

**State of Kansas, ex rel.**  
Geary County Sheriff's Department,

Plaintiff,

v.

**One 2007 Chevrolet Tahoe,**  
VIN #1GNFK13067R375829

Defendant.

Case No. 2023-CV-000129  
GESO 23-8840

Motion for Probable Validity Hearing;  
Memorandum in Support; Exhibits A-C;  
Certificate of Service.

Hon. Benjamin Sexton (D01)

Oral Argument Requested

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**Motion for Probable Validity Hearing**

Dewonna Goodridge seeks a prompt opportunity to test the government's likelihood of success on the merits of the forfeiture action—or what the United States Supreme Court has termed the “probable validity” of continued deprivation of her property during the pendency of legal proceedings.

Without a probable validity hearing, Ms. Goodridge's rights to procedural due process and to have justice administered without delay will be violated.

Ms. Goodridge asks this Court to schedule—at its earliest possible convenience—a probable validity hearing and an expedited briefing schedule to determine whether grounds exist for the continued seizure of Ms. Goodridge's 2007 Chevrolet Tahoe.

This motion is brought pursuant to this Court's inherent authority over property held in *custodia legis*, the Due Process Clause of the Fourteenth Amendments to the U.S. Constitution, and Section 18 of the Kansas Constitution Bill of Rights.

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Dated: Feb. 1, 2024.

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In the District Court  
of  
Geary County, Kansas

**State of Kansas, ex rel.**  
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Memorandum in Support of Motion for  
Probable Validity Hearing; Certificate of  
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**Memorandum in Support of Motion for Probable Validity Hearing**

Summary of Argument

Even though Dewonna Goodridge is not accused of any crime, the Geary County Sheriff's Office seized her car and has held it since June 29, 2023. Ms. Goodridge has a procedural due process right, under both the federal and state constitutions, to a meaningful hearing, at a meaningful time, where justice will be administered without delay. Ms. Goodridge is constitutionally entitled to a prompt, post-seizure probable validity hearing to test the government's likelihood of success on the merits of the forfeiture action and any other potential defenses. This Court possesses the inherent authority to hold a probable validity hearing and to issue orders determining the validity of the ongoing seizure of property under its jurisdiction.

## Facts<sup>1</sup>

Ms. Goodridge is the sole owner of the 2007 Chevrolet Tahoe that the government seized. *See* Petition for Recognition of Exemption (hereinafter “Petition”) ¶¶ 3, 6; Affidavit of Deputy Cayla Da Giau (hereinafter “Da Giau Affidavit”) at 4. Ms. Goodridge purchased the 2007 Chevrolet Tahoe, in good faith, for value, in 2019 with a car loan and a gift from a family member who is not the alleged perpetrator of the alleged crime. Petition ¶ 5.

The 2007 Chevrolet Tahoe is Ms. Goodridge’s only reliable method of traveling out of town or over any long distance. Petition ¶ 12. At times, Ms. Goodridge has authorized her son, Antwaan Dwayne Williams, to use the 2007 Chevrolet Tahoe for the lawful purpose of commuting to work and taking his children to sporting events. Petition ¶ 8. Mr. Williams has no ownership interest in the 2007 Chevrolet Tahoe, Petition ¶ 3, and does not possess power of attorney related to the car or authority to convey the car to any other individual, Petition ¶ 8.

On June 29, 2023, Geary County Sheriff Deputy Cayla Da Giau (“Da Giau” or “Deputy”), allegedly observed Mr. Williams driving the Tahoe. Da Giau Affidavit at 1. The Deputy alleges that she observed Mr. Williams commit traffic violations and then failed to yield when she attempted a traffic stop. *Id.* at 2. Mr. Williams stopped the car in a parking lot at 2031 S. Spring Valley Road, Junction City, Kansas, at which point Deputy Da Giau took Mr. Williams into custody. *Id.* at 2. Deputy Da Giau alleges that a drug dog alerted to the 2007 Chevrolet Tahoe and that she found marijuana “shake” in the car, but, according to her sworn affidavit, didn’t collect it, or any other evidence, for that matter. *Id.* at 3-4.

