

ARRESTING YOUR PROPERTY

HOW CIVIL ASSET FORFEITURE TURNS POLICE INTO PROFITEERS



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Civil asset forfeiture is a law enforcement tool with a dark side. Meant to ensure that “crime does not pay,” civil forfeiture laws allow police to seize property they merely suspect was involved in criminal activity. In many states, law enforcement authorities can keep whatever they seize as profits—leading some agencies to treat civil forfeiture as a way to raise revenue, often at the expense of innocent property owners.

Every American knows that in a court of law they are innocent until proven guilty, but civil forfeiture flips this on its head: Your property is guilty until you prove your own innocence.

ARRESTING YOUR PROPERTY highlights egregious examples of cops seizing homes, money, and cars on dubious grounds. Fortunately, federal and state reforms can stop the abuse of this law enforcement tool, restoring due process protections for citizens caught in civil forfeiture’s pernicious web.

To view the booklet online go to: www.heritage.org/ForfeitureReform and to view more examples of the abuse of forfeiture laws visit: www.heritage.org/ForfeitureAbuse

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How Good Intentions Made Bad Policy: Federal Forfeiture's History

Civil asset forfeiture is a tool that allows law enforcement officials to seize property that they assert has been involved in certain criminal activity. Forfeiture rests on the legal fiction that *property* itself can be guilty of a crime. This means that police and prosecutors can seize cars, homes, money, or valuables without ever having to charge, much less convict, the *property owner* with a crime.

The roots of civil forfeiture can be traced back to Medieval English common law, but in the U.S., these laws only came to the forefront during the Civil War and later during Prohibition, to enable the seizure of vehicles transporting illegal alcohol.¹ Today, though, the use of these once-dormant laws has expanded exponentially, with the value of forfeitures measured in the billions and instances of abuse catalogued in nearly every state.

SO HOW DID WE GET TO WHERE WE ARE TODAY?

During the 1980s, federal and state law enforcement officials dramatically expanded the use of civil forfeiture as a tool in the war on drugs. Their reasoning was simple: By seizing the assets and ill-gotten gains of criminal kingpins, they could remove the financial incentive to commit crime. In 1984, Congress went a step further. It created the Assets Forfeiture Fund and enabled law enforcement agencies to retain the proceeds of their seizures.² Prior to this reform, forfeiture funds were directed to the General Fund of the Treasury. Agencies now had a direct financial stake

in generating forfeiture revenues, creating a perverse incentive for some overzealous investigators to engage in a form of legalized bounty hunting. States quickly followed suit—42 states dangerously shifted their law enforcement priorities toward the pursuit of profit.³ It is not surprising that with these direct financial incentives, civil forfeiture actions skyrocketed. Innocent and guilty citizens alike became targets for forfeiture.

In 2000, Congress took up the cause of innocent property owners and passed the Civil Asset Forfeiture Reform Act (CAFRA).⁴ CAFRA afforded modest due process protections for citizens but left in place forfeiture's perverse financial incentives. The result: A system that encourages forfeitures and is stacked against innocent property owners.

While many of these forfeitures involve people who have committed crimes, startling stories continue to surface of cops and prosecutors seizing homes, money, and cars on dubious grounds and leaving innocent victims in their wake. As abuses abound, it has become clear that the system is broken and is in dire need of reform.

Civil forfeiture proceedings do not carry many of the basic legal protections Americans expect in their justice system:



Legal Representation. Anybody who has watched *Law and Order* knows that in a criminal trial, if you cannot afford a lawyer, one will be provided at the government's expense. No such right exists in civil forfeiture proceedings. Property owners must pay for their own lawyers, an expense that often exceeds the value of what has been seized. It is no surprise, then, that many property owners elect to navigate the impossibly complex forfeiture system alone or never even challenge a seizure in the first place.

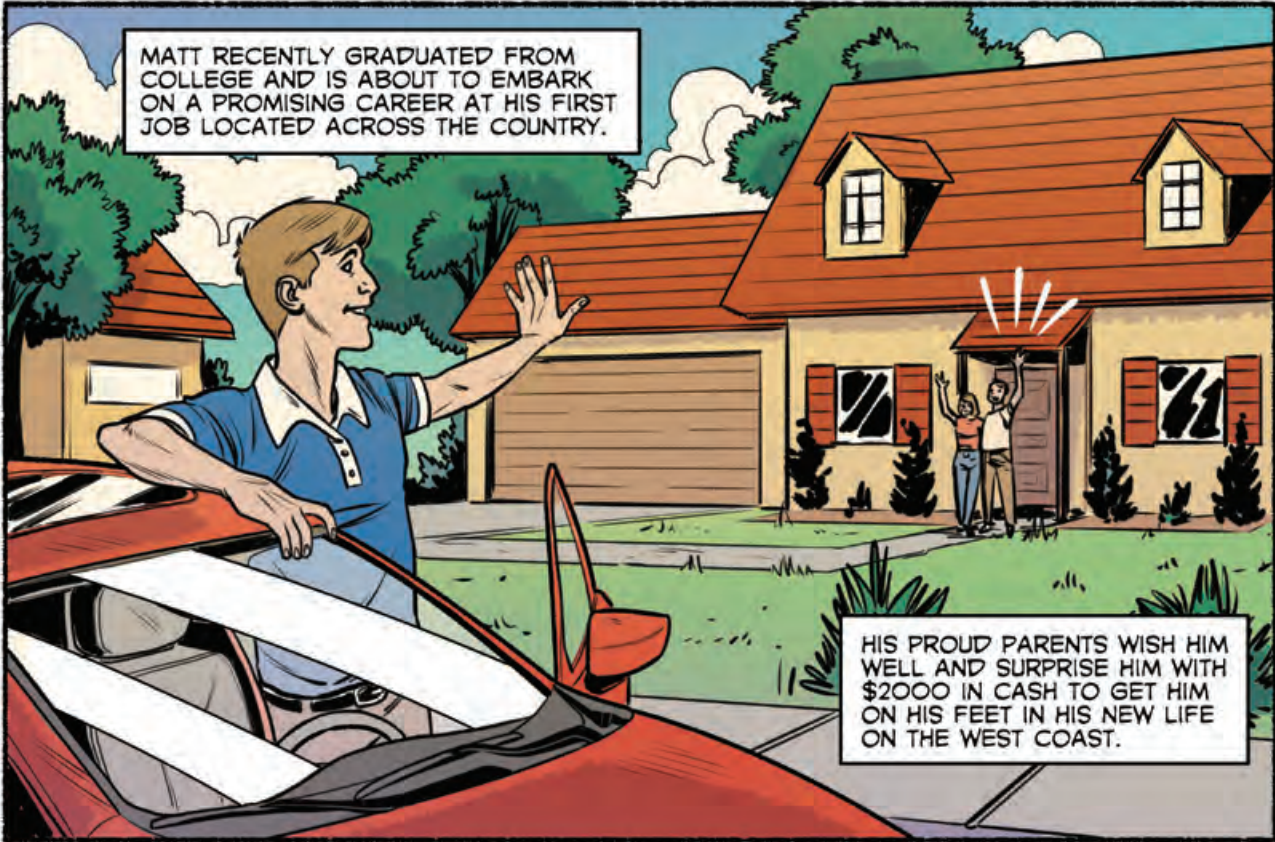


Burden of Proof. Unlike criminal cases, where the burden is "beyond a reasonable doubt," in civil forfeiture cases in most jurisdictions the government need only show that property is subject to forfeiture by a "preponderance of the evidence," a much lower burden. And to seize property in the first place, the burden is lower still—mere probable cause. The bottom line: It is easy for property owners to get pulled into the forfeiture system and incredibly hard for them to escape it.



