

**FORFEITING OUR RIGHTS:
THE URGENT NEED FOR CIVIL
ASSET FORFEITURE REFORM**

HEARING

BEFORE THE
SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL
LIBERTIES
OF THE

**COMMITTEE ON OVERSIGHT
AND REFORM**

**HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTEENTH CONGRESS**

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- * Policy brief by ACLU, titled "Profiting from California's Most Vulnerable"; submitted by Chairman Raskin.
- * Report by Center for American Progress, titled "Forfeiting the American Dream"; submitted by Chairman Raskin.
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FORFEITING OUR RIGHTS: THE URGENT NEED FOR CIVIL ASSET FORFEITURE REFORM

Wednesday, December 8, 2021

HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND REFORM
SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL LIBERTIES
Washington, DC.

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 2154, Rayburn House Office Building, and via Zoom. The Hon. Jamie Raskin (chairman of the subcommittee) presiding.

Present: Representatives Raskin, Wasserman Schultz, Kelly, Pressley, Norton, Ocasio-Cortez, Tlaib, Davis, Mace, Sessions, Biggs, and Donalds.

Also present: Representative Clyde.

Mr. RASKIN. The committee will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time.

And I am now going to recognize myself for an opening statement.

Good morning. Thank you to our witnesses for joining us today, and thanks to all the members for coming to participate in this critical hearing.

I want to thank my friend, the ranking member Congresswoman Mace, and her staff for working so closely with us in coordinating today's hearing.

This bipartisan hearing will be the first that Congress has held in nearly seven years focused on the need to reform the use of our civil asset forfeiture laws. Civil asset forfeiture is a tool used widely by federal, state, and local law enforcement to seize assets that are believed to be connected to criminal activity, either as an instrument of criminal activity or a proceed of criminal activity.

Law enforcement, under the civil asset forfeiture laws, can seize money, cars, vans, boats, and other vehicles, even people's homes and offices, and then keep the cash or sell the property to augment their agency's budget, their auto fleets, their holiday party and social activity funds, athletic and gymnastic facilities, and other government facilities and activities.

Because these laws often lack the bare minimum of due process protections, many of these operations are, in fact, trampling every major component of constitutional due process. Law enforcement agents can seize and permanently deprive people of their assets without ever arresting them, much less charging them with a

crime, much less convicting them of a crime. And that is why we call this civil asset forfeiture because the state is not going through the ordinary criminal process and sustaining the burden of proving beyond a reasonable doubt someone has committed a crime. Rather, people's property is just being seized.

And again, you don't have to prove beyond a reasonable doubt or even by a preponderance of the evidence in court first that the property is somehow tainted by crime. You don't even have to charge the person. You don't even have to arrest the person. The state is just seizing the property.

And law enforcement agents can seize and forfeit assets of innocent third-party owners even if the person whose property is being seized had no knowledge that their property was being allegedly used in connection with a suspected crime. Under this system, a grandmother's car or a parent's apartment can be seized if police suspect that the grandchild or child is possessing drugs or committing some other kind of criminal offense on the property. That is an outrageous breach of the most basic concepts of civil justice, due process, and property rights. And too often these seizures become permanent, even if charges are never brought against a person whose assets are seized.

Even if criminal charges are never even brought, it can be extremely difficult, virtually impossible to recover your property. So, civil asset forfeitures flip the constitutional standards of a citizen's presumption of innocence and the government's duty or burden to prove guilt on their head. Just flip it over and, thus, deprive people of their due process rights.

In most cases, law enforcement can seize and keep the property using a very low evidentiary burden. Even if it does get to court, even if the person whose property is seized goes to court, finds a lawyer, pays to go, even then the lowest evidentiary burden of simple reasonable suspicion of crime is what is often used, and hearsay is often used in the process.

Conversely, the property owner must be the one who goes to court and affirmatively prove that their assets are not connected to a crime or that they had no knowledge that they were connected to a crime. Your property, in essence, is presumed guilty, and this is a scandalous inversion of due process.

Because these are civil rather than criminal actions, poor Americans who are caught up in this process have no right to appointed counsel. The civil forfeiture proceedings are bewilderingly complex to navigate for laypeople. A single filing error can result in permanent forfeiture, and the value of seized assets is often less than it would cost to hire an attorney in the case of someone just having a small amount of money taken from them on the street, for example. As a result, civil asset forfeitures are rarely challenged, and successful challenges are very rare.

Meanwhile, law enforcement agencies in many states keep the proceeds from forfeited assets, leading to massive windfalls in some police department or sheriff department budgets. This is true even in states that have abolished civil asset forfeiture because of a massive loophole in the federal law we will discuss today called the Adoption and Equitable Sharing Programs.

Under these programs, seizures made by state and local law enforcement can be adopted by a federal agency for forfeiture, and then up to 80 percent of those revenues can be equitably shared and returned to the seizing agency. This creates a perverse profit incentive because law enforcement agencies can keep the revenues from forfeitures with little, if any, oversight as to how the money is being spent.

In 2018, federal and state law enforcement seized and forfeited more than \$2 billion worth of cash and assets from Americans using these processes. From 2000 to 2018, state and federal agencies combined obtained more than \$68.8 billion through forfeitures. Despite these massive sums, high-value forfeitures remain the exception, not the rule. In fact, most seizures, usually of cash or cars, are for quite low values and are taken from people primarily living in communities of color in low-income areas.

Between 2015 and 2019, the average forfeiture amount under state law was \$1,276 per incident. In several states, the median amount forfeited is far less than that. Half of all forfeitures in Michigan, for example, were less than \$423 in a two-year period, and in Pennsylvania, they were less than \$369 in 2018.

Moreover, numerous studies reflect that communities of color are disproportionately affected. For instance, between 2012 and 2018, more than half of the forfeitures occurring in Philadelphia came in four low-income Black and Latino majority zip codes. Between 2014 and 2016, 65 percent of the people targeted for forfeiture in South Carolina were African-American men, despite their making up just 13 percent of the state population.

The 2016 ACLU of California study found that 85 percent of equitable sharing payments went to law enforcement agencies serving in majority minority communities. We cannot have an honest conversation about civil asset forfeiture without acknowledging its connection to greater issues of the targeting of communities of color by law enforcement in particular communities.

In 2015, then-Attorney General Holder issued an order that curbed federal adoptions to a limited degree and prohibited equitable sharing revenues from being spent on militarized equipment. Even though these limitations were applied narrowly, they were rescinded by Attorney General Sessions in 2017.

It is time for DOJ to reinstate the protections provided by the Eric Holder memorandum and to conduct a comprehensive review of its civil forfeiture program to ensure that basic civil rights and civil liberties are being protected. But this isn't enough. We need lasting legislative reform.

Thankfully, there is near universal recognition now that civil asset forfeiture practices are rife with abuse and ripe for reform. Since 2014, 36 states and D.C. have taken steps to reform their regimes, and four states—Maine, Nebraska, New Mexico, and North Carolina—have eliminated it entirely.

But these efforts are being undermined by federal equitable sharing, which is like a run-around or an end run, and we need to deal with it by passing the sweeping reforms contained in the FAIR Act that we will discuss today. Congress must act to ensure lasting reforms to federal civil asset forfeiture programs.

I am proud to be the lead Democratic cosponsor of H.R. 2857, the FAIR Act, along with my good friend Congressman Tim Walberg of Minnesota. This bill will, among other things, raise the level of proof required by the government to keep a forfeiture to clear and convincing evidence. It will require all revenues to be deposited in the general Treasury fund, rather than being returned directly to state and local law enforcement agencies.

I am pleased as well that many of my colleagues on this committee have joined Mr. Walberg and me in cosponsoring this bill. This is how Congress should be operating in the interests of protecting the rights of all Americans, rather than engaging in our constant habits of partisan polemic and invective.

I hope that we can continue working together to confront this mostly invisible, but still egregiously outrageous injustice that civil asset forfeiture imposes on so many Americans. And I look forward to hearing the testimony of our distinguished witnesses today.

With that, I now recognize my esteemed ranking member, Ms. Mace, for her opening statement.

Ms. MACE. And thank you, Mr. Chairman, and I thank you, Chairman Raskin, for holding today's hearing on a question that couldn't be more important to the American people or fundamental to our Nation's identity as founded in our Constitution, the ability of people to be secure in their property.

In the case of civil asset forfeiture, there is no requirement that the property owner be convicted of a crime, let alone charged with any sort of offense. And I want to quote this morning, first of all, my hometown newspaper, the *Charleston Post and Courier*. As we were discussing earlier before the hearing today, I worked on civil asset forfeiture as a state lawmaker before coming up here to Congress, and it is an honor to work with you on these issues and to have this hearing today. It is an important hearing.

The *Post and Courier* a few years ago reported on investigations by the *Post and Courier* and the *Greenville News* in 2017, and their investigation showed how the law was incentivized, law enforcement agencies, to seize assets, sometimes without even filing criminal charges and put people in the legally backward position of having to prove their innocence to get their property back, which is completely opposite of what the Constitution would, I believe, require.

The *Post and Courier* also stated the *Greenville News* series that did this large investigation looked at some 3,200 seizures and \$17.6 million in assets taken over a three-year period in South Carolina. In about 800 cases of those 3,200, or 25 percent, there were no criminal charges filed. And in another 800 cases in which charges were filed, there were no convictions.

The series, the investigation by the *Greenville News*, also found that roughly two-thirds of seized assets came from Black men, calling into question whether the law was being applied fairly. And as the chairman rightly recognized, this disproportionately affects communities of color, and those who are poor are also unfairly and unevenly treated in these cases.

The writers of our country's Declaration of Independence held several truths to be self-evident, that all are created equal, that

they are endowed by their creator with certain unalienable rights. And those are life, liberty, and the pursuit of happiness.

Our Constitution guarantees those rights explicitly in the text. The Fifth Amendment prohibits the Federal Government from depriving people of life, liberty, or property without due process of law. And in so many cases, as the chair has recognized, that is not happening.

Likewise, the Fourteenth Amendment prohibits states from depriving any person of life, liberty, or property again without due process of law. But civil asset forfeiture too often creates an end run around the constitutional guarantee of due process. Too often civil asset forfeiture creates a “seize first, ask questions later” approach and incentive.

We do want to prevent criminals from continuing to use their property in the commission of criminal offenses and crimes or to enjoy the property derived illegal activity. They shouldn’t be doing it, obviously. But asset forfeiture, pursuant to a criminal charge and conviction, is a sound means of ensuring criminals do not benefit from the proceeds of their crimes, and defendants should be proven guilty beyond a reasonable doubt.

Civil asset forfeiture is an action against the property, and those property owners who have assets seized have no guarantee to an attorney to help them navigate a very complicated and most often expensive and costly legal proceeding. They usually cannot afford to contest the forfeiture in a proceeding in which the government has a very low burden of proof.

In fact, it often costs well more for an attorney than the seized assets are worth, leading many forfeiture actions just to simply go untested because it is unaffordable to fight in court. Many innocent activities have led to authorities seizing assets, which are often very difficult to get back through any forfeiture proceeding.

Small business owners have been wrongly accused of structuring, which is the practice of depositing or withdrawing less than \$10,000 to avoid bank reporting laws, even though there are a number of reasons to deposit \$9,000 in a bank. Those affected have had their entire bank accounts seized, tying up all of their operating capital for months, if not years, in complicated legal proceedings, all without ever being charged with a crime.

Others have had their life’s savings confiscated by the government merely for carrying large amounts of cash, again without being charged with any criminal offense. A report by the Institute for Justice shows the median cash seizure in states is only about \$1,300, which is well below the amount of money it would cost to hire an attorney to contest the forfeiture.

