

PROTECTING SMALL BUSINESSES FROM IRS ABUSE

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

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PROTECTING SMALL BUSINESS FROM IRS ABUSE

WEDNESDAY, FEBRUARY 11, 2015

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

The subcommittee met, pursuant to call, at 10:05 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:]



Chairman Roskam Announces Hearing on Protecting Small Businesses from IRS Abuse

House Committee on Ways and Means Subcommittee on Oversight Chairman Peter Roskam (R-IL) today announced that the Committee on Ways and Means Subcommittee on Oversight will hold a hearing on the IRS's use of civil asset forfeiture laws to seize the bank accounts of law abiding small businesses, and the settlement tactics employed by the agency. The hearing will take place on Wednesday, February 11 at 10:00 AM in Room B-318 of the Rayburn House Office Building.

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 Tuesday, February 25, 2015**. 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.

1. 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.
2. 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.
3. 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. Good morning, the hearing will come to order. Welcome to the Oversight Subcommittee hearing 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 business owners 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 examine the IRS's use and abuse of its civil asset forfeiture authority. What is civil asset forfeiture exactly? Under current law, federal agencies like the IRS can seize people's assets without any proof of wrongdoing. 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, and 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 did nothing wrong.

These small businesses keep getting caught in the snares largely because they are just that, small. They do a lot of transactions in cash because, believe it or not, we are still a very cash-driven economy. 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. However, 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.

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. We have received their statements for the record.

We also learned yesterday that the Treasury Inspector General for Tax Administration has planned an audit of the IRS' practices in this area, so that 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 while you testify here today.

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.

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. The practice of the agency seizing the assets of taxpayers came to our attention through press reports at the end of last year. We were concerned that in many of the press reports the taxpayers were small businesses that made cash deposits from daily operations. 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.

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 mic 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. However, 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.

[The prepared statement of Mr. Koskinen follows:]

**WRITTEN TESTIMONY OF
JOHN A. KOSKINEN
COMMISSIONER
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT
ON FINANCIAL TRANSACTION STRUCTURING
FEBRUARY 11, 2015**

Chairman Roskam, Ranking Member Lewis and members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the role of Internal Revenue Service Criminal Investigation (IRS-CI) in the detection and deterrence of financial crimes such as structuring and the law enforcement procedure called asset forfeiture.

The national strategy for combatting financial crimes involves multiple law enforcement organizations working together to disrupt and dismantle criminal enterprises. Financial crimes undermine the stability of the U.S. economy and threaten the integrity of our tax system, as funds from legal and illegal sources go undetected through tax evasion schemes. This untaxed underground economy ultimately erodes public confidence in the tax system and contributes to the tax gap.

As the sole law enforcement organization responsible for enforcing our nation's tax laws and supporting federal tax administration, IRS-CI plays a unique 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. Over time, IRS-CI has become known as having the best financial investigators in the government and their skills are often sought by other law enforcement agencies and prosecutors. They focus their efforts on national law enforcement priorities such as tax evasion, money laundering, public corruption and terrorist financing. IRS-CI's conviction rate, which is indicative of the quality of cases it recommends to the U.S. Department of Justice for prosecution, remains one of the highest among federal law enforcement agencies. In fiscal year 2014, the IRS-CI conviction rate was 93 percent.

Congress has enacted numerous statutes to help law enforcement organizations like IRS-CI detect and investigate potential crimes through mechanisms such as third-party reporting.¹ The *Currency and Foreign Transactions Reporting Act of 1970* – also known as the Bank Secrecy Act (BSA) – was passed in part to uncover criminal activities previously hidden from the government. Under the law, financial institutions are required to report individuals engaging in cash transactions exceeding \$10,000 in currency. These reports, called Currency Transaction Reports (CTRs), in combination with other reports like Suspicious Activity Reports (SARs) required by applicable laws and

¹ Statutory authorities, delegated authorities, and internal policies, procedures and guidelines apply to the conduct of criminal investigations by IRS-CI. Title 26 United States Code (USC) §7608(b) provides the initial authority for investigating crimes arising under the Internal Revenue laws. IRS-CI also has explicit enforcement responsibilities with regard to Title 18 USC §1956 and 18 USC §1957 dealing with money laundering and Title 31 USC §5311 *et seq.* dealing with the Bank Secrecy Act.

regulations, constitute a robust set of data widely used by federal law enforcement organizations to uncover a variety of illegal activities both domestically and around the world.

To circumvent BSA reporting requirements, criminals manipulate cash transactions to fall below the \$10,000 threshold that triggers the requirement to file a CTR. This intentional manipulation of the CTR filing threshold is referred to as structuring. The *Money Laundering Control Act of 1986* criminalized structuring for the purpose of evading the reporting requirements and made a person who willfully violated the law subject to possible fines and imprisonment. Ignorance of the law is not a defense to criminal structuring.

Criminals structure financial transactions to avoid BSA reporting for any number of reasons. For instance, structuring can be used to conceal from the government illegal cash-generating activities, such as drug-dealing. Structuring can also be used to conceal legal cash-generating activities as a way to evade paying taxes. Regardless of whether the funds come from a legal or illegal source, structuring financial transactions to evade BSA reporting requirements is a felony that IRS-CI continues to investigate in adherence with the law.

For a structuring violation to occur, the individual must act with the purpose of evading reporting obligations under the BSA. Depending on the facts and circumstances presented, a conspicuous pattern of cash deposits or other transactions may constitute circumstantial evidence that the bank's account holder acted with this illegal purpose. When evidence indicates criminal wrongdoing has occurred, structuring will be investigated and where appropriate, prosecution will be recommended, often together with other crimes such as tax evasion and money laundering. In cases where structuring occurred but is not separately charged as a crime, evidence of structuring may be presented to establish willfulness or as an affirmative act in furtherance of tax evasion or other crimes.

A critical tool to combat criminal activity is the seizure and forfeiture of assets related to those criminal activities. A "seizure" is the process through which the government initially comes into possession of property. "Forfeiture" proceedings are proceedings through which the government may acquire legal title and full rights of ownership as to the property. There are significant due process protections in place to protect the rights of innocent parties.

Before it can seize property in a structuring case, IRS-CI special agents prepare a seizure warrant affidavit, which is reviewed and approved internally by CI management. The affidavit is then reviewed by an Assistant U.S. Attorney (AUSA) and his/her manager and if they agree the affidavit is legally sufficient, the AUSA and the special agent appear before a federal magistrate judge where the special agent swears to the information contained in the affidavit. If the magistrate judge determines sufficient evidence was presented to establish probable cause, a seizure warrant is issued. IRS-CI agents then serve the warrant, and assets (cash and/or property) are seized.

Once a seizure takes place, the applicable civil or criminal forfeiture process follows pursuant to 18 U.S.C. § 983, 21 U.S.C. § 853 and other applicable federal forfeiture statutes. To civilly forfeit property, the government must prove by a preponderance of the evidence that the property is the proceeds of a criminal offense, or is involved in or traceable to a criminal offense, for which forfeiture is an available sanction. The property owner has the opportunity to challenge the government's evidence and assert his or her claim in the applicable civil or criminal process.

At issue in recent months has been the practice of law enforcement organizations seizing for forfeiture funds that were structured but were not derived from or associated with any other illegal activity. To be clear, structuring is a felony no matter the source of the funds, and federal law allows for seizures as a permissible tool. But it should also be noted that there are significant safeguards to ensure the reasonableness of any seizure action and that parties with an interest in the seized asset have a full and fair opportunity to be heard.

Structuring bank deposits or withdrawals to evade BSA reporting requirements is a felony, regardless of whether the funds come from a legal or illegal source. However, we recognize that small businesses and individuals may make deposits under \$10,000 without any intent to avoid the reporting requirements. In that light, after conducting a review of structuring cases last year, the IRS concluded that it will focus its resources on cases where evidence indicates that the structured funds are derived from illegal sources. We have tried to take a common sense approach to how we operate in this area.

Specifically, the IRS will no longer pursue the seizure and forfeiture of funds associated solely with "legal source" structuring cases unless there are exceptional circumstances justifying the seizure and forfeiture and the case has been approved by a senior headquarters executive within IRS-CI. While the act of structuring to evade BSA requirements – whether the funds are from a legal or illegal source – is against the law, IRS-CI special agents will view this act as an indicator that other, more serious crimes may be occurring. This ensures that IRS-CI continues to focus its limited investigative resources on identifying and investigating tax violations within its jurisdiction that closely align with IRS-CI's mission and key priorities.

The new policy will help ensure consistency in how IRS-CI structuring investigations and related seizures are conducted. Seizure and forfeiture in "illegal source" structuring cases will continue, and in conducting any and all asset forfeiture actions, IRS-CI will continue to fully comply with all legal, regulatory, and policy requirements. IRS recognizes that seizure and forfeiture are powerful tools that must be administered fairly, efficiently, and in compliance with the law.

Let me conclude by noting that the IRS recognizes and emphasizes in all of its work the importance of administering the law fairly. We have processes in place to ensure we use our investigative tools appropriately and we continually look to make improvements. At the same time, IRS-CI will continue to investigate and assist in these significant financial investigations that will generate the maximum deterrent effect to criminals and

those considering violations of the law, and that will enhance voluntary compliance and ensure fairness. I appreciate the opportunity to testify on this important topic and I would be happy to take your questions.

Chairman ROSKAM. Thank you, Commissioner.

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. On Monday, I was in my district and held a meeting of about 50 people and I 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. As much as I tried to talk about any other subject that we are 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 what we feel like is an abuse of small business owners. Last year, a woman from Iowa, 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 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 have the money to travel here from Iowa to tell her story. But she would like to tell it, so this is Carole 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 has owned her small business for 38 years, and for 38 years, she has only accepted cash payments. Accordingly, 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 containing \$33,000 was frozen, and the IRS informed her that she was being suspected of structuring. It took her almost a year and a half to get her money back. Even so, she had to close her restaurant because she 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. 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 have any burden of proof that they must provide to the person the money has been seized, or his or her attorney or accountant, is there any burden of proof that the IRS has 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 the money seized 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, Mr. 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.

We talked a little bit about Ms. Hinder, \$33,000 was seized from her. Maybe that is not that much to the IRS, but there is another person that will appear on the panel who had \$900,000 seized from them.

In my business, having access to capital is critical, so when somebody can seize those assets based on their interpretation or their belief that you have been helping somebody launder money, there can be a devastating effect. 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 takes action, 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. The issue 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. Mr. Commissioner, you and I have met before, and you told me at one time there are two types of people 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. However, the reality of it is, for Carole Hinder, 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? These are the exact people that we need 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. 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 happened to you.

Mr. KOSKINEN. I am sure we are all in that position.

Mr. KELLY. 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. Do you think it would be 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. That is not the question. They haven't been found guilty of anything yet. This is only 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 this 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 due process. The suspicion of guilt is one thing. The ability to shut down a business or a person, limits their access to capital, and put them in a bad position is another. 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, "yes, they have, but." "No but, we can't help you."

Mr. KOSKINEN. Right. And I think it is an important issue.

Mr. KELLY. It is not only important. I have got to tell you it is far beyond important. Important is dismissive. It is critical. We are killing these people and their businesses 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. If you 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 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.

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 do if you were in business and somebody did that to you. I got to tell you, access to capital, access to cash, is 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 non-illegal 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, Mr. Commissioner, 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. 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 desired—because it is an easier way to go.

Probable cause, you mentioned this issue a couple of times, what is the underlying probable cause that is required to be shown before assets can be seized?

Mr. KOSKINEN. The underlying probable cause at this point would be we have evidence that there is criminal sourcing involved.

Mr. MEEHAN. So now it is going to be criminal sourcing. What was the standard of probable cause before this new policy was put in place?

Mr. KOSKINEN. Probable cause before would have been—

Mr. MEEHAN. Just the simple act of structuring?

Mr. KOSKINEN. Structuring, exactly.

Mr. MEEHAN. Okay, structuring 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 of criminal sourcing presented to the judge by the U.S. attorney before a seizure that will be initiated?

Mr. KOSKINEN. That is correct.

Mr. MEEHAN. Okay. Are you aware that in 2012—for the statistics that I have seen—statistics show 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 drug-related or terrorist-related incidents 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, but half the cases involve 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. Weren't 80 percent of these cases 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. In the course of it, he showed numerous times that 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 him this case could easily become a criminal case against him 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.

I have a few specific questions about the new policy. The new policy that is dated 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 for example, they decided, 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 simply the act of structuring?

Mr. KOSKINEN. Yes.

Mr. HOLDING. Okay. You are 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, at a case from North Carolina, from my former prosecutorial district, after your policy change. I have read through the affidavit and the associated documents. There is no allegation of illegal activity other than the act of structuring. I believe if you looked at cases, there has been no change in practice that would require the allegation of 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 sum of money, and it does not aver a criminal act on my part, that I can then go to the judge and say this is an insufficient affidavit here because 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 [continuing]. I have a defense.

Mr. KOSKINEN. To the seizure——

Mr. HOLDING [continuing]. To that seizure——

Mr. KOSKINEN [continuing]. That we have not provided any evidence——

Mr. HOLDING [continuing]. 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 [continuing]. 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, it is a banking law, correct?

Mr. KOSKINEN. It is a banking law, the Bank Secrecy Act, correct.

Mr. SMITH. Okay. So how often do you find 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 under-reporting 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 or number of 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.

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 based upon, and that concerns me if you are going to be basing it on those metrics.

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, what concerns me about your new policy is 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.

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 constituents, who are angry over the President's unconstitutional Executive amnesty. Here is the truth of the matter: President Obama's Executive amnesty isn't just about immigration; it is about taxes also. 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 amnesty is, quote, "you are willing to pay your fair share of taxes."

