

# THE MORAL LIBERAL

## Quiet Change Expands ATF Power to Seize Property

By Adam Bates

Feb. 26, 2015

A quick glance at the Federal Register (Vol. 80, No. 37, p. 9987-88) today reveals that Attorney General Eric Holder, who earned cautious praise last month for a small reform to the federal equitable sharing program, has now delegated authority to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to seize and “administratively forfeit” property involved in suspected drug offenses. Holder temporarily delegated this authority to the ATF on a trial basis in 2013, and today made the delegation permanent while lauding the ATF for seizing more than \$19.3 million from Americans during the trial period.

Historically, when the ATF uncovered contraband subject to forfeiture under drug statutes, it was required to either refer the property to the DEA for administrative forfeiture proceedings or to a U.S. Attorney in order to initiate a judicial forfeiture action. Under today’s change, the ATF will now be authorized to seize property related to alleged drug offenses and initiate administrative forfeiture proceedings all on its own.

The DOJ claims this rule change doesn’t affect individual rights (and was thus exempt from the notice and comment requirements of the Administrative Procedure Act) and that the change is simply an effort to streamline the federal government’s forfeiture process. Those who now stand more likely to have their property taken without even a criminal charge may beg to differ.

Further, the department claims that forcing the ATF to go through a judicial process in order to seize property requires too much time and money. Whereas an “uncontested administrative forfeiture can be perfected in 60-90 days for minimal cost [...] the costs associated with judicial forfeiture can amount to hundreds or thousands of dollars and the judicial process generally can take anywhere from 6 months to years.” In other words, affording judicial process to Americans suspected of engaging in criminal activity takes too long and costs too much.

Note that the above quote speaks of an “uncontested” forfeiture. This refers to a situation in which the property owner fails to engage the byzantine process for recovering their property. Defenders of civil asset forfeiture often claim that such failures to contest amount to admissions of guilt, but there is substantial evidence that many victims of civil asset forfeiture simply lack the time, resources, and legal knowledge to fight the bottomless resources of government to get their property back. This is especially true when it comes to the War on Drugs, within which the bulk of civil forfeiture targets are poor, lack legal education, and lack access to attorneys and other avenues to vindicate their rights. There are also troubling examples of the government

simply never initiating proceedings against the stolen property and thus never giving the owners a chance to “contest” anything at all.

At a time when Attorney General Holder himself has acknowledged the need for asset forfeiture reform, the authorization to take the property of American citizens should be shrinking, not expanding. A country that spoke itself into existence with assertions of the rights to life, liberty, and property can ill afford yet another government agency with the power to seize your property without so much as a criminal charge.

*Adam Bates is a policy analyst with Cato Institute’s Project on Criminal Justice. His research interests include Constitutional law, the War on Drugs, the War on Terror, police militarization, and overcriminalization.*