No. 23-1050

In the Supreme Court of the United States

LUIS SANCHEZ, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court abused its discretion by denying petitioners leave to amend the petition they filed pursuant to 21 U.S.C. 853(n).

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 1
Statement 2
Argument 10
Conclusion 19

TABLE OF AUTHORITIES

Cases:

Caplin & Drysdale, Chartered v. *United States*, 491 U.S. 617 (1989) 10
Cutter v. *Wilkinson*, 544 U.S. 709 (2005) 14
Edelman v. *Lynchburg Coll.*, 535 U.S. 106 (2002) 13, 14
Libretti v. *United States*, 516 U.S. 29 (1995) 10
The Monrosa v. *Carbon Black Exp., Inc.*, 359 U.S. 180 (1959) 19
Scarborough v. *Principi*, 541 U.S. 401 (2004) 13
Supervisors v. *Stanley*, 105 U.S. 305 (1882) 19
United States v. *Davenport*, 668 F.3d 1316 (11th Cir.), cert. denied, 566 U.S. 1035 (2012) 9
United States v. *Furando*, 40 F.4th 567 (7th Cir. 2022) 15, 16
United States v. *Gilbert*, 244 F.3d 888 (11th Cir. 2001), superseded by rule on other grounds as recognized in *United States* v. *Marion*, 562 F.3d 1330 (11th Cir.), cert. denied, 558 U.S. 930 (2009) 12
United States v. *Lamid*, 663 Fed. Appx. 319 (5th Cir. 2016) 15
United States v. *Marion*, 562 F.3d 1330 (11th Cir.), cert. denied, 558 U.S. 930 (2009) 13, 14

Cases—Continued: Page

United States v. *Negron-Torres*, 876 F. Supp. 2d 1301 (M.D. Fla. 2012) 12
United States v. *Snipes*, 611 F.3d 855 (11th Cir. 2010), cert. denied, 563 U.S. 1032 (2011) 9
United States v. *Swartz Family Trust*, 67 F.4th 505 (2d Cir. 2023) 16
United States v. *Sze*, No. 22-cr-141, 2024 WL 195468 (D.N.J. Jan. 18, 2024) 17
United States v. *Welch*, No. 20-cr-52, 2023 WL 7020377 (D. Idaho Oct. 25, 2023), appeal pending, No. 23-3309 (9th Cir. filed Nov. 3, 2023) 17

Constitution, statutes, and rules:

U.S. Const. Art. III 2, 6, 8, 10, 18
Civil Rights Act of 1964, Tit. VII, 42 U.S.C. 2000e *et seq.* 13
Equal Access to Justice Act, Pub. L. No. 96-481, Tit. II, 94 Stat. 2325 13
21 U.S.C. 841(a)(1) 3
21 U.S.C. 846 2
21 U.S.C. 853 ..... 2, 3, 8-10, 14, 15
21 U.S.C. 853(k) 9, 10
21 U.S.C. 853(n) 2-5, 10, 11, 13, 16-18
21 U.S.C. 853(n)(2) 3, 8-10
21 U.S.C. 853(n)(3) 4-8, 11, 14, 18
21 U.S.C. 952(a) 2
21 U.S.C. 963 2
Fed. R. Civ. P.:
Rule 15 12
Rule 15(a)(2) 12
Rule 15(c) 13

Rules—Continued: Page
Rule 60(b) 8, 14
Fed. R. Crim. P.:
Rule 32.2 ..... 3, 10, 12, 14
Rule 32.2(b)(2)(A) 10
Rule 32.2(b)(6)(A) 4
Rule 32.2(b)(6)(C) 12
Rule 32.2(b)(6)(D) 12
Rule 32.2(c) 10, 12
Rule 32.2(c)(1)(B) 12
Rule 32.2 advisory committee's note (2000) 12
Sup. Ct. R. 10 17

