

ACLU Policy Brief



CIVIL ASSET FORFEITURE

**Profiting from California's
Most Vulnerable**



Civil Asset Forfeiture: Profiting from California's Most Vulnerable
is a report by the ACLU of California's Criminal Justice and Drug Policy Project.

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For years, California law enforcement agencies have taken advantage of a loophole in outdated federal laws that let them take – and permanently keep – a person’s cash, car, or home without even arresting them.

This brief describes this practice, called “**civil asset forfeiture**,” and reveals that the burden falls most heavily on communities of color and low-income communities. We find that an increasing number of agencies are relying on this practice, and share previously unreported stories of real people who have had their belongings taken when they did nothing wrong. Finally, the brief describes efforts to limit civil asset forfeiture to cases where a person has been convicted of a crime.

This report draws on data from the Department of Justice, Drug Enforcement Administration (DEA), and U.S. Census Bureau; and from previous research by the *Washington Post*, the Drug Policy Alliance, the Center for American Progress, the American Civil Liberties Union (ACLU), and others. It also examines the experiences of Californians who have fought the federal government in court for the return of their property as well as those who were unable to. We find that:

- The vast majority (85%) of the proceeds of federal asset forfeiture in California goes to agencies that police communities that are majority people of color;ⁱ
- Half of DEA seizures from California involved people with Latino surnames;
- Counties with higher per capita seizure rates have an annual household income below the state median; and
- The number of California law enforcement agencies taking advantage of federal civil asset forfeiture laws has increased from 200 to 232 in just the last two years.



Photo Credit: Photographerlondon / Dreamstime.com

INTRODUCTION

Local police use federal law to keep your property, even if you've done nothing wrong.

Imagine you're on your way to buy a used car and a police officer pulls you over. After asking you a few questions, the officer asks to search your car.

The next thing you know, the officer is telling you that he's suspicious that you have \$5,000 in cash – and he takes it. You explain that you're on your way to buy a car. He doesn't believe you and tells you that if you want your cash back, you'll have to fight for it in court.

Unfortunately, scenarios like this have played out countless times up and down the Golden State.

The worst part is that this practice is perfectly legal under "civil asset forfeiture" laws.

Under federal law, the government may permanently forfeit a person's property without ever charging that person with a crime, or seeking a conviction.

By participating in the federal "equitable sharing" program, state and local law enforcement agencies are able to bypass California's more stringent property protection laws.

In the past decade, the number of civil asset forfeiture cases initiated by or involving California law enforcement agencies, but transferred to federal control, has tripled, while state cases have remained flat.ⁱⁱ

Local law enforcement agencies have participated in about 10,000 seizures since

2001, totaling \$430 million in proceeds – about \$300 million of which was sent back to state and local agencies.ⁱⁱⁱ

Innocent people are caught in the civil asset forfeiture web.

It takes very little for law enforcement to take and permanently keep your property under federal law. They can and do take property from people who are clearly innocent.

Civil asset forfeiture was originally created to take away booty from drug "kingpins." But the practice has been perverted into an ongoing attack on Californians who can't afford to fight the government in court, a burden that falls disproportionately on low-income people and people of color.

According to a national review by the *Washington Post*, more than half of seizures nationwide were of under \$8,800.^{iv} Those are hardly kingpin sums.

Civil asset forfeiture is not uncommon. And because federal law has such low property protections, innocent people must fight the federal government for the return of their property.

This report includes several stories illustrating the many ways this can and does happen in California. All stories have been verified through media reports, one-on-one interviews, legal filings, and/or defense counsel.

In most cases we have come across, people who have fought to regain their seized assets want to share their stories, but most were uncomfortable sharing their names.

It happened to me...

Attorney Dale Major's client is an 18-year-old with immigrant parents. On his way to buy a car from a friend, the youth was involved in an auto accident. Without his permission or a warrant, officers opened his trunk and found a small amount of marijuana, which the youth possessed legally along with his medical marijuana card. He explained to officers that he was on his way to buy a car from a friend. He even showed that he had withdrawn \$4,000 from the bank the day before, but officers seized the cash nonetheless. He is still fighting the case.

It happened to me...

East Palo Alto Home Owner: When Elizabeth James* retired after thirty-one years at the phone company, she looked forward to finally taking a trip across the country with her husband. She'd worked hard, raised two kids, and purchased a home for her developmentally disabled sister two blocks away from the James' modest East Palo Alto bungalow.

