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* WAYNE COUNTY, MICHIGAN IN SUPPORT OF RESPONDENTS

DAVIDDE A. STELLA
Assistant Wayne County Corporation Counsel
Counsel of Record

JAMES W. HEATH
Wayne County Corporation Counsel

OFFICE OF THE WAYNE COUNTY CORPORATION COUNSEL
500 Griswold St., Floor 30
Detroit, MI 48226
(313) 224-5030
dstella@waynecounty.com

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

STATUTES, RULES AND REGULATIONS

TABLE OF AUTHORITIES – Continued

INTEREST OF *AMICUS CURIAE*

Wayne County, a municipal corporation and political subdivision of the State of Michigan, has an interest in this matter because a similar lawsuit challenging the constitutionality of three Michigan state civil forfeiture laws under a procedural Due Process theory remains pending against it in the United States District Court for the Eastern District of Michigan. *See Ingram, et al. v. Wayne County, MI*, No. 20-10288 (E.D. Mich. filed Feb. 4, 2020).[1] These Michigan state laws include the Drug Asset Forfeiture statute, Mich. Comp. Laws § 333.7531, *et seq*., the Omnibus Forfeiture Act, Mich. Comp. Laws § 600.4701, *et seq*., and the Nuisance Abatement statute, Mich. Comp. Laws § 600.3801, *et seq*. Following the granting of Wayne County's petition for an interlocutory appeal from the district court's interim ruling, the United States Court of Appeals for the Sixth Circuit recently heard oral argument in the matter. *See Ingram, et al. v. Wayne County*, No. 22-1262 (6th Cir. argued May 4, 2023). One of the three plaintiffs in the *Ingram* case, Ms. Stephanie Wilson, has co-authored an *amicus* brief in support of Petitioners Halima Culley and Lena Sutton in this matter. *See Amicus* Brief of the Institute of Justice in Support of Petitioners (filed June 29, 2023).

[1] Pursuant to Rule 37.6, neither Respondents nor their counsel authored this Brief in whole or in part and did not make any monetary contribution intended to fund the preparation or submission of it. No monetary contributions were made by any other individual or entity intended to fund the preparation or submission of this Brief.

SUMMARY OF THE ARGUMENT

1. Petitioners Halima Culley and Lena Sutton have failed to demonstrate that their procedural Due Process rights were violated in the Alabama state court civil forfeiture proceedings. Because Petitioners have failed to preserve any argument that the lower courts misapplied the *$8,850* test to the facts of their cases, the appeal need not proceed any further.

2. The facts of Petitioners' cases do not justify the replacement of the *$8,850* test with the *Mathews* test. The *$8,850* test was specifically designed to address claims of unconstitutional "delay" in the initiation and adjudication of a civil forfeiture case. *Mathews* has been applied primarily to federal and state administrative deprivations and has traditionally focused on the "processes" involved and not "delay."

3. Petitioners fail to explain how the *$8,850* test could not have protected their rights to be heard in court in a meaningful time and manner.

4. Other, less extraordinary alternatives could be considered before the imposition of a "retention hearing" requirement into federal and state civil forfeiture laws. These include possible revisions to the *$8,850* test or perhaps the endorsement of a post-hoc warrant requirement where the initial seizure lacked one.

ARGUMENT

A. Petitioners Have Failed to Demonstrate That Respondents Violated Their Procedural Due Process Rights.

The only issue in this appeal is whether Alabama's statutory and judicial procedures governing civil forfeiture cases violated the Fourteenth Amendment rights of Petitioners Halima Culley and Lena Sutton. A procedural Due Process claim asserted pursuant to 42 U.S.C. § 1983 requires the establishment "of two elements: (i) deprivation by state action of a protected interest in life, liberty, or property, and (ii) inadequate state process." *Reed v. Goertz*, 143 S. Ct. 955, 961 (2023) (citation omitted). "[A] procedural due process claim is not complete when the deprivation occurs. Rather, the claim is complete only when the State fails to provide due process." *Id*. (internal citation and quotation marks omitted). "[T]o determine whether a constitutional violation has occurred, it is necessary to ask what process the State provided, and whether it was constitutionally adequate. This inquiry would examine the procedural safeguards built into the statutory or administrative procedure of effecting the deprivation, and any remedies for erroneous deprivations provided by statute or tort law." *Zinermon v. Burch*, 494 U.S. 113, 126 (1990).

