No. _____

In the
Supreme Court of the United States

$59,914 United States Currency
et al. (Ameen Salaam, Claimant),
Petitioner,

v.

The People of the State of Illinois
Ex Rel. Kimberly Foxx,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. When a court has *in rem* jurisdiction can it enter a final judgment without the notice required by the due process clause.

2. Whether a judgment that is void because the notice necessitated by the due process clause was not provided can become unassailable by the passage of time.

The State of Illinois forfeited money in a civil judicial forfeiture proceeding, without notice to claimant Salaam. Denying relief, the Illinois Supreme Court ruled "even if that lack of notice amounted to a due process violation, [it] could not deprive the circuit court of its jurisdiction" to enter a final judgment of forfeiture. *People ex rel. Alvarez v. $59, 914*, 2022 IL 126927, ¶ 23. Appendix A. It explained the court's jurisdiction was *in rem* and judgment was "voidable" within two years, but time rendered the due process violation moot. The decision of the Illinois Supreme Court allows a final judgment without notice.

More than a century ago, this Court wrote, "Much more so will equity enjoin parties from enforcing those obtained without service. For in such a case the person named as defendant 'can no more be regarded as a party than any other member of the community.' Such judgments are not erroneous and not voidable, but, upon principles of natural justice, and under the due process clause of the 14th Amendment, are absolutely void." *Simon v. S. R. Co.*, 236 U.S. 115, 122, 35 S. Ct. 255, 256, 59 L. Ed. 492 (1915).

LIST OF PARTIES TO THE PROCEEDINGS

Petitioner is Ameen Salaam and $59,914 United States Currency; $53,140 United States Currency; $67,109 United States Currency; $7,000 United States Currency; and $36,580 United States Currency. Petitioner was a claimant in the state court and claimant-appellant on appeal.

Respondent is the State of Illinois, acting through the Cook County State's Attorney, Kimberly Foxx. Respondent was Plaintiff in the trial court and appellee in the reviewing courts.*

RELATED PROCEEDINGS

This case arises out of the following proceedings:

- *The People of the State of Illinois ex rel. Anita Alvarez v. $59,914 United States Currency et al.*, 2022 IL 126927 (opinion affirming judgment of appellate court, issued April 26, 2022);
- *People ex rel. Alvarez v. $59,914 United States Currency*, 2020 IL App (1st) 190922U (opinion affirming default judicial forfeiture judgment, issued November 23, 2020); and
- *The People of the State of Illinois, ex rel. Anita Alvarez v. $59,914 United States Currency et al.,* Cook County, IL, No. 2015-COFO-003667, April 3, 2019.

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* Respondent Kimberly Foxx is the State's Attorney for Cook County. Her predecessor, Anita Alvarez, was named in her official capacity in the lower courts.

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Petitioner, Ameen Salaam, respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Illinois.

OPINIONS BELOW

On April 3, 2019, the trial court denied Salaam's Motion to Vacate a Forfeiture Judgment. A timely appeal followed. On December 29, 2020, a Corrected Order upon denial of rehearing was released. *People ex rel. Alvarez v. $59,914 United States Currency*, 2020 IL App (1st) 190922U. The Illinois Supreme Court affirmed on April 21, 2022. 2022 IL 126927. Rehearing was denied on September 26, 2022.

JURISDICTION

Petitioner seeks review of a decision from the Illinois Supreme Court, the highest court in the state. This Court has jurisdiction under 28 U.S.C. §1257.

CONSTITUTIONAL PROVISION INVOLVED

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its

> jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, §1.

STATEMENT OF THE CASE

The State of Illinois forfeited $223,000 that was seized when it was found in a nondescript duffle bag during a search of a work van following a traffic stop. The driver of the work van was arrested, charged with a narcotics offense, and the money found in the bag was inventoried. Sometime after, the state sought to forfeit the money. It is undisputed that notice of the forfeiture was not provided to the vehicle's owner, or that the driver did not receive it. The Illinois Supreme Court held that because a forfeiture is an *in rem* proceeding the failure to provide the notice due process required did not make the default judgment void. It wrote notice only had to be provided to the *res*. *People ex rel. Alvarez v. $59,914, et al.* 2022 IL 126927, ¶ 22. The Illinois Supreme Court's holding is contrary to fundamental notions of due process.

