No. 19-659

In the Supreme Court of the United States

MILADIS SALGADO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion in permitting the government to voluntarily dismiss a civil forfeiture action without prejudice in order to facilitate the distribution of seized funds to a victim.

2. Whether the district court abused its discretion in declining to award attorney's fees to petitioner on the grounds that she did not "substantially prevail[]" in civil forfeiture proceedings under 28 U.S.C. 2465(b)(1)(A).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

United States v. *$70,670 in U.S. Currency,* No. 15-cv-23616 (Jan. 3, 2018)

United States Court of Appeals (11th Cir.):

United States v. *$70,670 in U.S. Currency,* No. 18-10312 (July 8, 2019)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-21) is reported at 929 F.3d 1293. The order of the district court (Pet. App. 24-33) is not published in the Federal Supplement but is available at 2018 WL 278890. Prior orders of the district court (Pet. App. 34-36, 53-55) are unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 22-23) was entered on July 8, 2019. On September 25, 2019, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including November 21, 2019, and the petition was filed on November 19, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In September 2015, the United States initiated an *in rem* action in the United States District Court for the Southern District of Florida seeking civil forfeiture, under 18 U.S.C. 981(a)(1) (2012) and 21 U.S.C. 881(a)(6), of U.S. currency and cashier's checks. Compl. 1. The complaint alleged that those assets were derived from drug-trafficking or the interstate transportation of stolen property, or were involved in money laundering transactions. *Ibid.* Petitioner and others filed claims to the assets. After the alleged victim of the interstate transportation of stolen property recovered a judgment against some of the forfeiture claimants in state court, the district court granted the government's motion to dismiss the forfeiture complaint without prejudice and denied petitioner's motion for attorney's fees. Pet. App. 2. The court of appeals affirmed. *Id.* at 21.

1. In late 2014, petitioner's ex-husband, Wilson Colorado, formed a corporation called Kurvas Secret by W, Inc. (Kurvas Secret) for the purpose of selling "fajas," a class of garments that includes corsets, girdles, and waist cinchers. Pet. App. 3. Colorado obtained the fajas from a Colombia- and Florida-based manufacturer and retailer called AnnChery Fajas USA, Inc. (AnnChery). *Id.* at 2-3. Demand for AnnChery fajas had grown after an unofficial endorsement from Kim Kardashian, and as a result, AnnChery had a policy limiting the number of fajas a retailer could purchase to 1500 per week. *Id.* at 3. In April of 2015, AnnChery determined that Colorado had circumvented that quota system and had obtained AnnChery merchandise without paying for it with the help of AnnChery's Florida general manager. *Ibid.* AnnChery sent a demand letter to Colorado alleging that he had stolen the company's merchandise, and

also filed suit in Florida court against Colorado, Kurvas Secret, and two other defendants. *Ibid.*

After Colorado received the demand letter, he liquidated two bank accounts containing proceeds from the sale of AnnChery fajas in order to purchase cashier's checks for $101,629.59 and $30,000, payable to himself. Pet. App. 3. He stored those cashier's checks, as well as a substantial amount of cash, at the home in which he, petitioner, and their children resided. See *id.* at 4-5.

In the meantime, the Drug Enforcement Administration (DEA) received a tip that Colorado was involved in cocaine distribution and money laundering, and that he stored currency and narcotics in several south Florida residences. Pet. App. 4. Law enforcement officers searched the home in which petitioner, Colorado, and their children resided. *Ibid.* They discovered and seized both cashier's checks, $15,070 cash that was in the same master bedroom closet, and $55,600 cash in a child's bedroom. *Ibid.* At the time, petitioner told the officers she did not know about any of the assets, and Colorado claimed ownership of both the cash and cashier's checks. Compl. 5. Colorado also admitted that he had received AnnChery merchandise from the Florida general manager, which he sold through Kurvas Secret, and that he had hidden his money because AnnChery had filed a lawsuit against him. Compl. 6.

2. After the seizure, the DEA initiated an administrative forfeiture proceeding with respect to the two cashier's checks (which totaled $131,629.59) and the cash (which totaled $70,670) recovered from petitioner's residence. See D. Ct. Doc. 110, at 5 (Mar. 31, 2017).

a. The DEA provided notice of the administrative forfeiture to petitioner, Colorado, and others. D. Ct.

