No. 22-585

In the Supreme Court of the United States

HALIMA TARIFFA CULLEY, ET AL., PETITIONERS

v.

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

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether a claimant's assertion of a right to a prompt hearing on the disposition of property that a government has seized for civil forfeiture should be analyzed under the test employed in *United States* v. *$8,850 in U.S. Currency*, 461 U.S. 555 (1983), and *Barker* v. *Wingo*, 407 U.S. 514 (1972), or the test employed in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976).

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INTEREST OF THE UNITED STATES

This case concerns the constitutional standard for evaluating the process that is due after property that is subject to forfeiture is taken into custody. Because the United States conducts forfeiture proceedings against seized property, it has a direct interest in that constitutional standard. See, *e.g.*, *United States* v. *Von Neumann*, 474 U.S. 242 (1986); *United States* v. *$8,850 in U.S. Currency*, 461 U.S. 555 (1983). The United States has accordingly participated as amicus curiae in other cases involving due-process challenges to forfeiture procedures. See, *e.g.*, *Alvarez* v. *Smith*, 558 U.S. 87 (2009); *Bennis* v. *Michigan*, 516 U.S. 442 (1996).

STATEMENT

1. Petitioners Halima Culley and Lena Sutton owned vehicles that were seized incident to arrests and subject to civil-forfeiture proceedings under the pre-2022 version of Alabama law.[1] Under that law, illegal drugs, property used to carry out or facilitate drug crimes (including vehicles), and the proceeds of drug crimes are subject to *in rem* civil forfeiture. Ala. Code § 20-2-93(a) (West 2015); see *Money* v. *State*, 717 So. 2d 38, 46 n.4 (Ala. Crim. App. 1997). Property may be "[s]eiz[ed] without process" in certain situations, including when "[t]he seizure is incident to an arrest." Ala. Code § 20-2-93(b)(1) (West 2015).

Before forfeiture proceedings are initiated, a claimant who believes that property was "illegally seized" may file a motion seeking its return. Ala. R. Crim. P. 3.13(a); cf. *State* v. *Greenetrack, Inc.*, 154 So. 3d 940, 950-958 (Ala. 2014) (per curiam). And when the State seizes a vehicle, the owner may reclaim it during the pendency of forfeiture proceedings by posting a "bond in double the value of" the vehicle. Ala. Code § 28-4-287 (West Supp. 2022).

The State is required to "institute[]" judicial civil-forfeiture proceedings "promptly" after a seizure. Ala. Code § 20-2-93(c) (West 2015); see Ala. Code § 28-4-286 (West Supp. 2022). The Alabama Supreme Court has explained that although "[w]hat is 'prompt' is decided on the facts of a given case, * * * a fairly short time

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[1] In 2022, Alabama revised its forfeiture statutes to permit someone who claims to be an innocent owner (and is not the defendant in a related criminal proceeding) to request a hearing "at any time after seizure of property and before entry of a conviction in the related criminal case." Ala. Code § 20-2-93(*l*) (West Supp. 2022); see *id.* § 20-2-93(a)(4).

frame is evident from the cases addressing the issue." *Lightfoot* v. *Floyd*, 667 So. 2d 56, 66 (1995). Alabama courts have held, for example, that unjustified seven- and ten-week delays in initiating forfeiture proceedings violate the statutory promptness requirement. See *Hall* v. *State*, 150 So. 3d 771, 773-774 (Ala. Civ. App. 2014); *Adams* v. *State ex rel. Whetstone*, 598 So. 2d 967, 969 (Ala. Civ. App. 1992).

The State commences a forfeiture proceeding by filing a complaint in state circuit court. Ala. Code § 28-4-286 (West Supp. 2022). The court then may require repeated publication of a notice of the forfeiture proceeding so that interested parties can assert their property interests. See *ibid.*; Ala. R. Civ. P. 4.3; *Bharara Segar, LLC* v. *State*, 224 So. 3d 661, 663-665 (Ala. Civ. App. 2016). In the proceeding, the State bears the burden to "establish a prima facie case for the * * * forfeiture of the property." *Ex parte McConathy*, 911 So. 2d 677, 681 (Ala. 2005) (citation omitted). If it meets that burden, a claimant may raise (*inter alia*) an innocent-owner defense. Ala. Code § 20-2-93(h) (West 2015); see *Wallace* v. *State*, 229 So. 3d 1108, 1111 (Ala. Civ. App. 2017).

2. Culley's vehicle was seized on February 17, 2019, after her son, who was driving the vehicle, was pulled over and arrested for possessing marijuana and drug paraphernalia. Pet. App. 3a. Ten days later, the State filed a forfeiture action in circuit court. *Ibid.*; see J.A. 1-5. Seven months later, in September 2019, Culley answered the forfeiture complaint. Pet. App. 16a. On September 21, 2020, Culley moved for summary judgment, asserting that she was an innocent owner. J.A. 109, 112-113. On October 30, 2020, the court granted her motion and ordered return of the vehicle. J.A. 116-117.

Sutton's vehicle was seized on February 20, 2019, when a friend borrowing the car was pulled over and then arrested when police found methamphetamine in the car. Pet. App. 62a; J.A. 11, 18, 47. Fourteen days later, the State instituted forfeiture proceedings in circuit court. Pet. App. 62a; see J.A. 7-22. After Sutton failed to appear, the court entered a default judgment. Pet. App. 63a. In June 2019, it set aside that judgment at Sutton's request. *Ibid.* Ten months later, on April 10, 2020, Sutton moved for summary judgment, asserting that she was an innocent owner. J.A. 92, 99-100. On May 28, 2020, the court granted her motion and ordered the State to return her vehicle. J.A. 103-104.

3. While their forfeiture proceedings were pending, petitioners filed federal class-action complaints against various state and local defendants who are respondents here. Pet. App. 3a-4a. The State itself intervened in Sutton's case and is also a respondent. *Id.* at 4a. Each complaint included a claim seeking damages under 42 U.S.C. 1983 on the theory that Alabama's pre-2022 civil-forfeiture scheme violates the Due Process Clause of the Fourteenth Amendment for "fail[ing] to provide a prompt post-deprivation hearing." Pet. App. 4a; see *id.* at 6a.

