RECORD NO. 18-50977

In The
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, Del Rio Division, No. 2:17-cv-00048-AM-CW, Honorable Alia Moses, Presiding

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BRIEF OF *AMICI CURIAE* NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, CATO INSTITUTE, AND DUE PROCESS INSTITUTE IN SUPPORT OF PLAINTIFFS-APPELLANTS

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SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel certifies that the following listed persons and entities, in addition to those already listed in the parties' briefs, have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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National Association of Criminal Defense Lawyers
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Undersigned counsel further certifies, respectively, pursuant to Federal Rule of Appellate Procedure 26.1(a), that amicus curiae National Association of Criminal Defense Lawyers, Cato Institute, and Due Process Institute are not publicly held corporations, do not have any parent corporations, and that no publicly held corporation owns 10 percent or more of their stock.

Dated: April 23, 2019

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INTEREST OF *AMICUS CURIAE*[1]

The National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct, in both state and federal court. NACDL was founded in 1958 and has a nationwide membership of many thousands of direct members, and up to 40,000 members when affiliates are included. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and criminal defense lawyers. It is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files its brief in this case because asset forfeiture is one of the most fundamental threats to the individual liberties of those accused of criminal activities, as well as citizens not charged with any crime.

[1] No party or party's counsel authored this brief in whole or in part, and no party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person—other than the *amicus curiae*—contributed money that was intended to fund preparing or submitting this brief. Pursuant to Federal Rule of Appellate Procedure 29(a), counsel for *amicus* states that counsel for all parties consented to the filing of this brief.

NACDL strongly supports full due process rights and constitutional protections in such cases.

The Cato Institute is a nonpartisan public-policy research foundation established in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999, and focuses on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement.

The Due Process Institute is a nonprofit, bipartisan, public interest organization that works to honor, preserve, and restore procedural fairness in the criminal justice system.

INTRODUCTION AND SUMMARY OF ARGUMENT

Gerardo Serrano, a U.S. citizen and resident of Kentucky, was stopped at the border by U.S. Customs and Border Protection ("CBP") in Eagle Pass, Texas on September 21, 2015, while he was traveling to

Mexico to meet with his cousin about the cousin's solar panel business.[2] ROA.11, 13. Mr. Serrano is a legal gun owner and CPB found five .380 caliber bullets and a .380 caliber magazine that he had inadvertently left in his truck. ROA.15-16. After hours of detention, he was allowed to leave the area on foot and was not charged with a crime.

Mr. Serrano timely and diligently pursued remission of his truck and other property. ROA.18. Twenty-three months after the seizure, he sued on behalf of himself and a putative class, arguing that Defendants, among other things, violated his Fifth Amendment due process right to a prompt post-seizure hearing after the government seizes a vehicle through civil forfeiture. The District Court granted Defendant's motion to dismiss and Mr. Serrano now appeals.

NACDL supports Mr. Serrano and others in his position and disagrees with the District Court's dismissal. NACDL argues that this Court should hold that there is a constitutional due process right to a prompt post-seizure hearing when a vehicle is seized by the government. NACDL also notes that frequent abuses of asset forfeiture laws by both

[2] Because this appeal comes from a motion to dismiss, the court must accept as true the well-pled factual allegations in the complaint. *E.g.*, *Taylor v. Books a Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002).

state and federal government agencies underscore the importance of strong due process protections for persons whose property is seized using civil or administrative forfeiture laws.

ARGUMENT

I. Unfair and Abusive Uses of Asset Forfeiture by Government Agencies Underscore the Importance of Due Process Protections in This Case.

