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 FOR RESPONDENTS CITY OF SATSUMA AND TOWN OF LEESBURG, ALABAMA

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QUESTION PRESENTED

Petitioners loaned their cars to persons who used them to transport controlled substances. The municipalities' police officers stopped the cars, arrested the drivers, and seized the cars. The State of Alabama's prosecutors promptly filed civil forfeiture proceedings in state courts against Petitioners' cars. Petitioners did not post bonds to obtain their cars immediately and waited over a year to file motions for summary judgment in which they argued their innocent owner defenses. Less than 50 days after the motions were filed, Petitioners received hearings and orders directing the return of their cars. In their federal civil rights actions, the only remaining claim is for an alleged conspiracy between the State (i.e., prosecutors in their official capacities) and the municipalities that seized the cars. The alleged conspiracy was to not return the cars during the state court civil forfeiture proceedings. The Eleventh Circuit affirmed the judgments for Respondents, measuring due process by the specific factors enumerated in *Barker v. Wingo*, 407 U.S. 514 (1972), instead of the general factors used in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Whether the Petitioners have standing, have stated a claim, and, if so, received due process during the civil forfeiture actions?

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INTRODUCTION

Petitioners' introductory sentence—"For more than a year, Respondents (collectively, Alabama) deprived Petitioners Halima Tariffa Culley and Lena Sutton of their vehicles, without any judicial oversight" Pet'rs.Br.1—is inaccurate. For more than a year, each Petitioner's car was subject to judicial oversight in a state court forfeiture action in which the full panoply of state rules of civil procedure, modeled on the federal rules, applied. Petitioners could have taken advantage of the forfeiture statute by posting bonds and received the immediate return of their cars. Or Petitioners could have, for example, filed at any time motions for summary judgment based on their innocent owner defenses and motions for expedited hearings. Petitioners did neither. Instead, Petitioners allowed their civil forfeiture cases, and their cars, to sit for more than a year before filing summary judgment motions and arguing their innocent owner defenses. Still, Petitioners requested no expedited or other hearing. After prompting by the trial courts, Petitioners filed their summary judgment motions and the state trial courts took less than 50 days to hold hearings and order the cars returned to Petitioners.

In these § 1983 federal court actions, Petitioners seek what they never requested from the state courts—an expedited hearing—and argue what they never argued to any court—the available bond is too expensive. They do not have standing to do so.

To establish standing, Petitioners must show that their injury—loss of possession of their cars during the pendency of the civil forfeiture actions—is "fairly traceable" to the alleged wrongful conduct of the Respondent municipalities. That alleged conduct is an alleged agreement with the State to hold the cars,

lawfully seized incident to arrests, until the civil forfeiture proceedings, promptly filed by the State, were terminated. But it was Culley and Sutton, not the municipalities and the State, who caused the delay in recovering possession of the Petitioners' cars during the forfeiture proceedings. They chose not to post a bond at all and not to file their summary judgment motions based on their innocent owner defenses for over a year after the civil forfeiture actions commenced. And, after such motions were filed, it was the state court trial judges, not the defendant state prosecutors and municipalities, who decided when to schedule the summary judgment hearings. No part of the delay in Petitioners' regaining possession of their vehicles during the forfeiture proceedings was traceable to the alleged unlawful conduct of the municipalities or the state prosecutors with which they allegedly agreed.

Even if Petitioners establish standing, the Court should not reach the constitutional issue because they have stated no plausible claim for relief against the municipalities. In each case, the Petitioner's sole remaining claim—a § 1983 conspiracy between the State and the municipality—fails because the State is not a "person" under § 1983 that can form an agreement—the core element of a conspiracy—with a municipality or anyone else. Further, the alleged unlawful conspiracy to violate Petitioners' constitutional rights has an "obvious alternative explanation" under *Twombly*: The alleged co-conspirators were each independently doing what they were obligated to do under the civil forfeiture law.

In any event, the State has amended the forfeiture statute to provide for a hearing within 60 days after the request for a hearing. So any relief this Court would give for future cases is illusory.

In short, Petitioners seek a determination of what due process test to apply based on claims for which they have no standing, a conspiracy claim that neither exists nor is plausible, and a forfeiture statute that has already been amended to provide the hearing that they seek.

If the Court reaches the merits, it should reaffirm the *Barker* test for due process in forfeiture proceedings, which balances the length of delay, reason for delay, the claimant's assertion of his right, and prejudice to the claimant. These factors are more specifically tailored to a claim of delay in obtaining property subject to forfeiture (where the delay is caused by the claimant's own lack of diligence) than the generalized *Mathews* test, which balances the private interest, risk of erroneous deprivation, and the government's interest.

STATEMENT OF THE CASE

A. Alabama's Statutory Framework for Civil Forfeitures of Property.

1. The old civil forfeiture statute that applied to Petitioners' cars.

In 2019, when the municipal police officers arrested the drivers of Petitioners' cars and seized the cars, and state prosecutors filed civil forfeiture proceedings against the cars, and in 2020 when the state court judges ordered the cars returned, Alabama's old civil forfeiture statute applied. That statute provided that "[a]ll conveyances" used "in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any" controlled substance may be civilly forfeited to the State. ALA. CODE § 20-2-93(a)(5)

(2015).[1] A vehicle may be seized without process "incident to an arrest" or if "probable cause" exists "to believe that the property was used or is intended to be used" to violate the law. *Id*. at § 20-2-93(b)(1) & (4) (2015).

To forfeit property, the State must "promptly" institute *in rem* civil judicial proceedings against the "guilty" property. ALA. CODE § 20-2-93(c) (2015).

Claimants of the property have a right to possess the property pending resolution of the forfeiture proceedings, provided they post a bond for double the value of the property. ALA. CODE § 20-2-93(h) (2015), *inc'g by ref*. § 28-4-287.

As defenses to forfeiture, claimants may raise constitutional challenges, *see, e.g., Ex parte Kelley,* 766 So. 2d 837, 840 (Ala. 1999), or prove a statutory "innocent owner" affirmative defense. ALA. CODE § 20-2-93(h) (2015); *see also State v. Saliba*, 149 So. 3d 616 (Ala. Civ. App. 2014). Because these judicial proceedings are subject to the Alabama Rules of Civil Procedure (unless the statute provides its own procedure), *see* Ala. R. Civ. P. 81(a)(12), claimants may also seek relief by motion—including for summary judgment and expedited consideration. *See* Ala. R. Civ. P. 56; Pet.App.46a (noting that "Culley did not . . . request[] the state court set the matter for hearing").

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[1] Alabama Code § 20-2-93 as it existed and applied during the civil forfeiture proceedings at issue in the pending Petition is cited as "ALA. CODE § 20-2-93 (2015)." This statute was amended during the pendency of these suits by Alabama Act 2021-497 (effective January 1, 2022). Section 20-2-93, as amended, is cited as "ALA. CODE § 20-2-93 (2023 Westlaw)."

