No. 26-91

In the

Supreme Court of the United States

RICHARD STUART ROSS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR *AMICI CURIAE* FORMER FEDERAL FORFEITURE PROSECUTORS IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST[1]

Amici curiae are former Assistant U.S. Attorneys who served in and led forfeiture units in the Eastern District of New York, Southern District of New York, and the District of New Jersey. Collectively, *amici* have decades of experience prosecuting federal forfeiture actions and are responsible for billions of dollars' worth of successful recoveries by the United States.

A complete list of amici and the positions they occupied in the Department of Justice is set forth in an appendix to this brief.

As former officials charged with investigating, seizing, and forfeiting proceeds of crime and property involved in illegal conduct, *amici* have a strong interest in ensuring that the forfeiture laws are interpreted and applied correctly. *Amici* submit this brief to offer their informed perspective on when attorney fees may be awarded to claimants who "substantially prevail" under Section 2465(b) of the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"). They explain that when the government voluntarily drops a civil forfeiture case and the claimant regains all the property he claimed, the claimant "substantially prevails" within the meaning of CAFRA.

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[1] No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amici curiae*, their members, or counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for Petitioner and Respondents received timely notice of *amici curiae*'s intent to file this brief.

SUMMARY OF ARGUMENT

In a civil forfeiture proceeding the property is the defendant. Before it can begin a civil forfeiture proceeding against personal property, the Government must seize it, which deprives a claimant of his possessory interest in the property. That is, the mere act of seizure deprives a property owner, during the pending of the proceeding, of a right to enjoy and dispose of the property.

The goal of a claimant in a civil forfeiture proceeding is to regain possession or control of property seized or restrained by the Government for forfeiture.

If the case is dismissed and the claimant obtains all the property he claims, he has prevailed. At the very least, he has "substantially prevailed." And federal forfeiture law provides that when a claimant "substantially prevails," the Government "shall be liable for . . . reasonable attorney fees and other litigation costs reasonably incurred by the claimant." 28 U.S.C. § 2465(b)(1).

For that reason, Mr. Ross, the petitioner in this case, should receive his reasonable attorney fees and litigation costs. He had to file a claim to spur the Government to return his property. After a year of litigation, the case was dismissed. His claim was for $1,213,113.11, and that's what he received.

But his reasonable fees were not paid. Instead, the Government convinced the courts below that Mr. Ross did not "substantially prevail" because he won due to the Government's voluntary dismissal.

The logic of that holding leads to bizarre results that are likely to recur in future cases. First, the Government could avoid paying attorney fees even if it dismissed a case the night before a jury verdict. Second, the Government's interpretation of Section 2465(b)(1) renders Subsection (b)(2) superfluous. Subsection (b)(1) provides that a claimant who substantially prevails in a civil forfeiture proceeding is awarded reasonable fees, while Subsection (b)(2) sets forth an exception to that general rule. Specifically, Subsection (b)(2)(C) sets forth a series of conditions the Government must satisfy to avoid liability for costs and attorney fees when there are multiple claims to the same property. But if the Government could avoid paying reasonable fees simply by filing a voluntary dismissal, then it could write Subsection (b)(2)(C) out of the statute.

The correct interpretation of the fee shifting provision in CAFRA does not leave the Government unprotected. First, CAFRA allows the Government to avoid fees entirely if it returns seized assets before filing a complaint. Ninety days after a claim is filed, the Government has three options under 18 U.S.C. § 983(a)(3): file a civil complaint, obtain a criminal indictment, or return the property. If the Government returns the property within 90 days, it has avoided the obligation to pay reasonable attorney fees because the Government has not yet commenced any "civil proceeding to forfeit property." Second, when the Government has to pay, it only has to pay fees and costs that a court deems "reasonable," not all fees and costs.

In sum, the Government does not have to pay attorney fees if it: (1) returns property before it files a civil complaint; (2) complies with the terms of 28 U.S.C. § 2465(b)(2); or (3) faces fees that are unreasonable. There is no reason to re-write the forfeiture laws so that the Government can ***also*** avoid paying fees by dismissing any time before summary judgment, a jury verdict, or a judicial determination as to forfeiture.

