No. 22-583

In the Supreme Court of the United States

EVAN GREEBEL, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

The Consumer Credit Protection Act (CCPA), 15 U.S.C. 1601 *et seq.*, generally provides that no more than 25% of an individual's "disposable earnings" may be garnished for payment of a debt. 15 U.S.C. 1673(a). The CCPA's limitation on garnishment applies in proceedings brought by the United States to enforce a criminal restitution order. 18 U.S.C. 3613(a)(3) and (f). The question presented is whether a lump-sum distribution from an individual's contributory 401(k) retirement account qualifies as "earnings" under the CCPA, thereby limiting the government's ability to liquidate the funds in such an account to satisfy a restitution order.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D.N.Y):

SEC v. *Shkreli*, No. 15-cv-7175 (Apr. 5, 2021)

United States Court of Appeals (2d Cir.):

United States v. *Shkreli*, No. 18-819 (July 18, 2019) (co-defendant's appeal)

United States v. *Shkreli*, No. 18-1084 (July 18, 2019) (co-defendant's appeal)

United States Supreme Court:

Shrekli v. *United States*, No. 19-495 (Nov. 18, 2019) (co-defendant's petition for a writ of certiorari)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Case—Continued: Page

Statutes and regulation:

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 47 F.4th 65. The order of the district court (Pet. App. 23a-38a) is reported at 534 F. Supp. 3d 224.

JURISDICTION

The judgment of the court of appeals was entered on August 24, 2022. On November 9, 2022, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including December 22, 2022. The petition for a writ of certiorari was filed on December 21, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the Eastern District of New York, petitioner was convicted of conspiracy to commit

wire fraud, in violation of 18 U.S.C. 1349, and conspiracy to commit securities fraud, in violation of 18 U.S.C. 371. Judgment 1; see Pet. App. 24a. The district court sentenced petitioner to 18 months of imprisonment, to be followed by three years of supervised release, and ordered him to pay $10,447,979 in restitution. Judgment 2-3, 5. The court of appeals affirmed. 782 Fed. Appx. 72. The government initiated proceedings to enforce the restitution order, and the district court entered an order garnishing two of petitioner's contributory 401(k) retirement accounts. Pet. App. 23a-38a. The court of appeals vacated the district court's order and remanded for further proceedings. *Id.* at 1a-22a.

1. This case involves the application of the restriction on garnishment in the Consumer Credit Protection Act (CCPA), 15 U.S.C. 1601 *et seq.*, in a proceeding to enforce a restitution order under the Mandatory Victims Restitution Act of 1996 (MVRA), Pub. L. No. 104-132, Tit. II, Subtit. A, 110 Stat. 1227.

a. As defined in the CCPA, "garnishment" is "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt." 15 U.S.C. 1672(c). Congress enacted the CCPA's restriction on garnishment in 1968, after finding that "[t]he unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit." 15 U.S.C. 1671(a)(1). Congress also concluded that excessive garnishment orders were driving debtors into bankruptcy and that "[t]he great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the

country." 15 U.S.C. 1671(a)(3); see *Kokoszka* v. *Belford*, 417 U.S. 642, 651-652 (1974).

To address those concerns, the CCPA generally prohibits garnishment of more than 25% of an individual's "disposable earnings":

> [T]he maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed
>
> (1) 25 per centum of his disposable earnings for that week, or
>
> (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of title 29 in effect at the time the earnings are payable,
>
> whichever is less.

15 U.S.C. 1673(a). The CCPA provides that "[t]he term 'earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." 15 U.S.C. 1672(a). An individual's "disposable earnings" are the earnings "remaining after the deduction * * * of any amounts required by law to be withheld." 15 U.S.C. 1672(b).

