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Constitutional Law: Courts Should Not Forfeit the Barker Factors in Civil Forfeiture—Olson v. One 1999 Lexus MN License Plate No. 851LDV VIN: JT6HF10U6X0079461, 924 N.W.2d 594 (Minn. 2019).

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CONSTITUTIONAL LAW: COURTS SHOULD NOT FORFEIT THE BARKER FACTORS IN CIVIL FORFEITURE—OLSON V. ONE 1999 LEXUS MN LICENSE PLATE NO. 851LDV VIN: JT6HF10U6X0079461, 924 N.W.2D 594 (MINN. 2019)

Kathryn Simunic*

I. INTRODUCTION

In *Olson v. One 1999 Lexus*,[1] the Minnesota Supreme Court faced the challenge of determining whether a Minnesota vehicle forfeiture statute[2] violated due process in light of an eighteen-month delay between the seizure of a vehicle and the post-seizure hearing.[3] Megan Olson, a repeat driving-while-impaired (DWI) offender and the daughter of Helen Olson, was driving her mother's car when she was arrested for a fourth DWI offense.[4] This resulted in the seizure of the vehicle, despite the fact that the driver was not the owner.

Minnesota's forfeiture statute required that Megan's pending criminal proceeding be resolved before the forfeiture action could begin,[5] which contributed to the eighteen-month delay. The court upheld the constitutionality of the statute on its face and as applied to Megan, the non-owner driver.[6] However, the majority ruled that the statute was unconstitutional as applied to Helen, the alleged innocent owner of the vehicle.[7] The court reached its decision by applying the analytical test from *Mathews v. Eldridge*,[8] which concerned process before the termination of Social Security disability benefits, rather than *Barker v. Wingo*,[9] which involved the constitutionality of a delay prior to a criminal trial.

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[1] 924 N.W.2d 594 (Minn. 2019).
[2] MINN. STAT. § 169A.63, subdiv. 9(d) (2018).
[3] *Olson*, 924 N.W.2d at 602.
[4] *Id.* at 598.
[5] MINN. STAT. § 169A.63, subdiv. 9(d).
[6] *Olson*, 924 N.W.2d at 616.
[7] *Id.*
[8] 424 U.S. 319, 335 (1976).
[9] 407 U.S. 514, 530 (1972).

This case note begins with a discussion of the judiciary's controversial efforts to navigate the complexities of the variable and unpredictable procedural due process doctrine.[10] A brief overview of procedural due process in the context of civil forfeiture follows, with an explanation of the commonalities between civil forfeiture and criminal law.[11] The use of the *Mathews* framework and *Barker* factors in procedural due process, specifically in Minnesota, are also discussed.[12] Next, the facts and procedural history of *Olson* follow,[13] along with an explanation of the majority's decision.[14]

This note then continues with an analysis of the constitutional test employed in *Olson*,[15] arguing that the use of the *Barker* factors would have been more appropriate because of the quasi-criminal nature of civil forfeiture along with the United States Supreme Court's application of *Barker* for this specific forfeiture issue.[16] The note goes on to examine the Minnesota Supreme Court's erroneous decision in applying the *Mathews* framework—because of the court's desire to follow Minnesota precedent—and disregarding the differences between private property and administrative benefits.[17] Subsequently, the note argues that *Olson*, if decided under the *Barker* factors, would likely have held the forfeiture statute constitutional as applied to both Megan and Helen.[18] This result is then compared with the outcome for innocent owners generally, arguing that *Barker* provides a stronger claim for these individuals.[19] Finally, this case note concludes with a discussion of the implications of the *Olson* ruling on future cases in Minnesota.[20]

[10] *See infra* Section II.A.
[11] *See infra* Section II.B.
[12] *See infra* Section II.C.
[13] *See infra* Section III.A.
[14] *See infra* Section III.B.
[15] *See infra* Part IV.
[16] *See infra* Section IV.A.
[17] *See infra* Section IV.B.
[18] *See infra* Section IV.C.
[19] *See id.*
[20] *See infra* Section IV.D.

II. HISTORY OF THE RELEVANT LAW

A. Origin and Evolution of Procedural Due Process

The roots of due process trace back to the Magna Carta of 1215.[21] Originating from English law, due process aimed to protect individuals from the unrestrained power of the King.[22] The notorious Clause 39 stated, "No free man shall be . . . stripped of his rights or possessions . . . except by the lawful judgment of his equals or by the law of the land."[23] Almost 600 years later, the Framers sought to replicate these rights by carefully constructing this language in a more simplistic form.[24] The due process protections are embedded in the Fifth and Fourteenth Amendments of the United States Constitution to ensure fair procedures are in place to prevent the arbitrary deprivation of life, liberty, or property by the government.[25] The underlying premise of the procedural due process doctrine is "'the opportunity to be heard' . . . at a meaningful time and in a meaningful manner."[26]

Since their inception within the Bill of Rights, these seemingly simplified clauses have proven to be increasingly complex in the eyes of the

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[21] *See In re* Winship, 397 U.S. 358, 378–79 (1970) (Black, J., dissenting) (discussing the original concept of due process found in the Magna Carta); *see also* Murray's Lessee v. Hoboken Land & Improv. Co., 59 U.S. 272, 276 (1855) (noting that "due process of law" and "law of the land" are synonymous); W. J. Brockelbank, *The Role of Due Process in American Constitutional Law*, 39 CORNELL L. REV. 561 (1954).

[22] Dent v. West Virginia, 129 U.S. 114, 123 (1889) ("[Due process of law] come[s] to us from the law of England, from which country our jurisprudence is to a great extent derived; and their requirement was there designed to secure the subject against the arbitrary action of the crown, and place him under the protection of the law."); *see also* Paul J. Larkin, Jr., *The Lost Due Process Doctrines*, 66 CATH. U. L. REV. 293, 327–50 (2016) (discussing the events leading up to the creation of the Magna Carta, its impact on English Law, and its influence on developing American constitutional law).

[23] *English Translation of Magna Carta*, BRITISH LIBRARY (July 28, 2014), http://www.bl.uk/magna-carta/articles/magna-carta-english-translation [https://perma.cc/6XB8-Z9FF].

[24] Obergefell v. Hodges, 135 S. Ct. 2584, 2632–33 (2015) (Thomas, J., dissenting) (describing the influence of Clause 39 on the Framers in enacting the Due Process Clause); *see also* Leonard W. Klingen, *Our Due Process Debt to Magna Carta*, 90 FLA. B.J., 16, 18 (2016) ("It is a testament to their genius that the framers' more economical use of language did nothing to narrow the reach of the protections thus afforded.").

[25] U.S. CONST. amend. V ("No person shall be . . . deprived of life, liberty, or property, without due process of law."); U.S. CONST. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law.").

[26] Armstrong v. Manzo, 380 U.S. 545, 552 (1965) (quoting Grannis v. Ordean, 234 U.S. 385, 394 (1914)).

courts.[27] Aside from acknowledging that due process is an individual right, the clauses are rather vague and lack detail as to what guarantees are specifically afforded.[28] In the absence of explicit guidance, courts have relied on the concept of fundamental fairness to resolve the ambiguities and further develop the doctrine.[29] Given its ambiguous nature, due process demands a fact-specific analysis for each individual case.[30]

Typically, courts begin a due process analysis by assessing whether the liberty or property interest at issue falls within the protections of due process.[31] Prior to the 1970s, government benefits were not considered protected interests under this analysis.[32] However, with the expansion of

[27] *See* Larkin, *supra* note 22, at 296 (suggesting that the ambiguous language of the Fifth and Fourteenth Amendments has led to continual interpretations by the judiciary, specifically in unraveling the meaning of the terms "depriving," "person," "liberty," and "property").

[28] *See* Hannah v. Larche, 363 U.S. 420, 442 (1960) ("'Due process' is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts."); Dent v. West Virginia, 129 U.S. 114, 124 (1889) ("[I]t may be difficult, if not impossible, to give to the terms 'due process of law' a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as are forbidden.").

[29] *See, e.g.*, Lassiter v. Dep't of Soc. Serv., 452 U.S. 18, 24–25 (1981) ("Applying the Due Process Clause is . . . an uncertain enterprise which must discover what 'fundamental fairness' consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake."); Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 162–63 (1951) (Frankfurter, J., concurring) ("Representing a profound attitude of fairness between man and man, and more particularly between the individual and government, 'due process' is compounded of history, reason, the past course of decisions, and stout confidence in the strength of the democratic faith which we profess."); Kelley v. Alamo, 964 F.2d 747, 750 (8th Cir. 1992); McCleskey v. Kemp, 753 F.2d 877, 892 (11th Cir. 1985); Barlau v. Northfield, 568 F. Supp. 181, 188 (D. Minn. 1983).

[30] *See, e.g.*, Morrissey v. Brewer, 408 U.S. 471, 481 (1972) ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands."); Cafeteria Workers & Rest. Workers Union, Local 473 v. McElroy, 367 U.S. 886, 895 (1961) ("[D]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances."); Griffin v. Illinois, 351 U.S. 12, 20–21 (1956) (Frankfurter, J., concurring in the judgment) (describing the ever-changing nature of due process and its ability to adapt to the demands of society).

[31] *See, e.g.*, Richard B. Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1669, 1717–19 (1975) (explaining the privileges that typically did not receive due process protections as well as providing examples of interests that are now recognized under due process expansion); Sara B. Tosdal, *Preserving Dignity in Due Process*, 62 HASTINGS L.J. 1003, 1010–12 (2011) (comparing the approaches taken by the United States Supreme Court in *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy* and *Board of Regents of State Colleges v. Roth* to demonstrate the analysis of the Court).

[32] *See* Randy Lee, *Twenty-Five Years After* Goldberg v. Kelly*: Traveling from the Right Spot on the Wrong Road to the Wrong Place*, 23 CAP. U. L. REV. 863, 867 (1994) (noting that benefit payments and employment from the government were not protected under due

administrative agencies following the New Deal, due process concerns regarding the fairness of administrative proceedings were on the rise.[33] The growing prevalence of these cases gave way to the landmark decision in *Goldberg v. Kelly*,[34] where the United States Supreme Court enforced due process rights in the context of administrative proceedings.[35]

In *Goldberg*, procedural due process protections were expanded to include a new form of property interest: welfare benefits.[36] The petitioners in *Goldberg* received financial aid through federal and New York State assistance programs.[37] The aid, however, was terminated without prior notice or an evidentiary hearing.[38] After the suit had commenced, New York developed procedures for providing notice and a hearing.[39] The Court, accordingly, considered two issues: (1) whether notice and a hearing are required prior to the termination of welfare benefits and (2) whether the State's revised procedures satisfied due process.[40]

First, the Court weighed the individual's need for welfare assistance against the government's concern of protecting public funds.[41] The Court reasoned that the stakes were much higher for an eligible individual, who would likely be impoverished without the federal aid.[42] This vital individual need substantially outweighed the government's interest.[43] Moreover, Justice Brennan stated that "[i]t may be realistic today to regard welfare entitlements as more like 'property' than a 'gratuity.'"[44] Thus, terminating these statutory

process in the era prior to *Goldberg v. Kelly*); *see also* Stewart, *supra* note 31, at 1717–19 (explaining the privileges that typically did not receive due process protections and providing examples of interests that are now recognized under due process expansion).

[33] *See* Tosdal, *supra* note 31, at 1007 (discussing the history of administrative law and the agencies born from the New Deal, specifically the Social Security Administration and the National Labor Relations Board).

[34] 397 U.S. 254 (1970).

[35] *Id.* at 263–64.

[36] *See id.* at 261–62; *see also* Edward L. Rubin, *Due Process and the Administrative State*, 72 CALIF. L. REV. 1044, 1063 (1984), (noting that the decision in *Goldberg* resulted in the expansion of procedural due process to a wide array of government benefits that had not previously been recognized as protected property).

[37] *Goldberg*, 397 U.S. at 256.

[38] *Id.*

[39] *Id.* at 257.

[40] *Id.* at 256–57.

[41] *Id.* at 261.

