been written nor is it intended to be used, and cannot be used, for the purpose of (i) avoiding Federal, state or local tax penalties that may be imposed by the Internal Revenue Service or applicable state or local tax provisions.

From: Cassella, Stefan (USAMD) [<mailto:Stefan.Cassella@usdoj.gov>]
Sent: Friday, May 25, 2012 8:55 AM
To: David L. Watt, Esq.
Subject: Settlement Agreement

Dave,

Here is what I hope is the final draft of the agreement. I am leaving in mid-week on an overseas trip. If you have your clients sign the agreement and return it to me on Tuesday, I can get it filed in court before I leave; otherwise I can get it filed after I return.

Stef

**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT L



U.S. Department of Justice

United States Attorney
District of Maryland
Northern Division

Rod J. Rosenstein
United States Attorney

Stefan D. Cassella
Assistant United States Attorney

36 South Charles Street
Fourth Floor
Baltimore, Maryland 21201

DIRECT: 410-209-4986
MAIN: 410-209-4800
FAX: 410-962-5130
TTY/TDD: 410-962-4462

May 25, 2012

David L. Watt, Esq.
Law Offices of David L. Watt, LLC
3280 Urbana Pike, Suite 207
Jlamsville, MD 21754

Re: United States v. \$62,936.04 in U.S. Currency
No. 12-cv-01216-WDQ

Dear Mr. Watt:

In accordance with our recent conversation concerning the above-referenced forfeiture action, the following agreement is proposed pursuant to Rule 68 of the Federal Rules of Civil Procedure. Once the agreement is fully executed and returned to me, and the time for the filing of any additional claims to the property has expired,¹ I will forward it to the Court with a motion for an order of forfeiture. Once the order is entered, I will forward it to the appropriate agency for disposition.

SETTLEMENT AGREEMENT

This Settlement Agreement is made between Karen and Randy Sowers ("the claimants") and the United States of America ("the government"):

WHEREAS, the Government filed a civil forfeiture action against \$62,936.04 that was seized from PNC Bank account number ****6112 on or about February 28, 2012 ("the defendant property"); and

WHEREAS, the claimants admit no wrongdoing on their part but acknowledge that the Government had reasonable cause to seize the defendant currency and to commence the action against the defendant property; and

¹ In lieu of waiting for the time for additional claims to expire, the Government is willing to file this agreement with the court and request the entry of judgment immediately so that the non-forfeited funds may be returned to the claimant without delay, *provided* the claimant agrees to indemnify the Government should any other third party file a meritorious claim to the defendant property.

WHEREAS, the parties wish to reach a fair and expedited resolution to this matter; and

WHEREAS, the account from which the defendant property was seized was held in the name of the claimants and it does not appear that any other person would have standing to contest the forfeiture of that property;

NOW, THEREFORE, for the foregoing reasons and for good and substantial consideration, the adequacy and receipt of which is hereby acknowledged, the claimants and the government agree as follows:

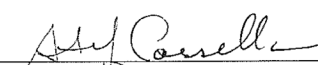
1. Entry into this Agreement constitutes recognition by the Government that the claimants, in executing this agreement, have claimed, under penalty of perjury, an ownership interest in the defendant property, and that the claimants may therefore be deemed to be parties to this matter who have filed a valid claim pursuant to 18 U.S.C. § 983(a)(4) and Supplemental Rule G(5).
2. The claimants agree that a portion of the defendant currency, to wit: \$29,500, will be forfeited to the United States, and they relinquish all right and title thereto.
3. In return, the government agrees that the remainder of the defendant property, to wit: \$33,436.04, will not be forfeited and will be returned to the claimants upon the entry of a forfeiture judgment by the court. Moreover, the Government agrees that it will not seek to seize or forfeit any part of the remainder of the \$295,220 in allegedly structured funds that were not seized.
4. The parties also agree that this civil forfeiture settlement resolves all matters, civil and criminal, relating to the alleged structuring offense, but that there is no agreement regarding any civil or criminal tax liability. The IRS has not yet completed its review of the claimants' income tax returns and nothing in this agreement precludes the IRS or the Office of the United States Attorney from pursuing any civil or criminal sanction should such liability be found to exist.
5. The claimants agree to indemnify and hold the government harmless from and against all claims, damages, losses, and action resulting from or arising out of the seizure and release of the defendant property, including any claims that may be made by a third party who files a claim before the time to do so under Rule G(5) expires, but after the parties have entered into this Settlement Agreement. The claimants understand that their consent to this indemnity provision is necessary because the Government would otherwise not be able to release any

portion of the defendant property until the time for the filing of all claims pursuant to Rule G(5) has expired.

6. Notwithstanding the Government's agreement to release a portion of the defendant property to the claimants upon the entry of a judgment of forfeiture, the claimants understand that the Internal Revenue Service is required by law to withhold the release of any funds in the Government's possession until the IRS has determined that the claimants do not owe any unrelated debts to the United States. See 31 U.S.C. § 3716. The claimants, however, reserve the right to seek the intervention of the court if the Government unreasonably delays the release of the funds to which the claimants are entitled under this agreement.
7. The parties agree to bear their own costs and attorneys fees.
8. The claimants agree that the government may submit a copy of this agreement in connection with a request for an Order of Forfeiture.
9. This agreement states the entire agreement reached between the parties hereto.

