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I. INTRODUCTION

This case is about what happens when the Government seeks to forfeit property that a state sponsor of terrorism possesses and that is also the proceeds of that state's non-terrorism crimes. Does the property go to the victims of terrorism, the victims of the crimes giving rise to forfeiture, or the government?

The D.C. Circuit has squarely decided, in two published decisions, that the property goes to the victims of terrorism. In *Estate of Levin v. Wells Fargo Bank, N.A.* (“*Levin II*”), the Court held that, where a state sponsor of terrorism obtains property through crime and that property is “blocked” under the International Emergency Economic Powers Act, judgment creditors’ liens from terrorism-related judgments defeat the Government’s claim to forfeiture because the Terrorism Risk Insurance Act “subject[]s to execution” the blocked assets of a terrorist party “notwithstanding any other provision of law.” 156 F.4th 632, 638 (D.C. Cir. 2025). And in *United States v. BCCI Holdings (Lux.), S.A.*, the Court held that even where victims of fraud can trace their property to the defendant property in a forfeiture case, they cannot prevail through the imposition of a constructive trust and are, therefore, not entitled to defeat the claims of the government, or other creditors, to the defendant property. 46 F.3d 1185, 1191 (D.C. Cir. 1995). Binding law holds that when a state sponsor of terrorism obtains property by fraud, exchanges it for other property, and the government seeks to forfeit that property, the court should award the property to the terror victims. *Levin II*, 156 F.4th at 638; *BCCI Holdings*, 46 F.3d at 1191.

That is what happened here. Here, the Government seeks to forfeit the interests of the Democratic People’s Republic of Korea (“North Korea”) or its agencies

or instrumentalities in a digital ledger balance of approximately 13.98 million Tether (USDT) that the United States alleges North Korea obtained by selling other crypto assets North Korea had taken by fraud from Claimant Huobi Global S.A., a Panamanian crypto exchange. ECF No. 1, Complaint ¶¶ 13, 31–34; *infra* Section III.D.4. Huobi filed a verified claim and answer, contending (among other things) that it is an innocent owner of the USDT balance. Claimants Han Kim and Yong Seok Kim, whose loved one was murdered by North Korea in an act of terrorism, who obtained a money judgment for compensatory damages for that loss, *Kim v. Democratic People’s Republic of Korea (“North Korea”)*, 87 F. Supp. 3d 286, 291 (D.D.C. 2015), and who obtained a lien on North Korea’s property interests with Tether International S.A. *de C.V.* (the company that issues USDT), ECF No. 8–9, ¶¶ 52–56, also filed verified claims and a combined Answer, ECF No. 22. The Kims contend that because of the Terrorism Risk Insurance Act their lien defeats the government’s forfeiture and, further, that Huobi has no legal interests in the Defendant Property, which was not taken from it.

The Kims thus file this motion for judgment on the pleadings. All three Claimants admit the facts of the Complaint, and the Kims’ verified claims establish the indisputable facts underlying their lien, and so this case presents a pure issue of law ripe for decision. Judgment should issue for the Kims because (a) their claim defeats the government’s, *Levin II*, 156 F.4th at 638; (b) after dismissing the government’s claim, this Court retains jurisdiction to determine the competing claims of the Kims and Huobi, *United States v. 475 Martin Lane*, 545 F.3d 1134, 1146 (9th

Cir. 2008); and (c) the Kims' claim defeats Huobi's, *e.g.*, *BCCI Holdings*, 46 F.3d at 1191.

II. FACTS

The following facts are taken from the pleadings in this case or from existing judgments or other proceedings. Because the three claimants admit the relevant facts of the Complaint, this Memorandum cites the Complaint only for the facts that appear there.

A. Background on Blockchain Technology and Tether

A blockchain is a system for a distributed network of machines to keep a ledger of transactions publicly and securely. ¶ 23. The blockchain at issue in this case is called Tron. *E.g.*, ¶ 32. Users participate in Tron using wallet addresses, which are digital representations of the sending and receiving ends of transactions on the blockchain. ¶ 20. Each time Tron validates a new block, it updates the state of its ledger to reflect information about each wallet address on the blockchain. ¶ 23. Tron can record transactions in many different assets. ¶ 17. This standard enables anyone on the Tron blockchain to create a “token” using something called a “smart contract.” ¶ 25. A TRC-20 token is represented by a number representing a token balance associated with a wallet address that holds that balance. ¶ 23.

All standard tokens have some core functions—all of them have a fixed total supply at any time, may be transferred from one wallet address to another, and are fungible. But some TRC-20 tokens have additional functions encoded by their creators, including, for example, the ability for the creator to freeze the token balance

of specific wallets so that they will always remain the same; to decrease the token balances of wallets; and to increase the token balances of wallets. ¶ 19.

A company called Tether issues a crypto asset called USDT. ¶ 19. To issue USDT, Tether uses its private keys to direct the smart contract code that it controls to cause a wallet address's USDT balance to equal the amount of USDT purchased. ¶ 19. Then, anyone with the private keys to *that* wallet address can transfer the USDT to any other wallet address. ¶ 21. Tether always retains the power to cause the USDT balance of any wallet address to remain frozen or to decrease to zero. ¶ 19. At any time, then, anyone who possesses one of *two* private keys can cause the USDT balance of a wallet address to decrease while simultaneously causing the USDT balance of another wallet address to increase: the person who holds the private keys to the decreasing (or sending) wallet address can do so, and Tether also always has this power as well because it holds the private keys to Tether's smart contract code. *See* ¶¶ 19, 21.

