STATE OF INDIANA)
) SS.
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT 4
CAUSE NO. 49D04-2405-MI-020041

STATE OF INDIANA,

Plaintiff,

v.

$42,825.00 in U.S. CURRENCY,
HENRY MINH,
PATRICK H.,
as their interest may appear,

Defendant(s).

HENRY MINH, INC., on behalf of itself and all others similarly situated,

Counterclaim-Plaintiff,

v.

STATE OF INDIANA; and RYAN MEARS, in his official capacity as Marion County Prosecutor,

Counterclaim-Defendants.

HENRY MINH, INC.'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO COUNTERCLAIM-DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions & Statutes

Rules

Codes

Other Authorities

INTRODUCTION

Civil forfeiture in Indiana is "punitive" for property owners and "profitable for the government." *State v. Timbs*, 134 N.E.3d 12, 21 (Ind. 2019). In Marion County, the Prosecutor's Office has increased civil forfeiture's profitability using two systemic practices that go far beyond the government's lawful authority. This certified class action challenges those practices.

First, the Office has spent years suing to forfeit currency seized from FedEx parcels merely passing through Indianapolis on their way from one non-Indiana state to another. *See* Findings of Fact and Conclusions of Law re: Certification of Classes 12-30, 40 (filed July 21, 2025) (Class-Cert. Order) (certifying "Parcel Class"). The Office admits that it prosecutes these cases without evidence that the currency is connected to any Indiana crime beyond the parcel's transitory stop at the Indianapolis FedEx hub. Yet—as the Office concedes—Indiana's Civil Forfeiture Statute authorizes forfeiture only when property is connected to a qualifying Indiana crime. And Indiana crimes, in turn, are limited by the State's territorial-jurisdiction statute. No territorial jurisdiction, no Indiana crime. No Indiana crime, no forfeiture.

The government's response never solves that problem with the Parcel Class forfeitures. Indeed, it never identifies an Indiana criminal offense that supports the Parcel Class forfeitures. Instead, the government principally argues that forfeiture actions are in rem proceedings against property. But the in rem styling of forfeiture cases does not eliminate the statutory requirement of a predicate Indiana crime. Nor does it free Indiana from the territorial limits that define the reach of its law. Under the government's theory, Indiana could forfeit property connected to alleged wrongdoing occurring anywhere in the country so long as FedEx happened to route the parcel through Indianapolis. Neither the Civil Forfeiture Statute nor the state and federal constitutions permit such boundless authority.

Second, the Prosecutor's Office systematically starts currency-forfeiture cases through boilerplate "complaints" that identify neither the operative facts nor the predicate criminal offense allegedly justifying forfeiture. *See* Class-Cert. Order 30-40 (certifying "Notice Class"). As the Prosecutor's own Rule 30(B)(6) designee admitted, the Office itself often does not know what specific criminal statute supposedly supports forfeiture when a complaint is filed. With those omissions, the "complaints" offend due process and fail to meet the Civil Forfeiture Statute's requirement that civil-forfeiture actions begin with the filing of a complaint that meets the demands of Indiana's notice-pleading standard. The government's response largely concedes the inadequacy of the "complaints" themselves. Rather than defend those complaints, it points to probable-cause affidavits filed separately. But those affidavits cannot cure the defect—not least because the Prosecutor's Office does not serve them on property owners. In fact, the Court noted this precise problem in its class-certification order. Class-Cert. Order 35 ("[I]t is unclear how the State can suggest that members of the Notice Class somehow receive adequate notice from a document the State does not send to them."). The government's response? Silence.

The government's remaining arguments fare no better. Much of its brief is devoted to procedural objections that were rejected—verbatim—in the Court's class-certification decision last year. None casts doubt on the Court's certification ruling, and none prevents the Court from granting class-wide relief. At bottom, this case presents two straightforward questions. First: May Indiana forfeit property despite there being no crime that Indiana has authority to prosecute? Second: May Indiana seek forfeiture through complaints that fail to tell property owners what crime and facts supposedly justify forfeiture? The answer to both questions is no. On both fronts, Henry Minh, Inc. and the certified classes are entitled to summary judgment.

BACKGROUND

The background concerning the claims of the Parcel Class and the Notice Class is presented at pages 2-10 of Henry Minh, Inc.'s opening brief in support of its motion for summary judgment.

STATEMENT OF MATERIAL FACTS IN DISPUTE AND GENUINE ISSUES

There are no genuine issues of material facts. The government's opposition brief disputed none of the items in the statement of material facts in Henry Minh, Inc.'s motion for summary judgment. *See* Countercl.-Pl.'s MSJ Br. 10-12 (filed Mar. 31, 2026). And as detailed below, none of Henry Minh, Inc.'s disputes with the government's statement of facts is material:

Paragraph 1. Undisputed, though this statement appears to be not a statement of fact.

Paragraph 2. Disputed and immaterial as to the Notice Class. *See, e.g.*, Miller MSJ Opposition/Reply Aff. Ex. 2. Undisputed and immaterial as to the Parcel Class. *See* pp. 23-25, below.

Paragraph 3. Undisputed but immaterial.

Paragraph 4. Disputed but immaterial. *See, e.g.*, Gov't MSJ Ex. 1, at 8 (filed May 7, 2026) ("To this day, I do not know the legal or factual reasons asserted by the State of Indiana to justify the forfeiture of the $42,825 in the complaint."). It is immaterial because the Notice Class claims challenge the adequacy of the government's notice given to property owners, not what information a particular property owner may dig up through independent investigation. *See* pp. 15-16, 17, below.

Paragraph 5. Undisputed but immaterial.

Paragraph 6. Disputed that the security reasons for Henry Minh, Inc.'s parcel-labeling practice was "unexplained." Gov't MSJ Ex. 1, at 9 (filed May 7, 2026) (explaining why company's parcels are labeled in the way they are). But this dispute is immaterial to the class counterclaims.

Paragraph 7. Undisputed that the Marion County Prosecutor's Office has identified an instance in which it filed a complaint seeking judgment under the Civil Forfeiture Statute and later

(for unexplained reasons) filed a motion requesting that the property instead be transferred to the federal government. The Court's public dockets indicate that that case demonstrates a new trend, if a trend at all. The Indiana Code provides that motions to transfer property to the federal government are filed under Title 35, not the Civil Forfeiture Statute, which is in Title 34. I.C. § 35-33-5-5(k) (addressing transfer by motion). And the Marion County Prosecutor's historical practice when seeking to transfer property to the federal government has been to proceed under Title 35, not the Civil Forfeiture Statute, filing a matter-initiating motion under Section 35-33-5-5(k), not a complaint under Section 34-24-1-3(a). Miller MSJ Opposition/Reply Aff. Ex. 1 (examples). Paragraph 7 is thus immaterial. Both certified classes are limited to persons "named as defendants in actions brought under Title 34, Article 24, Chapter 1, of the Indiana Code," and neither class includes property owners who are in Title 35 proceedings to transfer property to the federal government.

ARGUMENT

I. The Parcel Class counts: By suing to forfeit currency from in-transit parcels with no connection to an Indiana crime, the government violates state and federal law.

Counts 1 through 4 of Henry Minh, Inc.'s counterclaims challenge the practice of the Marion County Prosecutor's Office of bringing actions to forfeit currency from FedEx parcels that are in-transit from an origin outside Indiana to a destination outside Indiana. This practice contravenes both statutory and constitutional law, and the government offers no basis for holding otherwise.

A. The Parcel Class forfeitures violate the Civil Forfeiture Statute because they are not predicated on any violation of Indiana criminal law (Count 1).

1. As detailed in our opening brief (at 13-24), the Parcel Class's statutory claim is straightforward. The Civil Forfeiture Statute makes property forfeitable only if it is connected to a violation of Indiana criminal law. Countercl.-Pl.'s MSJ Br. 13-14 (filed Mar. 31, 2026); Miller MSJ

Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 43:18-43:21) (filed Mar. 31, 2026) ("**Q** Does that crime need to be one that the State of Indiana could prosecute against an individual? **A** Yes."). To violate Indiana criminal law, an act must satisfy at least one of the provisions of Indiana's criminal "territorial jurisdiction" statute, Indiana Code § 35-41-1-1. Countercl.-Pl.'s MSJ Br. 16-17; *see, e.g.*, *A.-H.Y. v. State*, 975 N.E.2d 1273, 1276 (Ind. 2012), *as corrected* (Jan. 6, 2025) ("[T]his Court treats territorial jurisdiction as though it were an element of an offense . . . ."). No such violation supports the Parcel Class forfeitures—where the sender is outside Indiana, the recipient is outside Indiana, and their currency's Indiana presence is due to the happenstance of FedEx's shipping routes. On these facts, none of the territorial-jurisdiction hooks is met for any Indiana crime. Yet it is the Marion County Prosecutor's practice to forfeit the currency anyway. That practice contravenes the Civil Forfeiture Statute; with no Indiana crime, the statute authorizes no Indiana forfeiture.

