No. 17-7085

In the Supreme Court of the United States

GLORIA I. GONZALEZ,
Petitioner,
v.

STATE OF ARIZONA EX REL. MARK BRNOVICH,
ARIZONA ATTORNEY GENERAL,
Respondent

On Petition for Writ of Certiorari
to the Arizona Supreme Court

STATE OF ARIZONA'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether—as federal and state courts widely agree—a putative claimant who fails to file a claim in a civil forfeiture proceeding does not become a party to the action and therefore lacks standing to contest a forfeiture.

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BRIEF IN OPPOSITION

Petitioner Gloria Gonzalez asks this Court to review the Pima County Superior Court's conclusion that because she never filed a claim in a forfeiture proceeding against her property, she never became a party to the action and therefore lacked standing to contest the forfeiture or seek post-judgment relief. Gonzalez fails to identify any defect in the judgment from which she appeals or in the forfeiture notice she admits she received but never responded to. Her assertion that there was fraud in the judgment turns on her mistaken view of the facts. Her claim that the English-language notice she received denied her due process as a Spanish speaker is foreclosed by longstanding case law. And even if there were some doubt about those precedents' continued vitality (which there is not), this case would be a poor vehicle to resolve that issue, because the record casts serious doubt on whether Gonzalez's English-language skills are as weak as she now claims. This case offers a poor vehicle for contesting settled law. The Court should deny the Petition.

OPINIONS BELOW

The only written decision in the case—a brief minute entry from the Pima County Superior Court—is unreported but reprinted in Gonzalez's Appendix at 8a–15a. The Arizona Court of Appeals' order dismissing Gonzalez's appeal is unreported but reprinted in Gonzalez's appendix at 3a–7a. The Arizona Supreme Court's order denying Gonzalez's petition for review is unreported but reprinted in Gonzalez's appendix at 1a–2a.

JURISDICTION

The Arizona Supreme Court denied review on September 12, 2017. This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATEMENT

1. In 2013, security departments at several Tucson retail stores uncovered hundreds of thousands of dollars in theft. Ariz. Ct. App. Record on Appeal ("ROA") 21 at 76. Based on video recordings and documents, Walmart's security department identified Gonzalez, her son, and others as persons of interest. *Id.* The stores turned over their investigation to the Tucson Financial Crime Task Force, which comprised state and federal law enforcement agents. The Task Force found that Gonzalez and the other members of the criminal enterprise had operated a months-long scheme to defraud retail stores using fraudulent credit cards. *Id.* at 76–77.

In July 2014, the Task Force searched Gonzalez's residence and vehicle pursuant to a warrant. *Id.* at 80. Police officers seized gift cards involved in Gonzalez's scheme in her vehicle and house, as well as a pound of marijuana and other contraband. *Id.* at 81. Several days later, members of the Task Force, including a Tucson police detective, interviewed Gonzalez and her son at a police station. ROA 29 at 6. Gonzalez admitted she had obtained fraudulent gift cards through in-person and mailed delivery to her house and then used and sold them for significant profits. ROA 21 at 11. Afterwards, Gonzalez consulted an attorney about the investigation but chose not to retain counsel. ROA 29 at 6.

Gonzalez and her son operated as part of a sophisticated criminal enterprise. The enterprise members obtained fraudulent gift cards through the mail. They also acquired blank credit cards with magnetic strips, and then used data encoders, software, embossers, and printers to create the appearance that the cards were loaded with funds. ROA 21 at 82. They next used the fraudulent cards to buy store gift cards. *Id.* They then used and sold the gift cards and deposited the proceeds into Gonzalez's bank account. *Id.* at 83. Throughout their scheme, Gonzalez used her residence to receive, produce, and store fraudulent cards and as a base of operations. *Id.* at 11–12.

Between July and December 2013, Gonzalez, her son, and other members of the criminal enterprise caused at least $272,000 in losses to approximately 70 local and national financial institutions, individuals, and retail stores, on top of more than $800,000 in additional *failed* transactions. *Id.* at 82, 85.

