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]

CHIEF JUSTICE REHNQUIST, with whom JUSTICE SCALIA joins, and JUSTICE O'CONNOR joins in Parts II and III, concurring in part and dissenting in part.

I concur in Parts I and III of the Court's opinion and dissent with respect to Part II. The Court today departs from longstanding historical precedent and concludes that the *ex parte* warrant requirement under the Fourth Amendment fails to afford adequate due process protection to property owners who have been convicted of a crime that renders their real property susceptible to civil forfeiture under 21 U. S. C. §881(a)(7). It reaches this conclusion although no such adversary hearing is required to deprive a criminal defendant of his liberty before trial. And its reasoning casts doubt upon long settled law relating to seizure of property to enforce income tax liability. I dissent from this ill-considered and disruptive decision.

The Court applies the three-factor balancing test for evaluating procedural due process claims set out in *Mathews* v. *Eldridge*, 424 U. S. 319 (1976), to reach its unprecedented holding. I reject the majority's expansive application of *Mathews*. *Mathews* involved a due process challenge to the adequacy of administrative procedures established for the purpose of terminating Social Security disability

benefits, and the *Mathews* balancing test was first conceived to address due process claims arising in the context of modern administrative law. No historical practices existed in this context for the Court to consider. 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. See *Medina* v. *California*, 505 U. S. ___ (1992) (holding that the Due Process Clause has limited operation beyond the specific guarantees enumerated in the Bill of Rights). More importantly, the Court does not work on a clean slate in the civil forfeiture context involved here. It has long sanctioned summary proceedings in civil forfeitures. See, *e. g.*, *Dobbins's Distillery* v. *United States*, 96 U. S. 395 (1878) (upholding seizure of a distillery by executive officers based on *ex parte warrant*); and *G. M. Leasing Corp.* v. *United States*, 429 U. S. 338 (1977) (upholding warrantless automobile seizures).

The Court's fixation on *Mathews* sharply conflicts with both historical practice and the specific textual source of the Fourth Amendment's "reasonableness" inquiry. The Fourth Amendment strikes a balance between the people's security in their persons, houses, papers, and effects and the public interest in effecting searches and seizures for law enforcement purposes. *Zurcher* v. *Stanford Daily*, 436 U. S. 547, 559 (1978); see also *Maryland* v. *Buie*, 494 U. S. 325, 331 (1990); and *Skinner* v. *Railway Labor Executives*' *Assn.*, 489 U. S. 602, 619 (1989). Compliance with the standards and procedures prescribed by the Fourth Amendment constitutes all the "process" that is "due" to respondent Good under the Fifth Amendment in the forfeiture context. We made this very point in *Gerstein* v. *Pugh*, 420 U. S. 103 (1975), with respect to procedures for detaining a criminal defendant pending trial:

> "The historical basis of the probable cause requirement is quite different from the relatively recent application of variable procedural due process in debtor-creditor disputes and termination of government-created benefits. The Fourth 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, including the detention of suspects pending trial." *Id.* at 125, n. 27 (emphasis added).

The *Gerstein* Court went on to decide that while there must be a determination of probable cause by a neutral magistrate in order to detain an arrested suspect prior to trial, such a determination could be made in a nonadversarial proceeding, based on

hearsay and written testimony. *Id.*, at 120. It is paradoxical indeed to hold that a criminal defendant can be temporarily deprived of liberty on the basis of an *ex parte* probable cause determination, yet respondent Good cannot be temporarily deprived of property on the same basis. As we said in *United States* v. *Monsanto*, 491 U. S. 600, 615–616 (1989):

> "[I]t would be odd to conclude that the Government may not restrain property, such as the home and apartment in respondent's possession, based on a finding of probable cause, when we have held that (under appropriate circumstances), the Government may restrain *persons* where there is a finding of probable cause to believe that the accused has committed a serious offense."

