



The American Civil Liberties Union

Written Statement of
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For a Hearing on

**Forfeiting our Rights:
The Urgent Need for Civil Asset Forfeiture Reform**

United States House of Representatives
Committee on Oversight and Reform
Subcommittee on Civil Rights and Civil Liberties

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Chairman Raskin, Ranking Member Mace, and Distinguished Members of the Civil Rights and Civil Liberties Subcommittee,

On behalf of the American Civil Liberties Union, I am pleased to be here today to discuss the need for federal civil asset forfeiture reform, including investigating areas where oversight of the Department of Justice Asset Forfeiture Program is needed and to support the bipartisan Fifth Amendment Integrity Restoration Act (FAIR Act), H.R. 2857, introduced by Representatives Walberg (MI-7), Raskin (MD-8), McClintock (CA-4), Cardenas (CA-29), Rush (IL-1), and Armstrong (ND).

For 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee to everyone in this country. Consistent with this mission, the ACLU advocates for reforms that will protect the due process rights of all property owners and promote fairness, equity, and transparency by law enforcement within the communities they serve.

Civil Asset Forfeiture Is Fundamentally Flawed

Civil forfeiture statutes inherently violate fundamental constitutional rights, including our right to due process of law and the right to be free from punishment that is disproportionate to the offense. Civil forfeiture allows law enforcement to seize and take property from someone who has not been convicted of a crime, and in many cases not even charged with a crime. Once their property is taken, it is presumed guilty and the owner bears the burden of proving the property's "innocence" in court. For anyone who cannot bear the financial costs or time lost from work spent fighting in court, there is no recourse to lawfully owned property or cash being seized by law enforcement.

While it is the ACLU's position that the practice of civil forfeiture should be abolished, we support taking reasonable steps immediately to provide due process protections, add critical checks and balances, and increase transparency to begin to mitigate the unfairness of current civil asset forfeiture schemes.

The ACLU believes there are three fundamental flaws with federal and state civil asset forfeiture laws: 1) they inherently violate fundamental constitutional rights, including the right not to be deprived of property without due process of law and the right to be free from punishment that is disproportionate to the offense; 2) they are executed in a manner that disproportionately impacts people of color and low-income individuals; and 3) they create perverse profit-motives for law enforcement and allows agencies to augment their budgets without appropriate public and



legislative oversight. The Department of Justice (DOJ) Equitable Sharing program poses an additional problem by giving state and local agencies a way to side-step state reforms.

Perhaps no better case highlights the myriad problems with civil asset forfeiture than the case of *Morrow v. City of Tenaha*. In 2008, the ACLU filed a lawsuit on behalf of African-American and Latinx drivers in two East Texas counties where police seized \$3 million dollars from at least 140 people between 2006 and 2008. In *Morrow*, police officers from the town of Tenaha and Shelby County routinely pulled over motorists without any legal justification, asked if they were carrying cash and, if they were, ordered them to sign over the cash to the city or face charges of money laundering or other serious crimes. Almost all of the stops involved Black and Latinx drivers. In one instance in 2007, police went so far as to threaten to take children from their parents if they did not surrender the cash they were carrying. In that traffic stop, a Latinx man and his partner, a white woman, were detained. In response to a question by an officer, they stated they had about \$6,000 in cash because they were on their way to buy a new car. The officer threatened to charge the couple with money laundering and put their children, who were also in the car, in foster care if they did not hand over the cash. None of the plaintiffs in the *Morrow* case were ever arrested or even charged with a crime, and the seized assets were used to enrich Tenaha and Shelby County prosecutors and law enforcement officers themselves.¹ Had attorneys from the ACLU not stepped in, these drivers with low and modest incomes may have never seen justice.

Civil asset forfeiture has been championed by law enforcement officials as a powerful weapon to fight the failed War on Drugs. Indeed, it was touted as a form of poetic justice: purportedly seizing the assets of major drug traffickers and repurposing these “tainted” assets to fund law enforcement initiatives. However, as a result of the ease with which law enforcement authorities can secure forfeitures and the lack of transparency and oversight, the use and abuse of forfeiture has skyrocketed but with little pay off to public safety. Unfortunately, in their zeal, law enforcement agencies have turned civil forfeiture into a living nightmare for thousands of ordinary people who have minor brushes with the law or who are completely innocent of wrongdoing. Tragically, scores of innocent citizens and the Constitution have become casualties in this so-called “war.”

