

**BEFORE THE
UNITED STATES INTERNAL REVENUE SERVICE**

**PETITION FOR REMISSION OR MITIGATION
OF KHALID QURAN**

Scott Bullock
Robert Everett Johnson
THE INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203
Phone: (703) 682-9320
Fax: (703) 682-9321
Email: rjohnson@ij.org

Attorneys for Petitioner

TABLE OF CONTENTS

INTRODUCTION	1
STATEMENT OF FACTS	3
ARGUMENT	8
I. The Government Has Authority To Return Khalid's Money, And There Are No Procedural Barriers To Granting That Relief.....	8
A. The Government Has Statutory Authority To Return Khalid's Money.....	9
B. Khalid's Prior Agreement To Forfeit The Money Does Not Bar The Petition.....	10
C. Khalid's Petition Is Timely	13
II. Because The Seized Money Is The Legitimate Proceeds Of Khalid's Lawful Convenience-Store Business, It Should Be Returned In Its Entirety.....	15
A. Return Of The Property Will Promote The Interest Of Justice And Will Not Diminish The Deterrent Effect Of The Law	16
B. Factors Listed In The Internal Revenue Manual Support Return Of All The Forfeited Money To Khalid	19
C. IRS Guidelines For Mitigation Likewise Support Return Of The Forfeited Money To Khalid	21
III. At The Very Minimum, The Government Should Return A Substantial Portion Of Khalid's Money	23
CONCLUSION.....	23

Pursuant to 19 U.S.C. § 1618 and 31 U.S.C. § 5321(c), Khalid Quran hereby petitions the Internal Revenue Service to remit or mitigate \$153,907.99 that was seized from his bank account on June 20, 2014, and administratively forfeited to the United States on or about September 15, 2014. Those funds would not be seized—much less forfeited—under current government policy. Now, the government should do the right thing and give the money back.

INTRODUCTION

Khalid Quran has worked over seventeen years—seven days a week, every week of the year, almost never taking a vacation—at his convenience store in Greenville, North Carolina. Khalid came to this country with \$3,000 in savings, but through hard work he managed to build a modest financial cushion. Then, suddenly and without warning, the government seized Khalid’s entire bank account—over \$150,000.

The government took Khalid’s account because he withdrew his money from the bank in amounts under \$10,000. Federal law requires banks to report cash transactions over \$10,000, and federal law makes it a crime (“structuring”) to withdraw cash in amounts under \$10,000 in order to evade that reporting requirement. This law was intended to target drug dealers, money launderers, and criminals seeking to keep their activities hidden from the government. But, in Khalid’s case, it was applied to an innocent small business owner seeking only to make an honest living doing business in cash. Khalid withdrew money from the bank in amounts under \$10,000 simply because that was the amount of money that he required to operate his lawful convenience store business. The government has never even *alleged* that the cash was used in connection with unlawful activity.

Although Khalid is not a criminal, he has been treated like one. Immediately after seizing Khalid’s bank account, state and federal agents came to his store, conducted a search with a dog,

and then demanded that he sign a paper consenting to the forfeiture of his account. When Khalid initially refused to sign—explaining that, as a native speaker of Arabic, he could not read English well enough to understand the legal language on the form—the agents yelled at Khalid and informed him they would visit with his wife to see if she would sign. Khalid ultimately signed, but only because he felt he had no other choice.

Subsequent to the seizure in Khalid’s case, the IRS has adopted a policy meant to prevent precisely these kinds of applications of the structuring laws. *See* Exhibit A. Under this new policy, the IRS will no longer pursue structuring cases in situations where the money involved in the allegedly structured transactions is derived from lawful business activity. And the Department of Justice followed suit, announcing that it likewise will not pursue structuring cases absent evidence of a crime. *See* Exhibit B. As the IRS Commissioner explained, at a hearing before Congress, this change in policy will “ensure fairness for taxpayers” and “protect the rights of individuals” by “making sure that taxpayers get appropriately protected.” Exhibit C at 11, 15. The policy change implicitly recognizes that what happened to Khalid was not fair, was not appropriate, and did not adequately respect his constitutional rights to property and due process.

Having recognized that what happened to Khalid was wrong, the IRS now should do the right thing and give the money back. The government has ample authority to correct what has happened: Congress has expressly authorized the IRS to return forfeited money under the remission and mitigation procedure whenever doing so will promote the interests of justice. And the IRS’s own internal guidelines recognize that return of forfeited money is appropriate when it “will promote the interest of justice and will not diminish the deterrent effect of the law.” Internal Revenue Manual § 9.7.7.4.6.1.A. In light of current policy, the IRS evidently has determined that seizure of money from people like Khalid is neither just nor necessary to deter

criminal behavior. So there can be no question that return of property is merited in this case under the IRS's own internal standards for remission and mitigation.

The seizure of this money has been devastating for Khalid and his family. Khalid's business was debt-free prior to the seizure, but since then Khalid has been forced to take out a substantial loan (using his family home as collateral) to keep the business going. Now 60 years old, Khalid has no idea how he will ever retire without the money that he worked for seventeen years to earn. Khalid worries that he does not have another seventeen years to earn that money again. The destruction of Khalid's financial security, as well as the financial security of his family, is a heavy and unwarranted penalty for the mere act of withdrawing money from the bank in the wrong amounts. The IRS should do the right thing and give Khalid his money back.

STATEMENT OF FACTS

A. Khalid's Convenience Store Business

Khalid came to America in 1997, leaving behind a career as a fireman in a town ten miles north of Jerusalem. Exhibit D ("Khalid Dec.") ¶ 2. At the time, Khalid was already 42 years old. *Id.* Khalid's wife travelled to America before him, and Khalid followed shortly after with their four children—an oldest son, a daughter, and twin baby boys. *Id.* Because Khalid's brother lived in Greenville, North Carolina, Khalid and his wife chose to settle in Greenville as well. *Id.* ¶ 3.

Several months after arriving in America, Khalid used \$3,000 in savings and additional money loaned by family members to purchase a convenience store on a dusty lot. *Id.* ¶ 4. The store—named 427 Convenience Mart by its previous owner—was modest in appearance. *Id.* The sign out front was hand-painted on a wood board, and the interior consisted of two walls of refrigerators and two aisles of low-rise shelves. *Id.*

Khalid spent the next seventeen years working in that store. *Id.* ¶ 8. Khalid worked seven days a week, hardly ever taking a vacation, and often both opened and closed the store. *Id.* For a

time, Khalid's brother was able to help with the business, but his brother died in 2012. *Id.* Since then, Khalid has worked a regular schedule: Most days, Khalid opens the store at 8 a.m. and stays behind the register until his sole employee arrives at 1 p.m. *Id.* Khalid then takes a mid-day break and returns to the store at 4 p.m., at which point he stays straight through to closing at 10 p.m. and then returns to open the store the next morning. *Id.* After so much time on his feet, Khalid's legs constantly ache. *Id.*

Khalid's business scratches out a profit on razor-thin margins. *Id.* ¶ 9. Khalid sells soda, beer, snack food, cigarettes, and ice. *Id.* ¶ 5. The store also carries an assortment of hair extensions and other beauty products. *Id.* Customers can send money by Western Union, and they can play the lottery. *Id.* And, primarily as a courtesy to his customers, Khalid will cash small checks for a \$2 fee. *Id.* ¶ 6. Khalid makes money a few dollars or cents at a time, by being available all day every day to meet his customers' basic needs. *Id.* ¶ 9.

In the meantime, Khalid's family has prospered in other ways. *Id.* ¶ 7. Khalid and his wife became American citizens in 2008. *Id.* Khalid's daughter recently graduated with honors from UNC Chapel Hill, and his twin sons are working towards degrees at that same school. *Id.*

B. Khalid's Cash Withdrawals

In order to run his business, Khalid requires cash from the bank. Khalid Dec. ¶ 11. Khalid uses cash to pay for deliveries of inventory, to pay out lottery winnings, and to cash his customers' checks. *Id.* When Khalid needs cash, he asks his wife to go to the bank to make a withdrawal. *Id.* The amount of the withdrawal has varied over time, as Khalid's business needs have ebbed and flowed. *Id.* ¶ 13. In April and May 2013, Khalid generally asked his wife to withdraw \$9,000 in cash every time she went to the bank. *See* Exhibit F ¶ 18. Between June and September 2013, Khalid shifted to asking his wife to withdraw \$10,000 in cash. *Id.* Then, between October 2013 and February 2014, Khalid returned to asking his wife to withdraw

\$9,000—with the exception of November 22, 2013, when Khalid asked for \$8,000; the day before Thanksgiving, when Khalid asked for \$5,000; the day after New Years, when Khalid asked for \$7,000; and the day following Super Bowl Sunday, when Khalid asked for \$1,000. *Id.* Khalid asked his wife to withdraw these amounts because they approximated the amount that he anticipated he would need to run his business. Khalid Dec. ¶¶ 12-13.

C. The Seizure And Forfeiture of Khalid’s Money

In June 2014, the IRS applied for a warrant to seize Khalid’s bank account on the basis of alleged structuring activity. *See* Exhibit F. The supporting affidavit—filled out by Jason DeBose, a Detective with the Dublin County Sheriff’s Office—set forth Khalid’s pattern of cash withdrawals and stated that this pattern supported a finding of probable cause that Khalid was engaged in structuring. *Id.* ¶ 18. The affidavit did not allege that Khalid was otherwise engaged in criminal activity. *Id.* ¶¶ 23, 26. The only basis for the seizure alleged in the affidavit was the fact that Khalid frequently withdrew money from the bank in amounts under \$10,000. *Id.* ¶ 26.¹

A magistrate approved the warrant application, and state and federal law enforcement agents proceeded to Khalid’s bank to seize his account. The warrant authorized the agents to seize up to \$570,000, as that was the amount involved in the allegedly structured withdrawals. *See* Exhibit G. Because the total amount in Khalid’s bank account at the time of the seizure was \$153,907.99, the agents emptied out the bank account. *Id.* at 2; *see also* Exhibit H.

The agents continued directly—and in force—to Khalid’s convenience store. Khalid Dec. ¶ 14. At least four agents were present. *Id.* The agents asked Khalid if they could look around the

¹ The affidavit did mention that Khalid cashes checks without a FinCEN license, but the affidavit also explained that no FinCEN license is required so long as a store only cashes checks under \$1,000. Exhibit F ¶¶ 12, 14, 15. The affidavit states that investigators had been told that the business “do[es] not cash any large checks” and nowhere suggests that Khalid cashed checks over \$1,000. *Id.* ¶ 14. As a matter of policy, Khalid does not cash checks over \$1,000. *See* Khalid Dec. ¶ 6.

store, but they did not tell him they would be using a police dog for the search. *Id.* Khalid was surprised when they brought in the dog, and he was concerned that the agents might frighten his customers. *Id.*

After thoroughly searching the store, the agents blocked the door to prevent customers from entering and then proceeded to interview Khalid about his bank withdrawals. *Id.* ¶ 15.

When the agents told Khalid that they had come to the store because he withdrew money in amounts under \$10,000, Khalid told them he had no idea that was even potentially a crime. *Id.* ¶ 16. He explained that he had simply asked his wife to withdraw the amount of cash required for his business. *Id.* ¶ 15. Khalid had no purpose in setting the size of his cash withdrawals other than to ensure that he would have a sufficient (but not excessive) amount of cash on hand to satisfy the needs of his customers. *Id.* ¶¶ 12, 13.

The agents asked Khalid if he was familiar with the term “structuring,” and Khalid told them he was not. *Id.* ¶ 16. At that point, the agents told Khalid they had seized his entire bank account. *Id.*

The agents then demanded that Khalid sign a piece of paper captioned “Consent to Forfeiture.” *See* Exhibit I. Khalid told the officers that he had difficulty reading English, and he told the agents he did not want to sign a paper if he did not know what it said. Khalid Dec. ¶ 18. One of the agents read the paper out loud very quickly, and Khalid still did not understand what he was being asked to sign. *Id.* Then, the agents exerted pressure on Khalid to sign. *Id.* at ¶ 19. One of the agents yelled at Khalid, insisting that he was disrespecting their authority by refusing to sign. *Id.* at ¶ 19. Another agent told Khalid that, if he did not sign the paper, they would visit with his wife to see if she would agree to sign. *Id.* Khalid interpreted this statement as a threat that they would harass his wife if he did not sign. *Id.* In order to protect his wife, and in order to

bring the encounter with the agents to a close, Khalid agreed to sign the paper. *Id.* However, he did so only because he felt he had no real choice. *Id.*

Khalid hired a local lawyer, and the lawyer obtained from the government a copy of the paper that Khalid was compelled to sign. *Id.* ¶ 21. The paper stated that Khalid agreed that the funds seized from his bank account were “knowingly and voluntarily forfeited to the United States of America.” Exhibit I. Notably, although the paper stated that Khalid had been advised of his right to counsel prior to signing the paper, the agents in fact told Khalid that talking to a lawyer would be fruitless, as the seizure had already been approved by a judge and there was nothing that a lawyer could do to stop it. Khalid Dec. ¶ 17. When Khalid *did* consult with a lawyer, after the seizure was complete, the lawyer advised him not to contest the forfeiture, as at that point he had already signed a paper consenting to the forfeiture. *Id.* ¶ 22.

The government sent Khalid notice of the forfeiture of his property on July 28, 2014. *See* Exhibit J. Khalid accepted his then-attorney’s advice not to contest the forfeiture, Khalid Dec. ¶ 22, and the money was administratively forfeited to the IRS in September 2014.

D. The Impact Of The Forfeiture

The financial impact of the forfeiture has been devastating. Khalid Dec. ¶¶ 24-26; *see also* Exhibit B (“Dina Dec.”) ¶ 7. Khalid—who is currently 60 years old and is the family’s only source of income—was relying on the forfeited money for his retirement. Khalid Dec. ¶ 26. Now, in order to keep his business going, Khalid has been forced to open a \$50,000 line of credit using his family home as collateral. *Id.* ¶ 24. Prior to the forfeiture, Khalid’s business was debt free, and he had a sufficient financial cushion that he did not need to worry about cash day-to-day. *Id.* Now, Khalid owes money to the bank, and he must ask the bank teller how much money is in his account every time he goes to withdraw money. *Id.* Khalid has been forced to keep less inventory on hand in the store, and he has foregone sales as a result. *Id.* ¶ 25. Above all, given

this sudden turn in his finances, Khalid has no idea how he will ever be able to retire or support his wife after he is no longer able to work. *Id.* ¶ 26.

The emotional impact of the forfeiture has been equally severe. Khalid Dec. ¶ 27; *see also* Dina Dec. ¶ 8. The stress and worry are punishing, as Khalid and his wife constantly worry about having enough money in the bank to pay the family’s expenses and keep the business afloat. Khalid Dec. ¶ 27. Khalid and his wife also worry about how to explain the situation to their family and friends, as people assume Khalid must have done something far worse than withdrawing money from the bank to merit such punishment. *Id.* And the question of how Khalid will ever afford to retire—while also continuing to support his family—hangs above Khalid like a perpetual cloud. *Id.*

Khalid never believed this kind of thing could happen in his adopted country. Khalid Dec. ¶ 28. Now that it has happened, he struggles to understand how, in America, an honest and hardworking business owner could be deprived of his entire bank account merely because of the manner in which he withdrew his money from the bank. *Id.*

ARGUMENT

I. The Government Has Authority To Return Khalid’s Money, And There Are No Procedural Barriers To Granting That Relief.

Although the forfeiture of Khalid’s money is complete, the government retains the ability to make this situation right. In recognition of the “extraordinarily broad scope of federal forfeiture laws and the harsh results they sometimes occasion,” Congress has established a procedure—called a petition for remission and mitigation—that allows property owners to seek return of property that has been forfeited to the federal government. 2 David B. Smith, *Prosecution and Defense of Forfeiture Cases*, § 15.01 (2014). Khalid now invokes that procedure to ask the IRS to return the money it has taken.

A. The Government Has Statutory Authority To Return Khalid's Money.

The government's statutory authority to return Khalid's money is plain and clear. The general provision governing petitions for remission and mitigation dates back to the First Congress, *see* Smith, *supra*, § 15.01, and authorizes the Secretary of the Treasury ("the Secretary") to grant a petition whenever he "finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture." 19 U.S.C. § 1618. The Secretary has broad discretion to "remit or mitigate the same upon such terms and conditions as [the Secretary] deems reasonable and just." *Id.* More specifically, Congress also has provided that the Secretary "may remit *any part* of a forfeiture under . . . section 5317 of this title," which in turn is the provision authorizing forfeiture for structuring violations of the sort at issue here. 31 U.S.C. § 5321(c) (emphasis added).

As the text of the governing statutes make plain, Congress intended to confer broad authority to return forfeited money whenever doing so would advance the interests of justice. The statutes do not limit the factors that officials may consider in deciding whether to grant a petition for remission or mitigation; officials charged with deciding a petition can grant relief whenever they find the existence of "such mitigating circumstances as to justify the remission or mitigation." In other words, the law confers "virtually unreviewable discretion to ameliorate the harshness of forfeiture statutes in appropriate cases." *United States v. United States Currency in the Amount of \$2,857.00*, 754 F.2d 208, 214 (7th Cir. 1985). And, as the Supreme Court has observed, that grant of discretion was intended to ensure that the forfeiture laws "impose a penalty only upon those who are *significantly involved* in a criminal enterprise." *United States v. United States Coin and Currency*, 401 U.S. 715, 721-22 (1971). The only limitation on this grant of statutory authority is the government's sense of justice.

The government, moreover, has authority to return *all* of the property. The relevant statute is clear that the government has discretion to choose to “remit *any part* of a forfeiture.” 31 U.S.C. § 5321(c) (emphasis added). When that language is read in conjunction with the Internal Revenue Manual, it becomes clear that the phrase “any part” encompasses the sum total of the forfeiture. Remission of the entire amount of the forfeiture is authorized where a petitioner is an innocent owner. *See* Internal Revenue Manual § 9.7.7.4.5. And, meanwhile, provisions in the Internal Revenue Manual pertaining to *mitigation* likewise allow return of the entire property, so long as return is paired with non-monetary conditions. *See id.* § 9.7.7.4.6.3 (mitigation may involve “a monetary condition *or* the imposition of other conditions relating to the continued use of the property”); *id.* § 9.7.7.4.6.1.A (mitigation may involve “monetary and/or other conditions”). The government might, for instance, require Khalid to sign a notification stating that he is now aware of the structuring laws. While Khalid does not believe he should have to enter into *any* kind of agreement to get his property back—as it is his property and should never have been taken in the first place—he is willing to sign such a paper if it is the only way to secure the return of the entire amount of the forfeited property.

B. Khalid’s Prior Agreement To Forfeit The Money Does Not Bar The Petition.

The government has authority to grant Khalid’s petition notwithstanding Khalid’s prior agreement to forfeit the property. This is true for three reasons.

First, the agreement signed by Khalid is void for lack of mutual consideration. *See* 15B Am. Jur. 2d Compromise and Settlement § 23 (“A compromise and settlement must be supported by consideration *on both sides*,” meaning “*reciprocal* concessions of the parties to adjust their differences”) (emphasis added). The agreement is entirely one-sided: Khalid agrees to forfeit over \$150,000, but the government gives up nothing in exchange. *See* Exhibit I. The government does not agree to return any of the money that it seized from Khalid’s bank account; does not

agree to abstain from pursuing forfeiture of additional money or property; and does not agree to abstain from pursuing criminal or other charges. A contract where only one party benefits is no contract at all.

Second, Khalid’s agreement to forfeit the property was obtained through coercion, and therefore cannot be treated as legally binding. *See, e.g.*, 15B Am. Jur. 2d Compromise and Settlement § 34 (a settlement agreement obtained through coercion “must be set aside”). The settlement agreement was obtained by government officials at a time when Khalid was without representation of counsel, and—although the paper states that Khalid was informed of his right to counsel—in fact the officials informed Khalid that consulting with a lawyer would be useless because there was nothing that could be done to stop them from taking the money. Khalid Dec. ¶ 17. Law enforcement officials blocked the entrance to Khalid’s store to keep customers out and then demanded that Khalid sign. *Id.* ¶¶ 18-19. The officers suggested to Khalid that they would take even more money, up to half a million dollars, if he did not sign. *Id.* ¶ 18. One of the officers yelled at Khalid to pressure him to sign, while another told Khalid that, if he did not sign, the officers would be forced to speak with his wife. *Id.* ¶ 19. In the face of these threats, Khalid felt he had no choice but to sign. *Id.* It would be unconscionable to hold Khalid to the terms of an agreement obtained under such circumstances.

Indeed, agreements of the kind that Khalid signed are currently prohibited by Department of Justice policy, presumably because of this risk of coercion. *See* Exhibit B at 4 (“Informal settlements, including those negotiated between law enforcement and private parties, are expressly prohibited.”). Forfeiture agreements signed by property owners while under apparent investigation by law enforcement, and without the benefit of counsel, are inherently coercive and have been the target of public condemnation. *See* Sarah Stillman, *Taken*, The New Yorker, Aug.

12, 2013. Enforcement of the agreement is even more inappropriate here because of the particular conditions under which the agreement was obtained.

Third, most fundamentally, an agreement to forfeit property does not bar the government from *voluntarily* returning the forfeited property to the property owner via the remission and mitigation procedure. A petition for remission or mitigation is an entirely separate procedure from the underlying forfeiture. *See* Internal Revenue Manual § 9.7.7.4 (“Petitions for remission or mitigation are separate and independent of (administrative or judicial) or criminal forfeiture proceedings.”). Even assuming the settlement agreement would bar Khalid from contesting the validity of the forfeiture, the filing of a petition for remission or mitigation “does not serve to contest the forfeiture, but rather is a request for an executive pardon of the property.” *Ibarra v. United States*, 120 F.3d 472, 475 (4th Cir. 1997). A petition “seeks relief from forfeiture on fairness grounds,” *United States v. German*, 76 F.3d 315, 318 (10th Cir. 1996), and is a “plea for leniency.” Internal Revenue Manual § 9.7.7.4. Because Khalid does not seek to challenge the forfeiture of his property, his petition is not barred by his supposed agreement to the forfeiture. Khalid admits the property has been legally forfeited to the government, but now asks the government to do the right thing and give the property back.

The availability of remission or mitigation after settlement of a forfeiture proceeding is akin to the availability of an executive pardon after a criminal plea agreement. Presidents routinely issue pardons to petitioners who have pled guilty to a criminal offense. *See, e.g.*, Todd Spangler, *Detroit Man’s Drug Sentence Among 46 Commuted by Obama*, Detroit Free Press, July 13, 2015, <http://www.freep.com/story/news/local/michigan/2015/07/13/obama-commutes-sentence/30090465/> (reporting that President Obama pardoned a man who “pleaded guilty to conspiracy to distribute”); Philip Rucker, *Obama Grants Pardons to 17 People for Nonviolent*

Offenses, Wash. Post, Mar. 1, 2013, http://www.washingtonpost.com/politics/obama-grants-pardons-to-17-people-for-nonviolent-offenses/2013/03/01/1932107e-82bf-11e2-a350-49866afab584_story.html (reporting that President Obama pardoned a “fishing magnate who pleaded guilty more than 20 years ago”).² In short, an agreement not to contest a judicial proceeding does not bar a later request for executive clemency. Whatever the effect of the Consent to Forfeiture form, the IRS has authority to issue Khalid a similar type of pardon.

C. Khalid’s Petition Is Timely.

Finally, internal IRS guidelines establish that Khalid’s petition is timely notwithstanding the time that has elapsed since the forfeiture of the money.

The Internal Revenue Manual states that a petition for remission or mitigation “will be considered *any time* after written notice is sent to interested parties, *after the property is forfeited* and *until* the forfeited property is placed into official use, sold, or otherwise disposed of according to law.” Internal Revenue Manual § 9.7.7.4.4 (emphasis added). Thus, although the notice sent to a property owner “advises that a petition for remission or mitigation must be filed within 35 days of the mailing of the letter,” *id.*, the Internal Revenue Manual makes clear that this 35-day deadline is merely advisory and does not draw a hard line after which the petition will no longer be considered. So long as the property has not been “placed into official use, sold, or otherwise disposed of according to law,” it is available to be returned to its owner.

Although the money seized from Khalid presumably has been deposited into the Treasury Forfeiture Fund, that fact alone cannot be sufficient to establish that the money has been “placed

² See also Ethan Trex, CNN, 11 Notable Presidential Pardons (Jan. 5, 2009), http://edition.cnn.com/2009/LIVING/wayoflife/01/05/mf.presidential.pardons/index.html?eref=rss_us (discussing pardons granted by Presidents Ronald Reagan and Bill Clinton following guilty pleas).

into official use, sold, or otherwise disposed of according to law.”³ Under federal law, money placed in the Treasury Forfeiture Fund is “available to the Secretary . . . for . . . [p]ayment of amounts authorized by law with respect to remission and mitigation.” 31 U.S.C. § 9705(a)(1)(E). That same statute lists the various types of “disposition” that can be made of money placed in the Treasury Forfeiture Fund: “sale, *remission*, cancellation, placement into official use, sharing with State and local agencies, and destruction.” *Id.* § 9705(f)(2)(I)(ii) (emphasis added). These provisions plainly convey Congress’s understanding that money contained within the Treasury Forfeiture Fund would be available to satisfy petitions for remission or mitigation. It would violate manifest congressional intent to interpret the timeliness provision such that a petition for remission or mitigation is no longer timely once money has been placed in the Treasury Forfeiture Fund, as that would be tantamount to saying that money in the fund is *not* in fact available for a purpose authorized by Congress.

The provision of the Internal Revenue Manual governing timeliness confirms the point, as it is clear that remission remains available “after the property is forfeited.” Internal Revenue Manual § 9.7.7.4.4. That language would be nonsensical if deposit into the Treasury Forfeiture Fund qualified as disposition of the property for purposes of the subsequent clause. When property has been forfeited by the IRS, it is required by law to be deposited in the Treasury Forfeiture Fund; it would make no sense to allow remission of “forfeited” property if money placed in the Treasury Forfeiture Fund were necessarily unavailable for that purpose because it

³ Petitioner lacks information regarding the present whereabouts of the forfeited funds, but if regular procedures have been followed the funds should have been deposited in the Treasury Forfeiture Fund. As of September 2014, the Treasury Forfeiture Fund held net assets of \$7.5 billion. *See* Department of the Treasury, Treasury Forfeiture Fund Accountability Report Fiscal Year 2014, at 14 (2015), *available at* <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Documents/TFF%20FY%202014%20Final%20Accountability%20Reports%20508.pdf>.

had already been “disposed of” within the meaning of the timeliness provision governing a remission or mitigation petition.⁴

Finally, this conclusion is bolstered by the general statute authorizing petitions for remission or mitigation. That law states that a petition is timely so long as it is filed “before the sale” of the property seized by the government. 19 U.S.C. § 1618. Currency is “sold” when it is exchanged by the government for some other good or service—in other words, when it is spent. So long as currency remains in the government’s possession, it has not been “sold” and thus remains the proper subject of a petition for remission or mitigation. And there can be no question that currency in the Treasury Forfeiture Fund remains within the government’s possession.

