PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7246

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARCUS ROOSEVELT TAYLOR,

Defendant - Appellant.

No. 21-4422

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARCUS ROOSEVELT TAYLOR,

Defendant - Appellant.

Appeals from the United States District Court for the District of Maryland, at Baltimore. Catherine C. Blake, Senior District Judge. (1:17-cr-00106-CCB-6)

Argued: October 26, 2022 Decided: March 10, 2023

Before KING and HEYTENS, Circuit Judges, and Sherri A. LYDON, United States District Judge for the District of South Carolina, sitting by designation.

Affirmed by published opinion. Judge Heytens wrote the opinion, in which Judge King and Judge Lydon joined. Judge Lydon wrote an opinion concurring in the judgment.

ARGUED: Gerald Chester Ruter, LAW OFFICES OF GERALD C. RUTER, P.C., Baltimore, Maryland, Appellant. Patrick Garrett Selwood, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee. **ON BRIEF:** Erek L. Barron, United States Attorney, Leo J. Wise, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

TOBY HEYTENS, Circuit Judge:

Federal law says a district court "shall order" certain defendants to "make restitution to the victim of the offense." 18 U.S.C. § 3663A(a)(1). Here, a person convicted of robbery insists he should not have to make restitution because at least some of the cash and personal property he stole were proceeds of illegal drug sales and the government failed to prove what (if any) portion was not so tainted. That argument has no basis in the statutory text. We thus affirm.

I.

Marcus Taylor was a detective in Baltimore's Gun Trace Task Force, a unit charged with investigating firearms-related crimes. After a trial where the government showed Taylor and some of his colleagues stole money, drugs, and other items on the job, a jury convicted him of Hobbs Act robbery and racketeering offenses. The district court sentenced Taylor to 18 years of imprisonment, to be followed by 3 years of supervised release. This Court affirmed. See *United States v. Taylor*, 942 F.3d 205 (4th Cir. 2019).

This appeal challenges the district court's later-imposed restitution order. The court ordered Taylor to make restitution to two people from whom he and his confederates stole cash, personal property, and illegal drugs. The district court did not order restitution for the drugs. It did, however, order Taylor to pay $228,304 in restitution for the cash and personal property.

Taylor claims the restitution order is unwarranted and unsupported. The people to whom the court ordered Taylor to make restitution testified against him under grants of immunity. Both admitted to selling drugs, and one said at least some of the stolen cash—

$15,970 taken from a closet—came from illegal drug sales. Based on that testimony, Taylor argued these people were not "victim[s]" under 18 U.S.C. § 3663A(a)(2) because "[t]he proceeds of illegal activity are not the property of the person who obtained the funds through that activity" and the government failed to prove that either the cash or personal property was "untainted." JA 1128–29.

The district court did not resolve how much of the stolen cash derived from drug sales or whether the stolen items of personal property were bought with such tainted funds. Instead, the court concluded "the plain text" of the relevant statute "does not limit restitution based on the conduct of the person who experienced pecuniary loss." Supp. JA 81. We review that issue of statutory construction de novo. See *United States v. Abdelbary*, 746 F.3d 570, 574 (4th Cir. 2014).

II.

The language of the Mandatory Victims Restitution Act (MVRA) is straightforward. "[W]hen sentencing a defendant convicted of an offense described in subsection (c), the court shall order . . . that the defendant make restitution to the victim of the offense." 18 U.S.C. § 3663A(a)(1). The "offense[s] described in subsection (c)" include "an offense against property under this title" "in which an identifiable victim or victims has suffered a physical injury or pecuniary loss." § 3663A(c)(1)(A)(ii) & (B). And "victim," in turn, "means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered." § 3663A(a)(2).

Here, several of the relevant questions are open and shut. As the district court noted, "Taylor does not dispute that the offenses for which he was convicted are covered by the

MVRA or claim that he was not involved in the robberies." Supp. JA 81. Nor does Taylor claim that the MVRA's "shall" means anything besides "must." See Taylor Br. 9 (acknowledging "restitution under Section 3663A is mandatory").

