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Committee on Ways and Means
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Statement for the Record

Social Security Disability Fraud Scheme in New York

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Good morning, Chairman Johnson, Ranking Member Becerra, and members of the Subcommittee. Thank you for inviting me to discuss our investigation of a vast New York City-based Social Security Disability Insurance (SSDI) fraud scheme, and the vulnerability of Social Security programs to similar criminal enterprises.

Introduction

On January 7, 2014, my office, in coordination with the Manhattan District Attorney's Office and the New York City Police Department (NYPD), began making arrests of 106 indicted individuals for their alleged involvement in a vast, longstanding scheme to defraud the Social Security Administration (SSA) out of millions of dollars.

The 106 people indicted include 102 disability beneficiaries and four middlemen, or facilitators—two 'recruiters,' an attorney, and a disability consultant. To date, 105 beneficiaries have been arrested, including the four facilitators. All have been charged with varying degrees of grand larceny. Additional indictments and arrests are expected in the coming months as we continue this investigation.

Through December, the total amount of fraudulent disability benefits allegedly taken from SSA by the 102 beneficiaries named in the January 7 indictments exceeds \$23 million; the total loss to SSA as a result of this conspiracy, however, is expected to be much more. As I said, our investigation continues.

The SSDI program necessarily relies to some extent on the integrity of applicants. Honesty, self-reporting, and forthrightness only go so far, however, so that reliance is then checked by the expectation of integrity on the part of attorneys and claimant representatives. Even when that expectation fails, the integrity of medical professionals serves as the next line of defense. When all of these fail, however, the vulnerability of the system can be exploited, as we saw in Puerto Rico, and now allegedly in New York.

As we also saw in both Puerto Rico and New York, however, there is another critical line of defense—the employees of the State Disability Determination Services (DDS) and of SSA, who bring to the attention of the Office of the Inspector General (OIG) suspicious applicants, applications, and beneficiaries. Both investigations began because these dedicated professionals saw something, and said something.

Before I describe the New York conspiracy and how it was ultimately exposed, I have to note that as disturbing as the Puerto Rico scheme was—or any scheme in which applicants, doctors,

attorneys, and in other cases, even judges or SSA employees, deceive and manipulate—it is all the more upsetting when the applicants are former guardians of the public trust, such as law enforcement officers and other public servants who constitute the majority of the New York defendants. Moreover, the exploitation by many of the defendants in this case of the tragic events of September 11, 2001 is nothing short of infuriating. To do so makes a mockery of the lives lost that day and the heroism and integrity of the NYPD and Fire Department of New York City (FDNY) personnel who were there during and after the attacks. Our own agents were at Ground Zero that day, working on the rescue operation alongside the NYPD and FDNY, and our New York Cooperative Disability Investigations (CDI) unit, located at 22 Cortlandt Street—adjacent to the World Trade Center site—was severely damaged in the attack. Our respect for the NYPD and FDNY is in no way diminished by these indictments, nor should their reputations be besmirched by the actions of these defendants.

Finally, while this investigation and arrest operation is another example of the fine work of our investigators and our cooperative efforts with SSA and other law enforcement agencies, the revelation of the scheme is also a stark reminder of the vulnerability of Social Security's disability programs, when both applicants and facilitators are willing to steal from the taxpayers and from the beneficiaries who actually need and deserve these critical benefits.

I'm joined today by Special Agent-in-Charge Edward J. Ryan, from our New York Field Division, to discuss with you the investigation and actions that we, SSA, and the Subcommittee can take to protect taxpayer funds from large-scale fraud and abuse such as this.

The Investigation

The investigation of this conspiracy dates back to 2008, after New York State DDS employees had noticed similarities in several questionable disability applications from retired NYPD officers, FDNY, and others. Dating back a number of years, the DDS had referred several cases to the CDI unit involving NYPD and FDNY employees on disability retirement for a physical disability, now applying for SSDI for a mental disability. Some of the applicants had the same legal representation, the applications had the same handwriting, and they contained nearly identical descriptions of mental ailments. While the CDI unit investigated several of these allegations independently, there was not enough evidence to provide a compelling case for a conspiracy.

Moreover, while the CDI unit suspected that a common scheme might be involved, the referrals were of applications (which meant that no government money had been lost), so both Federal and State prosecutors declined to pursue criminal prosecutions.