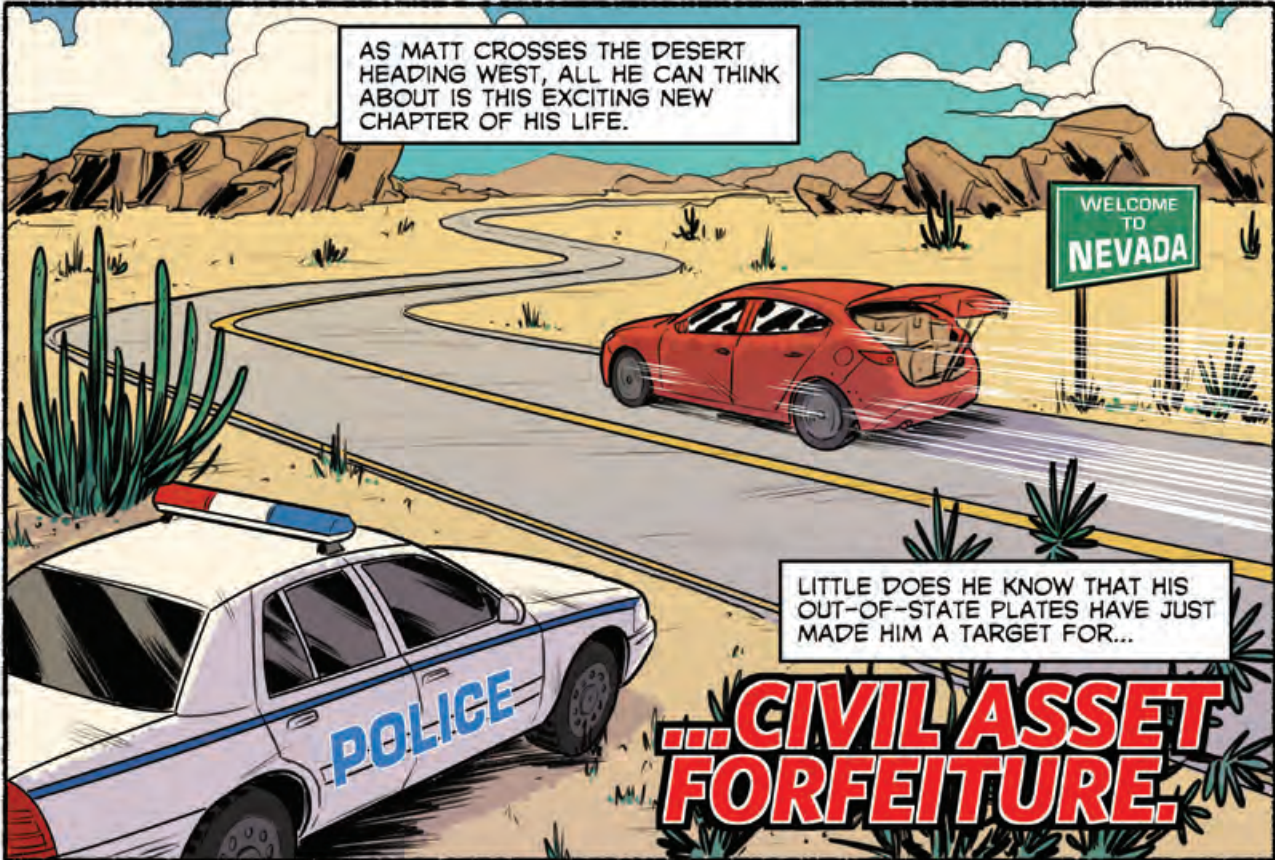
Presumption of Guilt. In a criminal trial, the government must prove guilt beyond a reasonable doubt, but in civil forfeiture proceedings in most jurisdictions, this basic legal tenet is flipped. The "innocent owner" defense requires that property owners prove a negative—that they did not know their property was involved in a crime. In effect, property owners must prove their own innocence to avoid forfeiting their property.

How does civil forfeiture affect an average citizen? See Matt's story on the next page.



MATT RECENTLY GRADUATED FROM COLLEGE AND IS ABOUT TO EMBARK ON A PROMISING CAREER AT HIS FIRST JOB LOCATED ACROSS THE COUNTRY.

