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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASSIE WILL-DARNALL,

Defendant.

SANDRA WILL,

Third Party Claimant.

Case No.: 5:24-CR-00292-PCP

THIRD PARTY CLAIMANT SANDRA WILL'S OPPOSITION TO GOVERNMENT'S MOTION TO DISMISS FIRST AMENDED PETITION

Court: Courtroom 8, 4th Floor
Hearing Date: March 25, 2026
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TABLE OF CONTENTS

TABLE OF CONTENTS i
TABLE OF AUTHORITIES ii
INTRODUCTION 1
ARGUMENT 2
A. The amended petition is timely. 5
B. Ms. Will's interests in Bellwood were superior to those of Ms. Will-Darnall. 8
C. Ms. Will has standing to raise a constitutional challenge to the forfeiture. 10
CONCLUSION 13

TABLE OF AUTHORITIES

Cases

Fort Bend Cnty., Texas v. Davis, 587 U.S. 541 (2019) 6
Gates Rubber Co. v. Ulman, 214 Cal. App. 3d 356 (1989) 9
Hamer v. Neighborhood Hous. Servs. of Chicago, 583 U.S. 17 (2017) 5, 6
Henderson ex rel. Henderson v. Shinseki, 562 U.S. 428 (2011) 6
Hudson v. United States, 522 U.S. 93 (1997) 10
Lloyds Bank California v. Wells Fargo Bank, 187 Cal. App. 3d 1038 (1986) 9
Majewsky v. Empire Constr. Co., 2 Cal. 3d 478 (1970) 8
Mayle v. Felix, 545 U.S. 644 (2005) 7
United States v. $100,348.00 in U.S. Currency, 354 F.3d 1110 (9th Cir. 2004) 10
United States v. 101 Houseco, LLC, 22 F.4th 843 (9th Cir. 2022) 5
United States v. Alvarez, 710 F.3d 565 (5th Cir. 2013) 6
United States v. Bajakajian, 524 U.S. 321 (1998) 10
United States v. Caspersen, 275 F. Supp. 3d 502 (S.D.N.Y. 2017) 3
United States v. Coffman, 612 Fed. Appx. 278 (6th Cir. 2015) 11
United States v. Crew, 704 F. App'x 30 (2d Cir. 2017) 8
United States v. Espada, 128 F. Supp. 3d 555 (E.D.N.Y. 2015) 10, 12
United States v. Estevez, 845 F.2d 1409 (7th Cir. 1988) 6
United States v. Grossman, 501 F.3d 846 (7th Cir. 2007) 8
United States v. Klemme, 894 F. Supp. 2d 1113 (E.D. Wis. 2012) 7
United States v. Lamid, 663 F. App'x 319 (5th Cir. 2016) 6
United States v. Marion, 562 F.3d 1330 (11th Cir. 2009) 8
United States v. Nejad, 933 F.3d 1162 (9th Cir. 2019) 4
United States v. Newman, 659 F.3d 1235 (9th Cir. 2011) 12
United States v. One 1980 Rolls Royce, VIN No. SRL39955, 905 F.2d 89 (5th Cir. 1990) 3
United States v. Osborn, 357 F. App'x 109 (9th Cir. 2009) 6
United States v. Pole No. 3172, Hopkinton, 852 F.2d 636 (1st Cir. 1988) 3

United States v. Porchay, 533 F.3d 704 (8th Cir. 2008) 11

United States v. Real Property Located at 5208 Los Franciscos Way, Los Angeles, CA, 385 F.3d 1187 (9th Cir. 2004) 2

