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OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (JULY 11, 2022)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

HALIMA TARIFFA CULLEY, on Behalf of Herself and Those Similarly Situated,

Plaintiff-Appellant,

v.

ATTORNEY GENERAL, STATE OF ALABAMA,
DISTRICT ATTORNEY OF THE
13TH JUDICIAL CIRCUIT (Mobile County),
CITY OF SATSUMA, ALABAMA,

Defendants-Appellees.

No. 21-13805

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:19-cv-00701-TFM-MU

LENA SUTTON, on Behalf of Herself and Those Similarly Situated as Described Below,

Plaintiff-Appellant,

v.

LEESBURG, ALABAMA, TOWN OF,

Defendant-Appellee,

STATE OF ALABAMA,

Intervenor-Appellee.

No. 21-13484

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 4:20-cv-00091-ACA

Before: WILSON, JORDAN, and
NEWSOM, Circuit Judges.

PER CURIAM:

This appeal is consolidated from two cases, one brought by Ms. Halima Culley, and the other by Ms. Lena Sutton. Both Appellants seek monetary damages for alleged violations of, and conspiracy to violate, their Eighth and Fourteenth Amendment rights. Ms. Culley also seeks injunctive relief. After careful review, we lack jurisdiction to consider the claims for injunctive relief because they are moot. And as to the remaining claims, the district courts correctly held that they are foreclosed by binding precedent. We thus affirm.[1]

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[1] The Appellees offer several additional reasons to affirm: claim preclusion, issue preclusion, and the abstention doctrine of *Younger v. Harris*, 401 U.S. 37, 44 (1971). Because these bases are not jurisdictional, and because the rulings below are due to be affirmed in any event, we need not reach these issues. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 282 (2005) ("Preclusion is not a jurisdictional matter."); *Walker v. City of*

I

We assume the parties are familiar with the factual and procedural background of these consolidated cases, and thus recount only the facts necessary to resolve this appeal.

We begin with the Culley Action. On February 17, 2019, Ms. Culley's son was pulled over by police while driving a car registered to his mother. Police arrested him and charged him with possession of marijuana and drug paraphernalia in Satsuma, Alabama. The City of Satsuma also seized the vehicle incident to the arrest. Ms. Culley tried to retrieve the vehicle, but to no avail. On February 27, 2019, the State of Alabama filed a civil asset forfeiture action in state court. After 20 months, the state court granted Ms. Culley summary judgment, finding that she was entitled to the return of her vehicle under Alabama's innocent-owner defense. *See* Ala. Code § 20-2-93(h).

Next, the Sutton Action. In February 2019, a friend of Ms. Sutton's took her car to run an errand. While he was en route, the town of Leesburg police pulled him over. After a search of the vehicle turned up methamphetamine, the police arrested the driver and seized Ms. Sutton's vehicle. Ms. Sutton, like Ms. Culley, eventually obtained summary judgment in a civil forfeiture case based on the innocent-owner defense—but not until more than a year after the seizure of her vehicle.

Ms. Culley and Ms. Sutton each filed class actions in federal district court. Ms. Culley sued three defend-

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Calhoun, 901 F.3d 1245, 1254 (11th Cir. 2018) (The *Younger* abstention doctrine is not a jurisdictional matter).

ants in the Southern District of Alabama: the Attorney General of the State of Alabama, the District Attorney for the 13th Judicial Circuit of Alabama (together, the State or the State Defendants), and the City of Satsuma. Ms. Sutton sued the Town of Leesburg in the Northern District of Alabama, after which the State of Alabama intervened in the action. Both plaintiffs sued under 42 U.S.C. § 1983, claiming, as relevant here, that the defendants' failure to provide a prompt post-deprivation hearing violated their rights under the Eighth and Fourteenth Amendments. They also brought § 1983 conspiracy claims.

The defendants prevailed in both actions. In the Culley Action, the district court granted the State Defendants' motions for judgment on the pleadings, and granted the City of Satsuma's motion to dismiss. In the Sutton Action, the district court dismissed Ms. Sutton's Eighth Amendment claim and later granted summary judgment to the Town of Leesburg on her Fourteenth Amendment claim. On the Fourteenth Amendment claim, both district courts held that binding Eleventh Circuit precedent—particularly our decision in *Gonzales v. Rivkind*, 858 F.2d 657 (11th Cir. 1988), required the application of the test set forth in *Barker v. Wingo*, 407 U.S. 514 (1972). And under that test, the courts held that the plaintiffs' claims failed. Neither plaintiff contended below that she could prevail under the *Barker* test—only that it should not apply. As to the Eighth Amendment claims, the courts held that the retention *pendente lite*—that is, during litigation—of a vehicle seized under Alabama's Civil Asset Forfeiture Statute was not a "fine" and thus could not violate the Eighth Amendment's Excessive Fines Clause.

II

We review de novo the grant of a motion to dismiss, a motion for judgment on the pleadings, and a motion for summary judgment. *See Sun Life Assurance Co. of Canada v. Imperial Premium Fin., LLC*, 904 F.3d 1197, 1207 (11th Cir. 2018).

III

Before reaching the merits, we must satisfy ourselves that we have jurisdiction over all of the issues before us. Under Article III of the Constitution, we lack jurisdiction to decide questions that have become moot. *Powell v. McCormack*, 395 U.S. 486, 512–13 (1969). A case generally becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Id.* at 496. The State Defendants argue that Ms. Culley's claims against them for prospective injunctive relief are moot. Once she obtained the return of her vehicle, they argue, no further prospective injunctive relief could be granted, and thus there is no live controversy.

Ms. Culley counters that her class claims fall within an exception to mootness for claims that are "inherently transitory," meaning they are so fleeting that they are bound to become moot before class certification. *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 76 (2013). In such cases, "where the transitory nature of the conduct giving rise to the suit would effectively insulate defendants' conduct from review, certification [can] potentially 'relate back' to the filing of the complaint." *Id.* We find, however, that this exception to mootness does not apply here. Ms. Culley's state forfeiture proceedings began in February 2019. She filed this suit seven months later. Thirteen

months after that, her state forfeiture proceedings finally concluded and her vehicle was returned to her. If Ms. Culley were correct that the Defendants had no right to hold her vehicle during the state forfeiture proceedings without a probable cause hearing, her claims for injunctive relief would have been live during the lengthy pendency of the state court litigation. Her claims for injunctive relief, then, are not the sort of fleeting claims that could trigger the inherently-transitory exception to mootness. As a result, these claims are moot, and we lack jurisdiction to address them.

A live controversy remains, however, as to Ms. Culley's claim for monetary damages against the City of Satsuma, and as to Ms. Sutton's claim for monetary damages against the Town of Leesburg.[2] The Appellants make two arguments on appeal: one under the Fourteenth Amendment and one under the Eighth Amendment. We address those arguments in turn.

A

The first argument raised by the Appellants is that the Appellees violated their due process rights under the Fourteenth Amendment by retaining their vehicles during litigation without a showing of probable cause that the vehicles were forfeitable. We have addressed the requirements of due process in the context of a post-seizure challenge pending a final forfeiture trial. *See Gonzales*, 858 F.2d 657. In *Gonzales*, the Immigration and Naturalization Service had seized the claimants' vehicles which were being used to

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[2] There are no claims for monetary damages against the State Defendants.

transport undocumented immigrants. *Id.* at 659. The owners of the vehicles brought a class action challenging the forfeiture procedures on due process grounds. *Id.* To analyze the due process claim, the district court had applied the factors set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1975), and found that they weighed in the claimants' favor. *Gonzales v. Rivkind*, 629 F.Supp. 236, 240 (M.D. Fla. 1986). The district court had thus ordered that the claimants be provided a probable cause hearing within 72 hours of seizure. *Id.* On appeal, we reversed, holding that two Supreme Court decisions, *United States v. $8,850*, 461 U.S. 555 (1983) and *United States v. Von Neumann*, 474 U.S. 242 (1986), were controlling and required us to apply *Barker* rather than *Mathews*. *See Gonzales*, 858 F.2d at 661–62. Applying the *Barker* factors, we then held that a merits hearing on forfeiture, "if timely, affords a claimant of seized property all process to which he is constitutionally due." *Id.* at 661.

Here, the Appellants say that the district court erred by analyzing due process under *Barker* rather than *Mathews*. They argue that while the *Barker* test governs the timeliness of a merits hearing on forfeiture, they are seeking something different—a probable cause hearing to determine whether they can retain their property during the pendency of litigation. The Appellants note that at least one circuit has taken their view. *See Krimstock v. Kelly*, 306 F.3d 40 (2d Cir. 2002). We remain bound, however, by our prior precedent "unless and until [it] is overruled by [our] Court sitting en banc or by the Supreme Court." *Smith v. GTE Corp.*, 236 F.3d 1292, 1300 n.8 (11th Cir. 2001). And in *Gonzales* we rejected the argument

that due process requires the sort of probable cause hearing the Appellants seek. We held instead that a timely merits hearing affords a claimant all the process to which he is due, and that the timeliness analysis is governed by *Barker*. *See Gonzales*, 858 F.2d at 661–62. That precedent is dispositive here, and we thus affirm the holdings of the district courts.

B

The Appellants argue next, without any on-point authority, that the temporary forfeiture of their vehicles violates the Eighth Amendment's provision that excessive fines shall not be imposed. At the founding, a "fine" meant "a payment to a sovereign as punishment for some offense." *United States v. Bajakajian*, 524 U.S. 321, 327 (1998) (emphasis added). As a result, a *forfeiture* can constitute a fine when it is "at least partially punitive." *Timbs v. Indiana*, 139 S. Ct. 682, 689 (2019). Temporary retention of property, on the other hand, cannot be a payment at all because it is not permanent. *See Coleman v. Watt*, 40 F.3d 255, 263 (8th Cir. 1994). Only after property is permanently forfeited and ownership changes can a claimant challenge the forfeiture as an excessive fine. Therefore, we affirm in this regard.

IV

In conclusion, we lack jurisdiction to hear Ms. Culley's claim against the State Defendants for injunctive relief because that controversy is no longer live. As to the Appellants' monetary damages claims under the Fourteenth and Eighth Amendments, binding precedent forecloses those claims. And consequently, the Appellants' conspiracy claims must also

fail. *See Spencer v. Benison*, 5 F.4th 1222, 1234 (11th Cir. 2021) (holding that "an underlying violation of [] constitutional rights . . . is required to sustain a § 1983 conspiracy claim"). Accordingly, we dismiss the appeal in part and affirm in part.

DISMISSED IN PART; AFFIRMED IN PART.

MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA (SEPTEMBER 29, 2021)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

HALIMA TARIFFA CULLEY,

Plaintiff,

v.

STEVE MARSHALL, in His Official Capacity as Attorney General of the State of Alabama, ET AL.,

Defendants.

Civ. Act. No. 1:19-cv-701-TFM-MU

Before: Terry F. MOORER,
United States District Judge.

Now pending before the Court are the *Motion for Judgment on the Pleadings of Attorney General Steve Marshall and District Attorney Ashley Rich* (Doc. 18, filed 1/3/20, as supplemented by Doc. 33, filed 11/23/20) and the *Motion to Dismiss* (Doc. 20, filed 1/6/20, as supplemented by Doc. 34, filed 11/23/20). Plaintiff timely filed its responses in opposition. *See* Docs. 25, filed 2/3/20; Doc. 38, filed 12/14/20. Defendants timely replied. *See* Docs. 26, 27, 39. The motions are fully

submitted and ripe for review. After a careful review of the motions, responses, replies, the pleadings, and the relevant case law, the Court GRANTS the motions for the reasons articulated below.

I. Parties, Jurisdiction, and Venue

Plaintiff Halima Tariffa Culley ("Plaintiff" or "Culley") filed a purported class action complaint against three defendants: (1) Steve Marshall, in his official capacity as the Attorney General of the State of Alabama ("AG Marshall") (2) Defendant Ashley Rich, in her official capacity as the District Attorney for the 13th Judicial Circuit of Alabama-Mobile County ("DA Rich"), and (3) and the City of Satsuma, Alabama ("the City"). The Court will collectively refer to AG Marshall and DA Rich as ("the State") as utilized by the Plaintiff and reference all three collectively as "the Defendants."

The Court has subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. § 1331 (federal question) and § 1343 (civil rights jurisdiction) as Plaintiff brings claims under 42 U.S.C. § 1983. The parties do not contest personal jurisdiction or venue, and there are adequate allegations to support both.

II. Standards of Review

The City filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), while the State filed a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c).

