
YALE LAW & POLICY REVIEW

Duress, Coercion, and Intimidation on the Highway: A Call to Ban Roadside Waivers in Civil Forfeiture

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Civil forfeiture is widely criticized for incentivizing law enforcement to forfeit property from law-abiding owners for agency profit. This Feature examines a nefarious and underdiscussed police tactic—roadside waivers—that is used to obtain consent from motorists during highway traffic stops to permanently seize their cash and waive all hearing rights to challenge the forfeiture of their property.

On interstate highways, police pull over unsuspecting motorists for minor traffic violations and then prolong traffic stops in search of drugs and cash. When police find cash, but not drugs, they falsely threaten motorists with money-laundering charges. Police then confront motorists with pre-printed waiver forms that permanently forfeit their cash and waive their notice and hearing rights. Motorists are isolated on the side of the road, have no access to legal help, and are understandably intimidated by the threat of criminal charges. They are coerced into signing roadside waivers on the promise that by doing so, they can go on their way without any criminal charges. Under such duress, innocent motorists surrender their money and their rights.

The police in Tenaha, Texas, were infamous for their aggressive use of roadside waivers, and their tactics have served as a blueprint for similar abuses across the country. This Feature recounts the stories of motorists stopped in diverse locations to show that state and local police tactics are strikingly similar. Police use intimidation, isolation, false threats of crimes,

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and promises of leniency to induce motorists to sign over their property and their rights on interstate highways.

These abusive police tactics have led five states to enact legislation prohibiting roadside waivers, and other states have similar legislation pending. This Feature calls for a universal legislative ban that prohibits all law-enforcement officers—police and prosecutors—from inducing a person to waive their property or hearing rights before (and unless) a civil forfeiture action is filed. Such legislation should declare void and unenforceable any waiver document that is executed before a civil forfeiture action is filed. Without a comprehensive ban, police will continue to use roadside waivers to forfeit lawful cash while evading procedural reforms enacted by thirty-seven states over the past decade to protect innocent property owners.

This Feature also urges judges to declare roadside waivers per se unenforceable when they are challenged in court. Roadside waivers fail under well-established contract principles and constitutional demands. Roadside waivers lack consideration and are the product of intimidation, coercion, and duress. They violate public policy and infringe upon Fourth Amendment and due-process concerns. And, in some states, roadside waivers deprive property owners of jury rights. The invidious nature of roadside waivers and the intimidating circumstances under which they are executed demand blanket unenforceability without the need for individual fact finding.

Finally, this Feature contends that prosecutors violate their special duty to facilitate procedural justice when they draft, accept, or process roadside waivers. The American Bar Association's Standing Committee on Ethics and Professional Responsibility has already cautioned prosecutors about their ethical duties when entering into plea bargains with unrepresented persons in misdemeanor cases, and this guidance should provide clear warning that prosecutors violate their ethical responsibilities when they deprive innocent motorists of their property and hearing rights through roadside waivers.

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INTRODUCTION

Civil forfeiture is unknown to most Americans unless their property has become ensnared in its web. Under state and federal civil forfeiture laws, police seize and take ownership of cash, cars, and homes they suspect are connected to criminal activity without ever having to charge or convict the property owner of a crime.¹ Police have a strong incentive to seize and forfeit as much property as possible because forfeiture revenues flow mostly to law-enforcement agencies, whose budgets have become increasingly dependent on this source of funding.²

Even as states enact civil forfeiture reforms to prevent abuse of the system, police use a nefarious tactic known as roadside waivers to permanently seize cash during highway traffic stops. On interstate highways, police stop unsuspecting motorists for minor traffic infractions, then clandestinely search for cash under the guise of investigating drug activity. If police find cash, they threaten innocent motorists with false money-laundering charges even though they have not found any drugs. Under threat of criminal charges, police confront motorists with a standardized waiver form through which they extract *consent* to allow law

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1. See *Leonard v. Texas*, 580 U.S. 1178, 1179 (2017) (Thomas, J., statement respecting the denial of certiorari) (“[Civil forfeitures are] *in rem* proceedings [that] often enable the government to seize the property without any predeprivation judicial process and to obtain forfeiture of the property even when the owner is personally innocent”); see also Lisa Knepper, Jennifer McDonald, Kathy Sanchez & Elyse Smith Pohl, *Policing for Profit: The Abuse of Civil Asset Forfeiture*, INST. FOR JUST. 19 (3d ed. 2020), <https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf> [<https://perma.cc/49CJ-Z9X3>] (finding that, in 2018, based upon data available from fifteen states, currency made up 68% of forfeited property, and vehicles made up an additional 16%).
 2. See Knepper et al., *supra* note 1, at 15 (finding that, in 2018 alone, forty-two states, the District of Columbia, and the federal government forfeited over \$3 billion). Many states, such as Pennsylvania, direct all or most forfeiture revenues to law-enforcement budgets. *Id.* at 34; see also *Culley v. Marshall*, 601 U.S. 377, 396 (2024) (Gorsuch, J., concurring) (“Law enforcement agencies have become increasingly dependent on the money they raise from civil forfeitures.”).

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enforcement to permanently retain their cash and to waive all hearing rights afforded by governing law.³

Motorists sign waivers on the shoulders of busy highways under blatantly coercive conditions and without any access to legal help or court oversight. In exchange for signing a waiver, police allow motorists to go on their way free of any criminal charges. Many motorists do not grasp the rights they relinquish by signing these waivers; they know only that by signing, they will free themselves from police detention and a nightmarish traffic stop. Prosecutors then administer these *consensual* cash forfeitures and add the money to their agency's budget with full knowledge of the coercive circumstances under which the legal tender was obtained. This is what civil forfeiture looks like on interstate highways when law enforcement's overarching objective is profit, rather than public safety.

The systematic seizure and forfeiture of property—mostly cash—from law-abiding citizens has been called “stategraft.”⁴ The term describes the practice of state agents transferring property from residents to the state in violation of the state's own laws and basic civil rights.⁵ Roadside waivers are a classic example of stategraft. Highway traffic stops designed to permanently seize cash are significant revenue-generating tools,⁶ and the overlay of supposedly consensual waivers disguises the true nature of cash forfeitures. These written waivers permanently seize an owner's lawful money, while foreclosing the exercise of statutory and constitutional rights and evading judicial scrutiny.

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3. See Brief of Amicus Curiae Americans for Forfeiture Reform in Support of Claimant-Appellee-Cross-Appellant Straughn Gorman at 29, *United States v. Gorman*, 859 F.3d 706 (9th Cir. 2017), 2016 WL 2812903, at *29 [hereinafter AFR Amicus Brief] (“John Yoder and Brad Cates, former directors of the DOJ's Asset Forfeiture Office, have declared: “Today, the old speed traps have all too often been replaced by forfeiture traps, where local police stop cars and seize cash and property to pay for local law enforcement efforts.””).
 4. *E.g.*, Bernadette Atuahene, *A Theory of Stategraft*, 98 N.Y.U. L. REV. 1, 2-3 (2023).
 5. *Id.*
 6. See Farhang Heydari, *The Invisible Driver of Policing*, 76 STAN. L. REV. 1, 18-19 (2024) (“Civil forfeiture laws . . . create additional financial incentives for police to conduct traffic stops. This revenue can drive police practices and is difficult to give up once relied upon.” (footnote omitted)).

A legal waiver is the “intentional relinquishment or abandonment of a known right.”⁷ The term “roadside waiver” is a shorthand descriptor of standardized forms that police bring to highway traffic stops aimed at obtaining consent to permanently seize cash from motorists.⁸ The police coerce motorists on the highway to sign these roadside documents under the false threat of criminal charges, even when they find no evidence of a crime.⁹ By foreclosing all hearing rights, police use these waivers to maximize profit for their agency budgets while evading transparency and accountability. Once motorists sign these waivers, police simply let them go on their way.

Roadside waivers are emblematic of modern civil forfeiture abuses. In recent years, a demarcation has emerged between historic civil forfeiture—aimed at curbing maritime offenses in which shipowners were outside the jurisdiction of domestic courts—and contemporary civil forfeiture, which targets innocent Americans in their homes and while traveling on interstate highways.¹⁰ The expansion of civil forfeiture laws in the 1970s and 1980s to

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7. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938); *In re Google Tech. Holdings LLC*, 980 F.3d 858, 862 (Fed. Cir. 2020); see also Note, *Constitutional Waivers by States and Criminal Defendants*, 134 HARV. L. REV. 2552, 2552 (2021) (“[A] valid waiver is the ‘intentional relinquishment or abandonment of a known right or privilege,’ or to use the Court’s subsequent rephrasing, the waiver must be ‘voluntary [and] knowing.’” (second alteration in original) (footnote omitted)).
 8. While the term *roadside waiver* is commonly used to describe these forms, they may be known in some states under different names. See, e.g., *In re \$300,000 in U.S. Currency*, 309 A.3d 1117, 1123 (Pa. Commw. Ct. 2024) (referring to roadside waivers as “disclaimer and acknowledgment” forms).
 9. See Jasmin Chigbrow, *Police or Pirates? Reforming Washington’s Civil Asset Forfeiture System*, 96 WASH. L. REV. 1147, 1160-61 (2021) (“[L]aw enforcement officers can persuade property owners to ‘consensually forfeit’ their property and release all ownership interest to the agency . . . Critics have accused police of using high pressure, coercive tactics to bully motorists into signing these waivers by threatening worse repercussions if they do not.”).
 10. See *Culley v. Marshall*, 601 U.S. 377, 399 (2024) (Gorsuch, J., concurring) (tracing historical use of civil forfeiture, including its application to admiralty violations where it was the only means to punish wrongdoers); *Leonard v. Texas*, 580 U.S. 1178, 1181 (2017) (Thomas, J., statement respecting the denial of certiorari) (expressing concern that current civil-forfeiture practices may not comport with the historical justification for civil forfeiture).

combat illegal drugs unleashed a war on property owners.¹¹ The very public officials entrusted to decide whether to seek civil forfeiture benefit from the property they seize, using their seizures for agency gain.

Unlike criminal forfeiture, civil forfeiture laws provide weak safeguards to prevent the erroneous deprivation of property.¹² There is no right to counsel for property owners who cannot afford a lawyer, and so they have little or no access to legal help.¹³ Even property owners able to afford

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11. See Shaila Dewan, *Police Use Department Wish List When Deciding Which Assets to Seize*, N.Y. TIMES (Nov. 9, 2014), <https://www.nytimes.com/2014/11/10/us/police-use-department-wish-list-when-deciding-which-assets-to-seize.html> [<https://perma.cc/B9F6-VKN5>] (“[Civil forfeiture], expanded during the war on drugs in the 1980s, has become a staple of law enforcement agencies because it helps finance their work.”). Despite its origin in the war on drugs, “forfeiture machine revenue” is often spent on law-enforcement salaries rather than drug prevention programs. See, e.g., *Philadelphia’s Civil Forfeiture Machine Facts and Figures*, INST. FOR JUST., <https://ij.org/philadelphia-facts-and-figures> [<https://perma.cc/PM67-WQXX>] (reporting that, between 2002 and 2014, Philadelphia prosecutors forfeited 1,248 homes, 3,531 vehicles, and over \$50 million in cash yet spent none of the money on “community-based drug programs”).
 12. See *Civil Forfeiture Is Frustrating, Corrupt and Unfair: What Legislators Can Do*, INST. FOR JUST. 2 (2003) https://ij.org/wp-content/uploads/2023/03/03-06-2023-Natl-forfeiture-one-pager_final.pdf [<https://perma.cc/9NUZ-N95F>] (“In the three states that track whether forfeitures were processed using civil or criminal procedures, between 71% and 93% of forfeitures were processed using civil procedures. These procedures offer owners far less protection from unjust forfeitures.”).
 13. Federal law provides for counsel for indigent property owners whose primary residence is the subject of a civil forfeiture proceeding. 18 U.S.C. § 983(b)(2)(A) (2018). No state, however, has provided for a right to counsel in a state civil-forfeiture proceeding for an indigent property owner. The lack of counsel for indigent property owners has a disproportionate impact upon minorities. See Bobbi Taylor, *Legalized Theft: An Analysis of Civil Asset Forfeiture and Reform in New Jersey*, 53 SETON HALL L. REV. 1413, 1420 (2023) (“Minority populations are more likely to be negatively affected by forfeitures. . . . The American Civil Liberties Union (ACLU) of California reports that half of the seizures involve people with ‘Latino surnames,’ and 70 percent of the forfeiture proceeds in 2015 went to agencies where more than 70 percent of the residents are people of color. In Alabama, 64 percent of civil asset forfeitures were assessed against African Americans, who make up only 27 percent of the population.” (footnote omitted)); see also Lauren McLane, *Confronting Racist Authority: The Vertical Narrowing of Whren v. United*

counsel find that the cost of legal help often exceeds the value of their seized property. Complex civil forfeiture laws strongly favor the government,¹⁴ and default rates are shockingly high as innocent owners often give up and walk away, leaving police seizures vastly untested in the courts.¹⁵

This modern use of civil forfeiture has led to a growing acknowledgment that civil forfeiture has strayed far from its original purpose. In *Leonard v. Texas*, Justice Thomas questioned “whether modern civil forfeiture statutes can be squared with the Due Process Clause and our Nation’s history.”¹⁶ And more recently, in *Culley v. Marshall*, Justices Gorsuch and Sotomayor both underscored the differences between the early use of civil forfeiture to combat maritime offenses by foreign ship owners and modern seizures of private property from owners who are unconnected to criminal wrongdoing.¹⁷

While journalists, advocates, and scholars have brought civil forfeiture abuses out of the shadows, roadside waivers remain largely hidden and demand special attention. These preprinted forms reveal how aggressive modern civil forfeiture has become in the search for profit. This Feature is the first to closely examine roadside waivers that are used at highway traffic stops. Although media outlets have reported for more than a decade that

States, 15 GEO. J.L. & MOD. CRITICAL RACE PERSPS. 71, 103 (2023) (“Even if, at the end of the stop, the Black or Brown motorist is permitted to leave without even so much as a traffic ticket, the invasion to their privacy and sense of security was arbitrary and extreme.”).

14. Knepper et al., *supra* note 1, at 37 (noting that in many states, the government’s burden of proof is low and property owners must prove their innocence).
15. *See Forfeiting Your Rights: How Alabama’s Profit-Driven Civil Asset Forfeiture Scheme Undercuts Due Process and Property Rights*, S. POVERTY L. CTR. 5 (2018), https://www.splcenter.org/sites/default/files/com_civil_asset_forfeiture_report_finalnocrops.pdf [<https://perma.cc/DLF7-T6FA>] (finding in a study of Alabama civil forfeiture cases that “52 percent of disposed cases were default judgments, meaning the seizures were never challenged in court by the individuals from whom assets were taken”).
16. *Leonard v. Texas*, 580 U.S. 1178, 1178 (2017) (Thomas, J., statement respecting the denial of certiorari).
17. 601 U.S. 377, 393-403 (2024) (Gorsuch, J., concurring); *id.* at 403-15 (Sotomayor, J., dissenting). Justice Gorsuch wrote a concurring opinion, with which Justice Thomas joined, and Justice Sotomayor wrote a dissenting opinion, with which Justices Kagan and Jackson joined.

police use pre-printed roadside waivers at highway traffic stops,¹⁸ there has been little judicial scrutiny of this practice. As a result, the use of roadside waivers continues unabated, threatening any motorist who ventures out on interstate highways.

In this Feature, I examine roadside waivers to better understand how police come prepared to highway traffic stops with legal documents designed to permanently forfeit cash from innocent owners and avoid court oversight. I use the term *roadside waivers* to describe standardized forms that are prepared in advance and then executed on the side of busy highways.

When police and prosecutors possess hard evidence that a crime has been committed, they should file proper charges and seek public accountability. Police should not exchange this official obligation for cash.¹⁹ On the other hand, when threatened criminal charges have no merit, the police's use of roadside waivers amounts to extortion. Roadside waivers enable police to take cash from innocent motorists who forfeit their basic rights without knowing what they are signing away. Even when motorists understand the rights they are forfeiting, they are coerced into signing on the spot without any opportunity to consult an attorney or to access materials that might explain their options. Roadside waivers offer little, if any, transparency while depriving property owners of essential due-process protections on the side of the road.

In Part I of this Feature, I review several highway traffic stops involving roadside waivers. In Part II, I explore the economic and psychological reasons why innocent property owners may sign roadside waivers when they have done nothing wrong. In Part III, I review legislation enacted by several states prohibiting police from using roadside waivers, and I propose a universal legislative ban that includes several essential elements. I also

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18. See, e.g., Sarah Stillman, *Taken*, NEW YORKER (Aug. 5, 2013), <https://www.newyorker.com/magazine/2013/08/12/taken> [<https://perma.cc/YF9P-5M28>]; Anna Lee, Nathaniel Cary & Mike Ellis, *Taken: How Police Departments Make Millions by Seizing Property*, GREENVILLE NEWS, <https://www.greenvilleonline.com/in-depth/news/taken/2019/01/27/civil-forfeiture-south-carolina-police-property-seizures-taken-exclusive-investigation/2457838002> [<https://perma.cc/632F-2PXV>] (Jan. 17, 2020).
19. Civil forfeiture is often criticized on the basis that it “results in a distortion of law enforcement objectives . . . because it motivates law enforcement to focus on assets and their seizures (for financial reward) instead of targeting crime.” Michael Preciado & Bart J. Wilson, *The Welfare Effects of Civil Forfeiture*, 4 REV. BEHAV. ECON. 153, 161 (2017).

warn that forfeiture reforms enacted by a majority of states over the past decade are at risk without a universal legislative ban on roadside waivers.

In Part IV, I employ contract-law principles, including duress, intimidation, undue influence, and unconscionability, to argue that judges should declare roadside waivers null and void when they are challenged in court. I also contend that roadside waivers violate important constitutional rights, including Fourth Amendment rights and the right to a jury trial, which are guaranteed by many states in civil forfeiture cases. I also argue by analogy that roadside waivers must fail under the reasoning of Supreme Court precedent that has examined the legality of agreements to waive civil-rights actions in exchange for the dismissal of criminal charges.

Finally, in Part V, I contend that prosecutors, as ministers of justice, violate their ethical obligations through their complicity in the police's use of roadside waivers to evade the procedural rights of innocent property owners. I argue that it would be unethical for prosecutors to negotiate a plea bargain with an unrepresented accused using the same tactics that police use to obtain signed roadside waivers from motorists. As such, prosecutors are ethically required to reject these agreements.

I. LAW ENFORCEMENT'S USE OF ROADSIDE WAIVERS

More than a decade ago, the *New Yorker* magazine exposed a pattern of abuse in which police seized homes, cash, and cars from innocent owners without ever charging or convicting them of a crime.²⁰ In her widely read article, Sarah Stillman weaved together a tapestry of vignettes that highlighted different ways in which police and prosecutors sought to forfeit private property from innocent residents.²¹ The lead vignette chronicled aggressive highway traffic stops in Tenaha, Texas, where police seized cash from unsuspecting motorists.²² Because Tenaha's roadside waivers have since become a blueprint for police departments across the country, I first revisit the use of roadside waivers there.

A. Case Study: Tenaha's Roadside Waivers

In 2007, Jennifer Boatright, a Latina waitress, was stopped by police while driving near Tenaha with her boyfriend, Ron Henderson, and her two

20. Stillman, *supra* note 18.

21. *Id.*

22. *Id.*

young sons.²³ Boatright and Henderson planned to buy a used car and carried approximately \$6,000 in cash.²⁴ The police stopped their car for allegedly driving in the left lane without passing another vehicle.²⁵ Police requested consent to search the vehicle, and Boatright and Henderson agreed.²⁶ During the search, police found no drugs, but they did find a glass pipe and the cash.²⁷ Police then threatened the couple that “they could face felony charges for money laundering and child endangerment,” they could go to jail, and their children could be placed in state custody.²⁸ But the police offered them a “get out of jail” card. If Boatright and Henderson signed a pre-printed waiver form authorizing the forfeiture of their cash to the City of Tenaha, they could “get back on the road.”²⁹

Frightened by these threats, especially as to the custody of their children, Boatright and Henderson signed the roadside waiver and surrendered their cash to the police. As promised, the police then allowed them to leave with their children, free from criminal charges.³⁰ Jennifer Boatright later described her reasons for signing the waiver: “It was give them the money or they were taking our kids They suggested that we never bring it up again. We figured we better give them our cash and get the hell out of there.”³¹

The American Civil Liberties Union (the “ACLU”) joined a class action against Shelby County and Tenaha authorities challenging the actions of Tenaha’s police and prosecutors.³² The suit accused the officials of

23. *Id.*

24. *Id.*

25. *Id.*; see also Plaintiffs’ Third Amended Complaint at 11-12, *Morrow v. Washington*, No. 08-CV-288 (E.D. Tex. Feb. 17, 2010) [hereinafter *Morrow Complaint*].

26. Stillman, *supra* note 18.

27. *Id.*

28. *Id.*; see also *Morrow Complaint*, *supra* note 25, at 12.

29. Stillman, *supra* note 18.

30. *Morrow Complaint*, *supra* note 25, at 12.

31. Howard Witt, *Highway Robbery? Texas Police Seize Black Motorists’ Cash, Cars*, CHI. TRIB., <https://www.chicagotribune.com/2009/03/10/highway-robbery-texas-police-seize-black-motorists-cash-cars> [https://perma.cc/2486-8N8W] (Aug. 21, 2019).