United States v. Soreide, 461 F.3d 1351 (11th Cir. 2006) 7

United States v. Tarraf, 725 F. Supp. 2d 625 (E.D. Mich. 2010) 11

United States v. Timley, 507 F.3d 1125 (8th Cir. 2007) 9

United States v. Totaro, 345 F.3d 989 (8th Cir. 2003) 11

United States v. Watts, 786 F.3d 152 (2d Cir. 2015) 9

Willis Mgmt. (Vermont), Ltd. v. United States, 652 F.3d 236 (2d Cir. 2011) 7

Constitutional Provisions

U.S. CONST. AMEND. VIII 10, 11, 12

Statutes

18 U.S.C. § 981 2

21 U.S.C. § 853 ..... *passim*

28 U.S.C. § 2461 2

Federal Rules

Federal Rule of Civil Procedure 6 6

Federal Rule of Civil Procedure 12 7

Federal Rule of Civil Procedure 15 7

Federal Rule of Civil Procedure 56 7

Federal Rule of Criminal Procedure 32.2 ..... 1, 6, 7

INTRODUCTION

Third Party Claimant Sandra Will petitioned the Court on June 6, 2025 to conduct an ancillary proceeding under 21 U.S.C. § 853(n) and Federal Rule of Criminal Procedure 32.2(c) after the government gave her notice that it intended to forfeit two homes—306 Los Gatos Almaden Way and 111 Belwood Gateway—in Los Gatos as a result of criminal conduct by her daughter, defendant Cassie Will-Darnall. Dkt. 65. Most pressing to Ms. Will was the property at 306 Los Gatos Almaden Way, the home she has owned since 1991 and lived in since 1995. She also, however, contested the government's efforts to forfeit a second property located at 111 Belwood Gateway. The government ultimately abandoned its request to forfeit 306 Los Gatos Almaden, but continued to seek forfeiture of 111 Belwood Gateway. Following a full briefing by the parties, and a motion hearing, this Court granted the government's motion to dismiss but granted Ms. Will leave to file an amended petition within 21 days of the Court order. Dkt. 103.

As authorized by the Court, Ms. Will filed an amended petition on November 11, 2025. Dkt. 104, Third Party Claimant Sandra Will's Amended Petition For Ancillary Proceeding ("Amend. Pet."). She reasserted her argument concerning 306 Los Gatos Almaden and refined her argument concerning 111 Belwood Gateway. The government opposes Ms. Will's ancillary petition, again limiting its discussion to 111 Belwood Gateway. It argues that Ms. Will's petition is untimely and her arguments against forfeiture of the home at 111 Belwood Gateway meritless. Dkt. 115, United States' Notice of Motion and Motion to Dismiss First Amended Petition ("Gov. Mot."). As set forth in detail below, the government is wrong.

Ms. Will's amended petition is timely because it was filed within the deadline established by the Court, after implicitly finding good cause to permit her to file an amended petition. It is also timely because under Federal Rule of Civil Procedure 15(c)(1)(B), it relates back to her timely original petition. Because Ms. Will has demonstrated that the home was held in a resulting trust, her interest in the home was superior to that of Ms. Will-Darnall's under 21 U.S.C. § 853(n)(6)(A).

This Court should deny the government's motions and amend the preliminary order of forfeiture to remove the Belwood property.

ARGUMENT

Lurking throughout these proceedings has been the validity of the government's theory of forfeitability. As set forth in Ms. Will's Amended Petition, neither house was "derived from proceeds traceable" to the bank fraud charged in Count 1, 28 U.S.C. § 2461(c), or was property "obtained directly, or indirectly, as the result of the commission of the offense." 18 U.S.C. § 981(a)(2)(A). Both houses were purchased long before the COVID-19 pandemic and PPP fraud committed by Ms. Will-Darnall, and were purchased without any money obtained through the PPP loans. Amend. Pet. at 9. The only Ninth Circuit case cited by the government in support of its theory of forfeiture, *United States v. Real Property Located at 5208 Los Franciscos Way, Los Angeles, CA*, 385 F.3d 1187 (9th Cir. 2004), involved property purchased *after* the fraud, with fraudulent proceeds and after the purchaser was on notice that they were being investigated for fraud. 385 F.3d at 1189; *see* Dkt. 77 at 16, n. 12. That is certainly not the case here.