Mr. Commissioner, I have 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. 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 in the United States. However, isn't it true that President 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. I heard you say last week that an illegal immigrant who gets a Social Security number, thanks to President Obama's Executive amnesty, can actually claim EITC for years in which he was illegally working in the United States 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. The Joint Tax Committee tells us that individuals could get a total of \$23,800 for the years 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 President Obama's amnesty, illegals will be getting thousands of dollars from the IRS. I feel like that is 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 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, but just to be clear, that gives the IRS all the ability to take the initiative. In other words, a defendant is not, 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 a 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 for the change was an argument about an allocation of resources. So, theoretically, if the IRS were to get all the resources that it was requesting, 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 is 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 with an audit. There is certainty as it relates to: What is the subject of this inquiry? What is the duration of the inquiry? The taxpayer can prepare for this, 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 [continuing]. Without any question, there is nobody on this panel that is going to quarrel with the use of government power to disrupt criminal enterprises. Yet, the witnesses that are going to speak 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 re-engaging with Mr. Holding's inquiry about doing your best to influence the U.S. attorneys in these cases? 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 to be 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 [continuing]. 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 to them come today from you, the Commissioner of the IRS?

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 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 recommend you to have your staff sum-

marize those stories in their actual accounts, because the agency that 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, 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 ask 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 \$66,000, 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.

[The prepared statement of Mr. Sowers follows:]

Statement of Randy D. Sowers U.S. House Committee on Oversight
February 5, 2015

My name is Randy D. Sowers. I live at 8305 Bolivar Road Middletown, Maryland 21769. I am married to Karen B. Sowers. We have been married since 1974. Along with my children, we are farm family living in Frederick County, Maryland. I began renting our dairy farm in 1981, and took a loan to buy the farm in 1987. Due to the economics of farming, we have been on the verge of losing our farm numerous times over the past 30+ years. While a lot has changed for us over the years, one thing has not changed: We get up every day at 2:00 am to milk cows and do everything else to keep the farm running.

On our farm, we produce milk, cheese, eggs, and meats and produce everything we need to care for our animals on our farm. We sell our farm products to farm co-ops and directly to consumers. For consumers we home deliver products and we also sell directly to consumers at farmer's markets.

Most weekends, my wife and I get up early and drive our truck to farmer's markets. We sell whatever we can at these markets. Most of the sales are in cash.

Since the farmer's markets are usually on the weekends, we can't deposit the cash we receive until Monday when the banks open. We make the deposits in our farm account and spend the money on farm expenses.

In May 2011, my wife brought a cash deposit to our bank and was told by the teller that if the deposit was less than \$10,000, the bank would not have to fill out an IRS reporting form. So, for those Farmer's markets in which we collected more than \$10,000, my wife would keep some cash on hand for farm expenses, and deposit the balance. That's why we had several deposits less than \$10,000 beginning in May 2011. I want to make clear that my wife did not do this for any reason except that she believed it was saving paperwork for the bank, and not because she thought she was avoiding any law.

On February 29, 2012, 2 Federal Agents from the Department of Treasury Financial Crimes Unit arrived at my farm. They started asking me questions about our bank account. Then they gave me a subpoena for our bank records. Only then was I informed that all of the funds in our account, over \$62,000 had been seized by the government.

This was the biggest shock of my life. The government had filed criminal charges against my wife and I. Not only that, we needed those funds to run our farm!

I want to be clear that at no time did we believe we did anything wrong.

After the initial shock, we had our attorney contact the US Attorney prosecuting the case. According to our attorney, the US Attorney stated that while he didn't think we were involved in any criminal activity, he would still need to continue the investigation. He also stated that he would be willing to settle the case for much less than the amount seized as long as he didn't uncover any crimes.

Not long after that, I received a call from a reporter from The City Paper in Baltimore. He had heard about the charges and he wanted to do a story. At first, I didn't want to speak with him, but he said he was going to do the story whether I spoke to him or not. So, I told him everything I have just told you.

Once the story ran in the newspaper, the US Attorney's attitude changed about settlement. He told my attorney that he wasn't willing to be as accommodating now that I had spoken to the press.

Eventually, my wife and I decided to settle the case. The government kept \$29,500 of our money.

What I want to say about all this is:

It is not right that the government can take all of your money on the basis that they think you have done something wrong.

Also, when the government shows up at your door with armed agents and hands you a subpoena, your whole life is turned upside down.

This case has caused so much stress on me and my family.



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.

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.

[The prepared statement of Mr. Hirsch follows:]

Good morning, Chairman Roskam, and members of the Committee. I am pleased to be with you today, and to have this opportunity to tell you about my treatment at the hands of the IRS. My case is over now, but Americans deserve to know what the IRS is up to. No other American should be put through the nightmare I experienced.

For twenty-seven years, I have operated Bi-County Distributors, Inc., a small business that distributes candy, food, cigarettes, and other products to convenience stores on Long Island. When I was growing up, my father worked in convenience-store distribution, and I learned about the business from him. Today, my brothers Richard and Mitchell are also partners in the business. Every weekday, we load up our vans with products for convenience stores, and I personally drive a van on a delivery route through Suffolk and Nassau Counties. I often work eleven-hour days to keep the business going.

The IRS seized almost half a million dollars from my business. It then held that money for over two-and-a-half years without charging me with any wrongdoing and without giving me any opportunity to make my case before a judge. The IRS's conduct drove my business to the edge of insolvency. In fact, my business would not have survived if longtime business partners had not lent us extraordinary credit. Then, after holding my money for years, the IRS returned the money—still without having ever alleged *any* wrongdoing by me, my brothers, or anyone else associated with my business. The IRS did not

apologize, did not pay interest on the money, and did not compensate me for the tens of thousands of dollars that I spent to get my money back.

The Seizure

On May 21, 2012, when I went to the bank to deposit money in my business's bank account, I was told by the teller that the entire contents of the account had been seized by the IRS. The account contained \$446,651.11. This was the first time I learned that I had been targeted by the IRS. I received no advance warning that my bank account might be seized, and nobody from the government asked me any questions or spoke to me about my banking practices prior to the seizure.

The next day, on May 22, 2012, I received a copy of a seizure warrant. The warrant stated that my money had been seized because my brothers and I allegedly engaged in "structuring" by depositing cash in the bank in amounts under \$10,000. Prior to reading the warrant, I had never heard of the concept of "structuring" and had no idea that depositing cash in amounts under \$10,000 could ever be against the law.

Convenience-store distribution is, by its nature, a cash-intensive business, as convenience stores often pay for inventory with cash. Over the years, I had a number of banks close the business's bank accounts with little warning or explanation. My accountant advised me that banks find frequent cash deposits burdensome in part because of paperwork burdens associated

with deposits over \$10,000. My accountant advised that my brothers and I should keep our cash deposits under \$10,000 to minimize the burden on our bank and to avoid having our accounts closed in the future.

Because I was eager to explain the motivation for my banking practices to the government, I reached out to the officer who had sworn the affidavit accompanying the warrant—Michael Kearns, a Nassau County detective who was identified in the affidavit as a member of the “New York Asset Forfeiture Task Force of the U.S. Internal Revenue Service.” I invited Mr. Kearns to come visit my business to talk about the reasons for our banking practices and the reasons why the money had been seized. Mr. Kearns, however, refused even to meet with me.

The Government’s Fishing Expedition

Shortly after the seizure, I retained a local attorney, who took steps to initiate a meeting with federal authorities. A meeting finally occurred on October 25, 2012, five months after the seizure, and was attended by my attorney and by Assistant U.S. Attorney Diane Beckmann, as well as other unknown government officials.

It was my impression that government officials, during the meeting, were fishing for information about my business in an attempt to find some after-the-fact justification for having seized the money. At one point during the meeting, the participants called me on the phone and asked a number of

questions about my banking practices. In particular, I was asked a number of questions about why my brothers and I deposit endorsed third-party checks in the business's account. I explained that convenience stores often pay for inventory using checks that have been endorsed to them by their customers, and that we accept those checks as payment and deposit them in our account. There is nothing unlawful about that practice. It was clear to me from their tone and the questions that they asked that the government officials knew next to nothing about my particular business or the way my industry worked.

Although the government did not make any allegation of wrongdoing after the October 2012 meeting, the government still was unwilling to return the money. So, in the summer of 2013, my attorney suggested that we hire a forensic accounting firm to audit the business in order to demonstrate our innocence to the government and avoid ruinously expensive litigation. At a cost of over \$25,000, we hired a well-established Manhattan CPA firm, Baker Tilly, to audit the business over a period of 18 months prior to the seizure.

Baker Tilly gave the business a clean bill of health. They found that Bi-County reported all third-party checks and cash on its federal tax return, and they found no basis to believe that my brothers or I had purposefully sought to circumvent laws requiring reporting of cash transactions.

My attorney and I presented the results of the Baker Tilly audit to the government in the summer of 2013. Government officials did not question the

results of the audit and did not suggest that they were in possession of any evidence of wrongdoing by anyone associated with the business. Nonetheless, the government still refused to return the money.

Over the following year, the government contacted me on two occasions to propose a settlement under which I would agree to forfeit a substantial portion of the money to the government. I rejected these offers, as I felt that I had done nothing wrong and should not be forced to give up my hard-earned money for no reason.

Finally, on July 25, 2014, approximately two years after the initial seizure, I received notice that the IRS was auditing my business's 2012 income-tax return. That audit is still ongoing. In my nearly 28 years in business, I had never before been audited.

The Impact Of The Seizure

Having our business's entire bank account seized by the government was a devastating experience.

The money that was in the account was money that was needed to pay vendors, bills, and other expenses necessary to keep the business operating. Convenience-store distribution is a low-margin business; almost all the cash that we receive from convenience stores is used to pay our vendors, with only a small amount retained as profit. As a result, the majority of the money seized from the account was money that we owed to our business partners.

Our business has been able to survive the loss of this money, but only thanks to the generosity of our vendors. We have worked with many of our vendors for decades; some also worked with my father. Our vendors have been willing to lend us an extraordinary amount of credit on the basis of that relationship. However, extending so much credit for so many years has created a substantial hardship for our vendors.

Being forced to ask for such a favor has also been embarrassing for me as a business owner. In all the years that I had been in this business, I had never before bounced a check. It was extraordinarily difficult to be forced to explain to friends and business partners that the business had suddenly been driven to the edge of financial ruin. Even friends and long-time business associates looked at me as though I may have been guilty of something for the IRS to have seized my money.

Being deprived of the business's working capital has also made the day-to-day operation of the business substantially more difficult. We have been forced to keep less inventory immediately on hand, and, as a result, I have had to work harder, for longer hours, to keep my customers satisfied.

The stress of fighting to keep my business running—while also dealing with a government seemingly determined to find any possible justification for taking my business's money—is an experience I would not wish on anyone. Yet I lived with that stress for over two-and-a-half years.

The Return Of The Money

In Fall 2014, I teamed up with the Institute for Justice, a non-profit public interest law firm that litigates around the country to protect property rights. On October 16, 2014, we filed a case in federal court demanding that the IRS return the money it had seized.

That lawsuit attracted significant attention in the national press. It was featured in a front-page story in the *New York Times* and in an editorial in the *Wall Street Journal*. The public reaction to news of my case was harshly critical of the IRS.

Rather than defend its actions in court, the IRS opted to return all of the money that it seized from my business. On January 20, 2015, a full 974 days after the IRS seized my bank account, the government filed with the court a “Stipulation and Proposed Order of Settlement” promising to return the money. In the stipulation, the government acknowledged that “neither Bi-County nor its employees has been charged with any crime in connection with the Seized Funds.” We hope the money will be back in our account soon.

Although the government agreed to return the money, the government will not undo the harm it has caused. The government will not pay interest on the money, although it held the money for over two-and-a-half years. The government also will not reimburse the money that I spent to get my money

back—including approximately \$25,000 that I paid in fees to my first attorney and over \$25,000 that I paid to obtain a forensic audit.

It is gratifying that the government has finally agreed to return my money, but it is also bittersweet. After putting me through the wringer for over two-and-a-half years, the government has been able to walk away from the case without suffering any real consequences. The government turned my life upside down for no apparent reason, and yet the government has never even apologized for its conduct.

Conclusion

No American should have to endure the treatment that I received at the hands of the IRS. Rather than investigate *before* taking my business's entire bank account, the IRS seized the account and then conducted a two-and-a-half year fishing expedition *after* the seizure in an attempt to find some justification for its actions. Ultimately, finding nothing, the government returned the money—without any compensation for the hardship caused by the seizure and without even an apology.

In this country, people are supposed to be innocent until proven guilty. But, in the eyes of the IRS, I was guilty until proven innocent—forced to prove my own innocence to get my property back. I hope that, by bringing my experience to the attention of this committee, I can prevent other Americans from being treated the same way.

Thank you for the opportunity to testify.



Chairman ROSKAM. Thank you, Mr. Hirsch.
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.

[The prepared statement of Mr. Clyde follows:]

The Money Laundering Suppression Act of 1994
&
The Law of Structuring

31 USC § 5324

“Where NO SAFE HARBOR EXISTS for law
abiding small businesses that deposit cash”

Testimony of Andrew S. Clyde

February 11, 2014

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Background.**The Company:**

I am Andrew Clyde, the CEO and owner of Clyde Armory, Inc. We are a small business with a Federal Firearms License that sells guns, ammunition and related accessories to both law enforcement agencies and the local population from our retail store in Athens, GA. I have lived the American dream with my business.

The Beginnings:

I started "Clyde Armory" as a sole proprietor "home business" in 1991. My initial focus was to sell firearms to law enforcement agencies and then eventually to expand the business to serve the general public. I grew the business as my finances allowed until 1997. I then went back to school, to the University of Georgia for my Masters in Business. While there I built the business plan that would allow me to successfully launch Clyde Armory in a bigger way. When I graduated with my MBA in 1999, I decided to become a true entrepreneur and make Clyde Armory my primary source of income.

