NO. _____

In the
Supreme Court of the United States

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

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari To the United States Court of Appeals For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In a civil forfeiture action, the government bears the burden of proving that the property it seeks to forfeit is connected to unlawful activity. *See* 18 U.S.C. § 983(c). Any claimant with a "colorable interest in the property" has standing to file a claim. *United States v. Seventeen Thousand Nine Hundred Dollars ($17,900.00) in U.S. Currency*, 859 F.3d 1085, 1090 (D.C. Cir. 2017). This standard is "very forgiving" to ensure that legitimate claimants can contest the forfeiture of their own property. *Id.* at 1089–90 (quotation marks omitted).

The question presented is:

Where a claimant asserts an ownership interest, does the claimant's standing at summary judgment require only some evidence of ownership, as six circuits hold, or also an explanation of how the claimant acquired ownership, as three circuits hold?

CORPORATE DISCLOSURE STATEMENT

Petitioner Battle Born Investments Company, LLC is owned by SJC Ventures Holdings, LLC and has no parent corporation. No publicly held corporation owns 10% or more of Battle Born Investments Company, LLC.

Petitioner First 100, LLC is owned by 1st One Hundred Holdings, LLC and has no parent corporation. No publicly held corporation owns 10% or more of First 100, LLC.

Petitioner 1st One Hundred Holdings, LLC is owned by dozens of members and has no parent corporation. No publicly held corporation owns 10% or more of 1st One Hundred Holdings, LLC.

RELATED PROCEEDINGS

There are no proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case under Supreme Court Rule 14.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

Petitioners Battle Born Investments Co., LLC, First 100 LLC, and 1st One Hundred Holdings LLC respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the court of appeals is unpublished and reproduced at App.1–7. The judgment of the district court is unpublished and reproduced at App.8–10, and the order of the district court is unpublished and reproduced at App.11–23.

JURISDICTION

The Ninth Circuit affirmed the judgment on August 18, 2023, App.7, and denied rehearing en banc on December 12, 2023, App.24–25. On March 11, 2024, Justice Kagan extended the time to file a petition for writ of certiorari to and including April 25, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant portions of the civil-forfeiture statute, 18 U.S.C. § 983, are reproduced in the Appendix at App.93–98.

PRELIMINARY STATEMENT

This petition concerns the "most valuable asset ever seized" through civil forfeiture: a bitcoin wallet now worth more than $4.4 billion. C.A. Excerpts of Record ("ER")-21. Petitioners claim ownership of that wallet and provided evidence of their ownership. Yet

the Ninth Circuit held that *nobody* can contest the forfeiture. Something has gone seriously wrong when a court allows the government to appropriate an asset worth over $4.6 billion without ever having to prove its entitlement to that property.

The Ninth Circuit, like many other courts, was led astray by the government's aggressive litigation of legitimate claimants' standing. In its zeal to avoid judicial scrutiny of its forfeiture claims, the government has repeatedly pressed a "problematic interpretation" of standing that "would require claimants to help prove the government's case against them." *United States v. $31,000.00 in U.S. Currency*, 872 F.3d 342, 353–54 (6th Cir. 2017).

In this case, Petitioners acquired an ownership interest in the 1HQ3 wallet from Raymond Ngan, whose ownership and control were evidenced both by Ngan's own representations and by a forensic examination of his electronic devices. To avoid any adversarial testing, the government moved to strike Petitioners' claims on the pleadings—but then convinced the Ninth Circuit to grant *summary judgment* based on a heightened standard requiring not just some evidence of ownership (which Petitioners provided), but also proof of how "Ngan would have come into ownership of" the wallet. App.5–6. Petitioners thus were deemed to lack standing because they supposedly didn't have enough evidence of ownership, but they were denied the opportunity to obtain more evidence because they supposedly lacked standing.

The government's efforts to deny claimants standing even when they provide some evidence of

ownership has entrenched a 6-3 circuit split. At least six circuits require at summary judgment only "an initial evidentiary showing" that the claimant has an ownership interest. *United States v. $148,840.00 in U.S. Currency*, 521 F.3d 1268, 1273 (10th Cir. 2008). In contrast, at least three circuits—including the Ninth Circuit below—add an additional step by requiring an explanation of how the claimant acquired ownership. These latter circuits "turn the burden of proof in forfeiture actions on its head" by effectively requiring claimants to prove lawful ownership merely to establish standing—*i.e.*, to prove their property is *unconnected* to unlawful activity, when it should be the government's burden to prove it is *connected* to such activity. *$31,000.00*, 872 F.3d at 353.

This case presents a rare and ideal opportunity for the Court to restore uniformity in this important area. This case illustrates the harmful consequences of imposing too high an evidentiary burden on claimants to establish standing. Courts should allow legitimate claimants to contest the government's right to keep their valuable property. Unless this Court intervenes, *nobody* will be allowed to contest the then-largest civil forfeiture on record.

STATEMENT OF THE CASE

A. Statutory Background

Civil asset forfeiture is "widespread and highly profitable" to the government and can lead to "egregious" government abuses. *Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (Thomas, J., respecting denial of certiorari). That is because it allows the government to seize valuable property "without any predeprivation

judicial process" and permanently keep that property through a civil proceeding against an inanimate object (the property itself). *Id.* at 847. Often, the government obtains forfeiture without ever having to prove it is entitled to keep the seized property. *See* Lisa Knepper et al., Inst. for Justice, Policing for Profit: The Abuse of Civil Asset Forfeiture ("Policing for Profit") 23–24 (3d ed. 2020), *available at* https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf.

