



NATIONAL SHERIFFS' ASSOCIATION

July 17, 2023

Honorable Dan Crenshaw
U.S. House of Representatives
248 Cannon House Office Building
Washington, D.C. 20515
202.225.6565

Re: Please preserve a critical tool to fight the drug cartels and vote *against* H.R. 1525, Fifth Amendment Integrity Restoration (FAIR) Act of 2023.

Dear Representative Crenshaw:

Despite the fact that they are killing hundreds of Americans daily, **HR 1525, FAIR Act**, would largely dismantle a crucial tool in the fight against the Mexican drug cartels: federal civil-asset forfeiture. For example, HR 1525 would repeal equitable sharing, which is the cornerstone of state and local participation in joint operations with federal law enforcement, especially on task forces such as HIDTA. On behalf of the nation's 3,086 sheriffs, the National Sheriffs' Association, therefore, asks you to *vote against HR 1525*.

Especially after 9/11, the public rightly demands *more* federal, state, and local cooperation, not less. Nonetheless, HR 1525 would repeal equitable sharing—the cornerstone of some of the most successful joint operations against the drug cartels. Repealing equitable sharing will not promote civil rights, vindicate the Fifth Amendment, or protect property owners. But it would be a big victory for drug lords and other organized crime.

HR 1525 proposes other bad amendments as well. For example, it would shorten the government's time to notify a potential property owner of a forfeiture proceeding from 60 days to *seven* and its time to file a complaint from 90 days to 30. These radical reductions—far out of step with usual civil-procedure time frames or deadlines—won't improve justice. They're designed to choke down the use of civil-asset forfeiture, regardless of the merits of a case or seizure.

HR 1525 would increase the government's burden that property was subject to forfeiture or that it had a substantial connection to crime from a preponderance-of-the-evidence standard to a clear-and-convincing-evidence standard. But nothing about the nature of civil-asset forfeiture demands this. A preponderance is the greater weight of credible evidence, and the fact finder is free to decide which evidence is credible and what testimony, documents, video, and other evidence add up to the greater weight in each case. This allows for a nuanced review of the evidence and is fair. Most civil proceedings use this standard, including ones for the care of children, property valuation in eminent domain, contract disputes, and tax disputes.

Under existing law, the government bears the burden of proof to show that specific property is subject to forfeiture. Nonetheless, HR 1525 would shift the burden on the innocent-owner defenses to the government as well. That is, the government would have to prove that a putative owner did *not* know of the conduct that subjects the property to forfeiture or, upon learning of the conduct, did *not* do all that reasonably could be expected to stop the conduct. Just as a defendant bears the burden of proof on an affirmative defense in a criminal case, however, a property owner should bear the burden on these affirmative defenses. Most of the time, the property owner will have better access to the relevant evidence, and shifting the burden would force the state to conduct intrusive discovery against owners.

Financial institutions must file CTR reports in connection with deposits of \$10,000 or more in cash, and federal law prohibits structuring transactions to evade such reporting requirements. Section 5(a) of HB 1525 would increase the government's burden to prove a structuring charge by inserting the phrase "knowingly" in each of the provision's three parts—even though they already require the government to prove a culpable mental state; that is, that a defendant acted "for the purpose of evading the reporting requirements" After the U.S. Supreme Court discussed the issue in a January 1994 opinion, Congress amended the statute in September 1994 and October 2001 and addressed the mental state required for an offense. The state must prove a culpable mental state to secure a structuring conviction.

A person must file a report when the person transports monetary instruments of more than \$10,000 at one time across a U.S. border, and Treasury may apply for a search warrant when it reasonably believes that a monetary instrument is being transported without such a report or with a material omission or misstatement. A court may issue a warrant for a search of a designated person, place, or object, or, in the case of a border matter, a search of a vessel, vehicle, aircraft, or other conveyance. The law also allows for civil forfeiture for some violations of these reporting and related rules. Section 5(b) of HR 1525 would require a court, on a putative owner's demand, to *hold* a probable-cause hearing within *14 days* to determine if there was probable cause to believe that someone violated an anti-structuring provision in connection with the attempted transport. If the court did not find PC, then the government would have to return the monetary instrument. Like HR 1525's reduction of other time frames, this provision would likely create another unrealistic deadline and choke down use of civil-asset forfeiture to fight money laundering without regard to a particular case's or seizure's merits.

