[ORAL ARGUMENT NOT 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 AND CHRISTOPHER A. WRAY, in his official capacity as Director of the Federal Bureau of Investigation,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEES

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and Amici

Plaintiff-appellant is Linda Martin. Defendants-appellees are the Federal Bureau of Investigation and Christopher Wray, in his official capacity as Director of the Federal Bureau of Investigation. The Cato Institute filed an amicus curiae in this Court.

No other parties, intervenors, or amici curiae appeared before the district court or have entered appearances before this Court.

B. Rulings Under Review

Plaintiff appeals from the order (Dkt. No. 25) and opinion (Dkt. No. 24) of the district court (Mehta, J.) issued on April 5, 2024, which granted defendants' motion to dismiss and denied as moot plaintiff's motion for class certification. The district court's opinion is unreported but is available on Westlaw at 2024 WL 1612084.

C. Related Cases

This case has not previously been before the Court. Defendants-appellees are not aware of any related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

/s/ Joshua M. Koppel
Joshua M. Koppel

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GLOSSARY

DEA	Drug Enforcement Administration
FBI	Federal Bureau of Investigation
INS	Immigration and Naturalization Service
USPV	U.S. Private Vaults

INTRODUCTION

Federal law provides for the forfeiture of property traceable to specified criminal conduct. The government may seek to forfeit certain property administratively—*i.e.*, without a court order—if, after it publishes general notice and provides personal written notice to any known interested parties, no one claims an interest in the property. If someone files such a claim, however, the government must either return the property or commence judicial forfeiture proceedings, which involve ordinary trial procedures. In judicial forfeiture, the government bears the burden of proving that the property is subject to forfeiture.

This case arises out of the Federal Bureau of Investigation's (FBI) seizure of currency owned by plaintiff Linda Martin. The FBI sent plaintiff a notice of intent to forfeit the currency. The notice described the property at issue and identified the date and location of the seizure. The notice also explained the remedies available to plaintiff: First, she could file a claim identifying her interest in the seized property, in which case the government would return the property or initiate judicial forfeiture proceedings. Second, she could also file a petition for remission or mitigation, which would not contest the forfeiture, but

would request that the FBI, in its discretion, pardon all or part of the property from forfeiture.

Plaintiff did not file a claim contesting the forfeiture. Instead, she filed a petition for remission or mitigation. Then, nearly 21 months after receiving the notice of forfeiture, plaintiff filed the instant action, alleging that the notice was constitutionally deficient and that her due-process rights were violated because the notice did not identify the factual and legal bases for the proposed forfeiture with sufficient specificity. Plaintiff also moved to certify a class action.

A few months later, the FBI discontinued forfeiture proceedings and returned plaintiff's property, and the government moved to dismiss. The district court recognized that plaintiff's individual claim was moot but held that her class claim fell within the "inherently transitory" exception to mootness. The court then dismissed the claim on the merits and denied the class-certification motion as moot.

The case should be remanded with instructions to dismiss for lack of jurisdiction. Plaintiff's individual claim is moot because the government terminated forfeiture proceedings and returned her property. And plaintiff's class claim does not fall within an exception to

mootness because plaintiff's claim was plainly not inherently transitory. In fact, it was plaintiff's own delay in waiting nearly two years before filing her complaint and moving for class certification that prevented the court from acting on that motion before her claim became moot.

Even if an exception to mootness applied, that would only permit this Court to review the denial of the motion to certify a class action, which plaintiff has not challenged. It would not allow this Court to review the merits of plaintiff's indisputably moot individual claim. Because plaintiff has, on appeal, raised arguments only as to the dismissal of her claim, the appeal should be dismissed for lack of jurisdiction.

If the Court concludes that it has jurisdiction, it should affirm the dismissal of plaintiff's claim. The Court's precedent is clear that an interested party must raise any challenge to the government's forfeiture in the administrative process before filing a collateral challenge in court. Because plaintiff did not raise her due-process claim with the FBI, the district court properly dismissed the claim for failure to exhaust administrative remedies.

The district court also correctly held that plaintiff failed to state a plausible claim for relief. The FBI's forfeiture procedures provide an interested party with adequate notice of the government's intent to forfeit property. The interested party then has an opportunity for a meaningful hearing in court, and a right to receive notice of the factual and legal grounds for the proposed forfeiture before the hearing. That is all the Due Process Clause requires.

Contrary to plaintiff's argument, the government need not identify the specific grounds for a proposed forfeiture in the initial forfeiture notice. Nor is plaintiff entitled to that information at the time she decides whether to file any petition for remission or mitigation, which is a procedure that is not itself constitutionally required. Plaintiff would have received all the information she contends she was entitled to if she had filed a claim asserting her ownership interest in the property. Having failed to do so, plaintiff cannot now complain that she did not receive that information at an earlier time.

STATEMENT OF JURISDICTION

The district court had jurisdiction pursuant to 28 U.S.C. § 1331. The court entered a memorandum opinion and final order dismissing

plaintiff's claims on April 5, 2024. JA453-472. Plaintiff timely filed a notice of appeal on May 28, 2024. JA004. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether threshold issues prevent the Court from considering the merits of plaintiff's due-process claims because (a) the district court should have dismissed the case for lack of jurisdiction after plaintiff's individual claim became moot; and (b) even assuming plaintiff's class claim falls within an exception to mootness, the Court may not consider the merits of that claim without a certified class.

2. Whether the district court properly dismissed plaintiff's due-process claim because plaintiff failed to exhaust administrative remedies by raising the issue with the FBI.

3. Whether the district court properly held that plaintiff failed to state a plausible due-process claim because the FBI's forfeiture procedures provide interested parties who claim an interest in the subject property a full explanation of the grounds for the proposed forfeiture and a meaningful opportunity to be heard.

PERTINENT STATUTE

The text of 18 U.S.C. § 983 is reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Statutory Background

Federal law provides for the forfeiture of property that is involved in or traceable to certain criminal conduct, *see, e.g.*, 18 U.S.C. § 981(a), and establishes the procedures under which the government conducts those forfeitures, *see, e.g.*, *id.* § 983. In some cases, the government may seek to forfeit the property administratively—that is, without a court order. But if anyone claims an interest in the property—indicating an intent to contest the forfeiture—the government must terminate administrative forfeiture proceedings and return the property or pursue forfeiture in court.

In particular, the civil forfeiture of property seized by the FBI operates according to the following procedures: When the FBI seizes property subject to administrative forfeiture, it publishes notice of the seizure and its intent to forfeit the property and sends interested parties personal written notice within 60 days of the seizure. 18 U.S.C. § 983(a)(1); 28 C.F.R. § 8.9(a)-(b). The notices must, *inter alia*, describe

the seized property; state the date, statutory basis, and place of seizure; identify the appropriate official of the seizing agency and the address where the interested party may file a claim to the seized property; and state the deadline for filing such a claim, which must be at least 30 days after final publication of a general notice or 35 days after personal written notice is sent. 28 C.F.R. § 8.9(a)(2), (b)(2). The notices must also advise interested persons that they may submit a petition for remission or mitigation. *Id.* § 9.3(a). Interested parties then have two nonexclusive options for recovering the property.

First, a party may file a "claim" with the appropriate FBI official. 18 U.S.C. § 983(a)(2). "A claim need not be made in any particular form," *id.* § 983(a)(2)(D), but it must "identify the specific property being claimed," "state the claimant's interest in [the] property," and "be made under oath," *id.* § 983(a)(2)(C). If an interested party files a claim, the administrative forfeiture process terminates, and the government is required to either "file a [civil] complaint for forfeiture" in district court or include a forfeiture allegation in a criminal indictment—thus initiating the "judicial forfeiture" process, *id.* § 983(a)(1)(A)(ii)—"or return the property." *Id.* § 983(a)(3). If the government opts to file a

civil forfeiture complaint, it must, among other things, "identify the statute under which the forfeiture action is brought" and "state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial." Fed. R. Civ. P. Supp. R. G(2)(e)-(f). Judicial forfeiture then generally proceeds in accordance with the Federal Rules of Civil Procedure, including the discovery rules. *See* Fed. R. Civ. P. Supp. R. A(2) ("The Federal Rules of Civil Procedure also apply to" forfeiture actions "except to the extent that they are inconsistent with these Supplemental Rules."); Fed. R. Civ. P. Supp. R. G advisory committee note to paragraph 8(e) ("The extent and timing of discovery are governed by the ordinary rules."). At trial, "the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture." 18 U.S.C. § 983(c)(1).

