No. 08-351

IN THE

Supreme Court of the United States

ANITA ALVAREZ, Cook County State's Attorney,

Petitioner,

—v.—

CHERMANE SMITH, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

AMICUS CURIAE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AND THE ACLU OF ILLINOIS IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI*[1]

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with more than 500,000 members dedicated to the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. The ACLU of Illinois is one of its statewide affiliates. *Amici* respectfully submit this brief to assist the Court in resolving an issue of longstanding concern to the ACLU—namely, the scope of due process rights in civil forfeiture proceedings.

STATEMENT OF THE CASE

This case was filed by several individuals whose property was seized by the state under the Illinois Drug Asset Forfeiture Procedure Act ("DAFPA"), 725 ILCS 150/1 *et seq.* Respondents do not challenge the State's authority to forfeit assets connected to a drug crime. Nor do they claim a right to a hearing prior to the seizure of their personal property. Under Illinois law, however, the forfeiture hearing provided by DAFPA need not occur until six months after the seizure of the property and often

[1] The parties have filed blanket letters of consent to all *amicus* briefs with the Clerk of the Court. Pursuant to Rule 37.6, counsel for *amici* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae,* their members or their counsel made a monetary contribution to this brief's preparation or submission.

does not occur for a year or more.[2] The only issue presented by this case is whether, given those delays, due process requires a preliminary hearing to determine whether the State should retain the seized property pending a final forfeiture decision.

Such lengthy delays represent a hardship for most property owners but, as the Seventh Circuit recognized below, the hardship is particularly severe for individuals whose automobiles are seized. Moreover, those delays are inescapable even for innocent owners—like Respondents Smith, Perez and Brunston—whose cars were allegedly used for drug-related offenses without their knowledge and consent. Although Illinois law entitles innocent owners to the return of their cars, 725 ILCS 150/8(A)(i), the return of their cars must await a final forfeiture hearing under DAFPA. In the meantime, Respondents and others like them are deprived of their principal means of transportation to work, school and other significant life obligations (such as medical appointments).

When Respondents began this action, they had already been waiting up to ten months for forfeiture proceedings and, they hoped, the return of their seized property. Despite this long delay, their due process complaint was dismissed by the district court

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[2] In theory, DAFPA provides for initiation of a forfeiture hearing for property worth less than $20,000 within 187 days. *See* Pet. App. 3a; 725 ILCS 150/5, 150/6. In fact, the government routinely avails itself of a variety of extensions provided by the statute, *see* 725 ILCS 150/10, 150/9(F), including a stay of the statutory deadlines when the property seized may be used for evidence. *See* 725 ILCS 150/10.

based on the then-controlling decision *Jones v. Takaki,* 38 F.3d 321 (7th Cir. 1994).

The Seventh Circuit reversed. After re-examining the reasoning of *Jones*, the Seventh Circuit concluded that DAFPA fails to satisfy the limitations that the Due Process Clause imposes on civil asset forfeiture. Pet. App. 10a. The court of appeals applied this Court's familiar due process test, articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and held that the government must provide property owners with a preliminary opportunity to be heard—at which they can seek the temporary return of their property subject to whatever conditions the court might deem equitable—prior to the full forfeiture hearing, which may not occur for months or years.

The court of appeals focused its analysis of the *Eldridge* factors most explicitly on the seizure of automobiles and remanded the case to the district court with instructions to "fashion appropriate procedural relief" in the form of a hearing that "should be prompt but need not be formal." Pet. App. 10a. In finding that DAFPA requires additional procedural protection and remanding the case to the district court, the court of appeals did not specify the contours or the time frame of this preliminary opportunity to be heard, stating only that due process requires "some sort of mechanism to test the validity of the retention of the property." *Id.* However, the decision does provide clear guidance to the district court about one issue: "We do not envision . . . duplicat[ing] the final forfeiture hearing." *Id.*

This Court granted *certiorari* to review the narrow question of whether the court of appeals properly selected the traditional *Eldridge* test in adjudicating the due process question or, alternatively, should have chosen the standard developed in *Barker v. Wingo,* 407 U.S. 514 (1972), for analyzing speedy trial rights. Weighing in as *amicus curiae* for Petitioners, the United States argues: (1) that the court of appeals erred because the new procedure its holding requires would needlessly replicate and unfairly expedite the ultimate forfeiture proceeding; (2) that the choice between *Eldridge* and *Barker* is irrelevant; and (3) that, whether *Eldridge* governs or not, due process challenges to a forfeiture statute may only be directed at the facts of individual applications of the statute.

Amici ACLU and ACLU of Illinois submit this brief in support of Respondents to address these three points.

SUMMARY OF ARGUMENT

This brief is narrowly directed, first, at correcting Petitioners' and the United States' mistaken assumption that a prompt preliminary hearing after property is seized would replicate the full forfeiture hearing that comes months or years later. Second, we explain that *Mathews v. Eldridge* provides the appropriate framework for analyzing whether a new interim procedure should be created for a category of claimants and that, contrary to the suggestion of the United States, the choice between *Eldridge* and other tests is a consequential one.

Finally, we address the United States' erroneous suggestion that the constitutionally required procedures for property owners in forfeiture proceedings can only be adjudicated on a case-by-case basis.

The court of appeals issued a broad, flexible directive to the district court, requiring it, in collaboration with the parties, to craft an interim proceeding that would allow appropriate claimants to seek the temporary return of their property, pending the final outcome of their forfeiture proceedings. This modest preliminary proceeding has almost nothing in common with the eventual adjudication of a forfeiture claim, and the addition of an interim step of this kind certainly cannot be characterized as merely moving forward the date of the full-fledged forfeiture proceedings that will determine the final status of the seized property.

Once it becomes clear that the envisioned preliminary hearing is distinct from the final adjudication of a forfeiture claim, *Eldridge* emerges as the appropriate test to use in deciding whether a forfeiture statute provides constitutionally adequate process to a category of property owners. By design, *Eldridge* adjudicates rights categorically. *Barker,* by contrast, adjudicates rights on an individualized basis, and is therefore unsuitable in this context. Under the *Eldridge* test, the interest of claimants—and certainly the interest of automobile owners who were the focus of the decision below—in having an interim proceeding to regain temporary use of their property outweighs the government interest in

retaining the property pending a final adjudication in all cases.

