NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LEONEL RUIZ-LOPEZ,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

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

PETITION FOR WRIT OF CERTIORARI

Doris A. Randle-Holt
Federal Public Defender for the
Western District of Tennessee
By: Robert L. Thomas
Assistant Federal Public Defender
Attorneys for Petitioner
200 Jefferson, Suite 200
Memphis, Tennessee 38103
E-mail: robert_thomas@fd.org
(901) 544-3895

QUESTION PRESENTED FOR REVIEW

The Victim and Witness Protection Act, 18 U.S.C. § 3663 ("VWPA"), permits a district court to order restitution to victims of an offense under Title 18. A "victim" is a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered. "An offense" is not defined, but this Court has held that "the loss caused by the conduct underlying the offense of conviction establishes the outer limits of a restitution order." Hughey v. United States, 495 U.S. 411, 420 (1990). What does an "offense" mean for purposes of restitution awards under the VWPA?

LIST OF PARTIES

All of the parties to the proceeding are listed in the style of the case.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Leonel Ruiz-Lopez, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The Sixth Circuit opinion is available electronically at United States v. Ruiz-Lopez, 53 F.4th 400 (6th Cir. 2022). It is also submitted herewith in Appendix A.

JURISDICTION

On November 15, 2022, a three-judge panel of the Sixth Circuit Court of Appeals entered its opinion in United States v. Ruiz-Lopez, 53 F.4th 400 (6th Cir. 2022). This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1254(1).

STATUTES, ORDINANCES AND REGULATIONS INVOLVED

The Victim and Witness Protection Act, 18 U.S.C. § 3663 ("VWPA"):

> The court, when sentencing a defendant convicted of an offense under this title . . . may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim's estate.

18 U.S.C. § 3663(a)(1).

> For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

18 U.S.C. § 3663(a)(2).

STATEMENT OF THE CASE

A single word, "offense," has hopelessly split the lower appellate courts for purposes of awarding restitution under the VWPA. Depending on jurisdiction, many defendants are being deprived of property without due process of law. This, despite the fact that the VWPA's legislative history supports only one reading of the word "offense."

Thousands of defendants across the nation are impacted by restitution orders every day. For many, these orders have severe and ongoing collateral consequences. See, e.g., United States v. Norwood, 49 F.4th 189, 219 (3d Cir. 2022) (explaining that an unpaid restitution obligation instantly becomes an added condition of parole or supervised release, and in many states, having an outstanding criminal restitution liability means being denied the right to vote, to serve on a jury, and to run for office, along with suspension of one's driver's license, or the right to own a firearm, not to mention the looming threat of future incarceration). This Petition provides the Court an opportunity to clarify when a restitution order is proper.

Like at least three other Circuits,[1] the Sixth Circuit has read the VWPA, as amended after Hughey, to include all conduct encompassed by the underlying offense of conviction, failing to recognize that Hughey's core holding remains valid. Focusing on the word "commission," in the VWPA's definition of "victim," the Sixth Circuit has found there was a legislative intent to include a defendant's total conduct in committing an "offense." The Eighth Circuit has also focused on the word "commission," in a similar manner. See United States v. Chalupnik, 514 F.3d 748, 753 (8th Cir. 2008). Meanwhile, the Eleventh Circuit believes that the causal standard defined in

[1] Some of these cases address the Mandatory Victims Restitution Act ("MVRA"), 18 U.S.C. § 3663A, which defines "victim" identically to the VWPA. Compare 18 U.S.C. § 3663(a)(2), with 18 U.S.C. § 3663A(a)(2). Because the statutory definition is identical, courts analyze cases interpreting the relevant language interchangeably.

Hughey is irreconcilable with the definition of "victim" in the VWPA, as amended. See, e.g., United States v. Washington, 434 F.3d 1265, 1268 (11th Cir. 2006). The Eleventh Circuit focuses on the "as a result of" language in the definition of "victim," rather than an "offense." Id. ("[T]he appropriate standard for causation is found in the Act itself: "directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered." (emphasis in original)). In cases like this one, the Seventh Circuit says Hughey doesn't even apply, thereby allow courts to award restitution for all related conduct and damages arising out of the offense, as long as the causal nexus between the conduct and loss is not too attenuated. See United States v. Donaby, 349 F.3d 1046, 1053 (7th Cir. 2003) (finding Hughey inapplicable because damage to police car during flight arose out of the convicted offense of bank robbery).

