ORAL ARGUMENT NOT YET SCHEDULED

NO. 24-5144

In The

United States Court of Appeals

For The District of Columbia Circuit

LINDA MARTIN,

Plaintiff-Appellant,

v.

FEDERAL BUREAU OF INVESTIGATION, **et al.**,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Columbia
(No. 1:23-cv-00618-APM)

BRIEF OF APPELLANT

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Federal Rule of Appellate Procedure 28 and D.C. Circuit Rule 28(a)(1), Plaintiff-Appellant submits this certificate as to parties, rulings, and related cases.

A. PARTIES, *AMICI*, AND INTERVENORS

The Plaintiff below and Appellant here is Linda Martin. Plaintiff is a person and not a subsidiary or affiliate of a publicly owned corporation, and no publicly owned corporation has a financial interest in the outcome of this case. The Federal Bureau of Investigation and Christopher A. Wray, in his official capacity as Director of the Federal Bureau of Investigation, were Defendants below and are Appellees here. There are currently no *amici* or intervenors.

B. RULING UNDER REVIEW

The ruling under review is a Memorandum Opinion and Order granting Defendants' Motion to Dismiss and denying Plaintiff's Motion for Class Certification, dated April 5, 2024, decided by Hon. Judge Amit P. Mehta in *Martin v. Federal Bureau of Investigation*, No. 23-cv-00618-APM, 2024 WL 1612084, and available at ECF 24 and ECF 25 below.

C. RELATED CASES

This case has not been before any court other than the district court and counsel is not aware of any other related cases.

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INTRODUCTION

For nearly two centuries, the unbroken practice in America was that the government gave specific reasons before depriving people of property. That is because due process, at its core, requires that people be given adequate notice at the outset so they can intelligently respond and protect their rights. However, for years, the Federal Bureau of Investigation has violated this maxim.

Appellant Linda Martin's story is a prime example. In March 2021, the FBI seized more than $100 million dollars from hundreds of customers at U.S. Private Vaults, a private safe-deposit box company. Although the investigation was focused on the business, and the warrant expressly forbade a criminal search or seizure of box renters' property, the FBI did just that as part of a preformulated plan to forfeit any property worth more than $5,000, including customers' belongings. Ultimately, the Ninth Circuit held that the FBI's flouting of the warrant's terms violated box renters' Fourth Amendment rights. *Snitko v. United States*, 90 F.4th 1250, 1266 (9th Cir. 2024).

Linda was one of those box renters. In Linda's box was $40,200, money she had saved up for a house. When the FBI seized Linda's life

savings, it had no reason to suspect her of any wrongdoing. But it initiated forfeiture proceedings anyway. And when Linda received the FBI's forfeiture notice, it failed to say either why the FBI took her savings or why it thought it could keep them forever. Although Linda had only 30 days to decide what to do, Linda could only guess at what the FBI thought she had done wrong. The notice gave Linda no way to contact the FBI to get more information or ask questions. So Linda petitioned to get her property back, not realizing that, in so doing, she had conceded its forfeiture. 28 C.F.R. § 9.5(a)(4).

Linda's experience is far from unique. The FBI always sends these deficient forfeiture notices when it wants to forfeit seized property. They do not give the specific facts and law the FBI claims would justify the forfeiture, instead listing just generic facts and hundreds of possible crimes.

Due process demands more, so Linda sued the FBI for herself and a nationwide class of property owners like her. Her claim, bolstered by federal forfeiture records across nearly two centuries, is that when the FBI attempts to forfeit someone's property, due process requires that it say why, citing specific *facts* and *laws*. It must give that information at

the outset, without forcing owners to jump through hoops to get the information they were due at Step 1. By sending notices that initiate and, often, consummate property's forfeiture—all without ever saying what exactly the FBI thinks justifies the forfeiture—the FBI deprives owners of crucial information they need to protect their rights.

Accordingly, the trial court erred when it dismissed Linda's claims for failure to state a claim and failure to exhaust. On the merits, the trial court disregarded the complaint's well-pleaded allegations and departed from this Court's binding precedent, which requires the government to say up front why it's forfeiting property. And on exhaustion, the trial court failed to recognize that there simply were no administrative remedies for Linda to exhaust. When Linda received the forfeiture notice, she had to act. But the notice gave her no way to supplement its lack of detail, nor did it identify anyone Linda could call for more information. A property owner cannot be faulted for not exhausting administrative remedies that simply do not exist.

The decision of the trial court should be reversed, and the case remanded.

STATEMENT OF JURISDICTION

Linda filed her claims on March 7, 2023. JA002. The trial court had subject-matter jurisdiction over Linda's claims under 28 U.S.C. § 1331. *See* JA007–08, Compl. ¶¶ 1–2 (also citing 5 U.S.C. § 702 and 28 U.S.C. §§ 2201, 2202). On April 5, 2024, the trial court granted the government's motion to dismiss and entered a final judgment. JA004. Linda timely appealed to this Court on May 28, 2024. JA004; *see also* Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

The issues presented in this appeal are:

1) Did the trial court err by dismissing Linda's due-process claims under Rule 12(b)(6) when Linda plausibly alleged that the FBI seized her property and sent her a forfeiture notice without telling her why it seized or wanted to forfeit it?

2) Did the trial court err by dismissing Linda's claims for failure to exhaust when Linda plausibly alleged there were no remedies to exhaust?

STATEMENT OF CASE

I. The FBI's forfeiture notices give recipients three options and 30 days to decide.

When the FBI seizes property, it sends a notice of seizure and initiation of forfeiture proceedings. 28 C.F.R. § 8.9; Joint Appendix at JA036 (hereinafter cited as "JA036"). In the notices, the FBI gives property owners 30 days to choose among three options: Default, filing a petition, and filing a claim. *See* JA036–37.

Although the forfeiture notice does not specifically describe default, it is what it sounds like. If the property owner takes no affirmative action in response to a forfeiture notice, the FBI "shall declare the property forfeited," which "shall have the same force and effect as a final decree and order of forfeiture in a federal judicial forfeiture proceeding." 28 C.F.R. § 8.12.

But the notice's second option, filing a petition for remission, is not what the notice makes it sound like. The notice, for instance, refers to the petition for remission as the way to seek "return of" the property. JA036. But the filing of a petition in fact means the FBI "shall presume a valid forfeiture and shall not consider whether the evidence is sufficient to support the forfeiture." 28 C.F.R. § 9.5(a)(4). Thus, "[f]iling

a [p]etition concedes forfeiture of the seized property and asks for its return only as a matter of administrative grace." JA015, Compl. ¶ 52.

The "administrative process" that follows is nothing more than the owner begging for some or all of his property back as an act of "agency[] grace." JA455; JA470. That process bears no hallmarks of an actual proceeding. *See* JA015, ¶ 52. For example, the property owner never gets a hearing. 28 C.F.R. § 9.3(g). There is no judicial review. *See* 18 U.S.C. § 983(e). The owner must prove not only their innocence, but also that the FBI should exercise its grace to return the property. 28 C.F.R. § 9.5(a)(3). Whether the owner gets any property back "shall be determined at the discretion of the ruling official." *Id.* § 9.7(a)(1). But that "ruling official" is not a judge, but instead an FBI forfeiture lawyer—namely, the FBI's "Forfeiture Counsel, who is the Unit Chief, Legal Forfeiture Unit, Office of the General Counsel." *Id.* § 9.1(b)(1); JA015, Compl. ¶ 52. And if the property owner disagrees with that FBI lawyer's decision, there is no right to an appeal. JA015, Compl. ¶ 52.

Lastly, the FBI's forfeiture notices tell people they can submit a "claim," which allows the property owner to litigate the matter in federal court in a judicial forfeiture proceeding. JA037. Once a claim is

filed, the FBI transfers the forfeiture to the U.S. Attorney's Office. 28 C.F.R. § 8.10(e). If the federal government files a forfeiture complaint, the property owner must answer within 20 days and defend against the allegations in the litigation that follows. *See* 18 U.S.C. §§ 983(a)(3), (4). Notably, an owner cannot move to dismiss a forfeiture action "on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property." *Id.* § 983(a)(3)(D). Even if probable cause was initially lacking, the government can use "evidence gathered after the filing of a complaint for forfeiture." *See id.* § 983(c)(2).

In sum, when the FBI initiates forfeiture against people's property, it gives owners 30 days to choose between two options that automatically forfeit the property to the FBI (default, or a petition) and one option that forces the property owner into litigation to try to prove their innocence in federal court (a claim). But as shown below, the FBI's forfeiture notices break with centuries of tradition by failing to articulate the alleged crime supporting the proposed forfeiture, making it impossible for a property owner presented with these three options—

default, petition, or claim—to choose among them meaningfully and intelligently. JA021, Compl. ¶ 88.

II. The history of notice in federal forfeiture proceedings.

A bedrock principle of due process has long been that when the government wants to forfeit someone's property, it must tell them the specific legal and factual reasons why, and it cannot make up for failing to provide that notice at the outset by forcing property owners to jump through additional hoops. Since the beginnings of this Nation, this principle applied to asset forfeiture proceedings, both judicial and administrative. But changes to federal forfeiture law led the FBI to break with that history and tradition.[1]

[1] The Court may take judicial notice of the allegations in the publicly available, historical forfeiture records and filings discussed in Part II. *See Capitol Servs. Mgmt., Inc. v. Vesta Corp.*, 933 F.3d 784, 789 (D.C. Cir. 2019); *Covad Commc'ns Co. v. Bell Atl. Co.*, 407 F.3d 1220, 1222 (D.C. Cir. 2005). Judicial notice of the contents of historical newspapers is also proper. *See Wash. Post v. Robinson*, 935 F.2d 282, 291 (D.C. Cir. 1991) ("This court may take judicial notice of the existence of newspaper articles in the . . . area that publicized the ongoing criminal investigation . . . and [one's] involvement and cooperation in that investigation." (citing *Agee v. Muskie,* 629 F.2d 80, 81 n.1, 90 (D.C. Cir. 1980) for propriety of "taking judicial notice of facts generally known as a result of newspaper articles")).