The Northern District of California cases cited by the government in its motion to dismiss that involved the forfeiture of real property all involved properties acquired directly from the use of tainted funds, not the novel situation here—unsupported by a single Ninth Circuit case—where property acquired well before criminal activity becomes forfeitable when tainted funds are used to make improvements, pay off loans and otherwise increase the equity of the property. *See, e.g. United States v. Susan Xiao-Ping Su*, 4:11-CR-00288-JST, Dkt. 224 at 1 (defendant used illegally obtained "funds to purchase real estate" that was then forfeited without objection); *United States v. Esther Sanchez*, 5:15-CR-00475-BLF, Dkt. 160 at 2 (defendant made false statements to a bank "in connection with the purchase of her co-defendant's home" that "influence[d] the bank to fund" a mortgage on the property that was later foreclosed on by the bank); *United States v. Pavel Lazarenko*, 3:00-CR-00284-CRB, Dkt. 1625 at 2 (forfeited property purchased "with laundered money" and "the purchase is the financial transaction underlying defendant Lazarenko's conviction on Count Seven of the Second Superseding Indictment for money laundering"); *United States v. Jonathan Chang*, 5:16-CR-00047-EJD, Dkt. 232 at 2 (fraudulently obtained "funds were invested and used to purchase real property, including rental properties;" 3 of 5 properties purchased entirely with tainted funds, 2 remaining properties purchased with some untainted funds, but forfeiture limited to tainted funds);

see Gov. Mot. at 6.[1]

Ms. Will acknowledged in her amended petition that courts outside the Ninth Circuit had adopted the government's theory that "real property acquired with fraud proceeds (including through an all-cash purchase or mortgage payments)" are forfeitable. Gov. Mot. at 4; *see* Amend. Pet. at 9, n. 4. But that theory comes with an important caveat: in these cases, the government's interest in the property was limited to the amount of tainted funds.

For example, in *United States v. Caspersen*, 275 F. Supp. 3d 502 (S.D.N.Y. 2017), a case cited by the government, the district court ordered forfeiture of an apartment that was purchased with a downpayment sourced from untainted funds while the mortgage payments were made by tainted funds. *Caspersen*, 275 F. Supp. 3d at 504; *see* Gov. Mot. at 4. The district court explained "the Government acquired an interest in the Apartment *to the extent of the sum* Mr. Caspersen used to pay off the Apartment's mortgage" through tainted funds. *Caspersen*, 275 F. Supp. 3d at 504 (emphasis added). The district court elaborate "the use of crime proceeds to pay off a HELOC secured by real property results in the Government's acquisition of an interest in the real property *to the extent of the payment*." *Id.* (emphasis added). As noted in Ms. Will's amended petition, other Circuits have reached similar results. *See United States v. Pole No. 3172, Hopkinton*, 852 F.2d 636, 639 (1st Cir. 1988) ("We do not believe, however, that forfeitability spreads like a disease from one infected mortgage payment to the entire interest in the property acquired prior to the payment. After all, only the actual proceeds of [criminal activity] are forfeitable.") *United States v. One 1980 Rolls Royce, VIN No. SRL39955*, 905 F.2d 89, 90 (5th Cir. 1990) (agreeing with claimant "that the legitimate portions of…properties are not subject to forfeiture."); Amend. Pet. at 9, n. 4. So it is clearly wrong for the government to complain that it "is contrary to the law and precedent" for Ms. Will to assert "the government is not entitled to forfeit any excess equity beyond the proceeds traced into the property" under principles of forfeiture. Gov. Mot. at 4.

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[1] The final case cited by the government involved a stipulation between the parties allowing the government to forfeit one property to satisfy a money forfeiture judgment, with the government's agreement not to forfeit a second property. *See United States v. Allen Fong*, 3:14-CR-00527-VC, Dkt. 571. It is unclear from the record in that case whether the properties were derived from the criminal activity, or if the government was using the property as a substitute asset.

What the government has done is conflate *what* it can forfeit with *how* it can collect. The government ultimately wants the Bellwood house as "substitute property" to cover the balance of the forfeiture money judgment issued against Mr. Will-Darnall, which exceeds the $746,372.98 of tainted proceeds traced to the home. Gov. Mot. to Dismiss at 5.

