No. 25-193

IN THE

Supreme Court of the

United States

GRAVITY FUNDING, LLC AND
GRAVITY CAPITAL, LLC,
Petitioners,

v.

UNITED STATES, ET AL.,
Respondents.

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

BRIEF OF RESPONDENTS E. ALAN TIRAS AND E. ALAN TIRAS, P.C. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

.

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QUESTION PRESENTED

Whether 21 U.S.C. § 853(n) allows for a verified petition asserting an interest in property to be amended to change the party who filed the original petition to an entirely new entity, after the 30-day deadline to file petitions expired, and after the evidentiary hearing was conducted.

CORPORATE DISCLOSURE STATEMENT

Respondent E. Alan Tiras, P.C. is a professional corporation owned entirely by E. Alan Tiras. There is no owner of E. Alan Tiras, P.C. that is a publicly traded company and E. Alan Tiras, P.C. has no parent company.

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INTRODUCTION

This appeal concerns a criminal forfeiture proceeding initiated by the United States (the "Government") in connection with an indictment and ultimate conviction of Scott J. Davis ("Davis") for PPP loan fraud committed in or around April or May 2020. The particular property at issue here was real property located at 23226 Oak Hollow Lane, Tomball, Texas 77377 ("Tomball Property"). The Tomball Property was sold during the proceeding, the proceeds were forfeited to the Government subject to a judgment lien in favor of E. Alan Tiras and E. Alan Tiras, P.C. (collectively "Tiras"), and the Government was to pay the proceeds to Tiras per the district court's Amended Final Order of Forfeiture entered on January 18, 2024.

STATEMENT OF CASE

As was shown in the district court, the origins of this matter actually began over 10 years ago. In 2015, Tiras obtained a Nevada judgment against Davis, his company, and his then girlfriend, Sandra Ramirez, in Case No. CV11-02360; *E. Alan Tiras, a Professional Corporation and E. Alan Tiras, an individual v. Scott Davis, et. al.*; in the Second Judicial District Court of the State of Nevada. The Nevada judgment is made up of the $200,000 that was stolen by Davis from Tiras, as well as the interest on the loan Tiras had to obtain to replenish his trust account, plus attorneys' fees, costs, and post-judgment interest. The Nevada judgment was domesticated in Texas, making the Nevada judgment a Texas judgment, and an abstract of judgment against Davis and Ramirez was recorded in the real property records of Harris

County, Texas on August 17, 2015 providing Tiras a lien on real property owned or thereafter acquired by Davis.

In 2017, in Case No. 4:16-cr-00214, styled *United States of America v. Scott Jackson Davis,* in the Southern District of Texas, Houston Division, Davis was charged with and pled guilty to wire fraud. The charges against Davis resulted from the same facts as the Nevada Judgment and led to Davis being sentenced to thirty-seven (37) months imprisonment and a criminal order for Davis to pay $208,000 to Tiras in restitution.

Shortly after Davis was released from prison for his fraud on Tiras, Davis engaged in a 2020 PPP loan scheme defrauding the Government out of millions of dollars. Davis was indicted for these financial crimes on December 8, 2021. As part of the criminal proceedings, the Government initiated criminal forfeiture proceedings seeking forfeiture of, among other things, the Tomball Property. Tiras had previously worked with the Government to identify the Tomball Property as a potential forfeitable asset. The Government obtained a preliminary order of forfeiture for the Tomball Property and gave notice to Tiras and Gravity (defined below).

On July 14, 2022, pursuant to 21 U.S.C. § 853(n)(2), Tiras timely filed a petition against the Government asserting his interests in the property subject to the preliminary order, including the Tomball Property.

Gravity Capital, LLC ("Gravity Capital") incorrectly asserts in its question presented and

throughout its Petition for Writ of Certiorari that it timely filed a petition against the Government in this case asserting an alleged interest in the Tomball Property on July 14, 2022. However, the entity that filed the petition was Gravity Funding, LLC ("Gravity Funding") and in connection with the petition, Gravity Funding's president filed a declaration verifying the facts in the petition and swearing that Gravity Funding held the interest in the Tomball Property.