Second, an interested party may file a "petition for remission or mitigation." 28 C.F.R. § 9.3(b)(1). Unlike a claim, a petition does not dispute that a basis for forfeiture exists. "The ruling official shall presume a valid forfeiture and shall not consider whether the evidence is sufficient to support the forfeiture." *Id.* § 9.5(a)(4). The agency may

nonetheless grant remission if it determines that the petitioner "has a valid, good faith, and legally cognizable interest in the seized property as owner or lienholder … and is an innocent owner." *Id.* § 9.5(a)(1). Alternatively, the agency may grant mitigation on a variety of grounds, including "to a party not involved in the commission of the offense underlying forfeiture." *Id.* § 9.5(b)(1).

Interested parties may file "both a claim … and a [p]etition for [r]emission or [m]itigation," U.S. Dep't of Justice, *Petitions*, https://perma.cc/JL74-D6NT; *see also* JA036, in which case the petition is considered after the conclusion of any judicial-forfeiture proceedings, in the event a court finds the property subject to forfeiture. Regardless of whether an interested party files a claim or petition, the FBI retains the discretion to terminate the forfeiture process and return the property of its own accord prior to the completion of the forfeiture. *See* 28 C.F.R. § 8.7(a) (identifying circumstances in which the FBI Special Agent in Charge "is authorized to release property seized for forfeiture"); *id.* § 8.7(b) ("[S]eized property may be released if the appropriate official of the seizing agency determines that there is an innocent party with the

right to immediate possession of the property or that the release would be in the best interest of justice or the Government.").

If no interested party files a claim and the FBI does not exercise its discretion to return the property, "the appropriate official of the seizing agency shall declare the property forfeited." 28 C.F.R. § 8.12. That declaration has "the same force and effect as a final decree and order of forfeiture in a federal judicial forfeiture proceeding." *Id.*

B. Factual Background

1. Plaintiff Linda Martin rented a safe deposit box from U.S. Private Vaults (USPV), a private company. JA455. Unlike banks, which also rent safe deposit boxes, "USPV did not require customers to provide personal information, social security numbers, driver's licenses, or any other form of identification in order to rent a box." *Snitko v. United States*, 90 F.4th 1250, 1252 (9th Cir. 2024). Indeed, "[p]rotection of customers' anonymity was USPV's main selling point." *Id.* USPV's facility also featured significant security measures, including iris-scan vault access. *Id.* Unsurprisingly, USPV's boxes "were used regularly by unsavory characters to store criminal proceeds, a fact both known to and desired by USPV's principals." *Snitko v. United States*, No. 2:21-cv-

04405-RGK-MAR, 2022 WL 20016427, at *1 (C.D. Cal. Sept. 29, 2022), *rev'd*, 90 F.4th 1250 (2024).

Government investigations of USPV clients resulted in the execution of numerous federal search warrants at the facility, "along with the forfeiture of box contents that were the criminal proceeds of, *inter alia*, ransoms, gambling and prostitution rings, drug operations, and identity theft schemes." *Snitko*, 2022 WL 20016427, at *1. Federal law enforcement agencies also opened an investigation into USPV and its principals, suspecting them of various crimes, including money laundering. JA455.

In March 2021, the FBI obtained a search warrant to seize USPV's facilities, including its nest of safe deposit boxes. JA455. The warrant directed agents to follow their agencies' written inventory policies to inspect the boxes to identify and notify their owners so they could claim their property. JA455. The FBI executed the warrant, removing and seizing more than 700 safe deposit boxes. JA456. Agents inventoried the contents of the boxes, ran all cash over $5,000 by drug-sniffing dogs, tagged items with forfeiture numbers, and photographed objects found in the boxes. JA456. The FBI eventually initiated

administrative forfeiture proceedings against the contents of 400 safe deposit boxes. JA456.

Shortly after the execution of the warrant, plaintiff's counsel—representing approximately half a dozen other plaintiffs—filed a class-action complaint against the FBI in the Central District of California, alleging that the FBI's seizure of the contents of certain USPV boxes violated the Fourth Amendment. *See Snitko*, 2022 WL 20016427, at *5. In light of the ongoing litigation, the FBI held in abeyance all uncontested administrative forfeitures involving property seized from USPV boxes. The Ninth Circuit eventually held that the government exceeded the scope of the search warrant's terms in seizing and forfeiting the property of USPV's customers. *Snitko*, 90 F.4th at 1264-1265.

2. One of the boxes that the FBI seized at USPV's facility was plaintiff's. JA456. In June 2021, the FBI sent plaintiff a Notice of Seizure of Property and Initiation of Administrative Forfeiture Proceedings. JA456; *see* JA036-037 (notice). The notice identified the seized property as "$40,200.00 U.S. Currency from U.S. Private Vault Box #1810," identified the seizing agency ("the FBI") and the date and

location of the seizure ("March 22, 2021," in "Beverly Hills, California"). JA036. The notice also stated that the forfeiture had "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. The notice informed plaintiff that she could file a petition for remission or mitigation and/or a claim. JA036-037. It explained that "to contest the forfeiture … in United States District Court," plaintiff "must file a claim," and that if she did "not file a claim," plaintiff would "waive [her] right to contest the forfeiture of the asset." JA037 (capitalization altered). The forfeiture notice further explained that if plaintiff filed only a petition for remission or mitigation, the petition would be decided by the seizing agency. JA036. The FBI identified the time limit for filing a claim or petition, described what a claim or petition should contain, explained that plaintiff could file a claim or petition online or by mail, and identified the address for the "Forfeiture Paralegal Specialist" to whom any such mail should be directed. JA036-037.

Plaintiff chose not to file a claim and instead filed a petition for remission or mitigation. JA016. She stated in the petition that she "did

not know of the conduct giving rise to the forfeiture" and was not "aware of any activity that may have prompted the forfeiture." JA016; JA456. Plaintiff inquired about the status of her petition on multiple occasions. JA017. In July 2022, the FBI responded that in order to "conduct an investigation into the merits" of plaintiff's petition, plaintiff would need to "provide documentation in support of the significant amount of cash [she was] requesting a pardon for," such as pay stubs or tax returns. JA039. Plaintiff submitted additional documents to the FBI. JA017. In January 2023, the FBI e-mailed plaintiff's counsel, advising that "[t]he case [wa]s still open," the matter was "still pending forfeiture," and that the FBI Legal Forfeiture Unit would "make a determination as to pending petitions" "[o]nce the property ha[d] been forfeited." JA041.

C. Prior Proceedings

1. Plaintiff filed this action on March 7, 2023. JA005-034. She asserted two procedural due-process claims, one on her own behalf and one as representative of a putative class. JA028-033. Plaintiff proposed a class of all persons (1) who received a notice of forfeiture from the FBI during the past six years or who will receive a notice of forfeiture from

the FBI in the future, (2) whose property has not been returned to them, and (3) whose property has not been made subject of a complaint for forfeiture in a United States District Court. JA022. Plaintiff asserted that the FBI's "[n]otice procedures create a substantial and unconstitutionally large risk of erroneous deprivation of [plaintiff's and proposed class members'] protected interests." JA028; *see also* JA030. She contended that the FBI's forfeiture notices do not provide "the specific legal and factual bases for seizing and trying to forfeit property," and that without this information, class members cannot "understand the nature of the government's proceedings against them and their property and c[annot] … even begin to prepare an effective and meaningful response to defend their rights." JA031; *see also* JA028.

Plaintiff requested that the court issue a declaratory judgment that the FBI's notices of forfeiture violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution and enjoin the FBI from proceeding with the forfeiture of class members' property "unless and until the FBI resends them notices containing the specific legal and factual reasons the FBI believes justify seizing and forfeiting their property." JA032. If the FBI did not provide that corrected notice,

plaintiff asked the court to "order the FBI to return" class members' property "without condition or delay." JA033.

Shortly after filing her complaint, plaintiff moved to certify a class action. JA042-043.

2. In April 2023, while the USPV administrative forfeiture proceedings were still in abeyance, the FBI determined that it would discontinue forfeiture proceedings and release plaintiff's property, upon verification of ownership, pursuant to its authority under 28 C.F.R. § 8.7. JA446-447; JA458. The FBI contacted plaintiff's attorneys to arrange a "key check" in order to verify her ownership, and then had plaintiff complete a form to release the funds. JA447; JA458.

The government then moved to dismiss the complaint. It argued, first, that plaintiff's claim is moot because the FBI exercised its discretion to release the seized property to plaintiff and terminated the administrative forfeiture proceeding. Dkt. No. 15-1, at 8-11. The government also argued that the complaint should be dismissed because plaintiff failed to exhaust administrative remedies. *Id.* at 11-15. Finally, the government contended that plaintiff's claims should be dismissed for failure to plausibly allege a violation of the Due Process

Clause because the FBI's notices of forfeiture satisfy the minimum requirements of due process by notifying interested parties of the pendency of a forfeiture action and an opportunity to present their objections. *Id.* at 15-17. The government opposed plaintiff's motion to certify a class action on the same grounds. Dkt. No. 17.