[42] *Id.*

[43] *Id.*

[44] *Id.* at 262 n.8; *see also* Charles A. Reich, *The New Property*, 73 YALE L.J. 733 (1964) (discussing the rights-privileges distinction and branding government benefits as "new property" because of their comparable economic importance to personal property).

entitlements—a now-protected interest—without an evidentiary hearing would deprive individuals of their property without due process.[45]

Second, the majority assessed New York's new procedures to determine what process is due in terminating welfare benefits.[46] It recognized that due process "require[d] that a recipient have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally."[47] The Court quickly glossed over the seven-day notice outlined by the State's procedures but acknowledged that the recipient's inability to present evidence orally or question an adverse witness resulted in insufficient due process.[48]

As the doctrine evolved, courts continued to develop various frameworks and analytical tools to assess due process violations. *Goldberg* had weighed private interests against governmental interests.[49] This balancing test laid the foundation for the framework established in *Mathews v. Eldridge*.[50] In *Mathews*, the petitioner's Social Security disability benefits had been terminated without a prior evidentiary hearing.[51] Given that the facts of *Mathews* had a striking resemblance to *Goldberg*, the Court applied the *Goldberg* test but identified a third prong.[52] To determine whether due process required an evidentiary hearing before terminating disability payments, the Court balanced three factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[53]

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[45] *Goldberg*, 397 U.S. at 262.
[46] *Id.*
[47] *Id.* at 267–68.
[48] *Id.* at 268.
[49] *Id.* at 261. This analysis created the basis of the *Mathews* test. *See* Lee, *supra* note 32, at 884–87 (discussing the motivations behind Justice Brennan's omission of the probability of erroneous deprivation prong that the district court had originally included in its analysis).
[50] 424 U.S. 319, 335 (1976).
[51] *Id.* at 320.
[52] *Id.* at 335; *see also* Lee, *supra* note 32, at 977–78 (noting that the Court reverted to the original test from the district court in *Goldberg*, which was not criticized in Justice Brennan's dissenting opinion).
[53] *Mathews*, 424 U.S. at 335 (citing *Goldberg*, 397 U.S. at 263–71). Although *Goldberg* did not explicitly include the second factor from *Mathews*, the *Goldberg* Court expressed similar concerns about the risk of erroneous deprivation. *Compare Goldberg*, 397 U.S. at 266 ("[T]he stakes are simply too high for the welfare recipient, and the possibility for honest

The Court distinguished the hardship faced in the deprivation of welfare benefits from that caused by the loss of disability benefits to reach its conclusion that a pre-termination hearing was not required in this case.[54] Since this decision, the *Mathews* framework has been extended to a wide array of cases involving various procedural due process violations.[55]

Prior to its decision in *Mathews*, the Court had also developed a set of factors in *Barker v. Wingo*[56] to evaluate whether a delay of more than five years violated the defendant's due process right to a speedy trial.[57] The *Barker* test considers: "[1.] [l]ength of the delay, [2.] the reason for the delay, [3.] the defendant's assertion of his right, and [4.] prejudice to the defendant."[58]

In addition to Sixth Amendment due process challenges, the *Barker* test has been applied in the civil forfeiture context.[59] In particular, courts have used these factors to assess the timing of forfeiture proceedings after property is seized.[60] Even though *Barker* has been extended to civil forfeiture,[61] courts remain divided over the proper test for analyzing

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error or irritable misjudgment too great, to allow termination of aid without giving the recipient a chance, . . . , to be fully informed of the case against him . . . ."), *with Mathews*, 424 U.S. at 335.

[54] *Mathews*, 424 U.S. at 340–41.

[55] *See, e.g.*, Boumediene v. Bush, 553 U.S. 723, 733 (2008) (invalidating the Military Commissions Act of 2006 for inadequate process for the detention of enemy combatants at Guantanamo Bay, Cuba); Wilkinson v. Austin, 545 U.S. 209, 225 (2005) (finding that the government's process for placement in supermax prison provided acceptable due process); Connecticut v. Doehr, 501 U.S. 1, 24 (1991) (holding that the statute providing prejudgment attachment without notice or a hearing constituted a procedural due process violation). *See generally* Andrew Blair-Stanek, Twombly *is the Logical Extension of the* Mathews v. Eldridge *Test to Discovery*, 62 FLA. L. REV. 1, 11–12 (2010) (discussing that the *Mathews* test has been widely used by the Supreme Court for numerous areas of due process).

[56] 407 U.S. 514, 530 (1972).

[57] *Id.* at 514.

[58] *Id.* at 530.

[59] Teresia B. Jovanovic, Annotation, *Delay Between Seizure of Personal Property by Federal Government and Institution of Proceedings for Forfeiture Thereof as Violative of Fifth Amendment Due Process Requirements*, 69 A.L.R. Fed. 373, § 2 (1984) ("As a general proposition, any delay between the seizure of personal property by federal governmental officials and the institution of proceedings for forfeiture thereof, which is substantial, unexcused, and unreasonable in view of the circumstances presented, will bar further forfeiture proceedings on due process grounds.").

[60] *See* 16 C.J.S. *Constitutional Law* § 2382 (2019) (indicating that the *Barker* factors supply the appropriate test for evaluating procedural due process requirements specific to timeliness and delays in forfeiture proceedings); *see also* United States v. $23,407.69 in U.S. Currency, 715 F.2d 162 (5th Cir. 1983); United States v. Piteo, 726 F.2d 50 (2nd Cir. 1983).

[61] *See, e.g.*, United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency, 461 U.S. 555 (1983) (applying *Barker*'s four-factor balancing test to determine

procedural due process in this context.[62] Many courts continue to consider *Mathews* to be the more suitable framework because of its ability to encompass a broad scope of procedural due process issues.[63]

B. Overview of Procedural Due Process in Civil Forfeiture

Like procedural due process, civil forfeiture has a long-standing history in English common law.[64] Civil forfeiture often includes the deprivation of property from an owner who used it to facilitate a crime, or assisted others in committing a crime intentionally or negligently.[65] Deep-rooted precedent established that the property is guilty of the crime rather

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that there was no unreasonable delay in filing a forfeiture action); United States v. One 1976 Mercedes 450 SLC, 667 F.2d 1171 (1982); United States v. One 1978 Cadillac Sedan De Ville, 490 F. Supp. 725 (1980); United States v. One 1973 Ford LTD, Serial. No. 3J66S132017, 409 F. Supp. 741 (1976).

[62] *See* Krimstock v. Kelly, 306 F.3d 40, 60 (2d Cir. 2002) (employing *Mathews* to evaluate the requirement for a prompt post-seizure hearing of a vehicle). *But see* United States v. Two Hundred Ninety-Five Ivory Carvings, 726 F.2d 529, 531 (9th Cir. 1984) (refusing to uphold the district court's decision that due process was violated by the government's nineteen-month delay in initiating civil forfeiture proceedings because the *Barker* factors had not been evaluated).

[63] *See, e.g.*, United States v. James Daniel Good Real Prop., 510 U.S. 43, 53 (1993); Parham v. J.R., 442 U.S. 584, 599 (1979); Ass'n for L.A. Deputy Sheriffs v. County of Los Angeles, 648 F.3d 986, 994 (9th Cir. 2011); Chernin v. Welchans, 844 F.2d 322, 325 (6th Cir. 1988); McCahey v. L.P. Investors, 774 F.2d 543, 545 (2d Cir. 1985); Olson v. One 1999 Lexus MN License Plate No. 851LDV VIN: JT6HF10U6X007961, 924 N.W.2d 594 (Minn. 2019).

[64] *See* Michele M. Jochner, *From Fiction to Fact: The Supreme Court's Re-evaluation of Civil Asset Forfeiture Laws*, 82 ILL. B.J. 560, 561 (1994) (noting that legal historians have found origins of civil forfeiture in the Bible); *see also* Jacob M. Hilton, *Keep Him on a Short Leash: Innocence of Owner Not a Constitutional Defense to Forfeiture of Property Allegedly Connected to Illegal Conduct:* Bennis v. Michigan*, 116 S. Ct. 994 (1996)*, 28 TEX. TECH L. REV. 133, 135–36 (1997) (explaining the three types of forfeiture under English common law: deodand, forfeiture upon conviction of felony or treason, and statutory forfeiture, and that the United States only adopted statutory forfeiture, which had primarily been used in connection with customs and revenue laws violations).

[65] *See Forfeiture*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining civil forfeiture as "[a]n in rem proceeding brought by the government against property that either facilitated a crime or was acquired as a result of criminal activity"); *see also* Mary M. Cheh, *Can Something This Easy, Quick, and Profitable Also Be Fair? Runaway Civil Forfeiture Stumbles on the Constitution*, 39 N.Y.L. SCH. L. REV. 1, 10 (1994) (explaining the modern characteristics of civil forfeitures).

than the property owner.[66] This has commonly become known as the "guilty-property fiction."[67]

As opposed to criminal proceedings against an individual, civil forfeiture acts *in rem* against the property itself.[68] Pursuing these proceedings *in rem* means that they are usually civil as opposed to criminal.[69] Such proceedings remain highly controversial because civil claimants are afforded fewer constitutional protections than criminal defendants, including the lack of a right to a jury trial and a lower standard of proof.[70]

Additionally, certain circumstances allow *in rem* proceedings to commence without the typical minimum due process requirements of prior notice and a hearing. For example, the Court, in *Fuentes v. Shevin*,[71] recognized that various "'extraordinary situations' . . . justify postponing notice and opportunity for a hearing."[72] It indicated that each of these instances met a common set of conditions:

> First, . . . the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, . . . the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance.[73]

Thus, in some situations, the very link between forfeiture and criminal activity can serve as the basis for the government's ability to seize property.

While civil forfeiture had long existed as a sanction in common law, its use was relatively rare until the 1970s with the passage of the Racketeer

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[66] *See, e.g.*, J.W. Goldsmith, Jr.-Grant Co. v. United States, 254 U.S. 505, 511 (1921) ("[T]he thing is primarily considered the offender."); Harmony v. United States, 43 U.S. 210, 233 (1844) ("The vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner."); The Palmyra, 25 U.S. 1, 14 (1827) ("The thing is here primarily considered as the offender, or rather the offence is attached primarily to the thing.").

[67] Austin v. United States, 509 U.S. 602, 616 (1993).

[68] 36 AM. JUR. 2D *Forfeitures and Penalties* § 1 (2019).

[69] Leonard v. Texas, 137 S. Ct. 847, 849 (2017).

[70] *Id.* at 847–48; David J. Stone, *The Opportunity of* Austin v. United States*: Toward a Functional Approach to Civil Forfeiture and the Eighth Amendment*, 73 B.U. L. REV. 427, 434–35 (1993) (criticizing the fact that forfeiture proceedings are classified as civil as opposed to criminal because of the fewer of constitutional protections that are afforded to civil litigants).

[71] 407 U.S. 67 (1972).

[72] *Id.* at 90.

[73] *Id.* at 91.

Influenced and Corrupt Organizations Act (RICO) and the Controlled Substances Act (CSA).[74] These acts were passed in an effort to curtail illegal activity arising from criminal enterprises, and they allowed property of criminal organizations to be forfeited.[75] However, the increasing prevalence of civil forfeiture led to heightened scrutiny in order to manage the risk of abuse. In particular, with the close connection between civil forfeiture and criminal activity, courts have noted the danger of prejudice based on the timing of civil forfeiture proceedings prior to the conclusion of a related criminal matter.[76] In those instances, the defense of a civil forfeiture proceeding may place the subsequent criminal proceedings in jeopardy.[77] Thus, courts have held that postponing forfeiture proceedings until the resolution of related criminal proceedings is warranted in certain circumstances.[78]

Despite its intended remedial purpose,[79] civil forfeiture has been regarded as a quasi-criminal punishment due to its punitive impact and

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[74] *See* Stone, *supra* note 70, at 427–28 (discussing the development of civil forfeiture).

[75] *Id.*

[76] United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency, 461 U.S. 555, 567 (1983) (citing United States v. U.S. Currency, 626 F.2d 11 (6th Cir. 1980)) ("In some circumstances, a civil forfeiture proceeding would prejudice the claimant's ability to raise an inconsistent defense in a contemporaneous criminal proceeding."); United States v. One 1976 Mercedes 450 SLC, 667 F.2d 1171, 1175 (1982) ("Had the government pursued forfeiture at the same time, it is probable that [the defendant] would have claimed that his defense in the criminal case was being prejudiced.").

[77] Kimberly J. Winbush, Annotation, *Pendency of Criminal Prosecution as Ground for Continuance or Postponement of Civil Action to Which Government is Party Involving Facts or Transactions Upon Which Prosecution is Predicted-Federal Cases*, 33 A.L.R. FED. 2d 111, § 2 (2009) ("Parties facing parallel civil and criminal proceedings are in an unenviable position, primarily since the scope of civil discovery is so much broader than that in the criminal realm. A party's defense of civil claims may thus threaten the Fifth Amendment privilege, particularly vis-a-vis testimony that would impact the criminal proceedings. Accordingly, courts have held that the pendency of parallel or related criminal proceedings may provide a basis for postponing the civil proceeding under certain conditions.").

[78] *See, e.g.*, United States. v. Any and All Assets of Shane Co., 147 F.R.D. 99, 102 (M.D.N.C. 1992) (granting a short stay of discovery in a civil forfeiture proceeding) ("Under the circumstances where the criminal investigation is pending and prior to indictment, *and* where claimants will not be able to fully provide discovery answers, the Court is less inclined to permit discovery or to allow partial discovery."); United States v. One 1964 Cadillac Coupe DeVille, 41 F.R.D. 352, 354–55 (S.D.N.Y. 1966) (explaining that the information in a claimant's interrogatories in a civil forfeiture case was of "paramount importance" in the pending criminal action, which justified a stay of discovery until the criminal action was resolved).

[79] *See* Austin v. United States, 509 U.S. 602, 621 (1993) (quoting United States v. Halper, 490 U.S. 435, 448 (1989)) ("[A] civil sanction that cannot fairly be said solely to serve a

focus on deterrence.[80] In 1974, this focus on a punitive and deterrent purpose guided the Court in reaching its decision in *Calero-Toledo v. Pearson Yacht Leasing Co.*[81] There, the Court held that seizing a lessee's yacht upon finding marijuana without providing prior notice or a hearing advanced the criminal statute's purpose "by preventing further illicit use of the conveyance and by imposing an economic penalty, thereby rendering illegal behavior unprofitable."[82] The yacht's lessor attempted to assert an innocent-owner defense to demonstrate that the lack of process prior to seizure violated his due process rights.[83] The Court, however, found insufficient evidence that the lessor had done everything reasonably possible to prevent the unlawful behavior conducted on his property.[84]

The dismissal of due process claims in forfeiture by innocent owners was not unprecedented[85] as it had been supported by caselaw dating back as early as 1827.[86] The justification for forfeiting the property of an innocent owner was, essentially, negligence—"that the owner may be held accountable for the wrongs of others to whom he entrusts his property."[87] The Court, however, has implied that it may be possible for a "truly" innocent owner,

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remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term.").

