No. 22-585

In the Supreme Court of the United States

HALIMA TARIFFA CULLEY, ET AL.,
Petitioners,

v.

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

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

BRIEF FOR RESPONDENTS IN OPPOSITION

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MARCH 1, 2023

QUESTION PRESENTED

Petitioner Lena Sutton's roommate was driving Sutton's car when he was arrested for possessing large amounts of methamphetamine. Likewise, Halima Culley's son was driving Culley's car when he was arrested for illegally possessing drugs and a firearm. The cars were impounded following lawful seizures incident to arrest. The State then timely sought forfeiture of Petitioners' cars by instituting *in rem* civil judicial forfeiture proceedings in state court. Petitioners had the option under state law of posting bond to secure release of their property during pendency of those proceedings, but they never posted bond or alleged that the bond procedure was inadequate—they instead seem to have overlooked that it existed. Nor did Petitioners take any action to expedite the forfeiture proceedings, which ultimately concluded with Petitioners getting back their cars. Instead, Petitioners filed federal suits collaterally attacking the state court proceedings as violative of due process because the proceedings purportedly did not afford them a chance to keep their cars pending resolution of the proceedings.

The question presented is:

Did the procedures available to Petitioners regarding the seizure and forfeiture of their cars, which included a right to obtain the cars pending resolution of forfeiture proceedings by posting bond, satisfy the Due Process Clause of the Fourteenth Amendment?

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STATEMENT

A. Alabama's statutory framework for civil *in rem* forfeitures of property.

Alabama law provides that "[a]ll conveyances" used "in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any" illegal substance may be civilly forfeited to the State. ALA. CODE § 20-2-93(b)(5).[1] A vehicle may be seized without process "incident to an arrest" or if "probable cause" exists "to believe that the property was used or is intended to be used" to violate the law. *Id.* § 20-2-93(d). At that point—upon the vehicle's seizure but prior to institution of civil judicial forfeiture proceedings—claimants may challenge unlawful seizures by moving a court for the property's return. ALA. R. CRIM. P. 3.13(a).

To forfeit property, the State must "promptly" institute *in rem* civil judicial proceedings against the "guilty" property. ALA. CODE § 20-2-93(e)(1).

Claimants of the property have a right to possess the property pending resolution of the forfeiture proceedings, provided they post a bond for double the value of the property. *Id.* § 20-2-93(w), *inc'g by ref.* § 28-4-287.

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[1] This statute was amended during the pendency of these suits. *Compare* Ala. Act 2021-497, *with* Ala. Act 90-472. That amendment renumbered provisions and added additional procedural protections for claimants. While the code citations used in this brief thus may not match the numbering of those used in the lower courts, the operative language remains the same unless otherwise indicated.

As defenses to forfeiture, claimants may raise constitutional challenges, *see, e.g.*, *Ex parte Kelley*, 766 So. 2d 837, 840 (Ala. 1999), or prove a statutory "innocent owner" affirmative defense, ALA. CODE § 20-2-93(w); *see also Wallace v. State*, 229 So. 3d 1108, 1110-11 (Ala. Civ. App. 2017). Because these judicial proceedings are subject to the Alabama Rules of Civil Procedure (except as contradicted by the statute), claimants may also seek relief by motion—including dismissal, summary judgment, or expedited consideration. *See* Pet.App.46a (noting that "Culley did not … request[] the state court set the matter for hearing").

Additionally, amendments to the forfeiture statute adopted during the pendency of these suits expand the process available to innocent owners who now may "petition the court for a hearing" regarding probable cause for retaining their vehicle "at any time after seizure of property and before entry of conviction in the related criminal case." ALA. CODE § 20-2-93(l), *inc'g by ref.* § 15-5-63. Such hearing must be held within 60 days of the request unless continued for good cause. *Id.* § 15-5-63(3). After the hearing, the court may (1) find probable cause and stay forfeiture proceedings until the resolution of the criminal case, (2) exempt the innocent owner's interest from forfeiture, or (3) order the property sold to satisfy an innocent owner's interest under certain circumstances. *Id.*

B. Petitioner Lena Sutton

1. In early 2019, Petitioner Lena Sutton separated from her spouse and temporarily stayed with a friend, Roger Maze. On February 20, 2019, Maze was driving Sutton's 2012 Chevrolet Sonic (with her permission)

when officers with the Town of Leesburg pulled Maze over for speeding, discovered a large amount of methamphetamine in the car, and arrested and charged him with trafficking a controlled substance. Pet.App.62a.

2. Within two weeks of the stop, on March 6, 2019, the State initiated civil judicial forfeiture proceedings—hereinafter, *Sutton I*[2]—against Sutton's car in Cherokee County Circuit Court. Pet.App.62a; S.Doc. 28-1 at 3.[3] Sutton was served promptly but failed to answer the complaint. Pet.App.63; S.Doc. 28-1 at 18. At the State's request, Circuit Judge Shaunathan Bell entered a default judgment forfeiting the car. S.Doc. 28-1 at 45.

Later that day, Sutton appeared for the first time and filed a *pro se* motion to set aside the default judgment.[4] *Id.* at 47-48. Sutton acknowledged service but claimed she had not responded to the suit because she had moved. *Id.* Her motion further argued that the seizure and prospective forfeiture of her car was unconstitutional and that she wished to answer the

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[2] *State v. Maze, Sutton, One (1) Automobile, et al.,* No. 13-CV-2019-900034 (Ala. Cir. Ct. filed Mar. 6, 2019).

[3] The lower courts took judicial notice of the complete certified record from each state forfeiture proceeding. Citations to those records (and other documents available on the district courts' dockets) use the form "C.Doc." for *Culley v. Marshall* and "S.Doc." for *Sutton v. Leesburg*, with each followed by the document number and page number in the ECF header.

