

No. _____

In the
Supreme Court of the United States

ILANA BANGIYEVA,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

What is the appropriate test to determine whether petitioner has a sufficient legal interest in forfeited property.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings before this court are as follows:

Ilana Bangiyeva

United States of America

LIST OF PROCEEDINGS

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Case No. 1:14cr206

UNITED STATES V. BANGIYEVA

Memorandum Order and Final Order of Forfeiture reported as *United States v. Bangiyeva*, No. 1:14cr206, 2021 U.S. Dist. LEXIS 220510 (E.D. Va. Nov. 15, 2021) and reproduced in the Appendix.

Judgement dated November 15, 2021.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Case No. 22-1066, No. 22-1099

UNITED STATES V. BANGIYEVA

Lower Court denial of Government's Motion to Reconsider AFFIRMED in part and VACATED in part, case REMANDED. Judgment reported as *United States v. Bangiyeva*, 75 F.4th 445 (4th Cir. 2023) and reproduced in the Appendix.

Judgment dated August 2, 2023.

UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

Case No. 22-1066, No. 22-1099

UNITED STATES V. BANGIYEVA

Petition for Rehearing DENIED. Judgment reported as
United States v. Bangiyeva, Nos. 22-1066 (L), 22-1099,
2023 U.S. App. LEXIS 26049 (4th Cir. Oct. 2, 2023) and
reproduced in the Appendix.

Judgment dated October 2, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Bangiyeva respectfully requests that a Writ of Certiorari be issued to review the denial of petition for rehearing by the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The November 15, 2021, memorandum order and final order of forfeiture in favor of the Government from the United States District Court for the Eastern District of Virginia is reproduced in the Appendix (“App. C and D”).

The August 2, 2023, order from the Court of Appeals for the Fourth Circuit is reproduced in the Appendix (“App. A”). This order is published as *United States v. Bangiyeva*, 75 F.4th 445 (4th Cir. 2023).

BASIS FOR JURISDICTION IN THIS COURT

The United States Court of Appeals for the Fourth Circuit entered judgment on October 2, 2023. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE CASE

A. Concise Statement of Facts Pertinent to the Question Presented.

Ilana Bangiyeva is a registered nurse in Queens, New York. On August 7, 2014, a grand jury returned a two-count indictment against her brothers, Eduard and Arkadiy, charging both with participating in a RICO conspiracy in violation of 18 U.S.C. §1962(d) and participating in a conspiracy to commit counterfeiting offenses in violation of 18 U.S.C. §§ 371, 471, 472, 473.

The indictment contained a forfeiture allegation which, upon conviction, the government would seek forfeiture of various properties the defendants acquired or maintained in violation of 18 U.S.C. § 1962. On January 15, 2015, both Eduard and Arkadiy pled guilty to the first count, agreeing to forfeit all interests in any asset derived from counterfeiting or racketeering activity.

Ilana has exercised dominion and control over the following properties at the time of the crime giving rise to the forfeiture by the United States District Court for the Eastern District of Virginia (“District Court”):

- 110-37 69th Avenue, Forest Hills, New York
- 102-02 65th Road, Rego Park, New York
- 98-21 67th Avenue, Flushing, New York
- 98-23 67th Avenue, Flushing, New York
- 61-25 98th Street, Apt. 10N, Rego Park, New York
- \$572,848 in account 8926 at TD Bank.

Ilana used the proceeds of home equity loans to purchase gold and used those proceeds to fund the purchase and/or maintenance of the above assets¹.

On April 20, 2015, the government moved for a Preliminary Order of Forfeiture against the defendants.

B. Procedural History.

On October 27, 2015, the United States District Court for the Eastern District of Virginia entered Preliminary Orders of Forfeiture against both Eduard and Arkadiy. On December 14, 2015, Ilana filed her petition to adjudicate her interest in the forfeited property.

On November 15, 2021, the United States District Court for the Eastern District of Virginia denied Ilana's petition and entered its Final Order of Forfeiture.

On January 13, 2022, Ilana filed a Notice of Appeal to the United States Court of Appeals for the Fourth Circuit, from the District Court's Final Order of Forfeiture entered on November 15, 2021.

On August 2, 2023, United States Court of Appeals for the Fourth Circuit denied Ilana's appeal after an oral argument.

¹ Not all the properties were purchased with the gold proceeds. For example, 110-37 69th Ave was not purchased with the gold proceeds. 102-02 65th Road also was mainly purchased with the gift money from the mother and only the minor contribution was from the gold proceeds.

