

Hearing on “Beyond the Smash and Grab: Criminal Networks and Organized Theft”
Senator Grassley, Chairman
Questions for the Record
Hon. Summer Stephan

1. An important feature of the Combatting Organized Retail Crime Act is allowing for criminal forfeiture of assets after a defendant is convicted of stealing from interstate or foreign freight (18 U.S.C. § 659), transporting stolen goods (18 U.S.C. § 2314), or sale or receipt of stolen goods (18 U.S.C. § 2315).
 - a. What is the purpose of criminal forfeiture?

Criminal forfeiture is an important tool to dismantle and disable organized crime rings by seizing any property, goods, or financial gains directly tied to the crimes that they are convicted of. Organized crime is driven by financial greed and resulting power. This is the reason that criminal forfeiture is not only a beneficial tool, but a critical component of deterring and dismantling organized crime syndicates and groups. Beyond its impact on the offender, criminal forfeiture can positively support victims as well. Seized assets can be used to compensate victims for their losses through restitution, and other victim services. Criminal forfeiture can also financially support the ability of law enforcement to conduct these complex investigations that inevitably require overtime and increased technological and people resources.

- b. For assets to be forfeited under criminal forfeiture statutes, must they be the assets stolen or connected to the proceeds of the defendant’s criminal activity?

Yes. Under federal criminal forfeiture any property, real or personal, that is directly related or is traceable to the profits acquired directly or indirectly as a result of the offense shall be forfeited.

- c. What protections against overreaching criminal asset forfeiture exist in statute or case law?

The first protection is that criminal forfeiture is an *in personam* sanction meaning it can only be triggered following a defendant’s conviction. The Supreme Court in *U.S. v. Bajakajian* (1998) held that forfeiture “grossly disproportional” to the offense violates the Excessive Fines Clause, creating a constitutional check on punitive forfeitures. *Timbs v. Indiana* (2019) extended this protection to state-level forfeitures. Federal statutes and Supreme Court precedents provide the necessary safeguards to ensure there are no abusive asset forfeitures.

- d. How does the criminal forfeiture described in the Combatting Organized Retail Crime Act help prosecutors address organized retail and supply chain crime?

The addition of interstate shipment theft, the transportation of stolen goods, and the sale of stolen goods to offenses that are applicable to criminal forfeiture provides prosecutors with the tools to make sure we are prioritizing organized crime rings, and depriving them of the ill-gotten gains that motivates the crimes in the first place.

2. In addition to establishing the Organized Retail and Supply Chain Crime Coordination Center, the Combatting Organized Retail Crime Act amends portions of Title 18 relating

to aggregating thefts that reach over \$5000 over 12 months. Why is aggregation an important component of the bill, especially in terms of differentiating ordinary shoplifters from organized theft groups?

Aggregation by its very nature targets repeat and habitual criminal conduct over a limited time period and thus helps prosecutors focus on this narrower criminal population rather than the individual who commits a one-time crime. Aggregation also allows us to connect the dots and prove the organizational aspect of organized theft and retail crime by demonstrating that specific items that are more suitable for resale like home improvement tools, designer jeans, or cosmetics are the targeted item for theft as opposed to an item of necessity due to hunger or poverty. Aggregation helps build the case and illustrate what an organized retail crime ring is—multiple perpetrators, repeated thefts, and shared fencing routes. This tool allows us to strategically focus on the most serious and organized thieves, leaving one-time shoplifters or petty theft outside of any federal prosecution.

3. At a federal level, the Racketeer Influenced and Corrupt Organizations (RICO) Act criminalizes certain acts by criminal enterprises. Many states have adopted similar statutes. However, prosecuting crimes under state and federal RICO statutes presents challenges. Why are RICO statutes not equipped to tackle organized retail and supply chain crime?

The RICO Act is an important law that allows the effective prosecution of established criminal enterprises such as the Sinaloa cartel or the Mexican Mafia (EME) but the elements of this law requires proof of the enterprise itself along with proof of the crimes committed. In my experience of my office prosecuting more than 200 criminal defendants under our state Organized Retail Crime statutes, these criminal groups appear to typically operate without the formal hierarchy that is seen in traditional RICO cases, and a specific criminal ‘enterprise’ is not identified. It’s possible that one of the outcomes of a national task force is the ability to identify some enterprises. Currently, organized retail crime rings will exploit online resale platforms and multiple stores making it difficult to trace the shipments and meet the RICO threshold of the enterprise affecting commerce. Building a RICO case also demands coordination, forensic support, wire-tap authorizations, and other resources many county prosecutors lack. Without specialized training in racketeering investigations, RICO cases can be difficult to carry out. RICO is an excellent tool to dismantle long-standing, high level traditional criminal enterprises, but it is too blunt to adequately address the decentralized, fast-moving organized retail crime rings.

4. The National District Attorneys Association and the Retail Industry Leaders Association came together to create the Vibrant Communities Initiative, a public-private partnership that mirrors the Organized Retail and Supply Chain Crime Coordination Center the Combatting Organized Retail Crime Act calls for. Why is public-private coordination valuable to combat organized retail and supply chain crime?