Initially, federal law authorized only "judicial" forfeiture, an in rem proceeding where the court decides whether to allow forfeiture of property because it is connected to a violation of law. To effect a forfeiture in the 1700s, the government had to initiate a proceeding in federal district court by filing a "libel" (or "information") in rem. A libel had to "set[] forth the articles to be forfeited and the alleged statutory violation," including the purported illegal activity that justified forfeiture.[2] For example, a 1794 New York libel alleged that "100 casks of raisins . . . were not contained in the [sloop's] certified manifest . . . contrary to the form of the statute in such case made and provided."[3] Similarly, an early 1800s Pennsylvania libel alleged that the owner of the ship The Anthony Mangin illegally concealed an "alien" part-owner,

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[2] *See* Kevin Arlyck, *The Founders' Forfeiture*, 119 Colum. L. Rev. 1449, 1469–70 (2019).

[3] *See id.* at 1489 n.229 (citing the libel in *United States v. One Hundred Casks of Raisins* (1794), which appears in "reel 1, vol.1, 213–15" of the National Archives Microfilm Publication M919, which is described at 1470 n.126 as the "Admiralty Case Files of the U.S. District Court for the Southern District of New York, 1790-1842"); *see also id.* at 1470 n.129 (citing National Archives Microfilm Product M886, which contains additional forfeiture records from the Founding period). For ease of reference, a copy of the libel from *One Hundred Casks of Raisins* is available here: https://perma.cc/C9CM-J2QN.

(namely "a certain Harman Henry Hackerman") to obtain ship registration.[4]

This changed in 1844, when Congress established "administrative" forfeiture for a relatively narrow class of property—namely, illegally imported "goods, wares, or merchandise" valued at less than $100. Act of Apr. 2, 1844, ch. 8, § 1, 5 Stat. 653. At first, these changes were minor. For goods worth less than $100, the Act authorized the collector of the customs to

> publish a notice, for the space of three weeks, in some newspaper of the county or place where the seizure was made, describing the articles, and stating the time, place, and **cause of their seizure**, and requiring any person or persons claiming them to appear and make such claim within ninety days from the date of the first publication of such notice[.]

Id. (emphasis added).[5]

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[4] *United States v. The Anthony Mangin*, 24 F. Cas. 833, 834, 838–39 (D. Pa. 1802) (No. 14,461).

[5] *McGuire v. Winslow*, 26 F. 304, 306 (C.C.N.D.N.Y. 1886) (stating "the act of April 2, 1844" authorized the customs collector to forfeit "property which . . . was of the value of $100 or less"); Caleb Nelson, *The Constitutionality of Civil Forfeiture*, 125 Yale L.J. 2446, 2507 n.298 (2016) ("Prior to 1844, the only way the government could effect a forfeiture was to institute suit in the district court." (quoting 1 David B. Smith, Prosecution and Defense of Forfeiture Cases ¶ 6.01 n.2 (2015))).

By mandating that all notices "stat[e] the time, place, and cause of [] seizure," the Act demanded specific notice of cause. If someone submitted a claim, the matter went to federal court. *Id.* But if no one came forward, the goods would be sold and the proceeds deposited in the Treasury. *Id.* The Act also allowed owners to apply for remission of the forfeiture within a year of the sale. Under the Act, the government was to grant an application so long as it was "satisfactorily shown that the applicant" did not have notice and that "the said forfeiture was incurred without willful negligence or any intention of fraud" on the owner's part. *Id.* § 2, 5 Stat. at 653–54.

Accordingly, following the advent of administrative forfeiture, afflicted property owners continued to be advised of the government's specific factual and legal bases for moving forward. *E.g.*, Collector's Office Notice, *Bangor Daily Whig and Courier*, Dec. 3, 1844, at 2 (noticing intended forfeiture of "three pieces of Blue Broadcloth," which were seized "from the Store of C. H. DeWolf in Oldtown" and "alleged to have been illegally imported"); Notice of Seizure, *Weekly Santa Fe Gazette*, Jan. 9, 1864, at 2 (noticing seizure of "23, Cotton Rebosos" and "1, Gents Broad Cloth Cloak" which were alleged to "hav[e] been

illegally imported"); U.S. Marshal's Notice, *The Oregonian*, Apr. 10, 1884, at 3 (noticing seizure of vessel and directing interested parties to "answer the said libel" in district court on set day); Notice of Seizure, *The Cleveland Leader*, Sep. 16, 1903, at 11 (noticing seizure and intended forfeiture of cigars "for the reason that the same are falsely branded and labeled"); Notice of Seizure of 78 Lots of Intoxicating Liquors, *The Baltimore Sun*, Apr. 5, 1919, at 14 (same of "78 lots" of liquor "shipped in violation of [ ] Section 240, U.S. Penal Code of 1910"); Notice of Seizure And Intent to Forfeit, *The Sunday Oregonian*, June 3, 1979, at 66 (same of "one 1970 Volkswagen bus . . . for violation of 19 USC 595 and 21 USC 841, 881, & 952" and giving deadline after which the bus "will become forfeited to the Government")[6]; *cf. The Neurea*, 60

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[6] *See also, e.g.*, Notice of Seizure, *The Buffalo Commercial*, Oct. 25, 1865, at 4 (two notices stating "thirty nine cords wood [sic]" and "Four 10 gallon kegs of" liquor were seized "for a violation of the 27th section of the act of March 2d, 1799," and another notice stating "[o]ne half barrel of whisky" was seized for a "violation of the tenth section of the act of 2d March, 1799"); Notice of Seizure and Intent to Forfeit, *Nogales International* (Nogales, AZ), May 19, 1944, at 4 (noticing seizure and forfeiture of liquor, "sandals," "pottery," and various other goods "for violation of secs, 497, 592, and 593, Tariff Act of 1930, as amended"); Notice of Seizure and Intent to Forfeit, *El Paso Times*, Aug. 12, 1983, at 25 (noticing seizure and forfeiture of car "for violation of Sections 1459, 1460, and 1595a, Title 19, United States Code"); Notice of Seizure and

U.S. (19 How.) 92, 92–95 (1856) (detailing how ship owner violated the law by "exceed[ing] the number [of passengers] which could be lawfully taken on board and brought into the United States" and holding this libel to be adequate because it "sets forth the offence in the words of the statute which creates it" and provides "sufficient certainty as to the time and place of its commission").

All of that continued until 1984, when Congress enacted the Comprehensive Crime Control Act, which made two key changes to forfeiture. First, the CCCA created the Assets Forfeiture Fund, where Department of Justice agencies (including the FBI) deposit forfeited assets. The Attorney General can disburse Fund amounts to those same agencies for "any expenses necessary" or "incident to" forfeiture operations, including general payments to reimburse "any Federal agency participating in the Fund for investigative costs leading to seizures." *See* 28 U.S.C. § 524(c)(1)(A)(ii); 98 Stat. 1976, 2052 (Oct. 12, 1984). Second, the CCCA increased the jurisdictional ceiling for

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Intent to Forfeit, *The Idaho Statesman*, Sept. 15, 1985, at 43 (same of "1,200 switchblade knives . . . for violation of 18 USC 545 and 19 CFR 12.97; Case No. 85-2907-00003"). For ease of reference, the notices cited in this paragraph and footnote are available for viewing here: https://perma.cc/4T9S-NVCM.

administrative forfeiture, doubling it from $50,000 to $100,000. 98 Stat. 2053. Within six years, that $100,000 ceiling became $500,000. 104 Stat. 629, 642 (Aug. 20, 1990); 19 U.S.C. § 1607(a)(1).

By 1990, the Department of Justice reported to Congress that "[a]sset forfeiture has grown explosively."[7] From 1985 to 1990, "the number of asset seizures grew at an average rate of 59 percent annually."[8] Over that same period, the Department's inventory of seized assets quadrupled in value. And the value of assets the government was administratively forfeiting had grown to over $140 million, a sevenfold increase in just five years.

It is important to reiterate that modern administrative forfeiture looks nothing like the modest process enacted by Congress in 1844. And it bears no resemblance to judicial forfeiture, except for the fact that both result in individuals losing property as punishment for a crime. The 1844 Act, for instance, allowed remission *only* after the forfeiture process ran its course, and only for owners who had not known about the forfeiture and for whom the time to file a claim had long passed. But

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[7] U.S. Dep't of Justice, Annual Report of the Department of Justice Asset Forfeiture Program 1990, at 1.

[8] *Id.* at 5

under modern administrative forfeiture, owners with live claims can petition for remission as well. In fact, it is often the first option a notice gives to owners. And by petitioning, those owners permanently concede their property's forfeitability and simply plead for its return as a matter of "administrative grace." Whether to extend that grace is not decided by any administrative law judge, but by FBI officials who make that decision without hearings, without deadlines, and without any judicial review. 28 C.F.R. § 9.7(a)(1); JA015, ¶ 52.

