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.

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

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Whether courts should apply *Mathews v. Eldridge*, 424 U.S. 319 (1976), or *Barker v. Wingo*, 407 U.S. 514 (1972), to determine whether due process requires a post-seizure, prejudgment hearing to challenge the government's retention of property—a retention hearing—during a civil forfeiture proceeding.

PARTIES TO THE PROCEEDING

Petitioners are Halima Culley and Lena Sutton. Each Petitioner filed a class action in district court and later appealed to the Eleventh Circuit, which consolidated the cases.

Respondents are Steven T. Marshall, in his official capacity as the Attorney General of Alabama; Keith Blackwood, in his official capacity as the District Attorney of Mobile County, Alabama (Thirteenth Judicial Circuit); the State of Alabama; the City of Satsuma, Alabama; and the Town of Leesburg, Alabama. Each Respondent was a defendant-appellee below, except the State of Alabama, which was an intervenor-appellee.

RELATED PROCEEDINGS

United States Court of Appeals (11th Cir.):

Culley v. Attorney General, State of Alabama, et al., No. 21-13805 (July 11, 2022)

Sutton v. Town of Leesburg, Alabama, et al., No. 21-13484 (July 11, 2022)

United States District Court (S.D. Ala.):

Culley v. Marshall, et al., No. 1:19-cv-701 (Sept. 29, 2021)

United States District Court (N.D. Ala.):

Sutton v. Town of Leesburg, Alabama, et al., No. 4:20-cv-00091 (Sept. 13, 2021)

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INTRODUCTION

For more than a year, Respondents (collectively, Alabama) deprived Petitioners Halima Culley and Lena Sutton of their vehicles, without any judicial oversight. Sutton had loaned her car to a friend, and police seized it when arresting him for trafficking methamphetamine. Culley bought her car for her son to use at college, and police seized it when arresting him for possessing marijuana. But neither Culley nor Sutton had done anything wrong. Neither was involved in or knew anything about the illegal activity, as judges would later conclude. Yet the police—who stood to keep the cars upon forfeiture, or any money they might generate—wouldn't hear it and refused Petitioners' repeated pleas to return their cars. The consequences were devastating. For Sutton, fourteen months without a car meant she couldn't find work, couldn't keep up with her bills, and couldn't keep her mental-health appointments—all because there was no opportunity for a neutral magistrate to ask Respondents what they were doing.

This case shows why our Constitution mandates that no state shall deprive any person of property without due process. A simple procedure, a retention hearing, could have prevented this abuse: a post-seizure hearing allowing Petitioners to contest the validity of Alabama's retention of their cars during the civil forfeiture actions. Indeed, when judges finally heard Petitioners' cases on the merits, they ruled that Petitioners were innocent owners protected against forfeiture under Alabama law, and ordered police to immediately return Petitioners' cars. As the familiar due process test set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976), makes clear, the Constitution

demanded a retention hearing. No wonder Alabama has since amended its civil forfeiture laws to require retention hearings.

But when Petitioners then brought due process claims under 42 U.S.C. § 1983, the court of appeals didn't apply *Mathews*. Instead, the court used the Sixth Amendment speedy trial test from *Barker v. Wingo*, 407 U.S. 514 (1972), to conclude that Petitioners weren't entitled to a retention hearing because the final merits hearings—more than a year after the seizures—were "timely." Pet. App. 8a. Even though Petitioners aren't criminal defendants. Even though this isn't a Sixth Amendment case. Even though the *Barker* test has nothing to do with due process in a *criminal* case, much less protecting property interests in a *civil* case. Even though none of the *Barker* factors tracks the private or governmental interests that have long underpinned this Court's due process precedents, or the concerns about erroneous deprivation of property absent the requested procedure.

The question presented is thus what test courts should apply to determine whether due process requires a retention hearing evaluating the government's continued deprivation of property during civil forfeiture proceedings. The answer is straightforward: the same flexible and proven due process test, articulated in *Mathews* and countless other decisions, that has long governed in civil settings to guard against the risk of mistaken and unwarranted deprivation of property. That test considers (1) the private interest affected; (2) the risk of an erroneous deprivation of that interest through the existing procedures used, as well as the probable value of additional safeguards; and (3) the Government's interest. 424 U.S. at 335. And here, it makes

clear that Petitioners were constitutionally entitled to retention hearings.

* * *

1. The Court has long applied the *Mathews* framework to determine whether due process requires more process in a civil case. The due process guarantee is "meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus*, 435 U.S. 247, 259 (1978). And the *Mathews* factors—(1) the private interest affected; (2) the risk of an erroneous deprivation of that interest through the existing procedures used, as well as the probable value of additional safeguards; and (3) the Government's interest, 424 U.S. at 335—implement that guarantee by helping determine which "procedural protections … the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Those factors have guided courts time and again to guard against arbitrary and mistaken government action, including in the civil forfeiture context. *See United States v. James Daniel Good Real Property*, 510 U.S. 43, 53 (1993). *Mathews* is the test for determining whether due process requires a retention hearing in a civil forfeiture action. *Accord Krimstock v. Kelly*, 306 F.3d 40, 51-53, 68 (2d Cir. 2002) (Sotomayor, J.).

2. The court of appeals rejected *Mathews* because it thought *United States v. $8,850 in U.S. Currency*, 461 U.S. 555 (1983), and *United States v. Von Neumann*, 474 U.S. 242 (1986), required it to apply *Barker*. Pet. App. 7a-8a. That is incorrect. *Barker* is a balancing test used to determine whether the prosecution has violated a criminal defendant's Sixth Amendment right to a speedy trial. *See* 407 U.S. at

530. It has nothing to do with whether the Constitution requires a retention hearing or other additional process to protect a distinct property right in a civil case. In fact, *Barker* isn't even the test for due process in the *criminal* context. Nor do any of the *Barker* factors account for the three critical considerations *Mathews* and countless other decisions have relied on to guard against mistaken or unjustifiable deprivations of property.

$8,850 and *Von Neumann* don't suggest otherwise. Neither decision addressed how to determine whether due process requires a retention hearing in a civil forfeiture action. *$8,850* addressed only the "narrow" question whether the government violated due process by delaying commencement of a forfeiture action, and the Court applied *Barker* by "analogy." 461 U.S. at 562, 564. But that "analogy" doesn't apply here, where the request is for more process to protect against erroneous deprivation of a distinct property interest pending a final forfeiture determination. And *Von Neumann* is less relevant still, addressing only a claim that the government acted too slowly in responding to a request for wholly discretionary relief despite its entitlement to forfeit the claimant's car. 474 U.S. at 243, 249-50. Here, in contrast, Alabama law mandates that an innocent owner's property "shall not be forfeited," Ala. Code § 20-2-93(w), and that property interest demands protection during the forfeiture action.

3. Although the *Mathews* framework is the answer to the question presented, the court of appeals did not apply *Mathews* . The Court can thus remand for the court of appeals to apply *Mathews*, or it can hold that Alabama violated Petitioners' due process rights by failing to provide a retention hearing.

Petitioners have a significant interest in possessing and using their cars during the forfeiture proceedings. And Alabama erroneously deprived them of their cars for over a year without *any* judicial oversight. The first two *Mathews* factors favor Petitioners and outweigh whatever interest Alabama may have (once) had in not providing a retention hearing.

OPINIONS BELOW

The court of appeals' single decision in both Petitioners' cases (Pet. App. 1a-9a) is unreported but available at 2022 WL 2663643. The district court decisions in Culley's case (Pet. App. 10a-59a) and Sutton's case (Pet. App. 60a-71a) are unreported but available at 2021 WL 4477900 and 2021 WL 4149784.

JURISDICTION

The court of appeals entered its judgment on July 11, 2022, and denied rehearing en banc on August 30, 2022. Petitioners timely filed a petition for a writ of certiorari on December 20, 2022, and the Court granted review on April 17, 2023. The Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced in the addendum to this brief.

STATEMENT

A. Legal background

1. a. Alabama law makes certain property "subject to seizure and forfeiture." Ala. Code § 20-2-93(b). That property includes "conveyances"—like cars—that "are used, or are intended for use, to transport, or in any manner to facilitate the

transportation, sale, receipt, possession, or concealment of" controlled substances. *Id.* § 20-2-93(b)(5). Although Alabama courts typically must authorize seizures under Section 20-2-93, law enforcement can, in certain scenarios, seize property "without process." *Id.* § 20-2-93(d). For example, court authorization is not required when the "seizure is incident to an arrest" or when there is "probable cause to believe that the property was used or is intended to be used" to violate Alabama law. *Id.* § 20-2-93(d)(1), (4). Once law enforcement has seized property, the government must "promptly" institute a civil forfeiture action. *Id.* § 20-2-93(e)(1).

Some property is categorically exempt from forfeiture under Section 20-2-93. *See, e.g.*, *id.* § 20-2-93(c)(1). As relevant here, Alabama has given "innocent owners" the right not to have their property forfeited. *See id.* § 20-2-93(w). An "innocent owner" is someone who "did not participate in," "have knowledge [of,] or consent to" the conduct that led to the seizure. *Id.* § 20-2-93(a)(4). Alabama law thus provides that "personal property, real property, or fixtures *shall not be forfeited* under [Section 20-2-93] … unless the state proves by a preponderance of the evidence that the act or omission [giving rise to the seizure] was committed or omitted with the knowledge or consent of th[e] owner." *Id.* § 20-2-93(w) (emphasis added).

b. Alabama law enforcement has "strong incentives to pursue forfeiture." *Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (statement of Thomas, J., respecting the denial of certiorari). Alabama is one of 25 states where "100% of forfeiture proceeds go to funds controlled by law enforcement." L. Knepper et al., Institute for Justice, *Policing for Profit: The Abuse of*

Civil Asset Forfeiture 34-35 (3d ed. 2020), https://tinyurl.com/Policing-for-Profit. "When property is forfeited under [Section 20-2-93]," the agency that seized the property can keep it for official use or sell it and keep all proceeds. Ala. Code § 20-2-93(s).

2. For many years, Alabama did not allow owners—including innocent owners—to challenge the government's retention of their cars during forfeiture proceedings. Instead, the "exclusive means for obtaining" "a seized vehicle during the pendency of a forfeiture proceeding" was to post a bond for "*double* the value of such property." *Alabama v. Two White Hook Wreckers*, 337 So. 3d 735, 738-39 (Ala. 2020) (emphasis added) (quoting Ala. Code § 28-4-287); *see also* Ala. Code § 20-2-93(h) (effective until Jan. 1, 2022) (incorporating by reference Ala. Code § 28-4-287). Thus, unless an innocent owner could afford a double-value bond, law enforcement could deprive her of her car for the entire forfeiture proceeding by withholding an opportunity to show that she was an innocent owner whose property "shall not be forfeited," Ala. Code § 20-2-93(w).

The inability to challenge Alabama's retention of seized property during forfeiture proceedings created significant hardship. For example, when law enforcement seized property "without process" (*i.e.*, without a warrant), the government could "promptly" institute a forfeiture action without obtaining a post hoc seizure order from a state court. *Id.* § 20-2-93(b)-(c) (effective until Jan. 1, 2022). Law enforcement could thus seize and retain an innocent owner's vehicle without *any* judicial oversight until the merits hearing on forfeitability. That unreviewed deprivation could last years. *See infra* pp. 8-9. And because "forfeiture operations frequently target the poor," *Leonard*, 137 S. Ct.

at 848 (statement of Thomas, J., respecting the denial of certiorari), Alabama's double-value bond provision was nothing more than "illusory hardship relief." *Olson v. One 1999 Lexus*, 924 N.W.2d 594, 600, 615 (Minn. 2019).

