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THE COST OF IGNORANCE

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Legal scholars have written about how the Supreme Court's criminal procedure jurisprudence since the 1970s has encouraged police exploitation of citizen ignorance. A clear example of this is the Court's consent doctrine articulated in Schneckloth v. Bustamonte. Schneckloth *teaches that police officers, when asking civilians for permission to search them, are not required to inform those civilians that they have a right to refuse.*

This Piece adds a human element to this problem by detailing two frightening car stops of motorists who were innocent of any crime. They were fully compliant with the law enforcement agents stopping them and gave permission for the officers to search their vehicles. This Piece illustrates how the motorists' ignorance of their rights likely contributed to the horrors they experienced when the officers found large amounts of cash—their life savings—in both vehicles. Each motorist learned firsthand about civil forfeiture when the officers confiscated their money. The effects of these encounters were both financially devastating and psychologically traumatic. In sum, this Piece provides powerful anecdotal evidence that the Court's jurisprudential decision to permit the police exploitation of citizen ignorance via its consent doctrine is fundamentally unjust.

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INTRODUCTION

Since the 1970s, the Supreme Court has deliberately crafted a jurisprudential landscape in criminal procedure that permits and even encourages police exploitation of citizen ignorance.[1] The Court permits "consent" searches regardless of whether the civilian knows that they have a right to refuse.[2] The Court requires that a person explicitly invoke their rights under *Miranda v. Arizona*,[3] but it permits both explicit and implicit waivers of said rights.[4] Despite having once acknowledged the coercive nature of police interrogations,[5] the Court has declared that nothing but a clear, unambiguous statement will trigger any law enforcement obligation to honor a citizen's *Miranda* rights.[6] Moreover, that statement must come from the civilian being interrogated; a third party, even the civilian's attorney, cannot invoke the civilian's *Miranda* rights.[7] The Court's fashioning of this landscape coincided with the federal government establishing and waging "wars" on drugs and crime, and the Court's stated intent in developing these doctrines was to give the police wide latitude to solve crime.[8]

For the law-abiding citizen, the Court's teachings may not seem problematic. After all, only those "evil people" that commit crimes have

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1. See Arnold H. Loewy, Police, Citizens, the Constitution, and Ignorance: The Systemic Value of Citizen Ignorance in Solving Crime, 39 Tex. Tech L. Rev. 1077, 1077, 1079–88 (2007) (arguing that "the Supreme Court has purposely created a jurisprudence designed to allow the police to exploit citizen ignorance").

2. See Schneckloth v. Bustamonte, 412 U.S. 218, 227, 229–34 (1973) ("While knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the *sine qua non* of an effective consent.").

3. 384 U.S. 436 (1966).

4. See North Carolina v. Butler, 441 U.S. 369, 373 (1979) (holding that *Miranda* waivers need not be in writing and can be implicit or explicit); cf. Berghuis v. Thompkins, 560 U.S. 370, 381–85 (2010) (noting that the invocation of the *Miranda* right to silence must be explicit, verbal, and unambiguous); Davis v. United States, 512 U.S. 452, 462 (1994) (concluding that the invocation of the *Miranda* right to an attorney must be explicit and unambiguous).

5. See *Miranda*, 384 U.S. at 467–69 (1966) (concluding that "without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely").

6. See *Berghuis*, 560 U.S. at 381–85; *Davis*, 512 U.S. at 461–62.

7. See Moran v. Burbine, 475 U.S. 412, 421–22 (1986) (upholding a *Miranda* waiver irrespective of an attorney's attempted actions on their client's behalf).

8. See *Miranda*, 384 U.S. at 481 (1966) (reminding that the Court has always intended to give "ample latitude to law enforcement agencies in the legitimate exercise of their duties"); Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness 41–50, 60–62 (10th anniversary ed. 2020) (describing the Reagan Administration's "vehement promises to be tougher on crime and to enhance the federal government's role in combating it" through the "War on Drugs").

any reason to fear a consent search or inclination to refuse to talk to the police during an investigation. Professor Arnold Loewy notes,

> We substantially circumscribe police opportunity to conduct searches and seizures by ordinarily requiring probable cause and a warrant, but almost gleefully permit "consent" searches when everybody knows that the searchees believed that they had no power to deny consent. Similarly, we have developed a whole panoply of confession limitations from *Miranda* and its progeny, but with rare exceptions, we positively rejoice when the suspects do not understand their rights and consequently incriminate themselves.[9]

Obedience to authority aside, many law-abiding citizens believe that they have no reason to fear consent searches or other kinds of interactions with the police because they are not (knowingly) violating the law.[10]

This Piece will highlight two police–citizen interactions within the past five years to prove that this kind of thinking is ignorant: the police stop of Ameal Woods in Texas[11] and the police stop of Stephen Lara in Nevada.[12] In both incidents, the citizens were fully cooperative with law enforcement and innocent of any crime. Yet in both incidents, the police took large amounts of cash from the citizen despite that citizen not being accused of or arrested for engaging in criminal activity. For Ameal, the money seized was his investment—made possible through years of savings—in a trucking business he had dreamt of starting.[13] For Stephen, the money seized was his life savings.[14] This government theft, called "civil forfeiture,"[15] was made possible, in part, by citizen ignorance. The cost of

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9. Loewy, supra note 1, at 1077 (footnotes omitted).

10. See John M. Burkoff, Search Me?, 39 Tex. Tech L. Rev. 1109, 1124–25 (2007) ("Moreover and more pragmatically, it is easy to imagine that many, if not most, innocent persons might appreciate the opportunity to demonstrate their innocence . . . by agreeing to a request to search."); Alisa M. Smith, Erik Dolgoff & Dana Stewart Speer, Testing Judicial Assumptions of the "Consensual" Encounter: An Experimental Study, 14 Fla. Coastal L. Rev. 285, 304–05 (2013) (reporting experimental findings that "[u]nder all circumstances, individuals complied with all of the officers' requests" to be questioned and provide identification); Beau C. Tremitiere, Note, The Fallacy of a Colorblind Consent Search Doctrine, 112 Nw. U. L. Rev. 527, 536–38 (2017) (describing the various factors recognized by courts as relevant in determining the subjective vulnerability of a person giving consent to search).

11. See infra section II.A.

12. See infra section II.B.

13. See infra section II.A.

14. See infra section II.B.

15. See, e.g., Alex Haller, Note, Legislative Reform or Legalized Theft?: Why Civil Asset Forfeiture Must Be Outlawed in Ohio, 67 Clev. St. L. Rev. 295, 298 (2019) (describing the process of civil forfeiture); Kelsey O'Callaghan, Note, Guilty Until Proven Innocent: An Analysis of Racial Disparities in Civil Asset Forfeiture Seizures, Mitchell Hamline L.J. Pub. Pol'y & Prac., Spring 2025, at 245–46 (2025) (characterizing civil forfeiture as "a well-oiled machine of legalized theft"); Bobbi Taylor, Comment, Legalized Theft: An Analysis of Civil Asset Forfeiture and Reform in New Jersey, 53 Seton Hall L. Rev. 1413, 1413–14 (2023) (providing examples of civil asset forfeiture as "effectively theft").

that ignorance was the money they lost—Ameal indefinitely and Stephen temporarily.[16] For both civilians, there is the additional cost of anxiety and depression over having been subjected to such severe injustices.

