



**TESTIMONY OF:**

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**Presented before**

**The New York City Council Committee on Public Safety  
Hearing on Int. No. 83, Pro. Int. No. 728A, Int. No. 834, Int. No. 1000 and Reso. No. 1181  
Local Laws relating to reporting of CPR and AED certification among NYPD officers,  
publication of the NYPD patrol guide, use of all-terrain vehicles, and reporting on civil  
forfeiture, and a resolution calling upon the New York State Legislature to pass Briana’s Law,  
respectively.**

**September 15, 2016**

My name is Anca Grigore and I am a Staff Attorney in the Civil Justice Practice at Brooklyn Defender Services (BDS). Thank you for this opportunity to address the New York City Council Committee on Public Safety. BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, to tens of thousands of clients in Brooklyn every year. We deeply appreciate the Council's ongoing efforts to reform our criminal justice system. While all of the issues addressed by the legislation and the resolution under consideration today impact BDS' clients, I will focus my testimony on civil forfeiture and police accountability. In short, we support Int. No. 83, Pro. Int. No. 728A, Int. No. 1000 and Reso. No. 1181, and encourage the Council to go further in ensuring that law enforcement does not infringe upon the rights of New Yorkers.

**CIVIL FORFEITURE**

There is a common misconception that all property seized and forfeited by law enforcement belongs to convicted criminals and that it has been used in, or gained through, commission of a crime. The reality is that this process begins at arrest, at a time when the owner is presumed innocent, and these funds and assets are most often retained without court oversight and without due process. BDS' Civil Justice Practice works case by case to advocate for justice, but the policing-for-profit industry warrants systemic reform. Even clients who can prove that their property was not used for illegal activity often settle—that is, they pay the police to get their own

stuff back—due to the coercive dynamics and burdensome procedures described in detail below. It is very difficult to advise a client, even one with a good case, not to pay for an expeditious and guaranteed return of their property. Because settlements are only approved if the client signs a “hold harmless” agreement, preventing any civil lawsuit against the City for abuse of civil forfeiture, there are no realistic avenues to challenge the underlying practices in court. For our clients, the cost is simply too high. Fighting to protect their rights means suffering the unrecoverable loss of time, wages, missed medical appointments, stable housing and more. The reality is that only clients who cannot afford to settle end up pursuing their right to due process and pushing back against the City’s fundamentally unfair policies.

### ***Background***

The New York Police Department and local District Attorneys can effectively take New Yorkers’ cash and property at will and can hold it for months on end, even years with very little accountability. These seizures typically occur at arrest, and then the cash or property can be forfeited permanently through criminal forfeiture, in which prosecutors indict the property used or derived from a crime along with the defendant as part of a criminal prosecution. Civil forfeiture is a process in which the property is indicted alone. Importantly, criminal forfeiture is subject to a court order. It can only occur in cases resulting in criminal convictions, and defendants are constitutionally entitled to an attorney, whereas the vast majority of civil forfeitures never even reach a public hearing, and can occur without a conviction. In the rare civil forfeiture cases that receive a hearing, attorneys are not provided to property owners, though our Civil Justice Practice represents BDS clients throughout the process. The differences in these procedures are critical, as is the absence of meaningful oversight or accountability in law enforcement practices.

Every year, the City of New York collects millions of dollars in revenue from civil forfeiture initiated by the New York Police Department (NYPD).<sup>1</sup> Items that are most commonly seized by the NYPD include cash, motor vehicles, computers, and smartphones. This is doubtlessly a very lucrative source of income for the NYPD and New York City. However, this procedure encourages “policing-for-profit,” reinforces community distrust of the police, and disproportionately harms impoverished communities and people of color.

According to an analysis of FBI data by the Washington Post, “law enforcement officers took more stuff than burglars did [in 2014].”<sup>2</sup>