The district court in Culley's case granted respondents' motions to dismiss and for judgment on the pleadings. Pet. App. 10a-59a. The court assessed Culley's due-process claim under the version of the four-factor test from *Barker* v. *Wingo*, 407 U.S. 514 (1972), that this Court applied in the forfeiture context in *United States* v. *$8,850 in U.S. Currency*, 461 U.S. 555 (1983). Pet. App. 44a-47a. That test "involves weighing (1) the length of delay, (2) the reason for the delay, (3) the

[claimant's] assertion of the right, and (4) prejudice to the" claimant. *Id.* at 46a.

The district court observed that "the State initiated forfeiture proceedings shortly" after the seizure and found the second and third factors dispositive in Culley's case because "Alabama law provides a mechanism to regain possession of the vehicle through the bond" and Culley "played a significant role" in "the delay in [the] proceedings." Pet. App. 46a-47a. The court also determined that the balancing test for procedural due process in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), would not have entitled Culley to "extra proceedings," which "would present an undue significant burden" on the State. Pet. App. 50a.

The district court in Sutton's case likewise granted respondents' motion for summary judgment. Pet. App. 60a-71a. Applying *$8,850* and *Barker*, the court found that Sutton failed to "establish[] that she was denied a speedy forfeiture proceeding" because "the State filed the civil forfeiture action within fourteen days of the seizure; 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; and she suffered no prejudice because she prevailed in the civil forfeiture." *Id.* at 70a-71a.

4. The court of appeals consolidated petitioners' appeals and affirmed the grants of summary judgment on petitioners' due-process claims for damages. Pet. App. 1a-9a. Relying on circuit precedent, the court explained "that the timeliness analysis is governed by *Barker*"; recognized "that a timely merits hearing affords a claimant all the process to which he is due"; and "rejected the argument that due process requires the sort of probable cause hearing"—namely, "a probable cause

hearing to determine whether [claimants] can retain their property during the pendency of" civil-forfeiture litigation—sought by petitioners. *Id.* at 7a-8a.

SUMMARY OF ARGUMENT

The court of appeals correctly recognized that petitioners have no due-process right to seek a standalone "retention hearing" when the government has seized property for civil forfeiture. Instead, as this Court has made clear, a claimant's possessory rights are fully protected by the requirement that the forfeiture proceedings are themselves timely. And the approach taken by this Court's precedents is wholly consistent with *Mathews* v. *Eldridge*, 424 U.S. 319 (1976).

A. Personal property may be seized for forfeiture without an advance hearing so long as a hearing is provided before the property is actually forfeited. *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974). And this Court has explained that a claimant's due-process interest in possessing seized property is protected by a requirement that the forfeiture proceedings are timely. See *United States* v. *Von Neumann*, 474 U.S. 242, 249 (1986).

In *United States* v. *$8,850 in U.S. Currency*, 461 U.S. 555 (1983), the Court adapted the four-factor speedy-trial test from *Barker* v. *Wingo*, 407 U.S. 514 (1972), to assess the timeliness of a forfeiture proceeding. Under *$8,850*, the Court determines whether a delay in initiating forfeiture proceedings violates due process based on (1) the length of the delay, (2) the reasons for the delay, (3) the claimant's assertion of the right, and (4) prejudice to the claimant. 461 U.S. at 565-569.

B. Petitioners invoke *Eldridge* to assert (*e.g.*, Br. i) that, in addition to a timely forfeiture proceeding, they have a separate right to seek a "retention hearing." But

under this Court's decisions, a claimant does not have an independent and overlapping right to another procedure, either before or during the forfeiture proceedings, to address the disposition of seized property.

In any event, *Eldridge* is fully consistent with, and would not require any material changes in, *$8,850*'s *Barker*-based analysis. Because the judge presiding over forfeiture proceedings would be able to address any requests for relief, the *Eldridge* analysis boils down to an interest-balancing analysis of the timeliness of those proceedings. It thus weighs the same considerations as *$8,850*.

C. A new constitutional right to an additional layer of postseizure proceedings would override considered legislative judgments and upset the balance between private and public interests. Federal and state governments have carefully calibrated interim remedies—including remission, mitigation, hardship release, and bond—that ease the burden on claimants facing genuine difficulties. At the same time, existing forfeiture frameworks account for the public interest in identifying and contacting all potential claimants before assigning possession of the property; coordinating forfeiture proceedings with related matters, particularly criminal investigations and prosecutions; and ensuring, through government custody, that property is not reduced in value, rendered unavailable, or put to illicit use before it is finally disposed through the forfeiture proceeding.

When, notwithstanding such a tailored system, the forfeiture proceedings in an individual case are unduly delayed, *$8,850* allows a claimant to secure the dismissal of the forfeiture proceeding and the return of her property. But there is no sound justification for a new layer of procedure—"retention hearings" of amorphous

nature and scope—in cases where the forfeiture action is proceeding in a timely way.

D. Petitioners here are not entitled to relief under either *$8,850* or *Eldridge*. Their forfeiture proceedings were commenced within two weeks, and any delay in their proceedings was attributable to their own lack of diligence.

ARGUMENT

A FORFEITURE PROCEEDING PROVIDES ADEQUATE POSTSEIZURE PROCESS UNLESS IT IS DELAYED BEYOND THE TIME THAT THE GOVERNMENT'S VALID INTERESTS REASONABLY REQUIRE

This Court's precedents make clear that a claimant's due-process interest in the possession of seized property is protected by a requirement that the forfeiture proceedings in which property rights will be finally adjudicated are timely. And to assess the timeliness of the forfeiture proceeding, the Court in *United States* v. *$8,850 in U.S. Currency*, 461 U.S. 555 (1983), adapted the four-factor test in *Barker* v. *Wingo*, 407 U.S. 514 (1972), which addresses similar concerns that arise in the context of the constitutional right to a speedy criminal trial. That approach accords with the more generalized due-process rubric in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), because it appropriately balances claimant and government interests in this context. Petitioners' reliance on *Eldridge* to demand a different and superseding procedure—which would judicially engraft a preliminary "retention hearing" onto carefully calibrated civil-forfeiture systems—has no sound basis in this Court's precedent; would disrupt the interests served by timely forfeiture proceedings; and is unnecessary to protect claimants' interests.

