<u>Written Questions of Ranking Member Charles Grassley for Senate Judiciary Committee Hearing, "Cleaning Up Online Marketplaces: Protecting Against Stolen, Counterfeit and Unsafe Goods," November 2, 2021</u>

<u>Questions for Ben Dugan</u>

1. What's been your experience working with law enforcement to protect against online retail theft? What can be done to better improve law enforcement efforts?

   CVS enjoys strong partnerships with local, state, and federal law enforcement agencies in the fight against organized retail crime (ORC). However, the success of law enforcement in these efforts is impaired by three major challenges:

   <u>Resources to address these crimes at the appropriate level</u>*. We have heard that many law enforcement agencies do not have the manpower or tools they need to consistently investigate these crimes and keep pace with the rapidly growing number of bad actors and criminal organizations operating through the online marketplaces. Dedicated funding for investigators and analysts would be helpful.*

   <u>Education and Training</u>*. Understanding among law enforcement, prosecutors and the online marketplaces of the severity and impact of ORC also can be limited. Unfamiliarity with the tactics used by these criminal organizations can impede or significantly delay enforcement actions that could reduce physical and financial harm. There is a continued need for specific ORC training to all levels of law enforcement and among the online marketplaces.*

   <u>Transparency and Intelligence Sharing</u>*. Currently, intelligence on ORC criminal networks and activity is sporadic and scattered across the country by state. A federal center and/or database, manned by the appropriate representatives from law enforcement and retail, is needed. This center would act as a clearinghouse to collect and distribute field intelligence, including vital information on illicit sellers and stolen product trends from each of the online marketplaces.*

2. What trends are you seeing in terms of the type of goods that are being counterfeited or shoplifted? Are certain goods preferred by these criminals?

First, thank you for your co-sponsorship of S. 936, The INFORM Consumers Act. We appreciate your support to enact legislation to dissuade criminal actors who sell stolen and counterfeit goods to unsuspecting consumers while at the same time harming local businesses, families, and their communities.

The sale of stolen goods via online marketplaces is increasing rapidly, representing a serious threat to legitimate businesses of all sizes and subjecting our colleagues and in-person and online shoppers to real harm. Organized retail crime (ORC) has been on the rise for more than a decade and has grown enormously since 2017. In the last two and a half years, criminal networks have taken advantage of the COVID-19 pandemic and the steep rise in online purchases to prey on unsuspecting consumers by peddling counterfeit, stolen, defective, harmful, and potentially dangerous products.

In their 2021 report entitled, The Impact of Organized Crime and Theft in the United States, the Retail Industry Leader's Association and the Buy Safe America Coalition estimated that as much as US$68.9 billion worth of products were stolen from retailers in 2019, representing about 1.5 percent of total retail sales. The report further estimates that retail theft costs federal and state governments nearly US$15 billion in personal and business tax revenues, not including the lost sales taxes. It is estimated that more than $500 billion in illicit stolen and counterfeit goods are sold on third-party marketplaces like Amazon each year.

These crimes have become more sophisticated and highly dangerous. The use of a weapon or physical violence during an organized retail crime theft has more than doubled in the last year and a half. As these crimes grow increasingly common, they pose a serious threat to the safety and well-being of our customers and colleagues, subjecting them to potential harm and distress.

The National Coalition of Law Enforcement and Retail categorizes ORC threat levels by product category. Different types of products are stolen and resold by divergent criminal networks and organizations. The chart below describes these threats and their impact.

Severity

ORC Activity	Targeted Product	Retail Victims	Level of Violence	Scope	Financial Impact (per case)	Collateral Crimes
National Criminal Organizations (Control Pricing and Disrupt Infrastructure)	OTC medicines Razor blades Health and beauty aids	Pharmacies, big box, and grocery stores	**Low** Purposely non-violent	Transnational, national interstate theft across large geographic areas (includes e-commerce)	US$10 - 200 Million	Interstate stolen goods, ML/wire fraud, international crimes/ counterfeiting, large scale financial fraud (gov), drug trafficking, human (labor) trafficking, terrorism financing
E-Commerce High Level Sell Nationally	Tools, electronics, health and beauty aids	Home improvement, electronic stores, grocers, pharmacies, big box	**Moderate**	Product stolen regionally; same state or neighboring states	US$500k- 2 Million	Interstate stolen goods, narcotics trafficking, ML/wire fraud
E-Commerce Local Level Sell Nationally	Tools, cosmetics, clothing and accessories	Home improvement, electronic stores, grocers, pharmacies, and big box	**Moderate**	Product stolen and listed locally	US$25K- 500K	Interstate stolen goods, narcotics trafficking, ML/wire fraud
Local ORC Flea Markets, Small Illicit Businesses	Laundry detergent, hand and body lotions; personal hygiene and some clothing	Dollar stores, big box, soft lines, pharmacies	**High probability for violence**	Product stolen and sold locally in public forum	US$10k- 200K	Interstate stolen goods, robbery/assault, narcotics trafficking, ML/wire fraud
Smash and Grabs	High dollar designer goods, jewelry, clothing	High end, soft lines, jewelry, small businesses	**Very violent**	Local gangs	US$5K- 100K	Robbery/assault, burglary, narcotics trafficking
Retail Theft Personal Use	All retailers	All retailers	**High potential for violence**	Local homeless or drug addicted	Low dollar	Narcotics, robbery/assault

