No. 16-

IN THE

Supreme Court of the United States

ROY LANGBORD, DAVID LANGBORD, JOAN LANGBORD,

Petitioners,

—v.—

UNITED STATES DEPARTMENT OF THE TREASURY, UNITED STATES BUREAU OF THE MINT, SECRETARY OF THE UNITED STATES DEPARTMENT OF THE TREASURY, ACTING GENERAL COUNSEL OF THE UNITED STATES DEPARTMENT OF THE TREASURY, DIRECTOR OF THE UNITED STATES MINT, CHIEF COUNSEL UNITED STATES MINT, DEPUTY DIRECTOR OF THE UNITED STATES MINT, JOHN DOE NOS. 1 TO 10 "John Doe" Being Fictional First and Last Names, UNITED STATES OF AMERICA,

Respondents.

UNITED STATES OF AMERICA,

Third Party Plaintiff,

—v.—

TEN 1933 DOUBLE EAGLE GOLD PIECES,
ROY LANGBORD, DAVID LANGBORD, JOAN LANGBORD,

Third Party Defendants,

ROY LANGBORD, DAVID LANGBORD, JOAN LANGBORD,

Petitioners.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, when the government seizes property from private citizens (in this case illegally, in violation of their constitutional rights) and intends to retain it indefinitely, it can avoid the procedures, deadlines and penalties set forth in the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA") by merely asserting that the property was stolen from the government and declaring that it has no intention of seeking forfeiture?

2. Whether the government can avoid CAFRA's protections by strategically waiting for years and then filing a declaratory judgment claim that seeks essentially the same relief as is barred by CAFRA?

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PETITION FOR A WRIT OF CERTIOARI

When Congress passed the Civil Asset Forfeiture Reform Act in 2000 by wide bipartisan majorities, it was hailed as the most significant overhaul of the civil forfeiture laws since 1789.[1] Among other important reforms aimed at curbing government abuse of the forfeiture process, CAFRA shifted to the government the burden of proving forfeitability by a preponderance of the evidence (previously the burden was on the claimant to prove the property was not forfeitable) and established procedures, deadlines and penalties to ensure that disputes over seized property were promptly and fairly resolved through the legal process.

Every year, the Department of Justice brings hundreds of prosecutions under 18 U.S.C. § 641, related to theft, embezzlement and conversion of government property – from money and merchandise alleged to be stolen from government facilities to funds, checks and benefits alleged to be stolen from government agencies and programs.[2] The decision below, of a divided Third Circuit sitting *en*

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[1] Stefan D. Cassella, *The Civil Asset Forfeiture Reform Act of 2000: Expanded Government Forfeiture Authority and Strict Deadlines Imposed on All Parties*, 27 J. Legis. 97 (2001).

[2] *See* United States Attorneys' Annual Statistical Report, Fiscal Year 2015, at 14 (listing 463 filed cases involving theft of government property), available at https://www.justice.gov/usao/resources/annual-statistical-reports. For some recent examples of such prosecutions, *see United States v. Lee,* 833 F.3d 56 (2d Cir. 2016) (theft of plastic pallets from U.S. Postal Service); *United States v. Dalalli,* 651 Fed. Appx. 389 (6th Cir. 2016) (theft of welfare benefits); *United States v. Feaster,* 798 F.3d 1374 (11th Cir. 2015) (theft by use of a government credit card);

banc, renders several of CAFRA's central reforms and protections inapplicable in this large universe of cases – criminal and civil – in which the government seizes what it claims to be stolen, embezzled or converted government property.

According to the *en banc* majority, in any such case where the government simply asserts it owns the allegedly stolen property, so long as the government notifies the person from whom the property was seized that it does not intend to commence forfeiture proceedings to retain that property, many of CAFRA's key protections are rendered inapplicable. Even if the person from whom the property was seized contests the government's assertion that it was stolen, that person cannot avail herself of fundamental protections at the heart of CAFRA's reforms –

United States v. Wilson, 788 F.3d 1298 (11th Cir. 2015) (theft of Treasury checks obtained through fraudulently filed tax returns); *United States v. Loving,* 588 Fed. Appx. 494 (7th Cir. 2015) (theft of funds belonging to the United States); *United States v. Joseph,* 743 F.3d 1350 (11th Cir. 2014) (theft of fraudulently obtained tax refunds); *United States v. Lagrone*, 743 F.3d 122 (5th Cir. 2014) (theft of U.S. postal stamps); *United States v. Sussman,* 709 F.3d 155 (3d Cir. 2013) (theft of gold coins from safe deposit box frozen by court order); *United States v. Bole,* 542 Fed. Appx. 665 (9th Cir. 2013) (theft of social security benefits); *United States v. Rosario,* No. CR 16-148, 2016 WL 4379299 (E.D. Pa. Aug. 17, 2016) (theft by fraudulently obtained tax refund checks); *United States v. Mann,* 140 F. Supp. 3d 513 (E.D.N.C. 2015) (theft of equipment from Navy bombing range); *United States v. Paup*, No. 15 cr-00233-PAB, 2015 WL 5139301 (D. Co. Sept. 2, 2015) (theft of merchandise from U.S. military base store); *United States v. Ellis,* No. CR 14-00213, 2015 WL 248362 (W.D. La. Jan. 20, 2015) (theft of Social Security payments); *United States v. Morris,* No. 4:10-cr-00090-SWW-1, 2014 WL 2560617 (E.D. Ark. June 6, 2014) (theft of funds from Veterans Administration and Social Security Administration); *United States v. Estrada,* No. 2:13cr152, 2014 WL 2320858 (E.D. Va. May 29, 2014) (embezzlement of cash from Military Sealift Command Vessel safe); *United States v. Crary,* No. CR 13-35-M-DLC, 2013 WL 6054607 (D. Mont. Nov. 15, 2013) (theft of SSI benefits).

including the right to force the government to promptly prove its entitlement by a preponderance of evidence in a court of law, and the right to have the government precluded from seeking to forfeit the property if it fails to follow CAFRA's strict requirements and timelines. As applied by the *en banc* majority, the purposes and principles of this groundbreaking law are thus turned upside down, granting the government virtually unfettered powers to delay, harass and burden the rare citizens who attempt to fight back against government overreaching.

