HOUSE WAYS AND MEANS COMMITTEE

SUBCOMMITTEE ON OVERSIGHT

February 11, 2015

<u>Testimony of Robert Everett Johnson</u>

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

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

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

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

Together, these stories and statistics paint a picture of government abuse. Civil forfeiture allows government to take property based on mere suspicion of wrongdoing and then forces innocent property owners to fight to get their property back. Civil forfeiture also encourages government abuse by allowing agencies like the IRS to keep the money that they seize. The government routinely disregards procedural protections provided by existing law. And the IRS has adopted an aggressive interpretation of so-called "structuring" laws to criminalize conduct most Americans would never even imagine is a crime. Civil forfeiture—and structuring in particular—is an area badly in need of reform.

<u>Structuring: The Law Of Bank Deposits</u>

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

Federal law requires banks to file a currency transaction report with the U.S. Department of the Treasury for any cash transaction in excess of $10,000.[1] Federal structuring law, meanwhile, makes it unlawful for a bank customer to break up cash deposits or withdrawals into amounts below that $10,000 threshold "for the purpose of evading" federal currency reporting requirements.[2] A person who has violated this latter prohibition is said to have impermissibly "structured" his cash transactions.

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

[1] 31 U.S.C. § 5313
[2] 31 U.S.C. § 5324.

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

These laws were intended to target drug dealers and other hardened criminals engaged in money laundering or other criminal activity. In practice, however, the IRS enforces the structuring laws against innocent Americans who have no idea that depositing less than $10,000 in the bank could possibly get them in trouble with the law. For instance:

- In August 2013, Carole Hinders, the proprietor of Mrs. Lady's Mexican Food, a small-town restaurant in Spirit Lake, Iowa, had more than $32,000 seized by the IRS—the restaurant's entire bank account.[3] Years ago, Carole's mother told her that depositing more than $10,000 created a hassle for the bank. Carole had no idea that trying to make life easier for the bank might be a federal crime. The IRS finally agreed to return Carole's money sixteen months after the seizure.
- In March 2013, Mark Zaniewski, the proprietor of Metro Marathon service station, in Sterling Heights, Michigan, had his business's entire

[3] *See United States v. Thirty-Two Thousand Eight Hundred Twenty Dollars and Fifty-Six Cents in U.S. Currency*, No. 13-CV-4102 (N.D. Iowa).

bank account—over $33,000—seized by the IRS.[4] An IRS agent advised Mark that he should go ahead and deposit any additional funds belonging to Metro Marathon into the account to avoid bouncing checks to his vendors. Mark borrowed $10,000 from his sister-in-law and also made additional deposits of credit card receipts into the account. Then, in April 2013, the IRS seized all this newly deposited money (over $37,000) from the account. Although Mark often deposits cash in amounts under $10,000, he also sometimes deposits more than $10,000; this pattern reflects the fact that he goes to the bank every few days to deposit cash to cover vendor bills and to safeguard surplus cash. Eight months after the seizure, the IRS finally agreed to return all the money.

- In January 2013, Terry Dekho, the proprietor of Schott's Supermarket, located in Fraser, Michigan, had his entire bank account cleaned out by the IRS—totaling more than $35,000.[5] Nine months before the seizure, the IRS visited Schott's Market to perform a "Bank Secrecy Act" examination and informed Dekho that "no violations were identified." Terry made a practice of depositing cash from the store when the amount on hand approached $10,000, as the insurance policy for

---

[4] *See United States v. Thirty-Three Thousand Two Hundred Forty-Four Dollars and Eighty-Six Cents in U.S. Currency*, No. 13-cv-13990 (E.D. Mich.).
[5] *See United States v. Thirty Five Thousand Six Hundred Fifty-One Dollars and Eleven Cents in U.S. Currency*, No. 4:13-cv-13118 (S.D. Mich.).

Schott's Supermarket covered theft or other loss of cash up to $10,000. Eleven months after the seizure, the government agreed to return the money.

- In May 2012, Jeffrey, Richard, and Mitchell Hirsch, the proprietors of Bi-County Distributors, Inc., had over $446,000 seized by the IRS—once again, the entire contents of their business's bank account.[6] After a series of banks closed their accounts, the Hirsch brothers were advised by their own accountant to keep cash deposits under $10,000 to reduce paperwork burdens for their banks that otherwise are associated with frequent cash deposits. The IRS held the money for thirty-two months, over two-and-a-half years, before finally agreeing to return it to the Hirsch brothers.

