



# Forfeiting the American Dream

How Civil Asset Forfeiture Exacerbates Hardship for Low-income Communities and Communities of Color

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By Rebecca Vallas, Tracey Ross, Todd Cox, Jamal Hagler, and Billy Corriher

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# Introduction and summary

In the United States, the basic tenet of the criminal justice system is that one is presumed innocent until proven guilty. However, over the past several decades, many thousands of people across the country have had their property seized by the government without being charged with a crime.<sup>1</sup> Regardless of these individuals' innocence, their cash, homes, cars, and personal property can be taken if law enforcement believes it was involved in a crime or if it is the proceeds of a crime.

This practice, known as civil asset forfeiture, was established as a tool to dismantle criminal organizations.<sup>2</sup> But over the past 30 years, the use—and in many cases abuse—of this practice has spiraled well beyond the purposes for which it was created. In recent years, civil asset forfeiture has come to create perverse incentives that can lead law enforcement agencies to seek profit over justice.

For many years, one of the primary drivers of these perverse incentives has been a federal practice called equitable sharing. Under this practice, state and local law enforcement can have a seizure adopted by the federal government—that is to say, placed under federal jurisdiction—and be allowed to keep up to 80 percent of the proceeds from the adopted seizures, with the remaining 20 percent going to federal agencies.<sup>3</sup> Some \$3 billion in seizures were distributed through equitable sharing between 2008 and 2014.<sup>4</sup>

Amid media and public controversy around the program, equitable sharing was curtailed in 2015 by then-U.S. Attorney General Eric Holder.<sup>5</sup> While the new federal policy that Attorney General Holder put in place last year was without question a step in the right direction, it left room for continued abuses. Today, congressional lawmakers continue to work on a bipartisan basis to pass federal legislation to achieve further reform.<sup>6</sup> Moreover, many states still have laws on the books that permit unjust and harmful civil asset forfeiture practices. Without additional reform, innocent people across the United States will continue to face seizure of their cash, vehicles, and even homes—many without ever having their day in court.

In Michigan, for example, an elderly disabled woman had every penny of her savings taken by law enforcement—money she had received from disability payments and a car accident settlement—even though the government had not proven that it was connected to illegal activity. This left her unable to challenge the seizure because she had no funds left to post the bond in court.<sup>7</sup> A low-income Philadelphia grandmother had her house seized because her niece’s boyfriend was accused of selling drugs outside her home.<sup>8</sup> And a Los Angeles taco truck owner had thousands of dollars of earned taco sales taken by law enforcement despite no evidence of criminal activity. While he initially challenged the seizure, he was forced to drop the case because it was too expensive to fight and he feared the legal proceedings would risk the deportation of his relatives.<sup>9</sup>

Although civil asset forfeiture affects people of every economic status and race, a growing array of studies indicates that low-income individuals and communities of color are hit hardest.<sup>10</sup> The seizing of cash, vehicles, and homes from low-income individuals and people of color not only calls law enforcement practices into question, but also exacerbates the economic struggles that already plague those communities.

Making matters worse, these individuals are the least able to shoulder the cost required to regain their property through complicated legal proceedings that are heavily weighted in favor of law enforcement. Moreover, because there is no constitutional right to an attorney in forfeiture cases, property owners who cannot afford legal representation are often left with no choice but to attempt to represent themselves in court.

Fortunately, as bipartisan outrage at unjust civil asset forfeiture practices continues to grow across the United States, policymakers have a unique opportunity to find common ground and enact laws that restore forfeiture to its original purpose. While federal reform is urgently needed, states can do a great deal to protect their residents—and especially vulnerable populations—from the abuse of civil asset forfeiture laws.

This report provides an overview of the rise of civil asset forfeiture abuse by law enforcement, highlights the impact of these abusive practices on low-income individuals and communities of color, and offers steps that state policymakers can take to prevent civil asset forfeiture abuses from pushing already struggling families and communities into or deeper into poverty.

