

No.

IN THE
Supreme Court of the United States

Cassandra Cean,
Petitioner,

v.

United States of America
Respondent.

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

PETITION FOR REHEARING

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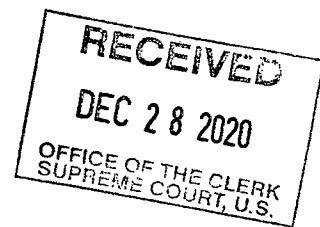


TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
PETITION FOR REHEARING	1
CONCLUSION	3
CERTIFICATE OF GOOD FAITH	4

TABLE OF AUTHORITIES

	Page
CASES	
United States v. Cean, 771 Fed. App. 81 (2019).....	2
Porter v. Warner Holding Co., 328 U.S. 395 (1946)..	3

OTHER AUTHORITIES

Atkinson, Khorri, "FTC Says High Court 'Principle' Supports Restitution Power, https://www.law360.com/.../ftc-says-high-court-principle-supports-restitution-power (Dec. 2, 2020)..	5,6
Pet. For Writ of Cert., AMG v. Federal Trade Commission, No. 19-508 (U.S. October 21, 2019).....	1,2,3

PETITION FOR REHEARING

The Petitioner, herein, was acquitted of one charge of wire fraud and the Petitioner's original restitution was reduced by approximately one million dollars from \$1,205,355 to \$243,148.51, after the Second Circuit remanded the Petitioner's case following an appeal of her conviction of four counts of wire fraud and restitution in the amount of \$1,205,355. The Petitioner respectfully submits this petition for rehearing of the November 23, 2020 order of this Court denying her petition for a writ of certiorari in which this Court is asked to determine whether the Second Circuit's use of the middle road approach¹ violates the constitutional rights of criminal defendants; and in particular, did the Second Circuit violate Petitioner's Constitutional rights when the Second Circuit upheld the district court's use of the middle road approach in affirming the revised restitution amount of \$243,148.51² against the Petitioner.

Ms. Cean's petition for writ of certiorari also sought to have this Court determine if the Second Circuit violated Petitioner's constitutional right to present a complete defense when the court failed to preclude testimony from the victims³ seeking restitution who failed to produced court ordered documents necessary for the Petitioner's defense at the Mandatory Victim Restitution Act (MVRA) hearing pursuant to § 18 U.S.C.3663A. The undersigned pro se Petitioner attaches the certification required by this Court's Rule 44.2.

¹ Only two circuits, the First and the Second, apply the middle road approach when this Court and ten other circuits -- the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and DC Circuits -- apply a "created circumstance approach" that deems the standard of determining (proximate cause) is to determine if the harm alleged has a sufficiently close connection to the conduct at issue -- not the "middle road approach" holding that, "a defendant is liable under the Mandatory Victims Restitution Act to a victim if any subsequent action contributing to the victim's loss is related to the defendant's conduct." *U.S. v. Vaknin*, 112 F.3d 579, 590 (1st Cir. 1997).

² In the underlying petition, Ms. Cean avers that since the losses (\$243,148.51) were caused by a breach of duty of the master servicer² to the victim (Impac Secured Asset 2007-2 Trust) that this broke the causal chain of connection between the victim losses and the Petitioner's conduct of conviction.

³ Impac and Santander were deemed to be victims of Petitioner's charged offense. However, the Government had three other entities (American Brokers Conduit, WMC and Impac Funding Corporation) testify as victims at Petitioner's trial.

On January 13, 2020, this Court has set for argument the matter of AMG Capital Management, LLC v. Federal Trade Commission, No. 19-508. Upon first impression, the Court may find that its ruling on AMG has no bearing upon the presented issues herein. However, after closer examination, the issues in AMG and those presented by Petitioner Cassandra Cean are, in fact, mirror images. In AMG Capital Management, LLC v. Federal Trade Commission, "Asset manager AMG Capital Management LLC is seeking to overturn a Ninth Circuit holding that the Federal Trade Commission Act (FTC) allows the agency to seek monetary relief for victims of market place wrongdoings."⁴ In Cassandra Cean v. United States, Petitioner Cean is seeking to overturn a Second Circuit holding that the court is allowed to award restitution to victims without showing of reliance on the misrepresentation of defendants by the use of the middle road approach to determine proximate cause. See e.g. United States v. Cean, 771 Fed. App. 81 (2019).

"Critics of the FTC's long-standing reliance on monetary sanctions say the commission takes too expansive a view of its power to impose judgments."⁵ The core of Ms. Cean's argument is that the First and Second Circuits adoption of the middle road approach is an improper expansion of the court's power given by Congress under the MVRA. The Second Circuit interprets too expansively the court's power to impose judgments based on rights given to the courts by Congress, pursuant to the MVRA.

Also like AMG, this case presents the increase in exorbitant restitution sanctions regularly imposed against criminal defendants in violation of the Constitution. The Ninth Circuit panel, in AMG, concluded that the FTC did not need to prove that deception had occurred, only that the representation of the loan terms was likely to deceive.⁶ Similarly, the Second Circuit expanded its authority given by Congress when it determined that they "need not resolve whether a showing of reliance is required because, even if it is, we agree with Judge Reyes that one might reasonably infer that Impac Trust relied on Impac Funding's underwriting process, which depended on the veracity of information in the mortgage applications." See e.g. United States v. Cean, 771 Fed. App. 81 (2019).

⁴ Atkinson, Khorri, "FTC Says High Court 'Principle' Supports Restitution Power, <https://www.law360.com/.../ftc-says-high-court-principle-supports-restitution-power>.

⁵ Supra Atkinson.

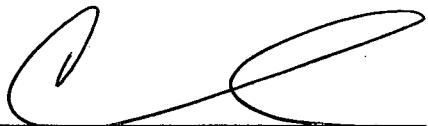
⁶ Id.

This Court's answer to the question presented in *AMG v. FTC* could have a significant impact on Ms. Cean's claim that the Second Circuits use of the middle road approach is too expansive making it unconstitutional and the ultimate issue of whether the Petitioner is liable to Impac Secured Asset 2007-2 Trust. The petitioner in *AMG*, like Ms. Cean, has asked this Court to determine, under a century-old line of precedent, whether Congress must express its intent to limit the District Court's equitable powers "in so many words" or "by a necessary and inescapable inference." *Porter*, 328 U.S. at 398.

Conclusion

"This Court could, in resolving *AMG*, determine that the FTC's restitution awards are not Constitutional and have not been promulgated by Congress. Ms. Cean's case is an example of what is at risked by allowing restitution awards that are not Constitutional and have not been promulgated by Congress by an expansion of the court's power to determine proximate cause for purposes of the MVRA. Therefore, Ms. Cean respectfully submits that it is proper to vacate the denial of certiorari in this case, hold the case pending the Court's decision in *AMG v. FTC*, and remand the case for further consideration of Cean's claim in light of the *AMG* decision.⁷

Respectfully submitted, this 17th day of December, 2020.



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⁷ This Court has granted rehearing in similar circumstances.

CERTIFICATE OF GOOD FAITH

The undersigned hereby certifies that this Petition for Rehearing is restricted to the grounds specified in Rule 44.2 of the Rules of the Supreme Court and is presented in good faith and not for delay.



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