About a month later, in July 2023, while both the government's motion to dismiss and plaintiff's motion for class certification remained pending, the government electronically transferred to plaintiff the full value of the seized funds ($40,200.00) plus interest ($1,439.22). JA448-452; JA458.

3. On April 5, 2024, the district court granted the government's motion to dismiss and denied plaintiff's motion for class certification as moot. JA471-472.

The court first addressed the government's argument that the entire case was moot. JA458. The court agreed that plaintiff's individual claim "is now moot because the FBI has discontinued the administrative forfeiture proceedings and returned the seized funds to her." JA459. It acknowledged that plaintiff's class claim would ordinarily also be moot because the court had not yet certified a class,

but it found that plaintiff had sufficiently demonstrated the prerequisites for applying the "inherently transitory" exception to mootness, under which "a motion for [class] certification may 'relate back' to the filing of the complaint." JA459 (quoting *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 n.2 (2013)). The court recognized that plaintiff's claim remained live for two years after the date she could have filed a claim with the FBI, but it speculated that some other putative class members' claims might not last that long. JA460-461.

The district court next held that plaintiff's claims are barred because she did not exhaust her administrative remedies. The court emphasized that this Court's case law requires exhaustion in civil forfeiture proceedings. JA462 (citing *Malladi Drugs & Pharm., Ltd. v. Tandy*, 552 F.3d 885 (D.C. Cir. 2009)). Plaintiff had argued that there is an exception to the exhaustion requirement when inadequate notice of illegal procedures prevents the plaintiff from being able to raise its objection before the agency, but the court explained that nothing in the forfeiture notice prevented plaintiff from challenging the sufficiency of the notice in her petition or demanding that the FBI clarify the grounds for the seizure and forfeiture. JA463-464. The court further held that

plaintiff was required to exhaust her administrative remedies even though the challenge she sought to bring was constitutional in nature, and that plaintiff's failure to exhaust could not be excused. JA464-468. Exhaustion would not have been futile because the FBI could have reviewed the constitutional challenge and, if necessary, issued a revised forfeiture notice. JA466-467.

The district court also held that plaintiff failed to state a plausible due-process claim. JA468-470. The court recognized that "[t]he Due Process Clause requires 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" JA468 (quoting *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)). In the context of civil forfeitures, the government must provide "'individualized notice that the [the government] ha[s] [seized] property' … where the property owner 'would have no other reasonable means of ascertaining who was responsible for his loss.'" JA468 (brackets in original) (quoting *City of West Covina v. Perkins*, 525 U.S. 234, 241 (1999)). The court held that the FBI's forfeiture notice satisfies this standard because it provides individualized notice of a

seizure, includes basic details of the seizure (including the date and location), identifies the property at issue, cites the relevant statutes and regulations that authorize the seizure, and explains possible remedies and the procedures for filing a claim contesting the forfeiture or a petition for remission or mitigation. JA468-469.

The district court rejected plaintiff's reliance on *Gray Panthers v. Schweiker* (*Gray Panthers I*), 652 F.2d 146 (D.C. Cir. 1980), and *Ralls Corp. v. Committee on Foreign Investment in the U.S.*, 758 F.3d 296 (D.C. Cir. 2014), in which this Court held that due process entitles a person to notice of the reasons for the denial of the person's legal interest prior to a hearing or in time for the person to challenge that denial. The court explained that the forfeiture notice at issue here "was not 'the sum total of the communication from decisionmaker to claimant before a final denial,'" and that plaintiff would have "the 'opportunity to flesh out the notice' by filing a claim or[] even by filing a petition and requesting more information from the FBI as part of that process." JA469 (emphasis omitted) (quoting *Gray Panthers I*, 652 F.2d at 169). Plaintiff thus had "an avenue to force the government to identify the basis for, and bear the burden of defending, the seizure." JA470.

Regardless of the contents of the forfeiture notice itself, the district court held, "the process here offered [p]laintiff all of the procedural protections required" by this Court's precedent "and more, if she only had contested the forfeiture by filing a claim." JA470.

SUMMARY OF ARGUMENT

I.A. The district court should have dismissed plaintiff's claims as moot because the FBI discontinued forfeiture proceedings and returned the seized funds to plaintiff, and the court could not grant any additional remedy. Plaintiff's claim does not fall within the "inherently transitory" exception to mootness because it remained live for more than two years from the time that she received the allegedly defective notice of forfeiture until her property was returned. As the district court recognized, two years is enough time for a court to rule on a motion for class certification.

The district court erred by focusing on how long plaintiff's claim remained live after she filed her complaint. The "inherently transitory" exception focuses on whether a *claim* would last long enough for a court to rule on a class-certification motion, not whether a plaintiff's judicial action lasts that long. A plaintiff who delays in filing a complaint and

motion for class certification on a claim that lasts long enough for a court to adjudicate cannot take advantage of the "inherently transitory" exception. Accordingly, the court should vacate the judgment below and remand with instructions to dismiss the action as moot.

B. Even if an exception to mootness applied to plaintiff's class claim, that exception would have permitted the district court to rule on only the motion for class certification; it would not permit the court to rule on the merits of plaintiff's indisputably moot individual claim. This Court likewise lacks jurisdiction to review the merits of plaintiff's individual claim, which is the only issue plaintiff has presented on appeal. Because plaintiff has not challenged the denial of class certification and the Court lacks jurisdiction to review the merits of her due-process claim, this appeal should be dismissed for lack of jurisdiction.

II. If the Court concludes that it has jurisdiction to review the merits of the dismissal order, it should affirm the decision below because plaintiff failed to exhaust her administrative remedies. As the district court explained, this Court's case law makes clear that interested parties must exhaust administrative remedies before filing

suit to challenge the procedures used in an administrative forfeiture. Plaintiff could have done so here by filing a claim with the FBI, in which case the FBI would have been required to return plaintiff's property or file a complaint in court that set out the factual and legal grounds for the proposed forfeiture—precisely the information that plaintiff contends she was entitled to. Alternatively, plaintiff could have raised her due-process argument in the remission petition that she did file, in which case the FBI could have considered the argument and, if necessary, issued an amended notice of forfeiture.

Plaintiff argues that there was no administrative process to exhaust, but that argument is forfeited because she failed to raise it in the district court. In any event, the argument is meritless because this Court has made clear that the opportunity to file a claim or remission petition provides an avenue for administrative review of a challenge to a proposed forfeiture.

III. The district court also correctly held that plaintiff failed to state a plausible due-process claim. The Due Process Clause requires that before the government deprives a person of a property interest, it must provide notice that apprises the affected individual of the

proposed action and permits the individual to pursue available remedies. The government must also afford the affected individual a meaningful opportunity to be heard and, prior to that hearing, provide notice of the factual basis for the government's action so that the individual can respond effectively.

The FBI's forfeiture procedures satisfy these requirements. The forfeiture notice apprises interested parties of a proposed forfeiture and their opportunity to contest the forfeiture. And an interested party who claims an interest in the subject property is afforded a meaningful judicial hearing in which the government must file a complaint identifying the factual and legal bases for the forfeiture, the parties can engage in discovery, and the court conducts a trial on the merits at which the government bears the burden of proving that the property is subject to forfeiture.

Plaintiff errs in arguing that the government must provide notice of the factual and legal bases for a proposed forfeiture in the initial forfeiture notice. Neither this Court nor the Supreme Court has ever held that the grounds for the government's action must be provided in an initial notice; to the contrary, this Court has recognized that those

grounds may be provided later so long as they are disclosed in time for the interested party to prepare for the hearing.

The Supreme Court has also made clear that the forfeiture proceedings that occur when an interested party files a claim provide the constitutionally required process. The Constitution does not require the government to allow an interested party to file a petition for remission or mitigation. Accordingly, the Due Process Clause does not require that an interested party be provided any additional information about the grounds for a proposed forfeiture at the time she has to decide whether to file such a petition.

STANDARD OF REVIEW

The Court reviews the district court's dismissal order de novo. *See Ralls Corp. v. Committee on Foreign Inv. in the U.S.*, 758 F.3d 296, 314 (D.C. Cir. 2014).

ARGUMENT

I. THE COURT LACKS JURISDICTION TO REVIEW THE MERITS OF THE DISTRICT COURT'S DISMISSAL ORDER BECAUSE PLAINTIFF'S CLAIM BECAME MOOT WHEN THE FBI RETURNED HER PROPERTY

A. The District Court Erred In Not Dismissing This Case On Mootness Grounds

1. Article III of the Constitution "confines the federal judicial power to the resolution of 'Cases' and 'Controversies.'" *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). "For there to be a case or controversy under Article III, the plaintiff must have a personal stake in the case—in other words, standing." *Id.* (quotation marks omitted). And a plaintiff "must maintain [her] personal interest in the dispute at all stages of litigation." *Id.* at 431.

