No. 24-571

In the Supreme Court of the United States

ELIZABETH PETERS YOUNG,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	1
ARGUMENT	2
I. *In personam* criminal forfeiture has no historical basis in America and raises profound constitutional problems	2
II. Excessive *in personam* criminal forfeitures impose collateral consequences that hurt real people in the real world and incentivize greedy prosecutorial choices	16
III. Sections 853 and 982 are practically indistinguishable	20
CONCLUSION	24
APPENDIX A: Letter from Cristal Clark (Dec. 17, 2024)	1a
APPENDIX B: Letter from Terri L. Schneider (Dec. 14, 2024)	15a

TABLE OF AUTHORITIES

Page

CASES:

Austin v. United States,
509 U.S. 602 (1993) 16

Calero-Toledo v. Pearson Yacht Co.,
416 U.S. 663 (1974) 3–4

Dunham v. Drake,
1 N.J.L. 315 (N.J. 1795) 8

Field Day, LLC v. County of Suffolk,
463 F.3d 167 (2d Cir. 2006) 12

Gall v. United States,
552 U.S. 38 (2007) 15

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581 U.S. 443 (2017) 2, 9, 13, 23

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584 U.S. 675 (2018) 20

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318 U.S. 101 (1943) 20

Jones v. Gov'r of Fla.,
975 F.3d 1016 (11th Cir. 2020) 17

Kaley v. United States,
571 U.S. 320 (2014) 15

Libretti v. United States,
516 U.S. 29 (1995) 15

Michigan v. Long,
463 U.S. 1032 (1983) 20

Miller v. United States,
78 U.S. 268 (1870) 9

Molina-Martinez v. United States,
578 U.S. 189 (2016) 20

Russello v. United States,
464 U.S. 16 (1983) 9

Timbs v. Indiana,
586 U.S. 146 (2019) 13

Tison v. Arizona,
481 U.S. 137 (1987) 13–14

United States v. Anderson,
637 F. Supp. 632 (N.D. Cal. 1986),
rev'd sub nom. United States v. Littlefield, 821 F.2d 1365 (9th Cir. 1987) 14

United States v. Bajakajian,
524 U.S. 321 (1998) 3, 5, 9, 13

United States v. Bradley,
969 F.3d 585 (6th Cir. 2020) 12

United States v. Caporale,
806 F.2d 1487 (11th Cir. 1986) 11

United States v. Cauble,
706 F.2d 1322 (5th Cir. 1983) 2

United States v. Chittenden,
896 F.3d 633 (4th Cir. 2018) 12, 22

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952 F.3d 1301 (11th Cir. 2020) 11–12

United States v. Cullen,
979 F.2d 992 (4th Cir. 1992) 15

United States v. Delgado,
2023 WL 7104063 (11th Cir. Oct. 27, 2023) 12

United States v. Elbeblawy,
899 F.3d 925 (11th Cir. 2018) 12, 22

United States v. Elliott,
876 F.3d 855 (6th Cir. 2017) 11

United States v. Gjeli,
867 F.3d 418 (3d Cir. 2017) 22

United States v. Goldstein,
989 F.3d 1178 (11th Cir. 2021) 11

United States v. Huber,
603 F.2d 387 (2d Cir. 1979) 9

United States v. L'Hoste,
615 F.2d 383 (5th Cir. 1980) 10

United States v. Levesque,
546 F.3d 78 (1st Cir. 2008) 15

United States v. Padron,
527 F.3d 1156 (11th Cir. 2008) 11

United States v. Peithman,
917 F.3d 635 (8th Cir. 2019) 12

United States v. Pitt,
193 F.3d 751 (3d Cir. 1999) 11

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816 F.2d 869 (3d Cir. 1987) 14

United States v. Sanjar,
876 F.3d 725 (5th Cir. 2017) 22

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894 F.3d 787 (6th Cir. 2018) 12

United States v. Tanner,
942 F.3d 60 (2d Cir. 2019) 20

United States v. Thompson,
990 F.3d 680 (11th Cir. 2021) 15

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602 F.3d 886 (8th Cir. 2010) 11

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814 F.3d 104 (2d Cir. 2016) 13

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969 F.3d 1156 (11th Cir. 2020) 11

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108 F.4th 1307 (11th Cir. 2024) 12

CONSTITUTIONAL PROVISIONS:

U.S. Const. amend. v 12–13

U.S. Const. amend. viii 12–13

U.S. Const. art. III, §3, cl. 2 7

STATUTES:

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18 U.S.C. § 981 10

18 U.S.C. § 982 .... 10, 12, 21–22

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Letter to Henry Lee, May 8, 1825, in 8 *The Writings of Thomas Jefferson* 407
(H.A. Washington ed. 1854)......................... 6

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Commentaries on American Law (N.Y. 1827) 8

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Fragment on the Constitution and the Union (Jan. 1861), in 4 *The Collected Works of Abraham Lincoln* (Roy P. Brasler ed., 1953) 7

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The Second Treatise of Government (1689) 7

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59 Temp. L.Q. 1097, 1104–05 (1986) 5–6

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Bane of American Forfeiture Law—Banished at Last?,
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The Social Contract 21 (1923) 6

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at 270 (Charles R. Kesler ed. 1961) 7

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at https://tinyurl.com/35eua9vy 19

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8 Crim. Just. 11 (1993) 17

INTEREST OF *AMICUS CURIAE*[1]

Founded in 1958, the National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. It has a nationwide membership of many thousands of direct members, up to 40,000 with affiliate members. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous *amicus* briefs each year in this Court, and other federal and state courts, seeking to provide *amicus* assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole.

This case presents an important, recurring criminal justice issue worthy of the Court's consideration: whether prosecutors and courts can compel criminal defendants to forfeit that which they never obtained.

SUMMARY OF ARGUMENT

Modern *in personam* criminal forfeiture statutes mark a dramatic and draconian departure from nearly two centuries of American legal tradition. The

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[1] The parties were timely notified of the filing of this brief. *See* S.Ct. R. 37.2. No party's counsel authored this brief in whole or in part, and no person or entity, other than *amicus* and its counsel, made any monetary contribution to its preparation or submission. *See id.* 37.6.

present-day continuation of joint-and-several liability, notwithstanding *Honeycutt v. United States*, 581 U.S. 443 (2017), revives practices the Founders repudiated. *In personam* criminal forfeiture and joint-and-several liability expand forfeiture far beyond its historical scope, creating novel and troubling questions about proportionality, individual culpability, and the constitutional limits on punishment. And excessive forfeiture orders portend significant collateral consequences for defendants, their families, and their communities while simultaneously incentivizing troubling prosecutorial practices. The Court should grant certiorari now to address these weighty concerns.

ARGUMENT

I. *In personam* criminal forfeiture has no historical basis in America and raises profound constitutional problems

1. On this side of the Atlantic, *in personam* criminal forfeiture is a novel approach to punish crime. The Founders repudiated it, and the pre-founding Anglo-American legal tradition reflects repeated "struggle[s] to protect the property interests of innocent owners from *in personam* forfeiture." Donald J. Boudreaux & A.C. Pritchard, *Innocence Lost: Bennis v. Michigan and the Forfeiture Tradition*, 61 Mo. L. Rev. 593, 609 (1996).

The English curbed the Crown's forfeiture abuses in *Magna Carta*. Thereafter, the Founders "early on adopt[ed] a hostile attitude toward criminal forfeitures," *id.* at 613, and a particular "antipathy for English common law's 'forfeiture of estate,'" *United States v. Cauble*, 706 F.2d 1322, 1345 (5th Cir. 1983). Instead of *in personam* criminal forfeiture, the United States adopted England's *in rem* civil forfeiture system that

sought not to punish individuals, but to bolster national sea power and revenue collection. *United States v. Bajakajian*, 524 U.S. 321, 331 (1998); Kevin Arlyck, *The Founders' Forfeiture*, 119 Colum. L. Rev. 1449, 1466 (2019).

The Founders broke with England because of differing concepts of social contract and our rights' origins. Rights, including property rights, in American tradition originate from God or Nature, not sovereigns. The Declaration of Independence ¶¶ 1–2 (1776) ("Declaration"). The British concept of property rights instead derives from the sovereign and thus justifies forfeiting the property of a traitor or felon who breaks the social contract.

The resulting British excesses regarding forfeiture led to "a Founding Era consensus that core principles of justice," including "innocence and proportionality," "demanded meaningful limits on forfeiture's exercise." Arlyck, *supra*, at 1453. The government's present practice of *in personam* criminal forfeitures swims upstream against centuries of hard-won protection for property and due process rights. And the recent expansion to joint-and-several liability is a step further removed from this history.

