

19-7836
CASE#

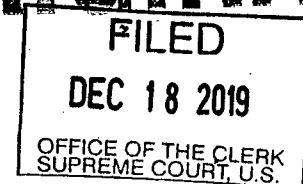
IN THE
SUPREME COURT OF THE UNITED STATES

TAJUDDIN SALAHUDDIN
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

ORIGINAL



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

PETITION FOR CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

- 1) When the United States of America seizes innocent third-party property and cash; applies 21 U.S.C 853 to forfeit the property but applies a separate restitution type lien under 18 U.S.C 3613(c) to cash to prevent any intervention by a third party, what equivalent procedure and opportunity does the innocent third-party have to contest its cash being applied to a criminal defendant's restitution?

- 1) Whether Petitioner's loan agreement establishes his security interest and priority over United States restitution lien on cash seized from a criminal Defendant under Texas law?

LIST OF PARTIES

Petitioner certifies that the following are interested parties in this case:

United States of America, Respondent

RELATED CASES

- United States (Plaintiff- Appellee) v. Babar Butt (Defendant) & Huma Butt and Tajuddin Salahuddin (Appellant) (No 18-20131 U.S. Court of Appeals for the Fifth Circuit). Judgement entered July 15th 2019.
- United States v. Babar Butt (No. 4:16-CR-00452-1, U.S. District Court for the Southern District of Texas). Judgement entered July 18th 2017.
- United States v. Babar Butt (No 18-20023 U.S. Court of Appeals for the Fifth Circuit). Judgement entered April 14th 2019.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix
 A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported;
or, ☒ is unpublished.

The opinion of the United States district court appears at Appendix
_____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported;
or, ☐ is unpublished.

TABLE OF AUTHORITIES

Cases

Kaley v. United States, 134 S. Ct 1090 (2014)

Libretti v. United States, 516 U.S. 29, 41 (1995)

STATUTES

28 U.S.C. §1254

21 U.S.C. 853(n)

18 USCS 3613(c)

18 U.S.C. 3664(m)

JURISDICTIONAL STATEMENT

This writ is from a denial by the Fifth Court of Appeals on July 15th, 2019 (Appendix A) and also a denial of rehearing and rehearing en banc on September 23rd, 2019. (Appendix B). This Court has jurisdiction under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

Petitioner an innocent third party, asserted an interest in his own property, subject to criminal forfeiture and restitution in defendant Mr. Butt's criminal case. (No. 4:16-CR-00452-1, S.D. TX).

On August 13th 2014 Petitioner executed a loan agreement under which Petitioner agreed to loan Mr. Butt money to run and expand his business (Appendix E). On April 14th 2016 Federal agents seized \$91,267 and 452 electronic devices (cellphones, ipads, macbooks etc.) from Mr. Butt.¹ On October 5th 2016 the Government filed a 17 count indictment against Mr. Butt and arrested him on October 11th 2016.

On January 17th 2017 Mr. Butt plead guilty to six counts of mail fraud (Roa 5). In accordance with Defendant Mr. Butt's plea agreement the District Court entered a \$287, 679 forfeiture money judgment against Mr. Butt (Roa 55). On May 10th 2017, prior to Mr. Butt's sentencing the Government drafted an unopposed motion to forfeit cash seized from Mr. Butt as his substitute property. Mr. Butt objected to this motion and through his then attorney informed the Government that the cash did not belong to him and he opposes the forfeiture of any assets seized from him as he is not the rightful owner (Roa 439, Motion to forfeit cash was attached in the email sent to Mr. Butt's counsel on May 10th 2017). Upon learning of this objection the Government did not file the motion to

¹ The seized cash was the proceeds from the loan provided by Petitioner. The 452 electronic devices were also purchased from the proceeds of the loan.

forfeit cash. The Government then proceeded with Mr. Butt's sentencing on July 18th 2017 without any objections despite being fully aware that Mr. Butt, according to Government's own filings later in the proceedings, was in violation of his plea agreement. On July 18th 2017 Mr. Butt was sentenced to 21 months of incarceration.

For the next five months the Government did not take any action with regards to the cash and the electronic devices seized from Mr. Butt. On December 5th 2017 five months after Mr. Butt's sentencing Defendant Mr. Butt filed a motion in District court requesting an evidentiary hearing in the presence third parties to petition to court their interest in the seized assets from Mr. Butt (Roa 478). The Government objected to such a hearing and immediately on December 20th 2017 filed a turnover motion to apply the seized cash towards Mr. Butt's restitution (Roa 78). The Government in their turnover motion claimed that no third party exists despite the fact that Mr. Butt's motion (Roa 478) and his objections to the forfeiture of cash prior to his sentencing clearly alerted the Government that Mr. Butt is not the rightful owner of the cash.