On July 6, 2023, the district court held an evidentiary hearing as required by 21 U.S.C. § 853(n) to address both Tiras' petition against the Government and Gravity Funding's petition against the Government. At the hearing, Gravity Funding's president admitted under cross examination that Gravity Funding did not, in fact, have an interest in the Tomball Property, that it was Gravity Capital that held the interest, and that Gravity Capital was a separate entity.

On July 31, 2023, the district court issued an Order on the forfeiture proceedings ("July Order"). The July Order forfeited the Tomball Property to the Government subject to Tiras's lien. The Government and Gravity[1] both filed notices of appeal of the July Order. On November 27, 2023, the district court entered a Final Order of Forfeiture as to the Tomball Property ("November Order"). Thereafter, Tiras filed a motion to amend the November Order to which the Government did not object. On January 18, 2024, the district court entered its Amended Final Order of

[1] For convenience only, the use of the term "Gravity" herein shall refer collectively to the separate entities Gravity Capital, LLC and Gravity Funding, LLC.

Forfeiture as to the Tomball Property ("Final Order")). The Final Order directed the proceeds of the sale of the Tomball Property to be paid to Tiras up to the amount of Tiras' judgment lien. Gravity then amended its Notice of Appeal to appeal the Final Order. On January 26, 2024, the Government voluntarily dismissed its appeal, which had been as to the July Order only.

Gravity Funding did not assert in its appeal that it has or ever had an interest in the Tomball Property. Instead, Gravity Capital argued that it should have been allowed to file a late petition after the § 853(n) deadline and after the evidentiary hearing, asserting that this somehow would have been an "amendment" of the petition by Gravity Funding.

On May 16, 2025, the United States Court of Appeals for the Fifth Circuit issued its opinion, affirming the district court's Final Order, finding that "the district court correctly determined that Gravity Capital failed to comply with § 853(n), and that Gravity Funding lacks any interest in the Tomball property." The Fifth Circuit also found that even if an amendment to add a new party were allowed, it would be untimely as Gravity did not seek to amend the petition until at least eleven months after the deadline set forth in § 853(n)(2). Finally, the Fifth Circuit also found that Gravity Capital's failure to assert a valid interest under § 853(n) precluded it from challenging Tiras' petition and lien (which the Government did not challenge).

The crux of the appeal is that Gravity asserts that the district court, and then subsequently the

Fifth Circuit, erred in finding that Gravity Funding did not have an interest in the Tomball Property and that Gravity Capital failed to file a timely petition.

Gravity Funding asserts that it should have been given leave (after the 30-day deadline mandated by § 853 and after the evidentiary hearing) to amend its verified petition to change the party from Gravity Funding to Gravity Capital. Gravity attempts to frame this issue as a simple misnomer and attempts to show a circuit split on the issue of amending such petitions. However, the issue at hand is not a mere misnomer, and there is no circuit split because Gravity cites only to cases allowing petitioners to amend petitions to add more detail to their existing petitions. Gravity does not cite to any cases that allow for "amendments" to petitions that permit a completely different party to assert a petition after the deadline has passed.

Gravity has made the following misstatements of fact or law in its Petition for Writ of Certiorari:

a. Gravity asserts in the Question Presented section, as well as pages 4, 14 and 18 of the Petition for Writ of Certiorari that Gravity Capital, LLC, which is defined as "Gravity" in the petition in the district court, filed a timely, sworn petition. This is simply not what happened as found by the district court. Gravity Funding filed a sworn petition and declaration, attesting that it was the owner of the interest in the Tomball Property, not Gravity Capital.

b. Gravity asserts on page 16 of its Petition for Writ of Certiorari that "[h]ad Gravity Funding filed its

third-party petition in either the Second or Seventh Circuits, it would have been permitted to amend its petition outside of Section 853(n)'s 30-day filing deadline… This statement misconstrues the law in the Second and Seventh Circuits which has, in very limited circumstances, allowed parties who have already filed a timely petition, to amend their own petitions to add more detail needed to satisfy the statute's requirements to claim an interest. This is not equivalent to Gravity's request in this case: to add an entirely new party. Nothing from the cases cited by Gravity show either circuit would allow Gravity to change the petitioner from Gravity Funding (verified in the petition) to a separate entity, Gravity Capital, after the thirty-day deadline, and after the hearing had already occurred. Allowing the "amendment" that Gravity Funding and Gravity Capital propose would render § 853(n)'s statutory requirement for the petition to be sworn to under oath completely superfluous and open the door for future gamesmanship in criminal forfeiture proceedings. This matter does not involve an amendment; it involves Gravity Funding's swearing that it owned the interest, and the failure of Gravity Capital to file any petition in this proceeding whatsoever.