In all these cases, the individuals targeted by the IRS had no interest in concealing their activities from the government; each had a legitimate purpose for their banking practices. None of these individuals was ever charged with any crime other than depositing less than $10,000 in the bank. Yet the government seized their money without warning and without asking

[6] *See In the Matter of the Seizure of Four Hundred Forty Six Thousand Six Hundred Fifty One Dollars an Eleven Cents in U.S. Currency*, No. 14-mc-1288 (E.D.N.Y.).

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

In response to significant media attention, including a front-page article in the *New York Times*, the IRS announced in October 2014 that it was adopting a new policy under which it would only pursue structuring cases where the money came from an illegal source.[7] The new IRS policy, however, did not apply to pending cases, and also included a vague and undefined loophole for "exceptional" circumstances. At this point, it remains to be seen whether that policy change will have a significant effect on IRS enforcement of the structuring laws.

Early indications are not entirely promising. In December 2014, the IRS filed a civil forfeiture complaint against the proprietors of L&M Convenience Mart, Inc. in Robeson County, North Carolina, alleging that the money was subject to forfeiture because the proprietors deposited cash in amounts under $10,000—with deposits ranging from $952 to $3,856 to $9,988.[8] The government does not allege in its complaint that the money came from an illegal source. Because this action post-dates the IRS policy

[7] *See* Statement of Richard Weber, Chief of IRS Criminal Investigation, at http://www.nytimes.com/2014/10/26/us/statement-of-richard-weber-chief-of-irs-criminal-investigation.html (Oct. 25, 2014).
[8] *See United States v. $107,702.66 in United States Currency*, No. 7:14-cv-295 (E.D.N.C.).

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

Civil Forfeiture Facilitates And Encourages Abuse

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

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

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

[9] *See* 31 U.S.C. § 5317.

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

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

---

[10] 18 U.S.C. § 983.

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

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

Shockingly, the government uses the money that it takes through civil forfeiture to pad the budgets of the very agencies that seize the money. When the IRS uses civil forfeiture to seize money for structuring violations, the money is deposited in the Treasury Forfeiture Fund.[14] By law, the assets in the Treasury Forfeiture Fund are available "without fiscal year limitation" for use by Secretary of the Treasury to fund the law enforcement activities of the IRS and other agencies within the Treasury Department—including to fund additional seizures of property.[15] In other words, the money that the IRS takes from hardworking Americans is put right back to work to seize money

---

[12] 18 U.S.C. § 983(f)(1).
[13] *Id.* § 983(f)(8).
[14] *See* U.S. Dept. of Treasury, Treasury Executive Office for Asset Forfeiture, http://www.treasury.gov/about/organizational-structure/offices/Pages/The-Executive-Office-for-Asset-Forfeiture.aspx.
[15] 31 U.S.C. § 9703(a).

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

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

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

---

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

Quantifying The Problem

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

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

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

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

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

Conclusion

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

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

Thank you for the opportunity to testify.

SEIZE FIRST, QUESTION LATER:

THE IRS AND CIVIL FORFEITURE

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

Institute for Justice

February 2015

SEIZE FIRST, QUESTION LATER:

THE IRS AND CIVIL FORFEITURE

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

TABLE OF CONTENTS

Executive Summary 4

Introduction 7

The IRS's Growing Use of Forfeiture for Suspected Structuring 10

Civil Versus Criminal Forfeiture for Suspected Structuring 14

Nothing but Structuring Suspected 16

How Long Forfeitures Take 18

Is the IRS Seizing More than Justified? 20

Policy Recommendations 24

Conclusion 26

Endnotes 28

EXECUTIVE SUMMARY

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

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

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

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

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

IJ CLIENT CAROLE HINDERS

IJ CLIENTS TERRY DEHKO AND SANDY THOMAS

INTRODUCTION

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

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

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

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

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

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

The IRS used civil forfeiture to clean out Terry and Sandy's store bank account, claiming the funds had been illegally "structured." Federal law requires banks to report cash transactions in excess of $10,000 to the IRS,[3] and it is illegal to "structure" deposits or withdrawals to avoid those reporting requirements by, for example, depositing or withdrawing $9,000 at a time.[4] The federal reporting requirements are supposed to help detect and deter financial crimes, such as money laundering and fraud. But, importantly, it is not illegal to make deposits or withdrawals of less than $10,000 if there is a legitimate purpose for doing so—as Terry and Sandy had.

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

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

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

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

IJ CLIENT TERRY DEHKO

THE IRS'S GROWING USE OF FORFEITURE FOR SUSPECTED STRUCTURING

From 2005 to 2012, the IRS seized more than $242 million for suspected structuring violations, originating from more than 2,500 cases.[7] From 2006 to 2013 the agency forfeited, or kept, $123 million from 1,745 cases. As shown in Table 1, half of these seizures were for less than $34,000, almost identical to the amount seized from Schott's Supermarket. Half of forfeitures were for less than $27,000.[8] Such modest amounts call into question whether people losing their assets are the terrorist money launderers or headline-grabbing financial fraudsters that laws against structuring are meant to target.

