No. 23-1164

In the Supreme Court of the United States

BATTLE BORN INVESTMENTS COMPANY, LLC, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
NICOLE M. ARGENTIERI
Principal Deputy Assistant Attorney General
JOSHUA K. HANDELL
Attorney
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the lower courts erred in finding that petitioners lacked standing to contest the forfeiture of an asset based on their failure to adduce evidence of ownership.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-7) is not published in the Federal Reporter but is available at 2023 WL 5319258. The order of the district court (Pet. App. 11-23) is not published in the Federal Supplement but is available at 2022 WL 888655.

JURISDICTION

The judgment of the court of appeals was entered on August 18, 2023. A petition for rehearing en banc was denied on December 12, 2023 (Pet. App. 24-25). On March 1, 2024, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including April 25, 2024, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The United States filed a civil complaint in the United States District Court for the Northern District of California seeking forfeiture of a large amount of cryptocurrency pursuant to 18 U.S.C. 981(a)(1)(A), (C), and 981(b), and 21 U.S.C. 881(a)(6). See D. Ct. Doc. 8 (Nov. 20, 2020). Petitioners filed untimely claims asserting an ownership interest in the property, which the government moved to strike for, *inter alia*, lack of standing. The district court granted the government's motion to strike, Pet. App. 11-23, and subsequently entered a final order of forfeiture of the property, *id.* at 8-10. The court of appeals affirmed. *Id.* at 1-7.

1. "Since the earliest years of this Nation, Congress has authorized the Government to seek * * * *in rem* civil forfeiture actions" against property involved in illicit activity. *United States* v. *Ursery*, 518 U.S. 267, 274 (1996). "Forfeitures serve a variety of purposes, but are designed primarily to confiscate property used in violation of the law, and to require disgorgement of the fruits of illegal conduct." *Id.* at 284. While a criminal prosecution (or a civil action to collect a fine) is brought *in personam* against an individual defendant, an *in rem* forfeiture suit is brought against the property involved in the crime, relying on the fiction that "the property itself is 'guilty' of the offense." *Austin* v. *United States*, 509 U.S. 602, 615 (1993).

Congress has specified the circumstances under which property is subject to *in rem* civil forfeiture in 18 U.S.C. 981 *et seq.* and Supplemental Rule G of the Federal Rules of Civil Procedure. Once a forfeiture action is commenced, the government must provide notice to potential claimants by publication and, in some cases, by direct notice. See generally 18 U.S.C. 983(a)(1);

Supp. R. G(4). Third parties may then file claims, in accordance with Supplemental Rule G(5), asserting an interest in the property and contesting the forfeiture. 18 U.S.C. 983(a)(4); Supp. R. G(5)(a). When a third party with a colorable interest in the property has come forward, the government bears the burden of proving by a preponderance of the evidence that the property is subject to forfeiture. 18 U.S.C. 983(c)(1). A claimant may defeat forfeiture by establishing an "innocent owner" defense. 18 U.S.C. 983(d).

At any point before trial, "the government may move to strike a claim" for failure to comply with Rule G(5) or "because the claimant lacks [Article III] standing." Supp. R. G(8)(c)(i)(A) and (B). Such a motion "may be presented as a motion for judgment on the pleadings or as a motion * * * [for] summary judgment." Supp. R. G(8)(c)(ii)(B). In the latter case, the claimant bears "the burden of establishing standing by a preponderance of the evidence." *Ibid.*

2. This case arises from the government's seizure of 69,370 bitcoin that had been transacted through an illicit online market and later stolen by a hacker. Bitcoin is "a type of virtual currency" that "is not issued by any government or bank" but is instead "generated and controlled through computer software operating on a decentralized, peer-to-peer network." Pet. App. 32.[1] It is commonly stored in a digital file called a "wallet," which is associated with the owner's "Bitcoin address"—an