"If an intervening circumstance deprives the plaintiff of a 'personal stake in the outcome of the lawsuit,' at any point during litigation, the action can no longer proceed and must be dismissed as moot." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013). A case becomes moot "when, among other things, the court can provide no effective remedy because a party has already 'obtained all the relief that it has sought.'" *Conservation Force, Inc. v. Jewell*, 733 F.3d 1200, 1204 (D.C. Cir. 2013) (alteration omitted). Even when a plaintiff asserts a

class claim, a case is ordinarily moot and should be dismissed when "a case or controversy no longer exists between the named plaintiff[] and the [defendant]," unless a class has already been certified. *Board of Sch. Comm'rs v. Jacobs*, 420 U.S. 128, 129 (1975) (per curiam); *see also United States v. Sanchez-Gomez*, 584 U.S. 381, 386 (2018) ("Normally a class action would be moot if no named class representative with an unexpired claim remained at the time of class certification.").

The district court correctly concluded that "[p]laintiff's individual claim is now moot because the FBI has discontinued the administrative forfeiture proceedings and returned the seized funds to [plaintiff]." JA459; *see* JA448 (notice of payment). Plaintiff has already obtained the relief she sought. *See* JA030. The district court thus lacked jurisdiction to proceed further and should have dismissed the case as moot. *Cf. Board of Sch. Comm'rs*, 420 U.S. at 129-130.

2. The district court erred in holding that plaintiff's class claim falls within the "inherently transitory" exception to mootness. The Supreme Court has recognized this exception—which permits a district court to certify a class action even after the claims of the named plaintiffs have become moot—in a "narrow class of cases" where "it is

certain that other persons similarly situated" will continue to be subject to the challenged conduct, *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975), and the claims raised are "so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires," *County of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991) (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 399 (1980)). *See also Genesis Healthcare*, 569 U.S. at 76. In such cases, the certification of a class action "might 'relate back' to the filing of the complaint," when the named plaintiff's individual claim was still live. *Id.* Although the party seeking dismissal for lack of jurisdiction bears the initial burden of establishing mootness, "the 'opposing party bears the burden of proving an exception [to mootness] applies.'" *J.D. v. Azar*, 925 F.3d 1291, 1307 (D.C. Cir. 2019) (per curiam).

Plaintiff did not, and cannot, meet her burden of proving that the "inherently transitory" exception applies because plaintiff's claim is not of the type that is "so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires." *County of*

Riverside, 500 U.S. at 52 (quoting *Geraghty*, 445 U.S. at 399). Indeed, as the facts of this case reflect, the government's seizure and retention of property for forfeiture is not inherently transitory, and claimants are not precluded from bringing due-process challenges or seeking class certification while those forfeiture proceedings are ongoing. Here, the government retained plaintiff's property for more than two years after sending plaintiff the notice of forfeiture, which is when her claim arose. That period provided more than enough time for plaintiff to file a complaint and have a court rule on her class-certification motion, as the district court acknowledged. *See* JA460 ("[A] class certification motion could be resolved within two years ...."); *see also Fund for Animals, Inc. v. Hogan*, 428 F.3d 1059, 1064 (D.C. Cir. 2005) ("As a general rule, two years is enough time for a dispute to be litigated.").

The district court erred in finding the "inherently transitory" exception applicable here. First, the court observed that plaintiff's individual claim became moot fewer than three months after she moved for class certification, which the court declared "suggests an 'inherently transitory' claim." JA460. But the relevant focus is on plaintiff's "claim[]," not her judicial action. *County of Riverside*, 500 U.S. at 52

(quoting *Geraghty*, 445 U.S. at 399). To measure whether a claim is inherently transitory requires assessing how long the claim remains live—that is, from the time the claim accrued until the time the claim became moot. A claim accrues when the plaintiff "has a 'complete and present cause of action,'" *Corner Post, Inc. v. Board of Governors of the Fed. Reserve Sys.*, 603 U.S. 799, 809 (2024)—in this case, when plaintiff received the allegedly deficient notice of forfeiture. As noted above, plaintiff's claim in this case was live for more than two years, and that is more than enough time for a district court to rule on a class-certification motion.[1]

Second, the district court erred by shifting to the government what was properly plaintiff's burden to prove the applicability of an exception to mootness. *See J.D.*, 925 F.3d at 1307. The court declared that "[d]efendants ha[d] offered 'no evidence to show how long civil forfeiture proceedings usually remain pending.'" JA460. The court further stated that even if it measured from "the final date that [p]laintiff could have filed a claim with the FBI"—such that plaintiff's

[1] Had plaintiff properly exhausted her administrative remedies, *see infra* Part II, she could have argued that her claim did not accrue until the FBI made a final decision on her due-process claim.

claim lasted approximately two years—"the court has no evidence before it that administrative forfeitures resulting in the return of property ordinarily last, at least, that length of time," and "on this spare record," the court stated that it could not determine that plaintiff's claim was not inherently transitory. JA460-461. If the court lacked evidence to establish whether a claim like plaintiff's is inherently transitory, then plaintiff failed to meet her burden to prove the exception to mootness, and the district court was required to dismiss for lack of jurisdiction. The government had no obligation to demonstrate how long forfeitures normally last.

Third, the district court reasoned that "[e]ven if *some* forfeiture proceedings do span multiple years"—as plaintiff's did—it could not require plaintiff "to predict *which* ones" would last that long. JA461 (alteration and quotation marks omitted). That reasoning might make sense in a case where there was no way for the named plaintiff to avoid having her claim mooted before the court was able to rule on her motion for class certification. But that reasoning cannot work where, as here, the plaintiff's claim remained live long enough for such a ruling—more than two years in this case—and it was the plaintiff's delay in filing her

complaint and certification motion that prevented the court from ruling on that motion before the claim became moot. In other words, a plaintiff cannot delay in filing a class-certification motion and then, after her claim becomes moot, assert an exception to mootness because some *other* potential plaintiff's similar claim might have been inherently transitory. *See, e.g.*, *Richardson v. Bledsoe*, 829 F.3d 273, 287 (3d Cir. 2016) (noting that relation back would not be appropriate if the plaintiff "unduly delay[s]" seeking class certification); *Banks v. NCAA*, 977 F.2d 1081, 1086 (7th Cir. 1992) (holding that a plaintiff's claim was not inherently transitory where the plaintiff had not "been diligent in filing his claim").

In opposing the government's motion to dismiss, plaintiff argued that her due-process claim was transitory because the government has "*unilateral* authority to decide to return someone's property" and moot the claim. Dkt. No. 18, at 20. But the possibility that a defendant may provide the relief a plaintiff seeks exists in virtually every case. And the Supreme Court has made clear that the "inherently transitory" "doctrine has invariably focused on the fleeting nature of the challenged

conduct giving rise to the claim, not on the defendant's litigation strategy." *Genesis Healthcare*, 569 U.S. at 76-77.

Citing *Serrano v. Customs & Border Patrol*, 975 F.3d 488, 492 n.1 (5th Cir. 2020) (per curiam), plaintiff also argued that "courts regularly hold that plaintiffs can pursue class certification in forfeiture cases even when their personal property has been returned." Dkt. No. 18, at 21. But *Serrano* relied on a Fifth Circuit case, *Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1051 (5th Cir. Unit A July 1981), that "*extended* the concept of relation back in holding that 'a suit brought as a class action should not be dismissed for mootness upon tender to the named plaintiffs of their personal claims.'" *Serrano*, 975 F.3d at 492 n.1 (emphasis added). *Serrano* thus did not rely on the "inherently transitory" exception, but rather on an extension of *Gerstein*'s reasoning in *Zeidman*. Furthermore, the Fifth Circuit has recognized that the validity of *Zeidman* "may be in doubt," *Fontenot v. McCraw*, 777 F.3d 741, 750 (5th Cir. 2015), and even *Zeidman* recognized that the relation-back principle would only apply where the plaintiff "timely filed and diligently pursued [a] motion for class certification," 651 F.2d at 1051.

In sum, because the "inherently transitory" exception does not apply, the district court should have dismissed this entire case as moot once the FBI returned plaintiff's property.

B. Even If An Exception To Mootness Applies, The Court Lacks Jurisdiction To Adjudicate The Merits Of Plaintiff's Moot Individual Claim

Even if the "inherently transitory" exception to mootness applied, it would not permit the relief plaintiff now seeks: an adjudication of the merits of her moot individual claim. The Supreme Court has made clear that "[a] named plaintiff whose claim expires may not continue to press the appeal on the merits until a class has been properly certified." *Geraghty*, 445 U.S. at 404; *see also Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 336 (1980) (holding that when the named plaintiffs' claims were resolved in their favor after class certification was denied, "the Court of Appeals had jurisdiction to entertain the appeal only to review the asserted procedural error, not for the purpose of passing on the merits of the substantive controversy"). In *County of Riverside*, the Court thus made clear that the "inherently transitory" exception to mootness allowed the plaintiffs to "preserve[] the merits of the

controversy" for future litigation "by *obtaining* class certification." 500 U.S. at 51 (emphasis added).

