

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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MICHAEL PRIME, *Petitioner*,

v.

UNITED STATES, *Respondent*.

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On Petition For Writ Of Certiorari  
To The United States Court of Appeals For  
The Eleventh Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether the government may satisfy the “prejudice” element of the equitable defense of laches by relying on its own voluntary destruction of seized property that is the subject of a motion for return under Federal Rule of Criminal Procedure 41(g).

**PARTIES TO THE PROCEEDING BELOW**

Michael Prime was the defendant in the United States District Court for the Middle District of Florida. After the conclusion of his criminal case, he was the Movant bringing the civil Rule 41(g) claim addressed herein. Mr. Prime was Appellant in the United States Court of Appeals for the Eleventh Circuit.

The United States brought the charges against Mr. Prime in the district court and later became Respondent to Mr. Prime's Rule 41(g) motion. The United States was Appellee in the United States Court of Appeals for the Eleventh Circuit.

**RELATED CASES**

U.S. District Court for the Middle District of Florida:

*United States v. Michael Prime*, Case No. 8:19-cr-00540-JSM-AAS. Order entered on November 14, 2023.

U.S. Court of Appeals for the Eleventh Circuit:

*United States v. Michael Prime*, Case No. 23-13776. Judgment entered November 4, 2025.

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Michael Prime respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

### **OPINION BELOW**

The opinion of the court of appeals (App. B) is reported at 158 F.4th 1313. The opinion of the district court (App. C) is unreported.

### **JURISDICTION**

The Eleventh Circuit Court of Appeals entered its judgment on November 4, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

### **PROVISIONS INVOLVED**

Constitution of the United States  
*Amendment V*

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure:

(g) MOTION TO RETURN PROPERTY. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

## **STATEMENT OF THE CASE**

### **A. Case Background.**

Prime was arrested following an incident where Florida Hillsborough County Sheriff's Office deputies responded to a domestic disturbance at his residence. Mr. Prime's wife gave consent for law enforcement to enter the home, wherein they discovered materials for the counterfeiting of access devices, as well as computers and hard drives.

The government filed a criminal complaint against Prime on October 19, 2018. In its criminal complaint against Prime, the government indicated its awareness regarding Prime's claim to owning approximately 3,500 Bitcoin. After his arrest, Prime

admitted that he sold the access devices online and accepted Bitcoin currency as payment. He stated that he was also paid \$1,000 per month in Bitcoin to work for a website that sold the counterfeit information.

Federal agents obtained warrants authorizing the seizure of items, including Prime's cryptocurrency. The government attempted to retrieve cryptocurrency data from the hard drives it seized. After two tries, one agent reported in October 2018 that "no cryptocurrency, private keys or recovery seeds" were found and that "no contents were located or seized from any Coinbase account." After a third attempt in February 2019, agents were unable to gain access to a cryptocurrency wallet.

The government commenced forfeiture proceedings related to certain property of Prime's, including firearms and weapons. However, the government did not initiate forfeiture as to either the seized Bitcoin or any hard drive that might contain it.

In December 2019, Prime pleaded guilty to access device fraud, aggravated identity theft, and illegal possession of a firearm. The plea agreement also acknowledges Prime's claim to the 3,500 Bitcoin without disputing it. Prime was sentenced in the underlying action on June 25, 2020. During the sentencing, the government again acknowledged the existence of Prime's claim to approximately 3,500 Bitcoin without dispute. The district court sentenced him to sixty-five months' imprisonment, of which he

served approximately two years before transferring to a halfway house in July 2022.<sup>1</sup>

## **B. Proceedings Below**

### **1. The District Court's Order**

On August 16, 2022, after the close of all criminal proceedings, Prime filed a motion to appoint counsel to assist him in having the seized property returned. That motion was denied. Prime later retained private counsel who, on September 1, 2023, filed a Rule 41(g) motion to have the Bitcoin returned. That motion argued that the government did not seek forfeiture of the Bitcoin, which was never shown to be proceeds of criminal activity, and it should therefore be returned.

