No. 21-898

IN THE

Supreme Court of the United States

BLAKE CONYERS AND KEVIN FLINT,
Petitioners,

v.

CITY OF CHICAGO,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether this Court should decline to review the Seventh Circuit's holding that petitioners could not proceed on a Fourth Amendment claim based on respondent's disposal of their personal items, where it is undisputed that the property was reasonably seized upon petitioners' arrest, respondent's procedures for claiming the property satisfied due process, and petitioners abandoned their property by failing to claim it; and where petitioners articulate no Fourth Amendment theory that would afford them relief in any circuit.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES **Page**

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

ORDINANCES

OTHER AUTHORITES

STATEMENT

The Disposal of Petitioners' Unclaimed Property

Petitioners were arrested by officers of the Chicago Police Department ("CPD"). Pet. 4. At the time of their arrest, CPD seized, inventoried, and stored items in petitioners' possession that were not permitted in CPD's lockup. *Ibid.* Petitioners were then transferred to the Cook County Jail to await trial, and CPD continued to store the property that Cook County did not permit arrestees to take to the jail. *Ibid.* CPD's policy was to give arrestees a receipt for their stored items and a notice explaining how to retrieve them. Pet. App. 3a. The notice pointed arrestees to further information on CPD's website explaining how those in custody could claim their property. *Id.* at 4a. After 30 days, property unclaimed by the owner or the owner's authorized representative was deemed abandoned, pursuant to a Chicago ordinance. Municipal Code of Chicago, Ill. § 2-84-160(c)(1); Pet. App. 104a-105a. Petitioners failed to claim their property, and CPD disposed of it. Pet. 4.

The District Court Proceedings

Petitioners filed a complaint alleging that CPD's disposal of their unclaimed property violated the Fourth Amendment, the Takings Clause of the Fifth Amendment, and the Due Process Clause of the Fourteenth Amendment. Pet. 6; R. 59 at 2, 4.

The district court dismissed petitioners' Fourth Amendment claim. Pet. App. 92a. The claim, it

explained, was barred by the Seventh Circuit's decision in *Lee v. City of Chicago*, 330 F.3d 456 (7th Cir. 2003), because petitioners challenged not the City's seizure of their property pursuant to arrest, which was concededly reasonable, but the City's retention of the property and procedures for claiming it, and *Lee* held that the Fourth Amendment does not apply to the recovery of lawfully seized property. *Ibid.*

The district court dismissed petitioners' takings claim for failure to exhaust state remedies, Pet. App. 93a, and their procedural due process claim for lack of standing, *id.* at 101a. Petitioners lacked standing because, although they alleged that the notice CPD gave arrestees explaining how to claim property was flawed, they did not claim that they "detrimentally relied on" the notice, *id.* at 100a, or that the procedures were "constitutionally deficient," *id.* at 97a n.10. The court allowed petitioners to replead their due process claim. *Id.* at 102a.

Petitioners did so, alleging that although the notice CPD gave arrestees about property retrieval procedures stated that further information was available on CPD's website, that information was not accessible to persons detained at the Cook County Jail, and thus no adequate procedure existed for jailed individuals to reclaim their property. R. 81 at 5-6. Petitioners alleged that they should have been given "individualized notice" and a hearing before CPD disposed of their items, *id.* at 6-7, and that respondent

therefore deprived them of their property without due process, in violation of the Fourteenth Amendment, or just compensation, in violation of the Fifth Amendment, *id.* at 9-11.

The district court again dismissed petitioners' Fifth Amendment takings claim, Pet. App. 79a, but it allowed petitioners' procedural due process claim to proceed, *id.* at 84a, and certified a class, *id.* at 66a.

After discovery, the district court granted respondent's motion for summary judgment on petitioners' due process claim. Pet. App. 46a. The court explained that the only disputed issue was whether petitioners had access to information about how to retrieve their stored property. *Id.* at 25a. The court therefore examined whether the content of CPD's website satisfied respondent's obligation to provide notice to arrestees about how to retrieve their belongings; whether inmates at the Cook County Jail could access the website's content; and whether the information appeared on the website during the relevant period. *Id.* at 25a-26a.