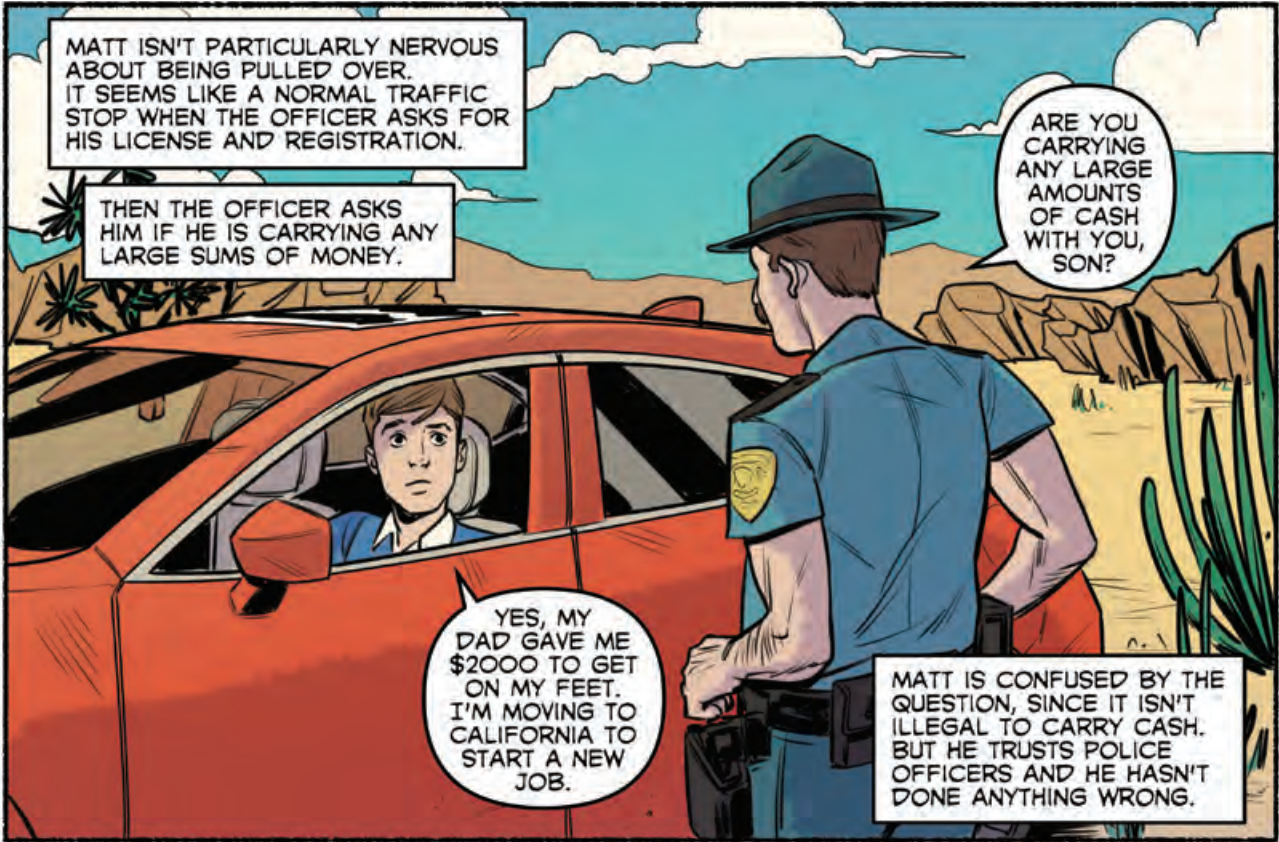
HIS PROUD PARENTS WISH HIM WELL AND SURPRISE HIM WITH \$2000 IN CASH TO GET HIM ON HIS FEET IN HIS NEW LIFE ON THE WEST COAST.



AS MATT CROSSES THE DESERT HEADING WEST, ALL HE CAN THINK ABOUT IS THIS EXCITING NEW CHAPTER OF HIS LIFE.

LITTLE DOES HE KNOW THAT HIS OUT-OF-STATE PLATES HAVE JUST MADE HIM A TARGET FOR...

...CIVIL ASSET FORFEITURE.



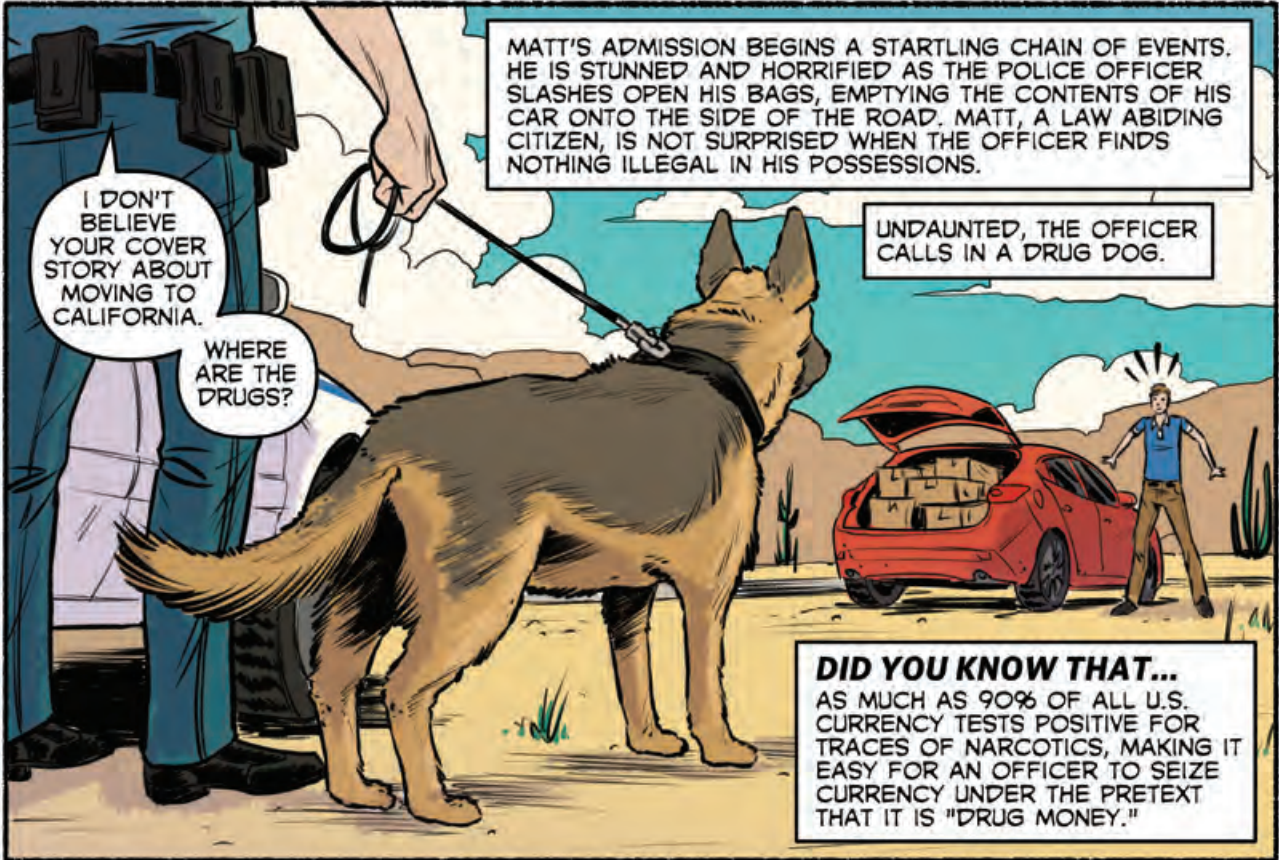
MATT ISN'T PARTICULARLY NERVOUS ABOUT BEING PULLED OVER. IT SEEMS LIKE A NORMAL TRAFFIC STOP WHEN THE OFFICER ASKS FOR HIS LICENSE AND REGISTRATION.

THEN THE OFFICER ASKS HIM IF HE IS CARRYING ANY LARGE SUMS OF MONEY.

ARE YOU CARRYING ANY LARGE AMOUNTS OF CASH WITH YOU, SON?

YES, MY DAD GAVE ME \$2000 TO GET ON MY FEET. I'M MOVING TO CALIFORNIA TO START A NEW JOB.

MATT IS CONFUSED BY THE QUESTION, SINCE IT ISN'T ILLEGAL TO CARRY CASH. BUT HE TRUSTS POLICE OFFICERS AND HE HASN'T DONE ANYTHING WRONG.