3. In 2022, Alabama added procedural protections to Section 20-2-93. *See* Ala. Act 2021-497 (effective Jan. 1, 2022); Opp. 2. Innocent owners now have a right to a retention hearing "any time after seizure of property and before entry of a conviction in the related criminal case." Ala. Code § 20-2-93(*l*). And when law enforcement seizes property without a warrant, the government cannot institute a forfeiture action without obtaining a post hoc seizure order from a state court. *Id.* § 20-2-93(e)(1)(a).

B. Factual and procedural background

1. This case arises out of Alabama law enforcement's warrantless seizure and attempted forfeiture of Lena Sutton's and Halima Culley's vehicles under Section 20-2-93. Sutton and Culley were innocent owners, and all relevant events occurred before the amendments to Section 20-2-93 took effect in 2022.

a. Sutton let her friend borrow her car, a 2012 Chevrolet Sonic. *See* J.A. 78; Pet. App. 3a, 62a; Opp. 2. On February 21, 2019, local law enforcement stopped Sutton's friend for speeding and, after searching the vehicle, arrested him for trafficking methamphetamine. J.A. 78-79; Pet. App. 62a. The authorities seized Sutton's car incident to the arrest. Pet. App. 3a.

Sutton did not participate in, know of, or consent to the drug trafficking. J.A. 79. She promptly and repeatedly called the police to get her car back. *See* J.A. 48-49, 79-80; Pet. App. 62a. But the police, refusing to

believe she was innocent, would not return it. J.A. 80. On March 6, 2019, fourteen days after the seizure, Alabama instituted a civil forfeiture action against Sutton's vehicle. Pet. App. 62a.

On May 28, 2020—more than fourteen months after the forfeiture action began—the state court ruled that Sutton *was* an innocent owner and that her car could not be forfeited under Section 20-2-93. J.A. 103-04; Pet. App. 3a, 63a-64a. Alabama never afforded her a retention hearing during that fourteen-month span, J.A. 81, causing her serious hardship. Without a car, she couldn't find work and missed several mental-health treatments; without an income, she fell behind on her bills. J.A. 49-50.

b. Culley experienced similar treatment. She bought a 2015 Nissan Altima for her son to use at college. J.A. 58; Pet. App. 15a-16a. On February 17, 2019, local law enforcement pulled over Culley's son and arrested him for possession of marijuana and drug paraphernalia. J.A. 59. The authorities seized Culley's car incident to the arrest. J.A. 59, 106; Pet. App. 3a.

Culley did not participate in, know of, or consent to the possession of marijuana or drug paraphernalia. Pet. App. 16a. So she contacted the police to get her car back. J.A. 59, 106-07. The authorities refused to return the car and instead instituted a civil forfeiture action ten days after seizing it. J.A. 59; Pet. App. 16a.

On October 30, 2020—twenty months after the forfeiture action began—the state court ruled that Culley was an innocent owner under Section 20-2-93 and thus was entitled to the return of her vehicle. *See* J.A. 116-17; Pet. App. 3a; Opp. 8-9. Culley never received a retention hearing, either. J.A. 60.

2. Culley and Sutton filed separate class actions in federal court under 42 U.S.C. § 1983, claiming that Alabama had deprived them of due process by retaining their cars for over a year without providing a retention hearing. Pet. App. 3a-4a. Culley sued the Attorney General of Alabama and the District Attorney of Mobile County, plus the City of Satsuma, from which she sought damages. Pet. App. 2a, 3a-4a, 6a & n.2. Sutton sued the Town of Leesburg, likewise seeking damages, and the State of Alabama eventually intervened. Pet. App. 2a, 4a, 6a & n.2,

Alabama prevailed in both actions. Pet. App. 4a. In each case, the district court applied the *Barker* test and ruled that Alabama's failure to provide a retention hearing did not violate due process. *Id.*

3. The Eleventh Circuit consolidated the cases, applied *Barker*, and affirmed. Pet. App. 1a-9a. The court rejected then-Judge Sotomayor's decision in *Krimstock*, which held that *Mathews*, not *Barker*, governs whether due process requires a retention hearing in a civil forfeiture action. *See Krimstock*, 306 F.3d at 51-53, 68; Pet. App. 7a-8a.

The court of appeals first held that this case presents a live controversy, because both Culley and Sutton seek damages for past harms. Pet. App. 6a. The court then held that "*Barker* rather than *Mathews*" controls the analysis. Pet. App. 7a. In choosing *Barker* over *Mathews*, the court conflated "the timeliness of a merits hearing on forfeiture" with the availability of a "hearing to determine whether [Alabama] can retain [Culley's and Sutton's] property during the pendency of litigation." *Id.* The court also rejected *Krimstock*, *see id.*, which explained that the availability of a "retention hearing" is distinct from,

and thus "not parallel" to, "delays in rendering final judgment," *Krimstock*, 306 F.3d at 53, 68. On the merits, the court held that Alabama's failure to provide Culley and Sutton retention hearings did not violate due process, because under *Barker* "a timely merits hearing affords a claimant all the process to which he is due." Pet. App. 8a. The court did not separately analyze the due process question under *Mathews*.

SUMMARY OF ARGUMENT

The question presented is how to determine whether due process requires a retention hearing to protect against erroneous deprivation of property during a civil forfeiture action. The answer is by applying the three-factor *Mathews* framework. A straightforward application of that framework makes clear that Respondents violated Petitioners' due process rights by failing to give them a meaningful procedure to protect against the indisputably erroneous deprivation of their vehicles during the civil forfeiture proceedings.

A. The *Mathews* framework governs whether due process requires a retention hearing in a civil forfeiture action. *Mathews* is the general approach for determining whether due process requires more process in a civil setting. A request for a retention hearing is a request for an additional procedure to protect against the erroneous deprivation of an owner's property during the forfeiture proceedings, separate from the process for the final forfeiture determination. Thus, as in every other civil case involving a request for additional procedures, *Mathews* applies.

1. The *Mathews* framework addresses whether due process requires additional procedures in a civil setting. Under *Mathews*, courts balance three factors:

the private interest, the risk of erroneous deprivation, and the governmental interest. *See* 424 U.S. at 335.

Because the purpose of the *Mathews* framework is "to evaluate the sufficiency of particular procedures," *Wilkinson v. Austin*, 545 U.S. 209, 224 (2005), the Court has consistently applied *Mathews* when a person claims that existing procedures are constitutionally deficient. Examples abound, and the civil forfeiture context is no exception. Indeed, *Good* balanced the *Mathews* factors to decide whether more process was due in a civil forfeiture action. *See* 510 U.S. at 53. As a long line of precedent confirms, *Mathews* governs whether due process requires more process in a civil setting.

2. The *Mathews* framework, and specifically its focus on weighing private and governmental interests, reflects historical practice. In *Goldberg v. Kelly*, 397 U.S. 254, 263 (1970) (citation omitted), for example, the Court emphasized that the necessity of additional process depends on whether the "private interest" "outweighs the governmental interest." *Goldberg* also considered whether the private interest at issue might be "erroneously terminated" without a pretermination hearing. *Id.* at 266. *Mathews* formalized the analytical framework that the Court has long applied when determining whether more process is due.

3. The *Mathews* framework honors the flexible nature of due process, which "calls for such procedural protections as the particular situation demands." *Morrissey*, 408 U.S. at 481. The contrast between *Mathews* and *Goldberg* illustrates the point. Both decisions evaluated the necessity of more process in a civil setting. And while the due process issues were "similar," *Mathews*, 424 U.S. at 340, the three-factor

inquiry led to different outcomes in each case. *See id.* at 339-49; *Goldberg*, 397 U.S. at 260-66. The point is that the *Mathews* framework sometimes will demand more process and other times it won't, consistent with the Court's time-honored understanding of the due process guarantee.

4. The answer to the question presented is that courts must apply the *Mathews* framework to decide whether due process requires a retention hearing in a civil forfeiture action. That conclusion follows from *Good* and the avalanche of precedent applying *Mathews* in civil cases involving requests for more process. And that conclusion makes sense in the civil forfeiture context, where the property interests at stake and the risk of erroneously depriving owners of their property during the forfeiture proceedings—two of the three *Mathews* factors—are likely to weigh in favor of needing a retention hearing for owners asserting their innocence. *See Olson*, 924 N.W.2d at 612-16.

B. The court of appeals erroneously believed that this Court's decisions in *$8,850*, 461 U.S. 555, and *Von Neumann*, 474 U.S. 242, required it to apply *Barker* rather than *Mathews*. Pet. App. 7a-8a. But *Barker* is inapposite. It addresses whether the government, through its delay, has violated a criminal defendant's Sixth Amendment right to a speedy trial. The issue here, in contrast, is whether the Constitution requires additional process to protect a claimant's right to possess and use her property during civil forfeiture proceedings. These questions, as then-Judge Sotomayor explained, "are not parallel." *Krimstock*, 306 F.3d at 53. The court of appeals erred in applying *Barker* over *Mathews*.

1. Under *Barker*, to determine whether the government has violated the Sixth Amendment by delaying a criminal trial, courts must balance (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) the prejudice to the defendant. 407 U.S. at 530. The first *Barker* factor proves that the test is focused on how quickly the government brings a criminal defendant to trial and not the constitutional sufficiency of any trial or pretrial procedures. "The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors." *Id.* Other aspects of *Barker*, too, show that the framework focuses on the timely application of existing procedures, rather than the "the sufficiency of particular procedures." *Wilkinson*, 545 U.S. at 224.

Barker is not designed to address whether due process requires any particular process even in the *criminal* context—let alone whether due process requires a retention hearing during *civil* forfeiture proceedings, the kind of routine due process question that only *Mathews* can answer. Indeed, in the civil forfeiture context, *Barker* applies only—and only by "analogy"—to the speedy-forfeiture-action question, *$8,850*, 461 U.S. at 564. And as then-Judge Sotomayor explained, "the speed with which" a government conducts civil forfeiture proceedings is a different question from the necessity of additional procedures "while those proceedings are conducted." *Krimstock*, 306 F.3d at 68.

2. The *Barker* framework fails to account for the private and governmental interests that this Court's precedents have long recognized as critical considerations. *See, e.g.*, *Goldberg*, 397 U.S. at 263. Indeed, *none*

of the *Barker* factors tracks those considerations. *Barker* cannot be the test for whether the Constitution requires more process to protect against erroneous deprivation of property during forfeiture proceedings when the test doesn't weigh either side's interests respecting that property.

3. The *Barker* framework also disregards the flexible nature of due process. When courts apply *Mathews* to determine whether due process requires a retention hearing in a civil forfeiture action, the answer is sometimes "yes" and sometimes "no." *See, e.g.*, *Olson*, 924 N.W.2d at 600, 608-16. But when courts apply *Barker*, the answer is *always* "no." *See, e.g.*, Pet. App. 7a. That rigid result flouts the time-honored principle that "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey*, 408 U.S. at 481.

4. Neither *$8,850*, 461 U.S. 555, nor *Von Neumann*, 474 U.S. 242, resolves the question presented here or whether due process requires a retention hearing in a civil forfeiture action.