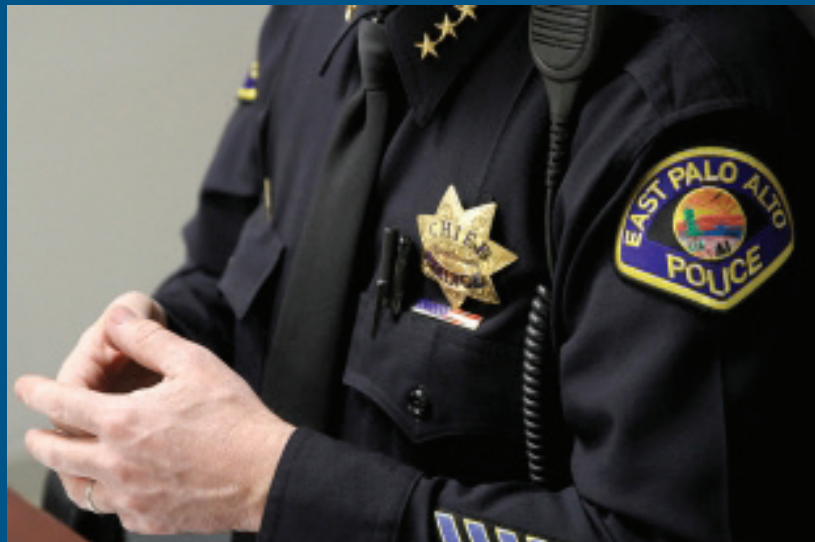
Ms. James is still waiting to take that trip. In 2009, East Palo Alto police, working with the U.S. attorney, arrested Ms. James' son for involvement in drug selling. He'd been living in the home that Ms. James had purchased for her sister. The government evicted her sister and proceeded to forfeit the house.

“The government can come in and just take anything. They have no respect for a person who works all their lives.”

As they went after Ms. James' property, federal prosecutors never charged her with a crime; they didn't even allege that she knew her son was selling drugs. The James fought for over a year and a half to get their property back. As the legal bills piled up, Mr. James, a machinist, took out additional credit cards. With no end in sight, their lawyer advised them to accept a deal. In exchange for a guilty plea from their son, the government dropped its forfeiture of their house, but declined to reimburse their legal fees or the cost of repairing the damage left behind when police kicked in the doors of the house and ransacked it.

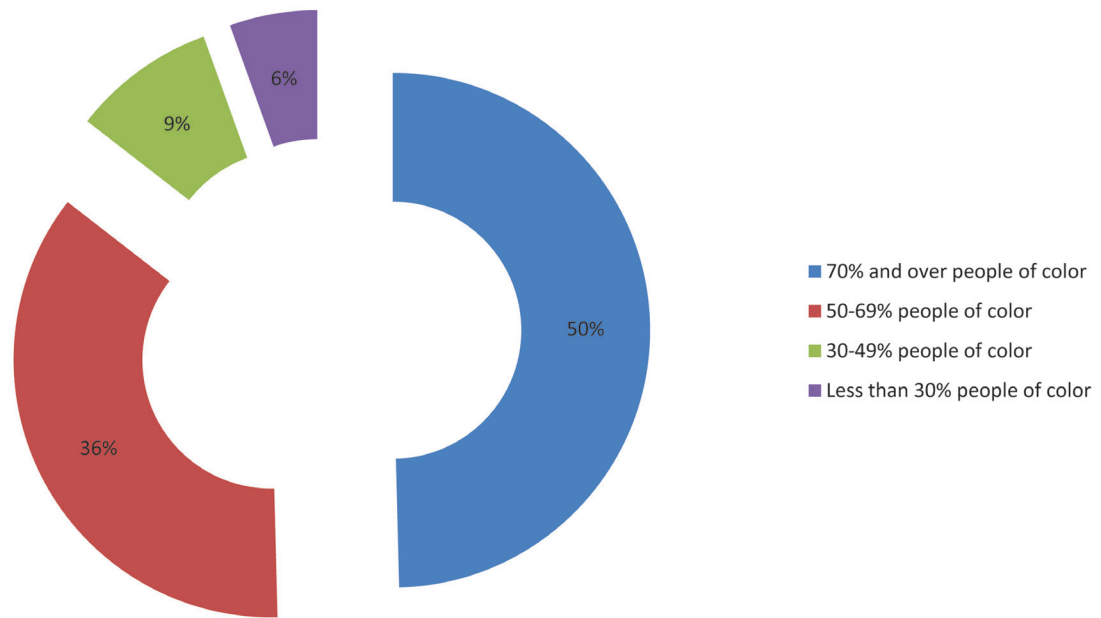
Ms. James says the ordeal cost them close to \$70,000. Not only were the couple, who are senior citizens, left to take care of three young grandchildren after their son was sent to prison for selling drugs, but Mr. James has borrowed against his future retirement income to pay off the debt they incurred to get their house back.

