SUPREME COURT OF THE UNITED STATES

No. 91–767

REPUBLIC NATIONAL BANK OF MIAMI, PETITIONER *v.* UNITED STATES

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

[December 14, 1992]

JUSTICE BLACKMUN announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, and IV, and an opinion with respect to Part III in which JUSTICE STEVENS and JUSTICE O'CONNOR joined.

The issue in this case is whether the Court of Appeals may continue to exercise jurisdiction in an *in rem* civil forfeiture proceeding after the res, then in the form of cash, was removed by the United States Marshal from
the judicial district and deposited in the United States Treasury.

In February 1988, the Government instituted an action in the United States District Court for the Southern District of Florida seeking forfeiture of a specified single-family residence in Coral Gables. The complaint alleged that Indalecio Iglesias was the true owner of the property; that he had purchased it with proceeds of narcotics trafficking; and that the property was subject to forfeiture to the United States pursuant to §511(a)(6) of the Comprehensive Drug Abuse Prevention and Control Act of

1970, as amended, 92 Stat. 3777, 21 U. S. C. §881(a)(6).[1] A warrant for the arrest of the property was issued, and the United States Marshal seized it.

In response to the complaint, Thule Holding Corporation, a Panama corporation, filed a claim asserting that it was the owner of the res in question. Petitioner Republic National Bank of Miami filed a claim asserting a lien interest of $800,000 in the property under a mortgage recorded in 1987. Thule subsequently withdrew its claim. At the request of the Government, petitioner Bank agreed to a sale of the property. With court approval, the residence was sold for $1,050,000. The sale proceeds were retained by the Marshal pending disposition of the case. See App. 6, n. 2.

After a trial on the merits, the District Court entered judgment denying the Bank's claim with prejudice and forfeiting the sale proceeds to the United States pursuant to §881(a)(6). App. 25. The court found probable cause to believe that Iglesias had purchased

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[1]Title 21 U. S. C. §881(a) reads in pertinent part:

"The following shall be subject to forfeiture to the United States and no property right shall exist in them:

. . . . .

"(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner."

the property and completed the construction of the residence thereon with drug profits. It went on to reject the Bank's innocent-owner defense to forfeiture. *United States* v. *One Single Family Residence*, 731 F. Supp. 1563 (SD Fla. 1990).[2] Petitioner Bank filed a timely notice of appeal, but did not post a supersedeas bond or seek to stay the execution of the judgment.

Thereafter, at the request of the Government, the United States Marshal transferred the proceeds of the sale to the Assets Forfeiture Fund of the United States Treasury. The Government then moved to dismiss the appeal for want of jurisdiction. App. 4.

The Court of Appeals granted the motion. 932 F. 2d 1433 (CA11 1991). Relying on its 6 to 5 en banc decision in *United States* v. *One Lear Jet Aircraft*, 836 F. 2d 1571, cert. denied, 487 U. S. 1204 (1988), the court held that the removal of the proceeds of the sale of the residence terminated the District Court's *in rem* jurisdiction. 932 F. 2d, at 1435–1436. The court also rejected petitioner Bank's argument that the District Court had personal jurisdiction because the Government had served petitioner with the complaint of forfeiture. *Id.*, at 1436–1437. Finally, the court ruled that the Government was not estopped from contesting the jurisdiction of the Court of Appeals because of its agreement that the United States Marshal would retain the sale proceeds pending order of the District Court. *Id.*, at 1437.

In view of inconsistency and apparent uncertainty among the Courts of Appeals,[3] we granted certiorari.

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[2]The Government also had argued that the "relation-back" doctrine precluded the Bank from raising an innocent-owner defense. See 731 F. Supp., at 1567. That issue is pending before this Court in No. 91–781, *United States* v. *A Parcel of Land*, argued October 13, 1992.