The Supreme Court applied these principles in *Alvarez v. Smith*, 558 U.S. 87, 89 (2009), where the Court granted certiorari to determine whether Illinois law provided a sufficiently speedy opportunity for an individual to contest the lawfulness of a warrantless seizure of property. The district court had granted the defendants' motion to dismiss on the merits and denied the plaintiffs' motion for class certification as moot. *Id.* at 91; *see also Smith v. City of Chicago*, No. 06 C 6423, 2007 WL 6988874, at *1 (N.D. Ill. Feb. 22, 2007). The court of appeals reversed the dismissal, and the Supreme Court granted certiorari. *Alvarez*, 558 U.S. at 91. The Court discovered at oral argument, however, that the State had returned the plaintiffs' seized property, and it found the case moot. *Id.* at 92. The Court recognized that the plaintiffs had "sought certification of a class" that "might well contain members" with live claims, but it stressed that the district court had "denied the plaintiffs' class certification motion" and that "[t]he plaintiffs did not appeal that denial." *Id.* at 92-93. Thus, "the only disputes relevant" before the Court were those involving the named plaintiffs, "and those disputes

[we]re now over." *Id.* The Court thus declined to reach the merits of the plaintiffs' claims.

Alvarez applies directly to this case. Having found plaintiff's individual claim moot, the district court lacked jurisdiction to consider the merits of that claim on a motion to dismiss. And even though the court concluded (erroneously) that the "inherently transitory" exception to mootness applied to plaintiff's class claim, that conclusion gave it authority only to consider the pending motion to certify a class action. If the court had certified a class, then the case could have proceeded and the court could have resolved the unnamed class members' live claims on the merits; if the court denied certification, then the case would have to be dismissed for lack of jurisdiction.

Instead, the district court considered the merits of plaintiff's moot individual claim. *See, e.g.*, JA465-468 (considering whether plaintiff had exhausted her claim); JA468-469 (describing the forfeiture notice sent to plaintiff). It lacked jurisdiction to do so.

On appeal, plaintiff could potentially have sought review of the district court's denial of class certification, including on the ground that the district court should have resolved that motion without regard to

the merits of the class claim. Plaintiff could potentially have requested a remand for the district court to re-exercise its discretion under Federal Rule of Civil Procedure 23 to decide whether to certify a class. But plaintiff has not made any of those arguments and has not sought review of the district court's denial of class certification. By not raising it in her opening brief, plaintiff has forfeited any challenge to the district court's denial of class certification. *See Herron v. Fannie Mae*, 861 F.3d 160, 165 (D.C. Cir. 2017) (a party forfeits an argument by failing to adequately raise it in her opening brief).

Plaintiff instead seeks this Court's review of the merits of her own moot due-process claim, *see* Pl. Br. 46-48 (arguing that the FBI's forfeiture notice denied plaintiff her due process rights) or of a due-process claim on behalf of a non-certified class. *See* Pl. Br. 4 (stating that the issues presented are whether "the trial court err[ed] by dismissing [plaintiff's] due-process claims under Rule 12(b)(6)" or "for failure to exhaust"). No Article III jurisdiction exists to resolve plaintiff's individual claim because that claim is moot. Nor does jurisdiction exist to resolve the merits of the class claim because no class has been certified. Simply put, no entity is before this Court with

a live claim for relief against the government that might allow the Court to reach the merits of the due-process challenge. *See Geraghty*, 445 U.S. at 408 ("It would be inappropriate for this Court to reach the merits of this controversy" based on a mootness ruling that "extends only to the appeal of the class certification denial."); *id.* at 404 n.11 ("[T]he issue on the merits will not be addressed until a class with an interest in the outcome has been certified."). Because the Court cannot address the only issues that plaintiff has raised in her opening brief, the appeal should be dismissed for lack of jurisdiction.

II. THE DISTRICT COURT PROPERLY DISMISSED PLAINTIFF'S CLAIMS FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

A. Plaintiff Failed To Exhaust Her Due-Process Claims

If this Court concludes that there is jurisdiction to review the merits of plaintiff's claims, it should affirm the dismissal of those claims because she failed to present them to the FBI in the first instance. JA462-468. "It is a hard and fast rule of administrative law, rooted in simple fairness, that issues not raised before an agency are waived and will not be considered by a court on review." *Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251, 1297 (D.C. Cir. 2004) (per curiam). The doctrine

of administrative exhaustion applies also to constitutional claims and serves to "giv[e] agencies the opportunity to correct their own errors, afford[] parties and courts the benefits of agencies' expertise," ensure that agencies "compil[e] a record adequate for judicial review, [and] promot[e] judicial efficiency." *Marine Mammal Conservancy, Inc. v. Department of Agric.*, 134 F.3d 409, 413-414 (D.C. Cir. 1998).

This Court specifically requires interested parties to exhaust administrative remedies before filing suit to challenge the procedures used in an administrative forfeiture. In *Malladi Drugs & Pharmaceuticals, Ltd. v. Tandy*, 552 F.3d 885, 888 (D.C. Cir. 2009), the plaintiff challenged the Drug Enforcement Administration's (DEA) forfeiture of chemicals obtained during four seizures. The plaintiff did not file claims for the property, but instead filed petitions for remission. *Id.* After the government denied those petitions, the plaintiff filed suit, seeking the return of the chemicals or the institution of judicial forfeiture proceedings, arguing that the government was required to pursue judicial, rather than administrative, forfeiture because the aggregated value of the four seizures exceeded the limit that the government can forfeit administratively. *Id.* at 888-889.

This Court held that the plaintiff's "legal challenge fails because [the plaintiff] did not exhaust its administrative remedies before filing suit, having neglected to use the mechanism for obtaining judicial relief provided in the forfeiture statutes and having failed to raise the aggregation argument in its proceedings before the DEA." *Malladi*, 552 F.3d at 889. The Court explained that the plaintiff "elected to forego the legal remedy it seeks here when it chose the discretionary administrative remedy and allowed the time for filing a claim under the administrative scheme to pass." *Id.* at 890. "Having waived its opportunity for judicial forfeiture proceedings during the administrative process," the plaintiff could "not now attempt to correct its choice of remedy in federal court." *Id.* The plaintiff had further "compounded the exhaustion problem by failing to raise its argument[s] … before the DEA at all, even in the petitions [for remission] that it did file." *Id.*

This Court also applied the administrative-exhaustion requirement to bar a challenge to forfeiture procedures in *Colon-Calderon v. DEA*, 218 F. App'x 1 (D.C. Cir. 2007) (per curiam) (cited favorably in *Malladi*, 552 F.3d at 891). In that case, the DEA had seized cash from the petitioner, and then unsuccessfully attempted to

provide written notice of forfeiture. *See* Resp't's Br. 4-6, *Colon-Calderon v. DEA*, No. 05-1417, 2006 WL 3761323 (D.C. Cir. Dec. 15, 2006). The government administratively forfeited the money, and the petitioner then filed an untimely petition for remission, which the DEA denied. *Id.* at 6-7. The petitioner sought review in this Court, arguing for the first time that the DEA should have remitted or mitigated the forfeiture because the notice of forfeiture did not comport with the Due Process Clause. *Colon-Calderon*, 218 F. App'x at 1. The Court denied the petition for review because the petitioner "never raised this contention before the DEA." *Id.*

The district court correctly concluded that *Malladi* and *Colon-Calderon* require the dismissal of this case for failure to exhaust administrative remedies. Upon receiving the notice of forfeiture, plaintiff could have filed a claim with the FBI, which would have required the government to initiate a judicial forfeiture proceeding by filing a complaint in district court that "identif[ied] the statute under which the forfeiture action [wa]s brought" and "state[d] sufficiently detailed facts to support a reasonable belief that the government w[ould] be able to meet its burden of proof at trial." Fed. R. Civ. P.

Supp. R. G(2)(e)-(f); *see also* 18 U.S.C. § 983(a)(3)(A). Filing a claim would thus have required the FBI to provide plaintiff with the additional specificity that she now seeks concerning the factual and legal bases for the government's attempted forfeiture. Because plaintiff could "have 'petitioned the agency directly for the relief [she] seeks in this lawsuit' and failed to do so, [she] has 'not exhausted [her] administrative remedies.'" *Malladi*, 552 F.3d at 890 (alterations omitted).