STATEMENT OF REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. THIS COURT HAS RECENTLY DENIED CERTIORARI IN A CASE SEEKING SIMILAR RELIEF, CITING THE SAME CASES, AND WITH A PETITIONER WHO WAS AT LEAST THE CORRECT PARTY

In *United States v. Sanchez*, No. 22-11923, 2023 WL 5844958 (11th Cir. Sept. 11, 2023), *cert. denied*, 145 S. Ct. 139 (2024), a case which Gravity refers to in its Petition for Writ of Certiorari on page 14, the Appellant Jaqueline Yupanqui Palacios appealed the decision of the United States District Court for the Southern District of Florida to dismiss her § 853(n) petition because she did not sign the petition, and therefore did not comport with the statutory language requiring it be signed under penalty of perjury. *Id.* at *4. Palacios argued that the district court erred in not allowing her to amend the petition to add her signature after the 30-day window had closed. *Id.* at *5. The Eleventh Circuit upheld the district court's decision, finding that it was not an abuse of discretion when it "enforced this congressionally prescribed, 'mandatory' thirty-day window and denied leave to amend." *Id.*

Palacios filed a petition for writ of certiorari citing the exact same cases used by Gravity: *United States v. Furando,* 40 F.4th 567 (7th Cir. 2022) and *United States v. Swartz Fam. Tr.*, 67 F.4th 505, 518 (2d Cir. 2023). However, unlike the case here that seeks amendments to entirely change the party long after the deadline, the petitioner in *Sanchez* was at

least the correct party to bring a petition— she simply had not followed the express language of the statute that the petition had to be signed under penalty of perjury. The Court denied certiorari in that case on October 7, 2024. *Sanchez v. United States,* 145 S. Ct. 139 (2024). The Court should likewise do so here, where, as is shown below, there is no actual split of authority of whether amendments should be allowed after the thirty-day deadline (and even after the hearing itself) to replace the party swearing to own the interest with an entirely different party who did not file a sworn petition by the time required in the statute.

II. THERE IS NO CIRCUIT SPLIT ON THE ISSUE IN THIS CASE

Simply put, there is no controversy between the Circuits because neither the Second Circuit or the Seventh Circuit allow one entity to swear that it owned an interest and then "amend" the petition to add new and different petitioners. Gravity has not cited to a single case that does so.

Gravity asserts that "Federal courts are fundamentally divided concerning the core procedural rules that govern creditor claims in these ancillary forfeiture proceedings." However, the alleged circuit split does not concern the issue of whether amendments to petitions should be allowed to add entirely new petitioners. Instead, the cases cited by Gravity show only that certain circuits hold fast to the 30-day deadline and do not allow any amendments after it, and that certain other circuits allow some limited amendments to petitions in limited circumstances that allow a

petitioner who already timely filed its petition, to add more detail to its petition to reach the threshold of description required.

Gravity misclassifies the question presented here to have it appear that the issue in this case fits within a purported division amongst the circuits to allow any amendments at all. Gravity does not seek a simple amendment to allow a correct party to add a bit more detail. Instead, Gravity seeks to swap parties entirely (after swearing that Gravity Funding held the interest) and have an entity which unquestionably did not file a petition under the statute, be allowed to come into the case years after the 30-day deadline to file has passed.

This misclassification of the issue by Gravity relies on a false premise that Gravity is only asking to cure a "mere misnomer", just a simple "technical pleading defect." Gravity presents the issue as "[t]he petition also included mistaken references to Gravity Funding…" (Petition, p. 4). However, while Gravity's petition may only reference Gravity's full name, Gravity Funding, LLC, in the caption and opening statement, it nonetheless defines "Gravity" as Gravity Funding, LLC for all instances of Gravity in the petition. Furthermore, the Declaration of David Knudson that Gravity Funding attached to its petition in support of the claim to property the CEO of Gravity declared that Gravity Funding was the entity with the claim to the property, not once, but several times. (the Declaration is attached as Appendix H). This was not a simple typographical error in the style or a few wayward mistaken references; this was swearing under penalty of perjury that Gravity Funding had a right to

the property and was asserting the claim and never doing the same for Gravity Capital.