Ms. James feels betrayed. “The government, they can come in and just take anything. They have no respect for a person who works all their lives,” she says. “I need to move on with my life, I want to travel. I want to do something before I leave this world,” she says. But she doesn't know when that day will come. “I don't think I'm going to pay off the debt in this lifetime unless my husband hits the lotto.”



**Names changed at person's request.*

Federal “equitable sharing” payments in California go mostly to law enforcement policing in communities of color, 2015



Sources: Department of Justice, U.S. Census Bureau (2010), ACLU analysis

Law enforcement agencies serving communities of color in California receive most forfeiture funds.

California data reveal racial and ethnic disparities in police stops and searches.^v This increased exposure to police puts people of color in California at higher risk for everything from fix-it tickets and license suspensions to physical abuse.^{vi}

It also puts them at risk for losing their cash or car to civil asset forfeiture.^{vii} Investigations – including by the *Washington Post*,^{viii} Drug Policy Alliance,^{ix} ACLU,^x and others^{xi} – have consistently found that people of color are disproportionately at risk of having law enforcement take their property under civil asset forfeiture laws.

According to an ACLU review of federal forfeiture reports, disparities also exist in federal forfeitures in California.

The DEA reported a total of 363 seizures for forfeiture in California in a four-month period (February – May 2015).^{xii} Because these reports are posted daily and replace the report from the previous day, the period reviewed reflects the period we captured these daily reports.

Of the notices reviewed by the ACLU, nearly half (49%) involved people with Latino

surnames. This raises questions about the factors that law enforcement apply in exercising their discretion to take property under federal asset forfeiture laws.

Moreover, the ACLU found that civil asset forfeitures that relied on federal law were prevalent in communities of color. According to an ACLU analysis of data from the Department of Justice and the U.S. Census Bureau, a full half of all federal “equitable sharing” payments to local law enforcement went to those agencies policing communities where more than 70% of residents are people of color.^{xiii} More than 85% went to agencies policing communities in which people of color make up more than half of the population.

In 2013 and 2014, 86% and 85% of all payments, respectively, went to agencies in majority minority communities.

Lower-income communities in California bear the heaviest burden.

Low-income communities and communities of color are particularly hard hit by civil asset forfeiture because they are more likely to carry cash.

According to a recent report by the Center for American Progress, 17 million Americans

It happened to me...

Janitorial Business: In 2014, San Diego attorney Richard Barnett's client was driving down the I-5 freeway when she was pulled over by LA County Sheriff deputies. They said they'd pulled her over because she had swerved. They made her get out of her car and into the back of the police car. She was confused by this and asked why she was being made to get out of her car if this was a routine traffic stop. The officers wouldn't answer her and asked if they had permission to search her car. Still confused she said "no" and asked again what was going on.

They searched the car anyway and took the \$18,000 she had from her janitorial company that she was using to pay her employees. With the money, she had paperwork proving the funds were from her company. The officers said they didn't believe her and that they were going to take both the money and her car, but that they wouldn't take her car if she signed over the money. She signed the disclaimer and they took her car anyway. They then dropped her off outside of a closed Santa Clarita police station that night and left her there. By that time it was 2:00 in the morning. She hired Mr. Barnett, who fought for, and won, all her money back plus the return of her car. . .but it took two years.

were "unbanked" (i.e., they did not have a bank account) in 2013, and 51 million more Americans were "underbanked" (i.e., they did have a bank account but also used alternatives such as check cashers).^{xiv}

Half of all households with annual income of less than \$15,000 were either unbanked or underbanked. And nearly half of all Latino and Black households were unbanked or underbanked, compared with just 20% of white households.^{xv} People without bank accounts or who rely on check cashers must often carry relatively large sums of cash – for example, their whole paycheck or rent payment – and therefore can be especially vulnerable to cash seizures through civil asset forfeiture.