At least five other Circuits disagree with such readings, finding that regardless of amendment to the VWPA, Hughey's core rationale still controls. See United States v. Davis, 714 F.3d 809, 814–816 (4th Cir. 2013) ("[T]o be considered a victim under § 3663, the act that harms the individual must be either conduct underlying an element of the offense of conviction, or an act taken in furtherance of a scheme, conspiracy, or pattern of criminal activity that is specifically included as an element of the offense of conviction."); United States v. Espinoza, 677 F.3d 730, 732 (5th Cir. 2012) ("[A] district court can award restitution to victims of the offense, but the restitution award can encompass only those losses that resulted directly from the offense for which the defendant was convicted."); United States v. Oladimeji, 463 F.3d 152, 158-59 (2d Cir.2006) (holding that the relevant question in imposing restitution under the MVRA is whether the "loss [is] caused by the specific conduct that is the basis of the offense of conviction"); United States v. Akande, 200 F.3d 136, 141 (3d Cir.1999) (holding that "[t]he conduct underlying the offense of conviction thus stakes out the boundaries of the restitutionary authority" under the MVRA); United

States v. Reed, 80 F.3d 1419, 1423 (9th Cir. 1996) ("[R]estitution may only be imposed for conduct that constitutes an element of the offense."). The reasoning of these courts is sound. Not only is this the simpler and less confusing manner of applying the provisions of the VWPA, but it is also truer to the text of the statute, avoids constitutional problems and is best supported by the statute's legislative history.

A. Factual Background

Mr. Ruiz-Lopez frequented an Exxon gas station in Memphis, Tennessee, and was friendly with its employees, including Mr. Abdul Hamid. See Ruiz-Lopez, 53 F.4th at 402. One day in February 2022, Mr. Ruiz-Lopez made his regular stop at the gas station, carrying his new pistol in his pocket. Id. As he entered, Mr. Ruiz-Lopez made a playful grab for Mr. Hamid's pistol, which he carried holstered on his hip. Id. Another employee then asked Mr. Ruiz-Lopez if he had a new gun. Id. Mr. Ruiz-Lopez pulled out his new pistol and as he was lowering it to put back in his pocket, he hit the trigger, discharging the weapon. Id. The bullet ricocheted off the floor and struck Mr. Hamid's leg. Id. Mr. Hamid was taken to the hospital and treated for his injuries. Id.

B. Proceedings Below

Mr. Ruiz-Lopez was charged with, and pled guilty to, possession of a firearm as an undocumented alien, in violation of 18 U.S.C. § 922(g)(5). Id. At sentencing, the parties disputed whether Mr. Ruiz-Lopez should be required to pay restitution to Mr. Hamid. Id. Mr. Ruiz-Lopez argued that Mr. Hamid's injuries were not a direct or proximate result of his illegal possession of a firearm. Id. The district court disagreed and ordered Mr. Ruiz-Lopez to pay Mr. Hamid $4,689.64 in restitution. Id. Mr. Ruiz-Lopez timely appealed. Id.

On appeal, a three-judge panel of the Sixth Circuit affirmed the district court's restitution order. Id. at 404. The panel started with the premise that the VWPA's requirement that the victim

be directly and proximately harmed encompasses the traditional "but for" and proximate cause analyses. Id. The panel found both conditions met in the case. Id. The panel reasoned that, "[b]ut for [Mr.] Ruiz-Lopez's unlawful possession, the firearm would not have been in the gas station that day, and it would not have discharged, causing injury to [Mr.] Hamid's leg." Id. The panel went on to state, "[Mr.] Ruiz-Lopez's conduct in possessing the weapon was also the direct and proximate cause of [Mr.] Hamid's injury," or in other words, "[t]he link between [Mr.] Ruiz-Lopez's actions and [Mr.] Hamid's injury cannot be described as too remote, purely contingent or indirect." Id. (internal quotations and citations omitted). The panel found the risk of injury was entirely foreseeable because Mr. Ruiz-Lopez possessed the firearm in a reckless manner – the gun was capable of discharge with its safety removed. Id. at 404-05. The panel then concluded that restitution was proper because Mr. Hamid was a victim who was "directly and proximately harmed as a result of [Mr. Ruiz-Lopez's] commission" of the offense. Id. (quoting 18 U.S.C § 3663(a)(2)).

