SUPREME COURT OF THE UNITED STATES

No. 92–1180

UNITED STATES, PETITIONER *v.* JAMES DANIEL GOOD REAL PROPERTY ET AL.

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

[December 13, 1993]

JUSTICE KENNEDY delivered the opinion of the Court.

The principal question presented is whether, in the absence of exigent circumstances, the Due Process Clause of the Fifth Amendment prohibits the Government in a civil forfeiture case from seizing real property without first affording the owner notice and an opportunity to be heard. We hold that it does.

A second issue in the case concerns the timeliness of the forfeiture action. We hold that filing suit for forfeiture within the statute of limitations suffices to make the action timely, and that the cause should not be dismissed for failure to comply with certain other statutory directives for expeditious prosecution in forfeiture cases.

On January 31, 1985, Hawaii police officers executed a search warrant at the home of claimant James Daniel Good. The search uncovered about 89 pounds of marijuana, marijuana seeds, vials containing hashish oil, and drug paraphernalia. About six months later, Good pleaded guilty to promoting a harmful drug in the second degree, in violation of Hawaii law. Haw. Rev. Stat. §712–1245(1)(b) (1985). He was sentenced to one year in jail and five years' probation, and fined $1,000. Good was

also required to forfeit to the State $3,187 in cash found on the premises.

On August 8, 1989, four and one-half years after the drugs were found, the United States filed an *in rem* action in the United States District Court for the District of Hawaii, seeking to forfeit Good's house and the four-acre parcel on which it was situated. The United States sought forfeiture under 21 U. S. C. §881(a)(7), on the ground that the property had been used to commit or facilitate the commission of a federal drug offense.[1]

On August 18, 1989, in an *ex parte* proceeding, a United States Magistrate Judge found that the Government had established probable cause to believe Good's property was subject to forfeiture under §881(a)(7). A warrant of arrest *in rem* was issued, authorizing seizure of the property. The warrant was based on an affidavit recounting the fact of Good's conviction and the evidence discovered during the January 1985 search of his home by Hawaii police.

The Government seized the property on August 21, 1989, without prior notice to Good or an adversary hearing. At the time of the seizure, Good was renting

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[1]Title 21 U. S. C. §881(a)(7) provides:

"(a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

. . . . . .

"(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner."

his home to tenants for $900 per month. The Government permitted the tenants to remain on the premises subject to an occupancy agreement, but directed the payment of future rents to the United States Marshal.

Good filed a claim for the property and an answer to the Government's complaint. He asserted that the seizure deprived him of his property without due process of law and that the forfeiture action was invalid because it had not been timely commenced under the statute. The District Court granted the Government's motion for summary judgment and entered an order forfeiting the property.

The Court of Appeals for the Ninth Circuit affirmed in part, reversed in part, and remanded for further proceedings. 971 F. 2d 1376 (1992). The court was unanimous in holding that the seizure of Good's property, without prior notice and a hearing, violated the Due Process Clause.

In a divided decision, the Court of Appeals further held that the District Court erred in finding the action timely. The Court of Appeals ruled that the 5-year statute of limitations in 19 U. S. C. §1621 is only an "outer limit" for filing a forfeiture action, and that further limits are imposed by 19 U. S. C. §§1602–1604. 971 F. 2d, at 1378–1382. Those provisions, the court reasoned, impose a "series of internal notification and reporting requirements," under which "customs agents must report to customs officers, customs officers must report to the United States attorney, and the Attorney General must `immediately' and `forthwith' bring a forfeiture action if he believes that one is warranted." *Id.,* at 1379 (citations omitted). The Court of Appeals ruled that failure to comply with these internal reporting rules could require dismissal of the forfeiture action as untimely. The court remanded the case for a determination whether the Government had satisfied its obligation to make prompt reports. *Id.,* at 1382.

We granted certiorari, 507 U. S. ___ (1993), to resolve a conflict among the Courts of Appeals on the constitutional question presented. Compare *United States* v. *Premises and Real Property at 4492 South Livonia Road*, 889 F. 2d 1258 (CA2 1989), with *United States* v. *A Single Family Residence and Real Property*, 803 F. 2d 625 (CA11 1986). We now affirm the due process ruling and reverse the ruling on the timeliness question.

