

**The Overcriminalization of Conduct:
Consequences for One
American Family**

**Testimony Before
Subcommittee on Crime,
Terrorism and Homeland Security,
Committee on the Judiciary,
United States House of Representatives**

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This hearing is long overdue.

The word “overcriminalization” did not mean a thing to me or my husband, George, until 2003, when we learned what it means all too well. Our home was ransacked by federal agents, my husband was prosecuted and imprisoned, and our family is still suffering the consequences—all because my husband imported a few legal orchids into the United States with improper paperwork. This “crime” is one committed by everyone who imports orchids because otherwise it would be impossible to do business at all with most foreign sellers.

But in 2003, the U.S. Fish and Wildlife Service decided it wanted to “make an example” of an orchid dealer after years of ignoring the orchid community, and, for reasons that I do not know, they chose my husband. He went to jail because we didn’t have enough money to fight the charges, even after spending our life savings. And now he is a felon. I was raised in a strong community where nobody had been arrested for anything, and never imagined that I would be married to a felon—it was inconceivable. But now I am.

Until it happened, I thought the government didn’t do this kind of thing to regular people. It wasn’t part of anything in my civics books in school. But now I know that every single person is at risk because almost anything can be charged as a crime.

I hope that my testimony will educate Congress about the real-life consequences of overcriminalization, how well-meaning criminal laws can have unintended consequences for regular citizens and families. This is something that Congress, like most Americans, probably does not understand.

If any good is to come of what happened to my family, it will be that we help to make sure that more families don’t suffer as we have. That is why George and I are here today.

On October 28, 2003, I received a phone call at my office from my neighbor. “What’s going on at your house?,” she asked. I didn’t know what she was talking about and said so. She explained that someone was standing in the street in front of our house, stopping cars and asking people what they knew about criminal activity in our house.

I hung up and called my husband, who was at home. There was no answer, and I tried again and again—four times, in all. On the fifth call, someone answered and said, “Who is this?” It was not my husband.

Startled, I said, “George?” In response, the voice on the other end repeated his question: “Who is this?”

I said that if this was not George then I was hanging up and phoning the police to go to my home

to see who was there and what had happened to my husband. The voice then said that he was a federal officer, but he wouldn't tell me anything else, not even his name or any other kind of identification.

I asked to speak to George. The answer, at first, was no, but after some wrangling, I was able to get him on the phone. On the other end of the line, George was confused and frightened. He was not under arrest, but he was not allowed to get out of the kitchen chair where the agents had ordered him to sit. He told me that they had a search warrant, but that it was sealed, so he had no idea what this was all about. George said that he could hear them ransacking the house. He had no idea what they were looking for.

After four hours, they left with 37 boxes of documents and George's computer. We were left with a receipt and a trashed house to clean up. We spent the rest of the day picking up the mess they had left and trying to see what exactly they had taken.

The next morning, I stayed home from work and phoned the Clerk of Court for the Southern District of Texas. The clerk confirmed that the indictment was sealed and that we could obtain no information about it.

And that was how we stayed for the next five months—scared and in the dark.

My husband's part-time orchid business was nearly destroyed because of the raid. But thanks to friends in the community, he was slowly able to build it back up. After a few weeks, the government returned George's computer, broken. To this day, we have only received 8 of the 37 boxes that were taken in the raid.

We learned what the investigation was about the following March, at the Miami Orchid Show. Our close family friend Manuel Arias Silva, an orchid grower from Peru, had flown into town and planned to make some sales at the show. He was arrested the day before it began. Everyone thought that George would be next.

We scrambled to sell Arias's flowers for him to earn enough money to pay his expenses and get him out of jail. We guaranteed his \$25,000 bail and \$175,000 surety bond, because he was a close friend and there was no one else in the country to do it.

George was indicted a week later. He was charged with one count of conspiracy to violate the Endangered Species Act (ESA), five counts of violating the requirements of the Convention on International Trade in Endangered Species (CITES) and the ESA, and one count of making a false statement to a government official. According to the indictment, George and Manuel had mislabeled some of the orchids that Manuel had shipped to George from Peru.

Let me be clear that none of these flowers—and there weren't that many of them—were rare or really endangered. Almost all of them were grown in Manuel's greenhouses. Manuel and George probably could have gotten the right paperwork for all of them, but it would have taken months and cost a fair amount—that's how foreign governments work. So this really was a paperwork

violation.

On March 17th, we flew back to Miami, and George voluntarily surrendered. The marshals put him in handcuffs and leg shackles and threw him in a holding cell with one person suspected of murder and two suspected of dealing drugs.