Finally, the United States raises a significant, but ultimately irrelevant, distinction between facial invalidation of DAFPA (which the United States believes the court of appeals ordered) and individualized adjudication of Respondents' claims (which the United States contends is the exclusive mode of analysis available to personal property owners claiming violations of due process). The remedy ordered by the court of appeals does not invalidate DAFPA, facially or otherwise. To the contrary, the remedial order is both deferential and flexible. Furthermore, as the United States itself recognizes, the choice between total facial invalidation and individualized relief is a false dichotomy. In many areas of constitutional adjudication, including forfeiture, this Court and lower courts have steered a middle course by ordering relief for a category of claimants whose rights have been abridged and whose constitutional claim does not depend on individual circumstances. At a minimum, this Court should follow that approach here and uphold the right of automobile owners to a preliminary retention hearing that they are now denied under DAFPA.

ARGUMENT

I. A PRELIMINARY OPPORTUNITY FOR PROPERTY OWNERS TO TEST THE RETENTION OF THEIR PROPERTY BY THE STATE WILL NOT REPLICATE THE SUBSEQUENT FORFEITURE PROCEEDING.

In finding that due process requires "some sort of mechanism to test the validity of the retention of [seized] property," the court of appeals directed the district court to fashion a preliminary hearing that does *not* "duplicate the final forfeiture hearing." Pet. App. 10a. Petitioners claim that inevitably the preliminary and final hearings will be duplicative and that "the requirement of an interim hearing does nothing more than move up the date of the civil forfeiture hearing." Pet'r Br. 47. The United States joins in this prediction. Br. of the United States [hereinafter "U.S. Br."] 8 n.1 ("[A]t the additional, preliminary hearings that Respondents seek, the State's burden (probable cause) would be precisely the same [as in the final forfeiture proceeding].").[3]

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[3] The *amicus* brief filed by several States in support of Petitioner likewise adopts the faulty assumption that the interim proceeding would require an "adversarial, 'probable cause to detain' hearing." Br. for the States of Illinois, Alabama, Arizona, *et al.* 1. With that faulty assumption, the States maintain that the most states' procedures fall "well short of what the Seventh Circuit's new due process rule seems to anticipate." *Id.* at 2. The States misinterpret the court of appeals ruling, imagining a kind of hearing that the court's own words do not support. As we demonstrate below, a modest interim procedure, allowing for use of the property during the pendency of protracted forfeiture proceedings, comports with

On the assumption that the preliminary and final hearings are substantively duplicative, the United States infers that Respondents' "due process challenge concerns only the *timing* of forfeiture proceedings." U.S. Br. 9 (emphasis in original). So characterized, it is far easier to argue that Respondents' claim would logically be controlled by this Court's precedents about the timing of forfeiture proceedings.

However, the United States' (and Petitioners') premise is incorrect: The interim measures envisioned in the present case (and utilized already in the federal system and a number of states) do *not* duplicate final forfeiture proceedings, and therefore this Court's precedents on the timing of final forfeiture proceedings do not control the analysis in the present matter. The district court, in following the appeals court's direction that, "with the help of the parties," it "should fashion appropriate procedural relief," Pet. App. 10a, could implement any of a number of interim measures, analogous to many such measures already in place under federal law and the laws of various states, that do not replicate the ultimate forfeiture proceeding.

The differences between such interim measures and the final forfeiture adjudication under Illinois law are significant. A full forfeiture hearing

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the practice of most states. *See infra* note 5. Indeed, it is not clear that *any* other state (aside from Illinois) has a forfeiture statute under which claimants wait such a protracted period with no opportunity to request the continued use of their property.

under DAFPA includes a government forfeiture complaint, answers from the property owner and any interest holders, and an adversarial hearing with evidentiary burden-shifting as to probable cause and exemptions. 725 ILCS 150/9. By contrast, the preliminary proceeding foreseen by the court of appeals "need not be formal." Pet. App. 10a. As the court explained, one appropriate consideration at a preliminary proceeding would be "to see whether a bond or an order can be fashioned to allow the legitimate use of the property while the forfeiture proceeding is pending." *Id.* This interim measure need not call for any finding on the existence of probable cause *vel non* (as Petitioners and the United States speculate would be the case, *see* Pet'r Br. 47-48; U.S. Br. 8 n.1), nor force the government to show its hand as to its upcoming criminal case (as the United States suggests, U.S. Br. 15). *See* Pet. App. 10a ("We do not envision lengthy evidentiary battles[.]"). Nor did the court of appeals set any specific time frame for the interim proceedings other than to require that it be "prompt." *Id.* Thus, far from requiring an adjudication of the ultimate merits of the forfeiture action, the interim step envisioned by the court of appeals would merely provide a property owner the opportunity to make a case for continued use of her property while the full-fledged forfeiture proceeding unfolds.[4]

[4] The United States' and Petitioners' misperceptions about the scope of the interim proceeding may arise from the appeals court's statement that "plaintiffs . . . claim[] that . . . due process requires that they be given a prompt, postseizure, *probable cause* hearing." Pet. App. 2a (emphasis added).

Models for the type of interim remedy the district court could design are in abundance throughout federal and state law. *See, e.g.,* U.S. Br. 30-32 (discussing interim remedies under federal law). Under federal civil forfeiture practice, for example, claimants have several interim means of securing access to their property. The federal hardship provision allows that a "claimant . . . is entitled to immediate release of seized property if . . . the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless." 18 U.S.C. § 983(f)(1)(C). Federal Rule of Criminal Procedure 41(g) creates a bond procedure whereby "the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings." Far from duplicating the eventual

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However, as noted above, nothing in the relief ordered by the court envisions a probable cause hearing. Further, the court described the federal procedures providing for "release of [an] automobile prior to the actual forfeiture hearing" as "relief similar to that which the plaintiffs in this case seek." *Id.* at 7a. The court continued: "It is hard to see any reason why an automobile, not needed as evidence, should not be released with a bond or an order forbidding its disposal." *Id.* at 8a. Again, the court made no suggestion that the interim hearing will involve any evaluation of the merits of the government's case. On balance, it appears that, regardless of the scope of relief originally sought by plaintiffs, the court of appeals clearly envisioned a modest, limited interim procedure focused on temporary return of property subject to appropriate conditions, not a probable cause hearing.

