NO. _____

In the
Supreme Court of the United States

ELIZABETH PETERS YOUNG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In *Honeycutt v. United States*, 581 U.S. 443 (2017), this Court held that under a federal forfeiture statute, a defendant could not be held jointly and severally liable for property that his co-conspirator derived from the crime but that the defendant himself did not "actually acquire."

The first question presented is:

Under *Honeycutt*, can a defendant be ordered to forfeit property that was intended for and ultimately acquired by her co-conspirator, merely because the property temporarily passed through the defendant's possession on its way to her co-conspirator?

2. The federal Anti-Kickback Statute (AKS) prescribes "[c]riminal penalties for acts involving Federal health care programs." 42 U.S.C. § 1320a-7b. On its face, it does not criminally penalize kickbacks involving private insurers.

The second question presented is:

Can a defendant who is convicted under the AKS be ordered to forfeit proceeds obtained from private health insurers where such proceeds are not obtained in violation of the statute?

RELATED PROCEEDINGS

The following proceedings are directly related to this petition under Rule 14.1(b)(iii):

United States Court of Appeals (11th Cir.):

United States v. Young, 108 F.4th 1307 (11th Cir. 2024). Judgment entered July 22, 2024.

United States District Court (S.D. Fla.):

United States v. Young, No. 19-cr-60157 (Sept. 4, 2024)

United States v. Young, No. 19-cr-60157, 2020 WL 14005719 (Nov. 16, 2020)

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PETITION FOR WRIT OF CERTIORARI

Elizabeth Peters Young petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the Eleventh Circuit is reported at 108 F.4th 1307 and reproduced at App.1–55. The District Court's Preliminary Orders of Forfeiture are unreported and reproduced at App.87–93.

JURISDICTION

The Eleventh Circuit issued its opinion on July 22, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the Appendix at App.112–41.

INTRODUCTION

This Court unanimously held in *Honeycutt v. United States* that "[f]orfeiture . . . is limited to property the defendant h[er]self actually acquired as the result of the crime." 581 U.S. 443, 454 (2017). Thus, a defendant cannot be held jointly and severally liable for property that her co-conspirator derived from the crime but that the defendant herself did not actually "acquire." *Id.* at 445. Such liability, the Court reasoned, "would require forfeiture of untainted property" in violation of the underlying forfeiture statute and the common law principles animating it. *Id.* at 449.

Following *Honeycutt*, the circuit courts have split on the question of when a defendant "actually acquires" property for purposes of determining forfeiture liability. Some courts, like the Eleventh Circuit in the decision below, have taken the expansive position that "if you touch it, you own it." In those circuits, even if property was intended for and ultimately acquired by a co-conspirator, the defendant can be held liable for that property merely because it temporarily passed through the defendant's possession on its way to the co-conspirator. Other courts, including the Ninth and the Fourth Circuits, have held that such a rule is inconsistent with *Honeycutt*, and a defendant may only be ordered to forfeit those proceeds that "come to rest" with him or her.

Applying the "if you touch it, you own it" rule in this case, the Eleventh Circuit ordered Elizabeth Peters Young to forfeit money that was always intended for her co-conspirator, that only passed through her account temporarily on its way to her co-conspirator, that was ultimately obtained and retained by her co-conspirator, and that the government could recover from her co-conspirator through a forfeiture order it secured against the co-conspirator.

This holding violates the governing forfeiture statute and is irreconcilable with the Court's decision in *Honeycutt*, which bars the imposition of joint and several liability for property that the defendant did not "actually acquire." *Honeycutt* makes clear that the government may only take *tainted* property from a defendant. Yet here, the government wants to take

away Young's personal residence to pay the $338,255.94 that ended up in the pocket of her co-conspirator—against whom the government also has a forfeiture order. The government thereby seeks to recover *untainted* property from Young in violation of the underlying forfeiture statute and the principles announced in *Honeycutt*.

The unjust consequences of this circuit split are not merely academic or theoretical. Because Young was tried in Florida, she is out hundreds of thousands of dollars that she would get to keep if she had been tried in South Carolina. And in this case, as in many forfeiture proceedings, the personal stakes are high; Young's personal residence is on the line. The Court should grant the writ of certiorari to resolve the conflict among the lower courts as to what "actually acquire" means and put an end to the unfair and arbitrary outcomes that result from that sharp division of authority.

The Eleventh Circuit's legal errors did not end with its incorrect interpretation of *Honeycutt*. The court compounded its flawed and unjust forfeiture judgment by ordering Young to pay criminal penalties for monies received for referrals to *private* payment plans—conduct that the court acknowledged was lawful and legitimate. As the dissenting opinion below explains, this result renders irrelevant the plain text of the underlying statute of conviction, which pertains only to *government* payments, not private payments. The Eleventh Circuit's decision effectively nullifies Congress's careful legislative drafting and holds defendants criminally liable for lawful conduct. This

raises a question of exceptional importance that independently warrants this Court's review.

STATEMENT OF THE CASE

A. Young's Convictions

Petitioner Elizabeth Peters Young had a career marketing medical products to surgeons. App.3. In 2015, Young began selling over-the-counter pain-relieving patches and creams to a doctor in Georgia. App.3. These products were supplied to the doctor's patients by a pharmacy in Florida called Drugs4Less. App.4. Young and the owner of Drugs4Less entered into an agreement whereby Young would receive 50% of the profits from prescriptions that she directed to Drugs4Less. App.4. Some of these prescriptions Young directed to Drugs4Less were filled on behalf of patients covered by the Federal Employees' Compensation Act (FECA) program. App.6. Some were filled on behalf of patients covered by private health plans. App.42. Young would later enter into a similar arrangement with another pharmacy called Gateway Pharmaceuticals. App.7–8.

In early 2015, Young hired Tim Mitchell as a sales representative. App.4. Young and Mitchell entered into an agreement whereby Young would transfer 20% of the revenue they earned from Drugs4Less to Mitchell. App.6. Young would re-route the money Drugs4Less sent her to Mitchell usually within a day of receiving the money from Drugs4Less. App.37. Per their agreement, Young transferred to Mitchell his allotted share of the proceeds, totaling $338,255.94. App.7.

In 2019, Young was indicted for federal kickback crimes related to these agreements. *See generally* App.94–111. Mitchell pled guilty to one count of conspiracy to receive healthcare kickbacks, and he was ordered to forfeit his illicit gains. App.9 n.3. A jury convicted Young of one count of conspiracy to pay and receive healthcare kickbacks in connection with the FECA program, in violation of 18 U.S.C. § 371, 42 U.S.C. §§ 1320a-7b(b)(1)(A), and 1320a-7b(b)(2)(A), and four counts of paying healthcare kickbacks in connection with the FECA program, in violation of 42 U.S.C. § 1320a-7b(b)(2)(A). App.13.

B. Forfeiture Proceedings in the District Court

At sentencing, the government sought forfeiture in the amount of $1,527,160.76, arguing that this was the total amount that Young received from Drugs4Less and Gateway. App.13. Young opposed the motion on several grounds. App.13–14. Young argued that the $338,255.94 that was transferred to her co-conspirator Mitchell should be excluded from the forfeiture total under this Court's decision in *Honeycutt v. United States*, 581 U.S. 443 (2017). App.13–14. That money was not in her possession because it had been passed on to Mitchell—indeed, pursuant to Young's agreement with Mitchell, it was always intended for Mitchell. Young merely acted as a pass-through for this money. And Mitchell pled guilty and was subject to a forfeiture order for the same money.

Young also argued that the money she received from Drugs4Less and Gateway in connection with private payor payments, rather than federal

healthcare program payments, was not subject to forfeiture because that amount was not "traceable" to the commission of any offense. App.11, 13. The Anti-Kickback Statute under which Young was convicted does not make it a criminal offense to pay kickbacks for the referral of medical services paid by private insurers. Accordingly, proceeds that Young received for referrals of private insurers were, by definition, not traceable to the commission of any offense under the AKS.

After a hearing, the district court accepted the government's proposed forfeiture amount. App.14. It found Young liable for the entire sum that was deposited into her account by Drugs4Less and Gateway—including the $338,255.94 that Young transferred to Mitchell, and including the amount that she received in connection with private payor payments. App.13–14.

C. The Eleventh Circuit's Decision

On appeal, Young pressed three arguments opposing the district court's forfeiture judgment: (1) any money that she transferred to co-conspirators should be excluded from the forfeiture total under *Honeycutt*; (2) any money derived from private insurers should be excluded; and (3) the total amount is an excessive fine in violation of the Eighth Amendment.[1] App.13–14. The Eleventh Circuit rejected each of these arguments and affirmed the district court's forfeiture award.

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[1] The court found that Young abandoned the Eighth Amendment challenge. App.47–48.

The court first concluded that the forfeiture judgment did not violate *Honeycutt*. App.34. Recognizing that the application of *Honeycutt* to these facts was an issue of first impression for the court, the Eleventh Circuit endorsed the government's sweeping position that "Young's control of the illicit money—even temporarily—makes her liable to forfeit the full amount." App.37–38. This approach, the court determined, was consistent with approaches taken by the First, Second, and Sixth Circuits, which similarly impose joint and several liability on defendants for any property they touch, but in conflict with the Ninth Circuit, which limits forfeiture liability to those proceeds that "come to rest" with the defendant. App.38–42.

The court next rejected Young's argument that the district court erred by including monies from private insurance plans in the forfeiture judgment, holding that this argument was foreclosed by prior precedent. App.42–43. While recognizing that the AKS, the statute under which Young was convicted, does not make it a criminal offense to receive or pay kickbacks for claims by private payors, the court went on to conclude that lawful proceeds from those plans were nevertheless forfeitable under 18 U.S.C. § 982(a)(7). App.46. The court rationalized this result by explaining that the government and private payments were "part and parcel" of the entire sum, and the private payments were therefore "traceable to the commission of the offense"—even though, as the court acknowledged, the collection of this money was *not* an "offense" under the AKS. App.46–47 (quotation marks omitted). Thus, although payments from private payors were "proceeds from legitimate services

and conduct," the court found that § 982(a)(7) can reach those proceeds merely because they arose out of the same set of facts and circumstances as the federal payments. App.46.

Judge Jordan dissented on the private payor issue, opining that "proceeds obtained from private health insurers . . . were not proceeds derived from the commission of a federal health care offense and as [a] result they were not subject to forfeiture under 18 U.S.C. § 982(a)(7)." App.49. Judge Jordan began with a detailed analysis of the subsection of the AKS that Young was convicted of violating, observing that the plain text of the statute "makes it illegal for someone to 'knowingly and willfully offer[] or pay[] any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part *under a Federal health care program*[.]'" App.49–50 (some emphasis omitted) (quoting 42 U.S.C. § 1320a-7b(b)(2)(A)).

Because private health insurers do not constitute "a Federal health care program within the meaning of § 1320a-7b(f)," Judge Jordan reasoned, the act of paying kickbacks for the referral of medical services by private health insurers does not violate the AKS. App.51 (quotation marks omitted). By extension, "if paying kickbacks to private health insurers does not violate § 1320a-7(b), then any proceeds Ms. Young received as a result of such kickbacks are not 'gross proceeds traceable to the commission of the offense' for

purposes of § 982(a)(7)," and are thus not subject to forfeiture. App.52–53.

REASONS FOR GRANTING THE PETITION

This case is a perfect vehicle for resolving an acknowledged circuit split over the proper application of this Court's precedent regarding an important issue of federal criminal law. As the Eleventh Circuit recognized, its decision deepened a stark division in the lower courts concerning the scope of *Honeycutt*. The open question about when a defendant "actually acquires" property under *Honeycutt* recurs frequently and can result in vastly disparate penalties for the same offense. As the law currently stands, a defendant's exposure in criminal forfeiture proceedings turns on whether the defendant's trial takes place in South Carolina, which is in a circuit on one side of the split, or across the state border in Georgia, which is in a circuit on the other side of the split. Only this Court can resolve the conflict and ensure that federal forfeiture law is applied fairly and consistently across the country. This Court should also correct the Eleventh Circuit's flawed and overbroad view of forfeiture liability under the AKS, which guts the plain text of that statute and imposes criminal penalties on lawful conduct.

I. The circuits are split as to the application of *Honeycutt*'s prohibition on holding co-conspirators jointly and severally liable for criminal forfeiture judgments.

Seven years ago, this Court recognized that joint and several liability is "incompatible" with the statutory text and structure of 21 U.S.C. § 853.

Honeycutt, 581 U.S. at 454 n.2. Accordingly, the Court held that "[f]orfeiture pursuant to § 853(a)(1) is limited to property the defendant himself actually acquired as the result of the crime." *Id.* at 454.

In the years that have followed that decision, lower courts have agreed that the rule articulated in *Honeycutt* extends to other federal forfeiture statutes, including 18 U.S.C. § 982(a)(7), the statute at issue in this case.[2]

At the same time, a circuit split has emerged concerning the scope and application of *Honeycutt*, with many lower courts misconstruing the decision and imposing joint and several liability on defendants for property that they did not "actually acquire." The Eleventh Circuit is one such court that has adopted an erroneous view of *Honeycutt*'s scope and application. The decision below is in direct tension with the basic reasoning animating *Honeycutt*, and the circuit split that it exacerbated is ripe for this Court's intervention.

A. In *Honeycutt*, the Court held that forfeiture is limited to property that the defendant "actually acquired."

In *Honeycutt*, two brothers were indicted for various federal crimes related to their sale of an

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[2] *See, e.g.*, *United States v. Elbeblawy*, 899 F.3d 925, 941 (11th Cir. 2018) (applying *Honeycutt* to 18 U.S.C. § 982(a)(7)); *United States v. Sanjar*, 876 F.3d 725, 749 (5th Cir. 2017) (same); *United States v. Chittenden*, 896 F.3d 633, 637 (4th Cir. 2018) (applying *Honeycutt* to 18 U.S.C. § 982(a)(2)); *United States v. Gjeli*, 867 F.3d 418, 427 (3d Cir. 2017) (applying *Honeycutt* to 18 U.S.C. § 981).

iodine-based water-purification product while knowing or having reason to believe the product would be used to manufacture methamphetamine. 581 U.S. at 445. One brother, Tony, owned the store where the brothers sold the product, while the other brother, Terry, worked at the store as a salaried employee and managed the store's sales and inventory. The iodine product was kept behind the sales counter, and both brothers sold the product to customers who came to the store. *United States v. Honeycutt*, 816 F.3d 362, 369 (6th Cir. 2016). The store made a profit of $269,751.98 from sales of the iodine product. *Honeycutt*, 581 U.S. at 446. Tony pled guilty to the charges and agreed to forfeit $200,000, while Terry went to trial and was ultimately convicted of conspiring to and knowingly distributing iodine. *Id.*

Pursuant to 21 U.S.C. § 853(a)(1), the government sought a forfeiture judgment against Terry for $69,751.98, comprising the full amount in profits the store earned less the amount Tony already agreed to pay. The district court declined to enter the judgment because Terry did not "personally receive[] any profits from the iodine sales." 581 U.S. at 446. The Sixth Circuit reversed, concluding that as co-conspirators, the brothers could be held "jointly and severally liable for any proceeds of the conspiracy." *Id.* at 447 (quoting 816 F.3d at 380).

This Court reversed, holding that "[f]orfeiture pursuant to § 853(a)(1) is limited to property the defendant himself actually acquired as the result of the crime." *Id.* at 454. Section 853 did not authorize a forfeiture judgment holding a defendant jointly and severally liable for proceeds obtained only by his co-

conspirator. *Id.* at 448. In reaching this conclusion, the Court observed that § 853(a) restricts forfeiture to "tainted property." *Id.* at 449. That limitation, the Court reasoned, "provide[s] the first clue that the statute does not countenance joint and several liability, which, by its nature, would require forfeiture of untainted property." *Id.* The Court further explained that joint and several liability would render futile the "'substitute property'" provision in § 853(p)—"the sole provision of § 853 that permits the Government to confiscate property untainted by the crime." *Id.* at 451. Joint and several liability would amount to an "end run" around "Congress' carefully constructed statutory scheme, which permits forfeiture of substitute property only when the requirements of §§ 853(p) and (a) are satisfied." *Id.* at 452.

To illustrate why joint and several liability would defy the basic structure and principles of the forfeiture statute, the Court posed the following hypothetical: a marijuana farmer and a college student conspire to distribute marijuana on college campuses. The farmer pays the student a salary of $300 a month to make deliveries of marijuana on campus, while the farmer keeps the profits from the sales. *Id.* at 448. In one year, the student earns $3,600 in wages, while the farmer earns $3 million in profits from sales. *Id.*

In this scenario, the Court explained, the student could not be held liable for any amount beyond the $3,600 that he "actually acquired"—*i.e.*, the amount that ultimately came to rest in the student's pocket pursuant to the conspiracy agreement. The student could not be held jointly and severally liable for the

remaining $2,996,400 that his co-conspirator, the farmer, acquired. *Id.* at 449. That amount "would have no connection whatsoever to the student's participation in the crime and would have to be paid from the student's untainted assets." *Id.* And that is true, the Court held, even though the student may have acted as a physical intermediary or pass through for the proceeds of the drug purchases. *Id.* at 450 (recognizing that "the marijuana mastermind . . . might arrange to have drug purchasers pay an intermediary such as the college student"). Even when the student physically collects the money and passes it on to the farmer, the Court opined that it is still the farmer and not the student who "actually acquires" the proceeds and is therefore liable for them in forfeiture proceedings. *Id.*

Thus, although Terry Honeycutt physically facilitated sales of iodine at the store, he did not "personally benefit" from those sales because he had no ownership interest in the store and did not pocket any of those profits. *Id.* at 454. Section 853, the Court concluded, did not authorize a forfeiture judgment holding him jointly and severally liable for the profits of those sales that he never "actually acquired." *Id.*

B. There is an acknowledged circuit split over what it means for a defendant to "actually acquire" property for purposes of forfeiture.

In the aftermath of this Court's *Honeycutt* decision, lower courts have divided over its application. On one side of the split, courts recognize that *Honeycutt* does not allow the government to make one defendant liable for money that went into the

pocket of a co-conspirator. On the other side, several courts take the opposite approach. Those courts allow the government to collect all proceeds the defendant touched at any point, including money that was ultimately pocketed by a co-conspirator.

1. The Ninth and Fourth Circuits have faithfully applied *Honeycutt*'s limitation on joint and several liability to conclude that one co-conspirator cannot be ordered to forfeit property that was ultimately acquired by another co-conspirator.

Ninth Circuit. In *United States v. Thompson*, 990 F.3d 680 (9th Cir. 2021), the Ninth Circuit, applying *Honeycutt* to forfeiture ordered pursuant to 18 U.S.C. § 981, held that a defendant could only be ordered to forfeit those proceeds which "came to rest" with him. *Id.* at 690–91. The government sought to hold Thompson liable for the full amount of the proceeds of a wire fraud conspiracy, despite the fact some of those proceeds indisputably ended up in the hands of his co-conspirators. *Id.* In support of this request, the government argued that because Thompson directed money to his co-conspirators' accounts, he "received" all the money and could therefore be held liable for the full amount under *Honeycutt*. *Id.* at 691.