The next day, George pled not guilty. A day after that, he was released on bond. We flew back home to Spring, Texas. Our finances were already suffering due to all the flying back and forth, the loss of George's business, and the cost of hiring an attorney. It would only get worse.

For reasons unknown to me, we were not granted a change of venue from Miami to Houston, which is near our home. This kind of transfer is routinely granted, I have been told. That meant we had to travel to Miami, paying for airfare, hotels, rental cars or taxis, and meals each time there was a hearing. We rarely had more than four days advance notice, so we paid full airfare most of the time.

We were forced to find an attorney in Miami. But we knew few people in Miami and didn't know anyone who might know an attorney competent to handle a truly unique and complicated case. Given our limited resources, we did the best we could do. Then there was the issue of communicating long distance. For a person above 60, texting and email are not the way to build a relationship as critical as the one with one's attorney. It was frequently strained and occasionally impossible. Miscommunications were happening all the time.

We also had the feeling that the government was monitoring many of the communications into and out of our home. It was difficult to find ways to convey confidential information to our attorneys, and we never felt safe in communicating with family and friends. This went on for about a year.

Because the case involved environmental law, international law, and trade law, we needed to hire an attorney with experience in those fields. We found only one, and his fees were completely out of our price range. As the bills piled up, it became apparent that we could not afford to go up against the government, which doesn't have to worry about bills. George took the only option left and pled guilty. He said it was the hardest thing he's ever done in his life, because he didn't believe that he had done anything wrong.

This affair cost us our life savings. We lost our business. George's Social Security income stopped when he was in prison, but I had to pay his Medicare premiums in order for him to be insurable after his release. We refinanced the house and took the tiny bit of equity we had built up since we rebuilt it after it took nine feet of water in the flood of 1994.

Money was tight. I cut out every unnecessary expense I could find and found ways to simply do without. It was impossible for George to live on prison food and he needed stamps and envelopes, so I also came up with money to send him to use in the commissary. Some of our friends kicked in money to support his prison needs. It might be possible to recover from such losses had we been younger, but at the ages of 71 and 66, there is not enough time and health to

regain the loss.

But those are the easy losses.

The most difficult of all the consequences is that I lost the man I married. He came home from prison and ate and slept and sat on the couch, staring at the TV—not really watching it. He would not water a plant, invite a friend over, initiate contact with the kids and grandkids. Nothing. And this went on for months. I began looking for a counselor who had experience with felons. Gradually, George regained his interest in wood working. So his world expanded to include his shop behind the garage. He was a recluse with the beginnings of a hobby, but it was still an improvement.

Meanwhile, my world shrank as well. During the time George was in prison my life consisted of scrimping to pay bills, keeping our home going, and traveling to the prison in Fort Worth to visit each week. Every time, I came home to all the chores, a full time job, and no husband. I was going through all the stages of grief with no support. My cousin, who was like a sister to me, died while George was in prison, and then I had real grief. At night, I could manage only two to three hours of sleep. During the day, I was exhausted.

Our younger grandchildren were not told where Papa George was—he was just traveling. The older ones knew the story and had their own grief and anger and frustration to handle. Our children were also struggling with their own feelings of anger and loss and with explaining it all to their children. Everyone was stressed, and our family ties were seriously tested. Today, after his release from prison, the burden of being the only felon in his family, whose history dates back to the first arrival in America in 1634, weighs heavily on George.

Another family consequence is that, as a felon, George is not allowed to possess firearms. So he cannot go hunting with his children or grandchildren. Hunting has been a part of George's family for generations, and this loss has been devastating to him. He is also not allowed to be around people who have weapons, which makes it difficult to visit members of our family and friends. Technically, we are not allowed to have alcohol in the house. He cannot vote or serve on a jury. The list of "can'ts" goes on and on, despite the fact that George's crime had nothing to do with guns, drugs, or alcohol. The "one-size-fits-all" approach simply doesn't work for people like us. George's 66 years as a responsible member of society count for absolutely nothing.

It is important to talk about the impact of four-and-a-half years of this on our health. George is diabetic, with cardiac complications. He also has arthritis, glaucoma, and Parkinson's disease. Though he was sent to a Federal Medical Facility to serve his time, his treatment there was poor, and his "doctor" at the facility was later arrested—seems he was not a doctor at all, which explains his inability to handle George's drugs and conditions.