1.a. In England, forfeiture took three forms: deodand; statutory forfeiture; and attainder. But only *in rem* statutory forfeiture took root here. *See Calero-Toledo v. Pearson Yacht Co.*, 416 U.S. 663, 682 (1974). To ward off forfeiture abuses, the law always tried to mitigate harsh applications against third parties. Ms. Young's joint-and-several forfeiture upends these historical practices.

The forfeiture of her goods and home is akin to the *in personam* attainder that the Founders abhorred.

Because "a breach of the criminal law" offended "the King's peace," it "was felt to justify denial of the right to own property." *Ibid.*; James R. Maxeiner, *Bane of American Forfeiture Law—Banished at Last?*, 62 Cornell L. Rev. 768, 770 (1977). Thus, the severe penalty of attainder followed conviction of treason or felony and placed the offender outside the law's protection, resulting in "forfeiture, and the corruption of blood." 4 William Blackstone, *Commentaries* 374. This meant "no descendant could ever trace a line of inheritance through the attainted ancestor." Maxeiner, *supra*, at 773–74.

The attainted also forfeited his estate, both real and personal property. 4 William Blackstone, *Commentaries* 374–75. In "anticipation of his punishment, he is already dead in law." *Id.* 374. By "violat[ing] the fundamental principles of government," the attainted had "broken his part of the original contract between king and people, [and] abandoned his connections with society." *Id.* 383. The attainted lost his "civil rights following attainder," and with them "the benefits of property ownership vanished. Thus, following a conviction for treason, the offender forfeited all of his real property and chattels to the king." Matthew R. Ford, *Criminal Forfeiture and the Sixth Amendment's Right to Jury Trial Post-*Booker, 101 Nw. U.L. Rev. 1371, 1401 (2007).

Criminal forfeiture distinguished between real and personal property. Personal property was forfeited immediately following conviction and could be used or sold until conviction, as it was "of so fluctuating a nature, that it passes through many hands in a short time." 4 William Blackstone, *Commentaries* 380–81. The forfeiture of real property was delayed until

attainder and was also retroactive to the time of offense. *Id.* 380.

Forfeiture of estate's harshness against third-parties spurred reform. Blackstone criticized it as unjustly harsh, as it dealt a crushing blow to the attainted's family and descendants. *Id.* 381–82. Beginning with *Magna Carta*, the Crown's possession of real property for felonies was limited to a year and a day. *Magna Carta* art. 32; 4 William Blackstone, *Commentaries* 378–79. And juries sometimes withheld conviction for certain crimes, "forfeiture being looked upon, since the vast increase of personal property of late years, as rather too large a penalty for an offence." 4 William Blackstone, *Commentaries* 380.

Innocent owners too were protected from *in personam* forfeiture's harshness. Parliament gave them the right to retrieve their stolen property where once a thief's stolen goods were forfeited. *Id.* 362. Trusts and estates held for the use of others would not be forfeited. Boudreaux & Pritchard, *supra*, at 610 (citing Theodore F.T. Plucknett, *A Concise History of the Common Law* 581 (5th ed. 1956)); 1 Matthew Hale, *The History of the Pleas of the Crown* 247 (reprinted 1980) (1736). A woman whose husband committed treason kept her fee title to real property. Boudreaux & Pritchard, *supra*, at 609. And she lost her dower interests only in cases of his treason, not felony. *Ibid.*

1.b. The Founders rejected criminal *in personam* forfeiture altogether. "Although *in personam* criminal forfeitures were well established in England at the time of the founding, they were rejected altogether in the laws of this country until very recently." *Bajakajian*, 524 U.S. at 332. Nor did they last in England, which abolished the practice in 1869. Eric R. Markus, *Procedural Implications of Forfeiture Under*

RICO, the CCE, and the Comprehensive Forfeiture Act of 1984: Reforming the Trial Structure, 59 Temp. L.Q. 1097, 1104–05 (1986).

To the Founders, *in personam* forfeiture was a practice "founded in tyranny and avarice," turning "the crimes of the subject" into "the inheritance of the prince" and violating "the rule, founded in justice and nature, that the property of the parent is the inheritance of his children." 2 James Wilson, *The Works of James Wilson* 630–31 (1804). Such laws turn the ends of government on their head: "an insult to society becomes a pecuniary favor to the crown; the appointed guardian of the public security becomes interested in the violation of the law; and the hallowed ministers of justice become the rapacious agents of the treasury." *Id.* at 630–31.

The Founders resisted *in personam* criminal forfeiture so forcefully because it was antithetical to their views of natural rights and property. The practice "was tied up with the common law's understanding of the social contract." Ford, *supra*, at 1400. Under the English view, "all property is derived from society, being one of those civil rights which are conferred upon individuals, in exchange for that degree of natural freedom, which every man must sacrifice when he enters into social communities." 1 William Blackstone, *Commentaries* 299; *see also* Jean-Jacques Rousseau, *The Social Contract* 21 (1923) ("the right which each individual has to his own estate is always subordinate to the right which the community has over all").

The Founders broke from the state-centric view of rights, instead looking to "the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, &c." Thomas Jefferson, *Letter to Henry Lee*, May 8, 1825, *in* 8 *The Writings of Thomas Jefferson* 407 (H.A.

Washington ed. 1854). Locke thought all humans are born with natural rights, including life, liberty, and property. John Locke, *The Second Treatise of Government* 193–94 § 6 (1689). Individuals then form a government with power sufficient to arbitrate disputes and redress injuries while leaving the state of nature to protect their rights. *Id.* 258, §131.

The Declaration of Independence enshrined these fundamental principles, holding that "all men are created equal," with no natural sovereigns or subjects, and "are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness." Declaration ¶ 2. Governments "secure[d] these rights" and "deriv[ed] their just powers from the consent of the governed," who may revolt "whenever any Form of Government becomes destructive of these ends." *Id.*

The Founders then framed the Declaration's principles—this "apple of gold"—in a constitutional "picture of silver." Abraham Lincoln, *Fragment on the Constitution and the Union* (Jan. 1861), in 4 *The Collected Works of Abraham Lincoln* 168, 169 (Roy P. Brasler ed., 1953). They rejected the corruption of blood attending attainder of treason and limited *in personam* forfeiture to "the Life of the Person attainted." U.S. Const. art. III, §3, cl. 2. Thus, although the federal government "ought to be enabled to punish" treason, it would be restrained "from extending the consequences of guilt beyond the person of its author." *The Federalist Papers* No. 43 Madison, at 270 (Charles R. Kesler ed. 1961).

The First Congress then limited the government still further, ordering that "no conviction or judgment" for any of the early federal criminal offenses,

including treason, "shall work corruption of blood, or any forfeiture of estate." Crimes Act of 1790, § 24.

Until then, the colonies had used attainder inconsistently, including to punish loyalists during the Revolutionary War. Ford, *supra*, at 1402–03. But the practice "quickly went out of style" after "ratification of the Constitution." *Id.* at 1403. Many states then passed laws like the First Congress's prohibition. *See* Maxeiner, *supra*, at 779 (citing 2 J. Kent, *Commentaries on American Law* 318 (N.Y. 1827)). And the states that retained it still limited forfeiture of estate to high treason, *see, e.g.*, *Dunham v. Drake*, 1 N.J.L. 315, 315 (N.J. 1795), and protected "the rights of third persons, existing at the time of the commission of the treason," 2 Kent 317.

The Founders thus rejected *in personam* criminal forfeiture as a deeply flawed practice wholly outside their conception of the social contract. Instead, the Founders adopted statutory *in rem* forfeiture to "enforce[e] the legislative scheme governing revenue collection," but they remained "concern[ed] over forfeiture's abusive potential." Arlyck, *supra*, at 1449, 1466.

Hamilton and the First Congress established "executive-branch authority to return seized property to violators who lacked fraudulent intent," and Hamilton and subsequent Treasury secretaries "understood themselves to be *obligated* to exercise that authority to its fullest extent." *Id.* at 1449, 1452. Although the United States' "early forfeiture regime … was expansive in theory," in "practice [it] was constrained by a deep belief in the impropriety of taking property from those who inadvertently broke the law." *Id.* at 1449. And it remained limited to *in rem* statutory forfeiture.

Even during the Civil War, the Confiscation Acts authorizing *in rem* proceedings against the real and personal property of Confederates were viewed not as *in personam* criminal forfeitures but rather as exercises of congressional war powers. *See Miller v. United States*, 78 U.S. 268, 305 (1870). *In personam* criminal forfeiture would lay dormant for almost 200 years.

