Department of Justice

STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON MONETARY POLICY AND TRADE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

FOR A HEARING ENTITLED

"A LEGISLATIVE PROPOSAL ENTITLED THE 'BANK ACCOUNT SEIZURE OF TERRORIST ASSETS (BASTA) ACT'"

PRESENTED

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Statement of Marshall L. Miller
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U.S. Department of Justice
Before the Subcommittee on Monetary Policy and Trade
Committee on Financial Services
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INTRODUCTION

Mr. Chairman, Ranking Member Clay, and distinguished Members of the Subcommittee, thank you for inviting me to speak with you this morning at this hearing regarding potential legislative approaches to the attachment of assets seized or frozen under the Foreign Narcotics Kingpin Designation Act. I am Marshall Miller, Principal Deputy Assistant Attorney General of the Criminal Division of the Department of Justice, and my statement will focus on the current activities of the Department in managing the seizure and forfeiture of assets associated with unlawful activity. The Department works with crime victims on a daily basis to ensure they receive justice for the harms they have suffered. As this Committee considers legislation in this area, the Department stands ready to ensure that any proposal complements, rather than conflicts with the forfeiture and restitution tools that we use to help victims every day.

The seizure and forfeiture of assets that represent the proceeds of federal crimes, or that were used to facilitate those crimes, are covered by the Department of Justice's Asset Forfeiture Program. The Program's primary mission is to use asset forfeiture to enhance public safety and security by ensuring that crime does not pay. To accomplish that mission, the Department forfeits the proceeds of crime, or other substitute assets, directly from the criminals themselves. Asset forfeiture takes the profit out of crime, disrupts criminal organizations, lessens their economic influence, and serves as a deterrent to future criminal activity. In addition, the laws governing asset forfeiture provide pre-trial preservation tools to prevent criminal defendants from dissipating crime proceeds, ensuring that such proceeds remain available for forfeiture or restitution.

The Criminal Division's Asset Forfeiture and Money Laundering Section (AFMLS) spearheads the Asset Forfeiture Program and, more generally, the Department's asset forfeiture and anti-money laundering enforcement efforts. Most importantly for today's hearing, AFMLS leads the Department's efforts to return forfeited criminal proceeds to those harmed by crime through the administration of victims' claims.

RETURNING FORFEITED ASSETS TO VICTIMS OF CRIME

The Department works to ensure that victims of crime are fairly and equitably compensated. The authority to distribute forfeited funds to victims has been entrusted to the Attorney General. This makes sense legally because, once property or funds are forfeited, ownership of the property or funds transfers to the government. But it is also sensible, as it allows the government to finalize and execute forfeiture orders equitably, without prejudicing the rights of other claimants.

The process by which the Department distributes forfeited assets is known as "remission." Under the applicable regulatory framework governing remission, the Department has provided compensation to thousands of victims for a wide variety of crimes, ranging from Ponzi schemes, mail and wire fraud, and health care fraud to identify theft, intellectual property and trademark violations. Since 2001, nearly $4 billion in forfeited assets have been disbursed to victims by the Department under the Attorney General's discretionary authority. Over $203 million has been returned to victims so far this fiscal year.

The remission process is governed by federal regulations that define a victim as an innocent person who has suffered a pecuniary loss as a direct result of the crime underlying the forfeiture or a related offense. It is important to note that the remission regulations give no preferential treatment to any particular victims; all victims must submit and document their losses with supporting documents. When the forfeited funds are not sufficient to compensate multiple victims for the entirety of their losses, the funds are generally distributed on a pro-rata basis, in accordance with each victim's verified pecuniary loss amount. An important purpose of these regulations is to avoid victims of crime being doubly harmed – first by the underlying criminal conduct, and a second time as resources are dissipated through competition over a limited pot of money.

Compensating victims has long been a top priority of the Department's Asset Forfeiture Program. In fact, the Department has made strides to provide remission in situations where victims who suffered defined pecuniary losses were denied funds under other avenues for recovery including bankruptcy law or the Securities Investor Protection Act (SIPA), because such laws generally only recognize creditors, rather than the broader class of victims recognized in the remission regulations. For example, in the Bernie Madoff case, the Department anticipates distributing forfeited proceeds to victims who would have been ineligible to obtain recovery in related SIPA civil proceedings. Since the forfeited funds unfortunately do not cover all the victims' losses, those funds will be distributed on a pro-rata basis.

We should emphasize that as a matter of DOJ policy, victims of crime have priority over forfeited funds – in other words, victims are compensated before law enforcement and before equitable sharing with federal, state and local agencies, or international partners. The

Department remains steadfast in its commitment to ensuring that forfeiture plays a key role in helping victims recover from the crimes committed against them. We do want to note for the benefit of this Committee, however, that the Department's experience in this arena has largely been focused on victims who have suffered quantifiable pecuniary harm, as the regulations set forth. Quantifying non-pecuniary harm is a very difficult process, and we should move cautiously before altering the existing system in a manner that could favor one class of victims, such as judgment creditors, over other victims.

CONCLUSION

In closing, I would like to once again thank this Subcommittee for holding this hearing and providing the Department with the opportunity to explain the Department's forfeiture efforts, remission procedures, and commitment to compensating the victims of crime.