The "narrow" question in *$8,850* was whether the government violated due process by waiting 18 months to file a civil forfeiture action. *See* 461 U.S. at 562. *$8,850* says nothing about how to evaluate whether due process requires a retention hearing, or any other kind of process, during civil forfeiture proceedings. As then-Judge Sotomayor explained, a claim about the government's delay in initiating an action for a final forfeiture adjudication is different from a request for a retention hearing to protect a claimant's interest in possessing and using property during the forfeiture proceedings. *Krimstock*, 306 F.3d at 68.

Von Neumann is even farther afield. Like *$8,850*, *Von Neumann* addressed only a challenge to the government's delay in implementing an existing procedure, and not a claim that due process required a retention hearing or any other additional procedures. 474 U.S. at 243. What's more, the Court resolved the case on the narrow ground that the remission procedure couldn't give rise to a due process claim because it gave the government "the discretion not to pursue a complete forfeiture despite the Government's entitlement to one." *Id.* at 249-50. That reasoning is not relevant here, because Alabama law mandates that an innocent owner's property "shall not be forfeited." Ala. Code § 20-2-93(w).

C. The *Mathews* framework is the answer to the question presented. But the court of appeals did not apply *Mathews*. Thus, the Court can either remand for *Mathews* balancing or balance the *Mathews* factors itself, holding that Alabama violated Petitioners' due process rights by failing to provide a retention hearing. The first two *Mathews* factors strongly favor Petitioners, who had significant interests in retaining their cars during the forfeiture proceedings. Yet Alabama erroneously deprived them of their vehicles for over a year without *any* judicial oversight. Due process demands better. Alabama's minimal interest in not providing a retention hearing (before the amendment effective in 2022) cannot excuse its arbitrary action. Respondents deprived Petitioners of due process by failing to afford them an opportunity to contest the deprivation of their vehicles during the forfeiture proceedings.

ARGUMENT

A. The *Mathews* framework governs whether due process requires a retention hearing in a civil forfeiture action.

Civil forfeiture regimes "must comply with the Due Process Clauses of the Fifth and Fourteenth Amendments." *Good*, 510 U.S. at 52. The Constitution thus imposes procedural limitations on a government's ability to seize, retain, and forfeit a person's property. In most due process cases, the question is simply "what process is due." *Wilkinson*, 545 U.S. at 224. But this case asks which test courts should use to determine whether due process requires a retention hearing in a civil forfeiture action to protect against erroneous deprivation of property during the forfeiture proceedings.

The answer is the *Mathews* balancing test: a court should evaluate the private interest, the risk of erroneous deprivation, and the governmental interest. Many times over many years, and even before *Mathews* itself, the Court has applied this approach to evaluate whether the Constitution requires more process in a civil setting—including in a civil forfeiture case. *See Good*, 510 U.S. at 53. The reason is the *Mathews* framework's ability to balance the important interests at stake to determine what "procedural protections … the particular situation demands." *Morrissey*, 408 U.S. at 481. Here, Petitioners sought retention hearings to protect their interests in their cars during civil forfeiture proceedings. The *Mathews* test applies, just as it did in *Good* and every other civil case involving a request for more process.

1. The *Mathews* framework has long been the test for assessing whether due process requires additional procedures.

The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. 14, § 1. That Clause protects against arbitrary government action, *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), and it "centrally concerns … fundamental fairness," *North Carolina Dep't of Revenue v. Kimberly Rice Kaestner 1992 Fam. Tr.*, 139 S. Ct. 2213, 2219 (2019) (citation omitted). The due process guarantee is "meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Carey*, 435 U.S. at 259. These guiding principles demand a flexible, "intensely practical" analytical framework, *Goss v. Lopez*, 419 U.S. 565, 578 (1975), because "not all situations calling for procedural safeguards call for the same kind of procedure," *Morrissey*, 408 U.S. at 481. Indeed, a "procedural rule that may satisfy due process in one context may not necessarily satisfy procedural due process in every case." *Bell v. Burson*, 402 U.S. 535, 540 (1971).

In civil settings, when a person claims that existing procedures are constitutionally deficient, the Court applies the "familiar" *Mathews* framework. *Connecticut v. Doehr*, 501 U.S. 1, 10 (1991). The framework requires courts to balance three factors: (1) "the private interest affected"; (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." *Good*, 510 U.S. at 53 (citing *Mathews*, 424 U.S. at 335).

The Court has "embraced [the *Mathews*] framework" specifically "to evaluate the sufficiency of particular procedures." *Wilkinson*, 545 U.S. at 224. It is the "general approach" for analyzing whether the Constitution requires more process. *Parham v. J.R.*, 442 U.S. 584, 599 (1979). And the Court consistently has applied *Mathews* when determining the "specific dictates of due process" in "a civil proceeding." *Turner v. Rogers*, 564 U.S. 431, 444 (2011) (citation omitted).

Take *Good*, a civil forfeiture case where the Court applied *Mathews* to determine whether more process was due. The claimant argued that the government violated due process by failing to provide notice and a hearing before seizing his house under federal forfeiture laws. *See Good*, 510 U.S. at 46-47. The Court held that the *Mathews* framework applied, because the due process question turned on "the competing interests at stake, along with the promptness and adequacy of later proceedings." *Id.* at 53. The Court then balanced the three *Mathews* factors, *see id.* at 53-59, holding that the government's failure to "afford notice and a meaningful opportunity to be heard" before seizing "Good's real property violated due process," *id.* at 62.

Other examples abound. The Court has applied *Mathews*:

- to determine whether Colorado's procedures governing the ability of exonerated defendants to recoup conviction-related assessments comported with due process, *Nelson v. Colorado*, 581 U.S. 128, 134-39 (2017);
- to determine whether the Constitution required Ohio to provide additional process before

transferring prisoners to its highest security prison, *Wilkinson*, 545 U.S. at 224-30;

- to determine whether state officials violated due process by "failing to provide notice and a hearing before suspending a tenured public employee without pay," *Gilbert v. Homar*, 520 U.S. 924, 926, 931-32 (1997);
- to evaluate the sufficiency of Kentucky's involuntary commitment procedures, *Heller v. Doe ex rel. Doe*, 509 U.S. 312, 330 (1993);
- "to determine whether a state statute that authorizes prejudgment attachment of real estate without prior notice or hearing, without a showing of extraordinary circumstances, and without a requirement that the person seeking the attachment post a bond, satisfies" due process, *Doehr*, 501 U.S. at 4; *see id.* at 11-18;
- to determine "whether a judicial hearing is required before [Washington] may treat a mentally ill prisoner with antipsychotic drugs against his will," *Washington v. Harper*, 494 U.S. 210, 213, 229 (1990);
- to assess whether state officials violated due process by failing to provide certain "procedural safeguards" before committing a mentally ill patient, *Zinermon v. Burch*, 494 U.S. 113, 115, 127 (1990);
- to determine "what pretermination process must be accorded a public employee who can be discharged only for cause," *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 535, 542-43 (1985);

- to determine whether "the procedural safeguards contained in [a New York state law are] adequate to authorize the pretrial detention of at least some juveniles charged with crimes," *Schall v. Martin*, 467 U.S. 253, 264 (1984); and
- to evaluate whether due process requires an "administrative procedure for entertaining [municipal utility] customer complaints prior to termination [of their utility service]," *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 18 (1978).

As this "mountain of precedent" shows, *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612, 1630 (2018), the *Mathews* framework determines whether the Constitution's due process guarantee requires additional procedures in a civil setting.

2. The *Mathews* framework, with its focus on balancing the private and governmental interests, reflects historical practice interpreting the due process guarantee.

The *Mathews* factors have a long lineage. As *Mathews* explained, *see* 424 U.S. at 333-35, and as the Court has since reiterated, "the now familiar threefold inquiry" stems from pre-*Mathews* precedent, *Doehr*, 501 U.S. at 10.

Take *Goldberg*, which held "that due process requires an adequate hearing before termination of welfare benefits, and the fact that there is a later constitutionally fair proceeding does not alter the result." 397 U.S. at 261 (citation omitted). *Goldberg* predated *Mathews*, but it applied the same basic framework. It emphasized that the due process inquiry depends on whether the "private interest" "outweighs the

governmental interest," *id.* at 263 (citation omitted), the first and third *Mathews* factors, *see* 424 U.S. at 335. *Goldberg* also considered the risk that welfare payments might be "erroneously terminated" without a pretermination hearing, 397 U.S. at 266, the second *Mathews* factor. After balancing these factors, *Goldberg* held that "the stakes are simply too high for the welfare recipient, and the possibility for honest error or irritable misjudgment too great, to allow termination of aid without giving the recipient a chance … [to] contest its basis and produce evidence in rebuttal." *Id.* (alteration adopted; citation omitted).

Goldberg's emphasis on the first and third *Mathews* factors—the private and governmental interests at stake—reflects still older historical practice interpreting the due-process guarantee. For example, *Goldberg* quoted (397 U.S. at 263) *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 367 U.S. 886, 895 (1961), which held that precedent makes "clear" that the analytical framework "must" focus on "the precise nature of the government function involved" and "the private interest that has been affected by governmental action." In *McElroy*, the government revoked an individual's access to a building that contained highly classified weapons systems. *Id.* at 887-88. The individual, through her labor union, claimed that due process required the government to conduct a hearing regarding "the specific grounds for her exclusion." *Id.* at 894. The Court balanced "the private interest which has been impaired and the governmental power which has been exercised," holding "that under the circumstances … such a procedure was not constitutionally required." *Id.* at 894-96.

Still more pre-*Mathews* decisions show that the Court has consistently analyzed the private and

governmental interests when determining whether due process requires additional procedures. In *Bell*, for example, the Court held that the government had to provide a hearing in certain circumstances before it could suspend a driver's license. *See* 402 U.S. at 542. The Court rejected the argument "that the licensee's interest in avoiding the suspension of his licenses is outweighed by countervailing governmental interests." *Id.* at 540. In *Fuentes v. Shevin*, 407 U.S. 67, 82, 96-97 (1972) (citation omitted), the Court considered "the importance of the interests involved" in holding that the government in certain scenarios had to provide notice and an opportunity to be heard before seizing property under a writ of replevin. And in *Fusari v. Steinberg*, 419 U.S. 379, 389-90 (1975), the Court stated that "[i]dentification of the precise dictates of due process requires consideration of both the governmental function involved and the private interests affected," and then remanded for the lower court to apply that standard in the first instance. *See also Morrissey*, 408 U.S. at 481-83; *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971).

The Court's pre-*Mathews* precedent also solidified its application of what would become the second *Mathews* factor—the risk of erroneous deprivation. In *Fuentes*, for instance, the Court explained that the primary purpose of procedural due process is "to minimize substantively unfair or mistaken deprivations of property." 407 U.S. at 81; *see also Arnett v. Kennedy*, 416 U.S. 134, 188-89 (1974) (White, J., concurring in part and dissenting in part). The Court reiterated this principle in *Carey*, 435 U.S. at 259-60, quoting both *Mathews* and *Fuentes*. "Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified

deprivation of life, liberty, or property." *Id.* at 259. "Thus, in deciding what process constitutionally is due in various contexts, the Court repeatedly has emphasized that 'procedural due process rules are shaped by the risk of error inherent in the truth-finding process.'" *Id.* (citation omitted).

In sum, *Mathews* crystallized the analytical framework that the Court has long considered when determining whether more process is due.