Source: chart provided by Ben Dugan, President of C.L.E.A.R.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Mr. Ben Dugan, Director of Organized Retail Crime and Corporate Investigations, CVS Health

1. It is helpful to begin with a common understanding of terms. Please define the following, with an explanation of how they relate to one another:

The definitions provided below are commonly understood meanings of these phrases as used by organized retail crime investigation units and law enforcement.

Shoplifting or petty theft – *The act of stealing merchandise for personal use or consumption.*

Organized retail theft – *Repeated and/or large-scale theft of retail merchandise with the intent to resell for financial gain. In its simplest form, organized retail crime is a syndicate of sophisticated criminal networks consisting of professional thieves, fences, and illicit online sellers.*

Employee shoplifting or petty theft – *Employees involved in stealing merchandise for personal use or consumption.*

Employee organized retail theft – *Employees involved in collusion or a conspiracy with another employee or outside entity to repeatedly steal merchandise from their retail employer for resale or financial gain. These incidents are rare and normally involve listing or reselling stolen product through an online marketplace.*

2. In an NBC News article[i], spokespersons for CVS and Walgreens were quoted as saying that thefts at San Francisco stores outpace those at stores in other markets. In an article with the San Francisco Chronicle, you were quoted as having said that: "At CVS, 42 percent of losses within the Bay Space got here from 12 shops in San Francisco, that are solely 8 percent of the market share."[ii] Additionally, in a New York Times article, you were quoted as saying that "San Francisco is one of the epicenters of organized retail crime."

In your sworn testimony, you stated that there is not more theft in San Francisco stores. You further asserted that relative to market share, San Francisco stores do not have higher instances of loss than stores in other markets. Finally, while you stated that CVS would not support laws that effectively decriminalize shoplifting, you did not provide a clear answer as to whether or not such laws have an impact on losses incurred by your stores.

a. Have thefts at CVS stores in San Francisco outpaced thefts at CVS stores in other markets?
b. What percent of losses do CVS stores in the San Francisco/Bay Area account for in proportion to your company's overall market share? In absolute terms?
c. Is there more organized retail crime in San Francisco relative to overall market share? In absolute terms? If so, how much more organized retail crime has occurred in San Francisco relative to CVS's overall market share since 2020?
d. Is there more shoplifting in San Francisco relative to overall market share? In absolute terms?

Please provide data to support your answers.

The statements quoted in the NBC News article were made on May 13, 2021 during a presentation to the San Francisco Board of Supervisors in response to questions about retail theft specifically in the Bay Area and across the state of California at that time, not in comparison to other cities or regions in the United

States that are outside of California.

The statements made at the November 2, 2021 Senate Judiciary hearing also are true. CVS Health does experience greater "instances of theft" in areas other than San Francisco. If time had permitted, I would have explained that the nationwide increase in organized retail crime appears to be linked more closely to the expansion of the online marketplaces beginning in 2017 than any enactment of increased felony thresholds, which began to rise in 2000.

A May 28, 2018 article entitled "States Can Safely Raise Their Felony Theft Thresholds" by the National Conference of State Legislatures, stated that "at least 39 states have raised the felony threshold for property theft since 2000." More than half of states, including Texas, have a felony theft threshold of $1,000 or more.

3. In an article entitled "Functional Redundancy as a Response to Employee Theft Within Small Businesses" by J.P. Kennedy, the author describes that employee theft has been trending upward and is ten times more costly to businesses than all forms of street crime and non-employee theft. In your testimony, you stated your opinion may be biased as a result of your role in working on the external part of the problem. Further, you stated that over the course of the pandemic, it has been non-employee theft that has been on the rise.

Since 2014, thirteen states plus the District of Columbia have enacted so- called "ban-the-box" laws, which bar employers from asking prospective employees about their criminal background. In that same vein, the Obama Administration launched the Fair Chance Business Pledge inviting employers to adopt ban-the-box hiring practices. CVS Health signed on to that pledge[iv].

a. Since signing the Fair Chance Business Pledge, has CVS seen an increase or a decrease in losses incurred as a result of, or which CVS has attributed to, employee theft?

b. What percentage of losses does CVS attribute to employee theft compared to those incurred from external losses? In absolute terms?

c. For each year over the last five years, what cities or states experienced the highest rates of organized retail theft from non-employees? From employees? How has this changed over time by location?

