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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

Petitioners did nothing wrong. They let others drive their cars, and when *those* individuals got arrested, Respondents' officers seized, retained, and tried to forfeit the cars, rebuffing Petitioners' claims of innocence. But Alabama had no chance of forfeiture, because Alabama law bars forfeiture of an innocent owner's car. Even so, Respondents deprived Petitioners of their cars during the forfeiture proceedings, each lasting well over a year. For Sutton, the consequences were severe: she couldn't find work, fell behind on her bills, and missed medical appointments. J.A. 49-50. None of this had to happen: Alabama could have provided, as it does now, a streamlined retention hearing, a limited proceeding testing the "probable validity of continued deprivation" during the forfeiture proceedings. *Ingram v. Wayne County*, No. 22-1262, 2023 WL 5622914, at *15 (6th Cir. Aug. 31, 2023) (quoting *Krimstock v. Kelly*, 306 F.3d 40, 69 (2d Cir. 2002)).

The question presented is how to decide whether due process required that retention hearing. As then-Judge Sotomayor explained (and five other appellate courts agree), the answer is by applying the due process framework set out in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See Krimstock*, 306 F.3d at 48-49; *Ingram*, 2023 WL 5622914, at *10-11; Reply (Cert.) 3. *Mathews* is the ordinary, time-tested standard for assessing the sufficiency of process in civil contexts, and the Court has applied it before to resolve whether more process is due in the civil forfeiture context. *See United States v. James Daniel Good Real Property*, 510 U.S. 43, 53 (1993).

Respondents (collectively, Alabama) and the federal government don't have much to say about *Mathews* and why it shouldn't apply to retention hearings just like it applies to most other due process questions in civil cases.

First, Alabama and the federal government claim that *United States v. $8,850 in U.S. Currency*, 461 U.S. 555 (1983), and *United States v. Von Neumann*, 474 U.S. 242 (1986), held that the Sixth Amendment speedy trial test from *Barker v. Wingo*, 407 U.S. 514 (1972), is the "exclusive test" for post-seizure due process claims in the civil forfeiture context. Ala. Br. 17. But those decisions addressed only due process claims about the timeliness of the final forfeiture determination, not the need for more process to protect, during the forfeiture proceedings, a state-created right against forfeiture based on innocence. The federal government doesn't even address then-Judge Sotomayor's explanation of this point in *Krimstock*, 306 F.3d at 53, 68. And without *$8,850* and *Von Neumann*, the *Barker*-over-*Mathews* argument falls apart. It's little surprise that the Sixth Amendment speedy trial test has nothing to say about "the value of additional process." *Ingram*, 2023 WL 5622914, at *10. In fact, analogizing to the criminal context—the prompt probable-cause hearing requirement under *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975)—only underscores the need for a methodological approach that can assess the sufficiency of process during the forfeiture proceedings.

Second, Alabama and the federal government wheel out a parade of unresponsive and unpersuasive arguments. They complain that Petitioners are really seeking a speedier final forfeiture determination, again ignoring the distinct interest retention hearings

protect and retention hearings' preliminary, streamlined nature, as *Krimstock* and the Legal Aid Society's amicus brief explain. They argue that governmental interests weigh against retention hearings—but those are arguments *Mathews* can account for, not reasons *Mathews* shouldn't apply. The United States then claims to have discovered that there is little difference between the *Mathews* and *Barker* frameworks. But that's news to the several appellate courts that apply *Mathews* and hold that due process requires a retention hearing, Reply (Cert.) 3; *Ingram*, 2023 WL 5622914, at *10-11—and also to Alabama, which admits that *Barker never* requires a retention hearing, *infra* pp. 15, 17. And while Alabama invokes the history of civil forfeiture, Judge Thapar has explained that "history and tradition" support requiring a retention hearing within 48 hours of the seizure, similar to the Fourth Amendment's hearing requirement under *Gerstein*. *Ingram*, 2023 WL 5622914, at *17-20 (Thapar, J., concurring).