The Due Process Clause of the Fifth Amendment guarantees that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." Our precedents establish the general rule that individuals must receive notice and an opportunity to be heard before the Government deprives them of property. See *United States* v. *$8,850*, 461 U. S. 555, 562, n. 12 (1983); *Fuentes* v. *Shevin*, 407 U. S. 67, 82 (1972); *Sniadach* v. *Family Finance Corp. of Bay View,* 395 U. S. 337, 342 (1969) (Harlan, J., concurring); *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313 (1950).

The Government does not, and could not, dispute that the seizure of Good's home and four-acre parcel deprived him of property interests protected by the Due Process Clause. By the Government's own submission, the seizure gave it the right to charge rent, to condition occupancy, and even to evict the occupants. Instead, the Government argues that it afforded Good all the process the Constitution requires. The Government makes two separate points in this regard. First, it contends that compliance with the Fourth Amendment suffices when the Government seizes property for purposes of forfeiture. In the alternative, it argues that the seizure of real property under the drug forfeiture laws justifies an exception to the usual due process requirement of preseizure notice and hearing. We turn to these

issues.

The Government argues that because civil forfeiture serves a "law enforcement purpos[e]," Brief for United States 13, the Government need comply only with the Fourth Amendment when seizing forfeitable property. We disagree. The Fourth Amendment does place restrictions on seizures conducted for purposes of civil forfeiture, *One 1958 Plymouth Sedan* v. *Pennsylvania*, 380 U. S. 693, 696 (1965) (holding that the exclusionary rule applies to civil forfeiture), but it does not follow that the Fourth Amendment is the sole constitutional provision in question when the Government seizes property subject to forfeiture.

We have rejected the view that the applicability of one constitutional amendment pre-empts the guarantees of another. As explained in *Soldal* v. *Cook County*, 506 U. S. __, __ (1992) (slip op., at 14):

> "Certain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitution's commands. Where such multiple violations are alleged, we are not in the habit of identifying as a preliminary matter the claim's `dominant' character. Rather, we examine each constitutional provision in turn."

Here, as in *Soldal*, the seizure of property implicates two "`explicit textual source[s] of constitutional protection,'" the Fourth Amendment and the Fifth. *Ibid*. The proper question is not which Amendment controls but whether either Amendment is violated.

Nevertheless, the Government asserts that when property is seized for forfeiture, the Fourth Amendment provides the full measure of process due under the Fifth. The Government relies on *Gerstein* v. *Pugh*, 420 U. S. 103 (1975), and *Graham* v. *Connor*, 490 U. S. 386 (1989), in support of this proposition. That reliance is misplaced. *Gerstein* and *Graham*

concerned not the seizure of property but the arrest or detention of criminal suspects, subjects we have considered to be governed by the provisions of the Fourth Amendment without reference to other constitutional guarantees. In addition, also unlike the seizure presented by this case, the arrest or detention of a suspect occurs as part of the regular criminal process, where other safeguards ordinarily ensure compliance with due process.

Gerstein held that the Fourth Amendment, rather than the Due Process Clause, determines the requisite postarrest proceedings when individuals are detained on criminal charges. Exclusive reliance on the Fourth Amendment is appropriate in the arrest context, we explained, because the Amendment was "tailored explicitly for the criminal justice system," and its "balance between individual and public interests always has been thought to define the `process that is due' for seizures of person or property in criminal cases." *Gerstein, supra,* at 125, n. 27. Furthermore, we noted that the protections afforded during an arrest and initial detention are "only the *first* stage of an elaborate system, unique in jurisprudence, designed to safeguard the rights of those accused of criminal conduct." *Ibid*. (emphasis in original).