After considering a number of approaches for expanding the scope of their review to identify more applicants and, more importantly, beneficiaries, who might be involved in a common scheme, the CDI unit decided to focus on the fact that they were dealing with retired NYPD officers. Knowing that a majority of retired police officers seek permits to carry concealed weapons, and also knowing that a permit holder must certify to the NYPD that they have no mental impairments (while an applicant for SSDI for a mental disability would obviously be swearing to the opposite), the CDI unit submitted the names of three individuals to the NYPD licensing division (LD). Mindful of privacy rules, they told the LD only that they had reason to believe that these three individuals might be unqualified to hold a gun permit. The NYPD informed us that all three were permit holders. Only then did we share with NYPD the fact that

they were receiving benefits for a mental disability and were under investigation—and now under a joint OIG/NYPD investigation.

Between 2008 and 2011, we went on to check some 51 suspicious mental disability cases with the NYPD's licensing division. Forty-one had concealed carry permits and were receiving benefits for a mental disability; all had remarkably similar ailments and applications. As the permits were suspended and some licensees fought the suspension, more and more details of the potential Social Security conspiracy came to light.

We contacted the U.S. Attorney for the Southern District of New York in 2009, and while they agreed initially to prosecute, they later decided not to pursue the case. At about the same time, in 2010, the Manhattan District Attorney's Office (MDAO) was investigating one of our disability fraud subjects in a separate matter. After we briefed them on our growing conspiracy case, the MDAO agreed to prosecute.

While the evidence we'd gathered through the administrative appeals before the NYPD LD gave us a good idea of the nature of the conspiracy, we needed more to proceed to indictment, or even to obtain search warrants. For this, we knew we would need someone on the inside. After considerable difficulty identifying a viable undercover operative (since the facilitators would be mistrustful of anyone outside of their limited pool of potential clients), we launched an undercover operation in 2011 in conjunction with the NYPD Internal Affairs Bureau.

This filled in still more gaps in the conspiracy, and provided evidence sufficient to obtain court orders for telephone intercepts. That additional evidence, combined with hundreds of surveillances and the review of thousands upon thousands of pages of SSA records, brought the case close to prosecution.

Search warrants were obtained and executed in 2013, providing the physical evidence—including records, cash, and property—that was needed to support prosecution. At that point, the evidence was presented to a Grand Jury, indictments were returned, and last week, the arrests began.

The Facilitators

Our investigation revealed that these four individuals allegedly led this widespread fraud scheme:

- Raymond Lavalley, 83, of Massapequa, New York, is a self-employed attorney and a registered claimant representative with SSA. He previously served as an FBI agent in the 1950s, and later as an Assistant District Attorney and Chief of the Rackets Division of the Nassau County District Attorney's Office.
- Thomas Hale, 89, of Bellmore, New York, is the chairman and president of TJH, Inc., a disability consultancy firm based out of his residence. Lavalley registered the firm for Hale with the State of New York in 1985.
- Joseph Esposito, 70, of Valley Stream, New York, was employed with the NYPD from 1973 to 1990. SSA records show Esposito filed for SSDI based on “mood disorders” in October 1991, and he has received almost \$300,000 in benefits for himself, an additional \$114,000 for his three children, and an additional \$13,000 for his wife.

- John Minerva, 61, of Malverne, New York, was employed with the NYPD from 1973 to 1984. He currently serves as a disability consultant for New York's Detectives' Endowment Association, a union representing New York City police.

The Scheme

The details of the alleged scheme are as follows:

Upon retiring from the NYPD or FDNY (a few of the defendants are other public employees), retirees would contact Esposito or Minerva, who were known within the New York City law enforcement community as men who could assist individuals in obtaining disability or retirement benefits. Esposito and Minerva were the recruiters, and generally instructed the potential applicants that, in order to obtain SSDI, their claim needed to include a psychiatric illness; and that they could create a convincing version of such an illness based on events that occurred while they were working, such as the September 11, 2001 terrorist attacks.

Once they had a new client reeled in, Esposito and Minerva would connect applicants with Hale, a disability consultant who would schedule the applicant with a psychiatrist or psychologist. Since a qualifying disability must be expected to last for a year or more (or result in death), these applicants would generally undergo treatment for a full year before applying. This medical evidence would be included in the applicant's SSDI claim, which would be completed and filed by Hale and by Lavallee, who would be the applicant's attorney of record.

Esposito instructed applicants to exhibit symptoms of depression, anxiety, and related disorders during doctor visits. He coached them on how to act at an SSA consultative examination: how to dress, how to behave, and how to fail a concentration test. Finally, he coached them on specific claims to make, such as that they couldn't concentrate or sleep, didn't go out, and even that they were afraid of planes and large buildings, if they were claiming to be disabled based on their participation in the events following the 9/11 terrorist attacks.