Lastly, Respondents complain that Petitioners are responsible for the delay. But that argument has nothing to do with the question presented—what test applies to determine whether due process requires a retention hearing for vehicle owners asserting innocence precluding forfeiture. Regardless, Petitioners *promptly* pleaded for their cars back, *see* Petitioners' Br. 8-9, but Respondents' officers turned a deaf ear, perhaps motivated by the "money-making venture" that civil forfeiture has become. *Ingram*, 2023 WL 5622914, at *15 (Thapar, J., concurring). Under *Krimstock* and *Ingram*, Petitioners would have had retention hearings—and their cars back—within weeks of the seizure. But Respondents think it makes sense to blame the victims for not trying out an array

of Alabama litigation tactics (apparently even before they were represented by counsel) and seeing what happened. Respondents are wrong. And again, their contentions are arguments for the *Mathews* test to evaluate, not reasons to ignore the *Mathews* test.

Mathews is the test for determining whether due process requires a retention hearing, and Petitioners were entitled to a retention hearing.

ARGUMENT

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

The Due Process Clause imposes procedural limitations on Alabama's ability to seize, retain, and forfeit property. *Good*, 510 U.S. at 53. For instance, before Alabama can forfeit property, it must provide a meaningful opportunity to be heard at a meaningful time. *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). Importantly, Alabama has given "innocent owners"—like Petitioners—the right *not* to have their property forfeited. *See* Ala. Code § 20-2-93(a)(4), (w). That state-created right triggers due process rights that are necessary to guard against arbitrary government action. *District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52, 68 (2009).

Petitioners claim that Alabama's then-applicable civil forfeiture law did not adequately protect their state-created right as innocent owners against forfeiture of their cars. Tracking then-judge Sotomayor's decision in *Krimstock*, 306 F.3d at 48-49, Petitioners argue that due process required a retention hearing—a simple post-seizure, prejudgment hearing to test the "probable validity" of Alabama's retention of their cars during the forfeiture proceedings. *Ingram*, 2023 WL

5622914, at *1; *see* Legal Aid Society Br. 12-21. The question is *how to determine* whether due process requires a retention hearing. The answer is by applying the *Mathews* test, just as the Court did to answer the due process question in *Good*, 510 U.S. at 53.

A. *Mathews* is the default test for determining what procedures due process requires in civil settings, and it is the test that applies here.

1. The Due Process Clause provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. 14, § 1. That guarantee is flexible, because "not all situations calling for procedural safeguards call for the same kind of procedure." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). As Petitioners explained (Br. 19-21), the Court routinely applies *Mathews* to test "the sufficiency of particular procedures" in civil settings. *Wilkinson v. Austin*, 545 U.S. 209, 224 (2005). The framework balances (1) the private interest affected; (2) the risk of an erroneous deprivation of that interest through the procedures used, as well as the probable value of additional safeguards; and (3) the government's interest. *Matthews*, 424 U.S. at 335. Take *Good*, a civil forfeiture decision that applied *Mathews* to determine the process due. 510 U.S. at 53.

Petitioners also explained (Br. 21-25) that *Mathews* reflects historical practice and honors the flexible nature of due process. Comparing *Mathews*, 424 U.S. at 340-42, with *Goldberg v. Kelly*, 397 U.S. 254, 263 (1970), makes clear that a consistent methodology can produce different outcomes—in those cases, because the private interest in *Goldberg*

(welfare benefits) carried more weight than it did in *Mathews* (disability benefits).

2. The question presented is which test applies to answer a narrow underlying merits question: whether due process requires a retention hearing in a civil forfeiture proceeding involving a car whose owner asserts innocence, which precludes forfeiture. The answer is *Mathews*. Petitioners' Br. 25-28. Such owners, like Petitioners, want additional process to protect against deprivation of a right secured by substantive law. Thus, as in *Good*, *Mathews* applies.

3. Alabama doesn't seriously dispute that the *Mathews* framework is the default civil standard. It instead claims that the *Barker* framework—which governs the *Sixth Amendment* right to a speedy trial—should determine whether *due process* requires more process in civil forfeiture actions. *Infra* pp. 8-18. Still, Alabama gets two things wrong about *Mathews*.

First, contrary to Alabama's assertion (Br. 27), *Good* did much more than say that *Mathews* "provides guidance" about the procedures due process requires in the civil forfeiture context. 510 U.S. at 53. *Good* analyzed, balanced, and based its holding on the *Mathews* factors. *Id.* at 53-59, 62. Alabama cannot dismiss *Good* simply because it involved real property. *See* Ala. Br. 32-33. As Petitioners explained, Reply (Cert.) 6-7, and as the federal government acknowledges (Br. 1), this case presents a methodological question. And as the contrast between *Mathews* and *Goldberg* makes clear, methodology governs the same legal question, even when the facts differ. *Supra* pp. 5-6. If *Mathews* governs the sufficiency of process in civil forfeiture actions involving real property, *Good*, 510 U.S. at 53-59, it also governs the sufficiency of process

in civil forfeiture actions involving personal property. *See* Petitioners' Br. 26.

