TABLE OF CONTENTS

Last updated: February 2015

27.00 FALSE RETALIATORY LIENS

27.01 STATUTORY LANGUAGE: 18 U.S.C. § 1521

Title 18, Section 1521, provides:

> [w]hoever files, attempts to file, or conspires to file, in any public record or in any private record which is generally available to the public, any false lien or encumbrance against the real or personal property of an individual described in section 1114, on account of the performance of official duties by that individual, knowing or having reason to know that such lien or encumbrance is false or contains any materially false, fictitious, or fraudulent statement or representation, shall be fined under this title or imprisoned for not more than 10 years, or both.

27.02 GENERALLY

Tax defiers and sovereign citizens have developed a strategy of filing false retaliatory liens against government officials for the performance of their official duties. *See* ***Jones v. Caruso***, 569 F.3d 258, 261 (6th Cir. 2009) (citing cases). These retaliatory filings are intended to harass the victims and to divert their attention from their work. The false liens may harm these government officials by damaging their credit and publishing their identifying information; expunging the liens also uses government resources. IRS officials involved in civil audits, collection, and criminal investigations are targeted, as are federal judges, prosecutors, and highly placed government officials. This scheme is an outgrowth of the "redemption scheme," which often involved harassing government officials by filing official, but false, forms (e.g., Forms 1099, Forms 8300, Currency Transaction Reports, and Suspicious Activity Reports). *See* Jennifer E. Ihlo & Melissa E. Schraibman, *Recycled "Redemption": The Latest Illegal Tax Protester Scheme*, 49 UNITED STATES ATTORNEYS' BULLETIN 25, 25-28 (July 2001).

In 2007, to address this problem, Congress enacted Section 201 of the Court Security Improvement Act, codified at 18 U.S.C. § 1521, which made it a ten-year felony to file fictitious liens in retaliation for official acts performed by federal officials. The Act "is intended to penalize individuals who seek to intimidate and harass Federal judges and employees by filing false liens against their real and personal property." H.R. REP. NO. 110-218, at 827 (2007).

27.03 ELEMENTS

In order to establish a violation of Section 1521, the government must prove the following beyond a reasonable doubt:

(1) that the defendant filed, attempted to file, or conspired to file, in a public record a false lien or encumbrance against the real or personal property of an individual;

(2) that such individual was an officer or employee of the United States or of any agency in any branch of the United States government;

(3) that the defendant filed the lien or encumbrance on account of the performance of such individual's official duties; and

(4) that the defendant knew or had reason to know that such lien or encumbrance was false or contained any materially false, fictitious, or fraudulent statement or representation.

27.03[1] Filed a False Lien or Encumbrance Against the Property of an Individual

27.03[1][a] Definition of Lien or Encumbrance

Tax defiers and sovereign citizens often file confusing and oddly named documents, requiring prosecutors to determine whether such a document qualifies as a lien or encumbrance under this statute. In many cases, defendants file false financing statements under the Uniform Commercial Code (UCC) with the Secretary of State, County Recorder of Deeds, or other office

in the state where the purported debtor resides. *See* U.C.C. §§ 9-301(1), 9-307(b)(1), (c), and 9-501(a). These Forms are commonly accepted by the office with minimal review. The UCC Financing Statements (Forms UCC-1) typically report that the defendant has a security interest in the real or personal property of a targeted federal official. The federal official is listed as the debtor and the defendant is listed as the creditor. In some cases, the IRS, Department of the Treasury, or other government agency is listed as the debtor, and an amendment is filed adding the name of a government official as debtor. The amount of the debt and collateral purportedly attached are described in the form. Another common type of false retaliatory lien is a "Notice of Claim of Maritime Lien," which purports to be a security document intended to be filed with the United States Coast Guard's National Vessel Documentation Center regarding mortgaged vessels. These maritime notices report the name of the official victim as the name of the "vessel," the Secretary of the Department of Transportation as the owner of the vessel, and the filer as claimant. Other false retaliatory lien documents may be devised by the tax defiers or sovereign citizens themselves, with titles such as "Claim of Injury" or "Notice of Debt".