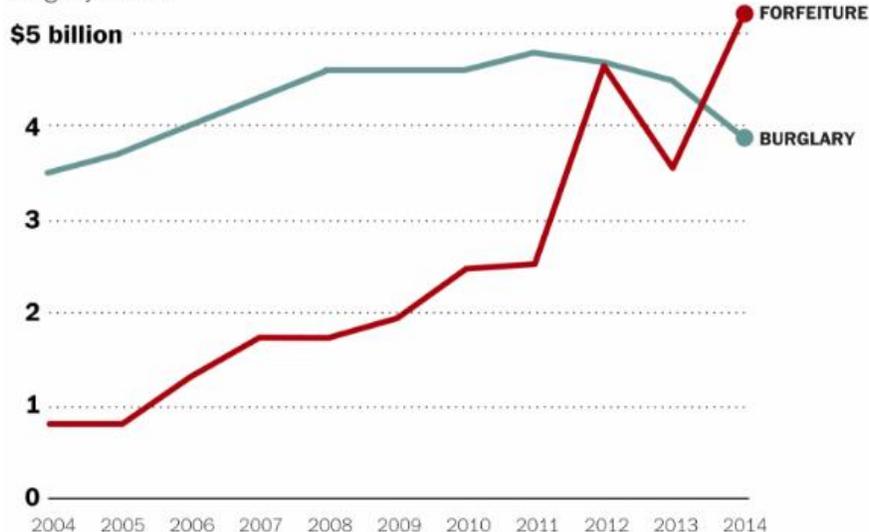
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<sup>1</sup> NOVEMBER 2015 FINANCIAL PLAN - Revenue 2016 -2019 (Office of Mgmt. & Budget 2015).

<sup>2</sup> <https://www.washingtonpost.com/news/wonk/wp/2015/11/23/cops-took-more-stuff-from-people-than-burglars-did-last-year/>

## Asset forfeitures surpass burglaries

Total annual dollar value of assets seized by federal law enforcement and burglary losses



WAP0.ST/WONKBLOG

Source: Institute for Justice, FBI Crime Reports

Forfeiture actions are regulated under New York State’s Civil Practice Law and Rules §1311.<sup>3</sup> They were allegedly designed to “take the profit out of crime”<sup>4</sup> and cripple large-scale criminal enterprises by allowing the government to recover property which constitutes the “proceeds of a crime” or that is an “instrumentality of a crime.” Regardless of the underlying purpose, the statute explicitly provides authority for civil forfeiture actions to be commenced against criminal defendants as well as those not charged with a crime. As a result, the NYPD often seeks forfeiture even where the District Attorney has declined to bring charges. In the rare cases challenging a forfeiture action—often, those cases in which an individual cannot afford to pay to get their own property back—New Yorkers are further hampered by the statute: Rather than requiring proof beyond a reasonable doubt, as is the case in criminal court, law enforcement must only meet the much lower ‘preponderance of the evidence’ standard to acquire property.

### *Seizure and Forfeiture in Practice*

As soon as property has been seized, the NYPD civil forfeiture unit is supposed to inform the property owner that they have filed or soon will file a forfeiture action in state supreme court, though this often does not occur. Instead, property owners are given a voucher and, for car seizures, a Krimstock form, with no explanation of what either mean. Months later, they might get a settlement offer in the mail. Either way, the NYPD typically does not wait for a criminal

<sup>3</sup> N.Y. Civil Practice Law and Rules §1311 (McKinney 2010)

<sup>4</sup> Kelly, James F. (2012) "CPLR 13-A: A District Attorney May Attach the Personal Assets of a Defendant, Prior to Conviction, Without Establishing that the Attached Assets Are the Proceeds of a Crime," St. John's Law Review: Vol. 61: Iss. 1, Article 11.

conviction relating to any underlying charges. One repercussion of this practice is that criminal defendants are often unable to testify in the related civil forfeiture proceeding, as any testimony can be used against them in a criminal proceeding. A refusal to testify can lead to a negative inference against the defendant property owner. This puts a defendant in the dangerous position of either exercising their right to remain silent and potentially losing their property or testifying in the civil case and allowing the District Attorney to use their statements against them in the criminal case.

It is important to note that innocence is no guarantee that property will be returned to its owner. An organization that relies on forfeiture proceeds has little incentive to return property for free. We often see cases that result in dismissals of all criminal charges or in a mere non-criminal violation where the NYPD still pursues forfeiture unless the client will pay a settlement fee of anywhere between \$500 and \$3000. In addition, many clients do not respond to a civil forfeiture summons or do not understand that they must affirmatively demand release of the property. In such scenarios, the property will be marked abandoned and, if it is not cash, liquidated.

Where forfeiture is not related to an ongoing criminal matter, it can be extremely difficult for the property owner to obtain information about why their property is being held or what accusations are being made due to the lack of discovery from the criminal case. Instead, they are forced to pay and settle the case or wait until the civil forfeiture lawsuit has been commenced to be informed of why the NYPD has been retaining their property. Many do not have the option to wait, such as those who need their car or laptop for work or those who need their cash to pay rent. Even where they are offering settlement, the NYPD is under no obligation to release information about the underlying allegations, their evidence, or the reasons for seeking forfeiture. This lack of basic transparency can make it challenging for an attorney to advise clients in these situations and extremely difficult for an innocent owner to decide what to do. In practice, most defendants, even those claiming innocence, will agree to pay whatever they can afford if a settlement is offered.