A. Motion to Dismiss – Fed. R. Civ. P. 12(b)(6)

Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes a motion to dismiss an action on the

ground that the allegations in the complaint fail to state a claim upon which relief can be granted. On such a motion, the "issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Little v. City of N. Miami*, 805 F.2d 962, 965 (11th Cir. 1986) (per curiam) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). "When considering a motion to dismiss, all facts set forth in the plaintiff's complaint 'are to be accepted as true and the court limits its consideration to the pleadings and exhibits attached thereto.'" *Grossman v. Nationsbank, N.A.*, 225 F.3d 1228, 1231 (11th Cir. 2000) (per curiam) (quoting *GSW, Inc. v. Long Cty.*, 999 F.2d 1508, 1510 (11th Cir. 1993)). The court must draw "all reasonable inferences in the plaintiff's favor." *St. George v. Pinellas Cty.*, 285 F.3d 1334, 1337 (11th Cir. 2002).

However, the court is not required to accept a plaintiff's legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1950, 173 L.Ed 868 (2009). The U.S. Supreme Court has suggested that courts adopt a "two-pronged approach" when considering motions to dismiss: "1) eliminate any allegations in the complaint that are merely legal conclusions; and 2) where there are well-pleaded factual allegations, 'assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.'" *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010) (quoting *Iqbal*, 556 U.S. at 679, 129 S. Ct. at 1950). Importantly, "courts may infer from the factual allegations in the complaint 'obvious alternative explanation[s],' which suggest lawful conduct rather than the unlawful conduct the plaintiff would

ask the court to infer." *Id.* (quoting *Iqbal*, 556 U.S. at 682, 129 S. Ct. at 1951-52).

Rule 12(b)(6) is read in consideration of Federal Rule of Civil Procedure 8(a)(2), which requires "'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964, 167 L.Ed.2d 929 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957)). Although Rule 8 does not require detailed factual allegations, it does demand "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949. To survive a motion to dismiss, a complaint must state on its face a plausible claim for relief, and "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Unless the plaintiffs have "nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." *Twombly*, 550 U.S. at 570, 127 S. Ct. at 1974. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S at 678, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S at 556, 127 S. Ct. at 1965).

B. Motion for Judgment on the Pleadings – Fed. R. Civ. P. 12(c)[1]

The Federal Rules of Civil Procedure provide that "[a]fter the pleadings are closed-but early enough not to delay trial-a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). Judgment on the pleadings pursuant to Rule 12(c) is appropriate when "no issues of material fact exist, and the movant is entitled to judgment as a matter of law." *Ortega v. Christian*, 85 F.3d 1521, 1524-25 (11th Cir. 1996). When reviewing a judgment on the pleadings, the court must accept the facts in the complaint as true and view them in the light most favorable to the nonmoving party. *Id.* A judgment on the pleadings is limited to consideration of "the substance of the pleadings and any judicially noticed facts." *Bankers Ins. Co. v. Fla. Residential Prop. & Cas. Joint Underwriting Ass'n*, 137 F.3d 1293, 1295 (11th Cir. 1998). In other words, a Rule 12(c) motion "is subject to the same standard as a motion to dismiss under Rule 12(b)(6)." *Doe v. Myspace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008); *see also Edwards v. City of Goldsboro*, 178 F.3d 231, 243-44 (4th Cir. 1999) (applying 12(b)(6) standard of review to a 12(c) motion).

Eleventh Circuit precedent discussing the standard of review for a motion under Rule 12(c) indicates "[j]udgment on the pleadings is appropriate only when the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."). *Horsley v. Feldt*, 304 F.3d 1125, 1131 (11th Cir. 2002) (quoting

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[1] A Rule 12(b)(6) motion and a Rule 12(c) motion functionally serve the same purpose. However, a Rule 12(b)(6) motion must be made before the responsive pleadings are filed, while Rule 12(c) motions may be made afterwards.

Moore v. Liberty Nat'l Life Ins. Co., 267 F.3d 1209, 1213 (11th Cir. 2001)); *see also Horsley v. Rivera*, 292 F.3d 695, 700 (11th Cir. 2002) ("If upon reviewing the pleadings it is clear that the plaintiff would not be entitled to relief under any set of facts that could be proved consistent with the allegations, the court should dismiss the complaint."). These cases have not yet been explicitly overturned. However, that same language was previously utilized in the context of a Rule 12(b)(6) motion to dismiss prior to *Twombly*, 550 U.S. 544, 127 S. Ct. 1955. In *Twombly*, the Supreme Court explained that this "no set of facts" language "earned its retirement" because it is simply "an incomplete, negative gloss on an accepted pleading standard: once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Id.* at 563, 127 S. Ct. at 1969. As caselaw is clear that the standards are functionally identical for a Rule 12(b)(6) and Rule 12(c) motion, the Court will apply the *Twombly* standard. *See, e.g., Perez-Acevedo v. Rivero-Cubano*, 520 F.3d 26, 29 (1st Cir. 2008) (applying *Twombly* to a Rule 12(c) motion); *Tucker v. Middleburg-Legacy Place, LLC*, 539 F.3d 545, 549-50 (6th Cir. 2008) (same); *Doe v. MySpace Inc.*, 528 F.3d at 418 (same); *Pisciotta v. Old Nat'l Bancorp*, 499 F.3d 629, 633 (7th Cir. 2007) (same).

III. Factual and Procedural Background

As noted above, the Court accepts Plaintiff's allegations as true for the purposes of this review. Plaintiff resides in Rockdale County, Georgia. In 2019, her son, Tayjon was a student at the University of South Alabama located in Mobile, Alabama. When

he went to college, Plaintiff purchased a 2015 Nissan Altima ("the Vehicle") for his use, though the vehicle is titled to Culley and registered in the state of Georgia. Plaintiff also paid the registration and insurance on the vehicle. *See* Doc. 1 at ¶¶ 22-26.

On or about February 17, 2019, Tayjon was arrested and charged with the possession of marijuana and drug paraphernalia. Incident to that arrest, police officers with the City seized the Vehicle. Plaintiff was not charged with a crime and had no knowledge that her son had marijuana and drug paraphernalia in the Vehicle. Upon learning the Vehicle had been seized incident to arrest, Plaintiff contacted the City to retrieve the Vehicle. The City then contacted DA Rich who on behalf of the State of Alabama filed a civil forfeiture action on or about February 27, 2019. *Id.* at ¶¶ 27-33. On September 16, 2019, Plaintiff filed an answer in the civil forfeiture action. *See* Doc. 18-3.

Plaintiff filed the instant suit on September 23, 2019. *See generally* Doc. 1. Plaintiff asserts a proposed class of "All persons who have had their property seized by the City of Satsuma, Alabama, have not been charged with a crime, and have had a civil forfeiture action filed against them from four years prior to the filing of this action, to present." Doc. 1 at ¶ 40. Plaintiff asserts in Count 1 a claim brought pursuant to 42 U.S.C. § 1983 against the State Defendants for violations of the Fourth, Fifth, and Fourteenth Amendments seeking declaratory and injunctive relief. The gist of the argument is that the State has a policy and practice of seizing property indefinitely and having the City hold it while the civil forfeiture action proceeds. As a result, there is no meaningful opportunity to contest the retention of the property at a meaningful

time before the hearing on the merits of the forfeiture. *Id.* at ¶¶ 48-55. In Count 2, Plaintiff asserts a claim brought pursuant to 42 U.S.C. § 1983 against the State Defendants for violations of the Eighth Amendment's prohibition against excessive fines. In Count 3, Plaintiff asserts against the City a conspiracy claim brought under 42 U.S.C. § 1983 and seeks damages. She states there was an agreement between the City and the State Defendants to violate Plaintiff's constitutional rights by seizing the Vehicle and instituting civil forfeiture proceedings. *Id.* at ¶¶ 64-70.

Initially the Defendants filed a joint motion to stay pending a ruling in an earlier-filed case in the Northern District of Alabama—*Sutton v. Marshall*, 4:19-cv-660-KOB (N.D. Ala. May 1, 2019) ("*Sutton I*"). *See* Docs. 9, 10. Plaintiff responded in opposition to the motion and Defendants filed their reply. *See* Docs. 13, 14. However, before the Court had the opportunity to rule on the motion, the Defendants withdrew the request because the *Sutton I* ruling had been issued. Subsequently, the State filed their combined answer and the motion for judgment on the pleadings. *See* Docs. 17–19. The City filed its motion to dismiss. *See* Doc. 20. Plaintiff filed her omnibus response in opposition to both motions. *See* Doc. 25. Defendants filed their respective replies. *See* Docs. 26, 27. At that time, the motions were fully submitted and ripe for review.[2] On November 6, 2020, Defend-

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[2] Unfortunately, due to the COVID-19 pandemic, the Court fell behind on a number of civil cases given the increase in criminal and civil matters relating to covid-specific issues that required quick rulings. At the point the Court intended to review and rule on the issue, the parties then requested the opportunity to file supplemental briefing.

ants filed an unopposed motion to supplement their briefing based upon new developments in the civil forfeiture case. *See* Doc. 30. The Court granted the request and Defendants filed their respective supplemental briefs on November 23, 2020. *See* Docs. 33, 34. Though Plaintiff's response was due on December 7, 2020, she filed her response late on December 14, 2020. *See* Doc. 35; *see also* Doc. 38 ("corrected" version). Defendants requested the response be stricken which the Court denied, but did give them an extension to file their respective replies. *See* Docs. 36, 37. The State filed its reply on December 29, 2020, and the City did not file a reply. *See* Doc. 39. Therefore, the motions are fully submitted and ripe for review. The Court further determines that oral argument is unnecessary to resolve this matter.

The State asserts four primary arguments in its original motion for judgment on the pleadings. *See* Doc. 19. First, that the Court should abstain from this case pursuant to *Younger v. Harris* and its progeny. Next that the Court's final judgment in the *Sutton I* case has preclusive effect on the claims in this case. Finally, in the third and fourth arguments, the State asserts Plaintiff fails to state a claim in Count 1 and Count 2 against the State. *Id.* In the supplemental briefing, the State notes that the civil forfeiture action had concluded and the court ruled in Culley's favor on the Vehicle. *See* Doc. 33. The State repeats its assertion that the Court should abstain under *Younger* because the civil forfeiture case was still pending when this case was filed. Next, the State argues the request for injunctive relief is moot and sovereign immunity bars retroactive relief against the State. The State further argues that the claim is

precluded by the now-final judgment in the civil forfeiture action. Finally, the State argues that the injuries Culley alleges in Count 1 are self-inflicted and that Count 2 fails because the vehicle was not forfeited and no fine was imposed. *Id.*

The City filed its motion to dismiss and a brief in support. *See* Doc. 20.[3] In the early part of the brief, the City adopts the grounds set forth in the State's motion. Specifically, the City notes that Count 3 incorporates by reference the contentions in Counts 1 and 2 and alleges a conspiracy between the City and the State to violate Plaintiff's rights under the Fourth, Fourteenth, and Eighth Amendments. The City argues that Count 3 is "entirely dependent upon the success of her claims of the declaratory and injunctive relief against the State." *Id.* at 5. Therefore, the City avers *Younger* would also apply to the allegations against it. *Id.* at 4-7. Further, since Plaintiff alleges a conspiracy, the City argues her claim fails because the underlying constitutional violation allegations fail. *Id.* at 7-8. Finally, the City asserts a conspiracy to enforce the law is not actionable. *Id.* at 8-9. In its supplemental brief, the City reasserts the same arguments in arguing that applying the *Younger* abstention doctrine is still appropriate and the conspiracy claim against the City fails. *See* Doc. 34.

Plaintiff responded in opposition to the original motions and the supplemental motions. *See* Docs. 25,

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[3] Because of the combined nature of the motion and brief, the pages set forth by the City do not align with those of the PDF. When citing pages in this opinion, the Court utilizes the PDF page numbers since it is one comprehensive document on the docket sheet.

