

No. 17-576

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**In the Supreme Court of the United States**

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OSAMA H. SALOUHA, ET AL., PETITIONERS

*v.*

UNITED STATES OF AMERICA

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

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## QUESTIONS PRESENTED

1. Whether the district court clearly erred in finding that petitioners are barred by the fugitive-disentitlement statute, 28 U.S.C. 2466, from asserting claims to assets in a civil *in rem* forfeiture action, where the facts were uncontested even in the absence of a formal evidentiary submission by the government.

2. Whether the district court committed reversible error by ordering the civil *in rem* forfeiture of assets claimed by petitioners, whom the court had found to be disentitled fugitives under 28 U.S.C. 2466, where the government did not first obtain a default judgment under Federal Rule of Civil Procedure 55.

3. Whether the forfeiture procedures the district court employed violated due process.

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## **OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1-25) is reported in the Federal Reporter at 869 F.3d 429. The relevant opinion and orders of the district court (Pet. App. 28-37, 51-54) are not published in the Federal Supplement but are available at 2015 WL 2239071 and 2016 WL 3189759.

## **JURISDICTION**

The judgment of the court of appeals (Pet. App. 26-27) was entered on August 23, 2017. The petition for a writ of certiorari was filed on October 13, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **STATEMENT**

In July 2013, the United States filed an *in rem* action in the United States District Court for the Northern District of Ohio seeking civil forfeiture under 21 U.S.C.

881 and 18 U.S.C. 981 (2012) of U.S. currency, real estate, and automobiles. Pet. App. 3. The complaint alleged that those assets were proceeds from illegal sales of prescription medication. *Id.* at 59-66. After petitioner Osama Salouha—who is currently overseas—filed claims to the assets, the government moved to strike his claims, and those of a business he controlled (petitioner HYS Health Mart, Inc.), pursuant to 28 U.S.C. 2466, the fugitive-disentitlement statute. The district court granted the government’s motion to strike. Pet. App. 28-36. After the government reached a settlement agreement with Salouha’s wife, who (unlike Salouha) had returned to the United States, the district court issued forfeiture orders. D. Ct. Doc. 160 (Jan. 14, 2016); Pet. App. 5. The court of appeals affirmed. Pet. App. 1-25.

1. “Fugitive disentitlement began as a judicial doctrine allowing appellate courts to dismiss appeals from criminal fugitives who failed to surrender to authorities, holding that such failure ‘disentitles the defendant to call upon the resources of the Court for determination of his claim.’” *United States v. Batato*, 833 F.3d 413, 426 (4th Cir. 2016), cert. denied, 138 S. Ct. 66 (2017) (quoting *Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970) (per curiam)). In *Degen v. United States*, 517 U.S. 820 (1996), this Court held that the common-law fugitive-disentitlement doctrine did not give courts inherent authority to strike a civil-forfeiture claimant’s claim on the ground that he was evading related criminal charges. *Id.* at 828.

Congress responded by enacting 28 U.S.C. 2466, which expressly grants federal courts discretion to “disentitle[]” a civil-forfeiture claimant who is a fugitive

from justice from using U.S. courts to pursue his claims. Section 2466(a) provides:

(a) A judicial officer may disallow a person from using the resources of the courts of the United States in furtherance of a claim in any related civil forfeiture action \* \* \* upon a finding that such person—

(1) after notice or knowledge of the fact that a warrant or process has been issued for his apprehension, in order to avoid criminal prosecution—

(A) purposely leaves the jurisdiction of the United States;

(B) declines to enter or reenter the United States to submit to its jurisdiction; or

(C) otherwise evades the jurisdiction of the court in which a criminal case is pending against the person; and

(2) is not confined or held in custody in any other jurisdiction for commission of criminal conduct in that jurisdiction.

