

United States Senate

WASHINGTON, DC 20510

November 7, 2017

Dear Chairman Shelby and Ranking Member Shaheen:

In July of this year, the Department of Justice announced that it would expand the practice of civil asset forfeiture by expanding the use of equitable sharing and adoptive seizures of property. As you work with your counterparts in the House to negotiate a final Commerce, Justice, and Science (CJS) Appropriations bill for Fiscal Year (FY) 2018, we urge you to defund the implementation of these practices.

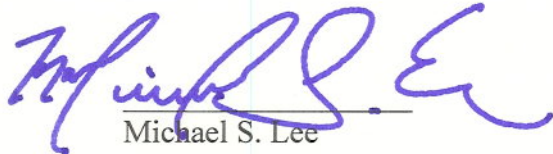
During the consideration of H.R. 3354—the Make America Secure and Prosperous Appropriations Act—the House of Representatives unanimously accepted three amendments to block DOJ from reinstating a policy of adoptive forfeiture; those amendments are Walberg/Cohen #46, Raskin/Sensenbrenner #67, and Amash/Sanford #70. These amendments were championed by a diverse group of lawmakers and supported by a broad coalition of organizations, including the American Conservative Union, the Institute for Justice, the NAACP, and the ACLU. We also strongly support the inclusion of at least one of these amendments into the final CJS appropriations bill.

Civil asset forfeiture practices defy fundamental principles of due process that are central to our nation. Under current practices, federal law enforcement can confiscate property from individuals without first providing those affected with a hearing. Once property is confiscated, the federal government is required to show by a preponderance of the evidence—the lowest civil standard—that the property was merely *connected* to a crime. Property owners who contend that they did not know their property was connected to a crime (for example, a property owner who lends a car to a family member or friend who commits a crime using the car) must prove their lack of knowledge—a remarkable evidentiary burden to impose on someone challenging government action. In all cases, the federal government is not required to charge someone with a crime as a prerequisite to seizing property. We believe these practices are an obvious violation of the due process protections found in the Fifth Amendment.

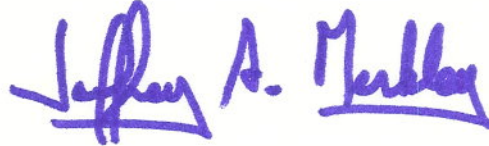
Adoptive forfeiture and equitable sharing are particularly egregious elements of civil asset forfeiture because they not only violate due process but also attack principals of federalism. DOJ's reinstated policy allows state law enforcement officers to circumvent state limitations on civil forfeiture by turning seized property over to federal officials for forfeiture in exchange for up to 80% of the proceeds of the property. This perversely incentivizes local law enforcement to confiscate suspect property even where state laws forbid the practice.

As Justice Thomas recently recognized in response to the denial of certiorari in *Leonard v. Texas*, “[t]h[e civil forfeiture system]—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses.”¹ We agree with Justice Thomas, and we ask you to ensure that none of our precious federal resources are used to implement these constitutionally suspect practices. Therefore, as you finalize a spending package for FY2018, we respectfully request the inclusion of language which will prevent the implementation of these polices.

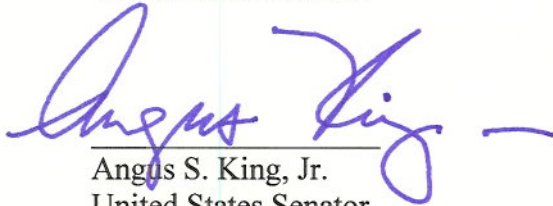
Sincerely,



Michael S. Lee
United States Senator



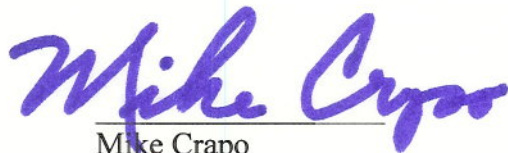
Jeffery A. Merkley
United States Senator



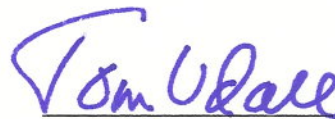
Angus S. King, Jr.
United States Senator



Rand Paul, M.D.
United States Senator



Mike Crapo
United States Senator



Tom Udall
United States Senator

¹ *Leonard v. Texas*, No. 16-122 (Mar. 6, 2017) (Thomas, J.) (respecting the denial of certiorari).