



Department of Justice

STATEMENT OF
DANIEL BOGDEN
UNITED STATES ATTORNEY, DISTRICT OF NEVADA

BEFORE THE
FINANCIAL CRISIS INQUIRY COMMISSION

ENTITLED
“THE IMPACT OF THE FINANCIAL CRISIS AT THE GROUND LEVEL – STATE OF
NEVADA”

PRESENTED
SEPTEMBER 8, 2010

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DRAFT TESTIMONY
UNITED STATES ATTORNEY DANIEL G. BOGDEN
FINANCIAL CRISIS INQUIRY COMMISSION
SEPTEMBER 8, 2010
LAS VEGAS, NEVADA

Distinguished Members of the Commission, thank you for the invitation to speak before you today about the Department of Justice’s mortgage fraud enforcement efforts in Nevada. Your work in identifying the causes of the financial crisis in this country is vital, and I am pleased to have the opportunity today to assist you in your fact-finding process.

In January of this year, Attorney General Eric Holder and Assistant Attorney General Lanny Breuer testified before the Commission about the Department’s aggressive enforcement efforts in combating financial fraud. What they told you then is worth repeating again today: In the Department’s fight against terrorism and crime, we hold wrongdoers accountable. From significant jail time to severe civil penalties, the Department uses all of the tools at its disposal to keep this country safe.

This mission takes on important significance in the high-priority area of financial fraud. The Department fights fraud in all its forms, from mortgage fraud, to Medicare and health care fraud, to securities fraud and corporate malfeasance. Nevertheless, while we stand on the front lines in combating financial fraud, our work has its limits. As the Department has stressed before, it is not, as a general matter, within the scope of our expertise or mission to opine on the causes of the financial crisis. We are a terrorism- and crime-fighting body, and our resources are focused on the investigation and prosecution of violations of the federal criminal laws.

Within these constraints, I am happy to provide you with a prosecutorial perspective of my office’s work in Nevada to address mortgage fraud. Of course, any discussion of the

27 Department's mortgage fraud enforcement efforts in this community should begin with the
28 Department's strategic approach to financial fraud. In November, 2009, as a response to the
29 unprecedented nature of the financial crisis, the President created the Financial Fraud
30 Enforcement Task Force, over which the Attorney General serves as chairman. The Task Force,
31 which is composed of officials from across federal, state, and local governments, is the most
32 comprehensive collection of criminal, civil, and regulatory officials ever assembled with a focus
33 on developing forward-leaning enforcement and prevention strategies against financial crimes.

34 Through the Task Force, we have entered what's been referred to as an era of heightened
35 cooperative fraud enforcement. In this regard, we have strengthened our collective efforts to
36 prosecute, convict, and punish those who commit fraud in order to send a powerful deterrent
37 message.

38 Mortgage fraud enforcement provides an excellent example of the government's
39 collective action at work. In June, the Task Force announced the conclusion of Operation Stolen
40 Dreams, the most comprehensive mortgage fraud enforcement initiative ever undertaken. The
41 Task Force coordinated the months-long operation, which included federal and state criminal
42 prosecutions and civil actions across the United States. In support of this massive sweep, U.S.
43 Attorneys' Offices across the country, including my office here in Nevada, brought charges
44 against fraudsters who have perpetrated various mortgage fraud schemes. At its conclusion,
45 Operation Stolen Dreams resulted in federal and state criminal charges against over 1,500
46 defendants, civil charges against nearly 400 defendants, and an estimated loss exceeding \$3
47 billion.

48 Your invitation to address the Commission at today's hearing included a list of areas
49 upon which you asked me to comment. Those areas included the types of mortgage fraud my

50 office has encountered, factors which may contribute to a high incidence of mortgage fraud in
51 Nevada, the standards for determining which cases my office pursues, and the training and other
52 needs of area law enforcement agencies. I'd like to spend the remainder of my time commenting
53 on those areas.