The panel rejected Mr. Ruiz-Lopez's argument pursuant to Hughey "that the loss caused by the conduct underlying the offense of conviction establishes the outer limits of a restitution order." Id. at 405(quoting Hughey, 495 U.S. at 420). Mr. Ruiz-Lopez argued that he was convicted of unlawful possession of the firearm, and the manner of possession was not relevant to his offense. Id. (emphasis in original). But the panel found that it was his reckless handling and resulting discharge of the gun that directly and proximately caused Mr. Hamid's injuries. Id. (emphasis in original). The panel focused on the word "commission" in the VWPA's definition of victim reasoning that Mr. Ruiz-Lopez's particular act of possession – his "commission of" the possession offense – directly and proximately caused Mr. Hamid's harm. Id.

The panel accused Mr. Ruiz-Lopez of overreading Hughey. Id. In the panel's view, "Hughey required a causal link between the offense of conviction and the harm for which

restitution is ordered." Id. (quoting Washington, 434 F.3d at 1269). The panel found such link present, as Mr. Ruiz-Lopez's particular act of possession "directly and proximately" caused Mr. Hamid's harm. Id.

The panel also rejected the views of the Fourth, Fifth and Ninth Circuits, which as explained, read Hughey more narrowly. Id. at 405-06. The panel reasoned that neither Hughey, nor the VWPA contained any "elements-only" language. Id. at 406. Moreover, the panel noted, the statute was amended after Hughey to add the definition of victim. Id.

Finally, the panel rejected earlier Sixth Circuit precedent that was in accord with Hughey because the precedential opinions were decided before the statute's amendment. Id. Besides, the panel reasoned, its holding was consistent with even earlier circuit precedent and Hughey, because both stood for the proposition that restitution is limited to losses flowing from the offense of conviction. Id.

REASONS FOR GRANTING THE PETITION

The courts of appeal are hopelessly entangled in a fierce debate about the scope of this Court's decision in Hughey, and the meaning of Congress's resulting amendments to the VWPA and MVRA, which share a common definition of "victim." The debate centers around the question of what is meant by an "offense" in the definition of "victim." Those courts that narrowly read Hughey and the resulting VWPA amendments correctly cabin the VWPA's definition of "victim" to those directly and proximately harmed by the offense of conviction, while those who read the definition more broadly impose restitution for any possible harm springing from the offense.

This debate has significant consequences for the thousands of federal defendants who are ordered to pay restitution as part of their criminal penalty each year.[2] The collateral consequences triggered by a failure to pay restitution mirror those that attach to other criminal punishments, including continued disenfranchisement for the inability to pay, preclusion from running for office, threat of further incarceration if someone is unable to prove her failure to pay was not willful, and suspension of one's driver's license. See Cortney E. Lollar, What is Criminal Restitution?, 100 Iowa L. Rev. 93, 99 (Nov. 2014). Other punitive consequences also continue to linger as a result of the difficulties many convicted indigent defendants have in making these payments, which means further incarceration continues to lurk for them. Id.

[2] A 2018 Government Accountability Office ("GAO") Report to Congressional Committees analyzed the United States Sentencing Commission's available data on restitution orders for 95 percent of all offenders sentenced from fiscal years 2014 through 2016. See GAO, Federal Criminal Restitution: Most Debt is Outstanding and Oversight of Collections Could be Improved, at "Highlights" (Feb. 2018), https://www.gao.gov/assets/gao-18-203.pdf. The analysis revealed that 214,578 federal offenders were sentenced during this time period and restitution was ordered for 33,158, or 15 percent, of those offenders. Id. Collectively, courts ordered these offenders to pay $33.9 billion in restitution. Id.