This dispute began over a decade ago because Petitioners Roy Langbord, David Langbord and Joan Langbord (the "Langbords") did the right thing. They voluntarily came forward and disclosed to the government that they had ten United States 1933 Double Eagle $20 gold coins, the most valuable and now famous coins in U.S. history. In doing so, the Langbords trusted that they would be treated fairly. Unfortunately, the government instead violated their constitutional rights and confiscated the Coins without affording the Langbords any process whatsoever.

The Langbords respectfully seek a writ of certiorari to appeal the divided judgment of the United States Court of Appeals for the Third Circuit to ensure that CAFRA's protections are not eliminated in a broad swath of cases (including their case) and to make clear that in contested situations: (1) the government may not confiscate and retain property based on nothing more than its unilateral claim that

it is the rightful owner, and (2) if it does so, it must suffer the penalty that Congress thought necessary and appropriate to deter government overreaching – i.e., loss of its ability to seek forfeiture of that property.

OPINIONS BELOW

The opinion of the Third Circuit Court of Appeals *en banc,* App. 1-82, is reported at 832 F.3d 170 (3d Cir. 2016). The Order of the Court of Appeals granting rehearing is unreported, at App. 239-240. The relevant District Court opinions being appealed are reported at 645 F. Supp. 2d 381 (E.D. Pa. 2009) (App.195-234), 749 F. Supp. 2d 268 (E.D. Pa. 2010) (App. 166-192), 888 F. Supp. 2d 606 (E.D. Pa. 2012) (App. 85-154), and unreported at App. 157-165. The unreported District Court orders and judgments appealed are at App. 155-156, 193-194, and 235-237.[3]

JURISDICTION

The judgment of the Court of Appeals, *en banc*, was entered on August 1, 2016. This Court's jurisdiction rests on 28 U.S.C. § 1254(a).

STATUTES INVOLVED

18 U.S.C. § 983(a)(1)(A)(i) provides:

> Except as provided in clauses (ii) through (v), in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the

[3] Citations to the Appendix being filed with this petition are "App. ___." Citations to the Joint Appendix filed in the Third Circuit are "JA ___."

Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.

18 U.S.C. § 983(a)(2)(A) provides:

> Any person claiming property seized in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute may file a claim with the appropriate official after the seizure.

18 U.S.C. § 983(a)(3)(A) provides:

> Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

18 U.S.C. § 983(a)(3)(B) provides:

> If the Government does not—
>
> > (i) file a complaint for forfeiture or return the property, in accordance with subparagraph (A); or
> >
> > (ii) before the time for filing a complaint has expired—
> >
> > > (I) obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and
> > >
> > > (II) take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute,
>
> the Government shall promptly release the property pursuant to regulations promulgated by the Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.

STATEMENT OF THE CASE

A. Historical Background

The history of this case begins in March and April 1933, in the opening days of Franklin Roosevelt's presidency, when government officials issued a series of directives restricting the production and circulation of gold coins. (JA3113-25; JA3137-49; JA3231). Notwithstanding these directives, between March and May 1933, the U.S. Mint in Philadelphia produced 445,500 1933 Double Eagle $20 gold coins. (JA2222).

The government maintained from the start of the litigation that the Mint was forbidden to release any gold coins to the public within hours of President Roosevelt's inauguration in early March,1933. (Docket Entry No. 8 at 8). However, at the trial in this case in federal district court in Philadelphia in 2010, the government conceded that for several weeks after President Roosevelt took office the Mint was authorized to release gold coins in exchange for gold deposits. (JA2303). Mint records reveal that hundreds of gold coins were in fact released during this "window of opportunity." Those records do not state that any 1933 Double Eagles were released, but the evidence at trial showed that those records are incomplete because they fail to record the release of other gold coins to the public. (JA2335-36 & JA2338-40; JA2406; JA5348-50; JA5555-56). Mint records also indicate that, during this period, the Philadelphia Mint cashier kept

scores of newly minted 1933 Double Eagles in an open bag in his vault. (JA2356-57).

By 1937, all gold coins in the Mint's possession — including 1933 Double Eagles — were supposed to have been melted. (JA2196). However, nearly two dozen 1933 Double Eagle gold coins have since turned up in the hands of private collectors and citizens – including the ten at issue in this case.

For many years after 1937, no questions were raised about the legality of 1933 Double Eagles in the hands of the public. In 1939, a 1933 Double Eagle was openly exhibited at the annual convention of the American Numismatic Association. (JA2450). In February 1944, the Treasury Department asked the curator of the Smithsonian's coin collection if the 1933 Double Eagle was of "recognized special value," he answered "yes" in a letter, and, as a result, the Treasury Department released and licensed the export of one 1933 Double Eagle to King Farouk of Egypt. (JA4870).

Things changed later in 1944. A 1933 Double Eagle was advertised for sale at Stack's auction house in New York. (JA5158). A call from a newspaper reporter to the Treasury Department sparked a Secret Service investigation. (JA3340). The Treasury and Mint claimed that no 1933 Double Eagles should have ever been released to the public. (JA4844). Several holders of 1933 Double Eagles told the Secret Service that they had purchased their coins from Israel Switt,

a Philadelphia jeweler and coin collector, and the father of appellant Joan Langbord. (JA4836-38). Employees of the Mint pointed to George McCann, the former Philadelphia Mint Cashier who had been convicted of stealing coins from the Mint some years back. However, conducting an investigation ten years after the fact proved frustrating, and the Secret Service conceded that "[t]he investigation did not conclusively establish when, how, or by whom the coins found in circulation were taken from the Philadelphia Mint, although the evidence pointed very strongly to George A. McCann." (JA4928; *see also* JA5007). The Secret Service wrote to the U.S. Attorney inquiring about possible criminal prosecution of McCann and Switt, but no criminal case was brought against either man — or anyone else — in connection with the purported theft of 1933 Double Eagles. (JA5010-14).