Please provide data to support your answers.

CVS Health signed the Fair Chance Business Pledge in 2016 and maintains compliance with all applicable laws related to hiring of employees with a previous criminal background. In the past five years, 99.8% of the nearly 1500 cases that were investigated by the CVS Health ORC Team were related to ORC organizations not affiliated with or involving a company employee.

According to a 2022 joint report from the Association of Certified Anti-Money Laundering Specialists and U.S. Department of Homeland Security entitled "Detecting and Reporting the Illicit Financial Flows Tied to Organized Theft Groups (OTG) and Organized Retail Crime (ORC)," the top ten cities with the highest rates of ORC are (in order):

1. *New York City*
2. *Los Angeles*
3. *Philadelphia*
4. *Chicago*
5. *Washington, DC/Baltimore*

6. *San Francisco*
7. *Houston*
8. *Miami*
9. *Dallas*
10. *Orlando/Tampa*

4. In your testimony, you advocated for the INFORM Consumers Act in order to combat organized retail theft, despite the fact that the INFORM Consumers Act contains no provisions directly related to the criminal aspect of retail crime.

   a. What position does CVS and CLEAR take regarding whether the Department of Justice should consider charges against these organizations under the Racketeer Influenced and Corrupt Organizations Act (RICO)?
   b. What does position does CVS and CLEAR take regarding whether the Department of Justice should consider bringing criminal charges against organizations or individuals responsible for organized retail crime?
   c. If CVS and CLEAR oppose bringing criminal charges or RICO charges, please explain the reasoning for these positions.
   d. Why do CVS and CLEAR believe that the provisions under the INFORM Consumers Act would be more successful in combatting organized retail crime than law enforcement actions through criminal charges or RICO charges? –

CVS Health directly investigates and compiles information to assist law enforcement, but all decisions on whether to pursue criminal charges and how to prosecute a matter occur at the sole discretion of the prosecutors assigned to the case.

While CLEAR encourages cooperation between law enforcement agencies and business and private sector organizations with the goal of advancing security and protecting our communities, the organization also generally does not take positions related to the manner in which law enforcement pursues cases. CLEAR routinely educate and counsels law enforcement personnel on how to effectively pursue and investigate cases through its training programs.

By making it harder for criminals to easily dispose of stolen and counterfeit goods, the INFORM Consumers Act would directly and immediately curtail theft in retail stores and the proliferation of counterfeit goods available in online marketplaces. Importantly, by increasing confidence in the integrity and safety of the products purchased online, the INFORM Consumers Act would also enhance the ability of legitimate sellers of all sizes to connect with customers. Criminal investigations, while critical, are reactive in nature, occurring after the harm has been rendered.

5. In your testimony, you explained how a network of so-called "boosters" sell stolen goods to "fences" for below market value in exchange for either money or drugs. According to the Department of Housing and Urban Development's (HUD) most recent Annual Homeless Assessment Report (AHAR), the nation's homeless population sits at roughly 580,000 and nearly 40% of that population is unsheltered[v]. California accounts for more than half of all unsheltered people in the nation (about 113,660 people) and nearly half of that population (63,706 people) is in Los Angeles County.

a. Is there any correlation between an incidents of retail thefts and the prevalence of homelessness a city or state is dealing with? Using Los Angeles as an example, please provide comparative data as to the national average of thefts in CVS stores versus thefts in Los Angeles County stores.

CVS Health does not categorize or track theft data by homelessness or any other social demographic.

6. According to the National Retail Federation (NRF), organized retail crime (ORC) is a serious problem—and it's on the rise. Three in four ORC victims tell NRF they've seen an increase in the past 12 months. When asked why they believe this is happening, retail execs point to "relaxed law enforcement guidelines," "shoplifting law changes, limited loss prevention in stores," and "decreased penalties in shoplifting laws."[vi] In your testimony, you stated that criminal activity has overwhelmed efforts to engage in loss prevention.

a. A lot of focus has been placed on e-commerce platforms as it relates to halting the sale of goods that have already been stolen. What is CVS's position on loss prevention and how much focus should be placed on preventing loss at the outset? Please provide a copy of any written loss prevention policies currently in use by CVS.

b. In the past 5 years, has CVS allocated more resources to loss prevention? What kinds of efforts have been undertaken? Please provide data to support your answer.

c. Why is the tax data that online platforms already collect for tax purposes insufficient for identifying third party sellers who use such platforms to engage in commerce?

Federal law does not currently require online marketplaces to verify the accuracy of the information provided by the seller. The INFORM Consumers Act, by comparison, requires verification of seller information, including banking information, which frequently is essential to law enforcement when seeking evidence. Further, the marketplaces report a single aggregate sales amount to the IRS, not transactions that can provide evidence of fraudulent activity between various parties in the criminal organization.