[4] That same day, Sutton separately filed suit against Attorney General Marshall in the U.S. District Court for the Northern District of Alabama. More on that below.

lawsuit thusly. *Id.* Judge Bell set Sutton's motion for a hearing. *Id.* at 60.

The day before that hearing, Sutton—now represented by counsel—filed a memorandum arguing her default should be set aside because she had meritorious defenses including constitutional challenges under the Eighth and Fourteenth Amendments. *Id.* at 108-16. As supporting evidence, Sutton included her own affidavit, some earlier filings, and a letter to Leesburg stipulating that Sutton would not add Leesburg as a defendant to a collateral federal suit (discussed below) and Leesburg would not sell her car during the pendency of that case. *Id.* at 146-47.

After the hearing, Judge Bell set aside the default judgment and gave Sutton 21 days to respond to the complaint. *Id.* at 171. Sutton waited the full 21 days to file her two-page answer, which raised affirmative defenses including that she was an innocent owner and that the retention of her car violated the Eighth and Fourteenth Amendments. *Id.* at 172-73.

Then, other than some minor discovery filings, nothing of substance happened until February 2020, when Judge Bell *sua sponte* set the case for an April trial. Pet.App.63a; S.Doc. 28-1 at 236. Several days before trial—and nearly nine months after filing her answer—Sutton moved for summary judgment premised only upon her innocent owner defense. Pet.App.63a; S.Doc. 28-1 at 237-39. In support, Sutton filed a four-page memorandum, her own affidavit, Maze's criminal case record, and interrogatories. S.Doc. 28-1 at 241-333. Judge Bell held a hearing on the motion on May 28, 2020, and entered an order granting it that same day. *Id.* at 386. That order (identical to Sutton's

proposed order) found that the State proved a prima facie case supporting forfeiture, but that Sutton prevailed on her innocent owner defense. Pet.App.63a-64a; S.Doc. 28-1 at 360, 386.

Sutton never posted bond, moved for expedited review, or took any other action in the state court proceedings to recover her car before moving for summary judgment 14 months after her car was seized.

3. Meanwhile, the same day Sutton first appeared in the state court proceeding, she also filed suit on behalf of herself and a putative class in the U.S. District Court for the Northern District of Alabama—hereinafter *Sutton II*.[5] Her suit, brought under 42 U.S.C. § 1983, alleged the same facts underlying *Sutton I* and again raised constitutional challenges to the seizure and potential forfeiture of her vehicle. *See* S.Doc. 46-1. Attorney General Marshall was the only defendant. *Id.*

The *Sutton II* court dismissed Sutton's claims in November 2019 on *Younger* abstention grounds. *See* 423 F. Supp. 3d 1294, 1302 (N.D. Ala. 2019). The court explained that Sutton should raise her constitutional challenges in *Sutton I* and held that *Younger* abstention barred the exercise of jurisdiction over those challenges. *Id.* Importantly, *Sutton II* also found that Sutton failed to show any reason she could not raise her constitutional challenges in *Sutton I*. *Id.* at 1302 ("Ms. Sutton has not shown any actual impediment to raising her constitutional issues in her state forfeiture proceedings. In fact, she *has* raised some

[5] *Sutton v. Marshall*, 4:19-cv-00660-KOB (N.D. Ala. filed May 1, 2019).

constitutional claims challenging the seizure of her vehicle in her state court proceedings.").

Sutton did not appeal.

4. Two months after *Sutton II*'s dismissal, Sutton again filed suit in the U.S. District Court for the Northern District of Alabama—the proceeding underlying this petition and, hereinafter, *Sutton III*. Sutton alleged the same facts and advanced the same constitutional theories and again sought relief on behalf of herself and a putative class. *See* S.Doc. 1. However, Sutton named only the Town of Leesburg as a defendant, despite claiming that Leesburg conspired with *the State* to violate her constitutional rights and despite requesting a judgment declaring *state law* unconstitutional (along with "appropriate final injunctive relief" and money damages from Leesburg). *Id.* at 13 ¶50, 18-19. Specifically, Sutton claimed the State's failure to offer a prompt post-deprivation seizure hearing separate from a merits hearing on forfeitability and its retention of property pending that hearing violates the Fourth, Fifth, Eighth, and Fourteenth Amendments. *See id.* at 14, 18-19.

Sutton waited ten months before notifying the State she challenged the constitutionality of state law (despite Federal Rule of Civil Procedure 5.1's requirements). Pet.App.64a. The State subsequently intervened under 28 U.S.C. § 2403(b) and moved to dismiss on several grounds, including *Younger* abstention, preclusion, and the merits. *Id.* The district court dismissed Sutton's Fourth, Fifth, and Eighth Amendment claims in full and her Fourteenth Amendment claim that no process existed to reclaim property during forfeiture proceedings "because the statute plainly

provides for the execution of a bond." S.Doc. 39 at 2-4, 27-28.

However, the district court did not dismiss Sutton's challenge to the lack of a prompt post-seizure probable cause hearing, holding that the *Mathews v. Eldridge* test applied rather than the *Barker v. Wingo* test advanced by the State. Pet.App.64a-65a. The State moved to reconsider, which the district court denied, but later prevailed on cross-motions for summary judgment. *Id.* at 65a. The district court ultimately held that binding precedent required application of the *Barker* test, under which Sutton's claim failed because she did not challenge the timeliness of her forfeiture proceeding and because such a challenge would fail even if applying the *Barker* factors. *See id.* at 66a-67a. The district court accordingly entered judgment against Sutton on her remaining claim. *Id.* at 71a.

Sutton appealed. That appeal was consolidated with that of Petitioner Halima Tariffa Culley and will be discussed further below.

