SUPREME COURT OF THE UNITED STATES

No. 00–6567

LARRY DEAN DUSENBERY, PETITIONER *v.*
UNITED STATES

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

[January 8, 2002]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

This case concerns the adequacy of the means employed by the Federal Bureau of Investigation (FBI) to provide notice to a federal prisoner of his right to contest the administrative forfeiture of property seized during the execution of a search warrant for the residence where he was arrested.

In April 1986, officers of the FBI arrested petitioner Larry Dean Dusenbery at a house trailer in Atwater, Ohio. Later that day, they obtained and executed a search warrant, seizing drugs, drug paraphernalia, several firearms, a ballistic knife, an automobile registered in the name of petitioner's stepmother, and various other items of personal property. Among these was $21,939 in cash, $394 of which had been found on petitioner's person, $7,500 in the inside pocket of a coat in the dining area and $14,045 in a briefcase found on the floor in the living room.

Two months later, petitioner pleaded guilty in the United States District Court for the Northern District of Ohio to a charge of possession with intent to distribute 813 grams of cocaine in violation of 21 U. S. C. §841(a)(1)

(1988 ed.). He was sentenced to 12 years of imprisonment followed by 6 years of special parole. Two years later, the United States, no longer expecting the firearms and knife to be used as evidence in a future prosecution, and unable to determine their rightful owner, sought and obtained an order from the District Court authorizing the FBI to destroy them. The FBI also began the process of administratively forfeiting the cash and the automobile.

At this time, designated agents of the FBI were allowed to dispose of property seized pursuant to the Controlled Substances Act, 84 Stat. 1242, 21 U. S. C. §801 *et seq.* (1988 ed.), without initiating judicial proceedings if the property's value did not exceed $100,000, and if no person claimed an interest in the property within 20 days after the Government published notice of its intention to forfeit and sell or otherwise dispose of it. §881(a)(6) (subjecting to forfeiture all proceeds traceable to an unlawful exchange for a controlled substance and all moneys, negotiable instruments, and securities traceable to such an exchange); §881(d) (providing that laws relating to summary and judicial forfeiture for violation of the customs laws apply to controlled substance forfeitures); 19 U. S. C. §§1607–1609 (1988 ed.) (setting forth customs law requirements for summary forfeitures).

To effect such a forfeiture, the statute required the agency to send written notice of the seizure together with information on the applicable forfeiture procedures to each party who appeared to have an interest in the property. §1607(a). It also required the publication for at least three successive weeks of a similar notice in a newspaper of general circulation in the judicial district in which the forfeiture proceeding was brought. *Ibid.;* 21 CFR §1316.75 (1988). The FBI sent letters of its intention to forfeit the cash by certified mail addressed to petitioner care of the Federal Correctional Institution (FCI) in Milan, Michigan, where he was then incarcerated; to the address of the

residence where petitioner was arrested; and to an address in Randolph, Ohio, the town where petitioner's mother lived. App. 21–23. It placed the requisite legal notice in three consecutive Sunday editions of the Cleveland Plain Dealer. *Id.,* at 24–30. Similar practices were followed with respect to the proposed forfeiture of the car. Brief for Petitioner 3. The FBI received no response to these notices within the time allotted, and so declared the items administratively forfeited. *Ibid.;* App. 15. An FBI agent turned over the cash to the United States Marshals Service on December 13, 1988. *Id.,* at 16–17.

Nearly five years later, petitioner moved in the District Court pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure[1] seeking return of all the property and funds seized in his criminal case. The United States responded that all of the items of petitioner's property that were not used in his drug business had been returned to him and that other items seized had long since been forfeited to the Government. The District Court denied the motion, reasoning that any challenge to the forfeiture proceedings should have been brought in a civil action, not as a motion ancillary to petitioner's now-closed criminal case. Case No. 5:95–CV–1872 (ND Ohio, Oct. 5, 1995).

The Court of Appeals for the Sixth Circuit vacated the District Court's judgment and remanded for further proceedings. Judgt. order reported at 97 F. 3d 1451 (1996), App. 31. The Court of Appeals agreed that petitioner could not pursue his claim through a Rule 41(e) motion since the criminal proceedings against him had been completed. It held that the District Court abused its

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[1] Rule 41(e) provides that "[a] person aggrieved by an unlawful search and seizure or by the deprivation of property may move the district court for the district in which the property was seized for the return of the property on the ground that such person is entitled to lawful possession of the property."

discretion, however, by not construing the motion as a civil complaint seeking equitable relief for a due process challenge to adequacy of the notice of the administrative forfeiture.

