Case No. 18-50977

United States Court of Appeals for the Fifth Circuit

GERARDO SERRANO,
on behalf of himself and all others similarly situated,

Plaintiff–Appellant,

v.

CUSTOMS AND BORDER PATROL, U.S. Customs and Border Protection; UNITED STATES OF AMERICA; JOHN DOE 1–X; JUAN ESPINOZA; KEVIN MCALEENAN,

Defendants–Appellees.

On Appeal from the United States District Court
for the Western District of Texas
No. 2:17-cv-00048-AM-CW

BRIEF OF *AMICUS CURIAE* AMERICANS FOR FORFEITURE REFORM IN SUPPORT OF PLAINTIFFS-APPELLANTS

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Certificate of Interested Persons

Serrano v. Customs & Border Patrol, et al., No. 18-50977

The undersigned counsel of record for *amicus curiae* Americans for Forfeiture Reform certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of the above, consolidated appeals. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Plaintiff-Appellant

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on behalf of himself and all others similarly situated.

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Defendants-Appellees

- Customs & Border Patrol, U.S. Customs & Border Protection;
- United States of America;
- John Doe 1–X, unknown U.S. Customs & Border Protection agents, sued in their individual capacities
- Juan Espinoza, Fines, Penalties, & Forfeiture Paralegal Specialist, sued in his individual capacity; and
- Kevin McAleenan, Commissioner, U.S. Customs & Border Protection, sued in his official capacity.

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Dated: April 23, 2019

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Amicus Identity, Interest, & Authority to File

A. Identity of Americans for Forfeiture Reform

Americans for Forfeiture Reform (AFR) is a non-profit, non-partisan civic group. AFR champions the limited interpretation of forfeiture laws in line with the time-honored rule that "[f]orfeitures are not favored" and "should be enforced only when within both [the] letter and [the] spirit of the law." *United States v. One 1936 Model Ford V-8 De Luxe Coach*, 307 U.S. 219, 226 (1939).

B. Interest of Americans for Forfeiture Reform

AFR is interested in this case because civil forfeiture "has led to egregious and well-chronicled abuses." *Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (Thomas, J., respecting the denial of certiorari). An essential check on these abuses is vigorous judicial enforcement of federal constitutional due-process guarantees.

C. Authority of Americans for Forfeiture Reform to File

AFR files this brief with the consent of all parties as allowed under Fed. R. App. P. 29(a)(2). AFR also affirms under Fed. R. App. P. 29(a)(4)(E) that no party, nor counsel for any party, in this case: (1) wrote this brief in part or in whole; or (2) contributed money meant to fund the preparation or submission of this brief. Only AFR, including its members and counsel, has contributed money to fund the preparation and submission of this brief.

Argument

Continuous government detention of a vehicle pending the government's initiation and prosecution of forfeiture litigation is no small matter. "Cars extend us. Cars manifest liberty. A person released on bond, retaining a presumption of innocence, might suffer virtual imprisonment if he cannot regain his vehicle in time to drive to work." *Washington v. Marion Cnty. Prosecutor*, 916 F.3d 676, 679 (7th Cir. 2019) (Manion, J.). To this end, due process entitles vehicle owners to a continuous-detention hearing[1]—i.e., a prompt hearing before a neutral judge on whether the government may continue to detain a vehicle while forfeiture litigation is pending. *See Krimstock v. Kelly*, 306 F.3d 40, 67–68 (2d Cir. 2002).

The district court here disagreed. In doing so, the district court neglected three key aspects of due process. First, the district court neglected the original meaning of due process. Second, the district court neglected the high risk of erroneous deprivation that attends vehicle detention and the vital role of continued-detention hearings in meeting this risk. Third, the district court neglected a number of recent Supreme Court precedents that substantially undercut a Ninth Circuit case on which the district court mainly relied. For all these reasons (and more), this Court should reverse.

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[1] This Brief uses the term "continued-detention hearing" rather than "post-seizure hearing" or "post-deprivation hearing" to emphasize *what the hearing is about* (continued detention of a vehicle), as opposed to when the hearing happens to occur (i.e., after a vehicle is seized).