To the extent Taylor offers a textual basis for his position, he grounds it mainly in the statutory words "pecuniary loss." 18 U.S.C. § 3663A(a)(2), (c)(1)(B); see Taylor Supp. Br. 2 ("The Appellant has posited that one cannot experience pecuniary harm when that which has been illegally taken from him is contraband or the fruits of criminal activity."). But Taylor develops no argument why that term excludes cash or personal property derived from illegal activity, and merely saying something does not make it so. At bottom, Taylor's raw assertions "sound more of *ipse dixit* than reasoned explanation." *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 543 (1985).

In any event, we are unpersuaded. "[P]ecuniary loss" has had a consistent meaning since the 17th century, and it refers broadly to "[a] loss of money or of something having monetary value." *Loss*, Black's Law Dictionary (11th ed. 2019). We are aware of no authority—and Taylor cites none—saying a person's previously unlawful conduct has any bearing on whether the person suffers a pecuniary loss from (or is proximately harmed by) a robbery. Cf. U.S.S.G. § 2B1.1 application note 3(A)(iii) (defining "pecuniary harm" for offenses involving stolen property as "harm that is monetary or that otherwise is readily measurable in money").

If there is any textual warrant for Taylor's position, it must come from the word "restitution" itself. The MVRA does not define the term, and as best we can tell, neither does any other federal statute. But "restitution has deep common law roots," *United States*

v. Grant, 715 F.3d 552, 553 (4th Cir. 2013), and "[w]hen a statutory term is obviously transplanted from another legal source, it brings the old soil with it." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019) (quotation marks omitted). Given that, Taylor might have a winning argument *if* the common law barred restitution for cash or personal property obtained through unlawful conduct. Cf. Taylor Br. 12 ("The question we ask this Court to answer is not whether [the two people] were robbed but rather whether [they] are entitled to restitution . . . .").

The problem for Taylor is the common law rule appears to have been the opposite. Indeed, an illustration from the Restatement (First) of Restitution—published in 1937—provides:

> A steals B's chattels. C steals them from A. A is entitled to restitution from C . . . since A's wrong to B is not connected with C's wrong to A.

Restatement (First) of Restitution § 140 ill. 4. Or, to put the example in the language of this case: Person A obtains cash and personal property by selling drugs. Taylor and his confederates steal the cash and personal property from A. Taylor must make restitution to A "since A's wrong [in selling drugs] is not connected with [Taylor's] wrong to A." *Id.* [1]

[1] As the district court noted, some "courts have recognized a 'coconspirator exception' . . . to preclude the award of restitution to persons who were participants in the offense of conviction and shared the defendant's criminal intent." Supp. JA 82. We need not decide whether that view is correct. We note, however, that it appears consistent with the First Restatement, which provides restitution may be withheld in situations involving "criminal or other wrongful conduct in connection with the transaction on which [the] claim [for restitution] is based." Restatement (First) of Restitution § 140; see *United States v. Ojeikere*, 545 F.3d 220, 223 (2d Cir. 2008) ("[R]estitution would not be appropriate if one burglar were to rob another of the proceeds of a heist they have just committed.").

The broader statutory context further undermines Taylor's argument. If a defendant's otherwise mandatory restitution obligation depended on the way victims obtained the property later stolen from them, Congress would have had every reason to establish procedures for district courts to acquire that kind of information. Congress, however, has not done so—a silence made all the more notable given the mechanisms Congress did establish for obtaining information relevant to restitution.

For example, to assist district courts with awarding restitution, federal law requires the probation officer, the attorneys for the government, and the defendant to submit information involving "the losses to each victim" and "the economic circumstances of [the] defendant." 18 U.S.C § 3664(a); see § 3664(d)(1), (d)(3). But none of the specified information addresses how a person from whom money or property was stolen obtained that money or property in the first place. The same statute instructs the probation officer to "provide notice to all identified victims" of "the opportunity . . . to submit information to the probation officer concerning the amount of the victim's losses." § 3664(d)(2)(A) & (A)(iii). That provision likewise says nothing about directing victims to document how they acquired the property for which they are seeking restitution—much less cautioning victims their own conduct may be scrutinized as part of the restitution inquiry. The most natural explanation for these omissions is that such matters are not part of the restitution process.

