No. 23-1050

In the Supreme Court of the United States

LUIS SANCHEZ, ET AL.,
Petitioners,

v.

UNITED STATES,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

Amicus Curiae Brief of Florida Association of Criminal Defense Lawyers in Support of Petitioners

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INTEREST OF AMICUS CURIAE[1]

The Florida Association of Criminal Defense Lawyers ("FACDL") is a non-profit organization with a membership of over 1,300 attorneys and 29 chapters throughout the state of Florida. Each of FACDL's members is a criminal defense attorney. The question presented in this case has important implications for ensuring fairness in forfeiture proceedings in Florida's federal courts. FACDL's members participate in such proceedings on behalf of their clients. FACDL files amicus briefs regularly in the Florida Supreme Court, and occasionally in this Court in matters of particular importance to the practice of criminal law in Florida.

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the amicus curiae, or its counsel, made a monetary contribution to its preparation or submission. Pursuant to Sup. Ct. R. 37.2, amicus curiae provided timely notice of its intention to file this brief to all parties.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners Luis Sanchez, a part owner of an electronic sales company, and Jacqueline Palacios, a customer of Sanchez's company, sought to be heard regarding their interest in $9,000 in cash that was seized by the government upon the arrest of Carlos Quipse Cancari. As part of his plea agreement, Cancari agreed to entry of a preliminary order of forfeiture of the $9,000, subject to adjudication of third-party interests. App. 2.

Petitioners timely filed a petition within the 30 days provided by 21 U.S.C. § 853(n)(2), asserting their interest in the $9,000. Pet. Br. at 10. The petition was accompanied by affidavits signed by Petitioners under penalty of perjury, which were incorporated by reference into the petition and attested that Ms. Palacios had sent the $9,000 to Mr. Sanchez as payment towards electronics she had previously purchased and that the funds had no relationship to Cancari's criminal conduct. Pet. Br. at 2, 9. But the district court dismissed the petition because it was signed by counsel rather than by Petitioners. App. 46 (internal citations omitted); *see* 21 U.S.C. § 853(n)(3) ("The petition shall be signed by the petitioner under penalty of perjury."). Although counsel signed the petition, and the Petitioners had signed an affidavit attesting to the facts in the petition, the Petitioners did not sign the petition itself. *Id*. The district court denied Petitioners leave to amend the petition to conform to the signature requirement because, under its reading of the statute, a third-party petitioner may not amend a claim to correct a defect under section

853(n)(3) after the 30-day period for filing a petition under section 853(n)(2) has passed. App. 50. The Eleventh Circuit affirmed, holding that the 30-day window provided by section 853(n)(2) is "mandatory." App. 12.

The Court should grant certiorari for two reasons:

First, the Eleventh Circuit's interpretation of section 853(n)(2) finds no support in the text of the statute, which is silent on the timing of amendments to petitions and requires that the provisions of the section "be liberally construed to effectuate [their] remedial purposes." 21 U.S.C. § 853(o). Nor does its interpretation find support in the policy behind the statute: to provide innocent third parties a hearing on the merits so they can assert their interest in property that is subject to a preliminary order of forfeiture. That hearing is essential because it affords third parties the only opportunity to "testify and present evidence and witnesses on [their] own behalf" to prove their interest and protect their property rights. 21 U.S.C. § 853(n)(5),(6)(A).

Second, the Eleventh Circuit's decision has deepened a circuit split on this issue. Although every third-party claimant must navigate the statutory labyrinth of forfeiture proceedings under section 853, claimants asserting an interest in property that is subject to a preliminary order of forfeiture in the Fifth and Eleventh Circuits face the disproportionate punishment of dismissal for a technical pleading defect in their petition that is not corrected within the 30-day period for filing a petition. The Second and Seventh Circuits take the opposite, far more sensible, approach: permitting amendment to the petition after

the 30-day period so that third-party claimants still have an opportunity to be heard on the merits of their claim. The Court should grant the Petition and resolve a circuit split that has a significant impact on the lives of many innocent third parties who find themselves having to assert their interest in property seized by the Government and subject to forfeiture.

ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I. The Eleventh Circuit's Interpretation of Section 21 U.S.C. § 853(n) is Wrong.

21 U.S.C. § 853 sets forth the procedure to notify third parties of property to be forfeited by the Government, and to provide those third parties an opportunity to be heard regarding their legal interest in the property. The purpose of the statutory scheme is to provide a hearing so that a third party can "testify and present evidence and witnesses on his own behalf," and "cross-examine witnesses who appear at the hearing," to support his or her interest in the property subject to forfeiture. *Id.* at § 853(n)(5). The Eleventh Circuit ruled that Petitioners could not have a hearing because of a technical pleading defect in their failure to sign the petition—a non-substantive, easily-correctible error—despite the fact that the correction would not prejudice the Government. The Eleventh Circuit's interpretation of section 853 is unsupported by the text and policy of the statute, and should be rejected.

