

No. 23-160

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

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FRANCISCO DARIO MORA, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT*

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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### **QUESTION PRESENTED**

Whether 28 U.S.C. 2461(c) and 21 U.S.C. 853(p) authorized the district court to order the criminal forfeiture of substitute assets in the place of firearms and ammunition that petitioner transferred to a third party, where the firearms and ammunition were subject to forfeiture under 18 U.S.C. 924(d).

**RELATED PROCEEDINGS**

United States District Court (D. Ariz.):

*United States v. Mora*, 19-cr-3289 (May 10, 2021)

*United States v. Sevilla*, 19-cr-3289 (Apr. 25, 2022)

United States Court of Appeals (9th Cir.):

*United States v. Mora*, 21-10147 (Dec. 29, 2022)

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## **OPINION BELOW**

The opinion of the court of appeals (Pet. App. 1a-5a) is unreported but is available at 2022 WL 17984468.

## **JURISDICTION**

The judgment of the court of appeals was entered on December 29, 2022. A petition for rehearing was denied on April 24, 2023 (Pet. App. 6a-7a). On July 12, 2023, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including August 23, 2023, and the petition was filed on August 16, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **STATEMENT**

Following a guilty plea in the United States District Court for the District of Arizona, petitioner was convicted of conspiring to smuggle goods from the United

States, in violation of 18 U.S.C. 371; smuggling goods from the United States, in violation of 18 U.S.C. 554; and making false statements in the acquisition of a firearm, in violation of 18 U.S.C. 922(a)(6) and 924(a)(2). Judgment 1. The court sentenced him to 60 months of imprisonment, to be followed by 3 years of supervised release. *Ibid.* The court of appeals affirmed. Pet. App. 1a-5a.

1. Before 1970, the government obtained forfeiture of property involved in crimes by bringing separate *in rem* civil actions against the property, on the fiction that “the property itself is ‘guilty’ of the offense.” *Austin v. United States*, 509 U.S. 602, 615 (1993); see *id.* at 613-617. Those *in rem* actions resulted in the forfeiture of the “guilty property”—for example, the vessel used to smuggle goods—but did not impose personal liability on the individuals who committed the offenses. *United States v. Bajakajian*, 524 U.S. 321, 332 (1998); see *id.* at 330-332; see also *Austin*, 509 U.S. at 615-616.

Since 1970, however, Congress has authorized criminal forfeitures as penalties for violations of certain federal criminal laws. See *Bajakajian*, 524 U.S. at 332 n.7. Unlike civil forfeitures, criminal forfeitures are “an aspect of punishment imposed following conviction of a substantive criminal offense.” *Libretti v. United States*, 516 U.S. 29, 39 (1995). And whereas civil forfeitures involve *in rem* proceedings against specific property, criminal forfeitures involve *in personam* proceedings and impose personal liability on the convicted defendant. *Bajakajian*, 524 U.S. at 330-332.

The forfeiture provisions relevant to this case are codified in 18 U.S.C. 924, 21 U.S.C. 853, and 28 U.S.C. 2461. Section 924 provides for the civil forfeiture of any firearms or ammunition intended to be used in a federal



offense, where the requisite intent is established by clear and convincing evidence. 18 U.S.C. 924(d)(1) and (3)(F). Section 853 authorizes the criminal forfeiture of certain property involved in drug crimes. 21 U.S.C. 853(a). It also authorizes the forfeiture of “any other property of the defendant” if, as a result of any act or omission of the defendant, “any property described in [Section 853(a)] \* \* \* cannot be located upon the exercise of due diligence,” “has been transferred or sold to \* \* \* a third party,” “has been placed beyond the jurisdiction of the court,” or meets other statutory criteria of unavailability. 21 U.S.C. 853(p). Finally, Section 2461 provides that, “[i]f a person is charged in a criminal case with a violation of an Act of Congress for which the civil \* \* \* forfeiture of property is authorized,” the government may obtain “the forfeiture of the property as part of the sentence in the criminal case.” 28 U.S.C. 2461(c). Section 2461 further provides that “[t]he procedures in [Section 853] apply to all stages of a criminal forfeiture proceeding, except that [Section 853(d)] applies only in cases in which the defendant is convicted of a violation of [the Controlled Substances Act, 21 U.S.C. 801 *et seq.*].” 28 U.S.C. 2461(c).