[80] *See* United States v. Riverbend Farms, Inc., 847 F.2d 553, 558 (9th Cir. 1988) ("Civil forfeiture statutes, although not sufficiently criminal to trigger the full array of constitutional protections, are nonetheless considered 'quasi-criminal' and implicate certain constitutional rights."); 37 C.J.S. *Forfeitures* § 3 (2019) ("Forfeiture serves not only remedial purpose, but also retributive or punitive, and deterrent, purposes."); *see also* Cheh, *supra* note 65, at 16–17 (discussing the punitive impact of civil forfeiture, particularly for forfeiture of property used as a criminal instrument in which "punishment is imposed in addition to any criminal penalties and is wholly unrelated to whether criminal charges could be or were brought").

[81] 416 U.S. 663 (1974).

[82] *Id.* at 686–87.

[83] *Id.* at 680.

[84] *Id.* at 690.

[85] *See, e.g.*, J.W. Goldsmith, Jr.-Grant Co. v. United States, 254 U.S. 505 (1921) (finding that a carriage that was used in the removal or concealment of goods removed with intent to defraud the United States must be forfeited); Dobbins's Distillery v. United States, 96 U.S. 395 (1877) (subjecting the owner of a distillery property to forfeiture for the owner's intent to defraud the United States of revenue); Harmony v. United States, 43 U.S. 210 (1844) (holding that the vessel committing the aggression is the guilty instrument and implying that forfeiture attached to it despite the character or conduct of the owner).

[86] The Palmyra, 25 U.S. 1, 15 (1827) (holding that personal conviction of the offender is not necessary to enforce a forfeiture).

[87] Austin v. United States, 509 U.S. 602, 615 (1993).

who did not have knowledge of the criminal activity and did not consent to it, to succeed in this defense.[88]

C. Procedural Due Process in Minnesota

The Minnesota Constitution contains a clause to prevent the deprivation of life, liberty, or property without due process.[89] Among these protections are reasonable notice and a timely opportunity to be heard.[90] However, the promptness of a hearing is not limited to a certain time frame.[91] The Minnesota Supreme Court has adopted the *Mathews* framework on numerous occasions when faced with a variety of procedural due process challenges.[92] This is fitting because *Mathews* was designed to assess the general constitutionality of process. These cases involve process challenges for different types of proceedings, such as, child support,[93] license revocations,[94] and parole release.[95]

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[88] *Calero*, 416 U.S. at 689–90 ("It therefore has been implied that it would be difficult to reject the constitutional claim of an owner whose property subjected to forfeiture had been taken from him without his privity or consent. Similarly, the same might be said of an owner who proved not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property; for, in that circumstance, it would be difficult to conclude that forfeiture served legitimate purpose and was not unduly oppressive."); *see also Austin*, 509 U.S. at 617.

[89] MINN. CONST. art. I, § 7.

[90] Mathews v. Eldridge, 424 U.S. 319, 348 (1976).

[91] 7 DUNNELL MINN. DIGEST, CONSTITUTIONAL LAW § 6.17 (2019) (citing Mixed Local of Hotel & Rest. Emps. Union Local No. 458 v. Hotel & Rest. Emps. Int'l All., 212 Minn. 587, 597, 4 N.W.2d 771, 777 (Minn. 1942)) ("Notice and hearing are indispensable requirements of due process, but there is no requirement that the same be afforded at any particular stage of the proceedings.").

[92] *See, e.g.*, Olson v. One 1999 Lexus MN License Plate: 851LDV VIN: JT6HF10U6X0079461, 924 N.W.2d 594, 603 (Minn. 2019); Gams v. Houghton, 884 N.W.2d 611, 619 (Minn. 2016) (employing *Mathews* to assess the process related to the involuntary dismissal of a personal injury action); Rew v. Bergstrom, 845 N.W.2d 764, 785–86 (Minn. 2014) (applying *Mathews* to review the extension of an order for protection for potential violations of procedural due process); State v. Wiltgen, 737 N.W.2d 561, 568 (Minn. 2007) (evaluating procedural due process rights concerning judicial review of a driver's license revocation with *Mathews*); Martin v. Itasca County, 448 N.W.2d 368, 370 (Minn. 1989) (utilizing *Mathews* to examine an employer's leave of absence policy for a procedural due process violation); Machacek v. Voss, 361 N.W.2d 861, 863 (Minn. 1985) (analyzing a statute requiring the temporary payment of child support based upon blood test results in paternity proceedings with *Mathews*).

[93] *Machacek*, 361 N.W.2d at 863.

[94] Heddan v. Dirkswager, 336 N.W.2d 54, 59 (Minn. 1983).

[95] State *ex rel.* Taylor v. Schoen, 273 N.W.2d 612, 617 (Minn. 1978).

On the other hand, Minnesota recognizes that the *Barker* factors apply to delays in access to courts, specifically to the delay in instituting a post-seizure forfeiture action violating the due process clause.[96] *Barker*, however, has not been applied to delays in the forfeiture context. The Minnesota Supreme Court had not encountered this particular issue until *Olson*. The only cases to date to incorporate *Barker* involved the right to a speedy trial.[97] Rather than stray from its precedent of broadly applying *Mathews*, the Minnesota Supreme Court continued to utilize this test, including in the quasi-criminal context of forfeiture.[98]

III. THE *OLSON* DECISION

A. Facts and Procedural History

On August 16, 2015, a Shakopee police officer observed Megan Olson driving under the influence of alcohol.[99] After conducting a breath test that confirmed Megan was intoxicated, the officer arrested her for driving while impaired.[100] This was not Megan's first encounter with DWIs. In fact, at the time of her arrest, she had already been convicted of three previous DWIs within the last decade.[101] Because of her prior DWI incidents in the last ten years, Megan was charged with two counts of felony first-degree DWI.[102]

Under the Minnesota vehicle forfeiture statute,[103] a vehicle is subject to forfeiture when used to commit a "designated offense."[104] First-degree DWI offenses fall within the category of a designated offense.[105] As a result, the 1999 Lexus that Megan was driving was seized, despite the fact that she was not the vehicle's owner.[106] Megan was the only driver of the Lexus,[107] but her mother, Helen Olson, was the sole registered owner.[108] Minnesota law

[96] 7 DUNNELL MINN. DIGEST, CONSTITUTIONAL LAW § 6.23 (2019).
[97] *See, e.g.*, State v. Gayles, 327 N.W.2d 1 (Minn. 1982); State v. Terry, 295 N.W.2d 95 (Minn. 1980).
[98] Olson v. One 1999 Lexus MN License Plate: 851LDV VIN: JT6HF10U6X0079461, 924 N.W.2d 594, 603 (Minn. 2019).
[99] *Id.* at 598.
[100] *Id.* at 610.
[101] *Id.* at 598.
[102] Olson v. One 1999 Lexus MN, 910 N.W.2d 72, 74 (Minn. Ct. App. 2018).
[103] MINN. STAT. § 169A.63 (2018).
[104] *Id.* § 169A.63, subdiv. 6(a).
[105] *Id.* § 169A.63, subdiv. 1(e)(1).
[106] *Olson*, 924 N.W.2d at 598.
[107] *Id.* at 609.
[108] *Id.* at 598.

provides that a vehicle may be seized incident to the lawful arrest of an individual suspected of committing a designated offense,[109] but an interested party may file a demand for judicial determination to contest the seizure.[110] Even though Helen was not driving her vehicle, it was seized nonetheless because it was used to facilitate the commission of a designated offense.[111] As a result, both Megan and Helen were served notice of the seizure and intent to forfeit.[112]

Once an individual makes a demand for a judicial determination, subdivision 9(d) requires a hearing to be "held at the earliest practicable date, and in any event no later than 180 days following the filing of the demand by the claimant."[113] However, this 180-day rule is subject to subdivision 9(d), which states that "[i]f a related criminal proceeding is pending, the hearing shall not be held until the conclusion of the criminal proceedings."[114] Additionally, it specifies that the hearing must be scheduled "as soon as practicable after the conclusion of the criminal prosecution."[115] The statute does not provide further guidance on the length of time that is considered to be "as soon as practicable."[116]

Given that an owner is deprived of personal property, the statute provides three methods of reducing the hardship of deprivation.[117] First, an owner may post a bond for the value of the vehicle and have it returned with a temporary disabling device.[118] Second, a person with an interest in the forfeited property can file a petition for remission or mitigation of the forfeiture with the county prosecutor, who determines whether the forfeiture may reasonably be remitted or mitigated.[119] Finally, the statute provides an innocent-owner defense.[120] This defense allows owners who do not have actual or constructive knowledge of the unlawful use of their property to petition the court, although family members are presumed to have this knowledge.[121]

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[109] MINN. STAT. § 169A.63, subdivs. 2(b), 6(a) (2018).
[110] *Id.* subdivs. 8(e)–(f).
[111] *Olson*, 924 N.W.2d at 610.
[112] *Id.* at 598.
[113] MINN. STAT. § 169A.63, subdiv. 9(d) (2018).
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Olson*, 924 N.W.2d at 599.
[118] MINN. STAT. § 169A.63, subdiv. 4 (2018).
[119] *Id.* subdiv. 5(a).
[120] *Id.* subdiv. 7(d).
[121] *Id.*

On October 7, 2015, Megan and Helen Olson filed a joint demand for judicial determination of the forfeiture, claiming that the statute violated their constitutional due process rights.[122] A hearing was then scheduled for February 11, 2016.[123] However, as required by the forfeiture statute,[124] the hearing was continued six times due to Megan's pending criminal proceedings.[125]

Megan pleaded guilty to the first-degree DWI charge on October 12, 2016, approximately fourteen months from the date of her arrest.[126] Two days later, Megan and Helen moved for summary judgment and argued that subdivision 9(d) failed to provide a prompt forfeiture hearing.[127] On February 23, 2017, approximately eighteen months after the seizure, the forfeiture hearing took place.[128] The district court granted summary judgment to the Olsons, holding that their procedural due process rights were violated by the statute.[129]

The State appealed the decision. The Court of Appeals found that the forfeiture statute was constitutional on its face because the Olsons failed to demonstrate that the statute would always be unconstitutional.[130] The court reasoned that it is possible for a related criminal matter to be promptly resolved, which would allow for a prompt forfeiture hearing.[131] However, due to the statute's caveat preventing a hearing until after Megan's criminal proceedings concluded, the court determined that the statute was unconstitutional as applied to both Megan and Helen.[132] It reasoned that the statute failed to provide a mechanism for prompt, meaningful review.[133]

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[122] *Olson*, 924 N.W.2d at 599–600.
[123] Olson v. One 1999 Lexus MN, 910 N.W.2d 72, 74 (Minn. Ct. App. 2018).
[124] MINN. STAT. § 169A.63, subdiv. 9(d) (2018).
[125] *Olson*, 910 N.W.2d at 74.
[126] *Olson*, 924 N.W.2d at 600.
[127] *Id.*
[128] *Id.*
[129] *Id.*
[130] *Olson*, 910 N.W.2d at 77.
[131] *Id.*
[132] *Id.* at 80.
[133] *Id.*

B. The Minnesota Supreme Court's Decision

The Minnesota Supreme Court affirmed the facial constitutionality of subdivision 9(d).[134] It also upheld the unconstitutionality of the statute as applied to Helen Olson, who claimed to be an innocent owner.[135] The court, however, reversed the Minnesota Court of Appeal's determination that the forfeiture statute was unconstitutional as applied to Megan Olson, a non-owner driver.[136] To reach this conclusion, the court's first task was to determine the appropriate framework for reviewing the procedural due process claims presented.[137] The majority considered the factors established in *Barker*, which involved the constitutionality of a delay leading up to a criminal defendant's trial.[138] However, the majority chose to apply the framework developed in *Mathews*, a case pertaining to the process afforded to individuals in the termination of government benefits.[139]

First, the Olsons claimed that the forfeiture statute was facially unconstitutional.[140] They argued that the delay caused by the requirement to resolve criminal proceedings prior to a post-seizure hearing meant that no demand for judicial determination could ever be constitutionally prompt.[141] Much like the court of appeals, the majority concluded that there could be instances when the criminal proceedings are resolved quickly, which would lead to a constitutionally prompt post-seizure hearing.[142] The majority reasoned that if the court can identify even "a single situation in which the [statute at issue] might be applied constitutionally, [a party's] facial challenge fails."[143] Thus, the statute was not unconstitutional on its face.[144]

Next, Megan's as-applied due process challenge was reviewed.[145] In applying the *Mathews* factors, the court found that Megan's private interest was limited.[146] Since she was not the registered owner of the vehicle, she did not have an economic interest in selling or using the car as collateral.[147] Also,