3. The *Mathews* framework honors the flexible nature of due process.

The *Mathews* framework accounts for the circumstance-dependent nature of the due process guarantee. "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *McElroy*, 367 U.S. at 895. The Court has thus applied the *Mathews* framework "fully realizing," *Goss*, 419 U.S. at 577-78, that sometimes more process will be due and sometimes it won't. In practice, the *Mathews* framework has met its promise.

Mathews and *Goldberg* illustrate the point. *Goldberg* held that due process required the government to hold a hearing before terminating welfare benefits, *see* 397 U.S. at 260-66, whereas *Mathews* held that due process did not require the government to hold a hearing before terminating disability benefits, *see* 424 U.S. at 339-49. The due process issues in these cases were "similar," *id.* at 340, but the three-factor inquiry led to different outcomes, mainly because the private interest affected by the termination of benefits—the first *Mathews* factor—was more significant for the person receiving welfare benefits. As *Mathews* explained, "the disabled worker's need is likely to be less than

that of a welfare recipient" given that disability benefits, unlike welfare benefits, typically do not provide the recipient with "the very means by which to live." *Id.* at 340, 342 (citation omitted). Thus, on balance, due process required more process in *Goldberg* than it did in *Mathews*.

Other examples, too, show that the *Mathews* framework fits the flexible nature of due process. Sometimes the Court has held that existing procedures were constitutionally inadequate. *See, e.g.*, *Good*, 510 U.S. at 62; *Nelson*, 581 U.S. at 130; *Doehr*, 501 U.S. at 4; *Loudermill*, 470 U.S. at 547-48; *Craft*, 436 U.S. at 22. At other times, the Court has held that existing procedures were sufficient. *See, e.g.*, *Wilkinson*, 545 U.S. at 213; *Gilbert*, 520 U.S. at 931-35; *Heller*, 509 U.S. at 315; *Harper*, 494 U.S. at 228; *Schall*, 467 U.S. at 255-57.

The point is simple: whether due process requires additional procedures varies from situation to situation, and the *Mathews* framework honors that reality.

4. *Mathews* is the right test for assessing whether due process requires a retention hearing in a civil forfeiture action.

These precedents and principles answer the question presented: Courts should apply the *Mathews* framework to determine whether due process requires a retention hearing in a civil forfeiture action to test "the 'probable validity' of continued deprivation of a claimant's property during the pendency of legal proceedings." *Krimstock*, 306 F.3d at 48.

a. A request for a retention hearing in a civil forfeiture action is a request for a judicial assessment to determine whether deprivation of property *during* the

forfeiture proceedings is warranted, rather than whether the government's fully developed case on the merits justifies final deprivation of the property at the end of those proceedings. *See Krimstock*, 306 F.3d at 52. The whole point of the *Mathews* framework is to answer that kind of due process question. And the Court has repeatedly, both before and after *Mathews*, balanced the *Mathews* factors when analyzing whether due process requires more procedures in a civil setting. *Supra* pp. 19-24.

That mountain of precedent controls. As explained, *Good* is particularly instructive. *Good* applied *Mathews* to determine whether due process requires additional procedures in the civil forfeiture context. 510 U.S. at 53. True, *Good* involved real property, whereas this case involves personal property. But that difference isn't relevant to the question presented, because the due process guarantee does not "distinguish among different kinds of property." *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 608 (1975). So, if the *Mathews* framework governs whether more process is due in a civil forfeiture action involving real property, then it must also govern whether more process is due in a civil forfeiture action involving personal property. Indeed, as the Chief Justice has explained, "it is clear" that *Mathews* "provides the relevant inquiry" when the question is whether more process is due in a forfeiture proceeding that is separate from the criminal process. *Kaley v. United States*, 571 U.S. 320, 350 n.4 (2014) (Roberts, C.J., dissenting).

b. It makes sense that the *Mathews* framework applies to a request for a retention hearing. For over 150 years, "the central meaning of procedural due process has been clear: 'Parties whose rights are to be

affected are entitled to be heard' … 'at a meaningful time and in a meaningful manner.'" *Fuentes*, 407 U.S. at 80 (citations omitted). The purpose of that guarantee is to protect the private interest, like the right to freely possess and use one's property, and to minimize erroneous deprivations. *Id.* at 80-81. Those are the first and second *Mathews* factors, 424 U.S. at 335, and they are just as important in the civil forfeiture context as they are in any other civil context where the government seeks to deprive a person of their life, liberty, or property. And a retention hearing protects an important property interest that may—as here—otherwise go unprotected: the interest against deprivation of the property during the forfeiture proceedings themselves, whenever the final determination may occur.

If anything, the civil forfeiture context underscores the need to consider the private interest affected and the risk of erroneous deprivation. For starters, it is unclear whether modern civil forfeiture regimes are even constitutional. *See Leonard*, 137 S. Ct. at 849-50 (statement of Thomas, J., respecting the denial of certiorari). Moreover, even assuming "the broad modern forfeiture practice" can survive scrutiny, *id.* at 850, there still is a significant risk that the deprivation of property during the forfeiture proceedings may cause irreparable injury, *Good*, 510 U.S. at 56. Given how "congested civil dockets" are, "a claimant may not receive an adversary hearing until many months after the seizure." *Id.* "And even if the ultimate judicial decision is that the claimant was an innocent owner, or that the Government lacked probable cause, this determination, coming months after the seizure, 'would not cure the temporary deprivation that an earlier hearing might have prevented.'" *Id.*

(citation omitted); *accord Krimstock*, 306 F.3d at 63-64. The Due Process Clause thus "requires that the party whose property is taken be given an opportunity for some kind of predeprivation *or prompt post-deprivation hearing* at which some showing of the probable validity of the deprivation must be made." *Commissioner v. Shapiro*, 424 U.S. 614, 629 (1976) (emphasis added); *see Krimstock*, 306 F.3d at 68.

Of course, in any given forfeiture case, a court might find that the balance of the *Mathews* factors does not require a retention hearing. For example, in *Olson*, the Minnesota Supreme Court applied the *Mathews* framework to hold that Minnesota's failure to provide a retention hearing violated due process *only* with respect the owner asserting innocence (Helen) and *not* with respect to the nonowner whose conduct gave rise to the seizure (Megan). 924 N.W.2d at 600, 608-16. That makes sense: An owner has a stronger property interest in her car than a nonowner, and the risk of erroneous deprivation is greater for one claiming innocence. That's precisely why courts must balance the *Mathews* factors when deciding whether due process requires a retention hearing—something the court of appeals here failed to do.

B. The *Barker* framework does not govern whether due process requires a retention hearing in a civil forfeiture action.

The court of appeals erroneously believed that *$8,850*, 461 U.S. 555, and *Von Neumann*, 474 U.S. 242, "required" it "to apply *Barker* rather than *Mathews*" to determine whether, under the circumstances, Alabama's failure to provide a retention

hearing violated due process. Pet. App. 7a-8a. That conclusion was mistaken.

First, the *Barker* framework has nothing to do with the question presented here. *Barker* governs a distinct and narrow timing question: whether the government, through its delay, has violated a criminal defendant's Sixth Amendment right to a speedy trial to produce a final determination of guilt or innocence. But the question here is whether due process requires a procedure for testing the continued deprivation of property pending a final civil forfeiture adjudication.

These questions, then-Judge Sotomayor explained, "are not parallel." *Krimstock*, 306 F.3d at 53. The question here is whether more process is due in a civil case to protect a distinct property interest—the very kind of routine due process question *Mathews* has always governed. The *Barker* framework isn't designed to answer that kind of question, and so it makes no sense to import it by analogy here. Indeed, this Court has *never* applied *Barker* in a civil context beyond the narrow speedy-forfeiture-action question addressed in *$8,850* and *Von Neumann*. In fact, the *Barker* framework is not the test for due process challenges even in the *criminal* context, where *other* constitutional guarantees and tests protect against erroneous deprivation of liberty pending a trial. Simply put, applying the *Barker* framework here cannot be squared with this Court's due process precedents. For example, none of the *Barker* factors adequately accounts for the private or governmental interests. And when the lower courts have applied the *Barker* framework to determine whether due process requires a retention hearing in a civil forfeiture action, the answer has *always* been "no." That rigid result flouts the time-honored principle that "due process is flexible

and calls for such procedural protections as the particular situation demands." *Morrissey*, 408 U.S. at 481.

Second, neither *$8,850* nor *Von Neumann* purported to address the question presented here. *$8,850* held that the government's delay in *commencing* a civil forfeiture action did not violate due process under the *Barker* framework. 461 U.S. at 569-70. But the decision did not speak to how a court should address a claim that due process requires an additional procedure to protect an innocent owner's distinct interest against erroneous deprivation of property during the forfeiture proceedings. And *Von Neumann* held that the government's 36-day delay in resolving a remission petition did not violate due process because the remission procedure was discretionary and did not affect the claimant's underlying property interest. 474 U.S. at 249-50. Nothing in *$8,850* or *Von Neumann* supports applying *Barker* over *Mathews* here.

1. The *Barker* framework addresses the Sixth Amendment right to a speedy criminal trial, not whether more process is due to protect a distinct property interest in a civil case.

Barker established a framework for evaluating whether a government, by delaying the trial of an accused, has violated the criminal defendant's Sixth Amendment right to a speedy trial. *See* 407 U.S. at 515-16, 530-33. The *Barker* framework, colloquially called the "speedy trial test," *Krimstock*, 306 F.3d at 68, requires courts to balance four factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) the prejudice to the defendant. *Barker*, 407 U.S. at 530. The narrow scope of that test makes sense for its limited

purpose, because other constitutional protections, including the due process guarantee, govern the sufficiency of other aspects of a criminal trial.

a. The speedy trial test focuses on the prosecution's speed in bringing a criminal defendant to trial. The first *Barker* factor proves the point. "The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." *Id.* And typically, delay is not "presumptively prejudicial"—meaning the speedy trial test is not even triggered—until it "approaches one year." *Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992). This focus on the "promptness" of governmental action, *id.* at 652, rather than "the sufficiency of particular procedures," *Wilkinson*, 545 U.S. at 224, shows that the *Barker* framework, even when extended by analogy into the civil context, is designed only to ensure that a government implements existing procedures in a timely manner. *See infra* pp. 37-40.

Other aspects of the *Barker* test confirm that the framework focuses only on the timeliness of existing criminal process. *Barker* explained that a prolonged delay creates several problems. 407 U.S. at 519. It backlogs courts, "enabl[ing] defendants to negotiate more effectively for pleas of guilty to lesser offenses and otherwise manipulate the system." *Id.* It also creates more opportunities for "persons released on bond … to commit other crimes" or "jump bail and escape." *Id.* at 519-20. The "delay between arrest and punishment," the Court reasoned, also "contributes to the overcrowding and generally deplorable state of" local jails. *Id.* at 520. That, in turn, could cause "violent rioting," and it increases by "millions" the cost of detaining individuals before trial. *Id.* As *Barker* saw it,

the source of those problems is not insufficient process, but delays in bringing a defendant to trial.

b. The *Barker* framework is not designed to address whether due process requires additional procedures in the *criminal* context, much less in the civil context. That makes sense given that the Sixth Amendment right to a speedy trial is qualitatively "different from any of the other rights enshrined in the Constitution." *Id.* at 519. Indeed, *Barker* doesn't supply the test for *any* of the many other criminal procedure questions, from whether law enforcement may arrest a defendant without a warrant, *United States v. Watson*, 423 U.S. 411, 423-24 (1976); to whether a defendant's liberty interest pending trial warrants a prompt arraignment, *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975); or whether pretrial or trial procedures comport with due process, *see, e.g.*, *Medina v. California*, 505 U.S. 437, 445 (1992). Similarly, in the civil forfeiture context, *Barker* applies only—and only by "analogy"—to the speedy-forfeiture-action issue, *$8,850*, 461 U.S. at 564, as discussed below (at 37-40). The *Barker* framework cannot answer whether due process requires additional procedures—like a retention hearing—in a civil forfeiture action.

