No. 17-522

In the Supreme Court of the United States

ANNE MARIE HANKINS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a district court may direct unclaimed restitution payments to the Crime Victims Fund.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes:

Miscellaneous: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is published at 858 F.3d 1273. The opinion of the district court (Pet. App. 16a-23a) is not published in the Federal Supplement but is available at 2015 WL 13547854.

JURISDICTION

The judgment of the court of appeals was entered on June 6, 2017. On August 17, 2017, Justice Kennedy extended the time within which to file a petition for a writ of certiorari to and including October 5, 2017, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Oregon, petitioner was convicted on one count of bank fraud, in violation of 18 U.S.C. 1344. Pet. App. 24a. The court sentenced her

to 30 days of imprisonment, to be followed by five years of supervised release, and ordered her to pay $350,000 in restitution. *Id.* at 25a-26a, 32a. Years later, after paying less than a tenth of what she owed, petitioner moved to extinguish her restitution obligation on the ground that the victim bank had assigned its interest in her restitution payments to a third-party entity that, in turn, had agreed to accept $5000 as settlement of the obligation. *Id.* at 3a-4a. The court denied petitioner's motion to extinguish her restitution obligation. *Id.* at 16a-23a. The court of appeals affirmed. *Id.* at 1a-15a.

1. In the late 1990s, petitioner submitted a false loan application on behalf of her company to U.S. Bank in Eugene, Oregon. In the loan application, petitioner stated that her company's short-term liabilities were approximately $10,000 when she knew that they were actually more than $650,000. Gov't C.A. E.R. 1-3. The bank loaned the company $350,000 based on the misrepresentations in petitioner's application. *Ibid.* Nine days after the loan was funded, petitioner's company ceased operations. Presentence Investigation Report ¶ 15.

In 2001, petitioner was charged in a criminal complaint with one count of bank fraud, in violation of 18 U.S.C. 1344. Gov't C.A. E.R. 1-3. She pleaded guilty pursuant to a plea agreement, *id.* at 14-18, and she acknowledged before pleading guilty that "restitution in the full amount of any financial loss" was "mandatory" for "certain * * * crimes involving fraud or deceit," *id.* at 9; see 18 U.S.C. 3663A(c)(1)(A)(ii) (requiring restitution for "an offense against property under this title * * * including any offense committed by fraud or deceit"). The district court sentenced petitioner to 30 days of imprisonment, to be followed by five years of supervised release. Pet. App. 25a-26a. The court also

ordered petitioner to pay restitution in the amount of $350,000, which would be paid to the clerk of the court "for transfer to" the victim, U.S. Bank. *Id.* at 32a. The restitution was ordered to be paid "in full immediately," though the court's order further provided that, "[i]f there is any unpaid balance at the time of [petitioner's] release from custody, it shall be paid at the maximum installment possible, and not less than $50 per month." *Ibid.*

For the next 11 years, petitioner made "sporadic" restitution payments ranging between $50 and $400. Pet. App. 3a; Gov't C.A. E.R. 19-23. In 2011, petitioner made an involuntary payment of $1158 when the U.S. Department of the Treasury redirected one of her tax refunds to the clerk of the district court, crediting the amount against petitioner's restitution obligation under the Treasury Offset Program. Pet. App. 3a & n.1; Gov't C.A. E.R. 21; see 26 U.S.C. 6402(d) (statutory authority for the Treasury Offset Program). Around the same time, the court was "advised" that the victim, U.S. Bank, had assigned its interest in petitioner's restitution payments to Horton & Associates LLC. 01-cr-60100 Docket entry No. (Docket entry No.) 26 (Nov. 4, 2011) (minute order). The court directed the clerk's office to send all future "disbursements on the restitution obligation to Horton & Associates L.L.C." *Ibid.*; C.A. E.R. 13. In 2012, Treasury again redirected a tax refund that otherwise would have gone to petitioner (this time for approximately $3310). Gov't C.A. E.R. 22. At this point petitioner had paid about $13,000 of her $350,000 obligation, including about $5000 in Treasury offsets. Pet. App. 3a.