# Civil asset forfeiture: Intent versus use

In 1970, Congress passed the Comprehensive Drug Abuse Prevention and Control Act, which allowed police to use civil asset forfeiture to seize property used to transport drugs or purchased with the proceeds of drug sales.<sup>11</sup> Then in 1984, Congress passed the Comprehensive Crime Control Act, which expanded the law to allow seizures of cash. Under these statutes, law enforcement agencies were newly empowered to disrupt criminal organizations by seizing cash or other property obtained through illicit means or used to commit crimes.<sup>12</sup> Federal law enforcement—and in many states, state and local law enforcement—could direct the profits from these seizures toward the fight against crime.

Despite its early usage as a tool for taking down drug kingpins and organized crime, because forfeiture cases are brought against the property itself rather than its owner, civil asset forfeiture makes it possible for the government to take property from people who have not been charged with a crime, much less convicted of one.<sup>13</sup>

With these changes to the law, the U.S. Department of Justice created its Asset Forfeiture Program and began allowing federal law enforcement agencies to adopt seizures made by state and local authorities, allowing state and local law enforcement to receive what is termed an equitable share of up to 80 percent of the proceeds from the seized property.<sup>14</sup> Another form of equitable sharing authorized federal-state joint task forces to seize property and split the proceeds.

The federal asset forfeiture program in effect allowed state and local law enforcement to bypass state laws restricting where the profits from seizures could go and how they could be used, thus creating a strong financial incentive for law enforcement agencies to prioritize seizures, knowing that the lion's share of the proceeds would go directly into law enforcement's coffers. Many states followed the federal government's lead and passed their own civil asset forfeiture laws. This led to an era of widespread abuse of civil asset forfeiture.

In response to criticism, Congress passed the Civil Asset Forfeiture Reform Act of 2000, or CAFRA, which included modest new protections for innocent property owners and established timeframes governing forfeiture proceedings.<sup>15</sup> However, by creating strict procedural deadlines for filing a legal challenge to a seizure, CAFRA also had the perverse effect of further stacking the deck against property owners. For example, if an individual fails to meet a deadline by even one day, he can see his property forfeited immediately.<sup>16</sup>

Following the attacks of September 11, 2001, equitable sharing increased sharply as federal authorities increasingly called on state and local law enforcement agencies to serve as partners in national security matters.<sup>17</sup> With federal encouragement, law enforcement officials sought specialized training in highway interdiction that led to dramatic increases in seizures for forfeiture.<sup>18</sup>

According to a 2014 analysis by *The Washington Post*, the federal government adopted \$2.5 billion from state and local law enforcement agencies in cash seizures between 2001 and 2014, with roughly \$1.7 billion returning to state and local law enforcement under the federal equitable sharing program during that period.<sup>19</sup> In turn, many law enforcement departments and taskforces came to rely heavily on proceeds from forfeitures, with several hundred local law enforcement entities leaning on forfeiture revenues to account for 20 percent or more of their annual budgets between 2008 and 2014.<sup>20</sup>

In January 2015, in response to bipartisan outrage about civil asset forfeiture abuses, then-Attorney General Eric Holder took steps to curtail the equitable sharing program, most notably by ending federal adoptions—albeit with several exceptions.<sup>21</sup> While this was without question a step in the right direction, a number of loopholes remain.<sup>22</sup> Bipartisan lawmakers in Congress, led by Sen. Chuck Grassley (R-IA), are currently working to address many of these loopholes through federal reform legislation.<sup>23</sup> And at the state level, while some states have laws on the books that restrict abuse of civil asset forfeiture by state and local law enforcement, the vast majority of states still lack adequate legal protections for property owners.<sup>24</sup>

# A blueprint for exacerbating poverty and racial inequality

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## Communities of color are disproportionately affected

While available data on the populations affected by civil asset forfeiture are limited, an array of analyses conducted by media outlets and advocacy organizations suggests that people of color are disproportionately impacted by civil asset forfeiture. As a result, some have described civil asset forfeiture as “the new stop and frisk.”<sup>25</sup>

A 2014 analysis by *The Washington Post* that examined 400 court cases across 17 states found that, “where people... challenged seizures and received some money back, the majority were black, Hispanic, or another minority.”<sup>26</sup> While the *Post*’s analysis examined only cases where property owners successfully challenged forfeitures, people of color appear to bear the brunt of civil asset forfeiture—challenge or no—in states and cities across the United States.