So too, in *Graham* we held that claims of excessive force in the course of an arrest or investigatory stop should be evaluated under the Fourth Amendment reasonableness standard, not under the "more generalized notion of `substantive due process.'" 490 U. S., at 395. Because the degree of force used to effect a seizure is one determinant of its reasonableness, and because the Fourth Amendment guarantees citizens the right "to be secure in their persons . . . against unreasonable . . . seizures," we held that a claim of excessive force in the course of such a seizure is "most properly characterized as one invoking the protections of the Fourth Amendment."

490 U. S., at 394.

Neither *Gerstein* nor *Graham*, however, provides support for the proposition that the Fourth Amendment is the beginning and end of the constitutional inquiry whenever a seizure occurs. That proposition is inconsistent with the approach we took in *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663 (1974), which examined the constitutionality of *ex parte* seizures of forfeitable property under general principles of due process, rather than the Fourth Amendment. And it is at odds with our reliance on the Due Process Clause to analyze prejudgment seizure and sequestration of personal property. See, *e. g.*, *Fuentes* v. *Shevin*, 407 U. S. 67 (1972); *Mitchell* v. *W. T. Grant Co.*, 416 U. S. 600 (1974).

It is true, of course, that the Fourth Amendment applies to searches and seizures in the civil context and may serve to resolve the legality of these governmental actions without reference to other constitutional provisions. See *Camara* v. *Municipal Court of San Francisco,* 387 U. S. 523 (1967) (holding that a warrant based on probable cause is required for administrative search of residences for safety inspections); *Skinner* v. *Railway Labor Executives' Assn.,* 489 U. S. 602 (1989) (holding that federal regulations authorizing railroads to conduct blood and urine tests of certain employees, without a warrant and without reasonable suspicion, do not violate the Fourth Amendment prohibition against unreasonable searches and seizures). But the purpose and effect of the Government's action in the present case go beyond the traditional meaning of search or seizure. Here the Government seized property not to preserve evidence of wrongdoing, but to assert ownership and control over the property itself. Our cases establish that government action of this consequence must comply with the Due Process Clauses of the Fifth and Fourteenth Amendments.

Though the Fourth Amendment places limits on the Government's power to seize property for purposes of forfeiture, it does not provide the sole measure of constitutional protection that must be afforded property owners in forfeiture proceedings. So even assuming that the Fourth Amendment were satisfied in this case, it remains for us to determine whether the seizure complied with our well-settled jurisprudence under the Due Process Clause.

Whether *ex parte* seizures of forfeitable property satisfy the Due Process Clause is a question we last confronted in *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663 (1974), which held that the Government could seize a yacht subject to civil forfeiture without affording prior notice or hearing. Central to our analysis in *Calero-Toledo* was the fact that a yacht was the "sort [of property] that could be removed to another jurisdiction, destroyed, or concealed, if advance warning of confiscation were given." *Id*., at 679. The ease with which an owner could frustrate the Government's interests in the forfeitable property created a "`special need for very prompt action'" that justified the postponement of notice and hearing until after the seizure. *Id.,* at 678 (quoting *Fuentes*, 407 U. S., at 91).

We had no occasion in *Calero-Toledo* to decide whether the same considerations apply to the forfeiture of real property, which, by its very nature, can be neither moved nor concealed. In fact, when *Calero-Toledo* was decided, both the Puerto Rican statute, P. R. Laws Ann., Tit. 24, §2512 (Supp. 1973), and the federal forfeiture statute upon which it was modeled, 21 U. S. C. §881 (1970 ed.), authorized the forfeiture of personal property only. It was not until 1984, ten years later, that Congress amended §881 to authorize the forfeiture of real property. See 21 U. S. C. §881(a)(7); Pub. L. 98–473, §306, 98 Stat.

2050.

The right to prior notice and a hearing is central to the Constitution's command of due process. "The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment—to minimize substantively unfair or mistaken deprivations of property . . . ." *Fuentes* v. *Shevin*, 407 U. S., at 80–81.