[3]Compare *United States* v. *One Lot of $25,721.00 in*

___ U. S. ___ (1992).

A civil forfeiture proceeding under §881 is an action *in rem*, "which shall conform as near as may be to proceedings in admiralty." 28 U. S. C. §2461(b). In arguing that the transfer of the res from the judicial district deprived the Court of Appeals of jurisdiction, the Government relies on what it describes as a settled admiralty principle: that jurisdiction over an *in rem* forfeiture proceeding depends upon continued control of the res. We, however, find no such established rule in our cases. Certainly, it long has been understood that a valid seizure of the res is a prerequisite to the *initiation* of an *in rem* civil forfeiture proceeding. *United States* v. *One Assortment of 89 Firearms*, 465 U. S. 354, 363 (1984); *Taylor* v. *Carryl*, 20 How. 583, 599 (1858); 1 S. Friedell, Benedict on Admiralty §222, p. 14–39 (7th ed. 1992); H. Hawes, The Law Relating to the Subject of Jurisdiction of Courts §92 (1886). See also Supplemental Rules for Certain Admiralty and Maritime Claims C(2) and C(3). The bulk of the Government's cases stands merely for this

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Currency, 938 F. 2d 1417 (CA1 1991); *United States* v. *Aiello*, 912 F. 2d 4 (CA2 1990), cert. denied, ___ U. S. ___ (1991); *United States* v. *$95,945.18 United States Currency*, 913 F. 2d 1106 (CA4 1990), with *United States* v. *Cadillac Sedan Deville, 1983*, appeal dism'd, 933 F. 2d 1010 (CA6 1991); *United States* v. *Tit's Cocktail Lounge*, 873 F. 2d 141 (CA7 1989); *United States* v. *$29,959.00 U. S. Currency*, 931 F. 2d 549 (CA9 1991); and the Court of Appeals' opinion in the present case. Compare also *United States* v. *$57,480.05 United States Currency and Other Coins*, 722 F. 2d 1457 (CA9 1984), with *United States* v. *Aiello*, 912 F. 2d, at 7, and *United States* v. *$95,945.18 United States Currency*, 913 F. 2d, at 1110, n. 4.

unexceptionable proposition, which comports with the fact that, in admiralty, the "seizure of the RES, and the publication of the monition or invitation to appear, is regarded as equivalent to the particular service of process in law and equity." *Taylor* v. *Carryl*, 20 How., at 599.

To the extent that there actually is a discernible rule on the need for continued presence of the res, we find it expressed in cases such as *The Rio Grande*, 23 Wall. 458 (1875), and *United States* v. *The Little Charles*, 26 F. Cas. 979 (CC Va. 1818). In the latter case, Chief Justice Marshall, sitting as Circuit Justice, explained that "continuance of possession" was not necessary to maintain jurisdiction over an *in rem* forfeiture action, citing the "general principle, that jurisdiction, once vested, is not divested, although a state of things should arrive in which original jurisdiction could not be exercised." *Id.*, at 982. The Chief Justice noted that in some cases there might be an exception to the rule, where the release of the property would render the judgment "useless" because "the thing could neither be delivered to the libellants, nor restored to the claimants." *Ibid.* He explained, however, that this exception "will not apply to any case where the judgment will have any effect whatever." *Ibid.* Similarly, in *The Rio Grande*, this Court held that improper release of a ship by a marshal did not divest the Circuit Court of jurisdiction. "We do not understand the law to be that an actual and continuous possession of the *res* is required to sustain the jurisdiction of the court. When the vessel was seized by the order of the court and brought within its control the jurisdiction was complete." 23 Wall., at 463. The Court there emphasized the impropriety of the ship's release. The Government now suggests that the case merely announced an "injustice" exception to the requirement of continuous control. But the question is one of jurisdiction, and we do not see why the means of the

res' removal should make a difference.[4]

Only once, in *The Brig Ann*, 9 Cranch 289, 290 (1815), has this Court found that events subsequent to the initial seizure destroyed jurisdiction in an *in rem* forfeiture action. In that case, a brig was seized in Long Island Sound and brought into the port of New Haven, where the collector took possession of it as forfeited to the United States. Several days later, the collector gave written orders for the release of the brig and its cargo from the seizure. Before the ship could leave, however, the District Court issued an information, and the brig and cargo were taken by the Marshal into his possession. This Court held that, because the attachment was voluntarily released before the libel was filed and allowed, the District Court had no jurisdiction. Writing for the Court, Justice Story explained that judicial cognizance of a forfeiture *in rem* requires