Plaintiff also could have raised her due-process argument before the FBI "in the petition[for remission] that [she] did file." *Malladi*, 552 F.3d at 890-891. Had she done so, the FBI could have considered the due-process issue and potentially issued an amended forfeiture notice. Plaintiff's "failure 'to pursue normal administrative remedies' here allowed [her] to 'side-step a corrective process which might have cured or rendered moot the very defect later complained of in court.'" *Id.* at 891 (alteration omitted). Because plaintiff did not raise the due-process claim before the FBI, the district court properly refused to consider it. *See id.* at 891-892; *Colon-Calderon*, 218 F. App'x at 1.

B. Plaintiff's Arguments On Appeal Are Forfeited And, In Any Event, Meritless

In district court, plaintiff argued that she was not required to exhaust her claims because "constitutional claims generally are not subject to administrative exhaustion," because the FBI's administrative forfeiture proceedings are potentially lengthy, because the FBI may not be able to provide an adequate remedy, and because the FBI may be biased in deciding a due-process claim. Dkt. No. 18, at 24-26. The district court correctly rejected those arguments, JA464-467, and plaintiff does not renew them here. And although the district court explained that *Malladi* controls the outcome of this case—and that *Colon-Calderon*, though a non-precedential decision, is directly on point—plaintiff does not even mention those cases on appeal.

Plaintiff instead argues (Br. 57) that the district court erred because she "had no remedies to exhaust in the 30 days that the FBI's forfeiture notice gave her to respond." Plaintiff did not raise this argument in the district court, and she has therefore forfeited it. "It is well settled that issues and legal theories not asserted at the [d]istrict [c]ourt level ordinarily will not be heard on appeal." *District of Columbia v. Air Fla., Inc.*, 750 F.2d 1077, 1084 (D.C. Cir. 1984).

In any event, plaintiff's new argument is meritless because she had the same administrative remedies as the plaintiff in *Malladi*. Plaintiff could have filed a claim, in which case the FBI would have been required to return her property or file a judicial proceeding with a complaint that would have provided plaintiff the additional information she seeks in this case. Or plaintiff could have raised her due-process argument in the petition for remission that she did file, in which case the FBI could have considered whether to issue an amended forfeiture notice. *Cf. Malladi*, 552 F.3d at 890-891. *Malladi* makes clear that the claim and petition process provide an opportunity for administrative review of a challenge to a proposed forfeiture.

Plaintiff further argues that the notice of forfeiture failed to provide information about how to contact the FBI other than to file a petition—an argument that, again, was not presented to the district court. In any event, plaintiff misses the point: As in *Malladi*, plaintiff could have raised her due-process claim in a claim or "in the petition[] that [she] did file." *Malladi*, 552 F.3d at 890-891. Moreover, plaintiff is mistaken. The notice of forfeiture provided an address in Los Angeles ("Attn: Forfeiture Paralegal Specialist") to which plaintiff could mail a

claim or petition. JA036-037. A reasonable person would understand that she could send a request for more information, and any due-process argument, to the same address—either together with or separate from an actual claim or petition for remission.

Plaintiff cites no case holding that a plaintiff need not exhaust administrative remedies before bringing a collateral challenge to forfeiture proceedings. She cites (Br. 56 n.23) several cases holding that courts have *jurisdiction* over such claims, but none of those cases addressed the exhaustion requirement. Plaintiff also briefly asserts in the summary of her argument that "the FBI has no power to decide whether its notices are constitutional." Pl. Br. 28; *see also* Pl. Br. 56 (observing, as a general matter, that "courts do not always require [exhaustion], especially where constitutional claims are involved"). But plaintiff forfeited this argument by failing to develop it in her brief. *See Iowaska Church of Healing v. Werfel*, 105 F.4th 402, 414 (D.C. Cir. 2024). Furthermore, the district court considered and rejected this argument, *see* JA464-465, and plaintiff identifies no error in the court's reasoning.

III. THE DISTRICT COURT CORRECTLY HELD THAT PLAINTIFF FAILED TO STATE A PLAUSIBLE DUE-PROCESS CLAIM

A. The FBI's Forfeiture Procedures Comport With The Due Process Clause

The Due Process Clause requires "that the government provide notice and some kind of hearing before final deprivation of a property interest." *Propert v. District of Columbia*, 948 F.2d 1327, 1331 (D.C. Cir. 1991). The notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The notice serves the purpose of allowing the property owner to "ascertain[] who was," or will be, "responsible for his loss" so that he can "pursue available remedies for [the property's] return." *City of West Covina v. Perkins*, 525 U.S. 234, 240-241 (1999); *see also Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 14 (1978) ("The purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending 'hearing.'").

"[T]he opportunity to be heard must be given 'at a meaningful time and in a meaningful manner.'" *Propert*, 948 F.2d at 1332. Courts have thus recognized that "the right to know the factual basis for the action and the opportunity to rebut the evidence supporting that action are essential components of due process." *Ralls Corp. v. Committee on Foreign Inv. in the U.S.*, 758 F.3d 296, 318 (D.C. Cir. 2014). As this Court has explained, "[u]nless a person is adequately informed of the reasons for denial of a legal interest, a hearing serves no purpose," because "a claimant [would be] reduced to guessing what evidence can or should be submitted." *Gray Panthers I*, 652 F.2d 146, 168-169 (D.C. Cir. 1980).

The FBI's forfeiture procedures satisfy these due-process requirements. As the district court explained, the notice of forfeiture that was sent to plaintiff—consistent with the FBI's general procedures and in accord with federal statutes and regulations—included "basic details of the seizure ('Notice Date,' 'Seizure Date and Location,' 'Notice ID Number'), identifying features of the asset ('Description of Seized Property,' 'Asset ID Number'), and citations to the relevant statutes and regulations that authorized the seizure ('Forfeiture Authority')." JA468

(quoting JA036). The notice also explained interested parties' remedies, including the procedures for petitions for remission or mitigation and claims contesting the forfeiture. JA036-037. The notice further stated that the failure to file a claim would "waive [the] right to contest the forfeiture" and that "if no other claims are filed," plaintiff "may not be able to contest the forfeiture … in any other proceeding, criminal or civil." JA037. The notice thus advised plaintiff of the property at issue ("$40,200.00 U.S. Currency from U.S. Private Vault Box #1810"), who was responsible for the seizure ("the FBI"), and the procedures and deadlines for plaintiff to seek the property's return. JA036.

The district court correctly held that the notice comports with due process because it "provides 'individualized notice' of the FBI's seizure of [p]laintiff's property" and the FBI's intent to seek forfeiture. JA468. The notice was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*, 339 U.S. at 314.

The forfeiture statute and the FBI's procedures also provide a property owner a meaningful opportunity to be heard. If an interested party contests the proposed forfeiture by timely claiming an interest in

the property, the administrative forfeiture proceeding ends, JA037, and the government must either "file a complaint for forfeiture" in district court or return the property, 18 U.S.C. § 983(a)(3)(A). If the government chooses to pursue judicial forfeiture, the complaint must "identify the statute under which the forfeiture action is brought" and "state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial." Fed. R. Civ. P. Supp. R. G(2)(e)-(f). The interested party would then have an opportunity to engage in discovery, *see* Fed. R. Civ. P. Supp. R. A(2); Fed. R. Civ. P. Supp. R. G advisory committee note to paragraph 8(e) ("The extent and timing of discovery are governed by the ordinary rules."). And at trial, the government would bear "the burden of proof … to establish, by a preponderance of the evidence, that the property is subject to forfeiture." 18 U.S.C. § 983(c)(1). This judicial process plainly provides a property owner with adequate opportunity to discover "the factual basis" for the forfeiture and "rebut the evidence supporting that action." *Ralls*, 758 F.3d at 318.

B. The District Court Correctly Held That The FBI Was Not Required To Include Additional Information In The Forfeiture Notice

The district court correctly rejected plaintiff's claim that the FBI was required to provide greater specificity by stating the legal or factual bases for the proposed forfeiture "up front," Pl. Br. 34—*i.e.*, in the original forfeiture notice.

1. As explained above, the government must provide an explanation of the factual and legal bases for a proposed forfeiture so that the property owner can adequately prepare for a hearing and attempt to rebut the government's evidence. With regard to the timing of when the government provides that explanation, this Court has observed that "a conscientious definition of due process would include both specific notice of the factual grounds for denial plus a *subsequent opportunity* to address these grounds." *Gray Panthers I*, 652 F.2d at 169 (emphasis added). Thus, due process usually requires that a person be notified of the grounds for the government's intended action before a hearing on that action—as the civil forfeiture statute and Federal Rules of Civil Procedure provide for.

Plaintiff asserts (Br. 35-39) that the government must provide a detailed explanation of the grounds for a proposed forfeiture in the initial notice sent to interested parties (and, perhaps, in the published notice), before those parties have even claimed an interest in the property. *See also* Pl. Br. 50 (arguing that "[d]ue process requires notice of the government's specific reason for taking property *at the outset*" (emphasis added)). But the cases that plaintiff relies upon (Br. 36-39) undermine her argument by confirming that the government may provide additional information after the original notice so long as the interested party receives that information in time to prepare for a meaningful hearing.