28 U.S.C. 2466(a).

2. a. In May 2013, as part of its investigation of petitioner Salouha's distribution of controlled substances, law-enforcement agents executed search warrants. Pet. App. 29. Three days later, Salouha and his wife withdrew their children from school and told their neighbors they were traveling to Florida. *Ibid.* In fact, they flew to Amman, Jordan. *Ibid.* As the district court later observed, Salouha and his wife have "offered various explanations for leaving the United States following the search and seizure." *Id.* at 30. For example, Salouha first asserted that he traveled to Jordan to visit his sick father and took his wife with him because she was eight months pregnant. *Ibid.* Salouha later stated that he left the United States because he had no means



to support himself after the search. *Ibid.* While contending that it was too difficult to return from the “war-torn Middle East,” Salouha and his wife sought (through counsel) a “global resolution” of the criminal case, indicating that such a resolution would result in Salouha’s “immediate return.” *Ibid.* (citation omitted).

In July 2013, the government filed a verified complaint seeking civil *in rem* forfeiture of various assets connected to Salouha: 20 bank accounts, certain real property, and three vehicles. Pet. App. 55-66. The complaint alleged that Salouha and others, who owned and operated pharmacies, unlawfully sold controlled substances such as oxycodone, oxymorphone, and hydrocodone. *Id.* at 60-63. The complaint explained that Salouha deposited revenue from these unlawful sales into 30 bank accounts (some of which have subsequently been closed) and used proceeds to purchase three vehicles and make mortgage payments for real property. *Id.* at 63-64.

In August 2013, shortly after leaving the country, Salouha, his wife, and one of the pharmacies over which Salouha had control (petitioner HYS Health Mart, Inc.) filed claims to numerous assets listed in the forfeiture complaint. Pet. App. 29. At the government’s request, the district court stayed the forfeiture proceeding pending a related, ongoing criminal investigation. *Ibid.* On May 23, 2014, the district court lifted the stay and ordered Salouha and his wife to appear at a case-management conference in June 2014. *Ibid.*; D. Ct. Docs. 66, 67 (May 23, 2014).

On June 3, 2014, a federal grand jury returned an indictment charging Salouha and others with conspiracy to distribute controlled substances, in violation of

21 U.S.C. 846; 15 counts of distribution of controlled substances, in violation of 21 U.S.C. 841; three counts of making a false statement, in violation of 18 U.S.C. 1001; conspiracy to commit money laundering, in violation of 18 U.S.C. 1956 (2012); 11 counts of international money laundering, in violation of 18 U.S.C. 1956 (2012); conspiracy to defraud the Internal Revenue Service, in violation of 18 U.S.C. 371; eight counts of falsifying income-tax returns, in violation of 26 U.S.C. 7206; and 13 counts of structuring transactions to evade reporting requirements, in violation of 31 U.S.C. 5313 and 5324. Indictment 1-37, *United States v. Salouha*, No. 14-CR-196 (N.D. Ohio) (reproduced at D. Ct. Doc. 121-1 (Mar. 24, 2015)). The indictment alleged facts similar to those contained in the civil-forfeiture complaint, *id.* at 1-13, and the grand jury found probable cause that more than \$2 million and 26 specific assets were subject to forfeiture, *id.* at 37-40. Salouha's arraignment was set for June 25, 2014. D. Ct. Doc. 121, at 4; see D. Ct. Doc. 121-2.

Following the indictment, Salouha and his wife sought a continuance of the June 2014 case-management conference in the civil-forfeiture proceeding. Pet. App. 30. The district court denied the continuance and required Salouha and his wife—who were then located in the Gaza Strip—to participate by phone, but they failed to do so. *Ibid.* Salouha also failed to appear for his arraignment in the criminal case, and a warrant was issued for his arrest. *Id.* at 4; D. Ct. Doc. 121-2.

b. On September 18, 2014, the government moved to strike the claims of Salouha, his wife, and Salouha's codefendant to specific assets listed in the forfeiture complaint (and the indictment) under the statutory fugitive-disentitlement provisions of 28 U.S.C. 2466. D. Ct. Doc.

85; Pet. App. 4. Salouha and his wife opposed that motion, arguing that Salouha was not a fugitive, but had not returned to the United States because he was unable to leave Gaza. Pet. App. 13; D. Ct. Doc. 90, at 7-11 (Oct. 18, 2014). The government indicated that the U.S. State Department might be able to assist the Salouhas in departing Gaza. Pet. App. 13-14. The district court did not immediately rule on the government's motion to strike, and instead "waited to see whether [Salouha and his wife] were able to re-enter the country with the help of the U.S. State Department." *Id.* at 4.

