No. 22-585

# In the Supreme Court of the United States

HALIMA TARIFFA CULLEY, ET AL., PETITIONERS,

—v.—

STEVEN T. MARSHALL, ATTORNEY GENERAL OF ALABAMA, ET AL., RESPONDENTS.

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

## BRIEF OF *AMICUS CURIAE* THE LEGAL AID SOCIETY IN SUPPORT OF PETITIONERS


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## INTEREST OF THE AMICUS CURIAE

The Legal Aid Society is the nation's oldest and largest private non-profit legal services agency, dedicated since 1876 to providing quality legal representation to low-income New Yorkers.[1] It has served as the primary public defender in New York City since 1965 and, each year, represents tens of thousands of people who are arrested and unable to afford private counsel. As part of the arrest process, the New York City Police Department has for decades sought the civil forfeiture of property seized from Legal Aid's clients on the ground that it was used in the commission of a crime.

In 2002, Legal Aid's Special Litigation Unit represented the plaintiffs that obtained a ruling in *Krimstock v. Kelly* to safeguard the right of procedural due process for people whose motor vehicles have been seized and held by the police in contemplation of forfeiture actions. 306 F.3d 40 (2d Cir. 2002), *cert. denied*, 539 U.S. 969 (2003). In *Krimstock*, the United States Court of Appeals for the Second Circuit applied the three-part test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), and held that any person whose vehicle was seized and impounded upon arrest has the constitutional right to a prompt post-seizure hearing

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae*, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

to challenge the legitimacy and necessity of its continued impoundment during the pendency of a forfeiture action. *Krimstock*, 306 F.3d 40. This hearing process has been institutionalized for almost twenty years at a city administrative tribunal. Legal Aid's attorneys regularly represent people at such hearings, and its Special Litigation Unit monitors the process to ensure that class members' opportunity to be heard remains a reality.

In this case, this Court's choice between the *Mathews* test or the *Barker v. Wingo*, 407 U.S. 514 (1972), "speedy trial test" will either affirm *Krimstock* or unravel the constitutional underpinnings of New York's vehicle retention hearing process and thus risk its demise. *Amicus* Legal Aid, on behalf of the many current and future participants in that process, has a strong interest in its continuation. Legal Aid's low-income clients, many of whose livelihoods depend on access to their vehicles, risk losing the constitutional safeguards that have protected their rightful access to their property for decades.

Relying on *Krimstock* hearing decisions, *Amicus* can demonstrate that in the almost twenty years of its operation, the vehicle retention hearing has effectuated a prompt, efficient and meaningful opportunity to be heard for countless individuals whose cars have been impounded. That opportunity has resulted in the return of many hundreds of vehicles to their owners, who otherwise would have suffered prolonged, unnecessary and erroneous

deprivations of their vehicles during the years-long waiting period for a forfeiture trial.

## SUMMARY OF ARGUMENT

The vehicle retention hearing process in New York City confirms the necessity of a prompt hearing to prevent the widespread erroneous deprivation of property. Prior to the inauguration of such hearings in 2004, vehicle owners suffered months- and even years-long delays getting their vehicles returned, even for minor crimes; many were forced to abandon the vehicles because they did not have the resources to engage in the process required to secure their return.[2] Since the implementation of *Krimstock* hearings, the prompt opportunity to be heard has corrected hundreds of instances of New York City's unwarranted retention of vehicles. Administrative law judges have released impounded vehicles for a wide range of reasons, including because no probable cause existed for the arrest and the evidence demonstrated the vehicle was not used as an instrument of a crime; the owner presented a credible "innocent owner" defense showing that someone else used their car to commit a crime without permission; and the City lacked any need to retain the vehicle pending forfeiture proceedings. The *Krimstock* retention hearing embodies the real-world operation

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[2] *See* David Rohde, *The High Price of Drunken Driving Law*, N.Y. TIMES (Feb. 28, 1999), https://www.nytimes.com/1999/02/28/nyregion/the-high-price-of-drunken-driving-law.html.