7. How does CVS distinguish between organized retail theft and shoplifting or petty theft? Does CVS track products stolen and make a determination as to whether the incident is organized retail theft versus shoplifting on a case-by-case basis? Please explain your internal processes for making such determinations.

a. Over the past five years, how many incidents of organized retail theft investigated by CVS and charged by local, state or federal law enforcement utilized either a CVS employee or an employee of a CVS contractor, vendor, or supplier acting as an "inside man" as part of the criminal enterprise? How many total incidents of retail theft have local, state or federal law enforcement charged that involved the sale of stolen goods from CVS as part of organized retail theft?

b. How does CVS account for thefts that are not reported to law enforcement on its balance sheet?

c. What is CVS's position on creating a registry of stolen products with SKU data in collaboration with online platforms and other retailers?

d. What has CVS done to collaborate with other retailers and online platforms to create a best practices guide with respect to organized retail theft?

Shoplifting differs from organized retail crime (ORC) in that ORC is the repeated and/or large-scale theft of retail merchandise with the intent to resell for financial gain. In its simplest form, ORC is a syndicate of sophisticated criminal networks consisting of professional thieves, fences, and illicit online sellers. ORC is organized, sophisticated, and massive in scale.

In the last five years, the CVS ORC Team has investigated and supported criminal prosecutions in nearly 1500 separate cases representing nearly $175 million in inventory loses and resulting in nearly 5,000 individual arrests by local, state, and federal law enforcement. In the past five years, 99.8% of the nearly 1500 cases that were investigated by the CVS Health ORC Team were related to ORC organizations and not affiliated with or involving a company employee.

Like most retailers, CVS Health maintains an accounting of physical inventory for goods available for sale. Inventory discrepancies are reported as shrink, which is a component of gross margin.

SKU data does not act as positive identifier the way a serial number might, for example, identify a smartphone. This data alone would not have much value without relative intelligence and would not readily support investigations. Retailers rely upon other means of identifying stolen products.

CVS Health is a leader in the retail ORC industry and actively collaborates alongside other retailers and law enforcement to develop best practices for identifying ORC and conducting ORC investigations. CVS supports these efforts through the Retail Industry Leaders Association, the Coalition of Law Enforcement and Retail, state Organized Retail Crime Associations, and, more recently, state Attorney General ORC Task Forces.

8. Supporters of the INFORM Act have suggested that the INFORM Act will be effective in combatting organized retail theft, preventing the sale of counterfeit goods, and preventing the sale of unsafe goods. Please answer the following questions in relation to the provisions of the INFORM Act.

    a. Does the INFORM Act require a high-volume third-party seller to take action under the legislation (i.e., "a third-party seller shall... " or a "high volume third-party shall...)? If so, please identify each instance

       of required action and describe with specificity how that required action will help combat organized retail theft.

    b. Does the INFORM Act require an online marketplace to take action under the legislation (i.e., "an online marketplace shall. ....)? If so, please identify each instance of required action and describe with specificity how that required action will help combat organized retail theft.

    c. Does the INFORM Act impose a legal duty on a high-volume third- party seller to provide accurate information to an online marketplace?

    d. The INFORM Act requires an online marketplace to "verify the information collected " from high-volume third-party sellers. Please describe the steps that an online marketplace is expected or required to take under INFORM in order to verify the accuracy of collected information.

    e. Please identify any provisions in the INFORM Act that specifically operate to:

a. Prevent retail theft;
b. Prevent unsafe goods; and
c. Prevent counterfeit goods.

f. The INFORM Act requires online marketplaces to collect certain information from high-volume third-party sellers and also to disclose such information to consumers, including "whether [a] high-volume third-party seller used a different seller to supply the consumer product to the consumer upon purchase..." and, in certain circumstances, the country and State where a seller (and different seller) is located. If the disclosure of this information – including the potential country of origin and State where items are sold from – is an important safety disclosure to protect consumers from purchasing unsafe or counterfeit goods, please explain whether all retailers who sell goods online, including CVS, should similarly be required to disclose the country of origin of each item the retailer sells to consumers from its website? If not, why not?

The INFORM Consumers Act would require a series of interactions between the online marketplaces and high-volume third-party sellers to verify the business and contact information provided by the seller, similar to, but not as extensive as the process used by brick-and-mortar retailers to verify the information, credentials, and product standards of their suppliers.