Second, Alabama cannot rebut the Court's consistent application of *Mathews* when deciding whether more process is due in a civil setting. Alabama notes (Br. 27) that different tests govern the criminal process and the method for giving notice, but this case doesn't involve either context. *Mathews* "provides the relevant inquiry." *Kaley v. United States*, 571 U.S. 320, 350 n.4 (2014) (Roberts, C.J., dissenting).

4. Not applying *Mathews* in this context would raise grave concerns. "[C]ivil forfeiture has in recent decades become widespread and highly profitable." *Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (statement of Thomas, J., respecting the denial of certiorari). Indeed, in requiring retention hearings under *Mathews*, the Sixth Circuit recently noted that one jurisdiction (Wayne County, Michigan) was "more interested in the money" than addressing legitimate concerns. *Ingram*, 2023 WL 5622914, at *13. As Judge Thapar observed, "the County's scheme is simply a money-making venture—one most often used to extort money from those who can least afford it." *Id.* at *15 (Thapar, J., concurring). The County would retain seized cars for months, "denying hearings to anyone bold enough to ask for them," and it would return the cars, if at all, only after the owner paid $900, $1,800, or $2,700. *Id.* Such abuse, Judge Thapar concluded, defies due process, which requires a retention hearing within 48 hours. *Id.* at *20.

If *Barker* applies, Wayne County could continue its regime of extortion—no wonder it filed an amicus brief here. That's because, under *Barker*, innocent owners are *never* entitled to a retention hearing. Ala.

Br. 24. Thus, only *Mathews* ensures that innocent owners have adequate procedural safeguards against arbitrary government action.

B. *Barker* does not govern whether due process requires a retention hearing.

Alabama argues that the Court has extended or should extend *Barker* to address whether due process requires a retention hearing in a civil forfeiture action. That argument makes little sense. Courts use *Barker* to determine whether the prosecution's delay violated a criminal defendant's Sixth Amendment right to a speedy trial by balancing (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) the prejudice to the defendant. 407 U.S. at 530. As the Sixth Circuit recently held, the *Barker* framework is "not a good fit" for deciding "whether more process is needed for the interim holding of property," because it does not address "the value of additional process." *Ingram*, 2023 WL 5622914, at *10-11.

$8,850 and *Von Neumann* did not address, much less decide, which test governs whether due process requires a retention hearing when the claimant asserts a right that bars forfeiture under substantive law. Those decisions addressed only the timeliness of procedures for making a final forfeiture determination and whether due process constrains discretionary conduct. That's why the courts of appeals, aside from the Eleventh Circuit below, have had little trouble "agree[ing] *Mathews* is the proper test." *Id.* at *11. And without *$8,850* and *Von Neumann*, Alabama's argument crumbles.

1. The Court has never extended *Barker* to address whether due process requires a retention hearing in a civil forfeiture action.

Alabama claims *$8,850* and *Von Neumann* "squarely decided" whether courts should apply *Mathews* or *Barker* to determine whether due process requires a retention hearing. Br. 17. Alabama is wrong. Unlike *Good*, which addressed the need for more process—the same basic issue here—*$8,850* and *Von Neumann* addressed only the speed in rendering a final ownership determination for claimants who had violated the law. The "only" issue in *$8,850* was whether the government's delay in filing a civil forfeiture action deprived the claimant of "a meaningful hearing at a meaningful time." 461 U.S. at 562-63. Similarly, *Von Neumann* addressed the government's delay in resolving a remission petition, 474 U.S. at 249-51—discretionary relief implicating *no* due process rights. The Court's resolution of those "timing" questions doesn't decide which test applies to a request for a retention hearing by owners whose innocence bars forfeiture under state law. Petitioners' Br. 37-40.

a. ***i.*** *$8,850* addressed "only" the "narrow" question whether the government violated due process by waiting 18 months to file a civil forfeiture action, holding that *Barker* was the test. 461 U.S. at 561-62, 569-70. Indeed, the claimant "challenge[d] only the length of time between the seizure and the initiation of the forfeiture trial." *Id.* at 564. That holding does not address how to decide whether due process requires additional procedures, like a retention hearing where the substantive law bars forfeiture of innocent owners' property.

ii. *$8,850* addressed a delay in commencing a civil forfeiture proceeding, not the need for a procedure to test the government's retention of property during the proceeding. As then-Judge Sotomayor explained, "the issue of delay in the proceedings" is distinct, one that "presumes prior resolution of any issues involving … the government's custody of the property" "while [the] proceedings are conducted." *Krimstock*, 306 F.3d at 68.

