No. 16-8327

# In The
# Supreme Court of the United States

HENRY LO,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## BRIEF FOR AMICUS CURIAE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS – MIAMI CHAPTER IN SUPPORT OF PETITIONER


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## INTEREST OF AMICUS CURIAE[1]

Founded in 1963, the Miami Chapter of the Florida Association of Criminal Defense Lawyers (FACDL-Miami) is one of the largest bar associations in Miami-Dade County. The 450-plus attorneys in the Miami Chapter include private practitioners and public defenders who are committed to preserving fairness in the state and federal criminal justice systems and defending the rights of individuals guaranteed by the Constitution of the United States.



## SUMMARY OF THE ARGUMENT

This case is about so-called "forfeiture money judgments," a topic that was the subject of intense questioning last week during the oral argument before the Court in *Honeycutt v. United States*, No. 16-142. In *Honeycutt*, the question presented, as framed by the government, is "[w]hether 21 U.S.C. 853 renders the members of a drug conspiracy jointly and severally liable for the forfeiture of the reasonably foreseeable proceeds of the conspiracy." Government's Merits Brief at I. Responding to questions from the Court about when the government is entitled to forfeit from a defendant untainted, "substitute property" under section 853(p) – in lieu of forfeiting (from a co-conspirator) the

[1] The parties were given 10 days notice and have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no person other than amicus and its counsel has made any monetary contribution to the preparation or submission of this brief.

actual proceeds traceable to the crime of conviction – the government emphasized that Honeycutt had not contested the predicate to the application of joint and several liability, to wit: the propriety of the district court entering what one Justice described as an "extra[-]statutory money judgment[]." *See* Tr. of Oral Argument at 46:13 (Justice Kagan: "And let's put aside the extra[-]statutory money judgments, since I don't understand really how that works, so let's just focus on (p). All right?"). Government counsel advised the Court:

> MR. FLETCHER: What I mean is that in – this is the – the understanding which the case was litigated in district court. The government came in and sought a *money judgment*[.]
>
> * * *
>
> Now, Petitioner could have argued that the prerequisites for seeking a money judgment weren't satisfied, *either because we can't get money judgments* and have to go through (p), or if we do have to go through (p), that we hadn't satisfied those prerequisites. We could have made the showing; I think we could have on these facts, *but Petitioner didn't make those arguments*.
>
> The only argument that Petitioner made that's relevant to the question presented here is that he couldn't be held jointly and severally liable on a money judgment. That's the argument that the district court adopted.
>
> * * *

> But I really think a lot of the discussion that we've had about how (p) works and *how money judgments works are really ancillary*. They inform the question presented, to be sure, but *they are not the question presented*. The question, *as this case has been litigated and as it comes to the Court*, there's no question that the government can get a money judgment.

*Id*. at 38-39, 48 (emphases added).

Presupposing the propriety of a forfeiture money judgment, the government in *Honeycutt* asks the Court to authorize joint and several liability, "a remedy that's literally unheard of in the background principles of forfeiture," *id*. at 31:22-24 (Justice Sotomayor), and one that the text of section 853 does not support. *Id*. at 25:23-26:3 (Justice Breyer: "It doesn't say it in P. It doesn't say it in A, and indeed congress, said when they passed this that these are exhaustive, we want – we're not adding to anything, we're trying to make it exhaustive. So just where in the statute does it give you the authority to draw the conclusion that you're drawing?"). But before deciding whether principles of joint and several liability apply to a forfeiture money judgment, the Court must first be satisfied that such a judgment is legally valid.

For his part, Henry Lo petitions the Court to address whether Congress even authorized forfeiture money judgments in section 853, which says nothing about money judgments. *Compare* 31 U.S.C. 5332(b)(4) (forfeiture provision which explicitly authorizes entry

of "a personal money judgment against the defendant"). Henry Lo's petition for a writ of certiorari thus squarely presents the question neither raised nor litigated in *Honeycutt*, but one that logically should be resolved a priori: "Whether a district court may order an in personam forfeiture money judgment against an impecunious criminal defendant in the absence of a statute expressly authorizing such a form of punishment." Petition for Writ of Certiorari at i.