2. In August 2014, the State brought a judicial *in rem* forfeiture action against the subject property of the investigation, including Gonzalez's residence located at 502 W. Columbia Street in Tucson. ROA 3. The State constructively seized the residence and filed a Notice of Pending Forfeiture and Notice of Seizure for Forfeiture ("NOPF") pursuant to Ariz. Rev. Stat. § 13-4311(A). *Id.* The State provided Gonzalez a copy of the NOPF via certified and first class mail at her residence. ROA 21 at 28–29. To ensure sufficient notice, the State also sent a second copy of the NOPF via certified and first class mail to Gonzalez at her ex-husband's address. *Id.* at 30–31. It is undisputed that Gonzalez received and signed for the certified

mail. The State also published the notification in the Green Valley News and Sun Newspaper. *Id.* at 67–68.

The five-page-long NOPF provided express notice of the action, the court, the cause number, the state's attorney, the seizing agency, the statutes invoked, and the claim- and content-requirements, and it clearly explained the consequences of failing to file a timely claim, including the forfeiture of the subject property. ROA 3 at 4. It attached a two-page appendix listing all seized property, including the street address, county parcel number, and legal description of Gonzalez's house. *Id.* at 8–9. It stated that "the State of Arizona claims [this] property" is "subject to forfeiture"; that "[t]he property has been seized for forfeiture"; and that "[a]ny person claiming a lawful interest in the seized property must file a verified claim in the Superior Court in Pima County . . . within thirty (30) days after service of this notice." *Id.* at 1–2. It explained in no uncertain terms that "[n]o person who has not timely filed a proper claim will be a party, be represented, or receive further notice of any proceeding," and that, "[b]y law, no extension of time for the filing of a claim may be granted." *Id.* at 3. And the NOPF and appendix expressly identified Gonzalez as a person whose interest in property was subject to forfeiture and Gonzalez's residence as property subject to forfeiture. *Id.* at 5–6.

It is undisputed that Gonzalez received notice. The State received signed certified mail receipts for the copies sent to Gonzalez at two addresses, ROA 21 at 31–32; the State's first-class mailings to Gonzalez at the subject property were not returned and thus presumed delivered, *id.* at 52–55; and above all, Gonzalez admits that she received the NOPF mailed to her, ROA 29 at 6.

Gonzalez never responded and never made a claim.

3. In October 2015, the State applied for an order of judgment of forfeiture *in rem*. ROA 21. The application included exhibits regarding Gonzalez's real property, the basis for forfeiture, and proof that Gonzalez had failed to make a timely claim. *Id.*

The trial court found that the State's application established the jurisdiction, notice, and legal and factual showing necessary for forfeiture. ROA 23. It entered judgment for the State pursuant to Ariz. Rev. Stat. §§ 13-4314 and 13-4315, vesting the State with title and ownership of the residence located at 502 W. Columbia. *Id.* at 4–5. The State then served Gonzalez personally with a Notice to Vacate Property, a copy of the judgment, and a date by which she must vacate. Ariz. Ct. App. Dkt. No. 4 at 110.

4. Gonzalez then attempted to participate in the forfeiture action for the first time, moving for relief from judgment under Rule 60 of the Arizona Rules of Civil Procedure. ROA 29. Gonzalez conceded that she had received the NOPF and Notice to Vacate Property. *Id.* at 6. But she argued she had not understood them and therefore received inadequate notice. *Id.* Gonzalez also claimed the State's investigation was somehow fraudulent. *Id* at 7.

There was no serious question that Gonzalez understood the significance of legal proceedings: She had previously participated in multiple cases both as a plaintiff and defendant, with and without an attorney, and with and without an interpreter. ROA 37. And Gonzalez plainly understood the nature and purpose of forfeiture proceedings. Only months before the Task Force searched her house and the State served Gonzalez with the NOPF regarding her residence, Gonzalez had forfeited her vehicle through similar *in rem* forfeiture proceedings, based on conduct involving the possession and transportation of approximately 100 fraudulent cards. *Id.* Indeed, her familiarity with forfeiture likely exceeded that of the average person.