2. The amended civil forfeiture statute.

In 2021, after Petitioners had received their cars back, the State amended its civil forfeiture statute to provide that innocent owners could file a petition to obtain their seized property back and receive a hearing within 60 days. Ala. Act 21-497 (effective January 1, 2022). Specifically, an innocent owner may "petition the court for a hearing" regarding probable cause for retaining their vehicle "at any time after seizure of property and before entry of a conviction in the related criminal case." ALA. CODE § 20-2-93(*l*) (2023 Westlaw), *inc'g by ref.* § 15-5-63. Such hearing must be held within 60 days of the request unless continued for good cause. ALA. CODE § 15-5-63(3). After the hearing, the court may (1) find prob-able cause and stay the forfeiture proceedings until the resolution of the criminal case, (2) exempt the innocent owner's interest from forfeiture, or (3) order the property sold to satisfy an innocent owner's interest under certain circumstances. *Id.*

B. Petitioner Halima Culley's state and federal cases.

1. Culley's state civil forfeiture case—*Culley I*.

Petitioner Halima Tariffa Culley waited approximately 18 months after the civil forfeiture case began (from service of the complaint on March 8, 2019 to September 21, 2020) to file a summary judgment motion to regain possession of her car. C.Doc.33-1 at 19, 132.[2] Thirty-nine days later, on October 30, 2020,

[2] The lower federal courts took judicial notice of the complete certified record from each state forfeiture proceeding. Citations to those records (and other documents available on the district

the state trial judge held a hearing and granted summary judgment on Culley's innocent owner defense, allowing Culley to obtain her car. *Id*. at 220. Culley never requested an expedited hearing and never posted a bond to obtain her car immediately.

Culley holds title to a 2015 Nissan Altima that she purchased for use by her son, Tayjon Culley. Pet.App.15a-16a. On February 17, 2019, police officers employed by the City of Satsuma pulled Culley's son over. *Id*. at 16a. The son was subsequently arrested and charged with first-degree marijuana possession, possession of a loaded Sig Sauer 9 millimeter pistol without a permit, and possession of drug paraphernalia. C.Doc.18-1 at 9, 15, 24. The car and pistol were seized incident to Culley's son's arrest. JA 2. Culley's son pleaded guilty to second-degree marijuana possession on June 12, 2019, and all other charges against him were dismissed. C.Doc.18-1 at 5-6.

Ten days after the seizure, on February 27, 2019, the State filed a civil forfeiture complaint in Mobile County Circuit Court against the car and handgun ("*Culley I*").[3] Pet.App.16a. The complaint was served on Culley on March 8, 2019, but she did not respond to it until September 16, 2019 (just one week before filing this § 1983 action ("*Culley II*")) when she appeared and filed an answer (represented by one of the same counsel representing her and Sutton before this Court). C.Doc.33-1 at 19, 43-46. Culley's answer

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courts' dockets) use the form "C.Doc." for *Culley v. Marshall*, No. 1:19-cv-701 (S.D. Ala.), and "S.Doc." for *Sutton v. Town of Leesburg*, No. 4:20-cv-91 (N.D. Ala.), followed by the document number and page number in the ECF header.

[3] *State v. One Sig Sauer Handgun & One Nissan Altima, Seized from Tayjon Culley & Titled to Halima Tariffa Culley,* No. 02-cv-2019-900565 (Ala. Cir. Ct. filed Feb. 27, 2019), JA 1.

raised the defenses that she was an innocent owner and that the seizure violated the Eighth and Fourteenth Amendments. C.Doc.33-1 at 44-45.

Other than some minor discovery filings, the case remained dormant until September 1, 2020, when the state trial judge *sua sponte* set the case for a status conference. C.Doc.33-1 at 81. On September 21, 2020, Culley moved for summary judgment premised upon her innocent owner affirmative defense. *Id.* at 87-122. In support, she filed a four-page memorandum and her own affidavit. *Id.* at 110-22. The state trial judge held a hearing on the motion on October 30, 2020, granting Culley's motion that same day and ordering her car returned, but the handgun forfeited. *Id.* at 220.

Culley never posted bond, moved for expedited review, or took any other action to recover her car in the state court proceedings before moving for summary judgment approximately 18 months after being served with the notice of the civil forfeiture action. JA 1-5; C.Doc.33-1 at 19, 87-122.

2. Culley's federal § 1983 case—*Culley II*.

On September 23, 2019, Culley filed suit on behalf of herself and a putative class in the U.S. District Court for the Southern District of Alabama—this case ("*Culley II*"). JA 52-72. Culley sued the Alabama Attorney General, the district attorney, and the City of Satsuma. *Id.* at 52-53. Culley's claims arise from the facts of *Culley I:* that the State's failure to offer a prompt post-deprivation hearing separate from a merits hearing on forfeitability and its retention of property pending that hearing violates the Fourth, Fifth, Eighth, and Fourteenth Amendments and that Satsuma conspired with the State to deprive her of her rights by enforcing state law. *See id.* 63-68. Culley requested

declaratory and injunctive relief, and money damages from Satsuma. *Id*. at 68-70; Pet.App.16a-17a.

On Rule 12 motions from the defendants, the district court entered judgment against Culley on the merits of all claims on September 29, 2021. Pet.App.58a. As the district court explained, Culley's due process claim "glosse[d] over Ala. Code § 28-4-287 and its opportunity to 'execute a bond in double the value of such property' to have it returned during the pendency of the civil forfeiture proceedings." Pet.App.39a. Indeed, the complaint asserted "that there is no such process." *Id.* (citing C.Doc.1 at 15-16). Thus, Culley's assertions that the State was "'hold[ing] her vehicle . . . without making a probable cause showing that she had some connection to the crime, and that there is no less restrictive way for the State to secure the vehicle during the pendency of the proceedings'" were "factually and legally incorrect." Pet.App.43a (quoting C.Doc.25 at 32). There plainly "is a process by which Culley could have reclaimed the Vehicle during the pendency of the civil forfeiture case." Pet.App.43a. The court held that Culley's due process claim failed, whether assessed through the lens of *Barker v. Wingo,* 407 U.S. 514 (1972), or *Mathews v. Eldridge,* 424 U.S. 319 (1976). Pet.App.46a-52a.

Culley appealed.

C. Petitioner Lena Sutton's state and federal cases.

1. Sutton's state civil forfeiture case—*Sutton I*.

Sutton waited approximately 13 months after the civil forfeiture case began (from service of the civil forfeiture complaint on March 12, 2019 to April 10, 2020) to file a summary judgment motion to regain

possession of her car. S.Doc.28-1 at 17-18, 238-40. Forty-eight days later (April 10, 2020 to May 28, 2020), the state trial judge held a hearing and granted summary judgment, allowing Sutton to obtain her car. S.Doc.28-1 at 386. Sutton never requested an expedited hearing and never posted a bond to obtain her car quickly.

On February 20, 2019, Sutton allowed her friend, Roger Maze, to drive her 2012 Chevrolet Sonic. Pet.App.60a. Officers with the Town of Leesburg pulled Maze over for speeding, discovered a large amount of methamphetamine in the car, arrested and charged him with trafficking a controlled substance, and seized the car. *Id*. at 62a; S.Doc.28-1 at 257.

On March 6, 2019, the State filed a civil forfeiture complaint against Sutton's car in Cherokee County Circuit Court ("*Sutton I*"). JA 7-22.[4] Sutton was served promptly, but failed to answer the complaint. Pet.App.63a; S.Doc.28-1 at 18, 22. At the State's request, the state trial court entered a default judgment forfeiting the car on April 15, 2019. S.Doc.28-1 at 45.