Imposing a forfeiture money judgment upon an indigent defendant like Henry Lo is particularly problematic. When a defendant is destitute, he no longer possesses the fruits or instrumentalities of the crime or any property traceable thereto. He has nothing left to forfeit to the government. Whatever "legitimate interest [the government has] in depriving criminals of economic power," *Caplin & Drysdale, Chtd. v. United States*, 491 U.S. 617, 630 (1989), by forcing them to disgorge the proceeds of their crimes, that policy interest does not create any statutory authority to saddle an indigent defendant with a forfeiture money judgment that would allow the government to garnish future wages legitimately earned by a defendant and encumber untainted property legally acquired by the defendant long after the conviction.

As demonstrated below, the government's position is contrary to the plain language of the pertinent forfeiture statutes and their legislative history; it violates a core canon of statutory construction by rendering an entire section of two statutes superfluous; and it elevates a Rule of Criminal Procedure (Rule 32.2) to the

position of a substantive law. Petitioner's position, on the other hand, complies with the words and spirit of the law and is faithful to the doctrine of separation of powers and to the expressed intent of Congress in authorizing the forfeiture of substitute assets to provide a narrow expansion to the government's ability to forfeit assets. *See* S. Rep. 98-225, 98th Cong., 1st Sess., at 192 (1983); *See Honeycutt*, Tr. of Oral Argument at 57:23 (Justice Breyer).

The Court should grant a writ of certiorari to decide whether, to forfeit untainted assets, the government must follow the statutory procedures set forth in 21 U.S.C. 853(p) or whether the government may instead obtain an "extra-statutory money judgment," *Honeycutt*, Tr. of Oral Argument at 46:13-14, and thereby circumvent the statutory requirements for forfeiting untainted assets.



## ARGUMENT

### The Oral Argument in *Honeycutt v. United States*, No. 16-142, Highlights the Importance of Resolving, in the First Instance, Whether 21 U.S.C. 853 Authorizes "Forfeiture Money Judgments"

At the oral argument in *Honeycutt* on March 29, 2017, the government took the position that it may obtain a forfeiture money judgment and thereby force a defendant to forfeit untainted (i.e., "innocent") assets without the government satisfying the substitute property conditions set forth in 21 U.S.C. 853(p). Tr. of

Oral Argument at 37:9 ("In order to forfeit substitute property . . . [the government's] view [is that] the government doesn't have to invoke [section 853](p). It can also obtain a forfeiture money judgment if the directly forfeitable property isn't available."). When pressed, the government argued that "the discussion . . . about how [section 853](p) works and how money judgments work[] are really ancillary," *id.* at 49:6 – ancillary, because Honeycutt, in his case, did not challenge the propriety of forfeiture money judgments. *Id*. at 38-39, 48.

So the Court in *Honeycutt* is being asked to take for granted the validity of the money judgment, effectively placing the proverbial cart before the horse. For if a forfeiture money judgment is indeed extra-statutory, then it is void; it cannot be enforced at all, much less through principles of joint and several liability. This predicate to the application of joint and several liability is of critical import, as it impacts nearly every case in which an indictment contains a prayer for forfeiture – a feature of an increasingly large category of the criminal cases brought in federal court.

In Henry Lo's case, the government advanced a position with respect to the purported validity of forfeiture money judgments similar to the position that the government advanced in *Honeycutt*. But, unlike Honeycutt, Henry Lo argued in the court below that the imposition of the forfeiture money judgment was illegal. The plain language of the forfeiture statutes and their legislative history support Henry Lo's position.

When Congress first enacted criminal forfeiture as a criminal sanction in 1970 with the Racketeer Influenced and Corrupt Organization Act (RICO), Congress had long statutorily prohibited "forfeiture of estate."[2] *See United States v. Bajakajian*, 524 U.S. 321, 332 (1988) ("Although *in personam* criminal forfeitures were well established in England at the time of the founding, they were rejected altogether in the laws of this country until very recently."); *Austin v. United States*, 509 U.S. 602, 613 (1993) ("the First Congress also abolished forfeiture of estate as a punishment for felons. Act of Apr. 30, 1790, ch. 9, § 24, 1 Stat. 117"). Prior to RICO's enactment, there simply was no federal criminal forfeiture sanction, much less one that authorized the criminal forfeiture of lawfully obtained legitimate assets.[3]

For more than 30 years after 1970, Congress did not enact a forfeiture provision authorizing the satisfaction of a criminal defendant's forfeiture liability from assets legitimately acquired or maintained by the

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[2] "Provided always, and be it enacted, that no conviction or judgment for any of the offences aforesaid, shall work corruption of blood, or any forfeiture of estate." Act of Apr. 30, 1790, § 24, 1 Stat. 117.