We tolerate some exceptions to the general rule requiring predeprivation notice and hearing, but only in "`extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event.'" *Id.,* at 82 (quoting *Boddie* v. *Connecticut*, 401 U. S. 371, 379 (1971)); *United States* v. *$8,850*, 461 U. S., at 562, n. 12. Whether the seizure of real property for purposes of civil forfeiture justifies such an exception requires an examination of the competing interests at stake, along with the promptness and adequacy of later proceedings. The three-part inquiry set forth in *Mathews* v. *Eldridge*, 424 U. S. 319 (1976), provides guidance in this regard. The *Mathews* analysis requires us to consider the private interest affected by the official action; the risk of an erroneous deprivation of that interest through the procedures used, as well as the probable value of additional safeguards; and the Government's interest, including the administrative burden that additional procedural requirements would impose. *Id.,* at 335.

Good's right to maintain control over his home, and to be free from governmental interference, is a private interest of historic and continuing importance. Cf. *United States* v. *Karo*, 468 U. S. 705, 714–715 (1984); *Payton* v. *New York*, 445 U. S. 573, 590 (1980). The seizure deprived Good of valuable rights of ownership, including the right of sale, the right of occupancy, the right to unrestricted use and enjoyment, and the right to receive rents. All that the

seizure left him, by the Government's own submission, was the right to bring a claim for the return of title at some unscheduled future hearing.

In *Fuentes*, we held that the loss of kitchen appliances and household furniture was significant enough to warrant a predeprivation hearing. 407 U. S., at 70–71. And in *Connecticut* v. *Doehr*, 500 U. S. 1 (1991), we held that a state statute authorizing prejudgment attachment of real estate without prior notice or hearing was unconstitutional, in the absence of extraordinary circumstances, even though the attachment did not interfere with the owner's use or possession and did not affect, as a general matter, rentals from existing leaseholds.

The seizure of a home produces a far greater deprivation than the loss of furniture, or even attachment. It gives the Government not only the right to prohibit sale, but also the right to evict occupants, to modify the property, to condition occupancy, to receive rents, and to supersede the owner in all rights pertaining to the use, possession, and enjoyment of the property.

The Government makes much of the fact that Good was renting his home to tenants, and contends that the tangible effect of the seizure was limited to taking the $900 a month he was due in rent. But even if this were the only deprivation at issue, it would not render the loss insignificant or unworthy of due process protection. The rent represents a significant portion of the exploitable economic value of Good's home. It cannot be classified as *de minimis* for purposes of procedural due process. In sum, the private interests at stake in the seizure of real property weigh heavily in the *Mathews* balance.

The practice of *ex parte* seizure, moreover, creates an unacceptable risk of error. Although Congress designed the drug forfeiture statute to be a powerful instrument in enforcement of the drug laws, it did not intend to deprive innocent owners of their property.

The affirmative defense of innocent ownership is allowed by statute. See 21 U. S. C. §881(a)(7) ("[N]o property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner").

The *ex parte* preseizure proceeding affords little or no protection to the innocent owner. In issuing a warrant of seizure, the magistrate judge need determine only that there is probable cause to believe that the real property was "used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of" a felony narcotics offense. *Ibid.* The Government is not required to offer any evidence on the question of innocent ownership or other potential defenses a claimant might have. See, *e.g., Austin* v. *United States*, 509 U. S. ___ (1993) (holding that forfeitures under 21 U. S. C. §§881(a)(4) and (a)(7) are subject to the limitations of the Excessive Fines Clause). Nor would that inquiry, in the *ex parte* stage, suffice to protect the innocent owner's interests. "[F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . . No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 170–172 (1951) (Frankfurter, J., concurring) (footnotes omitted).

The purpose of an adversary hearing is to ensure the requisite neutrality that must inform all governmental decisionmaking. That protection is of particular importance here, where the Government has a direct pecuniary interest in the outcome of the proceeding.[2] See *Harmelin* v. *Michigan*, 501 U. S. ___,

[2]The extent of the Government's financial stake in drug

___, n. 9 (1991) (opinion of SCALIA, J.) (slip op., at 19, n. 9) ("[I]t makes sense to scrutinize governmental action more closely when the State stands to benefit"). Moreover, the availability of a postseizure hearing may be no recompense for losses caused by erroneous seizure. Given the congested civil dockets in federal courts, a claimant may not receive an adversary hearing until many months after the seizure. And even if the ultimate judicial decision is that the claimant was an innocent owner, or that the Government lacked probable cause, this determination, coming months after the seizure, "would not cure the temporary deprivation that an earlier hearing might have prevented." *Doehr, supra*, at ___ (slip op., at 12).