Doc. 110, at 5-6. Colorado filed administrative claims as to the cashier's checks and currency, asserting that he owned all of it and requesting that the matter be referred for judicial action. *Id.* at 6. Petitioner did not file a claim. *Ibid.*

The government accordingly filed an *in rem* action in the United States District Court for the Southern District of Florida seeking civil forfeiture of the cash and the value of the two cashier's checks. Pet. App. 4. The complaint asserted that the funds were traceable to drug crimes in violation of 21 U.S.C. 841(a) and 846; or were traceable to the interstate transportation of stolen, converted, or fraudulently obtained property in violation of 18 U.S.C. 2314; or were involved in money-laundering transactions in violation of 18 U.S.C. 1956 (2012) or 18 U.S.C. 1957. Pet. App. 4; see Compl. 6-9.

Petitioner, Colorado, and Kurvas Secret ("claimants") filed claims to the funds. Pet. App. 5. Colorado and his company claimed ownership of the cashier's checks and the $55,600 seized from his child's bedroom, and a possessory interest in the $15,070 seized from the master closet. *Ibid.* Petitioner claimed ownership of the $15,070 and a possessory interest in the cashier's checks and the $55,600. *Ibid.* Both Colorado and petitioner were deposed in discovery. Petitioner testified that she had saved the $15,070, some of which she received from Colorado, and Colorado also testified that some of the $15,070 was his. See D. Ct. Doc. 73-2 (Oct. 17, 2016) (chart of sworn statements regarding sources of $15,070 in currency).

b. While the federal forfeiture action was pending, a Florida state court entered a default judgment in AnnChery's favor in the civil litigation it had brought against Colorado and Kurvas Secret. Pet. App. 5. In

that case, AnnChery's complaint had alleged that "any and all funds in Colorado's bank accounts or to which he had access were derived from the sale of stolen fajas." *Id.* at 6. Under Florida law, the default judgment established those factual allegations as conclusive. *Id.* at 5. The Florida court later entered judgment in favor of AnnChery against Colorado and Kurvas Secret in the amount of $318,019.70, *id.* at 7, and issued an order authorizing AnnChery to "levy on the property" of Colorado and Kurvas Secret, including on any of their "claims to and interests in the seized cash and cashier's checks at issue in" the federal forfeiture action, see D. Ct. Doc. 134-1, at 4 (Aug. 7, 2017).

In the federal forfeiture action, the claimants (who were jointly represented) and the government filed motions for summary judgment. D. Ct. Docs. 108 (Mar. 27, 2017), 110. As relevant here, the government sought summary judgment on two of the three forfeiture claims asserted in the complaint, based on evidence that the seized assets were traceable to the interstate transportation of property stolen from AnnChery and were involved in or commingled with money-laundering transactions. D. Ct. Doc. 110, at 13-21. The government did not seek summary judgment on the claim that the funds were the proceeds or derivative proceeds of drug offenses because "material facts and the admissibility of evidence remain[ed] in dispute at [the] time, foreclosing summary judgment." *Id.* at 4.

In the alternative, the government moved for leave to dismiss the complaint without prejudice. See Pet. App. 6. The government explained that dismissal without prejudice was potentially appropriate in light of the default judgment in Florida state court, which involved the same facts and issues as to which the government

had moved for summary judgment in the federal forfeiture action. D. Ct. Doc. 110, at 3-4. The government explained that even if the claimants ultimately prevailed in the federal forfeiture action, the funds would be awarded to AnnChery by the Florida state court; if, on the other hand, the government prevailed in the forfeiture action, the government would turn the forfeited funds over to the victim, AnnChery, pursuant to Department of Justice policy. Pet. App. 6-7.

The claimants opposed voluntary dismissal. Pet. App. 7. They claimed that dismissal without prejudice "would be contrary to law and a manifest injustice," D. Ct. Doc. 112, at 3 (Apr. 12, 2017), but did not explain how they would be prejudiced by such a dismissal, see Pet. App. 7.

c. The district court found "good cause to permit the United States to voluntarily dismiss this action without prejudice based on the parallel state action" and ordered the United States to "file an appropriate notice or motion." 15-cv-23616 Docket entry No. 133 (July 31, 2017). The government did so. D. Ct. Doc. 134 (Aug. 7, 2017). The claimants then objected again, asking the district court to "dismiss th[e] forfeiture action *with prejudice* so that [the claimants' attorney could] pursue attorney[']s fees pursuant to the [Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Pub. L. No. 106-185, 114 Stat. 202] and 28 U.S.C. § 2465." Pet. App. 7-8 (first, second, and third set of brackets in original).

