

No. _____

In the
Supreme Court of the United States

BATTLE BORN INVESTMENTS COMPANY, LLC; FIRST 100 LLC;
1ST ONE HUNDRED HOLDINGS LLC,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

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

**APPLICATION TO JUSTICE ELENA KAGAN
FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR WRIT OF CERTIORARI**

Rod J. Rosenstein
Counsel of Record
Kellam M. Conover
KING & SPALDING LLP
1700 Pennsylvania Avenue NW
Washington, DC 20006
(202) 737-0500
rrosenstein@kslaw.com

Counsel for Petitioners

March 1, 2024

**TO: THE HONORABLE ELENA KAGAN,
ASSOCIATE JUSTICE OF THE UNITED STATES AND
CIRCUIT JUSTICE FOR THE NINTH CIRCUIT**

Pursuant to Supreme Court Rule 13.5, Petitioners Battle Born Investments Company, LLC, First 100 LLC, and 1st One Hundred Holdings LLC respectfully request a 45-day extension of the time to file a petition for a writ of certiorari up to and including April 25, 2024. The United States Court of Appeals for the Ninth Circuit issued its decision on August 18, 2023, see Attachment A, and denied rehearing en banc on December 12, 2023, see Attachment B. Absent an extension, a petition for certiorari would be due on March 11, 2024. This application is timely because it has been filed more than ten days before the date on which the petition is otherwise due. S. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1254(1).

1. Civil asset forfeiture is “highly profitable” to the Government and often leads to “egregious” abuses. *Leonard v. Texas*, 137 S. Ct. 847, 847–48 (2017) (Thomas, J., respecting denial of certiorari). To curb abuse, the laws both require the Government to prove that seized property is, in fact, connected to unlawful activity (*i.e.* forfeitable), *see* 18 U.S.C. § 983(c)(1), (3), and allow anyone with a colorable interest in the property to “file a claim” and challenge the Government’s showing, *id.* § 983 (a)(2)(A). The decision below deepened a three-way circuit split concerning the standard at summary judgment for claimants to establish standing. In effect, the Ninth Circuit turned the law “on its head” by “asking the *claimant* to satisfy the *government’s* burden” on the merits, thereby blessing the Government’s attempt to shortcut judicial scrutiny of billions of dollars in seized cryptocurrency. *United States*

v. \$31,000.00 in U.S. Currency, 872 F.3d 342, 353 (6th Cir. 2017) (emphases added).

This Court’s review is urgently needed.

2. This case involves a cryptocurrency wallet that was then the “most valuable asset ever seized” through civil forfeiture. C.A.J.A. 21. The “1HQ3 wallet” at issue contained over 69,370 bitcoin and related cryptocurrency now worth roughly \$4 billion. *See United States v. Battle Born Invs. Co., LLC*, 2023 WL 5319258, at *1 (9th Cir. Aug. 18, 2023). Although the United States asserts that the 1HQ3 bitcoin is traceable to criminal activity by an anonymous person called “Individual X,” *see id.*, the Government has never been required to provide any admissible evidence to support this theory.

3. Petitioners filed verified claims alleging that, through prior ownership by one Raymond Ngan, they own the 1HQ3 wallet—either as good-faith “purchaser of [Ngan’s] bankruptcy estate” or as “judgment creditors” against Ngan. *Id.* Though prevented from taking discovery under the local rules, Petitioners presented sworn declarations and exhibits supporting Ngan’s prior ownership of the 1HQ3 wallet, including evidence that (1) Ngan contacted multiple investors about selling large quantities of bitcoin; (2) sent an image of 1HQ3 when asked which wallet would fund the sale; (3) secured that transaction through an escrow account and various purchase agreements; and (4) had personal devices that further indicated his “control over the 1HQ3 Wallet.” C.A.J.A. 35–72, 74.

4. After the Government moved to strike Battle Born’s claim for lack of standing, the district court granted the motion, holding that Battle Born had “not

pleaded facts” indicating “how Ngan would have come into ownership of the Bitcoin in [the] 1HQ3 wallet.” *United States v. Approximately 69,370 Bitcoin*, 2022 WL 888655, at *5 (N.D. Cal. Mar. 25, 2022).

5. Despite finding Battle Born’s “assertions” of ownership “sufficient at the pleading stage,” the Ninth Circuit *sua sponte* considered whether Battle Born had *also* established “standing at summary judgment.” *Battle Born*, 2023 WL 5319258, at *2. The court then held that, although Battle Born had established “ownership rights to [Ngan’s] bankruptcy estate,” they lacked standing because they did not explain “how Ngan would have come into ownership of the bitcoin” or Ngan’s “association with Individual X,” *id.*—which would be impossible in the absence of discovery, as the Government has never disclosed Individual X’s identity. The court of appeals subsequently denied Petitioners’ motion for rehearing en banc. *See* Attachment B.

6. Petitioners intend to file a petition for writ of certiorari. The Ninth Circuit’s decision deepens a three-way circuit split regarding the standard for claimants to establish standing at summary judgment in civil forfeiture proceedings. Five circuits require “some evidence” of ownership, but do not require claimants to explain the nature of that ownership interest; one circuit requires proof of a “colorable interest” in the property, but does not require claimants to explain that interest; and two circuits allow the Government to shift the burden to claimants to disprove the Government’s merits case by explaining the legitimate nature of their own ownership interest. This issue is immensely important. A claimant’s standing is a threshold issue in every contested civil forfeiture case. When courts do not vigilantly protect

claimants' rights, the Government can seize assets without ever having to prove they should be forfeited—as happened here.

7. Petitioners respectfully request an extension of 45 days, to and including April 25, 2024, to prepare a petition for certiorari. An extension is necessary to enable undersigned counsel to coordinate with newly retained counsel, to give potential *amici* time to consider whether to participate and, if so, to prepare and coordinate submissions, and because undersigned counsel will be out of town from March 5 through 9. The requested extension would not cause material delay, as this Court would still be able to hear the case in the upcoming Term.

8. Counsel for Respondent does not oppose the requested extension.

Respectfully submitted,

Rod J. Rosenstein
Counsel of Record
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KING & SPALDING LLP
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Washington, DC 20006
(202) 737-0500
rrosenstein@kslaw.com

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