Civil forfeiture is widely used by federal, state, and local law enforcement throughout the country. The practice is driven by the billions of dollars it generates annually for law enforcement at all levels because law enforcement keeps the assets they seize. Between 2008 and 2014, state and local police made more than 55,000

¹ See ACLU, *Morrow v. City of Tenaha, et al.*, <https://www.aclu.org/blog/criminal-law-reform/reforming-police/settlement-means-no-more-highway-robbery-tenaha-texas>.



seizures of cash and property with the help of the federal government.² Between 2000 and 2016, the DOJ paid state and local law enforcement \$6.8 billion dollars in forfeiture proceeds from the DOJ's Asset Forfeiture Fund, which took in \$4.5 billion dollars in 2014 alone. Civil forfeiture creates perverse incentives for federal, state, and local law enforcement agencies, and DOJ's Equitable Sharing Program provides a loophole for state and local agencies to undermine state reforms.

Far greater than these billions, however, is the price that people pay when their homes, businesses, cars, cash, and other property are seized. The ACLU has long been concerned with how civil asset forfeiture is being used to carry out the War on Drugs. Just as the War on Drugs disproportionately impacts people and communities of color, so does civil asset forfeiture. Based on mere suspicion of drug activity—with no hard evidence and without a conviction—Black and Latinx people are disproportionately targeted for civil asset forfeiture. And too often, those with modest means are most vulnerable to forfeiture. Very few individuals have the resources to take on the government, especially when the deck is stacked against property owners, as it is in civil asset forfeiture cases.

Modern Civil Asset Forfeiture is Driven by the War on Drugs

In the last 50 years, we have spent trillions of dollars on the failed and ineffective War on Drugs; today it is estimated that the United States spends over \$551 billion annually on the War on Drugs. That is in addition to the more than \$1 trillion it is estimated that the United States has spent on interdiction policies.³ Despite these expenditures, drug use has not declined, while millions of people—disproportionately poor people and people of color—have been caged and then branded with criminal records that pose barriers to employment, housing, and stability.

Tactics used to wage the War on Drugs have deepened racial injustice, shattered neighborhoods, and separated families, all without evidence that they have improved public safety. An examination of incarceration rates illustrates the havoc the War on Drugs has wreaked on communities of color. In federal prison, the ratio between Black and white people is 7:1, and the ratio between white and Hispanic people is 4.6:1.⁴ Approximately 57% of people incarcerated in state prisons and 77%

² Robert O'Harrow, Jr., et al., *Holder limits seized-asset sharing process that splits billions with local, state police*, Wash. Post (Jan. 16, 2015), http://www.washingtonpost.com/investigations/holder-endsseized-asset-sharing-process-that-split-billions-with-local-state-police/2015/01/16/0e7ca058-99d4-11e4-bcfb059ec7a93ddc_story.html.

³ Jeffrey Miron, *The Budgetary Effects of Ending Drug Prohibition*, CATO Institute (Jul. 23, 2018), <https://www.cato.org/tax-budget-bulletin/budgetary-effects-ending-drug-prohibition>.

⁴ Katie Mettler, *States imprison black people at five times the rate of whites — a sign of a narrowing yet still-wide gap*, Wash. Post (Dec. 4, 2019), <https://www.washingtonpost.com/crime->



of people incarcerated in federal prisons for drug offenses are Black or Latinx, compared to 30% of the U.S. population.⁵ According to the Sentencing Project, 45% of all individuals convicted of a drug offense and serving time in a state prison are Black compared to 28% that are white.⁶ The impact of these disproportionate incarceration rates on families, and children in particular, cannot be understated. One in nine Black children have an incarcerated parent, compared to one in 28 Latinx children and one in 57 white children.⁷

Arrest patterns also demonstrate the disproportionate racial impact of the War on Drugs. Black people are 3.64 times more likely than white people to be arrested for marijuana possession, notwithstanding comparable usage rates.⁸ In 2020, over 1.1 million people were arrested in the United States for a drug violation. Additionally, 24 percent of those arrested for a drug offense were Black despite making up 13 percent of the population.⁹

