

United States Senate  
WASHINGTON, DC 20510

August 1, 2017

The Honorable Jeff Sessions  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Sessions:

We are writing with concern over last month's announcement that the Department of Justice (DOJ) will be expanding its use of civil forfeiture,<sup>1</sup> a policy which raises major Constitutional concerns and which we find to be inherently abusive.

The Fifth Amendment protects Americans from being deprived of their property without due process of law; yet civil forfeiture allows the government to take an individual's property without ever obtaining a conviction, much less filing criminal charges, against him or her. As Justice Clarence Thomas recently wrote in response to the denial of certiorari in *Lisa Olivia Leonard v. Texas*, "Th[e civil forfeiture system]—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses."<sup>2</sup> After cataloguing a number of these abuses, he went on to correctly note that "These forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings."<sup>3</sup> We agree with his statement.

Civil forfeiture does not reflect the fundamental principle of "innocent until proven guilty" that is vital to our nation's criminal justice system. Law enforcement can confiscate property from individuals without ever giving them a day in court, and it does so with increasing regularity. In fact, over the past ten years, DOJ's Asset Forfeiture Program has forfeited over \$28 billion.<sup>4</sup> In 2014 alone, the federal government took more cash and property from Americans than burglars did.<sup>5</sup>

The DOJ incentivizes civil forfeiture through policies like adoptive seizures, which DOJ has reinstated, allowing state law enforcement officers to circumvent state limitations on civil forfeiture by turning seized property over to federal officials for forfeiture in exchange for up to 80% of the proceeds of the forfeited property.<sup>6</sup> In enacting this policy directive, DOJ attempted

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<sup>1</sup> Press Release, U.S. Dep't of Justice, "Attorney General Sessions Issues Policy and Guidelines on Federal Adoptions of Assets Seized by State or Local Law Enforcement" (July 19, 2017).

<sup>2</sup> \$201,100.00 U.S. Currency v. Texas, No. 09-14-00478-CV (Tex. App.—Beaumont [9<sup>th</sup> Dist.] 2015), *cert. denied*, 580 U. S. \_\_\_\_ (2017).

<sup>3</sup> *Id.*

<sup>4</sup> Office of the Inspector General, U.S. Dep't of Justice, *Review of the Department's Oversight of Cash Seizure and Forfeiture Activities, Evaluation and Inspections Division Report 17-0* (2017).

<sup>5</sup> Christopher Ingraham, *Law enforcement took more stuff from people than burglars did last year*, THE WASHINGTON POST, Nov. 23, 2015.

<sup>6</sup> Marian Williams, et al., *Policing for Profit*, 6 (2010).

to put in place procedural safeguards, but these safeguards amount to nothing more than self-policing.<sup>7</sup> As shown by DOJ's Office of the Inspector General,<sup>8</sup> self-policing of the civil forfeiture program simply does not work. Especially concerning is the fact that DOJ acknowledges that officials are still pursuing forfeiture—of homes, no less—even when ownership of the property lies with an individual not implicated in any illegal conduct.<sup>9</sup>

We should be motivating law enforcement to protect public safety, not to seek financial awards through increased civil forfeiture. Accordingly, we ask that you rescind DOJ's Order No. 3946-2017 and Policy Directive 17-1. In the meantime, we will continue working in Congress to prevent the inherent abuses of civil forfeiture and restore the due process protections of the Fifth Amendment through meaningful legislative reform.

Sincerely,



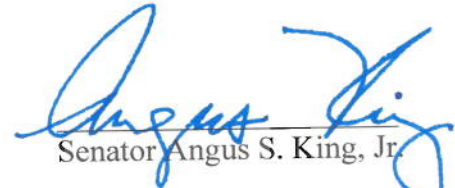
Senator Rand Paul, M.D.



Senator Tom Udall



Senator Mike Crapo



Senator Angus S. King, Jr.



Senator Mike Lee



Senator Cory A. Booker

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<sup>7</sup> See Policy Guidance on the Attorney General's Order on Federal Adoption and Forfeiture of Property Seized by State and Local Law Enforcement Agencies, Dep't of Justice Policy Directive 17-1 (July 19, 2017) ("legal counsel at the federal agency adopting the seized property must continue to review all seizures," "state or local agency [must] provide additional information about the probable cause determination justifying the seizure," "Adoptions of cash...may require additional safeguards," but even if the safeguards are not present "the agency may proceed with the adoption" if the U.S. Attorney's Office concurs, and "Department officials should proceed with particular caution.").

<sup>8</sup> See Office of the Inspector General, *supra* note 4.

<sup>9</sup> See Policy Guidance, *supra* note 7 ("Department officials should proceed with particular caution...in considering the forfeiture of personal residences where title or ownership lies with persons not implicated in illegal conduct.").