2. The government's opposition brief nowhere denies that the Civil Forfeiture Statute's compass is "limited to violations of Indiana criminal laws." Gov't Br. 28. Nor does the government argue that its Parcel Class forfeitures are linked to *any* crime that qualifies as a violation of Indiana criminal law under the State's territorial-jurisdiction statute. The government does not argue that the forfeitures are linked to a crime that satisfies Section 35-41-1-1(b)(1). Countercl.-Pl.'s MSJ Br. 19.[1] Or Section 35-41-1-1(b)(2). *Id.*[2] Or Section 35-41-1-1(b)(3). *Id.* 20.[3] Or Section

[1] I.C. § 35-41-1-1(b)(1) ("A person may be convicted under Indiana law of an offense if . . . either the conduct that is an element of the offense, the result that is an element, or both, occur in Indiana.").

[2] I.C. § 35-41-1-1(b)(2) (". . . conduct occurring outside Indiana is sufficient under Indiana law to constitute an attempt to commit an offense in Indiana.").

[3] I.C. § 35-41-1-1(b)(3) (". . . conduct occurring outside Indiana is sufficient under Indiana law to constitute a conspiracy to commit an offense in Indiana, and an overt act in furtherance of the

35-41-1-1(b)(4). *Id.*[4] Or Section 35-41-1-1(b)(5). *Id.* 21.[5] With no territorial jurisdiction, there is no "violation[] of Indiana criminal laws." *See* Gov't Br. 28. With no violation of Indiana criminal laws, there is no basis for forfeiture under the Civil Forfeiture Statute. It's as simple as that.

What arguments the government does make do not alter the analysis. The government points out, for example, that "the Civil Forfeiture statute makes no mention of needing to bring criminal charges against any person involved in the criminal activity." *Id.* 29. That of course is true. *Smith v. State*, 232 N.E.3d 109, 113 (Ind. 2024). But the Civil Forfeiture Statute still authorizes civil-forfeiture actions only if the property to be forfeited is linked to a violation of Indiana criminal law. Countercl.-Pl.'s MSJ Br. 13-15; *see also* I.C. § 34-24-1-3(a)(2) (providing that each civil-forfeiture action must be filed within the period set by Indiana's criminal code for "the offense that is the basis for the seizure"). The point is not that someone "must actually be in Indiana for [a] forfeiture to work"—the government's strawman account of our position. Gov't Br. 29. In fact, the territorial-jurisdiction statute recognizes various circumstances in which a person may be prosecuted criminally in Indiana despite not having been physically present in the State. *E.g.*, I.C. § 35-41-1-1(b)(2). Yet despite every opportunity, the government points to no such criminal offense when it comes to Parcel Class forfeitures. And for a simple reason: There is none.

In a similar vein, the government observes that civil-forfeiture actions are "brought against

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conspiracy occurs in Indiana.").

[4] I.C. § 35-41-1-1(b)(4) (". . . conduct occurring in Indiana establishes complicity in the commission of, or an attempt or conspiracy to commit, an offense in another jurisdiction that also is an offense under Indiana law.").

[5] I.C. § 35-41-1-1(b)(5) (". . . the offense consists of the omission to perform a duty imposed by Indiana law with respect to domicile, residence, or a relationship to a person, thing, or transaction in Indiana.").

the property itself as an *in rem* proceeding." Gov't Br. 29. Again: true but irrelevant. By its terms, the Civil Forfeiture Statute authorizes such forfeitures only if the government can "identify the applicable criminal statute that was violated and establish a substantial connection between the seized money and that crime." *Smith*, 232 N.E.3d at 115. For members of the Parcel Class, there simply is no "applicable criminal statute that was violated" anywhere in the Indiana Code. Whether the cases are called in rem or in personam, the Civil Forfeiture Statute is clear, and the Marion County Prosecutor's Office is violating it.

Shifting approaches, the government contends that it is "simply intuitive" that currency belonging to members of the Parcel Class must be linked to "some criminal activity" in Indiana. Gov't Br. 29. But "intuition" isn't how courts construe statutes—particularly ones, like the Civil Forfeiture Statute, that "'are not favored' due to their 'significant criminal and punitive characteristics.'" *Smith*, 232 N.E.3d at 113. If the best the government can muster is intuition, that's a red flag that—far from being "novel" and "radical" (Gov't Br. 15)—the Parcel Class's reading of the Civil Forfeiture Statute is the correct one. Tellingly, the Indiana Supreme Court rejected a similar intuition over a half-century ago. *Green v. State*, 115 N.E.2d 211, 214 (Ind. 1953) ("No matter how closely an act is connected with the state, if it is done entirely outside it should not be punished, great as is the desire to do so." (citation omitted)).

Beyond intuition, the government devotes a sentence to the view that, for members of the Parcel Class whose currency may be related to an out-of-state drug deal, "the deal itself . . . continues with the fruits of the crime," meaning an in-transit parcel's path through Indiana does indeed give rise to a violation of Indiana criminal law. Gov't Br. 29. Yet the government cites no authority for that proposition. Nor does it reckon with Indiana precedent holding—

unequivocally—that money is not an element of dealing crimes under Indiana law. *Hall v. State*, 897 N.E.2d 979, 984 (Ind. Ct. App. 2008) ("[A]n exchange of money is not required to establish the offense of Dealing . . . .") (*cited at* Countercl.-Pl.'s MSJ Br. 23); *cf. State v. Dudley*, 581 S.E.2d 171, 181-82 (S.C. Ct. App. 2003) (rejecting similarly strained view of drug trafficking), *aff'd as modified*, 614 S.E.2d 623 (S.C. 2005). Simply, the government must be able to point to an Indiana crime to support an Indiana forfeiture. And to do so, it must satisfy Indiana's territorial-jurisdiction statute—a statute its brief fails even to cite. That silence speaks volumes.

The government further remarks that its degrees of proof vary based on the stage of forfeiture proceedings. Gov't Br. 27-28. Whatever the degree of proof, though, the facts that form the basis for the Marion County Prosecutor's Parcel Class forfeitures are always the same. Across the board, it is the Office's practice to prosecute these forfeitures without regard to whether the currency being sought has any connection to Indiana besides the fact that it was seized at the Indianapolis FedEx hub. *E.g.*, Miller MSJ Aff. Ex. 1 (filed Mar. 31, 2026) (Prosecutor 30(B)(6) Dep. 47:17-47:22); *see also* Countercl.-Pl.'s MSJ Br. 5, 10-11, 26-27. As the Court recognized at the class-certification stage, that position systematically undergirds the Parcel Class forfeitures. Class-Cert. Order 3-4, 21-22. And the government's summary-judgment brief doubles down on that stance. Gov't Br. 23-24. In short, the government's nutshell account of the various stages of its forfeiture cases does not detract from the point that matters: Its Parcel Class forfeitures are supported by nothing that qualifies as a violation of Indiana criminal law.

Equally without merit is the government's view that requiring it to conform to the Civil Forfeiture Statute would be "disastrous." *Id.* 29. Indeed, the government's own behavior belies that rhetoric: Seemingly in response to this lawsuit, the Marion County Prosecutor's Office has

quietly dialed back its Parcel Class forfeitures—and the heavens remain unfallen. *See generally* pp. 27-28, below (explaining that nothing prevents the Office from stepping up its Parcel Class forfeitures at any time). The government's repeated invocation of child sexual abuse material is similarly far afield. Gov't Br. 30. *See* Class-Cert Order 40 (certifying Parcel Class relating to seized currency only). Contrary to the government's suggestion, Indianapolis law enforcement would not be hamstrung if they were somehow to identify an in-transit "hard drive that [they] knew had pornographic images of children." Gov't Br. 30. Nothing would prevent them from coordinating with law enforcement in other jurisdictions to safeguard the evidence and help capture the out-of-state perpetrators. As our opening brief stressed, that would be the responsible thing to do in *more* cases where Indy police identify parcels that they believe are linked to crimes elsewhere. Countercl.-Pl.'s MSJ Br. 24. Instead, the government insists on defending a different priority: "making millions off suspected crimes in other States while doing nothing to apprehend those responsible." *Id.*

B. If the Parcel Class forfeitures do not offend the Civil Forfeiture Statute, those forfeitures violate the federal and state constitutions (Counts 2-4).