This brief has already addressed findings that suggest communities of color are disproportionately hit by federal civil asset seizure laws. A review of available federal data on California seizures suggests disparities by income as well. According to data from the Department of Justice and U.S. Census Bureau, of the 10 California counties with the highest per capita seizure rates^{xvi} in 2014, nine counties had a median income below the statewide median (\$61,489) and six had a higher proportion of people living in poverty than the statewide figure (16.4%).^{xvii}

California Counties with Highest Per Capita Seizure Rates, 2014

County	2014 per capita seizure rate	Median Household Income, 2010-2014 (in 2014 dollars)	Persons living in poverty, %
Trinity	\$17.06	\$36,862	19.9%
Imperial	\$7.46	\$41,772	23.6%
Inyo	\$4.50	\$45,625	14.0%
Los Angeles	\$3.21	\$55,870	18.7%
San Bernardino	\$2.81	\$54,100	20.4%
Humboldt	\$2.73	\$42,153	21.0%
Glenn	\$2.40	\$40,106	17.1%
Nevada	\$2.02	\$56,949	11.4%
San Mateo	\$1.95	\$91,421	7.5%
Shasta	\$1.94	\$44,556	14.7%

Sources: Department of Justice, U.S. Census Bureau (2014 population projections), ACLU analysis

It happened to me...

A taco truck owner had \$10,000 taken by the LA Sheriff's Department near Lancaster. He answered honestly that he was carrying a large sum of money. Why wouldn't he? He wasn't breaking the law; he was traveling with his own money, from his own legal business. There were no drugs in the car, no evidence of a crime, but a K9 (dog officer) keyed on the money.

The driver was not arrested or charged. But his property was seized and put into forfeiture proceedings. Even though he got a California lawyer, went to a California court, and had a California judge order the return of his money, the LASD declared that it had already been transferred to federal jurisdiction. At that point he was advised by his attorney to drop the case, because fighting the U.S. Government is too expensive, and has been known to morph from asset forfeiture, into deportation investigations of relatives or IRS involvement.



A Los Angeles music promoter had his cash seized twice in 2014.

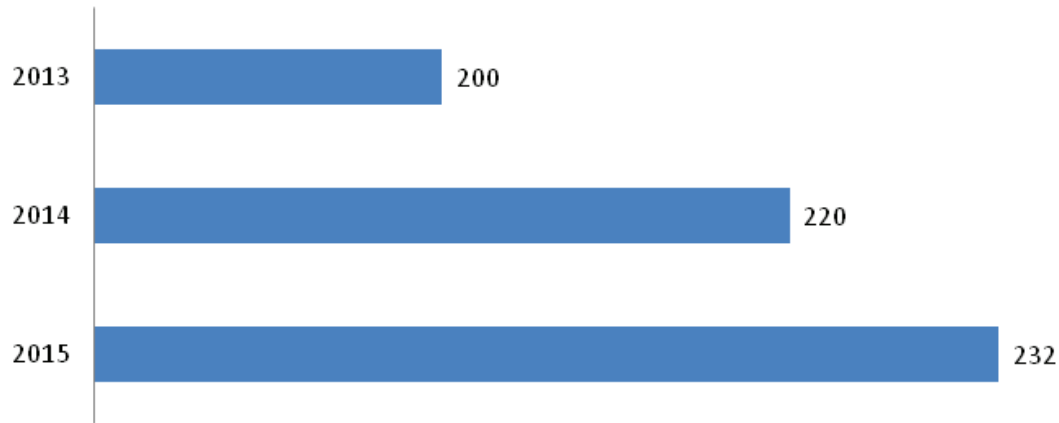
He had sent his staff to collect the door receipts at big Mexican music concerts that he promotes and organizes. In both cases, a simple traffic stop turned into a loss of property, even though there was no evidence of a crime and in neither case was a driver charged with a crime.



In Shasta County, \$13,000 was taken, and in Woodland, Oregon, \$32,000. In both cases, after lengthy delays by both local law enforcement and then federal prosecutors, the funds were returned to the lawful owner, but only because they had the means to hire lawyers to fight their case. In the Shasta case, he knew that the legal fees might exceed the recovery, but he was so angry, he wasn't about to let it go.

More California agencies are using federal civil forfeiture law to seize people's property

■ Number of California agencies relying on federal law to forfeit assets



Source: Department of Justice

More local law enforcement agencies are turning to federal laws to seize Californians' property.

Civil asset forfeiture, by design, relies on law enforcement agents to determine whether to seize and attempt to forfeit a person's property. And, because federal law allows agencies to keep up to 80% of the proceeds of forfeited property, agencies have a financial incentive to pursue forfeiture actions. According to Department of Justice data, the number of California law enforcement agencies receiving "equitable sharing" funds increased by 16% (from 200 to 232) in the previous two years alone (2013-15). Once agencies tap in, they tend to keep tapping in. Of the 200 agencies that received funds in 2013, 91% (182) received funds in either 2014 or 2015, and 77.5% (155) received funds in both 2014 and 2015.

Of the agencies that didn't receive "equitable sharing" funds in 2013, but did in 2014, more than two-thirds also collected funds in 2015.

