



May 24, 2016

The Honorable Robert Goodlatte
Chairman, House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers
Ranking Member, House Judiciary Committee
B-336 Rayburn House Office Building
Washington, DC 20515

The Honorable Jim Sensenbrenner
Chairman, House Judiciary Crime Subcommittee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Sheila Jackson Lee
Ranking Member, House Judiciary Crime Subcommittee
B-336 Rayburn House Office Building
Washington, DC 20515

Re: The ACLU Supports H.R. 5283, the DUE PROCESS Act of 2016

Dear Chairman Goodlatte, Ranking Member Conyers, Chairman Sensenbrenner, and
Ranking Member Jackson Lee:

The American Civil Liberties Union (ACLU) offers qualified support for H.R. 5283, the Detering Undue Enforcement by Protecting Rights of Citizens from Excessive Searches and Seizures (DUE PROCESS) Act of 2016. We appreciate the Committee's continued bipartisan effort around civil asset forfeiture reform. The bill is an important first step, offering substantial procedural protections for those subjected to forfeiture. However, the legislation fails to address the profit incentive driving forfeiture and equitable sharing. Also, demographic data on those subjected to forfeiture should be collected as part of an effort to establish the disproportionate impact on marginalized communities. We encourage the Committee to address these issues as it takes up H.R. 5283.

For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, DC, for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

KARIN JOHANSON
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

The ACLU's opposition to civil asset forfeiture is consistent with this mission. Civil asset forfeiture deprives innocent people of their property without due process of law, often without an arrest or a hearing. Property owners bear the burden and the costs of demonstrating a property's "innocence" and in most cases are not entitled to a lawyer. Civil asset forfeiture also disproportionately impacts low income people and people of color and has long been used to carry out the ineffective and abusive War on Drugs.

We support the procedural reforms made by the DUE PROCESS Act, including the increased burden of proof, right to counsel, and the innocent owner protections. The bill raises the burden of proof from a preponderance of the evidence to clear and convincing evidence, making it more difficult for meritless forfeiture cases to proceed. The legislation provides property owners who are indigent access to counsel in forfeiture proceedings, giving them a much needed resource when navigating forfeiture processes. Finally, the bill provides additional protection for innocent property owners, requiring the government – instead of the owner – to prove a connection between the property, owner, and alleged offense.

While we support these provisions of the DUE PROCESS Act, the bill must go further. As the Committee works to perfect this legislation, the ACLU asks that you consider the following:

I. Collect data on the demographics of individuals subjected to seizures and forfeitures

In an effort to bring transparency and accountability to forfeitures, the DUE PROCESS Act includes a provision on data collection and reporting. The provision mandates data on several forfeiture practices, including the seizing agency and type of property seized. However, it does not require data on the demographics of those subjected to seizures and forfeitures. This data is vital to understanding the true impact of forfeitures. Reports have shown a disproportionate number of people of color and low income people are subjected to these practices.¹ Demographics, including race, ethnicity, nationality, gender, age, and disability, should be collected and reported under the DUE PROCESS Act.

II. Eliminate profit incentive and equitable sharing

We urge the Committee to eliminate the profit incentive driving civil asset forfeiture, including equitable sharing. The practice of "equitable sharing" – the federal and local sharing in billions of dollars' worth of seized items – has incentivized forfeitures.² Since 2008, state and local police have made more than 55,000 seizures of cash and property worth \$3 billion dollars with the help of the federal government.³ In 2014 alone, federal forfeiture laws were used to take in \$4.5 billion dollars.⁴ Civil asset forfeiture reform will be complete only when the profit incentive is eliminated.

¹ *Forfeiting the American Dream*, Center for American Progress (April 2016) <https://cdn.americanprogress.org/wp-content/uploads/2016/04/01060039/CivilAssetForfeiture-reportv2.pdf>; *Guilty Property*, ACLU of Pennsylvania (June 2015) https://www.aclupa.org/files/3214/3326/0426/Guilty_Property_Report_-_FINAL.pdf.

² Robert O'Harrow, Jr., Sari Horwitz, and Steven Rich, *Holder limits seized-asset sharing process that splits billions with local, state police*, WASH. POST (Jan. 16, 2015), http://www.washingtonpost.com/investigations/holder-ends-seized-asset-sharing-process-that-split-billions-with-local-state-police/2015/01/16/0e7ca058-99d4-11e4-bc9f-059ec7a93ddc_story.html.

³ *Id.*

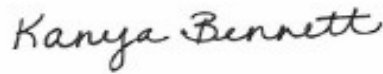
⁴ Jason Clayworth and Grant Rodgers, *Solutions to Iowa's broken forfeiture system*, Des Moines Register (Apr. 5, 2015), <http://www.desmoinesregister.com/story/news/investigations/2015/04/04/solutions-broken-forfeiture-system/25304121/>.

Thank you for your leadership on civil asset forfeiture reform. We look forward to continuing to work with you to perfect this bill. If you have any questions or comments, please feel free to contact Kanya Bennett, Legislative Counsel, phone: (202) 715-0808 or email: kbennett@aclu.org.

Sincerely,



Karin Johanson
Director



Kanya Bennett
Legislative Counsel

cc: Members of the U.S. House Judiciary Committee