This is a real problem in our country, one that Congress should seriously debate and consider reforming, which is why we are doing this today. So, thank you. And certainly, there are simple, common sense reforms that we all could get behind to restore the Constitution’s guarantee of due process outlined by the chairman this morning.

But for example, it should be easier for litigants representing themselves to navigate and contest any forfeiture action. We should guarantee their right to a quick hearing, where the government must show cause for why the property was seized in the first place.

And we should consider whether it is proper for funds to be returned directly to the authority seizing those funds in the first place or whether those funds should be deposited, as you mentioned, in the general Treasury, if not returned directly to victims that are affected.

I look forward to hearing from our witnesses today. So, thank you for spending your time with us and sharing your knowledge and expertise and personal experiences about the scope of this issue across the country and what we could be and should be doing as legislators in Congress to solve it.

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

Mr. RASKIN. And thank you, Ms. Mace, for those super thoughtful and lucid remarks you just made.

I want to now introduce our witnesses today and swear them in.

Our first witness is Daniel Alban, a senior attorney and co-director for the National Initiative to End Forfeiture Abuse at the Institute for Justice, which is a primary actor in this field. And I, too, like Ms. Mace, worked on this problem in Annapolis when I was a state senator, and the Institute for Justice was a critical resource we relied on. So, thank you for being with us, Mr. Alban.

Then we are going to hear from Malinda Harris of Springfield, Massachusetts, who was a victim of civil asset forfeiture.

Then we are going to hear from Professor Louis Rulli, a practice professor of law and director of the Civil Practice Clinic and Legislative Clinic at the UPenn Carey Law School.

Finally, we will hear from Aamra Ahmad, a senior policy counsel at the ACLU.

The witnesses will be unmuted, please, or stand so we can swear them in. Please raise your right hands. Great.

Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

[Response.]

Mr. RASKIN. All right. Let the record show that all of the witnesses answered in the affirmative today.

Thank you. Without objection, your written statements are going to be made part of the record.

Now you are recognized for five minutes. And with that, Mr. Alban, you will go first.

STATEMENT OF DANIEL ALBAN, SENIOR ATTORNEY AND CO-DIRECTOR, NATIONAL INITIATIVE TO END FORFEITURE ABUSE, INSTITUTE FOR JUSTICE

Mr. ALBAN. Thank you, Mr. Chairman and the members of this committee, for the opportunity to testify about the urgent need for civil forfeiture reform.

My name is Dan Alban. I am a senior attorney at the Institute for Justice and the co-director of our National Initiative to End Forfeiture Abuse. IJ is a national nonprofit public interest law firm. For 30 years, we have litigated cases nationwide on behalf of individuals whose constitutional rights have been violated by the government.

IJ has been litigating civil forfeiture cases since the 1990's, and we are currently litigating over a dozen forfeiture cases in courts

across the country. We have also conducted extensive research on the use of civil forfeiture nationwide and have published numerous studies based on that research, including three editions of “Policing for Profit,” the Nation’s only comprehensive study on civil forfeiture laws in all 50 states and at the federal level.

In recent years, we have also published multiple studies based on Federal Government data that found that civil forfeiture is ineffective at fighting crime, but it is used to generate more revenue when there are budget shortfalls. Those findings highlight why civil forfeiture is a national disgrace. It is not just ripe for abuse. It is inherently abusive.

Our civil forfeiture laws violate due process, encourage widespread abuse of civil liberties, pose a terrible threat to property rights, and distort and divert law enforcement priorities away from preventing and solving crimes toward raising revenue. Civil forfeiture turns the presumption of innocence on its head and effectively permits the government to punish someone for a crime without actually convicting them of that crime. That is not just deeply unjust, it is un-American.

But civil forfeiture continues throughout the United States because law enforcement has a strong financial incentive to use it. It gets to keep the money. Up to 100 percent of forfeited money goes to funds controlled entirely by law enforcement, with little oversight by Congress, state legislatures, or city council. That not only violates the separation of powers, it distorts law enforcement priorities, incentivizing policing for profit.

But civil forfeiture—unsurprisingly, the vast majority of forfeiture done under federal law is civil in nature. From 2000 to 2019, civil forfeitures made up 84 percent of all forfeitures done by DOJ agencies and 98 percent of forfeitures done by Treasury agencies. During that time, at least \$69 billion was seized and forfeited nationwide, and the Federal Government paid out nearly \$9 billion to state and local law enforcement agencies through the Federal Equitable Sharing Program.

While forfeiture generates massive amounts of money for law enforcement, the size of a typical forfeiture is quite modest. The median DOJ agency currency forfeiture is \$12,090. In other words, half of DOJ currency forfeitures are under \$12,000. The median currency forfeiture by Treasury agencies is just \$7,320, while the state median currency forfeiture is about \$1,000.

These figures indicate that forfeiture targets everyday people far more often than drug kingpins. Even worse, the federal forfeiture system involves a very complex set of procedures that is nearly impossible for a layman to navigate. We have prepared an infographic, which I am holding up now, that demonstrates the incredible complexity of the federal forfeiture process and how many ways there are to lose a civil forfeiture case, but very few ways to win.

Congress must act to fix this injustice. First, Congress should eliminate the profit incentive that drives most civil forfeiture by diverting all forfeiture proceeds to the general fund. Law enforcement should not get to control the money it forfeits. All spending should be done through the normal appropriations process and subject to legislative oversight.

Second, Congress should abolish the Federal Equitable Sharing Program, which drives so much abuse at the state and local level. Equitable sharing allows state law enforcement to circumvent state law by sending their forfeitures to the Feds. Equitable sharing should be abolished to preserve federalism and let states implement greater protections for property rights than are available under federal law.

Third, Congress should eliminate the byzantine administrative forfeiture process that makes it extremely difficult for property owners to contest a forfeiture. Property owners deserve their day in court, in a real court with a neutral Article III judge. They should not lose their property because the seizing agency makes a self-serving determination that it was right to seize and forfeit their property.

Finally, to truly fix this problem, civil forfeiture should be replaced entirely by criminal forfeiture. Until forfeiture is limited to criminal matters, the government will continue to punish people for alleged unlawful activity without actually convicting them of a crime. That is contrary to the American system of justice and cannot stand.

Thank you for the opportunity to testify today.

Mr. RASKIN. And thank you for your excellent testimony, Mr. Alban.

Ms. Harris, you are now recognized for your five minutes.

**STATEMENT OF MALINDA HARRIS, VICTIM OF CIVIL ASSET
FORFEITURE, SPRINGFIELD, MASSACHUSETTS**

Ms. HARRIS. Good morning. First, I would just like to thank the committee for inviting me here to testify. This is what happened with me and to give me a voice. So, thank you for that.

My name is Malinda Harris. I am 61 years old. I am a single parent of three boys. I was born in Greenville, South Carolina. I currently reside in Springfield, Massachusetts.

In 2015, my car was taken from me—

Mr. RASKIN. Ms. Harris, forgive me. Will you just make sure you speak directly into your microphone or as close as you can get? We don't want to miss any of your important words.

Ms. HARRIS. OK. Is that better? Can you hear me?

Mr. RASKIN. That is great.

Ms. HARRIS. OK, great. In 2015, my son Trevice Harris was coming off a vacation, and he asked if I could pick him up at the airport. I did so and returned home. He asked if he could borrow my car. I let him. He dropped me off, and about 10:30 that night, I got a phone call from him. I could tell something was wrong, but I wasn't quite sure what. He told me to come where to pick my car up at.

When I went to pick my car up, as soon as I put my hands on the door handle, about five, six police officers came from out of nowhere. One of them even had his hand on his holster, and they told me that they were going to seize my car because it was suspected of being involved in criminal activity.

And I'm like, "I don't know what you are talking about. This is my car." They wasn't trying to hear it. They told me that, basically, if I didn't give them the keys, they would—that the car may be

damaged, but whether I give it to them or not, the car was coming with them.

They had no warrant. They didn't show me any paperwork. I never got a receipt for my car. Basically, told me they were taking the car, and that's what they did.

So, the next day, I went down to the police station to find out what's going on and how to get my car back, and they wouldn't give me any information. Said it was part of an ongoing investigation, and so that was pretty much that.

Fast forward in I think it was 2020, I got a letter in the mail stating that they were going to keep the car unless I answered to them. I called to find out what needed to be done. They told me I need a lawyer.

I couldn't get a lawyer because I couldn't afford a lawyer at the time, and I needed to answer these things I had. They gave me 23 days, and by the time the letter got to me, I had like two weeks. And couldn't afford one, plus with the pandemic going on, you couldn't get a legal aide or anything. So, I was kind of left out there again.

So, I was trying to get more time. I contacted the D.A.'s office to see if I could get more time. They basically told me I need to get a lawyer to put into for more time to get a lawyer. It was a very difficult time, and if it wasn't for the Goldwater Institute and taking my case pro bono, I wouldn't have gotten my car back.

But fortunate for me, they did a great job, and I was able to get the car back, and I was able to give it to Trevice's daughter when she graduated.

The forfeiture was very, very stressful, and if it wasn't for them—it was a bad time. My son Trevice—let me just say this quickly. My son Trevice was killed in 2018, murdered. So, and it was in the same month. So, my thoughts were all over the place. It was a very difficult time. And thank you for the Goldwater Institute. My car was returned. So, I gave it to my granddaughter.

And why I think this reform is important is for a lot of reasons that were already stated because I don't believe people should be allowed to police for profit, and I think that they should have a better burden of proof. And also if they're going to do it, the money should be—they should be held accountable how the money is spent. And I really think it should go back into the community from which it was taken and do some good there, as opposed to lavish parties and trips to wherever.

So, once again, I thank you for allowing me to come and share my story, and I truly hope this bill passes because I think it's very important.

Thank you.

Mr. RASKIN. Ms. Harris, thank you for your wonderful testimony. We are very sorry to hear about the loss of your son, and thank you for joining us today and sharing your story.

Professor Rulli, you are now recognized for your five minutes of testimony.

**STATEMENT OF LOUIS S. RULLI, PRACTICE PROFESSOR OF
LAW, DIRECTOR OF CIVIL PRACTICE CLINIC AND LEGISLA-
TIVE CLINIC, UNIVERSITY OF PENNSYLVANIA CAREY
SCHOOL OF LAW**

Mr. RULLI. Thank you so much, Chairman. I appreciate the offer to testify today, and I commend the subcommittee for holding such an important hearing.

I direct a civil practice clinic at the University of Pennsylvania law school, where our students have represented low-income property owners in civil forfeiture proceedings over the past 20 years. Our clinic's work on civil forfeiture was highlighted in a cover story in the *New Yorker* magazine in 2013, entitled "Taken."

We were introduced to civil forfeiture 20 years ago, when a 77-year-old Black homeowner who had end-stage renal disease was served with a petition for forfeiture of her home. She was never charged with a crime. She was never suspected of any criminal activity. It had to do with a neighborhood boy who was unrelated to her. But nonetheless, the prosecutor sought to take her home.

I remember distinctly her saying something to me that many clients would say to me over 20 years, and that was, "Why is the government trying to take my home when I didn't do anything wrong?"

The *New Yorker* article was about our representation of Mary and Leon Adams, an African-American couple living in West Philadelphia. Prosecutors brought a civil forfeiture action against their home because their adult son was engaged in some small marijuana sales to a confidential informant. It had nothing to do with Mary and Leon Adams.

They were 68 and 70 years of age, upright, law-abiding citizens who had never been charged with a crime in their life, and nor were they charged or suspected of any criminal activity here. It was all related to their adult son. Nonetheless, prosecutors sought to take their home permanently.

Just recently, a local judge called me, seeking representation for a 14-year-old high school student who resided with his mother in a home that he inherited from his grandfather. The student's father did not live with them, but apparently or allegedly was involved in some low-level drug sales two miles from the property.