A. Section 853(n) sets forth detailed notice and hearing procedures that afford a third party the opportunity to assert an interest in property subject to forfeiture.

Section 853 requires a criminal defendant to forfeit to the United States, "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation," "any of the person's property used, or intended to be

used, in any manner or part to commit, or facilitate the commission of, such violation," and in cases involving continuing criminal enterprises "any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise." 21 U.S.C. § 853(a).

Congress created detailed procedures that afford innocent third parties an opportunity to assert their interest in property subject to potential forfeiture. Under section 853(n)(1), once a preliminary order of forfeiture is entered, "the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified." *Id.* Once notified, an individual "may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property." *Id.* at § 853(n)(2).

The statute requires the hearing to be held "before the court alone, without a jury" and "to the extent practicable and consistent with the interests of justice," within 30 days of the filing of the petition. *Id.* at § 853(n)(2),(4). The hearing affords both the petitioner and the government the opportunity to present their case. At the hearing, "the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at

the hearing." *Id.* at § 853(n)(5). The Government, similarly, "may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing." *Id.*

After the hearing, if the Court determines that "the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part . . ." or that "the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section," then it "shall amend the order of forfeiture in accordance with its determination." *Id.* at § 853(n)(6).

Importantly, the notification and hearing procedures in section 853(n) "shall be *liberally* construed to effectuate [their] *remedial* purposes." *Id.* at § 853(o) (emphasis added).

B. The Eleventh Circuit prioritized the technical requirements of a petition over the substantive requirement to provide a petitioner a hearing on the merits.

The Eleventh Circuit affirmed the dismissal of the petition in this case without a hearing on the merits, finding that the petition failed to meet the technical requirement that it be "signed by the petitioner under penalty of perjury." *See* 21 U.S.C. § 853(n)(3), and holding that the 30-day period for filing a third-party petition is "mandatory," App. 11 (citing *U.S. v.*

Davenport, 668 F.3d 1316 (11th Cir. 2012)), and that any pleading error in the petition may only be corrected within the 30-day period. *See id.* The Eleventh Circuit's interpretation is unsupported by the text of section 853(n), which is silent as to how to treat a motion for leave to correct a pleading defect in a petition. A reading of the statute as a whole and an appreciation of its policy goals compel the conclusion that a petitioner should be granted leave to amend a petition to conform to pleading requirements, as justice requires, for several reasons.

First, dismissal of the petition before a hearing without leave to amend is inconsistent with the statute's requirement to hold a hearing on the merits. *See id.* at § 853(n)(2); *see also id.* at § 853(n)(4) ("The hearing on the petition *shall*, to the extent practicable and consistent with the interests of justice, *be held* within 30 days of the filing of the petition.") (emphasis added).

In the proceeding below, the Government relied upon Federal Rule of Criminal Procedure 32.2(c)(1)(A), which permits it to move to dismiss the petition "for lack of standing, for failure to state a claim, or for any other lawful reason." But, as made clear by the advisory committee comments to the rule, the extension of motion practice to criminal forfeiture proceedings was not intended to deprive third parties the right to a hearing in the run-of-the-mill forfeiture case. Instead, such motion practice was intended to apply to "ancillary hearings [that] can involve issues of enormous complexity that require years to resolve. *In such cases*, procedures akin to those available under the Federal Rules of Civil Procedure should be

available to the court and the parties to aid in the efficient resolution of the claims." Fed. R. Crim. P. 32.2(c)(1)(A), Advisory Committee Notes (2000) (internal citations omitted) (emphasis added).

Moreover, to the extent the Federal Rules of Criminal Procedure extended civil motion-to-dismiss practice to criminal forfeiture proceedings, they also extended the liberal amendment practices of the civil rules, which generally permit a party to amend its complaint after a motion to dismiss has been granted "when justice so requires." Fed. R. Civ. P. 15(a)(2); *cf. Foman v. Davis*, 371 U.S. 178, 181-82 (1962) ("It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.") (internal citations omitted). Permitting amendment to the petition to fix a pleading defect before the hearing on the merits satisfies the statutory requirement *to hold a hearing*, and also facilitates the ultimate goal of the hearing: to ascertain the third parties' interest in the property.

Second, allowing amendment of a petition after the 30-day period to correct a pleading defect gives effect to the admonition in section 853(o) that "[t]he provisions of this section shall be liberally construed to effectuate its remedial purposes." *Id.* at § 853(o). When Congress demands that a statute be "liberally construed," it does so to broaden the rights afforded by

the statute, and to counsel against strict adherence. *See Serfass v. United States*, 420 U.S. 377, 387 (1975) (concluding that Congress added provision that statute "shall be liberally construed to effectuate its purposes" to counter "restrictive judicial interpretations of congressional intent"); *United States ex rel. Tenn. Valley Auth. v. Welch*, 327 U.S. 546, 551 (1946) (rejecting narrow constructions of the federal Tennessee Valley Authority Act because it expressly provided that it "shall be 'liberally construed to carry out the purposes of Congress to provide . . . for the national defense, improve navigation, control destructive floods, and promote interstate commerce and the general welfare.'"). The remedial purposes of section 853(n)—to afford third parties the opportunity to assert an interest in their property—are not served by denying leave to amend an otherwise timely-filed petition to correct a pleading defect, especially where the correction (in this case, the signature page) does not alter the claims or defenses or result in any prejudice to the opposing party.