2. American resistance to criminal forfeiture began eroding in 1970, when Congress, in its wisdom, made sweeping changes to this Nation's centuries old forfeiture regime. It "resurrect[ed] the English common law of punitive forfeiture to combat organized crime and major drug trafficking" through RICO and the Comprehensive Drug Abuse Prevention and Control Act. *Bajakajian*, 524 U.S. at 332, 356 n.7.

2.a. This "new weapon" was supposed to help law enforcement combat organized crime, *see* 18 U.S.C. § 1961–1968 (RICO), and wage the war on drugs, *see* 21 U.S.C. § 853. *Russello v. United States*, 464 U.S. 16, 26 (1983). This marked an abrupt shift toward the use of criminal forfeiture.

From 1790, when the First Congress "abolished forfeiture of estate and corruption of blood," until RICO was enacted, "'no Federal statute ha[d] provided for a penalty of forfeiture as a punishment for violation of a criminal statute of the United States.'" *United States v. Huber*, 603 F.2d 387, 396 (2d Cir. 1979) (citation omitted). Instead, forfeiture proceedings were *in rem* actions based on the legal fiction that the property itself was guilty of the offense. *Honeycutt*, 581 U.S. at 453. But section 853 "effectively merg[ed]" "*in rem* forfeiture proceedings with *in personam* criminal proceedings." *Id.*

Initially, the government rarely used its "new weapon" in RICO or section 853 prosecutions. From 1970–1980, the government sought or obtained only $2 million in forfeitures. General Accounting Office, *Asset Forfeiture—A Seldom Used Tool in Combatting Drug Trafficking* 10 (1981), *at* https://tinyurl.com/2xc2knpr. This lag in prosecutions meant federal courts had "little occasions" to weigh in on the propriety of criminal forfeiture. David J. Fried, *Rationalizing Criminal Forfeiture*, 79 J. Crim. L. & Criminology 328, 340 (1988–1989). But by the mid-2000s, criminal forfeiture became a "routine part" of federal prosecutions, accounting for nearly 50% of all forfeitures. Stefan D. Cassella, *Criminal Forfeiture Procedure: An Analysis of Developments in the Law Regarding the Inclusion of a Forfeiture Judgment in the Sentence Imposed in a Criminal Case*, 32 Am. J. Crim. L. 55, 56 (2004).

Congress' ahistoric expansion of the criminal-forfeiture regime continued into the 1980s. In 1986, Congress enacted 18 U.S.C. sections 981 and 982. Section 981 said any person convicted of certain crimes shall forfeit to the United States "[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to a violation," *id.* § 981(a)(1)(C), and swept in more than three dozen federal statutes, *id.*

The forfeiture of proceeds "traceable to a violation" reflects another departure from traditional forfeiture law, which had until the late 1970s been limited to "contraband or articles put to unlawful use." *United States v. L'Hoste*, 615 F.2d 383, 384 (5th Cir. 1980) (Tate, J., dissenting). Section 982 incorporates section 853's criminal forfeiture provision, *see* 18 U.S.C. § 982(b)(1), and applies to dozens of federal crimes.

In 2000, Congress amended 28 U.S.C. § 2461 (mode of recovery). The introduction to the amendment succinctly illustrated Congress' bloodthirst for more criminal forfeitures: "Encouraging use of criminal forfeiture as an alternative to civil forfeiture." Pub. L. 106–185, § 16, 114 Stat. 221. And the current version permits criminal forfeiture for any offense in which civil forfeiture is authorized. 28 U.S.C. § 2461(c); *see also United States v. Padron*, 527 F.3d 1156, 1161–62 (11th Cir. 2008).

The broad sweep of these criminal forfeiture provisions allows federal prosecutors to gobble up vast sums of "untainted" money and property and transfer ownership to the federal government. This practice stands in stark contrast to the 180 years that preceded RICO and section 853.

2.b. After RICO and section 853 entered the scene, courts began endorsing joint-and-several forfeitures. *See, e.g.*, *United States v. Caporale*, 806 F.2d 1487, 1506–08 (11th Cir. 1986) (RICO); *United States v. Van Nguyen*, 602 F.3d 886, 904 (8th Cir. 2010) (section 853); *see also United States v. Pitt*, 193 F.3d 751, 765 (3d Cir. 1999) (coconspirators were jointly and severally liable under either section 982(a)(1) *or* section 853(a)(1)).

After *Honeycutt*, some circuit courts held joint-and-several section 853 forfeitures were foreclosed. *See, e.g.*, *United States v. Elliott*, 876 F.3d 855, 868 (6th Cir. 2017) (remanding section 853 forfeiture for recalculation per *Honeycutt*). But other circuits persisted in affirming joint-and-several forfeitures. *E.g.*, *United States v. Waked Hatum*, 969 F.3d 1156, 1163 (11th Cir. 2020) (*Honeycutt* "held only that 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").[2]

Those courts try to dodge *Honeycutt*'s core holding by pointing to factual distinctions, *see, e.g.*, *Young*, 108 F.4th at 1326, or by noting differences in the statutory text, *see, e.g.*, *United States v. Cingari*, 952 F.3d 1301, 1306 (11th Cir. 2020) (noting *Honeycutt* was "highly dependent on language found in" section 853). But these distinctions are beside the point.

First, *Honeycutt* at minimum forbids joint-and-several liability unless a coconspirator "personally obtains" tainted property. Second, differences in statutory text are irrelevant when a defendant challenges the application of a statute on constitutional grounds. *Field Day, LLC v. County of Suffolk*, 463 F.3d 167, 174 (2d Cir. 2006). Third, it's unclear whether *Honeycutt* applies only to section 853 cases. *Compare United States v. Elbeblawy*, 899 F.3d 925, 941 (11th Cir. 2018) (*Honeycutt* applies to section 982(a)(7)), *United States v. Delgado*, 2023 WL 7104063, at *8 (11th Cir. Oct. 27, 2023) (same), *and United States v. Chittenden*, 896 F.3d 633, 637 (4th Cir. 2018) (*Honeycutt* applies to section 982(a)(2)), *with United States v. Bradley*, 969 F.3d 585, 588–89 (6th Cir. 2020) (*Honeycutt* didn't *per se* foreclose joint-and-several liability in all cases), *United States v. Peithman*, 917 F.3d 635, 652 (8th Cir. 2019) (same), *and United States v. Sexton*, 894 F.3d 787, 799 (6th Cir. 2018) (same). This case presents an

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[2] The Eleventh Circuit has held criminal forfeiture applies to coconspirators, but each time the money to be forfeited was accessible or controlled by both coconspirators. *United States v. Goldstein*, 989 F.3d 1178, 1203 (11th Cir. 2021); *United States v. Cingari*, 952 F.3d 1301, 1306 (11th Cir. 2020). Not so here. The money Young received was passed through to Mitchell. *United States v. Young*, 108 F.4th 1307, 1313 (11th Cir. 2024).

ideal opportunity for this Court to address the constitutionality of joint-and-several forfeiture liability.

3. RICO, section 853, and other criminal forfeiture statutes, *e.g.*, 18 U.S.C. § 982, not only lack historical priors but are constitutionally dubious. *See* U.S. Const. amend. v, viii. Joint-and-several forfeitures may violate the Eighth Amendment's principle of proportionality. *Bajakajian*, 524 U.S. at 334 (1998). They can also offend the Fifth Amendment's Due Process Clause because some fines may be tantamount to forfeiture of estate. And they run headlong into the bedrock requirement that punishment be individualized. *Tison v. Arizona*, 481 U.S. 137, 149 (1987).

Eight Amendment: Criminal forfeiture "constitutes punishment and is thus a 'fine' within the meaning of the Excessive Fines Clause." *Bajakajian*, 524 U.S. at 334 (analyzing section 982(a)(1)). *Bajakajian* represents the only time this Court has considered whether criminal forfeiture can run afoul of the excessive fines clause, *id.* at 328, and the prohibition of excessive fines date "to at least 1215" and *Magna Carta*. *Timbs v. Indiana*, 586 U.S. 146, 151 (2019).

Proportionality is the "touchstone" of the excessive-fines inquiry. *Bajakajian*, 524 U.S. at 334. To survive constitutional scrutiny, "the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish," *id.* at 334, which implicates a defendant's culpability, *United States v. Viloski*, 814 F.3d 104, 112 (2d Cir. 2016); *see also Bajakajian*, 524 U.S. 321 at 339 (considering harm defendant caused). Forfeitures "grossly disproportional to the gravity of the defendant's offense" don't pass muster. *Id.* at 337.