The United States opposed that motion, arguing in essence that the Bitcoin did not exist and that, even if it did, that Prime had “unclean hands.”

A hearing was held on Prime's Rule 41(g) motion before the district court on November 14, 2023. The hearing relied solely on arguments from counsel, and no evidence was taken or admitted by the district court. The government did not argue it was prejudiced by the destruction of the disputed Bitcoin, only that it had been destroyed. At the conclusion of the hearing,

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<sup>1</sup> Prime filed a direct appeal in the Eleventh Circuit as to his underlying conviction and sentence. Case No. 20-12498. Counsel for Prime filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) and the district court's judgment was affirmed by the Eleventh Circuit. *Id.* at Doc. 40-1. No issues from that appeal are relevant to this petition.

the district court held that Prime was not entitled to a return of the Bitcoin.<sup>2</sup> It held that Prime had notice of the seizure, that the Bitcoin was properly destroyed, and that the doctrine of laches applies. App. 33. The district court did not enter a written order and instead issued an endorsed order denying Prime’s motion “for the reasons stated on the record.” Case No. 8:19-cr-00540-JSM-AAS, Doc. 91.

Prime appealed the denial of his Rule 41(g) motion to the Eleventh Circuit.

## **2. The Eleventh Circuit’s Opinion**

The Eleventh Circuit affirmed the lower court. Its analysis centered entirely on the application of the equitable defense of “laches.” It held that the defense of laches has three elements: (1) a delay in asserting a right or a claim, (2) that “the delay was not excusable,” and (3) that it caused the government “undue prejudice. App. 10. The Eleventh Circuit held that all three factors weighed in favor of the government.

First, the Eleventh Circuit held that the government satisfied the delay element of laches because Prime waited for more than three years to assert his claim to the Bitcoin. It recognized that Prime disclosed the existence of the 3,500 Bitcoin in his plea agreement, but held that he later failed to

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<sup>2</sup> The district court held that the hard drive was “destroyed,” but Prime argued on appeal that the government failed to provide evidence of its destruction. However, the Eleventh Circuit deemed this argument waived. App. 13 n.2.

disclose the asset in financial disclosures to the U.S. Probation Office. App. 10.

The Eleventh Circuit held that the delay was not excusable, despite Prime's extra-judicial negotiations with the Department of Justice before filing his Rule 41(g) motion. App. 12. It held that the return of the Bitcoin was not explicitly discussed in communications related to those negotiations, and reiterated Prime's delay in seeking the property's return. App. 13.

Finally, and most relevant here, the Eleventh Circuit held that the delay prejudiced the government. It speculated that the government would not have destroyed the hard drive had it known it contained millions of dollars in Bitcoin. It found that, were Prime's motion successful, "the government would now have to find and hand over almost 3,443 replacement bitcoin to make Prime whole." App. 13-14. It held that the government having to replace the Bitcoin it destroyed "is prejudice in anyone's book." The Eleventh Circuit affirmed the district court's order on laches alone.

Prime filed a petition for rehearing en banc in the Eleventh Circuit. However, the Eleventh Circuit issued a letter indicating it would take no action on the petition because the case was closed.<sup>3</sup> App. A.

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<sup>3</sup> Prime subsequently moved to reopen the case in the Eleventh Circuit, arguing that the deadline for filing a petition for rehearing should be governed by Federal Rule of Appellate Procedure 40(d)(1)(A) because the matter was civil in nature and

### C. Legal Background

Federal Rule of Criminal Procedure 41(g)<sup>4</sup> provides, in relevant part, that “A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion.”

When a Rule 41(g) motion is filed after the close of criminal proceedings, “the person from whom the property was seized is presumed to have a right to its return, and the government must demonstrate that it has a legitimate reason to retain the property.” *Chambers*, 192 F.3d at 377. The government may meet this burden by demonstrating “a cognizable claim of ownership or right to possession” adverse to that of the movant. *United States v. Van Cauwenberghe*, 934 F.2d 1048, 1061 (9th Cir. 1991).

