No. 12-1046

In the Supreme Court of the United States

RYAN JAMES CRAIG, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner is entitled to an award of interest with respect to property returned pursuant to Federal Rule of Criminal Procedure 41(g).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-11a) is reported at 694 F.3d 509. The opinion of the district court (Pet. App. 12a-21a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 17, 2012. A petition for rehearing was denied on October 11, 2012 (Pet. App. 36a-37a). On December 28, 2012, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including February 25, 2013, 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 jury trial in the United States District Court for the Middle District of Pennsylvania, petitioner

was convicted on two counts of wire fraud, in violation of 18 U.S.C. 1343, and one count of failure to appear for trial, in violation of 18 U.S.C. 3146. He was sentenced to 71 months of imprisonment and ordered to pay restitution of $12,411 and a special assessment of $300. The court of appeals affirmed the conviction and sentence. See 343 Fed. Appx. 766.

In the course of investigating petitioner's crime, the government seized certain of his funds. The district court ordered that a portion of the funds be applied to satisfying petitioner's restitution and special assessment obligation in this case and that the remaining funds—which petitioner sought to have returned to him pursuant to Federal Rule of Criminal Procedure 41(g)—be sent to the United States District Court for the District of Rhode Island to satisfy his outstanding restitution obligation in a different case. Pet. App. 32a-35a. The court of appeals vacated and remanded, holding that the district court had exceeded its authority by attempting to enforce another court's restitution order. *Id.* at 22a-31a. On remand, the district court ordered that the remaining funds be turned over to petitioner, but rejected petitioner's request for an award of interest on those funds. *Id.* at 12a-21a. The court of appeals affirmed. *Id.* at 1a-11a.

1. Petitioner carried out a fraud scheme involving the internet auction site eBay. Using his grandmother's identification information, he established an eBay seller's account, posted items for sale, and accepted payment for them. He did not possess those items or deliver them to the purchasers. Still, he "ke[pt] the proceeds from the completed sales," which "were paid to him by way of Western Union money orders." 343 Fed. Appx. at 767.

During the course of the investigation into petitioner's fraud, "authorities seized $16,342 from [his] person and a bank account of [his]." 06-cr-219 Docket entry No. (Docket No.) 150, at 1 (M.D. Pa.); see Pet. App. 5a, 32a; Docket No. 162, at 1; 08-cv-267 Docket entry No. 1, at 1-2. Of that amount, $6960 was found in the rental vehicle petitioner was driving when he was arrested by Middletown, Pennsylvania, police in 2003; $382 was taken from petitioner when he was arrested by the federal government as a fugitive in 2007; and $9000 was located in petitioner's bank account in 2007. 08-cv-267, Docket No. 1, at 1-8 (M.D. Pa.). The money found in the rental car was initially "logged into evidence by the Middletown Police Department," but was eventually "transferred * * * to the United States Postal Inspection Service and secured as evidence in the USPIS investigation." *Id.* at 5-6.

2. On December 27, 2007, a jury convicted petitioner of two counts of wire fraud and one count of failure to appear for trial. Judgment 1; see Docket No. 48-2, at 8-10. The district court sentenced him to 71 months of imprisonment, to be followed by three years of supervised release. It also ordered him to pay $12,411 in restitution to the victims of the fraud and imposed a special assessment of $300. Pet. App. 4a-5a; Judgment 1-7; see 343 Fed. Appx. at 771 (affirming the judgment).

In February 2008, the government instituted a civil forfeiture action against the $16,342 in seized funds. See *United States* v. *$6,960.00 in U.S. Currency, et al.*, No. 08-cv-267; Pet. App. 5a, 18a. The verified complaint in that case sought to "forfeit and condemn" the money pursuant to 18 U.S.C. 981. See 08-cv-267 Docket No. 1, at 1.

On May 16, 2008, the government moved in the criminal case for an order directing that the seized funds "be applied by the Clerk to victim restitution." Docket No. 150, at 1-2. On July 28, 2008, with petitioner's consent, the district court ordered the USPIS to "deliver $12,711.00 of the funds seized" from petitioner "to the Clerk of Court" and directed the Clerk to "apply the funds received to victim restitution as set forth in the judgment and commitment order." Docket No. 162, at 1-2; see Pet. App. 13a.