As that modern administrative forfeiture system began its explosive growth, the specificity of federal forfeiture notices began to degrade. Within a year of the CCCA's passage, the government began to issue general notices that did not specify what supposed crime justified the forfeiture. A 1985 Montana notice failed to specify any crime, as did a 1991 Alaska notice. Instead, both notices based the forfeitures on a "violation of the laws of the United States of America."[9] Modern notices likewise fail to give specific factual notice of a crime supporting the forfeiture. A 2012 Texas notice says property is being forfeited "for

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[9] *See* Notice of Seizure and Intent to Forfeit, *Great Falls Tribune*, Aug. 18, 1985, at 39; Notice of Seizure and Intent to Forfeit, *Anchorage Times*, Mar. 29, 1991, at 38.

violation of Federal law(s)."[10] Both a 2015 Virginia notice and a 2022 New Jersey notice, for instance, allege no specific facts and claim forfeiture authority because of "one or more violations of any of the . . . Endangered Species Act, the Marine Mammal Protection Act, the Lacey Act, [the] Wild Bird Conservation Act, or the African Elephant Conservation Act."[11]

The FBI's notices likewise fail to advise recipients of what crime supposedly justifies their property's forfeiture. All these notices come from the FBI's headquarters in Washington, D.C., under a uniform policy and procedure. *See* JA008, JA013, Compl. ¶¶ 3, 43; JA307–56. None are materially different. *See generally* JA036, JA089, JA173; *cf.* JA359–60 (publication notices entitled "Legal Notice – Attention" but providing the same substance as the individual notices appearing in JA036, JA089, JA173). Each is called a "Notice of Seizure of Property and Initiation of Administrative Forfeiture Proceedings." JA036; *see*

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[10] *See* Notice of Seizure and Intent to Forfeiture [sic], *El Paso Times*, Aug. 22, 2012, at 27.

[11] Notice of Seizure and Intent to Forfeit, *Daily Press* (Newport News, VA), Feb. 10, 2015, at C7; Notice of Seizure and Intent to Forfeit, *Press of Atlantic City*, Oct. 24, 2022, at B9. For ease of reference, the notices cited in footnotes nine through eleven are available here: https://perma.cc/7AXD-M2ZN.

also JA089, JA173. Each describes the seized property, where and when it was seized, and the FBI's "Forfeiture Authority," but none specifically identify a crime supporting the forfeiture. *See* JA036; JA089; JA173; JA359–60.

III. Linda Martin stored her life savings at U.S. Private Vaults.

Linda Martin resides with her husband near Los Angeles, California. JA008–09, Compl. ¶¶ 4, 7. Linda and her husband saved money for two years, hoping one day to use the money as a downpayment on a family home. JA008–09, JA028, Compl. ¶¶ 4, 7, 132; JA077, ¶ 2. By 2021, they had saved $40,200. *See* JA008, JA013, JA016, Compl. ¶¶ 4, 41, 57; JA078, ¶ 6. Linda wanted to ensure that the money was kept safe, but worried the easy access of a bank card or ATM would make saving difficult. JA009–10, Compl. ¶¶ 7–9, 15; JA077, ¶ 3.

So, Linda found a private safe-deposit box company called U.S. Private Vaults. JA009, Compl. ¶ 9; JA078, ¶ 4. A member of the Beverly Hills Chamber of Commerce, JA010, Compl. ¶ 14, U.S. Private Vaults maintained a professional website and advanced security measures, JA009–10, Compl. ¶¶ 12–13; JA078, ¶ 5. Linda also liked the company's location and hours: far enough away that Linda couldn't unnecessarily

access and spend her money, but open 24 hours in case she needed it urgently. JA009–10, Compl. ¶¶ 10–15; JA078, ¶ 5. Based on these factors, Linda rented box #1810 from U.S. Private Vaults to store her savings. JA010, JA013, Compl. ¶¶ 15, 43; JA036; JA078, ¶ 6.

IV. The FBI misled a federal judge in securing a warrant against U.S. Private Vaults.

But at the same time Linda was renting her box, the FBI was investigating U.S. Private Vaults. *See* JA078, ¶ 7; *Snitko v. United States*, 90 F.4th 1250, 1253 (9th Cir. 2024). Although the FBI's purported interest was the company, its focus from early on was U.S. Private Vaults' customers. As early as the summer of 2020, more than six months before the raid, FBI agents talked about forfeiting the "assets they expected to find within the [customers'] safe deposit boxes." *Snitko*, 90 F.4th at 1253 (cleaned up). FBI agents were confident the local field "office could handle a large-scale seizure." *Id.* By February 2021, the month before the raid, agents decided they had "probable cause to seize the contents of the safe deposit boxes." *Id.* At the same time, the FBI drew up supplemental instructions that told agents, for example, to take any cash in a box worth more than $5,000, and then assign it "a 'forfeiture identification number.'" *See id.* at 1256.

But when the FBI asked a federal judge for a seizure warrant against U.S. Private Vaults the following month, it failed to mention its forfeiture plans. In its warrant application, the FBI Special Agent specifically averred that "[t]he search and seizure warrants the government seeks . . . authorize the seizure of the nests of the [safe deposit] boxes themselves, not their contents." *Id.* at 1254.[12] In keeping with that promise, the judge's warrant specifically warned:

> This warrant does not authorize a . . . seizure of the contents of any safety [sic] deposit boxes. In seizing the nests . . . , agents shall follow their written inventory policies . . . [and] inspect the contents of the boxes in an effort to identify their owners in order to notify them so that they can claim their property.

Id.

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[12] The Special Agent also averred that agents would only "inspect the property as necessary to identify the owner and preserve the property for safekeeping," and that the "inspection should extend no further than necessary to determine ownership." *Snitko*, 90 F.4th at 1254 (cleaned up). But "[t]he district court found . . . that 'occasionally' '[e]ven after finding'" evidence of ownership, but before reaching the box's contents, "agents would break open the interior of the box and inventory the box's contents.'" *Id.* at 1256–57 (quoting *Snitko v. United States*, 2:21-CV-04405-RGK-MAR, 2022 WL 20016427, at *5 (C.D. Cal. Sept. 29, 2022)).

V. The FBI violated the warrant by opening more than 700 customer boxes and seizing everything worth over $5,000 for forfeiture, including Linda's life savings.

Despite that express limitation, the FBI opened more than 700 customers' boxes. *Id.* at 1256–57. This included Linda's. JA078, ¶¶ 6–7.

After seeing the raid on the news, Linda immediately went to U.S. Private Vaults to try to retrieve her money. JA078, ¶ 7. Agents turned her away and told her to wait for more information. *Id.* Months later, Linda received that information, such as it was, when the FBI sent her a forfeiture notice:

NOTICE OF SEIZURE OF PROPERTY AND INITIATION OF ADMINISTRATIVE FORFEITURE PROCEEDINGS

SEIZED PROPERTY IDENTIFYING INFORMATION

Notice Date: June 10, 2021	**Asset ID Number:** 21-FBI-003186
Notice Letter ID: 270328 (use ID when searching for assets during online filing)	
Description of Seized Property: $40,200.00 U.S. Currency from U.S. Private Vault Box #1810	
Seizure Date and Location: The asset(s) referenced in this notice letter were seized on March 22, 2021 by the FBI at Beverly Hills, California.	
Forfeiture Authority: The forfeiture of this property has been initiated pursuant to 18 USC 981(a)(1)(C) and the following additional federal laws: 19 U.S.C. §§ 1602-1619, 18 U.S.C. § 983 and 28 C.F.R. Parts 8 and 9.	

JA036. This table is the only information which changes from notice to notice. *Compare id.*, *with* JA089. The only portion of the notice that sheds light on the underlying crime is the Forfeiture Authority section. But those two lines of text point to no specific facts, all while listing

hundreds of possible crimes that could potentially justify forfeiture. *See* JA013–14, Compl. ¶¶ 45–47.

VI. Linda received an FBI forfeiture notice and responded by filing a petition for the return of her property, which inadvertently ceded it to the FBI.

So when Linda received the FBI's forfeiture notice in June 2021, she was left bewildered. JA036. The notice did not shed any light on why the FBI was trying to keep her life savings. *See id.* It said the FBI was forfeiting her money, but did not allege any wrongdoing by Linda or anyone else. Nor did it specify any alleged criminal violation. *Id.* The statutes cited in the "Forfeiture Authority" section indirectly incorporated *hundreds* of different crimes, "includ[ing] code sections outlawing influencing a loan officer, forgery, counterfeiting, uttering counterfeit obligations, smuggling, loan fraud, computer fraud, and bank fraud, among others." *Snitko v. United States*, 2:21-CV-04405-RGK-MAR, 2021 WL 3139706, at *4 (C.D. Cal. July 23, 2021) (noting "thirty-five sections of the United States Code" in section 981(a)(1)(C)). And "[a] violation of any one of these code provisions can provide a basis for forfeiture." *See id.*; 18 U.S.C. § 981(a)(1)(C) (citing 18 U.S.C.

§ 1956(c)(7), which incorporates all "racketeering activity" under 18 U.S.C. § 1961(1)).

The notice left Linda guessing as to why the FBI wanted to keep her money forever. Linda thought this was all some simple mistake. *See* JA078–79, ¶¶ 8–10. But the notice did not contain an email or phone number of anyone Linda could call for help, nor did it identify anyone Linda could ask for more information. *See* JA036. With just 30 days to decide how to respond to the notice, Linda had to act, but she was unsure what to do. *See* JA078–79, ¶¶ 8–10; JA036.

Reading the notice, after the "Forfeiture Authority" section, Linda saw she could ask for the "return of" her savings by filing a petition:

THE GOVERNMENT MAY CONSIDER GRANTING PETITIONS FOR REMISSION OR MITIGATION, WHICH PARDONS ALL OR PART OF THE PROPERTY FROM THE FORFEITURE.

TO REQUEST A PARDON OF THE PROPERTY YOU MUST FILE A PETITION FOR REMISSION OR MITIGATION

A. **What to File:** You may file both a claim (see section II below) and a Petition for Remission or Mitigation (Petition). If you file only a petition and no one else files a claim, your petition will be decided by the seizing agency.

B. **To File a Petition:** A petition should be filed online or by mailing it via the U.S. Postal Service or a Commercial Delivery Service to the Federal Bureau of Investigation (FBI), Attn: Forfeiture Paralegal Specialist, 11000 Wilshire Blvd. Suite 1700, FOB, Los Angeles, CA 90024. It must be received no later than 11:59 PM EST thirty (30) days of your receipt of this Notice. *See* 28 C.F.R. Parts 8 and 9.

