



Trump Supports Civil Asset Forfeiture Even Without Conviction

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“We’ll destroy his career,” President Donald Trump said of a Texas legislator who has reportedly introduced legislation to curtail civil asset forfeiture — the practice of taking a person’s property allegedly used in the commission of a crime — unless the individual is convicted of a crime.

Trump made his remarks, which were taken as joke, at a February 7 White House meeting with sheriffs from across the country (shown). But even if the remark was not taken seriously by the sheriffs, who laughed at the “threat,” it is clearly indicative of the president’s position on the issue.

During the meeting with the sheriffs, the issue of civil asset forfeiture (CAF) was discussed at some length. Sheriff Aubrey of Jefferson County, Kentucky, raised the issue: “The other thing is asset forfeiture. People want to say we’re taking money and without due process. That’s not true. We take money from dope dealers.”

Trump then asked, “And you’re not allowed to do it now?”

Sheriff Aubrey said it had been “curtailed a little bit,” after which Trump asked whether it was for “legal reasons” or “just political reasons?”

Aubrey answered, “They make it political and they make it — they make up stories.”

Trump told the sheriffs that he would like to “look into that.” He then said to Dana Boente, the acting attorney general, “So what do you do? So in other words, they have a huge stash of drugs. So in the old days, you take it. Now we’re criticized if we take it. [Note: The criticism of CAF is not the taking of illegal drugs, but rather property which is only alleged to have been involved in the drug trade or some other alleged crime]. So who gets it? What happens to it? Tell them to keep it?”

Boente explained, “Well, we have what is called equitable sharing, where we usually share it with the local police departments for whatever portion that they worked on the case. And it was a very successful program, very popular with the law enforcement community.”

No doubt it is, since local law enforcement is able to procure through CAF cars, boats, cash, and other valuable property through this program in which local law enforcement and federal agents work together on a case.

Boente told Trump, “There’s been a lot of pressure not to forfeit, in some cases.”

Trump responded, “Who would want that pressure, other than, like bad people, right?” He then told Sheriff Aubrey that he could count on his support in his efforts to continue CAF.

One participant, unnamed on the White House website, told Trump his version of what CAF means. “You shouldn’t be allowed to profit from the illegal proceeds. So if you’re going to sell narcotics and sell illegal drugs in our country, you also cannot profit from that. And so we seize those profits.”

Then, John Cary Bittick, the sheriff from Monroe County, Georgia, a past president of the National Sheriffs Association, chimed in: “I just want to thank you for the administration working actually on pieces of legislation and on political ideas with us. It’s refreshing, and we are thoroughly enjoying it. We are currently working with Senator [Charles] Grassley on some criminal justice reform issues. And the administration has been supporting us. And asset forfeiture is a big thing.”

Following a brief back-and-forth with other participants, Sheriff Harold Eavenson of Rockwell County, Texas, brought up the CAF issue again: “Mr. President, on asset forfeiture, we got a state senator in Texas who was talking about introducing legislation to require conviction before we can receive their forfeiture.”

Trump responded, “Can you believe that?”

Sheriff Eavenson responded, “I told him that the cartel would build a monument to him in Mexico if he could get that legislation.”

It was then that Trump asked, “Who is the state senator? Want to give his name? We’ll destroy his career.”

According to Politico, Trump’s comment “elicited laughter from those gathered in the Roosevelt Room,” but that Trump “did not join in.” So, while the sheriffs took the comment more as a joke than an actual threat, it is unclear how seriously Trump meant it.

Since the sheriff did not offer the legislator’s name, speculation has centered on two possibilities, one being Texas state Senator Juan “Chuy” Hinojosa, a Democrat who introduced CAF legislation in November. Hinojosa told the Texas Tribune that he did not think the sheriff was referring to him. He said he had never met the sheriff and had never spoken to him.

More likely, the reference was to a Republican, state Senator Konni Burton, whose district is relatively close to Rockwall County. Burton's bill, introduced in December, would require criminal conviction before forfeiture.