My understanding of the legislation as an investigator is that high-volume third-party sellers would be required to do the following:

- *Provide the marketplace with a bank account number, contact information, a tax identification number, and a working email and phone number.*
- *Electronically certify their business and contact information and/or whether there have been any changes to the information when prompted by the marketplace to do so.*
- *Convey certain contact information to consumers in a clear and conspicuous manner if the seller meets or exceeds an aggregate threshold of $20,000 or more in annual gross revenues.*

My understanding of the legislation as an investigator is that marketplaces would be required to do the following:

- *Attempt to obtain certain information from high-volume third-party sellers within 10 days of the seller being identified as a high-volume seller.*
- *Notify such sellers to keep any information collected current.*
- *Provide a means for the seller to electronically certify the information and notify of any changes to the information.*
- *Suspend a seller's account(s) if the seller does not comply with the requirements above or if the seller provides false representations.*
- *Maintain in a clear and conspicuous manner an electronic and telephonic reporting system for consumers to report suspicious marketplace activity to the online marketplace.*

The INFORM Consumers Act would create transparency for consumers and accountability for online marketplaces and their sellers. The current lack of transparency and accountability is what allows criminals to steal from legitimate retailers and then sell those stolen goods, *including over-the-counter drugs, baby formula, and beauty products, through the online marketplaces. When criminals can hide behind fake screen names and bogus business accounts, retail employees are placed in danger, and consumers and their communities are harmed.*

According to the 2022 joint report from the Association of Certified Anti-Money Laundering Specialists and U.S. Department of Homeland Security, "in addition to defrauding retailers, threatening employees, reducing choice, and increasing costs to consumers, many of these organized retail crime syndicates use their ill-gotten gains to fund other criminal activities, such as labor, arms, and drug trafficking."

This, in my capacity as an investigator, is why the provisions in the INFORM Consumers Act are so important to law enforcement. It also is why the National Coalition of Law Enforcement and Retail (CLEAR) and the Fraternal Order of Police (FOP) support the INFORM Consumers Act.

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[i] Erik Ortiz & Jacob Ward, *After San Francisco shoplifting video goes viral, officials argue thefts aren't rampant*, NBC News (July 14, 2021), https://www.nbcnews.com/news/us-news/after-san-francisco-shoplifting-video-goes- viral-officials-argue-thefts-n1273848

[ii] Mallory Moench, *Out of control organized crime drives S.F. shoplifting, closes 17 Walgreens in five years*, San Francisco Chronicle (May 13, 2021), https://www.sfchronicle.com/local-politics/article/Out-of-control-Organized- crime-drives-S-F-16175755.php

[iii] Thomas Fuller, *San Francisco's Shoplifting Surge*, N.Y. Times (May 21, 2021), https://www.nytimes.com/2021/05/21/us/san-francisco-shoplifting-epidemic.html

[iv] The Obama White House Archive, *Take the Fair Chance Pledge* (Nov. 2, 2015), https://obamawhitehouse.archives.gov/issues/criminal-justice/fair-chance-pledge

[v] U.S. Dep't of Housing & Urban Dev., *The 2020 Annual Homeless Assessment Report (AHAR) to Congress*, HUD (Jan. 2021), https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf

[vi] National Retail Federation, *NRF 2020 Organized Retail Crime*, NRF (Apr. 2020), https://cdn.nrf.com/sites/default/files/2020-12/2020%20Organized%20Retail%20Crime%20Survey_0.pdf

Senator Thom Tillis

Questions for the Record
Cleaning Up Online Marketplaces:
Protecting Against Stolen, Counterfeit, and Unsafe Goods

Ben Dugan, Director of Organized Retail Crime and Corporate Investigations, CVS Health

1. Americans increasingly have turned to online marketplaces to purchase what they need on a day-to-day basis, especially the elderly who are more at risk and often cannot go to their local store like normal. Unfortunately, criminal actors, often from China, are taking advantage of this pandemic to sell dangerous counterfeit goods to unsuspecting Americans. I appreciate the proactive steps some companies have taken to prevent the sale of counterfeits and I am proud to work with my colleagues on both sides of the aisle to ensure safety and transparency in the online retail marketplace.
   a. What are your views on *The Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers (INFORM Consumers) Act?*
   b. What are your views on the *Stopping Harmful Offers on Platforms by Screening Against Fakes in E-commerce (SHOP SAFE) Act*?
   c. What are your views on the *Counterfeit Goods Seizure Act*?
   d. What are your views on the *Stopping All Nefarious Toys in America (SANTA) Act*?

First, thank you for your co-sponsorship of S. 936, The INFORM Consumers Act. We appreciate your support to enact legislation to dissuade criminal actors who sell stolen and counterfeit goods to unsuspecting consumers while at the same time harming local businesses, families, and their communities.

CVS Health strongly supports the INFORM Consumers Act. This legislation brings transparency and accountability to online marketplace by requiring the verification of sellers by the online marketplaces and requiring sellers to provide contact information to consumers. These basic transparency and accountability measures will help protect consumers from illicit goods, aid law enforcement in efforts to track organized crime, and make it harder for criminals to profit by selling stolen or counterfeit merchandise.