The same is true of Congress's failure to provide any mechanism for a sentencing court to resolve disputes about how a victim acquired the lost or damaged property. Although one of the people to whom Taylor was ordered to make restitution admitted some

of the stolen cash was drug proceeds, the same person insisted the rest was lawfully earned from his job as a painter. Taylor, in contrast, suggests all the stolen cash and property were drug proceeds.

The restitution statutes supply no rules for how district courts are to resolve these sorts of questions. Is property for which restitution is sought presumed clean or tainted? Must a defendant who claims it is tainted submit pleadings or allegations sufficient to survive a plausibility standard? Is discovery permitted? May the defendant demand an evidentiary hearing about the source of the taken property? Call witnesses to testify about the victim's conduct? Cross-examine the government's witnesses? The federal restitution statutes' failure to address any of these questions suggests those statutes do not contemplate the sort of inquiry Taylor seeks.[2]

Taylor's position also flouts multiple provisions designed to protect victims during the restitution process and ensure the focus remains on the defendant's wrongful conduct. Most obviously, Congress instructed "[n]o victim shall be required to participate in any phase of the restitution order" and may "at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way

[2] In contrast, Congress *has* provided detailed procedures for actions brought by the government to forfeit contraband or proceeds of unlawful activity. See 21 U.S.C. § 881, 18 U.S.C. § 981. The government suggests it could not pursue forfeiture proceedings against Taylor's victims because of their immunity agreements. Oral Arg. 32:51–33:15. Whether or not that is true, cf. *United States v. Ursery*, 518 U.S. 267, 288–89 (1996) (emphasizing forfeiture is a civil proceeding against property and is "not a criminal sanction"), these provisions confirm Congress knows how to establish procedures for determining whether particular assets were proceeds of illegal conduct.

impairing the obligation of the defendant to make such payments." 18 U.S.C. § 3664(g)(1) & (2).

As a practical matter, however, Taylor's proposed rule would pressure victims to participate. Recall, Taylor's argument is that people whose property or money was obtained through unlawful means are not entitled to restitution because they have not suffered the right type of "loss." And, under federal law, "[t]he burden of demonstrating the amount of the *loss* sustained by a victim as a result of the offense shall be on the attorney for the Government." 18 U.S.C. § 3664(e) (emphasis added). So, if Taylor's view were right, a defendant facing mandatory restitution could assert no award is warranted because of the victim's unlawful conduct and use the victim's non-participation to argue the government failed to meet its burden of proving the contrary.

At bottom, the pull of Taylor's argument comes from appeals to policy rather than the language of the MVRA. See Taylor Br. 17 (asserting that ordering restitution for "the proceeds of [crime] should shock the collective conscience of this Court"). "As usual," however, "there are (at least) two sides to the policy question before us," and "a rational Congress could reach the policy judgment the statutory text suggests it did." *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1486 (2021).

Take Taylor's insistence that it makes no sense to say a person who has illegal drugs stolen may not obtain restitution for the street value of the drugs but can get restitution if the drugs were sold for cash right before the theft. The former result (no restitution for stolen drugs) flows directly from the text of federal statutes and longstanding principles, which require restitution of the "property of a victim," 18 U.S.C. § 3663A(b)(1), while

reaffirming that "no person may assert an ownership interest . . . in contraband or other property that it is illegal to possess," § 983(d)(4). See *Property*, Black's Law Dictionary (11th ed. 2019) (defining "personal property" as a "movable or intangible thing that is subject to ownership"). By contrast, a person does "own[]"—and thus has a property interest in—the proceeds of illegal activity unless *and until* "the Government wins a judgment of forfeiture." *United States v. Parcel of Land, Bldgs., Appurtenances & Improvements, Known as 92 Buena Vista Ave.*, 507 U.S. 111, 127 (1993) (plurality op.); see also *id.* at 131 (Scalia, J., concurring in the judgment) (describing the "*retroactive* vesting of title [to the government] that operates only upon entry of [a] judicial order of forfeiture").