2. Between June and September 2019, petitioner and a co-conspirator purchased firearms and ammunition in the United States and drove them across the border into Mexico, handing the firearms and ammunition over to a Mexican cartel. Presentence Investigation Report (PSR) ¶¶ 4, 6, 21; Gov’t C.A. Br. 6. Petitioner personally purchased at least 19 firearms, a 70-round drum magazine, 760 30-round magazines, and 10,000 rounds of ammunition. PSR ¶ 5. He also instructed his co-conspirator to purchase firearms and deliver them to

him so that he could smuggle them into Mexico. PSR ¶¶ 20, 25.

The cartel initially paid petitioner \$800 to \$1000 for each firearm he delivered, although the cartel later cut his earnings in half. PSR ¶ 30. For each gun purchase made by his co-conspirator, petitioner paid the co-conspirator between \$100 and \$300. PSR ¶¶ 20, 22, 25. Of the 40 firearms that petitioner and his co-conspirator smuggled into Mexico, only 3 were recovered. See Gov't C.A. Br. 24.

3. A federal grand jury in the District of Arizona returned an indictment charging petitioner with conspiring to smuggle goods from the United States, in violation of 18 U.S.C. 371; smuggling goods from the United States, in violation of 18 U.S.C. 554; and making false statements in the acquisition of a firearm, in violation of 18 U.S.C. 922(a)(6) and 924(a)(2). Indictment 2-7; see Judgment 1. The indictment also contained forfeiture allegations under 18 U.S.C. 924(d) and 28 U.S.C. 2461(c). Indictment 8-11. It sought forfeiture of “any firearms and ammunition involved in the commission of the offenses,” or, if those items were not available, substitute property under 21 U.S.C. 853(p). Indictment 8; see Indictment 10.

Petitioner pleaded guilty without a plea agreement but objected to the government’s proposed order of forfeiture. 9/24/2020 Tr. 4-5, 16-18; D. Ct. Doc. 55 (Oct. 7, 2020). The district court rejected petitioner’s arguments, 5/10/2021 Tr. 21-22, and found that the firearms and ammunition were subject to forfeiture under Section 924(d) and Section 2461(c), D. Ct. Doc. 98, at 4 (May 10, 2021). The court further found that Section 853(p) applied and that the forfeiture of substitute property was appropriate because petitioner “had an interest in

the [f]irearms and [a]mmunition [n]ot [s]eized” and those items were “transferred, sold to, or deposited with a third party, or placed beyond the jurisdiction of the court and therefore no longer available for forfeiture.” *Id.* at 4-5. The court accordingly entered a final order of forfeiture that required petitioner to forfeit \$32,663.48, which represents “the value of the [f]irearms and [a]mmunition [n]ot [s]eized at the time of the offense.” *Id.* at 5.

The district court sentenced petitioner to 60 months of imprisonment, to be followed by 3 years of supervised release. Judgment 1. The court also entered a personal money judgment ordering him to forfeit \$32,663.48. Judgment 1-2.\*

4. The court of appeals affirmed in an unpublished, nonprecedential decision. Pet. App. 1a-5a.

The court of appeals explained that “[t]hree intertwined statutes” govern forfeiture in this case: (A) 18 U.S.C. 924(d), which “authorizes the civil forfeiture of firearms and ammunition”; (B) 28 U.S.C. 2461(c), which “permits the use of the criminal-forfeiture procedures in 21 U.S.C. § 853 whenever civil forfeiture is available and the defendant is found guilty of a crime”; and (C) 21 U.S.C. 853(p), which “permits forfeiture of ‘substitute property’ in certain situations.” Pet. App. 2a (citation omitted). The court also noted that 21 U.S.C. 853(a), which is referenced in Section 853(p), “defines ‘property subject to criminal forfeiture’ as ‘any of the person’s property used, or intended to be used, in any manner or

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\* The district court separately ordered the co-conspirator, who was also petitioner’s co-defendant, to forfeit the same amount, and the co-defendant did not appeal. D. Ct. Doc. 150, at 4-5 (Apr. 27, 2022).

part, to commit, or to facilitate the commission of” an offense.” Pet. App. 3a (brackets and citation omitted).