Anyone with a "colorable interest in the . . . property" can file a claim in a civil forfeiture proceeding. *$148,840.00*, 521 F.3d at 1273; *see* 18 U.S.C. § 983(a)(2)(A). A claimant asserting an ownership interest can establish standing at summary judgment by providing "some evidence tending to support the existence of that ownership interest." *$148,400.00*, 521 F.3d at 1276. This standard is "very forgiving" so as to enable legitimate claimants to contest the government's entitlement to their property. *United States v. Seventeen Thousand Nine Hundred Dollars ($17,900.00) in U.S. Currency*, 859 F.3d 1085, 1089–91 (D.C. Cir. 2017) (quotation marks omitted).

On the merits, the government is ordinarily required to prove that the property is connected to unlawful activity. 18 U.S.C. § 983(c). "[I]f the government fails to do so, the property is not forfeited—regardless of whether or not the claimant turns out to be the actual owner of the property." *United States v. $557,933.89, More or Less, in U.S. Funds*, 287 F.3d 66, 77, 79 n.10 (2d Cir. 2002) (Sotomayor, J.). If the government satisfies its merits

burden, the burden shifts to the claimant to prove it is nevertheless entitled to the property as an "innocent owner." 18 U.S.C. § 983(d). But when the government defeats each claimant's standing, it can be awarded the property without ever having to prove anything—and citizens thereby lose a critical safeguard against overzealous forfeiture efforts.

Unsurprisingly, the government routinely challenges claimants' standing so as to avoid having to prove its entitlement to forfeit their property. *See* Stefan D. Cassella, Asset Forfeiture Law in the United States § 7-13(d) (2d ed. 2012) ("much of the litigation in civil forfeiture cases turns on the claimant's standing"). Courts often have been "[m]isled by the government's" tactics, *United States v. One Lincoln Navigator 1998*, 328 F.3d 1011, 1014 (8th Cir. 2003), including by its "problematic interpretation" of standing, *$31,000.00*, 872 F.3d at 353.

B. Factual Background

1. This forfeiture action concerns the so-called "1HQ3" wallet, which contains roughly 69,370 bitcoin and related cryptocurrency now worth over $4.4 billion. *See* App.2. According to the government's inadmissible hearsay theory, "Individual X" stole that bitcoin in 54 distinct transactions from wallets supposedly "controlled by" the Silk Road marketplace, and then transferred the bitcoin to the 1HQ3 wallet. ER-172. The government has never been required to prove these allegations, however, nor has it disclosed the identity of the mystery person who allegedly voluntarily forfeited his interest in an asset now worth $4.4 billion, nor has it alleged that that asset was ever used in any criminal activity. *See* ER-169–76.

2. Petitioners claim to own the 1HQ3 wallet as a consequence of innocently acquiring ownership.

Specifically, First 100 and 1st One Hundred Holdings claim ownership as "judgment creditors" who in March 2017 "obtained a $2,211,039,718.46 judgment against [Raymond Ngan]," App.3, for contractual breaches resulting in approximately $1 billion in lost profits (doubled for punitive damages), App.81. In May 2018, after Ngan filed for bankruptcy, Battle Born Investments purchased from the Chapter 7 bankruptcy trustee all of Ngan's property interests, whether disclosed or not, and "wherever located and by whomever held." ER-88; ER-99 (bankruptcy court approving "good faith" sale of all of Ngan's assets, whether disclosed or not); *see* 11 U.S.C. § 541(a).

There were several valuable assets that Petitioners later discovered Ngan had owned but not disclosed in his bankruptcy estate, including an $8 million bank account and 272 kilograms of Monatomic Ultra-Pure Electrolytic Copper Powder, a rare isotope of enormous value. App.81; ER-87–88. When ordered to produce all information stored on his laptops and cell phone, Ngan caused his associate to flee the country with those devices. App.91. To identify other undisclosed assets of Ngan's estate, Petitioners recovered those personal electronic devices in April 2019 through a writ of assistance and had an expert conduct a forensic examination. App.91.

Petitioners found on Ngan's laptop and cell phone substantial evidence that he owned the 1HQ3 wallet, including that, between 2017 and early 2019, Ngan (1) contacted multiple investors about selling large quantities of bitcoin, *see* ER-35–72; (2) sent one

investor a proposed contract for the sale of bitcoin, App.39; App.51–56, and sent an image of 1HQ3 when asked which wallet would fund the sale, App.40; App.57–64; and (3) secured that sale by setting up an escrow account, App.39; App.42–50, and drafting a purchase agreement, escrow agreement, and notice of conditional offer under which Ngan would not receive any funds unless he turned over the bitcoin, App.42–50; App.51–56; App.65–74.

Evidence from the forensic examination of Ngan's devices further indicated that (4) Ngan had "control over the 1HQ3 Wallet," App.77, and (5) when Ngan's associate fled the country with Ngan's personal electronic devices, he deleted 54 files from those devices, App.83–84, presumably to destroy evidence of Ngan's interest in the wallet.

C. Procedural History

1. The government subsequently filed this action, and Petitioners submitted verified claims that they are innocent owners who acquired ownership of the 1HQ3 wallet from Ngan. *See* ER-159–60; ER-163–67. While Petitioners suspect Ngan is, or is associated with, Individual X, they stated they need "additional information" to confirm that suspicion, ER-160; ER-166, because the government has never disclosed Individual X's identity.

Petitioners were not given the chance to discover further evidence in support of their claims. The local rules barred discovery until after entry of a case management order. *See* N.D. Cal. Civ. L.R. 16-7. Before that order could be entered, the government

immediately moved to strike Petitioners' claims for lack of standing. ER-110.