This Piece proceeds in three Parts. Part I discusses Fourth Amendment consent doctrine and briefly reviews scholarship related to the consent doctrine and citizen ignorance. Part II details the two selected incidents, showing how judicially encouraged ignorance played a role in the seizure of each respective citizen's money. It also examines other Fourth Amendment doctrines at play that assisted law enforcement in taking advantage of the two Stephen and Ameal. Finally, Part III suggests a change the Court should make to prevent the injustice that occurred with these two individuals. The author firmly believes that the practice of civil forfeiture should be permanently discontinued and the consent doctrine fully abolished. But given how unlikely the federal government is to do either anytime soon, this Piece makes a modest proposal: Lawmakers at all levels of government should prohibit law enforcement officers from asking civilians about cash in their possession unless they have probable cause that the person is committing a crime that specifically involves large amounts of cash. Such a rule could help make the Supreme Court precedent more respectable—or perhaps a bit less unrespectable.

I. CONSENT AND CITIZEN IGNORANCE

The Supreme Court first announced the modern consent doctrine in *Schneckloth v. Bustamonte*.[17] This case featured a car stop, which Professor Morgan Cloud notes "is the archetypal scenario in which an officer asks for consent to search."[18] The owner of the car was apparently not among the six individuals stopped, but the owner's brother, Joe Alcala, was seated in the front passenger seat.[19] After the men had exited the car, the officer that made the car stop asked Alcala if he could search the vehicle; Alcala said, "Sure, go ahead."[20] During the search, the officer asked Alcala if the trunk opened, to which Alcala responded, "Yes," before opening the trunk with the car keys.[21] The detaining officer described the atmosphere during the stop as "congenial,"[22] and the majority opinion noted that "[p]rior to the search no one was threatened with arrest."[23] It is instructive here that Alcala was apparently a law-abiding citizen; the government attributed the

16. See infra Part II.

17. 412 U.S. 218, 248–49 (1973).

18. Morgan Cloud, Ignorance and Democracy, 39 Tex. Tech L. Rev. 1143, 1148 (2007).

19. *Schneckloth*, 412 U.S. at 220.

20. Id. (internal quotation marks omitted) (quoting Joe Alcala).

21. Id. (internal quotation marks omitted) (quoting testimony of Joe Gonzales).

22. Id. (internal quotation marks omitted) (quoting James Rand, Police Officer, Sunnyvale Dep't of Pub. Safety).

23. Id.

stolen checks eventually found in the trunk of the car to a different passenger, Robert Bustamonte.[24] The Court ultimately found that the checks were lawfully recovered pursuant to the consent exception under the Fourth Amendment.[25]

As part of its holding, the Court declared that the government need not prove that a person knew of their right to refuse a search to establish lawful consent.[26] Professor Cloud persuasively demonstrates how the Court's rationale behind this conclusion was (and remains) unsurprisingly weak: The fact that interactions on the street may differ from proceedings in a criminal trial provides no principled reason to offer different levels of protections for Fourth Amendment rights as compared to those for Fifth and Sixth Amendment rights.[27] Yet *Schneckloth* does just that, needlessly and inappropriately positioning the Fourth Amendment as less worthy of judicial respect than the Fifth and Sixth Amendments.[28] Professor Russell Weaver argues that the Court's decision and rationale "ignores fundamental constitutional values," relegating the sacred Fourth Amendment to "an afterthought or an add-on to the Bill of Rights."[29]

In his dissent, Justice Thurgood Marshall called out the majority for sanctioning police exploitation of ignorance:

> I must conclude with some reluctance that when the Court speaks of practicality, what it really is talking of is the continued ability of the police to capitalize on the ignorance of citizens so as to accomplish by subterfuge what they could not achieve by relying only on the knowing relinquishment of constitutional rights.[30]

Justice Marshall continued, opining that the Court's ruling "confines the protection of the Fourth Amendment against searches conducted without probable cause to the sophisticated, the knowledgeable, and, I

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24. See id. at 278 n.3 (Marshall, J., dissenting) ("Bustamonte was charged with possessing stolen checks found in the search at which he was present . . . ."); see also Christo Lassiter, Consent to Search by Ignorant People, 39 Tex. Tech L. Rev. 1171, 1178 (2007) ("After discovery of the checks, Gonzales[,] [the driver,] cooperated with the officers and provided information that linked Bustamonte with the fruits of the search and a scheme to cash the forged checks." (citing *Schneckloth*, 412 U.S. at 220)).

25. See *Schneckloth*, 412 U.S. at 247 ("There is no reason to believe, under circumstances such as are present here, that the response to a policeman's question is presumptively coerced . . . .").

26. See id. at 229–34 (holding that proof of knowledge of the right to refuse is not necessary to demonstrate consent).

27. See Cloud, supra note 18, at 1152–57 ("Justice Stewart's attempt to explain why a simple warning would not work in the Fourth Amendment context fails because it relies upon inapt analogies . . . . No one would reasonably suggest that a courtroom setting is analogous to an investigation in the field . . . .").

28. See *Schneckloth*, 412 U.S. at 235–48 (acknowledging that "knowing" and "intelligent" waiver is required for Fifth and Sixth Amendment rights but not for Fourth Amendment rights).

29. Russell L. Weaver, The Myth of "Consent", 39 Tex. Tech L. Rev. 1195, 1199 (2007).

30. *Schneckloth*, 412 U.S. at 288 (Marshall, J., dissenting).

might add, the few."[31] As Professor Weaver notes, *Schneckloth*'s holding "ignores the realities of police–citizen encounters and the inherent pressures on individuals to comply with police requests."[32] Most people do not think that they can refuse a police search, and the power dynamics inherent in police–citizen interactions are enough to make people unwisely consent even when advised that they have a right to refuse.[33]

For these reasons, *Schneckloth* has been justifiably criticized for decades.[34] This Piece highlights one particular problem with the current consent doctrine: It permits police exploitation of citizen ignorance for the purposes of facilitating government theft of civilian property. The next Part anecdotally expands upon this problem.

II. CITIZEN IGNORANCE AND CIVIL FORFEITURE: TWO TALES

This Part analyzes two different interactions between law-abiding citizens and the police. The interactions resembled what the Court described in *Schneckloth*; both were "congenial" in the sense that the officers did not threaten arrest or violate constitutional precedent in any meaningful way, and the citizens were fully cooperative and compliant.[35] Given the officers' seeming obedience to the Fourth Amendment, this Part assumes that had the officers *not* obtained consent, they would not have conducted the search.[36] This Part shows how police exploitation of the

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31. Id. at 289.

32. Weaver, supra note 29, at 1199.

33. See Robert V. Ward Jr., Consensual Searches, The Fairytale That Became a Nightmare: *Fargo* Lessons Concerning Police Initiated Encounters, 15 Touro L. Rev. 451, 469–70 (1999) (explaining how the power dynamics of police encounters negate consent).

34. See, e.g., Alexandra L. Pratt, Note, The Need for "Knowing": Why the Iowa Supreme Court Should Reject *Schneckloth v. Bustamonte*, 100 Iowa L. Rev. 1327, 1349 (2015) ("Despite the frequency of consent searches, *Schneckloth* remains the subject of pervasive criticism." (citing State v. Pals, 805 N.W.2d 767, 789 (Iowa 2011) (Waterman, J., dissenting))).