For example, an Oklahoma study examining 401 cash seizures made between 2010 and 2015 in 10 Oklahoma counties found that nearly two-thirds of seizures came from African Americans, Latinos, and other racial and ethnic minorities, despite the fact that 75 percent of the state’s population is white.<sup>27</sup> Similarly, a 2015 analysis by the American Civil Liberties Union, or ACLU, of Pennsylvania found that 71 percent of Philadelphians who faced cash seizures between 2011 and 2013 without being convicted of a crime were African American, despite the fact that African Americans make up only 44 percent of the city’s population.<sup>28</sup>

Then there is the city of Tenaha, Texas, which received national attention when media accounts revealed that police were targeting African American and Hispanic drivers who were traveling through town. Under the guise of a drug interdiction program authorized by the state’s civil asset forfeiture laws, Tenaha police officers seized cash and other valuables from these travelers without any suspicion of criminal activity.<sup>29</sup> Law enforcement reportedly seized a total of \$3 million from 140 motorists between 2006 and 2008; according to a class action lawsuit settled in 2012, police would routinely threaten to arrest drivers or even have their children turned over to Child Protective Services if they did not relinquish their property.<sup>30</sup>



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## Forfeiture can keep families from getting ahead and drive them deeper into poverty

In Philadelphia, a random sample of 351 cash forfeitures made in 2012 and 2013 revealed that half of all cash forfeitures were for less than \$192—hardly the types of large-scale seizures that would result if civil asset forfeiture were being used as intended: as a tool for dismantling large criminal organizations.<sup>31</sup> While \$192 may not sound like a substantial sum, given the populations from which the money is most often taken, these seizures can represent a devastating financial burden.

One reason that low-income communities and communities of color are particularly hard hit by civil asset forfeiture is that they are more likely to be disconnected from the financial mainstream, leaving them more likely to carry cash.<sup>32</sup> In 2013, the most recent year for which data are available, 17 million Americans were unbanked—meaning they did not have a bank account—and 51 million Americans were underbanked—meaning they had a bank account but still utilized alternative financial providers, such as pawn shops or check cashers.<sup>33</sup> Half of all households with income of less than \$15,000 were either unbanked or underbanked.<sup>34</sup> Communities of color are especially likely to operate outside the financial mainstream: As of 2013, nearly half of all Latino and African American households were unbanked or underbanked compared with one in five white households.<sup>35</sup> Because unbanked and underbanked individuals are often forced to carry relatively large sums of cash—such as a full month’s rent payment or wages from an entire pay period—they can be especially vulnerable to cash seizures through civil asset forfeiture.

Furthermore, low-income individuals can face major barriers to challenging such seizures. For starters, just the cost of taking off work to appear in court can be prohibitive for people living paycheck to paycheck. On average, a property owner facing civil asset forfeiture must spend four days in court proceedings to challenge the seizure of his or her property.<sup>36</sup> For a minimum-wage worker, the cost of taking off work for four days is \$232—and that is if the worker’s employer will permit time off, a luxury many low-wage workers do not have.<sup>37</sup> Then there is the cost of hiring an attorney to help navigate the complex laws—an expense that most low-income individuals cannot afford—leaving many without legal representation given the scarcity of civil legal aid and other free or low-cost legal services.<sup>38</sup>

Additionally, in some states, property owners must post a cash bond before they can challenge the forfeiture. While some state laws offer exceptions for indigence, low-income individuals who do not meet the criteria—such as living below the austere federal poverty line—can find themselves out of luck. For example, in Illinois, an owner who wants to challenge a forfeiture but cannot show indigence

must post a bond of \$100 or 10 percent of the value of the seized property, whichever is greater.<sup>39</sup> Gathering the bond money in the first place can be an insurmountable obstacle for many low-income individuals. But making matters worse, if the property owner loses the forfeiture case, the state will typically deduct its costs and expenses for the forfeiture proceedings from the bond, meaning the individual will end up losing additional money on top of the property they did not get back.