TABLE 1: TOTAL IRS SEIZURES AND FORFEITURES FOR SUSPECTED STRUCTURING[9]

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

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

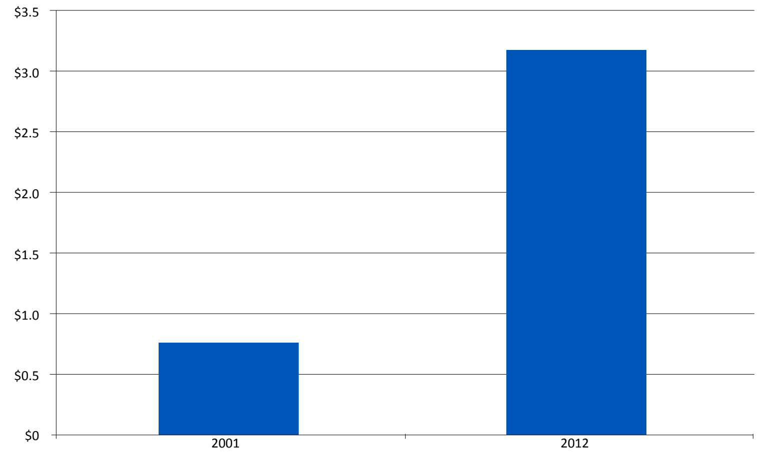
BEYOND SUSPECTED STRUCTURING, FORFEITURE ON THE RISE

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

But federal agencies are not alone in the forfeiture take. Both the Department of Justice and the Treasury Department run "equitable sharing" programs that allow state and local law enforcement to collaborate on forfeitures and split the proceeds, with state and local agencies receiving as much as 80 percent—even in states that bar agencies from receiving forfeiture proceeds or that set higher standards for forfeiting property. Equitable sharing has likewise grown: State and local agencies took in $558 million in 2012, an increase of more than two-and-a-half times since 2002.[2]

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

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



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

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

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

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

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

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

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

As Figures 1 and 2 illustrate, IRS structuring-related forfeitures and forfeiture revenues grew basically steadily year to year, but seizures and funds seized spiked from 2009 to 2010. The data do not provide any guidance on why this might be, but it could be a consequence of a series of high-profile and substantial financial frauds that came to light in 2008 and 2009. These included cases against Bernie Madoff,[11] the Stanford Bank and Stanford Industries,[12] Joseph Forte,[13] Mark Drier,[14] Tom Petters[15] and Scott Rothstein.[16] Though they did not involve structuring violations, these cases may have raised awareness of or concern about financial misdealings and led agents to step up efforts to identify suspected banking-law violations by looking for suspicious patterns of deposits and withdrawals. Such heightened scrutiny of financial transactions may have swept up more than just potential fraud cases, resulting in a significant spike in 2010.

