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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 18-56657

D.C. No. 2:17-cv-04446- DSF-PLA

[Filed: August 24, 2020]

UNITED STATES OF AMERICA,	)
Plaintiff-Appellee,	)
v.	)
TAREK OBAID,	)
Claimant-Appellant,	)
CERTAIN RIGHTS TO AND INTERESTS IN SHARES OF SERIES D PREFERRED STOCK IN PALANTIR TECHNOLOGIES,	)
Defendant.	)

OPINION

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted September 11, 2019
Pasadena, California

Filed August 24, 2020

Before: Johnnie B. Rawlinson, Sandra S. Ikuta, and Mark J. Bennett, Circuit Judges.

Opinion by Judge Rawlinson;
Dissent by Judge Ikuta

SUMMARY[*]

Personal Jurisdiction / *In Rem* Civil Forfeiture / Venue

The panel affirmed the district court's order denying Tarek Obaid's motion to dismiss for lack of personal jurisdiction and for lack of proper venue a civil forfeiture case involving Obaid's shares of stock in Palantir Technologies, a corporation with its principal place of business in California.

Obaid is a citizen of Saudi Arabia who wired $2 million from his account in Switzerland to a bank in California to purchase stock in Palantir. The government filed this *in rem* civil forfeiture action against Obaid's Palantir shares. Obaid moved to dismiss the forfeiture action, contending that *in*

[*] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

personam jurisdiction over him was necessary to adjudicate this *in rem* action, and the district court was required to apply the minimum contacts standard to determine whether he had sufficient contacts with the forum.

The panel held that the United States Supreme Court's decision in *Shaffer v. Heitner*, 433 U.S. 186 (1977) (requiring the application of a minimum contacts framework to each person who claims ownership of property), addressed a *quasi in rem* proceeding rather than a true *in rem* proceeding. The panel held further that *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004), provided more direct guidance for the issues before the panel. The panel concluded that *Hood* supported its view that *Shaffer* was limited to *quasi in rem* actions and did extend to *in rem* actions, such as this one. The panel held that the district court did not err when it determined that the constitutional due process requirements set forth in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), were inapplicable to this *in rem* action. In an *in rem* action, the focus for the jurisdictional inquiry is the res, in this case Obaid's Palantir shares, rather than Obaid's personal contacts with the forum.

The panel held that venue was proper because sufficient acts giving rise to the civil forfeiture occurred in the Central District of California. The panel concluded that the conspiratorial activity in the Central District was sufficient to support venue given the relatively low standard set forth in 28 U.S.C. § 1355. The panel also held that whether Obaid was

involved in the conspiracy was immaterial to the venue analysis.

Dissenting, Judge Ikuta wrote that the majority erred in not applying *Shaffer v. Heitner*, and created a split with two circuits that applied *Shaffer* and seven circuits that expressly construed it to cover ordinary *in rem* proceedings. Judge Ikuta would remand to the district court to conduct the required minimum contacts analysis.

COUNSEL

David B. Rivkin (argued), Jonathan R. Barr, Lee A. Casey, Mark W. DeLaquil, Elizabeth Price Foley, and Andrew M. Grossman, Baker Hostetler LLP, Washington, D.C.; Jonathan B. New, Baker Hostetler LLP, New York, New York; for Claimant-Appellant.

Joshua L. Sohn (argued), Trial Attorney; Woo S. Lee, Deputy Chief; Deborah Connor, Chief; Money Laundering and Asset Recovery Section, United States Department of Justice, Washington, D.C.; L. Ashley Aull, Chief, Criminal Appeals Section; Nicola T. Hanna, United States Attorney; United States Attorney's Office, Los Angeles, California; for Plaintiff-Appellee.

David L. Zifkin, Boies Schiller Flexner LLP, Santa Monica, California; Matthew L. Schwartz, Boies Schiller Flexner LLP, New York, New York; for Amicus Curiae Qentas Holdings.

OPINION

RAWLINSON, Circuit Judge:

Appellant-claimant Tarek Obaid (Obaid) appeals the district court's order denying his motion to dismiss for lack of personal jurisdiction and for lack of proper venue in this civil forfeiture case involving his shares of stock in Palantir Technologies (Palantir), a corporation with its principal place of business in California. Reviewing *de novo*, we affirm the judgment of the district court.

I. BACKGROUND

Obaid is a citizen of Saudi Arabia, who serves as the chief executive officer of PetroSaudi International (PSI), an oil and gas exploration company. In 2009, PSI entered into a joint venture with 1Malaysia Development Berhad (1MDB), an investment company wholly-owned by the government of Malaysia. 1MDB was created to pursue economic development for the benefit of the Malaysian people. According to the government, 1MDB was riddled with fraud from its inception, as multiple individuals conspired to divert and launder billions of dollars from the fund. From 2009 to 2011, 1MDB and PSI arranged for the fraudulent transfer of more than $1 billion from 1MDB to a Swiss bank account in the name of Good Star Limited (Good Star Account). Jho Low, a Malaysian national, was involved in the creation of 1MDB, and laundered more than $400 million through the Good Star Account into the United States. Low then used the laundered funds to, among other things, purchase luxury items and real estate.

As the chief executive of PSI, Obaid allegedly facilitated the 1MDB and PSI joint venture, including by signing various documents to effectuate the transfers of money into the Good Star Account. Additionally, Obaid personally received $153 million from the Good Star Account that was processed through a bank account in New York and ultimately sent to Obaid's personal account in Switzerland. Relevant to this appeal, Obaid wired $2 million from his account in Switzerland to a bank in California to purchase 2,500,000 shares of Series D preferred stock in Palantir.[1]

As part of its efforts to recoup money fraudulently obtained in the scheme, the government filed this *in rem* civil forfeiture action against Obaid's Palantir shares. In a lengthy complaint, the government alleged that the Palantir shares were forfeitable because they were derived from proceeds traceable to the wire fraud and money laundering scheme involving 1MDB and PSI. Contemporaneous with the action brought against Obaid's Palantir shares, the government filed multiple civil forfeiture suits seeking to reclaim assets such as luxury hotels, yachts, certain movies rights, and expensive real estate in Beverly Hills, connected to the fraudulent scheme. However, it is unclear from the complaint whether—and to what extent—Obaid maintains an ownership interest in the additional

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[1] Because this is an *in rem* action, the defendant in this appeal is property—the Series D Palantir shares. *See United States v. 2,164 Watches, More or Less Bearing a Registered Trademark of Guess?, Inc.*, 366 F.3d 767, 771 (9th Cir. 2004).

assets being sought by the government in the related civil forfeiture actions.

Obaid confirmed his ownership of the Palantir shares and subsequently moved to dismiss the forfeiture action, contending that the district court lacked personal jurisdiction over him as the property owner. Obaid also maintained that venue was improper because the disputed res, *i.e.*, the Palantir shares, was not alleged to be located in the Central District of California. The district court rejected Obaid's argument that personal jurisdiction over him was required to adjudicate rights to the named property. And the district court concluded that venue was proper in the Central District, reasoning that civil forfeiture actions may be brought in the district "in which any of the acts or omissions giving rise to the forfeiture occurred." In the district court's view, venue was proper because multiple acts giving rise to the alleged conspiracy occurred in the Central District.

Obaid moved for reconsideration of the district court's rulings and, in the alternative, to certify the rulings for interlocutory appeal. The district court denied the motion for reconsideration, but granted the motion to certify its ruling for interlocutory appeal.

II. STANDARD OF REVIEW

A district court's rulings on personal jurisdiction and venue are reviewed *de novo*. *See Myers v. Bennett Law Offices*, 238 F.3d 1068, 1071 (9th Cir. 2001).

III. DISCUSSION

Obaid contends that the district court erred when it denied his motion to dismiss for lack of personal jurisdiction. According to Obaid, *in personam* jurisdiction over him was necessary to adjudicate this *in rem* forfeiture action, and the district court was required to apply the minimum contacts standard established by United States Supreme Court precedent to determine whether he had sufficient contacts with the forum. Applying that standard, Obaid asserts that he lacked sufficient contacts with the forum to satisfy due process requirements. Obaid also challenges the district court's determination that venue was proper in the Central District.

A. *In Personam* Jurisdiction in an *In Rem* Action

Obaid urges us to conclude that the district court erred when it held that the United States Supreme Court's decision in *Shaffer v. Heitner*, 433 U.S. 186 (1977) does not control the outcome of the jurisdiction issue in this *in rem* civil forfeiture action. Obaid maintains that *Shaffer* squarely stands for the proposition that *all* assertions of jurisdiction—*in rem*, *quasi in rem*, and *in personam*—must be evaluated according to a minimum contacts standard.

Before delving into the issues in this case, it is helpful to distinguish among the types of potential jurisdiction in federal cases. "*In personam* jurisdiction, simply stated, is the power of a court to enter judgment against a person." *SEC v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007). By contrast, *in rem* jurisdiction is the court's power to adjudicate rights over property. *See id.*

"Jurisdiction *in rem* is predicated on the fiction of convenience that an item of property is a person against whom suits can be filed and judgments entered. . . ." *United States v. Approximately $1.67 Million (US) in Cash, Stock & Other Valuable Assets*, 513 F.3d 991, 996 (9th Cir. 2008) (citation and internal quotation marks omitted). More nebulous is the concept of *quasi in rem* jurisdiction:

> A *quasi in rem* action is basically a halfway house between *in rem* and *in personam* jurisdiction. The action is not really against the property; rather, the action involves the assertion of a personal claim against the defendant of the type usually advanced in an *in personam* action and the demand ordinarily is for a money judgment, although in some contexts the objective may be to determine rights in certain property. The basis for transforming the suit from one *in personam* to an action against the defendant's property is the attachment or garnishment of some or all of the property the defendant may have in the jurisdiction.