Unfortunately, this case is not unique or even unusual. Instead, it presents a recurring pattern: as a frequent and sophisticated forfeiture plaintiff, the Government often dismisses cases late and without prejudice to avoid paying reasonable attorney fees and costs. This practice will stop only if and when this Court corrects the Government's misinterpretation of 28 U.S.C. § 2465.

Doing so will not discourage the Government from prosecuting worthy forfeiture actions. U.S. Attorneys' Offices will not shy away from meritorious cases to avoid losing budgeted funds to pay claimants' attorney fees. Payment of attorney fees comes from a separate source. Attorney fee awards under CAFRA, like other judgments incurred in cases handled by components of the Department of Justice, are compensable by the Judgment Fund maintained by the U.S. Department of Treasury pursuant to Title 31, United States Code, Section 1304.

This Court should grant the petition as the questions it presents are important to the fair administration of justice and likely to recur.

ARGUMENT

I. Mr. Ross "substantially prevailed" on his claim.

A. Before it can begin a civil forfeiture proceeding against personal property, the Government must seize it, which deprives a claimant of his possessory interest in the property.

A claim in a civil forfeiture proceeding is "brought against property, not people." *United States v. All Funds in Account Nos. 747.034/278*, 295 F.3d 23, 25 (D.C. Cir. 2002) (citing *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 683 (1974)). The property—the *res*—"is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches." *The Malek Adhel*, 43 U.S. 210, 233 (1844) (Story, J.). In other words, a civil forfeiture proceeding is *in rem*; it concerns "the status of a thing, and therefore the rights of persons generally with respect to that thing." Black's Law Dictionary 943 (12th ed. 2024) (defining "in rem"). *In rem* judgments operate against the entire world claiming against that property. *See R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943, 957 (4th Cir. 1999) (citing *The Moses Taylor*, 71 U.S. (4 Wall.) 411, 427 (1866)). A person who wants to contest the disposition of the property must intervene as a claimant. And claimants may not assert counterclaims against the Government. *United States v. One Lot of U.S. Currency ($68,000)*, 927 F.2d 30, 34 (1st Cir. 1991).

Before it can begin a civil forfeiture proceeding against personal property, the Government must gain possession, custody, or control of the *res*, upon which exercise of a court's *in rem* jurisdiction depends. *See*

Fed. R. Civ. P. Supp. R. G(3)(b), (c) (providing for issuance and execution of warrant to arrest property). As this Court has written, "seizure of the res has long been considered a prerequisite to the initiation of *in rem* forfeiture proceedings." *United States v. James Daniel Good Real Property,* 510 U.S. 43, 57 (1993) (citations omitted); *see also United States v. All Funds Distributed To, or o/b/o* Weiss, 345 F.3d 49, 55 (2d Cir. 2003) ("When a forfeiture suit is commenced against personalty, the government must seize the defendant property."). In fact, seizure is a requirement for jurisdiction. *See United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 363 (1984) ("In contrast to the *in personam* nature of criminal actions, actions *in rem* have traditionally been viewed as civil proceedings, with jurisdiction dependent upon seizure of a physical object.").

Seizure naturally deprives a property's owner of a possessory interest in, and right to enjoy and dispose of, the property during the pendency of the proceeding. That can include "the right of sale, the right of occupancy, the right of unrestricted use and enjoyment, and the right to receive rents." *James Daniel Good Real Property*, 510 U.S. at 53-54, 62 (seizure of residence deprived claimant of these "valuable rights of ownership" which required prior notice and hearing to comport with Due Process Clause). Title is not settled by seizure; that's what forfeiture does. *See Langbord v. U.S. Dep't of Treasury*, 832 F.3d 170, 183 (3d Cir. 2016) (en banc) (explaining that seizure gives Government possession of property while forfeiture gives Government title). But even a mere seizure—the predicate for jurisdiction—creates a real and serious deprivation.