In February 2015, the State Department was able to facilitate travel for Salouha and his family from Gaza to Amman, Jordan. Pet. App. 30-31. On March 1, 2015, Salouha and his family provided an itinerary to the State Department indicating that they would travel to the United States, and the State Department returned the family's U.S. passports. *Id.* at 31. On March 3, 2015, Salouha's wife and their children returned to the United States. *Ibid.*

Salouha, however, did not return to the United States with his family. Pet. App. 31. Instead, the State Department learned that, on March 3, 2015, Salouha had departed Jordan and traveled to Egypt, using his Palestinian passport. *Ibid.* Salouha has never returned to the United States. *Id.* at 29.

c. On March 24, 2015, the government filed a new motion to strike the claims asserted by Salouha and HYS Health Mart (collectively petitioners) under the fugitive-disentitlement provisions of 28 U.S.C. 2466. D. Ct. Doc. 121; Pet. App. 28. The district court set a deadline for petitioners' opposition to that motion affording them the time they requested. D. Ct. Doc. 133 (Apr. 14, 2014); Pet. App. 53 (noting that petitioners

were “given an extended time in which to file [an] opposition”). Petitioners, however, never filed a response. Pet. App. 28-29, 53. The court nevertheless considered arguments they had made in opposing the government’s previous motion to strike. *Id.* at 29.

In May 2015, the district court granted the government’s motion to strike. Pet. App. 28-37. The court explained that, under circuit precedent, the government was required to show that: (1) a warrant or similar process had issued in a criminal case for Salouha’s apprehension; (2) Salouha knew about the warrant; (3) the criminal case was related to the forfeiture action; (4) Salouha was not confined or in custody in another jurisdiction; and (5) Salouha “deliberately avoided prosecution” by either leaving the United States or declining to enter or reenter the country on purpose. *Id.* at 33 (quoting *United States v. Salti*, 579 F.3d 656, 663 (6th Cir. 2009)). Petitioners had challenged only the fifth element—that Salouha deliberately avoided prosecution by declining to reenter the United States. *Id.* at 13, 53. Assessing the “totality of the circumstances,” the district court found that Salouha had “made a conscious choice not to reenter the United States for the purpose of avoiding prosecution.” *Id.* at 36. Because HYS Health Mart’s claim asserted that Salouha was its “President and 100% owner,” the court struck its claim to the assets as well on the same grounds. *Ibid.*

d. In December 2015, the government and Salouha’s wife entered a stipulated settlement agreement and decree of forfeiture. Pet. App. 40-50. Under that agreement, the government agreed to return one vehicle and a parcel of real property to Salouha’s wife and to dismiss the forfeiture claims against those assets. *Id.* at 45, 48-50. In exchange, Salouha’s wife agreed not to file any

claim against the remaining assets and to waive any future claims. *Id.* at 46. In January 2016, the district court ordered forfeiture in accordance with the terms of the agreement. *Id.* at 5; D. Ct. Doc. 160.

In April 2016, petitioners moved to vacate the forfeiture judgment or to clarify the court's ruling under the fugitive-disentitlement statute. Pet. App. 5, 51. The district court denied petitioners' motion to the extent it "s[ought] reconsideration of their status as disentitled fugitives." *Id.* at 53. The court stated that, "despite having been given an extended time in which to file [an] opposition," petitioners had neither opposed the government's motion to strike their claims nor appealed that ruling, and they "ha[d] provided no explanation that would excuse their failure" to file an opposition or appeal. *Ibid.* Petitioners also had "provided no new information that would challenge, or in any way affect the Court's prior decision." *Ibid.* The court accordingly stated that its "determination that [petitioners] are disentitled fugitives remains intact." *Ibid.*

The district court then struck petitioners' motion "[t]o the extent that it seeks any further consideration of [the district court's] order relating to the disposition of the defendant property." Pet. App. 53-54. "As disentitled fugitives," the court stated, "[petitioners] have no standing to raise any claim to the defendant properties, or to seek reconsideration or clarification of the Court's orders relating to those properties." *Id.* at 53.