In the meantime, petitioner filed a motion pursuant to Federal Rule of Criminal Procedure 41(g) seeking to have the remaining $3631 in seized funds "return[ed]" to him. Fed. R. Crim. P. 41(g) (providing that "[a] person aggrieved by * * * the deprivation of property may move for the property's return" in "the district where the property was seized"); see Docket No. 159, at 3-4. The government opposed the motion. As the government noted, in 2003 petitioner "was ordered to pay $58,002 in restitution and a $100 special assessment as part of his sentence for conspiracy to commit wire fraud in the United States District Court for the District of Rhode Island," and those obligations remained unsatisfied. Docket No. 161, at 2 (citing 03-cr-49 Docket entry No. 23 (D.R.I.)). The government asked the district court to direct that the disputed $3631 "be deposited with the Clerk of the United States District Court for the District of Rhode Island for payment of the assessment and distribution to the victims in the Rhode Island case." *Id.* at 3-4; see Pet. App. 13a.

The district court denied petitioner's Rule 41(g) motion and granted the government's request. See Pet. App. 34a-35a; Docket No. 200, at 1-3. Because that order disposed of all of the remaining seized funds, the

government moved to dismiss without prejudice the civil forfeiture action, and the district court granted the motion. See Pet. App. 5a, 18a-19a.

3. Petitioner appealed the order transferring the $3631 in seized funds to the Rhode Island district court. The court of appeals vacated and remanded, holding that the district court "lacked the statutory authority to order the transfer of seized funds to the Rhode Island Court for the purpose of facilitating the payment of restitution in an unrelated case." Pet. App. 27a.

4. After the court of appeals issued its decision, the district court in Rhode Island ordered the relevant funds in its possession—$3531, the amount "remaining after a $100 bank charge was deducted from the original $3,631"—transferred back to the district court in Pennsylvania. Docket No. 230, Ex. A at 4 n.5, 9; see Pet. App. 5a. On August 20, 2010, the Pennsylvania district court ordered the return of those funds to petitioner. *Id.* at 14a.

On November 2, 2010, petitioner filed a motion in the instant criminal case seeking an award of interest on the $3531 pursuant to the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Pub. L. No. 106-185, 114 Stat. 202, which states that "in any civil proceeding to forfeit property under any provision of Federal law" involving currency "in which the claimant substantially prevails, the United States shall be liable for * * * interest actually paid to the United States * * * and * * * an imputed amount of interest * * * for any period during which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding * * *)." 28 U.S.C. 2465(b)(1); see Pet. App. 12a, 14a; Docket No. 236, at 1-5 (relying exclusively on CAFRA as authority for the requested

interest). As the motion notes, the record does not establish whether any interest was actually earned on the seized funds. See *id.* at 2.

The district court denied the motion. See Pet. App. 12a-20a. The court explained that petitioner was not entitled to an award of interest under CAFRA because petitioner had agreed to the dismissal of the civil forfeiture action without prejudice and therefore did not qualify as a party who had "substantially prevail[ed]." 28 U.S.C. 2465(b)(1); see Pet. App. 18a-20a. The court also ruled that it was "without jurisdiction to award interest on the seized funds pursuant to Rule 41(g)" because such an award was barred by "principles of sovereign immunity." *Id.* at 16a.

On appeal, petitioner challenged the district court's CAFRA ruling. He also argued that "[e]ven if CAFRA does not apply, as an equitable matter the government must disgorge interest it earned, or could have earned, on the seized funds that were ultimately returned to" him. Pet. C.A. Br. 8; see *id.* at 16 (arguing that petitioner was entitled to interest as "equitable relief"); *id.* at 18 (arguing that it would be "grossly unfair" to deny payment of interest and that such payment "would simply put the parties in the position" in which "they otherwise would have been").

The court of appeals affirmed. First, the court rejected petitioner's argument that he prevailed for purposes of CAFRA because he won "his challenge to the Government's attempt to divert funds to satisfy the Rhode Island restitution order." Pet. App. 6a-7a. Petitioner "obtained neither a judgment on the merits nor any relief specific to the forfeiture action," the court explained. *Id.* at 7a.

Second, the court of appeals rejected petitioner's argument "that equity requires the Government to disgorge the interest." Pet. App. 8a. The court stated that "[a]lthough courts treat a motion pursuant to [Rule 41(g)] as a civil equitable action, such a characterization cannot serve as the basis for subjecting the United States to all forms of equitable relief," *ibid.* (alteration in original) (quoting *United States* v. *Bein*, 214 F.3d 408, 415 (3d Cir. 2000), cert. denied, 534 U.S. 943 (2001)), since equity cannot "abrogate the sovereign immunity of the United States," *ibid.* The court ruled "that Rule 41(g), which provides only for the 'return [of] property" and makes no explicit mention of interest, does not waive the sovereign's immunity with respect to [petitioner's] claim." *Ibid.*; see *id.* at 9a (explaining that merely "characterizing the interest as part of the seized property" did not avoid the sovereign-immunity problem because "the force of the no-interest rule cannot be avoided simply by devising a new name for an old institution") (quoting *Library of Cong.* v. *Shaw*, 478 U.S. 310, 321 (1986)); *ibid.* (noting that this approach to the sovereign-immunity issue was in accord "with the majority of our sister circuits to have addressed" it).