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

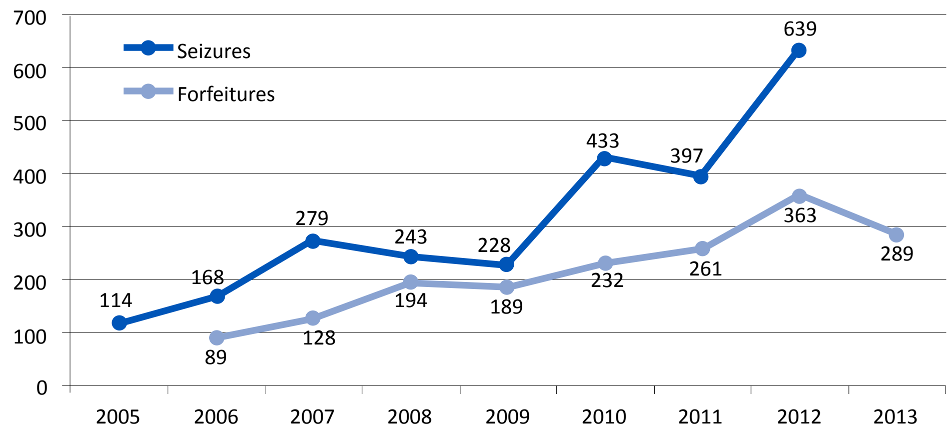
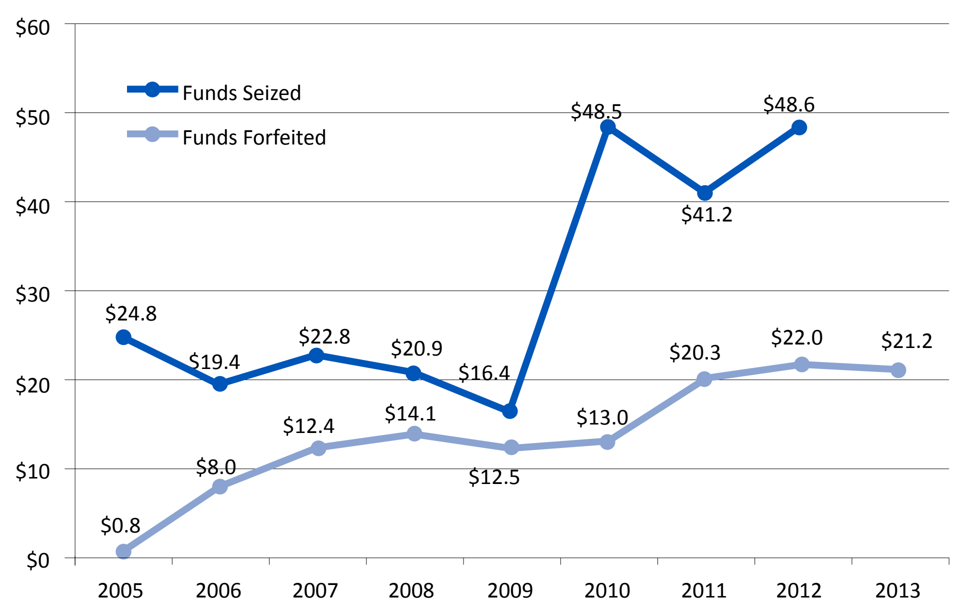


FIGURE 2: FUNDS SEIZED AND FORFEITED ANNUALLY BY IRS FOR SUSPECTED STRUCTURING, 2005 TO 2013, IN MILLIONS



CIVIL VERSUS CRIMINAL FORFEITURE FOR SUSPECTED STRUCTURING

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

TABLE 3: IRS SEIZURES FOR SUSPECTED STRUCTURING, CIVIL VS. CRIMINAL, 2005 TO 2012[18]

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

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

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

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

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

IJ CLIENTS TERRY DEHKO AND SANDY THOMAS

NOTHING BUT STRUCTURING SUSPECTED

For seizures, the IRS data specify which part of federal anti-structuring law the agency suspected was violated. The government can seize assets because it suspects someone is structuring to hide criminal activity, such as money laundering, fraud or smuggling.[23] (Even when criminal activity is suspected, the government can pursue civil or criminal forfeiture.) But under a different part of federal law, the government can seize money because someone appears to be structuring transactions for the sole purpose of avoiding reports to the federal government, with no further criminal activity alleged.[24]

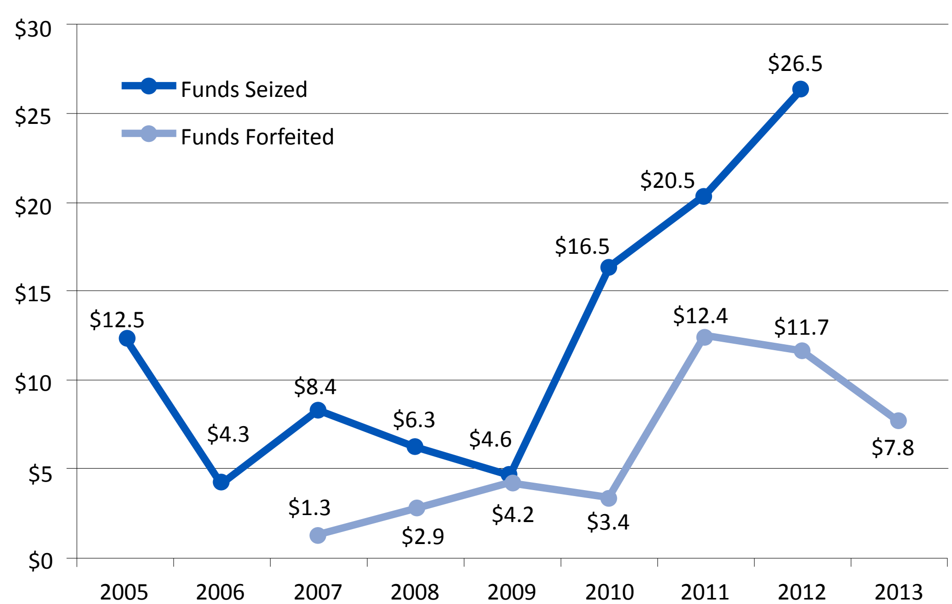
This part of anti-structuring law is particularly likely to trap the unwary. Like the Dehkos, Carole Hinders of Spirit Lake, Iowa, had no idea what "structuring" was or that it was illegal. For almost 40 years, Carole owned and operated Mrs. Lady's Mexican Café in Spirit Lake, a rural vacation spot