Ilana filed a Petition for Rehearing with the United States Court of Appeals for the Fourth Circuit. On October 2, 2023, the United States Court of Appeals for the Fourth Circuit denied Ilana's petition for rehearing.

Now, this Petition for Writ of Certiorari follows.

REASONS TO GRANT THIS PETITION

I. PETITIONER EXERCISED DOMINION AND CONTROL OVER THE FORFEITED PROPERTY AT THE TIME OF THE CRIME GIVING RISE TO THE FORFEITURE.

The District Court clearly erred in failing to recognize Ilana's claimed ownership interests in the forfeited property. Property subject to forfeiture under 18 U.S.C. § 1963(l) is owned by third parties when the petitioner exercises sufficient "dominion and control over the subject asset to establish a vested legal interest in the property." *United States v. Bangiyeva*, 75 F.4th 445, 454 (4th Cir. 2023) (citing *United States v. Morgan*, 224 F.3d 339, 343 (4th Cir. 2000)).

In *Bangiyeva*, 75 F.4th at 454, the United States Court of Appeals for the Fourth Circuit addressed whether Ilana exercised sufficient dominion and control over the following six assets:

- 110-37 69th Avenue, Forest Hills, New York
- 102-02 65th Road, Rego Park, New York²

² In addition to exercising dominion and control of this property, Ilana's \$235,000 contribution towards the downpayment on this property are, as acknowledged by the court, legitimate funds as having been gifted to Ilana by her mother. This payment was made

- 98-21 67th Avenue, Flushing, New York
- 98-23 67th Avenue, Flushing, New York
- 61-25 98th Street, Apt. 10N, Rego Park, New York
- \$572,848 in account 8926 at TD Bank.

The Appellate Court began its analysis by focusing on Ilana's claim that "she acquired each interest, at least in part, using funds derived from a profitable gold investment that she and her brothers made." *Id.* at 449. Ilana, along with her two brothers, "took out home equity lines of credit on the 110-37 69th Ave. property totaling \$750,000." *Id.* Ilana and her brothers then used \$500,000 to purchase gold as an investment. *Id.* Later, her brothers sold the gold for a profit totaling more than \$880,000. *Id.* Ilana used her one-third share of the proceeds to invest in the six assets in question. *Id.*

15 years ago. The court ordered the Government to credit Ilana that amount from the property's post- forfeiture sale proceeds.

However, the court disregarded the argument that it is undisputed that this amount alone constituted 51% of the equity of the property (\$235,000 from the original down payment of \$463,000 constitutes 51% of the equity) at the time of purchase and therefore establishes Bangiyeva as the majority owner of the property. As such, this establishes the government as a minority owner and as such its interest in the property should be held by lien or Bangiyeva should possess the option to purchase the government's interest in the property.

The Appellate Court affirmed the District Court's denial of what the former referred to as Ilana's "gold-investment narrative." *Id.* at 452. The Appellate Court reasoned that Ilana's ownership in five of the six assets, "the properties at 98-21 67th Ave., 98-23 67th Ave., and 102-02 65th Rd.; the 278 shares in Park City Tenant's Corporation at 61-25 98th St., Apt. 10N; and the \$572,848.39 in a TD Bank account ending in 8926—hinge[d] entirely on her gold-investment narrative." *Id.* Since the Appellate Court rejected such "narrative" it dismissed Ilana's claimed ownership interests in the above five assets.

The Appellate Court erred in its determination regarding Ilana's gold investment. Beginning with Ilana's petition, she makes clear that "[t]he proceeds of the [] home equity loans were used to purchase gold." Doc. 752 at 4, ¶ 16. As a result, "Ilana received substantial distributions from the sale of her share of gold sales, the proceeds of which were used to fund the purchase and/or maintenance of the [above assets]." *Id.* at ¶ 17. The Appellate Court stated that Ilana "fail[ed] to discuss or preview even one of those alleged invoices or receipts" providing evidence of the gold investment." *Bangiyeva*, 75 F.4th at 452. However, Ilana's petition is replete with citations to Exhibit G which contains TD Bank Statements within Exhibit G. Doc. 752 at 8. Such ample evidence of the gold investment is demonstrated in Ilana's petition and its citations to specific exhibits supporting the gold investments.