II. Because The Seized Money Is The Legitimate Proceeds Of Khalid’s Lawful Convenience-Store Business, It Should Be Returned In Its Entirety.

Under provisions of the Internal Revenue Manual pertaining to mitigation, the government has authority to return the *entire* amount of the forfeited property in conjunction with the imposition of a non-monetary condition—for instance, that Khalid sign a document stating that he is now aware of the structuring laws. Mitigation is appropriate where return of the property “will promote the interest of justice and will not diminish the deterrent effect of the law.” Internal Revenue Manual § 9.7.7.4.6.1.A. Moreover, IRS guidelines establish other factors that come into play in cases where the petitioner was involved in the commission of the offense underlying the forfeiture, including, among other things, “[l]ack of a prior record” and that the

⁴ Further confirmation of this conclusion is provided by policy guidance issued by the Treasury Executive Office for Asset Forfeiture concerning the management of the Treasury Forfeiture Fund. Those guidelines state that, “[o]nce [an] agency is aware of a petition [for remission or mitigation], it must ensure that the funds are obligated so that the funds are not available to be expended for another purpose.” Department of the Treasury, Guidelines for Treasury Forfeiture Fund Agencies on Refunds Pursuant to Court Orders, Petitions for Remission, or Restoration Requests 7 (2008), *available at* <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Documents/bluebook.pdf>. These policy guidelines plainly contemplate that money that has been forfeited and moved into the Treasury Forfeiture Fund will be available to satisfy remission petitions.

“[v]iolation was minimal and was not part of a larger criminal scheme.” *Id.* § 9.7.7.4.6.2. Under these provisions, return of the entire amount of the forfeited property is the appropriate remedy in this case.

A. Return Of The Property Will Promote The Interest Of Justice And Will Not Diminish The Deterrent Effect Of The Law.

The Internal Revenue Manual establishes that mitigation is appropriate where it will “promote the interest of justice” and “not diminish the deterrent effect of the law.” Internal Revenue Manual § 9.7.7.4.6.1.A. In light of the recent policy change, there can be no question that this standard has been satisfied.

Under the IRS policy announced in October 2014, the IRS would no longer even attempt to seize the money that has been forfeited from Khalid. The policy, a copy of which is attached as Exhibit A, limits application of the structuring laws to “illegal-source” cases, meaning cases where the structured funds are derived from otherwise illegal activity. *See also* Exhibit B (parallel DOJ policy). But, as explained above, the funds seized from Khalid were derived from his legitimate convenience store business. *See* Khalid Dec. ¶ 23. The government has never suggested anything to the contrary, and has never sought to investigate Khalid for *any* offense apart from structuring.

1. The Interests Of Justice

The recent policy change represents recognition by the IRS that forfeiture under the structuring laws promotes the interest of justice *only* where the funds are derived from illegal activity. As the IRS Commissioner explained, in testimony before the House Ways & Means Oversight Subcommittee, the policy change will “ensure fairness for taxpayers” and “protect the rights of individuals” by “making sure that taxpayers get appropriately protected.” Exhibit C at 11, 15. While the structuring law itself sweeps more broadly than the new IRS policy, the IRS

has recognized through its policy that the law's broad scope sweeps up innocent businesspeople accused of nothing more than doing business in cash. Such people were not the intended focus of the structuring law, and justice is not served by application of the law in such cases.

And this is particularly true in the case of Khalid, who had *no* interest in hiding from the federal government, and who merely sought to withdraw money for use in his legitimate convenience store business. *See* Khalid Dec. ¶¶ 11-12; Dina Dec. ¶ 5. Doing business in cash is emphatically not a crime. *See* 31 U.S.C. § 5103 (“United States coins and currency . . . are legal tender for all debts, public charges, taxes, and dues.”). No possible interest of justice is served by taking the entire bank account for Khalid's legitimate business simply because he withdrew his own hard-earned money from the bank.⁵

2. The Deterrent Effect Of The Law

The recent policy change likewise serves as definitive evidence that returning Khalid's money would “not diminish the deterrent effect of the law.” If forfeiture was necessary for deterrence, presumably the IRS would continue to seize property in cases like Khalid's today. Given that the IRS has adopted a policy of forbearing from such forfeitures, the IRS has plainly concluded that there is no need for forfeiture in such cases to deter unlawful activity. And, indeed, the IRS Commissioner told Congress that the new policy prohibiting structuring seizures in legal-source cases would strike “the right balance between law enforcement and trying to

⁵ This commonsense conclusion is bolstered by federal regulations, which make clear that the government has no real interest in receiving currency transaction reports for legitimate businesses like Khalid's. Under federal law, banks are not required to file currency transaction reports for businesses that have maintained a bank account for two months, frequently engage in large cash transactions, and are registered to do business in the state. *See* 31 C.F.R. § 1020.315(b)(6). A sophisticated businessperson in Khalid's position, with the benefit of informed legal advice, could likely fit within this exception to federal currency transaction reports. Khalid was neither so sophisticated nor so well informed. But, if the government did not need to receive the reports *at all*, the “evasion” of the filing of the reports cannot possibly have caused any serious injury to the government.

protect taxpayers.” Exhibit C at 26. The IRS policy change definitively shows that the government’s interest in deterrence would not be advanced by keeping Khalid’s money.

And this makes good sense. Where people are not engaged in illegal activity, the IRS has no apparent interest in deterring deposits or withdrawals under \$10,000. The act of depositing or withdrawing money is not itself harmful to society; there is nothing inherently dangerous or destructive about sub-\$10,000 cash transactions. *See Ratzlaf v. United States*, 510 U.S. 135, 144 (1994) (“[C]urrency structuring is not inevitably nefarious.”). Structuring is significant only to the extent that it provides a means for criminals to evade bank reporting laws. The government undoubtedly has an interest in uncovering criminal behavior, and once such behavior has been uncovered the government may proceed under the structuring laws. But, in legal-source cases, there is no criminal behavior to deter.

Moreover, even if deterrence were desirable in legal-source cases, forfeitures are unlikely to achieve that result, as legitimate business owners are likely to engage in structuring *only* if they are unaware of the possible penalties that could result. People who engage in structuring in legal-source cases are typically unaware that such activity is unlawful—or, at a minimum, are unaware of the consequences that such behavior can bring. Certainly, Khalid had no idea he was even potentially violating the law. *See Khalid Dec.* ¶ 16. People who are unaware that structuring is illegal are unlikely to be deterred from structuring, no matter how harsh the penalty.

Once again, all this is particularly true for Khalid. Khalid did not know that structuring was illegal. *Khalid Dec.* ¶ 16. Khalid also had no desire to hide anything at all from the United States government. *Id.* ¶ 12. Khalid simply stumbled into this situation because he withdrew cash from the bank in amounts that would meet the needs of his convenience store business. *Id.* No

interest in deterrence is served by punishing people who—like Khalid—are not even aware that they are potentially breaking the law.

B. Factors Listed In The Internal Revenue Manual Support Return Of All The Forfeited Money To Khalid.

In addition to the general standard discussed above, the Internal Revenue Manual includes a non-exclusive list of factors that become relevant where a petitioner was involved in the commission of the offense underlying the forfeiture. *See* Internal Revenue Manual § 9.7.7.4.6.2. These factors all support return of the forfeited money to Khalid.

First, Khalid has no meaningful prior criminal record, and there is no evidence of any similar conduct by Khalid. Internal Revenue Manual § 9.7.7.4.6.2.A. Khalid is not a criminal. With the exception of a few traffic tickets, and one incident where Khalid sold beer on a Sunday morning, Khalid has never had any run-ins with the law. *See* Khalid Dec. ¶ 23. Khalid is a hardworking entrepreneur who earned the forfeited money over the course of nearly two decades through his hard work at his convenience store. The government has never suggested that Khalid is guilty of any offense other than withdrawing money from the bank, and in fact Khalid is *not* guilty of any offense beyond the mere fact of his sub-\$10,000 cash withdrawals.

Second, Khalid’s alleged violation “was minimal and was not part of a larger criminal scheme.” Internal Revenue Manual § 9.7.7.4.6.2.B. To the extent that Khalid’s deposits violated the structuring laws, that violation was minimal in nature. Khalid was not seeking to keep anything secret from the IRS; Khalid merely withdrew money from the bank in amounts that would serve his business needs—which happened to be amounts under \$10,000. *See* Khalid Dec. ¶¶ 11-12. And, again, there is no “larger criminal scheme” in this case. *Id.* ¶ 23; *see also* Exhibit

F (setting forth basis for seizure of the money). In fact, there is no “criminal scheme” at *all*. Khalid is not a criminal. Khalid is a hard-working small business owner.⁶

Third, Khalid has “cooperated with Federal, state, or local investigations.” Internal Revenue Manual § 9.7.7.4.6.2.C. Khalid allowed the search of his store when officials came to visit, and he also answered those officials’ questions fully and without reservation. *See* Khalid Dec. ¶¶ 14-16. To his detriment, Khalid even signed the “Consent to Forfeiture” form when instructed to do so by the officials. *Id.* ¶¶ 18-19. And Khalid stood ready to answer any further questions—although no further investigation occurred after the seizure. *Id.* ¶ 20. There has never been *any* request from the IRS that Khalid has not fully honored.

Fourth, and finally, “complete forfeiture . . . is not necessary to achieve the legitimate purposes of forfeiture.” Internal Revenue Manual § 9.7.7.4.6.2.D. Forfeiture is legitimate only as a punishment for criminal behavior, which is precisely why the only legitimate form of forfeiture is *criminal* (as opposed to civil) forfeiture. But, in this case, Khalid is not even suspected of a crime—unless one counts the mere act of withdrawing money from the bank in amounts under \$10,000 as a “crime.” *See* Exhibit F. Khalid runs a legitimate convenience store business, and he withdrew money for legitimate business needs. *See* Khalid Dec. ¶¶ 11-12. Taking money from hardworking small business owners, simply because they withdraw their own hard-earned money from the bank, is not a “legitimate” purpose of forfeiture. This factor thus also supports the return of Khalid’s money.

⁶ Once again, this commonsense conclusion is bolstered by federal regulations providing that currency transaction reports *are not required* for legitimate businesses like Khalid’s. *See supra* n. 5. If the currency transaction reporting system had worked as it was designed to work, the government still would not have received the currency transaction reports that Khalid has been accused of “evading.”

C. IRS Guidelines For Mitigation Likewise Support Return Of The Forfeited Money To Khalid.

IRS internal guidelines for mitigation likewise support return of all the money to Khalid. These guidelines establish a base penalty of 10% of the entire amount involved in the structuring offense in cases where the structuring was a “[f]irst offense,” where the money was derived from a legitimate source, and where the property owner was not criminally convicted. *See* Internal Revenue Manual Exhibit 9.7.7-5(II). All three factors are present in this case. Khalid had never been admonished for structuring prior to this offense; the money was from Khalid’s legitimate convenience store business; and Khalid was never criminally convicted of structuring and, indeed, was never even accused of *any* crime.

From this 10 percent base penalty, the guidelines then provide for reductions based on a variety of mitigating factors. *See* Internal Revenue Manual Exhibit 9.7.7-5(II)(B). Some factors call for a subtraction of 2 percent of the total amount of structured transactions from the base penalty; some call for a subtraction of 3 percent; and others call for a subtraction of 9 percent. *Id.* Because Khalid can establish mitigating circumstances adding up to more than the 10 percent base penalty, Khalid can establish that the entire amount of the property should be returned.

First, Khalid is entitled to a 3 percent reduction in the penalty based on the “[l]anguage barrier” factor. Internal Revenue Manual Exhibit 9.7.7-5(II)(B)(1). Khalid’s first language is Arabic. Khalid Dec. ¶ 10. Although Khalid came to the United States in 1997, the transition from Arabic to English is a difficult one, and Khalid today still has difficulty with the English language. *Id.* Khalid is able to communicate verbally, but only with effort and with occasional lapses in understanding. *Id.* Khalid finds written communication far more difficult, as Arabic script is so different from the script used for the English language. *Id.* These barriers helped

ensure that Khalid had no idea that withdrawing money from the bank in amounts under \$10,000 could even potentially lead to the forfeiture of his entire bank account.

Second, Khalid is entitled to a 3 percent reduction based on his “[i]nexperience in banking matters.” Internal Revenue Manual Exhibit 9.7.7-5(II)(B)(2). Although Khalid owns a business, he is hardly experienced in banking matters. Khalid Dec. ¶ 9. Khalid relies heavily on his accountant and his bank to ensure that the business pays its taxes and comports with its regulatory responsibilities. *Id.* Khalid himself focuses on the day-in business of his store, primarily buying goods and selling them at a slightly higher price. *Id.* Khalid lacks the financial sophistication necessary to know (without being told) that structuring is a crime or that withdrawing money from the bank could potentially put him in violation of the law.

Third, Khalid is entitled to a 2 percent reduction based on his “[c]ooperation with IRS officials.” Internal Revenue Manual Exhibit 9.7.7-5(II)(B)(3). As explained above, Khalid has cooperated with IRS and state law enforcement at every turn. Khalid, in fact, cooperated to his own detriment, by signing an unlawful and coercive agreement purporting to forfeit his interest in the seized currency. Khalid Dec. ¶¶ 18-19. And Khalid also allowed a wholly unnecessary search of his store and then answered all questions posed to him by law enforcement. *Id.* ¶¶ 14-16. Beyond that, Khalid is fully willing to comply with any other reasonable requests for information posed by law enforcement. There has never been any instance where Khalid has failed to cooperate with IRS requests.

Fourth, and finally, Khalid is entitled to up to a 9 percent reduction based on the catch-all “[h]umanitarian factor.” Internal Revenue Manual Exhibit 9.7.7-5(II)(B)(5). The government in this case seized money that it took Khalid years of hard work to earn. Khalid Dec. ¶ 23. Khalid earned that money on his feet, standing behind the corner of his convenience store, working

seven days a week for seventeen years. *Id.* ¶ 8. And this was money that Khalid needed to support his family and to plan for his retirement. *Id.* ¶¶ 24-26. Khalid is now 60 years old, and does not have another seventeen years to earn this money again. *Id.* ¶ 26. Without the money the government has seized, Khalid faces the prospect of being forced to retire without the resources to sustain himself and his wife through their old age. *Id.* Any hope Khalid might have had of passing some small inheritance to his children has been dashed by the forfeiture. *Id.* To take that from a person, simply because he withdrew his own hard-earned money from the bank, is an unconscionable violation of the public trust. And to return that future to Khalid—a future that he worked hard to earn—would be an act of humanitarianism and, above all, an act of justice.

III. At The Very Minimum, The Government Should Return A Substantial Portion Of Khalid's Money.

While the foregoing analysis of governing statutes and IRS internal policies demonstrates the appropriateness of returning *all* the money seized from Khalid, at a minimum those same authorities support return of *some* of the money. The IRS has authority to return any portion of the money that it thinks would be appropriate to further the interests of justice. 31 U.S.C. § 5321(c). Internal authorities from the IRS make clear that, in this case, the appropriate portion to return is the entire amount that has been forfeited. But it would be impossible to read those authorities and conclude that Khalid is entitled to return of *none* of the currency.

CONCLUSION

At bottom, this is a case about a man who has had the proceeds of over seventeen years of work—over \$150,000—seized by the United States government simply because he withdrew his own hard-earned money from the bank in a way that government officials concluded amounted to a technical violation of obscure bank reporting laws. Khalid is not a lawyer or a banking professional; he had no reason to suspect that what he was doing was even potentially

illegal. Yet Khalid has been deprived of his entire bank account—money that he worked for years to earn, and that he was depending on for his retirement. The penalty that has been imposed on Khalid bears no conceivable relationship to the offense of which he has been accused, as the IRS itself acknowledged when it changed its policies to bar seizures in these kinds of cases. The only possible just result in this case would be to return the money the government has taken from Khalid Quran.

Upon information and belief, I swear that the facts stated herein are true.

RESPECTFULLY SUBMITTED, this 16th day of July, 2015.


A handwritten signature in black ink, appearing to read "R. E. Johnson", written over a horizontal line.

Scott Bullock
Robert Everett Johnson
THE INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203
Phone: (703) 682-9320
Fax: (703) 682-9321
Email: rjohnson@ij.org

Attorneys for Petitioner

STATEMENT OF PETITIONER

I hereby declare under penalty of perjury that Scott Bullock and Robert Everett Johnson have authority to represent me in this proceeding; that my attorney has read the petition to me; and that it is truthful and accurate in every respect.


Khalid Quran, Petitioner

**PETITION FOR REMISSION OR
MITIGATION
OF KHALID QURAN**

EXHIBIT A



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

CRIMINAL INVESTIGATION

October 17, 2014

MEMORANDUM FOR SPECIAL AGENTS IN CHARGE
CRIMINAL INVESTIGATION

FROM

Rebecca A. Sparkman 
Director, Operations Policy and Support
Criminal Investigation SE:CI:OPS

SUBJECT

IRS Structuring Investigation Policy Changes

The purpose of this memorandum is to set forth IRS-CI policy concerning seizure and forfeiture activities involving "legal source" structuring.

IRS-CI will no longer pursue the seizure and forfeiture of funds associated solely with "legal source" structuring cases unless: (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case has been approved at the Director of Field Operations (DFO) level. The policy involving seizure and forfeiture in "illegal source" structuring cases remains unchanged by this memorandum.

In cases where legal source income is involved in alleged structuring activity, consideration should be given to initiating a Title 26 criminal tax investigation. In certain circumstances, the structuring activity can be treated as an affirmative act of evasion under 26 U.S.C. § 7201,¹ evidence of willfulness, an overt act of conspiracy (18 U.S.C. § 371), or it may support Title 31 violations. This policy update will ensure that CI continues to focus our limited investigative resources on identifying and investigating violations within our jurisdiction that closely align with CI's mission and key priorities.

Individuals who are structuring cash deposits or withdrawals are more often than not doing so in an attempt to conceal the existence and source of the funds from the U.S. Government. While the structuring activities violate 31 U.S.C. § 5324, the activity should be treated as just an indicator that another violation of law might have occurred. Therefore, authorized investigative activities should be performed to determine the source of the funds and if there are other related violations of law that should be investigated prior to initiating a seizure of funds related to the criminal activities.

¹ See *United States v. Mounkes*, 204 F.3d 1024, 1030 (10th Cir. 2000)

IRS-CI continues to be committed to investigating criminal violations of the federal anti-money laundering and Bank Secrecy statutes. Our partnerships with state, local and county law enforcement agencies through IRS-CI led Financial Crimes Task Forces (FCTFs) provide CI with valuable resources to further the commitment to investigate violations of these laws. The primary focus of FCTFs is to conduct significant criminal investigations of anti-money laundering and Bank Secrecy violations occurring in their area of responsibility and related statutes.

The applicable Internal Revenue Manual sections, the Suspicious Activity Report Review Team, and the FCTF Standard Operating Procedures will be revised to include this guidance as soon as practical. If you have any questions regarding this policy, please contact Global Financial Crimes Director XXXXXXXXXXXXXXXXXXXX.

cc: CI Senior Staff
CT Counsel

**PETITION FOR REMISSION OR
MITIGATION
OF KHALID QURAN**

EXHIBIT B



U.S. Department of Justice

Criminal Division

Asset Forfeiture and Money Laundering Section

Washington, D.C. 20530

POLICY DIRECTIVE 15-3

TO: Heads of Department Components
United States Attorneys

FROM: M. Kendall Day, Chief *MKD*
Asset Forfeiture and Money *3/31/15*
Laundering Section

SUBJECT: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses

Title 31, United States Code, Section 5324(a) prohibits evasion of certain currency transaction-reporting and record-keeping requirements, including structuring schemes. Generally speaking, structuring occurs when, instead of conducting a single transaction in currency in an amount that would require a report to be filed or record made by a domestic financial institution, the violator conducts a series of currency transactions, willfully keeping each individual transaction at an amount below applicable thresholds to evade reporting or recording. On October 17, 2014, the Internal Revenue Service-Criminal Investigation (IRS-CI) issued guidance on how it will conduct seizures and forfeitures in its structuring cases, and specifically in what it calls “legal source” structuring cases. Pursuant to the IRS guidance, IRS-CI will not pursue seizure and forfeiture of funds associated only with “legal source” structuring unless: (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case is approved by the Director of Field Operations.

As part of the Department’s ongoing review of the federal asset forfeiture program, the Department has conducted its own review of forfeiture in structuring cases, including analysis of the new IRS-CI policy. The guidance set forth in this memorandum, which is the result of that review, is intended to ensure that our investigative resources are appropriately and effectively allocated to address the most serious structuring offenses, consistent with Departmental priorities. The guidance applies to all federal seizures for civil or criminal forfeiture based on a violation of the structuring statute, except those occurring after an indictment or other criminal charging instrument has been filed.¹

¹ These guidelines apply to all structuring activity whether it constitutes “imperfect structuring” chargeable under 31 U.S.C. § 5324(a)(1) or “perfect structuring” chargeable under 31 U.S.C. § 5324(a)(3). *See Charging Imperfect Structuring: 31 U.S.C. § 5324(a)(1) or (a)(3) or Both?*, Money Laundering Monitor, at 1 (Oct.-Dec. 2014) (available at [AFMLS Online](#)).

Subject: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses

1. Link to Prior or Anticipated Criminal Activity

If no criminal charge has been filed and a prosecutor has not obtained the approval identified below, a prosecutor shall not move to seize structured funds unless there is probable cause that the structured funds were generated by unlawful activity or that the structured funds were intended for use in, or to conceal or promote, ongoing or anticipated unlawful activity. For these purposes, “unlawful activity” includes instances in which the investigation revealed no known legitimate source for the funds being structured. Also for these purposes, the term “anticipated unlawful activity” does not include future Title 26 offenses. The basis for linking the structured funds to additional unlawful activity must receive appropriate supervisory approval and be memorialized in the prosecutor’s records.²

Where the requirements of the above paragraph are not satisfied, unless criminal charges are filed, a warrant to seize structured funds may be sought from the court only upon approval from an appropriate official, as follows:

- For AUSAs, approval must be obtained from their respective U.S. Attorney. The U.S. Attorney may not delegate this approval authority.³
- For Criminal Division trial attorneys or other Department components not partnering with a U.S. Attorney’s Office, approval must be obtained from the Chief of the Asset Forfeiture and Money Laundering Section (AFMLS). The Chief of AFMLS may not delegate this approval authority.

The U.S. Attorney or Chief of AFMLS may grant approval if there is a compelling law enforcement reason to seek a warrant, including, but not limited to, reasons such as: serial evasion of the reporting or record keeping requirements; the causing of domestic financial institutions to file false or incomplete reports; and violations committed, or aided and abetted, by persons who are owners, officers, directors or employees of domestic financial institutions.

If the U.S. Attorney or Chief of AFMLS approves the warrant, the prosecutor must send a completed “Structuring Warrant Notification Form” to AFMLS by e-mail at AFMLS.Structuring@usdoj.gov. A copy of that form is attached.

These requirements are effective immediately. For any case in which seizure was effected prior to the issuance of this memorandum, the forfeiture may continue so long as it otherwise comports with all other applicable law and Department policy.

² In order to avoid prematurely revealing the existence of the investigation of the additional unlawful activity to the investigation’s targets, there is no requirement that the evidence linking the structured funds to the additional unlawful activity be memorialized in the seizure warrant application.

³ Although this authority is ordinarily non-delegable, if the U.S. Attorney is recused from a matter or absent from the office, the U.S. Attorney may designate an Acting United States Attorney to exercise this authority, in the manner prescribed by regulation. See 28 C.F.R. § 0.136.

Subject: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses

2. No Intent to Structure

There may be instances in which a prosecutor properly obtains a seizure warrant but subsequently determines that there is insufficient admissible evidence to prevail at either civil or criminal trial for violations of the structuring statute or another federal crime for which forfeiture of the seized assets is authorized. In such cases, within seven (7) days of reaching this conclusion, the prosecutor must direct the seizing agency to return the full amount of the seized money. Once directed, the seizing agency will promptly initiate the process to return the seized funds.

3. 150-Day Deadline

Within 150 days of seizure based on structuring, if a prosecutor has not obtained the approval discussed below, a prosecutor must either file a criminal indictment or a civil complaint against the asset.⁴ The criminal charge or civil complaint can be based on an offense other than structuring. If no criminal charge or civil complaint is filed within 150 days of seizure, then the prosecutor must direct the seizing agency to return the full amount of the seized money to the person from whom it was seized by no later than the close of the 150-day period. Once directed, the seizing agency will promptly initiate the process to return the seized funds.

With the written consent of the claimant, the prosecutor can extend the 150-day deadline by 60 days. Further extensions, even with consent of the claimant, are not allowed, unless the prosecutor has obtained the approval discussed below.

An exception to this requirement is permissible only upon approval from an appropriate official as follows:

- For AUSAs, approval must be obtained from their respective U.S. Attorney. The U.S. Attorney may not delegate this approval authority, except as discussed in footnote 3, *supra*.
- For Criminal Division trial attorneys or other Department components not partnering with a U.S. Attorney's Office, approval must be obtained from the Chief of AFMLS. The Chief of AFMLS may not delegate this approval authority.

If additional evidence becomes available after the seized money has been returned, an indictment or complaint can still be filed.

4. Settlement

Settlements to forfeit and/or return a portion of any funds involved in a structuring investigation, civil action, or prosecution, must comply with the requirements set forth in the *Asset Forfeiture Policy Manual* and the *United States Attorneys' Manual*. See *Asset Forfeiture*

⁴ This deadline does not apply to administrative cases governed by the independent time limits specified by the Civil Asset Forfeiture Reform Act.

Subject: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses

Policy Manual (2013), Chap. 3; *United States Attorneys' Manual* § 9-113.000 *et seq.* In addition, settlements must be in writing, include all material terms, and be signed by a federal prosecutor. Informal settlements, including those negotiated between law enforcement and private parties, are expressly prohibited.

This memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion, and does not alter in any way the Department's authority to enforce federal law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of 31 U.S.C. § 5324(a). This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution.

**PETITION FOR REMISSION OR
MITIGATION
OF KHALID QURAN**

EXHIBIT C

RPTR MAAR

EDTR CRYSTAL

PROTECTING SMALL BUSINESS FROM IRS ABUSE

Wednesday, February 11, 2015

House of Representatives,
Subcommittee on Oversight,
Committee on Ways and Means,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room B-318, Rayburn House Office Building, Hon. Peter Roskam [chairman of the subcommittee] presiding.

Chairman Roskam. Now the hearing will come to order. And welcome to the Oversight Subcommittee on protecting small businesses from IRS abuse with IRS Commissioner John Koskinen on the first panel. And on the second panel, we will hear from Mr. Sowers, Mr. Hirsch, and Mr. Clyde, all small businesses who have had their assets seized by the IRS. In addition, we will hear from Mr. Johnson, a resident expert in this area of the law.