Because there had been no discovery or evidentiary hearing, the government could bring only "a motion for judgment on the pleadings." Fed. R. Civ. P. Supp. R. G(8)(c)(ii)(B). Nevertheless, the government improperly asked the district court to decide that motion based on a hearsay declaration by an IRS agent who had no firsthand knowledge of the facts. *See* App.26–36 (declaration); D. Ct. Dkt. No. 90 at 25 (motion to strike).

Petitioners opposed the motion, explaining they "ha[d] sufficiently pled their ownership interest in 1HQ3." D. Ct. Dkt. No. 98 at 17. In an abundance of caution, though, they also submitted sworn declarations and exhibits detailing the evidence of Ngan's prior ownership of the 1HQ3 wallet, *see* ER-34–113, while arguing they "would be entitled to discovery prior to any adverse decision" if the motion were *sua sponte* converted into a summary-judgment motion, D. Ct. Dkt. No. 98 at 21.

2. The district court granted the government's motion. App.12. Despite recognizing that Ngan's conduct was "a representation by him that he owned the 1HQ3 wallet," the district court held that Petitioners lacked standing because they had not "pleaded facts" indicating "how Ngan would have come into ownership of the Bitcoin in [the] 1HQ3 wallet, much less lawful ownership." App.22.

3. On appeal, the government conceded that the district court had "granted the government's motion to strike on the basis that [Petitioners] failed to properly

plead standing," C.A. Dkt. No. 29 at 32, and had not "convert[ed] [its] analysis to one of summary judgment," *id.* at 36–37. That should have ended the appeal: As the Ninth Circuit correctly held, Petitioners' "assertions" of ownership were "sufficient at the pleading stage." App.5.

Stunningly, though, the government went on to urge the Ninth Circuit to grant *summary judgment* based on the theory that Petitioners lacked "standing because they did not prove an ownership interest in the bitcoin in 1HQ3 by a preponderance of the evidence." C.A. Dkt. No. 29 at 45. The government thus pressed the Ninth Circuit to do what the district court had not done and convert the government's motion into a summary-judgment motion—even though no discovery had been taken nor any competent evidence proffered to satisfy the government's initial burden on summary judgment. The government also insisted that the court conflate Petitioners' merits burden with the "very forgiving" standard for establishing standing. *$17,900.00*, 859 F.3d at 1089 (quotation marks omitted).

Led astray by the government's unwarranted argument, the Ninth Circuit held that while Petitioners sufficiently pleaded ownership, they "failed to carry their burden to establish some evidence" of ownership on summary judgment. App.5. Petitioners' extensive evidence that Ngan owned the 1HQ3 wallet was not enough, the panel held, because Petitioners did not explain "how Ngan would have come into ownership" of the wallet or Ngan's "association with Individual X," App.6—which is irrelevant because the government introduced no

competent evidence that Individual X owned the wallet and, in any event, would be impossible because the government has never disclosed Individual X's identity. Other circuits would not require evidence connecting Ngan's "ownership interest" to Individual X, but the panel did so because "no authority in [that] Circuit" foreclosed that approach. App.7.

4. In October 2023, after the panel issued its ruling, Petitioners submitted a FOIA request to the U.S. Department of Justice's Executive Office for U.S. Attorneys, seeking the names of (1) Individual X, (2) "any person believed to have owned, possessed, or controlled" the 1HQ3 wallet, and (3) the individual who consented to forfeiture of the 1HQ3 wallet. *See* Compl. ¶¶ 12–13, *Battle Born Invs. Co. v. DOJ*, No. 1:24-cv-00067 (D.D.C. Jan. 8, 2024), ECF No. 1. When the government refused to provide that information, Petitioners filed a FOIA complaint. *See id.*, ¶ 21. The government still has not disclosed the requested information.

5. The Ninth Circuit meanwhile denied rehearing en banc. App.24. This timely petition followed.

REASONS FOR GRANTING THE PETITION

Certiorari is needed to ensure there is meaningful judicial scrutiny of the largest civil forfeiture ever: a bitcoin wallet worth over $4.4 billion. To avoid adversarial testing of its forfeiture claim, the government prompted the courts below to require Petitioners to satisfy an improperly heightened standard for establishing standing. As a result, the government stands to reap a $4.4 billion windfall

without ever having to prove it is actually entitled to keep that property.

In case after case, the government has aggressively pressed a problematic view of standing that bars legitimate claimants from contesting the forfeiture of their own property. As Justices Sotomayor and Gorsuch have recognized, the government's approach to standing is "mistaken," *United States v. $557,933.89, More or Less, in U.S. Funds*, 287 F.3d 66, 76 (2d Cir. 2002) (Sotomayor, J.), and "fundamental[ly] flaw[ed]," *United States v. $148,840.00 in U.S. Currency*, 521 F.3d 1268, 1274 (10th Cir. 2008) (Gorsuch, J., on panel). The Court should put a stop to this litigation tactic, and this petition presents a uniquely good vehicle for doing so.

Certiorari is further warranted because the decision below entrenches a 6-3 circuit split on what a claimant asserting an ownership interest must show to establish standing at summary judgment. All circuits agree that a claimant must demonstrate "a facially colorable interest in the res." *$148,840.00*, 521 F.3d at 1273. But whereas at least six circuits require only "an initial evidentiary showing" that the claimant *has* an ownership interest, *id.*, at least three circuits—including the Ninth Circuit below—further require claimants to *explain* how they obtained that ownership interest. These latter circuits "turn the burden of proof in forfeiture actions on its head" by effectively requiring claimants to prove the property was acquired lawfully, when it should be the government's burden to prove the property is the fruit of unlawful activity. *United States v. $31,000.00 in U.S. Currency*, 872 F.3d 342, 353 (6th Cir. 2017).

