No. 16-612

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 – REPLY BRIEF

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ARGUMENT

Petitioners respectfully submit this Reply to respond to certain new points raised in the government's Brief in Opposition (hereafter "Opp.").

1. The government claims that it was not required to commence forfeiture proceedings because it was "acting in its capacity as a property owner, rather than in its capacity as a law enforcer." (Opp. 14.) But the factual record tells a very different story. It was the United States Secret Service, a law enforcement agency, that seized the Coins from Roy Langbord in Philadelphia. (JA812-13.) The Secret Service agents read Mr. Langbord his Miranda rights before interviewing him. (JA813.) As the District Court noted, the Secret Service "prepared a Notice of Contraband Seizure for the coins." (App. 206.) The Coins were transported to and held by the Secret Service in their vault. (JA813.) Government officials contacted the U.S. Attorney's Office and requested a seizure warrant. (*Id.*) And then – as the District Court found and the government did not challenge on appeal – the government unconstitutionally "seized" the Coins, and violated the Langbords' due process rights, when it refused to return the Coins. (App. 206-228.)

A mere "property owner" cannot do any of these things. The government was clearly acting as "sovereign law enforcer" (Opp. 22) at the time it seized the Coins and when it later decided not to follow CAFRA's dictates. The fact that, over four years later, after being found to have violated the Langbords' constitutional

rights, the government belatedly came up with the idea of filing a declaratory judgment claim does not in any way change or erase the reality that it was acting as law enforcer in 2004 and 2005 when it took possession of and then unconstitutionally seized the Coins. And in acting as a law enforcer – and precisely because it was the government, not a mere "property owner," that seized the Coins – CAFRA's dictates apply and should be enforced.

2. While the government emphasizes that the facts of this case are unique, the implications of the government's legal arguments – and of the *en banc* majority's decision – are far-ranging and will have wide application. The government will be permitted to take, seize and retain property from private citizens, without having to follow any legal process or prove its entitlement before any neutral tribunal, by merely *asserting* that it is the lawful owner and that the private citizen from whom it took the property has no legal title. Stated differently, the government's words will trump its deeds – so long as it says it is not engaging in an act of forfeiture, the government now may seize and retain a citizen's property, even without troubling a magistrate for a warrant, and avoid all of CAFRA's requirements and penalty provisions. In either scenario, the burden will be on the citizen to take legal action to recover his or her property – precisely the opposite result from what the CAFRA reforms prescribe. The government will thus have vastly expanded powers to seize and retain property, powers not enjoyed by private property owners, and powers unconstrained

by the very rules Congress enacted to reign in government overreaching in this precise context.[1]

3. The government argues that allowing a private citizen whose property is seized by the government to "compel an *immediate* judicial forfeiture proceeding, in a matter in which the government did not seek nonjudicial forfeiture, runs counter to the statutory scheme and the various remedies the government has in its distinct capacities as a property owner and as a law enforcer." (Opp. 18.) This claim is wrong in at least three respects.

First, the government can always choose not to seize property, and then would have the full five years to decide how to proceed under the statute of limitations in 19 U.S.C. § 1621.

Second, while the statutory scheme enacted by Congress did give private citizen claimants the right and ability to expedite the process when the government has seized and refuses to return property, even then, nothing requires the government to act "immediately." While Congress required the government to

[1] The government's argument proceeds from the assumption that, from the very start of this dispute, the property should be viewed as "stolen property" in which the government "held lawful title." (Opp. 14.) This ignores that (1) the Langbords originally had possession of the Coins, which entitles them to a presumption of ownership (App. 218-20), and (2) whether the Coins were stolen was the issue to be determined at a forfeiture proceeding – the very proceeding the government refused to commence (App. 220 ("even where the Government is attempting to recover property that allegedly belongs to the government, it must still bring an action to recover that property")).

provide written notice where required within 60 days after the date of a seizure (or 90 days if a state or local agency seized the property), 18 U.S.C. §§ 983(a)(1)(A)(i), (A)(iv), it also allowed for the possibility of extending the notice period, §§ 983(a)(1)(B)-(D). And while Congress allowed claimants to challenge a forfeiture in court by requiring that the government bring a judicial forfeiture action within 90 days of a seized asset claim being filed, § 983(a)(3)(A), it again provided for the government to seek to extend the 90-day period before it expires for "good cause shown or upon agreement of the parties." *Id.* To the extent the government has complaints about these central timeframe reforms reflected in CAFRA, notwithstanding the provisions for extensions, it should direct its complaints to Congress, not this Court.