I moved the business from my house to a small rented retail location in 1999 and as I put in hard work and long hours it grew. I worked as its only employee until 2002 when I made my first full time hire. By the end of that year I had 4 total employees.

During that time I was still a Reserve Officer in the US Navy and was called to active duty for service in Operation Iraqi Freedom from January – June 2003. I returned to my business and it continued its growth through 2004.

Also in 2004, Clyde Armory obtained its first insurance policy. It was NRA Endorsed Business Insurance from Lockton Risk Services. The standard policy regarding cash covered \$10,000 of cash losses outside the premises. Therefore, to better manage risk, Clyde Armory's policy for taking cash outside the premises mirrored the limits of its insurance policy. This means that cash taken to the bank for deposit was always less than \$10,000.

In the fall of 2004, Clyde Armory expanded its footprint from 1,400 square feet to 2,900 square feet and business increased. In February 2005 I was again mobilized to active duty by the Navy to serve with my SeaBee Regiment in combat, attached to the 1st Marine Expeditionary Force in Fallujah, Iraq. After a successful deployment, I returned in June 2005 to again focus on my small business.

In 2007 I hired my first employee who had Information Technology (IT) experience with the intention of transitioning the business to an automated Point of Sale (POS) System. In November 2007 I was again mobilized by the Navy to serve in Operation

Enduring Freedom which supported combat operations in both Iraq and Afghanistan. I returned in June 2008 after a third successful combat deployment and then transitioned to the inactive Navy Reserve.

Significant Growth:

In late 2008 Clyde Armory broke ground to build its first dedicated Armory building totally owned by the company. In January 2009, Clyde Armory Incorporated was born and the company transitioned from a sole proprietorship to a real corporation. In June 2009 Clyde Armory, Inc. acquired its first automated Point of Sale system and began using barcodes and scanners for all its sales.

In May of 2010, the new Clyde Armory building was finished and a move was made to the new location which was now over 12,000 square feet. Business continued to be strong and in April of 2011 a new, more robust POS system was acquired to handle the increase in customers and sales.

In May 2012, Clyde Armory obtained a new insurance policy. This time it was from Philadelphia Insurance, which offered the same \$10,000 coverage limit on cash outside the premises. More recently I learned from our insurance broker, BB&T, that the \$10,000 cash limitation is a standard limit in the insurance industry for small businesses.

Cash in the Firearms Industry:

Though most firearms are not purchased with cash, there are still many people who use cash to purchase firearms and ammunition and their reasons are very legitimate.

- 1) Purchase of a gift for a spouse or family member, so there is no check book or credit card record for the spouse to see the cost.
- 2) Purchase of a gift for YOU, so there is no check book or credit card record for the spouse to see the cost. This is very common.
- 3) Using your "sock money" which has been squirreled away for something special.
- 4) Bubba doesn't have a credit card or a checking account so he only uses cash

Sandy Hook Tragedy, Newtown, CT:

The firearms industry is very sensitive to government regulation. When Barak Obama was re-elected President on 6 November 2012, firearm sales increased significantly. When the Newtown tragedy occurred in December 2012, the President said that banning black rifles was part of the solution. That legislative effort sent the market into orbit and every AR15 rifle I had in my store sold out in less than two weeks. Firearm and ammunition sales sky rocketed immediately thereafter and continued until all inventory

on hand and in the pipeline was exhausted. People began buying other guns as well and we would sell out of product as soon as it would arrive. AR15 rifles became hard to acquire but we had good connections and were able to purchase at least some inventory to sell. However, the store looked quite empty compared to normal.

We experienced business like I have never seen before. In the 5 months that followed we made about \$7.5 million in sales of firearms and related product of which about 15% was in cash. That translated to about 1.2 million dollars of cash. Clyde Armory had banked with Robins Federal Credit Union (RFCU) since 2009 and my financial manager generally made daily deposits of funds. During this time of record sales, Clyde Armory held to the company policy of not carrying more than \$10,000 off premises to deposit in the bank at any one time.

I learned from documents in the case that at least one IRS field agent visited Clyde Armory on February 6, 2013 to provide reconnaissance information. Clyde Armory was described by the agent in his report as "a high end gun shop that looked like a castle". There was no mention of even the suspicion of illegal activity from the recon mission.

My Personal Day That Will Live in Infamy.

On Friday April 12th, 2013 I was visited by two IRS agents who interviewed me about my business processes, and then served me with a seizure warrant which notified me that \$940,313 had already been seized from my companies bank account in Robins Federal Credit Union. They also educated me on both the term structuring and "CTR", as I had no idea what either of them were, and they notified me that structuring was a felony. This is the first I had ever heard of the term structuring and the first time I became aware of the legal requirement for banks to report cash deposits over \$10,000. Though I was told on this day that "structuring" was a felony, I was also told that the US Attorney was considering this just a civil forfeiture matter.

I was never so afraid in my life, not even in combat, so much so that I trembled when they left. A felony, how could this be a felony? I was just depositing my own hard earned and legally earned cash in the bank. How can that be a felony? I pay my taxes, I try to do everything correct. This is illogical. But if they were right then I could lose everything I had worked for in my business, all 22 years of building my dream. A person cannot have a felony and own a firearms business. I immediately called my counsel.

The Immediate Business Impact:

Three days later on April 15th my 2012 taxes were due and so were the estimated taxes for the first quarter of 2013. By the time I had paid both tax bills and the next employee payroll, I had no working capital left to run my business. If it were not for the grace of Almighty God and my banker at Wells Fargo that believed in me and lent me the

\$80,000 I needed, we would have been in such serious financial trouble as to put my whole business at risk.

I immediately cancelled whatever product orders I could, which amounted to hundreds of thousands of dollars in purchase orders with firearms manufacturers. This had a distinct negative impact on my reputation with the affected manufacturers as cancelling purchase orders on short notice is considered a bad business practice. I also indefinitely suspended a new Point of Sale system we had planned to purchase and implement. A year earlier I had specifically hired a new IT employee to spearhead the integration of our web site with a Point of Sale (POS) system. This integration required a new POS system and a new web site. The project, including installation was going to cost over \$100,000. But now, with no money to pay for the project, my new hire had almost nothing to do.

The Governments 1st Demand:

My attorney started negotiations to attempt recovery of the seized money. On April 18th, a meeting was held between the two IRS agents who visited me, the Assistant US Attorney, myself, my counsel and my accountant with the intent of explaining the misunderstanding and recovering the \$940,313.

On May 7th, the Government responded via email with the following offer:

"I have authority to resolve this case by forfeiting \$325,000 to the United States and returning the balance to your client.

It is this Office's view that your client knowing violated federal law when he structured \$940,313 by way of 109 transactions from May 3, 2012, to March 25, 2013. 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 for purposes of this settlement negotiation only. "

The Government wanted my money without any record of a formal complaint even being filed. Of course then it would not be public either and that would mitigate the chance of damage to my reputation, so they said. And that was a real threat, because "A good name is more desirable than great riches, to be esteemed is better than silver or gold" (Proverbs 22:1). I had worked hard to earn a good name in the community and with structuring being part of the Money Laundering Act, the headline could have read:

"1 Million in Local Gun Dealers Cash Seized by the IRS for Money Laundering".

Regardless whether you believed the headline or not, that would sink a small retail business as people would stay away for fear of being associated with money laundering. I would also spend all my time explaining that I was innocent because our society has a

natural bent to believe that the law is good and is fairly applied. And our society should believe that as we are a government of "we the people" with the best Constitution in the world. So this threat against my name was real, but so was my innocence. This was another attempt by the Government to pressure me to acquiesce. I am not a man who uses curse words so I responded as did BG McAuliffe when surrounded at Bastogne, "NUTS" and directed my attorney to politely decline the Governments offer.

A formal complaint was then filed by the USDOJ on May 29, 2013 seeking civil seizure of the entire \$940,313 and I was reminded by the AUSA that though this is now a civil case, anything found during civil discovery could easily turn this into a personal criminal matter against me. Again, this was another attempt by the Government to pressure me into voluntarily forfeiting my hard earned money.

The Judge:

Not until July 22nd, 3 ½ months after the seizure were we able to get a mitigation hearing in front of a Judge. At the hearing the Judge asked if any other laws were violated or if only simple structuring was the basis for the entire forfeiture. The Government admitted in open court that they had no evidence of any other violations, only simple structuring, but that structuring stood on its own. Prior to the hearing, and at my own expense, I had a forensic tax auditor go through my records to validate that my records were correct. So the government admitted that all my cash revenue was legal and properly reported on tax returns.

The Judge then strongly suggested that the Government return a substantial portion of the seized funds as he was concerned that the seizure was so large as to create Constitutional issues. The Government refused and correctly told the Judge that there was no provision in the law that would allow the Court to order a return of the money short of a trial. The Judge again strongly suggested that the Government return a substantial portion of the seized funds or the trial would begin in 9 days. If something could be worked out, then the trial would begin in 30 days.

Three days later the Government offered a return of \$440,313 and amended the complaint to US vs. \$500,000. Trial was then set for about 30 days later on August 26th.

The Governments 2nd Demand:

The Government came back and again offered to settle the case for only \$109,000 this time, and I was again reminded that this case could easily go criminal against me personally during discovery. My answer was the same, and again my attorney politely declined their offer.

The agreed upon \$440,313 was returned to Clyde Armory on August 7th with no interest paid by the government. \$500,000 was still retained by the government as the new basis for their claim of structuring.

In deposition before the trial, the IRS agent confirmed under oath that there was "no floor for deposits that cannot be considered structuring". That means any cash deposit of 10,000 or less can be considered structuring by the IRS. For me it was as low as a cash deposit of \$1,628 that they considered structuring. This means there is NO SAFE HARBOR for any small business that deals in cash, because though they can define what structuring is, they cannot define what it is not, when the cash deposit is less than \$10,000. So any deposit or withdrawal of cash under \$10,000 can be considered as structuring. That means every small business is completely vulnerable.

The Settlement:

Three days before the trial, and under duress, I agreed to forfeit \$50,000 to settle the case. It was a business decision based on the projected cost of the trial and that my business was not going to survive very well if I lost all \$500,000. In total, my legal defense cost me \$149,336 in pre-tax income.

This was my tactical retreat, so I could live to fight another day.... and that day is today. I did not serve three combat tours in Iraq only to come home and be extorted and shaken down by my government's corrupt use of civil forfeiture laws. But that is what I feel they have done to me and I need Congress to stop it from happening to anyone else.

When I asked the US Attorney why he was doing this, his response was, I'm just following the law. So he laid the responsibility right at the feet of Congress. Therefore, I am asking Congress to change the law and take away their legal authority to go after legally earned and reported cash money, and then restore those of us who have been abused.

The remaining \$450,000 was finally returned on September 13, 2013. The government calculated the interest to be \$3.91 for the 4 months of retaining the initial \$440,313 and slightly more than \$5.00 for retaining the \$450,000 over 5 months. Total interest was calculated at less than \$10.00 and in the end no interest was ever paid.

If the appropriate IRS interest rate of 3% had been used, the government would have owed \$10,028.13 in interest.

The Pressure of the DOJ.

The DOJ used the following tactics to attempt to coerce me into a settlement.

- 1) The money was seized on April 12th, three days before both year-end taxes and estimated quarterly taxes were due to be paid on April 15th. This ensured maximum money was obtained and the business was bled as dry as possible to exert maximum financial pressure.
- 2) Though a meeting was held 6 days later (April 18th) with my counsel and my tax accountant to explain to both the IRS investigators and the Assistant US Attorney (AUSA) that the money in question was both legitimate and properly reported, it quickly became apparent that the IRS / USA was in no hurry to have the matter decided and return the money.
- 3) Twenty Six days later the AUSA proposed an expedited settlement if I agreed to forfeit \$325,000 of the \$940,313 seized. I immediately saw that the AUSA was not really interested in pursuing a criminal case, (which would have given me more rights and set a higher burden of proof for the gov't) but that the real motive was confiscating money and I believe I appeared to be a flush target.
- 4) Forty eight days after seizure, a civil complaint was finally filed by USDOJ, but it was filed against the money and not against me personally. I was not the defendant, I was simply the principle that owned the defendant. By doing this, it limited my ability in a future trial to use character witnesses on my behalf, as money has no character.
- 5) The government reminded me at each settlement offer that if the case continued and went to the discovery phase, anything they found out could easily turn this into a personal criminal matter, as this was a criminal statute. I believe this suggestion was intended to exert significant additional pressure to force me into a monetary settlement prior to the trial. After all, any felony conviction would mean they would take all my firearms and it would be the absolute end of my business.
- 6) The statue is currently interpreted to not allow a Judge to grant the return of any of the seized cash, short of a final trial. Only if the entire business is seized is there a possibility of court relief prior to trial. So the IRS seizes the cash and not the business so there is no opportunity for recourse until the trial. This exerts monumental pressure on the business to negotiate a settlement as rarely is a trial expedited. Usually it takes at least a year or more and by that time fatal injury has usually occurred within the business as cash is the life blood of a business. Truly No cash, No blood and No life!

- 7) The Governments delay tactics increased my legal bills and put more financial pressure on my business, which was already reeling from the \$940,313 seizure.
- 8) The Government offered a settlement without any record of a formal complaint even being filed. Then it would not be public, and that would mitigate the chance of damage to my good reputation, so they said. And that was a real threat. I had worked hard to earn a good name in the community and with structuring being part of the Money Laundering Act, the headline could read:

"1 Million in Local Gun Dealers Cash Seized by the IRS for Money Laundering".

Regardless whether you believed it or not, that would sink a retail business as people would stay away for fear of being associated with money laundering. I would also spend all my time explaining that I was innocent, because our society has a natural bent to believe that the law is good and is fairly applied. And our society should believe that as we are a government by "we the people" with the best Constitution in the world. So this threat against my name was real, and had to be evaluated seriously.