It is not just federal defendants who are impacted. The debate also has significant consequences for the federal justice system as a whole. Indeed, the GAO recently interviewed ten stakeholders within the criminal justice system, including the Administrative Office of the Courts, the Sentencing Commission, Department of Justice ("DOJ") Officials, and Federal and Community Defenders, and found that all were concerned about expanding federal courts' authority to order defendants to pay restitution for a victim's losses for conduct unrelated to the conduct underlying the offense of conviction. See GAO, Federal Criminal Restitution: Factors to Consider for a Potential Expansion of Federal Courts' Authority to Order Restitution, (Oct. 2017), https://www.gao.gov/assets/gao-18-115.pdf. Four of ten stakeholders, including DOJ officials and an organization representing federal prosecutors, stated that if the authority of federal courts to order restitution were broadened to allow inclusion of harms for a defendant's related conduct, there would be increased complexity to determine losses for restitution. Id. at 17. For example, inclusion of a defendant's related conduct would allow restitution to be open to a larger pool of potential victims, such that identifying and calculating losses for all victims with a nexus to the offense of conviction could become an impossible task. Id. This increased complexity, in turn, could have the effect of federal courts ordering less restitution through the exception for complex cases, see 18 U.S.C. § 3663(a)(1)(B)(ii), which would negatively impact victims. Id.

Another concern for eight of ten stakeholders was the potential violation of a defendant's rights under the Fifth Amendment's Due Process Clause. Id. This was also a concern noted in the legislative history of the MVRA and VWPA. See S. Rep. No. 104-179, at 23 (1996), reprinted in 1996 U.S.C.C.A.N. 924, 932 ("It is the committee's view that permitting the court to order restitution for offenses for which the defendant has neither been convicted nor pleaded guilty may violate the due process clause of the fifth amendment.")

There were additional stakeholder concerns about increased restitution debt and collection challenges, such as the additional DOJ efforts needed to collect more restitution debt and additional supervision of offender restitution payments by probation officers. Id. at 25. The stakeholders also questioned the suitability of criminal versus civil proceedings, with some on both the prosecution and defense sides recognizing that civil attorneys practicing in this area have more expertise. Id. at 25-26. Five of the ten stakeholders noted the impacts to federal court resources, including increased workloads, additional legal services, the need for more experts, and the burden on federal probation officers to track and supervise more restitution payments. Id. at 26-27. Finally, two of the defender-related stakeholders noted that the burden of restitution affected an offenders' ability to successfully re-enter society. Id. at 27-28.

Given the wide-ranging impact of restitution awards, it is imperative that the lower federal courts get it right. This Court should intervene to clarify the appropriate standard for imposing restitution to prevent needless scores of erroneously imposed restitution orders, to protect critically important constitutional rights, and to lessen the burden on the entire justice system resulting from such erroneous awards. This case is the perfect vehicle for this Court to do so.

A. The lower courts' lack focus upon the critical "offense" language contained in the VWPA's definition of "victim," which has helped cause the circuit split.

The VWPA provides that "a defendant convicted of an offense" under Title 18 may be ordered to "make restitution to any victim of such offense." 18 U.S.C. § 3663(a)(1)(A). "Victim" is defined as:

> a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

Id. at § 3663(a)(2). Put simply, Section (a)(1)(A) tells court the offenses for which restitution may be ordered, and Section (a)(2) tells the court that restitution may go to the victim of that offense.

The limitation language of § 3663(a), mandates the application of the VWPA only to offenses violating Title 18 and certain other enumerated offenses. This limitation was addressed by this Court in Hughey. Hughey was convicted of a single count of unauthorized use of a credit card, an offense covered by the VWPA, now at 18 U.S.C. § 3663(a). This resulted in $10,412 in losses to a single victim. The district court ordered restitution of $90,431 to cover the losses of all victims. This Court reversed, reasoning "that the language and structure of" the VWPA "make plain Congress' intent to authorize an award of restitution only for the loss caused by the specific conduct that is the basis of the offense of conviction." 495 U.S. at 413. The Court held that the "loss caused by the conduct underlying the offense of conviction establishes the outer limits of a restitution order." Id. at 420. This is the so-called "Hughey limitation."

It follows that because restitution in the instant case was ordered in accordance with the VWPA, the Hughey limitation, which restricts restitution orders to losses arising from offenses of conviction, must apply. Since the Hughey Court focused heavily on "the offense" in reaching its decision, it would seem the Hughey limitation should similarly apply to that language wherever it appears. Indeed, Sections 3663(a)(1) and (2) provide that the defendant be convicted of "an offense" enumerated in the statute, the victim be compensated for "such offense," and the victim receive compensation for commission of "an offense" for which restitution may be ordered (i.e., those enumerated in the statute).