B. The Kims' Efforts to Recover For the Kidnapping, Torture, And Murder of Their Loved One

In 1993, Reverend Dong Shik Kim moved from the U.S., where he was a lawful permanent resident, to China to work as a missionary providing humanitarian and religious services to North Korean families who had fled across the Sino–Korean border. *Kim v. Democratic People's Republic of Korea*, 950 F. Supp. 2d 29, 36 (D.D.C. 2013). In 2000, Reverend Kim was abducted by a member of the North Korean security services and secreted across the border into North Korea. *Kim v. Democratic People's Republic of Korea*, 774 F.3d 1044, 1049 (D.C. Cir. 2014). No one outside North

Korea has heard from Reverend Kim since. *Id.* Experts in North Korea’s human-rights violations testified that North Korea sends those whom it deems to be “opponents of the . . . regime” to torture camps called *kwan-li-sos*. *Id.* at 1050. Experts further testified that Reverend Kim “suffered an untimely death” resulting “from torture and malnutrition . . . deliberately caused by his North Korean captors.” *Id.* at 1050–51.

In 2009, the Kim family sued North Korea for the abduction and murder of Reverend Kim. *Kim v. Democratic People’s Republic of Korea*, No. 09-CV-648, Dkt. 1 (D.D.C. April 8, 2009). North Korea, after being properly served, did not appear to defend. *Id.* Dkt. No. 12 (entry of default). And so the Kims sought a default judgment. *Id.* Dkt. No. 46. The district court denied that request, reasoning that Kims had not presented evidence sufficient to meet the Foreign Sovereign Immunity Act’s special provision for proof when a defendant defaults. *Kim*, 950 F. Supp. 2d at 34. The Kims appealed and the D.C. Circuit reversed, holding that “[t]he Kims . . . make a compelling case that North Korea” tortured Reverend Kim and murdered him outside of the normal legal process. 774 F.3d at 1050. On remand, the district court entered a default money judgment of \$15,000,000 in compensatory damages for each of the Kims and \$300,000,000 in punitive damages to be divided between them. *Kim v. DPRK*, 87 F. Supp. 3d 286, 291 (D.D.C. April 9, 2015). The Kims served the default judgment on North Korea, and on July 23, 2019, the court granted the Kims permission to enforce the judgment under 28 U.S.C. § 1610(c). Since judgment issued,

Claimant's compensatory damage award has accrued \$411,796.10 of interest pursuant to 28 U.S.C. § 1961.

C. North Korea Obtains Crypto Assets Through Fraud, Lauanders Them And Commingles Them With Assets From Other Sources, Then Sells Them For USDT

North Korea conducts widespread and extremely aggressive campaigns of cyber-attacks. ¶ 15. On November 22, 2023, North Korean agents wrongfully acquired assets worth approximately \$107 million at the time from Huobi. ¶ 31. North Korean agents did this by tricking a Huobi engineer to download and run a malicious program that gave North Korea access to the Huobi engineer's computer. ¶ 32.a. That computer then connected to a server hosting malicious programs called "malware," ¶ 32.b, which the agent then used to access Huobi's internal network and steal its crypto assets, ¶ 32.d.

Shortly after the theft, North Korean agents traded some of the stolen assets for the native asset of the Ethereum blockchain, called ETH, ultimately consolidating 47,194 ETH in newly created Ethereum wallet addresses. ¶ 34. (For relevant purposes, Ethereum and Tron function identically.) The 47,194 ETH remained in those newly created wallet addresses until March 13, 2024, when North Korean agents sent them to a service called Tornado Cash, which is a service called a "crypto mixer" that obscures the origins of crypto transactions by blending assets with other users' assets. ¶ 35. (For more details on Tornado Cash, see *Van Loon v. U.S. Dep't of the Treasury*, 122 F.4th 549, 557–58 (5th Cir. 2024).) Next, when North Korean agents withdrew assets from Tornado Cash, they "commingled [those assets] with other funds known to have been stolen by the APT38 actors." ¶ 42. For this reason,

the Complaint alleged—and the parties do not dispute—that the assets coming out of Tornado Cash were withdrawn by North Korea. *Id.*

North Korean agents then took the ETH from Tornado Cash and exchanged it, via a service called ThorSwap, for Bitcoin at the then-prevailing market price for that exchange. ¶ 35. Over the next few days, North Korean agents made a dizzying series of Bitcoin transactions between wallet addresses that they controlled. ¶ 37. In or around April of 2024, North Korean agents sent some of the Bitcoin to a service called Bitget, which maintains accounts for its users and holds Bitcoin on their behalf. ¶ 38.c. North Korean agents then sold some of that Bitcoin for USDT using a service called Binance BNB Smart Chain. ¶ 54. Eventually, the USDT balances that North Korea received in exchange for its Bitcoin ended up (after many other exchanges and obscuring transactions, ¶¶ 58–71) in the Target Addresses, which are 47 Tron blockchain addresses defined by the Complaint. ¶ 13.

On April 9, 2024, based on a tip from Binance, the FBI requested that Tether voluntarily freeze the USDT balances of the Target Addresses. ¶ 58. On or about March 19, 2025—nearly a year later—the FBI provided Tether with a copy of seizure warrant 25-sz-33. ¶ 72. Accordingly, on or around March 19, 2025, Tether caused the USDT balance of the target wallet addresses to equal zero and the USDT balance of a wallet address belonging to the United States to equal the USDT balances that the target wallet addresses had before Tether decreased them to zero. The United States describes the March 19, 2025, transaction as “Tether then transferred to the United

States the equivalent amount of USDT as was associated with the Target Addresses.”

