No. 24-1307

In the Supreme Court of the United States

JENNIFER COTTO, ET AL.,
Petitioners,

v.

ANDREA JOY CAMPBELL, ET AL.,
Respondents,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under the law of the Commonwealth of Massachusetts, all rights in property used or intended to be used to facilitate a drug-related crime transfer to the Commonwealth upon the entry of a civil judgment of forfeiture. Mass. Gen. Laws ch. 94C, § 47(a). Petitioners, whose property was forfeited pursuant to § 47(a) but whose drug-related convictions were later vacated, brought a federal action against the Commonwealth, alleging that failure to return their forfeited property once their convictions were vacated is an ongoing constitutional violation such that the *Ex parte Young* exception to Eleventh Amendment immunity applied.

The District Court rejected that argument and held that the Eleventh Amendment barred Petitioners' claim for the return of forfeited property. Pet. App. 38a-39a. Petitioners did not appeal that (or any other) aspect of the District Court's judgment. The Commonwealth took an interlocutory appeal of the District Court's award of certain purportedly prospective and ancillary injunctive relief, and the First Circuit concluded that the Eleventh Amendment barred all relief. Pet. App. 4a. The question presented is:

Whether the alleged unconstitutional failure to automatically return money and property forfeited pursuant to Mass. Gen. Laws ch. 94C, § 47, following a vacated conviction constitutes an ongoing violation of federal law.

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INTRODUCTION

In concluding that the allegedly unconstitutional failure to return forfeited property is not an ongoing violation of federal law, both the District Court and the First Circuit correctly applied decades of this Court's Eleventh Amendment case law, most significantly *Edelman v. Jordan*, 415 U.S. 651 (1974), and *Papasan v. Allain*, 478 U.S. 265 (1986). Those cases, as the First Circuit observed, "held that state officials' continued withholding of past benefits, even if wrongful, amounted to a past wrong and not an ongoing violation for *Ex parte Young* purposes." Pet. App. 12a. The manifestly correct application of that principle to this case does not warrant this Court's review—especially because Petitioners did not cross-appeal the District Court's "ongoing violation" ruling, as the First Circuit recognized, *see* Pet. App. 12a n.5.

The cases upon which Petitioners rely to allege a split are consistent with the First Circuit's holding. As explained in detail below, those cases concern meaningfully different scenarios, such as where ownership of the property had not transferred to the state, or where the plaintiff sought reinstatement to employment after an allegedly wrongful termination. In such scenarios, the plaintiff can plausibly claim an ongoing violation that prospective relief can remedy; here, by contrast, the transfer of the property's ownership to the Commonwealth occurred years ago when the property was forfeited. In the circumstances of this case, *Edelman* and *Papasan* squarely control.

Accordingly, the petition should be denied.

STATEMENT

1. The Massachusetts civil forfeiture law authorizes the forfeiture of money and property that was used or intended to be used to commit or facilitate a drug-related crime. Mass. Gen. Laws ch. 94C, § 47 ("State Act"). Forfeiture under the State Act is considered "outside the scope of the criminal matter and constitutes a civil proceeding." *Commonwealth v. Brown*, 688 N.E.2d 1356, 1360 (Mass. 1998); *Commonwealth v. Martinez*, 109 N.E.3d 459, 475-76 (Mass. 2018).

Under the State Act, when a state court judgment of forfeiture is entered, all property rights in the forfeited property transfer to the Commonwealth. Mass. Gen. Laws ch. 94C, § 47(a). The State Act created "within the office of the state treasurer" special trust funds to hold forfeited assets, and those assets may then be expended according to the State Act's provisions "without further appropriation." *Id.* § 47(d).

2. Beginning in about 2004, two forensic chemists employed by the Commonwealth, Annie Dookhan and Sonja Farak, tampered with evidence, falsified drug results, and committed perjury in thousands of state court drug cases. *See* Pet. App. 5a. After their egregious misconduct was discovered, the Massachusetts Supreme Judicial Court ("SJC") vacated and dismissed with prejudice over 30,000 convictions tainted by their involvement. *See id.* Subsequently, several plaintiffs filed suit in state court, raising constitutional due process claims based on *Nelson v. Colorado*, 581 U.S. 128 (2017), and seeking the return of fees, victim-witness

assessments, restitution, fines, court costs associated with their convictions, and any civilly forfeited assets.

The SJC considered these claims in *Commonwealth v. Martinez*, 109 N.E. 3d 459 (Mass. 2018). In that case, the Commonwealth (through its Attorney General) agreed that for individuals whose criminal convictions had been vacated due to the state chemists' misconduct, *Nelson* required the automatic return of fees, victim-witness assessments, restitution, and fines. *See* Brief for the Commonwealth in No. SJC-12479.[1] The SJC so held, *see* 109 N.E.3d at 471-475, but further held that *Nelson* does not require the automatic return of assets civilly forfeited pursuant to the State Act. Pet. App. 5a; *Martinez*, 109 N.E.3d at 475-76.[2] As to forfeiture, the SJC noted that forfeiture under Massachusetts law is a civil proceeding that is subject to a lower burden of proof than a criminal conviction, and thus civil forfeiture judgments are "not solely a consequence of the invalidated drug convictions[.]" *Martinez*, 109 N.E.3d at 475-76; *see Nelson*, 581 U.S. at 130 (holding that state is "obliged to refund fees, court costs, and restitution exacted from the defendant *upon, and as a consequence of, the conviction*" (emphasis added)).

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[1] Available at https://www.ma-appellatecourts.org/pdf/SJC-12479/SJC-12479_02_Appellee_Commonwealth_Brief.pdf.

[2] The Commonwealth, through one of its District Attorneys, had argued in a case consolidated with *Martinez* that *Nelson* does not require the return of forfeited assets. *See* Brief for the Commonwealth in No. SJC-12480, available at http://ma-appellatecourts.org/pdf/SJC-12480/SJC-12480_05_Appellee_Commonwealth_Redacted_Brief.pdf.

