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IN THE  
**Supreme Court of the United States**

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CYNTHIA STIGER,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

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

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PETITION FOR A WRIT OF CERTIORARI

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## Questions Presented for Review

1. Did the Fifth Circuit err in holding that the district court did not abuse its discretion in refusing to strike a juror during trial based on perceived bias against all four defendants, when that juror became the presiding juror, and two alternate jurors were available to step in?
2. Did the Fifth Circuit err in finding that the evidence was sufficient to support Petitioner's Stiger's health care fraud conspiracy conviction?
3. Regarding the restitution amount imposed on Ms. Stiger, should this Court's reasoning in *Honeycutt v. United States*, 137 S.Ct. 1626 (2017), which held that joint and several liability is invalid for forfeiture awards, also apply to awards of restitution?
4. There is a conflict between the Fifth Circuit and the Seventh Circuit on whether a special condition of supervised release that permits the probation officer to visit a defendant at any time at their home or elsewhere is unreasonably broad, with the Seventh Circuit holding this language is unreasonably broad and remanding for resentencing in several cases in 2015-2016, but the Fifth Circuit disagreeing with the Seventh Circuit's reasoning, and upholding the validity of this language in *United States v. Payton*, 959 F.3d 654 (5<sup>th</sup> Cir. 2020). The Fifth Circuit upheld this special condition language in Petitioner Stiger's case based upon *Payton*. Should this Court resolve this conflict between the Fifth and Seventh Circuits?

## **List of Parties**

The names of the parties are listed in the caption of this case. The judgment of conviction and sentence was imposed by U.S. District Judge Sam A. Lindsay, of the Northern District of Texas, Dallas Division. The three judge panel of the United States Court of Appeals for the Fifth Circuit which considered Petitioner Cynthia Stiger's appeal on briefs and issued an unpublished *per curiam* opinion, consisted of U.S. Circuit Judges James E. Graves, Jr., Gregg J. Costa, and Kurt D. Engelhardt.

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IN THE  
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CYNTHIA STIGER,

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PETITION FOR A WRIT OF CERTIORARI

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

NOW COMES Petitioner CYNTHIA STIGER, who files this Petition for a  
Writ of Certiorari, and respectfully states as follows:

Opinion Below

The judgment or order sought to be reviewed was entered January 28, 2021  
in an unpublished *per curiam* opinion by the United States Court of Appeals for

the Fifth Circuit, styled *United States v. Veasey, et al*, which will be reported at 843 Fed. Appx. 325. The Fifth Circuit’s slip opinion is at Appendix Tab “A.”

### Statement of Jurisdiction

This is a criminal appeal of a judgment of conviction and sentence from the U.S. District Court for the Northern District of Texas, Dallas Division, Hon. Sam A. Lindsay presiding, which was affirmed by the Fifth Circuit in its January 28, 2021 opinion included as Appendix Tab “A,” to be printed at 843 Fed. Appx. 325. The underlying Judgment in a Criminal Case is at Appendix Tab “B.”

This certiorari petition will be timely if it is electronically filed, and one paper copy is mailed to this Court’s clerk’s office, within 150 days after January 28, 2021, the date of the Fifth Circuit’s opinion affirming Ms. Stiger’s conviction and sentence, (Appendix Tab “A”), or by Monday, June 28, 2021, pursuant to Sup. Ct. Rule 30.1, since the 150<sup>th</sup> day after January 28, 2021 is Sunday, June 27, 2021. The filing deadline for certiorari petitions was extended by Court’s March 19, 2020 Order to “150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. See [Sup. Ct.] Rules 13.1 and 13.3.” This order extending the filing deadline from 90 to 150 days remains in effect as of the date that this certiorari petition is being filed.

### Relevant Federal Statute

18 U.S.C. § 1349 provides: “Any person who attempts or conspires to commit any offense under this chapter [Chapter 63 - Mail Fraud and Other Fraud Offenses] shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.” Bracketing added.

### Statement of the Case

Petitioner Cynthia Stiger seeks this Court’s review of the January 28, 2021 Fifth Circuit unpublished opinion affirming her conviction and sentence, attached as Appendix Tab “A,” which will be printed at 843 Fed. Appx. 325. The U.S. District Court’s October 27, 2017 Judgment in a Criminal Case, is attached as Appendix Tab “B.”