Although cash seizures make up the vast majority of civil asset forfeiture cases, cars and homes are also seized through civil asset forfeiture with relative frequency. Such losses can be even more devastating to low-income individuals than the seizure of cash. According to an analysis by the Institute for Justice, Texas and Virginia alone seized more than 17,000 vehicles between 2001-2007.<sup>40</sup> The average value of these vehicles was less than \$6,000, which strongly suggests that low-income people are the most affected by vehicles seizures in those states.

### Rhonda's story

In 2015, Rhonda Cox, a resident of Phoenix, Arizona, and grandmother of four, had her used pickup truck taken by local law enforcement after her 20-year-old son borrowed it and was accused of using it in a crime. Rhonda had no connection to the crime and no knowledge of the incident until her son was arrested by the Pinal County sheriff. Her truck was not worth much, just \$6,000, but it was her only means of getting to and from work.

Unable to afford an attorney, Rhonda did her best to navigate the legal process of getting her truck back; she spent months filing paperwork with the sheriff's office and seeking to demonstrate her innocence. When her requests for the return of her truck were denied, she was able to scrape together the funds to pay a \$304 filing fee to challenge the seizure in court. Rhonda was ultimately forced to give up when she learned that if her challenge was unsuccessful, she would not only lose her truck, but she would also be on the hook for the county's attorney's fees and investigation costs, which exceeded the value of her truck. The ACLU last year filed a still-pending lawsuit challenging Arizona's civil asset forfeiture laws because they "gave Pinal County license to steal" from innocent individuals such as Rhonda Cox.<sup>41</sup>

As more and more job opportunities move outside of city limits, access to a vehicle can be a necessity for individuals living in communities with poor public transportation.<sup>42</sup> Lack of access to a vehicle can be a major barrier to finding work, particularly for African Americans, who disproportionately live in cities.<sup>43</sup>

Meanwhile, access to a vehicle significantly boosts a jobseeker's employment prospects. One recent study found that people in families with cars were twice as likely to find a job and four times as likely to remain employed over a 10 to 15 year period as those in families without cars.<sup>44</sup> Indeed, research indicates that access to transportation is one of the most important determinants of upward mobility.<sup>45</sup> Loss of a vehicle through forfeiture can thus not only hamper families' efforts to get ahead; it can quickly drive them deeper into poverty.

Losing a home through civil asset forfeiture can have devastating short- and long-term consequences for families as well. Homeownership can combat intergenerational poverty by protecting households from rising rents, creating financial security across generations by stabilizing or even eliminating the cost of shelter for families that struggle to meet other basic expenses.<sup>46</sup> Seizing homes from low-income homeowners puts these families at risk of homelessness and eliminates a pathway out of poverty.

Seizing low-income families' homes through civil asset forfeiture also poses a threat to wealth accumulation and risks exacerbating the racial wealth gap. As Sarah Stillman reported in *The New Yorker*, homes in Philadelphia are routinely seized for minor drug crimes that often involve the property owner's children or grandchildren.<sup>47</sup> According to Louis S. Rulli—a University of Pennsylvania Law School professor and the director of the Civil Practice Clinic, which represents low-income Philadelphians facing unjust seizures of their homes—"For real-estate forfeitures, it's overwhelmingly African-Americans and Hispanics."<sup>48</sup> Given the legacy of housing discrimination that has prevented generations of African American families from accumulating wealth, seizure of homes is particularly damaging to communities of color. Moreover, when those families belong to communities that have suffered generations of housing discrimination, civil asset forfeiture can erase all the progress a family has made to climb the income ladder.

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## Civil asset forfeiture risks undermining public efforts to combat poverty

Perversely, by cutting struggling individuals and families off from opportunity and driving them deeper into poverty, seizures of cash, vehicles, and homes through civil asset forfeiture risks undercutting the government’s own efforts to help high-poverty communities and low-income families.