35. See *Schneckloth*, 412 U.S. at 220 (quoting James Rand, Police Officer, Sunnyvale Dep't of Pub. Safety).

36. In reality, the fear civilians have that officers will search them should they try to refuse a consent search is well founded. See Janice Nadler, No Need to Shout: Bus Sweeps and the Psychology of Coercion, 2002 Sup. Ct. Rev. 153, 203 ("[O]f the five motorists who declined to consent to the search, two reported being searched despite their explicit refusal to consent." (citing Illya D. Lichtenberg, Voluntary Consent or Obedience to Authority: An Inquiry Into the "Consensual" Police—Citizen Encounter (1999) (Ph.D. dissertation, Rutgers University))); see also, e.g., United States v. Rodney, 956 F.2d 295, 297 (D.C. Cir. 1992) ("He also testified that before the events leading to his arrest, he had had four unpleasant encounters with the police: each time he had refused their request to search him, but each time they had searched him anyway."). For purposes of this Piece, however, the author imagines a world where the police follow the law because that is the world where the *Schneckloth* Court resides. Besides, current Supreme Court jurisprudence gives the police wide latitude to legally abuse citizens under the color of law. See Brian Puchalsky, Weapon on Board?: A Proposal to Solve the Riddle of the Nonprotective Protective Search, 107 Colum. L. Rev. 706, 706–09 (2007) (describing the court-sanctioned ability of the police to

innocent ignorance of each citizen contributed to the loss of each citizen's money.

A. *Incident One—Ameal Woods*

At the time of the stop, Ameal Woods was a lifelong resident of Natchez, Mississippi.[37] He trained horses, drove tractor-trailers, and worked in construction.[38] His wife, Jordan Nastassia Davis, was gainfully employed at a casino restaurant.[39] Ameal operated a small trucking business with his brother and was interested in expanding the business by purchasing a second tractor-trailer.[40] He decided to drive to Houston, Texas, because he found tractor-trailers for sale at prices he could afford there, and he brought cash to get a better offer.[41] He carried $42,300 in cash, which consisted of all his life savings ($22,800), as well as contributions from Jordan ($6,500) and Ameal's niece ($13,000).[42] His wife and niece withdrew their money from their respective bank accounts and gave it to him as a loan.[43] Ameal had kept his own money at home because he distrusted banks; it was a distrust inherited from his father's experience of being left without recourse when a bank denied the existence of his account.[44]

On May 14, 2019, a Harris County police sergeant pulled Ameal over for allegedly following too close behind a tractor-trailer.[45] Ameal's court filings cast doubt on this claim, asserting in response that Ameal drove trucks for a living and therefore knew the safety risks of trailing them too

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search vehicles without warrants); see also Zamir Ben-Dan, Criminal Procedure Redemption, 61 Harv. C.R.-C.L. L. Rev. (forthcoming 2026) (manuscript at 6–7) (on file with the *Columbia Law Review*) ("[T]he post-Civil Rights Era Supreme Court . . . shr[ank] the constitutional rights of criminally accused persons and immuniz[ed] judicial systems and their players from legal accountability.").

37. Plaintiffs' Original Petition, Application for Class Certification, and Application for Injunctive Relief ¶ 20, Woods v. Harris County, No. 2021-54748 (Tex. Dist. Ct. Aug. 30, 2021) [hereinafter Original Petition, *Woods*].

38. Chuck Robinson, Trucker's Seized Money Case Gets a Jury Trial in Texas, Land Line Media (May 17, 2023), https://landline.media/truckers-seized-money-case-gets-a-jury-trial-in-texas [https://perma.cc/R4B3-VGXC].

39. Original Petition, *Woods*, supra note 37, ¶ 54. Ameal Woods and Jordan Davis "consider themselves married" but are not legally married. Id. ¶ 22.

40. Id. ¶¶ 30–31.

41. Id. ¶¶ 32–39.

42. Id. ¶¶ 49–50; see also Appellants' Opening Brief at 2, Woods v. State, No. 01-23-00818-CV (Tex. App. May 8, 2024), 2024 WL 2245158, at *2 (recounting Ameal's testimony that the money he carried was a "combination of [his] life savings and money borrowed from family").

43. Original Petition, *Woods*, supra note 37, ¶¶ 50, 54–55.

44. Id. ¶¶ 44–48.

45. Id. ¶ 67–70; see also Institute for Justice, Cops Seize $41,680 From INNOCENT Man. Wasn't Charged With a Crime, at 01:25–01:32 (YouTube, Oct. 2, 2021), https://www.youtube.com/watch?v=MsIxzQXdWzY (on file with the *Columbia Law Review*) [hereinafter Institute for Justice, Innocent Man].

closely.[46] The claim is further suspect because the sergeant gave Ameal no citation or warning for that or any other infraction.[47] For his part, Ameal does not remember any tractor-trailers in the area at the time he was pulled over and is sure he would have obeyed the minimum following distance law if there had been.[48] Nonetheless, the sergeant's claim is important because it permitted him to stop Ameal's car.[49]

Rather than argue with the police sergeant that pulled him over, Ameal tried to cooperate in any way so he could be released and continue his journey.[50] The sergeant asked him a series of questions, including whether he had any drugs on him; Ameal answered that question in the negative.[51] The sergeant asked Ameal if he had any weapons, and he admitted to having a loaded gun in the car, a firearm he lawfully purchased and legally owned.[52] The sergeant then asked Ameal to step out of the car,[53] a permissible request if the underlying stop was in fact lawful.[54]

Eventually, the police sergeant asked Ameal if he had cash.[55] At that point, the officer had neither reasonable suspicion nor probable cause that Ameal was committing a crime. Possessing a large amount of cash, by itself, was neither a crime nor indicative of criminal activity.[56] Thus, Ameal was under no legal obligation to answer the question (or most of the earlier questions he was asked).[57] Had he known this, he might have either refused to answer or answered in the negative. But Ameal admitted to having cash on him.[58] The sergeant, along with other officers eventually

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46. Original Petition, *Woods*, supra note 37, ¶ 72.

47. Id. ¶¶ 102, 104.

48. Id. ¶ 71.

49. See Whren v. United States, 517 U.S. 806, 819 (1996) (holding that the temporary detention of a motorist for violating a traffic law does not violate Fourth Amendment protections against unreasonable search and seizure).

50. Original Petition, *Woods*, supra note 37, ¶ 73.

51. Institute for Justice, Innocent Man, supra note 45, at 01:32–01:40.

52. Original Petition, *Woods*, supra note 37, ¶¶ 61, 74.

53. Id. ¶ 75.

54. See Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977) (holding that an officer may ask an individual to step out of their vehicle after an initial traffic stop).

55. Institute for Justice, Innocent Man, supra note 45, at 01:40–01:47.

56. See Woods v. State, No. 01-23-00818-CV, 2025 WL 2832219, at *4 n.3 (Tex. App. Oct. 7, 2025) ("Possession of a large sum of money is not illegal in and of itself." (citing $27,920.00 in U.S. Currency v. State, 37 S.W.3d 533, 535 (Tex. App. 2001))); see also United States v. McClellan, 44 F.4th 200, 211 (2022) ("While it may be dubious to drive around with a large amount of cash in one's car, it does not create an inescapable inference of criminal activity. Not using a bank does not necessarily make one a criminal.").