of what this Court has identified as "the two central concerns of due process," one, "the prevention of unjustified or mistaken deprivations;" and two, "the promotion of participation and dialogue by affected individuals in the decisionmaking process." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

These hearings would not exist if the Second Circuit had not applied the *Mathews v. Eldridge* test to require them. The Second Circuit's decision in *Krimstock v. Kelly* arose out of a New York City practice where the NYPD seized and impounded vehicles for months and years without affording their owners any opportunity to be heard pending the resolution of forfeiture proceedings. *Krimstock* held that *Mathews* is the applicable test to decide if due process requires a prompt post-seizure hearing at which the deprived owner can challenge the continued impoundment of the vehicle. *Krimstock*, 306 F.3d at 60. The Second Circuit reasoned that cases dealing with speedy trial limitations on prosecuting the ultimate forfeiture action are not relevant because they concern the right to outright dismissal of the forfeiture case, not the right to possession of the property during the pendency of the case. *Id.* at 53, 68. If this Court affirms the Eleventh Circuit's contrary rule, it risks unravelling New York's successful legal framework and depriving many thousands of people whose vehicles will be erroneously seized by police of an opportunity to vindicate their property rights.

## ARGUMENT

### I. The History of the *Krimstock* Decision Demonstrates the Necessity of Applying the *Mathews* Test to Require a Prompt Post-Seizure Hearing Pending Forfeiture Proceedings.

The history of the Second Circuit's resolution of *Krimstock v. Kelly* highlights both the constitutional necessity of a prompt post-seizure hearing and how application of the *Mathews* test underpins New York City's current, well-functioning system. In *Krimstock,* the Second Circuit confronted a New York City ("City") program that aggressively sought the forfeiture of vehicles seized and impounded when the driver was arrested and accused of a crime. In the early 1990's, the New York City Police Department ("NYPD") began a program of confiscating vehicles upon the arrest of the driver.[3] Section 14-140(e) of New York City's Administrative Code authorizes the NYPD to seize and impound without a warrant any property that is allegedly used "as a means of committing crime ...or in furtherance of a crime," regardless of whether the crime is felony or misdemeanor. The NYPD held these vehicles for a prospective civil forfeiture trial where it sought a court declaration that the owner of such a vehicle was no longer a "lawful claimant" to the property. N.Y.C.

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[3] *See* William J. Bratton, *The New York City Police Department's Civil Enforcement of Quality-of-Life Crimes*, 3 J.L. & Pol'y 447, 456 (1995).

Code § 14–140(e). In 1999, the NYPD's vehicle seizure program expanded dramatically after the City prioritized vehicles from arrests for driving while intoxicated ("DWI").[4] By July 2001, the NYPD seized over 4,000 vehicles from DWI arrests.[5]

For years, the forfeiture trial was the only legal proceeding where a person could obtain the return of their vehicle following its warrantless seizure.[6] But trials were an infrequent occurrence. In 1998, of the 1,800 cars that had been seized and held for forfeiture, fewer than one percent went to trial.[7] In many of these non-trial cases, people either gave up their cars or resorted to buying them back.[8] Newspaper coverage of the practice at the time highlighted the inequity of the City's practice resulting from the disproportionate burden prolonged seizures of critical vehicles placed on low-income people. As the *New York Times* noted, wealthy people

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[4] *See* Rohde, *The High Price of Drunken Driving Law*, N.Y. TIMES.

[5] *See* Jacob Fries, *4000 Cars Seized in Effort to Halt Drunken Driving*, N.Y. TIMES (July 3, 2001), https://www.nytimes.com/2001/07/03/nyregion/4000-cars-seized-in-effort-to-halt-drunken-driving.html.

[6] *See* Rohde, *The High Price of Drunken Driving Law*, N.Y. TIMES.

[7] *See* Rohde, *The High Price of Drunken Driving Law*, N.Y. TIMES.