Accordingly, the SJC held in *Martinez* that "the reasons for invalidating a conviction potentially may warrant relief from the civil judgment of forfeiture, but that issue must be separately litigated in the civil forfeiture proceeding through a motion for relief from judgment under Mass. R. Civ. P. 60(b)." 109 N.E.3d at 476. The plaintiffs in *Martinez* did not file a petition for certiorari. *See* Pet. App. 6a.

3. Petitioners—criminal defendants in drug cases whose convictions were vacated due to the misconduct of state chemists Dookhan and Farak—initially filed suit in 2018 in the District of Massachusetts to seek the return of various categories of fees, exactions, and forfeited property, relying on *Nelson*. *See* Pet. App. 26a-27a; *see also Cotto et al. v. Campbell et al.*, No. 1:18-cv-10354-IT, ECF No. 1 (D. Mass.). The federal action was then stayed pending the outcome of related state court proceedings, which ultimately led to a comprehensive class action settlement that resolved the majority of the claims from the original complaint and resulted in the issuance of refund checks to more than 30,000 class members. *See* Pet. App. 27a; Final Approval Order, *Foster v. Commonwealth of Massachusetts*, No. 1984-CV-03373 (Mass. Super. Ct. Oct. 6, 2022). The settlement did not resolve claims relating to forfeited property.

Petitioners then filed the operative Second Amended Complaint in this case on February 3, 2023, alleging that the civil forfeitures and Defendants' failure to return forfeited property after the SJC vacated their underlying drug convictions violates the Eighth and Fourteenth Amendments to the U.S. Constitution. Pet. App. 52a-53a.

The Second Amended Complaint requested the following relief on behalf of the putative class: (1) a "declar[ation] that Plaintiffs . . . are entitled to the return of all Forfeited Property," (2) an order that the Defendants shall "notify Class Members of their rights to the return of all Forfeited Property," (3) an order that the Defendants "implement an efficient, effective and fair process to return all Forfeited Property," (4) an order that the Defendants "conduct a full accounting of all Forfeited Property," (5) the return of all forfeited property, and (6) a prohibition against the Defendants seeking to re-forfeit the same property under the State Act. Pet. App. 103a-104a.

The Commonwealth Defendants[3] moved to dismiss the Second Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). They argued that Petitioners' claims were barred by sovereign immunity as well as federal abstention and related doctrines, and that the claims should also be dismissed as time-barred and for failure to state a claim. *See* Pet. App. 32a.

4. The District Court (Talwani, J.) issued a Memorandum and Order on November 13, 2023, which granted in part and denied in part the Commonwealth Defendants' motion to dismiss. Pet. App. 22a-51a. The District Court held that the *Younger* abstention, *Colorado River* abstention, and *Rooker-Feldman* doctrines did not apply. Pet. App.

[3] The "Commonwealth Defendants" refers to the Massachusetts Attorney General, the eleven District Attorneys in the Commonwealth, the Administrator of the State Trial Court, and the Interim Superintendent of the Massachusetts State Police. The other named Defendants were municipal police departments. *See* Pet. App. 6a.

44a-48a. The District Court found that Petitioners' claims related to alleged errors in the initial forfeiture proceedings were time-barred, but the claims of alleged unlawful withholding of forfeited property as of 2017 were not time-barred. Pet. App. 43a-44a.

The District Court held that Petitioners' claims against the Commonwealth Defendants for the return of forfeited assets could not proceed. Pet. App. 36a-40a. The court found that "to remedy Plaintiffs' claims that the withholding itself is a violation of federal law, this court would have to authorize an award of an accrued monetary liability that would to a virtual certainty be paid from state funds. That avenue of recourse is barred by the Eleventh Amendment." Pet. App. 39a (citations and internal quotation marks omitted). However, the District Court found that sovereign immunity did not bar Petitioners from seeking from the Commonwealth Defendants three categories of relief it deemed "prospective, procedural injunctive relief": (1) a "full accounting of all Forfeited Property obtained from Class members in connection with their criminal cases[,]" (2) "notification of [class members'] rights to a more robust state procedure under the State Act, or their rights to pursue relief under [Mass. R. Civ. P.] 60(b)[,]" and (3) "additional procedural due process protections within a Rule 60(b) hearing." Pet. App. 41a-43a. The District Court stated generally that "the court is not barred from entertaining Plaintiffs' constitutional challenges" for "relief other than an order from this court directing the payment of money from the state." Pet. App. 43a; *see* Pet. App. 7a.

The Commonwealth Defendants timely filed a Notice of Appeal from the District Court's partial

denial of their Motion to Dismiss. *See* Pet. App. 8a. Petitioners initially filed a Notice of Cross Appeal on the District Court's partial grant of the motion to dismiss, but then abandoned their cross-appeal, instead expressly "reserv[ing] their rights to appeal following the entry of a final judgment." Pet. Br. in No. 23-2069, at 11 n.2 (1st Cir. Sept. 20, 2024); *see* Pet. App. 6a n.1.

5. The First Circuit reversed the District Court's partial denial of the Commonwealth Defendants' Motion to Dismiss and remanded to the District Court with instructions to dismiss the Complaint in full. Pet. App. 21a. The First Circuit concluded that Eleventh Amendment sovereign immunity bars all the relief sought by the Petitioners. *Id.*; Pet. App. 4a.

First, the First Circuit concluded that because Petitioners' attempt to recover their forfeited property focused on a past alleged wrong, rather than an ongoing violation of federal law, the *Ex parte Young* exception to sovereign immunity did not apply. Pet. App. 4a. The First Circuit held that the District Court's decision on this point was correct: "There may be a continuing liability for a past harm, but there is no ongoing violation here." Pet. App. 12a. The First Circuit explained that this Court's decisions in *Edelman* and *Papasan* foreclosed Petitioners' argument. Pet. App. 12a. The First Circuit found that Petitioners failed to allege an ongoing violation of federal law, because "[j]ust like the continued withholding of previously owed payments in *Edelman* and *Papasan* did not amount to ongoing violations, defendants' continued withholding of forfeited property does not qualify as an ongoing violation [because Petitioners'] claims rest on 'the past actions

of the [Commonwealth],' either from the time of their forfeiture proceedings or from the time their convictions were vacated, rather than any current or future actions." Pet. App. 14a (quoting *Papasan*, 478 U.S. at 282).