While many of us are familiar with the way the War on Drugs has harmed communities of color, the role civil asset forfeiture has played is not well-known. The American model for civil forfeiture dates to the eighteenth-century when archaic legal concepts evolved into forfeiture laws used to combat piracy and customs violations. Under this system, courts permitted the government to seize the offending ship as a civil remedy, rather than requiring criminal prosecution of the owners, who were usually not American and difficult to locate for criminal prosecution. Modern civil asset forfeiture flows from these same archaic legal concepts. Federal asset forfeiture law was uncommon until the Comprehensive Drug Abuse Prevention and Control Act of 1970.¹⁰ The limited seizures authorized by this law were subsequently expanded to allow money and real property

[law/2019/12/04/states-imprison-black-people-five-times-rate-whites-sign-narrowing-yet-still-wide-gap/](https://www.aclu.org/news/civil-rights/2019/12/04/states-imprison-black-people-five-times-rate-whites-sign-narrowing-yet-still-wide-gap/).

⁵ Drug Policy Alliance, *The Drug War, Mass Incarceration and Race* (June 2015), https://www.unodc.org/documents/ungass2016/Contributions/Civil/DrugPolicyAlliance/DPA_Fact_Sheet_Drug_War_Mass_Incarceration_and_Race_June2015.pdf.

⁶ Leadership Conference Education Fund, *The 'War on Drugs' Has Failed, Commission Says*, (June 8, 2011), <https://civilrights.org/edfund/resource/the-war-on-drugs-has-failed-commission-says/>.

⁷ Drug Policy Alliance, *The Drug War, Mass Incarceration and Race* (Jan. 15, 2018), <https://drugpolicy.org/resource/drug-war-mass-incarceration-and-race-englishspanish>

⁸ ACLU, *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform* (2020), <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

⁹ Wendy Sawyer and Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, Prison Policy Initiative, <https://www.prisonpolicy.org/reports/pie2020.html>.

¹⁰ Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1242 (1970) (codified at 21 U.S.C. § 881).



seizures,¹¹ in the name of waging the growing War on Drugs. Today, the Drug Enforcement Agency (DEA) makes by far the most cash seizures of all the agencies that participate in DOJ's Asset Forfeiture program (DEA, ATF and FBI).¹²

Civil Asset Forfeiture Harms Low-Income and Communities of Color

Like so many other parts of the criminal legal system, people of color are negatively affected by civil asset forfeiture laws. The racially disparate impact of these laws, as illustrated in the *Morrow* case from Texas, is a pattern repeated around the country:¹³

- In South Carolina, from 2014 to 2016, law enforcement accumulated over \$17 million from civil forfeitures, with 75% going to police agencies and 20% going to prosecutors. Although only 27% of the population was Black, seven out of ten property seizures were from Black people. And while Black men represented only 13% of the state's population, they made up 65% of cash forfeitures.¹⁴
- In California, in 2014, the vast majority (85%) of proceeds from the federal Equitable Sharing program went to California agencies that police communities that are majority people of color.¹⁵
- Half of federal forfeiture suits filed by DEA in California over a four-month period in 2015 involved people with Latinx surnames.¹⁶
- In Pennsylvania, from 2011 to 2013, although only 44% of Philadelphia's population was African-American, 63% of cash forfeitures by the city were taken from African-Americans, and a stunning 71% of innocent owners in cash cases were African-American.¹⁷ The county that most aggressively

¹¹ Psychotropic Substances Act of 1978, Pub. L. No. 95-633, Title III, 301(a), 92 Stat. 3777 (1978) (codified at 21 U.S.C. § 881(a)(6)); Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat 2050 (1984) (codified at 21 U.S.C. § 881(a)(7)).

¹² Office of the Inspector General, U.S. Dep't of Justice, *Review of the Department's Oversight of Cash Seizure and Forfeiture Activities*, 11-12 (Mar. 2017) ("DOJ Inspector General 2017 Report"), <https://www.oversight.gov/sites/default/files/oig-reports/e1702.pdf>.

¹³ The data on race discussed here was collected through independent investigations by local journalists and organizations like the ACLU. To increase transparency, Congress should require the Justice and Treasury Departments to collect data on race and ethnicity for all seizures processed through their asset forfeiture programs, including adoptions.