IJ CLIENT CAROLE HINDERS

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

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

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




IJ CLIENTS MITCH HIRSCH, RICH HIRSCH AND JEFF HIRSCH

HOW LONG FORFEITURES TAKE

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

Unfortunately, the IRS data do not indicate how long it takes property owners who get their property back to see the return of their funds; the data only provide dates for forfeitures, not for the return of seized property that does not result in a forfeiture. But the forfeiture dates suggest that property owners may wait a long time. It takes an average of 460 days for the IRS to forfeit currency through a civil judicial process. It likely could take a property owner caught up in the same process as long to get her money back, even when the civil judicial case is dropped. For their part, Terry Dehko and Sandy Thomas waited almost a year to receive their funds back.[27]

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

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

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

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

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

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

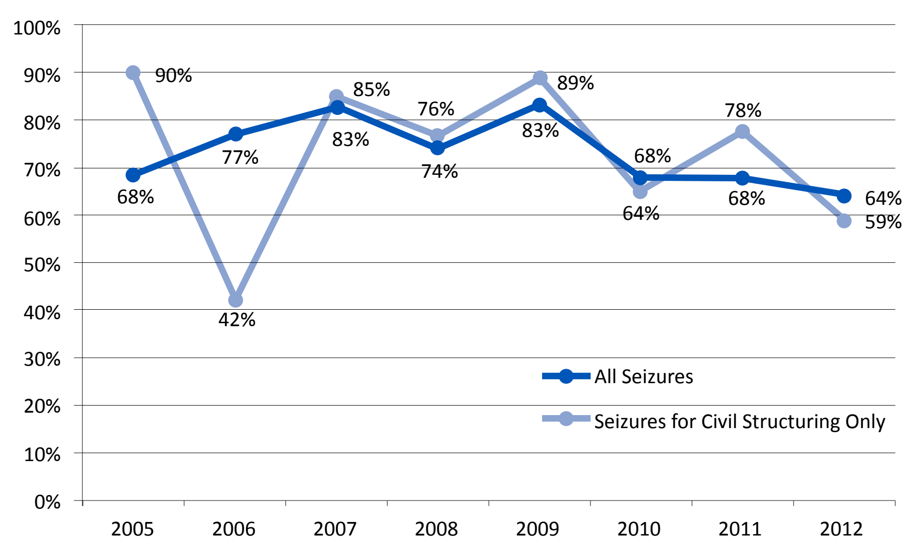
IS THE IRS SEIZING MORE THAN JUSTIFIED?

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

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

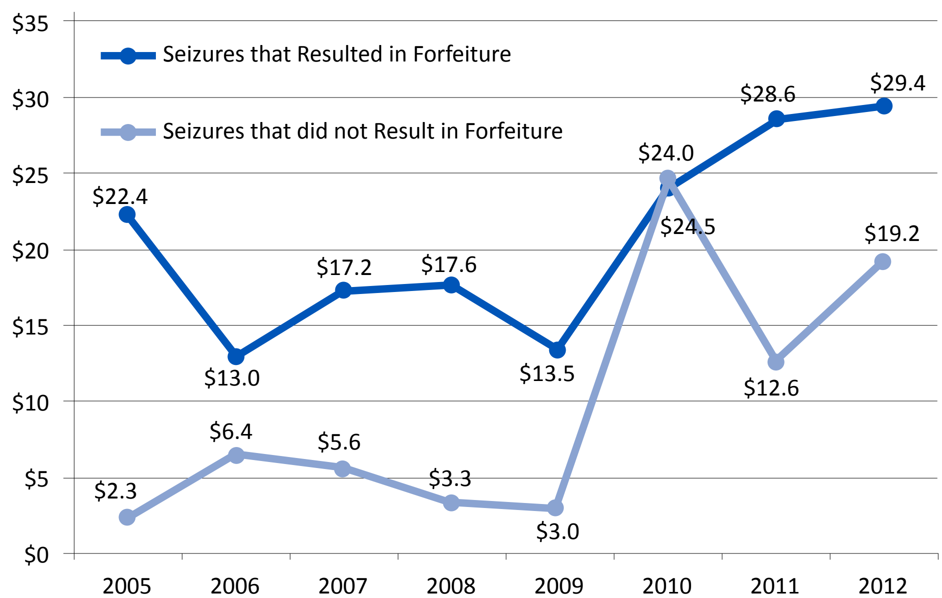
Seizures that failed to yield a forfeiture are on the rise, as illustrated by Figure 4. In 2007 and 2009, 83 percent of IRS structuring-related seizures resulted in the forfeiture of at least some funds, but by 2012, just 64 percent of seizures led to a forfeiture. Successful civil forfeitures for suspected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