[8] *Id.; See also* Bratton, *supra* note 3, at 456 (explaining that some vehicle owners "get their cars back under a negotiated settlement which requires them to pay a percentage of the car's book value.")

"may be able to quickly settle . . . the civil case by buying their cars back from the police. But . . . the poor will lack the resources to fight a drawn-out battle and will in essence be forced to give them up."[9]

Within that context, seven named plaintiffs initiated the *Krimstock* class action in December 1999 in the Southern District of New York. *Krimstock*, 306 F.3d at 45-47. The plaintiffs, whose vehicles had been held for months without any civil court proceeding, sought under the Due Process Clause a prompt post-seizure hearing to review whether there was probable cause for the seizure and whether the continued retention of their vehicles pending forfeiture proceedings was necessary. *Id*. at 45-47. The district court dismissed the case, ruling that the plaintiffs were not entitled to a prompt retention hearing because the forfeiture proceeding was all that due process required. *See Krimstock v. Safir*, No. 99 CIV. 12041 MBM, 2000 WL 1702035 (S.D.N.Y. Nov. 13, 2000).

The Second Circuit reversed. *Krimstock*, 306 F.3d at 43-44. It found the City's seizure and retention of property under civil forfeiture statutes raised serious due process concerns absent "a meaningful hearing at a meaningful time" to challenge the legitimacy of the retention pending a forfeiture trial. *Id.* at 51 (citing *United States v. James Daniel Good Real Prop*., 510 U.S. 43, 62

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[9] *See* Rohde, *The High Price of Drunken Driving Law*, N.Y. TIMES.

(1993)). And it rejected the district court's application of the "speedy trial" test to determine whether plaintiffs' due process rights required additional safeguards beyond a forfeiture trial. *Krimstock*, 306 F.3d at 52-53. As the Second Circuit explained, the "speedy trial" test is inapplicable because "plaintiffs' claim does not concern the speed with which civil forfeiture proceedings themselves are instituted or conducted." *Id.* at 68. Instead, the *Mathews* balancing test applied because the Constitution "distinguishes between the need for prompt review of the propriety of continued government custody, on the one hand, and delays in rendering final judgment, on the other." *Id.*

The Second Circuit's remaining due process analysis focused on the application of the three-part balancing test of *Mathews v. Eldridge*, which examines (1) the private interest affected; (2) the risk of erroneous deprivation of that interest in the absence of additional procedural safeguards; and (3) the Government's interest. *See id.* at 60-68. First, as to the private interest, the Second Circuit noted the paramount importance of motor vehicles in modern American life, "providing access to jobs, schools, and recreation as well as to the daily necessities of life." *Id.* at 61 (quoting *Coleman v. Watt*, 40 F.3d 255, 260-61 (8th Cir. 1994)). This interest was enhanced by "the length of the deprivation," given that "the City retains seized vehicles for months or sometimes years before the merits of a forfeiture action are addressed." *Krimstock*, 306 F.3d at 61-62.

Second, as to the risk of erroneous deprivation, the Second Circuit found that "[n]either the arresting officer's unreviewed probable cause determination nor a court's ruling in the distant future on the merits of the City's forfeiture claim can fully protect against an erroneous deprivation of a claimant's possessory interest" in their vehicle that remains in police custody "for months or years." *Id.* at 62. Although the court believed the risk of error to be reduced in an ordinary DWI arrest, thus tipping the second factor in favor of the City, other issues enhanced the risk thus making the City's win on this factor "a narrow one." *Id.* at 62-63. For one, there was "a heightened potential for erroneous retention" of the vehicles of innocent owners, persons not implicated in any criminal conduct, in the absence of an "early retention hearing." *Id.* at 58, 63. In addition, "the City's pecuniary interest" in the outcome of forfeiture proceedings necessitated "greater procedural safeguards" to protect against arbitrary impoundments. *Id.* at 63. Until recently, money from the sale of vehicles seized by the NYPD went directly to the NYPD.[10] Following this Court's reasoning, the Second Circuit found that "greater procedural