We are here to exam the IRS' use and abuse of its civil asset forfeiture authority. And what is it exactly? Under current law, federal agencies like the IRS can seize people's assets without any proof of wrongdoing. Now, this law was supposed to stop criminal enterprises and recover ill-gotten gains, but the IRS has used it to seize the bank accounts of people suspected of structuring, that is, of making cash deposits worth less than \$10,000 to avoid reporting requirements.

This is a crime that most folks have never heard of. The small business people will tell you it casts a pretty wide net and it is catching a lot of innocent people. It is catching a Mexican restaurant owner, a gas station owner, dairy farmers. Many small business people then have had to fight expensive court battles to get even a portion of their money back, even though they didn't do anything wrong.

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

still a very cash-driven economy. And in a typical year, American consumers do more than a trillion dollars in cash transactions. And under the Bank Secrecy Act, it is illegal to structure or split up transactions in order to avoid a requirement to report those worth more than \$10,000. To be clear, it makes it a crime to fail to file a report on certain transactions.

Take an example. Say I am a restaurant owner and I take \$8,000 to the bank on Friday and \$2,000 on Monday simply because I don't like to keep a lot of cash in my register. I am not structuring. But if I do it because the bank teller says I can avoid filling out forms if deposits are smaller than \$10,000, then I am guilty even if I don't know it is a crime. In either case, it may look like I am trying to avoid the reporting requirement, and that is enough for the bank to file a Suspicious Activity Report.

At that point, the IRS can file a warrant and say it has probable cause to believe that assets are involved in a crime and then it can seize the account. That is it. The IRS doesn't have to give notice to the account holder for seizing the assets, and the IRS doesn't have to prove that the person is actually guilty of anything, just that the account probably is involved in structuring.

And after the IRS seizes the assets, the account holder isn't entitled to any sort of expedited hearing. So even if he did absolutely nothing wrong, it can literally take years of legal

proceedings for the account holder to get some or all of his assets back, and many people simply can't afford a long, drawn-out fight. So what do they do? They settle, handing over thousands of fairly earned dollars to the IRS all without having done anything wrong.

We are going to hear from some of those victims today, and I know that there are many others out there who wanted to be here, like Carole Hinders, a restaurant owner in Iowa, Mark Zaniewski, a gas station owner in Michigan, but they couldn't take time away because of family and business needs. But we have received their statements for the record.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Roskam. We also learned yesterday that the Treasury Inspector General for Tax Administration plans an audit of the IRS' practices in this area, so this inquiry will be forthcoming.

And for the witnesses who traveled here to tell your stories, thank you for your time. We know that as small business owners you are not drawing a salary here while you testify.

We are also looking forward to hearing from Commissioner Koskinen who I hope will be able to explain how this has been going on and what the IRS is doing to stop it.

With that, I would like to yield to the ranking member for his opening statement.

[The statement of Chairman Roskam follows:]

***** COMMITTEE INSERT *****.

Mr. Lewis. Thank you very much, Mr. Chairman, for holding this hearing on the Internal Revenue Service. I am very pleased that we have the Commissioner with us today. I also thank the witnesses on the second panel for testifying today.

[Audio gap.]

The taxpayers came to our attention through press reports at the end of last year. We were concerned that in many of the press reports --

[Audio gap.]

The taxpayers were small businesses that made cash deposits from daily operation. We also were concerned that these taxpayers did not have a right to request a hearing in court within a reasonable period of time after their assets were seized.

I am glad that the agency took action last October. The new IRS policy only allows the agents to seize assets in certain cases. I look forward to hearing more about this change today.

In closing, Mr. Chairman, I would like to state that I am very concerned about the full effect of the agency's budget cuts on taxpayer service and enforcement. I think that we can all agree that American taxpayers deserve the best possible assistance. In the last year, the agency's funding was reduced by nearly \$350 million. It is now at the lowest level of funding since fiscal year 2008. The growing gap between the agency's increased workload and the shrinking budget has led the National Taxpayer Advocate to state that the declining quality of taxpayer service

is the most serious problem facing the agency.

Mr. Chairman, I said in the past and I say it again today, it is impossible to get blood from a turnip. We can do better and we must do better. Thank you. And I yield back.

Chairman Roskam. Thank you, Mr. Lewis.

[The statement of Mr. Lewis follows:]

***** COMMITTEE INSERT *****

Chairman Roskam. Commissioner Koskinen, thank you for your time today and for joining us. The committee has received your written statement and it will be made part of the formal hearing record. You have 5 minutes to deliver your remarks, and you may begin whenever you are ready.

**STATEMENT OF THE HONORABLE JOHN KOSKINEN, COMMISSIONER,
INTERNAL REVENUE SERVICE, WASHINGTON, D.C.**

Mr. Koskinen. Thank you, Chairman Roskam, Ranking Member Lewis, and members of the subcommittee. Thank you for the opportunity to testify here today about an important subject.

Chairman Roskam. Commissioner, could you pull the mike a little closer to you?

Mr. Koskinen. Sure. How is that?

The IRS has sole jurisdiction to investigate criminal violations related to federal tax crimes. In addition, the IRS works together with various federal law enforcement agencies to combat other serious financial crimes, including money laundering, Bank Secrecy Act violations, and terrorist financing. In these efforts, we strive for a balanced approach that takes into account the need for fairness and respect for the rights of individuals under the law.

The ongoing battle against financial crimes has been helped by passage of laws that provide law enforcement with tools to

uncover hidden criminal activities. One of the most significant laws is the Bank Secrecy Act of 1970 which, as the chairman noted, requires financial institutions to report on individuals who engage in cash transactions exceeding \$10,000. These and other similar reports constitute a robust set of data widely used by law enforcement agencies to uncover illegal activities both domestically and around the world.

To circumvent these reporting requirements, individuals sometimes engage in structuring where they intentionally manipulate cash transactions to fall below the \$10,000 reporting threshold. Structuring may occur for any number of reasons. Individuals may want to conceal cash generated from illegal activities, such as drug dealing. Or the cash may come from legal sources, but the person is trying to hide it to evade taxes. Whatever the reason, the law is clear, it is a crime to structure cash transactions for the purpose of evading the reporting requirement.

Under the law, the IRS has the authority in structuring cases to investigate criminally and seize the assets involved in the structuring. But the law also includes procedures we must follow to safeguard the rights of individuals and ensure the seizure action is appropriate. Before an action can go forward, IRS agents must first prepare a seizure warrant affidavit that is reviewed by the appropriate U.S. attorney's office. The warrant then is presented to a federal judge who approves or denies it.

If the judge authorizes the warrant, only then can the seizure and forfeiture proceedings take place.

After reviewing our activities last year, the IRS announced in October that it would focus resources on cases that are more closely aligned with our strategic priorities. Specifically, the IRS will no longer pursue the seizure and forfeiture of funds associated solely with legal structuring cases or legal source structuring cases unless there are exceptional circumstances justifying the seizure and forfeiture and the case has been approved beyond the approvals from the U.S. attorney and the judge by a senior headquarter's executive at the IRS.

While the act of structuring, whether the funds are from a legal or illegal source, is against the law, IRS special agents, henceforth, will view the act as simply an indicator of whether more serious crimes may be occurring. This ensures that the IRS continues to focus its limited investigative resources on identifying and investigating tax violations within its jurisdictions that closely align with the IRS missions and key priorities.

No one should conclude from this change that the IRS is backing away from enforcing the laws written by Congress by appropriately investigating both the source of funds and the purpose of the structuring when these cases arise. When the evidence indicates criminal wrongdoing has occurred, structuring will still be investigated and prosecuted where appropriate,

often together with other crimes, such as tax evasion and money laundering.

We recognize that seizure and forfeiture are powerful law enforcement tools and must be administered in a fair and appropriate manner. The IRS understands and embraces the fact that we have a duty not only to uphold the law, but to protect the rights of individuals as well. We believe that our policy change will help ensure consistency in how IRS structuring investigations and related seizures are conducted and will also ensure fairness for taxpayers. In short, if a taxpayer is not violating the law and engaged in illegal sourcing, they have nothing to fear with regard to the seizure of their assets.

This concludes my statement. I would be happy to take your questions.

Chairman Roskam. Thank you, Commissioner.

[The statement of Mr. Koskinen follows:]

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Chairman Roskam. I will first recognize Mr. Marchant on the majority side, and I intend to ask my questions at the end.

Mr. Marchant. Thank you, Mr. Chairman.

Welcome, Commissioner. I was Monday in my district and held a meeting of about 50 people and thought we were going to have a very nice lunch. As it turns out, I was the lunch.

Mr. Koskinen. I know that feeling.

Mr. Marchant. And as much as I tried to talk about any other subject that we were working on in Congress, this group wanted to talk about the IRS. So as much as we may have thought the whole Lois Lerner event and the events of last year have passed, they have not in the minds of our constituents.

Today we are here to talk about abuse, we feel like it is an abuse of small business owners. Last year, a woman from Iowa, her name is Sue Martinek, came to our committee and reported to us that the IRS had targeted her pro-life group for extra scrutiny before it got its tax-exempt status. She even told us that her group was asked to tell the IRS about what they prayed about at their prayer meetings before the meeting.

Now we hear about another Iowa woman who has been targeted by the IRS for doing nothing wrong. Unfortunately, Carole Hinders, she can't be with us today. She has an adult child that is sick and requires that she be with her. And she did not really have the money to travel down here from Iowa to tell her story. But she would like to tell it. This is Carole here on the screen.

She owns a Mexican food restaurant. I guess with all the Texans coming up here for the presidential election that Mexican food is a popular item in Iowa.

Carole owned her small business and she has owned it for 38 years. For 38 years, she has only accepted cash payments. And for 38 years, she has regularly gone to the bank and made deposits so that she did not keep large amounts of cash on hand.

In August of 2013, with no warning, no letter, no prompting, her bank account for \$33,000 was frozen, and the IRS informed her that she was structuring or was being suspected of structuring. It took her almost a year and a half to get her money back. And even so, she had to close her restaurant because she just could not afford to continue operating.

Why would it take a year and a half to get her money back, Commissioner?

Mr. Koskinen. It shouldn't take a year and a half. There is a limited, unfortunately, I think, too limited period of time for anyone whose assets have been seized to come directly to the U.S. attorney and the IRS and administratively make a claim. That timeframe is less than 45 days. So what happens generally is people make their claim in the legal proceedings, at which point we lose control of it, it becomes a legal case. And in the courts, it takes much longer than it would otherwise. But there is no reason --

Mr. Marchant. Once they seize that account, does the IRS

agent have any burden of proof that they must provide to the person that the money has been seized, or his or her attorney or their accountant, is there any burden of proof that they have to immediately provide to the taxpayer to justify the account being frozen?

Mr. Koskinen. As noted earlier, we have to, an IRS agent has to have the matter reviewed by the U.S. attorney's office and a judge has to find that there is probable cause that there has been a criminal violation before the seizure takes place. Once the asset is seized, if it goes into the judicial proceeding -- which I say takes place very quickly, there is a limited time in which you can do that and most people simply go to court -- once there, then the government, represented by the Justice Department, has to prove by a preponderance of the evidence that the seizure was appropriate, that it was, in fact, the result of a violation of the criminal law.

Mr. Marchant. So when does the burden to determine whether the money was seized lawfully, I mean whether it was lawfully earned or not, when does that burden of proof have to be shown? Does it have to be shown to the judge before the money is seized or is it proved in a court case afterwards?

Mr. Koskinen. We have to show probable cause to a judge before the seizure. And then in the court case, the government has to prove by a preponderance of the evidence that, in fact, the seizure was appropriate.

Mr. Marchant. Thank you, Commissioner.

Thank you.

Chairman Roskam. Mr. Lewis is recognized.

Mr. Lewis. Thank you, Mr. Chairman.

Mr. Commissioner, thank you for being here today, and thank you for your great and good work. Can you tell us when did the new policy come into place.

Mr. Koskinen. Pardon?

Mr. Lewis. When did the new policy --

Mr. Koskinen. The new policy, we reviewed the matter during last year. And in October, we instituted the new policy that if there was not evidence of illegal sourcing for the funding, forfeiture would not be taken.

Mr. Lewis. Why did the IRS change its policy?

Mr. Koskinen. We started looking at it earlier last year because it turned out there was no uniform policy across the country. Different U.S. attorney's offices had different proceedings and different judges responded differently. In some cases, if there was not illegal sourcing, a seizure would not be allowed. In other cases, if there was no evidence of illegal sourcing, the seizure could still go forward. And after reviewing it, we decided the better policy, to some extent making sure that taxpayers get appropriately protected, the better policy if we are going to have a standard would be that we would only have asset seizures when there was evidence of criminal

sourcing, a source of criminality for the funds themselves. The review took several months. In October, we made that policy announcement.

Mr. Lewis. Could you list for us some of the examples of exceptional circumstances?

Mr. Koskinen. An exceptional circumstance would be, without illegal sourcing, would be large volumes of transactions. The case of \$8,000 on a Friday and \$2,000 on a Monday would not be that. But if every day someone was magically showing up with \$8,000 or \$9,000 regularly during the course of a week and that took place --

Mr. Lewis. So if there is some pattern?

Mr. Koskinen. If there is some long-term pattern. And, again, I would stress that that will not be a decision made by an agent in the field. That will only be a decision made by a senior executive at the IRS in our Criminal Investigation Division.

We do not expect that to happen often. But it would be where there is a unique circumstance, where there is a regular pattern of violations and it is clear that while we can't tell initially what the source of those fundings is, whether it is illegal or not, the fact that it is occurring every day over a period of time would be a significant change and an exceptional circumstance from the cases that we are talking about here today.

Mr. Lewis. Mr. Commissioner, you heard me say that I am

deeply concerned about how the budget cuts have affected the IRS in this filing season. Will you tell us what impact the budget cuts are having?

Mr. Koskinen. Well, the impact is of great concern to us, is on both sides of what I call the compliance coin. On the one hand, we now have 5,000 fewer revenue agents, officers, and criminal investigators. So our enforcement of many crimes, tax evasion, collection is down.

But equally significant and important to overall compliance rates is that because we have 13,000 fewer people, headed towards having 15,000 or 16,000 fewer, we simply don't have enough people to answer the phone. So our level of customer service in this, a very complicated filing season is the worst it has been in years. And the people who care most about that are the IRS employees who want to provide information and support to taxpayers.

But the level of our service in this filing season, which is going very well, I am delighted to report, thanks to the good work of our employees, the level of service is still below 50 percent. That means your chances of getting through to a live assister are less than 50 percent. And that is just a miserable level of service and one that we don't think taxpayers deserve.

And there is nothing we can do. We have been as efficient as we can. We have moved as many people to the Web site as we can. We have apps if you want to know about your refund, if you want to get transcripts, if you want to actually make a payment,

you can do that all online. We are trying to be as efficient as we can and move as many people there as we can, but the net result is we still have far more people calling than we are able to handle appropriately.

Mr. Lewis. Thank you, Mr. Commissioner.

And I yield back, Mr. Chairman.

Chairman Roskam. Thank you, Mr. Lewis.

Mr. Kelly is recognized.

Mr. Kelly. Thank you, Mr. Chairman.

Mr. Koskinen, good to see you.

You know, in my life, running a small business and then trying to comply with everything that we have to do, one of the things that I have always worried about is -- and you made reference to your working with less money and it is making it harder for you to serve people. The fact that the Tax Code is so big requires having more people to try to help people navigate it.

As a small business person, and we talked a little bit about Ms. Hinder, so \$33,000 you seized from her. And maybe that is not that much to the IRS. But there is another person that will appear on the panel, \$900,000.

In my business, in my business, having access to capital is critical. So when somebody can seize those assets based on their interpretation or their belief that somehow you have been helping somebody launder money -- I have always related having cash in my store to having blood in my body. Without that cash,

you are dead.

So when the IRS does it, whether it is a seizure or an audit, but when you can seize somebody's assets based on somebody saying, you know what, I think these people are involved in something, you can kill them as a person, as an entity, as a business. Is that not true?

Mr. Koskinen. That is true. But we don't do it just thinking about it.

Mr. Kelly. No, no, no. Listen, it is solely, you are the judge and the jury when you decide to go after these folks.

Mr. Koskinen. That is not true.

Mr. Kelly. It is true.

Mr. Koskinen. No, it isn't.

Mr. Kelly. Commissioner, you and I have met before. You and I have met before. You told me at one time the definition that you look at when it comes to taxpayers, those that want to pay tax and those who do not want to pay tax. I would tell you that in the private sector there is nothing more chilling than any kind of communication from the IRS.

First of all, we don't have access to capital. Once you seize those accounts, how would I go to my lender and say, you know what, they seized my bank accounts, I still want to keep my business open, I haven't been found guilty of anything but it is under suspicion.

Now, I understand you walked us through how that works. But

the reality of it is, for Carole Hinders, who is she going to get to fight that battle for her? How is she going to stay open when you have seized her accounts? And these are the exact people that we are looking for to keep the country going forward. These are the people that supply all the coal for the furnace that heats the whole country.

I don't understand this. I really don't. How can you be guilty on a suspicion? This flies in the face of everything we are as a country. Have you ever been in that position where somebody could come in and seize your assets? It is a yes or no. If it hasn't happened to you, it hasn't happen to you.

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

Mr. Kelly. No, no, no. But have you actually been in it where somebody seized your assets because they think you may have been guilty of some wrongdoing?

Mr. Koskinen. No.

Mr. Kelly. Okay. Would you think it was an overreach if somebody had that ability to do that to you?

Mr. Koskinen. If they could do it on their own and without any evidence that I had done anything wrong, I think it would be --

Mr. Kelly. No, no, no. That is not it. They haven't been found guilty of anything yet. This is on the suspicion they may have done something wrong.

Mr. Koskinen. As you say, I think it is important for the

record to know we don't make that decision by ourselves. It takes the U.S. attorney and a federal judge to agree that there is probable cause.

Mr. Kelly. I understand. But it is not the due process of law that we have. As individuals in this country, citizens are protected from an overreach by a government that can find them guilty without ever having it. The suspicion of it is one thing. The ability to shut down a business or a person, limit their access to capital, and put them in a position. If you have ever had to sit across from a lender and try to explain who you are and where you are and why you need them, they say, all your assets have been seized, is that correct? And you say, yeah, they have, but. No buts, we can't help you.

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

Mr. Kelly. It is not important. I have got to tell you it is far beyond important. Important is dismissive. It is frickin' critical. We are killing these people on a suspicion that they may have done something wrong. This flies in the face of everything this country was built on from day one. And if are going to sit there and tell me that somehow you went through a process that allowed you to seize assets of people who are getting up every morning, putting their feet out over the bed, going to work to put a roof over the heads of their children, food on the table, clothes on their backs, and getting ready for the future, but that is okay because, see, we went through a process that

allowed us to seize those assets. So we are going to find out if they are guilty or not.

And how long does that process take? How long would it take before I would find out if I am still allowed to be in business because the IRS says, you may be guilty of something, I am going to shut you down. What is the average time?

Mr. Koskinen. I don't know what the average time is.

Mr. Kelly. Okay. I will tell you what, you would if you were in business and somebody did that to you. I got to tell you, access to capital, access to cash, the same as having access to keep your body running when you run out of blood. It is incredible that this organization can do that on a suspicion of wrongdoing, shut somebody down, seize their assets, and put them in a position where they can't possibly survive. You talk about waterboarding, this is waterboarding at its worst.

Thank you. And I yield back.

Chairman Roskam. Mr. Rangel is recognized.

Mr. Rangel. May the record indicate that I have the same amount of emotion that Mr. Kelly does if certainly something like this has happened. Let's see whether I can defend our country and the agency in any way possible.

First of all, under this new policy change, nothing like this could probably happen again?

Mr. Koskinen. Our hope is and our plan is and our expectation thus far is that nothing will happen like this.

Mr. Rangel. Second, under the existing law, there is nothing in the existing law that says there has to be criminal intent, the law?

Mr. Koskinen. Actually the law passed by the Congress says that you don't have to have a criminal intent to violate the law. You simply have to be not providing information as required by the law.

Mr. Rangel. And so the judges and the assistant U.S. attorney said that if taxpayers, if there is no evidence of illegal sources or anything, still they would go through the process merely because the law said it was before you changed the policy?

Mr. Koskinen. The policy was that it is a violation of the law to structure your assets and your deposits. And if you have structured your deposits under the law, it is a violation.

Mr. Rangel. And structured means that a consistency that is below \$10,000?

Mr. Koskinen. Correct.

Mr. Rangel. And from that, you infer that you can seize someone's property without showing any evidence that they intended to violate the law, that was the policy?

Mr. Koskinen. That was the policy. That is the law actually. You have to have an intent to avoid the reporting requirements. You don't necessarily have to have an intent to --

Mr. Rangel. So you are trying to say that it is the Congress that enacted this law. That just doesn't make any sense at all

that you should do this to anybody, anybody that has no criminal intent and for whatever reason wants to structure their deposits in a bank and there is no evidence of wrongdoing. That law to me is unconstitutional, unreasonable, and stupid. So the only way that you can do this is by having tax reform, I would think. Do you have any other ways to change this besides changing the policy?

Mr. Koskinen. Well, as I say, we have changed the policy from our standpoint. Historically only in a third of the cases of investigations were there ever seizures to begin with, and the average of those seizures was well over \$100,000. But the policy would say and does say and has been in effect since last fall that if there is no evidence of criminal sourcing --

Mr. Rangel. That is good and it makes me feel good. I hope it makes Mr. Kelly feel a little better.

This never should have happened in the first place is what I am saying. And I hope you would agree that whether or not it was within the law or not, it is wrong without any criminal evidence to seize somebody's property merely because it falls within the four corners of the law because the law doesn't make any sense, there is nothing wrong in doing this. I am a former assistant U.S. attorney. Every case I have seen is people buying luxury cars, expensive jewelry, and a vendor putting in deposits of over \$9,900 dollars, a bunch of crooks.

Mr. Koskinen. Yes.

Mr. Rangel. Now we find a bunch of innocent people doing the same thing for nonillegal purposes and you are enforcing bad law.

Mr. Koskinen. And we are actually making it clear that if you haven't done anything illegal --

Mr. Rangel. Well, you are making it clear now, Commissioner. But common sense and decency would say when the Congress screws up, we expect you people to come back to us and say this is not working. You have done this in policy. And there has to be some way that we can tell the people that have been victims of poor judgment that we regret that this happened. So let's move on and agree that we should reform the tax system.

Thank you. I yield back the balance of my time.

Chairman Roskam. Thank you, Mr. Rangel.

Mr. Meehan is recognized.

Mr. Meehan. Thank you, Chairman. Thank you, Director, for being here today.

You identified that you spoke to The New York Times and changed this policy publicly. What were the reasons for the changing of the policy?

Mr. Koskinen. The changing of the policy, as I noted, earlier last year, as we began to look into the situation, it was clear that there was no single policy and that if we were presenting evidence in some jurisdictions to U.S. attorneys and courts there would be a seizure, in other jurisdictions, there

wouldn't. So we looked at the entire question of how this law is applied and came up with the decision that the right balance between law enforcement and trying to protect taxpayers was when there was no evidence that the funds were from illegal sources there would be no seizure.

Mr. Meehan. So that is the inconsistency you are trying to say that existed?

Mr. Koskinen. We decided we needed to have a standard policy at the IRS in when we would request seizures, and the policy would be we would not request a seizure if there was no evidence of criminal sourcing.

Mr. Meehan. Do you think there were abuses of this policy in the cases that you oversaw?

Mr. Koskinen. I am not familiar with individual cases, but I take Mr. Kelly's and everybody's concern that if a business has legitimate reasons for depositing cash regularly in amounts that avoid otherwise the Bank Secrecy Act, if they have got legitimate reasons for that, then they should not be subject to seizures. And that is our policy.

Mr. Meehan. Because, I mean, I can see the value in a program like this as a former prosecutor. But you can also see the ease with which this can be manipulated to get ends that are -- because it is an easier way to go.

Probable cause, you mentioned this a couple of times, what is the underlying probable cause.

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

Mr. Meehan. That is. So now it is going to be criminal sourcing. When we did these before, the probable cause, you know, you said --

Mr. Koskinen. Probably cause before would have been --

Mr. Meehan. Just the simple act of structuring?

Mr. Koskinen. Structuring, exactly.

Mr. Meehan. Okay, alone. So this does not tie back. Now we are going to make sure that it is a two-step process, that it includes at the initial determination that there has to be some kind of evidence presented to the judge and by the U.S. attorney before there will be a seizure that will be initiated?

Mr. Koskinen. That is correct.

Mr. Meehan. Okay. I tried to figure out where these -- are you aware in 2012 -- of course for the statistics that I have seen, there have been five times as many structuring-related seizures as there were in 2005, five times as many. Half of the total were for less than \$34,000. Does that look to you like the kind of big drug-related or terrorist-related incident that we are trying to prevent?

Mr. Koskinen. The average of the seizures in the evidence, the data I have, the average is well over \$100,000.

Mr. Meehan. That is the average because you have some big

seizures and I get you. But half the people are less than \$34,000.

Mr. Koskinen. And under this policy, if that \$34,000 had no indication it was coming from criminal violations, there would be no seizure.

I would note for the record, 60 percent of the cases when there is a seizure nobody shows up. Which means that in 60 percent of the cases there are criminals who don't even want to see the light of day and are happy to give up the money. And part of the reason for the seizure is to try to, in effect, undercut the ability of organized crime, drug dealers and terrorists --

Mr. Meehan. But 80 percent of these cases were civil cases. They weren't criminal, 80 percent were civil.

Mr. Koskinen. Yes. Because to have a criminal case, you have to have a criminal defendant. And, as you know, in drug cases, in terrorist financing cases and other times, oftentimes we can't get the individual. So we are stuck with the civil procedure and forfeiture, which is against the asset.

Mr. Meehan. What do you mean we can't get the guy so we are stuck with the civil? I mean, this is due process. This is America.

Mr. Koskinen. We will seize the asset in many cases and the owner of that asset will disappear, will not show up. Sixty percent of the cases, the owner of the asset does not show up. That means in 60 percent of the cases one could surmise that they had a good reason for not showing up, that they, in fact, did

not want to subject themselves to further legal enforcement.

Mr. Meehan. We are going to hear from Mr. Clyde later. I went through some of his testimony. And in the course of it, he did show up. He showed up numerous times because they were being leveraged, a \$900,000 seizure of his business was negotiated down numerous times, which by the final time the IRS came to him and said you will settle for \$109,000.

Mr. Koskinen. The IRS did not do that. The negotiations on settlement, once it goes to court, are within the realm of the Justice Department and the U.S. attorney. The only time we settle is if in that window of administrative proceedings, before you have to go to court, you come to see us, you will settle with us. And it is a handful of cases.

Mr. Meehan. So you are putting this on the U.S. attorney. That may be. Here is my problem with this because, again, we are using the system. And this is going to be his testimony. I read the testimony. He said they came back and they offered to settle for only \$109,000, and they reminded me this case could easily go criminal against me personally during discovery.

Now, you know it is unethical to leverage a civil case by threatening a criminal prosecution.