MATT'S ADMISION BEGINS A STARTLING CHAIN OF EVENTS. HE IS STUNNED AND HORRIFIED AS THE POLICE OFFICER SLASHES OPEN HIS BAGS, EMPTYING THE CONTENTS OF HIS CAR ONTO THE SIDE OF THE ROAD. MATT, A LAW ABIDING CITIZEN, IS NOT SURPRISED WHEN THE OFFICER FINDS NOTHING ILLEGAL IN HIS POSSESSIONS.

UNDAUNTED, THE OFFICER CALLS IN A DRUG DOG.

I DON'T BELIEVE YOUR COVER STORY ABOUT MOVING TO CALIFORNIA.

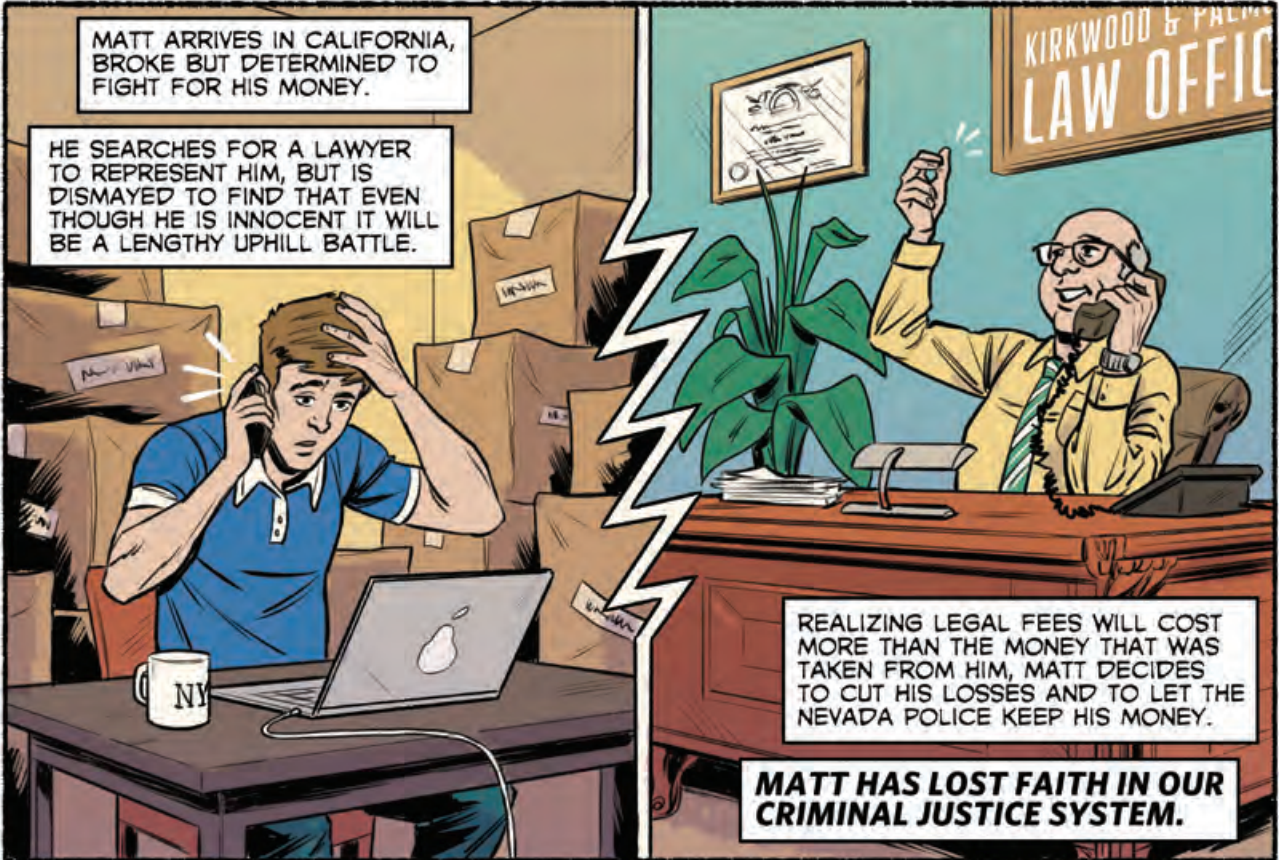
WHERE ARE THE DRUGS?

DID YOU KNOW THAT...
AS MUCH AS 90% OF ALL U.S. CURRENCY TESTS POSITIVE FOR TRACES OF NARCOTICS, MAKING IT EASY FOR AN OFFICER TO SEIZE CURRENCY UNDER THE PRETEXT THAT IT IS "DRUG MONEY."



AFTER ALL THAT EFFORT, THE POLICE OFFICER FINDS NO EVIDENCE OF ILLEGAL ACTIVITY. MATT THINKS THE ORDEAL IS ALMOST OVER, BUT THE POLICE OFFICER STILL "SUSPECTS" THAT THE CASH WAS INVOLVED IN A DRUG TRANSACTION.

THE OFFICER DECIDES HE HAS PROBABLE CAUSE TO SEIZE MATT'S MONEY EVEN THOUGH HE HAS NO REAL EVIDENCE THAT MATT IS A CRIMINAL. MATT IS ANGRY BUT HE HAS NO CHOICE: THE OFFICER TAKES THE CASH, WRITES MATT A RECEIPT, AND TELLS HIM TO "MOVE ALONG."