Second, because there is no ongoing violation of federal law to anchor Petitioners' claims, the First Circuit found that no prospective or ancillary relief could be granted. Pet. App. 15a-18a. The First Circuit explained that the *Ex parte Young* doctrine "permits federal courts to issue prospective relief that requires state officials 'to conform [their] *future* conduct' to federal law, not retrospective relief that only 'make[s] reparation for the past.'" Pet. App. 15a-16a (quoting *Edelman*, 415 U.S. at 664-65 (emphasis added)). The First Circuit found that the District Court "correctly held that an injunction requiring the payment of money from the state treasury would be impermissibly retrospective[,]" and that it followed that any injunctions for notice or accounting relief, as well as for additional procedural protections in state court, could not qualify as prospective relief since they would not serve to directly end an ongoing violation of federal law because Petitioners alleged only a past wrong. Pet. App. 16a.

Accordingly, the First Circuit concluded that the exception for ancillary relief which supports the implementation of "prospective relief already ordered by the court" was not applicable. Pet. App. 15a (quoting *Green v. Mansour*, 474 U.S. 64, 70-71 (1985)). The First Circuit explained that this Court's decisions in *Quern v. Jordan*, 440 U.S. 332 (1979), and *Green* "make clear that federal courts can only grant relief that is not itself prospective under *Ex parte Young*

when that relief is 'ancillary to the prospective relief already ordered by the court.'" Pet. App. 17a-18a (quoting *Green*, 474 U.S. at 70-71; citing *Quern*, 440 U.S. at 349). The First Circuit found that *Green* was directly on point, and that because no prospective relief was available to remedy the underlying allegedly unconstitutional actions, there was nothing to which the "ancillary" notice or accounting relief could attach, so that relief is also barred by sovereign immunity. Pet. App. 17a-18a.

The First Circuit held that Petitioners' request for a declaratory judgment that they are entitled to the return of forfeited property was barred because to hold otherwise would be a "partial 'end run' around the prospective relief requirement." Pet. App. 15a (quoting *Green*, 474 U.S. at 73). The First Circuit explained that under this Court's holding in *Green*, declaratory judgments are barred when their only use would be "be[ing] offered in state-court proceedings as res judicata on the issue of liability." Pet. App. 18a (quoting *Green*, 474 U.S. at 73). The First Circuit found that *Green*'s reasoning directly applied to Petitioners' request for a declaratory judgment, which would be used to establish res judicata on the issue of liability in their state court proceedings to recover forfeited property. Pet. App. 18a-19a (citing *Green*, 474 U.S. at 73). Thus, the First Circuit concluded that such a declaratory judgment would function as an impermissible "end run" around *Ex parte Young*'s prospective relief requirement by, in effect, allowing a federal court to order the retrospective relief of the return of Petitioners' forfeited property. Pet. App. 15a (citing *Green*, 474 U.S. 64, 73 (1985)). As such, the First Circuit concluded that the request for

declaratory judgment was barred by the Eleventh Amendment. Pet. App. 18a-19a.

Finally, the First Circuit held that Petitioners' claim for additional procedural protections in state court proceedings fell outside of the *Ex parte Young* exception to sovereign immunity because the Commonwealth Defendants lack the authority to enforce or change those procedures. Pet. App. 10a, 19a-20a. The First Circuit explained that "[u]nder *Ex parte Young*, plaintiffs may only seek relief from state officials with 'some connection with the enforcement of the [allegedly unconstitutional] act[,]' . . . . [o]therwise, plaintiffs would be 'attempting to make the state a party.'" Pet. App. 20a (quoting *Ex parte Young*, 209 U.S. 123, 157 (1908)). The First Circuit concluded that the Commonwealth Defendants—the Massachusetts Attorney General, the eleven District Attorneys in the Commonwealth, the Administrator of the State Trial Court, and the Interim Superintendent of the Massachusetts State Police—lack the authority to alter state court procedures to provide "additional procedural due process protections within a Rule 60(b) hearing"; only the SJC can change state court procedures for hearings under Massachusetts Rule of Civil Procedure 60(b). Pet. App. 20a. Therefore, the state was the real party in interest, and the claim for additional procedural protections in state court for the return of forfeited property was barred by sovereign immunity. *Id.*

REASONS FOR DENYING THE PETITION

The petition in this case presents no question that warrants this Court's review. In holding that sovereign immunity barred Petitioners' claims arising

from the past entry of a civil forfeiture judgment, the First Circuit correctly rejected Petitioners' characterization of the alleged harm as an ongoing violation of federal law. The First Circuit's decision is a straightforward application of this Court's precedent in *Edelman* and *Papasan*, which establish that a monetary loss resulting from a state official's past breach of a legal duty is not an ongoing violation of federal law. There is no split of authority on that point; the cases upon which Petitioners rely to allege a split arose in different factual circumstances that have no relevance here.

Nor is this case a suitable vehicle for addressing the question presented. As explained above, the District Court ruled against Petitioners on the question of an ongoing violation, and Petitioners did not appeal to the First Circuit on that issue (or any other). The petition should therefore be denied.

I. This Case Does Not Present a Question Warranting This Court's Review.

Petitioners' claimed split of authority regarding whether an event that occurred in the past constitutes an ongoing violation of federal law for purposes of the *Ex parte Young* exception to sovereign immunity is based on a misunderstanding of state law and the property rights in the forfeited property at issue. Contrary to Petitioners' arguments, once property is forfeited under the State Act, the claimants are no longer seeking the return of *their own* property which is being withheld by the state, but are instead seeking *compensation* for the past taking of the property, which has transferred to the state's ownership. The First Circuit correctly applied this Court's settled

doctrine in such a circumstance, consistent with other courts of appeals.

The decisions relied on by Petitioners for the supposed split involved readily distinguishable factual circumstances, such as property that is still owned by the plaintiff, or where the plaintiff is seeking reinstatement to an employment position, admission to a university, or expungement of a record. Those circumstances are meaningfully different from the situation here, where the Petitioners seek compensatory relief based solely on the prior forfeitures. There is, in short, no split, nor was there any error in the First Circuit's decision.