Not so, says the Sixth Circuit. Instead, plucking the word "commission" out of context, it justifies restitution awards for collateral conduct falling outside the offense of conviction, never

grappling with what an "offense" really entails. This approach is inconsistent with this Court's precedent.

This Court has held that, when interpreting a statute, words must be given their "ordinary or natural" meaning. Smith v. United States, 508 U.S. 223, 228 (1993). "Commission" simply means the act of doing or perpetrating (as a crime). Commission, Black's Law Dictionary (8th Ed. 2004). This Court has explained that when interpreting a statute that features an elastic word, such as "commission," it should be construed in its context and in light of the terms surrounding it. See Leocal v. Ashcroft, 543 U.S. 1, 9 (2004) (addressing the word "use"). This, the Sixth Circuit did not do. It did not consider "commission" in the context of the "offense." If it had, it would have recognized that the commission of Mr. Ruiz-Lopez's offense was possession of the firearm, not its reckless handling.

Other courts have taken a different tack, finding that Hughey's causation holding is irreconcilable with the VWPA's current definition of "victim." They focus their analysis on the following language of the definition: "directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered." Washington, 434 F.3d at 1269 (emphasis in original). But, this Court, applying Hughey, has already interpreted the "as a result of" phrase under a similar restitution statute with similar wording, finding the statute perfectly reconcilable with Hughey. In Paroline v. United States, 572 U.S. 434 (2014), the Court explained:

> All parties agree § 2259 imposes some causation requirement. The statute defines a victim as "the individual harmed as a result of a commission of a crime under this chapter." § 2259(c). The words "as a result of" plainly suggest causation. See Pacific Operators Offshore, LLP v. Valladolid, 565 U.S. ——, ——, 132 S.Ct. 680, 690–691, 181 L.Ed.2d 675 (2012); see also Burrage v. United States, 571 U.S. ——, ——, 134 S.Ct. 881, 886–887, 187 L.Ed.2d 715 (2014). And a straightforward reading of § 2259(c) indicates that the term "a crime" refers to the offense of conviction. Cf. Hughey v. United States, 495 U.S. 411, 416, 110 S.Ct. 1979, 109 L.Ed.2d 408 (1990). So, if the defendant's offense conduct did not cause harm to

> an individual, that individual is by definition not a "victim" entitled to restitution under § 2259.

Paroline, 572 U.S. at 1720. The Paroline Court interpreted the "as a result of" language in light of the "crime." In other words, it was construed in its context and in light of the terms surrounding it.

Those courts that focus upon the offense of conviction, just as the Hughey Court did, have the better view. See, e.g., Davis, 714 F.3d at 814 ("The focus of the court in applying [§ 3663A] must be on the losses to the victim caused by the offense." (emphasis in original) (internal quotations and citation omitted)); Espinoza, 677 F.3d at ("[A] district court can award restitution to victims of the offense, but the restitution award can encompass only those losses that resulted directly from the offense for which the defendant was convicted." (citation omitted)). This focus is most consistent with the text of the VWPA.

The critical aspect of the definition of "victim" is that there be the commission of an offense for which restitution may be ordered. The statute thus directs the focus to the "offense," and mandates looking to the elements and the nature of the offense of conviction, rather than to the particular facts relating to the particular crime. This is done in the context of the categorical approach, and interpretation of "offense" in that context has yielded a determination that the word "offense" means offense of conviction. See Leocal, 543 U.S. at 7

The "offense" in this case is a Title 18 status offense – undocumented alien in possession of a firearm, in violation of 18 U.S.C. § 922(g)(5). This "offense" is "committed" the second the undocumented alien possesses the firearm. To look beyond possession to the facts surrounding the manner of commission of this particular possession crime is erroneous because the statute emphasizes restitution to a victim only for the Title 18 offense. Cases holding otherwise fail to address the statute's emphasis on an offense.

