No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Brandi Channon and Matthew Channon,
Petitioner,

v.

United States of America,
Respondent

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

JOINT PETITION FOR WRIT OF CERTIORARI

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Questions Presented

Brandi Channon and Matthew Channon manipulated OfficeMax's customer loyalty program to fraudulently obtain OfficeMax rewards. During the scheme, the couple redeemed $105,191 in OfficeMax rewards by purchasing gift cards and office products from OfficeMax. Although the Channons were still in possession of at least some of the items purchased with the rewards at the time of their arrest, the government sought an *in personam* money judgment forfeiture order in the amount of the redeemed OfficeMax rewards. The district court granted the government's motion and ordered that an *in personam* money judgment, imposed jointly and severally, be issued against the Channons in the amount of $105,191. The statutory foundation for the forfeiture order was 18 U.S.C. § 981(a)(1)(C).

This case presents two questions worthy of this Court's review:

1) Does § 981(a)(1)(C) permit the entry of an *in personam* money judgment in lieu of tainted property?

2) Does § 981(a)(1)(C) permit joint and several liability?

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PETITION FOR WRIT OF CERTIORARI

Petitioners Brandi Channon and Matthew Channon respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

Opinion Below

The opinion below is the published decision of the United States Court of Appeals for the Tenth Circuit, *United States v. Channon*, 973 F.3d 1105 (10th Cir. 2020). This opinion is included as Appendix A. The Tenth Circuit's unpublished order denying rehearing en banc is attached as Appendix B.

Jurisdiction

The Tenth Circuit Court of Appeals entered judgment on September 1, 2020. Appendix A. The Channons timely filed a petition for rehearing en banc. The Tenth Circuit denied this petition on February 5, 2021. Appendix B.

This Court's general order of March 19, 2020, extends the deadline in 28 U.S.C. § 2101(c) to file a petition for a writ of certiorari in this case by 60 days, creating a deadline of July 6, 2021. *See* Rules of the Supreme Court of the United States, Rule 30 (2019) (governing holiday deadlines). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Statutes Involved

This case presents two issues of statutory interpretation: (1) does 18 U.S.C. § 981(a)(1)(C) authorize district courts to enter a personal money judgment in lieu of tainted property in a forfeiture order, and (2) does § 981(a)(1)(C) permit joint and several liability.

In full, § 981(a)(1)(C) provides:

> **(a)(1)** The following property is subject to forfeiture to the United States:
>
> **(C)** Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 656, 657, 670, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, or 1344 of this title or any offense constituting "specified unlawful activity" (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

In turn, 18 U.S.C. § 981(c)(2)(A) defines "proceeds" as follows:

> **(A)** In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care fraud schemes, the term "proceeds" means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

STATEMENT OF THE CASE

Brandi and Matthew Channon used fictitious names and addresses to open "rewards accounts" at an OfficeMax store. *United States v. Channon*, 973 F.3d 1105, 1108 (10th Cir. 2020). The Channons used these accounts to fraudulently obtain over $100,000 in OfficeMax products. *Id.* This scheme was discovered when an Office-Max fraud investigator noticed an unusually high number of on-line adjustments across several different accounts, and he observed that most of these accounts were registered to one of three e-mail address. *United States v. Channon*, 881 F.3d 806, 808 (10th Cir. 2018). These e-mail addresses were used to claim purchases by other consumers, thus generating rewards to which the Channons were not entitled. *Id*.

The Channons also used the various e-mail accounts to sell more than 27,000 used ink cartridges, which garnered $3 in rewards from OfficeMax for each, for which they paid less than an average of 32 cents per cartridge on Ebay. *Channon*, 973 F.3d at 1124-25 (Briscoe, J., dissenting). Over the course of this scheme, which lasted 21 months, a total of $105,191.00 was redeemed in OfficeMax rewards. *Id*. at 1108.