[1] "Bitcoin is both a cryptocurrency and a protocol; because of this [dual usage], capitalization differs" based on context. Pet. App. 32 n.1. "Accepted practice is to use 'Bitcoin' (singular with an uppercase letter B) to label the protocol, software, and community, and 'bitcoin' (with a lowercase letter b) to label units of the currency." *Ibid.*

analogue to "the account number for a bank account." *United States* v. *Ulbricht*, 858 F.3d 71, 84 n.7 (2d Cir. 2017) (citation omitted), cert. denied, 138 S. Ct. 2708 (2018); see *id.* at 83 n.3.

a. The website Silk Road was once "the most sophisticated and extensive criminal marketplace on the Internet, serving as a sprawling black market bazaar where unlawful goods and services, including illegal drugs of virtually all varieties, were bought and sold regularly by the site's users." Pet. App. 11-12. Between 2011 and the site's 2013 seizure by law enforcement, Silk Road was used by thousands of drug dealers and other sellers to distribute illegal drugs and other unlawful goods and services and to launder hundreds of millions of dollars derived from those illegal transactions. *Id.* at 12-13. The only form of payment accepted on Silk Road was bitcoin. See *id.* at 32-33 (noting that, although cryptocurrency "is not illegal in the United States," it "is frequently used in conjunction with illegal or restricted activities, including, for example, purchasing illegal narcotics on darknet markets").

On October 1, 2013, a grand jury sitting in the Southern District of New York indicted the creator of Silk Road, Ross Ulbricht, on charges including narcotics-trafficking conspiracy, computer-hacking conspiracy, and money-laundering conspiracy. Pet. App. 13. The same day, law enforcement seized Silk Road's servers, including all bitcoin contained on those servers. *Ibid.* The next day, the government filed a civil action in the Southern District of New York seeking, *inter alia*, forfeiture of all bitcoin in wallet files residing on Silk Road's servers. *Ibid.* A judgment and order granting forfeiture was entered in that action in 2014. *Ibid.* Ul-

bricht was later convicted and sentenced to life imprisonment. *Ibid.*; *Ulbricht*, 858 F.3d at 94.

b. Over the next several years, the government endeavored to find and seize the bitcoin that had been involved in Silk Road's unlawful business dealings. By analyzing transactions executed on Silk Road, law enforcement discovered that, "on May 6, 2012, 54 transfers were made from Bitcoin addresses controlled by Silk Road to two Bitcoin addresses, abbreviated as 1BAD and * * * 1BBq." Pet. App. 14. The transactions "were not noted in the Silk Road database as vendor or Silk Road employee withdrawals," so law enforcement suspected that they "represent [b]itcoin that was stolen from Silk Road." *Ibid.* Further inquiry revealed that, nearly a year later, "most of the [b]itcoin at 1BAD and 1BBq was transferred to an address abbreviated as 1HQ3," *ibid.*—which was widely known for the immense value of its holdings, D. Ct. Doc. 90, at 11 (July 13, 2021) (discussing publicity and media coverage). The government seized the 1HQ3 wallet in 2020, at which time it held "nearly 70,000 [b]itcoin" at a value exceeding $3.5 billion. Pet. App. 14.

An investigation into the 1HQ3 wallet revealed that a person known as "Individual X" was the one who had hacked into Silk Road and transferred bitcoin from its addresses to 1BAD and 1BBq, and later from there to 1HQ3. Pet. App. 14. The investigation further revealed that Ulbricht was "aware of Individual X's online identity" and had "threatened Individual X," but Individual X had not returned the bitcoin. *Ibid.*

In November 2020, Individual X—whose identity is known to the government—signed an agreement consenting to the forfeiture of the bitcoin in the 1HQ3 wallet. Pet. App. 14. That same day, the government took

custody of the bitcoin. *Id.* at 14-15; see also Gov't C.A. Br. 23 (noting that "Individual X * * * had the private key to 1HQ3, thus enabling the government to transfer its bitcoin contents").