Consider West Philadelphia and North Central Philadelphia, two of the highest-poverty neighborhoods in the City of Brotherly Love. In 2013, the Obama administration designated West Philadelphia as one of the nation’s first Promise Zones, giving the neighborhood priority access to federal funding to revitalize the community, reduce crime, improve education, and improve employment opportunities.<sup>49</sup> In 2015, the U.S. Department of Housing and Urban Development, or HUD, awarded the city a \$30 million Choice Neighborhoods grant to address “poverty, unemployment, poor educational attainment and decreased opportunities for residents” in North Central Philadelphia.<sup>50</sup> Yet despite increased federal investment, residents of Philadelphia neighborhoods just like these lose \$1 million every year through civil asset forfeiture that deprives them of much-needed cash, homes, and cars—even when they are innocent of any wrongdoing.<sup>51</sup>

Civil asset forfeiture risks undermining states’ and cities’ efforts to tackle homelessness, as well. For example, in 2010, the state of Michigan published a plan to end homelessness in the state in 10 years through a partnership between local communities, in-state partners, and other key stakeholders.<sup>52</sup> Yet Michiganders have an average of nearly \$19 million seized every year through civil asset forfeiture—pushing the states’ already struggling citizens into or deeper into poverty and exacerbating housing precarity for families living on the brink.<sup>53</sup>

Thus, as it is currently implemented in many states, civil asset forfeiture not only impedes the government’s efforts to lift people out of poverty and build ladders of opportunity, but it also runs counter to the very ideals of American society.

## Consuela's story

Consuela\* is a low-income resident of Philadelphia in her mid-60s. She shares her North Philadelphia rowhouse with her young grandson, who has lived with her since he was an infant. Consuela has served as block captain and is actively engaged in her neighborhood. In 2007, she rented an extra bedroom in the rowhouse to her niece for \$100 per month. The following year, her niece's boyfriend moved into the bedroom as well.

In April 2010, Consuela learned that while she had been away from the house, the Philadelphia Police Department searched her home and arrested her niece's boyfriend on suspicion of being involved with drugs. Once he was released from jail, she immediately told him he was not welcome in her home; she never had contact with him again. Consuela believed she had put the situation behind her and returned her focus to raising her grandson.

Four months later, the Philadelphia District Attorney served Consuela with a legal document notifying her that her home would be seized in connection to her niece's boyfriend's drug involvement. The document alleged that a confidential informant had given the boyfriend money for drugs while he was standing

outside Consuela's house, that the boyfriend had gone into the home and that he had emerged with drugs. The document also alleged that on another occasion, the boyfriend, again while standing outside Consuela's house, told the confidential informant where to buy drugs.

Consuela had no knowledge of these incidents, nor that the boyfriend was involved in drugs. Moreover, Consuela was never accused of any wrongdoing whatsoever. Nonetheless, she found herself facing the prospect of losing her home.

Unable to afford an attorney, Consuela was lucky to find free legal help from the University of Pennsylvania's Civil Practice Clinic. Staff from the clinic helped her challenge the forfeiture in court, and ultimately negotiated a settlement that allowed her to keep her home. In exchange, Consuela was required to agree to never again allow her niece or the boyfriend to enter her home.

*Story provided by the University of Pennsylvania Civil Practice Clinic.*

*\*Name has been changed to protect confidentiality*

# A nightmare for those who cannot afford a lawyer

From the very beginning, the civil asset forfeiture process is weighted heavily in favor of the government. Individuals facing the loss of property generally have few legal rights or protections, and the process can be difficult if not impossible to navigate without the help of a lawyer.

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## A byzantine process with few protections for property owners

In most states, all that law enforcement typically needs in order to seize property is probable cause to believe that the home, vehicle, cash, or other property has a connection to criminal activity.<sup>54</sup> The owner need not be involved in any crime in order to have his or her property taken by the government. Moreover, the U.S. Supreme Court has held that the fact that an individual was unaware that their property was involved in a crime is no defense to civil asset forfeiture.<sup>55</sup> Moreover, except in the case of real property such as a home, owners generally have no right to notice or a hearing before the government seizes their property for forfeiture.<sup>56</sup>

Once property has been seized, the burden lies with its owner to initiate legal proceedings to get it back. In addition to requiring payment of a cash bond in many states, as discussed above, having property returned requires navigating a byzantine system of complex legal procedures. Most individuals find that they need legal representation in order to understand the process, let alone to have a shot at successfully challenging the seizure in court. However, unlike in criminal cases, property owners generally do not have the right to an attorney during the forfeiture process.<sup>57</sup>