None of the above tactics worked very well on me because of many factors. By the grace of God I was able to keep some life blood in the business by reducing incoming purchase orders and inventory, tapping into a line of credit for \$80,000 at another bank, delaying or cancelling planned capital projects and managing the finances to the penny.

I was 100% convinced of my complete innocence and that drove me forward with conviction. I also had difficulty grasping the interpretation of this statute. It is not intuitive that a statute meant to catch illegal proceeds or unreported proceeds would ever be used against legal cash proceeds that are totally reported as income on tax returns. It remains illogical to me. But it is still dangerous and the risk of losing in court is always a possibility and I had to come to grips with that.

The Judge breathed more life blood back into my business when he persuaded the Government to return \$440,313 of the company life blood. But a public trial with a loss of \$500,000 would still have set us back two years in growth and could have caused significant harm to our reputation in the industry. So agreeing to forfeit the \$50,000 in post-tax income to get back the \$450,000 was a business decision based on the projected cost of the trial and that my business was not going to survive very well if I lost all \$500,000. In total, my legal defense including the forfeiture cost me the equivalent of \$149,336 in pre-tax income.

Legal Issue #1 - Legal and Illegal Cash is treated the same:

The IRS is using laws meant to catch illegal and unreported income as a justification to seize the legally earned and fully reported cash income of individuals and legitimate businesses.

There are a myriad of legitimate reasons for small business (and individuals) to keep deposits at \$10,000 or less to avoid or mitigate risk:

- 1) Security of the deposit (managing the risk so you never risk too much)
 - a. Employee theft
 - b. Accidental loss from mishap (traffic accident & car fire, etc.)
 - c. Robbery
 - d. Cash is irreplaceable if lost or stolen
- 2) Insurance limitations of \$10,000 on carrying cash outside the business
- 3) Fear that high cash deposits will result in increased chance of IRS audit
- 4) Fear of not being treated fairly by the IRS during an audit
- 5) Right to financial privacy (especially cash)

There is NO SAFE HARBOR for any legitimate business that deposits cash unless the business saves up cash and consistently makes its deposits in excess of the \$10,000 threshold delineated in the structuring laws of 31 USC § 5324.

The IRS can consider any cash amount of \$10,000 or less to be involved in structuring transactions. I experienced an amount as low as \$1,628.00 that the IRS considered to be structuring. From my research I have seen an amount as low as \$800.00 in cash. From sworn testimony on 8/22/2013 in the deposition of IRS Special Agent Bryant L. Brooks, page 42, Lines 16-24, he concurred under oath that there is no floor for deposits that cannot be considered structuring.

This is so discretionary that I can NEVER do normal business and positively know that I am not breaking the law in their eyes.

The IRS considers the willfulness aspect of structuring to have been removed by Congress in the 1994 Money Laundering Suppression Act.

"12. Willfulness is not an element of a civil forfeiture action for property involved in a structuring violation. See *United States v. Ratzlaf*, 510 U.S. 135, 146 n.16 (1994). Accordingly, in this instant forfeiture action, the Government only needs to show by a preponderance of the evidence that cash deposits in excess of \$10,000 were divided into amounts less than that amount for deposits in such a manner so as to avoid the filing of CTR's."

Therefore, in order to win their case, the IRS simply needs to prove a “pattern of deposits” that together would have made an amount over \$10,000 but is deposited in amounts less than \$10,000.

Even if the business is successful in defending itself, it still takes a massive financial hit in both capital and time invested in the defense. Most, if not all of the cost of the defense, will never be reimbursed by the Government. My defense cost me \$149,336. in pre-tax income.

If the small business’s defense is not successful, it faces both possible felony convictions and massive fines up to \$500,000 simply for the way it deposits it’s legitimately earned or owned cash.

In addressing this issue on October 25, 2014, Chief Richard Weber of IRS Criminal Investigation stated in an open letter to the New York Times that:

“I.R.S.-C.I. will no longer pursue the seizure and forfeiture of funds associated solely with “legal source” structuring cases unless there are exceptional circumstances justifying the seizure and forfeiture”

But it is still legal for them to go after legal source money, according to the IRS. This “policy update” to no longer go after legal source cash, that they have decided to do today, doesn’t mean that tomorrow they cannot change their minds and start going after it again. NO! Congress must permanently take away their authority to ever go after legal source cash again and provide relief to the business owner/individual if the IRS ever does. That is the ONLY WAY we will be safe from their abuses in this area.

Suggested Legislative Changes to Create the Safe Harbor:

Below I have copied the US Code 31 USC 5324. I am recommending that the code be amended to include what I have highlighted below. I am no Law Clerk but I believe that what I have added would sufficiently insulate citizens and small businesses from the overreach of an aggressive IRS while still maintaining the value of the code to law enforcement as a useful tool in fighting monetary crime.

31 USC § 5324

(a) Domestic Coin and Currency Transactions Involving Financial Institutions.—No person shall, for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the

recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508—

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313 (a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by an order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508;

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313 (a) or 5325 or any regulation prescribed under any such section, to file a report or to maintain a record required by any order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions subject to the following –

A legal business cannot be guilty of structuring unless it has first been notified by being given a notice of law by the agency concerned.

(b) Domestic Coin and Currency Transactions Involving Nonfinancial Trades or Businesses.— No person shall, for the purpose of evading the report requirements of section 5331 or any regulation prescribed under such section—

(1) cause or attempt to cause a nonfinancial trade or business to fail to file a report required under section 5331 or any regulation prescribed under such section;

(2) cause or attempt to cause a nonfinancial trade or business to file a report required under section 5331 or any regulation prescribed under such section that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with 1 or more nonfinancial trades or businesses.

(c) International Monetary Instrument Transactions.— No person shall, for the purpose of evading the reporting requirements of section 5316—

(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.

(d) Criminal Penalty.—

(1) **In general.**— Whoever violates this section shall be fined in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both.

(2) **Enhanced penalty for aggravated cases.**— Whoever violates this section while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

(e) **Exclusions.** – 5324 Sections (a), (b) and (d) shall not apply to the legal source income of a legitimate and legal business or individual. If found to be applied to the legal source income of a legitimate and legal business or individual, the government shall be liable for reasonable interest, attorney's fees and damages suffered by the business or individual.

(f) **Restoration.** – Any individual or business damaged by civil forfeiture or criminal prosecution solely for a violation of 5324 Sections (a), (b) or (d) involving only legal source income shall be restored by the return of all forfeited funds, payment of interest due, reasonable attorney's fees and damages as the court determines. If convicted of a felony, their record shall be expunged of the conviction and completely restored.

Legal Issue # 2: – No Authority for the Court to Allow Remission Before Trial

The law, as applied, subjects a person to the seizure without being able to contest the probable cause finding in an emergency fashion.

From a legislative standpoint, we would ask that you look at our argument regarding 18 USCS § 983 (f), and particularly part 8 of the provision. That provision on its face appears to state that a party can seek remission currency only when the Government seizes the whole business, not when they just seize the currency of the business. We submit this is nonsensical, as an ongoing business needs currency to operate.

Legal Issue #3. - Little or No Interest Paid When Seized Funds are Returned.

Interest paid on funds returned from seizure should be paid at the same rate as interest charged for late payment of taxes.

Current rate for the late payment of taxes: 3%

Current rate for interest on seized funds: .005% or nothing.

The current rate for interest paid on the return of seized funds is tied to the 30-Day Treasury Bill as explained below. This comes from an 8/28/13 Treasury email.

“Currency seized by participating agencies is deposited into the Treasury Suspense Account, which is located in the Federal Reserve Bank of New York. Every month, managers of the Forfeiture Fund identify the amount of monies available for investing. That portion is provided to the Bureau of Public Debt, which invests the monies in 30-Day Treasury Bills.”

Therefore, those who have had their assets unjustly seized by the IRS only get a chance at the smallest interest rate imaginable.

Whether or not seized currency is invested by the Bureau of Public Debt should have no impact on the payment of interest to parties who have had their seized funds returned. If the money is rightfully returned, then it was not proper for it to be seized in the first place. If this is a government for the people, then returned money should be accompanied by an appropriate amount of interest. It should be at least the same interest rate as what the government charges its citizens for the late payment of taxes.

If the Government was a “For Profit Corporation” then I could possibly understand a disparity in interest rates, but the Government is not a “For Profit Corporation”. The Government is to be for the people and this disparity should not exist.

Legislation needs to be created to mandate that interest be paid by the Government on any seized money that is returned. The legislation also needs to tie the rate for interest paid on the returned money to the same as that charged by the Government on late tax payments.

Additional Background from the Trial Order:

This case now involves the seizure of funds in the amount of \$500,000.00, from Robins Credit Union, held in the name of Clyde Armory, Inc. Plaintiff (US Attorney) contends that the Claimant Property constitutes property involved in funds structured into a domestic financial institution with the intent to evade the currency reporting requirements or caused or attempted to cause a financial institution to fail to file a report, all in violation of Title 31, United State Code, Section 5324, and is therefore, subject to forfeiture pursuant to 31 U.S.C. § 5317(c)(2), in conjunction with 18 U.S.C. § 984.

Claimant, Andrew Clyde is a long time resident of Athens, Georgia. He has a distinguished reputation, having served in the United States Navy on active duty for 11 years and in a reserve capacity for 17 years. He is also an active member of his local church, Prince Avenue Baptist Church, having served as a deacon since 2003. During his tenure in the military, he performed three tours of combat duty in the Iraqi theater. Mr. Clyde received numerous medals for his service including the Defense Meritorious Service Medal (the 3rd highest award from the Department of Defense for a member of the military)

In addition to his military service, Mr. Clyde has served in local law enforcement (Wilkes County) as a firearms instructor since 2010. Mr. Clyde is also a Federal Firearms License holder. In short, Mr. Clyde has been subjected to numerous background investigations and other security reviews; he is more than a model citizen of his community and of this country.

Claimant, Clyde Armory, Inc, is a federal firearms licensee, which has a 12,000 square foot brick and mortar facility in Athens, Georgia that employs 26 people. The company sells all manner of firearms and ammunition, including federally restricted rifles to Law Enforcement Agencies. In addition to retail the company contracts with various law enforcement agencies including the Clarke, Oconee, Dekalb, Cobb & Los Angeles County Sheriff Departments. Clyde Armory is also a primary weapons provider for the United States Marine Corps Exchange Service.

The Government initially seized \$940,313.00¹ from Clyde Armory's primary holding account on the allegation that Mr. Clyde structured the deposit of the cash. The Government announced in open Court in a preliminary proceeding that they do not have evidence to support the contention that cash is the result of illegal activity or that the cash was not properly handled. (all cash revenue properly reported on tax returns)

¹ The Government has agreed to remit \$440,313.00.

The Government contends that Mr. Clyde made 109 transactions which violate 31 USC § 5324. Mr. Clyde denies the allegation on the basis that he was not aware of the legal requirement for either 31 USC § 5313(a) or 5324 and therefore could not of taken these actions “for the purpose of evading the reporting requirements” of those statutory provisions that he did not know even existed.

Pictures of CLYDE ARMORY, Inc. in Athens, GA



Clyde Armory – Customer Entrance



Clyde Armory – Road View



Clyde Armory – Retail Floor View

What the IRS agent would have seen during his 6 February recon mission except that there would have been a lot less rifles on the walls. The gun racks on the walls and the glass display cases would have been about empty in early February 2013.

Chairman ROSKAM. Thank you, Mr. Clyde.
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 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. However, 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.

[The prepared statement of Mr. Johnson follows:]

Good morning, Chairman Roskam, and members of the Committee. I am pleased to have this opportunity to talk to you about the issue of civil forfeiture, and specifically about the IRS's use of civil forfeiture to pursue small business owners who are guilty of nothing more than depositing cash in the bank in amounts under \$10,000.

I am an attorney at the Institute for Justice, a public-interest law firm that litigates to protect property rights nationwide. I represented Jeff Hirsch—also testifying today—in his fight against the IRS.

Unfortunately, Jeff's case is hardly unique. Numerous property owners have been put through similar ordeals. Like Jeff, they are innocent, hardworking Americans simply trying to make a living. And, like Jeff, they had no idea they might be breaking the law until their lives were turned upside down by a government that seized their money without warning.

A report recently published by the Institute for Justice, *Seize First, Question Later*, quantifies the breadth of the problem. A copy of that report is attached as an exhibit to my written testimony.

Together, these stories and statistics paint a picture of government abuse. Civil forfeiture allows government to take property based on mere suspicion of wrongdoing and then forces innocent property owners to fight to get their property back. Civil forfeiture also encourages government abuse by allowing agencies like the IRS to keep the money that they seize. The

government routinely disregards procedural protections provided by existing law. And the IRS has adopted an aggressive interpretation of so-called “structuring” laws to criminalize conduct most Americans would never even imagine is a crime. Civil forfeiture—and structuring in particular—is an area badly in need of reform.

Structuring: The Law Of Bank Deposits

Jeff and others like him have become entangled in obscure federal banking laws that most Americans have no idea exist, but that quickly become all-too real for Americans who run afoul of their requirements.

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 \$10,000.¹ 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 requirements.² A person who has violated this latter prohibition is said to have impermissibly “structured” his cash transactions.

Importantly, federal structuring laws do not criminalize every cash transaction below \$10,000. Structuring is only a crime if a person engages in sub-\$10,000 cash transactions with an impermissible “purpose” to evade

¹ 31 U.S.C. § 5313

² 31 U.S.C. § 5324.

currency reporting requirements. Under a correct interpretation of the structuring laws, a person who instead makes sub-\$10,000 deposits for a legitimate business purpose is not guilty of anything illegal.