[3] The closest that Congress came was enactment of the Confiscations Acts during the Civil War, but this Court upheld these laws as enacted pursuant to constitutional War Powers, and they were not "mere municipal regulations for the punishment of crime." *See*, *e.g.*, *Miller v. United States*, 78 U.S. 288, 307 (1870) (holding forfeiture of estate prohibitions inapplicable to Confiscation Act).

defendant. *See* 18 U.S.C. 1963(a) (authorizing forfeiture of interests "acquired or maintained in violation of section 1962"). *See also* 18 U.S.C. 982(a)(1) (authorizing "that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property").[4] To be sure, in 1984, Congress enacted specific legislation addressing the limited circumstances in which federal courts are authorized to order the criminal forfeiture of legitimate assets (so-called "substitute property"). 18 U.S.C. 1963(m); 21 U.S.C. 853(p). Subsequently, in 2000, Congress merged the pre-existing statutory regime for the civil, *in rem* forfeiture of tainted or illegitimate assets into the new criminal forfeiture statutory regime. 28 U.S.C. 2461(c).[5] In both instances, Congress took care to restrict the authorized scope of criminal forfeiture to the specific property adjudged to be obtained or used in violation of statutory forfeiture law (i.e., tainted assets).

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[4] Section 1366(a), Pub. L. No. 99-570, 100 Stat. 3207 (Oct. 27, 1986).

[5] If a person is charged in a criminal case with a violation of an Act of Congress for which the civil or criminal forfeiture of property is authorized, the Government may include notice of the forfeiture in the indictment or information pursuant to the Federal Rules of Criminal Procedure. If the defendant is convicted of the offense giving rise to the forfeiture, the court shall order the forfeiture of the property as part of the sentence in the criminal case pursuant to the Federal Rules of Criminal Procedure and 18 U.S.C. 3554.

In sharp contrast, in 2001, when it created the new crime of "bulk cash smuggling" in 31 U.S.C. 5332, Congress enacted a provision that authorizes entry of a forfeiture money judgment.

> If the property subject to forfeiture under paragraph (2) [i.e., tainted property] is unavailable, and the defendant has insufficient substitute property that may be forfeited pursuant to section 413(p) of the Controlled Substances Act, the court shall enter a *personal money judgment* against the defendant for the amount that would be subject to forfeiture.

31 U.S.C. 5332(b)(4) (emphasis added). Section 5332(b)(4) shows that when Congress intends for a statute to authorize district courts to enter a forfeiture money judgment, it says so and it uses the words "money judgment" to communicate its intent.

The drafting care of Congress has not been matched by those courts, like the Ninth Circuit below, which have simply assumed that the *in personam* character of the more recently-authorized criminal forfeiture sanction expands the scope of criminal forfeitures to reach wholly legitimate property of a defendant. Specifically, a majority of federal circuit courts have inferred from the *in personam* nature of criminal forfeiture, and from its unquestioned jurisdictional application to a defendant's whole person, that Congress implicitly authorized a criminal forfeiture judgment to apply to all of a defendant's property akin to a civil money judgment. *See*, *e.g.*, *United States v. Hall*, 434

F.3d 42, 59 (1st Cir. 2006);[6] *but cf*. *United States v. Vampire Nation*, 451 F.3d 189, 202 (3d Cir. 2006) (after citing and quoting the substitute assets forfeiture provisions of 21 U.S.C. 853(p), stating: "It is apparent, therefore, that the scope of *in personam* judgment in forfeiture is more limited than a general judgment *in personam*.").

Application of standard statutory construction principles leads to the conclusion that Congress did ot intend to untether a forfeiture judgment from the specific property that justifies the imposition of this criminal sanction upon a guilty defendant. A so-called "forfeiture money judgment," like the ones imposed upon Honeycutt, Henry Lo, and countless federal criminal defendants, is an *in personam* money judgment against a defendant for an amount equal to the value of the tainted property identified in section 853(a). Such a judgment purports to authorize the government to obtain forfeiture of any assets (tainted or untainted) up to the amount that belongs to the defendant at any time (currently or in the future).