The district court entered an order dismissing the forfeiture action without prejudice. Pet. App. 53-55. The court explained that pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, the case "may be dismissed [at] the plaintiff's request only by court order, on terms that the court considers proper." *Id.* at

54 (quoting Fed. R. Civ. P. 41(a)(2)). The court found that the Florida state court had "entered decisions in a parallel state action" that "effectively render the outcome of this action moot" and that dismissal was therefore appropriate. *Ibid.* And the court ordered that "[s]hould the United States re-file this action," the government would be required to pay "costs to the Claimants pursuant to Rule 41(d)," which provides that a district court may require a plaintiff to cover the costs of a previously dismissed action if the plaintiff later re-files. *Id.* at 55.

d. The claimants filed a motion to alter or amend the judgment, seeking a dismissal *with* prejudice. See Pet. App. 8. They also moved for attorney's fees, costs, and interest pursuant to CAFRA, 28 U.S.C. 2465(b)(1). See Pet. App. 9.

While those motions were pending, petitioner, AnnChery, and the shared attorney for the claimants executed and filed a "Stipulation for Settlement in Forfeiture Action." Pet. App. 9. That settlement agreement, to which the United States was not a party, stipulated to the entry of an order distributing $10,387.92 to petitioner, $128,920.61 to AnnChery, and $62,991.06 to the claimants' attorneys. *Ibid.* The settlement provided that the claimants' attorneys would retain the $62,991.06 sum for themselves unless they prevailed on the motion for attorney's fees from the government; if they did so prevail, then AnnChery would receive an additional $58,308.98 and petitioner would receive an additional $4,682.08. *Id.* at 43-44. The district court ordered the release of the funds and directed the parties to distribute them in accordance with the stipulation. *Id.* at 9.

The district court then denied the motion to alter or amend the order of dismissal, again finding dismissal without prejudice appropriate on the facts of this case. Pet. App. 24-33. The court determined that "[n]othing suggests to the Court that the government acted in bad faith or that the government did not believe it had a meritorious case for forfeiture." *Id.* at 29. "Rather," the court explained, the government "determined that in light of the state court judgment and AnnChery's claim to the assets, voluntary dismissal without prejudice would be an adequate alternate resolution." *Ibid.* The court also emphasized that "if the government refiles the case, Claimants will then be entitled to costs expended in defending this dismissed action," and it found that "under the unique circumstances here, this condition was all that was necessary to do justice among the parties." *Id.* at 30.

The district court rejected the claimants' argument that "a dismissal without prejudice here plainly prejudices Claimants because it prevents them from obtaining statutory attorney's fees" under CAFRA. Pet. App. 30. The court observed, as a threshold matter, that the claimants had "waived this argument" by raising it for the first time after the court had granted the government's motion for voluntary dismissal without prejudice. *Id.* at 31. And the court further determined that "even absent waiver," it need not reach the legal question whether the loss of a claim for attorney's fees "constitutes legal prejudice that should preclude voluntary dismissal without prejudice," because the facts of this case did not suggest that the government had acted in bad faith or had brought a non-meritorious forfeiture action. *Ibid.*

The district court also denied the claimants' motion for attorney's fees pursuant to CAFRA, 28 U.S.C. 2465(b)(1), under which a claimant who "substantially prevails" is entitled to collect fees. Pet. App. 32. The court explained that the "parties agree that CAFRA's 'substantially prevails' standard is equivalent to a 'prevailing party' standard" and that claimants did not "prevail[]" here because the dismissal without prejudice did not effect a "'material alteration of the legal relationship of the parties'" with a "corresponding 'judicial imprimatur.'" *Ibid.* (citation omitted).

3. The court of appeals affirmed. Pet. App. 1-21.

a. The court of appeals first determined that the district court did not abuse its discretion by dismissing the forfeiture action without prejudice. Pet. App. 11-17. The court of appeals explained that voluntary dismissals without prejudice are generally appropriate unless the defendant "will suffer clear legal prejudice" or "lose [a] substantial right by the dismissal." *Id.* at 12 (citations omitted). The court rejected the claimants' argument that the dismissal was unjust here, finding no indication that the government had litigated in bad faith or unreasonably delayed the case. *Id.* at 13. The court of appeals explained that because "[t]he government made clear that even if it prevailed in this forfeiture action, it intended to transfer the funds to AnnChery," the district court reasonably determined that the outcome of the forfeiture proceeding "no longer mattered," because "either way, the money would end up with AnnChery." *Id.* at 14.