The very next day on December 21st 2017 the District Court granted Government's turnover motion relying on Government's misleading assertions that the cash belongs to Mr. Butt and no third party exists (Roa 84). On or about January 10th 2018 Petitioner filed a motion in the District court requesting an ancillary hearing to which Petitioner attached his executed loan agreement with Mr. Butt showing that he is the rightful owner of all assets in possession of Mr. Butt and all of Mr. Butt's personal assets too are under a lien

(Appendix D). The District Court denied Petitioner's request to hold an ancillary hearing reasoning that "*at best*" Petitioner is "*an unsecured creditor as to the cash and other assets that have been forfeited to the United States*" (Appendix C). Petitioner promptly appealed this denial to the Court of Appeals.

On July 15th 2019 the Court of Appeals issued a remand of Petitioner's denial of ancillary hearing with regards to the electronic devices but affirmed District Court's judgment with regards to the cash (Appendix A). Court's opinion stated that Petitioner did not present persuasive allegation demonstrating priority claim to the cash senior to the restitution lien of the United States but by virtue of his loan agreement has adequately asserted a facially plausible claim in the electronic devices seized. The Court of Appeals also pointed out that the cash in dispute was applied towards Defendant Mr. Butt's restitution using 3613(c) thus Petitioner cannot object to it using procedures stated by Congress under 21 U.S.C. § 853.

SUMMARY OF THE ARGUMENT

Petitioner argues that no other meaningful procedure exists to challenge seizure under 18 U.S.C. § 3613, thus Petitioner resorted to 21 U.S.C § 853. The Government violated Petitioner's due process rights and prevented Petitioner from meaningfully contesting the seizure of cash in a forfeiture proceeding.

Petitioner further argues that he has priority over United States restitution lien on cash because at the time of turnover motion filed by the Government under Texas Law Petitioner's security interest in the cash was superior to United States. The Government had ample notice prior to Defendant Mr. Butt's sentencing and the filing of Government's turnover motion that the cash did not belong to Defendant Mr. Butt. and both the District Court and the Appellate Court erred in declaring Petitioner an unsecured creditor with regards to cash despite the overwhelming evidence that at all time Petitioner not Mr. Butt was the true owner of the cash.

ARGUMENT

1) Petitioner argues that no meaningful procedure exists to challenge seizure under 18. U.S.C 3613.

A third party “asserting a legal interest in property which has been ordered forfeited” may “petition the Court for a hearing to adjudicate the validity of his alleged interest in the property.” 21 U.S.C. §853 (N); Fed.R.Crim.P.32.2 (c). A petitioner has the burden of providing by a preponderance of the evidence that (1) legal right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture. 21 U.S.C. §853 (n)(6).

“[A] judgment imposing a fine may be enforced all property and rights to a property of the person fined ...” 18 U.S.C. § 3613 (a). Forfeiture is an element of the sentence imposed for a violation of [criminal] conduct. *Libretti v. United States*, 516 U.S. 29, 41 (1995). Forfeitures, the Court has explained, “help to ensure that crime does not pay: They at once punish wrong doing, deter future illegality, and ‘lessen the economic power’ of criminal enterprises.” *Kaley v. United States*, 134 S. Ct. 1090 (2014).

Petitioner contends that he was never allowed an opportunity to assert interest in his own property. Applying the procedures stated by Congress - 21 U.S.C. § 853 - only allows Petitioner to assert interest in electronic devices in a forfeiture proceeding but not

in cash. The Government in their brief to the Court of Appeals floated the concept of intervention pursuant to Fed.R.Civ.P. 24. This is to imply an opportunity for Petitioner to contest the ownership of his cash. The rules of intervention does not give notice to Petitioner to intervene and the requirements of intervention are more stringent than any other statute authorizing contention of property (preponderance of evidence).

The Government applied the cash seized from Mr. Butt to his restitution debt utilizing the tax type lien under 3613(c). Under such a scheme, a restitution order establishes a lien in favor of the government “on all property and rights to property owned by the defendant”. In addition, as per Government’s own assertions 3664 (m)(1)(a)(ii) is applied *“when property of the Defendant is in possession of the United States”* (Govt brief to the Court of Appeals 18-20131, 5th Cir pg. 14). In this case the Government has made no definite showing that the cash belonged to Mr. Butt and neither did the District Court made any factual findings with regards to ownership of the cash. Honorable Judge Dennis, Judge Clement’s and Judge Owen’s decision in Mr. Butt’s appeal against the denial of the Court’s decision not to hold an evidentiary hearing to litigate third party interests (18-20023, 5th Cir) states that *“To the extent Butt had any interest in the \$91, 267 that was ordered turned over, it could be used to satisfy the restitution debt owed by Butt”*. Although the Honorable Judges did not divulge into ownership issues but a liberal reading of their statement can be construed to argue that at minimum the District Court should have addressed ownership issues with regards to cash and determined the extent of Mr. Butt interest in the cash. Mr. Butt’s financial disclosures which he provided to the Government

after his plea agreement which the Government construed as true never laid claim to the \$91, 267. Although Mr. Butt made conflicting statements with regards to ownership of cash all evidence in this case shows that the cash seized from Mr. Butt was cash from the loan proceeds provided by Petitioner and at all times Petitioner was the true owner of the cash and the lien holder.