Ostensible reforms like HR 1525 rest on an incomplete picture of the fight against trafficking. No one should support the egregious anecdotes of individual abuses—seizures of valuable real property or vehicles for relatively minor crimes or coercion of out-of-town travelers to surrender their cash with threats of criminal charges. But focusing on a few anecdotes results in bad policy. Make no mistake. Organizing third-party mules and couriers into discrete cells, the cartels smuggle bulk currency by passenger vehicle, tractor-trailer, and boat; by package and parcel; and in disguised crates and concealed compartments. Mules transport large bundles of cash that are sorted, wrapped in plastic, and concealed; this cash isn't in a trunk safe and the mule doesn't have paperwork for the recent sale of a home or receipt of life-insurance proceeds. They are key components of the cartels' money-laundering efforts. And joint operations between federal law enforcement, with intelligence from cross-country and international sources, and state and local highway-interdiction teams *are some of the best ways of fighting this trafficking*. HR 1525 would stop virtually all such operations.

In summary, Congress would give the cartels a gift by passing HR 1525. Largely dismantling federal civil-asset forfeiture and repealing equitable sharing are terrible policy. Please vote against HR 1525, and thank you for your continued commitment to public safety and the nation's sheriffs.

Sincerely,



Sheriff Jim Skinner, Collin County, TX

Treasurer and Chair, Government Affairs Committee, National Sheriffs' Association

Sources. Background: H. Rep. 106-192 (1999) (relaying anecdotes about forfeiture abuses and recommending reform); Civil Asset Forfeiture Reform Act (CAFRA) of 2000, Pub. L. No. 106-185, 114 Stat. 202 (2000) (reform act). **Cooperation:** The 9/11 Commission Report, at 81–82, 390 (2004). **Key Forfeiture Statutes:** 21 U.S.C. § 881; 18 U.S.C. §§ 981–987, 19 U.S.C. § 1616a; 31 U.S.C. § 9705; DOJ, *Guide to Equitable Sharing for State, Local, and Tribal LE Agencies*, at 2 n.2 (2018) (listing key provisions). **Current Burden of Proof:** 18 U.S.C. § 983(c). **Anti-Structuring:** 31 U.S.C. § 5313; 31 CFR 1010.311; 31 U.S.C. § 5324, §§ 5316–17 (search and forfeiture of monetary instruments); 31 CFR 1010.340. **Mental State for Conviction:** *Ratzlaf v. United States*, 510 U.S. 135, 137 (1994); Pub. L. No. 103-325, §§ 411(a), 413(a), 108 Stat. 2160, at 2253 (Sept. 23, 1994); Pub. L. No. 107-56, §§ 353(c), 365(b)(1), 115 Stat. 272, at 333–34 (Oct. 26, 2001). **Trafficking:** DEA, “2020 Nat’l Drug Threat Assessment,” at 68 (Mar. 2021) (“Mexican TCOs transport the majority of illicit drugs entering into the United States, moving product across the SWB using a wide array of smuggling techniques. Cartels transport bulk quantity, polydrug loads via commercial and passenger vehicles . . . * * * TCOs exploit major highway routes for transportation and the most common method employed involves smuggling illicit drugs through U.S. POEs in passenger vehicles with concealed compartments or commingled with legitimate goods on tractor-trailers.”), <https://www.justice.gov/usao-mdpa/page/file/1425276/download>; *id.* at 68 (“U.S.-based Mexican TCO affiliates compose various compartmentalized cells and are assigned to specific functions, to include: drug distribution or transportation, consolidation of drug proceeds, or money laundering. * * * Operators in the chain are aware of their specific function, but are unaware of other aspects of an operation. In most cases, individuals hired to transport drug shipments within the United States are independent, third-party contractors who may work for multiple Mexican TCOs.”); *id.* (“Mexican TCOs generate billions of dollars annually through the sale of illegal drugs in the United States. The cartels utilize a variety of methodologies to counter law enforcement efforts to identify and confiscate illicit proceeds in the United States and Mexico. TCOs use members to transport cash across the border in vehicles, small aircraft, and by couriers.”); *id.* at 85-89 (discussing methods used by cartels to move money across the border into Mexico, including bulk-cash smuggling, traditional money laundering (jewelry, real estate, vehicles), and modern methods (dark web and virtual currencies)). **HIDTA:** Exec. Office of the President, ONDCP, High Intensity Drug Trafficking Areas Program, 2021 Report to Congress, at 2-6, <https://www.whitehouse.gov/wp-content/uploads/2021/08/2021-HIDTA-Annual-Congressional-Report-FINAL-FOR-TRANSMISSION.pdf>.