Aggressive use of forfeiture proceedings has grown in recent years and is a practice that is often oppressive, unfair, and constitutionally dubious. *Leonard v. Texas*, 137 S. Ct. 847 (2017) (Thomas, J., statement respecting the denial of certiorari).[3]

As Justice Thomas has noted, civil forfeiture in recent decades has become "widespread and highly profitable." *Leonard*, 137 S. Ct. at 848 (Thomas, J., statement respecting the denial of certiorari) (citing Institute for Justice, D. Carpenter, L. Knepper, A. Erickson, & J. McDonald, Policing for Profit: The Abuse of Civil Asset Forfeiture 10 (2d ed. Nov. 2015) (Department of Justice Assets Forfeiture Fund took in $4.5

[3] *See also* Forfeiture Reform, Nat'l Ass'n of Crim. Defense Lawyers, https://www.nacdl.org/forfeiture/ (stating that asset forfeiture "tears at the heart of justice and fairness in our system and turns the fundamental principle that a person is innocent until proven guilty on its head" and that it "represents one of the most fundamental threats to the individual liberties of those accused of criminal activities as well as citizens not charged with any crime").

billion in 2014 alone)).[4] "This system—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses." *Id.*; *see also United States v. 6109 Grubb Rd.*, 886 F.2d 618, 624 (3d Cir. 1989) ("Civil forfeitures could sometimes lead to harsh and surprisingly unjust results . . ."); *Brown v. District of Columbia*, 115 F. Supp. 3d 56, 59 (D.D.C. 2015) ("[E]vidence has emerged suggesting that at least some police departments have abused the civil forfeiture process.").

Stories of such abuse have been widely covered by the mainstream press. Consider the experience of New Jersey resident George Reby. Reby was driving through Tennessee on his way to purchase a vehicle in cash. *Last Week Tonight with John Oliver: Civil Forfeiture* (HBO television broadcast Oct. 5, 2014). He was pulled over by police, who seized $22,000 under the "theory" that "common people do not carry this much currency." *Id.* Despite Reby's protests and offers to show his bid on the vehicle, and despite Reby never being charged with any crime in conjunction with this stop, the officer confiscated Reby's cash. *Id.*

[4] Available at https://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf

In another case, Matt Lee of Michigan was moving to California when a friend offered him an entry-level sales rep job there. Robert O'Harrow Jr., Michael Sallah & Stephen Rich, *They Fought the Law. Who Won?*, Wash. Post., Sept. 8, 2014.[5] His father loaned him $2,500 in cash. *Id.* While passing through the Nevada desert, Lee was stopped by police, who confiscated nearly all of his cash on the "theory" that Lee was on a "drug run," despite Lee's credible explanation, his lack of criminal record, and the absence of drugs in his vehicle. *Id.*

Ryan Hamer, a resident of Greenville, South Carolina, was trying to mail money to a friend in need. Nathaniel Cary, Anna Lee & Mike Ellis, *How Civil Forfeiture Errors, Delays Enrich SC Police, Hurt People*, Grenville News, Feb. 1, 2019, https://www.greenvilleonline.com/in-depth/news/taken/2019/01/29/civil-forfeiture-south-carolina-errors-delays-property-seizures-exclusive-investigation/2460107002/. Police seized $6,000 in money orders even though Hamer was not charged with any crime. *Id.* Hamer could prove that the money was his and it was eventually returned, but he had to pay $1,200 for legal help. *Id.*

[5] https://www.washingtonpost.com/sf/investigative/2014/09/08/they-fought-the-law-who-won/?utm_term=.38852b4f8954.

Unsurprisingly, members of Congress have often expressed concern about the Government's use of asset forfeiture and the negative impacts it has on innocent private property owners. In a 2015 hearing on asset forfeiture, Representative James Sensenbrenner said, "It is hard to believe this can happen in America. The Government is seizing billions of dollars of cash and property from Americans, often without charging them with a crime." *Federal Asset Forfeiture: Uses and Reforms: Hearing Before the Subcomm. on Crime, Terrorism, Homeland Security, and Investigations of the H. Comm. On the Judiciary*, 114th Cong. 1, 3 (2015) (statement of Rep. James Sensenbrenner, Chairman, Subcomm. on Crime, Terrorism, Homeland Security, and Investigations). Representative Sensenbrenner then quoted former Representative Henry Hyde, who described civil asset forfeiture as "an unrelenting Government assault on property rights, fueled by a dangerous and emotional vigilante mentality that sanctions shredding the U.S. Constitution into meaningless confetti.'" *Id.*