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[4]See also *The Bolina*, 3 F. Cas. 811, 813–814 (CC Mass. 1812) (Story, J., as Circuit Justice) ("[O]nce a vessel is libelled, then she is considered as in the custody of the law, and at the disposal of the court, and monitions may be issued to persons having the actual custody, to obey the injunctions of the court . . . . The district court of the United States derives its jurisdiction, not from any supposed possession of its officers, but from the act and place of seizure for the forfeiture. . . . And when once it has acquired a regular jurisdiction, I do not perceive how any subsequent irregularity would avoid it. It may render the ultimate decree ineffectual in certain events, but the regular results of the adjudication must remain."); 1 J. Wells, A Treatise on the Jurisdiction of Courts 275 (1880) (actual or constructive seizure provides jurisdiction in admiralty forfeiture action. "And, having once acquired regular jurisdiction, no subsequent irregularity can defeat it; or accident, as, for example, an accidental fire.").

> "a good subsisting seizure *at the time when the libel or information is filed and allowed*. If a seizure be completely and explicitly abandoned, and the property restored by the voluntary act of the party who has made the seizure, all rights under it are gone. Although judicial jurisdiction once attached, it is divested by the subsequent proceedings; and it can be revived only by a new seizure. It is, in this respect, like a case of capture, which, although well made, gives no authority to the prize Court to proceed to adjudication, if it be voluntarily abandoned *before judicial proceedings are instituted*." *Id.*, at 291 (emphasis added).

Fairly read, *The Brig Ann* simply restates the rule that the court must have actual or constructive control of the res when an *in rem* forfeiture suit is initiated. If the seizing party abandons the attachment prior to filing an action, it, in effect, has renounced its claim. The result is "to purge away all the prior rights acquired by the seizure," *ibid.*, and, unless a new seizure is made, the case may not commence. *The Brig Ann* stands for nothing more than this.

The rule invoked by the Government thus does not exist, and we see no reason why it should. The fictions of *in rem* forfeiture were developed primarily to expand the reach of the courts and to furnish remedies for aggrieved parties, see *Continental Grain Co.* v. *Barge FBL-585*, 364 U. S. 19, 23 (1960); *United States* v. *Brig Malek Adhel*, 2 How. 210, 233 (1844), not to provide a prevailing party with a means of defeating its adversary's claim for redress. Of course, if a "defendant ship stealthily absconds from port and leaves the plaintiff with no *res* from which to collect," *One Lear Jet*, 836 F. 2d, at 1579 (Vance, J., dissenting), a court might determine that a judgment would be "useless." Cf. *The Little Charles*, 26 F. Cas., at 982. So, too, if the plaintiff abandons a seizure, a

court will not proceed to adjudicate the case. These exceptions, however, are closely related to the traditional, theoretical concerns of jurisdiction: enforceability of judgments, and fairness of notice to parties. See R. Casad, Jurisdiction in Civil Actions §1.02, pp. 1–13 to 1–14 (2d ed. 1991); cf. *Miller* v. *United States*, 11 Wall. 268, 294–295 (1870) ("Confessedly the object of the writ was to bring the property under the control of the court and keep it there, as well as to give notice to the world. These objects would have been fully accomplished if its direction had been nothing more than to hold the property subject to the order of the court, and to give notice."). Neither interest depends absolutely upon the continuous presence of the res in the district.

Stasis is not a general prerequisite to the maintenance of jurisdiction. Jurisdiction over the person survives a change in circumstances, *Leman* v. *Krentler-Arnold Co.*, 284 U. S. 448, 454 (1932) ("[A]fter a final decree a party cannot defeat the jurisdiction of the appellate tribunal by removing from the jurisdiction, as the proceedings on appeal are part of the cause," citing *Nations* v. *Johnson*, 25 How. 195 (1860)), as does jurisdiction over the subject-matter, *Louisville, N.A. & C. R. Co.* v. *Louisville Trust Co.*, 174 U. S. 552, 566 (1899) (mid-suit change in the citizenship of a party does not destroy diversity jurisdiction); *St. Paul Mercury Indemnity Co.* v. *Red Cab Co.*, 303 U. S. 283, 289–290 (1938) (jurisdiction survives reduction of amount in controversy). Nothing in the nature of *in rem* jurisdiction suggests a reason to treat it differently.