3. In November 2020, the government filed a civil complaint in the Northern District of California seeking forfeiture of the 69,370 bitcoin recovered from the 1HQ3 wallet. See D. Ct. Doc. 8.

a. Later that month, the government posted an online notice informing potential claimants that they had 60 days (until January 26, 2021) to file a claim with the district court. See D. Ct. Doc. 25 (Jan. 6, 2021) (declaration of earlier publication); Supp. R. G(4)(a)(iv)(C). Reflecting the 1HQ3 wallet's notoriety, multiple claimants came forward to assert putative interests in the bitcoin during the claim-filing window. See Pet. App. 15-23 (recounting various claims). Notably, Ulbricht himself did not file a claim, and instead entered into a settlement agreement in which he "admitted that the [b]itcoin is subject to forfeiture" and "consented to its forfeiture." *Id.* at 15.

On March 16, 2021—49 days after the January 26 deadline named in the public notice—petitioners submitted two related claims for the 1HQ3 bitcoin. C.A. E.R. 158-162, 163-168. Their claims were premised on a $2.2 billion judgment they held against a man named Raymond Ngan, who petitioners alleged was either Individual X or an associate of Individual X. *Id.* at 159; Pet. App. 21; see *id.* at 80 (discussing "Ngan's breach of agreements to provide approximately $160 million to [petitioners'] business ventures"). Petitioners asserted that, following their March 2017 judgment against him, Ngan filed for bankruptcy, and petitioners, in an effort to satisfy their outstanding judgment, purchased all the

assets in his estate, including all of his "disclosed and undisclosed property interests." C.A. E.R. 164; Pet. App. 21. They alleged that those assets included the 1HQ3 bitcoin, which therefore belonged to them. C.A. E.R. 160, 165.

After filing their claims, petitioners disclosed documents purportedly supporting their theory that Ngan had owned or controlled the bitcoin. See D. Ct. Doc. 90, at 6. The materials indicated that Ngan had offered to sell a "significant amount of [b]itcoin" in 2018 and that he had tacitly represented himself as the owner of the 1HQ3 wallet by sending a prospective buyer a screenshot from a publicly accessible website depicting the wallet's contents and transaction history. D. Ct. Doc. 98, at 4 (Aug. 10, 2021); see Pet. App. 39-40.

The government moved to strike petitioners' claims for untimeliness and lack of standing. Pet. App 12; D. Ct. Doc. 90. As to the latter, the government submitted a law-enforcement declaration explaining that neither Ngan nor any of his associates was Individual X; that the 1HQ3 wallet's "lure and notoriety" had made it the subject of numerous scams by people claiming to own the wallet; and that legitimate ownership of a Bitcoin wallet is usually proved by digitally signing a message using the Bitcoin address, "not by simply providing a screenshot of a well-known address on a blockchain explorer site." Pet. App. 28-36. Therefore, in the government's view, petitioners had adduced "no evidence that Ngan ever possessed, owned, or controlled 1HQ3," and the evidence they had offered indicated only that Ngan was a swindler. D. Ct. Doc. 90, at 20; see *id.* at 18-21. Petitioners opposed the motion to strike, D. Ct. Doc. 98, attaching several affidavits and the documentary materials they had previously disclosed, Pet. App. 37-92.