I. The original meaning of due process supports continued-detention hearings for seized vehicles.

"Whenever a governmental body acts so as to injure an individual, the Constitution requires that the act be consonant with due process of law." *Dixon v. Ala. State Bd. of Educ.*, 294 F.2d 150, 155 (5th Cir. 1961). This guarantee is not limited, however, to the content of modern due-process precedents. Due process also encompasses the Framers' "original understanding" of this concept, ensuring that "the people's rights are never any less secure against governmental invasion than they were at common law." *Sessions v. Dimaya*, 138 S. Ct. 1204, 1224–25 (2018) (Gorsuch, J., concurring).

Due process comes to us from Magna Carta, which forbade the deprivation of life, liberty, or property except "by the law of the land." *Twining v. New Jersey*, 211 U.S. 78, 100 (1908). These words "secure the individual from the arbitrary exercise of … government [power], unrestrained by … established principles of private rights and distributive justice." *Id.* at 101 (punctuation omitted). This means that even today "the government generally may not deprive a person" of life, liberty, or property "without affording him the benefit of (at least) those customary procedures to which freemen were entitled by the old law of England." *Sessions*, 138 S. Ct. at 1224 (Gorsuch, J., concurring) (citation and punctuation omitted).

The question then becomes: what customary procedures were freeman entitled to when the government seized private property in

the name of civil (i.e., *in rem*) forfeiture? The answer may be found in the history of the Court of Exchequer, which under the old law of England was charged with adjudicating the "forfeiture of articles seized on land for the violation of law." *C. J. Hendry Co. v. Moore*, 318 U.S. 133, 137 (1943) (summarizing this history); *see State v. Chilinski*, 383 P.3d 236, 241–43 (Mont. 2016). Indeed, "[s]tatutory forfeitures were most often enforced … in the … Exchequer." *Calero-Toledo v. PearsonYacht Leasing Co.,* 416 U.S. 663, 682 (1974).

The Exchequer's history reveals that government seizures had to be supported by an early showing of probable cause and property owners were able to enforce this point. In particular, "[i]f there be a seizure made, the Officer must in the next Term, or sooner, at the Discretion of the Court, return the Cause of Seizure and take out a Writ of Appraisement."[2] SIR GEOFFREY GILBERT, A TREATISE ON THE COURT OF EXCHEQUER 182 (London, H. Lintot 1758).[3] If this did not occur, the owner was "entitled to move for a Writ of Delivery" that would require delivery of the seized property to him. *Id.*

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[2] A "writ of appraisement" was "a writ issued out of court for the valuation of goods seized as forfeited to the crown." 38 ABRAHAM REES, THE CYCLOPAEDIA (London, Rivington et al. 1819).

[3] *See* JAMES MANNING, THE PRACTICE OF THE COURT OF EXCHEQUER 143–44 (London, A. Strahan 1827) ("Before proceedings or seizures were placed under the control of the commissioners of the respective boards of customs and excises, the seizing officer was bound in the next term, or sooner, at the discretion of the Court, to return the cause of seizure and take out a writ of appraisement, otherwise the proprietor was entitled to move for a writ of delivery …." (some spelling alterations)).

The Exchequer observed a similar due-process limit even after the return of a Cause of Seizure and Writ of Appraisement. At this point, the seizing officer was obligated to file "an [i]nformation … to condemn" the property he seized."[4] B. Y., MODERN PRACTICE OF THE COURT OF EXCHEQUER 141 (London, E. & R. Nutt & R. Gosling 1730). But if the "information [was] not filed in a month" after a property owner filed his claim, the owner could once again "move for a writ of delivery, which he might … have as a matter of course, upon giving security." JAMES MANNING, THE PRACTICE OF THE COURT OF EXCHEQUER 162–63 (London, A. Strahan 1827); *see also* GILBERT, TREATISE ON THE COURT OF EXCHEQUER, at 183 (same).

As such, writs of delivery[5] were a major customary procedure that protected against continuous detention of property even when the property was forfeitable. And while Parliament later imposed certain statutory limits on when these writs could be issued, these limits preserved "the discretion of the Court to grant or refuse the writ, under the particular circumstances of each case." MANNING, PRACTICE OF THE COURT OF EXCHEQUER, at 163.