A. Timely Civil-Forfeiture Proceedings Under *$8,850* Satisfy A Claimant's Due-Process Interest In Possession Of Seized Personal Property

In Alabama, as elsewhere, property that is used to commit a crime may be subject to civil forfeiture. Ala. Code § 20-2-93(a) (West 2015); see *e.g.*, 18 U.S.C. 981. This Court's due-process decisions in the seizure context make clear that for personal property like vehicles, the only process necessary to protect a claimant's right to possess the seized property is a timely postseizure civil-forfeiture proceeding. The Court has further instructed that a civil-forfeiture proceeding is sufficiently timely so long as it satisfies *$8,850*'s version of the *Barker* speedy-trial test.

1. The Due Process Clause does not require a predeprivation hearing for the seizure of personal property subject to civil forfeiture

In *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974), this Court upheld a Puerto Rico statute that allowed the seizure, without a preseizure hearing, of a yacht suspected of importing marijuana. The Court explained that because seized personal property "will often be of a sort that could be removed to another jurisdiction, destroyed, or concealed," requiring "advance warning of confiscation" might well "frustrate the interests" that forfeiture statutes are intended to serve, such as "preventing continued illicit use" of the instrumentalities of crime and "enforcing criminal sanctions." *Id.* at 679. The Court emphasized that the furtherance of those important public purposes is entrusted to public officials, differentiating civil forfeiture from seizures by "self-interested private parties" under replevin statutes (which do require a preseizure hearing). *Ibid.* (citing *Fuentes* v. *Shevin*, 407 U.S. 67 (1972)).

In *United States* v. *James Daniel Good Real Property*, 510 U.S. 43 (1993) (*Good Real Property*), the Court adopted a different rule for the seizure of real property, which does not involve "the same considerations" as personal property. *Id.* at 52. The Court observed that "real property cannot abscond," *id.* at 57; that a court maintains jurisdiction over an *in rem* proceeding involving real property regardless of whether a seizure occurs, *ibid.*; and that seizing a home causes "far greater deprivation" than seizing personal property, *id.* at 54. But the Court's analysis of "the forfeiture of real property," *id.* at 52, had no bearing on the forfeiture of personal property, which the Court continued to recognize as a distinct context in which less process is required. See *id.* at 52, 57.

2. A claimant's due-process right to a postdeprivation hearing is fully satisfied by a timely civil-forfeiture action

This Court's decision in *United States* v. *Von Neumann*, 474 U.S. 242 (1986), addressed a claimant's due-process right to a hearing after personal property is seized. And the Court explained there that "the forfeiture proceeding, without more, provides the postseizure hearing required by due process." *Id.* at 249.

That case involved the seizure of a car that Von Neumann had attempted to drive into the United States from Canada without declaring it to the U.S. Customs Service. *Von Neumann*, 474 U.S. at 245. Von Neumann filed an administrative petition for remission or mitigation. *Id.* at 246.[2] The government partially granted that

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[2] Petitions for remission or mitigation are common in federal civil-forfeiture enforcement. See *$8,850*, 461 U.S. at 558. The relevant

petition 36 days later by reducing the forfeiture to a $3600 penalty. *Ibid.* In the interim, Von Neumann had gotten his car back by posting a bond for its value. *Id.* at 245-246. Von Neumann then challenged the mitigated penalty on the theory that the government had taken an unconstitutionally long time to address his remission petition. *Id.* at 246-247. This Court, however, explained that the Due Process Clause entitled Von Neumann only to a timely forfeiture proceeding. *Id.* at 249.

The Court rejected Von Neumann's argument that administrative remission was an essential first step in the process by which the government forfeits property, such that it would be subject to the same due-process concerns that underlie the right to a civil-forfeiture proceeding where a court determines the disposition of the property. See *Von Neumann*, 474 U.S. at 249-250. Instead, the Court explained, the remission procedure simply grants the government the discretion not to pursue a complete forfeiture even when the government is entitled to one; it is "not *necessary* to a forfeiture determination," and the Constitution does not entitle claimants to "a speedy disposition of [a] remission petition without awaiting a forfeiture proceeding." *Ibid.*

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statute vests discretionary authority in the appropriate official to remit (*i.e.*, forgive) or mitigate (*i.e.*, reduce) a forfeiture upon finding that the forfeiture was "incurred without willful negligence or without any intention" by the owner to violate the law, or that other mitigating circumstances exist. 19 U.S.C. 1618. That provision is incorporated by reference in nearly all federal civil-forfeiture statutes. See, *e.g.*, 18 U.S.C. 981(d); 21 U.S.C. 881(d). Some federal agencies consider remission or mitigation petitions before a judicial forfeiture proceeding. See *$8,850*, 461 U.S. at 566 nn.15-16. Agencies within the Department of Justice consider such petitions after forfeiture is decreed.

In reaching that conclusion, the Court repeatedly emphasized that the Constitution mandates a timely forfeiture proceeding before property may be permanently forfeited—but no more. See *id.* at 249, 251.

3. The timeliness of a civil-forfeiture proceeding depends on context- and case-specific application of the* $8,850 *factors

Because the forfeiture proceeding itself is the mechanism through which the validity of a seizure of personal property is tested, see *Von Neumann*, 474 U.S. at 249, a claim of unduly prolonged government retention turns on the timing of the postdeprivation forfeiture proceedings. And the Court held in *$8,850* that the speediness of a forfeiture proceeding is assessed under an adapted version of the analogous test in *Barker* for the speediness of commencing a criminal trial. As *Von Neumann* explained, Von Neumann's "right to a forfeiture proceeding meeting the *Barker* test satisfies any due process right with respect to the car and the money" for the bond. 474 U.S. at 251.

a. The issue in *$8,850* "was whether the Government's 18-month delay in bringing a forfeiture proceeding violated the claimant's right to due process of law." *Von Neumann*, 474 U.S. at 247 (emphasis omitted). "The Court held that due process requires a postseizure determination within a reasonable time of the seizure." *Ibid.* And it "concluded that the four-factor balancing test of *Barker* * * * provides the relevant framework for determining whether a delay was reasonable." *Ibid.*

In *$8,850*, the Customs Service had seized currency from Mary Vasquez, who had falsely understated the amount of currency she was bringing into the country, in violation of a reporting statute. 461 U.S. at 558. Shortly after the seizure, Vasquez filed an administrative

petition for remission or mitigation of the forfeiture. *Id.* at 559. For around seven months, the Customs Service investigated whether the seized currency was connected to drug trafficking (which would have compounded the offense), ultimately concluding that it was not. *Id.* at 558-560. Vasquez was then indicted for the reporting offense and for making a false statement; the indictment also sought criminal forfeiture of the currency. *Id.* at 560. Criminal proceedings in the case lasted six months, and Vasquez was acquitted of the reporting violation on which the criminal forfeiture allegation was based. *Ibid.*

The Customs Service then referred the case to the United States Attorney to pursue civil (rather than criminal) forfeiture and denied the remission petition. *$8,850*, 461 U.S. at 560 & n.7. A civil-forfeiture action was ultimately filed 18 months after the original seizure. *Id.* at 560. Consistent with *Pearson Yacht*, Vasquez acknowledged that the seizure was constitutional, see *id.* at 562 & n.12, but asserted that the "dilatory" commencement of the civil-forfeiture action and the "dilatory processing" of the remission petition violated due process and warranted dismissal of the civil-forfeiture proceeding, *id.* at 561. This Court disagreed, finding the delay reasonable. *Id.* at 569-570.