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-13) is not published in the Federal Reporter but is available at 2023 WL 5844958. The orders of the district court (Pet. App. 16-30, 31-36, 37-52) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 11, 2023. A petition for rehearing was denied on November 21, 2023 (Pet. App. 57-58). On February 5, 2024, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including March 20, 2024, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea by defendant Carlos Quispe Cancari in the United States District Court for the Southern District of Florida, the United States obtained a preliminary order of forfeiture under 21 U.S.C. 853 for Cancari's interest in $9000 in United States currency seized from him upon his arrest. Pet. App. 2. Petitioners Luis Sanchez, Jaqueline Yupanqui Palacios, and Excentric Import and Export Corporation commenced an ancillary proceeding under 21 U.S.C. 853(n) contending that they were entitled to the $9000. Pet. App. 3. The district court determined that petitioners Sanchez and Excentric lacked Article III standing and that all petitioners failed to satisfy the requirement of Section 853(n)(3) that a third-party petition be "signed by the petitioner under penalty of perjury." *Id.* at 46 (citation and emphasis omitted); see *id.* at 42-52. The court accordingly dismissed the third-party petition and denied petitioners leave to amend. *Id.* at 37-52. The court subsequently entered a final order of forfeiture. *Id.* at 16-30, 31-36. The court of appeals affirmed. *Id.* at 1-13.

1. On February 4, 2021, law-enforcement officers arrested Cancari after he arrived at Miami International Airport on a cargo plane traveling from Bolivia. Cancari was carrying approximately five kilograms of cocaine and $9000 in U.S. currency. Pet. App. 2; Presentence Investigation Report ¶¶ 7, 9-26.

A federal grand jury returned an indictment charging Cancari with conspiracy to import cocaine, in violation of 21 U.S.C. 963; importation of cocaine, in violation of 21 U.S.C. 952(a); conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. 846; and possession with intent to distribute cocaine, in violation of

21 U.S.C. 841(a)(1). Indictment 1-3. The indictment also sought forfeiture of any property constituting or derived from proceeds of the charged offenses and any property used or intended to be used to facilitate the commission of those offenses, pursuant to 21 U.S.C. 853. Indictment 3-4. The government later filed a bill of particulars specifying that the property subject to criminal forfeiture included the $9000 seized from Cancari. Pet. App. 32.

Cancari pleaded guilty to the conspiracy-to-import count. Pet. App. 2, 32. He admitted that the $9000 was "subject to forfeiture," waived his right to a hearing to determine the nexus between the cash and the charged conspiracy, and waived his right to contest forfeiture. *Id.* at 2, 39.

The district court entered a preliminary order of forfeiture, which directed the government to publish notice in accordance with 21 U.S.C. 853(n). Pet. App. 53-56. Section 853(n) permits "[a]ny person, other than the defendant, asserting a legal interest in property which has been ordered forfeited" to "petition the court for a hearing to adjudicate the validity of his alleged interest in the property." 21 U.S.C. 853(n)(2). A petition under Section 853(n) must be filed "within thirty days of the final publication of notice or [the petitioner's] receipt of notice * * * whichever is earlier." *Ibid.*

The government published the required notice from September 25, 2021, to October 24, 2021. Pet. App. 33. Because Cancari had told the arresting officers that the $9000 belonged to petitioner Sanchez, and Sanchez had filed an administrative claim for the money, the government also sent notice directly to Sanchez's counsel. *Id.* at 2, 33, 39. That notice was consistent with Federal Rule of Criminal Procedure 32.2, which requires that

notice be sent to "any person who reasonably appears to be a potential claimant with standing to contest the forfeiture" in any ancillary proceeding. Fed. R. Crim. P. 32.2(b)(6)(A).[1] The preliminary order of forfeiture, the notice to Sanchez's counsel, and the published notice stated that any third parties claiming an interest in the $9000 seized from Cancari must file a petition pursuant to 21 U.S.C. 853(n) within 60 days of the initial publication date of September 25, 2021 (*i.e.*, no later than November 25, 2021). Pet. App. 33-34, 55; C.A. App. 55.

