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CHRISTINA PARK · MAY 24, 2023

In Las Cruces, New Mexico police officers are taught not to seize jewelry or computers but flat-screen TVs. [1] Whether it be cash or cars, officers are instructed to take assets that are profitable, easy to sell, or of direct use to the police department. These seizures are possible through a process called civil asset forfeiture, where law enforcement is able to seize property on the basis of “probable cause” that the property was involved in criminal activity. [2] Civil asset forfeitures, or *in rem* forfeiture proceedings, operate against the property itself and not the owner. Owners are considered claimants, and criminal charges or warrants against claimants are not required for law enforcement to seize a claimant’s property. [3] Without this burden on the government, civil asset forfeitures have allowed for the recovery of stolen artwork, enforcement of prohibition, and busting of multiple drug trafficking operations. [4] In addition to civil forfeitures, the two other types of asset forfeitures are criminal and administrative forfeitures. Criminal forfeitures require criminal convictions and are filed against the owner of the property whereas in administrative forfeitures, no convictions are required and the property is forfeited without filing a case. All parties of potential interest in the forfeited assets are notified; however if no individual files a claim, the property is seized without a case. [5] If the seizure is challenged, prosecutors must seek judicial approval to



allegations of corruption and abuse. Victims of these seizures claim that they have lost their vehicles and, in some cases, their homes, after a third party had misused their property without their knowledge. While states have individually sought to reform or abolish forfeiture practices, the Supreme Court has traditionally upheld them. However, in the recent case *Leonard v. Texas*, which was denied certiorari by the Supreme Court, Justice Clarence Thomas' statement signaled a potential shift in the High Court's opinion of the constitutionality of civil forfeitures. [6] Several justices questioned whether or not modern-day seizures can be protected by a narrow historical justification for forfeiture practices. Further, the Trump administration's expansion of equitable sharing undermined state attempts to reform forfeiture practices. Equitable sharing allows local, state, and federal law enforcement to share the proceeds of the assets seized from forfeitures. This move heavily incentivizes state and federal agencies to get involved in criminal proceedings, which has its own constitutional ramifications. [7] Equitable sharing allows for federal law enforcement to become more actively involved in state and local departments, encroaching on state sovereignty. Ultimately, civil asset forfeitures unreasonably empower law enforcement, are overly punitive, and have potentially dangerous implications.

In civil forfeitures proceedings, cases are brought against the property itself, and historically, the burden of proving that there was no connection between the property and the criminal act was on the owner of the property. Civil forfeiture proceedings changed following



the owners' guilt to the government. The reform act also applied the Eighth Amendment's excessive fines protections and Fourth Amendment protections as well. [8] Despite these changes, the CAFRA fails to limit the scope of seizures. The reform act allows for the forfeiture of "fungible property," which allows for law enforcement to seize property in "virtually all serious federal crimes, and a number of state and foreign crimes." [9]

Under the current system, civil forfeitures unreasonably expand the powers of law enforcement, essentially allowing them to seize property at their own discretion. Without needing a criminal conviction and having the burden of proving the relationship between the property and the criminal act, there are fewer steps to seizing property in civil forfeitures. Additionally, without the requirement of reporting the revenue raised by forfeitures, there is virtually no way of accounting for all of the profits seized by each department at the local or state level. [10] Such advantages make civil forfeiture an appealing tool for law enforcement to profit from. The Justice and Treasury Department, for instance, received close to \$4.5 billion in forfeited proceeds in 2014, and each individual state makes nearly \$50 million a year from such practices. [11] However, not every owner of forfeited properties is guilty of a crime. Law enforcement employs various tactics that intimidate innocent people and result in the forfeiture of their belongings. In "Highway Interdiction," officers use the excuse of a minor traffic violation to stop vehicles. Large sums of cash and the drivers' nervousness are sufficient probable cause to detain the driver and seize their money. Once



often than not forfeit their property in fear of the potential charges against them. They are also unlikely to challenge the seizure, as the cost of acquiring legal counsel often exceeds the value of the seized property. Moreover, an overwhelming majority of forfeiture victims come from economically-disadvantaged communities and are often racial minorities. [13] Unregulated civil asset forfeitures have created a system where law enforcement officers can intentionally target citizens of low-income backgrounds for profit. Civil asset forfeitures thus empower law enforcement at the expense of discriminating against minorities.

The use of criminal enforcement tactics in combination with civil forfeiture is perpetuated further by the lack of regulation on what purchases can be made with the forfeited proceeds. Proceeds have funded equipment for police departments and salaries; they have even covered personal expenses for law enforcement officials. [14] In many cases, forfeitures are a main source of profit for police departments, and without them, departments would not be able to employ as many officers. The Illinois state attorney's office in 2016 anticipated a staggering \$4.96 million in forfeiture revenues, which would fund the salaries and benefits of 41 full-time employees. [15] Thus with these incentives in mind, departments are taught to seize items that are more profitable. In a seminar for officers in his jurisdiction, Harry S. Connelly Jr (the city attorney of Las Cruces, New Mexico at the time) instructed officers to only seize items that will maximize the profit of their department. "Don't bother with jewelry and computers...[but] do go