38.[4] In opposing the motion, Plaintiff first notes that the City was not a party to the *Sutton I* case and therefore *Sutton I* bears no relevance. Moreover, the *Younger* abstention doctrine would also not apply for the same reason—there is no ongoing state court litigation between Plaintiff and the City in the underlying state action. *See* Doc. 25 at 7-8. Further along that same line, Plaintiff argues that the issues between this case and the underlying state action are not barred by issue preclusion (collateral estoppel) because the claims against the City distinguish it from both the underlying state case and the issues presented in *Sutton I*. As a result, *Sutton I* also has no preclusive effect. *Id.* at 8-12. Plaintiff then turns to her argument on the reason *Younger* does not apply to the claims against the State. Specifically, that the pendency of a civil forfeiture proceeding is no bar to this action, the federal relief sought does not interfere with the state civil forfeiture proceeding, the forfeiture proceeding does not provide Plaintiff the opportunity to present her constitutional defense to the continued impoundment of her vehicle *pendente lite*, and Ala. Code § 28-4-286 does not comport with due process. *Id.* at 12-25. Plaintiff next compares her case to one in the Second Circuit arguing that Count I should proceed on the merits. *Id.* at 26 (citing *Krimstock*, 306 F.3d 40 (2d Cir. 2001). Moreover, that due process requires a post-seizure hearing on the question of

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[4] Plaintiff's supplemental response was untimely in that it was filed one week late. *See* Doc. 35. Later that same date, Plaintiff filed a "corrected" response. *See* Doc. 38. The Court reviewed both documents, but the latter document is clearly the controlling response as noted it the footnote of the corrected response when it states "[t]his filing subsumes, and replaces, and corrects that earlier filing." *See* Doc. 38 at 2, n. 1.

whether a vehicle may be retained *pendente lite* in a civil forfeiture action. *Id.* at 27-28. Plaintiff further avers that the State misses the mark on her assertion—she does not contest the original seizure of the Vehicle during the arrest of her son, but rather contests the State's continued possession of her car while the civil forfeiture action proceeds in violation of her due process rights. *Id.* at 28-30. Plaintiff then attempts to distinguish the caselaw relied upon by the Defendants by addressing each in turn. *Id.* at 30-35. Plaintiff proceeds with her analysis of the constitutional due process claims applying *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.Ed.2d 18 (1976). *Id.* at 35-39. Finally, Plaintiff addresses her Eighth Amendment claim and states it is properly pled. *Id.* at 39-42.

In her supplemental response, Plaintiff states that the Circuit Court of Mobile County's grant of summary judgment in favor of Plaintiff on the underlying civil forfeiture claim does not affect the claims against the City of Satsuma. *See* Doc. 38 at 5-7. Plaintiff next asserts that the City misapplies caselaw regarding an "ongoing state proceeding" and that "a court cannot abstain in favor of a non-existent State court proceeding" when the City was never a party to the underlying state civil forfeiture case. *Id.* at 8. Plaintiff further argues that though her individual claims may have been rendered moot by the civil forfeiture action and its resolution, the class claims for prospective injunctive relief should remain against the State because the claims are "inherently transitory." *Id.* at 9-14. Next, Plaintiff asserts her claims are not precluded by summary judgment in the underlying case and *res judicata* does not apply because the

judgment was in her favor (as opposed to the State's favor). Plaintiff avers that neither *res judicata* or claim preclusion bars this suit and issue preclusion doesn't apply because the two suits do not involve the same issue. *Id.* at 14-17. Next, Plaintiff asserts that the length of the constitutional deprivation has no bearing on its actionability in response to the State's argument to the fact Culley did not act sooner in filing her summary judgment motion in the civil forfeiture claim. Rather, Plaintiff states this is a claim unrelated to damages, but rather that it is unconstitutional for the State to impound property *pendente lite* without providing a prompt, post-seizure hearing on the issue of probable cause to impound the property and if any security is necessary, the least restrictive means. *Id.* at 17-22. Turning to the Eight Amendment claim, Plaintiff asserts that, as an innocent owner of the Vehicle, the deprivation of the property, even temporarily, is ultimately a fine. Further the claim of deprivation under the Eighth Amendment is inherently transient in the same way the due process claims are. *Id.* at 22-25. Finally, Plaintiff notes that conspiracy claim against the City further survives because the Complaint meets the requirements of Fed. R. Civ. P. 8 and is sufficiently specific to plead a concerted action between the City and the State. Plaintiff further disputes the assertion by the City that they cannot be held responsible for simply enforcing the law. Plaintiff avers the City and the State's actions, in concert, deprived Plaintiff of her vehicle for months and may be found liable because they were enforcing unconstitutional statutory provisions and procedures. In sum, the City started the unconstitutional process and ultimately profited from the scheme. *Id.* at 26-30.

Both the State and the City filed their respective replies to the Plaintiff's omnibus response. *See* Docs. 26, 27. For the supplemental briefing, only the State filed a reply to the supplemental response. *See* Doc. 39. Both the motion for judgment on the pleadings and the motion to dismiss are fully briefed and ripe for the Court's review. The Court finds that oral argument is unnecessary for resolution of the motions.

IV. Discussion and Analysis

As noted above, a Rule 12(b)(6) motion and a Rule 12(c) motion functionally serve the same purpose. So when the Court refers to a Rule 12(b)(6), it necessarily encompasses the review under Rule 12(c).

Typically, when faced with a 12(b)(6) motion to dismiss, a court must limit its consideration to the content of the complaint and any written instruments attached to the complaint as exhibits, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice. However, the Eleventh Circuit has held "a district court may take judicial notice of matters of public record without converting a Rule 12(b)(6) motion into a Rule 56 motion." *Halmos v. Bombardier Aerospace Corp.*, 404 F. App'x 376, 377 (11th Cir. 2010) (citations omitted);[5] *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322-23, 127 S. Ct. 2499, 2509, 168 L.Ed. 2d 179 (2007) ("courts must consider the complaint in

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[5] In this Circuit, "[u]npublished opinions are not considered binding precedent, but they may be cited as persuasive authority." 11th Cir. R. 36-2 (effective Dec. 1, 2014); *see also Henry v. Comm'r of Soc. Sec.*, 802 F.3d 1264, 1267 n.1 (11th Cir. 2015) (per curiam) ("Cases printed in the Federal Appendix are cited as persuasive authority.").

its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice."); *Horne v. Potter*, 392 F. App'x 800, 802 (11th Cir. 2010) (citation omitted) (stating court properly may take judicial notice of the pleadings and orders in another case, without "converting [the] motion to dismiss into a motion for summary judgment"). Therefore, the Court takes judicial notice of the documents from the underlying state civil forfeiture proceeding because they are public records that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

As a backdrop to the case at hand, the Court will discuss Alabama law on forfeiture proceedings. Under Ala. Code § 20-2-93(a)(5), a conveyance used "to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of" drugs or other controlled substances is subject to forfeiture.[6] Law enforcement may seize property subject to forfeiture without process when instant to arrest. ALA. CODE § 20-2-93(b)(1). When the property is seized in this manner, civil forfeiture proceedings shall be instituted "promptly." Ala. Code § 20-2-93(c), (d). Once proceedings have begun, a civil forfeiture defendant may reclaim the property if they can show that they did not know about the illegal acts and "could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property

[6] The Court utilizes the version in effect at the time of the Vehicle's forfeiture. The Alabama legislature recently passed a new version which goes into effect on January 1, 2022.

so as to have prevented such use." Ala. Code § 20-2-93(h). In short, the civil forfeiture defendant can assert the affirmative defence of innocent owner.

While the civil forfeiture action proceeds, the seized property is "deemed to be in the custody of the state, county, or municipal law enforcement agency." Ala. Code § 20-2-93(d). However, an owner can also execute a bond to reclaim the property during the pendency of the forfeiture action. Ala. Code §§ 20-2-93(h§), 28-4-287. The bond is "double the value of such property. *Id.* The Alabama Supreme Court recently reiterated that "§ 28-4-287 provides the exclusive means for obtaining seized personal property during the pendency of a forfeiture action." *State v. Two White Hook Wreckers*, ___ So.3d ___, ___, 2020 WL 7326386, at *2, 2020 Ala. LEXIS 183, at *9 (Ala. Dec. 11, 2020).

A. *Younger* Abstention doctrine

The State and the City both assert that the Court should abstain from exercising jurisdiction over Plaintiff's claims pursuant to *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L.Ed.2d 669 (1971), and its progeny.

The general rule is that a federal court has a "virtually unflagging obligation to exercise the jurisdiction given to them." *31 Foster Children v. Bush*, 329 F.3d 1255, 1274 (11th Cir. 2003). The *Younger* doctrine is "an extraordinary and narrow exception to the duty of a district court to adjudicate a controversy properly before it." *Green v. Jefferson Cty Comm'n*, 563 F.3d 1243, 1251 (11th Cir. 2009) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813, 96 S. Ct. 1236, 47 L.Ed.2d 483 (1976)). While *Younger* involved state criminal proceed-

ings, the Supreme Court subsequently determined that the abstention is "fully applicable to noncriminal judicial proceedings when important state interests are involved." *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432, 102 S. Ct. 2515, 2521, 73 L.Ed.2d 116 (1982). Therefore, abstention under *Younger* is appropriate when: (1) the federal proceeding would interfere with ongoing state judicial proceedings; (2) the state proceedings implicate important state interests; and (3) the plaintiffs have an adequate state remedy available. *31 Foster Children*, 329 F.3d at 1274-75 (citing *Middlesex Cty.*, 457 U.S. at 432, 102 S. Ct. at 2521). Courts must "assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Id.* at 1279 (quoting *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15, 107 S. Ct. 1519, 95 L.Ed.2d 1 (1987)). "In addition, the Supreme Court has instructed that *Younger* only applies where the state proceeding at issue involves "orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions . . . it has never been suggested that *Younger* requires abstention in deference to a state judicial proceeding reviewing legislative or executive action." *Green*, 463 F.3d at 1251 (citations omitted and emphasis in original).

When abstaining from exercising jurisdiction under *Younger*, "federal courts promote the value of comity between the states and the federal government and avoid unnecessary determinations of federal constitutional questions." *Liedel v. Juv. Ct. of Madison Cty.*, 891 F.2d 1542, 1546 (11th Cir. 1990). Further, as noted by the Eleventh Circuit, the state court proceeding is considered "ongoing" if it was pending at

the time the plaintiff filed the federal complaint. *Id.* at 1546 n.6; *see also Cormier v. Green*, 141 F. App'x 808, 813 (11th Cir. 2005) (stating *Younger* applied to the date the federal complaint was filed even though there was no longer a pending state proceeding at the time of the motion to dismiss).

Based on this framework, the Court now turns to whether the *Younger* doctrine applies to the case at hand by applying the three factors.

Based on the filing date of this case, the state civil forfeiture action was in progress, thus there was an ongoing state court proceeding for the purposes of this analysis. The fact that the case has resolved does not change that particular detail. However, binding precedent clearly notes that the ongoing nature of a state proceeding is not enough to merit abstaining if the federal case will not interfere with the proceeding. *31 Foster Children*, 329 F.3d at 1275. In this case, there is no possibility of interference because the underlying state civil forfeiture proceeding has ended with judgment in Plaintiff's favor. Thus, even if Culley were to prevail here and the Court were to issue her requested declaratory judgment, injunctive relief, and monetary damages, it would have zero effect on the original state action.[7] As all three *Middlesex* factors must be met, the Court finds it need not address the remaining factors since the first fails.

[7] As noted by our sister court in the Northern District of Alabama on this same issue, the Court has some concerns on whether the relief sought would effectively enjoin civil forfeiture proceedings, but finds it is unnecessary to address given the current decision on not abstaining. *See* Civ. Act. No. 4:20-cv-91 (N.D. Ala. Apr. 6, 2021), Doc. 39, Memorandum Opinion; *see also* Doc. 42-2 in the instant case.

Therefore, the Court declines to abstain under *Younger* and both motions are denied on that basis.

B. Preclusion

The State Defendants assert two separate arguments on preclusion. To start, between the original motion and the supplemental motion, the State asserts both claim and issue preclusion. *Compare* Doc. 19 at 19 *with* Doc. 33 at 7. The State defendants assert the issue of collateral estoppel through the *Sutton I* federal case and also preclusion through the now-final judgment in the underlying civil forfeiture proceeding. Thus, the Court is looking at preclusion through both a federal case and a state case. "The preclusive effect of a federal-court judgment is determined by federal common law." *Taylor v. Sturgell*, 553 U.S. 880, 891, 128 S. Ct. 2161, 2171, 171 L.Ed.2d 155 (2008) (citing *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 507-08, 121 S. Ct. 1021, 149 L.Ed.2d 32 (2001)). When determining the preclusive effective of an Alabama state court judgment, the Court must apply Alabama law. *Kizzire v. Baptist Health Sys., Inc.*, 441 F.3d 1306, 1308 (11th Cir. 2006). Therefore, when determining the preclusive effect of *Sutton I*, the Court looks to federal law and for the underlying civil forfeiture judgment the Court looks to state law.