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 enforces the structuring laws against innocent Americans who have no idea that depositing less than \$10,000 in the bank could possibly get them in trouble with the law. For instance:

- 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. The IRS finally agreed to return 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

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).

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 April 2013, the IRS seized all this newly deposited money (over \$37,000) from the account. Although Mark often deposits cash in 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 all the money.

- In January 2013, Terry Dekho, the proprietor of Schott’s Supermarket, located in Fraser, Michigan, had his entire bank account cleaned out by the IRS—totaling more than \$35,000.⁵ Nine months before the seizure, the IRS visited Schott’s Market to perform a “Bank Secrecy Act” examination and informed Dekho that “no violations were identified.” Terry made a practice of depositing cash from the store when the amount on hand approached \$10,000, as the insurance policy for

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.).

⁵ See *United States v. Thirty Five Thousand Six Hundred Fifty-One Dollars and Eleven Cents in U.S. Currency*, No. 4:13-cv-13118 (S.D. Mich.).

Schott's Supermarket covered theft or other loss of cash up to \$10,000.

Eleven months after the seizure, the government 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.⁶ After a series of banks closed their accounts, the Hirsch brothers were advised by their own accountant to keep cash deposits under \$10,000 to reduce paperwork burdens for their banks that otherwise are associated with frequent cash deposits. The IRS held the money for thirty-two months, over two-and-a-half years, before finally agreeing to return it to the Hirsch brothers.

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 charged with any crime other than depositing less than \$10,000 in the bank. Yet the government seized their money without warning and without asking

⁶ 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.).

any questions prior to the seizure. Then, the government forced the property owners to fight for months or years to get their money back.

In response to significant media 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.⁷ The new IRS policy, however, did not apply to pending cases, and also included a vague and undefined loophole for “exceptional” circumstances. At this point, it remains to be seen whether that policy change will have a significant effect on IRS enforcement of the structuring laws.

Early indications are not entirely promising. In December 2014, the IRS filed a civil forfeiture complaint against the proprietors of L&M Convenience Mart, Inc. in Robeson County, North Carolina, alleging that the money was subject to forfeiture because the proprietors deposited cash in amounts under \$10,000—with deposits ranging from \$952 to \$3,856 to \$9,988.⁸ The government does not allege in its complaint that the money came from an illegal source. Because this action post-dates the IRS policy

⁷ See Statement of Richard Weber, Chief of IRS Criminal Investigation, at <http://www.nytimes.com/2014/10/26/us/statement-of-richard-weber-chief-of-irs-criminal-investigation.html> (Oct. 25, 2014).

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

change, it raises serious questions regarding how meaningfully that policy change will bind the IRS.

Civil Forfeiture Facilitates And Encourages Abuse

All of these cases involve the use of civil forfeiture laws, which allow government to take property from innocent Americans and then force those Americans to engage in costly and often protracted litigation to get their property back.⁹ These laws facilitate—and even encourage—government abuse of Americans’ civil liberties.

Federal civil forfeiture laws allow the government to take and hold property it merely suspects of being involved in a crime. Under civil forfeiture laws, the government obtains a warrant to seize property in an *ex parte* proceeding—without any notice to the property owner or opportunity to contest the seizure before the judge—based only on a showing of “probable cause.” In structuring cases, courts often find probable cause based on nothing more than a pattern of sub-\$10,000 deposits. Then, once the property has been seized, property owners must wage a lengthy and expensive legal battle against the government to get their property back.

These problems are exacerbated by the government’s disregard for the few protections provided by existing law. Most notably, the government

⁹ See 31 U.S.C. § 5317.

makes a habit of disregarding the timelines for forfeiture established by the Civil Asset Forfeiture Reform Act of 2000 (“CAFRA”). Under CAFRA, the government is required to initiate administrative forfeiture proceedings within 60 days of seizing property, and then, if the property owner files a claim, to initiate judicial forfeiture proceedings within an additional 90 days.¹⁰ The Department of Justice itself has recognized that Congress in CAFRA “made clear its intent that the Government be expeditious in providing notice and in initiating forfeiture actions.”¹¹ Yet prosecutors in the Hirsch brothers’ case held the property over two-and-a-half years without initiating forfeiture proceedings. And the government also failed to meet the deadlines set by CAFRA in the cases of Terry Dekho and Mark Zaniewski. This practice of delay magnifies the difficulties faced by property owners, as many businesses simply cannot afford to be deprived of the use of their working capital for months or even years. In many cases, property owners agree to forfeit a substantial portion of the property in order to bring the case to a close—even if they do not believe they have done anything wrong.

The burden of contesting a forfeiture proceeding is mitigated in other types of cases by the availability of so-called “hardship hearings,” but these

¹⁰ 18 U.S.C. § 983.

¹¹ Department of Justice, Criminal Division, Asset Forfeiture Policy Manual at 54 (2013).

hearings are not available to individuals targeted under the structuring laws. CAFRA provides that the government shall release seized property, pending the conclusion of forfeiture proceedings, where the property owner can show “substantial hardship,” including “preventing the functioning of a business.”¹² But no hardship hearing is available when the government seizes currency.¹³ The unavailability of hardship hearings ratchets up the pressure for individuals to agree to the government’s settlement demands.

Shockingly, the government uses the money that it takes through civil forfeiture to pad the budgets of the very agencies that seize the money. When the IRS uses civil forfeiture to seize money for structuring violations, the money is deposited in the Treasury Forfeiture Fund.¹⁴ By law, the assets in the Treasury Forfeiture Fund are available “without fiscal year limitation” for use by 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 of property.¹⁵ In other words, the money that the IRS takes from hardworking Americans is put right back to work to seize money

¹² 18 U.S.C. § 983(f)(1).

¹³ *Id.* § 983(f)(8).

¹⁴ See U.S. Dept. of Treasury, Treasury Executive Office for Asset Forfeiture, <http://www.treasury.gov/about/organizational-structure/offices/Pages/The-Executive-Office-for-Asset-Forfeiture.aspx>.

¹⁵ 31 U.S.C. § 9703(a).

from *additional* hardworking Americans, without any need for appropriation by Congress.

The IRS also invites abuse by delegating its enforcement authority to local law enforcement. Structuring laws are often enforced by joint task forces consisting of both IRS officials and local law enforcement exercising federal authority delegated by the IRS. In the case of the Hirsch brothers, for instance, the affidavit submitted in support of the seizure warrant was filled out by a state police officer. These local law enforcement personnel may lack meaningful background investigating alleged financial crimes. In addition, under a practice called “equitable sharing,” participating local law enforcement agencies receive a portion of the seized funds.¹⁶

The result is a legal system in which the deck is stacked against ordinary Americans. Property owners are deprived of their money without prior notice and are forced to prove their own innocence to get their money back. And these draconian laws are enforced by agencies with a direct pecuniary interest in forfeiting as much money as possible. Given these perverse incentives, the abuse that we see in so many cases should hardly come as a surprise.

¹⁶ 31 U.S.C. § 9703(a)(1)(D); *id.* § 9703(h).

Quantifying The Problem

In an effort to quantify the scope of the problem, the Institute for Justice requested data on structuring seizures and forfeitures from the IRS under the Freedom of Information Act. The resulting data has been released in a report, *Seize First, Question Later*, a copy of which is attached as an exhibit to this testimony.

The report shows that the IRS is stepping up its enforcement of the structuring laws, and also shows that the IRS seizes millions of dollars every year that it ultimately cannot justify keeping. Key findings include:

- From 2005 to 2012, the IRS seized more than \$242 million for suspected structuring violations in more than 2,500 cases, and annual seizures increased fivefold over those eight years.
- At least a third of those cases arose from nothing more than a series of cash transactions under \$10,000, with no other criminal activity alleged.
- Four out of five IRS structuring-related forfeitures were civil, not criminal, meaning the IRS faced a lower evidentiary standard and did not need to secure a conviction to forfeit the cash, and owners had fewer rights in fighting to win it back.

- IRS data do not indicate how long property owners who get all or some their money back are deprived of their funds, but it is likely a long time: Forfeitures that the IRS won took nearly a year to complete.
- Nearly half of the money seized by the IRS was not forfeited, raising concerns that the IRS seized more than it could later justify keeping. Indeed, in almost a third of cases, the IRS failed to forfeit any of the funds seized.

These findings suggest that the stories conveyed above are not isolated incidents, but rather part of a more systemic practice at the IRS. It is troubling, to say the least, that the IRS is seizing millions of dollars from property owners that it is ultimately unable to justify keeping. Yet that is precisely what is occurring, and the IRS is only seizing more money every year.

Conclusion

When Congress enacted the structuring laws, they were intended to make it more difficult for hardened criminals to hide the fruits of their illicit activities from the government. Certainly Congress never imagined that those laws would be used to go after hardworking small business owners who have never been accused of any crime other than depositing lawfully-earned money in the bank in amounts under \$10,000. Yet, in case after case, that is precisely how the law is being enforced.

To correct this injustice, reform is urgently required. The only surefire reform of civil forfeiture is to eliminate the practice entirely, and to require all forfeiture to proceed under the criminal laws. Short of that, the IRS policy change—limiting application of the structuring laws to funds derived from illegal sources—should be codified in statute, and without any open-ended loophole for “exceptional” cases. Reform also is needed to impose meaningful deadlines on prosecutors, requiring them either to bring their case to a judge in a timely fashion or else return the property; to limit equitable sharing and delegation of IRS authority to local police; and to eliminate the profit motive for civil forfeiture by requiring that forfeited funds be deposited in a general fund. These reforms, if implemented, would shield innocent Americans from further government abuse.

Thank you for the opportunity to testify.



SEIZE FIRST, QUESTION LATER:

THE IRS AND CIVIL FORFEITURE

By Dick M. Carpenter II, Ph.D., and Larry Salzman



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EXECUTIVE SUMMARY

Federal civil forfeiture laws give the Internal Revenue Service the power to clean out bank accounts without charging their owners with any crime. Making matters worse, the IRS considers a series of cash deposits or withdrawals below \$10,000 enough evidence of “structuring” to take the money, without any other evidence of wrongdoing. Structuring—depositing or withdrawing smaller amounts to evade a federal law that requires banks to report transactions larger than \$10,000 to the federal government—is illegal, but more importantly, structured funds are also subject to civil forfeiture.

Civil forfeiture is the government’s power to take property suspected of involvement in a crime. Unlike criminal forfeiture, no one needs to be convicted of—or even a charged with—a crime for the government to take the property. Lax civil forfeiture standards enable the IRS to “seize first and ask questions later,” taking money without serious investigation and forcing owners into a long and difficult legal battle to try to stop the forfeiture. Any money forfeited is then used to fund further law enforcement efforts, giving agencies like the IRS an incentive to seize.

Data provided by the IRS indicate that its civil forfeiture activities for suspected structuring are large and growing:

- From 2005 to 2012, the IRS seized more than \$242 million for suspected structuring violations, in more than 2,500 cases.
- Structuring-related seizures are becoming more frequent: In 2012, the IRS initiated more than five times as many such seizures as it did in 2005, yielding a 166 percent increase in forfeiture revenue.
- The IRS overwhelmingly favors civil forfeiture procedures over criminal. From 2006 to 2013, nearly four out of five forfeitures for suspected structuring were civil.
- At least a third of the IRS’s structuring-related seizures arose out of nothing more than a series of transactions under \$10,000, with no other criminal activity, such as fraud, money laundering or smuggling, alleged by the government.
- People whose money is seized likely face a long legal battle to win it back. The average forfeiture for suspected structuring took nearly a year to complete.
- A sizable and growing gap between what the IRS seizes for suspected structuring and what it forfeits raises concerns that the agency is seizing more than it can later justify. Altogether, of the \$242 million seized, nearly half—\$116 million—was not forfeited.

The surest way to prevent innocent people from losing money unjustly would be to end civil forfeiture and replace it with criminal forfeiture. Short of that, removing the financial incentive to seize, raising the standard of proof to forfeit and enacting other procedural reforms would help protect people from losing their bank accounts when the government has little or no proof of criminal wrongdoing.



IJ CLIENT CAROLE HINDERS 5



6 IJ CLIENTS TERRY DEHKO AND SANDY THOMAS

INTRODUCTION

Sandy Thomas remembers the day in stomach-turning detail. “[The Internal Revenue Service] just walked into [our] store and announced that they had emptied the store’s bank account.”¹

Sandy and her father Terry Dehko run Schott’s Supermarket, in Fraser, Mich., a suburb north of Detroit. Terry came to America for a better life from Iraq in 1970. He started a family, and in 1978 he bought Schott’s Supermarket, which has put food on his family’s table for more than 30 years by providing delicious food and great service. The store is especially well known for its deli and meat department, with dozens of varieties of custom sausages. As Schott’s has grown, its prosperity has rippled across the community, providing jobs for more than 30 people, even during bad economic times. Terry is proud of his store—the fulfillment of his American Dream.

That dream turned into a nightmare when the government grabbed \$35,651 from his store’s bank account without warning. Schott’s Supermarket manages to turn a modest profit and keep people employed, but it doesn’t have money to spare. Terry needed that \$35,000 to pay vendors and employees. To keep their business afloat, Terry and Sandy had to negotiate with creditors—possible only thanks to trust they had built up through years of honest dealings—and dip into their personal savings.

The IRS snatched Terry and Sandy’s money without charging them with any crime. Thanks to federal civil forfeiture laws, it didn’t have to.

Civil forfeiture is the government’s power to take property suspected of involvement in a crime. Unlike criminal forfeiture, in which the government takes the ill-gotten gains of criminal activity after an individual is convicted of a crime, civil forfeiture allows police and prosecutors to take property without charging people with, let alone convicting them of, any crime. Civil forfeiture is based on the fiction that the property itself is “guilty.” Under federal law and in most states, the proceeds of forfeited property pad the budgets of the very agencies that seize it, giving law enforcement a financial stake in forfeiture proceedings.²

The civil forfeiture power plus federal laws against so-called “structuring” of bank deposits and withdrawals enables an IRS approach of “seize first, ask questions later.”