In September 2013, petitioner's attorney filed a notice with the district court entitled "Full Satisfaction of

Judgment," which bore the name of petitioner's attorney at the top but purported to be filed on behalf of Horton & Associates LLC. Docket entry No. 27, at 1-2 (Sept. 12, 2013) (reproduced at C.A. E.R. 15-16).[1] The document "acknowledge[d] satisfaction in full of the Restitution Judgment in the sum of $350,000 entered in this action" and "authorize[d] and direct[ed]" the clerk of the court "to enter a full satisfaction of record." *Ibid.* The document was dated September 6, 2013, signed by S. Dewayne Horton as managing member of Horton & Associates LLC, and notarized by a notary public in Oklahoma. C.A. E.R. 16. After this notice was filed, petitioner stopped making restitution payments. Pet. App. 4a.

In April 2015, notwithstanding the notice filed by petitioner's attorney, the Treasury Offset Program redirected another tax refund to the district court—this time in the amount of $21,765. Gov't C.A. E.R. 22. Shortly thereafter, petitioner filed a "Motion to Satisfy Restitution Judgment." C.A. E.R. 1. In support of the motion, petitioner's attorney swore in an affidavit that "[o]n or about the 20th day of November, 2002, U.S. National Bank Association assigned all its rights and claims against [petitioner] to Horton & Associates LLC." *Id.* at 3. The affidavit did not explain why petitioner did not notify the court of the assignment until

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[1] The petition states that "Horton filed with the District Court a notice acknowledging 'Full Satisfaction of Judgment,'" but, as noted, that document appears to have been filed by petitioner's attorney. Pet. 5 (citation omitted). There is no evidence from the record that any lawyer representing Horton & Associates LLC ever appeared before the district court. Before the court of appeals, petitioner acknowledged that "Horton, the assignee, was not a party to the proceeding." Pet. C.A. Br. 7.

nine years after the fact. See Pet. App. 3a. Petitioner's attorney further swore that, in 2013, Horton & Associates LLC had accepted $5000 as "satisfaction of the restitution judgment." C.A. E.R. 3.

2. The district court denied petitioner's motion to extinguish her restitution obligation. Pet. App. 16a-23a. The court viewed petitioner's motion as raising two issues: first, whether the remainder of her restitution should be "discharged"; and second, where to send the $21,782 payment from the Treasury Offset Program, and all future restitution payments. *Id.* at 20a-21a. On the first issue, the court determined that petitioner's restitution obligation was "not discharged by the satisfaction agreement she entered into with Horton" and must be paid in full. *Id.* at 20a.

On the second issue, the district court concluded that the $21,782 offset and all future restitution payments that petitioner remained obligated to make should be sent to the Crime Victims Fund. Pet. App. 21a-22a. The Crime Victims Fund is a statutorily created fund in the U.S. Treasury that receives money collected from fines, restitution, mandatory assessments, and forfeited bonds, among other things. 34 U.S.C. 20101(a) and (b). It supports grants to victims of federal and state crimes and funds victims' services (*e.g.*, victim coordinators in U.S. Attorney's Offices). 34 U.S.C. 20101(d). Under 18 U.S.C. 3664(g)(2), a victim "may at any time assign [her] interest in restitution payments to the Crime Victims Fund * * * without in any way impairing the obligation of the defendant to make such payments." See Pet. App. 21a-22a. That provision, the court explained, suggests that assignment of restitution funds that a victim (or its assignee) has rejected to the Crime Victims Fund by the court is permitted. *Id.* at 22a.

3. The court of appeals affirmed. Pet. App. 1a-15a.

a. The court of appeals first determined that the mandatory nature of restitution under Sections 3663A and 3664 does not allow a defendant to extinguish her restitution obligation by reaching a settlement with the victim or the victim's assignee. Pet. App. 6a-9a. The court explained that the Mandatory Victims Restitution Act of 1996 (MVRA or Act), Pub. L. No. 104-132, Tit. II, Subtit. A, 110 Stat. 1227, "mandates restitution to victims of certain offenses, including those 'committed by fraud or deceit,'" Pet. App. 5a (citation omitted), and "[o]nce a restitution order is imposed, the MVRA leaves the district court with limited options to modify restitution," *id.* at 6a-7a. The court of appeals further explained that, because restitution is a criminal sentence, "its enforcement is distinct from a civil judgment that is left largely in the parties' hands." *Id.* at 7a. The court observed that its holding was consistent with other circuits and that if it adopted the rule suggested by petitioner, "there is a serious risk that defendants could coerce victims into settling" for far less than the defendants owed. *Id.* at 8a.