The Court noted that the Due Process Clause requires "a hearing at a meaningful time" before property may be permanently forfeited, and that "a postseizure delay may become so prolonged that the dispossessed property owner has been deprived of a meaningful hearing at a meaningful time." *$8,850*, 461 U.S. at 562-563 (citation and internal quotation marks omitted). The Court explained, however, that identifying such unconstitutional delay requires a "flexible approach" that

"depends * * * heavily on the context of the particular situation." *Id.* at 564, 565 n.14. And the Court recognized in particular that the government has an interest in taking sufficient "time to pursue its investigation," even while "a claimant whose property has been seized * * * has been entirely deprived of the use of the property." *Id.* at 564.

To balance the competing considerations, the Court adapted a framework it had set forth in *Barker*, which involved an "analo[gous] * * * right to a speedy trial once an indictment or other formal process has issued." *$8,850*, 461 U.S. at 564. The Court recognized that "*Barker* dealt with the Sixth Amendment right to a speedy trial rather than the Fifth Amendment right against deprivation of property without due process of law." *Ibid.* But the Court reasoned that a "Fifth Amendment claim * * * —which challenges only the length of time between the seizure and the initiation of the forfeiture trial—mirrors the concern of undue delay encompassed in the right to a speedy trial." *Ibid.*

The Court accordingly determined that "[t]he *Barker* balancing inquiry provides an appropriate framework" in both the speedy-trial and forfeiture contexts. *$8,850*, 461 U.S. at 564. The Court noted that, if anything, "[t]he deprivation" of a defendant who "no longer retains his complete liberty" pending a criminal trial "may well be more grievous than the deprivation of one's use of property" pending a civil-forfeiture hearing. 461 U.S. at 564, 565 n.14. But the Court found that did not disturb the propriety of adapting the *Barker* test to address due-process claims of postseizure deprivation of property and instead would, at most, affect "the balance of the interests" by making it harder for a property claimant to prevail. *Id.* at 565 n.14.

b. As the Court observed in *$8,850*, "[t]he *Barker* test involves a weighing of four factors: length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." 461 U.S. at 564. And the Court explained in *$8,850* how those four fact-laden considerations likewise act as "guides in balancing the interests of the claimant and the Government" in the postseizure context. *Id.* at 565; see *id.* at 565-569.

Length of the delay: The Court observed that no bright constitutional line can be drawn as to the length of the delay; instead, the point at which a delay becomes unconstitutional "necessarily depends on the facts of the particular case." *$8,850*, 461 U.S. at 565. And the Court acknowledged that potential harms to the claimant are part of the length-of-delay inquiry, observing that the 18-month delay in *$8,850* was "quite significant" because "[b]eing deprived of this substantial sum of money for a year and a half is undoubtedly a significant burden." *Ibid.*

Reasons for the delay: At the same time, the Court recognized that there are valid reasons for delay in initiating the postseizure process of a forfeiture proceeding. *$8,850*, 461 U.S. at 565-568. First, the government "must be allowed some time * * * to investigate the situation in order to determine whether the facts entitle the Government to forfeiture"—particularly where a seizure decision is "of necessity a hasty one" (such as one made at the border). *Id.* at 565. Second, if the government seeks to postpone formal forfeiture proceedings while addressing an administrative remission petition, that is a "weighty factor" in favor of delay because the vast majority of remission petitions result in at least partial relief, and administrative remission thus can avoid the burdens of formal litigation. *Id.* at 567; see *id.*

at 558, 566. Third, the parties often have good reason to postpone civil proceedings while related criminal proceedings are pending, including to avoid issue preclusion, to prevent the exploitation of broad civil discovery to gain an advantage otherwise unavailable in the criminal prosecution, or to preserve the defendant's ability to raise inconsistent arguments in the two proceedings. *Id.* at 567.

The claimant's assertion of the right: The Court further reasoned that when a claimant has the ability to trigger an early judicial forfeiture proceeding, but does not do so, she provides "some indication" of acquiescence in the timing of the civil proceeding. *$8,850*, 461 U.S. at 569. And the Court identified multiple routes that federal law provided for compelling the forfeiture process to move forward, including: (1) affirmatively requesting that the Customs Service refer the matter to the United States Attorney to commence a judicial forfeiture proceeding, and (2) filing a motion under then-Rule 41(e) of the Federal Rules of Criminal Procedure (1983)—now Rule 41(g)—challenging the validity of the seizure and seeking return of the property. *$8,850*, 461 U.S. at 569.

Prejudice to the claimant: Finally, the Court noted that an actual impediment to a claimant's ability to mount her case, such as "the loss of witnesses" due to the government's delay in filing, "could be a weighty factor indicating that the delay was unreasonable." *$8,850*, 461 U.S. at 569.

B. This Court's Focus On The Timeliness Of Forfeiture Proceedings Is Consistent With *Eldridge*

Petitioners assert (*e.g.*, Br. i) that—in addition to their right to the timely initiation of forfeiture proceedings under the adapted *Barker* framework—they have

a separate right to seek a "retention hearing" under *Eldridge*. In their view, *$8,850* applies only to claims regarding "delay in *commencing* a civil forfeiture action"—and does not apply to claims of an "erroneous deprivation of property during the forfeiture proceedings." Br. 30. But *Von Neumann* and *$8,850* do not support such a cramped reading; their focus on the timeliness of forfeiture proceedings is consistent with *Eldridge*; and in any event, the formal framing of the inquiry would not meaningfully affect its substance.