As a starting point, that does not mean the government is able to forfeit the full value of the home, which is exactly what it proposed to do when it first applied to forfeit the properties. *See* Dkt. 43, Application for Preliminary Order of Forfeiture at 17 (seeking "forfeiture of the Subject Property" *and* "a $1,406,594.56 money judgment"). The Ninth Circuit has noted that "the government may not enforce a personal money judgment through the same means it would use to enforce an ordinary in personam civil judgment. Instead, once the government identifies untainted property that it believes may be used to satisfy a personal money judgment, it must return to the district court and establish that the requirements of § 853(p) have been met." *United States v. Nejad*, 933 F.3d 1162, 1166 (9th Cir. 2019). After all the briefing submitted to the Court and two motion hearings, the government finally admits as much, explaining "*Once* the Court enters a final order of forfeiture including the money judgment of $1,406,594.56, the government *will apply* to the Court for the forfeiture of substitute assets—namely, any equity in excess of $746,372.98, but not to exceed $1,406,594.56 (that is, $2,152,967.54 in total), resulting from the sale of the Belwood Property—to satisfy the money judgment." Gov. Mot. at 4-5 (emphasis added). In turn, for the first time, the government seeks only "Up to $746,372.98 in equity resulting from the sale of the Belwood Property." *Id.* at 12.

All this background demonstrates that the government's critique about Ms. Will's "morphed" claims apply equally to its actions. Gov. Mot. at 7. After Ms. Will filed her original petition, it abandoned its efforts to forfeit the Los Gatos Almaden house. Now, it has stated for the first time it was limiting its forfeiture of the Bellwood home to just the amount of tainted funds traced to the home. Even if Ms. Will ultimately does not prevail, her challenges to the government's forfeiture have spared her primary residence, and limited the amount of money the government seeks to forfeit from the Bellwood home.

But again, as Ms. Will has repeatedly acknowledged, a "third party wishing to challenge a district court's criminal forfeiture order" in an ancillary proceeding cannot "include a claim that the

property was not forfeitable in the first place." *United States v. 101 Houseco, LLC*, 22 F.4th 843, 849 (9th Cir. 2022). Instead, to prevail at an ancillary proceeding, a petitioner must show by a preponderance of the evidence that she either (1) has a "legal right, title, or interest in the property" that was "vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property," or (2) is "a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture." 21 U.S.C. § 853(n)(6)(A), (B). If that standard is met, the district court should "amend the order of forfeiture" to accommodate those interests. 21 U.S.C. § 853(n)(6).

In her original and amended petitions, Ms. Will raised a claim under 21 U.S.C. § 853(n)(6)(A) as to both the Almaden and Bellwood homes, asserting that her interests in the properties were superior to Ms. Will-Darnall's interests at the time of the fraud in May 2020. Ms. Will thus asked the Court to amend the forfeiture order to remove the properties. Amend. Pet. at 11-13. She also explained why forfeiting the homes would constitute an unconstitutionally excessive fine. Amend. Pet. at 13-16.

The government, now only seeking forfeiture of the Bellwood home, asserts that Ms. Will's amended petition should be dismissed as untimely and that her claim to the home is invalid. As set forth below, the government's arguments should be rejected.

A. <u>The amended petition is timely.</u>

Despite the fact Ms. Will filed her amended petition within the deadline set by the Court, the government nonetheless asserts the petition is untimely. Gov. Mot. at 6. It is wrong.

As an initial matter, the 30 day deadline in 21 U.S.C. § 853(n)(2) is clearly a claims processing rule, not a jurisdictional barrier. A "jurisdictional defect is not subject to waiver or forfeiture…may be raised at any time in the court of first instance and on direct appeal…and courts are obliged to notice jurisdictional issues and raise them on their own initiative." *Hamer v. Neighborhood Hous. Servs. of Chicago*, 583 U.S. 17, 20 (2017) (citations omitted). In contrast, "claim-processing rules are less stern. If properly invoked, mandatory claim-processing rules must be enforced, but they may be waived or forfeited." *Id.* (quotations and citations omitted).