(1) Claim Preclusion

The State asserts that Culley's claims are precluded by the final judgment in the underlying state case. *See* Doc. 33 at 5-9. As noted above, the Court looks to Alabama law here. The Alabama Supreme Court has stated "[b]oth collateral estoppel and res judicata are affirmative defenses; thus, the party

raising the defense has the burden of proving each element." *Lee L. Saad Constr. Co. v. DPF Architects, P.C.*, 851 So.2d 507, 516 (Ala. 2002) (citations omitted). "Res judicata and collateral estoppel are two closely related, judicially created doctrines that preclude the relitigation of matters that have been previously adjudicated or, in the case of res judicata, that could have been adjudicated in a prior action." *Bond v. McLaughlin*, 229 So.3d 760, 767 (Ala. 2017); *Ex parte Beck*, 988 So.2d 950, 954 (Ala. 2007); *Lee L. Saad*, 851 So.2d at 516. "The doctrine of res judicata, while actually embodying two basic concepts, usually refers to what commentators label 'claim preclusion,' while collateral estoppel . . . refers to 'issue preclusion,' which is a subset of the broader res judicata doctrine." *Bond*, 229 So.3d at 767 (citations omitted).

The elements of *res judicata* are (1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action presented in both actions. *Id.*; *Pendley v. Pendley*, 439 So.2d 1, 3 (Ala. 1983) (citing *Wheeler v. First Ala. Bank of Birmingham*, 364 So.2d 1190 (Ala. 1978)). However, as noted by Plaintiff in her supplemental response brief, this circumstance does not apply because Culley was the prevailing defendant in her state case (not the plaintiff) as noted by longstanding Alabama caselaw. *See Burdeshaw v. White*, 585 So.2d 842 (Ala. 1991); *Maxcy v. Twilley*, 289 Ala. 681 (Ala. 1972).

> As a general rule, where a defendant has an independent claim against the plaintiff, such as might be either the basis of a separate action or might be pleaded as a set-off or counterclaim, he is not obliged to plead it in

> plaintiff's action, although he is at liberty to do so, and if he omits to set it up in that action, or if, although he introduces it in evidence in rebuttal of plaintiff's demand, it is not used as a set-off or counterclaim, this will not preclude him from afterward suing plaintiff upon it, in the absence of some statute to the contrary. *A.B.C. Truck Lines v. Kenemer*, 247 Ala. 543, 25 So.2d 511 (1946). But the rule does not apply where the subject matter of the set-off or counterclaim was involved in the determination of the issue in the former action in such wise that the judgment therein necessarily negatives the facts on which defendant would have to rely in order to establish his demand.

Maxcy, 289 Ala. at 683-84. Further, the Alabama Supreme Court also states:

> The traditional res judicata case (frequently referred to as a claim preclusion) involves prior litigation between a plaintiff and a defendant, which is decided on the merits by a court of competent jurisdiction, and then a subsequent attempt by the prior plaintiff to relitigate the same cause of action against the same defendant, or perhaps to relitigate a different claim not previously litigated but which arises out of the same evidence. Alabama law is well settled that this will not be allowed. A valid, final judgment on the merits of the claim extinguishes the claim. If the plaintiff won, the claim is merged into the judgment; if the defendant won, the plaintiff is barred from relitigating any matter

> which could have been litigated in the prior action.

Burdeshaw, 585 So.2d at 844 (citations omitted and emphasis added).

Thus, the general rule is that *res judicata* does not apply to a prevailing defendant except under certain circumstances. First, it would apply if a statute required the claim to be asserted in the first action. *Maxcy*, 289 Ala. at 684 (citing *A.B.C. Truck Lines*, 247 Ala. 543). The State has cited no such statute that required the claims to be asserted in the state civil forfeiture proceeding. As such, this exception does not apply.

Next, *res judicata* would apply if "the subject matter of the set-off or counterclaim was involved in the determination of the issue in the former action in such wise that the judgment therein necessarily negatives the facts on which the defendant would have to rely in order to establish his demand." *Id.* The State does not address this particular matter and, it is not clear at this juncture that the judgment from the civil forfeiture proceeding establishes a fact that would necessarily defeat her current claims. In fact, it would appear to the contrary. Therefore, this exception does not apply.

Finally, Alabama law also provides that "failure to assert a compulsory counterclaim bars the assertion of that claim in another action." *Brooks v. Peoples Nat'l Bank*, 414 So.2d 917, 920 (Ala. 1982); *see also Sho-Me Motor Lodges, Inc. v. Jehle-Slauson Constr. Co.*, 466 So.2d 83, 90-91 (Ala. 1985) ("The counterclaim rule is based on the equitable principle of collateral estoppel. ARCP 13, Committee Comments. The principle

bars parties in a subsequent proceeding from asserting any matter which might or ought to have been litigated in a prior proceeding. But the principle of collateral estoppel will not bar assertion of a claim which the parties agreed to leave to a subsequent proceeding."). Turning to Ala. R. Civ. P. 13(a), it states about compulsory counterclaims, "relitigation of the claim may be barred by the doctrines of res judicata or collateral estoppel by judgment in the event certain issues are determined adversely to the party electing not to assert the claim.). Ala. R. Civ. P. 13(a) (emphasis added). Here, the issues were not determined adversely to Culley—rather they were determined in her favor. So, this exception does not apply.

The State does nothing to address the prevailing defendant discussion in its supplemental briefing and therefore failed to carry its burden of establishing it is entitled to the affirmative defense of claim preclusion under Alabama law.

(2) Issue Preclusion

Preclusion defined by claim preclusion and issue preclusion which are collectively called "res judicata." *Taylor*, 553 U.S. at 892, 128 S. Ct. at 2171. "The general principle of res judicata prevents the relitigation of issues and claims already decided by a competent court." *Cmty. State Bank v. Strong*, 651 F.3d 1241, 1263 (11th Cir. 2011). "Res judicata comes in two forms: claim preclusion (traditional 'res judicata') and issue preclusion (also known as 'collateral estoppel')." *Id.* (citing *Comm'r of Internal Revenue v. Sunnen*, 333 U.S. 591, 598, 68 S. Ct. 715, 92 L.Ed. 898 (1948)). The State also asserts issue preclusion (collateral estoppel) based on the results in the *Sutton I* case out of the

Northern District of Alabama. *See* Doc. 19 at 18-22 (citing *Sutton I*, Civ. Act. No. 4:19-cv-660). As it is a federal court judgment, the Court looks to federal law.

"Collateral estoppel, or issue preclusion, bars the relitigation of an issue that was litigated and resolved in a prior proceeding." *Wachovia Bank N.A. v. Tien*, 658 F. App'x 471, 473-74 (11th Cir. 2016) (citing *Pleming v. Universal-Rundle Corp.*, 142 F.3d 1354, 1359 (11th Cir. 1998)).

> In order to rely on collateral estoppel, the party raising the doctrine must show that: (1) the present issue is identical to an issue in a previous proceeding; (2) the issue was actually litigated in the previous proceeding; (3) resolution of the issue must have been an essential part of the judgment in the previous proceeding; and (4) the party against whom the doctrine is being raised must have had a full and fair opportunity to litigate the issue in the first proceeding.

Id. at 474.

Since this Court has rejected the application of the *Younger* doctrine, the reliance on the original *Sutton I* case is inappropriate and the Court is not bound by the application of the doctrine by a sister court against the State Defendants. Further, the Court agrees with the Plaintiff's response wherein she states that the instant case includes claims against the City, so there are some differences between the case at hand and *Sutton I*.

However, the biggest contention here is element four—whether Culley had a full and fair opportunity to litigate the issue in the first proceeding. The State

acknowledges that a person who was not a party to a prior lawsuit generally would not satisfy this element. *See* Doc. 19 at 20. However, they also note that *Taylor* enumerated six exceptions to that general rule. *Id.* at 20-21. Thus, the Court looks at whether any of the exceptions apply.

> A court may apply nonparty preclusion if: (1) the nonparty agreed to be bound by the litigation of others; (2) a substantive legal relationship existed between the person to be bound and a party to the judgment; (3) the nonparty was adequately represented by someone who was a party to the suit; (4) the nonparty assumed control over the litigation in which the judgment was issued; (5) a party attempted to relitigate issues through a proxy; or (6) a statutory scheme foreclosed successive litigation by nonlitigants.

Griswold v. Cty. of Hillsborough, 598 F.3d 1289, 1292 (11th Cir. 2010) (citing *Taylor*, 553 U.S. at 893-895, 128 S. Ct. at 2170-2173).

The State asserts that the third exception is applicable here in that Culley was adequately represented by Plaintiff Sutton who was a party to *Sutton I*. Specifically, the State argues that *Sutton I* was also brought as a purported class action and the same counsel represents both plaintiffs. The State does acknowledge that no state-wide class was certified in *Sutton I*, but glosses over the issue by seemingly indicating that the lack of certification is irrelevant. The Court disagrees. Had the case been certified, then the Court certainly would have agreed that Sutton adequately represented Culley (and other plaintiffs) in the lawsuit. However, the lack of certification in

the *Sutton I* case necessarily means that the *Sutton I* case only applied to the plaintiff in that case—as discussed in further detail in the next section. The fact they shared a counsel does not negate that simple fact. Therefore, the Court finds that collateral estoppel (issue preclusion) does not apply here.

The State makes a passing reference to the "first filed rule" in its original motion, however, the only context is in the discussion of collateral estoppel. *See* Doc. 19 at 19-20. The Court declines to extend any further discussion given its rejection of the collateral estoppel argument.

C. Class Claims

In the supplemental briefing, the State also asserts that because Plaintiff's claims are moot, there can be no surviving class claims. *See* Doc. 33 at 6-7. Plaintiff argues that the class claims would still proceed because they are inherently transitory. *See* Doc. 38 at 9-14. The State argues that the claims are not inherently transitory and instead are moot.

Article III jurisdiction is premised upon the presence of a legally cognizable interest in the outcome—*i.e.*, standing. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91, 133 S. Ct. 721, 726, 184 L.Ed.2d 553 (2013). That requirement exists not only at the time the complaint is filed, but at all stages of the litigation. *Id.* "A case becomes moot—and therefore no longer a Case or Controversy for purposes of Article III—when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Id.* at 91, 133 S. Ct. at 726-27 (citation and internal quotations omitted). "No matter how vehemently the parties continue to dispute the lawfulness of the

conduct that precipitated the lawsuit, the case is moot if the dispute 'is no longer embedded in any actual controversy about the plaintiffs' particular legal rights.'" *Id.* (quoting *Alvarez v. Smith*, 558 U.S. 87, 93, 130 S. Ct. 576, 175 L.Ed.2d 447 (2009)).

Plaintiff's personal stake in the class claims is extinguished given that she was successful in the underlying forfeiture case, has received the Vehicle back, and is not entitled to compensatory damages against the State. *See Lane v. Pena*, 518 U.S. 187, 192, 116 S. Ct. 2092, 135 L.Ed.2d 486 (1996). However, a certified class "acquires a legal status separate from the interest asserted by the named plaintiff." *United States v. Sanchez-Gomez*, ___ U.S. ___, 138 S. Ct. 1532, 1538, 200 L.Ed.2d 792 (2018) (internal quotations omitted). "The 'inherently transitory' rationale was developed to address circumstances in which the challenged conduct was effectively unreviewable, because no plaintiff possessed a personal stake in the suit long enough for litigation to run its course." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 76, 133 S. Ct. 1523, 185 L.Ed.2d 636 (2013). Therefore, "certification could potentially 'relate back' to the filing of the complaint," before the named plaintiff's claim became moot, allowing the named plaintiff to proceed on behalf of the class. *Id.* (citations omitted). Specifically, "the relation-back doctrine may apply in Rule 23 cases where it is certain that other persons similarly situated will continue to be subject to the challenged conduct and the claims raised are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires." *Id.* (internal quotations

and citations omitted). In sum, "a suit brought as a class action must as a general rule be dismissed for mootness when the personal claims of the named plaintiffs are satisfied and no class has properly been certified," "this general rule must yield when the district court is unable reasonably to rule on a motion for class certification before the individual claims of the named plaintiffs become moot." *Zeidman v. J. Ray McDermott & Co., Inc.*, 651 F.2d 1030, 1045 (5th Cir. 1981).[8] When "the issue sought to be litigated escapes full appellate review at the behest of any single challenger," the Court explained, the case "does not inexorably become moot by the intervening resolution of the controversy as to the named plaintiffs." *Sosna v. Iowa*, 419 U.S. 393, 401, 95 S. Ct. 553, 42 L.Ed.2d 532 (1975).

