



August 18, 2017

The U.S. Commission on Civil Rights Disapproves of the Department of Justice's Civil Asset Forfeiture Policy

The U.S. Commission on Civil Rights, by unanimous vote, strongly disagrees with the Department of Justice's recent decision to expand federal participation in the practice of civil asset forfeiture.¹ Civil asset forfeiture, defined as the taking of property by law enforcement without a criminal conviction, was sharply curtailed by the Department in 2015.² Efforts to limit the practice have bipartisan support.³ As Justice Clarence Thomas recently noted, "This system — where police can seize property with limited judicial oversight and retain it for their own use — has led to egregious and well-chronicled abuses."⁴ Congressman John Conyers (D-MI) similarly stated, "It has increasingly become apparent that the procedures in federal law governing civil forfeiture are inadequate and unfair."⁵ With respect to concerns about access to

¹ Deborah Connor, Acting Chief, Money Laundering and Asset Recovery Section, Criminal Division, *Policy Guidance on the Attorney General's Order on Federal Adoption and Forfeiture of Property Seized by State and Local Law Enforcement Agencies*, Policy Directive 17-1, U.S. Department of Justice, July 19, 2017, <https://www.justice.gov/file/982616/download> (allowing Department of Justice components and agencies to forfeit assets seized by state or local law enforcement).

² See Eric Holder, Attorney General, *Prohibition on Certain Federal Adoptions of Seizures by State and Local Law Enforcement Agencies*, U.S. Department of Justice, January 16, 2015, <https://www.justice.gov/file/318146/download>; Eric Holder, Attorney General, *Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses*, U.S. Department of Justice, March 31, 2015, <https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/31/ag-memo-structuring-policy-directive.pdf>

³ Robert O'Harrow Jr., *Lawmakers Urge End to Program Sharing Forfeited Assets with State and Local Police*, Washington Post, January 9, 2015, <https://www.washingtonpost.com/investigations/lawmakers-urge-end-to-program-sharing-forfeited-assets-with-state-and-local-police/2015/01/09/>; see also bipartisan cosponsors for the Fifth Amendment Integrity Restoration Act, S. 642, 115th Congress, <https://www.congress.gov/bill/115th-congress/senate-bill/642>; H.R. 1555, 115th Congress, <https://www.congress.gov/bill/115th-congress/house-bill/1555>.

⁴ *Leonard v. Texas*, 580 U. S. ____ (2017) (Thomas, J., dissenting from denial of certiorari) https://www.supremecourt.gov/opinions/16pdf/16-122_1b7d.pdf. See also Institute for Justice, *Policing for Profit*, November 2015, <https://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf>; Michael Sallah, Robert O'Harrow Jr., Steven Rich and Gabe Silverman, *Stop and Seize*, Washington Post, September 6, 2014, <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>; Drug Policy Alliance, *Above the Law: An Investigation of Civil Asset Forfeiture in California*, April 21, 2015, <http://www.drugpolicy.org/resource/above-law-investigation-civil-asset-forfeiture-california>; ACLU of Pennsylvania, *Guilty Property*, June 2015, https://www.aclupa.org/files/3214/3326/0426/Guilty_Property_Report_-_FINAL.pdf.

⁵ Rep. John Conyers, Press Release, *Sensenbrenner, Goodlatte, Conyers, Jackson Lee, Walberg, Roskam Unveil Bill to Protect Americans' Property Rights*, May 19, 2016, <https://democrats-judiciary.house.gov/news/press-releases/sensenbrenner-goodlatte-conyers-jackson-lee-walberg-roskam-unveil-bill-protect>.

justice, Congressman Jim Sensenbrenner (R-WI) said civil asset forfeiture cases “make a mockery of the Constitution.”⁶

A recent analysis of Nevada forfeitures shows most seizures of property in that state last year were assets worth less than \$1000, and seizures were concentrated in areas where most residents are people of color and poverty is high.⁷ The high cost of challenging a seizure means there is no practical way to contest the seizure of such assets. In total, Nevada residents forfeited nearly \$2 million in cash and property in 2016.⁸ As in other states, law enforcement keeps a portion of this money, which creates an inherent conflict of interest. Public trust in the police is dangerously undermined when police are perceived to be acting primarily in their own financial interests, rather than in the interests of public safety.