54 The types of mortgage fraud in Nevada run the gamut from loan origination schemes,
55 property flipping, builder bailout schemes, and foreclosure rescue scams, to loan modification
56 fraud. Between approximately 2000 and 2006, when the economy was stronger, home prices
57 were rising, and foreclosures were low, most frauds involved loan origination schemes and
58 property flipping. But starting in 2007, when the market weakened and home prices fell, the
59 number of those schemes declined while the number of foreclosure rescue scams and loan
60 modification fraud increased.

61 Loan origination fraud in its most basic level involves individuals falsifying loan
62 documents to qualify for a mortgage to buy their own homes. Such fraud was less detectable
63 when loan qualification requirements were less stringent and lenders required few verification
64 documents. Such fraud has had less impact on Nevada's financial community than has
65 organized and ongoing fraud schemes.

66 Loan origination fraud at a more complex level involves property flipping schemes. Here
67 culprits fraudulently buy houses to skim money from the mortgages used to buy those houses.
68 These schemes operate in one of two ways. The first involves a fraudster who persuades a seller
69 to sell him a house at a price substantially above the asking price while agreeing to secretly kick
70 back the inflated amount to the buyer. The kickbacks often ranged between \$50,000 and
71 \$150,000 per house. The second way involves a fraudster who arranges to buy a house at the
72 asking price, then immediately sells the house to a straw buyer at a price inflated by \$50,000 to

73 \$150,000. The straw buyer never intends to occupy the house or become the owner of the house
74 but simply agrees to let the fraudster use his name and credit history to buy the house. The
75 fraudster pays the straw buyer usually between \$5,000 to \$10,000 per house. The fraudster then
76 keeps the \$50,000 to \$150,000 for himself.

77 The builder bailout frauds involve builders inflating the prices of their homes to kick
78 back incentives to the buyers and others and concealing the kickbacks from the lenders. The
79 frauds often attract fraudsters who use straw buyers to buy the houses so the fraudsters can keep
80 the incentives for themselves.

81 Foreclosure rescue fraud and loan modification fraud are similar to each other. They
82 involve culprits promising to help distressed homeowners avoid foreclosure or obtain a loan
83 modification in return for a fee. The victim pays the fee up front, but the culprit does little or
84 nothing to help the homeowner. These frauds became prevalent in 2008 as foreclosures
85 increased, home prices decreased and a great number of homeowners got “upside down” on their
86 mortgages.

87 Institutional and systemic mortgage fraud involves not only the person who orchestrates
88 the scheme, but professionals (including loan officers) willing to use false information to qualify
89 buyers for loans, escrow officers willing to create false documents to conceal the diversion of
90 loan proceeds from the lenders, real estate agents willing to locate properties suitable for use in
91 the scheme and create false sales documents to carry out the scheme, and appraisers willing to
92 inflate the value of the homes.

93 The harm caused by property flipping and builder bailout fraud has been devastating to
94 Nevada. The most obvious harm is the direct loss to lenders. Since 2005, federal law
95 enforcement efforts in Nevada have resulted in federal criminal charges against 172 persons for

96 mortgage fraud. We have identified hundreds of properties used in these schemes that have gone
97 into foreclosure. The loss for each property is approximately \$200,000. Our investigations,
98 however, indicate that *thousands* not hundreds of properties have been used in the schemes.

99 The less obvious harm caused by property flipping fraud and builder bailout fraud is the
100 effect it has had on home prices and the fallout from precipitous price declines.

101 To perpetrate flipping fraud and builder bailout fraud, culprits needed to fraudulently inflate
102 home values. This was often done with the complicity of appraisers who fraudulently inflated
103 the value of the houses. These appraisals set new benchmarks for home values on which
104 legitimate and illegitimate appraisals relied. The inflated home prices used in flipping frauds and
105 builder bailout frauds contributed to the rapid, artificial increase in market values in Nevada.
106 Legitimate home buyers who bought when the market was high, overpaid for their homes and, if
107 they still own their homes, are making unnecessarily large mortgage payments. When the
108 market turned, and prices fell, those legitimate home buyers are now further upside down than
109 they should be.