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



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

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



Unfortunately, the IRS data do not explain why the IRS might forfeit substantially less than it seizes, but there are a few possible reasons. In some cases, the IRS might have reached a settlement with the property owner. The IRS might settle for a smaller amount to avoid protracted litigation, even if it has a strong case that the funds were intentionally structured, either to evade reporting requirements or to hide other criminal activity. Conversely, a property owner, even an innocent one, might agree to take some percentage of the seized amount back and allow the rest to be forfeited to avoid costly litigation and risk losing the full amount. The IRS offered Terry and Sandy such a deal, proposing to return 20 percent of their money,[31] an offer that was refused.

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

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

IJ CLIENT MARK ZANIEWSKI

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

This happened with another Michigan business owner and IJ client, Mark Zaniewski. In 2013, the IRS cleaned out his gas station's account, alleging the funds were structured. To avoid bouncing checks to vendors, he replenished the account with borrowed funds and earnings from his business—after the IRS told him he could do so without fear of a second seizure. But the IRS then seized the newly deposited funds.[34] After Zaniewski provided proof that these funds could not have been structured cash deposits, the agency offered to return the money from the second seizure if he would give up the funds from the first seizure. He refused, and the IRS finally returned the money from the second seizure after holding it for six months.[35]

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

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

POLICY RECOMMENDATIONS

On October 26, 2014, *The New York Times* exposed the IRS's structuring-related forfeiture activities, reporting some of the numbers we secured through the freedom-of-information request and featuring Carole Hinders and the Hirsch brothers.[36] In response to scrutiny by the *Times*, the IRS announced it would adjust its policy to focus on "cases where the money is believed to have been acquired illegally or seizure is deemed justified by 'exceptional circumstances.'" However, any change in practice will not apply to seizures and forfeitures already underway[37] and does not change the law. As long as the law remains as is, individuals remain at risk for the loss of their property.

PEOPLE WHO HAVE NEVER BEEN CONVICTED, OR NEVER EVEN CHARGED, IN CRIMINAL COURT SHOULD NOT LOSE THEIR PROPERTY IN CIVIL COURT.

The surest way to stop structuring-related seizures once and for all is to end civil forfeiture entirely and replace it with criminal forfeiture. People who have never been convicted, or never even charged, in criminal court should not lose their property in civil court. Ending civil forfeiture would not change the practice of seizing properties suspected of involvement in a crime, but since agents would have to be prepared to win in a criminal proceeding, which includes proving guilt beyond a reasonable doubt, it would reduce the number of seizures considerably, particularly those perpetrated with the flimsiest of evidence. Moreover, property owners would be afforded the greater protections that come with criminal proceedings, not least of which includes the presumption of innocence.

Short of eliminating civil forfeiture, lawmakers should remove the perverse financial incentive law enforcement agencies have to pursue civil forfeiture by requiring that forfeited funds be deposited in a neutral account, such as a general fund, and increase the standard of proof required for forfeiting property. Currently, law enforcement agencies forfeit funds under a simple preponderance of the evidence standard. Increasing this to a standard of clear and convincing evidence would introduce greater protections for property owners like Terry Dehko and Carole Hinders whose financial transactions were entirely explainable.

Reforming forfeiture procedures to require a prompt post-seizure hearing after the seizure of currency would also extend greater due process protections to property owners. Federal civil forfeiture law does not allow for a prompt post-seizure hearing when currency is seized.[38] This means cases can languish months and even years before property owners have an opportunity to contest the seizure before a neutral magistrate—among the most fundamental requirements of due process. Federal law does, however, prescribe a post-seizure hearing for non-monetary property, although only after the property owner files a hardship petition.[39] Federal forfeiture law should be changed to consistently require a prompt post-seizure hearing for all property types, and no hardship petition should be required to trigger that hearing.

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

CONCLUSION

Upon learning of the IRS's money grab from his store's bank account, Terry Dehko exclaimed, "Aren't we in the United States? We did nothing wrong."[40] Unfortunately, there is an upside-down world within the United States in which people who do nothing wrong, like Terry and Sandy, are presumed guilty, face a Kafkaesque process in an attempt to get their money back and wait months or years for resolution of their cases.