By making it harder for criminals to easily profit from of stolen and counterfeit goods, the INFORM Consumers Act would directly and immediately curtail theft in retail stores and the proliferation of counterfeit goods available in online marketplaces. Importantly, by increasing confidence in the integrity and safety of the products purchased online, the INFORM Consumers Act would also enhance the ability of legitimate sellers of all sizes to connect with customers.

I am not as familiar with the other pieces of legislation. I can comment that, when conducting searches in conjunction with law enforcement of organized retail crime organization locations (warehouses, personal homes, storage unit), we often identify both stolen and counterfeit goods in their possession and for sale through their unchecked sites on online marketplaces.

2. I believe the focus of the SHOP SAFE Act should remain on goods that impact health and safety. Do you agree that is the right approach? If not, what changes would you make to the scope of this definition, while maintaining the focus on health and safety?

   As an investigator, my focus is solving organized retail crime (ORC) incidents and disrupting ORC organizations for CVS Health. My job is centered around creating a safe environment for our colleagues and customers. I am not familiar with this legislation so am not able to knowledgeably respond to this question.

3. Should brand owners be required to provide information to platforms for them to benefit from the provisions of the bill?

   As an investigator, my focus is solving organized retail crime (ORC) incidents and disrupting ORC organizations for CVS Health. My job is centered around creating a safe environment for our colleagues and customers. I am not familiar with this legislation so am not able to knowledgeably respond to this question.

4. How should we best incentivize platforms to protect against stolen, counterfeit, and unsafe goods? Will a one-size fits all approach work? If not, how should we tailor solutions to different platforms – by industry, by size, by consumer base?

   The INFORM Consumers Act will help protect consumers against stolen, counterfeit, and unsafe goods. By making it harder for criminals to easily dispose of stolen and counterfeit goods, the INFORM Consumers Act would directly and immediately curtail theft in retail stores and the proliferation of unsafe counterfeit goods available in online marketplaces. It is the organized criminal organizations that need to be dismantled. Many of these organizations operate across a wide range of platforms, networks, and product types. A focus on a specific set of factors would fail to capture the intertwined aspects of how these criminal organizations are structured.

5. Are there any additional "know your customer" considerations that Congress should look at when considering how best to ensure that marketplaces protect against stolen, counterfeit, and unsafe goods?

   In my opinion, the INFORM Consumers Act currently is the best approach for protecting consumers against stolen, counterfeit, and unsafe goods. This legislation brings transparency and accountability to online marketplaces by requiring the verification of sellers by the online marketplaces and requiring sellers to provide contact information to consumers. These basic transparency and accountability measures will help protect consumers from illicit goods, aid law enforcement in efforts to track organized crime, and make it harder for criminals to profit by selling stolen or counterfeit merchandise.

6. Can you provide additional details about the scale and scope of the criminal networks which are selling stolen goods through online marketplaces? How vast are their financial transactions and how are they interconnected across the country?

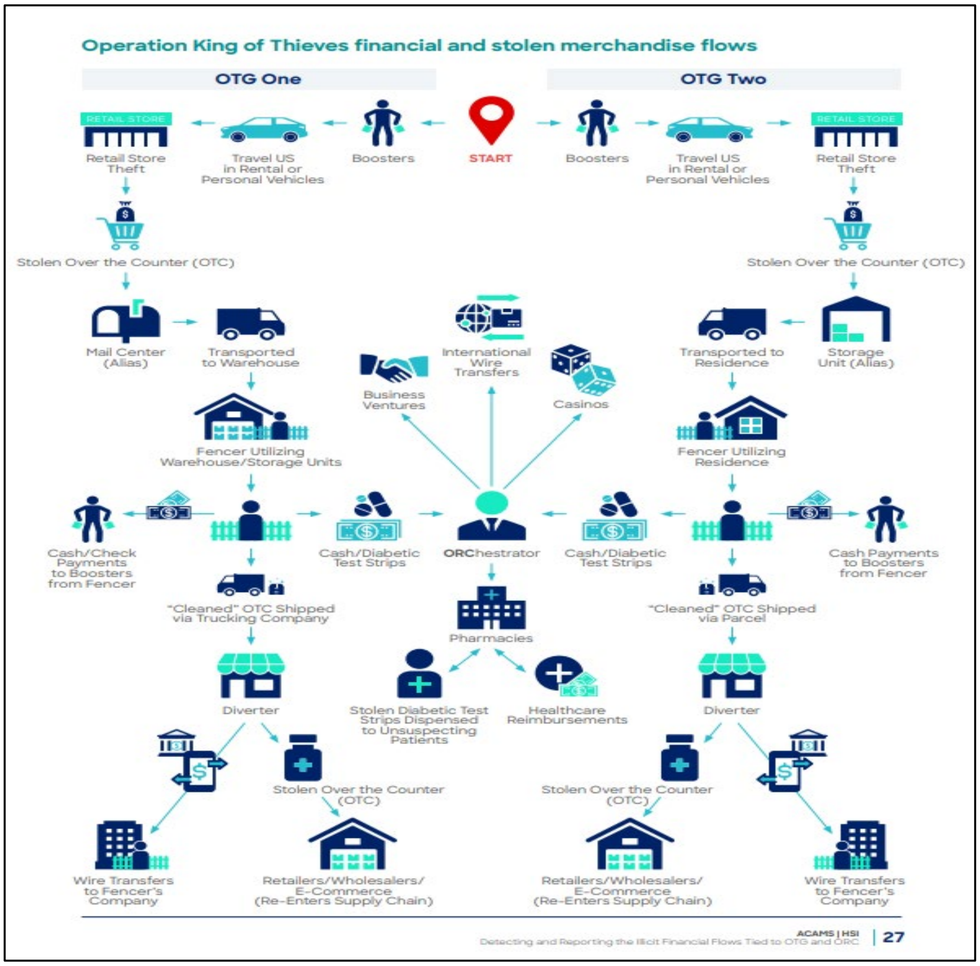
According to the 2022 joint report from the Association of Certified Anti-Money Laundering Specialists and U.S. Department of Homeland Security entitled "Detecting and Reporting the Illicit Financial Flows Tied to Organized Theft Groups (OTG) and Organized Retail Crime (ORC)," organized retail crime has vast economic costs to the global economy and exploits the formal financial system." The report states that these organized theft groups "are often linked to other heinous crimes like human trafficking, terrorism financing, and transnational organized crime including drug and weapons trafficking."

