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APPENDIX A

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

GERALD S. OSTIPOW,
Individually and as Personal Representative of the Estate of Royetta L. Ostipow, Deceased, Plaintiffs-Appellants,

v.

WILLIAM L. FEDERSPIEL,
Defendants-Appellees.

No. 22-1414
September 29, 2023

On Appeal from the United States District Court for the Eastern District of Michigan

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BEFORE:
BATCHELDER, GIBBONS, and READLER,
Circuit Judges

NOT RECOMMENDED FOR PUBLICATION

CHAD A. READLER, Circuit Judge.

Fifteen years ago, Saginaw County officials seized Gerald and Royetta Ostipow's property. Despite invoking both state and federal remedies, plaintiff Gerald Ostipow, individually and on behalf of Royetta's estate, has yet to be compensated for that seizure. Previously, we held that Ostipow's recourse was through the Michigan state system, not the federal courts. Back before us, Ostipow again faults Sheriff William Federspiel for failing to provide Ostipow the compensation he says is due. This prolonged denial, Ostipow claims, amounts to fresh violations of the Takings Clause as well as substantive due process. We disagree and affirm the district court's decision awarding summary judgment to Federspiel.

I.

The facts of this case are mostly as they were before. See *Ostipow v. Federspiel* ("*Ostipow I*"), 824 F. App'x 336, 338-40 (6th Cir. 2020). The crux of the dispute is the state's seizure of the Ostipows' farmhouse and property. *Id.* at 338. Seemingly unbeknownst to his parents, the Ostipows' son had converted the farmhouse into a grow house. *Id.* Eventually, the police arrested him, resulting in various drug-crime convictions and leading prosecutors to seize the family property. *Id.* at 338-39. The Saginaw County Circuit Court entered an order of forfeiture, pursuant to which the seized property was sold. *Id.* at 339. After

multiple state court appeals, the Ostipows received a judgment entitling them to some proceeds from the sale. *Id.*

With that judgment in hand, and with no payment forthcoming, the Ostipows previously pursued Takings Clause and substantive due process claims, among others, against Federspiel in the district court. *Id.* The district court granted summary judgment to Federspiel, *Id.* at 339-40, a decision we affirmed. *Id.* at 347. Instructive there was *Bennis v. Michigan*, 516 U.S. 442, 452-53 (1996), which, we noted, held that "a state's seizing and retaining property as part of a criminal investigation is not a 'taking' for a 'public purpose' under the Fifth Amendment." *Ostipow I*, 824 F. App'x at 341. Nor, we observed, is there a "right to instantaneous satisfaction of a judgment when a governmental entity is involved." *Id.* at 345. Accordingly, we directed Ostipow and Federspiel to use the state law mechanisms available to them in the hopes of "expeditiously" resolving their dispute. *Id.* at 344.

Our hopes seemingly were just that. Eight months passed without much change to the status quo. Then, Gerald Ostipow returned to state court, filing a new suit against Federspiel, one Federspiel removed to federal court. Ostipow realleged federal takings and substantive due process violations and added two state law claims. Relying mainly on our *Ostipow I* opinion, the district court granted Federspiel

summary judgment and declined to exercise supplemental jurisdiction. Ostipow timely appealed.

II.

On balance, we agree that Federspiel is entitled to summary judgment. Ostipow's takings claim is foreclosed by our earlier decision, and his substantive due process claim fails for many of the same reasons. We take the issues in turn.

A.

The legal backdrop for this long-running dispute is the Fifth Amendment's bar (as incorporated against the states through the Fourteenth Amendment) on the government's taking private property for public use without just compensation. U.S. CONST. AMENDS. V & XIV; see also *Chicago, B. & Q.R. v. City of Chicago*, 166 U.S. 226, 241 (1897). When a government taking occurs, a property owner may invoke 42 U.S.C. § 1983 to "sue the government . . . in federal court" to ensure that the property owner does in fact get paid. *Knick v. Township of Scott*, 139 S. Ct. 2162, 2170 (2019). As with other § 1983 suits, however, the governmental defendant may invoke qualified immunity to favorably resolve the suit before trial. *Ostipow I*, 824 F. App'x at 341. That is the tack Federspiel takes here.

Under the familiar qualified immunity framework, Ostipow must show both that Federspiel took his

private property for public use without just compensation and that it was clearly established that his actions ran afoul of the Fifth Amendment at the time they occurred. See *Pearson v. Callahan*, 555 U.S. 223, 231-32 (2009). Critically, we do not write on a clean slate. And that history largely forecloses Ostipow's taking claim. *Ostipow I*, 824 F. App'x at 340-44. As we previously explained, "a state's seizing and retaining property as part of a criminal investigation is not a 'taking' for a 'public purpose' under the Fifth Amendment, and thus does not give rise to a claim for just compensation." *Id.* at 341.

That decision has preclusive force today. Parties who receive a final merits decision by a court of competent jurisdiction are precluded from relitigating claims that were or could have been raised in the earlier proceeding. *Allen v. McCurry*, 449 U.S. 90, 94 (1980); *Bittinger v. Tecumseh Prods. Co.*, 123 F.3d 877, 880 (6th Cir. 1997). Our prior holding resolved in Federspiel's favor the merits question of whether Ostipow could prove Federspiel's actions violated the Fifth Amendment. *Ostipow I*, 824 F. App'x at 342. Settled principles bar Ostipow from relitigating that question today.

That said, we previously emphasized that Ostipow possessed a state court judgment entitling him to compensation related to the seizure. We left it to the parties to ensure the judgment's enforcement. *Id.* at 343-44 (noting that Ostipow could pull the available Michigan law levers to "ensure the satisfaction of

[the] judgment."). Yet relief does not appear to be forthcoming.

Ostipow attributes that delay to Federspiel's "chang[ing] [his] mind after *Ostipow I*" about his commitment to compensate Ostipow. Appellant's Br. at 21-22. Even if true, that development does not alter our Fifth Amendment analysis. Both then and now, Ostipow at bottom seeks just compensation for the retention of the family's farmhouse and its contents seized as part of a criminal investigation. See *McCarthy v. City of Cleveland*, 626 F.3d 280, 284 (6th Cir. 2010) ("A physical taking occurs when the government physically intrudes upon a plaintiff's property.") (quotation omitted). We have already said that those events alone do not give rise to a federal claim for compensation. *Ostipow I*, 824 F. App'x at 342. Now, as before, "a judgment against a government entity is not a right to payment at a particular time." *Id.* at 343. At day's end, Ostipow still holds a judgment entitling him to payment—one unconnected to his Takings Clause claim— that he can enforce in state court. But so far, at least, he has seemingly chosen against doing so.

Instead, Ostipow continues to believe his remedies are in this federal forum. For support, he cites two out-of-circuit cases holding that retention of property seized according to the state's police powers can itself be a taking, if those powers no longer justify the retention. See *Jenkins v. United States*, 71 F.4th 1367, 1373 (Fed. Cir. 2023) ("While the United States'

police power may insulate it from liability for an initial seizure, there is no police power exception that insulates the United States from takings liability for the period after seized property is no longer needed for criminal proceedings."); *Frein v. Pa. State Police*, 47 F.4th 247, 252-53 (3d Cir. 2022) ("[T]he government is permitted to seize evidence for use in investigation and trial, but that such property must be returned once criminal proceedings have concluded, unless it is contraband or subject to forfeiture.") (citation omitted). Assuming these recent cases correctly identify the contours of the Fifth Amendment, Ostipow was late to raise the point. The police power, after all, would have ceased to justify Federspiel's retention of his property once Ostipow's son's criminal proceedings concluded, a point that had already passed by the time of *Ostipow I*. Yet by and large, Ostipow never argued in our earlier case—nor in this case (until his reply brief on appeal)—that his son's conviction marked the moment the police power could no longer be relied on to justify retention of the Ostipows' property. In other words, both preclusion and forfeiture principles likely bar the argument Ostipow makes now. See *Bragg v. Flint Bd. of Educ.*, 570 F.3d 775, 776 (6th Cir. 2009) (claim preclusion); *Buetenmiller v. Macomb Cnty. Jail*, 53 F.4th 939, 946 (6th Cir. 2022) (forfeiture).

Ostipow faces a second, equally significant, hurdle. To overcome Federspiel's assertion of qualified immunity, the purported constitutional rule violated by the sheriff needed to be clearly established in our

circuit at the time of the violation. *Pearson*, 555 U.S. at 231-32; *Campbell v. Cheatham Cnty*. Sheriff's Dep't, 47 F.4th 468, 481 (6th Cir. 2022) ("[W]e look to the law at the time of the officer's conduct[.]"); *Arrington-Bey v. City of Bedford Heights*, 858 F.3d 988, 993 (6th Cir. 2017) ("We begin with, and could end with, the reality that [the plaintiff] points to no Supreme Court or Sixth Circuit case" that clearly establishes an officer's conduct was unconstitutional). And the two opinions Ostipow highlights are neither ours nor the Supreme Court's. Nor, for that matter, could they reflect any manner of established law before the first one issued just last year. So even without his preclusion and forfeiture problems, Ostipow could not satisfy the clearly established prong of the qualified immunity test.

B.