Gravity's reliance on the Seventh Circuit case *United States v. Furando* for the proposition that other jurisdictions have allowed leave to amend to cure technical problems with a petition in an § 853(n) proceeding is misplaced in this instance. *Furando* did not involve a party with no actual interest in the property filing the petition, but instead the petition was facially invalid due to mere conclusory statements without detailing the required information setting forth the nature and extent of the petitioner's right in the property as required by § 853(n)(3). *See United States v. Furando,* 40 F.4th 567 (7th Cir. 2022).

In *Furando,* the district court dismissed the petition *sua sponte,* without a hearing, as part of its granting of the Government's motion for interlocutory sale of the property. *Id.* at 573-574. The Second Circuit noted that the general circuit case law "cautions against *sua sponte* dismissal unless the jurisdictional deficiency is incurable." *Id.* at 576. The Second Circuit then found that the § 853(n) petition was facially deficient because it contained only conclusory statements about the property ownership. *Id.* at 578-579. The Second Circuit, in light of the circuit's caution against *sua sponte* dismissals of all kinds, found that the defect in *Furando* was "curable" because the party with an interest had already timely filed a petition but simply failed to include sufficient detail. *See id.* at 579-580.

Furando does not stand for the proposition that a party that did not file a timely petition at all should

be allowed to jump into the case long after the deadline to file a petition or after the hearing has been conducted, nor does it stand for the proposition that completely changing the party in the petition is a defect curable by amendment. Instead, *Furando* allowed the limited amendment to avoid the *sua sponte* dismissal of the 853(n) petition, and thus denial of a hearing, based on not having provided sufficient detail in the timely-filed petition by the proper party.

Gravity's reliance on the Second Circuit case *United States v. Swartz Family Trust,* suffers from the same inapplicability as does *Furando.* The court in *Swartz* did not remand to allow leave to amend the petition to add a different party that had not timely filed a petition. Instead, the technical issue in the *Swartz* petition was that it failed to adequately describe its bona fide purchaser claim. *See United States v. Swartz Fam. Tr.*, 67 F.4th 505, 518 (2d Cir. 2023). Once again, like *Furando,* this was a petition dismissed for lack of requisite detail, wholly unlike the case at hand. The *Swartz* court itself stated that "§ 853(n)(2) is ordinarily strictly construed." *Id.* at 519. It then held that "[w]here, as here, a third party *files its petition before the deadline and moves promptly to amend it*, rejecting leave to amend does not always further that purpose…[r]ather, *in limited circumstances*, it may be appropriate to permit *the petitioner* to amend its petition outside the 30-day window." *Id.* (emphasis added).

Both of the cases Gravity relies on set forth very *limited circumstances* as exceptions to the rule that the deadline in § 853(n) is strictly enforced, and such circumstances are only where the party did timely file

but failed to adequately assert facts supporting its claim. Neither of these cases allows a whole new party to assert a petition ***over a year after the deadline.*** In fact, in *Swartz,* the very same court that allowed remand to determine if a timely filed party should be entitled to an amendment to add additional information, refused to allow a trust that had not timely filed to file a petition after the 30-day deadline, despite the trustee's assertion that he was incapacitated due to a medical condition. *Id.*at 514-515. In other words, the Second Circuit did strictly enforce the 30-day filing deadline against another party in the same case.

Gravity does not cite a single case in which an appellate court has allowed an amendment to completely change the party to an entirely new party after the 30-day deadline. While Gravity certainly enjoys the legal protections of creating various entities for various endeavors, it is only right that they are responsible for keeping them straight and filing the petition on behalf of the correct party (and not swearing that another entity owns the interest).

The entity that filed the petition categorically did not have an interest in the property as it made no loan to Davis or the Trust. It is not a simple typo, as Gravity's own CEO swore that Gravity Funding had an interest in the property, which it did not, and Gravity made no attempt to "promptly amend." Further still, this was not a curable defect because this is not an instance of a party with an interest simply being too vague or conclusory in their petition to conform with the statute. Instead, here, the party with even an arguable interest did not file a petition at all.