C. Petitioner Halima Culley

1. Petitioner Halima Tariffa Culley holds title to a 2015 Nissan Altima that she purchased for use by her son, Tayjon. Pet.App.15a-16a. On February 17, 2019, Tayjon was pulled over in the car by officers with the City of Satsuma and subsequently arrested and charged with first-degree marijuana possession, possession of a loaded Sig Sauer 9 millimeter pistol without a permit, and possession of drug paraphernalia. *See id.* at 16a; *see generally* C.Doc. 18-1. The car was seized incident to Tayjon's arrest. Pet.App.16a.

Tayjon pleaded guilty to second-degree marijuana possession on June 12, 2019, and all other charges against him were dismissed. C.Doc. 18-1 at 5-6.

2. Ten days after seizure, the State instituted civil judicial forfeiture proceedings in Mobile County Circuit Court against the car and handgun—hereinafter *Culley I*.[6] Pet.App.16a. The complaint was served on Culley on March 8, 2019, but she did not respond to it until September 16, 2019 (just one week before filing *Culley II*) when she appeared and filed an answer (represented by the same counsel representing her and Sutton before this Court). *Id.*; C.Doc. 33-1 at 14, 43-46. Her answer raised the affirmative defenses that she was an innocent owner and that the seizure violated the Eighth and Fourteenth Amendments. C.Doc. 33-1 at 44-45.

Then, other than some minor discovery filings, the case remained dormant until September 1, 2020, when Circuit Judge Michael Youngpeter *sua sponte* set the case for a status conference. *Id.* at 81. A few weeks later, Culley moved for summary judgment premised upon her innocent owner affirmative defense. *Id.* at 87-122. In support she filed a four-page memorandum and four exhibits: her own affidavit, a court records search purportedly listing her case history, Sutton's affidavit from *Sutton I*, and the *Sutton I* summary judgment order. *Id.* Judge Youngpeter held a hearing on the motion on October 30, 2020, granting

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[6] *State v. One Sig Sauer Handgun & One Nissan Altima, Seized from Tayjon Culley & Titled to Halima Tariffa Culley*, No. 02-CV-2019-900565 (Ala. Cir. Ct. filed Feb. 27, 2019).

Culley's motion that same day and ordering her car returned but the handgun forfeited. *Id.* at 220.

Culley never posted bond, moved for expedited review, or took any other action to recover her car in the state court proceedings before moving for summary judgment 19 months after her car's seizure.

3. Meanwhile, one week after answering the six-month-old complaint in *Culley I*, Culley filed suit on behalf of herself and a putative class in the U.S. District Court for the Southern District of Alabama—this case and, hereinafter, *Culley II*. Culley sued Attorney General Marshall, then-Thirteenth Judicial Circuit District Attorney Ashley Rich,[7] and the City of Satsuma. Culley's claims arise from the facts of *Culley I*: that the State's failure to offer a prompt post-deprivation hearing separate from a merits hearing on forfeitability and its retention of property pending that hearing violates the Fourth, Fifth, Eighth, and Fourteenth Amendments and that Satsuma conspired with the State to do so by enforcing state law. *See* Pet.App.16a-17a. Culley requested declaratory and injunctive relief, and money damages from Satsuma. *Id.*

On Rule 12 motions from the defendants, the district court entered judgment against Culley on the merits of all claims on September 29, 2021. Pet.App.58a. As the district court explained, Culley's due process claim "glosse[d] over Ala. Code § 28-4-287 and its opportunity to 'execute a bond in double the value of such property' to have it returned during the

[7] On January 11, 2023, Keith Blackwood assumed office as Thirteenth Judicial Circuit District Attorney and is thus automatically substituted as a party for former-District Attorney Rich.

pendency of the civil forfeiture proceedings." Pet.App.39a. Indeed, the complaint asserted "that there is no such process." *Id.* (citing C.Doc. 1 at 15-16). Thus, Culley's assertions that the State was "'hold[ing] her vehicle … without making a probable cause showing that she had some connection to the crime, and that there is no less restrictive way for the State to secure the vehicle during the pendency of the proceedings'" were "factually and legally incorrect." Pet.App.43a (quoting C.Doc. 25 at 32). There plainly "is a process by which Culley could have reclaimed the Vehicle during the pendency of the civil forfeiture case." *Id.* The court held that Culley's due process claim failed, whether assessed through the lens of *Barker v. Wingo*, 407 U.S. 514 (1972), or *Mathews v. Eldridge*, 424 U.S. 319 (1976). Pet.App.46a-52a.

Culley appealed.

D. The court of appeals rejects Petitioners' claims.

The court of appeals below consolidated Petitioners' appeals for consideration. Pet.App.2a. The court of appeals first found that the state court's judgment in *Culley I*—which resulted in her car's return—mooted Culley's requests for injunctive relief (and thus all her claims against Attorney General Marshall and then-District Attorney Rich). *Id.* at 5a-6a. However, the court of appeals found that a live controversy remained as to Culley's claim for money damages against Satsuma and Sutton's claim for money damages against Leesburg. *Id.* Each of those claims were rejected because "a timely merits hearing affords a claimant all the process to which he is due, and

that … timeliness analysis is governed by *Barker*." *Id.* at 8a.

REASONS FOR DENYING THE PETITION

The biggest problem with Petitioners' challenge is that they attack a statute that never existed. In their telling, Alabama deprived them of their vehicles without ever having considered whether "a less restrictive means exists to secure the State's interest in the property pending resolution" of their forfeiture proceedings. Pet.6. But, as the *Culley II* district court noted, that premise is "factually and legally incorrect." Pet.App.43a. There most certainly "is a process by which [Petitioners] could have reclaimed" their vehicles "during the pendency of the civil forfeiture case." *Id.* It just appears that they were "unaware" of this feature of Alabama's forfeiture law when they launched these collateral federal lawsuits. *Id.*

Indeed, both Petitioners' complaints asserted "that there is no such process." Pet.App.39a (citing C.Doc. 1 at 15-16); S.Doc. 39 at 28 (citing S.Doc. 1 at 10, 15-16). When they learned that there was, they opted to ignore this inconvenient fact. Now before this Court, they recycle their head-in-the-sand approach, "never discuss[ing] the application of Ala. Code § 28-4-287," which gave Petitioners a right to "regain [their property] during the pendency of the proceedings." Pet.App.49a. This Court does not typically grant certiorari so plaintiffs can continue tilting at windmills.

