

**Coalition Statement in Support of
Abolishing the Equitable Sharing Program**

April 22, 2016

Honorable Loretta E. Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

RE: Abolish the Equitable Sharing Program

Dear Attorney General Lynch:

On behalf of the 20 undersigned organizations that represent the interests of criminal justice reform, civil and human rights, faith, business, and community, we write to express our opposition to the U.S. Department of Justice's reinstatement of payments to state and local law enforcement from the Equitable Sharing Program, and request a meeting with the Department to discuss the possibility of abolishing the program, as we urge Congress to pass meaningful and comprehensive civil asset forfeiture reform.

We applauded the Department of Justice's temporary suspension of the Equitable Sharing Program as a first step towards curbing the financial incentive law enforcement faces to pursue forfeitures. However, we were greatly dismayed when, on March 28, 2016, the Department of Justice announced that it will resume this program.

Current federal forfeiture laws create a financial incentive to pursue profit over the fair administration of justice, facilitate the circumvention of state laws intended to protect citizens from abuse, encourage the violation of due process and property rights of Americans, and disproportionately impact people of color and those with modest means. Victims of civil forfeiture have no right to an attorney in forfeiture cases and are overwhelmingly those least able to afford representation to defend themselves, which worsens the economic struggles that already plague low-income communities. Victims of civil forfeiture also must prove their own innocence to get their property back—turning the presumption of innocence on its head.

The Equitable Sharing Program allows state and local law enforcement to seize property from individuals without proving criminal wrongdoing and then refer this property to federal authorities to pursue forfeiture. Thus, with federal assistance, state and local law enforcement convert seized property into funding for local law enforcement. This program creates a direct financial incentive for state and local law enforcement to not only seize property, but also circumvent their own state laws that are more protective of property rights and due process than federal laws.

A growing number of states are proactively reforming their civil asset forfeiture laws to address this loophole. At least two states, California and New Mexico, have advanced legislation that would limit state and local law enforcement participation in the Equitable Sharing Program. We have seen reports that the Department of Justice has addressed state-level reform in ways that have adversely impacted

legislation or its implementation.¹ The Department of Justice should remain neutral and impartial on efforts by state lawmakers to reform their civil asset forfeiture laws.

There has been widespread abuse under the Equitable Sharing Program. As authorized by this program, state and local law enforcement have seized over \$2.5 billion in almost 62,000 “highway interdictions” since 2001—all without any warrants or indictments.² And between 2000 and 2013, annual payments to state and local law enforcement through the Equitable Sharing Program more than tripled, generating \$4.7 billion for those agencies.³

What is fueling this explosion was shared at a Senate Judiciary Committee hearing on the issue on April 15, 2015. Law enforcement testified that the major concern with federal reform that would include abolishing the Equitable Sharing Program was the potential loss of “hundreds of millions” of dollars for state and local law enforcement.⁴ As Chairman Grassley rightly noted, that position “demonstrates the absurdity of a system of justice in which some in law enforcement appear to value funding their own operations over protecting civil rights.”⁵

At that hearing, we were pleased to hear both the Chairman and Ranking Member Leahy insist that reform was urgently needed. Chairman Grassley noted that the Equitable Sharing Program “incentivizes police to seize particular property to obtain a direct financial reward.”⁶ Ranking Member Leahy also acknowledged that “it is clear that some abuses persist” and “innocent Americans deserve protections from abusive asset forfeiture practices.”⁷

The solution is clear: the Equitable Sharing Program must be abolished, and Congress must pass comprehensive civil asset forfeiture reform.

Unlike appropriated federal programs for state and local law enforcement, the Equitable Sharing Program is not a stable funding mechanism because it relies on the value and type of property that police seize. To the extent that equitable sharing *is* a stable funding mechanism, it relies on encouraging police and prosecutors to seek out and seize property in volume.

The source of law enforcement funding should *not* be tied—either directly or indirectly—to property seized by law enforcement. It is never appropriate to give police and prosecutors an *incentive* to seize

¹ Jason Pye, *Federal Government Threatens States Considering Comprehensive Civil Asset Forfeiture Reform*, FREEDOMWORKS (Sept. 8, 2015), <http://www.freedomworks.org/content/federal-government-threatens-states-considering-comprehensive-civil-asset-forfeiture-reform>.

² Michael Sallah et al., *Stop and Seize: Aggressive Police Take Hundreds of Millions of Dollars from Motorists Not Charged with Crimes*, WASH POST, Sept. 6, 2014, available at <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>.

³ Dick M. Carpenter II et al., *POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE* 25 (2d ed. 2015), <http://ij.org/report/policing-for-profit/> (last visited Apr. 20, 2016).

⁴ *The Need to Reform Asset Forfeiture: Hearing before the S. Comm. on the Judiciary*, 114th Cong. 3–4 (2015) (statement of Chuck Canterbury, National President, Grand Lodge, National Fraternal Order of Police), available at <https://www.judiciary.senate.gov/imo/media/doc/04-15-15%20Canterbury%20Testimony.pdf>.

⁵ *The Need to Reform Asset Forfeiture: Hearing before the S. Comm. on the Judiciary*, 114th Cong. 2 (2015) (statement of Sen. Chuck Grassley, Chairman, S. Comm. on the Judiciary), available at <https://www.judiciary.senate.gov/imo/media/doc/04-15-15%20Grassley%20Statement.pdf>.

⁶ *Id.* at 1.

⁷ *The Need to Reform Asset Forfeiture: Hearing before the S. Comm. on the Judiciary*, 114th Cong. 1 (2015) (statement of Sen. Patrick Leahy, Ranking Member, S. Comm. on the Judiciary), available at <https://www.judiciary.senate.gov/imo/media/doc/04-15-15LeahyStatement.pdf>.

people's property. By doing so, equitable sharing violates principles of due process and federalism and threatens the property and civil rights of all Americans.

Although in 2015 former Attorney General Eric Holder implemented a new policy that limits the ability of federal agencies to adopt some forfeiture cases from state and local law enforcement agencies, the new policy does not apply to the overwhelming number of seizures that result from joint state and federal investigations or involve a federal seizure warrant. This change in Department of Justice policy is a step in the right direction, but the program must be permanently eliminated in order to resolve the inherent and improper financial incentives and federalism issues.

Thank you for considering our request and we look forward to the opportunity to discuss the Administration's next steps on this critical issue. We stand ready to assist you and your staff, and are available to answer any questions you may have. Please feel free to contact Darpana Sheth, Attorney, Institute for Justice at dsheth@ij.org or 703-682-9320; Kanya Bennett, Legislative Counsel, ACLU at kbennett@aclu.org or 202-715-0808; Grant Smith, Deputy Director, Drug Policy Alliance at gsmith@drugpolicy.org or 202-683-2984; or Nancy Zirkin, The Leadership Conference on Civil and Human Rights at zirkin@civilrights.org or Sakira Cook, The Leadership Conference on Civil and Human Rights at cook@civilrights.org or 202-263-2894.

Sincerely,

All Eyes On Africa Communications

American Civil Liberties Union

American Conservative Union

Americans for Tax Reform

Church of Scientology National Affairs Office

D.C. Reentry Task Force

DKT Liberty Project

Drug Policy Alliance

Empowerment Temple A.M.E. Church

FreedomWorks

Institute for Justice

LatinoJustice PRLDEF

Law Enforcement Against Prohibition

The Leadership Conference on Civil and Human Rights

Marijuana Policy Project

NAACP

National Association of Criminal Defense Lawyers

National Association of Social Workers

National Lawyers Guild

Smith & Zimmerman, PLLC