b. The court of appeals additionally determined that the district court had permissibly directed payment of the restitution funds that Horton had rejected to the Crime Victims Fund. Pet. App. 9a-15a. The MVRA provides that "[a] victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund * * * without in any way impairing the obligation of the defendant to make such payments." 18 U.S.C. 3664(g)(2). Based on that statutory reference to the Crime Victims Fund, as well as the MVRA's "compensatory goal of supporting crime victims," the court of

appeals concluded that the district court had the authority to "fill[] [the] gap in the MVRA" by redirecting petitioner's restitution payments to the Crime Victims Fund. Pet. App. 12a. Absent such redirection, the court of appeals observed, petitioner's mandatory restitution payments would remain with the district court clerk and would eventually "revert * * * to the U.S. Treasury's federal unclaimed property fund" or "escheat to the state." *Id.* at 13a; see *id.* at 13a & n.5 (citing 28 U.S.C. 2042 and *United States* v. *Klein*, 303 U.S. 276 (1938)). If that happened, the court of appeals observed, "the funds would accrue without supporting any victims of crime," contrary to the purpose of the MVRA. *Id.* at 13a.

The court of appeals observed that in *United States* v. *Speakman*, 594 F.3d 1165 (2010), the Tenth Circuit had permitted a victim to dictate whether the defendant would be ordered to pay restitution at all, a result it described as "contradict[ing] both the mandatory nature of restitution and the conclusion of multiple circuits that restitution under the MVRA does not rest on the victim's concurrence." Pet. App. 14a. The court also observed that in *United States* v. *Pawlinski*, 374 F.3d 536 (2004), the Seventh Circuit had concluded that the MVRA did not allow a district court to itself direct unclaimed restitution payments to the Crime Victims Fund and had viewed the disposition of such funds as an issue for federal and state governments to resolve. Pet. App. 14a-15a. The court of appeals stated that *Speakman* and *Pawlinski* did not affect its reasoning. The court explained that the "process of deciding where to send restitution payments already ordered is distinct from the authority to order restitution in the first in-

stance," and in this case "[n]o one disputes that the district court entered a valid restitution order at the outset." *Id.* at 15a. The court of appeals further explained that it did not "interpret the MVRA's silence regarding redirection as a limit on the district court's power to craft a solution that is consistent with the purposes of the MVRA and the [Crime Victims] Fund and that fosters the compensatory and punitive goals of the statute." *Ibid.*

ARGUMENT

Petitioner contends (Pet. 19-22) that the district court lacked statutory authority to direct restitution payments to the Crime Victims Fund after her victim's assignee disclaimed any further interest in restitution payments. That issue is unsuitable for review in this Court, because petitioner has not identified any way in which the Court's resolution of that question would affect her. Regardless of whether petitioner's restitution payments are redirected to the Crime Victims Fund or instead remain with the district court, the court of appeals correctly held—in a portion of its decision that petitioner does not directly challenge—that a victim cannot unilaterally extinguish a defendant's obligation to pay restitution. Further review of the question raised in the petition is therefore unwarranted.

1. Regardless of whether the district court had statutory authority to direct petitioner's restitution payments to the Crime Victims Fund, the court of appeals correctly held, and petitioner does not directly dispute, that a victim cannot unilaterally extinguish a restitution order entered against a defendant as part of her criminal sentence. Pet. App. 6a-9a. Accordingly, no matter how the question presented might be resolved, peti-

tioner remains obligated to satisfy the $350,000 restitution order entered as part of her criminal sentence, which the district court indisputably had statutory authority to order.