Mr. Koskinen. That is correct.

Mr. Meehan. That is correct.

Mr. Koskinen. And I don't think that is an IRS agent that did that.

Mr. Meehan. Is Mr. Clyde lying when he is testifying that this happened to him?

Mr. Koskinen. Does he specify that it was an IRS agent that told him that?

Mr. Meehan. He specifies that he was leveraged that if he did not settle for \$109,000 this could be a criminal case.

Mr. Koskinen. It is exactly as you say. We would not threaten him. And I don't think that is an IRS agent.

Mr. Meehan. Thank you, Mr. Koskinen. I appreciate it.

Chairman Roskam. Mr. Crowley is recognized.

Mr. Crowley. I think the big distinction then, Commissioner, would be whether it was the prosecutor or the IRS agent, agent of the IRS who was making that innuendo, which is, I think, a very valid point.

Commissioner, welcome. But I think you recognize by the angst on both sides of the aisle that this is a bipartisan issue of concern of overreach by the IRS. And while we haven't officially heard from the witnesses on panel two, I have read their testimony, it is horrifying to me as an American.

I think most Americans, if not all Americans, who read those stories about the IRS, as well as the U.S. attorney and federal judges who have the ability to seize Americans' bank assets for no legitimate reason, all the while never charging them with a crime. That policy robbed hard-working people of their cash without any proof of crime. And whether you are Democrat or

Republican, green, purple, red, or blue, it is wrong.

The people before us on panel two are victims. They are not criminals. We all recognize the IRS is a powerful agency. And at times, that power is justified to crack down on what Mr. Meehan was speaking about in terms of terror financing or drug laundering or tax evasion itself. But that power must be measured and used appropriately to get to criminals and not trap innocent American citizens.

That is why I hope that these civil asset forfeitures against people who committed no crime appears to be something of the past. Could you explain the changes you undertook as Commissioner on civil asset forfeiture?

Mr. Koskinen. As I noted, the changes since I have been there, we looked at reports that had come in about varying policies across the country, reviewed the entire policy, and decided that the appropriate policy was if we didn't have evidence of criminal sourcing for the funding there would not be a seizure. And there have been cases, some jurisdictions where that was already the policy. Other jurisdictions, it was not the policy and there were seizures. And I am sure some of the people you will hear from were in those jurisdictions.

We decided the right policy was to have a uniform policy and not have seizures unless there is evidence that you, in fact, were involved in criminal activities. We will continue to investigate, as we will, evidence, but we will actually proceed,

and in some cases it has turned out to be a very good development of the policy because instead of simply relying on a seizure to begin with, we have actually uncovered with further investigation more criminal activity.

So the policy decision was to have a uniform policy and to make this decision that it would be uniform, that if you weren't engaged and there was no evidence you were engaged in criminal activities and the source of funds was from criminal activities, you would not be at risk of a forfeiture.

Mr. Crowley. I do hope that that policy, as you said, is effective. And if not, I think the Congress will continue, we will continue to have oversight regardless.

I would like to get your thoughts on the bipartisan legislation written by Sandy Levin, the ranking member of the committee, to allow effected taxpayers the right to a probable cause hearing within 14 days or have the IRS return the seized funds. What are your thoughts on that?

Mr. Koskinen. As I say, I think the ability to come in, in an administrative way, without having to hire a lawyer and go to court, that timeframe under the law is in the range of 30 days. And I think that is too short. I think that we ought to give people the chance to come in, before they have to hire a lawyer and go to court, to make their case. As I say, hopefully we won't have these cases going forward. And so I have no problem as a general matter with making sure people --

Mr. Crowley. More a matter of time.

Mr. Koskinen. My concern is whether 14 days is going to be too short even for the taxpayer. But if it were some reasonably short period of time, I think that taxpayers ought to have a chance to show up. As I say, 60 percent of them historically, even under the old policy, didn't show up, but that was an indicator of what they were about. But I agree totally that these are important matters. It is important to make sure that innocent taxpayers are not dragged into a system inadvertently. And if they, even with our policy, if they think they have been wrongly included, they should have a prompt way to be able to raise that issue.

Mr. Crowley. I appreciate it, Mr. Chairman. I have limited time.

Like many of my constituents, I read with disgust and shock the stories reporting the IRS rehired a number of former employees who had troubling work records during their previous stint at the IRS. Please tell me that these stories are incorrect, that they have not been rehired.

Mr. Koskinen. Historically, in the 2009 to 2012 area, there were a handful of people with prior employment problems, primarily seasonal employees -- we hire 8,000 to 10,000 seasonals a year -- who had prior issues. We have agreed with the IG's report on this, and I have had meetings in the last few weeks to make sure that we look at very carefully, particularly those who have been willful violators of the Tax Code, to ensure that we consider

that before any hiring decision is made. And so the handful of cases the IG found I think will not occur. And those were a handful out of the 73,000 hired over those several years.

Mr. Crowley. Mr. Chairman, let me just say for the record that I appreciate the response by the Commissioner. But I do think that more investigation of this is warranted. And I would associate myself with your letter dated February 6 asking about current hiring practices at the IRS. And with that, I yield back the balance of my time.

Mr. Koskinen. And we are responding and we will respond promptly to that letter.

Mr. Crowley. Thank you, Mr. Commissioner.

Chairman Roskam. Mr. Holding.

Mr. Holding. Thank you, Mr. Chairman.

A few specific questions about the new policy. One, the new policy that is dated, what, October of 2014 --

Mr. Koskinen. October, yeah, 2014.

Mr. Holding. October 17.

Mr. Koskinen. The date is actually October 17, yes.

Mr. Holding. Okay. Is it retroactive to cases that were in the works pending beforehand?

Mr. Koskinen. No. It is not retroactive in the sense that if there are cases before that, they are in the judicial process, and they will be resolved however the judicial process would resolve them.

Mr. Holding. Right. So there could be plenty of legally sourced structuring cases prior to the date of your new policy. Do you think it is fair that people who are prior to your policy are being treated differently to folks subsequent to your policy?

Mr. Koskinen. Well, I think that, as I say, our hope is going forward no one runs into this problem.

Mr. Holding. But is it fair to the people who happen to have been caught in the web before you changed the policy?

Mr. Koskinen. Well, as I say, at this point, they are, as noted, and it is unfortunate if it takes that long, but they are in a process that allows them through the courts to raise their challenges and their defenses.

Mr. Holding. The U.S. attorney could step in and withdraw the case.

Mr. Koskinen. They could do that.

Mr. Holding. There is plenty of precedent for that. The crack resentencing guidelines, they decided, you know, on a department basis to apply these things retroactively. Would you advocate applying your policy retroactively.

Mr. Koskinen. I always try to be careful not to tell another agency what their policy ought to be. But it is, I think, appropriate for the Justice Department to consider that.

Mr. Holding. Well, you are telling them what their policy ought to be with your new policy.

Mr. Koskinen. I was going to make that point earlier. I

should stress there are a wide range of federal agencies, the Drug Enforcement Agency, the Justice Department, the FBI, and others who have seizure authority. Our policy, all we can do is make a policy for the Internal Revenue Service. My understanding is the Justice Department is looking at our policy in terms of applying it itself in other cases. But I can't tell you that our policy will be the policy other agencies follow. It is just the policy we think is right, that draws the right balance.

Mr. Holding. To follow up on one of your answers to Mr. Meehan, are you saying that under the new policy that you have to aver that we have probable cause to believe that an illegal act is taking place other than the act of structuring?

Mr. Koskinen. Yes.

Mr. Holding. Okay. You sure about that?

Mr. Koskinen. That is what I am advised by the people who run the Criminal Investigation Division.

Mr. Holding. I have taken a look, the staff pulled for me a case from North Carolina, from my former prosecutorial district, after your policy change. And I have read through the affidavit and the associated documents. There is no allegation of illegal activity other than the act of structuring. And I believe if you looked at cases, there has been no change in practice of alleging some illegal act.

Mr. Koskinen. If that case exists, then it is not following the policy I have been advised. I had lengthy meetings with the

senior leadership of our Criminal Investigation Division which handles this and have been assured that that is the policy, that people have been trained and advised about it. So if somebody is not following the policy --

Mr. Holding. Do you know how your policy --

Mr. Koskinen. Pardon?

Mr. Holding. Do you know how your policy is being communicated to the U.S. attorney's offices.

Mr. Koskinen. The U.S. attorney isn't the one that is making the decision for us. We present the case --

Mr. Holding. Well, the U.S. attorney is the one who takes it to court for you. I mean, that is your gatekeeper to getting due process.

Mr. Koskinen. Right. And so what we have done is had the policy -- it has been a public policy -- people, we have announced it, it has been in the press. We would not go to the U.S. attorney under this policy unless we had the case that fit the criteria.

Mr. Holding. So do you think that your new policy creates a situation where if I am a claimant, I am reading through the affidavit against the thing, the sum of money, and it does not aver a criminal act on my part that I have, that I can go to the judge and say this is an insufficient affidavit here, it doesn't allege any criminal activity other than the act of structuring.

Mr. Koskinen. My understanding is that private citizens should have the ability to do that. Our policy is that we would

not --

Mr. Holding. So you have created a defense, your policy creates a defense, is what you are saying?

Mr. Koskinen. Yes.

Mr. Holding. How do you anticipate that the --

Mr. Koskinen. I guess I should answer to be careful. If you are structuring to avoid the reporting requirement, it is still a crime.

Mr. Holding. I understand that. But what you are saying, under your new policy --

Mr. Koskinen. Under our policy, we are not going to seize --

Mr. Holding. -- I have a defense.

Mr. Koskinen. To the seizure --

Mr. Holding. -- to that seizure --

Mr. Koskinen. -- that we have not provided any evidence --

Mr. Holding. -- by saying that you haven't alleged, you haven't presented any probable cause that there is an underlying criminal act on my part other than structuring.

Mr. Koskinen. Structuring, that is correct. That is our policy.

Mr. Holding. All right. Mr, Chairman, I yield back.

Chairman Roskam. Mr. Smith is recognized.

Mr. Smith. Thank you, Mr. Chairman.

Commissioner, I would like to start out reading the IRS mission statement. It says that the IRS' mission is to provide

America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all. Your mission is not to enforce all laws, it is to enforce tax laws, correct?

Mr. Koskinen. Correct. Although we do cooperate on task forces with drug dealing and others at the request of other agencies.

Mr. Smith. You don't enforce drug laws, you cooperate.

Mr. Koskinen. We cooperate.

Mr. Smith. You enforce tax laws.

Mr. Koskinen. We enforce tax laws.

Mr. Smith. Not banking laws?

Mr. Koskinen. Banking laws to the extent that bank security, if there are laws that provide us or require us to, in fact, be aware of violations of the law. But basically our primary function, as I said, we are the only agency --

Mr. Smith. What does that mean?

Mr. Koskinen. -- that enforces tax laws.

Mr. Smith. So you don't enforce banking laws? You just look at banking laws?

Mr. Koskinen. Yes. We are aware of banking laws. We are on task forces because we are a law enforcement agency. We have law enforcement powers. And we participate in joint task forces at the request of other agencies because our agents are very good at tracking money.

Mr. Smith. Okay.

Mr. Koskinen. We probably are the best people to deal with complicated financial structures of anybody in the government.

Mr. Smith. All right.

Mr. Koskinen. So U.S. attorneys are forever asking us to be involved in cases.

Mr. Smith. I get it.

I have looked at the Treasury Forfeiture Fund Accountability Report for 2013, and it appears that the IRS cases that the report touts are some that are related to your mission, such as tax evasion and unlawful tax shelter cases. But structuring payments is not a tax crime, correct, it is a banking law?

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

Mr. Smith. Okay. So how often do you find evasion, tax evasion cases from structuring cases?

Mr. Koskinen. I can't give you a number. But any number of people are in business structuring their deposits so we don't get reports of how much cash they have. The highest level of underreporting in the tax gap, which I will testify about this afternoon, is small and medium-sized businesses where we have no other third-party reporting historically.

Mr. Smith. So you have no number?

Mr. Koskinen. I have no numbers about what percentage of the cases we are dealing with are tax evasion, other than that

is the primary purpose of our activities.

Mr. Smith. So the primary purpose of your activities is looking at structuring to find tax evasion, but you have no idea of what amount of number those cases are, is that what you are saying?

Mr. Koskinen. Which ones turns out to be tax evasion cases as opposed to drug cases or terrorism cases, no, because we actually are involved in those cases as well. But I can find out if we can get you that data, and we would be happy to provide it.

Mr. Smith. I think that would be data the committee would like.

Mr. Koskinen. We would be delighted to get you the data about how the cases break down.

Mr. Smith. Okay. So is the IRS devoting any time to enforcing banking laws at all?

Mr. Koskinen. Yes. As I say, we participate at the request particularly of U.S. attorneys and the Tax Division of the Justice Department and others in a range of cases. We are involved in money laundering cases, we have been involved in drug cases, we have been involved in terrorist financing cases at the request of various agencies because we have a very skillful and qualified set of criminal investigators.

Mr. Smith. So you have been involved in some drug cases?

Mr. Koskinen. Yes.

Mr. Smith. What is your involvement in any structuring cases in the State of Colorado?

Mr. Koskinen. I don't have that data.

Mr. Smith. I would be very interested and I think the committee would be interested to see if the federal law is being enforced under the structuring in the IRS Code.

Mr. Koskinen. I would be happy to. Again, the data would show last year we had 146, the last fiscal year, 146 seizures. So it is not as if we have thousands of these cases. But I would be delighted to get you the data to the extent we have it on Colorado.

Mr. Smith. Out of those 146 cases, were any in the State of Colorado?

Mr. Koskinen. That I don't know. But I will get you the information.

Mr. Smith. I would like to have that.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Smith. Thank you, Mr. Chairman.

Chairman Roskam. Representative Noem.

Mrs. Noem. Commissioner, it is important to set goals for an agency. I believe that it is important. Do you believe that that is important, to have goals as well?

Mr. Koskinen. Yes.

Mrs. Noem. I have been reading through your Forfeiture Fund annual report, and it is interesting to me that the IRS has set its goals based on the number of seizures, based on the size of seizures, and based on the amount of money in seizures.

Mr. Koskinen. That is not a goal of the IRS. In fact, the law prohibits us to have goals tied to actually collections. So none of our employees are measured by the dollars they collect.

Mrs. Noem. Well, that is the concern that I have, because based on my evaluation of the report and the fund is that that is what the goals of the IRS are. And that concerns me if you are going to be basing it --

Mr. Koskinen. That is a report from the Treasury Department. That is not an IRS fund. We do not control that fund.

Mrs. Noem. But the data would be the same. I mean, the data indicates --

Mr. Koskinen. We have volumes of data, some of which I am going to provide to this committee, about the number of cases, the amount of seizures. But those are not goals that are measured for performance of our agents. Those are the results of our

activities.

Mrs. Noem. So could you clarify for me then does the IRS have any goals that would indicate it is going after lawfully earned money?

Mr. Koskinen. We have no goals at all that would tie anybody's performance, including the agency's performance, to collections under any of those activities.

Mrs. Noem. Are your agents motivated at all by goals set by the agency to put points on the board?

Mr. Koskinen. None at all. It is illegal for us to have goals that cause any agent and any IRS employee anywhere in the organization to have a goal tied to collections.

Mrs. Noem. Is part of their evaluation for doing their job based on any kind of dollars of seizures that they have produced, by seizures that they have been a part of, or the size of those seizures? Is that a part of their evaluation as their work as an agent?

Mr. Koskinen. That is a very important question. I am glad you asked it. It is never a part of their evaluation. We are across the board prohibited from, whether it is a revenue agent, a collection agent, somebody sending you a notice, we are prohibited from having anybody rewarded on the basis of the dollars they collect. That is important for taxpayers to understand.

Mrs. Noem. So even if an agent is in a situation where they

have seized an amount of dollars but yet they settled for less, that is not going to be a part of their evaluation as to doing their job duties?

Mr. Koskinen. A, that settlement is not an IRS settlement. B, even if it were, it would not be part of their evaluation.

Mrs. Noem. Okay.

Mr. Koskinen. We settle cases. We have revenue agents negotiating with taxpayers across the country. What their settlements are is never toted up in terms of performance and never measured in terms of performance.

Mrs. Noem. Your Criminal Investigation Division has field offices, correct?

Mr. Koskinen. Across the country.

Mrs. Noem. Are they evaluated based on what kind of seizures they have participated in and investigated in?

Mr. Koskinen. Absolutely not.

Mrs. Noem. How are they evaluated?

Mr. Koskinen. They are evaluated on a set of normal performance measures in terms of their activities.

Mrs. Noem. So if they are not performing well and they are not getting very many seizures or aren't producing very many seizures, is that reflective on the work that they are doing and are they then motivated to go after easy cases or easy seizures?

Mr. Koskinen. You have to understand the seizure investigations are about 5 percent of the work of the Criminal

Investigation Division and about a third of those result in seizures. So in two-thirds of our investigations there is no seizure. And the investigations totally are about 5 percent of their activity.

So we are involved with identity theft, tracing criminals. We have thrown 2,000 people in jail for, thanks to cooperation with the Justice Department who prosecutes those cases, for identity theft. So the vast majority of their time is not spent on seizures or on those investigations.

Mrs. Noem. See, here is what concerns me about your new policy, is because it says that there could be exceptional circumstances that would change the policy if that was necessary. So if they are short on goals, if there are not many seizures happening, it could easily be declared that there are exceptional circumstances that could be utilized to raise those number of seizures and the amount of dollars that would be captured.

Mr. Koskinen. The number of seizures is not a performance goal. So they have no incentive to do that. The second point to remember is no agent and no field office has the ability to make that determination. It is made by a senior executive at headquarters in the Criminal Investigation Division to make sure that they really are exceptional circumstances to change the policy.

Mrs. Noem. And is that written policy that every agent and every member of the Criminal Investigation Division team would

know and be very clear of?

Mr. Koskinen. Every agent has been advised about that, it is being put into our Revenue Manual that everybody follows. Once that policy was initiated last fall, it was distributed and shared throughout the agency. Every agent should be aware of that policy.

Mrs. Noem. So to your knowledge, there has been no evaluation processes that have been gone through where seizures were discussed or talked about or even the settlements that resulted from those seizures.

Mr. Koskinen. Settlements and dollar. As I say, it is illegal and I think it is appropriately illegal for us to measure anybody's performance by their collection activity.

Mrs. Noem. Thank you, Mr. Commissioner.

I yield back.

RPTR ZAMORA

EDTR SECKMAN

[11:01 a.m.]

Mrs. Noem. I yield back.

Chairman Roskam. Mr. Johnson is recognized.

Mr. Johnson of Texas. Thank you, Mr. Chairman.

Thank you for letting me join you today.

Mr. Commissioner, welcome. I am here to try to give voice to my angry constituents, who are angry over the President's unconstitutional Executive amnesty. And here is the truth of the matter: Obama's Executive amnesty isn't just about immigration; it is about taxes also. And that is what I want to ask you about today.

This is what the President had to say back in November when he announced his Executive amnesty: Quote, "Now, here is the thing, we expect people who live in this country to play by the rules."

The President later on said that among the requirements for getting his amnesty is, quote, "you are willing to pay your fair share of taxes."

Mr. Commissioner, I have got some questions regarding the Earned Income Tax Credit, a refundable tax credit that can result in thousands of dollars in cash back from the IRS. First question, isn't it true that in order to claim the EITC, the tax filer,

along with the dependents, must provide a Social Security number, yes or no?

Mr. Koskinen. That is correct.

Mr. Johnson of Texas. So, in other words, no number, no EITC?

Mr. Koskinen. That is also correct.

Mr. Johnson of Texas. And just to confirm, if you are here illegally in the United States, you can't get a Social Security number; is that true or false?

Mr. Koskinen. That is also true, but you can file taxes, which hundreds of thousands of illegal immigrants do.

Mr. Johnson of Texas. Isn't it another requirement of the EITC that income must be earned, yes or no?

Mr. Koskinen. Yes.

Mr. Johnson of Texas. So, in other words, one needs to work in order to be eligible for EITC. So I think we have made it clear that the EITC is only for those who can legally work for the United States. But isn't it true that Obama's Executive amnesty will allow some who have been here illegally to get Social Security numbers? Yes or no?

Mr. Koskinen. They can do that, but the law -- EITC and the law in general about working is we encourage -- the law encourages and our process encourages illegal immigrants to pay taxes. And as I say, we have almost 700,000 ITINs, as they are called, out there, and people illegally in the country have been paying taxes for some time.

Mr. Johnson of Texas. But with the Social Security number, they can claim EITC?

Mr. Koskinen. That is correct.

Mr. Johnson of Texas. Okay. Now, I heard you say last week that an illegal who gets a Social Security number, thanks to Obama's Executive amnesty, can actually claim EITC for years in which he was illegal by filing amended returns. Is that correct?

Mr. Koskinen. That is correct. They would have to have been working in those years. As you noted, you can only get the EITC if you are working. The law doesn't say "legally working." The law simply says it is tied to people working. So if you have not worked in the past, you won't be eligible for EITC, whether you got a Social Security number or not.

Mr. Johnson of Texas. Well, say such an individual gets a Social Security number in February of this year, what is the maximum Earned Income Tax Credit that this individual can get if he files his return, including amended returns, as per the statute of limitations, by April 15?

Mr. Koskinen. If you are a single person, the maximum you can get is in the range of about \$600. The maximum you can get if you are a family with three children or more is close to \$6,000. So if you are an individual worker, you would get \$600 this year. And if you had worked for the previous 3 years, you could file an amended return and get another \$1,800.

Mr. Johnson of Texas. Well, Joint Tax tells us that

individual could get a total of \$23,800 for the year 2012 through 2014.

Mr. Koskinen. You would have to be married, have more than three children. And if you were filing an amended return and had worked for those 3 years, you would be able to get that amount.

Mr. Johnson of Texas. Well, the truth is, I say thanks to Obama's amnesty, illegals will be getting thousands of dollars from the IRS. And I feel like that is kind of outrageous, and it is wrong. It is not fair. It is not right.

So let me make it clear, I represent hardworking, law-abiding Texas taxpayers and elsewhere in my district. I took an oath to support and defend the Constitution, and I think these amnesty rewards -- and that is what they are -- need to be stopped.

Thank you, Mr. Chairman.

Mr. Koskinen. Thank you.

Chairman Roskam. Commissioner, you mentioned to Mr. Holding that the new policy involved a defense. Did you mean a legal defense when you said that?

Mr. Koskinen. Well, what I meant was -- you know, I am not a practicing lawyer; I haven't been for some time -- is that our policy is that if there is not evidence of illegal sourcing, we cannot establish, will not try to establish probable cause. So a --

Chairman Roskam. I understand that. So, but just to be clear, that gives the IRS all the ability to make the initiative.

In other words, a defendant is not able, based on that policy statement, able to come in and assert, Hey, the New York Times reported that the IRS isn't going to do this anymore. Do you follow me? So it is not an actual defense. It is a discretion.

Mr. Koskinen. That is a good point. And as I tried to make clear as well, if the structuring has taken place, it is a violation of the law. We are simply saying that we are not going to go after an asset seizure if there is no indication of illegal activity. But the law still says that if you are consciously trying to avoid having a bank file above \$10,000, what is called an currency transaction report, if you are trying to avoid that, that is a violation of the law that Congress has passed. We are simply saying, if there is no legal activities, we are not seizing your assets in that case.

Chairman Roskam. So will you be amending the Internal Revenue Manual to reflect that?

Mr. Koskinen. Yes, we have already instructed the agents, but we are going to change the Internal Revenue Manual and try to make sure across the country that that is a uniform policy and uniformly applied.

Chairman Roskam. What is the timing on that, on the change to the Internal Revenue Manual?

Mr. Koskinen. I saw some place an expectation that it is going to take years. I mean, it takes us -- in fact, if it is not in the IRM, it will be there very quickly. Changing the

manual, it does not take forever.

Chairman Roskam. Okay. So you would expect that done in 2015, for example?

Mr. Koskinen. Certainly, well before the end of this quarter, if it isn't already done.

Chairman Roskam. Excellent.

One of the things that I think Mr. Weber said at the time was for the change was an argument about an allocation of resources. So if, theoretically, if the IRS were to get all the resources that it was requesting, I mean, that suggests that they could maybe go back to the legal source structuring. Can you assure us that that is not going to happen?

Mr. Koskinen. I can assure that we have no intention of going back to seizing assets where there is legal source structuring.

Chairman Roskam. Okay. I want to contrast, to follow up on Mr. Kelly's line of inquiry a little bit, and that is to really highlight this power relationship and how it has unique in the seizure situation and contrast it with an audit, for example. You know, if a taxpayer gets notice from the IRS that there is an audit, it is a different process. Can you walk through the taxpayer protections that someone has for an audit that they don't have in a seizure, for example?

Mr. Koskinen. Well, as I say, in the seizure, we should not forget, while it takes too long sometimes, there is a court process that is available to a taxpayer immediately. So they have the

protections of the legal protection of the legal service and the court process. The fact, in some cases, it may take too long, I think, is an appropriate concern, but it is not as if they are out there without the ability to immediately go to court and make their case.

But in the audit, to get to your point, we will send you a notice if we find there is a problem. I would stress that we do that on the basis of computerized analysis and matchings. We will send you a notice and say, Hey, we think there is an issue here. You then can write us back and say, yep, I agree and here and it is over, or you will say, nope, that is fine, and we will then get two or three correspondences by letter.

As I said, if you hear from us for the first time by phone, you are not hearing from us. The phone scams going on and people making threats over the phone from the IRS are just that, scams.

Chairman Roskam. But to that point, I mean, the audit is for a discrete period of time, isn't it?

Mr. Koskinen. It is usually for a given year, and it is about a specific issue. We will then, if we can't by correspondence do that, we will then have a Revenue agent or officer will show up and set a meeting with you.

Chairman Roskam. My point is, there is a lot more certainty. There is certainty as it relates to what is the subject of this inquiry? What is the duration of the inquiry? I can prepare for this. And, you know, you still have -- the taxpayer in this case

would still have access to all their resources and everything until it is ultimately disposed of.

Mr. Koskinen. Exactly. And if they disagree with us when we come to a final assessment, they can go through our appeals process and then they can go to court. So there are --

Chairman Roskam. So you can understand then how somebody feels fundamentally different about an IRS inquiry that looks and feels different. The seizure is fundamentally different. All the power is with the IRS. All the power to come in and say, There is something going on.

And I think part of what I want to draw your attention to -- and it was in your own testimony. In your written testimony, you said the purpose of these sorts of efforts is to disrupt and dismantle criminal enterprises. I mean --

Mr. Koskinen. Correct.

Chairman Roskam. -- without any question, there is nobody on this panel that is going to quarrel with the use of government power to disrupt criminal enterprises. And yet, the witnesses that are going to come after you today are not criminals. They didn't do anything remotely related to the type of enterprise that you were citing in your testimony.