C. **Requirements for Petition:** The petition must include a description of your interest in the property supported by documentation and any facts you believe justify the return of the property and be **signed under oath**, subject to the penalty of perjury or meet the requirements of an unsworn statement under penalty of perjury. *See* 28 U.S.C. § 1746.

D. **Petition Forms:** A petition need not be made in any particular form but a standard petition form and the link to file the petition online are available at https://www.forfeiture.gov/FilingPetition.htm. If you wish to file a petition online for the assets referenced in the asset list of this letter, please use the Notice Letter ID referenced above.

E. **Supporting Evidence:** Although not required, you may submit supporting evidence (for example, title paperwork or bank records showing your interest in the seized property) to substantiate your petition.

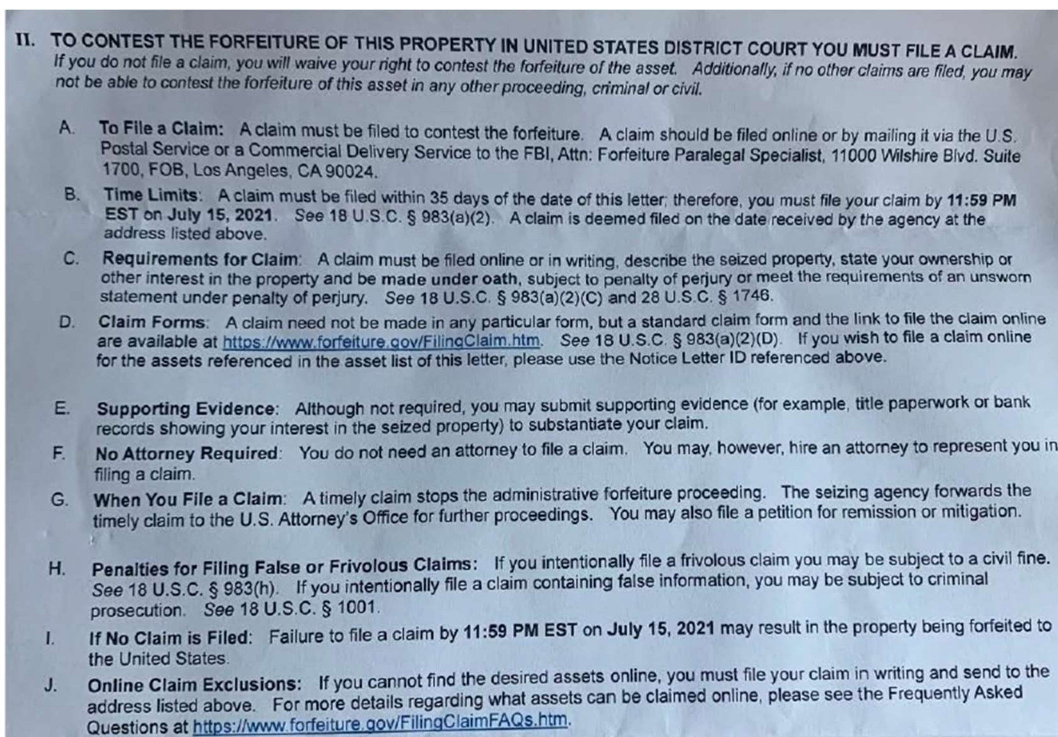
F. **No Attorney Required:** You do not need an attorney to file a petition. You may, however, hire an attorney to represent you in filing a petition.

G. **Petition Granting Authority:** The ruling official in administrative forfeiture cases is the Unit Chief, Legal Forfeiture Unit, Office of the General Counsel. The ruling official in judicial forfeiture cases is the Chief, Money Laundering and Asset Recovery Section, Criminal Division, Department of Justice. *See* 28 C.F.R. § 9.1.

H. **Regulations for Petition:** The Regulations governing the petition process are set forth in 28 C.F.R. Part 9, and are available at www.forfeiture.gov.

I. **Penalties for Filing False or Frivolous Petitions:** A petition containing false information may subject the petitioner to criminal prosecution under 18 U.S.C. § 1001 and 18 U.S.C. § 1621.

JA036; *see also* JA079, ¶ 12.[13] By contrast, the other option, filing a claim, would send Linda and her money to the U.S. Attorney's Office. *See* JA036:



II. **TO CONTEST THE FORFEITURE OF THIS PROPERTY IN UNITED STATES DISTRICT COURT YOU MUST FILE A CLAIM.** *If you do not file a claim, you will waive your right to contest the forfeiture of the asset. Additionally, if no other claims are filed, you may not be able to contest the forfeiture of this asset in any other proceeding, criminal or civil.*

A. **To File a Claim:** A claim must be filed to contest the forfeiture. A claim should be filed online or by mailing it via the U.S. Postal Service or a Commercial Delivery Service to the FBI, Attn: Forfeiture Paralegal Specialist, 11000 Wilshire Blvd. Suite 1700, FOB, Los Angeles, CA 90024.

B. **Time Limits:** A claim must be filed within 35 days of the date of this letter; therefore, you must file your claim by **11:59 PM EST on July 15, 2021**. *See* 18 U.S.C. § 983(a)(2). A claim is deemed filed on the date received by the agency at the address listed above.

C. **Requirements for Claim:** A claim must be filed online or in writing, describe the seized property, state your ownership or other interest in the property and be **made under oath**, subject to penalty of perjury or meet the requirements of an unsworn statement under penalty of perjury. *See* 18 U.S.C. § 983(a)(2)(C) and 28 U.S.C. § 1746.

D. **Claim Forms:** A claim need not be made in any particular form, but a standard claim form and the link to file the claim online are available at https://www.forfeiture.gov/FilingClaim.htm. *See* 18 U.S.C. § 983(a)(2)(D). If you wish to file a claim online for the assets referenced in the asset list of this letter, please use the Notice Letter ID referenced above.

E. **Supporting Evidence:** Although not required, you may submit supporting evidence (for example, title paperwork or bank records showing your interest in the seized property) to substantiate your claim.

F. **No Attorney Required:** You do not need an attorney to file a claim. You may, however, hire an attorney to represent you in filing a claim.

G. **When You File a Claim:** A timely claim stops the administrative forfeiture proceeding. The seizing agency forwards the timely claim to the U.S. Attorney's Office for further proceedings. You may also file a petition for remission or mitigation.

H. **Penalties for Filing False or Frivolous Claims:** If you intentionally file a frivolous claim you may be subject to a civil fine. *See* 18 U.S.C. § 983(h). If you intentionally file a claim containing false information, you may be subject to criminal prosecution. *See* 18 U.S.C. § 1001.

I. **If No Claim is Filed:** Failure to file a claim by **11:59 PM EST** on **July 15, 2021** may result in the property being forfeited to the United States.

J. **Online Claim Exclusions:** If you cannot find the desired assets online, you must file your claim in writing and send to the address listed above. For more details regarding what assets can be claimed online, please see the Frequently Asked Questions at https://www.forfeiture.gov/FilingClaimFAQs.htm.

So, Linda petitioned for the return of her money. JA079, ¶ 12. Then, she waited.

Linda tried contacting the FBI after submitting the petition but received only two responses across two years. *See* JA017–18, Compl. ¶¶ 66–73; JA080, ¶ 14; JA039 (July 6, 2022); JA041 (Jan. 12, 2023).

[13] But the notice did not mention that filing a petition also would concede forfeiture of her savings. *See* JA079, ¶ 13; JA015, ¶ 52; 28 C.F.R. § 9.5(a)(4).

Neither time did the FBI tell Linda why it was trying to forfeit her savings. The first time, in July 2022, the FBI invited Linda to submit more information (which the FBI could use to investigate her), under penalty of perjury. *See* JA039; JA080, ¶ 15. Linda did that but, because she had no idea what the FBI thought she did wrong, she didn't know what to send. JA079, ¶ 10. Ultimately, Linda sent paystubs and other documents showing she earned the money legitimately. JA080, ¶ 15. Months later, Linda tried reaching out again. But in January 2023, almost two years after seizing Linda's money, all the FBI could say was that, someday, it would decide what to do. JA041; *see also* JA017–18, ¶¶ 66–73.

VII. Proceedings in the trial court.

Left in the dark for nearly two years, Linda sued the FBI and its Director Christopher Wray, in his official capacity, for declaratory and injunctive relief. JA008–09, ¶¶ 5–6; JA080, ¶ 17. She sued for herself and a class of others who, in the preceding six years, had received an FBI forfeiture notice and whose property had not yet been returned or sent for judicial forfeiture. *See* JA033, ¶ A; JA042. Linda alleged the FBI systematically violated the class's due process rights by sending

them forfeiture notices that lack any specific legal or factual reasons for the attempted forfeiture. *See* JA023–24, ¶¶ 106–10. In April 2023, Linda moved the trial court to certify a class pursuant to Federal Rule of Civil Procedure 23(b)(2). JA042.

Once sued, the FBI quickly moved to return Linda's money. One month after Linda sued, the FBI offered to return her money; two months after that, she had it. ECF 15-1 at 9; JA080, ¶ 18. The FBI then moved to dismiss Linda's claims on several grounds, including mootness. ECF 15-1; *see also* ECF 17 (opposing class certification only on mootness).

The trial court dismissed Linda's claims, but not as moot. JA453; JA472. First, it held that Linda failed to exhaust her claims by not challenging the adequacy of the FBI's notices before the FBI itself. JA462–68. Alternatively, it reasoned that, even if notice were inadequate, Linda should have somehow "demand[ed] that the FBI clarify the grounds for the seizure and forfeiture" after she filed the petition (even though the filing of that petition automatically forfeited her savings to the FBI and put the FBI in the position of deciding, as a matter of agency grace, whether to return it), or after filing a claim and

going to federal court to litigate against the U.S. Attorney's Office. *See* JA463–64.

Second, the trial court ruled that Linda failed to state a claim. The court pointed to *City of West Covina v. Perkins*, which held that, when officials take property under a valid warrant for a criminal investigation, the notice that they leave the owner does not have to give detailed information about publicly available state-law remedies. JA468–70 (citing 525 U.S. 234 (1999)).[14] The court also held that, if property owners want more information, they can file a claim and litigate in federal court to get it from the government's complaint. *See* JA469–70.