Courts have also criticized asset forfeitures. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 81 (1993) (Thomas, J., concurring in part and dissenting in part) ("[L]ike the majority, I am disturbed by

the breadth of new civil forfeiture statutes such as 21 U.S.C. § 881(a)(7), which subjects to forfeiture all real property that is used, or intended to be used, in the commission, or even the facilitation, of a federal drug offense."); *United States v. $506,231 in U.S. Currency*, 125 F.3d 442, 454 (7th Cir. 1997) (stating that "the government's conduct in forfeiture cases leaves much to be desired" and noting that "[w]e are certainly not the first court" to be troubled by unchecked government use of forfeiture statutes); *United States v. All Assets of Statewide Auto Parts*, 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 due process that is buried in those statutes.").

Justice Thomas has even remarked on the facial Due Process deficiencies of forfeiture laws. Over twenty years ago, before forfeiture and its resulting abuses were as widespread as they are today, he wrote that people unaware of the "history of forfeiture laws and 200 years of this Court's precedent . . . might well assume that such a scheme is lawless—a violation of due process." *Bennis v. Michigan*, 516 U.S. 442, 454 (1996) (Thomas, J., concurring). He criticized the practice that allows

law enforcement to seize property and seek permanent forfeiture "all without so much as charging the owner with a criminal offense." *Leonard*, 137 S. Ct. at 847 (Thomas, J., dissenting). This allows forfeiture to "become more like a roulette wheel employed to raise revenue from innocent but hapless owners . . ." *Bennis*, 516 at 456 (Thomas, J., concurring).

Justice Thomas's concerns are not new. Nearly a century ago, the Supreme Court considered a forfeiture statute and said that it "seems to violate that justice which should be the foundation of the due process of law required by the Constitution." *J.W. Goldsmith, Jr.-Grant Co. v. United States*, 254 U.S. 505, 510 (1921). Nevertheless, the Court upheld the law based on such laws' historical prevalence and consequent presumption of legality. Given even the Supreme Court's longstanding due process concerns with asset forfeitures, it is even more important that due process rights be afforded to victims of asset forfeiture such as Mr. Serrano and others like him.

II. Due Process Requires A Prompt Post-Deprivation Hearing When The Government Seeks Forfeiture Of A Vehicle.

A. Relevant Supreme Court And Federal Court Precedent Generally Require A Pre-Deprivation Hearing, But Still Require A Post-Seizure Hearing For Seizure Of Vehicles.

The Due Process Clause of the Fifth Amendment guarantees that "[n]o person shall . . . be deprived of life, liberty or property, without due process of law." U.S. Const. amend. V. Due process generally requires that "individuals must receive notice and an opportunity to be heard before the Government deprives them of property." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 48-49 (1993); *see also Goss v. Lopez*, 419 U.S. 565, 579 (1975) (stating that, "at the very minimum" due process "requires some kind of hearing"); *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard"). Even a temporary, nonfinal deprivation requires that Due Process protections be provided. *Fuentes v. Shevin*, 407 U.S. 67, 84-85 (1972); *see Connecticut v. Doehr*, 501 U.S. 1, 15 (1991) (a later hearing "would not cure the temporary deprivation that an earlier hearing might have prevented").

The Supreme Court has been clear that Due Process requires a hearing when the government seizes a person's property, though the

timing of that hearing may vary depending on the type of property seized. The Supreme Court has held that a pre-deprivation hearing is required for most types of property. *See James Daniel Good Real Prop.*, 510 U.S. at 62 (absent exigent circumstances, "the Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture"); *Fuentes*, 407 U.S. at 80 (holding that state replevin statutes that permitted seizure of household chattel property prior to judgment and without a pre-deprivation opportunity to be heard violated Due Process); *Sniadidach v. Family Fin. Corp.*, 395 U.S. 337, 338-41 (1969) (finding due process violation where wages were garnished prejudgment without garnishee having opportunity for hearing). However, for moveable property, such as motor vehicles, a preseizure hearing is not required. *United States v. Von Neumann*, 474 U.S. 242, 251 (1986). In these limited set of circumstances, however, Due Process still requires a post-seizure hearing. *See id.* at 249 (considering what type of proceeding would "provide[] *the postseizure hearing required by due process* to protect Von Neumann's interest in the car") (emphasis added).