The CCPA generally applies to all garnishment proceedings, whether in federal or state courts. 15 U.S.C. 1672(c).[1] Congress authorized the Department of Labor

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[1] The CCPA's restriction on garnishment is subject to narrow exceptions. See 15 U.S.C. 1673(b) (providing that a greater percentage of an individual's disposable earnings may be garnished to enforce a domestic-support order and that the CCPA's restrictions do

(DOL) to enforce the CCPA's restrictions on garnishment and to implement specific provisions of the statute by regulation. 15 U.S.C. 1676; see 15 U.S.C. 1673(a), 1675; 29 C.F.R. Pt. 870.

b. The MVRA requires a court to order restitution to victims when sentencing a defendant convicted of specified crimes, including "any offense committed by fraud or deceit." 18 U.S.C. 3663A(c)(1)(A)(ii); see 18 U.S.C. 3663A(a)(1). The government may then enforce such a restitution order by, among other things, invoking "the practices and procedures for the enforcement of a civil judgment under Federal law or State law." 18 U.S.C. 3613(a); see 18 U.S.C. 3613(f), 3664(m)(1)(A). When the government does so, the MVRA generally provides that, "[n]otwithstanding any other Federal law," the order "may be enforced against all property or rights to property" of the defendant. 18 U.S.C. 3613(a).[2]

The MVRA makes two exceptions to that general rule. First, it provides that if the government relies on federal procedures for enforcing a civil judgment, some of the categories of property that are "exempt from levy for taxes" under 26 U.S.C. 6334(a) are also exempt from the enforcement of the restitution order. 18 U.S.C. 3613(a)(1). The list of incorporated exemptions covers, among other things, unemployment benefits, 26 U.S.C. 6334(a)(4); workmen's compensation, 26 U.S.C. 6334(a)(7); amounts required to comply with judgments for the support of minor children, 26 U.S.C.

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not apply to the collection of tax debt or to orders in Chapter 13 bankruptcy cases).

[2] Section 3613(a) generally provides for the enforcement of a criminal fine, but its procedures are also made "available to the United States for the enforcement of an order of restitution." 18 U.S.C. 3613(f); see 18 U.S.C. 3664(m)(1)(A).

6334(a)(8); and certain disability payments connected to military service, 26 U.S.C. 6334(a)(10). See 18 U.S.C. 3613(a)(1). Second, the MVRA preserves the CCPA's restriction on garnishment, specifying that "the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) shall apply to enforcement of the [restitution order] under Federal law or State law." 18 U.S.C. 3613(a)(3).

2. Petitioner is an attorney, and from 2006 to 2015, he was a partner in the New York office of the law firm Katten Muchin Rosenman LLP (Katten). Presentence Investigation Report (PSR) ¶¶ 7, 106; Pet. App. 4a. In June 2011, Katten began representing MSMB Capital Management LP, a New York-based hedge fund. PSR ¶¶ 6-7. At MSMB Capital, Martin Shkreli served as the managing member and portfolio manager—as he also did for MSMB Healthcare LP, another New York-based hedge fund. PSR ¶ 6. Beginning in 2009, Shkreli used false statements and material omissions to persuade investors to invest in MSMB Capital and MSMB Healthcare, PSR ¶¶ 9-13, 17-20, and he misappropriated funds from both hedge funds, PSR ¶¶ 14, 20.

In 2011, Petitioner began working on projects for MSMB Capital, and he became MSMB Capital's principal attorney at Katten in June 2012. PSR ¶ 7. Meanwhile, in January 2012, through petitioner's efforts, Katten began representing Retrophin, Inc., a publicly traded biopharmaceutical company based in New York. *Ibid.* From January 2012 through September 2014, petitioner was Retrophin's principal Kattan attorney, *ibid.*, and in approximately December 2012, Shkreli became Retrophin's Chief Executive Officer, PSR ¶ 6.

In late 2012, petitioner and Shkreli orchestrated a series of securities transactions, each backdated to the

summer of 2012, to make it appear that MSMB Capital had invested in Retrophin, even though petitioner and Shkreli knew that MSMB Capital had made no such investments. PSR ¶¶ 23-24. Beginning in February 2013, petitioner, Shkreli, and others caused Retrophin to enter into settlement agreements with seven investors who claimed that Shkreli had defrauded them in connection with their investments in the MSMB hedge funds. PSR ¶ 25. Those settlements occurred without the knowledge or approval of Retrophin's board of directors, and because of the settlements, Retrophin paid millions of dollars in cash and stock to the MSMB investors even though Retrophin was not liable for the investors' claims. PSR ¶¶ 25-26.