Ventura Packers, Inc. v. F/V JEANINE KATHLEEN, 424 F.3d 852, 860 n.4 (9th Cir. 2005), *as amended* (citations and alteration omitted).

Fortunately, there is no dispute that the underlying action is *in rem* because "[a] forfeiture action is *in rem*." *$1.67 Million*, 513 F.3d at 996 (citation omitted). The Supreme Court recognizes a "sharp distinction between

in rem civil *forfeitures* and *in personam* civil *penalties* such as fines." *United States v. Ursery*, 518 U.S. 267, 275 (1996). While a civil action to recover penalties is similar to a criminal prosecution in that "it is the wrongdoer in person who is proceeded against, in an *in rem* forfeiture proceeding, it is the property which is proceeded against." *Id.* at 283 (citation, alteration, and internal quotation marks omitted). Thus in a civil forfeiture proceeding *in rem*, "jurisdiction [is] dependent upon seizure of a physical object." *Id.* at 277 (citation omitted). Here, the focus is on the district court's jurisdiction over the property in dispute, *i.e.*, Obaid's Palantir shares. *See Ross*, 504 F.3d at 1138.

To resolve this case we must decide which of two cases is the more pertinent precedent. The first is *Shaffer*, which involved a Delaware shareholder derivative suit against Greyhound Corporation, as well as its officers and directors. *See* 433 U.S. at 189–90. In conjunction with his action, the plaintiff moved to sequester the Delaware property—stock in Greyhound Corporation—of the individual defendants. *See id.* at 190–91. Under Delaware law, the primary purpose of "sequestration" was to use the property as a basis to "compel the personal appearance of a nonresident defendant to answer and defend a suit brought against him in a court of equity." *Id.* at 193 (citation omitted). The individual defendants challenged the suit on personal jurisdiction grounds, contending that they lacked sufficient contacts with Delaware to satisfy the jurisdictional requirements of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). *See Shaffer*, 433 U.S. at 192–93. The Delaware Supreme Court rejected the defendants' argument, holding that the *quasi in rem*

jurisdiction was predicated "on the presence of capital stock [in Delaware], not on prior contact by defendants with this forum." *Id*. at 195 (quoting *Greyhound Corp. v. Heitner*, 361 A.2d 225, 229 (Del. 1976)).

The United States Supreme Court reversed the ruling of the Delaware courts *See id*. In the Supreme Court's view, the same precepts that govern *in personam* jurisdiction, "fair play and substantial justice," also applied in *Shaffer* because "judicial jurisdiction over a thing, is a customary elliptical way of referring to jurisdiction over the interests of persons in a thing." *Id*. at 207 (citation, footnote reference, and internal quotation marks omitted). Logically, this means that "in order to justify an exercise of jurisdiction *in rem*, the basis for jurisdiction must be sufficient to justify exercising jurisdiction over the interests of persons in a thing." *Id*. (footnote reference and internal quotation marks omitted). "The standard for determining whether an exercise of jurisdiction over the interests of persons is consistent with the Due Process Clause is the minimum-contacts standard elucidated in *International Shoe*." *Id*. The Supreme Court thus concluded that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." *Id*. at 212 (footnote reference omitted).

Left with this conclusion from *Shaffer*, one might deduce that Obaid's position carries the day. But not so fast. Another Supreme Court decision, *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004), decided some twenty-five years after *Shaffer*, has

something to say about *in rem* jurisdiction and it does not say the same thing that *Shaffer* seemingly says.

The Tennessee Student Assistance Corporation (TSAC) is a government agency that administers student assistance programs in the state of Tennessee. *See id.* at 443. Among other things, TSAC guarantees student loans to residents of Tennessee. *See id.* at 444. Hood was one such resident, and she signed promissory notes for loans guaranteed by TSAC. *See id.* Years after receiving the loans, Hood filed a "no asset" bankruptcy petition. She did not mention her student loans and those debts were not included in her discharge. *See id.* Hood then reopened her bankruptcy petition for the limited purpose of seeking a discharge of her student loans pursuant to the "undue hardship" provision of the Bankruptcy Code. *See id.* TSAC was named as a defendant. *See id.* at 445.

TSAC filed a motion to dismiss Hood's complaint for lack of jurisdiction, on the basis of the state's sovereign immunity under the Eleventh Amendment. *See id.* The bankruptcy court, Sixth Circuit Bankruptcy Appellate Panel, and the Sixth Circuit all agreed that states have no immunity from suit in the bankruptcy context. *See id.*

The Supreme Court granted certiorari and affirmed. *See id.* at 443. Rather than addressing the "broader question" of whether states have no immunity from suit in the bankruptcy context, the Court addressed the narrower question of whether discharge of a student loan debt implicated Eleventh Amendment immunity. *See id.* at 445. The Court's answer to this question was "no." *See id.*

To resolve this question, the Court first clarified that "[t]he discharge of a debt by a bankruptcy court is . . . an *in rem* proceeding and that [b]ankruptcy courts have exclusive jurisdiction over a debtor's property." *Id.* at 447 (citations omitted). The Court noted that its precedent "has drawn a distinction between *in rem* and *in personam* jurisdiction, even when the underlying proceedings are, for the most part, identical." *Id.* at 453. For the purpose of adjudicating the discharge claim, the bankruptcy court's "jurisdiction is premised on the res, not on the persona." *Id.* at 450. The Court concluded that the case did not implicate the Eleventh Amendment because the bankruptcy court's *in rem* jurisdiction "allows it to adjudicate the debtor's discharge claim without *in personam* jurisdiction over the State." *Id.* at 453 (citation omitted). "The bankruptcy court's *in rem* jurisdiction permits it to determine all claims that anyone, whether named in the action or not, has to the property or thing in question. . . . *Id.* at 448 (citation, alteration, and internal quotation marks omitted). This conclusion follows because in an *in rem* action, "jurisdiction over the person is irrelevant if the court has jurisdiction over the property." *Id.* (citation omitted). The Court emphasized that Hood did not ask the bankruptcy court to exercise personal jurisdiction; she simply wanted "a determination of the dischargeability of her debt." *Id.* For that reason, the Eleventh Amendment was not implicated and the denial of TSAC's motion to dismiss was upheld. *See id.* at 455.

Neither of these two cases is precisely on point. *Shaffer* addressed a *quasi in rem* proceeding rather than a true *in rem* proceeding. *See Ventura Packers*,

424 F.3d at 860 n.4 (describing a *quasi in rem* proceeding as "a halfway house between *in rem* and *in personam* jurisdiction" with the "action not really against the property" but more "a personal claim . . . of the type usually advanced in an *in personam* action"). As noted in *Shaffer*, the primary purpose of sequestration was "not to secure possession of property" but to "compel the personal appearance of a nonresident defendant to answer and defend a suit brought against him in a court of equity." 433 U.S. at 193 (citation omitted). In other words, "the only role played by the property [was] to provide the basis for bringing the defendant into court." *Id.* at 209 (footnote reference omitted). Indeed, once the defendant made a general appearance before the court, the res was released. *See id.* at 193. Unlike in a true *in rem* proceeding, the seized property "[was] not the subject matter of [the] litigation, nor [was] the underlying cause of action related to the property." *Id.* at 213. Thus, despite the Court's reference to *in rem* proceedings, it is apparent from its analysis that *Shaffer* is limited to *quasi in rem* proceedings.[2] There

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[2] See also James Weinstein, *The Federal Common Law Origins of Judicial Jurisdiction*, 90 Va. L. Rev. 169, 246 & n.28 (2004) ("In continuing the common law process that gave rise to the *in rem* rules in the first place, the Court has, for a variety of reasons (including forum state interest, history, and considerations of individual fairness), decided that most of the traditional *in rem* rules continue to square with its vision of how state judicial authority should be allocated in our federal system. Only where changed circumstances have rendered a traditional practice outmoded and dysfunctional, as was the case with attachment jurisdiction [in *Shaffer*], has the Court, in the best common law tradition, declared the practice invalid.").

is no dispute that civil forfeiture does not involve the *quasi in rem* proceedings contemplated by *Shaffer*, in which the "action is not really against the property; rather, the action involves the assertion of a personal claim against the defendant of the type usually advanced in an *in personam* action." 4A C. Wright & A. Miller, Federal Practice and Procedure § 1070 (4th ed. 2020).

This conclusion is supported by the failure of the Court to expressly overrule its longstanding precedent anchoring *in rem* jurisdiction to the presence of the res. *See*, *e.g.*, *Republic Nat. Bank of Miami v. United States*, 506 U.S. 80, 84 (1992) ("Certainly, it long has been understood that a valid seizure of the res is a prerequisite to the initiation of an *in rem* civil forfeiture proceeding. . . .") (citations omitted); *see also Kline v. Burke Constr. Co.*, 260 U.S. 226, 229 (1922) ("Where the action is in rem the effect is to draw to the federal court the possession or control, actual or potential, of the res . . ."); *Overby v. Gordon*, 177 U.S. 214, 221 (1900) ("An essential characteristic of a proceeding *in rem* is that there must be a *res* or subject-matter upon which the court is to exercise its jurisdiction. . . .").