In their 2021 report entitled, The Impact of Organized Crime and Theft in the United States, the Retail Industry Leaders Association and the Buy Safe America Coalition estimated that as much as US$68.9 billion worth of products were stolen from retailers in 2019, representing about 1.5 percent of total retail sales. The report further estimates that retail theft costs federal and state governments nearly US$15 billion in personal and business tax revenues, not including the lost sales taxes. It is estimated that more than $500 billion in illicit stolen and counterfeit goods are sold on third-party marketplaces like Amazon each year.

The size and scope of the criminal networks involved in selling stolen products through online marketplaces range from crews of professional thieves that sell the stolen product to local businesses such as convenience stores or pawn shops with an online presence to large scale transnational criminal organizations. The larger criminal organizations continuously monitor the online marketplace listings and contact the sellers of desired products directly to harvest stolen product from multiple states. They frequently utilize shell companies and international wire transfers to conceal their movements and launder their money.

The following example was included in the 2022 joint report from the Association of Certified Anti-Money Laundering Specialists and U.S. Department of Homeland Security and demonstrated the complexity and scale of these criminal operations. This particular case was worked by CVS Health in collaboration with the following enforcement agencies:

U.S. Department of Homeland Security Investigations Unit
U.S. Department of Health and Human Services - Office of Inspector General
U.S. Food and Drug Administration - Office of Criminal Investigations
U.S. Federal Bureau of Investigations
Texas Attorney General's Medicaid Fraud Control Unit
U.S. Internal Revenue Services - Criminal Investigation Unit
Ohio's Medicaid Fraud Control Unit
Texas State Board of Pharmacy.



Source: Association of Certified Anti-Money Laundering Specialists and U.S. Department of Homeland Security (2022). Detecting and Reporting the Illicit Financial Flows Tied to Organized Theft Groups (OTG) and Organized Retail Crime (ORC): A Comprehensive Educational Guide for Law Enforcement and Financial Crime Investigators. www.acams.org.

7. How have efforts by online platforms improved in recent years to combat stolen goods? Are there ways in which voluntary cooperation could be improved in addition to legislative action?

   eBay was the first to set up a response team and system (named PROACT) in 2007 to collaborate with both retailers and law enforcement in detecting and preventing the sale of stolen goods. Since then, we have observed very little change by the online marketplaces to mitigate the sale of stolen products on their platforms.

   Although there is significant opportunity for voluntary cooperation against these crimes, the online marketplaces (with a few exceptions like eBay) have been reluctant to partner with the retailers against known offenders. I believe the only way the online marketplaces will cooperate in providing the necessary transparency is through enactment of the INFORM Consumers Act. This legislation is a necessary step to compel the online marketplaces to provide much needed transparency and accountability.

8. How has CVS adapted to the theft of goods and resale online? Where have you been successful in removing stolen goods from online platforms? Where have you been unsuccessful in removing stolen goods from online platforms?