That leaves Ostipow's substantive due process claim. To prevail, he needs to demonstrate a constitutionally protected interest that was infringed by arbitrary and capricious state action. *Golf Vill. N. v. City of Powell*, 42 F.4th 593, 601 (6th Cir. 2022). In the context of this case, he needs to show that the seizure and retention of the family property by the state was "so brutal and offensive that [those actions] do not comport with traditional ideas of fair play and decency." *Id.* (brackets and quotations omitted) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998)). As already explained, any claims stemming from the initial seizure or retention of the family property

following their son's conviction would be foreclosed by *Ostipow I*. Substantive due process claims alleging that the continued retention of the Ostipows' property was arbitrary and capricious, however, present a distinct issue that would not be precluded by earlier litigation. See *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2305 (2016); see also *Id.* at 2335 (Alito, J., dissenting) (describing the proposition that "a prior judgment does not preclude new claims based on acts occurring after the time of the first judgment" as "unremarkable").

That begs the question whether Federspiel's continued failure to even attempt to pay Ostipow fits the latter description. To our minds, it does not. See *Golf Vill. N.*, 42 F.4th at 602 (denying substantive due process violation where plaintiff sought relief for defendant's refusal to act "without the benefit of complete information" because plaintiff did not do their part). Remember that Federspiel is currently subject to a state court judgment that merely requires that he give Ostipow whatever compensation is just. The judgment does not tell him the amount owed. Nor does it (or, for that matter, our earlier order) necessarily task Federspiel with figuring out what amount would be just. Federspiel left the Ostipows to decide whether (and, if so, how) to seek reimbursement. While another state official may have acted in a different manner, Federspiel's purported inaction in the face of uncertainty is hardly extreme enough to constitute a violation of substantive due process. See *Id.*

Ostipow argues otherwise. Part of the egregiousness, he says, was Federspiel's "duty (and promise)" to "figure out how and how much to pay" him. But neither a duty nor a promise has been established. The underlying state court order supposedly imposing that duty merely indicated that it was Federspiel's duty to pay the Ostipows what they were owed. The "how and how much" questions were left to the parties jointly, with the order anticipating that the parties would resolve the issue during settlement negotiations. And because we look only to events that happened after *Ostipow I*, it is worth reiterating that, by order, the duty to iron out those details was assigned to the parties jointly, not Federspiel alone. 824 F. App'x at 344. It does not shock the conscience to hold off on paying another until it is clear how much is owed. See *Golf Vill. N.*, 42 F.4th at 602.

* * * * *

We understand Ostipow's frustration as his decade-and-a-half search for reparations continues. But those efforts must pick back up elsewhere, perhaps with another look at Michigan's laws relating to the enforcement of its courts' judgments. The district court's judgment is affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT
E.D. MICHIGAN, SOUTHERN DIVISION

GERALD S. OSTIPOW,
individually and as the personal representative of
the estate of Royetta Ostipow,
Plaintiff,

v.

WILLIAM FEDERSPIEL,
Defendant.

Case No. 21-11208
May 2, 2022

OPINION & ORDER (1) GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (Dkt. 27), (2) DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (Dkt. 28), AND (3) DISMISSING PLAINTIFF'S STATE LAW CLAIMS WITHOUT PREJUDICE

MARK A. GOLDSMITH, District Judge.

This case is brought by Plaintiff Gerald Ostipow—both individually and as the personal representative of the estate of his late wife, Royetta Ostipow—to recover the value of property seized by Defendant William Federspiel in his official capacity as the Saginaw County Sheriff.[1] This action resumes the dispute that the Court considered in *Ostipow v. Federspiel*, Case No. 16-CV-13062, 2018 WL 3428689 (E.D. Mich. July 16, 2018), aff'd, 824 F. App'x 336 (6th Cir. 2020).

After conferring with counsel, who advised that discovery was not necessary to resolve the viability of Ostipow's federal claims, the Court directed the parties to each file a motion for summary judgment on those claims, see 1/28/22 Order (Dkt. 26), which the parties did, see Federspiel Mot. (Dkt. 27); Ostipow Mot. (Dkt. 28). For the reasons that follow, the Court grants Federspiel's motion for summary judgment, denies Ostipow's motion for summary judgment, and dismisses Ostipow's state law claims without prejudice.[2]

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[1] The Court refers to Plaintiff Gerald Ostipow as Ostipow, to his late wife as Royetta, and to the couple collectively as the Ostipows.

[2] Because oral argument will not aid the Court's decisional process, the motions will be decided based on the parties' briefing. See E.D. Mich. LR 7.1(f)(2); Fed. R. Civ. P. 78(b). In addition to the parties' motions, the briefing includes separately paginated briefs in support of those motions, contained within the same filings as the motions; Federspiel's response to Ostipow's motion, which includes a separately paginated brief in support of that response (Dkt. 29); Ostipow's response to

I. BACKGROUND

The pertinent facts, which are in all material respects undisputed, are set forth below.

A.
Seizure, Forfeiture, and Sale of Property

This long saga began in April 2008, when deputies from the Saginaw County Sheriff's Department executed search warrants on two properties owned by the Ostipows in Shiawassee County: 3551 and 3996 E. Allan Road in Owosso, Michigan. *Ostipow*, 2018 WL 3428689 at *1.[3] The deputies identified an indoor marijuana-growing operation at 3551 E. Allan Road, which was the residence of the Ostipows' son, Steven. *Id.* The Ostipows denied any knowledge of the operation. *Id.*

The deputies seized multiple items of personal property upon execution of the search warrants. *Id.* In June 2008, the Saginaw County Prosecutor initiated forfeiture proceedings for (i) the personal property at 3996 E. Allan Road and (ii) the real and personal

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Federspiel's motion (Dkt. 30); Federspiel's reply in support of his motion (Dkt. 31); and Ostipow's reply in support of his motion (Dkt. 32).

[3] Gerald and Royetta Ostipow resided together at 3996 E. Allan Road. *In re Forfeiture of Marijuana*, No. 310106, 2013 WL 5731508, at *2 (Mich. Ct. App. Oct. 22, 2013). The 3551 E. Allen Road property was in Gerald Ostipow's name only. *Id.*

property at 3551 E. Allan Road. *Id.* The Ostipows filed an answer to the proceedings, arguing that they were third-party innocent owners with no knowledge of their son's illegal activity. *Id.*

In January 2009, the Saginaw County Circuit Court granted summary disposition in favor of the county and ordered that all right, title, and interest in the seized real and personal property was to be forfeited to the Saginaw County Sheriff's Department and to be disposed of under Mich. Comp. L. § 333.7524. *Id.*[4] The Ostipows filed a claim of appeal with the Michigan Court of Appeals and moved in the circuit court for a stay conditioned on the posting of a bond. *Id.* The circuit court authorized a stay conditioned on posting a bond in the amount of $150,000, which the Ostipows did not post; instead, they asked the Michigan Court of Appeals to review the bond conditions. *Id.* The Michigan Court of Appeals denied the Ostipow's motion to amend the bond conditions. *Id.*

In May 2009, the Sheriff's deputies secured the structures at 3551 E. Allan Road and proceeded to

[4] The Michigan Legislature has amended this statute (effective April 2017), but Ostipow has provided the original statute applicable at the time of the seizure (Dkt. 20-8). Mich. Comp. L. § 333.7524(b) allowed the government agency that had seized forfeited property to sell that property, the proceeds of which sale were to be distributed by the court having jurisdiction over the forfeiture proceedings to the treasurer of the unit of government having budgetary authority over the seizing agency.

remove the Ostipows' personal property. *Id.* at *2. Over the course of 2009, the Saginaw County Purchasing Manager and Risk Manager, Kelly Suppes, sold the real property at 3551 E. Allan Road for $86,000 through an independent realtor and sold the personal property on eBay for undisclosed amounts. See Def. Summary of Material Facts (SMF) ¶ 17 (Case No. 16-CV-13062, Dkt. 97) (citing Suppes Aff. (Case No. 16-CV-13062, Dkt. 97-14)).

B.
Further State Court Proceedings
and Judgment in Favor of Ostipows

In January 2011, the Michigan Court of Appeals reversed and remanded to the circuit court, finding that summary disposition in regard to the forfeiture was improper because there were material questions of facts regarding the Ostipows' innocent owner defense. See *In re Forfeiture of a Quantity of Marijuana*, 805 N.W.2d 217, 225 (Mich. Ct. App. 2011).

After remand, the case went to trial in March 2012. The circuit court found that the Ostipows were not innocent owners and that they had waived their rights and remedies regarding the non-forfeited property due to their failure to post bond. 3/20/12 Saginaw County Trial Tr. at 178-182 (Case No. 16-CV-13062, Dkt. 97-16); *Ostipow*, 2018 WL 3428689, at *2. In October 2013, the Court of Appeals reversed in part, finding that Royetta was an innocent owner and

that the trial court had erred in forfeiting her rights to the property at issue. *Id.* at *4.

Following this second remand, the circuit court entered a judgment in August 2016 finding that certain interests of the Ostipows and the separate dower interest of Royetta as to certain property were not forfeited.[5]

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[5] Specifically, the circuit court found that the following interests were not forfeited: (i) Royetta's interest in the real property at 3551 E. Allan Road, for which Royetta was to be compensated for her dower interest; (ii) the Ostipows' interests in "[a]ll personal property" in the curtilage and outbuildings at 3551 E. Allan Road (excepting Steven Ostipow's Ski-Doo snowmobile and property inside a shed where drug manufacturing equipment was found), including but not limited to a 1965 Chevrolet Nova and its trailer, a collection of tools and equipment, and other personal effects; (iii) the Ostipows' interests in certain specified firearms located at 3996 E. Allan Road, which had already been returned to the Ostipows at the time of the judgment; and (iv) the Ostipows' interests in ammunition, firearms cases, scopes, and four specifically identified firearms taken from Steven's bedroom at 3996 E. Allan Road. See 8/2/16 Saginaw County Judgment (Case No. 16-13062, Dkt. 97-19).