It would be "exceeding strange"[3] if the Supreme Court intended to eliminate the historical distinction

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[3] William Shakespeare, The Merchant of Venice, Act 1, Scene 1. The dissent maintains that the Supreme Court "explicitly said" that it was overruling decades of precedent governing *in rem* jurisdiction. *Dissenting Opinion*, p.38–39. However, it is notable that the dissent does not point to one *in rem* case that the Supreme Court overruled in *Shaffer*.

between *in personam* and *in rem* jurisdiction without explicitly saying so. *See United States v. Ten Thousand Dollars*, 860 F.2d 1511, 1513 (9th Cir. 1988) (applying "traditional *in rem* principles" in a forfeiture action).[4] We should not assume that the Supreme Court has implicitly overruled its precedent. *See Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 18 (2000) ("This Court does not normally overturn, or so dramatically limit, earlier authority *sub silentio*. . . ."). In our view, the more reasonable interpretation of *Shaffer* limits it to the scenario presented to the Court—a *quasi in rem* statutory scheme.

The Supreme Court evidently did not sweep away traditional *in rem* principles in *Shaffer*, as it relied on those same principles almost thirty years later in *Hood* to conclude that "the bankruptcy court's jurisdiction is premised on the res, not on the persona." *Hood*, 541 U.S. at 450. We are persuaded that *Hood* provides more direct guidance for the issue we are called upon to decide. Unlike in *Shaffer*, *Hood* involved a true *in rem* case. In this case and in *Hood*, the res is the subject of the action, not a substitute for the *person* who is the subject of the action. *See Shaffer*, 433 U.S. at 213 (explaining that the property was "not the subject matter of this litigation").

The dissent's attempt to restrict *Hood's* application of traditional *in rem* principles to bankruptcy cases where the absent party is the creditor, rather than the debtor, is unpersuasive. The Court was clear that its

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[4] The dissent ignores this language in its citation of this case. *See Dissenting Opinion*, p.40.

jurisdiction was "premised on the res," *see Hood*, 541 U.S. at 448, and that "jurisdiction over the person is irrelevant if the court has jurisdiction over the property." *Id.* at 453 (citation omitted). Contrary to the characterization in the dissent of our "misunderstanding of the nature of bankruptcy proceedings" and our misreading of *Hood*, *Dissenting Opinion*, 34, we fully understand and faithfully apply the statutory bankruptcy scheme as interpreted by the Supreme Court in *Hood*. Under 28 U.S.C. § 1334(e), bankruptcy courts have "exclusive jurisdiction of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate." Thus, *in rem* bankruptcy jurisdiction "essentially creates a fiction that the property—regardless of actual location—is *legally* located within the jurisdictional boundaries of the district in which the court sits." *Beck v. Fort James Corp.* (*In re Crown Vantage, Inc.*), 421 F.3d 963, 971 (9th Cir. 2005) (citation omitted) (emphasis in the original).[5] The jurisdictional statute here creates a similar legal fiction, providing that a "forfeiture action or proceeding may be brought in the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred," even if the property is located in a foreign country. 28 U.S.C. § 1355(b).

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[5] The dissent elides our reliance on this precedent, preferring to reference only a treatise cited in *Hood*. *See Dissenting Opinion*, p.36. The dissent's only attempted response to the express language in *Hood* is to seek to blunt its impact through resorting to "context." *Id.*

The discharge of a debt by a bankruptcy court is "an *in rem* proceeding." *Hood*, 541 U.S. at 447. Although the bankruptcy court's discharge order "operat[es] as an injunction to prohibit creditors from attempting to collect or to recover the debt," the court need not have personal jurisdiction over the creditor. *Id*.[6]

If we adopt the broad reasoning of *Shaffer* advocated by Obaid and the dissent, we would be discarding a longstanding body of Supreme Court authority. We hasten to add that we do not read *Hood* as overruling or purporting to overrule *Shaffer*. Rather, we conclude that each survives in its respective sphere: *Shaffer* in the realm of *quasi in rem* jurisdiction and *Hood* in the realm of *in rem* jurisdiction.[7]

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[6] The dissent states that "[n]othing in *Hood* suggests that a court may exercise *in rem* jurisdiction without personal jurisdiction over the owner of the res." *Dissenting Opinion*, p. 36. But *Hood* is clear that *in rem* jurisdiction is "premised on the res, not on the persona"—this statement would make no sense if the personal jurisdiction is also necessary. 541 U.S at 450. The "owner of the res" is "persona" not "res." *In rem* jurisdiction does not include an additional personal jurisdiction requirement over the debtor: the debtor filed the petition and 28 U.S.C. § 1334(e) provides the bankruptcy court with "exclusive jurisdiction of all the property . . . of the debtor . . . and of property of the estate." In accordance with traditional *in rem* principles, jurisdiction over property is all that is required. *See also United States v. Gurley*, 434 F.3d 1064, 1068 (8th Cir. 2006) (holding that when the "government, as a creditor, asserted a right to payment" through filing a proof of claim in debtor's bankruptcy proceeding, "there was no need to establish personal jurisdiction over" the debtor "[b]ecause it was an *in rem* proceeding").

[7] Contrary to the dissent's unpersuasive reading of *Hood*, *see Dissenting Opinion*, p.36, everything in *Hood* points to the court's

The dissent concedes that in the forty-plus years since *Shaffer* was decided, no court has dismissed a civil forfeiture action for lack of personal jurisdiction over a claimant. *See Dissenting Opinion*, p.43 n.12. The dissent attempts to minimize this fact by saying that "this is to be expected." *See id.* We beg to differ. Generally, when the Supreme Court makes a sweeping change in a fundamental legal theory, there is a tsunami of reversals in the lower courts applying the new precedent. One need only compare the legal aftermath of the Supreme Court's decision in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to make the point. *Iqbal* redefined the pleading standards under Rule 8 of the Federal Rules of Civil Procedure, *see id.* at 678–80, and prompted a barrage of dismissals. *See* Daniel W. Robertson, *In Defense of Plausibility: Ashcroft v. Iqbal and What the Plausibility Standard Really Means*, 38 Pepp. L. Rev. 111, 140 (2010) ("In the few months since the decision in *Iqbal* came down, it has resulted in the dismissal of 1500 district court and 100 appellate court cases, many if not most of which would probably have survived; more dismissals are pending.") (citation omitted).

Nevertheless, we acknowledge that two of our sister circuits have noted in passing that *Shaffer* requires a minimum contacts analysis in an *in rem* proceeding. In *United States v. Batato*, 833 F.3d 413 (4th Cir. 2016), on which the dissent relies to support its reading of *Shaffer*, the Fourth Circuit acknowledged that "*Shaffer* provides only limited guidance as to how to proceed."

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in rem jurisdiction without regard to personal jurisdiction over the owner of the res. *See* 541 U.S. at 447.

Id. at 423. Contrary to the dissent's contention that the Court "applied" *Shaffer* to require satisfaction of *International Shoe* in an *in rem* action, the *Batato* panel "assume[d] without deciding that a traditional, state-based minimum contacts approach is appropriate" in a forfeiture action. *Id.* (footnote reference omitted).[8]

Obaid also cites a Second Circuit case, *LiButti v. United States*, 178 F.3d 114 (2d Cir. 1999), for the proposition that "*in rem* jurisdiction cannot lie to adjudicate ownership of shares owned by a non-resident . . . when the shareowner lacks minimum contacts with the forum." But the Second Circuit's holding was not as sweeping as Obaid contends.

LiButti involved litigation over the ownership of a racehorse, "Devil His Due." *Id.* at 116. When the IRS issued a levy against the horse, contending that LiButti owned it, his daughter brought a wrongful levy action, claiming that she, not her father, was the owner. *See id.* at 116–17. While the case was pending on appeal, the daughter entered into a syndicate agreement dividing ownership of the horse into shares, half of which were sold to a third party. *See id.* at 117. When the IRS ultimately prevailed on appeal, it sought restitution for the full value of "Devil His Due" from the daughter and the third party. *Id.* at 118. The Second Circuit determined that the third party could not be compelled to pay restitution because the court

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[8] Faced with these explicit statements from the *Batato* decision, the dissent again falls back on "context" to spin its analysis. *Dissenting Opinion*, p.40 n.9.

had no personal or *in rem* jurisdiction under a minimum-contacts analysis. *See id.* at 122–23. Contrary to Obaid's contention, the court did not dismiss the *in rem* action for lack of jurisdiction—it upheld the determination about the ownership of the horse, notwithstanding any lack of jurisdiction over the third party claimant. *See id.* at 120. The court simply held that the third party could not be ordered to reimburse the IRS. *See id.* at 122–23.[9]

We are not persuaded by the lukewarm discussion of *Shaffer* by the Fourth Circuit and the Second Circuit. Neither are the other cases cited by the dissent of sufficient persuasive value to undermine our analysis of the *Shaffer* decision. For starters, not one of the cases cited by the dissent involves a civil forfeiture action, which is governed by a statute expressly allowing a forfeiture action to be brought in any district "in which any of the acts or omissions giving rise to the forfeiture occurred," even if the property "is located in a foreign country." 28 U.S.C. § 1355(b)(1)(A), (b)(2). Consequently none of the cases, or the dissent for that matter, grapples with the application of *Shaffer* to civil forfeiture proceedings brought under a statute conferring exclusive jurisdiction. A brief discussion of each of the cases confirms this observation.

- *Inland Credit Corp. v. M/T Bow Egret*, 556 F.2d 756, 757 (5th Cir. 1977) - admiralty case brought *in rem* against the vessel and *in personam*

[9] The dissent once more resorts to analytic gyrations in an effort to twist the Second Circuit decision to more closely mirror *Shaffer*. *See Dissenting Opinion*, p.40 n.9.

against the owner of the vessel. Cites *Shaffer* for its "philosophy" without analysis and notes that it was decided "in a quite different context"—but did not apply *Shaffer*. *Id.* The dissent quotes an order denying a petition for rehearing. The underlying opinion expressly declined to address the question: "We need not decide in the present case whether the philosophical underpinnings of the system of in rem jurisdiction in admiralty have been critically shaken. . . ." 552 F.2d 1148, 1152 (5th Cir. 1977).