The availability of this additional process undercuts any notion that this case presents an important split in due process approaches, which perhaps explains Petitioners' decision to duck the issue. Though

their petition notes (at 24-25) that the availability of a bond is a critical part of assessing whether due process requirements are met, they never account for that additional available process. Thus, their claim reduces to the notion that due process requires governments to institute an additional round of hearings, regardless of what other process may already be available. But the Due Process Clause does not require process merely for the sake of process.

Even if Petitioners had identified a legitimate, important circuit split, this case would be a poor vehicle to resolve it because: (1) Petitioners' constitutional claim is claim precluded by the judgments in the state court forfeiture proceedings; (2) a judgment for Petitioners would have little effect beyond a potential damages award because their cars have been returned and the law they challenge has been amended to provide forfeiture claimants the opportunity Petitioners claim to seek here; and (3) the novel theory underlying their sole remaining claim—that the municipalities and the State itself conspired to violate Petitioners' due process rights—is riddled with defects. The petition should be denied.

I. Petitioners' Purported Circuit Split Is Illusory.

The "fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotations and citation omitted). But no due process violation occurs "unless and until the State fails to provide due process." *Zinermon v. Burch*, 494 U.S. 113, 126 (1990). Thus, "it is necessary to ask what process the State provided, and

whether it was constitutionally adequate." *Id.* In other words, the Due Process Clause does not require process merely for the sake of process. Thus, plaintiffs cannot state a due process claim seeking additional process unless they first show that the available process is constitutionally inadequate.

Moreover, whether available process is adequate is an inherently fact-dependent question. This Court has recognized that due process is "flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Indeed, "the very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *Goss v. Lopez*, 419 U.S. 565, 578 (1975) (quoting *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961)). Accordingly, this Court "uses different tests to consider whether different kinds of delay run afoul of the Due Process Clause." *Betterman v. Montana*, 578 U.S. 437, 451 (2016) (Sotomayor, J., concurring).

In the civil forfeiture context, courts have applied two primary tests to adjudicate due process claims. In *United States v. $8,850*, this Court reasoned that the speedy trial test from *Barker v. Wingo*, 407 U.S. 415 (1972), "provides an appropriate framework for determining whether the delay [at issue] violated the due process right to be heard at a meaningful time." 461 U.S. 555, 564 (1983). The *Barker* test weighs four factors: (1) length of delay, (2) reason for delay, (3) claimant's assertion of rights, and (4) prejudice to claimant. *Id*. This Court reaffirmed *Barker*'s applicability in *United States v. Von Neumann*, explaining that "[i]mplicit in this Court's discussion of timeliness in

$8,850 was the view that the forfeiture proceeding, without more, provides the postseizure hearing required by due process to protect [claimant's] property interest in the car." 474 U.S. 242, 249 (1986).

Some courts of appeals have purported to distinguish *$8,850* and *Von Neumann* as distinct from the test set forth in *Mathews v. Eldridge*. *See, e.g.*, *Krimstock v. Kelly*, 306 F.3d 40 (2d Cir. 2002); *Smith v. City of Chicago*, 524 F.3d 834 (7th Cir. 2008), *vacated as moot sub nom. Alvarez v. Smith*, 558 U.S. 87 (2009). In *Mathews*, the Court considered three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

To understand Petitioners' claim, it is first necessary to clarify what they do not challenge. Petitioners do not challenge the initial seizure of their cars. They do not challenge the manner in which a final hearing on the merits of the forfeiture is conducted. And they do not challenge the timeliness of the merits hearings in *Culley I* or *Sutton I*. Rather, Petitioners claim that the Fourteenth Amendment entitles them to a "prompt post-deprivation hearing as to whether [their] automobile[s] should be retained by the State, *pendente lite*, and whether continued impoundment was the least restrictive way for the State to secure its interest in the vehicle." Pet.7-8. Petitioners contend

that the *Mathews* test should apply and entitles them to such relief.

Petitioners face a few problems as to both the merits of that claim and their assertion that a split exists. First, the labeling of the test used is little more than an empty formality given due process's flexible nature. *See, e.g.*, *Morrissey*, 408 U.S. at 481. At the outset, then, any implication that the *Mathews* test should apply just because it is the "traditional test" for procedural due process rings hollow. *See, e.g.*, Pet. 6-7 (quoting *United States v. Kaley*, 579 F.3d 1246, 1260 (11th Cir. 2009)).

No matter which test applies, a court considering a claim for a prompt post-seizure hearing must first determine that any already-available post-seizure hearings are not prompt. *Accord Zinermon*, 494 U.S. at 126. While *Barker* provides more precise guidance for making that determination (and is thus a better test), a court could nonetheless conduct a similar analysis under *Mathews*. So while different courts have labeled their approaches differently based on the primary factors they consider important, at their core what tends to separate the decisions are not their analytical frameworks but the specific facts of each case. And to the extent that cases like *Krimstock* failed to first consider whether a merits hearing occurred at a "meaningful time," their misapplication of *Zinermon*'s settled rule does not warrant review as to whether *Barker* or *Mathews* should apply. The methodological "split" is not as meaningful as Petitioners suggest.