[10] *See* Max Rivlin-Nadler, *When Cops Just Take Your Cash and Car*, N.Y. DAILY NEWS (Nov. 8, 2015), https://www.nydailynews.com/opinion/max-rivlin-nadler-cops-cash-car-article-1.2426381. Following recent changes to City law, the money now goes to the City of New York's general fund. *See* N.Y.C. Admin. Code §14-140(6).

safeguards" are of "particular importance" when "the Government has a direct pecuniary interest in the outcome of the proceeding." *Krimstock*, 306 F.3d at 63 (quoting *James Daniel Good Real Prop.,* 510 U.S. at 55-56).

Relying on this Court's decision in *James Daniel Good*, the Second Circuit stressed that the impact of an erroneous deprivation was heightened in the vehicle impoundment setting because "[a]n owner cannot recover the lost use of a vehicle by prevailing in a forfeiture proceeding," and suffers additional loss as the vehicle "continues to depreciate in value as it stands idle in the police lot." *Krimstock*, 306 F.3d at 64 (citation omitted). As this Court held, the "ultimate judicial decision" in the forfeiture action, even if favorable, would "not cure the temporary deprivation that an earlier hearing might have prevented." *James Daniel Good Real Prop.,* 510 U.S. at 56 (quoting *Connecticut v. Doehr*, 501 U.S. 1, 15 (1991)). And as the Second Circuit pointed out, unlike the availability of full retroactive benefits for plaintiffs in *Mathews v. Eldridge* that made an earlier hearing unnecessary, no similar retroactive remedy exists for those deprived of the use of their vehicles for months or years. *Krimstock*, 306 F.3d at 64 (citing *Mathews*, 424 U.S. at 340).

The third *Mathews* factor addresses the Government's interest, including the operation and cost of an additional procedural requirement. The most notable interest identified by the Second Circuit

was the City's concern that a seized vehicle not be sold or destroyed by a defendant before a forfeiture judgment. *Krimstock*, 306 F.3d at 64. The court observed that other means of restraint could safeguard that interest, in particular a restraining order to prohibit sale of a vehicle, or a bond. *Id*. at 65. The use of "less drastic measures than continued impoundment" could be considered at the retention hearing. *Id*. at 70.

After balancing the three *Mathews* factors, the Second Circuit found that procedural due process in the car impoundment setting requires a prompt hearing before a neutral fact-finder to test the probable validity of the case for forfeiture, including the City's probable cause for the initial seizure, and the necessity for continued impoundment during the pendency of the forfeiture action. *Krimstock*, 306 F.3d at 67-68. The Due Process Clause requires such an opportunity to be heard "in order to minimize any arbitrary or mistaken encroachment upon plaintiffs' use and possession of their property." *Id*. at 53.

One year after this decision, the New York Court of Appeals addressed a similar forfeiture program in Nassau County. *County of Nassau v. Canavan*, 1 N.Y.3d 134 (2003). Following *Krimstock*, the Court of Appeals applied the *Mathews* test and ruled that due process requires a prompt post-seizure hearing for vehicles seized pursuant to Nassau County's forfeiture program. *Id.* at 141-45 (citing *Krimstock*, 306 F.3d at 57, 67).

Thus, by operation of both federal and state law resting on the foundation of *Krimstock,* each of New York's 62 counties have been required for the last two decades to provide a prompt post-seizure hearing for vehicles seized by the police. Should this Court reject the reasoning of *Krimstock*, therefore, the foundation of that system will be removed and a return to the inequitable and unjust system that preceded the Second Circuit's ruling may occur.

## II. New York City's Experience Implementing *Krimstock* Vehicle Retention Hearings Confirms the Value of a Prompt Opportunity to be Heard to Prevent Unwarranted Deprivations of Property.

### A. The *Krimstock* Vehicle Retention Hearing Process Demonstrates the Administrative Viability of the Process Petitioners Seek.