3. The court of appeals affirmed. Pet. App. 1-25.<sup>1</sup>

a. The court of appeals upheld the district court's determination that petitioners are disentitled fugitives

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<sup>1</sup> The court of appeals denied a motion by the government to dismiss petitioners' appeal as untimely. Pet. App. 6-11, 26.

under 28 U.S.C. 2466. Pet. App. 12-19. It rejected petitioners' contention that "evading criminal prosecution had to be the sole purpose of [Salouha's] remaining outside the United States" for them to be deemed fugitives under Section 2466. *Id.* at 17.

The court of appeals also rejected petitioners' argument that the district court erred in striking their claims under Section 2466 because the government had not carried its burden of proving that Salouha "stayed outside the United States to avoid criminal prosecution." Pet. App. 17. Petitioners argued that the district court had improperly "grant[ed] the equivalent of a summary judgment motion without requiring the government" to submit "admissible evidence." Pet. C.A. Br. 15; see *id.* at 18-25. The court of appeals stated, however, that although the government had not submitted "affidavits or exhibits," it had presented to the district court an extensive factual recitation of Salouha's travels, and petitioners "chose not to refute any of these statements." Pet. App. 17-18. Moreover, "at oral argument, [petitioners'] counsel was unable or unwilling to answer [the court of appeals'] direct question asking where Salouha was currently located." *Id.* at 18. The court stated that, "[g]iven these unique circumstances, [petitioners] cannot credibly argue that there were disputed facts about Salouha's ability to return to the United States to face prosecution." *Ibid.*

The court of appeals accordingly "h[e]ld that the district court did not commit clear error in crediting the uncontested statements of the government, as well as relying on the knowledge of [Salouha's wife's] return, to conclude that Salouha was deliberately staying outside the jurisdiction of the United States in order to avoid prosecution." Pet. App. 19. For similar reasons, the

court of appeals concluded that, “given the unusual circumstances of this case,” it “need not delve into” whether and to what extent the summary-judgment procedures prescribed by Federal Rule of Civil Procedure 56 were appropriate here. Pet. App. 18 n.3.

b. The court of appeals also upheld the forfeiture orders. Pet. App. 19-25. Petitioners contended that the government’s failure to seek and obtain a default judgment under Federal Rule of Civil Procedure 55 rendered the forfeiture orders invalid, and that the stipulated agreement between the government and Salouha’s wife did not authorize the forfeiture. Pet. App. 19-20; see Pet. C.A. Br. 26-33. The court determined, however, that because it had “affirmed the district court’s disenfranchisement decision, [petitioners] no longer ha[d] statutory standing to contest procedural mistakes in the forfeiture action.” Pet. App. 20.

The court of appeals further determined that, “even if [it] were to consider [petitioners’] procedural deficiency challenge, [it] would still affirm.” Pet. App. 22. The court stated that, although seeking a default judgment is the “general” and “perhaps the best practice,” a “failure to do so is not fatal \* \* \* in this case” because “the only evidence in this case supports a finding that the properties seized by the government were involved in illegal prescription drug sales and money laundering.” *Ibid.* The court explained that, although the district court should have “ensure[d] that the allegations in the verified complaint were sufficient” before entering judgment for the government, the court of appeals’ own “review of the verified complaint reveal[ed] that it sufficiently allege[d] that the defendant assets are forfeitable based on their connection to criminal activity.” *Id.* at 23-24; see *id.* at 24-25.

c. The court of appeals did not reach the merits of petitioners' claims that the forfeiture orders violated their Fifth Amendment right to due process and other constitutional rights. Pet. App. 6 n.2; see Pet. C.A. Br. 33-42. The court explained that "these arguments ha[d] been waived" because they were raised only in petitioners' April 2016 motion to vacate, "which is in essence a motion for reconsideration," and the court "declined" to overlook petitioners' failure to preserve the argument. Pet. App. 6 n.2.

#### ARGUMENT

Petitioners contend (Pet. 10-12) that the district court erred in finding that they are disentitled fugitives under 28 U.S.C. 2466 without a formal evidentiary presentation by the government. The court of appeals held, however, that the district court did not clearly err in relying on the uncontested facts in the unique circumstances of this case, and it did not address the broader question petitioners raise regarding the appropriate evidentiary standard under Section 2466. The court of appeals' decision is correct and does not conflict with any decision of this Court or another court of appeals.