A. There is No Split of Authority Concerning the Application of the Ongoing Violation of Federal Law Requirement of the *Ex parte Young* Exception to Sovereign Immunity.

Petitioners wrongly contend that the First Circuit's decision creates a conflict with the Second, Fourth, Fifth, Sixth, Ninth, Tenth, and Eleventh Circuits. Pet. i, 25-27. There is no such conflict; the differing outcomes in Petitioners' cited cases turn on facts that differ from the present case in legally significant ways. The First Circuit's decision did not run afoul of the proposition, relied on by Petitioners, that "[S]tate officials may commit ongoing violations when they unconstitutionally retain possession of a person's *identifiable property*." Pet. 14-15 (emphasis added) (quoting *Cooperrider v. Woods*, 127 F.4th 1019, 1044 (6th Cir. 2025) (citations and internal quotation marks omitted)). But that proposition has no application here, where ownership of the property

transferred to the Commonwealth years ago. Simply stated, there is no longer any "identifiable property" at issue in this case.

1. Petitioners' Ninth and Eleventh Circuit Cases Are Distinguishable Because the State in Those Cases Did Not Own the Property.

As explained *supra* at 2, Massachusetts law is clear that property, once forfeited pursuant to the State Act, is owned by the Commonwealth.[4] That fact distinguishes this case from *Taylor v. Westly*, 402 F.3d 924 (9th Cir. 2005), and *Maron v. Chief Financial Officer of Florida*, 136 F.4th 1322 (11th Cir. 2025). In those cases, unlike this one, ownership of the property being held by the state had not transferred to the state.

Taylor concerned California's unclaimed property laws, which "plainly establish[ed] that the state only holds the property on behalf of the true owners and not as its own." 402 F.3d at 935; *see id.* at 931 ("Before California escheated property is 'permanently' escheated, it is like a car that is towed and held in an impound lot. The car is in the custody of the impounding government, but it is held for its owner,

[4] The Petition inaccurately frames the action taken by state officials here as "the unconstitutional retention 'of a person's identifiable property.'" Pet. 5 (quoting *Mikel v. Quin*, 58 F.4th 252, 257 (6th Cir. 2023)); *see* Pet. 15, 21. It represents that "Petitioners' property was neither 'deposited in the state treasury' nor 'designated in any manner as the property of the state[.]'" Pet. 20. This is incorrect as a matter of state law, as set forth *supra* at 2.

if one turns up."). Because the property had not permanently escheated to the state, the state had not gained ownership of the property, and the Ninth Circuit concluded that the rule from *Edelman* and *Papasan* did not apply. *Id.* at 932, 935.

The Ninth Circuit relied on this ownership distinction, explaining that "[i]n *Edelman*, the plaintiffs unquestionably sought money that belonged to the government but to which the plaintiffs asserted an entitlement[,]" rather than seeking "reinstatement of possession of property they owned"; similarly, in *Papasan*, "any money recovery was coming directly from state resources." *Id.* at 932, 935. In contrast, under California's unclaimed property laws, "the corpus still exists and is available for return." *Id.* at 932. The logic of *Edelman* thus did not apply in *Taylor* because the state never owned the property. *See Taylor*, 402 F.3d at 932 ("The State of California's sovereign immunity applies to the state's money."). Here, however, the Commonwealth took ownership of the forfeited property as soon as the civil forfeiture judgment entered. Thus, any failure by the Commonwealth to compensate plaintiffs for the alleged constitutional violation of not repaying Petitioners once their convictions were vacated is the type of "ongoing liability for past breach" that this Court held in *Papasan* to be controlled by *Edelman*. *See Papasan*, 478 U.S. at 280.[5]

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[5] As the First Circuit accurately summarized,

> Plaintiffs' claims rest on 'the past actions of the [Commonwealth],' either from the time of their forfeiture proceedings or from the time their convictions were vacated, rather than any

Similarly, *Maron* involved Florida's unclaimed property law, which "expressly decline[d] to transfer title over unclaimed property." 136 F.4th at 1335; *see id.* ("The Act is not an escheatment statute. . . . [A]fter the unclaimed property is placed in the State's custody, the Act does not provide for a transfer of title, but merely gives the State 'custody and responsibility for the safekeeping of the property.'" (citation omitted)). There, plaintiffs alleged a Fifth Amendment Takings Clause violation based on the state's failure to pay to an owner certain interest that the property may have generated while it was in the state's custody. *Id.* at 1326-28. The Eleventh Circuit observed that the Takings Clause "prohibits not takings, but takings *without just compensation*," and concluded that where a plaintiff claims that a taking of property has not been compensated, "[t]he lack of compensation is a part of an ongoing tort." *Id.* at 1334.[6] The court expressly distinguished a takings claim from situations where "[t]he constitutional tort occurred whether the payment is made or not, and the payment is recompense for the tort." *Id.* And that description applies to the present case because ownership of the forfeited property immediately transferred to the Commonwealth; Petitioners' claim is that the Commonwealth became legally obligated to

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> current or future actions. *Papasan*, 478 U.S. at 282. Therefore, plaintiffs have not alleged an ongoing violation of federal law and the *Ex parte Young* exception does not apply.

Pet. App. 14a.

[6] Petitioners here did not allege a taking, *see* Pet. App. 97a-103a (causes of action), and therefore the First Circuit was not presented with (and did not address) the question whether a takings claim in the context of forfeiture could constitute an ongoing violation.

pay them back once their convictions were vacated. Thus, because *Maron* expressly excluded cases like this one from its conclusion, there is no conflict between the First Circuit's decision below and the Eleventh Circuit's decision in *Maron*.

2. Petitioners' Remaining Cases Concern the Withholding of Interests, Such as Employment and Licensure, That Has Continuing Prospective Effect.