The Second Circuit in *Krimstock* remanded the case to the district court to formulate, "in consultation with the parties," the outlines of the vehicle retention hearing. 306 F.3d at 70. At the City's suggestion, the district court chose as the locus of the hearings the Office of Administrative Trials and Hearings ("OATH"). *See Jones v. Kelly*, 378 F.3d 198, 200 (2d Cir. 2004). OATH is a tribunal within the executive

branch of the city government.[11] It adjudicates matters for a variety of city agencies.[12]

The district court's order governs the timing, structure, and procedure of the vehicle retention hearing. *See* Third Amended Order & Judgment ("*Krimstock* Order"), No. 99 Civ. 12041 (HB), 2007 U.S. Dist. LEXIS 82612 (S.D.N.Y. Sept. 27, 2007). The hearing is only scheduled upon the demand of an eligible claimant, which is either the person from whom the vehicle was seized, or the registered owner (who has priority). *Krimstock* Order ¶¶ 4-6. A claimant must request a hearing on an NYPD form, which the NYPD must provide to the arrested person at the time of seizure and, five business days later by mail, to the registered owner. *Id.* ¶¶ 4-5. A hearing must be scheduled to take place within ten business days of the NYPD's receipt of a hearing request. *Id.* at ¶ 5. The date of the hearing may be extended upon a showing of good cause by either party. *Id.*

At the hearing, to continue its retention of the vehicle, the NYPD must demonstrate: (i) probable cause for the arrest of the vehicle operator; (ii) likelihood of success in the forfeiture action; and (iii) necessity for retaining the vehicle pending final

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[11] *See* About OATH, https://www.nyc.gov/site/oath/about/about-oath.page (last visited Jun. 27, 2023).
[12] *See id.*

judgment in the forfeiture action.[13] See *id.* ¶ 3. Reliable hearsay is admissible. *Id.* The vehicle claimant may testify and present evidence. *Id.* If the NYPD sustains its burden, the vehicle will be retained; if it does not, the vehicle must be returned to the claimant. *Id.*

The decision of the OATH administrative law judge as to retention or release does not affect the right of the NYPD to seek forfeiture of the vehicle, or to seek review of the retention decision in New York Supreme Court. *Id.* ¶ 3. As the *Krimstock* Order states, "[a]ny decision made by an OATH judge shall not be binding in any way upon the New York Criminal or Supreme Court in any proceeding." *Id.* Nor is any legal or factual theory advanced by the City binding in either court. *Id.*

If a hearing is held, the OATH judge issues a written decision within three business days. *Id.* ¶ 3. Because OATH judges can require a settlement conference before each scheduled hearing, cases can be settled before the hearing. *See* 48 Rules of the City of N.Y. § 1-31(a).

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[13] The *Krimstock* Order also enables prosecutors to obtain an *ex parte* retention order from a Criminal Court judge if they demonstrate retention is necessary to preserve the vehicle as evidence for the criminal case. *Id.* ¶¶ 9-10. The OATH hearing is postponed during the pendency of such an order. *Id.* ¶¶ 8-12.

### B. *Krimstock* Hearing Decisions Demonstrate the Indispensability of the Prompt Post-Seizure Opportunity to Be Heard.

In the almost twenty years since February 2004 when *Krimstock* vehicle retention hearings became operational, many hundreds of vehicle owners have retrieved their vehicles pending their forfeiture trial because they had an early opportunity to be heard. The examples of OATH decisions detailed below demonstrate why an early opportunity for vehicle owners to present their side of the story and correct the unwarranted seizure and retention of property is indispensable for those facing the long-term deprivation of that property. This early opportunity to be heard has prevented significant harm to people by allowing them to retrieve cars necessary to attend to their medical needs, to care for their sick family members, and to work and provide for their children. The testimony of vehicle owners as to issues such as the lack of probable cause for the arrest or innocent ownership has proven key to securing the early return of vehicles critical to their livelihoods.