Following remand, the District Court entered an order allowing discovery and subsequently presided over a telephone deposition of James Lawson, an Inmate Systems Officer who began to work in the mailroom at FCI Milan early in 1988 and who had submitted an affidavit in the case. Lawson testified that he signed the certified mail receipt for the FBI's notice to petitioner regarding the cash. App. 49–50. He also testified about the procedures within FCI Milan for accepting, logging, and delivering certified mail addressed to inmates. *Id.,* at 50. Lawson explained that the procedure would have been for him to log the mail in, for petitioner's "Unit Team" to sign for it, and for it then to be given to petitioner. *Id.,* at 51. But he said that a paper trail no longer existed because the Bureau of Prisons (BOP) had a policy of holding prison logbooks for only one year after they were closed.[2] *Id.,* at 51–52.

Both parties moved for summary judgment. The District Court ruled that the Government's sending of notice by certified mail to petitioner's place of incarceration satisfied his due process rights as to the cash. Case No. 5:95–CV–1872 (ND Ohio, Jan. 19, 1999). The Court of Appeals affirmed. 223 F. 3d 422 (CA6 2000). Citing *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U. S. 306, 314 (1950), it held that the Government's notice of the cash forfeiture comported with due process even in the absence

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[2] In a letter received before argument, the Solicitor General advised us that the BOP now requires the retention of certified mail logbooks for 11 years in accordance with its implementation of Government record retention policies under the Federal Records Act of 1950, 44 U. S. C. §2901 *et seq*. (1994 ed.).

of proof that the mail actually reached petitioner. 223 F. 3d, at 424.

Because Courts of Appeals have reached differing conclusions about what the Due Process Clause requires of the United States when it seeks to provide notice to a federal inmate of its intention to forfeit property in which the inmate appears to have an interest,[3] we granted certiorari to consider the adequacy of the FBI's notice to petitioner of its intended forfeiture of the cash. 531 U. S. 1189 (2001). We now affirm the judgment below.

The Due Process Clause of the Fifth Amendment prohibits the United States, as the Due Process Clause of the Fourteenth Amendment prohibits the States, from depriving any person of property without "due process of law." From these "cryptic and abstract words," *Mullane*, *supra,* at 313, we have determined that individuals whose property interests are at stake are entitled to "notice and an opportunity to be heard." *United States* v. *James Daniel Good Real Property,* 510 U. S. 43, 48 (1993).

Petitioner urges that, in analyzing his due process

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[3] See, *e.g., Whiting* v. *United States*, 231 F. 3d 70, 76 (CA1 2000) (due process satisfied by Government's sending certified letter to inmate at his prison facility absent proof that mail delivery was unreliable); *Yeung Mung Weng* v. *United States*, 137 F. 3d 709, 715 (CA2 1998) (mailed notice to custodial institution inadequate unless in fact delivered to the intended recipient); *United States* v. *One Toshiba Color Television*, 213 F. 3d 147, 155 (CA3 2000) (en banc) (Government bears burden of demonstrating the existence of procedures that are reasonably calculated to ensure that actual notice will be given); *United States* v. *Minor*, 228 F. 3d 352, 358 (CA4 2000) (endorsing *One Toshiba Color Television*, *supra*); *United States* v. *Woodall*, 12 F. 3d 791, 794–795 (CA8 1993) (requiring actual notice to defendant or his counsel of agency's intent to forfeit property); *United States* v. *Real Property*, 135 F. 3d 1312, 1315 (CA9 1998) (adequate to send summons by certified mail to jail with procedures for distributing mail directly to the inmate); *United States* v. *Clark*, 84 F. 3d 378, 381 (CA10 1996) (sufficient to send certified mail to prisoner at jail where he was located).

claim, we follow the approach articulated in *Mathews* v. *Eldridge,* 424 U. S. 319 (1976). Brief for Petitioner 12; Reply Brief for Petitioner 7. There we spoke of a balancing of three factors: (1) the private interest that will be affected by the official action, (2) a cost-benefit analysis of the risks of an erroneous deprivation versus the probable value of additional safeguards, and (3) the Government's interest, including the function involved and any fiscal and administrative burdens associated with using different procedural safeguards. 424 U. S., at 335. The United States, on the other hand, urges us to apply the method set forth in *Mullane*, *supra*, which espouses a more straightforward test of reasonableness under the circumstances. Brief for United States 27.