Petitioners also argue (Pet. 12-17) that the district court erred in ordering forfeiture of the disputed property because the government did not first obtain a default judgment under Federal Rule of Civil Procedure 55. The court of appeals determined, however, that petitioners—as disentitled fugitives under 28 U.S.C. 2466—lack standing to challenge the forfeiture procedure on that basis. It further determined that petitioners' challenge would fail in any event because, even assuming that the government was required to seek a default judgment, it would have prevailed in seeking one here based on the



court's review of the factual record. Its decision is correct, does not conflict with any decision of this Court or another court of appeals, and does not warrant further review.

Petitioners further contend (Pet. 17-21) that the forfeiture of the disputed property here violated due process. The court of appeals did not reach that issue, finding that petitioners waived any due-process challenge. In any event, petitioners' due-process claim lacks merit. Further review is not warranted.

1. a. The fugitive-disentitlement statute, 28 U.S.C. 2466, authorizes a court to "disallow a person from using the resources of" federal courts "in furtherance of a claim in any related civil forfeiture action \* \* \* upon a finding that such person," "after notice or knowledge of the fact that a warrant or process has been issued for his apprehension, in order to avoid criminal prosecution," either "purposely leaves the jurisdiction of the United States," "declines to enter or reenter the United States to submit to its jurisdiction," or "otherwise evades the jurisdiction of the court" where "a criminal case is pending against" him. 28 U.S.C. 2466(a)(1). In the lower courts, petitioners disputed only one of the statute's elements: whether "Salouha stayed outside the United States to avoid criminal prosecution." Pet. App. 17. The district court found, however, "[b]ased on the totality of the circumstances," that Salouha "made a conscious choice not to reenter the United States for the purpose of avoiding prosecution." *Id.* at 36. Reviewing that factual finding for clear error, the court of appeals affirmed. *Id.* at 19.

Petitioners contend (Pet. 10-12) that the lower courts were required to apply Federal Rule of Civil Procedure 56, which governs motions for summary judgment, and

that Rule 56 required the government to make a formal evidentiary showing of Salouha's intent to evade prosecution. They argue that, because the government's motion under Section 2466 to strike petitioners' claims did not append "the type of evidentiary material required under Rule 56," the district court should have denied the motion. Pet. 10. That contention does not warrant review.

As the court of appeals explained, the district court's finding that petitioners are fugitives rested on facts that were not disputed. Pet. App. 17-19. The government had presented a detailed account of Salouha's travels—including that, although the State Department facilitated his departure from Gaza, and although Salouha's wife and children returned to the United States, Salouha failed to do so, and instead traveled to Egypt. *Id.* at 18-19. Despite ample opportunity, petitioners "chose not to refute any of these" facts, and indeed filed no response to the government's operative motion to strike at all. *Id.* at 18. Moreover, notwithstanding petitioners' failure to file a response, the district court nevertheless considered arguments petitioners had previously made in opposing the government's earlier motion, and determined that those arguments did not undermine the government's representations. *Id.* at 28-29, 35-36. Even in the court of appeals, petitioners' counsel was "unable or unwilling to answer [a] direct question" about Salouha's whereabouts. *Id.* at 18. The court appropriately determined that, in "these unique circumstances," the district court "did not commit clear error in crediting the uncontested statements of the

government” and determining that petitioners are fugitives. *Id.* at 18-19.<sup>2</sup>

The court of appeals also appropriately determined that, in “these unusual circumstances,” it need not resolve whether and to what extent Rule 56 applied. Pet. App. 18 n.3. The court noted several reasons why Rule 56’s summary-judgment framework may be inapposite to Section 2466 motions to strike. *Id.* at 17-18 n.3. But it concluded that it “need not delve into” that question here. *Id.* at 18 n.3. As the court recognized, *id.* at 17-18 n.3, Rule 56 would have required the district court to determine whether there was a “genuine issue as to any material fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986) (quoting Fed. R. Civ. P. 56(c)). At no stage of this litigation have petitioners identified any such genuine dispute of material fact. Instead, they elected not to contest the government’s account of the relevant facts, despite repeated opportunities.