The court of appeals rejected petitioner’s assertion that “he did not possess a legitimate interest in the fire-arms and ammunition[], and therefore the munitions cannot be considered his ‘property’ under” Section 853(a). Pet. App. 3a. The court noted that in *United States v. Valdez*, 911 F.3d 960 (9th Cir. 2018), cert. denied, 140 S. Ct. 2571 (2020)—a “nearly identical cartel straw-purchaser case”—it had “held that the limiting personal ‘property’ language of § 853(a) does not apply to cases under 28 U.S.C. § 2461(c)” because Section “853(a) is substantive, not procedural.” Pet. App. 3a. The court therefore concluded that Section “853(p) allows forfeiture of substitute assets even where a defendant purchased munitions at the direction of a third party with that party’s funds.” *Ibid.*

#### ARGUMENT

Petitioner does not appear to dispute that the fire-arms and ammunition he smuggled across the border were subject to forfeiture under 18 U.S.C. 924(d). Petitioner contends (Pet. 9-25), however, that the district court lacked the authority to order him to forfeit \$32,663.48 in substitute assets in lieu of those items. The court of appeals correctly affirmed the forfeiture order in this case, and its unpublished, nonprecedential decision does not conflict with any decision of this Court or of any other court of appeals. This Court previously denied review of the question presented, see *Valdez v. United States*, 140 S. Ct. 2571 (2020) (No. 19-6062), and it should follow the same course here.

1. The court of appeals correctly determined that 18 U.S.C. 924(d), 21 U.S.C. 853(p), and 28 U.S.C. 2461(c) authorized the district court to require petitioner to for-

feit substitute property in lieu of the firearms and ammunition that petitioner transferred to a third party.

Under Section 924(d), the firearms and ammunition that petitioner smuggled and conspired to smuggle were subject to civil forfeiture because those items were used in an “offense \* \* \* which involves the exportation of firearms or ammunition.” 18 U.S.C. 924(d)(3)(F); see 18 U.S.C. 924(d)(1). Under Section 2461(c), those firearms and ammunition were also subject to criminal forfeiture because petitioner was convicted of “a violation of an Act of Congress for which the civil \* \* \* forfeiture of property is authorized.” 28 U.S.C. 2461(c). And under Section 2461(c), “[t]he procedures in [21 U.S.C. 853]” governed the “criminal forfeiture proceeding.” 28 U.S.C. 2461(c). One of the procedures in Section 853, in turn, is 21 U.S.C. 853(p), which provides for the forfeiture of substitute property if the directly forfeitable property meets statutory criteria of unavailability. See *Honeycutt v. United States*, 581 U.S. 443, 453 (2017) (explaining that the “procedures outlined in § 853(p)” are the “one way for the Government to recoup substitute property when the tainted property itself is unavailable”). As the court of appeals correctly recognized, those statutory provisions together authorized the district court to order the forfeiture of substitute property in lieu of the firearms and ammunition as part of petitioner’s criminal sentence. Pet. App. 2a-3a.

2. Petitioner’s contrary arguments lack merit.

a. Petitioner errs in contending (Pet. 9-13) that Section 853(p) is a substantive provision rather than a “procedure” incorporated by Section 2461(c). Section 853(p) is properly considered procedural because its purpose “is to thwart the defendant’s efforts to avoid the impact of a criminal forfeiture,” *United States v. McHan*, 345

F.3d 262, 271 (4th Cir. 2003), not to increase the amount of property subject to forfeiture. Although the provision permits forfeitures that might not otherwise occur, it does so only when an “act or omission of the defendant,” 21 U.S.C. 853(p)(1), has prevented the government and the court from locating the specific assets subject to forfeiture. And Section 853(p) does not change the amount of the forfeiture or impose any additional forfeiture burden on a defendant; rather, it merely provides for an alternative method of collecting a forfeiture judgment. Because that provision “neither changes the quantum of punishment \* \* \* nor adds any new penalty”—and instead “provides for an alternative method of collecting a forfeiture judgment”—it is properly considered procedural. *United States v. Reed*, 924 F.2d 1014, 1017 (11th Cir. 1991) (discussing 18 U.S.C. 1963(m), a provision identical to Section 853(p)(1)).

That conclusion accords with the plain meaning of “procedure.” A “procedure” is “[a] specific method or course of action” and “[t]he judicial rule or manner for carrying on a civil lawsuit or criminal prosecution.” *Black’s Law Dictionary* 1241 (8th ed. 2004). When a defendant has made directly forfeitable property unavailable, the government may follow the “method or course of action” (and the “rule or manner”) in Section 853(p) to obtain the forfeiture of substitute property. *Ibid.* The same is true under the definitions that petitioner plucks (Pet. 9-10) from other contexts. Allowing the government to forfeit substitute property does not “abridge, enlarge or modify” the government’s “substantive right[s].” 28 U.S.C. 2072(b). Nor does the substitution “significantly affect the result of a litigation.” *Hanna v. Plumer*, 380 U.S. 460, 466 (1965) (citation omitted). The government is entitled to the same “re-

sult,” *ibid.* (citation omitted)—a forfeiture judgment—regardless of whether substitute property can be used to satisfy the defendant’s forfeiture obligation.