57. See Hiibel v. Sixth Jud. Dist. Ct. of Nev., 542 U.S. 177, 187 (2004) ("[T]he Fourth Amendment itself cannot require a suspect to answer questions."); see also Berkemer v. McCarty, 468 U.S. 420, 439 (1984) ("[At a Terry Stop,] the detainee is not obliged to respond."); Brown v. Texas, 443 U.S. 47, 52 (1979) (holding that an individual's right to personal security and privacy outweighs public interest during a traffic stop made without reasonable suspicion).

58. See Institute for Justice, Innocent Man, supra note 45, at 01:41–01:48.

present on the scene, inquired further as to the money, and Ameal answered all their questions. He fully disclosed the purpose of his trip, why he had the amount of cash he had, and where the money came from, among other details.[59] It became apparent to Ameal that the officers' real motivation for searching the vehicle was to look for cash.[60] Unfortunately for Ameal, the Supreme Court held in *Whren v. United* States that such pretextual activities are permissible so long as the underlying basis for the stop is facially valid.[61]

The officers eventually requested to search Ameal's vehicle.[62] Ameal's admission that he had cash on him did not provide reasonable suspicion or probable cause, so an involuntary search would have been unconstitutional.[63] Had Ameal refused to permit the officers to search his vehicle, they would not have been able to seize his cash. But Ameal granted the officers permission to search his vehicle.[64] Granting that permission was the second mistake on his part; the first was admitting that he had cash in his car. Upon finding his money, the police interrogated Ameal further, and Ameal answered all their questions.[65] The sergeant then called Jordan with Ameal's phone to corroborate what Ameal told the officers, and Jordan confirmed Ameal's statements and answered the sergeant's questions.[66] Despite all this, the sergeant claimed that the cash was drug money and took it all from Ameal.[67] Ameal's pleas to the sergeant were disregarded.[68] Ameal asserts that the officers did not count the money on the scene, and the receipt they gave him did not state how much cash they seized.[69] This would become relevant later, because while Ameal averred that he had $42,300 in cash on him, the officers claimed to have only seized $41,680.[70]

Of course, Ameal's loss was not merely financial. The psychological toll of being a victim of injustice was substantial. Ameal explained: "Calling Jordan, telling her . . . about what happened, I was at a loss for words . . . . I choked up . . . . All of my drive, all of my motivation . . . everything was gone. You know, all I can think about was anything we saved up . . . . It's

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59. Original Petition, *Woods*, supra note 37, ¶ 77.

60. Id. ¶ 81.

61. See Whren v. United States, 517 U.S. 806, 810–16 (1996).

62. Original Petition, *Woods*, supra note 37, ¶ 78.

63. See Nies v. State, 557 S.W.3d 642, 645 (Tex. App. 2017) (holding that possession of a large amount of cash does not constitute probable cause for a warrantless vehicle search); see also Carroll v. United States, 267 U.S. 132, 158–59 (1925) (holding that nonconsensual car searches require probable cause).

64. Original Petition, *Woods*, supra note 37, ¶ 78.

65. Id. ¶¶ 82–84.

66. Id. ¶¶ 86–89.

67. Id. ¶¶ 93–95.

68. Id. ¶ 96.

69. Id. ¶¶ 97–98.

70. Id. ¶¶ 109, 138.

hard."[71] His wife Jordan concurred: "I worked hard for that money. There are days that I didn't even want to go to work because I'm tired. And to just have it taken with no explanation is terrible . . . . How do you start over?"[72] It would take over two years for Harris County to notify Ameal and Jordan that they were seeking forfeiture.[73]

The Institute for Justice took up Ameal's cause and filed a lawsuit to recover his money, alleging a plethora of state constitutional violations.[74] Ameal and Jordan were able to defeat Harris County's claim of governmental immunity.[75] But they suffered a setback at trial: The jury rejected their side of the story.[76] Painting Ameal out to be a criminal involved in drugs was central to the county's case.[77] That Ameal possessed no contraband, and that proof existed that Jordan and his niece withdrew their lawfully obtained money, was of no moment. The Institute for Justice filed an appeal, and the appellate court reversed the jury verdict in Ameal's individual case, ordering Harris County to return the $41,680 it had taken from Ameal and Jordan.[78] The appeal of the class action suit alleging violations of the Texas Constitution remains pending.[79]

Ignorance of his constitutional rights played a role in Ameal losing over $40,000 of his, his girlfriend's, and his niece's hard-earned money. There was, however, a deeper ignorance at play: Ameal's belief that his innocence and cooperation protected him from being victimized in this manner by the police. Like many Americans, Ameal was most likely unaware of what could happen to his money if law enforcement officers got their hands on it. He was also likely unaware of the financial incentive

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71. Institute for Justice, Innocent Man, supra note 45, at 02:11–02:20, 02:37–02:46.

72. Id. at 02:20–02:37.

73. Original Petition, *Woods*, supra note 37, ¶¶ 108–122.

74. Id. ¶¶ 250–298.

75. J. Justin Wilson, Forfeiture Victims Win First Round in Class Action Lawsuit Challenging Harris County's Seizure and Civil Forfeiture Practices, Inst. for Just. (Nov. 8, 2023), https://ij.org/press-release/forfeiture-victims-win-first-round-in-class-action-lawsuit-challenging-harris-countys-seizure-and-civil-forfeiture-practices (on file with the *Columbia Law Review*).

76. See Wesley Hottot, Loss and Win Combine for Perfect Forfeiture Appeal in Texas, Inst. for Just. (Feb. 1, 2024), https://ij.org/ll/loss-and-win-combine-for-perfect-forfeiture-appeal-in-texas (on file with the *Columbia Law Review*) ("Ameal and Jordan's forfeiture case went to trial over the summer, when a jury handed down a disappointing verdict. Losing at trial stings . . . .").

77. See Robinson, supra note 38 ("Officers claimed Woods admitted to being involved in drug trafficking . . . .").

78. J. Justin Wilson, Texas Appeals Court Reverses Forfeiture of Innocent Americans' Life Savings and Orders Harris County to Return the $41,680 It Seized, Inst. for Just. (Oct. 7, 2025), https://ij.org/press-release/texas-appeals-court-reverses-forfeiture-of-innocent-americans-life-savings-and-orders-harris-county-to-return-the-41680-it-seized (on file with the *Columbia Law Review*).

79. Id.

police officers have to behave as unscrupulously as they did with him.[80] Had he known that his money would be at risk of confiscation by (a) answering the officer's question about whether he had money in the car and (b) giving permission to search his car—chances are that he would have acted differently.