SUMMARY OF ARGUMENT

The trial court should be reversed because Linda adequately pleaded her due-process claims (Part I), and because exhaustion does not apply here (Part II).

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[14] The government opposed class certification only as moot. ECF 17. If this Court reverses and remands, it should leave the trial court's ruling on mootness undisturbed, JA458–61. The trial court's ruling is even more sound after the Supreme Court decision in *Fikre v. FBI*, 601 U.S. 234 (2024), which reaffirmed that when the government argues, as the FBI did here, that a case is mooted by its voluntary cessation, the government bears a "formidable burden." *Id.* at 241.

On the merits, nearly two centuries of unbroken practice shows that, at its core, due process is about notice. Until recently, when it moved for forfeiture, the government told the owner why, without forcing them to investigate further. Cases from both this circuit and others explain why this is constitutionally necessary. But, directly contrary to these cases, the trial court held that the FBI's forfeiture notices were adequate. It wrongly reasoned that, even if the notices themselves didn't contain all the requisite information, Linda could just act now and get more information from the FBI later. That is both wrong as a factual matter and legally immaterial. Due process means the FBI must tell owners why it is trying to forfeit their property so that they can meaningfully respond and protect their rights. But the FBI's forfeiture notices keep owners in the dark during the critical 30-day window when they must respond, meaning any later information they might receive is legally irrelevant.

The trial court also rejected this Court's cases by mistakenly following *City of West Covina v. Perkins*, 525 U.S. 234 (1999). That case involved a property owner who knew the police had his property pursuant to a warrant and knew they would return it, but who wanted

more publicly available information about legal remedies. But Linda's complaint is not about publicly available legal remedies; it is about the FBI's failure to lay out the specific facts and law that it believes justify forfeiture. That is information that is *solely* in the FBI's possession, and it is essential that owners be told it so that they can intelligently respond.

The trial court similarly erred on exhaustion, claiming that Linda should have challenged "the sufficiency of the Notice in her petition or demanding that the FBI clarify the grounds for the seizure and forfeiture." But exhaustion is required only when a remedy is available. And the filing of a petition automatically forfeits seized property and pleads for its return as a matter of grace. 28 C.F.R. § 9.5(a)(4); JA455. The petition process provides no way to challenge the FBI's procedures, let alone the adequacy of its notices. Nor could Linda somehow demand that the FBI "clarify the grounds for the seizure and forfeiture." The notice identified no one Linda could contact who could clarify why the FBI was doing this to her. Regardless, the FBI has no power to decide whether its notices are constitutional.

STANDARD OF REVIEW

This Court reviews dismissals under Rule 12(b)(6) *de novo* and "accept[s] the operative complaint's well-pleaded factual allegations as true." *Esparraguera v. Dep't of the Army*, 101 F.4th 28, 33 (D.C. Cir. 2024). Also, "dismissal for lack of administrative exhaustion is a question of law, which this court reviews *de novo*." *Artis v. Bernanke*, 630 F.3d 1031, 1034 (D.C. Cir. 2011).

ARGUMENT

I. The trial court erred in dismissing Linda's complaint, which plausibly alleges that the FBI violates due process by sending administrative forfeiture notices without stating the crime supporting the forfeiture.

As pre-Founding practice in England and nearly two centuries of historical practice in this country confirm, "[i]t is universally agreed that adequate notice lies at the heart of due process." *Gray Panthers v. Schweiker*, 716 F.2d 23, 32 (D.C. Cir. 1983) ("*Gray Panthers II*") (quoting *Gray Panthers v. Schweiker,* 652 F.2d 146, 168 (D.C. Cir. 1980) ("*Gray Panthers I*")). Consequently, a bedrock principle of due process applies when the government intends to permanently deprive someone of their property: It must notify the owner of its specific legal and factual reasons for doing so, without requiring the person whose

property is at stake to undertake additional investigation on their own. Precedent from this Court and from around the country endorses this principle, including in the forfeiture context.

But the district court departed from these cases. It held that the FBI didn't have to send adequate notice since, in its view, owners could file a claim and litigate the matter in federal court. JA470. And it wrongly analogized Linda's claim that due process requires the FBI to tell her what crime it thinks supports the forfeiture—information solely in the FBI's possession—with *City of West Covina v. Perkins*, 525 U.S. 234 (1999), which simply holds that police don't have to advise property owners about state law—information available to all. JA469–70. Because this was error, this Court should reverse.

A. History shows that notice of the government's specific reasons for forfeiting property is not just an "essential" maxim of due process, but also one that federal courts have routinely enforced.

Due process, at its core, requires "notice of the proposed official action and the opportunity to be heard" before the government acts. *See Ralls Corp. v. CFIUS*, 758 F.3d 296, 318 (D.C. Cir. 2014) (quotation

marks omitted)[15]; *see also* JA026, ¶ 124. Like many constitutional protections, the concept of due process arose to curb depredations by the English Crown, namely its Star Chamber and associated abuse of "the infamous writ of subpoena," which "summon[ed] defendants for questioning under threat of penalty and without notice of cause."[16]

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[15] This is the rule under either of the two tests that can apply when plaintiffs challenge the adequacy of notice on due process grounds. *See Mathews v. Eldridge*, 424 U.S. 319 (1976); *Mullane v. Central Hanover Bank*, 339 U.S. 306, 315 (1950). Courts in this circuit have applied both to notice challenges, *see, e.g.*, *Barkley v. U.S. Marshals Serv. ex rel. Hylton*, 766 F.3d 25, 31–32 (D.C. Cir. 2014), and, ultimately, Linda prevails under either, *cf. N.B. v. Dist. of Columbia*, 244 F. Supp. 3d 176, 181–82 & n.2 (D.D.C. 2017).

[16] Max Crema & Lawrence B. Solum, *The Original Meaning of "Due Process of Law" in the Fifth Amendment*, 108 Va. L. Rev. 447, 472 (2022); *id.* at 482 (explaining due process arose in response to these abuses and prevented the king from "seizing the goods of a person . . . [without] legal process" (citing 1 Matthew Hale, *The History of the Pleas of the Crown* 364–65 (London, Sollom Emlyn ed., 1736)); Keith Jurow, Untimely Thoughts: A Reconsideration of the Origins of Due Process of Law, 19 Am. J. Legal Hist. 265, 270 (1975). Subpoenas essentially summoned people "to appear before the Council 'for certain reasons,'" Theodore F.T. Plucknett, *A Concise History of the Common Law* 683 (Liberty Fund ed., 2010) (stating the "great objection" to the writs of subpoena "was their failure to mention the cause of the summons"). They also lacked the common law's "ample, often painstaking notice of the charges or claims." Crema & Solum, *supra*, at 471; *accord* Plucknett, *supra*, at 683–84 (stating subpoenas violated "principle of the common law" that a person get "due notice of the matters which he would have to answer").

It is therefore no surprise that, at the Founding, notice of the legal violation justifying the forfeiture was essential to due process. In 1813, in *The Hoppet*, Chief Justice Marshall called adequate notice "a maxim essential to the due administration of justice" and "a rule so essential to justice and fair proceeding" that it "must be the rule of every Court where justice is the object." *The Hoppet*, 11 U.S. (7 Cranch) 389, 394–95 (1813). There, Chief Justice Marshall struck down a forfeiture for lack of "a substantial statement of the offence," and explained two distinct reasons why specific factual and legal notice is constitutionally required. *Id.* at 394. The first concerned the property owner, recognizing that notice is needed so that "the party accused [would] know against what charge to direct his defence." *Id.* And the second reason was "the Court" itself, as proper notice would ensure that "the fact, alleged to have been committed, is an offence against the laws," and would allow the court to determine "the punishment annexed by law to the specific offence." *Id.*; *see also The Samuel*, 14 U.S. (1 Wheat.) 9, 14–15 (1816) (Marshall, C.J.) (requiring that "the offence be described in the words of the law"). Without the government giving notice of the facts and crime supporting the forfeiture, the defendant cannot rebut the forfeiture

allegations, and judicial review is frustrated because the government can later change its allegations, its proof, or both. Marshall's views echo throughout other Founding-era cases.[17]

This tradition of the government giving notice of its specific legal and factual reasons for forfeitures continued for nearly two centuries.[18]

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[17] *See, e.g.*, *Steel v. Roach*, 1 S.C.L. 63, 61, 1 Bay 63, 1788 WL 38, at *1 (1788) (information seeking forfeiture of "25 barrels and 5 hogsheads of sugar, 11 barrels of coffee, and 9 boxes of oil" as penalty "for landing in the port of Charleston . . . before a *permit* was obtained, *entry* made, or *duty* paid . . . and also for unloading in the morning, before sun rise, contrary to the acts of the legislature"); *Allen v. Hoyt*, 1 Kirby 221, 222–23 (Conn. Super. Ct. 1787) (writ and the information which explained the defendant's "goods, chattels, and real estate" were being forfeit because he, "on the 20th day of April, 1777, . . . did voluntarily go to, join with, and put himself under the protection of the enemies of the United States, then at open war with the said states" and continued "under protection of said enemies, until the 24th day of June, 1778"); *Churchill v. Blackburn*, 1 Va. Colonial Dec. R26, 1730 WL 4, at *1 (Va. Gen. Ct. Apr. 1730) ("Thomas Machen a teller under this Act Exhibits an Information against Mr. Churchill for 500wt of Tobacco forfeited by the first Branch of the Act for Listing Doll as a Tithable when she was under 16. And upon that Information has obtained a Verd't and Judgm't in the County Court.").