If the conjured rule were genuine, we would have to decide whether it had outlived its usefulness, and whether, in any event, it could ever be used by a plaintiff—the instigator of the *in rem* action—to contest the appellate court's jurisdiction. The rule's illusory nature obviates the need for such inquiries, however, and a lack of justification undermines any

argument for its creation. We agree with the late Judge Vance's remark in *One Lear Jet*, 836 F. 2d, at 1577: "although in some circumstances the law may require courts to depart from what seems to be fairness and common sense, such a departure in this case is unjustified and unsupported by the law of forfeiture and admiralty." We have no cause to override common sense and fairness here. We hold that, in an *in rem* forfeiture action, the Court of Appeals is not divested of jurisdiction by the prevailing party's transfer of the res from the District.[5]

The Government contends, however, that this res no longer can be reached, because, having been deposited in the United States Treasury, it may be released only by congressional appropriation. If so, the case is moot, or, viewed another way, it falls into the "useless judgment" exception noted above, to

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[5]We note that on October 28, 1992, the President signed the Housing and Community Development Act of 1992, 106 Stat. ___. Section 1521 of that Act (part of Title XV, entitled the Annunzio-Wylie Anti-Money Laundering Act) significantly amended 28 U. S. C. §1355 to provide, among other things:

"In any case in which a final order disposing of property in a civil forfeiture action or proceeding is appealed, removal of the property by the prevailing party shall not deprive the court of jurisdiction. Upon motion of the appealing party, the district court or the court of appeals shall issue any order necessary to preserve the right of the appealing party to the full value of the property at issue, including a stay of the judgment of the district court pending appeal or requiring the prevailing party to post an appeal bond." 106 Stat., at ___.

Needless to say, we do not now interpret that statute or determine the issue of its retroactive application to the present case.

appellate *in rem* jurisdiction.

The Appropriations Clause, U. S. Const., Art. I, §9, cl. 7, provides: "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." In *Knote* v. *United States*, 95 U. S. 149 (1877), this Court held that the President could not order the Treasury to repay the proceeds from the sale of property forfeited by a convicted traitor who had been pardoned. But the Government—implicitly in its brief and explicitly at oral argument, see Tr. of Oral Arg. 37–39—now goes further, maintaining that, absent an appropriation, *any* funds that find their way into a Treasury account must remain there, regardless of their origin or ownership. Such a rule would lead to seemingly bizarre results. The Ninth Circuit recently observed: "If, for example, an agent of the United States had scooped up the cash in dispute and, without waiting for a judicial order, had run to the nearest outpost of the Treasury and deposited the money . . . it would be absurd to say that only an act of Congress could restore the purloined cash to the court." *United States* v. *Ten Thousand Dollars ($10,000.00) in United States Currency*, 860 F. 2d 1511, 1514 (1988). Yet that absurdity appears to be the logical consequence of the Government's position.

Perhaps it is not so absurd. In some instances where a private party pays money to a federal agency and is later deemed entitled to a refund, an appropriation has been assumed to be necessary to obtain the money. See 55 Comp. Gen. 625 (1976); United States General Accounting Office, Principles of Federal Appropriations Law, 5–80 to 5–81 (1982). Congress, therefore, has passed a permanent indefinite appropriation for "`Refund of Moneys Erroneously Received and Covered' and other collections erroneously deposited that are not properly chargeable to another appropriation." 31 U. S. C. §1322(b)(2). This appropriation has been

interpreted to authorize, for example, the refund of charges assessed to investment advisers by the Securities and Exchange Commission and deposited in the Treasury, after those charges were held to be erroneous in light of decisions of this Court. See 55 Comp. Gen. 243 (1975); see also *National Presto Industries, Inc.* v. *United States*, 219 Ct. Cl. 626, 630 (1979) (suggesting that prior version of §1322(b)(2) authorized refund of sum deposited in Treasury during litigation). Section 1322(b)(2) arguably applies here.

