

19-8121

No. \_\_\_\_\_

ORIGINAL

Supreme Court, U.S.  
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IN THE

SUPREME COURT OF THE UNITED STATES

Nikkolas Thompson — PETITIONER  
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eighth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Nikkolas Thompson  
(Your Name)

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## **Questions Presented**

- I. Whether, the 2000 amendments to the Civil Asset Forfeiture act are constitutional where it requires a Claimant to prove the source of the funds in question prior to the Government meeting a minimum pleading standard for its allegations against the defendant currency.
- II. Whether special interrogatories are required pursuant to Rule G of the Supplemental Rules of Admiralty or Maritime Claims and Asset Forfeiture Actions once a District Court has determined a Claimant has standing.

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#### **IV. Parties**

Nikkolas Thompson, is a private citizen and former small business owner living in Little Rock Arkansas. Mr. Thompson respectfully petitions this court for a writ of certiorari to review the judgment of the Eight Circuit Court of Appeals decision of his case against the United States of America.

#### **V. Opinions Below**

This matter was most recently heard by the United States Court of Appeals for the Eight Circuit. It was case number 18-2701 and the order denying En Banc review was filed on October 22, 2019. The original decision upholding the lower court's striking of Thompson's claim was filed on August 12, 2019. Thompson's appeal to the Eight Circuit was of a District Court order in case number 4:16-CV-00168 BSM in which the Order to Striking Thompson's claim to the disputed currency was filed on May 22, 2018.

#### **VI. Jurisdiction**

Mr. Adams invokes this Court's jurisdiction pursuant to Article III, Section II of the United States Constitution due to the alleged violations of Mr. Thompson's constitutional rights. This petition for a writ of certiorari within ninety days of the order denying En Banc review by the United States Court of Appeals for the Eight Circuit.

## **VII. Constitutional Provisions and Statutes Involved**

### **United States Constitution, Amendment IV:**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### **United States Constitution, Amendment V:**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **Statement of the Case**

The forfeiture laws and rules of procedure permit the government to seize private assets and file a civil lawsuit against such property within ninety days of the seizure in order to permanently keep the property. Two crucial provisions of the federal civil asset forfeiture regime could make such laws arguably constitutional. Without such provisions, the federal government is unrestrained in theory, and in this case, to seize the assets of anyone in the United States and require the owner of those assets to prove their legitimacy before the government is required to sufficiently state grounds for its continued seizure.

One such provision is the requirement that the government initially plead its case to the heightened fact pleading standards of Fed R. Civ. P. SUPP AMC Rule G(2), taken together with Fed R. Civ. P. 12(b)(6). Those provisions require that the government plaintiff identify the statute under which it brings the forfeiture action and state “sufficiently detailed facts” to support a reasonable belief that the government will be able to prove its allegations by a preponderance of the evidence at trial.

The other crucial provision permits an owner of the property, or a bailee, to file a claim demanding its return.

This case is a cautionary example of the overreach of executive government power. The case began in the Federal District Court for the Eastern District of Arkansas and was filed pursuant to Federal forfeiture laws. The overriding issues involve the interpretation of the Supplemental Rules of procedure that govern forfeiture claims. The question is whether those rules can be interpreted to give the government boundless power to indefinitely keep property it deems suspicious without stating any evidence-based theory of why the property is subject to forfeiture.

This episode began on September 29, 2015 when the Government found approximately \$284,950.00 in Mr. Thompson’s luggage. On March 30, 2016, five months after it began its investigation, the government filed this case alleging that, more likely than not, the money it took from Mr.

Thompson was drug money. Longer than two years after it filed its lawsuit, the Government had still not alleged any facts that could demonstrate the theories it proposed back in 2016.

In the meantime, however, the government had empaneled at least two grand juries and analyzed more than 600,000 megabytes of electronic data it took from Thompson and his girlfriend during searches of their home and two of their business locations. Thompson produced answers to interrogatories as well as financial records. Thompson five years of tax returns and several years of records of electronic transactions that included hundreds of thousands of dollars of electronic transactions that were business income, loans and gifts.

The District Court stated in open court and ruled in a written order that he had to file his claim. However, despite Thompson having standing the District Court struck his claim due to his alleged failure to adequately respond to Rule G special interrogatories. In its order striking Thompson's claim the District Court stated that Thompson had the burden of proving his interest in the defendant currency.

Additionally, the District Court declined to consider Thompson's Motion to Dismiss the Government's Complaint and ignored his Constitutional claims. The Eighth Circuit Court of Appeals upheld the lower court's rulings and held that dismissal based on Thompson's responses to Special Interrogatories was not an abuse of discretion and that it need not address Thompson's Constitutional claims or Motion to Dismiss.