[18] *United States v. One Hundred & Twelve Casks of Sugar*, 33 U.S. (8 Pet.) 277, 277–78 (1834) (citing government's "libel" which "charge[d] that this entry was made by a false designation of the merchandise, with an intent to defraud the revenue of the United States, by" charging the wrong duty); *Greene v. McElroy*, 360 U.S. 474, 496 (1959) (describing the principle that "where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be

Indeed, even after the introduction of administrative forfeiture in 1844, the government continued to give specific reasons for property deprivations. *See supra* Statement of Case Part II.

Chief Justice Marshall's explanation about how notice facilitates both fairness and judicial review is just as true today. As Linda discusses below, both this Court and others have held the government must give its specific reasons for a proposed deprivation up front. And when it fails to do so, the government cannot force owners to jump through hoops to get the information they were due at Step 1.

B. <u>This Court's precedent and out-of-circuit cases uniformly hold that due process requires the government to give specific notice for a proposed deprivation at the outset without requiring owners to jump through additional hoops</u>.

As Chief Justice Marshall described over two centuries ago: If the government wishes to deprive someone of their property, due process requires that it first specifically say why. In Part 1, Linda points to numerous cases in which this Court has held that the government must do so up front, without foisting additional steps on the property owner

disclosed to the individual so that he has an opportunity to show that it is untrue"); *see also* Act of Apr. 2, 1844, ch. 8, § 1, 5 Stat. 653; Act of Jul. 18, 1866, ch. 201, § 11, 14 Stat. 180–81; Act of Jun. 6, 1872, ch.315, § 40.

to learn those reasons. In Part 2, she explains how other circuits have uniformly held the same in a variety of contexts, including civil forfeiture. And in Part 3, Linda explains how the Ninth Circuit has held the same in the forfeiture context and how one, following that precedent, enjoined the FBI's attempted forfeitures of other U.S. Private Vaults box renters' property on precisely these grounds, declaring the FBI's notices to be constitutionally "anemic."

1. *This Court's precedent requires the government to give its specific legal and factual reasons for a property deprivation up front.*

This Court has repeatedly required the government to articulate the specific factual and legal reasons why it's taking someone's property. This is true no matter the context: Due process requires it of the government before denying Medicare benefits, *Gray Panthers v. Schweiker*, 652 F.2d 146 (D.C. Cir. 1980) ("*Gray Panthers I*"); *Gray Panthers v. Schweiker*, 716 F.2d 23 (D.C. Cir. 1983) ("*Gray Panthers II*"); before divesting a company of real property, *Ralls Corp. v. CFIUS*, 758 F.3d 296 (D.C. Cir. 2014); and before demoting an Army officer, *Esparraguera v. Dep't of Army*, 101 F.4th 28 (D.C. Cir. 2024). In each

case, the Court recognized it is critical that the government give adequate notice at the start.

First, take *Gray Panthers I*, which required "specific reasons" for denial of Medicare benefits. The plaintiffs there were Medicare beneficiaries who sued the Secretary of the Department of Health and Human Services after their Medicare benefits were denied in determination notices that, according to the plaintiffs, violated due process because they did not include Medicare's "specific reasons" for the denial. *See id.* The government claimed that the notices provided all the information the patients were due. *Id.* at 148. And it also argued that, even if its written notices were deficient standing alone, then the plaintiffs and others could always appeal the denial and get more information in a "paper" hearing. *See id.* at 169.

But this Court held that the government's notice was inadequate. This was because the denial notices did not "specify . . . which of [the] two basically different causes for denial applied"—whether it was "treatments . . . deemed unnecessary," or "charges . . . deemed unreasonable." *Gray Panthers I*, 652 F.2d at 167. This Court then went on to recognize that any additional process could not cure the initial

notice's deficiency: Without the notice identifying the "specific reasons for the denial," beneficiaries were "reduced to guessing" at how to best respond. *See id.* at 168–69.[19] Accordingly, this Court reversed the trial court's summary judgment ruling and remanded to let the case proceed. *See id.* at 172–73.[20]

Decades later, *Ralls Corp.* reaffirmed the core holdings of *Gray Panthers I and II*. *See* 758 F.3d at 318. There, the Committee on Foreign Investment in the United States (CFIUS) and the President ordered a foreign-owned company to divest itself of four windfarms the

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[19] Similarly, when this Court has held that a notice was adequate because it identified "explicitly what the dispute was about," it noted the procedures that followed to confirm its holding that "the actual notice was adequate to avoid serious risk of erroneous deprivation." *See Reeve Aleutian Airways, Inc. v. United States*, 982 F.2d 594, 599–600 (D.C. Cir. 1993), *as amended on denial of reh'g* (Mar. 26, 1993).

[20] Following remand, the parties appealed again. *See Gray Panthers II*, 716 F.2d at 25 (In *Gray Panthers I*, "[w]e held that the written form initially used to notify beneficiaries that their claims are being denied and the paper hearing provided to those beneficiaries who seek review of this initial decision were inadequate procedural safeguards given the elderly and infirm population that seeks Medicare reimbursement for medical expenses."). In *Gray Panthers II*, the Court reaffirmed that the government must give notice up front and cannot rely on "supplementation through action by [the] recipient," rejecting the Secretary's argument that the initial inadequate denial coupled with a "toll-free telephone system" could provide adequate notice. *Id.* at 32 (citing *Vargas v. Trainor*, 508 F.2d 485, 489–90 (7th Cir. 1974), *cert. denied*, 420 U.S. 1008 (1975)).

company had purchased. *See id.* at 301–02. There was a lot of process: CFIUS reviewed the purchases for national security concerns, which triggered a 30-day review period during which Ralls could answer CFIUS officials' questions and give them a presentation. *See id.* at 305. But at no point did the government "disclose[] the nature of the national security threat the transaction posed or the evidence on which" it relied when issuing its order. *See id.*

The Court held that CFIUS and the President's failure to provide Ralls with the specific factual bases for the divestment order violated due process. Because the government never gave Ralls "the factual basis for the action," *id.* at 318 (citing *Greene v. McElroy*, 360 U.S. 474, 496 (1959)), Ralls could never "rebut the factual premises underlying" the government's action, *id.* at 319–20 & n.19. Although "Ralls had the opportunity to present evidence . . . and to interact with" CFIUS, the lack of specific facts still denied Ralls due process because, without those facts, "Ralls never had the opportunity to tailor its submission to [the government's] concerns or to rebut the factual premises underlying" them. *Id.* at 319–20. The Court remanded "with instructions that Ralls be provided," at least, "access to the unclassified

evidence on which the President relied and an opportunity to respond." *See id.* at 325.

Gray Panthers and *Ralls Corp.* are not outliers. Indeed, this Court relied on *Ralls Corp.* recently in *Esparraguera*. *See* 101 F.4th at 40. There, the plaintiff complained that the Army's decision to demote her without first disclosing the "evidence that formed the factual basis" of that decision, including the specific "report cited as the reason for her removal," *id.*, violated due process. The district court dismissed, but this Court reversed, noting that, "[t]o have proper notice and a meaningful opportunity to respond," as required by due process, one "must at least 'know the factual basis for the action.'" *Id.* (quoting *Ralls Corp.*, 758 F.3d at 318). District courts in this Circuit also commonly apply the holdings of both *Gray Panthers* and *Ralls Corp*. *See, e.g.*, *N.B. v. District of Columbia*, 244 F. Supp. 3d 176, 181–82 (D.D.C. 2017).

2. *Precedent from outside this circuit recognizes the same notice principle as the in-circuit cases and requires the government to say why it is depriving someone of their property up front.*

Other circuits are in accord that due process requires giving specific notice to property owners up front, without forcing them to jump through hoops to learn the information they should have been

provided previously. *E.g.*, *Vargas v. Trainor,* 508 F.2d 485, 490 (7th Cir. 1974) ("Under such a procedure only the aggressive receive their due process right to be advised of the reasons for the proposed action. The meek and submissive remain in the dark and suffer their benefits to be reduced or terminated without knowing why the Department is taking that action.").[21]

Take, for example, *Kapps v. Wing*, a Second Circuit case where claimants challenged their benefits determinations under a home energy assistance program, claiming the determinations omitted

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[21] *See also Ellender v. Schweiker*, 575 F. Supp. 590, 600 (S.D.N.Y. 1983) ("The consequence of such inadequate notice is that the Secretary's determinations remain final and unchallenged; the elderly beneficiaries have no evidence on which to object." (citing, *inter alia*, *Gray Panthers I*)); *Caulder v. Durham Hous. Auth.*, 433 F.2d 998, 1004 (4th Cir. 1970) (holding due process "requires [ ] timely and adequate notice detailing the reasons for a proposed termination"); *Dixon v. Ala. State Bd. of Ed.*, 294 F.2d 150, 158 (5th Cir. 1961) (holding that students were entitled to pre-expulsion notice and hearing and that, although expulsion proceedings would vary, due process required "[t]he notice [to] contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education"); *Hous. Auth. of King Cnty. v. Saylors*, 578 P.2d 76, 79 (Wash. App. 1978) ("The notice given to Saylors was equally insufficient. It failed to set forth a factual statement of the incident or incidents which constituted the grievance. The vague and conclusory notice sent to Saylors was inadequate to provide the required opportunity to prepare for argument before the hearing panel.").

budgetary information they needed to make sense of them. 404 F.3d 105 (2d Cir. 2005). In response, the agency pointed out that the claimants had 60 days to request a hearing and, in the meantime, could "obtain further information in a number of ways," including by "meeting with a benefits specialist." *See id.* at 110. But the Second Circuit held any subsequent process could not cure the notice's failure to give budgetary information in the first place. Without that information, said the Court, "[c]laimants cannot know *whether* a challenge . . . is warranted, much less formulate an effective challenge." *Id.* at 124. Ultimately, the Second Circuit held the notices violated due process as a matter of "common sense" because it was a "scheme[ ] which relie[d] on beneficiaries to seek out basic information on why the agency took the action it did," and which therefore "will result in 'only the aggressive receiv[ing] their due process right to be advised of the reasons for the proposed action.'" *Id.* at 126 (quoting *Vargas*, 508 F.2d at 490)).

