



Testimony of
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Federal Asset Forfeiture: Uses and Reforms

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Investigations

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Chairman Sensenbrenner, Ranking Member Jackson Lee, Members of the Subcommittee, my name is Keith Henderson and I am the Prosecuting Attorney in Floyd County, Indiana. I am also here today as a member of the Executive Committee for the National District Attorneys Association (NDAA), the largest and oldest organization representing elected and appointed prosecutors and assistant prosecutors from across the country. I appreciate the opportunity to testify before you today.

Background

Civil asset forfeiture laws have changed substantially over the years, beginning with a federal forfeiture program and now including forfeiture laws in most states. On Friday, January 16, Attorney General Eric Holder announced changes to civil asset forfeiture policies under the Department of Justice (DOJ) that would eliminate the ability of state and local law enforcement to seize assets and turn them over to federal authorities for forfeiture, with some exceptions.

These changes to “state adoptions” came as no surprise as we understood the Administration had been considering changes to the current policy for the past several months. We were disappointed that NDAA was not consulted prior to this decision, which directly impacts our members across the country.

We are concerned that DOJ has not adequately studied the impact of this new policy direction on state and local governments, has based its decision on assumptions without supporting data that wide abuse exists across the system, and left out a key constituency in the process.

Attorney General Holder also indicated that state adoptions would be prohibited, “except for property that directly relates to public safety concerns, including firearms, ammunition, explosives and property

associated with child pornography.” While we applaud the continued inclusion of these types of property and the continuation of forfeiture by joint state and federal task forces, we remain concerned that the decision is yet another step in the continued erosion of drug enforcement by the federal government.

State Adoptions: Impacts and Uses

Asset forfeiture is a tool used by state and local law enforcement and prosecutors to go after the pocketbooks of drug dealers and drug traffickers. Going after these finances not only makes our communities safer because the money is no longer available to use for other criminal activities, but being able to access some of the proceeds from the seized assets goes back to agencies to enhance enforcement capabilities. Not having the ability, or reducing the ability to go after criminal proceeds ignores a huge component of sophisticated, modern transnational organized crime, particularly when it comes to money laundering operations. Forfeitures are a byproduct of strong enforcement and if we take away the disincentive for these criminals to deal and traffic drugs and profit from these crimes, we could jeopardize the safety of our communities.

Another component that must be considered is that of information sharing and intelligence gathering, largely occurring at the state and local level. Although the recent announcement did have an exception for task forces, there is less of an incentive now for locals to partner with federal officials. That means that local participation with federal law enforcement on task forces could essentially end in many jurisdictions. Agencies such as the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) need local participation from the county sheriffs, city and state police as these federal agencies rely heavily on local intelligence being gathered to aid in broader investigations. Local police now must question whether to continue to pay their officers to work with federal law enforcement

that often takes them out of their jurisdictions now that the civil asset forfeiture rules have changed. Furthermore, local departments rely on federal expertise when drug dealers use restaurants, barbershops, garages and other cash businesses as places of sale and to launder money. Forfeiture of businesses is a specialized task that most local agencies lack the expertise and resources to handle and have had to rely on the U.S. Marshall Service for assistance to date. This may include management of the business, real property and tools of the business.

As part of the recent decision, drug forfeitures would be severely limited and adoptions would only be granted through very narrow exceptions. For example, under the new policy, DOJ will take an adoption if a firearm is involved, but might not otherwise. The approach seems shortsighted as very few cases involve just firearms, or just relate to child pornography. In most of the cases we see, illegal drugs are an integral part of an operation, finance the purchasing of these firearms, and are part of larger criminal enterprises. Why limit the ability of state and local law enforcement to go after the worst of the worst? The bottom line is that drug dealing and trafficking remain a major crux of crime across this country—it is the root cause of many other crimes of violence. From violent crime to property crime to the end point of drug ingested deaths, the human destruction attributable to drug dealing remains high.