Ostipow also calls attention to a Saginaw County Circuit Court opinion issued after remand but before the court's August 2016 judgment, which Ostipow believes establishes that Federspiel is the party with the obligation to compensate Ostipow for the non-forfeited property. Ostipow Resp. at 1-2. This order states in part:

As to who is responsible for the monetary value and payment to Mrs. Ostipow for her interest, that responsibility in the view of the court lies with petitioner [Federspiel]. . . . [C]laimant is

C.
First Action in Federal Court

In August 2016, the Ostipows made a written demand on Federspiel for the return of the real and personal property in which they retained a property interest. Ostipow, 2018 WL 3428689, at *2. After Federspiel failed to comply with this demand, the Ostipows took no action in the state courts. Rather, they filed suit in this Court, asserting multiple federal and state claims, including alleged violations of the Takings Clause of the Fifth Amendment and the Ostipows' substantive due process rights. *Id.*; 8/24/16 Compl. (Case No. 16-CV-13062, Dkt. 1). In July 2018, this Court granted Federspiel's motion for summary judgment with respect to the federal claims and dismissed without prejudice the state law claims. Ostipow, 2018 WL 3428689, at *11.[6]

In August 2020, the United States Court of Appeals for the Sixth Circuit affirmed this Court's decision. See *Ostipow*, 824 F. App'x at 338.

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entitled to compensation from somebody or some entity and as it was petitioner who initiated the forfeiture proceedings, caused the sale before final determination of her legal status, and are the only party in this case to which the court can now look, that financial responsibility would appear to be theirs and not, as claimed, the estate of Mr. Ostipow.

11/5/15 Saginaw County Circuit Court Order at Page*ID.*1310 (Dkt. 30-4).

[6] Subsequent to this decision, the Ostipows filed a notice of death regarding Royetta's passing (Case No. 16-CV-13062, Dkt. 135).

D.
Present Action

In March 2021, Ostipow wrote another letter to Federspiel, demanding payments in specific amounts for Royetta's dower interest in 3551 E. Allan Road (equal to one third of the property's fair market value), the 1965 Chevrolet Nola, and the alleged replacement value of the personal property. Compl. ¶ 31 (Dkt. 1-1).

Not receiving an answer, Ostipow brought suit in Shiawassee County Circuit Court, asserting claims based on (i) the Takings Clause of the Fifth Amendment, (ii) a substantive due process violation under the Fourteenth Amendment, (iii) Michigan inverse condemnation, and (iv) Michigan restitution. *Id.* ¶¶ 32-55. Defendants removed the action to this Court (Dkt. 1).

II.
ANALYSIS[7]

The Court begins by considering whether the doctrines of res judicata and collateral estoppel bar Ostipow's claims. The Court then reviews Ostipow's

[7] In assessing whether the parties are entitled to summary judgment, the Court applies the traditional summary judgment standard as articulated in *Scott v. Harris*, 550 U.S. 372, 380 (2007). Each movant is entitled to summary judgment if that party shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

takings claim and substantive due process claim and, with an award of summary judgment to Federspiel on these federal claims, declines to exercise supplemental jurisdiction over Ostipow's remaining state law claims.

A.
Res Judicata and Collateral Estoppel

As an initial matter, Federspiel notes that the Sixth Circuit has already ruled on takings and substantive due process claims brought against him by Ostipow. Federspiel argues that this Court should bar Ostipow's present federal claims based on the doctrines of res judicata and collateral estoppel. Federspiel Br. in Supp. Mot. at 9-17.

Res judicata bars a new claim that follows an already-adjudicated claim when, among other factors, (i) an issue in the present action was or should have been litigated in the prior action; and (ii) there is an "identity of the causes of action," which requires that the claims arose out of "the same transaction or series of transactions" or "the same core of operative facts." *Trustees of Operating Engineers Loc. 324 Pension Fund v. Bourdow Contracting, Inc.*, 919 F.3d 368, 380-383 (6th Cir. 2019) (punctuation modified, citations omitted). For the overlapping doctrine of collateral estoppel to bar a new claim, "the precise issue must have been raised and actually litigated in the prior proceedings." *Cobbins v. Tenn. Dep't of Transp.*, 566 F.3d 582, 589 (6th Cir. 2009).

These doctrines do not apply. As explained below, the legal analysis employed by this Court and by the Sixth Circuit in the former action counsels in favor of awarding summary judgment to Federspiel on the federal claims in the current action. But the rulings do not compel this conclusion under the former adjudication doctrines invoked by Federspiel. Ostipow has specifically pleaded that each of his new federal claims derives from Federspiel's actions and inactions "[o]n a date following the issuance of the Sixth Circuit's decision." Compl. ¶¶ 40, 45. The claims presented by Ostipow's latest takings and substantive due process claims are, therefore, technically distinct from those already adjudicated by this Court and the Sixth Circuit, and so the Court considers these claims on their own merits.

B.
Takings

To prevail on his takings claim, Ostipow must show that Federspiel "(1) took [his] property and (2) failed to compensate [him] justly or failed to put the property to public use." *Prater v. City of Burnside, Ky.*, 289 F.3d 417, 425 (6th Cir. 2002) (punctuation modified, citation omitted). "[A] property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it." *Knick v. Twp. of Scott, Penn.*, 139 S. Ct. 2162, 2170 (2019).

According to Ostipow, "[i]n this case, a taking has clearly occurred." Ostipow Mot. at 12. Ostipow argues that he has a property interest in the non-forfeited property, as the Sixth Circuit has recognized. Ostipow Resp. at 14 (citing *Ostipow*, 824 F. App'x at 342). Ostipow submits that the sale of that property has been "used as funding for the Sheriff's law enforcement operations." Ostipow Mot. at 12. In Ostipow's view, Federspiel falsely represented to the Sixth Circuit that he would provide the Ostipows with compensation, since which time Federspiel has "simply refused to pay just compensation" and communicated that he "is never going to pay just compensation." Ostipow Resp. at 14.

Federspiel counters that the Sixth Circuit has already found that the Sheriff Department's seizure and forfeiture of the Ostipows' property cannot give rise to a takings claim. Federspiel Br. in Supp. Mot. at 19-20. As the Sixth Circuit explained:

> Indeed, it is well settled that a state's seizing and retaining property as part of a criminal investigation is not a "taking" for a "public purpose" under the Fifth Amendment, and thus does not give rise to a claim for just compensation. . . .
>
> So too here. The Ostipows' property was seized pursuant to uncontested warrants authorizing the search and seizure of property believed to be involved in drug manufacturing. The

> Saginaw County prosecutor, in turn, initiated forfeiture proceedings against that property. The weight of authority holds that claims emanating from the use of police power are excluded from review under the Takings Clause. To the extent there conceivably is merit to the Ostipows' suggestion that civil asset forfeiture actions specifically should be reviewed under the Takings Clause, no such rule is clearly established, meaning Federspiel is entitled to qualified immunity on that claim.

Ostipow, 824 F. App'x at 341-342 (citations omitted, emphasis added).

Ostipow's claim—that he is owed just compensation for property seized and sold pursuant to forfeiture proceedings—still emanates from the Sheriff Department's "use of police power," and so his claim remains "excluded from review under the Takings Clause." *Id.* at 342. Ostipow does not argue that the law has changed—and courts within this circuit believe it has not, as they continue to cite *Ostipow*, 824 F. App'x at 342 for the principle that "takings attendant to the police power are not compensable." *Williams v. City of Stanford, Ky.*, 533 F. Supp. 3d 512, 525 (E.D. Ky. 2021); see also *Halabo v. Michael*, No. 21-12528, 2022 WL 982353, at *4 (E.D. Mich. Mar. 30, 2022). Ostipow does not address the non-applicability of the Takings Clause to police power-based claims at all. His silence, however, cannot nullify the binding precedent against him.

Ostipow apparently believes that the takings calculus has changed because the Sixth Circuit has recognized his property interest, relieving him of the need to establish a "taking" and allowing him to rush on to the question of just compensation. See Ostipow Resp. at 14. Ostipow relies on the following discussion—which follows the holding quoted above—for his understanding that the Sixth Circuit has recognized his property right:

> That the Ostipows received a judgment in their favor does not change our conclusion. . . . Over a century ago, the Supreme Court held that the property right created by a judgment against a government entity is not a right to payment at a particular time; it is instead a recognition of a continuing debt of that government entity. . . . And so while the Ostipows have a property right in their judgment, there is no evidence that property right ultimately will not be honored.

Ostipow, 824 F. App'x at 342-343 (citations omitted, emphasis added).

Ostipow is correct that the Sixth Circuit acknowledged that he has a property right, but nothing in the Sixth Circuit's explanation suggests that the existence of that property right dispenses with the requirement that Ostipow make out all of the elements of a takings claim. To the contrary, the Sixth

Circuit established that Ostipow's property right "is not a right to payment at a particular time," and so a delay in receipt of compensation does not, alone, violate the Takings Clause. *Id.* at 343. Ostipow doubts that Federspiel will satisfy the debt owed, but he has no legal basis for asserting that Federspiel's delay in compensating him for property seized and sold pursuant to police power gives rise to a takings claim. This theory still does not fit. The Court awards summary judgment to Federspiel on Ostipow's takings claim.