This petition presents a rare and ideal opportunity for the Court to restore uniformity in this important area. Courts should allow legitimate claimants to contest the government's entitlement to keep their property. Unless this Court intervenes, however, *nobody* will be allowed to contest whether the government is entitled to keep the largest civil forfeiture on record.

The Court should grant certiorari.

I. The Government Needs To Stop Avoiding Judicial Scrutiny Of Its Forfeiture Claims.

This case presents an immensely important question: whether the government can bar property owners from contesting the forfeiture of property when they provide some evidence of ownership. The Court should grant certiorari to put an end to this overzealous practice.

A. In a criminal forfeiture proceeding, the government must prove beyond a reasonable doubt both that the owner committed a crime *and* that its property was connected to that crime. Not so with civil forfeiture, which allows the government to permanently keep property for itself—often without any proof whatsoever. The government can "seize the property without any predeprivation judicial process." *Leonard v. Texas*, 137 S. Ct. 847, 847 (2017) (Thomas, J.). And it often permanently keeps that property based on nothing more than pleadings—not proof.

The government profits enormously from this anomalous system. Between 2000 and 2019, federal agencies received more than *$45.7 billion* from the forfeiture of property. Policing for Profit at 162. This

"highly profitable" system has made civil forfeitures "widespread" in recent decades. *Leonard*, 137 S. Ct. at 848 (Thomas, J.). Some agencies obtain over 98% of their forfeitures using the lax civil-forfeiture process. Policing for Profit at 24.

Given these profit incentives, law-enforcement decisions are "often governed not by justice, but by department wish lists." Note, *How Crime Pays: The Unconstitutionality of Modern Civil Asset Forfeiture as a Tool of Criminal Law Enforcement*, 131 Harv. L. Rev. 2387, 2392 (2018) (quotation marks omitted). At one point the Department of Justice's "marching orders" were, "Forfeit, forfeit, forfeit. Get money, get money, get money." Michael van den Berg, *Comment: Proposing a Transactional Approach to Civil Forfeiture Reform*, 163 U. Pa. L. Rev. 867, 907 (2015) (quotation marks omitted).

Unsurprisingly, this system "has led to egregious and well-chronicled abuses." *Leonard*, 137 S. Ct. at 848 (Thomas, J.). Examples of abuse "are easy to find." David Pimentel, *Civil Asset Forfeiture Abuses: Can State Legislation Solve the Problem?*, 25 Geo. Mason L. Rev. 173, 178 (2017). Time and again, "corrupting incentives" have led the government to (1) pursue "aggressive but marginal [forfeiture] claims," *United States v. Funds Held ex rel. Wetterer*, 210 F.3d 96, 110 (2d Cir. 2000); (2) "pressur[e] property owners into settling" so it can "tak[e] a portion of [their] property," Policing for Profit at 23 (quotation marks omitted); and even (3) use "[f]alse and [m]isleading [a]ffidavits . . . to maneuver . . . [c]ourt[s] into" forfeiting innocent owners' most valuable possessions, *United States v. Real Prop.*

Located at 110 Collier Drive, 793 F. Supp. 1048, 1051–52 (N.D. Ala. 1992).

B. This case provides a unique opportunity for the Court to put an end to one of the government's most problematic practices and to do so with "the most valuable asset ever seized" through civil forfeiture. ER-21.

1. The government routinely challenges standing to try to shortcut judicial scrutiny of its forfeiture proceedings. *See* Cassella, Asset Forfeiture Law in the United States § 7-13(d) ("much of the litigation in civil forfeiture cases turns on the claimant's standing"). The reason why is obvious: The government prefers to have any adversarial testing come from "an inanimate object" rather than a legitimate claimant with a stake in the outcome. *$17,900.00*, 859 F.3d at 1091. To avoid having to prove its case, the government consistently pushes courts to shut out legitimate claimants for lack of standing.

In many cases, appellate courts have called out the government for taking overzealous steps to avoid judicial scrutiny of its forfeiture claims. In one case, the district court was "[m]isled by the government[ ]" to "resolve[ ] disputed issues of fact, including credibility issues" at summary judgment. *United States v. One Lincoln Navigator 1998*, 328 F.3d 1011, 1014 (8th Cir. 2003). In another, the government hoodwinked the district court to adopt a "problematic interpretation" of standing that "would require claimants to help prove the government's case against them." *United States v. $31,000.00 in U.S. Currency*, 872 F.3d 342, 353–54 (6th Cir. 2017); *see id.* at 352 (rebuking government's "sirens' song" because it

"rest[ed] on flawed assumptions"). In yet another, the government "raised an eyebrow" by insisting a claim must be struck as untimely even though the government did not "hold[ ] itself to the scrupulous punctuality that it demand[ed] of [that] *pro se* litigant." *United States v. Starlin*, 76 F.4th 92, 98 & n.3 (2d Cir. 2023).

2. This case is yet another example of the government's zeal for profits gone awry. One might hope the government would welcome transparency and adversarial testing when permanently taking $4.4 billion of someone's property. Instead, the government has disputed Petitioners' standing at every step even though their ownership interest in the 1HQ3 wallet is indisputably innocent—acquired as it was through Ngan's bankruptcy estate without any knowledge of how Ngan had acquired it.