The courts that have considered this issue have agreed and found that a prompt post-seizure hearing is required when a vehicle is seized by the government. *See Krimstock v. Kelly*, 306 F.3d 40, 48 (2d Cir. 2002) (Sotomayor, J.) (calling seizure of vehicles "without any prompt hearing before a neutral fact-finder . . . constitutionally infirm"); *Smith v. City of Chicago*, 524 F.3d 834, 836 (7th Cir. 2008) ("A post-seizure hearing is, however, required."), *vacated and remanded sub nom.*, *Alvarez v. Smith*, 558 U.S. 87 (2009) (finding case was moot because the government returned property in the interim period between the Seventh Circuit's decision and the hearing of the case before the Supreme Court); *Brown v. District of Columbia*, 115 F. Supp. 3d 56, 60 (D.D.C. 2015) ("[T]he government must provide a prompt opportunity for owners of seized automobiles to challenge the reasonableness of the seizure . . ."); *Washington v. Marion Cnty. Prosecutor*, 264 F. Supp. 3d 957, 975 (S.D. Ind. 2017) (agreeing with *Krimstock*), *vacated due to new legislation enacted while appeal was pending,* 916 F.3d 676, 679 (7th Cir. 2019); *see also Neapolitan Navigation, Ltd. v. Tracor Marine Inc.*, 777 F.2d 1427, 1430 (11th Cir. 1985) ("Although the usual due process requirements of notice and a pre-seizure hearing are overcome by the necessity of keeping

a maritime vessel within the jurisdiction, there is no justification whatsoever for denying the vessel's owner a post-seizure hearing after the in rem arrest has taken place, and the vessel's presence is assured.").

B. The Factors In *Mathews v. Eldridge* Weigh Strongly In Favor Of A Prompt Post-Seizure Hearing.

The Supreme Court and lower courts have used the three-factor test from *Mathews v. Eldridge* to evaluate the sufficiency of the process afforded in post-seizure, pre-judgment civil forfeiture proceedings. *Krimstock*, 306 F.3d at 60 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *James Daniel Good Real Prop.*, 510 U.S. at 53)). The factors are: (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 334-35.

The District Court used the correct standard, the *Mathews* test, to determine what procedures were required, but its conclusions with respect to the *Mathews* factors were incorrect. Analysis of these factors

in the context of this case confirms the conclusions that other courts have drawn in similar cases—that a prompt post-seizure hearing is required by Due Process.

With respect to the first factor, the private interest affected, courts have recognized the significant private interest in the use of one's automobile. Automobiles are often central to Americans' lives and are crucial to their lives and livelihoods. *See Krimstock*, 306 F.3d at 61 (the "particular importance" of vehicles derive "from their use as a mode of transportation, and, for some, the means to earn a livelihood); *Coleman v. Watt*, 40 F.3d 255, 260-61 (8th Cir. 1994) ("Automobiles occupy a central place in the lives of most Americans, providing access to jobs, schools, and recreation as well as to the daily necessities of life."); *Stypmann v. City & County of San Francisco*, 557 F.2d 1338, 1342-43 (9th Cir. 1977) (finding a "substantial" interest in the "uninterrupted use of an automobile," upon which the owner's "ability to make a living" may depend); *Commonwealth v. 1997 Chevrolet & Contents Seized from Young*, 160 A.3d 153, 177 (Pa. 2017) (stating that "in our society" a vehicle is "often essential to one's life and livelihood"). The District Court agreed that the seizure of a vehicle "unquestionably implicates an

important private interest in being able to travel and go to work." ROA.485 (internal quotation marks omitted). This factor weighs heavily in favor of Mr. Serrano.

