

John Cassara's Response to Questions Posed by Senator Ben Sasse

Hearing: "S-1241: Modernizing AML Laws to Combat Money Laundering and Terrorist Financing"

1. I do not understand the question posed about a "threshold" and organizational structure to combat money laundering. However, one overlooked organizational obstacle to effective AML is the creation of the Department of Homeland Security and the simultaneous decimation of Treasury enforcement.

Within the Department of Justice, the DEA is single mission. It focuses almost exclusively on narcotics. Today, most money laundering in the United States does not involve narcotics trafficking. The FBI is very good at catching bank robbers and white collar criminals. But its legacy does not really involve money laundering. Moreover, the FBI has no expertise in trade-based money laundering – arguably the largest and most pervasive money laundering methodology in the U.S. In contrast, the mission of the Department of Treasury is money. With the creation of DHS, legacy Treasury law enforcement arms such as the Secret Service, ATF, and Customs were jettisoned. Treasury no longer has enforcement capability. (I am not including IRS-CI because its mission is primarily taxes). FinCEN, OFAC, TFI, etc. are not involved with street level investigations and law enforcement. DHS' Immigration and Customs Enforcement is multi-mission. Financial crimes expertise has deteriorated while more and more emphasis has been put on illegal immigration. Legacy customs investigators that had expertise in trade fraud, trade-based money laundering, and underground financial systems such as hawala have now retired.

So in considering a possible rearrangement of our AML organizational structure, I strongly urge Congress to put the Secret Service, ATF, and Customs back into the Department of Treasury where they belong.

Per my written statement on page 11, I believe the most pressing need is to change the incentives and priorities for law enforcement. Instead of our primary emphasis on intercepting narcotics or seizing stolen vehicles or stopping containers of counterfeit goods, we should change the enforcement paradigm. The emphasis should be on following the money trail to the criminal hierarchy and taking away ill-gotten gains. We have talked about this for over 25 years but we have never done it. It is easier to go after the criminal activity rather than the illicit proceeds they generate – even though the

proceeds fuel the crime. Until we change the priority, we will not make progress. And in order to change the priority, we have to change the incentives for law enforcement. Law enforcement agencies and departments at the federal, state and local levels (investigators and prosecutors) are statistics driven. Promotions and budgets depend upon them. Although there are some high-profile exceptions, over time and generally speaking, there is very subtle bureaucratic pressure to go after the quick and easy cases rather than meaningful, long-term, complex, impact cases that revolve around money.

2. There will always be a balancing act between the need for effective enforcement and the simultaneous need to protect civil liberties. In the context of financial intelligence, I think we have done a remarkably effective job of doing just that. I worked with financial intelligence for over twenty years including six years at FinCEN. I do not recall a single instance domestically where financial intelligence was abused or released inappropriately. I do not understand the question about transactional behavior.
3. It's estimated that human trafficking generates roughly \$150 billion in illicit profits each year, making it one of the largest illegal industries in the world. Criminal organizations do not traffic in people for the sake of transporting or manipulating people. They engage in criminal human trafficking to make money. The money they make is the proceeds of crime. Money laundering is the necessary component in disguising the proceeds of human trafficking.
4. I discuss the use of Legal Entity Identifier (LEI) on page 14 of my written statement. The widespread use of LEI will help provide financial transparency, accountability, and assist investigators in following the money trail. Much more information is available at the Global Legal Entity Identifier Foundation at <https://www.gleif.org>. One of the primary drivers of the LEI is the Group of 20 and the U.S. is a member.

The regulatory system in the United States is vast and complex. As of 2012, the U.S. Treasury was promoting the use of LEI. For further information on the status of the LEI in the United States and steps forward see: https://www.treasury.gov/initiatives/wsr/ofr/Documents/LEI_FAQs_August2012_FINAL.pdf

5. I do not know how to calculate the costs of requiring beneficial ownership transparency. Inquiries to the European Union regarding its experience with implementing their program of beneficial ownership requirements might be useful.

The concern about the effectiveness of beneficial ownership transparency requirements if other countries continue to facilitate the creation of opaque shell companies is valid. In

international money laundering, criminals and criminal organizations gravitate towards the weak link. There are many of financial secrecy countries and jurisdictions that will continue to provide opaque shell companies because they gain revenue from doing so. The most effective countermeasure is publically naming and shaming. The Financial Action Task Force should play a lead role in this regard.

It is precisely because of our shame that we need to crack down on non-transparent shell company formation. Observers worldwide point to U.S. hypocrisy. How can we lecture others about the need for financial transparency in all its many forms when the U.S. enables the creation of non-transparent shell companies? Overseas, the unaware point to the United States and our financial safeguards. Not knowing about the non-transparent nature of “Delaware” companies, they say if a company is established in Delaware it must be O.K. because the United States would never permit egregious and fraudulent behavior to be masked by shell company formation. It is embarrassing to have to disabuse them of this notion.

Regarding the types of company forms that beneficial ownership information should apply to, from a criminal investigator’s standpoint the more transparent, the more information, the more coverage, and the more accessible the more helpful it is.

6. I do not have any experience with bitcoins and other cryptocurrencies.
7. The question about how seriously cracking down on money laundering would enhance tax revenue is excellent. The question should be directed to Treasury or perhaps the GAO.

But before making that inquiry, one must first decide what it included in the “count.” Are we also talking tax evasion? As I note on page 5 in my written statement, the IRS believes “money laundering is tax evasion in progress.” Systematically and aggressively cracking down on tax evasion (and associated tax fraud) would also obviously bring enormous revenue to the government.

From a pure money laundering perspective, in the U.S. it is conservatively estimated that \$300 billion is laundered every year. I believe the total from recognized specified unlawful activities (not including tax evasion) is at least double that amount. For the most part, the proceeds of crime are not taxed via current federal and state income tax. (Theoretically, a consumption tax would be more effective in recovering ill-gotten gains).

If we use \$500 billion a year as a moderate estimate of money laundering in the United States, by increasing our AML efforts we could perhaps intercept, seize and forfeit 5% of

illicit proceeds. (We are currently seizing and forfeiting approximately 1%). A 5% success rate would mean approximately \$25 billion a year. In contrast, per my written testimony on page 5, in 2014 the U.S. confiscated approximately \$4.4 billion.

Perhaps the largest untapped source of tax revenue revolves around trade-based money laundering. Per my written statement on pages 6 and 7, trade-fraud is a predicate offense for money laundering and could represent approximately 6 – 9 percent of U.S. trade. We could recover billions of dollars in taxes and tariffs if trade fraud and trade-based money laundering were systematically targeted. We know how to do it. We just haven't made it a priority. The return on the small investment required would be enormous!

8. Money laundering is an essential component in any transnational criminal organization. Illicit proceeds have to be successfully laundered for the criminal organization to stay operational. As far as I am aware, every criminal and terrorist organization is different when it comes to laundering illicit funds. There isn't a single model. Some internalize the laundering. Others outsource in order to acquire financial and legal expertise. Some narcotics trafficking organizations in Mexico and Colombia cooperate in smuggling and buying and selling the resultant product and proceeds. Per the question, I have no expertise in MS-13.