## Reasons for Granting the Writ

1. **To avoid due process deprivation and protections against unreasonable seizures for those who have a legitimate interest in contested property this Court should deem Fed. R. Civ. P. Supp. R. G(6)(c) unconstitutional because it requires a Claimant to prove the source of the funds in question prior to the Government meeting a minimum pleading standard for its allegations against the defendant currency.**

Most of the Court's cases that provide guidance to lower courts on the issue of civil asset forfeiture were decided prior to Congress's 2000 revision to the underlying forfeiture statutes. The Civil Asset Forfeiture Reform Act of 2000 elevated the burden of proof at trial to a preponderance of the evidence standard: "[P]resently under CAFRA, the Government must meet a higher level of proof in order to prevail in a civil forfeiture proceeding in that it must establish by a 'preponderance of the evidence' that the 'property is subject to forfeiture.'" *1630 Ardmore Dr.*, 178 F. Supp. 2d at 580 (citing 18 U.S.C. § 983(c)). Yet, and still 17 years later the vast majority of the Supreme Court case law is rooted in the previous version of the forfeiture act in which the Government simply had to meet a probable cause standard.

The new law also requires that "[The government] must 'establish a 'reasonable belief that the Government can demonstrate its burden of proof at trial.'" *United States v. 630 Ardmore Drive, City of Durham, Parkwood Twp., Durham Cty., N. Carolina*, 178 F. Supp. 2d 572, 581 (M.D.N.C. 2001) (citing *United States v. Daccarett*, 6 F.3d 37, 47 (2d Cir.1993)).

However, a claimant cannot challenge the Government's alleged failure to

meet its pleading standard, without first proving the legitimacy of the source of the money. Such a requirement effectively shifts the burden of proof from the Government, to the person whose property was unreasonably seized.

The Supreme Court should hear this case because Rule G(6)(b) prevents a Claimant from seeking the dismissal of a frivolous claim by the Government against her property until such time as the district court determines that the Claimant has satisfactorily answered the Government's special interrogatories—even as in the case of Thompson when the Government possesses all the answers.

The claimant who fails to answer special interrogatories to the satisfaction of the Government will have his claim stricken, before the Government is ever required to demonstrate it has sufficiently plead a case.

**a. The Government failed to state facts sufficient to support a reasonable belief that can demonstrate its burden of proof at trial.**

The government gave short shrift to the pleading requirement that it state "facts sufficient to support a reasonable belief" that it can demonstrate by a preponderance of the evidence that Mr. Thompson's money is drug money. See *United States v. U.S. Currency, in Amount of \$150,660.00*, 980 F.2d 1200, 1205 (8th Cir. 1992).

Although the Government has kept property from Mr. Thompson for four years based on a mere suspicion, the Constitution demands more than mere suspicion to sustain a forfeiture action. The forfeiture rules also require more of the government. At a minimum, six things must be sufficiently set forth in a forfeiture complaint:

The complaint must:

- (a) be verified;
- (b) state the grounds for subject-matter jurisdiction, in rem jurisdiction over the defendant property, and venue;
- (c) describe the property with reasonable particularity;
- (d) if the property is tangible, state its location when any seizure occurred and—if different—its location when the action is filed;
- (e) identify the statute under which the forfeiture action is brought; and
- (f) state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial.

Fed R. Civ. P. SUPP AMC Rule G(2) (emphasis added).

Subsection (f) is crucial. According to subsection (f) of Rule G(2), the government must include facts in its Complaint. Further, the law states that those facts must be sufficiently detailed to make it reasonable to believe the government can prove Mr. Thompson was involved in a drug crime at trial. In this case, the facts alleged in the government's attempt to take Mr. Thompson's money categorically fail to do that.

The Rules state further, "In actions to which this rule is applicable the complaint shall state the circumstances from which the claim arises with such particularity that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading." Fed R. Civ. P. SUPP AMC Rule E(2).

The Government's only fact-based route into a drug theory in this case is their statement, "Kazi gave a positive alert for the odor of narcotics on the suitcase." That

is the only factual allegation of a link to drugs. A supposed “alert” on a supposed trace of something that could conceivably have been some unidentified narcotic on luggage. That “alert” alone cannot, in the United States of America, establish that it is more likely than not that Thompson is a drug dealer.