The IRS used civil forfeiture to clean out Terry and Sandy’s store bank account, claiming the funds had been illegally “structured.” Federal law requires banks to report cash transactions in excess of \$10,000 to the IRS,³ and it is illegal to “structure” deposits or withdrawals to avoid those reporting requirements by, for example, depositing or withdrawing \$9,000 at a time.⁴ The federal reporting requirements are supposed to help detect and deter financial crimes, such as money laundering and

fraud. But, importantly, it is not illegal to make deposits or withdrawals of less than \$10,000 if there is a legitimate purpose for doing so—as Terry and Sandy had.

Had the government simply asked, it would have learned that Terry and Sandy were not trying to avoid banking regulations; they were trying to avoid letting large amounts of cash accumulate on the store’s premises, where it would be vulnerable to theft. The store’s insurance policy limits coverage for theft or other loss of cash to \$10,000—a common provision for small-business policies.

But the IRS did not learn any of this because civil forfeiture gives it the power to seize the money on the mere suspicion of criminal activity—no charges or conviction for “structuring” or any other crime required. For the IRS, a string of sub-\$10,000 deposits was justification enough—despite Schott’s Supermarket previously earning a clean bill of health in a routine IRS audit.

After money is seized for civil forfeiture, the government must initiate forfeiture proceedings

to permanently keep, or “forfeit,” it. Civil forfeiture proceedings require property owners like Terry and Sandy to engage in a lengthy and expensive court battle to try to get their money back. Terry and Sandy were fortunate that the Institute for Justice took their case pro bono; many property owners cannot afford to hire counsel. And because it is a civil, not criminal, process, the government need only prove the money is connected to a crime by a “preponderance of the evidence,” a standard well below the “beyond a reasonable doubt” threshold required for convictions.⁵

Neither the IRS nor the Treasury Department publicly reports how much it seizes or forfeits for suspected structuring violations, so the Institute for Justice sought data through a freedom-of-information request to the IRS. The IRS is likely the most active agency pursuing structuring cases in the Treasury Department, but it is not the only one,⁶ so data reported here may undercount forfeiture actions for suspected structuring.



THE IRS'S GROWING USE OF FORFEITURE FOR SUSPECTED STRUCTURING

From 2005 to 2012, the IRS seized more than \$242 million for suspected structuring violations, originating from more than 2,500 cases.⁷ From 2006 to 2013 the agency forfeited, or kept, \$123 million from 1,745 cases. As shown in Table 1, half of these seizures were for less than \$34,000, almost identical to the amount seized from Schott's Supermarket. Half of forfeitures were for less than \$27,000.⁸ Such modest amounts call into question whether people losing their assets are the terrorist money launderers or headline-grabbing financial fraudsters that laws against structuring are meant to target.

TABLE 1: TOTAL IRS SEIZURES AND FORFEITURES FOR
SUSPECTED STRUCTURING⁹

	Number of Actions	Total Value	Mean Value	Median Value
Seizures (2005-2012)	2,501	\$242,627,129	\$97,012	\$34,089
Forfeitures (2006-2013)	1,745	\$123,433,274	\$70,735	\$27,309

As with forfeiture generally (see sidebar on the next page), IRS seizures and forfeitures for suspected structuring have grown substantially over time, as shown in Table 2 (page 12). In 2012, the IRS initiated more than five times as many structuring-related seizures than it did in 2005, and funds seized jumped 96 percent. Forfeitures increased three-fold from 2006 to 2013, yielding a 166 percent increase in revenue.¹⁰

BEYOND SUSPECTED STRUCTURING, FORFEITURE ON THE RISE

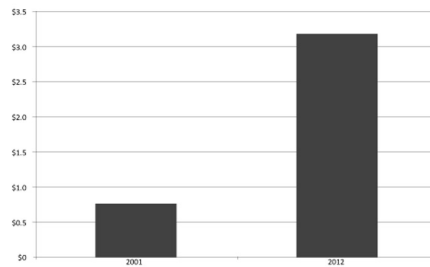
The IRS is not the only law enforcement agency using forfeiture to seize more and more assets. Agencies across the federal government have enlarged their forfeiture coffers substantially in recent years. Two funds—the Department of Justice’s Assets Forfeiture Fund (AFF) and the Treasury Forfeiture Fund (TFF)—process forfeiture deposits from and make money available to departments within their agencies. In 2001, these two funds held \$763 million—already a significant sum—in net assets, but by 2012, the combined holdings exploded to almost \$3.2 billion, a 316 percent increase in a little more than a decade.¹

But federal agencies are not alone in the forfeiture take. Both the Department of Justice and the Treasury Department run “equitable sharing” programs that allow state and local law enforce-

ment to collaborate on forfeitures and split the proceeds, with state and local agencies receiving as much as 80 percent—even in states that bar agencies from receiving forfeiture proceeds or that set higher standards for forfeiting property. Equitable sharing has likewise grown: State and local agencies took in \$558 million in 2012, an increase of more than two-and-a-half times since 2002.²

Research indicates that giving law enforcement agencies a financial stake in forfeiture proceeds encourages seizures.³ A recent study found that state and local agencies were more likely to forfeit property through the federal equitable sharing program than under their own state systems when doing so boosted their chances of securing forfeiture revenue, suggesting that pursuit of forfeiture dollars was a motivation.⁴ And a recent experiment concluded that the profit motive in civil forfeiture laws creates a strong temptation for law enforcement to seize property to pad their own budgets.⁵

JUSTICE AND
TREASURY
DEPARTMENT
FORFEITURE
FUNDS’ NET
ASSETS, 2001
AND 2012
(IN BILLIONS)



1 <http://www.justice.gov/jmd/afp/01programaudit/index.htm>; <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Pages/annual-reports.aspx>

2 Equitable sharing data available at <http://www.justice.gov/jmd/afp/02fundreport/> and <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Pages/annual-reports.aspx>

3 Baicker, K., & Jacobson, M. (2007). Finders keepers: Forfeiture laws, policing incentives, and local budgets. *Journal of Public Economics*, 91, 2113-2136; Benson, B. L., Rasmussen, D. W., & Sollars, D. L. (1995). Police bureaucrats, their incentives, and the new war on drugs. *Public Choice*, 83, 21-45; Gabbidon, S. L., Higgins, G. E., Martin, F., Nelson, M., & Brown, J. (2011). An exploratory analysis of federal litigation in the United States challenging asset forfeiture. *Criminal Justice Policy Review*, 22(1), 50-64; Mast, B. D., Benson, B. L., & Rasmussen, D. W. (2000). Entrepreneurial police and drug enforcement policy. *Public Choice*, 104, 285-308; Worrall, J. L. (2001). Addicted to the drug war: The role of civil asset forfeiture as a budgetary necessity in contemporary law enforcement. *Journal of Criminal Justice*, 29, 171-187; Worrall, J. L., & Kovandzic, T. V. (2008). Is policing for profit? Answers from asset forfeiture. *Criminology and Public Policy*, 7(2), 219-244.

4 Holcomb, J. E., Kovandzic, T. V., & Williams, M. R. (2011). Civil asset forfeiture, equitable sharing, and policing for profit in the United States. *Journal of Criminal Justice*, 39, 273-285.

5 Wilson, B. J., & Preciado, M. (2014). Bad apples or bad laws? Testing the incentives of civil forfeiture. Arlington, VA: Institute for Justice.

TABLE 2: ANNUAL GROWTH OF IRS SEIZURES AND FORFEITURES FOR SUSPECTED STRUCTURING, 2005 TO 2013

Seizures			Forfeitures		
	Actions	Total Value		Actions	Total Value
2005	114	\$24,765,672	2006	89	\$7,974,908
2006	168	\$19,447,782	2007	128	\$12,363,630
2007	279	\$22,776,270	2008	194	\$14,077,055
2008	243	\$20,940,702	2009	189	\$12,452,249
2009	228	\$16,414,697	2010	232	\$13,039,933
2010	433	\$48,548,698	2011	261	\$20,306,098
2011	397	\$41,153,812	2012	363	\$21,996,502
2012	639	\$48,579,495	2013	289	\$21,222,900

As Figures 1 and 2 illustrate, IRS structuring-related forfeitures and forfeiture revenues grew basically steadily year to year, but seizures and funds seized spiked from 2009 to 2010. The data do not provide any guidance on why this might be, but it could be a consequence of a series of high-profile and substantial financial frauds that came to light in 2008 and 2009. These included cases against Bernie Madoff,¹¹ the Stanford Bank and Stanford Industries,¹² Joseph Forte,¹³ Mark Drier,¹⁴ Tom Petters¹⁵ and Scott Rothstein.¹⁶ Though they did not involve structuring violations, these cases may have raised awareness of or concern about financial misdealings and led agents to step up efforts to identify suspected banking-law violations by looking for suspicious patterns of deposits and withdrawals. Such heightened scrutiny of financial transactions may have swept up more than just potential fraud cases, resulting in a significant spike in 2010.

FIGURE 1: ANNUAL IRS SEIZURES AND FORFEITURES
FOR SUSPECTED STRUCTURING, 2005 TO 2013

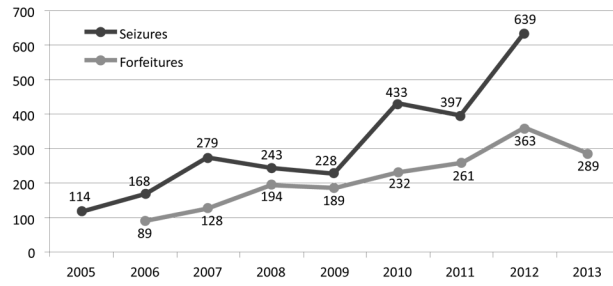
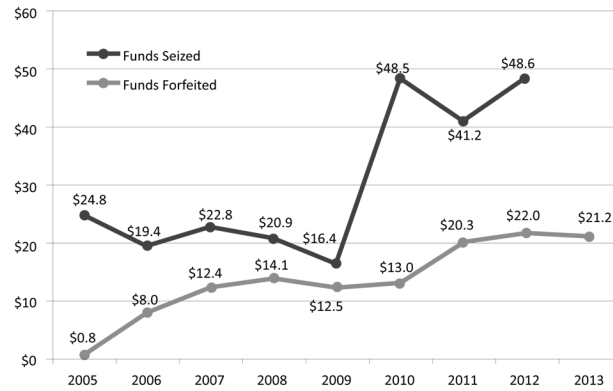


FIGURE 2: FUNDS SEIZED AND FORFEITED ANNUALLY
BY IRS FOR SUSPECTED STRUCTURING, 2005 TO 2013,
IN MILLIONS



CIVIL VERSUS CRIMINAL FORFEITURE FOR SUSPECTED STRUCTURING

When the IRS seizes money for suspected structuring, law enforcement agents can seize under criminal forfeiture statutes, which require criminal charges and a conviction for a forfeiture, or civil forfeiture statutes, which require neither. Civil forfeiture is considerably easier for the government and harder for property owners to fight.¹⁷ As Table 3 indicates, the IRS overwhelmingly chooses the civil route: From 2005 to 2012, 86 percent of IRS seizures for suspected structuring were civil actions.

TABLE 3: IRS SEIZURES FOR SUSPECTED
STRUCTURING, CIVIL VS. CRIMINAL, 2005 TO 2012¹⁸

	Seizures	Percentage of Total	Total Value
Civil	2,139	86%	\$199,901,775
Criminal	362	14%	\$42,725,354

For money that was ultimately forfeited, the IRS data also indicate whether it was forfeited through a civil or criminal process. Sometimes property seized under criminal statutes will be processed under civil procedures, or vice versa; this was the case for a small number of seizures in the IRS data.¹⁹ Civil forfeitures are actions brought against the money itself and can be either “civil judicial” or “administrative.”²⁰ In either case, the government must notify the owner of intent to forfeit the property. If the property owner fails to meet the strict, short deadlines required to contest the seizure, the IRS may unilaterally declare the property forfeited—known as an administrative forfeiture—and keep it without any hearing before a judge. If the property owner makes a timely claim, the government must file a formal “civil judicial” forfeiture action in federal court to continue the forfeiture.²¹

Criminal forfeiture is brought as a part of the criminal prosecution of a defendant property owner. If the defendant is convicted and the property is deemed forfeitable, the court issues an order of forfeiture.²² As shown in Table 4, nearly 80 percent of IRS structuring-related forfeitures from 2006 to 2013 followed civil processes, while only 21 percent were criminal.