Indiana's Parcel Class forfeitures violate not just statutory constraints, but constitutional ones also. To be clear—and as our opening brief explains (at 24-25)—if the Court agrees with us that the forfeitures are precluded by the Civil Forfeiture Statute, declaratory and injunctive relief based on that statutory count could secure full relief for the Parcel Class. In that event, there would be no need for the Court to consider whether the forfeitures also violate the state and federal constitutions. But if the Court were to determine that the Civil Forfeiture Statute does in fact authorize the Parcel Class forfeitures, then the Class's constitutional counts would need to be addressed. And on that front, the Marion County Prosecutor's practice of bringing Parcel Class forfeitures violates both the federal and the state constitutions.

The background principles are well-settled. Under the Fourteenth Amendment, the Tenth Amendment, and principles of horizontal federalism, "[n]o State can legislate except with reference to its own jurisdiction." *Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1881); *see also* Countercl.-Pl.'s MSJ Br. 25. And the Supreme Court has been clear: No one "should . . . think one State may prosecute the citizen of another State for acts committed 'outside [the first State's] jurisdiction' that are not 'intended to produce [or that do not] produc[e] detrimental effects within it.'" *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 375-76 (2023). The Indiana Constitution imposes similar constraints. Countercl.-Pl.'s MSJ Br. 27-28. And the Parcel Class forfeitures flatly violate those constraints: It is undisputed that the Marion County Prosecutor's Office "never" has "evidence that the currency was connected to a crime in Indiana other than the fact that it went through the [FedEx] hub[.]" Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 65:1-65:5) (filed Mar. 31, 2026). If, contrary to all textual and structural signals, the Civil Forfeiture Statute authorizes forfeitures based on non-Indiana crimes, those applications are unconstitutional.

The government does not deny our account of the factual record. Nor does the government deny "that a State may not prosecute a *person* of another State for acts committed in a different state." Gov't Br. 30. Its only argument is this: that because forfeiture actions are "against property, not people" (*id.*), neither the federal constitution nor the state constitution limits extraterritorial enforcement. That is wrong. As the Indiana Supreme Court has recognized, characterizing a forfeiture as being against property is "a legal fiction." *Id.* (quoting *Smith*, 232 N.E.3d at 113). In reality, forfeitures "have significant criminal and punitive characteristics" and amount to "criminal-like penalties." *Hughley v. State*, 15 N.E.3d 1000, 1005 (Ind. 2014). In any event, "the authority of a state to make its law applicable to persons or activities," is "quite a separate matter from

'jurisdiction to adjudicate.'" *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 813 (1993) (Scalia, J., dissenting) (citation omitted). And just as a State may not fine you for an offense committed elsewhere (even if you happen to one day pass through its borders and potentially expose yourself to its "jurisdiction to adjudicate"), no more may it confiscate your property on that basis. Were the rule otherwise, the intrusions on other States' sovereignty would be stark. Constitutionally, Indiana would be free to forfeit a car passing through its borders on the ground that it had once been used for street racing in Raleigh. *Cf.* Casey Smith, *Indiana lawmakers seek to increase penalties for 'street takeovers,' ban use of radio jammers*, Ind. Cap. Chron. (Jan. 15, 2025). Or had once transported a shoplifted cellphone in Cincinnati. *Cf. Sargent v. State*, 27 N.E.3d 729, 731 (Ind. 2015). Or had once contained pilfered snacks in San Jose. *Cf.* Pl's. Mot. Summ. J., *State v. Jaynes*, No. 49D01-1111-MI-043642, 2012 WL 12974140 (Ind. Super. Ct., Marion Cnty. May 23, 2012) (seeking forfeiture of car that had been found with "a large quantity of Gatorade bottles and assorted snacks and candies" stolen from a playground concession stand). That is not how these United States were set up to work, and it is no answer to say that the State of Indiana is targeting outsiders' money through an in rem device rather than an in personam one.

II. The Notice Class counts: By filing forfeiture complaints that do not provide the legal or factual basis for forfeiture, the government violates state and federal law.

The second certified class—the Notice Class—challenges the adequacy of the notice provided by the Marion County Prosecutor's Office in its actions to forfeit currency. (In this way, the Notice Class is defined more broadly than the Parcel Class; it covers all actions to forfeit currency in Marion County, not just those originating from the FedEx hub.) As its practice, the Prosecutor's Office files boilerplate complaints in currency-forfeiture cases. Those complaints lack basic factual

allegations needed to support the requested forfeiture. They also fail to identify the crime that is alleged to justify the requested forfeiture—instead reciting merely that the currency is linked to "a violation of a criminal statute." Whether viewed through the lens of the state and federal due-process clauses or the Civil Forfeiture Statute's requirements, this practice is unlawful.

A. The Prosecutor violates federal and state due-process guarantees by failing to provide adequate notice to property owners (Counts 6-7).

1. As discussed in our opening brief (at 30-31), "[i]t is universally agreed that adequate notice lies at the heart of due process" under both the federal and the Indiana constitutions. *Gray Panthers v. Schweiker*, 716 F.2d 23, 32 (D.C. Cir. 1983) (citation omitted); *see also Freeman v. Pierce*, 101 N.E. 478, 479 (Ind. 1913). Since the first years of nationhood, the courts have made clear that—for civil forfeitures specifically—the sort of boilerplate used in Marion County is inadequate. In 1813, for example, the Supreme Court held a forfeiture pleading fatally defective for failing to provide specific legal and factual allegations justifying the forfeiture. *The Hoppet*, 11 U.S. 389, 393 (1813). As Chief Justice Marshall reasoned, "a rule so essential to justice and fair proceeding as that which requires a substantial statement of the offence upon which the prosecution is founded, must be the rule of every Court where justice is the object, and cannot be satisfied by a general reference to the provisions of a statute." *Id.* at 394. The "importance of this principle to a fair administration of justice," he emphasized, "is too apparent to require elucidation." *Id.* at 393.

Courts have honored that principle in more modern forfeiture cases as well. In one leading decision, for instance, the Ninth Circuit held that an agency violated due process when it seized vehicles for forfeiture without telling the owners "which statutory provisions are alleged to have been violated" and without giving them "any statement of the factual basis" for forfeiture. *Gete v. INS*, 121 F.3d 1285, 1290 (9th Cir. 1997). More recently, another federal court enjoined forfeitures

as likely violating due process when the FBI seized the contents of hundreds of safety deposit boxes and issued forfeiture notices reciting thirty-five potential crimes—and providing "no factual basis for the seizure of Plaintiffs' property whatsoever." *Snitko v. United States*, No. 21-cv-4405, 2021 WL 3139707, at *3 (C.D. Cal. June 22, 2021). Even in the context of public-benefit denials, courts have rejected boilerplate of the sort at issue here, reasoning that "in the absence of an explanation of the reasons underlying the state's action, it is implausible to expect that an individual could prepare, let alone present, a sound defense." *Perdue v. Gargano*, 964 N.E.2d 825, 835 (Ind. 2012).

Under a simple application of these principles, the Marion County Prosecutor's forfeiture complaints fall far short of the due-process floor. The complaints provide no factual basis for the forfeiture. The complaints' asserted legal basis is the unadorned allegation that the seized property is linked to "a violation of a criminal statute." Even the prosecutor who writes the complaints cannot later read them and tell what crime served as the basis for the forfeitures demanded. Miller MSJ Aff. Ex. 1 (Prosecutor 30(B)(6) Dep. 72:4-72:7) (filed Mar. 31, 2026). And if the prosecutor himself can't tell, surely defendants can't be expected to either.