Ms. Stiger and three other persons were indicted in the United States District Court for the Northern District of Texas, Dallas Division, for offenses relating to Medicare healthcare fraud involving home health care agencies providing home health services under Medicare. According to the Fifth Circuit’s opinion:

Ms. Stiger and Wilbert James Veasey, Jr. were the owners and registered directors of Apple of Your Eye Health Care Services, a home health care provider in Dallas. Charity Eleda operated Charry HHA. Dr. Jacques Roy operated a medical company called Medistat and was the certifying physician for various home health providers. All of these entities provided services to Medicare beneficiaries.



Appendix Tab “A,” p. 2. The Fifth Circuit’s opinion summarizes the underlying facts at Appendix Tab “A,” pp. 2-4. Of the 17 counts charged in the indictment, Ms. Stiger was only charged in Count One: conspiracy to commit health care fraud in violation of 18 U.S.C. § 1349. Appendix Tab “A,” p. 4. Petitioner Stiger was not charged with any individual acts of health care fraud. All four defendants were tried together, with Ms. Stiger being convicted of the sole count charged against her. *Id.* Petitioner Stiger was sentenced to 120 months, three years of supervised release, and ordered to pay \$23,630,777.26 in restitution, jointly and severally with Roy and Veasey. Appendix Tab “A,” p. 5.

The Fifth Circuit affirmed Ms. Stiger’s conviction and sentence in its January 28, 2021 opinion, Appendix Tab “A,” which will be printed at 843 Fed. Appx. 325. As noted earlier, this petition for a writ of certiorari will be timely if filed within 150 days of January 28, 2021, or by Monday, June 28, 2021.

#### Argument Amplifying Reasons for Granting the Writ

This Court should grant certiorari on Question Four because it presents a circuit conflict under Sup. Ct. Rule 10(a) on whether standard condition of supervised release paragraph 6, Appendix Tab “B,” p. 4, which states that, “You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the

conditions of your supervision that he or she observes in plain view[.]” is unreasonably broad, as held by the Seventh Circuit. The Fifth Circuit did not discuss the Seventh Circuit cases in its opinion affirming Ms. Stiger’s conviction and sentence, but instead relied upon its opinion in *United States v. Payton*, 959 F.3d 654, 656, 658 (5<sup>th</sup> Cir. 2020), which disagreed with the Seventh Circuit’s reasoning and held that imposing this condition was not an abuse of discretion. Appendix Tab “A,” pp. 27-28. Question Four of this certiorari petition presents an opportunity for this Court to resolve this circuit conflict.

Question Three of this certiorari petition regarding the imposition of restitution against Petitioner Stiger, asks whether this Court’s reasoning in *Honeycutt v. United States*, 137 S.Ct. 1626 (2017), which stated that joint and several liability did not apply to forfeiture awards, should also apply to prevent joint and several liability for restitution incurred by other defendants unrelated to Ms. Stiger and her home health care agency, Apple of Your Eye. The Fifth Circuit held that *Honeycutt’s* reasoning did not apply to restitution awards, and affirmed the restitution amount imposed in Petitioner Stiger’s judgment. Appendix Tab “A,” pp. 25-27. Whether *Honeycutt’s* reasoning should be extended to restitution is an important question of federal law that has not been, but should be, settled by this Court. Sup. Ct. Rule 10(c).

The first two questions presented in this certiorari petition concern whether the district court abused its discretion when it refused to strike during trial a juror (who became the presiding juror) based on perceived bias against all four defendants, when two alternate jurors were available (Question One), and whether the evidence was insufficient to convict Ms. Stiger of conspiracy to commit health care fraud (Question Two). These two issues present federal questions that ask for an exercise of this Court's supervisory power. Sup. Ct. Rule 10(a).

Question Four Presents a Circuit Conflict that this Court Should Resolve.

Pages 27-28 of the Fifth Circuit's opinion (Appendix Tab "A") discuss the issue presented by Question Four, whether standard of condition of supervised release paragraph 6 was unreasonably broad. That conditions states, "You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view." Appendix Tab "A," p. 27, and Appendix Tab "B," p. 4. The condition is not limited in time or place, meaning the probation officer could ask to search Ms. Stiger's home, or any place where she is located, at any time of the day or night. Ms. Stiger did not object to this condition of supervised release, meaning plain error review applied. Appendix Tab "A," p. 28.

To demonstrate plain error, [appellant] must show that: “(1) there was an error; (2) the error was clear or obvious; (3) the error affected [her] substantial rights; and (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings such that [the appellate court] should exercise [its] discretion to reverse.”

*United States v. Cabello*, 916 F.3d 543, 544 (5<sup>th</sup> Cir. 2019) [quoting *United States v. Oti*, 872 F.3d 678, 690 (5<sup>th</sup> Cir. 2017)] (bracketing added).