Nonetheless, never charged with any criminal activity, either mom or the high school student, prosecutors filed a civil forfeiture action to take the student's home.

Civil forfeiture is not just about homes. It's about cash, and it's about cars. And in terms of cash, the police confiscated a piggybank belonging to our client's young daughter when they searched her home. They never charged her with any criminal activity. She wasn't involved in anything. The piggybank contained the young girl's birthday money, totaling \$91. Prosecutors refused to give back that piggybank to her daughter.

These cases ended favorably only because there was free legal representation. A 70-year-old widow in failing health had both her home and her car seized by police and forfeited, putting her on the street at age 70, only to have years later the Pennsylvania Supreme Court finally rule in her favor.

Let's be clear. For the decade between 2005 and 2014, prosecutors in Philadelphia forfeited 746 homes, 1,938 cars, \$34.2 million in cash. That's just one city alone.

Reform of civil forfeiture is long overdue. We must enact a right to counsel. The high rate of default judgments is intolerable in our justice system. Prosecutors are not being held accountable for the claims they bring, and these matters are too complex to handle on your own.

We must put a stop to the low cash forfeitures that make it infeasible to hire a lawyer to represent you to get your cash back, and we must make sure that low-income individuals have the legal help when they need it most. The burden of proof is way too low. It does not protect property owners from erroneous deprivation of their property.

And we must boost data tracking and address head on the racial disparity in civil forfeiture. We know, and we did studies in Philadelphia, that low-income families and particularly families of color are disproportionately affected by civil forfeiture. This must end, and it will end if we begin to eliminate the financial incentive to law enforcement that drives persistent abuses.

I thank you all, and I thank this committee for this important work. Let's get it done.

Mr. RASKIN. And thank you, Professor Rulli, for your powerful testimony, and thank you for being a credit to law professors everywhere with the clinics that you run and the work you have been doing in the city of Philadelphia.

We turn now to Ms. Ahmad. You are now recognized for your five minutes of testimony.

**STATEMENT OF AAMRA AHMAD, SENIOR POLICY COUNSEL,
AMERICAN CIVIL LIBERTIES UNION**

Ms. AHMAD. Good morning, Chair Raskin, Ranking Member Mace, and distinguished members of the subcommittee. My name is Aamra Ahmad. I am pleased to be here today to discuss the need for federal civil asset forfeiture reform and urge you to pass the bipartisan Fifth Amendment Integrity Restoration Act.

For over 100 years, the ACLU has been our Nation's guardian of personal liberties, working to defend and preserve our individual rights and liberties. The ACLU believes there are three fundamental flaws with federal and state civil asset forfeiture laws.

First, they violate due process and the prohibition against excessive fines. Second, they disparately impact people of color and low-income people. And third, they create perverse profit motives for law enforcement and allow agencies to augment their budgets without legislative oversight.

Civil asset forfeiture has been championed by law enforcement officials as a powerful weapon to fight the failed war on drugs, seizing the assets of major drug traffickers and repurposing those assets to fund law enforcement initiatives. It's been profitable.

Between 2000 and 2014, deposits into DOJ's forfeiture fund have increased tenfold from \$440 million to \$4.5 billion. Far greater than the billions in proceeds is the price that people pay when their homes, businesses, cars, and cash are unjustly seized. Just as

the war on drugs disproportionately impacts people in communities of color, so does civil asset forfeiture.

One example is an ACLU case in East Texas, where in 2007, police pulled over a biracial couple and their children. When police learned they were carrying \$6,000 in cash as they were en route to buy a new car, they threatened to charge them with money laundering and put their children in foster care if they did not hand over the cash. The man and woman were never arrested or charged with a crime, and the seized assets were used to enrich the prosecutors and officers themselves.

In 2008, the ACLU filed a lawsuit on behalf of the couple and other drivers targeted by the scheme. It was discovered that between 2006 and 2008, police of East Texas had seized \$3 million from at least 140 people, all people of color.

Numerous studies show East Texas is not an outlier. Thirteen percent of South Carolina's residents are Black men, but 65 percent of cash seizures are from Black men. In one Florida county, 90 percent of the drivers from whom cash was confiscated without arrest were Black or Latino. In New Jersey, 8 of the 10 cities with the highest number of seizures were also the poorest in the state.

Federal law enforcement does not report data on the race of property owners subject to federal forfeiture, but when the *Washington Post* looked at 400 cases that challenged federal seizures and got some money back, it found that the majority of those people were people of color.

And when DOJ's Inspector General examined DEA's cash seizures, it could confirm that only 34 percent were related to a criminal investigation. The report cautioned that when forfeitures cannot be linked to criminal activity, "Law enforcement creates the appearance and risks the reality that it is more interested in seizing cash than advancing an investigation." Even the former prosecutors who built DOJ's asset forfeiture program in the 1980's have said civil forfeiture has run amok and that policing for profit outside of the legislative budget process must end.

For example, DOJ's Equitable Sharing Program serves as a loophole for state and local agencies to forum shop and sidestep state reforms to the tune of over \$6 billion between 2000 and 2016. Due to the racial disparity and the lack of due process, the ACLU believes that federal civil asset forfeiture should be abolished.

In the interim, we also support the following five steps that can be taken immediately. First, pass the FAIR Act. It would shift the burden of proof to the government, raise the standard of proof to clear and convincing evidence, end the Equitable Sharing Program, and direct DOJ forfeiture proceeds to the general fund, where it will be subject to congressional appropriations.

Second, Congress should end federal administrative forfeitures. They lack judicial oversight and are used in 80 to 98 percent of cases.

Third, members should conduct oversight of the Equitable Sharing Program and demand that DOJ officials prevent purchases of military equipment and other forms of wasteful spending.

Fourth, Congress should give property owners counsel when they can't afford it.

Finally, Congress should establish basic transparency and accountability standards by requiring DOJ to report whether seizures are related to any criminal investigation and the race and ethnicity of property owners.

Once again, I appreciate your leadership on this issue and the opportunity for the ACLU to participate in today's important hearing. I look forward to your questions.

Mr. RASKIN. All right. Thank you very much for your excellent testimony, Ms. Ahmad.

And now I am going to recognize myself for five minutes for questions.

First, though, I do want to submit for the record this very helpful document that Mr. Alban brought, demonstrating how civil forfeiture works at the federal level. And without any objections, that will be entered into the record.

Mr. RASKIN. OK. I recognize myself for five minutes for questions.

Now, Ms. Harris, I want to come back to you. What happened when your car got seized? Did you have another car?

Ms. HARRIS. No, sir. I did not. I ended up in public transportation.

Mr. RASKIN. So, how long were you without a car before you got your car back? And I know you are one of the lucky ones because you found legal representation, but what was the interval?

Ms. HARRIS. It was probably about a year and a half before I would be able to save to purchase another car, nowhere near as nice or the value of the one that they took, but it did get me to work once I found it.

Mr. RASKIN. I am sorry, but I missed it. How long were you going on public transportation without a car?

Ms. HARRIS. About a year and a half.

Mr. RASKIN. A year and a half?

Ms. HARRIS. Yes, sir.

Mr. RASKIN. And then you got your car back, or how did you end up with a new car or a different car?

Ms. HARRIS. I was able to get my car back because I was then sent to the Goldwater Institute, and they do forfeitures, and they do pro bono work. And I was very fortunate to get connected with them.

Mr. RASKIN. I got you. So, when you got your car back and it was working OK, even though it hadn't been driving for a year and a half?

Ms. HARRIS. Well, we had to—I had to spend probably about \$2,000 to get it to ready to be—in order to be drivable and what not.

Mr. RASKIN. Thank you.

Mr. Alban, let me come to you. Because I remember when we went through this in Maryland, and we dramatically reformed our process when we learned of all these outrageous abuses taking place. But I think both you and Ms. Ahmad have ventured that why do we need civil asset forfeiture?

Criminal forfeiture says that if we think you are involved in, say, drug dealing, you are charged. You are indicted. You are pros-

ecuted. If you are found guilty, at that point, the criminal forfeiture process kicks in.

So, you say, well, we don't need law enforcement departments just taking people's property from them. Whether it is cash or apartments or condos, there is way too much error that takes place. The violation of third-party rights is terrible, but also, I assume you are raising the rights of even the people who might go on to be convicted criminally.

But do we lose something if we were to abolish civil asset forfeiture? And I am thinking specifically of this. I remember one officer testified, and he said, well, it is 2 o'clock in the morning, and we don't want to bring somebody in and charge them and everything. But they are standing on the corner with a wad of cash. We just grab the cash, and then they learn their lesson, and then we get the money.

What is wrong with that?

Mr. ALBAN. What's wrong with that is that mere suspicion is not sufficient to punish someone as though they've committed a crime. Under the American criminal justice system, we believe that people should be innocent until proven guilty and should not be punished until they're proven guilty. And civil forfeiture permits law enforcement to seize property from people just on that mere suspicion, never actually secure the conviction, and say, "Oh, well, we know that guy is guilty," even though that's never proven in a court of law.

Mr. RASKIN. And it risks the corruption of both the law enforcement officers who are doing the seizing and the departments, right?

Mr. ALBAN. It does. It creates a strong incentive for those law enforcement agencies to devote far more resources to things like highway interdiction or airport interdiction, and that takes away from the resources that they have to spend preventing crime and solving crimes. There's been a number of studies that have shown that civil forfeiture is ineffective at fighting crime, ineffective at lowering drug use rates, but is effective at raising revenue. But that is not a valid reason for taking property away from people without a criminal conviction.

Mr. RASKIN. But would you talk us through what the Holder policy was, how well that worked? Is it time to reinstate it? And should it be reinstated the way it was, or should it be expanded in some way?

Mr. ALBAN. Sure, I'd be happy to. So, the Holder policy addressed one specific aspect of the Federal Equitable Sharing Program. There are two types of equitable sharing. There are adoptive seizures, and there are task force seizures. Task force seizures make up about 80 percent of all equitable sharing. Adoptive seizures make up about 20 percent.

The Holder program suspended the use of adoptive seizure. So, suspended about 20 percent of the Equitable Sharing Program without approval from very high up in the Justice Department. And so that prevented state and local agencies from asking federal agencies to adopt their seizures and then process them through the federal forfeiture system.

I think it would be excellent to reimplement the Holder policy, but frankly, the entire Equitable Sharing Program should be suspended. DOJ could do that unilaterally, or Congress could simply pass a law making equitable sharing something that's not allowed anymore.

Mr. RASKIN. And what about the task force side of it?

Mr. ALBAN. So, the task force side was unaddressed by the Holder policy. And so the vast majority of equitable sharing continued while the Holder policy was in effect. So, it was a good first step, but it did not fix the equitable sharing loophole.

Mr. RASKIN. But should we look at reforming the task force side of it as well?

Mr. ALBAN. Yes, absolutely. The entire Equitable Sharing Program poses the same problems, poses the same threats to federalism, and allows federal—allows local and state law enforcement officers to sidestep state law requirements by handing their seizures off to the Feds.

Mr. RASKIN. So, it incentivizes an end run around the policies that have been adopted by the state governments, right?

Mr. ALBAN. That's right. And many states have adopted laws that are much more protective of property rights than the federal forfeiture system or have said that money that's received through forfeiture has to go to a school fund or a general fund. But the Federal Equitable Sharing Program circumvents those requirements and allows those state and local law enforcement agencies to directly receive the federal money.

Mr. RASKIN. All right. Well, the state laws are being circumvented by federal policy in order to violate the civil rights and civil liberties of the people.

So, thank you. And I am going to turn now to Ms. Mace. You are recognized for five minutes.

Ms. MACE. And thank you, Mr. Chairman.