"Filing deadlines…are quintessential claim-processing rules." *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435 (2011). That is, it is a rule that "seek[s] to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times.'" *Fort Bend Cnty., Texas v. Davis*, 587 U.S. 541, 548–49 (2019) (quotations and citations omitted). The Supreme Court has "reserved whether mandatory claim-processing rules may be subject to equitable exceptions." *Hamer*, 583 U.S. at 20 n. 3. But when it comes to § 853(n)(2) specifically, the Ninth Circuit has assumed "the district court could waive the time bar for excusable neglect." *United States v. Osborn*, 357 F. App'x 109, 109–10 (9th Cir. 2009). So have other Circuits. *See United States v. Alvarez*, 710 F.3d 565, 568 (5th Cir. 2013) (dismissing ancillary petition and noting petitioner "did not move for an extension under Federal Rule of Civil Procedure Rule 6(b)(1), which allows the court to, 'for good cause,' extend the deadline after its expiration on motion of the party 'if the party failed to act because of excusable neglect.'"); *United States v. Estevez*, 845 F.2d 1409, 1412 (7th Cir. 1988) (finding "excusable neglect" to permit petitioner to challenge forfeiture after expiration of 30 day deadline in § 853(n)); *United States v. Lamid*, 663 F. App'x 319, 325 (5th Cir. 2016) (citing *Estevez* as holding "the judgment of forfeiture was vacated and the claimant given another opportunity to file a petition because, in that case, the claimant's failure to timely file was due to "excusable neglect.").

The fact that the 30 day deadline in § 853(n)(2) is a non-jurisdictional, claims-processing rule means that the deadline can be extended for good cause. Here, this Court found good cause to permit Ms. Will to file an amended ancillary petition. It noted the theory pressed here—that Ms. Will "acquired a property interest in the Bellwood property through her provision of funds to Ms. Will-Darnall over several years"—was "not set forth in Ms. Will's existing petition and the parties have not briefed its legal validity." Dkt. 103 at 2. Because it was "possible for Ms. Will to state a viable theory in an amended petition," it granted her leave to file an amended petition. *Id.* Thus, the claim is properly before the Court.

Moreover, ancillary petitions are similar to civil lawsuits, and Federal Rule of Criminal Procedure 32.2 has adopted some of the procedures that apply in civil cases under the Federal Rules of Civil Procedure. *See, e.g., Willis Mgmt. (Vermont), Ltd. v. United States*, 652 F.3d 236, 241–42 (2d Cir. 2011) (a motion to dismiss under Fed. R. Crim. P. 32.2(c)(1)(A) "should be treated like a motion

to dismiss a civil complaint under Federal Rule of Civil Procedure 12(b).") (quotations and citations omitted); Fed. R. Crim. P. 32.2(c)(1)(B) (noting "party may move for summary judgment under Federal Rule of Civil Procedure 56).

Federal Rule of Civil Procedure 15(c)(1)(B) states an amendment to a pleading "relates back to the date of the original pleading when…the amendments asserts a claim…that arose out of the conduct, transaction, or occurrence set out…in the original pleading." In a habeas corpus proceeding, for example, a new claim raised in an amended pleading filed after the statute of limitations has expired "relates back" to the original and timely filed claim when they are "tied to a common core of operative facts." *Mayle v. Felix*, 545 U.S. 644, 664 (2005) (citing former Fed. R. Civ. P. 15(c)(2), now located at Fed. R. Civ. P. 15(c)(1)(B)).

Here, Ms. Will's amended petition "relates back" to the timely filed original petition because it is based on the same "common core of operative facts." Ms. Will attached the same exhibits attached to her original petition to her amended petition, and her declaration is largely unchanged. She is not relying on a new set of facts, or a new legal theory under § 853(n)(6). Thus, the amended petition is timely.

None of the cases cited by the government are relevant here. It cites *United States v. Klemme*, 894 F. Supp. 2d 1113 (E.D. Wis. 2012) for the proposition that a "claimant could not file [a] supplemental pleading after the 30-day deadline expired adding new grounds for recovery." Gov. Mot. at 7. But the district court there noted the claimant had submitted a letter that was not signed under penalty of perjury and so the "letter cannot serve as an amended petition curing deficiencies in the original." *Klemme*, 894 F. Supp. 2d at 1117. Here, as authorized by the Court, Ms. Will submitted an amended petition signed under penalty of perjury.