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[4] An "information in the Exchequer" was "a statement … to the Court" asserting the King's right "to an adjudication in his favor" of seized lands or goods. MANNING, PRACTICE OF THE COURT OF EXCHEQUER, at 142; *see* 3 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *262 (1st ed. 1765) ("Upon … [the Crown's] seizure [of property,] an information was usually filed in the king's exchequer ….").

[5] At bottom, a "writ of delivery" was "a writ directing the delivery of goods out of the king's possessions, either by verdict or by consent." 38 ABRAHAM REES, THE CYCLOPAEDIA (London, Rivington et al. 1819).

British common law thus did not allow continuous government detention of property without guaranteeing individuals the right to be heard in court on this deprivation. America then assimilated this principle. Consider Chief Justice Marshall's opinion in *Slocum v. Mayberry*, 15 U.S. 1 (1817). After emphasizing that federal courts had "exclusive cognizance of all seizures made on land or water," Chief Justice Marshall deemed it only natural to conclude that: "If [a] seizing officer should refuse to institute proceedings to ascertain [a] forfeiture [under federal law], the [federal] district court may, upon the application of the aggrieved party, compel the officer to proceed to adjudication, or to abandon the seizure." *Id.* at 10.

Such analysis then reveals the depth of the district court's error in this case. The district court presumed that "due process" is limited to whether there is "any case in support of the argument that a [continued-detention] hearing is required after a seizure under federal law." ROA.483. But as the Supreme Court has long recognized, due process also includes "those settled usages and modes of proceeding existing in the common and [statute] law of England." *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272, 277 (1856). These usages include writs of delivery. These usages also remind us that "delays and little inconveniences in the forms of justice are the price that all free nations must pay for their liberty in more substantial matters." 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, *350-51 (1st ed. 1765).

II. Vehicle detentions pose a high risk of erroneous deprivation that only continued-detention hearings solve.

The district court's due-process analysis is no less troubling when tested against modern norms as against original meaning. The modern lodestar for procedural due process is *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Mathews* requires courts to assess the meaning of due process by analyzing "three distinct factors": (1) "the private interest" at stake; (2) "the risk of an erroneous deprivation of [this] interest through [currently-existing] procedures … and the probable value, if any, of additional … procedural safeguards"; and (3) "the Government's interest [at stake], including the function involved and the fiscal and administrative burdens that … [an] additional … procedural requirement would entail." *Id.* at 335.

In the end, the *Mathews* factor that must be analyzed most carefully is the risk of erroneous deprivation and the value of added safeguards. *See Buttrey v. United States*, 690 F.2d 1170, 1178 (5th Cir. 1982). This is because "[a] procedure that seems perfectly reasonable under one set of circumstances can, with only a slight modification of the facts, suddenly smack of administrative tyranny." *Id.* (citation and punctuation omitted). For example, procedures well-suited to address *civil forfeiture* of a vehicle (*permanent loss*) may be ill-suited to address *continued detention* of a vehicle (*preliminary loss*) while forfeiture litigation is pending. *See Krimstock,* 306 F.3d 40, 68 ("The Constitution … distinguishes between … continued government custody, on the one hand, and … final judgment ….").

The district court failed to exercise such care in its *Mathews* analysis. *See* ROA.482–88. As a result, the district court failed to recognize the high risk of erroneous deprivation that federal customs laws pose in allowing continuous detention of vehicles without judicial review while forfeiture litigation is pending. The district court also failed to recognize the essential value of continued-detention hearings in meeting this risk.

A. The high risk of erroneous deprivation

The district court dismissed the risk of erroneous deprivation that "current [federal] customs laws" pose in allowing continuous vehicle detention without judicial review. The district court reached this conclusion because these same laws allow for: (1) remission; (2) submission of one's case "for an independent evaluation" by the Attorney General; and (3) "judicial review to determine whether the forfeiture was just." ROA.486. None of this analysis makes sense, however, once the "risk" at issue is properly defined.