In the second superseding indictment issued in this case, the government charged the Channons with several counts alleging wire fraud and conspiracy to commit wire fraud. That same superseding indictment also contained a forfeiture

allegation. Vol. I at 54.[1] Specifically, the allegation stated that, upon conviction, the Channons shall "forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461 any property, real or personal, which constitutes or is derived from proceeds traceable" to the charged offenses. *Id.* Without identifying any such "property"—*i.e.*, the merchandise obtained by redeeming the OfficeMax rewards—the government, instead, sought a money judgment equal to at least $105,191. *Id.*

A jury subsequently found the Channons guilty of the charged offenses, and the government sought the money judgement of $105,191. Vol. I at 60. The district court held a hearing on the issue.

The Channons objected to the forfeiture on the basis that the government had not met its burden of proof. *Id.* at 61-62. Specifically, the Channons argued that § 981(a)(1)(C) only provides for forfeiture of "[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to" the offense. *Id*. at 61. Vol. IV at 16. The government made no showing of any amount of *money* obtained by the Channons that was "traceable" to the offense. *Id.* As argued by the Channons, § 981(a)(1)(C) did not authorize an *in personam* money judgment unless the money

[1] Record references cited in this petition correspond to the volumes of the record on appeal as transmitted electronically to the Tenth Circuit Court of Appeals by the clerk of the District Court for the District of Colorado.

was "property" traceable to the offense of conviction. *Id.* at 61-62. Since the government had failed to connect any *money* to the crimes committed by the Channons, its attempt to obtain an *in personam* money judgment of forfeiture was unlawful. *Id*. at 225.

The district court resolved this issue by entering a money judgment of forfeiture for $105,191, explaining that the government had "established the requisite nexus between the money judgment and the offense [for] which the defendants were convicted." *Id.* at 232. The court ordered that the forfeiture apply jointly and severally to the Channons. *Id.*

On direct appeal, the Tenth Circuit rejected one legal claim raised by the Channons (concerning the use of spreadsheet files containing business records from OfficeMax), but found some merit in their attack on the money judgment of forfeiture entered against them. *Channon*, 881 F.3d at 809-11. The legal analysis of the Tenth Circuit concerning the forfeiture issue was this:

> Defendants last argue that the government failed to meet its burden to prove the amount forfeited ($105,191) was traceable to the offense of wire fraud. We have held that wire fraud proceeds are subject to forfeiture under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461. *See United States v. Courtney*, 816 F.3d 681, 685 (10th Cir. 2016). The property subject to forfeiture includes "[a]ny property, real, or personal, which constitutes or is derived from proceeds traceable to [the] violation." 18 U.S.C. § 981(a)(1)(C). The substitute-asset provision, 21 U.S.C. § 853(p), provides the only method for the forfeiture of untainted property. *Honeycutt v. United States*, 137 S. Ct. 1626, 1633 (2017).

> The government concedes a remand to conform the money judgment to the requirements of § 853(p) may be necessary. The government explains that going forward it will seek only to enforce a forfeiture money judgment through the substitute-asset provisions of § 853(p) and will seek to amend the forfeiture order under Fed. R. Crim. P. 32.2(e). Accordingly, we remand so the district court may conduct further proceedings on this issue.

Id. at 811-12. Thus, the forfeiture order was sent back to the district court for a proper resolution in light of the representations made by the government during oral arguments in the Tenth Circuit.

The Tenth Circuit issued its opinion on January 31, 2018, but nothing much really happened in the district court until July 6, 2018, when Matthew Channon filed a motion for an evidentiary hearing in order for the government to prove properly, if it could, the correct amount of forfeiture, a motion which was joined by Brandi Channon. Vol. I at 253.

The Channons apprized the district court of the opinion of the Tenth Circuit on direct appeal, asserted that the district court must determine fact questions concerning the amount of gain to the Channons that is traceable to the wire fraud conviction, and if the government can do that, then the next step would be for the government to demonstrate the factors enumerated in 21 U.S.C. § 853(p) in order to lawfully request forfeiture of untainted assets. *Id.* at 254 (*citing United States v.*

Bornfield, 145 F.3d 1123, 1136 (10th Cir. 1998) (identifying the factors set forth in § 853(p) that might allow the government to move to forfeit substitute assets)).