Forfeiture cases in New York City are adjudicated in the state's civil supreme courts, and the benchmark for resolving a standard case in these courts – that is, the goal the New York court system sets for the normal resolution of such a case – is 27

months.[14] Thus, as in the pre-*Krimstock* era, forfeiture proceedings still take years to resolve – a deprivation period that is unbearable for many people. *Cf. James Daniel Good Real Prop.*, 510 U.S. at 56 (explaining that "a postseizure hearing may be no recompense" if it happens "many months after the seizure" due to "congested civil dockets").

The early opportunity to be heard provided in *Krimstock* hearings has saved many hundreds of vehicle owners from the harms that result from long periods without their vehicles. In one case, for example, the vehicle owner had cerebral palsy, walked with crutches, and relied on his vehicle to visit family and manage activities like going to the laundromat. *Police Dep't v. Ridges*, OATH Index No. 661/22, mem. dec. at 4 (Nov. 3, 2021).[15] The owner explained that he was able to drive "with a hand-controlled piece connected to the steering wheel." *Id.* The OATH judge noted the owner's "urgent need to retrieve his specially equipped vehicle" and found that the NYPD failed to satisfy the notice requirement designed to afford vehicle owners a rapid, preliminary hearing addressing the retention

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[14] *See The State of Our Judiciary 2019, Excellence Initiative Year Three,* p. i (Feb. 2019), https://ww2.nycourts.gov/sites/default/files/document/files/2019-02/19_SOJ-Report.pdf.

[15] All OATH decisions are publicly available and can be searched by their name or index number at the OATH Decision Database: http://a820-isys.nyc.gov/ISYS/ISYS.aspx#. Every OATH decision cited in this brief includes a hyperlinked index number to facilitate access to the decision.

of their vehicle. *Id.* at 2-5; *see also Police Dep't v. Bull*, OATH Index No. 2231/21, mem. dec. at 4 (July 14, 2021) (ordering the vehicle's return because of a similar notice violation and crediting the owner's testimony that the vehicle loss caused a "personal hardship for him that affected his ability to work and see his son in Delaware.")

In another case, a single mother caring for ten of her children and grandchildren testified that she starts work as a bus matron at 5:30am on weekdays and relies on her impounded vehicle to get to and from work. *See Police Dep't v. Clark,* OATH Index No. 1101/21, mem. dec. at 4 (Jan. 8, 2021). She explained that her two sons took her car without permission and got arrested, and she did not know they would use it while committing a crime (criminal possession of a handgun). *Id.* at 6. If the vehicle were returned, she promised to secure her car keys to "make sure that this will never happen again." *Id.* at 5. Finding her to be credible, the OATH judge held that she was an innocent owner and ordered the return of her vehicle. *Id.* at 6-7. In doing so, the judge noted "the inconvenience that the car's seizure has already caused and her need to use the car to get to work." *Id.* at 6; *see also Police Dep't v. Cruz*, OATH Index No. 1341/15, mem. dec. at 5 (Jan. 12, 2015) (ordering the vehicle's return to an innocent owner who "needed the car for work and to care for her ill mother.").

The opportunity for vehicle owners to be heard through their testimony at these early *Krimstock*

hearings has routinely cut short the erroneous deprivation of their property. Vehicle owners have won the early return of their vehicles by showing through testimony that the NYPD lacked probable cause for the arrest and that the vehicle was not used as an instrument of a crime. In one case, the vehicle owner disputed that the police had probable cause to arrest him for driving while intoxicated because he was not even driving the vehicle. *See Police Dep't v. Rios*, OATH Index No. 146/06, mem. dec. at 3 (July 21, 2005). The OATH judge credited the testimony of the vehicle owner and his witnesses that he was not driving the car but merely keeping it running to use the radio for a block party where people were "hanging out, drinking, listening to the radio, [and] playing dominoes." *Id.* Because the police were unable to prove that they ever saw him in the vehicle, the OATH judge found that the NYPD was unlikely to succeed in proving the vehicle was the instrument of a crime at the forfeiture trial and thus ordered its release. *Id.* at 6.