This brings us to the third consideration under *Mathews*, "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U. S., at 335. The governmental interest we consider here is not some general interest in forfeiting property but the specific interest in seizing real property before the forfeiture hearing. The question in the civil forfeiture context is

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forfeiture is apparent from a 1990 memo, in which the Attorney General urged United States Attorneys to increase the volume of forfeitures in order to meet the Department of Justice's annual budget target:

"We must significantly increase production to reach our budget target.

". . . Failure to achieve the $470 million projection would expose the Department's forfeiture program to criticism and undermine confidence in our budget projections. Every effort must be made to increase forfeiture income during the remaining three months of [fiscal year] 1990." Executive Office for United States Attorneys, U. S. Dept. of Justice, 38 United States Attorney's Bulletin 180 (1990).

whether *ex parte* seizure is justified by a pressing need for prompt action. See *Fuentes*, 407 U. S., at 91. We find no pressing need here.

This is apparent by comparison to *Calero-Toledo*, where the Government's interest in immediate seizure of a yacht subject to civil forfeiture justified dispensing with the usual requirement of prior notice and hearing. Two essential considerations informed our ruling in that case: first, immediate seizure was necessary to establish the court's jurisdiction over the property, 416 U. S., at 679, and second, the yacht might have disappeared had the Government given advance warning of the forfeiture action. *Ibid*. See also *United States* v. *Von Neumann*, 474 U. S. 242, 251 (1986) (no preseizure hearing is required when customs officials seize an automobile at the border). Neither of these factors is present when the target of forfeiture is real property.

Because real property cannot abscond, the court's jurisdiction can be preserved without prior seizure. It is true that seizure of the res has long been considered a prerequisite to the initiation of *in rem* forfeiture proceedings. See *Republic Nat. Bank of Miami* v. *United States*, 506 U. S. ___, ___ (1992); *United States* v. *One Assortment of 89 Firearms*, 465 U. S. 354, 363 (1984). This rule had its origins in the Court's early admiralty cases, which involved the forfeiture of vessels and other movable personal property. See *Taylor* v. *Carryl*, 20 How. 583, 599 (1858); *The Brig Ann*, 9 Cranch 289 (1815); *Keene* v. *United States*, 5 Cranch 304, 310 (1809). Justice Story, writing for the Court in *The Brig Ann*, explained the justification for the rule as one of fixing and preserving jurisdiction: "[B]efore judicial cognizance can attach upon a forfeiture *in rem*, . . . there must be a seizure; for until seizure it is impossible to ascertain what is the competent forum." 9 Cranch, at 291. But when the res is real property, rather than personal goods, the appropriate judicial forum may be

determined without actual seizure.

As *The Brig Ann* held, all that is necessary "[i]n order to institute and perfect proceedings *in rem*, [is] that the thing should be actually or constructively within the reach of the Court." *Ibid*. And as we noted last Term, "[f]airly read, *The Brig Ann* simply restates the rule that the court must have actual or constructive control of the res when an *in rem* forfeiture suit is initiated." *Republic Nat. Bank, supra,* at ___ (slip op., at 7). In the case of real property, the res may be brought within the reach of the court simply by posting notice on the property and leaving a copy of the process with the occupant. In fact, the rules which govern forfeiture proceedings under §881 already permit process to be executed on real property without physical seizure:

> "If the character or situation of the property is such that the taking of actual possession is impracticable, the marshal or other person executing the process shall affix a copy thereof to the property in a conspicuous place and leave a copy of the complaint and process with the person having possession or the person's agent." Rule E(4)(b), Supplemental Rules for Certain Admiralty and Maritime Claims.

