Department of Justice

Eliminate the Federal Equitable Sharing Program and the Assets Forfeiture Fund

RECOMMENDATION

First, the President should instruct the Attorney General and the Secretary of the Treasury to eliminate the federal "equitable sharing" programs they administer. Federal law allows, but does not require, the sharing of proceeds derived from successful civil forfeiture cases with state and local law enforcement agencies that "participated directly" in the case.[1]

Second, the President should direct federal agencies to improve the administrative forfeiture process, to ensure that property owners are fully apprised of their right to contest a forfeiture action, and to provide transparency in administrative forfeitures. The President should also order new reporting requirements in all civil forfeiture cases, to track whether property seizures are tied to criminal investigations, and whether said investigations result in convictions.

Third, Congress should adopt comprehensive civil forfeiture reforms. In addition to codifying the above presidential actions, such legislation should eliminate the forfeiture financial incentive by terminating the Justice Department's Assets Forfeiture Fund, as well as its Treasury Department counterpart, the Treasury Forfeiture Fund. Congress should permanently rescind the funds contained in these accounts and deposit them—along with all future forfeiture proceeds—into the General Fund. Legislation should also adopt improved procedural protections for property owners in civil-forfeiture cases, including a heightened evidentiary requirement and guaranteed indigent defense.

RATIONALE

In 1984, Congress ramped up federal forfeiture activities with the Comprehensive Crime Control Act, empowering federal law enforcement agencies with the ability to seize the property and ill-gotten gains of the worst categories of offenders—drug kingpins, criminal organizations, and money launderers. It also granted agencies the novel authority to retain and spend forfeited assets. This financial incentive has, in some cases, warped law enforcement priorities, encouraging cash seizures at the expense of traditional law enforcement activities. Some agencies have become dependent on the funds generated by asset forfeiture, and the lack of accountability has resulted in high-profile instances of abuse or misuse of forfeiture-derived funds. Additionally, forfeiture activities are no longer concentrated on the most serious offenders; today, federal civil-forfeiture law is commonly used to seize relatively small amounts of cash. Seizures require little or no evidence of criminal misconduct, and insufficient due-process protections exist to ensure that innocent property owners do not suffer confiscation of their assets or property.

In addition to seizing and forfeiting assets directly, federal officials coordinate with state and local law enforcement authorities, and divide proceeds with these agencies. Equitable sharing funds must be spent by the receiving agency for law enforcement purposes, regardless of state law. The program has been criticized as providing state and local agencies with a means of circumventing state laws that, relative to federal forfeiture law, are more restrictive in how forfeiture funds may be spent, or are more protective of property owners. In recent years, 20 states have reformed their civil forfeiture laws, and federal law should not provide a means to bypass state law.

The Justice Department does not track the percentage of civil forfeiture cases tied to criminal prosecutions or convictions. However, it is estimated that nearly 90 percent of federal cases end in administrative forfeiture, meaning there is no judicial involvement in the case.[2] A recent report by the Department of Justice Inspector General concluded that, of a representative sampling of Drug Enforcement Administration seizures, officials could only demonstrate that 44 percent of seizures furthered a criminal investigation.[3]

The policy changes outlined above will provide greater transparency, eliminate the financial incentive for federal agencies to employ dubious or abusive practices to seize and forfeit property, and afford

property owners greater legal protections. These actions will also end the ability of state and local law enforcement agencies to circumvent more restrictive state forfeiture laws, and return oversight and budgetary authority to elected lawmakers, at all levels, who are accountable to the public for their appropriations.

ADDITIONAL READING

- John Malcolm, "Civil Asset Forfeiture: Good Intentions Gone Awry and the Need for Reform," Heritage Foundation *Legal Memorandum* No. 151, April 20, 2015.
- Jason Snead, "Instead of Raiding the Assets Forfeiture Fund, Congress Should Simply Discontinue It," Heritage Foundation *Issue Brief* No. 4469, November 20, 2015.