Third, far from running "counter to the statutory scheme," allowing private citizens to force the government to prove its entitlement to seized property in a timely way was one of the central reforms that CAFRA enacted, as explained in the Langbords' Petition (at pp.25-26). Post-CAFRA, where it decides to seize property, "[u]nder Section 983(a)(3), the Government no longer has the luxury in most cases of delaying the commencement of a judicial forfeiture action as long as it sees fit." Stefan D. Cassella, *Asset Forfeiture Law in the United States* § 7-4 at 245 (2d ed. 2013).

4. Citing a mistaken description of the procedural history in the *en banc* majority opinion (App. 31), the government twice repeats the erroneous assertion

that the District Court allowed it to "amend its counterclaim to assert a claim for a declaratory judgment." (Opp. 8, 21.) In fact, the government failed to file any counterclaims when the Langbords brought suit in 2006. What the District Court permitted the government to do – erroneously, in our view – is bring a declaratory judgment claim *for the first time* four years after it was required to bring any such cause of action as a counterclaim when the Langbords first sued to obtain the Coins' return. *See* App. 166-191 (2010 decision allowing government to file a claim for declaratory judgment along with its judicial forfeiture claim).

5. As a final point, the government argues "good cause" exists here to extend the 90-day deadline "because the government reasonably believed its status as a property owner made it unnecessary to initiate forfeiture proceedings." (Opp. 26.) This is an issue that was adverted to, but never decided by the District Court. (Pet. App. 204 n.3.)[2]

In addition, the government's interpretation of 18 U.S.C. § 983(a)(3)(A) is wrong as a matter of law for several reasons. First, a narrow reading of the "good cause" exception is required because forfeitures are disfavored and forfeiture statutes "are always construed strictly as against the government." *Shipp v. Miller's Heirs*, 15 U.S. 316, 325 (1817); *accord United*

[2] Similarly, whether the Coins were ineligible for nonjudicial forfeiture because they "may be merchandise valued at over $500,000, instead of being monetary instruments," or whether they were subject to nonjudicial forfeiture under 19 U.S.C. § 1607(a)(2), are issues never decided below.

States v. Charles D. Kaier Co., 61 F.2d 160, 162 (3d Cir. 1932).

Second, the plain language of the statute – allowing a good cause extension in the district where the complaint "*will* be filed" – makes clear that "the Government has to seek the extension before the limitations period passes and . . . cannot seek a 'retroactive extension.'" *United States v. Funds from Fifth Third Bank Account*, No. 13-11728, 2013 WL 5914101, at *9 (E.D. Mich. Nov. 4, 2013); *see also United States v. $1,073,200.00 in United States Currency*, 2007 WL 1017317, at *3 (N.D.N.Y. Mar. 30, 2007) (refusing to excuse lapse of 90-day deadline where government did not request extra time before deadline expired). Here, the government failed to seek a timely extension, and, therefore, a "good cause" extension was and remains unavailable.

Third, far from a "mistake," the government's unconstitutional seizure and failure to file a forfeiture action was calculated, knowing, deliberate, and, as the District Court correctly found, "objectively unreasonable." (App. 215.) Under these circumstances, no "good cause" could excuse the government's failure to file. *See, e.g.*, *Funds from Fifth Third Bank*, 2013 WL 5914101, at *9 ("good faith mistake . . . is not the standard in the statute, nor is it the intended purpose behind the exception"); *United States v. $10,160.00 in U.S. Currency*, No. 3:11-cv-1612 (VLB), 2012 WL 3608578, at *3 (D. Conn. Aug. 22, 2012) ("[T]he primary consideration in determining whether good cause has

been shown is whether the moving party can demonstrate diligence. . . . At a minimum, good cause requires a showing by the moving party of an objectively sufficient reason for extending a deadline such that the deadlines cannot reasonably be met despite the diligence of the party needing the extension." (citation and quotation marks omitted)); *United States v. Funds in the Amount of Three Hundred Fourteen Thousand Nine Hundred*, No. 05 C 3012, 2006 WL 794733, at *1 (N.D. Ill. Mar. 21, 2006) (without doubting government's "good faith," rejecting "good cause" tolling after government filed one day late due to its misinterpretation of CAFRA's "deemed" filed date because "both a claimant and the government are held to strict compliance with the statutory deadlines contained in 18 U.S.C. § 983").[3]

[3] Although the statute itself does not define "good cause," the only species of "good cause" mentioned in CAFRA's legislative history contemplate circumstances not present here. *See* H.R. Rep. No. 105-358(I), at 44 (1997) (in describing earlier version of "good cause" exception, noting that court should grant extension of time when "the filing of the complaint . . . would reveal facts concerning a pending investigation, undercover operation, or court-authorized electronic surveillance, or would jeopardize government witnesses" or "to allow the government to include the forfeiture in a criminal indictment").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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