We had to go to great lengths to make sure that George got the care he needed. Whenever he was ill, George would call me and describe his symptoms. I would call his doctor on the outside and relay the information. The doctor would then tell me what drugs to adjust or discontinue. I would tell George, and he would tell his prison doctor. It was difficult and time-consuming, but this

system probably saved George's life. I don't know how someone in George's position without a dedicated friend or family member on the outside could manage.

The most difficult day for me was when George had a serious attack of atrial fibrillation, a type of abnormal heart rhythm, in the visitation room and had to be wheeled out to the infirmary. There was no way for me to get information on his condition; I had to just wait until he was well and could call me. Had he died, I suppose the call would have come from his counselor later. No family member should be treated this way.

While he was in prison, George's health seriously declined. He had nothing to do but sleep and eat and walk across the compound to get his medications. For a man of his age and health, and especially one who is not used to prison-type conditions, this kind of sentence could be debilitating or worse.

My health also suffered. I caught some form of bronchitis the first time I visited George, and it took three months of treatment to cure it. I couldn't sleep. I developed a form of arthritis for which I am now on infusion treatments.

Today, after this ordeal, both of us are on medication for depression.

For a while, about a year after George entered prison, it looked like there would be a reprieve. In April, after he was incarcerated, we filed an appeal. Oral argument was set for December. Within 30 minutes of the conclusion of the oral argument hearing, the judges resurrected a denied motion for George's release pending the appeal and ordered his immediate release. That was a Thursday, and in the prison system, "immediate" meant the following Tuesday. I waited days for him to actually be released. At one point, I was told I could not sit in the prison lobby and wait for George, so I walked out to the parking lot and sat in my car. Then I was told I could not park on federal property, so I drove down the hill to the parking lot for a city soccer field. That's where I had to wait until they finally let him out.

It took six-and-a-half months for the final opinion to be published, and it upheld the original sentence. So George, who had scored the highest marks possible as a prisoner and been granted one of only two furloughs given by the warden that year, was to go back prison to serve the remainder of his sentence. He returned to prison in January, 2007, with one week's worth of his prescription medications. Among them was Ambien, a non-narcotic sleep aid. For that, he was charged with a "narcotics" violation and put in solitary confinement, for 71 days in total, and then 30 days in the infirmary. He learned from other prisoners that the prison officials were angry about his temporary release during the appeal.

After George returned to prison, I was not allowed to visit him, and for a number of weeks there was no contact at all. Eventually I received letters from George. The prison was so overcrowded that he had roommates in solitary. At one point, his roommate was an arsonist. This is just what a wife wants to hear: that her husband is locked in a small cell with someone who sets fires.

It didn't have to be this way. I kept thinking that someone might find alternative sentencing

attractive, so I wrote two scenarios for George. One would have had him creating, at his own time and expense, an orchid house for Mercer Arboretum in Houston. That would provide a new resource for the entire Houston community and use George's expertise to create that benefit. The other scenario was to find and create garden spots for senior citizens and low-income families in Montgomery County. He is a master gardener and could have used his skills to benefit those populations. These ideas were not well-received.

George was finally released from prison at the end of April in 2007, but that was not the end. This experience has changed us both for good.

A lasting part of this ordeal for George and me is paranoia. After what happened to us, we are always looking over our shoulders, waiting for some additional charge or penalty from the government. George is afraid to drive lest he get in a wreck. He has taken up bonsai, but many of the plants are native to other countries and buying them from sellers here in the U.S. is just too risky for us now. So most of the plants he is working with are from the woods behind our house. When George bought an orchid at Home Depot last month, I could not suppress my panic.

Even testifying before this committee has us wondering if we have just painted a bull's eye on George's back. We never expected we would carry this burden of fear in our "golden years."

The hardest part about this whole thing is that I was raised in a country that wasn't like this. I grew up in a reasonably affluent part of Dallas. I came from a family in which nobody had ever been indicted or arrested, and so did George. And the government didn't do this stuff to people. It certainly wasn't part of anything in my civics books. Over the entrance to my high school were the words "Enter to learn. Go forth to serve." I have been doing that all of my adult life. Now I wish I could believe that it had done more good.

Recounting all this is painful, and it is something that I would rather not do. But I could not turn down this opportunity to make a difference for families who might one day find themselves in a situation just like ours. I don't want them to have to experience this pain and the unending losses.

If there is a lesson here, it is that overcriminalization has very real, very serious consequences for American families. That is what I hope this Subcommittee takes away from the hearing today. And I hope that you will take actions in the future which will reduce the risk of this happening to others.

Thank you for the opportunity to share our story with you.