The government filed a response on August 31, 2018, objecting to an evidentiary hearing, arguing that the Tenth Circuit "left untouched" the $105,191 forfeiture amount on direct appeal, and asserted to the district court that the Tenth Circuit's "narrow remand does not provide any reason for this Court to revisit its conclusion." *Id.* at 280. According to the government, the district court had simply a clerical duty to issue an amended order of forfeiture "that clarifies that the money judgment is only enforceable through the procedures set forth in 21 U.S.C. § 853(p)." *Id.* at 281.

The district court agreed with the government, did not take additional evidence, denied a requested evidentiary hearing by the Channons, and issued an amended order on February 4, 2019, clarifying that in the event the government seeks to forfeit substitute property it must satisfy the requirements of § 853(p). *Id.* at 325.

The Channons appealed once again to the Tenth Circuit. *Channon*, 973 F.3d at 1108. As applies here, a two-judge majority held that *in personam* money judgments are appropriate under the criminal forfeiture statute. *Id.* Despite openly admitting that there was no statutory foundation for an *in personam* money judgment, the Tenth Circuit, nevertheless, held that a district court holds the authority to enter such a money judgment instead of identifying the specific property tainted by the criminal

offense. *Id.* at 1118 ("Nothing in the applicable statutes authorizes a district court to impose an *in personam* money judgment of forfeiture in *any* circumstances.").

The majority opinion also affirmed the district court's imposition of joint and several liability. *Id.* at 1115. To that end, the majority recognized that a circuit split had developed concerning whether this Court's decision in *Honeycutt* applied to other forfeiture provisions. *Id.* (citing *United States v. Honeycutt*, 147 S. Ct. 1626 (2017)). *Honeycutt* held that joint and several liability could not be imposed for a forfeiture order entered under 21 U.S.C. § 853(a). *Id.* But the majority held that the statutory language between § 853(a) and § 981(a)(1)(C) was sufficiently different to make it not "obvious" that *Honeycutt* applied here. *Id.*

In her dissenting opinion, Judge Briscoe observed that "in direct contravention of the applicable forfeiture statutes," the majority permits the government to seek a money judgment and effectively "seize property that was not derived from the offenses of conviction (untainted property) without having first proven what proceeds defendants actually derived from their offenses of conviction (tainted property)." *Id.* at 1118 (Briscoe, J., dissenting). The "troubling" aspect of this holding, according to the dissent, is that it "effectively nullifies, the language of the forfeiture statutes relied on by the government in this case by enabling the government to obtain an in person money judgment by proving only the amount of the victim's loss." *Id.* at 1122.

The Channons petitioned for panel rehearing and rehearing en banc. Appendix B. After ordering a government response, the Tenth Circuit denied the Channons's petition for rehearing. *Id.* The Channons now seek this Court's review.

REASONS FOR GRANTING THE WRIT

I. The Tenth Circuit's holding that § 981(a)(1)(C) authorizes *in personam* money judgments in lieu of tainted property constitutes an important federal question that was decided in a way that conflicts with relevant decisions of this Court.

A. The Tenth Circuit decision in this case conflicts with relevant decisions of this Court.

The Tenth Circuit opinion in this case eschews several of this Court's well-established principles governing statutory interpretation and criminal law. First, the majority opinion conflicts with this Court's basic principle that a court cannot fill a void left by statutory silence, especially when Congress has evidenced its ability to speak on the matter elsewhere. This rule is firmly established.

In *Dean*, this Court directly rejected a government attempt to read into statutory silence a required order for imposition of sentences, when a separate statute explicitly stated what the government sought to glean from the silence. *Dean v. United States*, 137 S. Ct. 1170, 1177 (2017). This Court stressed that "'drawing meaning from silence is particularly inappropriate' where . . . 'Congress has shown that it knows how to direct sentencing practices in express terms.'" *Id.* (quoting *Kimbrough v. United States*, 552 U.S. 85, 103 (2007)).