B. The goal of a claimant is to regain the possessory interest he has lost.

Unlike parties litigating against one another in an *in personam* action, the goal of a claimant in a civil forfeiture proceeding is to regain the property he claims. And when a claimant achieves that goal after a case is dismissed, the claimant has prevailed or, at the very least, "substantially prevailed." Federal forfeiture law provides that, when a civil claimant "substantially prevails," the Government "shall be liable for . . . reasonable attorney fees and other litigation costs reasonably incurred by the claimant." 28 U.S.C. § 2465(b)(1). Regaining all your property—restoring your right to possess and dispose of it as you see fit—is both the common-sense and plain meaning of what it means to prevail in a forfeiture proceeding.

In civil forfeiture proceedings "the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture." 18 U.S.C. § 983(c)(1). If the Government "meets its burden, it will prevail unless a claimant introduces evidence to support his case." *United States v. Real Prop. 10338 Marcy Rd. Nw., Canal Winchester, Ohio*, 938 F.3d 802, 809 (6th Cir. 2019) (quotations omitted) "But if the [G]overnment does not meet its initial burden, the claimant prevails. In that situation, claimants are under no obligation to come forward with evidence of their rightful ownership." *Id.* (quotations omitted).

C. When the Government dismissed its case and returned all the property Mr. Ross claimed, he "substantially prevailed" on his claim.

As the District Court in this case noted, "by voluntarily withdrawing the action as to the Contested Funds, the government…conced[ed] that the Contested Funds [were] not forfeitable."[2] Thus, the Government failed to carry its burden. Whether it sat down or tripped does not matter.

Despite Mr. Ross receiving back every dollar of the $1.21 million he claimed, the Second Circuit nevertheless concluded that he did not prevail because he did not obtain a dismissal *with prejudice*. For that reason, the Circuit concluded, "Ross obtained none of the judicially sanctioned relief that he sought from the district court." *United States v. Ross*, 161 F.4th 100, 119 (2d Cir. 2025).

That reasoning runs contrary to the nature of civil forfeiture, the facts of this case, and the statement of the District Court. The goal of a claimant in a civil forfeiture proceeding is to regain the property he claims, which is what Mr. Ross did; summary judgment or victory at trial are just means to that end. Whether Mr. Ross's motions were granted does not change the fact that he received every dollar of the property he claimed. And on the key point in this case—return of the funds—the District Court denied Mr. Ross's motion precisely because he had already

[2] *United States v. $4,183,402.74 in U.S. Currency Seized From Regions Bank Acct. XXXX*, No. 5:22-CV-138 (GLS/TWD), 2023 WL 2329480, at *4 (N.D.N.Y. Mar. 2, 2023) ("2023 Order").

won, or, as the court phrased it, because "Claimant Ross *has obtained* the relief he requested." (emphasis added).

On March 22, 2023, Mr. Ross moved to compel the Government to release the funds it initially sought to forfeit in the action the Government later voluntarily dismissed: the $1,213,113.11 in funds he claimed.[3] On April 12, 2023, twenty days after Ross filed that motion, the Government returned the full $1,213,113.11 claimed by Ross.

As a result, the District Court found moot Mr. Ross's motion to release the funds because the funds had already been released and returned to him:

> On May 9, 2023, the Government filed a Department of Treasury Process Receipts and Returns that showed that the $1,213,113.11 in U.S. Currency was returned to Claimant Ross. *See* Dkt. No. 68. Therefore, *as Claimant Ross has obtained the relief he requested*, the Court finds that his motion to compel Plaintiff to release funds it voluntarily dismissed is moot and, therefore, denies his motion.[4]

Thus, Mr. Ross did not lose his motion to release the funds in any real sense; the District Court denied his

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[3] Dkt. No. 62, Mar. 22, 2023, Motion to Compel Plaintiff to Release Funds it Voluntarily Dismissed, *United States v. $4,183,402.74 in U.S. Currency et al.*, No. 5:22CV00138 (N.D.N.Y.).

[4] *United States v. $4,183,402.74*, No. 5:22-CV-138 (FJS/TWD), 2024 WL 2763864, at *3 (N.D.N.Y. Mar. 22, 2024) ("2024 Order") (emphasis added).

motion only because he had already prevailed by regaining his property.

