No. 22-585

In the Supreme Court of the United States

HALIMA TARIFFA CULLEY, *et al.*,

Petitioners,

v.

STEVEN T. MARSHALL,
ATTORNEY GENERAL OF ALABAMA, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Eleventh Circuit

BRIEF OF *AMICUS CURIAE* RESTORE THE FOURTH, INC. IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICUS CURIAE*[1]

Restore the Fourth, Inc. is a non-partisan nonprofit dedicated to robust enforcement of the Fourth Amendment and related due-process rights. Restore the Fourth oversees a series of local chapters whose membership includes lawyers, academics, advocates, and ordinary citizens. Restore the Fourth also files amicus briefs in major cases about Fourth Amendment or due process rights. *See, e.g.*, Brief of *Amici Curiae* Restore the Fourth, Inc., *et al.* in Support of Petitioners, *Lombardo v. City of St. Louis*, 141 S. Ct. 2239 (2021); Brief of *Amicus Curiae* Restore the Fourth, Inc., in Support of Petitioner, *Torres v. Madrid*, 141 S. Ct. 989 (2021).

Restore the Fourth is interested in *Culley* because the Eleventh Circuit's decision leaves vehicle owners "less secure against governmental invasion than they were at common law." *Sessions v. Dimaya*, 138 S. Ct. 1204, 1224 (2018) (Gorsuch, J., concurring-in-part). Both the *Mathews* test for procedural due-process claims and common-law tradition affirm that vehicle owners have the right to a prompt hearing at which they may argue for the return of their vehicle while forfeiture proceedings against the vehicle are pending. Yet, the Eleventh Circuit pronounced that a timely forfeiture trial affords a vehicle owner "all the process to which he is due." Pet. App. 8a.

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[1] This amicus brief is filed with timely notice to all parties. S. Ct. R. 37.2(a). No counsel for a party wrote this amicus brief in whole or in part; nor has any person or any entity, other than Restore the Fourth and its counsel, contributed money intended to fund the preparation or submission of this amicus brief.

SUMMARY OF THE ARGUMENT

Continuous government detention of a vehicle pending government initiation and prosecution of civil forfeiture proceedings is no small matter. "Cars manifest liberty." *Washington v. Marion Cnty. Prosecutor*, 916 F.3d 676, 678–79 (7th Cir. 2019) (Manion, J.). "Days, even hours, of unnecessary delay may impose onerous burdens upon a person deprived of his [or her] vehicle." *Stypmann v. City & Cnty. of S.F*, 557 F.2d 1338, 1344 (9th Cir. 1977).

The Court should thus grant review to settle the standards governing whether due process entitles vehicle owners to continued-detention hearings—i.e., a prompt judicial hearing to address whether the government may detain a vehicle while forfeiture litigation is pending. This question has percolated long enough, with multiple circuits and state high courts having weighed in and reached diametrically opposite holdings about the proper standard.

The alternative is maintenance of a due-process patchwork that contravenes "the basic principle of justice that like cases should be decided alike." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 139 (2005). A vehicle owner driving through New York, Connecticut, and Vermont may claim the right to a prompt continued-detention hearing for a seized vehicle. *See Krimstock v. Kelly*, 306 F.3d 40, 67 (2d Cir. 2002). But once the owner crosses into Illinois, that due-process right vanishes. *See People v. One 1998 GMC*, 960 N.E.2d 1071, 1073 (Ill. 2011).

The Court should end this arbitrary map.

ARGUMENT

I. The Court should grant review to reaffirm the paramount nature of the *Mathews* test for procedural due-process claims.

Time and again, this Court has emphasized that "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The point has been "said so often by th[e] Court . . . as not to require citation of authority." *Id.* To cement this principle, the Court declared in *Mathews v. Eldridge* that "identification of the specific dictates of due process generally requires consideration of three distinct factors." 424 U.S. 319, 335 (1976).

The three distinct factors are: (1) the "private interest affected by [an] official action"; (2) the "risk of an erroneous deprivation of that interest through the procedures used, as well as the probable value of additional safeguards"; and (3) the Government's interest. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993). These three factors—or *Mathews* test—are the paramount rule for assessing what due process requires "under **any** given set of circumstances." *Morrissey*, 408 U.S. at 481–82 (bold added). That includes vehicle forfeitures.

A 2019 Minnesota Supreme Court case drives this home. Considering application of the *Mathews* test to whether due process required "prompt post-seizure judicial review of the substantive legal basis for the State's seizure of [a] vehicle," the court did not hesitate: "[t]he *Mathews* framework is well suited

to answering this question." *Olson v. One 1999 Lexus*, 924 N.W.2d 594, 603 (Minn. 2019). The court had "consistently applied *Mathews* to procedural due process claims" and application of *Mathews* here fit "with other courts that have considered . . . whether *Mathews* . . . applies." *Id.* at 603–04 & n.7.

