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SEIZED LIFE SAVINGS

Defense lawyers say government took immigrants' money first, asked questions later

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It was a classic American success story. Hai Nguyen and his wife, Oanh Le, had escaped communist Vietnam in a boat under the cover of darkness and found work in the textile mills outside Charlotte. Through years of hard labor and frugal living, they were able to save enough money to buy a small house and a nail salon business, all while raising five children.

But their lives took a Kafkaesque turn in 2007, when the federal government arrived with questions about a series of cash deposits that the couple had made at several banks near their Cherryville home.

H. Monroe Whitesides Jr.

What happened next led Nguyen and Le to conclude that the U.S. attorney's office is "worse than the communists," said H. Monroe Whitesides Jr., a solo practitioner in Charlotte and member of the couple's four-lawyer pro bono criminal defense team.

Federal agents accused Nguyen and Le of scheming to hide their money from the government and seized more than $200,000 that they had set aside for their children's education. Then prosecutors waited nearly five years before deciding to pursue a criminal case against the couple.

The case crumbled in early April, when a jury in the U.S. District Court for the Western District of North Carolina took less than two hours to acquit Nguyen and Le of felony structuring charges that could have sent them to prison for up to five years.

"The bigger picture here, I think, is that this case illustrates the federal government having such enormous power and I wonder if maybe the pendulum has swung and people are now at a place where they're ready to say, 'Whoa, let's put the brakes on a little bit,'" said Le's lead defense attorney, Sonya Pfeiffer of Charlotte's Rudolf, Widenhouse & Fialko. Her law partner and husband, David S. Rudolf, served as co-counsel.

Pfeiffer, Whitesides and another member of the defense team, Robert B. Cordle, a 71-year-old semi-retired lawyer who works out of his garage in Charlotte, say the government seized first and asked questions later.

"It was ready, fire, aim instead of ready, aim, fire," said Cordle, a Vietnam War vet who helpedWhitesides defend Nguyen. "These people had worked hard, saved their money, and then the government just comes in and takes it. You don't like to see that happen."

After federal agents squeezed the trigger prematurely, prosecutors were too stubborn to admit that a mistake had been made, choosing instead to blindly plod ahead with a flimsy case, the defense team said.

"If you've taken someone's life savings

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and held it for five years, I think it's very difficult for the federal government to turn around and say, 'Whoops, sorry,'" Pfeiffer said.

The prosecutor, assistant U.S. attorney Michael E. Savage, said this was the first jury trial he has lost in 20 years. Savage referred further comment to first assistant U.S. attorney David A. Brown Sr., who defended his office's decision to seize the couple's money and take them to court.

Sonya Pfeiffer

Brown stressed that U.S. Magistrate Judge David C. Keesler signed off on a warrant allowing for the cash seizure, another judge gave the go-ahead for the civil forfeiture filing and a grand jury found sufficient evidence to hand up indictments in the case.

Robert B. Cordle

"I think it would be a tough hill to climb for someone to say that the government doesn't have justification for what it's done here," he said. "We don't waste our resources unnecessarily or prosecute cases foolishly, at least I hope not."

But Brown could not explain why it took almost five years to charge the couple with a crime after their money was seized. The decision came just before the expiration date of the statute of limitations.

"I would say candidly that that's an awfully long time," Brown said. "There may have been some internal debate as to whether we were going to bring this case, I don't know. It could have been that it languished on someone's desk, which would have been unfortunate."

'Purely a regulatory offense'

The most glaring flaw in the government's case against Nguyen and Le was a lack of criminal intent: The two barely speak English and had no idea that their bank deposits were illegal, according to the defense team.

Beginning in 2006, Nguyen and Le began depositing cash that they had earned in the mills along with an insurance payment of $130,000 for lost jewelry. They had kept the money wrapped in old newspapers hidden around their house until one of their children told them their savings would be safer in the bank.

Each deposit the couple made was in their children's names and for less than $10,000, because a bank worker had told Nguyen years earlier that any transaction over that amount would require him to fill out a complicated federal report, Whitesides said. In reality, banks are obligated to file the reports, not customers.

> "We believe we had a justifiable basis to seize all of the [couple's] money, which is why we did it."
>
> ***U.S. attorney David A. Brown Sr***

The currency transaction reporting requirement was enacted in 1970 as part of the Bank Secrecy Act. It was intended to help federal agents identify and prosecute criminals who have plenty of money but no legitimate source of income.

One of the banks that accepted the couple's cash deposits sent a suspicious activity report to the Financial Crimes Enforcement Network of the U.S. Department of the Treasury, setting off the investigation that led to the cash seizure, civil forfeiture case and criminal trial.

Nguyen and Le had receipts, tax returns, insurance claim forms and other paperwork to account for the legality of their money, according to Whitesides. And the U.S. attorney's office admits that it had no evidence to show that the couple's money was ill-gotten.

"This was purely a regulatory offense," Brown said. "Regulatory offenses, without any evidence of illegal activity separate and apart from the trying charges, are difficult to prosecute."

Unlocking the life savings

After its criminal case disintegrated, prosecutors offered to settle the forfeiture matter against Nguyen and Le and return the $202,750 that it seized back in October 2007.

"When the government called and told me they would like to make a settlement offer and that they wanted to give back all the money, I was pretty floored. It's extraordinarily rare," said C. Melissa Owen, a partner at Tin, Fulton, Walker & Owen in Charlotte, who gave free representation to the couple's children in the civil case.

The government sometimes returns a portion of seized cash as part of a settlement agreement, but it hardly ever gives back every penny.

"That would be unusual," said Brown, who was unaware of the pending offer with Nguyen and Le. "We believe we had a justifiable basis to seize all of the [couple's] money, which is why we did it."

Of course, the settlement deal does not include reimbursement for lost interest or attorneys' fees, according to Owen. Still, she felt that it was in her clients' best interests to accept the offer and move on with their lives.

"They're able to get their money back," she said. "But after everything this poor family has been through, I guess it doesn't seem so wonderful to get back the money that they rightfully had all along."

Hai Nguyen (right) and his family: Federal prosecutors are 'worse than the communists' *Contributed photo*