As the case expanded to encompass more and more claimants, we found that all of their benefit applications followed a distinctive and common pattern in style, content, and phrasing, as well as the same handwriting. Even after applicants were awarded benefits, they were coached on how to report their conditions and to continue receiving treatment from the same New York doctors, even if they relocated away from the New York City area, to demonstrate that their conditions never improved and they could not be gainfully employed.

Because they were treated for a year before even applying for benefits, their ultimate SSDI award included a lump sum retroactive benefit payment from the alleged disability onset date. These lump sum initial payments were between \$10,000 and \$50,000.

The law currently limits a representative's fee to \$6,000 of an applicant's lump-sum retroactive benefit, and with Lavallee listed as the attorney of record, he would generally receive a payment of \$6,000 directly from SSA. However, the agreed-upon "fee" paid to the facilitators by these fraudulent beneficiaries was generally 14 months' worth of benefits, as much as \$45,000.

To make these payoffs, Esposito instructed applicants to withdraw cash from their banks in small amounts so as not to trigger IRS reporting requirements or any suspicions on the part of their financial institutions. The applicants would then make cash deliveries to Esposito and/or Minerva of an amount equal to 14 months' worth of benefits, less the \$6,000 Lavallee had

already received from SSA. Esposito and Minerva would then split the cash with their co-conspirators.

As for the fraudulent beneficiaries themselves, they would continue to keep all of their monthly benefits for years to come. The investigation and evidence revealed that the applicants often engaged in lifestyles and activities that did not match representations made on their SSDI applications. They held jobs, managed finances, traveled, socialized with friends, and (to their ultimate detriment) were not shy about sharing descriptions, videos, and photos of many of these activities online.

Some of the beneficiaries indicted last week received benefits over time in excess of \$400,000.

As I've said several times, this investigation is very much ongoing and active. We are limited to some extent by applicable statutes of limitations, and by the fact that some of the indicted individuals were placed on benefits at a time when claim folders were still entirely paper records. But we continue to investigate, and even if some escape criminal prosecution, SSA will be reviewing every possible application connected with this scheme, and ill-gotten gains will be pursued and recouped to the greatest extent possible.

OIG Integrity Efforts

Our auditors have examined, and continue to examine, many aspects of the disability claims process, seeking to identify areas of weakness and vulnerability so that we can make high-impact, valuable, and feasible recommendations to SSA for changes that will improve the process and prevent fraud. That said, it is impossible to claim that any one recommendation or audit report holds the key to preventing this type of large-scale, organized fraud against a program with complex rules and regulations as well as multiple agencies and personnel involved in decision-making. Nevertheless, we continue to believe that of all SSA integrity activities, its continuing disability reviews (CDR)—and its efforts to complete as scheduled all such reviews that come due—offer the best way to ensure that only those who are eligible for SSDI benefits continue to receive them; and potentially to identify those who were *never* eligible for them.

In our report, *Full Medical Continuing Disability Reviews*, we recommended that SSA work with the Congress to secure funding to eliminate the CDR backlog. SSA agreed with our recommendation; however, the CDR backlog continues to grow. SSA's goal based on its FY2013 budget request was to conduct 650,000 full medical CDRs, but given the actual funding it received, the Agency has reported that it conducted 428,568. SSA expected a backlog of 1.3 million full medical CDRs to remain at the end of FY2013.

Also, we are currently assessing SSA's adherence to the medical improvement review standard (MIRS), and its impact on the beneficiary rolls. During a CDR, SSA follows MIRS – mandated by the Social Security Disability Amendments of 1984 – to determine if a beneficiary's impairment has *improved* since his/her most recent favorable determination and can perform work activities. However, if SSA mistakenly placed the individual on disability in the first place—if they were not disabled when the favorable determination was made—MIRS makes it difficult for SSA to take the person *off* disability, because under current law, there is *no medical improvement*. Based on our sample, it appears that some individuals would not be disabled under SSA's rules were MIRS not in place. Our report is still ongoing; we expect to issue it later this year.

On the investigative side, we have always placed a high priority on allegations of disability fraud committed by participants in the claims process, including administrative law judges, other SSA employees, and third-party facilitators such as attorneys, physicians, and others. However, in light of our recent investigations exposing large-scale schemes, we have added even more emphasis, using existing as well as new initiatives. First, this Subcommittee is well aware of the success of our CDI program over the past 15 years. It remains our most effective tool for preventing improper payments, but this case reveals the true potential of the CDI program.

The traditional CDI case involves an individual application referred by the DDS as suspicious, and a CDI investigation that finds evidence of fraud and helps DDS or SSA personnel make an accurate decision on the disability claim. Without in any way denigrating that process, which saves taxpayers millions of dollars a year, CDI units are also in a unique position to investigate and dismantle schemes and conspiracies such as this one, just as DDS analysts are in a unique position to question the suspect applications as they are processed.