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[134] *Olson*, 924 N.W.2d at 616.
[135] *Id.*
[136] *Id.*
[137] *Id.* at 601.
[138] *Id.*
[139] *Id.* at 602–04.
[140] *Id.* at 607.
[141] *Id.*
[142] *Id.* at 608.
[143] *Id.* at 607 (quoting McCaughtry v. City of Red Wing, 831 N.W.2d 518, 522 (Minn. 2013)).
[144] *Id.*
[145] *Id.*
[146] *Id.* at 609 (describing Megan's sole interest as the potential that she "could ask family or friends to use the vehicle to drive her to and from particular locations.").
[147] *Id.*

Megan could not legally drive because her license had already been cancelled.[148] Besides, the State had a compelling interest in curbing the risk to public safety by keeping repeat DWI offenders off the road.[149] Additionally, requiring a hearing to be held within a very short window after a seizure would significantly increase the administrative and fiscal burden on the court system, given the substantial number of DWI-related vehicle seizures each year.[150]

Further, the risk of erroneous deprivation was not significant.[151] Under section 169A.63, the vehicle could only be seized if Megan had committed a designated offense.[152] The arresting officer had probable cause because the breath test showed she was intoxicated, and she had a record with three prior criminal offenses.[153] These factors established that the classification of a designated offense was proper.[154] Given that Megan had a timely preliminary judicial hearing regarding probable cause, the risk of erroneous deprivation was not compelling.[155] The majority, therefore, ruled that the forfeiture statute was constitutional as applied to Megan, the sole driver of the vehicle.[156]

Finally, the court addressed whether the forfeiture statute was unconstitutional as applied to Helen.[157] The majority determined that Helen's private interest was greater than Megan's interest.[158] Although Helen's driving license was also cancelled, the court found that the vehicle was still a financial asset to her.[159] Additionally, the State's interest was less significant.[160] The State's compelling interest in preventing DWI offenders from getting behind the wheel was weaker since Helen was not driving while impaired.[161] Moreover, the administrative and financial burdens would be reduced if the requirement for a hearing shortly after seizure only applied

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[148] *Id.*
[149] *Id.*
[150] *Id.*
[151] *See id.* at 609–10 (indicating that this risk is minimal because of the evidence demonstrating probable cause to arrest Megan for driving while intoxicated and the fact that she had three previous DWIs in ten years).
[152] *Id.* at 609.
[153] *Id.* at 610.
[154] *Id.*
[155] *Id.*
[156] *Id.* at 611–12.
[157] *Id.* at 612.
[158] *Id.*
[159] *Id.*
[160] *Id.*
[161] *Id.*

to innocent owners.[162] Lastly, and most critically, the risk of erroneous deprivation was significant.[163] Helen purported to be an innocent owner, and the forfeiture statute did not provide potential innocent owners a probable-cause hearing nor the ability to expedite the process.[164] Therefore, the eighteen-month delay for a post-seizure hearing was a violation of due process, rendering the statute unconstitutional as applied to Helen.[165]

IV. ANALYSIS

A. The Minnesota Supreme Court Should Have Applied Barker in Olson

The Minnesota Supreme Court overlooked the value of the *Barker* factors when deciding the *Olson* case. This section begins by introducing the United States Supreme Court's incorporation of *Barker* into the context of civil forfeiture.[166] Next, the quasi-criminal nature of civil forfeiture is explored to show that it has a closer relationship to the criminal context in *Barker* than the administrative context in *Mathews*.[167] A subsequent deeper dive into the United States Supreme Court case reflects a mirror image of *Olson*.[168] Finally, this section explains how applying *Barker* can avoid the inference of judicial interference that can arise from applying *Mathews*.[169]

1. The Integration of Barker in Civil Forfeiture

The *Barker* factors were initially established in a Sixth Amendment due process case to address the timeliness of a delay leading up to a criminal defendant's trial.[170] Willie Barker was to be tried for murder following trial of Silas Manning, the other suspected killer of an elderly couple.[171] It was unlikely that Barker would be convicted without the testimony of Manning

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[162] *Id.*
[163] *Id.* at 613.
[164] *Id.* at 613–14.
[165] *Id.* at 616.
[166] *See infra* Section IV.A.1.
[167] *See infra* Section II.A.2.
[168] *See infra* Section II.A.3.
[169] *See infra* Section II.A.4.
[170] Barker v. Wingo, 407 U.S. 514, 515–16 (1972).
[171] *Id.* at 516.

against him.[172] Barker's trial was delayed by sixteen continuances, resulting in over five years between his arrest and trial.[173]

Eventually, Barker was convicted and sentenced to life in prison.[174] He filed a habeas corpus petition that ultimately landed in the United States Supreme Court.[175] There, the Court developed a test to assess the timeliness of process required in the criminal trial.[176] The test analyzed (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant.[177] Although the Court found that "the length of delay between arrest and trial—well over five years—was extraordinary," it concluded that the remaining factors outweighed this time frame.[178] Barker had not objected to the continuances until Manning was convicted, nor did he want a speedy trial because he assumed he would not be tried if Manning was acquitted.[179] Additionally, the Court found minimal prejudice.[180] Therefore, the delay did not constitute a violation of his rights.[181]

The *Barker* factors have since been extended to procedural due process claims in the forfeiture context.[182] In *United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency*,[183] the United States Supreme Court applied the *Barker* factors to assess post-seizure delays in forfeiture. There, the Court analyzed whether the delay between the seizure of $8,850 and the Government's filing of a civil forfeiture proceeding resulted in a due process violation.[184] The decision to extend the *Barker* factors to a Fifth Amendment due process case involving property forfeiture derived from careful consideration of the similarities

[172] *Id.* ("The Commonwealth had a stronger case against Manning, and it believed that Barker could not be convicted unless Manning testified against him. Manning was naturally unwilling to incriminate himself. . . . By first convicting Manning, the Commonwealth would remove possible problems of self-incrimination and would be able to assure his testimony against Barker.").
[173] *Id.* at 516–18.
[174] *Id.* at 518.
[175] *Id.*
[176] *Id.* at 530.
[177] *Id.*
[178] *Id.* at 533–34.
[179] *Id.* at 534–35.
[180] *Id.* at 534.
[181] *Id.* at 536.
[182] *See, e.g.*, United States v. Von Neumann, 474 U.S. 242, 251 (1986); United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency, 461 U.S. 555, 556 (1983); People v. One 1998 GMC, 960 N.E.2d 1071, 1087–88 (Ill. 2011).
[183] 461 U.S. 555, 565–69 (1983).
[184] *Id.* at 556.

between the cases.[185] Additionally, the Court acknowledged that its previous cases had only involved the issue of whether a pre-seizure hearing was required.[186]

Prior to *$8,850*, the Court had not faced the narrow inquiry concerning the length of time of a post-seizure delay and due process violations.[187] Justice O'Connor explained that "[u]nlike the situation where due process requires a prior hearing, there is no obvious bright line dictating when a post-seizure hearing must occur."[188] Interestingly, the Court never mentioned the possibility of applying *Mathews*. By utilizing *Barker*, which was ultimately designed to assess timeliness in the forfeiture context, *$8,850* set new precedent.[189]

Furthermore, the Court identified a significant discrepancy in the time permitted for Government investigations before a post-deprivation hearing in civil forfeiture and criminal proceedings.[190] The majority concluded that "[a] suspect who has not been indicted retains his liberty; a claimant whose property has been seized, however, has been entirely deprived of the use of the property."[191] The Court recognized that the situation of a criminal defendant's right to a speedy trial after an indictment, where he has been completely deprived of liberty, was analogous to forfeiture.[192] Thus, in *$8,850*, *Barker* was the appropriate tool for analyzing the timeliness of post-seizure forfeiture proceedings.[193]

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[185] *Id.* at 564 ("[T]he Fifth Amendment claim here—which challenges only the length of time between the seizure and the initiation of the forfeiture trial—mirrors the concern of undue delay encompassed in the right to a speedy trial.").

[186] *Id.* at 562–63; *see also, e.g.*, Mathews v. Eldridge, 424 U.S. 319 (1976); Goldberg v. Kelly, 397 U.S. 254 (1970).

[187] *$8,850*, 461 U.S. at 562–63 ("Because our prior cases in this area have wrestled with whether due process requires a pre-seizure hearing, we have not previously determined when a post-seizure delay may become so prolonged that the dispossessed property owner has been deprived of a meaningful hearing at a meaningful time.").

[188] *Id.* at 562.

[189] *Compare $8,850*, 461 U.S. at 564 (holding that *Barker* factors should be applied in the forfeiture context when assessing the length of time before a post-seizure hearing), *with* United States v. James Daniel Good Real Prop., 510 U.S. 43, 53 (1993) (invoking *Mathews* in a forfeiture case to determine whether a hearing was required under due process prior to the government seizing real property, which is distinguished from both issues regarding timeliness and post-seizure hearings).

[190] *$8,850*, 461 U.S. at 564.

[191] *Id.*

[192] *Id.*

[193] *Id.*

2. Civil Forfeiture—Cross-Over into the Criminal Context

Olson, a civil forfeiture case, should have adopted the *Barker* factors, instead of adhering to *Mathews*, because its circumstances are more aligned with the criminal context than with the administrative-benefits forfeiture in *Mathews*. It is likely that if the Minnesota Supreme Court had relied on the *Barker* factors, it would have found that section 169A.63 of the Minnesota Statutes did not violate Megan and Helen Olson's due process rights. Instead, the court relied on *Mathews*.[194]

While the *Mathews* framework has been used in a variety of procedural due process challenges,[195] the United States Supreme Court has repeatedly emphasized that it is not a universal test for all procedural due process claims.[196] *Mathews* was originally developed to determine the adequacy of administrative procedures.[197] It simply provided courts with a tool for analyzing fairness.[198] The Court, however, has quickly adopted it as a decision-making test for cases in and out of the administrative context.[199]

This widespread application has not gone uncontested. In fact, the use of *Mathews* has been criticized for its overreach—even into the realm of terrorism cases.[200] A major source of controversy appears in the criminal law

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[194] Olson v. One 1999 Lexus MN License Plate: 851LDV VIN: JT6HF10U6X0079461, 924 N.W.2d 594, 604 (Minn. 2019).

[195] *See generally* Tom Pryor, Note, Turner v. Rogers, *The Right to Counsel, and the Deficiencies of* Mathews v. Eldridge, 97 MINN. L. REV. 1854, 1861 (2013) (noting the vast range of "procedural due process rules, precedents, and frameworks" that have evolved in the United States Supreme Court over the last several decades and the impact of expanding due process protections).

[196] *See, e.g.*, Dusenbery v. United States, 534 U.S. 161, 168 (2002) ("[W]e have never viewed *Mathews* as announcing an all-embracing test for deciding due process claims."); United States v. James Daniel Good Real Prop., 510 U.S. 43, 66 (1993) (Rehnquist, C.J., dissenting) (citing Medina v. California, 505 U.S. 437 (1992)) ("The Court has expressly rejected the notion that the *Mathews* balancing test constitutes a 'one-size-fits-all' formula for deciding every due process claim that comes before the Court.").

[197] Pryor, *supra* note 195, at 1862.

[198] Gary Lawson et al., *"Oh Lord, Please Don't Let Me Be Misunderstood!": Rediscovering the* Mathews v. Eldridge *and* Penn Central *Frameworks*, 81 NOTRE DAME L. REV. 1, 21 (2005), (arguing that the *Mathews* framework was established for the particular set of facts in the case that could generate and facilitate a discussion of fairness rather than serve as a determinative test).

[199] *Id.* (citing City of Los Angeles v. David, 538 U.S. 715, 716–17 (2003)).

[200] *See* Hamdi v. Rumsfeld, 542 U.S. 507, 575–76 (2004) (Scalia, J., dissenting) (arguing that the court's invocation of "this sort of 'judicious balancing' from *Mathews v. Eldridge* . . . a case involving . . . *the withdrawal of disability benefits*" was inappropriate). "Whatever the merits of [the *Mathews*] technique when newly recognized property rights are at issue (and even there they are questionable), it has no place where the Constitution and the common law already supply an answer." *Id.*

context. *Mathews* hit a roadblock in *Medina v. California*,[201] where the Court rejected the framework in addressing due process violations in criminal procedure.[202] The Court reasoned:

> The Bill of Rights speaks in explicit terms to many aspects of criminal procedure, and the expansion of those constitutional guarantees under the open-ended rubric of the Due Process Clause invites undue interference with both considered legislative judgments and the careful balance that the Constitution strikes between liberty and order.[203]

Accordingly, the Court deemed a narrower test to be more suitable for decision-making in the criminal arena.[204]

A closer look at the spectrum of procedural due process protections raises a new question about the applicability of *Mathews* at the intersection of criminal and civil procedure. In this spectrum, the greatest protections are afforded in criminal proceedings[205] and the least to administrative proceedings.[206] The safeguards given in civil proceedings fall between criminal and administrative proceedings.[207] This is logical as the stakes are much higher for a criminal defendant who may face the ultimate deprivation of liberty through incarceration or capital punishment.[208] Civil forfeiture, particularly, has been deemed quasi-criminal in nature.[209] While the goal of

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[201] 505 U.S. 437 (1992).

[202] *Id.* at 443 ("[T]he *Mathews* balancing test does not provide the appropriate framework for assessing the validity of state procedural rules which . . . are part of the criminal process."). Additionally, the Court had applied *Mathews* in two criminal cases prior to announcing the inadequacies of it in the criminal realm. However, it reasoned "it is not at all clear that *Mathews* was essential to the results reached in those cases." *Id.* at 444 (citing United States v. Raddatz, 447 U.S. 667 (1980) and Ake v. Oklahoma, 470 U.S. 68 (1985)).