Practically speaking, the decision means the government may forfeit an individual's property without providing any notice, and if the individual does not expeditiously raise a challenge to the proceedings he knows nothing about, the judgment survives. Many things change over time, but a void judgment should not be one of them.

The holding rests upon an impossible legal fiction: that the object can act on its own. It is nonsense, a logical and practical absurdity. The

property in an *in rem* proceeding cannot notify its owner or interest holder, it cannot hire a lawyer, it cannot appear in court, it cannot say I agree or disagree, and it cannot testify. The property cannot litigate the case. The property cannot do anything. It is untenable to posit that because the property is the fictional defendant the matter can be adjudicated without any notice to the putative owner. After all, the property does not have an interest in the owner; rather, the owner has an interest in the property, and it is that interest that is being adjudicated.

Historically and presently, due process requires notice to any potential interested party before there can be a taking. *See Mullane,* 339 U.S. at 314 (due process requires notice); *Robinson,* 409 U.S. at 38; *Dusenberry v. United States*, 534 U.S. 161, 122 S.Ct. 694 (2002) (individuals whose property interests are at stake are entitled to notice, citing *United States v. James Daniel Good Real Property*, 510 U.S. 43, 48 (1993)); and the Fifth and Fourteenth Amendment due process clauses of the United States Constitution. A forfeiture is no different, "In an ordinary case a citizen has a right to a hearing to contest the forfeiture of his property, a right secured by the Due Process Clause, *United States v. James Daniel Good Real Property,* 510 U.S. 43, 48–62, 114 S.Ct. 492, 498–505, 126 L.Ed.2d 490 (1993); *Fuentes v. Shevin,* 407 U.S. 67, 80, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972); *McVeigh v. United States,* 11 Wall. 259, 266–267, 20 L.Ed. 80 (1871)." *Degen v. United States*, 517 U.S. 820, 822, 116 S. Ct. 1777, 1780, 135 L. Ed. 2d 102 (1996).

A person learns that their interest in the "thing" is at risk when they are provided "notice" of the legal proceeding. Due process requires it. If the notice fails to comport, the underlying action is void. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950). Due Process is never satisfied if notice is not provided, or the government knows that the claimant will not receive it. *See Robinson v. Hanrahan*, 409 U.S. 38, 40, 93 S.Ct. 30, 34 L.Ed.2d 47 (1972); *Torres v. $36,256.80 U.S. Currency*, 25 F.3d 1154, 1160–61 (2d Cir.1994); *United States v. Giraldo*, 45 F. 3d 509, 511 (1st Cir. 1995); *United States v. Rodgers*, 108 F.3d 1247, 1252–54 (10th Cir.1997); *Small v. United States*, 136 F.3d 1334, 1338 (D.C.Cir.1998); and *Krecioch v. United States,* 221 F.3d 976, 980 (7th Cir.2000). Notice is the prerequisite, and without notice, a court cannot enter a final judgment. A "void judgment is a legal nullity. *See Black's Law Dictionary* 1822 (3d ed. 1933)." *United Student Aid Funds, Inc. v. Espinosa,* 559 U.S. 260, 270, 130 S. Ct. 1367, 1377 (2010).

The Illinois decision cannot be reconciled with due process jurisprudence.

STATEMENT OF FACTS

On September 15, 2015, during a traffic stop, the Chicago police seized $223,743.00 from a closed

duffle bag found in the work van being driven by Alan Tyler ("Tyler"). Tyler was an employee of Petitioner Ameen Salaam's company, Infinite Heating, Cooling and Refrigeration. He was arrested, charged with a narcotics offense, and the money was inventoried. Salaam owned the work van. There was no indication the bag belonged to Tyler, other than he and it were in the same vehicle.

On November 12, 2015, while the criminal case was pending, a special unit of the prosecutor's office initiated judicial forfeiture proceedings before a different court. No one involved in the criminal proceedings knew of the forfeiture proceedings. Notice was not provided to Salaam or the business, and the notice mailed to Tyler was returned undelivered. Notwithstanding the lack of notice, a default judgment of civil forfeiture was entered on January 20, 2016.