United States v. Soreide, 461 F.3d 1351 (11th Cir. 2006) is cited by the government because the court refused to consider "belated" claims. Gov. Mot. at 7. But the Eleventh Circuit reached that result because the petitioner never asserted in her timely petitions that her interests in the property were superior to the defendant's interests, instead relying solely on her being a bona fide purchaser. 461 F.3d at 1355. She raised the superior interest argument only in response to the government's motion to dismiss, and then on appeal when the government's motion was granted. *Id.* Here,

however, Ms. Will has relied on the same legal ground under § 853(n)(6) in both her original and amended petition—that she had superior interests to Ms. Will-Darnall. She did not wait to raise the claim in her opposition to the government's motion to dismiss, or raise it for the first time in an amended petition.

Even more irrelevant are the government's citation to cases where the third party did not file *any* petition at all within the 30 day window. *See United States v. Marion*, 562 F.3d 1330, 1334 (11th Cir. 2009) (petition untimely when petitioner waited until "three and a half months after receiving her notices"); *United States v. Grossman*, 501 F.3d 846, 849 (7th Cir. 2007) (petitioner "admits that its petition was not filed within thirty days after its agent received notice"); *United States v. Crew*, 704 F. App'x 30, 32 (2d Cir. 2017) (petitioner "failed to file a petition asserting a legal interest in the property within 30 days."); *United States v. Lebnitz Tran*, 21-CR-269-WHO (N.D. Cal.), Dkt. 80 at 1 ("On December 10, 2022, a year before the pending petition was filed, I entered a Final Order of Forfeiture that forfeited the Tesla to the government."); *see* Gov. Mot. at 7-8. That obviously is not the case here, as Ms. Will timely filed her original petition, and the government has never claimed otherwise.

Thus, Ms. Will's amended petition is timely and this Court can consider her arguments against forfeiture of the Belwood Gateway house.

B. <u>Ms. Will's interests in Bellwood were superior to those of Ms. Will-Darnall.</u>

Ms. Will's amended petition asserted she had a superior interest in the Belwood home under § 853(n)(6)(A) because Ms. Will supplied the money Ms. Will-Darnall needed to both buy out Ms. Darnall's interest in the home in 2017, and then pay off Ms. Will-Darnall's mortgage in 2018, which created a resulting trust in favor of Ms. Will on the property. Amend. Pet. at 12-13.

The government disputes this, arguing first that "the fact that Will's money was allegedly used to purchase some portion of the Belwood Property is insufficient to establish the existence of a resulting trust." Gov. Mot. at 10. But that is legally incorrect, at least when the transfer of money from one to the other "is founded on a relationship between the two, on the fact that as between them, consciously and intentionally, one has advanced the consideration wherewith to make a purchase in the name of the other." *Majewsky v. Empire Constr. Co.*, 2 Cal. 3d 478, 485 (1970). Here, Ms. Will

provided significant funds to Ms. Will-Darnall to obtain the home, first in the divorce proceeding in 2017, then to extinguish the mortgage on the property in 2018.

Despite the fact Ms. Will provided money to her daughter to obtain the Belwood house, it was clear this was not a gift. The government disputes Ms. Will's claim that her daughter "paid rent," which it believes is "contradicted by documents attached to her amended claim in which the word 'mortgage' repeatedly appears, unlike the word 'rent.'" Gov. Mot. at 10. But just because the check indicated "mortgage" instead of "rent" is unimportant. Regardless of the term, the fact remains that Ms. Will-Darnall paid Ms. Will monthly to live in the home. That the payment would be used by Ms. Will to pay down the mortgage does not change that fact. And more importantly, it evidences a clear intent by the parties that this was not a gift between a parent and child, meaning that Ms. Will has satisfied her burden of rebutting the presumption that "transactions between parent and child" are "presumed to be in the nature of gifts, advancements or bounties." *Lloyds Bank California v. Wells Fargo Bank*, 187 Cal. App. 3d 1038, 1042 (1986).

