

## CASE STUDY

### A CASE OF ALLEGED STATEGRAFT IN NEVADA: *STEPHEN LARA V. STATE OF NEVADA, ET AL.*

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Stategraft, a term coined by Professor Bernadette Atuahene, occurs when governments and government actors supplement their funding by illegally charging individuals.<sup>1</sup> This illegal extraction can be intentional or unintentional, but its impact remains the same: a systemic funneling of funds that belong in the hands of residents into government pockets.<sup>2</sup> Former U.S. Marine Stephen Lara’s case is an instance of alleged stategraft because the practice of ‘equitable sharing’ between state and federal agencies resulted in the allegedly illegal seizure of thousands of dollars from Mr. Lara by the state agency.

In September 2021, The Washington Post ran a story describing how the Nevada Highway Patrol (NHP) seized nearly \$87,000 from Mr. Lara and handed it over to the Drug Enforcement Agency (DEA), without either agency pursuing a criminal investigation, let alone a criminal prosecution, of Mr. Lara.<sup>3</sup> Lara filed suit against the State and various state actors, alleging, among other things, that NHP’s seizure violated state law.<sup>4</sup> According to Lara’s First Amended Complaint, an NHP trooper conducted a pretextual traffic stop<sup>5</sup> and, after Lara informed the trooper that he had a large sum of money (his “life savings”) in the car, seized it and handed over to the DEA pursuant to an “equitable sharing program”<sup>6</sup> that Lara’s counsel described in Lara’s First Amended Complaint as follows:

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1. Bernadette Atuahene, *A Theory of Stategraft*, 98 N.Y.U. L. REV. 1, 3 (2023).

2. *Id.* at 14.

3. Matt Zapotosky, *A Former Marine Was Pulled Over for Following a Truck Too Closely. Police Took Nearly \$87,000 of His Cash*, THE WASHINGTON POST (Sept. 1, 2021), [https://www.washingtonpost.com/national-security/stephen-lara-nevada-asset-forfeiture-adoption/2021/09/01/6f170932-06ae-11ec-8c3f-3526f81b233b\\_story.html](https://www.washingtonpost.com/national-security/stephen-lara-nevada-asset-forfeiture-adoption/2021/09/01/6f170932-06ae-11ec-8c3f-3526f81b233b_story.html).

4. Complaint para. 5, *Lara v. State*, No. CV21-01595 (Nev. 2d Jud. Dist. Ct. Feb. 1, 2022).

5. *See id.* paras. 26-39.

6. *Id.* paras. 40-78.

Under the U.S. Department of Justice’s (“DOJ’s”) “equitable sharing” program, federal law enforcement agencies can “adopt” property seized by state and local agencies. An adoption occurs after state officers seize property, under state law, and a federal agency handles the investigation and prosecution, under federal law. The federal agency keeps 20 percent of the resulting proceeds and returns 80 percent to the state agency, assuming the government forfeits the property by one of several means—for example, the owner defaults by missing a deadline, the government wins a civil forfeiture case (in rare cases) or wins administrative forfeiture with zero judicial involvement (in most cases). In 2019, more than 85 percent of federal seizures were disposed of through the administrative process.<sup>7</sup>

According to Lara’s counsel, the administrative forfeiture process “is more favorable to the government than the judicial forfeiture process” because the judicial process “requires a preponderance of evidence linking property to a forfeitable crime,” while forfeiture pursuant to the administrative process simply “operates at the discretion of the agency.”<sup>8</sup>

Six weeks after The Washington Post ran its story about the seizure of Lara’s money, the DEA returned it to him.<sup>9</sup> In his state court suit—presently pending in the Second Judicial District Court of the State of Nevada, which covers Washoe County, Nevada—Lara seeks various forms of relief, including (but not limited to) declarations that: (1) state law does not authorize NHP’s participation in the equitable sharing program; and (2) participation in the program violates the Nevada Constitution’s due process protections “because it creates a substantial incentive to seize property without probable cause.”<sup>10</sup> In essence, Lara claims (among other things) that NHP’s participation in the DOJ’s equitable sharing program violates state law because it allows NHP to evade state forfeiture laws that provide individuals with greater protections from forfeiture than the protections provided in relation to the equitable sharing program.<sup>11</sup>

In response, the State filed a Motion to Dismiss that is presently pending in Nevada state court.<sup>12</sup> While the State has asserted a number of bases for dismissal, some warrant discussion here because they illuminate arguments that others in Lara’s position may face is similar cases.