The "risk" at issue here is the wrongful loss of a vehicle for months—if not years—while forfeiture of the vehicle is litigated. This means a person being forced to miss out on "fundamental life activities such as transit to a job or school, visits to health care professionals, and caretaking for children or other family members." *Washington v. Marion Cnty. Prosecutor*, 264 F. Supp. 3d 957, 976 (S.D. Ind. 2017). And this risk exists even if civil forfeiture is a foregone

conclusion, because a vehicle owner may still deserve preliminary relief (e.g., to prevent hardship), even if the vehicle owner is bound to lose on the merits. *Cf. Fuentes v. Shevin*, 407 U.S. 67, 87 (1972) ("The [due-process] right to be heard does not depend upon an advance showing that one will surely prevail.").

A helpful way to appreciate this point is to consider the similar role of pre-trial release in criminal cases. A person may be entitled to such release even if they are later convicted or are certain to face conviction at trial. *See State v. Brooks*, 604 N.W.2d 345, 350–51 (Minn. 2000) (explaining that under federal law, the rule is "when possible, pretrial release should be ordered on personal recognizance"). In this way, pre-trial release speaks to a liberty interest that is separate and distinct from liberty after acquittal. It cannot then be said that that when it comes to protecting against the erroneous deprivation of this interest, sufficient remedies may be found in a defendant's right to seek a plea bargain or to obtain a speedy trial.

The same goes for seized vehicles pending forfeiture litigation. The function of a forfeiture trial is to minimize the risk of wrongful *forfeiture*—not wrongful *detention* while forfeiture litigation is ongoing. The same goes for independent evaluation by the Attorney General. While this procedure allows the Attorney General "upon inquiry and examination" to conclude that a forfeiture should not "be instituted or prosecuted," this procedure says nothing about the Attorney General being able to release detained property while

forfeiture litigation is pending. 19 U.S.C. § 1604. Finally, remission petitions have nothing to do with preventing wrongful forfeiture or wrongful detention. They instead rest on executive "discretion not to pursue a complete forfeiture despite … being entitle[d] to one." *United States v. Von Neumann*, 474 U.S. 242, 250 (1986).

Hence, "[i]n the language of procedural due process," neither forfeiture trials nor AG evaluation nor remission petitions afford vehicle owners an "opportunity to be heard" before a neutral judge on why they should be able to keep their vehicles while forfeiture litigation is pending. *Rutherford v. United States*, 702 F.2d 580, 584 (5th Cir. 1983). The district court then lacked any basis to hold these procedures were "multiple alternative remed[ies]" that "lower[ed] the risk of erroneous deprivation" in this case. ROA.486.

This goes double for AG evaluation and remission petitions—procedures that ultimately "test no more than the strength of the [government's] own belief in [its] rights." *Fuentes*, 407 U.S. at 83. This is problematic enough by itself, but it is made worse by the fact that the government profits from customs-based forfeitures. (*See* Appellant's Opening Br. at 24.) "Since [the government's] private gain is at stake, the danger is all too great that [its] confidence in [its] cause will be misplaced." *Fuentes*, 407 at 83; *see also Johnson v. United States*, 333 U.S. 10, 14 (1948) (highlighting the distinction between the "neutral and detached magistrate" and "the officer engaged in the often competitive enterprise of ferreting out crime").

B. The essential value of additional safeguards

Since forfeiture trials, AG evaluation, and remission do nothing to remedy the problem of a vehicle being wrongfully detained while forfeiture litigation is pending, federal customs laws pose a high risk of erroneous deprivation in this context. The solution, in turn, is simple. As federal courts have uniformly recognized, the answer is "a prompt post-seizure, pre-judgment hearing before a neutral judicial or administrative officer." *Krimstock*, 306 F.3d at 67; *see Smith v. City of Chicago*, 524 F.3d 834, 838 (7th Cir. 2008), *vacated as moot sub nom. Alvarez v. Smith,* 558 U.S. 87 (2009); *Washington*, 264 F. Supp. 3d at 961; *Brown v. D.C.*, 115 F. Supp. 3d 56, 67 (D.D.C. 2015); *Simms v. D.C.*, 872 F. Supp. 2d 90, 92, 99–104 (D.D.C. 2012).