Based on the parties' evidence, the district court answered each of these questions in the affirmative. The court explained that CPD's website contained "specific and detailed notice of the procedures" by which property could be retrieved. Pet. App. 26a. Indeed, "plaintiffs d[id] not contest" that the information, if available to inmates, satisfied respondent's notice obligations. *Id.* at 27a. As to

Cook County Jail inmates' access to the information, the record established that jail social workers and law librarians could provide the information to inmates. *Id.* at 27a-28a. Finally, CPD's website was active during the class period. *Id.* at 33a-34a. The district court therefore held that "the City's procedures for obtaining the return of property seized at the time of arrest were generally available to those transported to the Cook County Jail following arrest," and accordingly, "no individual notice was required" before CPD disposed of petitioners' unclaimed property. *Id.* at 36a. The court noted that 75% of arrested individuals claimed their items, and that "sporadic" failures to follow "established procedures" would not support liability under *Monell* [*v. Department of Social Services*, 436 U.S. 658 (1978)]." *Id.* at 37a-38a. Finally, the court rejected petitioners' claim that they were entitled to a hearing before CPD disposed of their property, explaining that CPD's procedures satisfied due process. *Id.* at 38a-39a. The court also denied petitioners' motion for reconsideration of the dismissal of their Fifth Amendment claim. *Id.* at 44a-45a. Petitioners appealed. R. 220.

The Court of Appeals' Ruling

The Seventh Circuit affirmed the district court's judgment in respondent's favor. Pet. App. 1a-19a. The court first noted that CPD's "right to seize and inventory . . . property upon arrest is not at issue. It is well settled that it may do so." *Id.* at 2a (citing

Illinois v. Lafayette, 462 U.S. 640, 646 (1983)).

Regarding petitioners' Fourth Amendment claim, the court held that the "question whether the City had a duty to release the property sooner, or on more favorable terms," was an issue that fell "more naturally under the Due Process Clause of the Fourteenth Amendment." Pet. App. 10a. The court therefore followed its decision in *Lee* and rejected the claim. *Id.* at 9a. It further explained that *Manuel v. City of Joliet*, 137 S. Ct. 911 (2017), did not support a different result. *Manuel* had nothing to do with retention of property. It involved a pretrial detainee's seizure and detention that were "flawed from the outset" because they were based on fabricated evidence. *Id.* at 9a-10a. Petitioners' case presented no similar issue because CPD lawfully seized their property pursuant to arrest. *Id.* at 10a.

The court of appeals affirmed the dismissal of petitioners' Fifth Amendment takings claim as well. Pet. App. 13a. It reasoned that respondent was entitled to treat petitioners' property "as abandoned" after it went unclaimed for 30 days; petitioners were advised of how to claim the property and the deadline to do so. *Ibid*. There was "nothing unconstitutional about the City's decision to deem property abandoned after 30 days," and because "abandoned property does not belong to anyone," the City could "dispose of it as it s[aw] fit." *Ibid.*

Finally, the court affirmed the judgment for

respondent on petitioners' procedural due process claim. It concluded that the content on CPD's website "explains just what a detainee must do, either in person or through a delegate, to ensure the recovery of property." Pet. App. 14a. The evidence established that the website was active and its information accessible to jail inmates. *Id.* at 14a-18a. Petitioners failed to meet their burden "to show why the system" established for inmates to claim their stored property "was constitutionally inadequate." *Id.* at 18a.

REASONS FOR DENYING THE PETITION

Petitioners complain that the court of appeals wrongly rejected their Fourth Amendment claim premised on CPD's disposal of their unclaimed property. In seeking review, they assert that other circuits have reached decisions inconsistent with the holding below. But petitioners fail to acknowledge the consensus among the circuits on the precise issue in their case. Indeed, petitioners could not obtain relief on a Fourth Amendment theory in any circuit. No court of appeals has held that if the seizure that divested an owner of property was lawful, and the owner failed to claim it, the government's disposal of the property implicates the Fourth Amendment. Petitioners' claim of conflict in the context of the facts here should therefore be rejected. Petitioners also misrepresent the decision below, in which the court of appeals correctly applied established procedural due process principles to reject their claim. The petition

should be denied.[1]

I. PETITIONERS IDENTIFY NO CONFLICT WARRANTING REVIEW ON THE ISSUE PRESENTED.

The courts of appeals generally agree that, while the Fourth Amendment's protections apply to property at the time of seizure, if – as is undisputed here – that seizure was reasonable, the Fourth Amendment does not provide a cause of action to challenge the government's retention and disposal of the property or the procedures for claiming property. Those issues instead implicate procedural due process, or perhaps state law.