Petitioners' appeal is not about inadequate "process" but claimed unreasonable "delays" in the adjudications of their state court civil forfeiture cases. They assert that because of the "delays," the Court should interpose a requirement that courts conduct an

interim "retention hearing" in "all" or "some" civil forfeiture cases at some unspecified point during the case. The imposition of this extraordinary remedy is not justified by the facts of the cases below.[2]

In assessing whether any unconstitutional "delay" in the Alabama state court adjudications occurred, the first step would be to determine whether an unreasonable "delay" occurred. If so, the second step would be to identify the party or parties responsible for it. For Petitioners, any delays in the state court adjudications appear mostly, if not entirely, attributable to their own litigation conduct.

In Ms. Culley's case, the police seizure of her vehicle occurred on February 17, 2019. *See Culley v. Marshall*, No. 19-701, 2021 U.S. Dist. LEXIS 187325, *7 (S.D. Ala. Sept. 29, 2021) (unpublished). On February 27, 2019, the prosecutor, as the party plaintiff, filed the state court civil lawsuit. *Id*. Seven (7) months later, on September 16, 2019, Ms. Culley filed an answer to the complaint. *Id*. at *7-8. One (1) year after answering the complaint, during September 2020, Ms. Culley moved for summary judgment on the basis of a statutory "innocent owners" defense, a factual claim and motion she presumably could have raised at the beginning of the case. On October 30, 2020, the Alabama state court

---

[2] Alabama has recently amended its civil forfeiture law in two relevant respects: (1) the addition of a *post hoc* warrant requirement, Ala. Code § 20-2-93(e)(1)(a); and (2) the provision of an option for a claimant to request a state court hearing at any time after a civil forfeiture civil action is initiated, Ala. Code § 20-2-93(l).

granted her motion and ordered the return of the vehicle. *Id*. at *43. In the subsequent federal civil rights case, the district court recognized that "while perhaps not solely responsible for the delay, [Ms. Culley] played a significant role." *Id*. at *43-44.

In Ms. Sutton's case, the police seizure occurred on February 21, 2019. *See Sutton v. Leesburg*, No. 20-91, 2021 U.S. Dist. LEXIS 173223, *3 (N.D. Ala. Sept. 13, 2021) (unpublished). On March 9, 2019, Alabama, as the party plaintiff, filed a lawsuit in state court. *Id*. Despite being served with the complaint, Ms. Sutton failed to appear and defend, which led the state court to issue a default judgment on May 1, 2019. *Id*. at *4-5. She then filed a motion to set aside the default judgment, which the state court granted on June 25, 2019. *Id*. at *5. Eight (8) months then passed with nothing substantively occurring in the case until February 28, 2020, when the state court set the matter for trial for April 2020. On April 10, 2020, Ms. Sutton finally moved for summary judgment on the basis of a statutory "innocent owners" defense, a factual claim and motion that she presumably could have asserted at the outset of the case. *Id*. On May 28, 2020, the state court granted summary judgment to her and ordered the return of the vehicle. *Id*. at *5-6. Similar to *Culley*, the district court held that "any delay in the final judgment was due to Ms. Sutton's own dilatory conduct; Ms. Sutton never asserted her right to a speedy trial[.]" *Id*. at *13-14.

On appeal to the Eleventh Circuit, Petitioners did not argue that the district courts had misapplied the

analysis for evaluating whether civil forfeiture cases conform with procedural Due Process as established in *United States v. $8,850 in U.S. Currency*, 461 U.S. 555 (1983). Instead, they argued that the Eleventh Circuit: (1) should disregard *$8,850* and its own precedent; (2) should adopt instead the *Mathews v. Eldridge* procedural Due Process test; (3) hold on appeal that Respondents violated their procedural Due Process rights as a matter of law in both cases; and (4) should impose as a remedy for these violations a "probable cause hearing" requirement into Alabama's civil forfeiture statutes. *See Culley v. Attorney General, State of Alabama*, No. 21-13805, 2022 U.S. App. LEXIS 18975, *7-8 (11th Cir. July 11, 2022) (unpublished). The Eleventh Circuit correctly rejected those invitations. *Id*.[3]