Following two hearings and court-ordered supplemental briefing from the State, the trial court denied Gonzalez's Rule 60 motion. The court concluded that because Gonzalez had never filed a claim to the property at issue, she never had become a party to the case and therefore lacked standing to seek relief. ROA 45 at 1. Even assuming Gonzalez had standing, the court found that Gonzalez had failed to show any "other adequate ground . . . to set aside the judgment." *Id.* The court also rejected Gonzalez's assertion that the State's investigation had somehow been fraudulent or illegal, finding "no evidence of fraud or other act in violation of state or federal law" and no "violation of due process." *Id.* at 2.

5. Gonzalez moved for reconsideration, ROA 46, which the court denied, ROA 59. She then filed a notice of appeal. ROA 52.

The State moved to dismiss Gonzalez's appeal on the grounds that she lacked standing and thus the court lacked jurisdiction. Ariz. Ct. App. Dkt. No. 15. The Arizona Court of Appeals granted the State's motion and denied Gonzalez's subsequent motion for reconsideration. *Id.*, Dkt. Nos. 4, 5. The Arizona Supreme Court then denied review. *Id.*, Dkt. No. 2.

Currently, Gonzalez and five co-defendants are under a 58-count indictment on 24 felony counts of illegally conducting an enterprise, conspiracy, fraudulent schemes and artifices, forgery, and taking the identity of another person. *See State of Arizona v. Gonzalez*, Case No. 81 SGJ 273 (Pima Cnty. Sup. Ct.). Gonzalez continues to live at 502 W. Columbia Street. *See* Ariz. Ct. App. Dkt. No. 15 at 6.

REASONS FOR DENYING THE WRIT

I. There Is No Split in Authority for this Court to Resolve.

Gonzalez does not argue that certiorari is necessary to resolve a split in authority. No such split exists. On the contrary, federal and state courts broadly agree that where a would-be claimant like Gonzalez fails to file a claim in an *in rem* civil forfeiture proceeding, she does not become a party to the case and thus cannot contest the forfeiture.

1. The Pima County trial court faithfully applied that rule to conclude that because Gonzalez had not filed a claim in the forfeiture proceeding against her residence and other property, she was not a party to the forfeiture action and therefore could not move for relief from judgment under Rule 60 of the Arizona Rules of Civil Procedure.

Like its federal counterpart, Arizona Rule 60 allows only "a *party* or its legal representative" to seek relief "from a final judgment, order, or proceeding." Ariz. R. Civ. P. 60(b) (emphasis added); *see* Fed. R. Civ. P. 60(b) (same). And Arizona courts have consistently held—as a matter of state law—that a putative claimant who fails to properly file a claim in a forfeiture action never becomes a party to the case and therefore lacks standing to contest the forfeiture under Rule 60 or otherwise. *See, e.g.*, *State ex rel. Brnovich v. Culver*, 240 Ariz. 18, 20–21 (Ct. App. 2016) (collecting cases and holding that "[b]ecause Culver did not file a timely claim in compliance with the statute, he was not a party to the forfeiture action" and therefore "could not make a claim for relief from judgment pursuant to Rule 60(c)"); *Norriega v. Machado*, 179 Ariz. 348, 353 (Ct. App. 1994) ("Because Payan's claim was stricken for failure to comply with [Arizona's forfeiture statutes], she was not a party in the forfeiture action and did not have standing to contest the forfeiture based on lack of probable cause, unconstitutionality of the forfeiture statutes, or any other grounds.").

2. The federal courts of appeals apply the same rule under federal law. In *United States v. 8136 S. Dobson Street, Chicago, Ill.*, 125 F.3d 1076 (7th Cir. 1997), for example, the Seventh Circuit held that a putative claimant who had not filed a claim lacked standing to move for relief on his own behalf from a default judgment entered against forfeited property. "Absent the claim," the court explained, "the putative claimant is not a party to the action," and Rule 60(b) of the Federal Rules of Civil Procedure "confines the relief it offers to parties, or a party's legal representative." *Id.* at 1082.[1]

[1] The court in *Dobson Street* went on to analyze the merits of the putative claimant's Rule 60(b) motion because the record was too "murk[y]" to determine whether he could "stand in the place of and act as the representative for the parties who [had] filed claims on" the forfeited property. 125 F.3d at 1083. Gonzalez does not and cannot claim that she is acting as anyone's legal representative here.