While it would be unusual for Trump to oppose Burton's reelection, since she is a member of his own political party, it would not be without precedent. In 1938, President Franklin Roosevelt opposed Democratic Party congressmen who had opposed his "court-packing plan" (in which FDR tried to get Congress to create six new positions on the Supreme Court, that he could then fill), but he was largely unsuccessful.

Most Americans are uninformed about CAF, but polls indicate that those Americans who have heard of it are strongly opposed. A poll taken late last year by the libertarian CATO Institute found that 84 percent of Americans oppose taking "a person's money or property that is suspected to have been involved in a drug crime before the person is convicted of a crime."

Many in law enforcement are supportive of CAF without conviction, however. One who is not in favor of CAF before conviction is Trump's pick for the Environmental Protection Agency, Scott Pruitt, who has been attorney general in Oklahoma since 2011. In an interview last year with CATO, Pruitt said the only type of asset forfeiture that is legitimate is "post-conviction."

In the interview with CATO, Pruitt offered "two egregious examples" of CAF abuse in Oklahoma. In one case, a Kansas resident traveling with a contemporary Christian band, who had raised a large amount of charity money to send to Burma, was stopped by the sheriff's office in Muskogee County for a broken taillight. Since the man was carrying \$53,000 in cash, the sheriff's office presumed it was drug money. They called in a drug dog, who alerted that drugs were in the vehicle. Pruitt told CATO that the use of drug dogs "can be manipulated."

After four hours of interrogation, the man was released. But the sheriff kept the money — under civil asset forfeiture. Eventually, after a story in the Washington Post highlighted the case, they finally returned the money. But many citizens are not so fortunate, and are expected to prove that the cash, or other property, is not drug money — in other words, prove a negative.

This is the central problem of CAF. The normal presumption of innocence, with the burden of proof upon the government, shifts to the accused, under the reasoning that it is the cash or other property that has committed the crime!

Another example Pruitt offered as an abuse that can occur with CAF was a case in Wagoner County, Oklahoma. There, the sheriff conducted a search of a vehicle and simply pocketed \$10,000 he found in it.

Unlike the impression left in the discussion between Trump and the sheriffs in the Roosevelt Room, the issue is not illegal drugs being seized, but rather private property being seized — and kept — without conviction. This is, of course, a gross violation of due process of law.

It is not a small problem. In 2014, federal law-enforcement officers seized over \$5 billion in

assets under CAF, while burglary losses were a little less than \$4 billion. This does not include private property seized independently by local law-enforcement agencies, such as police departments and sheriff's departments.

Sadly, President Trump gives every indication that he is fine with such seizures. While drugs are certainly a scourge, a person simply accused of a drug crime is entitled to due-process procedures. After all, murder, robbery, and rape are also terrible crimes, and we don't punish those individuals who are simply accused of such offenses. It is still up to the government to prove a person's guilt, beyond reasonable doubt. Just because a person is accused of a crime, whether it be murder or drug dealing, it does not mean that person is guilty of that crime.

Unfortunately, Pruitt is not going to serve as attorney general of the United States. Trump has nominated Senator Jeff Sessions (R-Ala.) for that post instead. Although Sessions is good on many issues, he is a strong advocate of civil asset forfeiture. In a Senate hearing in 2015, Sessions dismissed concerns about CAF, saying that "95 percent" of forfeitures are from suspects who have "Done nothing in their lives but sell dope."

Sessions may or may not be right on his numbers, but even if he is right, we must ask: Is he comfortable that the five percent who are innocent are being stripped of their property without due process of law?

And, is President Trump also content for five percent of Americans to lose property to CAF, even if they have committed no crime?

Let us hope that President Trump, Jeff Sessions, and the nation's sheriffs re-think this issue. And since they claim to uphold the Constitution, that includes upholding the Fifth Amendment: "No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."