If Congress had believed, or intended, that courts could impose such a forfeiture money judgment and automatically satisfy it from any property of the defendant (tainted or not), there would have been no need to enact the substitute property provisions. Those

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[6] *Accord United States v. Huber*, 404 F.3d 1047, 1056 (8th Cir. 2005); *United States v. Baker*, 227 F.3d 955, 970 (7th Cir. 2000); *United States v. Lester*, 85 F.3d 1409, 1413 (9th Cir. 1996); *United States v. Robilotto*, 828 F.2d 940, 948-49 (2d Cir. 1987); *United States v. Ginsburg*, 773 F.2d 798, 801-03 (7th Cir. 1985) (en banc).

provisions were added to respond to a specific problem – that is, "to assure that [a defendant] cannot . . . avoid the economic impact of forfeiture" by "transfer[ing], deplet[ing], or conceal[ing] his [tainted] property." S. Rep. 97-520, 97th Cong., 2d Sess., at 192 (1982). The substitute asset provisions thus authorize the government to obtain forfeiture of a defendant's untainted assets ("substitute property") as a remedy, albeit a limited one, in cases where a defendant has placed his tainted assets beyond the government's reach. Congress's decision to enact section 853(p) demonstrates that neither any extra-textual authority nor any other provision of section 853 had already bestowed upon the district courts power to enter a "forfeiture money judgment." If a district court already had such power, Congress would have had no reason to enact the substitute property provision in section 853(p), because a forfeiture money judgment would subsume the remedy offered by section 853(p). The government could enforce such a judgment against a defendant's untainted assets and would never need to rely on (much less satisfy the conditions of) section 853(p). That would render section 853(p) superfluous, violating the basic canon of statutory construction that statutes do not contain surplusage. *See*, *e.g.*, *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459, 2468 (2014).

That same canon compels the conclusion that Congress did not implicitly authorize entry of forfeiture money judgments. Congress expressly dealt with the issue of forfeiture of untainted property by enacting

specific substitute assets provisions that impose preconditions for such forfeiture. There would be no "need" for those "specific provision[s]" if Congress had implicitly authorized entry of forfeiture money judgments. *See id.* Congress did not do so.

The structure of the criminal forfeiture statutes repeatedly enacted by Congress confirms this plain language interpretation. *State Farm Fire & Cas. Co. v. U.S. ex rel. Rigsby*, 137 S. Ct. 436, 442 (2016) (using statute's structure to construe meaning). Congress addressed the forfeiture of untainted, substitute assets in subsections distinct and separate from the subsection authorizing the substantive criminal forfeiture of tainted property. *Compare* 21 U.S.C. 853(a) and 18 U.S.C. 1963(a) (authorizing forfeiture of tainted property) *with* 21 U.S.C. 853(p) and 18 U.S.C. 1963(m) (authorizing forfeiture of innocent assets only if, "as a result of any act or omission of the defendant," property described in subsection (a) "cannot be located upon the exercise of due diligence"; "has been transferred or sold to, or deposited with, a third party"; "has been placed beyond the jurisdiction of the court"; "has been substantially diminished in value"; or "has been commingled with other property which cannot be divided without difficulty."). *See also* 18 U.S.C. 982(b)(1) (adopting criminal forfeiture provisions of 21 U.S.C. 853 for money laundering convictions).

The symmetry of these disparate statutory enactments on the same legal issue – the potential punishment available in connection with the imposition of criminal forfeitures – counsels even more forcibly

against a conclusion that Congress repeatedly enacted meaningless statutory surplusage when legislating on the same subject as applied to wholly different criminal offenses. This Court has repeatedly applied the presumption that, where Congress includes language in one part of a statute, but omits it elsewhere, Congress acts intentionally. *E.g.*, *Russello v. United States*, 464 U.S. 16, 23 (1983) (applying this canon to 18 U.S.C. 1963(a)). Here, where Congress affirmatively authorized the forfeiture of untainted "substitute" assets, but did so only where specifically enumerated statutory preconditions are met, there simply is no statutory language authorizing a free-wheeling forfeiture execution upon all property of the defendant. By repeatedly conditioning the availability of criminal forfeiture of innocent assets upon required statutory showings – in language dispersed throughout the different statutory forfeiture regimes – Congress acted intentionally.