Moreover, this "split" has lain dormant for decades. The decision that Petitioners cite as causing the purported split is nearly 35 years old. *See Gonzales v.*

Rivkind, 858 F.2d 657 (11th Cir. 1988). And while this Court did grant review of the issue in *Alvarez* (before that case became moot), 558 U.S. at 94, it has since rejected numerous petitions presenting the same or similar issues, *see, e.g.*, *Serrano v. U.S. Customs & Border Prot.*, 141 S. Ct. 2511 (2021); *Nichols v. Wayne County*, 141 S. Ct. 2716 (2021); *Russell v. Alabama*, 571 U.S. 823 (2013); *One 1998 GMC v. Illinois*, 566 U.S. 1034 (2012). The asserted need to correct this purported split has not grown any more urgent with time.

Next, and perhaps most critically, Alabama law guaranteed Petitioners "a less restrictive means … to secure the State's interest in … property pending resolution" of their forfeiture proceedings. Pet. 6. From the beginning of these cases, Petitioners have ignored this fact, and they do so again before this Court. But it is right there in the Alabama Code: Claimants enjoy a statutory right to post bond to retain their property during forfeiture proceedings. *See* ALA. CODE § 20-2-93(w), *inc'g by ref.* § 28-4-287. Petitioners made no allegations regarding the sufficiency of the bond procedure in their complaints—maybe they were unaware. Pet.App.43a. But now, years later, they continue to pretend it does not exist. Petitioners' assertions that no less restrictive measures are available to them without a hearing are, in the words of the district court, "factually and legally incorrect." Pet.App.42-43.

This additional post-deprivation procedure undermines not only the merits of Petitioners' claim, but also their asserted "split." None of the forfeiture schemes considered in the cases upon which Petitioners rely included a statutory right to a bond procedure.

Indeed, Petitioners even quote passages from both *Krimstock* and *Smith* that reveal the absence of a bond procedure weighed heavily in those courts' analyses. Pet.15-16, 23-25. Both cases, attempting to distinguish *$8,850*'s and *Von Neumann*'s application of the *Barker* test, emphasized the lack of a bond procedure in the schemes before them. *See Krimstock*, 306 F.3d at 52 n.12; *Smith*, 524 F.3d at 837. And in addition to the bond procedure, Alabama's law also provides claimants with a means to challenge the seizure even before institution of judicial forfeiture proceedings, ALA. R. CRIM. P. 3.13(a), which further underscores that this case is more like *Von Neumann* than *Krimstock*. Indeed, the case at hand would come out the same way whether decided by the Second Circuit or the Eleventh Circuit. *See infra* Section II.

Finally, Petitioners' remaining arguments that a split exists conflate the issues presented. For example, Petitioners claim that "[t]he Eleventh Circuit itself recognizes that it is the only circuit holding that the civil asset forfeiture proceeding itself ratifies due process as to the pretrial restraint of assets," purportedly "recognizing contrary authority from" seven other courts of appeals. Pet.5 (citing *United States v. Register*, 182 F.3d 820 (11th Cir. 1999)). But *Register* recognized nothing of the sort. *Register* instead concerned the process due when a criminal defendant facing *criminal* forfeiture of his assets claimed that pretrial restraint of those assets impinged his Sixth Amendment rights by impacting his ability to pay counsel of his choice to defend him. *See* 182 F.3d at 835. Needless to say, such a scenario involves additional interests beyond those at issue in this case.

Even if this Court granted review, that unrelated split (such as it might be) would remain untouched. Petitioners' citation to cases implicating different issues than those purportedly presented here does not warrant review.

II. Resolving the Purported Split Would Be Academic Because Petitioners Received Due Process Under Either Test.

Whether one starts with *Barker* or *Mathews* to assess Petitioners' cases, their due process claims fail. As an initial matter, Petitioners' "innocent owner" status does not entitle them to special solicitude under either test. *Contra* Pet.26. For centuries, this Court has confirmed that *in rem* civil forfeitures need not inquire into the guilt or innocence of the property's owner—only the use of the property itself in a prohibited act. *See, e.g.*, *Bennis v. Michigan*, 516 U.S. 442 (1996). That Alabama chose to enact statutory protections for innocent owners thus does not entitle those owners to heightened constitutional protections.

Here, Petitioners received all the process they were constitutionally due under either test. In particular, Petitioners' failure to make use of the procedures available to them—posting bond, filing a Rule 3.13 motion before forfeiture proceeding were filed, and their self-inflicted delays after forfeiture proceedings were filed—doom their cries for more process. Accordingly, this case is a poor vehicle to resolve Petitioners' illusory split.

A. Petitioners received due process under the *Barker* test.

At the outset, Petitioners have waived any argument that they can prevail under the *Barker* test because they have never pressed that argument in this litigation. Pet.App.4a. Moreover, such a challenge would fail. The *Barker* test weighs four factors: (1) length of delay, (2) reason for delay, (3) claimant's assertion of rights, and (4) prejudice to claimant. *$8,850*, 461 U.S. at 564. No factor is dispositive; rather each is part of a flexible balancing inquiry. *Id.* at 565. Here, each *Barker* factor weighs against Petitioners.

First, both forfeiture proceedings were filed promptly—within two weeks of each seizure. And even to the extent the duration of the proceeding itself should be considered, the weight still doesn't shift. Although *Sutton I* lasted 14 months and *Culley I* lasted 21 months, both Petitioners ultimately received hearings and final judgments within about a month after moving for summary judgment. Had they filed the same motions from the start (or even simpler motions to expedite), they may well have received exactly the relief they seek in their federal suits. But Petitioners allowed those proceedings to languish until both state courts *sua sponte* set them for hearings. Petitioners cannot legitimately argue that state court does not afford prompt hearings when their claims were resolved within a month of their assertion.