We think *Mullane* supplies the appropriate analytical framework. The *Mathews* balancing test was first conceived in the context of a due process challenge to the adequacy of administrative procedures used to terminate Social Security disability benefits. Although we have since invoked *Mathews* to evaluate due process claims in other contexts, see *Medina* v. *California,* 505 U. S. 437, 444 (1992) (citing cases), we have never viewed *Mathews* as announcing an all-embracing test for deciding due process claims. Since *Mullane* was decided, we have regularly turned to it when confronted with questions regarding the adequacy of the method used to give notice. See, *e.g., New York City* v. *New York, N. H. & H. R. Co.,* 344 U. S. 293, 296 (1953); *Walker* v. *City of Hutchinson,* 352 U. S. 112, 115 (1956); *Schroeder* v. *City of New York,* 371 U. S. 208, 210 (1962); *Robinson* v. *Hanrahan,* 409 U. S. 38, 39 (1972) *(per curiam); Greene* v. *Lindsey,* 456 U. S. 444, 448 (1982); *Mennonite Bd. of Missions* v. *Adams,* 462 U. S. 791, 797 (1983); *Tulsa Professional Collection Services, Inc.* v. *Pope,* 485 U. S. 478, 484 (1988). We see no reason to depart from this well-settled practice.

Mullane itself involved a due process challenge to the

constitutional sufficiency of notice to beneficiaries on judicial settlement of accounts by the trustee of a common trust fund established under state law. A trustee of such a common trust fund sought a judicial decree settling its accounts as against all parties having an interest in the fund. The only notice of the application for this decree was by court-ordered publication in a newspaper for four successive weeks. 339 U. S., at 309–310. We held that this notice was constitutionally defective as to known persons whose whereabouts were also known, because it was not "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.,* at 314, 319; see also *id.,* at 315 ("The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it").

Was the notice in this case "reasonably calculated under all the circumstances" to apprise petitioner of the pendency of the cash forfeiture? The Government here carried its burden of showing the following procedures had been used to give notice. The FBI sent certified mail addressed to petitioner at the correctional facility where he was incarcerated. At that facility, prison mailroom staff traveled to the city post office every day to obtain all the mail for the institution, including inmate mail. App. 36. The staff signed for all certified mail before leaving the post office. Once the mail was transported back to the facility, certified mail was entered in a logbook maintained in the mailroom. *Id.,* at 37. A member of the inmate's Unit Team then signed for the certified mail to acknowledge its receipt before removing it from the mailroom, and either a Unit Team member or another staff member distributed the mail to the inmate during the institution's "mail call." *Id.,* at 37, 51.

Petitioner does not seriously contest the FBI's use of the

postal service to send its certified letter to him, a method our cases have recognized as adequate for known addressees when we have found notice by publication insufficient.[4] Tr. of Oral Arg. 11 ("This case is not really a mailed notice case because the procedures that are inadequate are the procedures that happened after the mailing"). Instead, he argues that the notice was insufficient because due process generally requires "actual notice" to interested parties prior to forfeiture, which he takes to mean actual receipt of notice.[5] Brief for Petitioner 8, 15, 18–19; see also Tr. of Oral Arg. 23. For this proposition he cites *Mennonite Bd. of Missions,* 462 U. S.*,* at 796–797. But the only sentence in *Mennonite* arguably supporting petitioner's view appears in a footnote. That sentence reads: "Our cases have required the State to make efforts to provide actual notice to all interested parties comparable to the efforts that were previously required only in *in personam* actions." *Id.,* at 797, n. 3. It does not say that the State *must provide* actual notice, but that it *must attempt to provide* actual notice. Since *Mennonite* concluded that mailed notice of a pending tax sale to a mortgagee of record was

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[4] *E.g., Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U. S. 306, 319 (1950) (noting that the mails "are recognized as an efficient and inexpensive means of communication"); *Walker* v. *City of Hutchinson*, 352 U. S. 112, 116 (1956); *Schroeder* v. *City of New York,* 371 U. S. 208, 214 (1962); *Mennonite Bd. of Missions* v. *Adams,* 462 U. S. 791, 798 (1983); *Tulsa Professional Collection Services, Inc.* v. *Pope,* 485 U. S. 478, 490 (1988).

[5] The Government's brief notes that the term "actual notice" is not free from ambiguity as used by this Court in cases such as *Tulsa*, *supra*, and by other courts. Brief for United States 20, n. 12 (stating that the term has been used both to distinguish notice by mail from notice by publication and to refer to the actual receipt of the notice by the intended recipient); see also Black's Law Dictionary 1087 (7th ed. 1999) (defining "actual notice" as "[n]otice given directly to, or received personally by, a party"). We think the best way to avoid this confusion is to equate, as petitioner does, "actual notice" with "receipt of notice."

constitutionally sufficient, *id.,* at 799, the sentence is at best inconclusive dicta for the view petitioner espouses.