This principle should have controlled here. The statutory foundation for the forfeiture order in this case does not authorize a district court to enter a personal money judgment. As even the majority opinion noted here, § 981 is devoid of any language authorizing a district court to enter a money judgment forfeiture instead of identifying specific property that is traceable to the offense. *Channon*, 973 F.3d at 1118.

But, elsewhere, Congress has demonstrated that it knows how to authorize money judgments when it wishes to do so. The statute covering forfeiture for "bulk cash smuggling"—which does not apply in this case—explicitly includes money judgments as a forfeiture mechanism. 31 U.S.C. § 5332(b)(4). The statute provides that if the defendant has "insufficient substitute property" to satisfy a forfeiture order, the court "shall enter a personal money judgment against the defendant for the amount that would be subject to forfeiture." *Id.* In the face of this express authorization for money judgments in § 5332(b)(4), the Tenth Circuit violated this Court's established canon of statutory interpretation by reading into § 981(a)(1)(C)'s silence an implied authorization for the entry of money judgments.

Again, in *Lagos*, this Court used Congress's express authorization in one statute as evidence that the absence of such authorization in another statute was intentional. *Lagos v. United States*, 138 S. Ct. 1684, 1689-90 (2018). The *Lagos* Court narrowly interpreted the words "investigation" and "proceedings" in subsection

(b)(4) of the Mandatory Victims Restitution Act. *Id.* This Court held that such terms limited restitution to victim costs associated with government investigations and criminal proceedings. *Id.* This Court reasoned that because Congress enacted different restitution statutes specifically requiring restitution for the "full amount of the victim's losses," the relative silence in the Mandatory Victims Restitution Act should be read as exclusive of such relief. *Id.* at 1689. As this Court stated, when "Congress has expressly provided" for greater relief in one statute, but is silent as to such relief in another statute, this favors a "more limited interpretation" of the latter statute. *Id.* at 1690.

The Tenth Circuit's opinion in this case violates this rule. Congress expressly provided for the entry of money judgments in § 5332(b)(4). It did not provide for such judgments in § 981(a)(1)(C). Thus, under *Lagos*, § 981's silence vis-à-vis money judgments should be read as limiting the entry of such judgments.

The Tenth Circuit decision in this case also conflicts with several principles articulated by this Court in *Honeycutt v. United States*, 137 S. Ct. 1626 (2017). In *Honeycutt*, this Court held that the criminal forfeiture statute at issue—§ 853(a)—did not give district courts the authority to impose forfeiture judgments of joint and several liability for co-conspirators. *Id.* at 1631. The reasoning for rejecting the government's arguments to the contrary apply equally here.

In line with *Lagos* and *Dean*, this Court looked to the plain language and structure of the forfeiture statute at issue in *Honeycutt* and reasoned that the absence of an express authorization for joint and several liability for the money judgment was critical. *Id.* at 1632-33. In other words, this Court's reasoning in *Honeycutt* followed an established mode of statutory construction that compared the express authorization in one section, with the silence in another. *Id.* at 1633-34. The Tenth Circuit's decision in this case, conflicts with that reasoning.

As noted, the forfeiture statute applicable to bulk cash smuggling demonstrates that Congress contemplated situations in which personal money judgments would be authorized as part of the forfeiture remedy. *See* 31 U.S.C. § 5332(b)(4). And when Congress intends for a forfeiture statute to authorize district courts to enter a personal money judgment, the statute says so explicitly—Congress uses the words "money judgment" to communicate its intent. *See id.* "Congress provided just one way," for the district court to enter a personal money judgment, through § 5332(b)(4), when a person has been convicted of bulk cash smuggling. *Honeycutt*, 137 S. Ct. at 1635. It conflicts with this Court's reasoning in *Honeycutt* to hold that § 981(a)(1)(C) authorizes money judgments when the statute never once mentions such relief.

In *Honeycutt*, this Court also explained that, in adopting asset forfeiture statutes, Congress did not intend to significantly expand the scope of asset forfeiture

beyond the tainted property, and that such a limitation is deeply entrenched in the history of forfeiture in the United States. *Id.* at 1634-35. Traditionally, forfeiture was an action against the tainted property itself, and, thus, proceeded *in rem*; that is, proceedings in which "the thing [was] primarily considered as the offender, or rather the offence [was] attached primarily to the thing." *Id.* (internal quotation marks omitted). The forfeiture "proceeding *in rem* st[ood] independent of, and wholly unaffected by a criminal proceeding *in personam*" against the defendant. *Id.* (internal quotation marks omitted).