Ms. Goodridge wasn’t in the vehicle at the time, but she was at the parking lot at 2031 S. Spring Valley Road where Mr. Williams stopped the vehicle. *Id.* at 2. Although Deputy Da

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<sup>1</sup> Many of the alleged facts come from Deputy Da Giau’s Affidavit in Support of the Notice of Pending Forfeiture. Ms. Goodridge does not admit to any of these alleged facts and will file a Motion to Suppress the evidence from the illegal traffic stop and search of the vehicle. Further, Ms. Goodridge has sought discovery from the Government in this matter, including the body camera and dash camera footage from the incident, but the Government has failed to provide any discovery on the matter.

Giau knew at the time that Ms. Goodridge was the lawful owner of the vehicle, *id.* at 4, and she did not describe any probable cause to believe that Ms. Goodridge had committed any crime, Deputy Da Giau still seized Ms. Goodridge’s car. *Id.* at 4.

On August 16, 2023—48 days after the seizure—the government filed a Notice of Pending Forfeiture. The government claimed the 2007 Chevrolet Tahoe represented the proceeds of illegal drug transactions, or was used, or intended to be used, to facilitate drug transactions. Notice of Pending Forfeiture at 1.

On October 4, 2023, Ms. Goodridge filed a timely Petition for Recognition of Exemption. Ms. Goodridge stated the 2007 Chevrolet Tahoe was exempt from forfeiture under KSA § 60-4106(a)(3)(A), because she did not know and could not reasonably have known about the alleged criminal acts; and further, that under KSA § 60-4106(c), the forfeiture would have been grossly disproportionate to the nature and severity of her conduct. Petition at ¶¶ 11, 13.

The government’s response to the Petition for Recognition of Exemption was due on November 14, 2023. The government still hasn’t responded to Ms. Goodridge’s Petition for Recognition of Exemption.

The 2007 Chevrolet Tahoe remains in the government’s possession seven months after it was seized.

### **Argument**

The “disposition of property held in *custodia legis*,” like here, “is dependent upon certain minimum due process requirements having been met.” *In re Two (2) Bose Speakers, Serial No. 121098*, 17 Kan. App. 2d 179, 182 (1992). The district court has “inherent power to make an appropriate order” relating to the property in *custodia legis*, *State v. Gunzelman*, 200 Kan. 12, 14 (1967), “and retains such jurisdiction to restore it to the rightful owner.” *In re One 1993 Chevrolet Corsica, VIN #1G1LT5345PY166194*, 268 Kan. 759, 762 (2000); *see also State v. Markovich*, 258 P.3d 388, 2011 WL 3795544 (Kan. Ct. App. Aug. 26, 2011). “At a minimum,” to comply with the Federal and Kansas constitutions, forfeiture procedures must provide

“notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *State v. Durst*, 235 Kan. 62, 66 (1984).

In the forfeiture context, the “comprehensive due process concept” requires an “early opportunity to test the [government’s] likelihood of success on the merits of the forfeiture action, or what the Supreme Court has termed the ‘probable validity’ of continued deprivation of a claimant’s property during the pendency of legal proceedings.” *Krimstock v. Kelly*, 306 F.3d 40, 48 (2d Cir. 2002) (Sotomayor, J.). *See also Comm’r v. Shapiro*, 424 U.S. 614, 629 (1976); *Ingram v. Wayne Cnty., Michigan*, 81 F.4th 603, 620 (6th Cir. 2023) (holding that owners of seized vehicles must be given a prompt probable validity hearing).

In both *Krimstock* and *Ingram*, the courts examined the post-seizure process that was due to owners of vehicles under civil forfeiture statutes. In both, the courts held that forcing vehicle owners to wait until the end of the civil forfeiture proceedings—which often takes months or years—to obtain the return of their vehicle violated the Due Process Clause; and therefore, property owners were entitled to prompt “probable validity” hearings to determine the continued seizure of the vehicles during the pendency of the forfeiture suit.