- *Pickens v. Hess*, 573 F.2d 380, 387 (6th Cir. 1978) - a case addressing *in personam* jurisdiction. Cites *Shaffer* in a *see also* citation, without analysis, to support the proposition that the modern view of jurisdiction does not "herald[] the eventual demise of all restrictions on the personal jurisdiction of state courts." *Id.* (citation omitted).

- *Lakeside Bridge & Steel Co. v. Mountain State Const. Co., Inc.*, 597 F.2d 596, 600–02 (7th Cir. 1979) - a case addressing *in personam* jurisdiction. Restates the holding of *Shaffer*, without analysis, to support application of *International Shoe* to the question of *in personam* jurisdiction over a non-resident defendant, not jurisdiction over a res. Characterizes the Delaware court's exercise of jurisdiction as "in rem jurisdiction to sequester shares of stock and stock options" even though the action was *quasi in rem*. *Id.* at 601.

- *Salazar v. Atlantic Sun*, 881 F.2d 73, 76, 80 (3d Cir. 1989) - admiralty case. Distinguishes *Shaffer* on the basis that *Shaffer* did not arise "in the admiralty context," and rejected a due process claim raised by the owner. *Id.* at 76.

- *Pittsburgh Terminal Corp. v. Mid Allegheny Corp.*, 831 F.2d 522, 525 (4th Cir. 1987) - a case addressing *in personam* jurisdiction. Recognizes that *International Shoe* addresses *in personam* jurisdiction and agrees with our interpretation that in *Shaffer*, "the litigation there was not related to the property [and] the only role played by the property was to bring the defendants before the court." *Id.* at 526.

As stated previously, not one of the cited cases purported to address civil forfeiture proceedings. Thus, the dissent's declaration of a circuit conflict is much exaggerated, particularly in view of the lack of any mention in *Shaffer* of overruling the legion of cases embodying principles of *in rem* jurisdiction. And the Supreme Court has continued to recognize *in rem* jurisdiction predicated on presence of the res in civil forfeiture proceedings post-*Shaffer*. *See, e.g.*, *Republic Nat. Bank of Miami v. United States*, 506 U.S. 80, 84–85 (1992). We are persuaded that *Hood* supports our view that *Shaffer* is limited to *quasi in rem* actions and does not extend to *in rem* actions. *See Hood*, 541 U.S. at 453 (noting the distinction in Supreme Court

precedent between *in rem* and *in personam* jurisdiction).[10]

B. Venue

Under 28 U.S.C. § 1355(b)(1)(A), in a civil forfeiture action venue is appropriate in "the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred." The government emphasizes that the words "any acts" encompass acts committed in furtherance of the conspiracy. Obaid responds that this interpretation is too broad. In contrast, he focuses on the "giving rise to the forfeiture" language of section 1355. Under his interpretation, only a specific criminal act that took place in the Central District, directly implicating the Palantir shares, would establish venue.

We conclude that Obaid's preferred interpretation is much too narrow and ignores the antecedent language in section 1355 permitting venue in the

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[10] The law review articles cited by the dissent—all of them published before the Supreme Court's decision in *Hood*—are similarly unpersuasive on the issue of jurisdiction in forfeiture proceedings. At best, commentators at the time confirmed that the effect of *Shaffer* on *in rem* forfeiture proceedings is uncertain. *See, e.g.*, Andreas Lowenfeld, *In Search of the Intangible: A Comment on Shaffer v. Heitner*, 53 N.Y.U.L. Rev. 102 (1978) ("The debate goes on whether *Shaffer v. Heitner* really overruled *Pennoyer v. Neff* [95 U.S. 714 (1878)], whether *Seider v. Roth* [216 N.E.2d 312 (N.Y. 1966)] can survive after *Shaffer*, [and] whether one can build an effective structure to enforce judgments obtained in forum 1 against assets maintained in (or removed to) forum 2. . . ."); Angela M. Bohmann, *Applicability of* Shaffer *to Admiralty in Rem Jurisdiction*, 53 Tul. L. Rev. 135, 141 (1978–79); Kenneth G. Whyburn, *Attachment Jurisdiction After* Shaffer v. Heitner, 32 Stan. L. Rev. 167, 167 n.1 (1979).

district where "any acts" of the conspiracy occurred. 28 U.S.C. § 1355(b)(1)(A). His interpretation is also inconsistent with the legislative history of section 1355. The Congressional analysis of section 1355(b)(1) explained that its enactment "would be a great improvement over current law," because the government would no longer be compelled "to file separate forfeiture actions in each district in which the subject property is found." 137 Cong. Rec. 31538 (Nov. 13, 1991). Contrary to Obaid's assertion, section 1355(b)(1) broadened, not narrowed, the scope of civil forfeiture suits "by providing that the court in the district where the acts giving rise to the forfeiture occurred has jurisdiction over the forfeiture action." *Id.*

The threshold inquiry under section 1355 is whether "sufficient acts . . . giving rise to the forfeiture" took place in the Central District. *$1.67 Million*, 513 F.3d at 996. As alleged, the Palantir shares were purchased using funds traceable to a $700 million transfer to the Good Star Account as part of the 1MDB scheme. Some of the alleged acts in furtherance of the conspiracy were conducted in the Central District, including expensive real estate purchases in Beverly Hills, the financing of a motion picture, and the purchase of the Palantir shares. Purchasing real estate in Beverly Hills and shares of stock in Palantir are not *per se* criminal acts. However, if the purchases were a mechanism to launder proceeds in furtherance of the 1MDB scheme, "sufficient acts" giving rise to the forfeiture occurred in the Central District, thus making venue proper. *See id.* We thus conclude that the conspiratorial activity in the Central District was sufficient to support venue in that district, given "the

relatively low standard set forth in section 1355." *Batato*, 833 F.3d at 420.

Finally, Obaid's assertion that the actions of third parties in the Central District (co-conspirators) cannot serve as a proxy to establish venue based on *his conduct*, misses the point. This civil forfeiture action is not premised on Obaid's conduct; rather, the action is predicated on whether the Palantir shares, *i.e.*, the res, are traceable to the proceeds of a crime. *See Ross*, 504 F.3d at 1138. Accordingly, whether Obaid was involved in the conspiracy is immaterial to the venue analysis.

IV. CONCLUSION

The Supreme Court decision in *Hood* supports our conclusion that the district court did not err when it determined that the constitutional due process requirements set forth in *International Shoe* were inapplicable to this *in rem* action. The Court's decision in *Shaffer* addressed *quasi-in-rem* actions rather than *in rem* actions directed solely toward a res instead of property seized as a substitute for the defendant. In an *in rem* action, the focus for the jurisdictional inquiry is the res, in this case Obaid's Palantir shares, rather than Obaid's personal contacts with the forum.[11] Finally, venue was proper because sufficient acts giving rise to the civil forfeiture occurred in the Central District.

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[11] Because we conclude that the district court correctly determined that *Shaffer* did not extend to this *in rem* action, we do not address whether Obaid had sufficient contacts with the forum as to satisfy the constitutional due process requirements set forth in *International Shoe*.

AFFIRMED.

IKUTA, Circuit Judge, dissenting:

With one stroke, the majority has swept away *Shaffer v. Heitner*, the Supreme Court's landmark decision ensuring that "traditional notions of fair play and substantial justice" apply to all persons with property subject to adjudication, regardless of the Latin label attached to the proceeding. 433 U.S. 186, 212 (1977). *Shaffer* held that a court cannot extinguish a person's property rights unless it first obtains personal jurisdiction over that person, and eliminated a 100-year-old rule to the contrary as "fundamentally unfair." *Id*. Instead of applying *Shaffer*, the majority applies the principles of in rem jurisdiction that *Shaffer* rejected as lacking "substantial modern justification." *Id*. In doing so, the majority creates a split with two circuits that have faithfully applied *Shaffer* and seven circuits that have expressly construed it to cover ordinary in rem proceedings. The majority's attempt to bolster its opinion with an irrelevant bankruptcy case, *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004), is unavailing. Because *Shaffer* adopted a principle of fairness and equity that the majority now ignores, I dissent.

I

Obaid, a resident of Saudi Arabia and Switzerland, purchased 2.5 million shares of stock in Palantir Technologies Inc. by wiring funds to Palantir's bank in Northern California. Obaid states that the Palantir stock certificate is currently held by a bank in

Switzerland. Although the government argues that the shares are deemed to be present in Delaware as a matter of Delaware law, there is no dispute that the shares are not in California.[1]

The government commenced a forfeiture action to gain possession of the Palantir shares on the grounds that Obaid had been engaged in a criminal conspiracy and the Palantir shares were traceable to funds indirectly linked to the conspiracy. The government brought this suit in the Central District of California based on a statute allowing a forfeiture action to be brought where "any of the acts or omissions giving rise to the forfeiture occurred," even when the assets subject to forfeiture are located in a foreign country. 28 U.S.C. § 1355(b)(1)(A), (b)(2). In this case, the specific acts "giving rise to the forfeiture" that allegedly took place in the Central District of California are vague. According to the government, certain conspirators not including Obaid, while engaged in a phase of the alleged criminal conspiracy not involving Obaid, used proceeds generated by the conspiracy to purchase property in Beverly Hills and then sent emails abroad. Over Obaid's objections, the district court ruled it had in rem jurisdiction over the Palantir shares, even though it lacked personal jurisdiction over Obaid. This interlocutory appeal followed.

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[1] For this reason, the majority's suggestion that it is merely honoring "the historical distinction between *in personam* and *in rem* jurisdiction," Maj. at 15, is incorrect. Whereas traditional in rem principles gave courts jurisdiction "based on the court's power over property within its territory," *Shaffer*, 433 U.S. at 199, there is no dispute that Obaid's Palantir shares are neither within the court's territory nor its control.