2. For its part, the government does not deny that *Gete* and *Snitko* accurately reflect the governing due-process standard. But the government maintains that the Prosecutor's complaints here are somehow superior to the notices at issue in those cases. In truth, it's the opposite—by a long shot. Take *Snitko*. There, "the factual basis for the seizure of Plaintiffs' property" was stated in "individualized notices" as follows: "The asset(s) referenced in this notice letter were seized on March 22, 2021 by the FBI at U.S. Private Vaults in Beverly Hills, California[.]" *Snitko*, 2021 WL 3139707, at *3. "This notice, put bluntly," the district court held, "provides no factual basis for the seizure of Plaintiffs' property whatsoever." *Id.* Factually, those allegations are

materially identical to the ones at issue here. *See* Countercl.-Pl.'s MSJ Br. 29 ("On or about June 21, 2023, law enforcement officers seized $533.00 from Defendant, Sean Cole, in the course of serving a search warrant in Marion County, Indiana." (quoting sample complaint)). What was true in *Snitko* is thus equally true here: The Prosecutor "provides no factual basis for the seizure of Plaintiffs' property whatsoever." *Snitko*, 2021 WL 3139707, at *3.[6]

As for the legal basis, the Marion County Prosecutor's notice is even *worse* than *Snitko*'s. There, the federal government's notices stated: "**Forfeiture Authority:** The forfeiture of this property has been initiated pursuant to 18 USC 981(a)(1)(C) [*sic.*] 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." *Id.* That notice, the district court held, "fall[s] woefully short of the Government's duty to provide 'the specific statutory provision allegedly violated.'" *Id.* (quoting *Gete*, 121 F.3d at 1298). "Title 18 U.S.C. § 981(a)(1)(C)," the court reasoned, "lists thirty-five sections of the United States Code," any one of which "can provide a basis for forfeiture." *Id.* But compare the information that is sent to the Notice Class here. Unlike the federal government in *Snitko*, the Marion County Prosecutor's complaints identify *no* criminal predicate at all. If the notices in *Snitko* were "anemic" (*id.*), the Marion County Prosecutor's are that and worse.

3. The government's remaining arguments lack merit also:

a. Foremost, the government points out that, separate from its complaints, it

[6] The government notes that the temporary-restraining-order decision in *Snitko* was titled "ex parte." Gov't Br. 35. Contrary to the implication of that phrase, the plaintiffs' TRO application was subject to full adversarial briefing before the order was entered. Following further briefing, it was converted to a preliminary injunction as to two of the plaintiffs. *See generally* Counterclaims ¶ 103(B) & n.5 (noting that the Institute for Justice represented the plaintiffs in the *Snitko* litigation).

simultaneously files probable-cause affidavits in forfeiture cases. But there's a glaring problem: For reasons known only to itself, the Prosecutor's Office *does not serve* those affidavits on the property owners. Countercl.-Pls.' MSJ Br. 12, 33-34. At risk of stating the obvious, property owners don't receive adequate notice from documents the government doesn't send them—a point the Court's class-certification order noted and the government's summary-judgment submission continues to ignore. Class-Cert. Order 35 ("[I]t is unclear how the State can suggest that members of the Notice Class somehow receive adequate notice from a document the State does not send to them.").

The government observes that, of late, it has taken to including an additional boilerplate paragraph in its complaints: "A probable cause affidavit has been filed in this cause. The probable cause affidavit provides additional information about the property seizure." *See* Gov't Br. 33-34. That does not change the analysis. For one thing, nothing prevents the Marion County Prosecutor's Office from reverting to its original template at any time. Countercl.-Pl.'s MSJ Br. 34; *see also* Gov't Br. 31-36 (nowhere denying this point); *cf. State ex rel. Indiana State Bar Ass'n v. Northouse*, 848 N.E.2d 668, 673-74 (Ind. 2006) (holding that "an injunction should be issued" despite defendants' post-suit representations that they did not intend to resume allegedly unlawful behavior). And in any event, the Office's new-and-improved template continues to suffer the same notice problems as before. "[T]he burden of providing adequate notice rests with the state[.]" *Perdue*, 964 N.E.2d at 838 n.18 (citation omitted). And the government "cannot shift that burden to the individual by providing inadequate notice and inviting the [defendant]" to hunt for the missing pieces. *Id.* (citation omitted). Nor can it do so by "[m]erely offering" parties "information from which they could potentially deduce the reasons for" the government's actions against them. *Id.* at 838. Yet at best, that is what the Prosecutor's complaints do. They allege no facts. No predicate

crime. They simply make opaque reference to "additional information" in unserved court filings that—in seeming defiance of the Trial Rules—the Prosecutor's Office persists in submitting ex parte. That does not comport with due process. Indeed, the Indiana Supreme Court has said as much explicitly: "The ability to proactively inquire as to the reasons" for a proposed action "has been unequivocally rejected by the Seventh Circuit as well as many other courts as an inadequate remedy for an otherwise deficient notice." *Id.* at 838 n.18. *Contra* Gov't Br. 35 (suggesting that the fact that class members can try to obtain the affidavits for themselves means they have "access" to them). And if most of this paragraph sounds familiar? That's because it's taken almost verbatim from our opening brief. The government's response? Silence. Its response to the record evidence demonstrating that it is in fact difficult for property owners to access unserved probable-cause affidavits (Countercl.-Pl.'s MSJ Br. 35-36)? Silence. Its response to the Indiana Supreme Court's *Perdue* decision? Silence again.

b. The government suggests that Henry Minh, Inc. "affirmatively disclaims alleging that any members of the class do not, in fact, know the legal and factual reasons believed to justify the forfeiture of [their] property." Gov't Br. 34. That misstates the record. In discovery, the government requested documents "supporting the assertion that members of the classes do not know the legal and factual reasons believed to justify forfeiting their property from a complaint, the probable cause affidavit, or search warrant, or other document filed in the forfeiture case by the State of Indiana." Gov't MSJ Ex. 1, at 4 (filed May 7, 2026). As the company has long emphasized, however, the government *does not serve* probable-cause affidavits and search warrants on class members. And as for the documents the government *does* serve, they "fail[] to notify the property owners of the crime and the operative facts alleged to be the basis for the forfeiture" and thus "do[]

not meet the requirements of due process and of the Indiana civil-forfeiture statute." *Id.*

In any case, the possibility that class members might sometimes learn "through other means" of the bases for their property's seizure is beside the point. Gov't Br. 34, 36. Indeed, the Ninth Circuit in *Gete*—whose reasoning, again, the government does not challenge—rejected a similar view. There, the court acknowledged that "many owners are present when their vehicles are seized" and thus "will frequently have at least a general idea of the factual basis for the seizure." *Gete*, 121 F.3d at 1297-98. But "without knowing the exact reasons for the seizure, as well as the particular statutory provisions and regulations they are accused of having violated," the court reasoned, "they may not be able to clear up simple misunderstandings or rebut erroneous inferences drawn by the [seizing agency]." *Id.*; *see also id.* ("[A]mbiguous factual circumstances may in many cases cause vehicle owners to guess incorrectly why their vehicle has been seized, thus preventing them from responding effectively to the unspecified accusations of criminal wrongdoing that underlie a forfeiture."); *Smith*, 232 N.E.3d at 116 (faulting the government, in a Marion County forfeiture case, for having "never tied the money to a specific, applicable offense" either "in the trial court [or] on appeal"). Simply, there is no substitute for adequate notice.

c. Also without merit is the government's fleeting suggestion that because forfeiture cases are "in rem case[s] against the property itself," ordinary due-process principles do not apply. Gov't Br. 34. As the Supreme Court has stressed, "Fourteenth Amendment rights cannot depend on the classification of an action as in rem or in personam." *Shaffer v. Heitner*, 433 U.S. 186, 206 (1977); *see also* Class-Cert. Order 36. Nor, contrary to the government's suggestion, do the Notice Class's claims seek to import criminal-court-specific protections into the civil sphere. Gov't Br. 34, 35-36. Rather, the Class is entitled to the notice required by precedent *in civil-forfeiture cases*

dating to the first years of our Nation—hardly a "novel" proposition. *Contra id.* 34.

d. The government posits that "it will often be difficult to determine who might have an interest or be a possible owner of the seized property." *Id.* 34. *But see* Class-Cert. Order 36 ("[T]he civil-forfeiture statute itself contemplates 'service of the complaint' on '[t]he owner of the seized property' and 'any person whose right, title, or interest is of record.'"). That is irrelevant to the Notice Class's claims. "Fair or adequate notice has two basic elements: content and delivery." *Fogel v. Zell*, 221 F.3d 955, 962 (7th Cir. 2000). Here, the Notice Class raises no claim about the delivery of complaints and summonses. Their claims are about the content: that the documents they receive lack even basic factual and legal information about the basis for forfeiture. *Id.*

* * *

At base, the government's view is as simple as it is wrong: According to the government, the Notice Class's demand for adequate notice can be written off as "formalistic," because, whatever the defects in the complaints, class members can always try to dig up more information "through other means." Gov't Br. 34, 36. But to the extent due process imposes requirements that are "formal" (*id.* 34), that's because the government's depriving people of property is a big deal. *See* U.S. Const. amend. XIV. And seizing property pre-judgment is an extraordinarily big deal. *United States v. Von Neumann*, 474 U.S. 242, 249 n.7 (1986). That, in part, is why civil forfeitures "are not favored" (*Smith*, 232 N.E.3d at 113) and why "statutes authorizing forfeitures are strictly construed." *Chan v. State*, 969 N.E.2d 619, 621 (Ind. Ct. App. 2012) (Shepard, J.). When the government decides to exercise this formidable power, therefore, it must turn square corners. "[I]dentify the applicable criminal statute that was violated," *Smith*, 232 N.E.3d at 115, along with "the factual basis" for forfeiture, *Gete*, 121 F.3d at 1290. That's the bare-minimum, due-process floor.