That distinction reflects the different interests at stake. *$8,850* involved a baseline constitutional guarantee: a timely merits hearing before final judgment. 461 U.S. at 562-63. But claimants with a state-created right *not* to have their property forfeited have another interest, possessing their property pending final judgment, and that additional right requires additional process to protect it "from arbitrary encroachment." *Krimstock*, 306 F.3d at 53 (quoting *Good,* 510 U.S. at 53). In *$8,850*, a quicker merits hearing would have changed nothing, because the claimant "conceded that the elements necessary for a forfeiture … were present," 461 U.S. at 569, and she "had no defense," so the hearing would have been "open and shut," Tr. of Oral Arg. at 23. But innocent owners are protected from forfeiture, meaning they have interests in both ultimate ownership at final judgment and possession pending final judgment.

The federal government ignores *Krimstock*. Alabama calls *Krimstock* "mistaken" because *$8,850* addressed "the remission procedure, which did not concern 'delays in rendering final judgment.'" Br. 20 (citation omitted); *see* Br. 17. But as this Court has explained, "the issue [in *$8,850*] did not involve the remission procedure." *Von Neumann*, 474 U.S. at 247. In short, *Von Neumann* doesn't support Alabama's

reading of *$8,850*. Neither does *Serrano v. United States Customs & Border Protection*, 975 F.3d 488, 500-01 n.17 (5th Cir. 2020), which held that (a) neither *$8,850* nor *Von Neumann* requires courts to apply *Barker* when determining the procedures due in a civil forfeiture proceeding, and (b) "*Mathews* is more applicable … because the harm alleged is the lack of an interim hearing rather than delay preceding an ultimate hearing on the merits." *Contra* Ala. Br. 20.

iii. Alabama and the federal government can't agree on whether *$8,850* "adopted" *Barker*, Ala. Br. 18, or "adapted" it, U.S. Br. 6, 8, 12, 14, 21. The distinction doesn't matter, because *$8,850* did not hold that *Barker* governs every post-seizure due process claim in the civil forfeiture context. But the semantics proves one thing: the struggle to apply "an adapted version of the analogous test in *Barker*," U.S. Br. 12, shows that *Barker* does not fit the due process inquiry here. *Infra* pp. 14-18.

b. *Von Neumann* didn't hold that *Barker* is the exclusive due process test for civil forfeiture cases, either. *Von Neumann* held only that (a) the claimant had no due process rights as to his remission petition, a discretionary form of relief, and (b) even assuming he had a property right protected by due process, the 36-day delay in resolving the remission petition did not violate due process under *Barker*. 474 U.S. at 249-51. *Von Neumann* does not resolve how to decide whether due process requires a retention hearing in a civil forfeiture action for a vehicle owner asserting innocence where innocence bars forfeiture—as the Sixth Circuit recently held. *Ingram*, 2023 WL 5622914, at *11; *see* Petitioners' Br. 40-44.

i. *Von Neumann* stands for the basic principle that where the government can grant or deny a benefit in its discretion, the claimant has no right to, and thus no due process interest in, the benefit. *See Osborne*, 557 U.S. at 67-68; *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005). Von Neumann argued that he had "a constitutional right to a speedy disposition of his remission petition." *Von Neumann*, 474 U.S. at 249. But the government had "discretion" to grant or deny remission, which assumes the property can be forfeited in the first place. *Id.* at 250. Von Neumann was not an innocent owner; he had crossed the border without declaring his property, so the government could forfeit his car. *Id.* With remission a discretionary administrative sideshow to the forfeiture proceeding, Von Neumann had no protected interest in remission, much less in its speed. *See id.*

Here, in contrast, Petitioners have a state-created right against forfeiture based on their innocence, and their claim is that more process—a retention hearing—was needed to protect that right. *Supra* pp. 4-5. Alabama's attempt to liken retention hearings to remission proceedings (Br. 24-25) thus fails. Unlike remission proceedings, retention hearings rest on a substantive entitlement barring forfeiture for innocent owners. Alabama's creation of that right "beget[s] yet other rights to procedures essential to the realization of the parent right." *Osborne*, 557 U.S. at 68 (citation omitted). The only way to determine whether retention hearings are one of those rights is to conduct a due process inquiry—something *Von Neumann* didn't need to do because there was no "legitimate entitlement to a benefit" in the first place, *Williams v. City of Detroit*, 54 F.4th 895, 899 (6th Cir. 2022) (Sutton, C.J.).