Simply put, the Circuits are not divided on the actual question at issue in this case, which is whether § 853(n) allows, or should allow, for amendments to add an entirely new petitioner after the 30-day deadline to file a petition has passed, and after the evidentiary hearing itself has already been conducted.

III. DUE PROCESS WAS NOT DEPRIVED BECAUSE GRAVITY FUNDING, LLC AND GRAVITY CAPITAL, LLC RECEIVED DUE PROCESS

While Gravity does not directly assert any specific violation of due process rights, it intimates a general notion that there are "growing due process concerns" in civil forfeiture proceedings. Gravity then seeks to use the general notion that there are theoretical questions related to due process and civil forfeiture to assert that granting its Petition for Writ of Certiorari would give the opportunity to address some of the "due process concerns" such as those mentioned in the concurring opinion in *Culley v. Marshall,* 601 U.S. 377, 401 (2024).

A. This is a Criminal Forfeiture, not a Civil Forfeiture.

Gravity consistently seeks to fit a round peg in a square hole by attempting to mold this case into unrelated issues. Much like the cases cited for an alleged circuit split to which this case does not apply, Gravity asserts that there are due process concerns in the forefront of modern jurisprudence regarding civil forfeiture. It should be noted at the outset that this case is

one of criminal forfeiture, not of civil forfeiture. The dissent in *Culley* even acknowledges that due process concerns the Court was addressing do not exist in a criminal forfeiture. 601 U.S. 377, 404 (2024). As Justice Sotomayor points out in her dissent: "Civil forfeiture occupies a murky space between criminal forfeiture and ordinary government deprivations of property. Criminal forfeiture is part of a defendant's criminal punishment. The government must therefore proceed against the person (*in personam*) to obtain someone's property via criminal forfeiture, which generally requires notice of intent to forfeit the property in a criminal indictment and full criminal procedural protections for the defendant." *Culley*, 601 U.S. at 404 (J. Sotomayor, dissenting). Criminal forfeiture is a different proceeding, with a different analysis and considerations.

Here, Gravity does not challenge the process of criminal forfeiture itself, as of course, § 853(n) is the very vehicle that Gravity seeks to use to obtain dominion over the Tomball Property, now reduced to proceeds.

Section 853(n) has an express and obvious deadline of 30 days to file a verified petition to adjudicate a claim of a third party having an interest in the subject property. 21 U.S.C. § 853(n)(2). Gravity does not challenge or assert that the 30-day time period is constitutionally inadequate in any way. It makes no claim that 30 days is not a reasonable amount of notice to satisfy the due process rights of third parties with an interest in the subject property. It makes no claim that the notice it received was inadequate, that Gravity Funding or Gravity Capital failed to receive

notice, or that the notice in any way failed to identify the specific property. Indeed, Gravity could not assert such challenges because at least Gravity Funding was able identify the Tomball Property and to file a petition.

The reality, here, is that this is not a due process challenge whatsoever. Gravity simply hints at these modern jurisprudential questions involving due process in civil forfeiture in hopes of making this case more appealing to this Court. In other words, Gravity is presenting a solution in search of a problem. These concerns are not applicable here. Instead, this is a case concerning whether an expressly stated specific statutory deadline should be enforced as written. Section 853(n)'s language is clear and unambiguous that if a petition is going to be filed, it must be done "within 30 days of the final publication of notice or his receipt of notice under § 853(n)(1), whichever is earlier…" § 853(n)(2). Further still, § 853(n)(3) requires that the petition be signed by the petitioner under penalty of perjury. "The most significant requirement [for statutory standing] is that the claimant must timely file a verified statement of interest, as required by [21 U.S.C. § 853(n)]...." *United States v. Loria*, No. 3:08cr233-2, 2009 WL 3103771, at *2 (W.D.N.C. Sept. 21, 2009) (quoting *United States v. $487,825 in U.S. Currency*, 484 F.3d 662, 664-65 (3d Cir. 2007)) (civil forfeiture context) (first bracket added). "The requirement that the claimant file a timely verified statement serves two purposes. First, it forces claimants 'to come forward as quickly as possible after the initiation of forfeiture proceedings, so that the court may hear all interested parties and resolve the dispute

without delay.' Second, it 'minimize[s] the danger of false claims by requiring claims to be verified or solemnly affirmed.'" *Id.*

The fact that Congress chose to require the petition be sworn, and that it set the deadline as the earlier of the two options shows the intent that the 30-day period to file a sworn petition is meant to be enforced. As shown above, even Gravity's own authority acknowledges that § 853(n) is strictly construed by the courts. *Swartz Family Trust*, 67 F.4th at 519.