In August 2013, Retrophin's external auditor discovered the settlement agreements and determined that Retrophin was not responsible for the claims resolved in those agreements. PSR ¶ 27. In response, petitioner and Shkreli made additional false statements and executed more fraudulent documents to deceive the auditor into believing that Shkreli and the MSMB hedge funds would reimburse Retrophin for the settlement amounts. PSR ¶¶ 28-30. In fact, no such reimbursement occurred, and petitioner and Shkreli continued to take steps to cause Retrophin to make payments to the MSMB investors pursuant to the settlement agreements. PSR ¶¶ 29-32. Petitioner and Shkreli also used sham consulting agreements to steal large numbers of restricted shares from Retrophin in order to repay other defrauded MSMB investors and conceal Shkreli's fraud schemes at the MSMB hedge funds. PSR ¶¶ 33-36. Retrophin lost $10,447,979 as a result of the settlement agreements and the consulting agreements. PSR ¶ 39. Petitioner and Shkreli also engaged in a scheme

to defraud investors and potential investors in Retrophin by taking steps to control the price and trading volume of Retrophin's shares. PSR ¶¶ 41-48.

3. In 2017, petitioner was convicted of conspiracy to commit wire fraud, in violation of 18 U.S.C. 1349, and conspiracy to commit securities fraud, in violation of 18 U.S.C. 371. Judgment 1; see Pet. App. 4a. The district court sentenced petitioner to 18 months of imprisonment, to be followed by three years of supervised release, and ordered him to pay $10,447,979 in restitution to Retrophin. Judgment 2-3, 5. Petitioner's written judgment provided that restitution was "due immediately" and "payable immediately from available assets * * * until paid in full." Judgment 5. The court of appeals affirmed. 782 Fed. Appx. 72.

4. After petitioner's sentencing, the government filed applications for writs of garnishment against the interests that petitioner had in two 401(k) retirement accounts under the Federal Debt Collection Procedures Act of 1990 (FDCPA), 28 U.S.C. 3001 *et seq.*, which is the mechanism that the government uses to enforce civil judgments and is therefore available to enforce a restitution order under the MVRA. Pet. App. 4a, 6a-7a, 24a; see 18 U.S.C. 3613(a) and (f); see also 28 U.S.C. 3205 (garnishment procedures under the FDPCA). The first account was petitioner's 401(k) retirement account at Merrill Lynch from his time as an associate at the law firm Fried, Frank, Harris, Shriver & Jacobson LLP. Pet. App. 4a-5a. The second account was petitioner's 401(k) retirement account at Charles Schwab from his time working as an associate and partner at Katten. *Id.* at 6a. In December 2018, the value of petitioner's interest in the Merrill Lynch account was approximately $133,000, and in January 2019, the value of petitioner's

interest in the Charles Schwab account was approximately $788,000. *Id.* at 25a.

Petitioner objected to the garnishments, contending that, because he lacked a current right to the funds, they were outside the government's reach under the MVRA, or, in the alternative, that the garnishment should be limited by the CCPA's 25% cap. Pet. App. 27a. Following an evidentiary hearing, the district court rejected petitioner's contentions and granted the government's request for orders of garnishment. *Id.* at 23a-38a. The court determined that the government could garnish both retirement accounts because petitioner had a current right to withdraw funds from each of them. *Id.* at 28a-34a. The court also determined that the CCPA's 25% cap on garnishment applies to "'periodic payments pursuant to a pension or retirement program,'" but that the CCPA "does not explicitly limit the Government's ability to garnish a retirement account when it does so by garnishing the entire account at once, before periodic distributions to the recipient have begun." *Id.* at 35a. The court therefore found that "the cap does not apply to the Government's garnishment of [petitioner's] two retirement accounts under the circumstances presented here." *Id.* at 37a.