b. Petitioners contend (Pet. 10-11) that the courts of appeals are divided on the applicability of Rule 56 to Section 2466 motions to strike. This case does not implicate any such disagreement because, as explained above, the court of appeals expressly declined to address that question here, Pet. App. 18 n.3, and it would

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<sup>2</sup> Petitioners assert (Pet. 6) the “district court agreed to accept Petitioners’ first brief in opposition as also responsive to the second motion to strike.” See Pet. 10 n.6. The district court, however, did not excuse petitioners’ failure to respond, but instead explained that petitioners “provided no explanation that would excuse their failure to oppose” the motion. Pet. App. 53. The court stated that, despite “the absence of any opposition,” it had nevertheless “considered applicable arguments made by” petitioners. *Ibid.* The district court thus afforded petitioners additional procedural protection, but still found that they had not provided any basis for disputing that Salouha intended to evade prosecution. *Ibid.*; see *id.* at 28-29.

not affect the outcome. At a minimum, the absence of any ruling below on that question makes this case an unsuitable vehicle to resolve it. See *Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144, 1151 (2017).

In any event, petitioners err in contending (Pet. 10-11) that this question implicates a square conflict among the courts of appeals. As petitioners acknowledged (*ibid.*), the Second and Ninth Circuits have declined to require district courts to convert motions to strike into motions for summary judgment. As the Second Circuit has stated, a court “is explicitly required to make findings of fact” under Section 2466, and therefore “determinations as to disentitlement are not to be made under the standards governing summary judgment.” *United States v. Technodyne LLC*, 753 F.3d 368, 381-382 (2014); see *United States v. \$671,160.00 in U.S. Currency*, 730 F.3d 1051, 1059 (9th Cir. 2013) (affirming district court’s decision declining to convert motion to strike into one for summary judgment).

Petitioners argue (Pet. 11) that those decisions are inconsistent with *United States v. \$6,976,934.65, Plus Interest Deposited into Royal Bank of Scotland Int’l, Account No. 2029-56141070, Held in the Name of Soulbury Ltd.*, 554 F.3d 123 (D.C. Cir. 2009) (*Soulbury*). That is incorrect. In *Soulbury*, the government moved for summary judgment, and the D.C. Circuit simply addressed the case in that posture, concluding that the district court could not resolve factual disputes at that stage. See *id.* at 124-125. The D.C. Circuit did not hold that courts must always apply the summary-judgment framework to Section 2466 motions to strike. As the Second Circuit has observed, *Soulbury* simply “dealt with the matter as it stood: an appeal from summary judgment.” *Technodyne*, 753 F.3d at 381.

Petitioners also suggest (Pet. 11) that the Sixth Circuit previously adopted a contrary position in *United States v. Salti*, 579 F.3d 656 (2009). That is incorrect. In *Salti*, the government moved to dismiss the claimant's claim, and the Sixth Circuit rejected the claimant's argument that discovery and a hearing were required before the district court could rule on that motion. See *id.* at 660, 663-664. The Sixth Circuit reversed because the district court had granted the motion to dismiss by deciding "as a matter of law" that the claimant was a fugitive, without considering evidence he had submitted concerning his medical history that might have supported a contention that he remained outside the United States due to poor health, not a desire to evade prosecution. See *id.* at 664-665. As discussed above, this case involved no such submission by petitioners. In any event, any potential intracircuit inconsistency between *Salti* and the decision below would not warrant this Court's intervention. See *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

2. Petitioners separately contend (Pet. 12-17) that the district court erred in ordering forfeiture here because the government did not obtain a default judgment in accordance with Federal Rule of Civil Procedure 55. That contention likewise does not warrant further review.

a. The court of appeals rejected petitioners' challenge to the forfeiture orders at the threshold because petitioners, as fugitives under Section 2466, lacked standing to challenge the district court's compliance

with Rule 55. Pet. App. 20-22. As it explained, Section 2466

was enacted to prevent “the unseemly spectacle . . . of a criminal defendant who, facing both incarceration and forfeiture for his misdeeds, attempts to invoke from a safe distance only so much of a United States court’s jurisdiction as might secure him the return of alleged criminal proceeds while carefully shielding himself from the possibility of a penal sanction.”