32. The ACLU joined the case in July 2012 on behalf of several individuals affected by the actions of Tenaha police. See *Court Cases: Morrow v. City of Tenaha, et*

operating an illegal practice of “stopping, detaining, searching, and often seizing property from” citizens without “any legitimate law enforcement purpose but [rather] to enrich their offices and perhaps themselves.”³³ According to ACLU estimates, police in Tenaha seized millions of dollars involving at least 140 cases.³⁴ Police stopped hundreds of motorists, disproportionately Black and Latino people, and targeted vehicles with out-of-state license plates.³⁵ Police detained and interrogated motorists to determine if they possessed cash or other valuable property.³⁶ Then, without evidence of drug activity, police took cash under threat that, if a motorist did not consent to the seizure, they would be subject to criminal charges.³⁷ In the first six months of implementing a drug-interdiction program, Tenaha brought in \$1.3 million in seized profits by targeting mostly out-of-state vehicles.³⁸ The Tenaha police became infamous for engaging in forfeiture abuse by repeatedly targeting motorists traveling on interstate highways and, whenever possible, using roadside waivers to permanently take their cash and extinguish their hearing rights. The stories of several other motorists who were class members in the ACLU’s case illustrate the depth of the problem.

al., ACLU, <https://www.aclu.org/cases/morrow-v-city-tenaha-et-al> [<https://perma.cc/PXR8-9AP4>] (Mar. 5, 2013).

33. *Morrow* Complaint, *supra* note 25, at 2.
34. Press Release, ACLU, ACLU Announces Settlement in “Highway Robbery” Cases in Texas (Aug. 3, 2012) [hereinafter ACLU Press Release], <https://www.aclu.org/press-releases/aclu-announces-settlement-highway-robbery-cases-texas> [<https://perma.cc/PXR8-9AP4>].
35. *Id.*
36. *Id.*
37. *Id.* The federal government has long urged local police to use pretextual traffic stops as a drug-interdiction tactic. The federal government has trained state and local police to conduct traffic stops as a pretext for various law-enforcement goals. For example, Operation Pipeline was a federal Drug Enforcement Administration (“DEA”) initiative launched in 1984 to teach state police how to use traffic stops in search of drugs. The program trained police to utilize various tactics to gain consent to search a vehicle and to spot drug traffickers. See Farhang Heydari, *Rethinking Federal Inducement of Pretext Stops*, 2024 WIS. L. REV. 181, 212-27 (tracing the history of drug enforcement on the highways).
38. *Id.* at 227.

B. Case Studies: Other Motorists and the Tenaha Police

James Morrow, the named Plaintiff in the ACLU's class, was a Black motorist stopped by the Tenaha police.³⁹ Police interrogated Morrow at a traffic stop and brought a drug-sniffing dog to his vehicle.⁴⁰ During the exchange, Morrow volunteered that he was carrying approximately \$3,900 on his way to visit a cousin in Houston.⁴¹ Based upon this information and an alleged affirmative alert from a drug-sniffing dog, the police searched Morrow's car.⁴² They found neither drugs nor evidence of criminal activity.⁴³ Nonetheless, police seized \$3,969 and two cell phones from Morrow and arrested him on the claim that he was engaged in "money laundering."⁴⁴ Police placed Morrow in jail overnight and threatened to prosecute him for this offense unless he agreed to permanently turn over his \$3,969.⁴⁵ In response to this pressure, Morrow agreed to forfeit his cash.⁴⁶ Police then released him from detention, and any charges against him were dismissed.⁴⁷ According to the court complaint later filed against Tenaha officials, police warned Morrow "not to hire a lawyer or try to get his money back."⁴⁸ Morrow later said of the experience, "I was victim of truly unjust law enforcement practices and just couldn't walk away . . . [I couldn't] believe that this went on in modern times."⁴⁹

Stephen Stuart Watson and Amanee Busby were Black passengers in a car stopped on Highway 59 in Texas, where they were detained and

39. *See Morrow Complaint, supra* note 25, at 5-6.

40. *Id.* at 5.

41. *Id.*

42. *Morrow v. City of Tenaha, et al. - Plaintiff Biographies*, ACLU (Aug. 14, 2012) [hereinafter *Plaintiff Biographies*], <https://www.aclu.org/documents/morrow-v-city-tenaha-et-al-plaintiff-biographies> [<https://perma.cc/KZR7-6MU7>].

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Morrow Complaint, supra* note 25, at 6.

48. *Id.*

49. *Plaintiff Biographies, supra* note 42.

interrogated by the Tenaha police.⁵⁰ In response to questioning, the motorists explained that they were in the restaurant business, on vacation, and considering opening another restaurant.⁵¹ Police then asked to search the vehicle, and though the motorists refused, the police soon claimed that a drug-sniffing dog's "alert" gave them sufficient cause for a nonconsensual search.⁵² During their search, police found and seized \$50,000 in cash and threatened criminal prosecution for money laundering.⁵³ Watson and Busby were not charged with an offense, and, at considerable expense, they ultimately obtained the dismissal of a forfeiture proceeding brought against their cash.⁵⁴

Yuselff Dismukes, another Black motorist, was traveling on Highway 59 with several passengers near Tenaha when police stopped his vehicle.⁵⁵ Police interrogated Dismukes and his passengers about whether they were carrying cash, searched Dismukes's car, and found \$13,000, which they seized.⁵⁶ Police then charged Dismukes with money laundering, but after they failed to obtain an indictment, the charges were dismissed.⁵⁷

Linda Dorman and Marvin Pearson were Black motorists traveling on Highway 59 near Tenaha in 2007 when they were stopped and detained by police for a lengthy time without legal justification.⁵⁸ The traffic officer called in additional help and searched the vehicle in which Dorman and Pearson were traveling. Police found \$4,500, seized the cash, and arrested Dorman and Pearson while threatening them with criminal prosecution and imprisonment.⁵⁹ Under duress, Dorman and Pearson signed a "Waiver of Service" and an "Agreed Final Judgment of Forfeiture" form relinquishing

50. *See Morrow Complaint, supra* note 25, at 6.

51. *Id.* at 7.

52. *Id.*

53. *Id.* at 8.

54. *Id.*

55. *Id.*

56. *Id.* at 9.

57. *Id.*

58. *See Morrow Complaint, supra* note 25, at 10.

59. *Id.*

their right to the property.⁶⁰ Once signed, no criminal charges were filed against Dorman and Pearson.⁶¹

C. Highway Forfeiture Abuses Beyond Tenaha

On August 3, 2012, the ACLU announced that it had successfully settled its class action lawsuit against the responsible Tenaha officials,⁶² thereby halting many of these practices.⁶³ Tenaha's "abuse of civil asset forfeiture laws" however, was not unique.⁶⁴ These same police tactics reappeared on interstate highways in other states.

In modern civil forfeiture, interstate highways are fertile ground for the wrongful seizure of cash by police. Police in South Carolina and Illinois, for example, became notorious for extensive seizures of cash from innocent motorists. In 2019, the Greenville News in South Carolina conducted a three-year investigation of civil forfeiture takings on the state's highways. The newspaper exposed Operation Rolling Thunder, in which police stopped motorists and seized cash found in their possession.⁶⁵ The study

60. *Id.* at 10-11.

61. Greg Moses, *The Cash Cops of Tenaha*, COUNTERPUNCH (Oct. 19, 2009), <https://www.counterpunch.org/2009/10/19/the-cash-cops-of-tenaha> [<https://perma.cc/F2SS-H9GF>]; see also Lisa Sandberg, *Property Seized by E. Texas Police Called 'Highway Piracy,'* HOUS. CHRON. (Feb. 7, 2009), <https://www.chron.com/news/houston-texas/article/property-seized-by-e-texas-police-called-1732387.php> [<https://perma.cc/97J6-RJQL>] (explaining that Linda Dorman signed a roadside waiver after being presented with an ultimatum: waive your rights to your property or be criminally charged).

62. ACLU Press Release, *supra* note 34; see also *Plaintiff Biographies*, *supra* note 42.

63. The court settlement required that all stops be videotaped, that police officers state the reason for a roadside stop and the basis for suspecting criminal activity, and that motorists be advised orally and in writing that they may refuse a search; additionally, officials agreed not to use dogs when conducting traffic stops and that any property improperly taken from motorists be returned within thirty days. ACLU Press Release, *supra* note 34.

64. *Id.*

65. Nathaniel Cary, *Inside Look: How SC Cops Swarm I-85 and I-26, Looking for 'Bad Guys,'* GREENVILLE NEWS, <https://www.greenvilleonline.com/in-depth/news/2019/02/03/operation-rolling-thunder-sc-civil-forfeiture->

revealed that police did not arrest or charge motorists in 19% of the stops in which cash was seized, and of those criminally charged, another 18% of the motorists were not convicted.⁶⁶ These seizures had a disparate racial impact: the study showed that 65% of civil forfeiture victims were Black men, who comprised only 13% of the state's population.⁶⁷ Also deeply troubling is the fact that in 55% of the cases, police seized less than \$1,000. For many, these deprivations made it economically infeasible to hire a lawyer, and yet those without financial means to obtain legal help had no right to appointed counsel.⁶⁸

In Illinois, the LaSalle County State's Attorney Felony Enforcement ("SAFE") Unit stopped motorists on Interstate 80 and seized \$1.7 million from 2011 to 2015.⁶⁹ When a SAFE investigator stopped a driver, he immediately alerted a canine unit to obtain a drug-sniffing dog. The agency filed more than fifty forfeiture cases with almost half unconnected to a criminal charge.⁷⁰ The SAFE Unit used forfeiture funds for its operating expenses to pay the salaries of the investigators responsible for the seizures. Other forfeiture funds were used for travel to conferences,

interstate-95-interstate-26/2458314002 [https://perma.cc/RM4Y-5GTD] (Jan. 17, 2020).

66. *Id.*

67. Nathaniel Cary & Mike Ellis, *65% of Cash Seized by SC Police Comes from Black Men. Experts Blame Racism*, GREENVILLE NEWS, <https://www.greenvilleonline.com/story/news/taken/2019/01/27/south-carolina-racism-blamed-civil-forfeiture-black-men-taken-exclusive-investigation/2459039002> [https://perma.cc/2T3L-6V44] (Jan. 17, 2020). The disparate racial impacts of civil forfeiture are described in many studies. See, for example, Taylor, *supra* note 13, at 1420, for an Alabama study showing that 64% of all civil asset forfeitures were brought against African Americans, who make up only 27% of the population. See also Dawn Fritz, Comment, *Timbs v. Indiana: Civil Asset Forfeiture, Racism, and the War on Drugs*, 98 DENV. L. REV. F. 1, 30-33 (2021) (framing forfeiture as rooted in racist practices and describing its disproportionate impact on people of color).

68. Lee et al., *supra* note 18.

69. Nick Sibilla, *Prosecutor Can't Create Drug Squad to Seize Cash from Innocent Drivers, Illinois Supreme Court Rules*, FORBES (July 17, 2017), <https://www.forbes.com/sites/instituteofjustice/2017/07/17/prosecutor-cant-create-drug-squad-to-seize-cash-from-innocent-drivers-illinois-supreme-court-rules/#6e33385777fd> [https://perma.cc/GJH9-QP4U].

70. *Id.*

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including trips to Las Vegas.⁷¹ Two out-of-state motorists who were stopped and detained by SAFE officers brought a class-action lawsuit alleging that the police unit was a “vigilante police force” that violated their constitutional rights against unreasonable searches and seizures.⁷² Unsurprisingly, the SAFE Unit was disbanded in 2017 after the Illinois Supreme Court found its practices an illegal use of prosecutorial authority.⁷³ Police seizures of cash in South Carolina and Illinois are just two examples of widespread civil forfeiture abuse on interstate highways, unconnected to criminal activity. Unfortunately, there are many others, including particularly egregious individual stories.⁷⁴

The Institute for Justice brought a class-action lawsuit in 2021 against authorities in Harris County, Texas, after police stopped Ameal Woods. Mr. Woods, a Mississippi resident, was traveling toward Houston on Interstate 10 to purchase a tractor and trailer for his small business.⁷⁵ Woods carried his life savings and monies lent to him by his wife totaling \$42,300.⁷⁶ He was

71. *Id.*

72. *Id.*

73. *Id.*; *People v. Ringland*, 89 N.E.3d 735, 746 (Ill. 2017).

74. In Michigan, for example, a study found that more than 700 innocent people had their property forfeited in 2016. Louis S. Rulli, *Prosecuting Civil Asset Forfeiture on Contingency Fees: Looking for Profit in All the Wrong Places*, 72 ALA. L. REV. 531, 541-42 (2021). Of that total, 523 individuals had their property taken without being charged with a crime, while another 196 were charged but found innocent of criminal activity. *Id.*; *see also id.* at 542 (stating that, in Philadelphia from 2002 to 2014, law-enforcement authorities forfeited 1,248 homes, often from low- or modest-income, minority owners who were never charged with a crime, and that, during that same time period, prosecutors also forfeited 3,531 vehicles and \$50 million in cash); Robert O’Harrow Jr., Steven Rich & Shelly Tan, *Asset Seizures Fuel Police Spending*, WASH. POST (Oct. 11, 2014), <https://www.washingtonpost.com/sf/investigative/2014/10/11/asset-seizures-fuel-police-spending> [<https://perma.cc/BPD6-JXGS>] (describing aggressive police forfeiture practices on highways that took millions of dollars from motorists not charged with a crime).

75. Plaintiffs’ Original Petition, Application for Class Certification, and Application for Injunctive Relief at 7, 11-16, *Woods v. Harris County*, No. 2021-54748 (Tex. Dist. Ct. Aug. 30, 2021), <https://ij.org/wp-content/uploads/2021/08/Plaintiffs-Original-Petition.pdf> [<https://perma.cc/D8US-GL5T>].

76. *Id.* (asserting that Woods, a Black man, has a family history of distrusting banks and therefore carried large amounts of cash when necessary, and also

stopped for allegedly following a tractor-trailer too closely. In response to police questioning, Woods disclosed that he was carrying a large amount of cash to purchase trucking equipment. Police searched his vehicle with consent and located the money.⁷⁷ Without evidence of a crime, police claimed that the cash was drug money and seized the entire amount.⁷⁸ As in other stops, police did not arrest Woods or even ticket him for his alleged traffic violation. Instead, they grabbed his cash and sent him on his way.⁷⁹ They gave Woods a citizen's information card that contained only the officer's name, unit number, and case number.⁸⁰ It took over two years before Woods was able to get his money back.⁸¹

In 2021, Stephen Lara, a former Marine and combat veteran, was driving from Texas to California to visit his daughters.⁸² While outside of Reno, Nevada, he was stopped by police for allegedly passing a tanker truck too closely.⁸³ Police engaged Lara in an extended conversation in which he informed them that his life savings of nearly \$87,000 in cash was in the trunk of his car.⁸⁴ Lara permitted police to search the vehicle, whereupon they found the cash along with receipts showing Lara's bank withdrawals.⁸⁵ Police subsequently called in a drug-sniffing dog that allegedly alerted them

that he was anticipating purchasing a tractor and a trailer from second-hand sellers who only accepted cash).

77. *Id.* at 13. Woods also had a loaded gun in his car—a fact he disclosed to the police officer. *Id.* at 12.

78. *Id.* at 16. Police claimed that they used a drug-sniffing dog that provided a positive alert, but Mr. Woods stated that he never saw a police dog. *Id.*

79. *Id.* at 15.

80. *Id.*

81. Nick Sibilla, *Lawsuit: Texas Cops Use "Cut and Paste Allegations" to Seize Couple's Life Savings*, FORBES (Sept. 13, 2021), <https://www.forbes.com/sites/nicksibilla/2021/09/13/lawsuit-texas-cops-use-cut-and-paste-allegations-to-seize-couples-life-savings> [<https://perma.cc/SB2L-JF4B>]; see also *Texas Forfeiture II*, INST. FOR JUST., <https://ij.org/case/texas-forfeiture-ii> [<https://perma.cc/JU9D-789Z>].

82. Dick M. Carpenter II, *Generating Revenue Through Civil Forfeiture*, 98 N.Y.U. L. REV. ONLINE 205, 205 (2023).

83. *Id.* at 206.

84. *Id.*

85. *Id.*

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to the presence of drugs.⁸⁶ The drug-sniffing dog's alert proved false as no drugs were found, but police nonetheless seized Lara's cash without filing charges or making an arrest.⁸⁷ Lara told police that he was carrying the cash because he distrusted banks and had "worked really hard" for the money.⁸⁸ He objected that by seizing his cash, police were "taking food out of his kids' mouths."⁸⁹ Angered at what the police had done, Lara later described the seizure of his money in the following terms: "I could not believe that I had just been literally robbed on the side of the road by people with badges and guns."⁹⁰ Only after Lara obtained legal help and shared his story with the Washington Post did federal authorities return his money.⁹¹

D. The Proliferation of Roadside Waivers

The ACLU's earlier admonition that "[w]hat happened in Tenaha is not unique when it comes to abuse of civil forfeiture laws" has proven true.⁹² From South Carolina to Wyoming, and from Nebraska to Pennsylvania, police have used roadside waivers to grab cash from innocent owners and foreclose their rights. The use of roadside waivers cannot be attributed to a few rogue police officers or to only one local police department: Multiple locations across the country reveal patterns and practices that abuse trusted authority. In truth, abusive practices are the foreseeable product of

86. Matt Zapotosky, *A Former Marine Was Pulled over for Following a Truck Too Closely. Police Took Nearly \$87,000 of His Cash.*, WASH. POST (Sept. 1, 2021), https://www.washingtonpost.com/national-security/stephen-lara-nevada-asset-forfeiture-adoption/2021/09/01/6f170932-06ae-11ec-8c3f-3526f81b233b_story.html [<https://perma.cc/UGM3-TLEG>].

87. *Id.*

88. *Id.* (showing video segments of the stop).

89. *Id.*

90. *Id.*

91. *Id.* Lara was fortunate to obtain the legal assistance of the Institute for Justice to represent him in this matter. *Id.* There are many other deeply troubling examples. For instance, Deon Owens was carrying \$20,000 with him while driving from Indiana to California—for the purpose of buying real estate—when he was stopped for speeding; police confiscated his cash, even though no drugs or illegal items were found, and the dashboard-mounted camera captured an officer's statement: "I say we take his money and, um, count it as a drug seizure." AFR Amicus Brief, *supra* note 3, at *25.

92. ACLU Press Release, *supra* note 34.

modern civil forfeiture laws that were never intended to target innocent motorists.⁹³ Financial incentives embedded in these laws have generated opportunities for profit at pretextual traffic stops, which themselves have long raised serious issues of public concern.⁹⁴ The ability to seize assets has been a “major driver of pretextual traffic stops,” leading some to believe that the drug-interdiction program at highway traffic stops looks much more like a cash-interdiction program.⁹⁵

There is a reason that motorists who carry cash are a primary target of profit-seeking forfeitures.⁹⁶ As police readily acknowledge—and rely upon—almost every motorist will break a minor traffic law if you follow them long enough.⁹⁷ This reality creates ample opportunity for police to conduct highway stops at will. Police monitor highways known for interstate drug travel and, in some counties through which interstate highways run, target out-of-state motorists.⁹⁸ Some focus on only one side

93. See Carpenter, *supra* note 82, at 221 (“Civil forfeiture is not a problem of ‘bad apples,’ but of bad laws that encourage bad conduct.”).

94. See Heydari, *supra* note 37, at 185, 212-27 (noting that traffic stops have resulted in police killings that have spotlighted racial profiling).

95. *Id.* at 213, 227 (“In 1984, the DEA launched ‘Operation Pipeline’ (OP), a ‘nationwide highway interdiction program’ meant to teach state police and highway patrol officers how to use traffic stops to search for drugs. . . . The ability to seize assets has been a major driver of pretextual traffic stops, with stark results. Tenaha, Texas for example, ‘brought in \$1.3 million in seized profits within six months of implementing a drug interdiction program that utilized pretextual stops’ . . . [and] [a] town off Interstate 85 in Georgia with a population of 2,600 seized \$2 million worth of cars and cash in just two years.”).

96. See Carpenter, *supra* note 82, at 218 (noting that people respond to incentives and that law enforcement is not immune from such incentives); see also Heydari, *supra* note 6, at 18-19 (“Civil forfeiture laws, which authorize police to seize assets with minimal justification and make it difficult for individuals to reclaim the property, create additional financial incentives for police to conduct traffic stops. This revenue can drive police practices and is difficult to give up once relied upon.”).

97. Cary, *supra* note 65; Beth A. Colgan, *Revenue, Race, and the Potential Unintended Consequences of Traffic Enforcement Reform*, 101 N.C. L. REV. 889, 902 (2023).

98. In Seward County, Nebraska, one of the state’s busiest counties for civil forfeiture, the *Flatwater Free Press’s* 2023 investigation found that almost every vehicle involving a roadside waiver was driven by an out-of-state

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of the highway, where alleged drug buyers travel *toward* cities to purchase drugs with cash in hand, as opposed to the other side, where motorists allegedly return with purchased drugs after spending their cash.⁹⁹ Once stopped for a broken turn signal or driving too long in a passing lane, police engage motorists in extended conversations aimed at prolonging the stop and generating probable cause to search their vehicle.¹⁰⁰

Many motorists give police consent to search, although police do not mention that motorists are free to refuse.¹⁰¹ After police discover cash, they threaten motorists with money-laundering charges, even when no drugs are found. Police then bring out pre-printed waivers and pressure motorists to permanently forfeit their cash and their hearing rights. Once a detained motorist signs the waiver, police let the motorist leave without criminal charges and, often, without even a citation for the traffic violation that supposedly prompted the highway stop in the first place. In this way, police and prosecutors permanently seize lawfully owned cash from unsuspecting owners without ever having to go before a judge and justify their actions.