Circuits have held that district courts “must hold an evidentiary hearing on any disputed issue of fact necessary to the resolution of the motion.” *See United States v. Chambers*, 192 F.3d 374, 378 (3d Cir. 1999) (citing *United States v. Dean*, 100 F.3d 19, 21 (5th Cir. 1996); *United States v. Hess*, 982 F.2d 181, 186 (6th Cir. 1992)). The government “must do more than

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the United States is a party. That motion remains pending as of this filing.

<sup>4</sup> Formerly codified as Federal Rule of Criminal Procedure 41(e).

state, without documentary support, that it no longer possesses the property at issue.” *Chambers*, 192 F.3d at 378 (citing *Mora v. United States*, 955 F.2d 156, 159 (2d Cir. 1992)).

In the Eleventh Circuit Court of Appeals, “[w]hen an owner invokes Rule 41(g) after the close of all criminal proceedings, the court treats the motion for return of property as a civil action in equity.” *United States v. Howell*, 425 F.3d 971, 974 (11th Cir. 2005). Every Circuit Court of Appeals applies a similar equitable standard to Rule 41(g) motions. *See Angel-Torres v. United States*, 712 F.2d 717, 719–20 (1st Cir. 1983); *De Almeida v. United States*, 459 F.3d 377, 382 (2d Cir. 2006); *United States v. Parlavecchio*, 57 F. App'x 917, 920 (3d Cir. 2003); *United States v. Soza*, 559 F. App'x 69, 70 (4th Cir. 2015); *Bailey v. United States*, 508 F.3d 736, 738 (5th Cir. 2007); *Brown v. United States*, 692 F.3d 550, 552–53 (6th Cir. 2012); *United States v. Shaaban*, 602 F.3d 877, 878-79 (7th Cir. 2010); *Floyd v. U.S. Marshals*, 486 F. App'x 623, 624 (8th Cir. 2012); *United States v. Kama*, 394 F.3d 1236, 1238 (9th Cir. 2005); *United States v. Bacon*, 900 F.3d 1234, 1237–38 (10th Cir. 2018); *Richman v. United States*, 350 F.R.D. 401, 418 (D.C. Cir. 2025).

As this Court has held, “in the federal courts equity has always acted only when legal remedies were inadequate . . .” *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 509 (1959). Several circuits, including the Eleventh Circuit, have held that principles of sovereign immunity preclude an action against the United States for money damages based on the government’s destruction or failure to return

property. *See United States v. Potes Ramirez*, 260 F.3d 1310, 1316 (11th Cir. 2001) (“[W]e agree with the Third, Fourth and Fifth Circuits and hold that sovereign immunity protects the government from money damages sought under Rule 41(e.)”; *but see Clymore v. United States*, 415 F.3d 1113, 1119-20 (10th Cir. 2005) (“Contrary to the above cases, the Second and Ninth Circuits have allowed monetary damages in a Rule 41(e) action where the property has been destroyed by the government.”). However, even if the property has been “lost or destroyed,” the district court retains the “authority to fashion an equitable remedy.” *Potes Ramirez*, 260 F.3d at 1315.

As an equitable action, laches is available as an affirmative defense. Laches is intended to protect defendants against “unreasonable, prejudicial delay in commencing suit.” *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 667 (2014); *see also* 1 D. Dobbs, *Law of Remedies* § 2.3(5), p. 89 (2d ed. 1993) (Dobbs) (“The equitable doctrine of laches bars the plaintiff whose unreasonable delay in prosecuting a claim or protecting a right has worked a prejudice to the defendant”).

“[T]his Court has cautioned against invoking laches to bar legal relief.” *Petrella*, 572 U.S. at 678 (citing *Holmberg v. Armbrecht*, 327 U.S. 392, 395, 396, 66 S.Ct. 582, 90 L.Ed. 743 (1946)). The “principal application” of laches “was, and remains, to claims of an equitable cast for which the Legislature has provided no fixed time limitation.” *Petrella*, 572 at 678, 134 S.Ct. at 1973; *see also* R. Weaver, E. Shoben, & M. Kelly, *Principles of Remedies Law* 21 (2d ed.