The *Olson* court further concluded "the *urgency* of a prompt post-deprivation hearing" in the vehicle-forfeiture context made application of the *Mathews* test of "paramount" importance. *Id.* at 602–03 (italics in original). Other courts have recognized the same: loss of a vehicle threatens many "fundamental life activities," such as "transit to a job or school, visits to health care professionals, and caretaking for children or other family members." *Washington v. Marion Cnty. Prosecutor*, 264 F. Supp. 3d 957, 976 (S.D. Ind. 2017). And this remains true even if forfeiture is a foregone conclusion, because a vehicle owner may still deserve interim relief to prevent grave hardship. *Cf. Fuentes v. Shevin*, 407 U.S. 67, 87 (1972) ("The right to be heard does not depend upon an advance showing that one will surely prevail.").

A helpful way to appreciate this point is to consider the similar function of pre-trial release in criminal cases. A person may be entitled to pre-trial release even if they are later convicted or are certain to face conviction at trial. *See State v. Brooks*, 604 N.W.2d 345, 350–51 (Minn. 2000). Pre-trial release thus concerns a liberty interest that is separate from liberty after acquittal. Sufficient protection against erroneous deprivation of this interest cannot then be found in a defendant's right to a speedy trial.

The same goes for seized vehicles awaiting a forfeiture trial. The function of a forfeiture trial is to minimize the risk of a wrongful *forfeiture*—not the risk of wrongful *detention* while forfeiture litigation is ongoing. In the "language of procedural due process," the possibility of a timely forfeiture trial—which may take place after many months (or even years) of vehicle detention—does not afford a vehicle owner an "opportunity to be heard" on why the owner should be able to keep their vehicle while forfeiture proceedings remain pending. *Rutherford v. United States*, 702 F.2d 580, 584 (5th Cir. 1983).

Only the *Mathews* test accounts for this reality, as well as accounting for the vital procedural benefits of continued-detention hearings. The most important benefit is **early error correction**. "Some risk of erroneous seizure exists in all cases." *Krimstock*, 306 F.3d at 50–51. "[I]n the absence of prompt review by a neutral [judge] . . . an inquiry into probable cause . . . must wait months or sometimes years before a . . . forfeiture proceeding takes place." *Id.* An "early [judicial] hearing," on the other hand, "provide[s] vehicle owners the opportunity to test the factual basis" of a given vehicle seizure, helping to prevent "erroneous deprivation." *Stypmann v. City & Cnty. of S.F.*, 557 F.2d 1338, 1344 (9th Cir. 1977).

Continued-detention hearings for seized vehicles also facilitate **probable cause disaggregation**. The probable cause that supports initial seizure of a vehicle may not support ongoing detention pending a forfeiture trial. *See Brewster v. Beck*, 859 F.3d 1194, 1197 (9th Cir. 2017) (exigency for a vehicle seizure "vanished" once the owner "showed up"). Continued-

detention hearings finally serve the key function of **hardship prevention**, making it possible for courts to assess and mitigate the "onerous burdens" that "[d]ays, [or] even hours" of unnecessary vehicle detention may impose on "a person deprived of his [or her] vehicle." *Stypmann*, 557 F.2d at 1344.

As a result, courts have opted to take successive "run[s]" at whether due process requires continued-detention hearings for seized vehicles. *Smith v. City of Chicago*, 524 F.3d 834, 836 (7th Cir. 2008), *vacated-as-moot by Alvarez v. Smith*, 558 U.S. 87 (2009). This Court should do the same. *See Alvarez*, 558 U.S. at 89 (leaving issue of continued-detention hearings for another day). "Individual freedom finds tangible expression in property rights." *James Daniel Good Real Prop.*, 510 U.S. at 61. It is also "hard to see any reason why" persons like Petitioners should lose their vehicles "for months or years without a means to contest the seizure or even to post a bond" to bail out the vehicle. *Smith*, 524 F.3d at 838.

II. The Court should grant review to enforce the original meaning of due process.

The Fourteenth Amendment's guarantee of due process is not limited to modern due-process cases. Due process also includes this concept's "original understanding." *Sessions v. Dimaya*, 138 S. Ct. 1204, 1224 (2018) (Gorsuch, J., concurring-in-part). Court enforcement of this "original understanding" ensures "the people's rights are never any less secure against governmental invasion than they were at common law." *Id.; see also Wooden v. United States*, 142 S. Ct. 1063, 1082–83 (2022) (Gorsuch, J., concurring).

The original meaning of due process is rooted in Magna Carta, which provided no free person could be deprived of life, liberty, or property except "by the law of the land." *Twining v. New Jersey,* 211 U.S. 78, 100 (1908). English law regarded "private property" so highly that the law would "not authorize the least violation of it." 1 W. BLACKSTONE, COMMENTARIES *135 (1765). Multiple British statutes prohibited the King from "dispos[ing]" of a subject's "lands or goods" in any "arbitrary way whatsoever." *Id.* at *138. And under Chapter 30, Magna Carta itself forbade the arbitrary disposition of private vehicles: "[n]o sheriff or bailiff of ours, or other person, shall take the horses or carts of any freeman for transport duty, against the will of the said freeman."[2]

Applied today, these core due-process principles dictate the government may not deprive a person of his property "without affording him the benefit" of those "customary procedures to which freemen were entitled by the old law of England." *Sessions*, 138 S. Ct. at 1224 (Gorsuch, J., concurring-in-part) (cleaned up); *see also Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272, 276–77 (1856). The question then becomes: what customary procedures were freemen entitled to under the old law of England when the Crown seized and tried to forfeit private property, including private vehicles?