¶ 72.

D. The Kims Establish an Execution Lien on The Defendant Property

In 2025, the Kims registered their judgment against North Korea in the United States District Court for the Southern District of New York, *Kim v. Democratic People’s Republic of Korea*, No. 25-MC-527 (S.D.N.Y. 2025). On December 10, 2025, the Clerk of the United States District Court for the Southern District of New York issued writs of execution in *Kim v. DPRK*, 25-CV-527. That day, the Kims, through counsel, personally served those writs on the United States Marshal for the Southern District of New York. ECF No. 8–9, ¶ 53. One of the writs “respectfully request[ed] that [the Marshal] execute this judgment by garnishing DPRK’s assets, funds, or interests in the possession of Tether International, S.A. de C.V.” *Id.* ¶ 56. The writ specifically requested that the Marshal

[L]evy or seize all assets, funds, and property interests of any kind of the Democratic People’s Republic of Korea or its agencies or instrumentalities, including but not limited to Tether Coins (“USDT”), digital wallet balances, any interest in Tether International S.A. de C.V., or its affiliates’ cash, securities, or bonds, or other obligations and any other assets or interests held by, or for the benefit of, the Democratic People’s Republic of Korea and its instrumentalities and agents.

Id. Under New York law, the service of this writ on the marshal created an execution lien in the Kims’ favor. *Don King Prods., Inc. v. Thomas*, 945 F.2d 529, 533 (2d Cir. 1991); *see also* David Gray Carlson, *Critique of the Money Judgment (Part II Liens on Personal Property)*, 83 ST. JOHN’S L. REV. 43, 47–50 (2009) (explaining that New York

law creates a lien on property as of the moment the judgment creditor delivers an execution to the executing officer).

E. This Proceeding

The Government filed the Complaint in this case on November 14, 2025, alleging that the Defendant Property, which is the “reissued USDT” that had previously been associated with the Target Addresses, ¶ 12, “is property constituting or derived from proceeds traceable to wire fraud, wire fraud conspiracy, money laundering, money laundering conspiracy, computer fraud and computer fraud conspiracy in violation of 18 U.S.C. §§ 1343, 1349, 1956, 1030, and 371.” ¶ 75.

Claimant Huobi Global, S.A. is a “corporation organized and existing under the laws of the Republic of Panama” that “owns and operates HTX, a global virtual currency exchange, and is the developer of the Huobi ECO Chain,” known as the HECO Bridge. ECF No. 7 ¶ 2. It filed a five-paragraph verified claim on February 2, 2026. *Id.* Huobi’s claim does not contend that the Defendant Property was ever in its possession, nor even that North Korea stole *any* USDT from HTX or the HECO Bridge. Instead, Huobi contends that North Korea “stole virtual currency valued at over \$107 million from HTX and the HECO Bridge, and laundered a portion of those assets through various platforms and blockchain services,” *id.* ¶ 2, and that the USDT at issue here are “traceable proceeds of the HTX and HECO Bridge theft,” *id.* ¶ 3.

Huobi and the Government were apparently in discussions about the apparently uncontested forfeiture of the Defendant Property to the Government and presumptive remittance of the funds to Huobi. On February 19, 2026, they jointly

filed a stipulation to dispense with the filing of Huobi's Answer because the Government and Huobi were "in the process of discussing resolution of the foregoing claim." ECF No. 13 at 1. On February 23, 2026, Huobi answered, *see* ECF No. 17, and on February 24, 2026, this Court rejected that stipulation in any event, *see* Minute Order of Feb. 24, 2026.

The Kim Claimants filed their separate, verified claims on February 9, 2026. *See* ECF Nos. 8, 9. As explained, their claim to the Defendant Property is based on the fact that they had previously created a lien on Tether that gives them the right to any interests in USDT that is held by North Korea. ECF No. 8–9, ¶¶ 53–56.

III. ARGUMENT

Much about this case is technologically complicated, but the legal issues as applied to the undisputed facts are straightforward: The Kims are entitled to the Defendant Property because Congress has explicitly prioritized their liens over the Government's forfeiture. As a result, the Government's claim to forfeiture should be dismissed. If the Court dismisses the Government's claim, this Court retains jurisdiction to decide the question whether the Defendant Property should go to Huobi or the Kims. *United States v. 475 Martin Lane*, 545 F.3d 1134, 1146 (9th Cir. 2008). And, on that issue, Huobi's claims fail because the Defendant Property was not, despite Huobi's repeated claims to the contrary, stolen from Huobi: Other property was obtained from Huobi by fraud; exchanged hundreds of times and commingled with fungible assets belonging to North Korea and countless unknown others; and, at last, sent to the Target Wallet Addresses. That means that Huobi cannot defeat the claims of North Korea's other creditors—whose claims Congress

has explicitly prioritized—by simply claiming to be the victim of the original fraud that caused the loss of *other* property. *BCCI Holdings*, 46 F.3d at 1191. Huobi would instead have to assert a constructive trust, which (a) Huobi has not even tried to do, (b) would fail to defeat the Kims’ claim even if Huobi successfully asserted, *id.*.