[203] *Id.* at 443.

[204] *Id.*; *see also* 1 CRIM. PROC. § 2.7b (4th ed. 2018) (indicating that *Medina* deemed the utilitarian balancing of *Mathews* to be "inconsistent with the 'narrower inquiry' traditionally applied in determining what was 'fundamentally unfair' in a criminal case").

[205] Ramanujan Nadadur, Note, *Beyond "Crimigration" and the Civil-Criminal Dichotomy—Applying* Mathews v. Eldridge *in the Immigration Context*, 16 YALE HUM. RTS. & DEV. L. J. 141, 146–47 (2013) (listing some of the constitutional rights afforded to criminal defendants, including the right to jury trial and the right to counsel).

[206] *Id.* at 159–60 (describing the minimum requirements in administrative proceedings as the right to notice and the opportunity to be heard in writing).

[207] *Id.* at 154–60 (enumerating the differences in procedural rights provided under each type of proceeding).

[208] *See id.* at 155.

[209] United States v. Riverbend Farms, Inc., 847 F.2d 553, 558 (9th Cir. 1988) ("Civil forfeiture statutes, although not sufficiently criminal to trigger the full array of constitutional protections, are nonetheless considered 'quasi-criminal' and implicate certain constitutional rights."); *see also* Austin v. United States, 509 U.S. 602, 618 (1993) (citing Peisch v. Ware, 8 U.S. 347

civil forfeiture is remedial, the Court has acknowledged that there is also an underlying punitive objective.[210]

Forfeiture is unique because the proceedings inevitably subject a property owner to being tied to criminal activity, regardless of the level of the owner's involvement.[211] A property owner in need of defending his or her crime may face a catch-22 scenario—either surrender the right against self-incrimination in the criminal proceeding or forfeit the use of evidence in the civil proceeding.[212] Criminal law, where an individual's liberty interest may be infringed upon in order to protect societal interests, functions comparably to forfeiture, where removing the instrument of crime through the deprivation of a property interest serves societal interests.[213] Moreover, a criminal defendant is not necessarily afforded the same level of pretrial-hearing rights prior to a government action depriving him of liberty as a civil litigant has prior to property deprivation.[214]

Nonetheless, similar to the criminal context, where an individual's liberty interest is infringed upon by detention or incarceration, civil forfeiture involves seizing a property interest.[215] As Justice Frankfurter stated, "[The] right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society."[216] Despite this understanding that a hearing is required prior to the final deprivation of

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(1808)); J.W. Goldsmith, Jr.-Grant Co. v. United States, 254 U.S. 505 (1921)) ("[T]his Court . . . consistently has recognized that forfeiture serves, at least in part, to punish the owner.").

[210] *Austin*, 509 U.S. at 617 ("If forfeiture had been understood not to punish the owner, there would have been no reason to reserve the case of a truly innocent owner [in the more recent cases]. Indeed, it is only on the assumption that forfeiture serves in part to punish that the Court's past reservation of that question makes sense."); *see also* Leonard v. Texas, 137 S. Ct. 847, 847 (2017) ("Modern civil forfeiture statutes are plainly designed, at least in part, to punish the owner of property used for criminal purposes.").

[211] *See* Cheh, *supra* note 65, at 38 (emphasizing the criminal implications of civil forfeiture proceedings and the negative consequences a property owner may face).

[212] *Id.*

[213] *See id.* at 6.

[214] Niki Kuckes, *Civil Due Process, Criminal Due Process*, 25 YALE L. & POL'Y REV. 1, 14 (2006) ("[D]ue process hearing rights that are routine in the pretrial stages of civil cases can be absent from parallel stages of the criminal process, despite the comparable or greater interests at stake.").

[215] *See* Stone, *supra* note 70, at 434–37 (discussing the controversy surrounding the due process protections under civil forfeiture and its classification as civil rather than criminal, despite the fact that property has already been deprived at that point).

[216] Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 169 (1951) (Frankfurter, J., concurring).

property,[217] certain circumstances in civil forfeiture permit deprivation without a hearing.[218] Civil forfeiture, in instances where the deprivation has occurred without a hearing, is more aligned with the criminal context because the due process protections are afforded post-deprivation.

The realities of the criminal nature of forfeiture demonstrate that civil forfeiture cases should be given similar safeguards afforded to criminal cases. To facilitate these protections, courts assessing civil forfeiture should look to *Medina* to avoid the broad, sweeping framework of *Mathews* and, instead, employ narrower tests to provide the greatest protections in civil forfeiture contexts. Given that the *Olson* court dealt with a due process issue in the quasi-criminal context of forfeiture, it should have implemented the narrower inquiry from *Barker* rather than the overly expansive *Mathews* test.

3. The Use of Barker in $8,850 Mirrors Its Applicability in Olson

The *Olson* majority dismissed *Barker* as the overall mechanism for resolving the issue at hand.[219] What is more, the court gave minimal, if any, consideration to the glaring factual similarities between *Olson* and *$8,850*, where the United States Supreme Court, as noted above, chose to apply *Barker* in the context of forfeiture.[220]

In *$8,850*, Mary Vasquez declared that she did not have more than $5,000 in currency[221] while being processed through customs at the airport.[222] Customs officials seized $8,850 from her and sent a letter indicating that it was subject to forfeiture.[223] In her answer to the complaint seeking forfeiture,

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[217] Wolff v. McDonnell, 418 U.S. 539, 557–58 (citing *McGrath*, 341 U.S. at 168 (Frankfurter, J., concurring)).

[218] United States v. James Daniel Good Real Prop., 510 U.S. 43, 53 (1993) (quoting Fuentes v. Shevin, 407 U.S. 67, 82 (1972)) ("We tolerate some exceptions to the general rule requiring pre-deprivation notice and hearing, but only 'in extraordinary circumstances where some valid government interest is at stake that justifies postponing the hearing until after the event.'").

[219] Olson v. One 1999 Lexus MN License Plate: 851LDV VIN: JT6HF10U6X0079461, 924 N.W.2d 594, 603 n.5 (Minn. 2019). Nevertheless, the court applied "insights from *Barker* and *$8,850* where appropriate." *Id.*

[220] *See* United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency, 461 U.S. 555, 556 (1983).

[221] *Id.* at 557. At the time, Section 231 of the Bank Secrecy Act of 1970, 31 U.S.C. § 1101, required individuals knowingly transporting currency in excess of $5,000 to declare the amount with the United States Customs Service.

[222] *Id.* at 558.

[223] *Id.*

Vasquez asserted an affirmative defense that the eighteen-month delay in commencing her civil forfeiture action violated due process.[224]

The issue in *$8,850* was whether the eighteen-month delay of a post-seizure forfeiture hearing constituted a due process violation.[225] In applying *Barker*, the Court first acknowledged that eighteen months was a significant delay.[226] Second, the Court determined that the reasons for the delay were justifiable due to the Government's "diligent pursuit" of processing Vasquez's petition for remission and pending criminal proceedings.[227] Third, Vasquez's failure to seek the available remedies to assert her right to a judicial hearing was assessed.[228] Finally, review of prejudice revealed that Vasquez failed to demonstrate that the delay negatively impacted her defense against the forfeiture.[229] Thus, the Court held that the eighteen-month delay leading up to a post-seizure forfeiture hearing did not violate due process rights.[230]

The issue in *Olson* was identical—whether an eighteen-month delay in post-seizure forfeiture proceedings offended due process.[231] Another similarity with *$8,850* was the underlying reason for the delay—the restriction of proceeding to the post-seizure hearing until pending criminal matters had concluded.[232] This limitation in both cases is important because of the significant weight it carried in the quasi-criminal forfeiture context and the challenges that emerged from the intertwining of civil forfeiture and criminal proceedings.

First, initiating a civil proceeding contemporaneously may compromise the criminal proceeding because forfeiture is frequently part of the sentence.[233] Without the delay, the right against self-incrimination through the civil proceedings may be implicated.[234] Additionally, prior civil proceedings may inadvertently grant claimants access to details of the pending criminal matters that claimants would not otherwise be privy to under the stricter rules of criminal procedure.[235] Finally, a criminal

[224] *Id.* at 560–61.
[225] *Id.* at 556.
[226] *Id.* at 565.
[227] *Id.* at 568.
[228] *Id.* at 568–69.
[229] *Id.* at 569.
[230] *Id.* at 570.
[231] Olson v. One 1999 Lexus MN License Plate: 851LDV VIN: JT6HF10U6X0079461, 924 N.W.2d 594, 602 (Minn. 2019).
[232] *Compare $8,850*, 461 U.S. at 567, *with Olson*, 924 N.W.2d at 599.
[233] *$8,850*, 461 U.S. at 567.
[234] *Olson*, 924 N.W.2d at 611.
[235] *$8,850*, 461 U.S. at 567.

defendant may be able to assert that his or her defense in the criminal case was prejudiced by contemporaneous civil proceedings.[236]

It is crucial that criminal defendants are not prejudiced by commencing a civil forfeiture proceeding.[237] Even if a statute allows for a defendant to request an expedited civil proceeding, the government has a compelling interest in ensuring that the criminal proceedings take precedence. These concerns are specifically addressed by the second *Barker* factor—the reason for the delay.

Moreover, the claimants in *$8,850* and *Olson* failed to pursue the available remedies. In *$8,850*, Vasquez did not request the numerous remedies available to initiate an expedited forfeiture hearing, such as seeking the return of her seized property by filing an equitable action, filing a motion under Federal Rule of Criminal Procedure 41(e), or requesting the matter to be referred to the United States Attorney.[238] Similarly, in *Olson*, Helen did not pursue any action through the remission or mitigation provisions provided in the statute, post bond, or inquire about expediting the hearing.[239]

With each of these similarities, it is surprising that the *Olson* court did not choose *Barker*. Through *$8,850*, the United States Supreme Court made a deliberate decision to extend *Barker* to civil forfeiture cases. *Mathews* had already made a prominent mark in due process analysis, yet it was never referenced in *$8,850*. Given that *Barker* was applied in *$8,850*, the majority in *Olson* should have followed suit to evaluate this specific issue involving how quickly a hearing must be provided post-seizure.[240] While the court in *Olson* explained that the *Barker* factors and *Mathews* framework overlap,[241] it conceded that some aspects of prejudice to the individual facing

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[236] United States v. One 1976 Mercedes, 667 F.2d 1171, 1175 (1982) (noting that a pending criminal case would take precedence over commencing forfeiture proceedings due to the risk of a defendant's assertion of prejudice in defending the criminal case).

[237] Appellant's Reply Brief at 2, Olson v. One 1999 Lexus MN License Plate: 851LDV VIN: JT6HF10U6X0079461, 924 N.W.2d 594 (Minn. 2019) (No. A17-1083) ("Criminal defendants have constitutional rights that civil litigants do not. If a civil proceeding is not stayed, criminal defendants may lose those protections in the criminal prosecution. . . . So to protect criminal defendants from having to choose between defending their liberty in criminal court and protecting their property in civil court, the DWI forfeiture statute stays the civil proceeding and requires the criminal case to go first.").

[238] *$8,850*, 461 U.S. at 569.

[239] *Olson*, 924 N.W.2d at 600.

[240] *See* Brief of Amicus Curiae Minnesota Attorney General at 3, Olson v. One 1999 Lexus MN License Plate No. 851LDV VIN: JT6HF10U6X0079461, 924 N.W.2d 594 (Minn. 2019) (No. A17-1083) [hereinafter Brief of Amicus Curiae Minnesota Attorney General].

[241] *Olson*, 924 N.W.2d at 603 n.5.

a delay are not sufficiently addressed by *Mathews*.[242] Considering the factors above, the majority could have reached a different conclusion in *Olson*, given that *Mathews* does not fully encompass all of the considerations in *Barker*.[243] Therefore, the court should have employed the *Barker* factors to properly evaluate this specific procedural due process question of timeliness.

4. Barker Provides an Opportunity to Avoid Criticism of Mathews

Barker asserts factors that are more objective in nature, which helps to avoid the appearance of judicial interference. By choosing *Mathews*, the Minnesota Supreme Court disregarded the framework's primary criticism.[244] Similar to the vague language of the Due Process Clause, the *Mathews* framework leaves the balance of competing private and governmental interests open to interpretation.[245] Consequently, judges are compelled to weigh factors that are impossible to truly measure.[246]

In *Olson*, the majority compared the private interests of both Helen and Megan to conclude that one was stronger than the other, but the majority was unable to articulate the extent of the difference or how this would actually be quantified when balancing the other *Mathews* factors.[247]

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[242] *Id.* ("[T]he ability of a person deprived of property to hold the government to account without the loss of evidence or faded memories that can sometimes accompany a long delay is an important private interest that is not fully captured in the traditional *Mathews* inquiry into 'private interests.'").

[243] *See* discussion *infra* Section IV.C.

[244] *See* Medina v. California, 505 U.S. 437, 443 (1992); T. Alexander Aleinikoff, *Constitutional Law in the Age of Balancing*, 96 YALE L.J. 943, 982 (1987) (commenting on the arbitrary nature of balancing tests of individual versus government interests that have injected subjectivity and manipulation into constitutional interpretation); Lawson et al., *supra* note 198, at 21 (arguing that the *Mathews* framework was established for the particular set of facts at hand that could generate and facilitate a discussion of fairness, but it was not intended to serve as a determinative test).