“[A]t a minimum,” *Krimstock* held, a probable validity “hearing must enable claimants to test ... either probable cause for the seizure or post-seizure evidence supporting the probable validity of continued deprivation.” 306 F.3d at 69. While there may be overlap between probable cause and probable validity, the two terms are not necessarily coextensive. *Id.* at 49. In addition to analyzing probable cause, the court at a probable validity hearing must also consider, among other things: (1) the government’s “likelihood of success on the merits of the forfeiture action,” *id.* at 48; (2) an innocent owner defense, *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 55 (1993); *Krimstock*, 306 F.3d at 49; (3) an excessive fines defense, *James Daniel Good*, 510 U.S. at 55; and (4) any “other potential defenses a claimant might have,” *id.* *See also* Gregory L. Acquaviva & Kevin M. McDonough, *How to Win A Krimstock Hearing: Litigating Vehicle Retention Proceedings Before New York’s Office of Administrative Trials and Hearings*, 18 Widener L.J. 23, 46 (2008). “At this hearing, the burden of proof will be on

the government to show the probable validity of continued deprivation.” *Ingram*, 81 F.4th at 622 (quoting *Krimstock*, 306 F.3d at 69).

Under both the federal and state constitutions, Ms. Goodridge must be afforded “an opportunity to be heard at a meaningful time and in a meaningful manner,” *Durst*, 235 Kan. at 66; *Creecy v. Kansas Dep't of Revenue*, 310 Kan. 454, 462 (2019) (“A civil litigant’s right to due process is grounded in the Fifth and Fourteenth Amendments of the United States Constitution and Section 18 of the Kansas Constitution Bill of Rights”). But the Kansas Standard Asset Seizure and Forfeiture Act, KSA § 60-4101, *et seq.*, (“the Act”) fails to provide Ms. Goodridge with such an opportunity. When property is seized pursuant to the Act, the government is given 90 days to file a Notice of Pending Forfeiture. KSA § 60-4109(a)(1). The property owner may then file a Petition for Recognition of Exemption. KSA §§ 60-4106, 60-4110(a)(2). The government is then given 180 days after the Notice of Pending Forfeiture (270 days after the date of seizure) before it is required to file a judicial forfeiture action in the district court. KSA § 60-4109(a)(2). Only then will the case begin and proceed according to the rules of civil procedure. KSA § 60-4112(p). That does not satisfy the three-part balancing test for procedural due process cases, where the court must weigh: (1) the individual interest at stake; (2) the risk of an erroneous deprivation of the interest; and (3) the Government’s interest in the procedures used. *Creecy*, 310 Kan. at 462 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

#### Individual Interest

First, Ms. Goodridge’s individual interest is incredibly high. The 2007 Chevrolet Tahoe is her only reliable means of transportation. The seizure of the car causes great harm to Ms. Goodridge and her family. After all, “[a]utomobiles 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, [and is] often his or her most valuable possession.” *Krimstock*, 306 F.3d at 61 (cleaned up); *see also Ingram*, 81 F.4th at 619 (same); *James Daniel Good*, 510 U.S. at 61 (“Individual freedom finds tangible expression in property rights.”).

Moreover, Ms. Goodridge's right to possess property is a fundamental and inalienable natural right protected by Section 1 of the Kansas Constitution Bill of Rights and the Fourteenth Amendment. The Fourth Amendment and Section 15 guarantee that the fundamental right to property will be free from unreasonable seizures.<sup>2</sup> *See Hodes & Nausser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 689 (2019) (Biles, J., concurring) (citing *State v. Ryce*, 303 Kan. 899, 957 (2016)); Morgan Cloud, *Property is Privacy: Locke and Brandeis in the Twenty-First Century*, 55 Am. Crim. L. Rev. 37, 37 (2018); William Cuddihy, *The Fourth Amendment: Origins and Original Meaning 602-1791*, p. 454 (2009). The right to possess property is of the highest order and this first prong weighs heavily against the government.

#### Erroneous Deprivation

Second, the risk of an erroneous deprivation of seized property is high. Given the government's incredibly low burden of proof under Kansas' forfeiture act, the risk of an erroneous deprivation of the fundamental right to property is constitutionally unacceptable. *See Amelia Selph, Kansas Standard Asset Seizure and Forfeiture Act: An Ancient and Failing Approach*, 66 U. Kan. L. Rev. 717 (2018); Elyssa R. Ellis, *The Silent War on Individual Property Rights: The Necessary Reform of the Kansas Standard Asset Seizure and Forfeiture Act*, 59 Washburn L.J. 103 (2020). The government only needs to establish probable cause to seize and continue holding Ms. Goodridge's car. KSA § 60-4113(h). Ms. Goodridge is denied the presumption of innocence and is required to prove her car is exempt from forfeiture. *Id.* She is also denied the benefit of a jury trial.<sup>3</sup> Finally, the fact that KSA § 60-4117 allows the government to retain the proceeds of the forfeiture creates perverse profit incentives for law enforcement to aggressively seek the forfeiture of property even when not justified. *James Daniel Good*, 510 U.S. at 56; *Krimstock*, 306 F.3d at 63.