Requiring less culpable coconspirators to foot the bill for entire forfeiture amounts ignores the

proportionality analysis. In most coconspirator cases, the offense's gravity and each defendant's culpability isn't a one-size-fits-all proposition. *See Honeycutt*, 581 U.S. at 448 (mastermind pocketing $3 million while mule earns only $3,600 would be disproportional forfeiture). Holding minor players to account for schemes' entire ill-gotten gains fails to assess the gravity of their offenses or their level of culpability.

Fifth Amendment: Criminal forfeiture statutes raise serious concerns about the Fifth Amendment's Due Process Clause because, in some cases, a fine may be tantamount to forfeiture of estate. Holding coconspirators jointly and severally liable offends the bedrock principle that punishment must be individualized. "The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender." *Tison*, 481 U.S. at 149. Additionally, forfeiture proceedings are truncated, and joint-and-several liability allows the government to bankrupt low-level participants while allowing more culpable kingpins and "mastermind" to escape punishment.

Forfeiture of estate—"the taking by the Crown of all of a felon's real and personal property"—was disfavored at the founding and prohibited by the First Congress. Fried, *supra*, at 329 n.1; *United States v. Sandini*, 816 F.2d 869, 873 (3d Cir. 1987). Yet neither the criminal forfeiture statutes nor any other federal statutes prohibit taking all of a coconspirator's property. True, section 853 "does not provide that [a defendant] must forfeit *all* his or her property." *United States v. Anderson*, 637 F. Supp. 632, 634 (N.D. Cal. 1986), *rev'd sub nom. United States v. Littlefield*, 821 F.2d 1365 (9th Cir. 1987) (emphasis original). But this is little solace to drug mules. Where low-level

conspirators are held liable for proceeds retained entirely by coconspirators, in amounts many times their net worth or earnings capacity, they may effectively be required to turn over to the government all the property they own or may ever own.

To be sure, the proportionality test offers illusory protection. For example, in *United States v. Levesque*, the defendant made about $37,000 for her part in the drug-distribution scheme, yet faced a $3 million forfeiture order. 546 F.3d 78, 80–81 (1st Cir. 2008). Although the First Circuit remanded to determine whether the forfeiture would deprive Levesque of future earnings, it held a defendant's "inability to satisfy a forfeiture at the time of conviction, in and of itself, is not at all sufficient to render a forfeiture unconstitutional, nor is it the correct inquiry." *Id.* at 85.

Criminal forfeiture is punishment and thus part of a defendant's sentence. *Libretti v. United States*, 516 U.S. 29, 40–42 (1995). And a sentence must be individualized based on the "uniqueness of the individual case." *Gall v. United States*, 552 U.S. 38, 52 (2007). It's impossible to square these fundamental principles with joint-and-several liability.

No court would ever countenance a circumstance where all conspirators received the same sentence regardless of individual culpability or participation. Nor would any court impose joint-and-several prison sentences. Joint-and-several liability punishes unlike coconspirators alike and renders culpability irrelevant. A corollary to these deficiencies is that joint-and-several liability undermines primary goals of criminal forfeiture: deterring crime, *United States v. Thompson*, 990 F.3d 680, 686 (11th Cir. 2021); disincentivizing criminal conduct, *United States v. Cullen*, 979 F.2d 992, 994 (4th Cir. 1992); and advancing

retributive goals, *Austin v. United States*, 509 U.S. 602, 610 (1993). Alas, if major players escape liability while minor participants foot the bill, then crime *does* pay. *Kaley v. United States*, 571 U.S. 320, 323 (2014).

II. Excessive *in personam* criminal forfeitures impose collateral consequences that hurt real people in the real world and incentivize greedy prosecutorial choices

The harm from joint-and-several criminal forfeitures doesn't stop when defendants turnover untainted assets. Rather, overbroad forfeitures unleash myriad collateral consequences. The petition should be granted to limit these harms.

1.a. Whether forfeitures are treated as fines, costs, or fees, the practical result is the same: defendants are left to contend with overwhelming postconviction debts with enormous consequences.

First, "criminal justice debt wreaks havoc on individuals' credit scores, and with it, their housing and employment prospects." Alicia Bannon, Mitali Nagrecha, & Rebekah Diller, *Criminal Justice Debt: A Barrier to Reentry* 27 (2010). Like other debts, criminal justice debts can eventually result in liens or garnishment. *See ibid.* (15 states with highest prison populations "permit … liens or the garnishment of bank accounts or wages" to collect on criminal justice debts (collecting state statutes)). Further compounding employment concerns, some states (like Florida and Virginia) suspend driver licenses for unpaid criminal-justice debt. *See* Rebekah Diller, *The Hidden Costs of Florida's Criminal Justice Fees* 6 (2010), *at* https://tinyurl.com/2ejrua8t.

Second, a criminal defendant's freedom often turns on repaying criminal-justice debt. *See* Bannon *et al.*,

supra, at 21 (15 states with highest prison populations "make at least some forms of criminal justice debt a condition of probation or parole, including for the indigent, putting individuals at risk of incarceration if a court finds that missed payments were willful" (collecting state statutes)). Failure to pay criminal-justice debt can also violate probation, disqualifying defendants from certain federal public benefits and putting those vital resources out of reach forever. *See id.* at 28 (collecting federal statutes).

Third, restoring defendants' voting rights can turn on whether they can buy them back, a prohibitive burden for many. "Alabama, Arizona, Florida, and Virginia all explicitly condition the restoration of voting rights on the repayment of at least some forms of criminal justice debt." *Id.* at 29. The Eleventh Circuit upheld Florida's repayment regime as constitutionally tolerable. *See Jones v. Gov'r of Fla.*, 975 F.3d 1016, 1025 (11th Cir. 2020). Georgia and Texas "require individuals to complete their 'sentences,' which may potentially include the payment of fines, restitution, or other forms of criminal justice debt." Bannon, *supra*, at 29. And Louisiana, North Carolina, and Texas "disenfranchise people on probation, while also allowing the court to *extend* probation if a defendant has not paid off his or her debt by the expiration of the probation term … effectively continu[ing] to deny the right to vote." *Id.* (emphasis added).

1.b. There are collateral consequences for third parties as well. *See* Michael F. Zeldin & Jane W. Moscowitz, *Innocent Third Parties in Federal Forfeiture Proceedings: What are their rights?*, 8 Crim. Just. 11 (1993). Criminal forfeiture of a family home due to coconspirators' conduct illustrates the harm.

Consider Dave and Cristal Clark. App. 1a–13a. Dave was a successful real estate and hospitality entrepreneur; Cristal, his wife and partner, worked alongside him. In 2014, they were indicted for bank fraud and money laundering for supposedly defrauding investors and lenders in a resort development project. Although the jury acquitted Cristal of all charges, it found Dave guilty of lesser charges of providing mortgage down payment assistance to some of his relatives who bought condos in the project.

Nonetheless, the district court imposed a forfeiture order of $303 million on Dave, based on the total amount of real estate closings in the project, even though the jury had rejected the government's theory that the project was a Ponzi scheme. The court forced the Clarks to disgorge hundreds of millions of dollars they never obtained, for charges on which Dave and Cristal were *acquitted*.

The forfeiture order now prevents Dave from accessing credit, owning any assets, or pursuing his entrepreneurial gifts to their fullest extent. Despite that hardship, Dave and Cristal founded Promising People, an organization that recently received funding from the state of Florida to pilot virtual-reality-based trade job training programs in prisons not unlike the ones that incarcerated them. But for the overbearing forfeiture order, the Clarks could expand Promising People, providing access to job training and reducing recidivism rates for the formerly incarcerated.

Similarly, consider Terri Schneider. App. 14a–21a. A licensed audiologist and successful businesswoman, Terri was indicted for participating in a Medicare fraud scheme orchestrated by Brock Lovelace, a former employee. She was convicted of conspiracy to commit health care fraud, and the district court

ordered her to forfeit $2.5 million, the full amount of the fraudulent claims Lovelace submitted through her provider number. The court ignored the fact that Terri had legitimate business expenses and taxes that consumed most of her income, essentially forcing her to forfeit assets for millions she never obtained.

Today, the fallout from the forfeiture has cost Terri hundreds of thousands of dollars, forcing the fire-sale auction of her Florida home for below-market value, the proceeds of which the IRS and government immediately seized. Back in her West Virginia hometown, Terri now lacks an income stream sufficient to support her ailing mother or her husband. She dreams of starting businesses that could help develop her local community (e.g., a café or hospitality venue), but the outstanding forfeiture amount—which she'll never be able to repay—prevents her from getting a line of credit for even her most modest ideas.