b. The district court struck petitioners' claims to the bitcoin on the ground that they lacked standing. Pet. App. 21-22. The court began by noting that "the parties now agree" that Raymond Ngan "is *not* Individual X." *Id.* at 21. Acknowledging petitioners' evidence that "Ngan sent an image of the 1HQ3 page on the website, blockchain.com," to a prospective bitcoin purchaser, the court deemed it "reasonable * * * to take Ngan's conduct as a representation by him that he owned the 1HQ3 wallet." *Id.* at 21-22. But that implicit representation, the court concluded, was not "sufficient to create a colorable claim by [petitioners] to the seized [b]itcoin," because such a claim would rest on "sheer speculation that Ngan may have had some association with Individual X" that would have somehow accorded him "lawful ownership that would have made the [b]itcoin part of the bankruptcy estate." *Id.* at 22. "Because [petitioners] ha[d] not pleaded facts—as opposed to conclusions—that plausibly put the 1HQ3 wallet into the bankruptcy estate [they] purchased," the court granted the government's motion to strike their claims. *Ibid.* In the same order, the court struck a separate claim for a more modest share of the 1HQ3 bitcoin because that claimant had also offered "nothing other than pure speculation to suggest that his [b]itcoin was transferred to Silk Road" and then to the 1HQ3 wallet. *Id.* at 19.

4. The court of appeals affirmed the order striking petitioners' claims. Pet. App. 1-7.

At the outset, the court of appeals distinguished the standards for assessing a forfeiture claimant's standing at the pleading stage and at summary judgment, although the government's motion to strike and the district court's decision had not done so. "[A]t the pleading stage," the court of appeals explained, claimants "may

establish standing * * * by making an unequivocal assertion of ownership" and nothing more. Pet. App. 4. "[T]o survive a motion for summary judgment," however, "a claimant asserting an ownership interest in the defendant property must also present some evidence of ownership beyond the mere assertion." *Ibid.* (internal quotation marks and citations omitted).

Applying that framework here, the court of appeals first determined that petitioners had established standing at the pleading stage by making "an unequivocal assertion of ownership in their verified claim[s]." Pet. App. 5. For purposes of summary judgment, however, the court held that petitioners failed to "carry their burden to establish some evidence, beyond a mere assertion, of ownership of the Defendant Property, from which a reasonable and fair-minded jury could find that they have standing." *Ibid.* In the court's view, the evidence that petitioners had put forward in the district court—including the affidavits and the "screenshot of the 1HQ3 wallet on the publicly accessible blockchain.com, found in Ngan's possession"—"[a]t best, * * * establish[ed] that [petitioners] have ownership rights to the bankruptcy estate of Ngan," and "provide[d] nothing beyond speculation that Ngan had some association with Individual X" and "offer[ed] nothing to suggest how Ngan would have come into ownership of the bitcoin in 1HQ3." *Id.* at 5-6. As a result, the court of appeals concluded that "the district court correctly held that no reasonable jury could find that [petitioners] have a colorable claim of ownership as to the Defendant Property sufficient to confirm standing." *Id.* at 6.

The court of appeals also rejected petitioners' argument that the district court had erred in implicitly denying their request to "defer ruling on the government's

motion to strike until [they] could take additional discovery." Pet. App. 6. And the court of appeals held that the district court did not "err by requiring the Battle Born parties to connect their ownership interest to that of Individual X," because (among other reasons) petitioners' own claims relied upon such an alleged connection. *Id.* at 7.

ARGUMENT

Petitioners renew their contention (Pet. 25-29) that the district court erred in finding that they adduced insufficient evidence of ownership of the seized property to establish standing and preclude the court from striking their claims to the property. The court of appeals correctly rejected their contention. Its factbound decision does not conflict with any decision of this Court or another court of appeals, and petitioners have not shown that their claims would have established their standing in any other circuit. Further review is unwarranted.

1. The court of appeals correctly held that petitioners failed to put forward sufficient evidence supporting their claims of ownership of the seized cryptocurrency. Pet. App. 1-7.

a. As the court of appeals explained, although a claimant in a civil-forfeiture proceeding "may establish standing at the pleading stage by making an unequivocal assertion of ownership," such an assertion does not suffice at summary judgment. Pet. App. 4. At that stage, a claimant "asserting an ownership interest in the defendant property must also present some evidence of ownership beyond the mere assertion to establish standing." *Ibid.* (internal quotation marks and citation omitted). Petitioners do not contest those legal standards, see Pet. 25, which comport with the usual

rules of civil procedure, see *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