Ironically, the Solicitor General, *Honeycutt*, Tr. of Oral Argument at 44:5, and virtually every circuit (except the Fourth[7]) have endorsed the parallel, plain-language construction of the same statutes in the context of pretrial restraints. *E.g.*, *United States v.*

[7] *In re Billman*, 915 F.2d 916 (4th Cir. 1990). *Billman* was the first appellate opinion on the availability of pretrial restraints upon substitute assets, and its decision to permit such restraints still stands alone, as all other circuits to address the issue have held to the contrary. In *Honeycutt*, the Solicitor General has acknowledged that *Billman* does not survive this Court's recent opinion in *Luis v. United States*, 136 S. Ct. 1083 (2016). Tr. of Oral Argument at 44:5.

*Ripinsky*, 20 F.3d 359, 363 (9th Cir. 1994) (citing *In re Assets of Martin*, 1 F.3d 1351, 1359 (3d Cir. 1993) and *United States v. Floyd*, 992 F.2d 498, 502 (5th Cir. 1993) for proposition that plain language of the statute is "clearly dispositive"). This analysis rests on a finding that the statutory language of 18 U.S.C. 1963(m) and 21 U.S.C. 853(p) shows that "Congress . . . chose to treat untainted, or substitute, assets differently than the tainted assets described" in subsection (a) of those statutes. *United States v. Parrett*, 530 F.3d 422, 430-31 (6th Cir. 2008). Moreover, these circuits reject the argument in the pretrial restraint context that section 853(o), which states that "[t]he provisions of this section shall be liberally construed to effectuate its remedial purposes," supports an extra-textual reading of the statute. *E.g.*, *Ripinsky*, 20 F.3d at 363 ("while § 853(o) does 'command for a liberal construction,' it does not 'authorize us to amend by interpretation.'") (citing *Floyd*, 992 F.2d at 502). Consistency demands that the same is true in the forfeiture context: Section 853(o) does not authorize courts to amend the statute to provide an extra-textual remedy that Congress declined to enact.

In the pretrial restraint context, nearly every circuit recognizes the need to rely on the plain language of the forfeiture statutes and acknowledges that "amend[ing] by interpretation" is inappropriate. *Id*. The Court expressed concern at oral argument in *Honeycutt* that the government was failing to adhere to the language of the applicable forfeiture statute. *See*, *e.g.*, Tr. of Oral Argument at 26 (Justice Breyer: "So just

where in the statute does it give you the authority to draw the conclusion that you're drawing?"); *id*. at 41 ("And you're able to do that under what statute?"); *id*. at 46 (Justice Kagan: " . . . let's put aside the extra[-]statutory money judgments, since I don't understand really how that works. . . ."); *id*. at 47 (Justice Kennedy: " . . . But [the statute] begins by saying act or omission of the defendant."). These concerns follow this Court's longstanding precedents focusing on the language of forfeiture statutes, *see United States v. Monsanto*, 491 U.S. 600, 606-08 (1989), and holding that such statutes are penal laws that must be strictly construed against the government. *E.g.*, *Johnson v. United States*, 135 S. Ct. 2551, 2567-68 & n.1 (2015) (Thomas, J., concurring in the judgment) (stating that "laws authorizing . . . forfeitures" are "penal" and citing "the rule that penal statutes should be construed strictly") (internal quotation marks omitted); *United States v. One 1936 Model Ford V-8 Deluxe Coach*, 307 U.S. 219, 226 (1939) ("Forfeitures are not favored; they should be enforced only when within both the letter and spirit of the law."); *Shipp v. Miller's Heirs*, 15 U.S. 316, 325 (1817) ("[A]cts, imposing forfeitures, are always construed strictly as against the government, and liberally as to the other parties.").

Yet, many of those same circuits authorize an extra-statutory remedy of forfeiture money judgments that can be obtained and collected upon regardless of whether the statutory prerequisites for forfeiting substitute assets are satisfied. Hence, essentially all circuits – including the Ninth Circuit below – have

strictly construed the same statutory language with respect to substitute assets restrained pretrial, but have rejected a plain reading of the same language in the post-trial context. This divergent treatment of the same statutory language is irreconcilable and is contrary to this Court's precedent.