I am going to read to you from congressional testimony from the Department of Justice Head of Asset Forfeiture, the Asset Forfeiture Fund. He said this about the forfeiture law: Forfeiture undeniably provides both a deterrent against crime

and a measure of punishment for the criminal. Many criminals fear the loss of their vacation homes, fancy cars, businesses, and bloated bank accounts far more than the prospect of a jail sentence.

But take, you know, Mrs. Hinder's story. There is nothing remotely related to that type of criminal activity in Mrs. Hinder's story, or in the witnesses that we are going to hear from today, Mr. Clyde or Mr. Hirsch or Mr. Sowers. So you have an opportunity here before these people. Would you, on behalf of the IRS, be willing to apologize to them for the way in which they have been treated and working forward, even reengaging with Mr. Holding's inquiry about doing your best to influence the U.S. attorneys in these cases? But would you be willing to apologize to these people on behalf of the IRS?

Mr. Koskinen. Well, I am not allowed to know any of the details of individual cases, which is appropriate, so I can't talk about individual cases. I can assure you --

Chairman Roskam. But you have notice about who our witnesses are. So I am not asking you to disclose anything, but you know their stories are public and they have been aggrieved. There is no question, right?

Mr. Koskinen. There is no doubt about that, and I regret -- we take, as the mission statement says, very seriously our responsibility to taxpayers. The IRS does have a lot of enforcement powers. Even when you get a letter from us, it is

not a fun day in your life, and we try to take and balance that as much as we can. We pulled together early last year a taxpayer bill of rights to try to let taxpayers know --

Chairman Roskam. But, I mean, just so we are clear --

Mr. Koskinen. So my sense is, going forward under this policy, we should not people in the circumstances of the witnesses following us. And that is the goal for the policy. To the extent that people have gotten wrapped up in this system and it has taken too long to resolve it, I regret that. That is a problem with the system. The question was asked, shouldn't there be a way for people able, however they got there, to come in quickly? Fourteen days may be a little short, but there ought to be a way efficiently for people to be able to come in and make their claim.

As I say, 60 percent of the people just disappear who are the criminal types who we are chasing. But even with the policy, I do think that we ought to make sure that there is a way for people efficiently and quickly to be able to say, Well, okay, there is an allegation of criminal issues or, in fact, if some agent doesn't follow the policy, to be able to come in in a reasonable period of time and be able to make their case without hiring lawyers, without waiting for a year or 2 --

Chairman Roskam. Mr. Commissioner --

Mr. Koskinen. -- are out of the question.

Chairman Roskam. The IRS grabbed these taxpayers by their throat and squeezed them and squeezed them and squeezed them

without mercy and nearly ruined them and made their lives miserable. Would you be willing today on behalf of the IRS to apologize to those taxpayers who were so abused?

Mr. Koskinen. Anyone who actually was not engaged in structuring, was not engaged in processing and laundering illegally gained funds who ended up stuck in the system, some of it beyond our control, I think, deserve an apology.

Chairman Roskam. And would that apology come today from you, the Commissioner of the IRS, to them?

Mr. Koskinen. I would apologize for anyone -- not just in this area -- anyone who is not treated fairly under the Code I apologize to. Our goal is to make sure that taxpayers in all circumstances are treated fairly; they are treated the same way. It goes back to the issues about determinations for (c)4 cases. I have said from the start, I apologized there for anybody who got caught up in those delays.

Taxpayers have to be comfortable they are all going to get treated fairly, the same way as anybody else, no matter who they are, what organization they belong to, who they voted for in the last election. If you hear from us or if you are dealing with us, you should be comfortable you are going to be treated the same way and fairly as everybody else.

And to the extent that the system makes mistakes, we should recognize those. And I am sorry the mistakes happened, if they happened, and I am happy to apologize to say if taxpayers have

gotten themselves into a situation that is not their fault, they are not consciously structuring and avoiding taxes -- there are a lot of people out there structuring to avoid letting us know what they earned. If they paid their taxes, they weren't doing anything consciously illegal and they got wrapped up in the system, that was a mistake and I apologize for that.

Chairman Roskam. So, to be clear, it is your intention to have the new policy reduced to writing and part of the manual within the next quarter?

Mr. Koskinen. It will be by the end of this quarter, and as I say, we have instructed agents already. This is a policy that has not been under -- you know, quietly done. It has been in the press. We have talked to our offices. Again, with Congressman Holding, if somebody is not following that policy, that is a mistake. And while we don't hold people and measure their progress by how much they collect, we do measure their progress by following our policies. We have terminated a large number of employees every year who don't follow the policies and procedures because we take them very seriously.

Chairman Roskam. Once it is in the manual, the new policy, for example, would it be within the discretion of the next IRS Commissioner? Let's say that that person had a different disposition than you, would they have the authority to go back and revisit that and say, Look, we are going to move back into this legal-source approach?

Mr. Koskinen. You could do that.

Chairman Roskam. So that would require a change in the statute to remedy against that?

Mr. Koskinen. You have got me for the next 3 years, and then, thereafter, you might need to deal with the statute.

Chairman Roskam. I just want to follow up on one thing that you mentioned to Mr. Meehan, and that was, you said that we don't settle. We, the IRS, are not involved in the settlement process.

Mr. Koskinen. Unless you come in in that short administrative period.

Chairman Roskam. So what is that time period?

Mr. Koskinen. Somebody will tell me, but it is about 30 or 35 days. The statute is set up so you can come in administratively to the U.S. attorney and the IRS. Otherwise, it goes -- you file a claim in court. A large number of people go straight to the court if they are going to do that.

The number of cases in 3 years, I asked about that, I think we have had seven who showed up in that timeframe making the case. And, in fact, in five of them, it turned out there was evidence that there was a criminal violation, and so there was no settlement. So the discussions about people settling their cases and giving up large amounts are discussions that don't take place with the IRS as a general matter.

Chairman Roskam. Commissioner, I think you have heard from both sides of the aisle here and you have heard a great deal of

concern. The stories that we are going to hear in the subsequent panel -- and I know you have another commitment and you are not able to stay -- but I would commend you to have your staff summarize those stories in their actual accounts, because the agency that you are now tasked with heading, you are now tasked with leading, has basically come off like Inspector Javert -- you know what I mean -- with very little flexibility, very little concern and, as Mr. Rangel said, you know, looking within the four corners of the document without looking at the totality of the situation.

So I appreciate the exchange today and your willingness to come and spend time with the subcommittee, and we look forward to continuing a dialogue with you in the future.

Mr. Koskinen. Well, I appreciate it, and I appreciate the discussion. As I said, this is an important matter. We take it seriously. I think the concerns are legitimate and appropriate. It is part of what drove us to the policy that we will continue to follow and deal with. And I think taxpayers, as I say, again, your point is they need to feel they are going to get treated fairly and appropriately.

And somebody early on noted, I do distinguish -- and we do as an agency -- if you are trying to become compliant, across the board, we are anxious to work with you. You don't have to hire somebody off late-night TV. We are going to try to work with you. It is the people who are consciously deciding they are going to cheat, they are going to avoid taxes, they are going to

participate in criminal ventures that we should be applying our resources against, and we are trying to make sure that that is the division that is made.

And so we are, as I say, we have a taxpayer bill of rights we went out of our way to provide to taxpayers to make sure that they understand that they are an important part of our process and we take their rights very seriously.

So I appreciate the discussion and the conversation.

Chairman Roskam. Thank you, Commissioner, for appearing before us today.

Members are advised that they may submit written questions to be answered later in writing.

Those questions and your answers would be made part of the formal record of today's hearing, Commissioner.

And as the Commissioner knows, I wrote seeking information about the IRS' contract with CGI. Thanks for the response we received on Monday, and I note that there are a number of items that are missing, including the documents requested. Would you and your staff be willing to work with us to satisfy the document request?

Mr. Koskinen. Yes, in fact, we hope to satisfy without any further work. It just takes a little longer. And I wanted to get a response back to you quickly. And we will get you all of those documents, and we will make sure that your staff are comfortable that they have got everything you asked for.

Chairman Roskam. Thank you.

We will now turn to our second panel.

Thank you, Commissioner.

Mr. Koskinen. Thank you.

Mr. Rangel. I want to thank you so much for bringing up these things that happen to innocent people. It seems as though that Congress gave them the authority to do these vicious things against people who never intended to violate the law. So, even though your question is, could another Commissioner change it, I think maybe on the suspension calendar, we could correct this and make certain that nobody without criminal intent be subject to this type of behavior. But I want to congratulate you for bringing it up.

Chairman Roskam. Thank you. I think that there is a lot of interest, Mr. Rangel, on this issue across the spectrum. And I am committed to working with you and others to make this right.

Mr. Sowers, Mr. Hirsch, Mr. Clyde, and Mr. Johnson, thank you for your time today. The committee has received your written statement and it will be made part of the formal hearing record. You will be recognized in sequential order, and you have 5 minutes to deliver your oral remarks.

Mr. Sowers, you may begin when you are ready.

STATEMENT OF RANDY SOWERS, OWNER, SOUTH MOUNTAIN
CREAMERY, MIDDLETOWN, MARYLAND

Mr. Sowers. Good morning, Mr. Chairman, members of the committee --

Chairman Roskam. Mr. Sowers, why don't you pull that mike a little bit closer to you. And is the light on down below?

Mr. Sowers. Okay. It is on.

Good morning, Mr. Chairman, members of the committee, and thank you for inviting me this morning to testify. It gets me out of the cold. Two months working in the cold, it is kind of nice being warm a little bit.

My name is Randy Sowers, and I am a dairy farmer by trade. My wife of 40 years is here with me today. We started farming in 1981. Our parents weren't farmers. We started on our own. We had one -- or two children. One of them is still on the farm with us.

We did rent a farm in Frederick County and, later on, in 1987, got to buy that farm. Farming is a tough business to be in and many a time almost to the verge of not being able to make it. But we are here. Twenty years after we started, we invested \$1 million and built a processing plant. We process milk and home deliver it to more than 8,000 customers in the Greater Washington

area.

So that brings us to why we had this cash we were depositing, because to promote ourselves, we would do farmers markets. That got us out there, give people samples, sold them our products, told them who we were. And we got a lot of cash at the time. We were doing five or six markets a week. In the beginning, the cash just got deposited kind of with the rest of the income from our business.

This year -- it was 4 years ago, I think, I am not sure about the date, but -- and we are vertically integrated. We do everything from start to finish. All of our animals we raise ourselves. We produce all of the milk, the meat, beef, pork, whatever we sell, and distribute to the people. But this year -- or 4 years ago, my wife went to the bank one day, and she had \$12,000 in cash because we do a festival. So we had a little bit of extra cash that week. And when she went to deposit it, the teller told her, Well, next time, just keep it under \$10,000, and I don't have to fill out a form. So that is what she did. Not that it was normally more than 10. I mean, it was in that neighborhood, but she has to keep cash on hand for those five markets to have, you know, money to give people when we make change. So that is why it didn't all get deposited, and most of the time, it wouldn't have been over \$10,000.

But the markets we do now, we leave at 3 in the morning and go, but that is actually a late time for us because we usually

get up 12:30 every morning and milk. And we have both been up milking cows every day since the 1st of November. So a 12-hour day for us is a short day. Anyway, we had the Treasury Department show up one day. And I thought one of these days, they would probably show up and want to know where I was getting the cash.

I never thought about it. Our lawyer was there, and he had just left. I tried to call him back, and he didn't come back. So I didn't think it was a problem, and I just talked to these people. And they did as me questions. The two agents were pretty good. I didn't have a problem with those guys. I think they saw right away we weren't criminals, and they pretty much said that.

But he said, you know, we took your money. I said, what? Yeah. We seized your money. And, you know, I was really taken aback by that. I couldn't believe, you know, they would just come in and take my money with no prior notice. And we thought it was going to be easy to remedy this thing because we gave them what they needed. I mean, my wife wrote down every week what we got from the farmers markets, and that is how we reported it. And we turned that in. That is what they wanted. They wanted some other things, and we turned it in right away.

But it seemed like when my lawyer talked to the Justice Department that they thought, too, it wouldn't be a big problem, that we would settle this thing and, you know, he would throw a number out and we would throw a number out. And I was down at my neighbor's doing a job one day, and I got a call from a guy

from Baltimore City Paper. And he wanted to ask me questions about this case because he saw it come out of the docks in Baltimore.

And I said, Well, my lawyer don't want me to talk to anybody about this. But he said, Well, I am going to do the story. It don't look good on your part, so it is up to you whether you want to tell me the story. I was itching to tell somebody the story anyway. So I told him the whole thing, and he did a beautiful job in the paper of explaining what had happened.

Well, it seemed to be after that that my lawyer was talking to the guy from the Justice Department and things had changed then. He said since, you know, I went to the press, then we were different than most people, and he was going to, you know -- we were going to have to pay what he wanted, and there wasn't going to be any question about that.

So we finally settled for \$29,000. I mean, they took 66, and actually they took some more they weren't supposed to take, but that is where it ended. And we thought it was done. But after that, they did send IRS out to talk to my accountant, asking him different questions that we didn't, you know, understand. And my accountant said that they told him that he shouldn't tell me that they had contacted him.

So I thought the government was supposed to protect me. I didn't think they were supposed to come out and try to put me out of business, because that is what they could have done easy enough. And we are just hardworking farmers. I mean, we don't

have time to be criminals. We have got a thousand animals to take care of. And, you know, we have to take care of them. And that is what we do. And we love doing it. That is why we do it. We wouldn't do it if we didn't love it. It is too tough a job.

So I think the Government ought to give my money back. And I want to thank my lawyers that did help and took a little bit of the pain away. I mean, it was kind of tough sometimes getting some sleep when you know they could charge you with a felon -- as felons, and some people have been charged with that when they fault them.

Chairman Roskam. Well, thank you, Mr. Sowers. That is very, very helpful and we appreciate it. And I know that our members will have a number of questions for you and further inquire.

Mr. Sowers. Thanks a lot.

[The statement of Mr. Sowers follows:]

***** INSERT 2-1 *****

Chairman Roskam. Mr. Hirsch.

**STATEMENT OF JEFF HIRSCH, OWNER, BI-COUNTY DISTRIBUTORS,
RONKONKOMA, NEW YORK**

Mr. Hirsch. Good morning, Chairman, and members of the committee. My name is Jeff Hirsch, and I am the owner of with Bi-County Distributors with two of my brothers. We sell candy, tobacco goods, and paper goods. On May 2012, we went to the bank that morning, and the teller said that our account was frozen. Me and my two brothers didn't know what was going on. We made phone calls. And, finally, we got a letter later that day stating our account was seized by the IRS.

So we made phone calls and we called this Detective Kearns that was on the letter, and we asked him, What Is going on? We are doing nothing wrong. And he said to contact an attorney because I asked him to come on down, take a look at my operation. And he wouldn't come down to take a look. So we contacted an attorney in New York City, and Mr. Potashnik, and he was working on the case for 2 years.

And he was getting frustrated because he kept making phone calls. They gave him the runaround. We met with them twice with this district attorney. And it just looked like they were fishing for anything they could. And there was nothing there. So he advised me to hire a forensic accountant. So we did. We hired

Baker Tilly in New York City, and they did our books for 2011 and half of 2012. And they came back with the clean bill of health. It was a 40-page report. And still they wouldn't give us back our money.

It was getting very frustrating. It has been 2 years and 9 months. We finally settled with them -- with the IRS -- January 20 of 2015. They are giving us back all our money. And, as of today, we haven't received it in the bank account. So we are still waiting.

But, in the meantime, they were just, in the 2 years 9 months, just giving us the runaround. And after 2 years, Mr. Potashnik just didn't know what to do anymore. And we found the Institute for Justice. And they handled our case.

It is an embarrassing moment when you have got to go to your vendors, and you ask them to extend you more credit for the week. And I have been in the business 27 years. So they all know me. They know what type of business we are running. They know we are honest people. So a couple of them have been helping us out for the 2 years and 9 months. And we still owe these people money. So the money that we are receiving from the Government will be going back to these vendors.

So I just hope that nobody in this country or person has to go through something like this. It is embarrassing. You really can't put a word for it. It has just been a long 2 years, almost 3. Thank you.

Chairman Roskam. Thank you, Mr. Hirsch.

[The statement of Mr. Hirsch follows:]

***** INSERT 2-2 *****

Chairman Roskam. Mr. Clyde.

**STATEMENT OF ANDREW CLYDE, CEO, CLYDE ARMORY, BOGART,
GEORGIA**

Mr. Clyde. Thank you, Chairman, Honorable Members of Congress, thank you for the invitation to tell my story. I am Andrew Clyde. I own Clyde Armory, which is a small Federally licensed firearms store owned in Athens, Georgia. On Friday, April 12, 2013, two IRS agents showed up at my door and served me with a seizure warrant saying that they had already taken \$940,313 from my company's bank account that morning, which was most of what I had.

I started Clyde Armory in my home in 1991. I worked hard and put in long hours to grow the company. I hired my first employee in 2002, and today we have 25 employees. I have been blessed to live the American dream. In 2003, I made my first combat deployment to Iraq as a Navy Reserve, and those employees carried the business while I served.

In 2004, I obtained my first insurance policy. That policy had a \$10,000 cap for covering my loss of cash outside the business. To date, my insurance policy has the same \$10,000 cap. To reduce risk, my company policy on carrying cash to the bank mirrors my insurance policy.

In late 2012, the President proposed new gun laws. During

the following 5 months, we experienced incredible sales with much of it being in cash. That meant we took in over \$1 million in cash. We also helped my company policy of not depositing more than \$10,000 in cash in the bank at any one time. At the IRS agent's deposition, he acknowledged that there was no floor for a structured transaction. That meant any deposit under \$10,000 could be considered structuring. For us, it was as low as \$1,628.

When the agents visited me, I had no idea what the term "structuring" even meant, and I had no knowledge that there was a law that prohibited structuring. The agents educated me on structuring and also told me that it was a felony -- a felony. Yet, if they were right, I would lose everything I had worked for because you cannot have a gun business and have a felony.

The seizure had the potential to devastate me. The timing was 3 days before April 15, when my 2012 taxes and 2013 estimated taxes were due. After I had paid both tax bills and my next employee payroll, I had no money left to run my business. By the grace of Almighty God, I was able to borrow \$80,000 from my banker at Wells Fargo to keep my business alive. I immediately canceled the product orders that I could and also canceled our new computer system. If the business did not survive, then neither would my employee's jobs. And they had families too.

At the initial meeting with the Government, which was 6 days later, my accountant and attorney showed them that this was all legal money and properly reported. But the Government already

knew the money was clean, but that didn't matter because in their interpretation of the law, it makes no distinction between legal or illegal cash. And the Government wasn't going to give it back, not at least without their cut.

On May 7, in an email to my attorney, the Government said, and I quote, "I have authority to resolve this case by forfeiting \$325,000 to the United States and returning the balance to your client. This offer to resolve the matter already takes into consideration Mr. Clyde's contention that the cash was legitimately earned and that appropriate withholdings were made, two matters that we will not challenge."

Despite acknowledging in writing the cash was legitimate, the Government still attempted coercive tactics saying that I could be criminally prosecuted for the misdeed. They also said that if a suit was filed, it could ruin my reputation in the community; and that if anything was found out during discovery, it could easily change to a personal criminal case against me. The clear intent was to force me to cave, and I refused.

Again, by the grace of God, we got a hearing on July 22, and the judge exercised creativity to force the Government to return \$440,000 of my funds. While the amount allowed me to immediately buy inventory for the hunting season, it was not a long-term fix. I needed the remaining \$500,000; 3 days before the trial, I forfeited \$50,000 to settle the case. It was my tactical retreat so I could live to fight another day.

I did not serve three combat tours in Iraq only to come home and be extorted by my Government's use of civil forfeiture laws, but that is what I feel they have done to me and I need you to stop it from happening to anyone else. When I asked the U.S. attorney why he was doing this, his response was, I am just following the law. So he laid the responsibility right at the feet of Congress. So I am here to ask you to change the law and prevent them from ever going after legal-source money again and then restore those of us who have been abused.

Honorable Members of Congress, you are our last remaining line of battle. Thank you for the invitation to tell my story.

Chairman Roskam. Thank you, Mr. Clyde.

[The statement of Mr. Clyde follows:]

***** INSERT 2-3 *****

Chairman Roskam. Mr. Johnson.

**STATEMENT OF ROBERT JOHNSON, ATTORNEY, INSTITUTE FOR
JUSTICE, ARLINGTON, VIRGINIA**

Mr. Johnson. Thank you, Chairman Roskam, Ranking Member Lewis, and members of the subcommittee. Thank you for inviting me to testify today about the IRS' use of civil forfeiture to take money from honest, hardworking, small-business owners. Nothing I can say can speak as powerfully as the stories of the other members of the panel, but I want to begin by putting their stories in some context based on information that we received from the IRS through a Freedom of Information Act request.

Between 2005 and 2012, the IRS seized money under the structuring laws in 2,500 cases. The IRS seized \$242 million from Americans under the structuring laws. And a the third of cases, the IRS reported that it suspected no criminal activity other than the mere act of making sub-\$10,000 cash transactions.

Now, the Commissioner referred, in his testimony, to protections that are available by law, but those protections are less robust in practice than the Commissioner may believe. It is true that before money can be seized, it is necessary for a law enforcement officer to fill out an affidavit. And this affidavit is often filled out by local law enforcement officers working as part of joint task forces with the IRS. They are

exercising Federal law enforcement activity, a law enforcement authority that has been delegated to them by the IRS, but these are local police officers filling out these affidavits.

And what they will allege in the affidavit is a mere pattern of sub-\$10,000 deposits, and that is the only information that is in the affidavit. The mere fact that there is a pattern of sub-\$10,000 deposits over a period of time. Before bringing that affidavit to court to seize property, they give no warning to the property owner. There is no notice that the property may be seized. And there is no meaningful investigation that is conducted to determine if there might be some legitimate business practice explaining that pattern of sub-\$10,000 deposits.

Now, when that warrant application was brought to a magistrate judge, that is an ex parte proceeding, meaning that there is no opportunity for the property owner to present a defense to explain why they might be depositing money in the bank in amounts under \$10,000. In many cases, people have all kinds of reasons that they are depositing money in the bank in those small amounts.

It may be the case that there is an insurance policy that only covers up to \$10,000. Or, in many cases, people simply are told by their own banks that sub-\$10,000 deposits are easier for the bank; they avoid paperwork burdens. Banks may even close people's accounts if they make frequent deposits over \$10,000 because that creates a burden for the bank. So there is no serious

investigation to determine whether those explanations may be present, and there is no opportunity to present that defense at the hearing before the seizure.

Finally, once the seizure has happened, property owners simply must wait. The law does establish deadlines: 30 days -- 60 days to file an administrative hearing, and then 30 days after that, you can file a claim. But those deadlines are routinely disregarded because the law provides no meaningful enforcement mechanism to ensure that they are actually followed, because if the Government doesn't follow them, although it is required to return the property debts without prejudice to take in property again at a later time.

The reality, as a result of this, is that property owners simply are forced to settle. Some statistics that underlie those facts. Of the \$242 million seized between 2005 and 2012, \$116 million of that was not forfeited by the IRS. What that means is that the IRS is seizing substantial amounts of money that it ultimately cannot justify keeping.

The Commissioner also mentioned the policy change. I think it is important to underscore that that policy change includes this loophole for exceptional circumstances. And the Commissioner made clear that it will be considered exceptional if there is a pattern of deposits over a long period of time. And that is something that we see in almost all of these cases. So almost every case here today, I think every case here today

would qualify as exceptional under that new policy.

I thank you for inviting me to testify and welcome your questions.

Chairman Roskam. Thank you, Mr. Johnson.

[The statement of Mr. Johnson follows:]

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Chairman Roskam. On the majority side, we will go to Mr. Marchant.

Mr. Marchant. Thank you, and thank you for traveling to Washington today and sharing your story, each one of you.

I think what I would like to do, many of you have already discussed some of these facts in your opening statement, but if you would go down the line, starting with Mr. Clyde, and answer the following questions: How much money did the IRS take from you? How much did you get back? How long did it take you to get it back? How much money did you spend on lawyers and accountants?

Mr. Clyde. Okay, sir, they took \$940,313 from me. It took me right at 5 months to finally get it back. At the 4-month mark, we had a judicial hearing, and I got \$440,000 back. And then, right before the trial, because the judge gave me an expedited trial because that was the only way he could get me money back was through an expedited trial, 3 days before the trial I gave up \$50,000 to get my other \$450,000 back. It cost me, including the forfeiture, the \$50,000 forfeiture, in pre-tax income, it cost me \$149,336 to defend myself.

Mr. Marchant. Okay. Thank you.

Mr. Hirsch.

Mr. Hirsch. They took \$446,000 out of the bank. It took us 2 years, 9 months to get it back, and we are still waiting to get it back. We settled with them. We didn't have to give them anything because we did nothing wrong. We proved that.

And what was the last?

Mr. Crowley. How much did it cost you?

Mr. Hirsch. It cost us, between accounting and lawyer fees, about \$60,000 and also we had to break a \$50,000 CD to keep the business running, and we had to lower our inventory so we could keep this business still going.

Mr. Marchant. Thank you.

Mr. Sowers.

Mr. Sowers. They took around \$62,000, but at the time, they told me that I could use that account and nothing would happen to it. But my wife had made another deposit of \$5,000 after that, and the bank sent that to them too, so I guess it was actually \$67,000. I don't think it took much more than 4 or 5 months to get it back. I don't remember. It has been 4 years ago.

At that time of year, our sales are down in our home delivery businesses and we are putting out crops. So it was kind of tough not having it. But people know me. In farming, sometimes they will hold off for their money. So we did all right on that one.

My lawyer I have on a retainer anyway. So he pretty much had to do the work because we already paid him. Anyway, our accountant, I am sure he charged me for what he did, which wasn't much because we had the information they needed to show what cash we actually were taking and we weren't evading taxes or anything like that.

Mr. Marchant. So did each one of you, just the mechanics

of this, you then had to go set up another operating account in your bank. You couldn't continue to operate that account. Did they close your physical bank account down or just take the money out of it?

Mr. Clyde. They just took the money, sir.

Mr. Marchant. So you could immediately go back to that same account and continue to do business out of that same account?

Mr. Clyde. That is correct, we could.

Mr. Marchant. And the same with all of you?

Mr. Hirsch. Same.

Mr. Sowers. Actually, the account we were depositing money in was in a different bank than we normally use, and for some reason, that summer, it seemed like we were doing a little bit better. And we were trying to put some money back. So we were putting it in that account trying to, you know, hide it a little bit. So it wasn't our main account. If it would have been, we would have been out of business because there was probably \$168,000 to \$200,000 on that account, which we pay employees and everything else out of it. So it actually was good that they --

Mr. Marchant. Were you given assurances by the IRS that you could go back and continue to make deposits and they would not be back a week later or a month later to do exactly the same thing?

Mr. Clyde. No, sir, I had no assurances of that. In fact, I asked them that that exact question: What prevents you from doing this? Nothing.

Mr. Marchant. So it was very disruptive to your business --

Mr. Clyde. Incredibly.

