



## Civil Forfeiture: More Safeguards Needed to Protect the Innocent

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Civil forfeiture is a legal fiction premised on two notions: that (i) property bears guilt when put to unlawful use; and (ii) monarchs are the creator's appointed representatives on the earth. In such a world, it would make sense for guilty property to be seized and returned to the monarch. In the monarch's hands, stained property can be washed clean and repurposed for noble use. But that is not real life.

In real life, it is not so simple. Significant challenges have been made to the procedures that local and state governments use in seizing property. See, e.g., *Alvarez v. Smith*, 130 S. Ct. 576 (2009), which involved a challenge to the warrantless seizure of cash and automobiles purportedly used to facilitate a drug crime. The U.S. Court of Appeals for the 7th Circuit had held that the Illinois statutory procedures "show insufficient concern for the due process right of the plaintiffs," but the U.S. Supreme Court dismissed the case as moot.

Recently, columnist John Stossel [argued in the \*Boston Herald\*](#) that civil forfeiture is "government grand theft auto" because in most states, police and prosecutors are allowed to keep for their own use all or most of the property that they seize.

Civil forfeiture can be a useful and needed tool for law enforcement. For example, it gives law enforcement officers authority to seize an unattended rental truck based on a showing of probable cause that the truck was being used to ship products used to manufacture methamphetamine. Without civil



forfeiture, officers could not stop the operation unless they could apprehend the owner or driver.

Civil forfeiture permits officers to seize the truck. Then, the Government must (i) provide notice to the interested parties (the owner and driver, for example); (ii) file a civil forfeiture proceeding; or (iii) obtain an indictment alleging that the property is subject to forfeiture. Anyone who has an interest in the property may contest forfeiture. As a practical matter, this procedural safeguard only protects the truck's owner if the owner knows of the proceeding, the owner can afford an attorney, and the value of the truck exceeds the cost of preventing forfeiture. Ultimately, the Government must prove the property is subject to forfeiture by a preponderance of the evidence. The owner must prove the "innocent owner defense."

Although the Civil Asset Forfeiture Reform Act (CAFRA), passed in 2000, did much to curb the abuse of forfeiture proceedings, the Act did not go far enough. Interested parties must be given ready access to the system through informal proceedings and/or court-appointed representation. And most importantly, the Government's financial interest in forfeiture must be addressed. Until we destroy the perverse incentives of civil forfeiture, federal and local law enforcement agencies tasked with serving the public will be tempted to profit from them through the seizure and forfeiture of valuable property, including from innocent owners. Such cases turn the old superstition on its head.

*Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.*

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