A. Legal Standards For Judgment on The Pleadings And Summary Judgment in Forfeiture Cases

In this case, the Government sues the Defendant Property *in rem* alleging that it is forfeitable as the proceeds of crime. ¶ 12. In response, Claimants have each filed verified claims contending that they have protected interests in the Defendant Property, ECF No. 7–9, and answers to the Complaint admitting the facts, ECF No. 13, 22. In a forfeiture action, a claimant must first establish standing by pleading “a colorable interest in the property, for example, by [alleging] actual possession, control, title, or financial stake.” *United States v. 475 Martin Lane*, 545 F.3d 1134, 1140 (9th Cir. 2008) (citation and internal quotation marks omitted); *see also United States v. \$148,840 in U.S. Currency*, 521 F.3d 1268, 1275 (10th Cir. 2008); *United States v. One Lincoln Navigator*, 328 F.3d 1011, 1013 (8th Cir. 2003). All three claimants have met this bar—Huobi alleges that it is a victim of North Korea’s fraud and the Kims allege a specific property interest in the Defendant Property, namely an execution lien.

Rule 12(c) of the Federal Rules of Civil Procedure, which applies in civil forfeiture cases because it is not inconsistent with Supplemental Rule G, states that “[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” *United States v. All Assets Held at Bank Julius*

Baer & Co., 772 F. Supp. 2d 205, 208 (D.D.C. 2011) (quoting Fed. R. Civ. P. 12(c)). The standard of review for motions for judgment on the pleadings is essentially the same as that for motions to dismiss under Rule 12(b)(6), *id.*, and, as with a motion to dismiss, “the Court may not rely on facts ‘outside’ the pleadings in deciding a motion for judgment on the pleadings,” *id.*, but the “Court may consider . . . documents ‘upon which [a party’s pleading] necessarily relies,’ even if those documents are not physically attached to the filed pleading,” *id.* (quoting *Hinton v. Corrections Corp. of Am.*, 624 F. Supp. 2d 45, 46 (D.D.C. 2009)).

B. The Kims’ Claim Is Superior to The Government’s Under *Levin II*

The Kims’ claim defeats the Government’s attempt to forfeit the Defendant Property because the Kims hold a lien on that property stemming from a terrorism-related judgment, because that property is covered by TRIA, and because terrorism-related liens on property covered by TRIA defeat the government’s forfeiture. It is possible, as explained below, that the mere existence of the Kims’ terrorism-related *judgment* is alone sufficient to defeat the government’s forfeiture, but this Court need not decide that question because of the Kims’ valid and enforceable lien.

1. The Kims hold a lien on the Defendant Property

In a civil forfeiture case, like this one, governed by 18 U.S.C. § 981, the nature of a claimant’s asserted property interest in defendant assets is “defined by the law of the State in which the interest arose.” *One Lincoln Navigator*, 328 F.3d at 1013; *see also United States v. \$100,348 U.S. Currency*, 354 F.3d 1110, 1119 (9th Cir. 2004); *United States v. One-Sixth Share of James J. Bulger in All Present & Future Proceeds*

of *Mass Millions Lottery Ticket No. M246233* (“One-Sixth Share”), 326 F.3d 36, 45 (1st Cir. 2003). Here, that state is New York, where Tether maintains the treasury assets “backing” USDT. ECF No. 8–9 ¶ 18, 23.

Under New York law, “those property interests of the judgment debtor ‘which by law the debtor may assign or transfer, may be sought for application to the judgment.’” *All. Bond Fund*, 190 F.3d 16, 26 (2d Cir. 1999) (citing *New York Practice*, *supra*, § 486, at 742); *Marshak*, 746 F.2d at 931; *ABKCO Indus., Inc. v. Apple Films, Inc.*, 39 N.Y.2d 670, 674 (1976). Where those interests are capable of being turned over by a third party—called a “garnishee”—who holds them on the judgment debtor’s behalf, the judgment creditor’s process begins by serving a writ of execution on the executing officer (in this case the U.S. Marshal), which establishes a lien over the judgment debtors’ property. *Don King Prods., Inc. v. Thomas*, 945 F.2d 529, 533 (2d Cir. 1991) (“Under New York law, a judgment creditor becomes a ‘judgment lien creditor’ as to personal property . . . after execution is delivered to the sheriff.”). The executing officer then “levies” the property by serving the writ of execution on the garnishee. *E.g.*, David Gray Carlson, *Critique of the Money Judgment (Part II Liens on Personal Property)*, 83 St. John’s L. Rev. 43, 47–50 (2009). Where, as here, the property is intangible (known in Article 52 as “property not capable of delivery”), the executing officer’s levy is known as a “paper levy”; a further order of turnover from a court is usually necessary to transfer the judgment debtors’ interest from the garnishee to the judgment creditor. *Id.*

On December 10, 2025, the Kims served a writ of execution on the U.S. Marshal, who executes judgments registered in federal court, directed to all property interests belonging to North Korea that Tether is capable of turning over. ECF No. 8–9 ¶ 2. The Kims have moved for an order directing the Marshal to serve Tether in El Salvador, *Kim*, No. 25-MC-527, ECF No. 13, and, once that is accomplished, will conduct discovery and seek turnover of North Korea’s assets, *e.g. id.* ECF No. 4-1 (seeking turnover of North Korean assets from other stablecoin issuer). Thus, on December 10, 2025, the Kims perfected an execution lien on all property interests owned by North Korea that Tether is capable of turning over—namely all USDT owned by North Korea.