The Ninth Circuit rejected this argument, explaining that "*Honeycutt* does not allow for an interpretation that any conspirator who at some point had physical control is subject to forfeiture of all the proceeds." *Id.* at 691. As the Ninth Circuit put it, "the college student and the store manager [described in *Honeycutt*], who each at some point had physical control of all the money, were nevertheless not subject

to forfeiture for money that did not come to rest with them." *Id.* The court observed that in many conspiracies, "physical control over the property change[s] from time to time," so a defendant cannot be held liable for property merely because they are a "stop[] on the way" to another co-conspirator." *Id.* The court determined that the district court's judgment, which ordered Thompson to forfeit a sum exceeding the amount that "came to rest with him as a result of his crimes," necessarily "amounts to joint and several liability, regardless of whether the district court called it that." *Id.*

In reaching this holding, the Ninth Circuit also relied on first principles of forfeiture. The court echoed *Honeycutt*'s recognition that "the limitation of forfeiture to tainted property . . . distinguish[es] this mechanism from other sorts of criminal penalties." *Id.* at 687. And a forfeiture judgment that imposes forfeiture liability on the defendant in an amount exceeding the tainted property that came to rest with him would need to be satisfied with untainted assets. *Id.* at 690. Such a result, the court recognized, is "inconsistent with the common law conception of forfeiture." *Id.*

Fourth Circuit. In *United States v. Chittenden*, 896 F.3d 633, 639 (4th Cir. 2018), the Fourth Circuit similarly recognized that *Honeycutt* "does not permit courts to hold a defendant liable for proceeds that only her co-conspirator acquired" when ordering forfeiture pursuant to 18 U.S.C. § 982(a)(2). Acknowledging that "forfeiture under 18 U.S.C. § 982(a)(2) is limited to property the defendant acquired as a result of the crime," the Fourth Circuit reversed the district court's

order requiring "Chittenden to forfeit $1,032,378.82 of her untainted assets as a substitute for criminal proceeds that only her co-conspirators obtained." *Id.* Applying the same logic in *United States v. Limbaugh*, 2023 WL 119577, at *5 (4th Cir. Jan. 6, 2023), the Fourth Circuit cited the Ninth Circuit's *Thompson* decision approvingly and remanded a forfeiture judgment for the district court to determine "the appropriate forfeiture amount, based on the portion of the conspiracy proceeds that actually 'came to rest' with [defendant] herself." (quoting 990 F.3d at 691–92).

District Courts. Other lower courts have similarly recognized that holding one co-conspirator liable for proceeds that came to rest with another co-conspirator violates *Honeycutt*'s limitation on joint and several liability. For example, in *United States v. Wynns,* 2022 WL 683029 (D.N.J. Mar. 8, 2022), the government sought forfeiture against Wynns in the amount of $28,498.99, the full amount of conspiracy proceeds that were deposited into Wynns' bank account. Wynns argued that she was liable only for $1,000 of that sum "because she gave the balance to her co-conspirators pursuant to their agreement." *Id.* at *3. Agreeing with Wynns, the court acknowledged that "pursuant to *Honeycutt*, what happened to the money after Wynns received it is highly relevant." *Id.* at *5. And because the government acknowledged that Wynns transferred money out of her account to co-conspirators, it could not dispute that "Wynns did not 'actually acquire' *all* of the tainted proceeds." *Id.* ("The essential point of the hypothetical college student in *Honeycutt* is that making the student liable for the entire $3 million would require the student to

pay more than what he was permitted by the mastermind to *keep*." (emphasis added)).

In *United States v. Cooper*, 2018 WL 6573454 (D.D.C. Dec. 13, 2018), the District Court for the District of Columbia similarly held that the government failed to prove that Cooper, a middleman in a conspiracy to distribute heroin, "actually acquired" the full amount of money he received in sales, because Cooper passed on some portion of that money to his supplier. Here too, the court rejected the government's contention that what happened after Cooper received the money was irrelevant; it was "highly relevant" because "if the Court were to hold Mr. Cooper liable for entire $46,432, he would have to pay the portion that was paid to his supplier from his own untainted assets" in violation of *Honeycutt*. *Id.* at *3.

2. The First, Second, Sixth, and Eleventh Circuit have reached the opposite conclusion, holding that defendants are jointly and severally liable for proceeds that are ultimately acquired by another co-conspirator. In these circuits, "if you touch it, you own it," and forfeiture liability can attach when a defendant is merely a stop on the way to a co-conspirator.

First Circuit. In *Saccoccia v. United States*, 955 F.3d 171 (1st Cir. 2020), the First Circuit held that the defendant could be ordered to forfeit all $137 million in proceeds that passed through a bank account the defendant controlled, even though it was undisputed that some amount of those proceeds was distributed to the accounts of other co-conspirators. The court concluded that *Honeycutt* did not preclude a defendant

from being held liable for the full amount of proceeds where the defendant temporarily "controlled" those proceeds, regardless of where they ultimately ended up. *Id.* at 175.

Second Circuit. In *United States v. Tanner*, 942 F.3d 60 (2d Cir. 2019), the Second Circuit held that "*Honeycutt*'s bar against joint and several forfeiture for co-conspirators applies only to co-conspirators who never possessed the tainted proceeds." *Id.* at 67. *Tanner* involved two defendants—Davenport, an owner of a specialty pharmacy, and Tanner, an employee of a pharmaceutical manufacturer. The government's theory was that Davenport agreed to pay Tanner a portion of proceeds from the sale of the pharmaceutical company to the manufacturer, in exchange for Tanner doing Davenport's bidding. *Id.* at 64. Davenport carried out his end of the bargain by transferring $9.7 million to Tanner in proceeds from the sale of the company. *Id.* at 65. The Second Circuit held that Davenport could be held jointly and severally liable for that full amount, even though none of it remained in his possession. *Id.* at 68.

Sixth Circuit. In *United States v. Bradley*, 969 F.3d 585 (6th Cir. 2020), the Sixth Circuit held that a defendant "actually acquires" proceeds when he comes into possession of those proceeds but ultimately pays some amount to a co-conspirator. Bradley was indicted on charges relating to drug trafficking and money laundering, arising out of his activities in directing and facilitating opioid sales. Bradley challenged the forfeiture judgment entered against him on the grounds that he could not be liable for money he received from the crime but paid to

coconspirators. *Id.* at 588. Rejecting this argument, the Sixth Circuit concluded that "§ 853(a) holds defendants responsible for the 'proceeds' they 'obtained' through the conspiracy, no matter their eventual destination." *Id.* at 588–89.

Eleventh Circuit. In the decision below, the Eleventh Circuit held that the district court's forfeiture judgment ordering Young to forfeit the full amount of proceeds she received and then directed to co-conspirators did not violate *Honeycutt*. App.34. Acknowledging that different circuits had taken different approaches to the application of *Honeycutt* in similar circumstances, the court was "more persuaded by the First, Second, and Sixth Circuits." App.41.[3]

These contradictory approaches to forfeiture liability produce arbitrary, inconsistent, and, in many instances, draconian results for criminal defendants based on mere geography. For the defendant in *Tanner*, for example, the stakes were to the tune of a whopping $9.7 million. If tried in California, he would keep that money under *Thompson*, but in New York, he loses it under *Tanner*.

[3] District courts have similarly declined to apply *Honeycutt* or else narrowed its application in cases involving proceeds passed from one co-conspirator to another. *See*, *e.g.*, *United States v. Kingston*, 2023 WL 2634692, at *4 (D. Utah Mar. 24, 2023) (holding *Honeycutt* does not bar joint and several liability where defendant exercised "degree of control over the fraudulently obtained funds").

C. The Eleventh Circuit's decision is wrong and violates the principle of *Honeycutt*.

This Court's decision in *Honeycutt* prohibits holding a defendant jointly and severally liable for proceeds that she did not personally acquire in forfeiture proceedings pursuant to § 853.[4] The concept of joint and several liability, as the Court explained, is "incompatible" with the statute's limitation of forfeiture to "tainted property that the defendant obtained." 581 U.S. at 454 n.2. To illustrate why that is true, the Court referenced its marijuana hypothetical: imposing joint and several liability for the proceeds of the entire conspiracy on the hypothetical college student would require the student to pay $2,996,400 from his untainted assets—that amount having "no connection whatsoever to the student's participation in the crime." *Id.* at 449. Under *Honeycutt*, forfeiture "is limited to property the defendant himself actually acquired as the result of the crime," and the defendant cannot be ordered to forfeit "property that his co-conspirator derived from the crime but that the defendant himself did not acquire." *Id.* at 445, 454.

The decision below contravenes these rules for several reasons. It imposes joint and several liability in a criminal forfeiture for property that merely passed through the defendant's hands on its way to her co-conspirator, and thereby allows the government to take untainted property from the defendant. The

[4] There is no dispute that *Honeycutt*'s holding applies with equal force to the criminal forfeiture provision at issue here. App.36 n.5.

Eleventh Circuit's justifications for its rule conflict with *Honeycutt* and in any event are unconvincing.

1. By ordering Young to forfeit the $338,255.94 that she transferred to her co-conspirator Mitchell pursuant to their established agreement, the Eleventh Circuit did what *Honeycutt* prohibits—it held Young liable for "property that [her] co-conspirator derived from the crime but that [Young herself] did not acquire." 581 U.S. at 445. As a result, Young is being forced to pay that portion of the judgment out of untainted assets that have no connection to the conspiracy. The decision below defies the limitation on joint and several liability established by *Honeycutt*.

The upshot of the decision below is that a defendant may be ordered to forfeit property merely because they temporarily exercised some modicum of control over it—even if only for a moment, and even where it is undisputed that the property ended up in the hands of a co-conspirator from whom the government could recover the tainted property. Put simply, according to the Eleventh Circuit (and the other circuits that align with its view), "if you touch it, you own it." That rule is squarely at odds with *Honeycutt*. *See Thompson*, 990 F.3d at 691 ("*Honeycutt* does not allow for an interpretation that any conspirator who at some point had physical control is subject to forfeiture of all the proceeds.").

Nevertheless, the court defended its decision as consistent with *Honeycutt* because "based on the hypothetical that *Honeycutt* relied on, *Honeycutt's* 'bar against joint and several forfeiture for co-conspirators applies only to co-conspirators who never possessed the tainted proceeds of the crimes.'" App.41 (quoting

Tanner, 942 F.3d at 67–68). That reasoning gets the *Honeycutt* hypothetical backwards. In discussing the marijuana farmer and the college student, this Court expressly acknowledged that the farmer "might arrange to have drug purchasers pay an intermediary such as the college student," who then physically delivers those payments to the farmer. *Honeycutt*, 581 U.S. at 450. In any such instance, it is still the farmer, not the student, who acquires the property for forfeiture purposes. *Id.* Thus, the prohibition on joint and several liability that the Court articulated in *Honeycutt* cannot be limited, as the Eleventh Circuit imagines, to apply only where the defendant never lays a hand on the money—otherwise, the hypothetical college student *would* be liable for those proceeds that he passed along. So too would Terry Honeycutt be liable for the money that he physically collected in sales of the iodine product while working the cash register at the store. The Eleventh Circuit's reasoning therefore misconstrues *Honeycutt* and flips the logic of that important precedent on its head.

2. The Eleventh Circuit's reasoning on this score also turns a blind eye to *Honeycutt*'s discussion of the principle that forfeiture must be limited to tainted assets. The decision below effectively countenances the "end-run" around § 853(p) that *Honeycutt* rebuked. *Id.* at 452. Like § 853(a)(1), the forfeiture statute in this case limits forfeiture to tainted property. *Compare* 21 U.S.C. § 853(a)(1) (requiring forfeiture of "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation), *with* 18 U.S.C. § 982(a)(7) (requiring forfeiture of property that "constitutes or is derived, directly or indirectly,

from gross proceeds traceable to the commission of the offense."). Accordingly, 18 U.S.C. § 982(a)(7) does not authorize forfeiture of untainted property that the defendant may own, absent the government abiding by the procedures to forfeit substitute property under 21 U.S.C. § 853(p). *See* 18 U.S.C. § 982(b)(1).

In the present case, the relevant "tainted" property is the money that Drugs4Less and Gateway paid to Young from payments by federal healthcare plans. There is no dispute that Young then paid $338,255.94 of that "tainted" money to Mitchell. To the extent that the court ordered forfeiture inclusive of that amount, it effectively ordered forfeiture of Young's *untainted* assets, without requiring the government to establish that the requirements of § 853(p) have been satisfied. *See Honeycutt*, 581 U.S. at 452. The government did not prove that the money Young paid to Mitchell was "unavailable" or otherwise satisfied any one of the five conditions set forth in § 853(p)(1); to the contrary, the government secured a plea in which Mitchell was ordered to forfeit his illicit gains. In other words, the government could recover the $338,255.94 of tainted assets from Mitchell himself. Allowing the government to recover untainted assets from Young, despite the fact that the tainted property was directly traceable to Mitchell, defied *Honeycutt*'s admonition to avoid "circumvent[ing] Congress' carefully constructed statutory scheme, which permits forfeiture of substitute property only when the requirements of §§ 853(p) and (a) are satisfied." *Id.*

3. The Eleventh Circuit's justifications for its rule are not persuasive. It claimed that it "furthers the

penological goal of forfeiture," and that a contrary reading "would punish only those defendants those defendants who immediately use proceeds for their own enrichment." App.41–42. This rationale lays bare the court's misunderstanding of the principles animating *Honeycutt*. As *Honeycutt* explained, the common law purposes of forfeiture are to separate a criminal from his ill-gotten gains and lessen the economic power of criminal enterprises. 581 U.S. at 447. Where a defendant has already, of his own accord, parted ways with ill-gotten gains by transferring them to a co-conspirator, forfeiture is not intended, as the Eleventh Circuit suggests, to punish the defendant merely for punishment's sake. *See Thompson*, 990 F.3d at 686 ("Forfeiture is not the same as other criminal penalties."). And to the extent that forfeiture is necessary to further the penological goal of deterrence, that goal is hardly served by ordering forfeiture based on mere physical control. This Court recognized as much when it held that Terry Honeycutt could not be ordered to forfeit proceeds from sales merely because he helped consummate those sales.

The court also expressed concern that ordering forfeiture based on where proceeds come to rest may prompt defendants to "avoid forfeiture responsibility by simply transferring proceeds to other less responsible co-conspirators." App.42. But that hypothetical concern is misguided for at least two reasons. First, it disregards "Congress' carefully constructed statutory scheme." *Honeycutt*, 581 U.S. at 452. If tainted proceeds are indeed transferred to another co-conspirator, section 853(p) places the onus on the government to collect from the co-conspirator,

or to otherwise abide by § 853(p) in obtaining substitute property; the statute does not make allowances for the government based on this perceived policy concern. And second, the Eleventh Circuit's hypothetical contemplates a defendant who gratuitously and belatedly transfers proceeds to co-conspirators as a ruse to avoid liability. Whatever policy concerns are implicated by that hypothetical are absent here, where the proceeds were split among co-conspirators according to a preexisting agreement. By the very terms of the conspiracy, 20% of the money Young received from Drugs4Less was destined to end up in Mitchell's pocket. App.37 ("The record contains no evidence that Young intended to retain access to any of [the $338,255.94 sent to Mitchell]. Rather, she always planned to send Mitchell a 20% share of the profits."). Allocating forfeiture liability based on "how the loot was divided among the conspirators" according to the terms of the conspiratorial agreement more accurately reflects each co-conspirator's actual financial stake in the conspiracy than a rule that pays no mind to where the money ended up. *Thompson*, 990 F.3d at 691.

Finally, the Eleventh Circuit suggested that the "bright line rule" it established (i.e., *if you touch it, you own it*) "provides clarity to would-be defendants and courts alike." App.42. Not so. As the Ninth Circuit pointed out, during a conspiracy, tainted property may change hands many times before coming to rest. *Thompson*, 990 F.3d at 691. The rule that provides the most clarity to would-be defendants and courts focuses not on who touched it, but rather who kept it.

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The lesson from *Honeycutt* is that a defendant cannot be held liable for forfeiture of property merely because he laid a hand on property that ultimately went into the pocket of a co-conspirator. Thus, *Honeycutt* instructs that neither the store manager who passes the money in the register to his brother, nor the salaried college student who passes the proceeds of his sales to the farmer, can be "subject to forfeiture for money that did not come to rest with them." *Thompson*, 990 F.3d at 691. Applying *Honeycutt* here, Young cannot be held liable for money that she received and passed along to Mitchell.

D. This case is an ideal vehicle for resolving the split over this important and recurring question.

This case is especially worthy of review because the *Honeycutt* question arises frequently and the acknowledged circuit split produces grave and disparate consequences for defendants. And this case is an ideal vehicle for answering that important question of federal criminal law.

1. This case merits the Court's review because the stark circuit split described above leads to dramatically unfair and arbitrary results for criminal defendants. If Young's case was tried in California, her forfeiture judgment would be determined by the Ninth Circuit's decision in *Thompson*, and she would not be held to account for the amount that came to rest with Mitchell. The same would be true if Young, a Georgia resident, had been tried in South Carolina, which is just a couple of hours east of her home. Under the Fourth Circuit's interpretation, Young would not

be responsible for Mitchell's profits from the conspiracy.

But because the scheme took place within the Eleventh Circuit, she's on the hook for $338,255.94. The stakes in these proceedings, like in many forfeiture proceedings, can be personally devastating; the district court already has entered a preliminary order of forfeiture of Ms. Young's personal home. A person should not lose her home because she was prosecuted in Florida, as opposed to South Carolina or Virginia. More broadly, the results of federal forfeiture proceedings should not turn on mere quirks of geography and diverging interpretations of federal law in different jurisdictions.

Moreover, like the statute in *Honeycutt*, forfeiture under § 982(a)(7) is mandatory. And courts have determined that *Honeycutt* applies to other forfeiture provisions, including other mandatory provisions. *See*, *e.g.*, *Chittenden*, 896 F.3d at 637 (applying *Honeycutt* to § 982(a)(2)); *United States v. Gjeli*, 867 F.3d 418, 427–28 (3d Cir. 2017) (applying *Honeycutt* to forfeiture pursuant to § 981(a) and § 1963); *United States v. Carlyle*, 712 F. App'x 862, 864–64 (11th Cir. 2017) (per curiam) (applying *Honeycutt* to § 981(a)(1)(C)). The question presented thus recurs frequently, and this Court's final determination of the scope of *Honeycutt* will provide much-needed guidance to courts in a wide swath of cases.

2. The straightforward facts underlying the forfeiture judgment are uncontested, making this case a clean vehicle to consider the proper application of *Honeycutt*. It is undisputed that Young and Mitchell entered into an agreement whereby Young would pay

Mitchell 20% of the money she received from Drugs4Less. And it is undisputed that Young did in fact transfer $338,255.94 to Mitchell. The Eleventh Circuit's determination that Young could nevertheless be ordered to pay that amount is a pure issue of law. And in resolving that question of law, the Eleventh Circuit expressly acknowledged that it was deepening a circuit split. This case is therefore an ideal vehicle for the Court to bring the circuits into harmony and clearly articulate how to apply *Honeycutt*.

II. The Court should grant certiorari on the important question of whether proceeds obtained from private insurers are subject to forfeiture based on violations of the Anti-Kickback Statute.

In addition to misapplying *Honeycutt*, the Eleventh Circuit's decision also contravenes the plain text of the Anti-Kickback Statute, the federal law underlying Young's convictions. By holding that the forfeiture judgment can include proceeds that Young obtained from private insurance payors—which the court expressly acknowledged did not violate the AKS—the court committed a manifest error of law on a question of exceptional importance.

The kickback statute, § 1320a-7b, is entitled "Criminal penalties for acts involving *Federal health care programs*." That title says it all; the statute does not, as the Eleventh Circuit recognized, make it illegal to pay or receive kickbacks for claims to private

payors. App.45–46.[5] Such "legitimate conduct and proceeds" therefore cannot form the basis of an offense under the AKS. And logically, if payment of kickbacks for claims to private payors does not constitute a "commission of the offense" under the AKS, money received from such kickbacks cannot be "traceable to the commission of the offense." 18 U.S.C. § 982(a)(7). Yet the Eleventh Circuit majority refused to reach that logical conclusion.