In *Gray Panthers I*, the plaintiffs challenged the procedures for resolving disputes over small Medicare claims. 652 F.2d at 148. The Court observed that "none of the plaintiffs received any precise indication as to why his or her claim was being denied prior to the final decision on review," *id.* at 156, and the agency's notice "failed to specify prior to the final agency review which of … two basically different causes for denial applied," *id.* at 167. This "cryptic notice" was "the sum total of the communication from decisionmaker to claimant before a

final denial," and the claimant had "no opportunity to flesh out the notice at any stage by access to the files or informal consultation with either the initial or reviewing decisionmaker before a final and irrevocable denial of benefits [wa]s made." *Id.* at 169. Moreover, because the Medicare procedures did not provide for an oral hearing, a claimant could only "write a letter … that he hopes will address the issue" causing the denial of his claim. *Id.* The Court declared that the particular "combination" of procedures at issue in this scheme—"notice that does not adequately inform [the claimant] of the basis of the denial, no access to files or a summary of the evidence, no opportunity for any direct oral communication with the decisionmaker, a provider and a decisionmaker with possible bias, [and] no appeal of any sort"—created a significant possibility that the claimant would be deprived of his property erroneously and violated the plaintiffs' right to due process. *Id.* at 172-173.

As the district court here explained, the holding in *Gray Panthers I* rested on the fact that the deficient notice that failed to apprise the claimant of the grounds for the denial of his claim was "the sum total of the communication from decisionmaker to claimant before a final

denial." JA469 (emphasis omitted) (quoting *Gray Panthers I*, 652 F.2d at 169). Indeed, this Court recognized in *Gray Panthers I* that "ready access to the adverse evidence or a summary thereof" may "compensate[] for" "a lack of precise initial notice of the grounds for" the government's action. *Gray Panthers I*, 652 F.2d at 169. The Court therefore held that a Medicare claimant must "receive[] adequate notice and a genuine opportunity to answer the factual case against him, whether achieved by means of better notice, opportunity to talk to the decisionmaker and/or see his file, *or* a combination of both." *Id.* at 172 (emphasis added). Instead of mandating that the grounds for the government's action be provided in the initial notice, the Court recognized that those grounds could be made available to the claimant at a later time, so long as it preceded the opportunity to be heard. *See also Reeve Aleutian Airways, Inc. v. United States*, 982 F.2d 594, 600 (D.C. Cir. 1993) (considering, in determining that notice was adequate, the notice letter's "offer of follow-up contact through which [the plaintiff] could request additional information").

As explained, a property owner who receives a forfeiture notice has the "opportunity to flesh out the notice" before the forfeiture

becomes final by filing a claim. *Gray Panthers I*, 652 F.2d at 169; *see* JA470 (explaining that plaintiff "could have filed a claim, which would have … forced the government into court" where the government "would have to plead … the 'factual and legal basis for the forfeiture'"). Moreover, the property owner would have access to the government's evidence through discovery, an opportunity to present evidence and cross-examine witnesses before a neutral decisionmaker in federal court, and a right to appeal. *Cf. Gray Panthers I*, 652 F.2d at 172. *Gray Panthers I* does not require anything more.

In a footnote, plaintiff argues that, in a subsequent appeal in *Gray Panthers*, the Court "reaffirmed that the government must give notice up front and cannot rely on 'supplementation through action by the recipient.'" Pl. Br. 37 n.20 (alteration omitted) (quoting *Gray Panthers v. Schweiker* (*Gray Panthers II*), 716 F.2d 23, 32 (D.C. Cir. 1983)). But this Court has rejected that characterization of *Gray Panthers II*, explaining that "[t]he quoted language … is not a holding in *Gray Panthers II* but a parenthetical summarizing" a Seventh Circuit case. *Reeve Aleutian Airways*, 982 F.2d at 600 n.5. In fact, *Gray Panthers II* recognized that "the scope of hearings required before final decision on

a claim is dependent to some extent on whether the original notice provides a 'precise indication as to why a particular claim is being denied.'" 716 F.2d at 32 (alterations omitted). The Court thus made clear that the government need not provide a "precise indication" of its reasons in the original notice so long as subsequent proceedings, including hearings, provide an adequate opportunity for a claimant to learn the basis for the government's action and respond. *Id.*

Plaintiff fares no better in relying on *Ralls*, which held that a foreign-owned company was deprived of due process by a presidential order requiring the company to divest U.S. windfarms. 758 F.3d at 301-302, 321. *Ralls* recognized that "the right to know the factual basis for the action and the opportunity to rebut the evidence supporting that action are essential components of due process," *id.* at 318, but it did not address whether the private party must be provided with the factual basis for the government's action in the initial notice of that action, or if it may be provided at a later time. *See id.* at 320 ("We hold only that Ralls must receive the procedural protections we have spelled out before the Presidential Order prohibits the transaction."). Likewise, in *Esparraguera v. Department of the Army*, 101 F.4th 28 (D.C. Cir.

2024), the Court recognized that, "[t]o have proper notice and a meaningful opportunity to respond, [a federal] employee must at least 'know the factual basis for'" her removal from service, *id.* at 40, but it did not hold that she must receive that information in the original notice.

The cases that plaintiff cites (Br. 39-43) from other courts of appeals are equally unhelpful to her. In *Gete v. INS*, 121 F.3d 1285 (9th Cir. 1997), for example, the Ninth Circuit reversed the dismissal of due-process claims challenging the forfeiture procedures of the Immigration and Naturalization Service (INS). Unlike the FBI's petition process, which does not provide an avenue for contesting a forfeiture, the INS's administrative hearing process permitted property owners to contend that property "is not subject to forfeiture because no violation of the law occurred." *Id.* at 1290. *Gete* held that property owners going through that administrative process to contest a forfeiture must receive notice of "the factual and statutory bases" for the proposed forfeiture; otherwise, the owners would be "unable to make effective challenges to illegal seizures and unjustified forfeitures." *Id.* at 1295. In the case of the procedures challenged here, in contrast, any property owner who

chooses to contest the FBI's forfeiture does so through judicial proceedings. Thus, anyone contesting the FBI's forfeiture receives notice of the factual and statutory bases for the forfeiture—just as *Gete* required.

Plaintiff also relies on cases holding that a State must provide an explanation for denying an application for benefits where the individual would need that information to decide whether to seek a hearing where she would have to establish the State's error. *See Kapps v. Wing*, 404 F.3d 105, 110, 123-126 (2d Cir. 2005); *Vargas v. Trainor*, 508 F.2d 485, 488-490 (7th Cir. 1974). Here, however, plaintiff needed no additional information to respond to the forfeiture notice. She only needed to file a claim asserting her ownership interest in the property, with no supporting evidence required. *See* JA037.

Plaintiff likewise fails to advance her case by criticizing the district court's reliance on *City of West Covina*. As an initial matter, the court's reliance on that case was limited to two sentences that are not necessary to its holding. *See* JA468. In any event, plaintiff's discussion demonstrates her fundamental misunderstanding of the forfeiture system in a critical regard. She states (Br. 55) that, "[u]nlike [plaintiff],

the property owner in [*City of*] *West Covina* was entitled to get his property back without having to disprove the government's reasons for taking it." Critically, plaintiff, too, had no obligation to "disprove" the government's reasons for seeking forfeiture; as the district court pointed out, plaintiff had only to claim an interest in the property, at which point the government would have had to return the property or meet *its* burden of proving that the property was subject to forfeiture. JA470. This Court need not consider what notice the Due Process Clause requires when an individual bears the burden of disproving the asserted grounds for a proposed government action.

Plaintiff's appeal to history is also unavailing. In particular, her description (Br. 11-13) of early notices of administrative forfeiture does not accurately portray the range of such notices. Some early forfeiture notices provided very little detail about the grounds of forfeiture, stating only, for example, that specified property had been seized and would be forfeited "for violation of the revenue Laws." *Notice to Claimants*, Orleans Indep. Standard, Jan. 4, 1867, at 3, https://perma.cc/6MSE-Y3QN; *see also, e.g.*, Western Sentinel, Sept. 8, 1887, at 2, https://perma.cc/6JYT-8A4Z (seizure of property "for

violation of the Internal Revenue law"); *Collector's Notice*, Yorkville Enquirer, June 25, 1868, at 3, https://perma.cc/9JJE-Y784 (similar); *Notice of Seizure*, Western Sentinel, Apr. 4, 1895, at 3, https://perma.cc/6GKR-TVJE (similar); *Notice of Seizure*, Caucasian, July 19, 1906, at 3, https://perma.cc/45Z2-MJMN (similar). And whether or not interested parties could have figured out the grounds for these forfeitures—including because forfeiture was permitted for only a limited number of offenses at the time—is beside the point. The point here is that the notices themselves provide no more—and likely less—specificity in the factual or legal basis for the proposed forfeiture than the notice sent to plaintiff here.