The lower courts correctly found that petitioners failed to satisfy the "some evidence of ownership" standard that petitioners favor. The only evidence petitioners presented to support their suspicion that Raymond Ngan "is, or is associated with, Individual X"—the person who stole the bitcoin from Silk Road—was a screenshot any member of the public could have taken. Pet. 7; see Pet. App. 6. (Indeed, in the district court, petitioners agreed that Ngan "is *not* Individual X." Pet. App. 21.) Petitioners' other principal evidence, which depicted Ngan representing himself as having bitcoin for sale circa 2018, Pet. 25, indicates at most that Ngan was behind one of the numerous scams of that time period related to the 1HQ3 wallet, see Pet. App. 28-32.

Petitioners also cite (Pet. 26) their affiants' statements, "[o]n information and belief," that a review of "Ngan's business correspondence * * * indicated his control over the 1HQ3 Wallet," Pet. App. 77, and that Ngan's associate "deleted fifty-four files from Mr. Ngan's devices over a two-day period," *id.* at 84, which could purportedly correspond to the 54 transfers of bitcoin from Silk Road.[2] But declarations "on information and belief" are "entitled to no weight" at summary judgment. *Bank Melli Iran* v. *Pahlavi*, 58 F.3d 1406, 1412-1413 (9th Cir.) (citation omitted), cert. denied, 516 U.S. 989 (1995). Moreover, even if petitioners had adduced evidence that Ngan really had possessed

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[2] Petitioners' inference from the number of deleted files seems to rely on a misimpression of how Bitcoin works. Bitcoin transactions are not saved on the parties' devices as individual files that can be "deleted." D. Ct. Doc. 99, at 7-8 (Aug. 24, 2021); see Pet. App. 32-34.

the 1HQ3 wallet at some point, that would not show that the stolen bitcoin was among the assets petitioners purchased after Ngan's bankruptcy. See *Kitchen* v. *Boyd* (*In re Newpower*), 233 F.3d 922, 931 (6th Cir. 2000) (stolen property is not part of the bankruptcy estate).

The court of appeals thus correctly found that petitioners failed to carry their burden to establish standing and that the district court properly struck their claims on that basis. Pet. App. 5-6. That factbound determination does not warrant review by this Court, which ordinarily does not grant a writ of certiorari "to review evidence and discuss specific facts," *United States* v. *Johnston*, 268 U.S. 220, 227 (1925)—particularly when, as here, the "district court and court of appeals are in agreement as to what conclusion the record requires." *Kyles* v. *Whitley*, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting); see, *e.g.*, *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949).

b. Petitioners' counterarguments lack merit. Their principal contention is that the court of appeals strayed from the "some evidence of ownership" standard at summary judgment by purportedly requiring them to go further and "explain their ownership interest" in the 1HQ3 bitcoin. Pet. 26; see Pet. 26-29. They highlight the court's observations that petitioners provided no evidence to substantiate Ngan's alleged "association with Individual X" and "offer[ed] nothing to suggest how Ngan would have come into ownership of the bitcoin in 1HQ3." Pet. App. 6; see Pet. 26. In their view, requiring them "to *explain* how they obtained th[eir] ownership interest" wrongly requires them to disprove the government's case for forfeiture, which depends on a showing that the property is the fruit of unlawful activity. Pet. 11.