Petitioners acknowledge that the First, Second, Sixth, and Seventh Circuits follow this rule. Pet. 10-13. They omit that the Eleventh and D.C. Circuits do as well. *E.g.*, *Case v. Eslinger*, 555 F.3d 1317, 1330 (11th Cir. 2009); *Johnson v. Quander*, 440 F.3d 489 (D.C. Cir. 2006).

For example, in *Denault v. Ahern*, 857 F.3d 76 (1st Cir. 2017), the First Circuit held that a town's retention and transfer to a tow company of a lawfully seized vehicle did not implicate the Fourth Amendment, *id.* at 83-84, although the plaintiffs

[1] Petitioners refer to the Fifth Amendment in their Question Presented, Pet. (i), but they advance no Fifth Amendment claim as a basis to grant their petition.

prevailed on a state-law tort claim, *id.* at 79.

In *Shaul v. Cherry Valley-Springfield Central School District*, 363 F.3d 177 (2d Cir. 2004), the Second Circuit rejected a teacher's Fourth Amendment claim against school officials who failed to return personal items removed from his classroom. *Id.* at 187. The court explained that if the "initial seizure of property was reasonable," the failure to return it did not support "a separate Fourth Amendment claim of unreasonable seizure," although it might implicate "procedural due process." *Ibid.*

In *Fox v. Van Oosterum*, 176 F.3d 342 (6th Cir. 1999), the Sixth Circuit rejected a Fourth Amendment claim based on the police's refusal to return the plaintiff's seized driver's license. *Id.* at 349-53. The seizure, it explained, was complete when the license was taken, and the refusal to return it "neither brought about an additional seizure nor changed the character of the [prior] seizure from a reasonable one to an unreasonable one." *Id.* at 350.

In *Lee*, the plaintiff's car was lawfully impounded for evidentiary purposes. 330 F.3d at 458-59. The Seventh Circuit held that the refusal to return the car unless the plaintiff paid a fee was not an additional seizure that could violate the Fourth Amendment. *Id.* at 460. It explained that the Fourth Amendment governs a person's interest in keeping their property at the time it is taken, but not in regaining lawfully taken property. *Id.* at 466.

In *Case*, the Eleventh Circuit held that where police had probable cause to arrest the plaintiff for theft and seize his allegedly stolen property, the plaintiff could not challenge the retention of the "legally seized" property as a Fourth Amendment violation, although the circumstances "raise[d] an issue of procedural due process under the Fourteenth Amendment." 555 F.3d at 1330; *see also Byrd v. Stewart*, 811 F.2d 554, 554-55 (11th Cir. 1987) (claim that police officers "failed to return the items seized" was "a procedural due process claim").

In the same vein, the D.C. Circuit, in *Johnson*, 440 F.3d 489, rejected a probationer's Fourth Amendment challenge to the government's storage and later use of his DNA and blood samples. The court explained that if a DNA sample "is taken in conformance with the Fourth Amendment, the government's storage and use of it does not give rise to an independent Fourth Amendment claim," *id.* at 499, and that in the case of blood samples, the "'search' is completed upon the drawing of the blood," *id.* at 500.