As then-Judge Sotomayor explained, "the speed with which" a government conducts civil forfeiture proceedings and the availability of additional procedures "while those proceedings are conducted" are different questions. *Krimstock*, 306 F.3d at 68. The *Mathews* framework governs the latter. Indeed, the *Barker* framework *cannot* govern the availability of additional process, like a retention hearing in a civil forfeiture action, because "the speedy trial test presumes prior resolution" of such issues, "leaving only the issue of delay in the proceedings." *Id. Mathews*,

not *Barker*, governs whether due process requires a retention hearing in a civil forfeiture action.

Bolstering this commonsense conclusion, the Court has applied *Mathews*, not *Barker*, even when the due process question concerns timing. In *City of Los Angeles v. David*, 538 U.S. 715, 716-19 (2003) (per curiam), for example, the Court balanced the *Mathews* factors and held that the government's "27-day delay in holding a hearing here reflects no more than a routine delay substantially required by administrative needs." And in *Mackey v. Montrym*, 443 U.S. 1, 10-19 (1979), and *Dixon v. Love*, 431 U.S. 105, 112-15 (1977), although "the sole question presented [was] the appropriate timing of the legal process due," the Court made clear that the "question must be determined by reference to the [*Mathews*] factors." *Mackey*, 443 U.S. at 11. Neither *David*, *Mackey*, nor *Dixon* applied *Barker*. Of course, the Court need not decide how courts must determine whether a delay in implementing existing procedures violates due process. But the Court's application of *Mathews* to *that* question reaffirms that *Mathews* governs the question the Court has so often applied it to answer: whether due process requires additional procedures in a civil setting.

Lastly, the remedy for a violation of the speedy trial right confirms that *Barker* doesn't address whether more process is due. "[T]he only possible remedy" "for [the] denial of a speedy trial" is "dismissal of [the] indictment." *Strunk v. United States*, 412 U.S. 434, 439-40 (1973) (quoting *Barker*, 407 U.S. at 522). Thus, *Barker* doesn't allow a court to fashion "a 'practical' remedy" that both affords more process, like a retention hearing in a civil forfeiture action, and permits a final adjudication. *Id.* at 437. *Barker* is inapposite at every turn.

2. The *Barker* framework fails to account for the private and governmental interests.

When the question is whether more process is due, courts "must" determine whether the "private interest" "outweighs the governmental interest." *Goldberg*, 397 U.S. at 263 (citation omitted); *see supra* pp. 21-23. But none of the *Barker* factors corresponds to those significant considerations. The *Barker* framework thus fails to adequately balance two crucial components of the due process inquiry.

Start with the private interest, the first *Mathews* factor. *See* 424 U.S. at 335. While due process protects "'property' generally," not all property is entitled to the same protection. *Fuentes*, 407 U.S. at 90 & n.21. "The temporary deprivation of a job" or "the use of [an] automobile," for example, "typically works a far more serious harm" than the temporary deprivation of money. *David*, 538 U.S. at 717-18. Courts thus must carefully consider the private interest affected by the government action. But *Barker* does not adequately account for "the degree of difference" between varying private interests. *Mathews*, 424 U.S. at 341.

The first two *Barker* factors—the length of the delay and the reason for the day—clearly miss the mark. The third *Barker* factor—the defendant's assertion of his right—similarly is inapt, because its sole focus is *whether*, not *why*, the defendant asserted his right to a speedy trial. *See* 407 U.S. at 531. The fourth *Barker* factor—prejudice to the defendant—also fails to account for the private interest affected. As *Barker* explained, the "most serious" consideration with respect to this factor is the extent to which the delay impaired the defense. *Id.* at 532. But no such

impairment results from a government's continued retention of a person's property throughout a forfeiture proceeding. Thus, a person's significant interest in possessing and using her property, like a vehicle, during a forfeiture proceeding will play little to no part in a court's analysis of the fourth *Barker* factor. Indeed, Alabama agrees, arguing that the "temporary deprivation of [Petitioners'] cars … is not a relevant form of prejudice for this analysis." Opp. 21.

The *Barker* framework also doesn't adequately account for that governmental interest, the third *Mathews* factor. 424 U.S. at 335. The government sometimes has "a substantial interest" in taking action without affording additional process, *Kaley*, 571 U.S. at 334, and that interest may sometimes outweigh the competing private interests, *see, e.g.*, *Wilkinson*, 545 U.S. at 227-29. And the Court historically has considered the government's interest when asking whether more process is due. *Supra* pp. 21-23. But the closest *Barker* comes to addressing that interest is to ask "whether the government or the criminal defendant is more to blame for the delay." *Vermont v. Brillon*, 556 U.S. 81, 90 (2009) (alteration adopted; citation omitted). The government's justification for delaying trial, however, is different from its interest in taking action in a civil setting without affording additional process. When evaluating whether the Constitution requires *more* process to protect a distinct property interest, the reason a government delayed commencing a civil action is unhelpful, if not irrelevant.

In sum, the *Barker* factors cannot address whether due process requires additional procedures.

3. Using the *Barker* framework to determine whether due process requires a retention hearing ignores the flexible nature of due process.

"It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey*, 408 U.S. at 481. In practice, that means a government's failure to afford certain procedures may violate due process in one case but not in another.

The *Mathews* framework, unlike *Barker*, honors "the flexible concepts of due process." *United States v. Raddatz*, 447 U.S. 667, 677 (1980). Sometimes the *Mathews* framework will require a retention hearing in civil forfeiture actions. Other times it won't. *See Olson*, 924 N.W.2d at 608-16; *supra* p. 28. The same cannot be said for the *Barker* framework. Courts applying *Barker* have held that due process will *never* require a retention hearing in a civil forfeiture action because "a merits hearing on forfeiture, 'if timely,'" is all due process requires. Pet. App. 7a (citation omitted); *see also People v. One 1998 GMC*, 960 N.E.2d 1071, 1082 (Ill. 2011); *Nichols v. Wayne County*, 822 F. App'x 445, 453 (6th Cir. 2020) (McKeague, J., concurring). And "timely" does not mean "prompt," because the speedy trial test typically doesn't even apply until the delay "approaches one year." *Doggett*, 505 U.S. at 652 n.1. Thus, as lower court decisions show, applying *Barker* makes due process rigid and inflexible in the civil forfeiture context, contrary to fundamental due process principles.

4. The Court has never extended *Barker* to address whether due process requires a retention hearing in a civil forfeiture action, and it should not do so now.

The court of appeals thought that it had "to apply *Barker* rather than *Mathews*" based on *$8,850* and *Von Neumann*. Pet. App. 7a-8a. But neither decision addressed the question presented or otherwise justifies ignoring *Mathews*, the "general approach" for analyzing whether more process is due in a civil setting. *Parham*, 442 U.S. at 599. Indeed, the Court has *never* applied *Barker* in any other civil context.

a. *$8,850* did not hold that courts should apply *Barker*, rather than *Mathews*, to evaluate whether due process requires a retention hearing in a civil forfeiture action, and its reasoning doesn't support that conclusion, either. *$8,850* held only that the government's 18-month delay between seizing money and filing a civil forfeiture action didn't violate due process under the *Barker* framework. 461 U.S. at 569-70. That holding says nothing about whether the Constitution may require more process to protect against erroneous deprivation of property during the forfeiture action.

i. The "narrow" question in *$8,850* was whether the government violated due process by waiting 18 months to institute a civil forfeiture action against cash seized by U.S. customs officials. *Id.* at 561-62. The Court chose to analyze that "narrow" question under *Barker* because it found the Sixth Amendment speedy trial issue an "apt analogy." *Id.* at 562, 564. The Court recognized the mismatch in constitutional guarantees between "the Sixth Amendment right to a speedy trial" and "the Fifth Amendment right against

deprivation of property without due process of law." *Id.* at 564. It nonetheless reasoned that the due process claim concerned "only the length of time between the seizure and the initiation of the forfeiture trial," such that the claim "mirror[ed] the concern of undue delay encompassed in the right to a speedy trial." *Id.* at 562, 564. Applying the *Barker* factors, *$8,850* held that the 18-month delay between seizing money and instituting a civil forfeiture action did not violate due process. *See id.* at 565-70.

ii. *$8,850* provides no guidance about how to evaluate whether due process requires a retention hearing, or any other kind of additional process, in a civil forfeiture action. That's because the Court's reasoning by "analogy" to *Barker*'s Sixth Amendment speedy trial test addressed only the "narrow" argument that the government's "'dilatory' commencement of the civil forfeiture action violated [the claimant's] right to due process." *Id.* at 561, 562, 564. Perhaps that argument tracks the Sixth Amendment speedy trial test. But it does not track what the question presented here asks: whether the failure to provide additional process to protect against deprivation of the right to property during forfeiture proceedings violates the due process guarantee.

Then-Judge Sotomayor explained this point in *Krimstock*. The purpose of a retention hearing is not to address a "delay[] in rendering final judgment," but to "review … the propriety of continued government custody" pending final judgment. *Krimstock*, 306 F.3d at 68. The distinction reflects the different interests at stake. The due process claim in *$8,850* concerned the government's delay in initiating the process that would lead to the "final judgment of forfeiture" adjudicating ultimate ownership of the property. *Id.* at 52.

The claim here, in contrast, concerns the lack of process "'to protect [the claimant's] use and possession of [the] property from arbitrary encroachment' … during the pendency of [the forfeiture] proceedings." *Id.* at 53 (quoting *Good*, 510 U.S. at 53). While a timely merits hearing may protect a claimant's ultimate ownership interest, it does not protect an innocent owner's interest against deprivation of her property pending that final adjudication. That possessory interest requires a different kind of procedural protection: a "prompt post-deprivation hearing at which some showing of the probable validity of the deprivation must be made." *Shapiro*, 424 U.S. at 629.

$8,850's reasoning by "analogy" to the criminal process shows that *Barker* cannot be the test for retention hearings. Consider, as perhaps "[a] more apt analogy," *$8,850*, 461 U.S. at 564, the Fourth Amendment requirement of a judicial "determination of probable cause," "either before or promptly after arrest," "as a condition for any significant pretrial restraint of liberty," *Gerstein*, 420 U.S. at 125. Just as the due process guarantee considers both private and government interests, the *Gerstein* rule balances "important competing interests" in "protecting public safety," on the one hand, and avoiding "prolonged detention based on incorrect or unfounded suspicion," on the other. *County of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991). *Gerstein* requires "a fair and reliable determination of probable cause" "promptly" after a warrantless arrest, *id.* at 54-55, but its balancing test "allow[s] a substantial degree of flexibility" in the precise timing, *id.* at 56. To state the obvious, *Gerstein*, not *Barker*, is the test for whether the state has provided adequate pretrial process for determining probable cause supporting detention pending trial.