Many of these cases pertain to situations where there was a pending motion for certification. That is not the case at hand. Plaintiff's complaint identifies the class definition she requests and a brief discussion on the matters that would be ultimately addressed within a motion for certification. *See* Doc. 1 at 11-13. Therefore, assuming without deciding that the claims are inherently transitory as described in *Zeidman*, the Court determines it may still look to the dispositive motions. *See, e.g., Thornton v. Mercantile Stores Co.*, 13 F.Supp.2d 1282, 1289 (M.D. Ala. 1998) (noting that "the vast majority of courts have held that

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[8] *See Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, en banc) (adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981); *see also Walker v. Fin. Recovery Servs.*, 599 F. App'x 359, 361 n.1 (reiterating that *Zeidman* was still binding precedent in the Eleventh Circuit).

dispositive motions may be considered prior to ruling on a motion for class certification"); *Mitchell v. Indus. Credit Corp.*, 898 F.Supp. 1518, 1537 (N.D. Ala. 1995) ("[U]nder proper circumstances, as exist in this case, where early resolution of motions for summary judgment would save the court and parties from needless and costly litigation and where the parties would not suffer significant prejudice it would seem permissible and not an abuse of discretion for the court to rule on the motions for summary judgment without deciding the class certification issue."). Further, advisory committee notes for Rule 23 indicate that "[o]ther considerations may affect the timing of the certification decision. The party opposing the class may prefer to win dismissal or summary judgment as to the individual plaintiffs without certification and without binding the class that might have been certified." Fed. R. Civ. P. 23(c)(1)(A) advisory committee's note to 2003 amendment. Thus, a court does not abuse its discretion in ruling on a dispositive motion before ruling on a motion for class certification. *See Toben v. Bridgestone Retail Operations, LLC*, 751 F.3d 888, 896 (8th Cir. 2014); *Wright v. Schock*, 742 F.2d 541, 543-44 (9th Cir. 1984). This is especially true where a defendant essentially waives the protections of Rule 23 by seeking a ruling on the merits of the class action claims prior to certification. *Curtin v. United Airlines, Inc.*, 275 F.3d 88, 92-93 (D.C. Cir. 2001) (reversing the usual order of disposition where rendering an easy decision on an individual claim avoids an unnecessary and harder decision on the propriety of certification). Such is the case here. The Defendants have essentially waived the right to bind putative class members. Therefore, the Court finds it prudent to resolve the motion for judgment on the

pleadings and motion to dismiss prior to addressing any class matters.

D. Violation of Right to a Post Deprivation Hearing (Count I against the State)

Count I is brought pursuant to 42 U.S.C. § 1983 and asserts three separate constitutional violations under the Fourth, Fifth, and Fourteenth Amendments. Culley states repeatedly throughout her complaint and briefs that this case is not about the initial seizure or even the ultimate decision at trial in civil forfeiture proceedings. Rather that the State in conjunction with the City seizes vehicles and other property and retains custody of it during the civil forfeiture action. *See, e.g.,* Doc. 1 at 5. Specifically, there is not a prompt post-seizure hearing on the Vehicle. Culley seeks declaratory and injunctive relief against the State.

As a preliminary matter, Plaintiff merely glosses over Ala. Code § 28-4-287 and its opportunity to "execute a bond in double the value of such property" to have it returned during the pendency of the civil forfeiture proceedings. There is no reference to it in the complaint and in fact, Plaintiff states to the contrary that there is no such process. *See* Doc. 1 at 15-16. In the response to the State's motion, Plaintiff states the following: "[t]his predetermined bond amount does not comport with due process. First, the ability to post security at an arbitrarily determined amount does not reach Ms. Culley's right to prove under the Statute that she had no knowledge or involvement in the underlying crime." *See* Doc. 25 at 23. Plaintiff also states, in the context of her Eighth Amendment argument that "the arbitrary 'double value' bond amount does not withstand 8th Amendment scrutiny

. . . In short, an arbitrary 'double value' bond amount gives no due process as to the proper amount of the bond." *Id.* at 25. Beyond those statements, Plaintiff does not appear to challenge the statute by arguing that the payment of *a bond* is unconstitutional. Rather, Plaintiff focuses on the lack of a prompt post-seizure probable cause hearing and does a limited argument stating, "the posting of a bond for double the amount of the value of the vehicle is, by definition excessive." *Id.*

(1) Fourth Amendment

Turning to Culley's Fourth Amendment claim in Count I, she alleges a "policy and practice" of failing to provide a prompt post-seizure probable cause hearing. *See* Doc. 1 at 14. More specifically, Culley asserts "the State has a policy and practice of seizing the property indefinitely, and having the City of Satsuma, Alabama hold it, while the civil forfeiture action proceeds when it knows, or should know, that there is no meaningful opportunity to contest the retention of the property at a meaningful time before an ultimate hearing on the merits of forfeiture, which takes months, if not years." *Id.* at 14-15. Culley argues this violates the Fourth and Fourteenth Amendments of the Constitution.

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. In short, it protects individuals from unreasonable search and seizure." *United States v. Purcell*, 236 F.3d 1274, 1277 (11th Cir. 2001).

Plaintiff does not contest the initial seizure incident to arrest. Rather, she only challenges the retention of the vehicle during the pendency of the forfeiture proceedings. This falls outside the scope of the Fourth Amendment. "A complaint of continued retention of legally seized property raises an issue of procedural due process under the Fourteenth Amendment." *Case v. Eslinger*, 555 F.3d 1317, 1330 (11th Cir. 2009); *see also Caldwell v. Fort Lauderdale Airport Task Force*, 673 F. App'x 906, 910 (11th Cir. 2016) (quoting *Case*) ("We have stated that '[a] complaint of continued retention of legally seized property raises an issue of procedural due process under the Fourteenth Amendment.'"). Therefore, the motion for judgment on the pleadings is due to be granted as to the Fourth Amendment Claim.

(2) Fifth Amendment

To start, Plaintiff essentially concedes in a footnote that the Fifth Amendment claims cannot stand. Specifically, she states:

> Plaintiff concedes that the current state of the law is 5th Amendment claims have not been incorporated to apply to the states. This, however, is of no practical effect due to the existence of a due process claim under the Fourteenth Amendment. The 11th Circuit has held that, "our analysis is the same under either because the reaches of [Due Process Clauses of the] Fourteenth and Fifth Amendments are coextensive." *Walker v. R.J. Reynolds Tobacco Co.*, 737 F.3d 1278 (11th Cir. 2013), *quoting Rodriguez-Mora v. Baker*, 792 F.2d 1524, 1526 (11th Cir. 1986).

Doc. 25 at 28, n. 5. The Court agrees that because these claims are against the State and not the federal government, the Fifth Amendment does not apply. However, the Court also agrees that the due process clauses of both are generally reviewed in a similar/ same manner. Therefore, to the extent Plaintiff originally asserted Fifth Amendment claims, they necessarily fail, but instead are reviewed under the Fourteenth Amendment.

(3) Fourteenth Amendment

As noted previously in the context of the Fourth Amendment claim, Culley does not challenge the initial seizure, only the retention of the Vehicle during the civil forfeiture proceedings. Culley asserts that the lack of a prompt post-seizure probable cause hearing violates the Fourteenth Amendment's due process clause. *See* Doc. 1 at 15. She further states "defendants in civil forfeiture actions are given no opportunity to show, at a meaningful time, that there is a less restrictive way for the State to secure the property, such as the posting of a bond." *Id.* "Moreover, under the Civil Forfeiture Act, there is no provision for a prompt hearing to consider the posting of a bond as security for the property subject to the civil forfeiture action, which would be a much less restrictive way to secure the State's interest in the property, pendente lite." *Id.* at 15-16. In her response to the original motions, Culley reiterates that same discussion when she states:

> The issue is that Ms. Culley has been deprived of her vehicle from the time it was seized, through the filing of the civil forfeiture action, and has no remedy to

> maintain possession of her automobile during the pendency of that action. Ms. Culley does not claim that the action was not instituted promptly, or that the State has no right to proceed with the forfeiture action. She claims that it is a denial of her right to due process for the State to hold her vehicle during the pendency of that action, without making a probable cause showing that she had some connection to the crime, and that there is no less restrictive way for the State to secure the vehicle during the pendency of the proceedings.

Doc. 25 at 32.

The Court notes at the outset that these statements are factually and legally incorrect. As discussed above, Alabama state law provides the opportunity to "execute a bond in double the value of such property" to have it returned during the pendency of the civil forfeiture proceedings. Ala. Code § 28-4-287. Further, as noted by the Alabama Supreme Court in 2020, "§ 28-4-287 provides the exclusive means for obtaining seized personal property during the pendency of a forfeiture action." *Two White Hook Wreckers*, ___ So.3d at ___, 2020 WL 7326386 at *2, 2020 Ala. LEXIS 183 at *9. Thus, there is a process by which Culley could have reclaimed the Vehicle during the pendency of the civil forfeiture case. Whether because she was unaware or by design, this was ultimately a path taken by the Plaintiff.

"In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation

of such an interest without due process of law." *Zinermon v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 983, 108 L.Ed.2d 100 (1990) (emphasis in original). The proper inquiry to determine whether due process has been satisfied requires a court to ask two questions: (1) what process the government has provided, and (2) whether it was constitutionally adequate. *Id.* at 126, 110 S. Ct. at 983. The parties are in conflict on which standard and test applies to the case here to satisfy that inquiry. Plaintiff asserts that the procedural due process claim is governed by *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.Ed.2d 18 (1976), while the State asserts the claim is governed by *Barker v. Wingo*, 407 U.S. 415, 92 S. Ct. 2182, 33 L.Ed.2d 101 (1972).

After reviewing the parties' arguments and the caselaw cited, the Court finds that it is bound by the Eleventh Circuit's decisions in *Gonzales v. Rivkind*, 858 F.2d 657 (11th Cir. 1988) and *Nnadi v. Richter*, 976 F.2d 682 (11th Cir. 1992) which therefore mandates the use of the test established under *Barker*.

In *Gonzales*, the Eleventh Circuit relied primarily on two Supreme Court decisions in its determination: *United States v. Von Neumann*, 474 U.S. 242, 106 S. Ct. 610, 88 L.Ed.2d 587 (1986) and *United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency*, 461 U.S. 555, 103 S. Ct. 2005, 76 L.Ed.2d 143 (1983). The Eleventh Circuit stated

> Given the teaching of *$ 8,850* and *Von Neumann*, we must conclude that, because a claimant of a vehicle seized under 8 U.S.C. sec. 1324 has the opportunity to challenge the government's probable cause determination in a forfeiture proceeding, that proce-

> dure, if timely, affords a claimant of seized property all process to which he is constitutionally due. *See generally, United States v. U.S. Treasury Bills Totaling $ 160,916.25 and U.S. Currency Totaling $ 2,378.75*, 750 F.2d 900 (11th Cir. 1985) (implicitly presuming that opportunity for hearing on forfeiture of funds under 21 U.S.C. sec. 881(a)(6) met due process requirement and applying *Barker* criteria to determine whether timing [*662] of hearing violated due process); *United States v. Banco Cafetero Panama*, 797 F.2d 1154 (2d Cir. 1986) (in case involving forfeiture of proceeds traceable to narcotics transaction, due process did not entitle claimants to probable cause hearing in advance of forfeiture trial).

Gonzales, 858 F.2d at 661-62. Of note, the Eleventh Circuit specifically cited the Second Circuit's statement that due process did not entitle claimants to a probable cause hearing in advance of the forfeiture trial. *Id.* (citing *Banco Cafetero*, 797 F.2d 1154). In analyzing *$8,850* and *Von Neumann*, the *Gonzales* determined that "the availability of a timely postseizure hearing fulfills the requirements of due process." *Id.* at 661.

Other Eleventh Circuit cases have also applied *Barker* in the context of retention of property during forfeiture proceedings. In *United States v. Bissell*, 866 F.2d 1343 (11th Cir. 1989), several criminal defendants argued that several seized assets were being wrongfully retained which prevented them from hiring counsel of their choice. The Eleventh Circuit specifically held that "[w]e conclude that the *Barker* test, as described in *United States v. $8,850*, applies here."

Bissell, 866 F.2d at 1354. The point was further reiterated in *United States v. Kaley*, 579 F.3d 1246 (11th Cir. 2009), when the Eleventh Circuit, acknowledging *Bissell*, applied the *Barker* test in another case involving pre-trial restraint of assets in the context of a choice of counsel issue. *Kaley*, 579 F.3d at 1260.