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7. *Id.* para. 2.

8. *Id.* para. 91.

9. *Id.* para. 7.

10. Complaint para. 9, *Lara v. State*, No. CV21-01595.

11. *Id.* at 16:17–20:28.

12. Motion to Dismiss, *Lara v. State*, No. CV21-01595 (Nev. 2d Jud. Dist. Ct. March 29, 2023).

With respect to Lara’s contention that NHP unlawfully utilized the DOJ’s equitable sharing program to evade Nevada law’s civil forfeiture protections, the State contends that NHP’s conduct was permitted pursuant to the Interlocal Cooperation Act, which permits state agencies to cooperate with other government agencies<sup>13</sup> and more specifically provides that “[a]ny power, privilege or authority exercised or capable of exercise by a public agency of this State, including, but not limited to, law enforcement, maybe exercised jointly with any other public agency . . . of the United States to the extent that the laws of . . . the United States permit such joint exercise.”<sup>14</sup>

The State also disputes Lara’s contention that the Nevada Constitution’s Due Process Clause provides individuals with greater protections than the United States Constitution, by citing cases in which the Supreme Court of Nevada relied upon the United States Supreme Court’s analysis of federal due process issues in analyzing state due process issues<sup>15</sup> and arguing the seizure of Lara’s money constitutes an enforcement action, as opposed to the type of judicial or quasi-judicial function that might implicate the Due Process Clause.<sup>16</sup> The State’s Motion to Dismiss includes other arguments relating to Lara’s standing, the Supremacy Clause, mootness, and immunity.<sup>17</sup>

Lara disputes the State’s contentions and asserts that from 2000 to 2019, Nevada law enforcement agencies received \$73 million through the equitable sharing program during that time period.<sup>18</sup>

The State filed a Reply,<sup>19</sup> and the court heard arguments on the State’s Motion to Dismiss on September 28, 2023, but has not ruled on the motion as of the time of publication.

According to Lara’s counsel, from 2000 to 2019, state and local governments received \$8.8 billion through the equitable sharing program.<sup>20</sup> A ruling in Lara’s favor would establish that, while this may be legal at the federal level, it is unconstitutional in Nevada under the state’s due process protections. Such a state-level violation, combined

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13. *Id.* at 13:1–6 (citing Nev. Rev. Stat. §§ 277.090, 277.100 (2021/2022 R1)).

14. *Id.* at 13:7–10 (quoting Nev. Rev. Stat. § 277.110(1) (2021/2022 R1)) (emphasis omitted).

15. *Id.* at 15:16–17 (citing *Wyman v. State*, 217 P.3d 572, 578 (Nev. 2009); *Hernandez v. Bennett-Haron*, 287 P.3d 305, 310 (Nev. 2012)).

16. *Id.* at 15:24–16:12.

17. *Id.* at 1:24–26:17.

18. Plaintiff’s Opposition to Defendants’ Motion to Dismiss at 6:5; 6:5 n.2, *Lara v. State*, No. CV21-01595 (Nev. 2d Jud. Dist. Ct. May 12, 2023).

19. Reply in Support of NHP’s Motion to Dismiss, *Lara v. State*, No. CV21-01595 (Nev. 2d Jud. Dist. Ct. June 9, 2023).

20. Plaintiff’s Opposition to Defendants’ Motion to Dismiss at 6:5; 6:5 n.2, *Lara v. State*, No. CV21-01595 (Nev. 2d Jud. Dist. Ct. May 12, 2023).

with the taking of such a significant amount of funds, would constitute an instance of stategraft.