Also on April 15, 2019, Sutton appeared for the first time and filed a *pro se* motion to set aside the default judgment. S.Doc.28-1 at 47-48. Sutton acknowledged service, but claimed she had not responded to the suit because she had moved. *Id.* Her motion further argued that the seizure and prospective forfeiture of her car were unconstitutional and that she wished to answer the lawsuit with those arguments. *Id.* The state trial judge set Sutton's motion for a hearing on June 25, 2019. *Id.* at 60.

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[4] *State v. Maze, Sutton, One (1) Automobile, et al.,* No. 13-cv-2019-900034 (Ala. Cir. Ct. filed Mar. 6, 2019).

On June 24, 2019, Sutton—now represented by counsel—filed a memorandum arguing her default should be set aside because she had meritorious defenses, including constitutional challenges under the Eighth and Fourteenth Amendments. S.Doc.28-1 at 108-20. As supporting evidence, Sutton included her own affidavit, some earlier filings, and a letter to the Town of Leesburg stipulating that Sutton would not add Leesburg as a defendant to a collateral federal suit (discussed below) and Leesburg would not sell her car during the pendency of that case. *Id.* at 121-47.

After the hearing, the state court judge set aside the default judgment and gave Sutton 21 days to respond to the complaint. S.Doc.28-1 at 171. Sutton waited the full 21 days to July 16, 2019, to file her two-page answer, which raised defenses, including that she was an innocent owner and that the retention of her car violated the Eighth and Fourteenth Amendments. *Id.* at 172-74.

Other than some minor discovery filings, nothing of substance happened until February 28, 2020, when the state trial judge *sua sponte* set the case for trial. Pet.App.63a (citing S.Doc.28-1 at 236). On April 10, 2020, several days before trial—and nearly nine months after filing her belated answer—Sutton moved for summary judgment based solely on her innocent owner defense. Pet.App.63a (citing S.Doc.28-1 at 238-39). Sutton filed a four-page memorandum, her own affidavit, Maze's criminal case record, and interrogatory answers. S.Doc.28-1 at 241-333. The state trial judge held a hearing on Sutton's summary judgment motion on May 28, 2020, and entered an order granting it that same day. *Id.* at 386. That order found that the State proved a *prima facie* case supporting forfeiture, but that Sutton prevailed on her

innocent owner defense. Pet.App.63a-64a; S.Doc.28-1 at 360, 386.

Sutton never posted bond, moved for expedited review, or took any other action in the state court proceedings to recover her car before moving for summary judgment approximately 13 months after she was served with the civil forfeiture complaint. S.Doc.28-1 at 18, 237-38.

2. Sutton's federal § 1983 cases—*Sutton II* and *III*.

On May 1, 2019, two weeks after Sutton first appeared in the state court proceeding, she also filed suit on behalf of herself and a putative class in the U.S. District Court for the Northern District of Alabama ("*Sutton II*"). JA 27-46.[5] Her suit, brought under 42 U.S.C. § 1983, alleged the same facts underlying *Sutton I* and again raised constitutional challenges to the seizure and potential forfeiture of her vehicle. *Id.* at 27-43. Attorney General Marshall was the only defendant. *Id.* at 27-28.

The *Sutton II* federal court dismissed Sutton's claims in November of 2019 based on *Younger* abstention. *See* 423 F. Supp. 3d 1294, 1302 (N.D. Ala. 2019). The court explained that Sutton should raise her constitutional challenges in *Sutton I* and held that *Younger* abstention barred the exercise of jurisdiction over those challenges. *Id.* Importantly, *Sutton II* also found that Sutton failed to show any reason that she could not raise her constitutional challenges in *Sutton I*. *Id.* at 1302 ("Ms. Sutton has not shown any actual impediment to raising her constitutional issues

[5] *Sutton v. Marshall,* 4:19-cv-00660-KOB (N.D. Ala. filed May 1, 2019).

in her state forfeiture proceedings. In fact, she *has* raised some constitutional claims challenging the seizure of her vehicle in her state court proceedings.").

Sutton did not appeal the judgment in *Sutton II*.

Two months after *Sutton II*'s dismissal, Sutton again filed suit in the U.S. District Court for the Northern District of Alabama ("*Sutton III*")[6] on January 17, 2020—the proceeding now before this Court for review. Sutton alleged the same facts and advanced the same constitutional theories and again sought relief on behalf of herself and a putative class. *See* JA 73-91. However, Sutton named only the Town of Leesburg as a defendant, despite claiming that Leesburg conspired with *the State* (i.e., state prosecutors acting in their official capacities) to violate her constitutional rights and despite requesting a judgment declaring *state law* unconstitutional (along with "appropriate final injunctive relief" and money damages from Leesburg). *Id.* at 17, 87-89. Specifically, Sutton claimed the State's failure to offer a prompt post-deprivation seizure hearing separate from a merits hearing on forfeitability and its retention of property pending that hearing violates the Fourth, Fifth, Eighth, and Fourteenth Amendments. *See id.* at 85-89.

The State subsequently intervened under 28 U.S.C. § 2403(b) and moved to dismiss on several grounds, including *Younger* abstention, preclusion, and the merits. S.Doc.26 at 1-5. The district court dismissed Sutton's Fourth, Fifth, and Eighth Amendment claims in full and her Fourteenth Amendment claim that no process existed to reclaim property during forfeiture

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[6] *Sutton v. Town of Leesburg, Alabama*, No. 4:20-cv-91 (N.D. Ala. filed Jan. 17, 2020).

proceedings "because the statute plainly provides for the execution of a bond." S.Doc.39 at 2-4, 27-28.

However, the district court did not dismiss Sutton's challenge to the lack of a prompt post-seizure probable cause hearing, holding that the *Mathews v. Eldridge* test applied rather than the *Barker v. Wingo* test advanced by the State. Pet.App.64a-65a. The State moved to reconsider, which the district court denied. S.Doc.39 at 30-32; Pet.App.65a. Later, following briefing for summary judgment, the district court held that binding Eleventh Circuit precedent required application of the *Barker* test. *See* Pet.App.66a-67a. Under the *Barker* test, the district court held that Sutton's claim failed because she did not challenge the timeliness of her forfeiture proceeding and because such a challenge would fail under the *Barker* factors. *See id.* The district court accordingly entered judgment against Sutton on her remaining claim. *Id.* at 71a.

Sutton appealed the judgment in *Sutton III* to the Eleventh Circuit.

D. The court of appeals rejects Petitioners' claims.

The Eleventh Circuit consolidated the appeals from the judgments in *Culley II* and *Sutton III*. Pet.App.2a. To recap, Culley pleaded three claims: (1) a due process claim against the State that sought declaratory and injunctive relief, JA 63-65; (2) an excessive fines claim against the State that sought declaratory and injunctive relief, *id*. at 66; and (3) a § 1983 conspiracy claim against the City of Satsuma that sought money damages, *id*. at 67-68. Sutton pleaded one claim—a § 1983 conspiracy claim against the Town of Leesburg that sought money damages, as well as declaratory and injunctive relief. *Id*. at 87-89.

Because Culley's and Sutton's cars had been returned and the state court forfeiture proceedings terminated, the Eleventh Circuit held that the claims seeking injunctive relief were moot. Pet.App.5a-6a. Only each Petitioner's conspiracy claim for money damages against a municipality was not moot. *Id*. There was no claim for money damages against the State. *Id*. at 6a n.2.