The Ninth Circuit reached the same conclusion in *United States v. Real Property*, 135 F.3d 1312 (9th Cir. 1998). There, the court held that a would-be claimant "lack[ed] standing to bring a Rule 60 motion" or "challenge [a] magistrate judge's jurisdiction to hear his motion," because his failure to file a timely claim "preclude[d] him from establishing standing as a party to the forfeiture action." *Id.* at 1317 (citing *Dobson Street*, 125 F.3d at 1082).

The First, Second, Third, Sixth, Eighth, and District of Columbia Circuits likewise have held that a putative claimant lacks standing to challenge a forfeiture if he fails to file a timely claim to forfeited property, or if he files such a claim but the claim is later struck or withdrawn. *See, e.g.*, *United States v. One Urban Lot*, 978 F.2d 776, 778 (1st Cir. 1992) ("Before a claimant in a forfeiture case can file an answer and defend on the merits, a claim must be filed. If no claim is filed, a putative claimant lacks standing to contest a forfeiture."); *United States v. Cambio Exacto, S.A.*, 166 F.2d 522, 526 (2d Cir. 1999) (a putative claimant that "did not file a timely claim . . . therefore lacks statutory standing"); *United States v. $487,825.00 in U.S. Currency*, 484 F.3d 662, 665 (3d Cir. 2007) ("A claimant who fails to file a verified statement has no standing to contest a forfeiture."); *United States v. $525,695.24, Seized from JPMorgan Chase Bank Inv. Account #XXXXXXXX*, 869 F.3d 429, 440 (6th Cir. 2017) (because claimants' claim was struck under the federal fugitive disentitlement statute, the "[c]laimants no longer have statutory standing to contest procedural mistakes in the forfeiture action"); *United States v. Lot 65 Pine Meadow, an Addition to Barling, Sebastian Cty., Ark., with All Appur-*

tenances & Grounds, 976 F.2d 1155, 1157 (8th Cir. 1992) ("Because appellant did not file a timely claim, he lacked standing to contest the forfeiture."); *United States v. 8 Gilcrease Lane, Quincy, Fla. 32351*, 638 F.3d 297, 301–02 (D.C. Cir. 2011) (affirming the denial of a Rule 60 motion where claimants voluntarily withdrew their claims, lost a motion to reinstate them, and therefore were no longer parties to the action).

Federal courts of appeals also have held that a putative claimant who fails to file a claim to forfeited property never becomes a party to the proceeding for purposes of deciding whether jeopardy attached. In *United States v. Torres*, 28 F.3d 1463 (7th Cir. 1994) (Easterbrook, J.), for example, the Seventh Circuit held that a person who "received notice inviting him to make a claim in [a] civil forfeiture proceeding" but did not do so "did not become a party to the forfeiture," "and [thus] jeopardy did not attach." *Id.* at 1465. "As a non-party," the court explained, the putative claimant "was not at risk in the forfeiture proceeding, and '[w]ithout risk of a determination of guilt, jeopardy does not attach, and neither an appeal nor further prosecution constitutes double jeopardy.'" *Id.* (quoting *Serfass v. United States*, 420 U.S. 377, 391–92 (1975)). Or, as the Tenth Circuit explained in *United States v. Hardwell*, 80 F.3d 1471 (10th Cir. 1996), "a person who fails to contest a forfeiture by filing a claim is not a party to that proceeding and is not punished or placed in jeopardy by it; accordingly, criminal prosecution for the conduct on which the forfeiture is based does not subject the defendant to multiple punishment for the same offense or place him in double jeopardy because there was no former punishment or jeopardy." *Id.* at 1485.