As Judge Jordan correctly observed, § 982(a)(7) targets "'gross proceeds traceable to the commission of the offense,'" so "the language of the underlying statute of conviction matters in determining what is forfeitable." App.54. But the panel majority glossed over the language of the underlying statute here. In holding that forfeiture orders pursuant to § 982(a)(7) may encompass lawfully earned proceeds from private payors, the majority drew on Eleventh Circuit precedent applying 18 U.S.C. § 1347. But unlike 42 U.S.C. § 1320a-7(b), which is limited to "Federal health care program[s]," section 1347 more broadly covers fraud against any "health care benefit program," which that statute defines to include "private plan[s]." 18 U.S.C. § 24(b). The cases relied on by the Eleventh Circuit applying § 1347 thus stand for the unremarkable proposition that private

[5] This same issue—whether the Anti-Kickback Statute, 42 U.S.C. § 1320a-7(b) extends to services paid for by private health insurers—is also the question presented in a separate Petition for Writ of Certiorari pending before the Court filed on July 5, 2024. *Jackson Jacob v. United States*, No. 24-5032. On July 31, 2024, the Court requested that the United States file a response to the petition, which is due on November 20, 2024.

payments obtained in violation of that statute are subject to forfeiture under § 982(a)(7) because they are "traceable to the commission of an offense." But that proposition simply has no application to this case, where private payments were *not* obtained in violation of 42 U.S.C. § 1320a-7(b). In holding that 18 U.S.C. § 982(a)(7) may nevertheless be applied to reach those proceeds, the Eleventh Circuit conflated the applicable provision of the AKS with an entirely different statute.

As a result, the Eleventh Circuit held that § 982(a)(7) can be read to impose criminal penalties for lawfully earned property. The court's expansive and unfounded view of forfeiture liability portends dramatic consequences for defendants, who, in the Eleventh Circuit's view, may be ordered to forfeit perfectly legitimate and untainted property that was obtained through lawful conduct. This important and recurring issue warrants this Court's review.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

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November 19, 2024

APPENDIX

TABLE OF APPENDICES

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 20-13091, 20-14377

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ELIZABETH PETERS YOUNG,

Defendant-Appellant.

[PUBLISH]

Appeals from the United States District Court
for the Southern District of Florida

D.C. Docket No. 0:19-cr-60157-RAR-1

Filed July 22, 2024
Document No. 71-1

Opinion of the Court

Before JORDAN, ROSENBAUM, Circuit Judges, and MANASCO,* District Judge.

ROSENBAUM, Circuit Judge:

Under the federal Anti-Kickback statute, it's illegal to make or accept payments for referring

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* Honorable Anna M. Manasco, United States District Judge for the Northern District of Alabama, sitting by designation.

business that a federal program will reimburse. Among other functions, this law helps ensure that medicine-related decision-makers do not make decisions for financial-enrichment reasons but rather for the patient's benefit.

Here, a jury convicted Defendant Elizabeth Peters Young of conspiring to pay and receive kickbacks from federal reimbursements for medical creams and lotions that the pharmacies she worked with dispensed. As part of Young's sentence, the district court ordered Young to make restitution in the amount of $1.5 million to the federal government, based on the amount of kickbacks Young received. The court also entered a forfeiture judgment against Young in that same amount because it represented the gross proceeds Young controlled during the conspiracy.

Young now challenges her conspiracy conviction, the restitution order, and the forfeiture judgment. She asserts that insufficient evidence supported her conspiracy conviction, that the government did not meet its burden to support the restitution amount, and that the district court erred in calculating the forfeiture amount.

After careful review of the record and with the benefit of oral argument, we affirm Young's conspiracy conviction. We also affirm the district court's forfeiture judgment as consistent with controlling precedent. But we agree with Young that the district court erred in crafting the restitution order. Because the government did not establish that the amount of loss it experienced as a result of Young's conduct equaled the total amount of kickbacks Young

possessed during the conspiracy, we vacate the restitution order and remand for further proceedings consistent with this opinion.

I. BACKGROUND

A. Factual Background

Young had a career marketing medical products to surgeons. She often spent time in the operating room during surgery in case her surgeon clients needed assistance with the products she sold them, and she developed relationships with her clients.

Around 2012, Young started her own distributorship, Young Surgical, LLC. Young Surgical initially sold devices related to spinal surgeries, as that was Young's area of expertise.

But in early 2015, Young decided to start marketing over-the-counter pain-relieving patches and creams to doctors who treated workers' compensation patients. The patches went by the brand name Terocin, and the creams went by the brand name LidoPro. Terocin and LidoPro were expensive. So only a few healthcare programs, including the Federal Employees' Compensation Act ("FECA") program, administered by the Department of Labor's Office of Workers' Compensation Programs, would pay for them. Those programs applied an extremely high rate in reimbursing the pharmacies that provided Terocin and LidoPro. For instance, a program paid one providing pharmacy $802 for Terocin, even though the product cost the pharmacy only $200, plus $16 in shipping.

Young decided that she would try to sell the patches and creams to Dr. Plas James, one of Young Surgical's clients who owned and operated a practice in Georgia. So she approached Dr. James's medical assistant and office manager, Desiree de la Cruz.[1] Young and de la Cruz had been friends for more than fifteen years. Over the years, Young had helped de la Cruz by buying her food and, on one occasion, even giving her a car. In February 2015, Young asked de la Cruz to tell Dr. James about Young's new venture selling Terocin and LidoPro.

After meeting with de la Cruz, Young looked for a pharmacy that could provide Terocin and LidoPro. A Google search led her to a pharmacy in Pompano Beach, Florida, called Drugs4Less. Drugs4Less had a surplus of Terocin and LidoPro and had experienced trouble offloading them because of their expense.

Young contacted the owner of Drugs4Less, Dr. Amir Serri, and they entered into a contract under which Young would receive a kickback of 50% of the net profits from the prescriptions she was able to direct to Drugs4Less. Drugs4Less then sent a few samples of Terocin and LidoPro to Dr. James, who agreed to use the products with his patients.

Around the same time, Young hired Tim Mitchell as a sales representative for Young Surgical. Mitchell and de la Cruz were living together then and later married. Before Young hired him, Mitchell had been a

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[1] At some point during the events in this case, de la Cruz's name changed to Desiree Mitchell. To avoid confusion with co-conspirator Tim Mitchell, we refer to her throughout this opinion as Desiree de la Cruz.

cashier and had held some positions as a sales representative, including for Aflac. But he had never worked in the healthcare industry.

Young was not concerned about Mitchell's lack of experience, though. She hired him because of his relationship with de la Cruz, whom Young described as a "unicorn." A "unicorn," for these purposes, is someone who "worked in an office that had access to the doctor [and] had the ability to give everybody that came through a prescription," which was "very, very rare" and "unique." Whether or not it's true that de la Cruz had the ability to "give" every patient a prescription for Terocin and LidoPro, the evidence showed that de la Cruz participated in securing prescriptions for Dr. James's patients. For example, Young said de la Cruz "wr[ote]" "script[s]," and Young sent an email saying, "With all of [de la Cruz's] refills today, we're at nine thousand for the day."

With Mitchell onboard as her sales representative and de la Cruz involved in processing prescriptions for Dr. James, Young implemented her kickback scheme. It worked like this: Dr. James saw patients in Georgia who sought treatment for injuries. He often prescribed pain patches and creams to his patients. And Young made it easy for him to prescribe Terocin and LidoPro, between de la Cruz's presence in Dr. James's office and Young's provision of preprinted prescription pads with the drug names Terocin and LidoPro in large print and the generic form of the drugs in small print underneath.[2]

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[2] The government does not assert that Dr. James was involved in Young's scheme.

When Dr. James prescribed Terocin or LidoPro to patients who were eligible for federal workers' compensation, de la Cruz sent those prescriptions to be filled at the Drugs4Less pharmacy, even though it was located in Florida. Drugs4Less then filled the prescriptions, shipped the patches and creams for free to the patients, and sent a bill to the FECA program in the Office of Workers' Compensation Programs. That office reimbursed Drugs4Less at the extremely high rates Terocin and LidoPro supported, and Drugs4Less in turn sent half its profits to Young. Young then sent 20% of her revenue to Mitchell for de la Cruz's services.

The co-conspirators focused on Terocin and LidoPro because of their high reimbursement rates. In an email to her Drugs4Less contact, Young even called "adding [L]ido[P]ro" her "best idea EVER." And in response to an email from Drugs4Less asking about refills on Terocin patches, de la Cruz responded, "Refills for everyone!!!!!!!" But if federal programs denied prescriptions for Terocin or LidoPro, Dr. James's office would not prescribe an alternative treatment, further highlighting that the scheme relied on the high rates Terocin and LidoPro supported.

The scheme was a huge financial success. Just a few months into the venture, Young and Drugs4Less enjoyed their first month with over $100,000 in profits. By the end of August 2015, Young's monthly share of the profits reached $134,952. In total, in the roughly sixteen months between March 2015 and July 2016, Young received $1,228,404 from Drugs4Less based on reimbursements from workers' compensation

programs, the vast majority of which came from the FECA program.

Of this, Young sent Mitchell $338,255 as purported compensation for his work as a sales representative. In reality, though, as we've noted, these payments were kickbacks to de la Cruz for sending the prescriptions to Drugs4Less. Indeed, Mitchell testified at trial that he did no work at all in his position as a sales representative for Young Surgical. He merely waited for the checks to come in each month as compensation for de la Cruz's work securing the prescriptions.

The arrangement continued through the summer of 2016. Around that time, Young took a few steps to try to limit the legal exposure from her scheme. First, Young had Mitchell sign a declaration stating that he didn't try to influence Dr. James and that Dr. James made all the medical decisions. Second, she sent Mitchell emails purporting to seek assurances that de la Cruz was not in a position of authority to award the referral of business (even though that was the reason Young hired Mitchell). Third, she arranged a training opportunity for Mitchell so he would appear to be a bona fide sales representative. And fourth, she asked Dr. Serri to hire Mitchell and herself as employees of Drugs4Less, which she hoped would shield her from liability under the Anti-Kickback Statute.

But Dr. Serri refused to hire Young and Mitchell. So Young terminated the relationship with Drugs4Less and found employment for herself and Mitchell at another pharmacy. Apparently unable to find a cooperating pharmacy in Georgia, where the patients were located, or Florida, where Drugs4Less

was, Young completed the Eleventh Circuit trifecta and went with Gateway Pharmaceuticals, a pharmacy in Birmingham, Alabama.

Still, Young continued the same arrangement she had with Mitchell and de la Cruz, with only two differences. First, de la Cruz routed the Terocin and LidoPro prescriptions to Gateway instead of Drugs4Less. And second, because Mitchell was an employee of Gateway, Gateway paid him directly, so Young did not have to pay Mitchell anymore. From September 2016 through December 2018, Gateway paid $298,756 to Young and $209,572 to Mitchell.

All told, during the scheme, the FECA program reimbursed $1,863,649 to Drugs4Less and $1,092,919 to Gateway for Terocin and LidoPro prescriptions. Young received $1,527,160.75 in total between the two pharmacies, and she passed $338,255 of that to Mitchell.

B. Procedural History

A federal grand jury returned an indictment against Young for her role in the kickback scheme. The Indictment charged Young with one count of conspiracy to pay and receive healthcare kickbacks in connection with the FECA program, in violation of 18 U.S.C. § 371, 42 U.S.C. §§ 1320a-7b(b)(1)(A), and 1320a-7b(b)(2)(A); six counts of receiving healthcare kickbacks in connection with the FECA program, in violation of 42 U.S.C. § 1320a-7b(b)(1)(A); and four counts of paying healthcare kickbacks in connection with the FECA program, in violation of 42 U.S.C. § 1320a-7b(b)(2)(A).

Young moved to transfer venue to the Northern District of Georgia, or alternatively, to dismiss based on improper venue. After a hearing, the district court denied Young's motion with respect to the conspiracy count, the payment counts, and three of the receipt counts, and the court dismissed the three remaining receipt counts.

The surviving counts proceeded to a jury trial. The government called six witnesses, including Mitchell, as part of its case-in-chief.[3] Mitchell testified that Young and de la Cruz enjoyed a longstanding close friendship. In 2015, Mitchell recounted, de la Cruz told Mitchell that Young had offered them an opportunity to make some money. So Mitchell and de la Cruz met with Young at a Chick-Fil-A, where Young explained that she wanted Mitchell to "focus on selling" LidoPro and Terocin to Dr. James, de la Cruz's longtime employer. Mitchell noted that de la Cruz had a "[v]ery close" relationship with Dr. James.

According to Mitchell, he had no knowledge of healthcare products, and Young provided no training or instruction. Although Mitchell tried to sell LidoPro and Terocin to a couple other doctors, Mitchell said, Young discouraged him from spending his time that way. And as for Dr. James, Mitchell never "pitch[ed]"

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[3] For their roles in the conspiracy, Mitchell and de la Cruz both pled guilty to one count of conspiracy to receive healthcare kickbacks. Mitchell was sentenced to 60 months' probation, including 12 months' home detention, and he was ordered to forfeit his illicit gains in the amount of $457,586 and pay that same amount in restitution. De la Cruz was sentenced to 12 months and 1 day of imprisonment, and she was held jointly and severally liable for Mitchell's restitution obligations.

him, marketed to him, presented to him on Terocin and LidoPro, or even provided him with samples. Instead, Mitchell testified, Young relied on de la Cruz's "great relationship" with Dr. James. Young told Mitchell that "[e]very patient that comes through [Dr. James's office] will get our patches and cream" because of de la Cruz.

As Mitchell recounted his position with Young, de la Cruz did "all the work and [Mitchell] . . . ma[de] extremely good money." But Young told Mitchell "not to do anything" in exchange for the money.

Mitchell explained that de la Cruz was Dr. James's back office manager, so she was able to ensure that all his patients were prescribed LidoPro. According to Mitchell, it was de la Cruz who obtained the prescriptions for Terocin and LidoPro from Dr. James, de la Cruz who sent those prescriptions to the pharmacy, and de la Cruz who handled patient issues. Mitchell noted that ensuring that no patients complained was important because Young told him that "[i]f complaints got back to Dr. . . . James, he would have immediately shut down our operation." Although, by his own testimony, Mitchell did "nothing," he was paid "[a]round 450-something thousand dollars." Mitchell opined that he received payment instead of de la Cruz to avoid having de la Cruz's involvement raise "a red flag that would draw attention."

Mitchell also said that Young directed him to take steps to make the arrangement seem legitimate. For instance, he mentioned that Young instructed him to start his own company solely for the purpose of depositing Young's payments because "it looked better

in regards to depositing those kind[s] of checks into a business account [as] opposed to a personal account." Similarly, Mitchell recounted that Young told him to remove de la Cruz's name from certain bank accounts. And when it came to payment, Mitchell testified that on several occasions before he opened the bank account in the name of his own company, Young split Mitchell's payment into two or more checks, so no check totaled $10,000 or more. But after he opened his company's bank account, Young paid him with checks well over $10,000.

For her part, Young also engaged in acts to falsely make her arrangement with Mitchell seem legitimate, Mitchell said. For example, after Mitchell and de la Cruz returned from their honeymoon, Young sent Mitchell an email that said, "Now that you and [de la Cruz] are married, I must assume that there is the potential of co-mingling your personal funds." Yet for more than a year before their marriage, Mitchell testified, Young knew that Mitchell and de la Cruz lived together, had given checks to de la Cruz for Mitchell, and was aware that Mitchell and de la Cruz had already been "co-mingling funds." Still, Young's email continued, "I must, with a reasonable amount of certainty, be sure that [de la Cruz] is not in a position of any authority to award the referral of business," and then quoted the federal anti-kickback statute.

Then, when Young started using Gateway instead of Drugs4Less to provide the products, Mitchell testified, he moved right along with Young. According to Mitchell, "My wife. Everything. The whole organization. Everything[]" moved to Gateway. Young also sent Mitchell a contract with Gateway to sign.

Under the contract, Mitchell agreed to work as a marketing representative of Gateway.

But in actuality, Mitchell continued to do nothing. And Cruz continued to refer Dr. James's patients—this time to Gateway.

Mitchell also testified that he had pled guilty to conspiring to violate the anti-kickback law because he "was guilty." According to Mitchell, he conspired with de la Cruz, Young, Drugs4Less, and Gateway. Mitchell explained that he was testifying against Young in the hope of receiving a reduced sentence.

Besides Mitchell, the government called Vanessa Hernandez, a pharmacy technician at Drugs4Less. Hernandez testified that Dr. Serri sought a way to unload his inventory of Terocin and LidoPro, that de la Cruz was Hernandez's point of contact at Dr. James's office, and that Hernandez kept Young updated on problems with prescriptions. Those issues included instances like when the Office of Workers' Compensation declined to reimburse a particular order.

And when Hernandez found the prescribing physician's signature illegible, she called de la Cruz for verification. On occasion, Hernandez continued, de la Cruz also phoned in prescriptions and approved refills on behalf of Dr. James.

On another note, Hernandez explained that sometimes, an insurer declined to pay for a particular prescription, but it was possible to receive coverage for an equivalent prescription. When the insurer denied payment for LidoPro and Terocin, though, Hernandez said, typically, no one sought an equivalent substitute.

Young testified in her own defense. She claimed that all the payments she received from the pharmacies were legitimate payments for marketing and customer referrals. She also testified that all payments she made to Mitchell were for his legitimate work as a sales representative. Young also called several other witnesses to testify on her behalf, including former supervisors and colleagues who had worked with her.

After a ten-day trial, the jury convicted Young on the conspiracy count and the four counts related to paying kickbacks. The jury acquitted Young on the three remaining counts related to receiving kickbacks.

Young moved to set aside the verdict or conduct a new trial. But the district court denied her motion. The court sentenced Young to 57 months' imprisonment and three years of supervised release.

In connection with Young's sentencing, the government moved for a preliminary criminal forfeiture order under 18 U.S.C. § 982(a)(7). Under that provision, a court can order healthcare defendants to forfeit property "that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense." 18 U.S.C. § 982(a)(7). The government sought forfeiture in the amount of $1,527,160.75, which represented the total amount Young received in kickbacks in exchange for referrals of Terocin and LidoPro to Drugs4Less and Gateway.

Young opposed the motion on several grounds, three of which she continues to press on appeal: (1) any money that she transferred to co-conspirators

should be excluded from the forfeiture total under the Supreme Court's decision in *Honeycutt v. United States*, 581 U.S. 443 (2017); (2) any money derived from private insurers should be excluded; and (3) the total amount is an excessive fine in violation of the Eighth Amendment.

After a hearing, the district court accepted the government's proposed forfeiture amount. It found Young liable for the gross proceeds of the conspiracy under *Honeycutt* and ordered forfeiture of the total amount deposited into her account—$1,527,160.75—no matter whether those funds came from government funds or private insurers.

The district court also conducted a separate restitution hearing. The government sought restitution in the amount of $1,527,160.75—the same as the forfeiture amount. Young challenged that proposed amount. She asserted that the government did not prove that any of the reimbursements she received were fraudulent and warranted restitution.

The district court concluded that the value of the kickbacks could serve as the starting point to determine restitution. It also found that the government had sufficiently shown that Young's scheme involved fraud and that Young had not offered evidence to establish that the patches and creams she provided were medically necessary. So the district court ordered restitution for the full amount of the kickbacks, $1,527,160.75.