Support for the view that the Fourth Amendment governs the taking of property, but not its retention or disposition, extends beyond these six circuits, too. The Third, Eighth, and Tenth Circuits have approvingly cited the above cases in dicta or indicated agreement with a similar approach. *E.g.*, *Revell v. Port Authority of New York, New Jersey*, 598 F.3d 128, 138 (3d Cir. 2010) (citing *Case* and distinguishing

between claim based on "initial seizure" and claim based on retention of property and failure to provide notice and hearing); *Ali v. Ramsdell*, 423 F.3d 810, 814 (8th Cir. 2005) (expressing "considerable doubt" whether claim based on improperly inventoried and stored property stated Fourth Amendment claim); *Gilmore v. City of Minneapolis*, 837 F.3d 827, 838 (8th Cir. 2016) (qualified immunity for officer sued under Fourth Amendment for destruction of a protestor's sign where seizure of sign was lawful); *Kripp v. Luton*, 466 F.3d 1171, 1176-77 (10th Cir. 2006) (distinguishing between challenge to "initial seizure" – a Fourth Amendment claim – and "challenge to . . . later *process*" before property is forfeited, which raises due process concerns); *see also DiCesare v. Stuart*, 12 F.3d 973, 978 (10th Cir. 1993) (challenge to seizure of plaintiff's horses was a Fourth Amendment claim; challenge to their later sale was a due process claim); *Winters v. Board of County Commissioners*, 4 F.3d 848, 855 (10th Cir. 1993) (claim based on ring's seizure was a Fourth Amendment claim, while claim based on its "ultimate disposition" was a due process claim).

Crucially, no circuit has disagreed with the court below that no Fourth Amendment claim exists on facts like those here: where the government lawfully seized property, provided a process to claim it, and disposed of it when it went unclaimed.

Petitioners cite three cases to evince a purported circuit split: *Presley v. City of Charlottesville*, 464

F.3d 480 (4th Cir. 2006); *Mom's Inc. v. Willman*, 109 F. App'x 629 (4th Cir. 2004); and *Brewster v. Beck*, 859 F.3d 1194 (9th Cir. 2017). Pet. 14-15. Those cases, however, do not demonstrate a genuine conflict on the issue presented. Their facts are distinguishable, and their reasoning would not support a different outcome here.

In *Presley*, the City of Charlottesville distributed, without the plaintiff's consent, a map that showed a public trail crossing a portion of the plaintiff's riverfront property. 464 F.3d at 482. The public used the trail, "leaving behind trash, damaging the vegetation, and sometimes even setting up overnight camp sites" on the property. *Id.* The plaintiff sued the city, alleging that her property had been unreasonably seized, in violation of the Fourth Amendment. *Id.* at 483. On those unique facts, the Fourth Circuit held that by alleging that the city encouraged private individuals to trespass within the curtilage of her home, the plaintiff stated a valid Fourth Amendment claim. *Id.* at 484 n.3, 487-89.

Presley – a case about the unreasonable seizure of real property – does not suggest a different result in this case, which involves personal property CPD reasonably seized and stored, and then deemed abandoned. Indeed, the Fourth Circuit stated that "to prevail on a seizure claim, a plaintiff must prove that the government *unreasonably* seized property." 464 F.3d at 485 (emphasis in original). *Presley* did not recognize a Fourth Amendment cause of action to

challenge the disposal of legally seized property. Petitioners do not explain how *Presley* demonstrates a circuit conflict on the issue they raise, and it does not.

Petitioners also cite an unpublished 2004 Fourth Circuit decision. Pet. 14. In *Mom's Inc.*, the plaintiffs alleged that federal agents stole a watch while executing a search warrant. 109 F. App'x at 633. The Fourth Circuit stated that "such theft violate[d] the Fourth Amendment," but the officers were entitled to qualified immunity. *Id.* at 637.

Mom's Inc. does part ways with courts that have held that theft of property after a legal search does not implicate the Fourth Amendment. *E.g.*, *Wagner v. Higgins*, 754 F.2d 186, 187 (6th Cir. 1985) (allegation that police stole personal items from a lawfully impounded vehicle did not state a Fourth Amendment claim); *see also Ali*, 423 F.3d at 814 (expressing doubt that allegation that legally seized property was improperly stored stated a Fourth Amendment claim). But petitioners do not claim their property was stolen. This is therefore not an appropriate case to resolve any shallow split that might exist on whether theft during a legal search implicates the Fourth Amendment. And the Fourth Circuit has not opined on the issue here, which, again, is whether the Fourth Amendment provides a cause of action to challenge procedures for claiming or disposing of legally seized property.[2]

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[2] Citation of unpublished Fourth Circuit dispositions

Brewster also involved circumstances far afield of the facts here. There, the Ninth Circuit allowed a Fourth Amendment claim to proceed where the Los Angeles Police Department ("LAPD") impounded the plaintiff's vehicle for a mandatory 30 days under a state statute after the plaintiff's unlicensed relative was stopped while driving the vehicle. 859 F.3d at 1195-96. The plaintiff appeared with a valid license and offered to pay all towing and storage fees, but LAPD refused to release the vehicle to her. *Ibid*. The Ninth Circuit concluded that the 30-day seizure was not justified because the initial exigency for seizing the vehicle no longer existed. *Id.* at 1196-97.