This Court has previously indicated that Section 853(p) is procedural, explaining that “Congress provided just one way for the Government to recoup substitute property when the tainted property itself is unavailable—the *procedures* outlined in § 853(p).” *Honeycutt*, 581 U.S. at 453 (emphasis added). What is more, “every circuit court that has reviewed the issue has said that section 853(p) is a forfeiture ‘procedure’ that is ‘incorporated by reference in section 2461(c).’” *United States v. Javat*, No. 20-13310, 2022 WL 703940, at \*7 (11th Cir. Mar. 9, 2022) (per curiam) (brackets and citation omitted); see *United States v. Valdez*, 911 F.3d 960, 965 (9th Cir. 2018), cert. denied, 140 S. Ct. 2571 (2020); *United States v. Seabrook*, 661 Fed. Appx. 84, 85-86 (2d Cir. 2016); *United States v. Gregoire*, 638 F.3d 962, 971 (8th Cir. 2011); *United States v. Alamoudi*, 452 F.3d 310, 313-314 (4th Cir. 2006); see also *United States v. Chittenden*, 896 F.3d 633, 638 (4th Cir. 2018) (describing Section 853(p) as procedural).

Petitioner notes that “when Congress incorporated Section 853(p) into another statute to allow forfeiture of substitute assets, it used the term ‘provision.’” Pet. 10 (quoting 18 U.S.C. 982(b)). But that does not change the procedural nature of Section 853(p). See *Javat*, 2022 WL 703940, at \*6 (“Whatever the difference between section 853’s provisions and procedures, \* \* \* section 853(p) is a substitute asset forfeiture ‘procedure.’”). Indeed, Congress may have intended to incorporate *other* subsections of Section 853 that Section 2461(c) does not incorporate by using the term “provisions” in 18 U.S.C. 982(b).

b. Petitioner likewise errs in contending that because Section 853(p) authorizes forfeiture of substitute property where “any property described in [Section 853(a)]’ is unavailable,” Pet. 13 (citation omitted), a court may not order the forfeiture of substitute property unless the directly forfeitable property would fit within Section 853(a)’s description of property forfeitable for certain drug crimes. But Section 853(p) applies here only because Section 2461(c) has taken Section 853’s criminal-forfeiture procedures and made them applicable to property whose forfeiture is already authorized by some *other* statute. As the court of appeals correctly observed, Section “853(a) is substantive, not procedural, and therefore it does not apply to substitute-asset forfeiture under § 853(p).” Pet. App. 3a; see *Valdez*, 911 F.3d at 967 (explaining that Section 853(a) “is plainly a substantive, not procedural, provision of § 853, because it describes the forfeitable property for certain drug crimes”). By incorporating only the procedures of Section 853—and not the definition of directly forfeitable property in Section 853(a)—“Congress intended courts to apply § 853(p) and the other procedures of § 853 to the forfeitable property as defined elsewhere.” *Valdez*, 911 F.3d at 967; see *United States v. Bermudez*, 413 F.3d 304, 306 (2d Cir.) (per curiam) (determining that Section 853(p) authorizes the forfeiture of substitute property in place of forfeitable property described in 18 U.S.C. 982(a)(1), rather than forfeitable property described in Section 853(a)), cert. denied, 546 U.S. 996 (2005). Here, the “forfeitable property as defined elsewhere,” *Valdez*, 911 F.3d at 967, is identified in Section 924(d), not Section 853(a).

c. Petitioner further asserts that the forfeiture here exceeded the proper scope because he possessed the



firearms and ammunition only as an intermediary and that “‘criminal *in personam* forfeiture reaches only’ items ‘owned’ by the defendant”—and “cannot reach items possessed by an agent or intermediary.” Pet. 16 (quoting *United States v. Bajakajian*, 524 U.S. 321, 328 n.3 (1998)). That contention lacks merit. It is true that Section 853(a) (like some other forfeiture statutes) allows forfeiture of only “the person’s property” or “proceeds the person obtained,” 21 U.S.C. 853(a)(1) and (2)—that is, things that the person owned or possessed. But Section 924(d), in contrast, provides for the forfeiture of “[a]ny firearm or ammunition involved in or used in any knowing violation of” certain firearm offenses. 18 U.S.C. 924(d)(1). Thus, the plain text of Section 924(d) allows for forfeiture of property that the defendant did not personally own or obtain. And, unlike Section 924(d), other statutes that rely on Section 853(p) contain provisos that limit its application; for example, 18 U.S.C. 982(b)(2) provides that, unless certain specified exceptions apply, Section 853(p) “shall not be used to order a defendant to forfeit assets in place of the actual property laundered where such defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense.”