3. Other state courts agree. Indeed, for nearly 150 years state courts have held that a putative claimant lacks standing to contest a forfeiture if that person does not file a claim to the forfeited property. In 1872, for example, the Supreme Judicial Court of Massachusetts held that because "[t]he claimants failed to appear and make a claim to [certain] liquors seized," "[t]hey were defaulted and never became parties to the proceedings" and therefore "cannot come in, after a judgment of forfeiture, and appeal from an order . . . directing the disposition to be made of the forfeited property, or from the judgment of forfeiture." *Commonwealth v. Intoxicating Liquors*, 110 Mass. 188 (1872). The Alabama Supreme Court reached the same conclusion four decades later in *One Packard Automobile v. State*, 204 Ala. 435, 436 (1920) (automobile owner who did not file a claim to the forfeited car "did not become a party to the cause, and hence cannot appeal or assign errors"). And the doctrine remains effective into the present day. Just two years ago, the Kansas Court of Appeals held that a putative claimant "lacked standing to challenge [a] forfeiture because he had not filed any claim or request for extension after having been given proper notice." *State ex rel. Kan. Highway Patrol v. One 1995 Chevrolet Caprice Classic/Impala SS VIN 31G1BL52P8SR191732*, 53 Kan. App. 2d 35, 41 (2016). *See also In re Property of Twyla Miles*, No. W2016-00132-COA-R3-CV, 2017 WL 384247, at *4 (Tenn. Ct. App. Jan. 27, 2017), *rev. denied* May 19, 2017 (dismissing appeal where putative claimant never filed a claim).

Additionally, like federal courts, state courts widely agree that a putative claimant who fails to file a timely claim to forfeited property does not become a party to the proceeding for double-jeopardy purposes. *See, e.g.*, *State v. Tuipuapua*, 83 Haw. 141, 146–47 (1996); *Municipality of Anchorage v. Skagen*, 920 P.2d 284, 287 (Alaska Ct. App. 1996); *People v. Delatorre*, 279 Ill. App. 3d 1014, 1017–18 (1996); *Waye v. State*, 219 Ga. App. 22, 23 (1995); *People v. Angeloni*, 40 Cal. App. 4th 1267, 1272 (1995).

4. Gonzalez does not cite a single contrary decision. She argues that "[t]here appear to be conflicting federal decisions suggesting federal Rule 60 is a proper remedy to set aside a default judgment." Pet. 10. But none of the cases she cites upsets the broad federal (and state) consensus that a would-be claimant who fails to file a claim to forfeited property lacks standing to challenge the forfeiture. In fact, one of those cases squarely applies that same rule. *$487,825.00 in U.S. Currency*, 484 F.3d at 665. The rest are simply inapposite. *See United States v. Madden*, 95 F.3d 38 (10th Cir. 1996) (claimant had answered complaint and participated in forfeiture action); *United States v. Mosquera*, 845 F.2d 1122 (1st Cir. 1988) (case remanded for further factual development where litigant challenged forfeiture on lack-of-notice grounds where he claimed he was already incarcerated when notice of forfeiture was sent, and that his family was no longer living at that address); *United States v. Timbers Preserve, Routt Cty., Colo.*, 999 F.2d 452 (10th Cir. 1993), *abrogated on other grounds by Degen v. United States*, 517 U.S. 820, 825 (1996) (affirming denial of relief from judgment where claimant filed notice of claim and an-

swer, and district court struck them on grounds that he was a fugitive from justice); *United States v. Bowser*, 834 F.3d 780 (7th Cir. 2016) (affirming denial of Rule 60(b) motion and holding that a would-be intervenor had no cognizable interest in subject property and therefore was not entitled to individualized notice of forfeiture).

Unable to point to a split in authority on the question whether she lacks standing to contest the forfeiture, Gonzalez contends her case stands apart because she asserts "lack of notice [and] fraud in the judgment claims." Pet. 10. Missing from this attempted distinction is an explanation of why the standing rules would change based on what a would-be claimant argues—or any authority suggesting that the Pima County court was incorrect in its approach to that non-issue. Indeed, Gonzalez has not pointed to any case in which a court allowed a would-be claimant to make up for the failure to file a claim merely by asserting that he lacked notice or that the judgment was fraudulent. Nor would that rule-swallowing exception make sense—it would allow every dilatory claimant to challenge a default judgment by incanting notice or fraud allegations, no matter how specious.

