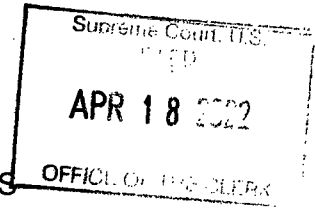


21-7673
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



DIMITAR PETLECHKOV — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DIMITAR PETLECHKOV
(Your Name)

780 MOROSGO DR NE, UNIT 13272
(Address)

ATLANTA, GA 30324
(City, State, Zip Code)

404-954-0890
(Phone Number)

QUESTION(S) PRESENTED

Question 1:

Can a district court order forfeiture of substitute assets far in excess of the personal money judgment balance owed?

21 U.S.C. § 853(p) authorizes forfeiture of substitute assets only "up to the value of" the unavailable offense proceeds. Until now, every district and circuit court had found that the forfeiture of substitute assets exceeding the value of the personal money judgment was not authorized by the statute.

The District Court for the Western District of Tennessee entered a forfeiture order against Petitioner which vested in the government title to three parcels of real property worth a combined total of three times the money judgment amount Petitioner owes.

The Sixth Circuit currently stands alone when it affirmed this forfeiture order as lawful. Thus, this decision has created a circuit split with the Second, Fourth, Seventh and Eleventh Circuit Courts of Appeal.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

United States v. Petlechkov, No. 21-5174/5199, 2022 WL 168651 (6th Cir., Jan. 19, 2022)
Judgment entered January 19, 2022.

United States v. Petlechkov, No. 17-20344, W.D. Tenn.
Judgment entered July 7, 2020, January 28, 2021 and February 8, 2021.

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Sixth Circuit opinion and order affirming district court judgment

APPENDIX B

District Court forfeiture order/personal money judgment/substitute assets

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☒ reported at 2022 WL 168651; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

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

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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

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

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 19, 2022.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

21 U.S.C. § 853(p): Forfeiture of substitute property

(1) In general

Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant—

- (A) cannot be located upon the exercise of due diligence;
- (B) has been transferred or sold to, or deposited with, a third party;
- (C) has been placed beyond the jurisdiction of the court;
- (D) has been substantially diminished in value; or
- (E) has been commingled with other property which cannot be divided without difficulty.

(2) Substitute property

In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

STATEMENT OF THE CASE

Petitioner was convicted of mail fraud and the government obtained a personal money judgment for the unavailable offense proceeds. See App. "B." In addition, the government sought forfeiture of three parcels of real property as substitute assets in order to satisfy the forfeiture judgment balance. *Id.* Despite the substitute assets exceeding the forfeiture money judgment by a factor of three, the district court ordered the substitute assets forfeited and the Sixth Circuit affirmed reasoning that the government would only take what is necessary to satisfy its judgment. See *United States v. Petlechkov*, 2022 WL 168651 at *5 (6th Cir. 2022) at App. "A." However, the court ignored the fact that the forfeiture order vested title to all three properties in the government by virtue of 21 U.S.C. 853(n)(7) and section 6 of the forfeiture order at App. "B" and did not explain why the government should be allowed to seize and liquidate all

three of them. Equally, the court made no provision for when or how the excess property should be returned to its rightful owner and the statute itself offers no guidance other than that the excess property never should have been subjected to forfeiture in the first instance.

REASONS FOR GRANTING THE PETITION

I. The forfeiture order should be reversed because the substitute assets' value far exceeds the money judgment.

The plain language of the statute makes clear that substitute property may be seized to satisfy a judgment for forfeitable property for a qualifying offense only “*up to the value*” of the forfeitable proceeds. 21 U.S.C. § 853(p)(2). Every circuit and district court except the Sixth Circuit has found the same. See *United States v. Djibo*, 730 F. App'x 52, 60 (2d Cir. 2018) (“Section 853(p) entitles the government under certain conditions to seek forfeiture of substitute assets up to the value of any forfeiture money judgment imposed.”); also *In re Rothstein, Rosenfeldt, Adler, P.A.*, 717 F.3d 1205, 1214-15 (11th Cir. 2013) (“The District Court must be mindful that a substitute property interest may be forfeited only ‘up to the value of’ any forfeitable proceeds that have been commingled and are accordingly unavailable for forfeiture as proceeds.”); See also *United States v. Mincey*, 800 F. App'x 714, 725 (11th Cir. 2020) (The district court ruled that the government was entitled to an order of forfeiture of substitute assets to satisfy the \$1.9 million money judgment. But the court denied without prejudice the government's request for the forfeiture of the specific property because the \$3.2 million estimated value of the substitute assets exceeded the \$1.9 million money judgment).

Cases have only authorized substitute assets when the government has shown that the value of the specific property it seeks is less than the amount traceable to the

offense. See *United States v. Smith*, 770 F.3d 628, 641-42 (7th Cir. 2014) (finding substitute asset forfeiture appropriate where the defendant's known unencumbered assets, valued at their original purchase prices, amounted to less than half of the forfeiture judgment amount); also *United States v. Christie*, 249 F. Supp. 3d 739, 747-48 (S.D.N.Y. 2017) (granting in part and denying in part the government's motion for forfeiture of substitute assets, holding that the government can proceed to substitute one parcel of real property valued at \$2.7 million towards the \$3.15 million money judgment but denying the government's original request to substitute multiple parcels of real property worth approximately \$9.7 million); *United States v. Edwards*, 2015 WL 1810381 at *2 (D.V.I. 2015) (Holding that "[s]ubstitute assets may be forfeited 'up to the value of the assets originally sought' and denying government's motion for forfeiture of substitute assets because the substitute assets listed by the government in its motion exceed the amount of the money judgment by a significant margin. As such, the government has failed to show "that the value of the substitute property does not exceed the money judgment."); *United States v. Poulin*, 690 F. Supp. 2d 415, 431 (E.D. Va. 2010), *aff'd*, 461 F. App'x 272 (4th Cir. 2012) (To obtain forfeiture of substitute assets, "the Government must show: (1) that the statutory prerequisites have been met; (2) that the Defendant owns the substitute property sought, and (3) that the value of the substitute property does not exceed the money judgment."); *United States v. Stathakis*, No. 04-CR-790 (CBA), 2008 WL 413782, at *n. 4 (E.D.N.Y. Feb. 13, 2008) ("As the government has represented that the total, best case scenario value of the substitute properties is significantly less than the judgment amount, the Court finds that this property may be substituted to satisfy the judgement against [the defendant].")

In the instant case, the evidence in the record regarding the value of the subject

properties shows that they are worth approximately \$1 million – far higher than the \$367,000 forfeiture money judgment. See Resentencing Tr., R. 256, PID 3005-06 & Sentencing Exhibit 7. Indeed, one of the parcels on its own – valued at \$400,000 – already exceeds the money judgment amount. *Id.* There is simply no statutory or other lawful authority under 21 U.S.C. § 853(p) to permit the government to take into custody and forfeit all three properties. In fact, even the \$400,000 property should not have been eligible to be subjected to forfeiture proceedings under the plain language of the substitute forfeiture statute and extensive caselaw on this subject. The Sixth Circuit – the only circuit to have permitted forfeiture of substitute assets far in excess of the personal money judgment – erred when it affirmed the district court's forfeiture order.

CONCLUSION

WHEREFORE, premises considered, the petition for a writ of certiorari should be granted.

Dated: April 17, 2022

Respectfully submitted,

/s/ Dimitar Petlechkov

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Petitioner, *pro se*