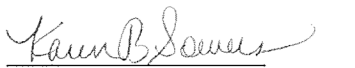
Very truly yours,

Rod J. Rosenstein
United States Attorney

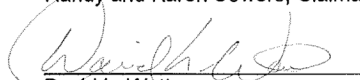
By: 

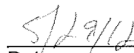
Stefan D. Cassella
Assistant United States Attorney




Randy and Karen Sowers, Claimants


Date


David L. Watt
Counsel for Claimant


Date

**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division

UNITED STATES OF AMERICA,	*	
	*	
Plaintiff,	*	
	*	
v.	*	No. 12-cv-01216-WDQ
	*	
\$62,936.04 in U.S. Currency,	*	
	*	
Defendant.	*	

* * * * *

MOTION FOR FINAL ORDER OF FORFEITURE

The United States of America, by and through undersigned counsel, hereby moves for entry of an order of forfeiture, and in support of such motion states the following:

1. The Verified Complaint for Forfeiture of the defendant property was filed on or about April 19, 2012.
2. The defendant currency, \$62,936.04, was seized from a bank account held by Randy and Karen Sowers on or about February 28, 2012 based on probable cause to believe that it was property involved in a violation of 31 U.S.C. § 5324(a)(3) (structuring), and was therefore forfeitable to the United States pursuant to 31 U.S.C. § 5317(c)(2).
3. On or about May 29, 2012 Randy and Karen Sowers ("Claimants") and the Government agreed to disposition of the forfeiture action against the defendant currency. A copy of the settlement agreement is annexed hereto as **Exhibit A**.
4. According to the agreement, the Government agrees to recognize Randy and Karen Sowers as Claimants to the currency within the meaning of 18 U.S.C. § 983(a)(4) and Supplemental Rule G(5) of the F.R.Civ.P. even though they have not filed a formal claim.

5. Moreover, according to the agreement, the Government agreed to release a portion of the seized funds (\$33,436.04) to Claimants. In return, Claimants agreed not to contest the forfeiture of the remaining \$29,500 to the government and to relinquish all right, title and interest in that property.

6. Because the defendant currency was seized from an account held solely by the claimants, and there being no other person with a potential interest in the property, the Government and Claimants entered into the Settlement Agreement before the time for other persons to file claims pursuant to Supplemental Rules G(4)(a) and G(5) has expired. The Government submits that it would be in the interest of justice for the court to approve the attached settlement agreement and enter the proposed forfeiture order without waiting the usual 60 days to see if anyone with an interest in the property files a claim. The delay would serve only to prevent the Government from releasing the balance of the seized funds to Claimants.

WHEREFORE, the United States of America respectfully requests that the Court enter judgment for the United States of America under the terms and conditions of the draft order submitted herewith for the convenience of the Court.

Respectfully submitted,

Rod J. Rosenstein
United States Attorney

Date: 5/29/2012

/s/
Stefan D. Cassella
Assistant United States Attorney
36 S. Charles Street
Fourth floor
Baltimore, Maryland 21201
Telephone (410) 209-4800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 29, 2012, a copy of the foregoing Motion for Final Order of Forfeiture was mailed first class, postage prepaid to David L. Watt, Law Offices of David L. Watt, 3280 Urbana Pike, Suite 207, Ijamsville, MD 21754

/s/
Stefan D. Cassella
Assistant United States Attorney

**PETITION FOR REMISSION OR
MITIGATION OF
RANDY AND KAREN SOWERS**

EXHIBIT N

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division

UNITED STATES OF AMERICA,	*	
	*	
Plaintiff,	*	
	*	No. 12-cv-01216-WDQ
v.	*	
	*	
\$62,936.04 in U.S. Currency,	*	
	*	
Defendant.	*	

FINAL ORDER OF FORFEITURE

IT IS ORDERED, ADJUDGED, AND DECREED on this 30th day of May, 2012

that:

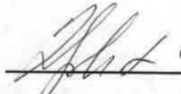
1. The United States of America has filed a Verified Complaint for forfeiture pursuant to Supplemental Rule G(2) of the F.R.Civ.P.;
2. The United States of America has shown that there was reasonable cause for the seizure of the defendant property under 28 U.S.C. § 2465;
3. Randy and Karen Sowers are recognized as claimants to the defendant property for the purposes of Supplemental Rule G(5) and 18 U.S.C. § 983(a)(4);
4. There are no other potential claimants to the defendant property;
5. The parties have reached a settlement whereby Randy and Karen Sowers have agreed not to contest the forfeiture of \$29,500 of the defendant property and the United States has agreed not to seek the forfeiture of \$33,436.04.