Assuming *argumendo* even if Government's lien is to be considered valid in this case Petitioner perfected his lien twenty-nine months before Government laid any claims to the cash.² Moreover, Mr. Butt's motion (Roa 478) filed on December 5th 2017 unequivocally informed the Court and the Government that neither the cash nor the electronics belong to him. The Government in their brief further submitted to the Court of appeals admits that Mr. Butt prior to his sentencing placed the Government on notice that the cash did not belong to him and in violation of his plea agreement refused to agree to the forfeiture of cash (No: 18-20131 5th Cir Govt brief pg. 13, Footnote 6). This should have been enough of a reason for the Government not to apply 3613(c) or 3664 (m)(1) to the seized cash. Petitioner avers that the application of 3613(c) and 3664 (m)(1)(a)(ii) was incorrect and the Government nefariously used the turnover method to prevent Petitioner from contesting the application of cash to pay Mr. Butt's restitution in an ancillary proceeding.

² Petitioner executed his loan agreement with Mr. Butt on August 13th 2014 whereas Mr. Butt plead guilty on January 17th 2017 after which restitution was ordered.

Record also shows that the District Court only addressed if Petitioner was a secured creditor or an unsecured creditor without expressing any opinion with regards to the ownership of the cash or the electronic devices. By declaring Petitioner an unsecured creditor, the District Court short circuited all other arguments made by Petitioner. Petitioner asserts that he is the true owner of the cash and it should not be applied towards the payment of Mr. Butt's restitution without any additional fact finding and Petitioner being able to contest ownership in a forfeiture proceeding simply because it was seized from Mr. Butt.

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2) Whether Petitioner's loan agreement establishes priority over United States restitution lien on cash seized from Mr. Butt under Texas Law.

Record shows that Petitioner and Defendant, Mr. Butt, executed a collateralized loan agreement on August 13th 2014 establishing Petitioner's security interest in all inventory, current assets and accounts receivables, and all of Mr. Butt's personal assets. (Appendix E). Under Texas law, when property intended to serve as collateral is not in the possession or control of the alleged party, no security interest can arise unless the parties enter into a written security agreement.... Tex. Bus. Com. Code 9.301.

Clause# 11 of the loan agreement executed between Petitioner and Mr. Butt states:

“ In addition, party of the First [Petitioner] has first lien on all current assets of the business i.e. Cash and Accounts receivables” (Roa 521)

Clause #13 of the same loan agreement states:

“.....Party of the Second [Defendant] pledges all his assets to party of the First [Petitioner]” (Roa 521).

“.... pledges all of his personal and business assets i.e. current and fixed assets to Party of the First [Petitioner] until all disputes are settled and recovery of the principal amount” (Roa 521).

Both these clauses in the executed loan agreement establish Petitioner's security interest in the cash under Tex. Bus. Com. Code 9.203(b) and 9.301. The Court of Appeals in a decision on July 15th 2018 ruled that Petitioner through his loan agreement has

adequately alleged a secured interest in the electronic devices (“inventory”) but the Court did not extend that interest with regards to cash. The panel overlooked the fact that the loan agreement executed between Petitioner and Defendant Mr. Butt contained the above express terms dealing with the ownership of cash which pre-dated United States turnover motion filed on December 20th 2017.

Furthermore, Petitioner contends that the cash should not be treated differently than the electronic devices because the cash itself was from the loan proceeds provided to Defendant Mr. Butt for the sole purpose of buying inventory. This \$91,267 could very well have been in the form of inventory at any other given day hence Petitioner argues that this cash should be treated the same way as the electronic devices. The inventory, the cash and any accounts receivable fall under current assets thus both the above referenced clauses establish Petitioner’s priority claim and security interest in the cash and any other assets seized from Mr. Butt.

REASON FOR GRANTING THE PETITION

This Court should review this case because there exists no procedure to challenge a seizure of one's property when the Government uses a restitution lien, to pay another's debt. Petitioner avers that the Government knowingly and willingly applied 3613(c) to prevent Petitioner from contesting the seizure of the cash in an ancillary proceeding. By allowing Government a blanket opportunity to apply such restitution liens on disputed property it opens the gateways for the Government to take advantage of pro-se litigants who cannot meaningfully put up a fight against trained Government attorneys by permanently blocking any intervention from them.

Furthermore, this court should decide if proceeds from the same loan under the same loan agreement can be treated differently simply because some of the proceeds in this case are in the form of electronic devices and some of the proceeds are in the form of cash.

As stated by the Supreme Court, "justice must satisfy the appearance of justice". (Offutt v. United States, 48 U.S. 11, 13, 75 S. Ct. 11, 99 L. Ed. 11 (1954)). The Due process clause of the Fifth Amendment requires that Petitioner be given an opportunity to be heard in a meaningful way and in a meaningful manner. This is exactly what Petitioner is requesting. Petitioner is requesting that the Supreme Court takes up this issue and decide whether 3613(c) can be used in situations where ownership of the assets to be applied

towards a criminal defendant's restitution are in dispute and if so what options do litigants have to intervene in such an instance. In additions this Honorable Court should decide whether Petitioner's loan agreement establishes his security interest and priority lien on cash seized from Mr. Butt under Texas Law.

Respectfully submitted,

s/ Tajuddin Salahuddin

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12/16/2019