



'Policing for profit' reform may be stymied under Trump

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February 20, 2017

It's been over a year since a joint-task force of San Diego law enforcement and federal agents sledgehammered their way into James Slatik's place of business and made off with over \$300,000 in cash and millions in equipment, after which they froze his personal bank accounts, and those belonging to his wife and two teenage daughters. The government is still holding on to all of it — and Slatik has still never been arrested or charged with a single crime.

For the past year, every time his dogs bark on the porch of his San Diego home, he wonders if the police are finally coming to bring him in. "I often wake up in the middle of the night with panic and stress," Slatik said. Though he still isn't facing criminal proceedings, San Diego's District Attorney also hasn't given any of the Slatik family's money back — so, with two teenage kids, the family's finances are tight.

"At 58 years old, I didn't think I'd be constantly checking my bank accounts to make sure my car insurance payment isn't going to bounce," he said.

His problems with law enforcement began because he ran Med-West, a registered medical marijuana company that refined cannabis extractions. Like many medical cannabis businesses in the state of California, Med-West was temporarily existing in a regulatory grey area: the state has legalized the industry, but statewide regulations don't take effect until 2018. In Slatik's case, the impetus for the raid was the extraction process that law enforcement said he was using; after at least two raids around the state for the same reason, the California legislature retroactively passed legislation to affirm the companies were acting legally.

Slatik's personal and business assets were seized as part of controversial legal maneuver known as a civil asset forfeiture, a process which allows law enforcement to confiscate and eventually pocket the assets of citizens, often without ever securing criminal convictions against them.

Civil asset forfeiture has its roots in English maritime law, when authorities needed a mechanism to take possession of confiscated pirate ships. But the practice is now used by modern law enforcement to take control anything from cars to houses to petty cash; since the procedure is civil and not criminal, the government has to meet a much lower standard of proof.

Authorities can also seize assets that may be far removed from the alleged crime — like Slatik's daughter's college savings account — if prosecutors believe they have some link to the misdeed. In Slatik's case, the San Diego District Attorney explained that a neutral judge had found

probable cause that his family's assets were indeed tainted by his allegedly illegal business, though they have yet to file charges against him for operating said business.

Once a person's assets are in the hands of the government, he or she must petition for their return, a process that can often incur hefty legal bills. Slatik would have already incurred more legal costs than the total value of his seized assets, he says, if he weren't being represented pro-bono by the nonprofit Institute for Justice, a libertarian-aligned public interest law firm.

On Friday, Slatik's lawyer Wesley Hottot filed a petition to return his client's assets, citing the one year statute of limitations for prosecutors to file charges.

"The government believes they can take every penny from a family based on suspicion that one family member violated the law," Hottot said. "That's not just wrong, it's unconstitutional."

Despite its widespread use, civil asset forfeiture is also intensely unpopular: a recent survey by the libertarian Cato Institute found that a full 84 percent of Americans oppose the practice.

That's a view that may not be shared by President Donald Trump. On Feb. 7, during a meeting with the National Sheriff Association, Trump made what may be his first public comments on civil asset forfeitures when Harold Eavenson, a sheriff from Rockwall County, Texas, asked Trump to weigh in on an ongoing reform effort in the Lone Star state.

"We've got a state senator in Texas that was talking about introducing legislation to require conviction before we could receive that forfeiture money," Eavenson explained to the president. Before Eavenson could continue, Trump interrupted: "Can you believe that?" he said. "Who is the state senator? Do you want to give his name? We'll destroy his career."

The Texas reforms — which would require an owner's criminal conviction before assets can be seized, and limit law enforcement's ability to confiscate cars and homes just because drugs are found inside them — are being pushed by state Senator Konni Burton (R) and state Senator Chuy Hinojosa (D). It wasn't clear to which lawmaker Trump and the sheriff were referring, and neither wanted to comment directly on the president's apparent threat.

Until Trump's comments, reform advocates had felt the wind was at their backs. "We like to say: there are two kinds of people in the world: those who don't know what civil asset forfeiture is, and those who oppose it," says Darpana Sheth, a senior attorney with the Institute for Justice.

But now, Sheth fears that Trump may be the first kind of person. "The president's remarks were off the cuff, but the nature of the remarks demonstrate profound misunderstanding of what civil forfeiture is," Sheth said. "He confused the unquestioned ability to seize contraband like drugs with the broader power to seize any property."

Aside from his freewheeling remarks to the sheriff, the president has yet to formally announce a new policy trajectory for civil-asset forfeiture. But the federal government — and particularly the attorney general, who is now Jeff Sessions — has tremendous influence over how prevalent the practice is.

Until 2015, civil asset forfeitures were assisted by a federal policy known as “equitable sharing,” in which local law enforcement and federal officials worked together to seize assets from citizens who had not been convicted of crimes. Under the program, after local enforcement officials took possession of property in a raid, federal lawyers would do the legal leg-work and file the civil actions required to formally take control of those assets, a process known as “adoption.” The program let local law enforcement keep up to 80 percent of the proceeds of a raid, though federal lawyers handled the legal proceedings in federal court. A 2015 Washington Post investigation found that, in the preceding 15 years, police seized nearly \$2.5 billion from over 62,000 people without filing any criminal charges under the “equitable sharing” program.

