No. 19-

IN THE
Supreme Court of the United States

JAMES BROME,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

STEVEN Y. YUROWITZ, ESQ.
950 THIRD AVENUE -- 32ND FLOOR
NEW YORK, NEW YORK 10022
TELEPHONE: 212-308-7900
FAX: 212-826-3273

ATTORNEY FOR PETITIONER

QUESTION PRESENTED

In *Dusenbery v. United States*, 534 U.S. 61 (2002) this Court held that due process does not require "actual notice" of a forfeiture action before an incarcerated stakeholder's rights can be extinguished. Since *Dusenbery*, the Courts of Appeals are divided over what constitutes adequate notice to a prisoner. The First, Fifth, Sixth, Seventh and Tenth Circuits have held that a nearly irrebuttable presumption exists where a notice is sent by certified mail to the proper prison facility. By contrast, the Third and Fourth Circuits, joined now by the Second Circuit, refuse to apply any such presumption. Instead, these courts place the onus on the Government to show that the correctional facility's internal procedures for delivering mail are reasonably calculated to notify the prisoner. Finally, the Eighth Circuit places the burden on the prisoner to demonstrate the inadequacy of the prison's procedures.

Here, the record demonstrates that a notice with the wrong seizure date was sent to petitioner by certified mail to the prison where he was housed, and the prison had a procedure in place to deliver such notices to inmates, although nothing in the record indicated that the sender at the time notice was mailed was aware what if any procedures the prison had, raising the following three issues for review:

1. What level of notice is required when providing a prisoner with notice that his property will be forfeited?

2. Must an agency have knowledge of the prison's mail delivery system *ex ante* (*see Jones v. Flowers*, 547 U.S. 220, 231 (2006)), or is *post hoc* knowledge sufficient as the Court of Appeals held?

3. Is strict adherence to the statutory and regulatory notice provisions required before a petitioner can be deemed to have defaulted?

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The decision of the United States Court of Appeals for the Second Circuit affirming the lower court's Order denying petitioner's motion for the return of his property is reported as *United States v. Brome*, 942 F.3d 550 (2d Cir. 2019) (Calabresi, Livingston and Lohier, Circuit Judges), a copy of which is annexed hereto as Appendix A. The unreported Summary Order of the same panel of the United States Court of Appeals for the Second Circuit, dated November 7, 2019, affirming a separately appealed Order is reported as *United States v. Brome*, 783 Fed.Appx. 100 (2d Cir. 2019), a copy of which is annexed hereto as Appendix B. A copy of the unreported Order denying petitioner's petition for rehearing with a suggestion for rehearing *en banc* is annexed hereto as Appendix C.

JURISDICTION

The judgment of the United States Court of Appeals sought to be reviewed was entered on November 7, 2019, and the Order of that court denying petitioner's petition for rehearing was entered on March 10, 2020. As a result of the Covid-19 pandemic, by General Order of this Court dated March 19, 2020, petitioner's time to file a petition for certiorari was extended until 150 days after the denial of a petition for rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The due process clause of the fifth amendment provides that no person shall "be deprived of ... property, without due process of law." U.S. Const. amend. V.

21 U.S.C. §881 provides for forfeiture in relation to controlled substance offenses. Subsection (a)(6) provides:

> All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter.

Subsection (d) provides the procedure for such forfeiture proceedings:

> **(d)Other laws and proceedings applicable**
> The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this subchapter, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this subchapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

19 U.S.C. § 1607 captioned "Seizure; value $500,000 or less, prohibited articles, transporting conveyances" provides:

> **(a) Notice of seizure** If—
>
> > **(1)** the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed $500,000;
> >
> > **(2)** such seized merchandise is merchandise the importation of which is prohibited;
> >
> > **(3)** such seized vessel, vehicle, or aircraft was used to import, export, transport, or store any controlled substance or listed chemical; or

> **(4)** such seized merchandise is any monetary instrument within the meaning of section 5312(a)(3) of title 31;
>
> the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

18 U.S.C. §983(e) provides the procedure for a motion to set aside a forfeiture judgment. It provides as follows:

> **(e) Motion To Set Aside Forfeiture.—**
>
> **(1)** Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person's interest in the property, which motion shall be granted if—
>
> **(A)**the Government knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with notice; and
>
> **(B)**the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.
>
> **(2)**
>
> **(A)** Notwithstanding the expiration of any applicable statute of limitations, if the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without prejudice to the right of the Government to commence a subsequent forfeiture proceeding as to the interest of the moving party.
>
> **(B)**Any proceeding described in subparagraph (A) shall be commenced—
>
> **(i)** if nonjudicial, within 60 days of the entry of the order granting the motion; or
>
> **(ii)** if judicial, within 6 months of the entry of the order granting the motion.

