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Forfeiture Laws, the War of Drugs, and *Alvarez v. Smith*

By [ILYA SOMIN](#)

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Today, the Supreme Court hears *Alvarez v. Smith*, an important case that will affect the constitutional property rights of many people around the country but has failed to attract the attention it deserves.

In [Alvarez](#), the federal Seventh Circuit Court of Appeals ruled that it was unconstitutional for Chicago police to seize cars and other property and hold it for many months at a time without giving the owners any chance to challenge the seizure. The Illinois Drug Asset Forfeiture Procedure Act (DAFPA) allows the police to seize property that may have been involved in a drug-related crime and hold onto it for up to 187 days without any kind of legal hearing. This rule applies even to property owned by completely innocent persons who simply had their possessions caught up in a drug investigation through no fault of their own – for example, if someone else used their car to transport illegal drugs without their knowledge. The three car owners involved in *Alvarez* were never even charged with a crime, much less convicted. Under DAFPA, the authorities also don't have to prove that keeping innocent owners' property is necessary in order to prevent the loss of valuable evidence.

In other words, DAFPA authorizes the government to take away the valuable property of completely innocent people for over six months at a time, without giving the owner any opportunity to contest the seizure whatsoever. The 187 day time limit applies to any personal property worth less than \$20,000, which includes most cars. And, even after an asset forfeiture action is filed, many more months might pass before any court actually hears the case. In this case, the three cars were held by the police for over a year.

Laws like DAFPA pose a serious danger to the property rights of innocent people caught up in the War on Drugs. In many jurisdictions, police departments are allowed to auction off property seized in drug investigations and keep the profits, giving them a clear incentive to seize cars first and ask questions later. Moreover, many of the people whose cars are seized are poor or minorities. They often lack the political power necessary to persuade police to release their property without judicial intervention.

The Court of Appeals ruled that DAFPA violates the property owners' rights under the Due Process Clause of the Fourteenth Amendment. It should have been an easy case. After all, the Clause requires that states must not "deprive any person of life, liberty, or property, without due process of law." One can certainly argue about how much process is "due" in any given situation. But surely it is a violation of the Clause for the state to deprive an innocent citizen of valuable property for many months *without any judicial process whatsoever*. That is especially true if the deprivation imposes a severe burden on the property owner, as is often the case when the property seized is a car. Perhaps little or no process should be required for a very small deprivation of property. But surely more is "due" when the owner suffers serious harm as a result of the seizure.

The lower court decision requires only that property owners be given an opportunity to challenge the seizure of their property in a brief informal hearing. If the Supreme Court denies property owners even this minimal protection, then there will be no meaningful constraint on the power of the government to seize the property of innocent people caught up in criminal investigations and hold it for many months at a time. Unfortunately, it is quite possible that the Supreme Court will reverse the Seventh Circuit. The Court usually hears cases only when there is a split between courts of appeals in different parts of the country (which did not happen here) or when it wants to reverse the lower court decision.

There is one ray of hope. In [Krimstock v. Kelly](#), a 2002 decision she authored while serving as a Second Circuit Court of Appeals judge, newly confirmed Justice Sonia Sotomayor invalidated a New York City law very similar to the Illinois statute challenged in *Alvarez*. Perhaps Justice Sotomayor can persuade her colleagues to take the same view. Otherwise, the property rights of numerous innocent people will remain at risk.

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