5. The court of appeals vacated the district court's judgment and remanded for further proceedings. Pet. App. 1a-22a. Like the district court, the court of appeals rejected petitioner's contention that he currently lacks the right to withdraw a lump-sum distribution from his retirement accounts. *Id.* at 13a-17a. The court of appeals found, however, that the district court had failed to address "the ten-percent early withdrawal tax" described in 26 U.S.C. 72(t) or the potential effect of that tax on petitioner's property interest in his retirement

funds. Pet. App. 17a-18a. The court of appeals recognized that the tax does not prevent the government from garnishing petitioner's retirement funds, but the court found that the imposition of the tax would limit petitioner's right to his retirement funds and would thus limit the government's parallel right to garnish them. *Id.* at 19a. The court of appeals therefore remanded to the district court to "determine whether the Government's garnishment would trigger the ten-percent early withdrawal tax, and, if so, the amount subject to garnishment by the Government." *Ibid.*

The court of appeals also rejected petitioner's contention that the funds in his retirement accounts constitute "earnings" under the CCPA and are therefore subject to the 25% cap on garnishment. Pet. App. 20a; *id.* at 20a-22a. The court explained that the CCPA defines "'earnings'" to mean "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." 15 U.S.C. 1672(a); see Pet. App. 20a. The court found that the statute thus "plainly covers *periodic* payments pursuant to a retirement program" but "is 'silent as to lump-sum distributions of retirement funds, suggesting that such distributions do not qualify as earnings.'" Pet. App. 20a (quoting *United States* v. *Sayyed*, 862 F.3d 615, 619 (7th Cir. 2017)); see *id.* at 20a-21a. The court therefore concluded that "the CCPA's garnishment cap does not apply to lump-sum distributions from contributory 401(k) accounts." *Id.* at 21a. In reaching that decision, the court observed that it was "agree[ing] with the decisions of [its] sister circuits, which reflect judicial consensus" as to the status of such distributions under the CCPA. *Ibid.*; see *id.* at 21a n.12.

6. After the court of appeals' decision, the case was remanded to the district court for further proceedings. D. Ct. Doc. 782, at 1 (Sept. 14, 2022). On November 14, 2022, petitioner informed the district court that he planned to file a petition for a writ of certiorari in this Court, and petitioner asked the district court to stay its garnishment proceedings until proceedings in this Court have concluded. D. Ct. Doc. 783, at 1. The government consented to petitioner's requested stay, *ibid.*, and the district court has taken no further action in petitioner's case since receiving petitioner's stay request.

ARGUMENT

Petitioner contends (Pet. 7-27) that a lump-sum distribution from his contributory 401(k) retirement account qualifies as "earnings" under the CCPA and that, accordingly, the CCPA's limitations on garnishment restrict the government's collection of funds from such accounts to satisfy his restitution debt under the MVRA. The court of appeals correctly determined that a single, lump-sum distribution from each of petitioner's retirement accounts would not involve "earnings" subject to the CCPA's restriction on garnishment, and no conflict exists between that decision, the decision of any other court of appeals, or the government's interpretation of the CCPA in other contexts. And even if this Court were inclined to consider the question presented, the interlocutory posture of this case makes it an inappropriate vehicle for review at this juncture. The petition for a writ of certiorari should be denied.

1. The court of appeals correctly determined that the funds in petitioner's retirement accounts do not qualify as "earnings" subject to the CCPA's restriction on garnishment.

a. The CCPA provides that "[t]he term 'earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." 15 U.S.C. 1672(a). A single, lump-sum distribution from a contributory 401(k) does not fall within that definition. Although the funds within the account can be traced back to petitioner's salary, they do not perpetually maintain their status as "earnings, rather than as assets or investments, once in the fund." Pet. App. 36a. In the context of a contributory 401(k), "[l]ump-sum payouts of funds that often have been invested for decades" do not qualify as "direct 'compensation paid or payable for personal services'" and therefore fall outside of the CCPA's restrictions. *United States* v. *Frank*, 8 F.4th 320, 334 (4th Cir. 2021). Cf. *Usery* v. *First Nat'l Bank*, 586 F.2d 107, 110-111 (9th Cir. 1978) (wages are no longer "earnings" once deposited into an employee's bank account).