2. On November 23, 2021, petitioners filed a third-party petition for release of property pursuant to 21 U.S.C. 853(n). Pet. App. 3. The petition was not "signed by the petitioner[s] under penalty of perjury," as required by 21 U.S.C. 853(n)(3), nor accompanied by a memorandum of law, as required by the local rules. Pet. App. 3. The district court denied the petition without prejudice for failure to comply with local rules requiring a memorandum of law, and the next day it granted petitioners' unopposed motion to extend the deadline for filing a revised petition to December 17, 2021. *Id.* at 3, 34.

Petitioners filed their revised petition for release (the currently operative one) on December 17, 2021. Pet. App. 3. The petition alleged that Palacios sent the $9000 with Cancari as payment for merchandise she had

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[1] The notice was delivered to Sanchez's counsel on October 29, 2021, and was sent after the U.S. Attorney's Office learned from U.S. Customs and Border Protection (CBP) of the claim asserted on Sanchez's behalf in a nonjudicial administrative forfeiture proceeding. Pet. App. 33 & n.1. On July 1, 2021, Sanchez himself had been sent a "Notice of Seizure and Information to Claimants CAFRA Form" by CBP, which informed Sanchez that the currency had been seized and that "facts available to CBP indicate that you have an interest in the seized property." C.A. App. 82 (capitalization altered; emphasis omitted).

purchased from Excentric, of which Sanchez was part owner, and that none of the petitioners knew that Cancari was importing drugs. *Id.* at 3-4. As with the earlier filing, the revised petition was not signed by the petitioners under penalty of perjury, even though the petition itself quoted the requirement in Section 853(n)(3) that such a "petition shall be signed by the petitioner under penalty of perjury." *Id.* at 3, 48. Instead, the petition was signed electronically only by petitioners' counsel, and was not verified under penalty of perjury by anyone. *Id.* at 47-48; C.A. App. 80.

Attached to the petition were verified affidavits from petitioners Sanchez and Palacios. Pet. App. 3; C.A. App. 86-93. Sanchez's affidavit stated that Palacios owed Excentric $9000 as payment for previously purchased merchandise and had sent the $9000 with Cancari. Pet. App. 49; C.A. App. 86-87. But Palacios's affidavit, which was notarized, stated that she had purchased $10,048 in merchandise from Excentric; stated that she had sent $10,000 with Cancari as payment; and attached an invoice that matched the date and invoice number in the affidavit but showed a purchase amount of $28,766.06. Pet. App. 48-49; C.A. App. 88-93. Nothing in the petition or the attached materials explained the discrepancies within Palacios's affidavit or between that affidavit and the petition.

The government moved to dismiss on the grounds that petitioners lacked constitutional and statutory standing and had failed to satisfy the pleading requirements of 21 U.S.C. 853(n), including because the petition was not signed by petitioners under penalty of perjury. Pet. App. 40; C.A. App. 94-113. The government argued that the affidavits, although signed, could not suffice because they contradicted the petition; did not

by themselves allege sufficient facts to satisfy Section 853(n)(3); and contained unexplained discrepancies. C.A. App. 105-106, 110-111.

Petitioners' opposition to the motion to dismiss characterized their failure to sign the petition under penalty of perjury as a "formatting" error and faulted the district court for failing to provide a recommended form petition on its website, Pet. App. 47-48; C.A. App. 116 n.1, but petitioners did not acknowledge or respond to the government's arguments regarding the deficiencies and contradictions in the affidavits that petitioners had submitted, C.A. App. 114-123. Petitioners attached a new affidavit from Palacios that tracked the structure and language of Sanchez's affidavit, changed the purchase and payment amounts to $9000, and omitted any reference to the invoice. Pet. App. 49; C.A. App. 131-132. Neither petitioners' response nor any of the materials submitted with it acknowledged or explained the discrepancies with Palacios's earlier, notarized affidavit. Pet. App. 49. In a concluding paragraph of their January 24, 2022 opposition, petitioners asserted that if the court deemed the petition deficient, it should grant them leave to amend it. *Id.* at 123.