110 Since 2008, foreclosure rescue and loan modification frauds have increased substantially.
111 While the loss from these frauds is not as high as the loss from other frauds, these frauds take
112 money directly from and victimize desperate homeowners. These homeowners are typically
113 conned out of \$2,000-\$5,000 for the hope of being able to save their homes. In some cases,
114 culprits have persuaded distressed homeowners to transfer their homes temporarily to the
115 culprits' companies on the false promise that the home will be transferred back to the
116 homeowner at a later date. In these cases, culprits promise homeowners to make their mortgage
117 payments for them while the homeowners promise to pay rent to the culprits. Not surprising, the

118 culprits collect the rents but do not make the mortgage payments. In the end, the homeowners
119 remain responsible for the defaulted mortgages.

120 In March 2008, we formed a mortgage fraud task force in southern Nevada consisting of
121 the Federal Bureau of Investigation, Housing and Urban Development Office of the Inspector
122 General, United States Postal Service Office of the Inspector General, Internal Revenue Service,
123 United States Secret Service, Nevada Attorney General's Office and the Las Vegas Metropolitan
124 Police Department. Under the direction of the FBI, the task force shared information and
125 coordinated efforts to combat the fraud. The FBI also established a mortgage fraud hotline,
126 which has received more than 3,500 calls since March 2008. As more federal law enforcement
127 resources were devoted to mortgage fraud investigations, federal law enforcement reviewed
128 more than 6,000 Suspicious Activity Reports (SARS) filed with the Financial Crimes
129 Enforcement Network (FinCEN) by financial institutions that identified hundreds of potential
130 mortgage fraud cases. Federal law enforcement then used traditional investigative methods to
131 develop those cases: grand jury subpoenas issued to obtain loan and escrow documents, bank
132 records, and other useful documents; witness interviews; grand jury appearances; and
133 cooperating defendants and targets.

134 Earlier this year, we formed the northern Nevada mortgage fraud task force. Several
135 federal agencies comprise this task force: the Federal Bureau of Investigation, Internal Revenue
136 Service, Housing and Urban Development Office of the Inspector General, United States Postal
137 Inspection Service and United States Secret Service. This task force meets regularly with our
138 office to identify mortgage fraud cases and share resources and information.

139 In 2008 and 2010, we participated in two nationally organized "sweeps" or "take-downs"
140 of mortgage fraud cases: Operation Malicious Mortgage and Operation Stolen Dreams. Each

141 operation was part of a nationally coordinated effort to address mortgage fraud. Following each
142 operation we held a press conference to announce the operations and their results. These efforts
143 have raised public awareness of mortgage fraud and federal law enforcement efforts to combat it,
144 thereby in part, curbing mortgage fraud.

145 As part of the effort to combat mortgage fraud, federal, state and local law enforcement
146 agencies have dedicated resources to address the problem. The FBI assigned ten agents in its
147 local office to mortgage fraud cases and transferred seven agents from other FBI offices
148 permanently to Nevada to investigate mortgage fraud. The FBI has also hired contract employees
149 to help the investigations. The IRS, Postal Service, Secret Service and HUD have assigned
150 agents to work mortgage fraud cases. The United States Attorney's Office assigned additional
151 attorneys and staff to the task and hired a contract paralegal. In Fiscal Years 2009 and 2010, the
152 Executive Office for United States Attorneys provided our office with two new permanent
153 Assistant United States Attorneys and a paralegal, and the Criminal Division of the Department
154 assigned four prosecutors temporarily to Nevada to assist in addressing the problem.