Petitioners argue that unlike the court of appeals below, the Ninth Circuit applied the Fourth Amendment to the retention of property, not just the initial taking. Pet. 14. But *Brewster* does not help petitioners. The seizure itself in *Brewster* was for a *mandatory* 30 days, and that was what the Ninth Circuit deemed unreasonable. This Court has stated that the duration of a seizure is a factor to be considered in Fourth Amendment analysis. *United States v. Place*, 462 U.S. 696, 710 (1983) (90-minute detention of respondent's luggage "went beyond the narrow authority possessed by police to detain briefly luggage reasonably suspected to contain narcotics").

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issued prior to January 1, 2007 is "disfavored." 4th Cir. Local R. 32.1. Moreover, the continued vitality of *Mom's Inc.* is debatable; in the eighteen years since *Mom's Inc.* was decided, other courts have rarely cited it.

Applying *Place*, the Ninth Circuit held that the 30-day seizure in *Brewster* went too far, given the government's justification for seizing the plaintiff's vehicle. 859 F.3d at 1195-97.

Brewster's approach would not supply petitioners with a viable claim. In *Brewster*, unlike here, there was no procedure available to Brewster for reclaiming her property during the mandated 30-day holding period. Here in contrast, CPD does not hold arrestees' property for any mandated period; petitioners could have retrieved their property at any time, but they did not. And petitioners do not argue that CPD held their property without justification, as in *Brewster*. To the contrary, they imply that CPD was required to store their property indefinitely. *See* Pet. 3, 18-19. *Brewster* does not suggest that a Fourth Amendment claim is available when lawfully seized property may be reclaimed at any time, and a plaintiff fails to use an available process to retrieve the property.[3]

In sum, the courts of appeals have overwhelmingly concluded that, if the seizure that divested an owner of property was lawful, the government's retention or disposal of the property does not implicate the Fourth Amendment. With no

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[3] Plaintiffs assert that the Seventh Circuit "acknowledged" a split with the Ninth Circuit, Pet. i, 4, but that is incorrect. The Seventh Circuit included a citation to *Brewster* but did not recognize any circuit split on the issue presented in this case.

reason to think petitioners' Fourth Amendment challenge to respondents' treatment of their stored property would come out differently in any other circuit, their claim of a circuit conflict fails.

Petitioners' argument that the court of appeals' decision conflicts with relevant decisions of this Court is also incorrect. Petitioners call the Seventh Circuit's decision "inconsistent with" this Court's decision in *Manuel*. Pet. 13. *Manuel* involved a pretrial detainee's seizure and detention based on fabricated evidence. The Court explained that, "[i]f the complaint is that a form of legal process resulted in pretrial detention unsupported by probable cause, then the right allegedly infringed lies in the Fourth Amendment." 137 S. Ct. at 919. *Manuel* said nothing about property, let alone property that was lawfully seized attendant to an arrest supported by probable cause. And although petitioners assert that "the Fourth Amendment does not provide any different protection for seizures of the person and seizures of effects," Pet. 13, the Court recently explained in *Torres v. Madrid* that the Fourth Amendment does *not* treat the seizure of persons and property as identical, but rather, the term" "seizure" is "broad" and "the nature of a seizure can depend on the nature of the object being seized," 141 S. Ct. 989, 995, 1002 (2021). Thus, the term "seizure" encompasses multiple concerns with different legal underpinnings. *Id.* at 995, 1001. *Manuel* does not support plaintiffs' claims regarding property or conflict with the decision below.