3. a. The district court granted the government's motion to dismiss the petition for release. Pet. App. 37-52. As relevant here, the court first ruled that Sanchez and Excentric had failed to establish Article III standing on the basis of their allegations that they were general creditors of Palacios, rather than parties with an ownership or possessory interest in the specific seized property. *Id.* at 42-43. The court concluded that Palacios had Article III standing but that she lacked statutory standing because she had "fail[ed] to identify the

jurisdiction(s) that created [her] alleged property rights." *Id.* at 44; see *id.* at 42.

The district court next held that petitioners failed to satisfy the pleading requirements of Section 853(n)(3) because they did not sign the petition for release. Pet. App. 46-50. The court explained that federal courts generally require strict compliance with the Section 853(n)(3) pleading requirements—including the requirement that a petition be signed under penalty of perjury—because those requirements are not mere technical rules, but rather important safeguards against the "substantial danger of false claims in forfeiture proceedings." *Id.* at 46 (citation omitted).

The district court further explained that "the affidavits cannot substitute for the Petition" because the less-detailed "versions of facts provided in the affidavits fall far short of satisfying the pleading requirements provided in section 853(n)(3)." Pet. App. 48. The court found it "[m]ore troubling still" that "Palacios's Affidavit directly contradict[ed] the Petition and Sanchez's Affidavit," *id.* at 49, and that the resulting "confusion" was increased because "neither Palacios nor Sanchez explain[ed] how they arrived at the numbers $10,048 or $9,000 based on the invoice" showing a purchase amount of $28,766.06; nor did they address why Palacios's second affidavit "inexplicably lowers the amount Palacios alleges she entrusted with Defendant [Cancari] to $9,000," *id.* at 49-50. Taking those reasons "[a]together," the court concluded that the petition must be dismissed. *Id.* at 50.

The district court declined to grant petitioners leave to amend, noting that they had provided no authority establishing that they could amend their petition after

the 30-day period in Section 853(n)(2) had expired. Pet. App. 51-52.

b. After the district court entered a final order of forfeiture, Pet. App. 31-36, petitioners filed a motion pursuant to Federal Rule of Civil Procedure 60(b) to set aside that order and the order dismissing their petition, Pet. App. 16, 20. Petitioners contended that their failure to sign the petition was due to their counsel's mistake and excusable neglect. *Id.* at 21. In their reply in support of the Rule 60(b) motion, petitioners contended for the first time that the government's position would render Section 853 unconstitutional. *Id.* at 5 n.2.

The district court denied the Rule 60(b) motion. Pet. App. 16-30. The court exercised its discretion to decline to excuse petitioners' counsel's failure to follow "'an unambiguous federal rule,'" emphasizing that "abundant and clear" case law establishes that Section 853(n)(3)'s requirement that a petition "must be signed under penalty of perjury is not a mere technical requirement that courts easily excuse." *Id.* at 24 (citation omitted). The court did not consider petitioners' belatedly raised constitutional arguments. *Id.* at 5 n.2.

4. The court of appeals affirmed in an unpublished, per curiam opinion. Pet. App. 1-13.

The court of appeals affirmed the district court's holding that Sanchez and Excentric lacked Article III standing because the petition alleged only that they were Palacios's general creditors, and not that they have any "ownership or possessory interest in the seized currency." Pet. App. 9; see *id.* at 10. The court concluded, however, that the petition alleged sufficient facts to establish Palacios's statutory standing because it "alleged she had an interest in the money as an owner or bailor." *Id.* at 11.

Addressing Palacios's failure to sign the petition and the district court's denial of leave to amend, the court of appeals first stated that Palacios concededly "didn't comply with the plain text" of "an unambiguous pleading requirement laid out by the statute." Pet. App. 12. The court noted that the statute also requires filing a petition within the timeframe set forth in Section 853(n)(2), which a previous Eleventh Circuit decision "described * * * as establishing a '*mandatory* 30-day period for filing third-party petitions," and that period "had long since passed" by the time petitioners sought leave to amend. *Ibid.* (quoting *United States* v. *Davenport*, 668 F.3d 1316, 1323 (11th Cir.), cert. denied, 566 U.S. 1035 (2012)). The court held that "[g]iven the language of the statute and our case law, we cannot say that the district court abused its discretion when it enforced this congressionally prescribed, 'mandatory' thirty-day window and denied leave to amend." *Ibid.*; see *id.* at 12-13 (citing *Davenport*, 668 F.3d at 1323, and *United States* v. *Snipes*, 611 F.3d 855, 864 (11th Cir. 2010), cert. denied, 563 U.S. 1032 (2011)).