A complaint that leaves the property owner to guess at the facts and law comes nowhere close.

B. The Prosecutor's forfeiture complaints contravene Indiana's Civil Forfeiture Statute by failing to comply with basic notice-pleading standards (Count 5).

As explained in our opening brief (at 36-37), the Prosecutor's systematically inadequate notice failures can be addressed on non-constitutional grounds as well: The Prosecutor's practice violates the Civil Forfeiture Statute. By its terms, the statute mandates that "an action for forfeiture" be brought "by filing a complaint in the circuit or superior court in the jurisdiction where the seizure occurred." I.C. § 34-24-1-3(a). Yet the government's case-initiating filing lacks the basic hallmarks of a "complaint" under Indiana law.

The government insists that the Civil Forfeiture Statute does not "describe[] what must be in the complaint," such that the Prosecutor's defective filings cannot be said to "violate" it. Gov't Br. 32. But the General Assembly has instructed that "[t]echnical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import." I.C. § 1-1-4-1(1). And the technical import of the word "complaint" is a case-initiating pleading that sets forth "the operative facts so as to place the defendant on notice as to the evidence to be presented at trial." *Noblesville Redevelopment Comm'n v. Noblesville Assocs. Ltd. P'ship*, 674 N.E.2d 558, 563 (Ind. 1996). The government nowhere denies that its boilerplate submissions do not fit that bill. In any event, all roads lead to Rome. If the government were correct that their "complaints" conform to the Civil Forfeiture Statute, that merely tees up whether the complaints nonetheless violate the federal and state constitutions' due-process protections. As detailed above, they do. Whether viewed through a statutory lens or a constitutional one, the Prosecutor's class-wide refusal to give property owners basic notice is unlawful.

III. The government's procedural arguments lack merit.

Of the twenty-eight pages of the government's argument (Gov't Br. 8-36), seventeen are dedicated to procedural objections—many of them carbon-copies of ones the Court has already rejected. All are without merit; having certified classes for the purpose of resolving this controversy on a class-wide basis, nothing prevents the Court from doing precisely that.

A. The government's request to decertify the classes recycles arguments the Court rejected last summer.

The government devotes fully eight pages of its brief to reprising its arguments against class certification. *Id.* 17-26. Yet as the government admits, this Court rejected almost all those arguments in its 40-page class-certification order of July 2025. *Id.* 17 n.1 (suggesting that this longest section of its brief serves merely to "preserve" its previously rejected arguments). The government did not seek interlocutory review of that order. App. R. 14(C). Nor does it give any reason to revisit that order now: The government does not even address the Court's factual findings and reasoning. As for the one new theory the government presents (that Henry Minh, Inc. must keep identifying new class members on a rolling basis), it cites not a single precedent in support.

1. Almost every argument the government now raises was presented over a year ago at the class-certification stage, and many appear to be copied directly from the government's earlier submission. To illustrate, attached as an addendum to this brief is an annotated copy of pages 17-26 of the government's summary-judgment brief, highlighting the material copied—word-for-word—from its class-certification opposition. It's a sea of neon green. For example:

The government's argument that the classes "do not meet the 'definiteness' requirement." Gov't Br. 19. This argument is almost word-for-word what the government wrote before. *Compare id.* 19-20, *with* Gov't Class-Cert. Opp. 6-7 (filed Dec. 18, 2024); *see also* Addendum p. 3-

4. It was squarely rejected in the Court's class-certification order. Class-Cert. Order 13-17 ("The Parcel Class is sufficiently definite."), 31-32 ("The Notice Class is sufficiently definite."). And nothing in the government's latest brief argues that the Court erred.

The government's argument that the Notice Class lacks "commonality" because the Prosecutor's Office "file[s] an affidavit of probable cause" in its civil-forfeiture cases. Gov't Br. 21. This argument is another near-verbatim match with what it submitted before. *Compare* Gov't Br. 20-23, *with* Gov't Class-Cert. Opp. 9-12; *see also* Addendum p. 4-7. It was rejected at pages 34-35 of the Court's class-certification order as "wrong on law and facts alike." Again, no word in the government's latest brief about why the Court's prior decision was erroneous.

The government's argument that the classes do not satisfy Trial Rule 23(B)(2). More copy-paste, with the main alteration changing the phrase "common group" to "homogenous mass." *Compare* Gov't Br. 23-24, *with* Gov't Class-Cert. Opp. 12-13; *see also* Addendum p. 7-8. This argument was rejected at pages 29-30 and 39 of the Court's class-certification order. Again, nothing in the government's latest brief about why those prior findings and reasoning were error.

The government's argument that each class member "should contest seized assets individually based on the specific and particular facts surrounding the asset seized." Gov't Br. 19. Again, the government made the same argument before. Gov't Class-Cert. Opp. 6 ("[D]efendants should contest seized assets individually based on the specific and particular facts surrounding the asset seized."); *see also* Addendum p. 3. Again, the Court rejected it. Class-Cert. Order 28 ("[T]he State identifies no factual variabilities that matter to the straightforwardly legal statutory and constitutional claims the Parcel Class would present."). Again, the government fails to reckon with that adverse ruling.

The government's argument that Henry Minh, Inc. "cannot be an adequate representative" because the Prosecutor's Office returned its money. Gov't Br. 24-25. More of the same. *Compare id.* 24-25, *with* Gov't Class-Cert. Opp. 14-15; *see also* Addendum p. 8-9. And once again, the Court rejected this argument a year ago. Worse, the Court's class-certification order emphasized that the argument was foreclosed by Indiana Supreme Court precedent. As the Court noted, the Indiana Supreme Court has "instruct[ed] that even the full-fledged mooting of the named plaintiffs' individual claims 'cast[s] no pall on the adequacy of class representation and . . . constitute[s] no bar to th[e] cases proceeding as class actions.'" Class-Cert. Order 27 (quoting *Matter of Tina T.*, 579 N.E.2d 48, 55 (Ind. 1991)); *see also id.* ("In neither its briefing nor at the May 2 hearing did the State have any response to *Tina T.*, which is a binding precedent on this Court."). Now a year later, the government still offers no response to that binding precedent.

To be clear, the government has every right to try to preserve its certification-stage arguments (though it's unclear why it had to spend eight pages repeating them). But if the government means for this Court to actually *act* on its suggestion that the classes be decertified, its copy-paste job offers no basis. It is of course true that trial courts "may amend, alter, modify and even revoke or rescind a previous order certifying a class." *Ramsey v. Lightning Corp.*, 991 N.E.2d 132, 135 (Ind. Ct. App. 2013); *cf.* Fed. R. Civ. P. 23(c)(1)(C). Yet when a court does so, it's ordinarily because "subsequently discovered facts and evidence" show that "the class should not have been certified in the first instance." *Ramsey*, 991 N.E.2d at 135. Recycling long-since-rejected legal arguments does not fit that bill. Indeed, courts have admonished that, "[i]n the absence of materially changed or clarified circumstances," a defendant's efforts to bog down litigation with "rearguments on the class issues" will not be "condone[d]." *Driver v. AppleIllinois, LLC*, No. 06-cv-6149, 2012 WL

689169, at *1 (N.D. Ill. Mar. 2, 2012) (quoting 3 William Rubenstein et al., *Newberg on Class Actions* § 7:47 (4th ed. 2011)). That principle applies with full force here.