The Defendant Property is USDT owned by North Korea and, therefore, the Kims have a valid execution lien on it. Stablecoin balances like the Defendant Property are a form of intangible property, and so they can be possessed by more than one person at the same time. *See, e.g., Timoria LLC v. Anis*, 346 A.3d 1166, 1180 (Del. Ch. 2025) (discussing situs of crypto assets); *Office Depot, Inc. v. Zuccarini*, 596 F.3d 696, 703 (9th Cir. 2010) (explaining that domain names, which, like USDT, can be transferred by owners, custodians, and issuers are sited for relevant purposes by all three). When the Government “seized” the Defendant Property by compelling Tether to “transfer[] to the United States the equivalent amount of USDT as was associated with the Target Addresses,” the Government obtained possession of the USDT alongside Tether (who can always transfer USDT, as explained above). But the Government did not, and could not have, obtained *ownership* of the USDT balances;

that, after all, is what the forfeiture process exists to determine in the first place. *E.g., Est. of Levin v. Wells Fargo Bank, N.A. (“Levin I”)*, 45 F.4th 416, 419 (D.C. Cir. 2022) (explaining that judgment debtor retained property interest in funds during pendency of government’s forfeiture action). Right now, then, the Defendant Property is a USDT balance owned by North Korea in a wallet address to which the Government has the private keys. ¶ 73. It is, therefore, subject to the Kims’ execution lien on Tether as garnishee under New York law.¹

Jurisdiction in a New York turnover action like the one the Kims are pursuing against Tether is *in personam*, not *in rem*. In *Koehler v. Bank of Bermuda Limited*, the Court of Appeals held that a turnover action is valid where personal jurisdiction exists over the garnishee even where the property that the judgment creditors seek is located abroad. 12 N.Y.3d 533, 537 (2009). Crucially, then, there is no problem with the prior-exclusive-jurisdiction doctrine which, as the D.C. Circuit explained in *Levin II*, prevents two courts from hearing *in rem* actions regarding the same *res*. 156 F.4th at 640. The Kims established a lien over all North Korean property interests, wherever they may be located, that Tether controls, asserting personal jurisdiction

¹ Huobi, in its answer, contends that, “[t]he reissued USDT constituting the Defendant Property was lawfully created and transferred to the United States pursuant to seizure warrant authority, negating any alleged DPRK ownership; and thus it is not a ‘blocked asset’ of a terrorist party.” ECF No. 17 at 10 ¶ 10. Huobi does not explain what it means by this statement, but any plausible interpretation is meritless. Either Huobi means that the mere fact of a seizure is sufficient to extinguish a criminal’s property interests, which is wrong, because then forfeiture proceedings would be pointless. *E.g., Levin I*, 45 F.4th at 419. Or else Huobi means that something about the means by which Tether transferred North Korea’s interests to the Government extinguished North Korea’s interests. That is not right, as explained below, but moreover it’s inconsistent with the rest of Huobi’s Answer, in which Huobi contends that it “held lawful ownership and control of the Defendant Property *prior to its theft*,” *id.* at 9 ¶ 1, which cannot be true if the Defendant Property freshly came into existence in some way that magically extinguished North Korea’s interests.

over Tether because the Kims' turnover action arises out of Tether's possession of reserve assets in New York. *See, e.g., Peterson v. Bank Markazi*, 121 F.4th 983, 990–92 (2d Cir. 2024) (holding that Article 52 creates cause of action for turnover and that the cause of action creates specific personal jurisdiction in New York to seek the turnover of intangible property representing rights to assets in New York).

2. *The Defendant Property is “the blocked asset[] of [a] terrorist party” subject to a terrorism-related judgment and so, under Levin II, the Kims’ claim defeats the Government’s*

Under D.C. Circuit law, a lien to execute a terrorism-related judgment against the blocked assets of a state sponsor of terrorism prevails over the government's forfeiture claims to the same assets because of the TRIA. *Levin II*, 156 F.4th at 638. Here, the Defendant Property are blocked assets of a terrorist party and the Kims' judgment is for an act of terrorism, and so the Kims' execution lien takes priority over the Government's forfeiture.

Section 201 of the TRIA provides in relevant part that

Notwithstanding any other provision of law, . . . in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, . . . the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

Id. (quoting Terrorism Risk Insurance Act of 2002, Pub. L. 107-297, 116 Stat. 2322).

The “TRIA defines a ‘blocked asset’ as ‘any asset seized or frozen by the United States’ under [the International Emergency Economic Powers Act (‘IEEPA’)], but it excludes from the definition assets that are subject to certain licenses or used exclusively for

diplomatic purposes.” *Id.* (quoting TRIA § 201(d)(2)(A)–(B)). The TRIA “defines a ‘terrorist party’ to include any foreign country designated as a state sponsor of terrorism. *Id.* (quoting TRIA § 201(d)(4)). And a terrorism-related judgment includes “any judgment relating to a claim for which a foreign state (including any agency or instrumentality of such state) claiming such property is not immune under section . . . 28 U.S.C. § 1605A.” 28 U.S.C. § 1610. The USDT at issue meets this definition.

First, the Defendant Property are “the blocked assets” of a terrorist party because “when property of designated persons comes ‘within the United States’ or ‘the possession or control of U.S. persons,’ it is ‘blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in.’” *Levin II*, 156 F.4th at 638 (quoting 31 C.F.R. § 594.201(a)). Here, as explained below (*infra* Section III.D.1) the Defendant Property is currently owned by North Korea or its agencies or instrumentalities. *Kitchen v. Boyd (In re Newpower)*, 233 F.3d 922, 930 (6th Cir. 2000) (“[I]f a thief steals funds and uses them to purchase other property the owner cannot follow the funds, and he is left to his remedy against the thief, who, although he had no title to the stolen funds, *does have title to the property purchased therewith.*”) (emphasis added). North Korea (and its agencies and instrumentalities, such as the “Lazarus Group” or “APT-38”) are “designated persons” under IEEPA. *See, e.g.*, OFFICE OF FOREIGN ASSET CONTROL (OFAC), SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST at 1452 (Oct. 2025). And the property is both “within the United States” and in “the possession or control of [a] U.S. person.” ECF No. 1 ¶ 73

(“The Defendant Property is currently in the possession of the USMS.”); *see also Kirschenbaum v. 650 Fifth Ave.*, 830 F.3d 107, 137 (2d Cir. 2016) (“[A]ll assets belonging to an entity that satisfies [the] definition of [a terrorist party under an executive order] are automatically blocked.”). It is therefore “frozen” by IEEPA and constitutes “blocked” property under TRIA.

