

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM
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MEMORANDUM

December 3, 2021

To: Members of the Subcommittee on Civil Rights and Civil Liberties

Fr: Subcommittee Staff

Re: Hearing on “Forfeiting our Rights: The Urgent Need for Civil Asset Forfeiture Reform”

On **Wednesday, December 8, 2021, at 10:00 a.m. ET, in room 2154 of the Rayburn House Office Building and on the Zoom video platform**, the Subcommittee on Civil Rights and Civil Liberties will hold a hearing to examine the need to reform the nation’s civil asset forfeiture laws and to prevent federal, state, and local law enforcement from abusing the civil rights and civil liberties of Americans.

I. HEARING PURPOSE

Civil asset forfeiture is a tool used by federal, state, and local law enforcement agencies to seize money, vehicles, and other assets that are believed to be connected to a crime.¹ These agencies can seize assets even when an owner has no knowledge of, or has not been charged with, the underlying crime.² Under state and federal forfeiture laws, law enforcement agencies can sell seized assets and use the proceeds to fund and expand agency budgets.³ This has led to widespread criticism that law enforcement agencies are “policing for profit.” For example, in 2018, five states—Florida, Georgia, New York, South Carolina, and Texas—seized nearly \$350

¹ Department of Justice, *Types of Federal Forfeiture* (online at www.justice.gov/afms/types-federal-forfeiture) (accessed Nov. 17, 2021).

² *How a Quiet Policy Lobbying Campaign Killed Civil Asset Forfeiture Reform in Missouri*, Pulitzer Center (Dec. 30, 2019) (online at <https://pulitzercenter.org/stories/how-quiet-police-lobbying-campaign-killed-civil-asset-forfeiture-reform-missouri>).

³ Institute for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture, 3rd Edition* (Dec. 2020) (online at <https://ij.org/wp-content/themes/ijorg/images/pfp3/policing-for-profit-3-web.pdf>).

million in assets through state civil asset forfeiture programs.⁴ In some states, agencies can keep up to 100% of forfeiture proceeds—a massive windfall for law enforcement.⁵

When assets are seized by law enforcement agencies, the burden is placed on asset owners to prove their innocence by challenging the seizures in administrative or judicial proceedings. Owners must meet a heightened burden by showing that their property was in no way connected to criminal activity or that they had no knowledge of the crime associated with their assets. Conversely, in many states, law enforcement agencies need only show probable cause, or by a preponderance of evidence, that the seized assets are connected to a crime. Because civil forfeitures are not criminal actions, owners of seized assets are not afforded fundamental protections, including the right to legal representation, making it more likely that they will be permanently deprived of their property.⁶

The hearing will address the following key points:

- Civil asset forfeiture programs are in dire need of reform to protect innocent individuals, especially those in low-income communities and communities of color, from having their assets seized by law enforcement.
- Federal equitable sharing programs allow state and local law enforcement to circumvent state reforms that limit their ability to seize assets from people who have not been charged with crimes. The Department of Justice should conduct a thorough review of its federal equitable sharing programs and reinstate the 2015 Holder Memorandum, which prohibited federal agencies from “adopting” assets seized by state and local law enforcement in certain circumstances.
- The bipartisan Fifth Amendment Integrity Restoration (FAIR) Act would restore due process and prevent state and federal law enforcement from abusing the civil rights and civil liberties of Americans by helping to end the profit motive underlying civil asset forfeiture.

II. WITNESSES

Ms. Aamra Ahmad
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American Civil Liberties Union

⁴ See Institute for Justice, *Policing for Profit State Profiles* (online at <https://ij.org/report/policing-for-profit-3/>) (accessed Nov. 29, 2021).

⁵ *Id.*

⁶ Institute for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture, 3rd Edition* (Dec. 2020) (online at <https://ij.org/wp-content/themes/ijorg/images/pfp3/policing-for-profit-3-web.pdf>).

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