The Secret Service tracked down collectors holding 1933 Double Eagles. Some were threatened with criminal prosecution. (JA4975-5006). One holder of a 1933 Double Eagle who refused to surrender his coin was sued by the United States in a replevin case and that 1933 Double Eagle was found by the Court to have been illegally taken from the Mint. *See United States v. Barnard*, 72 F. Supp. 531 (W.D. Tenn. 1947). Decades later, in the mid-1990s, federal agents seized a 1933 Double Eagle from British coin dealer Stephen Fenton, and the government brought a forfeiture action to recover his coin. (JA5233-46). After years of

litigation, the case was settled. (JA5247-52). The government agreed to publicly auction the coin and split the proceeds with Mr. Fenton. The coin was sold in 2002 for $7.59 million. (JA142).

B. Events Precipitating the Commencement of Litigation

In 2003, Joan Langbord discovered ten 1933 Double Eagle gold coins buried in a family safe deposit box in Philadelphia, among property that had belonged to her parents, Israel and Elizabeth Switt. (App. 195-96). Mindful of the *Fenton* case, the Langbord family consulted with counsel and voluntarily alerted the U.S. Mint. (*Id.*) The Langbords' counsel (who had also represented Fenton) spoke to the Mint and suggested that the Langbords could be open to a resolution of any claims or issues the government might have in hopes of avoiding litigation. Mint counsel expressed a willingness to discuss a resolution, and the parties worked out the terms of a conditional transfer so the government could authenticate the Coins in furtherance of a possible settlement. (*Id.*)

On September 21, 2004, the Langbords' counsel confirmed in a letter to the Mint lawyers:

> I write on behalf of the Langbord family regarding their ownership of ten 1933 Double Eagle Coins ("the Coins."). At the request of the United States Mint, Roy Langbord will make the coins available to the government . . . based on our understanding that the government will test the Coins for authenticity and secure the Coins while we discuss a possible resolution of the issues relating to the Coins. This agreement to make available the Coins . . . is without prejudice to all of my

> clients' rights . . . We specifically reserve all rights and remedies with respect to the Coins.

(App. 197, 241-42). The following morning, Roy Langbord, accompanied by counsel, transferred the Coins to the government. (App. 197-98).

Less than two months later, unbeknownst to the Langbord family, representatives of the United States Attorney's Office for the District of Columbia, the Treasury Executive Office for Asset Forfeiture, the United States Secret Service, and the United States Mint met to "devise an action plan" regarding the Coins (which had not yet been authenticated). (App. 198; App. 243-46). As reflected in a December 6, 2004 memorandum summarizing the meeting, "[a]ll the agencies involved, with the exception of the US Mint, [we]re in favor of pursuing forfeiture" (*id.*), the course of action that the government had pursued upon seizing the *Fenton* coin.

The government was aware, however, of one significant change in the law since *Fenton*. In 2000, Congress enacted CAFRA, which, as noted above, for the first time mandated that the government, not the claimant, shoulder the burden of proof in civil forfeiture proceedings. *See* 18 U.S.C. § 983(c)(1).

In a letter dated May 19, 2005, the Acting General Counsel of the Treasury Department explained to the Secret Service that, while "officials have considered whether subjecting these pieces to forfeiture proceedings is necessary or appropriate," he and an Assistant Secretary in the Treasury Department had

concluded that if the Coins were genuine, "*it is in the best interests of the United States not to subject them to forfeiture proceedings* and to return them promptly to the possession of the agency from which they were stolen — the United States Mint." (App. 247-48 (emphasis added)). The government also chose not to seek any warrant or other judicial review of its assertions of ownership, and instead determined that the government alone could deny the Langbords' rights to the Coins and afford no process whatsoever.

Shortly thereafter, the government informed the Langbords' counsel that the Coins had been authenticated but the government would neither return them nor offer any compensation for the Langbords' property. (App. 198).

On July 25, 2005, the Langbords' counsel sent Mint counsel a letter requesting the immediate return of the Coins. (App. 198; App. 249-53). On August 9, 2005, Mint counsel refused and stated:

> The United States Mint has no intention of seeking forfeiture of [the] ten Double Eagles because they already are, and always have been, property belonging to the United States; this makes forfeiture proceedings entirely unnecessary.

The Mint asserted that the Coins were "stolen property" that had been "taken out of the United States Mint at Philadelphia in an unlawful manner." (App. 198-99; App. 254-55).

On September 9, 2005, in accordance with the applicable forfeiture provisions of CAFRA (*see* 18 U.S.C. § 983(a)(2)(A) (2006)), the Langbords

submitted a "Seized Asset Claim" to the Mint and the Treasury Department. (App. 199; App. 256-62). The government was then required to bring an action to forfeit the Coins — in which it would bear the burden of proof — within the next 90 days or, pursuant to CAFRA's statutory bar, be prohibited from doing so thereafter. *See* 18 U.S.C. § 983(a)(3) (2006). The government deliberately chose not to file any action.[4] On December 5, 2005 – 87 days after receiving the Langbords' Seized Asset Claim – the Mint's chief counsel advised the Langbords that the government was "returning" plaintiffs' Claim "without action" and repeated that it had "no intention of seeking the forfeiture of any 1933 Double Eagle." (App. 199; App. 263-66).

C. Pertinent Procedural History and Pretrial Rulings

In December 2006, the Langbords were forced to commence a civil action against the government to recover the Coins, alleging causes of action for conversion, replevin, violations of CAFRA, violations of the Administrative Procedure Act, and violations of their Fourth and Fifth Amendment rights. (App. 200). The government asserted no counterclaims in its answer. (App. 167-68).

On July 29, 2009, the District Court granted the Langbords' motion for summary judgment on their Fourth and Fifth Amendment claims. It held that the Mint's refusal to return the Coins after they had been authenticated and the

[4] Nor did the government seek an extension of the 90-day deadline, as would have been permitted for "good cause shown" under 18 U.S.C. § 983(a)(3)(A).

Langbords had revoked their consent to the government's continued possession constituted an illegal seizure. (App. 205-16). The District Court also held that "the Government clearly deprived Plaintiffs of their due process rights" by denying the Langbords a predeprivation hearing (*i.e.*, a forfeiture trial at which the government would bear the burden of proof). (App. 226). The District Court found that the government confiscated the Coins through constitutional "shortcuts" that "undermine[d]" the "valuable function" served by the pertinent constitutional provisions and "erode[d] the meaning of the rights they are designed to protect." (App. 231-32). (The government never appealed the District Court's finding that it acted unconstitutionally.)