1.* Von Neumann *and* $8,850 *foreclose claims seeking a postseizure hearing that is separate from a timely forfeiture proceeding

The postseizure process that petitioners seek through a "retention hearing" is precisely what the forfeiture proceeding itself provides. As the Court explained in *Von Neumann*, "[i]mplicit in this Court's discussion of timeliness in *$8,850* was the view that the forfeiture proceeding, without more, provides the postseizure hearing required by due process to protect Von Neumann's property interest in the car." 474 U.S. at 249.

In reaching that view, the Court considered and accounted for the burdens associated with deprivation of property between the time that it is seized and the time of the forfeiture proceeding. Both *Von Neumann* and *$8,850* rest on the express presupposition that a claimant does not have possession of the property during that period. The Court recognized in *$8,850* that "a claimant whose property has been seized * * * has been entirely deprived of the use of the property," 474 U.S. at 564, and viewed the "delay" in the initiation of forfeiture proceedings as a period during which Vasquez was "deprived of [a] substantial sum of money," *id.* at 565.

Similarly, the precise argument that the Court rejected in *Von Neumann* was that Von Neumann's "interest in the car, or in the money put up to secure the bond, entitle[d] him to a speedy answer to his remission petition" without having to await the civil-forfeiture proceedings themselves. 474 U.S. at 250.

As *Von Neumann* and *$8,850* make clear, a due-process claim by someone who seeks the return of property that has been seized takes the form of a claim that the only postseizure process that he is due—a civil-forfeiture proceeding—has been unreasonably delayed. See *Von Neumann*, 474 U.S. at 249; *$8,850*, 461 U.S. at 562-570 & n.12; see also *Pearson Yacht*, 416 U.S. at 676-680. A claimant does not have an independent and overlapping right to another procedure, either before or during the forfeiture proceedings, concerning the disposition of the property. Instead, as the Court explained in *$8,850*, a claimant who believes that the government has retained personal property for an unlawfully prolonged period "is able to trigger rapid filing of a forfeiture action if he desires it." 461 U.S. at 569. Among other things, the common law has for centuries allowed a claimant to "file an equitable action seeking an order compelling the filing of the forfeiture action or return of the seized property." *Ibid.* (citing *Slocum* v. *Mayberry*, 15 U.S. (2 Wheat.) 1, 10 (1817) (Marshall, C. J.)).

Furthermore, as *Von Neumann* demonstrates, timely forfeiture proceedings are just as adequate when a government seizure has deprived the claimant of a car as when it has deprived a claimant of other forms of personal property. Von Neumann specifically "urge[d] the importance of automobiles to citizens in this society" in contending that the 14-day deprivation of his car before

he posted bond amounted to a due-process violation. 474 U.S. at 251. The Ninth Circuit agreed, observing that "special hardships [are] imposed on persons deprived of the use of their automobiles" and suggesting that the detention of Von Neumann's car had violated due process. *Von Neumann* v. *United States*, 729 F.2d 657, 661 (9th Cir. 1984), rev'd, 474 U.S. 242 (1986). This Court held, however, that the "right to a forfeiture proceeding meeting the *Barker* test satisfies any due process right with respect to" both "the car and the money" that Von Neumann paid to secure the bond. 474 U.S. at 251. In so holding, the Court drew no distinction between vehicles and money.

2. **Eldridge *would likewise focus on the timeliness of a forfeiture proceeding***

Although the Court has not expressly applied *Eldridge* to forfeitures of personal property, *Eldridge* is fully consistent with, and would not require any material changes in, the Court's traditional *Barker*-based analysis of the timing of proceedings to forfeit personal property. Like *$8,850*'s application of *Barker*, application of *Eldridge* in this context would necessarily focus on the timing of forfeiture proceedings, rather than the existence of some ancillary postseizure hearing. *Eldridge* outlined a three-factor due-process test that incorporates consideration of "the private and governmental interests at stake * * * and the nature of the existing procedures." 424 U.S. at 340. For two reasons, that test reduces in this context to the single question: whether the timing of the forfeiture hearing is adequately supported by valid government interests.

First, in these circumstances, the third *Eldridge* factor, "the nature of the existing procedures," 424 U.S. at 340, is not meaningfully at issue. No one disputes "the

fairness and reliability," *id.* at 343, of a forfeiture proceeding. Petitioners received notice that their vehicles had been seized and the opportunity to be heard in judicial proceedings before their vehicles could be forfeited. See Pet. App. 3a, 63a; J.A. 4-5. Petitioners do not challenge "the initial seizure[s]" of their vehicles, "the ultimate decision[s]" in their "civil forfeiture actions," or the processes governing civil judicial forfeiture proceedings in Alabama; they assert only a right to a sufficiently prompt judicial proceeding. J.A. 56; see J.A. 75-76. That is exactly what a timely civil-forfeiture proceeding provides.

Second, the "private interest[]" at issue, *Eldridge*, 424 U.S. at 334, concerns only the length of the deprivation, not the nature of the seizure. Petitioners do not assert that the initial seizure of their property pending forfeiture violated due process. See J.A. 56, 75-76; see also *Pearson Yacht*, 416 U.S. at 676-680. They contest, and assert an interest in modifying, only the length of time before a hearing on their right to reobtain the property. That timing issue is expressly what *$8,850* and *Von Neumann* consider.

3. The formal designation of the inquiry is substantively immaterial

Petitioners' effort to replace the specific and considered approach of *$8,850* and *Von Neumann* with the more amorphous *Eldridge* test is not only inconsistent with those decisions, but also unnecessary. The formal choice between the two tests is largely immaterial to how the issue of the right to prompt judicial process is assessed. Cf. *Kaley* v. *United States*, 571 U.S. 320, 334 (2014). Either way, a court would wind up examining the same considerations.

As adapted in *$8,850*, the *Barker* inquiry considers the claimant's and government's interests in a manner analogous to the *Eldridge* inquiry. The adapted *Barker* test considers the claimant's interests by considering (1) the general interest in avoiding the hardship of property deprivation, as part of the "overarching factor" of the "length of the delay," *$8,850*, 461 U.S. at 565; (2) the intensity with which the claimant pursues her interests and the specific reasons she invokes to support them, as part of its analysis of "the claimant's assertion of the right to a judicial hearing," *id.* at 568-569; and (3) the claimant's potential prejudice from the deprivation, in the "final element" of "whether the claimant has been prejudiced by the delay," *id.* at 569. And the adapted test accounts for the government's interests in assessing "the reason the Government assigns to justify the delay." *Id.* at 565; see *id.* at 565-568.