Regarding the property at 110-37 69th Avenue, Forest Hills, New York, the Appellate Court held that there was insufficient evidence of dominion and control

to warrant reversal. *Id.* at 454. First, Ilana acquired her one-third interest in the property for \$10. *Id.* The Appellate Court held that “[s]uch de minimis consideration in and of itself is highly suggestive of nominal ownership.” *Id.* Next, the Appellate Court disregarded the fact that Ilana made financial contributions to the property. *Id.* at 455. “[T]he fact that a petitioner has made occasional financial contributions to a subject asset is not necessarily dispositive for purposes of satisfying the dominion-and-control test, particularly where other facts—such as [Ilana’s] acquiring her legal interest in this \$850,000 property for only \$10 consideration—are strongly indicative of mere straw ownership.” *Id.*

Ilana’s financial contributions to this property should not be regarded as merely “occasional”. Ilana made financial contributions that were routine and were in line with what is expected of a property owner - mortgage payments, payments of utilities and payments for repairs and upkeep. *See Bangiyeva Petition of Interest in Forfeited Property* at p. 8.

The Petitioner provided clear and convincing evidence that she exercised dominion and control over this property by providing the Court with copies of the checks for this property’s initial renovation, including payments to subcontractors, payments for supplies, payments for utilities, etc. dating back from 2003 even before she was added to the title in 2004³. JA476-JA481.

³ Petitioner also contributed to title fees and closing costs. JA481 and JA432-433.

Additionally, a close review of the record reveals that even when Ilana became a title owner in 2004 Ilana paid the closing costs to the title company. See a copy of the check JA481 and JA432-433.

Furthermore, the 110-37 69th Avenue property was the sole physical residence for Bangiyeva from 2003 until 2007. Ilana's provided income tax returns indicate this property address as her residence. JA469-JA475. Additionally, the provided copies of Ilana's personal checks list 110-37 69th Avenue as her address. JA477. All deeds submitted on the record list 110-37 69th Avenue as Ilana's address. JA418-449. All bank statements submitted on the record list 110-37 69th Avenue as Ilana's address as well. JA514. The fact that the two HELOCs were executed with her as a party to both loans additionally establishes her dominion and control over this property as her signature was required in order to conduct any business on the property.

Simply put, the Petitioner has provided ample evidence that she exercised dominion and control over this property sufficient to substantiate her claim for preexisting or "vested" interest in this property. Nevertheless, the Court denied her rightful interest in this property.

The Appellate Court also erred when it denied Ilana's claimed ownership interests in 110-37 69th Avenue, Forest Hills, New York. In *Morgan*, the Fourth Circuit held that a petitioner does not exercise dominion and control over the asset when the petitioner is "no more than a mere name on the account, with no power over the disposition of the

account funds.” 224 F.3d at 343-44. In *Morgan*, the assets in question were a checking account and a certificate of deposit. The third-party claimant did not exercise dominion and control over the checking account because she “had no idea about the logistics of the transactions.” *Id.* at 344. The third-party claimant also did not exercise dominion and control over the certificate of deposit because all the money used belonged to the defendant. *Id.* at 345.

Unlike in *Morgan*, Ilana has demonstrated that she is more than a nominal owner of the asset in question. Ilana was not a mere name on the property with no power over it but had a one-third ownership interest in the property. Additionally, Ilana not only knew about the logistics of the property but actively made financial contributions toward the cost of the property’s utilities and maintenance. Doc. 752 at 4, at ¶ 17.

In *United States v. Bryson*, 406 F.3d 284, 291 (4th Cir. 2005), the asset in question was a tract of land. The third-party claimant did not exercise dominion and control because he paid no value for the tract but obtained it from his father. *Id.* While the claimant claimed he “expended value to obtain the tract”, the Fourth Circuit held that there was no evidence supporting the claimant’s expended value. *Id.* at 292.

Here, unlike in *Bryson*, Ilana paid value for the property. Even if the Court were to find such consideration, standing alone, insufficient, Ilana has made financial contributions toward the cost of the property’s utilities and maintenance. Doc. 752 at 4, at ¶ 17. In other words, Ilana provided additional value, in addition to the paid consideration. Ilana therefore

exercised sufficient dominion and control over the 110-37 69th Avenue, Forest Hills, New York, to establish a vested legal interest in the property.

II. THERE IS A CIRCUIT SPLIT AND LACK OF UNIFORMITY REGARDING THE APPROPRIATE TEST TO DETERMINE WHETHER A PETITIONER HAS A SUFFICIENT LEGAL INTEREST IN FORFEITED PROPERTY.