Turning now to the application of *Barker*, the Supreme Court established a four factor test to determine when government delay has abridged the right to a speedy trial. *Barker*, 407 U.S. at 530, 92 S. Ct. at 2192. The test involves weighing (1) the length of delay, (2) the reason for the delay, (3) the defendant's assertion of the right, and (4) prejudice to the defendant. *$8,850*, 461 U.S. at 563-65; *see also Nnadi*, 976 F.2d at 687 ("The Supreme Court has set forth a four-part test for determining whether an unreasonable delay has transpired between seizure of forfeitable property and a <u>final hearing</u> concerning the ultimate disposition of the property seized." (emphasis added)). Culley provides no analysis on the *Barker* test, but rather merely disputes its application. *See* Doc. 25 at 30-35; Doc. 38 at 17-18. When applied, it is clear that Plaintiff's due process claims fail as a matter of law when considering the second and third factors. Alabama law provides a mechanism to regain possession of the vehicle through the bond. Further, Plaintiff herself did nothing to press forward on the underlying forfeiture case. The Vehicle was seized on February 17, 2019, the State initiated forfeiture proceedings shortly thereafter, and Culley did not proceed with the bond nor any pleadings requesting the state court set the matter for hearing. Rather, the court *sua sponte* set the case for status conference in Septem-

ber 2020 to move the case along. It was only then did Culley file her motion for summary judgment on September 21, 2020, which was granted on October 30, 2020. Therefore, while perhaps not solely responsible for the delay in proceedings, Plaintiff played a significant role. Moreover, again Plaintiff fails to even discuss why she did not follow the bond procedure to regain possession of her car. Therefore, her claims fail as a matter of law under the *Barker* analysis.

However, even if the Court were in error to solely look to *Barker* and were to apply the test Plaintiff requests under *Mathews*, her claim would still fail. Those three factors are: (1) the private interests affected; (2) the risk of erroneous deprivation through the procedures used, and the value of other safeguards; and (3) the governmental interest. *Mathews*, 424 U.S. at 335, 96 S. Ct. at 903.

"The deprivation of real or personal property involves substantial due process interests." *Krimstock v. Kelly*, 306 F.3d 40, 61 (2d Cir. 2002) (citing *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53-54, 114 S. Ct. 492, 126 L.Ed.2d 490 (1993)). Moreover, there is little debate that a person has an important interest in their vehicle; thus, the crux of the argument relies upon the second and third factors. *See Serrano v. Customs & Border Patrol*, 975 F.3d 488, 497 (5th Cir. 2020).

The second factor is the risk of erroneous deprivation through the procedures used. *Mathews*, 424 U.S. at 335, 96 S. Ct. at 903. Culley provides little analysis on this factor except to cite *Krimstock* and its statement that "the risk of erroneous deprivation that is posed to innocent owners is a substantial one." Doc. 25 at 36 and Doc. 38 at 21 (both quoting

Krimstock, 306 F.3d at 58). Culley goes no further beyond that statement. However, there is nothing in this statement that binds this Court to that statement without a further look at the particular circumstances arising under the Alabama law. This includes all the procedures of the state forfeiture laws including the availability of alternate remedial processes which should be weighed and balanced. In the case at hand, after the initial seizure during arrest, there are multiple points of checks and balances. After the seizure, the State is notified of the seizure and has the opportunity to investigate the facts and laws to independently determine whether to initiate forfeiture proceedings. *Cf. United States v. One 1971 BMW 4-Door Sedan*, 652 F.2d 817, 821 (9th Cir. 1981) ("The risk of an erroneous seizure [is further] minimized by the duty of the United States Attorney immediately after notification of the seizure to investigate the facts and laws and independently to determine whether initiation of forfeiture proceedings [is] warranted."). And even after the decision is made to initiate forfeiture proceedings, a claimant such as Culley, still has the ability to seek the return of the property by paying the bond and filing a request with the court for an expedited proceeding to assert the innocent owner affirmative defense. Thus, when examining the circumstances of <u>this</u> statute, the second *Mathews* factor does not favor the Plaintiff as there are constitutionally adequate processes in place for a claimant to get the Vehicle back. Therefore, this factor favors the State.

Finally, the Court looks to the third *Mathews* factor—the governmental interest—which in many respects is tied to the second factor in analysis. The third factor specifically requires the consideration of

"the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335, 96 S. Ct. at 903. Again for this element, Plaintiff relies almost exclusively on *Krimstock*, but even there, the quote provided undercuts her own argument. *See* Doc. 25 at 37. Specifically, Plaintiff acknowledges that the analysis requires the consideration of other less restrictive means and quotes *Krimstock*. *Id.* However, even within that quotation, the Second Circuit states "[t]o ensure that the City's interest in forfeitable vehicles is protected, claimants could post bonds, or a court could issue a restraining order to prohibit the sale or destruction of the vehicle." *Krimstock*, 306 F.3d at 65. In her own response, Plaintiff acknowledges" [i]f a bond is posted for the full value of the vehicle, there is little risk." Doc. 25 at 37. Plaintiff never discusses the application of Ala. Code § 28-4-287 allows the claimant to "execute a bond in double the value of such property" to regain it during the pendency of the proceedings. Even the Second Circuit acknowledged that the posting of a bond may satisfy the due process requirements. *Krimstock*, 306 F.3d at 65. Therefore, of importance in this case (as opposed to Plaintiff's argument), there is a means to seek the return of seized property under the statute in question. Much like the Fifth Circuit discussed in *Serrano*, the Court cannot ignore the context of the underlying seizure:

> The Government's interest in preventing the unlawful exportation of munitions, drugs, and other contraband is significant. *See, e.g., Hernandez v. Mesa*, 140 S. Ct. 735, 746, 206 L.Ed.2d 29 (2020) ("One of the ways in

> which the Executive protects this country is by attempting to control the movement of people and goods across the border."); *Lee v. Thornton*, 538 F.2d 27, 31 (2d Cir. 1976) ("There is an extremely important government interest in policing the passage of persons and articles into the country across its borders."). Further, Serrano's property was subject to forfeiture because the agents believed that the truck was used in an attempt to illegally export munitions from the United States, in violation of federal law. The Government's retention protects its interest in the seized vehicle. Additionally, a significant administrative burden would be placed on the Government if it was required to provide prompt post-seizure hearings in every vehicle seizure.

Serrano, 975 F.3d at 500. Much like the case at hand, the initial seizure related to the arrest of Culley's son for drug related activity. The burden on the State to conduct extra proceedings would present an undue significant burden, especially in light of the ability of a claimant to reclaim the property through the bond process. The end result is that this factor favors the State.

Plaintiff relies heavily on *Krimstock*, 306 F.3d 40, in her analysis. However, even there, the Second Circuit did not go as far as Plaintiff implies. On the second *Mathews* factor, the court noted the city's victory was now "in light of the comparably greater risk of error that is posed to innocent owners, the City's direct pecuniary interest in the outcome of the forfeiture proceedings, and the lack of adequate re-

compense for losses occasioned by erroneous seizure of vehicles." *Id.* at 64. For the third factor, the court discounted the city's reasoning that it has an interest in (1) protecting the property from "being sold or destroyed before a court can render judgment in future forfeiture proceedings," (2) maintaining custody in order to preserve in rem jurisdiction, and (3) preventing the seized vehicle from being used as an instrumentality in future DWI acts. *Id.* at 64-67. In determining that a post-seizure, pre-judgment hearing was necessary, the court also noted that such a hearing would allow a claimant "an early opportunity to test the probable validity of further deprivation, including probable cause for the initial seizure, and to ask whether other measures, short of continued impoundment, would satisfy the legitimate interests of the City in protecting the vehicles from sale or destruction pendente lite." *Id.* at 68. Therefore, while the court found a hearing may be needed when discussing the deprivation from the New York seizure law, it also noted that other measures may satisfy the legitimate interests of the city. In short, its holding was specific to that particular law and not the broader concept Plaintiff espouses that all cases require a post-seizure, pre-forfeiture probable cause hearing. In the instant case, a bond would satisfy that concern while also returning the vehicle to the claimant. Finally, even to the extent *Krimstock* intended such a holding, it is not binding on this Court.

While the Court agrees that a vehicle owner has a significant interest in regaining the vehicle, in the case at hand, the Court finds that is insufficient to maintain the claim. "[D]ue process is flexible and calls [only] for such procedural protections as the

particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L.Ed.2d 484 (1972); *see also Zinermon*, 494 U.S. at 127, 110 S. Ct. at 984 (stating same). Further, the Supreme Court recognized that "implicit" in its "discussion of timeliness in *$8,850* was the view that the forfeiture proceeding, without more, provides the postseizure hearing required by due process to protect [claimant's] property interest in the car." *Von Neumann*, 474 U.S. at 249, 106 S. Ct. at 614 (emphasis added). Moreover, the Court has not found a Supreme Court case or an Eleventh Circuit case that requires an additional post-seizure, pre-forfeiture judicial hearing. Even when analyzing the Alabama process under Plaintiff's own requested analysis of *Mathews*, the claims still fail and merit dismissal.

E. Excessive Fine under Eighth Amendment (Count II against the State)

Count II is also brought pursuant to § 1983 and asserts violation of the Eighth Amendment saying that Culley, who was not charged with a crime, had her Vehicle retained without due process, has been fined by the State because the property was seized, and even if she gets it back through the civil forfeiture process was deprived of the property in the meantime. Plaintiff claims this forfeiture, even if brief, is excessive under the Eighth Amendment. and seeks declaratory and injunctive relief. Plaintiff also argues that "the arbitrary 'double value' bond amount does not withstand 8th Amendment scrutiny . . . In short, an arbitrary 'double value' bond amount gives no due process as to the proper amount of the bond." Doc. 25 at 25. It is not entirely clear whether Plaintiff argues that the payment of a bond is unconstitutional in civil forfeiture proceedings. Within back to back sentences,

Plaintiff states "[i]n such a case, any amount of bond is excessive because the State could make no showing that it is entitled to keep the vehicle at all. In such a case, the posting of a bond for double the amount of the value of the vehicle is, by definition excessive." *Id.* However, Plaintiff discusses this in the context of her due process claim which as the Court already determined fails. In the discussion on her Eighth Amendment claim, Plaintiff does not go into further detail nor cite to cases for that proposition.

The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend VIII. The Eighth Amendment is applicable to the states through the Fourteenth Amendment. *Timbs v. Indiana*, ___ U.S. ___, 139 S. Ct. 682, 687, 203 L.Ed.2d 11 (2019). Much like the *Timbs* case, "[d]irectly at issue here is the phrase 'nor excessive fines imposed,' which limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense." *Id.* (citations omitted and internal quotations omitted). In the *Timbs* case, the Supreme Court also reiterated its holding from *Austin v. United States*, 509 U.S. 602, 113 S. Ct. 2801, 125 L.Ed.2d 488 (1993), that "civil *in rem* forfeitures fall within the Clause's protection when they are at least partially punitive." *Id.* at 689.

Thus, looking at the alleged facts at hand, assuming them to be true, and through the limited lens of a motion to dismiss/judgment on the pleadings, the Court must decide whether the retention of the Vehicle during the pendency of the civil forfeiture proceedings constitutes an "excessive fine" under the Eighth Amendment.

Culley cites no caselaw that indicates the temporary deprivation of the Vehicle can constitute a fine under the Eighth Amendment. She merely cites to the *Timbs* and *Austin* case which establish that the Eighth Amendment applies to civil forfeiture proceedings in general. However, both cases relate to the ultimate forfeiture of the property—not the detention during proceedings. Thus, her briefing glosses over the actual issue at hand and jumps straight to a proportionality discussion.[9] The State's briefing is more on point.

"The Excessive Fines Clause limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense." *Austin*, 509 U.S. at 609-10, 113 S. Ct. at 2807 (emphasis and citation omitted). "Forfeitures—payments in kind—are thus 'fines' if they constitute punishment for an offense." *United States v. Bajakajian*, 524 U.S. 321, 328, 118 S. Ct. 2028, 2033, 141 L.Ed.2d 314 (1998). The Court has found no caselaw that indicates that the prejudgment retention of property constitutes a payment (cash or in kind)—all caselaw found by this Court discusses it in the context of a criminal or civil forfeiture judgment. This may be a novel approach by the Plaintiff, but as it is an ultimate legal determination, the Court must determine whether she states a

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[9] Plaintiff cites *United States v. Kajakajian*, 521 U.S. 321, 324 (1998) in her brief. *See* Doc. 25 at 41. However, the Court has found no such case and the citation goes to another Supreme Court case that has no relevance to the issues at hand. Rather the Court presumes it to be a typographical error and that Plaintiff intended *United States v. Bajakajian*, 524 U.S. 321, 328, 118 S. Ct. 2028, 2033, 141 L.Ed.2d 314 (1998).

claim for which relief may be granted to survive the motion for judgment on the pleadings.