Contrary to petitioner’s suggestion (Pet. 1, 3, 16), this Court’s decisions do not broadly provide that only items owned by a defendant are subject to criminal forfeiture. *Bajakajian* merely discussed 18 U.S.C. 982(a)(1), which is not at issue in this case, and the interplay between that provision and 31 U.S.C. 5316(a). See 524 U.S. at 328 n.3. And *Honeycutt* explained that Section 853(a) “limits forfeiture to property the defendant ‘obtained . . . as the result of’ the crime,” 581 U.S. at 449 (quoting

21 U.S.C. 853(a)(1)), and concluded that the defendant in that case had not “obtained” property within the meaning of that provision when the property in question was solely “obtained by his co-conspirator,” *id.* at 448; see *id.* at 448-454. Both *Bajakajian* and *Honeycutt* therefore discussed specific statutes—and did not announce any general limit on criminal forfeiture.

d. Because the government has the better reading of Section 2461(c) based on its text and context, petitioner’s remaining arguments lack merit. As an initial matter, the rule of lenity (see Pet. 20-21) has no application here because it applies only if, “after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute, such that the Court must simply guess as to what Congress intended.” *United States v. Castleman*, 572 U.S. 157, 172-173 (2014) (citation omitted). No ambiguity—let alone a grievous one—exists here.

Petitioner suggests (Pet. 24-25) that allowing the forfeiture of substitute property when the directly forfeitable property was involved or used in a crime will lead to disproportionate forfeitures. But there is no need for this Court to unduly restrict Section 2461(c) because if a defendant believes that his forfeiture is disproportionate to his crime in a particular case, the defendant may challenge his specific forfeiture order as unconstitutionally excessive. See, *e.g.*, *Bajakajian*, 524 U.S. at 324. Indeed, the court of appeals here rejected petitioner’s constitutional challenge to his forfeiture, crediting the district court’s conclusion that petitioner “was a ‘manager or supervisor’ of the conspiracy” and “funneled a lot of firepower into Mexico, which clearly is used for nothing but the cartels to kill people who

they decide they want to kill.” Pet. App. 4a (citation omitted).

Petitioner’s remaining policy argument fares no better. Petitioner contends (Pet. 18-19) that it is inequitable to apply Section 853(p) only when a defendant successfully transfers property to a third party or otherwise removes that property from the jurisdiction of the court. But when a defendant is captured before he can unlawfully transfer firearms and ammunition to others—or when the firearms and ammunition have been recovered—his conduct has not allowed others to unlawfully obtain and use that dangerous contraband. In contrast, when the government is unable to prevent the transfer of or unable to reclaim firearms and ammunition, then that contraband may “remain in the hands of criminals,” which causes additional societal harm. *Valdez*, 911 F.3d at 967. There is “no inequity in treating persons differently depending on whether they cause contraband to remain in the hands of criminals.” *Ibid*. Petitioner’s proposed approach would essentially grant a benefit to a defendant who successfully completes a crime. And it would significantly undermine important “governmental interests” served by forfeiture: “‘separating a criminal from his ill-gotten gains’” and “‘lessening the economic power’ of criminal enterprises.” *Honeycutt*, 581 U.S. at 447 (brackets and citation omitted).

3. The decision below does not conflict with any decision of this Court or of another court of appeals.

a. Petitioner’s suggestion (Pet. 1-2, 13), that the decision below is inconsistent with this Court’s decision in *Honeycutt* is incorrect. *Honeycutt* involved a forfeiture order under 21 U.S.C. 853(a)(1), and the Court’s analysis accordingly focused on the scope of forfeiture liabil-

ity under that provision. See 581 U.S. at 448-450. The Court did not consider whether, when Section 2461(c) has made Section 853(p)'s substitute-property procedures applicable to a forfeiture under Section 924(d), it also incorporates the substantive limitations on forfeiture set forth in Section 853(a). To the contrary, *Honeycutt* recognized that "Section 853(p)(1) demonstrates that Congress contemplated situations where the tainted property itself would fall outside the Government's reach" and "authorized the Government to confiscate [other] assets \* \* \* from the defendant who initially acquired the property and who bears responsibility for its disposition." 581 U.S. at 452. That understanding of Section 853(p) is consistent with the court of appeals' decision in petitioner's case.