Nor does such a lump-sum distribution fall within the final clause of the CCPA's definition of "'earnings,'" which refers to "periodic payments pursuant to a pension or retirement program." 15 U.S.C. 1672(a). As the Fourth Circuit has explained, that provision "expressly addresses retirement accounts, and specifies which forms of retirement account payments—those that are 'periodic'—will qualify as 'earnings' subject to its garnishment cap." *Frank*, 8 F.4th at 334. Multiple courts of appeals have observed that such a "specification would have been entirely superfluous had Congress intended also to cover *non-periodic* payments" from retirement accounts of the type at issue here (*i.e.*, single, lump-sum distributions from contributory 401(k) ac-

counts). *Ibid.*; see Pet. App. 21a; see also *United States* v. *Sayyed*, 862 F.3d 615, 619 (7th Cir. 2017) (observing that "the CCPA expressly protects persons already receiving periodic payments pursuant to a retirement plan," but that the statute's "silen[ce] as to lump-sum distributions of retirement funds[] suggest[s] that such distributions do not qualify as 'earnings'"). The statutory text therefore establishes that "the CCPA's garnishment cap does not apply to lump-sum distributions from contributory 401(k) accounts." Pet. App. 21a.

That plain text is consistent with the purpose of the CCPA. Congress enacted the CCPA to prevent bankruptcies by restricting the garnishment of "periodic payments of compensation needed to support [a] wage earner and his family on a week-to-week, month-to-month basis." *Kokoszka* v. *Belford*, 417 U.S. 642, 651 (1974); see 15 U.S.C. 1671(a). When a retiree receives "periodic payments" pursuant to a retirement program, 15 U.S.C. 1672(a), those payments "provide income that substitutes for wages earned as salary or hourly compensation" after the person has ceased to work. *Rousey* v. *Jacoway*, 544 U.S. 320, 331 (2005). But "a lump-sum distribution of retirement funds is not akin to a periodic payment of compensation needed to support the wage earner and his family on a regular basis." *Sayyed*, 862 F.3d at 619. Congress's decision to draw a distinction in Section 1672(a) between "periodic payments" of retirement funds and a single, lump-sum disbursement from a 401(k) retirement account thus accords with the statute's purpose.

Petitioner contends that because the funds in a contributory 401(k) retirement account are "made up of contributions of one's deferred *wages*," a lump-sum payment from that account is analogous to other lump-sum

payments like "golden parachutes, bonuses, and expense reimbursements" that qualify as "earnings" under the CCPA. Pet. 13; *id.* at 14 (brackets and internal quotation marks omitted). That analogy fails. "Bonuses and the like, even if paid irregularly, clearly qualify as 'compensation' under § 1672(a)'s definition." *Frank*, 8 F.4th at 334. They are direct payments for services rendered, not the result of an employee's investment of his prior wages. But petitioner's "retirement accounts are different because the statute treats them differently, singling out for inclusion 'periodic payments' and only periodic payments from such accounts." *Ibid.*; cf. *Kokoszka*, 417 U.S. at 651 (recognizing that the CCPA's definition of "earnings" does not encompass "every asset that is traceable in some way to * * * compensation") (citation omitted).

2. Every court of appeals to address the question has determined that a lump-sum disbursement from an individual's retirement account falls outside the CCPA's definition of "earnings." See Pet. App. 21a ("[T]he CCPA's garnishment cap does not apply to lump-sum distributions from contributory 401(k) accounts[.]"); *Frank*, 8 F.4th at 334 (4th Cir.) ("[A] lump-sum distribution of retirement funds does not qualify as 'earnings' subject to the CCPA's garnishment cap."); *United States* v. *Berry*, 951 F.3d 632, 638 (5th Cir. 2020) (determining that "a lump-sum payment" from the defendant's individual retirement account does not qualify as "earnings" under the CCPA); *Sayyed*, 862 F.3d at 619 (7th Cir.) ("[A] lump-sum distribution of retirement funds does not qualify as 'earnings' under the CCPA.").