We note that none of our cases cited by either party has required actual notice in proceedings such as this. Instead, we have allowed the Government to defend the "reasonableness and hence the constitutional validity of any chosen method . . . on the ground that it is in itself reasonably certain to inform those affected." *Mullane*, 339 U. S., at 315.

Petitioner argues that because he was housed in a federal prison at the time of the forfeiture, the FBI could have made arrangements with the BOP to assure the delivery of the notice in question to him. Brief for Petitioner 17. But it is hard to see why such a principle would not also apply, for example, to members of the Armed Forces both in this country and overseas. Undoubtedly the Government could make a special effort in any case (just as it did in the movie "Saving Private Ryan") to assure that a particular piece of mail reaches a particular individual who is in one way or another in the custody of the Government. It could, for example, have allowed petitioner to make an escorted visit to the post office himself in order to sign for his letter. But the Due Process Clause does not require such heroic efforts by the Government; it requires only that the Government's effort be "reasonably calculated" to apprise a party of the pendency of the action; " 'the criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements . . . .' " *Mullane*, *supra,* at 315.

Nor does the Due Process Clause require the Government to substitute the procedures proposed by petitioner for those in place at FCI Milan in 1988. See Brief for Petitioner 17 (suggesting that the Government could send the notice to a prison official with a request that a prison employee watch the prisoner open the notice, cosign a receipt, and mail the signed paper back to the agency from

which it came). The suggested procedures would work primarily to bolster the Government's ability to establish that the prisoner actually received notice of the forfeiture, a problem petitioner perceives to be the FCI Milan's procedures' primary defect. See Tr. of Oral Arg. 15 (explaining that the problem is that "[t]he procedure doesn't require verification of delivery"). But as we have noted above, our cases have never required actual notice. The facts of the present case, moreover, illustrate the difficulty with such a requirement. The letter in question was sent to petitioner in 1988, but the claim of improper notice was first asserted in 1993. What might be reasonably fresh in the minds of all parties had the question arisen contemporaneously will surely be stale five years later. The issue would often turn on disputed testimony as to whether the letter was in fact delivered to petitioner. The title to property should not depend on such vagaries.

JUSTICE GINSBURG's dissent does not contend, as petitioner does, that due process could be satisfied in this case only with actual notice. It makes an alternative argument that the FBI's notice was constitutionally flawed because it was " 'substantially less likely to bring home notice' than a feasible substitute," *post*, at 3 (quoting *Mullane*, *supra,* at 314–315)—namely, the methods used currently by the BOP, which generally require an inmate to sign a logbook acknowledging delivery, see *post*, at 8–10 (describing current BOP procedures and noting the practicability of BOP Unit Team member's "linger[ing]" a little longer to secure an inmate's signature). Just how requiring the *end recipient* to sign for a piece of mail substantially improves the reliability of the delivery procedures *leading up to* that person's receipt, JUSTICE GINSBURG's dissent does not persuasively explain. Nor is there any

probative evidence to this effect in the record.[6]

Even if one accepts that the BOP's current procedures improve delivery to some degree, our cases have never held that improvements in the reliability of new procedures necessarily demonstrate the infirmity of those that were replaced. Other areas of the law, moreover, have for strong policy reasons resisted rules crediting the notion that, " 'because the world gets wiser as it gets older, therefore it was foolish before.' " Advisory Committee's Notes on Fed. Rule Evid. 407, 28 U. S. C. App., p. 864 (1994 ed.) (quoting *Hart* v. *Lancashire & Yorkshire R. Co.*, 21 Law Times Rep. (n.s.) 261, 263 (1869), and explaining that Rule 407's prohibition against use of subsequent remedial measures to prove fault attempts to avoid discouraging persons from taking steps to further safety). In this case, we believe the same principle supports our conclusion that the Government ought not be penalized and told to "try harder," *post*, at 8, simply because the BOP has since upgraded its policies.

Here, the use of the mail addressed to petitioner at the penitentiary was clearly acceptable for much the same reason we have approved mailed notice in the past. Short of allowing the prisoner to go to the post office himself, the remaining portion of the delivery would necessarily depend on a system in effect within the prison itself relying on prison staff. We think the FBI's use of the system described in detail above was "reasonably calculated, under all the circumstances, to apprise [petitioner] of the action." *Mullane*, *supra,* at 314. Due process requires no

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[6]To try to show that there is a "significant risk," Brief for Petitioner 14, that notice mailed to a prison will not reach an inmate, petitioner has cited several cases from various Courts of Appeals involving post-forfeiture challenges. As the Government argues, these cases, like petitioner's own suit here, involve only claims that notice was not received, not findings of nonreceipt.

more.

The judgment of the Court of Appeals is

Affirmed.