Young timely appealed the initial judgment and prison sentence. She also appealed the amended judgment, which included the forfeiture and

restitution penalties. We consolidated Young's appeals.

II. STANDARDS OF REVIEW

We review de novo a defendant's challenge to the sufficiency of the evidence underlying her conviction. *United States v. Dixon*, 901 F.3d 1322, 1335 (11th Cir. 2018). In so doing, we "view the evidence in the light most favorable to the government and draw all reasonable inferences and credibility choices in favor of the jury's verdict." *Id.* (citation omitted).

As to a restitution order, we rely on three standards of review. First, we examine the legality of the restitution order de novo. *United States v. Robertson*, 493 F.3d 1322, 1330 (11th Cir. 2007). After all, "[a] federal district court has no inherent authority to order restitution, and may do so only as explicitly empowered by statute." *United States v. Valladares*, 544 F.3d 1257, 1269 (11th Cir. 2008) (quoting *United States v. Dickerson*, 370 F.3d 1330, 1335 (11th Cir. 2004)). Second, we review the district court's determination of the restitution value of lost or destroyed property for abuse of discretion. *Id.* And third, we review the factual findings underlying the restitution order for clear error. *Id.*

When assessing a forfeiture order, we review the district court's findings of fact for clear error and its legal conclusions de novo. *United States v. Goldstein*, 989 F.3d 1178, 1202 (11th Cir. 2021).

III. DISCUSSION

Our discussion proceeds in three parts. We first assess whether sufficient evidence supported Young's

conspiracy conviction. Then, we examine the district court's restitution order and determine whether the court erred in measuring the government's losses from Young's scheme. Finally, we consider whether the district court erred in ordering Young to forfeit the full amount that Drugs4Less and Gateway deposited into her account, given that she transferred some of that money to co-conspirators.

A. Sufficient evidence supported Young's convictions.

Young asserts that insufficient evidence supported her conspiracy conviction for two reasons. First, she argues that the government failed to present enough evidence to support a conspiracy involving herself, the Mitchells, and Gateway that ran from August 2016 to December 2018. Second, as to Drugs4Less and Gateway, Young contends that insufficient evidence established that de la Cruz or Mitchell served as a decisionmaker who could refer prescriptions to Drugs4Less or Gateway.

We address her arguments in turn.

1. The jury reasonably concluded that Gateway was involved in the conspiracy.

Young argues first that the government failed to prove a conspiracy involving the Gateway pharmacy. She acknowledges that the government offered several pieces of evidence on this count: the Office of Worker's Compensation Program's billing data; bank records indicating payments from Gateway to Young and Mitchell; Mitchell's testimony that "everything" moved from Drugs4Less to Gateway after Young stopped using Drugs4Less; and an email from Young

to de la Cruz in which Young attached a Gateway prescription pad. Still, Young contends that no direct evidence supports her conviction.

According to Young, the jury could draw only one permissible inference from the evidence the government offered: Gateway received legitimate payments from the Office of Worker's Compensation Programs and then paid Gateway's legitimate employees, Young and Mitchell, money that Young and Mitchell legitimately earned. Noting that the jury acquitted her on the receipt-of-kickbacks counts, Young reasons that the jury couldn't have found that her role in the conspiracy continued once Gateway became involved because Young was no longer paying Mitchell at that time.

We disagree. We've observed that "[b]ecause the crime of conspiracy is predominantly mental in composition, it is frequently necessary to resort to circumstantial evidence to prove its elements." *United States v. Watkins*, 42 F.4th 1278, 1285 (11th Cir. 2022) (citation omitted). Indeed, we've noted that the government may rely entirely on circumstantial evidence to secure a conspiracy conviction. *See United States v. White*, 663 F.3d 1207, 1214 (11th Cir. 2011) ("Because 'conspiracies are secretive by nature, the existence of an agreement and [defendant's] participation in the conspiracy may be proven entirely from circumstantial evidence.'") (citation omitted). Here, the circumstantial evidence allowed the jury to permissibly conclude that Young was involved in a conspiracy with Gateway.

First, the government presented Mitchell's testimony that his arrangement with Young largely

stayed the same after the core conspirators—Young, de la Cruz, and Mitchell—switched the underlying pharmacy from Drugs4Less to Gateway. In other words, Mitchell continued to get paid to do essentially nothing, while de la Cruz arranged for the patients to receive prescriptions for Terocin and LidoPro and sent them to, now, Gateway. Second, the Office of Worker's Compensation Programs's financial records further support the conclusion that the Terocin and LidoPro prescription scheme worked in the same way before and after Gateway's involvement, with merely a change in which pharmacy filled the prescription. Third, more than twenty of Dr. James's patients who had received medications from Drugs4Less began receiving shipments from Gateway. Fourth, the email from Young to de la Cruz included a Gateway prescription, which the jury reasonably could have understood to mean that Young and de la Cruz planned to continue their scheme in the same way it had operated with Drugs4Less. It makes no difference for purposes of the conspiracy count that Young no longer paid Mitchell directly because she still facilitated the kickback scheme with her co-conspirators.

Based on the evidence, the jury reasonably could have determined that Young moved the kickback scheme to Gateway because Drugs4Less declined to hire Mitchell and her as full-time employees, so Young made the switch in an effort to maintain the scheme under the guise of legal protection. In short, sufficient evidence allowed the jury to reasonably conclude that the conspiracy continued, even though it ran through a different pharmacy. *See United States v. Richardson*, 532 F.3d 1279, 1286 (11th Cir. 2008) ("A

conspiracy is presumed to continue until its objectives have been abandoned or accomplished.").

Young points to defense witnesses' testimony to negate the government's evidence about a continuing conspiracy with Gateway. But at this stage, we must assume that the jury made all credibility choices in the verdict's favor. *United States v. Estrada*, 969 F.3d 1245, 1266 (11th Cir. 2020). And the jury could have determined that the defense witnesses were not credible. So we decline to consider their testimony when evaluating whether the government offered sufficient evidence to convict Young.

2. The jury reasonably concluded that de la Cruz was a decisionmaker who could refer prescriptions.

The Anti-Kickback Statute makes it unlawful to "knowingly and willfully offer[] or pay[] any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person . . . to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program[.]" 42 U.S.C. § 1320a-7b(b)(2)(A). Young argues that de la Cruz was not a decisionmaker with authority to direct the patients' prescriptions, so Young could not have paid de la Cruz "to induce [her] to refer" the patients for unlawful purposes.

United States v. Vernon, 723 F.3d 1234 (11th Cir. 2013), forecloses this argument. There, the defendant operated a specialty pharmacy, and he paid a "patient

advocate" to direct her clients to fill their prescriptions at the defendant's pharmacy. *Id.* at 1245. The patient advocate generally helped her clients by attending medical appointments with them, helping with routine life tasks, and assisting in filling prescriptions. *Id.* After law enforcement uncovered the scheme, the defendant argued that his payments to the patient advocate could not violate the Anti-Kickback Statute because the patient advocate was not a doctor, so she couldn't "refer" patients to the defendant's pharmacy. *Id.* at 1254.

We rejected that argument. As we explained, the patient advocate "was effectively responsible for deciding which specialty pharmacy to use for the filling of her . . . patients' prescriptions." *Id.* And "overwhelming evidence" showed that the patient advocate could and did refer clients to the defendant's pharmacy. *Id.* In fact, in Vernon, some patients "did not even know which pharmacy filled their prescriptions because they gave control of that decision" to the patient advocate. *Id.* So we said it was "irrelevant" that the advocate herself could not actually prescribe the medication. *Id.*

The same reasoning applies here. Even if de la Cruz could not and did not write or sign the prescriptions herself, she was in a position to ensure that the prescriptions were sent to Drugs4Less and Gateway to be filled. Testimony established that de la Cruz sent the prescriptions to Drugs4Less—and later to Gateway—and the pharmacies then shipped the medications directly to the patients in Georgia. In fact, twenty-three of Dr. James's patients switched from Drugs4Less, a pharmacy in South Florida, to

Gateway, a pharmacy in Birmingham, Alabama, because of de la Cruz's control over the referrals. In this way, de la Cruz's role in this scheme resembled that of the patient advocate in *Vernon*, and it was central to Young's operation.

Young also relies on the Fifth Circuit's decision in *United States v. Miles*, 360 F.3d 472 (5th Cir. 2004). There, the defendants paid a public-relations firm $300 per patient who went to the defendants for home health services as a result of the public-relations firm's outreach efforts to doctors on the defendants' behalf. *Id.* at 479–80. The court reversed the defendants' kickback convictions based on this conduct. *Id.* at 481. It explained that the defendants' payments to the firm "were not made to the relevant decisionmaker as an inducement or kickback for sending patients" to the defendants' company because the recipient lacked authority to act on the doctors' behalf to select the defendants' company. *Id.* at 480.

But *Miles* has no more relevance here than we found it did in *Vernon*—none. *Vernon*, 723 F.3d at 1255. Most importantly—and unlike in *Vernon* (and by analogy, here)—we observed that the public-relations firm "had no relationship with the patients." *Id.* So in making payments to that firm, the defendants did not make payments "*to the relevant decisionmaker*." *Id.* (quoting *Miles*, 360 F.3d at 480) (emphasis added in *Vernon*). By contrast, the *Vernon* defendants' payments to the patient advocate—and Young's payments to de la Cruz here—were payments to a person who had the ability to determine where patients' prescriptions would be filled. So *Miles* has no application here.

In sum, sufficient evidence supports the jury's conclusion that de la Cruz was a relevant decisionmaker with the ability to direct prescriptions, and that Young paid Mitchell to induce de la Cruz to refer prescriptions to Drugs4Less and Gateway.

B. The government did not show loss by a preponderance of the evidence to support a restitution order.

Young appeals the restitution order because the district court based it wholly on the amount of kickbacks Young received, instead of basing it on any actual loss to FECA. The government rightly concedes that this was error. But it asserts that we should uphold the restitution award, anyway. The government argues that the district court determined that Young engaged in fraud, and that means that, as a matter of fact, the entire kickback amount constituted a loss to FECA. Not only that, the government urges, but the district court's factual determination was not clearly erroneous.

We begin by recognizing that "the purpose of restitution is not to provide a windfall for crime victims but rather to ensure that victims, to the greatest extent possible, are made whole for their losses." *United States v. Martin*, 803 F.3d 581, 594 (11th Cir. 2015) (cleaned up). For that reason, "[r]estitution is not designed to punish the defendant." *Id.* at 595. To accomplish restitution's purpose, a court must base the amount of restitution awarded to the victim on the amount of loss that the defendant's conduct "*actually* caused." *United States v. Huff*, 609 F.3d 1240, 1247 (11th Cir. 2010) (citation omitted). That means that, in a restitution order, the court must

account for any value that a defendant's scheme bestowed on the victim. *Id.*

Here, the district court did not specify whether it ordered restitution under the Mandatory Victims Restitution Act, 18 U.S.C. § 3663A, or the Victim Witness Protection Act, 18 U.S.C. § 3663. But the parties agree (and so do we) that, either way, the government bore the burden of showing the amount of loss by a preponderance of the evidence under § 3664(e), which applies to all orders of restitution under Title 18. *See* § 3664(a).

With these thoughts in mind, we first show why the total amount of kickbacks could not serve as the restitution award here. Then, we explain that the district court's fraud finding did not specify which reimbursements Young fraudulently obtained, so we can't affirm the restitution award on the government's proposed alternative basis.

1. The total amount of kickbacks does not represent the loss, if any, that the purported victim suffered here.

We have previously considered restitution awards in other healthcare cases involving kickbacks. But as we explain below, the restitution calculation is not one-size-fits-all in kickback cases. Rather, the victim's actual loss serves as our North Star in assessing the proper amount of restitution based on the facts of each case.

To show what we mean, we begin with *United States v. Vaghela*, 169 F.3d 729 (11th Cir. 1999). There, the defendant, an office manager for a medical practice, arranged to receive kickbacks from a lab in

exchange for sending the practice's lab work there. *Id.* at 731. The doctors, who weren't involved in the scheme, were the ones who determined what tests were necessary, and the defendant merely selected which lab to send the work to. *Id.* at 736. Ultimately, though, a federal program paid for the lab work. *Id.* at 731. We concluded that the district court erred in setting the defendant's restitution at the full amount that the government program paid the lab. *Id.* at 736. Although both parties agreed that the defendant's conduct had caused the government program a loss, the record included no basis for finding that the lab performed any work that was not medically necessary. *Id.* Rather, the defendant inflicted loss on the federal program by causing the lab to charge higher rates than it otherwise would have (which the federal program then paid), so the lab could cover the kickbacks to the defendant. Because the amount the defendant received in kickbacks was the actual loss the federal program suffered, we said restitution was limited to that amount. *Id.*

United States v. Liss, 265 F.3d 1220 (11th Cir. 2001), involved another kickback scheme. There, a lab that conducted medical testing paid doctors kickbacks for referring Medicare patients to the lab. *Id.* at 1224. The lab made a total of $55,371.36 in payments to Dr. Michael Spuza for his referrals, all of which the parties agreed were medically necessary. *Id.* at 1225. The district court ordered Spuza to pay restitution in the full amount of the kickbacks he received from the lab. *Id.* We vacated the restitution order. *Id.* at 1232. We explained that the government had failed to provide evidence that Medicare had suffered any loss because of Spuza's conduct. *Id.* That was so, we

reasoned, because all Spuza's referrals to the lab were medically necessary, and Medicare paid the lab a fixed amount for its tests. *Id.* So no basis existed to conclude that Spuza's actions had caused Medicare to spend money it otherwise would not have spent.

As *Vaghela* and *Liss* show, we must look to the facts of each specific kickback case to determine whether the federal-program-victim incurred any loss and, if so, the appropriate measure of it.

Thus, here, we determine loss by considering whether FECA incurred any costs it otherwise wouldn't have been responsible for in the absence of the kickback scheme. FECA reimbursed Terocin and LidoPro at a fixed rate, unlike the reimbursements in *Vaghela*, which the provider set and we assumed were unlawfully increased to account for kickback payments. Because the reimbursements here involved fixed rates, we must consider whether the government has shown that any or all the products Drugs4Less and Gateway provided because of Young's operation were not medically necessary or otherwise fraudulently imposed a cost on the government.

Relying on *United States v. Bane*, 720 F.3d 818, 878 (11th Cir. 2013), the government contends that it had no burden to show a lack of medical necessity as to the prescriptions supporting the restitution amount. Instead, it argues, Young had to show that the prescriptions at issue were medically necessary to offset their value from the total restitution amount. We disagree.

For starters, as we've mentioned, the legislature unambiguously said that "[t]he burden of

demonstrating the amount of the loss sustained by a victim as a result of the offense" falls squarely "on the attorney for the Government." 18 U.S.C. § 3664(e). And "[t]he preeminent canon of statutory interpretation requires the court to presume that the legislature says in a statute what it means and means in a statute what it says there." *Packard v. Comm'r*, 746 F.3d 1219, 1222 (11th Cir. 2014) (cleaned up). So barring a very good reason not to construe the statute to mean what it says, we must conclude that the government bears the burden of showing loss.

In a kickback case, where fraudulent conduct is not an element (so loss is not already baked into a conviction), showing loss necessarily requires the government to establish that the victim paid for something it otherwise wouldn't have, had the defendant not engaged in her scheme. Here, any losses to FECA must have stemmed from its payments for the LidoPro and Terocin provided to its insureds. But FECA was obligated to pay for medically necessary LidoPro and Terocin. So the mere fact that FECA paid for those treatments does not, in and of itself, show loss to FECA without a corresponding showing that the products FECA paid for were not medically necessary. In other words, on the facts of this case, it is impossible for the government to satisfy its burden to show loss without also establishing that the LidoPro and Terocin that FECA paid for were not medically necessary or were fraudulently obtained.

Bane does not give us a reason to ignore the plain text of § 3664(e). To be sure, in *Bane*, we vacated a restitution order and said that "[o]n remand, [the defendant] must offer evidence about what goods or

services he provided that were medically necessary and the value of them to receive an offset [to the loss the government claimed]." 720 F.3d at 828. And we even went a step further to explain, "The defendant bears the burden to prove the value of any medically necessary goods or services he provided that he claims should not be included in the restitution amount." *Id.* at 829 n.10. But *Bane* was a fraud case. And while we concluded that fraud and kickback cases both require a determination of whether the restitution amount excludes medically necessary goods or services, *id.* at 828, fraud and kickback cases necessarily differ from each other when it comes to who bears the burden of proving whether any goods or services were or were not medically necessary.

As we've noted, in fraud cases, a conviction inherently means that the paying victim experienced at least some loss. So if the defendant is convicted, that means the government has already shown loss. For that reason, it makes sense for the restitution amount to initially include the entire amount the victim entities paid related to the fraudulent scheme, and then for the defendant to be able to offset that amount by the value of any goods or services she can prove were medically necessary. But in a kickback case, where fraud is not necessary to a conviction, there's no basis for starting with the entire amount that the victims paid because that amount is not a reliable proxy for actual loss. Rather, under § 3664(e)'s mandate directing that the government bears the burden of demonstrating a victim's loss, the government must establish that a loss, in fact, occurred at all. And that requires the government to show either a lack of medical necessity or fraud.

Plus, "[w]e have pointed out many times that regardless of what a court says in its opinion, the decision can hold nothing beyond the facts of that case." *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1298 (11th Cir. 2010). And the facts in *Bane* differ in an important way from those at issue here.

In *Bane*, defendant Ben Bane owned and operated companies that provided oxygen for Medicare patients. 720 F.3d at 822. Medicare required equipment providers to ensure that the oxygen was medically necessary by sending patients to an independent laboratory for pulse oximetry testing. *Id.* Instead of complying with that requirement, Bane's companies conducted the testing themselves and falsely told Medicare that they used independent labs. *Id.* at 822–23. Although the district court found that 80 to 90 percent of the services Bane provided were medically necessary, its restitution calculations did not distinguish between medically necessary and unnecessary services. *See id.* at 828.

We vacated that order, explaining that, "[b]ecause the victims who paid for medically necessary oxygen paid no more than they would have if the tests had been performed by an independent entity, the only purpose behind restitution of those amounts would be to punish Bane, which is not a proper basis for a restitution award." *Id.* On remand, we required Bane to prove medical necessity and the value of goods provided to "receive an offset" from the loss amount. *Id.* We explained that Bane was "in the best position to know the value of the legitimate goods or services provided to his victims." *Id.* at 829 (citation omitted).

That was true in *Bane* because Bane conducted all the oximetry testing through his own companies, which were central to the scheme. Bane's own companies ran the tests that determined the patients' medical need, if any, for oxygen. *Id.* at 822–23. Even the patients had to rely on the test results from Bane's companies to know whether they medically required oxygen. So only Bane and those he controlled had direct access to evidence that could establish whether the oxygen that Bane's companies provided was or was not medically necessary. As a result, to give effect to Congress's directive that restitution must or may (depending on the governing statute) be ordered to cover a victim's loss and to prevent the defendant from avoiding restitution even if he caused a loss, the burden of proving medical necessity had to fall on Bane.

But the driving factual quirk in *Bane*—the government was not in a position, because of the nature of the defendant's conduct, to be able to establish what was and was not medically necessary—is not the case here. Unlike in *Bane*, Young is not the only person who can verify whether prescriptions were medically necessary or not. Rather, the government has access to evidence that allows it to establish whether, and if so, how much of, the LidoPro and Terocin products were not medically necessary—that is, what loss, if any, Young inflicted on FECA.