C.
Substantive Due Process

A plaintiff asserting a substantive due process claim must (i) demonstrate "'a deprivation of a constitutionally protected liberty or property interest'" and (ii) "show how the government's discretionary conduct that deprived that interest was constitutionally repugnant." *Guertin v. State*, 912 F.3d 907, 922 (6th Cir. 2019) (quoting *Am. Exp. Travel Related Servs. Co. v. Ky.*, 641 F.3d 685, 688 (6th Cir. 2011)); see also *Siefert v. Hamilton Cnty.*, 951 F.3d 753, 765 (6th Cir. 2020) (clarifying that the substantive due process analysis is a two-step inquiry). The second step asks whether the governmental entity engaged in "'conscience-shocking

conduct.'" *Id.* (quoting *Am. Exp. Travel*, 641 F.3d at 688).[8]

Ostipow argues that Federspiel's purposeful refusal to remit payment constitutes a violation of his protected property interest because it reflects "'willful and unreasoning action,'" Ostipow Mot. at 15-16 (quoting *Pearson v. City of Grand Blanc*, 961 F.2d 1211, 1221 (6th Cir. 1992) (punctuation modified)); it "'shocks the conscience,'" *Id.* (quoting *Johnson v. City of Saginaw*, 980 F.3d 497, 513 (6th Cir. 2020) (punctuation modified)); and it constitutes "'conduct that is so brutal and offensive that it does not comport with traditional ideas of fair play and decency,'" *Id.* (quoting *Handy-Clay v. City of Memphis*, 695 F.3d 531, 547-548 (6th Cir. 2012) (punctuation modified, citations omitted)).

Ostipow asserts that, when affirming rejection of the prior substantive due process claim, the Sixth Circuit relied on Federspiel's acknowledgement that he owes compensation to Ostipow. *Id.* at 15. The situation has changed, in Ostipow's view, now that Federspiel's continued inaction has established that he will not honor the Ostipows' property right. *Id.* at 16.[9]

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[8] Because the second prong is dispositive of Ostipow's claim, the Court need not address the issue of whether Ostipow has a protectible property interest.

[9] See also Ostipow Resp. at 17-18 ("The passage of time and the total inaction by Defendant is the `willful and unreasoning action'"); Ostipow Reply at 6 (arguing that Federspiel having "[told] a federal appeals court what [he] . . . is going to do" and

Ostipow notes that—as this Court has memorialized—Federspiel has represented that he has not pursued a means of compensating Ostipow for the non-forfeited property following the Sixth Circuit opinion. See 1/28/22 Order at 3 (Dkt. 26) ("The defense concedes that no steps were taken by Federspiel or other Saginaw County officials towards payment . . . ."). Ostipow concludes that this broken "promise" and obstinate refusal to provide compensation violates his substantive due process rights. Ostipow Mot. at 16.

Federspiel observes that the Sixth Circuit has already determined that the Ostipows failed to establish a substantive due process violation. Federspiel Br. in Supp. Mot. at 22-23. The Sixth Circuit stated in the prior action:

> After eight years of state litigation, the Ostipows have every right to be aggravated over the delay in Saginaw County satisfying their judgment. As frustrating as those actions may be, however, Federspiel's conduct does not "shock[ ] the conscience." See *Gohl* [*v. Livonia Pub. Sch. Sch. Dist.*], 836 F.3d[, 672] at 678 [(6th Cir. 2016)]. A valid court order, issued after the Ostipows had an opportunity to be heard, instructed that the Ostipows' property was forfeited "to the Saginaw County Sheriff's Department" to "be disposed of by said

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then "not do[ing] it to deny a citizen what is theirs" constitutes a substantive due process violation).

> Department as provided by statute, MCL 333.7524." It was not until seven years later—after a second trial court proceeding following a second remand from the Michigan Court of Appeals, and long after the property was sold—that the order was partially modified. Absent a stay of execution of the initial order, Federspiel seemingly was free to act upon the order's command.

Ostipow, 824 F. App'x at 345 (emphasis added).

Ostipow's present claims are in a different posture, but the same conclusion holds. As the Sixth Circuit has established, mere "delay" in the satisfaction of Ostipow's judgment—even the increasingly lengthy delay extended by the present litigation—is not sufficient to establish a substantive due process violation. See *Id.* A government entity's monetary obligation does not equate to a right to receive payment at a particular time. *Id.* at 343.

Ostipow accuses Federspiel of refusing to provide the compensation due and of misrepresenting to the Sixth Circuit what actions he was taking to satisfy the debt. Even if the Court takes Ostipow's accusations at face value and accepts Ostipow's claim as pleaded that Federspiel has "confirm[ed], by inaction, [that the] Ostipows are not entitled to any compensation for the value of their property," Compl. ¶ 45, Ostipow has not made out a substantive due process claim. Ostipow's claim rests on Federspiel having not taken a certain

action, despite his alleged obligation and promise to do so. But Ostipow cites no authority suggesting that such a circumstance "shocks the conscience."

Ostipow refers to a total of three cases in support of his substantive due process argument, two of which found that no substantive due process violation had occurred. All of these cases are distinguishable, as all arose in very different contexts. *Pearson* found that there was no substantive due process violation where a city council denied a landowner's application to rezone his property for use as a fast-food restaurant because—under an analysis specific to zoning challenges—the council's "action" was "rationally related to zoning." 961 F.2d at 1224. *Handy-Clay* found that there was no substantive due process claim where the former employee of a city attorney's office alleged that she had been terminated due to "repeated complaints about malfeasance and corruption" because her asserted rights were protected by the First Amendment rather than due process. 695 F.3d 531 at 548. Of the cases cited, only *Johnson* found that a plaintiff had adequately alleged a violation of her substantive due process rights, concluding that the city's five-month suspension of her restaurant's water service had no "rational" connection to the city's supposed goal of deterring dangerous behavior (though these rights were not clearly established, so the city was entitled to qualified immunity). 980 F.3d at 515.

Ostipow does not attempt to explain how this diverse case law on various types of governmental action supports his novel theory that Federspiel's inaction in failing to pay a judgment containing no definitive monetary amount violates Ostipow's substantive due process rights. Even in a rare case, where a government entity's failure to make a payment due on a judgment was held to give rise to a substantive due process claim, the circumstances were not remotely similar to those in the instant case. *Future Dev. of Puerto Rico v. Estado Libre Asociado De Puerto Rico*, 276 F. Supp. 2d 228, 239 (D.P.R. 2003) (finding that plaintiff had adequately pleaded a substantive due process claim where defendants' "many acts deliberately performed" and "unequal treatment" toward their creditors evidenced "an intent to injure"). Ostipow does not allege that Federspiel engaged in deliberate action to cheat him, but only that Federspiel refused to take the action that Ostipow thinks he should have taken. The weight of authority counsels against shoving the square peg presented by these facts into the round hole of substantive due process.

Federspiel's position is not a willful refusal to comply with an unambiguous legal obligation. He contends that there are several litigable issues remaining, including: (i) whether Federspiel must compensate Ostipow for the sale proceeds or the fair market value of the non-forfeited property, see *Ostipow*, 824 F. App'x at 344; (ii) whether Ostipow may collect on Royetta's dower interest following her passing, see

Id.; and (iii) which state court has jurisdiction over enforcement of the judgment, see Ostipow Mot. at 7-8; Federspiel Resp. at 8 (citing Mich. Compl. L. § 333.7523(3)). And regardless of the substantive resolution of these issues, the Sixth Circuit has instructed that, "at day's end, it is the state court's duty to oversee and ensure the satisfaction of the Ostipows' judgment." *Ostipow*, 824 F. App'x at 344. Federspiel maintains that Ostipow's proper course of action—consistent with the Sixth Circuit's expectation—is to "return to the state court to obtain guidance and interpretation of the judgment from the court that issued it." Federspiel Reply at 2. Federspiel's refusal to submit to Ostipow's unilateral monetary demands in these circumstances falls far short of a violation of substantive due process, which protects against "only the most egregious official conduct" by government officers. *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

At this posture and point in time, principles of substantive due process have not been violated. The Court grants summary judgment to Federspiel on this claim.

D.
State Law Claims

Ostipow has two remaining state law claims. See Compl. ¶¶ 48-55. But with summary judgment having now been awarded against Ostipow on his federal claims, there is no longer any federal character to the

case. The absence of federal claims and the Sixth Circuit's instruction that it is the "state court's duty" to oversee Ostipow's judgment, *Ostipow*, 824 F. App'x at 344, make it appropriate for this Court to decline to exercise supplemental jurisdiction over Ostipow's state law claims. They will be dismissed without prejudice. See 28 U.S.C. § 1367(c).

III.
CONCLUSION

For the foregoing reasons, the Court grants Federspiel's motion for summary judgment (Dkt. 27) and denies Ostipow's motion for summary judgment (Dkt. 28). Ostipow's state law claims are dismissed without prejudice.

SO ORDERED.

Dated: May 2, 2022
Detroit, Michigan

s/ Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

GERALD S. OSTIPOW,
Individually and as Personal Representative of the Estate of Royetta L. Ostipow, Deceased, Plaintiffs-Appellants,

v.

WILLIAM L. FEDERSPIEL; SAGINAW COUNTY SHERIFF'S DEPARTMENT; DEPUTY DOE 1-10,
Defendants-Appellees.

No. 18-2448
August 18, 2020

On Appeal from the United States District Court for the Eastern District of Michigan.

BEFORE:
BATCHELDER, DONALD, and READLER,
Circuit Judges

NOT RECOMMENDED FOR PUBLICATION

CHAD A. READLER, Circuit Judge.