After the criminal case was dismissed in 2018 a motion was filed in the criminal court for the return of the inventoried property. It was then, for the first time, that Salaam (and the criminal court prosecutor) learned of the forfeiture. Salaam then appeared in the forfeiture court and sought to vacate the default final judgment. His request was denied. Salaam appealed.

The Illinois Appellate Court, over dissent, held that either Salaam was not entitled to notice or that the arrest, long before the forfeiture was initiated, was "constructive notice." *People ex rel. Alvarez v. $59,914* 2020 Ill. App. (1st) 190922. The Illinois Supreme Court agreed to hear a further appeal. It,

also over dissent, held the failure to provide notice was irrelevant. It reasoned that the court had "*in rem* jurisdiction," so the lack of notice (due process) could not deprive the court of jurisdiction to enter a final judgement. 2022 IL 126927, ¶ 43, *rehearing denied* (Sept. 26, 2022). According to the court, the government could fail to provide any notice and obtain a final judgment. After, it was incumbent upon the person who did not receive notice, meaning they were unaware of the case, to attentively challenge the judgment.

In both reviewing courts, the dissent recognized the due process problem. Justice Neville wrote the majority opinion was that "an erroneous interpretation of the due process clauses in our [state and federal] constitutions to conclude that the circuit court can render a judgment against currency, which will directly impact the property interests of its known owner, without providing notice to that owner. Notice is more than a statutory requirement or prerequisite in this case; it is a constitutionally mandated condition precedent to avoid violation of a person's due process rights. *Schroeder*, 371 U.S. at 211, 83 S.Ct. 279." 2022 IL 126927, ¶ 43.

REASONS FOR GRANTING THE PETITION

The Illinois Supreme Court's ruling conflicts with settled law that in any proceeding due process requires notice to the putative claimant [defendant], because they have a constitutional right to contest. The finding that due process can be dispensed when a proceeding is *in rem* runs counter to all notions of

fundamental fairness and can only be corrected by this Court.

A. A Final Judgement Can Only Follow Proper Notice

The judgment here is missing the prerequisite to finality: notice. "[A]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278, 132 A.L.R. 1357; *Grannis v. Ordean*, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363; *Priest v. Board of Trustees of Town of Las Vegas*, 232 U.S. 604, 34 S.Ct. 443, 58 L.Ed. 751; *Roller v. Holly*, 176 U.S. 398, 20 S.Ct. 410, 44 L.Ed. 520." *Mullane,* 339 U.S. at 314.

That due process requires notice is not some throw-away concept. The "right to due process reflects a fundamental value in our American constitutional system." *Boddie v. Connecticut*, 401 U.S. 371, 374 (1971). It is "perhaps the most fundamental concept in our law," *Argersinger v. Hamlin*, 407 U.S. 25, 49 (1972) (Powell, J. concurring), ensuring proceedings depriving an individual of his property be "fair." We require that any "deprivation of life, liberty, or property by adjudication be preceded by notice and the opportunity for hearing appropriate to the nature of the case." *Mullane,* 339 U.S. at 313.

It is due process that prevents the unilateral taking of property:

> Before a person is deprived of a protected interest, he must be afforded opportunity for some kind of a hearing, 'except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event.' *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113. 'While '[m]any controversies have raged about . . . the Due Process Clause,' . . . it is fundamental that except in emergency situations [and this is not one] due process requires that when a State seeks to terminate [a protected] interest . . ., it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective.' *Bell v. Burson*, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, 29 L.Ed.2d 90.

Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 570, 92 S. Ct. 2701, 2705, 33 L. Ed. 2d 548 (1972) (footnote 7).

Without notice, a judgment is void. *McDonald v. Mabee*, 243 U.S. 90, 37 S.Ct. 343, 61 L.Ed. 608 (1917); *Griffin v. Griffin*, 327 U.S. 220, 228, 66 S. Ct. 556, 560, 90 L. Ed. 635 (1946).

This Court has made its position clear:

> '[I]n Anglo–American jurisprudence… one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.' *Hansberry v. Lee,* 311 U.S. 32, 40, 61 S.Ct. 115 [117], 85 L.Ed. 22 (1940)....This rule is part of our 'deep-rooted historic tradition that everyone should have his own day in court.' 18 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4449, p. 417 (1981).' *Martin v. Wilks,* 490 U.S. 755, 761–762, 109 S.Ct. 2180, 2184, 104 L.Ed.2d 835 (1989). *Blonder–Tongue Laboratories, Inc. v. University of Ill. Foundation,* 402 U.S. 313, 329, 91 S.Ct. 1434, 1443, 28 L.Ed.2d 788 (1971).