Petitioners' remaining cases also bear no resemblance to the present case. In all of them, the plaintiff claimed an ongoing unlawful deprivation of employment, licensure, or other interest, which inflicted ongoing harm (such as, for example, the ongoing inability to engage in a professional activity), and could be remedied by an order for prospective injunctive relief (such as an injunction to reinstate the plaintiff's employment or to restore a professional license). Such deprivations bear no relationship to Petitioners' allegations.

Petitioners' reliance on decisions stating claims for reinstatement to previous employment, Pet. 26-27, is unavailing. As the Eleventh Circuit has explained, "requests for reinstatement constitute prospective injunctive relief that fall within the scope of the *Ex parte Young* exception and, thus, are not barred by the Eleventh Amendment." *Lane v. Central Alabama Cmty. Coll.*, 772 F.3d 1349, 1351 (11th Cir. 2014). Accordingly, as the Fourth Circuit has observed, "[e]very circuit . . . has held that claims for

reinstatement to previous employment meet the *Ex parte Young* exception." *Biggs v. North Carolina Dep't of Pub. Safety*, 953 F.3d 236, 243 (4th Cir 2020).[7] That includes the First Circuit, which recognized in *Whalen v. Mass. Trial Court*, 397 F.3d 19 (1st Cir. 2005), that, where a termination was unlawful, "reinstatement . . . 'serves directly to bring an end to a present violation of federal law.'" *Id.* at 30 (quoting *Papasan*, 478 U.S. at 278).[8] The First Circuit's decision below repeatedly cited *Whalen* as binding authority. *See* Pet. App. 14a-16a.

But Petitioners here do not make a claim for reinstatement to unlawfully-terminated employment, or any other claim that could be remedied by prospective injunctive relief.[9] Rather, Petitioners seek payment from the state treasury to make them

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[7] Petitioners cite to three cases involving a claim for reinstatement. Pet. 26. In *Biggs*, a terminated plaintiff sought reinstatement to his prior position, the removal of negative materials from his personnel file, and reimbursement for his legal expenses. 953 F.3d at 238. Similarly, in *Nelson v. University of Texas at Dallas*, 535 F.3d 318 (5th Cir. 2008), the plaintiff brought a claim for reinstatement to the position from which he was terminated. *Id.* at 319. And in *State Employees Bargaining Agent Coalition v. Rowland*, 494 F.3d 71 (2d Cir. 2007), the plaintiffs alleged constitutional violations arising from the termination of approximately 3,000 state employees and sought reinstatement to their previous positions or other positions in the state workforce, as well as a prohibition against retaliating against plaintiffs. *Id.* at 76. These reinstatement cases are all irrelevant here for the reasons explained in the text.

[8] In *Whalen*, "[r]einstatement already ha[d] occurred outside the litigation," so that issue was moot. 397 F.3d at 29.

[9] As noted *supra* at 8-9, Petitioners sought certain ancillary injunctive relief that the First Circuit concluded was barred. Petitioners have not sought certiorari with respect to those ancillary forms of relief. *See* Pet. i.

whole based on the Commonwealth's allegedly unlawful refusal to undo the forfeitures of their property after their convictions were vacated.[10] The reinstatement decisions cited by Petitioners are thus not in conflict with the First Circuit's decision below. Rather, they involved a different type of alleged violation, and sought a different form of relief, than is at issue here.[11]

The Ninth and Tenth Circuit cases that Petitioners cite, Pet. 27, are distinguishable for like reasons. In

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[10] As the District Court recognized, "Plaintiffs do not deny that their requests for the return of their forfeited property and for restitution would have to be satisfied by the payment of money, and that the money would come from the State." Pet. App. 37a; *see also id.* at 16a ("The [district] court correctly held that an injunction requiring the payment of money from the state treasury would be impermissibly retrospective.").

[11] Illustrating the limits of reinstatement cases as useful comparators, the First Circuit in *Whalen* also distinguished reinstatement from a request for restoration of service credit toward retirement and pension benefits, which it found was not an ongoing violation of federal law. 397 F.3d at 29-30. The First Circuit reasoned:

> "[T]he 'restoration' of credit is designed to give [plaintiff] back something he lost when he was terminated unlawfully. Although reinstatement, too, involves a 'restoration' of rights, it differs because termination without due process is the very unlawful act at issue; reinstatement pending a hearing thus 'serves directly to bring an end to a present violation of federal law[.]' By contrast, restoring credit for time lost due to a past termination has no impact on an ongoing violation.

Id. at 30 (citation omitted). The First Circuit's decision here is a natural extension of this reasoning.

Flint v. Dennison, 488 F.3d 816 (9th Cir. 2007), a student brought constitutional claims against state university officials alleging that the imposition of a limit on campaign spending for student government offices violated his First Amendment free speech rights, and sought declaratory and injunctive relief expunging his violations of the policy from university records. *Id.* at 820, 824. Key to the Ninth Circuit's determination that the relief sought was prospective, and not limited merely to past violations, was the fact that forward-looking injunctive relief would expunge the discipline from the student's record, which records may continue to cause the student harm. *Id.* at 825.

Similarly, in *Buchwald v. University of New Mexico School of Medicine*, 159 F.3d 487 (10th Cir. 1998), a rejected applicant brought a claim against university officials alleging that the university's admission policy was unconstitutional, and sought a declaration that defendants violated her rights and injunctive relief ordering her admission. *Id.* at 493-94. Like the First Circuit here, the Tenth Circuit held that the claim for a declaration that defendants violated plaintiff's rights by not admitting her to the university was barred by the Eleventh Amendment pursuant to *Green v. Mansour*, 474 U.S. 64 (1985). *Buchwald*, 159 F.3d at 494-95. In contrast, the Tenth Circuit found that injunctive relief ordering plaintiff's immediate placement into the university was properly prospective and designed to directly end the alleged ongoing violation of federal law of the plaintiff's exclusion from admission to the university. *Id.* at 495-96.