Regardless of whether the "lien" is evidenced by a form used commercially or one created out of whole cloth, the debt reported on the form is a fiction. As part of the purported lien filing process, defendants may send demands for payment to the law enforcement victims. After the stated time for payment has expired, defendants declare the victim in default, sometimes offer an "opportunity to cure," then file lien documents reflecting the purported debt arising from the default. Defendants may attach affidavits or other documents that outline the purported basis for the debt to the filed Forms UCC–1.

There is no requirement that a putative lien meet all of the technical requirements of a lien to be charged under Section 1521. That the lien documents are technically incomplete,

virtually incomprehensible, or facially absurd is not an impediment to successful prosecution. The broad language of the statute also covers attempts and conspiracies to file false liens, and the fact that the false filing would not have succeeded in perfecting a priority claim as a matter of law is not a defense. ***United States v. Reed***, 668 F.3d 978, 984-985 (8th Cir. 2011); *see also* ***United States v. Neal***, --- F.3d ---, 2015 WL 136392, at *6 (9th Cir. 2015) (holding that the validity of a lien document is irrelevant to determining whether Section 1521 has been violated). In ***Reed***, the Eighth Circuit held that:

> [t]he prohibition in 18 U.S.C. § 1521 is triggered by the filing of a false or fictitious lien, whether or not it effectively impairs the government official's property rights or interests. Indeed, legal insufficiency is in the nature of the false, fictitious, and fraudulent liens [] that Congress intended to proscribe.

668 F.3d at 984-85. Likewise, another court has explained that Section 1521

> does not require that the "false lien or encumbrance" meet technical requirements to be a "lien" or "encumbrance." Indeed, the statute punishes the filing of "false liens" not "false [valid] liens" since all false liens are invalid. The words "false lien" must be read together—"bogus records intended to function as liens by burdening and impairing another's interest in property."
>
> The use of the term "fictitious" undermines defendant's argument that the false lien must meet the technical requirements of a "lien."

United States v. Davenport, 2011 WL 1155191, at *1-2 (E.D. Wash. Mar. 29, 2011) (citations omitted). *See also* ***United States v. Hoodenpyle***, No. 10-1457, 2012 WL 375499, at *2-3 (10th Cir. Feb. 7, 2012).

27.03[1][b] Property of Individual

The descriptions of the property belonging to the government official can range from precise descriptions of an official's residence to broad descriptions encompassing all of the

official's real and personal property in general terms. One defense that has been raised in lien cases is that the lien document does not specifically describe the property of the official victim. Courts have rejected such a defense, on the ground that the document "description named types of personal property against which valid liens can be filed – 'sliver [sic] coinage' and 'proceeds, products, accounts and fixtures,'" ***Reed***, 668 F.3d at 984, or on the ground that Section 1521 also prohibits attempts to file false liens. The Ninth Circuit rejected a defendant's claim that he could not be convicted under Section 1521 because the collateral identified in the document was not "real or personal property": "The prohibition is triggered by the type of document and resulting harm without regard to the validity or existence of the identified collateral in such documents," and the collateral listed in the lien documents "is not relevant" to whether the statute was violated. ***Neal***, 2015 WL 136392, at *6.

27.03[1][c] The Lien is False

Expert testimony is usually not necessary to prove that the lien is false. Nor is it advisable, especially if it opens the door to expert testimony proffered by a tax-defier or sovereign-citizen defendant, which testimony is especially likely to confuse the jury. ***United States v. Chance***, 2012 WL 5395263, at *11 (4th Cir. Nov. 6, 2012).

27.03[1][d] Filed or Attempted to File

To explain how the lien filing process operates and the effect of such a filing, the government may offer testimony from a representative of the Secretary of State, the County Recorder, or other state office where the documents were filed. Such representatives are generally competent to authenticate the lien documents, as well as to testify about how lien

documents are filed, how liens work, who can access lien information, the duration of the lien, and the procedures needed to remove a lien.