Among other evidence, first, the government hasn't argued that Dr. James, who purportedly approved all the prescriptions, was involved in the scheme. So it could ask Dr. James about the medical necessity of each prescription and the particular

brands prescribed.[4] Second, de la Cruz, who was the link between Dr. James and the fulfilling pharmacies, pled guilty. So the government could have sought to obtain evidence from her about the medical necessity of the prescribed items. Third, the government in fact interviewed some of the patients who received the products. Some of them told the government that they continued to receive LidoPro and Terocin refills when they hadn't asked for them and didn't need them. So the government had the means to show that at least some of the LidoPro and Terocin that FECA paid for was not medically necessary.

Despite these resources, the government made no effort to establish how much of the products FECA paid for were not medically necessary. Instead, it asked for the full amount of kickback payments Young

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[4] We do not suggest that the mere fact that Dr. James prescribed LidoPro and Terocin shows that they were medically necessary. As we've noted, "[a] doctor's prescription is not a get-out-of-jail-free card" against allegations of healthcare fraud. *United States v. Grow*, 977 F.3d 1310, 1321 (11th Cir. 2020) (per curiam). Of course, in *Grow* and the cases *Grow* relied on, the record contained evidence that doctors were involved in the scheme and had written dubious prescriptions. *See id.* at 1315 (describing how doctors consulted with patients for as little as three minutes online before prescribing the drugs at issue, and doctors at one of the facilities issued the prescriptions to ninety-seven percent of patients). The record contains no such evidence here. But even so, Dr. James may not have thought that the brands LidoPro and Terocin were medically necessary, for instance. Or he may have been told that a patient asked for a refill when she didn't—or any number of other circumstances that would have satisfied the government's burden to show that payment for LidoPro and Terocin was not medically necessary in at least some cases.

received—a measure that the government appropriately now recognizes was incorrect for the reasons we've already explained.

Though the government asks us to affirm on the alternative basis that the district court made a finding of fraud, we cannot do that. True, the district court found that "enough has been shown [by the government] from a fraud perspective to satisfy the [government's burden] under [§] 3664." But the court made no finding as to whether every prescription resulted from fraud or whether instead, the fraud encompassed only some smaller portion of the prescriptions. This matters.

The district court relied heavily on *United States v. Grow*, 977 F.3d 1310 (11th Cir. 2020) (per curiam), in making its generalized fraud finding. But there we were determining whether the government had established sufficient evidence of a conspiracy to commit healthcare fraud; we weren't considering the correct restitution amount. Not only that, but in *Grow*, the prescriptions at issue were dispensed either without the patient ever having spoken to a doctor or based on clearly pretextual virtual appointments with doctors. *Id.* at 1314–15, 1321–22. In other words, the evidence supported the conclusion that every prescription was fraudulent.

That is not the case here. The government presented no evidence showing that patients whom Dr. James didn't examine received prescriptions. Nor did it show that Dr. James did not ultimately decide whether to prescribe Terocin or LidoPro to some patients. Though we appreciate the district court's attention to this issue, we simply have no way on this

record to sort out what was or was not medically necessary.

For these reasons, we vacate the restitution award and remand for further proceedings consistent with this opinion.

C. The district court did not err in entering its forfeiture judgment.

We next address the district court's forfeiture order. Young presents three challenges to the forfeiture judgment. First, she argues the forfeiture judgment violates the Supreme Court's decision in *Honeycutt*. Second, she contends it erroneously requires repayment of money that private healthcare providers disbursed. Third, Young asserts the forfeiture judgment imposes an unconstitutionally excessive fine.

Before we address each of Young's specific arguments, we take a moment to examine 18 U.S.C. § 982(a)(7), the forfeiture statute at issue here, because it governs our analysis. Section 982(a)(7) is a criminal-forfeiture statute. *See* § 982 (titled "Criminal forfeiture"); *see also, e.g., United States v. Hasson*, 333 F.3d 1264, 1269 (11th Cir. 2003) (referring to § 982 as providing for "criminal forfeiture"); *United States v. Waked Hatum*, 969 F.3d 1156, 1162 (11th Cir. 2020) (describing forfeiture of property under § 982(a)(1) as "part of the 'historical tradition' of '*in personam*, criminal forfeitures'") (citation omitted).

Criminal "forfeiture focuses on the defendant," in contrast to restitution, which focuses on the victim. *United States v. Moss*, 34 F.4th 1176, 1194 (11th Cir. 2022) (citation omitted). As the Supreme Court has

explained, "Forfeitures help to ensure that crime does not pay: They at once punish wrongdoing, deter future illegality, and 'lessen the economic power' of criminal enterprises." *Kaley v. United States*, 571 U.S. 320, 323 (2014) (citation omitted). In this way, their purpose differs from that of restitution, which, as we've explained, is to make the victim whole.

The criminal-forfeiture statute we must apply here—§ 982(a)(7)—requires the court, "in imposing sentence on a person convicted of a Federal health care offense," to "order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense." As the text of this statute conveys, its reach is broad. *See United States v. Gladden*, 78 F.4th 1232, 1251 (11th Cir. 2023); *United States v. Bikundi*, 926 F.3d 761, 792 (D.C. Cir. 2019) (per curiam).

The Supreme Court has noted in construing other statutes that the term "proceeds" can be ambiguous, sometimes referring to "receipts" and others to "profits," depending on the context. *United States v. Santos*, 553 U.S. 507, 513–14 (2008) (plurality opinion); *id.* at 525 (Stevens, J., concurring in the judgment) (recognizing "proceeds" will have different meaning in different contexts). But in § 982(a)(7), the term "proceeds" appears in the phrase "gross proceeds." *See* § 982(a)(7). And that phrase is not ambiguous.

Rather, it has an ordinary meaning. "Gross" means "[u]ndiminished by deduction; entire . . . ." *Gross*, Black's Law Dictionary (11th ed. 2019). So when we look at the phrase in the context of

§ 982(a)(7), "'[g]ross proceeds traceable to' the fraud include 'the total amount of money brought in through the fraudulent activity, with no costs deducted or set-offs applied.'" *Gladden*, 78 F.4th at 1251 (quoting *Bikundi*, 926 F.3d at 792).

1. The forfeiture judgment does not violate *Honeycutt*.

Young asserts the district court's forfeiture judgment impermissibly renders Young jointly and severally liable for the money she did not keep for herself but rather directed to co-conspirators. In Young's view, we should reduce the roughly $1.5 million forfeiture order by the amounts she routed to other co-conspirators. For support, Young relies on *Honeycutt*.

In *Honeycutt*, the Court considered whether "a defendant may be held jointly and severally liable for property that his coconspirator derived from the crime but that the defendant himself did not acquire." 581 U.S. at 445. There, the defendant, Terry Honeycutt, worked at a store his brother Tony owned. *Id.* The store sold a product that drug producers used in making methamphetamine. *Id.* Police officers informed the brothers of the unlawful use, but the store continued to sell the product. *Id.* at 445–46. A grand jury indicted both brothers, and the government sought forfeiture against each of them for $269,751.98, the brothers' profits from their illicit sales of the product. *Id.* at 446. Although Tony pled guilty and agreed to forfeit $200,000, Terry went to trial. *Id.* After Terry was convicted, the government sought forfeiture against him for $69,751.98—the amount of profits still outstanding—even though Terry "had no

controlling interest in the store," "did not stand to benefit personally" from the conspiracy, and "had not personally received any profits" from the illicit sales. *Id.* (internal quotation marks omitted).

The Supreme Court held that Terry could not be held jointly and severally liable for the total illicit profits that the store earned. As the Court explained, applying joint and several liability to forfeiture "would require that each defendant be held liable for a forfeiture judgment based not only on property that he used in or acquired because of the crime, but also on property obtained by his co-conspirator." *Id.* at 448. Based on the text of the forfeiture statute at issue there, 21 U.S.C. § 853(a), the Court concluded that forfeiture is limited to tainted property, and that allowing joint and several liability on the facts in Terry's case would impermissibly extend forfeiture's reach to untainted property. *Id.* at 449, 454.

Throughout its discussion, the Court analogized to a hypothetical scenario involving a "mastermind" farmer who grows marijuana and recruits a college student to deliver it on campuses for $300 per month. *Id.* at 448. In the Court's example, the farmer earned $3 million from the operation over a year while the student earned $3,600. *Id.* at 448–49. The Court explained that the student could not face a forfeiture judgment for the entire amount of the conspiracy's proceeds—$3 million. *Id.* If the student were ordered to pay that amount, the Court reasoned, $2,996,400 of his liability "would have no connection whatsoever to

[his] participation in the crime and would have to be paid from [his] untainted assets." *Id.* at 449.[5]

We've since said that under *Honeycutt*, "a district court may not hold members of a conspiracy jointly and severally liable for property that one conspirator, but not the other, acquired from the crime." *Waked Hatum*, 969 F.3d at 1163. We've also explained that "*Honeycutt* did not purport to address joint and several forfeiture generally but instead narrowly addressed whether a defendant could be ordered to forfeit property that his co-conspirator alone acquired." *Goldstein*, 989 F.3d at 1203.

Even so, we have not yet applied *Honeycutt* in a case like this one, where one conspirator temporarily controlled all the illicit funds and distributed a portion of them to one of her co-conspirators. In *Goldstein*, for instance, after the defendants' unlawful proceeds were deposited into bank accounts that they could both access and control, we held that each defendant was responsible for the total amount of the proceeds. *Id.* at 1203. And in *United States v. Cingari*, when we analyzed *Honeycutt* under the plain-error standard, we concluded that a married couple who jointly operated a fraudulent business could both be held liable for the full forfeiture sum because both defendants mutually obtained all the proceeds for their joint benefit. 952 F.3d 1301, 1306 (11th Cir. 2020).

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[5] *Honeycutt* involved a different forfeiture statute than 18 U.S.C. § 982(a)(7), the one at issue here. But we have held that *Honeycutt* applies to 18 U.S.C. § 982(a)(7). *United States v. Elbeblawy*, 899 F.3d 925, 941 (11th Cir. 2018).

But the fact pattern here does not resemble that of either *Goldstein* or *Cingari*. Here, Drugs4Less sent Young half the monthly profits from the bills that the Office of Workers' Compensation Programs paid Drugs4Less for providing Terocin and LidoPro. Then, Young sent 20% of what Drugs4Less sent her to Mitchell, usually within a day of receiving the money from Drugs4Less. So while Young initially had access to all the money that she and Mitchell received for their roles in the Drugs4Less part of the scheme, Young almost immediately re-routed a portion of that money to Mitchell.

All told, Young's payments to Mitchell equaled $338,255.94. The record contains no evidence that Young intended to retain access to any of that money. Rather, she always planned to send Mitchell a 20% share of the profits to compensate de la Cruz for directing Terocin and LidoPro prescriptions from Dr. James's office to Young's desired pharmacies.

Under these circumstances, Young asserts that the government's attempt to require forfeiture of the full amount that Drugs4Less sent her improperly imposes joint-and-several liability for the roughly $338,000 she sent to Mitchell. In Young's view, under Honeycutt, the district court could order her to forfeit only the money she "personally obtained" from the crime, which she argues is limited to the proceeds that came to rest in her possession.

For its part, the government argues that *Honeycutt* does not apply to a leader of a conspiracy, especially one who acquires and uses tainted funds to pay an associate. On the government's reading, Young's control of the illicit money—even

temporarily—makes her liable to forfeit the full amount.

Several of our sister circuits have weighed in on this type of fact pattern. The parties direct us to some of them.

Young points to the Sixth Circuit's decision in *United States v. Bradley*, 897 F.3d 779 (6th Cir. 2018) ("*Bradley I*"). But *Bradley* does not help her. Instead, it supports the government's position.

In *Bradley I*, the district court imposed joint and several liability on the defendant, who was one of several co-conspirators, for forfeiture of the conspiracy's full proceeds. *Id.* at 783. After *Honeycutt*, the court reversed because "the evidence sa[id] nothing about whether [the defendant] kept all of this money—an improbable development in an eighteen-member conspiracy." *Id.* In remanding the matter to the district court, the court explained that the forfeiture amount should have reflected "an amount proportionate with the property [the defendant] actually acquired through the conspiracy." *Id.* at 784 (citation omitted). Young apparently reads this language to preclude forfeiture of monies one co-conspirator passes along to another.

But *Bradley*'s second chapter clarified that's not what the Sixth Circuit meant. On remand, upon considering the Sixth Circuit's directive, the district court once again concluded that the defendant had to forfeit the conspiracy's full proceeds. *United States v. Bradley*, 969 F.3d 585, 587 (6th Cir. 2020) ("*Bradley II*"). This time, the Sixth Circuit affirmed. *Id.* As the court explained, the forfeiture statute at

issue required defendants to forfeit proceeds, meaning *gross* receipts. *Id.* at 589. So it was "beside the point whether the money stayed in [the defendant's] pocket (e.g., kept as profits) or went toward the costs of running the conspiracy (e.g., used to pay coconspirators)." *Id.* Rather, the court reasoned, the forfeiture statute "asks only whether the defendant obtained the money, not whether he chose to reinvest it in the conspiracy's overhead costs, saved it for a rainy day, or spent it [personally]." *Id.* at 589 (citation omitted).

The First and Second Circuits have construed Honeycutt the same way.

In *Saccoccia v. United States*, for instance, the district court ordered a defendant who distributed a drug cartel's proceeds of $137 million to the cartel's accounts to forfeit that full amount, even though he did not ultimately get to keep that sum. 955 F.3d 171, 173 (1st Cir. 2020).[6] The First Circuit concluded that *Honeycutt* did not preclude that forfeiture order. Rather, the court explained, the defendant "neglect[ed] a critical part of *Honeycutt*'s holding: that any bar against joint and several co-conspirator liability articulated there applies only to defendants

[6] *Saccoccia* cites our decision in *United States v. Bane*, 948 F.3d 1290 (11th Cir. 2020), to suggest that we've already addressed whether *Honeycutt* applies in circumstances like those presented here. But we do not read *Bane* quite like the First Circuit did because it did not address forfeiture where a defendant temporarily held funds before distributing them to a co-conspirator, and the posture there was a case on collateral review trying to withstand procedural default. 948 F.3d at 1297–98. So *Bane* does not control our decision here.

who did not actually possess or control the funds at issue." *Id.* at 175. And there, the defendant "controlled the bank account [from] which the funds at issue flowed and . . . oversaw the distribution of those funds." *Id.*

In *United States v. Tanner*, the Second Circuit reached the same conclusion. 942 F.3d 60, 67–68 (2d Cir. 2019). There, the district court ordered joint and several forfeiture for the defendant and his co-conspirator, even though the defendant did not receive the ultimate benefit of all the money. The Second Circuit upheld the award and said, "*Honeycutt*'s bar against joint and several forfeiture for co-conspirators applies only to co-conspirators who never possessed the tainted proceeds of their crimes." *Id.*

The Ninth Circuit has taken a different approach. In *United States v. Thompson*, 990 F.3d 680 (9th Cir. 2021), three co-conspirators ran a scheme in which $2 million was stolen and deposited into trust accounts that one defendant's attorney controlled. *Id.* at 685. The money was later distributed to the co-conspirators. *Id.* at 685. The court held that, under *Honeycutt*, the defendant who originally controlled all the money could not be ordered to forfeit the full $2 million. *Id.* at 690–91. Instead, the court said, *Honeycutt* limited the forfeiture to the amount that "came to rest with [the defendant] as a result of his crimes." *Id.* at 691.[7]

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[7] The cases we discuss—*Thompson*, *Saccoccia*, *Tanner*, and the *Bradley* cases—did not all interpret the same forfeiture statute. But just as we've held that *Honeycutt* applies to forfeitures under 982(a)(7), all these cases involved forfeiture statutes that the

We are more persuaded by the First, Second, and Sixth Circuits. Four reasons lead us to this conclusion.

First, the text of the statute: as we've noted, § 982(a)(7) provides that "[t]he court . . . shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, *from gross proceeds traceable to the commission of the [Federal health care] offense*." (Emphasis added). Under the plain text of the statute, the $1.5 million Young received directly from Drugs4Less and Young Surgical received indirectly from Gateway "constitutes or is derived, directly or indirectly, from gross proceeds traceable" to Young's offenses. As the Sixth Circuit has explained, the forfeiture statute here "asks only whether the defendant obtained the money, not whether [s]he chose to reinvest it in the conspiracy's overhead costs, saved it for a rainy day, or spent it [personally]." *Bradley II*, 969 F.3d at 589 (citation omitted).

Second, we agree with our sister circuits that, based on the hypothetical that *Honeycutt* relied on, *Honeycutt*'s "bar against joint and several forfeiture for co-conspirators applies only to co-conspirators who never possessed the tainted proceeds of their crimes." *Tanner*, 942 F.3d at 67–68. But Young possessed, and even controlled, the funds from Drugs4Less that she sent to co-conspirators, as well as those funds that she directed Gateway to send to coconspirators.

Third, this reading furthers the penological goal of forfeiture. Using proceeds to further the conspiracy

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courts held *Honeycutt* applied to. For that reason, we find them instructive.

and create more proceeds benefits the organizer and controller of a conspiracy as much as (if not more than) using proceeds to buy a house, a boat, or a car. But the reading Young urges would punish only those defendants who immediately use proceeds for their own enrichment.

Finally, this bright-line rule that the text directs provides clarity to would-be defendants and courts alike. It is also more consistent with the punitive purpose of forfeiture. Drawing the line at whether the proceeds ultimately come to rest with a defendant who initially controlled them—regardless of how long the defendant may have controlled those proceeds—would encourage defendants who know the law is about to catch up with them to avoid forfeiture responsibility by simply transferring proceeds to other less responsible co-conspirators.

For all these reasons, we conclude that the forfeiture judgment holding Young responsible for the proceeds she received in her accounts and then directed to co-conspirators did not violate *Honeycutt*.[8]

2. The district court properly included proceeds from private payors in the forfeiture amount.

Next, Young argues that the district court erred by including monies from private insurance payors within the forfeiture judgment. In Young's view, the district court could order forfeiture of only those

[8] That said, the government may recover the $1.5 million total only once. So to the extent that Mitchell pays any of it, that amount must be deducted from the amount that Young owes.

amounts she received from Drugs4Less and Gateway that Drugs4Less and Gateway, in turn, obtained from federal healthcare program payments—not those they received from private payors' payments. Our prior precedent forecloses Young's argument.

We have construed § 982(a)(7), the forfeiture statute at issue here, in other cases. And in particular, we have opined on the meaning of the phrase "gross proceeds traceable to the commission of the offense" in that statute. We have interpreted that term to require application of a but-for standard to determine whether "gross proceeds" are "traceable to the commission of the offense." *Gladden*, 78 F.4th at 1250 (citation omitted). This standard "means that if one thing hadn't happened another thing would not have happened." *Moss*, 34 F.4th at 1195. As we've explained, applying the but-for standard requires us "to change one thing at a time and see if the outcome changes. If it does, we have found a but-for-cause." *Id.* (quoting *Bostock v. Clayton County*, 590 U.S. 644, 656 (2020)).

Our precedent contains some examples of how that standard works in practice. We begin with *Moss*, 34 F.4th 1181. Douglas Moss was a physician who fraudulently billed Medicare and Medicaid for visits to nursing-home patients that he never made, that were medically unnecessary, or that didn't involve the complexity of the codes he billed under. *Id.* at 1184. The district court ordered Moss to forfeit the total that Medicare and Medicaid paid him for claims billed under certain billing codes. *Id.* at 1194. That total included some amount for legitimate services Moss actually provided. *Id.* But the district court declined to

reduce the total. *Id. Moss* argued that was error. *Id.* We disagreed. *Id.* at 1196.