2011); 1 Dobbs § 2.4(4), at 104; 1 J. Story, Commentaries on Equity Jurisprudence § 55(a), p. 73 (2d ed. 1839). The laches defense “requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.” *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 121–22 (2002) (quoting *Costello v. United States*, 365 U.S. 265, 282 (1961)). While both elements of the laches defense must be proven, this Court has held that “the test of laches is prejudice to the other party.” *Gutierrez v. Waterman S. S. Corp.*, 373 U.S. 206, 215, 83 S. Ct. 1185, 1191, 10 L. Ed. 2d 297 (1963) (internal citations omitted).

### **REASONS FOR GRANTING THE PETITION**

Certiorari is warranted because a circuit split exists as to whether the government’s own destruction of property can satisfy the prejudice element of the defense of laches. Further, this case raises an important question of federal law. In an era where, as here, a small hard drive can contain a significant amount of valuable, constitutionally protected property, the government should not be allowed to rely on its own voluntary destruction of property to defend a rightful claim to its recovery. This case presents a clean vehicle to provide guidance to both claimants and the government regarding their obligations under Rule 41(g).

#### **A. The Circuits Are Divided on Whether the Government Can Manufacture Its Own Laches Defense.**

The Eleventh Circuit’s ruling below has created a circuit split. The Eleventh Circuit held here that the government can satisfy the “prejudice” element of laches (here by destroying the property it seized) by manufacturing its defense through its own conduct. However, the Fifth and Ninth Circuits have concluded the opposite is true.

In *Clymore v. United States*, 217 F.3d 370 (5th Cir. 2000), the Fifth Circuit addressed whether the government may invoke laches to bar return of administratively forfeited property when the action was filed within the applicable six-year statute of limitations. After Clymore’s truck was administratively forfeited, the Customs Service destroyed its forfeiture file pursuant to an internal three-year record-retention policy. Within the six-year limitations period<sup>5</sup> under 28 U.S.C. § 2401(a), Clymore filed a motion under then-Rule 41(e)<sup>6</sup> challenging the forfeiture on the ground that he had not received proper notice. The district court held the action time-barred and barred by laches.

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<sup>5</sup> The majority of circuits, including the Eleventh Circuit, hold that the six-year statute of limitations period under 28 U.S.C. § 2401 applies to equitable actions for return of property under Rule 41(g). See e.g. *Baxter v. United States*, 451 F. App’x 868, 870 (11th Cir. 2012) (“Rule 41(g) actions are subject to the six-year statute of limitations found in 28 U.S.C. § 2401(a).”). This Court has held that, “in face of a statute of limitations enacted by Congress, laches cannot be invoked to bar legal relief . . .” *Petrella*, 572 U.S. at 679, 134 S. Ct. at 1974. Here, the parties did not raise the unexpired statute of limitations below and the Eleventh Circuit did not consider it.

<sup>6</sup> The Fifth Circuit treated his *pro se* motion as a civil action under 28 U.S.C. § 1331. *Id.* at 373.

The Fifth Circuit reversed. Relevant here, the court concluded that, even assuming the delay element of laches was satisfied, any prejudice arising from the destruction of the forfeiture file was “prejudice of the government’s own making.” *Id.* at 377. The Customs Service could not rely on a self-imposed retention policy to create the prejudice necessary to support a laches defense. The court held that “ ‘ it was the government's own carelessness ’, not timing of plaintiff’s Rule 41(e) motion, that caused prejudice.” *Id.* (citing *United States v. Marolf*, 173 F.3d 1213, 1217 (9th Cir. 1999)). The Fifth Circuit therefore rejected laches and remanded, holding that the inadequately noticed forfeiture was void.