Mr. Marchant. -- to your psyche, to know that you --

Mr. Clyde. Yes, sir.

Mr. Marchant. In fact, a lot of people would respond exactly the opposite and then try to arrange things where they could not find the money and seize it, which seems to be very counterproductive.

Mr. Clyde. Uh-huh.

Mr. Marchant. Thank you, Mr. Chairman.

Chairman Roskam. With leave of Mr. Lewis, we will go to Mr. Crowley.

Mr. Crowley. Thank you, Mr. Chairman.

Thank you, Mr. Lewis.

Firstly, let me say that I have great empathy for all of you and what you have gone through.

And, Mr. Hirsch, I was going to offer to interpret for you for my colleagues, given that wonderful New York accent. You seemed to have pulled it off on your own.

In your testimony, you made reference to the fact that the IRS began an auditing of your business in the middle of your dispute with the IRS. Is that correct?

Mr. Hirsch. Yes. When we were trying to settle this, the 2011 case, in July 2014, they decided to audit my 2012 books, which they already knew that half the year was already done through

the forensic accountant that came out with the clean bill of health. So it is like a little salt in the wound. And we are still going through that today, and everything looks like it is going good on it.

Mr. Crowley. So the audit is continuing? In other words, the IRS continues to audit you --

Mr. Hirsch. Yes.

Mr. Crowley. -- even though they have come to settle with you, they indicated to you they are going to return to you the moneys that they took from you, correct?

Mr. Hirsch. Right. So they are auditing the next year, so it was 2011, they took, you know, the money they took. So 2012 is the audit right now.

Mr. Crowley. I thought it was an interesting question what my colleague asked, and I had a similar question, that was the expense that it cost you. In other words, you said it was about \$60,000?

Mr. Hirsch. Yes.

Mr. Crowley. Overall, including in terms of the CD lost and the penalties paid and the attorneys' fees?

Mr. Hirsch. That was without CD.

Mr. Crowley. Attorneys' fees?

Mr. Hirsch. The attorneys' fees and the accountant feeds came to about \$60,000. And then there was the loss of the CD, which was \$50,000.

Mr. Crowley. And you had to lower your inventory, and that had an affect on your business itself?

Mr. Hirsch. Yes, it made it work a little harder. We put in a 12-hour day right now. So instead of 12 hours --

Mr. Crowley. It affected your profits and your ability to employee people?

Mr. Hirsch. Yes. We have a part-timer. So it is me, my two brothers, and a part-timer, four of us.

Mr. Crowley. In regards to what you said the IRS took and what they have agreed to repay you, you have yet to receive that money back. Is that correct?

Mr. Hirsch. Right.

Mr. Crowley. Have they given you any indication of what date you ought to expect receiving that money back?

Mr. Hirsch. No, not --

Mr. Crowley. So really, in theory, they have indicated they are going to give you money back, but they still hold onto that money?

Mr. Hirsch. Right.

Mr. Crowley. And you are not receiving any interest, nor is the company receiving interest, on the money they are holding from you right now?

Mr. Hirsch. No, we had to sign an agreement with them that we wouldn't collect any interest on it.

Mr. Crowley. Okay. I think that is something of interest

as well, I think, to the committee as well.

As I said, I have empathy for you all.

Mr. Sowers, my in-laws are from Montana. You remind me very much of folks, the farming family, the ranching family, you remind me very much of those folks as well. You describe the work as hard, arduous. It is something you love, and it is what keeps you going. So I appreciate what you do, what the American farmers do for your country. I don't think you, nor any of the gentlemen before us today, deserve to be treated by your Government, by the IRS, in the way in which you have been.

I think, Mr. Chairman, we should also look at the possibility of when someone who is innocently accused and moneys are wrongfully withheld and it has been adjudicated and the IRS has been found without cause to having held their resources, that the responsibility ought to be on the Government to pay not only back the resources withheld with interest but also any legal fees that those individuals went through because that in and of itself can decimate a small business -- as the gentleman, Mr. Clyde from Georgia, had mentioned, the ability to make payroll, the ability to do everything one has to do to maintain a business. That is something I think we should be looking at as well in terms of any legislation moving forward. I would be happy to work with you on that as well.

And I thank the gentleman for yielding me the time.

Thank you, all.

Chairman Roskam. That is a great point, and, you know, the irony is the IRS charges interest.

Mr. Kelly is recognized.

Mr. Kelly. I thank the chairman.

I thank you all for appearing.

Mr. Sowers, you look like a lot of the people I represent back in western Pennsylvania.

And, Mr. Clyde, I hear the way you are talking about what happened to you and Mr. Hirsch. There is a family called the Logan brothers that did the same type of business in my town. They have all passed, but they were very big in our town because they just constantly reinvested in the community and did a lot of things from a charitable standpoint.

But I think the real story here today is how it affected you as an American citizen. You have been violated by your government in something that you have trusted in all your life and thought to be true. All of a sudden, you find out that those same people are the people now that are coming in. I think sometimes the confusion is, who do we represent? I do not represent the United States Government. I represent 705,687 people from Pennsylvania's District Three. I don't know if they are Republicans, Democrats, independents or people saying, I don't care, just leave me alone.

I have watched you. The Harpster family up near State College does what you do. I have got so many people that do what

you do. I am an automobile guy. And one of the things I went through was having a dealership taken from me by the Government, not because I couldn't meet the standards, not because I didn't have the money, but because they decided to do that. They cost me \$60,000 and over a year of not being able to sleep and then going through Cash for Clunkers while the Government was holding \$700,000 of my money.

But they said, Well, we will get it to you when we can get it to you. That was all money that I had to use to pay off my lender because the product that I sold was collateral and had to be paid in full. Just from your experience, wouldn't you like to just sit across from somebody or somebody that comes in from the Government that talks to you that has actually walked in your shoes, as opposed to saying, Look, I am just following the law?

I mean, this is an incredible violation of you as an American citizen. And I get tired of people come in from Government agencies saying, Oh, listen, you don't understand how it goes. I said, I do understand how it goes; you don't.

After what you have been through. And you have talked about how much money you lost, but what about your loss of faith in the Government?

Mr. Sowers. Loss of what?

Mr. Kelly. Faith and belief.

Mr. Sowers. I don't deposit cash in the bank anymore. I won't.

Mr. Kelly. You, Mr. Sowers, if you came in -- people that I represent back home, they will come in and buy a car and say, you know what, Kelly, talked to the wife, we can afford about \$225, \$230 a month. What would I have to put down to keep that payment there? God help me if I say to them, you know what, you have got to put down about \$12,000 in cash. They will say, so if I put down \$12,000, I can save about two and a quarter, two and a half? Yeah, you can do that.

You know what I have just helped them do? I am involved in a structuring. By you coming to me and telling me what you can afford and me telling you, I got to say, Hey, listen, you know what, Sowers, you kind of do what you want, you know where the payment is. And I can't tell you this at the time. If you come in and you give me a check for \$10,000 or give me cash for \$12,000 or whatever it is that you give me and I put it toward the deal to structure a deal that makes sense for you and the missus. To meet all your obligations, I have got to file this form 8300, which is affectionately called -- this is incredible -- a suspicious transaction.

I am going to tell the United States Government, I have got a dairy farmer who wanted to keep his payment down and I didn't really tell him, I told him, you know, at some point, I probably have to report this, but I have got almost a year to do it. But you go ahead if you want to do it, but I can't say that I helped you with. I mean, I don't know that the general public understands

what it is, and listen, I have been in front of Mr. Koskinen before. If you have never been in that person's shoes, you have no idea -- between sleepless nights and wondering about how you are going to meet your obligations.

Now, you were all able to go to your lenders. Why did they extend your credit? Because they knew you. Isn't it amazing that the people you do business with every day know you and trust you but your own government does not and is willing to shut you down because of a suspicious transaction.

Mr. Clyde. Yes, sir, that is correct.

Mr. Kelly. Absolutely incredible. What I go back to is I think the main loss here is the loss of faith and trust we have in a form of government that is the gold standard for the world, but yet we are violating our own citizens on an everyday basis and asking them to say, Hey, listen, still believe in me, still believe in me, still believe in me. You have got to feel like David going against Goliath. And you talk about how -- but you know what, Mr. Goliath, the IRS has unlimited resources to fight you.

Mr. Clyde. Yes, sir.

Mr. Kelly. You are limited by what you can do. So when they say, Listen, we are going to work with you on this -- what you had to settle for, you had to give up money to get them off your back. You know why? Because as soon as it starts, the meter is running. And I have dealt with a lot of great lawyers who have

helped me through a lot of great problems, but it has always been at my expense; their time, my money.

I applaud you for coming. You know, most people won't do what your doing. In fact, my son is back home running the dealership right now. He says, "For God's sake, Dad, quit talking about the IRS. Next thing is they are going to be in here." And I say, Hey, Brandan, if they come in, that is okay. We will still fight them tooth or nail. I had to fight to get the damn dealership back from the Government to begin with, and we already were meeting all the expectations.

So I know what you are doing. I know who you are fighting. I know where your hearts are. I thank you for coming here today. You are truly brave people, and you are the real patriots. Thank you.

Chairman Roskam. Ranking Member Lewis is recognized.

Mr. Lewis. Thank you, Mr. Chairman.

Mr. Chairman, I want to thank all of the witnesses for being here today. Thank you, as a previous speaker said, for being courageous and being very brave to be here. I know you are taking time from your work. You are hard-working and very busy people.

Mr. Clyde, I see that you are from the great State of Georgia.

Mr. Clyde. Yes, sir.

Mr. Lewis. I want to welcome you. You are from a great city, Athens, where the University of Georgia is located.

Mr. Sowers, I know you are a great farmer. I grew up on a

farm. I am very sympathetic to the predicament you find yourself. I grew up on a farm that my father bought in 1944 when I was only 4 years old, but I remember. They bought 110 acres of land for \$300, and we still own that land today. It was very hard work grabbing peanuts, picking cotton, pulling corn. And I used to fall behind when I was out there picking the cotton and gathering the peanuts. And my mother would have said, Boy, you are falling behind. And I would have said, This is hard work. And she would have said, Boy, hard work never killed anybody. I said, Well, it is about to kill me.

Now, also, on the farm, it was my responsibility to care for the chickens. And I fell in love with raising chickens. And as a little boy, I wanted to be a minister. So, from time to time, with the help of my brothers and sisters and cousins, we would gather all of our chickens together in the chicken yard. And my brothers and sisters and cousins would line the outside of the chicken yard, and I would start speaking or preaching to the chickens.

And so I am interested in knowing, did you raise any chickens?

Mr. Sowers. I have 17,000.

Mr. Lewis. My God. That is a very large congregation. I know you don't try to baptize any of those.

Mr. Sowers. Maybe. Chickens are certified humane, free-range, everything everybody wants.

RPTR MAAR

EDTR SECKMAN

Mr. Lewis. That is wonderful. And let me just ask you, has anyone from the IRS, except for today, has anyone, Mr. Clyde, Mr. Hirsh, Mr. Sowers, ever said I'm sorry, we made a mistake, we made a blunder?

Mr. Sowers. As I said, the two agents that showed up, I think they were apologizing a little bit. They knew what was coming down the line and even though they knew there was no intent. But they said now that it is this far, it has got to go the rest of the way. They didn't say they were sorry. But I think they were, you know, they knew what I was going to have to go through.

Mr. Lewis. Mr. Hirsch?

Mr. Hirsch. No, no one ever said they were sorry to us.

Mr. Lewis. Mr. Clyde?

Mr. Clyde. No, sir. No one ever said they were sorry to me.

Mr. Lewis. Well, as one Member of Congress and a member of this committee, I want to apologize to you for what the, a piece of my government, what the IRS did to you. I wish you well.

I don't have any questions, Mr. Chairman.

Chairman Roskam. Thank you.

Mr. Meehan is recognized.

Mr. Meehan. A new appreciation for the foul conduct of the

IRS, I guess.

Mr. Clyde, I was sort of struck by your testimony. You have served our Nation in the Armed Forces. You took how many tours overseas?

Mr. Clyde. Three combat tours, sir.

Mr. Meehan. Do you have family, Mr. Clyde?

Mr. Clyde. I am single. But, yes, I have family, a mom and dad.

Mr. Meehan. So you left family back here operating the business while you were overseas?

Mr. Clyde. Actually, it was just my employees that operated my business.

Mr. Meehan. When you returned and you took this position and then you identified what went on with you, when the IRS agents came to speak to you and the U.S. attorney's representative came to speak to you, you described that you were leveraged in your negotiations.

Mr. Clyde. Oh, yes, sir.

Mr. Meehan. Can you explain to me what they said to you?

Mr. Clyde. Yes, sir. They told me that -- in fact, it is in the court transcripts -- they said that discovery hadn't been made yet. Okay. And if they found anything in discovery, that it could easily transition from a civil forfeiture case to a criminal case against me. And that came at least twice, after the first -- well, after each offer actually -- the first offer

of taking only \$325,000 as a forfeiture and then the second offer after the judge made them, forced them to give back 440 to me -- then the IRS offered to settle now only for \$109,000 this time -- both times the comment was made, And if we find anything else in discovery -- because discovery hadn't happened yet -- that we will, we can go against you criminally. Absolutely.

Mr. Meehan. Did you feel like a criminal?

Mr. Clyde. They made me feel like a criminal. But there is no way I am a criminal.

Mr. Meehan. If you resolved the case, did you have a concern that there may have been people that believed you were a criminal?

Mr. Clyde. Absolutely. Yes, sir.

Mr. Meehan. Did you ever talk to anybody in a supervisory capacity when you were being leveraged in that manner in the U.S. Attorney's Office about their demands that you consider that implication and resolve the case?

Mr. Clyde. The only contact we had with the U.S. Attorney's Office was through the assistant, one of the assistant or really two of the assistant U.S. attorneys.

Mr. Meehan. Well, it is reprehensible activity, Mr. Clyde. It is a violation of the code of ethics to be calling you a criminal to leverage a civil proceeding. And they did you wrong.

But, Mr. Johnson, you have walked through this process with numerous of these people. As an attorney who understands, what

needs to be proven in a circumstance like this to suggest that somebody has violated the structuring crime?

Mr. Johnson. Well, I think that is an important question because the law really does demand something more than a mere pattern of deposits. The structuring law applies to people who have a purpose of evading the bank reporting requirements established by the Bank Secrecy Act. And I don't think anybody on this panel had that purpose. I don't think anybody on this panel actually violated the law. Yet the IRS is pursuing them anyway.

It is true that the structuring law contains very few protections for property owners and can sweep up people who do not know that it is illegal to try to hide something from the Government and are hiding something simply because they don't want --

Mr. Meehan. So there is no mens rea, so to speak. It is just this is a strict construction of the fact that you just did this act. They don't have to demonstrate that you were trying to elude some oversight by virtue of doing it?

Mr. Johnson. The people who get swept up by the structuring law who actually may be guilty of structuring but who most people would say have done nothing wrong are people who simply don't want the Government knowing what they are up to. And most people would say that is not a crime. But under the structuring law, that actually is a crime. And these people have no idea that they

are potentially breaking the law. But, again, the people on this panel, that is not even their case. These are people who literally didn't even want to hide anything from the Government.

Mr. Meehan. Mr. Chairman, I have just a couple quick questions I would like to get a response to just so we can create a record. There is something called the Civil Asset Forfeiture Reform Act. It requires a response within 60 days. From your experience, does that happen?

Mr. Johnson. No. In my experience, the Government routinely disregards the deadline set by the Civil Asset Forfeiture Reform Act.

Mr. Meehan. Notwithstanding that there is a law that requires that that be done within 60 days, the enforcement act?

Mr. Johnson. Yes. The problem is that the law simply does not provide any penalty for the Government if it disregards those deadlines because any penalty that is provided is simply toothless.

Mr. Meehan. The law contemplates hardship hearings in circumstances in which it is available to individuals that are targeted under certain structuring laws, are those available to somebody who deals exclusively in cash?

Mr. Johnson. No.

Mr. Meehan. So you may have a circumstance in which, again, the hardship opportunity is not available to you because you run a cash business?

Mr. Johnson. Right. That is absolutely right. The hardship hearing would be available for any kind of noncash seizure, for most kinds of noncash seizures. But the law specifically says that there is no hardship hearing available if you are --the money, if it was cash that was seized.

Mr. Meehan. Certain procedures here have been identified by the IRS Commissioner in which he said he has told prosecutors and others that they may not bring these cases. But we have seen evidence that affidavits don't necessarily have to come exclusively from Federal prosecutors. They may come from State police officers. They may come from local police officers, is that accurate?

Mr. Johnson. That is accurate. And I think another important point to make is that those local, State and local officers have a financial incentive in the enforcement of the law because under what is called equitable sharing, 80 percent of the money that is seized by the Federal Government can be returned to local law enforcement agencies.

Mr. Meehan. Do you have secure a conviction to get the cash?

Mr. Johnson. No.

Mr. Meehan. Mr. Chairman, thank you.

Chairman Roskam. Mr. Holding.

Mr. Holding. Thank you, Mr. Chairman.

I want to thank the witnesses for being here to tell your story. It is incredibly important that the people know.

Mr. Johnson, right now if the IRS seizes your client's money, you can't get into court immediately to fight the seizure, correct?

Mr. Johnson. That is right. People have to wait months or even years. In Jeff's case, the Government held his money for over 2 and a half years and never gave him any hearing before any judge.

Mr. Holding. I was doing a little calculation, 974 days. That is a long time.

Mr. Hirsch. A long time.

Mr. Holding. And they still haven't given it back to you?

Mr. Hirsch. No, not yet.

Mr. Holding. Last year, former Chairman Camp and Ranking Member Levin introduced a bill that would allow people whose assets have been seized to contest the seizure on an expedited basis within 2 weeks. I am sure the victims here today would have wanted to be able to go to court in that expedited manner and contest their seizure.

So you, Mr. Johnson, as an attorney, representing folks who are in this predicament, do you think this would be an improvement over the current procedure?

Mr. Johnson. I think it would absolutely be a major improvement to allow people the opportunity for a prompt hearing, both to contest the seizure and also to present evidence of hardship.

Mr. Holding. And also, per the Commissioner, perhaps evidence that an illegal act hasn't been -- a predicate illegal act -- hadn't been committed under his new policy.

Mr. Johnson. I think it is important that the policy be codified into law so that it would actually be a defense in such a proceeding. As it stands, as the members of the commission have noted, it is simply a discretionary matter with the IRS. Also, as I was saying earlier, the exception for exceptional cases is so broad that it really makes the policy potentially meaningless in practice.

Mr. Holding. So, in addition to codifying that affirmative defense, can you think of some other ways that the law should be reformed in order to protect against abuses by the IRS of folks such as we have here today?

Mr. Johnson. I think one of the most important reforms that could be made would be to eliminate the profit motive that is inherent in civil forfeiture. When the IRS seizes money, that money goes into a dedicated fund that is then available to the IRS without any congressional appropriation, to fund law enforcement expenses.

What this means is that the IRS is seizing money from innocent Americans and it is using that same money to fund additional seizures. This creates a clear incentive for abuse by the IRS. And, at the same time, through equitable sharing, that money can also go to local and State officers who are involved in the

seizure, giving those officers a profit incentive as well. So I think that eliminating that profit incentive would be a major step toward reforming this area of the law.

Mr. Holding. We should point out that the majority of seizures are from criminals at the end of the day. What we need to protect against are these instances when the IRS or another form of law enforcement overreaches and ends up catching within a web people who haven't done anything wrong.

Mr. Johnson. I think that is true. Although I would again emphasize that of the \$242 million that was seized by the IRS under the structuring law, \$116 million -- so almost half -- was never forfeited. And what that suggests is that IRS is seizing substantial sums that it ultimately can't justify keeping in a court of law.

Mr. Holding. Mr. Chairman, I yield back.

Chairman Roskam. Mr. Smith.

Mr. Smith. Mr. Johnson, just real quick, in the Institute for Justice that was released in a report just recently said 59 percent of the seizure cases were actually valid I guess. So what I am interested in is in the other 41 percent. Do you have statistics showing how fast the 41 percent was returned in a timeline or anything like that?

Mr. Johnson. We don't have statistics on how long it takes for the IRS to give people back their money. But I think that, just based on experience, it can take a very long amount of time.

In cases that we have litigated at the Institute for Justice, it took Jeff 32 months to get his property back. Carole Henders, it took 18 months. For Mark Zaniewski, who owns a service station in Michigan, it took 8 months. And for Terry Dehko, who owns a supermarket, also in Michigan, it took 11 months. So we are talking about months, if not years, in which business owners are forced to go without working the capital for their business. These are months or years that people simply may not have, which is why so many of these cases end up settling.

Mr. Smith. Could you put a number on how many businesses have been shut down because of the IRS' actions?

Mr. Johnson. I just don't have that information. But I think that it is probably substantial.

Mr. Smith. Thank you, Mr. Chairman.

Chairman Roskam. Ms. Noem.

Mrs. Noem. Mr. Sowers, you are a man after my own heart. I spent my life in farming. But we did crops and cattle, beef cattle. So you work harder than we do. Dairy cattle are a lot of work. So I appreciate you taking the time to be here. And I am glad to see your family is in business with you. I was completely formed by all the hours I spent working alongside of my dad. And that is a blessing to have.

But, Mr. Johnson, I just wanted to ask you a couple of quick questions. Do you believe that the IRS' new policy is good enough?

Mr. Johnson. No. I don't believe that it is good enough.

And I say that for a number of reasons. One is that the policy contains this loophole for exceptional circumstances. And previously what I would have said is that is troublingly undefined. After the Commissioner's testimony today, I would say that the actual meat that he put on the bones of that exception is even more troubling. He said that a long-term pattern of sub-\$10,000 deposits would be considered an exceptional circumstance. But that really is the norm in structuring cases. When people have reasons to deposit under \$10,000 because, for instance, they have an insurance policy that covers only up to \$10,000, that is something that they will do over a long period of time. And there is nothing exceptional about that.

I think it is also important to note that the policy only covers the IRS. And as the Commissioner stated, there are other agencies that enforce the structuring laws. And those agencies are not bound. So I think it is very important that that policy be codified into law to bind the IRS fully without any exception for, quote, "exceptional cases" and to bind other agencies as well.

Mrs. Noem. I agree. And do you believe it should be retroactive?

Mr. Johnson. I absolutely believe it should be retroactive, yes.

Mrs. Noem. How far back do you think it should go?

Mr. Johnson. You know, I think it could go back to the

beginning of these kinds of cases. Forfeiture in structuring cases has only existed since 1992. So this has been around relatively recent.

Mrs. Noem. Thank you.

I yield back.

Chairman Roskam. Thank you very much.

Mr. Johnson, Ms. Noem inquired of the Commissioner in the earlier testimony regarding the motive of agents and so forth. And he was, you know, like, Look, don't worry, they are not motivated by some evaluation and so forth. But what you have testified to is something far more powerful, far more motivating, and far more insidious, that is, a profit motive. Could you highlight that?

Mr. Johnson. Absolutely. So when the IRS seizes money, that money goes into an account, the Treasury Forfeiture Fund. And that money is available to the IRS to fund their law enforcement activities by the Federal law. And so the IRS has access to this money that otherwise they would have to come to Congress and obtain appropriation. They might or might not be able to get that. Whereas if they seize the money, they can circumvent that entire process and build up their budget without having to come to Congress. And, obviously, that is incredibly attractive to the IRS. It is also a problem at the State and local level because of the equitable sharing process. You have local --

Chairman Roskam. How does that work, equitable sharing?

Mr. Johnson. Sure. So what equitable sharing is, it means when the Government seizes property and there is participation by State and local officers, as there generally is in structuring cases because these cases are investigated and pursued by joint task forces of State, local and Federal officials, then the State agencies that are involved can keep up to 80 percent of the money that is seized. And for a State and local law enforcement agency that may have difficulty otherwise getting access to Federal funds, that is an incredibly powerful incentive.

Chairman Roskam. Carole Hinders is one of your clients?

Mr. Johnson. Yes.

Chairman Roskam. I looked at the affidavit that was sworn out in her case. And I am amazed at how de minimis these claims are. So the person that swore out the affidavit says, I mean, they are asserting their expertise: My education includes a bachelor's degree in sociology from the University of Iowa. Hey, God bless the sociology majors. But you know what I am saying? I mean, there are other things, and I am obviously kind of over-characterizing this. But then there are these assertions about deposits that are -- they don't look nefarious at all. They look like this is normal business transactions.

You are familiar with this document I assume. Can you speak to that at all, how these, how do the affidavits strike you that you have seen? And then can you give a little bit more color

commentary on the ex parte communication? In other words, you are not able, the defendant in this case is not able to assert themselves at any time until there is a trial presumably.

Mr. Johnson. Right. So, unfortunately, I don't think that Carole Hinders' affidavit is all that unusual. And there are a couple things about it that you pointed out that I think are pretty common. One is that it is filled out by a member of State or local law enforcement, who may have very little real background in investigating these kinds of offenses. The Commissioner spoke about how the IRSCI is one of the most --

Chairman Roskam. Criminal Investigations.

Mr. Johnson. Right. Is one of the most respected investigative branches. But in the structuring area, really these cases are being investigated and pursued in most cases by State and local officials who may have very little background in this.

And then in terms of the barebones allegations, that is very common. What you see in these affidavits that are being brought before magistrates to justify the seizure is literally, here is my training, here is what the law says, and then here is a list of transactions taken from a bank statement, all of which are under \$10,000, in some amount. And that is considered to be sufficient to give rise to probable cause, which is a very low standard, to then seize somebody's entire bank account.

And, again, as you know, with the ex parte hearings, when

that warrant is brought before a judge, that affidavit is brought before a judge, there is no opportunity for the property owner to say, Hey, wait a minute.

Chairman Roskam. There is nobody else there, right?

Mr. Johnson. Yes. There is nobody else there. It is just the --

Chairman Roskam. Here is the paper, Your Honor. This is what I am asserting. I am a sociology major from Iowa.

Mr. Johnson. Exactly. What would be incredibly valuable, obviously, to any property owner would be an opportunity to say, Look, sure, there is a bunch of \$10,000 deposits. But I have got an insurance policy. It only covers up to \$10,000. Presented with that, what may look suspicious turns out to be just business as usual. But there is no opportunity for anybody to say that to the judge before the seizure occurs.

Chairman Roskam. In the Commissioner's testimony, Mr. Johnson, in his written testimony, he talked about a 93 percent conviction rate, which, you know, if you read that, you would think, at first blush, that is pretty impressive, 93 percent. We are in a 51 percent business as politicians. So 93 percent is a big number for us. But that doesn't really tell the whole story, does it?

Mr. Johnson. No. It absolutely doesn't. So of the seizures, the \$242 million that was seized between 2005 and 2012, as I mentioned earlier, \$116 million was never forfeited. That

certainly doesn't sound like a 93 percent rate. That is much closer to a 50 percent rate. In half of the cases between 2005 and 2012, some portion of the money ultimately wasn't forfeited. So, again, that means you are much closer to a 50 percent rate. Many of those cases are probably settlements. These cases aren't going to trial. So when he refers to the 93 percent rate, I imagine he is referring to cases that actually go to trial. Actually, in a third of all cases where money was seized for structuring between 2005 and 2012, none of the money was ultimately forfeited. So the IRS took the money, may have held it for months, years, and then ultimately determined, as they did with Jeff, Look, we don't actually have a real case here, we are going to have to give this money back. But, meanwhile, they have turned people's lives upside down, made their lives incredibly difficult for a long period, maybe even put businesses out of business.