[245] *See* Aleinikoff, *supra* note 244.

[246] Pryor, *supra* note 195, at 1885; *see also* Rubin, *supra* note 36, at 1138 (articulating the complications in attempting to balance private and government interests that have virtually unavoidable contradictions between them) ("This reliance upon 'weight,' which is a useful approach for dealing with bananas, leaves something to be desired where factors such as those in *Mathews* are concerned."); Laurent B. Frantz, *Is the First Amendment Law?—A Reply to Professor Mendelson*, 51 CALIF. L. REV. 729, 748–49 (1963) ("As soon as he finishes measuring the unmeasurable, the judge's next job is to compare the incomparable. Even if he has succeeded in stating the interests quantitatively (or thinks he has), they are still interests of different kinds and therefore they can no more be compared quantitatively than sheep can be subtracted from goats.").

[247] *Olson*, 924 N.W.2d at 612 ("[A]lthough Helen's private interest is not as strong as it would be if her license had been valid at the time of the seizure, her interest in the vehicle as *both*

The framework's lack of guidance and excessive flexibility enables decision-makers to mold the factors to fit the desired outcome.[248] For instance, the court in *Olson* could have come to the opposite conclusion and affirmed the court of appeals' decision that the forfeiture statute was unconstitutional as applied to Megan, by emphasizing her private interest in the vehicle. After all, she was the exclusive driver of the vehicle and was solely responsible for its repairs.[249]

This loose rein on judicial interpretation through *Mathews* may inadvertently lead judges to adjudicate based upon individual policy preferences.[250] This may be especially problematic in the civil forfeiture realm, where there is a rising concern of injustice. For instance, Justice Thomas authored a statement in 2017 involving a petition for writ of certiorari of a civil forfeiture action, which seemed to serve in part as a call for reform due to the growing number of forfeitures and their increasing abuse.[251] There, he questioned whether historical practice could continue to justify the constitutionality of civil forfeiture.[252]

Minnesota, in particular, has focused on the issue of civil forfeiture abuse. In fact, new legislation has been introduced to place a complete ban on all administrative forfeitures.[253] In 2017, Minnesota had 3596 DWI-related forfeitures,[254] accounting for forty-six percent of reported forfeitures.[255] This number reflects an increase of over 450 forfeitures from 2016.[256] Moreover, in 2017, the net proceeds from forfeited property and

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a financial asset and as property having social-use value makes her private interest stronger than Megan's interest.").

[248] Nadadur, *supra* note 205, at 152–53 (identifying the common criticisms of *Mathews*, including the rejection of the framework in criminal procedure and its vulnerability to "outcome-oriented analysis").

[249] *Olson*, 924 N.W.2d at 609 n.10.

[250] *See* Pryor, *supra* note 195, at 1876 (discussing the dangers of judges advocating for policy preferences through balancing the *Mathews* factors, "where they are neither constitutionally entitled nor institutionally capable").

[251] Leonard v. Texas, 137 S. Ct. 847, 848 (2017) ("[B]ecause the law enforcement entity responsible for seizing the property often keeps it, these entities have strong incentives to pursue forfeiture. . . . This system—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses.").

[252] *Id.*

[253] H.R. 1971, 2019 Leg., 91st Sess. (Minn. 2019).

[254] *Olson*, 924 N.W.2d at 609 (citing REBECCA OTTO, CRIMINAL FORFEITURES IN MINNESOTA FOR THE YEAR ENDED DECEMBER 31, 2017, at 12–14 (2018), https://www.auditor.state.mn.us/reports/gid/2017/forfeiture/forfeiture_17_report.pdf [https://perma.cc/CT3W-9DQF]).

[255] OTTO, *supra* note 254, at 12.

[256] *Id.* at 13.

seized cash totaled over $7 million,[257] with seventy percent kept by the seizing law enforcement agency, twenty percent by the prosecuting agency, and ten percent by Minnesota's General Fund.[258]

The *Olson* majority noted that when a pecuniary interest is directly linked to the outcome of a decision, there is a call for closer judicial scrutiny.[259] Given that civil forfeiture has been vehemently debated, the use of *Mathews* may have led the court to bend, even unintentionally, towards individual policy preferences supporting civil forfeiture reform.[260] By incorporating the less subjective *Barker* factors into its analysis, the court could have been better equipped to defend against those perceptions. The court, however, will likely continue to follow its new precedent of applying *Mathews* to civil forfeiture cases involving timing, which will open the door for perceptions of judicial activism.

B. Despite Barker, the Minnesota Supreme Court Chose Mathews

The Minnesota Supreme Court erroneously applied *Mathews* in *Olson*. This section demonstrates the court's error by highlighting the differences between the issues in *Goldberg* and *Mathews* with the issues in *Barker* and *Olson*.[261] Additionally, this section argues that the court's reliance on broad precedent in procedural due process matters caused the court to lose sight of the differences between private property and administrative benefits.[262]

1. The Mathews *Test Is Inapposite Because the Issues in* Goldberg *and* Mathews *Are Not Aligned with the Issues in* **Barker** *and* Olson

Despite the fundamental differences between the issues in *Mathews* and *Olson*, the Minnesota Supreme Court applied *Mathews* instead of *Barker* to determine whether subdivision 9(d) of the forfeiture statute was

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[257] *Id.* at 9.
[258] *Id.* at 5.
[259] *Olson*, 924 N.W.2d at 610 n.12 (citing United States v. James Daniel Good Real Prop., 510 U.S. 43, 55–56 (1993)).
[260] 22 DUNNELL MINN. DIGEST, FORFEITURES § 1.01 (2019) ("Forfeitures are regarded with increasing disfavor."). The call for reform was highlighted in a brief, arguing that "[t]he Court should take the opportunity to rein in civil forfeiture." Brief of Amicus Curiae Institute for Justice at 18–20, Olson v. One 1999 Lexus MN License Plate No. 851LDV VIN: JT6HF10U6X0079461, 924 N.W.2d 594 (Minn. 2019) (No. A17-1083).
[261] *See infra* Section IV.B.1.
[262] *See infra* Section IV.B.2.

constitutional as applied to Megan and Helen Olson.[263] *Mathews*, emanating from *Goldberg v. Kelly*,[264] focused on a general due process inquiry.[265] The intent in developing the *Mathews* framework was to ensure the government followed a fair process in administrative proceedings[266] and to prevent the risk of wrongful deprivation of benefits.[267] The particular issues were whether an evidentiary hearing was required pre-termination and what process was due.[268] These issues are distinguished from the question posed in *Olson* in two significant ways.

First, the *Olson* court grappled with the narrow issue of timing, as related to a hearing in the forfeiture context.[269] In contrast, the preliminary question in *Mathews* was whether due process required a hearing to take place at all.[270] Unlike *Mathews*, the statute in question in *Olson* provided for a hearing, albeit prior to the forfeiture adjudication.[271] Neither of the Olsons even argued for a pre-seizure hearing.[272] Thus, the Court acknowledged that the central issue in *Olson* was specific to the timing between the seizure of the vehicle and the first hearing, and whether this delay constituted a due process violation.[273] The *Barker* factors take the aspects of timing directly into consideration by specifically targeting the length and reason for the delay.[274] Therefore, cases like *Olson* that concern the timing of post-deprivation civil forfeiture hearings fall outside of the scope of *Mathews*.

Second, *Goldberg* and *Mathews* involved pre-termination hearings.[275] This addressed concerns of fair process *prior* to the deprivation of property. The issue in *Olson* concerned post-seizure proceedings,[276] which implicate due process *after* depriving the individual of property. *Olson* is analogous

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[263] *Olson*, 924 N.W.2d at 603.
[264] 397 U.S. 254 (1970).
[265] *See* Mathews v. Eldridge, 424 U.S. 319, 334–35 (1976).
[266] *See* Rubin, *supra* note 36, at 1137 (referencing the underlying principle in forming the *Mathews* framework).
[267] *See id.* at 1160–62 (comparing the due process protections afforded to government benefits but noting that "[t]he distinction between those benefits that are legitimately discretionary and those that must be constrained by procedural protections and predefined rules has not been established by the case law"); *see also infra* Section IV.B.2.
[268] *Mathews*, 424 U.S. at 323.
[269] Olson v. One 1999 Lexus MN License Plate: 851LDV VIN: JT6HF10U6X0079461, 924 N.W.2d 594, 602 (Minn. 2019).
[270] *Mathews*, 424 U.S. at 323.
[271] MINN. STAT. § 169A.63, subdiv. 9 (2018).
[272] *Olson*, 924 N.W.2d at 602.
[273] *Id.*
[274] *Id.* at 603.
[275] *Mathews*, 424 U.S. at 323; Goldberg v. Kelly, 397 U.S. 254, 255 (1970).
[276] *Olson*, 924 N.W.2d at 600.

to the proceedings in *Barker* that occurred *after* the loss of liberty.[277] This critical difference signifies the limits of *Mathews*' reach. After seizure, the timing of a hearing becomes paramount.[278] The urgency of prompt pre-deprivation hearings is arguably less than that for post-deprivation hearings because before deprivation, the individual maintains control of the interest at stake up until adjudication.[279]

It may be argued that *Mathews*' individual-interest prong is adequate to assess the level of need for promptness. After all, that was a defining distinction between the results of *Goldberg* and *Mathews*. The decision in *Goldberg* was significantly controlled by the substantial burden placed on an individual from losing his or her welfare benefits.[280] The Court stated:

> By hypothesis, a welfare recipient is destitute, without funds or assets. . . . Suffice it to say that to cut off a welfare recipient in the face of . . . 'brutal need' without a prior hearing of some sort is unconscionable, unless overwhelming considerations justify it. . . . The crucial factor in this context . . . is that termination of aid pending resolution of a controversy over eligibility may deprive an *eligible* recipient of the very means by which to live while he waits.[281]

In contrast, the Court, in *Mathews*, held that disability benefits did not necessitate this same requirement because eligibility there did not hinge on financial need.[282] Additionally, the fundamental reason for terminating disability benefits was that "the worker [was] no longer disabled or ha[d] returned to work,"[283] which reduced the hardship of the loss. Thus, *Mathews*' individual-interest factor considered the nature of the burden to determine the urgency of a prompt hearing.

The *Olson* court noted that *Mathews* adequately addressed the question of urgency of a prompt post-seizure hearing.[284] Nevertheless, *Barker* is a more appropriate test because it involved an even greater need

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[277] *See* Barker v. Wingo, 407 U.S. 514, 564 (1972).

[278] *See Olson*, 924 N.W.2d at 611 (quoting Barry v. Barchi, 443 U.S. 55, 66 (1979)) ("Furthermore, the Court has held that *after* property has been seized without a hearing, 'the [property owner's] interest in a speedy resolution of the controversy becomes paramount.'"); *see also* Kuckes, *supra* note 214, at 12 ("In the limited circumstances when the government may take action before a hearing, the process required must be provided as soon as possible thereafter.").

[279] *Olson*, 924 N.W.2d at 602.

[280] Goldberg v. Kelly, 397 U.S. 254, 266 (1970).

[281] *Id.* at 261 (quoting Kelly v. Wyman, 294 F. Supp. 893, 899, 900 (S.D.N.Y. 1968)).

[282] Mathews v. Eldridge, 424 U.S. 319, 340 (1976).

[283] *Id.* at 336.

[284] *Olson*, 924 N.W.2d at 602–03.

for urgency—the deprivation of liberty by incarceration.[285] *Barker* involved a habeas corpus petition, where the stakes of delaying adjudication are highest.[286] Depriving liberty arguably has a much stronger need for an urgent and prompt hearing than the deprivation of a government entitlement.

The hardship faced in civil forfeiture resembles the burden posed in *Barker*. In *$8,850*, the Court weighed the burden of forfeiting a substantial amount of money for eighteen months.[287] Similarly, the Olsons faced adversity in losing a vehicle for eighteen months.[288] The seizure stripped them of a mode of transportation, as well as their economic interest in selling or using the vehicle as collateral for a loan.[289] Thus, since the *Olson* court determined that the urgency of a prompt hearing was a critical question, the *Barker* factors would have been better suited to address the delay.