While the State prosecutors in their official capacities were alleged to have conspired with the municipalities, neither Culley nor Sutton named the State as a defendant in their conspiracy claims. JA 67-68, 87-89. The Eleventh Circuit rejected both conspiracy claims because "a timely merits hearing affords a claimant all the process to which he is due, and that . . . timeliness analysis is governed by *Barker*." Pet.App.8a. The Eleventh Circuit affirmed the district courts' judgments. *Id*. at 9a.

SUMMARY OF ARGUMENT

Petitioners lack standing because their injuries of not having the possession and use of their cars during the pendency of the civil forfeiture proceedings are not fairly traceable to the alleged wrongful agreements between the municipalities and the State to retain the cars during those proceedings. Culley and Sutton could have posted bonds and obtained their cars back, but did not. Culley and Sutton could have immediately filed for summary judgment on their innocent owner defenses, but waited 18 and 13 months, respectively, to file those motions. That portion of the delay is not fairly traceable to the alleged unlawful conduct of the municipalities in agreeing with the State (i.e. state prosecutors acting in their official capacities) to retain the cars during the forfeiture proceedings.

Instead, this delay was self-inflicted and traceable to Petitioners themselves.

Nor is that portion of the delay from the filing of the summary judgment motion to the hearing (39 days for Culley and 48 days for Sutton) fairly traceable to the alleged unlawful conduct of the state prosecutors or the municipalities. The state judges set the hearing dates, not the municipalities or the state prosecutors. Because each Petitioner's lack of possession of her car is not fairly traceable to the alleged unlawful agreement between the municipalities and the state prosecutors to retain the car, each Petitioner lacks standing to sue for any alleged violations of her due process rights arising out of the forfeiture proceedings.

Petitioners also lack a legally viable claim against the municipalities. The Court should avoid resolution of the constitutional issue because it will make no difference in the disposition of this litigation. First, the remaining claim of each Petitioner—a conspiracy between the State and the municipality—is a legal and a factual impossibility. "Conspiracy requires an agreement—and in particular an agreement to do an unlawful act—between or among two or more separate persons." *Ziglar v. Abbasi*, 582 U.S. 120, 153 (2017). "[N]either a State nor its officials acting in their official capacities are 'persons' under § 1983." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). As a matter of law, there can be no "agreement" as alleged in Petitioners' complaints.

Second, Petitioners fail the *Twombly* and *Iqbal* standard of alleging a plausible conspiracy between the State and the municipalities to deprive them of their property without due process. There is an "obvious alternative explanation" for the alleged co-conspirators' conduct that was not unlawful: Each

acted independently in doing what the law obligated each to do. The State filed the forfeiture actions and the municipalities held the vehicles pending those proceedings, as mandated by the law. When vehicles are seized for transporting controlled substances, the state forfeiture statute provides that forfeiture proceedings "shall" be instituted promptly. And during the forfeiture proceeding, the state forfeiture statute *requires* the seizing law enforcement agency to keep the property until the court orders otherwise. This obvious alternative explanation for the alleged conduct makes the allegation of a conspiracy to deprive Petitioners of their constitutional rights insufficient as a matter of law.

Because Petitioners have failed to state a plausible claim for relief against the municipalities this Court should not decide the constitutional issue.

If the Court reaches the merits, it should affirm the Eleventh's Circuit application of the *Barker* test. The *Barker* factors of length of delay, the reason for the delay, the claimant's assertion of his right, and prejudice to the claimant more closely fit Petitioners' claims for delay in receiving property back in a forfeiture proceeding where the claimant's own inaction caused most of the delay.

ARGUMENT

I. Petitioners Lack Standing To Sue For Violation Of Their Due Process Rights Because Their Injuries Are Not "Fairly Traceable" To The Alleged Agreement Between The Municipalities And The State Prosecutors.

A. The Procedures of Posting a Bond and Filing for Summary Judgment were Available to Culley and Sutton to Obtain their Cars Back Quickly.

In their federal court complaints, Petitioners said "that there is no less restrictive way, i.e., the posting of a bond," to obtain their vehicles during the civil forfeiture proceedings. JA 60, 81. That is inaccurate. The civil forfeiture statutes allow a person whose car has been forfeited "to execute a bond in double the value of such property" and "[u]pon the execution of such bond, the sheriff shall deliver said property to the defendant or claimant . . . ." ALA. CODE § 28-4-287.[7]

Petitioners now assert in their brief that bonds in general are too expensive a burden to bear for people with seized property. Pet'rs.Br.48. But executing

[7] Petitioners complain of their loss of possession of their cars only for the period between the filing of the complaint for civil forfeiture and the hearing. JA 67-68, 88-89. Before the civil forfeiture cases are filed, however, Petitioners could have sought relief in the criminal cases against the drivers of the seized cars under Alabama Rule of Criminal Procedure 3.13(a). *See* Ala. R. Crim. P. 3.13(a) ("A person aggrieved by an unlawful search and seizure may move the court for the return of the property seized on the ground that he or she is entitled to lawful possession of the property which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be restored.").

bonds is a common means of superseding judgments pending appeal, *see*, *e.g.*, Fed. R. Civ. P. 62(b), obtaining preliminary injunctions, *see*, *e.g.*, Fed. R. Civ. P. 65(c), obtaining release of persons, *see, e.g*., 18 U.S.C. § 3142, and obtaining vehicles pending forfeiture proceedings, *see, e.g*., 18 U.S.C. § 983(f)(7)(A)(ii). Indeed, there is even a form to obtain vehicles that are subject to civil forfeiture proceedings in Alabama. *See* Jack B. Hood, et al., *Alabama Criminal Trial Practice Forms* § 10:29 (2020 ed.) ("Motion to release seized property"); *Id.* at 510:19 (2023 ed.) S.Doc.46-3. And, in any event, neither Culley nor Sutton alleged or proved that they could not afford to post a double value bond.

Petitioners say: "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." Pet'rs.Br.47 (internal quotation marks and citation omitted). But Alabama does provide an opportunity for such a hearing—a summary judgment hearing. On the day they were served with the civil forfeiture complaints, Culley and Sutton could have filed summary judgment motions and requested expedited hearings to make legal arguments and to provide evidence to support their innocent owner defenses. Using this available procedure, Petitioners could have quickly obtained hearings and presented evidence and arguments of their innocent ownership.[8]

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[8] Petitioners' assertion that the bond procedure is the "exclusive" means of obtaining property during the civil forfeiture proceedings, Pet'rs.Br.48, ignores this additional means by which the innocent owner can bring the proceedings to an immediate end and regain possession of the vehicle.

Civil forfeiture proceedings in state circuit courts[9] are governed by the Alabama Rules of Civil Procedure. *See* Ala. R. Civ. P. 81(a)(12) (rules of civil procedure apply to forfeiture proceedings "to the extent that the practice in such matters is not provided by statute"). The Alabama rules—like the Federal Rules of Civil Procedure they were modeled[10] on—allow a party to file an answer and a motion for summary judgment; Ala. R. Civ. P. 8(c) (answer with affirmative defense); Ala. R. Civ. P. 56 (summary judgment motion). Summary judgment movants have a right to a hearing. Ala. R. Civ. P. 56(c)(2) ("The motion for summary judgment, with all supporting materials, including any briefs, shall be served at least ten (10) days before the time fixed for the hearing . . . ."); *Van Knight v. Smoker*, 778 So. 2d 801, 805 (Ala. 2000) ("Rule 56(c), Ala.R.Civ.P., itself entitles the parties to a hearing on a motion for summary judgment.").