See also *United States* v. *TWP 17 R 4, Certain Real Property in Maine*, 970 F. 2d 984, 986, and n. 4 (CA1 1992).

Nor is the *ex parte* seizure of real property necessary to accomplish the statutory purpose of §881(a)(7). The Government's legitimate interests at the inception of forfeiture proceedings are to ensure that the property not be sold, destroyed, or used for further illegal activity prior to the forfeiture judgment. These legitimate interests can be secured without seizing the subject property.

Sale of the property can be prevented by filing a notice of *lis pendens* as authorized by state law when the forfeiture proceedings commence. 28 U. S. C.

§1964; and see Haw. Rev. Stat. §634–51 (1985) (*lis pendens* provision). If there is evidence, in a particular case, that an owner is likely to destroy his property when advised of the pending action, the Government may obtain an *ex parte* restraining order, or other appropriate relief, upon a proper showing in district court. See Fed. Rule Civ. Proc. 65; *United States* v. *Premises and Real Property at 4492 South Livonia Road*, 889 F. 2d 1258, 1265 (CA2 1989). The Government's policy of leaving occupants in possession of real property under an occupancy agreement pending the final forfeiture ruling demonstrates that there is no serious concern about destruction in the ordinary case. See Brief for United States 13, n. 6 (citing Directive No. 90–10 (Oct. 9, 1990), Executive Office for Asset Forfeiture, Office of Deputy Attorney General). Finally, the Government can forestall further illegal activity with search and arrest warrants obtained in the ordinary course.

In the usual case, the Government thus has various means, short of seizure, to protect its legitimate interests in forfeitable real property. There is no reason to take the additional step of asserting control over the property without first affording notice and an adversary hearing.

Requiring the Government to postpone seizure until after an adversary hearing creates no significant administrative burden. A claimant is already entitled to an adversary hearing before a final judgment of forfeiture. No extra hearing would be required in the typical case, since the Government can wait until after the forfeiture judgment to seize the property. From an administrative standpoint it makes little difference whether that hearing is held before or after the seizure. And any harm that results from delay is minimal in comparison to the injury occasioned by erroneous seizure.

It is true that, in cases decided over a century ago, we permitted the *ex parte* seizure of real property when the Government was collecting debts or revenue. See, *e.g., Springer* v. *United States*, 102 U. S. 586, 593–594 (1881); *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272 (1856). Without revisiting these cases, it suffices to say that their apparent rationale—like that for allowing summary seizures during wartime, see *Stoehr* v. *Wallace*, 255 U. S. 239 (1921); *Bowles* v. *Willingham*, 321 U. S. 503 (1944), and seizures of contaminated food, see *North American Cold Storage Co.* v. *Chicago*, 211 U. S. 306 (1908)—was one of executive urgency. "The prompt payment of taxes," we noted, "may be vital to the existence of a government." *Springer*, *supra*, at 594. See also *G. M. Leasing Corp.* v. *United States*, 429 U. S. 338, 352, n. 18 (1977) ("The rationale underlying [the revenue] decisions, of course, is that the very existence of government depends upon the prompt collection of the revenues").

A like rationale justified the *ex parte* seizure of tax-delinquent distilleries in the late nineteenth century, see, *e.g., United States* v. *Stowell*, 133 U. S. 1 (1890); *Dobbins's Distillery* v. *United States*, 96 U. S. 395 (1878), since before passage of the Sixteenth Amendment, the Federal Government relied heavily on liquor, customs, and tobacco taxes to generate operating revenues. In 1902, for example, nearly 75 percent of total federal revenues—$479 million out of a total of $653 million—was raised from taxes on liquor, customs, and tobacco. See U. S. Bureau of Census, Historical Statistics of the United States, Colonial Times to the Present 1122 (1976).