## Only a few states offer counsel in forfeiture cases

While in most states, individuals have no right to legal representation if they wish to challenge the seizure of their property, a few states do recognize the right to counsel in limited circumstances.<sup>58</sup> For example, West Virginia provides a right to counsel when property related to contraband—meaning any property that is illegal to possess—is seized by law enforcement.<sup>59</sup> And, in a few states, courts have ruled that low-income property owners are entitled to have a lawyer in some forfeiture proceedings. For example, the South Dakota Supreme Court has declared that a property owner has the right to legal representation when he or she also faces criminal charges.<sup>60</sup> The court reasoned that if prosecutors could seize property prior to filing charges, they could try to use the forfeiture proceedings to “bolster [the state’s] criminal case against the defendant.”<sup>61</sup> But South Dakotans not charged with a crime remain without a right to legal representation.

Although no court has yet ruled that property owners who cannot afford an attorney always have the right to counsel in forfeiture proceedings, advocates for property owners continue to fight to ensure access to legal representation.<sup>62</sup>

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## Free legal help is scarce

Because there is generally no right to counsel in forfeiture cases, low-income individuals who cannot afford an attorney must try to find free legal representation or attempt to represent themselves in court. Unfortunately, there are few places that low-income people can turn for free legal help to fight against civil asset forfeiture.

Public defender’s offices generally do not handle asset forfeiture cases because they are civil and not criminal matters. Civil legal aid programs—which provide free legal advice and representation for low-income individuals facing civil legal problems such as home foreclosure, predatory lending, wrongful eviction, denial of public assistance, and more—fill a critical need for struggling individuals and families, many of whom would have nowhere else to turn and no way to protect their rights.<sup>63</sup> However, demand for civil legal aid has long outstripped these programs’ capacity to meet the legal needs of low-income individuals.<sup>64</sup>

In a 2009 report documenting what is termed the justice gap, the Legal Services Corporation, or LSC, found that for every client served by legal aid, another in need of services is turned away for lack of resources.<sup>65</sup> LSC further estimated that just 20 percent of the civil legal needs of low-income Americans are being met.<sup>66</sup>

The justice gap has steadily widened with federal funding for civil legal aid remaining flat or declining in real terms for many years, and with legal aid programs across the country continuing to struggle to meet increasing demand in the wake of the economic downturn and foreclosure crisis.<sup>67</sup> The Great Recession forced many legal aid programs to downsize, which shrank the number of clients that they could represent each year. Some stopped accepting certain types of cases altogether.<sup>68</sup>

Civil legal aid programs are overwhelmed and under-resourced, and, as a result, few programs represent individuals in civil asset forfeiture cases. Recognizing the large unmet need, some law schools operate legal clinics that help low-income people facing seizure of their property. For example, in 2001, Rulli, of the Penn Civil Practice Clinic, made the decision to begin accepting civil asset forfeiture cases in the wake of an onslaught of forfeitures that affected struggling Philadelphians who had nowhere else to turn for free legal help.<sup>69</sup> While clinics like Rulli's provide a vital service, they can only represent only a tiny fraction of the individuals in need of legal help to fight the unjust seizure of their property.<sup>70</sup>

By putting low-income individuals and families at risk of homelessness if they lose their home, joblessness if they are unable to get to work without the family car, and economic hardship if they lose cash that they need to pay their bills, civil asset forfeiture can throw innocent people into needless crisis. Given the difficulty of navigating the system without legal help, widespread forfeiture of property belonging to people who cannot afford lawyers risks further exacerbating the access to justice crisis by dramatically increasing the number of low-income individuals who must go without needed legal help in times of crisis.