Second, and related, Petitioners are primarily responsible for the duration of the forfeiture proceedings. After Sutton waited until the day default judgment was entered against her—nearly two months after the case was filed and the same day she filed

Sutton II—she made no other attempt to expedite or resolve *Sutton I* for over nine months. Culley did even worse; for over a year, she did not request a hearing or expedited review, post a bond, or do anything of substance. Although Petitioners bring a challenge concerning their right to a prompt hearing, they apparently never wanted one. The preparation of their summary judgment motions certainly wasn't a complicated affair—relying primarily on a four-page memorandum, Petitioners' affidavits, and state court printouts of their criminal histories. There is thus no reason Petitioners couldn't have submitted similar motions *as soon as* the case was filed. *See* ALA. R. CIV. P. 56. Both Petitioners instead waited until the state courts *sua sponte* set their cases for hearings before moving for summary judgment supported by evidence largely available to them since the proceedings began. These forfeiture proceedings themselves show that Alabama's judicial system affords prompt hearings to those who want them—and even to those who don't.

Third, Petitioners slept on their rights by failing to assert them in the forfeiture proceedings. Although *Barker* itself involved an "extraordinary" five-year delay, this Court found no constitutional violation because the defendant there neither objected to continuances nor otherwise took action to assert his rights. 407 U.S. at 534-36. He instead gambled that a collateral proceeding would resolve in a manner favorable to him (i.e., that his accomplice would be acquitted). *Id.* Petitioners here were similarly dilatory—taking no initiative to seek return of their cars in the forfeiture proceedings. Before those proceedings were instituted, Petitioners did not file motions to challenge

their retention. *See* ALA. R. CRIM. P. 3.13(a). And after those proceedings were instituted, they did not post bond to get their cars back during the proceedings, ask for expedited review, immediately seek summary judgment, or do anything substantive before the state courts *sua sponte* set hearings. Petitioners had the counsel and resources to assert their rights in the forfeiture proceedings; they chose not to do so.

Lastly, Petitioners were not prejudiced. Claimants bear the burden of proving prejudice, which does not broadly consider any disadvantages, but rather only "whether the delay has hampered the claimant in presenting a defense on the merits, through, for example, the loss of witnesses or other important evidence." *$8,850*, 461 U.S. at 569. But financial difficulties—such as "lack of marketability" or "inability to buy inventory"—"do not constitute prejudice" under this factor. *See United States v. Premises Located at Route 13*, 946 F.2d 749, 756 (11th Cir. 1991) (citing *$8,850*). Petitioners have not carried their burden here. They have not shown that their ability to present their innocent owner defense was impaired by their self-imposed delays. The only prejudice Petitioners claim is the temporary deprivation of their cars, which is not a relevant form of prejudice for this analysis.

In sum, Petitioners' due process claim fails under *Barker*. Petitioners took no steps to retrieve their cars, expedite the forfeiture proceedings, or otherwise assert their rights. Even if Petitioners had squarely challenged the timeliness of their forfeiture proceedings, a claimant's own dilatory conduct does not give rise to a due process violation by the State.

B. Petitioners received due process under the *Mathews* test.

Petitioners' claims also fail under *Mathews*. Petitioners' contrary argument never once mentions that the *Culley* district court below found (in the alternative) that Culley's claims would fail even under *Mathews*. Pet.App.47a-52a. And even assuming Culley hasn't forfeited her opportunity to contest that determination, her claims still fail.

Mathews recognized three factors for analyzing due process: (1) the private interest; (2) the risk of erroneous deprivation and probable value of additional "procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens" of additional procedural safeguards. 424 U.S. at 335. Even assuming Petitioners have a protectable interest in continuing to possess cars indisputably used during criminal activity (apparently without restrictions), the second two factors weigh heavily in favor of the State.

Examining the second factor, Alabama's forfeiture procedures have a low risk of erroneous deprivation. Not only do claimants retain their possessory interest in cars subject to forfeiture upon exercising their statutory right to post bond for its release, they also enjoy a full judicial proceeding to contest the forfeiture. Petitioners argue that this factor weighs in their favor because they prevailed on their innocent owner defense. Pet.24. Just the opposite. It shows that the process worked—by making use of a procedural protection offered by the State, Petitioners received their cars back. Any temporary deprivation they faced during the pendency of the forfeiture proceedings is

attributable only to their own dilatory conduct. And Petitioners have never disputed that the initial seizures of the cars were valid (nor could they, as both state courts found the State made a prima facie case for forfeiture). *Cf. Kaley v. United States*, 571 U.S. 320, 337 (2014) (recognizing, in criminal forfeiture context, that "where the assets' connection to the allegedly illegal conduct is not in dispute … a pre-trial seizure is wrongful only when there is no probable cause to believe the defendants committed the crimes charged.").

Nor are additional procedural safeguards likely to significantly decrease the risk of erroneous deprivation. Petitioners had a full judicial proceeding available in which they could (and did) assert their innocent owner defenses. They have not explained why they did not seek that process sooner or why they never posted a bond for return of their cars in the meantime. Petitioners argue that additional process is required even though they left important process on the table. But, again, Petitioners cannot manufacture due process violations by refusing to make use of process available to them. "[T]he second *Mathews* factor does not favor [Petitioners] as there are constitutionally adequate processes in place for a claimant to get the Vehicle back." Pet.App.48a.

The third factor is the governmental interest at stake, which also weighs heavily in the State's favor here. Petitioners acknowledge the State's interest in securing property pending forfeiture. Pet.24. And though Petitioners suggest that a bond would be an appropriate means of securing this interest, Pet.25, they make no mention of the fact that a bond

procedure is available. "The burden on the State to conduct extra proceedings would present an undue significant burden, especially in light of the ability of a claimant to reclaim the property through the bond process." Pet.App.50a; *see also Mathews*, 424 U.S. at 348 ("At some point the benefit of an additional safeguard to the individual affected by the administrative action and to society in terms of increased assurance that the action is just, may be outweighed by the cost."). Additionally, forcing the State to disprove claimants' innocence earlier may force early disclosures of evidence that would negatively impact related (or contemplated) criminal prosecutions. *See Kaley*, 571 U.S. at 335-336. These considerations weigh heavily in favor of the State. Thus, even under *Mathews*, Plaintiffs' due process claim fails.