II

Does a district court have jurisdiction over a person's property solely because alleged co-conspirators took some actions within the court's territorial jurisdiction? Forty years ago, the Supreme Court decisively said no—that jurisdiction over Obaid's property in such circumstances "is fundamentally unfair to the defendant" and offends "[t]raditional notions of fair play and substantial justice." *Shaffer*, 433 U.S. at 212. Contrary to the majority's efforts to minimize *Shaffer v. Heitner*, this decision constituted a dramatic shift in the Supreme Court's jurisprudence.

A

In *Shaffer*, a plaintiff filed a shareholder derivative suit in Delaware against a corporation and various individual defendants, and at the same time obtained an order sequestering the individual defendants' Delaware property. *Id.* at 190–91. The defendants argued that the sequestration order violated their due process rights because they lacked sufficient contacts with Delaware. *Id.* at 193. The Delaware court rejected this argument, relying on a state statute that authorized courts to sequester property in order to compel the personal appearance of a nonresident defendant; under this statute, the Delaware court had quasi in rem jurisdiction. *Id.* at 193–94.

The Supreme Court reversed, and used the case as a vehicle for radically reformulating the law of in rem jurisdiction.

The Court first explained the historical roots of in personam and in rem jurisdiction. Under "the century-

old case of *Pennoyer v. Neff*," a court's authority was based on its "power over either persons or property." *Id.* at 196, 199 (citing 95 U.S. 714 (1878)). If the court's jurisdiction was based on its authority over the person, the court had "in personam" jurisdiction; if "based on the court's power over property within its territory," the court had "in rem" or "quasi in rem" jurisdiction. *Id.* at 199. Although the Court recognized the difference between judgments in rem and quasi in rem,[2] that distinction did not affect its analysis. The Court explained that it would "for convenience generally use the term 'in rem' in place of 'in rem and quasi in rem.'" *Id.* at 199 n.17.

Shaffer then described the development of in personam jurisdiction. After *Pennoyer*, courts asserted personal jurisdiction over a defendant when the defendant was not present within the state only in certain limited circumstances. *Id.* at 200–02. But *International Shoe Co. v. Washington* dramatically expanded jurisdiction over absent defendants. *See id.* at 203–04 (citing *International Shoe*, 326 U.S. 310,

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[2] The Court explained:

> A judgment in rem affects the interests of all persons in designated property. A judgment quasi in rem affects the interests of particular persons in designated property. The latter is of two types. In one the plaintiff is seeking to secure a pre-existing claim in the subject property and to extinguish or establish the nonexistence of similar interests of particular persons. In the other the plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him.

Shaffer, 433 U.S. at 199 n.17.

317–19 (1945)). Under *International Shoe*, due process did not require the defendant's presence. A defendant "not present within the territory of the forum" could be subject to a judgment in personam so long as he had "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Id.* at 203 (quoting *International Shoe*, 326 U.S. at 316). Accordingly, "the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction." *Id.* at 204.[3]

Shaffer then turned to the law of in rem jurisdiction. The Court recognized that "[n]o equally dramatic change [had] occurred in the law governing jurisdiction in rem." *Id*. at 205. But the Court stated it intended to effect such a change, announcing that "the time is ripe to consider whether the standard of fairness and substantial justice set forth in *International Shoe* should be held to govern actions in rem as well as in personam." *Id.* at 206.

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[3] *International Shoe*'s conclusion that personal jurisdiction must be based on the relationship among the defendant, forum, and litigation led to the development of two categories of personal jurisdiction: (1) general jurisdiction, where defendants' "affiliations with the State are so continuous and systematic as to render them essentially at home in the forum State," and (2) specific jurisdiction, where defendants' "in-state activities" are "enough to subject [them] to jurisdiction in that State's tribunals with respect to suits relating to that in-state activity." *Daimler AG v. Bauman*, 571 U.S. 117, 126–27 (2014).

Shaffer had no difficulty concluding that the answer to this question was yes. According to the Court, "the same test of 'fair play and substantial justice'" discussed in *International Shoe* should apply to exercises of both in personam and in rem jurisdiction. *Id*. at 207. This is because "[a]ll proceedings, like all rights, are really against persons." *Id.* at 207 n.22 (quoting *Tyler v. Court of Registration*, 175 Mass. 71, 76 (1900) (Holmes, C.J.)). The only functional difference between an in rem and in personam proceeding is "the number of persons affected." *Id.*[4] Therefore, going forward, any "exercise of jurisdiction over the interests of persons" would have to meet "the minimum-contacts standard elucidated in *International Shoe*" in order to be "consistent with the Due Process Clause." *Id.* at 207. As with in personam jurisdiction, "the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest," would determine whether a court has in rem jurisdiction "over the interests of persons in a thing." *Id.* at 204, 207 (internal quotation marks omitted).

Having announced the new rule governing in rem jurisdiction, *Shaffer* considered and rejected the arguments raised against such a change. Most important, *Shaffer* brushed aside "the long history of [in rem] jurisdiction based solely on the presence of property in a State." *Id*. at 211. The Court declared it

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[4] As discussed above, in personam proceedings impose personal obligations on defendants, but in rem proceedings may affect all persons with an interest in the property. *Id.* at 199 n.17.

was not bound by precedent "supporting the proposition that jurisdiction based solely on the presence of property satisfies the demands of due process." *Id*. at 212. That obsolete idea had to be rejected, because "'[t]raditional notions of fair play and substantial justice' can be as readily offended by the perpetuation of ancient forms that are no longer justified as by the adoption of new procedures that are inconsistent with the basic values of our constitutional heritage." *Id.* As to in rem jurisdiction in particular, "[t]he fiction that an assertion of jurisdiction over property is anything but an assertion of jurisdiction over the owner of the property supports an ancient form without substantial modern justification," and "[i]ts continued acceptance would serve only to allow state-court jurisdiction that is fundamentally unfair to the defendant." *Id*.

Shaffer also rejected the argument that its departure from precedent would eliminate jurisdiction in too many cases. As the Court explained, "jurisdiction over many types of actions which now are or might be brought in rem would not be affected by a holding that any assertion of state-court jurisdiction must satisfy the *International Shoe* standard," *id*. at 208, because "the presence of property in a State may bear on the existence of jurisdiction by providing contacts among the forum State, the defendant, and the litigation," *id.* at 207. Where "claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant, it would be unusual for the State where the property is located not to have jurisdiction." *Id.*

Encapsulating its rejection of 100 years of precedent, the Court stated: "We therefore conclude that *all* assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." *Id.* at 212 (emphasis added). Applying its new rule to the facts before it, the Court concluded that "Delaware's assertion of jurisdiction" was "inconsistent" with the Due Process Clause. *Id.* at 216–17.

B

Shaffer is directly on point here. The government's forfeiture action against Obaid's Palantir stock under the civil forfeiture statute, 18 U.S.C. § 981(a)(1), is an in rem proceeding. Under the statute, the government "begins a judicial civil forfeiture action by filing an in rem complaint against the property." *United States v. $133,420.00 in U.S. Currency*, 672 F.3d 629, 634 (9th Cir. 2012). The district court then adjudicates the interests of any persons claiming an ownership interest in the property. 18 U.S.C. § 983(a)(4). If the government prevails, title to the property vests in the government. *See United States v. Spahi*, 177 F.3d 748, 754 (9th Cir. 1999) (citing *United States v. 92 Buena Vista Ave.*, 507 U.S. 111, 125 (1993)) ("under the forfeiture statutes," the United States "is required to perfect title by legal action before title may vest.").[5]

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[5] Although a forfeiture judgment under § 981 "relates back" to when the offense was committed, *see* 18 U.S.C. § 981(f), "[w]here there is no such judgment the government acquires no title or interest in the property," 1 David B. Smith, Prosecution and Defense of Forfeiture Cases ¶ 3.05[2] (Matthew Bender). In other

Under *Shaffer*, the district court's jurisdiction over the property subject to an in rem complaint constitutes an "assertion of jurisdiction over *the owner* of the property." 433 U.S. at 212 (emphasis added).[6] Therefore, *Shaffer* requires the district court to apply the minimum contacts framework to each person who claims ownership of the property. *Id*. Here, it is undisputed that Obaid is the owner of the seized Palantir shares. Under *Shaffer*, therefore, the district court must consider whether Obaid has "minimum contacts" with the forum such that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe*, 326 U.S. at 316. The district court did not address this question of minimum contacts, and the answer is not obvious: the government argues that Obaid has sufficient contacts with the United States as a whole to confirm the court's jurisdiction under 28 U.S.C. § 1355(b), while Obaid argues that the court must find that he has sufficient contacts with California. We should remand to the district court to address that question and conduct the required minimum contacts analysis.

III

The majority acknowledges that "one might deduce" from *Shaffer* that "Obaid's position carries the day."

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words, a § 981 forfeiture proceeding adjudicates property not yet owned by the government.

[6] The conclusion that the court is asserting jurisdiction over Obaid is particularly compelling where, as here, the court's authority over the res is merely a legal fiction: the Palantir shares are not within either the territory or control of the district court.

Maj. at 11. But the majority then concludes that the Supreme Court undermined (or overturned) *Shaffer*'s groundbreaking expansion of "fair play and substantial justice" when it decided a subsequent bankruptcy case, *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004). According to the majority, *Hood* stands for the proposition that a court may continue to assert jurisdiction over the property rights of an absent owner so long as it has in rem jurisdiction over the property itself. Maj. at 12–13, 15.