The court of appeals also found that "the district court acted within its discretion to reject" as untimely the contention that dismissal without prejudice de-

prived claimants of an asserted right to collect attorney's fees under CAFRA. Pet. App. 14-15. The court of appeals further determined that the contention was unsound. *Id.* at 15-16. Even "assum[ing] that a meritorious claimant's loss of a right to statutory attorney's fees constitutes legal prejudice," the court found no evidence that the claimants had meritorious arguments in the forfeiture action itself that "ultimately would have prevailed" but for the dismissal. *Ibid.*

Finally, the court of appeals rejected the contention that, because petitioner was not a party to the state proceedings, no basis existed to dismiss the forfeiture proceedings against the $15,070 in which she claimed an interest. Pet. App. 16. The court found, as an initial matter, that petitioner had not adequately raised that argument in the district court and that "[t]he district court did not abuse its discretion by ignoring an argument that was not squarely presented to it." *Id.* at 16-17. The court of appeals also determined that petitioner had not established clear legal prejudice from the voluntary dismissal because "she ha[d] established no more than the other claimants that she would have prevailed if the action had been fully litigated." *Id.* at 17.

b. The court of appeals also found no abuse of discretion in the district court's denial of the claimants' motion for attorney's fees. Pet. App. 11, 17-20. The court of appeals rejected the claimants' argument that, notwithstanding the dismissal without prejudice, they had "'substantially prevailed'" and thereby earned attorney's fees under CAFRA. The court noted that it had interpreted "substantially prevailed" fee-shifting statutes, such as 28 U.S.C. 2465(b)(1), consistently with "prevailing party" fee-shifting statutes. Pet. App. 18 (citing *Loggerhead Turtle* v. *The County Council*, 307

F.3d 1318, 1322 n.4 (11th Cir. 2002)). Under that approach, the court determined that petitioner and the other claimants had "not substantially prevailed because a dismissal without prejudice places no 'judicial *imprimatur*' on 'the legal relationship of the parties,' which is 'the touchstone of the prevailing party inquiry'" in the context of an award of attorney's fees. *Ibid.* (quoting *CRST Van Expedited, Inc.* v. *Equal Emp't Opportunity Comm'n*, 136 S. Ct. 1642, 1646 (2016)).

The court of appeals also rejected petitioner's argument that she "obtained a judicially sanctioned recognition of her right to the funds because the district court instructed '[t]he parties [to] distribute the funds pursuant to the[] Stipulation.'" Pet. App. 19 (first and second set of brackets in original). The court of appeals explained that the "settlement stipulation embodied an agreement between AnnChery, [petitioner], and the claimants' attorney concerning their rights to the funds *as to one another*, but it said nothing about *the United States'* right to the funds, which was the whole subject of this civil forfeiture action." *Ibid.* Because "the government's claim" to the funds "remains unadjudicated," and could in fact be re-filed, the court determined that petitioner had not "substantially prevailed" and therefore was not entitled to attorney's fees. *Ibid.*

ARGUMENT

Petitioner contends (Pet. 24-29) that the civil forfeiture action against her should have been dismissed with prejudice rather than without prejudice, and (Pet. 13-24) that she was entitled to attorney's fees even for a dismissal without prejudice because she "substantially prevailed" under 28 U.S.C. 2465(b)(1). Those contentions lack merit and implicate no circuit conflicts, and

this case would be a poor vehicle to review the questions presented. No further review is warranted.

1. The court of appeals correctly determined that the district court did not abuse its discretion by dismissing the forfeiture action without prejudice. Pet. App. 11-17. This Court's review is not warranted.

a. Under Federal Rule of Civil Procedure 41(a)(2), "an action may be dismissed at the plaintiff's request" after the opposing party has served an answer or motion for summary judgment "only by court order, on terms that the court considers proper. * * * Unless the order states otherwise, a dismissal under this [provision] is without prejudice." Fed. R. Civ. P. 41(a)(2). Petitioner accordingly has not disputed that district courts have broad discretion in determining whether to grant a motion to voluntarily dismiss. The Eleventh Circuit has instructed district courts exercising that discretion to "weigh the relevant equities and do justice between the parties in each case," and to allow a voluntary dismissal without prejudice—the default type of dismissal—unless the opposing party would suffer "clear legal prejudice" as a result. *Pontenberg* v. *Boston Scientific Corp.*, 252 F.3d 1253, 1255-1256 (2001) (per curiam) (citations omitted).