2. The Court's Decision to Use the Broad-sweeping Mathews *Test Resulted in Disregarding the Differences Between Private Property and Administrative Benefits*

The *Olson* majority rationalized its decision to invoke the *Mathews* framework by following precedent.[290] The Minnesota Supreme Court had set the practice of employing the *Mathews* test in procedural due process claims.[291] However, each of the cases cited by the majority covered a wide range of due process challenges, none of which pertained to civil forfeiture.[292]

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[285] *See* Barker v. Wingo, 407 U.S. 514, 532–33 (1972).
[286] *Id.* at 518.
[287] United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency, 461 U.S. 555, 565 (1983).
[288] *Olson*, 924 N.W.2d at 600.
[289] *Id.* at 612.
[290] *Id.* at 604.
[291] *Id.*
[292] *See, e.g.*, Gams v. Houghton, 884 N.W.2d 611, 619 (Minn. 2016) (personal injury action); Rew v. Bergstrom, 845 N.W.2d 764, 785–86 (Minn. 2014) (order for protection); Sawh v. City of Lino Lakes, 823 N.W.2d 627, 632 (Minn. 2012) (designating a dog to be potentially dangerous was not a property interest); State v. Wiltgen, 737 N.W.2d 561, 568 (Minn. 2007) (driver license revocation); Bendorf v. Comm'r of Pub. Safety, 727 N.W.2d 410, 415–16 (Minn. 2007) (driver's license revocation); Hamilton v. Comm'r of Pub. Safety, 600 N.W.2d 720, 723–24 (Minn. 1999) (driver's license revocation); Falgren v. State Bd. of Teaching, 545 N.W.2d 901, 908–09 (Minn. 1996) (teaching license revocation); Martin v. Itasca City, 448 N.W.2d 368, 370 (Minn. 1989) (leave of absence policy); Violette v. Midwest Printing Co.–Webb Publ'g, 415 N.W.2d 318, 323 (Minn. 1987) (workers' compensation benefits); *In re* Harhut, 385 N.W.2d 305, 311 (Minn. 1986) (civil commitment statute); Machacek v. Voss, 361 N.W.2d 861, 863 (Minn. 1985) (child support payments); Heddan v. Dirkswager, 336

In particular, the Minnesota Supreme Court strongly emphasized its holding in *Fedziuk v. Commissioner of Public Safety*[293] to justify its application of *Mathews*.[294] The issue in *Fedziuk* was whether due process, in the context of a license revocation under an implied consent law, was violated.[295] There, the statute in question failed to specify any time period for judicial review, which caused a violation of due process.[296] The *Olson* dissent noted that the nature of the due process challenge in *Fedziuk* was different because it did not involve property forfeiture.[297] While *Mathews*—decided in the administrative context—is more relevant in license revocation,[298] it is less applicable in the setting of civil forfeiture.[299]

The *Olson* court's unrelenting reliance on *Mathews* ignored the distinction between the deprivation of private property interests and the deprivation of administrative benefits. These differences can be illustrated by returning to the concept of protections on a spectrum.[300] Forfeiture of private property raises the stakes with its quasi-criminal nature.[301] Forfeiture demands notice and a hearing—both due process requirements.[302] Other constitutional requirements, such as the Fourth Amendment's exclusionary rule and the Eighth Amendment's prohibition against excessive fines, also apply in the context of civil forfeiture.[303] Thus, private property interests receive greater protections from deprivation.

N.W.2d 54, 59 (Minn. 1983) (driver's license revocation); State *ex rel.* Taylor v. Schoen, 273 N.W.2d 612, 617 (Minn. 1978) (parole release).

[293] *Fedziuk*, 696 N.W.2d 340, 348 (Minn. 2005) (holding that the absence of language to require a prompt hearing for review of driver's license revocations within the Minnesota Implied Consent Law provisions violated procedural due process).

[294] *Olson*, 924 N.W.2d at 604.

[295] *Fedziuk*, 696 N.W.2d at 342.

[296] *Id.*

[297] *Olson*, 924 N.W.2d at 616 n.1 (Gildea, CJ., concurring in part, dissenting in part).

[298] *See id.* at 604 (noting that the *Mathews* test has been appropriately applied in the context of implied consent license revocation).

[299] *See id.* at 616 (Gildea, C.J., concurring in part and dissenting in part) (asserting that the *Barker* test is more appropriate in the context of civil forfeiture than the *Mathews* test).

[300] *See* discussion *supra* Section IV.A.2.

[301] *See supra* text accompanying notes 205–18.

[302] *Olson*, 924 N.W.2d at 607.

[303] HENRY W. MCCARR & JACK S. NORDBY, 9 MINN. PRAC., CRIM. LAW & PROC. § 36:68 (4th ed. 2018); *see also* One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 702 (1965) (holding that the exclusionary rule applied in forfeiture, and unlawfully-seized evidence from a vehicle could not be used in a civil forfeiture proceeding). The United States Supreme Court has subsequently limited the reach of the exclusionary rule by incorporating a balancing test weighing deterrent effects with societal costs, but it remains an applicable rule in civil forfeiture proceedings. *See* Joshua Lewellyn, Note, *Losing Your Navigator: Why the Exclusionary Rule Should Not Apply to Civil Asset Forfeiture Proceedings*, 13 LIBERTY U.

Lower on the spectrum lies public benefits. These benefits are statutorily created and can be broken down into the categories of discretionary or non-discretionary.[304] Non-discretionary benefits—such as welfare benefits—must be afforded the minimum, constitutionally-required procedures, including notice and the opportunity to be heard.[305] Discretionary benefits, however, belong at the very end of the continuum with the least amount of protection. They can be eliminated even without the minimum procedures.[306]

On this scale, the government action in *Fedziuk*—revoking a license[307] lies closer to *Mathews*' termination of disability benefits than the deprivation of private property through civil forfeiture in *Olson*. Therefore, in the absence of a forfeiture case, the justification in using *Mathews*, only to rely on precedent, is flawed.

C. Predictions of the Results in Olson under the Barker Factors

The outcome in *Olson* likely would have been different in some respects, and the same in others, if the *Barker* factors had been implemented. The *Barker* framework, like the *Mathews* framework, would likely have resulted in the finding of constitutionality of section 169A.63 of the Minnesota Statutes as applied to Megan Olson.[308] The outcome for Helen Olson, however, could have been different under *Barker* because the statute would likely be constitutional as applied to her.[309] Additionally, this section postulates the scenario for a typical innocent owner under *Barker* and demonstrates that the *Barker* factors may be more favorable for these individuals.[310]

L. REV. 153, 153–54 (2018); *see also* Austin v. United States, 509 U.S. 602, 622 (1993) (quoting Browning-Ferris Indus. v. Kelco Disposal, Inc., 492 U.S. 257, 265 (1989)) ("[Forfeiture] constitutes 'payment to a sovereign as punishment for some offense,' and, as such, is subject to the limitations of the Eighth Amendment's Excessive Fines Clause.")

[304] *See* Rubin, *supra* note 36, at 1160–62 (comparing the due process protections afforded to government benefits but noting that "[t]he distinction between those benefits that are legitimately discretionary and those that must be constrained by procedural protections and predefined rules has not been established by the case law").

[305] *See id.* (reciting "social welfare benefits or public education" as examples of nondiscretionary benefits that are provided based on eligibility).

[306] *See id.* ("When the benefit is awarded to a small number of 'best' candidates, it is legitimately discretionary. A research grant, a government construction contract, or the placement of a child for adoption would be obvious examples.").

[307] *Fedziuk*, 696 N.W.2d 340, 342 (Minn. 2005).

[308] *See infra* Section IV.C.1.

[309] *See infra* Section IV.C.2.

[310] *See infra* Section IV.C.3.

1. The Finding of Constitutionality as Applied to Megan Olson

Had *Barker* been used, the Minnesota Supreme Court would likely have reached the same conclusion with respect to Megan Olson—that the statute was constitutional as applied to her. Under the first *Barker* factor—the length of the delay—eighteen months would still likely be considered substantial.[311]

Second, the underlying reason delaying the forfeiture proceeding—the second *Barker* factor—was to protect Megan Olson as a criminal defendant.[312] Given that the vehicle in question was used to facilitate the commission of her alleged crime, instituting a forfeiture proceeding before the criminal trial could undermine her criminal case. Thus, the second *Barker* factor would support a finding of as-applied constitutionality for Megan.

Third, Megan demonstrated a lack of effort in asserting her rights, which frustrates the third *Barker* factor.[313] The hearing was continued six times due to her pending criminal matter.[314] Even so, Megan never demanded a speedy hearing.[315] In fact, she agreed to several continuances.[316] This is analogous to *Barker*, where the lack of objections to a series of continuances showed that the defendant did not desire a speedy trial.[317] Moreover, she did not pursue recovery of the vehicle through the statute's remission or mitigation provisions, nor did she post bond for the vehicle.[318]

Finally, the minimal prejudice posed to Megan from the delay would probably be insufficient to render section 169A.63 of the Minnesota Statutes unconstitutional under the fourth *Barker* factor—prejudice to defendant. At the time of her arrest, Megan was driving without a valid

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[311] *See* United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency, 461 U.S. 555, 565 (1983) (finding an eighteen-month delay to be substantial).

[312] Olson v. One 1999 Lexus MN License Plate: 851LDV VIN: JT6HF10U6X0079461, 924 N.W.2d 594, 611 (Minn. 2019) ("One reason the State proffers for this delay is the need to protect the criminally charged individual from incriminating herself in a civil proceeding.").

[313] *Id.* at 600.

[314] Olson v. One 1999 Lexus, 910 N.W.2d 72, 74 (Minn. Ct. App. 2018).

[315] *See* Appellant's Reply Brief, *supra* note 237, at 7.

[316] *Olson*, 910 N.W.2d at 76 ("[T]he district court noted that there was no dispute of material fact that the 'matter was continued several times at the agreement of all involved as they awaited the conclusion of the underlying criminal action.'").

[317] Barker v. Wingo, 407 U.S. 514, 534–36 (1972); *see also* Jovanovic, *supra* note 59, at 4 ("[Regarding the third *Barker* factor], the claimant's assertion of the right to a judicial hearing, the court held that if the clamant fails to file an equitable action seeking an order compelling the filing of the forfeiture action or return of the seized property, or fails to take other action which could trigger the rapid filing of a forfeiture action, this can be taken as some indication that the claimant did not desire an early judicial hearing.").

[318] *Olson*, 924 N.W.2d at 600.

license.[319] It had been cancelled for her conduct that was "inimical to public safety."[320] Therefore, the prejudice would be limited because she lacked the ability to legally drive. What is more, Megan was not the owner of the car, which meant that her transportation and economic interests in the vehicle were limited.[321] Thus, the delay caused minimal prejudice. Since the majority of the *Barker* factors indicate that the delay in the post-seizure hearing was not unreasonable, the court would probably still have reversed the court of appeals' holding that the statute was unconstitutional as applied to Megan.

2. The Finding of Constitutionality as Applied to Helen Olson

Had the Minnesota Supreme Court utilized the *Barker* factors instead of the *Mathews* framework, Helen Olson might have received a negative outcome. Even though she purported to be an innocent owner, her particular situation may have led the court to find that the delay was not unreasonable.[322]

In considering the first *Barker* factor—the length of the delay—the court would likely continue to acknowledge that a delay of eighteen months was substantial.[323] Although the length of the delay would undermine the constitutionality of the statute, the remaining *Barker* factors would likely outweigh the length of the delay and ultimately lead to a finding of constitutionality.

The second *Barker* factor—the reason for the delay—is debatable. On the one hand, Helen was limited by the statute's requirement to conclude pending criminal matters before proceeding with a forfeiture hearing.[324] On the other hand, the delay was also caused by Helen's lack of action in asserting her rights, as discussed under the third factor below. As Chief Justice Gildea's dissent stated, "[T]he delay here is largely the result of choices that Helen made."[325] Thus, it is unclear whether the second *Barker* factor would aid or thwart Helen's interests.

The third and fourth *Barker* factors, concerning the assertion of rights and prejudice to the claimant, would likely tip the scale in favor of the statute's constitutionality as applied to Helen. Helen did not assert her rights

[319] *Id.* at 609.
[320] *Id.*
[321] *Id.*
[322] *See id.* at 616–18 (Gildea, C.J., concurring in part and dissenting in part).
[323] *See* United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency, 461 U.S. *555*, *565* (1983) (finding an eighteen-month delay to be substantial).
[324] *Id.* at 600.
[325] *Id.* at 617 (Gildea, C.J., concurring in part and dissenting in part).

by requesting an expedited hearing as an allegedly-innocent owner would, under section 169A.63, subdivision 7(d), of the Minnesota Statutes.[326] In fact, Chief Justice Gildea noted that Helen "essentially took no action in the forfeiture proceeding" until a year after filing the demand, when she filed the motion for summary judgment.[327] Even if she had pushed for her innocent-owner defense, it likely would not have succeeded unless she could clearly demonstrate that she had no knowledge of or tried to prevent Megan's unlawful activity.[328] This would likely be a difficult hurdle to overcome due to Megan and Helen's familial relationship.[329] Additionally, Helen did not assert her right under section 169A.63, subdivision 5(a), to petition for a return of the vehicle, nor did she post a bond.[330] Moreover, she did not object to any of the six continuances that delayed a speedy hearing.[331] Each of these failures to seek available remedies undermines Helen's argument for unconstitutionality under the third *Barker* factor—the defendant's assertion of her right.

Finally, the fourth *Barker* factor—prejudice to defendant—would likely frustrate Helen's case. Her license had already been suspended at the time of the seizure, and she would not be able to legally drive the vehicle, regardless of the delay.[332] The court may have found a delay to be more reasonable for a claimant who is unable to use the vehicle in the first place. While Helen would still have an economic interest in the vehicle, it would probably not be substantial enough to consider the delay prejudicial.[333] The court also noted that Megan was the exclusive driver of the vehicle,[334] which would further mitigate prejudice from the delay to Helen. Given this analysis under *Barker*, Helen's particular circumstances would probably fail to demonstrate a due process violation.

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[326] *Id.*

[327] *Id.*

[328] *See* MINN. STAT. § 169A.63, subdiv. 7(d) (2018) (requiring, "by clear and convincing evidence," that the Petitioner "did not have actual or constructive knowledge that the vehicle would be used or operated in" an unlawful manner, or that Petitioner "took reasonable steps to prevent the use of the vehicle by the offender").

[329] *See id.* ("If the offender is a family or household member of any of the owners who petition the court and has three or more prior impaired driving convictions, the petitioning owner is presumed to know of any vehicle use by the offender that is contrary to law.").