Similarly, in *Graham* v. *Connor*, 490 U. S. 386, 394–395 (1989), the Court faced the question of what constitutional standard governs a free citizen's claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other "seizure" of his person. We held that the Fourth Amendment, rather than the Due Process Clause, provides the source of any specific limitations on the use of force in seizing a person: "Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of `substantive due process' must be the guide for analyzing these claims." *Id.*, at 395. The "explicit textual source of constitutional protection" found in the Fourth Amendment should also guide the analysis of respondent Good's claim of a right to additional procedural measures in civil forfeitures.

The Court dismisses the holdings of *Gerstein* and *Graham* as inapposite because they concern "the arrest or detention of criminal suspects." *Ante* at 6. But we have never held that the Fourth Amendment is limited only to criminal proceedings. In *Soldal* v. *Cook County*, 506 U. S. ___, ___ (1992), we expressly stated that the Fourth Amendment "applies in the civil context as well." Our historical treatment of civil forfeiture procedures underscores the notion that the Fourth Amendment specifically governs the process afforded in the civil forfeiture context, and it is too late in the day to question its exclusive application. As we decided in *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663 (1974), there is no need to look beyond the Fourth Amendment in civil forfeitures proceedings involving the Government because *ex parte* seizures are "too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced." *Id.*, at 686 (quoting *J. W. Goldsmith, Jr.-Grant Co.* v. *United States*, 254 U. S. 505, 510–511 (1921) (forfeiture not a denial of procedural due process despite the absence of preseizure notice and opportunity for a hearing)).

The Court acknowledges the long history of *ex parte* seizures of real property through civil forfeiture, see *Phillips* v. *Commissioner*, 283 U. S. 589 (1931); *Springer* v. *United States*, 102 U. S. 586 (1881); *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272 (1856); *United States* v. *Stowell*, 133 U. S. 1 (1890); and *Dobbins's Distillery* v. *United States*, 96 U. S. 395 (1878), and says "[w]ithout revisiting these cases," *ante*, at 16,—whatever that means—that they appear to depend on the need for prompt payment of taxes. The Court goes on to note that the passage of the Sixteenth Amendment alleviated the Government's reliance on liquor, customs, and tobacco taxes as sources of operating revenue. Whatever the merits of this novel distinction, it fails entirely to distinguish the leading case in

the field, *Phillips* v. *Commissioner*, *supra*, a unanimous opinion authored by Justice Brandeis. That case dealt with the enforcement of income tax liability, which the Court says has replaced earlier forms of taxation as the principle source of governmental revenue. There the Court said:

> "The right of the United States to collect its internal revenue by summary administrative proceedings has long been settled . . . [w]here, as here, adequate opportunity is afforded for a later judicial determination of the legal rights, summary proceedings to secure prompt performance of pecuniary obligations to the government have been consistently sustained." 283 U. S., at 595 (footnote omitted).
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> "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate." *Id.*, at 596–597.

Thus today's decision does not merely discard established precedence regarding excise taxes, but deals at least a glancing blow to the authority of the Govern-
ment to collect income tax delinquencies by summary proceedings.

The Court attempts to justify the result it reaches by expansive readings of *Fuentes* v. *Shevin*, 407 U. S. 67 (1972), and *Connecticut* v. *Doehr*, 500 U. S. ___ (1991). In *Fuentes*, the Court struck down state replevin procedures, finding that they served no important state interest that might justify the summary proceedings. 407 U. S., at 96. Specifically, the Court noted that the tension between the private buyer's use of the property pending final judgment

and the private seller's interest in preventing further use and deterioration of his security tipped the balance in favor of a prior hearing in certain replevin situations. "[The provisions] allow summary seizure of a person's possessions when no more than private gain is directly at stake." *Id.*, at 92. Cf. *Mitchell* v. *W. T. Grant Co.*, 416 U. S. 600 (1974) (upholding Louisiana sequestration statute that provided immediate postdeprivation hearing along with the option of damages).