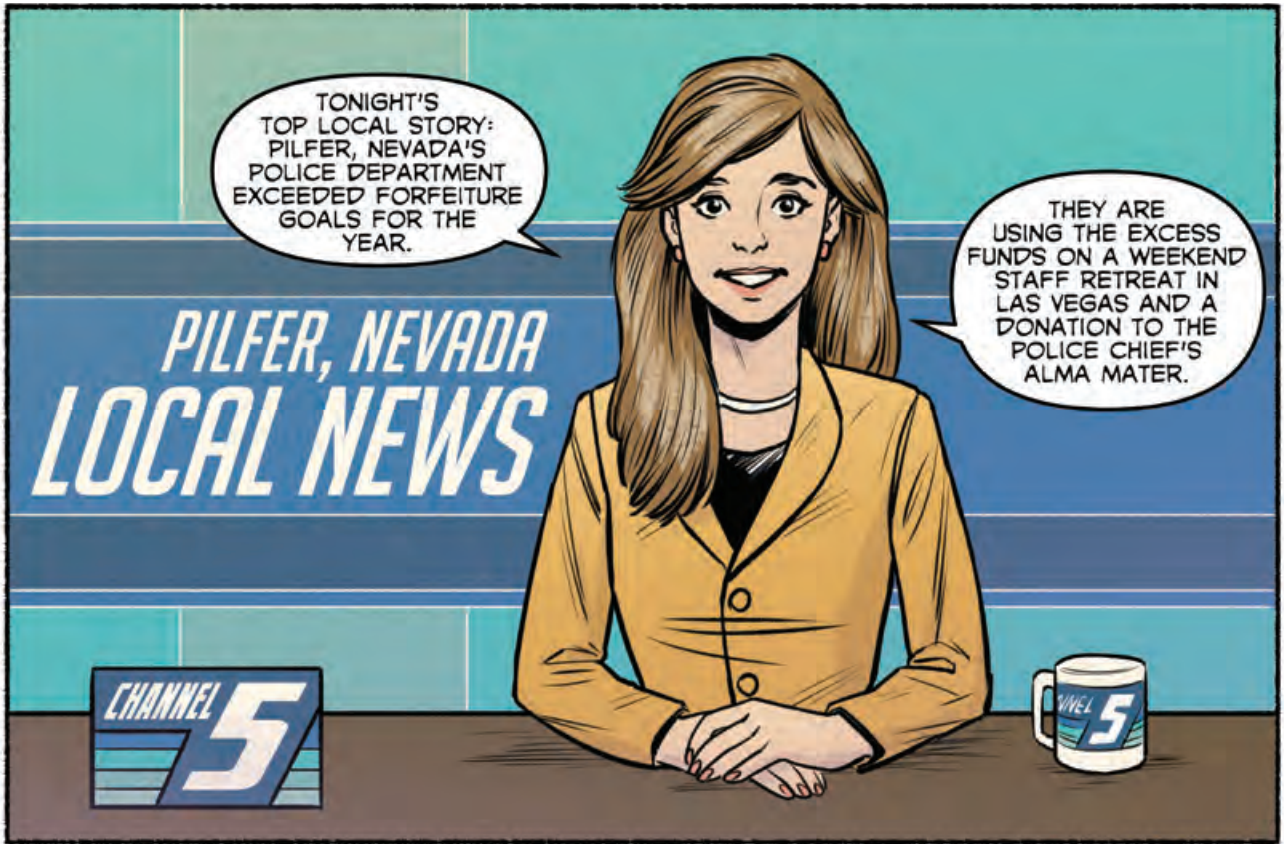


MATT ARRIVES IN CALIFORNIA, BROKE BUT DETERMINED TO FIGHT FOR HIS MONEY.

HE SEARCHES FOR A LAWYER TO REPRESENT HIM, BUT IS DISMAYED TO FIND THAT EVEN THOUGH HE IS INNOCENT IT WILL BE A LENGTHY UPHILL BATTLE.

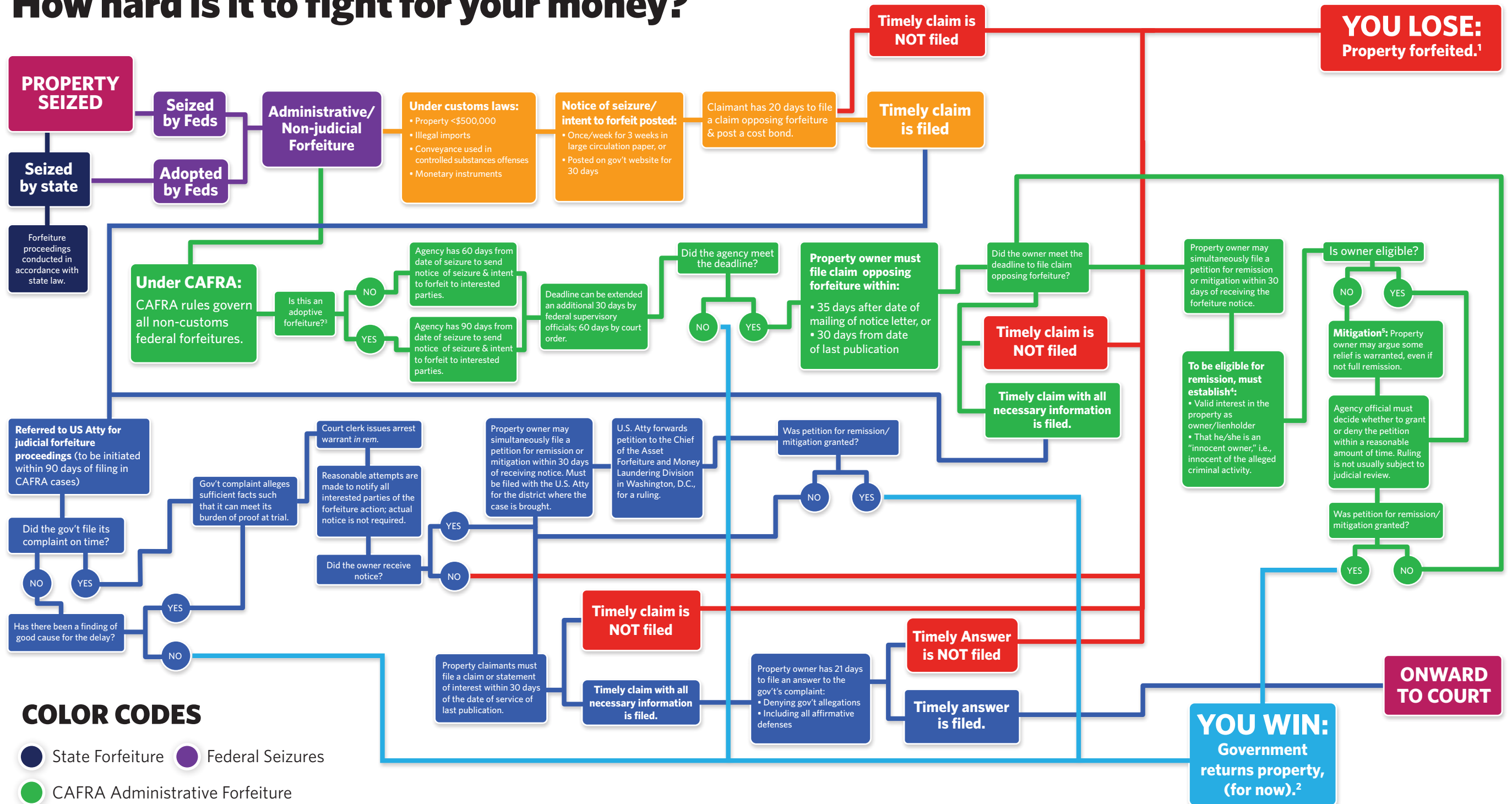
REALIZING LEGAL FEES WILL COST MORE THAN THE MONEY THAT WAS TAKEN FROM HIM, MATT DECIDES TO CUT HIS LOSSES AND TO LET THE NEVADA POLICE KEEP HIS MONEY.

MATT HAS LOST FAITH IN OUR CRIMINAL JUSTICE SYSTEM.



**THE SHOCKING
STORY YOU JUST
READ IS BASED ON A
REAL INSTANCE OF
CIVIL ASSET
FORFEITURE.**

How hard is it to fight for your money?