Richards v. Jefferson Cnty., Ala., 517 U.S. 793, 798, 116 S. Ct. 1761, 1765–66, 135 L. Ed. 2d 76 (1996). The rule should be just as deeply rooted when jurisdiction is *in rem*. Indeed, it is the person's right to the *res* that is being adjudicated, and it is against the person (claimant) the court judgment will bind. The *res* is simply an object.

True, actions *in rem* are technically proceedings against property, with the property itself as the defendant. The court acquires jurisdiction over the property by its seizure, while the owner receives notice "to avail himself by appearance as a claimant in the case." *Freeman v. Alderson*, 119 U.S. 185, 187,

7 S. Ct. 165, 166, 30 L. Ed. 372 (1886). "In an *in rem* forfeiture proceeding, 'it is the property which is proceeded against, and by resort to a legal fiction, held guilty and condemned.' *Various Items*, 282 U.S., at 580-581, 51 S. Ct., at 283-284." *United States v. Ursery*, 518 U.S. 267, 283, 116 S. Ct. 2135, 2145, 135 L. Ed. 2d 549 (1996). *See also Mullane,* 339 U.S. at 312 (growing ubiquity of intangible property has confused the distinction between *in rem* and *in personam,* concluding, "[W]e think that the requirements of the Fourteenth Amendment… do not depend upon a classification for which the standards are so elusive and confused…").

In *Shaffer v. Heitner*, 433 U.S. 186 (1977), this Court recognized "*in rem"* is a legal fiction, and it requires notice to someone capable of acting. "'[J]udicial jurisdiction over a thing', is a customary elliptical way of referring to jurisdiction over the interests of persons in a thing," *Id.* The Court continued, "[I]n order to justify an exercise of jurisdiction *in rem,* the basis for jurisdiction must be sufficient to justify exercising 'jurisdiction over the interests of persons in a thing.'" See also *Applewhite v. Metro Aviation, Inc.,* 875 F.2d 491, 495 (5th Cir. 1989) (*per curiam*) ("[R]egardless of whether the action is instituted *in personam, quasi in rem* or otherwise, all exercises of jurisdiction must be measured by the terms of the due process clause").

Plainly, property cannot be subjected to a court's judgment unless the property owners have been given (or a reasonable attempt was made to give) notice of the action. *Schroeder v. City of New*

York, 371 U.S. 208, 211–12, 83 S. Ct. 279, 282, 9 L. Ed. 2d 255 (1962). That makes sense, since "an adverse judgment *in rem* directly affects the property owner by divesting him of his rights in the property before the court." *Id.* at 213.

In a forfeiture, before judgment the notice must be to whomever can make a credible assertion of an interest and provide some explanation for it. "The government has an obligation to investigate the facts reasonably within its reach to find potential claimants…" *United States v. 2014 Nissan Altima 2.5L,* 2020 WL 3097462 (NDIL 2020). Any exceptions to the requirement of notice are rare, and this is not one of them. See *Ewing v. Mytinger & Casselberry, Inc.,* 339 U.S. 594, 70 S.Ct. 870, 94 L.Ed. 1088 (1950).

Federal courts have found that "before a default judgment is entered pursuant to a complaint for forfeiture *in rem*, the government must show that it complied with the notice requirements contained in the Supplemental Rules," which are designed to ensure due process notice. *United States v. Mondragon*, 313 F. 3d 862 (2002); *United States v. $1,071,251.44,* 324 F. Supp. 3d 38 (D.C. of Columbia, 2018); and *United States v. $6,999,925.00,* 368 F. Supp. 3d 10 (D.C. of Columbia, 2019).