3. *Courts in the Ninth Circuit have likewise recognized the same principle, including in the context of the FBI's administrative forfeiture notices.*

The Ninth Circuit has held that these fundamental due-process principles apply to civil forfeiture, too. In *Gete v. INS*, the INS had been

seizing vehicles at the border and administratively forfeiting them after sending vehicle owners forfeiture notices that did not tell "the owner which statutory provisions are alleged to have been violated" or give the owner "any statement of the factual basis" for the forfeiture. 121 F.3d 1285, 1289–90 (9th Cir. 1997). After the notice, INS offered further proceedings where owners could get more information, including a "personal interview" and an internal appeal. *See id.* at 1290. The plaintiffs in *Gete* sued after INS forfeited their vehicles, alleging that "because the INS routinely and as a matter of policy fails to provide [the factual and statutory bases for INS's forfeitures], vehicle owners who elect the administrative process often are unable to make effective challenges to illegal seizures and unjustified forfeitures." *Id.* at 1295.

The Ninth Circuit agreed and held that INS's notices violated the plaintiffs' due-process rights. The court first explained that due process required the INS to give the vehicle owners "the exact reasons" and "the particular statutory provisions and regulations" allegedly violated. *See id.* at 1297. Without that information, according to the court, the vehicle owners could not "determine whether [INS] based its decision on erroneous facts" or "whether there is evidence not previously considered

that might be submitted," nor could they "prepare reasonably informed petitions for remission." *See id.* at 1298. Thus, like in *Ralls Corp.*, the existence of extensive post-notice proceedings was immaterial; they could not cure the inadequacies in INS's initial notice, which led "vehicle owners to guess incorrectly why their vehicle has been seized" and thus "prevent[ed] them from responding effectively to the unspecified accusations of criminal wrongdoing that underlie a forfeiture." *Id.*

Indeed, courts in the Ninth Circuit have applied *Gete* to the very notices at issue here. In *Snitko v. United States*, a group of box renters at U.S. Private Vaults sued the government after the March 2021 U.S. Private Vaults raid. *See* 90 F.4th 1250, 1256–58 (9th Cir. 2024). These plaintiffs sought to enjoin the FBI from administratively forfeiting their property based on notices that are substantively identical to Linda's. *Compare* JA036, *with Snitko v. United States*, No. 2:21-cv-04405-RGK-MAR, 2021 WL 3139707, at *3 (C.D. Cal. June 22, 2021). And the district court granted their requested injunction, holding that the FBI's forfeiture notices violated due process. Specifically, it held that the notices were deficient under *Gete* because they did not include the

specific statutory provisions or specific facts underlying the supposed crime justifying forfeiture. *Snitko*, 2021 WL 3139707, at *2–3. In enjoining the FBI from administratively forfeiting the plaintiffs' property, the court reasoned that the "anemic notices" were likely to "violate [the box renters'] right to due process of law" because "the mere provision, without explanation, of copies of the entire [forfeiture] statute and regulations[ ]" is insufficient." *See id.*

C. <u>The trial court erred by dismissing under Rule 12(b)(6) because due process required the FBI to send Linda a forfeiture notice that describes the crime supporting the forfeiture</u>.

The trial court erred by dismissing Linda's claims for two reasons. First, under *Gray Panthers* and the other cases discussed in the previous section, Linda adequately pleaded her claim that the FBI's forfeiture notices, which do not state the specific legal and factual reasons for why the agency is forfeiting property, violate due process. The trial court erred by wrongly disputing those allegations and by assuming that any deficiencies in the notice could be cured by subsequent steps in the forfeiture process. But that assumption conflicts with *Gray Panthers*, *Ralls*, and other cases in Part I.B that hold that due process does not allow the government to withhold critical

information and force property owners to jump through additional hoops to get it. JA468–71. Second, the trial court wrongly concluded that this case is controlled by *City of West Covina v. Perkins*, which is about the government's duty to advise owners about publicly available legal remedies, not the privately held facts that undergird the FBI's forfeiture decision.

1. *Linda's complaint adequately states claims for relief under the Due Process Clause because it alleges that the FBI's forfeiture notices do not provide adequate notice.*

Under *Gray Panthers*, *Ralls Corp.*, and the related cases discussed in Part I.B above, Linda adequately pleaded that it "violates due process for the Notices not to inform her and members of the Proposed Class of the FBI's specific legal and factual reasons for seizing and trying to forfeit their property at the critical time when they must decide how to respond to the Notices to defend their rights." JA024, Compl. ¶ 114; *see also* JA021, JA023–24, JA026–28, Compl. ¶¶ 88, 105, 109–10, 122–29. Simply put, she alleged that the forfeiture notice was inadequate because it omits the FBI's specific legal and factual reasons for the forfeiture, *id.*; *see also* JA028–29, Compl. ¶¶ 135–40, and that

the notice may be the only communication before forfeiture is complete, *see* JA015, Compl. ¶ 52.

First, Linda pleaded that the FBI forfeiture notice she received "did not provide her with the specific legal or factual reasons the FBI believes justify seizing or forfeiting her property." JA028, Compl. ¶ 135; *see also* JA021, JA023–24, ¶¶ 88, 107–10. At bottom, by seizing and trying to forfeit Linda's savings, the FBI *necessarily* asserted that her savings were connected to something "the FBI thought [she] personally did wrong" or something "the FBI thought . . . anyone had done wrong." JA018–19, Compl. ¶¶ 77, 79; *see also* 18 U.S.C. § 981(a)(1). Only the FBI knows what that wrongdoing is, but it never says. *See* JA018, Compl. ¶¶ 74–75; JA036. This is exactly like the plaintiffs in *Gray Panthers* and the related cases discussed above, each of whom alleged they had been deprived of a property right and then received a notice that did not specifically explain why. *See supra* Part I.B.

Second, Linda alleged that there are no subsequent options for the FBI to clarify the notice. Linda specifically alleged that, without receiving the FBI's specific legal or factual reasons in the forfeiture notice, she could not "understand . . . how [the notice] was connected to"

her or the "true nature of the government's proceedings against" her. JA018, Compl. ¶¶ 76–77. She was thus "forced to decide how to respond without being able to," for example, determine "whether there were any defenses or other legal barriers to the FBI's" theory, JA020, Compl. ¶ 85, or to determine "where or how to marshal evidence," much less "what type or amount of evidence, if any, could rebut or explain the FBI's undisclosed" reasons for trying to forfeit her savings, JA019, Compl. ¶¶ 80–81. Worse yet, without the specific crime supporting the forfeiture, Linda could not know if the evidence she submitted would "bolster" the FBI's case or inadvertently "incriminate" her, not least because the FBI "could retroactively develop [its] legal and factual theories from [the] information Linda . . . submitted." *See also* JA019–20, Compl. ¶¶ 82–84. In these circumstances, Linda could not even "meaningfully and intelligently [assess] whether [she] should obtain legal counsel." JA021, Compl. ¶ 87. In short, Linda alleged that, based on the forfeiture notice, she could not meaningfully decide "what the next best step is" in the 30 days the notice gave her to decide. *See N.B.*, 244 F. Supp. 3d at 182; *Kapps*, 404 F.3d at 124; JA019–021, JA024, ¶¶ 80–86, 88, 109.

Worsening her predicament, Linda's forfeiture notice gave her only one way to contact the FBI during the 30-day window—by petitioning for remission. JA036; *see also* JA014, JA017, Compl. ¶¶ 49, 65. The forfeiture notice did not offer an informal way to get more information from someone in charge. JA036–37; *see also* JA020, ¶¶ 85–86; *N.B.*, 244 F. Supp. 3d at 182–83 (citing *Gray Panthers I*, 652 F.2d at 172)). So, according to the notice, Linda's only option to contact the FBI was to petition, but "[f]iling a [p]etition concedes forfeiture of the seized property and asks for its return only as a matter of administrative grace." JA015, ¶ 52; 28 C.F.R. § 9.5(a)(4). Even then, though, it's not guaranteed the FBI would have told her why this was happening, since the FBI decides petitions without a "neutral decisionmaker," "standard of decision," "opportunity for a hearing[or] internal review, aside from a request for reconsideration decided by another FBI employee," and without "opportunity for judicial review." JA015, Compl. ¶ 52.

Linda's factual allegations, which must be taken as true at this stage, establish that the FBI's forfeiture notices violate due process. The notices fail to "apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," *Mullane v.*

Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950), since, by failing to state the underlying crime, the notices prevent people from "understand[ing] the true nature of the government's proceedings," which in turn prevents them from "prepar[ing] an effective and meaningful response to defend [their] rights," *e.g.*, JA028, Compl. ¶ 136. For the same reasons, the notices "create a substantial and unconstitutionally large risk of erroneous deprivation," JA028, Compl. ¶ 134, which violates *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976), *see also* JA028–29, Compl. ¶¶ 134–40 (alleging facts relevant to *Mathews* factors). Under either test, Linda's allegations clear the low bar set by a Rule 12(b)(6) motion.

Failing to credit Linda's well-pleaded allegations led the trial court's legal analysis to go astray. For instance, Linda alleged that "it violates due process for the Notices not to inform [property owners] of the FBI's specific legal and factual reasons for seizing and trying to forfeit their property *at the critical time when they must decide how to respond to the Notice to defend their rights*." JA024, Compl. ¶ 114 (emphasis added); *see also* JA027, Compl. ¶ 125 (alleging due process requires property owners "to be so informed at the critical time *when*

they receive the Notice and must decide how to respond" (emphasis added)). She specifically alleged that, without that information at that critical time, property owners are "forced to decide how to respond without the opportunity to assess meaningfully and intelligently whether filing a [p]etition, a [c]laim, or simply defaulting would best serve their interests." JA021, Compl. ¶ 88. But in declining to follow *Gray Panthers*, the trial court disregarded these allegations. It claimed the forfeiture notice was not "the sum total of the communication" from the FBI to Linda "before a final denial" because she could have taken additional steps to get "the opportunity to flesh out the notice" by filing a claim, or even by filing a petition and requesting more information from the FBI in administrative forfeiture proceedings. *See* JA469 (emphasis omitted).