The Department of Justice’s decision to expand federal participation in asset forfeitures means conflicts of interest will be more widespread. Although the Department has included new notice procedures and has promised monitoring in this new policy directive, scaling up rather than scaling back on this practice means more innocent Americans will lose their property. As Congressman Sensenbrenner put it, “Current forfeiture laws put law-abiding citizens at risk for unwarranted seizures, and the DOJ proposal to expand programs supporting such laws will only make the problem worse.”⁹

The Commission has recently investigated similar conflicts of interest, raising serious civil rights and access to justice concerns. In our investigation of municipal fines and fees, the results of which the Commission plans to report in September 2017, the Commission examined conflicts of interest at the municipal level when courts seek first to collect money rather than administer justice. Testimony the Commission received indicated that civil asset forfeiture creates similar problems, leading to innocent persons losing their property or recovering it only after prolonged legal struggles and undermining public trust in government.¹⁰ Two of the Commission’s Advisory Committees, in Michigan and Tennessee, have taken up the topic for review because of civil rights concerns.¹¹

Civil asset forfeiture has repeatedly been shown to have racially disproportionate outcomes, with a greater effect on people of color.¹² As Justice Thomas has noted, “forfeiture operations

⁶ Rep. Jim Sensenbrenner, *Expansion of Federal Forfeiture Threatens Property Rights*, The Hill, July 25, 2017, <http://thehill.com/blogs/congress-blog/judicial/343624-expansion-of-federal-forfeiture-threatens-property-rights>.

⁷ Daniel Honchariw, *Who Does Civil Asset Forfeiture Target Most?*, Nevada Policy Research Institute, Summer 2017, http://www.npri.org/docLib/20170726_CompleteForfeitureReport.pdf

⁸ *Id.* at 3.

⁹ Rep. Jim Sensenbrenner, note 6 above.

¹⁰ See Testimony from Derek Cohen, of the Texas Public Policy Foundation and Right on Crime, U.S. Commission on Civil Rights Briefing, March 17, 2017, p. 147, <http://www.usccr.gov/calendar/trnscrpt/Targeted-Fines-Transcript-03-17-17.pdf>.

¹¹ The Michigan Advisory has issued a report on the topic and the Tennessee Advisory Committee will issue a report following a briefing held July 24, 2017. Michigan Advisory Committee to the U.S. Commission on Civil Rights, *Civil Rights and Civil Asset Forfeiture in Michigan*, October 2016, http://www.usccr.gov/pubs/Michigan%20Civil%20Forfeiture%20Report_2016.pdf.

¹² See *Who Does Civil Asset Forfeiture Target Most?*, note 7 above; *Stop and Seize*, note 4 above; *Guilty Property*, note 4 above; Clifton Adcock, Ben Fenwick and Joey Stipek, *Most Police Seizures of Cash Come from Blacks, Hispanics*, Oklahoma Watch, October 7, 2015, <http://oklahomawatch.org/2015/10/07/most-police-seizures-of-cash-come-from-blacks-hispanics/>.

frequently target the poor and other groups least able to defend their interests in forfeiture proceedings.”¹³

Chair Catherine E. Lhamon stated: “Every American should have equal access to justice in this country. The Department of Justice should be ensuring the fair administration of justice, not engaging in practices that put this justice in question.”

The Commission urges the Department of Justice to heed the many concerns raised about civil asset forfeiture and limit or — better for justice — end the practice.

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The U.S. Commission on Civil Rights is an independent, bipartisan agency charged with advising the President and Congress on civil rights matters and issuing an annual federal civil rights enforcement report. For information about the Commission, please visit <http://www.usccr.gov> and follow us on [Twitter](#) and [Facebook](#).

¹³ Leonard, 580 U.S. at ___, (Thomas, J., dissenting from denial of certiorari).