Similarly, in *Marolf*, the Ninth Circuit found that laches would not apply to bar the recovery of property under Rule 41(e). There, the government did not properly notice the defendant of the administrative forfeiture of a boat. After pleading guilty to importing marijuana, Marolf argued that the forfeiture violated his due process rights and filed a Rule 41(e) motion. 173 F.2d at 1215.

The district court voided the forfeiture for lack of notice but heard the Rule 41(e) motion on its merits, despite the expiration of the statute of limitations for the government to pursue the forfeiture. *See* 19 U.S.C. § 1621. The district court found that there was probable cause the boat was used in the crime and denied the motion. *Id.* On appeal, the Ninth Circuit affirmed that the forfeiture was void for lack of notice and holding that “it is the government that must be

held to a higher standard.” *Id.* at 1217. It also held that the statute of limitations to initiate forfeiture should govern.

The government argued that laches should nonetheless bar Marolf’s claim regardless of issues of notice. *Id.* at 1218. The district court “den[ie]d] the government’s assertion of laches purely on the grounds of prejudice.” *Id.* It held that “it was the ‘government’s own carelessness,’ not the timing of Marolf’s Rule 41(e) motion, that precluded the initiation of judicial foreclosure proceedings.” *Id.* at 1219. The Ninth Circuit affirmed the district court on that ground, holding “that any prejudice to the government was attributable to its own inexcusable delay” in pursuing forfeiture. *Id.* It ultimately remanded the case to determine the value of the boat and “to order the government to pay such sum to the appellant.” *Id.* at 1220. Thus, both the Fifth and Ninth circuit have explicitly held, contrary to the Eleventh Circuit here, that the government’s actions cannot form the basis of the prejudice element of laches.

The conflict between the circuits is not doctrinal. The Eleventh Circuit’s analysis below treats the destruction of property as a neutral fact: the government destroyed the hard drive, and the impossibility of its return equates to prejudice. Under that framework, the motives and cause of the destruction are legally irrelevant. Both the Fifth Circuit’s analysis in *Clymore* and the Ninth Circuit’s in *Marolf* takes the opposite view, holding that the cause of prejudice is dispositive.

Where the government's own conduct is responsible for the very condition it now invokes as prejudice, that prejudice is “of the government's own making” and cannot satisfy the laches element. *Clymore*, 217 F.3d at 377. The Ninth Circuit, whose reasoning the Fifth Circuit expressly adopted, put it plainly: it is “the government's own carelessness,” not the timing of the claimant's motion, that caused any prejudice. *Marolf*, 173 F.3d 1218–19.

Rather than destruction of underlying property as in this case, *Clymore* dealt with the government’s destruction of records preventing a formal forfeiture, and *Marolf* dealt with the government’s failure to provide proper forfeiture notice. However, both cases, as here, addressed the matter on the equities and found that prejudice could not be created by the government’s own actions.

That principle is irreconcilable with the Eleventh Circuit’s ruling below. In the Eleventh Circuit, the government defending a property owner's Rule 41(g) claim is automatically granted the “prejudice” element of a laches defense when it destroys property, regardless of why or when. In two other Circuits, that same destruction defeats the government's laches defense because equity will not permit a party to manufacture the elements of its own affirmative defense through its own voluntary conduct. And as an affirmative defense, laches is not satisfied by delay alone.

This Court should resolve that conflict. The question whether a party may invoke an equitable defense of laches by bootstrapping its own conduct is one of basic equity jurisprudence. The answer should not depend on the Circuit in which a claimant's property happened to be seized.

**B. This Case Presents an Important Question Regarding Whether the Government May Immunize Itself From Rule 41(g) Review by Destroying Seized Property.**

This case presents an important, recurring question about a foundation of equity that can often be the final word of whether the government's deprivation of a person's property was lawful. Every Circuit recognizes the equitable nature of Rule 41(g) motions because people in the same position as Prime here may have no other remedy at law to recover property seized by the government.