Chairman Roskam. Mr. Hirsch, you haven't been able to get your money back, right?

Mr. Hirsch. Not yet.

Chairman Roskam. Why not?

Mr. Hirsch. We are still waiting. We settled with them January 20, 2015. And my lawyer right next to me was still -- they said they have up to 60 days to put it back into the account.

Chairman Roskam. And they just happen to have an audit interest now in you? You are such an interesting person and such an interesting business, that of all the fruited plain, of all

the businesses that are out there, they have said, Hey, let's see what those Hirsch brothers are up to, is that basically what you are dealing with now?

Mr. Hirsch. That is what we are dealing with now. And in the 27 years that we have been in business, we pay our taxes, do the right thing, and we never have been audited before.

Chairman Roskam. Never audited before. Now you have come under their scrutiny. You have won basically on this thing. You are going to get your money back. And in 27 years of business, they have never audited you. And now you are incredibly attractive to them. And they are all over you, is that right?

Mr. Hirsch. Right.

Chairman Roskam. Mr. Sowers, what happened, how did the Government react when you talked to the press?

Mr. Sowers. My lawyer talked to the guy from -- I guess he is a, what do they say, prosecuting these cases, the prosecutor. And they gave us the \$29,000 settlement number. And then my lawyer says, Well, we think that is a little high. We are thinking about \$5,000. And then he said, Well, you know, that is not in the cards anymore because your client talked to the press. And now we are going to have to do something different.

But actually, they told us -- and I asked my lawyer about that this morning, and I am sure it came up -- if we would have went to trial, they would have went after the whole \$360,000 that I had deposited in that account over that 32 weeks. So that was

another scare tactic to say, Okay, you want to go against us? We will just take it all and not \$29,000.

Chairman Roskam. So they are upping the ante because you talked to the press?

Mr. Sower. That is what we figured. We do have a --

Chairman Roskam. It is not complicated. I don't think your calculation is off.

Mr. Sower. We actually have an email from him to my lawyers stating that.

Chairman Roskam. Really?

Mr. Sowers. Yes.

Chairman Roskam. Who was that from?

Mr. Johnson. I believe it is from Stefan Cassella, that's the U.S. attorney.

Mr. Sowers. Yes.

Chairman Roskam. And he disclosed? Tell me about the email. What was the nature of the email?

Mr. Sowers. There should be a copy here of it somewhere.

Mr. Johnson. It is an email from Stefan Cassella, who I believe was an assistant U.S. attorney at the time. And there is an email below it from David Watt, who was Mr. Sowers' attorney, who says that, I think we can still wrap this up before you leave on your trip. My client is still troubled by the, quote, "acknowledge language," referring to some language in the proposed settlement, since he believes he is admitting there was

reasonable cause to seize the money. In the meantime, I have obtained a settlement in the Taylor Produce case, which is attached. And it is very similar to Sowers' case. And there is no such language in that settlement.

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

And Mr. Cassella's response to that is, Mr. Taylor did not give an interview to the press.

Chairman Roskam. I would ask unanimous consent to insert that into the record. And can you provide that to the committee?

Mr. Johnson. Yes.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Roskam. Mr. Johnson, just quickly, your client Mark Zaniewski in Michigan had an experience. Can you just give us a nutshell basically what his journey was quickly?

Mr. Johnson. Absolutely. It is truly shocking what happened to him. He had about \$30,000 seized by the IRS. He owns a service station in Michigan. The IRS seized his money because he was depositing it under \$10,000 because he simply would deposit whenever he got up to an amount that he thought was enough cash to deposit. Sometimes he would deposit under. Sometimes it was over \$10,000.

The IRS takes his money. He says to them, I have vendors who are going to be taking money out of my bank account; what do I do to prevent the checks from cashing?

They said, Well, it is not really our problem. We are not closing the account. If you want to keep using it, that is fine.

So he says, Okay, well, I am going to put more money in it.

They said, Okay, that's fine.

So he goes to his sister-in-law, he gets a 10,000-dollar loan from his sister-in-law. He also deposits credit card receipts into the account, money that is not even cash receipts. He deposits this into the accounts, another \$30,000.

The IRS then comes back and seizes that money as well. And what they said to him was, Now that we have all of this money, we would be happy to agree to a settlement agreement under which we will return the money that we seized the second time if you

let us keep the money that we seized the first time.

Chairman Roskam. So they are basically saying, Hey, you messed up, you trusted us?

Mr. Johnson. And we are going to leverage that to make you settle.

Chairman. Roskam. And the same thing happened to you, Mr. Sowers, wasn't that right? The \$62,000 and then the subsequent \$5,000?

Mr. Sower. Yes. And that account had stuff coming off of it. And the bank was sending me letters saying or calling me and saying, Look, this thing needs money put in it.

And I said, Well, you know what happened, you all know what happened. But it didn't seem like anybody at PNC Bank knew what had happened. And I never did find out from PNC. And they finally closed the account on their own, not because I wanted it closed, but they closed it. So we had to transfer all that stuff to other accounts.

Chairman Roskam. I want to thank our second panel.

For those of you who have walked this journey, we are very regretful that we have had to have this hearing. But we are glad that we have a forum that we can tell this type of story.

It is this committee's job on a bipartisan basis to expose abuse of the Federal Government. When the Federal Government abuses its citizens, that is the interest of this subcommittee in particular. And you have our commitment on a bipartisan basis

to do everything that we can to stand up for you.

I will note that everybody hates lawyers until they need lawyers, you know what I am saying? Just saying. But there is a poignancy, and I just want to close with this, we have heard other witnesses in the past who have come in and have testified before the whole committee on similar situations, not with structuring, but where they have been abused.

And I have been inspired by those witnesses. We hear from a lot of people. We will hear from think tank people and we will hear from professional people and smart people and this people and that people. But what really gets my attention and inspires me is people who have kept faith in their country when they perceive that their country was not keeping faith with them. And that is what you have done. You have kept faith with your country because you realized this isn't the way this is supposed to be. This isn't the way -- this isn't why I was deployed. This isn't what I was standing up for. This isn't the hard work of putting together a family business. This isn't working with my wife and creating this business over a period of time. It is not supposed to be this way. And you were faithful. And now what is happening is your country is kind of trying to come over the hilltop and try to rescue you and be a part of fixing this.

So your willingness to stand up, your willingness to be sophisticated and smart about how you have done it, and your willingness to share with us your story means now you are handing

something off to us. And that responsibility is not lost on any member of this committee. I know I speak for my friend, the ranking member, Mr. Lewis, you have our assurance that we are going to do everything that we can to make sure that this is something that we put a stop to and that the Internal Revenue Service recognizes that it is a creature of Congress and it is responsible to the American public. The public delegates their authority to us, and then we delegate the authority to the IRS. And if they are operating outside of that delegated authority, they are going to deal with it.

So thank you all.

And Members are reminded that they have the requisite period of time to supplement the record today.

With that, the committee is adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

**PETITION FOR REMISSION OR
MITIGATION
OF KHALID QURAN**

EXHIBIT D

**DECLARATION OF KHALID QURAN
IN SUPPORT OF PETITION FOR REMISSION OR MITIGATION**

I, KHALID QURAN, declare under penalty of perjury that the following is true.

1. I am a citizen of the United States and resident of the State of North Carolina. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

2. I came to America in 1997 with only \$3,000 in savings. I was 42 years old at the time and had worked before then as a fireman in Al-Bireh—a town ten miles north of Jerusalem right next to Ramallah. My wife, Dina, came to America first. I followed a few weeks later with our daughter and three sons, including our two twin baby boys.

3. My brother was living in Greenville, N.C., at the time we arrived in America, so we decided to settle there as well.

4. I located a convenience store near the Greenville airport, and I purchased the store several months after coming to America using my savings and additional money that I borrowed from my family. The store is small: It has just two aisles of low-rise shelving and two walls of refrigerators. When I bought the store, it already had a hand-painted sign out front with the name “427 Convenience Mart.” That sign has faded over time, so I hired a local man to paint another sign to hang above the door.

5. My business is a fairly typical convenience store. I sell soda, beer, snack food, cigarettes, ice, hair extensions, and various beauty products. I offer wire transfers, and I also sell lottery tickets. I used to sell kerosene, but I stopped when the cost of kerosene became so high that the price of a typical purchase could no longer fit on the mechanical price read-out for the pump that was installed when I bought the store.

6. I also cash checks for a \$2 fee. I do this primarily as a service to my customers, as customers are more likely to spend money at my store if I am willing to cash their checks. My bank informed me that I would be required to maintain a check cashing license if I charged more than \$2 to cash a check or if I cashed checks over \$1,000. Because I do not want to risk violating licensing laws for check cashing businesses, I do not charge more than \$2 to cash a check and do not cash checks over \$1,000.

7. My family has prospered in many ways since coming to America. My wife and I both became American citizens in 2008. My daughter recently graduated with honors from UNC Chapel Hill, and my twin sons are working towards their degrees at that same school.

8. Ever since I bought my store, I have worked hard to make a living. My brother helped with the store for years. When he died in 2012, I hired an employee a few months later. Since that time, I have worked a regular schedule: I open the store at 8 a.m. and manage the register until my employee arrives at 1 p.m. I then take a mid-day break and return to the store at 4 p.m., at which point I work straight through to closing at 10 p.m. I repeat that schedule every day, seven days a week. After so much time on my feet, my legs constantly ache.

9. I am not a sophisticated businessman. I make money buying products and selling them for a slightly higher price, just a few dollars or cents at a time. My goal is always to be honest in my dealings and to comply with the law. Because I don't know much about the details of the law, I pay an accountant to do the taxes for the business, and I rely heavily on my accountant and my bank to help me be sure that I am following the law. I have repeatedly told the accountant that I always want to be sure to pay everything that I owe. I have never tried to avoid my taxes or to hide anything about my business from the government.

10. My first language is Arabic, and, although I came to America in 1997, I still have difficulty with the English language. I am able to communicate orally, but fairly often I do not understand what people are saying. I find written communication even more difficult, as Arabic script is so different from English.

11. My business depends on having a supply of cash. I use cash to pay for deliveries of inventory, to pay out lottery winnings, and to cash customers' checks. So, when I need cash for the business, I ask my wife to go to the bank to make a withdrawal. I use the cash that my wife withdraws from the bank to run my legitimate convenience store business.

12. When I decide how much cash I need from the bank, my goal is to make sure that I have enough—but not too much—cash on hand to meet my business's needs. I have been robbed several times over the years, and I worry that keeping too much cash on hand would increase the risk of a robbery. I have never once set the size of my withdrawals to avoid the filing of a report with the IRS. I have no interest in keeping information from the government, as I run a legitimate business and always pay my taxes in full.

13. The amount that I have asked my wife to withdraw has gone up and down over time, as my business needs have changed. I make a judgment based on how much cash I have in the store and how much cash I think I will need for the business. I do not give a great deal of thought to setting the amount of the withdrawal, other than ensuring that I am taking out an amount that will be adequate but not excessive.

14. In June 2014, a group of state and federal law enforcement agents came to my store. It was my understanding that at least two of these agents worked for the IRS, while at least one was a state or local police officer. The agents asked if they could search my store, and I gave them my consent. I was surprised, however, when the agents brought a dog in for the search. I

did not expect that they would use a dog to search the store, and I did not understand why they were using a dog or what they were looking for. I was concerned that the dog might frighten my customers.

15. After searching the store, the agents blocked the entrance to the store so that nobody could come or go. The agents then asked me questions about why I was withdrawing money from the bank. I explained that I used the money for my business. When they asked why I do not withdraw money in larger amounts, I explained that I withdraw only the amount of money that I need. I told the agents that I have been robbed on several occasions and do not like to keep excessive amounts of cash at the store.

16. One of the agents asked me if I was familiar with the term “structuring,” and I told him I was not. The agent explained that structuring involved withdrawing money from the bank in amounts under \$10,000, and I truthfully told him I had no idea that was even potentially a crime. The agent then told me he had both good news and bad news for me. The good news, he said, was that after speaking with me he did not think I was a criminal. He said that the government would not be pursuing any criminal charges against me. However, he said the bad news was that the government had seized my entire bank account because I withdrew money from the bank in amounts under \$10,000.

17. One of the agents told me that, while I had the right to talk to a lawyer about the seizure of my money, doing so would be pointless because there was nothing a lawyer could do to stop what was happening.

18. At that point, one of the agents gave me a piece of paper and told me to sign. I explained that I have difficulty reading English, and I said that I did not want to sign the paper if I did not know what it said. So, one of the agents read the paper out loud very quickly. I could

not follow what he was saying, and I still did not understand what I was being asked to sign. It was my understanding, however, that if I did not sign the paper the government might take even more of my money. One of the agents told me the judge had authorized the government to seize up to \$570,000, but he scratched out that number on the paper and wrote \$153,907.99, which he said was the amount actually seized.

19. When I initially told the agents that I did not want to sign the paper, the agents pressured me to sign. One of the agents yelled at me, asking why I was disrespecting their authority by refusing to sign. Another agent told me that, if I did not sign, they would visit with my wife to see if she would sign instead. I interpreted this as a threat that, if I did not sign, the agents would harass my wife to attempt to pressure her to sign. I finally agreed to sign the paper to protect my wife and to make the agents go away. I felt I had no real choice.

20. If the government had returned to ask additional questions about my business, my cash withdrawals, or any other topic, I would have willingly answered those questions. However, as far as I am aware, the government did not investigate any further after the visit to my store. The IRS has never requested any information that I have refused to provide.

21. Shortly after this encounter, I went to a lawyer to see whether it would be possible to recover my money. At that point, I thought that it was possible that I was the victim of a fraud, and that my money had been taken by some private actor only pretending to represent the government. However, the lawyer confirmed that the government had in fact taken my money. The lawyer also obtained a copy of the paper that I signed. According to the lawyer, the paper stated that I agreed to forfeit my bank account to the United States government.

22. The lawyer who I consulted after the seizure advised me that I should not contest the forfeiture. In the lawyer's view, doing so would be fruitless given that I had already signed a

paper consenting to the seizure of my bank account. I took the lawyer's advice and did not contest the administrative forfeiture.

23. The money that the government seized was all earned through my legitimate convenience store business, over a period of many years. None of the money was connected in any way to unlawful activity, for the simple reason that I am not *engaged* in unlawful activity. I am a business owner, not a criminal. Apart from one incident in which I was selling beer on a Sunday morning, I have never had any trouble with the law.

24. The forfeiture of my bank account has been very difficult. Before the government took my money, my business was debt free, and I had enough money that I did not need to worry about cash flow on a regular basis. After the forfeiture, I did not have enough money to keep the business going, and I was therefore forced to take out a \$50,000 line of credit using my family home as collateral. I already have a mortgage on my house, and now I must make monthly payments on the line of credit as well. When I go to the bank to do business, I must constantly ask how much money is in the account to ensure I do not overdraw the account.

25. As a result of the forfeiture, I have been forced to keep less inventory on hand in the store, as I cannot afford to pay for inventory far in advance of a sale. There have been times when I have been unable to meet customer demand as a result.

26. I am currently sixty years old, and I am thinking about retirement. My store is the family's only source of income. Before the government took my bank account, I thought that I would be able to use money from my business to fund my retirement. Now, I have no idea how I will ever be able to retire, or how I will continue to support my wife when I am no longer able to work. I also worry about whether I will be able to pass anything on to my children as an inheritance.

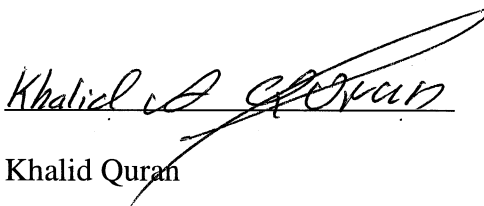
27. These events have been emotionally difficult. My wife and I worry constantly about having enough money in the bank to pay the family's expenses and keep the business afloat. I also worry about how to explain the situation to family and friends, and I worry that people assume I did something far worse to merit such a punishment. Uncertainty about my retirement has taken a psychological toll. Stress and worry have been constant companions since the government took my bank account, and I feel worn down physically as a result.

28. I never believed this could happen in America. Now that it has, I wonder whether I can continue to trust the government. I do not understand how, in this country, the government can take an honest businessman's entire bank account without proving that he did something wrong. The entire situation is confusing, frightening, and disappointing.

29. The substance of this declaration is my own, and the statements in it are based on my own personal knowledge except where otherwise indicated. I have had the assistance of counsel in preparing this declaration.

30. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of July, 2015.


Khalid Quran

**PETITION FOR REMISSION OR
MITIGATION
OF KHALID QURAN**

EXHIBIT E

**DECLARATION OF DINA QURAN
IN SUPPORT OF PETITION FOR REMISSION OR MITIGATION**

I, DINA QURAN, declare under penalty of perjury that the following is true.

1. I am a citizen of the United States and resident of the State of North Carolina. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

2. I came to America in 1997, and my husband Khalid followed a few weeks later with our four children. We have a daughter and three sons, including two twin boys. Khalid and I both became American citizens in 2008.

3. Khalid purchased a convenience store several months after we came to this country, and he has worked long hours managing the store ever since. Khalid often both opens and closes the store, and he repeats that schedule seven days a week. I have watched Khalid work hard for years to support his family.

4. Khalid often asks me to withdraw money from the bank for use in the business, and I always withdraw the amount that Khalid asks me to withdraw. Khalid asks me to take out the amount of money that he thinks he will need for the business. I know that Khalid does not like to have too much cash on hand, as he has been robbed in the past, so I never take out more money than Khalid thinks he will need.

5. The money that I withdraw from the bank is not intended for use in criminal activity, as neither Khalid nor I *do* anything illegal. I also have no interest whatsoever in hiding the withdrawals from the government. Khalid and I are law-abiding citizens, not criminals.

6. When Khalid told me the government had taken the bank account for the business, I was shocked. I never thought that something like this could happen in America. At first, I thought that Khalid must have been the victim of fraud, and that somebody pretending to

work for the government had taken the money. When I realized that the government had in fact taken the bank account, I wondered how I could ever trust the government again.

7. The forfeiture of the business's bank account has been devastating. I have worried constantly about how we will find enough money to run our household, as our family finances have been stretched to the breaking point by the forfeiture. The convenience store is our family's only source of income. Before the seizure, we had some payments left on our mortgage but had no other debt. Now, we have had to take out an additional loan on which we owe monthly interest payments.


8. In addition to the financial impact of the forfeiture, I have suffered psychologically. I worry about what people will think if they learn our money was taken, and I worry that people will assume that Khalid must be a real criminal for the government to do something like this. I worry about how Khalid will ever be able to retire without the money that has been taken, and I also worry about how I will be able to support myself when Khalid is no longer able to work. I worry about Khalid's health, as these events have been terribly difficult for him. And I worry about our kids, both about how to explain the government's actions to them and about how the stress of these events will affect their studies. I am often up late at night worrying about the future.

9. After having so much money taken by the government, I also wonder how I can trust the legal system to protect me in the future. My husband and I wanted nothing more than to do the right thing, to be good citizens, to build a better future for our kids, and to make an honest living. After seeing how easy it was for the government to take our bank account, I worry constantly that nothing we have earned is safe. I never thought that I would feel this way living in America.

10. The substance of this declaration is my own, and the statements in it are based on my own personal knowledge except where otherwise indicated. I have had the assistance of counsel in preparing this declaration.

11. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of July, 2015.

A handwritten signature in black ink, appearing to read "Dina Qura", written over a horizontal line.

Dina Qura

**PETITION FOR REMISSION OR
MITIGATION
OF KHALID QURAN**

EXHIBIT F

FILED
JUN 19 2014
JULIA A. RICHARDS, CLERK
U.S. DISTRICT COURT, EDNC
DEP CLK

AFFIDAVIT FOR SEIZURE WARRANT

I, Jason DeBose, a Detective with the Duplin County Sheriff's Office in Kenansville, North Carolina, and Federal Task Force Officer with the United States Department of Treasury, Internal Revenue Service, Criminal Investigation ("IRS-CI"), being duly sworn, depose and state the following:

INTRODUCTION AND AGENT BACKGROUND

1. I have been employed by the Duplin County Sheriff's Office for over nine (9) years. Before being assigned to my current position I worked as a Detective in the Special Operations Division since 2005. I have investigated a variety of criminal activity to include white collar crimes such as fraud, embezzlement, and forgery to major drug trafficking cases. I am currently detailed as a Federal Task Force Officer with the IRS-CI. I transferred into this position in 2012.
2. In connection with these positions, I have received training relating to the enforcement of United States Money Laundering and Bank Secrecy Act laws. I have also received training in the United States laws relating to the judicial process, probable cause, searches, seizures, and the forfeiture of property, goods, and currency to the United States.
3. Since becoming a Task Force Officer with IRS-CI, I have investigated and assisted others in investigating violations of money laundering and Bank Secrecy Act laws. I have assisted others in executing seizure warrants related to violations of the money laundering and Bank Secrecy Act laws.
4. As a result of my education, training, and experience as a Task Force Officer with IRS-CI, I am familiar with Federal laws and know that it is a violation of Title 31 U.S.C. § 5324 for anyone to (1) "cause or attempt to cause a domestic financial institution to fail to file a report required under Section 5313(a)", (2) "cause or attempt to cause a domestic financial institution to file a report required under Section 5313(a) that contains a material omission or misstatement of fact", or (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions" for the purpose of evading the reporting requirements of Title 31 U.S.C. § 5313(a).

5. This affidavit is made in support of an application for a seizure warrant for any and all funds contained in the following bank account:

Bank: **Southern Bank and Trust Co.**
Account Number: **5061014228**
Account Name: **427 Convenient Mart**

Based upon the information herein, there exists probable cause to believe that funds contained in the account listed above are **"recycled"** funds from structured cash withdrawals. The funds are recycled in that the cash from the structured cash withdrawals is used to cash checks and conduct other business transactions. The checks that are cashed with the structured cash withdrawals are then deposited into the 427 Convenient Mart bank account. Subsequently, structured cash withdrawals are made to obtain more cash in order to cash more checks, thus creating a cycle of structured activity and recycled funds. The funds are therefore forfeitable under Title 31 U.S.C. § 5317.

6. This affidavit contains information necessary to support this application. It is not intended to include each and every fact and matter observed by me or known to the Government.

CURRENCY REPORTING REQUIREMENT

7. Title 31 U.S.C. § 5313(a) and its related regulations, 31 Code of Federal Regulations ("C.F.R") Chapter X, state that when a domestic financial institution, including a bank or money services business ("MSB"), is involved in a transaction for the payment, receipt, or transfer of U.S. coins or currency (e.g., "cash") in an amount **greater than \$10,000**, the institution shall file a Currency Transaction Report ("CTR") for each cash transaction, such as, by way of example, a deposit, withdrawal, exchange of currency or other payment or transfer by, though, or to a financial institution. CTRs are filed with the Financial Crimes Enforcement Network ("FinCEN") on forms that require, among other things, the identity of the individual who conducted the transaction, and the individual or organization for whom the transaction was completed. The regulations also require that multiple transactions be treated as a single transaction if the financial institution has knowledge that they are by, or on behalf of, the same person, and they result in currency either received or disbursed by the financial institution totaling more than \$10,000 during any one business day.
8. CTRs are often used by law enforcement to uncover a wide variety of illegal activities including but not limited to tax evasion, gambling, subsidy fraud, insurance

fraud, narcotics trafficking, and additionally the laundering of proceeds from said crimes. Many individuals involved in illegal activities are aware of such reporting requirements and take active steps to cause financial institutions to fail to file CTRs. These active steps involve making multiple cash deposits or cash withdrawals in amounts equal to or less than \$10,000 on the same day or consecutive days. These active steps are often referred to as "structuring." Structuring is prohibited by Title 31 U.S.C. § 5324.

9. Title 31 U.S.C § 5317 provides for the forfeiture of any property, real or personal, involved in a violation of 31 U.S.C. § 5324, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy.

SUMMARY OF INVESTIGATION

10. I have been involved in the investigation of 427 Convenient Mart. The statements made in this affidavit are based in part on my personal knowledge, my review of financial records, and information furnished by other persons, including federal law enforcement.
11. 427 Convenient Mart is a convenience store located at 1461 Old River Rd, Greenville, North Carolina. 427 Convenient Mart is located in Pitt County, North Carolina. Pitt County is located in the Eastern District of North Carolina.
12. On or about November 2005, 427 Convenient Mart applied for a check-cashing license with the North Carolina Banking Commission. The license was denied in June 2006 due to failure to complete the required paperwork.
13. On May 15, 2014, IRS-CI TFO DeBose located 427 Convenient Mart at 1461 Old River Rd. in Greenville, North Carolina. The 427 Convenient Mart was open and a number of vehicles were seen on the property. IRS-CI TFO DeBose entered the store along with North Carolina Alcohol law Enforcement Officer Burch. While inside the business I noticed a certificate located behind the counter stating that Khalid Quran completed Anti-Money Laundering Training. Also, located inside the store, were two Anti-Money Laundering Compliance Program manuals provided by SIGUE Corporation and SGS Corporation.
14. While in the business I asked the employee (Fadi Hamdi) if they cashed checks for customers. Hamdi stated that they do but they don't cash a lot. Hamdi stated that they charge (2%) two percent and that they do not cash any large checks.

15. Title 31 U.S.C. § 5330 and its related regulations, 31 C.F.R. Chapter X require any person who owns or controls a money transmitting business to register with FinCEN. Title 31 U.S.C. § 5330 and its related regulations define a money transmitting business as any business other than the United States Post Office which provides check cashing services and cashes checks greater than \$1,000 for any one person on one day except on a one time basis. MSBs are required to maintain anti money laundering plans and be knowledgeable of the Bank Secrecy Act laws which include the CTR filing requirements.
16. On February 22, 2000, Southern Bank and Trust Co. account number 5061014228 was opened in the name of 427 Convenient Mart. Account number 5061014228 is a regular checking account. The authorized signers for Southern Bank and Trust Co. account number 5061014228 are Khalid Quran, Dina Quran and Thabet Saleh.
17. Bank records show that from December 3, 2012 through February 11, 2014 checks totaling more than \$2,389,147.00 were deposited to Southern Bank and Trust Co. account number 5061014228. The checks include numerous third party checks for payroll, child support, tax refunds, and various independent services like repairs, etc. The deposit of numerous third party checks by a convenience store like 427 Convenient Mart is indicative of a MSB, i.e. a check casher.
18. From December 4, 2012 through February 11, 2014 there were at least 110 cash withdrawals from Southern Bank and Trust Co. account number 5061014228 totaling more than \$1,016,000. The cash withdrawals were made by cashing checks made payable to cash. The checks were authorized by Khalid Quran and Dina Quran. Dina Quran conducted the vast majority of the withdrawals. Every cash withdrawal amount was below the CTR reporting threshold. Many of the cash withdrawals were on consecutive days, indicating that the withdrawals were structured to evade reporting requirements. A sampling of these transactions is shown in the table below.