Public-private partnerships are invaluable to addressing organized retail and supply chain crime. NDAA and the Retail Industry Leaders Association (RILA) created the first-of-its kind national partnership in 2022 to unify prosecutors and retailers in the fight against organized retail crime.

The partnership has successfully opened lines of communication, raised awareness of the issue, and elevated the response to organized retail crime. Through the partnership, retailers and prosecutors collaborate to share insights, build understanding, and identify ways to ensure community safety. Retailers have the opportunity to explain their approach to deterring crime, highlight their biggest challenges, and present opportunities for collaboration. District Attorneys' offices can offer their expertise on organized retail theft cases, share resource capabilities, and learn how their teams can be the most helpful and efficient. Public-private partnerships ensure that we are combating organized retail crime with as much accurate information available including the on the ground observations of private retailers combined with the law enforcement and prosecutor lens on the requirements of the laws.

We also see this private-public task force model successfully working in our San Diego and California Organized Retail Crime Task Forces. The large challenge that we are unable to meet is the proliferation of organized theft groups that operate across state lines and even transnationally including the key obstacle of stolen products being sold online in any state across our nation. This is where duplicating the proven wins of having public-private task forces expanded to a national level as proposed by this legislation is necessary.

5. The Organized Retail and Supply Chain Crime Coordination Center led by Homeland Security Investigations brings together multiple players to solve this problem. At a federal level, Customs and Border Protection, Secret Service, Postal Inspection Service, ATF, DEA, FBI, and the Federal Motor Carrier Safety Administration are all to staff the Organized Retail and Supply Chain Crime Coordination Center.
 - a. Why is it important to have the federal government coordinate the response to organized retail crime?

A federal coordination center would ensure effective communication and evidence sharing that would improve investigations at the local, state, and federal level. Federal agencies contributing their resources and subject matter experts to combating organized retail crime would greatly help in dismantling the complex networks of the organized crime rings. By elevating the response to organized retail crime to the federal level we would have more coordinated investigations with more effective prosecutions that can reach the higher level of the criminal organization.

- b. How would federal coordination of law enforcement help detect and punish nationwide criminal organizations that state law enforcement alone cannot address?

Organized theft crime rings are increasingly operating at a national and trans-national level which requires that we meet this threat with federal coordination that can connect the dots and develop investigations and prosecutions that can reach the higher-level criminal heads and organizers. I described in my written and oral testimony examples of multimillion dollar commercial and residential thefts where the criminal syndicates operate in multiple states and there is clear indications that the stolen property (Rolexes in one incident) were quickly transferred transnationally. This is evidence that organized retail crime rings currently exploit the gaps between jurisdictions, moving the stolen items and their financial laundering through multiple states to avoid prosecution. Coordination at the federal level would thwart this with consistent authority as they move state to state, and the ability to develop thorough investigations

regardless of where the criminals are operating at the time. I believe that if we had a functioning federal task force working hand in hand with state and local law enforcement and prosecutors, we would have received a national alert about the tactics of the criminal transnational group, in the latest case, a South American criminal syndicate targeting commercial jewelry stores and high end homes. A federal coordination center would also be an excellent tool because no single agency has all the investigative tools or resources needed to properly address the evolution of organized theft that is impacting small and large businesses at the heart of each community across America. A federal task force would be able to take on the challenges of these crimes that have resulted in harm that impacts the economy and the personal security of employees, customers and community.

The evolution of organized retail crime. Like any illicit crime ring, the networks, sophistication and ever-increasing willingness to use force and violence to achieve their goals is constantly evolving. Long gone are the days of retail crime being the work of isolated lone criminals. Instead, it has evolved into highly elaborate operations, often conducted by well-organized networks and coordinated across multiple locations, making identification and prosecution much more challenging. Another area that organized criminal groups are operating in across the United States goes beyond commercial properties like retail stores to brazen residential homes targeting very specific resaleable items such as jewelry and designer bags. Organized retail crime is a multi-billion-dollar illicit industry, and the criminals are willing to do what it takes to protect their investments.

The lack of coordination among all parties affected by organized retail crime has been exploited by criminals. The lack of coordination and information-sharing among retailers, law enforcement agencies, and other stakeholders hinders our ability to combat organized retail theft effectively. A continuous, collaborative and multi-teamed approach is necessary to address organized retail crime theft comprehensively. Organized crime rings easily traverse jurisdictions and state lines to evade detection and to continue their nefarious operations. Without a coordinated response, theft incidents get siloed within jurisdictions and justice is never fully achieved. This results in local law enforcement focusing only on individual cases, retailers tightening security in isolation, and it being more difficult for prosecutors to thread the needle and charge the most serious offenders. A unified and coordinated effort ensures that patterns and offenders aren't lost when crimes cross geographic, jurisdictional or organizational boundaries. This is one of the challenges where a coordinated national center as proposed in CORCA can be beneficial.