Though finding that the government had acted unconstitutionally, the District Court declined to enforce CAFRA's 90-day deadline and statutory bar (18 U.S.C. § 983(a)(3)(A) and (B)). The District Court held that CAFRA's 90-day deadline was not applicable because "the government never began an administrative forfeiture proceeding and therefore the requirements of § 983(a) do not apply." (App. 202). The District Court quoted a leading forfeiture treatise for the proposition that "[a] non-judicial civil forfeiture 'is commenced when the Government sends notice of the forfeiture proceeding to potential claimants.'" (*Id.*) (quoting Stefan D. Cassella, *Asset Forfeiture Law in the United States* 143 (2007)). The District Court found that condition was not satisfied because "the

Government never sent [the Langbords] such a notice" but instead told them (in the August 9, 2005 letter) that the government "believed that a forfeiture proceeding was 'entirely unnecessary' and that it had 'no intention of seeking the forfeiture of any 1933 Double Eagle.'" (*Id.)*

As a remedy for its constitutional violations, the District Court directed the government to either return the Coins or commence a judicial forfeiture proceeding. The government chose the latter course.

In September 2009, the government sought leave to file its forfeiture complaint, which asserted that the Coins had been stolen or concealed in violation of 18 U.S.C. § 641. (App. 168). The proposed complaint also included (among others) a claim for a declaration that title to "all 1933 Double Eagles in private hands" — including but not limited to the Langbords' 1933 Double Eagles — belong to the government. (JA1181).

With respect to the declaratory judgment claim, the District Court found that the government made a "strategic choice" not to file it as a counterclaim when the Langbords sued in 2006, "should have" brought the claim at that time, and did not "because it pursued a misguided legal strategy." (App. 178-181). Notwithstanding these findings and its earlier findings that the government violated the Langbords' constitutional rights, the District Court concluded that the Langbords would not be prejudiced by the addition of the claim four years later and decided that there was

no evidence the government acted in bad faith in delaying bringing that claim, and based on these determinations allowed the declaratory judgment claim to be filed. (*Id.)* In a later pretrial ruling, the District Court found that the declaratory judgment claim was not barred as a special statutory proceeding. (App. 157-163).

D. The Jury Trial

Trial on the government's forfeiture claim commenced on July 7, 2011, and on July 20, 2011, the jury returned a verdict in the government's favor (JA2705-06), based in part on evidence that would later be found to be inadmissible and prejudicial, as discussed below. Thirteen months later, in late August 2012, the District Court held that the jury's verdict (a) was supported by sufficient evidence and (b) required the District Court to also grant the government declaratory relief that the Coins were "not lawfully removed from the United States Mint" and "remain the property of the United States." (App. 85-154, 155-56).

E. The Opinion Below

On appeal, the Langbords initially prevailed on the CAFRA issues, with the government being ordered to return the Coins to them. 783 F.3d 441. But the panel opinion was vacated (App. 239-240) and the full Court of Appeals sitting *en banc* reached the opposite result, affirming the District Court's judgment. 832 F.3d 170 (App. 1-82). Chief Judge McKee, along with Judges Rendell and Krause,

dissented, and Judge Jordan entered a separate opinion concurring in part and concurring in the judgment.

The *en banc* majority, in an opinion by Judge Hardiman, agreed with the District Court that CAFRA's protections were inapplicable here because the government had not initiated a "nonjudicial forfeiture proceeding." The majority explained that "a seizure alone does not initiate a forfeiture proceeding because it does not implicate a transfer of legal title." (App. 19). It rejected the argument that "the Mint's [August 9] letter [App. 254-55] constituted notice that initiated a nonjudicial forfeiture," holding that "although CAFRA does not specify the content of nonjudicial forfeiture notices, a letter that explicitly disavows any intent to initiate a forfeiture proceeding surely cannot suffice." (App. 17-18 n.5).

The majority also rejected the argument that the government had commenced a nonjudicial forfeiture proceeding by communicating that it "was retaining the Coins with the intent of permanently divesting the Langbords of their property without providing compensation or going to court." (*Id.* (citations omitted)). In the majority's view, the government "had merely repossessed its own property" and "asserted its ownership rights to the coins." (App. 17).[5]

[5] In another footnote, the *en banc* majority explained that nonjudicial forfeitures had "essential[ly]" not changed since 1844: "after providing sufficient notice, an authorized agency may, in the absence of a claimant willing to contest the action, issue a 'declaration of forfeiture . . . .'" (App. 16 n.4 (citing 19 U.S.C. § 1609(b)). But there too, the majority declined to specify what notice would be sufficient to

The majority also affirmed the District Court's decisions with respect to the declaratory judgment claim. It found that claim was "an independent legal theory" by which "the Government was attempting to regain possession of what it believed to be its own property," and therefore was not barred even if CAFRA was a "special statutory proceeding" under Fed. R. Civ. P. 57 (a question the majority declined to decide). (App. 24-26). And the majority found no abuse of discretion in the District Court's decision to allow the declaratory judgment claim after a nearly four-year delay (App. 30-32).

While the majority also rejected a number of trial-related claims of error, it did find that the District Court "abused its discretion by admitting [] hearsay within Secret Service reports into evidence without applying [Fed. R. Evid.] 805" and further abused its discretion in allowing the government's expert to testify about this same hearsay, which "included speculation and characterization of events by out-of-court declarants that was adverse to the Langbords' position." (App. 36, 47-48). Nevertheless, the majority found these errors were harmless because "the Government was able to clearly and convincingly prove the elements of its case without reliance on the tainted evidence." (App. 48).

Judge Jordan, concurring in part, disagreed with the majority on the CAFRA issue, finding that the government's actions had triggered CAFRA's protections.

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commence such a proceeding, and in this case the Langbords did in fact come forward to contest the government's unilateral, improper actions.

While acknowledging that "[n]othing in CAFRA or . . . elsewhere in the United States Code specifies how a 'nonjudicial forfeiture proceeding' actually begins," he concluded that:

> When (as here) the government seizes property, asserts its title, and tells the previous owner that it will never return the property, that should surely suffice to trigger a "nonjudicial forfeiture proceeding."

(App. 64, 66); *see also id.* 68 ("in the absence of some clear description of what a notice must contain or how a nonjudicial forfeiture proceeding starts, the reasonable default conclusion is that it begins when the government takes your property and refuses to ever give it back – in short, when there is a seizure accompanied by some manifestation of an intent to claim ownership").