The *Gerstein* example shows that there is no reason to think the speedy-trial test provides an apt analogy supporting application of *Barker* when the claimant seeks a retention hearing to protect against erroneous deprivation of property during the forfeiture action.

b. *Von Neumann* similarly did not hold that *Barker*, rather than *Mathews*, governs whether due process requires a retention hearing in a civil forfeiture action. All *Von Neumann* held was that due process did not constrain the government's implementation of an existing, entirely discretionary remission procedure resting on the government's "entitlement" to "a complete forfeiture." 474 U.S. at 250. For that reason, *Von Neumann* explained, the government did not violate the claimant's right to due process by waiting 36 days to act on a remission petition.

i. *Von Neumann* turned exclusively on the "role" that a discretionary remission mechanism plays in the federal customs forfeiture regime. *Id.* at 249. Federal customs law subjects to forfeiture "any article not declared upon entry into the United States which by law must be declared." *Id.* at 243-44 (citing 19 U.S.C. § 1497). If the government seizes property under § 1497, the owner generally has two options. *First*, the owner can file a petition for the remission or mitigation of the penalty or forfeiture. 19 U.S.C. § 1618. "The remission statute … grants the Secretary [of the Treasury] the discretion not to pursue a complete forfeiture despite the Government's entitlement to one." *Von Neumann*, 474 U.S. at 250. Thus, the owner can ask the government to cancel or reduce the penalty to which the government is entitled given the violation of federal customs law. 19 U.S.C. § 1618. *Second*, the owner can challenge the initial seizure and the

penalty or forfeiture in a civil action filed by the government. *Von Neumann*, 474 U.S. at 244.

The question in *Von Neumann* was whether a 36-day delay in responding to Von Neumann's remission petition violated his right to due process. *Id.* at 243. Customs agents seized Von Neumann's car, worth $24,500, after he drove it across the border without declaring it. *Id.* at 245-46. Von Neumann filed a remission petition, and 36 days later, the government told him it would reduce the penalty to $3,600. *Id.* at 246. Von Neumann sued, claiming that the 36-day delay in acting on his remission petition was too long. *Id.* at 246-47. He did not claim that the government should have made more process available.

The Court rejected Von Neumann's arguments. *First*, it held that because remission is entirely discretionary, due process does not constrain how the government exercises that discretion (and if so, when). *Id.* at 249-50. Von Neumann argued that the "remission procedure is just one step in which it is determined whether [his] property interest will be extinguished." *Id.* at 249. But the Court explained that the remission procedure is "not *necessary* to a forfeiture determination," because remission rests on "the Government's *entitlement*" to forfeiture of property brought across the border "without the required declaration," no matter the claimant's intent. *Id.* at 249-50 (second emphasis added; citations omitted). Put another way, the remission procedure did not address "Von Neumann's property interest in the car." *Id.* at 249. Instead, "[t]he remission statute simply grants the Secretary the discretion not to pursue a complete forfeiture despite the Government's entitlement to one." *Id.* at 250. The Court thus reasoned that "there is no constitutional basis for a claim that [Von

Neumann's] interest in the car … entitles him to a speedy answer to his remission petition." *Id.*

Second, the Court held that "even if" the customs statute "itself creates a property right which cannot be taken away without due process … any due process requirement of timely disposition was more than adequately provided here." *Id.* The Court underscored that Von Neumann gave "no hint as to how or why even a 36-day delay in the disposition of his remission petition deprived him of the process he claims was his due in connection with that petition," and noted that "he was without his car for [just] 14 days" anyway. *Id.* at 250-51.

ii. *Von Neumann* doesn't support applying *Barker* rather than *Mathews* to determine whether due process requires a retention hearing in a civil forfeiture action.

For starters, *Von Neumann* never addressed the methodological question—how to determine whether more process is due—because it held that due process does not govern governmental conduct that is entirely discretionary. *See id.* at 249-50. That holding makes sense as a matter of basic due process principles. Due process protects "a legitimate entitlement to a benefit or a justifiable expectation of receiving it"; it does not create a protectable "interest 'if government officials may grant or deny it in their discretion.'" *Williams v. City of Detroit*, 54 F.4th 895, 899 (6th Cir. 2022) (Sutton, C.J.) (quoting *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005)). Put another way, due process doesn't protect a supposed interest "to which no particular claimant is *entitled* as a matter of state law." *District Att'y's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 67-68 (2009) (citing *Connecticut*

Board of Pardons v. Dumschat, 452 U.S. 458, 464 (1981)). And because relief under a discretionary procedure like remission "is manifestly not a matter of right under any circumstances, but rather is in all cases a matter of grace," *Jay v. Boyd*, 351 U.S. 345, 354 (1956), it cannot support a due process claim. Here, in contrast, an innocent owner is entitled not to have property forfeited—grace has nothing to do with it. *Supra* p. 6.

Additionally, as with *$8,850*, the due process issue in *Von Neumann* concerned only the timing of an existing procedure for resolving the forfeiture dispute, not the need for additional procedures to protect against deprivation of property during the forfeiture proceedings. Von Neumann claimed only that the government waited too long to act on his petition for remission, discretionary relief separate from any underlying property interest. He did not claim that due process requires a retention hearing in a civil forfeiture action—after all, the government released the car two weeks after seizing it. *Von Neumann*, 474 U.S. at 245-46. Here, by contrast, Alabama retained Petitioners' vehicles for over a year. *Supra* pp. 8-9. And unlike Von Neumann, Petitioners claim that due process requires a retention hearing in a civil forfeiture action. Because *Von Neumann* had nothing to do with the availability of additional process to protect a distinct property interest, much less a retention hearing, it does not inform the methodological question here.

iii. Alabama may rely on two sentences in *Von Neumann* to argue that *$8,850* resolved all due process claims in the civil forfeiture context. *See Von Neumann*, 474 U.S. at 249 ("Implicit 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 process to protect Von Neumann's property interest in the car."); *id.* at 251 ("[Von Neumann's] right to a forfeiture proceeding meeting the *Barker* test satisfies any due process right with respect to the car and the money."). But those sentences do not purport to resolve the question presented here, about how to determine what process is due to protect a property interest during the forfeiture proceedings. Neither *$8,850* nor *Von Neumann* presented or addressed that question.

As noted, *$8,850* involved only the "narrow" issue about the government's speed in initiating the civil forfeiture action, 461 U.S. at 562, and *Von Neumann* involved only a claim that a discretionary remission procedure wasn't fast enough, 474 U.S. at 246-47. Thus, read in context, those sentences are at most dicta suggesting an "[i]mplicit" "view that the forfeiture proceeding" provides due process *as to the ultimate ownership determination*. *Id.* at 249. But the Court did not confront, and those sentences do not address, whether due process requires an additional procedure to protect an innocent owner against unwarranted deprivation of her property *during* those forfeiture proceedings. *Supra* pp. 37-39. Thus, reading *Von Neumann* to suggest that *$8,850* somehow "[i]mplicit[ly]" resolved *every* due process issue that might arise in a civil forfeiture action, including whether due process requires a retention hearing, strays far beyond both opinions' narrow context. Even if the sentences purported to say that, they would be dicta going far "beyond the case," and "ought not to control the judgment in a subsequent suit when the very point is presented for decision" and "investigated with care." *Cohens v. Virginia*, 6 Wheat. 264, 399 (1821) (Marshall, C.J.).

C. Under *Mathews*, Alabama violated due process by failing to provide Petitioners a retention hearing.

The *Mathews* framework governs whether, under the circumstances, due process requires a retention hearing in a civil forfeiture action. But the court of appeals failed to balance the *Mathews* factors. Thus, although the Court can leave that question for remand, it can also apply the *Mathews* framework and hold that Alabama violated due process. The first two *Mathews* factors strongly favor Petitioners. They had weighty interests in using their vehicles during the forfeiture proceedings. Yet Alabama erroneously deprived them of their vehicles for over a year without *any* judicial oversight. Alabama's interests are too minimal to excuse that arbitrary deprivation. Due process required Alabama to give Petitioners a retention hearing.

1. Petitioners have significant property interests in their vehicles during the forfeiture proceedings.

Alabama has not disputed before this Court that the first *Mathews* factor—the private interest—strongly favors Petitioners, *see* Opp. 22, and for good reason. The Court has "frequently recognized the severity of depriving a person of the means of livelihood." *Loudermill*, 470 U.S. at 543; *see also Goldberg*, 397 U.S. at 264. And there is no question that cars can be a crucial resource for earning a living. In *Bell*, for instance, the Court explained that "continued possession" of a driver's license "may become essential in the pursuit of a livelihood." 402 U.S. at 539. In *David*, similarly, the Court recognized that "a temporary

deprivation of the use of [an] automobile" causes a "serious harm." 538 U.S. at 717.

That makes sense. "A car or truck is often central to a person's livelihood or daily activities." *Krimstock*, 306 F.3d at 44. Taking away someone's car "can result in missed doctor's appointments, missed school, and perhaps most significant of all, loss of employment." *Smith v. City of Chicago*, 524 F.3d 834, 838 (7th Cir. 2008), *vacated as moot sub nom. Alvarez v. Smith*, 558 U.S. 87 (2009). It also can affect the owner's "economic interest in selling, leasing, or using the vehicle as collateral to obtain financial benefits." *Olson*, 924 N.W.2d at 612.

Petitioners' experiences illustrate these points. Take Sutton, who, as a result of losing her vehicle for over 14 months, was unable to find work, fell behind on her bills, and missed medical appointments. J.A. 49-50. As explained, Alabama has given "innocent owner[s]"—like Petitioners—the right to not have their property forfeited. *See* Ala. Code § 20-2-93(w). That "state-created right … beget[s] yet other rights to procedures essential to [its] realization." *Osborne*, 557 U.S. at 68 (citation omitted). And the innocent owner's right against forfeiture loses much of its meaning if the state can hold the property during the forfeiture proceedings, despite the harm it causes. Innocent owners, by virtue of Alabama law, have a unique need for heightened procedural safeguards.

2. Alabama erroneously deprived Petitioners of their vehicles for over a year.

a. The second *Mathews* factor—the risk of erroneous deprivation through the procedures used and the value of other safeguards—also strongly

favors Petitioners. Alabama erroneously deprived Petitioners of their vehicles for over a year without *any* judicial oversight. Although Petitioners promptly and repeatedly called the police to get their cars back because they had no involvement in or knowledge of the illegal activity, the police refused to release their vehicles. *Supra* pp. 8-9. A retention hearing could have prevented that unwarranted harm. Indeed, once Petitioners finally had a chance to be heard, the courts uncovered the error and ordered Alabama to return the vehicles immediately. *See supra* pp. 8-9.

These cases show exactly why an opportunity to be heard by a neutral decisionmaker "is the only truly effective safeguard against arbitrary deprivation of property." *Fuentes*, 407 U.S. at 83. Respondents had "strong incentives to pursue forfeiture," *Leonard*, 137 S. Ct. at 848 (statement of Thomas, J., respecting the denial of certiorari)—"a direct pecuniary interest" in forfeiting Petitioners' vehicles, *Good*, 510 U.S. at 56—and Petitioners' innocent-owner defense "received *absolutely no consideration*" for over a year, *Olson*, 924 N.W.2d at 613. Alabama could have avoided inflicting unwarranted harm on Petitioners had it provided "an opportunity for some kind of … prompt post-deprivation hearing at which some showing of the probable validity of the deprivation must be made." *Shapiro*, 424 U.S. at 629.

b. Alabama nonetheless claims that "the process worked" because Petitioners eventually got their cars back over a year later. Opp. 22. That is not a serious argument. Petitioners sought retention hearings to protect their property interests in their vehicles *during the forfeiture proceedings*. There was *no process* to address that critical property interest, and the result was the significant harm described above.