The District Court disagreed with Mr. Serrano, however, on the second *Mathews* factor, the risk of an erroneous deprivation. Courts have generally agreed that a trained police officer's initial assessment "can typically be expected to be accurate." *Krimstock*, 306 F.3d at 62-63. Nevertheless, the risk of erroneous deprivation that is posed to innocent owners is a substantial one. *Id.* at 63. This concern is particularly salient in the present case, as Mr. Serrano was deprived of possession of his automobile for nearly two years without ever being charged with any crime or violation. Additionally, even the eventual determination that Mr. Serrano, or another property owner, was an innocent owner "would not cure the temporary deprivation that an earlier hearing might have prevented." *James Daniel Good Real Prop.*, 510 U.S. at 56. Even a "temporary, nonfinal deprivation of property is nonetheless a 'deprivation'" in terms of the Due Process Clause. *Fuentes*, 407 U.S. at 85 (citing *Sniadidach v. Family Fin. Corp.*, 395 U.S. 337, 338-41 (1969) (discussing Fourteenth Amendment)). As noted, Mr. Serrano was never

charged with a crime. Such circumstances suggest a higher likelihood that a seizure is erroneous. It is likely that many others in a similar position have likewise not been charged with crimes but have been subject to erroneous seizures by CBP or other law enforcement. This considerable risk weighs heavily in favor of providing strong Due Process protections.

Further, the Supreme Court has said that stronger procedural safeguards are needed "where the Government has a direct pecuniary interest in the outcome of the proceeding." *James Daniel Good Real Prop.*, at 55-56; *see Harmelin v. Michigan*, 501 U.S. 957, 979 n.9 (1991) ("[I]t makes sense to scrutinize governmental action more closely when the State stands to benefit."); *Nielsen v. 2003 Honda Accord*, 845 N.W.2d 754, 761 (Minn. 2013) (Anderson, J., concurring) (calling a statutory forfeiture regime with a pecuniary incentive for law enforcement "inconsistent with historic American insistence on checking authority").

U.S. Customs and Border Protection (CBP) has such a pecuniary interest. CBP is a participant in the Treasury Forfeiture Fund, which is the receipt account for asset forfeitures for several federal government

agencies.[6] In 2017, the Treasury Forfeiture Fund "earned revenue"—a euphemistic term for seizing assets—of over $500 million. Treasury Forfeiture Fund, 2017 Report. The majority of the Fund's revenue is used for expenses or distributed to state and local law enforcement agencies, other federal agencies, or other entities. *Id.* at 30. According to a 2010 GAO report, one of the three primary goals of the U.S. Department of Justice's Assets Forfeiture Fund, another major forfeiture fund and the largest of the federal government's forfeiture funds, is "to produce revenues in support of future law enforcement investigations and related forfeiture activities." U.S. Gov't Accountability Office, GAO-12-736, Justice Assets Forfeiture Fund: Transparency of Balances and Controls Over Equitable Sharing Should Be Improved 6 (2012), http://www.gao.gov/assets/600/592349.pdf.

Moreover, law enforcement's pecuniary incentive to seize property using forfeiture has caused federal forfeitures to grow astronomically. In 1986, the year after the Assets Forfeiture Fund was created, it took in $93.7 million in proceeds from forfeited assets. *Id.* at 11. By 2008, the

[6] Treasury Forfeiture Fund, Accountability Report: Fiscal Year 2017, *available at* https://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Documents/TFF%20FY%202017%20Accountability%20Report%20Final%2012-13-17.pdf.

fund—for the first time in history—topped $1 billion in net assets, i.e., forfeiture proceeds free and clear of debt obligations and now available for use by law enforcement. From fiscal years 2000 to 2012, the fund's net assets grew from $536.5 million to $ 1.6 billion.[7] The Treasury Forfeiture Fund, which CBP participates in, is smaller but has seen similar growth in recent years. In considering the second *Mathews* factor, CBP's direct pecuniary incentive to conduct asset forfeitures should weigh heavily in favor of providing robust procedural safeguards.