The majority's reading of *Hood* is incorrect because it is based on a misunderstanding of the nature of bankruptcy proceedings. In *Hood*, a debtor sought a determination that her student loans were dischargeable under 11 U.S.C. § 523(a)(8), which provides that a bankruptcy court cannot discharge a student loan guaranteed by a governmental unit unless the court determines that allowing the debt to survive would impose an "undue hardship" on the debtor. As required by the Federal Rules of Bankruptcy Procedure, the debtor filed a proceeding (styled as an "adversary" action) against various government guarantors, including the Tennessee Student Assistance Corporation (TSAC), a state entity. *Hood*, 541 U.S. at 444–45, 451–52. TSAC moved to dismiss the action, asserting sovereign immunity under the Eleventh Amendment. *Id.* at 445. The Supreme Court rejected TSAC's argument, holding that a bankruptcy court's discharge of government-guaranteed student loan debt under § 523(a)(8) does not implicate a state's Eleventh Amendment immunity. *Id.* at 450.

The Supreme Court based this conclusion on the nature of bankruptcy proceedings. In a "typical voluntary bankruptcy proceeding," the debtor invokes the court's jurisdiction by filing a petition for bankruptcy. *Id.* at 447. The commencement of the proceeding creates a bankruptcy estate consisting of the debtor's property interests. 11 U.S.C. § 541(a); *see also* 1 Collier on Bankruptcy ¶ 3.01[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). The bankruptcy court has jurisdiction over the debtor and the debtor's estate, *Hood*, 541 U.S. at 447, and creditors can participate in the bankruptcy by filing a proof of claim, 11 U.S.C. §§ 501, 726. But the court does not adjudicate the creditors' property rights, *see Hood*, 541 U.S. at 447, and need not have jurisdiction over the creditors, *see id.* at 453. At the close of the bankruptcy proceeding, the bankruptcy court issues a discharge order that "releases a debtor from personal liability with respect to any discharged debt." *Id.* at 447. This proceeding is in rem, because it determines "all claims that anyone, whether named in the action or not, has to the property or thing in question." *Id.* at 448.

Although a bankruptcy court does not exercise personal jurisdiction over creditors, *id.* at 453, it is able to provide the debtor with a fresh start from all debts because "[a] federal court's jurisdiction over the dischargeability of debt . . . derives not from jurisdiction over the state or other creditors, but rather from jurisdiction over debtors and their estates." *Id.* at 447–48 (quoting *In re Collins*, 173 F.3d 924, 929 (4th Cir. 1999)). Of course, a bankruptcy court's rulings may affect creditors' interests in the debtor's property. For example, a creditor's debt may become uncollectible

after a bankruptcy court discharges a debtors' debts. *See* 11 U.S.C. § 524(a). But this does not mean that the court exercises jurisdiction over the creditor or the creditor's property. "A debtor does not seek monetary damages or any affirmative relief from a [creditor] by seeking to discharge a debt; nor does he subject an unwilling [creditor] to a coercive judicial process. He seeks only a discharge of his debts." *Hood*, 541 U.S. at 450.

Hood applied these principles undergirding bankruptcy jurisdiction to the question whether bankruptcy proceedings could infringe a state's sovereign immunity when the state is a creditor. The Court first noted that a state is treated like any other creditor in bankruptcy, *see, e.g.*, *Gardner v. State of New Jersey*, 329 U.S. 565, 571, 573–75 (1947); *Van Huffel v. Harkelrode*, 284 U.S. 225, 227–28 (1931), and is therefore "bound by a bankruptcy court's discharge order no less than other creditors." *Hood*, 541 U.S. at 448. Next, the Court concluded that because bankruptcy proceedings do not adjudicate creditors' property rights, the bankruptcy court's "exercise of its *in rem* jurisdiction to discharge a debt does not infringe a State's sovereignty," and the court does not exercise "jurisdiction over the State." *Id.* at 448, 453.

Ignoring the difference between a creditor in a bankruptcy case and a property owner in a forfeiture action, the majority reads *Hood* as supporting application of all "traditional *in rem* principles." Maj. at 16. The majority's sole support for this conclusion is *Hood*'s cite to a civil procedure treatise and an accompanying parenthetical stating that "jurisdiction

over the person is irrelevant if the court has jurisdiction over the property." *Hood*, 541 U.S. at 453 (quoting 4A C. Wright & A. Miller, Federal Practice and Procedure § 1070, pp. 280–81 (3d ed. 2002)). In context, the parenthetical merely supports *Hood*'s holding that a bankruptcy court's in rem jurisdiction over the debtor's property is sufficient to resolve the claims of all creditors (including a state) to that property, and the court need not have jurisdiction over the state to accomplish this goal. *Id.* Nothing in *Hood* suggests that a court may exercise in rem jurisdiction without personal jurisdiction over the owner of the res.

In sum, *Hood* did not resurrect the in rem jurisdiction theory, rejected in *Shaffer*, that a court may assert jurisdiction over an absent property owner so long as it has jurisdiction over the property itself. To the contrary, *Hood* did not mention or cite *Shaffer* and held only that a bankruptcy court does *not* assert jurisdiction over creditors because a bankruptcy proceeding does not adjudicate their property interests. *Id*. at 447. Because the debtor, not the creditor, owns the property before a bankruptcy court, and the bankruptcy court does not adjudicate the creditor's property rights, *Hood* had no occasion to address the question whether a court with in rem jurisdiction over property can adjudicate the rights of that property's absent owner.

As this description makes clear, *Hood* provides no guidance here. Obaid is not a mere creditor. His rights to the property he owns—the Palantir shares—are at stake in the forfeiture proceeding. Nor is Obaid a debtor who has voluntarily submitted himself and his

property to the district court, obviating the need for due process protections. Obaid is the person described in *Shaffer*; the subject of a proceeding against his property, and therefore against Obaid himself. 433 U.S. at 207 n.22. Therefore, *Hood* gives the majority no grounds for ignoring *Shaffer*.

IV

Although the majority recognizes that *Hood* is not "precisely on point," Maj. at 13, it provides other reasons for ignoring *Shaffer*'s clear directive. These reasons are equally misguided.

A

First, the majority tries to confine *Shaffer* to its facts. Disregarding *Shaffer*'s statement that it was not distinguishing between in rem and quasi in rem jurisdiction, *see* 433 U.S. at 199 n.17, the majority contends that *Shaffer*'s holding applies only to quasi in rem proceedings, Maj. at 13–14, 15. According to the majority, this reading is "supported by the failure of the Court to expressly overrule its longstanding precedent anchoring *in rem* jurisdiction to the presence of the *res*." Maj. at 14. Applying traditional in rem principles, the majority contends that the defendant here is the Palantir shares, not Obaid, and therefore *Shaffer*'s "fair play and substantial justice" requirements do not apply. Maj. at 15.[7]

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[7] The majority also tries to distinguish *Shaffer* on the ground that it does not apply to a civil forfeiture proceeding such as this one. Maj. at 14, 20. But a civil forfeiture proceeding is an in rem proceeding, and *Shaffer* stated that "all" assertions of in rem

This reinterpretation of *Shaffer* contradicts *Shaffer*'s actual language. The Court clearly established a new rule for both in rem and quasi in rem jurisdiction, concluding that "*all* assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." *Shaffer*, 433 U.S. at 212 (emphasis added). Moreover, *Shaffer* did not ignore longstanding precedent governing in rem jurisdiction. Rather, the Court made clear that it was sweeping away "the perpetuation of ancient forms that are no longer justified." *Id.* Indeed, the majority is right that the Supreme Court has not overruled its precedent governing in rem jurisdiction "without explicitly saying so"—but only because the Supreme Court explicitly said that is what it was doing. Maj. at 15.[8] *Shaffer*'s

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jurisdiction are subject to *International Shoe*'s minimum-contacts test. 433 U.S. at 212. The majority has not explained why civil forfeiture proceedings are exempt from *Shaffer*. Nor has the government argued that civil forfeitures have unique characteristics that place them outside *Shaffer*'s ambit. Indeed, at least one circuit has applied *Shaffer* to a civil forfeiture proceeding. *See United States v. Batato*, 833 F.3d 413, 423 (4th Cir. 2016); *infra* footnote 9; *cf.* Maj. at 22 (asserting that the cases cited by the dissent do not include cases applying *Shaffer* to civil forfeiture proceedings.).

[8] *Shaffer* could not be more clear:

> "We are left, then, to consider the significance of the long history of jurisdiction based solely on the presence of property in a State. . . . This history must be considered as supporting the proposition that jurisdiction based solely on the presence of property satisfies the demands of due process, but it is not decisive. . . . We therefore conclude that all assertions of state-

language also refutes the majority's claim that the suit is against Obaid's shares of stock, not Obaid himself. Maj. at 15. *Shaffer*'s basic premise was that "[a]ll proceedings, like all rights, are really against persons." 433 U.S. at 207 n.22 (quoting *Tyler*, 175 Mass. at 76). And "[a]n adverse judgment in rem directly affects the property owner by divesting him of his rights in the property before the court." *Id*. at 206. Therefore, this proceeding over Obaid's stock is effectively a proceeding against Obaid, and *International Shoe*'s due process requirements apply.

B

Second, the majority makes strenuous efforts to distinguish its narrow construction of *Shaffer* from the decisions of other circuits that have faithfully recited *Shaffer*'s holding. But even a brief review of the relevant cases establishes that the majority's interpretation of *Shaffer* is contrary to our own precedent and creates a circuit split.

We have long acknowledged that assertions of in rem jurisdiction must satisfy *International Shoe*, "even when the court's jurisdiction is predicated on its control over an item of property or res." *United States v. Ten Thousand Dollars ($10,000.00) in U.S. Currency*, 860 F.2d 1511, 1513 (9th Cir. 1988). Further, we have recognized *Shaffer*'s ruling that "'judicial jurisdiction over a thing' is a customary elliptical way of referring

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court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny."