The CDI program's potential is limited only by available resources, and we continue to advocate expansion of the program to all 50 states, just as we have done for well over a decade. While increased and dedicated appropriations are certainly one way to expand CDI, we have also long supported the creation of an integrity fund so that CDI can fund itself, using a portion of savings realized by CDI to fund more CDI units.

Operating as an extension of our CDI program, our new Disability Fraud Pilot seeks to identify high-dollar, high-impact cases involving third-party facilitators conspiring with claimants to defraud SSA. The pilot team is evaluating allegations received, and exploring ways to compile and analyze data that could give us insight as to how to proactively identify disability claims that might be fraudulent or might involve a corrupt facilitator or even an employee. We will evaluate the Pilot at the end of this fiscal year and potentially expand its staffing and scope at that time.

Unfortunately, our ability to detect schemes like the New York and Puerto Rico conspiracies is hampered by the ongoing lack of an exemption from the outdated requirements of the *Computer Matching and Privacy Protection Act* (CMPPA) and the *Paperwork Reduction Act*. While legislation granting an exemption has been introduced in the last several sessions of Congress, none has passed—although the OIG for the Department of Health and Human Services (HHS) has obtained its own CMPPA exemption. Without our having the ability to search and compare readily available databases to detect large-scale fraud, conspiracies such as this one will continue in many cases to be profitable endeavors. If, for example, we were to try to extend what we learned in this case to other public-sector pension programs across the country, we would be stopped cold by the requirements of the CMPPA, which would either delay the project while we attempted to execute dozens of matching agreements; or would fail if the agreement could not be obtained. Technology gives us the potential to save untold millions of dollars and dramatically reduce fraud in SSA programs; current law takes away that potential.

The CMPPA exemption would also take two very good OIG initiatives—our Disability Fraud Pilot, which I just described, and our Electronic Intelligence Center—and radically expand their potential. Both rely heavily on the ability to obtain and analyze electronic information, yet the law prohibits us from comparing one set of data to another. The time has come to exempt the OIG from 26-year-old requirements that were outdated more than a decade ago.

Similarly, the *Paperwork Reduction Act* makes it virtually impossible for us to conduct certain audits in a timely and effective fashion. Unable to ask a group of beneficiaries multiple questions

without clearing time-consuming bureaucratic hurdles, we are often forced to abandon audits that could result in millions of dollars in savings.

Finally, we were fortunate in this case to have the unflagging support not only of the NYPD, but also of the MDAO. Criminal prosecution, however, is not always a feasible option, whether due to monetary thresholds that we cannot meet, or the many intangible variables inherent in the process by which prosecutors decide which cases to accept. When our investigation isn't prosecuted, the OIG's Civil Monetary Penalty program provides a valuable means of punishment, deterrence, and recovery of lost funds. Unfortunately, the penalty amount—\$5,000—has not increased in the nearly two decades since the legislation creating these penalties was enacted. While other civil monetary penalties are tied to consumer indexes to take inflation into account, ours have remained stagnant. We would suggest that the time has come to tie these penalties to inflation indexes, and to consider higher penalties for third-party fraud facilitators such as doctors and lawyers than for beneficiaries.

In the interim, we will of course continue to work—hard—with the resources we have. I've already mentioned CDI, our Disability Fraud Pilot, and our Electronic Intelligence Center. We have also launched a joint project of our Offices of Investigations and Audit to examine trends among claimant representatives and disability application allowances to confirm that representatives with success rates that deviate significantly from the norm are just good at their jobs, rather than something more sinister.

Conclusion

The arrest operation in New York is the culmination of a lengthy and complex investigation into a widespread disability fraud scheme among a group of facilitators and numerous beneficiaries, and is evidence of the OIG's continuing and even increasing focus on large-scale, facilitator-based fraud.

The scope of this fraud scheme is vast and disturbing to me and my office, and we will likely see more arrests of beneficiaries involved in this conspiracy, as well as other cases arising from the work of the Disability Fraud Pilot and the CDI program.

We are committed to identifying and pursuing all forms of disability fraud, as this and other recent large-scale investigations demonstrate. We will continue to do everything we can, as resources allow, to identify these schemes and pursue prosecution of all individuals who abuse government programs and waste taxpayer funds, while simultaneously conducting audits and evaluations of SSA's disability program to reduce its vulnerability to fraud.

Thank you again for the opportunity to testify today, and I'd be happy to answer any questions.