¹⁴ Anna Lee, et al., *TAKEN: How Police Departments Make Millions by Seizing Property*, Greenville News (Jan. 27, 2019), <https://www.greenvilleonline.com/in-depth/news/taken/2019/01/27/civil-forfeiture-south-carolina-police-property-seizures-taken-exclusive-investigation/2457838002/>.

¹⁵ ACLU of California, *Civil Asset Forfeiture: Profiting from California's Most Vulnerable* (May 2016), https://www.aclunc.org/docs/aclu_california_civil_asset_forfeiture_report.pdf.

¹⁶ *Id.*

¹⁷ ACLU of Pennsylvania, *Guilty Property* (June 2015), https://www.aclupa.org/sites/default/files/Guilty_Property_Report_-_FINAL.pdf.



pursues forfeitures in Pennsylvania, Montgomery County, has an African-American population of only 9%, but the majority of forfeitures, 53%, were from African-Americans.¹⁸

- In 10 Oklahoma counties, between 2010 and 2015, 65% of seizures of \$5,000 or more involved people of color.¹⁹
- In the 1990's, in one Florida county, 90% of the drivers from whom cash was confiscated without arrest were Black or Latinx.²⁰
- A broader study published in 2020 reviewed forfeitures from 2,278 municipal police departments between 1993 and 2007 and concluded there was “a significant relationship between minority population share and reported forfeiture revenue.”²¹

Today, federal law enforcement does not report data on the race of property owners subject to federal forfeiture. Nevertheless, the *Washington Post* in 2014 examined 400 federal court cases challenging property seizures and found the majority of property owners were people of color.²²

Low-income communities are also targeted for civil forfeiture schemes. In New Jersey, for example, eight of the ten cities with the highest frequency of seizures over a five-month period in 2016, were also the poorest in the state.²³ Of the ten California counties with the highest per capita federal seizure rates in 2014, nine had a median income below the statewide median and six had a higher proportion of people living in poverty than the statewide figure.²⁴ As Justice Clarence Thomas has recognized, “forfeiture operations frequently target the poor and other groups

¹⁸ ACLU of Pennsylvania, *Forfeiture in the Shadows* (Dec. 2015) (report based on reviewing data from every civil asset forfeiture case filed from 2012 to 2014, including reviews of 298 randomly selected forfeiture cases), <https://www.aclupa.org/en/publications/broken-justice-investigation-civil-asset-forfeiture-montgomery-county>.

¹⁹ Clifton Adcock, *Most Police Seizures of Cash Come from Blacks, Hispanics*, Okla. Watch (Oct. 7, 2015), <https://oklahomawatch.org/2015/10/07/most-police-seizures-of-cash-come-from-blacks-hispanics/>.

²⁰ Jeff Brazil and Steve Berry, *Tainted cash or easy money?*, ORLANDO SENTINEL (June 14, 1992), http://articles.orlandosentinel.com/1992-06-14/news/9206131060_1_seizures-kea-drug-squad.

²¹ Aallyah Wright, *Federal Loophole Thwarts State Curbs on Police Seizures of Property*, PEW (Aug. 18, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/08/18/federal-loophole-thwarts-state-curbs-on-police-seizures-of-property>.

²² Michael Sallah, et al., *Stop and Seize*, Wash. Post (Sept. 6, 2014), <https://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>.

²³ ACLU of New Jersey, *Civil Asset Forfeiture: A 5-Month Snapshot in New Jersey* (2018), <https://www.aclu-nj.org/?cID=1333>.

²⁴ ACLU of California, *Civil Asset Forfeiture: Profiting from California's Most Vulnerable* (May 2016), https://www.aclunc.org/docs/aclu_california_civil_asset_forfeiture_report.pdf.



least able to defend their interests.” “Perversely,” Justice Thomas said, “these same groups are often the most burdened by forfeiture.”²⁵