a. Congress enacted the MVRA to make restitution mandatory for all victims of specified crimes, without regard to a defendant's ability to pay. See S. Rep. No. 179, 104th Cong., 1st Sess. 18-20 (1995). Under the MVRA, the district court "shall order * * * that the defendant make restitution to the victim of the offense." 18 U.S.C. 3663A(a)(1). The MVRA's "text places primary weight upon, and emphasizes the importance of, imposing restitution upon those convicted of certain federal crimes," providing that "restitution shall be ordered in the 'full amount of each victim's losses' and 'without consideration of the economic circumstances of the defendant.'" *Dolan* v. *United States*, 560 U.S. 605, 612 (2010) (quoting 18 U.S.C. 3663A(f)(1)(A)). The government bears primary responsibility, along with the Probation Office, for establishing and proving the amount of restitution at sentencing, *id.* at 612-613 (citing 18 U.S.C. 3664(d)), although a victim has the right "to petition the court for an amended restitution order" if further losses are discovered, 18 U.S.C. 3664(d)(5). "A sentence that imposes an order of restitution is a final judgment notwithstanding the fact that" it can subsequently be modified under limited circumstances. 18 U.S.C. 3664(*o*).

Viewed as a whole, the MVRA makes clear that securing full restitution from a defendant is an integral part of federal sentencing. Restitution must be ordered even when the defendant's financial situation makes the victim's receipt of actual compensation doubtful, 18 U.S.C. 3664(f)(1)(A), and even when the victim has

already been compensated through another source, 18 U.S.C. 3664(f)(1)(B). If a victim has been compensated through another source, then the compensating entity is entitled to restitution, although the victim must be paid first. 18 U.S.C. 3664(j)(1). And if a victim is able to obtain compensation from the defendant through a federal or state civil proceeding, the MVRA provides that the defendant's restitution obligation will be reduced proportionately—"by any amount later recovered"—but will not be extinguished. 18 U.S.C. 3664(j)(2). The overarching theme of the MVRA is that "justice cannot be considered served until full restitution is made." *Dolan*, 560 U.S. at 613 (citation omitted).

As petitioner emphasizes (Pet. i, 2, 11, 14), the MVRA provides that "[n]o victim shall be required to participate in any phase of a restitution order." 18 U.S.C. 3664(g)(1). But most of the Act's provisions do not require a victim's participation, with a few well-defined exceptions. See, *e.g.*, 18 U.S.C. 3664(d)(1) and (5) (placing primary responsibility for establishing the amount of restitution on the government and the Probation Office, though further providing that a victim may "petition the court for an amended restitution order"); 18 U.S.C. 3664(m)(1)(B) (allowing a victim to request "an abstract of judgment certifying that a judgment has been entered in favor of such victim in the amount specified in the restitution order"); *Kelly* v. *Robinson*, 479 U.S. 36, 52 (1986) (noting, in a pre-MVRA decision, that a "victim has no control over the amount of restitution awarded or over the decision to award restitution").

Consistent with the MVRA's purpose of requiring full restitution from criminal defendants, a victim can-

not unilaterally excuse the defendant from paying restitution. Every court of appeals to address the issue has held that a defendant's presentencing settlement with a victim does not eliminate the defendant's obligation to pay full restitution to that victim, although the defendant may receive credit at sentencing for any payments he makes as part of such a settlement. See *United States* v. *Savoie*, 985 F.2d 612, 619 (1st Cir. 1993); *United States* v. *Himler*, 355 F.3d 735, 744-745 (3d Cir. 2004); *United States* v. *Karam*, 201 F.3d 320, 328-329 (4th Cir. 2000); *United States* v. *Sheinbaum*, 136 F.3d 443, 448-449 (5th Cir. 1998), cert. denied, 526 U.S. 1133 (1999); *United States* v. *Bearden*, 274 F.3d 1031, 1040-1041 (6th Cir. 2001); *United States* v. *Kolbusz*, 837 F.3d 811, 813 (7th Cir. 2016), cert. denied, 137 S. Ct. 2147 (2017); *United States* v. *Vetter*, 895 F.2d 456, 459 (8th Cir. 1990) (per curiam); *United States* v. *Cloud*, 872 F.2d 846, 854-855 (9th Cir.), cert. denied, 493 U.S. 1002 (1989); *United States* v. *Gallant*, 537 F.3d 1202, 1249-1250 (10th Cir. 2008), cert. denied, 556 U.S. 1198 (2009); *United States* v. *Twitty*, 107 F.3d 1482, 1493 n.12 (11th Cir.), cert. denied, 522 U.S. 902 (1997). Likewise, every court of appeals to address the issue has held that a victim cannot agree to settle a defendant's restitution obligation *after* sentencing—at which point the court's restitution order is "a final judgment," 18 U.S.C. 3664(*o*), that cannot be modified by private agreement. See *United States* v. *Johnson*, 378 F.3d 230, 244-246 (2d Cir. 2004); *United States* v. *Ridgeway*, 489 F.3d 732, 738 (5th Cir. 2007); *United States* v. *Boal*, 534 F.3d 965, 968-969 (8th Cir. 2008); cf. *Kelly*, 479 U.S. at 52 (1986) (holding that a restitution award is not dischargeable in bankruptcy, and noting that restitution is imposed not