Officers discovered marijuana plants growing in a farmhouse owned by Gerald and Royetta Ostipow. After seizing items believed to be connected to drug manufacturing, local officials initiated civil asset forfeiture proceedings against those items as well as the farmhouse itself. The Ostipows objected, claiming they were unaware their son, who lived in the farmhouse, was running a drug operation. The Ostipows then spent the next eight years in state court asserting their right to the seized property. Ultimately, they received a favorable final judgment. When the judgment was not immediately satisfied, the Ostipows turned to federal court for relief.

While we deeply sympathize with the Ostipows, their remedy continues to be in state court. As none of their federal claims are meritorious, we AFFIRM the judgment of the district court.

BACKGROUND

Gerald and Royetta purchased a farmhouse down the street from their home. To cover the approximately $150,000 purchase price, the Ostipows used a large part of their life savings and took out a $50,000 mortgage on their home. *In re Forfeiture of a Quantity of Marijuana*, No. 310106, 2013 WL 5731508, at *2 (Mich. Ct. App. Oct. 22, 2013) ("2013 Forfeiture").

After years of repairing and remodeling the farmhouse, the Ostipows allowed their then 36-year-old son, Steven, to move in. Steven had a history of committing minor crimes, from breaking and entering, to bar fights, to drug possession. *Id.* at *4. For a time, the support of his family seemed to help Steven alleviate those tendencies. But his path to redemption took a sharp turn when he decided to convert the majority of the farmhouse into a large marijuana-growing operation. In 2008, after receiving a tip that Steven was growing marijuana, Saginaw County Sheriff's deputies executed a warrant for the farmhouse. Officers discovered over 200 marijuana plants and fifteen pounds of processed marijuana, as well as narcotics, drug paraphernalia, and equipment used to grow marijuana. Officers seized these items as instrumentalities of crime. They also seized the farmhouse property—not just the farmhouse and its contents, but also three large sheds, which contained farm equipment, a partially restored 1965 Chevy Nova, and a snowmobile, as well as guns found in both the farmhouse and the Ostipows' home.

Following Steven's guilty plea to various drug-related crimes, the Saginaw County Prosecutor initiated civil forfeiture proceedings against the real and personal property seized. The Ostipows filed an answer in those proceedings in which they alleged they were innocent third-party owners, with no knowledge of any illegal activity. Rejecting the Ostipows' claim, the Saginaw County Circuit Court entered an order of forfeiture directing the Sheriff's Department to

dispose of the property as directed by Mich. Comp. Laws § 333.7524. The Ostipows appealed. At the same time, they moved the circuit court to stay the forfeiture order. Their motion was granted—contingent upon the Ostipows' posting a $150,000 bond. The Ostipows asked the Michigan Court of Appeals to review the bond conditions, but the appellate court denied their request. Ultimately, the Ostipows did not pay the bond. In the absence of a stay of the forfeiture order, the Sheriff's Department sold the Ostipows' property.

Two years later, the Michigan Court of Appeals determined that the Ostipows' innocent-owners defense raised material issues of fact and accordingly remanded the case back to the circuit court for additional proceedings. See *In re Forfeiture of a Quantity of Marijuana*, 805 N.W.2d 217, 225 (Mich. Ct. App. 2011). During a subsequent bench trial, the circuit court examined whether the property seized during the raid was subject to forfeiture and, if so, whether the Ostipows were innocent owners of that property. Once again, the circuit court found that the Ostipows were not innocent owners. See *2013 Forfeiture*, 2013 WL 5731508, at *2. Back, then, to the Michigan Court of Appeals, which held that Royetta, but not Gerald, was an innocent owner, and thus remanded the case back to the circuit court for a third time. *Id.*

At long last, in August 2016, the circuit court entered a final judgment describing which of the real and

personal property was not forfeited. The property deemed non-forfeited included: (1) Royetta's dower interest in the farmhouse, (2) the personal property in the farmhouse's sheds, including a 1965 Chevrolet Nova, and a collection of tools and equipment, (3) ammunition and firearms found in the Ostipows' home, and (4) and certain other personal property. The next day, the Ostipows made a written demand to Saginaw County Sheriff William Federspiel to return and reassemble the non-forfeited property within 21 days. When Federspiel failed to meet those demands, the Ostipows filed this § 1983 action against Federspiel in his individual and official capacities, the Saginaw County Sheriff's Department, and Does 1-10 alleging claims for (i) trover/conversion, (ii) substantive due process violations, (iii) procedural due process violations, (iv) violation of the Takings Clause of the Fifth Amendment, (v) excessive fines in violation of the Eighth Amendment, (vi) a Monell claim, and (vii) violation of the Michigan Freedom of Information Act.

Following discovery, Federspiel and the Sheriff's Department moved for summary judgment. The district court granted judgment to Defendant "Office of Sheriff" on the basis that it was not a separate legal entity subject to suit under Michigan law. See *Ostipow v. Federspiel*, No. 16-CV-13062, 2018 WL 3428689, at *3 (E.D. Mich. July 16, 2018). The district court also dismissed "Deputy Does 1-10." *Id.* at *3-4. That left Federspiel as the only defendant. As to him, the district court rejected the Ostipows' substantive

due process claim because none of Federspiel's actions "shock[] the conscience." *Id.* at *5. It likewise rejected the Ostipows' procedural due process claim because they received adequate process during the state trial and appellate proceedings. *Id.* at *5-6. With respect to the Ostipows' takings claim, the district court held that the civil asset forfeiture regime, which is quasi-criminal in nature, does not constitute a taking for public use and thus is not subject to the Fifth Amendment. *Id.* at *6-7. The district court also rejected the Ostipows' excessive fines claim, holding that it was not clearly established that the Eighth Amendment's Excessive Fines Clause applied against the States, and, in any event, that the forfeiture was not "grossly disproportional" to the gravity of the offense. *Id.* at *7-10. Finally, because none of the alleged constitutional violations occurred pursuant to a policy, procedure, or custom of Saginaw County, the district court dismissed the Ostipows' *Monell* claim. *Id.* at *10-11. The district court then declined to extend supplemental jurisdiction over the remaining state-law claims. *Id.* at *11. This appeal followed.

ANALYSIS

To obtain relief under 42 U.S.C. § 1983, the Ostipows must demonstrate a (1) right secured by the Constitution and laws of the United States; (2) that was violated; (3) by a person acting under color of state law. See *Parratt v. Taylor*, 451 U.S. 527, 535 (1981).

Federspiel asserts that he is entitled to qualified immunity as to each of the Ostipows' constitutional claims. Qualified immunity is an affirmative defense to a § 1983 claim. It shields a government official from liability so long as his conduct did not violate a clearly established constitutional right. *Gean v. Hattaway*, 330 F.3d 758, 767 (6th Cir. 2003) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)); see also *Walker v. Davis*, 649 F.3d 502, 503 (6th Cir. 2011). When determining whether an official is entitled to immunity, we ask two related questions: (1) did the government actor violate a constitutional right; and (2) was that right clearly established at the time of the alleged violation? *Jones v. City of Elyria*, 947 F.3d 905, 913 (6th Cir. 2020). Unless both questions are answered in the affirmative, a claim will not proceed to trial. See *Baynes v. Cleland*, 799 F.3d 600, 609-10 (6th Cir. 2015).

We note at the outset that we have before us only the Ostipows' claims against Federspiel. The Ostipows named Federspiel as a defendant in both his individual and official capacities. When an officer is sued in his official capacity, the law treats that suit as an action against Saginaw County. See *Leach v. Shelby Cnty. Sheriff*, 891 F.2d 1241, 1245-46 (6th Cir. 1989).

The district court granted summary judgment to Defendant "Office of Sheriff" because it is not a separate legal entity under Michigan law. See *Ostipow*, 2018 WL 3428689, at *3. The Ostipows at

most challenge that in a cursory footnote. Appellant Br. at 3 n.1. An argument raised in a footnote and in a "perfunctory manner unaccompanied by some effort" to develop the point is routinely deemed forfeited. *United States v. Phinazee*, 515 F.3d 511, 520 (6th Cir. 2008); *McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997). That being the case here as to the "Office of Sheriff," we consider only those claims against Federspiel in his official and individual capacities.

The Takings Claim.

The Ostipows claim they are entitled to recover the value of their improperly seized and sold property as just compensation for Federspiel's violation of the Fifth Amendment's Takings Clause. The Takings Clause, which applies to the States through the Fourteenth Amendment, commands that "private property [shall not] be taken for public use, without just compensation." U.S. CONST. AMEND. V; see *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226 (1897). When the government acquires private property for a public purpose, the plain language of the Takings Clause requires that the government pay the property owner. *Murr v. Wisconsin*, 137 S. Ct. 1933, 1942 (2017). To secure payment, a property owner may sue the government in federal court at the time of the taking for the "deprivation" of a right "secured by the Constitution." *Knick v. Township of Scott*, 139 S. Ct. 2162, 2170 (2019) (quoting 42 U.S.C. § 1983).

Federspiel asserts that he is entitled to qualified immunity as to each of the Ostipows' claims, including the takings claim. To overcome Federspiel's qualified immunity defense here, the Ostipows must show not only that their injury constitutes a Takings Clause violation, but also that such a violation was clearly established at the time of the alleged violation. With respect to the latter, we have "repeatedly" been warned not to define the right at "a high level of generality." *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011). To demonstrate that a law is "clearly established," then, the Ostipows must identify a factually similar case that would have given "fair and clear warning" to Federspiel about what the law requires. *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (quotation omitted). Controlling precedent, in other words, must "place[] the . . . constitutional question beyond debate." *Hearring v. Sliwowski*, 712 F.3d 275, 280 (6th Cir. 2013) (quoting *al-Kidd*, 563 U.S. at 741).