In short, joint-and-several criminal forfeiture affects not only those who are convicted, but also their families, friends, and communities.

2.a. From 2014–2023, the government has seized over $27.2 billion in assets. U.S. Attorneys, *Annual Statistical Reports*, *at* https://tinyurl.com/35eua9vy. Of that $27.2 billion, $11.8 billion is derived from civil forfeitures and $15.4 billion from criminal forfeitures. *Ibid.*

A close review of the distribution within that 10-year period, however, reveals a sharp turn in the trend toward increasing criminal forfeitures. In the first five-year period (2014–18), civil forfeitures accounted for 51% of the total and criminal forfeitures accounted for 49%. *Ibid.* But in the second five-year period, civil forfeitures accounted for only 33%,

whereas criminal forfeitures accounted for 67%. *Ibid*. The data reveal that the government has become even more ravenous for criminal forfeitures.

2.b. Whether defendants are jointly and severally liable turns on where they are convicted. Consider forfeiture amounts in the latest available year (2023). Of nearly $4.4 billion in asset forfeitures, criminal forfeitures accounted for $4.09 billion, or 94%. *See* U.S. Attorneys, *Annual Statistical Reports, Fiscal Year 2023* at 64 (2024), *at* https://tinyurl.com/3u2djwff. Nearly $3.5 billion, or 80%, was in a single state—New York—where criminal defendants are held jointly and severally liable.[3] And the sum of criminal forfeitures in the top five states—New York ($3.5 billion), Texas ($159 million), Florida ($92 million), Connecticut ($74 million), and Pennsylvania ($27.5 million)—is nearly $3.9 billion, or 88% of the nationwide criminal forfeitures in 2023. *Id.* at 62–64. A defendant's liability shouldn't depend on geography, but it does.

The present split undermines identical principles that animate the need for clarity, uniformity, and stability in sentencing. *Cf. Hughes v. United States*, 584 U.S. 675, 693 (2018) (Sotomayor, J., concurring) ("similarly situated defendants [should be] subject to a uniform legal rule"); *accord Molina-Martinez v. United States*, 578 U.S. 189, 192 (2016); *Michigan v. Long*, 463 U.S. 1032, 1040 (1983); *Jerome v. United States*, 318 U.S. 101, 104 (1943).

III. Sections 853 and 982 are practically indistinguishable

For two reasons, it's no response to say *Honeycutt* applies only to 21 U.S.C. § 853(a) cases and therefore

[3] *See United States v. Tanner*, 942 F.3d 60, 63 (2d Cir. 2019).

it has no force in cases involving section 982 or other criminal forfeiture statutes.

1. First, section 853(a)(1), which *Honeycutt* interpreted, is textually indistinguishable from section 982(a)(7), the statute here. Section 853(a)(1) says "any person convicted of a violation" of a drug crime "shall forfeit to the United States … any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation." 21 U.S.C. § 853(a)(1). Similarly, section 982 requires courts to order "a person convicted of a Federal health care offense" to "forfeit property, real or personal, 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).

Here lies the first important parallel: "*Any proceeds* the person obtained," 18 U.S.C. § 853(a)(1) (emphasis added), and "*gross proceeds*," 18 U.S.C. § 982(a)(7) (emphasis added), are indistinguishable. *See Gross*, *Oxford English Dictionary* ("Entire, total, whole. Now usually *spec*. of an amount, weight, etc.: before necessary deductions have been made[.]"); *see also Gross*, *Merriam-Webster Dictionary* ("overall total exclusive of deductions"). After consulting Black's Law Dictionary, the Fifth Circuit concluded that "gross revenues means all amounts received from operation of a business, without deduction." *City of Dallas, Tex. v. F.C.C.*, 118 F.3d 393, 395 (5th Cir. 1997).

In short, *both* statutes target the disgorgement of all monies derived from or traceable to the alleged criminal conduct. But it's impossible to forfeit what one doesn't possess.

Here lies the *second* important parallel between the two statues: proceeds obtained "*as the result of* such

violation," 21 U.S.C. § 853(a)(1) (emphasis added), and proceeds "traceable to the commission of the offense," 18 U.S.C. § 982(a)(7), are also indistinguishable. "[A]s a result" means "because of something." *As a result, Merriam-Webster Dictionary*. And "traceable" means "capable of being traced" or as applicable here, "of a kind to be attributed to something specified." *Traceable, Merriam-Webster Dictionary*. In this way, both statutes require that the property subject to forfeiture have some nexus to the criminal violation.

The statutes, in short, mirror each other in their mechanical operation, as circuit courts have recognized: *Honeycutt*'s "same reasoning applies to the forfeiture statute for healthcare fraud" even though it "interpreted a different forfeiture statute." *Elbeblawy*, 899 F.3d at 941; *accord United States v. Sanjar*, 876 F.3d 725, 749 (5th Cir. 2017) ("the forfeiture statute for [healthcare-fraud] offenses incorporates many of the drug-law provisions on which *Honeycutt* relied in rejecting joint and several liability" (citing 21 U.S.C. §§ 853(c), (e), (p))).

Other courts likewise extend *Honeycutt* to other statutes with similar language. The Fourth Circuit applied *Honeycutt* to 18 U.S.C. §982(a)(2), *Chittenden*, 896 F.3d at 637, which requires forfeiture of "property constituting, or derived from, proceeds *the person obtained* directly or indirectly, as a result of" the crime, 18 U.S.C. § 982(a)(2) (emphasis added). Likewise, the Third Circuit denied joint-and-several liability after applying *Honeycutt* "with equal force" to 18 U.S.C. section 1963 and 18 U.S.C. section 981(a)(1)(C) because "a review of the text and structure of those statutes reveals that they were substantially the same as the one under consideration in *Honeycutt*." *United States v. Gjeli*, 867 F.3d 418, 427, 428 (3d Cir. 2017).

Accordingly, section 982(a)(7) is practically identical to section 853(a) in text and effect.

2. Second, section 982's cross-reference to 21 U.S.C. section 853(p) means that, for the same reasons the Court relied on in *Honeycutt*, section 982 also prohibits the government's seizure of untainted assets apart from the narrow path allowed in section 853(p).

After construing section 853 as a whole, *Honeycutt* reasoned that joint and several forfeiture under section 853(a) would render section 853(p)—"the sole provision" of section 853 that allows the government "to confiscate property untainted by the crime"—futile. 581 U.S. at 451.

The same result is warranted for section 982. It incorporates all of section 853, including section 853(p). Therefore, because forfeiture under section 982 is subject to the limitations of section 853, section 853(p), as held in *Honeycutt*, is also the only way the government can confiscate property untainted by the healthcare offenses. Accordingly, section 982, forbids joint-and-several forfeiture under section 982(a)(7) and leaves only section 853(p) as the permissible pathway to untainted assets.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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APPENDIX

TABLE OF CONTENTS

Page

APPENDIX A: Letter from Cristal Clark (Dec. 17, 2024) 1a

APPENDIX B: Letter from Terri L. Schneider (Dec. 14, 2024).. 15a

APPENDIX A

December 17, 2024

Thomas A. Burns
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Dear Thomas,

My husband and I met at a restaurant in Fort Myers, Florida in the year 2000. I had recently moved to southwest Florida from Michigan, and I was excited to be in the area with amazing weather, beaches, and people. I had several family members living nearby, and I was so happy to be a new Florida resident.

Dave was a real estate investor and developer, as well as a land mitigation banker and citrus grove owner. He also owned restaurants and small businesses throughout his twenties and thirties. He graduated from the University of Central Florida with an Accounting degree; he worked as an accountant with Ernst and Ernst before he went on to develop properties with RDG Florida Group, which then became EarthMark Companies. He developed properties and ran businesses successfully since the 1980s.

I, Cristal Clark, graduated from the University of Michigan-Dearborn. I earned a degree in Psychology, with a focus on Organizational Development. After graduating, I went on to work as a consultant for Habitat for Humanity, and helped them sell homes they had purchased to rehab. Shortly after moving to Florida, I became a licensed realtor and worked with Century 21 Sunbelt, before going to work for Dave in 2001. When we met, Dave had four daughters, and I had one son. We would later go on to have two additional sons

together. Our family blended well; we were very happy and made many happy memories together.

Throughout the years, we both worked hard to help the company grow. We donated to many charities and helped take care of several family members. We had seven children whom we supported, and we took care of foster children for years, as well. I volunteered at our children's schools, as well as at church. We also had an animal rescue for some time; our children helped us take care of sick, abandoned, and injured kittens in our neighborhood.