*Id.* at 21 (quoting *Collazos v. United States*, 368 F.3d 190, 200 (2d Cir. 2004)). Permitting petitioners nevertheless to challenge the forfeiture procedure in these circumstances, the court determined, would render that statutory directive “meaningless.” *Ibid.*

Although the court of appeals also proceeded to explain that it would reject petitioners’ Rule 55 challenge in any event, Pet. App. 22-25, its determination that Section 2466 precluded petitioners from raising that challenge provides an independently sufficient basis to reject petitioners’ Rule 55 argument. Petitioners do not suggest that any other court of appeals would have entertained their Rule 55 argument in these circumstances. See Pet. 16-17. Unless this Court were to grant review of and reverse the court of appeals’ separate holding affirming petitioners’ status as fugitives under Section 2466, petitioners’ Rule 55 argument would have no effect on the outcome. The court of appeals’ holding rejecting petitioners’ challenge to their fugitive status under Section 2466 does not warrant further review, see pp. 12-16, *supra*, and further review of their Rule 55 argument is thus unwarranted as well.

b. In any event, petitioners' contention (Pet. 12-13) that the forfeiture orders cannot stand because the government was required but failed to obtain a default judgment under Rule 55 lacks merit. When the government files a complaint to forfeit property, the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions provide the applicable procedural framework. 18 U.S.C. 983(a)(4); *United States v. \$11,500.00 in U.S. Currency*, 710 F.3d 1006, 1010 (9th Cir. 2013). Supplemental Rule G "governs a forfeiture action in rem arising from a federal statute." Supp. R. G(1); see *United States v. Vazquez-Alvarez*, 760 F.3d 193, 197 (2d Cir. 2014) (per curiam). Supplemental Rule G also identifies motions specific to asset-forfeiture actions, but it does not include a motion for default judgment. See Supp. R. G(8); see also Supp. Rs. C, E. The Supplemental Rules themselves thus do not require the government to obtain a default judgment before property is forfeited.

Nor did Rule 55 impose any independent requirement to obtain a default judgment before the district court could order forfeiture in this *in rem* proceeding in which no timely claims to the assets exist. Rule 55 permits entry of a default judgment "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend." Fed. R. Civ. P. 55(a). The parties to a civil *in rem* forfeiture action are the government and the property the government seeks to forfeit. See *Austin v. United States*, 509 U.S. 602, 613, 616 (1993); *Various Items of Pers. Prop. v. United States*, 282 U.S. 577, 581 (1931) ("It is the property which is proceeded against, and \* \* \* held guilty and condemned."). A claimant in a civil-forfeiture action, such as petitioners here, is not a "party" for purposes of Rule 55. See *United States v. \$22,050.00*

*U.S. Currency*, 595 F.3d 318, 320 n.1 (6th Cir. 2010) (*Rowland*) (“[P]otential claimants are not defendants in an *in rem* action, the seized objects or assets are.”). Thus, although the government may seek a default judgment in a civil *in rem* forfeiture case, it is not required to do so. See Stefan D. Cassella, *Asset Forfeiture Law in the United States*, § 7-14, at 323-324 (2d ed. 2013) (Cassella) (noting that when no one contests the government’s forfeiture of property, the government “may” seek a “default judgment against all persons who could have filed a claim”). Nothing in the Supplemental or Federal Rules indicates that the fact that the government has not sought a default judgment when no timely claims to assets exist precludes a court from entering an *in rem* forfeiture order.

Moreover, even if obtaining a default judgment were ordinarily required, that would not require setting aside the forfeiture orders in this case, because it was not outcome-determinative. The court of appeals explained that it could and “would still affirm” on an alternative ground. Pet. App. 22. The court determined that the record supports affirmance on the ground that “the government would have prevailed had it moved for default judgment.” *Ibid.* The court concluded that “the only evidence in this case supports a finding that the properties seized by the government were involved in illegal prescription drug sales and money laundering.” *Ibid.* “[T]he only evidence in the record” was the government’s verified complaint, which the court explained ““carries the same weight as would an affidavit for purposes of summary judgment.”” *Id.* at 23 (citation omitted). Based on its own independent review of the verified complaint, the court determined that it “sufficiently allege[d] that the



defendant assets are forfeitable based on their connection to criminal activity.” *Id.* at 23-24.