But the problem with petitioners' evidence was not that they had failed to explain how they came to own the bitcoin. The problem was that there was no evidence that they had ever owned it at all. Thus, the district court and court of appeals were merely engaging in a commonsense application of the "some evidence of ownership" standard that petitioners themselves favor. In many forfeiture cases, at summary judgment, claimants need not provide any explanation of how they assumed ownership of the property because they have some direct evidence of ownership, such as evidence of prior possession or "title plus control" of the property, Pet. 27. See, *e.g.*, *United States* v. *$133,420.00 in U.S. Currency*, 672 F.3d 629, 639 (9th Cir. 2012) ("The fact that property was seized from the claimant's possession, for example, may be sufficient evidence, when coupled with a claim of ownership, to establish standing at the summary judgment stage.").[3] When claimants lack such evidence, however, as petitioners concededly do here, see Pet. C.A. Br. 64 ("bitcoin lacks traditional means of establishing ownership"), providing "some evidence of ownership" will naturally entail providing some explanation of how they came to own the property. See *United States* v. *$148,840.00 in U.S. Currency*, 521 F.3d 1268, 1275 (10th Cir. 2008) (assertion of ownership,

[3] In some circumstances, even such evidence, or nominal ownership, may not suffice to establish standing. See, *e.g.*, *United States* v. *$8,440,190.00 in U.S. Currency*, 719 F.3d 49, 57-59 (1st Cir. 2013) (claimant's asserted ownership of bales of cash he was transporting was "contradicted by common sense"); *United States* v. *Cambio Exacto, S.A.*, 166 F.3d 522, 527 (2d Cir. 1999) ("we have * * * denied standing to 'straw' owners who do indeed 'own' the property, but hold title to it for somebody else"); *United States* v. *Contents of Accounts Numbers 3034504504 & 144-07143*, 971 F.2d 974, 985-986 (3d Cir. 1992) (similar), cert. denied, 507 U.S. 985 (1993).

"when coupled with *evidence* of the claimant's involvement with the res, is enough to confer Article III standing on the claimant"). Indeed, by detailing their purchase of Ngan's bankruptcy estate, see Pet. 6, 15, petitioners tacitly accepted that they needed to explain how the bitcoin ended up in their hands. But they have been unable to provide any nonspeculative evidence that the bitcoin was part of the estate that they purchased. Contrary to petitioners' suggestion (Pet. 28-29), the lower courts' recognition of petitioners' failure to find a nonspeculative link between their interest in the Ngan estate and the bitcoin did not conflate the standing and merits inquiries. No one has suggested that petitioners had to "definitively prove" their ownership interest at summary judgment. *$148,840.00*, 521 F.3d at 1273. It is petitioners who conflate the mere assertions that suffice at the pleading stage with the "some evidence" showing needed at summary judgment.

c. To the extent that petitioners highlight (Pet. 15-17) the court of appeals' treatment of the district court's decision as a grant of summary judgment after a supposedly improper denial of discovery, that issue is beyond the scope of the question presented and is not attributed to any legal standard that is the subject of any disagreement among the courts of appeals. In any event, the court of appeals did not err in construing the district court's decision as a grant of summary judgment and affirming the implicit denial of petitioners' request for discovery. See Pet. App. 5-6. The invocation of summary judgment comported with the forfeiture rules, which expressly permit striking claims for lack of standing via summary judgment. Supp. R. G(8)(c)(ii)(B); see Supp. R. G advisory committee's note (2006) (subdiv. (8), para. (c)(ii)) ("If the claim shows facts that would

support claim standing, those facts can be tested by a motion for summary judgment."). As for discovery, petitioners' request for discovery rested on the same unsupported speculation about Ngan as their overall theory of ownership. See Pet. C.A. Br. 68-70. But "mere speculation" does not entitle a claimant to discovery. *SEC* v. *Stein*, 906 F.3d 823, 833 (9th Cir. 2018) (quoting *Ohno* v. *Yasuma*, 723 F.3d 984, 1013 n.29 (9th Cir. 2013)), cert. denied, 140 S. Ct. 245 (2019); see *DF Activities Corp.* v. *Brown*, 851 F.2d 920, 922 (7th Cir. 1988) ("remote possibilities do not warrant subjecting the parties and the judiciary to proceedings almost certain to be futile"). Whether petitioners were entitled to discovery before the summary-judgment standard was applied to them is not a question that warrants this Court's review.