5. In any event, Gonzalez's attacks on the judgment are baseless. First, Gonzalez contends the judgment was infected by supposed "irregularities" in "the civil forfeiture process" based wholly on her misleading version of the facts. *See* Pet. 18–20. For example, Gonzalez claims the search of her home "was unlawful" because U.S. postal inspectors participated in it. Pet. 19. But as Gonzalez herself acknowledges, those postal inspectors were cross-certified as Arizona peace officers pursuant to Ariz. Rev. Stat. § 13-3875(B), a state law that—by Gonzalez's own

lights—"allows cross-certification of federal law enforcement agents as state peace officers with capability to enforce state crimes . . . 'if directed by their employer.'" Pet. 18. Gonzalez tries to cobble together an argument that the postal inspectors lacked such direction here, *see id.* at 18–19, but she ignores that the Pima County Sheriff's Department cross-certified the postal inspectors as Arizona peace officers *at the U.S. Postal Service's request*, ROA 49. Muddled facts do not create "irregularities," Pet. 18, and they certainly do not warrant this Court's review.

Second, although Gonzalez does not dispute that she received notice of the forfeiture, she claims that it was constitutionally inadequate solely because "the State was aware [she] primarily spoke Spanish through its investigators, yet the State mailed her a document in English despite having such knowledge." Pet. 12. This argument fails as a matter of law, and the issue (somewhat) presented has not divided the lower courts.

"It has long been established that due process allows notice . . . to be given solely in English to a non-English speaker if the notice would put a reasonable recipient on notice that further inquiry is required." *Nazarova v. I.N.S.*, 171 F.3d 478, 483 (7th Cir. 1999). That is true in immigration cases. *See id.*; *Singh v. Holder*, 749 F.3d 622, 626 (7th Cir. 2014); *Ojeda-Calderon v. Holder*, 726 F.3d 669, 675 (5th Cir. 2013). It is true for claimants of social security benefits. *See Soberal-Perez v. Heckler*, 717 F.2d 36, 43–44 (2d Cir. 1983) (English-language notice to Spanish-speaking social security claimants satisfied due process). And it is true in the forfeiture context. In *Toure v. United States*, 24 F.3d 444 (2d Cir. 1994), for example, the Second Circuit held that an English-language forfeiture notice served on a French-speaker "satisfied the requirements of procedural due process." *Id.* at 446. The court concluded that "[a] rule placing the burden of diligence and further inquiry on the part of a non-English-speaking individual served in this country with a notice in English does not violate any principle of due process." *Id.* (quoting *Soberal-Perez*, 717 F.2d at 43). That rule applies with full force here and disposes of Gonzalez's claim that she was denied due process because the forfeiture notice was in English.

Nothing in *Jones v. Flowers*, 547 U.S. 220 (2006), suggests otherwise. Gonzalez relies heavily on that decision, Pet. 12–13, but it holds only "that when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." *Jones*, 547 U.S. at 225. As noted above, Gonzalez admits that she received the NOPF, distinguishing the present case from *Jones* on the central fact driving the latter's outcome.

II. If There Were a Conflict in Authority, This Case Would Be a Poor Vehicle to Resolve It.

Even if Gonzalez could identify conflicting authority on the issue whether an English-language forfeiture notice satisfied due process (and she cannot), this case would be a poor vehicle to resolve that question. There are serious reasons to doubt that Gonzalez's English skills are as limited as she now claims. Before this case, Gonzalez had participated in divorce, criminal, and other forfeiture proceedings—both with an attorney and representing herself, and both with and without an interpreter. She certainly had experience in consulting and using attorneys in various proceedings prior to receiving the NOPF in this action. This strongly suggests that she understands enough English to have understood the forfeiture notice she admits she received. So does the fact that Gonzalez evidently understood the State's later notice to vacate her forfeited residence, which was also in English and evidently prompted her to hire a lawyer and move for relief from judgment. Simply put, Gonzalez would be the wrong person to test whether English-language notice is constitutionally sufficient—that is, assuming there was any doubt as to the sufficiency of such notice in the first place.

CONCLUSION

Gonzalez's petition for a writ of certiorari should be denied.

Respectfully submitted

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