Finally, timing is crucial. "Because forfeitable property vests in the government immediately upon the commission of a criminal act, a third party may prevail under § 853(n)(6)(A) only by establishing that he 'had a legal interest in the forfeited property before the underlying crime was committed'—that is, 'before the government's interest vested.'" *United States v. Watts*, 786 F.3d 152, 166 (2d Cir. 2015) (quoting *United States v. Timley*, 507 F.3d 1125, 1130 (8th Cir. 2007)). At the time of the fraud, Ms. Will had an interest in the Bellwood home, secured by a deed of trust, though undocumented by legal deed of title. But "recordation is not essential to legal recognition of a property interest." *Gates Rubber Co. v. Ulman*, 214 Cal. App. 3d 356, 365 (1989) (citations and quotations omitted). Because this Court looks to the state of affairs at the time of the fraud, the fact that Ms. Will-Darnall "poured fraud proceeds into the Belwood property to 'payoff' Will's loan" is thus beside the point. Gov. Mot. at 11. But even if that was considered, the record is clear that before the fraud, Ms. Will provided significant amounts of money—at least $1 million and perhaps more—to Ms. Will-Darnall, and creating a resulting trust in favor of Ms. Will was a way to ensure all these loans and advances of money over the years were not deemed a "gift."

Ms. Will has carried her burden under 21 U.S.C. § 853(n)(6)(A) and so the forfeiture order

must be amended to remove the Belwood home.

C. Ms. Will has standing to raise a constitutional challenge to the forfeiture.

Ms. Will's petition also asserted that forfeiting the properties would amount to an unconstitutional fine in violation of the Eighth Amendment's prohibition on "excessive fines." U.S. CONST. AMEND. VIII; *see* Amend. Pet. at 13-16. The government, incorporates by reference its earlier arguments against this constitutional argument. Gov. Mot. at 12. To the extent the government claims Ms. Will has no standing as a third party claimant to assert an Eighth Amendment claim, it is clearly wrong.

Forfeitures are "fines" under the Eighth Amendment when they "constitute punishment for an offense." *United States v. Bajakajian*, 524 U.S. 321, 328 (1998). A "punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." *Id.* at 334. Both "owners" and "claimants who assert possessory interests in the forfeited property" have standing to challenge a forfeiture order under the Eighth Amendment even if they are not a criminal defendant. *United States v. $100,348.00 in U.S. Currency*, 354 F.3d 1110, 1119 (9th Cir. 2004). A claimant may even raise an Eighth Amendment challenge in a civil forfeiture proceeding "as a party 'punished' by the forfeiture," notwithstanding the nonexistence of a criminal case. *Id.* at 1121; *see also Hudson v. United States*, 522 U.S. 93, 103 (1997) ("The Eighth Amendment protects against excessive civil fines, including forfeitures."). Because Ms. Will is both an "owner" and a "claimant" of the properties, she has standing to challenge the constitutionality of the forfeitures under the Eighth Amendment.

The cases cited by the government in its earlier pleadings for the proposition that Ms. Will cannot assert a constitutional challenge to the forfeiture of the Bellwood property do not withstand scrutiny upon closer inspection, as none of them deal with the Eighth Amendment claim raised by Ms. Will here. *See* Dkt. 77 at 19 (citing cases).

For example, in *United States v. Espada*, 128 F. Supp. 3d 555 (E.D.N.Y. 2015), the claimant asserted the constitutional rights of her husband, arguing that a preliminary order of forfeiture was entered in violation of *his* Sixth Amendment rights. 128 F. Supp. 3d at 557. The district court rejected that argument, noting the wife could not "vicariously assert constitutional claims" on her husband's

behalf. *Id.* But it clarified the wife "*could* raise constitutional challenges on her own behalf." *Id.* at 557 n. 1 (emphasis in original). And it quoted an Eighth Circuit case noting that if a court forfeited an "entire estate despite a valid claim of partial ownership by a third party," the result "would also punish the third party, against whom no jury has returned a verdict of guilt, and may therefore raise constitutional questions." *Id.* (quoting *United States v. Totaro*, 345 F.3d 989, 997 (8th Cir. 2003) (quotations omitted)).

Similarly, in *United States v. Tarraf*, 725 F. Supp. 2d 625 (E.D. Mich. 2010) the district court rejected the efforts of third party claimants to "assert the *Defendant's* Eighth Amendment rights," noting "had [the defendant] wished to assert an Eighth Amendment Excessive Fines defense, he should have argued as much during his criminal proceeding." *Tarraf*, 725 F. Supp. 2d at 635 (emphasis added).