d. Finally, petitioners repeatedly suggest that the Ninth Circuit's standing decision must be wrong because otherwise "*nobody* will be allowed to contest" the forfeiture of the 1HQ3 bitcoin on the merits. Pet. 3; see Pet. 2, 12, 25. But given that the two likeliest claimants to the 1HQ3 wallet—Ross Ulbricht and Individual X—each consented to the bitcoin's forfeiture, see pp. 5-6, *supra*, it is unsurprising that there would be no other viable claims to that property. And, as always, the apparent absence of a party with standing "is not a reason to find standing," no matter how important the matter in controversy. *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 420 (2013) (internal quotation marks and citation omitted). The court of appeals' decision is correct.

2. Petitioners err in positing (Pet. 17-25) a conflict among the courts of appeals over whether, at summary judgment, a claimant must satisfy the "some evidence of ownership" standard or must instead satisfy a higher

standard by explaining how the claimant acquired any ownership interest. As noted above, the court of appeals here applied the more-claimant-friendly some-evidence standard that petitioners favor. See Pet. App. 4. And as the Fourth Circuit has observed, "[e]very court of appeals that has addressed the issue" in recent years has done the same. *United States* v. *Phillips*, 883 F.3d 399, 403, cert. denied, 139 S. Ct. 347 (2018).[4] While petitioners contend that the Ninth Circuit here misapplied that widely accepted standard—a claim that is mistaken, as explained above—the alleged "misapplication of a properly stated rule of law" generally does not warrant this Court's review. Sup. Ct. R. 10.

Nor are there meaningful differences in how the courts of appeals apply the some-evidence standard. Petitioners submit (Pet. 22) that two circuits (in addition to the Ninth) have deviated from the norm by "requir[ing] claimants to explain their asserted ownership interest to establish standing at summary judgment." But the cases they cite do not bear that out. The Fifth Circuit decisions they cite (Pet. 22-23) are nonprecedential and do not discuss or apply any explanation require-

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[4] See *United States* v. *U.S. Currency, $81,000.00*, 189 F.3d 28, 35 (1st Cir. 1999); *Cambio Exacto*, 166 F.3d at 527 (2d Cir.); *United States* v. *$38,570 U.S. Currency*, 950 F.2d 1108, 1112 (5th Cir. 1992); *United States* v. *$774,830.00 in U.S. Currency*, No. 22-3392, 2023 WL 1961225, at *3 (6th Cir. Feb. 13, 2023) (citing *United States* v. *$515,060.42 in U.S. Currency*, 152 F.3d 491, 499 (6th Cir. 1998)); *United States* v. *Funds in the Amount of $239,400*, 795 F.3d 639, 642-643 (7th Cir. 2015); *United States* v. *$284,950.00 in U.S. Currency*, 933 F.3d 971, 973 (8th Cir. 2019) (citing *$133,420.00*, 672 F.3d at 638-639 (9th Cir.)), cert. denied, 140 S. Ct. 2732 (2020); *$148,840.00 in U.S. Currency*, 521 F.3d at 1277 (10th Cir.); *United States* v. *$17,900.00 in U.S. Currency*, 859 F.3d 1085, 1089-1091 (D.C. Cir. 2017).

ment. See *United States* v. *Real Prop. Located & Situated at 404 W. Milton St.*, 650 Fed. Appx. 233, 235 (2016) (per curiam); *United States* v. *One 1998 Mercury Sable*, 122 Fed. Appx. 760, 763-764 (2004) (per curiam). And the Fourth Circuit (Pet. 22) merely applied the some-evidence standard in the same sensible way as the decision below. As in this case, the claimant in *Phillips* had no direct evidence of ownership and offered only a facially implausible narrative explanation of how he came to own the funds, so the court of appeals held that his claim was properly struck for lack of standing. 883 F.3d at 405-406.