The rest of Taylor's policy arguments rely on a bit of rhetorical sleight of hand by lasering in on his victims' conduct while ignoring his own. If Taylor's victims obtained the property in question through (or with the proceeds of) unlawful conduct, their actions are blameworthy and their right to the property may well be inferior to that of the government or other third parties. But it would be, at minimum, *rational* for Congress to conclude that is a matter between Taylor's victims and those third parties, and that Taylor should not be able to escape the duty to make restitution for his own crimes by questioning the way his victims acquired the things he stole. Indeed, such an approach would seem most consistent with Congress's goal of providing "full restitution to all identifiable victims of covered offenses, while guaranteeing that the sentencing phase[s] of criminal trials do not become fora for the determination of facts and issues better suited to civil proceedings." *United*

States v. Newsome, 322 F.3d 328, 340 (4th Cir. 2003) (quoting the Senate Report for the MVRA)).

* * *

In the end, "no amount of policy-talk can overcome plain statutory text." *Julmice v. Garland*, 29 F.4th 206, 210 (4th Cir. 2022) (quotation marks and formatting omitted). Regardless of Taylor's policy objections, the district court correctly determined the MVRA requires him to make restitution to his victims. The judgment of the district court is thus

AFFIRMED.

SHERRI LYDON, District Judge, concurring in the judgment:

I concur in the judgment and agree with Judge Heytens's careful analysis of the issue before the court. Congress enacted laws to make victims whole through mandatory restitution. Congress also enacted laws to ensure criminals are deprived of the proceeds of their crimes through forfeiture. Both goals are equally important. And when properly used in tandem, restitution and forfeiture laws can ensure both of Congress's goals are met.

Footnote 2 of Judge Heytens's opinion acknowledges the "detailed procedures" associated with forfeiture, but for the purpose of contrasting the two statutory schemes: mandatory restitution versus forfeiture. Missing from footnote 2 is the important role forfeiture plays as to the facts of this case. Restitution is mandatory. Under our facts, mandatory restitution accomplishes Congress's goal of making victims whole; but by doing so, it returns admitted ill-gotten gains to a drug dealer. This is where forfeiture comes in. Though, here, the Government suggests that its immunity deal "forfeited" its ability to pursue those ill-gotten gains through forfeiture. Despite the Government's suggestion to the contrary, forfeiture, if properly invoked, ensures those admitted ill-gotten gains do not stay in the hands of the drug dealer. Thus, I write separately to expand on the importance of forfeiture, particularly as it relates to the $15,970 of admitted ill-gotten gains that Marcus Taylor stole from Shawn Whiting.

I.

This case falls neatly into the adage, "two wrongs don't make a right." To set up the "two wrongs" at issue, let's briefly return to the facts.

The appellant in our case, Marcus Taylor, was a detective with the now-defunct Baltimore Police Department's Gun Trace Task Force (GTTF). On January 24, 2015, and in his role as a GTTF detective, Taylor and others executed a search warrant at Shawn Whiting's home. J.A. 101–02. During the search, Taylor and the other GTTF detectives found heroin and over $23,000 in cash. J.A. 102–04, 110–12, 252–54, Suppl. J.A. 60. Whiting was arrested and charged with a drug crime. J.A. 235, 246.

Almost 14 months later, on March 22, 2016, Taylor (still a member of the GTTF) and other task force officers surrounded a car with two individuals inside. J.A. 764–69, 782–83. Inside the car, one individual, Oreese Stevenson, was attempting to sell cocaine to the other. J.A. 769–70. Stevenson was arrested, handcuffed, and transported to jail. Shortly after the arrest, Taylor and the other detectives proceeded to Stevenson's home, where they discovered guns, cocaine, and over $200,000 in cash. J.A. 772–75.

We know from the preceding opinion, of course, that neither Whiting's alleged wrongdoing nor Stevenson's alleged wrongdoing is the subject of this case. Shortly after the arrests of Whiting and Stevenson, an even more egregious wrong came to light—public corruption.