But that claim both contradicts the allegations in Linda's complaint and is wrong as a matter of law. Due process requires notice of the government's specific reason for taking property at the outset to avoid erroneous deprivations. Thus, for an "opportunity" to flesh out the notice to be in any way meaningful, it must occur before the deprivation. *Ralls*, 758 F.3d at 318 (requiring notice and opportunity to

be heard at a "meaningful" time). But, here, when Linda received the forfeiture notice, it gave her just one way to engage with the FBI, which was to file a petition for the return of her savings. JA036. However, by petitioning for the FBI to return her savings, her savings were *automatically* forfeited to the FBI. *See* JA015, Compl. ¶ 52; JA036; 28 C.F.R. § 9.5(a)(4). Accordingly, Linda could not "flesh out" the notice with the FBI after filing a petition without surrendering the very rights she was trying to protect.

The trial court's alternate rationale—that Linda cannot be heard to complain, because she could have simply filed a claim to learn more—fails under *Gray Panthers* and the related cases discussed above in Part I.B. The trial court's theory is that the FBI's failure to tell Linda why it was trying to forfeit her property was of no moment because she could just hire a lawyer, file a claim, and litigate against the full weight of the federal government. But that theory contradicts *Gray Panthers I and II*, *Ralls*, and *Esparraguera*, all of which hold that the government owes notice up front and cannot force owners to jump through hoops to learn the information they should have been provided initially. And because the notice provides no facts and identifies no crime, it gives Linda no

way to evaluate how strong such a claim would be. Indeed, without those facts, Linda can't know what kind of lawyer to consult for advice, since she would not know what the FBI was alleging. JA021, Compl. ¶ 87.

In sum, if the forfeiture notice were adequate, Linda could have intelligently and meaningfully chosen whether to default, or file a petition, or file a claim and litigate. But with only 30 days to decide, the FBI's forfeiture notice made it impossible for Linda to meaningfully evaluate her options. Any additional process that followed could not cure that fundamental defect. *See Snitko*, 2021 WL 3139707, at *3.

The trial court erred by failing to follow this Court's binding precedent that requires adequate notice up front. *See supra* Part I.B. The trial court compounded that error by following *West Covina*, despite that case being about a wholly distinct legal issue that has no bearing on this lawsuit.

2. *The trial court wrongly dismissed Linda's claims that the FBI must disclose information that only the FBI knows based on a case holding that local officials don't have to disclose "detailed" advice about public information.*

The trial court compounded its error by stating that *City of West Covina v. Perkins*, 525 U.S. 234 (1999), governed Linda's due process

challenge. In that case, local police seized property for a homicide investigation and left a notice detailing what property was taken, when it was taken, and by whom; that the property was taken under a warrant issued by a specific judge; and that the owner could call a specific detective at a specific phone number to get further information. *See id.* at 236–37. The owner subsequently sued, claiming that the notice should have provided "detailed" information about state-law procedures. *See id.* at 236. The Supreme Court disagreed, holding the police did not need to give "detailed and specific instructions or advice" about public information. *See id.*

West Covina does not apply for two reasons. First, that case was about notice of publicly available information. But, here, Linda challenges the FBI's forfeiture notices because they do not tell people what crime or wrongdoing justifies the seizure and the forfeiture *according to the FBI*, which turns on information that is known only to the FBI. *See* JA018–19, JA028–29, JA031, ¶¶ 73, 77, 79, 135–37, 152. Unlike the publicly available information at issue in *West Covina*, the

specific facts upon which the FBI justifies forfeiture are both critical to avoiding erroneous deprivations and solely in the FBI's possession.[22]

Second, unlike here, the property in *West Covina* was never in jeopardy. The police were not trying to forfeit or permanently keep it. So, the question in *West Covina* was not about what notice owners were owed prior to permanently depriving them of their property. 525 U.S. at 240. This is confirmed by the City of West Covina's briefing in the case, in which it expressly distinguished two cases on the grounds that they concerned what "notice [was] required by due process" for "the commencement of a finite period within which the claimants were required to assert their rights. Failure to assert those rights within the time periods resulted in the automatic loss of the rights." Pet.'s Reply Br., *City of West Covina v. Perkins*, 1998 WL 727539, at *9 (Oct. 14, 1998) (No. 97-1250). In other words, they distinguished cases just like this one. Moreover, the Supreme Court in *West Covina* confirmed that, unlike the case here, "no one contest[ed] the right of the State to have

[22] Also unlike in *West Covina*, where the notice invited the property owner to contact a knowledgeable detective, the FBI's forfeiture notices offer no way to contact the FBI for more information. *Compare* 525 U.S. at 236–37, *with* JA036.

seized the property in the first instances or its ultimate obligation to return it." *See* 525 U.S. at 240; Pet.'s Reply Br., *West Covina*, 1998 WL 727539, at *9–11.

Unlike Linda, the property owner in *West Covina* was entitled to get his property back without having to disprove the government's reasons for taking it. Whatever notice the government owes someone like the plaintiff in *West Covina* who faces no prospect of losing their property, the fact that Linda had 30 days to act or lose her property forever shows why *West Covina* has no bearing on what the FBI must tell people whose property has already been marked for administrative forfeiture. *See* 28 C.F.R. § 8.8.

II. The trial court erred by dismissing for failure to exhaust because there were no remedies to exhaust.

The trial court also erred by dismissing Linda's claims for failure to exhaust. JA462–68. This Court has described the exhaustion requirement "[a]s a general rule[that] no one is entitled to judicial relief . . . until the *prescribed* administrative remedy has been exhausted." *Atl. Richfield Co. v. U.S. Dept. of Energy*, 769 F.2d 771, 781 (D.C. Cir. 1984) (emphasis added). It is "not inflexible . . . and must be applied with an understanding of its purposes and of the particular

administrative scheme involved." *Id.* In short, the purpose is to give "the agency . . . an opportunity to exercise its discretion and expertise on the matter and to make a factual record to support its decision." *Hidalgo v. F.B.I.*, 344 F.3d 1256, 1258 (D.C. Cir. 2003) (citation omitted). Exhaustion thus "serves . . . twin purposes of protecting administrative authority," *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992), and promoting "administrative and judicial efficiency by avoiding premature interruption of the administrative process," *Atl. Richfield*, 769 F.2d at 781. But exhaustion is "not inflexible," *id.*, and courts do not always require it, especially where constitutional claims are involved, *see id.* at 782; *Rafeedie v. INS*, 880 F.2d 506, 513–14 (D.C. Cir. 1989) (noting agency admitted "it [was] without authority to examine [plaintiff's] constitutional claim" and declining to require exhaustion). Indeed, as a general matter, federal courts regularly hear due-process challenges to administrative forfeitures based on allegedly inadequate notice.[23]

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[23] *See Larumbe v. Austin*, No. 22-cv-01817 (RC), 2023 WL 7156529, at *2 (D.D.C. Oct. 31, 2023) (citing *Gete*, among others, for proposition "that even when an agency's decision is the exclusive remedy and otherwise not subject to judicial review, federal courts retain

Here, the trial court should have followed suit but instead ruled that Linda should have exhausted. JA462. That was error because Linda had no remedies to exhaust in the 30 days that the FBI's forfeiture notice gave her to respond. *See supra* Statement of Case Part VI. A fundamental premise of exhaustion is the existence of an adequate remedy to exhaust, so "[a]dministrative remedies that are inadequate need not be exhausted." *See Coit Indep. Joint Venture v. Fed. Sav. & Loan Ins. Corp.*, 489 U.S. 561, 587 (1989). That was the situation here because, according to the notice, the only way for Linda to contact the FBI was to file a petition. JA036 (not providing a number to call or person to contact for more information). But filing a petition also resulted in the forfeiture of her savings to the FBI. *See* 28 C.F.R. §

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jurisdiction . . . to consider constitutional claims (citations and quotation marks omitted)); *Gete v. INS*, 121 F.3d 1285, 1293 (9th Cir. 1997) (holding courts do not lose "jurisdiction to consider challenges to the constitutionality of forfeiture proceedings just because property owners elected administrative rather than judicial forfeiture"); *Krecioch v. United States*, 221 F.3d 976, 979–80 (7th Cir. 2000), *cert. denied*, 531 U.S. 1026 (2000) ("[F]ederal courts possess jurisdiction to review collateral due process attacks on administrative forfeitures." (citing *Weng v. United States*, 137 F.3d 709, 713 (2d Cir. 1998), and *United States v. Woodall*, 12 F.3d 791, 793 (8th Cir. 1993))); *United States v. McGlory*, 202 F.3d 664, 670 (3d Cir. 2000) (en banc); *United States v. Deninno,* 103 F.3d 82, 84 (10th Cir. 1996); *Sarit v. DEA,* 987 F.2d 10, 17 (1st Cir. 1993).

9.5(a)(4); JA454–55. The trial court ignored this fundamental problem when it dismissed Linda for not "protest[ing] the sufficiency of the forfeiture notice with the FBI before filing suit," JA462, such as "in her petition," JA464. It should therefore be reversed.

CONCLUSION

For the foregoing reasons, the trial court's decision dismissing Linda's claims should be reversed, and this case should be remanded for further proceedings.

Dated: October 17, 2024.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 12,481 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 with a 14-point Century Schoolbook font.

Dated: October 17, 2024

/s/ Robert M. Belden
Robert M. Belden

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2024, I filed the foregoing Brief of Appellant with the Clerk of the United States Court of Appeals for the D.C. Circuit via the CM/ECF system, which will notify all participants in the case who are registered CM/ECF users.

Dated: October 17, 2024

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