Unlike Alabama, the federal government seems to recognize (Br. 11) that *Von Neumann*'s holding rests on the discretionary nature of remission. But it separately says that *Von Neumann* "explained … that 'the forfeiture proceeding, without more, provides the post-seizure hearing required by due process.'" Br. 10 (quoting *Von Neumann*, 474 U.S. at 249). But that statement from Part II of *Von Neumann* can be understood only in the context of Part II's holding that Von Neumann had no due process interest in a discretionary benefit. Petitioners' Br. 43-44. It cannot reasonably be understood to say anything about due process where the substantive law confers an interest (like an innocent owner defense) that may require additional procedural protections.

ii. After holding that the claimant had no due process rights with respect to his remission petition, *Von Neumann* held (in Part III) that even if a due process right existed, the mere 36-day delay in resolving the remission petition did not violate due process under *Barker*. 474 U.S. at 250-51. As with *$8,850*, that holding addressed only the timing of a procedure for resolving the forfeiture dispute, not the need for a procedure to test the government's retention of property during the proceeding. And like the forfeiture hearing in *$8,850*, the remission proceeding in *Von Neumann* determined who ultimately would keep the property. *See id.* at 245-46. *Contra* Ala. Br. 23.

Alabama claims, without citation, that Von Neumann "asked for more process." Br. 22. That's wrong. Von Neumann asked for "a speedy disposition of his remission petition." *Von Neumann*, 474 U.S. at 249. *Von Neumann* did not address "the need for an interim hearing" to address a protected interest during the forfeiture proceedings. *Ingram*, 2023 WL 5622914,

at *11. *Von Neumann*'s alternate holding is thus indistinguishable from *$8,850*'s: *Barker* applies when claimants argue that a government's delay in resolving (or implementing the process for resolving) the final disposition of property violated their baseline due process right to a timely hearing.

This context is critical for understanding *Von Neumann*'s statement (in Part III) that the claimant's "right to a forfeiture proceeding meeting the *Barker* test satisfies any due process right with respect to the car and the money." 474 U.S. at 251. Alabama (Br. 22-24) and the federal government (Br. 12) read that statement in a vacuum, arguing that *Barker* necessarily governs *every* post-seizure due process claim in the civil forfeiture context. Read alongside *$8,850*, all *Von Neumann* says is that *Barker* governs the baseline due process right to a timely final disposition.

c. In the end, Alabama (Br. 13, 17, 21) and the federal government (Br. 17) ask the Court to (i) read *$8,850*—a decision explicit in its limited scope—to have implicitly held that a final forfeiture adjudication, without more, provides the post-seizure hearing required by due process *in every civil forfeiture action*, and (ii) read *Von Neumann* to have made that implicit holding explicit, without explaining the reasoning. Those decisions did no such thing, and, as explained below, such holdings would make little sense.

2. *Barker* doesn't fit—*Gerstein* is the better analogue and *Mathews* the better test.

Barker cannot answer whether due process requires a retention hearing.

a. *Barker*, which governs the Sixth Amendment right to a speedy trial, doesn't fit the due process claim

here. *Barker* focuses on delays in criminal process leading to a final verdict—a different issue from which procedures due process requires to protect a distinct property interest in a civil case. *Barker*'s four-factor balancing test does not adequately account for two crucial components of the due process inquiry: the private and governmental interests. And when courts apply *Barker* to decide whether due process requires a retention hearing, "the answer is *always* 'no,'" Ala. Br. 24 (citation omitted), an uncompromising outcome that ignores the flexible nature of due process.