The federal income tax code adopted in the first quarter of this century, however, afforded the taxpayer notice and an opportunity to be heard by the Board of Tax Appeals before the Government could seize property for nonpayment of taxes. See

Revenue Act of 1921, 42 Stat. 265–266; Revenue Act of 1924, 43 Stat. 297. In *Phillips* v. *Commissioner*, 283 U. S. 589 (1931), the Court relied upon the availability, and adequacy, of these preseizure administrative procedures in holding that no judicial hearing was required prior to the seizure of property. *Id*., at 597–599 (citing Act of February 26, 1926, ch. 27, §274(a), 44 Stat. 9, 55; Act of May 29, 1928, ch. 852, §§272(a), 601, 45 Stat. 791, 852, 872). These constraints on the Commissioner could be overridden, but only when the Commissioner made a determination that a jeopardy assessment was necessary. 283 U. S., at 598. Writing for a unanimous Court, Justice Brandeis explained that under the tax laws "[f]ormal notice of the tax liability is thus given; the Commissioner is required to answer; and there is a complete hearing *de novo* . . . . These provisions amply protect the [taxpayer] against improper administrative action." *Id*., at 598–599; see also *Commissioner* v. *Shapiro*, 424 U. S. 614, 631 (1976) ("[In] the *Phillips* case . . . the taxpayer's assets could not have been taken or frozen . . . until he had either had, or waived his right to, a full and final adjudication of his tax liability before the Tax Court (then the Board of Tax Appeals)").

Similar provisions remain in force today. The current Internal Revenue Code prohibits the Government from levying upon a deficient taxpayer's property without first affording the taxpayer notice and an opportunity for a hearing, unless exigent circumstances indicate that delay will jeopardize the collection of taxes due. See 26 U. S. C. §§6212, 6213, 6851, 6861.

Just as the urgencies that justified summary seizure of property in the 19th century had dissipated by the time of *Phillips*, neither is there a plausible claim of urgency today to justify the summary seizure of real property under §881(a)(7). Although the Government relies to some extent on forfeitures as a means of de-

fraying law enforcement expenses, it does not, and we think could not, justify the prehearing seizure of forfeitable real property as necessary for the protection of its revenues.

The constitutional limitations we enforce in this case apply to real property in general, not simply to residences. That said, the case before us well illustrates an essential principle: Individual freedom finds tangible expression in property rights. At stake in this and many other forfeiture cases are the security and privacy of the home and those who take shelter within it.

Finally, the suggestion that this one petitioner must lose because his conviction was known at the time of seizure, and because he raises an as applied challenge to the statute, founders on a bedrock proposition: fair procedures are not confined to the innocent. The question before us is the legality of the seizure, not the strength of the Government's case.

In sum, based upon the importance of the private interests at risk and the absence of countervailing Government needs, we hold that the seizure of real property under §881(a)(7) is not one of those extraordinary instances that justify the postponement of notice and hearing. Unless exigent circumstances are present, the Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture.[3]

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[3]We do not address what sort of procedures are required for preforfeiture seizures of real property in the context of criminal forfeiture. See, *e.g.*, 21 U. S. C. §853; 18 U. S. C. §1963 (1988 ed. and Supp. IV). We note, however, that the federal drug laws now permit seizure before entry of a criminal forfeiture judgment only where the Government persuades a district court that there is probable cause to

To establish exigent circumstances, the Government must show that less restrictive measures—*i.e.,* a *lis pendens*, restraining order, or bond—would not suffice to protect the Government's interests in preventing the sale, destruction, or continued unlawful use of the real property. We agree with the Court of Appeals that no showing of exigent circumstances has been made in this case, and we affirm its ruling that the *ex parte* seizure of Good's real property violated due process.

We turn now to the question whether a court must dismiss a forfeiture action that the Government filed within the statute of limitations, but without complying with certain other statutory timing directives.

Section 881(d) of Title 21 incorporates the "provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws." The customs laws in turn set forth various timing requirements. Section 1621 of Title 19 contains the statute of limitations: "No suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered." All agree that the Government filed its action within the statutory period.