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

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

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

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

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

IJ CLIENT CAROLE HINDERS

ENDNOTES

1 Americans have good reason to not trust the government. (2014, May 4). *Topeka Capital-Journal*, p. A4.

2 Williams, M. R., Holcomb, J. E., Kovandzic, T. V., Bullock, S. 2010. Policing for profit: The abuse of civil asset forfeiture. Arlington, VA: Institute for Justice.

3 31 U.S.C. § 5313(a).

4 31 U.S.C. § 5324(a).

5 Williams, Holcomb, Kovandzic, and Bullock, 2010.

6 Our request for structuring data began with the Treasury Department. That yielded no useful data and an admonition that data we sought would have to be obtained from each agency individually. Since the IRS is likely the most active agency in structuring, we began there first.

7 The data provided by the IRS refer to fiscal years, not calendar years, so all years in this report should be understood as fiscal years.

8 In analyses like this, the median (i.e., the middle) is the better measure of averages, as the mean is influenced by extreme figures at one end or another of a distribution of numbers.

9 The first complete year for which seizure data were made available by the IRS was 2005. We chose 2012 as the final year of seizures in the analyses to allow for sufficient time to pass for those seizures to turn into forfeitures, if, in fact, they were to do so. We used 2013 as the final year of forfeiture data, as it represented the final full year of these data available from the IRS. Since, as Table 5 indicates, seizures take, on average, approximately a year to turn into forfeitures, many if not most seizures from 2012 would be captured in the 2013 forfeitures (if they turn into such). However, some successful seizures do take longer than a year, so there may be a small number of seizures in 2012 that eventually turned into successful forfeitures sometime after 2013 but would not be captured as such here.

10 This comparison used 2006 since 2005 likely was not a complete year of forfeitures.

11 http://abcnews.go.com/Blotter/story?id=6444781&page=1

12 Goldfarb, Z. A. (2009, February 18). SEC alleges $8 billion savings fraud, *Washington Post*, p. D1.

13 http://www.sec.gov/news/press/2009/2009-5.htm

14 Weiser, B. (2009, July 14). Lawyer sentenced to 20 years for $700 million fraud, *New York Times*, p. A20.

15 http://www.reuters.com/article/2009/12/02/petters-verdict-idUSN024978920091202

16 Koppel, N. (2009, December 2). Rothstein charged in Ponzi scheme, *Wall Street Journal*, p. B3.

17 Cassella, S. D. (2008). The case for civil forfeiture: Why in rem proceedings are an essential tool for recovering the proceeds of crime. *Journal of Money Laundering Control*, *11*(1), 8-14.

18 For a small percentage of cases, the coding appears inconsistent between, for example, the statute under which a property was seized and how it was processed. For instance, some properties may have been seized under the civil structuring statute (31 U.S.C. § 5317 (c)(2)) but processed as a criminal judicial forfeiture. In other examples, properties were seized under criminal statutes (i.e., 18 U.S.C. § 982) but processed administratively or civil judicially. These inconsistencies likely reflect a change in the status of a case or a decision made by a prosecutor to change the status of a case as it proceeded through its life cycle. This means numbers or percentages compared between tables and figures may differ slightly.

19 In almost 10 percent of cases, property was seized under one type of procedure and processed under another. A little more than seven percent were seized under civil statutes and processed as criminal. A little more than two percent were seized under criminal statutes and processed as civil.

20 http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Pages/Forfeiture-Overview.aspx

21 Administrative forfeiture is less costly and less time-consuming to the government than civil judicial forfeitures. Moreover, in 1984 and again in 1990, Congress made administrative forfeitures simpler for the government. Prior to 1984, administrative forfeitures could only be commenced for property valued at less than $10,000; after 1984, as a result of the Comprehensive Crime Control Act, the threshold increased to $100,000, but only violations of customs law could be processed as administrative forfeitures. In 1990, as part of the Customs Trade Act, the threshold increased again to $500,000, and the scope broadened to include monetary instruments under other laws.

22 http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Pages/Forfeiture-Overview.aspx

23 31 U.S.C. § 5332 (c)(1), 18 U.S.C. § 981.

24 31 U.S.C. § 5317 (c)(2).

25 The first year in which forfeitures for structuring only appeared in the data was 2007.

26 Ross, D. B. (2000/2001). Civil forfeiture: A fiction that offends due process. *Regent University Law Review, 13*(1), 259-277.

27 The seizure at Schott's Supermarket was processed as a civil judicial forfeiture. The money was returned only after the government missed a procedural deadline. Presumably, had that not happened the forfeiture would have been decided by a judge.