> **(3)** A motion under paragraph (1) may be filed not later than 5 years after the date of final publication of notice of seizure of the property.
>
> **(4)** If, at the time a motion made under paragraph (1) is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government may institute proceedings against a substitute sum of money equal to the value of the moving party's interest in the property at the time the property was disposed of.
>
> **(5)** A motion filed under this subsection shall be the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture statute.

19 CFR §162.45(a) captioned "Summary forfeiture: Property other than Schedule I and Schedule II controlled substances. Notice of seizure and sale" provides:

> **(a)** ***Contents.*** The notice required by [19 U.S.C. 1607], of seizure and intent to forfeit and sell or otherwise dispose of according to law property not exceeding $500,000 in value, or any seized merchandise the importation of which is prohibited, or any seized vessel, vehicle or aircraft that was used to import, export, transport, or store any controlled substance, or such seized merchandise is any monetary instrument within the meaning of 31 U.S.C. 5312(a)(3), shall:
>
> > **(1)** Describe the property seized and in the case of motor vehicles, specify the motor and serial numbers;
> >
> > **(2)** State the time, cause, and place of seizure;
> >
> > **(3)** State that any person desiring to claim property must appear at a designated place and file with the Fines, Penalties, and Forfeitures Officer within 20 days from the date of first publication of the notice a claim to such property and a bond in the sum of $5,000 or 10% of the value of the claimed property, whichever is lower, but not less than $250, in default of which the property will be disposed of in accordance with the law; and
> >
> > **(4)** State the name and place of residence of the person to whom any vessel or merchandise seized for forfeiture under the navigation laws belongs or is consigned, if that information is known to the Fines, Penalties, and Forfeitures Officer.

STATEMENT

1. Petitioner appealed from two final orders separately issued by the district court following separate remand orders from the Court of Appeals. As relevant to this petition, the Court of Appeals affirmed the district court's order denying for a second time petitioner's motion seeking the return of $21,109 seized from him during an arrest by state police on September 12, 2010. A91-A100.[1]

As described in the PSR, shortly after midnight on September 12, 2010, the Lyons Police Department stopped a rental vehicle driven by Jamie Beers (petitioner's common-law wife) while petitioner was a front seat passenger. PSR ¶35. After running ID checks, the officers learned that Beers had a suspended license and petitioner was on parole. *Id.* Both Beers and petitioner were removed from the vehicle, patted down for weapons, and detained in the police car. *Id.* The pat down of petitioner revealed "large bulks" which upon further inspection was determined to be cash totaling $21,019. PSR ¶35. Beers and petitioner were both taken to the Lyons Police Department and interviewed. *Id.* at ¶36. Petitioner admitted during his interview that he had dealt drugs in the past. Petitioner insisted, however, that his grandmother took $21,800 out of the bank and gave it to him a few days earlier so he could buy a car or truck in Geneva, New York. *Id.* Petitioner also insisted that he could prove his grandmother got the money out of the bank for him. *Id.* Petitioner

[1] "A__" refers to pagination in the Appendix filed in the Court of Appeals, "Doc#__" refers to documents contained on the district court's docket in this matter, and "PSR" refers to the Pre-Sentence Investigation Report filed under seal in the Court of Appeals.

was dropped off at a motel in Newark, New York with a receipt for the money that was seized. *Id.* at ¶37; A13.

The receipt contained the following notice:

> NOTICE TO CRIME VICTIMS AND/OR SUSPECTS:
> In the interest of justice, it may be necessary to hold all or parts of the property listed on this form until a disposition is made in this case, or until otherwise notified. *We will contact you, either by phone or mail, when you may pick up your property.*
> FAILURE to promptly claim your property will result in said property being disposed of, pursuant to §263 of the Personal Property Law or §450.10(7) of the Penal Law. Please refer any questions on items in our possession to the: EVIDENCE CUSTODIAN CRIME SCENE TECHNICAL UNIT WAYNE COUNTY SHERIFF'S DEPARTMENT 7368 ROUTE 31 - LYONS, NEW YORK 14489 Or by calling (315) 946-9711 between 8 am and 4 pm Tuesday through Saturday

A13 (emphasis added).