But Culley waited 18 months and Sutton waited 13 months to file their summary judgment motions. C.Doc.33-1 at 19, 87-122; S.Doc.28-1 at 18, 22, 237-39. Culley received a hearing and an order returning her car 39 days after filing her summary judgment motion. C.Doc.33-1 at 220. Sutton received a hearing and an order returning her car 48 days after filing her summary judgment motion. S.Doc.28-1 at 386. So

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[9] Circuit courts are the trial courts of general jurisdiction in Alabama. *See* ALA. CONST. § 142(b) (2022); ALA. CODE § 12-11-30.

[10] *See generally Donoghue v. Am. Nat. Ins. Co.*, 838 So. 2d 1032, 1035 (Ala. 2002) ("[S]ince the Alabama Rules of Civil Procedure are modeled on the Federal Rules of Civil Procedure, federal decisions are highly persuasive when we are called upon to construe the Alabama rules.") (internal quotation marks and citations omitted).

their injuries of being deprived of their cars for 18 months and 13 months, respectively, were self-inflicted.

B. Petitioners Lack Standing Because They Cannot Show Their Injuries are "Fairly Traceable" to the Alleged Unlawful Conspiracy Between Each Municipality and the State Prosecutors in Holding Their Cars Pending Resolution of the Forfeiture Proceedings.

"The judicial Power shall extend to all Cases . . . arising under . . . the Laws of the United States . . . and . . . to Controversies . . . ." U.S. Const. art. III, § 2. "[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). As this Court explained in *Lujan*:

> "[T]he irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized . . . (b) "actual or imminent, not 'conjectural' or 'hypothetical,'" . . . . Second, *there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace*[*able*] *to the challenged action of the defendant, and not . . . th*[*e*] *result* [*of*] *the independent action of some third party not before the court*." . . . Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

504 U.S. at 560–61 (emphasis added) (citations omitted).

Petitioners cannot show that their specific injuries are fairly traceable to the specific alleged wrongful conduct of municipalities and the State: The loss of possession during the civil forfeiture proceedings is not fairly traceable to the municipalities' holding of the cars *pendente lite*:

> The actionable wrong by the City of Satsuma and the State is the *holding of property, pendente lite,* with the City of Satsuma, despite all efforts of civil forfeiture defendants, who have not been charged with a crimes, to retrieve the property.

JA 67-68 (italics added); *see id*. at 88-89.

Culley, like Sutton, alleges the injury of being deprived of the possession and use of her car without a timely hearing on her innocent owner defense. JA 68, 88-89. They do not complain of the initial seizures incident to the arrests and the consequent transfers of possession to the municipalities on the day of those seizures. *See id*. at 56 ("This case is not about the initial seizure . . . ."), *id*. at 75-76 ("This case is not about the initial seizure . . . ."). Nor do they complain about the approximate two-week period during which the municipalities held their cars before the state prosecutors filed the civil forfeiture actions. Instead, they complain about the time during which they were deprived of possession and use of their cars without a hearing while the civil forfeiture actions were pending. *Id*. at 68, 88-89. That deprivation of possession consists of two time periods: (1) from the filing of the civil forfeiture complaint to each Petitioner's filing of her motion for summary judgment; and (2) from each Petitioner's filing of her summary judgment motion to the state judge's holding of the hearing. Neither period of delay, however, was caused by Respondents.

1. The losses of possession of the cars from the date of the filing of the civil forfeiture proceedings to the date of the filings of the motions for summary judgment are "fairly traceable" to the Petitioners themselves who waited over a year to file their motions.

A plaintiff has Article III standing only if his injury is "fairly traceable to the *defendant's* allegedly unlawful conduct." *California v. Texas*, 141 S. Ct. 2104, 2113 (2021) (emphasis added) (citation omitted). When a plaintiff's own conduct caused the injury, that requirement is not satisfied. As a leading treatise explains, "[s]tanding is not defeated merely because the plaintiff has in some sense contributed to his own injury," but it is defeated if "the injury is so completely due to the plaintiff's own fault as to break the causal chain." 13A Charles Alan Wright et al., *Federal Practice and Procedure* § 3531.5, at pp. 361-62 (3d ed. 2008 & 2023 Update) ("Wright & Miller").

In *Pennsylvania* v. *New Jersey,* 426 U.S. 660 (1976) (per curiam), the Court held that a group of States did not acquire Article III standing to challenge taxes imposed by other States. New Jersey taxed the New Jersey-derived income of Pennsylvania residents. *Id*. at 662-63. And Pennsylvania gave their residents credits for taxes paid to New Jersey from working in New Jersey as a non-resident. *Id*. at 663. The Court held that credit-granting Pennsylvania had no standing to sue tax receiving New Jersey, explaining "[t]he injur[y] to [Pennsylvania's] fisc[] w[as] *self-inflicted*, resulting from [the] decision[] by [its] state legislature[]" to give a tax credit to its residents for taxes paid to New Jersey. *Id*. at 664 (emphasis added).

"No State can be heard to complain about damage inflicted by its own hand." *Id.*

In *Clapper* v. *Amnesty International USA,* 568 U.S. 398 (2013), this Court held that a group of plaintiffs lacked standing to challenge an intelligence program, even though the plaintiffs had incurred costs to avoid surveillance under that program. *Id.* at 415-19. The Court refused to allow the plaintiffs to "manufacture standing merely by inflicting harm on themselves." *Id.* at 416. The Court concluded that the plaintiffs' "*self-inflicted* injuries are not fairly traceable to the Government's purported activities . . . ." *Id.* at 418 (emphasis added).

And in *McConnell* v. *Federal Election Commission*, 540 U.S. 93, 228 (2003),[11] the Court held that a group of political candidates lacked standing to challenge a political contribution limit as being too high. The candidates alleged that they did not want to accept large campaign contributions because of the appearance of undue access and influence. *Id*. at 228. The plaintiffs claimed that the high contribution limit placed them at a "'fundraising disadvantage,' making it more difficult for them to compete in elections." *Id*. The Court held: "Their alleged inability to compete stems not from the operation of [the statute], but from their own personal 'wish' not to solicit or accept large contributions, i.e., *their personal choice*." *Id*. (emphasis added). The Court concluded that "plaintiffs fail here to allege an injury in fact that is 'fairly traceable' to [the statute]." *Id*.

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[11] In *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366 (2010), this Court overruled a different part of *McConnell* (i.e., *McConnell*'s upholding of a statute barring independent corporate expenditures for electioneering communications).

Similarly, Culley's and Sutton's injuries of not possessing their cars without a hearing on their innocent owner defenses were self-inflicted. As soon as the civil forfeiture actions were filed in the state trial courts, each Petitioner had the right to post a bond to obtain immediate possession of her car. ALA. CODE § 28-4-287. Neither Culley nor Sutton posted a bond. Having not claimed an inability to file such a bond, Culley's and Sutton's lack of possession is not due to the municipalities' holding their cars pending the civil forfeiture proceedings, but to "*their personal choice*." *McConnell*, 540 U.S. at 228 (emphasis added).