2. The government's one arguably new point does not move the needle. With the class now long-since certified, the government suggests that Henry Minh, Inc. must identify (seemingly on a rolling basis) a slate of individual class members actively being targeted in forfeiture actions. Gov't Br. 7, 18-20. But the government offers no precedent supporting that proposition. And the premise of Trial Rule 23(B)(2) is to the contrary. Rule 23(B)(2) typically "addresses claims for declaratory and injunctive relief" against a defendant's systemwide policies, so classes certified under this Rule are "defined more by the defendants' actions against a group as a whole than the plaintiffs' individual identities." *Perdue v. Murphy*, 915 N.E.2d 498, 506 (Ind. Ct. App. 2009); *see also* Class-Cert. Order 13. That is all the more true in a case like this one, where the classes cover future members who, by definition, cannot be identified by name. Class-Cert. Order 19. To the extent the government suggests that each 23(B)(2) class member must demonstrate his or her own standing (Gov't Br. 17 n.1, 19), "it is well settled that . . . the standing inquiry focuses *solely* on the named plaintiff or proposed class representative" in class actions that seek only "injunctive or other equitable relief." 1 *Newberg and Rubenstein on Class Actions* § 2:3 (6th ed. 2025) (emphasis added); *see also* pp. 25-27, below (explaining why Henry Minh, Inc.'s standing is met here).

The government's theory also spotlights its obvious potential for abuse. For the Notice Class, for instance, it happens to be easy to identify people who are members today, June 8, 2026. That is because the Marion County Prosecutor continues to file notice-free complaints that suffer the same defects as before. *See* Miller MSJ Opposition/Reply Aff. Ex. 2. The Parcel Class, meanwhile, has fluctuated more substantially over time. In the two years leading up to the class-

certification motion, more than 130 FedEx forfeiture cases were filed. *See* Ex. B to Marie Miller's Affidavit in Support of Countercl.-Pl.'s Motion for Class-Certification (filed Aug. 6, 2024) (139 complaints in FedEx cases filed between Jan. 1, 2022 and Aug. 6, 2024). When the class-certification motion was filed on August 6, 2024, there were about fifty-one FedEx forfeiture cases active. *See* Designation of Evidence ¶ B (filed June 8, 2026).[7] On January 1, 2025, there were at least sixteen. *Id.* ¶ C; *see also* Class-Cert. Order 19 ("Obviously, class membership will fluctuate throughout the course of this litigation" (citation omitted)). Since then, the Prosecutor's Office appears to have quietly dialed back its Parcel Class prosecutions. Yet that choice casts no doubt on the continuing propriety of class-wide relief. Nothing prevents the Office from resuming its FedEx-forfeiture campaign at any time. And just as a defendant's "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case," nor does it retroactively invalidate a certified class. *Northouse*, 848 N.E.2d at 674 (quoting *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953)). Were the rule otherwise, defendants could easily unwind any certified Rule 23(B)(2) class action. Simply suspend your allegedly unlawful policy long enough for the existing cohort of class members to rotate out. Secure decertification. Then resume the old policy until another class action is filed and another class certified. And repeat. *Cf. FBI v. Fikre*, 601 U.S. 234, 241 (2024) (explaining that the voluntary-cessation doctrine guards against defendants' incentive to "suspend its challenged conduct after being sued, win dismissal, and later pick up where it left off," and "even repeat 'this cycle' as necessary until it achieves all of its allegedly

[7] Henry Minh, Inc. asks the Court to take judicial notice of the chronological case summaries, complaints, probable-cause affidavits, and case-closing orders for the cases listed in Henry Minh, Inc.'s accompanying Designation of Evidence, which lists fifty-one case numbers of Parcel Class cases active as of August 6, 2024 and sixteen case numbers of Parcel Class cases active as of January 1, 2025. *See* Ind. R. Evid. 201(a)(1)-(2), 201(c)(1)-(2).

'unlawful ends'").

Trial Rule 23 countenances no such perverse result. As the government concedes (Gov't Br. 20), the Parcel Class covers not just current members but future ones. As a certified class, it enjoys an independent "legal status." *Sosna v. Iowa*, 419 U.S. 393, 399 (1975). And whether or not the Marion County Prosecutor's Office happens to dial back its FedEx-forfeiture practices from time to time, the Office remains "free to return to [its] old ways" at any point—and resume targeting Parcel Class members. *Northouse*, 848 N.E.2d at 674 (quoting *W. T. Grant Co.*, 345 U.S. at 632). For good reason, the government waived any argument at the class-certification stage that Rule 23's numerosity requirement was not met. Class-Cert. Order 19. For equally good reason, it has pointed to no case—anywhere—to support its view that the named plaintiff in a Rule 23(B)(2) class action must itemize individual class members on a rolling basis.

B. The government's arguments about the Declaratory Judgments Act conflate standing with mootness and again conflict with this Court's class-certification order.

Also without merit is the government's view that there is no "justiciable controversy" under the Declaratory Judgments Act. Gov't Br. 9-10. Under black-letter law, this case presented a justiciable controversy when Henry Minh, Inc.'s counterclaims were filed (standing) and continues to present a justiciable controversy today (mootness). This Court's certification of the classes under Trial Rule 23(B)(2) further cements that declaratory relief is "appropriate." T.R. 23(B)(2).

1. Standing. Months after Henry Minh, Inc. filed its counterclaim and moved for class certification, the government returned the company's money. On that basis, the government maintains, the company now "lacks standing." Gov't Br. 10. That is wrong. As in federal court, "[s]tanding" in Indiana "is evaluated at the time suit is filed." *Milwaukee Police Ass'n v. Bd. of Fire & Police Comm'rs*, 708 F.3d 921, 928 (7th Cir. 2013); *see also Holcomb v. Bray*, 187 N.E.3d 1268,

1286 (Ind. 2022) ("[A]s a threshold issue, we determine standing by looking at a lawsuit's allegations . . . ."). When Henry Minh, Inc.'s counterclaims were filed, the civil-forfeiture case against the company was active. Henry Minh, Inc. Answer ¶¶ 1-4 (filed Aug. 6, 2024). The government had custody of the company's money. Counterclaim ¶ 87 (filed Aug. 6, 2024). The premise of the government's forfeiture action was that it has the power to confiscate currency seized from in-transit FedEx parcels. *E.g.*, *id.* And the government's complaint to forfeit Henry Minh, Inc.'s property suffered the precise notice defects the company challenged. Compl. (filed May 2, 2024).

That should be the end of the matter. For standing, the date that matters is August 6, 2024, when Henry Minh, Inc. filed its counterclaim. There is no dispute that the company was suffering an ongoing, redressable harm then. More than just "the ripening seeds of a controversy," the government was *actively enforcing* against the company the very policies that the counterclaim alleges are unlawful. Under the Declaratory Judgments Act, that is plenty for a justiciable controversy. *Ind. Dep't of Env't Mgmt. v. Twin Eagle LLC*, 798 N.E.2d 839, 843 (Ind. 2003); *see also id.* (noting that even "threatened litigation in the immediate future" supports a controversy under the Act).

Under the (stricter) federal standard for standing, in fact, the federal court in Indianapolis recently reached much the same conclusion in nearly identical circumstances. In *Sparger-Withers v. Taylor*, the defendant in a state civil-forfeiture action filed an affirmative class-action suit challenging as unconstitutional an aspect of Indiana's civil-forfeiture regime. In response, the State hastily returned her money. 628 F. Supp. 3d 821, 827 (S.D. Ind. 2022). On that basis, the Attorney General's Office maintained that "[b]ecause her property has been returned to her and she cannot demonstrate a real and immediate threat of future injury, [she] lacks standing to bring [her] claim." Mem. in Supp. of Mot. to Dismiss at 3, *Sparger-Withers v. Taylor*, No. 21-cv-2824 (S.D. Ind. filed

Jan. 3, 2022) (Doc. 47). Yet the court rejected that theory root and branch. "Standing is evaluated at the time suit is filed," the court reasoned. *Sparger-Withers*, 628 F. Supp. 3d at 828 (citation omitted). And on the date "the case was filed," the plaintiff's "property was subject to . . . prosecution of an ongoing civil forfeiture proceeding," meaning she "easily" had standing. *Id.*

Those principles apply with even greater force here. As the supreme court has long emphasized, Indiana's standing doctrine is far less restrictive than the federal doctrine. *See, e.g.*, *Solarize Ind., Inc. v. S. Ind. Gas & Elec. Co.*, 182 N.E.3d 212, 219 n.5 (Ind. 2022). And the Declaratory Judgments Act "is to be liberally construed and administered." *Holcomb v. City of Bloomington*, 158 N.E.3d 1250, 1256 (Ind. 2020) (quoting I.C. § 34-14-1-12); *id.* (describing the Act as embodying a "relaxed standard"); *Bray*, 187 N.E.3d at 1287 (noting that "plaintiffs can satisfy the injury requirement by showing their rights are implicated in such a way that they could suffer an injury"). Against that backdrop, what was true in *Sparger-Withers* is true here. When its counterclaim was filed, Henry Minh, Inc. was actively the target of a civil-forfeiture action. Its challenge to the policies being enforced against it thus more than satisfies the Declaratory Judgments Act.