Alabama also suggests that the double-value bond provision excused it from providing a retention hearing. Opp. 16. (Before Alabama amended Section 20-2-93, posting a bond for *double* the vehicle's value was the "exclusive means for obtaining" a seized vehicle during a forfeiture proceeding. *Two White Hook Wreckers*, 337 So. 3d at 738-39.) But the government cannot cure a property deprivation by demanding *twice* the value in *other property*. *Olson* is instructive. There, the Minnesota Supreme Court held that the innocent owner was entitled to a retention hearing even though she did not post a bond for the value of her vehicle, as state law allowed. *Olson*, 924 N.W.2d at 615. If the opportunity to post a bond *equaling* the property's value is "illusory hardship relief," *id.*, then the opportunity to post a bond worth *twice* the property's value is downright delusional. That is especially true given that "forfeiture operations frequently target the poor." *Leonard*, 137 S. Ct. at 848 (statement of Thomas, J., respecting the denial of certiorari).

3. Alabama's minimal interests do not tip the scales.

The third *Mathews* factor—the governmental interest—does not outweigh the first two *Mathews* factors, which strongly favor Petitioners. In a civil forfeiture case, the relevant governmental interest "is not some general interest in forfeiting property," but "the specific interest" in not affording additional process. *Good*, 510 U.S. at 56.

Alabama's interest in not funding a retention hearing is a featherweight. "[C]ost alone is not a controlling weight in determining whether due process requires a particular procedural safeguard." *Mathews*,

424 U.S. at 348. And Alabama has volunteered to bear that cost going forward. *See* Ala. Code § 20-2-93(*l*).

Assuming Alabama has an interest in ensuring that seized vehicles are not "used for further illegal activity prior to the forfeiture judgment," *Good*, 510 U.S. at 58, that interest "weighs less" here because Petitioners are innocent owners, *Olson*, 924 N.W.2d at 612, as a retention hearing would have shown. Alabama's interest in preventing "the offending *res*—here, the seized vehicle—from being used as an instrumentality in future [unlawful] acts" is therefore at its weakest, because the failure to provide a retention hearing could—and in fact, did—deprive "innocent owners of the often indispensable benefits of daily access to their vehicles." *Krimstock*, 306 F.3d at 66.

Lastly, assuming Alabama has an interest in ensuring that seized vehicles are not sold or destroyed before the forfeiture merits hearing, *Good*, 510 U.S. at 58, that interest doesn't justify the double-value bond provision—the only way to get a car back before 2022. If the goal is preserving the value of the property that may be forfeited, then requiring a *double*-value bond is clearly excessive, if not punitive. *Cf. Leonard*, 137 S. Ct. at 848 (statement of Thomas, J., respecting the denial of certiorari). The double-value bond mechanism cannot outweigh the need for a retention hearing under the circumstances.

CONCLUSION

The Court should hold that *Mathews*, not *Barker*, governs whether due process requires a retention hearing in civil forfeiture actions, and that Respondents violated Petitioners' right to due process by failing to give them a retention hearing to protect their interest in their vehicles during the forfeiture proceedings.

Respectfully submitted.

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June 22, 2023

ADDENDUM

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ADDENDUM A

AMENDMENT XIV, SECTION 1, TO THE UNITED STATES CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ADDENDUM B

Ala. Code § 20-2-93 (effective until Jan. 1, 2022) provides:

Forfeitures; seizures.

(a) The following are subject to forfeiture:

(1) All controlled substances which have been grown, manufactured, distributed, dispensed or acquired in violation of any law of this state;

(2) All raw materials, products and equipment of any kind which are used or intended for use in manufacturing, cultivating, growing, compounding, processing, delivering, importing or exporting any controlled substance in violation of any law of this state;

(3) All property which is used or intended for use as a container for property described in subdivision (1) or (2) of this subsection;

(4) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law of this state; all proceeds traceable to such an exchange; and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any law of this state concerning controlled substances;

(5) All conveyances, including aircraft, vehicles, or vessels, or agricultural machinery, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any

property described in subdivision (1) or (2) of this subsection;

(6) All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used or intended for use in violation of any law of this state concerning controlled substances;

(7) All imitation controlled substances as defined under the laws of this state;

(8) All real property or fixtures used or intended to be used for the manufacture, cultivation, growth, receipt, storage, handling, distribution, or sale of any controlled substance in violation of any law of this state;

(9) All property of any type whatsoever constituting, or derived from, any proceeds obtained directly, or indirectly, from any violation of any law of this state concerning controlled substances;

(b) Property subject to forfeiture under this chapter may be seized by state, county or municipal law enforcement agencies upon process issued by any court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) The state, county, or municipal law enforcement agency has probable cause to believe that

the property is directly or indirectly dangerous to health or safety; or

(4) The state, county or municipal law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the state, county or municipal law enforcement agency subject only to the orders and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the state, county or municipal law enforcement agency may:

(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.

(e) When property is forfeited under this chapter the state, county or municipal law enforcement agency may:

(1) Retain it for official use; except for lawful currency (money) of the United States of America which shall be disposed of in the same manner

provided for the disposal of proceeds from a sale in subdivision (e)(2) of this section;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale authorized by this subsection shall be used, first, for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of or custody, advertising and court costs; and the remaining proceeds from such sale shall be awarded and distributed by the court to the municipal law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of whose law enforcement agencies or departments are determined by the court to have been a participant in the investigation resulting in the seizure, and such award and distribution shall be made on the basis of the percentage as determined by the court, which the respective agency or department contributed to the police work resulting in the seizure. Provided however, any proceeds from sales authorized by this section awarded by the court to a county or municipal law enforcement agency or department shall be deposited into the respective county or municipal general fund and made available to the affected law enforcement agency or department upon requisition of the chief law enforcement official of such agency or department.

(3) Require the state, county or municipal law enforcement agency to take custody of the property and remove it for disposition in accordance with law.

(f) Controlled substances listed in Schedule I that are possessed, transferred, sold or offered for sale in violation of any law of this state are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of any law of this state or of which the owners or cultivators are unknown or which are wild growths may be seized and summarily forfeited to the state.

(h) An owner's or bona fide lienholder's interest in real property or fixtures shall not be forfeited under this section for any act or omission unless the state proves that that act or omission was committed or omitted with the knowledge or consent of that owner or lienholder. An owner's or bona fide lienholder's interest in any type of property other than real property and fixtures shall be forfeited under this section unless the owner or bona fide lienholder proves 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. Except as specifically provided to the contrary in this section, the procedures for the condemnation and forfeiture of property seized under this section shall be governed by and shall conform to the procedures set out in Sections 28-4-286 through 28-4-290, except that: (1) the burden of proof and standard of proof

shall be as set out in this subsection instead of as set out in the last three lines of Section 28-4-290; and (2) the official filing the complaint shall also serve a copy of it on any person, corporation, or other entity having a perfected security interest in the property that is known to that official or that can be discovered through the exercise of reasonable diligence.

(Acts 1971, No. 1407, p. 2378, § 504; Acts 1981, No. 81-413, p. 650; Acts 1982, No. 82-426, p. 670, § 4; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1; Acts 1988, No. 88-651, p. 1038, § 2; Acts 1989, No. 89-525, p. 1074; Acts 1990, No. 90-472.)

ADDENDUM C

Ala. Code § 20-2-93 (effective Jan. 1, 2022) provides:

Forfeitures; seizures.

(a) For the purposes of this section only, the following words shall have the following meanings:

(1) CHARGEABLE CRIMINAL OFFENSE. An offense in which property is used or otherwise implicated as property subject to forfeiture under subsection (b). The term includes any act that could be charged as a felony or misdemeanor, regardless of whether a formal criminal prosecution or delinquency proceeding has begun at the time the forfeiture was initiated.

(2) CONTRABAND. All property as described in subsections (t) and (u). The term includes drug paraphernalia, as defined in Section 13A-12-260, and illegal firearms.

(3) FORFEITURE ACTION. A civil action to forfeit property to the state which is initiated by the prosecuting authority in accordance with this section.

(4) INNOCENT OWNER. A bona fide purchaser, lienholder, mortgagee, or other owner, other than a defendant, of property that is subject to forfeiture, including any of the following:

a. A person who has a valid claim, lien, or other interest in the property seized, who did not have knowledge or consent to the conduct that caused the property to be forfeited, seized, or abandoned under subsection (n) and

which property is subject to the requirements of subsection (w).

b. A person who has an interest in the property and did not participate in the commission of a crime or delinquent act giving rise to the forfeiture.

(5) INVENTORY. A written, itemized list of all property seized under this section that names all persons to whom the inventory is given at the time of the seizure, as provided in Rule 3.11 of the Alabama Rules of Criminal Procedure.

(6) KNOWLEDGE. An awareness or understanding of information, a fact, or a condition.

(7) PROSECUTING AUTHORITY. The Attorney General, a district attorney, or a designee thereof.

(8) RESPONDENT. Any person asserting a claim or interest in the property subject to the forfeiture action.

(9) SEIZING AGENCY. A state, county, or municipal law enforcement agency or department that seizes property in accordance with this section.

(10) SEIZURE ORDER. A written order issued by a court in connection with a seizure, establishing that probable cause exists to believe that the seizure is valid as described by this section. The term includes, but is not limited to, a search warrant issued pursuant to Article 1, commencing with Section 15-5-1, of Chapter 5 of Title 15.

(b) The following are subject to seizure and forfeiture:

(1) All controlled substances that have been grown, manufactured, distributed, dispensed, or acquired in violation of any law of this state.

(2) All raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, cultivating, growing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of any law of this state.

(3) All monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law of this state; all proceeds traceable to such an exchange; and all monies, negotiable instruments, and securities used or intended to be used to facilitate any violation of any law of this state concerning controlled substances.

(4) All property that is used or intended for use as a container for property described in subdivision (1), (2), or (3).

(5) All conveyances, including aircraft, vehicles, or vessels, or agricultural machinery, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of, any property described in subdivision (1), (2), or (3).

(6) All books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used or intended for use in violation of any law of this state concerning controlled substances.

(7) All imitation controlled substances, as defined under the laws of this state.

(8) All real property or fixtures used or intended to be used for the manufacture, cultivation,

growth, receipt, storage, handling, distribution, or sale of any controlled substance in violation of any law of this state.

(9) All property of any type whatsoever constituting, or derived from, any proceeds obtained directly, or indirectly, from any violation of any law of this state concerning controlled substances.

(c)(1) All of the following are exempt from seizure and forfeiture under this section:

a. United States currency totaling two hundred fifty dollars ($250) or less.

b. A motor vehicle that is less than five thousand dollars ($5,000) in market value.

(2) For purposes of seizures and forfeitures under subdivision (1), the Attorney General shall advise law enforcement agencies of publications the agencies may use to establish the value of a motor vehicle.

(3) The district attorney for a judicial circuit may increase the minimum dollar amounts provided in subdivision (1) for seizures and forfeitures that occur within the judicial circuit.

(d) Except as provided in subsection (c), property subject to forfeiture under this section may be seized by a seizing agency upon process issued by any court having jurisdiction over the property. Seizure without process may be made under any of the following conditions:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant.

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in

a criminal injunction or forfeiture proceeding based upon this chapter.