In a footnote, the court of appeals explained that it declined to address petitioners' challenge to the constitutionality of Section 853 because petitioners had not properly raised that issue below. Pet. App. 5 n.2 ("The district court declined to address the belatedly raised issue, and so do we.").[2]

5. The court of appeals denied a petition for rehearing. Pet. App. 57-58.

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[2] The court of appeals also dismissed petitioners' appeal of the preliminary order of forfeiture for lack of jurisdiction, noting that under 21 U.S.C. 853(k) third-party petitioners lack standing to challenge such orders. Pet. App. 5-7. Petitioners do not seek this Court's review of that determination.

ARGUMENT

Petitioners contend (Pet. 14-31) that the district court abused its discretion by denying leave to amend the third-party petition they filed under 21 U.S.C. 853(n). The court of appeals correctly rejected that contention, and its unpublished and nonprecedential decision does not conflict with any decision of this Court or another court of appeals. This case would in any event be a poor vehicle to address the question presented because two of the petitioners lack Article III standing, and the third petitioner has offered no reason to conclude that her underlying claim to the forfeited proceeds would succeed on the merits if this Court were to remand for further proceedings.

1. a. Criminal forfeiture proceedings are governed, in relevant part, by 21 U.S.C. 853 and Federal Rule of Criminal Procedure 32.2. Section 853(n) and Rule 32.2(c) establish a procedure through which a third party claiming a cognizable interest in property subject to a preliminary forfeiture order can commence an ancillary proceeding in which to demonstrate that she is the "'rightful owner[]' of forfeited assets." *Caplin & Drysdale, Chartered* v. *United States*, 491 U.S. 617, 629 (1989). That procedure is exclusive: a third party may assert an interest in the property only as provided in Section 853(n). See 21 U.S.C. 853(k); Fed. R. Crim. P. 32.2(b)(2)(A); *Libretti* v. *United States*, 516 U.S. 29, 44 (1995).

As relevant here, a third party claiming such an interest may file a petition "within thirty days of the final publication of notice." 21 U.S.C. 853(n)(2). "The petition shall be signed by the petitioner under penalty of perjury and shall set forth," among other things, "the nature and extent of the petitioner's right, title, or in-

terest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property," and the relief sought. 21 U.S.C. 853(n)(3). The statute further provides that "[t]he petition" that Section 853(n) requires be filed by the deadline must be verified personally under penalty of perjury. *Ibid.*

Here, the lower courts correctly held that petitioners' "fail[ure] to follow the plain" and "unambiguous" statutory language justified the dismissal of their petition. Pet. App. 48 (citation omitted); see *id.* at 12. Petitioners' failure to sign the petition under penalty of perjury was "especially hard to excuse here, considering the Petition that Petitioners' counsel signed recites section 853(n)(3) verbatim." *Id.* at 48.

For similar reasons, the district court did not err in denying petitioners leave to amend their petition. Contrary to petitioners' characterization of their noncompliance as a "minor pleading deficienc[y]" involving "the location of [petitioner Palacios's] signature," Pet. 2-4, 14, 31, federal courts generally require strict compliance with the pleading requirements of Section 853(n)(3), including the "mandatory" deadline for filing a petition. Pet. App. 12; see *id.* at 21, 46 (noting that strict compliance is necessary because of the substantial risk of false claims in forfeiture proceedings). Petitioners have never explained their failure to sign the petition under penalty of perjury. Nor have they ever explained the omissions and glaring contradictions in their various affidavits, which were critical to the district court's dismissal of their petition. *Id.* at 48-50. Instead, petitioners created further confusion and suspicion by submitting a different affidavit from Palacios inexplicably attesting to different facts. *Id.* at 49. In those circum-

stances, it was not an abuse of discretion to deny petitioners' request for leave to amend.

b. Petitioners' contrary arguments lack merit.