DATE	CASH WITHDRAWALS	CHECK DEPOSITS
Monday, April 01, 2013		\$17,123.50
Tuesday, April 02, 2013		\$9,251.91
Wednesday, April 03, 2013	\$9,000.00	\$3,744.90
Thursday, April 04, 2013		\$6,465.28
Friday, April 05, 2013		\$9,125.42
Monday, April 08, 2013		\$23,388.33

DATE	CASH WITHDRAWALS	CHECK DEPOSITS
Tuesday, April 09, 2013	\$9,000.00	\$5,636.03
Thursday, April 11, 2013	\$9,000.00	\$4,801.24
Friday, April 12, 2013	\$9,000.00	\$5,427.92
Monday, April 15, 2013	\$5,000.00	\$18,918.14
Tuesday, April 16, 2013		\$5,593.45
Wednesday, April 17, 2013	\$9,000.00	
Thursday, April 18, 2013		\$5,129.87
Friday, April 19, 2013		\$6,644.91
Monday, April 22, 2013	\$9,000.00	\$22,430.33
Tuesday, April 23, 2013		\$6,788.76
Wednesday, April 24, 2013	\$9,000.00	\$3,583.36
Friday, April 26, 2013	\$9,000.00	\$6,029.92
Monday, April 29, 2013		\$27,217.59
Tuesday, April 30, 2013	\$9,000.00	\$9,582.27
Thursday, May 02, 2013	\$9,000.00	\$7,717.84
Friday, May 03, 2013		\$8,533.13
Monday, May 06, 2013		\$28,280.96
Tuesday, May 07, 2013	\$9,000.00	\$4,863.52
Thursday, May 09, 2013	\$9,000.00	\$7,624.03
Friday, May 10, 2013		\$5,635.05
Monday, May 13, 2013		\$28,187.75
Tuesday, May 14, 2013	\$9,000.00	\$4,655.89
Wednesday, May 15, 2013		\$3,971.64
Thursday, May 16, 2013	\$9,000.00	\$4,273.43
Friday, May 17, 2013		\$6,194.20
Monday, May 20, 2013	\$9,000.00	\$26,543.19
Wednesday, May 22, 2013		\$6,063.86
Friday, May 24, 2013	\$9,000.00	\$8,569.21
Tuesday, May 28, 2013		\$25,883.13
Thursday, May 30, 2013		\$5,204.54
Friday, May 31, 2013	\$9,000.00	\$7,251.04
Monday, June 03, 2013		\$23,016.43
Wednesday, June 05, 2013		\$18,992.87
Friday, June 07, 2013	\$9,000.00	\$15,242.48
Monday, June 10, 2013		\$22,370.04

DATE	CASH WITHDRAWALS	CHECK DEPOSITS
Tuesday, June 11, 2013	\$10,000.00	\$6,200.51
Wednesday, June 12, 2013	\$10,000.00	\$6,231.86
Friday, June 14, 2013	\$9,000.00	\$12,854.36
Monday, June 17, 2013	\$10,000.00	\$32,831.32
Friday, June 21, 2013		\$20,530.64
Monday, June 24, 2013		\$22,497.89
Wednesday, June 26, 2013		\$10,542.44
Friday, June 28, 2013		\$9,103.72
Monday, July 01, 2013		\$28,202.11
Wednesday, July 03, 2013	\$10,000.00	\$11,903.28
Friday, July 05, 2013		\$9,802.22
Monday, July 08, 2013	\$10,000.00	\$23,011.94
Tuesday, July 09, 2013		\$9,267.94
Friday, July 12, 2013	\$10,000.00	\$9,057.58
Monday, July 15, 2013	\$10,000.00	\$21,948.85
Wednesday, July 17, 2013		\$8,551.59
Friday, July 19, 2013	\$10,000.00	\$9,072.82
Monday, July 22, 2013	\$10,000.00	\$19,529.26
Tuesday, July 23, 2013		\$4,780.15
Friday, July 26, 2013	\$10,000.00	\$9,038.88
Monday, July 29, 2013	\$10,000.00	\$27,007.53
Tuesday, July 30, 2013	\$10,000.00	\$7,042.81
Wednesday, July 31, 2013	\$10,000.00	\$3,851.84
Friday, August 02, 2013	\$10,000.00	\$7,861.23
Monday, August 05, 2013	\$10,000.00	\$23,527.18
Tuesday, August 06, 2013	\$10,000.00	\$3,933.01
Wednesday, August 07, 2013	\$10,000.00	\$3,931.41
Thursday, August 08, 2013	\$10,000.00	\$2,514.52
Monday, August 12, 2013	\$10,000.00	\$29,369.34
Tuesday, August 13, 2013	\$10,000.00	\$4,974.86
Thursday, August 15, 2013	\$10,000.00	\$4,456.86
Friday, August 16, 2013	\$10,000.00	\$6,011.54
Monday, August 19, 2013	\$10,000.00	\$20,809.73
Tuesday, August 20, 2013	\$10,000.00	\$2,484.83
Thursday, August 22, 2013	\$10,000.00	\$4,023.05

DATE	CASH WITHDRAWALS	CHECK DEPOSITS
Friday, August 23, 2013	\$10,000.00	\$5,349.75
Monday, August 26, 2013	\$10,000.00	\$21,627.92
Tuesday, August 27, 2013		\$5,918.43
Friday, August 30, 2013		\$7,711.24
Tuesday, September 03, 2013	\$10,000.00	\$33,959.92
Friday, September 06, 2013	\$10,000.00	\$8,305.55
Monday, September 09, 2013		\$27,743.79
Tuesday, September 10, 2013	\$10,000.00	\$5,547.07
Wednesday, September 11, 2013		\$6,662.14
Friday, September 13, 2013	\$10,000.00	\$7,154.06
Monday, September 16, 2013	\$10,000.00	\$7,652.78
Tuesday, September 17, 2013	\$10,000.00	\$26,255.43
Friday, September 20, 2013	\$10,000.00	\$9,340.24
Monday, September 23, 2013		\$29,859.33
Wednesday, September 25, 2013	\$10,000.00	\$7,576.70
Friday, September 27, 2013	\$10,000.00	\$7,201.61
Monday, September 30, 2013	\$10,000.00	\$20,928.39
Wednesday, October 02, 2013	\$10,000.00	\$3,693.22
Friday, October 04, 2013	\$9,000.00	\$9,425.31
Monday, October 07, 2013		\$29,430.05
Tuesday, October 08, 2013		\$5,039.67
Thursday, October 10, 2013	\$9,000.00	\$5,358.14
Friday, October 11, 2013	\$9,000.00	\$5,685.27
Tuesday, October 15, 2013		\$21,457.76
Thursday, October 17, 2013	\$9,000.00	\$3,297.45
Friday, October 18, 2013		\$4,393.92
Monday, October 21, 2013	\$10,000.00	\$17,598.26
Tuesday, October 22, 2013		\$2,461.56
Thursday, October 24, 2013	\$9,000.00	\$6,601.61
Monday, October 28, 2013	\$9,000.00	\$25,615.83
Thursday, October 31, 2013		\$6,111.59
Monday, November 04, 2013	\$9,000.00	\$27,987.85
Wednesday, November 06, 2013		\$5,550.54
Friday, November 08, 2013		\$9,843.59
Tuesday, November 12, 2013		\$24,660.13

DATE	CASH WITHDRAWALS	CHECK DEPOSITS
Wednesday, November 13, 2013		\$2,216.03
Friday, November 15, 2013	\$9,000.00	\$9,401.34
Monday, November 18, 2013	\$9,000.00	\$19,319.70
Tuesday, November 19, 2013		\$5,263.72
Thursday, November 21, 2013	\$9,000.00	\$5,672.18
Friday, November 22, 2013	\$8,000.00	\$7,160.38
Monday, November 25, 2013		\$15,727.93
Wednesday, November 27, 2013	\$5,000.00	\$7,160.64
Friday, November 29, 2013		\$11,657.48
Monday, December 02, 2013	\$9,000.00	\$10,831.01
Wednesday, December 04, 2013		\$4,732.90
Friday, December 06, 2013		\$14,553.68
Monday, December 09, 2013		\$16,275.95
Tuesday, December 10, 2013	\$9,000.00	\$4,398.40
Thursday, December 12, 2013	\$9,000.00	\$3,857.11
Friday, December 13, 2013		\$8,045.52
Monday, December 16, 2013		\$18,323.80
Tuesday, December 17, 2013	\$9,000.00	\$4,556.99
Thursday, December 19, 2013	\$9,000.00	\$3,523.98
Friday, December 20, 2013		\$8,799.38
Monday, December 23, 2013	\$9,000.00	\$21,837.59
Tuesday, December 24, 2013		\$4,048.75
Thursday, December 26, 2013		\$3,983.65
Friday, December 27, 2013	\$9,000.00	\$6,847.97
Monday, December 30, 2013		\$12,537.93
Thursday, January 02, 2014	\$7,000.00	\$10,468.38
Friday, January 03, 2014		\$2,085.43
Monday, January 06, 2014		\$12,837.70
Wednesday, January 08, 2014		\$5,712.19
Thursday, January 09, 2014		\$2,884.06
Friday, January 10, 2014		\$5,188.32
Monday, January 13, 2014	\$9,000.00	\$10,726.46
Tuesday, January 14, 2014		\$2,566.97
Friday, January 17, 2014	\$9,000.00	\$5,283.78
Tuesday, January 21, 2014	\$9,000.00	\$24,237.19

DATE	CASH WITHDRAWALS	CHECK DEPOSITS	
Thursday, January 23, 2014		\$2,367.08	
Friday, January 24, 2014		\$5,394.11	
Monday, January 27, 2014		\$13,105.82	
Thursday, January 30, 2014		\$6,297.23	
Friday, January 31, 2014		\$2,423.59	
Monday, February 03, 2014	\$1,000.00	\$17,658.93	
Wednesday, February 05, 2014		\$4,528.97	
Friday, February 07, 2014		\$4,407.84	
Monday, February 10, 2014		\$12,090.73	
Tuesday, February 11, 2014	\$9,000.00	\$3,089.54	

19. The pattern of depositing checks and subsequent cash withdrawals from Southern Bank and Trust Co. account number 5061014228 as shown in the table above is representative and characteristic of the 427 Convenient Mart banking transactions for the period December 2012 through February 2014.

20. In addition to the cash withdrawals shown in the table above, bank records for Southern Bank and Trust Co. account number 5061014228 show many other cash withdrawals in amounts less than \$10,000 that were made on or near consecutive days during the period December 2012 through February 2014.

21. The following table breaks down the 110 (referenced in paragraph 18) cash withdrawals into frequency of amounts for the period December 4, 2012 through February 11, 2014.

Withdrawal Amount	Number of Withdrawals
\$9,000.00-\$10,000.00	105
\$8,000.00-\$8,999.00	1
\$0.00-\$7,999.00	4

22. I respectfully submit, based on the facts of this investigation and my training and experience as well as the training and experience of other law enforcement agents, that probable cause exists to believe that Khalid Quran and/or others repeatedly

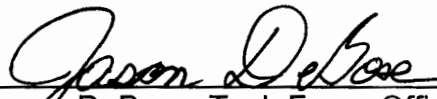
structured cash withdrawals totaling more than \$1,016,000 in increments of \$10,000 or less from December 4, 2012 through February 11, 2014 in order to evade the reporting requirements of Title 31 U.S.C. § 5313(a) in violation of Title 31 U.S.C. § 5324. The funds in the account for 427 Convenient Mart are recycled funds.

23. As stated previously, Title 31 U.S.C. § 5317 provides for the forfeiture of any property involved in a violation of Title 31 U.S.C. § 5324, or any conspiracy to commit such violation, and any property traceable to any such violation or conspiracy. Further, Title 18 U.S.C. § 984 provides that the United States may seek the forfeiture of any funds found within an account at a financial institution that received the forfeitable funds in the preceding year, up to the total amount sought for forfeiture, regardless of whether said funds can be traced back to the specific offense. The structured funds and traceable funds forfeitable pursuant to Title 31 U.S.C. § 5317 and Title 18 U.S.C. §§ 981 and 984 totals more than **\$570,000.00** from Southern Bank and Trust Co. account number 5061014228 for the period July 1, 2013 through February 11, 2014. This amount is a portion of the structured cash withdrawals referenced in the table set forth in paragraph 18 herein.
24. In accordance with Title 18 U.S.C. § 984(a)(1), in a forfeiture in rem the Government need not identify the specific property involved in the offense and it is not to be a defense that the property is removed and replaced by identical property. Pursuant to Title 18 U.S.C. § 984(a)(2), "any identical property found in the same place or account as the property involved in the offense" is subject to forfeiture.
25. Southern Bank and Trust Co. is a domestic financial institution as defined by Title 31 U.S.C. § 5312 with its corporate headquarters in Mount Olive, North Carolina. Southern Bank and Trust Co. is insured by the Federal Deposit Insurance Corporation ("FDIC") and is located in the Eastern District of North Carolina.
26. I respectfully submit that any and all funds totaling up to \$570,000.00 contained in Southern Bank and Trust Co. bank account number 5061014228 held in the name of 427 Convenient Mart are subject to seizure and forfeiture pursuant to Title 31 U.S.C. § 5317 as property involved in a violation of Title 31 U.S.C. § 5324, or any conspiracy to commit any such violation.

I declare under penalty of perjury that the foregoing is true and correct.

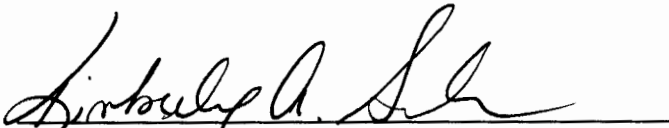
Reviewed by AUSA Steve West

Respectfully submitted this 19th day of June 2014.



Jason DeBose, Task Force Officer
U.S. Treasury Department (IRS-CI)

Sworn and subscribed to me this 19th day of June 2014.



Honorable Kimberly A. Swank
United States Magistrate Judge
Eastern Judicial District of North Carolina

**PETITION FOR REMISSION OR
MITIGATION
OF KHALID QURAN**

EXHIBIT G

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

In the Matter of the Seizure of)
 (Briefly describe the property to be seized))
 Funds in Southern Bank Account Numbered)
 5061014228 in the name of 427 Convenient Mart up)
 to the amount of \$570,000.00 . . .)

Case No. 4:14-MJ- 1088

WARRANT TO SEIZE PROPERTY SUBJECT TO FORFEITURE

For: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests that certain property located in the Eastern District of North Carolina be seized as being subject to forfeiture to the United States of America. The property is described as follows:
 Funds in Southern Bank Account Numbered 5061014228 in the name of 427 Convenient Mart up to the amount of \$570,000.00

I find that the affidavit(s) and any recorded testimony establish probable cause to seize the property.

YOU ARE COMMANDED to execute this warrant and seize the property on or before

July 3, 2014
 (not to exceed 14 days)

☒ In the daytime - 6:00 a.m. to 10:00 p.m.

☐ at any time in the day or night, as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must also give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

An officer present during the execution of the warrant must prepare, as required by law, an inventory of any property seized and the officer executing the warrant must promptly return this warrant and a copy of the inventory to United States Magistrate Judge any United States Magistrate Judge within the Eastern District of North Carolina (name)

☐ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box) ☐ for days (not to exceed 30).

☐ until, the facts justifying, the later specific date of

Date and time issued:

June 19, 2014 @
1:55 p.m.

Kimberly A. Swank
 Judge's signature

City and state:

Greenville, North Carolina

Kimberly A. Swank, United States Magistrate Judge
 Printed name and title

Return

Case No.: 4-14-MJ-1088	Date and time warrant executed: 6-20-2014 9:15 AM	Copy of warrant and inventory left with: Paul Anderson
---------------------------	--	---

Inventory made in the presence of:

Paul Anderson

Inventory of the property taken:

Siezed funds converted to a Southern Bank Cashiers Check
number 49449 in the amount of \$153,907.99

Certification

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant
to the designated judge.

Date: 6-20-2014

Jason DeBose IRS-CI-TFO
Executing officer's signature

Jason DeBose IRS-CI-TFO
Printed name and title

**PETITION FOR REMISSION OR
MITIGATION
OF KHALID QURAN**

EXHIBIT H

**PERSONAL FINANCIAL
INFORMATION
OMITTED**

**PETITION FOR REMISSION OR MITIGATION
OF KHALID QURAN**

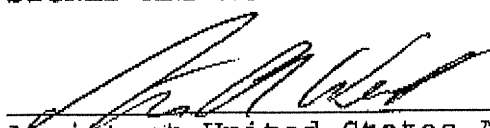
EXHIBIT I

Y-1003
CONSENT TO FORFEITURE

COMES NOW the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and Khalid Quran, individually and on behalf of 427 Convenient Mart, after being advised of his right to review with counsel before signing this consent, and hereby agree and stipulate that the funds totaling up to ~~\$570,000.00~~ ^{\$153,907.99 8-20-00 KR} and contained in Southern Bank and Trust Company account numbered 5061014228 held in the name of 427 Convenient Mart are knowingly and voluntarily forfeited to the United States of America; and

Said forfeited property constitutes, or was derived from, any proceeds Khalid Quran obtained, directly or indirectly, as a result of his/her participation in illegal activity, specifically, in violation of Title 31 U.S.C. § 5324, or any conspiracy to commit any such violation, are thereby subject to forfeiture pursuant to 31 U.S.C. § 5317 and 18 U.S.C. §§ 981 and 984.

SIGNED AND AGREED:


Assistant United States Attorney6-23-14
Date06-20-14
Date

**PETITION FOR REMISSION OR
MITIGATION
OF KHALID QURAN**

EXHIBIT J



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Criminal Investigation

July 28, 2014

Khalid Quran
215 Woodhaven Dr.
Greenville, North Carolina 27834

RE: Proceeds from Southern Bank and Trust Acct #XXXXX14228 totaling \$153,907.99

Dear Mr. Quran:

Our records indicate that you may have an ownership interest in the above-described property seized on June 20, 2014, by the Internal Revenue Service-Criminal Investigation (IRS-CI) at Southern Bank and Trust, 4259 Winterville Court, Winterville, NC 28590. The property is subject to forfeiture to the United States Government in that it was involved in a transaction, or attempted transaction in violation(s) of:

<input type="checkbox"/> Title 31 U.S.C. 5313, 5316	<input type="checkbox"/> Title 18 U.S.C. 1956
<input checked="" type="checkbox"/> Title 31 U.S.C. 5324	<input type="checkbox"/> Title 18 U.S.C. 1957
<input checked="" type="checkbox"/> Title 31 U.S.C. 5317	<input type="checkbox"/> Title 18 U.S.C. 1960

Title 18 U.S.C. 981(a)(1)(a) provides that any property involved in a transaction, or attempted transaction, in violation of the above statutes(s), or any property traceable to such property, may be seized and forfeited to the United States Government.

This letter is to advise you that administrative proceedings have been initiated to perfect forfeiture of the property. Notice of these proceedings, as required by law, is scheduled for publication beginning on August 1, 2014, in The Independent Tribune, newspaper, Concord, North Carolina. A copy of the Notice of Seizure to be published is enclosed for your information. This property is subject to forfeiture 30 days from the date of last publication of this notice. Absent the filing of a claim of ownership by you or any other person transferring this matter to U.S. District Court, the property will be administratively forfeited on September 15, 2014, by the IRS-CI, Charlotte Field Office.

If you have an ownership interest in the property, then a judicial determination or administrative review is available to you.

JUDICIAL DETERMINATION

If you disagree with the IRS's claim that the property is subject to forfeiture and desire a judicial determination of the matter, then you must file a claim of ownership. Your claim

must be received by September 2, 2014. You are cautioned that the timely filing of a claim of ownership is a necessary condition for obtaining a judicial determination.

Your claim of ownership must identify the property and explain the extent of your ownership interest. You must provide documentary evidence of your interest, if available, and state that your claim is not frivolous. Your claim must be signed under oath, subject to the penalty of perjury. For your ready reference, the acceptable language required by statute is as follows:

I declare, (or certify, or verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on (Sworn Date)
(Party Signature)

Unsupported submissions signed by attorneys are insufficient to satisfy the requirement that claims be personally executed. You do not need a specific form in order to file your claim; however, a claim of ownership form is enclosed for your convenience. You should send your claim of ownership to the IRS-CI, Special Agent in Charge, 4905 Koger Blvd, Box 3, Greensboro, NC 27407-2734, Attn: Asset Forfeiture Coordinator Sheri Lancaster. It is suggested, but not required, that you send your claim of ownership by certified mail, return receipt requested.

RELEASE OF PROPERTY TO AVOID SUBSTANTIAL HARDSHIP

If you choose to contest the forfeiture by filing a claim of ownership as set forth above, you may be entitled to the immediate release of the seized property, pursuant to Title 18 U.S.C. § 983(f), if:

1. you have a possessory interest in the property;
2. you have sufficient ties to the community to provide assurance that the property will be available at the time of trial;
3. you demonstrate that continued possession by the Government, pending the final disposition of any forfeiture proceeding, will cause you a substantial hardship. Examples of qualifying hardships include: preventing the functioning of a business; preventing an individual from working; or leaving an individual homeless;
4. you demonstrate that the likely hardship from the Government's continued possession of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred, if it is returned to you while any proceedings are pending; and
5. all of the following conditions must exist:
 - a. The property is not evidence of a violation of the law, is not currency, or other monetary instruments, or electronic funds (such as bank accounts), unless such currency, monetary instruments, or electronic funds constitute the assets of a legitimate business which has been seized;

- b. The property is not contraband, or by reason of its design or other characteristics, is particularly suitable for use in an illegal activity; and
- c. The property is not likely to be used to commit additional criminal acts if it is returned to you.

If you wish to seek release of qualifying property, you must submit a request for possession of the property setting forth the basis on which the requirements listed above are met. Your request should be sent to the IRS-CI, Special Agent in Charge, 4905 Koger Blvd, Box 3, Greensboro, NC 27407-2734, Attn: Asset Forfeiture Coordinator Sheri Lancaster. It is suggested, but not required, that you send your request by certified mail, return receipt requested.

In the event the property is not released to you within 15 days following our receipt of your request, or if your request is denied, you may file a petition in district court for the release of the property. Additional information relative to the filing of a petition with the court will be provided to you if your request is denied. It is also available upon request by contacting Asset Forfeiture Coordinator Sheri Lancaster at the address listed above or by calling (919) 856-4283, ext. 404.

ADMINISTRATIVE REVIEW **BY THE INTERNAL REVENUE SERVICE**

As to administrative review, if you would like to request a pardon of the forfeited property, or you believe there are mitigating circumstances that should be considered, you must submit a Petition for Remission or Mitigation of Forfeiture pursuant to Title 19 U.S.C. § 1618. The petition must identify the property seized, the date of seizure, and proof of your ownership interest in the property. You should describe the facts and circumstances that you believe justify the return of the property. Copies of documentary evidence should be submitted where appropriate. The petition should be signed, under oath subject to the penalty of perjury as noted under **Judicial Determination**. Your petition is subject to investigation. Should the Special Agent in Charge, Criminal Investigation, find the violation was committed without willful negligence, or without any intention on your part to defraud the Government or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of the resulting forfeiture, then the forfeiture may be remitted or mitigated as is deemed reasonable and just.

Your petition must be submitted to the IRS-CI, Special Agent in Charge, 4905 Koger Blvd, Box 3, Greensboro, NC 27407-2734, Attn: Asset Forfeiture Coordinator Sheri Lancaster, within 35 days of the mailing of this letter.


WARNING CONCERNING FORFEITURE PROCEDURE

The administrative forfeiture is not subject to judicial review. In the event that a claim of ownership is timely filed, the forfeiture would convert to a judicial matter as noted under **Judicial Determination**. In this case, any pending Petition for Remission or Mitigation

of Forfeiture of the property would be transferred to the United States Attorney for appropriate action.

You are cautioned that the timely filing of a Petition for Remission or Mitigation of Forfeiture does not extend the time for filing a valid claim of ownership. If you have any questions concerning this or any other matter in this letter, please contact Asset Forfeiture Coordinator Sheri Lancaster at (919) 856-4283, ext. 404.

Sincerely,

A handwritten signature in cursive script, reading "Thomas J. Holloman, III". The signature is written in dark ink and includes a stylized flourish at the end.

Thomas J. Holloman, III
Special Agent in Charge
Charlotte Field Office

Enclosures (2)

NOTICE OF SEIZURE**U.S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
CRIMINAL INVESTIGATION**

On June 20, 2014, Proceeds from Southern Bank and Trust Acct #XXXXXX14228 totaling \$153,907.99 were seized by the Internal Revenue Service-Criminal Investigation from Southern Bank and Trust, 4259 Winterville Court, Winterville, NC 28590. The property is subject to administrative forfeiture under the provisions of Title 18, U.S.C., Section 981, due to the property's involvement in a transaction(s) or attempted transaction(s) in violation of Title 31 U.S.C., Section 5324, and Title 31 U.S.C., Section 5317.

Any person claiming an ownership interest in this property must file under oath, a verified statement of interest (claim). You must also provide documentary evidence of your interest and explain the extent of your ownership interest and no later than 30 days after August 15, 2014, the date of final publication. The claim must be filed with the Special Agent in Charge of the Charlotte Field Office on or before September 15, 2014, otherwise, the property will be forfeited to the United States of America and disposed of according to law. Mail the claim to the address listed below and reference seizure number 56140027.

Internal Revenue Service-Criminal Investigation
Special Agent in Charge
Attn: Asset Forfeiture Coordinator Sheri Lancaster
Asset Forfeiture Unit
4905 Koger Blvd, Suite 102, Mail Stop 3
Greensboro, NC 27407-2734

**SEIZED ASSET CLAIM FORM**

Name _____
Address _____
Telephone Number _____
Date of Seizure _____
Seizure Location (Address, City, State) _____

PART I

List all the items in which you claim an interest. Include sufficient information to identify the items, such as serial numbers, make and model numbers, tail numbers, photographs, and so forth. Attach additional sheets of paper if more space is needed.

PART II

State your interest in each item of property listed above. Provide any documents that support your claim of interest, such as titles, registrations, bills of sale, receipts, and so forth. Attach additional sheets of paper if more space is needed.

PART III (ATTESTATION AND OATH)

I attest and declare *under penalty of perjury* that my claim to this property is not frivolous and that the information provided in support of my claim is true and correct to the best of my knowledge and belief.

Name (Print)

Date

Signature

**A FALSE STATEMENT OR CLAIM MAY SUBJECT A PERSON TO
PROSECUTION UNDER 18 U.S.C. 1001 AND/OR 1621 AND IS PUNISHABLE
BY A FINE AND UP TO FIVE YEARS IMPRISONMENT.**