As the court of appeals recognized, the district court here appropriately considered the relevant circumstances and acted well within its discretion in permitting voluntary dismissal of this forfeiture action without prejudice. The district court determined that the government had pursued the forfeitures in good faith, had not unduly delayed the litigation, and had a legitimate reason to seek dismissal. Pet. App. 29-31. As the court explained, the government did not seek to avoid a determination on the merits—and, to the contrary, stood

ready to litigate its summary judgment motion—but instead reasonably concluded that voluntary dismissal would be "an adequate alternate resolution" that served "the interests of justice" and "limit[ed] waste of both judicial resources and the resources of the parties." *Id.* at 29. Those findings supported the dismissal without prejudice. *Id.* at 12-14.

Petitioner largely disregards those findings and instead contends (Pet. 25-28) that a dismissal without prejudice is always inappropriate if it would deprive a claimant of the right to seek attorney's fees under CAFRA. The district court found that argument "waived," Pet. App. 31, and the court of appeals found no error in that determination, *id.* at 15. While the court of appeals did discuss the issue, the court expressly did *not* decide "whether the right to statutory attorney's fees is a 'substantial right' the deprivation of which by a plaintiff's voluntary dismissal without prejudice constitutes 'legal prejudice.'" *Ibid.* Instead, the court simply assumed that petitioner-favorable rule and nonetheless determined that any "legal prejudice" *here* was not "clearly apparent" because neither the record, nor the claimants' arguments on appeal, suggested that the claimants would ultimately have prevailed against the government had the district court not dismissed the case. *Id.* at 15-16. Petitioner does not explain why that fact-bound conclusion was wrong. See Pet. 24-30.

b. Petitioner claims (Pet. 27) that the decision below "widens" a conflict between the Ninth Circuit, on one hand, and the Fifth and Eighth Circuits on the other, about "whether dismissal without prejudice in these circumstances is an abuse of discretion." That is incorrect.

As petitioner notes (Pet. 27-28), the decision below is consistent with decisions in the Eighth and Fifth Circuits. In *United States* v. *Thirty-Two Thousand Eight Hundred Twenty Dollars and Fifty-Six Cents ($32,820.56) in U.S. Currency*, 838 F.3d 930 (8th Cir. 2016), the district court dismissed a civil forfeiture action without prejudice after considering the government's "valid reason for seeking dismissal" and the absence of any "'procedural gamesmanship.'" *Id.* at 937. The court of appeals "s[aw] no abuse of discretion" in that decision and affirmed. *Ibid.* Neither the district court nor the Eighth Circuit addressed the contention that "the government's only reason for seeking dismissal without prejudice was to avoid an inevitable fee award under CAFRA, and that the district court's ruling caused [the claimant] legal prejudice," finding that claim "waived." *Ibid.* The Fifth Circuit's unpublished per curiam decision in *United States* v. *Minh Huynh*, 334 Fed. Appx. 636, cert. denied, 558 U.S. 970 (2009), similarly did not address that issue but instead stated only that "the Government's dismissal without prejudice" does not "bestow prevailing party status" on the claimant in a civil-forfeiture action, *id.* at 639.

Petitioner's assertion of a circuit conflict centers on the Ninth Circuit's decision in *United States* v. *Ito*, 472 Fed. Appx. 841 (9th Cir. 2012). But *Ito* is an unpublished three-paragraph memorandum disposition that is not precedential in the Ninth Circuit. See 9th Cir. R. 36-3(a) ("Unpublished dispositions and orders of this Court are not precedent, except when relevant under the doctrine of law of the case or rules of claim preclusion or issue preclusion."). In any event, it does not squarely conflict with the decision below in this case. The Ninth Circuit in *Ito* found that the district court

had committed legal error by failing to "recognize that dismissal without prejudice precludes prevailing party status," stated without explanation that the claimants there had "suffered plain legal prejudice in losing their ability to move for attorney's fees," and remanded with instructions to dismiss with prejudice. 472 Fed. Appx. at 842. Here, however, the relevant argument was not properly preserved; the district court expressly recognized that dismissal without prejudice precluded prevailing-party status and an award of attorney's fees for the claimants; the court of appeals assumed *arguendo* that the loss of attorney's fees *could* constitute "legal prejudice" that would render a dismissal without prejudice inappropriate; and the court of appeals found dismissal nevertheless unwarranted on this record given the lack of evidence that claimants "ultimately would have prevailed" but for the dismissal. Pet. App. 15-16, 30-32.