In 2004, the real estate market was booming; Dave had developed Mariner's Club, Key Largo and Mariner's Club, Bahia Beach, as well as Herons Glen. He also developed several properties in Orlando (apartment complexes) and the Rolling River community in Jacksonville. Due to decisions being made by investor partners in Earthmark Companies to sell off key locations, Dave decided to part ways with them to start his own business, with the backing of several previous investment partners.

Dave began Cay Clubs which would continue his long history of real estate development. His focus was on finding properties in highly desirable locations where people would want to visit–many were waterfront Florida properties (with locations in Clearwater, Islamorada, Tavernier, and Marathon)–one was a block from the Las Vegas Strip; one was a ski-resort in Crested Butte, Colorado, and one was in the heart of Orlando–very close to Universal Studios. The company was also working on securing an island resort in the Bahamas (Walkers Cay), though they would learn there would be hidden environmental issues that would challenge future plans for that location. Dave

had contracted with IMG Academies to be their designated builder/developer to work together to create and transform properties to draw athletes, tourists, and more. The condominiums were sold as fee-simple homes to customers, and the buyers could choose to live at their properties, rent them out themselves, or rent them out through the property management company owned by Cay Clubs.

Through the company's efforts, the acquired properties were changed from regular residential communities to "mixed use resort" communities–therefore allowing the ability to have retail, commercial, food service and more. They worked diligently to get approvals for all these amenities, as well as short-term rentals, and more. The properties were well on the way to having all the amenities developed and units fully renovated. The condominiums had all been built–some were in the midst of renovations when the bottom of the market came. The goal was to have them all complete as soon as possible, but no one could foresee that the economy would soon collapse, and that condos everywhere would soon become worth a fraction of what they had been, due to changes in banking and lending regulations. The company had almost gone public, which would have kept it afloat and helped it to wait out the economic downturn, but at the last minute the group helping make that happen saw the "storms" coming with real estate and lending, and decided to back out. Another very large company/group came forward wanting to help partner with the company to run the rentals portion–that also came to a halt when their business went under.

Once the economic crash ensued toward the end of 2007, Dave went to the investor developer partners

and let them know he could no longer keep the business going. The expenses couldn't be taken care of with the sales coming to a total halt. He handed back all developments to the investor partners, who in turn kept them going. They are still there to this day.

We lost our home, as well as our assets, including all our own real estate investments and more. We struggled to get back on our feet, but with the help of previous and new investor partners, Dave was able to help start a new business called CashWiz. Over several years, he helped open more than 20 stores throughout the Caribbean. In the midst of this process, and over five years after Cay Clubs had closed and the properties went to investor/developer partners, we received notice that the SEC would be filing civil charges against us both for selling unlicensed securities with Cay Clubs. The SEC said that the condos sold were sold as investment securities. Dave decided to sell whatever shares were held in the new venture, to keep the CashWiz investor/partner group from being hurt by the negative press associated with the public SEC filing.

Once the funds for the sale of CashWiz were sent, the US DOJ had the funds frozen, stating that the money coming through for the sale of CashWiz shares was fraudulent and earned from tax evasion and money laundering. There was no hearing, and no warning. They seized not only the amount coming in from the sale of the business shares–they seized everything in our accounts.

We were fortunate to have ex-business partners who helped pay for the attorney helping us fight the SEC charges, and we were able to live off of the only store we kept in the sale of the rest of CashWiz: one which

had just opened in Roatan, Honduras. We spent our days raising our minor children and running the store, while fighting the charges looming over us in the SEC filing.

It was a long and arduous process. We gave depositions to the SEC to help them see the truth, even against everyone's warnings. We truly believed once the SEC officials heard the truth, all the misunderstandings would go away. The SEC never gave up. We finally won the SEC case and believed our world would go back to normal and that the government would give back what they had wrongly seized/frozen. We were wrong.

Soon after winning the SEC case, an attorney contacted Dave, and said if Dave would plead guilty to tax evasion and money laundering, they would leave me (Cristal) alone. Dave pleaded with me to just let him take whatever they were going to do, and to protect me from any harm. Our children at the time were nine, eleven, and seventeen. I urged him to fight for the truth and to clear our names, and bring it all to a close.

The Department of Justice arrested both of us in June of 2014. Dave was on his way to a business meeting with an investor partner, and I was at home with my children. My eldest son watched as authorities took me from my home and my children without knowing what the future would hold. Since we lived in Roatan, they took me straight to Tegucigalpa, Honduras–the very dangerous capital city–and they held me, with men, overnight, in their detention center. They then flew me to the US, where the magistrate judge decided to hold us both without bail. Our children were sent to Dave's sister's home in the Florida

Keys. We were blessed that my father-in-law was visiting when we were both taken without warning.

For 14 months leading up to our trial, we were both incarcerated: four months in county jail and 10 months in a high-security federal detention facility. Our lives were threatened at times, and we were both roomed with mentally unstable individuals (including schizophrenic and violent inmates) several times, as well. We were both forced to do innumerable strip searches, and I was forced to have two separate body cavity searches (even though I have never been involved with any type of activity which would call for such an experience). Once the guards knew we didn't use drugs or drink alcohol, we were both subjected to innumerable middle-of-the-night urine screenings, as well (it helped their numbers to show folks weren't under the influence on "random" screenings). We weren't able to go outside or have access to direct sunlight for almost a year.

When our trial finally came, I was acquitted of all charges, and Dave had a hung jury on all charges. There were no convictions. I was finally released and allowed to return to my children. It was beyond amazing and my heart was overjoyed at being free and back with my babies. While this was such a joy, we didn't have anywhere to call "home" besides living with family members. All our belongings were gone. No one could afford to ship things back from where we had been living in Roatan. I lived with my sister-in-law for some months, while looking for work. What most don't realize is that an employment background check only shows charges, not acquittals. I then went to live (with my two youngest children ages 10 and 12 at that time) with my parents at their one-bedroom condo in

Hollywood, Florida. They were taking care of my great aunt who struggled with Alzheimer's. She had the couch, so we slept on lawn/pool layout chairs with pads on them until we could figure out a better situation. I was finally able to secure a job as a teacher approximately one year after being released from incarceration. I had to start from scratch with household items and clothing since all our belongings were lost when they took us from our home.

They held Dave in the detention center until his next trial. During that trial, our attorneys found out many things, including that the prosecutor had acted inappropriately and unlawfully, including trying to get ex-business partners to go against us to help them win the trial. Thankfully, Dave's attorneys and one of his amazing and ethical business partners found the evidence necessary to help get several charges dropped. But Dave still faced several others. Once the next trial came, the government was able to block key witnesses from testifying and also block key evidence from being admitted.

Dave was found guilty of lesser charges. Given those convictions and the dollar amounts associated with his convictions, he could have received a sentence of less than ten years. Instead, the judge sentenced him as if he had been found guilty of all charges. He sentenced Dave to 40 years in prison, which at the time would have been a life sentence.

Most don't realize that is how the federal system works. The judge can consider whatever is acquitted "relevant conduct" and sentence however they wish. Dave was also acquitted of the charges that could support the forfeiture amount he was ordered to pay. He was never in possession of such an amount ($303

million). Again and most importantly, Dave was acquitted of the charge that would have given a high restitution and forfeiture amount. The money seized/frozen was from a time completely separate from the Cay Clubs business (it was from the sale of the later business, CashWiz which didn't even start until years after Cay Clubs shut its doors). Due to the lengthy sentence Dave was given, he was not eligible for a prison camp, or even a low or medium-level prison assignment. He went straight to a very scary, high-security level penitentiary—where many were serving life sentences for violent and repeat offenses. He spent more than three years at the Coleman 1 Penitentiary, before they moved him to the medium-security building.

I was homeless with my minor children for over a year, after being released from pre-trial detainment/incarceration before being able to gain self-supporting employment and housing. I still was unable to access any of the funds that were seized/frozen by the US government, even though I was fully acquitted. I struggled so much to support myself and my children as a single mom (with an incarcerated husband) with no financial help. I was able to borrow a car for that first year. That was a huge blessing; my family and friends worked together to try and donate as many items as they could to get us started.

Thankfully, almost seven years later, Dave's sentence was commuted, and he was able to return home to me and our children; though now they were much older and had been affected enormously by having their dad locked away and all the heartbreak that goes along with that.

Being imprisoned was a traumatic and horrific event that still causes nightmares today for us all.