The record does not currently show whether Tether, the FBI, or the USMS received an OFAC license authorizing either the transfer of the Defendant Property from Tether or from the FBI in Los Angeles, where it was originally seized, to the USMS. *See generally id.* Federal law generally requires even the Government to get such a license. *Levin II*, 156 F.4th at 637. But regardless the Government does not plead that it has a license, and even if it did the “license exception [to TRIA] does not apply because the license itself was required by IEEPA.” *Id.* at 638.

Second, the Kims hold a judgment for an act of terrorism against a terrorist party. North Korea is a designated state sponsor of terrorism. U.S. DEPARTMENT OF STATE, STATE SPONSORS OF TERRORISM at 1. And the Kims’ judgment is for an act—the torture and murder of their loved one—for which North Korea would not be immune under 28 U.S.C. § 1605A. *Kim*, 774 F.3d at 1045.

Therefore, under *Levin II*’s binding interpretation of TRIA, the Kims’ lien defeats the government’s claim to forfeit the Defendant Property. In *Levin II*, the Court held that because property covered by TRIA “shall be subject to execution” of judgments covered by TRIA “notwithstanding any other provision of law,” including the federal code provisions that make the proceeds of crime forfeitable, judgment

creditors holding covered judgments who execute on blocked property that is also subject to forfeiture prevail. *Id.* The Kims have executed on the Defendant Property by serving a writ of execution, which, under applicable law, created an enforceable lien on the Defendant Property. *See supra* Section III.B. This Court should, therefore, grant judgment on the pleadings and dismiss the Government’s claim to forfeiture because, accepting the facts of the Complaint as true—which all three Answers do—the Government may not lawfully forfeit the assets.

To be clear, nothing about the relief that the Kims request would require issuing a writ of execution *to the USMS*; the Kims have already executed against the Defendant Property by serving a writ of execution on Tether, who possesses the capacity to transfer the Defendant Property and, therefore, is a proper garnishee—as explained above, a USDT balance is intangible personal property and may be possessed by more than one person at the same time. *Supra* Section III.B. In *Greenbaum v. Islamic Republic of Iran*, the D.C. Circuit held that despite TRIA the doctrine of sovereign immunity forbids the service of a writ of execution on the Marshal him- or herself because such a writ effectively makes the Government a defendant in a civil action without its consent. 67 F.4th 428, 431 (D.C. Cir. 2023). That concern does not apply here because the Government is the *plaintiff*, and the Kims seek a dismissal of the government’s claims. *Contra id.* (“[T]he writs name the U.S. Attorney’s Office as garnishee, requiring it to appear in the execution

proceedings and answer interrogatories under compulsion of a ‘judgment of condemnation.’”).²

C. This Court Retains Jurisdiction to Decide The Competing Claims of The Kims and Huobi After Dismissing The Government’s

This Court should, as explained above, grant judgment to the Kims against the Government’s forfeiture claim and, therefore, dismiss that action. If the Court does so, though, it will retain jurisdiction over the disposition of the Defendant Property and can, therefore, consider the competing claims of the Kims and Huobi. In *United States v. 475 Martin Lane*, the Ninth Circuit squarely held that because an *in rem* action is an action against all the world’s interests in the defendant property, a court that obtains *in rem* jurisdiction by seizure of the defendant property retains jurisdiction to consider how it should be disposed even after dismissing the Government’s complaint. 545 F.3d 1134, 1146 (9th Cir. 2008). That is true even where, as here, the claimants could file separate suits to recover the Defendant Property. *Id.* Although the D.C. Circuit does not appear to have decided this exact question, no other circuit has disagreed with the Ninth Circuit’s persuasive analysis, which relies in part on *United States v. Wilson*, an analogous case from the criminal

² On remand in *Greenbaum*, the claimants argue that their TRIA-protected *judgments* are alone sufficient to defeat the Government’s claim to forfeiture even though they were unable to execute against defendant property that was exclusively in the custody of the USMS. ECF No. 67 at 8–14, *Greenbaum v. Islamic Republic of Iran*, No. 21-CV-305 (D.D.C., Nov. 1, 2024). This Court need not consider this question because the Kims have already perfected an execution lien on the Defendant Property, as the claimants in *Levin II* did. But, to the extent the Court wishes to reach this argument, the Kims incorporate the *Greenbaum* claimants’ argument by reference here and will expand on that argument at the Court’s request.

forfeiture context, which *475 Martin Lane* quotes as “noting, in the context of a Fed. R. Crim. P. 41(e) hearing regarding disposition of seized property, that the fact that adequate civil remedies exist ‘neither discharges the district court’s duties nor disturbs its jurisdiction.’” *475 Martin Lane*, 545 F.3d at 1146 (quoting *United States v. Wilson*, 540 F.2d 1100, 1104 (D.C. Cir. 1976)).