In many states, the median amount of cash seized is relatively low.¹⁰² Because these takings are infrequently challenged,¹⁰³ they are largely unknown to the public. The Greenville Press's three-year investigation into Operation Rolling Thunder in South Carolina found that more than half of

driver. Natalia Alamdari, *Using Loophole, Seward County Seizes Millions from Motorists Without Convicting Them of Crimes*, FLATWATER FREE PRESS (June 15, 2023), <https://flatwaterfreepress.org/using-loophole-seward-county-seizes-millions-from-motorists-without-convicting-them-of-crimes> [https://perma.cc/227L-K2YW].

99. See, e.g., Preciado & Wilson, *supra* note 19, at 161 (describing police roadblocks in the southbound lanes of I-95 in New York and similar police conduct in Nashville, Tennessee, where police stopped motorists on the side of the highway leaving the city, rather than entering it).
100. See *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (stating that a traffic stop should last only as long as is necessary to investigate the infraction that led to the stop, address related safety concerns, and issue a citation or warning); see also Colgan, *supra* note 97, at 911-12 & n.107 (explaining how the wide authority police officers have at traffic stops leads to searches).
101. See Colgan, *supra* note 97, at 912.
102. See Knepper et al., *supra* note 1, at 6 (reporting that median currency forfeitures averaged \$1,276 across twenty-one states with available data).
103. See *infra* notes 194-198 and accompanying text (explaining that the average cost of hiring a lawyer easily exceeds the median amount of cash seized).

the cash seizures were each for less than \$1,000.¹⁰⁴ These *consent* forfeitures were not filed in court and thereby bypassed judicial scrutiny and public accountability.¹⁰⁵ Instead, forfeiture documents were housed in file cabinets in the Solicitor's office without so much as assigned case numbers.¹⁰⁶

However, when roadside waivers are used to forfeit large amounts, they are much more likely to come to the attention of courts and the media. In these cases, motorists often hire lawyers to battle prosecutors.¹⁰⁷ While the amounts of cash taken at these traffic stops are sizeable, police tactics are exactly the same. The following four stories involve police use of roadside waivers in three different states and highlight how coercive roadside waivers deprive owners not only of their cash, but also of their rights to notice, a court hearing, a jury trial where provided by state law, and constitutional protections against unreasonable searches and seizures. They also underscore law enforcement's disregard for innocence while maximizing profit.

1. Wyoming

Roadside waivers attracted national attention in Wyoming when police obtained the written "consent" of a motorist to hand over more than \$90,000 in cash at a highway stop absent any evidence of criminal

104. Lee et al., *supra* note 18.

105. See Anna Lee, Nathaniel Cary & Mike Ellis, *Exclusive: How Civil Forfeiture Errors, Delays Enrich SC Police, Hurt People*, GREENVILLE NEWS, <https://www.greenvilleonline.com/in-depth/news/taken/2019/01/29/civil-forfeiture-south-carolina-errors-delays-property-seizures-exclusive-investigation/2460107002> [<https://perma.cc/3H5M-W7KM>] (Jan. 17, 2020) (finding that, in the Tenth Judicial Circuit in Anderson and Oconee counties and in the Sixteenth Judicial Circuit, which includes York and Union counties, prosecutors "never file the consent forfeiture" but simply hold onto the document).

106. *Id.* ("In Oconee, the consent cases are kept at the solicitor's office. In Anderson, they're stored in a file cabinet at the courthouse. And they stay there. The forfeiture proceedings aren't assigned case numbers, and they're never filed as a public record where anyone can view them . . .").

107. When counsel is obtained, legal help usually comes from a nonprofit legal-advocacy organization, such as the Institute for Justice or the ACLU, or occasionally from private counsel where the amount seized justifies expenditures for paid counsel.

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wrongdoing.¹⁰⁸ Phil Parhamovich, a fifty-year-old musician from Wisconsin with no criminal record, set off in his minivan to buy a music studio with \$91,800 hidden in a speaker cabinet.¹⁰⁹ He took his savings with him largely because he did not trust financial institutions.¹¹⁰ Police pulled Parhamovich over on I-80 in Wyoming for not wearing a seat belt and questioned him about his travel plans, attempting to learn if he was carrying contraband or large sums of cash.¹¹¹ When Parhamovich denied having either, police called in a drug-sniffing dog.¹¹² The police claimed that the drug-sniffing dog gave them an affirmative alert, which provided probable cause to search Parhamovich's van.¹¹³

Despite the dog's alert, police found no drugs in the van.¹¹⁴ They did find the hidden currency, and Parhamovich, who was frightened by his prior denial of carrying cash, told police that the money belonged to a friend.¹¹⁵ Another law-enforcement official then arrived on the scene and told Parhamovich that he needed to sign a document disclaiming his ownership of the seized property, waiving his right to contest its forfeiture, and stating his intent to give the property to the State of Wyoming's Division of Criminal Investigation "to be used for narcotics law enforcement purposes."¹¹⁶ Becoming increasingly worried about what would happen if he didn't sign the waiver, Parhamovich decided to sign the form after police told him, "we're going to let you go as long as you sign this waiver."¹¹⁷

108. See George Leef, *Another Ugly Civil Asset Forfeiture Tactic -- Highway Stop 'Waivers'*, FORBES (Dec. 4, 2017), <https://www.forbes.com/sites/georgeleef/2017/12/04/another-ugly-civil-asset-forfeiture-tactic-highway-stop-waivers> [https://perma.cc/FA9Z-25YH].

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. German Lopez, *"It's Been Complete Hell": How Police Used a Traffic Stop to Take \$91,800 from an Innocent Man*, Vox, <https://www.vox.com/policy-and-politics/2017/12/1/16686014/phillip-parhamovich-civil-forfeiture> [https://perma.cc/78D9-V6V2] (Mar. 20, 2018) (reprinting the content of the waiver).

117. *Id.*

The language of the pre-printed roadside waiver was misleading. It failed to state truthfully what had transpired at the highway stop and instead contained the following language:

I . . . the owner of the property or currency described below, desire to give this property or currency, along with any and all interests and ownership that I may have in it, to the State of Wyoming, Division of Criminal Investigation, to be used for narcotics law enforcement purposes. . . . I understand that . . . formal forfeiture proceedings against this property or currency will not be initiated pursuant to the Wyoming Controlled Substances Act. . . . By evidence of my signature below, it is my purpose and intention to voluntarily vest all interest and ownership in the above described property or currency to the State of Wyoming, Division of Criminal Investigation.¹¹⁸

The waiver was apparently drafted by a clever lawyer who thought making the cash grab appear to be a charitable contribution would mask the form's true function. The waiver also declared that the person signing understood that formal forfeiture proceedings would not be initiated under Wyoming law. The document did not state what rights under Wyoming law the signatory waived, nor did it state that the person should consult a lawyer before signing such an important document. Unlike an officer's obligation to provide a *Miranda* warning that protects an individual's rights when questioned by police in custodial settings,¹¹⁹ here, police felt no need to inform Parhamovich of the rights he was forfeiting by signing the waiver on the shoulder of the highway.

While many motorists never look back after signing away their cash and rights in a roadside waiver for fear of greater consequences to themselves and their families,¹²⁰ Parhamovich decided to fight. He attempted to revoke

118. *Id.* The language of the waiver is also quoted in the Institute for Justice's article on the case. J. Justin Wilson, *Wyoming Bans Roadside Waivers Used to Seize Cash on Highways*, INST. FOR JUST. (Mar. 19, 2018), <https://ij.org/press-release/wyoming-bans-roadside-waivers-used-seize-cash-highways> [<https://perma.cc/SS5A-GGDA>].

119. *Miranda v. Arizona*, 384 U.S. 436, 436 (1966) (holding that law-enforcement officials must warn a person of their constitutional rights before custodial interrogations and that, if officers fail to do so, a person's statements cannot be used against them at trial).

120. See Jennifer McDonald & Dick M. Carpenter II, *Frustrating, Corrupt, Unfair: Civil Forfeiture in the Words of Its Victims*, INST. FOR JUST. 30 (Oct. 2021),

his roadside waiver four days after the traffic stop. He revealed that the money was his and, upon request, provided documentation of his ownership and proof that the money was lawfully acquired. Instead of returning his money in response to this documentary proof, the Wyoming Attorney General's office argued that Parhamovich's money constituted abandoned property that was owned by the state.¹²¹

Parhamovich was fortunate to obtain the legal help of the Institute for Justice, which secured the return of his cash. However, even with skilled legal representation, it took approximately one year for Parhamovich to get his money back from the Wyoming government.¹²² Many others are not so fortunate.¹²³

2. Nebraska

In 2016, Nebraska became the third state in the nation to legislatively abolish civil forfeiture.¹²⁴ One might have expected that innocent motorists would not have to worry about police taking their cash at highway traffic stops in a state without civil forfeiture. But that is not the case—police pursuit of forfeiture revenue does not die easily.

Prior to the enactment of Nebraska's legislation, the state had a troubling history of roadside waiver use. The case of John Anderson, an out-

https://ij.org/wp-content/uploads/2021/09/Frustrating-Corrupt-Unfair_Civil-Forfeiture-in-the-Words-of-Its-Victims-2.pdf [<https://perma.cc/A5GB-43EZ>] (“Respondents to our survey offered sensible reasons for failing to fight, such as . . . fear of reprisal. These findings may explain why prior research has found that people infrequently contest forfeitures.”).

121. See Lopez, *supra* note 116 (reporting that the Attorney General's office denied Parhamovich's request for return of his cash, arguing that Parhamovich denied his personal interest in the currency and claimed to be unaware that cash was hidden in the vehicle within the portable speaker).
122. See Wilson, *supra* note 118 (“‘Civil forfeiture is little more than legal highway robbery’ What happened to Phil should never happen to anyone else.”).
123. This is not to say that Parhamovich was entirely fortunate. While he ultimately got his money back after battling prosecutors, the traffic stop completely disrupted Parhamovich's life. See Lopez, *supra* note 116 (“It's been complete hell I don't know too many people who put the kind of hours that I do. I don't say that in an egotistical way at all; I was just working hard. . . . To just have some police officers take my money, it kills me.”).
124. See L.B. 1106, 104th Leg., Reg. Sess. (Neb. 2016) (codified as amended at NEB. REV. STAT. § 28-431 (2024)).

of-state motorist who was traveling through Nebraska in 2012, is a classic example,¹²⁵ and one that served as partial motivation for the state's decision to eliminate civil forfeiture.¹²⁶ Police stopped Anderson for failing to signal promptly when changing lanes.¹²⁷ At the traffic stop, the officer noticed that Anderson's car had an air freshener and a radar detector, which he viewed as suspicious.¹²⁸ He also claimed that Anderson inconsistently described his travels during their conversation at the traffic stop.¹²⁹ The officer asked Anderson whether he was carrying drugs or large amounts of cash, and Anderson denied having either.¹³⁰ When Anderson refused the police request to consent to a search of his car, the officer deployed a drug-sniffing dog that alerted police for the presence of drugs.¹³¹ With that alert providing reasonable suspicion, police searched Anderson's car but did not find any drugs. They did, however, find \$25,180 in cash.¹³² The officer handcuffed Anderson and reportedly told him, "In Nebraska, drug currency is illegal Let me tell you something, I've seized millions out here. When I say that, I mean millions. . . . This is what I do."¹³³

The officer then presented Anderson with a roadside waiver and began to pressure him to sign it.¹³⁴ A dashboard video of the stop reveals the following interaction: "You're going to be given an opportunity to disclaim the currency To sign a form that says, 'That is not my money. I don't know anything about it. I don't want to know anything about it. I don't want

125. See Michael Sallah et al., *Stop and Seize*, WASH. POST (Sept. 6, 2014), <https://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize> [<https://perma.cc/3QD7-MT66>] (reviewing 400 court cases, which encompassed seizures in seventeen states).

126. See Natalia Alamdari, *Lawmaker Seeks to Ban Practice Allowing Seward County, Others, to Seize Millions from Motorists*, NEB. PUB. MEDIA (Feb. 2, 2024), <https://nebraskapublicmedia.org/en/news/news-articles/lawmaker-seeks-to-ban-practice-allowing-seward-county-others-to-seize-millions-from-motorists> [<https://perma.cc/W78Y-83CG>].

127. Sallah et al., *supra* note 125.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

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to come back to court.”¹³⁵ The officer then threatened Anderson that, unless he agreed to give up the money, a prosecutor would “want to charge” him with a crime, “so that means [he will] go to jail.”¹³⁶

The highway traffic stop, purportedly for failing to signal promptly when changing lanes, lasted more than two hours.¹³⁷ Anderson ultimately signed the disclaimer form and surrendered his cash.¹³⁸ The officer then released Anderson without charging him with a crime.¹³⁹

Even after the state abolished civil forfeiture, roadside waivers soon reappeared in Seward County, Nebraska. Karl Pittman was stopped by police while traveling through Nebraska on January 31, 2022, for allegedly following another car too closely and failing to use his turn signal.¹⁴⁰ Pittman was an out-of-state motorist on his way to Las Vegas to purchase property, and he had \$20,500 in money orders in duffle bags in his vehicle.¹⁴¹ During the highway stop, a drug-sniffing dog was deployed and supposedly alerted police to the presence of drugs.¹⁴² With this signal, police searched Pittman’s vehicle, but the dog’s alert proved erroneous, and no drugs were found.¹⁴³ However, police did find Pittman’s money orders and placed him under arrest.¹⁴⁴ Pittman subsequently obtained a defense lawyer, to whom prosecutors allegedly offered a deal: “You can just let us have the money and everything will go away.”¹⁴⁵ Pittman refused, and his criminal case was later dismissed.¹⁴⁶

There is a video recording of Pittman’s traffic stop, with only some portions audible, as Pittman attempted to film the traffic stop as best he could.¹⁴⁷ Unlike many motorists, Pittman appeared somewhat

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. Alamdari, *supra* note 98.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

knowledgeable of his rights. He resisted police tactics, insisting repeatedly that police not violate his rights.¹⁴⁸ When police attempted to engage Pittman in extended conversation, he responded respectfully, but emphatically, that he would not answer any questions. Instead, he stated, “I’m exercising my constitutional rights; I feel I’m being held against my will, I don’t want my rights violated.”¹⁴⁹

Early in the stop, Pittman directly asked the police officer, “Am I being detained; am I under arrest?” The officer responded that Pittman was being detained but did not answer whether he was under arrest. When Pittman questioned whether his rights were being violated, the officer offered to give him the name of a Supreme Court case and suggested that he google it on the side of the road. Pittman declined, stating repeatedly that he “just want[ed] to go on his way.” After more than twelve minutes on the side of the road, Pittman reminded the officer that he had no outstanding warrants and asked, “Why am I still here?”¹⁵⁰

The officer did not respond. When Pittman pressed for the officer’s badge number, the officer simply stated that Pittman would receive that information later. Soon thereafter, a different police officer approached the car. When Pittman asked that officer for his name and badge number, the second officer responded, “I don’t need to tell you anything.” It appeared to Pittman that the first officer was stalling for time—the reason soon became apparent as a drug-sniffing dog arrived on the scene and approached Pittman’s vehicle. By that time, the traffic stop, which was initiated because Pittman allegedly followed another vehicle too closely, had lasted for more than twenty minutes.¹⁵¹

Police soon claimed that the drug-sniffing dog alerted them to the presence of drugs, and they conducted a search of Pittman’s car. Pittman objected, but the officer informed him that, based on the dog’s alert, police were conducting a “reasonable cause search” and not a consensual search. The search did not reveal any drugs or evidence of criminal activity, once again raising serious questions about the reliability of alerts by drug-

148. *Id.* An audio and video recording of the police stop of Pittman was obtained by the *Flatwater Free Press* and is viewable as a part of the online article. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

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sniffing dogs on the highway.¹⁵² Instead, police found only Pittman's \$20,500 in money orders.¹⁵³

According to Pittman, after threats of criminal charges, authorities offered to make everything go away if he abandoned his money. Pittman refused, later bluntly stating, "You're not going to extort me or my money, are you out of your mind?" Pittman eventually reclaimed his money with the help of a lawyer, but like others who fight in court to regain their property, much of his seized money was used to pay attorney's fees.¹⁵⁴

In their account of police practices at traffic stops in Seward County, the *Flatwater Free Press* published the roadside waiver form used by police.¹⁵⁵ The language of the form differs slightly from the form used by Wyoming police, but it clearly has the same purpose. One form was titled "Voluntary Disclaimer of Interest and Ownership."¹⁵⁶ On this form, the property owner agrees to "disclaim any and all interest I may have in the approximate _____ in United States currency which was located _____." ¹⁵⁷ In addition, it states:

I further waive the right to plead or answer in any forfeiture action concerning the above referenced currency . . . [and] I herein waive and disclaim, any and all interest in the currency sought to be

152. *Id.* An analysis by the *Chicago Tribune* called into question the accuracy of drug-detecting dogs used during traffic stops. After examining three years of data for suburban departments, the *Tribune* reported that only 44% of sniffer dogs' positive signals led to the actual discovery of drugs or paraphernalia. See Dan Hinkel & Joe Mahr, *Tribune Analysis: Drug-Sniffing Dogs in Traffic Stops Often Wrong*, CHI. TRIB., <https://www.chicagotribune.com/2011/01/06/tribune-analysis-drug-sniffing-dogs-in-traffic-stops-often-wrong> [<https://perma.cc/Y57T-CKLS>] (Aug. 23, 2021). Additional empirical research is needed to fully ascertain the accuracy of alerts from drug-sniffing dogs, not simply in training exercises but also on busy highways where they are called into actual traffic stops.

153. Alamdari, *supra* note 98.

154. The *Flatwater Free Press* also detailed the story of Darius Endres, who signed a roadside waiver and had \$10,000 seized after being stopped by police on his way to a hockey game in Minnesota. While he later won the return of his money in court with the help of an attorney, he reported that most of the regained money went to pay his lawyer's fees. See Alamdari, *supra* note 98.

155. *Id.*

156. *Id.*

157. The form uses the word "approximate" with a note that the amount inserted is a hand count and is subject to an official count by a banking institution. *Id.*

forfeited, and agree that this case may be tried and judgment entered without further notice to me.

In short, by signing this waiver, a motorist relinquishes all rights to seized property and surrenders any right to receive notice and an opportunity to be heard in a court of law to challenge the police taking. If a motorist signs the waiver, prosecutors process the waiver and, when necessary, defend against any legal challenges to the signed agreement. The payoff in forfeited funds bolsters law-enforcement budgets. It is no wonder that police seizures of cash, coupled with roadside waivers, are often referred to as *highway robbery* by those who become trapped in their web.¹⁵⁸

In a press interview, one Seward County prosecutor tried to justify roadside waivers by claiming that motorists who sign are nonetheless given

158. A media investigation by the *Flatwater Free Press* uncovered many stories of police waivers used in Seward County and found that three out of every four forfeitures in the county from 2013 to 2023 occurred after a motorist signed a written waiver. *Id.*

One such story, in August 2020, involved Christopher Bouldin, a Virginia resident, who was driving his van on Interstate 80 through Seward County. He had \$18,000 in cash in a sleeping bag in his van that he was saving for his upcoming trip to Colorado. After being stopped for following a car too closely, police engaged Bouldin in a conversation unrelated to the alleged traffic violation in an attempt to prolong his presence at the stop. They then asked if they could search his van. When Bouldin refused, police called in a drug-sniffing dog. Although the dog gave an affirmative alert for drugs, police found no drugs in the van but did find Bouldin's \$18,000. Though Bouldin provided police with supporting evidence of his planned trip to Colorado, including emails on his phone, and though there was no evidence of a crime, police apparently did not believe him. *Id.*

Police presented Bouldin with a roadside waiver form and gave him an ultimatum: Sign over his \$18,000 in cash to police or "face potential arrest." Bouldin summoned up the courage to refuse, and police did not arrest him as threatened. Instead, they seized his cash and charged him with a misdemeanor for possessing drug money. Though Bouldin's criminal charge was later dropped, local prosecutors nonetheless battled in court to forfeit his \$18,000 in cash, and they were ultimately successful. It was later reported that Seward County's practice of cash waivers provided a huge payoff to local police, who purchased their interdiction headquarters in 2022 with \$806,000 of forfeiture funds. *Id.*

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a court date where they can try to reclaim their money.¹⁵⁹ Of course, the waiver form says no such thing. If motorists try to get their money back, prosecutors will vigorously contest their actions. Moreover, even if a court date is scheduled after receipt of a signed waiver, as this prosecutor claimed, out-of-state motorists may never get a court notice, or they may fail to appear for fear that the waiver they signed is inviolable and that they will face harsh consequences for challenging it. If prosecutors really intend to routinely schedule court dates after waivers are signed, what is the justification for continuing to use waiver forms that contain contrary, misleading language which prosecutors do not intend to enforce? The *Flatwater Free Press* found that, in 68 out of 90 cash seizure cases, drivers and passengers signed a form agreeing to abandon any claim to the money seized.¹⁶⁰ Of the 90 drivers in these cases, 80 never saw their money returned.¹⁶¹

3. Pennsylvania

In 2020, state police stopped Zhi Xiong Xu on a Pennsylvania highway for a minor traffic violation.¹⁶² Xu allowed police to search his vehicle,

159. Wendy Elston, Seward County attorney, is quoted in the *Flatwater Free Press* article as stating that a motorist who signs an abandonment form is given a court date where they can fight to get their money back. Elston claimed, “I just look at it as a piece of evidence . . . It’s just a piece of paper to me, it’s not determinative.” *Id.* But it may not look that way to a motorist who signs the waiver form on the side of I-80, and outcome statistics certainly question the prosecutor’s claim. See *Forfeiting Your Rights*, *supra* note 15, at 5 (showing that the majority of Alabama civil-forfeiture cases resolve in default judgments, meaning that the outcomes are never challenged).