WHEREFORE, \$29,500 in U.S. Currency, being part of the defendant *in rem*, is condemned and all rights, title, and interest of Randy and Karen Sowers and any and all other persons is **HEREBY FORFEITED** to the United States of America; and

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Case 1:12-cv-01216-WDQ Document 3-2 Filed 05/29/12 Page 2 of 2

IT IS FURTHER ORDERED that the United States shall dispose of the defendant property in accordance with law and in accordance with the agreement annexed to the government's motion, that the portion of the defendant property that is to be returned to the claimants be released as soon as possible, consistent with the requirements of 31 U.S.C. § 3716, and that the clerk of the court shall provide copies of this order to counsel of record.

A handwritten signature in dark ink, appearing to read 'W.D. Quarles', is written over a solid horizontal line.

William D. Quarles

United States District Judge



INSTITUTE FOR JUSTICE

March 11, 2016

The Honorable Loretta Lynch
 Attorney General of the United States
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, DC 20530

Dear Madam Attorney General:

I am writing to update your office about developments relevant to a petition for remission or mitigation submitted to your agency on July 16, 2015 on behalf of Randy and Karen Sowers.

Randy and Karen—two Maryland dairy farmers—have asked DOJ to return \$29,500 forfeited under the structuring laws. DOJ has recognized that it was wrong to take this money; in March 2015, DOJ announced a policy change designed to prevent precisely this type of forfeiture by limiting application of the structuring laws to real criminals seeking to conceal illegal activity. Randy and Karen are now asking DOJ to do the right thing and return money taken before that policy change.

Recently, on February 18, 2016, the IRS granted “in full” a nearly-identical petition filed on behalf of a North Carolina convenience store owner named Khalid Quran, agreeing to return \$153,907.99 taken under the structuring laws. Khalid filed his petition on the same day as Randy and Karen, and the petitions use similar language to make essentially identical arguments.

Randy and Karen should be treated the same as Khalid. The only real difference between the petitions is technical in nature: Khalid’s case was processed as an administrative forfeiture because he signed papers consenting to the forfeiture of his money prior to the filing of a complaint, whereas Randy and Karen’s case was processed as a judicial forfeiture because they agreed to forfeit their money after a complaint was filed. This distinction explains why the petitions are addressed to different agencies. But this distinction cannot justify granting one petition and denying the other.

While Randy and Karen agreed to forfeit their money, the same was true of Khalid. Both agreements were exacted under inherently coercive circumstances. As Randy and Karen explain in their petition, the cost to fight the forfeiture would likely have exceeded the amount at issue. Moreover, Randy and Karen were threatened with *criminal* prosecution for structuring if they refused to agree to the forfeiture. As the IRS necessarily determined when granting relief to

The Honorable Loretta Lynch
March 11, 2016
Page 2 of 2

Khalid, that kind of coercive agreement should pose no barrier at all to a petition for remission or mitigation.

Khalid's petition was granted "in full"—meaning that *all* of the money taken from his account will be returned. Randy and Karen deserve nothing less. Their petition should be granted and their \$29,500 returned.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. E. Johnson", with a long horizontal flourish extending to the right.

Robert Everett Johnson
Attorney
Institute for Justice

Enc: Letter from Richard Weber re: Petition of Khalid Quran

cc: Members of the House Ways & Means Oversight Subcommittee

The Honorable Peter J. Roskam
The Honorable John Lewis
The Honorable Patrick Meehan
The Honorable George Holding
The Honorable Jason Smith
The Honorable Tom Reed
The Honorable Tom Rice
The Honorable Kenny Marchant
The Honorable Joseph Crowley
The Honorable Charles Rangel
The Honorable Danny Davis

Former Members of the House Ways & Means Oversight Subcommittee

The Honorable Mike Kelly
The Honorable Kristi Noem
The Honorable Jim Renacci

The Honorable John A. Koskinen, Commissioner, Internal Revenue Service

The Honorable Rod J. Rosenstein, U.S. Attorney, District of Maryland

Mr. M. Kendall Day, Chief, U.S. Department of Justice AFMLS

FEB-19-2016 09:49

P.002



Chief, Criminal Investigation

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

February 18, 2016

Scott Bullock
Robert Everett Johnson
The Institute for Justice
901 N. Glebe Rd., Ste. 900
Arlington, VA 22203
(fax) 703 - 682 - 9321

Re: Petition for Remission or Mitigation of Forfeiture Filed by Scott Bullock and Robert Everett Johnson, of the Institute for Justice, on behalf of Khalid Quran, concerning: \$153,907.99 in U.S. Currency Seized from the Southern Bank and Trust Company Account [REDACTED] Held in the Name 427 Convenient Mart [REDACTED]

Dear Mr. Bullock & Mr. Johnson:

On behalf of your client, Khalid Quran, you submitted a petition for remission or mitigation of forfeiture of \$153,907.99 in U.S. currency seized from the Southern Bank and Trust Company account [REDACTED] held in the name of "427 Convenient Mart," pursuant to a seizure warrant authorized by a federal judge and administratively forfeited.

After careful consideration of your petition, all relevant facts and applying the criteria for remission or mitigation pursuant to Internal Revenue Manual (IRM) section 9.7.7.4.6 and Title 28, Part 9 of the Code of Federal Regulations, I have concluded that mitigation of forfeiture is granted in full.

Sincerely,

Richard Weber
Chief, Criminal Investigation

TOTAL P.002

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