(3) The seizing agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(4) The seizing agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(e)(1) In the event of a seizure pursuant to subsection (d), proceedings under subsection (p) shall be instituted promptly. Prior to the commencement of a forfeiture action by the prosecuting authority under this section against property not seized pursuant to a warrant, the seizing agency shall do all of the following:

a. Within seven business days, or an extension of time for good cause shown, after the seizure pursuant to subsection (d), obtain a seizure order from any circuit or district judge in the jurisdiction of the seizure.

b. Within 14 days after obtaining a seizure order under paragraph a., the seizing agency shall present the seizure order and an application for forfeiture, which shall include an inventory, to the prosecuting authority in the jurisdiction for consideration.

(2)a. Upon the issuance of a seizure order pursuant to this subsection, the clerk of the court for the jurisdiction shall establish a circuit civil case number and file the order in that case number, which shall become the case number for the forfeiture action should a prosecuting authority file a forfeiture action pursuant to subsection (g).

b. At the request of the seizing agency, the court may order the filing sealed to protect the confidentiality of any ongoing investigation or witnesses.

(3) If the prosecuting authority has not filed a forfeiture action pursuant to this section after 90 days from the date of the seizure order, the clerk shall notify the judge assigned to the case who may review the case with the prosecuting authority for a possible dismissal due to inaction. Pursuant to an order under this subsection, the property shall be tendered to the owner within 14 business days after the dismissal, unless the property is contraband, in which case the property shall be destroyed at the conclusion of the criminal case.

(4) On motion by the prosecuting authority, property otherwise due to be tendered to the owner pursuant to subdivision (3) or subsection (f) may be retained by the prosecuting authority for the duration of the criminal prosecution only if the prosecuting authority proves, by a preponderance of the evidence, that the seized property is necessary for evidentiary purposes in the criminal prosecution, and that the use of affidavits, photographic evidence, or other admissible evidence is an insufficient means to establish an element of the underlying criminal offense.

(f) A forfeiture action may only be instituted after a finding of probable cause by the prosecuting authority that the seizure is valid. If the prosecuting authority does not find probable cause that the seizure is valid, the property shall be tendered to the owner within 14 business days of the denial, unless the property is

contraband, in which case the property shall be destroyed at the conclusion of the criminal case.

(g) Upon compliance with subsection (f), the prosecuting authority may file a forfeiture action in the circuit court under this section within 42 days, or a greater time upon a showing of good cause to the court, from the date of the seizure of the property.

(h) The seizing agency shall provide an inventory to any person in possession of the seized property at the time of the seizure. The inventory shall be prima facie evidence of notice of the seizure to any person served with the inventory at the time of the seizure.

(i)(1) Nothing in this section shall be construed to permit a seizing agency to conduct extrajudicial seizures or forfeitures.

(2) A law enforcement officer may not induce or require a person to waive, for purposes of a seizure or forfeiture action, the person's interest in property.

(j) On motion of any party, the court may stay the proceedings under this section, including any requirement under the Alabama Rules of Civil Procedure.

(k) Nothing in this section shall prevent the pro tanto dismissal of any party pursuant to the Alabama Rules of Civil Procedure.

(l) An innocent owner may petition the court for a hearing under Section 15-5-63 at any time after seizure of property and before entry of a conviction in the related criminal case.

(m) The state may stipulate that the interest of an innocent owner is exempt from forfeiture upon presentation of proof of the claim. The state shall file

the stipulation with the court exercising jurisdiction over the forfeiture action, and the filing of the stipulation shall constitute an admission by the state that the interest is exempt from forfeiture. If a stipulation is submitted, no further claim, answer, or pleading shall be required of the stipulated innocent owner or lienholder, and a judgment shall be entered exempting that interest from forfeiture. An order under this subsection shall waive all court costs.

(n) Convictions or adjudications of chargeable criminal offenses may be considered by the court as prima facie evidence that the property seized is contraband, proceeds, or instrumentalities, and is due to be forfeited. The conviction or adjudication may be proven by the court taking judicial notice or by providing a certified copy of the conviction or adjudication to the court.

(o) All civil forfeiture cases are in rem and all issues shall be tried in the circuit court without the presence of a jury. The state must prove by a preponderance of the evidence the property subject to forfeiture is an instrumentality of, or proceeds derived directly from, a chargeable criminal offense.

(p)(1) The state may file for a default judgment against any party at any time pursuant to the Alabama Rules of Civil Procedure unless the case is stayed under subsection (j). The state may satisfy its burden for a default judgment with testimony taken under oath, or by presenting a sworn to and notarized affidavit.

(2) A respondent shall be deemed to have abandoned the property and any claims to the property, and a default judgment may be entered by the court, upon the occurrence of any of the following:

a. The death of the respondent.

b. The deportation of the respondent.

c. The absconding of the respondent. Violation of bond in the underlying criminal case and the issuance of a failure to appear warrant is prima facie evidence of the respondent's abandonment of the property.

(q) As part of an order of final judgment, pursuant to a trial or a default judgment hearing, the court shall not condemn and forfeit an instrumentality that is disproportionate to the underlying chargeable criminal offense or offenses that gave rise to the forfeiture action. Among other factors, the court may consider the following in determining whether a seizure is proportional to the underlying chargeable criminal offense or offenses:

(1) The extent to which the property was used in committing the chargeable criminal offense or offenses.

(2) The extent to which the respondent participated in the chargeable criminal offense or offenses.

(3) Any legitimate use of the property seized.

(4) The maximum possible prison sentence for the chargeable criminal offense or offenses.

(5) The maximum possible fines for the chargeable criminal offense or offenses.

(6) Possession of a firearm by the respondent during the chargeable criminal offense or offenses.

(7) The seriousness of the chargeable criminal offense or offenses and its impact on the community,

including the duration of the activity and the harm caused.

(r) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the seizing agency, subject only to the orders and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the seizing agency may do any of the following:

(1) Place the property under seal.

(2) Remove the property to a place designated by the seizing agency.

(3) Require the seizing agency to take custody of the property and remove the property to an appropriate location for disposition in accordance with law.

(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.

(s) When property is forfeited under this chapter, the seizing agency may do any of the following:

(1) Retain the property for official use; except for lawful currency of the United States of America which shall be disposed of in the same manner provided for the disposal of proceeds from a sale in subdivision (2).

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale authorized by this subdivision shall be used, first, for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of or custody, advertising, and court costs; and the

remaining proceeds from the sale shall be awarded and distributed by the court to the seizing agency or prosecuting authority following a determination of the court of which law enforcement agencies are determined by the court to have been a participant in the investigation resulting in the seizure and litigation. The award and distribution shall be made on the basis of the percentage, as determined by the court, of which respective law enforcement agency or prosecuting authority contributed to the police work or litigation resulting in the seizure and forfeiture. Provided, however, any proceeds from sales authorized by this section awarded by the court to a county or municipal law enforcement agency shall be deposited into the respective county or municipal general fund and made available to the affected law enforcement agency or department upon requisition of the chief law enforcement official of the agency.

(3) Require the seizing agency to take custody of the property and remove it for disposition in accordance with law.

(t) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of any law of this state are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(u) Species of plants from which controlled substances in Schedules I and II may be derived, which have been planted or cultivated in violation of any law of this

state or of which the owners or cultivators are unknown or which are wild growths, are contraband and may be seized and summarily forfeited to the state.

(v) As used in this subsection, the term "false or secret compartment" means any enclosure that is integrated into or attached to a vehicle, the purpose of which enclosure is to conceal, hide, or prevent discovery of contraband by a law enforcement officer. The term includes, but is not limited to, false, altered, or modified fuel tanks; original factory equipment on a vehicle that has been modified; and any compartment, space, or box that is added or attached to existing compartments, spaces, or boxes of the vehicle. Upon the seizure of a vehicle, the court may infer that the respondent intended to use a false or secret compartment to conceal a controlled substance or other contraband if the vehicle has a false or secret compartment that concealed a controlled substance or other contraband, or evidence is shown of the previous concealment of a controlled substance or other contraband within the false or secret compartment.

(w) An innocent owner's interest in personal property, real property, or fixtures shall not be forfeited under this section for any act or omission unless the state proves by a preponderance of the evidence that the act or omission was committed or omitted with the knowledge or consent of that owner. An owner's interest in any type of property other than real property, personal property, and fixtures shall be forfeited under this section unless the owner proves that the act or omission subjecting the property to forfeiture was committed or omitted without the owner's knowledge or consent. Except as specifically provided to the contrary in this section, the procedures for the condemnation and forfeiture of property seized under

this section shall be governed by and shall conform to the procedures set out in Sections 28-4-286 through 28-4-290, except that: (1) The burden of proof and standard of proof shall be as set out in this subsection instead of as set out in the last three lines of Section 28-4-290; and (2) the official filing the complaint shall also serve a copy of it on any person, corporation, or other entity having a perfected security interest in the property that is known to that official or that can be discovered through the exercise of reasonable diligence.

(x)(1) A prosecuting authority or seizing agency may not transfer or offer for adoption property seized under this section to a federal agency for the purpose of forfeiture under the federal Controlled Substances Act, Public Law 91-513 (Oct. 27, 1970), or other federal law, unless the property includes United States currency that exceeds ten thousand dollars ($10,000).

(2) Subdivision (1) only applies to a seizure by a state or local law enforcement agency pursuant to their own authority under this section and without involvement of the federal government. Nothing in subdivision (1) shall be construed to limit state and local agencies from participating in joint task forces with the federal government.

(3) State and local law enforcement agencies may not accept payment of any kind or distribution of forfeiture proceeds from the federal government if the state or local law enforcement agency violates subdivision (1). Any proceeds received as a result of any violation of subdivision (1) shall be directed to the State General Fund.

(Acts 1971, No. 1407, p. 2378, § 504; Acts 1981, No. 81-413, p. 650; Acts 1982, No. 82-426, p. 670, § 4; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1; Acts 1988, No. 88-651, p. 1038, § 2; Acts 1989, No. 89-525, p. 1074; Acts 1990, No. 90-472, p. 689, § 1; Act 2021-497, § 1.)

ADDENDUM D

Ala. Code § 20-4-287 provides:

Execution of bond by defendant or claimant for recovery of seized vehicle, etc., pending condemnation action; proceedings upon failure of defendant or claimant to deliver said vehicle, etc., upon entry of judgment of condemnation.

Whenever a conveyance, vehicle of any kind or animal used in drawing the same is seized by an officer of the state under the prohibition laws of this state, the defendant in the proceedings or the claimant of the property shall have the right to execute a bond in double the value of such property or of any item thereof, with good and sufficient surety, to be approved by the sheriff or the register or clerk of the circuit court and conditioned, in the event the said property is condemned, to deliver the same to the sheriff within 15 days from the date of such judgment of condemnation and to pay any difference between the value of said property at the time of the seizure and the time of the delivery to the sheriff after condemnation, such difference in value to be determined by the trial court upon motion of any party to said action. Upon the execution of such bond, the sheriff shall deliver said property to the defendant or claimant executing the same.

Upon the failure of the defendant or claimant to deliver the property condemned within 15 days after judgment of condemnation, the bond shall be returned forfeited to the register or clerk of the circuit court and execution may issue thereon against the principal and his sureties for the amount of the value of such property; or, in case of the return of the property to the sheriff and the failure to pay the difference in value as

above set forth, execution may issue against the principal and his sureties for such difference in value.

(Code 1923, § 4780; Code 1940, T. 29, § 249.)