In 1983, the Court established the legal framework for evaluating whether civil forfeiture cases conform with procedural Due Process. *See United States v. $8,850 in U.S. Currency*, 461 U.S. 555 (1983). There, the Court held that "[t]he *Barker* balancing inquiry provides an appropriate framework for determining whether the delay here violate[s] the due process right to be heard at a meaningful time." *Id*. at 564. Under this analysis, whether a civil forfeiture civil case conforms with procedural Due Process turns upon the analysis of the following factors: (1) the length of the delay in the initiation of the case; (2) the prosecutor's

[3] The Eleventh Circuit did not reach several alternative bases to affirm the judgments in favor of Respondents, including res judicata, collateral estoppel, and abstention. *See Culley*, 2022 U.S. App. LEXIS 18975, at *2 n. 1.

reason for any delay; (3) the claimant's assertion of his or her right to a speedy adjudication; and (4) the prejudice to the claimant. *Id*. None of these factors are "necessary" or "sufficient" but are to be used as guideposts in balancing the competing interests to comport with the "flexible requirements" of Due Process. *Id*. at 564-65. Three years later, the Court held that the same analysis applied to the federal government's alleged delay in resolving an administrative petition for remission in a civil forfeiture matter. *See United States v. Von Neumann*, 474 U.S. 242, 250 (1986). In neither *$8,850* nor *Von Neumann* did the Court find that the then-existing 1976 *Mathews v. Eldridge* analysis was either applicable or relevant to evaluating procedural Due Process challenges to civil forfeiture statutes and administrative procedures. No subsequent decision from the Court has cast any doubt, expressly or by implication, on the continuing validity of both decisions.

In the decades since the *$8,850* and *Von Neumann* decisions, at least the Second, Third, Sixth, Ninth, Tenth, and Eleventh Circuits have applied the *$8,850* test to claimants' procedural Due Process challenges in civil forfeiture cases. *See United States v. Banco Cafetero Panama*, 797 F.2d 1154, 1162-64 (2d Cir. 1986); *United States v. Scarfo*, 41 F.4th 136, 223 (3d Cir. 2022); *United States v. Ninety-Three Firearms*, 330 F.3d 414, 424 (6th Cir. 2003); *United States v. Approximately $1.67 Million in U.S. Currency, Stock, & Other Valuable Assets*, 513 F.3d 991, 1001-02 (9th Cir. 2008); *Juda v. Nerney*, No. 99-2070, 2000 U.S. App. LEXIS 6914, *7-8 (10th Cir. Apr. 17, 2000) (unpublished); *Gonzales v.*

Rivkind, 858 F.2d 657, 662 (11th Cir. 1988). District courts in the First, Fourth, and Eighth Circuits have similarly applied the *$8,850* test to federal civil forfeiture proceedings. *See*, *e.g.*, *United States v. $20,000 in U.S. Currency*, 589 F. Supp. 3d 240, 261 (D.P.R. 2022); *United States v. $307,970 in U.S. Currency*, 156 F. Supp. 3d 708, 720 (E.D.N.C. 2016); *United States v. Terry*, No. 20-248, 2021 U.S. Dist. LEXIS 76046, *17-18 (D. Neb. Apr. 13, 2021) (unpublished), *adopted by* 2021 U.S. Dist. LEXIS 76046 (D. Neb. June 14, 2021) (unpublished).

The *$8,850* analysis remains well-suited to address whether alleged unreasonable delays in the initiation and adjudication of a civil forfeiture case would violate a claimant's procedural Due Process rights to be heard at a meaningful time and manner. Factors (1) and (2) apply to both the government's initiation of the civil case as well as its litigation conduct within it. If delay is raised by a claimant, the burden shifts to the government to demonstrate that there are legitimate reasons that the case has not yet initiated and/or the pending case is not being actively pursued. Factor (3) requires that a claimant who seeks a speedy adjudication of the matter make that desire known to the court. Factor (4) permits the claimant to explain to a court the possible prejudice that is experienced by a failure to adjudicate the matter expeditiously.