2. Mootness. So much for standing. Since the government's justiciability arguments turn entirely on events postdating the filing of Henry Minh, Inc.'s counterclaim, those arguments could (charitably) be characterized as implicating mootness instead. For "[i]t is the doctrine of *mootness*, not standing, that addresses whether 'an intervening circumstance [has] deprive[d] the plaintiff of a personal stake in the outcome of the lawsuit.'" *West Virginia v. EPA*, 597 U.S. 697, 719 (2022). Despite every opportunity, however, the government has nowhere argued mootness. And for good reason. It is the government that would "bear[] the burden to establish that a once-live case has become moot," *id.*, and for a slate of reasons, it could not carry that burden here.

First, the Prosecutor's returning Henry Minh, Inc.'s money amounts to an act of "[v]oluntary cessation of allegedly unlawful conduct," which "does not make the case moot." *City of Huntingburg v. Phoenix Nat. Res., Inc.*, 625 N.E.2d 472, 474 (Ind. Ct. App. 1993). As the supreme court has noted, a defendant's "[v]oluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case." *Northouse*, 848 N.E.2d at 674 (quoting *W. T. Grant Co.*, 345 U.S. at 632). And for obvious reasons: A contrary rule would leave the defendant "free to return to his old ways." *Id.* (quoting *W. T. Grant Co.*, 345 U.S. at 632). That precedent applies straightforwardly here. Nothing prevents the Prosecutor's Office from subjecting Henry Minh, Inc. to its unlawful policies again in the future. The government's motion nowhere suggests differently. So, even were it to try, the government could not carry its "formidable" burden of proving that the company's individual counterclaim is moot. *Fikre*, 601 U.S. at 241.

Second, even had Henry Minh, Inc.'s *individual* counterclaim been mooted, the case still would be justiciable. For one thing, Indiana's "public interest exception to mootness" would readily apply because "the issue[s] involve[] . . . question[s] of great public importance which [are] likely to recur." *J.F. v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 256 N.E.3d 1260, 1264-65 (Ind. 2025) (citation omitted)). For another—and as this Court recognized last summer—the Indiana Supreme Court has held that "even the full-fledged mooting of the named plaintiffs' individual claims 'cast[s] no pall on the adequacy of class representation and . . . constitute[s] no bar to th[e] cases proceeding as class actions.'" Class-Cert. Order 27 (quoting *Tina T.*, 579 N.E.2d at 55). Federal courts have held similarly—including in two class actions challenging Indiana's civil-forfeiture laws. *Sparger-Withers*, 628 F. Supp. 3d at 829-30; *Washington v. Marion Cnty. Prosecutor*, No. 16-cv-2980, 2017 WL 897311, at *2-3 (S.D. Ind. Mar. 7, 2017) (Magnus-Stinson, C.J.). This case is no

different. This Court certified the Parcel Class and the Notice Class knowing full well that the government had already returned Henry Minh, Inc.'s money. Class-Cert Order 9. Precedent amply supported that ruling. And now as then, the government arguments pose no barrier to this Court's reaching the merits in a case that was certified as a class action for the very purpose of facilitating a resolution on the merits.

3. Discretion. The government contends that, even if the Court has the power to issue a declaratory judgment, it "should exercise its discretion" to refrain from using that power. Gov't Br. 11. According to the government, Henry Minh, Inc.'s class claims would be better litigated piecemeal by hundreds of civil-forfeiture defendants in hundreds of individual civil-forfeiture actions—litigated by property owners who, at least as to the Parcel Class, do not live in Indiana. *Id.* 12. Again, however, the Court rejected that precise argument last summer. In opposing class certification, the government contended that each class member should be left to "individually contest[] the validity of the forfeiture" in each of his or her specific cases. Gov't Class-Cert. Opp. 18. Yet the Court repudiated that view. "[T]he facts that *matter* to the class's claims are uniform," the court found, and "no variation among the individual class members' forfeiture cases detracts from the common questions that support class certification under Rule 23(A)(2)." Class-Cert. Order 21-22; *see also, e.g.*, *id.* 28. Moreover, the fact that the Court certified the classes under Rule 23(B)(2) necessarily reflects the Court's (correct) conclusion that "final injunctive relief or corresponding declaratory relief with respect to the class[es] as a whole" would be "appropriate." T.R. 23(B)(2). Indeed, the Court said so explicitly: "Because the Prosecutor 'has acted . . . on grounds generally applicable to the class,'" the Court reasoned, "final injunctive or declaratory relief for the class as a whole is appropriate." Class-Cert. Order 30.

Now years into the case, the government offers no persuasive reason why the Court should reverse course. In fact, doing so would almost certainly be an abuse of the Court's discretion. As the government acknowledges (Gov't Br. 12), "[t]he determinative factor is whether the declaratory action will result in a just and more expeditious and economical determination of the entire controversy." *Mid-Century Ins. Co. v. Est. of Morris ex rel. Morris*, 966 N.E.2d 681, 688 (Ind. Ct. App. 2012). And with the classes long-since certified, the entire controversy can be resolved *only* through class-wide relief, since each "class of unnamed persons described in the certification" enjoys "a legal status" of its own. *Sosna*, 419 U.S. at 399. Win or lose, therefore, a judgment "with respect to the class as a whole" is necessary to resolve the entire controversy. T.R. 23(B)(2).

C. The government's arguments about injunctive relief are without merit.

The government devotes five pages to arguing that Henry Minh, Inc., and the classes are not entitled to injunctive relief. Contrary to the government's view, this Court has the authority to grant injunctive relief, and such relief would absolutely be proper. The government asserts, for example, that there is "no cause of action that would permit [Henry Minh, Inc.] to get injunctive relief at all." Gov't Br. 12. But the courts' power to issue injunctions is well-established. "Courts of general jurisdiction in Indiana have power to grant equitable relief, not only under statutes, but inherently, as necessary to the complete administration of justice." *State ex rel. Uebelhor v. Armstrong*, 248 N.E.2d 32, 37 (Ind. 1969) (citation omitted). For that matter, Trial Rule 57 also confirms that "Indiana courts may . . . grant executory or coercive relief in declaratory judgment actions in addition to determining the rights and status of the parties." *Ind. State Health Comm'r v. Bernard*, 273 N.E.3d 462, 473 n.9 (Ind. Ct. App. 2025) (citation omitted) (affirming injunction). Thus, when "a valid Indiana statute [i]s being violated, equity may enjoin such continued wrongful activity." *Schrenker v. Clifford*, 387 N.E.2d 59, 61 (Ind. 1979). Likewise when a statute is

unconstitutional. *E.g.*, *Huie v. Private Truck Council of Am., Inc.*, 466 N.E.2d 435 (Ind. 1984) (affirming injunction). And as for the federal claims against the Marion County Prosecutor, Section 1983 similarly authorizes "injunctive relief." *Malhotra v. Univ. of Ill. at Urbana-Champaign*, 77 F.4th 532, 535 (7th Cir. 2023). The government's suggestions to the contrary blink reality.

The government also posits that Henry Minh, Inc., and the classes would be unable to satisfy the equitable factors for a permanent injunction. Gov't Br. 13-16. That, too, is wrong. Generally, trial courts must consider four factors when determining whether to grant permanent injunctive relief: whether the plaintiffs have succeeded on the merits; whether the plaintiffs face irreparable harm; whether the threatened injury to the plaintiffs outweighs the threatened harm a grant of relief would occasion upon the defendant; and whether the public interest would be disserved by granting relief. *See Doe 1 v. Boone Cnty. Prosecutor*, 85 N.E.3d 902, 911 (Ind. Ct. App. 2017). If the Court reaches the stage of evaluating these factors, Henry Minh, Inc. and the classes will necessarily have satisfied the first of them: success on the merits. And the other three would readily be satisfied as well. "[W]hen the acts sought to be enjoined are unlawful," for example, "the plaintiff need not make a showing of irreparable harm or a balance of the hardships in his favor." *Id.* And as for the final factor—the public interest—"statutory violations are against public interest" and thus "may support issuance of an injunction." *Individual Members of Med. Licensing Bd. of Ind. v. Anonymous Plaintiff 1*, 233 N.E.3d 416, 458 (Ind. Ct. App. 2024), *trans. denied.* That is true of constitutional violations as well: "[t]he existence of a continuing constitutional violation constitutes proof of an irreparable harm, and its remedy certainly would serve the public interest." *Planned Parenthood of Ind. & Ky., Inc. v. Comm'r*, 194 F. Supp. 3d 818, 837 (S.D. Ind. 2016) (Pratt, J.) (citation omitted); *Gibson v. Ind. Dep't of Correction*, 899 N.E.2d 40, 56 (Ind. Ct. App. 2008).

