



May 6, 2015

VIA CERTIFIED MAIL

Michael E. Horowitz, Esq.
Inspector General
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, N.W.
Suite 4706
Washington, D.C. 20530-0001

Re: Request for Investigation

Dear Inspector General Horowitz:

On January 29, 2015, Cause of Action, a government oversight group, requested that the Office of Inspector General (“OIG”) initiate an audit or review of the Department of Justice’s (“DOJ”) asset forfeiture program.¹

In response to Cause of Action’s letter, your office informed a reporter that it was already conducting a review of the DOJ’s asset seizure activities.² The DOJ OIG website describes this review as “focus[ing] on assessing the scope of federal seizure activities and the success rate of those actions, as well as the nature and extent of Department-organized or funded asset seizure training initiatives. The OIG’s review will cover the policies, practices, documentation, and outcomes of these activities and training programs for FY 2007 through FY 2014.”³

Cause of Action’s audit request was substantively different than the identified scope of your review. Your current review does not specifically examine administrative seizures nor evaluate the special civil liberties threats that result from such seizures. Although former Attorney General Holder’s order titled, “Prohibition on Certain Federal Adoptions of Seizures by State and Local Law Enforcement Agencies” (“Order”), states that it “applies prospectively to all federal adoptions,” the governing authority behind the Order restricts its application to adoptions of civil or criminal seizures only, excluding administrative seizures, which comprise the majority

¹ See Letter from Cause of Action to Michael E. Horowitz, IG, DOJ (Jan. 29, 2015), *available at* <https://www.scribd.com/doc/254119260/Cause-of-Action-Calls-on-DOJ-IG-to-Audit-Forfeiture-Programs> (hereinafter “CoA Letter”).

² See Ethan Barton, *Cause of Action Challenges Attorney General’s Official Property Seizure Reform*, WASH. EXAMINER (Jan. 30, 2015), *available at* <http://www.washingtonexaminer.com/cause-of-action-challenges-attorney-generals-official-property-seizure-reform/article/2559579>.

³ Office of the Inspector General, Department of Justice, <http://www.justice.gov/oig/ongoing/plus.htm> (last visited May 5, 2015).

of adoptions.⁴ Furthermore, we asked that you examine issues involved with federal contracts by Asset Forfeiture Program components and participants, which requires more than a review of the “nature and extent” of training initiatives or the “outcomes” of these initiatives.⁵

Notwithstanding your decision to ignore the unique issues raised in our January 29, 2015 letter, given continuing concerns regarding the DOJ’s Asset Forfeiture Program participants’ access to a license-plate tracking program, we are now demanding that OIG begin an immediate investigation into Desert Snow LLC (“Desert Snow”). Desert Snow’s founders created the Black Asphalt Electronic Networking & Notification System program (“Black Asphalt”),⁶ which was used for license-plate tracking, and is a General Services Administration (“GSA”)-approved federal contractor involved in asset seizure and training activities.⁷

Desert Snow LLC is the Causal Link between License-Plate Tracking and Asset Forfeiture

The DOJ’s license-plate tracking system, run by the Drug Enforcement Administration (“DEA”), involves tracking the real-time movement of vehicles around the country.⁸ The purported goal of this program is to seize cars, cash and other assets to help combat drug trafficking.⁹ But the breadth of the program has apparently expanded, and is now being used for all manner of potential crimes, and database information gathered by the program is being accessed by numerous state and local law-enforcement agencies.¹⁰

On January 28, 2015, Senators Charles Grassley (R-IA) and Patrick Leahy (D-VT) wrote then Attorney General Holder raising concerns over license-plate tracking systems and other surveillance programs.¹¹ As Senator Leahy noted to the press, the tracking system “raises significant privacy concerns. The fact that this intrusive technology is potentially being used to expand the reach of the government’s asset-forfeiture efforts is of even greater concern.”¹² Despite the raising of such concerns, reports indicate that the program continues to expand. Last

⁴ CoA Letter, *supra* note 1, at 5. Current Attorney General Loretta Lynch spoke favorably of asset forfeiture during her confirmation hearings, when she stated that “civil and criminal forfeiture are very important tools of the Department of Justice as well as our state and local counterparts.” Further, she claimed that such forfeiture is “done pursuant to supervision by a court, it is done pursuant to court order, and I believe the protections are there.” See Senator Mike Lee, *Lee Questions Loretta Lynch on Prosecutorial Discretion, Operation Chokepoint, and Asset Forfeiture*, YOUTUBE (JAN. 28, 2015), <https://www.youtube.com/watch?v=UJAxR93PkTk>; Scott Shackford, *AG Nominee Loretta Lynch Says Civil Asset Forfeiture ‘Protections Are There.’ Not When Her Office Ignores Them*, REASON (Jan. 29, 2015), <http://reason.com/blog/2015/01/29/ag-nominee-loretta-lynch-says-civil-asse>. Her views ignore, *inter alia*, administrative seizures, which are conducted without judicial supervision and with limited protections.