### **Lack of Oversight & Due Process**

In January of 2015, BDS submitted a Freedom of Information Law request to the NYPD seeking data on civil forfeiture proceedings against cars. The response, while incomplete, revealed that 2,404 cars were seized under civil forfeiture in 2014 and only 15 such seizures were subject to so-called Krimstock Hearings. These hearings, held by Office of Administrative Trials and Hearings, are New Yorkers' only opportunity for independent review of car seizures, and all owners are entitled to them. Yet few can actually exercise the right in this way for the aforementioned reasons: statements can be used against them in their criminal cases, and many cannot wait so long. While our FOIL only pertained to car seizures, we believe that a similar lack of oversight and due process afflicts the entire system of civil forfeiture.

## **Experiences of BDS Clients**

### ***Example #1 – Property with no nexus to alleged offense***

The first example involves the seizure of a car that was not in use, and not even in our client's possession, at the time of arrest. Our client was a passenger in a friend's car when it was stopped because an officer alleged the driver had two earpieces in his ears while driving. The stop resulted in a search and our client was charged with sale and possession of marijuana. That car was seized during the arrest, but the property collection did not stop there.

At the time of arrest, the NYPD asked if our client owned a car. They took our client's keys and wallet. They drove nearly four miles from the site of arrest to our client's house, knocked on the door, told his younger brother that they had received a phone call that the car was blocking the driveway and seized and held that car, as well. At the station, our client was told that if he did not cooperate with their investigation of the drugs found in the first car, he would not get his own car back.

Due process gave our client the right to a "prompt" hearing, called a Krimstock hearing, for the car's return during the pendency of the criminal case and any civil case. Indeed, shortly after his arrest, the NYPD informed our client of this right to a Krimstock hearing and explained they would settle the case for \$1,000 and a release from liability. Urgently needing his car to commute to and from his job on Long Island but unable to afford the steep settlement fee, our client requested the hearing. However, his hearing was postponed indefinitely when the Assistant District Attorney (ADA) in the criminal case secured an ex parte retention order for the vehicle, effectively ensuring our client could not take advantage of his due process rights to a prompt post-deprivation hearing.

Six weeks after the arrest, the ADA released the car, demonstrating that, in fact, they did not need the car for evidence, and our client was once again permitted to pursue its retrieval with the NYPD. Yet despite the absence of a criminal case related to the car, the NYPD continued its civil forfeiture case. The NYPD was unwilling to provide any basis for their retention of his car or explain how this car was connected to an arrest that occurred in another car miles away. Our client could have requested a new Krimstock hearing, waited up to 20 days for it to be scheduled, and even if it were successful, he would *still* be facing a civil forfeiture case in state court that could take months to resolve. In the end, he paid a \$500 settlement to get his car back.

### ***Example #2 – The Non-Criminal Property Owner***

Even when the NYPD and prosecutors agree that no criminal activity occurred and the property should be returned, our clients face the daunting challenge of navigating a system designed to retain property, not to return it.

If criminal charges are dismissed and the DA does not need the property, the owner must still request and receive a written release from the DA before the NYPD will release it. The process of requesting and obtaining this release can take weeks and requires property owners to present themselves in person at criminal court, request the release, and wait to be notified. The assigned

DA does not prioritize a case that has ended and has no motivation to assist in the matter. Once the release is acquired, the property owner then has to navigate the NYPD's own procedures.

We were able to help one of our clients get his car back without paying a settlement fee, but even with an acknowledgment from the DA and NYPD that he should get his car it took more than two weeks to physically acquire the car.

This client was extremely anxious to get his car back, as he relied on it on to drive a sick relative to regular doctors' appointments, and because of this obligation he had been paying to rent a car while fighting to get back his own. In the end, the client had spent nearly as much on rental cars as it cost him to buy his car in the first place (\$1,000). Despite his frustration with the process, the immense gratitude he had for our office was heartbreaking knowing that he was thanking us for the return of his own property that was taken without justification and returned without compensation.

### **Example #3 – Lost Car**

The lack of transparency and accountability in the civil forfeiture process allows the NYPD to lose our clients' cars with little recourse. One client's car was seized at arrest, and officers handed him a voucher with a number on it that was supposed to correspond to his car and potential forfeiture case. The client later took a plea requiring him to install a device on that same car. When he attempted to get his car back in order to comply with his plea, using the voucher number provided to him, he discovered that his voucher number corresponded to a different car and a different name. Both the District Attorney's office and the NYPD have searched their databases for his car, only to find nothing. The client was then violated for not complying with the requirement to install a device on a car he did not have. He faced jail time for this violation, until several attorneys from BDS explained the situation to the criminal court judge.