433 U.S. at 211–12 (citations omitted).

to jurisdiction over the interests of persons in a thing." *Id*. (quoting *Shaffer*, 433 U.S. at 207).

Our sister circuits have interpreted and applied *Shaffer* the same way. In *United States v. Batato*, the Fourth Circuit recited *Shaffer*'s conclusion that "in order to justify an exercise of jurisdiction in rem, the basis for jurisdiction must be sufficient to justify exercising jurisdiction over the interests of persons in a thing," and applied "a traditional, state-based minimum contacts approach" to determine whether it had jurisdiction over claimants to property subject to a civil forfeiture action. 833 F.3d 413, 423 (4th Cir. 2016) (quoting *Shaffer*, 433 U.S. at 207).[9] Similarly, the Second Circuit acknowledged that *Shaffer* "explained that to have *in rem* jurisdiction it is necessary, at the very least, to satisfy the minimum contacts standard

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[9] The majority asserts that *Batato* did not follow *Shaffer* because it "assume[d] without deciding" that *Shaffer* was applicable, and stated that "*Shaffer* "provides only limited guidance as to how to proceed." Maj. at 18. This is incorrect, because the majority takes these quotes out of context. *Batato* expressly acknowledged the applicability of the minimum contacts test to in rem proceedings. 833 F.3d at 423. It then stated that *Shaffer* "provide[d] only limited guidance as to how to proceed" regarding one aspect of that minimum contacts test: whether a court must consider a foreign property owner's contacts with only the forum state, or with the United States as a whole. *Id*. at 423 & n.3. But because the foreign claimants had sufficient contacts with the forum state, *Batato* could "assume without deciding" that the more demanding "state-based minimum contacts approach" controlled. *Id.* at 423. *Batato* made clear that the court could not exercise in rem jurisdiction without obtaining personal jurisdiction over the owner of the property subject to civil forfeiture. In sum, nothing in *Batato* suggests any reluctance to apply *Shaffer*.

set out in *International Shoe*" and upheld the district court's conclusion that it lacked in rem jurisdiction over a defendant that "did not have minimum contacts." *LiButti v. United States*, 178 F.3d 114, 123 (2d Cir. 1999).[10] These faithful applications of *Shaffer* are decisive holdings, not "lukewarm discussion[s]." Maj. at 20.

Other circuits have acknowledged the breadth of *Shaffer*'s rule. Shortly after *Shaffer* was decided, the Fifth, Sixth and Seventh Circuits correctly recited its holding. *See Inland Credit Corp. v. M/T Bow Egret*, 556 F.2d 756, 757 (5th Cir. 1977) (denying a petition for rehearing en banc and citing *Shaffer*'s holding that "states' assertion of in rem jurisdiction must satisfy the same 'minimum contacts standard' applied to in personam jurisdiction"); *Pickens v. Hess*, 573 F.2d 380, 387 (6th Cir. 1978) (citing *Shaffer* for the proposition that "all claims of jurisdiction, both in personam and in rem, must be evaluated in light of the standards of *International Shoe* and its progeny"); *Lakeside Bridge & Steel Co. v. Mountain State Const. Co., Inc.*, 597 F.2d

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[10] The majority's statement that *Libutti* "did not dismiss the *in rem* action for lack of jurisdiction," Maj. at 19, mischaracterizes the case. For our purposes, the pertinent question in *Libutti* was whether the district court could exercise jurisdiction over a third party who had an ownership interest in a race horse. *Libutti* held that the court did not have in personam jurisdiction over the third party because the third party lacked minimum contacts with the forum state, and "[s]ince [the third party] did not have minimum contacts, the district court did not have *in rem* jurisdiction either." 178 F.3d at 123. While *Libutti* upheld the trial court's rulings with regard to the defendant over which the court had jurisdiction, Maj. at 19, this is irrelevant to our analysis.

596, 600 (7th Cir. 1979) (stating, in its overview of in rem jurisdiction, that "the principles of *International Shoe* were held [in *Shaffer*] to govern assertion by a state of In rem as well as In personam jurisdiction").[11] A decade later, the Third and Fourth Circuits cited *Shaffer* for the same principle. *See Salazar v. Atlantic Sun*, 881 F.2d 73, 76 (3d Cir. 1989) (noting that *Shaffer* affected "traditional in rem procedures" by requiring "the presence of a defendant's minimum contacts with the forum"); *Pittsburgh Terminal Corp. v. Mid Allegheny Corp.*, 831 F.2d 522, 526 (4th Cir. 1987) (explaining that, after *Shaffer*, "the minimum contacts rule of *International Shoe* would henceforth be applied

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[11] Scholars writing in *Shaffer*'s immediate aftermath expressed no doubt as to whether *Shaffer* applied to in rem proceedings. *See* Angela M. Bohmann, *Applicability of* Shaffer *to Admiralty in Rem Jurisdiction*, 53 Tul. L. Rev. 135, 135 (1978–79) ("In its 1977 decision in *Shaffer v. Heitner*, the Supreme Court determined that the due process clause of the Fourteenth Amendment required all assertions of state court jurisdiction to be tested under the principles established in its earlier decision in *International Shoe Co. v. Washington*); *see also*, John R. Leathers, *The First Two Years After* Shaffer v. Heitner, 40 La. L. Rev. 907, 910 (1980); Stefan A. Riesenfeld, Shaffer v. Heitner*: Holding, Implications, Forebodings*, 30 Hast. L.J. 1183, 1204 n.100 (1979); Joseph J. Kalo, *Jurisdiction as an Evolutionary Process: The Development of Quasi in Rem and In Personam Principles*, 1978 Duke L.J. 1147, 1189–90 (1978); Linda J. Silberman, Shaffer v. Heitner*: The End of an Era*, 58 N.Y.U. L. Rev. 33, 62–63 (1978); William R. Slomanson, *Real Property Unrelated to Claim: Due Process for Quasi in Rem Jurisdiction?*, 83 Dick. L. Rev. 51, 54 (1978); Joseph P. Zammitt, *Reflections on* Shaffer v. Heitner, 5 Hast. Const. L.Q. 15, 17 (1978); Donald W. Fyr, Shaffer v. Heitner*: The Supreme Court's Latest Last Words on State Court Jurisdiction*, 26 Emory L.J. 739, 757–78, 762–64 (1977).

to actions *in rem* and *quasi in rem*, as well as to actions *in personam*").

Against this consensus, the majority's erroneous interpretation of *Shaffer* stands alone.[12]

V

Shaffer effected a transformation of the law of in rem jurisdiction in order to ensure that "fair play and substantial justice" prevail. In doing so, the Supreme Court was well aware that it was sweeping aside a century of jurisprudence which had allowed courts to adjudicate rights to property even when doing so ran roughshod over the rights of the persons who owned the property. By attempting to confine *Shaffer* to its facts, the majority turns its back on the Court's protection of due process rights and creates a conflict with every circuit court that has addressed this issue. I dissent from the majority's failure to follow the Supreme Court's clear instructions.

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[12] While the majority notes that "no court has dismissed a civil forfeiture action for lack of personal jurisdiction over a claimant," Maj. at 18, this is to be expected because a person with property in a state is likely to have enough contacts with that state to satisfy *Shaffer*, *see* 433 U.S. at 207–08. *Shaffer* itself predicted "that jurisdiction over many types of actions which now are or might be brought in rem would not be affected by a holding that any assertion of state-court jurisdiction must satisfy the *International Shoe* standard." *Id*. at 208.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 17-4446 DSF (PLAx)

[Filed: August 15, 2018]

UNITED STATES OF AMERICA, Plaintiff,	)
v.	)
CERTAIN RIGHTS TO AND INTERESTS IN SHARES OF SERIES D PREFERRED STOCK IN PALANTIR TECHNOLOGIES, Defendant.	)

Order DENYING Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue (Dkt. 45)

Claimant Tarek Obaid has moved to dismiss the government's forfeiture complaint against certain stock in Palantir Technologies for lack of personal jurisdiction and improper venue. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. The hearing set for August 20, 2018 is removed from the Court's calendar.

The Court rejects Obaid's argument that it needs *in personam* jurisdiction over him in order to adjudicate rights to the property. Obaid cites no authority holding that a court must have *in personam* jurisdiction over any particular claimant in a civil forfeiture action. While it may include language that appears to support Obaid's argument, Shaffer v. Heitner, 433 U.S. 186 (1977), does not control the issue. Shaffer was a *quasi in rem* action where the stated objection of proceeding against particular property was to coerce a targeted defendant into appearing in a forum where there would otherwise not be personal jurisdiction. Obaid tries to stretch Shaffer's *quasi in rem* holding onto any type of case where property is an *in rem* defendant. The only appellate court case to specifically consider the issue here correctly noted that Shaffer "provides only limited guidance as to how to proceed." United States v. Batato, 833 F.3d 413, 423 (4th Cir. 2016).[1] In addition, the Supreme Court itself has discouraged a broad reading of Shaffer. See Burnham v. Superior Ct., 495 U.S. 604, 620 (1990) ("[Schaffer] stands for nothing more than the proposition that when the 'minimum contact' that is the substitute for physical presence consists of property ownership it must, like other minimum contacts, be related to the litigation."). It has also reaffirmed a distinction between *in rem* and *in personam* jurisdiction in the Eleventh Amendment context, "even when the underlying proceedings are, for

[1] The appellate case that is arguably most supportive of Obaid's position, Harrods Ltd. v. Sixty Internet Domain Names, 302 F.3d 214 (4th Cir. 2002), was, like Batato, out of the Fourth Circuit. Given the discussion in Batato, the Fourth Circuit itself obviously does not think that Harrods answers the question.

the most part, identical." Tennessee Student Assistance Corp. v. Hood, 541 U.S. 440, 453 (2004). Hood is especially instructive because it involved the jurisdiction of a bankruptcy court to adjudicate claims to property in the absence of *in personam* jurisdiction over a claimant, a situation closely analogous to the one here.[2] The Supreme Court had little difficulty concluding that "the Bankruptcy Court's *in rem* jurisdiction allows it to adjudicate the debtor's discharge claim without *in personam* jurisdiction over the State [claimant]." Id.