This failure implicates the Fifth and Fourteenth Amendments, where neither the federal government nor the States may deprive individuals of "life, liberty, or property, without due process of law." U.S. CONST., amends. V, XIV. The harm to Mr. Hamid in this case is not based on the specific conduct that was the basis of Mr. Ruiz-Lopez's alien in possession of a firearm conviction, but rather the subsequent reckless discharge of a firearm. Yet, the prosecution was not required to prove recklessness in to obtain the conviction, and the penalty of restitution. See Ruiz-Lopez, 53 F.4th at 405. Mr. Ruiz-Lopez is therefore being deprived of property without due process of law. He should not be required to pay restitution for an offense for which he was not charged or convicted.

Given the lower court's confusion about interpretation of the text of the statute and the significant constitutional implications that result, this Court's intervention is necessary to clarify the meaning of the statute.

B. The legislative history of the statute supports a narrower reading of "victim."

It could be argued that the definition of "victim" is vague because "in ordinary speech," the word "offense" can carry at least two possible meanings. See United States v. Davis, 139 S. Ct. 2319, 2328 (2019). It can refer to "a generic crime, say, the crime of fraud or theft in general," or it can refer to "the specific acts in which an offender engaged on a specific occasion." Id. (quoting Nijhawan v. Holder, 557 U.S. 29, 33-34 (2009)). In other words, it can refer to the nature and elements of the offense, or it can refer to particular facts underlying the particular crime. If it is ambiguous, examination of the statute's text, context, and history is the approach to take. Davis, 139 S. Ct. at 2327. Examination of the VWPA's context and legislative history reveals that a fact-specific approach for determining the meaning of "victim" was not Congress's intent.

One of the problems hindering agreement in the lower courts is a misunderstanding of the amendments Congress made to the statute following this Court's Hughey decision. Another aspect of the Hughey decision was that the underlying restitution order included losses incurred with respect to counts dismissed as part of a plea agreement. Hughey, 495 U.S. at 420. The Hughey decision did not explicitly address whether a sentencing court could order restitution beyond the offense of conviction if the defendant agreed to such an order in a plea agreement. Hence, some courts held that a district court could not award restitution beyond the offense of conviction, even where a defendant agreed to pay it in a plea agreement. See, e.g., United States v. Guardino, 972 F.2d 682, 687 (6th Cir. 1992). Also, after Hughey, some courts held that an order of restitution must be limited to the loss attributable to the specific conduct supporting the offense of conviction, even when the offense of conviction involved a conspiracy or scheme. See, e.g., United States v. Sharp, 941 F.2d 811, 815 (9th Cir.1991); see also United States v. Pivorotto, 986 F.2d 669, 673 n.5 (3d Cir.), cert. denied, 510 U.S. 826 (1993); United States v. Wainwright, 938 F.2d 1096, 1097–98 (10th Cir.1991); United States v. Stone, 948 F.2d 700, 703–04 (11th Cir.1991).

Congress responded in 1990 by amending that portion of the VWPA that defines who may receive restitution. See Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789 (codified at 18 U.S.C. § 3663(a)(2)). The amended statute allowed for plea agreements to include a determined amount of restitution. See Guardino, 972 F.2d at 687. It also provided that when the subject offense involves a scheme, conspiracy, or pattern, restitution may be awarded to any person who is directly harmed by the defendant's course of criminal conduct. See United States v. Jewett, 978 F.2d 248, 251-52 (6th Cir. 1992) (recognizing this amendment but declining to apply it due to ex post facto concerns). The definition of "victim" was added, and read:

> For the purposes of restitution, a victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity means any person directly

> harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

18 U.S.C. § 3663(a)(2) (1992). This new definition demonstrated the congressional intent to address the problem of restitution awards for crimes of conspiracy. But it also demonstrated an intent to keep Hughey's central holding focusing upon the outer limits of the award being for the offense of conviction. The definition specified as much when it stated restitution could be ordered for an offense that involves as an element a scheme, conspiracy, or pattern.

Then in 1996, when Congress adopted the MVRA, the current definition of "victim" under the VWPA came into being. See Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (codified at 18 U.S.C. § 3663(a)(2)). The 1996 amendment is the most current definition of "victim" and added, in pertinent part, that a "victim" is "a person directly and proximately harmed as a result of the commission of an offense.