The third and final *Mathews* factor is the Government's interest, including the burden that procedural safeguards would entail. In finding that this factor favored the Government, the District Court cited *United States v. One 1971 BMW 4-Door Sedan*, which noted the "substantial interest of the government in controlling the narcotics trade without being hampered by costly and substantially redundant administrative burdens." 652 F.2d 817, 821 (9th Cir. 1981). The relevance of this case, however, is minimal. Mr. Serrano was a legal gun owner with a handful of low-caliber bullets. He was not involved in the narcotics trade or any

[7] *Compare* U.S. Dep't of Justice, Assets Forfeiture Fund and Seized Asset Deposit Fund, Ann. Fin. Statements FY 2000, http://www.justice.gov/jmd/afp/01programaudit/auditreport92002.htm, *with* Ann. Fin. Statements FY 2012, http://www.justice.gov/oig/reports/2013/a1307.pdf.

illicit activity and was not charged with any crime. Ultimately, we ask this Court to conclude that the Government's interest in seizing the property of an innocent person is essentially non-existent.

Additionally, the Government can have no fear of an owner absconding with the vehicle as it is already in the Government's possession. *See Krimstock*, 306 F.3d at 65 (noting under *Mathews*' third factor that "there is no danger" that an already seized vehicle could abscond) (citing *James Daniel Good Real Prop.*, 510 U.S. at 56-57). A prompt post-seizure hearing would not change that.

The District Court also cites the potential burden on the agency, given the number of forfeitures at the border. ROA.487. However, the District Court acknowledged that current customs law provided the owners with the option to petition for remission of the forfeiture, have their cases submitted to the U.S. Attorney for independent evaluation, and receive ultimate judicial review to determine whether the forfeiture was just. ROA.486. Leaving aside the fact that Mr. Serrano timely petitioned for remission of his property and then was ignored for nearly two years, it is not clear how requiring a prompt hearing before a neutral

fact-finder would be more burdensome[8] than this multi-step process, provided, of course, that the Government actually followed the process, unlike what it did in this case. Moreover, several jurisdictions already allow for prompt post-seizure hearings,[9] and there is no evidence that the required hearings in these jurisdictions have posed an unfair administrative burden, particularly considering the important private interests at issue.

The District Court also cites with approval *City of Los Angeles v. David*, which held that a mere ***27-day delay*** in holding a hearing for a property owner whose car had already been returned was not constitutionally insufficient and that a quicker timeframe would burden the government. 538 U.S. 715, 718 (2003). There, Plaintiff paid $134.50 to get his car back and petitioned for the return of the money, arguing that the 27-day wait for a hearing violated Due Process. *See id.* at 716-18. The case is obviously distinguishable. David paid a relatively small sum (in comparison with the value of the seized property) and was reunited with his car immediately. Mr. Serrano, on the other hand, paid

[8] *See James Daniel Good Real Prop.*, 510 U.S. at 59 (noting that altering the timing of a required hearing "creates no significant administrative burden").
[9] *See, e.g.*, *Krimstock*, 306 F.3d at 44, *Brown*, 115 F. Supp. 3d at 60.

a much larger bond—over three thousand dollars—but his car was still not returned.[10] David argued that he suffered a constitutional violation because of a delay of less than one month. Mr. Serrano waited nearly two years and, unlike David, did not enjoy possession of his property during that period. Ultimately, to whatever extent the government would be burdened by providing prompt post-seizure hearings, that cost is minimal.

A review of the *Mathews* factors weighs strongly in favor of Mr. Serrano and Plaintiffs. Thus, a prompt post-seizure hearing should be required to protect the significant private interest at stake from the risk of an erroneous deprivation by a government agency that has a pecuniary interest in the seizures.

CONCLUSION

This Court should hold that Due Process requires a prompt post-deprivation hearing in this and similar cases. The need for these important constitutional protections is heightened by the government's increased use and abuse of asset forfeiture laws.

[10] ROA.11.

Dated: April 23, 2019

Respectfully submitted,

/s/ Cynthia E. Orr

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April 2019 an electronic copy of the foregoing Brief of *Amicus Curiae* was filed with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system, and that service will be accomplished by the appellate CM/ECF system.

/s/ Cynthia E. Orr
Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

1. This brief complies with type-volume limits because of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 4,142 words, as determined by the word-count function of Microsoft Office Word 365, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f) and Fifth Circuit Rule 32.2.

2. This brief document complies with the typeface and type style requirements because of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 365 in 14-point Century Schoolbook font.

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