ARGUMENT

Petitioner contends (Pet. 7-24) that he is entitled to an award of interest on seized funds that were returned to him regardless of whether Congress has authorized such an award. Although some disagreement exists among the circuits on whether sovereign immunity bars recovery of interest on seized money, further review is not warranted here. The decision of the court of appeals was correct and does not conflict with any decision of this Court; this case does not implicate the circuits' disagreement because (*inter alia*) the record here does

not establish that the government actually or constructively earned interest on the seized money; and the disagreement is of little significance in any event in light of Congress's enactment of a provision permitting recovery of interest in civil-forfeiture cases under certain prescribed circumstances. This Court recently denied review of the question petitioner raises, see *Harber Corp.* v. *United States*, 131 S. Ct. 104 (2010) (No. 09-1389), and no reason exists for a different outcome in this case.

1. Petitioner argues (Pet. 12-21) that, even in the absence of a statutory waiver of sovereign immunity, the district court had authority under Federal Rule of Criminal Procedure 41(g) to order "disgorgement" of interest on the seized funds. That is incorrect.[1] The United States government is immune from suit unless it has expressly waived its sovereign immunity. See *Lane* v. *Pena*, 518 U.S. 187, 192 (1996). Any purported waiver of sovereign immunity is "strictly construed" in favor of the sovereign, *ibid.*, and "an added gloss of strictness" applies when a claimant seeks an award of interest against the government, *Library of Cong.* v. *Shaw*, 478 U.S. 310, 318 (1986). This Court has long recognized the "no-interest rule," according to which the United States is immune from an award of interest absent "express congressional consent to

[1] As discussed below, no evidence exists in this case that the government earned interest on the seized funds that could be "disgorged." See pp. 13-14, *infra*. Petitioner apparently agrees that he is not entitled to interest if the funds were never placed in an interest-bearing account or held in the United States Treasury. See Pet. 12-21. In any event, even if the record did demonstrate that such interest had been earned, the result reached by the court of appeals here would nevertheless be correct.

the award of interest separate from a general waiver of immunity to suit." *Id.* at 314.

That rule forecloses petitioner's claim in this case. As the court of appeals noted, petitioner's requested relief—an order compelling the United States to pay interest on the seized funds—was an "interest award" within the meaning of *Shaw*, from which the United States is immune absent an express congressional waiver. Pet. App. 8a-10a. And Rule 41(g) cannot be read to supply such a waiver: it provides only for "return" of the particular property of which an "aggrieved" person has been "depriv[ed]." Fed. R. Crim. P. 41(g).[2]

Petitioner seeks to circumvent the no-interest rule (Pet. 18-21) by claiming that payment of interest on seized property should not be considered damages, but rather part and parcel of the property itself. But that is simply a variant of the very argument that the *Shaw* Court rejected. The party seeking an award of interest in *Shaw* claimed that the interest was necessarily part of a "reasonable attorney's fee"—an amount that Congress had expressly authorized to be paid. 478 U.S. at 321. *Shaw* concluded, however, that Congress's reference to such a "reasonable"

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[2] Contrary to petitioner's contention (Pet. 15), the government has not "promulgated a policy" recognizing "that interest belongs to the owner of the principal" with respect to seized funds like those at issue in this case. To support that contention, petitioner misattributes to the Department of Justice *Asset Forfeiture Policy Manual* the statement that interest is "returned to the owner with the underlying principal," Pet. 16 (stating that "the manual" so provides); in fact, that statement comes from a decade-old audit report of earnings on particular accounts. See U.S. Dep't of Justice, Office of the Inspector Gen. Audit Div., *Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statement Fiscal Year 2001, Audit Report No. 02-22*, at Sec. I (June 2002), http://www.justice.gov/jmd/afp/01programaudit/auditreport72002.htm.

fee was insufficient to meet the strict requirements for a sovereign-immunity waiver. See *ibid.* The Court explained that "the force of the no-interest rule cannot be avoided simply by devising a new name" for the interest award: "[t]he character or nature of 'interest' cannot be changed by calling it 'damages,' 'loss,' 'earned increment,' 'just compensation,' 'discount,' 'offset,' or 'penalty,' or any other term, because it is still interest and the no-interest rule applies to it." *Ibid.* (citation omitted). The Court also emphasized that "[c]ourts lack the power to award interest against the United States on the basis of what they think is or is not sound policy." *Ibid.* (citation omitted).