In *United States v. Porchay*, 533 F.3d 704 (8th Cir. 2008) the Eighth Circuit found a third party could not raise a Fourth Amendment challenge to how the government seized property it later forfeited, noting that "a third party to the forfeiture has no standing to challenge the legality of the seizure *under the Fourth Amendment*." *Porchay*, 533 F.3d at 710 (emphasis added).

In *United States v. Coffman*, 612 Fed. Appx. 278 (6th Cir. 2015), the third party claimant raised an Eighth Amendment challenge to the final order of forfeiture, issued after an ancillary proceeding, seemingly for the first time on appeal. There, the claimant had been charged criminally with her husband; the husband was convicted but the claimant acquitted by jury. She then filed an ancillary petition to contest the forfeiture of certain property on her own behalf, as well as on behalf of certain entities with legal rights in the forfeited properties. The district court issued a final order of forfeiture. *Coffman*, 612 Fed. Appx. at 281-82. On appeal, she asserted the forfeiture proceeding violated her right against double jeopardy, given her acquittal on the criminal charges, and separately constituted an excessive punishment. The Sixth Circuit rejected the argument by noting the claimants could not "now, after having intervened in the proceedings, claim that the order of forfeiture operates as a fine, even if they eventually lose what they believe are their assets." *Coffman*, 612 Fed. Appx. at 289. The briefs submitted by the parties do not indicate that any challenge under the Eighth Amendment was raised by the claimants before the district court, and the appellate arguments focused on whether the

Eighth Amendment was violated given the fact the claimant was acquitted. *See* 2014 WL 1512661 (Appellant's Opening Brief); 2014 WL 3556188 (Government's Answering Brief); 2014 WL 3795363 (Appellant's Reply Brief).

Here, Ms. Will is asserting *her* rights under the Eighth Amendment to be free from excessive fines; she is not vicariously asserting the rights of Ms. Will-Darnall. *See Espada*, 128 F. Supp. 3d at 557 n. 1. Thus, this Court can consider her Eighth Amendment claim. As explained in Ms. Will's amended petition, forfeiting the Bellwood home would be an unconstitutionally excessive fine given the fact she has not been charged with a crime or accused of any wrongdoing. Amend. Pet. at 14. Because the government has other remedies to recoup the money taken by Ms. Will-Darnall, including restitution which can be enforced through liens and wage garnishment, forfeiting the Bellwood home is disproportionate and unconstitutional. *See* Amend. Pet. at 15-16.

The government responded previously that "courts routinely hold that imposition of restitution and forfeiture together in a single judgment does not constitute an excessive fine because requiring a defendant to disgorge no more than twice the proceeds of her crimes cannot be disproportionate to the harm inflicted on the defendant's victims." Dkt. 77 at 19. It cited a Ninth Circuit case, *United States v. Newman*, 659 F.3d 1235 (9th Cir. 2011) which it asserts found "forcing defendant to pay both forfeiture and restitution 'at worst' forces him to disgorge twice the value of the proceeds of his crime, which 'is in no way disproportionate to the harm inflicted on government and society.'" Dkt. 77 at 19 (quoting *Newman*, 659 F.3d at 1241). But as Ms. Will explained in her amended petition, *Newman* noted the "constitutional limits" to forfeiture—including "the constitutional limit defined by the Excessive Fines Clause of the Eighth Amendment"—were "not at issue here" as "neither Defendant asserts that the district court's forfeiture orders implicate constitutional considerations." *Newman*, 659 F.3d at 1241, n. 4; *see also* Amend. Pet. at 16. In other words, the Ninth Circuit's decision in *Newman* does not foreclose the constitutional challenge raised by Ms. Will in her petition.

Thus, Ms. Will can assert her Eighth Amendment rights to challenge to the forfeiture. Because forfeiting the Bellwood home is disproportionate to the gravity of the offense, in part because of the availability of other government remedies to collect money illegally obtained by Ms. Will-Darnall, forfeiture of the Belwood home would be unconstitutional.

CONCLUSION

Ms. Will respectfully requests this Court to amend the forfeiture order to remove 111 Belwood Gateway.

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Respectfully submitted,

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