Eliminate the Community Relations Service

RECOMMENDATION

Eliminate the Department of Justice's Community Relations Service (CRS).

RATIONALE

The CRS budget should be entirely eliminated. Rather than fulfilling its mandate of trying to be the peacemaker in community conflicts, the CRS has raised tensions in local communities in recent incidents. In the Zimmerman case in Florida, the CRS helped organize and manage rallies and protests against George Zimmerman, who was found "not guilty" of murder for shooting Trayvon Martin, thereby interfering with the objective administration of the justice system.[4] Other employees inside the CRS have cited a culture of incompetence, political decision making, and gross mismanagement, leading the employees to send a complaint letter to the Attorney General.[5]

ADDITIONAL READING

- J. Christian Adams, *Injustice: Exposing the Racial Agenda of the Obama Justice Department* (Washington, DC: Regnery Publishing, 2011).
- John Fund and Hans von Spakovsky, *Obama's Enforcer: Eric Holder's Justice Department* (New York: HarperCollins/Broadside, 2014).
- U.S. Department of Justice Office of the Inspector General, "Review of the Operations of the Voting Section of the Civil Rights Division," March 2013.

Eliminate the Legal Services Corporation

RECOMMENDATION

Eliminate the Legal Services Corporation (LSC). This proposal saves $484 million in FY 2018.

RATIONALE

The LSC was created by the Legal Services Act of 1974 as a means to provide civil legal assistance to indigent clients. It does so by distributing federal grant funds in one-year to three-year increments to service areas throughout the United States and its territories. The annual appropriations legislation specifies the types of activities for which the funds may be used, and also restricts certain uses, such as for political activities, advocacy, demonstrations, strikes, class-action lawsuits, and cases involving abortion, partisan redistricting, and welfare reform.

LSC grants do help provide high-quality civil legal assistance to some low-income Americans. Nevertheless, the Congressional Budget Office (CBO) has repeatedly listed LSC elimination among its deficit-reduction options, citing that many programs receiving LSC grants already receive resources from state and local governments and private entities.

LSC also should be abolished because state and local governments, supplemented by donations from other outside sources, already provide funding for indigent legal assistance in civil cases and are better equipped to address the needs of those in their communities who rely on these free services. By giving local entities sole responsibility for these activities, funds can be targeted in the most efficient manner, and the burden can be removed from the federal deficit. Access to justice is an important issue, and the responsibility for providing such assistance should lie with state and local governments, not the federal government.

ADDITIONAL READING

- Kenneth F. Boehm and Peter T. Flaherty, "Why the Legal Services Corporation Must Be Abolished," Heritage Foundation *Backgrounder* No. 1057, October 19, 1995.
- Congressional Budget Office, *Budget Options*, Volume 2, August 2009.
- National Legal and Policy Center, "What the Legal Services Corporation Doesn't Want Congress to Know," March 22, 2012.

Eliminate the Office of Community Oriented Policing Services

RECOMMENDATION

All grants provided by the Office of Community Oriented Policing Services (COPS) should be eliminated.

First, President Trump should consolidate COPS grants into the Office of Justice Programs. Grants for subsidizing the hiring of state and local police officers were authorized by Congress with the passage of the Violent Crime Control and Law Enforcement Act of 1994. While the act only authorized the grant funding, it did not establish the COPS office as an official agency within the Department of Justice. Then-Attorney General Janet Reno established COPS as an official agency within the Department of Justice with its own leadership and staffing. However, COPS does not actually perform the crucial task of managing the grants that it doles out. Instead, the Office of Justice Programs (OJP) manages the awarded grants. In order to decrease unnecessary duplication, Attorney General Jeff Sessions should consolidate COPS grants into the OJP, thus reducing administrative costs.

Second, Congress should eliminate all funding for COPS. The authority for the Attorney General to award specific grants for police officer salaries expired on September 13, 2000.[6] Further, congressional authority for COPS grants expired in FY 2009.[7]

RATIONALE

Created in 1994, COPS promised to add 100,000 new state and local law enforcement officers to the streets by 2000. COPS not only failed to add 100,000 additional officers, it was also failed at reducing crime.