Before the district court, the government immediately moved to strike Petitioners' claim for lack of standing before they could take any discovery. Though allowed to bring only "a motion for judgment on the pleadings," Fed. R. Civ. P. Supp. R. G(8)(c)(ii)(B), the government improperly asked that court to rely on *additional* "facts set forth herein" from a declaration by an IRS agent who had no personal knowledge and merely relayed the government's hearsay-based theory about how the bitcoin ended up in the 1HQ3 wallet. D. Ct. Dkt. No. 90 at 25; *see* App.26–36 (declaration). That misled the district court into erroneously holding that Petitioners lacked standing for not "plead[ing] facts" indicating how the previous owner "Ngan would have come into ownership of the Bitcoin in 1HQ3." App.22.

The government was even more brazen on appeal. Despite conceding that the district court had ruled only on the "plead[ings]," C.A. Dkt. 29 at 32, and had not "convert[ed] [its] analysis to one of summary judgment," *id.* at 36–37, the government urged the Ninth Circuit to convert its motion into one for summary judgment, *id.* at 45. The government made this stunning request even though Petitioners had been allowed no discovery and the government itself had offered no admissible evidence to satisfy its initial summary-judgment burden. Even worse, the government pressed the court of appeals to hold Petitioners to their *merits* burden and deny them "standing because they did not prove an ownership interest in the bitcoin in 1HQ3 by a preponderance of the evidence." *Id.*

The government's aggressive tactics worked. The Ninth Circuit converted the motion into one "on summary judgment," then held that although Petitioners had sufficiently pleaded standing by alleging Ngan's prior ownership of the 1HQ3 wallet, they had not sufficiently proven it because they failed to explain "how Ngan would have come into ownership" of the wallet. App.5–6.

The government's gamesmanship thus led to an obvious Catch-22: Petitioners lack standing because they don't have enough evidence of ownership, yet they can't obtain more evidence through discovery because they lack standing. App.6. This result is fundamentally unfair and at odds with basic principles of justice. The Court should grant certiorari to prevent the government from depriving legitimate

claimants of the opportunity to dispute the permanent forfeiture of their property.

II. The Decision Below Entrenches A 6-3 Circuit Split On The Question Presented.

All circuits agree that, to have standing at summary judgment, a claimant must establish "a facially colorable interest in the res such that he would be injured if the property were forfeited." *$148,840.00*, 521 F.3d at 1273. The circuits are sharply and intractably split, however, on the standard for establishing an ownership interest.

At least six circuits require only "an initial evidentiary showing" of the *fact* that the claimant owns the property. *Id.* In contrast, at least three circuits—including the Ninth Circuit below—additionally require an *explanation* of how the claimant acquired that ownership interest. The Ninth Circuit tacitly acknowledged this split in noting that "no authority in [that] Circuit" foreclosed imposing the latter requirement. App.7. Certiorari is urgently needed to restore uniformity to this important area of the law.

A. Six Circuits Do Not Require Claimants To Explain Their Ownership Interest.

At least six circuits do not require claimants to explain their ownership interest to establish standing at summary judgment. Rather, these circuits require only "an allegation of ownership and some evidence of ownership"—such as possession, title plus indicia of control, or a financial stake. *$148,840.00*, 521 F.3d at 1275 (quotation marks omitted).

The Second Circuit requires only "[a]n allegation of ownership and some evidence of ownership" to establish standing at summary judgment. *United States v. Cambio Exacto, S.A.*, 166 F.3d 522, 527 (2d Cir. 1999) (quotation marks omitted). While that court requires additional "indicia of reliability or substance" on "a naked claim of *possession*," *Mercado v. U.S. Customs Serv.*, 873 F.2d 641, 645 (2d Cir. 1989) (emphasis added), no explanation is required on an *ownership* claim. As then-Judge Sotomayor has explained, "the mere fact that [a claimant] had custody of [seized] money orders" is not enough to establish standing. *$557,933.89*, 287 F.3d at 79 n.10 (quotation marks omitted). But that evidence plus a claimant's "verified claim that he was the *owner* of the funds" is enough, *id.* (emphasis added)—even where the claimant has "assert[ed] the Fifth Amendment" to avoid explaining that ownership interest, *id.* at 73.

The Sixth Circuit applies the same rule, sharply distinguishing between the evidentiary standards for ownership and possession claims. *See $31,000.00*, 872 F.3d at 350 ("Article III standing may require some contextual information for a possessory interest, but even that is distinct from the assertion of an ownership interest."). In that circuit, "some explanation . . . regarding the claimant's relationship to the seized property" is required *only* where "mere physical possession of property" is claimed. *United States v. $515,060.42 in U.S. Currency*, 152 F.3d 491, 498 (6th Cir. 1998). Accordingly, the Sixth Circuit has found standing based on a claimant's unexplained ownership interest because the property was seized "from the trunk of [his] rental car," which indicated "he exercised some form of control over it." *United*

States v. $774,830.00 in U.S. Currency, 2023 WL 1961225, at *4 (6th Cir. Feb. 13, 2023).

The Seventh Circuit similarly requires only "an assertion of ownership combined with some evidence of ownership." *United States v. Funds in Amount of $239,400*, 795 F.3d 639, 642–43 (7th Cir. 2015). Requiring an explanation of ownership, that court has held, would "effectively shift the burden of proof from the government back to the claimant" to prove the "property is not subject to forfeiture." *Id.* at 646. The Seventh Circuit thus has upheld standing despite the claimant's "refus[al] to explain his ownership interest." *United States v. $304,980.00 in U.S. Currency*, 732 F.3d 812, 818 (7th Cir. 2013) ("While . . . the [claimants] have not proved their ownership . . . , they do *claim* such ownership, and the money was found in [their] possession. This is sufficient to give them a colorable claim to the money.").