The representative may also testify about the possible impact on the "debtor's" credit, but prosecutors should also consider other potential witnesses who may be able to testify on this point, such as a title examiner. Such evidence may be powerful evidence of the criminal intent of the defendant.

27.03[1][e] Unit of Prosecution

Where a defendant files multiple liens against different officials, each lien against a particular individual is a separate count. *United States v. Kozak*, No. 12-344 (D. Neb. Feb. 7, 2014) (unpub.). A defendant may also file a single false lien naming two or more federal officials as debtors. Because 18 U.S.C. § 1541 refers to the filing of a lien against an "individual," if one lien document refers to two victims, it is appropriate to charge each as a separate offense. For example, in ***Reed***, the indictment charged a separate violation of Section 1521 for each victim where the Form UCC-1 listed both the judge and United States Attorney as debtors on the form. ***United States v. Reed***, 668 F.3d 978, 982 (8th Cir. 2011).

Another question that may arise is whether to charge separate offenses if the same false lien document is filed in several locations or filed repeatedly in the same location. Counts are not facially multiplicitous if distinct from one another in time, place, or both. *See* ***United States v. Grant***, 114 F.3d 323, 330 (1st Cir. 1997) (indictment charging defendant with possession of 11 firearms in 2 different cities on 3 different dates is not multiplicitous). As discussed below, the sentencing guidelines provide for a two-level enhancement when more than two liens are filed against the property of the same victim, and for an upward departure when substantially more than two liens are filed against the same victim, to reflect the additional time and resources that

are required to remove multiple liens from the public domain. These provisions are consistent with charging lien filings in separate locations as separate offenses. However, if a false lien document was repeatedly filed with the same office, charging each filing in a separate count may be multiplicitous. *See* ***United States v. Graham***, 60 F.3d 463, 467 (8th Cir. 1995) (noting that under the unitary harm rule "repetition of a false statement which does not 'constitute an additional impairment of . . . governmental functions' [citation omitted] should not be charged separately in an indictment."); ***United States v. Salas-Camacho***, 859 F.2d 788, 791-92 (9th Cir. 1988) (holding that identical false statements made to different government agents could each be prosecuted separately if the repetition of the statement constituted an additional impairment of the operations of the government). If the defendant filed more than one lien document at the same time with the same government office—a Form UCC-1 and a Notice of Maritime Claim, for example—that purport to arise from the same underlying "debt," it might be appropriate to charge them either in one Section 1521 count or as separate counts.

27.03[2] Federal Official Defined

Section 1521 prohibits the filing of false liens against federal officials, who are defined in 18 U.S.C. § 1114, as:

> any officer or employee of the United States or of any agency in any branch of the United States Government . . . while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee, in the performance of such duties . . . .

Id.

The filing must claim an interest in the property of a government *official*, not merely a government *agency*, to be within the reach of Section 1521. ***Reed***, 668 F.3d at 983.

In some cases, defendants file a Form UCC-1, naming the United States Treasury or the IRS as the debtor, and then file an amendment adding a government employee as a debtor. Employees of the IRS, including revenue officers, revenue agents, and special agents, are employees of the government for purposes of the statute, and a defendant's arguments to the contrary are frivolous. ***United States v. Hoodenpyle***, 2009 WL 1883919, at *1-2 (D. Colo. June 30, 2009).

27.03[3] Lien Filed In Retaliation for Performance of Official Duties

The first step in proving retaliation is to establish the nature of the relationship between the government official and the defendant. The official nature of the relationship is generally proven by the testimony of the targeted official or another government witness. For example, in tax-related cases, IRS collection officials are often targeted. The collection history with the defendant and correspondence between the defendant and the IRS may be introduced into evidence. In addition to establishing that the government official is being targeted for his or her official actions, the falsity of the lien may be established by testimony that the official did not owe the defendant the money claimed on the forms. *See, e.g.*, ***United States v. Hoodenpyle***, 461 F. App'x 675, 679 (10th Cir. 2012). The official should be able to testify that he or she was assigned to the defendant's tax case in his or her official capacity, had no other relationship with the defendant, did not owe the defendant any money, and did not consent to the filing of the lien.