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[2] MAGNA CARTA (1215), https://bit.ly/3stFqtb. The practice that Chapter 30 prohibited was called "purveyance." *See* 1 BLACKSTONE, COMMENTARIES *277 (purveyance was "a right enjoyed by the crown" to "forcibly impress[] the carriages and horses of the subject" to do "the king's business on the public roads"); *see also* Louis M. Sears, *Purveyance in England Under Elizabeth,* 24 J. OF POL. ECON. 755, 755–56 (1916).

"English law provided for statutory forfeitures of offending objects used in violation of the customs and revenue laws." *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 682–83 (1974). The Court of Exchequer adjudicated these statutory forfeitures. *See id.* The Exchequer's history subsequently reveals that Crown seizures had to be supported by an early showing of probable cause—a rule that the common law enabled property owners to enforce.

The common law in the Exchequer provided: "[i]f there be a seizure made, the Officer must in the next Term, or sooner, at the Discretion of the Court, return the Cause of Seizure and take out a Writ of Appraisement."[3] If the Crown did not timely return a cause-of-seizure or take out a writ-of-appraisement,[4] the owner of the seized property became "entitled to move for a Writ of Delivery" that would require the Crown to return the seized property.[5]

The common law observed a similar due-process limit after the Crown filed a cause-of-seizure and writ-of-appraisement. The Crown next had to file an information[6] to condemn the seized property.[7] If the Crown did not do this "in a month" after the owner

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[3] SIR GEOFFREY GILBERT, TREATISE ON THE COURT OF EXCHEQUER 182 (London, H. Lintot 1758).

[4] A writ-of-appraisement was "a writ issued out of court for the valuation of goods seized as forfeited to the crown." 38 A. REES, CYCLOPAEDIA (London, Rivington et al. 1819).

[5] GILBERT, *supra* note 3, at 182.

[6] An "information" was a statement of the King's right to a ruling "in his favor." JAMES MANNING, PRACTICE OF THE COURT OF EXCHEQUER 142 (London, A. Strahan 1827).

[7] B.Y., MODERN PRACTICE OF THE COURT OF EXCHEQUER 141 (London, E. & R. Nutt & R. Gosling 1730).

filed his claim to the property, the owner could again move for a writ of delivery, "which he might . . . have as a matter of course, upon giving security."[8]

American courts assimilated these traditions. If a seizing officer "refuse[d] to institute proceedings to ascertain [a] forfeiture," federal courts could "upon the application of the aggrieved party, compel the officer to proceed to adjudication, or to abandon the seizure." *Slocum v. Mayberry*, 15 U.S. 1, 10 (1817).[9] Or as Judge Learned Hand put it: "I can insist either that the collector proceed with the forfeiture or [that he] release the goods, and that I will do." *Standard Carpet Co. v. Bowers*, 284 F. 284, 285 (S.D.N.Y. 1922); *see also United States v. Specified Quantities of Intoxicating Liquors*, 7 F.2d 835, 836 (2d Cir. 1925) ("elementary" that the "propriety of a seizure in rem can always be raised by a motion to vacate").

This original understanding supports review of Petitioner's case. The due-process rights of vehicle owners should not be "any less secure" today than "they were at common law." *Sessions*, 138 S. Ct. at 1224 (Gorsuch, J., concurring-in-part). The common law provided for generations that property owners always had the procedural right to a hearing or like proceedings to obtain the return of seized property during the pendency of forfeiture litigation.

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[8] MANNING, *supra* note 6, at 162–63.

[9] In *Slocum*, a revenue officer "detained a vessel and cargo" under a federal embargo statute. *Bruen v. Ogden*, 11 N.J.L. 370, 382 (1830) (summarizing *Slocum*). After cargo's owners won a "writ of replevin in the state court of Rhode Island," this Court affirmed, concluding that the embargo statute "authorized a detention of the vessel only, and not of the cargo." *Id.*

CONCLUSION

Seventy years ago, Justice Robert H. Jackson gave a speech to the American Bar Association in which he asked his audience to consider "how far so-called rights of property can be swept away without encroaching upon rights of the person."[10] He offered an evocative example: "[m]y equal right to drive an automobile may be only a claim to use of property, but it concerns my personal freedom as well."[11]

The Court should finally settle what standard governs the assessment of whether vehicle owners possess a due-process right to continued-detention hearings for seized vehicles. Both the constancy of the *Mathews* due-process test across the nation and the vitality of ancient due-process norms for seized private property demand nothing less.

Respectfully submitted,

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[10] Hon. Robert H. Jackson, *The Task of Maintaining Our Liberties*, 39 A.B.A. J. 961, 963 (1953).

[11] *Id.*