



Written by [Michael Tennant](#) on December 14, 2010

## How to Steal \$190,000 — and Get Away With It

On October 18, brothers Jesus and Jose Martinez were robbed of over \$190,000 by an armed man. They know who the man is and who employs him, and both the thief and his employer have admitted stealing the money. They took his employer to court to retrieve their money. A judge ordered the money returned, but the employer has refused to return it, saying that he has since passed it on to his superiors, who in turn have no intention of returning it.



Another hearing is scheduled in January, but even if the court again orders the return of the money, it is likely that the Martinez brothers will never see it again and that those who have so brazenly stolen it from them will get off scot-free.

How can this be? The answer is simple: The thief is a police officer, his employer is the city of Aurora, Illinois, and his employer's superiors are in the U.S. Department of Homeland Security.

[The Chicago Tribune reports](#) that, according to documents provided by an attorney for the city, the police had obtained court permission to tap the Martinezes' phones because they were suspected of drug dealing. In addition, says the paper,

The new documents allege North Central Narcotics Task Force officers were listening in on a call between the Martinez brothers in which they discussed Jesus' planned meeting with a man named Charlie in a parking lot in Aurora.

According to the report, Jose Martinez told his brother, "the package is ready," though there was not an explicit mention of drugs. The report said police observed Jesus Martinez arrive in the parking lot and talk with another man for a minute before both departed in separate vehicles. No exchange was reported, and police apparently did not stop the second driver.

Jesus Martinez was stopped four minutes later by an Aurora officer working with the task force. Martinez consented to have his vehicle searched. No drugs were found, but police did find the sack of cash.

An officer then confiscated the money. The police questioned Martinez and gave him a receipt for the money — as if they actually might return it to him at some point — then sent him on his way.

Although neither brother was ever charged with a crime, the city informed the Martinezes that it intends to keep the loot via civil forfeiture, described by the *Tribune* in [another report on the Martinezes' plight](#) as "a procedure that allows police agencies to seize property where the legal standard is lower than proof needed in a criminal forfeiture." In fact, there is practically no legal standard at all; law enforcement can simply confiscate property on the merest suspicion that its owner is even remotely connected with some illegal activity (drug offenses are a favorite pretext). Once



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confiscated, it is nearly impossible for the wronged individual to get his property back.

The Martinez brothers, however, were not deterred in their quest to regain their cash. They hired an attorney, Patrick Kinnally, who filed a complaint a month after the incident. Shortly thereafter Kinnally and city attorneys appeared before Kane County Circuit Judge Michael Colwell. The *Tribune* recounts what happened:

“Their lawyers basically said the city was going to file for forfeiture,” Kinnally said. “The judge asked on what basis. The lawyer said, ‘We don’t know,’ and the judge said: ‘This is America. Give it back.’”

The judge ordered the city to return the \$190,040, along with a month’s interest and costs. But Kinnally said that when he brought the order to Aurora, the city refused to turn over the cash, saying it planned to appeal the judge’s order.

That appeal was rejected, and now the city says it no longer has the money, having passed it on to DHS, which sent Jesus Martinez a certified letter stating that it had “seized the money from Aurora, and that the cash is subject to forfeiture under U.S. codes dealing with drug transactions,” according to the *Tribune*. Another hearing, before a judge who took over the case after Colwell retired, is set for January 5; but with the money in the hands of the feds, the brothers’ chances of getting it back are slim.

This case — only one among many such cases across the country — raises some serious constitutional issues.

First, the cops, and then the feds, clearly deprived the Martinezes of their property without due process of law, in violation of the Fifth Amendment. Of course, this has long been the case with asset forfeiture laws. In his 1995 book *Forfeiting Our Property Rights* the late Rep. Henry Hyde of Illinois wrote that asset forfeiture “has allowed police to view all of America as some giant national K-Mart, where prices are not just lower, but nonexistent — a sort of law enforcement ‘pick-and-don’t-pay.’” Hyde later sponsored the Civil Asset Forfeiture Reform Act of 2000, which provides some protections for those victimized by government thieves. But, says the organization [Forfeiture Endangers American Rights](#), “innocent owners who are never charged with a crime still must prove their innocence in complex proceedings, where many cases are lost before even coming to trial.” And as the Martinez case shows, even a court decision in favor of the property owner does not necessarily mean he will get his property back.

Second, there is absolutely no reason for the federal government to have its grubby mitts in this matter. The war on drugs is blatantly unconstitutional; and without the war on drugs, there is no justification for federal asset forfeiture laws and the subsequent seizing of the Martinez brothers’ money by DHS. Absent such federal overreach, the brothers would stand a much greater chance of retrieving their property.

The war on drugs should be abolished, asset forfeiture laws repealed, and the Martinezes’ money restored to their possession. As Judge Colwell said, “This is America.” In the land of the free, innocent people should not have to fear being robbed by their government.

Photo of Janet Napolitano, Secretary of Homeland Security: AP Images



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