Nothing in the government's brief rebuts these principles. For example, the government contends that Henry Minh, Inc., cannot show irreparable harm because it lacks standing. Gov't Br. 13-14. As discussed above, that is wrong. More to the point, the irreparable-harm inquiry kicks in *only* once the Court has already determined that Henry Minh, Inc., and the classes "ha[ve] in fact succeeded on the merits," *Ferrell v. Dunescape Beach Club Condominiums Phase I, Inc.*, 751 N.E.2d 702, 713 (Ind. Ct. App. 2001), meaning the government's standing theories will necessarily have been resolved against it. And even without the presumptive irreparable injury detailed above (at 31), the resulting harm for both classes here is textbook irreparable. For the Parcel Class, Indiana is seizing their property, keeping it for months, and obliging class members to either abandon it forever or spend still more money to lawyer up in a distant forum to try to recover it—all in violation of statutory and constitutional law. Even if successful in defending themselves, moreover, those Parcel Class members will never be made fully whole. Under Indiana law, for instance, they do not appear to be entitled to interest compensating for their seized money's lost time-value. *Cf.* 28 U.S.C. § 2465(b)(1)(C). And they almost certainly would be unable to pursue that recovery through an action for compensatory damages. *Cf. Ind. Fine Wine & Spirits, LLC v. Cook*, 459 F. Supp. 3d 1157, 1170 (S.D. Ind. 2020) (Pratt, J.) (holding that plaintiff "has no adequate remedy at law because it cannot pursue compensatory damages against the state actor Defendants because of sovereign immunity"). Likewise for the Notice Class, the right to adequate notice is a cornerstone of our justice system. Before deciding how to proceed, property owners are, at a minimum, entitled to know the basis for the government's decision to commence civil-forfeiture proceedings. *See, e.g.*, *Snitko*, 2021 WL 3139707, at *4 ("[A] deprivation of . . . due process rights 'inexorably' amounts to an irreparable harm."). Elsewhere, in fact, the Marion County Prosecutor has freely

acknowledged the burdens visited on property owners in civil-forfeiture cases: "Those who face the loss of property are not entitled to counsel, and many proceedings result in default judgments because the person is unable to appear in court to advocate on their own behalf or terrified of appearing alone." Br. of Amici Curiae 55 Current and Former Elected Prosecutors et al. at 3, *Sparger-Withers v. Taylor*, No. 24-1367 (7th Cir. filed Apr. 29, 2024) (filed on behalf of, among others, the sitting Marion County Prosecutor). For both classes, the statutory and constitutional guarantees the government is violating exist precisely because stripping people of their property visits grave burdens on them.

Likewise misplaced is the government's renewed suggestion that each class member should remedy his or her statutory and constitutional violations by defending against civil-forfeiture actions one-by-one. Gov't Br. 14-15. Again, that argument was aired and rejected at the class-certification stage. And now that the certified classes have "a legal status" of their own, *Sosna*, 419 U.S. at 399, relegating each member to piecemeal litigation is self-evidently not an "adequate" remedy for the classes as a whole. *Contra* Gov't Br. 14; *see also Gierek v. Anonymous 1*, 250 N.E.3d 378, 398 (Ind. 2025) (explaining that "the purpose of a class-action proceeding" is "the 'promotion of efficiency and economy of litigation' in cases involving multiple parties with similar claims").

The government next warns that injunctive relief would "[d]ismantl[e]" the Civil Forfeiture Statute. Gov't Br. 16. But how? For the Notice Class, the government nowhere explains why providing basic notice in its forfeiture complaints would spell ruin for its enforcement efforts. For the Parcel Class, the class's first-order claim is that the Marion County Prosecutor is prosecuting forfeitures that are not authorized by the Civil Forfeiture Statute in the first place. Counterclaim ¶¶ 105-11 (filed Aug. 6, 2024). As for the government's comments about how state officers

sometimes help "federal officials" combat "federal crimes"? Gov't Br. 16.The relief sought in this case has nothing to do with federal officials. Or federal crimes. Rather, the Parcel Class is limited to "persons and entities who are or will be named as defendants in actions brought under Title 34, Article 24, Chapter 1, of the Indiana Code" (Class-Cert. Order 40)—i.e., defendants in *state* forfeiture actions prosecuted in *state* court by *state* prosecutors. Countercl.-Pl.'s MSJ Br. 10.

Lastly, the government opines that the Civil Forfeiture Statute itself reflects the General Assembly's "determination of what is in [the] public interest," such that injunctive relief is improper. Gov't Br. 15 (citation omitted). Yet the classes seek a judgment to halt the Marion County Prosecutor's defiance of *that very statute*, and the state and federal constitutions. Bluntly, the government cannot invoke a statute's "important state interest[s]" to contend that it should be permitted to continue violating the statute unchecked. *Id.* 16. Nor, for that matter, is there any reason to think that the General Assembly intended to bless prosecutors' misapplying the Civil Forfeiture Statute and harnessing it to violate state and federal constitutional rights. Among the interests contemplated by the statute, after all, is ensuring that "citizens' rights and interests" are protected. *Smith*, 232 N.E.3d at 111. That is why "civil forfeiture actions must strictly comply with the laws our Legislature has carefully crafted." *Id.* If, as the counterclaim asserts, the government is violating the Civil Forfeiture Statute—or, worse, the state and federal constitutions—nothing could be worse for the public interest than to let those violations persist.

D. The government's State-as-defendant arguments are without merit and of little practical importance.

The government nowhere denies that the Marion County Prosecutor, in his official capacity, is a proper defendant for Henry Minh, Inc.'s counterclaims. The State's contention that the counterclaims are not "viable" as to the State of Indiana itself (Gov't Br. 17) thus is of little

practical importance: Whether or not the judgment runs directly against the State, the judgment undisputedly can run against the Prosecutor, which has the same real-world consequence.

Practicalities aside, the government is also wrong on the law. It is "the general rule," of course, "that the State cannot be sued without its consent." *Mathis v. Coop. Vendors, Inc.*, 354 N.E.2d 269, 274 (Ind. Ct. App. 1976). But where, as here, "the State is a plaintiff, it is subject to a cross action the same as any other litigant." *State v. Young*, 151 N.E.2d 697, 700 (Ind. 1958); Gov't Br. 2 (emphasizing that forfeiture suits "are 'properly classified as civil in nature'").[8] Even as to the State, therefore, Henry Minh, Inc.'s requests for declaratory and injunctive relief are proper.[9]

CONCLUSION

The Court should grant Henry Minh, Inc.'s motion for summary judgment, deny Counterclaim-Defendants' cross-motion for summary judgment, and enter declaratory and injunctive relief against Counterclaim-Defendants and in favor of Henry Minh, Inc., the certified Parcel Class, and the certified Notice Class.

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[8] *See also, e.g.*, Answer/Obj. to Compl. for Forfeiture, Jury Demand, Defenses and Countercl. at 4-5, *State v. Jeffrey Thigpen*, No. 02C01-2102-MI-000112 (Allen Cnty. Cir. Ct. filed Mar. 4, 2021); Answer and Countercl. at 2, *State v. John Lockridge*, No. 10C04-1905-MI-000113 (Clark Cnty. Cir. Ct. filed June 12, 2019); Answer, Defenses, and Countercl. at 3, *State v. Capital One Auto Finance*, No. 49D01-1905-MI-018459 (Marion Cnty. Sup. Ct. filed Nov. 6, 2019); Answer, Aff. Defenses, Countercl. and Demand for Jury Trial at 3, *State v. Myron L. Harris*, No. 21D01-1612-MI-000812 (Fayette Cnty. Sup. Ct. filed May 15, 2017). Henry Minh, Inc. asks the Court to take judicial notice of these court documents.

[9] With regard to Henry Minh, Inc.'s federal-law counts specifically, the government argues that "§ 1983 is the only conceivable mechanism" for bringing those counts, and as a statutory matter, States are not "person[s]" within the meaning of Section 1983. Gov't Br. 17. But, in a justiciable controversy like this one, Indiana's Declaratory Judgments Act itself is a statutory vehicle for settling disputes over a statute's compliance with federal law. *See generally* I.C. § 34-14-1-2 ("Any person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined *any* question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder." (emphasis added)).

Dated: June 8, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2026, a copy of the foregoing was served upon the following by the Indiana E-Filing system:

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