D. The Kims’ Claim Is Superior to Huobi’s

The Defendant Property in this case never belonged to Huobi as a matter of law and, as a matter of admitted fact, Huobi never even possessed it, Compl. ¶ 12; therefore, Huobi’s “innocent owner” defense fails as a matter of law, ECF No. 17 at 9–10 ¶ 1. Instead, the Defendant Property currently belongs to North Korea and is thus subject to the Kims’ superior lien. *Supra* Section III.B. Although North Korea obtained *other* assets from Huobi by fraud, the USDT balance that is the Defendant Property here is the result of hundreds of exchanges of fungible property. Therefore, if Huobi wants to assert *any* interest in the property, it must resort to the equitable doctrine of constructive trust. This it cannot do because under, D.C. Circuit law, constructive trusts never win in forfeiture actions, which makes sense because the Government is free to remit proceeds of crime to victims equitably, and allowing a constructive trust would let victims like Huobi prioritize their own interests over those of others. *BCCI Holdings*, 46 F.3d at 1191. Regardless, Huobi has not even sought the imposition of a constructive trust, and if it did it would fail under clear law.

1. *Huobi is not an innocent owner because it did not own the Defendant Property*

Huobi asserts in its Answer that it is an “innocent owner” under 18 U.S.C. § 983(d) because it “held lawful ownership and control of the Defendant Property prior to its theft.” ECF No. 13 at 9–10 n.1. But Huobi admits, as it must, that the Defendant Property “consists of USDT associated with the listed “Target Addresses” and that the USDT balance got to those addresses via many intermediate transactions after other property was taken by fraud from Huobi. Compl. ¶¶ 33–56. Huobi’s defense thus fails on its own terms.

Courts are clear and uniform that where property—whether bailed, stolen, or otherwise taken by fraud—is exchanged for fungible assets, a party seeking those fungible assets does not have an ownership interest in those funds and instead must seek relief through the imposition of a constructive trust, if at all. *E.g.*, *In re Miss. Valley Livestock, Inc.*, 745 F.3d 299, 304 (7th Cir. 2014) (“Had [the bankrupt debtor] sent the very same cattle back to [plaintiff] (as when a theater-goer retrieves her own car from a parking garage after the show), the case would be easy. The complicating fact is that [bankrupt debtor] transferred cash to [plaintiff], not cattle, and money is fungible. The bankruptcy court had to create a link between [plaintiff]’s cattle and the funds that [debtor] sent to [plaintiff]. To accomplish this, the court needed to impose a constructive trust on the funds.”); *Kitchen v. Boyd (In re Newpower)*, 233 F.3d 922, 930 (6th Cir. 2000) (“[I]f a thief steals funds and uses them to purchase other property the owner cannot follow the funds, and he is left to his remedy against the thief, who, although he had no title to the stolen funds, *does have title to the*

property purchased therewith.” (emphasis added) (citing and quoting *United States v. Brimberry*, 779 F.2d 1339, 1347–49 (8th Cir. 1985) (observing that “when an embezzler purchases property with stolen funds, the property may be subjected to a constructive trust in favor of the victim,” but concluding that until this occurs, the victim merely has a claim to—rather than an interest in—such property)).

Indeed, where property is taken by fraud—as is admittedly the case here, *see* Compl. ¶¶ 75, 78; ECF No. 13 ¶¶ 75, 78—even that property *itself* might be owned by the thief. *See United States v. Emor*, 785 F.3d 671, 679 (D.C. Cir. 2015) (“Say an employee convinced the Metropolitan Museum of Art to take part in an art transfer with another museum. But instead of shipping the painting to the other museum, the employee ships it to his home for his personal use, committing mail fraud in the process. If the act is labeled a fraud, the Museum’s vested interest prior to the fraud should mean it retains a superior interest sufficient to defeat forfeiture. Arguably, though, a fraud victim could be relegated to the ranks of general creditors and, lacking the ability to claim a constructive trust, have a more difficult time regaining its property. In contrast, if the act is characterized as larceny by trick or embezzlement, the Museum can argue its title was never relinquished.” (citing *BCCI Holdings*, 46 F.3d at 1191–92)). Huobi is thus not even close to having title *in the Defendant Property*, and indeed may have lost all title when its employee gave North Korea access to its customers’ assets. Compl. ¶ 32a; ECF No. 13 ¶ 32a.

Indeed, in a filing barely more than a month ago, the Government *itself* recognized this clear law. In a proceeding to forfeit Bitcoin, a different crypto asset

than here, the Government took the position that “fraud victims[,] who are unsecured creditors of fraudsters[,] do not have standing to assert a claim in a civil forfeiture action involving property belonging to the fraudster.” ECF No. 126, *United States v. Approx. 127,271 Bitcoin*, No. 25-CV-5745 (E.D.N.Y., Jan. 26, 2026). That applies here too.

In sum, because Huobi never owned the Defendant Property in the first place, it cannot even reach the starting gate of the innocent-owner defense, which requires that it have a pre-existing ownership interest in the defendant property. Instead Huobi must seek a constructive trust, which it has not even sought.³ That should end the matter.