Petitioners have not contested that the lower courts improperly applied the *$8,850* analysis to the facts of their cases. *See Cutter v. Wilkinson*, 544 U.S. 709, 718 n. 7 (2005) (recognizing that the Court is of

"review, not of first view"). Thus, if the Court determines that *$8,850* controls, then this appeal need not proceed any further.

B. This Case Presents No Reason to Expand the Scope and Applicability of the *Mathews* Test to Civil Forfeiture Matters.

Having failed to pursue any substantive argument regarding whether the *$8,850* factors would have weighed in their favor, Petitioners instead seek to have the Court replace the *$8,850* test with the *Mathews* test for federal and state civil forfeiture cases. The Court should decline this invitation because: (1) the *$8,850* test was specifically developed to address claims of possible unconstitutional "delay" in the initiation and adjudication of a civil forfeiture case; (2) the *Mathews* test has traditionally applied to whether administrative deprivations contained adequate process; and (3) the *Mathews* test has little historical basis for application outside of the administrative realm.

The Court's 1976 decision in *Mathews v. Eldridge*, 424 U.S. 319 (1976), addressed a procedural Due Process challenge to internal administrative processes within the Social Security Administration (the "SSA") – specifically, whether the SSA was constitutionally required to hold an evidentiary hearing before it terminated an individual's benefits. The Court framed the central issue as: "whether the [SSA's] administrative procedures provided . . . [were] constitutionally sufficient[.]" *Id*. at 334. In determining that the SSA was

not required to provide a hearing before the termination of benefits, the Court developed three factors for analysis: (1) the nature of the private interest affected by the deprivation; (2) the danger of error and the benefit of additional or alternative procedures; and (3) the public or governmental burden if additional procedures were mandated. *Id*. at 334-45. For this analysis, the Court relied upon and adapted the reasoning of its prior decision in *Goldberg v. Kelly*, 397 U.S. 254 (1970), a case that similarly had involved an administrative decision by a New York agency to terminate welfare benefits without a prior hearing. *Goldberg* in turn cited and relied upon various prior decisions involving claimed inadequate process in the administrative deprivation context. *See*, *e.g.*, *Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886 (1961) (Naval regulations pertaining to the termination of civilian employees without a hearing); *Hannah v. Larche*, 363 U.S. 420 (1960) (the investigative powers of the federal Civil Rights Commission). By and large, those cases did not involve claims of unconstitutional "delay" but whether the government-created administrative "procedures" themselves conformed with procedural Due Process principles.

From 1976 to 1993, the Court primarily applied the *Mathews* analysis to the evaluation of the sufficiency of federal or state administrative procedures.[4]

---

[4] There were certainly a few cases during this era where the Court did arguably appear to apply *Mathews* to judicial procedure. *See*, *e.g.*, *United States v. Raddatz*, 447 U.S. 667 (1980) (challenges to the Federal Magistrates Act); *Ake v. Oklahoma*, 470 U.S.

See, *e.g.*, *Ingraham v. Wright*, 430 U.S. 651 (1977) (Florida school's procedures governing the administration of corporal punishment); *Dixon v. Love*, 431 U.S. 105 (1977) (Illinois procedure for driver's license revocations); *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816 (1977) (New York procedures for removing foster children from foster homes); *Board of Curators of University of Missouri v. Horowitz*, 435 U.S. 78 (1978) (State medical school's procedures for dismissal of a student for substandard academic performance); *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1 (1978) (Tennessee public utility's administrative procedures for terminating utility services); *Parham v. J.R.*, 442 U.S. 584 (1979) (Georgia administrative procedures for voluntary commitment of juveniles to state mental hospitals); *Mackey v. Montrym*, 443 U.S. 1 (1979) (Massachusetts statute mandating the suspension of a driver's license if a breathalyzer is refused); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) (Illinois administrative investigation of a claim of disability discrimination); *Block v. Rutherford*, 468 U.S. 576 (1984) (Los Angeles County Jail administrative procedures governing contact visits and shakedown searches); *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) (Ohio board of education's administrative decision to terminate an employee); *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305 (1985) (Federal $10 limit to be paid to an

---

68 (1985) (Oklahoma provision of access to a psychiatrist to indigent capital defendants who sought to argue the issue of sanity in a criminal trial).

attorney representing a veteran seeking certain benefits); *Brock v. Roadway Express, Inc*., 481 U.S. 252 (1987) (Secretary of Labor administrative procedures regarding the termination of commercial transportation employees); *FDIC v. Mallen*, 486 U.S. 230 (1988) (Federal statute authorizing the FDIC to take administrative action to suspend an indicted official of a federally-insured bank); *Washington v. Harper*, 494 U.S. 210 (1990) (Washington prison policy regarding the administration of psychotropic medications over a patient's objection); *Zinermon v. Burch*, 494 U.S. 113 (1990) (Florida statute regarding the admission of mental health patients without a prior hearing).