## Legal challenges to forfeitures

Lawsuits challenging unjust civil asset forfeiture practices have led to significant reforms in a number of states and localities. For example, in many jurisdictions, the government impounds seized vehicles while the forfeiture case is pending, depriving owners of their vehicles for months and even years even in cases where the court ultimately finds that their vehicle is not subject to forfeiture. However, federal lawsuits have resulted in several jurisdictions—such as Washington, D.C.—now providing prompt post-seizure hearings at which the government must justify its need to hold a vehicle pending the outcome of a forfeiture proceeding.<sup>71</sup> Requiring such a hearing enables owners of seized vehicles to secure the return of their vehicles while the forfeiture case is being resolved.

Even when lawsuits do not lead to sweeping legal decisions, they can lead to change. A case brought by the ACLU of Pennsylvania offers one such example. In May 2014, a month after Christos and Markela Sourovelis' 22-year-old son was arrested for selling \$40 worth of drugs outside their home, Philadelphia police seized the couple's home and forced the family to leave. The Sourovelis family was allowed to return to their home one week later in exchange for waiving certain legal rights and promising to keep their son out of the home.<sup>72</sup>

The Sourovelis filed a class action lawsuit with others who had their property seized by Philadelphia police. The city recently settled the Sourovelis lawsuit and agreed to new procedures for the forfeiture of homes. The city agreed not to seize homes without specific evidence of criminal activity and some justification for an immediate seizure. Also, when the city settles forfeiture proceedings, it can no longer require owners to give up their legal rights or bar certain people from the home.<sup>73</sup>

# Recommendations

Fortunately, as civil asset forfeiture abuses have received increased media scrutiny, bipartisan momentum for reform continues to sweep the nation. As congressional lawmakers work together on a bipartisan basis to pass federal legislation to restrict abuse, there is a great deal that states can do to protect their citizens from unjust and devastating seizure of their property. Many states have already taken action to curb abuse and improve legal protections for property owners, and several more are currently considering reform legislation. While not a comprehensive list, the following are steps states should take to restrict abuse of civil asset forfeiture and prevent it from exacerbating poverty and hardship among low-income communities and communities of color.

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## Require a conviction before forfeiting property and place the burden of proof on the government

Under federal law and many states' laws, civil asset forfeiture does not require that an individual be convicted of a crime for property to be forfeited. In most jurisdictions, all that the government must show is that the seized property was used in a crime or resulted from a crime. Moreover, the burden generally lies with the owner to disprove the government's claim—a process that can be difficult to navigate, time-consuming, and costly.

In a best practice, some states have passed legislation requiring that law enforcement first convict an individual of a crime before seizing property connected to the crime. For example, in 2015, Montana enacted legislation authorizing forfeiture only after a conviction. In cases where the property owner is not the person who committed the crime justifying forfeiture—such as when someone transports illegal drugs in a friend or relative's car—law enforcement must now prove that the owner knew the property would be used in the commission of a crime.<sup>74</sup> Going one step farther, New Mexico recently enacted a law—which was supported unanimously in the state legislature—that abolished civil forfeiture altogether.<sup>75</sup> Lawmakers in other states, including Ohio and Pennsylvania, are currently considering similar legislation.<sup>76</sup>

Short of requiring a conviction before property may be taken through civil asset forfeiture, states should at a minimum require notice and a pre-seizure hearing for all types of forfeitable property—not just real property. And at such a hearing the burden should lie with the government to prove that the property sought was involved in, or the proceeds of, a crime and that the owner had knowledge of this fact.

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### Remove the profit motive for law enforcement to seize property

Many state laws permit proceeds from civil asset forfeiture to be directly sent to law enforcement as a source of revenue. This sets up a perverse incentive for law enforcement to seize property in order to close budget gaps and boost available funds for their activities. Some states and localities, such as the District of Columbia and North Carolina, have enacted legislation to remove such a profit motive by ensuring that the proceeds from civil asset forfeiture are deposited into the state's general fund.<sup>77</sup> Other states, such as Pennsylvania, are currently considering similar legislation to make this change.<sup>78</sup>

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### End petty cash seizures

Seizing relatively small amounts of currency is at odds with the original intent of civil asset forfeiture as a tool to topple organized crime and drug kingpins. Moreover, this practice is particularly harmful to low-income individuals, who are more likely to carry cash, and for whom these seizures create a significant financial burden. In a best practice, the District of Columbia enacted legislation in 2015 that, among other reforms, created a presumption that cash totaling \$1,000 or less was not connected to a crime and, therefore, not subject to civil asset forfeiture.<sup>79</sup> This provision has effectively ended petty cash forfeitures in D.C., which had previously represented a substantial majority of the district's cash seizures. States should follow D.C.'s lead and adopt legislation to end forfeitures of small amounts of cash.