Such continued-detention hearings provide a host of benefits that cannot be obtained through lesser procedural remedies. The most important is **early error correction**. "Some risk of erroneous seizure exists in all cases, and in the absence of prompt review by a neutral fact-finder … an inquiry into probable cause … must wait months or sometimes years before a … forfeiture proceeding takes place." *Krimstock*, 306 F.3d at 50–51. "An early [judicial] hearing, on the other hand … provide[s] vehicle owners the opportunity to test the factual basis of [a seizure] and thus protect[s] them against erroneous deprivation of the use of their vehicles." *Stypmann v. City & Cnty. of S.F.*, 557 F.2d 1338, 1344 (9th Cir. 1977).

Continued-detention hearings also serve the essential function of **probable cause disaggregation**. Even when probable cause may support initial seizure of a vehicle, the same may not be true of continued detention pending forfeiture proceedings. *See Brewster v. Beck*, 859 F.3d 1194, 1197 (9th Cir. 2017); *Krimstock*, 306 F.3d at 49–50. A continued-detention hearing enables prompt judicial review on this point. Such a hearing may reveal, for example, that a seized vehicle is owned by a different person or entity than its driver (e.g. a bank). In this circumstance—and other imaginable ones like it—the original probable-cause basis for an initial vehicle seizure may lose force as a basis for continued detention. *Cf. Brewster*, 859 F.3d at 1196 ("The exigency that justified … the [vehicle] seizure vanished once … [the owner] showed up with proof of ownership ….").

Continued-detention hearings finally serve the essential function of **hardship prevention**. This matters for innocent owners and accused ones alike. In both cases, loss of a vehicle often entails having to make "mak[e] other arrangements for … transportation needs." *Washington*, 264 F. Supp. 3d at 976. This hardship then persists for however long a vehicle ends up being detained. *See Stypmann*, 557 F.2d at 1344 ("Days, even hours, of unnecessary delay may impose onerous burdens upon a person deprived of his vehicle."). A prompt continued-detention hearing makes it possible for a court to assess and mitigate this kind of hardship—especially before it results in any form of irreparable injury.

With this in mind, a close analogy emerges between continued-detention hearings and bail hearings in criminal cases. Bail hearings vindicate "limits [on] government power to detain an accused prior to trial" while "ensur[ing] an accused's appearance and submission to the judgment of the court." *Brooks*, 604 N.W.2d at 350. Continued-detention hearings likewise vindicate limits on government power to detain a seized vehicle before a forfeiture trial while ensuring the vehicle remains subject to any later forfeiture judgment of the court. And continued-detention hearings do all this while safeguarding vehicle owners against the "inherent dangers of *ex parte* or unilateral seizures." *In re Chesnut*, 422 F.3d 298, 305 (5th Cir. 2005).

III. Recent Supreme Court decisions undercut the force of the Ninth Circuit's decision in *One 1971 BMW*.

The district court's failure to undertake the careful analysis required by the second *Mathews* factor—or to consider the original meaning of due process—is no accident. The district court borrowed most of its due-process analysis from *United States v. One 1971 BMW 4-Door Sedan*, 652 F.2d 817 (9th Cir. 1981). In this case, the Ninth Circuit rejected a vehicle owner's argument that he was entitled to a probable-cause hearing "within 72 hours of the … seizure of his automobile" under federal customs law. *Id.* at 820. Most of the Ninth Circuit's analysis behind this conclusion, however, collapses under close scrutiny—especially when stacked against a number of more recent Supreme Court due-process precedents.

The Ninth Circuit's main reason for rejecting the due-process claim at issue in *One 1971 BMW* was the court's belief that "the applicable procedures here far better protected the [vehicle owner's] rights." *Id*. Among these procedures was the U.S. Attorney's[6] duty "to investigate and make a determination, independent of the seizing agency, as to whether [customs] forfeiture was warranted." *Id.* Simply put, this analysis does not survive the Supreme Court's more recent determination that when "the Government has a direct pecuniary interest in the outcome of [a] proceeding"—as it does in forfeiture cases—agency review is no substitute for an "adversary hearing … to ensure … requisite neutrality." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 55–56 (1993).

The Ninth Circuit's reasoning on this point also runs afoul of the Supreme Court's recent emphasis on the "due process maxim" that "an unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case." *Williams v. Pennsylvania,* 136 S. Ct. 1899, 1906 (2016); *see Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). These decisions make it clear that whatever value may be afforded by having a U.S. Attorney (or the Attorney General) review a forfeiture case, such review cannot be said to "far better protect[]"a property owner's due-process rights than review by a judge. *One 1971 BMW,* 652 F.2d at 820.