2. Plaintiff also contends (Br. 46-47) that "without receiving the FBI's specific legal or factual reasons in the forfeiture notice," she was forced to respond without being able to "determine 'whether there were any defenses or other legal barriers to the FBI's' theory" or what evidence she should submit. As the forfeiture notice made clear, however, to contest the forfeiture, plaintiff needed only to file a claim identifying the property at issue and stating her "ownership or other interest in the property." JA037; *see also* 18 U.S.C. § 983(a)(2)(C). The

forfeiture notice directed plaintiff to an online claim form that she could use for her convenience, but also made clear that the claim "need not be made in any particular form." JA037. The notice further stated that plaintiff was "not required" to "submit supporting evidence." JA037.

Notably, plaintiff does not argue that she failed to file a claim because she was missing some critical piece of information. Rather, she states (Br. 2) that she filed a petition "not realizing that, in so doing, she had conceded its forfeiture." *See also* Pl. Br. 21 (stating that plaintiff "inadvertently ceded" the property to the FBI). But the forfeiture notice made clear that if plaintiff did "not file a claim, [she] w[ould] waive [her] right to contest the forfeiture of the asset." JA037. Plaintiff cannot undo her own "inadvertent[]"error by asserting that she was entitled to some additional information that would not have affected her decision as to how to proceed. Pl. Br. 21.

Plaintiff also errs in arguing (Br. 48, 51) that the only way she could contact the FBI to get additional information was by petitioning for remission, which would have conceded the forfeiture. As noted, plaintiff could have obtained more information simply by filing a claim. Plaintiff also could have contacted the FBI and sought more

information before deciding whether to file a claim and/or petition for remission. The forfeiture notice directed plaintiff to address any claim or petition for remission to the "Forfeiture Paralegal Specialist" at a provided address. JA036-037. Plaintiff could have used the same contact to seek more information. And, contrary to plaintiff's assertion, because that paralegal was the designated individual to receive either a claim or a petition for remission, it is clear that simply contacting the paralegal to request more information would not have been construed as a petition for remission that conceded the forfeiture.

Even if plaintiff could not have contacted the FBI for additional information upon receiving the forfeiture notice, however, plaintiff errs in arguing (Br. 50, 52), that she was entitled to additional information at the time that she had to determine whether to file a petition for remission, file a claim, or default. The Supreme Court addressed an analogous argument in *United States v. Von Neumann*, 474 U.S. 242 (1986), where the plaintiff argued that the U.S. Customs Service violated his due-process rights in a forfeiture proceeding by delaying its resolution of the plaintiff's petition for remission. In rejecting that claim, the Court explained that "[r]emission proceedings supply both

the Government and the claimant a way to resolve a dispute informally rather than in judicial forfeiture proceedings." *Id.* at 250. "But remission proceedings are not *necessary* to a forfeiture determination, and therefore are not constitutionally required." *Id.* A claimant thus has no constitutional right "to a speedy answer to his remission petition." *Id.*

Plaintiff's argument fails for a similar reason. Because there is no constitutional right to file a petition for remission, plaintiff's claim that she had a right to certain information before she decided whether to file such a petition necessarily fails. It is enough that plaintiff was afforded the option of electing to resolve the dispute through judicial forfeiture proceedings.

The reasoning of *Von Neumann* also forecloses plaintiff's complaint (Br. 51) that, in order to receive a full explanation of the FBI's reasons for pursuing forfeiture, she would have had to "file a claim[] and litigate against the full weight of the federal government." Where a statute provides a claimant the right to put the government to its burden of proof in judicial proceedings, the Due Process Clause does not entitle the claimant to an additional option of contesting the

forfeiture of her property through less formal proceedings, such as a petition for remission. *See Von Neumann*, 474 U.S. at 250 ("[R]emission proceedings … are not constitutionally required."). In other words, plaintiff cannot establish a due-process claim on the basis that the only option provided to her to contest forfeiture involved *too much* process.

The Supreme Court has held that "a timely forfeiture hearing 'satisfies any due process right' with respect to [personal property] that has been seized for civil forfeiture." *Culley v. Marshall*, 601 U.S. 377, 387 (2024) (quoting *Von Neumann*, 474 U.S. at 251). No additional process is required. In *Von Neumann* the Court held that the Due Process Clause does not require a "speedy answer to [a] remission petition," 474 U.S. at 250, and in *Culley* it held that the Clause does not require "a separate preliminary hearing" to determine whether the government may retain seized property pending a forfeiture hearing, *Culley*, 601 U.S. at 387. Here, too, where plaintiff had the option of proceeding through judicial forfeiture simply by claiming an interest in the seized property, the Due Process Clause did not require anything more.

CONCLUSION

For the foregoing reasons, this case should be remanded with instructions to dismiss for lack of jurisdiction. In the alternative, the appeal should be dismissed for lack of jurisdiction, or the judgment of the district court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 12,485 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Century Schoolbook 14-point font, a proportionally spaced typeface.

/s/ Joshua M. Koppel
Joshua M. Koppel

ADDENDUM

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18 U.S.C. § 983

§ 983. General rules for civil forfeiture proceedings

(a) Notice; claim; complaint.--

(1) (A) (i) Except as provided in clauses (ii) through (v), in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.

* * *

(2) (A) Any person claiming property seized in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute may file a claim with the appropriate official after the seizure.

(B) A claim under subparagraph (A) may be filed not later than the deadline set forth in a personal notice letter (which deadline may be not earlier than 35 days after the date the letter is mailed), except that if that letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure.

(C) A claim shall--

(i) identify the specific property being claimed;

(ii) state the claimant's interest in such property; and

(iii) be made under oath, subject to penalty of perjury.

(D) A claim need not be made in any particular form. Each Federal agency conducting nonjudicial forfeitures under this section shall make claim forms generally available on request, which forms shall be written in easily understandable language.

(E) Any person may make a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

(3) (A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a

court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

(B) If the Government does not--

(i) file a complaint for forfeiture or return the property, in accordance with subparagraph (A); or

(ii) before the time for filing a complaint has expired--

(I) obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and

(II) take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute,

the Government shall promptly release the property pursuant to regulations promulgated by the Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.

(C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture is the only forfeiture proceeding commenced by the Government, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

(D) No complaint may be dismissed 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.

(4) (A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

(B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

(b) Representation.--

(1) (A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

(B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as--

(i) the person's standing to contest the forfeiture; and

(ii) whether the claim appears to be made in good faith.

(2) (A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence, the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim.

(B) (i) At appropriate times during a representation under subparagraph (A), the Legal Services Corporation shall submit a statement of reasonable attorney fees and costs to the court.

(ii) The court shall enter a judgment in favor of the Legal Services Corporation for reasonable attorney fees and costs submitted pursuant to clause (i) and treat such judgment as payable under section 2465 of title 28, United States Code, regardless of the outcome of the case.

(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

(c) Burden of proof.--In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property--

(1) the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture;

(2) the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture; and

(3) if the Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

(d) Innocent owner defense.--

(1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.

* * *

(e) Motion to set aside forfeiture.--

(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person's interest in the property, which motion shall be granted if--

(A) the Government knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with notice; and

(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

(2) (A) Notwithstanding the expiration of any applicable statute of limitations, if the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without prejudice to the right of the Government to

commence a subsequent forfeiture proceeding as to the interest of the moving party.

(B) Any proceeding described in subparagraph (A) shall be commenced--

(i) if nonjudicial, within 60 days of the entry of the order granting the motion; or

(ii) if judicial, within 6 months of the entry of the order granting the motion.

(3) A motion under paragraph (1) may be filed not later than 5 years after the date of final publication of notice of seizure of the property.

(4) If, at the time a motion made under paragraph (1) is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government may institute proceedings against a substitute sum of money equal to the value of the moving party's interest in the property at the time the property was disposed of.

(5) A motion filed under this subsection shall be the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture statute.

(f) Release of seized property.--

(1) A claimant under subsection (a) is entitled to immediate release of seized property if--

(A) the claimant has a possessory interest in the property;

(B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

(C) 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;

(D) the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

(E) none of the conditions set forth in paragraph (8) applies.

* * *

(i) Civil forfeiture statute defined.--In this section, the term "civil forfeiture statute"--

(1) means any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense; and

(2) does not include--

(A) the Tariff Act of 1930 or any other provision of law codified in title 19;

(B) the Internal Revenue Code of 1986;

(C) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);

(D) the Trading with the Enemy Act (50 U.S.C. 4301 et seq.), the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), or the North Korea Sanctions Enforcement Act of 2016; or

(E) section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

* * *