In another case, the vehicle owner, a former corrections officer, gave "detailed and consistent" testimony that, on his way to his parked car, he saw a gun lying in the grass and did not want to leave it there where anyone could find it. *See Police Dep't v. Morton*, OATH Index No. 3260/09, mem. dec. at 4 (July 6, 2009). He picked up the gun, got in his car, and drove to the nearby police precinct where he planned to turn it over. *Id.* at 3. When he was nearing the precinct, police officers in an unmarked

car pulled him over and searched the car finding the gun. *Id.* at 3-4. The NYPD did not rebut his testimony that he was bringing the gun to the precinct when police officers stopped him. *Id.* at 5. Relying largely on the vehicle owner's testimony, the OATH judge held the NYPD failed to establish probable cause for the arrest and failed to establish that it would succeed at proving the vehicle was an instrument of a crime at the forfeiture trial because the owner had temporary and lawful possession of the gun. *Id.* at 5-8.

Other vehicle owners have won the early return of their erroneously deprived vehicles by proving that they are innocent owners. The most common scenario involves a parent who had no knowledge that their child was either driving their car or committing a crime while driving their car. *See, e.g., Police Dep't v. Arroyo, Sr.*, OATH Index No. 2016/06, mem. dec. (June 30, 2006) (finding the father to be an innocent owner because there was no evidence that he knew his son would use his vehicle to commit a crime). But any situation where a person did not know or have reason to know that the vehicle would be used in a crime merits an "innocent owner" adjudication. *See, e.g., Police Dep't v. Passley*, OATH Index No. 2401/07, mem. dec. at 3-4 (July 11, 2007) (finding the vehicle owner to be an innocent owner because she did not give permission to the man whom she was romantically involved with to take her car or use it to transport a gun).

The opportunity for vehicle owners to provide testimony is especially critical to preventing long-term erroneous deprivations in an "innocent owner" case. Virtually every decision in such a case hinges on a vehicle owner's credible testimony of what they knew about the driver's use of their vehicle. *See, e.g.*, *Police Dep't v. Jaber,* OATH Index No. 2836/10, mem. dec. at 3-5 (July 9, 2010) (finding the mother credibly testified to be an innocent owner because "there was no evidence that [she] knew that her daughter was actually going to drive the car, much less use it to sell drugs"); *Police Dep't v. Gutierrez*, OATH Index No. 2403/07, mem. dec. at 4 (Aug. 15, 2007) (finding the mother to be an innocent owner because she testified credibly to not knowing her son had a gun in her car); *Police Dep't v. Collins,* OATH Index No. 1221/14, mem. dec. at 3-5 (Jan. 9, 2014) (finding the mother to be an innocent owner because she credibly testified that, while she was on vacation in Hawaii, her son took her car without her permission).

As these examples illustrate, the opportunity at *Krimstock* hearings to be heard and to challenge the NYPD's allegations has been empirically proven to relieve people from wrongful deprivations of their vehicle while waiting for a forfeiture trial. Without these prompt hearings, people may suffer years without access to a vehicle that could be critical for access to jobs, child care, or educational opportunities. Moreover, many vehicle owners, unable to sustain making payments on an impounded vehicle while awaiting their trial would be forced to give up their

property. Thus, as it did in the years before *Krimstock*, the City in many cases could effectively gain permanent possession of people's vehicles with no court ever reviewing the validity of that possession. In such cases, procedural due process is not merely postponed, but never afforded.

## CONCLUSION

A clear understanding of the history that led to the *Krimstock* decision and the successful results of its implementation in New York demonstrate the soundness of applying the *Mathews* test to require prompt post-seizure hearings for vehicles seized by police.

For these reasons, the judgment of the Court of Appeals for the Eleventh Circuit should be reversed.

Respectfully submitted,

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