i. *Barker* is all about timing, not "the sufficiency of particular procedures." *Wilkinson*, 545 U.S. at 224; *see* Petitioners' Br. 30-33. Indeed, the "length of the delay is to some extent a triggering mechanism" for the test, *Barker*, 407 U.S. at 530, which courts typically don't apply unless the delay "approaches one year," *Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992). Alabama gives up the point when it argues that "only *Barker* explains whether a year is too long," Br. 2, as does the federal government in arguing that "the point at which a delay becomes unconstitutional 'necessarily depends on the facts of the particular case.'" U.S. Br. 15 (citation omitted). But whether a final forfeiture adjudication is timely and whether due process requires a procedure to protect an innocent owner's interests during the proceedings "are not parallel" questions. *Krimstock*, 306 F.3d at 53.

ii. When the question is whether an interest requires more process, courts "must" determine whether the "private interest" "outweighs the governmental interest." *Goldberg,* 397 U.S. at 263 (citation omitted). But none of the *Barker* factors corresponds to those significant considerations. Petitioners' Br. 34-35.

Alabama says the *Barker* factors are "better" than the *Mathews* factors because they "take a more nuanced approach to the interests" "in forfeiture cases." Br. 36. That's wrong. The weight of the private interest depends on what has been deprived. The "deprivation of the use of [an] automobile," for instance, "typically works a far more serious harm" than the deprivation of money. *City of Los Angeles v. David*, 538 U.S. 715, 717-18 (2003) (per curiam); *see Mathews*, 424 U.S. at 341-42 (welfare benefits versus disability benefits). *Barker* applies no nuance to that reality, because none of its factors accounts for "the degree of difference" among private interests. *Mathews*, 424 U.S. at 341.

The federal government quits the charade by trying to "adapt[]" *Barker* so that it is "analogous to" and "essentially replicates" *Mathews*. Br. 21. But that just proves that *Barker* isn't up to the task.

Take the fourth *Barker* factor: prejudice to the defendant. As *Barker* explained, the "most serious" consideration is how the delay impaired the defense. 407 U.S. at 532. Contrary to the federal government's assertion, *$8,850* didn't adapt that factor; it applied it as-is: "The primary inquiry here is whether the delay has hampered the claimant in presenting a defense on the merits." 461 U.S. at 569. And as Petitioners' explained (Br. 34-35), no such impairment results from the government's retention of property throughout a forfeiture proceeding. Thus, an innocent owner's interest in possessing her property during a forfeiture proceeding plays no role under the fourth *Barker* factor, adapted or not. As Alabama put it, the "temporary deprivation of [Petitioners'] cars … is not a relevant form of prejudice for this analysis." Opp. 21.

iii. *Mathews*, unlike *Barker*, honors "the flexible concepts of due process." *United States v. Raddatz*, 447 U.S. 667, 677 (1980). Sometimes *Mathews* will require a retention hearing in civil forfeiture actions. Other times it won't. Petitioners' Br. 28. *Barker*, by contrast, will *never* require a retention hearing. Petitioners' Br. 36.

The federal government sidesteps the issue, arguing that courts "have repeatedly found that the government has unconstitutionally delayed in commencing forfeiture proceedings." Br. 22. But the question is whether *Barker* will ever require a retention hearing. And the answer, as Alabama admits, "is *always* 'no.'" Br. 24 (citation omitted). There is thus a material difference between *Mathews* and *Barker*, as the 6–2, outcome-determinative split confirms. Reply (Cert.) 6-8; *Ingram*, 2023 WL 5622914, at *10-11.

b. To defend a framework that is all about timing, Alabama and the federal government argue that the real "issue here is timeliness, not a lack of procedure." Ala. Br. 34; *see* U.S. Br. 19. That is incorrect.

First, the question is whether due process requires a procedure to protect Petitioners' distinct interest, as vehicle owners asserting their innocence where state law makes innocence a bar to forfeiture, in their vehicles during the pendency of the forfeiture proceedings. Whether the overall forfeiture determination is quick enough doesn't necessarily address that distinct interim interest.

Second, even when the question concerns timing, *Mathews* is often the test—after all, procedure is meaningful only if it comes at a meaningful time. Petitioners' Br. 33. For example, *David* applied *Mathews* (not *Barker*) to determine whether the "27-day delay

in holding a hearing" violated due process, 538 U.S. at 719, and *Mathews* and *Goldberg* reached different conclusions about *when* a hearing had to occur, *see* Petitioners' Br. 24-25.