Judge Jordan described the government's handling of the dispute as "ill-advised," writing that "[t]he safe and sensible choice would have been to comply with CAFRA." (*Id.* 69-70).

> Labeled a "forfeiture" or not, what matters is what happened: the government took the property, claimed ownership, and kept it; the Langbords wanted it back. Resolving disputes like that is what forfeiture proceedings are for.

(Id. 70).

Despite his disagreement with the majority and the government on the CAFRA issue, Judge Jordan went on to find an alternative basis for affirming the judgment of the District Court, agreeing with the majority that the declaratory

judgment claim was properly allowed and independently sufficient irrespective of the fate of the forfeiture claim. (*Id.* 71-72 & n.5). But he cautioned that his vote to affirm "should not be taken as an endorsement of the government's ignoring the statutorily provided mechanisms for forfeiture." (*Id.* 72). In Judge Jordan's view, the government "[l]aying claim to the Double Eagles without going to court was . . . a bad idea from the start." (*Id.* 69). "The approach taken by the Mint," he concluded, "is one that ought not be repeated." (*Id.* 73).

Judge Rendell, Chief Judge McKee, and Judge Krause, dissenting, agreed with Judge Jordan on the CAFRA issue. According to their opinion, a nonjudicial forfeiture proceeding triggering CAFRA's protections had commenced here because "the Government seized property that is, by statute, subject to forfeiture, . . . with the intent to keep that property permanently and without a court proceeding, and so notified the Langbords." (App. 78). A contrary result – and specifically the result reached by the majority – would, in the dissenters' view, "enables the Government to nullify all of CAFRA's protections merely by asserting its ownership of property and lack of intent to forfeit that property." (*Id*. 77).

> Rather, to stay true to Congress's intent, we must focus on what actually occurred here: the Government seized property that is, by statute, subject to forfeiture, . . . with the intent to keep that property permanently and without a court proceeding, and so notified the Langbords. Clearly, then, a nonjudicial forfeiture proceeding was in process before the Langbords filed their seized asset claim, which should have triggered the filing of a judicial

> forfeiture complaint by the Government within 90 days, see 18 U.S.C. § 983(a)(3)(A).
>
> Accordingly, because the Government's failure to file a judicial forfeiture action within 90 days of the Langbords' timely seized asset claim barred it as a matter of law from taking any further action to forfeit the 1933 Double Eagles, see 18 U.S.C. § 983(a)(3)(B), the District Court erred in permitting the Government to later file its declaratory judgment and judicial forfeiture actions. Instead, the District Court should have ordered the 1933 Double Eagles returned to the Langbords pursuant to the statutory directive.

(Id. 78-80 (footnotes omitted)).[6]

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[6] The dissenters raised one additional issue, whether the Coins are "merchandise" whose value "exceed[s] $500,000" and not "monetary instrument[s]," under 19 U.S.C §§ 1607(a) and 1610, such that CAFRA's deadlines would not apply. (App. 80-82). *See also* Concurring Op., App. 71 (noting that for these same reasons "the CAFRA deadlines may not apply," but declining to reach the issue).

This issue does not present a barrier to certiorari. First, this argument was waived when the government failed to properly raise it in its merits brief to the original panel in the Court of Appeals (where the government argued only in passing in a brief footnote 13 that the Coins were worth more than $500,000). *See 14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 273 (2009) ("this Court will affirm on grounds that have not been raised below only in exceptional cases") (internal citations and alterations omitted); *Griswold v. Coventry First LLC*, 762 F.3d 264, 274, n.8 (3d Cir. 2014) (finding that appellees waived a claim on appeal because "[o]nly in the very last footnote of their brief do Appellees discuss the issue . . . and only abstractly").

Second, 19 U.S.C. § 1607(a)(3) and 1610 subject "monetary instruments" to administrative forfeiture irrespective of their value, and the cross-referenced definition of "monetary instrument[s]" in 31 § U.S.C. 5312(a)(3) includes "United States coins and currency." By any reasonable understanding, the 1933 Double Eagles – created by the Mint, bearing the name and symbols of the United States, and denominated as having a $20 value – are "United States coins." Indeed, the

REASONS FOR GRANTING THE PETITION

Under CAFRA, when the government seizes property and makes clear it intends to keep it, the private citizen has the right to dispute the government's claim and force the government to bring the matter to court, where the government – not the citizen – will bear the burden of proving its entitlement to the property. In such circumstances, CAFRA also requires the government to act by clearly established deadlines or else face penalties – including waiver of the right to take any further steps to effectuate the forfeiture of such property.

CAFRA provides no exception to these rules for property the government believes was stolen from it; to the contrary, the scheme Congress established makes clear that allegedly stolen government property *is* subject to forfeiture and *is* subject to CAFRA's procedural and substantive protections.

This Court's guidance is needed to clarify the important question of when CAFRA's protections are triggered and to make clear that where ownership of

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1933 Double Eagles are referred to as "coins" by the government throughout the pre-litigation record. *See, e.g., United States v. One 1933 United States Double Eagle Gold Coin,* at JA5233-242.

And third, the government has asserted from the beginning that the Coins are stolen government property, which also would render them subject to administrative forfeiture under § 1607(a)(2), which authorizes nonjudicial forfeiture for any property, the importation of which would be prohibited. On the government's theory that the Coins were stolen, importation would be prohibited by 18 U.S.C. § 2314 and 19 U.S.C. § 1595a(c)(1)(A). Neither the concurring or dissenting opinions considered this argument under § 1607(a)(2).

seized property is disputed, the government may not unilaterally declare itself to be the owner and retain the property forever, but instead must follow CAFRA's dictates or else suffer its penalties.