Moreover, while Culley and Sutton complain about not having a right to a hearing on their innocent owner defense,[12] they in fact had that right and simply waited over a year to file their summary judgment motions. *See* Ala. R. Civ. P. 56(c). This period of loss of possession without a hearing was "self-inflicted." *Pennsylvania*, 426 U.S. at 664. *See Clapper,* 568 U.S. at 415-19; *McConnell,* 540 U.S. at 228.

In *Federal Election Commission v. Cruz*, 142 S. Ct. 1638 (2022), this Court held that plaintiffs had standing to challenge a procedure, if using that procedure would itself burden the plaintiffs' constitutional rights. In *Cruz*, *id*. at 1646, Senator Ted Cruz and his campaign committee sued the FEC for violating their First Amendment rights by limiting the use of campaign funds to repay the candidate's personal loan to his campaign committee. The FEC argued that Cruz and his committee lacked standing because they could

[12] Culley and Sutton reiterate that the bond is the "exclusive" means of obtaining a seized car *during* the forfeiture proceeding. Pet'rs.Br.7, 48. That is only because the forfeiture proceeding ends and the car is returned if a party proves their innocent owner defense in a summary judgment proceeding.

have taken advantage of an alternative procedure by repaying the loan with pre-election funds within 20 days after the election. *Id*. at 1647-48. The campaign committee, however, did not want to use that option. *Id*. The ability to repay the loan at any time was at the heart of the plaintiffs' First Amendment challenge. *Id*. This Court held that the injury was fairly traceable to the challenged statute and regulation, reasoning: "Demanding that the Committee comply with the Governments 'alternative' would therefore require it to forgo the exercise of a First Amendment right we must assume it has–the right to repay its campaign debts in full, at any time." *Id*. at 1648.

By contrast, demanding that Culley and Sutton file summary judgment motions to argue their affirmative defenses[13] does *not* require them to forgo the due process right that we must assume they have—the right to an early retention hearing—but instead affords them the right to that hearing that they have always had. Unlike the plaintiffs in *Cruz*, Culley and Sutton do not contend that filing a summary judgment motion to assert their affirmative defense of innocent ownership is itself a burden on their constitutional rights. Unlike the plaintiffs in *Cruz* that did not want to use the alternative procedure, Culley and Sutton do want a hearing at which to argue their innocent owner defenses and get their cars back. Pet'rs.Br.1-5, 17, 25. Alabama Rule of Civil Procedure 56 gives them that hearing.

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[13] Because the State had shown a *prima facie* case that the car is forfeitable and a claimant possesses the evidence to establish her innocent ownership, Alabama's forfeiture statute places the burden of proof on the claimant to establish their innocent ownership. *See* Alabama Code § 20-2-93(h) (2015).

After the State made a *prima facie* case that the cars were used to transport controlled substances and were thus forfeitable, which is undisputed, both Petitioners filed for summary judgment and received a hearing. At those hearings, they argued their innocent owner defenses and then received orders directing the return of their cars. C.Doc.33-1 at 122, 220; S.Doc.28-1 at 237-39, 386. Any injury to the plaintiffs stems from failing to file for summary judgment sooner, which was self-inflicted. *See* Wright & Miller § 3531.5, p. 362 (there is no standing where "the injury is so completely due to [plaintiffs'] own fault"). Their injuries of failing to regain possession of their cars earlier are not fairly traceable to the conduct of the municipalities, which were simply doing what the law required—holding the vehicles pending termination of judicial forfeiture proceedings completely outside of their control.

Likewise, the bond posting procedure also forecloses any argument that Petitioners have standing. They never argued below that posting a bond was burdensome; they just stated such a procedure did not exist in their federal court complaints. JA 60, 65, 81, 86. While they belatedly argue that bonds in general are burdensome, that is not the claim found in their complaints. And bond or no bond, an early retention hearing, Pet'rs.Br.1-5, 17, 25, was always available. *See* Ala. R. Civ. P. 56. Petitioners just waited over a year to file for summary judgment to obtain their hearings.

Moreover, in *Cruz*, 142 S. Ct. at 1646, the candidate and his campaign committee sued the agency that injured them by promulgating the challenged regulation and enforcing the challenged statute. By contrast, Culley and Sutton have not brought this action against the persons who allegedly injured them—

themselves who delayed filing their summary judgment motions and the state judges who did not set the summary judgment hearings earlier.

2. The losses of possession of the cars from the filing of the summary judgment motions to the holding of hearings on the innocent owner defenses are fairly traceable only to the judges who set those hearings.

The second period in the civil forfeiture proceeding during which each Petitioner was deprived of her car is the period between the date she filed her summary judgment motion and the date the state court held the hearing. Culley filed her summary judgment motion on September 21, 2020, the state trial judge promptly held the hearing on that motion on October 30, 2020—39 days later. C.Doc.33-1 at 87-122, 220. Sutton filed her motion for summary judgment on April 10, 2020, and the state trial judge promptly held the hearing on May 28, 2020—48 days later. S.Doc.28-1 at 237-39, 386.

Petitioners' losses of possession of their cars from the date they filed their summary judgment motions to the date the judges set the summary judgment hearings are not fairly traceable to any of the alleged conspirators—the state prosecutors and the municipalities that seized and held the cars. None of these actors set the hearing date; the judges did.[14]

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[14] Judges are already under an obligation to rule promptly on pending matters, including forfeiture matters. *See* Ala. Canon Jud. Ethics 3(a)(5) ("A judge should dispose promptly of the business of the court, being ever mindful of matters taken under submission."); *Woods v. Reeves*, 628 So. 2d 563, 565 (Ala. 1993) (""The essence of due process requires that the aggrieved party be given a prompt opportunity to adjudicate his claims. . . . The

In *Simon v. East Kentucky Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976), this Court explained that "the 'case or controversy' limitation of Art. III still requires that a federal court act only to redress *injury* that fairly can be *traced to* the challenged action *of the defendant*, and *not* injury that results from the independent action of some *third party* not before the court." (Emphases added.) *See Lujan*, 504 U.S. at 562 (the causation requirement of standing is hard to meet when it "depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict . . . .") (quoting *ASARCO Inc. v. Kadish,* 490 U.S. 605, 615 (1989) (opinion of Kennedy, J.))

In *Simon*, 426 U.S. at 42–43, indigents sued the Secretary of the Treasury for decisions made by hospitals. The Treasury Department issued a revenue ruling stating that tax-exempt hospitals need only provide free treatment to indigent emergency room patients. The hospitals refused non-emergency services to indigents. *Id*. The indigent plaintiffs argued that the revenue ruling encouraged the hospitals not to treat non-emergency patients. *Id*. This Court held that "[i]t is purely *speculative* whether the denials of service specified in the complaint fairly can be traced to [the Treasury's] 'encouragement' or instead result from decisions made by the hospitals without regard to the tax implications." *Id*. (emphasis added).

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necessity of prompt action to adjudicate the merits of the seizure and to effectuate the forfeiture is what is constitutionally required . . . .'") (quoting *Kirkland v. State ex rel. Baxley*, 340 So. 2d 1121, 1126 (Ala. Civ. App. 1976)). They did so here.