Moreover, the statute does not require that a claimant prevail entirely, but only that he "substantially prevail." The word "substantially" is a synonym for "materially." It means "in substance," "in the main" or "largely but not wholly." *See* Webster's New International Dictionary 2514 (2d ed. 1945) ("[t]hat is such in substance or in the main"); Webster's New 20th Century Dictionary 1817 (1983) ("largely," "essentially," "in the main"); Webster's Ninth New Collegiate Dictionary 1176 (1983) ("largely but not wholly that which is specified"). As one longtime federal prosecutor and forfeiture scholar has observed, the Government must pay fees and costs if claimant prevails "as to some portion of the property." Stefan D. Casella, *The Civil Asset Forfeiture Reform Act of 2000: Expanded Government Forfeiture Authority and Strict Deadlines Imposed on All Parties*, 27 J. LEGIS. 97, 112–13 (2001). And here Mr. Ross had his entire possessory interest restored. The District Court denied his motion precisely because he had already prevailed in substance.

II. The Government's interpretation renders a subsection of the statute superfluous.

The existence of Subsection (b)(2)(C) frustrates the Government's interpretation of 28 U.S.C. § 2465(b)(1). Subsection (b)(2)(C) specifies how the Government can avoid fees. If the Government could avoid paying fees required by Subsection (b)(1) just by voluntary dismissal, the requirements set forth at length in (b)(2)(C) would be rendered superfluous. That result is contrary to well-established principles of statutory interpretation. As this Court has explained, it is a "'cardinal principle' of interpretation that courts 'must give effect, if possible, to every clause and word of a statute.'" *Loughrin v. United States*, 573 U.S. 351, 358 (2014) (citation omitted).

Subsection (b)(2)(C) provides a way for the Government to avoid liability for attorney fees when there are multiple claims to the same property. Specifically, it imposes four conditions the Government must satisfy to avoid liability for a claim:

> **(i)** promptly recogniz[ing] such claim;
> **(ii)** promptly return[ing] the interest of the claimant in the property to the claimant, if the property can be divided without difficulty and there are no competing claims to that portion of the property;
> **(iii)** …not caus[ing] the claimant to incur additional, reasonable costs or fees; and
> **(iv)** prevail[ing] in obtaining forfeiture with respect to one or more of the other claims.

28 U.S.C. § 2465(b)(2)(C)(i)–(iv).

If the Government could defeat fees simply by abandoning a case a year into a proceeding (or later), no prosecutor would ever need to satisfy the conditions of Subsection (b)(2)(C). It would not make sense for Congress to list four conditions for relief that is available without those. Subsection (b)(1) establishes the general conditions when the Government "shall be liable," while Subsection (b)(2)(C) sets out an exception to that rule. There would be no need for an exception if the baseline rule had a different, unstated, and broader exception.

Also, the text of Subsection (b)(2)(C)(iii) reinforces the purpose of Subsection (b)(1). The requirement that the Government "not cause the claimant to incur additional, reasonable costs or fees" reveals the purpose of Subsection (b)(1)'s fee shifting provision. That is, compensating owners for litigation costs created by the Government. To read Section 2465 as inapplicable after the Government forces a claimant to incur months, if not years, of litigation expenses would undermine the very purpose the statute was designed to serve.

III. Granting the petition and interpreting the statute correctly will not discourage the prosecution of worthy forfeiture cases.

The risk of paying attorney fees out of budgeted funds will not deter the Department of Justice from prosecuting meritorious forfeiture cases.

The Government may still seize property for civil forfeiture, including by the common practice of obtaining a seizure warrant upon a showing of probable cause, without incurring any risk of paying attorney fees. *See* 18 U.S.C. § 981(b)(2) (providing for issuance of civil seizure warrant by same procedures for obtaining search warrant under Rule 41 of the Federal Rules of Criminal Procedure). As expressly contemplated under CAFRA, the Government may then elect to return the property, seek a judicial extension of the period for filing a civil forfeiture complaint, or pursue criminal forfeiture, all without incurring exposure to payment of attorney fees. 18 U.S.C. § 983(a)(3).

In addition, the Government pays attorney fees out of a separate source that is independent from the Department of Justice: the Judgment Fund maintained by the U.S. Department of Treasury pursuant to Title 31, United States Code, Section 1304. The Judgment Fund is a permanent, indefinite appropriation administered by the U.S. Treasury's Bureau of the Fiscal Service, which is not subject to annual funding approvals or new legislative action by Congress.