Petitioners first contend (Pet. 21-23) that the district court's denial of leave to amend was inconsistent with the Federal Rules of Civil Procedure, and specifically with the statement in Civil Rule 15(a)(2) that the "court should freely give leave [to amend pleadings before trial] when justice requires." Fed. R. Civ. P. 15(a)(2). That is wrong as a matter of law. Criminal forfeiture proceedings are governed by the rules of *criminal* procedure. Indeed, Criminal Rule 32.2(c) was adopted to govern those proceedings specifically because "it would not be appropriate to make the Civil Rules applicable in all respects." Fed. R. Crim. P. 32.2 advisory committee's note (2000) (notes to Subsection (c)). It is true that Rule 32.2 "describes several fundamental areas in which procedures analogous to those in the Civil Rules may be followed," including "the filing of a motion to dismiss," *ibid.*, and that several provisions of Rule 32.2 expressly incorporate certain of the Civil Rules, see Fed. R. Crim. P. 32.2(b)(6)(C), (D) and (c)(1)(B). But, tellingly, leave to amend out of time is not mentioned, and Civil Rule 15 is not incorporated. It is therefore unsurprising that petitioners identify no court that has applied Civil Rule 15 in a criminal forfeiture proceeding.[3]

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[3] Petitioners cite (Pet. 21) *United States* v. *Negron-Torres*, 876 F. Supp. 2d 1301 (M.D. Fla. 2012), for the proposition that "[a]ncillary forfeiture proceedings that arise out of criminal cases are civil in nature and are thus governed by the Federal Rules of Civil Procedure." *Id.* at 1304. But *Negron-Torres* relied on the decision in *United States* v. *Gilbert*, 244 F.3d 888, 907 (11th Cir. 2001), which the Eleventh Circuit has acknowledged was superseded by Criminal

Second, petitioners contend (Pet. 23-24) that the court of appeals' decision conflicts with this Court's decision in *Scarborough* v. *Principi*, 541 U.S. 401 (2004). But that decision concerned civil claims brought under a statute that was subject to Civil Rule 15(c). See *id.* at 417-419. In *Scarborough*, the Court held that when a timely fee application under the Equal Access to Justice Act, Pub. L. No. 96-481, Tit. II, 94 Stat. 2325, fails to allege that the government's position in the underlying litigation lacked substantial justification, a court may grant leave to amend the application in order to cure that deficiency even after the statutory deadline to file an application has passed. 514 U.S. at 406. In reaching that conclusion, the Court emphasized that under the statutory scheme at issue there, the missing allegation did not "serve an essential notice-giving function," and the government would not be prejudiced by permitting the missing allegation to relate back. *Id.* at 416; see *id.* at 422-423. That reasoning does not extend to the context of criminal forfeiture, where the requirement to sign the petition under penalty of perjury serves the important governmental interest of weeding out false ownership claims.

Petitioners' cursory citation (Pet. 23) to *Edelman* v. *Lynchburg College*, 535 U.S. 106 (2002), which upheld an Equal Opportunity Employment Commission (EEOC) regulation interpreting Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, likewise does little to help their cause. As *Edelman* explained, one provision of Title VII required that a charge of discrimination be verified, and another imposed a filing deadline for such a charge, but neither provision implied that

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Rule 32.2, see *United States* v. *Marion*, 562 F.3d 1330, 1340-1341 (per curiam), cert. denied, 558 U.S. 930 (2009).

a charge must be verified at the time of filing. See 535 U.S. at 112. By contrast, the text of Section 853(n) requires both that "[*t*]*he* petition" be filed by the statutory deadline and that the petition itself "be signed by the petitioner under penalty of perjury." 21 U.S.C. 853(n)(3) (emphasis added); see *United States* v. *Marion*, 562 F.3d 1330, 1337 (11th Cir.) (per curiam) (explaining that under Section 853 and Criminal Rule 32.2, a third party desiring to assert an interest in forfeitable property does so "by filing a sworn petition within" the statutory period), cert. denied, 558 U.S. 930 (2009). In *Edelman*, the Court also emphasized that an EEOC regulation permitting an otherwise-timely charge of employment-discrimination to be verified after the statutory deadline did not prejudice the employer, which had no obligation to make "any response to an otherwise sufficient complaint until the verification ha[d] been supplied." 535 U.S. at 115. Here, by contrast, petitioners have never offered a verified petition, and they first referenced the possibility of leave to amend only after the government had already filed its motion to dismiss their petition.