In *Linda R.S. v. Richard D.*, 410 U.S. 614, 618 (1973), a mother challenged a criminal statute that jailed fathers of legitimate children who defaulted on child support obligations, but not fathers of illegitimate children. The State made the decision about who to prosecute, but the fathers of the illegitimate children made the decision about whether to pay child support. The Court held that there was no standing, reasoning: "The prospect that prosecution will, at least in the future, result in payment of support can, at best, be termed only speculative." *Id*.

Similarly, Culley and Sutton have sued municipalities as somehow responsible for any delay caused by state court judges' decisions on when to hold hearings. Any causal connection between Petitioners' injuries in failing to obtain a hearing more quickly, after filing their summary judgment motions, and the municipalities continuing to hold the vehicles pending the resolution of the forfeiture proceedings, is not merely "speculative"; the two are manifestly disconnected.

Moreover, the municipalities had no lawful choice but to do what Petitioners alleged they agreed with the State to do: Retain the cars until the end of the civil forfeiture proceedings. Once the forfeiture complaints were filed, the cars were "subject only to the orders and judgment of the court having jurisdiction over the forfeiture proceedings." ALA. CODE § 20-2-93(d) (2015). Further, at the time of the alleged agreement to retain the cars, and even at the time the summary judgment motions were filed, a prediction of when the state judges would order hearings on the summary judgment motions was purely speculative. *See also Clapper*, 568 U.S. at 1150 ("[R]espondents can only speculate as to whether that court will authorize such surveillance"); *Whitmore v. Arkansas,* 495 U.S. 149, 159-60 (1990) ("It

is just not possible for a litigant to prove in advance that the judicial system will lead to any particular result in his case.").

* * *

Petitioners have no standing.

II. Resolution Of The Constitutional Issue Should Be Avoided Because The Petitioners Have Failed To State A Plausible Claim For Which Relief Can Be Granted.

In *Christopher v. Harberry,* 536 U.S. 403, 417 (2002), this Court stated that constitutional questions should be avoided where possible:

> Since the need to resolve such constitutional issues ought to be avoided where possible, the trial court should be in a position as soon as possible in the litigation to know whether a potential constitutional ruling may be obviated because the allegations of denied access fail to state a claim on which relief could be granted.

(Internal citations omitted.)

The Court has "often stressed" that it is "importan[t] [to] avoid the premature adjudication of constitutional questions," and that "we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable," *Matal v. Tam,* 582 U.S. 218, 230-31 (2017) (citations and internal quotation marks omitted). Deciding the constitutional issue of which due process test to apply to civil forfeitures is not "unavoidable" because the only claim each Petitioner has left is the claim that each municipality conspired with the State.

A. The State is Not a "Person" Under § 1983 that can Conspire with the Municipalities to Do Anything.

Petitioners appear to concede that the only claim remaining in each case is the conspiracy claim for damages against each municipality for an alleged agreement to retain the cars throughout the state court civil forfeiture proceedings. *See* Pet'rs.Br.10. But the municipalities, which were not parties in the *state* court civil forfeiture proceedings, are not responsible for the process offered there. Culley and Sutton thus contend, in essence, that the municipalities conspired with the State itself to violate Petitioners' constitutional rights by holding their cars pending resolution of those state proceedings.

"Conspiracy requires an agreement . . . between or among two or more separate *persons.*" *Ziglar v. Abbasi,* 582 U.S. 120, 153 (2017) (emphasis added); *accord* 42 U.S.C. § 1985 (defining conspiracy to interfere with civil rights as involving "two or more persons").[15] "[N]either a State nor its officials acting in their official capacities are 'persons' under § 1983." *Will v. Mich. Dep't of State Police,* 491 U.S. 58, 71 (1989). True, conspiracy claims may lie where a person conspires with another person who is immune. *See, e.g., Dennis v. Sparks,* 449 U.S. 24, 27-29 (1980). But the State is not just immune from the § 1983 conspiracy claim—it's not a person. Each Petitioner's alleged conspiracy between the State and the munici-

[15] Although Petitioners' conspiracy claims rely solely on § 1983, the text of § 1985 and cases applying it are useful given its sole focus on civil rights conspiracies and the relative dearth of similar § 1983 cases.

pality that seized her car fails for want of two or more persons to conspire.

B. Petitioners Failed to Plead a Plausible Unlawful Conspiracy under the *Twombly-Iqbal* Standard because there is an "Obvious Alternative Explanation" for the Municipalities' Conduct.

Under *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 567 (2007), a plaintiff must specifically plead facts that suggest conduct that is plausibly wrongful, not merely conduct for which there is an "obvious alternative explanation" that the conduct is not wrongful. Plaintiffs alleged that when local telephone companies refrained from competition this parallel conduct strongly suggested an antitrust conspiracy. *Id*. But there was an obvious alternative explanation—the local phone companies had operated as regulated monopolies since their creation and naturally continued to do that even after they were de-regulated. *Id*. at 568. This Court held that the antitrust conspiracy alternative did not state a plausible claim. *Id*. at 569.

In *Ashcroft v. Iqbal*, 556 U.S. 662, 682 (2009), plaintiffs alleged discriminatory arrests of illegal alien, Muslim men after 9/11. Attorney General John Ashcroft and FBI Director Robert Mueller responded that they were arresting illegal aliens with possible connections to terrorists. This Court reasoned that "the arrests Mueller oversaw were likely lawful and justified by his nondiscriminatory intent to detain aliens who were illegally present in the United States and who had potential connections to those who committed terrorist acts." *Id*. "As between that 'obvious alternative explanation' for the arrests, *Twombly, supra,* at 567, 127 S. Ct. 1955, and the purposeful, invidious discrimination respondent asks

us to infer, discrimination is not a plausible conclusion." *Id*.

Similarly, Culley and Sutton allege that the State through its prosecutors and the municipalities conspired to violate their due process rights by agreeing that (1) the municipalities would notify state prosecutors of their seizure of vehicles; (2) the State would file civil forfeiture proceedings; and (3) the municipalities would hold the cars until those proceedings were terminated. But there is an obvious alternative explanation for such alleged conduct that does not involve unlawful, conspiratorial conduct—the prosecutors were simply doing what the law required of them in promptly instituting forfeiture proceedings.[16] Indeed, the State alone has standing to bring such actions.[17] And the municipalities were simply doing what the law required of them in notifying the State of any seizures and holding the vehicles pending the forfeiture proceedings.

Municipalities that seize vehicles incident to arrest are *legally bound* to notify the State so that it can meet its obligation to institute any forfeiture proceedings

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[16] Alabama Code § 20-2-93(h) (2015) provides that the procedures for the condemnation and forfeiture of seized property are to be governed by and conform to the procedures set out in Alabama Code §§ 28-4-286 through 28-4-290. Section 28-4-286 states: "It shall be *the duty* of [the district attorney] in the county or the Attorney General of the state to institute at once or cause to be instituted condemnation proceedings in the circuit court by filing a complaint in the name of the state against the property seized . . . ." (emphasis added). *See also* § 20-2-93(c) (2015) (mandating that forfeiture proceedings be instituted "promptly").

[17] Under Alabama law, municipalities have no standing to file such civil forfeiture proceedings; only the State does. *See State v. Property at 2018 Rainbow Drive,* 740 So. 2d 1025 (Ala. 1999).

promptly. The state forfeiture statute requires that "[i]n the event of seizure pursuant to subsection (b) [e.g., seizure "incident to arrest"] of this section, proceedings under subsection (d) [i.e., "forfeiture proceedings"] *shall be instituted promptly*." ALA. CODE § 20-2-93(c) (2015) (quoting (b)(1) and (d) in brackets) (emphasis added). Municipalities seizing vehicles incident to arrests have no choice but to notify the State promptly of those seizures.