The car remains unaccounted for, and neither the NYPD nor the DA's office has offered any recourse for our client.

### ***Example #4 – Cash Forfeiture***

These difficulties and delays are not unique to vehicle forfeiture. We see similar problems with cash forfeiture as well.

For example, a client was arrested with a co-defendant for possession of marijuana. At the time of arrest our client had her phone and about \$500 cash on her; the co-defendant had no money. When our client was first brought to the precinct, she saw that the phone and cash were vouchered under her name. After our client was offered and accepted an Adjournment in Contemplation of Dismissal (ACD), she began the process of retrieving her phone and cash, only to find that the cash was suddenly vouchered under her co-defendant's name, whose case was still open. Two months later, the ADA on her case had yet to respond to requests to release her phone. As for the cash, because it was no longer in her name she faced an uphill battle to get it returned. An NYPD Sergeant explained that our client had to secure another ADA release in her co-defendant's name, get a notarized letter from the co-defendant relinquishing any claim to the

cash, and then make a demand for the cash at the NYPD property clerk window. If she were successful in all this the NYPD would *begin* an investigation to determine if the cash can be released to her. More than three months later, the client finally was able to get her cash back, but not her phone.

This example illustrates what can happen outside of formal civil forfeiture proceedings. If our client had been unsuccessful in jumping through all these hoops and could not make a claim for the property within 120 days of the termination of her criminal proceeding, it would have been forfeited automatically without the city needing to file for forfeiture. **A very real and perverse incentive thus exists to delay the return of property in such cases.**

### **Civil Forfeiture as Extortion of the Poor**

Finally, although the civil forfeiture process begins with initial contact with the criminal justice system, there is no right to counsel in any related civil proceeding. The public defenders who assist in protecting a client's due process rights and ensuring they are treated as innocent until proven guilty do not have the same mandate with respect to a client's property. BDS is one of only a few comprehensive indigent legal service providers in the State.

The forfeiture statute is being used as just another threat the NYPD can hold over the heads of impoverished communities and the standard practice of extorting money from even innocent owners is clearly outside of the scope of what the original drafters intended.

### **Int. 1000 & the Need for Transparency**

While fundamental reforms or abolishment of civil forfeiture must be our ultimate goal, establishing transparency in the practice would be an important step forward. With public reporting on the value of cash and property seized, the results of such seizures, and the precincts who are responsible, this legislation shines a spotlight on a notorious and opaque practice. BDS thanks Councilmember Ritchie Torres for his leadership on this issue. We strongly support the bill and urge its swift enactment.

We also hope the City of New York will go further in protecting the rights of New Yorkers. Eleven states have already passed reforms requiring a criminal conviction as a precondition for most or all forfeiture cases.<sup>5</sup> Most recently, California passed legislation in August requiring a criminal conviction precede any seizure worth less than \$40,000.<sup>6</sup> Both New York City and State must finally recognize civil forfeiture as extortion of the poor – an extrajudicial punishment that can and does destroy lives. The Governor and the Legislature should either abolish the practice or follow the lead of other states and prohibit the vast majority of civil forfeitures until and unless a criminal conviction is secured against the property owner. In the meantime, the New York Police Department and local District Attorneys should end the seizure and withholding of cash and property of New Yorkers who are either found or presumed innocent. This change is a

<sup>5</sup> <http://endforfeiture.com/institute-for-justice-applauds-nebraskas-sweeping-forfeiture-reforms/>

<sup>6</sup> <http://www.latimes.com/politics/la-pol-sac-deal-reached-police-seizures-20160804-snap-story.html>

prerequisite to improving the legitimacy of police and prosecutors in heavily-policed neighborhoods.

### **CPR AND AED CERTIFICATION FOR POLICE OFFICERS**

BDS supports Int. No. 83, which would require the NYPD to report on the number of department employees certified in cardiopulmonary resuscitation and use of automated external defibrillators. We also support Res. No. 1181, which calls upon the New York State Legislature to pass, and the Governor to sign, Briana's Law, requiring all police officers to be retrained in cardiopulmonary resuscitation every two years.

### **PUBLICATION OF THE NYPD PATROL GUIDE**

BDS supports Int. No. 728-A, which would require the publication of the NYPD patrol guide on the Department's website. It is wholly unacceptable that the meager accountability standards that exist for police officers would be kept secret for those they are sworn to protect.

Thank you for considering my comments. BDS looks forward to continuing to work with the Council to make our criminal justice system more fair, effective and humane.