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<sup>2</sup>As stated above, Ms. Goodridge will file a motion to suppress all evidence obtained through the unlawful seizure and search of her 2007 Chevrolet Tahoe.

<sup>3</sup> The denial of a jury trial is itself unconstitutional, which Ms. Goodridge plans on specifically challenging later.



Even if a seizure of property may have been initially supported by probable cause, a constitutionally valid justification must continue to exist throughout the duration of the seizure, and once the seizure is no longer justified, the government must restore the seized property to its lawful owner. “In the absence of a showing that continued impoundment constitutes a valid deprivation, seized vehicles must be released during the pendency of civil proceedings.” *Krimstock*, 306 F.3d at 48; *see also Lindell v. United States*, 82 F.4th 614, 621–22 (8th Cir. 2023) (refusing to allow “the government’s continued retention” of property without “adequate justification”); *Brewster v. Beck*, 859 F.3d 1194, 1197 (9th Cir. 2017) (a lawful seizure remains lawful “only to the extent that the government’s justification holds force. Thereafter, the government must cease the seizure or secure a new justification.”); *Hawai’i v. Brighter*, 1 Haw. App. 248, 252 (1980) (“a defendant has a right to property lawfully seized where the government no longer has reason for its retention.”). The lack of any prompt, post-seizure hearing to determine the necessity of the continued seizure of Ms. Goodridge’s car creates a high risk of an erroneous, ongoing seizure. Even if her car is eventually returned at the end of the forfeiture case, that still does not account for the fact that she has been erroneously deprived of her property during the pendency of the case. These factors all create an unacceptably high risk of the erroneous deprivation of the inalienable natural right to property.

Third, while the government may have a legitimate interest in punishing criminals for their crimes, the government’s interest in the Act’s procedures is limited. The government does not have a sufficiently important interest in procedures allowing it to seize and hold property for 270 days without even filing a complaint, much less providing a meaningful opportunity to be heard. The limited burden on the time of prosecutors from an additional hearing is far outweighed by the risk to the rights of property owners. “While an additional hearing could add some administrative burden [for the government], it may obviate the need for forfeiture proceedings down the line by eliminating spurious use of forfeiture proceedings.” *Ingram*, 81 F.4th at 620.

While the three factors for determining a procedural due process claim under the Fourteenth Amendment weigh heavily against the government, the argument under Section 18 for a prompt hearing is even greater. Section 18 guarantees not just the “due process of law” but “justice administered *without delay*.” Section 18 traces its lineage “to English law and history, adopting Sir Edward Coke’s interpretation of language in the Magna Carta.” Shannon M. Roesler, *The Kansas Remedy by Due Course of Law Provision: Defining A Right to A Remedy*, 47 U. Kan. L. Rev. 655, 656 (1999); see also Michael J. DeBoer, *The Right to Remedy by Due Course of Law-A Historical Exploration and an Appeal for Reconsideration*, 6 Faulkner L. Rev. 135, 176-93 (2014).

The Magna Carta proclaimed that “[n]o freeman shall be taken or imprisoned or disseised of any freehold, or liberties, or free customs, or outlawed, or banished, or in any other way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land. To no one will we sell, to no one will we deny, or delay right or justice.” *Id.*; Thomas R. Phillips, *The Constitutional Right to A Remedy*, 78 N.Y.U. L. Rev. 1309, 1320 (2003). Lord Coke explained that “every subject of this realm, for injury done to him in goods, lands, or person, . . . may take his remedy by the course of the law, and have justice, and right for the injury done to him, freely without sale, fully without any deniall [sic], and speedily without delay.” *Id.* at 1320–21. Coke emphasized that the course of the law must be delivered “speedily, for delay is a kind of denial.” *Id.* Similarly, Blackstone emphasized that the courts must provide justice by the due course of law without delay. 1 William Blackstone, *Commentaries* \*141-42; Phillips, *The Constitutional Right to A Remedy*, 78 N.Y.U. L. Rev. at 1321-22.