That said, in no way should this Piece be read as blaming Ameal for what happened. Ameal's ignorance is an ignorance sanctioned by Supreme Court jurisprudence.[81] Supreme Court case law allows police officers to stop motorists for pretextual reasons.[82] It allows police to take advantage of the inherent pressure on citizens to obey authority and to claim "consent" under circumstances in which no voluntary consent exists.[83] It is the Court's dangerous jurisprudence and police exploitation of citizen ignorance that cost Ameal and Jordan over $40,000 and "robbed [Ameal] of the entrepreneurial spirit that motivated him to work to expand his trucking business."[84]

B. *Incident Two—Stephen Lara*

At the time the police stopped him, Stephen Patrick Lara was a resident of Lubbock, Texas.[85] Stephen had been traveling regularly to Portola, California, where his ex-wife was then living with their two children.[86] These trips meant he regularly traveled through Nevada, and he also often visited the state for longer periods to see friends who lived there.[87] Over the preceding years, he withdrew most or all of his income from his bank accounts and kept cash instead, citing his distrust of the banking system.[88] He kept all his bank withdrawal receipts.[89]

On February 19, 2021, Stephen was driving through Nevada on a trip from Lubbock to Portola when he got pulled over by a member of the

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80. See Darpana Sheth, Incentives Matter: The Not-So-Civil Side of Civil Forfeiture, Fed. Law., July 2016, at 48 (2016) (describing how civil forfeiture "dangerously shifts law-enforcement priorities from fairly and impartially administering justice to generating revenue.").

81. See supra Part I.

82. See supra notes 60–61.

83. Zamir Ben-Dan, The Pro-Defense Constitution, 2025 Utah L. Rev. 385, 431–33 ("Many people who consent to being searched do so because they are unaware they have a legal right to refuse. The Court is fine with this ignorance . . . ." (footnote omitted)); Loewy, supra note 1, at 1077 ("[T]he law of police-citizen interaction . . . permit[s] 'consent' searches when everybody knows that the searchees believed that they had no power to deny consent.").

84. Original Petition, *Woods*, supra note 37, ¶ 141.

85. First Amended Complaint ¶ 12, Lara v. State of Nev. ex rel. Dep't of Pub. Safety, Highway Patrol Div., No. CV21-01595 (Nev. Dist. Ct. Jan. 10, 2025), 2022 WL 22906594 [hereinafter First Amended Complaint, *Lara*].

86. Id.

87. Id. ¶ 15.

88. Id. ¶¶ 42–43, 152.

89. Id.

Nevada Highway Patrol.[90] Stephen was driving a rental car. He'd discovered the day before that the wheel on his own car had cracked, so he rented a car from the airport with the help of his father.[91] Since there were expired tags on the rental car, he thought the officer had pulled him over for having expired tags.[92] Instead, as in Ameal's case, the officer pulled Stephen over for "following [a] red and blue semi-truck too closely."[93] In the alternative, the officer also claimed he was pulling Stephen over for "driving under the speed limit."[94] The first claim constituted a traffic violation that served to justify the state trooper pulling Stephen over.

When the trooper approached Stephen's vehicle, he explained the reason for the stop: "We have a special enforcement campaign going on. We're trying to educate drivers about violations they may not realize they're committing. But we're seeing a big increase in crashes out here."[95] The trooper commended Stephen's driving, saying, "You drive great."[96] He then told Stephen that he observed him following a commercial vehicle, a "tanker truck," too closely.[97] The trooper eventually ordered Stephen out of his rental vehicle and had him stand near the trooper's patrol car.[98] Again, the trooper's stated grounds for the car stop made his request that Stephen exit his car lawful.[99]

As Stephen followed the trooper to his patrol car, the trooper began asking Stephen a multitude of questions unrelated to the car stop, including a host of personal questions.[100] Stephen was not legally required to answer any of those questions, but he nonetheless answered them all.[101] Eventually, the trooper all but fessed up to the real motivation behind the car stop: "Part of my job out here is that I do what's called highway interdiction. I look for people that are smuggling contraband through our state, across the country: weapons, humans, drugs, illicit currency, things

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90. Id. ¶ 27.

91. Id. ¶ 30.

92. See Institute for Justice, Watch Cops Seize Combat Vet's Life Savings [RARE FOOTAGE], at 01:50–02:05 (YouTube, Nov. 30, 2021), https://www.youtube.com/watch?v=MkeS_0NQUZs (on file with the *Columbia Law Review*) [hereinafter Institute for Justice, Combat Vet].

93. First Amended Complaint, *Lara*, supra note 85, ¶ 36 (internal quotation marks omitted) (quoting Chris Brown, Trooper, Nev. Highway Patrol).

94. Id. (internal quotation marks omitted) (quoting Chris Brown, Trooper, Nev. Highway Patrol).

95. Institute for Justice, Combat Vet, supra note 92, at 02:06–02:15.

96. Id. at 02:15–02:26.

97. First Amended Complaint, *Lara*, supra note 85, ¶ 38 (internal quotation marks omitted) (quoting Chris Brown, Trooper, Nev. Highway Patrol).

98. Id. ¶ 39.

99. See Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977) (permitting an officer to order a driver to exit their vehicle during a lawful traffic stop).

100. Institute for Justice, Combat Vet, supra note 92, at 02:42–02:57.

101. First Amended Complaint, *Lara*, supra note 85, ¶ 41.

like that."[102] Thus, the claim that Stephen was driving too closely behind a box truck was clearly pretextual: The trooper really wanted to see if Stephen was smuggling something. The trooper then asked Stephen about the presence of contraband in the vehicle, which Stephen truthfully denied.[103]

The trooper asked Stephen if he had any large amounts of U.S. currency in the vehicle.[104] Like the sergeant in Ameal's case, the trooper here lacked both reasonable suspicion and probable cause of criminal activity.[105] Thus, Stephen was not required to answer this question.[106] But because Stephen was trying to be as cooperative as possible, he answered the question and admitted to having nearly $100,000 in cash.[107] He explained: "I don't trust banks, so I keep my own money."[108] As Stephen tried to explain, the money he had was his life savings—income from his time in the military and the hospital job he had worked until the pandemic struck—and he had receipts verifying that his money came from gradual withdrawals from his own bank accounts.[109] As the trooper was certainly aware, carrying large amounts of U.S. currency was not illegal.[110]

The trooper then asked: "Would you give me permission to search your vehicle today?"[111] This question further indicates that probable cause of criminal activity was lacking: If probable cause existed, there would be no need to request permission to search. Stephen had a right to refuse the trooper's request, and the trooper would have had no legal basis to search Stephen's vehicle had Stephen exercised his right. But Stephen gave the trooper permission.[112] As he would later explain,

> I didn't want to come across as being noncooperative or combative, so I did what I felt was right, and I was very honest, very forthcoming. I was also very respectful, and I just wanted to make their job as easy as possible so that I could be on my way to spend time with my children.[113]

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102. Institute for Justice, Combat Vet, supra note 92, at 02:57–03:17.

103. Id. at 03:17–03:35.

104. Id. at 03:35–03:38.

105. See supra Part I.

106. A police officer needs probable cause to search a vehicle without consent. See Carroll v. United States, 267 U.S. 132, 154 (1925) ("[T]hose lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise.").

107. First Amended Complaint, *Lara*, supra note 85, ¶ 42; Institute for Justice, Combat Vet, supra note 92, at 03:38–03:54.