160. See Natalia Alamdari, *Seward County Roadside Seizures: How We Reported This Story*, FLATWATER FREE PRESS (June 15, 2023), <https://flatwaterfreepress.org/seward-county-roadside-seizures-how-we-reported-this-story> [<https://perma.cc/HMW3-ADVM>].

161. *Id.* The role of prosecutors in the use of roadside waivers cannot be overstated. This is why Texas amended its law to include prosecutors, as well as police, when it created a ban on obtaining or enforcing roadside waivers. See *infra* note 226 and accompanying text.

162. *In re \$300,000 in U.S. Currency*, 309 A.3d 1117, 1123 (Pa. Commw. Ct. 2024); see also Joseph Darius Jaafari & Joshua Vaughn, *How Pa. State Troopers Seize Big Money from Drivers, Many of Whom Are Never Charged*, SPOTLIGHT PA (Oct. 1, 2020), <https://www.spotlightpa.org/news/2020/10/pa-state-police->

during which they found a smartphone and \$300,000 in cash. Police found no evidence of criminal activity and made no arrests, but they nonetheless threatened money-laundering charges and presented Xu with a pre-printed roadside waiver on the stationery of the Pennsylvania Office of the Attorney General. The waiver required Xu to acknowledge that 1) the seized property belonged to him, 2) the property was used or intended to be used to facilitate a violation of the state's controlled substances act, and 3) he waived his right to have a forfeiture petition filed or to have a hearing, including a jury trial. It concluded with a self-serving statement, obviously drafted by a lawyer, that the form was signed "without any duress or coercion placed upon me."¹⁶³ The drafter of the waiver form knew precisely what a judge would be concerned about if the form was ever challenged in court.

The Attorney General's form also required Xu to agree that he "discharged the Commonwealth of Pennsylvania, the state police and the office of the state Attorney General from any and all claims in connection with the seizure, detention, and forfeiture of the property."¹⁶⁴ Not content with simply taking the motorist's cash, phone, and civil forfeiture rights, the form also took away Xu's civil right to seek constitutional redress in the courts for the actions of the police.¹⁶⁵

After seizing the \$300,000 and smartphone and obtaining the signed waiver, police sent Xu on his way without an arrest or the filing of criminal charges. If the police believed Xu was engaged in criminal activity, they must have also concluded that cash in hand for their agency budget trumped their obligation to protect public safety. Prosecutors apparently agreed, for they

traffic-stops-forfeiture-seizure-illegal-searches [https://perma.cc/P8KU-DY5R].

163. Brief of Appellant Zhi Xiong Xu at app. D, *In re \$300,000 in U.S. Currency*, 309 A.3d 1117 (Pa. Commw. Ct. 2024) (No. 520 C.D. 2022), 2022 WL 22617390.

164. *Id.*

165. A waiver of this type arguably violates the motorist's First Amendment rights. *See Salkil v. Mount Sterling Twp. Police Dep't.*, 458 F.3d 520, 529 (6th Cir. 2006) (noting that the First Amendment expressly precludes depriving persons of the right to petition the government and that "a municipality's attempt to avoid liability for a constitutional wrong through the blanket use of release-dismissal agreements arguably conflicts with this language").

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defended the seizure of cash and the validity of the waiver form when Xu later challenged the roadside waiver in court.¹⁶⁶

With legal help, Xu brought an action seeking the return of his \$300,000. He argued that the waiver was constitutionally invalid because he had not been afforded the same safeguards applied to criminal waivers, such as the entry of a guilty plea and an oral colloquy assuring voluntariness. He further contended that he did not freely and knowingly sign the form and that the police failed to provide any explanation of the form's provisions.

At a hearing before a lower court, the Commonwealth offered no evidence to justify the cash seizure except for the signed waiver form. The trial judge accepted this argument, holding that the signed waiver alone satisfied the Commonwealth's legal requirements for forfeiture under Pennsylvania's civil forfeiture law.¹⁶⁷ On appeal, the Commonwealth Court of Pennsylvania, an intermediate statewide appellate court, reversed.¹⁶⁸ In so doing, the appellate court noted that the Pennsylvania Supreme Court had previously held that "[t]he classic definition of a valid waiver is 'the

166. *See \$300,000 in U.S. Currency*, 309 A.3d at 1128 ("[T]he Commonwealth averred that Appellant admitted the currency had been or was intended to be used to facilitate a violation of the Drug Act, that it was subject to forfeiture, and that he was not under any duress or coercion when deciding to waive his right to a jury trial with regard to the same.").

In response to a right-to-know request by this author for all roadside waivers over the past five years, the Office of the Pennsylvania Attorney General claimed that they did a search of their records and found no roadside waivers. When confronted with the actual signed waiver form from this case (which they defended in court), the Attorney General's office then claimed that this *signed* waiver form was not their office's record but that they had provided a similar form to the state police at the state police's request. The Attorney General's office also claimed that they later instructed the state police not to use the waiver form again for this purpose, even though the office defended the signed form in court. The right-to-know officer for the Office of Attorney General sustained the agency's claim and held that nothing further needed to be provided in response to the initial request since the waiver form was not the agency's record (despite being on its stationery). The right-to-know request and decision are both on file with the author.

167. *\$300,000 in U.S. Currency*, 309 A.3d at 1129.

168. *Id.* at 1143.

intentional relinquishment of a known right”¹⁶⁹ and that this standard applied to waivers of rights of nonconstitutional dimension.¹⁷⁰

The Commonwealth Court rejected the government’s argument that the signed waiver form was entitled to the same binding legal effect as a written confession of an accused or an open-court guilty plea. The court noted that a strict application of the government’s proposed analogy would weaken its legal position. Under Pennsylvania’s rules of criminal procedure, the entry of a guilty plea requires both a writing and an oral colloquy on the record before the court to prove that the plea is “knowingly, voluntarily, and intelligently” entered by the accused.¹⁷¹ In contrast here, the roadside waiver was not completed in the presence of the court, and the police officer did not explain the various rights that the motorist relinquished by signing the waiver.¹⁷² As a result, the Court observed that the roadside waiver under these circumstances would constitute an unknowing and involuntarily entered plea. Rather than adopting this analogy, however, the Court held that the signing of a waiver form was not the functional equivalent of entering a guilty plea.

While the Court upheld the waiver as contractually valid, it ordered the return of Xu’s cash on the basis that, despite a signed waiver, the government had failed to meet its burden of showing any connection between the property and a drug offense. The appellate court’s holding and its disapproval of the lower court’s blind acceptance of the waiver form highlight the risks posed by case-by-case evaluations of roadside waivers

169. *Id.* (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

170. *Id.* (first citing *Commonwealth v. Johnson*, 413 A.2d 1047, 1049-50 (Pa. 1980); and then citing *Commonwealth v. Gribble*, 863 A.2d 455, 473 (Pa. 2004)). The Commonwealth Court also noted previous findings that “[a] waiver is knowing and intelligent if the right holder is aware of both the nature of the right and the risk of forfeiting it.” *Id.* (quoting *Pa. Liquor Control Bd. v. Beh.*, 215 A.3d 1046, 1056 (Pa. Commw. Ct. 2019)).

171. *See* PA. R. CRIM. P. § 590(B)(2) (“The judge shall conduct a separate inquiry of the defendant on the record to determine whether the defendant understands and voluntarily accepts the terms of the plea agreement.”); *see also* *Commonwealth v. Muntz*, 630 A.2d 51, 55 (Pa. Super. Ct. 1993) (“The reason for such a colloquy is to ensure that the defendant tenders the plea knowingly, voluntarily, and intelligently.”).

172. Under Pennsylvania law, these rights include a right to notice and hearing in a forfeiture proceeding, as well as a right to a jury trial if requested by a property owner. *See, e.g.*, *Commonwealth v. \$1400 in U.S. Currency*, 667 A.2d 452, 454 (Pa. Commw. Ct. 1995) (confirming a right to a jury trial in civil-forfeiture cases).

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conducted by trial courts rather than adopting a bright-line rule that creates a per se ban.¹⁷³ A clear prohibition is easily applied and predictably enforced.¹⁷⁴ Only a legislative prohibition or a court-ordered blanket rule rejecting roadside waivers will bring this abusive practice to an end, as discussed further in this Feature.

II. THE TRUTH BEHIND ROADSIDE WAIVERS: WHY DO MOTORISTS SIGN?

A. Police Pressure Compels Signatures

As long as forfeited cash remains lucrative for law enforcement, some police departments will continue to use roadside waivers to support their property seizures. The roadside waiver cases discussed above occurred in different states, but all feature common police tactics such as prolonged highway stops for minor traffic infractions, threats of false crimes, and promises to go free in exchange for the execution of standardized waivers. Their similarities suggest that police and prosecutors have received similar training in developing standard protocols for obtaining *consensual* forfeitures of cash on the highway.¹⁷⁵ These uniform measures underscore

173. See also *infra* Part IV (contending that the Court's treatment of release-dismissal agreements in *Town of Newton v. Rumery*, 480 U.S. 386 (1987), supports a per se ban of roadside waivers); Jeffrey R. Beck, *Arizona v. Gant: Heightening a Person's Expectation of Privacy in a Motor Vehicle Following Searches Incident to Arrest*, 55 S.D. L. REV. 299, 313-14 (2010) (discussing the rationale for a bright-line rule and stating that "the rules of the Fourth Amendment 'ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged' Bright-line rules provide clear guidance and a very simple protocol that governs the action of law enforcement in a manner that is easy for the officer to both understand and apply.").

174. Beck, *supra* note 173, at 316 n.210; see also *Miranda v. Arizona*, 384 U.S. 436, 502-03 (1969) (creating a bright-line rule that certain rights must be read to a suspect before a custodial investigation may begin, or else the subsequent statements are inadmissible).

175. This standard protocol has its origins in Operation Pipeline, the DEA program launched in the 1980s to provide drug-interdiction training to state and local law enforcement. See *supra* notes 37, 95. Such training has evolved with the profitability of civil forfeiture. Today, Desert Snow, a for-profit firm, trains officers in drug-interdiction and rewards them for seizing large sums of cash. Colgan, *supra* note 97, at 914, 939 n.277. Desert Snow also operates an online

the importance of a *per se* ban on roadside waivers to end this predatory governmental practice.

To understand why roadside waivers are signed by motorists, it is helpful to review the common attributes that define pretextual traffic stops.¹⁷⁶ Police surveil heavily traveled interstate highways that they believe are drug corridors. While purportedly looking for drugs, police also know that many motorists on these highways may carry sizeable amounts of cash. Police rely upon the belief that all motorists will commit a traffic violation if followed long enough,¹⁷⁷ providing a basis for police to stop almost any vehicle. As the cases demonstrate, motorists are often stopped for minor traffic violations such as failing to signal when changing lanes or following another car too closely.¹⁷⁸

Motorists on these highways who are pulled over for traffic violations are likely to carry modest amounts of cash.¹⁷⁹ Some motorists, however, may carry more significant sums, either because they are distrustful of banks or are unbanked. Minorities, whom police disproportionately stop, are more likely to be unbanked or less attached to the credit economy.¹⁸⁰ Additionally, entrepreneurs or small business owners may carry larger amounts of cash to purchase inventory or other necessities because cash can secure discounted prices.

Carrying modest or sizeable amounts of cash is not unlawful. Cash is legal tender.¹⁸¹ Nonetheless, police are quick to claim that cash is the

portal known as Black Asphalt, which officers may join for a small fee. Colgan, *supra* note 97, at 914. On Black Asphalt, officers post their suspicions that certain motorists will eventually pick up drugs or cash so that others may make targeted stops. Colgan, *supra* note 97, at 914.

176. These common elements are derived from the cases discussed *supra* Part I.
177. Colgan, *supra* note 97, at 902 & nn.37-38.
178. *E.g.*, Alamdari, *supra* note 98 (“The highway seizures that net this money often start when a Seward County deputy alleges a minor traffic violation – a car speeding, or improperly changing lanes, or like Bouldin, following too closely.”).
179. *See* Knepper et al., *supra* note 1, at 20 (explaining that across twenty-one states with available data, the median currency forfeiture averaged just \$1,276 between 2015 and 2019).
180. Colgan, *supra* note 97, at 918-19 (“The lack of access to banking is acute for Black and Latinx people, the very people likely targeted in drug interdiction practices in the first instance.” (footnote omitted)).
181. 31 U.S.C. § 5103 (2018) (“United States coins and currency . . . are legal tender for all debts, public charges, taxes, and dues.”).

product of money laundering, even when drugs are not found and there is no evidence of a crime. Attempts by motorists to explain their lawful acquisition of cash, and their reasons for carrying it with them, often fall on deaf ears, even when supporting documentation is provided.¹⁸²

Understandably, even innocent motorists who are stopped by police experience anxiety. But police regard nervous behavior as suspicious activity warranting a vehicle search.¹⁸³ To obtain consent to search a vehicle, police engage motorists in extended conversations on the side of the highway. They ask motorists about their trip, where they are coming from, and where they are going. They engage in small talk unrelated to the alleged traffic violation. The police attempt to establish rapport with motorists to prolong the stop and hold them on the side of the road as long as possible, even though police are only legally entitled to detain drivers for as long as necessary to address a traffic violation.¹⁸⁴ In that time, police attempt to obtain consent to search the vehicle. Many motorists provide consent because they have done nothing wrong, and they hope they may get on their way by consenting.

Motorists often consent to vehicle searches without knowing their rights. They may not know they have a right to withhold consent or to ask police whether they are under arrest and, if not, whether they are free to leave. However, even a knowledgeable motorist may hesitate to assert their rights for fear of appearing confrontational. They may worry that police will regard an assertion of rights as a sign of guilt or of being overly antagonistic. Instead, compliance appears safe, especially when motorists know that they are innocent of any crime.¹⁸⁵

182. *See, e.g.,* Carpenter, *supra* note 82, at 205-06 (summarizing the seizure of Stephen Lara's life savings despite receipts documenting his bank withdrawals).

183. *See* Sallah et al., *supra* note 125 ("Molina told the officer that he was shopping for a used car and had \$18,000 in his pockets. Molina's face began to tremble, which police said they took as a sign of possible wrongdoing. Molina said his cheek twitched from medication he was taking for a health condition that included kidney disease The officer asked Molina, who had no criminal history, to hand over the cash.").

184. *See id.* ("David A. Harris, a University of Pittsburgh law professor, said [the motorist's] stop crossed the line when he detained the driver while summoning a canine. 'You cannot elongate the stop to bring in the dogs,' he said. 'In doing that, you're detaining the person without probable cause. That ain't kosher.'").

185. *See infra* Section II.D (discussing the psychological pressures that compel motorists to sign roadside waivers).

If motorists refuse a consensual search request, police may deploy a drug-sniffing dog to the traffic stop.¹⁸⁶ Whether or not officers ultimately find drugs in a motorist's vehicle, a positive alert from the drug-sniffing dog may be enough to establish probable cause for a more invasive, nonconsensual vehicle search.¹⁸⁷

While police may not find drugs,¹⁸⁸ they often find cash. A motorist may volunteer that they have cash, or their cash may be hidden in their car. Once cash is found, police begin to raise the specter of criminal wrongdoing to heighten anxiety and apply pressure that will create a receptive environment for a waiver of rights. Despite no evidence of controlled substances, police accuse a motorist of money laundering simply because they have cash in their possession. In *Tenaha*, police even threatened motorists that their children would be taken from them.¹⁸⁹ Faced with such threats, motorists are understandably eager to remove themselves quickly from these highly coercive stops. Police count on this response as they produce a pre-printed, standardized roadside waiver form and offer an exchange to be decided on the spot: Motorists may leave free of criminal charges if they permanently turn over their cash to the police and waive

186. While an alert from a drug-sniffing dog may provide probable cause, police may not extend a completed traffic stop in order to conduct a dog sniff. *See Rodriguez v. United States*, 575 U.S. 348, 350 (2015) (holding that “a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution’s shield against unreasonable seizures”).

187. *E.g.*, *Alamdari*, *supra* note 98 (detailing forfeitures at multiple traffic stops in which police dogs falsely alerted to the presence of drugs); *see also Florida v. Harris*, 568 U.S. 237, 240, 250 (finding that a drug-detection dog’s alert provided probable cause to search a vehicle).

188. Although beyond the scope of this Feature, more research is needed to determine the rate of false positives provided by drug-sniffing dogs and whether a dog alert, as interpreted by police, is reliable enough at traffic stops on highways to confer reasonable suspicion for a nonconsensual vehicle search. *See supra* note 152; *see also* Brendan LaChance, *Drug Sniffing Dogs Frequently Give False Alerts; Marijuana Legalization Forcing K-9 Unit Changes*, OIL CITY NEWS (June 23, 2021), <https://oilcity.news/community/city/2021/06/23/drug-sniffing-dogs-frequently-give-false-alerts-marijuana-legalization-forcing-k9-unit-changes> [https://perma.cc/PRS8-7NDT] (reporting that some studies and data suggest that drug-sniffing dogs frequently give false alerts in the field).

189. *Stillman*, *supra* note 18 (detailing officers’ threats to place Jennifer Boatright’s children in foster care if they did not sign over their cash to police).

their forfeiture notice and hearing rights.¹⁹⁰ Police do not explain to motorists the rights they are giving up, and, of course, motorists are not able to leave or consult legal help while detained on the side of the road. These are the conditions under which roadside waivers are signed. It is understandable why ordinary citizens often sign these waivers even though they have done nothing wrong.

B. Prosecutors Facilitate and Defend Waiver Use

While prosecutors are rarely present when police seize cash at highway traffic stops, they may nonetheless be complicit in the use of roadside waivers.¹⁹¹ In some jurisdictions, prosecutors may have drafted and provided the standardized roadside waiver form to police. Prosecutors may also be aware of police conduct, given their role in processing *consensual* seizures and reporting all forfeitures to legislative authorities.¹⁹² Instead of engaging with civil forfeiture reforms that provide due-process protections to property owners and safeguard against the wrongful taking of private property, prosecutors continue to sanction the use of roadside waivers. Apparently, the profit incentive in contemporary civil forfeiture is too hard to resist.

When roadside waivers are challenged, prosecutors often try to justify their use by contending that they are binding agreements that motorists would not sign if they were innocent of criminal wrongdoing. Prosecutors are incorrect in this belief. Innocent motorists frequently sign roadside waivers.¹⁹³ The coercive and intimidating stops by the police create economic and psychological pressures that compel innocent motorists to forfeit their money and waive their rights.

190. Colgan, *supra* note 97, at 919 (“Motorists who have been subject to these practices describe being pressured to sign waivers or face arrest Upon signing a waiver, law enforcement allow motorists to drive away In these circumstances, there is no arrest for the alleged criminal activity and no follow-up investigation, just an intake in revenue and a document that can be used to protect it from challenge.” (footnotes omitted)).

191. *E.g.*, Alamdari, *supra* note 98 (“[A motorist], arrested for possession of drug currency in January 2022, said prosecutors told his lawyer that if he abandoned the money found in his car, the criminal case would ‘go away.’”).

192. *See, e.g.*, 42 PA. CONS. STAT. § 5803(j) (2023) (outlining prosecutors’ forfeiture-reporting obligations in Pennsylvania).

193. *See supra* Part I (illustrating the frequency with which innocent owners sign roadside waivers through a series of case studies).

C. Economic Barriers to Recovering Property

First, motorists are often compelled by financial considerations. The cost of legal help to fight back often exceeds the value of the taking.¹⁹⁴ As explained in Part I, the average cash forfeiture by police is relatively low.¹⁹⁵ For example, the Greenville News investigation found that, of the more than \$17 million seized by state agencies over three years, more than half of the individual seizures were for less than \$1,000.¹⁹⁶ In contrast, the average estimated cost of hiring a lawyer to contest a straightforward civil forfeiture case is \$3,000.¹⁹⁷ Even when police seize larger sums, motorists must still make rational economic calculations as forfeiture proceedings are complex, and attorney's fees may consume all or much of the amount seized. In such cases, there is no reward for battling the government. In a small number of cases, property owners may be able to obtain the help of nonprofit legal advocacy organizations concerned about the legality of civil forfeiture laws, but such help is not widely available.¹⁹⁸

194. See McDonald & Carpenter, *supra* note 120, at 30 (“[A]cross 21 states with available data, the median value of forfeited cash is just \$1,300. Meanwhile, the estimated cost of hiring an attorney to fight a fairly straightforward state forfeiture case is \$3,000.”).