In 1992, the Court expressly rejected the argument that the *Mathews* test should apply to procedures governing criminal proceedings. *See Medina v. California*, 505 U.S. 437, 445-46 (1992). For those rules, the Court held that procedural Due Process is not violated unless it "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Id*. at 446 (quoting *Patterson v. New York*, 432 U.S. 197, 202 (1977)).[5]

In the 1993 decision *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993), the Court again considered the possible applicability of the *Mathews* test. In that case, the government obtained a warrant to seize a parcel of real property. *Id*. at 47. The

[5] *Patterson* similarly did not refer to or cite the *Mathews* test for guidance regarding whether a New York statute allocating the burden to the defendant to demonstrate a defense of "extreme emotional disturbance" violated Due Process.

Court ultimately applied the *Mathews* test to conclude that in cases of real property, a pre-seizure hearing was required. *Id*. at 59. At the same time, Chief Justice Rehnquist, joined by Justice Scalia, dissented in relevant part regarding the expansion of the scope and the applicability of the *Mathews* test beyond the administrative realm where it had been traditionally applied:

> I reject the majority's expansive application of *Mathews*. *Mathews* involved a due process challenge to the adequacy of Social Security disability benefits, and the *Mathews* balancing test was first conceived to address due process claims arising from the context of modern administrative law. No historical practices existed in this context for the Court to consider. The Court has expressly rejected the notion that the *Mathews* balancing test constitutes a "one-size-fits-all" formula for deciding every due process claim that comes before the Court.

Id. at 66 (Rehnquist, C.J., concurring in part and dissenting in part) (citation omitted).

In 2002, the Court rejected an argument that *Mathews* should be deemed the definitive test for evaluating procedural Due Process claims:

> The *Mathews* balancing test was first conceived in the context of a due process challenge to the adequacy of administrative procedures used to terminate Social Security disability benefits. Although we have since invoked *Mathews* to evaluate due process claims in other contexts, we have never

> viewed *Mathews* as announcing an all-embracing test for deciding due process claims.

Dusenbery v. United States, 534 U.S. 161, 167-68 (2002) (internal citation omitted). In *Dusenbery*, the entire Court agreed that *Mathews* did not control the answer to the question of whether the FBI's sending of notice by mail of a civil forfeiture to an inmate in a correctional facility violated his procedural Due Process rights. Rather, the Court relied upon the specific procedural Due Process analysis outlined in *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306 (1950). *Dusenbery*, 534 U.S. at 167-70; *see id.* at 173-82 (Ginsburg, J., dissenting).[6]

Given the existence of *$8,850*, a robust and widely-applied procedural Due Process analysis that was specifically tailored to address claims of unreasonable "delay" in the initiation and adjudication of civil forfeiture matters, and the fact that *Mathews* lacks any

---

[6] In 2014, the Court confronted competing arguments regarding whether the *Medina* or *Mathews* test should apply to claims by criminal defendants that they should be able to challenge probable cause for a judicially-ordered pre-trial seizure of possibly-forfeitable assets under 21 U.S.C. § 853(e)(1). *See Kaley v. United States*, 571 U.S. 320 (2014). The Court ultimately determined that it need not decide which test would apply to the situation as not only prior precedent foreclosed the petitioners' arguments but they would also fail the *Mathews* analysis. *Id*. at 334 ("We decline to address those arguments, or to define the respective reaches of *Mathews* and *Medina*, because we need not do so"). In *Nelson v. Colorado*, 581 U.S. 128 (2017), the Court applied *Mathews* to Colorado's administrative scheme governing the reimbursement of court costs that were paid by criminal defendants before their convictions were set aside. *Id*. at 135-39.

longstanding basis in American jurisprudence to act as a "one-size-fits-all" test for every Due Process situation, the Court should decline the invitation to swap the tests in the civil forfeiture context.