The Eighth Circuit requires only evidence of "possession, control, title, [or] financial stake" to establish standing based on an ownership interest. *United States v. $11,071,188.64 in U.S. Currency*, 825 F.3d 365, 371 (8th Cir. 2016) (quotation marks omitted). Unlike in other circuits, even an unexplained "certificate of title"—standing alone, without any indicia of "'dominion or control'"—"establishes a prima facie case of ownership" in the Eighth Circuit. *One Lincoln Navigator 1998*, 328 F.3d at 1013–14 (quoting 18 U.S.C. § 983(d)(6)). Thus, no explanation of an ownership interest is required. *Cf. United States v. $579,475.00 in U.S. Currency*, 917 F.3d 1047, 1049 (8th Cir. 2019) (en banc) (no "information about how [the claimant] obtained the

funds at issue" is needed to establish statutory standing).

The Tenth Circuit also does not require a claimant to "expla[in] . . . how he came into possession of the [property]" in an ownership case. *$148,840.00*, 521 F.3d at 1274. That court requires such "explanatory evidence" solely if "an individual claims only a possessory interest." *Id.* at 1274–75. Accordingly, even where a claimant does not "explain how he came into ownership," he has standing at summary judgment if there is "some evidence tending to support the existence of that ownership interest." *Id.* at 1276–77; *see id.* at 1277 (claimed owner had standing where currency was found hidden in cooler inside his rental car).

The D.C. Circuit agrees that "an assertion of ownership combined with some evidence of ownership is sufficient to establish standing" at summary judgment. *$17,900.00*, 859 F.3d at 1090 (quotation marks omitted). "[E]specially when cash is at issue," that court has reasoned, it would be "unfair[ ] and unrealistic" to "requir[e] more than 'some evidence' of ownership" such as "pro[of] that [the] cash is legitimate." *Id.* at 1090–91. While the claimants in *$17,900.00* happened to "explain[ ] how they came to own the money" at issue, that was not relevant to the court's holding. *See id.* at 1094. What mattered was that they had "submitt[ed] extensive sworn testimony as evidence of their claim." *Id.* at 1092. The D.C. Circuit explained that requiring evidence beyond the mere fact of ownership would "run[ ] the danger of impermissibly shifting the merits burden to the claimant—tantamount to, say, making a claimant

prove that their property is *unconnected* to unlawful activity." *Id.* at 1091.

In addition to the above circuits, the First Circuit likewise requires only "an allegation of ownership and some evidence of ownership" to establish standing based on an ownership interest. *United States v. U.S. Currency, $81,000.00*, 189 F.3d 28, 35 (1st Cir. 1999). This test for standing is "very forgiving" and can be satisfied even where the claimant "is not a statutory 'owner' of the [seized] funds," *United States v. Union Bank for Sav. & Inv. (Jordan)*, 487 F.3d 8, 22 (1st Cir. 2007) (quotation marks omitted), or the claimant's original asserted ownership interest is "later held to be an improper basis for her claim," *United States v. One Parcel of Real Prop. with Bldgs., Appurtenances & Improvements Known as 116 Emerson St.*, 942 F.2d 74, 79 (1st Cir. 1991). Accordingly, the First Circuit has not required claimants to explain their ownership interest.

Had the government filed this forfeiture action in any of the above circuits, Petitioners would not have been required to explain their ownership of the 1HQ3 wallet to prevail on the government's motion to dismiss and instead would have been allowed to pursue discovery and challenge the government's evidence. It is untenable that the fortuity of where the government has filed suit can dictate whether or not a claimant has the right to contest a $4.4 billion forfeiture.

B. Three Circuits Require Claimants To Explain Their Ownership Interest.

At least three circuits—including the Ninth Circuit below—require claimants to explain their asserted ownership interest to establish standing at summary judgment.

The Fourth Circuit has held that "a claimant alleging an ownership interest in seized property must, at a minimum, present some evidence regarding how the claimant came to possess the property." *United States v. Phillips*, 883 F.3d 399, 403 (4th Cir. 2018) (quotation marks omitted). In *Phillips*, the claimant submitted at summary judgment some evidence of ownership—including a verified claim stating that the $200,000 "found in [his brother's] storage unit belonged to him," and a sworn affidavit from his brother corroborating that the claimant had, in fact, "stor[ed] [his] life savings of $200,000 in the storage unit." *Id.* at 402. But because the claimant "presented no objective evidence" of how "he accumulated $200,000," and his expenses suggested "he could not" save that much, the court held he lacked standing. *Id.* at 405–06.

The Fifth Circuit requires "some evidence of [an] ownership interest in order to establish standing" at summary judgment. *United States v. $38,570 U.S. Currency*, 950 F.2d 1108, 1112 (5th Cir. 1992) (emphasis removed). But because that case included evidence of the claimant's "involvement with the currency" at issue, *id.*, that court has since consistently required claimants to *explain* their ownership interest, as well. *See*, *e.g.*, *United States v. Real Prop. Located & Situated at 404 W. Milton St.*,

650 F. App'x 233, 235 (5th Cir. 2016) (per curiam) ("While the fact that property was seized from a claimant is prima facie evidence of [the claimant's] entitlement to it, the claimant must, nevertheless, come forward with additional evidence of ownership *if* there are serious reasons to doubt [their] right to the property.") (quoting *United States v. $8,720.00*, 264 F.3d 1140, 2001 WL 822496, at *1 (5th Cir. 2001) (per curiam)); *United States v. One 1998 Mercury Sable Vin: 1MEMF5OU4WA621967*, 122 F. App'x 760, 763–64 (5th Cir. 2004) (per curiam) (requiring claimant to "present sufficient evidence to establish a facially colorable claim that he, not the [criminal] offenses [at issue], was the source of the funds").