forfeiture hearing, these measures merely allow an aggrieved property owner the opportunity to make an equitable showing that temporary return of her property is fair, appropriate and not unduly harmful to the government's interest. Approximately half of all states likewise provide for similar interim proceedings that do not adjudicate the merits of the ultimate forfeiture action.[5]

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[5] A state-by-state review of forfeiture procedures debunks the fears of the State *amici* that a ruling for Respondents here would place many state forfeiture statutes in constitutional jeopardy. *See* Br. for the States of Illinois, Alabama, Arizona, *et al.* 3. The following 23 states provide for a prompt opportunity for a property owner (or, more narrowly, an automobile owner) to seek temporary return of property, subject to appropriate conditions: Alabama (automobiles only), Alaska, Arizona, California, Connecticut (stolen property only), Delaware, Florida, Georgia, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah and Virginia. The following 16 states explicitly require or provide that the government institute forfeiture proceedings well in advance of Illinois' 187 days: Arkansas, Colorado, Idaho, Indiana (timeline begins upon property demand by owner), Maryland, Mississippi, Montana, Nevada, New Hampshire, New Mexico, New York (timeline begins upon property demand by owner), South Dakota, Vermont, Washington, West Virginia and Wisconsin. In the following 5 states, although the law does not set forth a specific number of days for the government to institute forfeiture proceedings, the relevant statute requires that it must be done "promptly": Massachusetts, Michigan, North Dakota, Tennessee and Wyoming. In 2 states, Hawaii and Rhode Island, claimants can file mitigation or remission petitions. The attached table cites the relevant statutes for each state and briefly describes the procedures in each. *See* Appendix A.

Access to these intermediate forms of relief is particularly important for innocent owners of automobiles and would bring Illinois law into line with the practice of the federal government and other states. When the automobiles of innocent owners like Respondents Smith, Perez and Brunston are seized under DAFPA, they may wait months or even years before they are able to regain possession of their property. During that time, many innocent automobile owners who depend on the use of their vehicles to maintain their employment will face significant—and completely undeserved—hardship. As the court of appeals explained, "[t]he hardship posed by the loss of one's means of transportation, even in a city . . . with a well-developed mass transportation system, is hard to calculate." Pet. App. 8a. The reason is self-evident. "Our society is . . . highly dependent on the automobile" and losing it "can result in missed doctor's appointments, missed school, and perhaps most significant of all, loss of employment." *Id.*

Other courts have recognized the unique importance of automobiles as well. "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." *Coleman v. Watt,* 40 F.3d 255, 260-61 (8th Cir. 1994); *see also Krimstock v. Kelly*, 306 F.3d 40, 61 (2d Cir. 2002) ("The particular importance of motor vehicles derives from their use as . . . for some, the means to earn a livelihood."); *Stypmann v. 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). By allowing claimants to put forward such factors as their innocent ownership, the hardship they face, and their ability to post a bond, an interim hearing under DAFPA would give automobile owners an opportunity to retain the use of their vehicles, subject to conditions a judge may deem appropriate, while the ultimate forfeiture proceeding is pending.

Petitioners' and the United States' mistaken belief that a preliminary opportunity to be heard would serve simply to "move up the date of the civil forfeiture hearing," leads them to the equally mistaken conclusion that *United States v. $8,850 in U.S. Currency,* 461 U.S. 555 (1983), is controlling in the present case. Pet'r Br. 47; *see also* U.S. Br. 8, n.1 (claiming that the government's burden of proof at a preliminary hearing "would be precisely the same" as it is at the forfeiture hearing). In *$8,850,* the Court held that claimants must prove specific individualized facts, particular to the circumstances of their cases, in order to challenge the overall time the government takes to file forfeiture proceedings. *See* 461 U.S. at 555-56 (citing *Barker v. Wingo,* 407 U.S. 514 (1972)). The claimant in *$8,850* did not ask for creation of an intermediate hearing to allow temporary use of her property; indeed, as the United States recognizes, for the claimant in *$8,850* "several interim measures [were already] available." U.S. Br. 30. Rather, the claimant in *$8,850* urged the more rapid conclusion of the overall forfeiture process in her particular case. As the Court remarked several

times, "[t]he due process issue presented here is a narrow one." *$8,850*, 461 U.S. at 562.

If the preliminary hearing in the present case were merely an attempt to speed up the forfeiture hearing, one could more readily appreciate the argument that *$8,850* should guide the Court's decision here. However, as previously discussed, there is ample space for the district court to fashion an interim proceeding that is entirely distinct from the full forfeiture hearing. As the Second Circuit explained in reaching a holding similar to the Seventh Circuit's in the instant matter, *$8,850* is not controlling in this context because Respondents'

> claim does not concern the speed with which civil forfeiture proceedings themselves are instituted or conducted. Instead, [claimants] seek a prompt post-seizure opportunity to challenge the legitimacy of the [government's] retention of the vehicles while those proceedings are conducted. . . . The Constitution [] distinguishes between the need for prompt review of the propriety of continued government custody, on the one hand, and delays in rendering final judgment, on the other.

Krimstock, 306 F.3d at 68. Thus, Petitioners' assertion that "any challenge to the length of the delay in commencing the forfeiture hearing should be analyzed under . . . *Barker,*" as it was in *$8,850*, Pet'r Br. 26, fails to justify the use of *Barker* in this case because the question here is not about the delay in the existing forfeiture proceeding. Rather, this case

is about the necessity of adding a new procedure—a preliminary opportunity for owners to test the validity of the government's continued possession of their property.

II. IN EVALUATING THE DUE PROCESS RIGHT TO CREATION OF A NEW PROCEDURE, COURTS RELY ON THE CATEGORICAL ANALYSIS OF *ELDRIDGE*, NOT ON THE HIGHLY INDIVIDUALIZED ANALYSIS OF *BARKER*.

Given that the preliminary hearing envisioned by the court of appeals is a form of relief that would be generically applicable to many claimants (either broadly for all claimants or for certain categories of claimants) and is unconnected to the final disposition of any particular forfeiture proceeding, the Court should adopt a mode of analysis that allows a general weighing of interests rather than a narrow test that examines only the circumstances of particular individuals. Put another way, this Court should ask questions at the same level of generality as the answer it is called upon to give. *Mathews v. Eldridge* provides the structure for this more general analysis, insofar as it has long guided judicial evaluation of the need for creating procedures for a broad category of claims. By contrast, the *Barker* test requires the examination of an array of highly individualized facts unique to a particular litigant in deciding whether that litigant deserves speedier relief under existing procedures.