As the Ostipows first describe things, their claim has the feel of a taking. The government came to their home, took their property, sold it, and have yet to compensate the Ostipows. But upon closer inspection, their claims do not quite match up with traditional Takings Clause jurisprudence. The Ostipows' takings claim does not target the aspect of their story one might expect. They do not contest the scope of the government's initial seizure of their property, the treatment of their property when it was seized, or even the government's sale of that property during

the forfeiture proceedings, which they concede occurred pursuant to a then-valid court order. *Ostipow*, 2018 WL 3428689, at *4. The Ostipows instead focus on the 2016 judgment, which declared their ownership over some of the seized property. Characterizing those forfeiture proceedings as a "failure" that constitutes a "taking," the Ostipows now seek their "just compensation."

1.

Governments seize property for different reasons, utilizing different theories of power. When a government commits a taking for public use, it does so under its civil, eminent domain powers. A classic example is taking private property to build a public road through the property. When it does so, the government owes the property owners compensation for the land it took.

Governments also seize property utilizing their police powers, which are criminal in nature. See, e.g., *United States v. Droganes*, 728 F.3d 580, 591 (6th Cir. 2013). Indeed, it is well settled that a state's seizing and retaining property as part of a criminal investigation is not a "taking" for a "public purpose" under the Fifth Amendment, and thus does not give rise to a claim for just compensation. *Bennis v. Michigan*, 516 U.S. 442, 452-53 (1996); see also *AmeriSource Corp. v. United States*, 525 F.3d 1149, 1155 (Fed. Cir. 2008) (noting that "the character of the government action is the sole determining factor"

as to whether a plaintiff may bring a compensable takings claim).

Indeed, several circuits have concluded that the use of police power to lawfully seize and retain property categorically bars a Takings Clause claim. See, e.g., *Lech v. Jackson*, 791 F. App'x 711, 717 (10th Cir. 2019), cert. denied, No. 19-1123 (June 29, 2020) (dismissing a takings claim brought by innocent plaintiffs whose home was destroyed after police officers used an armored vehicle and explosives to apprehend a suspect who fled officers and sneaked into the plaintiffs' house); *Zitter v. Petruccelli*, 744 F. App'x 90, 96 (3d Cir. 2018) (finding no takings claim because officers acquired the ultimately destroyed property pursuant to a lawful search warrant); *Johnson v. Manitowoc County*, 635 F.3d 331, 333-34, 336 (7th Cir. 2011) (describing a takings claim as a "non-starter" when damage to a landlord's home occurred as a result of actions taken under the state's police power); *Acadia Tech., Inc. v. United States*, 458 F.3d 1327, 1331-32 (Fed. Cir. 2006) (collecting cases and dismissing a takings claim where the government seized property, failed to initiate forfeiture proceedings for four years, ultimately agreed to dismiss the forfeiture action, but did not return the property until its only value was as scrap).

So too here. The Ostipows' property was seized pursuant to uncontested warrants authorizing the search and seizure of property believed to be involved in drug manufacturing. The Saginaw County

prosecutor, in turn, initiated forfeiture proceedings against that property. The weight of authority holds that claims emanating from the use of police power are excluded from review under the Takings Clause. To the extent there conceivably is merit to the Ostipows' suggestion that civil asset forfeiture actions specifically should be reviewed under the Takings Clause, no such rule is clearly established, meaning Federspiel is entitled to qualified immunity on that claim.

In reaching this conclusion, we do not mean to suggest that victims of civil asset forfeiture abuse have no recourse under the Constitution. For example, a litigant might invoke the Due Process Clause, rather than the Takings Clause, to argue for heightened scrutiny in reviewing a state's determination that any seized property was an instrument to or proceed of a crime. See, e.g., *Leonard v. Texas*, 137 S. Ct. 847 (2017) (Thomas, J., respecting denial of cert.). And it is perhaps no coincidence that several states, including Michigan, recently have taken steps to curb forfeiture abuses. See, e.g., 2019 Mich. Pub. Acts. 7, 8, 9. This area of law, in other words, is one that appears to be evolving, even if that evolution does not help the Ostipows today.

2.

Resisting this conclusion, the Ostipows assert that their ultimate success in state court transforms this case from one about the exercise of police power into

one implicating the Takings Clause. That result, they say, is required by the Supreme Court's recent decision in *Nelson v. Colorado*, 137 S. Ct. 1249 (2017). Nelson invalidated a Colorado law that required defendants whose convictions had been reversed or vacated to later prove their innocence before they would be refunded the costs, fees, and restitution paid in connection with their invalid conviction. *Id.* at 1254-58. But Nelson did so on procedural due process grounds; it did not address a takings claim. *Id.* at 1252.

That the Ostipows received a judgment in their favor does not change our conclusion. Regrettably, the Ostipows have now waited over three-and-a-half years to be paid on that judgment (perhaps in part due to the length of this litigation). Yet even then, no clearly established takings claim exists. Over a century ago, the Supreme Court held that the property right created by a judgment against a government entity is not a right to payment at a particular time; it is instead a recognition of a continuing debt of that government entity. *Louisiana ex rel. Folsom v. Mayor of New Orleans*, 109 U.S. 285, 289 (1883). And so while the Ostipows have a property right in their judgment, there is no evidence that property right ultimately will not be honored. See, e.g., *Freeman Decorating Co. v. Encuentro Las Ams. Trade Corp.*, 352 F. App'x 921, 924 (5th Cir. 2009) (citing *Minton v. St. Bernard Parish Sch. Bd.*, 803 F.2d 129, 132 (5th Cir. 1986) (a school board's delay in satisfying a judgment does not create the

deprivation of a property right)). At least so far, Federspiel has not explicitly refused to satisfy the judgment. Compare Appellee Br. at 19, 32 (explaining that Saginaw County has to follow certain procedures before it can approve the Sheriff's expenditures), with *Wayside Church v. Van Buren County*, 847 F.3d 812, 823 (6th Cir. 2017) (Kethledge, J., dissenting) (arguing that a ripe takings claim existed where "the defendant Van Buren County took property worth $206,000 to satisfy a $16,750 debt, and then refused to refund any of the difference," explaining that in "some legal precincts that sort of behavior is called theft"). Rather, Federspiel has repeatedly recognized that debt. The Sheriff and his office purport to be working with the Saginaw County's Prosecutor's Office for guidance on the amount owed. Appellee Br. at 19, 32. Yet Federspiel claims that this suit, filed three weeks after entry of the state court judgment, simply did not afford sufficient time for the court or the Prosecutor's Office to provide such guidance. *Id.* Once that determination is resolved and the funds are allocated by the County Board of Commissioners, however, Federspiel asserts that the County Treasurer will pay the value of the judgment to the Ostipows. See Appellee Br. at 32-33; Mich. Comp. Laws § 600.6093.

3.

While we resolve the Ostipows' takings claim in Federspiel's favor, we disagree with his suggestion that the Ostipows do not have a "final judgment." In

making that suggestion, Federspiel invokes a procedural relic that long plagued our Takings Clause jurisprudence. These difficulties trace back to *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), which established a two-part test to determine when a takings claim is ripe. Under that test, a takings claim could be brought in federal court only after (1) the plaintiff received a "final decision" from the relevant government actor; and (2) the plaintiff sought "compensation through the procedures the State has provided for doing so." *Wayside Church*, 847 F.3d at 818. Depending upon the state, those procedures often included not only routine exhaustion of administrative procedures, but additional, typically cumbersome, state-imposed remedies, such as requiring the property owner to initiate reverse condemnation proceedings. *Williamson*, 473 U.S. at 196-97; see *Lumbard v. City of Ann Arbor*, 913 F.3d 585, 589-90 (6th Cir. 2019). But the Supreme Court recently overruled *Williamson*. Today, "a taking without compensation violates the self-executing Fifth Amendment at the time of the taking," meaning "the property owner can bring a federal suit at that time." *Knick*, 139 S. Ct. at 2172. It follows that after *Knick*, if an ancillary proceeding were required (akin to an inverse condemnation proceeding), the Ostipows would not have to exhaust that avenue before asserting a takings claim in federal court. *Id.*

Of course, the Ostipows' proceedings are before us in a different posture. A civil asset forfeiture action was

initiated against the Ostipows' property, and the Ostipows ultimately received a favorable judgment ordering the return of that property. In this setting, Michigan law does not appear to require the Ostipows to initiate a separate adjudication to satisfy their judgment. We asked for supplemental briefing on this very question, and neither party supplied answers as to what, exactly, the parties must do to determine a sum certain for the judgment. Federspiel merely reiterated that the Ostipows "have never presented proofs for judicial determination of the amount of compensation due"; the Ostipows, in turn, claim nothing more is required, believing they should have received a check or their property back immediately upon the judgment's being entered in their favor.

