



Written by [Joe Wolverton, II, J.D.](#) on September 24, 2016

## Albuquerque Police Ignore Laws Restricting Civil Asset Forfeiture

Arlene Harjo of Albuquerque, New Mexico, is making payments on a car she doesn't own. She's not crazy or crazy rich — she's the victim of a civil asset forfeiture law that was invalidated but is still being enforced by police in New Mexico's largest city.

As reported by the blog Reason the end of August:



After her son was pulled over for drunk driving, Harjo became one of roughly a thousand people every year who have their car seized by the city of Albuquerque in a process heavily weighted against the property owner. But unlike the vast majority of those cases, she's not rolling over. A new lawsuit filed Wednesday [August 31] in state court by Harjo and the Institute for Justice, a libertarian-leaning public interest law firm, argues the city's lucrative vehicle seizure program stands in direct contradiction of recently passed state laws and "is driven by a pernicious — and unconstitutional — profit incentive" that deprived Harjo of her 14th Amendment due process rights.

"It's a scam and a rip off," Harjo said. "They're taking property from people who just loan a vehicle to someone. It's happened a lot. Everybody I've talked to has had it happen to them or somebody they know, and everybody just pays."

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She's right, and it's revolting.

"Most Americans don't realize it's this easy for police to take your cash." That was the headline of a story published last October in the *Washington Post*. The topic under that title is civil asset forfeiture and how it is being misused by law enforcement (federal and local) to deprive Americans of their property.

For those readers unfamiliar with this tyrannical transfer of wealth — a constitutional violation known euphemistically as "asset forfeiture" — here's the *Washington Post's* summary included in another article published in the *Post* in 2015:



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Since 2008, thousands of local and state police agencies have made more than 55,000 seizures of cash and property worth \$3 billion under a civil asset forfeiture program at the Justice Department called Equitable Sharing.

With this kind of money up for grabs, it is little wonder that the plague of asset forfeiture has spread across the 50 states.

Paul-Martin Foss, president and executive director of the Carl Menger Center for the Study of Money and Banking, an Arlington, Virginia-based think tank dedicated to educating the American people on the importance of sound money and sound banking, wrote:

Hardly a week goes by without a mention of some innocent person who is arrested and/or imprisoned for violating an unconstitutional law, an arcane regulation, or simply being in the wrong place at the wrong time. For completely innocuous conduct, they find themselves at the mercy of an uncaring, unfeeling bureaucratic apparatus that chews them up and spits them out.

As with so many of the other ongoing assaults on the vestigial liberty enjoyed by Americans, civil asset forfeiture is justified by its perpetrators as a means of keeping the people safe.

In New Mexico, the governor signed into law a bill nearly completely outlawing civil asset forfeiture, but that hasn't stopped law enforcement in Albuquerque from carrying on fleecing citizens unaware of the changes in the law.

According to the [Albuquerque Journal](#), the city has seized 8,369 vehicles and collected more than \$8.3 million in forfeiture revenues since 2010, roughly 1,000 cars a year.

Data such as these is what prompted state lawmakers to enact an effort to rein in such abuses of authority.

Harjo's story is all too common in Albuquerque. Again, as reported by *Reason*:

In April, Harjo's son Tino asked to borrow her car to take a mid-day trip to the gym. When he didn't come back that night, Harjo got worried and started calling around. The next morning, she found out Tino had driven her car to Texas to hang out with his girlfriend. On the way back, he was pulled over and arrested for drunk driving.

"So I have to pay for a car I don't even have," said Harjo, who works as a customer service representative for Southwest Airlines. "It was pretty devastating that it got taken from me."

The city soon sent her a notice informing her that it was seizing her car, a 2014 Nissan Versa. Her first thought, she said, was that she still had a \$10,000 loan on her car. Harjo decided to challenge the seizure and soon found out that her troubles were just beginning.

In its Policing for Profit report, the Institute for Justice summed up the asset forfeiture situation:

Every year, police and prosecutors across the United States take hundreds of millions of dollars in cash, cars, homes and other property — regardless of the owners' guilt or innocence. Under civil forfeiture laws, the government can seize this property on the mere suspicion that it is connected to criminal activity. No charges or convictions are required. And once property is seized, owners must navigate a confusing, complex and often expensive legal process to try to win it back. Worst of all, most civil forfeiture laws give law enforcement agencies a powerful incentive to take property: a cut, or even all, of forfeiture proceeds.

Civil forfeiture procedures are based on the premise that a person's property can be complicit in the



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commission of a crime. This is laughable and legally unreasonable. The Constitution was specifically written to protect citizens from this and all other forms of unreasonable searches and seizures (Fourth Amendment), as well as to place due process protections between the governors and the governed (Fifth Amendment).

The Second and Fifth Amendments are repealed in one reportedly benign, even beneficial, bureaucratic fiat.

Of all the possessions police are still given the green light to grab, it seems suspicious that guns and ammunition are topping the list, especially in light of the Obama administration's multi-pronged assault on the natural right to keep and bear arms.

When it comes to civil asset forfeiture, the layers of constitutional violations multiply. Americans — who have been denied due process — are subjected to a financially crippling and liberty-depriving process of defending the ownership of their property.

Such tyranny is anathema to the rule of law and the protections bequeathed to us by our Founders.

Some conservatives may argue that while it is sometimes misused, the power of civil asset forfeiture should be retained by police in order to punish “drug dealers” and keep citizens safe.

This is evident in a statement to Rare made by the Albuquerque City Attorney's office:

Our ordinance is a narrowly-tailored nuisance abatement law to protect the public from dangerous, repeat DWI offenders and the vehicles they use committing DWI offenses, placing innocent citizens' lives and property at risk. The ordinance provides defenses to forfeiture to protect innocent owners and has been upheld by the courts.

Unsurprisingly, there is another constitutional problem in that premise, as well.

In the Constitution, the federal government was granted a “few and defined” powers. These powers were listed (enumerated) so as to bind those who would obtain any sort of authority in the manifold offices of the federal government.

In *The Federalist*, Alexander Hamilton explained that if the federal government acted outside the scope of its constitutional authority, then those acts were not laws; they were mere usurpations and they deserved to be treated as such.

Although it is unpopular in some conservative circles to talk about, the so-called “war on drugs” is one example of an area where the federal government has absolutely no constitutional authority to act.

Americans would go a long way toward eliminating the evil of civil asset forfeiture by demanding that their federal representatives repeal the full panoply of federal drug regulations: “laws” that incentivize the “policing for profit” that fuels the forfeiture scheme.



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