1 The agency has made a final determination that all "right, title, and interest in [the] property [is] vest[ed] in the United States." 18 U.S.C. § 981(f).
2 Possession of the property is transferred back to the party challenging the forfeiture. This does not necessarily preclude future forfeiture actions.
3 Adoptive forfeitures have been largely limited by recent, internal DOJ policy.
http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/01/16/attorney_general_order_prohibiting_adoptions.pdf.
4 Remission is the return of seized property after some internal administrative process is conducted by the seizing agency.
5 Mitigation is the return of a portion of the seized property, after the owner admits it was used in illegal activity, and if the seizing agency finds extenuating circumstances to justify the return.

Where Do Forfeiture Funds Go? Follow the Money

As Columbia, Missouri, Police Chief Ken Burton described civil forfeiture funds, “It’s kind of like pennies from heaven. It gets you a toy or something that you need, is the way we typically look at it.”

“Need” may be too strong a word. Throughout the country, law enforcement agencies have made some highly questionable purchases with their forfeiture dollars, often depending on the money from forfeiture for a substantial portion of their budgets each year:

- **The town of Sunrise, Florida**, abused forfeiture laws to bring in millions of dollars, but the town did not have the legal staff needed to handle the volume of cases they were bringing and could not use forfeiture funds to pay for new staff. The solution? Use a local law firm instead. The town was knocked by the Justice Department for steering nearly \$375,000 to the firm in a sweetheart deal, without even being able to produce a contract for the firm’s services. The town also paid officers working asset forfeiture sting operations more than \$1 million in overtime and fringe benefits—all of it financed from the very forfeiture cases they were handling.⁵

- **The District Attorney of Fulton County, Georgia**, Paul Howard, spent thousands of dollars of forfeiture funds on office parties, alcoholic beverages, NBA tickets and other extravagances for his employees. Howard spent another \$6,000 in forfeiture proceeds on a home security system for his private residence. In an amazing display of the lax rules governing forfeiture expenses, all of these purchases were deemed above board.⁶

- **The Camden County, Georgia**, Sheriff’s office was banned from the federal Equitable Sharing program until the office repaid \$662,000 that an audit revealed had been used inappropriately. Over 15 years, the Camden County Sheriff’s office had seized over \$20 million in forfeiture funds. The Sheriffs were able to keep and spend this considerable amount of money with relatively few checks and balances. Sheriff

Bill Smith used some of it to pay for splurges, like a \$90,000 Dodge Viper for their D.A.R.E program that, according to the Sheriff’s spokesperson, is needed because “the whole point of this car is to grab the kids’ attention.” But that wasn’t nearly the worst of it. Smith paid jail inmates \$50 a week to renovate and build his weekend home, the Ponderosa, and donated \$250,000 to The Citadel, Sheriff Smith’s alma mater, to develop a scholarship in his name. Sheriff Smith was voted out of office in 2008, but the new sheriff, Tommy Gregory, worked to have Camden reinstated in the Equitable Sharing program—by *paying off the debt with increased state forfeiture funds*.⁷

- **The City of Philadelphia** has perfected turning their law enforcement personnel into bounty hunters. According to the Institute for Justice, from 2002 through 2012, Philadelphia seized \$64 million in funds, averaging about \$6 million a year. The forfeiture tally is incredible: 1,172 homes, 3,290 vehicles, and \$44 million in cash.⁸ They run their forfeiture program like a well-oiled machine—from the cop who seizes the property to the convoluted hoops people have to jump through to contest the seizure at City Hall. The process is dragged out for months, even years, putting property owners at the mercy of office schedulers and a few prosecutors. Facing a steep uphill battle and uneven odds, it is not surprising that many owners give up. Philadelphia law enforcement agencies are dependent on forfeiture revenue: The \$64 million forfeiture pot equaled 20 percent of the District Attorney’s office’s general budget. \$25 million was used to pay law enforcement salaries, including salaries of the prosecutors who bring the forfeiture actions against property owners.⁹ For many property owners, it’s not always sunny in Philadelphia.

Equitable Sharing: The Link Between the Feds and the States

Civil forfeitures are not always executed solely by state and local law enforcement in state courts or by federal agencies in federal courts. Sometimes, the two cooperate. Under a federal program known as “Equitable Sharing,”¹⁰ local or state law enforcement authorities that are “directly” involved in the seizure of property that is later civilly forfeited through federal procedures are eligible to receive up to 80 percent of the resulting proceeds.

“Participation” can mean taking part in a federal investigation or participating in a joint task force. Until recently, state and local authorities could also take advantage of a process known as “adoptive forfeiture,” where virtually any type of property could be seized under state law, and then handed off to the federal government for forfeiture under generally more permissive federal forfeiture laws. The originating agency would then receive up to 80 percent of the value of the cash or property. By order of the U.S. attorney general, adoptive forfeitures have been curtailed, but not ended. Federal agencies can still adopt forfeitures under a “public safety” exemption or they can obtain a federal seizure warrant for any property the exemption does not cover.

Equitable Sharing is big money for law enforcement agencies. Since 1984, when the Equitable Sharing program was first implemented, more than \$5 billion in forfeiture funds has been distributed. In one year alone, Justice Department payouts to state and local authorities totaled \$657 million.¹¹ Thousands of police departments and sheriffs’ offices participate; according to *The Washington Post*, hundreds of them rely on Equitable Sharing payouts for more than 20 percent of their budgets.¹²

However, there is a significant catch to these funds: They must be used exclusively for “law enforcement purposes.” This puts control of the funds—and their use—solely in the hands of the officials executing the seizures, outside of the control of legislators.

Equitable Sharing distorts local and state law enforcement priorities. In many jurisdictions, the forfeiture bounty has been great, but actual arrests and prosecutions have been few, which suggests that some agencies are more concerned with acquiring money than with stopping criminals. And as states enact laws to protect innocent property owners, Equitable Sharing offers a federal means to circumvent them.

In many states and on Capitol Hill, a growing chorus of lawmakers and policy experts has denounced this program.¹³ Starting in fiscal year 2019, the District of Columbia has mandated that all Equitable Sharing funds go directly to the city treasury, which will effectively take D.C. law enforcement out of the program altogether.¹⁴

Recently, the Justice Department announced that it would restrict the practice of “adoptive forfeitures,” with several significant exceptions.¹⁵ But this administrative change, while laudable, lacks the force of law and could be reversed at any time. It is also filled with caveats and special exceptions and touches only one small part of Equitable Sharing—adoptive forfeitures, which make up a small and diminishing percentage of the entire program. The bulk of the Equitable Sharing program is alive and well. Even taking into account this recent DOJ policy shift, the program deserves the attention of Congress.

Shocking Examples of Unjust Civil Forfeiture

These are just a few examples of innocent victims who have fallen prey to civil asset forfeiture abuse. For more instances go to www.heritage.org/ForfeitureAbuse.