During a later suppression hearing, the arresting officer admitted that he did not have probable cause to believe that petitioner had committed a crime and petitioner was only taken to the police station because he had no means of transportation. Doc#325-2 at 66.

On September 29, 2010, the New York State Division of Parole issued a warrant to arrest petitioner for parole violations in that, *inter alia*, petitioner had changed his residence without the knowledge and/or permission of his parole officer. PSR ¶70. On October 1, 2010, the Wayne County District Attorney wrote to Sgt. Flock of the Lyons Police Department and informed him that "this office has reviewed the above referenced case and has determined not to proceed with a state forfeiture

action against the twenty-one thousand nineteen ($21,019.00) in United States currency seized by the Lyons Police Department." A14.[2] The District Attorney went on to state that it had no objection to the Lyons Police Department requesting federal adoptive forfeiture. *Id.* On October 7, 2010, the DEA Office in Rochester, New York, adopted the seizure of the cash previously seized from petitioner by the Lyons Police Department. A17 at ¶4(a). Thereafter, on November 3, 2010, the DEA sent written notice by certified mail, return receipt requested, to James S. Brome, 210 W. 230 Street, Apartment 8D, Bronx, New York. A21. In addition to mailing notice to petitioner addressed to the Bronx address, on November 15, 22 and 29, 2010, the government published notice in The Wall Street Journal regarding its intention to seize the cash from petitioner. A22-A26. All of these notices were defective since they listed the seizure date as October 7, 2010, when in fact petitioner's money had been seized on September 12, 2010. *Compare*, *e.g.*, A22, A27 (notices indicating that "seizure date" was October 7, 2010) *with* A31 (DEA declaration of forfeiture indicating that "seizure date was September 12, 2010").

The DEA should have been aware that the notices would not reach petitioner. For example, in an October 2010 wiretap application submitted by state prosecutors working in conjunction with the DEA, the prosecutor noted that petitioner's phone was registered to a different address from the one to which the DEA was sending notices. Doc#81-2. In fact, on November 28, 2010, the U.S. Postal Service returned

[2] In response to a suppression motion made by petitioner, the government conceded that petitioner's statements made after he arrived at the police station were obtained in violation of petitioner's *Miranda* rights and would not be used by the government at any trial. Doc#325-2 at 5.

the notice to the DEA marked "RETURN TO SENDER. UNCLAIMED. UNABLE TO FORWARD." A21.

There was no mystery to the DEA concerning petitioner's whereabouts, on November 30, 2010, petitioner was arrested by DEA in a controlled drug buy. PSR¶31, 41. Petitioner was charged by felony complaint in Wayne County Court and arrested and detained at the Wayne County Jail. PSR ¶44. These state charges were subsequently dismissed in lieu of the federal charges that were brought. *Id.* Despite the DEA's presence at petitioner's arrest on November 30, 2010, the same day the DEA sent by first class mail written notice of the seizure again addressed to James S. Brome, 210 W. 230 Street, Apartment 8D, Bronx, NY 10463. A27. On December 16, 2010, a probable cause hearing was held in the Lyons Village Court. Present and testifying at the hearing was Brian Hanley, an agent with the DEA. Petitioner was represented by counsel at the hearing. Defense counsel, however, was not provided with any notice of the forfeiture. On December 27, 2010, "after confirming his most current address" the DEA sent written notice to petitioner at the Wayne County jail by both certified and first class mail. A18-A19. An individual other than petitioner signed for the letter. A29. Like all of the defective notices that came before it, the mailed notice to the jail incorrectly listed the date of seizure as October 7, 2010, and made no mention of the actual seizure date of September 12, 2010. A28. No notice was sent to petitioner's counsel whose identity was known to the DEA. On February 22, 2011, having received no notice of claim from petitioner, the DEA administratively forfeited the $21,019 seized from petitioner. A31. According to the

DEA's statement of forfeiture -- and contrary to all of the notices that had been sent to petitioner -- the seizure date was September 12, 2010. *Id.*