only for the "benefit of victims, but for the benefit of society as a whole").

The consensus that a victim cannot unilaterally extinguish a defendant's restitution obligation is also sound as a policy matter. Although the victim in this case was a bank, petitioner's proposed rule that a victim's disclaimer of any further restitution payments would extinguish the defendant's obligation to pay them creates a "serious risk that defendants could coerce victims into settling" for far less than the defendants owed, thereby re-victimizing the victims all over again. Pet. App. 8a.

The court of appeals correctly applied those principles below, noting that the "logical extension" of the rule that a defendant cannot privately settle her restitution obligation before sentencing requires that a defendant cannot settle her restitution obligation after sentencing, either. Pet. App. 7a. Indeed, the court explained, the "reasoning is all the more powerful" in a post-sentencing context, when the question becomes whether private parties can agree to extinguish "the restitution order itself—a criminal sentence entered following a criminal conviction." *Ibid.* The court therefore correctly held that the apparent settlement between petitioner and the victim's assignee, Horton & Associates LLC, did not extinguish petitioner's restitution obligation. The requirement that petitioner pay $350,000 in restitution to the clerk of the district court as part of her criminal sentence was not something that a private party had the power to waive.

b. Petitioner relies on (Pet. 7) two court of appeals decisions to argue for a contrary result. Neither deci-

sion stands for the proposition that a victim can unilaterally extinguish a valid restitution order entered by a district court.

In *United States* v. *Speakman*, 594 F.3d 1165 (2010), the Tenth Circuit held that a victim could prevent a district court from imposing an order of restitution by completely refusing to participate in the sentencing process. Although the Tenth Circuit had previously held, in agreement with the other courts of appeals, that a victim cannot extinguish a defendant's restitution obligation as part of a presentencing settlement, see *Gallant*, *supra*, the court in *Speakman* allowed a victim's refusal to participate in the proceedings *at sentencing* to prevent the imposition of an otherwise mandatory restitution order against the defendant. 594 F.3d at 1175. The court reasoned that, because a victim has the right under 18 U.S.C. 3664(g)(1) to refuse restitution, a victim's exercise of that right—without assigning restitution to the Crime Victims Fund under Section 3664(g)(2)—leaves a district court without "a statutory basis" for ordering restitution to anyone. 594 F.3d at 1177.

That holding is wrong. See *Kelly*, 479 U.S. at 52 (a "victim has no control over the amount of restitution awarded or over the decision to award restitution"). But in any event it has no bearing on the court of appeals' decision in this case. As the court correctly noted, petitioner does not dispute that the district court entered a valid restitution order at sentencing, which is now a final judgment that constitutes part of petitioner's criminal sentence. Pet. App. 15a. Accordingly, there is no violation here of "the rule that a district court cannot order restitution absent explicit statutory authority." *Ibid.* As the court correctly explained,

"[t]he process of deciding where to send restitution payments already ordered is distinct from the authority to order restitution in the first instance." *Ibid.* *Speakman* does not address the former issue, which is the only issue raised in the petition.

In *United States* v. *Pawlinski*, 374 F.3d 536 (7th Cir. 2004), a Milwaukee alderman pleaded guilty to having defrauded contributors to his campaign fund by using the money for purposes unrelated to the campaign. *Id.* at 537. The defendant was ordered to pay restitution, with the money to be deposited in the district court in the first instance, and he paid the restitution in full. *Ibid.* Only a small number of victims stepped forward to claim their share of the restitution, and the question before the court was whether the district court could direct the remainder, which had already been paid to the district court, to the Crime Victims Fund. *Id.* at 538.