While perhaps providing few answers, the parties' supplemental briefs do shed light on how the parties might proceed from here. The parties appear to either disagree or lack clarity as to certain aspects of the state-court judgment. For example, the parties seem to have different views about how to compensate the Ostipows for their "full ownership interest." Are the Ostipows entitled to the proceeds of the sale of their property—presumably a fixed number available to Federspiel—or to the property's fair market value, as the Ostipows claim? See Appellant Br. at 38 n.11; Appellant Supp. Br. at 2-3; see also *Ostipow*, 2018 WL 3428689, at *5 (citing *In re Forfeiture of $256 and One 1978 Oldsmobile*, 517 N.W.2d 732, 734 (Mich. 1994) for the proposition that "the prior disposition of the assets will not bar entry of an order directing the

plaintiff to return the assets or the proceeds from the disposition of the assets"). The parties also appear to disagree over the amount and continuing validity of Royetta's dower interest. See generally *Zaher v. Miotke*, 832 N.W.2d 266, 271 (Mich. Ct. App. 2013) (noting that a dower interest is one-third of the property); *In re Forfeiture of $234,200*, 551 N.W.2d 444, 448 (Mich. Ct. App. 1996) (conferring standing on decedent's heirs to pursue decedent's innocent-ownership defense in forfeiture proceedings).

Michigan law provides numerous mechanisms to assist judgment creditors and debtors in clarifying and enforcing a judgment, from subpoenas to motion practice to extraordinary writs. See, e.g., Mich. Comp. Laws §§ 600.6101-600.6143; Mich. Ct. R. 2.620-21. For instance, a subpoena might issue to determine the sale price of the farmhouse, the car, and other items. Likewise, a request for modification of the judgment might clarify whether the Ostipows are entitled to the proceeds of the sale of their property or to the fair market value of their property at the time of sale. And if it is the latter, a post-judgment evidentiary hearing might help determine that value. But at day's end, it is the state court's duty to oversee and ensure the satisfaction of the Ostipows' judgment. With this appeal resolved, we trust that satisfaction will occur expeditiously.

The Substantive Due Process Claim.

The Ostipows' substantive due process claim targets the same conduct as their takings claim. And it fares no better. To invoke substantive due process protections, a purported right must implicate one of the three fundamental categories protected by that clause—life, liberty, or property. *Bowers v. City of Flint*, 325 F.3d 758, 763 (6th Cir. 2003). When one of those fundamental interests is at stake, substantive due process limits governmental action or inaction that is "arbitrary," *Upsher v. Grosse Pointe Pub. Sch. Sys.*, 285 F.3d 448, 453 (6th Cir. 2002), or "shocks the conscience." *Gohl v. Livonia Pub. Sch. Dist.*, 836 F.3d 672, 678 (6th Cir. 2016); see County of Sacramento v. Lewis, 523 U.S. 833, 846 (1998). We view such claims with a dose of skepticism, as "guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." *Collins v. City of Harker Heights*, 503 U.S. 115, 125, 128 (1992) (explaining that substantive due process is not intended to provide "rules of conduct" or best practices to regulate how we "liv[e] together in society"). And, of notable relevance here, the doctrine may not be used as a stand-in to address a failed takings claim. *Hillcrest Prop., LLP v. Pasco Count*y, 915 F.3d 1292, 1304 (11th Cir. 2019) (Newsom, J., concurring in the judgment).

After eight years of state litigation, the Ostipows have every right to be aggravated over the delay in Saginaw County satisfying their judgment. As frustrating as those actions may be, however,

Federspiel's conduct does not "shock[] the conscience." See *Gohl*, 836 F.3d at 678. A valid court order, issued after the Ostipows had an opportunity to be heard, instructed that the Ostipows' property was forfeited "to the Saginaw County Sheriff's Department" to "be disposed of by said Department as provided by statute, MCL 333.7524." It was not until seven years later— after a second trial court proceeding following a second remand from the Michigan Court of Appeals, and long after the property was sold—that the order was partially modified. Absent a stay of execution of the initial order, Federspiel seemingly was free to act upon the order's command.

While the court order directing Federspiel to dispose of the property eventually was partially reversed, Michigan law provides the Ostipows at least one remedy: entitlement to the proceeds of the sale of their property during the forfeiture proceeding. See *In re Forfeiture of $256 and One 1978 Oldsmobile*, 517 N.W.2d at 734. And they received a remedy when the Saginaw County Circuit Court issued a judgment in their favor, a point Federspiel does not dispute. Equally true, as previously explained, there is no right to instantaneous satisfaction of a judgment when a governmental entity is involved. Folsom, 109 U.S. at 289.

The Procedural Due Process Claim.

The Ostipows next claim that their procedural due process rights were violated when they were required

to post a bond to stay execution of the circuit court's forfeiture decision while they appealed that decision. By command of the Fourteenth Amendment, no State may "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. AMEND. XIV. To prevail on their procedural due process claim, the Ostipows thus must prove that Federspiel deprived them of a "liberty or property interest" without affording them the procedural protections the Constitution requires. *Phillips v. McCollom*, 788 F.3d 650, 653 (6th Cir. 2015).

One part of their claim is easily established. No one disputes the Ostipows have a property interest in the real and personal property seized from them in connection with Steven's arrest.

But the remaining part of their claim—that they were denied procedural protections—is another story. The Ostipows say those protections were denied when they were required to post a supersedeas bond to stay the execution of forfeiture pending appeal. Assuming, for purposes of argument, that Federspiel is the proper party against whom to assert this claim, accord *Ostipow*, 2018 WL 3428689, at *6, the Ostipows' claim still fails.

A supersedeas bond, also commonly known as an appellate bond, is a standard requirement in many courts, including our own. See, e.g., Fed. R. App. P. 8; Ohio Civ. R. 62; N.Y. C.P.L.R. § 5519; Cal. Code Civ. Proc. § 917.1. As was the case here, losing litigants in

the trial court are often asked to post a supersedeas bond to stay execution of the trial court's judgment, pending the outcome of their appeal. The bond is not part of the civil asset forfeiture regime; it is a general rule of Michigan civil procedure applicable to a variety of civil appeals. See Mich. Ct. R. 7.209.

While the supersedeas bond requirement may seem unfair to the Ostipows, particularly now that their claims have been partially vindicated, it did not impermissibly burden their procedural due process rights. The Ostipows were able to challenge the forfeiture of their property in the trial court. They received notice of the proceedings, filed an answer, and, upon receiving an unfavorable judgment, took an appeal. The bond requirement, in other words, did not alter their ability to challenge the seizure of their property. It merely hindered their ability to stay execution of the judgment pending appeal.

And perhaps most critically, the Ostipows had the opportunity to challenge that bond when it was imposed. The circuit court granted their request to stay the forfeiture proceedings pending appeal, subject to the Ostipows posting the bond. The Ostipows then asked the Michigan Court of Appeals to lift the bond condition. In making that request, the Ostipows never alleged any financial hardship or inability to meet the bond requirements, nor did they offer to provide a different type of bond, such as a surety bond. Without any reason to alter the bond

requirements, the appellate court left the circuit court's order intact.

The Ostipows gain no mileage from *In re Forfeiture of 2000 GMC Denali*, 892 N.W.2d 388 (Mich. Ct. App. 2016). The plaintiff there challenged Michigan's requirement to post a bond before challenging civil asset forfeiture proceedings in the trial court. *Id.* at 391. Because the plaintiff could not afford to post a bond, the Michigan Court of Appeals held that the bond requirement, as applied, denied the plaintiff her "opportunity for a hearing," meaning that certain provisions of the forfeiture statute were unconstitutional as applied. *Id.* at 400. Michigan has now eliminated this requirement. See Mich. Comp. Laws § 333.7522. But this has no impact on the Ostipows. For one thing, Denali did not involve supersedeas bonds. For another, the Ostipows, unlike the plaintiff in *Denali*, paid the bond necessary to challenge the forfeiture proceedings in the circuit court. And in any event, despite having their property sold during the pendency of their appeal due to their failure to pay the supersedeas bond, the Ostipows were still entitled to alternative remedies should their claims be vindicated on appeal. See *In re Forfeiture of $53.00*, 444 N.W.2d 182, 184 (Mich. Ct. App. 1989). When vindication came to pass, the circuit court issued a judgment in the Ostipows' favor. There was thus no due process violation.

The Excessive Fines Claim.

The Ostipows' Excessive Fines Clause claim suffers the same fate. The Ostipows allege that Federspiel violated the Eighth Amendment by imposing an excessive fine "in the form of the value of the forfeiture of [Gerald's] interest in the [f]armhouse and its contents[.]" Compl. ¶67. But we do not have to pass on whether Federspiel violated the Eighth Amendment here. Either way, the law was not "clearly established" at the time of the alleged misconduct.

In relevant part, the Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed . . . ." U.S. CONST., AMEND. VIII. The Ostipows rely on *United States v. Bajakajian*, 524 U.S. 321, 331 n.6 (1998) to support their claim that not only is seizure and forfeiture of their property an excessive fine, but also that such a violation was clearly established at the time. But twelve years after Bajakajian, the Supreme Court acknowledged it "never [had] decided whether the Third Amendment or the Eighth Amendment's prohibition of excessive fines applies to the States through the Due Process Clause." *McDonald v. City of Chicago*, 561 U.S. 742, 765 n.13 (2010). We likewise had not explicitly ruled on whether the Excessive Fines Clause applied against the States. See *Ross v. Duggan*, 402 F.3d 575, 588 (6th Cir. 2004) (assuming without comment that the Excessive Fines Clause applied against the States to affirm dismissal of an

excessive fines claim). Indeed, it was not until just last year that the Supreme Court, in *Timbs v. Indiana*, 139 S. Ct. 682 (2019), decided that the Excessive Fines Clause applied to the States and did so in the context of civil in rem forfeiture proceedings.

Given that neither Federspiel nor the Michigan courts had the benefit of Timbs at any point during the forfeiture proceedings, whether a forfeiture may constitute an excessive fine in violation of the Eighth Amendment was not "clearly established," for purposes of asserting a § 1983 claim. As such, Federspiel is entitled to qualified immunity on this claim as well.