Cash forfeitures are in many cases not “kingpin”-sized. Many are from property owners who have not been found guilty of a crime, and in many cases are never even charged. “Innocent before proven guilty” is a bedrock principle of our justice system, but in Philadelphia, nearly one-third (32%) of cash forfeitures were from people who had not been convicted of a crime, and half of all cash cases involved sums less than \$192,²⁶ making it hardly worth a victim’s time and effort to challenge the seizure. In New Jersey, Hudson County led the state in forfeitures, nearly half of which were less than \$175.²⁷ In South Carolina, nearly 40% of forfeitures were from people who were either never arrested or were charged but not convicted, and of the cash seizures, more than 55% were of less than \$1,000.²⁸ In Alabama, a review of forfeiture cases filed in 14 counties in 2015 revealed that in half the cases the amount of cash seized was less than \$1,372. Criminal charges were not brought in a quarter of those cases, but those counties profited by more than \$670,000.²⁹

Even DOJ’s own Inspector General could not confirm that the DEA’s interdiction seizures are related to criminal investigations. An examination of 85 cash seizures from interdiction operations at transportation facilities, such as airports, parcel distribution centers, train stations, and bus terminals, from which DEA reined in nearly \$4 million,³⁰ the Inspector General could verify that “only 34 percent (29 out of 85) of the seizures had advanced or were related to a criminal investigation.”³¹ His report cautioned that “[w]hen seizure and administrative forfeitures do not ultimately advance an investigation or prosecution, law enforcement creates the appearance, and risks the reality, that it is more interested in seizing and forfeiting cash than advancing an investigation or prosecution.”³²

²⁵ Eugene Volokh, *Justice Thomas Sharply Criticizes Civil Forfeiture Laws*, Wash. Post (Mar. 16, 2017), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/03/06/justice-thomas-sharply-criticizes-civil-forfeiture-laws/>.

²⁶ ACLU of Pennsylvania, *Guilty Property* (June 2015), https://www.aclupa.org/sites/default/files/Guilty_Property_Report_-_FINAL.pdf.

²⁷ ACLU of New Jersey, *Civil Asset Forfeiture: A 5-Month Snapshot in New Jersey* (2018), <https://www.aclu-nj.org/?cID=1333>.

²⁸ Anna Lee, et al., *TAKEN: How Police Departments Make Millions by Seizing Property*, Greenville News (Jan. 27, 2019), <https://www.greenvilleonline.com/in-depth/news/taken/2019/01/27/civil-forfeiture-south-carolina-police-property-seizures-taken-exclusive-investigation/2457838002/>.

²⁹ Alabama Appleseed Center for Law and Justice and SPLC, *Forfeiting Your Rights*, <https://www.alabamaappleseed.org/report-forfeiting-your-rights/#download>.

³⁰ DOJ Inspector General 2017 Report, 22.

³¹ *Id.*, 25.

³² *Id.*, iii.



Civil forfeiture is also fueling police militarization, another byproduct of the War on Drugs. Police departments purchase military weapons and equipment using the profits they reap from forfeitures because the proceeds go directly to their coffers and they can spend it without the oversight or accountability that comes with making budgetary justifications to elected officials. In one Georgia town with a population of roughly 30,000, police used forfeiture funds to purchase a \$230,000 armored personnel carrier.³³ Across the country, police have spent more than \$175 million on weaponry with funds acquired through federal and local partnering on civil forfeiture.³⁴

Civil Asset Forfeiture Creates Perverse Incentives

The lucrative business of asset forfeiture has created a strong temptation for law enforcement officials to pursue assets without worrying about the expense and evidentiary burden of pursuing convictions. A study of 1,400 municipal and county law enforcement executives found that agencies’ “depend[ence]” on civil forfeiture proceeds have created a “conflict of interest between effective crime control and creative fiscal management.”³⁵ Some officers even report redirecting efforts from drug busts to highway interdictions instead, in light of the opportunity to seize more cash, because seized drugs are not so easily exchanged for new equipment.³⁶

Moreover, it is not just state and local law enforcement agencies that are motivated by profit. Federal agencies are also incentivized by the potential to generate revenue. In 2000, Congress passed modest reforms through the Civil Asset Forfeiture Reform Act (CAFRA), which applies to federal agencies. Under CAFRA, if a property owner files a timely claim, the agency has 90 days to either file a court action for forfeiture or return the property, a decision that’s made by the federal prosecutor. However, the Department of Homeland Security Inspector General recently reported that in 7 of 11 Customs and Border Patrol (CBP) cases where the property owner filed a claim, rather than referring the case to federal prosecutors, CBP negotiated a settlement with the property owner, including in one case where CBP “determined that the funds seized did not appear to come from illegal

³³ Robert O’Harrow Jr., et al., *Asset Seizures Fuel Police Spending*, Wash. Post (Oct. 11, 2014), <https://www.washingtonpost.com/sf/investigative/2014/10/11/asset-seizures-fuel-police-spending/>.