Two things before I start with some questions. First, I would like to enter into the record this editorial by the *Charleston Post and Courier* that I quoted from this morning about property being seized without bringing charges.

Mr. RASKIN. Without objection.

Ms. MACE. And then, second, I thought I was on the FAIR Act already. Apparently, I am not. So, you can add one more Republican to that great bipartisan bill.

Mr. RASKIN. That is very good news. Without any objection there, too.

Ms. MACE. Right. And then, third, I will start with Ms. Harris and then go to Mr. Alban.

Ms. Harris, first of all, I want to thank you for sharing your personal story. So, many voices don't have the opportunity to share their stories, and it takes courage to do that. And we thank you for being here today, going through everything you went through from losing your son to losing your vehicle.

So, my first question goes to you. Were you ever charged with a crime in this particular incident?

Ms. HARRIS. Not only was I never charged with a crime, I was never even accused of a crime, except when they told me if I didn't

hand over the keys that they could then have held me accountable also. Other than that, that's the only thing that ever happened.

Ms. MACE. Thank you.

I think many Americans would be just surprised and shocked to hear that your assets—your car, your house, your cash—could be seized without ever being charged, let alone convicted of a crime.

What impact did losing your car for that period of time have on you, your family, and work?

Ms. HARRIS. Yes. Like I said it was in the middle of winter. So, I had—I was using public transportation in the middle of the winter. And then I had to pretty much grocery shop. Everything had to be done on the bus system, and at my age, that was not a very pleasant or easy thing to do. But you do what you have to.

Ms. MACE. Right.

Ms. HARRIS. And I forgot to state that, which I think is very important, is that not only did they take my car, they kept my car for five years before they even started any type of form of forfeiture acts, and I hadn't heard anything about that car for five years. That's a long time.

Ms. MACE. So, you—technically, you didn't have the vehicle for six years?

Ms. HARRIS. Yes.

Ms. MACE. OK, 6, 6 1/2 years without a vehicle. Thank you.

Ms. HARRIS. Without my vehicle.

Ms. MACE. Yes, thank you for sharing that.

And then I would like to talk to Mr. Alban and talk about some of the experiences that you have. And first, thank the Goldwater Institute for stepping up and helping you, too, Ms. Harris. But can you give some examples, Mr. Alban, of innocent activities that someone might have—that your clients or potential clients have been involved in that led to their property being seized via civil asset forfeiture, where they were never charged with a crime?

Mr. ALBAN. Absolutely. Usually the activity that people are engaged in is traveling, either driving, say, across the country, across the state, or flying. I recently represented a gentleman from the Lower Ninth Ward of New Orleans whose name was Kermit Warren. He's a metal scrapper and, until the COVID pandemic, was the shoeshine man at the Roosevelt Hotel in New Orleans.

He and his son both lost their jobs because of the COVID pandemic and were looking to try to provide for themselves by expanding their metal scrapping business. To make that effective, they needed a second truck. And so Mr. Warren located a tow truck that fit his specifications in Ohio. He flew to Ohio to inspect that truck, decided it wasn't actually quite what they needed, and on his way back was stopped at the airport by the DEA and had the \$28,180 that he had with him to buy the tow truck seized from him.

That was his entire life savings, and it left him destitute for over a year. That seizure happened last November. He finally got his money back just before Thanksgiving this year, over a year later. He was never charged with any crime, nor was his son, and his money has now been fully returned. But his life was made miserable for a year because DEA suspected that a Black man flying through an airport with \$28,000 must be up to no good.

That's just one of many, many examples. I'd be happy to provide others, but I don't want to take up your time.

Ms. MACE. Yes, and how do we disincentivize, de-incentivize some of this behavior? What other proposals are out there? We have the FAIR Act, but what are some things, small parts that would make a big difference in this larger conversation?

Mr. ALBAN. Well, I think it's absolutely critical that we separate the financial incentive so that law enforcement doesn't stand to directly benefit from the seizures that they're making. Those DEA officers that stopped Mr. Warren at the airport and took money from him, they don't get to put that money directly in their pockets, but you better believe they get promotions based on how much money they seize. They get evaluated based on how much money they seize because they're part of the airport interdiction program, and that interdiction program exists to take money away from travelers.

We need to put an end to those sorts of programs, and the best way to do that is to make sure that the money that is taken through civil forfeiture goes to the general fund and not to the DOJ assets forfeiture fund or the Treasury forfeiture fund, which are funds that can only be spent by law enforcement and are controlled by law enforcement. That's the fundamental thing that drives all of this abuse.

Ms. MACE. And thank you. And I am reminded, Mr. Chairman, having this conversation, talking about people using cash, when my kids were toddlers, I bought my first minivan for \$14,000. And I showed up with cash, not even thinking what the consequences could be.

So, thank you for sharing that, and I yield back.

Mr. RASKIN. Thank you very much.

I knew of another case like this where an older Chinese American gentleman had saved up, I think it was around \$40,000 in order to purchase a restaurant, and he was driving to Louisiana and got stopped, and the money was seized. It took him many years, I think with the help of the Institute for Justice, to get the money back.

All right. Ms. Wasserman Schultz, you are recognized for your five minutes.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

Mr. Chairman, civil asset forfeiture creates perverse incentives, as we've heard, for law enforcement agencies that stand to benefit financially from increased numbers of seizures. After the assets are seized, we heard the property may be sold, the proceeds kept, and in some states, law enforcement agencies are actually authorized to keep 100 percent of their forfeiture proceeds, which is a massive windfall for law enforcement.

In the vast majority of jurisdictions, forfeited assets don't go into a state's general fund for the well-being of all of its citizens, instead the money goes directly to the seizing law enforcement agency to spend however they want, and it has few or even no strings attached.

Dr. Alban, can you talk about the best evidence that we have that the financial benefits for law enforcement for law enforcement created by our laws are a motive behind civil asset seizures?

Mr. ALBAN. Sure, I'd be happy to discuss that. First of all, you can simply look at the time graph of federal civil forfeitures over time after the law was passed in the early 1980's, 1984, the Comprehensive Crime Control Act, permitting law enforcement to keep the proceeds of civil forfeitures. After that point, civil forfeitures went up dramatically.

But probably the most salient example that demonstrates how this profit incentive distorts law enforcement activity was a drug task force that was operating on I-40 outside of Nashville. In the drug interdiction world, money and drugs are viewed as moving in different directions. The drugs are viewed as moving from south to north and from west to east, from basically the borders to the population centers in the east coast. And the money is viewed as moving in the opposite direction, from east to west and from north to south, back to the borders where the drugs are coming in from cartels and smuggling and that sort of thing.

On I-40 outside of Nashville, this drug task force, which was funded almost entirely by civil forfeiture proceeds, was operating 90 percent of the time on the westbound side of the freeway. That is the side that the money would be moving on.

And the local News Channel 5 there investigated it using their traffic copters and an undercover investigation and found that 90 percent of the time, they were operating on the money side of the freeway rather than the drug side of the freeway. If you're trying to prevent drug trafficking, you should be operating on the drug side of the freeway because you prevent the drugs from getting to the east coast, and then there will be no money coming back.

Ms. WASSERMAN SCHULTZ. Right.

Mr. ALBAN. But that was the fundamental problem. There would be no money coming back. And if there was no money coming back, this drug task force would not be able to exist because it was funded almost entirely from civil forfeiture proceeds.

So, that's just one of the many examples out there.

Ms. WASSERMAN SCHULTZ. Thank you. I appreciate that.

Mr. Chairman, a *Washington Post* report, which reviewed annual reports that are submitted by local and state agencies to the Justice Department's Equitable Sharing Program, shows how law enforcement agencies and drug task forces spend their seizure proceeds. And it found multiple examples of agencies that used seizure proceeds to purchase frivolous items, including large-scale military-style equipment in small communities.

I would like to ask unanimous consent to submit this report to the record.

Mr. RASKIN. Without any objection.

Ms. WASSERMAN SCHULTZ. Thank you.

And Professor Rulli, what tangible steps can the Federal Government take right now to remove the profit motive associated with civil asset forfeiture? And then I would like to ask Dr. Alban, if both of you could answer, if you can answer the question about the role that law enforcement plays in thwarting civil asset forfeiture reform efforts, even though it is clear that they are necessary.

Mr. RULLI. I'll go first then. This is Lou Rulli. Thank you for that question.

You know, we've seen on the local level how powerfully the financial incentive for law enforcement really operates. And in Pennsylvania, for example, 100 percent of the funds go directly to law enforcement, directly to the people who are making the decisions as to whether or not to seek forfeiture.

And we've watched as the prosecutors' offices grow, and they spend money on lots of things that are totally unrelated to the safety of our citizens. And so we must direct funds away from these forfeiture funds and directly to the Treasury, where there is general accountability, where there is much more transparency, where we have a sense of exactly the data underneath all of these forfeitures.

What are the forfeitures for? Who is being impacted by these forfeitures? How is the money being spent? Are people being charged with a crime or not? And certainly, our experience on the local level has really confirmed all of the things that have been discussed here today, that reform is so desperately needed.

Ms. WASSERMAN SCHULTZ. And Mr. Chairman, would it be OK if the other question was answered quickly?

Mr. RASKIN. Yes, was that addressed to Ms. Ahmad?

Ms. WASSERMAN SCHULTZ. Mr. Alban. Professor Alban.

Mr. RASKIN. Mr. Alban, yes.

Mr. ALBAN. Yes, I'd be happy to address that. Law enforcement likes to say that they are only enforcing the laws and they don't make the laws. But the dirty little secret of forfeiture reform is the only entity opposed to forfeiture reform is law enforcement, and it's a powerful lobby.

I have personal experience with reform efforts in states like Missouri, where there has been widespread support—widespread bipartisan support for forfeiture reform, eliminating the equitable sharing loophole, and prosecutors and officials from St. Charles County, which profits substantially from civil forfeiture on the interstate there, come in and they lobby key legislators. And you know, basically say you don't want to look soft on crime. You're going to be taking money out of—out of law enforcement's pockets, and we're going to make you pay for that politically.

And that sort of process repeats itself all around the country when there are forfeiture reform efforts. They are almost always bipartisan. They are almost always supported nearly unanimously, if not unanimously. And yet law enforcement opposes these reform efforts because they view it as taking money out of their pockets.

And that is the primary obstacle that folks who want to reform civil forfeiture law face, that law enforcement is a powerful lobby. That it is able to affect how things happen in the judiciary process and in judicial committees where these bills are typically before. They can get a bill so that it's not heard. It's simply tabled.

And you have bills with widespread support that end up moving nowhere because of opposition from law enforcement.

Mr. RASKIN. Thank you. Thank you. The gentlelady's time has expired.

Ms. WASSERMAN SCHULTZ. [Inaudible].

Mr. RASKIN. Thank you very much. Mr. Biggs, you are now recognized for your five minutes of questioning.

Mr. BIGGS. Thank you, Mr. Chair.

I am grateful that you are having this hearing. This is an important topic, and Mr. Alban has kind of connected up, as some of you have, the intersection between state law and federal law on civil asset forfeiture.

Civil asset forfeiture laws infringe upon Americans' due process and property rights. Civil forfeiture has been used by state and federal officials to confiscate innocent Americans' property. And this is a problem, OK? So, I am going to get off my script here for a second because I used to be a prosecutor, and we actually carpooled. I carpooled with a group of prosecutors, and one of our prosecutors was a civil asset forfeiture attorney.

And he would tell us of cases, and we would say, "How can you take this person's property?" I mean, first of all, they have never been—you didn't even charge them. They were never charged with a crime.

Second of all, there is the standard of proof is so low. How can that be? But that was the state law in Arizona. And so Arizona has actually done some reform, much needed, long overdue reform.