As a GTTF detective, Taylor stole money, personal property, and illegal drugs from Whiting and Stevenson during the January 2015 and March 2016 events. Those thefts, of course, were the subject of Taylor's trial, subsequent conviction, and the restitution order that is the subject of this appeal. And Taylor's thefts constitute one of our two wrongs. But where does that leave the alleged wrongdoing of Whiting and Stevenson?

Stevenson and Whiting are admitted—but not convicted—drug dealers. At Taylor's trial, Stevenson and Whiting admitted to possessing drugs with the intent to distribute to others for profit. J.A. 236–37, 762–63. When stopped by police, Stevenson had a half kilogram of cocaine in his car, and his passenger was carrying a backpack with $21,500 in cash inside. J.A. 769–71. When police entered his home, they found nearly 10 kilograms of cocaine, $200,000 in a safe in the basement, and another $40,000 in a black bag. J.A. 774–78. Whiting later testified that he had 4.5 kilos of heroin in his house, though he was only later charged with 3 kilograms. J.A. 777. He also had over $23,000 in cash at his home. Stevenson and Whiting were granted immunity and never convicted of a federal controlled substance offense for the conduct that was the subject of their testimonies at Taylor's trial.

In exchange for their testimony against Taylor, they were granted immunity by federal prosecutors. During Taylor's trial, both Stevenson and Whiting testified to lawful and unlawful sources of income. On the lawful side, Stevenson testified to working as a truck driver and operating a small business with his wife, and Whiting testified to working as a painter. J.A. 762, 773. Stevenson did not testify to the source of the money or personal property that was stolen from him by Taylor. Whiting, in contrast, testified that of the $23,970 in cash taken from his home, $15,970 came from illegal drug sales, *i.e.*, constituted ill-gotten gains. J.A. 236–37. Whiting's admitted ill-gotten gains are our other wrong and the primary focus of this opinion.

With our two wrongs defined, we can turn to whether those wrongs would be righted by a district court's award of restitution. On the one side, if restitution is not awarded,

Taylor (a convicted criminal) keeps the fruits of his criminal actions—the money and personal property[1] taken from Stevenson and Whiting.[2] In that situation, no wrong is remedied. We are squarely within the parameters of our guiding phrase. Two wrongs. No rights. On the other side, if restitution is awarded, one wrong—Taylor's—is righted. An award of restitution rights Taylor's wrong by requiring him to return the money and value

---

[1] As explained by Judge Heytens, no persons have an ownership interest in the illegal drugs taken by Taylor. *Compare* 21 U.S.C. § 881(a) (outlining property subject to forfeiture to the United States under the Controlled Substances Act (CSA)), *with* 18 U.S.C. § 983(d)(4) (noting that for purposes of the innocent owner defense to civil forfeiture, "no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess"). Under the CSA, both controlled substances "manufactured, distributed, dispensed, or acquired in violation [of the Act]" and "moneys . . . furnished . . . in exchange for a controlled substance . . . in violation of [the Act]" are subject to forfeiture to the United States. 21 U.S.C. § 881(a)(1), (6). The difference between the two for purposes of this analysis being that a person may have an ownership interest in money or other property connected to the sale of a controlled substance, but that person does not, pursuant to federal forfeiture law, have an ownership interest in the contraband itself. Thus, for purposes of the restitution analysis, the court must analyze the contraband separately from the money.

[2] The focus of this opinion is the MVRA. The Court was asked to determine whether the victims of Taylor's crimes were properly granted restitution under the Act. Interestingly, however, the Government could have avoided this entire "two wrongs" quandary. Here's how: The money that Taylor stole from Stevenson and Whiting was the proceeds of RICO and Hobbs Act offenses and subject to forfeiture pursuant to 18 U.S.C. § 1963(a)(3) (RICO proceeds) and/or 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) (authorizing the criminal forfeiture of Hobbs Act proceeds). *See United States v. Blackman,* 746 F.3d 137, 143 (4th Cir. 2014) (holding that the imposition of a forfeiture order in the form of a money judgment is mandatory when requested by the Government). If that happened in this case, there would have been no need to order Taylor to pay restitution to anyone to prevent him from retaining the fruits of his crimes. *Cf. United States v. Ursery,* 518 U.S. 267, 291 (1996) (forfeiture "serves the additional nonpunitive goal of ensuring that persons do not profit from their illegal acts"). Why the Government did not seek a criminal forfeiture order as part of Taylor's sentence is not clear, but to the extent that its failure to do so created the instant quandary, it is the Government's fault. Nevertheless, the Government's failure to pursue the criminal forfeiture of the proceeds of Taylor's crime in his criminal case does not foreclose it from seeking civil forfeiture under 21 U.S.C. § 881(a)(6).