The delegates at the Wyandotte Convention chose to codify the promise of Magna Carta, Coke, and Blackstone to a prompt remedy in Section 18’s guarantee of a “remedy by due course of law, and justice administered without delay.” This textual commitment to justice without delay reflects a greater level of concern by the framers of the Kansas Constitution for the importance of obtaining a hearing at a *meaningful time* than is reflected by the text of the

Fifth or Fourteenth Amendments. Accordingly, even if the federal constitution does not require a prompt post-seizure probable validity hearing, Section 18 of the Kansas Constitution Bill of Rights does.

The Act does not afford Ms. Goodridge a prompt post-seizure probable validity hearing where she can obtain a remedy without delay. Nor does it provide her with any other adequate prompt, post-seizure process. In theory, the Act provides property owners with a probable cause hearing, but an owner must request it from the court “within 14 days after notice of the property’s seizure for forfeiture or lien, or actual knowledge of it, whichever is earlier, and after complying with the requirements for claims in K.S.A. 60-4109.”<sup>4</sup> KSA § 60-4112(c). But a property owner can only file a claim in response to the government’s Notice of Pending Forfeiture, and that must be filed within 90 days after the actual seizure. Most property owners, however, will receive actual notice of the seizure on the same day as the seizure, or shortly thereafter, but they will not be able to file a claim until much later when the government files a Notice of Pending Forfeiture. Besides, for the vast majority of property owners, it is simply not possible to file a claim and request a hearing within 14 days of receiving actual notice of the seizure because they will not have received a Notice of Pending Forfeiture.

In this case, Ms. Goodridge had actual notice of the seizure on June 29, 2023, but the Notice of Pending Forfeiture was not filed until 48 days later on August 16, 2023. As a result, it was a legal impossibility for Ms. Goodridge to obtain a probable cause hearing under KSA § 60-4112(c).

But even if probable cause hearings were universally available, they still would not be sufficient since such hearings are limited to “the sole issue of whether probable cause for forfeiture for the property then exists.” KSA § 60-4112(c). But the probable cause

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<sup>4</sup> KSA § 60-4109 does not contain any requirements for filing claims, which are instead found in KSA §§ 60-4110 & 60-4111. Presumably this is a scrivener’s error and it refers to the claim requirements of sections 60-4110 and 60-4111.

determination “typically will be a subset of the larger due process question of the legitimacy of continued impoundment *pendente lite*.” *Krimstock*, 306 F.3d at 49.

Nor is the ability of property owners to petition for recognition of exemption a constitutionally sufficient post-seizure hearing. To begin with, the petition is not decided by a neutral judge but by the very prosecutor seeking the forfeiture of the property in the first place. KSA § 60-4110(b)(1). Due process requires an impartial decision-maker to constitute a meaningful hearing. Nor is the time of petitioning for recognition of exemption, which does not have to be decided until 180 days after the initial seizure, an opportunity to be heard at a meaningful time. Waiting six months for a prosecutor to decide if they will show mercy is not an adequate remedy by due course of law, without delay. Indeed, in this case, the government hasn’t provided Ms. Goodridge with that minimal level of process. Instead, the government has ignored her Petition for Recognition of Exemption and has not provided any opportunity to be heard.

It is undisputed that Ms. Goodridge is the lawful owner of the 2007 Chevrolet Tahoe, and that she has not been accused of any criminal wrongdoing. Nevertheless, Ms. Goodridge has been deprived of her family’s only reliable means of transportation since June 29, 2023, without any opportunity to be heard before a neutral judge. Forcing Ms. Goodridge to wait months or years to have an opportunity to prove her own innocence before a neutral court and obtain the return of her family’s only reliable means of transportation denies her the opportunity to be heard at a *meaningful time* and in a *meaningful manner*.

Ms. Goodridge requests that this Court schedule, at its earliest convenience, a probable validity hearing and an expedited briefing schedule to determine the validity of the continuing seizure of her vehicle during the pendency of the forfeiture case.

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Dated: Feb. 1, 2024.

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