195. See *supra* notes 102-104 and accompanying text.

196. Lee et al., *supra* note 18.

197. McDonald & Carpenter, *supra* note 120, at 30; see also *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans*, LEGAL SERVS. CORP. 52 (Apr. 2022) [hereinafter *The Justice Gap*], <https://lsc-live.app.box.com/s/xl2v2uraiotbbzrhwtjlgioemp3myz1> [<https://perma.cc/2NXR-3PE5>] (“Many low-income Americans cite cost as a reason for not seeking legal help in the past year. Among those who did not seek legal help for at least one of their recent civil legal problems, nearly one-half (46%) cited concerns about cost as a reason why.”).

198. See Standing Comm. on Legal Aid and Indigent Defendants, *Directory of Law Governing Appointment of Counsel in State Civil Proceedings*, AM. BAR ASS'N 1-2 (2014), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lsc_laid_judges_manual_prefatory_info.pdf [<https://perma.cc/WV7V-28RP>] (noting that legal-aid programs nationwide are seriously under-resourced and must prioritize their limited resources on basic needs that do not usually include civil-forfeiture cases and that the abundance of need for legal help and shortage of resources result in a “justice gap” which leaves over “80 percent of low-income individuals” unable to

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The economic calculus that a property owner may make in deciding to sign a waiver agreement was illustrated in a Texas case that involved an agreed upon judgment of forfeiture. In that case, police instructed a driver and passenger, while in custody, to sign an agreed judgment forfeiting their right to seized cash in the amount of \$10,023 or else face a charge of felony money laundering.¹⁹⁹ Despite his actual innocence, the driver realized that if he refused to sign the waiver agreement, he would have to expend substantial money for a bondsman to procure his freedom and then for an attorney to represent him in court. He would then have to return to that Texas town for trial.²⁰⁰ Faced with those expenses and burdens, the driver reluctantly signed the document, forfeiting his money, and was released from police detention.²⁰¹

D. Psychological Pressures to Sign Waivers

Second, motorists feel compelled to sign waivers for psychological reasons. Phil Parhamovich, the fifty-year-old musician with no criminal record who signed a roadside waiver giving Wisconsin police \$91,800 that was intended for a purchase of a music studio, explained later that he signed the waiver because “he was, frankly, just freaking out at the time.”²⁰²

receive the legal assistance they need to “effectively navigate complex legal proceedings involving . . . fundamental human needs”); *see also* Louis S. Rulli, *Access to Justice and Civil Forfeiture Reform: Providing Lawyers for the Poor and Recapturing Forfeited Assets for Impoverished Communities*, 17 *YALE L. & POL’Y REV.* 507, 515 (1998) (“The truth is that civil forfeiture cases fall between the cracks of the public defender and legal services delivery systems.”).

199. Plaintiff’s Original Complaint at 5, *Gonzales v. Jim Wells Cnty. Task Force*, No. 07-CV-306 (S.D. Tex. July 12, 2007).

200. *Id.*

201. *Id.* This same calculus was on display in a Nebraska legislative hearing concerning a potential roadside-waiver ban. In response to the question, “why would a person negotiate or waive away their right to their own property?” the testifying witness stated that the median currency forfeiture in Nebraska was \$955 and that owners reason that “it just makes more sense for me not to . . . engage. I’ll give up the \$955.” *Adopt the Controlled Substance Offenses Forfeiture Act and Change Provisions Relating to Forfeiture: Hearing on L.B. 916 Before the Judiciary Comm.*, 108th Leg. 68-69 (2024) (statement of Lee McGrath, Attorney, Inst. for Just.).

202. *See Lopez, supra* note 116.

Parhamovich's description of his traffic stop underscores the intimidating and manipulative dynamics present when police are intent on seizing cash. Parhamovich stated that the police officer "started asking me tons of questions With just about everything I answered, he discounted [and] was acting like whatever I was saying wasn't true. . . . I don't know if you've ever been stopped by a very aggressive cop. They just intimidate you with their power."²⁰³ Under this pressure, Parhamovich feared that he might have done something wrong by carrying so much cash.²⁰⁴ This fear impeded his judgment and caused him to initially give false answers about his ownership of the currency.²⁰⁵ Parhamovich continued his description of the police encounter:

I definitely felt intimidated and scared and, by that time, confused That was the sense in my mind — that somehow I was being framed, that something weird was happening, and that maybe it was illegal to travel with that amount of money, which I hadn't really thought of prior to that.²⁰⁶

Recent research concludes that police make demeanor-based judgments of whether individuals are being truthful.²⁰⁷ Police investigators are prone to suspect deception and disbelieve people who are telling the truth, "with a great deal of confidence."²⁰⁸ Modern police-interrogation methods presume guilt and use psychologically oriented techniques involving isolation, confrontation, and minimization of blame to elicit

203. *Id.* (second alteration in original).

204. *Id.*

205. *Id.*

206. *Id.* (alteration in original).

207. Kyle C. Scherr, Allison D. Redlich & Saul M. Kassin, *Cumulative Disadvantage: A Psychological Framework for Understanding How Innocence Can Lead to Confession, Wrongful Conviction, and Beyond*, 15 *PERSPS. ON PSYCH. SCI.* 353, 356-57 (2020) ("The fact that investigators, lacking accuracy, exhibit a response bias toward seeing deception in preinterrogation interviews means that many suspects—innocent and guilty alike—are interrogated by nonneutral detectives who presume their guilt.")

208. Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, 5 *PSYCH. SCI. PUB. INT.* 33, 37-38 (2004) (finding that "[i]n short, although many law-enforcement professionals assume that they can make accurate judgments of truth and deception from verbal and nonverbal behavioral cues, there is little scientific evidence to support this claim").

confessions.²⁰⁹ Innocent people, by contrast, tend to waive their rights because they believe they have nothing to fear and that their innocence will set them free.²¹⁰ That is, even when they stand falsely accused, innocent people tend to cooperate fully with law enforcement under the false belief that police will discover their innocence upon further investigation.²¹¹

Many of the same dynamics apply at roadside traffic stops. Police presume guilt from the mere presence of cash found during a search, even though possession of cash is legal. Motorists are isolated and intimidated on the side of busy highways. When innocent motorists believe things will ultimately work out in their favor if they sign waivers, they are usually mistaken. There will be no future police investigation that might prove their innocence. With roadside waivers, police have every incentive *not* to investigate further or explore a motorist's innocence. To do otherwise would risk the payout a roadside waiver brings.

The research suggests that three police tactics in particular—isolation, presentation of false incriminating evidence, and statements implying that leniency will follow—combine to increase the risk that individuals will confess to crimes they did not commit.²¹² In fact, innocent individuals may even begin to believe that they are culpable.²¹³ It is not surprising that police

209. *Id.* at 33, 42-43 (“In contrast to past interrogations that relied on physical third-degree tactics, modern American police interrogations are presented in a manner that is professional and psychologically oriented . . . [T]he Reid technique is an operational nine-step process . . . essentially reducible to an interplay of three processes: custody and isolation, which increases stress and the incentive to extricate oneself from the situation; confrontation, in which the interrogator accuses the suspect of the crime, expresses certainty in that opinion, cites real or manufactured evidence, and blocks the suspect from denials; and minimization, in which the sympathetic interrogator morally justifies the crime, leading the suspect to infer he or she will be treated leniently and to see confession as the best possible means of ‘escape.’”)

210. *Id.* at 40 (reviewing literature regarding why those innocent of crimes might waive their rights and noting that “it appears that people have a naive faith in the power of their own innocence to set them free”).

211. Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 *LAW & HUM. BEHAV.* 3, 22-23 (2010) (reviewing existing studies finding that innocent people are at risk of waiving their rights).

212. *Id.* at 16-19.

213. Kassin & Gudjonsson, *supra* note 208, at 50 (“Internalized false confessions are those in which innocent but vulnerable suspects, under the influence of highly suggestive interrogation tactics, come not only to capitulate in their

commonly use all three tactics at roadside stops when presenting waivers to motorists.²¹⁴ Moreover, research on waivers of *Miranda* rights found that innocent individuals were more likely to waive their *Miranda* rights than those who were guilty.²¹⁵ Innocence may motivate individuals to give up their rights, perhaps out of an innate trust that the system will ultimately provide vindication.²¹⁶ If so, this trust may later turn to feelings of betrayal if the system does not deliver justice.

This understanding of human behavior informs legislation and policy in diverse fields. Legislators are concerned, for example, that consumers may sign contracts against their best interest. Federal rules and all fifty states grant homeowners a three-day rescission period to cancel consumer contracts when solicitors come knocking at their front doors.²¹⁷ This cooling-off period recognizes the undue pressure that door-to-door solicitors may exert on homeowners who are not expecting a consumer solicitation.²¹⁸ These laws typically require a seller to inform a buyer in

behavior, but also to believe that they committed the crime in question, sometimes confabulating false memories in the process . . .”).

214. All three tactics are present: (1) *isolation*—motorists are isolated on the side of busy highways where they are unable to consult legal help, confer with family members, or search for resources online; (2) *presentation of false incriminating evidence*—police allege money laundering crimes without supporting evidence; and (3) *statements implying that leniency will follow*—police promise that motorists can go on their way without criminal charges if they simply give up their cash and sign the waiver form.
215. Saul M. Kassir & Rebecca J. Norwick, *Why People Waive Their Miranda Rights: The Power of Innocence*, 28 LAW & HUM. BEHAV. 211, 215, 217 (2004) (finding in an experiment that “innocent suspects were more likely than guilty suspects to waive their rights” with “81% agreeing to talk with the detective” compared to 36% of guilty suspects).
216. Kyle C. Scherr et al., *Knowingly but Naively: The Overpowering Influence of Innocence on Interrogation Rights Decision-Making*, 42 LAW & HUM. BEHAV. 26, 33 (2018) (theorizing that naïve “just world beliefs” explain innocents’ tendency to comply with police requests against their self-interest).
217. *See, e.g.*, 16 C.F.R. pt. 429 (2024) (allowing consumers to cancel contracts made with door-to-door sellers within three days of signing, with some exceptions, and requiring sellers to inform consumers of this right).
218. *See Buyer’s Remorse: The FTC’s Cooling-Off Rule May Help*, FED. TRADE COMM’N: CONSUMER ADVICE (May 2021), <https://consumer.ftc.gov/articles/buyers-remorse-ftcs-cooling-rule-may-help> [<https://perma.cc/VV23-99G5>] (“High-pressure sales tactics can leave you wishing you had slowed down and done

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writing that they may cancel a signed contract, and they require that a cancellation form be provided for the buyer's use.²¹⁹ Even health-club contracts in many states are subject to three-day cancellation provisions because of high-pressure tactics.²²⁰

Additionally, some states recognize that other important contracts should contain no-penalty rescission clauses to assure that parties have an opportunity for lawyer review and consultation. For example, New Jersey provides a three-day attorney-review period to both sellers and buyers after signing a contract of sale for the purchase of a home.²²¹ Sellers and buyers are granted this legal-advice period to ensure that they understand the terms of their agreement that will profoundly affect their property rights.²²² A lawyer for either party may disapprove of the contract without being required to state the reasons for disapproval.²²³

In contrast, roadside waivers are "negotiated" and executed in much higher-pressure situations in which police have detained and isolated motorists on busy highways and have threatened them with criminal charges. Yet, police and prosecutors do not include cooling-off periods or attorney-review clauses in roadside waivers. To do so would undermine law enforcement's pursuit of profit.

III. LEGISLATIVE PROHIBITIONS ON ROADSIDE WAIVERS

The widespread deployment of roadside waivers at highway traffic stops calls for strong legislative measures prohibiting their use. A universal statutory ban, rather than case-by-case evaluation, is needed to end this nefarious practice.

some research before signing on the dotted line. The FTC's Cooling-Off Rule may help.").

219. *See, e.g.*, 73 PA. STAT. AND CONS. STAT. § 201-7 (West 2025) (protecting homeowners approached in their residences or contacted by phone).

220. *See, e.g., id.* § 2163 (requiring health-club contracts to permit buyer rescission within three days of signing).

221. N.J. ADMIN. CODE § 11:5-6.2(g)(2) (2025).

222. *See* N.J. State Bar Ass'n v. N.J. Ass'n of Realtor Bds., 461 A.2d 1112, 1114 (N.J. 1983) ("Most importantly, however, [these protections] serve[] to protect the public interest by making the contract subject to prompt attorney review if either buyer or seller so desires.").

223. N.J. ADMIN. CODE § 11:5-6.2(g)(2) (2025).

A. Existing and Pending Legislative Prohibitions on Roadside Waivers

The aggressive police tactics used to forfeit property in Tenaha, Texas, led to the nation's first state ban on roadside waivers in 2011.²²⁴ Between 2001 and 2007, Texas law-enforcement authorities retained more than \$225 million in civil forfeiture proceeds and seized 10,532 vehicles.²²⁵ In response, Texas enacted legislation prohibiting police from attempting to obtain a waiver of an individual's interest in seized property or of their rights concerning the property. This legislative reform targeted not only the actions of police officers but also prohibited prosecutors from engaging in similar conduct before filing a formal notice of a forfeiture action which, in Texas, is required no later than thirty days after the seizure.²²⁶

This is especially noteworthy in two respects. First, as noted by the sponsoring legislator of the waiver ban, prosecutors, as well as police, may be involved in obtaining roadside waivers, and therefore the bill needed to prohibit both actors.²²⁷ Second, the legislation prohibits inducing waivers not only from owners of property but also from any person *possessing*

224. TEX. CODE CRIM. PROC. ANN. art. 59.03(d) (West 2023) (mandating that peace officers and prosecutors “may not request, require, or in any manner induce any person . . . to execute a document purporting to waive the person's interest in or rights to property seized under this chapter”).

225. See Rachel L. Stuteville, *Reverse Robin Hood: The Tale of How Texas Law Enforcement Has Used Civil Asset Forfeiture to Take from Property Owners and Pad the Pockets of Local Government—The Righteous Hunt for Reform Is On*, 46 TEX. TECH L. REV. 1169, 1187 (2014).

226. TEX. CODE CRIM. PROC. ANN. art. 59.03(e) (West 2023) (“[A]n attorney representing the state may not request, require, or in any manner induce any person, including a person who asserts an interest in or right to property seized under this chapter, to execute a document purporting to waive the person's interest in or rights to the property.”).

227. SEN. RSCH. CTR., 82R2214 PEP-F, BILL ANALYSIS: S.B. 316, (Feb. 7, 2011), <https://www.capitol.state.tx.us/tlodocs/82R/analysis/pdf/SB00316I.pdf> [<https://perma.cc/36BN-RMYG>] (“Current law allows a district attorney to appear at a roadside search and obtain a waiver for property seized at the stop location before any court case or criminal charges have been filed. This practice has enabled a district attorney to use this confiscated property and funds for non law enforcement purposes, including the purchasing of alcohol for office parties.”).

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seized property, whether or not they have an interest or right in the property.²²⁸

After Texas banned roadside waivers, four other states followed. Virginia,²²⁹ Wyoming,²³⁰ Arizona,²³¹ and Alabama²³² each passed legislation in response to publicized instances of abuse in their states.²³³ All five states adopted similar language aimed at banning efforts to induce waivers of property and hearing rights before a forfeiture action is filed. The bans apply to peace officers,²³⁴ law-enforcement officers,²³⁵ the agency seizing the property, or any other law-enforcement agency.²³⁶ Wyoming's

228. TEX. CODE CRIM. PROC. ANN. art. 59.03(d) (West 2023).

229. S.B. 423, 2016 Gen. Assemb., Reg. Sess. (Va. 2016) (codified at VA. CODE ANN. § 19.2-386.2(D) (2023)).

230. H.B. 61, 64th Leg., Budget Sess. (Wyo. 2018) (codified at WYO. STAT. ANN. § 35-7-1049(bb) (2024)).

231. H.B. 2810, 55th Leg., Reg. Sess. (Ariz. 2021) (codified at ARIZ. REV. STAT. ANN. § 13-4306(L) (2024)).

232. S.B. 210, 2021 Leg., Reg. Sess. (Ala. 2021) (codified at ALA. CODE § 20-2-93(i)(2) (2023)).

233. *See, e.g.*, Wilson, *supra* note 118 (describing how the Wyoming ban was largely influenced by the case of a Wisconsin musician, Phil Parhamovich, who had his entire life savings—\$91,800—seized on Highway I-80 near Cheyenne, Wyoming).

234. *See* ARIZ. REV. STAT. ANN. § 13-4306(L) (2024). (“A peace officer may not request, require or in any manner induce a person to execute a document that attempts to disclaim an interest in or right to property or that relinquishes interests in or rights to property.”).

235. *See* ALA. CODE § 20-2-93(i)(2) (2023) (“A law enforcement officer may not induce or require a person to waive, for purposes of a seizure or forfeiture action, the person’s interest in property.”); WYO. STAT. ANN. § 35-7-1049(bb) (2024) (“A law enforcement officer may not request, require or in any manner induce any person to execute a document purporting to waive, for purpose of forfeiture under this section, the person’s interest in or rights to property seized.”).

236. *See* VA. CODE ANN. § 19.2-386.2(D) (2023) (“When any property is seized for the purposes of forfeiture . . . and an information naming that property has not been filed, neither the agency seizing the property nor any other law-enforcement agency may request, require, or in any manner induce any person who asserts ownership, lawful possession, or any lawful right to the property to waive his interest in or rights to the property until an information has been filed.”).

legislation additionally provides that “any document obtained by a law enforcement officer purporting to waive a person’s interest in or right to property seized under this section is null and void.”²³⁷ These roadside-waiver bans received overwhelming legislative support.²³⁸

Virginia’s ban on roadside waivers was the product of recommendations made by the Virginia State Crime Commission that studied civil forfeiture practices in the state.²³⁹ The Crime Commission unanimously adopted seven recommendations for legislative approval, with the first recommendation calling for a prohibition on law-enforcement waivers in which owners or lawful possessors of property relinquish their rights to contest forfeiture.²⁴⁰ The Commission’s recommendation noted that “having law enforcement directly ‘negotiate’ with a property owner, without the direct involvement of a prosecutor and/or an attorney for the owner, can raise the appearance of unfair dealing or coercion.”²⁴¹

In several states, a prosecutor and a property owner or defense counsel are free to discuss mutual agreements that may include a waiver of property rights once a forfeiture petition is filed or a court holds a hearing.²⁴² The legislation intends to protect property owners from waiving their property and hearing rights under *coercive conditions*, before a prosecutor has decided whether a forfeiture action is warranted and before a corresponding court notice has been issued explaining the legal and factual

237. WYO. STAT. ANN. § 35-7-1049(bb)(i) (2024) (“Any document obtained by a law enforcement officer purporting to waive a person’s interest in or right to property seized under this section is null and void.”).

238. H.B. 2810 in Arizona, for instance, passed by a vote of 29-1 in the state senate and 57-2-1 in the state house. See *Bill History for HB2810*, ARIZ. LEGISLATURE, <https://apps.azleg.gov/BillStatus/BillOverview/76007> [<https://perma.cc/94G7-KY5N>]. In Wyoming, H.B. 61 passed with only two opposing votes. See *HB0061 - Roadside Waiver of Property Rights Prohibited: Votes*, STATE OF WYO. LEGISLATURE, <https://wyoleg.gov/Legislation/2018/HB0061> [<https://perma.cc/GV47-YK37>].

239. See VA. STATE CRIME COMM’N, ANNUAL REPORT 9-10, 38 (2015) <https://vscc.virginia.gov/RD193%20VSCC%202015%20Annual%20Report.pdf> [<https://perma.cc/3L2H-EUFG>].

240. *Id.* at 6, 38.

241. *Id.* at 38.

242. See, e.g., WYO. STAT. ANN. § 35-7-1049(bb)(ii) (2024) (“Nothing in this subsection prohibits the commissioner, after a hearing and a finding of probable cause as required by subsection (c) of this section, from requesting a person to waive the person’s interest in or rights to property.”).

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claims asserted against the property owner. In Texas, for example, once a civil forfeiture action is filed, an owner receives a written explanation of the factual allegations and can obtain legal help to assert appropriate rights and defenses. This ensures that the property owner knows the factual and legal basis for the forfeiture filing, has an opportunity to consult legal help, and avoids coercive environments.

Several other states are currently considering legislation to end the practice of roadside waivers. For example, Iowa legislators have introduced a bill that would prohibit a law-enforcement officer, other than a prosecuting attorney, from requesting, inducing, or requiring a person to relinquish their right, interest, or title in seized property.²⁴³ Minnesota has similar legislation pending that would prohibit a law-enforcement officer, other than a prosecuting authority, from inducing a person to waive their interest in property.²⁴⁴

In the aftermath of aggressive police actions in Seward County, the Nebraska legislature is also considering a bill to prohibit law-enforcement officers, other than the prosecuting attorney, from inducing a person to give up their rights or interest in seized property.²⁴⁵ Like Wyoming's enacted legislation, the bill proposes to declare void any such waiver document obtained by a law-enforcement officer.²⁴⁶

In a Nebraska judiciary committee hearing held on February 21, 2024, a witness from the Institute for Justice described a roadside waiver as “a negotiation on the side of the highway” and noted that the median currency forfeiture in Nebraska was only \$955.²⁴⁷ He testified that “[t]hese are small amounts of money. So small, in fact, that it’s irrational to hire an attorney to try to get them back . . . even if a Nebraskan is innocent.”²⁴⁸ At that hearing, a representative of the Platte Institute also testified in support of the bill, expressing concern over the message that roadside forfeitures send to

243. H.F. 2560, 90th Gen. Assemb., Reg. Sess. (Iowa 2023).

244. S.F. 4625, 93d Leg., Reg. Sess. (Minn. 2023); H.F. 4673, 93d Leg., Reg. Sess. (Minn. 2024).

245. L.B. 916, 108th Leg., Reg. Sess. (Neb. 2023).

246. *Id.*

247. *Adopt the Controlled Substance Offenses Forfeiture Act and Change Provisions Relating to Forfeiture: Hearing on L.B. 916 Before the Judiciary Comm.*, 108th Leg. 68-69 (Neb. 2024) (statement of Lee McGrath, Att’y, Inst. for Just.).