Indeed, the court of appeals below followed the Court's long-standing precedent to interpret "seizure," in the Fourth Amendment context, to mean the act of taking possession of property, not the continued retention of the property. *See Thompson v. Whitman*, 85 U.S. 457, 471 (1873); *California v. Hodari D.*, 499 U.S. 621, 625 (1991)); *see also Hudson v. Palmer*, 468 U.S. 517, 538-39 (1984) (O'Connor, J., concurring) ("[T]he handling of the property while in the government's custody is not itself of Fourth Amendment concern.").

In *Thompson*, a county official seized a vessel charged with illegal clam raking off the New Jersey coast. A state statute allowed a vessel to be seized for such a violation within the county, but this vessel was seized outside of the county and then transported over the county line. 85 U.S. at 470. The county official argued that his action was lawful because the seizure was "continuous in its character," meaning the vessel was seized, or seized again, when it was towed within county limits. The Court rejected that argument, holding that "[a] seizure is a single act, and not a continuous fact." *Id.* at 471. Years later, in *Hodari D.*, it stated that since "the time of the founding," a seizure has meant a single act of "taking possession," 499 U.S. at 624, not a continuous act, *id.* at 625. And just last year, in *Torres*, the Court relied on *Hodari D.* to reaffirm that "'[a] seizure is a single act, and not a continuous fact,'" 141 S. Ct. at 1002 (quoting *Hodari D.*, 499 U.S. at 625). Thus, the decision below is faithful to the Court's understanding

of a Fourth Amendment seizure.

Finally, petitioners suggest that scholarship supports their view, Pet. 17, but they cite nothing relevant to this case. One cited article, Pet. 17, discusses "personal property in public space," Maureen E. Brady, "The Lost 'Effects' of the Fourth Amendment: Giving Personal Property Due Protection," 125 YALE L. J. 946 (2016). Another addresses searches of mobile devices. Pet. 13-14 (citing Laurent Sacharoff, "The Fourth Amendment Inventory as a Check on Digital Searches," 105 IOWA L. REV. 1643 (2020)). Neither applies the Fourth Amendment to the retrieval of property reasonably seized and stored by the government or its disposal once abandoned.

II. THIS CASE IS A POOR VEHICLE FOR CONSIDERING THE ISSUE PETITIONERS PRESENT.

This case would also be a poor vehicle for review.[4] Certiorari is inappropriate when "it is not clear that [the Court's] resolution of the constitutional question will make any difference even to these litigants."

[4] Petitioners suggest that the Court should review this case because it presents no qualified immunity issue, Pet. 16, but that does not render this case unique. Seizure of property pursuant to arrest is common and often gives rise to claims against local governments that, like this one, do not present a qualified immunity issue, as local governments are not entitled to qualified immunity.

Ticor Title Insurance Co. v. Brown, 511 U.S. 117, 122 (1994). That describes this case. Even on the view that petitioners' allegations could sustain a Fourth Amendment claim, petitioners could not prevail on that claim, for two independent reasons.

First, the Seventh Circuit held that petitioners abandoned their property. Pet. 3; Pet. App. 13a. Petitioners do not challenge that holding, and it forecloses their Fourth Amendment claim. A Fourth Amendment seizure "occurs when there is some meaningful interference with an individual's possessory interests" in property. *Soldal v. Cook County*, 506 U.S. 56, 61 (1992). If property is abandoned, the former owner has no interest in it. The Fourth Amendment does not prohibit the seizure of abandoned property. *E.g.*, *Abel v. United States*, 362 U.S. 217, 241 (1960); *United States v. Thomas*, 864 F.2d 843, 845 (D.C. Cir. 1989). Thus, even on petitioners' view that the Fourth Amendment governs "the government's treatment of property after it is seized," Pet. 18, no Fourth Amendment protections applied to the property once they abandoned it.

Second, petitioners never explain how they could demonstrate a violation of the Fourth Amendment, and they could not. The Fourth Amendment's "basic purpose . . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523, 528 (1967). Thus, "[i]n the context of reviewing civil

administrative and regulatory enforcement of laws enacted pursuant to the traditional police power, Fourth Amendment reasonableness means non-arbitrariness." *Freeman v. City of Dallas*, 242 F.3d 642, 654 (5th Cir. 2001).