   Retailers collectively spend billions of dollars each year on security and loss prevention, but they are being overwhelmed by criminal networks who know they can quickly, easily, and anonymously sell stolen products online for a huge profit. Like many retailers, CVS Health employs asset protection staff and invests in anti-theft measures to deter organized retail crime (ORC). We do not publicly disclose these investments or our specific loss prevention policies given the sensitive nature of these efforts to combat ORC and protect our colleagues and customers. However, according to a December 15, 2020 National Retail Federation survey, ORC costs retailers an average of US$700,000 per US$1 billion in sales, and three-fourths of retailers saw an increase in ORC in 2020. These numbers have increased substantially since then.

   While our ORC team efforts are impactful, unfortunately our success rate is low in comparison with the massive scale of these criminal organizations. Our success rate of having a fraudulent site selling stolen good removed from an online platform is only about 10 percent. This is why we focus on getting to the top of these criminal organizations where we can have the most impact.

9. How many listings do you estimate CVS flags annually for online platforms? What percentage of these listings are removed after an initial alert? What is the total number that are ultimately removed after further review?

   The CVS Organized Retail Crime Team flags approximately 1500 high volume sellers each year for online marketplaces. These sellers usually exceed $100 Million dollars in listings. Approximately 150 of those accounts are closed administratively by the online marketplaces or through criminal prosecution. It is important to note that nearly all the administrative account closures facilitated by CVS Health are executed by eBay. CVS Health receives very little cooperation in this regard from the other online marketplaces, even when a subpoena had been issued by law enforcement.

10. I understand from your testimony that increased, consistent vetting practices and reliable identification information for third-party sellers are critical pieces to identifying the sources of stolen goods being sold online. Although the overall focus of the SHOP SAFE Act is on unsafe counterfeit products, would the vetting and identification provisions in that bill be helpful in the stolen goods context as well?

    I am not familiar with this legislation so am not able to knowledgeably respond to this question. I can comment that the touchstone of the INFORM Consumers Act is creating transparency and accountability for online marketplaces and their sellers, which, as you know, is currently lacking. This lack of information is a major stumbling block to solving organized retail crime cases. When criminals can hide behind fake screen names and bogus business accounts the local retail storefront, retail employees, consumers and their communities are harmed.

Senator Marsha Blackburn
Questions for the Record to Ben Dugan
Director of Organized Retail Crime and Corporate Investigations, CVS Health

1. An obstacle to combating the rise in organized retail theft is getting some of the e-commerce platforms to cooperate with law enforcement. Retail and law-enforcement investigators say they struggle to obtain information about potentially illicit third-party sellers from certain online selling platforms, whereas others are more willing to cooperate. What kind of information sharing and collaboration do you think is necessary to effectively target these illicit sellers and reduce retail theft?

   The first and most meaningful step that Congress and the online marketplaces can take is to support and pass the INFORM Consumers Act. In addition, the online marketplaces can provide details of the seller's online sales history including any transactions directly with the marketplaces themselves (such as fulfillment centers). The online marketplaces could also require high volume sellers of high-risk products to provide verifiable proof that they are sourcing their product from legitimate vendors.

2. Which relevant stakeholders should be involved in a conversation about reforms regarding organized retail theft?

   The following stakeholders should be involved in discussions about reforms regarding organized retail crime:

   U.S. Department of Justice (DOJ)
   U.S. Homeland Security Investigations (HSI)
   State Attorney Generals
   Retail Industry Leaders Association (RILA)
   National Coalition of Law Enforcement and Retail (CLEAR)
   Retail Industry Experts
   Representatives from the online marketplaces

3. What kind of retail crime have you witnessed or experienced, e.g. walk-in theft during business hours, break-ins, or internal thefts committed by retail employees?

4. *In my 30 years investigating organized retail crime, I have experienced, witnessed, or learned of in the course of an investigation a wide range of crimes ranging from human trafficking and assault to money laundering, Medicare fraud and gift card scams.*

5. Are you seeing organized retail theft happen online, as well as in person in brick-and-mortar stores? For instance, some sellers might use bots to buy legitimate goods online, only to resell those goods for a profit. During the initial months of the pandemic, we know many consumers could only get products like hand sanitizer or Lysol wipes if they paid a premium for them on sites like Amazon or eBay. How do trends like this impact your approach to organized retail crime and your response?

Digital organized retail crime (ORC) is known as "Triangular Fraud" because it affects three separate victims. Criminal organizations use the dark web to facilitate credit card account takeovers of vulnerable citizens (such as the elderly) and then use those accounts to make bulk purchases from retail e-commerce sites. The retailers then ship the ordered merchandise to unsuspecting customers across the country or to a drop shipment location (i.e., a warehouse) run by the criminal organization. These criminal networks often list product through the online marketplaces to attract customers. The cardholder, the retailer and buyer all fall victim to these schemes. This crime is growing exponentially as retailers expand their digital offerings. CVS Health has made significant investments in new technology and staffing to combat this type of crime and protect consumers.