The Court has consistently turned to the *Eldridge* test when assessing the constitutional

adequacy of a given procedure for a broad category of claimants and, in particular, when assessing whether a procedural framework provides an adequate opportunity for a category of claimants to be heard in defense of their protected interests. Finally, the United States' attempt to sidestep the *Eldridge-Barker* question by arguing that the two tests collapse into a single one is wholly unpersuasive: not only are the differences between the two tests apparent on their face, but the United States' effort to merge them yields an entirely new test that resembles neither of the originals and merely provides a convenient vehicle for near-total deference to the status quo.

A. The Court Should Use the Eldridge Test Because It Involves Analysis at the Appropriate Level of Generality; By Contrast, Barker Is an Ad Hoc Test That Requires Analysis of the Individual Circumstances of Particular Claimants.

The decision to create a new interim procedure under DAFPA does not turn on the facts of individual cases. Accordingly, the test employed to answer the question in this case should be one that turns on an analysis applicable to claimants (or categories of claimants) generally, not one that turns on the seizure of property from any particular property owner. That is, the answer must be ascertained using a test that operates at the same level of generality as the question itself.

The *Eldridge* test operates at this level of generality, "weighing [the] fiscal and administrative burdens against the interests of a particular *category*

of claimants." *Eldridge,* 424 U.S. at 348 (emphasis added). The Court's application of the test in *Eldridge* itself illustrates this generic mode of analysis. For example, the first prong of the test weighs "the private interest that will be affected by the official action." *Id.* at 335. In *Eldridge*, the Court did not ask or reason about George Eldridge's individual interest in not losing his Social Security disability benefits before he had an opportunity to be heard. Rather, the Court discussed the generalized interests of Social Security disability benefit recipients as a category: "In view of the . . . typically modest resources of the family unit of the physically disabled worker, the hardship imposed upon the erroneously terminated disability recipient may be significant." *Id.* at 342. As in *Eldridge*, the set of private interests implicated by this case are not unique to these Respondents but are instead shared among a larger, well-defined group: all individuals whose personal property is seized under Illinois law (or, if this Court prefers to rule more narrowly, all individuals whose cars are seized under Illinois law). The *Eldridge* test properly frames an analysis of private interests that apply equally among a group of claimants.

By sharp contrast, the *Barker* test requires a court to scrutinize the individualized facts and idiosyncratic circumstances presented in a particular case. In *Barker v. Wingo,* 407 U.S. 514 (1972), the Court set out a list of criteria that judges should use in deciding whether an accused's Sixth Amendment Speedy Trial right has been violated, with each claim examined on an individual case-by-case basis.

Justice Powell explained that the *Barker* "test necessarily compels courts to approach speedy trial cases on an *ad hoc* basis. We can do little more than identify some of the factors which courts should assess in determining whether a *particular* defendant has been deprived of his right." *Id.* at 530 (emphasis added); *see also Vermont v. Brillon*, 129 S. Ct. 1283, 1291 (2009) ("*Barker*'s formulation 'necessarily compels courts to approach speedy trial cases on an *ad hoc* basis.'" (quoting *Barker*, 407 U.S. at 530)).

This *ad hoc* test focuses on four factors: the length of the delay between arrest and trial, the reason for the delay, the defendant's assertion of his or her right, and prejudice to the defendant resulting from the delay. *Barker,* 407 U.S. at 530. None of these factors applies generically to test the nature of private or governmental interests in general; rather, these factors were designed and used in *Barker* for a fact-specific examination of the record. Thus, the Court observed that "[o]nly seven months" of the five-year delay between the arrest and trial of Willie Mae Barker "can be attributed to a strong excuse, the illness of the ex[-]sheriff who was in charge of the investigation." *Id.* at 533-34.

The Court has extended its use of the *Barker* test to *ad hoc* forfeiture challenges, but only where the claimant objected to the length of the overall forfeiture proceeding in his individual case. *See United States v. $8,850 in U.S. Currency*, 461 U.S. 555 (1983); *United States v. Von Neumann,* 474 U.S. 242 (1986). In both *$8,850* and *Von Neumann,* individual claimants challenged a forfeiture process

as it unfolded in their particular situations, just as a criminal defendant raising a speedy trial claim challenges the propriety of particular trial delays in that defendant's case. When considering the reason for the government's delay in *$8,850*, the Court explained that there was "both a pending petition for mitigation or remission and a pending criminal proceeding," and "[t]his investigation required responses to inquires to state, federal and Canadian law enforcement officers." *$8,850*, 461 U.S. at 577. "[T]hese elements," the Court wrote, "are guides in balancing the interests of the claimant and the Government to assess whether the basic due process requirement of fairness has been satisfied *in a particular case*." *Id.* at 565 (emphasis added). Moreover, in evaluating the claimant's assertion of her right to bring the forfeiture proceeding to a definitive conclusion—and enumerating the various types of interim relief she could have pursued under the federal law—the Court highlighted the fact that "[the claimant] did none of these things and only occasionally inquired about the result of the petition for remission." *Id.* at 569.

The *Barker* test simply does not apply when a case turns on generalized considerations applicable to a whole category of claimants; that is, when individual circumstances are immaterial to the analysis. The Court used the *Barker* test in *$8,850* and *Von Neumann* because those were *ad hoc* challenges, not because they were forfeiture cases. At no time has the Court suggested that the *Barker* test is appropriate in all forfeiture cases. On the contrary: this Court used *Eldridge*, not *Barker*, in

United States v. James Daniel Good Real Property, 510 U.S. 43 (1993), a forfeiture case more recent than both *$8,850* and *Von Neumann*. As discussed more fully below, *see infra* Part III*, Good Real Property* held that, under the analysis prescribed by *Eldridge*, due process requires that owners of real property receive notice and a hearing before their property is seized for forfeiture proceedings. *Id.* at 46, 53-59. Thus, *Good Real Property* demonstrates that *$8,850* and *Von Neumann* do not require the use of *Barker* in all forfeiture cases, just forfeiture cases about the timing of proceedings in a particular individual's case. The issue in this case is not whether proceedings moved quickly enough in the individual Respondents' cases, but rather whether Illinois' present set of forfeiture procedures is constitutionally adequate as a general matter for *all* owners of personal property, or at least all automobile owners, in the state. Described by the Court at its inception as "*ad hoc*," the *Barker* test is wholly ill-suited to adjudicating due process rights on a categorical basis, as this case requires.