We approvingly cited the District of Columbia Circuit's decision in *Bikundi* for the proposition that it is appropriate not to reduce the forfeiture amount for legitimate services when "the money obtained from the fraud ha[s] propped up the defendants' legitimate services." *Id.* at 1195 (citing *Bikundi*, 926 F.3d at 793). Taking our lead from *Bikundi*, we said that the but-for standard required us to ask, "[I]f Moss had not committed fraud, would he have been entitled to any proceeds for his legitimate services?" *Id.* at 1195. We answered that question with a resounding "no." *See id.* at 1195–96. As we explained, "[t]he gross proceeds from an improperly billed claim are all traceable to the improper billing, even the portion of proceeds that could have been paid for legitimate services if they had been properly billed." *Id.* at 1196.

And most recently, we applied § 982(a)(7)'s but-for standard in *Gladden*. There, John Gladden worked at a compounding pharmacy, where he and other employees dispensed medically unnecessary high-reimbursement prescriptions, among other methods, to fraudulently increase the pharmacy's revenues. 78 F.4th at 1238. Under § 982(a)(7), the district court ordered him to forfeit $157,587.33—Gladden's salary while he worked at the compounding pharmacy, minus $10,000 the pharmacy paid him before his employment with it. *Id.* at 1249. On appeal, Gladden argued that his forfeiture judgment should not have exceeded "the amount of loss the government proved the victim[s] suffered when they paid [$31,104] for"

fraudulent prescriptions attributed specifically to Gladden. *Id.*; *see also id.* at 1241.

We disagreed. *See id.* at 1250–51. Relying on the but-for standard, we explained that Gladden's salary provided the proper measure of forfeiture. That was the case, we said, "because, in the absence of the conspiracy in which Gladden participated, [the compounding pharmacy] would not have employed and compensated Gladden the way that it did." *Id.* at 1251. So, we reasoned, "Gladden's salary constitutes the gross proceeds traceable to the commission of the offense, because in the absence of Gladden's—and the other conspirators'—conduct, it is unlikely that [the compounding pharmacy] would have been able to continue operations in the manner that it did." *Id.* In other words, "[e]ven if Gladden did participate in some legitimate transactions during his time at [the compounding pharmacy], these transactions were propped up by the illegitimate transactions." *Id.*

Young and our colleague's Dissent attempt to distinguish this line of our precedent. They argue that the defendants there were convicted under a different healthcare statute, 18 U.S.C. § 1347, which covers fraud against any "health care benefit program," defined to include "private plan[s]," § 24(b). But 42 U.S.C. § 1320a-7(b), Young's statute of conviction, they point out, covers only "Federal health care programs," and its definition does not include private plans.

Under our precedent, though, that makes no difference. To be sure, § 1347 can be charged to cover fraud against private plans. But it can't be charged to cover legitimate healthcare services and conduct. In

other words, § 1347's text does not make it illegal to engage in legitimate healthcare services and conduct and to collect proceeds from it. Yet in *Moss* and *Gladden*, we said that the phrase "gross proceeds traceable to the commission of the offense," from § 982(a)(7), reached the proceeds of legitimate healthcare services and conduct when they were found to be "traceable to the commission of the offense" because they wouldn't have been obtained but for the offense conduct.

So *Moss* and *Gladden* establish that the same forfeiture statute and text at issue in this case can reach proceeds from legitimate services and conduct, even though § 1347 doesn't criminalize those proceeds and conduct, as long as they are traceable to the offense conduct.

And if legitimate conduct and proceeds that don't independently violate § 1347 can be reached under § 982(a)(7)'s "gross proceeds traceable to the commission of the offense" language, then conduct and proceeds that don't independently violate § 1320a-7(b)—including kickbacks for claims to private payors—can also be reached under § 982(a)(7) if the defendant wouldn't have obtained those kickbacks but for her offense under § 1320a-7(b). After all, § 982(a)(7)'s statutory phrase "gross proceeds traceable to the commission of the offense" applies with equal force, whether the forfeiture involves proceeds the defendant obtained through violations of § 1347 or § 1320a-7(b).

So Young's and the Dissent's argument that § 1320a-7(b) doesn't itself cover payments from private payors is really an argument with our

precedent's interpretation and application of § 982(a)(7)'s phrase "gross proceeds traceable to the commission of the offense." But because of our prior-precedent rule, *see United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008), we are not free to reinterpret that phrase from § 982(a)(7).

We must then consider whether Young would have acquired the funds in question but for her healthcare offenses. We turn to the district court's factual findings to answer that question. Here, the district court found that "the driving force" of the payments "was the government portion of it, not the private pay[o]r portion of it," and that the government kickbacks were "part and parcel of" the entire sum. Forfeiture Hr'g 30:16–19, 32:21–33:2, ECF No. 235.

Young does not assert that the district court clearly erred in making these findings. Nor has she suggested any reason why she would have received the funds from private payors but for the healthcare offense. Rather, she relies on her argument that the but-for standard does not apply to § 1320a-7(b) cases. But as we've explained, she's mistaken about that. So we agree with the district court that the forfeiture judgment properly includes all monies Young obtained from Drugs4Less and Gateway from all payors—whether federal or private.

3. Young abandoned any Eighth Amendment claim.

Finally, Young summarily challenges the forfeiture order on the grounds that it exceeded the forfeiture liability authorized by 18 U.S.C. § 982(a)(7) and was therefore an excessive fine under the Eighth

Amendment. She included no supporting arguments or authority and did not respond to the government's argument in her reply brief. So she has abandoned this issue. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681–82 (11th Cir. 2014).

IV. CONCLUSION

For the foregoing reasons, we affirm Young's conviction and the forfeiture judgment against her. We vacate the restitution order and remand for further proceedings on that issue consistent with this opinion.

AFFIRMED IN PART; VACATED AND REMANDED IN PART.

JORDAN, Circuit Judge, Concurring in Part and Dissenting in Part:

I join all of the court's opinion except for Part III.C.2, which holds that the district court properly ordered Ms. Young to forfeit proceeds obtained from private health insurers through the payment of kickbacks. In my view, those payments were not proceeds derived from the commission of a federal health care offense and as result they were not subject to forfeiture under 18 U.S.C. § 982(a)(7). It will take some pages, and a somewhat laborious trek through federal statutory definitions and cross-references, to explain my position. So please bear with me.

I

Ms. Young was convicted of conspiring to pay and receive healthcare kickbacks in connection with the Federal Employees' Compensation Act program, in violation of 18 U.S.C. § 371 and 42 U.S.C. §§ 1320a-7b(b)(1)(A) & 1320a-7b(b)(2)(A), and of paying healthcare kickbacks in connection with the FECA program, in violation of 42 U.S.C. § 1320a-7(b)(2)(A). The kickback statute at issue, § 1320a-7b, is entitled "Criminal penalties for acts involving Federal health care programs." The subsection that Ms. Young conspired to violate, and actually violated, makes it illegal for someone to "knowingly and willfully offer[ ] or pay[ ] any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service *for which payment may be made in*

whole or in part under a Federal health care program[.]" § 1320a-7b(b)(2)(A) (emphasis added).

A "Federal health care program" is defined as "(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under chapter 89 of Title 5); or (2) any State health care program, as defined in section 1320a-7(h) of this title." § 1320a-7b(f). A "State health care program," in turn, is defined as "(1) a State plan approved under subchapter XIX[;] (2) any program receiving funds under subchapter V or from an allotment to a State under such subchapter[;] (3) any program receiving funds under division A of subchapter XX or from an allotment to a State under such division[;] or (4) a State child health plan approved under subchapter XXI." § 1320a-7(h).

II

The applicable forfeiture statute, 18 U.S.C. § 982(a)(7), provides that "[t]he court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from the gross proceeds traceable to the commission of the offense." A "Federal health care offense" includes a violation of, or a criminal conspiracy to violate, 42 U.S.C. § 1320a-7b. *See* 18 U.S.C. § 24(a)(1).

The phrase "gross proceeds" in § 982(a)(7) is qualified by the phrase "traceable to the commission of the offense." The offense here, as incorporated

through § 24(a)(1), is a violation of, or a conspiracy to violate, § 1320a-7b. So the gross proceeds that are subject to forfeiture under § 982(a)(7) must be traceable to the violation of (or the conspiracy to violate) § 1320a-7(b).[1]

As we explained in *United States v. Elbeblawy*, 899 F.3d 925, 941 (11th Cir. 2018), § 982(a)(7) "reach[es] only property traceable to the commission" of a covered offense. Under § 982(a)(7), therefore, the government "has the burden to show that the [funds from the private health insurers] were [1] funds directly or indirectly derived from gross proceeds of [Ms. Young's healthcare offenses]; and [2] that the funds were traceable to [those] healthcare offense[s]." *United States v. Ayika*, 837 F.3d 460, 471 (5th Cir. 2016).

Paying kickbacks for the referral of medical services paid by private health insurers may be socially undesirable behavior, and may even transgress applicable state law, but such conduct does not violate § 1320a-7(b), the statute underlying Ms. Young's substantive and conspiracy convictions. The reason is, of course, that private health insurers do not constitute a "Federal health care program" within the meaning of § 1320a-7b(f) or a "State health care program" within the meaning of § 1320a-7(h). *See Shah*, 95 F.4th at 388 (explaining, in a federal

[1] I recognize that in certain circumstances private health insurers can be victims in a federal kickback scheme for purposes of restitution under the Mandatory Victims Restitution Act, 18 U.S.C. § 3663A(a)(2), (c)(1). *See United States v. Shah*, 95 F.4th 328, 388–89 (5th Cir. 2024). But here we are dealing with forfeiture under § 982(a)(7), and not restitution under the MVRA.

kickback case, that "it was the presence of federal insureds that granted federal jurisdiction in this case and was necessary for conviction"). *See also* Trenton Brown, *Health Care Referrals Out of the Shadows: Recognizing the Looming Threat of the Texas Patient Solicitation Act and Other Illegal Remuneration Statutes*, 49 St. Mary's L.J. 749, 754 (2018) ("Generally, the [federal] Anti-Kickback Statute is implicated when remunerations are solicited, offered, or exchanged for referrals for services or items for which payment may be made, in whole or in part, under a Federal health care program (e.g., Medicare, Medicaid, TriCare)."); Kim C. Stanger, Health Law Handbook No. 6 at § 1.4 (Aug. 2021) (noting that § 1320a-7b is "not available [for use by prosecutors] to the extent the arrangements induced referrals for private pay business").[2]

What is the upshot of all of this? Simple—if paying kickbacks to private health insurers does not violate § 1320a-7(b), then any proceeds that Ms. Young received as a result of such kickbacks are not "gross proceeds traceable to the commission of the

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[2] A relatively new federal criminal statute, 18 U.S.C. § 220(a), prohibits kickbacks with respect to certain services covered by a "health care benefit program." For purposes of § 220(a), a "health care benefit program" is defined in 18 U.S.C. § 24(b). *See* § 220(e)(3). Because § 24(b)'s definition includes "any public or private plan or contract," § 220(a) is in some ways "broader than [§ 1320a-7b] in that it extends to items or services payable by private payors as well as federal programs." Stanger, Health Law Handbook No. 6 at § 1.3.5. But Ms. Young was not charged with violating § 220(a), so it is not the statute underlying her convictions for purposes of § 982(a)(7).

offense" for purposes of § 982(a)(7). Those proceeds, therefore, are not subject to forfeiture.

III

The court holds that Ms. Young must forfeit proceeds obtained from private health insurers due to a trio of Eleventh Circuit cases that apply a "but for" standard under § 982(a)(7). *See United States v. Hoffman-Vaile*, 568 F.3d 1335, 1344 (11th Cir. 2009) (ordering forfeiture of private payor proceeds "because, *but for* [the defendant's] Medicare fraud, she would not have been entitled to collect . . . from companies and patients") (emphasis in original); *United States v. Moss*, 34 F.4th 1176, 1195 (11th Cir. 2022) (ordering forfeiture of proceeds, including for potentially legitimate services, that the defendant would not have earned "but for his Medicare fraud"); *United States v. Gladden*, 78 F.4th 1232, 1251 (11th Cir. 2023) (ordering forfeiture of the defendant's salary because the company would not have generated revenue "but for [its] long-running healthcare fraud conspiracy"). As I try to explain below, I do not think these cases control the analysis or outcome here. Whatever the general validity or propriety of the "but for" standard in other contexts, I do not believe that it should be extended to a case like this one.

According to the court, any textual differences between the statute underlying the convictions in *Hoffman-Vaile*, *Moss*, and *Gladden* and the statute underlying Ms. Young's convictions are inconsequential. I respectfully disagree. The defendants in each of those "but for" cases were convicted in whole or in part of committing health care fraud in violation of 18 U.S.C. § 1347. They were not

convicted of paying or receiving kickbacks in violation of § 1320a-7b. *See Hoffman-Vaile*, 568 F.3d at 1339; *Moss*, 34 F.4th at 1184; *Gladden*, 78 F.4th at 1240. Critically, § 1347 encompasses fraud against "any health care benefit program," a term which "means any public *or private* plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual[.]" 18 U.S.C. § 24(b) (emphasis added). Consequently, any proceeds derived from health care fraud proscribed by §1347—including those proceeds obtained from private health plans—are subject to forfeiture under § 982(a)(7). In contrast, the relevant statute of conviction here, § 1320a-7b, does not prohibit kickbacks for the referral of services paid by private health insurers.

Because § 982(a)(7) targets the "gross proceeds traceable to the commission of the offense," the language of the underlying statute of conviction matters in determining what is forfeitable. In my view it is inappropriate to apply a forfeiture standard developed in cases involving health care fraud under § 1347—which reaches fraud committed against private health plans—to kickback cases under § 1320a-7b—which does not reach kickbacks involving services paid by private health insurers—without a compelling reason to do so. From my perspective, there is no such reason here. We "are not obligated to extend [prior decisions] to different situations." *Anders v. Hometown Mortg. Servs., Inc.*, 346 F.3d 1024, 1031 (11th Cir. 2003). Indeed, "stare decisis doesn't apply to statutory interpretation unless the statute being interpreted is the same one that was interpreted in the earlier case." Brian A. Garner et al., The Law of Judicial Precedent 343 (2016). We should not apply

§ 982(a)(7) in a way that makes the underlying statute of conviction completely irrelevant.

IV

I would set aside the forfeiture order insofar as it requires Ms. Young to forfeit proceeds obtained from private health insurers. With respect, I dissent from the court's contrary disposition on that score.

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division

Case No. 0:19-CR-60157-RAR(1)
USM Number: 72486-019

UNITED STATES OF AMERICA,

v.

ELIZABETH PETERS YOUNG.
Date of Original Judgment: 8/4/2020

Filed September 4, 2024
Document No. 274

Counsel for Defendant: Andrew S. Feldman
Counsel for United States:
David Turken, Emily Rose Stone

SECOND AMENDED JUDGMENT IN A CRIMINAL CASE[1]

AMENDMENT REASON(S):
Modification of Restitution Order (18 U.S.C. § 3664)

The Defendant was found guilty on Counts 1 and 8-11 of the indictment.

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[1] *See* Government's Notice Regarding Restitution, [ECF No. 273].

The Defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 371	Conspiracy to pay and receive health care kickbacks	12/01/2018	1
42 U.S.C. § 1320a-7b(b)(2)(A)	Payment of kickbacks in connection with a federal health care program	05/04/2016	8-11

The Defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The Defendant has been found not guilty on count(s) 2 through 4

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

September 3, 2024
Date of Imposition of Judgment

[*handwritten signature*]
Signature of Judge

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

September 3, 2024
Date

IMPRISONMENT

The Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 57 months. This sentence consists of terms of 57 months as to Counts 1, 8, 9, 10, and 11, to be served concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:

- Designation in or near to FPD Greenville — per Order at [ECF No. 232].
- Placement in the Residential Drug Abuse Treatment Program (i.e. 500-hour drug treatment program) at a designated Bureau of Prisons institution.

RETURN

I have executed this judgment as follows:

_____

_____

[* * * blank lines omitted]

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____

UNITED STATES MARSHAL

_____

DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **three (3) years**. This term consists of three years as to each of Counts 1, 8, 9, 10, and 11, all such terms to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)

4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (*check if applicable*)
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)

6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)

7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the

change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.flsp.uscourts.gov.

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

Association Restriction - The Defendant is prohibited from associating with co-conspirators, Desiree Mitchell and Vernon Tim Mitchell while on supervised release.

Financial Disclosure Requirement - The Defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Health Care Business Restriction - The Defendant shall not own, directly or indirectly, or be employed, directly or indirectly, in any health care business or service, which submits claims to any private or government insurance company, without the Court's approval.

Mental Health Treatment - The Defendant shall participate in an approved inpatient/outpatient mental health treatment program. The Defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Permissible Search - The Defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Substance Abuse Treatment - The Defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The Defendant will contribute to the costs of services

rendered (co-payment) based on ability to pay or availability of third party payment.

Unpaid Restitution, Fines, or Special Assessments - If the Defendant has any unpaid amount of restitution, fines, or special assessments, the Defendant shall notify the probation officer of any material change in the Defendant's economic circumstances that might affect the Defendant's ability to pay.

CRIMINAL MONETARY PENALTIES

	Assessment	Restitution	Fine
Totals	$500.00	$.00	$.00
[*table continued below*]			
	AVAA Assessment*	JVTA Assessment**	
Totals			

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. § 2259.

** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. § 3014.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payments of $500.00 due immediately.

It is ordered that the Defendant shall pay to the United States a special assessment of $500.00 for Counts 1, 8, 9, 10, and 11, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
The Defendant's right, title and interest to the property identified in the preliminary

order of forfeiture dated November 15, 2020 [ECF No. 233], which has been entered by the Court and is incorporated by reference herein, is hereby forfeited.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division

Case No. 0:19-CR-60157-RAR-1
USM Number: 72486-019

UNITED STATES OF AMERICA,

v.

ELIZABETH PETERS YOUNG.

Filed November 16, 2020
Document No. 256

Counsel for Defendant:
Andrew S. Feldman, Marissel Descalzo
Counsel for United States:
Anne McNamara, David Turken, Adrienne Rosen
Court Reporter: Gizella Baan-Proulx

AMENDED JUDGMENT IN A CRIMINAL CASE

Date of Original Judgment: 8/4/2020
(or Date of Last Amended Judgment)

AMENDMENT REASON(S):
Modification of Restitution Order (18 U.S.C. § 3664)

The Defendant was found guilty on Counts 1 and 8-11 of the indictment.

The Defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 371	Conspiracy to pay and receive health care kickbacks	12/01/2018	1
42 U.S.C. § 1320a-7b(b)(2)(A)	Payment of kickbacks in connection with a federal health care program	05/04/2016	8-11

The Defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The Defendant has been found not guilty on Counts 2 through 4.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Date of Imposition of Sentence: 8/4/2020

[*handwritten signature*]
RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Date: November 16, 2020

IMPRISONMENT

The Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 57 months. This sentence consists of terms of 57 months as to Counts 1, 8, 9, 10, and 11, to be served concurrently.

The Court makes the following recommendations to the Bureau of Prisons:

- Designation in or near to FPD Greenville — per Order at [ECF No. 232].
- Placement in the Residential Drug Abuse Treatment Program (i.e. 500-hour drug treatment program) at a designated Bureau of Prisons institution.

The Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons and/or the U.S. Marshal for this District on or before 12:00 p.m. on 12/1/2020 (extended per Order at [ECF No. 243].

RETURN

I have executed this judgment as follows:

_____

_____

[* * * blank lines omitted]

Defendant delivered on _____
to _____ at _____,
with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

_____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the Defendant shall be on supervised release for a term of **three (3) years**. This term consists of three years as to each of Counts 1, 8, 9, 10, and 11, all such terms to run concurrently.

MANDATORY CONDITIONS

The Defendant must report to the probation office in the district to which the Defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The Defendant shall not commit another federal, state or local crime.

The Defendant shall not unlawfully possess a controlled substance. The Defendant shall refrain from any unlawful use of a controlled substance. The Defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court.

The Defendant shall cooperate in the collection of DNA as directed by the probation officer.

The Defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the Defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The Defendant must comply with the standard conditions that have been adopted by this Court as

well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the Court about, and bring about improvements in your conduct and condition.

1. The Defendant shall not leave the judicial district without the permission of the Court or probation officer;
2. The Defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The Defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The Defendant shall support his or her dependents and meet other family responsibilities;
5. The Defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The Defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use,

distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8. The Defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9. The Defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10. The Defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11. The Defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12. The Defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and

13. As directed by the probation officer, the Defendant shall notify third parties of risks that may be occasioned by the Defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the Defendant's compliance with such notification requirement.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

Association Restriction - The Defendant is prohibited from associating with co-conspirators, Desiree Mitchell and Vernon Tim Mitchell while on supervised release.

Financial Disclosure Requirement - The Defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Health Care Business Restriction - The Defendant shall not own, directly or indirectly, or be employed, directly or indirectly, in any health care business or service, which submits claims to any private or government insurance company, without the Court's approval.

Mental Health Treatment - The Defendant shall participate in an approved inpatient/outpatient mental health treatment program. The Defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Permissible Search - The Defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Substance Abuse Treatment - The Defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The Defendant will contribute to the costs of services

rendered (co-payment) based on ability to pay or availability of third party payment.

Unpaid Restitution, Fines, or Special Assessments - If the Defendant has any unpaid amount of restitution, fines, or special assessments, the Defendant shall notify the probation officer of any material change in the Defendant's economic circumstances that might affect the Defendant's ability to pay.

CRIMINAL MONETARY PENALTIES

	Assessment	Restitution	Fine
Totals	$500.00	$1,527,160.75	$.00
[*table continued below*]			
	AVAA Assessment*	JVTA Assessment**	
Totals			

The defendant must make restitution (including community restitution) to the attached list of payees in the amount listed below.

If the Defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

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* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. § 2259.

** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. § 3014.

- Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Name of Payee	Total Loss*	Restitution Ordered
Clerk, United State Courts	$1,527,160.75	$1,527,160.75

Restitution with Imprisonment — It is further ordered that the defendant shall pay restitution in the amount of $1,527,160.75. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of $25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These

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* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. § 2259.

** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. § 3014.

- Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payments of $500.00 due immediately.

Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The Defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Defendant and Co-Defendant Names and Case Numbers (including Defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Case Number Defendant and Co-Defendant Names (Including Defendant Number)	Total Amount	Joint and Several Amount

The Preliminary Order of Forfeiture dated September 15, 2020 [ECF No. 233] is hereby incorporated into this Amended Judgment and Commitment.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and Court costs.

Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division

No. 19-CR-60157-RUIZ

UNITED STATES OF AMERICA,

v.

ELIZABETH PETERS YOUNG,

Defendant.

Filed September 16, 2020
Document No. 233

PRELIMINARY ORDER OF FORFEITURE

THIS MATTER is before the Court upon motion of the United States of America ("United States") for entry of a Preliminary Order of Forfeiture ("Motion") against Defendant ELIZABETH PETERS YOUNG ("Defendant"). The Court has carefully considered the Motion and heard argument from all parties at a forfeiture hearing held on September 8, 2020. Being otherwise fully advised in the premises, the Court finds as follows:

On June 11, 2019, a federal grand jury returned an Indictment charging the Defendant, in relevant part, with conspiracy to pay and receive health care kickbacks in violation of 18 U.S.C. § 371 (Count 1) and four counts of payment of kickbacks in connection with

a health care program, in violation of 42 U.S.C. § 1320a-7b(b)(2)(A) (Counts 8-11). [ECF No. 3]. The Indictment further alleged that upon conviction of any violation in the Indictment, Defendant shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the violation, pursuant to § 982(a)(7). *Id.* at pp. 9-10. On December 19, 2019, a trial jury returned a verdict convicting the Defendant of Counts 1 and 8 through 11. [ECF No. 122].

Evidence at trial showed that Drugs for Less ("D4L") was a pharmacy located in Pompano Beach, Florida, owned and operated by an unindicted co-conspirator. *Presentence Investigation Report* [ECF No. 162] at ¶ 8. D4L shipped topical pain cream and prescription pain patches to beneficiaries of the Federal Employees' Compensation Act ("FECA") program, administered by the United States Department of Labor, Office of Workers' Compensation Programs. *Id.* at ¶¶ 6, 8. Defendant owned and operated Young Surgical, LLC, which, from in or around April 2015 through in or around September 2016, received $1,228,404.33 from D4L in exchange for the referral of prescriptions for Terocin, Lidopro, and other products. *Id.* at ¶¶ 10, 13. Defendant subsequently engaged in the same activity with Gateway Pharmacy ("Gateway"), referring prescriptions for Terocin, Lidopro, and other products that were dispensed to FECA beneficiaries. *Id.* at ¶ 27. Between on or around September 2016 and on or around December 2018, Gateway paid Defendant $298,756.42 for referrals. *Id.* at 29.

For the reasons stated by the Court at the forfeiture hearing on September 8, 2020, the sum of money that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense of conviction, and is therefore subject to forfeiture pursuant to § 982(a)(7), is $1,527,160.75.[1] This sum may be sought as a forfeiture money judgment pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure.

Accordingly, based on the foregoing, the evidence in the record, and for good cause shown, the Motion is GRANTED, and it is hereby ORDERED AND ADJUDGED as follows:

1. Pursuant to 18 U.S.C. § 982(a)(7) and Rule 32.2 of the Federal Rules of Criminal Procedure, a forfeiture money judgment in the amount of $1,527,160.75 is hereby entered against the Defendant.

2. The United States is authorized to conduct any discovery that might be necessary to identify, locate, or dispose of forfeited property, and to resolve any third-party petition, pursuant to Rule 32.2(b)(3), (c)(1)(B) of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853(m).

3. The parties agree to a stay of this order pending Defendant's appeal pursuant to Rule 32.2(d) of the Federal Rules of Criminal Procedure. This Rule

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[1] At the forfeiture hearing on September 8, 2020, the Government proffered $1,527,160.75 based on Government Exhibit 2H introduced at trial. As explained on the record, the Court accepted this figure as a reasonable estimate of the total gross proceeds.

provides for a stay "on terms appropriate to ensure that the property remains available pending appellate review." Defendant therefore agrees that during the stay she will maintain any asset valued in excess of $10,000, and not sell, hide, waste, encumber, destroy, or otherwise devalue such asset without prior approval of the United States.

4. Defendant further agrees that neither she nor anyone acting on her behalf, shall directly or indirectly transfer, sell, assign, pledge, distribute, encumber, attach or dispose of in any manner, or take, or cause to be taken, any action that would have the effect of depreciating, damaging, or in any way diminishing the value of the real property located at 2135 Lower Dowda Mill Road, Ball Ground, Georgia 30107 during the stay. She further agrees to continue mortgage payments, insurance coverage, real estate tax payments, and any other obligations on this property.

5. Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, this Order is final as to the Defendant.

6. The Court shall retain jurisdiction in this matter for the purpose of enforcing this Order, and pursuant to Rule 32.2(e)(1) of the Federal Rules of Criminal Procedure, shall amend this Order, or enter other orders as necessary, to forfeit additional specific property when identified.

DONE AND ORDERED in Fort Lauderdale, Florida, this 15th day of September, 2020.

[*handwritten signature*]
RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division

No. 19-CR-60157-RUIZ

UNITED STATES OF AMERICA,

v.

ELIZABETH PETERS YOUNG,

Defendant.

Filed August 6, 2020
Document No. 211

PRELIMINARY ORDER OF FORFEITURE

THIS MATTER is before the Court upon Motion of the United States of America for entry of a Preliminary Order of Forfeiture ("Motion") pursuant to 18 U.S.C. § 982(a)(7), Fed. R. Crim. P. 32.2(b)(2), and 21 U.S.C. § 853. The United States seeks the entry of an order of forfeiture against Defendant ELIZABETH PETERS YOUNG in a sum of money equal in value to the gross proceeds traceable to the offenses of conviction. The Court has considered the Motion, is otherwise advised in the premises, and finds as follows:

On June 11, 2019, a federal grand jury returned an Indictment charging the Defendant, in relevant part, with conspiracy to pay and receive health care kickbacks in violation of 18 U.S.C. § 371 (Count 1) and

four counts of payment of kickbacks in connection with a health care program, in violation of 42 U.S.C. § 1320a-7b(b)(2)(A) (Counts 8-11). *See* Indictment [ECF No. 3]. The Indictment further alleged that upon conviction of any violation in the Indictment, Defendant shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the violation, pursuant to § 982(a)(7). *Id.* at pp. 9-10. On December 19, 2019, a jury returned a verdict convicting the Defendant of Counts 1 and 8 through 11. See Verdict [ECF No. 134].

Accordingly, based on the foregoing, the evidence in the record, and for good cause shown, the Motion is GRANTED, and it is hereby ORDERED AND ADJUDGED as follows:

1. Pursuant to 18 U.S.C. § 982(a)(7) and Fed. R. Crim. P. 32.2, a forfeiture money judgment equal in value to the gross proceeds traceable to the offenses of conviction is hereby entered against the Defendant.

2. This Order shall be amended when the amount of money to be forfeited has been determined, as provided by Fed. R. Crim. P. 32.2(b)(1)(C)(iii).

3. The United States is authorized, pursuant to Fed. R. Crim. P. 32.2(c)(1) and 21 U.S.C. § 853(m), to conduct any discovery necessary, including depositions, to identify, locate, or dispose of property to satisfy the forfeiture judgment, or in order to expedite ancillary proceedings related to any third-party petition.

4. The United States may, at any time, move to amend this Order pursuant to Fed. R. Crim. P. 32.2(e),

so as to include other property in order to fully satisfy the forfeiture judgment in this cause.

5. Pursuant to Fed. R. Crim. P. 32.2(b)(4), this Order is final as to the Defendant.

6. The Court shall retain jurisdiction in this matter for the purpose of enforcing this Order, and pursuant to Rule 32.2(e)(1) of the Federal Rules of Criminal Procedure, shall amend this Order, or enter other orders as necessary, to forfeit additional specific property when identified.

DONE AND ORDERED in Fort Lauderdale, Florida, this 4th day of August, 2020.

[*handwritten signature*]
RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

Appendix D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 0:19-CR-60157-RAR

UNITED STATES OF AMERICA,

v.

ELIZABETH PETERS YOUNG,

Defendant.

Filed June 11, 2019
Document No. 3
Filed by Angela E. Noble
Clerk U.S. Dist. Ct. S.D. of Fla. - Miami
Magistrate Judge Seltzer
Case No. 19-60157-CR-RUIZ
18 U.S.C. § 371
42 U.S.C. § 1320a-7b(b)(1)(A)
42 U.S.C. § 1320a-7b(b)(2)(A)
18 U.S.C. § 2
18 U.S.C. § 982(a)(7)

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times material to this Indictment:

The FECA Program

1. The Federal Employees' Compensation Act ("FECA"), Title 5, United States Code, Sections 8101, et seq., was administered by the United States Department of Labor, Office of Workers' Compensation Programs ("OWCP") (hereinafter collectively referred to as the "FECA Program"). The FECA Program provided compensation benefits, including medical and health benefits, to civilian employees of the United States for disability due to personal injury sustained while in the performance of their duties, and covered all medical expenses to include prescription drugs, rehabilitation services, medical tests, physical therapy, and medical supplies and equipment.

2. Under the FECA Program, when a qualified employee suffered a work related injury, the employee submitted a claim to OWCP, which then assigned the beneficiary an OWCP claim number.

3. To obtain reimbursement for prescription drugs provided to beneficiaries in the FECA Program, a pharmacy had to submit a claim for payment to OWCP. OWCP would then process the claim and reimburse the provider in accordance with an established fee schedule.

4. The FECA Program was a "Federal health care program" as defined by Title 42, United States Code, Section 1320a-7b(f), and a "health care benefit program" as defined by Title 18, United States Code, Section 24(b).

The Defendant, Related Entities and Individuals

5. Young Surgical, LLC ("Young Surgical") was a Florida corporation located at 12 Ocean Shore Drive in Ormond Beach, Florida.

6. Defendant ELIZABETH PETERS YOUNG, a current resident of Cherokee County, Georgia, and a former resident of Volusia County, Florida, was the owner, operator, and registered agent of Young Surgical.

7. Pharmacy 1 was a Florida corporation located in Pompano Beach, Florida.

8. Pharmacy 2 was an Alabama corporation located in Birmingham, Alabama.

9. Medical Facility 1 was a Georgia corporation located in Atlanta, Georgia. Medical Facility 1 provided medical treatments to beneficiaries covered under the FECA Program.

10. Desiree Mitchell, a resident of Gwinnett County, Georgia, was employed as a surgical coordinator at Medical Facility 1.

11. Gamer Medical Inc. ("Gamer Medical") was a Georgia corporation located in Lawrenceville, Georgia.

12. Vernon Tim Mitchell, a resident of Gwinnett County, Georgia, was the owner and registered agent of Gamer Medical.

13. Individual 1, a resident of Broward County, Florida was the owner of Pharmacy 1.

COUNT 1
Conspiracy to Pay and
Receive Health Care Kickbacks
(18 U.S.C. § 371)

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around April 2015, through in or around December 2018, in Broward County, in the Southern District of Florida, and elsewhere, the defendant,

ELIZABETH PETERS YOUNG,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with Desiree Mitchell, Vernon Tim Mitchell, Individual 1, and others known and unknown to the Grand Jury, to commit offenses against the United States, that is:

a. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A) by knowingly and willfully soliciting and receiving any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a Federal health care program, that is, the FECA Program; and

b. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A) by knowingly and willfully offering and paying any remuneration, including kickbacks

and bribes, overtly and covertly, in cash and in kind, to any person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a Federal health care program, that is, the FECA Program.

Purpose of the Conspiracy

3. It was a purpose of the conspiracy for the defendant and her co-conspirators to unlawfully enrich themselves by, among other things: (a) soliciting, receiving, offering, and paying kickbacks in return for referring FECA beneficiaries' prescriptions to Pharmacy 1 and Pharmacy 2; (b) submitting and causing the submission of claims to OWCP for prescription medications that Pharmacy 1 and Pharmacy 2 purportedly provided to FECA beneficiaries; (c) causing the FECA Program to make payments to Pharmacy 1 and Pharmacy 2 as a result of such claims; (d) concealing the payment and receipt of the kickbacks; and (e) diverting the proceeds for the defendant and her coconspirators' personal use, the use and benefit of others, and to further the conspiracy.

Manner and Means of the Conspiracy

The manner and means by which the defendant and her co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

4. ELIZABETH PETERS YOUNG solicited and received kickbacks from Pharmacy 1 and Pharmacy 2 in return for causing the referral to these pharmacies

of prescriptions for FECA beneficiaries who were treated at certain medical facilities, including Medical Facility 1.

5. ELIZABETH PETERS YOUNG offered and paid kickbacks to Desiree Mitchell, Vernon Tim Mitchell, and others, in return for the referral of prescriptions for FECA beneficiaries who were treated at certain medical facilities, including Medical Facility 1.

6. ELIZABETH PETERS YOUNG, Desiree Mitchell, Vernon Tim Mitchell, Individual 1, and others, used the referred prescriptions to submit and cause the submission of claims by Pharmacy 1 and Pharmacy 2 to the FECA Program for prescription drugs purportedly provided to FECA beneficiaries by Pharmacy 1 and Pharmacy 2.

7. As a result of these claims, the FECA Program made payments to Pharmacy 1 and Pharmacy 2.

Overt Acts

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one of the co-conspirators committed and caused to be committed, in the Southern District of Florida and elsewhere, at least one of the following overt acts, among others:

1. On or about April 2, 2015, ELIZABETH PETERS YOUNG sent an email to Individual 1 in which she stated "We are 100% on the same wavelength and that's ONE COMMA ZERO ZERO ZERO COMMA ZERO ZERO ZERO!!!"

2. On or about April 6, 2015, ELIZABETH PETERS YOUNG sent an email to Individual I in which she stated "I'm writing Desiree's rep a check! $3,800-ish!! They're very excited and motivated. Our day is coming..!$"

3. On or about April 8, 2015, ELIZABETH PETERS YOUNG sent an email to Individual 1 in which she stated "Desiree wanted me to remind you to remind everybody on your end to ONLY talk to her at the office."

4. On or about September 1, 2015, ELIZABETH PETERS YOUNG solicited and received a kickback, via a check written from Pharmacy 1 's Wells Fargo bank account ending in 6141 to Young Surgical, in the approximate amount of $65,125.00, for the referral of prescriptions for FECA beneficiaries to Pharmacy 1.

5. On or about September 4, 2015, ELIZABETH PETERS YOUNG paid a kickback, via a check written from Young Surgical's SunTrust bank account ending in 6545 to Vernon Tim Mitchell, in the approximate amount of $9,451.00, for Vernon Tim Mitchell and Desiree Mitchell's referral of prescriptions for FECA beneficiaries to Pharmacy 1.

6. On or about September 30, 2015, ELIZABETH PETERS YOUNG paid a kickback, via a check written from Young Surgical's SunTrust bank account ending in 6545 to Vernon Tim Mitchell, in the approximate amount of $9,451.00, for Vernon Tim Mitchell and Desiree Mitchell's referral of prescriptions for FECA beneficiaries to Pharmacy 1.

7. On or about October 8, 2015, ELIZABETH PETERS YOUNG sent an email to Desiree Mitchell

with the subject line "Here's some great examples" that indicated "the trouble someone could get into," and attached a link to a list of government enforcement actions involving the payment of kickbacks.

8. On or about November 3, 2015, ELIZABETH PETERS YOUNG solicited and received a kickback, via a check written from Pharmacy 1's Wells Fargo bank account ending in 6141 to Young Surgical, in the approximate amount of $112,200.00, for the referral of prescriptions for FECA beneficiaries to Pharmacy 1.

9. On or about November 4, 2015, ELIZABETH PETERS YOUNG emailed Individual 1 discussing the status of several FECA Program claims, during which YOUNG instructed Individual 1 to abandon the claims of a particular FECA beneficiary because "Desiree said to let her go. She doesn't want to start raising red flags."

10. On or about November 6, 2015, ELIZABETH PETERS YOUNG paid a kickback, via three checks written from Young Surgical's SunTrust bank account ending in 6545 to Gamer Medical, in the total approximate amount of $24,785.00, for Vernon Tim Mitchell and Desiree Mitchell's referral of prescriptions for FECA beneficiaries to Pharmacy 1.

11. On or about April 20, 2016, ELIZABETH PETERS YOUNG sent an email to Vernon Tim Mitchell in which she asked him to make sure that certain patients received refill prescriptions.

12. On or about May 3, 2016, ELIZABETH PETERS YOUNG solicited and received a kickback, via a check written from Pharmacy 1's Wells Fargo

bank account ending in 6141 to Young Surgical, in the approximate amount of $117,525.60, for the referral of prescriptions for FECA beneficiaries to Pharmacy 1.