Accordingly, whether interest generally follows principal as a matter of common law (Pet. 13) or in factual contexts different from the one presented here (Pet. 14-15 (citing *Phillips* v. *Washington Legal Found.*, 524 U.S. 156 (1998), and *Webb's Fabulous Pharmacies, Inc.* v. *Beckwith*, 449 U.S. 155 (1980))) is beside the point. This Court has repeatedly emphasized the "strictness" of "th[e] broad proscription of interest awards against the United States." *Missouri* v. *Jenkins*, 491 U.S. 274, 281 n.3 (1989). Where Congress wishes to authorize such awards, it does so expressly, see 28 U.S.C. 2465(b)(1)—and it cannot be assumed to have made such an authorization merely through an unadorned reference to the "property" that was initially seized, see Fed. R. Crim. P. 41(g); see also 18 U.S.C. 981(c) (stating that "[p]roperty taken or detained under this section shall not be repleviable").[3]

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[3] Despite petitioner's protestations (Pet. 17), that conclusion does not raise constitutional concerns. No taking occurs when funds are seized in an exercise of the government's police power. See *United States* v. *$7,990.00 in U.S. Currency*, 170 F.3d 843, 845-846 (8th Cir.) (citing, *inter alia*, *Bennis* v. *Michigan*, 516 U.S. 442 (1996), and

2. a. Petitioner correctly notes (Pet. 7) the existence of some disagreement among the circuits as to the payment of interest on money that the government has been found to have unjustifiably seized for civil forfeiture. Consistent with *Shaw*, the majority of the courts of appeals to have addressed the issue have held that, in the absence of a statutory waiver of sovereign immunity, the United States is immune from an interest award when returning such seized funds. See *Larson* v. *United States*, 274 F.3d 643, 647-648 (1st Cir. 2001) (per curiam); *United States* v. *$30,006.25 in U.S. Currency*, 236 F.3d 610, 614-615 (10th Cir. 2000), cert. denied, 534 U.S. 856 (2001); *United States* v. *$7,990.00 in U.S. Currency*, 170 F.3d 843, 845-846 (8th Cir.), petition for writ of cert. dismissed, 528 U.S. 1041 (1999); *Ikelionwu* v. *United States*, 150 F.3d 233, 238-239 (2d Cir. 1998).

Two courts of appeals—the Sixth and Ninth Circuits—have come to a different conclusion. In *United States* v. *$515,060.42 in U.S. Currency*, 152 F.3d 491 (6th Cir. 1998), the Sixth Circuit ruled that the government was obligated to pay interest on seized funds when the underlying civil forfeiture case was dismissed on statute of limitations grounds. The court stated that interest "the Government has actually or constructively earned * * * on seized funds"—either because the funds were placed in an interest-bearing account or because they were deposited in the United States Treasury—is an "aspect of the seized *res*." *Id.* at 504-505; see *id.* at 505 (concluding that deposit of funds in the Treasury "financially benefits the federal government" because "the Government was not required to borrow an equivalent sum," and that such deposited funds "should be treated as constructively earning interest

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Calero-Toledo v. *Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974)), petition for writ of cert. dismissed, 528 U.S. 1041 (1999).

at the Government's alternative borrowing rate"). "[T]here is no issue of sovereign immunity," the court concluded, when the government is asked to "disgorge property that was not forfeited." *Id.* at 504. As to a period of time when "the seized currency was retained as evidence" and was not deposited in an interest-bearing account or in the Treasury, however, the court found an award of interest impermissible. See *id.* at 505-506.