The lower courts have held that without notice the court does not have *in rem* jurisdiction to enter a final judgment. *See James Daniel Good Real Property*, 510 U.S. 43; *Dusenberry,* 534 U.S. 161; *United States v. 51 Pieces of Real Property Roswell, N.M.*, 17 F. 3d 1306 (10th Cir. 1994); *Giraldo*, 45 F. 3d at 511; *Schluga v. City of Milwaukee*, 101 F. 3d 60,

63 (7th Cir. 1996); *Rodgers*, 108 F. 3d at 1247; and *Small*, 136 F. 3d at 1339.

Likewise, other states have reached a conclusion opposite the Illinois court, even when the proceeding is *in rem*. *See In re Young*, 780 N.W. 2d 726 (2010) ("We begin our discussion by agreeing with all parties to this case that a statutory scheme which would allow the forfeiture of property without notice and an opportunity to be heard would violate due process under the United States and Iowa Constitutions."); *State v. Rivas*, 226 Ariz. 567, ¶16 (2011) (in an *in rem* forfeiture, "compliance with the notice requirements of the statutes is necessary to both give *the court jurisdiction over a property* and to give an owner of record an opportunity to protect his interests."); and *Crispin v. State*, 360 Ga. App. 485 (2021) ("the record demonstrates the state failed to serve Appellants with process. *** The result is that the trial court did not acquire jurisdiction over the appellants. *** It is well established that jurisdiction over a party must be established before the court can enter any ruling binding the party or the ruling is declared null and void.").

At the end, the very concept that a judgment entered without notice is ever valid and enforceable turns all notions of due process on their head. It cannot be allowed to remain the law, in Illinois or anywhere.

B. A Void Judgment Does Not Lose Its Voidness By the Passage of Time

There should be no debate—this judgment is void. *See Jaffe and Asher v. Van Brunt,* 158 F.R.D. 278 (S.D.N.Y.1994) (Judgments entered in violation of due process of law, must be set aside.); *In re Hensley, Bkrtcy.D.Kan.* 2006, 356 B.R. 68 (Judgment is "void" if the court entering it lacked jurisdiction over the subject matter or the parties or due process not satisfied); and *Lipin v. Hunt,* 573 F.Supp.2d 830 (S.D.N.Y. 2008) (A judgment is "void" if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law). Given this judgment is unquestionably void, it remains void, yesterday, today, and tomorrow.

The Illinois court was wrong to determine that because of the passage of time the judgment had ripened into one that could no longer be challenged on Due Process grounds. Since the judgment here was void, Salaam cannot be held to task for failing to move within two years to vacate.

To begin, he had no notice of the forfeiture proceeding during that time. The prosecutor in the criminal case was unaware of the forfeiture, as was the defense. No notice was sent before, and after he was not told of the judgment. If one does not know about the action, one cannot take steps to undo the void judgment. And if the judgment was void, which would be consistent with this Court's precedent, then it was forever void. No case has ever held that a void judgment becomes a valid judgment simply because

of the passage of time. The Illinois court stands alone and without any support. *See Simon v. S.R.Co.,* 236 U.S. 115, 122 (1915). "Whereas most challenges to forfeiture would be foreclosed by a plaintiff's failure to utilize the mechanism for obtaining judicial relief ... courts have entertained challenges to the adequacy of notice, reasoning that the mechanism is not available to a plaintiff who is not properly notified of the pending forfeiture*." Sarit v. U.S. Drug Enforcement Admin.*, 987 F.2d 10, 17 (1st Cir. 1993)." *United States v. Sanchez*, 2016 WL 424953, at *3 (D. Mass. Feb. 3, 2016).

The power to act to remedy a due process violation never expires."Federal courts always possess jurisdiction to review whether the notice given in an administrative forfeiture proceeding afforded the claimant constitutional due process." *Id.* (citing *Krecioch v. United States*, 221 F.3d 976, 980 (7th Cir. 2000))." *Curry v. United States*, 2022 WL 2986712, at *8 (E.D. Pa. July 28, 2022).

If this judgment stands, it would mean that after an arbitrary time, a final and enforceable judgment could be had without the person against whom the order applies ever knowing or having any opportunity to defend. In this case it was two years, but other jurisdictions could have a shorter time period. This judgment incentivizes a plaintiff to not provide notice.

This Court must intervene to clarify that a lack of notice due process violation never expires and that a void judgment is simply that, void.

CONCLUSION

Petitioner prays this Court grant this petition.

Respectfully submitted,

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