2. On May 12, 2011, petitioner was charged in a one-count Indictment for having engaged in a narcotics conspiracy with others during the period from "in or about June 2010, through and including in or about November 2010." Doc#10 at 1. On April 17, 2012, the district court conducted a suppression hearing on petitioner's motion to suppress the cash taken from petitioner and statements made by him at the time. Doc#325-2 at 2-98. During the hearing, the district court inquired whether petitioner was seeking to suppress evidence concerning "the discovery of the money" or "the seizure of the money" but noted that "I suppose the seizure of the money could be contested in the forfeiture allegations. You could always try to get the money back." *Id.* at 78-79. After his suppression motion was denied, in November 2012, petitioner pled guilty pursuant to a plea agreement. Doc#187. Petitioner made no admissions during his plea regarding the source or origin of the cash seized from him on the night of September 12. Doc#255. Thereafter, on February 26, 2013, petitioner was sentenced to a 204-month term of imprisonment. Doc#224.

3. Consistent with the district court's suggestion during the suppression hearing, by motion dated September 16, 2013, petitioner moved pursuant to Rule 41(g), Fed.R.Cr.P. for the return of the cash seized from him. Doc#244. According to petitioner he had written "not less than three letters asking for the return of money seized on September 12, 2010, all letters have gone unanswered to date." *Id.* The government submitted no response. Instead, by letter order dated October 4, 2013,

the district court wrote to petitioner informing him that he had received his petition and "I have been advised by the United States Attorney's Office that the $21,019 cash was administratively forfeited by the DEA on February 25, 2011." A15. As a result, the district court denied the petition. *Id.* Petitioner appealed to the Second Circuit and by Summary Order dated April 20, 2016, the Second Circuit remanded to the district court for a determination concerning the sufficiency of the notice in connection with the administrative forfeiture of petitioner's property. A32-A35.

On remand the government submitted an affidavit from a corrections officer at the Wayne County Correctional Facility (the Ambeau affidavit). A74-A77. According to the Ambeau affidavit a review of the mail log for the Wayne County Jail indicates that mail addressed to petitioner from the DEA was received on December 29, 2010. Standard protocol would have required that after the mail was logged into the system the receptionist would radio the roving officer to come to the reception area to collect all of the inmate mail. The roving officer would bring the mail to the housing area and call out the name of each inmate that had received mail. The government provided no evidence, however, concerning what knowledge, if any, the government had concerning the mail delivery practices the jail had *at the time notice was sent*.

4. On March 20, 2018, nearly two years after the case had been remanded and after petitioner filed a *pro se* mandamus petition, the district court issued a decision denying petitioner's motion concluding that "that the method used to notify [petitioner] of the administrative forfeiture of currency taken from his person was sufficient." A78-A87.

Petitioner appealed again. In rejecting his appeal, the Court of Appeals resolved an issue over which the other Circuits are divided. The Second Circuit joined the Third and Fourth Circuits and held that "the Government generally must demonstrate the existence of procedures reasonably calculated to ensure that a prisoner receives notice of the forfeiture action" (942 F.3d at 551) and that "it will ordinarily suffice if the Government demonstrates that it sent notice by certified return receipt to the correctional facility where the prisoner is detained and that the facility's mail distribution procedures are reasonably calculated to deliver the mail to the prisoner." *Id.* at 553.

The Court of Appeals, however, rejected petitioner's argument that "the DEA was required to know at the time it sent notice that the mail distribution procedures at the Wayne County jail were adequate." *Id.* at 554. The Court of Appeals concluded that such a requirement "cannot be right since this Court in *Dusenbery v. United States,* 534 U.S. 161 (2002) itself relied on after-the-fact testimony of a corrections officer, not any federal official's subjective knowledge of the prison's notice procedures, to determine in that case that notice satisfied due process." 942 F.3d at 554 (*citing Dusenbery*, 534 U.S. 161, 165–66, 169).

The Court of Appeals also rejected petitioner's claim that even if received the notice was invalid because it contained the wrong seizure date. In the view of the Court of Appeals, "due process was not offended by the minor error." 942 F.3d at 554.

The Court of Appeals denied petitioner's motion for rehearing or *en banc* review. Appendix C. Petitioner now seeks a writ of certiorari from this Court.