Like the cases involving reinstatement to an employment position, both *Flint* and *Buchwald* found

that the *Ex parte Young* exception applied where the plaintiff was seeking prospective injunctive relief that would directly bring an end to the alleged ongoing violation of federal law being conducted by the state officials. And, for the same reasons that the reinstatement decisions are not pertinent here, *Flint* and *Buchwald* are also inapposite. The *Ex parte Young* inquiry asks "whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Md., Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002). *Flint* and *Buchwald*, like the reinstatement decisions, meet those criteria. This case does not.[12]

Finally, the Sixth Circuit's decision in *Cooperrider v. Woods*, 127 F.4th 1019 (6th Cir. 2025), is easily distinguished. There, plaintiff claimed (among other things) that state officials committed a substantive due process violation by revoking his business's alcohol license and "s[ought] prospective relief in the form of the reissuance of that license"; the court noted that that claim and associated request for relief "falls squarely within the *Ex parte Young* exception." 127 F.4th at 1044.[13] An order to reissue an unlawfully-revoked license, like an order to reinstate unlawfully-terminated employment, has prospective impact and

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[12] Unlike these cases, the relief sought by Petitioners here—"notification" to the class of Rule 60(b) proceedings, an accounting of all forfeited property, and "additional procedural due process protections within a Rule 60(b) hearing"—would not directly bring an end to an alleged ongoing violation of federal law, because they would not directly result in the return of the property obtained through the state court civil forfeiture proceedings.

[13] *Cooperrider* also held that the plaintiff had failed to state a substantive due process claim, 127 F.4th at 1044, so the Eleventh Amendment discussion of that claim was dicta.

remedies an ongoing violation, namely, the prohibition against engaging in the activity that is the subject of the license. Undoing the forfeitures at issue here has no such forward-looking impact; rather, it remedies an alleged violation that occurred in the past.

In short, there is no conflict among the courts of appeals for this Court to resolve. *See* S. Ct. R. 10(a).

B. The First Circuit's Decision Was Correct.

The First Circuit's decision was a correct—indeed, a straightforward—application of this Court's Eleventh Amendment precedent, specifically, *Edelman* and *Papasan*. The First Circuit therefore has not "decided an important federal question in a way that conflicts with relevant decisions of this Court." S. Ct. R. 10(c).

Petitioners' contrary position that this case concerns an ongoing violation of federal law, namely, "the unconstitutional retention of a person's identifiable property," Pet. 5 (internal quotation marks omitted), is rooted in their misunderstanding of the State Act and mischaracterization of the state officials' action at issue. Pursuant to Mass. Gen. Laws ch. 94C, § 47(a), when a state court judgment of forfeiture enters ordering the forfeiture of money and/or property, "all property rights therein shall be in the Commonwealth." Therefore, at the time a forfeiture judgment enters, the property rights in the forfeited property transfer from the individual to the Commonwealth. Accordingly, contrary to Petitioners' contention, once the property at issue is forfeited, it is no longer "a person's identifiable property," but rather

the property of the Commonwealth. There is no "continued withholding" or "retention" of an individual's property, because the individual's property interest has been terminated and the forfeited property has become the Commonwealth's property. If the forfeiture was wrongful, an ongoing *liability* may result, but there is no ongoing *violation* of federal law. *See Papasan*, 478 U.S. at 280 (holding that recovery for "an ongoing liability for past breach" is barred by *Edelman*).

Consequently, Petitioners mischaracterize how forfeited money and proceeds from the sale of forfeited property are treated under the State Act. The State Act does not provide for officials "holding on to" forfeited property. Rather, "where a final order results in a forfeiture, said final order shall provide for disposition of said conveyance, real property, moneys or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding." Mass. Gen. Laws ch. 94C, § 47(d).

The State Act further provides how the "proceeds of any such sale" shall be spent and distributed, requiring the establishment "within the office of the state treasurer" of "separate special law enforcement trust funds for each district attorney and for the attorney general," and directing that "[a]ll such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a trust fund" and expended for certain enumerated purposes. *Id.*

Petitioners' repeated contention that they "seek only meaningful opportunities to recover their own property," Pet. 20, is thus incorrect as a matter of state law. And, once state law is properly understood, it becomes clear that the First Circuit correctly applied settled law on determining whether an alleged violation that occurred in the past constitutes an ongoing violation of federal law for purposes of the *Ex parte Young* exception to sovereign immunity.

Specifically, the First Circuit's determination that the failure to return assets obtained through civil forfeiture does not constitute an ongoing violation of federal law is consistent with three established principles regarding the *Ex parte Young* exception to sovereign immunity: (1) there is no ongoing violation of federal law for a monetary loss resulting from a state official's past breach of a legal duty, *see Edelman*, 415 U.S. at 668; *Papasan*, 478 U.S. at 280-81; (2) an ongoing violation of federal law only exists if there is prospective injunctive relief that could be granted against a state official that would cause the official to conform their future conduct to directly end a present violation of federal law, *see Papasan*, 478 U.S. 277-78; *Green*, 474 U.S. at 68; and (3) there is no ongoing violation of federal law when ownership of the property at issue has transferred to the state, *see Edelman*, 415 U.S. at 668; *Florida Dep't of State v. Treasure Salvors, Inc.*, 458 U.S. 670, 697-98 (1982) (plurality op.); *Taylor v. Westly*, 402 F.3d 924, 932, 935 (9th Cir. 2005).

First, the First Circuit's determination that the Complaint failed to allege an ongoing violation of federal law was consistent with this Court's precedent. As the First Circuit explained, its decision

followed the rule that "*Ex parte Young* permits federal courts to issue prospective relief that requires state officials 'to conform [their] *future* conduct' to federal law, not retrospective relief that only 'make[s] reparation for the past.'" Pet. App. 15a-16a (quoting *Edelman*, 415 U.S. at 664-65 (emphasis added)).

As this Court has explained, the *Ex parte Young* exception to sovereign immunity permits suits against state officials in their official capacities if the Complaint both "alleges an ongoing violation of federal law" by the state official and "seeks relief properly characterized as prospective." *Verizon Md., Inc.*, 535 U.S. at 645. But the *Ex parte Young* exception does not extend to "claims for retrospective relief," *Green*, 474 U.S. at 68, or to relief that "will to a virtual certainty be paid from state funds, and not from the pockets of the individual state officials who were the defendants in the action." *Edelman*, 415 U.S. at 668. This Court has emphasized that the *Ex parte Young* exception is "narrowly construed" and should not be given "an expansive interpretation." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102, 114 n.25 (1984).