Momentum builds for civil asset forfeiture reform.

A bipartisan consensus is growing across the country and at the federal level that asset forfeiture should not occur absent a conviction. New Mexico, Florida, Maryland, Michigan, Minnesota, Montana, Nebraska, and Washington, D.C. have all recently passed civil asset forfeiture reform laws. Congressman Ted Lieu has introduced legislation in Congress with dozens of representatives adding their names as co-authors. In California, Senator Holly Mitchell (D - Los Angeles) has introduced a bill, co-authored by Assemblymember David Hadley (R - Manhattan Beach), to make such a change.

Senate Bill 443, if enacted, will close the door on this predatory practice by preventing local law enforcement agencies from permanently keeping someone's cash or property if the person hasn't been convicted of a crime. This should be common sense for legislators. In fact, a recent survey by Public Policy Polling, found that 82% of polled likely voters in California opposed allowing law enforcement to seize and permanently keep property from people who have not been convicted of a crime.^{xviii}

ENDNOTES

- ⁱ “People of color” in this report is used to describe all racial/ethnic groups except non-Hispanic whites.
- ⁱⁱ California Department of Justice, annual Asset Forfeiture Report; Federal Department of Justice, annual Asset Forfeiture Fund Report; and Federal Treasury Department, annual Asset Forfeiture Fund reports.
- ⁱⁱⁱ Michael Sallah and others, “Stop and seize: Aggressive police take hundreds of millions of dollars from motorists not charged with crimes,” *The Washington Post*, September 6, 2014, available at www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/
- ^{iv} *Ibid*
- ^v Back on the Road California, *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California*, April 2016, available at http://www.lccr.com/wp-content/uploads/Stopped_Fined_Arrested_BOTRCA.pdf; Local reports from Fresno County, Sacramento, San Diego, Oakland, Berkeley, San Jose, and Los Angeles reveal that Black and Latino drivers are pulled over more often by police, and White drivers are pulled over less, each at rates that are disproportionate to their shares of the population. Black and Latino drivers are disproportionately searched during traffic stops, even though police are less likely to find contraband or other illegal activity in searches of Black and Latino drivers.
- ^{vi} *Ibid*
- ^{vii} Center for American Progress, *Forfeiting the American Dream*, April 2016, available at: <https://cdn.americanprogress.org/wp-content/uploads/2016/04/01060039/CivilAssetForfeiture-reportv2.pdf>
- ^{viii} See *supra* note iii
- ^{ix} The Drug Policy Alliance, *Above the Law: An Investigation of Civil Asset Forfeiture Abuses in California*, April 2015, available at: <http://www.drugpolicy.org/resource/above-law-investigation-civil-asset-forfeiture-california>
- ^x The American Civil Liberties Union of Pennsylvania, *Guilty Property: How Law Enforcement Takes \$1 million in Cash from Innocent Philadelphians Every Year-and gets away with it*, 2015, available at http://www.aclupa.org/files/3214/3326/0426/Guilty_Property_Report_-_FINAL.pdf
- ^{xi} David Love, “Civil Asset Forfeiture is The New Stop and Frisk, as Oklahoma Study Reveals Two-Thirds of Cash Seizures by Police Come From Blacks, Other Minorities,” *Atlanta Black Star*, October 8, 2015, available at <http://atlantablackstar.com/2015/10/08/civil-asset-forfeitureis-the-new-stop-and-frisk-as-oklahoma-study-revealstwo-thirds-of-cash-seizures-by-police-come-fromblacks-other-minorities/>.
- ^{xii} Reports on federal seizures are posted daily on www.forfeiture.gov.
- ^{xiii} Not including assets seized by multi-county taskforces, school districts, or statewide agencies.
- ^{xiv} See *supra* note vii
- ^{xv} See *supra* note vii
- ^{xvi} A county’s “per capita seizure rate” is the total seizure amount of *all agencies in the county* divided by the total county population.
- ^{xvii} The top ten per capita forfeiture counties in 2014 were Trinity, Imperial, Inyo, Los Angeles, San Bernardino, Humboldt, Glenn, Nevada, San Mateo, and Shasta. Of those, only San Mateo County has a median household income above the statewide figure. Of the top 10 counties, these have a higher than state average percentage of people living in poverty: Trinity, Imperial, Los Angeles, San Bernardino, Humboldt, and Glenn.
- ^{xviii} Public Policy Polling, “California Voters Adamantly Opposed to Civil Asset Forfeiture Laws,” May 2016, available at: http://www.drugpolicy.org/sites/default/files/PPP_Memo_CADrug_5.16.16.pdf.