So, I want to ask—I want to, if I can, deconstruct or delink for just a minute, Mr. Alban. My question is for you initially, and then if you are able to answer this question. How extensive is the federal civil asset forfeiture system? I want to know how much money or the value of the assets that we are seizing in our federal police apparatus, our prosecutorial apparatus every year? Do we know?

Mr. ALBAN. It varies by year, Congressman. It's approximately \$2 billion to \$3 billion in recent years. From 2000 to 2019, of that \$69 billion figure that I mentioned earlier, \$45.7 billion of that went into federal forfeiture funds. So, it was forfeited by federal agencies or through federal equitable sharing.

Mr. BIGGS. And so when we look at this, the argument from my police officer friends is that we are using it to curtail crime. Is there any evidence, is there any scientific data—I shouldn't say scientific, but any statistical data that indicates that we have seen the reduction in crime in certain areas because of the civil asset forfeiture laws?

Mr. ALBAN. There is not. In fact, the studies indicate the opposite. A study that was done on New Mexico, which abolished civil forfeiture in 2015, found that after civil forfeiture was abolished, there was no increase in crime rates both in New Mexico and New Mexico compared to neighboring counties of other states.

Mr. BIGGS. Can you share that study with members of the committee?

Mr. ALBAN. Absolutely. It's in our "Policing for Profit" report. We also have two other reports that were done looking, one, at federal equitable sharing data and, two, at the data from five states that made data available, comparing forfeiture rates to crime rates. Found no correlation in terms of increases in forfeiture reducing crime or reducing drug use.

Mr. BIGGS. So, there may be some other variables, independent variables that are affecting crime rates is what you are suggesting?

Mr. ALBAN. Lots of other independent variables affect crime rates, but civil forfeiture is not one of them.

Mr. BIGGS. OK. So, the other—the other argument is that victims—our system is not designed—you know, biblical systems were

designed to restore victims. Our system doesn't do that. We do it very inefficiently. We tend to punish first and reimburse victims last.

What is the result here? Do we have any data indicating that civil asset forfeiture is going to benefit or restore victims and make them whole where possible?

Mr. ALBAN. The evidence that we have, Congressman, is that a teeny-tiny percentage of all federal forfeiture procedures—

Mr. BIGGS. What would that be? "Teeny-tiny" doesn't compute for me. I need to know what the number is.

Mr. ALBAN. I'll have to get back to you on the specific number, but I believe it's around 5 or 6 percent.

Mr. BIGGS. OK. And so if you can get that for us, that would be helpful.

I think that the first thing—and the other thing is, as we have talked about, the standard of proof. The number of cases that don't even get litigated here because the value, what is the average value, something like \$1,300, of assets seized. The cost to litigate that is at least twice that. In my own experience, it would cost you far more than you would get. Is that accurate?

Mr. ALBAN. Yes. At the state level, the median forfeiture is about \$1,000.

Mr. BIGGS. What is it at the federal level?

Mr. ALBAN. At the federal level, for DOJ agencies, it's \$12,090. And for Treasury agencies, it's about \$7,300.

Mr. BIGGS. Thank you. My time has expired.

Mr. Chairman, thank you for introducing this legislation. Thanks for having this hearing today. Appreciate it.

Mr. RASKIN. Thank you for your questioning, Mr. Biggs. It is appreciated.

And Ms. Kelly, I come to you for your five minutes.

Ms. KELLY. Thank you, Chairman Raskin and Ranking Member Mace, for holding this very important hearing.

The protection of due process is central to our justice system. However, the current process of civil forfeiture violates this right and disproportionately, as we have heard, affects people of color. A policy that was meant to target drug kingpins and criminal organizations has instead been used by police departments as an extra revenue stream.

Targeting people on their way to buy a car with money they have saved or someone related to a person that has committed a misdemeanor is simply unacceptable. Congress passed the Civil Assets Forfeiture Reform Act, or CAFRA, in 2000 with the intent of implementing due process protections for innocent people facing forfeitures. Unfortunately, as the last 20 years of civil asset forfeiture regimes have proven, CAFRA has not worked.

Ms. Ahmad, I would like to start with you. As I mentioned, CAFRA was intended to provide due process protections for individuals facing civil asset forfeitures, but such protections have not happened in a meaningful way. How has CAFRA affected the due process rights of individuals whose assets have been seized by law enforcement?

Ms. AHMAD. Sure. Well, I think it's helpful to compare civil forfeiture to criminal forfeiture and what happens in criminal court.

Under criminal forfeiture, a person has the presumption of innocence. They have to be—the government has the burden of proving a person guilty beyond a reasonable doubt.

But in civil court, we have this archaic legal fiction that a piece of property can be a defendant in a case. So, we have cases of *United States v. \$22,000*. And because it's a piece of property, it doesn't have rights. It doesn't have a right to counsel. It doesn't have the presumption of innocence. The property is presumed guilty. The individual has to prove their innocence, and under CAFRA, they have to prove their innocence.

So, the kind of changes that we need for property owners is to— is to put the burden of proof on the government, to raise the burden of proof from preponderance of the evidence. Right now, the government just has to prove a nexus to the crime, between the property and the crime by a preponderance of the evidence. That should be raised to clear and convincing evidence. And these changes would definitely level the playing field.

Ms. KELLY. Has CAFRA even reduced civil asset forfeiture abuse since its passage?

Ms. AHMAD. Actually, since CAFRA, the Department of Treasury and the DOJ's asset forfeiture program have still been pulling in billions of dollars, even more than before CAFRA was passed. It's been 20 years, and the budgets just keep growing. The asset forfeiture funds and proceeds keep growing.

Ms. KELLY. Thank you.

Mr. ALBAN, I would like to bring you in. Based on what we have heard today, it seems clear that CAFRA has not fulfilled its intended purpose. But I am curious to know whether CAFRA has harmed any of the people it was designed to protect. Can you speak to some of the unintended consequences?

Mr. ALBAN. Certainly. CAFRA was watered down quite dramatically from its proposed version to the version that was ultimately passed. There were a handful of good reforms within CAFRA, for instance, raising the burden of proof from probable cause to a preponderance of the evidence. But by and large, CAFRA did not make a major impact on the federal forfeiture system, and so people continued to be abused by federal forfeiture after CAFRA.

Ms. KELLY. And how has the federal civil asset forfeiture and equitable sharing practices evolved since CAFRA's passage in 2000?

Mr. ALBAN. Well, the data show that there have been increases in the amount of money brought in through both the federal forfeiture programs and the equitable sharing programs. There have been substantial increases through 2015 or 2016. Federal forfeiture seems to have peaked around those years. There's been a slight decline since then, but CAFRA does not seem to have slowed the increase of forfeitures at the federal level.

Ms. KELLY. And what are your top one or two reforms that you would recommend?

Mr. ALBAN. I'd say the top three reforms that should be passed would be eliminating the profit incentive by directing all federal forfeiture proceeds to the general fund; two, eliminate equitable sharing so that there's no loophole for state and local governments to evade—state and local law enforcement agencies to evade their own state laws; and three, eliminate administrative forfeiture,

which stacks the deck against property owners and produces this incredibly complex and byzantine system that is impossible for someone to navigate without an attorney and, frankly, many attorneys find very difficult to navigate.

Ms. KELLY. Thank you to the witnesses.

And my time is up. Thank you.

Mr. RASKIN. Ms. Kelly, thank you for your questioning.

And before I come to Mr. Sessions, I just want to, without objection, Congressman Clyde of Georgia will be permitted to join the hearing and be recognized for the purpose of questioning the witnesses. Without any objection.

So, Mr. Clyde, welcome. And I now recognize you, Mr. Sessions, for your five minutes.

Mr. SESSIONS. Mr. Chairman, thank you very much.

And to our panel, we appreciate this. I think this—I join my colleagues in saying—is an area that not only is very interesting but must—for civil liberties of our citizens, must be looked at again.

My innocence in looking at this is that I would have assumed that if you take something from someone, you would have followed up with a process. That you would have required yourself, your legal team—whether it is a police officer or sheriff, federal agent—that they would have had a process that they must conform themselves to within a timeframe. It is a taking. Maybe you don't charge them with something. Then if you go through that process, you have to return the money.

Talk to me about this angle of the Federal Government. Generally speaking, do they just as they did at the airport in the example you gave, Mr. Alban, where the federal agencies—I don't know what those were, U.S. Marshals or just DEA, but I know that they have combined task forces. What is their process that they are required to follow by the law?

Mr. ALBAN. Sure. I'd be happy to address that.

So, under CAFRA, the federal forfeiture statute that we were just discussing, when federal law enforcement like DEA seize property from someone, they're supposed to give that person a receipt at the time of the seizure. And then, within 60 days, they are supposed to followup with what's called a CAFRA notice, or a notice of intended forfeiture.

So, about two months after the seizure, the property owner should receive in the mail a notice saying that the agency is intending to forfeit their property. At that point, the property owner has four options. By the way, this is all outlined in our federal forfeiture infographic.

At that point, the property owner has four options. One is to file an administrative petition and let the administrative agency decide the case. One is to file a judicial claim and try to go to court. And then the other two options are basically give up or negotiate some sort of settlement.

The property owner has to do those first two actions within 30 or 35 days, and then once they file a claim with the agency, then the Federal Government has another 90 days to file a civil forfeiture complaint. So, in a typical forfeiture case where someone is represented by counsel and is advised to file a judicial claim making the government take the case to court, if you add up those time

periods—60 days plus 30 days plus 180 days—you end up about six months after the seizure before the Federal Government even files the initial civil forfeiture complaint.

And that, of course, is what starts the forfeiture case itself. So, it can be many years after that that the person is able to get their property back.

Those are the processes that are supposed to be followed. They are not always followed. The person doesn't always receive the notice within 60 days. Sometimes agencies seize property, hold onto it for years, and never bother to process it through the forfeiture system.

Mr. SESSIONS. So, it seems like to me that we should spend time, notwithstanding we are trying to stop things that are egregious and wrong, that we should streamline the system to at least make sure that perhaps the burden is on them up front, meaning whoever the agency was that had the taking, that they had to prove cause, that they had to show some jurisdiction about why they got that.

And you are saying that is at the back part of that process?

Mr. ALBAN. That's right. That's one of the major inadequacies of the federal forfeiture system is that there is no prompt procedure hearing for someone to be able to shortly after the seizure contest the legitimacy of the seizure. What if the government just got the wrong person or the wrong bank account or the person has all receipts with them and can easily show that they just withdrew this money from the bank and are going on a trip to buy, you know, a new car or something like that.

Those things can be easily shown at an early stage and can at least allow someone whose car is seized, for instance, to maintain possession of that car while the forfeiture proceeding continues. But the federal forfeiture system doesn't have that, and that means even innocent people, people who ultimately prevail in their federal forfeiture proceeding, can go years without their property.

And of course, that's tremendously harmful to them. If you're a car owner, you probably need to get a new car while that's going on. That puts a substantial burden on property owners, and they shouldn't have that burden.

Mr. SESSIONS. Do you find that these forfeitures, that these federal agencies then go and speak with and do an investigation like perhaps with the IRS to find out whether their justification that they took of that I suppose would be a larger amount, not a smaller amount? Do they involve then federal agencies, or do they just do their own investigation, what I would call a *prima facie*—"Well, we don't know where you got it. So, we took it."

Do they then come back and where there is a process, they involve other federal agencies like the IRS?

Mr. ALBAN. It varies. In some instances, it looks like no additional investigation was done once the seizure happened. In a few other instances, I'm aware of the U.S. Marshal Service, on behalf of U.S. attorney's offices, conducting additional investigation. I'm aware of different agencies reaching out to each other as part of investigations.