Petitioner offers a different suggestion. It identifies 28 U. S. C. §2465 as an appropriation. That statute states: "Upon the entry of judgment for the claimant in any proceeding to condemn or forfeit property seized under any Act of Congress, such property shall be returned forthwith to the claimant or his agent." That is hardly standard language of appropriation. Cf. 31 U. S. C. §1301(d). Yet I have difficulty imagining how an "appropriation" of funds determined on appeal not to belong to the United States could ever be more specific.[6]

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[6]THE CHIEF JUSTICE, writing for the Court on this question, *post*, would find an appropriation in the judgment fund, 31 U. S. C. §1304. While plausible, his analysis is nevertheless problematic. The judgment fund is understood to apply to money judgments only. See, *e.g.*, 58 Comp. Gen. 311 (1979). A final judgment in petitioner's favor, however, would be in the nature of a financial "acquittal" — a simple ruling that the res is not forfeitable. Unless we were to require the bank to sue on its judgment of nonforfeitability for return of a sum equivalent to the retained res, THE CHIEF JUSTICE's approach would seem to open the judgment fund to payment on nonmoney judgments. Moreover, as THE CHIEF JUSTICE acknowledges, see *post*, at 3, "the property subject to forfeiture has been converted to proceeds now

In part for that reason, however, I believe that a formal appropriation is not required in these circumstances. The Appropriations Clause governs only the disposition of money that belongs to the United States. The Clause "assure[s] that *public funds* will be spent according to the letter of the difficult judgments reached by Congress." *OPM* v. *Richmond*, 496 U. S. 414, 428 (1990) (emphasis added); see also Stith, Congress' Power of the Purse, 97 Yale L.J. 1343, 1358, and n. 67 (1988) (Clause encompasses only funds that belong to the United States); 2 Story, Commentaries on the Constitution of the United States §1348 (3d ed. 1858) (object of the Clause "is to secure regularity, punctuality, and fidelity, in the disbursements of the *public money*" (emphasis added)). I do not believe that funds held in the Treasury during the course of an ongoing *in rem* forfeiture proceeding—the purpose of which, after all, is to determine the ownership of the res, see, *e.g.*, *The Propeller Commerce*, 1 Black 575, 580–581 (1861); *The Maggie Hammond*, 9 Wall. 435, 456 (1869); *Jennings* v. *Carson*, 4 Cranch 2, 23 (1807)—can properly be considered public money. The Court in *Tyler* v. *Defrees*, 11 Wall. 331, 349 (1870),

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resting in the Assets Forfeiture Fund of the Treasury." Title 28 U. S. C. §2465 can "be construed as authorizing the return of proceeds in such a case." *Post*, at 3. But a payment from the judgment fund would not achieve that purpose. The res is not in the judgment fund. A payment from that account, while no doubt entirely acceptable to petitioner, would not be a return of the forfeited property, and at the end of the episode (although I have no doubt that the Comptroller would manage to balance the books) the Assets Forfeiture Fund would be some $800,000 richer, and the judgment fund correspondingly diminished.

explained that once a valid seizure of forfeitable property has occurred and the court has notice of the fact, "[n]o change of the title or possession [can] be made, pending the judicial proceedings, which would defeat the final decree."

Contrary to the Government's broad submission here, the Comptroller General long has assumed that, in certain situations, an erroneous deposit of funds into a Treasury account can be corrected without a specific appropriation. See 53 Comp. Gen. 580 (1974); 45 Comp. Gen. 724 (1966); 3 Comp. Gen. 762 (1924); 12 Comp. Dec. 733, 735 (1906); Principles of Federal Appropriations Law, at 5–79 to 5–81. Most of these cases have arisen where money intended for one account was accidentally deposited in another. It would be unrealistic, for example, to require congressional authorization before a data processor who misplaces a decimal point can "undo" an inaccurate transfer of Treasury funds. The Government's absolutist view of the scope of the Appropriations Clause is inconsistent with these commonsense understandings.

I would hold that the Constitution does not forbid the return without an appropriation of funds held in the Treasury during the course of an *in rem* forfeiture proceeding to the party determined to be their owner. Because the funds therefore could be disgorged if petitioner is adjudged to be their rightful owner, a judgment in petitioner's favor would not be "useless."

In a civil forfeiture proceeding, where the Government has the power to confiscate private property on a showing of mere probable cause, the right to appeal is a crucial safeguard against abuse. No settled rule requires continuous control of the res for appellate jurisdiction in an *in rem* forfeiture proceeding. Nor does the Appropriations Clause place the money out of reach. Accordingly, we hold that the Court of Appeals did not lose jurisdiction when the funds were transferred from the Southern District of Florida to the Assets Forfeiture Fund of the United States Treasury. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.