TABLE 4: IRS FORFEITURES FOR SUSPECTED
STRUCTURING, CIVIL VS. CRIMINAL, 2006 TO 2013

	Forfeitures	Percentage of Total	Total Value
Administrative	614	35%	\$27,352,525
Civil Judicial	757	43%	\$58,326,540
Criminal Judicial	374	21%	\$37,754,209



NOTHING BUT STRUCTURING SUSPECTED

For seizures, the IRS data specify which part of federal anti-structuring law the agency suspected was violated. The government can seize assets because it suspects someone is structuring to hide criminal activity, such as money laundering, fraud or smuggling.²³ (Even when criminal activity is suspected, the government can pursue civil or criminal forfeiture.) But under a different part

of federal law, the government can seize money because someone appears to be structuring transactions for the sole purpose of avoiding reports to the federal government, with no further criminal activity alleged.²⁴

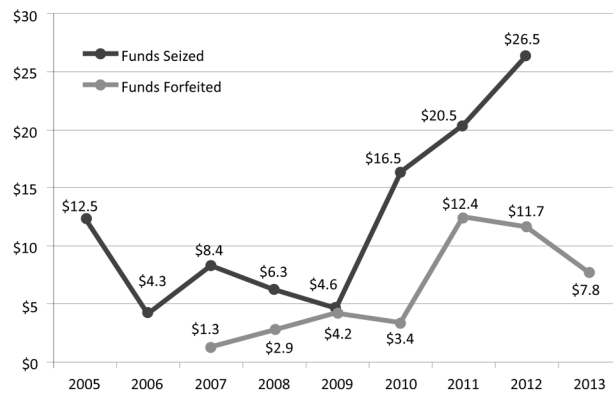
This part of anti-structuring law is particularly likely to trap the unwary. Like the Dehkos, Carole Hinders of Spirit Lake, Iowa, had no idea what “structuring” was or that it was illegal. For almost 40 years, Carole owned and operated Mrs. Lady’s Mexican Café in Spirit Lake, a rural vacation spot



90 miles outside of Sioux City. Because she operated a cash-only restaurant, she made frequent cash deposits at her bank. In August 2013, the IRS cleaned out her restaurant's \$32,821 bank account without charging her with any crime. The IRS did not accuse Carole of money laundering or fraud; it claimed only that her deposits were structured to evade reporting requirements. Only after the Institute for Justice took her case did the IRS agree to return her money—more than a year-and-a-half after it was seized.

From 2005 to 2012, more than one third of the IRS's structuring-related seizures were civil actions like Carole's—civil actions where only structuring was implicated. Another 48 percent of seizures were also civil, but data indicate that the IRS suspected that structuring was intended to hide some other criminal activity, though it is not clear whether the IRS ever proved any criminal activity happened: Civil forfeiture laws do not require it, and the data do not indicate whether related criminal charges were in fact filed or convictions obtained. A minority of seizures, a little more than 14 percent, were criminal. Like IRS structuring-related forfeitures generally, funds taken through structuring-only civil forfeiture actions have increased substantially (see Figure 3). From 2005 to 2012, seizure amounts rose 111 percent, and from 2007 to 2013 forfeiture amounts jumped 490 percent.²⁵

FIGURE 3: FUNDS SEIZED AND FORFEITED BY IRS FOR SUSPECTED STRUCTURING ONLY, 2005 TO 2013, IN MILLIONS





IJ CLIENTS MITCH HIRSCH, RICH HIRSCH AND JEFF HIRSCH

HOW LONG FORFEITURES TAKE

For property owners, the forfeiture process, whether civil or criminal, is byzantine in its complexities,²⁶ requiring not only legal counsel to navigate but also the patience and resources necessary to endure a prolonged fight for the return of property. As Table 5 indicates, from 2005 to 2012, IRS structuring-related forfeitures took, on average, nearly a year—356 days—to complete from seizure to forfeiture. Civil forfeitures for structuring only took even longer—375 days. Not surprisingly, judicial forfeitures took considerably longer than administrative forfeitures; civil judicial forfeitures, in fact, took more than twice as long as those completed administratively.

Unfortunately, the IRS data do not indicate how long it takes property owners who get their property back to see the return of their funds; the data only

provide dates for forfeitures, not for the return of seized property that does not result in a forfeiture.

But the forfeiture dates suggest that property owners may wait a long time. It takes an average of 460 days for the IRS to forfeit currency through a civil judicial process. It likely could take a property owner caught up in the same process as long to get her money back, even when the civil judicial case is dropped. For their part, Terry Dehko and Sandy Thomas waited almost a year to receive their funds back.²⁷

The Hirsch brothers, owners of the Bi-County Distributors in New York, waited even longer. In May 2012, the IRS seized more than \$446,000, everything in their company's bank account, and it took until January 2015 for the IRS to agree to give the money back. In all that time, the Hirsches were unable to contest the seizure before a judge because the government never formally moved to forfeit the property.²⁸

In October 2014, *IJ* challenged the IRS's delay tactics as an unconstitutional violation of the Hirsches' due process rights and a violation of the Civil Asset Forfeiture Reform Act and demanded the government return the funds. Had the government filed a civil forfeiture complaint, the Hirsch brothers would have had the opportunity to show that their frequent sub-\$10,000 cash deposits were for a legitimate business purpose, not to avoid banking regulations. Bi-County Distributors is a family-owned company that distributes candy and cigarettes to convenience stores on Long Island, and its customers often pay in cash. Bi-County has had several banks close its accounts in recent years because, the Hirsches were told, the banks did not want the hassle of dealing with a cash-intensive business. To avoid burdening banks and in hopes of keeping their accounts open, the brothers began making smaller deposits.

Before taking the Hirsches' money, the IRS made no serious attempt to investigate their business or understand why they made frequent cash deposits. After the seizure, the IRS turned a blind eye to evidence showing the money was legitimately earned and denied the brothers an opportunity to make their case in court. What the Hirsches experienced was not "seize first and ask questions later," but "seize first and ignore questions later." While the IRS held onto the cash, the brothers struggled to keep their business afloat. Their ordeal illustrates the hardships faced by those deprived of funds for months or even years.

At two years and nine months, Bi-County's wait was more than double the average wait indicated in the data for this report, but some cases have taken considerably longer. As shown in Table 5, the longest forfeiture, which was disposed of through a civil judicial process, took more than 6.5 years (2,390 days).

TABLE 5: DAYS BETWEEN SEIZURE AND FORFEITURE,
IRS STRUCTURING-RELATED SEIZURES, 2005 TO 2012

	Average days between seizure and forfeiture	Maximum days between seizure and forfeiture
Administrative	209	1,233
Civil Judicial	460	2,390
Criminal Judicial	393	2,079
All Properties	356	
Civil Structuring Only	375	2,026

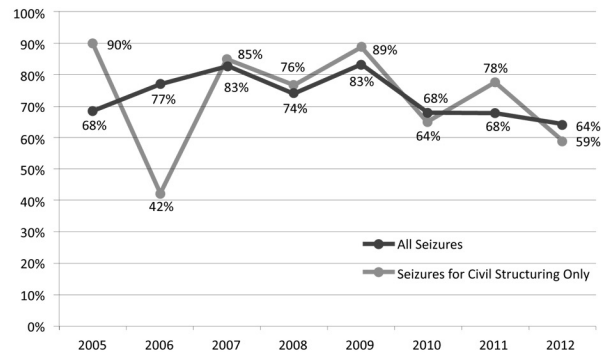
IS THE IRS SEIZING MORE THAN JUSTIFIED?

Figures 1 and 2 (page 13) show sizable and apparently growing gaps between the IRS's structuring-related seizures and its forfeitures, both in the number of cases and in the amount of money taken. The gaps raise concerns that the IRS is seizing more than it can later justify.

Altogether, of the \$242 million the IRS seized for suspected structuring from 2005 to 2012, nearly half—\$116 million—was not forfeited.²⁹ In half of seizures, the IRS forfeited less than it seized; in another 31 percent, the IRS did not forfeit *any* of the funds seized.³⁰

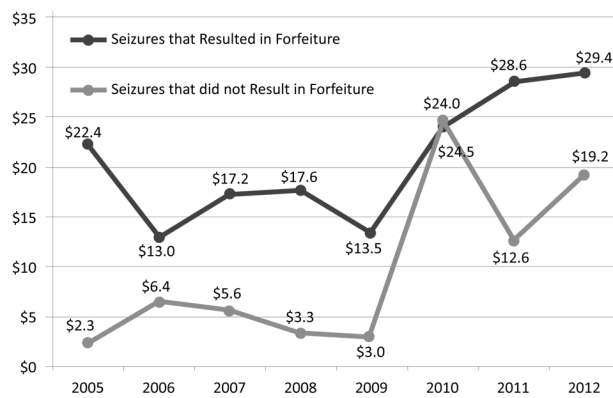
Seizures that failed to yield a forfeiture are on the rise, as illustrated by Figure 4. In 2007 and 2009, 83 percent of IRS structuring-related seizures resulted in the forfeiture of at least some funds, but by 2012, just 64 percent of seizures led to a forfeiture. Successful civil forfeitures for suspected structuring alone showed a similar drop.

FIGURE 4: PERCENTAGE OF IRS STRUCTURING-RELATED SEIZURES THAT RESULTED IN FORFEITURE, 2005 TO 2012



The amount of money taken in seizures that failed to yield a forfeiture likewise grew, as shown in Figure 5, particularly between 2009 and 2010, when the value of such seizures jumped from nearly \$3 million to \$24.5 million—a 715 percent increase. As with the spike in funds seized shown in Figure 2, this increase could be the result of greater attention paid to financial fraud in the wake of high-profile scandals. Yet, as the IRS was seizing more cash, its forfeiture success rate was declining. If heightened concern about financial fraud was behind the seizure increase, it appears not to have led to more seizures that were justified, but perhaps instead to overzealous seizing by the IRS.

FIGURE 5: TOTAL VALUE OF SEIZURES THAT DID AND DID NOT RESULT IN FORFEITURES, 2005 TO 2012, IN MILLIONS



Unfortunately, the IRS data do not explain why the IRS might forfeit substantially less than it seizes, but there are a few possible reasons. In some cases, the IRS might have reached a settlement with the property owner. The IRS might settle for a smaller amount to avoid protracted litigation, even if it has a strong case that the funds were intentionally structured, either to evade reporting requirements or to hide other criminal activity. Conversely, a property owner, even an innocent one, might agree to take some

percentage of the seized amount back and allow the rest to be forfeited to avoid costly litigation and risk losing the full amount. The IRS offered Terry and Sandy such a deal, proposing to return 20 percent of their money,³¹ an offer that was refused.

But others elect to cut their losses and accept a settlement. In 2011, the IRS seized \$62,936 from the South Mountain Creamery, owned by Maryland farmers Randy and Karen Sowers. The money was generated from cash sales at farmers markets, and a bank teller advised Randy and Karen that deposits in excess of \$10,000 required the bank to complete a special form. To avoid creating unnecessary paperwork, they began making deposits of less than \$10,000. The Sowers committed no crime other than systematically depositing less than \$10,000 to avoid paperwork. Randy and Karen challenged the seizure of their funds, but facing steep litigation costs, they later accepted the government's offer to return about half of their money.³²

Another possible reason that seized money may not all be forfeited is that a prosecutor determined that the IRS had seized more than it had authority to seize and returned some of the seized funds while moving to forfeit the rest. For instance, the IRS



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can typically only forfeit funds for suspected structuring going back one year.³³ If the agency or the prosecutor determines some seized funds were deposited earlier, it might return them. Or the agency or prosecutor might decide after a seizure that it has too little evidence to substantiate an alleged structuring violation for part or all of the funds and return them.

This happened with another Michigan business owner and U client, Mark Zaniewski. In 2013, the IRS cleaned out his gas station's account, alleging the funds were structured. To avoid bouncing checks to vendors, he replenished the account with borrowed funds and earnings from his business—after the IRS told him he could do so without fear of a second seizure. But the IRS then seized the newly deposited funds.³⁴ After Zaniewski provided proof that these funds could not have been structured cash deposits, the agency offered to return the money from the second seizure if he would give up the funds from the first seizure. He refused, and the IRS finally returned the money from the second seizure after

holding it for six months.³⁵

A final explanation for a gap between seizures and forfeitures would be an IRS loss in civil or criminal court, or a judge's determination that only a portion of the seized funds were eligible for forfeiture.

Whatever the explanation, substantial gaps between seizures and forfeitures are troubling. They suggest the IRS might be seizing more than can ultimately be justified to a prosecutor or court, depriving people of rightfully earned funds perhaps for months or years while the forfeiture process plays out and requiring them to hire legal counsel to win their money back. Seizure-forfeiture gaps are particularly worrisome given the “seize first, ask questions later” approach to law enforcement made possible by civil forfeiture laws in combination with laws against structuring. Because civil forfeiture sets such a low bar to seize funds—and gives the government a financial stake in doing so—it should not be surprising to see seizures that cannot survive scrutiny.

POLICY RECOMMENDATIONS

On October 26, 2014, *The New York Times* exposed the IRS's structuring-related forfeiture activities, reporting some of the numbers we secured through the freedom-of-information request and featuring Carole Hinders and the Hirsch brothers.³⁶

In response to scrutiny by the *Times*, the IRS announced it would adjust its policy to focus on "cases where the money is believed to have been acquired illegally or seizure is

deemed justified by 'exceptional circumstances.'"³⁷ However, any change in practice will not apply to seizures and forfeitures already underway³⁷ and does not change the law. As

long as the law remains as is, individuals remain at risk for the loss of their property.

The surest way to stop structuring-related seizures once and for all is to end civil forfeiture entirely and replace it with criminal forfeiture. People who have never been convicted, or never even charged, in criminal court should not lose their property in civil court. Ending civil forfeiture would not change the practice of seizing properties suspected of involvement in a crime, but since agents would have to be prepared to win in a criminal proceeding, which includes proving

guilt beyond a reasonable doubt, it would reduce the number of seizures considerably, particularly those perpetrated with the flimsiest of evidence. Moreover, property owners would be afforded the greater protections that come with criminal proceedings, not least of which includes the presumption of innocence.

Short of eliminating civil forfeiture, lawmakers should remove the perverse financial incentive law enforcement agencies have to pursue

civil forfeiture by requiring that forfeited funds be deposited in a neutral account, such as a general fund, and increase the standard of proof required for forfeiting property. Currently,

law enforcement agencies forfeit funds under a simple preponderance of the evidence standard. Increasing this to a standard of clear and convincing evidence would introduce greater protections for property owners like Terry Dehko and Carole Hinders whose financial transactions were entirely explainable.