Having both parents removed unexpectedly and for unknown amounts of time has caused serious stress. One of our children had to be involuntarily institutionalized because of suicidal behavior. Dave and I both missed our eldest's son's senior year of high school, as well as his prom and graduation. Missing these events was excruciatingly painful for us. Every moment away from our children was extremely painful; special events that can never be replayed go beyond pain. Dave's father also passed away while we were both being held without bail. We were not allowed to attend his funeral. Our children have had to pay for most of their college educations.

As stated earlier, I had to start from scratch. Everything from furnishings, kitchen items, bedding, all had to be purchased or donated, since all our assets were gone. I became very adept at thrift store shopping and "making do" with whatever I had. My children shared clothing and shoes, until I could get them their own things over time. When I was considered for a teaching position, I had to prove with letters from the judge and attorneys that I had in fact been acquitted. Years later, I found out that the government had placed an incorrect conviction on my record, and I was suspended with pay until I could prove it was incorrect. Dave also almost lost his life to sepsis from a tooth abscess which wasn't properly cared for. The prison dentist pulled his abscessed tooth without first giving him antibiotics; we are grateful someone realized the mistake and had him transported to a trauma center for a life-saving surgery and IV antibiotics. The facility did not notify us that he had been hospitalized, nor were we allowed to see him at the hospital, once we found out from a kind guard that he actually was

taken to the trauma center/ICU. He had been shackled to his hospital bed the entire time he was being operated on and throughout his recovery—over a week in total.

We are to this day held at customs when we travel to one of our work pilot projects in the United States Virgin Islands. It's like a never-ending "scarlet letter" situation; I am grateful for the experiences that help me to better understand so many in similar situations, and to hopefully be able to help turn things around one day—but it is definitely not easy or fun to go through these issues for so long.

Dave is home with us now, but we all still struggle with emotional and financial concerns. Dave still has the restitution order, so a portion of his income goes to that. Although he founded a company that contributes to society, he is restricted from having ownership of it. He also cannot get a loan or have a credit card; even with his sentence commutation, he still has strict boundaries imposed by the judge for years to come. We still rent the same home I moved into while he was away. Before he came home, and even now that he is here, we have had to rely on family to help with our day-to-day costs. We also have chosen not to file our taxes jointly, as that then may put me at risk for whatever else the government would or could do to harm us. I am now paying almost $20,000 in back taxes without that provision of filing jointly. Even though Dave's sentence has been commuted, he is still under the burdensome and unjustified restitution order. Our attorney is trying to fight that battle in court, but at this time, Dave still pays 10% of any and all income he makes and will be required to do so for the rest of his life, unless the restitution order gets overturned.

The experiences Dave went through after having spent almost seven years in prison alongside countless individuals with challenged backgrounds inspired him to help those who are/have been justice-impacted to make better lives for themselves. He helped co-found a company called Promising People which uses Virtual Reality and tablet technology to help bring training and education to those in (and coming out of) prison to ensure they have every possible opportunity to turn their lives around for good. It helps close the gaps of labor shortages, and enables those needing every step of education. We are both working diligently to offer those in need phonics/learning-to-read skills training, as well as academic interventions to pull people up from lower/elementary-level skills to high school readiness, high school diplomas, and career and technical education training. We also provide soft skills training to obtain the skills they need to grow and become successful in life. This training helps reduce recidivism and ensures a better future for individuals, families, and communities.

Dave is now 66, and I am 51 years old. Our children are now all adults. We also have seven amazing grandchildren. Dave has been home from prison now for almost four years. Our family is overjoyed to have him home and free.

We hope and pray that the courts will take into consideration how forfeitures and restitution orders can seriously impact the lives of individuals and families. Although it can be a beneficial thing for those who truly deserve to have funds taken and restitution orders enacted, our plight highlights the outlier situations where it can truly hurt families unjustly. If a person is acquitted of charges tied to restitution

orders and forfeiture actions, they should be free to move forward with their lives and what rightfully belongs to them. Courts and government officials should not have the right to just take from individuals and families without having to prove without a shadow of a doubt that what they are doing is justified.

After my experiences with the justice system and with forfeiture actions, I began to search for the "why" of it all? Why did the SEC and DOJ decide—many years after the development business failed and only once we were able to get our lives re-established— to go after us? It especially started to dawn on me that something was amiss beyond what I imagined when I read my husband's and my proposed "plea offers," given by our prosecutor, while we were incarcerated and awaiting trial (the plea offers were 23 and 17 pages, respectively). Both plea offers were complete fictional narratives implicating every person we knew who had millions of dollars of wealth as being part of some grand ponzi-scheme conspiracy. My public defender team let me know that even though they knew these were unjust charges, that it was unfathomably rare for anyone to be fully acquitted at a federal trial, given what the prosecutors can do, that federal judges can sentence on acquitted charges, and that a plea bargain may be a good option to keep me from any possibility of spending decades in prison and missing all of my children's senior years, proms, and/or graduations. If I signed my proposed plea offer, I would be home free very soon, but I would have to testify against all the others implicated in the pages of the agreement. Although more than anything I wanted to be home with my kids and be free of the nightmare I was living, I couldn't bring myself to lie about so many

to guarantee my own freedom. It was so perplexing that the system could be this unjust.

I needed to learn all I could about what could be fueling prosecutions like ours. Using the skills I gained as a research assistant in college, I learned that in the 1980s, President Reagan's Attorney General, Ed Meese, helped change the forfeiture laws. Prior to the change, all monies subject to asset forfeiture/seizure actions went to Congress to decide how to use the funds. They were placed in a "general fund" and the process was regulated and overseen by many layers of decision-makers hoping to do things according to the Constitution. Attorney General Meese helped change the system to the DOJ becoming the deciding agents. They were now able to keep whatever they took for "training" and for "the war on drugs", etc. All of it sounds good and well, except for these now staggering facts: In the 1980s approximately $90 million was taken on average each year in forfeiture actions and asset seizures throughout the United States. At that time, approximately 300,000 people were locked up in every type of incarceration facility. Now, three decades after that law was changed, it has risen to $4.4 billion dollars taken in forfeiture actions and asset seizures and almost 2.5 million people being incarcerated in every type of facility in the United States.

The law which changed the entire justice system is called the Comprehensive Forfeiture Act of 1984. It expanded the government's ability to seize property by mere accusation. They can take anything. Even with no probable ties to what they are accusing anyone of. Even without a conviction. Congress is no longer involved in deciding how to spend it. The Department of Justice decides. It is important to note

these figures and ask ourselves what on earth has happened, and can we turn things around?

Maybe it's just an odd coincidence that these numbers have skyrocketed. Maybe there is just so much more crime and need to take from US citizens to the extent they are. But maybe forfeiture laws need to be changed. I have spoken to countless others with similar stories to ours—the system can be very unjust, since it can become fueled by rewarding US Attorneys and prosecutors with sometimes not-so-great intentions. It will take courageous actions to help turn things around and help our country go back to the land of the free, a land where its citizens don't have to try and protect themselves from government overreach. Until that time, I will do all I can to help spread awareness. I am so grateful to have the chance to help turn things around for good.

Respectfully,

/s/ Cristal Clark

APPENDIX B

December 17, 2024

Thomas A. Burns
BURNS, P.A.
301 West Platt Street, Suite 137
Tampa, FL 33606

Dear Thomas,

I was born in 1958 in the small town of Hamlin West, Virginia. Hamlin is best known for being the birthplace of the pilot Chuck Yeager. My mother too, was born there. She attended Hamlin High alongside of Chuck and his brother. The same local doctor that delivered my mother delivered me. My grandmother assisted the doctor in my birth. I grew up in the nearby city of Kenova with my parents, brother, and sister. I had a wonderful childhood and very humble beginnings.

Life in West Virginia has limited options for anyone seeking to better himself or herself or learn new ways. My father owned an excavation company where he worked hard to improve his lot in life and trained my siblings and me to work hard. We spent the required time in school, an opportunity he did not have, and the rest of our time, we spent in our study of the Bible, working to help maintain the large property he had developed and helping him on various jobs in the community. After high school, I continued to work alongside my father and maintained fulltime employment in a variety of secular endeavors. The most important of my activities, however, was volunteer work in assisting individuals in the community with anything I could. Much work involved helping families who were struggling with everything from recovery from floods

to just needing a little something to eat. It was a great life.