The Court in *Fuentes* also was careful to point out the limited situations in which seizure before hearing was constitutionally permissible, and included among them "summary seizure of property to collect the internal revenue of the United States." 407 U. S., at 91–92 (citing *Phillips* v. *Commissioner*, *supra*). Certainly the present seizure is analogous, and it is therefore quite inaccurate to suggest that *Fuentes* is authority for the Court's holding in the present case.

Likewise in *Doehr*, the Court struck down a state statute authorizing prejudgment attachment of real estate without prior notice or hearing due to potential bias of the self-interested private party seeking attachment. The Court noted that the statute enables one of the private parties to "make use of state procedures with the overt, significant assistance of state officials," that involve state action "substantial enough to implicate the Due Process Clause." *Connecticut* v. *Doehr*, *supra*, at ___ (quoting *Tulsa Professional Collection Services, Inc.* v. *Pope*, 485 U. S. 478, 486 (1988)). The Court concluded that, absent exigent circumstances, the private party's interest in attaching the property did not justify the burdening of the private property owner's rights without a hearing to determine the likelihood of recovery. 500 U. S., at ___. In the present case, however, it is not a private party but the Government itself which is seizing the property.

The Court's effort to distinguish *Calero-Toledo* v.

Pearson Yacht Leasing Co., 416 U. S. 663 (1974), is similarly unpersuasive. The Court says that "[c]entral 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 advanced warning of confiscation were given.'" *Id.*, at 679. *Ante*, at 8. But this is one of the *three* reasons given by the Court for upholding the summary forfeiture in that case: the other two —"fostering the public interest and preventing continued illicit use of the property," and the fact that the "seizure is not initiated by self-interested private parties; rather, Commonwealth officials determine whether seizure is appropriate . . . ," 416 U. S., at 679, are both met in the present case. And while not capable of being moved or concealed, the real property at issue here surely could be destroyed or damaged. Several dwellings are located on the property that was seized from respondent Good, and these buildings could easily be destroyed or damaged to prevent them from falling into the hands of the Government if prior notice were required.

The government interests found decisive in *Calero-Toledo* are equally present here: the seizure of respondent Good's real property serves important governmental purposes in combatting illegal drugs; a preseizure notice might frustrate this statutory purpose by permitting respondent Good to destroy or otherwise damage the buildings on the property; and Government officials made the seizure rather than self-interested private parties seeking to gain from the seizure. Although the Court has found some owners entitled to an immediate postseizure administrative hearing, see, *e. g.*, *Mitchell* v. *W. T. Grant Co.*, *supra*, not until the majority adopted the Court of Appeals ruling have we held that the Constitution demanded notice and a *preseizure* hearing to satisfy due process requirements in civil

forfeiture cases.[1]

This is not to say that the Government's use of civil forfeiture statutes to seize real property in drug cases may not cause hardship to innocent individuals. But I have grave doubts whether the Court's decision in this case will do much to alleviate those hardships, and I am confident that whatever social benefits might flow from the decision are more than offset by the damage to settled principles of constitutional law which are inflicted to secure these perceived social benefits. I would reverse the decision of the Court of Appeals *in toto*.

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[1]Ironically, courts and commentators have debated whether even a *warrant* should be required for civil forfeiture seizures, not whether *notice* and a *preseizure hearing* should apply. See, *e. g.*, Nelson, Should the Ranch Go Free Because the Constable Blundered? Gaining Compliance with Search and Seizure Standards in the Age of Asset Forfeiture, 80 Calif. L. Rev. 1309 (1992); Ahuja, Civil Forfeiture, Warrantless Property Seizures, and the Fourth Amendment, 5 Yale L. & Policy Rev. 428 (1987); and Comment, Forfeiture, Seizures and the Warrant Requirement, 48 U. Chi. L. Rev. 960 (1981). Forcing the Government to notify the affected property owners and go through a preseizure hearing in civil forfeiture cases must have seemed beyond the pale to these commentators.