In this case, both the forfeitures pursuant to a state court forfeiture order, and the vacatur of Petitioners' criminal convictions pursuant to the state court settlement, occurred at discrete, past points in time. As the First Circuit correctly reasoned, "[j]ust like the continued withholding of previously owed payments in *Edelman* and *Papasan* did not amount to ongoing violations, defendants' continued withholding of forfeited property does not qualify as an ongoing violation[,]" because Petitioners' "claims rest on 'the past actions of the [Commonwealth],' either from the

time of their forfeiture proceedings or from the time their convictions were vacated, rather than any current or future actions." Pet. App. 14a (quoting *Papasan*, 478 U.S. at 282).

The First Circuit thus correctly found that Petitioners' attempt to characterize these past forfeitures as an ongoing violation is precisely the type of argument that this Court rejected in *Edelman* and *Papasan*. Pet. App. 12a-14a.

In *Edelman*, the plaintiffs alleged that state officials were administering aid programs in a manner inconsistent with federal law, and sought compensation for those who had their benefits withheld as a result. 415 U.S. at 653, 656. The *Edelman* plaintiffs "characterize[ed] . . . the legal wrong as the continued withholding of accrued benefits[.]" *Papasan*, 478 U.S. at 280 (describing *Edelman*). But this Court rejected that characterization, explaining that the claims were for "a monetary loss resulting from [state officials'] past breach of a legal duty." *Edelman*, 415 U.S. at 668. Accordingly, this Court held there was no continuing violation of federal law, and the claims were barred by sovereign immunity. *Edelman*, 415 U.S. at 668-69, 678.

In *Papasan*, plaintiffs challenged funding disparities between Chickasaw Cession schools and other Mississippi public schools through a breach of trust claim. 478 U.S. at 274. The plaintiffs alleged "the breach of a continuing obligation to comply with the trust obligations," *id.* at 280-81, and argued that they sought only prospective relief for state officials' "continuing federal obligation [to provide certain]

schools with appropriate trust income[,]" *id.* at 279. This Court rejected that characterization of the alleged violation, holding that the alleged violation was not continuing and there was "no substantive difference between a not-yet-extinguished liability for a past breach of trust and the continuing obligation to meet trust responsibilities asserted by the petitioners." *Id.* at 280-81. This Court explained that "[t]he distinction between a continuing obligation on the part of the trustee and an ongoing liability for past breach of trust is essentially a formal distinction of the sort [the Court] rejected in *Edelman*." *Papasan*, 478 U.S. at 280.

Here, the First Circuit's decision followed this Court's precedent in *Edelman* and *Papasan* by finding that even if the initial forfeiture, or the failure to return forfeited property upon vacatur of Petitioners' criminal convictions, was wrongful, such wrong occurred in the past, and what Petitioners attempt to frame as the continued withholding of property is properly characterized as a potential ongoing liability for the past forfeitures.[14] While "[t]here may be a continuing liability for a past harm, [ ] there is no ongoing violation here[,]" since "[t]his sort of 'formal distinction' between Defendants' [alleged] 'continuing obligation' to remedy their legal violation and their 'ongoing liability' for a past injury is 'of the sort [the Supreme Court] rejected' in articulating its retroactive relief test." Pet. App. 12a (quoting the District Court decision at Pet. App. 38a (quoting *Papasan*, 478 U.S. at 280)). As *Edelman* and *Papasan*

[14] The District Court held that Petitioners' challenges to the initial forfeiture proceedings were time barred. Pet. App. 44a. And, as already noted, Petitioners did not appeal any aspect of the District Court's decision to the First Circuit.

make clear, such potential ongoing liability for a past alleged wrong is not an ongoing violation for *Ex parte Young* purposes. *See* Pet. App. 12a-14a.

Second, the First Circuit's holding that this type of alleged violation does not fall within the *Ex parte Young* exception to sovereign immunity is also consistent with the established principle that the *Ex parte Young* exception only applies where the Complaint seeks prospective relief that will directly end an ongoing violation of federal law. Because the *Ex parte Young* exception to sovereign immunity exists to "balance" state and federal interests, it "has been focused on cases in which . . . the relief against the state official directly ends the violation of federal law as opposed to cases in which that relief is intended indirectly to encourage compliance with federal law through deterrence or directly to meet third-party interests such as compensation." *Papasan*, 478 U.S. at 277-78; *accord Green*, 474 U.S. at 68. Where the alleged prospective relief is not directly "designed to end a continuing violation of federal law," *Green*, 474 U.S. at 68, the rationale for application of the *Ex parte Young* exception is absent.

Consistent with this principle, the First Circuit correctly concluded that Petitioners' requests for notice, accounting, and additional state court procedural protections would not serve to directly end an ongoing violation of federal law, because they would not result in the return of the forfeited assets, and they are designed to indirectly encourage remedying an alleged past wrong—the entry of the state court judgment of civil forfeiture. Pet. App. 15a-16a. Accordingly, these forms of relief are properly characterized as designed to indirectly remedy a past

harm, rather than "serv[ing] directly to bring an end to a present violation of federal law." *Papasan*, 478 U.S. at 278.

Third, Petitioners' arguments are based on cases involving "the unconstitutional deprivation of private property." Pet. 14. But the forfeited property at issue is no longer private property, because ownership transferred to the Commonwealth upon the entry of the forfeiture judgment. *See* Mass. Gen. Laws ch. 94C, § 47(a). This distinguishes this case from the cases relied on by Petitioners. *See supra* Part I-A.

A recognized factor in determining whether sovereign immunity applies to a claim for the return of property is whether the claimant seeks the return of their own property, which is being withheld by the state, or seeks compensation for the taking of property that was formerly theirs, but which has become the state's. *See Edelman*, 415 U.S. at 668 (even where a "retroactive award of monetary relief" could be described as a "form of 'equitable restitution,' it is in practical effect indistinguishable in many aspects from an award of damages against the State."); *see also Ford Motor Co. v. Dep't of Treasury*, 323 U.S. 459 (1945) (*Ex parte Young* exception did not apply where the plaintiff's claim was "for a 'refund,' not for the imposition of personal liability on individual defendants for sums illegally exacted" because "when the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants."), *overruled on other grounds by Lapides v. Board of Regents*, 535 U.S. 613 (2002).