B. Eldridge Is the Standard Test This Court Uses To Determine Whether a Statute Provides Individuals with an Adequate Opportunity To Be Heard.

"The fundamental requisite of due process of law is the opportunity to be heard." *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 466 (2000) (citations and internal quotation marks omitted). This case raises the question whether DAFPA provides an adequate opportunity to be heard when a property owner (especially an automobile owner) seeks to retain use

of her property during the pendency of the forfeiture proceeding. *Eldridge* is the standard test that this Court uses to answer such questions. *See, e.g., Hamdi v. Rumsfeld,* 542 U.S. 507 (2004); *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993); *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532 (1985).

Although the *Eldridge* test originated in the administrative law context, this Court has since used it in a wide variety of cases involving the due process requirement of an adequate opportunity to be heard, from the right of public employees to be heard regarding their termination, *see Loudermill*, 470 U.S. at 535 (using *Eldridge* to decide "what pretermination process must be accorded a public employee who can be discharged only for cause"), to "the question of what process is constitutionally due to a citizen who disputes his enemy-combatant status" where the citizen argued "that he [was] owed a meaningful and timely hearing." *Hamdi*, 542 U.S. at 524 (plurality opinion). As demonstrated by *Good Real Property*, a property owner's opportunity to seek return of her property during the pendency of forfeiture proceedings falls comfortably within this range of applications of *Eldridge*. *See* 510 U.S. at 53-59. On only rare occasions has the Court explicitly declined to use *Eldridge* in due process cases, and none of these cases involved a due process right to be heard of the sort involved in this case.[6]

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[6] *See Schaffer ex rel. Schaffer v. Weast,* 546 U.S. 49 (2005) (declining to use *Eldridge* and finding no constitutional issue regarding the burden of persuasion in a dispute over the appropriateness of an individualized education program under

Because *Eldridge* functions at the appropriate level of generality, and because this Court routinely uses it in due process cases concerning the right to be heard, it is the proper test for adjudicating whether DAFPA adequately protects property owners' due process rights during the pendency of forfeiture proceedings.

C. Contrary to the Position of the United States, the Choice Between Eldridge and Barker Is Consequential to the Due Process Analysis.

The United States devotes much of its brief to urging this Court that the question on which it granted review—*i.e.*, whether *Eldridge* or *Barker* is the appropriate test—is an irrelevant one, because, according to the United States, the analysis under either test is the same. *See, e.g.*, U.S. Br. 7-9.

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the Individuals with Disabilities in Education Act); *Dusenbery v. United States,* 534 U.S. 161 (2002) (declining to use *Eldridge* to determine the adequacy of notice provided to a federal inmate whose property was being forfeited); *Weiss v. United States,* 510 U.S. 163 (1994) (declining to use *Eldridge* in deciding whether the lack of a fixed term of office for military judges violated due process); *Medina v. California,* 505 U.S. 437 (1992) (declining to use *Eldridge* to rule on the validity of an evidentiary burden imposed by a state criminal procedural rule); *Atkins v. Parker,* 472 U.S. 115 (1985) (the Court did not use *Eldridge* to determine the adequacy of notice provided to food stamp recipients about a change in entitlement); *Black v. Romano,* 471 U.S. 606 (1985) (the Court did not use *Eldridge* in deciding whether a sentencing court must indicate that it has considered alternatives to incarceration before revoking probation).

However, even a cursory comparison between the two tests reveals that the implicit premise underlying the question presented—namely, that the choice of test is a consequential one—is correct. Moreover, the United States' attempt to collapse the two opposing tests into one produces a third standard that is a far cry from either the *Eldridge* or *Barker* test, and all but entirely squeezes out consideration of private property interests.

The time-honored *Eldridge* test for analyzing due process claims requires a balancing of three generalized factors: the private interest, the government interest, and a comparison of the degree to which the existing procedures and any additional procedures protect against erroneous deprivation of the individual's interest. *Eldridge*, 424 U.S. at 335. By contrast, as discussed in more detail in the previous section, the *Barker* test analyzes only the particular circumstances of a specific case: the length of the delay in one person's case, the reason for that particular delay, whether that individual has asserted his or her right, and any prejudice to that individual resulting from the delay. *See Barker*, 407 U.S. at 530. The contrast between the two tests could not be clearer: one evaluates and compares private and government interests at a systemic level; the other considers the idiosyncratic facts of particular cases.

In attempting to collapse these two distinct tests into a single one, the United States actually creates a third test that resembles neither *Eldridge* nor *Barker*. Instead, the United States asks this Court to focus primarily—and deferentially—on the

interest of the government in the status quo, with minimal consideration of the shared interest of a category of individuals who are adversely affected by a paucity of process. *See, e.g.*, U.S. Br. 9 (proposing that this Court follow cases the United States characterizes as having "focused principally on the strength of the governmental interests at stake"). More specifically, according to the United States, this Court should consider only whether the time limits provided "are justified on their face by valid government interests." *Id.* at 19. This standard's extraordinary deference to the status quo is apparent both from the wording of the test, which asks for no more than a surface ("on their face") examination of the governmental interests justifying current procedures, and from the United States' application of its newly-minted standard, an application in which the United States believes that an unadorned recitation of government interests suffices to justify DAFPA, even though the Illinois law provides far less process than the corresponding federal statute. *See, e.g., id.* at 20 (arguing that "[t]he government has valid interests in identifying and contacting potential claimants before initiating a judicial proceeding"); *id.* at 24 (arguing that "[t]he government has valid interests in coordinating forfeiture proceedings with related matters"); *id.* at 26 (arguing that "[t]he government has valid interests in maintaining interim custody of personal property"). The United States makes a brief gesture toward acknowledging property owners' interest in their automobiles, but then dismisses this interest as "irrelevant." *Id.* at 27. Thus, under the novel standard the United States proposes, courts would

skip two of the three *Eldridge* factors in evaluating the need for an interim proceeding at which claimants could seek temporary custody of their property: the court would merely identify valid government interests, without balancing the government's interests against private interests or considering the efficacy of the interim procedures in preventing erroneous deprivations of property.