155 Our efforts have produced results. Since 2005, federal investigations have resulted in
156 172 persons being charged in Nevada with federal crimes related to mortgage fraud. Charges in
157 most of these cases were brought in 2009 and 2010 when additional resources were focused on
158 the frauds. To date, most defendants have pleaded guilty, two have gone to trial and were
159 convicted, and few are awaiting trial or are negotiating plea agreements. Numerous
160 investigations involving additional, potential defendants are ongoing.

161 As federal prosecutors, it is not within our expertise to opine on the factors contributing
162 to Nevada becoming a hot spot for mortgage fraud. However, some factors clearly contributed to
163 our mortgage fraud problem. They include the population growth rate in Nevada and the sharp

164 increase in home prices. The growth led to new housing developments and a larger resale
165 market which the culprits used to perpetrate their schemes. The sharp increase in home prices
166 created the opportunity for culprits to inflate home prices and conceal their frauds. As home
167 prices fell, the frauds became evident.

168 Local law enforcement officers have been adequately trained. Before we formed the
169 mortgage fraud task force, some local law enforcement officers had gained expertise in the area
170 by investigating the crimes. After we formed the task force, we, the FBI and the United States
171 Attorney's Office, provided additional training opportunities to local and state law enforcement
172 agencies. This training included formal training sessions and on-the-job training. Our FBI office
173 has also provided mortgage fraud training to FBI offices in other states.

174 Federal training opportunities have increased and improved since the crisis. Our
175 prosecutors may take advantage of new training courses held at the National Advocacy Center in
176 Columbia, South Carolina, may view mortgage fraud training video presentations on demand and
177 have written and online materials available, as well.

178 Federal, state, and local authorities are cooperating effectively. We have open lines of
179 communication that allow us to identify new fraud cases, share information and avoid
180 duplicating efforts. We divide cases among agencies by having federal law enforcement
181 agencies working primarily on property flipping and builder bailout frauds and state law
182 enforcement working primarily on foreclosure rescue and loan modification frauds. This
183 division allows each law enforcement agency to use its resources effectively and efficiently.
184 Apart from the large number of property flipping and builder bailout frauds that are keeping
185 federal law enforcement very busy, federal law enforcement is better equipped to handle
186 investigations with multi-state aspects. Federal law enforcement has subpoena powers that reach

187 across state lines and federal agents in every state available to assist with multi-state
188 investigations. The large number of foreclosure rescue schemes and loan modification schemes
189 are also keeping state law enforcement very busy. State law enforcement is well equipped to
190 handle these frauds and has channeled its resources into doing so.

191 Federal law enforcement has sought to build lines of communication with regulatory
192 agencies and industry leaders by meeting with the agency heads and leaders and explaining our
193 efforts to combat mortgage fraud. Through these efforts, we seek to obtain assistance from
194 regulatory agencies and industry sources with investigations and to receive tips regarding
195 criminal activity. We seek to improve cooperation by increasing our efforts to reach out to these
196 agencies and leaders.

197 All United States Attorneys look at a number of factors in determining whether to accept
198 cases for prosecution. Those factors are outlined in what is known as the “Principles of Federal
199 Prosecution.” The primary factors are whether a crime has been committed and the strength of
200 the evidence. However, there are other important factors, including the nature and seriousness of
201 the offense, the person’s culpability and criminal history, the deterrent impact of a prosecution,
202 the availability and sufficiency of other remedies, federal law enforcement priorities and the
203 resources of the particular United States Attorney’s office.

204 As I said, one of these many factors is the seriousness of the offense. One way to gauge
205 the seriousness of an economic crime is by the amount of loss caused by the defendant. Before
206 the crisis became apparent, we were unlikely to accept a mortgage fraud case for prosecution
207 where the loss was less than \$100,000. As you might imagine, in light of the cost of real estate,
208 almost all mortgage fraud cases exceeded that amount. After the crisis developed, we dropped

209 all emphasis on loss amount and adopted a policy of reviewing cases on a case-by-case basis,
210 regardless of the loss amount.

211 That concludes my prepared testimony, and I look forward to addressing questions from
212 members of the Commission.