I. THIS COURT SHOULD PROVIDE CLEAR GUIDANCE TO THE GOVERNMENT, PROPERTY OWNERS AND THE LOWER COURTS IN DETERMINING WHEN CAFRA'S TIMELINES AND PROTECTIONS ARE TRIGGERED

Congress "react[ed] to public outcry over the government's too-zealous pursuit of civil and criminal forfeiture" by enacting CAFRA, which took dramatic action to afford property owners an effective remedy for historic governmental abuses of civil forfeiture authority. *United States v. Khan*, 497 F.3d 204, 208 (2d Cir. 2007); *see also* Civil Asset Forfeiture Reform Act, 146 Cong. Rec. 5221, 5228 (2000) (remarks of Rep. Hyde) ("[CAFRA] returns civil asset forfeiture to the ranks of respected law enforcement tools that can be used without risk to the civil liberties and property rights of American citizens."). Congress passed CAFRA to "level[] the playing field between the government and persons whose property has been seized." *United States v. Real Prop. In Section 9,* 241 F.3d 796, 799 (6th Cir. 2001). As the courts quickly acknowledged, CAFRA "significantly amended the civil forfeiture statutes," *United States v. Wagoner Cnty. Real Estate*, 278 F.3d 1091, 1095 (10th Cir. 2002), and instituted a comprehensive set of new safeguards "to deter government overreaching." *Khan*, 497 F.3d at 208.

Under CAFRA and related forfeiture laws, the government has three procedural options to lawfully confiscate property: nonjudicial (also known as administrative), civil, and criminal. *See*, *e.g.*, 18 U.S.C. §§ 981, 982, 983. A nonjudicial forfeiture proceeding is no more than a declaration of default: "If no one sends the seizing agency a timely administrative claim letter, the agency simply declares the property forfeited without the involvement of a prosecutor or a court." *See* David B. Smith, *Prosecution and Defense of Forfeiture Cases* § 6.01[1] (2012).

The Government must send interested parties written notice of any nonjudicial forfeiture proceeding within 60 days of a seizure. 18 U.S.C. § 983(a)(1)(A)(i). In any such proceeding, any person who claims ownership of the property has the right to force the issue into court by filing a verified claim at any time "after the seizure." *Id.* § 983(a)(2)(A). The Government then has 90 days to file a "complaint for forfeiture" in an appropriate federal district court, unless the 90 days is extended by a court for "good cause shown." *Id.* § 983(a)(3)(A). In any such action, the government bears the burden of proving the property is subject to forfeiture. 18 U.S.C. § 983(c)(1). If "the Government does not file a complaint for forfeiture" within this period, "the Government shall promptly release the property . . . and may not take any further action to effect the

civil forfeiture of such property in connection with the underlying offense." *Id.* § 983(a)(3)(B).

CAFRA's congressional sponsors believed the 90-day deadline – referred to as the "death penalty" for civil forfeiture -- was one of the statute's "most important reforms":

> Previously, there was no statutory deadline compelling the Government to commence a judicial forfeiture action within any fixed period of time. This caused frequent complaints from defense attorneys who did all they could do to force the Government to commence a judicial forfeiture action by filing a claim (and, at that time, a cost bond), yet were forced to wait months or even years before the Government gave their clients their 'day in court' by filing a forfeiture complaint.

Stefan D. Cassella, *Asset Forfeiture Law in the United States* §§ 7-5 at 260 and 7-4 at 243-44 (2d. Ed. 2013).

The federal courts have repeatedly enforced the 90-day deadline against the government, emphasizing the importance of strictly holding to the deadlines that Congress set. *See, e.g.*, *United States v. 2014 Mercedes-Benz GL350BLT, VIN: 4JGDF2EE1EA411100*, 162 F. Supp. 3d 1205, 1211 (M.D. Ala. 2016) ("the 90-day deadline for the government to file a complaint [under CAFRA] is mandatory and should be strictly construed against the government") (collecting cases); *United States v. One 2007 Harley Davidson Street Glide Motorcycle Vin 1HD1KB4197Y722798 et al.*, 982 F. Supp. 2d 634, 638 (D. Md. 2013) ("Consistent

with [§ 983(a)(3)'s] mandates, district courts have tended to construe CAFRA's 90-day deadline strictly.") (collecting cases).[7]

But in passing CAFRA, Congress left something out that is crucial to the statute's enforcement. While the various provisions of CAFRA cited above make clear that their deadlines apply in a "nonjudicial forfeiture proceeding," "[n]othing in CAFRA or . . . elsewhere in the United States Code specifies how a 'nonjudicial forfeiture proceeding' actually begins." (App. 64, Jordan, C.J., concurring).

Not surprisingly in the face of this legislative void, courts and litigants have struggled to answer this critical question, coming up with different and inconsistent answers. In this case, the government argued a "nonjudicial forfeiture proceeding" commences when the government "sends notice of its intent to forfeit the property." (App. 23 n.8). The original panel majority believed instead that it was seizure, not notice, that commenced a "nonjudicial forfeiture proceeding." 783 F.3d at 450-53. The original panel dissent thought it was notice. *Id.* at 466-68.

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[7] For additional cases strictly applying the 90-day deadline, *see United States v. Funds from Fifth Third Bank Account # 0065006695*, No. 13-11728, 2013 WL 5914101, at *1 (E.D. Mich. Nov. 4, 2013); *United States v. $89,600 in U.S. Currency*, No. 4:11-cv-176, 2011 WL 4549604, at *3 (S.D. Ga. Sept. 29, 2011); *In re Return of Seized Prop.*, No. 11cv1091 BTM(RBB), 2011 WL 3759702, at *1 (S.D. Cal. Aug. 23, 2011); *Burman v. United States*, 472 F. Supp. 2d 665, 677 (D. Md. 2007); *United States v. $1,073,200.00 in U.S. Currency*, No. 5:06-CV-578(NAM/GJD), 2007 WL 1017317, at *3 (N.D.N.Y. Mar. 30, 2007); *United States v. Funds in the Amount of Three Hundred Fourteen Thousand Nine Hundred Dollars ($314,900.00)*, No. 05 C 3012, 2006 WL 794733, at *2 (N.D. Ill. Mar. 21, 2006).

The *en banc* majority held that neither seizure alone, nor a notice "that explicitly disavows any intent to initiate a forfeiture," could constitute or commence a "nonjudicial forfeiture proceeding." (App. 14-23 & nn. 5, 8).