Petitioner contends (Pet. 28-29) that the alleged conflict has "resulted in widely divergent outcomes * * * across the country." But petitioner cites district court cases that either predate the alleged conflict or are from outside the circuits that allegedly disagree. Rather than supporting petitioner's assertion of a conflict, the outcomes in those district court cases reflect fact-bound, discretionary decisions in each case.

2. The court of appeals also correctly determined that petitioner was not entitled to attorney's fees under 28 U.S.C. 2465(b)(1)(A) because petitioner did not "substantially prevail[]." Pet. App. 17. This Court's review is not warranted; even if it were, this petition is a poor vehicle to review the question presented.

a. Under 28 U.S.C. 2465(b)(1), the United States is obligated to pay attorney's fees incurred by a claimant

"in any civil proceeding to forfeit property under any provision of Federal law in which the claimant substantially prevails." Section 2465(b)(1)(A) is one of "numerous" federal fee-shifting statutes. *Buckhannon Bd. & Care Home, Inc.* v. *West Virginia Dep't of Health & Human Res.*, 532 U.S. 598, 602 (2001). "A wide range of statutes uses the 'substantially prevails' formulation," while many others "use 'prevailing party.'" *Oil, Chem. & Atomic Workers Int'l Union* v. *Department of Energy*, 288 F.3d 452, 454 (D.C. Cir. 2002) (superseded by statute, OPEN Government Act of 2007, Pub. L. No. 110–175, 121 Stat. 2524). The courts of appeals "have treated these statutes as substantially similar," seeing "nothing to suggest that Congress sought to draw any fine distinction between 'prevailing party' and 'substantially prevail.'" *Id.* at 454-455; see *$32,820.56*, 838 F.3d at 934-935 (construing 28 U.S.C. 2465(b)(1)(A) and collecting cases); *Union of Needletrades, Indus. & Textile Emps.* v. *United States INS*, 336 F.3d 200, 208 (2d Cir. 2003) (construing 5 U.S.C. 552(a)(4)(E) (2000)). Under either formulation of the standard, a party seeking attorney's fees "need not obtain a favorable judgment on the merits" in order to prevail, *CRST Van Expedited, Inc.* v. *Equal Emp't Opportunity Comm'n*, 136 S. Ct. 1642, 1651 (2016), but must secure a "'material alteration of the legal relationship'" between parties, *Buckhannon*, 532 U.S. at 603-605 (citation omitted), and the "change must be marked by 'judicial imprimatur,'" *CRST Van Expedited*, 136 S. Ct. at 1646 (quoting *Buckhannon*, 532 U.S. at 605).

The court of appeals applied that standard in determining that petitioner was not entitled to attorney's fees. Pet. App. 18-19. The dismissal without prejudice

in this case did not materially alter the legal relationship between the government and petitioner, let alone amount to a material alteration marked by "judicial imprimatur." Instead, as the court explained, "[a] voluntary dismissal without prejudice renders the proceedings a nullity and leaves the parties as if the action had never been brought." *Id.* at 18 (citations and internal quotation marks omitted). Indeed, the government faces "no legal bar" to "refiling the same forfeiture action in the future." *Ibid.*; accord *$32,820.56*, 838 F.3d at 934 ("There has been no alteration of the legal relationship between [the claimant] and the government, because the court's order dismissing the case without prejudice does not preclude the government from refiling an action based on [the same claims].").

b. Petitioner errs in contending (Pet. 20-21) that she "meets the criteria this Court stated in *CRST Van Expedited*" for "prevailing" because she received $10,387.92 through a settlement with AnnChery and her attorney. That private stipulation, which was filed after the district court granted the government's motion to voluntarily dismiss its case, "said nothing about *the United States'* right to the funds, which was the whole subject of this civil forfeiture." Pet. App. 19. As the court of appeals explained, the "government's claim of superior title to [petitioner's] share of the funds remains unadjudicated," and petitioner therefore cannot be said to have "substantially prevailed." *Ibid.*

Alternatively, petitioner contends (Pet. 15-19) that the phrase "substantially prevails" in 28 U.S.C. 2465(b)(1) should be construed more broadly than the phrase "prevailing party" in other fee-shifting statutes. Petitioner identifies no court of appeals that has adopted her broad interpretation of 28 U.S.C.