When property is seized and forfeiture proceedings instituted, the state forfeiture statute provides a list of things the seizing law enforcement agency can do with the seized property. The seizing law enforcement agency may choose from one or more of the following options:

> (1) Place the property under seal;
>
> (2) Remove the property to a place designated by it;
>
> (3) Require the . . . 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 . . . .

ALA. CODE § 20-2-93(d)(1) to (4) (2015).

A seizing municipality has only these options. And Petitioners do not contend that due process requires the State to simply give up and settle a forfeiture case instead of requiring a claimant to prove its affirmative defense under oath in court.

As between (1) the purposeful, nefarious conspiracy to deprive Petitioners of due process, and (2) the follow-the-state-forfeiture-statute "obvious alternative expla-

nation" for notifying the State and holding the seized vehicles pending subsequently filed civil forfeiture proceedings, the former "is not a plausible conclusion." *Iqbal*, 556 U.S. at 682. *See Twombly*, 550 U.S. at 567.

Because Petitioners have not alleged a plausible claim of conspiracy, this Court should avoid resolving the unnecessary constitutional question.

C. Culley and Sutton Fail to Allege Sufficient Facts to Establish *Monell* Liability because the Only Policy or Custom Alleged is Not a Choice Among Alternatives, But an Obligatory Duty under State Law.

The circuit courts are generally agreed that a claim of conspiracy against a municipality under § 1983 requires allegations and proof that constitutional rights were violated pursuant to an official policy or custom.[18] These decisions flow from this Court's conclusion in *Monell v. Department of Social Services,* 436 U.S. 658 (1978), that "Congress did not intend municipalities to be held liable unless *action pursuant to official municipal policy* of some nature caused a constitutional tort." *Id.* at 691 (emphasis added).

Petitioners do not allege any policy or custom of either municipality itself, but, at best, a joint policy of the State and each municipality to retain seized cars without a prompt retention hearing. JA 68-69, 85-86,

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[18] *See Lepre v. Lucas,* 602 F. App'x. 864, 869 (3d Cir. 2015) (unpublished); *Weiland v. Palm Beach Cnty. Sheriff's Office,* 792 F.3d 1313, 1330 (11th Cir. 2015); *Taylor v. City of Yorba Linda,* 168 F. App'x. 823 (9th Cir. 2006) (unpublished); *Bell v. City of Milwaukee,* 746 F.2d 1205, 1269 n.76 (7th Cir. 1984), *overruled on other grounds, Russ v. Watts,* 414 F.3d 783, 788 (7th Cir. 2005); *Owens v. Haas,* 601 F.2d 1242, 1247 (2d Cir. 1979).

89. State law, however, obligates municipalities that seize vehicles subject to forfeiture to retain the vehicles while the forfeiture proceedings are pending. *See* ALA. CODE § 20-2-93(d) (2015). Under the Petitioners' alleged conspiracy theory, the municipalities' compliance with this mandate of the state forfeiture statute cannot be viewed as a "policy" or "custom." *See id*.

"Municipal liability under § 1983 attaches where—and only where—a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986). *See City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823 (1985) ("'[P]olicy' generally implies a course of action consciously chosen from among various alternatives."). A municipality's decision to honor its obligation to follow a mandate under state law is not a conscious choice among various alternatives and thus not a "policy" sufficient for *Monell* liability.[19] It is the only choice the municipality has. As the Seventh Circuit has observed:

> It is difficult to imagine a municipal policy more innocuous and constitutionally permissible, and whose causal connection to the alleged violation is more attenuated, than the "policy" of enforcing state law. If the language and standards from *Monell* are not

[19] *See Bruce & Tonya & Assoc., Inc. v. Bd. of Supervisors of Fairfax Cnty., Va.,* 854 F. App'x. 521, 530 (4th Cir. 2021); *Vives v. City of New York,* 524 F.3d 346, 353 (2d Cir. 2008); *Bethesda Lutheran Home & Svs., Inc. v. Leean,* 154 F.3d 716, 718 (7th Cir. 1998); *Snyder v. King,* 745 F.3d 242, 247 (7th Cir. 2014); *Rhode v. Denson,* 776 F.2d 107, 109 (5th Cir. 1985).

> to become a dead letter, such a "policy" simply cannot be sufficient to ground liability against a municipality.

Surplus Store & Exchange, Inc. v. City of Delphi, 928 F.2d 788, 791-92 (7th Cir. 1991).[20]

III. On The Merits, the *Barker* Test More Accurately Measures The Process Due In A Civil Forfeiture Context.

In *United States v. $8,850*, 461 U.S. 555 (1983), this Court applied the *Barker* test to hold that a plaintiff's right to due process was not violated by an 18-month delay between the seizure of cash by the U.S. Customs Service and the filing of the civil forfeiture action. "The *Barker* balancing inquiry provides an appropriate framework for determining whether the delay here violated the due process right to be heard at a meaningful time." *Id*. at 564.

In *United States v. Von Neumann*, 474 U.S. 242, 249 (1986), the Court held that a plaintiff's right to due process was not violated by waiting 36 days for the U.S. Customs service to respond to his petition to remit the forfeiture of his car. "[H]is right to a forfeiture proceeding meeting the *Barker* test satisfies

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[20]The complaints fail to state a plausible claim for relief for other reasons as well. For instance, Culley and Sutton alleged that the municipalities are agents of the State. *See, e.g.,* JA 58, 65, 77-78. But under the intracorporate-conspiracy doctrine "an agreement between or among agents of the same legal entity, when the agents act in their official capacities, is not an unlawful conspiracy." *Ziglar,* 582 U.S. at 153. While this Court has left open the question as to whether this doctrine applies to § 1985 conspiracy claims, *see id.,* the logic underlying the doctrine applies with equal force to governmental entities, *accord Denney v. City of Albany,* 247 F.3d 1172, 1190-91 (11th Cir. 2001).

any due process right with respect to the car and the money." *Id*. at 251.

In *$8,850* and *Von Neumann*, the Court was correct to apply the factors in *Barker*, 407 U.S. at 530: length of delay, the reason for the delay, the claimant's assertion of his right, and prejudice to the claimant. Those factors fit the claims by plaintiffs that assert the injury from a delay in a forfeiture process that deprived them of their property for an unduly long period of time. The generalized factors in *Mathews*, 424 U.S. at 335—(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—would have to be adapted to fit a claim of delay in a forfeiture proceeding. For such a claim, like Culley's and Sutton's claims, the length of delay, reason for delay, and whether the claimant was responsible for the delay in returning property subject to forfeiture are critical in determining whether the claimant received the process she was due.

For all the reasons stated in Attorney General Marshall's brief, which the City of Satsuma and the Town of Leesburg adopt and incorporate in full, the appropriate test is found in *Barker*, *$8,850*, and *Von Neumann*. Culley and Sutton received all the process they were due.

CONCLUSION

For the foregoing reasons, the Court should dismiss for lack of standing or affirm by holding Petitioners failed to state a claim or by holding the Eleventh Circuit's application of *Barker* was correct.

Respectfully submitted,

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