28 http://www.ij.org/long-island-forfeiture-backgrounder

29 This includes seizures that did not result in forfeitures and forfeiture amounts that were less than seized. There may also be a small amount of seizures that took longer than one year to complete and turned into forfeitures after 2013.

30 This includes seizures that did not result in forfeitures and forfeitures of zero dollars. There may also be a small amount of seizures that took longer than one year to complete and turned into forfeitures after 2013.

31 Americans have good reason to not trust the government, 2014.

32 Specifically the government returned $33,436 and kept $29,500. *United States v. $62,936.04 in U.S. Currency* (D. Md. May 30, 2012).

33 18 U.S.C. § 984(a)-(b).

34 Motion for Prompt Post-Seizure Hearing at 3-7 (ECF #12), *United States v. $33,244.76 in U.S. Currency*, No. 13-13990 (E.D. Mich. *filed* Nov. 14, 2013).

35 Emails and letters between Zaniewski's counsel and the U.S. Attorney's office for the Eastern District of Michigan on file with the Institute for Justice.

36 Dewan, S. (2014, October 26). Law lets I.R.S. seize accounts on suspicion, no crime required, *New York Times*, p. A1.

37 *The New York Times* reported that the new policy will not apply to past seizures.

38 18 U.S.C. § 983(f)(8).

39 18 U.S.C. § 938(f)(1).

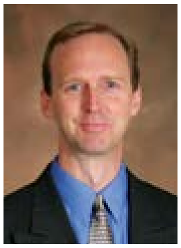
40 Americans have good reason to not trust the government, 2014.

41 In addition, because the cases are processed civilly, property owners who cannot afford counsel are disadvantaged compared to criminal cases, where the Sixth Amendment guarantees owners the right to an attorney

42 *United States v. James Daniel Good Real Property,* 510 U.S. 43 (1993).

43 *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

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



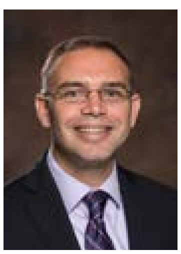
DICK M. CARPENTER II, PH.D.

Dick Carpenter serves as a director of strategic research for the Institute for Justice. He works with IJ staff and attorneys to define, implement and manage social science research related to the Institute's mission.

As an experienced researcher, Carpenter has presented and published on a variety of topics ranging from educational policy to the dynamics of presidential elections. His work has appeared in academic journals, such as *Economic Development Quarterly*, *The Forum*, *Education and Urban Society*, *Urban Studies*, *Regulation and Governance* and practitioner publications, such as *Phi Delta Kappan* and the *American School Board Journal*. Moreover, the results of his research have been quoted in newspapers such as *The New York Times*, *Washington Post* and the *Wall Street Journal*.

His research for IJ has resulted in reports such as *Disclosure Costs: Unintended Consequences of Campaign Finance Reform*, *License to Work*, *Private Choice in Public Programs: How Private Institutions Secure Social Services for Georgians, Designing Cartels: How Industry Insiders Cut Out Competition* and *Victimizing the Vulnerable: The Demographics of Eminent Domain Abuse*.

Before working with IJ, Carpenter worked as a high school teacher, elementary school principal, public policy analyst and professor at the University of Colorado Colorado Springs. He holds a Ph.D. from the University of Colorado.



LARRY SALZMAN

Larry Salzman is an attorney with the Institute for Justice. He joined the Institute in April 2011 and litigates cutting-edge constitutional cases protecting individual rights, including property rights and economic liberties, in federal and state courts.

Previously, he was an attorney with Pacific Legal Foundation, in Sacramento, Calif., litigating property rights cases in federal and state courts, served as a clerk to Judge Bohdan A. Futey on the U.S. Court of Federal Claims, and was CEO and co-founder of an e-commerce company.

Salzman received his law degree in 2002 from the University of San Diego, where he was Assistant Editor of the San Diego Law Review. He received an undergraduate degree in Finance from Arizona State University in 1993.

ABOUT IJ

The Institute for Justice is a nonprofit, public interest law firm that litigates to secure economic liberty, school choice, private-property rights, freedom of speech and other vital individual liberties and to restore constitutional limits on the power of government. Founded in 1991, IJ is the nation's only libertarian public interest law firm, pursuing cutting-edge litigation in the courts of law and in the court of public opinion on behalf of individuals whose most basic rights are denied by the government. The Institute's strategic research program produces social science and policy research to inform public policy debates on issues central to IJ's mission.

Institute for Justice
901 N. Glebe Road
Suite 900
Arlington, VA 22203

www.ij.org
p 703.682.9320
f 703.682.9321