of the property he stole from Stevenson and Whiting. This is the correct result and the one mandated by the plain language of the Mandatory Victims Restitution Act (MVRA). And it is for that reason that I sign onto Judge Heytens's opinion.

The troubling issue is that, through the righting of Taylor's wrong, admitted ill-gotten gains are returned to Whiting. I am not alone in feeling unsettled about this outcome. Courts have expressed disapproval of the idea of returning ill-gotten gains through restitution. *See, e.g., United States v. Ojeikere*, 545 F.3d 220, 223 (2d Cir. 2008) (affirming restitution order because victims were not *in pari materia* with defendant but also noting "Ojeikere has not demonstrated that his victims lost ill-gotten gains"); *United States v. Agate*, 613 F. Supp. 2d 315, 321 (E.D.N.Y. 2009) (outlining a "number of courts [that] have examined the question of whether an individual who loses ill-gotten gains may be awarded restitution as a 'victim' under the MVRA"); *United States v. Martinez*, 978 F. Supp. 1442, 1454 (D.N.M. 1997) ("An order of restitution . . . would involve the court directly and intimately in returning ill-gotten gains. A court's participation in such an endeavor would, at the least, be unseemly.").[3] And in at least one case in which the victims

---

[3] As a brief aside, the *Martinez* court's concern about whether it is appropriate for a court to return ill-gotten gains is understandable. It takes only an examination of restitution's common-law roots, however, to see that the law contemplates a court returning money and property even when it was obtained unlawfully by the person seeking restitution. Illustration 4 from the Restatement (First) of Restitution demonstrates this point:

> A steals B's chattels. C steals them from A. A is entitled to restitution from C, unless C has returned the chattels to B, or being authorized, defends on behalf of B, since A's wrong to B is not connected with C's wrong to A.

of the crime at issue were drug dealers, a district court declined to order restitution because the PSR noted that "restitution would be inappropriate as it would return contraband to the victim." *United States v. Azaryev*, No. 17-CR-478, 2018 WL 4583488, at *7 (E.D.N.Y. Sept. 24, 2018). In fact, even the district court in this case noted it was "mindful of Taylor's

---

Restatement (First) of Restitution § 140 ill. 4. The illustration shows that B has the most superior right or interest in the property because B is the rightful owner. But when C steals the property from A (the person who stole it from B) and A seeks restitution, as between C and A, A has the superior right or interest in the property. Thus, a court will award restitution to A unless, of course, C has returned the property to B (the rightful owner) or has authority to defend the restitution claim on B's behalf. This is a logical result because it focuses on the particular issue presented to the court: As between C and A, who has the superior interest in the property? The answer must be A because, following a restitution award to A, B could pursue his claim against A. The property is returned in the reverse order in which it is taken. Thus, despite the *Martinez* court's concern, there is nothing "unseemly" about a court awarding restitution in this context.

I also briefly note here that while I agree with Judge Heytens's opinion's reliance on the Restatement (First) of Restitution, I believe the support for affirming the district court order is found in § 140, as opposed to Illustration 4. Analogizing Illustration 4 to the facts of this case is difficult. There is no Person B under our facts. Judge Heytens's opinion replaces the portion of the illustration that says, "A steals B's chattels," with "Person A obtains cash and personal property by selling drugs." The problem with that replacement is that the persons who purchased the drugs from Person A cannot qualify as Person B. As Judge Heytens's opinion explains, once cash is exchanged for illegal drugs, the persons purchasing the drugs no longer have an ownership interest in the cash. Therefore, at the moment Person A obtains cash from Person B in exchange for drugs, Person B has no ownership interest in the cash held by Person A. Similarly, the government could not serve as Person B. We know from Judge Heytens's opinion that the government's interest in ill-gotten gains is not perfected until there is a forfeiture order—an order that does not exist in this case. Without a forfeiture order, the government is not Person B.