But it seems like the most common practice is once we've done a seizure, there's no need for additional followup. If you had a

whole bunch of money and you were flying, that's prima facie evidence of you were up to no good, and we're just going to keep the money based on that.

Mr. SESSIONS. Could we have one more question, please, Mr. Chairman?

Mr. RASKIN. Please.

Mr. SESSIONS. Is there a what I would call an area of the country, a federal area where they seemingly do process maybe at a fair or equitable balance, where either by one of the U.S. attorneys or however the administrative procedure? Is the Federal Government good at some point where they do a better job, where they take this seriously, as opposed to maybe others? Is there a best practice area?

Mr. RASKIN. The gentleman may answer the question.

Mr. ALBAN. There's not a specific region that's doing better than another region. But I will say that a large number of forfeitures are dropped between when the seizing agency seizes it, the property owner files a claim, which requires it to go to court.

That requires the seizing agency to transfer the case to the U.S. attorney's office. And the U.S. attorney's office has to then evaluate whether that case is worth pursuing as a civil forfeiture. And it's at that point that there seems to be some adult supervision. Some U.S. attorney's offices are better than others. But some U.S. attorney's offices will look at those seizures more closely and will, at times, decline to file a forfeiture action, which ultimately means that the person's property is returned.

Now that happens 7 or 8 months later——

Mr. SESSIONS. Right.

Mr. ALBAN [continuing]. But it's——

Mr. SESSIONS. Well, and I am sorry about, Mr. Chairman. Thank you for allowing me to ask that question, and I appreciate our witnesses today of the information they brought us.

Thank you.

Mr. RASKIN. Thank you, Mr. Sessions. And I now recognize the gentlelady from the District of Columbia, Ms. Norton, for her five minutes of questioning.

Ms. NORTON. Thank you very much, Mr. Chairman.

This is a very revealing and important hearing. We have heard some of the specifics. I am interested in how asset forfeiture disproportionately affects communities and individuals of color, and that is what my questions will go to. We have heard some of that about from Philadelphia, but we find it in states all over the United States. Las Vegas, Oklahoma, California—I am amazed at how widespread this is.

Ms. Ahmad, the ACLU of California found that more than 85 percent of equitable sharing payments in the state went to police agencies serving majority-minority communities. Now that is what interested me right there. What do you believe explains the disproportionate impact of civil asset forfeiture on communities of color?

Ms. AHMAD. Sure. Well, thank you for your question.

I will point out that that trend that you have honed in on in California, as you indicated, around the country, in New Jersey,

the poorest counties are the ones that are most targeted. That's not unusual at all. It's a common occurrence.

What accounts for that is concerns about racial bias in policing. That's a problem throughout the system. The war on drugs is really what is fueling the asset forfeiture process. It is seen as a tool to fight the drug war. But many of the tools that are used in the drug war have been unsuccessful and ineffective, and they have a trend of disparately impacting communities of color and also poor communities.

Ms. NORTON. Well, if the high percentage of forfeitures involving Black and Latino communities reflect excessive targeting of those communities by law enforcement, how can we hope to craft reforms—because that is what we are interested in in this committee—that will reduce the disparate impact of these practices?

Ms. AHMAD. We need oversight, and we need accountability, and we need transparency.

Ms. NORTON. Oversight at the state level or at the federal level?

Ms. AHMAD. At the state and the federal level. Because those numbers that you mentioned about California, those were all federal dollars that were taken through the Equitable Sharing Program, the Department of Justice's Equitable Sharing Program, and sent to California agencies that were policing communities of color.

So, at the federal level, first of all, there needs to be reporting about the race of people, the race and ethnicity of people who are subject to seizures. We need more information. The information we have so far is from independent investigations by organizations like the ACLU or journalists like the *Greenville News* in South Carolina, who are collecting this data.

So, we need that information, and Congress can mandate that that information be reported. We also need information about the effectiveness of these seizures. So, for example, in my written testimony, I talk about a 2017 report from the Inspector General's office at the DOJ that reviewed very carefully a number of DEA seizures and found that the DEA—and probably other federal agencies—does not track whether seizures are related to a criminal investigation or prosecution.

And the Inspector General, as I said earlier in my statement, noted that when that happens, there is a question as to whether this is really crime fighting or about seizing assets. So, if we have that information and that transparency, that would give Congress the ability to conduct that oversight.

We also need due process. So, right now, law enforcement is the judge and the jury and the prosecutor when assets are seized. Law enforcement gets to decide whether there's probable cause to seize the asset in the first place, and then no one else participates in the system. The property owner can't participate in the system for many months.

There should be an opportunity to—sorry.

Ms. NORTON. I have never heard of such a system in this country. I did have one more question, though, for Professor Rulli.

After Philadelphia—I am very interested in reform and whether it can take place and what happens. After Philadelphia reformed its civil asset forfeiture practices, did you see a shift in how communities of color were targeted? Professor Rulli?

Mr. RULLI. Well, there are many things that are happening, many moving parts here. And this is a complex question, and I thank you for that question.

First, let me just say that we cannot separate civil forfeiture from criminal justice reform that's ongoing, and there's a direct relationship here that we need to examine, and we need the data, as has already been reported.

I'd also point out that in minority communities, many families are unbanked or underbanked, meaning that they are carrying cash because that is the way that they are able to trans—you know, deal with the various needs that they may have. And so the suspicion that the mere carrying of cash is somehow illegal or related to drugs is a fundamental issue that is targeted really in low-income and minority communities. We have seen this throughout Pennsylvania, but particularly in our urban centers like Philadelphia.

Now there have been reforms, but as you've already heard, there were much more extensive reforms originally planned. I testified in the Senate Judiciary Committee that would have much more greatly revamped our state laws, but behind my testimony was the testimony of elected district attorneys from around the state that brought a very powerful lobby to really diminish the reforms that could have taken place.

Nonetheless, we have had reforms. We have a new district attorney who has greatly curtailed civil forfeiture. The press has spotlighted the abuses of forfeiture and its impact on low-income and minority communities. The Institute for Justice brought litigation in collaboration with local folks that was very successful.

Our Pennsylvania Supreme Court issued an excessive fines decision that was critical, and we haven't talked about excessive fines protection, but that's really another area that is underutilized. And we've had, as I said, some changes to our Pennsylvania law, like elevating the burden of proof to clear and convincing evidence.

Ms. NORTON. Thank you.

Mr. RULLI. So, all of those things are helping, but the reality is that this is a problem largely in urban centers, largely in low-income and minority communities.

Mr. RASKIN. Thank you. The gentlelady's time has expired. I now recognize Mr. Clyde for his five minutes of questioning.

Mr. CLYDE. Thank you, Chairman Raskin and Ranking Member Mace, for allowing me to join the subcommittee today to discuss this issue that is very much a personal interest of mine, making much-needed reforms to civil asset forfeiture proceedings to protect the due process rights of individuals.

I say it is a personal interest because I, myself, was a victim of civil asset forfeiture. I had my asset seized by the Internal Revenue Service in 2013, over \$940,000, without warning and without ever being charged with a crime. And I think we have heard that a lot today—without ever being charged with a crime.

So, how on earth does the Internal Revenue Service or any other government agency have the power to seize one's property without charging a person with a crime? It should not. But the IRS had been wrongfully confiscating money from individuals and small business owners across the country through civil asset forfeiture.

Specifically, they were accusing people of structuring their legally earned cash bank deposits, and that is exactly what they did to me.

In my case, the Internal Revenue Service offered me a deal to give back two-thirds of the \$940,000 of my legally earned money if I would forfeit one-third to them as a penalty. They wanted me to voluntarily forfeit \$325,000.

Even though they admitted in writing that all the money was legally earned and properly reported, in writing. This was nothing short of extortion, and I refused. They then threatened me with criminal prosecution to get a civil monetary settlement, which is a violation of legal ethics. And again, I refused because I had done nothing wrong.

Long story short, I fought the Internal Revenue Service in court and eventually had my money returned, but it cost me \$150,000. Unfortunately, too many Americans do not have the ability or the resources to take on the government, especially the Internal Revenue Service, and they wound up losing their businesses and livelihoods.

But I couldn't stop there. So, I found myself on the opposite side of this dais back in 2015. And there was a gentleman from the Institute for Justice, Rob Johnson, that sat right beside me testifying against the Internal Revenue Service and their corrupt methods in a congressional hearing. My testimony before Congress resulted in the introduction of and the eventual enactment of the Clyde-Hirsch-Sowers RESPECT Act, a bill that ensured individuals and small businesses were protected from unlawful cash seizures by the Internal Revenue Service over structuring.

Those protections were a great start, and I am thrilled to be here to learn more about how we can further reform our civil asset forfeiture laws so that we are protecting the due process rights of all Americans from being trampled on by all federal agencies, not just the Internal Revenue Service. In fact, I was excited to learn about the chairman's bill when he introduced it with Representative Walberg, the FAIR Act, and I wholeheartedly support its goals and policies.

Civil asset forfeiture knows no partisan bounds, no ethnic bounds, as no person is immune to it, none. We can and we must do better, and so I wanted to use this opportunity to commend the chair's work on this bill and for holding today's hearing to shine a light on the perverse incentives of federal forfeiture proceedings and the need to strengthen civil liberties.

One aspect I am particularly interested in working on, which the FAIR Act looks to do, is bolstering the reporting requirements and data tracking of assets seized so that we can know whether civil forfeiture is being applied fairly to all citizens. In fact, Mr. Rulli brought up the very issue of the need for more transparency in his submitted testimony, and I find this important, Mr. Chairman, because eventually I would like to see every individual wronged by civil asset forfeiture abuses made whole again. And we must have a better reporting system to make that happen, I believe.

So, Mr. Rulli, a question for you. Recognizing that we need better data and reporting to right the wrongs moving forward, is there an avenue by which we could simultaneously look to retroactively right these wrongs?

While I was fortunate to get my assets back, too many people have thrown up their hands and succumbed to the abuse. They just want it to go away. That is all they want.

And I realize there is no silver bullet to achieve my desired outcome, but is there any instrument you see that we could—wherein we could help these individuals? Thank you.

Mr. RULLI. Thank you for that question and for your testimony here, and it's so powerful.

And I would just add that so many of the clients we've had were in similar situations where prosecutors said, well, we'll give you 50 percent back, but we're keeping 50 percent. Really extortion.

Mr. CLYDE. Right.

Mr. RULLI. Even though there was no legal basis for the taking of that property. And that's why transparency and data is so important. We have to provide remedies for those whose property has been taken, and we have to know exactly what is happening.

I get calls all the time from reporters saying they're having difficulty getting access to the data. That's certainly at the state level, and that requires right to know requests, Freedom of Information requests, great delay, great objections, but without real basis.

And so, yes, I think the FAIR Act can take a major step forward in providing requirements that are carefully tailored to the abuses that we have seen so that we can get on top of the information we need not only to prevent the future abuses, but to determine who's been abused, who's had their property wrongfully taken, and how we can provide a remedy for them.

This is a very important part of this legislation, and I support it completely.

Mr. RASKIN. All right.

Mr. CLYDE. Thank you, Mr. Chairman. If you may, I would certainly appreciate the opportunity to work with you on that, on that issue, if you—

Mr. RASKIN. By all means. Thank you for raising that. Thank you for your participation, Mr. Clyde. We welcome it, and we thank you for your excellent and revealing comments today.

I was thinking about when you were talking about the shake-down, the extortion of one third of your money when you hadn't done anything wrong, and they were conceding it. St. Augustine once said that government without justice becomes just a band of robbers.

Mr. CLYDE. That is right.

Mr. RASKIN. And we don't want the police to be mimicking the tactics of the worst thieves on the street. So, thank you very much for your participation.

Come now to Ms. Tlaib for your five minutes of questioning.