REASONS FOR GRANTING THE WRIT

I.

This Court should grant review and resolve the split among the Circuits regarding the required level of notice of a forfeiture proceeding sufficient to satisfy due process where the putative stakeholder is imprisoned. The First, Fifth, Sixth, Seventh and Tenth Circuits hold that where a notice is sent by certified mail to a prison facility and the receipt was acknowledged by the prison, a nearly irrebuttable presumption exists that the prisoner received notice, refusing to inquire into the adequacy of a prison's mail delivery system. *See Chairez v. United States*, 355 F.3d 1099, 1101-02 (7th Cir. 2004); *Whiting v. United States*, 231 F.3d 70, 76-77 (1st Cir. 2000); *Jaramillo-Gonzalez v. United States*, 397 Fed.Appx. 978, 980-81 (5th Cir. 2010); *United States v. Real Property ("Tree Top")*, 129 F.3d 1266 (Table), 1997 WL 702771 at *2 (6th Cir. 1997); *United States v. Clark*, 84 F.3d 378, 381 (10th Cir. 1996).[3] These Circuits do not permit inquiry into the adequacy of a particular prison's mail delivery system. The Eighth Circuit refused to forbid any inquiry into a prison's mail delivery system. Instead, the Eighth Circuit held that where a prisoner claims that he did not receive notice, the burden is on him to demonstrate the inadequacy of the mail delivering procedures at the prison where he is housed. *Nunley v. Department of Justice*, 425 F.3d 1132 (8th Cir. 2005).

[3] The First Circuit was willing to carve out the following exception to the presumption: "if the government knew that mail delivery in a particular prison was unreliable but sent the notice by this means without any other precaution, mail delivery would not satisfy due process." *Whiting*, 231 F.3d 70, 77 (1st Cir. 2000).

The Court of Appeals here correctly rejected both lines of authority holding that because mail delivered to a prison involves an additional layer of delivery, i.e., from the prison mailroom to the prisoner, no presumption exists. Instead, the Government must "show that the correctional facility's internal procedures for delivering mail are reasonably calculated to notify the prisoner." *Brome*, 942 F.3d at 553 (*citing United States v. Minor*, 228 F.3d 352, 358 (4th Cir. 2000) and *United States v. One Toshiba Color Television*, 213 F.3d 147, 155 (3d Cir. 2000) (en banc)).[4]

The Second Circuit, however, relying on *Dusenbery* rejected petitioner's argument that the government "was required to know at the time it sent notice that the [particular prison's] mail distribution procedures . . . were adequate." *Brome*, 942 F.3d at 554. In the view of the Court of Appeals, there was no basis for such a requirement "since the Supreme Court in *Dusenbery* itself relied on after-the-fact testimony of a corrections officer, not any federal official's subjective knowledge of the prison's notice procedures, to determine in that case that notice satisfied due process." *Id.*

The reliance the Court of Appeals placed on *Dusenbury* was misplaced. The issue in *Dusenbery* was whether actual service of a forfeiture notice was required for an incarcerated defendant (the standard the Second Circuit had adopted prior to *Dusenbury*)[5] or whether something less sufficed. *Dusenbury* held that actual notice was not required. As to what level of notice was required was not before the Court, a

[4] While *Minor* and *Toshiba Color* were decided prior to *Dusenbury*, both Courts continue to adhere to the standard set forth in those cases. *See, e.g., United States v. Tidwell*, 477 Fed.Appx. 23 (3d Cir. 2012); *United States v. Claridy*, 373 Fed.Appx. 417 (4th Cir. 2010).
[5] *See Yeung Mung Weng v. United States*, 137 F.3d 709, 715 (2d Cir. 1998).

fact recognized by the Court of Appeals: "Even after *Dusenbery*, a split persists among the courts of appeals regarding what constitutes adequate notice to prisoners." 942 F.3d at 553.

In *Chairez*, the Seventh Circuit relied on the facts of *Dusenbery* to conclude that all that is required to provide forfeiture notice is a certified mailing to the prison. Yet, as the Eighth Circuit in *Nunley* recognized in rejecting *Chairez*: "*Dusenbery* does not address the question of whether courts need to inquire into prisons' mail-distribution procedures, so it is not controlling on this point." 425 F.3d at 1138.