Also of concern is that the statutory language in state forfeiture laws varies widely across the country. In my state for example, forfeiture money goes directly to a school fund. In other states, forfeiture money is capped at a certain threshold depending on the seizure. This means that local prosecutors serving to protect citizens and victims have no choice but to access assets forfeited under federal law as a means to support programming for victims and valuable training to ensure that justice is adequately served. In my home state of Indiana, if the current

federal rules remain in place, state and local agencies will not be able to spend the resources to forfeit drug dealer profits.

Potential Reforms

As we have all seen over the past several months, critiques of the program have been offered and stories of individuals having assets seized and never returned, regardless of the outcome of any potential accusations or charges, have been in papers and on TV. Let me be clear. Our members strongly support due process under the law and fully denounce any seizures of property and other assets of falsely accused individuals. Now that most states have their own asset forfeiture laws, we also acknowledge that the potential for duplication with programs at both the state and federal level does exist.

Several potential reforms could be examined to determine their feasibility and operational impact on state and local law enforcement's ability to go after the worst of the worst in our communities. As part of these potential reforms, a comprehensive study should be conducted to actually document any abuse that we have seen alleged in the media. There are bad actors in every program, and we do not condone unfair and abusive practices, but we must have factual documentation of these abuses in order to properly understand what types of reforms could make the current system more efficient and effective.

Recently, four national law enforcement organizations, the Major Cities Chiefs Association (MCCA), Major County Sheriffs' Association (MCSA), International Association of Chiefs of Police (IACP) and the National Sheriffs' Association (NSA), all signed a letter to Attorney General Holder regarding the asset forfeiture program and included a policy proposal of potential reforms to be considered. We stand with our law enforcement partners in calling for these reforms to be reviewed as potential paths forward on the asset forfeiture program.

First, adoption cases by state and local law enforcement should be limited to cases involving serious crime that pose a threat to public safety. These include cases involving drug trafficking, human trafficking, firearms, terrorism, and gang activity just to name a few.

Second, DOJ should develop a more comprehensive and detailed process for forfeiture cases. This could include a manual on seizures to promote consistent practices across the program and promote best practices that are already being promulgated in the states.

Requirements put into place by the Civil Asset Forfeiture Reform Act (CAFRA) should continue to be put into place and agencies participating in the asset forfeiture program should also develop manuals to make sure they are following procedures put into place by CAFRA. As is the case with many programs, adequate training is extremely important in ensuring fair and consistent practices are carried out.

Third, any seizures of assets must show a demonstrated criminal nexus, including tying the criminal activity to applicable statutes under state law. A report outlining these connections and rationale for seizing assets will address the critique that assets are unfairly seized without due process under the law.

Fourth, critics have attacked the threshold level for seizures. To address this concern, the threshold level for adoption cases should be raised to \$10,000 in cases where there is no arrest. In certain circumstances, DOJ can approve exceptions to this rule when targeting criminal organizations and repeat offenders.

Fifth, a greater level of transparency will build additional trust among the public that legitimate seizures are occurring in the field. DOJ could require agencies to issue annual reports open to the public on these seizures or the reporting mechanism through the current equitable

sharing program could be strengthened. In addition to the previous recommendation that manuals be developed on policies and procedures regarding forfeitures, the procedures should be publicly published, as long as those materials do not jeopardize investigative techniques of a given agency.

These five areas of potential reform could go a long way in addressing concerns associated with the program and restoring public trust that state and local law enforcement are going after criminals and legitimately seizing assets that are being used to commit other criminal activities in our communities. Furthermore, law enforcement and prosecutors should avoid pursuing forfeiture actions when the primary purpose is to obtain assets rather than pursue a prosecutable case.

We remain hopeful that the Administration and DOJ will improve its communication with organizations such as ours as a means to develop sound, practical and effective policy. We stand ready to engage with the Department on this issue and many others, and I thank the subcommittee for their time today.