Local police departments could then use the cash for their departmental budgets, creating a strong economic incentive for law enforcement agencies to seek out assets for seizure. In some cases, departments were using the money to buy luxury cars, high-powered weapons, and armored vehicles.

Over the last few years, a series of bipartisan reforms at the state level have it more difficult for law enforcement to do to others what San Diego is doing to the Slatik family. In total, 21 states and Washington, D.C. have enacted some form of civil asset forfeiture reform since the practice became common in the 1980s. Recent bills in Montana in 2015 and New Mexico in 2016, for example, require prosecutors to obtain a criminal conviction and show links between the property and the crime before assets can be seized.

There have also been some modest reforms on the federal level. In 2015, then-Attorney General Eric Holder placed some restrictions on “equitable sharing,” that narrowed the scope of seizures by eliminating the eligibility of assets (such as houses and cars) that aren’t always linked with criminal activity. Holder did, however, include a loophole that allows local law enforcement to continue broader seizures if they were acting as part of a joint-task force with federal agents — as was the case with the team that raided Slatik’s business.

At the time, a bipartisan group of senators tried to pass legislation curtailing civil asset forfeiture and enshrining some of Holder’s limitations formally into law, which would have made them difficult for a later administration to overturn. Though many conservatives supported the bill, then-Senator Sessions was a leading voice among the opposition.

“[It] would be a huge detriment to law enforcement,” Sessions said at the time, asserting that 95 percent of those impacted by forfeiture “have done nothing in their lives but sell dope.” Though there’s no way to know for certain that Sessions is wrong, since one need not be convicted of a single crime to have one’s assets seized, a 2014 Washington Post investigation found that, in 40 percent of cases in which people contested the seizure of their assets, the government was eventually forced to return the money despite the liberal standards for seizures.

Ultimately, the reforms never came up for a vote.

Sessions hasn’t specifically addressed civil asset forfeiture since he took the helm at the Justice Department earlier this month, but all it would take is a stroke of his pen to eliminate Holder’s reforms. “This will add fuel to the fire,” Hottot warned of such a move, as he said it would

provide further incentives for local law enforcement to seize property or, as Hottot called it, “policing for profit.”

Still, some opponents of civil asset forfeiture are confident that the Trump administration will ultimately side with the reform movement, which includes liberal organizations like the ACLU alongside conservatives like the Koch Brothers.

Brad Cates is a former DOJ official who ran the federal government’s civil asset forfeiture program in the 1980s. He has since become one of the most vocal critics of the practice, and he’s giving Trump the benefit of the doubt.

“I attribute the whole episode to what I call a sheriff’s ambush,” Cates said, claiming that Trump was caught off guard by the sheriff’s comments, and probably was not aware of the issue beforehand. “Once he’s settled in his job and studied this issue, he’ll come around.”

Cates is a Trump supporter, and thinks that the president’s respect for “property rights,” will ultimately turn him against civil asset forfeiture. (Notably, Trump garnered much criticism from the right during his campaign about his long-time support for eminent domain laws, which allows the government to seize private real estate for public purposes.) Cates can still remember the moment he changed his mind about forfeitures: as a federal prosecutor in Texas in the early 1990s, he had just helped seize an entire apartment complex because some of the tenants had been dealing drugs. but when he went down to see the building, he began second-guessing himself. “The owner wasn’t involved in the drug trafficking — he was trying to fix this place up.” Cates recalled thinking, “Gosh, was it right to take this man’s property? He did nothing wrong.”

But it’s not just businessmen and property owners who are subjected to seizures. In 2015, the ACLU took a random sample of 351 civil asset cases in Philadelphia and found that the median amount seized was valued at \$192.

Law enforcement groups like the National Sheriffs’ Association nonetheless continue to insist that civil asset forfeiture is crucial to keeping police departments well-funded. The association did not respond to request for comment but, when Holder instituted the new restrictions back in 2015, the group released a blistering statement claiming that civil asset forfeitures funds were vital for “public safety.” It went on to accuse Holder of putting “law enforcement lives at risk.”

Jim Manfre, the former Sheriff of Palm Coast, Florida, supports reforms but thinks most of the claims of abuse are overblown. “99 percent are done appropriately,” he said. “Ultimately, the reform movement at the state level has been a success,” he added. “And I hope the attorney general and the president listen to the states.”

Since Trump took office, a number of Republican lawmakers — including Kentucky Senator Rand Paul and Texas Congressman Justin Amash — have signaled that they will soon introduce legislation to curtail the practice as well.

Although Slatic hopes lawmakers will continue to reign in civil asset forfeiture, for him, the damage is already done. After draining his savings, Slatic is still buried in bills from his

shuttered business — a year later he's still working to pay out his employees 401K plans and healthcare costs.

“I deal with the ramifications of them raiding me on a daily basis,” he says. “That’s not going away anytime soon.”