

19-8218

ORIGINAL

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

In The  
**Supreme Court of the United States**

\_\_\_\_\_  
ANGEL RAZ-ALVAREZ,

*Petitioner,*

Supreme Court, U.S.
FEB 01 1991
OFFICE OF THE CLERK

v.

UNITED STATES OF AMERICA,

*Respondents.*

\_\_\_\_\_  
**ON PETITION TO FOR WRIT OF CERTIORARI  
TO THE U.S. COURT OF APPEALS FOR THE  
FIRST CIRCUIT**

\_\_\_\_\_  
To the Honorable William Breyer,  
Associate Justice of the United States Supreme Court  
and Circuit Justice for the First Circuit

\_\_\_\_\_  
ANGEL PAZ-ALVAREZ  
PROCEEDING PRO-SE  
REG. NUM. 40827-069  
P.O. BOX 340  
SALTERS, SC 29590

*Proceeding-Pro Se*

\_\_\_\_\_

## QUESTIONS PRESENTED

*This petition asks an important question: whether modern criminal-forfeiture statutes can be squared with the Due Process Clause and whether petitioner can properly be considered a third-party under rule 853 (n)(1)-(2) in his own criminal case.*

*This Court must settle a clear conflict between the First Circuit Appeals Court and the Fourth Circuit Court of Appeals that “any person, other than a defendant, asserting a legal interest in property which has been ordered forfeited to the United States, may petition the Court for a hearing to adjudicate the validity of his alleged interest in the property.” 21 U.S.C. Section 853 (n).*

## LIST OF PARTIES

*The petitioner is Angel Paz-Alvarez, a resident of the Commonwealth of Puerto Rico. The respondent is the United States of America.*

The Honorable William Beyer, Associate Justice of the United States Supreme Court and Circuit Justice for the First Circuit:

## OPINIONS BELOW

The opinion of the unpublished opinion as attached as Exhibit A, see also Motion for Extension.

## JURISDICTION

Petitioner, Angel Paz-Alvarez ("Petitioner") respectfully to file a petition for writ of certiorari. The earliest mandate for Applicants to file his petition is December 4, 2019, which is ninety days from the date when the Appeals Court for the First Circuit entered its mandate. This Court granted an extension of time until February 4, 2020. *See, extension of time*. The First Circuit denied Petitioner's motion for rehearing on October 16, 2019. *See, Addendum B*.

## STATUTES INVOLVED

### 21 U.S. Code 853. Criminal forfeitures

(a) **PROPERTY SUBJECT TO CRIMINAL FORFEITURE** Any person convicted of a violation of this subchapter or subchapter II punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

(n) *THIRD PARTY INTERESTS*

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

### **Background Facts**

In September 2012, a grand jury returned an indictment charging Paz and twelve co-defendants with: one count of conspiring to possess with intent to distribute controlled substances, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A)(ii); and one count of conspiring to import a controlled substance, in violation of 21 U.S.C. §§ 963, 952, 960(a)(1), and 960(b)(1)(B). (DE 3 at 1-4). The Indictment also included a drug forfeiture allegation, averring that, upon conviction, the defendants, including Paz, “shall forfeit to the United States of America any property constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of such offenses and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the offense(s).” (DE 3 at 9-10).

On Appeal the First Circuit Court held that petitioner Paz was a third-party to his *own* property, in the indictment, which basically turns the criminal forfeiture process on its head. *See Order attached as Addendum A:*

Pro se appellant Angel Paz-Alvarez appeals from the denial of a motion to strike a preliminary order of forfeiture. The forfeiture order entered in June 2013, but Paz-Alvarez waited until July 2018 to file the motion to strike. *There are multiple issues with the timing and manner of the challenge, any one of which, standing alone, would warrant affirmance. See United States v. Davenport, 668 F.3d 1316, 1320 (11th Cir. 2012) (“A codefendant in a criminal case is properly viewed as a third party with regard to another*

*defendant's forfeiture of property."); United States v. Catala, 870 F.3d 6, 9 (1st Cir. 2017) ("[21 U.S.C. § 853(n)] sets forth the procedures through which a third party can challenge a preliminary order of forfeiture."); 21 U.S.C. § 853(n)(2) (establishing a 30-day window during which any third party who wishes to assert an interest in criminally forfeited property may file a petition for a hearing).*

In any event, even if those issues might be set to the side, after careful review of the record and the filings of the parties, we conclude that the district court did not err in denying the motion. See United States v. George, 886 F.3d 31, 39 (1st Cir. 2018) ("Where ... a claim of error directed at a forfeiture order has been duly preserved, we review challenges to the ordering court's legal conclusions de novo and challenges to its factual findings for clear error.").

*Order, addendum A.*

#### **REASONS FOR GRANTING THE EXTENTION**

The petitioner had a statutory right to have the judge determine the forfeit-ability of his property in accordance with Rule 32.2 (c) of the Federal Rules of Criminal Procedure. (DE 289 at 5) . The defendant was not required to contest the criminal forfeiture under 21 U.S. C. S 853 (n) and Rule 32.2 (c) of the Federal Rules of Criminal Procedure, simply because the criminal action was plainly directed at him. Mr. Paz was not required to file a claim nor requested to have to request a hearing pursuant to Rule 32.2 (c) of the Federal Rules of Criminal Procedure and 21 U.S. C. S 853 (n) . See, S. Union Co. v. United States, 132 S. Ct. 344, 2350—51 (2012) (extending federal criminal forfeiture as in fines) ; (citing Oregon v. Ice, 555 U.S. 160, 168 ( 200 9 ) ; see also Honeycutt v. United States, No. 16–142. Argued March 29, 2017—Decided June 5, 2017 :

*Because forfeiture pursuant to 853 (a)(1) is limited to any property that the defendant himself actually acquired that provision does not permit forfeiture with regard to Terry Honeycutt, who had no ownership interest in his brother's store and did not personally benefit from the illegal sales. Pp. 3–11.*

*Section 853(a) limits forfeiture to property flowing from, §853(a)(1), or used in, §853(a)(2), the crime itself—providing the first clue that the statute does not countenance joint and several liability,*

*See, id.* (emphasis added)

The First Circuit decision is squarely at odds with the Fourth Circuit decision that "Title 21 Section 853(n) provides the exclusive means through which a third party, such as the petitioner, may assert an interest in property that has been forfeited." United States v. Phillips, 185 F.3d 183, 186 (4th Cir. 1999)(emphasis added); see also United States v. Valentin-Acevedo, 625 Fed. Appx. 16, at 5 (1<sup>st</sup> Cir. 2015)("21 U.S.C. 853 (n) provides the only means for third parties to claim an interest in property subject to criminal forfeiture."); citing Libretti v. United States, 516 U.S. 29, 44 (1995)("[T]hird-party claimants can establish their entitlement to return of the assets by means of a hearing afforded under 21 U.S.C. 853 (n))(emphasis ours). The First Circuit holding here will turn criminal forfeiture law on its head. Section 853(n)(2) provides, in relevant part, that "[a]ny person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may . . . petition the court for a hearing to adjudicate the validity of his alleged interest in the property." 21 U.S.C. § 853(n)(2). (emphasis added). The First Circuit does not meet the "other than the defendant" language in 853 (n) because petitioner was convicted in bifurcated trial in

accordance to Rule 32.2. Petitioner Paz cannot be considered a third-party in his own criminal case. See. Honeycutt v. United States, supra.

**CONCLUSION**

For the foregoing reasons, this writ must be granted.

**RESPECTFULLY SUBMITTED.**

*s/ Angel Paz-Alvarez*

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