248. *Id.* at 66.

citizens: “You can’t incarcerate someone without following process, and you shouldn’t be able to take . . . property without doing the same.”²⁴⁹

State Senator Tom Brewer, sponsor of the Nebraska reform bill, framed the legislation as one designed to restore trust in law enforcement, especially after so many publicized abuses in Seward County:

I’ve spent a, a lifetime working with law enforcement, and I didn’t want to do something that hindered law enforcement. I wanted to figure out how we could fix the problem. I think it’s essential that the actions of our law enforcement officers generate respect, and that they’re not doing things that causes a, a lack of trust or doubt within the community. So when the government takes property from a member of the public without proving that they’ve done anything wrong, the appearance is such that it, it brings questions that I don’t think we want our law enforcement community to have²⁵⁰

The idea behind this bill is simple. If the government is going to make someone—is going to take someone’s property, it should have proven that there was something committed that would justify it. . . .²⁵¹

What I’m saying is, I think it’s our responsibility within the Legislature to make sure that what is being done is right—it looks right and it is right.²⁵²

West Virginia²⁵³ and New York²⁵⁴ also have pending legislation aimed at banning roadside waivers. The West Virginia bill would prohibit a law-enforcement officer, other than the prosecuting authority, from inducing a

249. *Id.* at 63 (statement of Laura Ebke, Senior Fellow, Patte Inst.).

250. *Id.* at 61-62 (statement of State Sen. Tom Brewer).

251. *Id.* at 61.

252. *Id.* at 62.

253. H.B. 4288, 86th Leg., Reg. Sess. (W. Va. 2024) (containing similar language prohibiting a law-enforcement officer, other than the prosecuting authority, from inducing a waiver and holding that a waiver that violates this prohibition is void and inadmissible in court); *see also* H.B. 4565, 86th Leg., Reg. Sess. (W. Va. 2024) (providing for “Waiver prohibition”); H.B. 4584, 86th Leg., Reg. Sess. (W. Va. 2024) (containing a waiver prohibition).

254. A.B. 641/S.B. 2192, 246th Leg., Reg. Sess. (N.Y. 2023) (providing for criminal forfeiture in place of civil forfeiture).

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person to waive their interest in seized property and would render a document purporting to create such a waiver “void and inadmissible in court.”²⁵⁵ The New York bill would prohibit police from seeking a waiver for purposes of seizure or forfeiture and would declare any such waiver document void and inadmissible in court.²⁵⁶ A Kansas special judicial committee on civil asset forfeiture has similarly proposed recommendations for state reforms that include an end to roadside waivers.²⁵⁷

B. Proposed Model Legislation to Prohibit Roadside Waivers

Legislative prohibition is the best way to end roadside waivers once and for all at the state level. Model legislation to this effect is simple, straightforward, and allows for easy enforcement. Based upon the experiences of the five states that have already enacted such legislation, as well as others considering such a ban, legislation should include four key elements.

First, the ban should prohibit all attempts to request, require, or induce a person to waive property or their rights before a civil forfeiture action is filed.

Second, the prohibition should apply to all law-enforcement officials, including prosecutors and police. Prosecutors should be included to the extent that they draft roadside waivers, participate in their execution under coercive conditions, or simply stand by and process waivers that they know are neither knowing nor intelligent. Some states have expressed a reluctance to include prosecutors based on the mistaken notion that this will limit arms-length negotiations intended to amicably resolve disputes. A properly worded legislative ban should not, and will not, limit a prosecutor’s ability to engage in good-faith settlement negotiations. These settlement negotiations may include waivers that take place after the filing of a civil forfeiture action under conditions that are far removed from the

255. H.B. 4584, 86th Leg., Reg. Sess. (W. Va. 2024).

256. A.B. 641/S.B. 2192, 246th Leg., Reg. Sess. (N.Y. 2023)

257. See Jack Harvel, *Kansas Special Committee Leans into Recommendations for Civil Asset Forfeiture Changes*, TOPEKA CAP.-J. (Dec. 11, 2023) <https://www.yahoo.com/news/kansas-special-committee-leans-recommendations-134720003.html> [https://perma.cc/36SB-LAUW] (“The committee also agreed to end what are often referred to as roadside waivers. These essentially allow people to waive their right to contest asset seizures by an arresting officer, often as a condition to stop being detained.”).

shoulders of interstate highways and that allow for the property owner to obtain assistance of counsel.

Third, these protections should apply to anyone found in possession of seized property, including those who are not the owner or do not have an interest in the property. Police often bring pre-printed disclaimer of ownership forms in addition to roadside waivers and use many of the same high-pressure tactics to get motorists to sign.²⁵⁸ As several cases illustrate,²⁵⁹ innocent motorists may deny ownership of seized cash because they do not want to be linked to criminal activity, or they may act out of fear due to police intimidation. These motorists believe they are better off complying and signing the disclaimer form, even though they have done nothing wrong. Later, after a prosecutor files a civil forfeiture action, a motorist may appear in court to reclaim their property. Some courts reject these claims of ownership, finding that such motorists lack standing to be claimants because they previously denied an interest in the property.²⁶⁰

Though there may be distinctions between these situations and those in which declared owners at highway stops sign roadside waivers giving up their property and rights,²⁶¹ a legislative ban on disclaimers of ownership

258. *See* *United States v. \$119,030.00 in U.S. Currency*, 955 F. Supp. 2d 569, 573 (W.D. Va. 2013) (discussing an owner of cash who denied ownership during a traffic stop, later stating he was “nervous, intimidated and scared and signed the form disclaiming any interest in the money because ‘(he) just didn’t know what else to do. (He) didn’t want to go to jail’”).

259. *See, e.g., supra* text accompanying notes 125-139 (describing the case of John Anderson, who signed a disclaimer form in Nebraska).

260. *See, e.g., State v. \$105,646*, 297 P.3d 647, 653 (Utah Ct. App. 2013) (upholding the signed disclaimer form and finding that the motorist lacked standing to challenge the forfeiture of the seized property); *see also Landry v. Town of Livingston Police Dep’t*, 54 So. 3d 772, 774-75 (La. Ct. App. 2010) (involving a motorist who initially signed a currency-disclaimer form and later claimed ownership of the cash, but who failed to submit a claim timely in the forfeiture proceeding). However, when presented with a detailed explanation of a claimant’s ownership of the seized currency, some courts may require a hearing to determine whether the signed disclaimer form was a knowing and voluntary act that was free of deception. *See, e.g., Jean-Louis v. Forfeiture of \$203,595.00 in U.S. Currency*, 767 So.2d 595, 598 (2000) (reversing a lower court that had denied the claimants standing and holding that they were entitled to an evidentiary hearing on the validity of the waiver).

261. Disclaimer of ownership forms are different from roadside waivers in that they only require drivers to confirm whether seized property belongs to them.

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waivers, such as those enacted by the five states that already banned roadside waivers, should end this practice too. This is especially important because, without a ban on disclaimers of ownership waivers, police may attempt to circumvent roadside-waiver bans by coercing false disclaimers of interest in seized property.²⁶²

Fourth, legislative prohibitions should specify that a waiver document executed before a civil forfeiture action is ever filed will be declared null and void, inadmissible in court, and unenforceable. Should such a prohibited waiver come before a court, a prosecutor should be required to inform the court that state law requires that it be declared void and unenforceable.

When considering legislation to ban roadside waivers, states should include two additional elements. First, should an unrepresented property

If a driver claims no ownership, police will seize the property and later a prosecutor will commence a civil-forfeiture action to permanently forfeit the seized property. If a driver has signed a disclaimer form, he or she will also forfeit any right to notice to challenge the forfeiture action that is later filed. On the other hand, roadside waivers go much further in obtaining permanent forfeiture of property and waiving rights to a hearing. They require drivers to acknowledge, without proof, that there are police assertions that a crime has been committed, there is a nexus between the property and the crime, and they agree to permanent forfeiture of the property without any further process. Roadside waivers require that drivers give up hearing rights to which they are entitled under state forfeiture law (and which exist to satisfy minimum due-process requirements). Conversely, disclaimers of ownership generally waive rights to notice of forfeiture hearings, something drivers would not be entitled to under state forfeiture law if they actually had no legal interest or ownership of the property in question. *See* United States v. \$119,030.00 in U.S. Currency, 955 F. Supp. 2d 569, 578 (W.D. Va. 2013); *see also* United States v. \$1,185,135.00 in U.S. Currency, 320 F. App'x 893, 894-95 (11th Cir. 2008). Of course, there are also similarities between disclaimers and roadside waivers. They both require consent from a motorist under coercive and intimidating conditions, without motorists being aware of their rights or having an ability to obtain legal help before being pressured to sign.

262. As some of the stories recounted in this Feature demonstrate, police have both disclaimers of ownership and roadside waivers. They are not duplicative. If a motorist acknowledges ownership of cash, police will confront the owner with a roadside waiver authorizing the forfeiture of the property and waiving all procedural rights. However, if roadside waivers are banned, police will likely rely heavily on disclaimers of ownership to pressure motorists to deny ownership of cash under threat of false criminal charges. This will allow officers to seize the cash and obtain a waiver of the motorist's right to obtain notice of a future civil-forfeiture action at which they could attempt to dispute the forfeiture.

owner agree to waive their ownership of seized property or their right to a hearing *after* a civil forfeiture action is filed, a court should conduct an examination on the record to confirm that the waiver agreement was knowingly and voluntarily entered into by the unrepresented party.²⁶³ Second, to increase transparency, prosecutors should be required as part of their annual state-reporting responsibilities to provide detailed and separate accounting of forfeited property that was obtained from consent agreements, default judgments, and contested judgments. In addition, federal authorities should require all states receiving federal funds for law-enforcement purposes to provide this same information on standardized reporting forms that will allow for comparative analysis and transparency among the states.

Without universal and comprehensive legislative prohibitions on roadside waivers, as suggested in this Feature, state civil forfeiture reforms enacted in recent years to eliminate civil forfeiture entirely or, at least, to provide greater procedural protections for property owners, will be at substantial risk of being negated by the use of roadside waivers that bypass these reforms.

C. Roadside Waivers Evade Civil Forfeiture Reforms

The danger of not banning roadside waivers is that police will continue to use them to circumvent state legislative reforms aimed at curtailing forfeiture abuses. Currently, approximately 37 states have amended their civil forfeiture laws over the past decade to provide stronger protections for

263. Missouri specifically prohibits prosecutors from using forfeiture in bargaining to defer prosecution, obtain a guilty plea, or affect a sentencing recommendation. MO. REV. STAT. § 513.617(3) (2024) (“[S]eized property shall not be used in bargaining to defer prosecution of criminal charges, obtain a guilty plea or affect sentencing recommendations, and the court . . . shall not approve any settlement without first making such a finding. No state or local government agency, nor any person, may accept any monetary payment or other thing of value in exchange for the release of property seized for forfeiture or for the settlement of any criminal charges.”). Criminal and forfeiture proceedings may resolve at the same time, but only after the court finds that no unlawful bargaining has occurred. *Id.*

their residents.²⁶⁴ For example, four states have abolished civil forfeiture²⁶⁵ while sixteen now require a criminal conviction as a condition precedent to taking property under civil forfeiture laws.²⁶⁶ Some states have elevated the government's burden of proof, shifted the burden of proving innocence from the property owner to the government, and imposed new reporting requirements to enhance transparency.²⁶⁷ Significantly, state reforms have been both procedural and substantive. For example, Wyoming and Tennessee imposed prompt post-seizure probable-cause hearings, while Michigan and Illinois eliminated bond requirements that served as barriers to challenging forfeiture takings.²⁶⁸

Evidence does not support the notion that civil forfeiture reforms increase the incidence of crime.²⁶⁹ Still, few states have removed law enforcement's direct financial incentive in civil forfeiture laws,²⁷⁰ and no

264. *Civil Forfeiture Reforms on the State Level*, INST. FOR JUST., <https://ij.org/legislative-advocacy/civil-forfeiture-legislative-highlights> [<https://perma.cc/JQX7-DBM8>]. (noting that over the past decade, approximately thirty-seven states and the District of Columbia have enacted various reforms to their civil forfeiture laws).

265. *Id.* (explaining that North Carolina, New Mexico, Nebraska, and Maine have abolished civil forfeiture and use criminal forfeiture to forfeit property); see also Nick Sibilla, *Maine Abolishes Civil Forfeiture, Now Requires a Criminal Conviction to Take Property*, FORBES (Jan. 14, 2021), <https://www.forbes.com/sites/nicksibilla/2021/07/14/maine-abolishes-civil-forfeiture-now-requires-a-criminal-conviction-to-take-property> [<https://perma.cc/6ZT8-9BVU>].

266. See *Civil Forfeiture Reforms on the State Level*, *supra* note 264.

267. See *id.*

268. See Knepper et al., *supra* note 1, at 43-44.

269. See Taylor, *supra* note 13, at 1425 (arguing that data does not show that forfeiture stops crime and reporting that New Mexico, which abolished civil forfeiture, has not experienced a significant impact on crime); see also Knepper et al., *supra* note 1, at 19 (“[T]here is little evidence for forfeiture’s efficacy in ‘disrupt[ing] or dismantl[ing] criminal organizations.’”); Nick Sibilla, *When New Mexico Abolished Civil Forfeiture 5 Years Ago, Cops Predicted Crime Would Soar. It Didn’t*, FORBES (Dec. 17, 2020), <https://www.forbes.com/sites/nicksibilla/2020/12/17/when-new-mexico-abolished-civil-forfeiture-5-years-ago-cops-predicted-crime-would-soar-it-didnt> [<https://perma.cc/68Q5-4N2U>].

270. See Knepper et al., *supra* note 1, at 31 (“In the past five years, just one state has reduced (not eliminated) law enforcement’s financial incentive for forfeiture . . .”).

state has provided a right to counsel to indigent property owners.²⁷¹ With huge payoffs at stake, police and prosecutors seek to evade reforms. They have used equitable sharing²⁷² and *consensual* roadside waivers to avoid overhauling their abusive forfeiture practices.

In the mid-1980s, the federal government created the equitable sharing program.²⁷³ This program enabled local police to call federal authorities to their traffic stops to take over their seizures and pursue *federal* civil forfeiture proceedings against property owners, unencumbered by state-law constraints. After property is forfeited in federal proceedings (usually administratively), federal authorities return up to 80% of forfeited funds to state authorities. This allows local prosecutors to bypass safeguards imposed by state legislators.²⁷⁴ The name given to this practice, *equitable sharing*, masks a profit-motivated, coordinated attack on federalism.²⁷⁵

271. Although no state provides a right to counsel for indigent property owners in civil forfeiture, Congress provided a limited right in federal proceedings in the Civil Forfeiture Reform Act of 2000. *See* Civil Asset Forfeiture Reform Act, 18 U.S.C. § 983(b)(2)(A) (2018) (providing that “[i]f a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence, the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim”).

272. *See* Knepper et al., *supra* note 1, at 46; Carpenter, *supra* note 82, at 217.

273. *See* Heydari, *supra* note 37, at 226-27 (“This program amended federal asset forfeiture laws to permit direct transfer of seized assets . . . to the law enforcement agencies that seized the assets One particularly controversial aspect of the program is how it circumvents state and local prohibitions by allowing police to keep the proceeds of seized assets even if state or local law would otherwise prevent it.”).

274. *See* Knepper et al., *supra* note 1, at 46; *see also* Carpenter, *supra* note 82, at 216-17 (explaining the difference between “adoptive” equitable sharing and “joint investigative” forfeiture in which “state and federal agencies jointly investigate criminal activity and engage in a genuine joint enterprise to combat criminal activity”).

275. *Id.* at 217-218 & nn.72-73. Carpenter also cites Jefferson E. Holcomb, Tomislav V. Kovandzic & Marian R. Williams, *Civil Asset Forfeiture, Equitable Sharing, and Policing for Profit in the United States*, 39 J. CRIM. JUST. 273, 274 (2011), which found that agencies in jurisdictions with more restrictive state forfeiture laws received more federal equitable sharing proceeds.

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Some states have responded by banning equitable sharing practices along with other procedural reforms.²⁷⁶

Police and prosecutors also use roadside waivers to evade state civil forfeiture reforms. Under threat of money-laundering charges, police extract consensual forfeitures of cash and waivers of fundamental rights that circumvent the procedural protections and court oversight otherwise required by state reforms. Through roadside waivers, law enforcement seizes property in the shadows. Moreover, prosecutors rarely, if ever, disaggregate *consensual* roadside forfeitures from default judgments or contested judgments in their mandatory reports to state legislatures.²⁷⁷ This makes it extremely difficult to determine which property forfeitures are obtained without any legal process guaranteed by state reforms.

Transparency dies on the side of the road.

IV. CONTRACT PRINCIPLES AND CONSTITUTIONAL CONCERNS

Unless all states ban roadside waivers, courts will continue to assess their validity and enforceability on a case-by-case basis. In each instance, a court should apply established contract law principles of consideration, coercion, duress, intimidation, and unconscionability, and uphold constitutional guarantees to declare a roadside waiver null and void and unenforceable. When challenged in court, prosecutors may contend that roadside waivers are binding agreements.²⁷⁸ But even first-year law

276. *See, e.g.*, 42 PA. STAT. AND CONS. STAT. ANN. § 5807.1 (West 2024) (“State law enforcement authorities shall not refer seized property to a Federal agency seeking the adoption by the Federal agency of the seized property. Nothing under this chapter shall prohibit the Federal Government or any of its agencies from seeking Federal forfeiture of the same property under any Federal forfeiture law.”).

277. For example, Pennsylvania’s annual forfeiture reports submitted to the state legislature by the Pennsylvania Office of Attorney General do not distinguish consent forfeitures from those obtained through default judgments or contested judgments. While forfeiture amounts are listed in each annual report, it is not possible to know if they are the product of roadside waivers such as what took place in the roadside waiver of \$300,000 in the case of *In re \$300,000 in U.S. Currency*, 309 A.3d 1117, 1123-27 (Pa. Commw. Ct. 2024). We only know that a roadside waiver was used in that case because it resulted in a published opinion of an appellate court.

278. *See, e.g.*, *\$300,000 in U.S. Currency*, 309 A.3d at 1132 (“The Commonwealth posits that even if the Form were to be considered a contract, Appellant received consideration . . .”).

students recognize that the circumstances under which roadside waivers are executed do not constitute a willing and reasonable exchange of promises that evidences the mutual assent required for a binding agreement.

A. Contract Principles

An agreement is a manifestation of mutual assent on the part of two or more persons.²⁷⁹ The elements of a valid and enforceable agreement are “offer, acceptance and consideration.”²⁸⁰ A completely one-sided contract that gives nothing to a party but their freedom to leave raises the fundamental question of whether sufficient consideration exists.²⁸¹

Consideration requires more than a promise to do something that one is legally required to do.²⁸² Indeed, if a public servant has a preexisting duty, the performance of that duty is not consideration.²⁸³ In highway encounters, officers must promptly release motorists after addressing the traffic infraction that prompted the stop.²⁸⁴ When officers prolong a stop to search for cash and then offer motorists a waiver to sign to avoid criminal charges, they do no more than legally required. Therefore, the signed roadside waiver lacks the necessary consideration to be enforceable.

However, even if adequate consideration exists, principles of duress, intimidation, and undue influence still render roadside waivers invalid. For an agreement to be legally binding, the parties must enter it without duress or coercion, and the contract must have a legally permissive subject that does not violate public policy.²⁸⁵ Freedom of will is essential to validity.²⁸⁶

279. RESTATEMENT (SECOND) OF CONTS. § 3 (AM. L. INST. 1981).

280. *Fuqua v. SVOX AG*, 13 N.E.3d 68, 80 (Ill. App. Ct. 2014).

281. *United States v. Twenty Miljam-350 IED Jammers*, 669 F.3d 78, 87 (2d Cir. 2011) (evaluating claimant’s argument that a signed stipulation to forfeiture is void for lack of consideration).

282. 17 AM. JUR. 2D *Contracts* § 131 (2024).

283. See RESTATEMENT (FIRST) OF CONTS. § 84 (AM. L. INST. 1932) (providing that consideration is insufficient where the promisor is already bound by an identical duty to the public).

284. See *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (“Authority for [a traffic stop] ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.”).

285. 17 AM. JUR. 2D *Contracts* §§ 212, 231 (2024).

286. *Id.* § 212.