To be sure, timing is an *aspect* of Petitioners' underlying claim: a retention hearing several months after seizure is not the same as a retention hearing within 48 hours. *See Ingram*, 2023 WL 5622914, at *18-20 (Thapar, J., concurring). And a final forfeiture determination on the rare rocket docket might also be so fast that it eliminates the need for a separate retention hearing. But only *Mathews*, not *Barker*, can address those issues.

Indeed, the Sixth Circuit recently took this approach, endorsing the same arguments Petitioners have advanced here (Br. 39-40). Applying *Mathews*, the court analogized to the Fourth Amendment requirement of prompt probable cause determinations under *Gerstein*, 420 U.S. at 125, to hold that Wayne County must provide a retention hearing within two weeks of seizing a vehicle. *Ingram*, 2023 WL 5622914, at *14-15. And Judge Thapar, also relying on *Gerstein*, "would require Wayne County to hold a hearing within 48 hours." *Id.* at *19 (Thapar, J., concurring).

3. Alabama's remaining arguments fail.

Although the question presented is whether *Mathews* or *Barker* governs whether due process requires a retention hearing, Alabama tries to skip over that question by arguing that, regardless of methodology, due process does not require a retention hearing. *See, e.g.*, Br. 12-13. Those arguments fail on their own terms anyway.

a. Gesturing at the history of civil asset forfeiture, particularly as to innocent owners, Alabama

suggests that a retention hearing would be "novel" and thus is not required. Br. 3-6, 17. But Alabama ignores its choice to give innocent owners a right they didn't have at common law—the right *not* to have their property forfeited—and the consequence of that choice. Innocent owners' right to retain their property begets procedural rights necessary to protect that interest. *Supra* pp. 4-5, 12. Moreover, as Judge Thapar has explained, history and tradition support requiring a retention hearing within 48 hours of the seizure. *Ingram*, 2023 WL 5622914, at *17-20 (Thapar, J., concurring).

b. Alabama misunderstands retention hearings. It argues that due process does not require a retention hearing because "a full-blown adversarial hearing" "accelerat[es] the showing for permanent forfeiture," thereby requiring the government to carry "the same burden to retain property as it [must] to forfeit property permanently." Ala. Br. 13, 40. That's not a retention hearing.

As then-Judge Sotomayor and the Sixth Circuit explained, a retention hearing is meaningfully (and practically) different from "the eventual forfeiture hearing." *Krimstock*, 306 F.3d at 69. It's not "a forum for exhaustive evidentiary battles." *Id.* It's a "limited" proceeding, *id.* at 70, where "the burden of proof [is] on the government to show the 'probable validity of continued deprivation,'" an issue that is analytically distinct from the ultimate forfeiture determination. *Ingram*, 2023 WL 5622914, at *15 (citation omitted). In New York City, for instance, retention hearings are straightforward and efficient, *see* Legal Aid Society Br. 13-14, featuring "brief opening statements, witness examination, and closing arguments," Institute for Justice Br. 30 (citation omitted). Such

"streamlined" hearings, *id.* at 31, focusing on the probable validity of continued retention is what Petitioners have always sought. *See* Pet. 4, 12, 23; Reply (Cert) 1. *Contra* Ala. Br. 38.

This proper understanding of retention hearings disproves the argument that retention hearings give property more protection than people. Ala. Br. 38-42. It also shows that retention hearings are *not* "of amorphous nature and scope." U.S. Br. 7-8. And while retention hearings are "limited," *Krimstock*, 306 F.3d at 70, they're also essential given the time it takes to litigate civil forfeiture actions. *See, e.g.*, Institute for Justice Br. 9-11; Legal Aid Society Br. 15-16.

c. Alabama argues that due process does not require a retention hearing because (a) governmental interests justify retention, *see* Br. 29-33; *see also* U.S. Br. 25-31; and (b) alternate remedies exist under state law, Ala. Br. 42-48. But these concerns are issues for the *Mathews* balancing test, *infra* pp. 21-22, not an excuse to ignore *Mathews*. For instance, whether the opportunity to move for summary judgment justifies withholding a retention hearing is a question that *Mathews* can answer, not a reason *Mathews* should not apply.

Relatedly, the federal government argues that providing retention hearings "would be unnecessarily disruptive and detrimental," Br. 22 (formatting altered), citing the supposed difficulty of identifying owners of seized property, Br. 26-27. But like *Krimstock* and *Ingram*, this case involves only cars, so that complaint rings hollow. In "every state," the government's "own records" will quickly tell it who the owner is. *Ingram*, 2023 WL 5622914, at *20 (Thapar, J., concurring).