Ms. TLAIB. Thank you so much, Chairman Raskin.

And I really appreciate, Ms. Harris, you helping put a human face behind much of that is being discussed in this committee and very, very important hearing.

You know, civil asset forfeiture has been a major issue in my district. In 2017 alone, 400 of my residents without being charged with a crime, like my colleague, lost their vehicles to Wayne County's Operation Push-Off. They didn't have the kind of resources

that some of my colleagues have here. I mean, this is life-changing for them.

The operation targeted disadvantaged communities, involved officers stopping individuals and seizing vehicles if they suspected, not proved, suspected that they have been involved in a crime. I find it extremely outrageous. A vehicle can be a lifeline for so many of my residents.

Individuals who wanted to challenge these forfeitures could expect the process to take months or even years. Naturally, they could also pay \$900 "settlement fee," basically, a legalized bribe, in my view, for the return of their property. And of course, all of the proceeds went straight to the police department. If anyone else was doing this, it would be called extortion.

The fact that there are studies now that show that civil asset forfeiture does not significantly reduce crime or improve policing capabilities in our country. A recent study by the Institute for Justice that looked at data from five states, including my own, found "no evidence that forfeiture proceeds helped police fight crime, whether in terms of solving more crimes or reducing drug use."

This table, Mr. Alban, from the report shows civil asset forfeiture has no significant impact on drug use. Can you quickly summarize this table and its meaning for my colleagues on the effectiveness of civil asset forfeiture?

Mr. ALBAN. Sure. So, this study compared the data, federal data on illicit drug use and specific categories of drug use, including marijuana, nonmedical prescription drugs, cocaine, and found there was no correlation between increases or decreases in the use of civil forfeiture and increases or decreases in drug use rates of the various categories depicted in that table.

Ms. TLAIB. And the next table, if you look right here, the next table shows the effect of forfeiture on crime clearances, or the number of crimes solved by police. Can you briefly walk us through this table and its meaning?

Mr. ALBAN. Sure. So, the top-level takeaway is that there was no associated correlation between increases or decreases in the use of civil forfeiture and on crime. However, there was an inverse relationship between crime clearance rates and the use of civil forfeiture.

And so what this table shows is that when you divert law enforcement priorities to things like highway interdiction or community interdiction programs, where you're stopping people on the streets and taking away their money, instead of actually solving violent crimes, you end up with lower crime clearance rates, which should not be a goal.

Ms. TLAIB. Well, thank you for that.

Ms. Ahmad, I would like to conclude with your thoughts. On this greater conversation, and it has been a conversation, around policing in our country and reform, in your view, what does the fact that increased revenues from civil asset forfeiture don't actually improve crime rates or drug use tell us about the need for civil forfeiture reform?

Ms. AHMAD. Thank you for the question.

Right. I agree. It tells us that there's a need for civil asset forfeiture reform, that crime rates are not decreasing. And again, it

brings us back to this is about process. It's about due process. It's about involving a judge in the process so that there is a neutral arbiter. But it is also about oversight. It is about accountability.

If a town in Georgia of 30,000 spends over \$200,000 on an armored truck based on using federal equitable sharing proceeds, the question is, were stakeholders in the community involved? This was all done behind a Black box, and it wasn't learned of until after the purchase was made. Others in the community may have wanted to spend that money differently.

So, if we can bring transparency to the process and if we can remove the profit motive by directing proceeds to a general fund that is controlled by a legislative body in a public and open manner, that would make a tremendous difference.

Ms. TLAIB. Yes, and I think a lot of us, and that is something very much my colleagues and I all agree about is transparency. And so, again, thank you so much for being part of this process.

And thank you again to Ms. Harris, who shared her story. I think it is really important to remember that these are families and folks behind all of these processes, and if we don't get it right, it really is a life-altering change for them.

Thank you so much, and I yield.

Mr. RASKIN. Ms. Tlaib, thank you so much.

Ms. Pressley, if you are out there, you are recognized for your five minutes? It looks like she had—oh, there you go. Ms. Pressley?

Ms. PRESSLEY. Thank you, Chairman Raskin, for convening today's hearing.

Civil asset forfeiture laws have been weaponized by police and prosecutors and disproportionately targeted against Black and brown communities for far too long. These policies amount to little more than legalized theft, and they are abused to increase police budgets and to dole out bonuses. Without reform, civil asset forfeiture laws will continue to exact hurt and harm at the expense of innocent people all across our country.

And the Commonwealth of Massachusetts, the state I call home, is certainly no exception. In 2018, Massachusetts made \$36 million in revenue from civil asset forfeitures because it had an extremely low standard for seizure. The state has little transparency on who it is taking money and property from and even less accountability to ensure wrongful seizures are quickly returned.

Ms. Harris, unfortunately, you know this all too well. We all appreciate your willingness to share your story on how your car, your only possession during the time when you were living in a shelter, was seized by the police and impounded for five years. It breaks my heart to learn about the hardships and trauma that you experienced. At the same time, my heart swells at your resiliency and your ability, as Chairman Elijah Cummings so often said, to turn your pain into purpose.

Ms. Harris, I want to give you an opportunity to share anything about your experience that you would like to add to your opening remarks, such as what was going through your mind in real time when this happened.

Ms. HARRIS. I was alone—can you hear me?

Ms. PRESSLEY. Yes.

Ms. HARRIS. OK. My voice gets low sometimes. And I just felt like I didn't have any resources. I didn't have any money. So, nobody wanted to talk to me.

And I just really thought that the car was just gone because I see it all the time in my community. This is not unusual, and everyone was just telling me that it's a loss, it's a loss.

I was going through other things at the time, so I just moved on to what was next, and that was—that was unemployment, finding a place to live, you know, those things that were more important. And like I said, I already just said, OK, that's gone. Because this is what happens all the time where I live at. It's not unusual, you know, for that to happen.

Ms. PRESSLEY. And thank you for that. And if you can tell us, what did it mean to have your car returned to you after you had written it off as gone for more than five years? What was that moment like, and in what ways did that change and improve your life?

Ms. HARRIS. Well, it affected me because my son Trevice was murdered. Being able to get that car back and to give it to his oldest daughter who had just graduated high school and started college was tremendous, and it left a legacy for Trevice for his daughter to have something by him. So, it was tremendous. It was uplifting.

And it shows not only Kenai, his daughter, but in our community sometimes it's just like really hard to see that the law works for us. And for that to come back and to get that car, it let my granddaughters know that this system, we are included in this system, and it does work when people treat us fairly and work it.

Ms. PRESSLEY. That is right.

Ms. HARRIS. So, she was—so she was able to see that the law does work when somebody puts in the effort to make it happen. So, and that was something that was big for us.

Ms. PRESSLEY. Thank you. Well, you are modeling the fact that the arc of justice has to be—we have to bend it. And so, but I thank you so much for sharing your story. And although it is one that is based in the Commonwealth of Massachusetts, the policy violence of civil forfeiture is nationwide, as evidenced by the testimony that we have heard here today.

Professor Rulli, as the director of a law school clinic working on civil asset forfeiture, how does the loss of a home or car or even a few hundred dollars affect the lives of your clients?

Mr. RULLI. Thank you for that question.

It's devastating. It is so painful. It really just renders family—it tears families apart. The thought of being put on the street, most of our clients, their homes were all paid up. Many of them were of elderly age and were facing difficult health problems.

And to have this kind of pressure on them, the loss of their home or of their cars, which they needed for medical appointments, they needed for all kinds of things that were critical to their well-being, just was inflicting enormous pain. And to think that their own government was doing it to them when they had done nothing wrong was——

Ms. PRESSLEY. That is right. And Professor Rulli, to that point, so this injustice that they experienced happened very quickly, but

the process to have their belongings returned to them was much more slow. Could you just speak to that, just the challenges of navigating that process in order to have one's property returned?

Mr. RULLI. Yes. It is, as you've heard today, it's a very complex process. It's a very lengthy process.

The example that I gave of the piggybank, for example, which was just \$91, but was really important, took us 12 court appointments over more than a year just to get that money back for that child.

The home forfeitures on average, I would say, lasted about three years in the courts.

Ms. PRESSLEY. Wow.

Mr. RULLI. So this—even those who succeeded, this was weighing over their heads for that long period of time, and that really is terrible.

Ms. PRESSLEY. And just to get a sense of just how many people that we are talking about who experience this thievery, really, can you tell us roughly how many people whose property gets seized through asset forfeiture have actually committed any type of crime?

Mr. RASKIN. The gentlelady's time has expired, but you may answer that question.

Mr. RULLI. Well, our experience was that overwhelmingly, actually, our clients were never accused or certainly not convicted of any crime at all. Really, this is so much taking based upon suspicion that's not proven in the courts.

Ms. PRESSLEY. Thank you.

Mr. RASKIN. Thank you very much, Ms. Pressley, for your questioning. Mr. Davis, you are recognized for your five minutes now.

Mr. DAVIS. Thank you, Mr. Chairman. And a very informative hearing, tremendous information and insights have been given.

You know, there are some who would argue that there have been positive developments by the courts to rein in civil asset forfeiture. Specifically, the U.S. Supreme Court held in *Timbs v. Indiana* that the excessive fines clause of the Eighth Amendment was applicable to state and local governments in the context of asset forfeiture.

The Pennsylvania Supreme Court ruled that the state's excessive fines clause should have applied to a case in which a 71-year-old woman's home was seized and taken because her son allegedly sold \$200 worth of marijuana from the property. The Pennsylvania court provided guidance on how the excessive fines clause should apply in cases such as this.

However, neither of these opinions created precedent that would stop forfeitures from occurring at their outset. The onus remains on property owners to challenge the seizures and retain counsel that can help them navigate, as you just said a moment ago, Professor, the complex processes.

Professor Rulli, you lead the University of Pennsylvania's Law School Practice Clinic, and so I hope you can provide us some direct insight into the *Young* decision. Since *Young* was handed down, have jurisdictions across Pennsylvania reduced their use of civil asset forfeits?

Mr. RULLI. Thank you for that question.

I wish I could say the answer was yes, but I can't. The reality is that, again, the excessive fines clause protection will only be of

help if it's raised, if there's an opportunity of counsel to be there and to provide the representation. And the reality is that in so many of the cases, there is no representation, and individuals facing forfeiture of their property do not know to raise the various protections that do exist under the Constitution.

The Pennsylvania Supreme Court decision is a very important decision, and I would hope that one day the U.S. Supreme Court would adopt a much more protective framework for all citizens.

Mr. DAVIS. Are individuals contesting asset forfeiture able to state in their claims that a seizure violates the excessive fines clause, allowing for an expedited return of their property?

Mr. RULLI. Yes. That exists as a result of this decision. But in practice, it's not happening. Again, because without legal help, people do not know that they have this available to them. Prosecutors are not sharing this information with the individuals from whom they're taking property.

And so the law can exist, but it doesn't help ordinary people unless we are aware of it, unless we have the help that we need to express those concerns, and so it then comes back to due process. And so we've got a lot of work yet to do.

Mr. DAVIS. Thank you. Thank you very much.

So, the courts in Pennsylvania apply the excessive fines clause on a case-by-case basis, and there are no expedited processes that would allow laypersons to easily represent themselves.

Mr. Alban, I imagine that this would hold true in the federal context as well. Is that true?

Mr. ALBAN. That is correct, and the federal system is far more complex than Pennsylvania's system because of the addition of the administrative forfeiture procedures under federal law. So, it's even more difficult for someone to represent themselves in a federal forfeiture proceeding than under Pennsylvania law.

Mr. DAVIS. Is there a role for courts to help prevent these forfeitures from occurring in the first place?