Moreover, in 2000, when Congress sought to increase the sparse procedural protections of property owners from perceived abuses of the civil, *in rem*, forfeiture laws by enactment of the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"), Pub. L. No. 106-185, 114 Stat. 202 (2000),[8] it authorized the government to merge the substantive scope of civil and criminal forfeitures into one criminal proceeding. *See* 28 U.S.C. 2461(c). This gave the Justice Department the right to seek forfeiture of tainted property – as swept within the scope of innumerable civil forfeiture statutes – but with the added procedural protections of a criminal prosecution for defendants. Having merged the substantive scope of both civil (*in rem*) and criminal (*in personam*) forfeitures into the criminal proceeding, it makes no sense to assume that Congress nonetheless silently approved the criminal forfeiture of untainted property having no connection with either a civil or criminal statutory authorization for forfeiture.

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[8] "In passing CAFRA, Congress was reacting to public outcry over the government's too-zealous pursuit of civil and criminal forfeiture." *United States v. Khan*, 497 F.3d 204, 208 (2d Cir. 2007). Those concerns persist. *See, e.g.*, Office of the Inspector General, Department of Justice, Review of the Department's Oversight of Cash Seizure and Forfeiture Activities (March 2017).

Finally, although many circuits point to the references to "money judgments" in Rule 32.2 of the Federal Rules of Criminal Procedure as support for finding that forfeiture money judgments are authorized, *e.g.*, *United States v. Newman*, 659 F.3d 1235, 1242-43 (9th Cir. 2011), the Rules Committee expressly declined to take a position on whether Congress authorized *in personam* forfeiture judgments. *United States v. Croce*, 334 F. Supp. 2d 781, 785 n.12 (E.D. Pa. 2004) (noting that Advisory Committee notes to Fed. R. Crim. 32.2 recognized that some courts had endorsed *in personam* forfeiture judgments but that the Committee "took no position on the correctness of those rulings"). In any event, Rule 32.2 is a *procedural* Rule. Because the Rules Enabling Act states that the Federal Rules "shall not abridge, enlarge or modify any substantive right," 28 U.S.C. 2072(b), Rule 32.2 cannot authorize a forfeiture that Congress has not.

Therefore, there is no support for the government's position both in *Honeycutt* and in this case that the forfeiture statutes implicitly authorize "forfeiture money judgments" that allow the government to forfeit untainted assets without complying with the statutory preconditions set out in section 853(p). Moreover, because forfeiture laws are penal in nature, *e.g.*, *Johnson*, 135 S. Ct. at 2567 & n.1, and because courts are "prohibited from imposing criminal punishment beyond what Congress in fact has enacted by a valid law," *Welch v. United States*, 136 S. Ct. 1257, 1268 (2016), the circuits that authorize courts to impose forfeiture money judgments in the absence of statutory authority

are encroaching upon the authority of the legislative branch. As this Court has noted with respect to criminal forfeitures, "judgments about the appropriate punishment for an offense belong in the first instance to the legislature." *Bajakajian*, 524 U.S. at 336; *cf. United States v. Wiltberger*, 18 U.S. 76, 95, 5 L. Ed. 37 (1820) (Marshall, C.J.) ("The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment.").[9]

Ultimately, neither section 853 nor any extra-textual authority gives district courts the power to enter a so-called "forfeiture money judgment," as the phrase is defined by the government and by the Ninth Circuit below. The government appeared to recognize this lack of statutory authority, arguing that forfeiture money judgments are appropriate because "nothing suggests that money judgments are forbidden." (Pet. App. 287). "The government's inability to provide legal support for its actions is telling: There is no

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[9] *See also Libretti v. United States*, 516 U.S. 29, 55 (1995) (Stevens, J., dissenting) ("In *Bigelow v. Forrest*, 9 Wall. 339, 19 L. Ed. 696 (1870), the Court explained that a court 'transcend[s] its jurisdiction' when it orders the forfeiture of property beyond that authorized by statute. *Id.*, at 351. In a similar vein, *Ex parte Lange*, 18 Wall. 163, 21 L. Ed. 872 (1874), concluded that a judgment imposing punishment in excess of statutory authorization is not merely voidable, but 'void.' *Id.*, at 178.").

support." *United States v. Binh Tang Vo*, 78 F. Supp. 3d 171, 174 (D.D.C. 2015).

Absent legal authority, the Court should not allow the government to forfeit untainted assets as an additional punishment for criminal conduct, particularly where, as here, doing so violates the language and purpose of the statute, undermines the separation of powers, and is contrary to the express intent of Congress.

## CONCLUSION

The petition should be granted.

Respectfully submitted,

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