State and local officials, not the federal government, are responsible for funding the staffing levels of local police departments. By paying for the salaries of police officers, COPS funds the routine, day-to-day functions of police and fire departments. In *Federalist* No. 45, James Madison wrote:

> The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

When Congress subsidizes local police departments in this manner, it effectively reassigns to the federal government the powers and responsibilities that fall squarely within the expertise, historical control, and constitutional authority of state and local governments. The responsibility to combat ordinary crime at the local level belongs almost wholly, if not exclusively, to state and local governments.

The COPS program has an extensive track record of poor performance and should be eliminated. COPS grants also unnecessarily fund functions that are the responsibility of state and local governments.

ADDITIONAL READING

- David B. Muhlhausen, "Byrne JAG and COPS Grant Funding Will Not Stimulate the Economy," statement before the Judiciary Committee, U.S. Senate, May 12, 2009.
- David B. Muhlhausen, "Impact Evaluation of COPS Grants in Large Cities," Heritage Foundation *Center for Data Analysis Report* No. 06-03, May 26, 2006.

Eliminate Violence Against Women Act Grants

RECOMMENDATION

Congress should eliminate Violence Against Women Act (VAWA) grants.

RATIONALE

VAWA grants should be terminated because these services should be funded and implemented locally. Using federal agencies to fund the routine operations of domestic violence programs that state and local governments could provide is a misuse of federal resources and a distraction from concerns that are truly the province of the federal government.

The principal reasons for the existence of the VAWA programs are to mitigate, reduce, or prevent the effects and occurrence of domestic violence. Despite being created in 1994, grant programs under the VAWA have not undergone nationally representative, scientifically rigorous experimental evaluations of effectiveness.

The Government Accountability Office concluded that previous evaluations of VAWA programs "demonstrated a variety of methodological limitations, raising concerns as to whether the evaluations will produce definitive results." Thus, the evaluations could not be used to credibly assess the performance of the evaluated programs.

ADDITIONAL READING

- Paul J. Larkin Jr., "Send in the Lawyers: The House Passes the Senate's Violence Against Women Act," The Daily Signal, March 1, 2013.
- David B. Muhlhausen, "Violence Against Women Act Gives Grant Money to Misleading Organizations," The Daily Signal, February 13, 2013.
- David B. Muhlhausen and Christina Villegas, "Violence Against Women Act: Reauthorization Fundamentally Flawed," Heritage Foundation *Backgrounder* No. 2673, March 29, 2012.
- U.S. General Accounting Office, "Justice Impact Evaluations: One Byrne Evaluation was Rigorous; All Reviewed Violence Against Women Office Evaluations Were Problematic," March 2002.

Transfer the Special Litigation Section to the Office of the Deputy Attorney General

RECOMMENDATION

Transfer the Special Litigation Section of the Civil Rights Division to the Office of the Deputy Attorney General. The Special Litigation Section handles extremely sensitive matters involving state and local law enforcement and should be under the supervision of a top Justice official whose duty is to ensure the proper administration of the criminal justice system.

RATIONALE

The Special Litigation Section is responsible for enforcing federal laws governing the behavior of prison officials and law enforcement agencies. This is the section that sues such state and local agencies when they engage in a "pattern and practice" of unlawful or unconstitutional behavior. In other words, the section polices the standards and practices of police and correctional departments all over the country. Yet none of the lawyers inside the section have any law enforcement or corrections experience, or even any experience as criminal prosecutors enforcing criminal laws and evaluating the behavior of law enforcement personnel. The section has often been criticized for going far beyond what the law requires and trying to impose its own idea of what national standards should apply, even though that is neither its role nor its responsibility. It has imposed enormous costs on local police departments with draconian consent decrees that have restricted the ability of law enforcement to protect the safety of the public.