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### Abolish cash bonds

Requiring payment of a cash bond in order to challenge a forfeiture can make it difficult if not impossible for low-income individuals to fight unjust seizure of their property. In addition to creating a financial barrier to accessing the legal process, this practice can also compound the hardship caused by loss of property; in many states, if the challenge is unsuccessful, the government will deduct costs

and expenses incurred from the proceedings from the bond. In 2015, as part of a package of civil asset forfeiture reforms, the District of Columbia did away with its requirement that property owners post cash bonds of up to \$2,500 in order to challenge a forfeiture.<sup>80</sup> Again, states should follow D.C.'s lead and abolish cash bonds in civil asset forfeiture. At a minimum, states should waive any bond for low-income individuals with incomes below twice the federal poverty level, or \$40,320 for a family of three in 2016.<sup>81</sup>

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## Ensure access to legal representation

Navigating the legal process of challenging civil asset forfeiture can be difficult if not impossible without the help of a lawyer. Yet because there is generally no right to counsel in these cases, low-income individuals unable to afford legal representation can end up with no choice but to attempt to represent themselves or to forgo trying to get their property back altogether. This sets up a two-tiered system of justice based on income. States, therefore, should enact legislation requiring that the government provide lawyers to property owners who cannot afford an attorney. Short of ensuring legal representation, states should dedicate funding to civil legal aid programs, legal clinics, and pro bono resources in order to increase access to free legal help in civil asset forfeiture cases.

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## Improve data collection

Currently, data on civil asset forfeiture are extremely limited and vary widely from state to state, making it nearly impossible to assess who is affected, how forfeiture procedures are implemented, or the full consequences of forfeitures on individuals, communities, and other stakeholders. Improved data collection would allow law enforcement and policymakers to examine their procedures and ensure that forfeiture is used as intended, specifically, as a means of targeting criminal organizations' assets and profits. Detailed data collection on the size of seizure, the location of seizure, demographic information on the individual from whom property was seized, and the crime upon which the seizure was based will be critical to keep law enforcement accountable and inform needed reforms to curb abuse. Some states have recently taken steps along these lines to improve data collection. For example, as part of a package of civil asset forfeiture reform legislation recently passed in Michigan, law enforcement is now required to file detailed annual reports on forfeitures and forfeiture proceeds, which will provide greater insight to the scope and use of civil asset forfeiture in that state.<sup>82</sup> Other states should follow Michigan's lead and boost data collection on their own forfeiture practices.

## Conclusion

While abuse of civil asset forfeiture affects Americans of all racial backgrounds and on every rung of the economic ladder, these unjust practices fall hardest on those who are least able to weather the economic shock of losing a home, car, or financial resources—namely, low-income individuals and people of color. As a result, civil asset forfeiture abuses threaten to push already struggling individuals and families into or deeper into poverty, undercutting public efforts and policies to boost economic security and opportunity for these vulnerable populations.

With bipartisan momentum for curbing abuse of civil asset forfeiture continuing to build on the federal and state level, now is the time to find common ground and enact meaningful reforms to protect innocent individuals from unjust seizure of their property by law enforcement. Reforming civil asset forfeiture to end abuses will stop already struggling families and communities from being pushed deeper into poverty, prevent law enforcement agencies from seeking profit over justice, and spare innocent people from losing their cash, vehicles, and even homes without having their day in court.

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## Acknowledgements

The authors wish to thank Jackie Odum and Eliza Schultz for research assistance, Louis Rulli and Susanna Greenberg of the University of Pennsylvania for providing stories from the Civil Practice Clinic to help put a face on civil asset forfeiture abuse, as well as Kanya Bennett and Gary Feldon for their helpful comments on an earlier draft, and Ryan Erickson for creative titling.

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