The authority governing criminal forfeiture is provided by 21 U.S.C. § 853. In RICO cases, like this one, 18 U.S.C. § 1963 provides the authority for forfeiture. While these statutes governing criminal forfeiture procedures are identical, the application of such statutes throughout the Circuits is not. This petition brings to the Court's attention the apparent Circuit split and lack of uniformity regarding the appropriate test to determine whether a petitioner has a sufficient legal interest in forfeited property.

Circuits that have analyzed whether a sufficient legal interest in forfeited property exist are the Fourth Circuit,⁴ Ninth Circuit,⁵ Sixth Circuit,⁶ and Third

⁴ See *United States v. Morgan*, 224 F.3d 339 (4th Cir. 2000); *United States v. Bryson*, 406 F.3d 284 (4th Cir. 2005); *United States v. Under Seal*, No. 21-7273, 2023 U.S. App. LEXIS 15832 (4th Cir. June 23, 2023); *United States v. Bangiyeva*, 75 F.4th 445 (4th Cir. 2023).

⁵ See *United States v. Alcaraz-Garcia*, 79 F.3d 769, 774 (9th Cir. 1996); *United States v. Lester*, 85 F.3d 1409 (9th Cir. 1996); *United States v. Hooper*, 229 F.3d 818, 820 (9th Cir. 2000); *United States v. Nava*, 404 F.3d 1119, 1127 (9th Cir. 2005); *United States v.*

Circuit.⁷ Of the above Circuits that have addressed the issue, only the Fourth Circuit applies the Dominion and Control Test, while the remaining Circuits look to state law to determine whether a petitioner has the requisite property interest.

A. “Dominion and Control” Test.

1. The Fourth Circuit.

As demonstrated above, the Fourth Circuit uses a “higher” dominion and control test to determine whether a sufficient legal interest in forfeited property exists. *United States v. Under Seal*, No. 21-7273, 2023 U.S. App. LEXIS 15832, 3 (4th Cir. June 23, 2023). However, as acknowledged by the Fourth Circuit in *Morgan*, other circuits “have analyzed the question of whether a § 853(n) petitioner has a property interest by determining ownership under state law.” 224 F.3d at 343.

B. “State Law” Test.

1. The Ninth Circuit.

Unlike the Fourth Circuit, the Ninth Circuit looks to state law to determine whether a petitioner has the

Close, 755 F. App'x 626, 628 (9th Cir. 2018); *United States v. Hernandez-Escobar*, 911 F.3d 952, 956 (9th Cir. 2018).

⁶ *United States v. Certain Real Property Located at 2525 Leroy Lane, West Bloomfield, Michigan*, 972 F.2d 136, 138 (6th Cir. 1992).

⁷ *United States v. Stazola*, 893 F.2d 34, 38 (3d Cir. 1990).

requisite property interest.⁸ In *United States v. Alcaraz-Garcia*, 79 F.3d 769, 774 (9th Cir. 1996), the court held that to determine whether a petitioner had the requisite property interest required the third-party claimant to “look to California law to support their claimed ownership interest in the money.” The Ninth Circuit held “that under California law, [the third-party claimants] maintained their title interest in the funds” *Id.* at 776. In other words, legal title in the disputed property was sufficient to establish petitioner’s property interest.

Similarly, in *United States v. Lester*, 85 F.3d 1409 (9th Cir. 1996), the Ninth Circuit held that to determine whether a sufficient legal interest in forfeited property exists, the court should refer to state law. In *Lester*, the third-party claimant was the defendant’s wife, and owned 3/8 of the forfeited property. *Id.* at 1410. Under California law, property acquired during marriage is presumed to be community property. *Id.* at 1412. The forfeited property was therefore presumed to be community property, or put another way, the third-party claimant had a property interest in the forfeited property. *Id.*

After establishing the third-party claimant’s property interest, the Ninth Circuit looked “to federal law to determine whether [the third-party claimant’s]

⁸ See *United States v. Alcaraz-Garcia*, 79 F.3d 769, 774 (9th Cir. 1996); *United States v. Lester*, 85 F.3d 1409 (9th Cir. 1996); *United States v. Hooper*, 229 F.3d 818, 820 (9th Cir. 2000); *United States v. Nava*, 404 F.3d 1119, 1127 (9th Cir. 2005); *United States v. Close*, 755 F. App’x 626, 628 (9th Cir. 2018); *United States v. Hernandez-Escobar*, 911 F.3d 952, 956 (9th Cir. 2018).

ownership interest in the [] property may be forfeited pursuant to section 853(p)." *Id.* Since section 853(p) only allows for the "property of the defendant" to be forfeited to the government, the disputed property was not subject to forfeiture. *Id.* at 1412-13 (quoting 853(p)).