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

The court of appeals did not apply *Mathews*. And under *Mathews*, Petitioners win: the first two factors strongly outweigh Alabama's minimal interest in not providing Petitioners a retention hearing—process that Alabama now provides every innocent owner.

A. Petitioners had significant property interests in their vehicles during the forfeiture proceedings. *See* Petitioners' Br. 45-46. Taking away someone's car is a "substantial" deprivation, *Ingram*, 2023 WL 5622914, at *13, given the importance of a car "to a person's livelihood or daily activities," *Krimstock*, 306 F.3d at 44. Take Sutton, who was unable to find work, fell behind on her bills, and missed medical appointments as a result of losing her vehicle for over 14 months. J.A. 49-50. Alabama fixates on Petitioners' inability to master the intricacies of Alabama procedure before they were able to retain counsel, *see* Br. 50, but recall that Petitioners *immediately* tried getting their cars back, and Respondents' officers turned them away, Petitioners' Br. 8-9. That would not happen in New York City under *Krimstock* or in Wayne County under *Ingram*.

B. Alabama erroneously deprived Petitioners of their cars for over a year, and a retention hearing could have prevented that unwarranted harm. Petitioners' Br. 46-48. Petitioners were innocent owners, which is why state courts eventually ruled that Alabama could not forfeit their cars. Petitioners' Br. 8-9. Had there been an opportunity for a neutral magistrate to ask Respondents what they were doing, Petitioners likely would have gotten their cars back.

Alabama again misunderstands retention hearings. *See* Br. 50-51. The point is not to challenge the initial seizure or the ultimate forfeitability decision, but rather "the validity of the government's continued retention of the property before forfeiture is finally adjudicated." *Ingram*, 2023 WL 5622914, at *8. That's why Alabama Rule of Criminal Procedure 3.13(a) is not an adequate safeguard. *Contra* Ala. Br. 49. It enables persons to challenge only the legality of the seizure. Moreover, Petitioners had one option to possess their cars during the forfeiture proceedings: post a bond *twice* the value of their cars. Petitioners' Br. 48. A double-value bond provision is not an adequate safeguard for "forfeiture operations [that] frequently target the poor." *Leonard*, 137 S. Ct. at 848 (statement of Thomas, J., respecting the denial of certiorari).

C. Alabama's interests in not affording Petitioners a retention hearing, *see* Ala. Br. 52, do not tip the scales. Petitioners' Br. 48-49. That's especially true given that Alabama now offers retention hearings to every innocent owner. *See* Petitioners. Br. 8.

III. Respondents' ancillary arguments are meritless.

A. Respondents erroneously argue that Petitioners lack standing. *See* Ala. Br. 45; Municipality Br. 17-30. According to Respondents, because Petitioners didn't take certain actions, like posting a double-value bond, their injuries are more fairly traceable to them than Respondents. But the failure to follow "a legally available 'alternative' that would have avoided [the injury]" does not defeat standing. *Federal Election Commission v. Cruz*, 142 S. Ct. 1638, 1647-48 (2022). And Respondents caused Petitioners' injuries. The municipalities seized Petitioners' cars, denied

Petitioners' pleas to return the cars while doing nothing to make retention hearings available, and hoped for the payout of eventual forfeiture. Petitioners' Br. 6, 8-9.

B. Respondents argue that Petitioners failed to plausibly allege that the municipalities conspired with the State to violate their due process rights. Municipality Br. 30-37. But the lower courts never reached this issue, instead holding that Petitioners' claims failed because the failure to provide a retention hearing does not violate due process. *See* Pet. App. 8a-9a, 57a-58a. The Court shouldn't be the first to decide this conspiracy issue, which Respondents' didn't raise in opposing cert. And while Alabama separately argues that Petitioners "never stated a [due process] claim" because they "did not allege any facts about Alabama's bond procedure," Br. 44-45, raising those alternate procedures was Alabama's job, not Petitioners'.

CONCLUSION

The Court should hold that *Mathews*, not *Barker*, governs whether due process requires a retention hearing in a civil forfeiture action when a vehicle owner asserts innocence that is a bar to forfeiture, and that Alabama's failure to give Petitioners a retention hearing violated due process.

Respectfully submitted.

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