The United States' purported amalgamation of the *Eldridge* and *Barker* tests invites this Court to disregard the legitimate and weighty interests of private property owners. The fact that the attempted merging of the two tests produces a third creature that is neither fish nor fowl only underscores the important differences between the two tests and the importance of choosing correctly between them, as this Court implicitly acknowledged in its grant of *certiorari*. Because *Eldridge* is the test better suited to due process claims of a categorical nature, and because *Eldridge* is the standard and long-standing test for due process claims regarding the right to be heard, the appeals court's decision to apply the *Eldridge* test was correct. As Respondents' brief makes clear (and we do not repeat here), the application of all of the *Eldridge* factors supports the ruling below that some sort of interim hearing is appropriate, at least for some claimants (who can be defined categorically). *See also* Pet. App. 4a-9a (appeals court's application of the *Eldridge* factors); *Krimstock v. Kelly*, 306 F.3d 40, 67 (2d Cir. 2002) (same).

III. DAFPA'S CONSTITUTIONAL SUFFICIENCY CAN BE ADJUDICATED AS-APPLIED TO A CLEARLY DEFINED CATEGORY OF SEIZURES.

The United States raises a potentially distracting, but ultimately inapposite, distinction between the purported facial invalidation of DAFPA for its lack of a preliminary hearing procedure and the government's preferred form of relief—narrow, case-specific relief—directed at individual litigants who seek a preliminary hearing. *See* U.S. Br. 6 (objecting to holding that "the Illinois DAFPA procedure is facially invalid," and arguing that the question of whether a forfeiture statute provides constitutionally adequate procedures to property owners "turns on the facts of a particular case").

Contrary to the United States' characterization, the appeals court's requirement of "some sort of mechanism to test the validity of the retention of property," Pet. App. 10a, falls considerably short of facial invalidation of the statute. It envisions a modest procedure, quite possibly for only some categories of claimants, while leaving in place all of the mechanisms and timelines of the pre-existing forfeiture statute. Even if one were to assume the worst—*i.e.*, predict that the district court on remand would somehow facially invalidate the statute—and if this Court were to believe that such a remedy reaches too far, it does not necessarily follow that the only alternative is to evaluate, case-by-case, whether particular litigants are entitled to a preliminary hearing. The United States' invocation of these two poles—facial

invalidation and individual adjudication—erroneously suggests that these are the only options. They are not.

In rejecting facial invalidation, the United States implies that individualized decisions are the only alternative. This in turn pushes powerfully toward using *Barker*, a test designed to weigh individual factors. But there is another approach—one that the United States briefly acknowledges to be a theoretical option—that is better suited to this case: to consider categories of claims, particularly the category of automobile owners, who have a set of interests that is distinct from those of other property owners yet common among automobile-owner claimants, in the temporary return of their property. *See* U.S. Br. at 27, 29 (acknowledging the possibility of "a categorical rule affording greater protection to automobiles," to account for the fact that the seizure of other types of personal property "may be a less severe hardship than the seizure of an automobile"). A categorical analysis of this type is a practical way for resolving the issue before this Court, as it preserves the legislature's work by respecting its overall intent while curing constitutional defects in a narrow, targeted manner. The structure of this approach has been used already in forfeiture cases, and it is a common method of constitutional adjudication in many contexts.

This Court's due process jurisprudence concerning property owners recognizes that it would be inappropriate to restrict the evaluation of property owners' rights to individualized analyses in all instances. The Court's decision in *United States*

v. James Daniel Good Real Property, 510 U.S. 43 (1993)—handed down ten years after *$8,850*—illustrates an appropriate occasion for imposing a categorical rule in a forfeiture case, rather than mimicking the individualized analysis of *$8,850*. In *Good Real Property,* a homeowner alleged that the government violated his due process rights when it seized his home without first providing him with notice and a hearing. Even though the claimant "raise[d] an as applied challenge to the statute," the Court recognized the applicability of its analysis to a broader group. *Id.* at 62. The Court categorically "h[e]ld that the seizure of real property . . . is not one of those extraordinary instances that justify the postponement of notice and hearing." *Id.* Specifying the scope of its holding, the Court explained that "[t]he constitutional limitations we enforce in this case apply to real property in general, not simply to residences," *id.* at 61, and *a fortiori* not simply to the residence of James Daniel Good. If the United States were correct that this Court only considers due process challenges to forfeiture on a case-by-case basis, then the holding should have applied only to the individual case of Mr. Good, not to the category of all real property owners. Instead, where the Court was called upon to answer a question of general application concerning procedures of a forfeiture statute, it did so in a manner that gave clear, categorical guidance to government actors who then had to administer that statute.

Good Real Property involved the seizure and forfeiture of real property; Respondents' case involves the seizure and forfeiture of personal

property. Concededly, due process requirements in the forfeiture context differ for real versus personal property, most significantly in that the government can seize personal property without *prior* notice or a hearing. *See Calero-Toledo v. Pearson Yacht Leasing Co.,* 416 U.S. 663 (1974). But the scope and structure of this Court's analysis of a due process claim—*i.e.*, the evaluation of whether procedures are adequate for a category of claimants, as opposed to only for individuals—is unrelated to the question of whether owners of different types of property are entitled to notice or a hearing at a different point in the forfeiture process. There is nothing in the Court's jurisprudence to suggest that the constitutionality of a personal property forfeiture statute can only be considered on specific facts, while the constitutionality of a real property forfeiture statute can be considered more broadly, as the Court did in *Good Real Property*.