In 1987, I moved to Florida just looking for opportunity to expand my future. It was there, in Lakeland, I met my husband. After a few years of marriage I worked, saved, and was able to attend college. I continued to work fulltime and attended the University of South Florida fulltime. In 2000, I received my degree as a Doctor in the College of Communication Disorders. I then sat for certification and received my license as a Doctor of Audiology with a specialty in vestibular disorders. With this knowledge, I opened my private practice in Lakeland. This allowed me to expand on my degree. I enjoyed my work assisting individuals who were experiencing problems with dizziness and balance. I was known in many parts of the state for my ability in diagnostics and therapy for patients who had been suffering for years with these problems.

I had contracts with Florida Workers Compensation, The United States Veterans Administration and Polk County Board of Education, to name a few. In this practice, I had so much joy in helping people who had sought assistance for years for these debilitating disorders. Most of my patients had 100% recovery while others did receive enough relief to be able to continue to obtain a normal, functioning, working life. The financial rewards for this work were not tremendous but the satisfaction of helping others was worth it. At the same time, I did make a living that allowed my husband and me to have a comfortable life while helping others.

Many people I saw had insufficient or no insurance coverage. As many with vestibular disorders had

hearing loss, hearing loss was part of my practice. Coverage from insurance for hearing aids was rare. Services were never denied in my clinic regardless of ability to pay. Treatment could range from a few hundred to several thousand dollars. In my clinic, tens of thousands of dollars of this treatment was received at no charge. I volunteered and worked with the local Sertoma Service Club to assist so that as many that could be helped were.

Over time, my practice grew and a local doctor who wanted to team up to expand my services approached me. This eventually led me to start a second clinic that offered the electrophysiological testing needed to diagnose vestibular disorders as well as add a cardiologist and an otorhinolaryngologist. The idea was the practice would accept referrals from other physicians who may not have the expertise in the diagnostic arena or the extraordinarily expensive equipment needed to perform the diagnostic testing. Testing was provided in the office of the referring physician and we would employ a technologist to perform the testing. After being tested, I and the other doctors would provide the final report for interpretation of the tests. The studies were returned to the referring physician for treatment. This provided a seamless referral and recommendation that would be easy and convenient for both the patient and the referring physician. As mentioned earlier this equipment was very expensive and was an enormous investment. Contract employees, rental of space on or near the referring physician's office, and the equipment was needed.

I had a reputation in the industry of being a dedicated worker and was honest. Because of that reputation, a manufacturer I had dealings with in my first

practice provided me approximately $250,000.00 on a signature loan. Overhead costs for this practice were crushing. I had to lend the company money to help cover operating costs as it took over a year for the company to become profitable.

The business partner, hired to secure contracts and manage technicians, obtained a contract with a clinic in Miami, Florida. The practice started seeing forty patients or more every day. While this did increase cost, the business also started to receive Medicare reimbursement at a steady flow.

Shortly after the business seemed to be leveling out and looking as if it may be able to support itself, the Federal Bureau of Investigation (FBI) noted the large quantity of billing submitted to Medicare. Our volume far exceeded the average and expected. It was understandable that this would attract their attention. Without warning, the payments from Medicare stopped. I assumed it would resume soon as I knew our billings were legitimate. I also knew and actually appreciated the fact that the Federal Government was obligated to monitor billing to Medicare. With this in mind, I continued to see patients. After about 30-40 days without receiving payment from Medicare, I tried to contact the investigators to see if there were questions. I wanted to know what I could do to get the process started again. They would not return my calls. Medicare indicated they did not know why payments were being withheld. They saw no problem. I continued the work, as I assumed this would be cleared up soon. After about 3-4 months with no response from the FBI, the business began to suffer.

Suddenly, and much to my surprise, I was indicted. My nightmare with the legal system began. At the end

of this, I was charged and convicted of Money Laundering, Fraud, and Identity Theft. This ended in a sentence of 95 months. I was devastated. Everything I knew and dreamed of was destroyed. At the time of the indictment, I had about $250,000.00 on reserve in the business bank account. This was money set aside for Taxes and to have about a 30-day supply of operating cash and possible emergency expenses. In addition, I wanted to pay the business manager, as he had not been receiving pay for his work thus far. We had agreed we would not take regular salaries until the business was stable.

All funds in the bank were seized by the FBI. This set off a domino effect of financial ruin. Legal fees amounting to about $200,000 were spent from my original practice, there was no longer money for payment of the $250,000 loan, contract laborers, and rent. Perhaps worst of all, the funds to pay taxes were gone. I was no longer allowed to work in my profession. This meant I could not pay the lease on my original business. Nor could I pay vendors for the purchases I made.

On a personal basis, my income stopped at the indictment. There was no money for my mortgage on my home, electric bills, food, or maintenance. I could not afford health insurance for my husband and me. I have severe rheumatoid arthritis. One of my medications alone was nearly $2,500 per month. My husband has serious periodontal disease, which was about $4,000 per year to maintain. My vehicle was over 10 years old. It, of course, needed to be maintained.

This was all very stressful. Worse though were the many people who came to me for occasional help. My husband has five brothers who had all struggled for

years. It was not uncommon for my husband and I to make a rent payment, purchase gas, repair a vehicle, help with utilities, feed them at our house, or take them to the grocery store. Most of them have children. I could not and would not allow anyone to be hungry or cold, especially children, if I could prevent it.

In addition, I would help my own family. My brother had a stroke and needed around the clock care. My sister had experienced some rough financial times. She and her husband had just moved out of our home a few months earlier. I was continuing to try to help them a bit.

There was also the community I love so very much, deaf children. I had been volunteering for years in the county to help deaf children maintain their hearing aids, to try to teach them how to do much of the maintenance themselves, learn how to advocate for themselves, and express their hearing care needs.

The most difficult assistance I could no longer continue was that of my mother. My father passed away in 2009. My mother stayed, and still lives in that little humble homestead I mentioned at the start of my letter. Just like any other home, maintenance is ongoing.

In addition, my father used what funds he had to buy a horrible, overgrown piece of property on top of a mountain. Everyone told him he was crazy. He had a dream and a plan. He hired a man with a bulldozer to start to level a spot on top. My father sat on a rock and everyday watched the man as he leveled the land with his dozer and loaded the dirt in a dump truck with a backhoe to haul off.

With his fine reputation as an honest hard worker, my father went to the local bank to the president he

knew and grew up with. The banker loaned my father money to buy a dump truck. He used the dump truck to haul the dirt off and sell it as topsoil and fill dirt. He made enough money to pay the dozer operator and the bank loan off and used that money to buy a backhoe and build a large excavation business.

I carry that same drive in my heart as I struggle to figure how I can pay the overwhelming burden imposed by the court. I lost most of my material possessions, which I couldn't care less about. More importantly, I lost my good name and my reputation.

The IRS put a lien on my home in Florida. I couldn't sell the home for its true value because the IRS lien prevented me from being able to get a clear title. The mortgage company also had a lien. With no income and a restitution payment, I was behind on the mortgage. My home sold at auction for about $150,000 under value.

I do not qualify for a loan due to the bad debt I accrued when I was not allowed to work in my profession at the time of the indictment and was not able to pay the bills. I am not able to negotiate to try to pay any of the debts I had because of the restitution debt. I am paying about 20% of my Social Security income toward a debt that I won't live long enough to pay back, for money I never received.

This is a very depressed area of the country in terms of education, finances, and jobs. I have so many ideas of ways I could get back on my feet and move forward while at the same time help the people around me who need so much. Unfortunately, the weight of the restitution puts a stop to all of that.

No lender will lend even a small amount of money with that debt hanging over my head. I cannot even get a credit card I have many ideas for a small business. I am very creative. I have a talent for many things: stained glass, quilt making, cooking, and much more.

I would love to make cloth grocery tote bags to sell, as plastic is starting to fall from favor. I don't have and cannot get even the few hundred dollars to start that business.

I've also thought of operating a little coffee and breakfast stop or start a craft business. My big dream is to develop a piece of land on a property in my area called 12 Pole Creek. It feeds into the Ohio River. The Ohio River allows travel in the North Westerly direction and East. This land could be cleared and over time built up into an area for a Marina, Lodging, Eateries, and Local Artisans to sell their fabulous hand made goods. It is only about a mile from the airport and could attract tourist travel to the Ohio River. The jobs it could create would be wonderful.

All of these ideas, from the most minimal to multimillion dollar investment is out of reach, as the restitution has a strangle hold on me, as well as everyone and everything I touch. In the meantime, I am back at the house on top of a mountain where my life began, trying to help my now 89-year-old mother as much as I can. Though in my current situation, I actually need her help more than she needs mine.

I would appreciate if the Supreme Court would consider my experience, what I have written here, and hear this case. I have always said, "if we all give a little we could all have a lot."

Sincerely,
/s/ Terri L. Schneider