⁵ CoA Letter, *supra* note 1, at 8-9.

⁶ Michael Sallah, Robert O’Harrow, Jr., & Steven Rich, *Stop and Seize*, WASH. POST. (Sept. 6, 2014), available at <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/?hpid=z3>.

⁷ See generally, CoA Letter, *supra* note 1.

⁸ See Devlin Barrett, *U.S. Spies on Millions of Drivers*, WALL ST. J. (Jan. 26, 2015), available at <http://www.wsj.com/articles/u-s-spies-on-millions-of-cars-1422314779> (hereinafter “Barrett”).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Letter from Sens. Charles E. Grassley, Chairman & Patrick J. Leahy, Ranking Member, S. Comm. on Judiciary to Hon. Eric H. Holder, Jr., Atty. Gen. (Jan. 28, 2015), available at <http://1.usa.gov/1PmH31a>.

¹² Barrett, *supra* note 9.

month, the Department of Homeland Security announced that it was seeking bids from companies already gathering license-plate tracking data to determine the cost for providing access to Immigration and Customs Enforcement (“ICE”) officers.¹³

As Cause of Action explained in its prior letter, beyond the obvious concerns raised by DEA’s program and asset forfeiture efforts, the DOJ OIG is authorized to investigate concerns relating to federal contractors who benefit from asset forfeiture and individual monitoring activities. DEA, ICE and others have contracted with Desert Snow.¹⁴ As you are now aware, Desert Snow trained law enforcement officers in aggressive highway interdiction methods and started a private intelligence network for police known as Black Asphalt, which enabled more than 25,000 officers and federal authorities throughout the country to share reports about American motorists, many of whom had not been charged with any crimes.¹⁵

In September 2014, the American Civil Liberties Union sued Logan County, Oklahoma for access to records regarding Black Asphalt, which is now government-run, after discovering that Desert Snow employees were “impersonating police officers . . . ‘as part of a scheme with the local district attorney to make traffic stops, seize cash and property from citizens, and funnel it into local coffers in exchange for a percentage of the profits.’”¹⁶ Reports from USASpending.gov reflect that Desert Snow continues to receive federal funds, including funding from DOJ.¹⁷

Sadly, there is no indication that OIG’s current review of DOJ’s asset seizure activities will include an investigation of the unique civil liberties threats posed by contractors like Desert Snow, programs like Black Asphalt and systems of license plate tracking. Given recent press and congressional concerns, we are requesting that you specifically investigate Asset Forfeiture Program contractors and systems, including but not limited to, Desert Snow, Black Asphalt, and license plate tracking systems. Such an investigation will help ensure that OIG is fulfilling its mission to detect and deter waste, fraud, abuse and misconduct in DOJ’s programs and will help promote government transparency and accountability.

¹³ Ellen Nakashima, *A Year After Firestorm, DHS Wants Access to License-Plate Tracking System*, WASH. POST (Apr. 2, 2015), available at http://www.washingtonpost.com/world/national-security/dhs-renews-quest-for-access-to-national-license-plate-tracking-system/2015/04/02/4d79385a-d8a1-11e4-8103-fa84725dbf9d_story.html.

¹⁴ Kevin Gosztola, *DEA’s Massive License Plate Tracking Program Spies on Millions of Americans, Helps Agents Seize Property*, THE DISSENTER (Jan. 27, 2015), available at <http://dissenter.firedoglake.com/2015/01/27/deas-massive-license-plate-tracking-program-spies-on-millions-of-americans-helps-agents-seize-property/>.

¹⁵ Robert O’Harrow Jr. & Michael Sallah, *Police Intelligence Targets Cash*, WASH. POST (Sept. 7, 2014), available at <http://www.washingtonpost.com/sf/investigative/2014/09/07/police-intelligence-targets-cash/>.

¹⁶ David Lee, *Sheriff Accused of Keeping Secret Database*, COURTHOUSE NEWS SERVICE (Sept. 15, 2014), available at <http://www.courthousenews.com/2014/09/15/71368.htm>.

¹⁷ USASPENDING.GOV, PRIME AWARD SPENDING DATA, available at <https://www.usaspending.gov> (search “Desert Snow LLC”).

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Thank you for your attention to this matter.



DANIEL Z. EPSTEIN
EXECUTIVE DIRECTOR

cc: Attorney General Loretta E. Lynch, U.S. Department of Justice
Senator Charles E. Grassley, Chairman, Senate Committee on the Judiciary
Senator Patrick J. Leahy, Ranking Member, Senate Committee on the Judiciary
Representative Bob Goodlatte, Chairman, House Committee on the Judiciary
Representative John Conyers, Jr., Ranking Member, House Committee on the Judiciary