Pages 27-28 of the Fifth Circuit’s opinion (Appendix Tab “A”), quoted the factors to consider in determining whether a district court’s imposition of terms and conditions of supervised release was a proper exercise of its discretion, including that the condition must be narrowly tailored, from *United States v. Duke*, 788 F.3d 392, 398 (5<sup>th</sup> Cir. 2015). The Fifth Circuit then stated, “This court recently concluded that a district court did not abuse its discretion by imposing that very condition. *United States v. Payton*, 959 F.3d 654, 656, 658 (5<sup>th</sup> Cir. 2020). Thus, Eleda and Stiger are unable to establish error, plain or otherwise.” Appendix Tab “A,” p. 28.

However, as noted by the Fifth Circuit in *Payton*, 959 F.3d at 657, the Seventh Circuit has struck its version of this visitation standard condition, which is identically-worded as to the probation officer’s ability to “visit” the defendant, as unreasonably broad, and remanded for resentencing, in four cases: (1) *United States v. Henry*, 813 F.3d 681, 683 (7<sup>th</sup> Cir. 2016); (2) *United States v. Poulin*, 809 F.3d 924, 934 (7<sup>th</sup> Cir. 2016); (3) *United States v. Kappes*, 782 F.3d 828, 850-851

(7<sup>th</sup> Cir. 2015); and (4) *United States v. Thompson*, 777 F.3d 368, 380 (7<sup>th</sup> Cir. 2015). As the Seventh Circuit noted in *Thompson*, this condition “would allow the probation officer to ‘visit’ the defendant at 3:00 a.m. every morning and look for contraband, and also allow him to follow the defendant everywhere, looking for contraband.” *Thompson*, 777 F.3d at 380.

Because of this conflict between the Fifth and Seventh Circuits on whether it is unreasonably broad for a standard of condition of supervised release to permit the probation officer to visit the defendant at his or her home or elsewhere at any time and search for contraband, Ms. Stiger asks this Court to grant certiorari on this issue.

Question Three of this Petition Asks if this Court’s Reasoning in *Honeycutt v. United States*, 137 S.Ct. 1626 (2017), Which Held that Joint and Several Liability is Invalid for Forfeiture Awards, Should Also Apply to Restitution Awards.

Petitioner Stiger filed a written objection to the Presentence Report’s restitution calculation, stating in part, “Defendant Stiger is not responsible for amounts more than those established for Apple’s participation with Dr. Roy, as none of the losses from unknown and unnamed entities who may have conspired with Dr. Roy were foreseeable to her.” Fifth Cir. No. 17-10665, ROA.11936. The probation officer’s addendum to the PSR responded to Ms. Stiger’s objection to

being held accountable for \$23,630,777.26 in mandatory restitution, by stating that the amount would not be changed unless the court directed otherwise, and that:

the defendant was involved in a jointly undertaken criminal activity and is responsible for all fraudulent claims submitted to Medicare by either Apple or Medistat. According to SA Bennett, the intended loss amount attributed to the defendant is \$36,545,059.68 and the actual loss caused by the defendant was \$23,630,777.26.

Fifth Cir. No. 17-10665, ROA.11945-11946.

At the sentencing hearing, petitioner Stiger argued that this Court's opinion in *Honeycutt v. United States*, 137 S.Ct. 1626 (2017), decided a few months before Ms. Stiger's objections were filed and the sentencing hearing occurred, held that it was improper to impose joint and several liability between co-conspirators for forfeiture, and that this reasoning should also apply to restitution. Fifth Cir. No. 17-10665, ROA.11772-11775. Stiger's sentencing counsel also argued that since this Court in *Honeycutt* had rejected the government's argument that joint and several liability should apply to forfeiture under the reasoning in *Pinkerton v. United States*, 328 U.S. 640 (1946), which held that conspirators were liable for each others' acts, then this Court's rejection of *Pinkerton* liability in the forfeiture context should also apply to restitution. Fifth Cir. No. 17-10665, ROA.11772-11775. The government responded at sentencing by stating that *Honeycutt* was limited to forfeiture, and should not apply to restitution. Fifth Cir. No. 17-10665, ROA.11775-11776. The district court overruled the objection, noting that while

Ms. Stiger’s argument might be correct, it would be presumptuous for the district court to extend *Honeycutt*’s reasoning to restitution, since it was limited to forfeiture. Fifth Cir. No. 17-10665, ROA.11778-11780, and ROA.11781-11782.