The Ninth Circuit's two-step test, as outlined in *Lester*, has gained consistent application. In *United States v. Hooper*, 229 F.3d 818, 820 (9th Cir. 2000), in reliance on *Lester*, the Ninth Circuit held that "[s]tate law determines whether Claimants have a property interest, but federal law determines whether or not that interest can be forfeited."⁹ Such a test, when viewed in contrast to the Fourth Circuit's Dominion and Control Test, serves to highlight the lack of uniformity regarding the appropriate test to determine whether a petitioner has a sufficient legal interest in forfeited property.

2. *The Sixth Circuit.*

Like the Ninth Circuit, the Sixth Circuit looks to state law to determine whether a petitioner has the requisite property interest. *United States v. Certain Real Property Located at 2525 Leroy Lane, West*

⁹ See also *United States v. Nava*, 404 F.3d 1119, 1127 (9th Cir. 2005) ("state law determines whether Claimants have a property interest, but federal law determines whether or not that interest can be forfeited"); *United States v. Close*, 755 F. App'x 626, 628 (9th Cir. 2018) ("[S]tate law determines whether [c]laimants have a property interest, but federal law determines whether or not that interest can be forfeited"); *United States v. Hernandez-Escobar*, 911 F.3d 952, 956 (9th Cir. 2018) ("[S]tate law determines whether [the petitioner has] a property interest, but federal law determines whether or not that interest can be forfeited").

Bloomfield, Michigan, 972 F.2d 136, 138 (6th Cir. 1992).

In *Leroy*, the Sixth Circuit held it “appl[ies] [state] law to determine the property interests at issue.” *Id.* Accordingly, “recognition of state laws governing property rights does not contravene the federal forfeiture scheme, and that the application of state law is the most appropriate method of determining the [property] interest” *Id.* (quoting *United States v. Certain Real Prop. Located at 2525 Leroy Lane*, 910 F.2d 343, 347-48 (6th Cir. 1990)).

Importantly, the Sixth Circuit in *Leroy* acknowledged that “the federal forfeiture statutes do not operate to destroy the fundamental characteristics given to real property by the states.” *Id.* Like the Ninth Circuit, the Sixth Circuit’s reliance on state law, when viewed in contrast to the Fourth Circuit’s Dominion and Control Test, serves to highlight the lack of uniformity regarding the appropriate test to determine whether a petitioner has a sufficient legal interest in forfeited property.

3. *The Third Circuit.*

Like the Ninth and Sixth Circuits, the Third Circuit also looks to state law to determine whether a petitioner has the requisite property interest. *United States v. Stazola*, 893 F.2d 34, 38 (3d Cir. 1990). In *Stazola*, the Third Circuit held that “resort to substantive state law ordinarily will be necessary to make the determination required by § 853(n) of the tenant’s ‘right, title, or interest in the property.’” *Id.* Like the Ninth and Sixth Circuits, the Third Circuit’s

reliance on state law, when viewed in contrast to the Fourth Circuit's Dominion and Control Test, serves to highlight the lack of uniformity regarding the appropriate test to determine whether a petitioner has a sufficient legal interest in forfeited property.

After reviewing the four circuits that have addressed whether a sufficient legal interest in forfeited property exists, there are two main takeaways. First, there is a genuine circuit split that jeopardizes property ownership interests. Of the four circuits that have addressed whether a sufficient legal interest in forfeited property exists, only the Fourth Circuit applies the higher dominion and control test. The remaining Circuits look to state law to determine whether a petitioner has the requisite property interest. Such inconsistent treatment illustrates the need for resolution.

The second takeaway is that Ilana has demonstrated a sufficient legal interest in the forfeited properties no matter what legal test is applied. Ilana has exercised dominion and control over the forfeited properties because she is more than a nominal owner of the assets and provided additional value. In addition to the property at 110-37 69th Avenue, Bangiyeva has demonstrated not only dominion and control in all of the properties but also established her ownership in all of the properties under the state law. Thus, Ilana has a sufficient legal interest in the forfeited properties either way. However, the Fourth Circuit's dominion and control test raises the property ownership bar higher than any other Circuit in the United States,

creating a lack of uniformity and inconsistent jurisprudence.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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