As is clear from its text and structure, "§ 853 maintains traditional *in rem* forfeiture's focus on tainted property unless one of the preconditions of § 853(p) exists . . . . Congress did not, however, enact any significant expansion of the scope of property subject to forfeiture." *Id.* at 1635. Guided by this tradition, this Court in *Honeycutt* held that "[f]orfeiture pursuant to § 853(a)(1) is limited to property the defendant himself actually acquired as the result of the crime." *Id.*

The same holds true here. There is no evidence that Congress intended to expand the scope of property subject to forfeiture when it enacted § 981(a)(1)(C). By its plain terms, the statute only permits the forfeiture of "property, real or personal, which constitutes or is derived from proceeds traceable to" the offense of conviction. 18 U.S.C. § 981(a)(1)(C). Here, the property traceable to the offense of conviction was OfficeMax products. There was no money that was identified by the government

as being traceable to the offense. By permitting a money judgment forfeiture in this case, the Tenth Circuit changed the forfeiture's focus from *in rem* to *in personam* without any evidence that this was Congress's intent. *Honeycutt* rejected such a transformation. *Honeycutt*, 137 S. Ct. at 1635.

Finally, the Tenth Circuit's decision in this case conflicts with this Court's longstanding maxim that criminal statutes are to be narrowly construed. Criminal forfeiture, after all, is criminal punishment. *Libretti v. United States*, 516 U.S. 29, 39-41 (1995). And this Court has repeatedly held that such penal statutes are subject to narrow interpretation. *United States v. Lanier*, 117 S. Ct. 1219, 1225 (1997) (collecting cases). Moreover, "forfeitures are not favored" and "should be enforced only when within both the letter and spirit of the law." *United States v. One 1936 Model Ford V-8 Deluxe Coach*, 307 U.S. 219, 226 (1939) (internal quotation marks omitted).

The Tenth Circuit opinion in this case contravenes these basic principles. The Tenth Circuit broadly construed § 981(a)(1)(C) by authorizing a district court to take action that the statute does not expressly allow. Such an interpretation comports with neither the letter nor the spirit of the law. Certiorari is warranted in this case in order to correct the conflict between the Tenth Circuit's decision and this Court's relevant precedent.

B. Whether § 981 authorizes in personam *money judgments is a question of exceptional importance.*

Over the past 40 years, Congress has expanded the government's ability to seek and obtain forfeiture in criminal cases. Marc S. Roy, *United States Federal Forfeiture Law: Current Status and Implications of Expansion*, 69 MSLJ 373, 377 (1999). Federal law now permits over 350 different statutory forfeitures. *Id.* And these statutes have, in turn, generated a prolific income stream for federal law enforcement.

Between 2003 and 2011, "approximately $11 billion in seized assets were deposited into the Federal Asset Forfeiture Fund." Charles Basler, *Reforming Civil Asset Forfeiture: Ensuring Fairness and Due Process for Property Owners in Massachusetts*, 49 New Eng. L. Rev. 665, 672 (2015). In 2011, the "Asset Forfeiture Fund reached $1.8 billion, the largest ever for a single year." *Id.*

But, as at least one commentator has acknowledged, the increase in frequency of forfeiture proceedings comes with an increase in potential abuse. Mary M. Cheh, *Can Something This Easy, Quick, and Profitable Also Be Fair? Runaway Civil Forfeiture Stumbles on the Constitution*, 39 N.Y.L. Sch. L. Rev. 1, 7 (1994). Forfeiture is a "uniquely harsh invasion of an individual's property interests" and, as such, calls for well-defined procedures to limit "government overreaching." *Id.* at *8. The issue in this case, left unresolved by this Court, contains the potential for such abuse.