Many lower courts have found that neither of these amendments disturbed that part of Hughey which restricted the award of restitution to the limits of the offense of conviction. See, e.g., United States v. Howard, 759 F.3d 886, 891 (8th Cir. 2014) ("This amendment, however, does not disturb Hughey's limit on the conduct that gives rise to restitution for an offense that, like Howard's, does not involve such a scheme, conspiracy or pattern."); see also United States v. Gordon, 480 F.3d 1205, 1211 (10th Cir. 2007) ("The MVRA, which amended the VWPA in 1996, did not change the general rule that restitution may only be ordered for losses caused by the offense of conviction."); United States v. Batson, 608 F.3d 630, 636-37 (9th Cir. 2010) ("Subsequent amendments to the VWPA created an exception to Hughey when the crime of conviction includes as an element a scheme, conspiracy or pattern of criminal activity . . . but otherwise Hughey's limitation remains in effect."); United States v. Henoud, 81 F.3d 484, 488 (4th Cir. 1996) (noting the 1990 amendment was widely viewed as partially overruling Hughey's restrictive interpretation

of the VWPA and expanding district courts' authority to grant restitution in the case of schemes and plans); United States v. Clark, 957 F.2d 248, 253 (6th Cir. 1992) ("Section 3663(a)(2) by its terms extends only to those crimes where a scheme, conspiracy or pattern of criminal activity is an element of the offense." (emphasis in original)).

Others, like the Sixth Circuit has in this case, have found that restitution may be awarded for any conduct related to the offense of conviction, regardless of whether it involves a scheme or plan. These courts tend to view the current definition of "victim" as abrogating Hughey's "causation standard." See Donaby, 349 F.3d at 1053 (stating courts may undertake a factual determination of causation to determine a causal nexus between the conduct and loss, as long as it is not too attenuated); Washington, 434 F.3d at 1269-70 (finding damage to police car during flight after bank robbery was sufficiently causally related to robbery to support award of restitution).

The Sixth Circuit's view originates from the 1996 amendment. At that time, the Senate Judiciary Report explained, "The committee intends this provision to mean, except where a conviction is obtained by a plea bargain, that mandatory restitution provisions apply only in those instances where a named, identifiable victim suffers a physical injury or pecuniary loss directly and proximately caused by the course of conduct under the count or counts for which the offender is convicted." S. REP. NO. 104-179 at 19 (1996), reprinted in 1996 U.S.C.C.A.N. 924, 932. This "course of conduct under the count or counts for which the offender has been convicted" language has been said to paraphrase Hughey's holding and to support a congressional intent to include the defendant's total conduct in the "commission" of the offense. See Chalupnik, 514 F.3d at 753. But this was neither a paraphrase of Hughey's holding, nor did it demonstrate an intent to include conduct outside of the offense of conviction.

The 1996 amendment's addition of a "victim" as someone directly and proximately harmed is followed immediately by the 1990 amendment language just discussed, "including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern." S. REP. NO. 104-179 at 19 (1996), reprinted in 1996 U.S.C.C.A.N. 924, 932. The 1990 amendment thus became a non-restrictive clause in the definition, providing an example of the kinds of offenses that could be compensated. The example kept the language "in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity." Thus, the definition evinces a congressional intent to keep the focus upon someone directly and proximately harmed as a result of the underlying nature and elements of the offense of conviction.

Moreover, the Senate Judiciary Report also contained contraindications that Congress's intent was to incorporate collateral conduct into the definition of "victim." For instance, the Report documents that the Judicial Conference expressed concern to the Senate Judiciary Committee regarding the impact to the justice system. The Report explains that there was an attempt to respect the Judicial Conference's view regarding the costs to the justice system where 85 percent of all Federal defendants are indigent at the time of sentencing, and thus unlikely to be able to pay restitution. S. Rep. No. 104-179, at 18, reprinted in 1996 U.S.C.C.A.N. 924, 931. Attention to these costs was taken into consideration by limiting mandatory restitution to those federal offenses in which an identifiable victim suffers physical injury or a pecuniary loss. Id. Thus, the Committee's stated intent included "that courts order full restitution to all identifiable victims of covered offenses, while guaranteeing that the sentencing phase of criminal trials do not become

fora for the determination of facts and issues better suited to civil proceedings." Id. (emphasis added).