When highly placed government officials, such as the Commissioner of the IRS, the Comptroller of the Currency, or the Secretary of the Treasury are victims, it may not be practical or advisable to have them testify at trial. It may be possible for other government officials to testify about the defendant's dealings with the IRS and/or relationship to the defendant.

Prosecutors should consider these issues when making charging decisions in cases involving highly placed government officials as victims.

The lien documents themselves may explicitly state why the lien is being filed. The individual filing the lien may, for example, attach a document that recounts the filer's history with the IRS or other problems with the government and explains the rationale for the filing of the liens. The lien document may also refer to tax liens filed by the IRS against the defendant's property, the defendant's tax liability, or some other government action involving the defendant in the section describing the collateral for the purported debt.

The timing of events can also be significant; liens may be filed shortly after the government takes some kind of adverse action against the defendant. For example, in ***Reed***, the government introduced evidence that the day after the district court denied the defendant's motion to dismiss his gun case, the defendant discussed filing retaliatory liens against the judge and others during a recorded telephone call. The next day, liens were filed against the judge and United States Attorney.

Finally, many defendants set up the purported lien by sending documents to the victim alleging violations of the defendant's rights, making a demand for payment, and giving the official a specific amount of time to respond to the defendant's demands. When the official fails to respond, the defendant pronounces the victim to be in default, and then files false retaliatory liens based on these so-called "default judgments." A prosecutor who receives such "notices" should be aware that the defendant may be preparing to file a lien against him or her.

27.03[4] Knowledge that the Lien is False, Fictitious, or Fraudulent

To establish a violation of Section 1521, the government must prove only that the defendant knew or had reason to know the liens were false, fictitious, or fraudulent. The

government does not have to prove that the defendant filed the false lien "willfully." In ***United States v. Williamson***, 746 F.3d 987, 994 (10th Cir. 2014), the defendant contended that the district court had erred in not giving an instruction on good faith, a common defense in crimes requiring "willfulness," arguing "that this error prevented the jury from exonerating him if it found that he honestly believed that he had not filed a false lien." But the Tenth Circuit held that because Section 1521 "prohibits not only filing a false lien 'knowing' that that lien was false, but also filing a false lien 'having reason to know' that it was false," "a defendant can be guilty even if he honestly believed that he filed a proper lien so long as that belief was not a reasonable one." "A good-faith instruction," the court held, "would be inconsistent with the objective component of the having-reason-to-know requirement."

A defendant may argue that he or she lacked knowledge on the basis of a supposed psychiatric condition. Whether such psychiatric evidence is admissible will depend on the facts and may vary from circuit to circuit. *Compare* ***United States v. Williamson***, 746 F.3d 987, 990 & 994 (10th Cir. 2014) *with* ***United States v. Chance***, 496 Fed. Appx. 302, 304-306 (4th Cir. 2012). Prosecutors may consult *Jen E. Ihlo & Erin Pulice,* "*Prosecuting Tax Defier and Sovereign Citizen Cases—Frequently Asked Questions,*" 61 UNITED STATES ATTORNEYS' BULLETIN 45, 52-56 (March 2013), for more specific information regarding psychological issues in tax defier and sovereign citizen cases.

In tax defier cases stemming from collection efforts, defendants frequently submit numerous documents espousing tax defier arguments to the IRS. In some instances, the IRS Frivolous Return Unit will respond to such documents by advising the defendant in writing that the arguments he or she is espousing have been repeatedly rejected by the courts. IRS examination or collection files may contain correspondence sent to the defendant that, among

other things, warns the defendant of civil and criminal penalties related to his conduct. Additionally, individuals who have filed false liens against IRS personnel may have been contacted by the Treasury Inspector General for Tax Administration (TIGTA), and warned that the filing of such liens is illegal. Some defendants may admit that they filed the false documents when questioned by TIGTA or other government agents. *See*, *e.g.*, ***Reed***, 668 F.3d at 982.