G **GEORGIA** — Iraq War veteran Andrew Clyde owns a small gun shop armory in Athens, Georgia. In April 2013, the IRS seized nearly \$1 million from the company's bank account. Without any prior warning, two IRS agents showed up at his work with a seizure warrant. They justified their seizure citing a structuring offense—making repeated cash deposits under \$10,000 allegedly to avoid the creation of any record of those deposits. Even after his lawyer proved that all of the money was legitimately earned through lawful activity, the IRS still refused to return his money. Instead, the IRS offered a deal: If he let them keep \$300,000, the rest would be returned. Although Clyde decided to fight, after several months of costly (over \$150,000 in legal fees) and time-consuming negotiations, he settled before going to trial, forfeiting \$50,000. Testifying at a hearing on Capitol Hill, Clyde said, "I did not serve three combat terms in Iraq only to come home and be extorted by my government's use of civil forfeiture laws, but that is what I feel they have done to me, and I need you to stop it from happening to anyone else."¹⁶

IOWA — In Spirit Lake, Iowa, Carole Hinders owned and operated her restaurant, Mrs. Lady's Mexican Food, for nearly 40 years. In August 2013, through a secret warrant and with no warning, the federal government seized Carole's entire bank account—nearly \$33,000. She was not charged with any crime, nor did the government claim that her money was earned through any illegal activity; however, she was told by two IRS agents that they seized her account because she had made several cash deposits of slightly less than \$10,000. The IRS viewed this as an attempt to avoid a federal reporting requirement on deposits

DID YOU KNOW?

The IRS and other agencies can seize and forfeit bank accounts of individuals and small businesses for alleged structuring violations, using a law designed to help combat money laundering. The Bank Secrecy Act requires a bank to file a report for every transaction of more than \$10,000 in currency, but there is nothing in the law that says deposits must come from an illegitimate source. The government has increasingly used a law designed to catch criminals trying to launder their ill-gotten gains to target honest citizens. Between 2005 and 2012, more than a third of IRS structuring cases were civil cases where structuring itself was the only alleged offense. Over the same time period, funds seized purely for alleged structuring violations rose to \$26.5 million, an increase of 111 percent. Between 2007 and 2013, funds actually forfeited in these cases rose 490 percent.¹⁷ The Justice Department recently issued new rules limiting seizures of bank accounts and other financial assets involved in a structuring violation until after a defendant has been criminally charged or has been found to have engaged in additional criminal activity. While this is a step in the right direction, it still lacks the force of law and could be reversed at any time.

exceeding \$10,000. The simple explanation for this was that Carole's small establishment was cash-only; to avoid the danger of keeping large amounts of cash at the restaurant, she made frequent deposits to her bank account. Pro bono representation by the Institute for Justice made it possible for her to challenge the seizure, but the impact on her business was still devastating. After 16 months of litigation, the IRS agreed to return her money—she is one of the lucky ones. "I did not do anything wrong, but they took my money," said Ms. Hinders. "I was unable to pay my bills for the first time in my life. I had to borrow money, use my credit cards and beg vendors to extend me credit. This nightmare has left me broke, frightened and exhausted."¹⁸

MICHIGAN — At the Contemporary Art Museum in Detroit, Michigan, in 2008, a fun night out at a "Funk Night" event for 130 attendees morphed into a scene out of an action movie. Armor-clad police stormed the party with their guns drawn, forced attendees to the floor, and seized 40 vehicles from those in attendance. What heinous crime necessitated this treatment? It turned out that, unbeknownst to Funk Night patrons, the Art Institute failed to get a permit to serve alcohol. Using Prohibition-era reasoning combined with modern civil asset forfeiture law, the police determined that merely attending made everyone complicit. And because the cars were used to transport their users to the party, the cars were also "guilty" and subject to seizure. Police even seized a car parked in a friend's driveway over a mile away from the Art Institute. Attendees had to pay \$900 each to have their vehicles returned. Ironically, one of the patron's vehicles was stolen from the impound lot—a crime made possible by the Detroit police. Thankfully, a federal district court judge held the Funk Night seizures unconstitutional, calling the incident part of a "widespread practice" of detaining everyone present at a venue without an alcohol permit, searching them, and seizing their cars simply because of their presence.¹⁹

MINNESOTA — Minnesota's infamous Metro Gang Strike Force, a multi-jurisdictional task force, was dissolved over the widespread abuse of civil forfeiture laws. Strike Force personnel seized property from

Minnesotans *for their own personal use*. Among their prizes: Flat screen televisions, jewelry, sports memorabilia, and cash. One seized SUV was returned with 20,000 more miles on it than when it had been taken. Strike Force personnel were accused of physically assaulting those whose property was being seized. In one particularly disturbing incident, an officer attempting to kick a woman kicked her toddler in the head instead. The Strike Force was terminated in 2009 after its unconscionable tactics were made public. Victims of the illegal seizures and abusive tactics were awarded \$840,000 in a settlement. Minnesota reformed its forfeiture laws in 2014 to require a criminal conviction before property can be forfeited.²⁰

NEW YORK — For 27 years, brothers Jeffrey, Richard, and Mitch Hirsch ran Bi-County Distributor Inc., a small business that sold candy, snacks, and cigarettes to local convenience stores. In May 2012, three family business bank accounts totaling more than \$446,000 were seized by the IRS. Why? Just like in Carole Hinders's case, authorities alleged that the Hirsch brothers had committed a "structuring" violation by making repeated cash deposits of less than \$10,000. Two years later, none of them were charged with a crime, nor were they able to contest the seizure in front of a judge because federal prosecutors refused to file a forfeiture motion. They were literally left languishing while their money remained frozen. Bi-County was able to survive only because long-time, faithful vendors extended credit, but the toll has been demoralizing. "We're just hanging on as a family here," Jeff Hirsch said. "We weren't going to take a settlement, because I was not guilty."²¹ In January 2015, after considerable national media attention, including a front page article in *The New York Times* and an editorial in *The Wall Street Journal*, federal prosecutors agreed to return all of the seized funds to the Hirsch brothers.