Finally, petitioners advance (Pet. 24-27) various constitutional concerns that they contend would arise if the government could extinguish property rights after a claimant's "minor, easily correctible pleading defect," Pet. 24. Petitioners first raised constitutional concerns in their reply in support of their Rule 60(b) motion, C.A. App. 228-229, and first raised many of their current concerns in their opening brief in the court of appeals. See Pets. C.A. Br. 48-51. The courts below permissibly declined to consider those arguments because they were not timely raised, Pet. App. 5 n.2, and this Court should not entertain them either. See, *e.g.*, *Cutter* v. *Wil-*

kinson, 544 U.S. 709, 718 n.7 (2005) (emphasizing that this Court is "a court of review, not of first view"). In any event, the "aspects of § 853" (Pet. 24) on which petitioners now focus have nothing to do with the statutory requirement at issue in this case. Indeed, although petitioners (and their amici) advance legal and policy arguments about various aspects of federal ancillary proceedings, *in rem* civil forfeiture proceedings, and state and local forfeiture practices, they fail to identify any constitutional concern that flows from the basic and sensible threshold requirement that a third party who has received proper notice and wants to assert an interest in property already found to be forfeitable under Section 853 must file a timely petition that is signed under penalty of perjury.

2. Contrary to petitioners' contention (Pet. 15-20), the decision below does not conflict with the decision of any other court of appeals.

As an initial matter, the decision below is unpublished and nonprecedential, and thus could not create or deepen a circuit conflict. Moreover, that is also true of the unpublished decision in *United States* v. *Lamid*, 663 Fed. Appx. 319 (5th Cir. 2016) (per curiam), which is the only other court of appeals decision that petitioners identify (Pet. 18-20) on that side of the purported conflict.

In any event, there is no circuit conflict even under petitioners' overreading of the decision below. Petitioners contend (Pet. 15-16) that the decision below conflicts with the decision in *United States* v. *Furando*, 40 F.4th 567 (7th Cir. 2022). But that decision did not involve the requirement to sign a petition under penalty of perjury, nor did it address whether an amended petition would be timely. In *Furando*, the Seventh Circuit vacated the

district court's unexplained *sua sponte* dismissal of a Section 853(n) petition for failure to set forth sufficient information about the petitioners' claims. *Id.* at 573-574, 577-580. The court of appeals, drawing from its "reasoning in other *sua sponte* dismissal contexts," concluded that the *Furando* petitioners should have "the opportunity to amend their petition to provide information to satisfy § 853(n)(3) (if they have it)." *Id.* at 579. Nothing in *Furando* suggests that the Seventh Circuit would have found an abuse of discretion on the facts of this case, where the district court dismissed only after permitting petitioners to file two petitions and receiving adversary briefing.

The Second Circuit's decision in *United States* v. *Swartz Family Trust*, 67 F.4th 505 (2023), is similarly distinguishable. Although the Second Circuit stated that "in limited circumstances, it may be appropriate to permit [a] petitioner to amend its petition outside the 30-day window," *id.* at 520, the circumstances under which that court held that leave to amend might be available are unlike those presented here. In particular, the Second Circuit held that the district court should have considered whether to grant leave to amend a Section 853(n) petition where the district court's dismissal was based primarily on the petitioner's "technical" failure "to describe its bona fide purchaser claim as such" and to cite the specific subsection authorizing such a claim, and where "the Government acknowledged that additional factual development was necessary to resolve whether [the] petition stated a bona fide purchaser for value claim." *Ibid.* Whether leave to amend may be granted to allow Section 853(n) petitioners to allege any additional facts in order to meet their burden sufficiently to plead a particular ground for relief is a dis-

tinct question from whether leave to amend may be granted where (as in this case and *Lamid*) petitioners have failed to meet the unambiguous statutory requirement to file a petition signed under penalty of perjury.