In cases involving false retaliatory liens filed by state or federal prisoner, the government may be able to present evidence that the prison officials posted notices or conducted seminars warning the prisoners about the illegality of filing false retaliatory liens. Additionally, defendants may discuss the liens with other prisoners or during jail phone calls with family and friends. For example, in one case, the government introduced evidence that the defendant, who filed retaliatory liens against three federal judges, had ignored warnings by prison officials that the filing of the liens was illegal, a letter from the Texas Attorney General's office advising him that filing false liens was a federal crime, and written warnings by the FBI. ***United States v. Petersen***, No. 09-087 (D. Minn. Dec. 16, 2009) (Docket No. 70). In another case, the government showed that the defendant received but ignored paperwork explaining the illegality of filing retaliatory liens, and that he was heard on jail calls discussing the filing of the retaliatory liens. ***United States v. Leitner***, No. 11-49 (N.D. Fla. Sept. 16, 2011) (No. 13); *see also* ***Reed***, 668 F.3d at 981-82. Admissions made during litigation regarding these liens and court orders expunging the liens and enjoining the defendant from filing additional liens can also be evidence of the defendant's knowledge.

27.04 TAX DEFIER ISSUES

Prosecution of these cases may present other challenging issues because many defendants are tax defiers. For more information about tax defiers and their common defense tactics, see

Chapter 40 and Ihlo & Pulice, "*Prosecuting Tax Defier and Sovereign Citizen Cases—Frequently Asked Questions*," 61 UNITED STATES ATTORNEYS' BULLETIN at 52-56.

27.05 EXPUNGEMENT

Many states allow electronic filing of lien documents, and such documents are commonly accepted with minimal screening. The state offices generally do not have the authority to refuse to file lien documents, even when they are obviously being filed only to harass the named officials. However, the process for removing false liens is not so simple.

As noted by the Court of Appeals for the Third Circuit:

> These liens and judgments, accessible on financing statement forms, are easy to file. Once registered, however, the fraudulent liens are very burdensome to remove. For example, in a New Jersey incident, criminal defendants registered a fraudulent $14.5 million lien with the New Jersey Department of Revenue against a federal prosecutor and a $3.5 million lien against a federal judge for using their "copyrighted" names in court papers and hearings; it took a federal court order to remove them. In addition to the substantial effort and expense required to expunge the liens, the fraudulent filings ruined the victims' credit reports.

Monroe v. Beard, 536 F.3d 198, 203 (3d Cir. 2008) (citing civil and criminal cases involving prisoners filing retaliatory liens against government officials); *see also* ***United States v. Gordon***, 2005 WL 2237640, at *1-2 (S.D. Ga. Aug. 25, 2005) (noting that fictitious filings "are indexed or filed in such a manner that they . . . could in the future affect the credit ratings of the so-called 'lien debtors' as well as their ability to alienate or acquire property"). Also, lien documents often publish personally identifying information of the victims.

In many cases, the government is forced to seek a court order (1) to declare the financing statements ineffective, (2) to order the financing statements or other lien documents expunged from the state records, and (3) to obtain a permanent injunction precluding the defendant from

filing liens against other federal officials or employees without leave of the court. *See, e.g.*, ***United States v. McCloud***, 2008 WL 4277302, at *9 (E.D. Mich. Sept. 17, 2008). On rare occasions, a defendant may voluntarily withdraw the lien documents after being approached by investigators. In some cases, immediately after the defendant's conviction, the government has requested that the trial court order that the liens are null and void and that they be expunged. In others, the prosecutors have coordinated with the civil components who have handled the expungement.

It is important to remember that the false lien which is the subject of the prosecution may be only the tip of the iceberg in terms of the number of liens filed by the defendant, and that a defendant may file lien documents in several different counties or states. It is possible to search electronically for liens filed by the defendant (or filed against specific people) by using the "ULJ-all" database in Westlaw, although additional research should also be conducted to determine the complete universe of false lien filings.