As a result, an unconstitutional delay under *$8,850* may result in dismissal of a forfeiture proceeding and return of property if the claimant shows she has not received (and will not receive) timely process. The possibility that further delay may violate due process can, in turn, influence a court's decision to set deadlines or grant continuances, see, *e.g.*, 18 U.S.C. 983(a)(1)(C) and (3)(A); cf. *Vermont* v. *Brillon*, 556 U.S. 81, 90 (2009), and will certainly encourage the government to act diligently, cf. *Zedner* v. *United States*, 547 U.S. 489, 499 (2006). When, notwithstanding that incentive, the government takes unreasonable time in proceeding to a forfeiture hearing, a dismissal and return of the seized property are appropriate.

That remedial approach essentially replicates the substance of an *Eldridge* inquiry, properly considering in each case whether an unreasonably long time has

passed between seizure and judicial proceedings. Petitioners' suggestion (Br. 29) that the government will almost invariably prevail under the *$8,850* analysis is refuted by the evidence. Courts applying *$8,850* have repeatedly found that the government has unconstitutionally delayed in commencing forfeiture proceedings. See, *e.g.*, *United States* v. *$12,248 U.S. Currency*, 957 F.2d 1513, 1518-1519 (9th Cir. 1991); *United States* v. *$23,407.69 in U.S. Currency*, 715 F.2d 162, 165-166 (5th Cir. 1983). Petitioners accordingly present no sound reason to conclude that any formal reframing of the inquiry is warranted.

C. Judicial Imposition Of An Additional Layer Of Postseizure Proceedings Would Be Unnecessarily Disruptive And Detrimental

Petitioners' approach, in contrast, would appear to require a new layer of procedure, of amorphous nature and scope, in *all* cases where a claimant has not been charged with a crime, regardless of whether the forfeiture proceeding would have or has commenced in a timely way and no matter whether forfeiture is contested. Petitioners' class-action complaints sought a "prompt post-seizure hearing," separate from a forfeiture proceeding, in which "[a]ll persons who have had their property seized, * * * have not been charged with a crime, and have had a civil forfeiture action filed against them" can challenge the government's retention of that property. J.A. 61, 64; see J.A. 82, 85. And petitioners argued in the court of appeals that "they are seeking * * * a probable cause hearing to determine whether they can retain their property during the

pendency of litigation." Pet. App. 7a.[3] The addition of such a hearing, even when the government is acting expeditiously and in accordance with all previously recognized due-process requirements, would override legislative judgments about how to conduct sound and effective forfeiture proceedings without any corresponding benefit.

1. Federal and state legislatures already provide appropriate mechanisms for addressing claims of prolonged government retention of seized property

As noted earlier, the Court in *$8,850* listed several interim measures available to claimants who seek quick return of seized property. If a civil-forfeiture action has not yet been filed, a claimant can bring an equitable action to compel the government to initiate the civil proceeding, or if the seizure was unlawful, can seek return of the seized property under what is now Federal Rule of Criminal Procedure 41(g) or a state analogue such as

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[3] To the extent that petitioners assert that they instead were entitled to case-specific *Eldridge* hearings in which the propriety of such a postseizure "retention hearing" would be assessed, that was not what they claimed in district court (let alone tried to invoke in state court). In district court, petitioners asserted a right to "a prompt post-seizure hearing to establish" whether they were innocent owners—not a right to an *Eldridge* hearing to assess the propriety of a further postseizure "retention hearing." J.A. 64, 85. In any event, a claimed right to an *Eldridge* hearing, even if properly asserted at this point, would be even more unwarranted. It would likewise superimpose an additional hearing requirement on top of the procedures that the State already provides. The considerations in such a hearing would be the same as the ones that the *$8,850*/*Barker* test evaluates to assess the timeliness of the forfeiture proceedings. See pp. 15-16, *supra*. And if a claimant were successful in that *Eldridge* hearing, the result would be yet another separate hearing—the "retention hearing" itself.

Alabama Rule of Criminal Procedure 3.13(a). See *$8,850*, 461 U.S. at 569.

The Court in *$8,850* also noted that the federal government had voluntarily adopted nonjudicial discretionary procedures for interim relief, such as remission and mitigation petitions. See 461 U.S. at 558, 566-568; accord *Von Neumann*, 474 U.S. at 246, 249-250; see also 28 C.F.R. 8.7(b) (permitting the release of seized property under certain conditions, including if "the seizing agency determines that there is an innocent party with the right to immediate possession of the property"). Those remedies allow some forfeiture decisions and proceedings to be placed on a fast track, without requiring a mini-trial on forfeiture (whose nature and scope petitioners have declined to specify) as a precursor to a true forfeiture proceeding.

And since *$8,850* and *Von Neumann*, Congress has devoted even more extensive time and study to the issue of postseizure procedure. Between 1996 and 2000, Congress held a lengthy series of hearings on forfeiture reforms, culminating in the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Pub. L. No. 106-185, 114 Stat. 202. See, *e.g.*, Money Laundering and Asset Recovery Section, Criminal Div., U.S. Dep't of Justice, *The Civil Asset Forfeiture Reform Act of 2000 Legislative History* (May 2000), https://perma.cc/L7WS-6EJW (discussing hearings). CAFRA includes, among other things, a new federal provision that, in carefully delimited circumstances, permits an owner who suffers genuine hardship from the interim deprivation of her property to secure its release. 18 U.S.C. 983(f).

CAFRA's hardship provision illustrates that a remedy may appropriately account for claimants' interests without requiring an antecedent hearing in which the

parties and the court must address the same issues that a timely forfeiture hearing definitively resolves. And it underscores the care with which Congress and many state legislatures have crafted protections for forfeiture claimants over and above what the Constitution requires. Compare, *e.g.*, 18 U.S.C. 983(d) (innocent-owner defense), and Ala. Code § 20-2-93(h) (West 2015) (same), with *Bennis* v. *Michigan*, 516 U.S. 442, 443 (1996) (concluding that the Due Process Clause does not require an innocent-owner defense).

States may, of course, choose to provide such a hearing, as Alabama has since 2022, see p. 2 n.1, *supra*, but the choice may depend on specific state priorities and experience with its own citizens, law enforcement agencies, and courts. And even a State that provides a broader right may later determine that a more cabined one, like CAFRA's, is more manageable. Cf. *Oregon* v. *Ice*, 555 U.S. 160, 171 (2009) ("We have long recognized the role of the States as laboratories for devising solutions to difficult legal problems.").

