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December 15, 2021

The Honorable Jamie Raskin
Chairman, House Oversight Subcommittee on Civil Rights and Civil Liberties
2147 Rayburn House Office Building
Washington, DC 20515

The Honorable Nancy Mace
Ranking Member, House Oversight Subcommittee on Civil Rights and Civil Liberties
2147 Rayburn House Office Building
Washington, DC 20515

Congress Must End Egregious Civil Asset Forfeiture and Equitable Sharing Practices

Dear Chairman Raskin, Ranking Member Mace, and members of the House Oversight Subcommittee on Civil Rights and Civil Liberties:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the civil and human rights of all persons in the United States, we thank you for holding the hearing entitled "Forfeiting our Rights: The Urgent Need for Civil Asset Forfeiture Reform." The practice of civil asset forfeiture undermines property rights, has a disparate impact on low-income communities and communities of color,¹ and is fundamentally unjust. We appreciate the committee examining this important issue and look forward to your recommendations on ending this egregious practice.

Civil and human rights advocates have long held that civil asset forfeiture and related equitable sharing programs must be abolished. Civil asset forfeiture incentivizes police to essentially steal from the people without due process of law, has been used for decades to carry out the ineffective and abusive War on Drugs, and disproportionately harms working-class people in America while enriching federal, state, and local law enforcement budgets. Civil asset forfeiture authorizes the government to confiscate and seize property when, ostensibly, the government has probable cause to believe the property is contraband, constitutes the proceeds of a crime, or is used to facilitate a crime.² Once a person's property

¹ Sallah, Michael, Robert O'Harrow Jr., Steven Rich, and Gabe Silverman. "Stop and Seize." *The Washington Post*. Sept. 6, 2014. <https://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>. An investigative series of articles by The Washington Post chronicling the issue of civil asset forfeiture found that "of the 400 court cases examined by The Post where people who challenged seizures and received some money back, the majority were black, Hispanic or another minority."
² Thompson, Richard M. II. "Contesting the Seizure of Vehicles Under Civil Forfeiture: What Process is Due?" *Congressional Research Service*. March 16, 2021. <https://crsreports.congress.gov/product/pdf/LSB/LSB10581>.

has been seized, ordinary people must navigate a system that is stacked against them, a system in which they must prove that they are not guilty in order to recover their property, turning the fundamental presumption of innocence on its head. This practice also disproportionately affects people of color and those with modest means, as many of these seizures occur where law enforcement has engaged in discriminatory profiling of people of color, like traffic stops and airport and train searches. As none other than Supreme Court Justice Clarence Thomas has recognized, “forfeiture operations frequently target the poor and other groups least able to defend their interests.” “Perversely,” Justice Thomas continued, “these same groups are often the most burdened by forfeiture.”³ This practice, however, has proved lucrative for states and for the federal government. In 2018 alone, 42 states, the District of Columbia, and the federal government accrued over \$3 billion from asset forfeiture, with \$500 million seized by the states and \$2.5 billion under the equitable sharing programs run by the Department of Justice and the Department of the Treasury.⁴ By providing kickbacks to law enforcement, asset forfeiture programs create a troublesome incentive for police and prosecutors to go after innocent people.⁵

While billed as a way to “remove the tools of crime from criminal organizations, deprive wrongdoers of the proceeds of their crimes, recover property that may be used to compensate victims, and deter crime,” this abusive practice does nothing of the sort and instead targets everyday people going about the course of their lives.⁶ Indeed, law enforcement claims that asset forfeiture targets high-level drug “kingpins,” but data from 21 states suggests that most seizures in recent years have claimed under \$2,000.⁷ Stories of those impacted by forfeiture also provide a different tale: for example, that of Malinda Harris, who testified before the committee about the seizure of her vehicle by local law enforcement.⁸ Saying they suspected the vehicle had been involved in the commission of a crime, law enforcement seized Ms.