There is another reason the legislative history indicates that congressional intent was to maintain Hughey's central holding. Certainly, by the time of the 1996 amendment to the statute, Congress was well aware that many of the lower courts were applying Hughey's rationale and limiting restitution awards to the offense of conviction. After all, the Hughey Court stated in its opinion: "Indeed, had Congress intended to permit a victim to recover for losses stemming from all conduct attributable to the defendant, including conduct unrelated to the offense of conviction, Congress would likely have chosen language other than 'the offense,' which refers without question to the offense of conviction." Hughey, 495 U.S. at 418. The Hughey Court essentially gave Congress instructions on how to "fix" the statute if it wanted the result reached by the Sixth Circuit here. Yet, when Congress amended the statute in both 1990 and 1996, it did not follow the Hughey Court's instructions. This is a rather large contextual clue that Congress was not concerned with this particular fix. Instead, Congress implicitly sanctioned Hughey's holding regarding restitution only for the offense of conviction by its silence about the meaning of "offense" after this Court's explicit finding that "offense" refers without question to the offense of conviction. See Ysleta del Sur Pueblo v. Texas, 142 S. Ct. 1929, 1941 (2022) ("This Court generally assumes that, when Congress enacts statutes, it is aware of this Court's relevant precedents." (citing Ryan v. Valencia Gonzales, 568 U. S. 57, 66 (2013)). After all, "[w]hen the words of the Court are used in a later statute governing the same subject matter, it is respectful of Congress and of the Court's own processes to give the words the same meaning in the absence of specific direction to the contrary. Williams v. Taylor, 529 U.S. 420, 434 (2000) (citing Lorillard v. Pons, 434 U.S. 575, 581 (1978) ("Where . . . Congress adopts a new law incorporating sections

of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute")).

Indeed, Congress has enacted many different restitution statutes with differing language and governing different circumstances. Some of those statutes specifically require restitution for the "full amount of the victim's losses," defined to include "any . . . losses suffered by the victim as a proximate result of the offense." See 18 U.S.C. §§ 2248(b), 2259(b), 2264(b), 2327(b). Congress thus knows how to specify restitution for any losses suffered as a proximate result of the offense, but neither the VWPA nor the MVRA contain such language.

In sum, the legislative history of the statute indicates that Congress was aware of the costs to the justice system as a whole should it expand restitution orders to account for collateral conduct. Congress was also aware of the central tenet of Hughey's holding and chose not to disturb it. The context and history of the statute thus support reading "offense," as the offense of conviction.

C. If the statute is ambiguous, the rule of lenity applies.

The Hughey court also invoked the rule of lenity as an added ground for limiting the application of the VWPA to offenses of conviction. Hughey, 495 U.S. at 422. "This policy of lenity means that the Court will not interpret a federal criminal statute so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended." Ladner v. United States, 385 U.S. 169, 178 (1958); see also Whalen v. United States, 445 U.S. 684, 695 n. 10 (1980). A principal rationale for lenity is notice — that "a fair warning should be given to the world in language that the common world will understand." McBoyle v. United States, 283 U.S. 25, 27 (1931). Thus, the "venerable" rule of lenity vindicates not only the fundamental principle that no citizen should be held accountable for a violation of a statute whose commands are uncertain, but also that no citizen should be subjected

to punishment that is not clearly prescribed. United States v. Santos, 553 U.S. 507, 514 (2008). The rule applies to both criminal statutes and criminal penalties. Bifulco v. United States, 447 U.S. 381, 387 (1980). Mr. Ruiz invoked this doctrine below, but the Sixth Circuit chose not to address it based upon its holding. To the extent this Court finds that the statute remains ambiguous after consideration of its plain meaning, structure and legislative history, as explained herein, Mr. Ruiz-Lopez invokes the rule of lenity as an additional ground supporting his argument for limiting the application of the VWPA to offenses of conviction.

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully prays that this Court will grant certiorari to review the judgment of the Sixth Circuit in his case.

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Respectfully submitted,

DORIS RANDLE HOLT
FEDERAL DEFENDER

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By: Robert L. Thomas
Assistant Federal Defender
Attorneys for Petitioner
200 Jefferson, Suite 200
Memphis, Tennessee 38103
(901) 544-3895