b. As discussed above, see p. 9, *supra*, the courts of appeals that have addressed the question presented have unanimously concluded that Section 2461(c) incorporates Section 853(p)'s substitute-property provisions. The two court of appeals decisions petitioner identifies (Pet. 21-23) involved different forfeiture provisions and did not address the interaction among Sections 924(d), 2461(c), and 853(p).

The decision below does not conflict with the Fourth Circuit's decision in *Alamoudi*. That case involved forfeiture under 18 U.S.C. 981(a)(1)(C) (2006), which provides for forfeiture for certain offenses (such as bank fraud) rather than forfeiture under 18 U.S.C. 924(d), which is at issue in this case. *Alamoudi*, 452 F.3d at 313. The Fourth Circuit explained that Section 981(a)(1)(C) and Section 2461(c) together required the defendant in that case to criminally forfeit "any property, real or personal, which constitutes or is derived from proceeds traceable to" violations of certain laws." *Ibid.* (quoting

18 U.S.C. 981(a)(1)(C) (2006)) (brackets omitted). The Fourth Circuit then explained that Section 853(p), as incorporated by Section 2461(c), “mandate[d] forfeiture of substitute assets ‘when the tainted property has been placed beyond the reach of a forfeiture.’” *Id.* at 314 (citation omitted). That analysis is consistent with the decision below, and the Fourth Circuit did not suggest—much less hold—that a district court may require the forfeiture of substitute property only in the place of the property identified in Section 853(a). To the contrary, the Fourth Circuit explained that Section 853(p) “simply requires the court to allow the Government to seize substitute property when the defendant has placed the assets initially sought—and to which the Government is legally entitled—beyond the court’s reach.” *Id.* at 315.

Nor does the decision below conflict with the Third Circuit’s decision in *United States v. Gjeli*, 867 F.3d 418 (2017), cert. denied, 583 U.S. 1076, and 583 U.S. 1077 (2018). *Gjeli* likewise did not discuss forfeiture under 18 U.S.C. 924(d); rather, it involved a forfeiture under 18 U.S.C. 981(a)(1)(C) and 1963. 867 F.3d at 427-428. In providing a brief “review of the applicable forfeiture statutes,” the Third Circuit stated in a footnote that “21 U.S.C. § 853(a) \* \* \* became relevant through the government’s desire to seek substitute property pursuant to 21 U.S.C. § 853(p).” *Id.* at 427 & n.16. The *Gjeli* court cited *United States v. Vampire Nation*, 451 F.3d 189 (3d Cir.), cert. denied, 549 U.S. 970 (2006), for that proposition. But neither *Gjeli* nor *Vampire Nation* elaborated on or explained that statement; the statement was unnecessary to the court’s judgment in either case; and the court never suggested that Section 853(a)’s limitations would apply in a case involving a forfeiture under Section 924(d). Thus, neither decision indicates that a

future Third Circuit panel would necessarily disagree with the Ninth Circuit’s resolution of petitioner’s case.

4. In any event, this case would be a poor vehicle in which to address the question presented. The factual premise on which petitioner’s arguments rest—*i.e.*, that petitioner did not own the property—is not supported by the record. Petitioner states (Pet. 25) that the cartel “supplied the money that petitioner and his codefendant used to straw-purchase guns and ammunition.” But petitioner never admitted to receiving funds from the cartel for the purpose of purchasing firearms and ammunition, see PSR ¶ 30, and the district court made no findings on that point when accepting petitioner’s guilty plea, see 9/24/2020 Tr. 17. And it is by no means clear that the funds the cartel paid petitioner were advances for purchases of additional firearms and ammunition. Rather, it appears that petitioner received payment *after* the items were delivered—though he perhaps used some earlier payments to finance the purchase of additional firearms and ammunition. See PSR ¶ 30 (describing an interview in which petitioner “stated [that] in the beginning he *earned* between \$800 and \$1,000 each time he straw purchased firearms” and that “[t]he last time, he was never *paid*”) (emphases added).

**CONCLUSION**

The petition for a writ of certiorari should be denied.  
Respectfully submitted.

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