³ Leonard v. Texas, 137 S. Ct. 847 (2017) (Thomas, J., respecting the denial of certiorari). For example, an investigative series of articles by The Washington Post chronicling the issue of civil asset forfeiture found that “of the 400 court cases examined by The Post where people who challenged seizures and received some money back, the majority were black, Hispanic or another minority.” Sallah, Michael, et al. “Stop and Seize.” *The Washington Post*. Sept. 6, 2014. <https://www.washingtonpost.com/sf/investigative/collection/stop-and-seize-2/>. See also Cary, Nathaniel, and Ellis, Mike. “65% of cash seized by SC police comes from black men. Experts blame racism.” *Greenville News*. Jan 27, 2019. <https://www.greenvilleonline.com/story/news/taken/2019/01/27/south-carolina-racism-blamed-civil-forfeiture-black-men-taken-exclusive-investigation/2459039002/>; “Civil Asset Forfeiture: A 5-Month Snapshot in New Jersey.” *ACLU-New Jersey*. Dec. 2018. <https://www.aclu-nj.org/theissues/criminaljustice/civil-asset-forfeiture> (finding that areas in New Jersey with greater populations of people of color tended to have higher numbers of seizures).

⁴ Knepper, Lisa, et al. “Policing for Profit: The Abuse of Civil Asset Forfeiture.” *Institute for Justice*. Dec. 2020. Pg. 14. <https://ij.org/wp-content/themes/ijorg/images/pfp3/policing-for-profit-3-web.pdf>.

⁵ Some agencies use forfeiture to pad their budgets – for example, a 2015 Drug Policy Alliance survey of several California police departments found that forfeiture revenue “spiked immediately after police budgets were cut.” “Above the Law: An Investigation of Civil Asset Forfeiture in California.” *Drug Policy Alliance*. 2015. https://drugpolicy.org/sites/default/files/Drug_Policy_Alliance_Above_the_Law_Civil_Asset_Forfeiture_in_California.pdf.

⁶ “Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies.” *U.S. Department of Justice and Department of the Treasury*. July 2018. <https://www.justice.gov/criminal-afmls/file/794696/download>.

⁷ Knepper, Lisa, et al. “Policing for Profit: The Abuse of Civil Asset Forfeiture.” *Institute for Justice*. Dec. 2020. Pg. 20. <https://ij.org/wp-content/themes/ijorg/images/pfp3/policing-for-profit-3-web.pdf>.

⁸ Testimony of Malinda Harris before the House Oversight Subcommittee on Civil Rights and Civil Liberties. Dec. 8, 2021. <https://docs.house.gov/meetings/GO/GO02/20211208/114293/HHRG-117-GO02-Wstate-HarrisM-20211208.pdf>.

Harris's car and kept it for more than five years before even beginning a process to keep it permanently.⁹ Similarly, Melisa Ingram and two other plaintiffs have launched a class action lawsuit against Wayne County, Michigan, challenging its seizure and civil forfeiture laws after their vehicles were seized under suspicion they had been involved in crimes, even though their owners had not been arrested, charged, or convicted of any crime.¹⁰

Equitable asset sharing serves to enrich state and local law enforcement

Current federal forfeiture laws create a financial incentive to pursue profit over the fair administration of justice, facilitate the circumvention of state laws intended to protect people from abuse, and encourage the violation of due process and property rights of people in America — particularly people of color and those less able to navigate the complex and costly processes to recover their property. One component of federal forfeiture, the equitable sharing program, is particularly injurious to those affected by this practice. Under this program, which was restarted by the DOJ in 2016,¹¹ state and local law enforcement partner with the federal government and conduct seizures under the permissive federal forfeiture policies, which allow law enforcement to keep up to 80 percent of seized assets.¹² Alternatively, under another aspect of the program, state and local law enforcement agencies can conduct adoptive seizures, wherein these agencies carry out seizures without the federal government, but then request that the federal government forfeit, or adopt, the property under federal law.¹³ The equitable sharing program is an affront to our nation's federalist system because it creates loopholes that allow state and local law enforcement to use federal forfeiture laws to circumvent state law limitations.¹⁴ This approach directly undermines states and communities and weakens our nation's self-governance while enriching law enforcement agencies. Indeed, in 2019, the federal government distributed \$333.8 million to agencies participating in the equitable sharing program, adding to the more than \$8 billion in total distributed from 2000 to 2019.¹⁵ While the DOJ and Treasury Department suggest that asset forfeiture and equitable sharing are intended to supplement, not supplant, law enforcement budgets, these staggering allocations have bolstered law

⁹ Ibid.