108. Institute for Justice, Combat Vet, supra note 92, at 03:49–03:56.

109. First Amended Complaint, *Lara*, supra note 85, ¶¶ 42–43.

110. See Institute for Justice, Combat Vet, supra note 92, at 06:01–06:08.

111. Id. at 03:55–03:57.

112. First Amended Complaint, *Lara*, supra note 85, ¶ 42.

113. Institute for Justice, Combat Vet, supra note 92, at 04:06–04:30.

The trooper first called a Drug Enforcement Administration (DEA) agent to see if the agent was available,[114] and it appears from that point that the trooper was interested in taking Stephen's money.[115] According to the complaint, the trooper then called his sergeant, who would arrive on the scene in about half an hour.[116] The DEA agent eventually called back after the sergeant arrived but was unable to come to the scene, so the sergeant told him, "I'll text you the [] money count after I get it. It'll probably be a couple of hours."[117] Afterward, the sergeant instructed the trooper to "put the dog on the currency,"[118] meaning to place the currency somewhere in the area and see if the canine would alert to the presence of trace illicit substances.[119] The use of the drug-sniffing dog is important because a dog sniff is not considered a Fourth Amendment search, so no individualized suspicion is required.[120] The sergeant placed the money in a Ziplock bag and tossed it in the area, an appreciable distance away from Stephen's car.[121] The dog found the money, and the trooper informed the sergeant that there was a "positive alert."[122] They then officially decided to seize Stephen's money.[123]

When the sergeant told Stephen that he suspected the money to have come from drugs, Stephen's disbelief was palpable: "Drug proceeds?"[124] He tried to explain himself, but the sergeant cut him off to explain what would happen next.[125] Stephen's facial expression and demeanor said it all; in one fell swoop, he seemingly lost his entire life savings. Later, he appealed to the officers:

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114. Id. at 04:30–04:50.

115. Had the DEA agent been available, the plan was to seize Stephen's money and to put it in *federal* civil forfeiture proceedings, where the government has less of a burden to meet than it would under Nevada state law. In exchange, the federal government keeps a portion of the seized money and turns over the majority to the state. Stephen's lawyers estimated that the Nevada Highway Patrol stood to gain almost $70,000 from taking Stephen's money. See id. at 04:51–05:53; First Amended Complaint, *Lara*, supra note 85, ¶¶ 53–59, 61, 64–65, 75–78.

116. First Amended Complaint, *Lara*, supra note 85, ¶¶ 44–45.

117. Institute for Justice, Combat Vet, supra note 92, at 06:28–07:36.

118. First Amended Complaint, *Lara*, supra note 85, ¶ 47 (internal quotation marks omitted) (quoting Glenn Rigdon, Sergeant, Nev. Highway Patrol).

119. Institute for Justice, Combat Vet, supra note 92, at 09:01–09:46.

120. See Illinois v. Caballes, 543 U.S. 405, 409 (2005) ("[T]he use of a well-trained narcotics-detection dog . . . during a lawful traffic stop generally does not implicate legitimate privacy interests."); United States v. Place, 462 U.S. 696, 707 (1983) ("[E]xposure of [defendant]'s luggage . . . to a trained canine . . . did not constitute a 'search' within the meaning of the Fourth Amendment.").

121. First Amended Complaint, *Lara*, supra note 85, ¶ 48.

122. Id. ¶ 50 (internal quotation marks omitted) (quoting Chris Brown, Trooper, Nev. Highway Patrol).

123. See id. ¶ 51.

124. Institute for Justice, Combat Vet, supra note 92, at 09:57–10:06. Note Stephen's reaction: he looks away and shakes his head in disbelief. See id.

125. Id. at 10:11–10:33.

> That money, I worked really hard for. The money that I have in my jacket is only a few dollars. I have no money to pay for my kids' meals, my hotel, or even to get that car back to Texas . . . . I don't know what to do, because you just took all my money. So I'm probably going to be stuck here, unless somebody sends me some money. I have no way of providing for my children at this point or getting back to Texas.[126]

His plea was unsuccessful. The officers gave him a receipt and contact information for the DEA so that he could follow up and left him on the side of the road.[127] Stephen's brother had to wire him some money for him to complete his trip.[128]

Fortuitously for Stephen, the DEA would ultimately fail to follow the procedures required by federal law regarding Stephen's seized money. The Agency initiated administrative forfeiture proceedings on March 4, 2021.[129] After receiving notice of seizure on April 5, 2021, Stephen filed a claim "invoking his right to federal court proceedings" on April 21, 2021.[130] From that time, the DEA had ninety days to either criminally indict Stephen, request an extension of time, initiate federal civil forfeiture proceedings, or return Stephen's money.[131] The DEA failed to do any of those things.[132] Over six months after the car stop, and after his story received well-deserved attention from a major news outlet, the DEA finally returned Stephen's money.[133] Stephen's story is rare in that regard; unlike the majority of civil forfeiture victims, he actually got his money back.[134]

Nonetheless, Stephen's ignorance of both his rights and the reality of police stops played a role in the temporary loss of his money.[135] It is obvious that Stephen has (or at least had at that time) great respect for the police;

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126. Id. at 10:43–11:22.

127. Id. at 11:26–11:45.

128. First Amended Complaint, *Lara*, supra note 85, ¶ 119; Institute for Justice, Combat Vet, supra note 92, at 10:35–10:43.

129. First Amended Complaint, *Lara*, supra note 85, ¶ 78.

130. Id. ¶¶ 78, 82.

131. 18 U.S.C. § 983(a)(3) (2016).

132. Id. ¶ 86.

133. Id. ¶ 79; Institute for Justice, Combat Vet, supra note 92, at 12:05–12:24.

134. See Lisa Knepper, Jennifer McDonald, Kathy Sanchez & Elyse Smith Pohl, Inst. for Just., Policing for Profit: The Abuse of Civil Asset Forfeiture 23 (3d ed. 2020), https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf (on file with the *Columbia Law Review*) ("With no assurance that such a heavy investment of time and resources will pay off, . . . few owners even try to mount a challenge.").

135. As noted in Stephen's complaint:

> [Stephen] did not believe that anything like this could happen in America. He had no idea that his money could be taken from him based on such a flimsy justification and held, without charge or hearing, for the better part of a year. Nor did he believe that an innocent person could go through such an ordeal and, when the deadline to return his property arrived, still not get his money back.

First Amended Complaint, *Lara*, supra note 85, ¶ 122.

even as they swiped all of his life savings, he still told the police, "I know you're just doing your job."[136] Of course, he likely would have thought differently had he known about the coordination between the DEA and state law enforcement agencies like the Nevada Highway Patrol; after all, the first person the trooper tried to contact after finding Stephen's money was a DEA agent he obviously knew.[137] Stephen also most likely would have thought differently had he been privy to the conversations between the law enforcement officers, who seemed intent on seizing Stephen's money even *before* pulling out the drug-sniffing dog.[138] Had Stephen known what was liable to happen should he admit to having a lot of cash and grant the trooper permission to search his vehicle, chances are that he would have acted differently.

Again, however, Stephen is a victim, and this Piece in no way blames him. What happened to Stephen was the product of lamentable Supreme Court jurisprudence. It was Supreme Court jurisprudence that permitted the pretextual stop.[139] It allowed Stephen to "consent" to the search of his vehicle without requiring the trooper to inform him that he had a right to refuse.[140] It was Supreme Court jurisprudence that constitutionally elevated the dog sniff,[141] permitting probable cause upon a positive alert regardless of the actual reliability of canine alerts or the reality that most U.S. currency will present with trace amounts of drugs.[142] It was this dangerous jurisprudence and police exploitation of citizen ignorance that deprived Stephen of his life savings—and caused him anxiety and interfered with his life in several other ways[143]—for nearly eight months.