This distinction—between property owned by a claimant but held by the state, and property owned by the state—distinguishes this case from the cases cited in the Petition, both pre- and post-dating *Ex parte Young*.

The pre-*Ex parte Young* cases relied on by Petitioners, Pet. 15-20, recognize this distinction. As Petitioners themselves describe the decision in *United States v. Peters*, 9 U.S. 115 (1809), the Court reasoned that "because the 'original certificates' were neither 'deposited in the state treasury' nor 'designated in any manner as the property of the state,'" the Eleventh Amendment did not apply. Pet. 17 (quoting *Peters*, 9 U.S. at 140, 141). Thus, it was integral to the determination that sovereign immunity did not apply that the state official retained custody of the stock certificates and did not deposit them into the state treasury. *See* Pet. 16-17.

In contrast, the state officials here are not holding onto the forfeited property; by operation of state law, "all property rights" in the forfeited property transferred to the Commonwealth at the time of the forfeiture, and all "monies and proceeds received" from forfeiture are deposited in trust funds "within the office of the state treasurer." Mass. Gen. Laws ch. 94C, § 47. Thus, this case is readily distinguishable from the circumstances in *Peters*, and the First Circuit's holding is consistent with the reasoning applied in *Peters*.

The same is true for *United States v. Lee*, 106 U.S. 196 (1882), and *Tindal v. Wesley*, 167 U.S. 204 (1897), upon which Petitioners also rely. Pet. 18-20. As an initial matter, the current status of these cases as

binding precedent is dubious: this Court noted in *Pennhurst*, 465 U.S. at 109 n.19, that *Tindal* had been "explicitly overruled in *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949)," and *Larson* itself made clear that "the basis of the [*Lee*] decision was the assumed lack of the defendants' constitutional authority to hold the land against the plaintiff." *Larson*, 337 U.S. at 696; *see also John G. & Marie Stella Kenedy Mem'l Found. v. Mauro*, 21 F.3d 667, 673 (5th Cir. 1994) ("*Larson* . . . explicitly overruled *Tindal,* and significantly limited *Lee*" (citations omitted)).

In any event, even if *Lee* and *Tindal* retain any force, Petitioners err in arguing that their reasoning is applicable here. Petitioners' insistence that, like the *Lee* and *Tindal* plaintiffs, they "seek only meaningful opportunities to recover their own property, not to raid the state treasury," Pet. 20, is, as explained above, predicated on a misunderstanding of state law. To the contrary, Mass. Gen. Laws ch. 94C, § 47 provides that all property rights in forfeited property shall be in the Commonwealth, and that forfeited money and forfeiture proceeds shall be deposited into trust funds within the state treasury. In those circumstances, *Lee* and *Tindal* have no application. *See Larson*, 337 U.S. at 697 (explaining that "[t]he *Lee* case, therefore, offers no support to the contention that a claim of title to property held by an officer of the sovereign is, of itself, sufficient to demonstrate that the officer holding the property is not validly empowered by the sovereign to do so. *Only where there is a claim that the holding constitutes an unconstitutional taking of property without just compensation* does the *Lee* case require that conclusion." (emphasis added)); *Tindal*, 167 U.S. at

221-22 (noting that the property at issue in the case "must, on this record, be taken to belong absolutely to [the plaintiff]").

Similarly, *Florida Dep't of State v. Treasure Salvors, Inc.*, 458 U.S. 670 (1982), recognizes this distinction. In *Treasure Salvors*, the Court concluded that the *Ex parte Young* exception applied because the state officials did not "have a colorable claim to possession of the artifacts" at issue, and the plaintiffs "sought possession of specific property[,]" rather than the return of state funds. 458 U.S. at 697-98. Contrary to Petitioners' argument, Pet. 22-23, such reasoning is inapplicable to this case, where there is no question that pursuant to the State Act, when the state court forfeiture judgment entered, Petitioners' property rights in the forfeited property were terminated, and all property rights in the forfeited property transferred to the Commonwealth. Thus, unlike in *Treasure Salvors*, as a matter of state law there is no continued withholding by the Commonwealth Defendants, and Petitioners are not seeking the return of their specific property.

II. This Case Is Not a Suitable Vehicle to Address the Question Presented Because the District Court Decided That Question Adversely to Petitioners and They Did Not Appeal.

Petitioners present a single question, namely, "[w]hether the unlawful retention of property by state officials . . . is . . . a past wrong and not an ongoing violation for *Ex parte Young* purposes." Pet. i (internal quotation marks omitted). Petitioners'

failure to preserve that question in the First Circuit counsels strongly against certiorari.

The question Petitioners present was answered in the negative by the District Court below, Pet. App. 38a, and the Petitioners did not cross-appeal the District Court's determination. The First Circuit's decision expressly acknowledged this, noting "that plaintiffs did not cross-appeal the district court's ruling that defendants' continued withholding of their forfeited property did not qualify as an ongoing violation." Pet. App. 12a n.5; *see id.* 12a ("The district court explicitly rejected plaintiffs' argument that 'Defendants failure to return their forfeited property is a continuing violation of federal law,' noting that 'Plaintiffs' argument that repayment would remedy a continuing wrong rather than a past one is unpersuasive.'" (citation omitted)). This Petition therefore runs afoul of the principle that "an appellee who does not cross-appeal may not attack the [lower court's] decree with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary." *Jennings v. Stephens*, 574 U.S. 271, 276 (2015) (citation and internal quotation marks omitted). Plainly, a determination that there is an ongoing violation in this case would enlarge Petitioners' rights.

Because Petitioners did not preserve in the First Circuit the argument that the alleged violations constitute ongoing violations of federal law that fall within the *Ex parte Young* exception to sovereign immunity, this Court should not consider this question.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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