¹⁰ Wright, Aallyah. "Federal loophole thwarts state efforts to curb civil asset forfeiture by police." *USA Today*. Aug. 19, 2021. <https://www.usatoday.com/story/news/nation/2021/08/19/states-work-scale-back-civil-forfeiture-laws-amid-federal-loophole/8181774002/>.

¹¹ Ingraham, Christopher. "The feds have resumed a controversial program that lets cops take stuff and keep it." *The Washington Post*. March 28, 2016. https://www.washingtonpost.com/news/wonk/wp/2016/03/28/the-feds-have-resumed-a-controversial-program-that-lets-cops-take-stuff-and-keep-it/?hpid=hp_hp-top-table-main_wonk-seize-815pm%3Ahomepage%2Fstory.

¹² See "Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies." *U.S. Department of Justice and Department of the Treasury*. July 2018. <https://www.justice.gov/criminal-afmls/file/794696/download>. See also Knepper, Lisa, et al. "Policing for Profit: The Abuse of Civil Asset Forfeiture." *Institute for Justice*. Dec. 2020. Pg. 6. <https://ij.org/wp-content/themes/ijorg/images/pfp3/policing-for-profit-3-web.pdf>.

¹³ Knepper, Lisa, et al. "Policing for Profit: The Abuse of Civil Asset Forfeiture." *Institute for Justice*. Dec. 2020. Pg. 46. <https://ij.org/wp-content/themes/ijorg/images/pfp3/policing-for-profit-3-web.pdf>.

¹⁴ Wright, Aallyah. "Federal loophole thwarts state efforts to curb civil asset forfeiture by police." *USA Today*. Aug. 19, 2021. <https://www.usatoday.com/story/news/nation/2021/08/19/states-work-scale-back-civil-forfeiture-laws-amid-federal-loophole/8181774002/>; "Equitable Sharing Creates a Giant Loophole." *Institute for Justice*. Dec. 2020. <https://ij.org/report/policing-for-profit-3/pfp3content/equitable-sharing-creates-a-giant-loophole/>.

¹⁵ Knepper, Lisa, et al. "Policing for Profit: The Abuse of Civil Asset Forfeiture." *Institute for Justice*. Dec. 2020. Pg. 6. <https://ij.org/wp-content/themes/ijorg/images/pfp3/policing-for-profit-3-web.pdf>.

enforcement budgets by magnitudes for decades, resulting in the mass criminalization and over-policing that we see rampant across the country today.

Attempts by the DOJ to limit these forfeitures have offered very little substantive protection to property owners. In 2015, then-Attorney General Eric Holder placed limits on adoptive seizures except for “public safety reasons.”¹⁶ Attorney General Jeff Sessions, however, promptly rolled back these changes in 2017,¹⁷ while instituting safeguards that critics deemed “weak.”¹⁸ When the DOJ restarted the equitable sharing program in 2016, The Leadership Conference denounced the reinstatement¹⁹ and further pointed out the limitations of the supposed safeguards proffered by the DOJ upon reinstatement.²⁰ This program continues to run virtually unchecked, undermining our systems of governance while exploiting innocent people and businesses.

Congress must take swift action to reform federal civil asset forfeiture

Eliminating civil asset forfeiture is not a partisan issue. Americans across the political and ideological spectrums have recognized the harms perpetuated by asset forfeiture: A recent poll found that 59 percent of Americans oppose allowing law enforcement to use forfeited property or its proceeds for its own use, while 70 percent of Americans oppose the equitable sharing program.²¹ The Leadership Conference shares these concerns and has long fought for an end to the asset forfeiture system at the federal level.²² We urge Congress to act decisively to curb this pernicious practice, tackling reform of four aspects of the civil asset forfeiture program:

- First, the profit incentives driving civil asset forfeiture at all levels must be eliminated by ending the equitable sharing program and adoptive seizures.