On the other side of the purported conflict, petitioners identify no circuit that would allow claims like theirs to survive summary judgment. In most of the cases that petitioners read (Pet. 17-21) as requiring no explanation of ownership, there was manifestly no need for explanation because the claimants had supported their assertions of ownership with the kind of direct evidence that petitioners lack. See *United States* v. *$557,933.89, More or Less, in U.S. Funds*, 287 F.3d 66, 79 n.10 (2d Cir. 2002) (Sotomayor, J.) (claimant was in possession of the property at the time of seizure); *United States* v. *$304,980.00 in U.S. Currency*, 732 F.3d 812, 818 (7th Cir. 2013) (same); *$148,840.00*, 521 F.3d at 1274, 1276 (10th Cir.) (same); *United States* v. *One Lincoln Navigator 1998*, 328 F.3d 1011, 1013 (8th Cir. 2003) (claimant had certificate of title); see also *United States* v. *$515,060.42 in U.S. Currency*, 152 F.3d 491, 499-500 (6th Cir. 1998) (government conceded one claimant's "involvement with part of the seized currency," which was found in the other claimant's bedroom). And two of the cases that petitioners cite addressed the *pleading* standard under Supplemental Rule G, not the sum-

mary-judgment standard at issue here. *United States* v. *$579,475.00 in U.S. Currency*, 917 F.3d 1047, 1048-1050 (8th Cir. 2019) (en banc); *United States* v. *$31,000.00 in U.S. Currency*, 872 F.3d 342, 350-354 & n.3 (6th Cir. 2017).

Nor do any of the remaining cases support petitioners' approach. In *United States* v. *Funds in the Amount of $239,400*, 795 F.3d 639 (7th Cir. 2015), the court excused claimants from having to "demonstrate '*legitimate*' ownership" of the property, not from having to explain their ownership at all. *Id.* at 646 (emphasis added). In *United States* v. *$17,900.00 in U.S. Currency*, 859 F.3d 1085 (D.C. Cir. 2017), the court found the claimants' explanation of their ownership interest sufficient to preclude summary judgment, *id.* at 1092-1094, which tends only to support the conclusion that, absent direct evidence of ownership, some plausible explanation is necessary. Cf. *$515,060.42*, 152 F.3d at 501 (finding standing where the court had "a good sense of the currency's provenance and [the claimant's] connection to it"). Petitioners fail to establish a circuit conflict warranting this Court's intervention.

3. Furthermore, this case would be an unsuitable vehicle for considering the question presented because petitioners' claims were correctly struck, irrespective of the question of their standing. As noted above, the government may move to strike a claim for lack of standing or for noncompliance with Supplemental Rule G(5), which governs, among other things, the timeliness of claims in civil-forfeiture proceedings. See Supp. R. G(5)(a)(ii); *$31,000*, 872 F.3d at 349 ("[a] single deviation" from procedural requirements "deprives a claimant of statutory standing"). Petitioners' claims were untimely: The government published the required no-

tice giving claimants until January 26, 2021, to file claims to the 1HQ3 bitcoin, yet petitioners filed theirs 49 days late, on March 16, 2021, C.A. E.R. 158-168. See p. 6, *supra*. They did so even though they purportedly believed as early as December 2019 that Raymond Ngan controlled the 1HQ3 wallet, see Pet. App. 84, and despite the substantial publicity surrounding the government's seizure of the bitcoin in November 2020, see *id.* at 77. Their claims therefore should be struck even if they have standing to assert them. 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. *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882). Petitioners' noncompliance with the rules makes this case a particularly poor vehicle for considering their general policy arguments about civil forfeiture, see Pet. 3-5, 12-15, to the extent those concerns even apply to the legal regime at issue here (the federal Civil Asset Forfeiture Reform Act of 2000, Pub. L. No. 106-185, 114 Stat. 202), as opposed to the forfeiture practices of state and local governments.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
NICOLE M. ARGENTIERI
Principal Deputy Assistant Attorney General
JOSHUA K. HANDELL
Attorney

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