are virtually nonexistent in civil forfeitures. Though there has yet to be a civil forfeiture case heard before the Supreme Court, Justices have recognized that civil forfeiture proceedings seemingly violate the due process rights of owners that should be extended to them by the Constitution. [17] Still, the Supreme Court has maintained that the practice itself is constitutional, citing historical instances where forfeiture was permitted in the United States prior to the adoption of both the Fifth and Fourteenth Amendments. [18] The Supreme Court had otherwise refused to comment on the issue until *Leonard v. Texas*, a recent civil forfeiture case in which James Leonard forfeited \$201,100 and a bill of sale for a home that was supposedly in connection to a narcotics deal. The forfeiture occurred following a minor traffic infraction, and Leonard's mother petitioned the court because the seized assets had belonged to her. Lower courts had rejected the mother's innocent owner's defense. After appealing to the Supreme Court,

she was denied certiorari because she had failed to previously raise a due process claim. [19] Justice Clarence Thomas' statement for the case signals the Court's potential change in sentiment toward civil forfeitures. Justice Thomas questioned, "whether the Court's treatment of the broad modern forfeiture practice can be justified by the narrow historical one." [20] In the past, civil forfeitures applied only to the instruments related to the crime, such as a car used to transport illegal drugs. Now, forfeitures include derivative proceeds of the crimes such as property purchased from the sale of illegal goods. Modern forfeitures have gone beyond that of



An alternative route to challenging civil forfeitures is revealing the overly-punitive nature of the practice. In contrast to the historical justification that the forfeited property was “guilty” and that the forfeiture was a means of holding the property (not the owner) accountable, the Court has recently shifted to adopt the belief that the owner is culpable for negligence. [21] This shift thus aims to punish the owner for the misuse of their property, even in cases where the owner was uninvolved or unaware of the misuse. It is important to note that there are cases where forfeitures are remedial. In such cases, the seized proceeds may go toward paying reparations to victims of white collared fraud schemes. However, in cases where proceeds are used for other purposes, rather than making victims whole, the process is generally punitive against the owner of the property. Forfeitures are not based on the value of the property but based on whether or not the owners can afford to forfeiture the property. This is in line with criminal punishment’s goal to deter and offer retribution. There are even considerations of whether or not the seized amount is enough to “have an impact” on the owner. [22] As civil proceedings, civil asset forfeitures have a non-penal purpose thus they should not have the goal of promoting punishment and should aid crime deterrence. The judicial system must reevaluate the way civil forfeitures are being processed. If the judicial system wishes to continue applying criminal procedures to civil cases, it should consider extending the protections that petitioners are granted in criminal proceedings to ensure that petitioners or owners of the seized property have the capacity to regain their assets.



overly-punitive aims of criminal forfeiture, nonpunitive forfeitures allow for the enhancement of the protection of private rights and the provision of restitution for victims of crimes where offenders could not be prosecuted. [23] In theory, nonpunitive forfeitures restore the offender and the victim to their prior positions. While forfeitures might serve as an effective deterrent, the process in practice has become overly punitive, even when confiscation is unjustified. Consequently, forfeitures have less and less of a remedial effect, losing their purpose entirely. In terms of nationwide reform, legislative and judiciary bodies have the potential to change the course for civil forfeitures. Legislation at the local, state, and federal levels has the capability to restrict law enforcement's ability to confiscate property. Furthermore, policies can be developed to create a system that requires greater transparency to account for all seized assets, thereby forcing departments to note how much of their revenue is generated from the seized property. The Supreme Court has the capacity to reevaluate the constitutionality of modern forfeitures in comparison to the historical justifications that have perpetuated these injustices. Until then, law enforcement will continue to profit off the abuse of civil forfeitures, continuing to disadvantage low-income communities and defenseless owners of seized property.

Edited by [Ali Qi](#)

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- [5] “Types of Federal Forfeiture.”
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State or Local Law Enforcement,” United States
Department of Justice, July 19, 2017. <https://www.justice.gov/opa/pr/attorney-general-sessions-issues-policy-and-guidelines-federal-adoptions-assets-seized-state>.
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- [9] Civil Asset and Forfeiture Reform Act, § 981 (2000),
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[14] Stillman, “Punishment Without Crime.”

[15] Joel Handley et al., “Inside the Chicago Police Department’s Secret Budget,” *Chicago Reader*, September 29, 2016, <https://www.chicagoreader.com/chicago/police-department-civil-forfeiture-investigation/Content?oid=23728922>.

[16] Dewan, “Police Use Department Wish List When Deciding Which Assets to Seize.” [17] *J.W. Goldsmith, Jr.-Grant Co. v. United States*, 254 U.S. 505, 510 (1921).

[18] *Bennis v Michigan*, 516 US 442, 454 (1996)

[19] *Leonard v Texas*, 580 U. S. ____ (2017)

[20] *Leonard v Texas*, 580 U. S. ____ (2017)

[21] *Austin v. United States*, 509 U.S. 602, 618 (1993)

[22] Dewan, “Police Use Department Wish List When Deciding Which Assets to Seize.” [23] “How Crime Pays.”





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