2465(b)(1), nor does she suggest a division of circuit authority on that question. To the contrary, the courts of appeal have applied the standards articulated in *Buckhannon*, 532 U.S. at 603-605, to CAFRA's fee-shifting provision. See *$32,820.56*, 838 F.3d at 934-936 & n.3 (rejecting arguments to broaden the phrase "substantially prevails" in 28 U.S.C. 2465(b)(1), and collecting similar cases).

Instead, petitioner contends that "confusion abounds in the lower courts over when a civil forfeiture claimant 'substantial prevails' under 28 U.S.C. § 2465(b)(1)." Pet. 14. But petitioner identifies (*ibid.*) only two district court cases that she claims exemplify this confusion, and those cases are inapposite. In *Kazazi* v. *U.S. Customs & Border Prot.*, 376 F. Supp. 3d 781 (N.D. Ohio 2019), the parties disputed not whether claimants had "substantially prevailed," but whether an action under Federal Rule of Criminal Procedure 41(g)—which provides that a "person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return"—is subject to CAFRA at all. Similarly, the central dispute in *United States* v. *$60,201.00 U.S. Currency*, 291 F. Supp. 2d 1126 (C.D. Cal. 2003), was not whether claimants had "substantially prevailed"; instead, "[a]t issue [were] the calculation of the hourly rate and the number of hours billed" for the purpose of calculating attorney's fees. *Id.* at 1129. These district court cases do not bear directly on the question presented here, let alone demonstrate widespread confusion among the lower courts on the meaning of "substantially prevailed."

c. This case would also be a poor vehicle for the Court to consider the interpretation of 28 U.S.C. 2465(b)(1), for two reasons.

First, petitioner's argument for a broader meaning of the phrase "substantially prevails" was neither pressed nor passed upon below. Rather, in both the district court and the court of appeals, petitioner endorsed the standard that she now challenges. See Pet. App. 32 ("The parties agree that CAFRA's 'substantially prevails' standard is equivalent to a 'prevailing party' standard."); Pet. C.A. Br. 29-30, 53-54 (citing *Buckhannon* for relevant legal standard). This Court should not consider that challenge in the first instance. See *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view."); *United States* v. *Williams*, 504 U.S. 36, 41 (1992) (explaining that this Court's "traditional rule * * * precludes a grant of certiorari" when "'the question presented was not pressed or passed upon below'") (citation omitted).

Second, it is far from clear that petitioner would be entitled to attorney's fees under the broader interpretation of 28 U.S.C. 2465(b)(1) that she now advocates. As the court of appeals explained, petitioner recouped some of her claimed funds through a private settlement with the victim, not through any agreement with the United States. Pet. App. 19. Thus neither claim preclusion nor a settlement agreement bars the United States from reinstituting a civil forfeiture action against the same funds. *Ibid.* On these facts, petitioner is unlikely to prevail even under her current broad interpretation of "substantially prevails."

3. Finally, petitioner's policy arguments (Pet. 1-2, 21-24) provide no basis for further review in this case. Petitioner's suggestions of wrongdoing are misplaced here, where the government pressed its forfeiture case through summary judgment in order to return the seized funds to the victim, and voluntarily dismissed the

action when parallel state-court proceedings promised to achieve the same result. And as the opinions below reflect, the district courts possess "discretion to guard against abuse and to dismiss with prejudice in appropriate cases" involving civil forfeiture. *$32,820.56*, 838 F.3d at 936-937 (emphasis omitted). Petitioner's "proposed interpretation of CAFRA, on the other hand, is no panacea," because "[i]f the government is unable to dismiss a legally meritorious case without prejudice based on the exercise of prosecutorial discretion, then the exposure to liability for attorney fees may deter the government from forbearing litigation that would result in forfeiture of a claimant's property." *Id.* at 937.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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