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[6] Under the current version of 19 U.S.C. § 1604, this duty falls to the "Attorney General" as opposed to a U.S. Attorney.

Another pillar of the Ninth Circuit's due-process analysis in *One 1971 BMW* was the court's emphasis on the "public interest" served by forfeiting vehicles "pursuant to laws designed to curb the transportation and sale of narcotics." 652 F.2d at 821. This analysis is readily displaced, however, by the more recent emphasis among Supreme Court justices and lower courts that civil forfeiture has led to "egregious and well-chronicled abuses"—abuses that have often exceeded the ills that civil forfeiture was supposed to curb. *Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (Thomas, J., respecting the denial of certiorari); *see also, e.g. United States v. $506,231*, 125 F.3d 442, 453 – 54 (7th Cir. 1997) ("[T]he government's conduct in forfeiture cases leaves much to be desired."); *United States v. All Assets of Statewide Auto Parts, Inc.*, 971 F.2d 896, 905 (2d Cir. 1992) ("We continue to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for the due process that is buried in those statutes.").

The last pillar of the Ninth Circuit's due-process analysis in *One 1971 BMW* is the observation that "the judicial hearing to which the [vehicle owner] [is] entitled serve[s] to assure the propriety of the forfeiture." 652 F.2d at 820. As noted above, the problem with this reasoning is that it improperly conflates a vehicle owner's interest in keeping her vehicle *for good* (which a forfeiture trial protects) with a vehicle owner's interest in keeping her vehicle *for the duration* of forfeiture litigation (which a forfeiture trial does not protect). Simply

put, a vehicle owner "cannot recover the lost use of a vehicle by prevailing in a forfeiture proceeding. The loss is felt in the owner's inability to use a vehicle that continues to depreciate in value as it stands idle in the police lot." *Krimstock*, 306 F.3d at 64.

In *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), the Supreme Court highlights the due-process importance of distinguishing *permanent* deprivations from *preliminary* deprivations. At issue was the validity of a Colorado law that kept exonerated defendants from recovering fees, court costs, and restitutions except in limited circumstances. This led the Supreme Court to emphasize that what the affected defendants were seeking was "restoration of funds they paid to the State, not compensation for temporary deprivation of those funds." *Id.* at 1257. And in light of this reality, the Court determined that "[n]one of the … procedures" put forward by Colorado addressed "the risk faced by a defendant whose conviction has already been overturned that she will not recover funds taken from her solely on the basis of a conviction no longer valid." *Id.*

Based on the preceding analysis, the district court erred in concluding that *One 1971 BMW* afforded meaningful guidance on the due-process rights of vehicle owners faced with forfeiture under federal customs law. The Supreme Court's more recent decisions in cases like *James Daniel Good, Williams,* and *Nelson* point towards the reasoning of cases like *Krimstock*—cases that recognize the essential due-process value of continued-detention hearings.

Conclusion

Due process entitles vehicle owners to continued-detention hearings—a proceeding that guarantees vehicle owners will be promptly heard by a neutral judge on whether they may retain their vehicles while forfeiture litigation is pending. Because the district court failed to recognize this, this Court should reverse.

Respectfully submitted,

Dated: April 23, 2019

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Certificate of Service

The undersigned counsel certifies that on April 23, 2019, he electronically filed the Brief of *Amicus Curiae* Americans for Forfeiture Reform with the Clerk of the Court for the Fifth Circuit by using the CM/ECF system. The undersigned counsel also certifies that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: April 23, 2019

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Certificate of Compliance

The undersigned counsel for Americans for Forfeiture Reform certifies under Fed. R. App. P. 32(g) that this amicus brief meets the formatting and type-volume requirements of Fed. R. App. P. 32(a) & 29(a)(5). This brief is printed in 14-point, proportionately-spaced typeface using Microsoft Word 2010 and contains **4,097 words**, including headings, footnotes, and quotations, and excluding all items identified under Fed. R. App. P. 32(f).

Dated: April 23, 2019

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