A broad reading of the right to petition the Court that includes within it the right to amend a petition outside the 30-day period to correct a pleading defect gives full effect to Congress' intent to provide third parties "judicial resolution of their claims." As the Senate Report from the Committee on the Judiciary on the Comprehensive Crime Control Act of 1983 stated:

> Criminal forfeiture is an in personam proceeding. Thus, an order of forfeiture may reach only property of the Defendant, save in those instances

> where a transfer to a third party is voidable. Thus, if a third party can demonstrate that his interest in the forfeited property is exclusive of or superior to the interest of the defendant, the third party's claim renders that portion of the order of forfeiture reaching his interest invalid. The Committee strongly agrees with the Department of Justice that such third parties are entitled to judicial resolution of their claims.

S. Rep. No. 98-225, at 208 (1983).

Third, allowing amendment after the 30-day period to correct a pleading defect is commensurate with due process, which requires adequate notice and a *meaningful* opportunity to be heard when the Government seeks to deprive an individual of property. *Boddie v. Connecticut*, 401 U.S. 371, 377-78 (1971) ("[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurisprudence, this Court voiced the doctrine that '(w)herever one is assailed in his person or his property, there he may defend.'") (quoting *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876)); *Fuentes v. Shevin*, 407 U.S. 67, 80 (1872) ("It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'") (quoting *Armstrong v. Manzo*, 380 U.S. 545, 542 (1965)).

In sum, the Court should grant the Petition to correct the Eleventh Circuit's erroneous interpretation of 21 U.S.C § 853, which is inconsistent with the text of the statute and its underlying policy and deprives third parties such as Petitioners of their right to assert an interest in property subject to forfeiture.

II. The Court Should Grant the Petition to Resolve a Circuit Split On This Issue.

As set forth in the Petition, the Second and Seventh Circuits have interpreted section 853(n) to permit amendments to correct deficient petitions after the 30-day filing period has passed. In *United States v. Swartz Family Trust*, 67 F.4th 505 (2d Cir. 2023), the Second Circuit adopted the sensible approach that "[w]here, as here, a third party files its petition before the deadline and moves promptly to amend it, rejecting leave to amend does not always further [the Government's interest in finality]. Rather, in limited circumstances, it may be appropriate to permit the petitioner to amend its petition outside the 30-day window." *Id.* at 519-20. The Second Circuit noted two factors that weighed in favor of granting leave to amend upon remand in that case: (1) the defect, a failure to cite the appropriate subsection of the statute, was technical in nature; and (2) additional fact development was necessary to resolve the petition. *Id.* at 520. Similarly, in *United States v. Furando*, 40 F.4th 567 (7th Cir. 2022), the Seventh Circuit concluded that "the district court erred in sua sponte denying [the petitioners'] joint § 853(n) petition without a hearing or opportunity to amend. We hold this disposition was not appropriate, as any

jurisdictional deficiency may have been curable through amendment." *Id.* at 574-75.

By contrast, the Fifth and Eleventh Circuits bar such amendments and require "strict adherence" to the 30-day window. The Fifth Circuit reasoned in *United States v. Lamid*, 663 Fed. App'x 319 (5th Cir. 2016), that "the deadline in section 853(n)(2) is mandatory . . . . Any amended claim would therefore be untimely." *Id.* at 325. The Eleventh Circuit reached the same result in this case. This circuit split is reason alone to grant the Petition.

But the split also raises important issues that this Court should resolve. The Fifth and Eleventh Circuits' decisions to bar any amendments and to require "strict adherence" to the 30-day window is contrary to the text of the statute, the policy behind the statute, the rules of civil procedure (as extended to criminal forfeiture proceedings), and due process. And while every third party must navigate the statutory labyrinth of forfeiture proceedings, those whose property is ensnared in criminal forfeiture proceedings in either the Fifth or Eleventh Circuits face the disproportionate punishment of dismissal of their petitions and forfeiture of their property, without a hearing, based on a technical pleading defect that is not corrected within the 30-day filing period. *See McIntosh v. United States*, 144 S.Ct. 980, 991 (2024) (recognizing that "judicial economy is better served by allowing courts some flexibility to ensure the accuracy and completeness of the final forfeiture order" and to "address an inadvertent failure"). That punishment is unjust because it eviscerates the right of innocent third parties to assert their interest in property that

is subject to forfeiture in criminal proceedings in which they cannot otherwise participate.

CONCLUSION

The Court should grant the Petition.

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