It would be more efficient and effective for the Special Litigation Section to report directly to the Office of the Deputy Attorney General, which can draw on the experience of the Civil Rights Division as needed, but also the Criminal Division and its professional criminal prosecutors who understand the workings of the criminal justice system and the standards and requirements that should govern the behavior of law enforcement and corrections officers. Given the vital importance to the safety and security of the public of well-functioning, professional law enforcement, this section should be under the direct supervision of the Deputy Attorney General, the number two position at the Justice Department.

ADDITIONAL READING

- John Fund and Hans von Spakovsky, *Obama's Enforcer: Eric Holder's Justice Department* (New York: HarperCollins/Broadside, 2014), chapter 4.
- Heather MacDonald, "Targeting the Police: The Holder Justice Department Declares Open Season on Big City Police Departments," *The Weekly Standard*, January 31, 2011.
- Hans von Spakovsky, "*Every Single One*: The Politicized Hiring of Eric Holder's Special Litigation Section," PJ Media, August 16, 2011.
- Hans von Spakovsky, "What the Ferguson Report Really Exposed," *The National Interest*, March 13, 2015.
- Hans von Spakovsky and Brad Schlozman, "The 'Ferguson Effect': Restricting Law Enforcement's Ability to Protect Americans," The Heritage Foundation *Legal Memorandum* No. 184, June 23, 2016.

Transfer the Criminal Section of the Civil Rights Division and All Other Criminal Sections of All Divisions within the Justice Department to the Criminal Division

RECOMMENDATION

Transfer the Criminal Section of the Civil Rights Division, the Criminal Section of the Antitrust Division, the Criminal Enforcement Section of the Tax Division, and the Environmental Crimes Section of the Environment & Natural Resources Division to the Criminal Division of the Department of Justice.

RATIONALE

These criminal sections are responsible for prosecuting criminal civil rights, antitrust, tax, and environmental laws in contrast to the civil enforcement that predominates these divisions. The investigation and prosecution of criminal violations of the law is very different both substantively and procedurally from the civil enforcement of federal laws.

It would be more efficient and effective for all of the sections in different divisions that are responsible for criminal law enforcement to be consolidated inside the Criminal Division of the Justice Department. That division is staffed by experienced law enforcement personnel and professional criminal prosecutors who have a much better grasp of the requirements of the criminal justice system and the standards that govern the administration of criminal justice.

ADDITIONAL READING

- John Fund and Hans von Spakovsky, *Obama's Enforcer: Eric Holder's Justice Department* (New York: HarperCollins/Broadside, 2014), chapter 4.
- Hans von Spakovsky, "*Every Single One*: The Politicized Hiring of Eric Holder's Criminal Section," PJ Media, September 14, 2011.

Transfer the Immigrant and Employee Rights Section of the Civil Rights Division to the Executive Office of Immigration Review

RECOMMENDATION

Transfer the Immigrant and Employee Rights Section of the Civil Rights Division to the Executive Office of Immigration Review. This will place the Immigrant and Employee Rights Section in the Justice Department office whose personnel have actual experience in the enforcement of federal immigration law, unlike the Civil Rights Division.

RATIONALE

The Immigrant and Employee Rights Section is responsible for enforcing the anti-discrimination provisions of the Immigration and Nationality Act. No other sections inside the Civil Rights Division have anything to do with federal immigration law. In contrast, the Executive Office for Immigration Review is the office within the Justice Department that is responsible for fairly, expeditiously, and uniformly interpreting and administering all federal immigration laws. That includes conducting immigration court proceedings, appellate reviews, and administrative hearings.

It would be more efficient and effective for the Immigrant and Employee Rights Section to be housed in the Executive Office of Immigration Review with experienced immigration lawyers who have a much better grasp of the workings of the federal immigration enforcement system and of the standards and requirements that should govern such enforcement. Given the vital importance of a well-functioning federal immigration process, this section should be under the direct supervision of the office within the Justice Department that specializes in, and is responsible for, administering the immigration court system.