2. *Even if Huobi could impose a constructive trust on the Defendant Property because other property was stolen, Huobi’s claim would fail under D.C. Circuit Law*

Even if Huobi had asked the Court to impose a constructive trust here, it still could not succeed. The D.C. Circuit has squarely foreclosed resort to constructive trusts in forfeiture cases. In *BCCI Holdings*, the D.C. Circuit considered first whether the innocent-owner defense’s reference to “legal” interests was meant to invoke the ancient distinction between legal ownership and equitable property interests and

³ One searches Huobi’s pleadings in vain for even a mention—let alone adequate pleading—of a constructive trust. *See generally* ECF No. 13. Huobi, despite larding its answer with affirmative defenses, *see id.* at 9–11, hangs its whole innocent-owner case on the incorrect statement that Huobi “held lawful ownership and control of the Defendant Property prior to its theft,” *id.* ¶ 1. But according to Huobi’s own claim, North Korea obtained *other* assets from Huobi’s exchange and bridge by fraud, and Huobi claims that the Defendant Property is “traceable” to that incident. *See* ECF No. 7. This Court therefore need not even reach any constructive-trust claim Huobi may seek to bring.

concluded that, although the question was “close,” the statute did not invoke that distinction. 46 F.3d at 1191. But the Court then squarely held that “a constructive trust may not be used to defeat the government’s forfeiture claim.” *Id.* That holding applies here. *Emor*, 785 F.3d at 682 (“While it is true *BCCI Holdings* was decided in the RICO context and under a different statute, *see* 18 U.S.C. § 1963, it is also true the two forfeiture statutes contain identical language, and ‘it appears that no court has interpreted these two provisions differently,’ *United States v. BCCI Holdings (Luxembourg) S.A.*, 956 F. Supp. 5, 9 n.4 (D.D.C. 1997). *BCCI Holdings* is not limited solely to the RICO context.”). Huobi’s claim thus fails.

In the context of this specific case, the application of the *BCCI Holdings* rule makes particular sense. Here, the Government tried to transfer the Defendant Property to Huobi *without even requiring Huobi to answer*. ECF No. 13. This Court rejected that attempt. (Minute Order of Feb. 24, 2026.) But, as mentioned, the parties’ stipulation appears to indicate that the Government was planning to use its remission authority to pay Huobi without litigation: the stipulation stated that the United States and Huobi were “in the process of discussing resolution of the foregoing claim,” though such discussions did not include the Kims. ECF No. 13 at 1. But given those discussions and the desire that Huobi not answer, the Government and Huobi appeared to agree that Huobi need not even contest forfeiture and, therefore, remission following forfeiture would be the only way it could get paid. *E.g.*, 18 U.S.C. § 981(d). To the extent Huobi complains that *BCCI Holdings*’ rule disallowing Huobi’s

attempt to cut to the front of the line of North Korea's creditors is unfair,⁴ Huobi is sleeping in a bed of its own making: Huobi sought to admit forfeiture in the first place and answered only when required to by the Kims' opposition and this Court's order.⁵

IV. CONCLUSION

For the foregoing reasons, this Court should dismiss the Government's claim in forfeiture, retain jurisdiction to determine the competing claims of the Kims and Huobi, and award the Defendant Property to the Kims. As mentioned in the Proposed Order Granting the Motion, the Court can leave additional relief, including attorney's

⁴ On the fairness point: Huobi is a crypto exchange headquartered in Panama whose specific assets are not even at issue in this forfeiture proceeding. ECF No. 7, ¶ 2. Despite this, Huobi apparently thought remission of the property to it such a forgone conclusion that it filed what it calls an "unnecessary answer" only because the Kims dared to "file[] competing claims and opposed the stipulation" to dispense with Huobi's filing of any answer, ECF No. 17 at 23, and this Court later ordered that Huobi file an answer, *see* Minute Order of Feb. 24, 2026. Although the Kims are confident that they will prevail based purely on binding law, it would not be unfair to use the resources of the United States government to return North Korean assets to its Judgment Creditors in U.S. federal court, rather than to dispose of them to a crypto exchange whose own terms of service in fact prohibit anyone in the United States "from using all services." *See* HTX Platform User Agreement, ¶ 1.2. <https://www.htx.com/support/360000298561>. Indeed, given that limitation, there is more than a little bit of irony in Huobi's apparent summary attempt to have the United States remit to it nearly \$14 million worth of crypto while the company itself does not do business in the United States, perhaps because its service would be an unlicensed money-transmission business if operated here. *See, e.g.*, Transcript of Oral Ruling on Defendant Storm's Motion to Dismiss in *United States v. Storm*, No. 1:23-cr-00430 (KPF) (S.D.N.Y. Sep. 26, 2024).

⁵ This Court is not empowered to overrule *BCCI Holdings* but if, on appeal, Huobi argues that *BCCI Holdings* should be overruled, it should still lose because Congress in the TRIA prioritized terrorism victims' claims to blocked assets "notwithstanding *any* other provision of law." The Kims thus preserve this argument.

fees and other matters, to be decided following the Court's order awarding the Defendant Property to the Kims.

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 25-CV-3943
APPROXIMATELY 13.98 MILLION)	
USDT,)	JURY TRIAL DEMANDED
)	
Defendant in rem,)	
)	
HAN KIM and YONG SEOK KIM,)	
)	
Claimants.)	

**[PROPOSED] ORDER GRANTING MOTION FOR JUDGMENT ON THE
PLEADINGS**

[PROPOSED] ORDER

For the reasons in the Motion for Judgment on the Pleadings, it is ORDERED that the Motion is GRANTED, the Forfeiture Complaint is DISMISSED, and Judgment shall issue awarding Defendant Property to Claimants Han Kim and Yong Seok Kim.

The parties shall meet and confer and submit a status report within fourteen days of this Order that appraises the Court of any outstanding issues and a proposed briefing schedule on any issues on which there is disagreement.

Dated:

The Hon. Amy Berman Jackson