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Duress is a defense to an otherwise valid contract, and it may invalidate consent, rendering the contract a relative nullity.²⁸⁷ Duress exists where an improper threat leaves a motorist without any reasonable alternative other than to assent to the contract.²⁸⁸ Threat of imprisonment is a method of exercising duress.²⁸⁹ At highway stops, the police—with superior bargaining power—make wrongful threats to the motorist on a “take-it-or-leave-it basis.”²⁹⁰ Meanwhile, the motorist is neither free to leave nor to seek legal help. The pre-printed waiver contains one-sided, nonnegotiable terms favoring the drafter of the document. Police exert undue influence at highway traffic stops as the motorist is under their domination, a power disparity that enables them to persuade.²⁹¹ The motorist signs the waiver under duress, agreeing to unconscionable terms.²⁹² A reasonable, innocent motorist would not abandon his lawful cash and hearing rights without police pressure.²⁹³ As a result, the roadside waiver is a quintessential adhesion contract in which the circumstances allow for little other alternative than for a motorist to comply and sign the document.²⁹⁴

287. *Id.*; see also RESTATEMENT (SECOND) OF CONTS. ch. 7, topic 2, intro. note (AM. L. INST. 1981) (“Duress takes two forms. In one, a person physically compels conduct that appears to be a manifestation of assent In the other, a person makes an improper threat that induces a party who has no reasonable alternative to manifesting his assent. The result of this type of duress is that the contract that is created is voidable by the victim This latter type of duress is in practice the more common and more important.”).

288. 17 AM. JUR. 2D *Contracts* § 214 (2024).

289. RESTATEMENT (FIRST) OF CONTS. § 493 (AM. L. INST. 1932).

290. See *supra* Part I (illustrating roadside waiver practice).

291. RESTATEMENT (SECOND) OF CONTS. § 177 (AM. L. INST. 1981) (“Undue influence is unfair persuasion of a party who is under the domination of the person exercising the persuasion”). When assessing claims of undue influence, courts typically consider “the unfairness of the resulting bargain, the unavailability of independent advice, and the susceptibility of the person persuaded.” *Id.* § 177 cmt. b.

292. *Nino v. Jewelry Exch.*, 609 F.3d 191, 201 (3d Cir. 2010) (explaining that terms are unconscionable where they unreasonably favor the stronger party).

293. See *supra* Part II (assessing why innocent motorists sign roadside waivers).

294. See *Kammerman v. Steinberg*, 891 F.2d 424, 431 (2d Cir. 1989) (defining economic duress as “(1) a threat, (2) which was unlawfully made, and (3) caused involuntary acceptance of contract terms, (4) *because the circumstances permitted no other alternative*” (emphases added)).

Roadside waivers also violate public policy, making them unenforceable.²⁹⁵ In states that have adopted a legislative ban, that prohibition alone makes roadside waivers per se violative of public policy. But even in states without legislative bans, the public interest in protecting lawfully acquired property from wrongful governmental taking, and in providing property owners advance notice and an opportunity to be heard before property may be forfeited in civil forfeiture, outweighs any interest in the enforcement of roadside waivers.

Roadside waivers are also unconscionable because they are unreasonably one-sided and enable police to circumvent state procedural remedies that provide fairness and meet due-process requirements.²⁹⁶ The waiver documents purposely fail to disclose any information about procedural rights that motorists possess under state civil forfeiture laws. The stark contrast between the language of roadside waivers and notice requirements needed for the waiver of important employment rights under federal law underscores the unconscionability of roadside agreements. For example, an employee's waiver of the right to sue their employer for age discrimination must be voluntary and knowing. It also must advise the employee to consult an attorney before executing the agreement, among other detailed requirements.²⁹⁷

For all these reasons, the coercive conditions under which motorists sign roadside waivers demand per se invalidation by courts as void and

295. See RESTATEMENT (SECOND) OF CONTS. § 178 (AM. L. INST. 1981) (“A promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms.”).

296. See *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 449 (D.C. Cir. 1965) (“Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.”); see also Jacob Hale Russell, *Unconscionability's Greatly Exaggerated Death*, 53 U.C. DAVIS L. REV. 965, 967 (2019) (recognizing that while the doctrine of unconscionability has limited application today, it remains an appropriate standard when important hearing rights are at stake in contractual arrangements).

297. Age Discrimination in Employment Act, 29 U.S.C. § 626(f) (2018) (outlining the requirements for the waiver of claims under the Age Discrimination in Employment Act (ADEA)). Notably, waivers under the ADEA must also be made “for consideration in addition to anything of value to which the individual already is entitled.” *Id.* § 626(f)(1)(D).

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unenforceable. The same intimidating and oppressive conditions are present each time a roadside waiver is executed and therefore do not require individualized fact finding.²⁹⁸ Over many years, police departments in different states have used the very same tactics to coerce waiver agreements on interstate highways. As clearly demonstrated by the examples described in this Feature, waiver agreements are meant to grab cash and extinguish transparency.

In short, at highway traffic stops, parties do not willingly come together to forge an agreement in their respective mutual interests. Rather, under threat of criminal charges and potential imprisonment for nonexistent crimes, police extract property from innocent motorists for an illusory promise that they may leave free of criminal charges filed against them. This is hollow consideration.²⁹⁹ The isolating and intimidating conditions that prey upon a motorist's vulnerability and elevate police officers' authority amplify the power imbalance between police officers and motorists. After all, it is not illegal to carry legal tender.³⁰⁰ But the police hold all the cards in these highway interactions.

298. While the validity of a waiver is usually a question of fact, such individualized fact finding is unnecessary in roadside waiver cases. In individually evaluating waivers of the right against self-incrimination, for example, courts assess (1) whether the waiver was the product of free and deliberate choice rather than intimidation, coercion, or deception, and (2) whether the waiver was executed with a full awareness of the nature of the rights being abandoned and the consequences of their abandonment. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979). Under the onerous conditions under which all roadside waivers are executed, however, the answers to both questions are identical in every case as a matter of law. And, in states that have banned roadside waivers, legislative prohibitions obviate the need for case-by-case application of contract principles. Stephen J. Ware, *Arbitration Clauses, Jury-Waiver Clauses, and Other Contractual Waivers of Constitutional Rights*, 67 L. & CONTEMP. PROBS. 167, 172 n.29 (2004) ("Of course, non-contract law, such as that enacted through legislation or administrative agency regulation, can override contract-law standards . . .").

299. *See, e.g., Raglin v. State*, 152 Wash. App. 1047 (2009) (finding that a private family's contract with the state lacked sufficient consideration where the state promised performance that it was "already legally obligated" to provide).

300. Though most cash seizures are of modest amounts, even carrying large quantities of cash without more is not sufficient to show a connection to illegal drug transactions, although it can be strong evidence that money was exchanged for drugs. *See United States v. \$93,685.61 in U.S. Currency*, 730 F.2d 571, 572 (9th Cir. 1984) (reasoning that an "extremely large amount of

B. Constitutional Concerns and Policy Considerations

Constitutional law also demands that courts invalidate roadside waivers as per se unenforceable under the Fourth Amendment, public policy, and, where applicable, state jury-trial rights.

1. Fourth Amendment Violations

The Fourth Amendment's prohibition on unreasonable seizures limits a traffic stop's duration to the time "reasonably necessary to carry out the 'mission' of the stop."³⁰¹ For minor traffic violations, a stop's "mission" is to ensure "vehicles on the road are operated safely and responsibly" and includes "determining whether to issue a traffic ticket, . . . checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance."³⁰² By contrast, measures aimed at detecting "evidence of ordinary criminal wrongdoing" exceed a stop's mission.³⁰³

Accordingly, "even when a [stop] is justified at the outset," police violate the Fourth Amendment when they detain motorists longer than necessary to conduct additional investigations without probable cause or reasonable suspicion.³⁰⁴ A drug-detecting dog's sniff is a "paradigm example[]" of an "unrelated investigation that may not be performed if [it] prolong[s] a roadside detention absent independent reasonable suspicion."³⁰⁵ But even officer questioning that delays a driver only briefly may render a stop unconstitutional if unrelated to the alleged traffic violation and officer safety.³⁰⁶ And this delay need not come at the end of a stop—a single, off-

money" may itself be "strong evidence that the money was furnished or intended to be furnished in return for drugs").

301. *United States v. Gorman*, 859 F.3d 706, 714 (9th Cir. 2017) (citing *Rodriguez v. United States*, 575 U.S. 348, 354-55 (2015)).

302. *Rodriguez*, 575 U.S. at 355.

303. *Id.*

304. *Chiaverini v. City of Napoleon*, 602 U.S. 556, 562-63 (2024) (finding that unreasonably prolonged pretrial detention violates the Fourth Amendment).

305. *Gorman*, 859 F.3d at 715; *Rodriguez*, 575 U.S. at 356 ("[A] dog sniff is not fairly characterized as part of the officer's traffic mission.").

306. *See United States v. McCowan*, 547 F. Supp. 3d 966, 969-75 (D. Nev. 2021) (finding that an officer's forty-second exchange with a stopped vehicle's

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mission question halfway through a stop that delays a driver by a “few seconds” may violate the Fourth Amendment.³⁰⁷ Such a question might inquire into probation status,³⁰⁸ travel plans,³⁰⁹ or a passenger’s identity.³¹⁰

Officers often engage motorists in extended conversation when coercing signatures for roadside waivers. This goes beyond the stop’s mission: deciding whether to ticket a traffic violation. Where officers respond to a motorist’s refusal to consent to search by deploying drug-sniffing dogs, or ask unnecessary questions designed to generate reasonable suspicion for a nonconsensual search, they transition from ensuring “safety and responsibility” on the roadway to searching for “evidence of ordinary criminal wrongdoing” in violation of the Fourth Amendment.³¹¹ Only where an officer engages in this conduct without delaying a traffic stop, or where independent reasonable suspicion supports a time-consuming search, are these practices potentially constitutional.³¹² However, as the stories recounted earlier in this Feature demonstrate, police intentionally and substantially delayed traffic stops in search of a crime unrelated to traffic safety, and even when they called in drug-sniffing dogs, they were unable to uncover any evidence that would justify reasonable suspicion of criminal activity.

2. Contrary to Public Policy: *Town of Newton v. Rumery* and Release-Dismissal Agreements

Police circumvent a motorist’s due-process rights of notice and an opportunity to be heard when they find cash at traffic stops and coerce motorists to surrender their property and sign away their right to a forfeiture hearing. The use of roadside waivers, especially to forfeit small

passengers to request their identification exceeded the narrow mission of a stop for a traffic violation and thus rendered the stop unconstitutional).

307. *See* *United States v. Odom*, 588 F. Supp. 3d 1032, 1040 (N.D. Cal. 2022).

308. *Id.*

309. *Commonwealth v. Lopez*, 609 A.2d 177, 182 (Pa. Super. Ct. 1992).

310. *United States v. Landeros*, 913 F.3d 862, 868 (9th Cir. 2019).

311. *Rodriguez v. United States*, 575 U.S. 348, 355 (2015).

312. *See, e.g., Weisshaus v. Teichelman*, No. 22-11099, 2024 WL 620372, at *2 (5th Cir. Feb. 14, 2024) (finding that an officer’s questions regarding a driver’s travel plans and ultimate deployment of a drug-sniffing dog did not violate the Fourth Amendment where the questions did not delay the traffic stop and the driver’s responses gave rise to a reasonable suspicion of criminal activity).

amounts of cash that are financially infeasible to contest, reflects law enforcement's prioritization of profit over public safety and shapes official conduct that generates recurring patterns of abuse. This aggressive use of modern civil forfeiture against ordinary citizens departs from the historic justifications for civil forfeiture laws and raises serious due-process concerns.³¹³

In addition to Fourth Amendment and due-process concerns, roadside waivers are contrary to public policy. Though few published opinions address their policy implications, roadside waivers fare poorly under guidance from court decisions regarding "release-dismissal agreements" where individuals waive civil rights claims in exchange for the dismissal of criminal charges. In *Town of Newton v. Rumery*, the plaintiff signed a release-dismissal agreement but later sought to sue for defamation and false imprisonment.³¹⁴ The district court dismissed the action and upheld the agreement, deeming it valid as "a decision that was voluntary, deliberate

313. When cash is found and officers coerce motorists into signing away their right to a forfeiture hearing to permanently forfeit property, they circumvent basic due process, which requires, at a minimum, notice and an opportunity to be heard. *Goss v. Lopez*, 419 U.S. 565, 579 (1975); *see also* Sallah et al., *supra* note 125 ("Encouraging police to initiate searches for the purpose of seizing cash or other assets, rather than to seize evidence to be used in a prosecution, is a dangerous development,' . . . 'It is particularly troubling if police officers are trained to manipulate the suspect into forfeiting the assets or waiving the right to contest the search.'"). Moreover, law enforcement's prioritization of profit over public safety leads to abuses that deprive residents of due-process rights. *See* *Culley v. Marshall*, 601 U.S. 377, 396 (Gorsuch, J., concurring) (2024) ("Not only do law enforcement agencies have strong financial incentives to pursue forfeitures, those incentives also appear to influence how they conduct them. Some agencies, for example, reportedly place special emphasis on seizing low-value items and relatively small amounts of cash, hopeful their actions won't be contested because the cost of litigating to retrieve the property may cost more than the value of the property itself."); *see also* *Leonard v. Texas*, 580 U.S. 1178, 1180 (2017) ("This system—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses."). Additionally, civil forfeiture is not favored in the law and a forfeiture act's provisions must be strictly followed in order to meet due-process requirements. *See, e.g.,* *Barren v. Pa. State Police*, 148 A.3d 486 (Pa. Commw. Ct 2016); *Commonwealth v. Mosley*, 702 A.2d 857, 860 (1997).

314. 480 U.S. 386, 389-91 (1987).

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and informed.”³¹⁵ However, the Court of Appeals reversed, invalidating release-dismissal agreements outright.³¹⁶

The Supreme Court granted certiorari and rejected the blanket prohibition. Instead, it applied a balancing approach. It determined that an agreement could be unenforceable if public policy considerations outweigh the interest in enforcement.³¹⁷ While state and federal precedent prior to *Rumery* generally deemed these agreements voidable under common law due to coercion,³¹⁸ the Supreme Court stated that, in some cases, waivers can represent a rational choice for defendants weighing the risks of criminal prosecution against potential civil action.³¹⁹

Understanding the circumstances under which *Rumery* released his right to file a civil-rights action, however, is critical to a proper reading of the Supreme Court’s holding. *Rumery* was a sophisticated businessman who was not in jail at the time the agreement was negotiated.³²⁰ He was represented by an experienced criminal lawyer who negotiated with the prosecutor and who drafted the release agreement.³²¹ *Rumery* had three days to review the final agreement before deciding whether to sign it.³²² In addition, public-interest considerations supported the agreement’s waiver of a hearing as it spared a sexual-abuse victim the trauma of trial.³²³ Against this backdrop, the Supreme Court held that not all release-dismissal agreements are voided by public-policy concerns.

Of course, the circumstances in *Rumery* stand in sharp contrast to the conditions under which motorists sign roadside waivers at highway traffic stops. Motorists sign these waivers under threat of criminal charges but often absent evidence of wrongdoing, without an explanation of the hearing rights they forfeit, and in isolation on the roadway without attorney

315. *Id.* at 391.

316. *Id.*

317. *Id.* at 392.

318. Seth F. Kreimer, *Releases, Redress, and Police Misconduct: Reflections on Agreements to Waive Civil Rights Actions in Exchange for Dismissal of Criminal Charges*, 136 U. PA. L. REV. 851, 861-62 (1988) (citing *Willig v. Rapaport*, 81 A.D.2d 862, 864 (1981)).

319. *Rumery*, 480 U.S. at 393-94.

320. *Id.* at 394.

321. *Id.*

322. *Id.*

323. *Id.* at 402-03 (O’Connor, J., concurring).

consultation. Law-enforcement officials draft the waiver forms, and motorists must make quick take-it-or-leave-it decisions in the presence of armed police officers and, sometimes, drug-sniffing dogs. The fact that police, rather than prosecutors, initiate these agreements creates a greater risk to the public interest than was present in *Rumery*.³²⁴

The conversation that precedes the signing of a roadside waiver cannot fairly be called *negotiation*. Absent are informed exchanges between a prosecutor and a defense lawyer in the calm comfort of a law office or an ability to change the terms of the waiver form. Once signed, there is no judicial review or in-person colloquy to assure that the waiver of property and important rights was knowing and voluntary by the property owner. Where the circumstances in *Rumery* may have suggested a hint of prosecutorial coercion, roadside waivers present blatant police coercion under false pretenses that fail to meet any reasonable standard of negotiation.³²⁵

The contrast between the circumstances in *Rumery* and those that accompany roadside waivers is so stark that a *per se* rule is superior to a balancing approach. While the *Rumery* Court was unwilling to assume “that prosecutors will seize the opportunity for wrongdoing,”³²⁶ it is unlikely that

324. See *Lynch v. City of Alhambra*, 880 F.2d 1122, 1128 (9th Cir. 1989) (“The public interest in vindicating constitutional rights and deterring police misconduct is undermined where officials other than the prosecutor fabricate or exaggerate allegations of criminal conduct in order to facilitate the release of civil rights claims through release-dismissal agreements.”). Moreover, when police demand that motorists give up their right to pursue a civil action against police or prosecutors for redress, such waivers seek to avoid constitutional responsibilities of public officials and thereby implicate First Amendment concerns. See *Salkil v. Mount Sterling Twp. Police Dept.*, 458 F.3d 520, 529 (6th Cir. 2006) (“It is not unreasonable to suggest that a municipality’s policy or practice of demanding release-dismissal agreements for the sole purpose of avoiding constitutional responsibilities violates the First Amendment.”).

325. Justice O’Connor’s *Rumery* concurrence lists some of the many factors that may evidence that a release agreement was voluntary and not the product of overreaching. *Rumery*, 480 U.S. at 401-02 (O’Connor, J., concurring). These factors include the knowledge and experience of the criminal defendant, the circumstances of the execution of the release, whether the defendant was counseled, the nature and severity of the pending criminal charges, the existence of a legitimate criminal justice objective, and the presence of judicial supervision. *Id.* These factors all support the *per se* involuntariness of roadside waiver agreements.

326. *Id.* at 396 (majority opinion).

similar deference would be shown to police entering agreements on the roadside, especially when law-enforcement budgets are the financial beneficiaries of forfeited cash. As Justice O'Connor stated in her concurrence in *Rumery*, "no court would knowingly permit a prosecutor to agree to accept a defendant's plea to a lesser charge in exchange for the defendant's cash payment to the police officers who arrested him."³²⁷ The permanent seizure of cash and waiver of hearing rights in exchange for letting a motorist leave without criminal charges comes eerily close to Justice O'Connor's admonition. Only a per se ban will halt this unconstitutional practice.³²⁸

3. State Jury-Trial Rights

Finally, motorists may also give up their right to go before a jury of their peers. Such waivers must be made knowingly and intentionally,³²⁹ as the

327. *Id.* at 401 (O'Connor, J., concurring).

328. Note, also, that *Rumery* involved the waiver of only a statutory remedy. *Id.* at 389 (majority opinion). Because roadside waivers also involve the waiver of constitutional rights, a stricter rule should apply when assessing their validity. See *Davies v. Grossmont Union High Sch. Dist.*, 930 F.2d 1390, 1397 (9th Cir. 1991) ("While *Rumery* involved the surrender of a statutory remedy, here we confront the waiver of a constitutional right . . . [B]ecause constitutional rights are generally more fundamental than statutory rights, a stricter rule than the one embodied by the *Rumery* balancing test may be appropriate in such cases."). In *Davies*, the Ninth Circuit Court of Appeals refused to enforce a settlement agreement provision that precluded a newly elected high-school district board member from holding elective office. *Id.* at 1392-93. The Court reasoned that "foregoing a remedy of money damages for a past injury that cannot be undone may not implicate the public interest to the same extent as does the surrender of the right itself." *Id.* at 1397. In contrast, the right of the people to elect representatives of their own choosing to public office is a paramount public interest that was not present in *Rumery*. *Id.* at 1397-98. Similarly, in civil forfeiture, a waiver provision precluding a property owner from obtaining notice and a hearing to contest the government's taking of his private property implicates a public policy of the highest order and, when negotiated on the side of the road without any access to legal help, is not enforceable.

329. Jean R. Sternlight, *Mandatory Binding Arbitration and the Demise of the Seventh Amendment Right to a Jury Trial*, 16 OHIO ST. J. ON DISP. RESOL. 669, 677 (2001), citing *Fuentes v. Shevin*, 407 U.S. 67, 94 n.31 (1972). *Nat'l Equip. Rental, Ltd. v. Hendrix*, 565 F.2d 255, 258 (2d Cir. 1977) (first citing *Johnson*

“jury often stands as a shield between the individual and the State.”³³⁰ The Seventh Amendment guarantees a fundamental right to a jury trial in federal civil cases, and courts should presume against its waiver.³³¹ Property owners in such cases are entitled to a jury trial if the seizure of property is made on land and not at sea.³³² Most state constitutions or rules of civil procedure guarantee a civil jury-trial right as well, and this right applies to civil forfeiture cases in some, but not all states.³³³ In

v. Zerbst, 304 U.S. 458 (1938); and then citing *Heyman v. Kline*, 456 F.2d 123, 129 (2d Cir. 1972)); *see also* Sternlight, *supra*, at 678 n.43, 679 nn.44-49 (reviewing case law to demonstrate that “lower courts have virtually uniformly held that [jury trial] waivers are only valid when they meet a high standard variously expressed in words such as knowing, voluntary, and intentional”).