ADDITIONAL READING

- Richard Pollock, "*Every Single One*: The Politicized Hiring of Eric Holder's Immigration Office," PJ Media, August 12, 2011.
- Hans von Spakovsky, "Department of Justice Fines Sheriff Department for Hiring Only US Citizens," The Daily Signal, Nov. 23, 2016.]

Transfer Authority to Investigate Attorney Wrongdoing to the Inspector General of the Justice Department

RECOMMENDATION

Transfer the authority of the Office of Professional Responsibility (OPR) to investigate and punish professional malpractices and ethical violations by Justice Department lawyers, paralegal, legal assistants, and other staff to the Office of the Inspector General (OIG) of the Justice Department.

RATIONALE

The OPR has sole authority to investigate and punish unprofessional behavior by Justice Department personnel. It has been repeatedly criticized for its bias, failure to take action, and the incompetence of its personnel. Other Justice Department lawyers generally view the office with contempt because they believe it lacks the level of professional competence found elsewhere in the frontline divisions within Justice. It has demonstrated on numerous occasions that it is incapable of handling politically charged issues in an even-handed manner, particularly because the Attorney General appoints the head of the OPR, which is supposed to be the DOJ's internal policeman. As just one example, former Attorney General Michael Mukasey and Deputy Attorney General Mark Filip scathingly criticized the OPR for its erroneous, biased, and error-filled report in 2009 on John Yoo and Jay Bybee, the Bush Administration lawyers who wrote the memos analyzing the legality of enhanced interrogation techniques.

These problems with OPR lawyers and the conflict of interest inherent in having the OPR's director report directly to the Attorney General prompted the Inspector General of the Justice Department, Michael Horowitz, in 2013 to ask that his office be given authority to investigate the misconduct of Justice lawyers. He pointed out that the "institutional independence of the OIG…is crucial to the effectiveness of our misconduct investigations." Unlike the IG, "OPR does not have that statutory independence" since the "Attorney General appoints and can remove OPR's leader."

ADDITIONAL READING

- John Fund and Hans von Spakovsky, *Obama's Enforcer: Eric Holder's Justice Department* (New York: HarperCollins/Broadside, 2014), pp. 202–209.
- "Top Management and Performance Challenges Facing the Department of Justice-2013," Memorandum to the Attorney General, the Deputy Attorney General, from Michael E. Horowitz, Inspector General, U.S. Department of Justice, December 11, 2013 (re-issued December 20, 2013).
- "Vindicating John Yoo," *The Wall Street Journal*, February 22, 2010.
- Hans von Spakovsky, "Revenge of the Liberal Bureaucrats," *The Weekly Standard*, January 2, 2009.

ENDNOTES

1. 18 U.S. Code 981(e)(2).
2. Marian R. Williams et al., "Policing for Profit: The Abuse of Civil Asset Forfeiture," Institute for Justice, March 2010, http://www.ij.org/images/pdf_folder/other_pubs/assetforfeituretoemail.pdf (accessed May 3, 2017).
3. U.S. Department of Justice, Office of Inspector General, "Review of the Department's Oversight of Cash Seizure and Forfeiture Activities," March 2017, https://oig.justice.gov/reports/2017/e1702.pdf (accessed May 3, 2017).
4. Hans von Spakovsky, "Zimmerman Trial: The Holder Justice Department's Latest Abuse of Power," The Daily Signal, July 10, 2013, http://dailysignal.com/2013/07/10/zimmerman-trial-the-holder-justice-departments-latest-abuse-of-power/.
5. Hans von Spakovsky, "Corruption, Incompetence Scandal at DOJ's Ferguson Unit Widens," PJ Media, April 18, 2016.
6. [Name redacted], "Community Oriented Policing Services (COPS): In Brief," Congressional Research Service, *CRS Report*, February 2, 2016, p. 1, footnote 4.
7. Ibid., p. 1.