IV. The Government's conduct reflects a pattern in cases across the country.

Regrettably, this case is not unusual. As a frequent and sophisticated forfeiture plaintiff, the Government often dismisses cases late and without prejudice to avoid paying attorney fees. *See, e.g.*, *United States v. Thirty-Two Thousand Eight Hundred Twenty Dollars & Fifty-Six Cents ($32,820.56) in U.S. Currency*, 838 F.3d 930, 932 (8th Cir. 2016) (government moved to dismiss more than a year after it began); *United States v. $8,500.00 in United States Currency*, No. 23-10971, 2025 WL 2406318 at *2 (11th Cir. Aug. 20, 2025) (government moved to dismiss case five days after claimant's summary-judgment motion); *United States v. $70,670 in U.S. Currency*, No. 15-CV-23616, 2018 WL 278890, at *2 (S.D. Fla. Jan. 3, 2018), *aff'd sub nom. United States v. $70,670.00 in U.S. Currency*, 929 F.3d 1293 (11th Cir. 2019) (government moved to dismiss more than a year after discovery began and four days after summary judgment motion); *United States v. Any & All Funds on Deposit at JPMorgan Chase*, No. 12-cv-7530, 2013 WL 5511348 at *1

(S.D.N.Y. Oct. 2, 2013) (government moved to dismiss seven months after bringing suit); *United States v. $13,275.21*, No. 5:06-CV-00171 (W.D. Tex. 2006), ECF No. 84 (government moved to dismiss 10 months after bringing suit); *United States v. Approximately $16,500.00 in U.S. Currency*, 113 F. Supp. 3d 776, 779 (M.D. Pa. 2015) (government moved to dismiss three months after bringing suit); *United States v. $107,702.66 in U.S. Currency*, No. 7:14-CV-295-F, 2016 WL 413093, at *3–4 (E.D.N.C. Feb. 2, 2016) (government moved to dismiss five months after bringing suit).

In fact, the approach in these cases is DOJ orthodoxy. The DOJ's Asset Forfeiture Policy Manual states that "[a]ttorneys' fees are not available to the claimant where the government… agrees to voluntary dismissal."[5] The Government's deliberate use of voluntary dismissals to avoid paying reasonable attorney fees and costs is not likely to stop without the intervention of this Court.

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[5] U.S. Dep't of Just., Asset Forfeiture Policy Manual 2025 at 11-1, https://www.justice.gov/usdojmedia/criminal/media/1140236/dl?inline.

CONCLUSION

For the foregoing reasons, as well as those advanced by Petitioner, *Amici Curiae* respectfully request that the Court grant the petition for a writ of certiorari.

Respectfully submitted,

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August 20, 2026

APPENDIX

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LIST OF AMICI CURIAE FORMER FEDERAL FORFEITURE PROSECUTORS

Andrew Adams served as an Assistant United States Attorney for the Southern District of New York from 2013 to 2023, including as Deputy Chief of the Money Laundering and Asset Forfeiture Unit (2017-2018), Co-Chief of Money Laundering and Transnational Criminal Enterprises (2018-2022), and Director, Office of Deputy Attorney General's Russia Sanctions Task Force ("KleptoCapture") (2022-2023).

Jeffrey Alberts served as an Assistant United States Attorney for the Southern District of New York from 2007 to 2013, including in the Asset Forfeiture Unit (2008-2010).

Evan T. Barr served as an Assistant United States Attorney for the Southern District of New York from 1995 to 2004, including as Chief of the Major Crimes Unit, and in the Asset Forfeiture Unit (1996-1998).

Brian D. Morris served as an Assistant United States Attorney for the Eastern District of New York from 2010 to 2024, including as Deputy Chief of Asset Forfeiture (2012-2021), Co-Chief of Asset Recovery (2021-2022), and Senior Litigation Counsel in Business and Securities Fraud (2022-2024).

Evan Weitz served as an Assistant United States Attorney for the Northern District of Georgia from 2005 to 2008, the Eastern District of New York from 2008 to 2011—including as Acting Deputy Chief of the Asset Forfeiture Unit—and the District of New Jersey from 2011 to 2014.