Judge Jordan, concurring in part, came up with a more commonsense formulation for when a "nonjudicial forfeiture" commences: *i.e.*, when there is a seizure of property accompanied by "[s]ome manifestation of an intent to keep the seized property" or "some manifestation of an intent to claim ownership." (App. 65, 68). The three dissenting judges essentially agreed, writing that a nonjudicial forfeiture proceeding is "a statutory scheme" that "is commenced when the Government seizes property and notifies all interested parties . . . that it intends to keep the property as its own 'without the trouble and expense of court proceedings.'" (App. 74 (quoting *Small v. United States,* 136 F.3d 1334, 1335 (D.C. Cir. 1998).) Both the concurring and dissenting formulations are consistent with this Court's recognition that there is a critical difference of constitutional dimension when the "Government seize[s] property not to preserve evidence of wrongdoing, but to assert ownership and control over the property itself." *United States v. James Daniel Good Real Property*, 510 U.S. 43, 52 (1993).[8]

[8] The *en banc* majority spends many pages explaining that not every seizure constitutes or commences a forfeiture proceeding, noting that the government routinely seizes property for evidentiary purposes and intending to return it to the person from whom it was seized. (App. 19 -23). *See also* Cassella, *supra*, *Asset Forfeiture Law in the United States* § 4-6 at 167 (explaining that the provisions in

The competing and inconsistent definitions of what is sufficient to commence a "nonjudicial forfeiture proceeding" and thereby trigger CAFRA's various protections are no mere academic debate. The resolution of this open question will determine whether, in a wide variety of cases involving allegations of theft of government property, the government will be allowed to control when CAFRA's protections apply simply by the words it chooses, or instead will be required to follow CAFRA whenever it seizes property and makes clear it intends to keep it. This Court should grant a writ of certiorari to resolve this important question of federal law.

II. THE DECISION BELOW WILL ALLOW THE GOVERNMENT TO NULLIFY CAFRA'S PROTECTIONS IN A BROAD RANGE OF CASES BY SAYING ONE THING WHILE DOING ANOTHER

There is no dispute the government seized the Coins from the Langbords; indeed, the government did so unconstitutionally, as the District Court found (in a ruling the government has not appealed). Nor is there any dispute that, once it determined the Coins were authentic, the government proclaimed itself their owner and made clear it intended to keep them. The question is whether – notwithstanding these undisputed facts of a seizure followed by a clear declaration

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§ 983(a) of CAFRA do not apply "when the property is seized for some non-forfeiture purpose, such as for use as evidence in a criminal case"). But that proposition is neither contested nor particularly relevant here, where the Coins were *not* seized for evidentiary purposes and the government made clear it intended to keep the coins, not return them.

of ownership and intent to keep the property – the government's statement in its August 9, 2005 letter that it "has no intention of seeking forfeiture" is enough to render the protections of CAFRA inapplicable.

The *en banc* majority answered this question yes, holding, among other things, that "a letter that explicitly disavows any intent to initiate a forfeiture surely cannot suffice" to trigger CAFRA's timelines. (App. 17 n.5). The concurring and dissenting opinions thought otherwise, that the government should be judged not by the words it chose to put in its letter but by its clear actions.

Judge Jordan thus viewed the government's verbal disclaimer of any "intent to forfeit" as no more than a "semantic game." (App. 70). "Labeled a 'forfeiture' or not, *what matters is what happened*: the government took the property, claimed ownership, and kept it. The Langbords wanted it back. Resolving disputes like that is what forfeiture proceedings are for." *Id.* 70 (emphasis added); *see also id.* 65-66 ("the simple omission of the word 'forfeiture' from the government's notice – when that notice did in fact assert the functional equivalent of a forfeiture – does not avoid the deadlines and protections of CAFRA"). *See generally In re Soileau*, 488 F.3d 302, 310 (5th Cir. 2007) (quoting *Black's Law Dictionary*'s definition of forfeiture as "[t]he divestiture of property without compensation"); *New Jersey v. Moriarity*, 268 F. Supp. 546, 562-63 (D.N.J. 1967) ("[F]orfeiture is a divestiture of

the property without compensation which passes to the sovereign in consequence of an offense or a default.").

The dissenters agreed. "[T]o stay true to Congress's intent, we must focus on *what actually occurred here*: the government seized property that is, by statute, subject to forfeiture, . . . with the intent to keep that property permanently and without a court proceeding, and so notified the Langbords. Clearly, then, a nonjudicial forfeiture proceeding was in process before the Langbords filed their seized asset claim . . . ." (App. 78) (emphasis added). A contrary result, the dissenters explained, would allow the government "to nullify CAFRA's provisions at will" – in this case and a wide range of future cases – "render[ing] CAFRA's protections largely meaningless and def[ying] Congress's intent in passing the statute." (*Id*. 73).

The government has argued that this case is different – and CAFRA need not have been followed – because the Coins were *believed* to be stolen government property. Indeed, the *en banc* majority seemed to adopt the government's view that it "had merely repossessed its own property" and "asserted its ownership rights to the coins." (App. 17). But this distinction is neither logical nor much of a limitation at all. As Judge Jordan pointed out, "[t]hat dubious position both assumes the truth of the government's allegation without any requirement of proof and gives the government the power to unilaterally define when there is and is not

a forfeiture." (App. 66 n.3). Stated differently, "[a]llowing the government's self-declaration of its own property interest to be conclusive puts the forfeiture cart before the horse." (Dissent, App. 78-79 n.5); *see also id*. ("The Government's claim that the 1933 Double Eagles belong to the United States after all, is just that, and the validity of that claim is the very question to be answered by a forfeiture proceeding, not by the government's say-so.").

Moreover, as the dissenters point out, "[i]t is indisputable that allegedly stolen Government property is subject to forfeiture" and therefore is subject to the same CAFRA rules that apply to other forfeitable property. (App. 75-76 n.2).[9] In other words, far from carving allegedly stolen government property out of CAFRA, Congress included it. And far from authorizing the government to simply seize and keep property it *believes* is stolen government property, where a private citizen disputes that claim, CAFRA requires the government to promptly prove its ownership in a court of law.