Petitioners concede that a Fourth Amendment claim turns on reasonableness, Pet. 18, but fail to explain why CPD's handling of their property was *unreasonable*. Instead, they ignore the record and submit that CPD will "sell or destroy arrestee property simply because the owner of the property is in custody as a pretrial detainee." Pet. 18. But CPD did not handle petitioners' property in any such arbitrary fashion. As the court of appeals explained, Pet. App. 13a-14a, it reasonably seized the property upon arrest, *see Illinois v. Lafayette*, 462 U.S. at 646, inventoried it, established a procedure to claim it, and disposed of it only after it went unclaimed. Plaintiffs point to nothing – and there *is* nothing – unreasonable about that.

III. THE COURT OF APPEALS CORRECTLY APPLIED SETTLED LAW TO REJECT PETITIONERS' CLAIM.

The decision below was also correct and applied settled law. In claiming otherwise, petitioners repeatedly misrepresent both the record and the decision below. They suggest that it is impossible for individuals in custody to reclaim their property from CPD, Pet. (i), 10; argue that CPD's policies "harm"

arrestees, whose property is "of special importance," *id.* at 19; and contend that the Seventh Circuit's decision allows CPD to "sell or destroy arrestee property simply because the owner of the property is in custody," *id.* at 18.

Again, however, the record shows that CPD provided a process by which individuals in custody, like petitioners, could reclaim their property. Pet. App. 14a. (CPD's website "explains just what a detainee must do, either in person or through a delegate, to ensure the recovery of property."). Individuals in custody at the Cook County Jail had access to information about those procedures. *Id.* at 17a-18a. Only after petitioners failed to use CPD's system to retrieve their property did CPD treat it as abandoned and dispose of it. *Id.* at 13a.

In addition, the Seventh Circuit did not hold, as petitioners contend, that there are *no* constraints on the government's treatment of arrestees' stored property. Rather, it recognized that the applicable constraints are imposed by the Due Process Clause. Pet. App. 13a. It reviewed the evidence and held that petitioners did not meet their "burden of proof" to demonstrate the system CPD used "was constitutionally inadequate." *Id.* at 18a.

In reaching that holding, the Seventh Circuit applied well-established due process principles that aid courts in assessing procedures for reclaiming property from the government. *See, e.g.*, *Mullane v.*

Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950) (due process requires a hearing "appropriate to the nature of the case"); *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976) (explaining the "three distinct factors" that should be considered in evaluating due process); *City of West Covina v. Perkins*, 525 U.S. 234, 241 (1999) (no individualized notice of state-law remedies is required if they are available to the public through statutes and case law).

Unlike Fourth Amendment jurisprudence, due process case law provides specific standards to evaluate challenges to the government's handling of property, which courts routinely employ. *E.g.*, *Lee*, 330 F.3d at 466 ("[I]n conducting a due-process analysis to decide how, when, and under what terms the property may be returned, the Fifth and Fourteenth Amendments' texts, histories, and judicial interpretations . . . aid a court in balancing the competing interests at stake."); *see also Langston v. Charter Township of Redford*, 623 F. App'x 749, 761, 763 (6th Cir. 2015) (rejecting plaintiff's claim that forfeiture of his property was an unreasonable seizure, but allowing due process claim that he was prevented from claiming it); *Mora v. City of Gaithersburg*, 519 F.3d 216, 230 (4th Cir. 2008) (plaintiff's challenge to police's retention of his seized weapons turned on whether he had "notice and an opportunity to be heard"); *Alexandre v. Cortes*, 140 F.3d 406, 410 (2d Cir. 1998) (arrestee's claim that he was deprived of his automobile and jewelry raised question of "whether the procedures in place for

redeeming seized property" complied with due process); *Decker v. Hillsborough County Attorney's Office*, 845 F.2d 17, 21 (1st Cir. 1988) (plaintiff's complaint that defendants failed "to return his property to him immediately upon or soon after his acquittal" raised due process questions that required examination of state-law procedures to claim property and contest its destruction).

In summary, petitioners' claim that CPD unlawfully deemed their unclaimed property abandoned and disposed of it is not a Fourth Amendment claim, but a due process claim. The court of appeals correctly recognized it as such and applied well-established case law to reject it.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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