³⁴ Nick Sibilla, *Federal forfeiture program: what’s it funding?*, FORBES (Oct. 22, 2014), <http://www.forbes.com/sites/instituteforjustice/2014/10/22/how-civil-forfeiture-fuels-police-militarization-and-lets-cops-buy-sports-cars-and-hire-clowns/>.

³⁵ John L. Worrall, *Addicted to the Drug War: The Role of Civil Asset Forfeiture as a Budgetary Necessity in Contemporary Law Enforcement*, Journal of Crim. Justice (2001), <https://www.heartland.org/template-assets/documents/publications/1-s2.0-s0047235201000824-main.pdf>.

³⁶ Robert O’Harrow Jr., et al., *Police Intelligence Targets Cash*, Wash. Post (Sept. 17, 2014), <https://www.washingtonpost.com/sf/investigative/2014/09/07/police-intelligence-targets-cash/>.



activity.”³⁷ CBP also regularly violated CAFRA by waiving the 90-day deadline without a court order so it could buy itself additional time to negotiate settlements with property owners. Once property finally was returned, CBP and Secret Service acted outside of the bounds of CAFRA by requiring owners to sign away their right to file suit against the government as a condition for returning property.³⁸

Federal Reform is Needed

The decades-long problems with civil asset forfeiture being discussed at this hearing have prompted some states to reform their laws, and the results suggest that civil forfeiture can be abolished without compromising public safety. In 2015, New Mexico’s legislature passed reforms that abolished civil forfeiture and directed proceeds from any forfeitures to a general fund. The Institute for Justice analyzed data from New Mexico and neighboring states and found that New Mexico’s “overall crime rate did not rise following the reform, nor did arrest rates drop, strongly suggesting civil forfeiture is not an essential crime fighting tool and law enforcement agencies can fulfill their mission without it.” More states should heed the lessons learned from New Mexico, namely that these reforms can be taken on safely. Nebraska, North Carolina, and Maine have also abolished civil forfeiture and only allow forfeitures under criminal law.

However, while states make progress toward reform, DOJ’s Equitable Sharing Program creates a loophole for state and local agencies to bypass those reforms. The Equitable Sharing Program allows state and local law enforcement to obtain up to 80% of proceeds from forfeitures obtained through joint investigations with federal authorities, as well as through local and state seizures that are “adopted” by DOJ for federal forfeiture. Officers from North Carolina and Nebraska have cited their states’ restrictions as “the primary reason ... [they] disproportionately used adoptive seizure.”³⁹ Between 2000 and 2016, DOJ’s Equitable Sharing Program distributed over \$6 billion to state and local law enforcement agencies.⁴⁰ Between 2001 and 2014, the Equitable Sharing Program processed over 60,000 cash seizures on highways and elsewhere without search warrants or indictments, totaling more than \$2.5 billion. Half of the seizures were below \$8,800.⁴¹ The Institute for Justice reports that “on average, agencies in states with the lowest financial incentives and greatest protections for property owners took in more than twice as much equitable

³⁷ Dep’t of Homeland Security, Office of Inspector General, *DHS Inconsistently Implemented Administrative Forfeiture Authorities under CAFRA* (Aug. 27, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-09/OIG-20-66-Aug20.pdf>.

³⁸ *Id.*

³⁹ DOJ Inspector General 2017 Report, 36.

⁴⁰ *Id.*, 1.