2. Judicial imposition of additional proceedings would undermine the public interest

The federal and state legislatures, not the federal courts, are best suited to determine whether to modify the existing balance between public and private interests by adding another hearing requirement. A judicial requirement of a "retention hearing" in advance of a timely forfeiture proceeding would override the public interests, reflected in CAFRA and elsewhere, in having a single proceeding with all interested parties, coordinating forfeiture proceedings with related criminal proceedings, and preserving the property for appropriate disposition in the forfeiture proceeding.

a. Identifying and contacting potential claimants enables an accurate global resolution

Before commencing a judicial forfeiture proceeding, the government generally reviews facts gathered by the law enforcement agency that seized the relevant property, identifies all potentially interested parties, and notifies those parties that the property is subject to forfeiture. Those steps—and the time necessary to take them—are vital. A premature "retention hearing" could interfere with them.

i. Any proceeding to protect claimants' due-process rights must first seek to identify those claimants—which often includes research to determine their current mailing address, legal representative, and incarceration status. Petitioners appear to assume that people entitled to demand a hearing will be readily identifiable at the time of seizure. That is not so in all, or even most, cases. Every piece of property may have many potential claimants, each with a right to contest forfeiture. Federal law, for example, allows for claims by individuals who hold "a leasehold, lien, mortgage, recorded security interest, or valid assignment." 18 U.S.C. 983(d)(6)(A); see 18 U.S.C. 983(d)(1). The person from whom the property is seized may not even be one of those interested parties.

Ascertaining the identities of interested parties takes time and care, particularly when the property is personal. Ownership and other interests in various kinds of personal property are not publicly recorded. A prime example is cash: Ownership is not apparent from the face of a bill, and the money may belong to someone other than the person found with it. See, *e.g.*, *United States* v. *Alcaraz-Garcia*, 79 F.3d 769, 776 (9th Cir. 1996) (finding that when the claimants gave money to

the defendant to deliver to others, they were bailors under state law and therefore could contest forfeiture). And even where alternatives to personal notice are permissible, they take time. See, *e.g.*, Fed. R. Civ. P., Supp. R. for Admiralty or Mar. Cl. & Asset Forfeiture Actions G(4)(a)(iii) (publication notice of a civil-forfeiture action requires between three weeks and 30 days); Ala R. Civ. P. 4.3(d)(3)(C) (requiring publication "at least once a week for four successive weeks").

For those reasons, Congress determined that under the framework that applies to most federal forfeitures, the government should notify an interested party within 60 days after seizure *or* after learning of the party's interest (with a slightly longer period when the initial seizure was made by state or local authorities). 18 U.S.C. 983(a)(1)(A).[4] By that date, the federal law enforcement agency must either: (1) commence the administrative forfeiture process by sending written notice to potential claimants; (2) initiate a civil or criminal forfeiture

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[4] The deadlines in 18 U.S.C. 983(a) apply to forfeitures that begin as administrative proceedings, with exceptions noted in 18 U.S.C. 983(i)(2). Some classes of property are ineligible for administrative, non-judicial forfeiture and can only be forfeited through judicial proceedings. See 18 U.S.C. 985(a) (real property ineligible); 19 U.S.C. 1607(a)(1)-(4) (listing categories of personal property eligible for administrative forfeiture); see also 18 U.S.C. 981(d) (incorporating 19 U.S.C. 1607). And the government sometimes initiates judicial forfeiture even when it could first seek administrative forfeiture. Department of Justice policy encourages initiation of civil judicial forfeiture actions within 150 days of seizure if the property is eligible for administrative forfeiture or within 90 days of receipt of a claimant's written request for release of the property if the property is ineligible for administrative forfeiture. Money Laundering and Asset Recovery Section, Criminal Div., U.S. Dep't of Justice, *Asset Forfeiture Policy Manual*, Chap. 5, Secs. B.2.a and B.2.b (2023), https://perma.cc/85EU-JADZ.

proceeding by filing a complaint or obtaining an indictment; or (3) return the property. 18 U.S.C. 983(a)(1)(A) and (F). That deadline may be extended only under limited circumstances, and only once without court approval. 18 U.S.C. 983(a)(1)(B)-(D). Alabama, for its part, requires that forfeiture proceedings be "instituted promptly" after a seizure, Ala. Code § 20-2-93(c) (West 2015), which Alabama courts have read to require a short time frame—in many cases less than seven or ten weeks, see pp. 2-3, *supra*.

ii. Identifying and notifying potential claimants before conducting a forfeiture hearing furthers the efficiency of the proceedings, to the benefit of claimants, the government, and the judicial system. First, when many claimants all seek to contest the same forfeiture, requiring seriatim individualized hearings would be burdensome. Second, it would run the risk of improperly providing a remedy to an earlier claimant whose claim turns out to be superseded by a later one, or inappropriately benefitting a later claimant who is able to preview the government's case in earlier litigation. A single *in rem* forfeiture proceeding is therefore not only less burdensome, but also fairer.

Third, adequate time for notice also allows for the separation of uncontested forfeitures (which, by definition, do not violate due process) from contested forfeitures. That consideration is highly important because only a small minority of forfeitures are actually contested, even after the government identifies and notifies potentially interested parties. See Stefan D. Cassella, *Asset Forfeiture Law in the United States* § 4-1, at 191 n.2 (3d ed. 2022). In those cases, the forfeiture is resolved without "unnecessary and burdensome court

proceedings," *$8,850*, 461 U.S. at 566, of the sort that an advance-hearing requirement could impose.

b. Coordinating forfeiture proceedings with related matters promotes efficiency and fairness

The appropriate timing of forfeiture proceedings may also depend on coordination with the prosecution of a crime that makes property forfeitable; thus, "the pendency of criminal proceedings is * * * an element to be considered in determining whether delay is unreasonable." *$8,850*, 461 U.S. at 567. An adversary hearing on the forfeitability of personal property may require the government to present the same evidence that will inculpate the claimant in a criminal proceeding, or it may jeopardize an ongoing criminal investigation that the government is not yet prepared to announce publicly. See 18 U.S.C. 981(g)(1) (providing for a stay of civil proceedings to protect related criminal investigations that have not yet resulted in formal charges); 1 David B. Smith, *Prosecution and Defense of Forfeiture Cases* § 10.02[2] (2023) (Smith) (explaining that Section 981(g)(1) "recognizes that the need for confidentiality is at least as great during the investigatory stage of a criminal case").