This Court's recent holding in *Jones v. Flowers*, 547 U.S. 220 (2006), provides another example of a case in which a due process challenge to a government seizure was considered and resolved on a categorical basis. In *Jones*, an individual property owner challenged the adequacy of notice under Arkansas law prior to the tax sale of his property. *Id.* at 224. When Jones was no longer living in the house, the state twice sent notice by certified mail that his house would be subject to a tax sale if he failed to pay delinquent property taxes. *Id.* at 223-24. Even though Jones' estranged wife continued to live in the house, the certified mail was returned unclaimed both times and Jones did not actually

learn of the tax sale until an unlawful detainer was served on his daughter, who also continued to live in the house. *Id.* In light of these facts, the Court could have rendered a narrow holding regarding the particular circumstances of Jones' case, focusing for instance on such highly individualized factors as the continued residency of his ex-wife and daughter in the house. Instead, the Court decreed a categorical rule: "We hold that when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." *Id.* at 225. The Court reached this conclusion based on general observations, applicable to any property owner for whom notice is returned unclaimed. *See, e.g., id.* at 230 ("[W]hen a letter is returned by the post office, the sender will ordinarily attempt to resend it, if it is practicable to do so."); *id.* ("[I]f a feature of the State's chosen procedure is that it promptly provides additional information to the government about the effectiveness of notice, it does not contravene the *ex ante* principle to consider what the government does with that information in assessing the adequacy of the chosen procedure."). As a result of the *Jones* ruling, Arkansas now provides a modified notice procedure for the category of property owners whose notice by certified mail is returned unclaimed. Ark. Code Ann. § 26-37-301.

This Court's categorical approach has not been limited to property cases. In other contexts, as well, the Court has recognized that statutes can be unconstitutional as applied to a well-defined category

of persons or behaviors and, on that basis, has crafted appropriate categorical relief. *See, e.g.*, *Tennessee v. Garner,* 471 U.S. 1, 11-12 (1985) (holding that a state statute authorizing the use of all "necessary means" to effect an arrest when the suspect flees or forcibly resists was unconstitutional "insofar as it authorizes the use of deadly force against [all] fleeing suspect[s]," but that such force was appropriate "if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm . . . . As applied in such circumstances, the Tennessee statute would pass constitutional muster."); *Little v. Streater,* 452 U.S. 1, 3 (1981) (applying the *Eldridge* test to determine that a statute requiring litigants to pay for their own paternity tests violated due process only "when applied to deny [paternity] tests to indigent defendants" but upholding the statute as to non-indigent defendants); *United States v. Grace,* 461 U.S. 171, 183 (1983) (striking down application of a statute banning certain forms of speech on Supreme Court premises as "unconstitutional as-applied to . . . sidewalks" but upholding the statute as to the rest of the premises).[7]

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[7] In *United States v. National Treasury Employees Union*, 513 U.S. 454 (1995), the Court declined to rule categorically, explaining that such a remedy is inappropriate when "Congress has sent inconsistent signals as to where the new [categorical] line or lines should be drawn." *Id.* at 479 n. 26. This case does not raise similar concerns. Far from sending inconsistent signals, the Illinois legislature itself has set the stage for this Court to identify automobiles as a well-defined category of

Consistent with *Good Real Property* and *Jones* in the forfeiture context and numerous examples throughout other areas of constitutional law in which the Court reasoned and ruled categorically—and therefore more generically than the individualized facts and circumstances of the claimant—this Court need not confine its consideration of DAFPA's constitutionality to the facts of the individual seizures and forfeitures involved in the instant case.

DAFPA's application. The statute requires that "[w]hen the property seized for forfeiture is a vehicle, the law enforcement agency seizing the property shall immediately notify the Secretary of State that forfeiture proceedings are pending regarding such vehicle." 725 ILCS 150/5. Under Illinois law, the Secretary of State is responsible for vehicle registration. 625 ILCS 5/2-101. DAFPA's unique notice provision appears to rest on the fact that the state can more easily ascertain ownership of vehicles, as compared to other property, through the state's vehicle registration system, but this special notice provision does not expedite the forfeiture process for vehicles under the current statute (and thus does not obviate the need for relief in this case). By imposing a categorically different notification requirement for vehicle seizures as opposed to all other seizures, the Illinois legislature demonstrated that it views vehicle seizures as a distinct category to which different requirements can apply.

CONCLUSION

For the reasons stated herein, the judgment of the Seventh Circuit should be affirmed.

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APPENDIX

Appendix A:

Statutory Civil Forfeiture Provisions

Alabama: Ala. Code § 28-4-287: A claimant may post bond to recover a seized vehicle pending the outcome of the forfeiture proceeding.

Alaska: Alaska Stat. § 17.30.118(a): A claimant may petition for release of seized property at any time.

Arizona: Ariz. Rev. Stat. Ann. § 13-4306(G): An owner of property seized for forfeiture may obtain the release of the seized property by posting bond.

Arkansas: Ark. Code Ann. §§ 5-64-505(f)(2)(C), (f)(4), (g)(2)(A): The government must initiate forfeiture proceeding within sixty-five days of seizure.

California: Cal. Health & Safety Code § 11488.4(g): Any person (other than a defendant) claiming an interest in seized property can move for the return of the property.

Colorado: Colo. Rev. Stat. Ann. § 16-13-505(2)(a): The government must initiate forfeiture proceedings within sixty days of seizure.

Connecticut: Conn. Gen. Stat. Ann. § 54-36a(2): If the seized property is stolen, the government must notify the owner within ten days of the seizure; notification must include a

form to request the return of the property, a request that must be ruled on within thirty days of filing.

Delaware: Del. Super. Ct. R. Civ. Proc. § 71.3(c): An interest holder may seek the return of property seized by the government by filing a civil petition within forty-five days of receiving notice of the seizure.

Florida: Fla. Stat. Ann. § 932.703(2)(a): Within fifteen days of receiving notice of a seizure, an interest holder has a right to request an adversarial preliminary hearing to determine whether probable cause exists to believe that property was properly seized so that the government may retain it pending the outcome of the final forfeiture proceeding; the government must hold that hearing within ten days of receiving the claimant's request, or as soon as practicable thereafter.

Georgia: Ga. Code Ann. § 16-13-49(q)(4): An interest holder whose property was seized without process can apply for a preliminary probable cause hearing that the court must hold within thirty days of the application.

Hawaii: Haw. Rev. Stat. § 712A-10(5): Any person claiming seized property may petition for remission or mitigation of the forfeiture.

Idaho: Idaho Code Ann. §§ 37-2744(b), (c)(3): When property is seized without process, the government must initiate forfeiture proceedings within thirty days.

Illinois: 725 Ill. Comp. Stat. 150/5, 6: For property worth less than $20,000, the

government must initiate forfeiture proceedings within 187 days.