⁴¹ Michael Sallah, et al., *Stop and Seize*, Wash. Post (Sept. 6, 2014), <https://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>.



sharing money per agency as agencies in states with the highest incentives and poorest protections.”⁴²

Conclusion

It is beyond time that Congress meaningfully reform civil asset forfeiture. Current civil asset forfeiture laws and practices fundamentally violate Americans’ due process rights under our Constitution with little benefit to society. In addition to the due process problems, the impact on people of color and low-income communities from the manner that forfeiture laws are enforced are also deeply troubling. Decades have passed since Congress expanded civil forfeiture laws to help wage the War on Drugs and we are losing that war. Deposits into DOJ’s Asset Forfeiture Fund have increased ten-fold between 2000 and 2014, from \$440 million to \$4.5 billion.⁴³ Despite these profits, drug use remains high.⁴⁴ The most tragic sign that the drug war has failed is the national overdose death rate, which has risen steadily since 1999, when it was less than 20,000.⁴⁵ Today it stands at a record high of more than 100,000 deaths this past year.⁴⁶

We are pleased to see this Committee’s commitment to reforming civil forfeiture. While it is the ACLU’s position that the practice of civil forfeiture should be abolished, we support taking the following reasonable steps immediately:

- *Pass the FAIR Act.* The Fifth Amendment Integrity Restoration Act (FAIR Act), H.R. 2857, introduced by Representatives Walberg (MI-7), Raskin (MD-8), McClintock (CA-4), Cardenas (CA-29), Rush (IL-1), and Armstrong (ND), reforms five aspects of current forfeiture law. First, it eliminates the profit incentives driving civil forfeiture at all levels by the Equitable Sharing program. Second, it tackles the perverse profit incentives at the federal level by requiring that forfeiture proceeds be deposited into the U.S. Treasury’s General Fund, rather than the DOJ’s Asset Forfeiture Fund. This would

⁴² Brian D. Kelly, *Fighting Crime or Raising Revenue?*, Institute for Justice (June 2019), 11, <https://ij.org/wp-content/uploads/2019/06/Fighting-Crime-or-Raising-Revenue-7.20.2020-revision.pdf>.

⁴³ Lisa Knepper, et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture*, Institute for Justice (3rd Ed.), at 162, <https://ij.org/wp-content/themes/ijorg/images/pfp3/policing-for-profit-3-web.pdf>.

⁴⁴ *Key Substance-Use and Mental Health Indicators in the United States*, Substance Abuse and Mental Health Administration (Sept. 2020) (reporting illicit drug use by Americans was at 17.8% in 2015 and 20.8% in 2019), <https://www.samhsa.gov/data/sites/default/files/reports/rpt29393/2019NSDUHFFRPDFWHTML/2019NSDUHFFR1PDFW090120.pdf>.

⁴⁵ *Overdose Death Rates*, National Institute on Drug Abuse, Fig. 1, <https://www.drugabuse.gov/drug-topics/trends-statistics/overdose-death-rates>.

⁴⁶ Roni Caryn Rabin, *Overdose Deaths Reached Record High as the Pandemic Spread*, N.Y. Times (Nov. 17, 2021), <https://www.nytimes.com/2021/11/17/health/drug-overdoses-fentanyl-deaths.html>.



allow Congress to direct these funds through congressional appropriations, as required by the Constitution. Third, it shifts the burden of proof from the property owner to the government. Fourth, it raises the standard of proof from “preponderance of the evidence” to a “clear and convincing evidence” before the government can take property believed to be connected to a crime. Finally, the FAIR Act provides property owners with the right to counsel in all civil forfeiture proceedings. As a result, the FAIR Act reforms would help protect the property rights of all individuals subject to forfeiture, and minimize civil forfeiture’s disproportionate impact on people of color and low-income people.

- *End Administrative Forfeitures.* Congress should abolish administrative forfeiture, which allows federal agencies to forfeit property without judicial oversight, and is used in 80 to 90% of all federal forfeitures.⁴⁷
- *Conduct Meaningful Oversight of DOJ’s Asset Forfeiture Fund to Ensure the Program Appropriately Serves the Public Interest.* Hold DOJ accountable for allowing the Equitable Sharing Program to be used as a loophole by state and local agencies to bypass state reforms. Also, hold DOJ accountable for failing to place reasonable guardrails on some of the worst spending excesses of equitable sharing proceeds, such as purchases of military equipment by local and state agencies.
- *Increase Transparency.* For all federal forfeitures, including adoptions, require DOJ and Treasury to collect and publicly report data on the race and ethnicity of property owners and whether the seizure is related to a criminal investigation.

Thank you for the opportunity to testify at this critical hearing on the urgent need to reform civil asset forfeiture laws.

⁴⁷ See *Policing for Profit*, at 24-26.