Reforming forfeiture procedures to require a prompt post-seizure hearing after the seizure of currency would also extend greater due process protections to property owners. Federal civil forfeiture law does not allow for a prompt post-sei-

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zure hearing when currency is seized.³⁸ This means cases can languish months and even years before property owners have an opportunity to contest the seizure before a neutral magistrate—among the most fundamental requirements of due process. Federal law does, however, prescribe a post-seizure hearing for non-monetary property, although only after the property owner files a hardship petition.³⁹ Federal forfeiture law should be changed to consistently require a prompt post-seizure hearing for all property types, and no hardship petition should be required to trigger that hearing.

Finally, the basic due process principle of fair notice should be applied to the prosecution of civil forfeiture for structuring. Structuring laws were

aimed at combating serious criminals. But the government has prosecuted structuring cases against people completely unaware of what structuring is or that it is illegal. Sometimes people engage in transactions on the poor advice of bank tellers or accountants in an attempt to maintain their financial privacy. People who are not structuring to conceal any underlying criminal activity have little reason to consider or know that it is illegal to deposit their own lawfully earned money in their own bank accounts to avoid what they perceive as unnecessary or intrusive government reporting. Seizing and forfeiting money for nothing more than this violates the basic due process principle of fair notice and deprives people of an opportunity to conform their behavior to the law.

CONCLUSION

Upon learning of the IRS's money grab from his store's bank account, Terry Dehko exclaimed, "Aren't we in the United States? We did nothing wrong."⁴⁰ Unfortunately, there is an upside-down

world within the United States in which people who do nothing wrong, like Terry and Sandy, are presumed guilty, face a Kafkaesque process in an attempt to get their money back and wait months or years for resolution of their cases.



Seizures for suspected structuring are becoming more frequent, and the amount of money seized is substantial and growing. The amount ultimately forfeited, however, diverges significantly from what was seized, suggesting overzealous seizures and prosecution by the government. Moreover, the vast majority of structuring-related seizures are initiated and eventually processed through civil procedures, meaning property owners are not convicted of, let alone charged with, any crime.⁴¹ And at least a third of seizures originated not out of suspicion of activities normally thought of as crimes, such as fraud, money laundering or smuggling, but from the mere act of making transactions under \$10,000, a common practice among cash-intensive businesses.

What makes structuring-related civil forfeiture even more pernicious is the financial stake the IRS and prosecutors have in the process. Forfeited money is used to fund further law enforcement efforts, creating a perverse incentive to pursue monetary gain rather than the impartial application of the law, which may explain the “seize first, ask questions later” approach and the decreasing rate of seizures converted to forfeitures.

The U.S. Supreme Court has declared that “individual freedom finds tangible expression in property rights”⁴² and that property rights cannot be “relegated to the status of a poor relation” in comparison to other constitutional rights.⁴³ Citizens losing property absent a conviction, let alone an indictment, for any crime and waiting months and even years for the fulfillment of their due process rights epitomizes “the status of a poor relation.” In a 2014 civil forfeiture case, the presiding judge noted that the absence of an underlying criminal indictment of the property owners “create[d] some pause”:

Even the most ardent law and order advocate would likely recognize the legitimate civil liberty concerns that arise from the federal government’s taking of personal property as the fruit of a crime when neither the federal government nor any state has chosen to indict the alleged perpetrators for the underlying criminal activity.⁴⁴

The data presented in this report demonstrate why concerns about civil forfeiture are growing and why forfeiture laws require serious reform to return property rights to their central role in the expression of individual freedom.

ENDNOTES

- 1 Americans have good reason to not trust the government. (2014, May 4). *Topeka Capital-Journal*, p. A4.
- 2 Williams, M. R., Holcomb, J. E., Kovandzic, T. V., Bullock, S. 2010. Policing for profit: The abuse of civil asset forfeiture. Arlington, VA: Institute for Justice.
- 3 31 U.S.C. § 5313(a).
- 4 31 U.S.C. § 5324(a).
- 5 Williams, Holcomb, Kovandzic, and Bullock, 2010.
- 6 Our request for structuring data began with the Treasury Department. That yielded no useful data and an admonition that data we sought would have to be obtained from each agency individually. Since the IRS is likely the most active agency in structuring, we began there first.
- 7 The data provided by the IRS refer to fiscal years, not calendar years, so all years in this report should be understood as fiscal years.
- 8 In analyses like this, the median (i.e., the middle) is the better measure of averages, as the mean is influenced by extreme figures at one end or another of a distribution of numbers.
- 9 The first complete year for which seizure data were made available by the IRS was 2005. We chose 2012 as the final year of seizures in the analyses to allow for sufficient time to pass for those seizures to turn into forfeitures, if, in fact, they were to do so. We used 2013 as the final year of forfeiture data, as it represented the final full year of these data available from the IRS. Since, as Table 5 indicates, seizures take, on average, approximately a year to turn into forfeitures, many if not most seizures from 2012 would be captured in the 2013 forfeitures (if they turn into such). However, some successful seizures do take longer than a year, so there may be a small number of seizures in 2012 that eventually turned into successful forfeitures sometime after 2013 but would not be captured as such here.
- 10 This comparison used 2006 since 2005 likely was not a complete year of forfeitures.
- 11 <http://abcnews.go.com/Blotter/story?id=6444781&page=1>
- 12 Goldfarb, Z. A. (2009, February 18). SEC alleges \$8 billion savings fraud, *Washington Post*, p. D1.
- 13 <http://www.sec.gov/news/press/2009/2009-5.htm>
- 14 Weiser, B. (2009, July 14). Lawyer sentenced to 20 years for \$700 million fraud, *New York Times*, p. A20.
- 15 <http://www.reuters.com/article/2009/12/02/petters-verdict-idUSN024978920091202>
- 16 Koppel, N. (2009, December 2). Rothstein charged in Ponzi scheme, *Wall Street Journal*, p. B3.
- 17 Cassella, S. D. (2008). The case for civil forfeiture: Why in rem proceedings are an essential tool for recovering the proceeds of crime. *Journal of Money Laundering Control*, 11(1), 8-14.
- 18 For a small percentage of cases, the coding appears inconsistent between, for example, the statute under which a property was seized and how it was processed. For instance, some properties may have been seized under the civil structuring statute (31 U.S.C. § 5317 (c) (2)) but processed as a criminal judicial forfeiture. In other examples, properties were seized under criminal statutes (i.e., 18 U.S.C. § 982) but processed administratively or civil judicially. These inconsistencies likely reflect a change in the status of a case or a decision made by a prosecutor to change the status of a case as it proceeded through its life cycle. This means numbers or percentages compared between tables and figures may differ slightly.

- 1 In almost 10 percent of cases, property was seized under
 2 one type of procedure and processed under another. A
 3 little more than seven percent were seized under civil
 4 statutes and processed as criminal. A little more than
 5 two percent were seized under criminal statutes and
 6 processed as civil.
 7 [http://www.treasury.gov/resource-center/terrorist-illicit-
 8 finance/Asset-Forfeiture/Pages/Forfeiture-Overview.aspx](http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Pages/Forfeiture-Overview.aspx)
 9 Administrative forfeiture is less costly and less time-con-
 10 suming to the government than civil judicial forfeitures.
 11 Moreover, in 1984 and again in 1990, Congress made ad-
 12 ministrative forfeitures simpler for the government. Prior to
 13 1984, administrative forfeitures could only be commenced
 14 for property valued at less than \$10,000; after 1984, as a
 15 result of the Comprehensive Crime Control Act, the thresh-
 16 old increased to \$100,000, but only violations of customs
 17 law could be processed as administrative forfeitures. In
 18 1990, as part of the Customs Trade Act, the threshold
 19 increased again to \$500,000, and the scope broadened to
 20 include monetary instruments under other laws.
 21 [http://www.treasury.gov/resource-center/terrorist-illicit-
 22 finance/Asset-Forfeiture/Pages/Forfeiture-Overview.aspx](http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Pages/Forfeiture-Overview.aspx)
 23 31 U.S.C. § 5332 (c)(1), 18 U.S.C. § 981.
 24 31 U.S.C. § 5317 (c)(2).
 25 The first year in which forfeitures for structuring only
 26 appeared in the data was 2007.
 27 Ross, D. B. (2000/2001). Civil forfeiture: A fiction that offends
 28 due process. *Regent University Law Review*, 13(1), 259-277.
 29 The seizure at Schott's Supermarket was processed as a
 30 civil judicial forfeiture. The money was returned only after
 31 the government missed a procedural deadline. Presum-
 32 ably, had that not happened the forfeiture would have
 33 been decided by a judge.
 34 <http://www.ij.org/long-island-forfeiture-backgrounder>
 35 This includes seizures that did not result in forfeitures and
 36 forfeiture amounts that were less than seized. There may
 37 also be a small amount of seizures that took longer than one
 38 year to complete and turned into forfeitures after 2013.
 39 This includes seizures that did not result in forfeitures
 40 and forfeitures of zero dollars. There may also be a small
 41 amount of seizures that took longer than one year to
 42 complete and turned into forfeitures after 2013.
 43 Americans have good reason to not trust the
 44 government, 2014.
 45 Specifically the government returned \$33,436 and kept
 46 \$29,500. *United States v. \$62,936.04 in U.S. Currency* (D.
 47 Md. May 30, 2012).
 48 18 U.S.C. § 984(a)-(b).
 49 Motion for Prompt Post-Seizure Hearing at 3-7 (ECF #12),
 50 *United States v. \$33,244.76 in U.S. Currency*, No. 13-13990
 51 (E.D. Mich. filed Nov. 14, 2013).
 52 Emails and letters between Zaniewski's counsel and the
 53 U.S. Attorney's office for the Eastern District of Michigan
 54 on file with the Institute for Justice.
 55 Dewan, S. (2014, October 26). Law lets I.R.S. seize accounts
 56 on suspicion, no crime required, *New York Times*, p. A1.
 57 *The New York Times* reported that the new policy will not
 58 apply to past seizures.
 59 18 U.S.C. § 983(f)(8).
 60 18 U.S.C. § 938(f)(1).
 61 Americans have good reason to not trust the govern-
 62 ment, 2014.
 63 In addition, because the cases are processed civilly, prop-
 64 erty owners who cannot afford counsel are disadvantaged
 65 compared to criminal cases, where the Sixth Amendment
 66 guarantees owners the right to an attorney

^{4 2} *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993).

^{4 3} *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

^{4 4} *United States v. \$54,440.00 in U.S. Funds*, 4:11-CV-143 CDL, 2014 WL 5306502, at *6 (M.D. Ga. Oct. 15, 2014).
The judge upheld the forfeiture, however, because “the forfeiture statutes enacted by Congress permit such aggressive pursuit of the fruit of theoretically indictable, yet not actually indicted, crimes. Perhaps more importantly, any judge should know that the same Constitution that protects those civil liberties also constrains the Court from rewriting those forfeiture laws or purposely misconstruing the evidence to reach a particular result.” *Id.* Such logic ignores an essential role of the judiciary—determining the constitutionality of laws passed by legislative bodies. The fact that judges allow these laws to stand and approve the “aggressive pursuit” of forfeiture further emphasizes why reform of these laws is so important.



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ABOUT IJ

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Chairman ROSKAM. Thank you, Mr. Johnson.

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. To help understand the mechanics of this, did you then have to go set up another operating bank account in your bank, or could you continue to operate that bank 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 [continuing]. 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 counter-productive.

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 [continuing]. 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 effect 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 employ 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 and committing these acts. I think sometimes the confusion is, who do we represent as Congressman? 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 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." 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 it." 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, 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 you're 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, Brendon, if they come in, that is okay. We will still fight them tooth and 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.

Mr. LEWIS. That is wonderful. And let me just ask you, has anyone from the IRS, except for today, has anyone, Mr. Clyde, Mr. Hirsch, 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.

Mr. JOHNSON, you have walked through this process with numerous of these people. As an attorney who understands the process, what needs to be proven in a case like this to suggest that somebody has violated the structuring statute?

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 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 a response 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 to 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 their stories. It is incredibly important that the people know what is happening.

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 report that was released just recently, 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. 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 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 do the affidavits strike you that you have seen? Then can you give a little more color commentary on the ex parte communication? In other words, 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 back 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 now they just happen to have an audit interest 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.

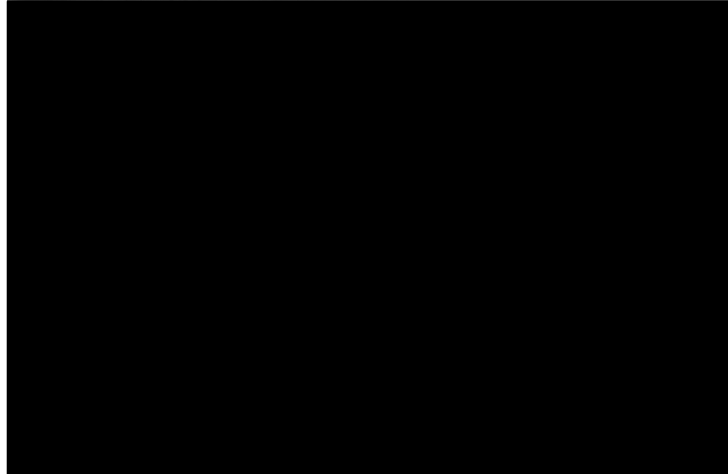
So he says, We would be satisfied with the exact same language from the Taylor case. Why can’t we just do what was done in the Taylor case?

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:]



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
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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

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<Sowers+Executed+Agreement_05292012.pdf>

<Motion+for+Final+Order+of+Fft.pdf>

<Sowers+Signed+Order_05302012-1.pdf>

Chairman ROSKAM. Mr. Johnson, just quickly, your client Mark Zaniewski in Michigan had an experience. Can you just give us a nutshell basically summarizing 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 where 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. 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? Yet, 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.

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, you were faithful, and now what is happening is your country is 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. If they are operating outside of that delegated authority, they are going to deal with it.

So thank you all.

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.]