III. A MODEST PROPOSAL

It is shameful that Ameal and Stephen had their money seized—Ameal indefinitely, Stephen temporarily—for being cooperative with the police. Moreover, Ameal and Stephen are not unique; the government has unfairly taken cash and property from thousands of Americans across the

136. Institute for Justice, Combat Vet, supra note 92, at 10:43–10:46, 11:02–11:06.

137. See id. at 04:30–05:53.

138. See id. at 04:30–05:53, 07:14–07:40.

139. See Whren v. United States, 517 U.S. 806, 810–16 (1996) (holding that it was not unlawful for police to conduct a traffic stop as pretext for searching a car).

140. See Schneckloth v. Bustamonte, 412 U.S. 218, 229–34 (1973) (rejecting the idea that voluntary consent to a search requires knowledge of the right to refuse consent).

141. See Illinois v. Caballes, 543 U.S. 405, 409 (2005) (holding that a sniff by a trained dog does not violate the Fourth Amendment's prohibition against unlawful searches); United States v. Place, 462 U.S. 696, 707 (1983) (holding that the limited nature of a trained dog sniff means that it does not qualify as a Fourth Amendment-protected search).

142. Institute for Justice, Combat Vet, supra note 92, at 09:39–09:55.

143. See First Amended Complaint, *Lara*, supra note 85, ¶ 122 ("[Stephen] has been at times anxious, ashamed, and depressed over the seizure of his money. He has lost sleep and struggled to process what happened to him.").

country without even charging them with a crime.[144] The unfairness of it all has inspired many to call for the abolition of civil forfeiture.[145] This author fully endorses these calls. To permit the government to take civilian property on the basis that it was involved in criminal activity, while not prosecuting either the owners or users of that property for any criminal activity, is patently unfair. The history of civil forfeiture practice over the last few decades bears this out; it invites corruption by incentivizing governments to stop and search citizens for cash simply to enrich themselves.[146] Civil forfeiture is government theft, pure and simple.

Other scholars have called for either Congress or the Supreme Court to overrule *Schneckloth* and remodel Fourth Amendment consent doctrine to be more responsive to the realities of police–citizen interactions.[147] The author agrees with these calls as well. *Schneckloth* is a bad case replete with bad logic; it devalues the Fourth Amendment and unpersuasively casts as too cumbersome the idea that police should make sure people know of their constitutional rights. It also ignores the power dynamics in police–citizen interactions that the Court itself recognized a mere seven years prior in *Miranda v. Arizona*.[148] The test the Court created in *Schneckloth* is, as Professor Marcy Strauss notes, "so vague that it provides little guidance to courts, litigants, or police officers."[149] Such vagueness naturally invites arbitrary police behavior.

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144. Between 2000 and 2020, the federal government and state governments forfeited over $68 billion from Americans. See Knepper et al., supra note 134, at 5.

145. See, e.g., id. at 7 ("To protect Americans from losing property unjustly, states and the federal government should . . . end the inherently abusive practice of civil forfeiture . . . ."); Sheth, supra note 80, at 49 ("Civil forfeiture should be abolished . . . ."); see also Jasmin Chigbrow, Note, Police or Pirates?: Reforming Washington's Civil Asset Forfeiture System, 96 Wash. L. Rev. 1147, 1184–90 (2021) ("Washington should abolish civil forfeiture entirely."); Sarah Farwick, Comment, The Unjust Side of Civil Asset Forfeiture in Illinois: Innocent Victims and Corrupted Incentives, 43 N. Ill. U. L. Rev. 153, 177–78 (2023) ("Illinois should altogether abolish civil forfeiture.").

146. See Sheth, supra note 80, at 48 (discussing the incentives for "widespread abuse" of civil forfeiture since it "giv[es] law enforcement a direct financial stake in property seizures").

147. See, e.g., Devon W. Carbado, (E)racing the Fourth Amendment, 100 Mich. L. Rev. 946, 971–73 (2002) (arguing that interracial dynamics make it necessary to reformulate the consent doctrine as applied in *Schneckloth*); Christo Lassiter, Eliminating Consent From the Lexicon of Traffic Stop Interrogations, 27 Cap. U. L. Rev. 79, 128–33 (1998) (arguing that consent to search during a traffic stop can never be truly voluntary because of the inherent power imbalance between office and civilian); Weaver, supra note 29, at 1201–05 (presenting alternatives to *Schneckloth*, including requiring police officers to inform suspects of their right to refuse consent); see also Pratt, supra note 34, at 1342–55 (2015) (arguing that the Iowa Supreme Court should adopt a standard requiring officers to inform suspects of their right to refuse searches in order to rectify the weaknesses in *Schneckloth*).

148. See 384 U.S. 436, 448–50, 453–54, 467–69 (1966).

149. Marcy Strauss, Reconstructing Consent, 92 J. Crim. L. & Criminology 211, 221 (2002).

In fact, this author echoes the calls of numerous scholars to abolish the consent doctrine entirely.[150] The doctrine opened a whole new world of police intrusions into the lives of civilians. The overwhelming majority of police searches of citizens legally qualify as consent searches,[151] but they are practically involuntary; with no knowledge of any right to refuse, and in the context of a grave power imbalance between police officers and citizens, the great majority of civilians feel compelled to acquiesce to law enforcement. Professor Josephine Ross aptly illustrates this with her analysis of a police bodycam video capturing the police stop of a Black Versace shoe designer in Beverly Hills, California.[152] The "consent" search was anything but consensual in the practical sense: The "consent" victim expressed being nervous several times and was clearly uncomfortable while the police invasively felt about his body.[153] As Professor Ross wrote, "[V]iewers can observe the injustice. Nothing here was truly consensual."[154]

The consent doctrine should also be scrapped because it encourages racial profiling. As several scholars, and even the Supreme Court at one point, have recognized, race very much influences the inquiry regarding consent.[155] Given the history of racialized policing, non-white persons are especially unlikely to believe that they have a right to refuse a search when an officer asks for consent.[156] Moreover, in light of the fact that law enforcement disproportionately stop and search Black and Brown people,[157] it is only natural that Black and Brown people would be the

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150. See, e.g., Josephine Ross, Abolishing Police Consent Searches Through Legislation: Lessons From Scotland, 72 Am. U. L. Rev. 2017, 2026 (2023) ("It is time to abolish the consent loophole that sanctions otherwise blatantly unconstitutional searches, which legal scholars remain virtually unanimous in condemning.").

151. See Julie Greco, Citizens Often Act Against Self-Interest in Granting Police Consent, Corn. Chron. (Mar. 4, 2024), https://news.cornell.edu/stories/2024/03/citizens-often-act-against-self-interest-granting-police-consent [https://perma.cc/FZ22-28AP] ("More than 90% of searches conducted by police in the United States are based on individual consent rather than a warrant or probable cause . . . .").