The Fifth Circuit discussed this issue at page 27 of its opinion, and declined to apply *Honeycutt* to restitution, stating:

Not only did *Honeycutt* have to do with forfeiture, it had to do with forfeiture of substitute property when the tainted property itself was not available. [*Honeycutt*, 137 S.Ct.] at 1634-1635. This is nothing like restitution, which has to do with actual loss. Further, *Honeycutt* did not alter or overrule liability under *Pinkerton v. United States*, 328 U.S. 640 (1946). In fact, in response to the government’s argument that Congress must be presumed to have legislated against the background principles of conspiracy liability, the Supreme Court said that the “plain text and structure” of the statute in question “leave no doubt that Congress did not incorporate those background principles.” *Honeycutt*, 137 S.Ct. at 1634.

Appendix Tab “A,” p. 27. Bracketing added.

Because the question of whether joint and several liability should still apply to restitution awards, after this Court’s holding in *Honeycutt v. United States*, 137 S.Ct. 1626 (2017) eliminated that theory for forfeiture awards, has not been yet decided by this Court, petitioner Cynthia Stiger asks this Court to grant certiorari to decide this important issue of federal law.

Questions One and Two (Refusal to Strike a Juror Based on Perceived Bias Against all the Defendants, and Whether there was Sufficient Evidence to Support Petitioner Stiger's Conviction), are Federal Questions that Ask for an Exercise of this Court's Supervisory Power.

The first two questions presented in this petition do not raise issues of a split among the circuits, or whether the reasoning of a recent opinion from this Court concerning forfeiture should also apply in the restitution context, but instead present federal questions that ask for this Court to exercise its supervisory power over lower federal courts.

The first question presented in this petition, which was discussed in the Fifth Circuit's opinion at Appendix Tab "A," pp. 5-8, was whether the district court abused its discretion when it refused to strike a juror during trial who was perceived to be biased against all four defendants, and who became the presiding juror. Fifth Cir. No. 17-10665, ROA.11511. During cross-examination of one of the case agents by Roy's trial counsel, a juror interrupted the proceedings to give the district judge a note that stated, "We need to take a break for the judge. The judge is not alert. Lawyer is badgering witness. Thank you." Appendix Tab "A," p. 6. Underlining added. There were two alternate jurors who could have been seated in the place of this juror. Fifth Cir. No. 17-10665, ROA.8247:15-16.

The Fifth Circuit's opinion discussed the further proceedings regarding that juror at Appendix Tab "A," pp. 6-8. Portions of the Fifth Circuit record on this subject are at Fifth Cir. No. 17-10665, ROA.3618:17-18, ROA.3625-3627, and



ROA.8651-8652. The district court denied Veasey's request that this juror be removed and an alternate juror seated, which was joined in by Roy and Eleda. Fifth Cir. No. 17-10665, ROA.3718-3722. However, petitioner Stiger's trial counsel did not join in these objections raised by the other three co-defendants at trial, meaning plain error review would apply to Ms. Stiger. *Id.* The Fifth Circuit found that there was no abuse of discretion (or plain error in Ms. Stiger's case) in the district court's denial of the request to remove this juror based on perceived bias against all the defendants at trial. Appendix Tab "A," p. 8.

The second question in this petition concerns whether the evidence was insufficient to support Ms. Stiger's conviction for conspiracy to commit health care fraud, discussed in the Fifth Circuit's opinion at Appendix Tab "A," pp. 9, and 14-17. Ms. Stiger's primary argument on this issue was that the Fifth Circuit's opinion in *United States v. Ganji*, 880 F.3d 760, 767-773 (5<sup>th</sup> Cir. 2018), which reversed a doctor's conviction for conspiracy to commit health care fraud because the circumstantial evidence was insufficient to establish a concert of action to prove an agreement, and because the witnesses admitted their own fraud, but did not implicate Ganji, should also apply to petitioner Stiger's case. The Fifth Circuit disagreed, stating that, "Unlike Ganji, Stiger was indeed implicated," and then discussed testimony which the Fifth Circuit believed implicated Ms. Stiger, before

holding that the evidence was sufficient to support petitioner Stiger's conviction for conspiracy to commit health care fraud. Appendix Tab "A," pp. 14-15.

Petitioner Cynthia Stiger respectfully disagrees with the reasoning of the Fifth Circuit on these two questions presented, and asks this Court to exercise its supervisory power and grant certiorari on Questions One and/or Two.

Conclusion and Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, petitioner CYNTHIA STIGER respectfully asks this Court to grant this petition for a writ of certiorari, set this case for oral argument and request briefing on the merits, and that on hearing thereof, this Court reverse the January 28, 2021 Fifth Circuit opinion affirming Ms. Stiger's conviction and sentence.

Respectfully submitted,  
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