B. *Culley* is an issue of the speed, timing, and order of the hearing, none of which are at issue here.

While this case involves a criminal forfeiture action, Gravity nonetheless cites the *Culley* case as a source to show the existence of questions related to due process regarding civil forfeitures. Of course, *Culley* does not involve § 853(n) at all.

Even if this case involved a civil forfeiture, the question at issue in *Culley* had to do with preliminary hearings to determine whether the government should be able to hold onto the seized property until the evidentiary forfeiture hearing, or if due process would require process before the seizure (or before retaining it), especially in situations where the seized property was a vehicle belonging to someone else who had loaned it to the individual who was driving it at the time of arrest. In essence, as stated by Justice Kavanaugh in the decision, the argument in that case for separate preliminary hearings "appears in many respects to be a backdoor argument for a more timely hearing so that a property owner with a good defense

against forfeiture can recover her property more quickly." The *Culley* case is a case about timing, and the desire for a quicker hearing. That has nothing to do with the case at hand, in which Gravity seeks a change in statutory law that would allow entirely new parties to join a forfeiture action long after the 30-day deadline to file a verified petition asserting an interest in the property, and even after the evidentiary hearing on such forfeiture has already been conducted.

C. Gravity was given notice and a meaningful opportunity to participate in the hearing.

Here, Gravity has made no challenge to the forfeiture process itself, nor to the timeliness of the forfeiture hearing that occurred in this case. It does not challenge that it was not given adequate notice. Clearly, Gravity Capital and Gravity Funding received actual notice, and they do not assert otherwise. "Unless exigent circumstances are present, the Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 62 (1993).

Gravity was, without question, afforded notice. Gravity was also afforded a meaningful opportunity to be heard (premised on filing an appropriate and timely verified petition), because Gravity Funding admittedly partook in the evidentiary hearing, and as such was clearly afforded due process. Instead, Gravity's complaint is that the statute is interpreted too rigidly by not allowing them to switch to a new party

after the 30-day deadline and after the evidentiary hearing had already occurred. This does not touch on the jurisprudential questions of whether a hearing should come before the seizure provisionally, to determine if the government can retain the seized property, or if the seizure and retention before the hearing is an acceptable exception to the ordinary course. Here, Gravity does not challenge the process in and of itself at all, but only the refusal to allow a new party to enter the action long after the 30-day notice period has expired, and even after the hearing was conducted. The statute is straightforward insofar as it requires a party to file a verified petition 30 days after published or received notice of the forfeiture in order to assert an interest in the subject property. This is a longer period than most defendants are afforded to answer a complaint lest they be subject to a judgment by default. There is no apparent challenge by Gravity of the 30-day period itself as contrary to due process. Gravity's complaint, instead, is the actual enforcement of it.

Because after the evidentiary hearing the district court concluded that Gravity Funding did not, in fact, have an interest in the property, it lost its bid to assert such an interest. Likewise, after that evidentiary hearing, the district court determined that Gravity Capital did not timely file a petition. As such, the district court issued its orders of forfeiture allowing for the forfeiture of the property to the Government subject to Tiras's claim.

In addition, Gravity never filed a motion for leave to amend and did not even arguably request an amendment until many months after the hearing

before the district court. Gravity received due process – it just failed to take advantage of it.

It should also be noted that Gravity's claim that it was an innocent party in the Davis PPP loan fraud and Gravity's complaints as to the unfairness of the proceeding is belied by the facts presented at the hearing. Gravity is an admitted hard-money lender, that testified it provides credit to the riskiest of individuals who cannot get financing through mainstream lenders. At the time Davis used Gravity Capital to refinance the property Davis had purchased with the fraudulent PPP funds, he had already been convicted once of financial fraud…against Tiras. The evidence at the hearing showed Gravity had failed to follow its own procedures as well as standard lender due diligence in investigating Davis and the origins of the property Davis was seeking to refinance, i.e. money launder. Gravity's knowledge of the inherent riskiness of its clientele would have given it ample reason to perform diligence related to Davis and would have led it to find Tiras' judgment lien just as prior title insurance companies had found when Davis previously tried to refinance the property and that title company had contacted Tiras. Had Gravity done the even minimal due diligence and contacted Tiras, who was working with the Government at the time,[2] Tiras would have advised them of the Government's