With the spread of technology, federal investigations routinely seize laptops, phones, and other storage media. And with the advent and growth of cryptocurrency, digital property often depends on access credentials stored on seized media. The destruction of that media can eliminate the most direct evidence of ownership and control. When "prejudice" is automatically established by destruction, the Government can insulate itself from meaningful equitable review simply by destroying disputed property. And when that property is cryptocurrency, its destruction can simultaneously delete the best proof of ownership. This enables the

government, as here, to also cast doubt on the property's very existence.

This creates a perverse incentive structure that equity traditionally rejects. *See e.g. Cornetta v. United States*, 851 F.2d 1372, 1381 (Fed. Cir. 1988) (“If back pay constitutes prejudice then virtually every suit could be said to be presumptively ‘prejudicial’ because most successful military claimants receive back pay.”). That incentive works to the detriments of those seeking the return of seized property and implicates Due Process. It allows a person's property to be seized, held, then destroyed, and the destruction itself can immunize the government from its destruction of property.

The resulting uncertainty over whether it should destroy property also harms the government. Conflicting rules regarding the destruction of seized property result in inconsistent application of the principles of equity and unclear guidance for federal agencies. The stakes are substantial and the scale of federal custody and disposition decisions underscores the importance of a uniform rule. The federal forfeiture apparatus handles assets of enormous volume. The Department of Justice reports that, at the close of FY 2024, it maintained forfeiture revenue earnings of \$2.263 billion.<sup>7</sup> This is a dramatic

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<sup>7</sup> See U.S. Dep't of the Treasury, Treasury Exec. Office for Asset Forfeiture, Treasury Forfeiture Fund Accountability Report: Fiscal Year 2024 (Sept. 30, 2024).

increase from \$1.6 billion in FY 2023, which was double the \$838 million seized in FY 2022.<sup>8</sup>

Clear national rules are needed to govern when the government may invoke equitable defenses to defeat return, and when the government's own destruction of the res cannot be treated as the "prejudice" that bars relief.

**C. This Would Be An Appropriate Case To Decide The Issue Presented.**

This would also be an appropriate case in which to decide the question presented. The decision below squarely rests on a legal rule that warrants this Court's review. The Eleventh Circuit affirmed on laches and found "prejudice" based on the government's destruction of the seized hard drive. The petition presents the straightforward question whether laches prejudice may be manufactured through the government's conduct. The Eleventh Circuit answered that question directly, and its answer was dispositive. Had this case occurred in the Fifth or Ninth Circuits, the government's conduct would not have been immunized and Mr. Prime would be entitled to the return of his property.

The case is in final posture. The Rule 41(g) proceeding was litigated to judgment and affirmed on appeal. There are no interlocutory proceedings in the lower courts that could affect the question presented.

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<sup>8</sup> See U.S. Dep't of the Treasury, Treasury Exec. Office for Asset Forfeiture, Treasury Forfeiture Fund Accountability Report: Fiscal Year 2023 (Sept. 30, 2023).

The Court can resolve the legal issue on the record that produced the judgment.

Further, the question presented does not require this Court to resolve disputed details about the underlying asset. The Eleventh Circuit's prejudice analysis proceeded on the premise that, if Petitioner were entitled to relief, the government would have to provide replacement Bitcoin because it destroyed the device in its custody. App. 13. Neither the district court nor the Eleventh Circuit determined that the Bitcoin did not exist. Instead, both proceeded *arguendo* on the assumption that it did.

Potential preservation issues do not prevent review. The question presented concerns the legal significance of destruction in the laches analysis, as the panel applied it. The Court can review that legal rule as the basis of the judgment.

The lower court's holding supplies a clean legal question. The answer will guide lower courts in a recurring set of cases involving lost or destroyed seized items, including digital media that can contain significant value. This Court has before it a final judgment that turns on a clearly articulated legal rationale.

For these reasons, the petition presents a suitable vehicle for resolving the question whether laches may be sustained on prejudice created by the government's destruction of seized property.

**CONCLUSION**

This petition for writ of certiorari should be granted.

Respectfully submitted.

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