¹⁶ O’Harrow Jr., Robert, et al. “Holder limits seized-asset sharing processes that split billions with local and state police.” *The Washington Post*. Jan 16, 2015. https://www.washingtonpost.com/investigations/holder-ends-seized-asset-sharing-process-that-split-billions-with-local-state-police/2015/01/16/0e7ca058-99d4-11e4-bcfb-059ec7a93ddc_story.html.

¹⁷ “Attorney General Sessions Issues Policy and Guidelines on Federal Adoptions of Assets Seized by State or Local Law Enforcement.” *Department of Justice*. July 19, 2017. <https://www.justice.gov/opa/pr/attorney-general-sessions-issues-policy-and-guidelines-federal-adoptions-assets-seized-state>.

¹⁸ Knepper, Lisa, et al. “Policing for Profit: The Abuse of Civil Asset Forfeiture.” *Institute for Justice*. Dec. 2020. Pg. 46. <https://ij.org/wp-content/themes/ijorg/images/pfp3/policing-for-profit-3-web.pdf>; McDonald, Jennifer. “Civil Forfeiture, Crime Fighting and Safeguards for the Innocent: An Analysis of Department of Justice Forfeiture Data.” *Institute for Justice*. Dec. 2018. https://ij.org/wp-content/uploads/2018/11/Forfeiture-White-Paper_Final.pdf.

¹⁹ “Civil and Human Rights Coalition Responds to Justice Department Move to Encourage Policing for Profit.” *Leadership Conference on Civil and Human Rights*. March 29, 2016. <https://civilrights.org/2016/03/29/civil-and-human-rights-coalition-responds-to-justice-department-move-to-encourage-policing-for-profit/>.

²⁰ “Letter to Senate & House Committees on the Judiciary re: Call to Pass Civil Forfeiture Reform Quickly and Independently.” *Leadership Conference on Civil and Human Rights*. July 20, 2017. <https://civilrights.org/resource/letter-re-call-pass-civil-forfeiture-reform-quickly-independently/>.

²¹ Poll: YouGov Institute for Justice Civil Forfeiture. Sep. 28-29, 2020. <https://ij.org/wp-content/uploads/2020/11/Results-for-Institute-for-Justice-Civil-Forfeiture-245-9.30.2020-1-Civil-Forfeiture-2.pdf>.

²² Letter to the Senate Judiciary Committee re: Support Effective & Comprehensive Federal Civil Asset Forfeiture Reform. *Leadership Conference on Civil and Human Rights*. April 15, 2015. <https://civilrights.org/resource/support-effective-comprehensive-federal-civil-asset-forfeiture-reform/>.

- Second, reform must also tackle these perverse profit incentives by restoring federal oversight and control. Forfeiture proceeds should be directed to the U.S. Treasury’s General Fund or toward programs that do not perpetuate improper forfeiture-related incentives.
- Third, the burden of proof in asset forfeiture proceedings should be increased from a “preponderance of the evidence” to “clear and convincing evidence” before the government can take someone’s property believed to be connected to a crime. Chairman Raskin and Congressman Walberg’s bill, H. 2857, the Fifth Amendment Integrity Restoration (FAIR) Act,²³ which The Leadership Conference has endorsed in the past, includes this necessary change to the burden of proof. Additionally, the right to counsel should apply in all civil asset forfeiture proceedings and the right to a pretrial hearing should be guaranteed.
- Finally, innocent business owners subjected to forfeiture should be protected. Congress must revise federal law to end the use of civil forfeiture in structuring cases where funds cannot be tied to illegal activity and are not derived from an illegal source. The IRS and other federal agencies should be required to prove that cash and other property is connected to illegal activity or derived from an illegal source that is separate and apart from a federal structuring offense.

As you consider this issue, we urge you to advance federal forfeiture policies that will protect lower income communities and communities of color, enhance due process rights, strengthen property rights across the country, and curb misaligned policy and economic incentives surrounding the use of federal civil asset forfeiture. We encourage you to pursue bipartisan legislative reforms. Thank you for your commitment to this issue and for your consideration. If you have any questions or concerns, please feel free to contact me at cook@civilrights.org or my colleague Chloé White, Policy Counsel, at white@civilrights.org.

Thank you,



Sakira Cook
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The Leadership Conference on Civil and Human Rights

²³ H. 2857. 117th Congress. 2021.