**b. Rule 12(b)(6) required the government to state more detailed facts to sufficiently state a claim for relief.**

The general requirements of Rule 12(b)(6) still apply to forfeiture proceedings: The Supreme Court has stated, to avoid dismissal, a complaint must include “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

Here, the government asserts a cause of action based in 18 U.S.C. § 983 and further set forth in Fed R. Civ. P. SUPP AMC Rule G. Showing that cause of action is plausible on its face requires a specified degree of fact pleading under Rule G(2)(f). Rule G(2) and E(2) set the fact pleading standard that makes a claim plausible under Rule 12(b)(6) in forfeiture cases. The rules require “sufficiently detailed facts” to “support a reasonable belief” that the government can prove by a preponderance of the evidence at trial what they allege in the Complaint. Therefore, Rule 12(b)(6) requires that the government state those “sufficiently detailed” facts on the face of its Complaint. This nuanced analysis by a Minnesota court illustrates distinction embodied in Rule 12(b)(6) between a sufficiently pled complaint and a merely conceivable complaint:

Stated differently, a plaintiff must plead sufficient facts “to provide the ‘grounds’ of his ‘entitle [ment] to relief,’ [which] requires

more than labels and conclusions, and [for which] a formulaic recitation of the elements of a cause of action will not do.” Id. at 1964–65 (citation omitted). Thus, a complaint cannot simply “le[vel] open the possibility that a plaintiff might later establish some ‘set of undisclosed facts’ to support recovery.” Id. at 1968 (citation omitted). Rather, the facts set forth in the complaint must be sufficient to “nudge[ ] the[ ] claims across the line from conceivable to plausible.” Id. at 1974.

*United States v. Real Prop. & Premises*, 657 F. Supp. 2d 1060, 1065–66 (D.

Minn. 2009).

Thompson’s efforts to hold the Government to its pleading standard fell on deaf ears before both the District Court and the Eighth Circuit Court of Appeals. Despite Thompson constantly complaining that the Fed R. Civ. P. SUPP AMC Rule G(6) violated his right to due process; his prayer for relief was ignored and deemed moot. The lower courts’ treatment of Thompson was a confusing and convoluted process in which the Government took Thompson’s life savings using a process reminiscent of Franz Kafka’s *The Trial*.

2. **To avoid due process deprivation against those who have a legitimate interest in contested property this Court should clarify that special interrogatories pursuant to Rule G(6) are not required once a claimant has been determined to have standing to file his claim.**

In forfeiture actions the Government “may serve special interrogatories limited to the claimant’s identify and relationship to the defendant property...[... ]” Fed.R.Civ.P. Supp. R. G(6)(a). The purpose of the rule is ‘to permit the government to file limited interrogatories at any time after the claim is filed to gather information that bears on the claimant’s standing. *United States v. \$579,475.00 in U.S. Currency*, 917 F.3d 1047, 1048-49 (8th Cir. 2019).

In order to demonstrate standing a claimant must state a “colorable ownership interest.” 18 U.S.C. § 983(d)(6)(A). “To have standing, a claimant need not prove the underlying merits of the claim. The claimant need only show a colorable interest in the property, redressable, at least in part, by a return of the property.” *United States v. 7725 Unity Ave. N.*, 294 F.3d 954, 957 (8th Cir.2002) (citation omitted).

At the pleadings stage of the litigation the burden a claimant must meet to achieve statutory standing pursuant to Rule G(5) is not very high. *United States v. \$579,475.00 in U.S. Currency*, 917 F.3d 1047, 1048-49 (8th Cir. 2019).

The Eighth and Ninth Circuits Court of Appeals have held that special interrogatories are unnecessary once the issue of standing is settled. See *Id.* and *U.S. v. Real Property Located at 17 Coon Creek Road, Hawkins Bar California, Trinity County*, 787 F.3d 968 (9<sup>th</sup> Cir. 2015).

Here, the Court had already determined in its July 2017 Order that Thompson had standing. So, there was no need for Thompson to provide the Government with responses to special interrogatories.

As noted *supra* Thompson provided significant information in his special interrogatory responses. More important here, is the fact that the Government had been investigating Thompson for some time.

In addition to Thompson’s special interrogatory responses the Government also raided Thompson’s home and businesses and seized all of his business records and electronic devices. All told the Government possessed—in addition to Thompson’s interrogatory responses—600 gigabytes of digital information it took from Thompson.

The attorney for the Government was also aware of each of Thompson's business locations.

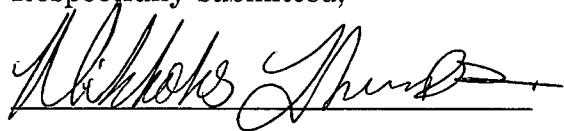
Dismissal of his Claim and striking his Answer after Thompson has established standing is offensive to Thompson's right to due process pursuant to the Fifth Amendment to the U.S. Constitution, and it permits the government to sustain a seizure without ever addressing its reasonableness in violation of the Fourth Amendment to the U.S. Constitution.

The Appellant respectfully requests that this Court grant certiorari to rule on provisions of the forfeiture laws that have been interpreted to permit unconstitutional and indefinite seizures of the assets of anyone in the United States without requiring the Government to state an adequate cause of action against the property until after the owner meets a heavy burden to prove the legitimacy of the source of the property.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 3/24/20