[2] The evidence at the hearing explained how instrumental Tiras was in assisting the Government in identifying property subject to forfeiture. Ultimately the Government did not contest Tiras being the recipient of the proceeds from the agreed sale of the Tomball Property.

potential claim to the Property because of Davis' fraudulent PPP activities.[3] Gravity is not the innocent victim it proclaims.

Gravity attempts to argue that the difference in Circuits regarding whether amendments are allowed to add more detail after a timely petition was filed by a proper party is the same question as whether entirely new parties should be allowed to be added by "amendment" after the 30-day period. These are clearly two different questions, and Gravity has shown no actual split in Circuits regarding the allowing of entirely new parties to be added after the deadline. The apparent lack of conflicts between courts on the actual issue in this case indicates that there is no risk of different results in different locations, and do not raise due process considerations on such grounds. Whether or not the Circuits disagree with allowing for amendments to petitions to add more necessary detail is inapplicable to this case, because that is not what Gravity is requesting.

D. Gravity's proposed change results in rendering the statutory deadline and requirement of swearing to the petition meaningless and offends the due process rights of other parties in interest.

Gravity complains that neither Tiras nor the Government objected to the "misnomer" until later;

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[3] Southern Title, upon finding the judgment lien, contacted the undersigned counsel for Tiras, showing that even standard diligence would lead to the discovery of Tiras' judgment and contacting Tiras.

however, it is unclear why it would be the responsibility of the opposition to ensure that another party swearing to an interest was actually telling the truth. In this case, the facts which exposed Gravity Funding's lack on an interest were only discovered at the hearing during cross examination of Gravity's President who confirmed that Gravity Capital was a separate entity from Gravity Funding and that Gravity Funding had not been assigned the alleged interest. There was no trickery by the Government or Tiras. Both used the evidentiary hearing to develop the evidence which showed Gravity Funding swore it owned an interest that it did not own. Nonetheless, it was not the onus of Tiras or the Government to double-check Gravity's work beforehand.

Further still, Gravity's request that parties be given opportunity to "amend" a petition to add a new party in this context appears so open-ended as to threaten to deprive other interested parties of their own due process rights. Here, Gravity did not even request to "amend" its petition to add or switch out Gravity Capital for Gravity Funding until after the evidentiary hearing on the forfeiture was already conducted. Thus, Gravity does not ask for a small amount of time after the deadline to file simple "amendments," nor does it request leniency to file amendments changing the party up until the hearing. Instead, Gravity here is asking for a complete "do-over" by amendment after the hearing was already conducted.

If due process entitled Gravity Funding to a timely and meaningful hearing, then it does the same for Tiras, who asserted a competing interest in the property at issue. However, Gravity's proposition of

boundless amendments to add new and different parties even after the hearing was conducted would rendered the hearing meaningless, as applicants such as Tiras could not rely on the hearing to be a final determination of the issues. *See Loria*, 2009 WL 3103771, at *2 ("The requirement that the claimant file a timely verified statement . . . forces claimants 'to come forward as quickly as possible after the initiation of forfeiture proceedings, so that the court may hear all interested parties and resolve the dispute without delay'"). Further, Gravity's rule would make the statutory deadline and requirement to swear to the petition under oath obsolete and open the door for false claims and gamesmanship as petitioners could swear that one party owned the interest at one time and later, when that assertion failed, amend to add a new party to the proceeding at a later date and try again. *See id.* ("The requirement that the claimant file a timely verified statement 'minimize[s] the danger of false claims by requiring claims to be verified or solemnly affirmed'").

CONCLUSION

Because there is no circuit split on the allowance of new parties to be added to a § 853(n) after the 30-day deadline, and further after the evidentiary hearing has been held, because Gravity does not raise much less show any actual challenge regarding due process, and because the theoretical due process "concerns" raised in the petition for writ of certiorari are not applicable to this case at all, the Court should deny the petition for writ of certiorari.

Respectfully submitted,

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