Mr. ALBAN. Absolutely. There should be judicial review of all forfeiture cases. Administrative forfeiture should not exist in the first place, but if it does exist, property owners should have the ability to appeal any ruling by an administrative agency so that an actual Article III judge can review the forfeiture and determine whether or not it's legitimate.

Mr. DAVIS. Thank you. Thank you very much.

And Ms. Ahmad, if I could ask you a brief question?

Mr. RASKIN. OK, yes. This will be your final question. Thank you.

Mr. DAVIS. All right. How does this lack of guidance affect the greater civil asset landscape, and what does it imply for ongoing efforts at reform?

Ms. AHMAD. Thank you for the question.

Well, what it implies for ongoing efforts is that more reform is needed at the federal level particularly. Violations of CAFRA are occurring right now. A DHS report from last year reports that a process, a negotiation process that feels like extortion is going on, even as CAFRA is supposed to prevent that kind of conduct, where agents are bypassing the judicial process and not working with federal prosecutors to file a claim and go to court and seize the asset.

Instead, they waive their own deadline. They don't talk to the federal prosecutor, and they call up the property owner, and they negotiate a settlement, not unlike Congressman Clyde's case.

Mr. DAVIS. Thank you very much. And Mr. Chairman, I yield back.

Mr. RASKIN. Thank you very much for your questioning, and I turn now to the vice chair of the committee, Ms. Ocasio-Cortez, for her five minutes of questioning. And thank you for your patience.

Ms. OCASIO-CORTEZ. Thank you so much, Chair Raskin.

Yes, I believe that there are two things to understand from our witness testimony today, and I want to thank our witnesses who are here in person as well as those joining us digitally for sharing their experiences and expertise today.

But you know, I think this is just simply an issue that Americans, so many people in this country, cannot believe is real. Civil forfeiture—Mr. Alban, civil forfeiture means that the government, law enforcement, et cetera, is allowed to take away your property, often your car or even your home, without an arrest, without criminal charges, and without ever going to court. Correct?

Mr. ALBAN. That is correct.

Ms. OCASIO-CORTEZ. And as long as the police can claim that they believe this property is in some way connected to a crime, the seizure of one's property can just happen without any sort of recourse in the immediate term. Correct?

Mr. ALBAN. That's absolutely true under the federal process.

Ms. OCASIO-CORTEZ. And then the police can sell your home or sell this property and use the proceeds as revenues. Correct?

Mr. ALBAN. After the property has been forfeited, yes.

Ms. OCASIO-CORTEZ. Now, second, we know, Ms. Ahmad, that in the United States our criminal system over targets the poor and over targets people of color, particularly Black Americans. Correct?

Ms. AHMAD. That's correct.

Ms. OCASIO-CORTEZ. And it relies on the kind of exploitation, the fact that so many people do not have the ability or the resources to get adequate defense to allow this to persist. But when we put these two things together, what we get is a picture of what is happening now, that in the vast majority of civil forfeiture cases, the government is driving away cars, kicking people out of their homes for claimed suspicion. But not even the person that has this property needs to be connected to any of these crimes. This happens without arrest, without criminal charges.

So, Professor Rulli, what you see in your practice essentially is the combination of the inherent biases and, frankly, institutional racism and classism of our criminal system, combined with civil asset forfeiture means it is disproportionately poor people, low-income people, and people of color that are having their property seized without really any proven cause. Correct?

Mr. RULLI. That is correct. And in fact, we map that in Philadelphia. We actually use geo mapping to show that. You're absolutely right.

Ms. OCASIO-CORTEZ. Thank you so much, Professor Rulli.

And we have one of those people with us here today, with our witness, with Ms. Harris. Ms. Harris, the police, as you mentioned in your testimony, drove your car away and for a reason that you

were not completely understood when it was given to you. And they didn't even show you a single slip of paper when they took your car away, right?

Ms. HARRIS. Correct.

Ms. OCASIO-CORTEZ. That is correct. And Ms. Harris, how long did the government take to contact you with a notice after they drove away with your car? You had mentioned it earlier.

Ms. HARRIS. Five years.

Ms. OCASIO-CORTEZ. So, they took your car without a shred of documentation, and they took five years to get back to you about that?

Ms. HARRIS. Yes, right.

Ms. OCASIO-CORTEZ. And when they got back to you about that, how long did the government, after they took five years of their time, their sweet time, how much time did they give you to respond to their notice?

Ms. HARRIS. I believe it was between 25 and 21 days, and that was what they gave me. And they put the wrong address on there. So, by the time I got that paperwork, I actually had two weeks.

Ms. OCASIO-CORTEZ. So, any amount of things could have happened. I mean, you could have moved. You could have had a change of address. They took five years to get to you, and then they gave you 21 days to respond to an enormous asset that they had seized that's absolutely devastating to just lose overnight. That's what happened?

Ms. HARRIS. Yes, correct.

Ms. OCASIO-CORTEZ. And initially, you weren't even going to pursue recourse because the legal fees associated with getting your car back, before pro bono help was extended to you, you were just going to take it as a loss. Is that correct?

Ms. HARRIS. Yes.

Ms. OCASIO-CORTEZ. See, you know, and Chair Raskin, this is the thing that it gets down to is the fact that, increasingly, so many of our communities, including the Bronx and Queens that I represent, do not believe and are increasingly not believing that we have a justice system in the United States. That this is just a punishment system that we have, a criminal system that does not even really center the actual justice of their innocence and actually give them benefit of the doubt.

We have a system that does not presume innocence until one is proven guilty unless you are wealthy or privileged in this country. And that is what we are here to really address. So, I thank you for calling the hearing, and I greatly look forward to our continuing work on this matter.

Mr. RASKIN. And thank you very much to the vice chair for her insightful questioning.

I am going to ask the ranking member, Ms. Mace, for any closing remarks or thoughts she has before I offer my own.

Ms. MACE. Thank you, Mr. Chairman.

And I want to thank you for having this hearing today, having worked on it, like you, as a state lawmaker and coming to Congress. And then seeing, when we bring together members of the Squad and the Freedom Caucus, and we are all working together on the same issue is quite the feat, and it is past time that we

work together. It is quite an achievement and shows that this is necessary, very much needed, past time to work together on this.

Because there is something really wrong with this issue, and Congress is finally doing something about it. So, thank you for this great step in having and hosting this hearing.

And I want to thank everyone who participated and Ms. Harris for sharing her personal story. Congressman Clyde, my colleague, for being so insightful in your story as well. I want to thank everyone for making the effort to be here and let us do something about it.

Thank you, Mr. Chairman.

Mr. RASKIN. And Ms. Mace, thank you so much for your wonderful participation in this hearing and this issue.

Before I make a closing remark, I just want to ask unanimous consent to enter into the record two Institute for Justice reports, "Policing for Profit" and "Does Forfeiture Work?"

And without objection, an ACLU policy brief, "Profiting from California's Most Vulnerable."

Without objection, a Center for American Progress report, "Forfeiting the American Dream."

Without objection, and a letter signed by 16 different nonprofit groups supporting federal civil asset forfeiture reforms, dated March 15, 2015.

All of these will be entered into the record.

Mr. RASKIN. I just want to close with a few thoughts about the fundamental importance of this hearing. I often think that the two most beautiful words in the English language, certainly in the law, but perhaps in the English language are "due process" because all of us have had the experience and know the indignity and the injustice of being wrongly accused of something and then having something taken away from us because of that.

And that is what due process is all about. We have got, in the civil asset forfeiture system, a whole apparatus and bureaucracy of government that inverts the general principles of due process. The basic idea is that we are all presumed innocent. In America, we are presumed innocent unless the government can actually show probable cause and make a case against us, sustaining its burden of proving beyond a reasonable doubt that we have committed a crime.

But other than that, we are presumed to be innocent. And yet what is happening and what we have heard from Ms. Harris and the stories that we have heard from around the country are of people having their property taken away from them, whether it is their life savings that they happen to have in their pocket because they are going to purchase a car or going to put a down payment on a house. It could be a car itself in lots of these cases. It could even be an apartment or a condo. It could be a bank account, as in the case of Mr. Clyde.

All of that is happening without people being charged with a crime. In many cases, without being accused of a crime. Certainly without being convicted of a crime, without being sentenced to a crime. But their property has been taken away.

And at that point, the whole system of due process is thrown out, and now you need to go out and hire a lawyer, if you can afford

one, as Ms. Harris underscores. If you can afford one, you have got to go find a lawyer to go and sue the government and prove that you are innocent. Your property is innocent. Or if you are not innocent, there is no nexus between you and the property, but even that connection seems to be thrown out the window because the assumption is if there is some cloud over you, then your property is definitely guilty, and the government is going to keep it. And that is wrong.

So, we have got a serious problem here, and it is something that affects every citizen. Whether you are a wealthy businessman in Georgia with \$1 million in the bank or you are a homeless person in Springfield, Massachusetts, who has to her name only a car, you can be affected by this totally arbitrary inversion of due process.

And it is also true, as I think has been shown by several witnesses today, that in the absence of constitutional due process, then all of the background inequalities of our society and the background injuries of race and class come to bear because some people are able to fend for themselves if they can afford a lawyer or if they have got the benefit of the Institute for Justice or the Goldwater Center. But without it, if you don't have the means to do it, then you are really at the mercy of a rather merciless system, as the Institute for Justice has documented in this excellent poster, which demonstrates the byzantine complexity of this Orwellian and Kafkaesque system that has grown up.

So, that is a real problem, and we didn't even really get into the corruption of the government and law enforcement agencies and bureaucratic departments themselves. I mean, it has been mentioned several times, but it is almost worth a hearing of its own. What does it do when the government agencies are told you can keep either 100 percent or a large part of the proceeds that you seize from people?

Well, you start focusing on one side of the street, as Mr. Alban says, and not on the other side of the street. You are looking for the money. You are not necessarily looking for the drugs.

And I do think that this whole problem has clearly been exacerbated by the war on drugs because it is such a cash-intensive business. There is so much money out there to be seized, and this is another way in which the war on drugs is eroding the basic civil liberties infrastructure of our constitutional system.

So, we have got to clean this up. I mean, part of me says we should just get rid of the whole thing and say the government can't take anybody's property until they have actually arrested you, indicted you, prosecuted you, convicted you, and then they can take your stuff from you.

But the legislation, which Congressman Walberg and I have been working on—and he has been such a powerful intellectual force in this field—this legislation doesn't go that far. This legislation should be able to be agreed to by everybody across the spectrum, whether you want to see things through the eyes of law enforcement or you want to see things through the eyes of somebody who has been the victim of one of these forfeitures.

What it does is it says we are going to shift the burden of proof back onto the government. The government has got to prove by clear and convincing evidence that your property is guilty in con-

nection with a crime, either the proceeds of the crime or an instrument of making the crime happen, rather than your having to go and prove that it is innocent. We want to increase transparency around the whole process, and we want to dramatically restrict the use of equitable sharing agreements between DOJ and local and state law enforcement.

I hope this is something that we can move in this session of Congress, that we can get it done on a bipartisan basis. I urge all of my colleagues on the committee and beyond who are watching to join us in H.R. 2857.

I want to thank the vice chair for her eloquent remarks and the ranking member for her wonderful participation today.

Mr. Clyde, thank you for joining us and hanging with the subcommittee, and I want to thank everybody on the subcommittee for their focus on this.

And our witnesses have been wonderful today. Thank you all, and we are determined to get this done.

You will have I think it is five days—one second. Yes. All members will have five days within which to submit additional written questions for the witnesses, and we will forward them to you. And we are also available for any additional materials that you want to send us. And we ask our witnesses to please respond as promptly as you can to any further questions that are sent to you.

Without any further business, this hearing is adjourned, and thank you all for participating in it.

[Whereupon, at 12:12 p.m., the subcommittee was adjourned.]

