

Hearing on Protecting Small Businesses from IRS Abuse

HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT
OF THE
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Commissioner, Internal Revenue Service

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Randy Sowers

Owner, South Mountain Creamery

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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. Good morning, the hearing will come to order. Welcome to the Oversight Subcommittee hearing 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 business owners 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 examine the IRS's use and abuse of its civil asset forfeiture authority. What is civil asset forfeiture exactly? Under current law, federal agencies like the IRS can seize people's assets without any proof of wrongdoing. 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, and 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 did nothing wrong.

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

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. We have received their statements for the record.

Chairman Roskam. We also learned yesterday that the Treasury Inspector General for Tax Administration has panned an audit of the IRS' practices in this area, so that 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 while you testify here today.

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.

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. The practice of the agency seizing the assets of taxpayers came to our attention through press reports at the end of last year. We were concerned that in many of the press reports the taxpayers were small businesses that made cash deposits from daily operations. 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.

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 mic 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. However, 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.

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. On Monday, I was in my district and held a meeting of about 50 people and I 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. As much as I tried to talk about any other subject that we are 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 what we feel like is an abuse of small business owners. Last year, a woman from Iowa, 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 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 have the money to travel here from Iowa to tell her story. But she would like to tell it, so this is Carole 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 has owned her small business for 38 years, and for 38 years, she has only accepted cash payments. Accordingly, 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 containing \$33,000 was frozen, and the IRS informed her that she was being suspected of structuring. It took her almost a year and a half to get her money back. Even so, she had to close her restaurant because she 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. 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 have any burden of proof that they must provide to the person the money has been seized, or his or her attorney or accountant, is there any burden of proof that the IRS 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 the money seized 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, Mr. 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.

We talked a little bit about Ms. Hinder, \$33,000 was seized from her. Maybe that is not that much to the IRS, but there is another person that will appear on the panel who had \$900,000 seized from them.

In my business, having access to capital is critical, so when somebody can seize those assets based on their interpretation or their belief that you have been helping somebody launder money, there can be a devastating effect. 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 takes action, 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. The issue 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. Mr. Commissioner, you and I have met before, and you told me at one time there are two types of people 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. However, the reality of it is, for Carole Hinder, 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? These are the exact people that we need 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. 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 happened to you.

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

Mr. Kelly. 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. Do you think it would be 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. That is not the question. They haven't been found guilty of anything yet. This is only 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 this 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 due process. The suspicion of guilt is one thing. The ability to shut down a business or a person, limits their access to capital, and put them in a bad position is another. 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, "yes, 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 only important. I have got to tell you it is far beyond important. Important is dismissive. It is critical. We are killing these people and their businesses 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. If you 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 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.

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 do if you were in business and somebody did that to you. I got to tell you, access to capital, access to cash, is 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, Mr. Commissioner, 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. 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 desired -- because it is an easier way to go.

Probable cause, you mentioned this issue a couple of times, what is the underlying probable cause that is required to be shown before assets can be seized?

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

Mr. Meehan. So now it is going to be criminal sourcing. What was the standard of probable cause before this new policy was put in place?

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

Mr. Meehan. Just the simple act of structuring?

Mr. Koskinen. Structuring, exactly.

Mr. Meehan. Okay, structuring 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 of criminal sourcing presented to the judge by the U.S. attorney before a seizure that will be initiated?

Mr. Koskinen. That is correct.

Mr. Meehan. Okay. Are you aware that in 2012 -- for the statistics that I have seen -- statistics show 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 drug-related or terrorist-related incidents 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, but half the cases involve 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. Weren't 80 percent of these cases 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. In the course of it, he showed numerous times that 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 him this case could easily become a criminal case against him 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.

I have a few specific questions about the new policy. The new policy that is dated 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 for example, they decided, 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 simply the act of structuring?

Mr. Koskinen. Yes.

Mr. Holding. Okay. You are 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, at a case from North Carolina, from my former prosecutorial district, after your policy change. I have read through the affidavit and the associated documents. There is no allegation of illegal activity other than the act of structuring. I believe if you looked at cases, there has been no change in practice that would require the allegation of 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 sum of money, and it does not aver a criminal act on my part, that I can then go to the judge and say this is an insufficient affidavit here because 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, it is a banking law, correct?

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

Mr. Smith. Okay. So how often do you find 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 or number of 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.

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 based upon, and that concerns me if you are going to be basing it on those metrics.

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, what concerns me about your new policy is 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.

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 constituents, who are angry over the President's unconstitutional Executive amnesty. Here is the truth of the matter: President Obama's Executive amnesty isn't just about immigration; it is about taxes also. 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 amnesty is, quote, "you are willing to pay your fair share of taxes."

Mr. Commissioner, I have 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. 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 in the United States. However, isn't it true that President 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. I heard you say last week that an illegal immigrant who gets a Social Security number, thanks to President Obama's Executive amnesty, can actually claim EITC for years in which he was illegally working in the United States 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. The Joint Tax Committee tells us that individuals could get a total of \$23,800 for the years 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 President Obama's amnesty, illegals will be getting thousands of dollars from the IRS. I feel like that is 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 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, but just to be clear, that gives the IRS all the ability to take the initiative. In other words, a defendant is not, 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 a 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 for the change was an argument about an allocation of resources. So, theoretically, if the IRS were to get all the resources that it was requesting, 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 is 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 with an audit. There is certainty as it relates to: What is the subject of this inquiry? What is the duration of the inquiry? The taxpayer can prepare for this, 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. Yet, the witnesses that are going to speak 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? 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 to them come today from you, the Commissioner of the IRS?

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 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 recommend you to have your staff summarize those stories in their actual accounts, because the agency that 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, 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.

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.

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.

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 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. However, 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.

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. To help understand the mechanics of this, did you then have to go set up another operating bank account in your bank, or could you continue to operate that bank 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 fees 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 effect 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 employ 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 and committing these acts. I think sometimes the confusion is, who do we represent as Congressman? 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 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." 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 it." 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, 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 you're 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, Brendon, if they come in, that is okay. We will still fight them tooth and 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.

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.

Mr. Johnson, you have walked through this process with numerous of these people. As an attorney who understands the process, what needs to be proven in a case like this to suggest that somebody has violated the structuring statute?

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 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 a response 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 to 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 their stories. It is incredibly important that the people know what is happening.

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 report that was released just recently, 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 Hinders, 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. 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 Hinder 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 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 do the affidavits strike you that you have seen? Then can you give a little more color commentary on the ex parte communication? In other words, 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 back 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 now they just happen to have an audit interest 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: [The Honorable Peter Roskam](#)]

Chairman Roskam. Mr. Johnson, just quickly, your client Mark Zaniewski in Michigan had an experience. Can you just give us a nutshell basically summarizing 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 where 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. 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? Yet, 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.

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, you were faithful, and now what is happening is your country is 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. If they are operating outside of that delegated authority, they are going to deal with it.

So thank you all.

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.]