Plaintiff cites no cases that support the view that requiring the posting of a bond during forfeiture proceedings violates due process. Rather, the Court finds that longstanding caselaw approves the constitutionality of requiring bonds, even in the context of forfeiture proceedings. *See, e.g., Arango v. Dep't of the Treasury*, 115 F.3d 922, 929 (11th Cir. 1997) (holding that the bond requirement in the federal asset forfeiture statute was designed to promote "more efficient and less costly administrative forfeitures"); *Gladden v. Roach*, 864 F.2d 1196, 1200 (5th Cir. 1989) (determining that the payment of a bond as a precondition for release following arrest for a non-jailable offense does not constitute a due process violation). Moreover, at no point does Plaintiff claim an inability to pay such a bond as required under Alabama law nor did she seek an expedited hearing with the state court arguing such. *See Arango*, 115 F.3d at 929; *see also Wren v. Eide*, 542 F.2d 757, 763 (9th Cir. 1976) (holding that "the fifth amendment prohibits the federal government from denying the opportunity for a hearing to persons whose property has been seized and is potentially subject to forfeiture solely because of their inability to post a bond"). The Court will not expand Plaintiff's assertions and declines to address a claim not raised especially as her individual claim has been rendered moot by her success on the merits of the state forfeiture case with the return of the Vehicle.

Ultimately, the Court cannot find that there is a legal basis for Plaintiff's Eighth Amendment claim, especially as ownership never changes hands in light of the civil forfeiture results in Culley's favor. Although

she did not have access to the Vehicle during the pendency of the proceedings, that was much by her own design than by chance. As previously noted, Plaintiff could have posted bond in accordance with Ala. Code § 28-2-93(h). Had she done so, no further deprivation would have occurred in light of her success on the merits. Rather, the State and the City did exactly what the forfeiture statute required of them after the initial seizure–institute civil forfeiture proceedings and hold the property until the resolution since bond was not sought. Specifically, state law permits the State and the City to (1) Place the property under seal; (2) Remove the property to a place designated by it; (3) Require the state, county, or municipal law enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; and (4) In the case of real property or fixtures, post notice of the seizure on the property, and file and record notice of the seizure in the probate office. Ala. Code § 20-2-93(d). Once the property has been forfeited only then may the State and the City use or sell the property. *See* Ala. Code § 20-2-93(e).

The Court agrees with the State's briefing that an anticipated fine does not present a ripe claim. "Eighth Amendment challenges are generally not ripe until the imposition, or immediately impending imposition, of a challenged punishment or fine." *Cheffer v. Reno*, 55 F.3d 1517, 1523 (11th Cir. 1995). "Challenges under the Excessive Fines Clause are also generally not ripe until the actual, or impending, imposition of the challenged fine." *Id.* (citation omitted); *see also Pettway v. Marshall*, Civ. Act. No. 5:19-CV-1073-KOB, 2020 U.S. Dist. LEXIS 125429, *13-14,

2020 WL 4016057, *5-6 (N.D. Ala. Jul. 16, 2020) (holding claim was not ripe when funds were merely frozen during civil forfeiture proceedings).

Thus, when Plaintiff filed her complaint, the Eighth Amendment claim was not ripe. Furthermore, the claim is now also moot since the forfeiture action results were in her favor and never resulted in the imposition of a forfeiture. Therefore, Culley's Eighth Amendment excessive fines claim fails and the motion for judgment on the pleadings is granted on this basis.

F. Conspiracy (Count III against the City)

In Count III, Culley asserts a claim for conspiracy under § 1983 against the City alleging that there is an agreement between the City and the State to violate her constitutional rights. Culley specifically states there is an agreement that the City seizes a vehicle incident to arrest, contacts the State defendants who, in turn, institute a civil forfeiture action. As a result, the City keeps the seized vehicle and refuses to return it while the civil forfeiture action proceeds.

As the City also asserts arguments under *Younger* and its progeny, the motion to dismiss is rejected for the for the same reason discussed previously. *See* Doc. 20 at 4-7;[10] Doc. 34 at 3-4. However, the City also asserts that if the direct constitutional claims against the State fail, the conspiracy claim necessarily fails. *Id.* at 7-8; Doc. 34 at 4-7. The Court will turn to the analysis on that assertion.

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[10] The Court again uses the pages in the PDF document since the page numbers on the consolidated motion and brief result in page numbers that do not match.

To establish a viable conspiracy claim under § 1983, the Plaintiff must allege three elements: (1) a violation of her federal rights; (2) an agreement among the Defendants to violate such rights; and (3) an underlying actionable wrong. *Grider v. City of Auburn, Ala.*, 618 F.3d 1240, 1260-62 (11th Cir. 2010). Therefore, Plaintiff must establish an underlying violation of her constitutional rights to sustain a § 1983 conspiracy claim. *See Spencer v. Benison*, 5 F.4th 1222, 1234 (11th Cir. 2021) (citations omitted); *see also Corey Airport Servs., Inc. v. Decosta*, 587 F.3d 1280, 1288 (11th Cir. 2009) (citing *GJR Invs., Inc. v. Cty. of Escambia, Fla.*, 132 F.3d 1359, 1370 (11th Cir. 1998)) ("a plaintiff must demonstrate a denial of constitutional rights to sustain a conspiracy claim under § 1983").

As the Court has already determined there was no constitutional violation established by Plaintiff's claims, her conspiracy claims also fails and must be dismissed.

V. Conclusion

Based on the foregoing, the *Motion for Judgment on the Pleadings of Attorney General Steve Marshall and District Attorney Ashley Rich* (Doc. 18, filed 1/3/20, as supplemented by Doc. 33, filed 11/23/20) and the *Motion to Dismiss* (Doc. 20, filed 1/6/20, as supplemented by Doc. 34, filed 11/23/20) are ultimately GRANTED. As such, Plaintiff's individual claims are DISMISSED with prejudice and the class claims are DISMISSED with prejudice as to refiling by this Plaintiff, but DISMISSED without prejudice as to any other potential plaintiffs.

DONE and ORDERED this 29th day of September, 2021.

/s/ Terry F. Moorer
United States District Judge

MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA (SEPTEMBER 13, 2021)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION

LENA SUTTON, on Behalf of Herself
and Those Similarly Situated,

Plaintiff,

v.

LEESBURG, ALABAMA, ET AL.,

Defendants.

No. 4:20-cv-00091-ACA

Before: Annemarie Carney AXON,
United States District Judge.

Plaintiff Lena Sutton lent her car to a friend who, unbeknownst to her, used it to carry drugs. After police officers from Defendant Town of Leesburg pulled her friend over and found the drugs, Leesburg seized Ms. Sutton's car and asked the State of Alabama to institute civil forfeiture proceedings under Alabama Code § 20 2-93. In accordance with that statute, Leesburg retained Ms. Sutton's car during the pendency of the civil forfeiture proceedings in state

court, which took over a year to complete and ended in a judgment in Ms. Sutton's favor.

Ms. Sutton filed this federal putative class action against Leesburg. (Doc. 1). The State of Alabama intervened, under 28 U.S.C. § 2403(b), for the limited purpose of "argument on the question of constitutionality." The court has dismissed all of Ms. Sutton's claims except her procedural due process claim, in which she argues that the Fourteenth Amendment to the United States Constitution requires the provision of a post-seizure, pre-judgment hearing on whether there is probable cause to support the retention of property during the pendency of the forfeiture proceeding. (Doc. 40).

Before the court now are cross-motions for summary judgment filed by Ms. Sutton, Leesburg, and the State. Ms. Sutton seeks summary judgment in her favor only as to liability (doc. 22), and Leesburg and the State seek summary judgment in their favor (docs. 46, 50). Under the *Barker v. Wingo*, 407 U.S. 514 (1972) test for whether a defendant received a speedy trial, no reasonable jury could find in Ms. Sutton's favor. Accordingly, the court WILL DENY her motion for summary judgment and WILL GRANT Leesburg's and the State's motions for summary judgment.

I. Background

On cross-motions for summary judgment, the court "draw[s] all inferences and review[s] all evidence in the light most favorable to [each] non-moving party." *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1239 (11th Cir. 2018) (quotation marks omitted). In this case, no one disputes the material facts.

The evidence establishes that on February 21, 2019, Ms. Sutton's friend, Roger Maze, borrowed her car to run an errand for her. (Doc. 21-1 at 2 ¶ 1). After he was pulled over for speeding, the police searched the car and found methamphetamine. (Doc. 23 at 4 ¶¶ 5–6; Doc. 48 at 3). The police arrested Mr. Maze and his passenger and seized the car. (Doc. 23 at 5 ¶ 7, 5 ¶ 10; Doc. 48 at 3).

Ms. Sutton quickly informed Leesburg that she had nothing to do with Mr. Maze's crime and that she needed her car back. (Doc. 21-1 at 2–3 ¶¶ 3–4). But the officer with whom she spoke did not believe her. (*Id.* at 3 ¶ 6). As required by the forfeiture statute, on March 4, 2019—twelve days after the seizure of Ms. Sutton's car—Leesburg asked the State to institute a civil forfeiture proceeding against the car. (Doc. 21-2 at 6). The State did so on March 6, 2019, fourteen days after the seizure. (*Id.* at 2–6).

Alabama's civil forfeiture statute provides for the forfeiture of vehicles used "to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of" controlled substances. Ala. Code § 20-2-93(a)(5). Once a civil forfeiture proceeding has begun, the property is "not . . . subject to replevin," Ala. Code § 20-2-93(d), a common law action for the return of goods wrongfully taken. At that point, the only way a civil forfeiture defendant may obtain her property during the pendency of the proceeding is by "execut[ing] a bond in double the value of such property." *Id.* § 20-2-93(h), <u>incorporating by reference</u> *id.* § 28-4-287; *State v. Two White Hook Wreckers*, ___ So.3d ___, 2020 WL 7326386, at *2 (Ala. Dec. 11, 2020) (holding that the double-value bond "is the exclusive method by which a claimant

may obtain seized personal property during the pendency of a forfeiture action”).

To prevail in a civil forfeiture proceeding for “any type of property other than real property and fixtures,” a property owner bears the burden of proving “both that the act or omission subjecting the property to forfeiture was committed or omitted without the owner’s or lienholder’s knowledge or consent and that the owner or lienholder could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use.” Ala. Code § 20-2-93(h).

Although Ms. Sutton was served with the civil forfeiture complaint in March 2019 (doc. 28-1 at 18), she did not appear, so the state court entered a default declaratory judgement forfeiting the car to Leesburg (*id.* at 45). On the day the court entered judgment, Ms. Sutton appeared in the case and moved to set the default judgment aside. (*Id.* at 47–48). On June 25, 2019, the state court granted the motion and set aside the default judgment. (*Id.* at 171).

In July 2019, Ms. Sutton served interrogatories and requests for production on the State. (Doc. 28-1 at 186–94). In an undated response, the State objected to some requests and promised “forthcoming” responses to others. (Doc. 21-5 at 2). The state court docket reflects no other activity until February 2020, when the court set the case for a trial to take place in April 2020. (Doc. 28-1 at 236). Several days before the trial was to start, Ms. Sutton moved for summary judgment. (*Id.* at 238–39). On May 28, 2020, the state court granted Ms. Sutton’s motion for summary judgment. (*Id.* at 386). The court found that, although the State had established a *prima facie* case that the car was

used as a conveyance for a controlled substance, Ms. Sutton had proved that she did not know and could not have learned of the intended unlawful use of the car. (*Id.*). The court therefore denied the State's request for forfeiture and ordered the release of the car to Ms. Sutton. (*Id.*).