Instead of ordering the forfeiture of property traceable to the crime of conviction—as § 981(a)(1)(C) expressly requires—the district court entered an *in personam* money judgment against the Channons. This means that the Channons' future earnings and assets will be potentially subject to forfeiture even if acquired years after the completion of the crime. Whether the law actually permits such a drastic infringement on an individual's property rights is a question of exceptional importance deserving of this Court's review.

This Court's review is also warranted to provide much needed guidance about the scope of §981(a)(1)(C). Courts of appeals, post-*Honeycutt*, have queried whether their previous precedent permitting personal money judgment forfeitures was correctly decided. *See United States v. Nejad*, 933 F.3d 1162, 1164-66 (9th Cir. 2019). As *Honeycutt* made clear, a court must start with the plain language of the forfeiture statute when interpreting its bounds. *Honeycutt*, 137 S. Ct. at 1634. But, despite § 981(a)(1)(C) not mentioning *in personam* money judgments, several courts of appeals had decided before *Honeycutt* that § 981(a)(1)(C) permits such judgments. *See United States v. Elbelway*, 899 F.3d 925, 940-41 (11th Cir. 2018); *United States v. Gorski*, 880 F.3d 27, 40-41 (1st Cir. 2018). As the Ninth Circuit has recognized, this has created the "counter-intuitive interpretation compelled by prior precedent" wherein "forfeiture may extend to property no longer in existence and sometimes

even to property the defendant never actually possessed." *United States v. Beecroft*, 825 F.3d 991, 997 (9th Cir. 2016).

However, post-*Honeycutt*, federal district courts have found that such prior precedent is no longer authoritative given this Court's reasoning. *United States v. Surgent*, No. 04-CR-364, 2009 WL 2525137, at *6–8 (E.D.N.Y. Aug. 17, 2009); *United States v. Day*, 416 F. Supp. 2d 79, 89–91 (D.D.C. 2006), *rev'd*, 524 F.3d 1361, 1377–78 (D.C. Cir. 2008). But the courts of appeals that have decided the issue have held that *Honeycutt* did not go so far as to overrule circuit precedent as it concerned only the statutory language of § 853(a), not § 981(a)(1)(C). *Elbelway*, 899 F.3d at 940-41; *Gorski*, 880 F.3d at 40-41; *Nejad*, 933 F.3d at 1164-66. This has created the legal landscape where the plain language of one forfeiture statute—§ 853(a)—controls its scope, while another forfeiture statute—§ 981(a)(1)(C)—is interpreted in a manner that exceeds its text. The disparate reading of these statutes increases the importance of the question presented in this case. This Court's review is needed to provide clarification.

II. The Tenth Circuit's holding that § 981(a)(1)(C) does not obviously preclude joint and several liability constitutes an important federal question that conflicts with the decisions of other courts of appeals.

A. The circuits are divided over whether § 981(a)(1)(C) permits joint and several liability.

After deciding that § 981(a)(1)(C) permits the entry of a forfeiture money judgment, the Tenth Circuit also held that it was not plainly erroneous for the district court to hold the Channons jointly and severally liable for the forfeiture order. *Channon*, 973 F.3d at 1115. This holding deepened a pre-existing circuit split. This Court's review is needed to fix this divide.

In *Honeycutt*, this Court held that the plain language of § 853(a) did not permit a district court to impose a joint and several forfeiture order. Post-*Honeycutt*, the Third, Fifth and Eleventh Circuit Courts of Appeals have held that the reasoning in *Honeycutt* applies equally to other forfeiture statutes. In their analysis, these courts have noted that, like § 853(a), the forfeiture statutes at issue did not expressly provide "for joint and several liability, and [the] statutes reach only property traceable to the commission of an offense." *United States v. Elbeblawy*, 899 F.3d 925, 941 (11th Cir. 2018) (quoting *United States v. Sanjar*, 876 F.3d 725, 749 (5th Cir. 2017); *United States v. Gjeli*, 867 F.3d 418, 427-28 (3rd Cir. 2017) (holding that *Honeycutt* applies to the forfeiture statutes governing RICO cases, 18 U.S.C. § 1963, because the statute was "substantially the same as the one under consideration in *Honeycutt*") *United States v. Carlyle*, 712 F. App'x 862, 864 (11th Cir. 2017) (per curiam) (remanding to the district court for a determination on whether *Honeycutt* governed wire fraud forfeiture under § 981(a)(1)(C) and observing it appeared likely to apply).