Indiana: Ind. Code § 34-24-1-3(3)(a): After receiving written notice from the owner demanding return of seized property, the government must initiate forfeiture proceedings within ninety days.

Iowa: Iowa Code Ann. § 809.3(1): Any person claiming a right to possession of seized property may make application for its return.

Kansas: Kan. Stat. Ann. § 60-4112(c): An interest holder can obtain a preliminary probable cause hearing within thirty-five days of seizure, and if the court finds that probable cause does not exist, the government must release the property to the interest holder.

Kentucky: Ky. Rev. Stat. Ann. § 218A.415(1): Property seized shall be subject only to the orders of the court having jurisdiction over the forfeiture proceedings.

Louisiana: La. Rev. Stat. Ann. § 40:2611C: An interest holder can obtain a preliminary probable cause hearing within thirty-five days of seizure, and if the court finds that probable cause does not exist, the government must release the property to the interest holder.

Maine: Me. Rev. Stat. Ann. tit. 15, § 5823.2: When vehicles are seized, the seizing agency must file a report of seizure with the state attorney at least twenty-one days after the seizure; within twenty-one days of receiving the report, the state attorney must initiate

forfeiture proceedings and petition to perfect title.

Maryland: Md. Code Ann., Crim. Proc. § 12-304(b): The government must file a complaint for forfeiture within forty-five days of seizing a vehicle.

Massachusetts: Mass. Gen. Laws ch. 94C, § 47(d): The court shall "promptly" hold hearings on the government's petitions for forfeiture proceedings.

Michigan: Mich. Comp. Laws Ann. § 333.7523(1): Forfeiture proceedings must be instituted "promptly."

Minnesota: Minn. Stat. Ann. §§ 609.531(5a)(a), (b): An owner may post bond to have seized property returned before the forfeiture action is determined. The owner of a seized vehicle can regain possession of it pending the final resolution of the forfeiture proceeding by surrendering the vehicle's certificate of title.

Mississippi: Miss. Code Ann. § 41-29-177(1): For seized property other than a controlled substance, raw material or paraphernalia, the government must institute forfeiture proceedings within thirty days from seizure or the subject property shall be immediately returned to the party from whom seized.

Missouri: Mo. Rev. Stat. § 513.610.1: An interest holder can move to regain possession of seized property by posting bond.

Montana: Mont. Code Ann. § 44-12-201: For property other than controlled substances, the government must institute forfeiture proceedings within forty-five days of seizure.

Nebraska: Neb. Rev. Stat. § 28-431(4): At any time after seizure and prior to court disposition, the owner property may petition the court to release the property.

Nevada: Nev. Rev. Stat. § 179.1171(2): The government must initiate forfeiture proceedings within sixty days of seizure.

New Hampshire: N.H. Rev. Stat. § 318-B:17-b(II)(e): The government shall initiate forfeiture proceedings within sixty days of seizure.

New Jersey: N.J. Stat. Ann. § 2C:64-3(g): Any person with a property interest in the seized property, other than a defendant who is being prosecuted in connection with the seizure of property, may secure its release pending the forfeiture action by posting bond.

New Mexico: N.M. Stat. § 31-27-5(A): The government must institute forfeiture proceedings within thirty days of the seizure.

New York: N.Y. Pub. Health Law § 3388(4): The government must institute forfeiture proceedings within twenty days of a person's written demand claiming ownership.

North Carolina: N.C. Gen. Stat. Ann. §§ 18B-504(d), (h): Property can be released to owner on bond pending the outcome of the forfeiture trial; an innocent owner may apply

to protect his/her interest in the property at any time before forfeiture is ordered.

North Dakota: N.D. Cent. Code §§ 19-03.1-36(3), (4): Forfeiture proceedings must be instituted "promptly."

Ohio: Ohio Rev. Code. Ann. § 2981.03(A)(4): An interest holder may file a motion requesting return of property before a complaint seeking forfeiture is filed and a hearing shall be promptly scheduled at which interest holder must "demonstrate by a preponderance of the evidence that the seizure was unlawful and that the person is entitled to the property."

Oklahoma: Okla. Stat. Ann. tit. 63, §§ 2-506(B), (D), (F): A forfeiture proceeding will be set for hearing once the claimant files an answer to the state's notice of seizure.

Oregon: 2009 Or. Laws 78, § 16: Within fifteen days of notice of seizure, an interest holder can apply for a preliminary hearing to determine whether probable cause exists to believe that property was properly seized; if the court finds that probable cause does not exist, the property must be returned to the interest holder.

Pennsylvania: Pa. Stat. Ann. § 6802(k): An interest holder can petition the court for the release of the seized property.

Rhode Island: R.I. Gen. Laws § 21-28-5.04.2(h)(4): Interest holders can file petitions for remission or mitigation.

South Carolina: S.C. Code Ann. §§ 44-53-586(a), (b)(1): Owner can move to have seized property returned on various grounds including innocent ownership.

South Dakota: S.D. Codified Laws § 34-20B-76: The government must institute forfeiture proceedings within thirty days of seizure without process.

Tennessee: Tenn. Code Ann. § 53-11-451(c): Forfeiture proceedings must be instituted "promptly."

Texas: Tex. Code Crim. Proc. Ann. § 59.02(b): An interest holder can give bond for the replevin of any contraband other than evidence in a criminal proceeding or money.

Utah: Utah Code. Ann. §§ 24-1-7(5), (7)-(13): A property owner may post bond for the release of the seized property pending the forfeiture hearing; hardship relief is also available to obtain release of seized property.

Vermont: Vt. Stat. Ann. tit. 18, § 4243(a): The state must initiate forfeiture proceedings within 14 days of their authorization to seize the property.

Virginia: Va. Code. Ann. § 19.2-386.6: An interest holder is permitted to post bond to obtain property subject to forfeiture prior to the final hearing.

Washington: Wash. Rev. Code § 69.50.505(3): When property is seized without process, proceedings for forfeiture are deemed commenced by the seizure itself.

West Virginia: W. Va. Code § 60A-7-705(4): The government must initiate forfeiture proceedings within ninety days of seizure.

Wisconsin: Wis. Stat. § 961.555(2): The government must initiate forfeiture proceedings within thirty days of seizure.

Wyoming: Wyo. Stat. Ann. § 35-7-1049(c): Forfeiture proceedings must be instituted "promptly."