In *Carvajal* v. *United States*, 521 F.3d 1242 (9th Cir. 2008), the Ninth Circuit reached a similar result, relying heavily on its prior decision in *United States* v. *$277,000 in U.S. Currency*, 69 F.3d 1491 (1995). In *Carvajal*, the plaintiff alleged that the government had seized some of her savings and then later returned them without instituting civil forfeiture proceedings. See 521 F.3d at 1245. The court stated that "no express waiver of sovereign immunity was necessary, and the plaintiff was entitled to the payment of interest actually or constructively earned by the government during the period the asset was wrongfully held." *Ibid.* The court understood "constructive[]" interest in the same way as the Sixth Circuit—as interest calculated by reference to a benefit received by the United States when seized funds are placed in the United States Treasury. See *ibid.* (citing *$277,000*, 69 F.3d at 1496 (stating that "to the extent the funds were deposited in the Treasury as of June 1987, those funds should be considered as constructively earning interest")). The court also concluded that the enactment of CAFRA in 2000 did not preclude the plaintiff's recovery of interest, since CAFRA applies only to civil forfeiture proceedings and no such proceeding was ever commenced. See *id.* at 1246-1249.

Petitioner asserts (Pet. 8) that the Eleventh Circuit has also held that interest is available when seized funds are returned, but that assertion is incorrect. The case that

petitioner cites, *United States* v. *1461 West 42nd Street*, 251 F.3d 1329 (2001), notes that when returning seized property the government "may be liable for prejudgment interest to the extent that it has earned interest." *Id.* at 1338 (citing the Sixth Circuit's decision in *$515,060.42*). That statement was only dicta, however. The court ruled that no interest award was available in any event because "the government did not earn interest" on the property at issue "during the illegal seizure period. * * * There are no earnings to disgorge here." *Ibid.*

b. This case is not an appropriate one in which to resolve the disagreement among the circuits on the interest issue, for several reasons. First, the issue is not presented on the facts here. This record contains no evidence that the government earned interest on the seized funds or that it placed them in the Treasury so as to obtain some benefit from their possession—the only circumstances in which the Sixth and Ninth Circuits would approve an award of interest. As noted above, in some cases, neither of those things ever occurs. Seized funds may be held as evidence—that is, not placed in any account at all. See *$515,060.42*, 152 F.3d at 506 (agreeing that no award of interest was proper for the period when "the currency was being retained as evidence against" the defendant); see also 08-cv-267, Docket No. 1, at 5-6 (noting that a portion of the seized funds in this case was "secured as evidence in the USPIS investigation"); cf. *1461 W. 42nd St.*, 251 F.3d at 1338. And the "seizure" of the money held in a defendant's bank account may consist of nothing more than asking the bank to freeze the account, so that the money remains in the possession of the bank but no account activity takes place. See, *e.g.*, *United States* v. *Capoccia*, No. 03-cr-35, 2011 WL 1930677, at *1 (D. Vt. May 19, 2011).

Having failed to seek any discovery on how the funds at issue in this case were treated, petitioner attempts to rely (Pet. 16) on an internal government document providing guidance on safeguarding seized funds. That reliance is misplaced. The very manual that petitioner cites demonstrates that seized cash is not invariably deposited in the Department of Justice's Seized Asset Deposit Fund. See U.S. Dep't of Justice, Criminal Div., *Asset Forfeiture Policy Manual* 26 (2012), http://www.justice.gov/criminal/afmls/pubs/pdf/policy-manual-2012.pdf (*DOJ Manual*). In particular, the manual explains that amounts less than $5000—like the remaining amount at issue here—may be "retained for evidentiary purposes" outside such an account with the approval of a supervisor in the U.S. Attorney's Office (and larger amounts may be retained with higher-level approval). *Ibid.* Because petitioner has not shown how that policy was applied here, no reason exists to believe that his case would have turned out differently in the Sixth or Ninth Circuits than it did in the Third Circuit.

Second, this case arises in different procedural circumstances than any of the court of appeals cases on which petitioner relies and therefore raises distinct issues that those cases do not address. Not one of those cases involves a request for return of property under Federal Rule of Criminal Procedure 41(g), which is the basis for petitioner's claim that he is entitled to an award of interest. Accordingly, none of them interprets the language of that provision, including the meaning of "property" as used in the phrase "[a] person aggrieved by * * * the deprivation of property may move for the property's return." Fed. R. Crim. P. 41(g). In addition, all of the cases are premised on situations in which the money at issue was "wrongfully" held, *Carvajal*, 521 F.3d at 1244, rather than rightfully taken to be used as evidence in a criminal proceeding.

Were the circuits that have allowed interest awards to confront the issue in the context of a Rule 41(g) return-of-property request, it is not certain what result they would reach—particularly since some courts have frowned on use of the Rule 41(g) procedure in circumstances similar to those presented here. See, *e.g.*, *$30,006.25*, 236 F.3d at 614 n.3.