152. See Ross, supra note 150, at 2018–22.

153. Id. (internal quotation marks omitted).

154. Id. at 2021 (footnote omitted).

155. See, e.g., United States v. Mendenhall, 446 U.S. 544, 558 (1980) (recognizing that a Black woman may have felt "unusually threatened" by white male officers); Tremitiere, supra note 10, at 530–32 (highlighting *Mendenhall*'s acknowledgment of racial dynamics in consent searches and arguing that courts should consistently consider those racial dynamics in assessing consent).

156. See Tremitiere, supra note 10, at 548–53 ("Deeply sown distrust [in communities of color] increases one's perceived likelihood that law enforcement would react disproportionately or violently if one refused to comply with police requests or instructions, even if that refusal were respectful and lawful."); see also Strauss, supra note 149, at 221 ("Most importantly, many members of certain races and cultures never feel free to reject a police officer's 'request' to search. For them, a 'voluntary' request by the police to search becomes an oxymoron.").

157. See Elizabeth Davis, Anthony Whyde & Lynn Langton, DOJ, Contacts Between Police and the Public, 2015, at 4, 9–10 (Caitlin Scoville & Jill Thomas eds., 2018),

disproportionate victims of consent searches. A small minority of agencies and jurisdictions have recognized this and have limited or banned the use of consent searches in response.[158] The rest of the country ought to follow suit.

Yet even if the consent doctrine continues to exist, *Schneckloth* remains good law, and civil forfeiture remains permissible, what happened to Ameal and Stephen is still unjustifiable. As bad a precedent as *Schneckloth* is, the abuse Ameal, Stephen, and thousands of other Americans suffered at the hands of law enforcement is plainly indefensible even under *Schneckloth's* rationale. An accurate reading of *Schneckloth* indicates that the consent doctrine was rationalized by a need for law enforcement to solve crimes, absolving the innocent while holding the guilty accountable.[159] The seizure of civilian property without any intention of criminally charging the civilian that owns or uses the property is the very antithesis of the sort of legitimate government action that the Court's reasoning concedes is necessary to justify the consent doctrine in the abstract. In fact, the Court expressly noted that "the possibility of unfair and even brutal police tactics poses a real and serious threat to civilized notions of justice."[160] The police actions in Ameal's and Stephen's cases were nothing

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https://bjs.ojp.gov/content/pub/pdf/cpp15.pdf [https://perma.cc/FZ87-3UTL]; Emma Pierson et al., A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States, 4 Nat. Hum. Behav. 736, 736–737 (2020) (finding that police stop and search decisions are subject to pervasive racial bias).

158. See Note, The Fourth Amendment and Antidilution: Confronting the Overlooked Function of the Consent Search Doctrine, 119 Harv. L. Rev. 2187, 2187–88 (2006) ("Hawaii, Minnesota, New Jersey, and Rhode Island banned the use of consent searches 'after controversies about racial profiling,' and the California Highway Patrol voluntarily adopted a policy prohibiting its officers from requesting consent from motorists." (footnote omitted) (citing Sylvia Moreno, Race a Factor in Texas Stops, Wash. Post (Feb. 24, 2005), https://www.washingtonpost.com/archive/politics/2005/02/25/race-a-factor-in-texas-stops/b0317d23-7bf4-4cfc-b043-54d79d70e570/ (on file with the *Columbia Law Review*))); David John Housholder, Note, Reconciling Consent Searches and Fourth Amendment Jurisprudence: Incorporating Privacy Into the Test for Valid Consent Searches, 58 Vand. L. Rev. 1279, 1302–03 (2005) ("Law enforcement authorities have taken steps to limit consent searches following traffic stops in order to discourage racial profiling.").

159. See, e.g., Schneckloth v. Bustamonte, 412 U.S. 218, 224–25 (1973) ("At one end of the spectrum is the acknowledged need for police questioning as a tool for the effective enforcement of criminal laws. Without such investigation, those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved." (citation omitted)); id. at 227–28 ("In situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence."); id. at 243 ("Rather, the community has a real interest in encouraging consent, for the resulting search may yield necessary evidence for the solution and prosecution of crime, evidence that may [e]nsure that a wholly innocent person is not wrongly charged with a criminal offense.").

160. Id. at 225.

short of unfair and brutal, and the civil forfeiture process poses a real and serious threat to civilized notions of justice.

Thus, in the absence of legislative or judicial eradication of either civil forfeiture or consent searches, the least federal, state, and local legislatures can do is circumscribe the consent doctrine to what the *Schneckloth* majority originally (purportedly) envisioned. The Court envisioned consent as a means of solving crimes, not as a mechanism for enabling government theft. Civil forfeiture bears no relation to the gathering of evidence for a criminal prosecution. Civil forfeiture has nothing to do with solving crimes, vindicating the innocent, or apprehending the guilty. In fact, civil forfeiture has served to hurt far too many innocent people while having no measurable impact on crime clearance.[161] Consent to search for the sole purpose of seizing property, in short, is inconsistent with *Schneckloth* and the rationale underlying the consent doctrine.

The author therefore offers this modest proposal: Legislatures at the local, state, and federal levels should prohibit law enforcement officers from asking civilians about cash in their possession in the absence of probable cause of criminal activity *specifically related to having a large amount of cash*. In a world where police actually followed the law, such a rule would realign the consent doctrine with the original justification of solving crime and protecting the public—and wrench it away as a vehicle for government-sanctioned theft. The stated logic behind civil forfeiture is to deprive citizens of property utilized for the fulfillment of criminal behavior.[162] If that is the case, then law enforcement should only be allowed to inquire about property, especially cash, when they have probable cause that the person they lawfully stopped is committing a related crime.

If this proposed rule had been in effect (and, of course, actually followed) in Nevada and Texas, Ameal and Stephen would not have gone through their respective nightmares. The sergeant in Ameal's case lacked probable cause that Ameal committed any crime at the time he inquired about the cash in his car.[163] Similarly, the state trooper had no probable cause that Stephen engaged in any criminal activity when he asked Stephen whether he possessed large sums of U.S. currency.[164] Thus, under this proposal, neither law enforcement officer would have been legally permitted to ask Ameal or Stephen if they had cash in their cars. At worst, the officers would have given Ameal and Stephen traffic citations; at best, the officers would have let each driver go. Ameal would have purchased a second tractor-trailer and expanded his business; Stephen would have

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161. See Knepper et al., supra note 134, at 6 (questioning the assertion that forfeiture is effective at preventing crime or advancing legitimate goals).

162. See, e.g., Asset Forfeiture Program, DOJ, https://www.justice.gov/afp [https://perma.cc/D5Z8-3K92] (last visited Oct. 7, 2025).

163. See supra notes 37–84 and accompanying text.

164. Institute for Justice, Combat Vet, supra note 92, at 03:33–03:50.

made it to California with money to provide for his children and to start buying a home. Adopting this rule would make civil forfeiture a slightly less objectionable law enforcement mechanism.

CONCLUSION

This Piece seeks to illustrate the gravity of the Supreme Court's misstep in *Schneckloth* by profiling two instances in which the exploitation of citizen ignorance led to innocent civilians being victimized. Civil forfeiture is a terribly unjust practice, and the Court's consent doctrine is a popular conduit by which the government seeks to inquire about and ultimately steal cash and property from law-abiding citizens. Lawmakers should disable the consent doctrine from being used in this manner. In place of abolishing civil forfeiture and the consent doctrine, this proposal offers a potentially effective remedy.

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