The *Monell* Claim.

Lastly, the Ostipows challenge the dismissal of their claim asserted pursuant to *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), on the basis that they did not have sufficient notice that Federspiel had moved for summary judgment on those claims. The record suggests otherwise. Federspiel moved for summary judgment on all "constitutional claims," and, relatedly, asked the district court to "dismiss[] this litigation with prejudice." As such, there was no notice issue. The Ostipows had the opportunity either to brief their *Monell* claim or, at the very least, alert the district court that they believed Federspiel had not sufficiently raised the matter. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986). We thus see no error here either.

CONCLUSION

For the reasons stated above, we AFFIRM the judgment of the district court.

APPENDIX D

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v.

A QUANTITY OF MARIJUANA; ET AL;
Defendants;

v.

GERALD OSTIPOW; ET AL;
Claimants

Case No. 08-900017-CF
Hon. James T. Borchard (P27015)

FINAL JUDGMENT

Plaintiff filed a complaint seeking forfeiture of various items of personal and real property. Gerald

Ostipow and Royetta Ostipow filed a claim/answer with the Court asserting innocent ownership of a majority of the property for which forfeiture was sought.

A trial was held in this matter on March 20, 2012 and March 29, 2012. At trial, the issue before the Court was to determine in the first instance whether Plaintiff could establish a factual basis for forfeiture under the civil forfeiture section of the Public Health Code, MCL 333.7521 et seq. Once and if established, the Court was required to then consider the claimants' assertion of innocent ownership. Following trial, the Court found that certain items of property were to be forfeited to Plaintiff under the Public Health Code and others were not. Following a final judgment incorporating those findings, the claimants appealed the Court's ruling to the Michigan Court of Appeals. The Michigan Court of Appeals reversed a portion of the Court's findings and remanded the matter back for entry of a new conforming final judgment. Therefore, and pursuant to the opinion and order of the Michigan Court of Appeals (*In re A Quantity of Marijuana*, unpublished opinion per curiam of the Court of Appeals, issued October 22, 2013 (Docket No. 310106)) and trial court's subsequent orders, the following shall be the final judgment of the Court:

A. As to the real property commonly known as 3551 East Allen Road, Owosso, Michigan and

the personal property contained therein and upon its curtilage:

i. Gerald Ostipow's entire interest in the real property shall be forfeited in favor of Plaintiff.

ii. Royetta Ostipow's interest is not forfeited and she shall be entitled to compensation for her dower interest as described in the opinion and order of the Michigan Court of Appeals (*In re A Quantity of Marijuana*, unpublished opinion per curiam of the Court of Appeals, issued October 22, 2013 (Docket No. 310106)) and trial court's subsequent orders.

iii. All personal property located in the residence building shall be forfeited in favor of Plaintiff. This includes, but is not limited to: furniture, fixtures, contents, marijuana, and paraphernalia related to drug manufacture.

iv. All personal property contained in the real property's curtilage and numerous outbuildings, with the exception of property located in a shed where drug manufacture

equipment was found, is not forfeited in favor of Plaintiff. Property located within the outbuildings to which the claimants maintain a full ownership interest of includes but is not limited to: a 1965 Chevrolet Nova (VLN 118375N149268) and its trailer; a collection of tools and equipment; and other personal effects.

v. However, Stephen Ostipow' s Ski - Doo snowmobile (VIN 2BPS1673X1V000014) located in one of the real property's outbuildings is forfeited in favor of Plaintiff.

B. As to the real property commonly known as 3996 East Allen Road, Owosso, Michigan and the personal property contained therein and upon its curtilage:

i. Plaintiff did not seek forfeiture of the real property and it is not forfeited in favor of Plaintiff

ii. The following weapons are not forfeited in favor of Plaintiff and by stipulation of the parties were already returned to the claimants:

i. one Remington Model 1187 shotgun (seizure item T2/68);

ii. one Remington Model 700, .243 caliber (seizure item U2/69);

iii. one Remington 20 gauge shotgun (seizure item V2/70);

iv. one New England Arms .243 rifle (seizure item W2/71);

v. one CVA muzzleloader (seizure item X2/72);

vi. one CVA muzzleloader (seizure item Y2/73);

vii. one Wards Western Field shotgun (seizure item Z2/74);

viii. one CVA muzzleloader (seizure item AA2/75);

ix. one Savage Model 99 rifle (seizure item BB2/76);

x. one Remington shotgun (seizure item CC2/77); and

xi. one Mossberg shotgun (seizure item DD2/78).

iii. At trial, Plaintiff sought forfeiture of the following weapons and related equipment owned by the claimants but the Court declined to forfeit them infavor of Plaintiff:

i. all seized ammunition;

ii. all seized firearm cases;

iii. all seized scopes;

iv. a Ruger 10/22 rifle (SCSD Item 57);

v. a Remington .22 rifle (SCSD Item 58);

vi. a Remington rifle with scope (SCSD Item 59);

vii. Savage .223/12 gauge rifle / shotgun combo (SCSD Item 60).

The claimants maintain their full ownership interest in the above property.

iv. The Court found only one weapon could be forfeited in favor of Plaintiff which was the sole firearm owned by Stephen Ostipow, that being a:

i. a .25 caliber semi-automatic handgun.

v. The following personal property owned by Stephen Ostipow located at the real property is forfeited in favor of Plaintiff:

i. $360.00 in U.S. currency; and

ii. various drug ledgers.

vi. No other personal property located at the real property was forfeitable in favor of Plaintiff. The claimants maintain full ownership interest of that personal property.

C. With the exception of the property listed as forfeited above, no other item seized by Plaintiff or its agents are forfeited in favor of Plaintiff. The claimants maintain their full ownership interest in such property.

D. This is a final order and closes the case pursuant to MCR 2.602.

IT IS SO ORDERED:

Date: 8-2-2016 /s/ James T. Borchard P27015
HON. JAMES T. BORCHARD
(P27015) Circuit Judge

A TRUE COPY
SUSAN KALTHENBACK, CLERK

APPENDIX E

No. 22-1414

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GERALD S. OSTIPOW, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ROYETTA L. OSTIPOW,
Plaintiff-Appellant,

v.

WILLIAM L. FEDERSPIEL,
Defendant-Appellee

ORDER

FILED
Nov 16, 2023
Kelly L. Stephens, Clerk

BEFORE:
BATCHELDER, GIBBONS, and READLER,
Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for

rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.*

No judge has requested a vote on the suggestion for rehearing en banc.
Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

*Judge Davis recused herself from participation in this ruling.

APPENDIX F

From the desk of:
Matthew E. Gronda, Attorney at Law
Return Mail: P.O. Box 70, Saint Charles, MI 48655
Phone: [989] 249-0350 Fax: [989] 393-5931
Email: matt@matthewgronda.com

March 22, 2021

Via U.S. Mail and Facsimile

Sheriff William Federspiel
311 South Harrison
Saginaw, Michigan 48602

Fax No. 989-790-5429

Re: Gerald Ostipow /
Estate of Royetta Ostipow

Sheriff:

I represent the interests of Gerald Ostipow in his own capacity and in his capacity as personal representative of the estate of his now deceased wife, Royetta Ostipow. On August 2, 2016, a final judgment was entered between yourself (in your capacity as Sheriff) and the Ostipows. That judgment quieted title to property that you claimed was forfeit in your

favor under the Michigan Public Health Code (with some property indeed being forfeit and some not). I have attached a copy of that judgment for your review.

Shortly thereafter, and consistent with that judgment, the Ostipows made a written demand for the return of their property to which you did not respond. A copy of that demand is also attached. On August 24, 2016, the Ostipows then filed suit against you in the United States District Court for the Eastern District of Michigan. That matter ultimately concluded without recovery to the Ostipows on October 22, 2020.

In relevant part, the United States Court of Appeals for the Sixth Circuit acknowledged that the Ostipows had property rights established under the final judgment. It also held that there was no evidence that you wouldn't honor those property rights thus precluding any federal liability. This holding was premised on your written statements to the Court that you: recognized the debt; were working with the Saginaw County Prosecutor's Office for guidance on the amount owed; and through the County Treasurer, would pay the value of the property to the Ostipows. However, it was your position that you simply hadn't had time to complete these steps at the time the Ostipows filed suit on August 24, 2016, being 22 days after entry of the final state court judgment.

It has now been 1,694 days since the final judgment and 216 days since the Sixth Circuit rendered its opinion. Yet at the same time, you have made zero effort to provide the Ostipow family with the compensation they are due.

We recognize that you have disposed of most of, or all of, the property. In the federal suit, as you may remember, we prepared and disclosed to you care of your counsel valuations for that property. It is as follows:

A. Royetta Ostipow's Interest in 3551 East Allen Road, Owosso, Michigan: $49,666.69 (1/3 of FMV)
B. Personal Property Replacement: $158,096.07
C. 1965 Chevrolet Nova: $25,356.00

If am requesting that you acknowledge in writing receipt of this letter within 14 days. If you do not acknowledge this letter in writing within 14 days, I will presume that it is your position that the Ostipows are not entitled to any compensation for the value of their property. I am further demanding that you pay the Ostipows the sum of $233,118.76 within 21 days of this letter's date. Should you need more time, I will grant any reasonable extension so long as your request for the same is in writing and received within that timeframe.

Should you have any questions or concerns, feel free to contact me at 989-249-0350 or matt@matthewgronda.com.

Best Regards,
/s/ Matthew E. Gronda
MATTHEW E. GRONDA