Petitioner contends (Pet. 16-19) that those decisions are erroneous because, he claims, they improperly rely on "dicta" in this Court's decision in *Kokoszka*, which

addressed the CCPA's application to income-tax refunds. See 417 U.S. at 648-652. But those decisions, including the decision below, rested principally on the plain text of Section 1672(a), not on *Kokoszka*. See Pet. App. 20a-21a ("[T]hat statutory text clearly excludes from the definition of 'earnings' a one-time, lump-sum distribution from a retirement fund.") (quoting *Frank*, 8 F.4th at 334); *Frank*, 8 F.4th at 333 ("The plain text of the CCPA resolves this question."); *Berry*, 951 F.3d at 638 (discussing the text of the CCPA without citing *Kokoszka*); *Sayyed*, 862 F.3d at 619 (observing that "the CCPA expressly protects persons already receiving periodic payments pursuant to a retirement plan" but "is silent as to lump-sum distributions of retirement funds, suggesting that such distributions do not qualify as 'earnings'"); see also *United States* v. *DeCay*, 620 F.3d 534, 544 (5th Cir. 2010) (determining that monthly pension benefits constitute "earnings" under the CCPA and "find[ing] the statutory language unambiguous").

Petitioner identifies no circuit that has held that a lump-sum distribution from a contributory 401(k) retirement account qualifies as "earnings" under the CCPA. In particular, although petitioner contends (Pet. 7, 9-10) that the decision below conflicts with *United States* v. *Ashcraft*, 732 F.3d 860 (8th Cir. 2013), *Ashcraft* did not consider the question presented here. Instead, *Ashcraft* addressed the CCPA's application to periodic payments that an employee was receiving under an employer-sponsored disability-insurance policy, determining that such payments constitute "earnings" under the CCPA. See *id.* at 862-865. Because the text of Section 1672(a) does not mention disability payments at all but explicitly encompasses "periodic payments pursuant to a pension or retirement program," 15

U.S.C. 1672(a), the Eighth Circuit correctly recognized that *Ashcraft* resolved "a different question" than cases like petitioner's, which deal with pension or retirement payments, 732 F.3d at 863 n.3. *Ashcraft* therefore fails to establish that the Eighth Circuit would disagree with the court of appeals' resolution of the question presented in petitioner's case. And for the same reason, petitioner is mistaken in contending (Pet. 7) that this case deepens "an open and acknowledged circuit split" involving *Ashcraft*.

Moreover, the only "open and acknowledged" circuit split involving *Ashcraft* (Pet. 7) is the disagreement between that case and *United States* v. *France*, 782 F.3d 820 (7th Cir.), cert. granted, vacated, and remanded, 577 U.S. 1026 (2015), over the CCPA's application to periodic disability payments. See *id.* at 823-825 (holding that such payments do not constitute "earnings" under the CCPA); *id.* at 826 n.1 ("[T]his opinion creates a split with the Eighth Circuit."). That circuit split no longer exists. After the Seventh Circuit issued its decision in *France*, the defendant filed a petition for a writ of certiorari, and in response, the government agreed that the disability-insurance payments at issue in that case were "'earnings' subject to the CCPA's restriction on garnishment." U.S. Br. at 9-10, *France* v. *United States*, No. 15-24 (Nov. 6, 2015). Consistent with the government's request, see *id.* at 10, 22, this Court granted the petition for a writ of certiorari in *France*, vacated the judgment of the court of appeals, and remanded for further consideration in light of the government's confession of error, *France* v. *United States*, 577 U.S. 1026 (2015).