Prosecutors who find a lien filed against them, a federal judge or other federal law enforcement official should notify a supervisor. The FBI typically investigates false lien filings against prosecutors and federal judges; TIGTA investigates false lien filings against IRS employees. If a lien is found, the government official victim may want to request a title examination and credit history and should coordinate with the Civil Division of the United States Attorney's office or the Tax Division regarding having the liens expunged.

27.06 VENUE

There are currently no reported cases regarding venue for Section 1521 offenses. Generally, venue is determined by the nature of the crime alleged and the location of the acts constituting it. ***United States v. Anderson***, 328 U.S. 699, 703 (1946). The general venue statute provides that a prosecution can be brought in any district where an offense was begun, continued, or completed. 18 U.S.C. § 3237(a).[1] Therefore, venue should be proper in any district where the lien was prepared or filed.

Defendants may file liens in several different states and judicial districts. In tax cases, the venue for the tax offenses may be different than the district where the liens were filed, making it difficult to establish common venue for the substantive tax and false lien offenses. In ***United States v. Marsh***, 144 F.3d 1229, 1231 (9th Cir. 1998), a large tax defier conspiracy case, the government charged the defendants with impeding and impairing tax administration (26 U.S.C. § 7212(a)) by filing false commercial liens against IRS officials located in the Eastern and Northern Districts of California. The liens were filed in Nevaada and Washington; defendants mailed the lien documents from the Eastern District of California. The case was tried in the Northern District of California, and the jury found that venue existed there. The government argued that venue was proper in the Northern District of California because the lien filings affected IRS officers in that district who were conducting a criminal investigation of the defendants. The Ninth Circuit overturned the conviction, holding that the crime was complete when the endeavor was made, which occurred when the liens were filed. ***Id.*** at 1242. The Ninth Circuit noted that "[t]he government did not have to show that its agents abandoned their

[1] Prosecutors may consult this Manual's general venue chapter, Chapter 6.

investigation or even that the agents were anxious about the effect of the liens on their credit. No effect need be proved. The filing of the lien is the crime." ***Id.***

27.07 STATUTE OF LIMITATIONS

The statute of limitations for prosecutions under Section 1521 is five years. *See* 18 U.S.C. § 3282; Criminal Tax Manual Chapter 7. The statute of limitations begins to run when the crime is completed, which is when the defendant files or attempts to file the false lien.

27.08 SENTENCING GUIDELINES

Section 1521 violations are sentenced under United States Sentencing Guidelines § 2A6.1. The base offense level is 12. A two-level increase applies when the offense involves more than two false liens. USSG § 2A6.2(b)(2). Section 2A6.1, Application Note 1, speaks in terms of multiple acts directed toward the same victim for the application of that adjustment. Thus, as charged, each "offense" is victim-specific, which is consistent with the wording of 18 U.S.C. § 1521 (providing for criminal penalties when a lien is filed against "an individual"). An upward departure may be warranted if the offense involved (1) substantially more than two false liens or encumbrances against the same victim, (2) multiple victims, or (3) substantial pecuniary harm to a victim. USSG § 2A6.1, comment. (n.4(B)). The two-level enhancement and upward departure provisions for multiple liens "reflect the additional time and resources required to remove multiple false liens or encumbrances and provide proportionality between such offenses and other offenses referenced to this guideline that involve more than two threats." USSG App. C, Vol. III, 295. Counts involving the same victim should be grouped; counts involving different victims should not. USSG § 2A6.1, comment. (n 3).

When a defendant is convicted of violating 18 U.S.C. § 1521, the Official Victim adjustment (USSG § 3A1.2) should be applied. USSG § 2A6.1, comment (n.2). Section 3A1.2(b) provides that a six-level increase is warranted if the victim was a current or former government officer or employee, the offense was motivated by the victim's official status, and the offense involved a threatening or harassing communication, hoax, or false lien covered by Section 2A6.1. If the defendant filed the lien while on supervised release, and the statutory sentencing enhancement under 18 U.S.C. § 3147 applies, the base offense level should be increased by three. USSG § 3C1.3.