C. Petitioners Fail to Explain How the *$8,850* Analysis Could Not Have Protected Their Property Interests.

Petitioners' argument appears to proceed from an assumption that *$8,850* does not already subsume and account for their positions on appeal.

First, with no argument that Alabama prosecutors did not file the state court cases "promptly," both Petitioners ultimately prevailed in the Alabama state courts when they presented, after lengthy, unexplained delays, their statutory "innocent owners" defenses. Petitioners did not invoke their rights under *$8,850* to demand a "speedy adjudication." *See $8,850*, 461 U.S. at 568-69 ("The failure to use these remedies can be taken as some indication that [the claimant] did not desire an early judicial hearing") (internal citation omitted). The factual bases for Petitioners' defenses were presumably known at the time they were notified of the seizure. Alabama statutes and judicial procedure permitted them to raise those defenses at any time, to post a bond, and/or to file a motion under the state's judicial rules of procedure for the return of the property. The Alabama prosecutors did nothing to thwart the assertion of Petitioners' defenses or delay their adjudication. Once the arguments were raised by

Petitioners' dispositive motions, the Alabama state courts did not unreasonably delay in deciding them.

Second, nothing prevented Petitioners from pursuing an *$8,850* "defense" in the state courts. If the Alabama prosecutors had unreasonably delayed the initiation of the civil forfeiture cases, *$8,850* expressly provides the pertinent analysis and remedy for that situation: likely dismissal for a violation of procedural Due Process. If the prosecutors had initiated the case in a timely manner but then somehow intentionally and/or unreasonably frustrated the claimants' rights to assert their defenses in court, *$8,850* analysis again provides the analysis and remedy. Once a court case is filed, *$8,850* requires that a claimant take the minimal step of expressing a desire for a speedy adjudication. At the same time, there are a variety of reasons why many claimants may not desire a speedy adjudication. For instance, a claimant may seek to stay the civil case to a parallel criminal proceeding to avoid being compelled to testify. Other claimants may want to take civil discovery. Petitioners' proposed "remedy" would not even be necessary if they had immediately filed their dispositive motions or communicated to the state courts that they sought a speedy adjudication.

Third, Petitioners fail to explain with specificity what the procedure and burdens of proof for their proposed "retention hearings" would be. Would the government have the burden to demonstrate "probable cause" for the seizure? Does the claimant have the burden of proof to demonstrate "innocent ownership" and what would the evidentiary standard be? What

happens if there is a disputed issue of fact? Can the government compel claimants and/or potential targets of a criminal investigation to testify at this hearing? Can the government use the testimony obtained in the "retention hearing" in a parallel criminal case? Would the "retention hearing" apply only to vehicles or to all personal property? If only for vehicles, does it have to be a claimant's only or primary vehicle? Would vehicles always qualify as a matter of law for the most protected "private interest?" In every case, does a court have to conduct a "*Mathews* hearing" to determine how important a particular piece of property is to the owner and the government's specific interest in the case to properly weigh the factors? What if the property was seized as both evidence for a criminal proceeding and for the possible purpose of civil forfeiture? What if the police agency had previously obtained a warrant for the seizure of the property? Petitioners do not adequately explain their proposed process and fail to account for many real-world considerations.

Fourth, Petitioners do not address the final part of the *Zinermon* analysis that looks to the existence of "any remedies for erroneous deprivations provided by statute or tort law." 494 U.S. at 126. Both federal and Alabama state law provide numerous avenues for civil monetary relief for unconstitutional and/or unlawful seizures in furtherance of possible civil forfeiture, including but not limited to § 1983 claims under the Fourth and/or Fourteenth Amendments and under Alabama state law (like a conversion claim). *See*, *e.g.*, *Caldwell v. Fort Lauderdale Airport Task Force*,

673 F. App'x 906, 910-11 (11th Cir. 2016) (unpublished) (reversing the dismissal of a § 1983 Fourth Amendment claim seeking damages for an unreasonable seizure of property at an airport intended for a civil forfeiture case); *Lightfoot v. Floyd*, 667 So.2d 56, 67 (Ala. 1995) (permitting an Alabama state law conversion claim to proceed arising from a seizure in furtherance of a possible civil forfeiture case). Petitioners fail to explain how their available civil claims are inadequate to remedy possible constitutional violations that may arise in the civil forfeiture context.