Finally, petitioner would not be entitled to relief in this case even if an award of interest were permissible and the record established that the government had actually (or constructively) earned interest *vis-a-vis* the disputed $3531. Aside from the CAFRA argument that petitioner declines to press here (see Pet. 7 n.3), the only argument that petitioner preserved in the court of appeals was that "*equity* requires the Government to disgorge the interest." Pet. App. 8a (emphasis added); see Pet. C.A. Br. 8 (arguing that "[e]ven if CAFRA does not apply, as an equitable matter the government must disgorge interest it earned, or could have earned, on the seized funds"); *id.* at 16, 18; *United States* v. *Bein*, 214 F.3d 408, 415 (3d Cir. 2000) (noting that courts "treat a motion pursuant to [Rule 41(g)] as a civil equitable action"), cert. denied, 534 U.S. 943 (2001). But it would be highly inequitable for petitioner to obtain an award of interest on those funds. No court has concluded that the government seized the funds wrongfully, rather than simply as evidence of petitioner's fraudulent activities. Moreover, the seizure could not have prevented petitioner from realizing interest that he would otherwise have earned on the money, since petitioner has been under an unsatisfied obligation since 2003—the same year that authorities first seized funds in connection with this case—to pay tens of thousands of dollars in restitution stemming from a conspiracy conviction in Rhode Island federal court. See p. 4, *supra*. Accordingly, even under the approach to

sovereign immunity that petitioner espouses, he could not obtain the award of interest that he seeks.

c. Even if this case were an appropriate vehicle for this Court to address the issue as to which the circuits have diverged, review still would not be warranted. As the courts of appeals have expressly noted, the importance of the issue has been significantly diminished by the enactment of CAFRA in 2000. See *Smith* v. *Principi*, 281 F.3d 1384, 1388 n.2 (Fed. Cir.) (stating that "[t]he circuit split is of diminishing significance" because of CAFRA), cert. denied, 537 U.S. 821 (2002); see also *United States* v. *Ford*, 64 Fed. Appx. 976, 980-981 (6th Cir. 2003) (unpublished op.) (same). Before CAFRA's enactment, Section 2465 "made no provision for, or reference to, the recovery of pre-judgment interest." *Larson*, 274 F.3d at 645. But CAFRA amended Section 2465 to expressly waive the government's sovereign immunity by providing for an award of pre-judgment interest to claimants who substantially prevail in civil asset-forfeiture proceedings involving currency. 28 U.S.C. 2465(b). While CAFRA does not cover every conceivable asset-forfeiture situation, see *Ohel Rachel Synagogue* v. *United States*, 482 F.3d 1058, 1062-1063 (9th Cir. 2007) (noting that Section 2465(b) does not cover criminal or administrative forfeiture proceedings), its provision for recovery of interest in ordinary civil asset-forfeiture cases, such as those underlying the decision of the Sixth Circuit in *$515,060.42* and the decision of the Ninth Circuit in *$277,000*, means that interest will be available in most cases in which money has been unjustifiably seized. Notably, many of the cases on which petitioner relies to establish the existence of a split among the circuits—including the Sixth Circuit's decision in *$515,060.42*—predate the enactment of CAFRA. See pp. 11-13, *supra*.

Petitioner's citation of statistics about the government's return of seized money (Pet. 21-22) does not establish that the interest issue remains of ongoing importance. The data cited by petitioner regarding the government's "return of * * * once-seized cash or monetary and financial instruments" (Pet. 21) includes property returned after the conclusion of civil forfeiture proceedings governed by CAFRA—indeed, it includes amounts as to which the government was required to pay interest pursuant to Section 2465(b). See U.S. Dep't of Justice, Office of Inspector Gen. Audit Div., *Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements Fiscal Year 2012, Audit Report No. 13-07*, at 44-45 (Jan. 2013), http://www.justice.gov/oig/reports/2013/a1307.pdf. And while it is true that the government generally does not commence civil forfeiture proceedings with respect to small amounts of money, see Pet. 22 n.7, it also generally does not seize such small amounts in the first place, see *DOJ Manual* 5. Petitioner thus has made no showing that a substantial number of cases involving return of seized money fall outside of CAFRA's aegis.[4]

[4] Petitioner suggests (Pet. 22-23) that the government could "sidestep[]" CAFRA by returning assets while a civil forfeiture case is ongoing. But no reason exists to believe that the government will attempt to manipulate forfeiture proceedings in that way. Moreover, except at an early stage, the government cannot (absent consent) dismiss a civil-forfeiture case without the district court's approval. See Fed. R. Civ. P. 41(a).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 2013