The court of appeals concluded that the defendant had standing to challenge the district court's order to redirect the restitution payments only because his lawyer suggested that the unclaimed balance should be returned to the campaign fund, which would then be dissolved and its assets distributed in accordance with Wisconsin law. *Pawlinski*, 374 F.3d at 538. And under Wisconsin law, it was possible that the defendant might be able to use money returned to the campaign fund to pay for the campaign's debt or for state law civil fines and criminal penalties. *Id.* at 538-539. The court concluded that the defendant therefore had a "financial interest in who receives the money" sufficient to confer standing upon him. *Id.* at 538; see *id.* at 539.

Having concluded that defendant had standing to challenge the district court's decision to redirect resti-

tution payments already made, the court of appeals concluded that the district court could not redirect the payments to the Crime Victims Fund without an assignment from the victims. *Pawlinski*, 374 F.3d at 539-540 (citing 18 U.S.C. 3664(g)(2)). The court did not decide, however, what should happen to the unclaimed restitution payments. It stated that "[w]hat happens to the money that the judge dispatched to the Crime Victims Fund will be an issue between Wisconsin, the U.S. Department of Justice, * * * and possibly the U.S. Treasury as well." *Id.* at 541.

Pawlinski thus does nothing to undermine the court of appeals' conclusion that a victim cannot unilaterally extinguish a restitution order that has been entered against a criminal defendant. The defendant in *Pawlinski* had satisfied his restitution obligation in full. 374 F.3d at 537. Petitioner has not identified any conflict in the court of appeals on the question whether a victim or its assignee can extinguish a valid restitution order. Indeed, she does not even directly ask the Court to review that question.[2]

2. Petitioner challenges (Pet. 20-21) only the district court's order directing restitution payments received by the district court to be sent to the Crime Victims Fund. See Pet. App. 23a (ordering that the $21,782 offset from the Treasury Offset Program and all future restitution payments be directed to the Crime Victims

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[2] As petitioner notes (Pet. 8), the United States' brief in opposition to the petition for a writ of certiorari in *Wright* v. *United States*, 134 S. Ct. 1933 (No. 12-8505), cited *Pawlinski* and *Speakman* as creating a circuit conflict on the question whether a victim can extinguish a defendant's restitution obligation after the restitution order has already been entered. As explained above, however, neither case squarely addresses that issue.

Fund). That issue is not properly before this Court because petitioner has not suggested that she has any personal stake in the Court's resolution of whether the district court had statutory authority to issue that order. Unlike the defendant in *Pawlinski*, who had a financial stake in that question because his attorney had suggested it would be appropriate to return the unclaimed restitution to the campaign fund (and thus potentially allow them to be used for his benefit), petitioner has not suggested how it makes any difference to her where her restitution payments go. She has provided no basis for concluding that she has an interest in whether the district court sends her restitution payments to the Crime Victims Fund, as opposed to, for example, continuing to send them to Horton & Associates LLC, or allowing them to remain with the clerk of the court and eventually be transferred, unless claimed, to the U.S. Treasury. See 28 U.S.C. 2042; Pet. App. 13a & n.5. Petitioner therefore lacks standing to raise the issue.

In any event, the court of appeals' conclusion that the district court had authority to redirect petitioner's restitution payments to the Crime Victims Fund is sound. In light of the mandatory nature of restitution under the MVRA, a victim's disclaimer of any interest in restitution payments that have been ordered by the district court can be viewed as an implicit assignment of that interest to the Crime Victims Fund pursuant to 18 U.S.C. 3664(g)(2). The court's decision to redirect the restitution payments in that manner is more consistent with the purpose of the MVRA and the Crime Victims Fund to support victims of crime, Pet. App. 13a, than requiring the payments to remain with the district court clerk, where they would eventually "revert * * * to the U.S. Treasury's federal unclaimed property

fund" or "escheat to the state," *Ibid.*; see *id.* at 13a & n.5 (citing 28 U.S.C. 2042 and *United States* v. *Klein*, 303 U.S. 276 (1938)). Further review of the district court's authority to redirect restitution payments to the Crime Victims Fund is unwarranted, especially in this case, where petitioner has no financial interest in the answer to that question and remains obligated to satisfy a valid restitution order for $350,000.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 2017

[*] The Solicitor General is recused in this case.