Finally, Petitioners' proposed remedy would only be theoretically invoked by a limited group of claimants: (1) those who are willing to testify voluntarily and not invoke their Fifth Amendment rights; and (2) those who believe they have an indisputable innocent owner defense. As an initial matter, not all civil forfeiture statutes even recognize that "innocent ownership" constitutes a complete defense. *See*, *e.g.*, *Bennis v. Michigan*, 516 U.S. 442, 453 (1995) (holding that Michigan's Nuisance Abatement statute was not unconstitutional for lacking a "complete" innocent owner defense). Even in situations where claimants raise at the outset what may appear to be meritorious innocent ownership defenses in civil forfeiture cases, those claims are often ultimately deemed to have no merit. *See*, *e.g.*, *United States v. Bird*, No. 21-11260, 2021 U.S. App. LEXIS 36417, *7 (11th Cir. Dec. 9, 2021) (unpublished) (affirming the grant of summary judgment to the government on the claimant's innocent owner defense); *United States v. $72,050.00*, 587 F. App'x 241,

245 (6th Cir. 2014) (unpublished) (same); *United States v. 194 Quaker Farms Rd.*, 85 F.3d 985, 987 (2d Cir. 1996) (discussing a jury's rejection of an innocent owner defense raised in a civil forfeiture case). The reality is that the police will only sometimes know at the precise moment of a seizure whether the record owner had knowledge of, consented to, or even directed the use of the property for criminal wrongdoing. As a plaintiff in a civil case, the government has the same rights as claimants to seek civil discovery, to file dispositive motions, and to demand a trial by court or by jury. Because federal and state law normally consider "innocent ownership" as an "affirmative defense" whose burden of proof rests solely on the claimant,[7] requiring that federal and state courts immediately adjudicate that defense at the dawn of a case would not only relieve the claimant of his or her legal burdens but would also often result in erroneous "interim" adjudications.

Because Petitioners' proposed remedy sweeps too broadly, could only provide a possible (and perhaps only temporary) remedy to a small class of claimants who have a specific affirmative defense, and fails to account for how civil forfeiture laws interact with criminal laws in the real world, the Court should reject an invitation to impose it.

---

[7] *See*, *e.g.*, *United States v. All Funds on Deposit with R.J. O'Brien & Assocs.*, 783 F.3d 607, 619-20 (7th Cir. 2015); *United States v. $11,071,188*, 825 F.3d 365, 371 (8th Cir. 2016); 28 U.S.C. § 983(d)(1).

D. Alternatives to a "Retention Hearing" Exist.

If the Court were considering modifying civil forfeiture processes for federal and state governments, other less extraordinary ideas could be considered.

First, the Court could choose to refine the *$8,850* test to emphasize more clearly the rights of claimants to a speedy adjudication and the responsibilities of federal and state courts to address those timeliness concerns. If the Court deems that the case law developed by the circuit courts applying *$8,850* has been historically too lenient to the governments' positions, it can modify and/or clarify the test accordingly.

Second, the Court could endorse a post-hoc warrant requirement.[8] Such a procedure could require police agencies to establish probable cause to a judicial officer as a prerequisite to a civil forfeiture case and could provide additional procedural and substantive safeguards for claimants.

CONCLUSION

For the foregoing reasons, Wayne County requests that the Court either dismiss the appeal as

[8] Such a requirement would not be necessary if: (1) the police agency already had obtained a warrant to seize the same property in furtherance of a criminal investigation and/or requires the retention of the property as evidence for the prosecution of a criminal case; or (2) the property itself is patently contraband (e.g., illegal weapons or narcotics).

improvidently granted or affirm the Judgment of the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

DAVIDDE A. STELLA
Assistant Wayne County Corporation Counsel
Counsel of Record

JAMES W. HEATH
Wayne County Corporation Counsel

OFFICE OF THE WAYNE COUNTY CORPORATION COUNSEL
500 Griswold St., Floor 30
Detroit, MI 48226
(313) 224-5030
dstella@waynecounty.com