The same is true in the Ninth Circuit. In addition to requiring "some evidence of ownership," *United States v. $133,420.00 in U.S. Currency*, 672 F.3d 629, 639 (9th Cir. 2012) (quotation marks omitted), that court requires some explanation of the claimant's "ownership interest," App.7. Petitioners submitted more than some evidence that they acquired ownership of the 1HQ3 wallet from Ngan. *Infra* III.A. Yet the Ninth Circuit held below that Petitioners lacked standing because they did not explain "how Ngan would have come into ownership of the bitcoin in 1HQ3" or his "association with Individual X," the anonymous person who allegedly stole the bitcoin. App.6. By denying rehearing en banc, the entire Ninth Circuit blessed this approach and declined to revisit the issue.

Without squarely deciding the issue, the Third Circuit has reached the same result by holding that a claimant asserting an ownership interest must "rebut

the government's evidence that [someone else] actually owned and controlled" the property at issue. *United States v. Contents of Account Nos. 3034504504 & 144-07143*, 971 F.2d 974, 986 (3d Cir. 1992). There, the claimant corporation presented some evidence of ownership: It "had legal title to the seized account" and through its legal representative had "exercised dominion and control over the money in [those] accounts." *Id.* at 977, 985–86. But because the company failed to provide "evidence of legitimate business dealings"—*i.e.*, "transactions with currency traders other than those . . . linked to the laundering of drug proceeds"—the Third Circuit held it lacked standing to challenge the forfeiture of its own accounts. *Id.*

The government may be tempted to argue that the Third Circuit's decision is *sui generis* in that the claimant's legal representative was supposedly its alter-ego and the "true owner of the accounts." *Account Nos.*, 971 F.2d at 975. But the Third Circuit expressly stated that the government's alter-ego theory of forfeiture "does not change our analysis." *Id.* at 986. Accordingly, claimants asserting an ownership interest in that circuit must "rebut the government's evidence" on the merits simply to establish standing. *Id.*

This 6-3 circuit split is deep and ripe and will only persist and deepen absent this Court's intervention. It violates basic principles of justice that, based solely on where a forfeiture action is filed, a different evidentiary burden may apply to innocent owners seeking to challenge the forfeiture of their own

property. Certiorari is therefore needed to restore uniformity to this important area of the law.

III. The Decision Below Is Wrong.

Certiorari is warranted for another reason: Because Petitioners provided "some evidence" that they owned the 1HQ3 wallet, they should be allowed to contest the government's seizure of that $4.4 billion cryptocurrency wallet—or else *nobody* will.

A. Petitioners Established A Colorable Interest In The 1HQ3 Wallet.

Despite receiving no discovery, Petitioners established that they have a concrete stake in this action that gives them standing to challenge the government's authority to forfeit the 1HQ3 wallet.

Petitioners indisputably acquired any ownership interest held by Ngan. To show Ngan had a colorable ownership interest, Petitioners submitted evidence that, between 2017 and early 2019, Ngan (1) contacted multiple investors about selling enormous quantities of bitcoin, *see* ER-35–72; (2) sent one investor a proposed contract for a bitcoin sale, App.39; App.51–56, and sent an image of 1HQ3 when asked which wallet would fund the sale, App.40; App.57–64; and (3) secured that sale by setting up an escrow account, App.39; App.42–50, and by drafting various agreements under which Ngan would not be paid if "the [bitcoin] are not delivered within 24 hours," App.54, or the buyer does not "confirm . . . receipt of the [bitcoin]," App.44. These agreements would have been pointless had Ngan not actually had the bitcoin to sell.

In addition to that evidence, a forensic examination of Ngan's electronic devices showed that (4) Ngan's business correspondence "indicated his control over the 1HQ3 Wallet," App.77, and (5) Ngan's associate deleted 54 files from Ngan's devices, App.83–84—presumably to conceal the 54 bitcoin transfers from Silk Road that the government alleges ended up in the 1HQ3 wallet, *see* ER-172.

It may turn out that Petitioners are not ultimately entitled to the 1HQ3 wallet. But especially when all factual inferences are drawn in their favor, Petitioners have demonstrated a "colorable interest" that gives them standing to contest the government's otherwise unopposed forfeiture.

B. The Ninth Circuit Was Wrong To Require Petitioners To Explain That Interest.

The Ninth Circuit denied Petitioners standing because they failed to explain their "ownership interest"—*i.e.*, "how Ngan would have come into ownership of the bitcoin in 1HQ3" or his "association with Individual X." App.6–7. That decision is grievously wrong and operates to shut out legitimate claimants from contesting whether the government can permanently take their property.

1. The "fundamental flaw" in requiring claimants to explain their ownership interest is that it overlooks "an important difference, for standing purposes," between possessory and ownership interests. *$148,840.00*, 521 F.3d at 1274 (Gorsuch, J., on panel).

"[W]here an individual claims only a possessory interest," the claimant must "support the legitimacy of

the *possessory interest* alleged." *Id.* at 1275–76 (citing authorities). This "distinct evidentiary burden exists" because someone from whom property is seized "cannot be said to suffer . . . injury in fact" from any forfeiture unless they have "a legally cognizable possessory interest in the property." *Id.* at 1276; *accord $515,060.42*, 152 F.3d at 498 ("a courier carrying cash from an unknown owner to an unknown recipient, resolute in his determination to give no explanation except that he was asked to transport cash . . . must be prepared to demonstrate that he has a lawful possessory interest.") (quotation marks omitted). What distinguishes a lawful possessor or bailee from "a mere custodian" or unknowing transporter is an explanation of the claimant's relationship to the seized property. *Cambio Exacto*, 166 F.3d at 527–28. Absent such an explanation, therefore, there is an "absence of demonstrated injury" and no standing. *Id.* at 528.