* * *

In sum, whether courts consider Petitioners' due process claims under the *Barker* test or the *Mathews* test does not matter here. Under either test, Petitioners cannot manufacture a due process violation by failing to take advantage of the process afforded them. Accordingly, this case is a poor vehicle to resolve the split in approach.

III. The Nature of Petitioners' Claims and Posture of This Case Make It A Poor Vehicle.

The return of Petitioners' cars creates vehicle problems for their case. Indeed, their claims should have been litigated to completion in the state court forfeiture proceedings. Instead, Petitioners continue to press their claims in this collateral litigation despite the claim-preclusive effect of the state court

judgments, despite the return of their cars, and despite the intervening change in Alabama law (which now provides a mechanism for requesting the type of hearing Petitioners seek). Moreover, they do so under the novel theory that the municipalities conspired with "the State" itself to violate Petitioners' constitutional rights. These vehicle problems render this case unworthy of review.

A. The claim-preclusive effect of the state court judgments bars Petitioners' claims.

Like Petitioners did in the state court forfeiture proceedings, they here press claims related to the seizure and forfeitability of their cars. Thus, claim preclusion[8]—which bars "any claim that was, or that *could have been*, adjudicated in the prior action," *Old Republic Ins. Co. v. Lanier*, 790 So. 2d 922, 928 (Ala. 2000)—bars this collateral litigation. When considering the preclusive effect of a state court judgment, federal courts must apply the preclusion law of that State. *See, e.g.*, *Parsons Steel, Inc. v. First Ala. Bank*, 474 U.S. 518, 523 (1986). Under Alabama law, claim preclusion requires four elements: "'(1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action presented in both actions.'" *Old Republic*, 790 So. 2d at 928 (quoting *Equity Res. Mgmt., Inc. v. Vinson*, 723 So. 2d 634, 636 (Ala. 1998)).

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[8] Alabama courts often use the terms "res judicata" and "claim preclusion" interchangeably. *See Austill v. Prescott*, 293 So. 3d 333, 341 (Ala. 2019).

Each element is satisfied here. For starters, Petitioners concede that the second element is met. As for the first element, Petitioners below agreed that there was a "prior judgment on the merits," but contend that claim preclusion does not apply because that judgment was in their favor. But Alabama law does not recognize Petitioners' so-called "prevailing defendant" exception. *See, e.g.*, *Whisman v. Ala. Power Co.*, 512 So. 2d 78, 81 (Ala. 1987); *Thompson v. SouthTrust Bank*, 961 So. 2d 876, 883 (Ala. Civ. App. 2007) (explaining claim preclusion would bar claims by plaintiffs "in privity with at least one of the prevailing defendants in the [earlier] lawsuit"). The first two elements are thus met.

Turning to the third element, Petitioners' presence in both the state and federal proceedings satisfies this requirement. Under Alabama law, this element "does not require complete identity, but only that the party against whom [claim preclusion] is asserted was either a party or in privity with a party to the prior action." *State v. The Boys & Girls Club of S. Ala., Inc.*, 163 So. 3d 1007, 1014 (Ala. 2014). Here, Petitioners were parties to the forfeiture proceedings as claimants—and also in privity with the *res*—and now the parties against whom claim preclusion is asserted. And despite Petitioners' arguments below, the absence of the municipalities from the forfeiture proceedings is irrelevant. Because Petitioners are the target of the bar, the identity element is satisfied.

Lastly, the fourth element is met because Petitioners' claims arise from the same circumstances underlying the state court forfeiture proceedings. Under Alabama law, whether "the same cause of action" is

presented does not require that the same "exact legal theories" or relief be requested in both suits, but rather looks to whether both suits "aris[e] out of the same nucleus of operative facts." *Old Republic*, 790 So. 2d at 928. Thus, two cases constitute the same cause of action even where the second case involves "a different claim not previously litigated but which arises out of the same evidence." *Whisman*, 512 So. 2d at 81 (Ala. 1987). Here, it is indisputable that Petitioners' constitutional challenges regarding the forfeiture of their vehicles could have been raised in their forfeiture proceedings. Indeed, Petitioners initially *did* raise those challenges before abandoning them in favor of pursuing their innocent owner defenses. The fourth and final element of claim preclusion is thus met.

The Alabama Supreme Court has explained the important interests supporting claim preclusion: "The interest of society demands that there be an end to litigation, that multiple litigation be discouraged, not encouraged, and that the judicial system be used economically by promoting a comprehensive approach to the first case tried." *Whisman*, 512 So. 2d at 81. These interests are particularly compelling here given the issues of federalism and comity involved; Petitioners raised and abandoned claims in state court forfeiture proceedings only to later assert substantially the same claims in collateral federal suits. Moreover, Petitioners' dilatory conduct in the forfeiture proceeding suggests that perhaps they were less concerned with prevailing on their constitutional claims so they could get their cars back—the key issue purportedly underlying all their suits—and more concerned with the

monetary relief and attorney fees available from the municipalities in federal court and, indeed, the only relief now remaining to them.[9] This Court should decline review to discourage such conduct in future cases.