330. *State v. One 1990 Honda Accord*, New Jersey Registration No. HRB20D, VIN No. 1HGCB7659LA063293 & Four Hundred & Twenty Dollars, 712 A.2d 1148, 1157 (N.J. 1998), citing *Lyn-Anna Properties Ltd. v. Harborview Dev. Corp.*, 678 A.2d 683, 693 (N.J. 1996) (“The right of trial by jury is an ever-present reminder of our belief in the importance of the individual.”).

331. *Aetna Ins. Co. v. Kennedy*, 301 U.S. 389, 393 (1937).

332. 50A C.J.S. *Juries* § 101 (2024).

333. Some state courts have concluded that in common-law forfeiture actions the trier of fact was historically the jury, and therefore they have reasoned that their state constitutions preserve the common-law right to trial by jury in in rem forfeiture actions. *See, e.g., One 1990 Honda Accord*, 712 A.2d at 1152 (reviewing and applying this history). In *State v. \$2,435 in U.S. Currency*, 220 N.E.3d 542 (Ind. 2023), the Indiana Supreme Court recently held that a property owner is entitled to a jury trial in a civil-forfeiture case. *Indiana High Court Finds State Residents Entitled to Jury Trial in Government Confiscation Cases*, ASSOCIATED PRESS (Nov. 1, 2023), <https://www.usnews.com/news/best-states/indiana/articles/2023-11-01/indiana-high-court-finds-state-residents-entitled-to-jury-trial-in-government-confiscation-cases> [<https://perma.cc/JE4P-4UDF>].

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Pennsylvania,³³⁴ Indiana,³³⁵ Montana,³³⁶ and New Jersey,³³⁷ among other states,³³⁸ a property owner has a right to a jury trial in a civil forfeiture action.³³⁹ In South Carolina, a claimant in a forfeiture case involving property is entitled to a jury trial as long as the property is not contraband. However, pre-printed roadside waiver forms rarely mention that motorists are surrendering their right to a jury trial when they sign. Even in a rare case where a waiver form stated that a jury trial was being waived, the

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334. *Commonwealth v. One Thousand Four Hundred Dollars (\$1,400) in U.S. Currency*, 667 A.2d 452, 454 (Pa. Commw. Ct. 1995) (noting that in *1984 Z-28 Camaro Coupe*, “the Supreme Court held that property owners are entitled to a jury trial in forfeiture actions, pursuant to Article 1, Section 6 of the Pennsylvania Constitution, where there is an issue as to whether the seized goods are contraband”); *see also* PA. CONST. art 1, § 6 (“Trial by jury shall be as heretofore, and the right thereof remain inviolate.”).
335. *State v. \$2,435 in U.S. Currency*, 220 N.E.3d 542, 548 (Ind. 2023) (holding that Article 1, Section 20 of the Indiana Constitution protects the right to a jury trial for in rem civil forfeitures); *see also* IND. CONST. art 1, § 20 (“In all civil cases, the right of trial by jury shall remain inviolate.”).
336. *State v. Items of Real Prop. Owned &/or Possessed by Chilinski*, 383 P.3d 236, 243 (Mont. 2016) (“After consideration of both American and English common law, federal jurisprudence, and decisions from our sister states . . . we join the majority of states and federal courts and conclude that there is a right to trial by jury guaranteed by Section 26 of Montana’s Constitution in an in rem forfeiture proceeding”); *see also* MONT. CONST. art. II, § 26 (“The right of trial by jury is secured to all and shall remain inviolate.”).
337. *One 1990 Honda Accord*, 712 A.2d at 1158. Idaho, Florida, and South Dakota are other examples of states that provide a jury-trial right in civil-forfeiture cases. *See Chilinski*, 383 P.3d at 242-43 (summarizing the jurisprudence in these states).
338. Some states, such as Michigan, do not guarantee a jury trial in a civil forfeiture action on the basis that it is an equitable action. *See In re Forfeiture of \$1,159,420*, 486 N.W.2d 326, 337 (Mich. 1992) (“The forfeiture act does not indicate a right to a jury trial in forfeiture actions. Because a forfeiture action is equitable in nature, we find that the Legislature’s failure to grant the right to a jury trial in forfeiture matters makes the right unavailable.”); *see also Chilinski*, 383 P.3d at 243 n.3 (identifying those states that do not recognize a jury-trial right in civil in rem forfeiture proceedings).
339. 50A C.J.S. *Juries* § 101 n.2 (2024).

appellate court found that the police provided no discussion or explanation to the motorist about giving up this fundamental right.³⁴⁰

When evaluating the validity of contractual waivers of jury-trial rights, courts assess whether the waiver was negotiated or presented on a take-it-or-leave-it basis, whether the jury waiver itself is formatted conspicuously within the document, and whether there is a sharp disparity in bargaining power between the parties—including the experience and sophistication of the party opposing the waiver.³⁴¹ In Pennsylvania, for example, a criminal jury waiver must be in writing, knowing and intelligent, and vetted in a colloquy on the record before a judge.³⁴² In addition, under state criminal rules of procedure, not only the defendant but also the prosecutor, the defense counsel, and the judge must sign the waiver.³⁴³ While such formality may not be required in a civil case, a jury trial waiver must still be knowingly and intentionally agreed upon by the party giving up this right.³⁴⁴ Where there is a gross inequality in bargaining power and a party believes there is no choice but to sign, there is strong evidence that such a waiver is neither knowing nor intentional.³⁴⁵

Although civil forfeiture actions are not criminal proceedings, some courts view them as quasi-criminal matters.³⁴⁶ Therefore, roadside waivers

340. *In re* \$300,000 in U.S. Currency, 309 A.3d 1117, 1142-43 (Pa. Commw. Ct. 2024). While contract-law standards are generally used for the waiver of constitutional rights in property-deprivation cases, “[c]ase law governing jury-waiver clauses stands out because of its failure to apply contract-law standards of consent and its requirement that consent be ‘knowing.’” *See Ware, supra* note 298, at 197.

341. *Sternlight, supra* note 329, at 680.

342. PA. R. CRIM. P. 590(A); *In re* 4714 Morann Ave. Houtzdale, Clearfield Cnty., 303 A.3d 200, 214 (Pa. Commw. Ct. 2023).

343. PA. R. CRIM. P. 620.

344. *See Ware, supra* note 298, at 197.

345. *See Nat’l Equip. Rental, Ltd. v. Hendrix*, 565 F.2d 255, 258 (2d Cir. 1977) (“[G]ross inequality in bargaining power suggests . . . that [an] asserted waiver was neither knowing nor intentional.” (citing *Fuentes v. Shevin*, 407 U.S. 67 (1972))).

346. *See Rulli, supra* note 74, at 557 & n.157 (“Civil forfeiture actions are quasi-criminal proceedings that are disfavored in the law.”); *see also* Tim Perry, *Yavapai County Takes \$8.6M in Civil Forfeitures Over 10 Years*, SEDONA RED ROCK NEWS (Nov. 14, 2023), <https://www.redrocknews.com/2023/11/14/yavapai-county-takes-8-6m-in-civil-forfeitures-over-10-years>

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of jury rights, where they apply to civil forfeiture actions, require special scrutiny. Roadside waivers between parties of grossly unequal bargaining power that fail to mention or explain the waiver of jury rights are not legally sufficient to satisfy the knowing-and-intelligent standard required to waive such a fundamental right.³⁴⁷

Roadside waivers wrongfully deprive innocent Americans of fundamental rights along with their cash. But they also steal another very valuable commodity. They shake the public's confidence in the honesty and trustworthiness of law enforcement and cause citizens to question the ethical integrity of officials sworn to protect them. This is a very high price to pay, one that cannot be justified by modern civil forfeiture laws.

[<https://perma.cc/YL7N-XA3P>] (“The U.S. Supreme Court found in *Boyd v. United States* in 1886 that ‘proceedings instituted for the purpose of declaring the forfeiture of a man’s property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal,’ and ruled that such proceedings were subject to the protections of the Fourth and Fifth Amendments.”).

347. See *D. H. Overmyer Co., Inc. v. Frick Co.*, 405 U.S. 174, 185-86 (1972) (distinguishing a negotiation that took place between two corporations who bargained for contractual waiver of due process and had counsel on both sides from cases involving unequal bargaining power and overreaching). Compare roadside waivers with emerging law in the mandatory-arbitration context. In far less coercive settings, in which consumers purchase services online and sign lengthy forms requiring disputes to be arbitrated, some courts have rejected the argument that mandatory-arbitration forms are adequate to waive jury rights. See *Chilutti v. Uber Techs., Inc.*, 300 A.3d 430, 434, 451 (Pa. Super. Ct. 2023) (invalidating a jury trial waiver made through hyperlinked “terms and conditions” online). Instead, these courts question the validity of jury waivers that are nonspecific or which are buried in online registration forms. See *Chilutti*, 300 A.3d at 443 (“We advocate that in both contexts — criminal and civil matters — it is critical that a party be fully informed of their right to a jury trial and the effect of waiving that right . . . [A] waiver must be clearly described and understood to be giving up a constitutional right to a jury trial.”). They emphasize that waivers must provide clear notice of consent to waive jury rights in bold and conspicuous print. *Chilutti*, 300 A.3d at 450.

V. PROSECUTORIAL ETHICS

Prosecutors are complicit in the use of roadside waivers. They draft the waiver forms,³⁴⁸ oversee their use,³⁴⁹ and process the forfeitures they generate.³⁵⁰ Prosecutors, therefore, know that police use the pre-written forms to intentionally sidestep procedural protections and judicial oversight provided by state civil forfeiture laws. To make matters worse, prosecutor budgets benefit financially from forfeited cash from roadside waivers.³⁵¹ In short, prosecutors underwrite and supervise roadside waivers by police.

348. See Steve Klein, *Wyoming Supreme Court Decision Should Prompt the End of Civil Forfeiture*, WYO. LIBERTY GRP. (Dec. 11, 2023), <https://wyliberty.org/blog/legal-perspectives/wyoming-supreme-court-decision-should-prompt-the-end-of-civil-forfeiture> [<https://perma.cc/L5SH-QUUJ>] (“The Wyoming Division of Criminal Investigation issued a form for ‘roadside waivers’ to have owners forfeit property on the spot, with chilling results, until the legislature specifically banned the practice in 2018.”); Brief of Appellant Zhi Xiong Xu, *supra* note 163, at app. D (displaying a roadside waiver form on the stationery of the Office of the Attorney General of Pennsylvania).

349. See *supra* note 278 and accompanying text.

350. See *supra* note 192 and accompanying text.

351. See Marian R. Williams, *Civil Asset Forfeiture: Where Does the Money Go*, 27 CRIM. JUST. REV. 321, 326 (2002) (“Almost 9 out of 10 jurisdictions (88 percent) specify that funds from forfeitures are to be given to law enforcement agencies (including prosecuting agencies) or are to be used for law enforcement purposes.”).

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Prosecutors are ministers of justice.³⁵² As such, they must ensure that an accused is accorded procedural justice³⁵³ and that justice is done,³⁵⁴ thereby making their role “much nearer that of a judicial officer than that of partisan advocate.”³⁵⁵ While prosecutors work closely with police, they must draw clear lines of authority.³⁵⁶ Their client is not the police or even the victim of a crime; the prosecutor owes her duty to society at large³⁵⁷ and must be fair to all when affecting the public interest.³⁵⁸

The prosecutor has a special duty to facilitate procedural justice by ensuring that an accused has a meaningful opportunity to be heard.³⁵⁹ When negotiating a plea arrangement, for example, a prosecutor must ensure that an accused understands its meaning and consequences.³⁶⁰ A prosecutor may also commit prosecutorial misconduct if they suppress

352. See MODEL RULES OF PRO. CONDUCT r. 3.8 cmt. (AM. BAR ASS’N 2024) (“A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.”); John D. Bessler, *The Public Interest and the Unconstitutionality of Private Prosecutors*, 47 ARK. L. REV. 511, 543 (1994) (stating that prosecutors “bear alone the state’s considerable responsibility to see that no innocent person is prosecuted, convicted, or punished” (quoting CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 13.10.1, at 759 (1986))); see also Rulli, *supra* note 74, at 555 & n.143 (reviewing authorities that underscore the prosecutor’s special role).

353. Rulli, *supra* note 74, at 555 n.140-41; MODEL RULES OF PRO. CONDUCT r. 3.8 cmt. (AM. BAR ASS’N 2024).

354. *United States v. Young*, 470 U.S. 1, 25 (1985) (Brennan, J., concurring in part and dissenting in part) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

355. Rulli, *supra* note 74, at 555 (quoting Bessler, *supra* note 352, at 543).

356. Police and prosecutors have a close and unique relationship in the legal system in which prosecutors “almost never advocate to diminish the role of police in our society but do everything to enlarge police’s role in our everyday lives.” Vida B. Johnson, *Whom Do Prosecutors Protect?*, 104 B.U. L. REV. 289, 344 (2024).

357. *Id.* at 297.

358. ABA Comm. on Ethics & Pro. Resp., Formal Op. 486, at 2 (2019).

359. See *id.* at 9-12 (describing the prosecutor’s duties to preserve the right to counsel and important pretrial rights).

360. *Id.* at 13-15.

“complaints against official abuse” by offering release-dismissal agreements when there is evidence of substantial police misconduct.³⁶¹

The American Bar Association’s (the “ABA”) opinion on plea bargaining in misdemeanor cases relies upon Model Rule 3.8(c)’s statement that a prosecutor “shall not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing.”³⁶² This reference to pretrial rights applies broadly and includes all important rights, substantive or procedural, affecting a critical stage of the process when judicial oversight is minimal.³⁶³ It is here that the risks and consequences of an improper waiver of rights by an unrepresented accused person are acute.³⁶⁴

The ABA’s opinion emphasizes the importance of ethical constraints at this stage of criminal misdemeanor cases because individuals accused of misdemeanor offenses are often not arrested and may be questioned by police in the field without the presence of counsel.³⁶⁵ An accused may not know their procedural rights or even that they have the right to a lawyer.³⁶⁶ Prosecutors must ensure that their subordinates and agents conform to conduct that is “compatible with . . . professional obligations.”³⁶⁷ Thus, if a prosecutor relies upon police officers to discuss waivers of rights in misdemeanor cases, she must take care that her ethical obligations are not violated in those discussions, and she must establish policies and procedures to monitor reasonable assurance of compliance with her obligations.³⁶⁸ A prosecutor may not permit a police officer who is involved in the investigation of a crime or arrest to act as a prosecutor and negotiate a plea agreement.³⁶⁹

The Model Rules of Professional Conduct constrain a prosecutor’s communications with an unrepresented accused in many ways. A

361. *Coughlen v. Coats*, 5 F.3d 970, 974 (6th Cir. 1993).

362. ABA Comm. on Ethics & Pro. Resp., Formal Op. 486, at 11 (2019).

363. *Id.*

364. *Id.* at 11 & n.47.

365. *Id.* at 12.

366. *Id.*

367. *Id.*

368. *Id.* at 13. Thus, the fact that a prosecutor is not physically present when police induce motorists to sign roadside waivers does not shield prosecutors from their ethical responsibilities.

369. *Id.* at 6.

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prosecutor must not request that an unrepresented accused waive a right to counsel or accept a plea if the accused does not understand the consequences of agreeing to such request,³⁷⁰ and a prosecutor must not seek to obtain their waiver of important pretrial rights.³⁷¹ Further, a prosecutor may not make false statements to a third person; even a partially leading statement or omission may be considered misrepresentation equivalent to a false statement.³⁷² Instead, a prosecutor must make reasonable efforts to assure that an accused has been advised of the right to obtain counsel and given ample opportunity to do so.³⁷³

The principles that require these protections for an unrepresented accused and impose ethical obligations on prosecutors apply with equal force to highway traffic stops in which police threaten motorists with criminal charges and then seize their property through roadside waivers. The motorist is in “an acutely vulnerable position” and almost always lacks experience with civil forfeiture.³⁷⁴ Similar to a plea bargain with an unrepresented accused, a “negotiation” at a roadside stop with armed police is not an “ordinary arms-length transaction or settlement agreement.”³⁷⁵ The stakes are high, and law enforcement must ensure that the motorist understands and voluntarily consents to the waiver of important rights.

A prosecutor may not say during plea bargaining with an unrepresented accused, “Take this plea for time served and you are done, you can go home now.”³⁷⁶ And yet, this is essentially the message that police send to motorists while securing their assent on pre-printed waiver forms: “*Sign the form giving over your cash and right to a hearing, and you can leave without any criminal charges being filed against you.*” For good reason, police involved in the investigation of a crime are not permitted to negotiate a plea.³⁷⁷ Similarly, they should not be permitted to negotiate waivers on the side of the road. If prosecutors authorize such waivers, either affirmatively or by silence, they are engaged in unethical conduct.

370. *Id.* at 13.

371. MODEL RULES OF PRO. CONDUCT r. 3.8(c) (AM. BAR ASS’N 2024).

372. MODEL RULES OF PRO. CONDUCT r. 4.1 cmt. (AM. BAR ASS’N 2024); ABA Comm. on Ethics & Pro. Resp., Formal Op. 486, at 13 (2019).

373. MODEL RULES OF PRO. CONDUCT r. 3.8(b) (AM. BAR ASS’N 2024).

374. *See* ABA Comm. on Ethics & Pro. Resp., Formal Op. 486, at 14 (2019) (describing unrepresented defendants in these terms).

375. *Id.* at 14.

376. *Id.* at 15.

377. *Id.* at 6.

The roadside waivers involved in the cases in this Feature do not describe in any detail the rights that a motorist waives by his or her signature, and they certainly fail to advise a motorist of the importance of obtaining legal help before signing. Instead, they demand an immediate response under coercive conditions accompanied by threats of criminal charges. Waiver forms may also mislead, as was evident in the Wyoming waiver form signed by Phil Parhamovich. The Wyoming waiver form tried to recast the taking of property as a charitable contribution with a donation of cash out of a “desire to give this property or currency . . . to the State of Wyoming . . . for narcotics law enforcement purposes.”³⁷⁸ Despite such misleading statements, prosecutors vigorously defend waivers when challenged, disregarding their higher duty to do justice.³⁷⁹

Just as a prosecutor may not improperly “pressure, advise, or induce acceptance” by an unrepresented accused when negotiating a plea bargain,³⁸⁰ a prosecutor must not accept or enforce a roadside waiver that is the product of pressure or inducement. Rule 8.4(c) prohibits any lawyer from engaging in dishonesty, fraud, deceit, or misrepresentation,³⁸¹ and that prohibition extends to both prosecutors and police when they obtain and enforce roadside waivers.

Nothing less satisfies the prosecutor’s special role in our justice system.

CONCLUSION

Roadside waivers reveal how far civil forfeiture has strayed from its historical roots. Police use pretextual traffic stops to take cash permanently from innocent motorists and to foreclose their hearing rights under state law. In this way, police actions largely evade court scrutiny. Financial incentives built into contemporary civil forfeiture laws push police to forfeit as much cash as possible while distorting public safety priorities and undermining public trust. Civil forfeiture legislative reforms enacted over

378. See Lopez et al., *supra* note 116.

379. See, e.g., Alamdari, *supra* note 98 (describing a case in which, though a prosecutor claimed a roadside waiver form was the only piece of evidence that she considered, she nonetheless chose to defend the waiver form in court); *In re* \$300,000 in U.S. Currency, 309 A.3d 1117, 1131-32 (Pa. Commw. Ct. 2024) (summarizing prosecutors’ various arguments to support a roadside waiver’s validity).

380. ABA Comm. on Ethics & Pro. Resp., Formal Op. 486, at 13, 16 (2019).

381. *Id.* at 14; MODEL RULES OF PRO. CONDUCT r. 8.4(c) (AM. BAR ASS’N 2024).

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the past decade by a majority of states are at risk of being incomplete and potentially ineffective, absent a ban on roadside waivers.

As long as police can evade public scrutiny and procedural safeguards through these coerced agreements, they will continue to put profit over public safety and intimidate motorists to sign away their cash at highway traffic stops. Ending this practice requires legislative bans in all fifty states. To be effective, these bans should, at a minimum, (1) prohibit attempts to induce the waiver of rights before a civil forfeiture action is filed, (2) apply to prosecutors as well as police, (3) protect anyone in possession of seized property, regardless of their ownership interest in the property, and (4) declare null and void any waivers that precede the filing of a forfeiture action. Further, where unrepresented parties enter waiver agreements after a forfeiture action has already commenced, states should require courts to conduct on-the-record examinations to assure voluntariness. And, to increase transparency, states should require prosecutors to delineate with specificity which forfeited property was obtained from consent agreements, default judgments, and contested judgments in their annual reporting.

Meanwhile, until legislative bans are universally enacted, courts should find roadside waivers null and void under established principles of contract and constitutional law. Motorists execute these agreements on the side of the highway under threat of criminal charges and without access to an attorney. These circumstances are a far cry from an arm's-length negotiation and cannot satisfy the free will, knowledge, and intentionality required for a binding agreement or a jury trial waiver, not to mention due-process and Fourth Amendment rights.

Modern civil forfeiture abuses cast a long shadow over law enforcement. When police and prosecutors permanently seize cash from innocent motorists through roadside waivers, they erode the hard-won public trust that enables an orderly system of justice. They signal that their primary allegiance is to the department's bottom line, not to public safety. And, in the process, prosecutors stain their honored ethical role as ministers of justice.

Ending roadside waivers—through legislation or judicial precedent—is urgently needed to protect private property and preserve the constitutional rights of every citizen who travels on interstate highways with cash in their possession.

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