II. Procedural History

Ms. Sutton filed this action against Leesburg in January 2020. (Doc. 1). Ten months later, she filed a belated notice under Federal Rule of Civil Procedure 5.1 and 28 U.S.C. § 2403 that this action questions the constitutionality of a state statute. (Doc. 24). After the court certified to the Attorney General that this action raises a constitutional challenge to the civil forfeiture statute, the State, without waiving its sovereign immunity, moved to intervene for the limited purpose of defending the constitutionality of its civil forfeiture statute. (Doc. 26). This court granted the motion and the State filed a motion to dismiss the complaint. (Docs. 27, 28). Leesburg then followed with a motion for judgment on the pleadings. (Doc. 31). The court granted in part and denied in part the State's motion to dismiss and Leesburg's motion for judgment on the pleadings. (Doc. 39). After rejecting various non-merits arguments made by the State and Leesburg, the court determined that the only claim on which Ms. Sutton could proceed was her claim that the lack of a prompt post-seizure probable cause hearing about the retention of property violates the Fourteenth Amendment's Due Process Clause. (*Id.* at 30–32, 34–35). The court found that the court must use the balancing test for procedural due process claims set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976), instead of the balancing test for speedy trial

claims set out in *Barker v. Wingo*, 407 U.S. 514 (1972). (*Id.* at 30– 31). But because the State's briefing did not adequately address the *Mathews* test, the court could not evaluate whether Ms. Sutton stated a claim that would survive under *Mathews*. (*Id.* at 32). The court dismissed all of Ms. Sutton's other claims with prejudice, but permitted the procedural due process claim to proceed. (Doc. 40).

The State then moved for reconsideration, arguing that Eleventh Circuit precedent required use of the *Barker* speedy trial test. (Doc. 43). Because that argument was available when the State filed its motion to dismiss, but the State's brief made only a passing argument to it, the court declined to reconsider its ruling. (Doc. 44). The court expressly noted that the parties could take up that legal issue later.[1] (*Id.* at 5). They have done so in these cross-motions for summary judgment.

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[1] The court notes Ms. Sutton's argument that the court's earlier decision to use *Mathews* is law of the case. (Doc. 57 at 10). Law of the case does not apply until issuance of a final judgment. *Vintilla v. United States*, 931 F.2d 1444, 1447 (11th Cir. 1991) ("[A] court's previous rulings may be reconsidered as long as the case remains within the jurisdiction of the district court. Consequently, law of the case applies only where there has been a final judgment.") (quotation marks and citation omitted); *see FDIC v. Stahl*, 89 F.3d 1510, 1514 n.7 (11th Cir. 1996) (concluding that the district court erred by declining to revisit its earlier ruling on a legal standard because "the denial of Defendants' motion to dismiss was not a final judgment, [so] the decision regarding the standard of care was not the law of the case"). Given the more fulsome briefing about the applicability of *Gonzales* present, the court can and must revisit its earlier decision about the correct test to use in this case.

III. Discussion

In deciding cross-motions for summary judgment, the court must determine whether, accepting the evidence in the light most favorable to the non-moving party, the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *see also Fort Lauderdale Food Not Bombs*, 901 F.3d at 1239. Because the parties do not dispute any material facts and the resolution of all three cross-motions depend on the same legal question, the court will address them all together.

The decisive question in this case is whether the court applies the *Mathews v. Eldridge* test or the *Barker v. Wingo* test to Ms. Sutton's procedural due process claim. *Mathews* provides a three-factor balancing test to determine whether a person received procedural due process before the deprivation of a liberty or property interest. 424 U.S. 319, 332–35 (1976); *see, e.g.*, *United States v. Kaley*, 579 F.3d 1246, 1260 (11th Cir. 2009) ("The *Mathews* test . . . is the traditional test employed in order to determine what process is due before a deprivation of property at the hands of the state may be sustained."). *Barker* provides a four-factor balancing test to determine whether a defendant received a speedy trial. 407 U.S. 514, 530–33 (1972).

The parties dispute which test applies in this case. Ms. Sutton contends that, as the court previously found, *Mathews* governs here because she asserts a procedural due process claim based on Leesburg's retention of her car without a prompt post-seizure probable cause hearing. (Doc. 22; Doc. 23 at 13–26). Leesburg and the State argue that binding Eleventh Circuit authority requires application of the *Barker*

speedy trial test. (Doc. 47 at 17–22; Doc. 51 at 16–21). The court agrees with Leesburg and the State. The Eleventh Circuit's decision in *Gonzales v. Rivkind*, 858 F.2d 657 (11th Cir. 1988), taken together with a precedential opinion in the criminal forfeiture context, mandates use of the *Barker* test.

In *Gonzales*, the government seized cars that were being used to transport illegal aliens. 858 F.3d at 659. The plaintiffs had the option of doing an interview with an official from the Immigration and Naturalization Service ("INS"), at which they could present evidence about whether their cars were subject to forfeiture, or filing a claim or cost bond that would prompt a judicial forfeiture proceeding. *Id.* at 658–59. Instead of doing either, they filed suit in federal court, arguing that due process required a prompt post-seizure judicial hearing on whether probable cause supported the seizures. *Id.* at 659; *see also Gonzales v. Rivkind*, 629 F.Supp. 236 (M.D. Fla. 1986), reversed by *Gonzales*, 858 F.2d 657. The district court found that the INS's procedure violated due process and entered an order "requiring the INS to provide a claimant a postseizure probable cause hearing before a judicial officer within seventy-two hours of the claimant's request for such a hearing." *Gonzales*, 858 F.2d at 659. The Eleventh Circuit reversed, holding that because the judicial forfeiture proceeding included a probable cause determination, "that procedure, if timely, affords a claimant of seized property all process to which he is constitutionally due." *Id.* at 661.

The *Gonzales* panel relied on two Supreme Court decisions: *United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency*, 461 U.S. 555 (1983) and *United States v. Von*

Neumann, 474 U.S. 242, 245 (1986). In *$8,850*, a plaintiff challenged the government's eighteen-month delay between seizing cash and instituting a civil forfeiture proceeding. 461 U.S. at 556. The Supreme Court held that the *Barker* speedy trial test "provides the relevant framework for determining whether the delay in filing a forfeiture action was reasonable." *Id.* In *Von Neumann*, the government seized the plaintiff's newly purchased car when he attempted to enter the United States without declaring the car at the border. 474 U.S. at 245. The plaintiff, conceding that he had violated customs laws, immediately filed an administrative petition for remission or mitigation,[2] which the agency took thirty-six days to rule on. *Id.* at 245–46. The plaintiff filed suit, arguing that "his property interest in his car gives him a constitutional right to a speedy disposition of his remission petition without awaiting a forfeiture proceeding." *Id.* at 249. The Supreme Court disagreed, explaining that "[t]he remission statute simply grants the [agency] the discretion not to pursue a complete forfeiture despite the Government's entitlement to one." *Id.* at 250. Because remission proceedings were not necessary to a forfeiture determination, they were not constitutionally required. *Id.* In reaching that holding, the Supreme Court stated that "[i]mplicit in this Court's discussion of timeliness in *$8,850* was the view that the forfeiture proceeding, without more, provides the postseizure hearing required by due pro-

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[2] "Remission . . . presupposes forfeiture and assumes title in the Government." *Fla. Dealers & Growers Bank v. United States*, 279 F.2d 673, 675–76 (5th Cir. 1960); *see also* 19 U.S.C. § 1618 (the remission or mitigation provision at issue in *Von Neumann*); 18 U.S.C. § 981(d).

cess to protect [the plaintiff]'s property interest in the car." *Id.* at 249.

The *Gonzales* decision explained that *$8,850* and *Von Neumann* stood for the proposition that "the availability of a timely postseizure hearing fulfills the requirements of due process." 858 F.2d at 661. In addition, the Court approvingly cited a Second Circuit case that held "due process did not entitle claimants to [a] probable cause hearing in advance of [the] forfeiture <u>trial</u>." *Id.* at 662 (citing *United States v. Banco Cafetero Panama*, 797 F.2d 1154 (2d Cir. 1986)) (emphasis added).

Gonzales held that the availability of the judicial forfeiture proceeding, if timely, provides all the post-seizure process that is due to protect a person's interest in property. *Gonzales*, 858 F.2d at 661. And, if a forfeiture proceeding is available, a forfeiture defendant's procedural due process claim must be analyzed under the *Barker* test. *Id.* Ms. Sutton argues that *Gonzales* does not bind the court in this case because *Gonzales* involved a challenge to the seizure of the car, not the post-seizure retention of the car. (Doc. 54 at 10–11; Doc. 57 at 10–13; Doc. 58 at 27–28). This distinction is unpersuasive. Although *Gonzales* addressed the seizure, not the retention, of property, other Eleventh Circuit cases hold that the court must analyze a challenge to the pre-judgment retention of property under *Barker*. *See Kaley*, 579 F.3d at 1252; *United States v. Bissell*, 866 F.2d 1343, 1352 (11th Cir. 1989).

In *Bissell*, criminal defendants challenged the government's pre-trial restraint of their assets, which precluded them from hiring counsel of their choice, on the ground that due process required a hearing at which the government had to "prove the probability

that the defendant will be convicted and that his assets will be forfeited." 866 F.2d at 1352. The Eleventh Circuit, relying on *$8,850*, held that the *Barker* test governed the due process analysis because the defendants "challenge[d] the absence of a hearing between the imposition of restraints on their assets and trial." *Id.* at 1353. In *Kaley*, the Eleventh Circuit, bound by *Bissell*, again used the *Barker* test in another case involving a pre-trial restraint of assets. *Kaley*, 579 F.3d at 1260.

Taken together, *Gonzales* and *Bissell* require this court to use the *Barker* test to analyze Ms. Sutton's due process claim. Under *Barker*, the court must weigh "(1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of [her] speedy trial right, and (4) actual prejudice to the defendant." *United States v. Oliva*, 909 F.3d 1292, 1298 (11th Cir. 2018). The first factor, length of the delay, "must first be satisfied for the court to analyze the other factors." *Id.*

Despite the abundant briefing in this case and this court's express invitation to address the applicability of the *Barker* test, Ms. Sutton's briefs do not present any argument that she can prevail under the *Barker* test. (*See* Doc. 54 at 3–5, 10; Doc. 57 at 10–24; Doc. 58 at 10–31). She is therefore not entitled to summary judgment on her claim, and the court WILL DENY her motion.

The State argues that Ms. Sutton cannot satisfy the *Barker* factors because the State filed the civil forfeiture action within fourteen days of the seizure; any delay in the final judgment was due to Ms. Sutton's own dilatory conduct; Ms. Sutton never asserted her right to a speedy trial; and she suffered no prejudice

because she prevailed in the civil forfeiture. (Doc. 47 at 23–27). These arguments are persuasive, especially given Ms. Sutton's failure to respond to them. No reasonable jury could find that Ms. Sutton has sustained her burden of establishing that she was denied a speedy forfeiture proceeding. Accordingly, the court WILL GRANT the State's and Leesburg's motions for summary judgment.

IV. Conclusion

The court WILL DENY Ms. Sutton's motion for summary judgment. The court WILL GRANT Leesburg's and the State's motions for summary judgment. The court WILL ENTER summary judgment in favor of Leesburg and against Ms. Sutton on her procedural due process claim.

The court will enter a separate order and final judgment consistent with this opinion.

DONE and ORDERED this September 13, 2021.

/s/ Annemarie Carney Axon
United States District Judge

ORDER AND FINAL JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA (SEPTEMBER 13, 2021)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION

LENA SUTTON, on Behalf of Herself
and Those Similarly Situated,

Plaintiff,

v.

LEESBURG, ALABAMA, ET AL.,

Defendants.

No. 4:20-cv-00091-ACA

Before: Annemarie Carney AXON,
United States District Judge.

The court DENIES Plaintiff Lena Sutton's motion for summary judgment. The court GRANTS Defendant Town of Leesburg's and Intervenor State of Alabama's motions for summary judgment. The court ENTERS summary judgment in favor of Leesburg and against Ms. Sutton on her procedural due process claim.

The court DIRECTS the Clerk to close this case.

DONE and ORDERED this September 13, 2021.

/s/ Annemarie Carney Axon
United States District Judge

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DENYING PETITION FOR REHEARING EN BANC (AUGUST 30, 2022)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

HALIMA TARIFFA CULLEY, on Behalf of Herself and Those Similarly Situated,

Plaintiff-Appellant,

v.

ATTORNEY GENERAL, STATE OF ALABAMA, DISTRICT ATTORNEY OF THE 13TH JUDICIAL CIRCUIT (Mobile County), CITY OF SATSUMA, ALABAMA,

Defendants-Appellees.

No. 21-13805-GG

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:19-cv-00701-TFM-MU

LENA SUTTON, on Behalf of Herself and Those Similarly Situated as Described Below,

Plaintiff-Appellant,

v.

LEESBURG, ALABAMA, TOWN OF,

Defendant-Appellee,

STATE OF ALABAMA,

Intervenor-Appellee.

No. 21-13484-GG

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 4:20-cv-00091-ACA

Before: WILSON, JORDAN, and
NEWSOM, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)