Since *Dusenbery* was not determining whether inquiry is required into a prisons' mail-distribution procedure, the fact that in *Dusenbery* the Court relied on a *post-hoc* inquiry into the particular prison's mail procedures was not a validation that such *post hoc* inquiries are adequate.

Indeed, after *Dusenbery* this Court recognized the opposite in *Jones v. Flowers,* 547 U.S. 220 (2006), i.e., that "the constitutionality of a particular procedure for notice is assessed *ex ante,* rather than *post hoc."* 547 U.S. at 231. Based on *Jones*, where a governmental agency fails to make any effort to determine what procedures the particular prison receiving the notice has in place, the agency involved simply has no basis *ex ante* to determine that "the facility's mail distribution procedures are reasonably calculated to deliver the mail to the prisoner." Moreover, as the Eighth Circuit recognized in *Nunley*, "[w]e do not think . . . that it would take a heroic effort (especially for other government officials) to find out how any particular prison's mail-

distribution system works — a few phone calls or e-mails *before sending the notice* would probably get the job done." 425 F.3d at 1138 (emphasis added).

This Court should grant certiorari to resolve this split among the Court of Appeals. Supreme Court Rule 10(a). Moreover, because the Panel's decision conflicts with this Court's prior precedent, it should grant review on the second question, i.e., whether the agency providing notice must know at the time the mailing is sent whether the facility to which notice is sent has a mail distribution system in place calculated to provide the prisoner with notice. *Id.* at Rule 10(b).

II.

The government did not dispute that the notices sent to petitioner were required to include "the *time*, cause and place of seizure…." 19 CFR §162.45(a)(2) (emphasis added). There was also no dispute that the notices sent to petitioner, even if he received them, did not contain the accurate "time . . . of seizure" but instead listed a date unknown to petitioner, i.e., the date that the DEA unilaterally decided to adopt the forfeiture. Nevertheless, the Court of Appeals rejected petitioner's challenge finding that "due process was not offended by the minor error." *Id.* at 554. Petitioner's challenge, however, was not limited to a due process challenge. And, certainly nothing in CAFRA (18 U.S.C. §983) limits a challenge to the lack of notice based on due process. Instead, petitioner argued whether as a matter of strict statutory interpretation, a notice that failed to comply with the requirement that it indicate the "time" of seizure constituted notice at all.[6] Moreover, it is doubtful that

[6] In this regard, it appears that the Court of Appeals ignored its own prior precedent. *Adames v. United States*, 171 F.3d 728, 730 n.2 (2d Cir. 1999) ("Curiously, the notice refers only to the amount of

such a notice satisfies due process. *Glasgow v. United States Drug Enforcement Admin.*, 12 F.3d 795, 799 (8th Cir. 1993) (Notice which failed to provide the date upon which a claim must be filed was invalid; "Agency disclosures that reflect 'an attitude of concealment rather than enlightenment' do not meet the basic demands of due process").

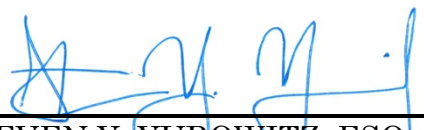
Before a defendant's rights are foreclosed for failing to strictly comply with the rules, there is nothing unfair with holding the government to a similarly strict standard. The opposite is true. Here, petitioner's property was seized by the local authorities and the notice he received upon seizure indicated that: "*We will contact you*, either by phone or mail, when you may pick up your property." A13. Even assuming petitioner received notice from the DEA, a notice from an agency different from the one that seized his money, containing a seizure date different from the date upon which his money was seized simply should not be an adequate basis to extinguish all of petitioner's rights to the property. Because review is, in any event, appropriate to resolve the split among the Courts of Appeals, this Court should grant certiorari on this issue as well.

currency at issue and the date on which the forfeiture complaint was filed; it mentions neither the names of putative property owners nor the date or location of the seizure. The government, understandably, does not argue here that this sort of notice is adequate.")

CONCLUSION

In view of the split in the Circuits, as well as the important constitutional rights at stake, petitioner respectfully requests that the Petition for Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED



STEVEN Y. YUROWITZ, ESQ.
950 Third Avenue -- 32nd Floor
New York, New York 10022
Tel: (212) 308-7900
Fax: (212) 826-3273

Attorney for Petitioner James Brome