13. On or about May 4, 2016, ELIZABETH PETERS YOUNG paid a kickback, via a check written from Young Surgical's SunTrust bank account ending in 6545 to Gamer Medical, in the approximate amount of $31,125.91, for Vernon Tim Mitchell and Desiree Mitchell's referral of prescriptions for FECA beneficiaries to Pharmacy 1.

14. On or about August 1, 2016, ELIZABETH PETERS YOUNG sent an email to Vernon Tim Mitchell in which she informed Mitchell that "FYI-because of all the fed investigations into illegal practices at compound pharmacies" he might not want to tell other people he was involved as a sales representative for "patches and creams."

15. On or about August 22, 2016, Vernon Tim Mitchell sent an email to ELIZABETH PETERS YOUNG in which he asked about the legality of the pharmacy referral arrangement, to which YOUNG replied by stating, in part, "technically you are getting a kickback and so am I."

16. On or about December 23, 2016, ELIZABETH PETERS YOUNG solicited and received a kickback, via a check written from Pharmacy 2's Iberia bank account ending in 9642 to YOUNG, in the approximate amount of $9,537.36 for the referral of prescriptions for FECA beneficiaries to Pharmacy 2.

17. On or about March 15, 2018, ELIZABETH PETERS YOUNG solicited and received a kickback from Pharmacy 2, via direct deposit into YOUNG's

SunTrust bank account ending in 3770, in the approximate amount of $11,011.63 for the referral of prescriptions for FECA beneficiaries to Pharmacy 2.

18. On or about September 14, 2018, ELIZABETH PETERS YOUNG solicited and received a kickback from Pharmacy 2, via direct deposit into YOUNG's SunTrust bank account ending in 3770, in the approximate amount of $12,242.02 for the referral of prescriptions for FECA beneficiaries to Pharmacy 2.

All in violation of Title 18, United States Code, Section 371.

COUNTS 2-7
Receipt of Kickbacks in Connection
with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(1)(A))

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein.

2. On or about the dates enumerated below as to each count, in Broward County, in the Southern District of Florida, and elsewhere, the defendant,

ELIZABETH PETERS YOUNG,

did knowingly and willfully solicit and receive any remuneration, that is, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a Federal health care program, that is, the FECA Program, as set forth below:

Count	Approximate Date of Kickback	Approximate Amount of Kickback
2	September 1, 2015	$65,125.00
3	November 3, 2015	$112,200.00
4	May 3, 2016	$117,525.60
5	December 23, 2016	$9,537.36
6	March 15, 2018	$11,011.63
7	September 14, 2018	$12,242.02

In violation of Title 42, United States Code, Section 1320a-7b(b)(1)(A) and Title 18, United States Code, Section 2.

COUNTS 8-11
Payment of Kickbacks in Connection with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(2)(A))

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein.

2. On or about the dates enumerated below as to each count, in Broward County, in the Southern District of Florida, and elsewhere, the defendant,

ELIZABETH PETERS YOUNG,

did knowingly and willfully offer and pay any remuneration, including kickbacks and bribes, overtly and covertly, in cash and in kind, to any person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made

in whole and in part under a Federal health care program, that is, the FECA Program, as set forth below:

Count	Approximate Date of Kickback	Approximate Amount of Kickback
8	September 4, 2015	$9,451.00
9	September 30, 2015	$9,451.00
10	November 6, 2025	$24,785.00
11	May 4, 2016	$31,125.91

In violation of Title 42, United States Code, Section 1320a-7b(b)(2)(A) and Title 18, United States Code, Section 2.

FORFEITURE
(18 U.S.C. § 982(a)(7))

1. The allegations of this Indictment are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of certain property in which the defendant, ELIZABETH PETERS YOUNG, has an interest.

2. Upon conviction of any violation alleged in this Indictment, the defendant shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violations. This includes, but is not limited to, approximately $1,542,280.84, which the United States may seek as a forfeiture money judgment.

3. If any of the property described above, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States shall be entitled to forfeiture of substitute property under the provisions of Title 21, United States Code, Section 853(p), including, but not limited to, the real property located at 2135 Lower Dowda Mill Road, Ball Ground, Georgia 30107.

All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures set forth in Title 21, United States Code, Section 853, as made applicable by Title 18, United States Code, Section 982(b)(1).

A TRUE [*typing obscured*]

_____
FOREPERSON

[*handwritten signature*]_____
ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

[*handwritten signature*]_____
ANNE P. MCNAMARA
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 0:19-CR-60157-RAR

UNITED STATES OF AMERICA,

v.

ELIZABETH PETERS YOUNG,

Defendant.

Court Division: (Select One)

__ Miami __ Key West

✓ FTL __ WPB __ FTP

Case No. _____

CERTIFICATE OF TRIAL ATTORNEY*

New defendant(s)	Yes ___	No ___
Number of new defendants	___	
Total Number of counts	___	

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/ Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the

---

* Penalty Sheet(s) attached

Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
   List language and/or dialect _____

4. This case will take 4-5 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

	(Check only one)		(Check only one)	
I	0 to 5 days	✓	Petty	___
II	6 to 10 days	___	Minor	___
III	11 to 20 days	___	Midsem.	___
IV	21 to 60 days	___	Felony	✓
V	61 days and over	___		

6. Has this case previously been filed in this District Court? (Yes or No) No

If yes: Judge	Case No.
(Attach copy of dispositive order)	(Yes or No) No
If yes: Magistrate Case No.	
Related miscellaneous numbers:	19-CR-60100-WJZ
Defendant(s) in federal custody as of	
Defendant(s) in state custody as of	
Rule 20 from the District of	
Is this a potential death penalty case (Yes or No)	No

7. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to August 9, 2013 (Mag. Judge Alicia O. Valle)? Yes __ No ✓

8. Does this case originate from a matter pending in the Northern Region U.S. Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard)? Yes __ No ✓

[*handwritten signature*]

Anne P. McNamara

Assistant United States Attorney

Court ID A5501847

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: ELIZABETH PETERS YOUNG

Case No: _____

Count#: 1

Conspiracy to Pay and Receive Health Care Kickbacks

Title 18, United States Code, Section 371

* Max. Penalty: Five (5) Years' Imprisonment

Counts #: 2-7

Receipt of Kickbacks in Connection with a Federal Health Care Program

Title 42, United States Code, Section 1320a-7b(b)(1)(A)

*Max. Penalty: Ten (10) Years' Imprisonment as to Each Count

Counts #: 8-11

Payment of Kickbacks in Connection with a Federal Health Care Program

Title 42, United States Code, Section 1320a-7b(b)(2)(A)

*Max. Penalty: Ten (10) Years' Imprisonment as to Each Count

*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.

Appendix E

Relevant Statutes

18 U.S.C. § 371 Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S.C. § 982 Criminal forfeiture

(a)(1) The court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.

(2) The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate--

(A) section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of this title, affecting a financial institution, or

(B) section 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 555, 842, 844, 1028, 1029, or 1030 of this title,

shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.

(3) The court, in imposing a sentence on a person convicted of an offense under--

(A) section 666(a)(1) (relating to Federal program fraud);

(B) section 1001 (relating to fraud and false statements);

(C) section 1031 (relating to major fraud against the United States);

(D) section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of insured financial institution);

(E) section 1341 (relating to mail fraud); or

(F) section 1343 (relating to wire fraud),

involving the sale of assets acquired or held by the the Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency, or the National Credit Union Administration, as conservator or liquidating agent for a financial institution, shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, as a result of such violation.

(4) With respect to an offense listed in subsection (a)(3) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations, or promises, the gross receipts of such an offense shall include any property, real or personal, tangible or intangible, which is obtained, directly or indirectly, as a result of such offense.

(5) The court, in imposing sentence on a person convicted of a violation or conspiracy to violate--

(A) section 511 (altering or removing motor vehicle identification numbers);

(B) section 553 (importing or exporting stolen motor vehicles);

(C) section 2119 (armed robbery of automobiles);

(D) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(E) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce);

shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, as a result of such violation.

(6)(A) The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or section 555, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title, or a violation of, or conspiracy to violate, section 1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States, regardless of any provision of State law--

(i) any conveyance, including any vessel, vehicle, or aircraft used in the commission of the offense of which the person is convicted; and

(ii) any property real or personal—

(I) that constitutes, or is derived from or is traceable to the proceeds obtained

directly or indirectly from the commission of the offense of which the person is convicted; or

(II) that is used to facilitate, or is intended to be used to facilitate, the commission of the offense of which the person is convicted.

(B) The court, in imposing sentence on a person described in subparagraph (A), shall order that the person forfeit to the United States all property described in that subparagraph.

(7) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

(8) The court, in sentencing a defendant convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344, or of a conspiracy to commit such an offense, if the offense involves telemarketing (as that term is defined in section 2325), shall order that the defendant forfeit to the United States any real or personal property--

(A) used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and

(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

(b)(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).

(2) The substitution of assets provisions of subsection 413(p) shall not be used to order a defendant to forfeit assets in place of the actual property laundered where such defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense unless the defendant, in committing the offense or offenses giving rise to the forfeiture, conducted three or more separate transactions involving a total of $100,000 or more in any twelve month period.

21 U.S.C. § 853 Criminal forfeitures

(a) Property subject to criminal forfeiture

Any person convicted of a violation of this subchapter or subchapter II punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law--

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Meaning of term "property"

Property subject to criminal forfeiture under this section includes--

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) Third party transfers

All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) Rebuttable presumption

There is a rebuttable presumption at trial that any property of a person convicted of a felony under this subchapter or subchapter II is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that--

(1) such property was acquired by such person during the period of the violation of this subchapter or subchapter II or within a reasonable time after such period; and

(2) there was no likely source for such property other than the violation of this subchapter or subchapter II.

(e) Protective orders

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section--

(A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that--

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(4) Order to repatriate and deposit

(A) In general

Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

(B) Failure to comply

Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.

(f) Warrant of seizure

The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (e) may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(g) Execution

Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

(h) Disposition of property

Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the

conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(i) Authority of the Attorney General

With respect to property ordered forfeited under this section, the Attorney General is authorized to--

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this subchapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, in accordance with the provisions of section 881(e) of this title, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(j) Applicability of civil forfeiture provisions

Except to the extent that they are inconsistent with the provisions of this section, the provisions of section

881(d) of this title shall apply to a criminal forfeiture under this section.

(k) Bar on intervention

Except as provided in subsection (n), no party claiming an interest in property subject to forfeiture under this section may--

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(*l*) Jurisdiction to enter orders

The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(m) Depositions

In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the

same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(n) Third party interests

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition.

The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that--

> (A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest 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 under this section; or
>
> (B) the petitioner 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 under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(o) Construction

The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(p) Forfeiture of substitute property

(1) In general

Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant--

(A) cannot be located upon the exercise of due diligence;

(B) has been transferred or sold to, or deposited with, a third party;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

(E) has been commingled with other property which cannot be divided without difficulty.

(2) Substitute property

In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the

forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

(3) Return of property to jurisdiction

In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.

(q) Restitution for cleanup of clandestine laboratory sites

The court, when sentencing a defendant convicted of an offense under this subchapter or subchapter II involving the manufacture, the possession, or the possession with intent to distribute, of amphetamine or methamphetamine, shall--

(1) order restitution as provided in sections 3612 and 3664 of Title 18;

(2) order the defendant to reimburse the United States, the State or local government concerned, or both the United States and the State or local government concerned for the costs incurred by the United States or the State or local government concerned, as the case may be, for the cleanup associated with the manufacture of amphetamine or methamphetamine by the defendant, or on premises or in property that the defendant owns, resides, or does business in; and

(3) order restitution to any person injured as a result of the offense as provided in section 3663A of Title 18.

42 U.S.C. § 1320a-7b Criminal penalties for acts involving Federal health care programs

(a) Making or causing to be made false statements or representations

Whoever--

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a Federal health care program (as defined in subsection (f)),

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized,

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

(5) presents or causes to be presented a claim for a physician's service for which payment may be made under a Federal health care program and knows that the individual who furnished the service was not licensed as a physician, or

(6) for a fee knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under a State plan under subchapter XIX, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1396p(c) of this title,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under the program, be guilty of a felony and upon conviction thereof fined not more than $100,000 or imprisoned for not more than 10 years or both, or (ii) in the case of such a statement, representation, concealment, failure, conversion, or provision of counsel or assistance by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $20,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a Federal health care program is convicted of an offense under the preceding provisions of this subsection, the administrator of such program may at its option (notwithstanding any other provision of such program) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the

imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.

(b) Illegal remunerations

(1) Whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind--

> (A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or
>
> (B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $100,000 or imprisoned for not more than 10 years, or both.

(2) Whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person--

> (A) to refer an individual to a person for the furnishing or arranging for the furnishing of any

item or service for which payment may be made in whole or in part under a Federal health care program, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $100,000 or imprisoned for not more than 10 years, or both.

(3) Paragraphs (1) and (2) shall not apply to--

(A) a discount or other reduction in price obtained by a provider of services or other entity under a Federal health care program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under a Federal health care program;

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services;

(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under a Federal health care program if--

(i) the person has a written contract, with each such individual or entity, which specifies the amount to be paid the person, which

amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

(ii) in the case of an entity that is a provider of services (as defined in section 1395x(u) of this title), the person discloses (in such form and manner as the Secretary requires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity;

(D) a waiver of any coinsurance under part B of subchapter XVIII by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act;

(E) any payment practice specified by the Secretary in regulations promulgated pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 or in regulations under section 1395w-104(e)(6) of this title;

(F) any remuneration between an organization and an individual or entity providing items or services, or a combination thereof, pursuant to a written agreement between the organization and the individual or entity if the organization is an eligible organization under section 1395mm of this title or if the written agreement, through a risk-sharing arrangement, places the individual or entity at substantial

financial risk for the cost or utilization of the items or services, or a combination thereof, which the individual or entity is obligated to provide;

(G) the waiver or reduction by pharmacies (including pharmacies of the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations) of any cost-sharing imposed under part D of subchapter XVIII, if the conditions described in clauses (i) through (iii) of section 1320a-7a(i)(6)(A) of this title are met with respect to the waiver or reduction (except that, in the case of such a waiver or reduction on behalf of a subsidy eligible individual (as defined in section 1395w-114(a)(3) of this title), section 1320a-7a(i)(6)(A) of this title shall be applied without regard to clauses (ii) and (iii) of that section);

(H) any remuneration between a federally qualified health center (or an entity controlled by such a health center) and an MA organization pursuant to a written agreement described in section 1395w-23(a)(4) of this title;

(I) any remuneration between a health center entity described under clause (i) or (ii) of section 1396d(l)(2)(B) of this title and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity pursuant to a contract, lease, grant, loan, or other agreement, if such agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center entity;

(J) a discount in the price of an applicable drug (as defined in paragraph (2) of section 1395w-114a(g) of this title) of a manufacturer that is furnished to an applicable beneficiary (as defined in paragraph (1) of such section) under the Medicare coverage gap discount program under section 1395w-114a of this title;

(K) an incentive payment made to a Medicare fee-for-service beneficiary by an ACO under an ACO Beneficiary Incentive Program established under subsection (m) of section 1395jjj of this title, if the payment is made in accordance with the requirements of such subsection and meets such other conditions as the Secretary may establish; and

(L) a bona fide mental health or behavioral health improvement or maintenance program, if–

(i) such program--

(I) consists of counseling, mental health services, a suicide prevention program, or a substance use disorder prevention and treatment program;

(II) is made available to a physician or other clinician for the primary purpose of preventing suicide, improving mental health and resiliency, or providing training in appropriate strategies to promote the mental health and resiliency of such physician or other clinician;

(III) is set out in a written policy, approved in advance of the operation of

the program by the governing body of the entity providing such program (and which shall be updated accordingly in advance to substantial changes to the operation of such program), that includes--

(aa) a description of the content and duration of the program;

(bb) a description of the evidence-based support for the design of the program;

(cc) the estimated cost of the program;

(dd) the personnel (including the qualifications of such personnel) implementing the program; and

(ee) the method by which such entity will evaluate the use and success of the program;

(IV) is offered by an entity described in clause (ii) with a formal medical staff to all physicians and other clinicians who practice in the geographic area served by such entity, including physicians who hold bona fide appointments to the medical staff of such entity or otherwise have clinical privileges at such entity;

(V) is offered to all such physicians and clinicians on the same terms and conditions and without regard to the volume or value of referrals or other

business generated by a physician or clinician for such entity;

(VI) is evidence-based and conducted by a qualified health professional; and

(VII) meets such other requirements the Secretary may impose by regulation as needed to protect against program or patient abuse;

(ii) such entity is--

(I) a hospital;

(II) an ambulatory surgical center;

(III) a community health center;

(IV) a rural emergency hospital;

(V) a skilled nursing facility; or

(VI) any similar entity, as determined by the Secretary; and

(iii) neither the provision of such program, nor the value of such program, are contingent upon the number or value of referrals made by a physician or other clinician to such entity or the amount or value of other business generated by such physician for the entity.

(4) Whoever without lawful authority knowingly and willfully purchases, sells or distributes, or arranges for the purchase, sale, or distribution of a beneficiary identification number or unique health identifier for a health care provider under subchapter XVIII, subchapter XIX, or subchapter XXI shall be

imprisoned for not more than 10 years or fined not more than $500,000 ($1,000,000 in the case of a corporation), or both.

(c) False statements or representations with respect to condition or operation of institutions

Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or entity in order that such institution, facility, or entity may qualify (either upon initial certification or upon recertification) as a hospital, critical access hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or other entity (including an eligible organization under section 1395mm(b) of this title) for which certification is required under subchapter XVIII or a State health care program (as defined in section 1320a-7(h) of this title), or with respect to information required to be provided under section 1320a-3a of this title, shall be guilty of a felony and upon conviction thereof shall be fined not more than $100,000 or imprisoned for not more than 10 years, or both.

(d) Illegal patient admittance and retention practices

Whoever knowingly and willfully--

(1) charges, for any service provided to a patient under a State plan approved under subchapter XIX, money or other consideration at a rate in excess of the rates established by the State (or, in the case of services provided to an individual enrolled with a medicaid managed care organization under

subchapter XIX under a contract under section 1396b(m) of this title or under a contractual, referral, or other arrangement under such contract, at a rate in excess of the rate permitted under such contract), or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under a State plan approved under subchapter XIX, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)--

(A) as a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for the mentally retarded, or

(B) as a requirement for the patient's continued stay in such a facility,

when the cost of the services provided therein to the patient is paid for (in whole or in part) under the State plan,

shall be guilty of a felony and upon conviction thereof shall be fined not more than $100,000 or imprisoned for not more than 10 years, or both.

(e) Violation of assignment terms

Whoever accepts assignments described in section 1395u(b)(3)(B)(ii) of this title or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title and knowingly, willfully, and repeatedly violates the term of such assignments or agreement, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $4,000 or imprisoned for not more than six months, or both.

(f) "Federal health care program" defined

For purposes of this section, the term "Federal health care program" means--

(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under chapter 89 of Title 5); or

(2) any State health care program, as defined in section 1320a-7(h) of this title.

(g) Liability under subchapter III of chapter 37 of Title 31

In addition to the penalties provided for in this section or section 1320a-7a of this title, a claim that includes items or services resulting from a violation of this section constitutes a false or fraudulent claim for purposes of subchapter III of chapter 37 of Title 31.

(h) Actual knowledge or specific intent not required

With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.