[330] *Olson*, 924 N.W.2d at 600.

[331] *See* Olson v. One 1999 Lexus, 910 N.W.2d 72, 76 (Minn. Ct. App. 2018).

[332] *Olson*, 924 N.W.2d at 612.

[333] *Id.* at 618 (Gildea, C.J., concurring in part and dissenting in part) ("[T]he delay in getting back a car that she cannot drive is not sufficient prejudice to support the conclusion that the statute is unconstitutional.").

[334] *Id.* at 609.

3. The Outcome for a Typical Innocent Owner

Although Helen Olson's innocent-owner defense may not have prevailed under *Barker*, these factors may provide a stronger claim for innocent owners in general, as elucidated by the Minnesota Attorney General's *amicus* brief. First, the length of the delay would vary for other innocent owners because section 169A.63, subdivision 9(d), of the Minnesota Statutes does not set a time frame for a hearing after the pending, related criminal matters have been resolved.[335] Because section 169A.63 does not afford innocent owners a probable-cause hearing or a preliminary hearing for their innocent-owner affirmative defense, this first factor should carry more weight for an innocent owner when a pending criminal matter causes a lengthier delay in asserting the innocent-owner defense.[336]

Second, the reason for the delay may also aid an innocent owner because the underlying reasons for a delay due to pending criminal matters do not protect the innocent owner in the same way that they protect a criminal defendant.[337] As the innocent owner is not a party to the criminal matter, she or he has no involvement in or control over the speed of the proceedings.[338] Thus, citing pending criminal matters as justification for the delay may not be reasonable for an innocent owner.[339] This will weigh in the innocent owner's favor.

Third, the outcome of the third *Barker* factor—the assertion of rights by the innocent owner—will vary based on the facts of the case. Depending on the action taken, this factor may help or hinder the balance of factors in an innocent owner's case. Section 169A.63, subdivisions 4 and 5(a), of the Minnesota Statutes provide two pathways for an individual to assert her rights.[340]

One option is to post a bond.[341] In that case, the vehicle is returned with a disabling device rendering it temporarily undrivable.[342] Since an innocent owner cannot use the vehicle under these circumstances, the decision not to seek this option would probably be insignificant. The second option is to file a petition for remission or mitigation with the county prosecutor.[343] In determining whether to grant remission or mitigation, the

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[335] Brief of Amicus Curiae Minnesota Attorney General, *supra* note 240, at 7.
[336] *Id.* at 8.
[337] *Id.* at 10.
[338] *Id.*
[339] *Id.*
[340] *Id.*
[341] *Id.*
[342] *Id.* at 11.
[343] *Id.*

prosecutor weighs the government's need for possessing the vehicle against the particular innocent owner's individual circumstances.[344] As the Minnesota Court of Appeals noted, a court will likely have difficulty in assessing the sufficiency of the hardship relief that is offered if the owners never pursue the available remedies.[345] Therefore, failure to assert this right for available relief may weigh against the innocent owner in the balance of these factors and weaken the possibility of establishing undue delay.[346]

Finally, the fourth *Barker* factor—prejudice caused by the delay—is enhanced for an innocent owner. For innocent owners, the prehearing delay is the "direct cause of a deprivation [of their mode of transportation] that can limit [their] ability to earn a living and otherwise participate in modern social life."[347] In contrast, the delay for a DWI defendant who drives and owns a vehicle would not be the cause of the inability to drive because the offender's license is likely to have been suspended regardless.[348]

All in all, *Barker* would likely have been more effective than *Mathews* in recognizing the urgency required for innocent-owner forfeiture hearings without clearing the path for claims from guilty owners charged with DWIs.[349] Given that the forfeiture statute does not permit the seizure of a vehicle if the registered owner is innocent,[350] an innocent owner with a valid license, who pursues the statute's remedies, may overcome the obstacles that Helen could not under *Barker*.

D. Implications for Future Decisions in Minnesota

The use of *Mathews* instead of *Barker* is likely to strengthen procedural due process claims for guilty owners with repeat DWI offenses and confine *Barker* to Sixth Amendment speedy trial cases. *Olson*, by applying *Mathews*, established a common private interest of ownership, shared by both innocent and guilty owners. Affording owners guilty of DWI offenses the same rights as innocent owners might, in the future, result in a

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[344] *Id.*

[345] Olson v. One 1999 Lexus, 910 N.W.2d 72, 79 (Minn. Ct. App. 2018) ("[W]e cannot determine whether the Olsons could have obtained adequate hardship relief under Minn. Stat. § 169A.63 because they failed to seek such relief.").

[346] Brief of Amicus Curiae Minnesota Attorney General, *supra* note 240, at 12.

[347] *Id.* at 13.

[348] *Id.*

[349] *See id.* at 7–13 (assessing each of the factors and arguing that the success of a constitutional challenge regarding timeliness of post-seizure hearings for innocent owners may be greater than individuals facing DWI charges when the *Barker* factors are applied). For further discussion of *Mathews*' impact on guilty owners charged with DWIs, see *infra* Section IV.D.1.

[350] *See* MINN. STAT. § 169A.63, subdiv. 7(d) (2019).

pathway for guilty owners to succeed in similar procedural due process claims.[351] Moreover, the Minnesota Supreme Court has now cast aside the United States Supreme Court's use of *Barker* in the forfeiture context, which steers Minnesota towards a universal *Mathews* test for future procedural due process cases.[352]

1. The Comparison of Innocent Owners to Guilty Owners Likely Risks an Influx of Timing-Related Procedural Due Process Cases

Due to the application of *Mathews* in *Olson*, Minnesota courts may experience an influx of claims pursuing prompt post-seizure hearings. In applying *Mathews* to determine that section 169A.63, subdivision 9(d), of the Minnesota Statutes was unconstitutional as applied to Helen, the court stressed the risk of erroneous deprivation to innocent owners.[353] The innocent-owner defense allows for the property's recovery if the owner can "demonstrate by clear and convincing evidence that the petitioning owner did not have actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law or that the petitioning owner took reasonable steps to prevent use of the vehicle by the offender."[354]

However, by upholding the use of *Mathews* in *Olson*, the Minnesota Supreme Court has essentially devised a new avenue for DWI offenders in forfeiture cases to challenge the statute. While Helen purported to be an innocent, non-driving owner, there may be similar instances in the future where guilty drivers who own a seized vehicle assert this same due process claim.[355] A crucial difference between Megan's and Helen's interests was that Helen was the owner and Megan was not.[356] That said, the interests of private owners—even guilty owners—are much more aligned with innocent

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[351] *See infra* Section IV.D.1.

[352] *See infra* Section IV.D.2.

[353] Olson v. One 1999 Lexus MN License Plate: 851LDV VIN: JT6HF10U6X0079461, 924 N.W.2d 594, 613 (Minn. 2019).

[354] MINN. STAT. § 169A.63, subdiv. 7(d) (2019).

[355] *See* Charles Ramsay, *Minnesota's DWI Forfeiture Law Found Unconstitutional*, MINN. DWI DEF. BLOG (Mar. 13, 2019), https://www.ramsayresults.com/minnesotas-dwi-forfeiture-law-found-unconstitutional?back_page=137 [https://perma.cc/3C7Y-TN5K] (observing that an individual who owns a vehicle and is arrested while driving has private interests that are much more aligned with innocent owners than non-owners, which may have significant impact on weighing the factors).

[356] *See Olson*, 924 N.W.2d at 608–16.

owners.[357] All owners alike have an interest in transportation.[358] Additionally, all owners have an economic interest in selling, loaning, or using a vehicle as collateral.[359]

Consequently, the court may encounter a rise in challenges concerning the length of delay between vehicle seizure and post-seizure forfeiture hearings from DWI offenders who also own the vehicle. *Olson* has set the precedent of applying *Mathews* to forfeiture cases going forward. By establishing Helen's strong individual interest as a purported innocent owner,[360] *Olson* has made it more difficult for the state to overcome the same high-level private interest afforded to repeat DWI driver-owners. This may frustrate the State's efforts in keeping repeat DWI offenders off the road.[361]

Applying *Barker* would have avoided this issue of supporting the private interests of guilty owners. Unlike *Mathews*, *Barker* does not expressly rely on balancing private interests.[362] Thus, applying *Barker* does not bring to light the private interests that guilty owners can now argue are impaired. Without directly incorporating the assessment of private interests into the factors, *Barker* effectively prevents the shared interests of innocent and guilty owners from being recognized as a key element in analyzing due process violations.

2. Disregarding Barker *in* Olson *Limits* Barker's *Use Going Forward*

Since *Olson* marked the first time the Minnesota Supreme Court encountered the specific issue of delay in a forfeiture hearing, its decision to employ *Mathews* over *Barker* sets the precedent for subsequent cases.

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[357] *See* Ramsay, *supra* note 355.

[358] *Olson*, 924 N.W.2d at 604 (quoting Coleman v. Watt, 40 F.3d 256, 260–61 (8th Cir. 1994)) ("Automobiles occupy a central place in the lives of most Americans, providing access to jobs, schools, and recreation as well as to the daily necessities of life.").

[359] *Id.* at 605 (citing United States v. James Daniel Good Real Prop., 510 U.S. 43, 54–55 (1993)).

[360] *Id.* at 612.

[361] *Id.* at 609 (quoting State v. Wiltgen, 737 N.W.2d 561, 570 (Minn. 2007)) ("[D]runken drivers pose a severe threat to the health and safety of the citizens of Minnesota[,] . . . [and] [t]he state has a compelling interest in highway safety that justifies its efforts to keep impaired drivers off the road, particularly those drivers who have shown a repeated willingness to drive while impaired."). In Minnesota, the forfeiture of property associated with designated offenses is intended to "enhanc[e] public safety by separating repeat intoxicated drivers from the instrumentality used to commit criminal actions." 22 DUNNELL MINN. DIGEST, FORFEITURES, § 1.02(e) (2019).

[362] *Compare* Barker v. Wingo, 407 U.S. 514, 530 (1972) (identifying the four *Barker* factors, none of which explicitly pertain to private interests), *with* Mathews v. Eldridge, 424 U.S. 319, 335 (1976) (specifying private interests as the first component to be considered under the *Mathews* framework).

This represents one more type of procedural due process matter to be tossed in the bottomless *Mathews* bucket. Given that in *Olson*, the broad *Mathews* test was chosen to address a narrow due process question, Minnesota may be migrating towards a single, all-encompassing test for due process cases.

This practice has been repeatedly denounced by the United States Supreme Court because of the direct contradiction between a universal test and the flexible nature of the procedural due process doctrine.[363] Perhaps Justice Frankfurter said it best when he stated, "Expressing as it does in its ultimate analysis respect enforced by law for that feeling of just treatment which has been evolved through centuries of Anglo-American constitutional history and civilization, 'due process' cannot be imprisoned within the treacherous limits of any formula."[364]

The Minnesota Supreme Court has now foreclosed the possibility of using *Barker* to analyze delays in forfeiture proceedings. By forfeiting the opportunity to use *Barker* in this instance, the court has likely constricted future uses of *Barker* solely to Sixth Amendment speedy trial cases. The Minnesota Supreme Court put an end to the use of *Barker* in forfeiture before it could begin.

V. CONCLUSION

For the first time, the Minnesota Supreme Court faced the issue of the constitutionality of a post-seizure delay arising from a forfeiture statute. To make this determination, the court confronted the question of whether to assess the claims using the *Mathews* framework or the *Barker* factors.[365] The *Mathews* framework was designed to assess the constitutionality of process in general, while the *Barker* factors were intended to evaluate the constitutionality of time delays in particular.[366] Despite the majority's acknowledgement that the principal issue was the permissible length of a procedural delay,[367] the court selected *Mathews*.[368] In part, this decision was based on the court's inclination to follow precedent in procedural due process cases.[369] Nonetheless, the court failed to properly consider the

[363] *See* Dusenbery v. United States, 534 U.S. 161, 168 (2002); Medina v. California, 505 U.S. 437, 443 (1992); Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 162–63 (1951) (Frankfurter, J., concurring).
[364] *McGrath*, 341 U.S. 123 at 162 (Frankfurter, J., concurring).
[365] *Olson*, 924 N.W.2d at 601.
[366] *See* Appellant's Reply Brief, *supra* note 237, at 6.
[367] *Olson*, 924 N.W.2d at 602.
[368] *Id.* at 603.
[369] *Id.*

narrow precedent set by the United States Supreme Court's use of the *Barker* factors in assessing the timing of post-deprivation delays in the forfeiture context.[370]

Applying *Mathews* may result in the unintended consequence of future DWI-offender owners increasingly asserting due process challenges associated with forfeiture. Using *Barker*, on the other hand, would have removed the balancing of private interests from the equation, effectively avoiding the link between innocent and guilty owners. The court missed the opportunity afforded by *Barker* to offer innocent owners an exclusive and strong claim against unjustified delays in forfeiture hearings. By doing so, the court has shut the door on using *Barker* in future forfeiture cases. Unfortunately, the court has simultaneously opened another door for repeat DWI offenders to assert their now-recognized, weighty private interest in a prompt post-seizure hearing. By providing repeat drunk drivers with a mechanism to return behind the wheel, this decision will likely have dangerous repercussions.

[370] *See* United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency, 461 U.S. 555, 564 (1983).