PENNSYLVANIA — In March 2014, police arrested Chris and Markela Sourovelis's son for selling \$40-worth of heroin to an undercover police officer. Soon after the arrest, the Philadelphia Police Department raided their home, SWAT-style with guns drawn, and found small amounts of the drug in their 22-year-old

son's bedroom. As if it was not shocking enough to learn that their child had a drug problem, the Sourovelises discovered they were now homeless. Their home was being confiscated under civil forfeiture laws, which do not require the property *owner* to be the one who actually commits the crime.²² After a lengthy legal battle, the Philadelphia District Attorney's office was finally forced to back down in December 2014—a miracle just in time for the holidays.²³

TEXAS — Between 2006 and 2008, Tenaha, Texas, established itself as a hotbed for civil forfeiture abuse. Tenaha police executed dozens of traffic stops in which vast sums of money and property were seized, though no criminal charges were filed against drivers or passengers. One of the victims of this abuse, Dale Agostini, had set out to buy restaurant equipment with his fiancée, his young child, and an employee. Tenaha police stopped Agostini for allegedly driving on the wrong side of the road, searched his car, and discovered a treasure trove totaling \$50,000 in cash. Although Agostini had proof that the money was clean, police arrested him for money laundering, seized his cash, and turned his child over to child protective services. Police never charged Agostini and returned his child, but it took months before he got his money back. These deplorable tactics generated millions of dollars for Tenaha and prompted a class action lawsuit. The city settled in 2012.²⁴

VIRGINIA—In November 2012, Victor Guzman, a Pentecostal church secretary originally from El Salvador, and his brother-in-law were stopped for speeding near Emporia, Virginia on Interstate 95. The Virginia State Trooper did not issue them a ticket, nor did he charge them with a crime. Instead, the trooper searched Guzman's vehicle, discovering \$28,500 in cash. Guzman explained to the officer that the money came from donations to their church, and did not belong to them. He said that they were carrying the money with the church's permission in order to

purchase a trailer and a parcel of land for their parish, facts later confirmed by church officials. The trooper paid no attention, stating that their stories were "inconsistent" and that they had "disclaimed ownership of the money." This was not surprising since they told the trooper that the money belonged to the church and any "inconsistency" (more likely a misunderstanding) was probably due to the fact that Guzman's brother-in-law spoke no English whatsoever and English was Guzman's second language. The trooper seized the cash and left Guzman with a receipt. Guzman's church eventually got its money back, but only after a lawyer took on the case pro bono and challenged the seizure in court.²⁵

WISCONSIN — In Brown County, Wisconsin, Joel Greer was arrested by the County Drug Task Force, with bail set at \$7,500. As any good mother would, Beverly Greer immediately set to work gathering the funds necessary to free her son. Beverly called the Brown County jail, where Joel was being held, and was explicitly told to bring the bail *in cash*—even though Wisconsin law allows you to pay for a bond with a cashier's check, credit card, money order, or cash. A series of visits to ATMs secured the \$7,500, and Mrs. Greer reported to the jail to bring her son home. But rather than accept the cash and release her son on bail, Brown County police brought in a drug dog, which alerted to trace amounts of illegal drugs on the bills. Brown County police then seized the cash and refused to release Joel Greer. To justify this, the police simply ignored the ATM receipts proving she had withdrawn the money from her bank and called the cash "drug money." In reality, it was the family's hard-earned savings and Mrs. Greer's disability pay. The Greers didn't get their money back for four months—and only after an attorney got involved on their behalf. Under Wisconsin law, law enforcement authorities may keep half of any seized amount exceeding \$2,000, creating a perverse incentive for local law enforcement authorities to seize first and ask questions later.²⁶

What Can Be Done?

Civil forfeiture abuse threatens the integrity of our criminal justice system and ought to concern all Americans. Thankfully, there are a variety of common-sense reforms. These reforms include:

Restore Legislative Control of Forfeiture Proceeds by Redirecting Them to the General Fund. Law enforcement should not be a profit center. Lawmakers should bar law enforcement agencies from retaining the forfeiture funds they generate and mandate that these proceeds go instead to a jurisdiction's General Fund.

Eliminate Equitable Sharing. The federal government should not be encouraging state and local law enforcement to bypass state and local laws. Equitable Sharing hampers state efforts to protect innocent property owners and reinforces the profit motives at the core of forfeiture abuse. Internal DOJ policy changes are insufficient; the program should be abolished. Until then, states should consider policy reforms that disallow their law enforcement agencies from bypassing their own laws.

Raise the Burden of Proof. The government should be required to demonstrate that property is subject to forfeiture by "clear and convincing evidence," a standard significantly higher than the current "preponderance of the evidence."

Reaffirm the Presumption of Innocence. Property owners should not have to disprove the government's case; rather, the burden should be on prosecutors to demonstrate that owners knew their property was being used in the commission of a crime.

Ban "Bartering." Property owners should not be pressured into waiving their rights on the side of a road or in the heat of the moment. All law enforcement agents should be barred from "bartering"—offering to let property owners go if they sign away their property on the spot.

Provide for Indigent Defense. Forfeiture is a highly complex system that most citizens are ill-prepared

to face alone. Because of its quasi-criminal nature, claimants who cannot afford counsel should be able to petition a court for the appointment of counsel at the government's expense, and victorious property owners who retained counsel should be afforded a chance to recoup their attorney's fees.

Protect Property Owners' Rights in Administrative Forfeitures. Most federal civil forfeiture cases begin and end in the bowels of a federal agency. Agencies should be required to reform their internal procedures to make the process fairer and more transparent, clearly advising potential claimants about their rights to contest a seizure and to legal representation. Property owners should also be afforded the right to a prompt pre-seizure or immediate post-seizure hearing before a judge.

Ensure Transparency Through Reporting Requirements. Law enforcement agencies involved in civil forfeiture cases should be required to record the details of their seizures and forfeitures. These reports should specify what was seized, the amount or value of the seized goods, the alleged criminal conduct giving rise to the forfeiture, whether anyone was ever arrested for, or convicted of, said criminal conduct, whether the forfeiture action was challenged, the final disposition of the property or currency, and how forfeiture funds have been spent.

Provide for Review of Forfeiture Settlements. Given the complexity of forfeiture law and the tremendous pressure that property owners face to settle forfeiture cases (sometimes because they are threatened with criminal charges if they continue to contest the forfeiture), in cases in which a claimant is not represented by counsel, any proposed settlement should be reviewed by a neutral third party, preferably a judge.

Resources to Learn More



Policing for Profit: The Abuse of Civil Asset Forfeiture

By: Institute for Justice | www.endforfeiture.com



Civil Asset Forfeiture: Good Intentions Gone Awry and the Need for Reform

By: John G. Malcolm | The Heritage Foundation



Civil Asset Forfeiture: 7 Things You Should Know

By: The Heritage Foundation



National Association of Criminal Defense Lawyers

www.nacdl.org/forfeiture



American Civil Liberties Union

www.aclu.org/assetforfeiture



The Forfeiture Racket: Police and prosecutors won't give up their license to steal

By: Radley Balko | Reason.com



Taken: Under civil forfeiture, Americans who haven't been charged with wrong-doing can be stripped of their cash, cars, and even homes. Is that all we're losing?

By: Sarah Stillman | The New Yorker



Stop and Seize: *Aggressive police take hundreds of millions of dollars from motorists not charged with crimes*

By: The Washington Post—6 Part Series



Last Week Tonight with John Oliver

Segment on Civil Asset Forfeiture Abuse | HBO

Endnotes

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