Despite petitioner's contrary suggestions (Pet. 3, 12), the decision below does not conflict with the posi-

tion that the government took in its brief to this Court in *France*. In that brief, the government explained that "the CCPA expressly provides that its general definition of 'earnings' 'includes periodic payments pursuant to a pension or retirement program.'" U.S. Br. at 12, *France*, *supra* (No. 15-24). The government characterized that statutory language as an "express statement" that "confirms that the definition [of 'earnings'] is broad enough to include *analogous payments* under employer-sponsored disability insurance policies." *Ibid.* (emphasis added). In other words, the government agreed in *France* that the disability payments at issue in that case were analogous to "periodic payments pursuant to a pension or retirement program" and therefore constituted "earnings" under the CCPA. 15 U.S.C. 1672(a). But the government did not take the position that a single, lump-sum disbursement from a contributory 401(k) retirement account is also analogous to "periodic payments pursuant to a pension or retirement program" or that such a disbursement would qualify as "earnings" under the CCPA.

3. DOL has not issued any guidance on the specific question presented, *i.e.*, whether a lump-sum distribution from a contributory 401(k) retirement account qualifies as "earnings" under the CCPA. To the extent that petitioner contends (Pet. 10-11) that a 2018 DOL opinion letter establishes that DOL would agree with petitioner's position in this case, he is mistaken. The 2018 letter responded to a request for guidance as to whether certain categories of "lump-sum payments from employers to employees" constituted earnings under the CCPA. C.A. App. 453. In the letter, DOL explained that "[t]he fact that lump-sum payments may occur only occasionally or one time does not alone ren-

der them outside the scope of earnings under the CCPA." *Id.* at 455; see *ibid.* (observing that "bonuses are often infrequent or given only one time, but the statute plainly includes them as earnings"). Instead, DOL stated, "the compensatory nature of the payment, *i.e.*, whether the payment is for services provided by the employee, rather than the frequency of the payment, is determinative under 15 U.S.C. § 1672(a)." *Ibid.* DOL therefore took the position that, "[i]n determining whether certain lump-sum payments are earnings under the CCPA, the central inquiry * * * is whether the employer paid the amount in question for the employee's services." *Id.* at 456 (emphasis omitted).

As the court of appeals observed in the decision below, the 2018 DOL opinion letter "did not conclude the CCPA's definition of earnings applies to lump-sum payments from pension or 401(k) plans." Pet. App. 21a n.13. Instead, the letter provided conclusions only as to certain categories of lump-sum payments, explaining that some of them qualify as "earnings" under the CCPA and that others—such as workers' compensation payments that reimburse medical expenses, portions of wrongful-termination insurance-settlement payments that result from compensatory or punitive damages, and buybacks of company shares—do not. C.A. App. 457-458. And the letter did not discuss Section 1672(a)'s reference to "*periodic* payments pursuant to a pension or retirement program," 15 U.S.C. 1672(a) (emphasis added), nor did it address whether *non*-periodic payments pursuant to a pension or retirement program constitute "earnings" under the CCPA. No conflict exists between that letter and the government's position in petitioner's case.

4. Even if the Court were inclined to review the question presented, it should not do so now. This case is in an interlocutory posture because the court of appeals vacated the district court's garnishment order and remanded for further garnishment proceedings. Pet. App. 19a, 22a. The interlocutory posture of a case ordinarily "alone furnishe[s] sufficient ground for the denial" of a petition for a writ of certiorari. *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (per curiam) (observing that a case remanded to the district court "is not yet ripe for review by this Court"); *Abbott* v. *Veasey*, 137 S. Ct. 612, 613 (2017) (statement of Roberts, C.J., respecting the denial of certiorari). Consistent with that general rule, this Court routinely denies interlocutory petitions in criminal cases. See Stephen M. Shapiro et al., *Supreme Court Practice* 4-55 n.72 (11th ed. 2019).

That practice promotes judicial efficiency because the proceedings on remand may affect the consideration of issues presented in a petition. It also enables issues raised at different stages of lower-court proceedings to be consolidated into a single petition. See *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) ("[W]e have authority to consider questions determined in earlier stages of the litigation where certiorari is sought from the most recent of the judgments of the Court of Appeals."). Petitioner offers no reason why this case warrants a departure from the Court's usual practice. Indeed, the practice is especially sound here, where the petition presents a garnishment question, and the court of appeals has directed the district court to issue fresh orders of garnish-

ment and to address in the first instance petitioner's arguments about the applicability and effects of the tax on early withdrawals. Pet. App. 17a-19a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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