Venue is also proper here. The civil forfeiture venue provision provides for venue "in the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred." 28 U.S.C. § 1355(b)(1)(A). In interpreting this language, it is important to consider the context of the overall allegations that the government believes justify the forfeiture. In the context of the broad conspiracy alleged here, "any act" should be interpreted as any act of the conspiracy, not necessarily any act directly relating to the property at issue. It is even less supportable to argue that the act in question must relate to a particular *claimant*, as Obaid occasionally seems to suggest. The complaint alleges at least one meeting in support of the conspiracy took place in Los Angeles, Compl. ¶¶ 203-204, and that significant proceeds of the conspiracy were funneled into property within the Central District of California, id. ¶¶ 466-79;

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[2] In Hood, the claimant at issue was a state agency over which the bankruptcy court arguably had no *in personam* jurisdiction due to the Eleventh Amendment.

480-96; 525-32; 660-64; 681; 731-50. The Complaint also alleges that "Singapore Banker 1" took steps in creating the Aabar-BVI Swiss Account via e-mail while physically present in Los Angeles. Id. ¶¶ 203-204. That email included the allegedly false explanation for the account's funding to justify BSI Bank's involvement in the transactions involving the account. Id. The timing of the e-mail in relation to Singapore Banker 1's meeting with Jho Low also suggests that the account was a topic at the contemporaneous meeting between the two in Los Angeles. All of these acts are part of the acts giving rise to the forfeiture and make venue in this District proper.

Obaid tries to define "any act" to mean only criminal acts that generated the proceeds used to purchase the given property. While it is possible to interpret acts "giving rise to the forfeiture" as being only acts that are, of themselves, criminal, criminal conspirators typically engage in many acts that are not necessarily themselves criminal but yet further the conspiracy in some way. The complaint alleges a wide-ranging money laundering conspiracy whose aim was to steal money from the Malaysian government, funnel that money through various channels, and then place the money in investments around the world. Several acts in support of that conspiracy took place in the Central District of California, so venue is appropriate here for any forfeiture relating to the conspiracy.

The motion to dismiss is DENIED.

IT IS SO ORDERED.

Date: 8/15/18

/s/ Dale S. Fischer
Dale S. Fischer
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 17-4446 DSF (PLAx)

[Filed: September 24, 2018]

UNITED STATES OF AMERICA, Plaintiff,	)
v.	)
CERTAIN RIGHTS TO AND INTERESTS IN SHARES OF SERIES D PREFERRED STOCK IN PALANTIR TECHNOLOGIES, Defendant.	)

Order DENYING Motion for Reconsideration; Order GRANTING Motion to Certify Order for Interlocutory Appeal (Dkt. 76)

Claimant Tarek Obaid moves for reconsideration of the Court's August 30, 2018 order denying his motion to dismiss for lack of personal jurisdiction and lack of venue. In the alternative, Obaid moves for certification of the order for interlocutory appeal. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. The

hearing set for October 1, 2018 is removed from the Court's calendar.

The motion for reconsideration is denied, if for no other reason, because Obaid makes no attempt to satisfy the requirements of Local Rule 7-18. While there may be unusual instances where a motion for reconsideration should be entertained even though the moving party cannot satisfy L.R. 7-18, the current motion is a very run-of-the-mill, "the court got it wrong" style motion for reconsideration. These motions are exactly what L.R. 7-18 is designed to govern.

Even putting aside L.R. 7-18, Obaid would not succeed on a motion for reconsideration. Obaid did not raise a personal jurisdiction argument with respect to the res in his moving brief. Even in Obaid's original reply, the issue of personal jurisdiction over the res itself seems to be limited to a passing, and incorrect, argument that because the res is not in this District, this Court has no personal jurisdiction over it. If other arguments in the reply were intended to be directed to personal jurisdiction over the res, that is certainly not clear.

Obaid's venue arguments are a recitation of arguments Obaid either could have or should have raised in the original briefing. There is no reason to revisit the issue.

However, certification of the matter for interlocutory appeal is appropriate.

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion

> that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

28 U.S.C. § 1292(b).

The Court has little doubt that the venue question should be certified for interlocutory appeal. There is a substantial ground for disagreement whether venue is proper in this District. The language "any of the acts or omissions giving rise to the forfeiture" in 28 U.S.C. § 1355(b)(1)(A) does not clearly answer the problem of venue over properties involved in large multifaceted money laundering conspiracies. Is the fact that the property at issue was purchased using laundered funds sufficient for venue in any district where an act in furtherance of the money laundering conspiracy took place? This is an especially difficult question where, as here, the act(s) within the district took place in a different "branch" of the conspiracy. That is, the question is much easier if there is a direct path between the act within the district and the purchase of the res – *i.e.*, the act within the district acquired the money eventually used to purchase the property. The question is less clear if, as appears to be the case here, the res was purchased using funds that, while proceeds of the same conspiracy, were not acquired directly through acts within the district.

The personal jurisdiction question is closer, but the Court also agrees that substantial questions on

controlling law are present. While the Court agrees with the government that Shaffer v. Heitner, 433 U.S. 186 (1977), does not require a showing of personal jurisdiction over a claimant in a civil forfeiture case, the language and reasoning of Shaffer certainly suggest that it might. The Court of Appeals may, of course, decline to entertain this question, see 28 U.S.C. § 1292(b), but the Court will give Obaid the chance to raise it on interlocutory appeal.

Resolution of these questions would materially advance the termination of the litigation if Obaid were to be successful because there would potentially be no venue or jurisdiction over the matter in this Court. Further, numerous related civil forfeiture actions pending before this Court raise the same or similar issues. It would be much more efficient to have a definitive ruling on jurisdiction and venue prior to proceeding with the civil forfeiture cases. The case is also well-suited for interlocutory appeal because it is already stayed indefinitely pending resolution of the related criminal investigation.

The motion for reconsideration is DENIED. The motion to certify the order for interlocutory appeal is GRANTED. The government is to provide notice of this order to all claimants in the related 1MDB civil forfeiture cases pending in this Court.

IT IS SO ORDERED.

Date: 9/24/18

/s/ Dale S. Fischer
Dale S. Fischer
United States District Judge

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 18-80128

D.C. No. 2:17-cv-04446-DSF-PLA
Central District of California, Los Angeles

[Filed: December 20, 2018]

UNITED STATES OF AMERICA,	)
	)
Plaintiff-Respondent,	)
	)
TAREK OBAID,	)
	)
Claimant-Petitioner,	)
	)
v.	)
	)
CERTAIN RIGHTS TO AND INTERESTS IN SHARES OF SERIES D PREFERRED STOCK IN PALANTIR TECHNOLOGIES,	)
	)
Defendant.	)

ORDER

Before: LEAVY and HURWITZ, Circuit Judges.

The petition for permission to appeal pursuant to 28 U.S.C. § 1292(b) is granted. Within 14 days after the date of this order, petitioner shall perfect the appeal in accordance with Federal Rule of Appellate Procedure 5(d).

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 18-56657

D.C. No. 2:17-cv-04446-DSF-PLA
Central District of California, Los Angeles

[Filed: November 2, 2020]

UNITED STATES OF AMERICA,	)
	)
Plaintiff-Appellee,	)
	)
v.	)
	)
TAREK OBAID,	)
	)
Claimant-Appellant,	)
	)
CERTAIN RIGHTS TO AND INTERESTS IN SHARES OF SERIES D PREFERRED STOCK IN PALANTIR TECHNOLOGIES,	)
	)
Defendant.	)

ORDER

Before: RAWLINSON, IKUTA, and BENNETT, Circuit Judges.

Judges Rawlinson and Bennett voted to deny, and Judge Ikuta voted to grant, the Petition for Rehearing En Banc.

The full court has been advised of the Petition for Rehearing En Banc and no judge of the court has requested a vote.

Claimant-Appellant's Petition for Rehearing En Banc, filed October 8, 2020, is DENIED.

APPENDIX F

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S. Code § 1355 - Fine, penalty or forfeiture

(a) The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

(b)

(1) A forfeiture action or proceeding may be brought in—

(A) the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or

(B) any other district where venue for the forfeiture action or proceeding is specifically provided for in section 1395 of this title or any other statute.

(2) Whenever property subject to forfeiture under the laws of the United States is located in a foreign country, or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture

may be brought as provided in paragraph (1), or in the United States District court [1] for the District of Columbia.

(c) In any case in which a final order disposing of property in a civil forfeiture action or proceeding is appealed, removal of the property by the prevailing party shall not deprive the court of jurisdiction. Upon motion of the appealing party, the district court or the court of appeals shall issue any order necessary to preserve the right of the appealing party to the full value of the property at issue, including a stay of the judgment of the district court pending appeal or requiring the prevailing party to post an appeal bond.

(d) Any court with jurisdiction over a forfeiture action pursuant to subsection (b) may issue and cause to be served in any other district such process as may be required to bring before the court the property that is the subject of the forfeiture action.

U.S. Constitution Fifth Amendment

Fifth Amendment

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 twice put 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.