Claimants themselves will often prefer that the forfeiture action be stayed while a related criminal proceeding is ongoing because litigating both proceedings simultaneously might put claimants in a difficult position, and federal law allows them to seek stays in such cases. See 18 U.S.C. 981(g)(2). A preliminary hearing that involves the claimant's assertion of an innocent-owner defense—as petitioners request here—would in many cases create tension with the claimant's right against compelled self-incrimination in any related criminal case because the government would be entitled

to test that defense through discovery and cross-examination. See, *e.g.*, 1 Smith § 10.01. And even aside from those considerations, the necessary discovery and witness preparation would consume time that could be more productively spent by both sides in furtherance of the criminal proceeding.

c. Government custody of seized personal property preserves its availability

Especially when the seizure is connected to a criminal case, allowing a claimant to repossess personal property pending a civil-forfeiture proceeding would create serious practical concerns. As the Court recognized in *Good Real Property*, the government has "legitimate interests * * * [in] ensur[ing] that the property not be sold, destroyed, or used for further illegal activity prior to the forfeiture judgment." 510 U.S. at 58. Government custody furthers those interests.

Contraband subject to forfeiture may pose a direct threat to public health and safety if left in circulation pending the judicial proceeding. Cf. *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U.S. 594, 599-600 (1950) (misbranded pharmaceuticals). In addition, many laws—like the laws providing for the forfeiture of vehicles used in drug smuggling—target contraband that is moved surreptitiously around (or into) the country. Forfeiture of instrumentalities like vehicles thus serves the "significant governmental purpose[]," *Pearson Yacht*, 416 U.S. at 679, of preventing the vehicles from continuing to facilitate crime. See 19 U.S.C. 1595a(a) (specifically identifying conveyances that facilitate smuggling as subject to forfeiture); see also, *e.g.*, 8 U.S.C. 1324(b)(1) (same, for vehicles used in smuggling noncitizens); 21 U.S.C. 881(a)(4) (same, for conveyances that facilitate drug transactions).

More generally, personal property can easily be moved, transferred, concealed, or destroyed. The government's possession of personal property can also ensure that it retains its value—which is particularly important if it is forfeited and used to compensate victims. Cf. Money Laundering and Asset Recovery Section, Criminal Div., U.S. Dept. of Justice, *Victims* (Aug. 19, 2022), https://perma.cc/6J9M-D6RZ (noting that the federal government's "victim compensation program has returned more than $11 billion in forfeited assets to victims since 2000"). No tool, like the *lis pendens* available with respect to real property, see *Good Real Property*, 510 U.S. at 58, exists to prevent the transfer of personal property like cash or cars.

Even a perfected security interest recorded against a vehicle title will not prevent the car from being concealed or transferred unlawfully. Similarly, a restraining order of the kind the Court suggested in *Good Real Property*, see 510 U.S. at 58, may not fully protect the government's interests once the instrumentalities or proceeds of crime are released from custody pending forfeiture. In the case of currency, no such relief appears possible; the cash either is in custody or may be spent freely, with no middle ground.

A premature proceeding for return of property, in advance of full notice and factual development, thus creates significant risks that a bona fide forfeiture proceeding would avoid. Those risks further support the consistent focus of this Court's due-process precedents on the timing of the forfeiture proceeding, rather than the judicial superimposition of an extra hearing.

D. The Timing Of Petitioners' Forfeiture Hearings Satisfied Due-Process Requirements

In this case, the State initiated petitioners' forfeiture proceedings within 14 days of seizing their vehicles. By way of comparison, that minimal delay was considerably shorter than the carefully calibrated time limits for the initiation of proceedings in CAFRA. See pp. 27-28 & n.4, *supra*. And any delay in the conclusion of petitioners' forfeiture proceedings was the result of petitioners' litigation decisions. Under either *$8,850* or *Eldridge*, petitioners' postseizure hearings were sufficiently prompt to satisfy due process.

1. Under *$8,850*, the "length of the delay" in commencing forfeiture proceedings was quite short in both cases. 461 U.S. at 565. The civil-forfeiture proceedings commenced within two weeks of the seizures. Other considerations do not suggest an entitlement to even speedier initiation of proceedings. Petitioners did not seek to expedite the proceedings even further. See *id.* at 568-569. The temporary deprivation of a car for such a brief period was not unduly burdensome or prejudicial. See *id.* at 565, 569; see also, *e.g.*, *Von Neumann*, 474 U.S. at 249. And the delay was clearly justified by the government interests in, *inter alia*, identifying and notifying all interested parties, coordinating with related criminal proceedings, and avoiding reuse of the vehicles as instrumentalities for crime. See *$8,850*, 461 U.S. at 565-569.

And, once the State promptly commenced petitioners' forfeiture hearings, petitioners—not the State—were responsible for the duration of their proceedings. See pp. 3-4, *supra*. The State had a continued interest in retaining possession of the vehicles during the pendency of the proceedings, and there is no indication that

the State took any actions to slow down the normal process of litigation. But Culley took over six months to respond to the forfeiture complaint and did not move for summary judgment until a year and a half after the State initiated the forfeiture proceedings. Within six weeks of that filing, the court ordered her car returned. Sutton, for her part, failed to appear and therefore had a default judgment entered against her. And even after the court set aside the default judgment, she waited ten months to move for summary judgment; the court then ordered her car returned in under seven weeks. Any undue delay in the proceedings themselves was thus a delay of petitioners' own making—not a basis for relief. See *$8,850*, 461 U.S. at 569 (noting that "[t]he failure to use [available] remedies can be taken as some indication that [a claimant] did not desire an early judicial hearing").

2. Application of the *Eldridge* framework would lead to the same result. As discussed above, see pp. 19-20, *supra*, the *Eldridge* test in this context boils down to an assessment of whether the timing of the forfeiture hearing is adequately supported by the public interest. Petitioners' assertion of an innocent-owner defense to forfeiture would not in itself entitle them to even faster process given the significant public interest in avoiding undue haste in resolving forfeiture proceedings.

Even if petitioners had a particularized interest in expedition, they did not make that known to either the court or to respondents. Indeed, as just discussed, they did not act diligently once the proceedings commenced. Petitioners accordingly fail to justify the damages relief that they seek—much less the relief that they sought on behalf of a class of similarly situated persons.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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