B. This case would have no prospective effect—Petitioners' cars have been returned and Alabama law has changed.

With their cars returned at the conclusion of the state court forfeiture proceedings, Petitioners no longer face prospective hardships warranting this Court's intervention. Moreover, Alabama law has been amended during the pendency of these proceedings and now provides claimants the opportunity to request the hearing Petitioners seek here. Although claimants have always been able to petition for such a hearing prior to institution of civil forfeiture proceedings, *see* ALA. R. CRIM. P. 3.13 (a), the statute now also

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[9] Petitioners appear to concede that their claims for equitable relief are moot and that only their claims for monetary relief against the municipalities remain. Pet.21. However, if Petitioners intend to continue pressing claims for injunctive or declaratory relief, then additional issues of mootness, sovereign immunity, and *Younger* abstention would also arise. Indeed, *Younger* would have required a stay (at minimum) even as to the damages claims until conclusion of the forfeiture proceedings. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 719-20 (1996). The concerns of federalism and comity advanced by *Younger* are thus also advanced by claim preclusion where, as here, federal plaintiffs decline to press their already-raised constitutional claims in the already-existing state court forfeiture proceedings. *Cf. id.* at 713 (recognizing that stay based on abstention could be immediately appealed in part "because the district court would be bound as a matter of res judicata to honor the state court's judgment").

provides that an innocent owner may request a hearing in the civil forfeiture proceedings as to whether probable cause for forfeiture exists "at any time after seizure of property and before entry of a conviction in the related criminal case," ALA. CODE § 20-2-93(*l*), *inc'g by ref.* § 15-5-63. This hearing must be held within 60 days absent good cause and may result in exemption of the innocent owner's interest from forfeiture. *Id.*

Resolving Petitioners' claims in their favor would thus have little impact beyond allowing them to continue to pursue monetary relief from the municipalities. Petitioners' cars have been returned and—though the Due Process Clause does not require it—Alabama has expanded the process available to claimants in the forfeiture context. The limited relief available does not warrant this Court's review.

C. Petitioners' sole remaining claim sounds in conspiracy and fails for want of conspiracy.

Petitioners appear to concede that only their damages claims against the municipalities remain. *See* Pet.21. But, of course, the municipalities themselves are not responsible for the process offered in *state* court proceedings. Petitioners thus resort to the novel theory that the municipalities conspired with the State itself to violate Petitioners' constitutional rights by holding their cars pending resolution of those state proceedings.

But this novel theory suffers from several fatal defects. First, "the State" is not a person under § 1983 with whom the municipalities could conspire. *See Will*

v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989). Of course, it's axiomatic that "[c]onspiracy requires an agreement … between or among two or more separate *persons*." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1867 (2017) (emphasis added); *accord* 42 U.S.C. § 1985 (defining conspiracy to interfere with civil rights as involving "two or more persons").[10] True, conspiracy claims may lie where a person conspires with another person who is immune, *see, e.g.*, *Dennis v. Sparks*, 449 U.S. 24, 27-29 (1980); but the State is not just immune here—it's not a person. Petitioners' alleged conspiracy thus fails for want of two or more persons to conspire.

Second, Petitioners' conspiracy likewise fails for want of an agreement to conspire. A § 1983 conspiracy to deny an individual of constitutional rights requires that the conspirators "had a 'meeting of the minds' and thus reached an understanding" to do so. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158 (1970); *see also Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1327 (11th Cir. 2015); *cf. Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 275-76 (1993) (concluding that § 1985 conspiracy required "that the defendant do more than merely be aware of a deprivation of right that he causes, and more than merely accept it; he must act at least in part for the very purpose of producing it."). Moreover, a plaintiff must specifically plead facts that suggest "a preceding agreement, not merely parallel conduct that could just as well be independent action." *Bell Atl. Corp. v.*

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[10] Although Petitioners' conspiracy claims rely solely on § 1983, the text of § 1985 and cases applying it provide helpful context given its sole focus on civil rights conspiracies and the relative dearth of similar § 1983 cases.

Twombly, 550 U.S. 544, 557 (2007) (discussing allegations required to sufficiently plead anticompetitive conspiracy). Here, Petitioners nakedly allege that the municipalities and the State have agreed to forfeit cars by state-law prescribed procedures. Of course, the fact that state law directs both the municipalities and the State to proceed in that fashion regarding civil forfeitures provides an "obvious alternative explanation" for that conduct. *Id.* at 567. In the absence of specific allegations that a specific agreement was reached *to* deprive Petitioners of their constitutional rights—and not merely despite those rights—Petitioners' conspiracy claim must fail.

Third, Petitioners below also alleged that the municipalities are agents of the State. *See, e.g.*, S.Doc. 1 ¶ 14; C.Doc. 1 ¶¶ 19, 56. But under the intracorporate-conspiracy doctrine "an agreement between or among agents of the same legal entity, when the agents act in their official capacities, is not an unlawful conspiracy." *Ziglar*, 137 S. Ct. at 1867. While this Court has left open the question as to whether this doctrine applies to § 1985 conspiracy claims, *see id.*, the logic underlying the doctrine applies with equal force to government entities, *accord Denney v. City of Albany*, 247 F.3d 1172, 1190-91 (11th Cir. 2001). Separately, Petitioners' assertion that the municipalities act as state agents also suggests that they should share the State's immunity from their damages claims. While municipalities are generally not entitled to Eleventh Amendment immunity due to their relative independence, it stands to reason that a municipality acting as an agent of the State should be treated no different than any other arm of the State.

See Alden v. Maine, 527 U.S. 706, 756 (1999) ("The immunity does not extend to suits prosecuted against a municipal corporation or other governmental entity *which is not an arm of the State*." (emphasis added)); *cf. City of Lafayette v. La. Power & Light Co.*, 435 U.S. 389, 413 (1978) (recognizing *Parker* immunity from antitrust regulation may extend to municipality acting at State's direction). In sum, Petitioners' novel approach causes more problems for them than it solves.

* * *

Petitioners' attempts to sidestep the process provided them in state court have caused numerous vehicle problems. Each of the issues discussed above either prevent this Court from reaching the underlying constitutional issue or would, at the very least, limit the significance of a decision in Petitioners' favor. Accordingly, this case presents a poor vehicle for this Court's review.

CONCLUSION

For these reasons, the Court should deny the petition.

Respectfully submitted,

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MARCH 1, 2023