The same is not true in *ownership* cases, however. Where an individual presents evidence of a "facially colorable" ownership interest, no "explanatory evidence" is needed to establish that claimant's stake in the outcome of the forfeiture action. *$148,840.00*, 521 F.3d at 1273–75. That is because evidence of that ownership interest—such as title plus control, or a financial stake—itself establishes a specific, concrete stake in the forfeiture. "It may well be that forfeiture ultimately will prove appropriate, but . . . it [is] obvious that such a claimant risks injury within the meaning of Article III and thus may have his day in court." *Id.* at 1276.

2. The decision below also "conflate[s] the constitutional standing inquiry with the merits determination that comes later." *$17,900.00*, 859 F.3d at 1091 (quotation marks omitted). Standing in forfeiture actions is "truly threshold only—to ensure that the government is put to its proof" by someone with a stake in the outcome. *$557,933.89*, 287 F.3d at 79 (Sotomayor, J.). Because only a "colorable interest" is needed to have a concrete stake in a forfeiture action, "a claimant need not definitively prove the existence of that interest" to have standing. *$148,840.00*, 521 F.3d at 1273 (Gorsuch, J. on panel). Thus, no explanation of that ownership interest is required.

An explanation of ownership often is not even relevant to the *merits* of a forfeiture action. That is because "the claimant's ownership" is not "at issue in determining the primary question of the government's right to forfeiture," *i.e.,* whether the property was involved in illegal activity. *$557,933.89*, 287 F.3d at 77; *see* 18 U.S.C. § 983(c). If the government fails to satisfy its burden, "the property is not forfeited—regardless of whether or not the claimant turns out to be the actual owner of the property." *$557,933.89*, 287 F.3d at 77. Accordingly, proof of actual ownership is relevant only in cases where the government satisfies its merits burden and the claimant is called upon to prove an innocent-owner defense. *See id.*

The rule applied by the Ninth Circuit, in short, "prevent[s] every person unwilling to completely explain his relationship to property that he claims to *own*," and that he has provided evidence of owning,

"from merely *contesting* [its] forfeiture." *$148,840.00*, 521 F.3d at 1276. That cannot be the law.

3. In fact, the decision below "runs the danger of impermissibly shifting the merits burden to the claimant." *$17,900.00*, 859 F.3d at 1091. Requiring claimants to explain how they acquired ownership "effectively shift[s] the burden of proof from the government back to the claimant" to prove the "property is not subject to forfeiture." *United States v. Funds in Amount of $239,400*, 795 F.3d 639, 646 (7th Cir. 2015). It is tantamount to requiring that a claimant prove legitimate ownership—*i.e.*, "that her property is *unconnected* to unlawful activity," when it is the government's burden to prove it is *connected* to unlawful activity. *$17,900.00*, 859 F.3d at 1091. That burden-shifting is especially inappropriate given "the limited opportunity claimants often have to develop the record" before the government moves to strike their claim. *Id.*

This case is a good illustration. The government speculates that the 1HQ3 bitcoin was stolen from Silk Road. But it has never offered admissible evidence to support that theory. By requiring Petitioners to show "how Ngan would have come into ownership of [that] bitcoin," App.6, the Ninth Circuit effectively required Petitioners to disprove the government's forfeiture theory on the merits—before they could enter the case and take discovery. That puts the cart before the horse and excludes legitimate claimants, like Petitioners, who plausibly assert a concrete stake in the outcome of the forfeiture.

IV. There Are No Vehicle Problems.

This case is an ideal vehicle for resolving the question presented. Appellate courts seldom have the chance to address the government's questionable litigation positions in civil-forfeiture cases. Few claimants can afford the costs of protracted litigation, and those costs can quickly dwarf the value of the seized property. This case thus presents a rare opportunity to address the government's tactics in seeking to avoid judicial scrutiny of its forfeitures.

This case also vividly illustrates the problems with imposing too high an evidentiary burden on claimants on the threshold issue of standing. Because the government moved to strike Petitioners' claims immediately, no discovery was allowed. It was profoundly unfair to require Petitioners to definitively prove their ownership of a cryptocurrency wallet when they had had only a "limited opportunity . . . to develop the record." *$17,900.00*, 859 F.3d at 1091. Indeed, the burden imposed by the Ninth Circuit was impossible: Petitioners cannot be expected to explain Ngan's "association with Individual X," App.6, when the government has refused to disclose the identity of Individual X.

The Court can decide the question presented with the benefit of extensive briefing about that issue. Before the district court, the parties vigorously disputed whether there was sufficient evidence to establish Petitioners' standing. *See* D. Ct. Dkt. No. 90 at 18–21 (motion to strike); D. Ct. Dkt. No. 98 at 14–20 (opposition); D. Ct. Dkt. No. 99 at 6–12 (reply). The district court surveyed Petitioners' claims and denied standing because they did not explain "how Ngan

would have come into ownership of the Bitcoin in 1HQ3 wallet." App.22. The sufficiency of Petitioners' evidentiary showing also was the primary issue on appeal. *See* C.A. Dkt. No. 22-1 at 61–64 (opening brief); C.A. Dkt. No. 29 at 37–45 (answering brief); C.A. Dkt. No. 39 at 8–20 (reply). And it was the central focus of the decision below, which held that Petitioners "failed to carry their burden" because they "offer[ed] nothing to suggest how Ngan would have come into ownership of the bitcoin in 1HQ3." *See* App.3–7.

This case is therefore an excellent vehicle for considering the important question presented. The Court should grant certiorari.

CONCLUSION

The Court should grant the petition for writ of certiorari.

Respectfully submitted,

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