The customs laws also contain a series of internal requirements relating to the timing of forfeitures. Section 1602 of Title 19 requires that a customs agent "report immediately" to a customs officer every seizure for violation of the customs laws, and every

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believe that a protective order "may not be sufficient to assure the availability of the property for forfeiture." 21 U. S. C. §853(f).

violation of the customs laws. Section 1603 requires that the customs officer "report promptly" such seizures or violations to the United States attorney. And §1604 requires the Attorney General "forthwith to cause the proper proceedings to be commenced" if it appears probable that any fine, penalty, or forfeiture has been incurred. The Court of Appeals held, over a dissent, that failure to comply with these internal timing requirements mandates dismissal of the forfeiture action. We disagree.

We have long recognized that "many statutory requisitions intended for the guide of officers in the conduct of business devolved upon them . . . do not limit their power or render its exercise in disregard of the requisitions ineffectual." *French* v. *Edwards,* 13 Wall. 506, 511 (1872). We have held that if a statute does not specify a consequence for noncompliance with statutory timing provisions, the federal courts will not in the ordinary course impose their own coercive sanction. See *United States* v. *Montalvo-Murillo*, 495 U. S. 711, 717–721 (1990); *Brock* v. *Pierce County*, 476 U. S. 253, 259–262 (1986); see also *St. Regis Mohawk Tribe* v. *Brock*, 769 F. 2d 37, 41 (CA2 1985) (Friendly, J.).

In *Montalvo-Murillo*, for example, we considered the Bail Reform Act of 1984, which requires an "immediat[e]" hearing upon a pretrial detainee's "first appearance before the judicial officer." 18 U. S. C. §3142(f). Because "[n]either the timing requirements nor any other part of the Act [could] be read to require, or even suggest, that a timing error must result in release of a person who should otherwise be detained," we held that the federal courts could not release a person pending trial solely because the hearing had not been held "immediately." 495 U. S., at 716–717. We stated that "[t]here is no presumption or general rule that for every duty imposed upon the court or the Government and its prosecutors there must exist some corollary punitive

sanction for departures or omissions, even if negligent." *Id.*, at 717 (citing *French*, *supra*, at 511). To the contrary, we stated that "[w]e do not agree that we should, or can, invent a remedy to satisfy some perceived need to coerce the courts and the Government into complying with the statutory time limits." 495 U. S., at 721.

Similarly, in *Brock*, *supra*, we considered a statute requiring that the Secretary of Labor begin an investigation within 120 days of receiving information about the misuse of federal funds. The respondent there argued that failure to act within the specified time period divested the Secretary of authority to investigate a claim after the time limit had passed. We rejected that contention, relying on the fact that the statute did not specify a consequence for a failure to comply with the timing provision. *Id.,* at 258–262.

Under our precedents, the failure of Congress to specify a consequence for noncompliance with the timing requirements of 19 U. S. C. §§1602–1604 implies that Congress intended the responsible officials administering the Act to have discretion to determine what disciplinary measures are appropriate when their subordinates fail to discharge their statutory duties. Examination of the structure and history of the internal timing provisions at issue in this case supports the conclusion that the courts should not dismiss a forfeiture action for noncompliance. Because §1621 contains a statute of limitations—the usual legal protection against stale claims —we doubt Congress intended to require dismissal of a forfeiture action for noncompliance with the internal timing requirements of §§1602–1604. Cf. *United States* v. *$8,850*, 461 U. S., at 563, n. 13.

Statutes requiring customs officials to proceed with dispatch have existed at least since 1799. See Act of Mar. 2, 1799, §89, 1 Stat. 695–696. These directives help to ensure that the Government is prompt in obtaining revenue from forfeited property. It would

make little sense to interpret directives designed to ensure the expeditious collection of revenues in a way that renders the Government unable, in certain circumstances, to obtain its revenues at all.

We hold that courts may not dismiss a forfeiture action filed within the five-year statute of limitations for noncompliance with the internal timing requirements of §§1602–1604. The Government filed the action in this case within the five-year statute of limitations, and that sufficed to make it timely. We reverse the contrary holding of the Court of Appeals.

The case is remanded for further proceedings consistent with this opinion.

It is so ordered.