The Tenth Circuit, in this case, joined the other side of the split by holding that *Honeycutt* was limited to the statutory language at issue in the case. The Tenth Circuit, like the Sixth and the Eighth Circuit, held that the "linchpin" of this Court's decision in *Honeycutt* was that § 853(a) utilized the phrase property that "the person obtained." *Channon*, 973 F.3d at 1115. Because § 981(a)(1)(C) contains slightly different wording, the Tenth Circuit held that it was not obvious that *Honeycutt*'s holding applied to the statute. *Id.* This is the same reasoning employed by the Sixth and the Eighth Circuits when they held that *Honeycutt* did not apply to § 981(a)(1)(C). *United States v. Sexton*, 894 F.3d 787, 799 (6th Cir. 2018) ("Unlike § 853(a)(1), 18 U.S.C. § 981(a)(1)(C) does not contain the phrase 'the person obtained,' which was the linchpin of the Supreme Court's decision in *Honeycutt.*");*United States v. Peithman*, 917 F.3d 635, 652, (8th Cir. 2019) (same).

But while the phrase "the person obtained" played a role in this Court's *Honeycutt* decision, it was not dispositive. To the contrary, this Court reasoned that section § 853(p) laid "to rest any doubt that the statute permits joint and several liability." *Honeycutt*, 137 S. Ct. at 1633. Permitting the government to seek joint and several liability would "allow the government to circumvent Congress' carefully constructed statutory scheme" and obtain property untainted by the crime without fulfilling the requirements of § 853(p). *Id.* at 1634.

The same is true with § 981(a)(1)(C). The only statutory basis for the government to seek substitute property for a forfeiture order entered under § 981(a)(1)(C) is § 853(p). Permitting joint and several liability under § 981(a)(1)(C) creates the same "end run" that formed the basis of this Court's concern in *Honeycutt*. *Id.* This Court's review is needed to cure the circuit split and to make clear that the reasoning of *Honeycutt* applies with equal force to all forfeiture statutes referencing § 853(p).

B. Whether § 981(a)(1)(C) permits joint and several liability is a question of exceptional importance.

This case merits this Court's review as it presents a question of exceptional importance. Over the past four years, courts have struggled with interpreting and implementing this Court's decision in *Honeycutt*. This is an issue that is bound to frequently reoccur. As *Honeycutt* can be read to impact the interpretation of every forfeiture provision potential subject to joint and several liability, the question presented in this case will arise in numerous federal cases going forward and the split will only continue to increase with defendants receiving different treatment depending on the circuit in which their crime is committed.

Only this Court can resolve this inter-circuit conflict and clarify whether its reasoning in *Honeycutt* strictly applies to § 853(a), or, as the Channons maintain, is applicable to all forfeiture statutes not expressly permitting joint and several liability. There is no realistic possibility that the circuit split will be resolved in any other

manner. Thus, the circuit split will continue until this Court grants certiorari to resolve the issue. Ensuring uniformity among the circuits is a matter of exceptional importance.

Also, as detailed above, any issue concerning the scope of a forfeiture statute has broad impact on the federal criminal justice system. As observed in this Court's *Honeycutt* opinion, subjecting defendants to joint and several liability for forfeiture orders has the potential to not only strip defendants of ill-gotten gains, but also strip them of financial resources wholly unrelated to the criminal conduct. *Honeycutt*, 137 S. Ct. at 1631-32. Due to the high prevalence of forfeiture proceedings nationwide, whether such a harsh penalty is appropriate presents an issue of exceptional importance. This Court's review is warranted for this reason as well.

CONCLUSION

For the foregoing reasons, Brandi Channon and Matthew Channon respectfully ask this Court to grant this petition for certiorari.

Respectfully submitted,

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