The government also has argued that the Langbords suffered no harm here because the government ultimately was ordered to file a judicial forfeiture in which

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[9]*See* 18 U.S.C. § 981(a)(1)(C) (property is subject to forfeiture if it "constitutes or is derived from proceeds traceable to . . . any offense constituting 'specified unlawful activity' (as defined in section 1956(c)(7) of this title)"); *id.* § 1956(c)(7)(D) ("[S]pecified unlawful activity" includes "an offense under . . . section 641 (relating to public money, property, or records)"; *id.* § 641(criminalizing the theft or embezzlement of any "thing of value of the United States or of any department or agency thereof").

it was required to – and did – carry the burden of proving its entitlement to the Coins. But that misses the point of the penalty provision of 18 U.S.C. § 983(a)(3). That provision is directly aimed at deterring the government from overreaching and violating CAFRA's deadlines by imposing a clear and significant penalty – loss of the ability to take any further action to effect the forfeiture of the property. Any argument that the penalty Congress prescribed for precisely the kind of government overreaching that occurred here should not be imposed, because eventually the government was forced to prove its case in court, is really an argument that the courts should rewrite CAFRA to eliminate the penalty provision – and its deterrent effect – for a broad class of cases. And, contrary to the assertion that there is no harm in allowing the government to freely undertake its unchecked course of conduct in this case or other cases, allowing the lower court result to stand will force any citizen who in the future has the will and wherewithal to dispute claims of property ownership by the United States government to face years of delay, extended litigation and tremendous legal costs.

Absent a grant of a writ of certiorari and reversal of the decision of the Court of Appeals, the government will now be free – in every case involving allegedly stolen government property – to seize and keep that property without following CAFRA's dictates. In the face of hundreds of prosecutions each year under 18 U.S.C. § 641, ranging from thefts of merchandise, equipment and cash from

government facilities to thefts of government funds through frauds committed on the IRS, Social Security Administration, and other agencies (*see* fn.2, *supra*), and countless other non-criminal forfeitures alleging theft of government property, the potential impact of the majority's decision is sweeping. Indeed, as the dissenters point out, there is no logical reason the majority's analysis – that there is something different about cases where the government is seeking to "repossess" property it believes it already owns – would not apply to an even broader swath of seizures and forfeitures beyond stolen government property. (Dissent, App. 78-79 n.5).

III. HAD CAFRA'S PROVISIONS BEEN CORRECTLY APPLIED, THE DECLARATORY JUDGMENT CLAIM SHOULD NOT HAVE BEEN ALLOWED

Before the Langbords discovered the Coins, the Government had twice gone to court to regain ownership of 1933 Double Eagles in private hands: first as plaintiff in the *Barnard* replevin action in the 1940s, and later by commencing a judicial forfeiture against the coin from Steven Fenton in 1996. Both of these options were available to the government when, in the summer of 2005, the Coins at issue were authenticated. (App. 214-15). But here the government chose neither option, and instead kept the Coins without filing any judicial action asserting its right to do so. In the face of this illegal seizure and process-less

confiscation, the Langbords had no alternative but to file their own suit, which they did, in December 2006. (JA240-72).

At that point, according to the District Court, the government "could have" and "should have" filed any and all counterclaims asserting its legal right to retain the Coins, but, for reasons "sound[ing] in strategic choice," it chose not to. (App. 181, 179). It was only in September 2009 — after the District Court excused the government's failure to abide by CAFRA's 90-day deadline and gave the government a second chance to bring a forfeiture proceeding — that the government, in its self-described role as "putative owner," sought a declaratory judgment that the Coins "were not lawfully removed from the United States Mint and that accordingly, as a matter of law, they remain the property of the United States." (JA1148; JA1162-83).

If this Court were to find that CAFRA's timelines in fact were triggered here by the government's August 9, 2005 letter, the remedy for the government's failure to abide by CAFRA's 90-day deadline for filing a judicial forfeiture complaint would be that (1) the Coins are returned to the Langbords, and (2) the government is blocked from taking "any further action to effect the civil forfeiture of such property in connection with the underlying offense." 18 U.S.C. § 983(a)(3)(B).

As the dissenters persuasively argued, under that scenario, the declaratory judgment claim should have been barred as well. Among other reasons,

declaratory judgment claims are not properly allowed where brought to circumvent statutory restrictions. In this case, the government's forfeiture theory that the Coins were stolen from the Mint was indistinguishable from its request for a declaratory judgment that the Coins "were not lawfully removed from the United States Mint." (App. 87) As the dissenters explained, because the "forfeiture claim and declaratory judgment action were . . . 'essentially predicated [on] the same cause of action,'" "as a matter of law [the government] was not allowed to circumvent CAFRA's 90-day deadline 'by [d]raping [its] claim in the raiment of the Declaratory Judgment Act." (App. 79-80 n.6 (quoting *Algrant v. Evergreen Valley Nurseries Ltd. P'ship*, 126 F.3d 178, 185 (3d Cir. 1997))). *Compare* Maj. Op., App. 25 ("While the declaratory judgment action did turn on a similar factual predicate as the forfeiture claim (*i.e.,* that the coins were stolen or embezzled), it used this fact to establish an independent legal theory, namely, that the Government was attempting to regain possession of what it believed to be its own property.").

In addition, if CAFRA had been applied and the Coins returned to the Langbords, the District Court decision to allow the declaratory judgment claim to proceed – based on a finding that the Langbords would not be prejudiced by the government adding that claim after three years of litigation – would have been predicated on legal error (i.e., the assumption that the case would be proceeding

anyway on various overlapping claims). If the District Court had instead enforced CAFRA's statutory bar, then the government would have been required to return the Coins, and the Langbords would have prevailed with respect to their entire complaint *before* the government sought leave to file its declaratory judgment claim. Granting the government's request to *then* file a declaratory judgment claim — thereby prolonging the litigation via a theory of recovery that, by its failure to file a counterclaim, the government had previously elected not to pursue — clearly would have substantially prejudiced the Langbords, in addition to burdening the Court with additional proceedings. *Compare* Maj. Op., App. 31 (upholding the District Court's finding of no prejudice in adding the declaratory judgment claim based on the premise that there remained overlapping Langbord "claims that were still unresolved at the time the Government sought leave to amend").

In sum, after making an intentional and strategic choice not to pursue a declaratory judgment; after being found to have violated the Langbord family's constitutional rights; after purposely violating CAFRA's 90-day deadline to provide process; and after engaging in years of litigation requiring many thousands of attorney hours to contest, the finding that the government should nonetheless be permitted to assert a declaratory judgment action because there has been "no prejudice" was based on multiple legal errors.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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