The court of appeals’ factbound assessment of the sufficiency of the government’s allegations does not warrant further review. At a minimum, this independent basis for affirmance of the forfeiture orders makes this case an unsuitable vehicle to decide the legal question petitioners raise.

c. Petitioners identify no court of appeals that would have reached a different result in the particular circumstances here. In any event, petitioners overstate any disagreement about the application of Rule 55 to civil forfeitures. Petitioners contend (Pet. 13) that the decision below is inconsistent with *United States v. \$23,000 in United States Currency*, 356 F.3d 157 (1st Cir. 2004). That is incorrect. The First Circuit did not hold that the government must always obtain a default judgment in civil-forfeiture proceedings; it simply addressed a proceeding in which the government had opted to seek a default judgment. See *id.* at 163-164. Petitioners also cite (Pet. 13) the Sixth Circuit’s prior decision in *Rowland*, *supra*, but it likewise did not hold that seeking a default judgment is always required in civil-forfeiture cases. See 595 F.3d at 324. And any purported intracircuit inconsistency between *Rowland* and the decision below would not warrant this Court’s review, see *Wisniewski*, 353 U.S. at 902.

Petitioners assert (Pet. 13-15) that the court of appeals’ determination that a default judgment would have been appropriate here implicates a further conflict about the showing required for the government to obtain a default judgment in a civil *in rem* forfeiture action. They argue that some courts require only that the defendant receive notice of the action; others require a

court to determine that the allegations in the complaint are sufficient; and still others review a wider array of evidence before granting a default judgment. *Ibid.*; see Cassella § 7-14, at 324-325 (explaining that most courts grant default judgment where the government has complied with the notice requirements in Supplemental Rule G(4) and no one has filed a timely claim, but that other courts “review the facts to see if they are sufficient, if true, to establish a factual basis for forfeiture”). Even accepting petitioners’ characterization of the lower courts’ approaches, any inconsistency in their decisions would not warrant review here because the forfeiture in this case was appropriate under any of those approaches. Petitioners have never argued that they received insufficient notice of the government’s forfeiture action. And the court of appeals determined that the verified complaint, which under circuit precedent “carrie[d] the same weight as would an affidavit,” contained sufficient facts to support forfeiture. Pet. App. 23 (citation omitted).

3. Finally, petitioners contend (Pet. 17-21) that the procedures applied by the lower courts violated due process. The court of appeals did not pass on the merits of petitioners’ due-process challenge, however, because it found that challenge “waived.” Pet. App. 6 n.3. Petitioners had raised that challenge for the first time in their April 2016 motion to vacate. *Ibid.* The court explained that that motion was “in essence a motion for reconsideration,” which was insufficient to preserve the issue. *Ibid.* Petitioners’ failure to preserve their due-process argument and the absence of any determination on the merits by the court of appeals counsel against review. *OBB Personenverkehr AG v. Sachs*, 136 S. Ct.

390, 397-398 (2015); *Taylor v. Freeland & Kronz*, 503 U.S. 638, 646 (1992).

Petitioners' due-process argument also lacks merit. The fugitive-disentitlement statute did not eliminate their opportunity to be heard on the merits of their claim to the assets in the forfeiture proceeding. Salouha (and his wholly owned company HYS Health Mart) "could have secured a hearing on [his] forfeiture claim any time \* \* \* simply by entering the United States." *Collazos*, 368 F.3d at 203. But petitioners relinquished that opportunity by "fail[ing] to take advantage of" it, and instead electing to remain outside the country. *United States v. Batato*, 833 F.3d 413, 427 (4th Cir. 2016), cert. denied, 138 S. Ct. 66 (2017); see *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971) (A State may "enter a default judgment against a defendant who, after adequate notice, fails to make a timely appearance."). Further review is not warranted.

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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