Petitioners also invoke (Pet. 11-12, 17-18) district court decisions, mostly unreported, that involved *pro se* petitioners who were granted leave to amend petitions that failed to satisfy statutory requirements for various reasons, including some that lacked signatures under penalty of perjury. Those district court decisions cannot create a conflict warranting this Court's review. See Sup. Ct. R. 10. But even setting that aside, those decisions did not address the implications of the statutory deadline on whether, or under what circumstances, a petitioner may amend a Section 853(n) petition to comply with the requirement that the petition by signed under penalty of perjury. Nor did any of those cases involve circumstances like those presented in this case, where petitioners were assisted by counsel, their petition acknowledged the statutory requirement but failed to comply with it, and they then submitted contradictory affidavits with inconsistencies that have yet to be explained.[4]

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[4] Petitioners cite (Pet. 19-20) two unreported district court decisions that declined to allow amendments adding new or different grounds for relief after the statutory deadline. See *United States* v. *Sze*, No. 22-cr-141, 2024 WL 195468, at *12 (D.N.J. Jan. 18, 2024); *United States* v. *Welch*, No. 20-cr-52, 2023 WL 7020377, at *5-*6 (D. Idaho Oct. 25, 2023), appeal pending, No. 23-3309 (9th Cir. filed Nov. 3, 2023). One of those decisions, presently on appeal before the Ninth Circuit, noted that "the Court would likely have allowed amendment" if the petitioner's asserted ground for relief had been included in the original petition but had merely been "factually deficient." *Welch*, 2023 WL 7020377, at *6.

In short, petitioners have identified no court that has addressed and decided in their favor the issue of whether a petitioner may amend a Section 853(n) petition after the statutory deadline has run to correct a failure to comply with the requirement to file a petition signed by petitioners under penalty of perjury, let alone in circumstances similar to those presented by this petition.

3. Even if the question presented otherwise warranted this Court's review, this case would be an unsuitable vehicle for considering it.

As both lower courts concluded, two of the three petitioners—Sanchez and Excentric—lack Article III standing to petition for the $9000 because they are merely general creditors who do not possess an ownership interest in the specific forfeited funds. See Pet. App. 8-10, 42-43. Sanchez and Excentric assert (Pet. 31) that if they were granted leave to amend they could "replead[] allegations supporting standing," but they do not explain what amendments they could make to rectify the failing identified below. And it is unclear how Sanchez and Excentric could even seek amendment given that they have not sought this Court's review of the court of appeals' holding on Article III standing.

The remaining petitioner, Palacios, failed to allege in any detail the "nature and extent," 21 U.S.C. 853(n)(3), of her legal interest in the $9000 after she allegedly gave it to Cancari to take to Miami. See Pet. App. 44-45. For example, Palacios never identified when or where she gave Cancari the money, never clarified the nature of her legal relationship with Cancari, and never identified the source of law that created her purported legal interest in the forfeited funds. Nor did she even resolve the inconsistencies in her own pleading-stage

affidavits. *Id.* at 49. Although the court of appeals concluded that those deficiencies did not deprive Palacios of statutory standing "at the pleading stage," *id.* at 11, Palacios offers no reason to conclude that in the event of a remand the district court would ultimately find on the merits that she is entitled to the forfeited $9000. A decision in Palacios's favor on the question presented would likely have no practical effect on her ability to obtain the forfeited funds. See *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties); *The Monrosa* v. *Carbon Black Exp., Inc.*, 359 U.S. 180, 184 (1959) ("While this Court decides questions of public importance, it decides them in the context of meaningful litigation. Its function in resolving conflicts among the [c]ourts of [a]ppeals is judicial, not simply administrative or managerial.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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