Regardless of the illustration, § 140 alone is sufficiently analogous to support the district court's decision in this case. It states: "A person may be prevented from obtaining restitution for a benefit because of his criminal or other wrongful conduct in connection with the transaction on which his claim is based." Restatement (First) of Restitution § 140. Carrying that language over to our facts, Stevenson and Whiting are not "prevented from obtaining restitution for a benefit because of [their] criminal or other wrongful conduct" because it was not "in connection with the transaction on which [their] restitution claim[s] are based."

policy argument that the MVRA should not be used to reward individuals for their ill-gotten gains." Supp. J.A. 83. But as Judge Heytens points out—and I agree—the issue is quintessentially one of policy.

The court's "role is to interpret law created by others." *Danforth v. Minnesota*, 552 U.S. 264, 290 (2008). It does "not prescribe what [the law] shall be," for that is the role of Congress. *Id.* (citing *Am. Trucking Ass'ns, Inc. v. Smith*, 496 U.S. 167, 201 (1990) (Scalia, J., concurring in judgment). More specifically, "[j]udges are not free to take the general purpose of a statute and choose the means to implement it, because it is in the delineation of means as well as the prescription of purposes that Congress makes its intentions clear." *First S. Prod. Credit Ass'n v. Farm Credit Admin.*, 926 F.2d 339, 346 (4th Cir. 1991).

For purposes of this case, if Congress desires to remedy ill-gotten gains being returned to those who have admitted to certain criminal acts under oath, but whom have not been convicted, it must amend the MVRA to create such an exception. We cannot create the exception, and neither can the district court.[4] *See id.* at 347 ("Courts are not the best places to correct congressional oversights—correction must normally await a return to the legislative process.").

---

[4] There is no question that the facts of this case are unique. It is through the MVRA that Taylor's wrong is righted. And after Taylor's wrong is righted, federal forfeiture law steps in to right the other wrong. Thus, there are federal laws in place now that can work in conjunction with the MVRA to ensure ill-gotten gains do not remain in the hands of individuals who admittedly obtained them through illicit means. It is for this reason that I express no opinion on whether Congress should craft an exception to exclude admitted ill-gotten gains from an award of restitution under the MVRA.

II.

So that's it? We are left with federal law only allowing one wrong to be made right? Not so. This is where the importance of Judge Heytens's footnote 2 becomes evident.

Judge Heytens references the "detailed procedures for actions brought by the government to forfeit contraband or proceeds of unlawful activity" to support the argument that the absence of such procedures in the MVRA suggests Congress never intended courts analyze the source of the victim's losses. But those detailed forfeiture procedures serve another purpose. They are critically important to righting the second wrong in our case. Here's why: Because Stevenson and Whiting were granted immunity for their testimonies against Taylor, *criminal* forfeiture is not an option here. *See* 18 U.S.C. § 982(a) (allowing forfeiture as part of the court "imposing [a] sentence on a person *convicted of* an offense") (emphasis added). Further, as part of the immunity deal and to prevent any ill-gotten gains from returning to the "victims," the Government could have required Stevenson and Whiting to "assign [their] interest[s] in restitution payments to the Crime Victims Fund in the Treasury." 18 U.S.C. § 3664(g)(2); *see Agate*, 613 F. Supp. 2d at 326 (describing a cooperator's waiver of the right to receive restitution through an assignment to the Crime Victims Fund; "An appropriate resolution was achieved. Vollaro will not receive any of the restitution ordered in his favor, but the defendants will still be required to pay for the losses they caused."). But, in this case, there is no evidence in the record suggesting that such a waiver was obtained by the Government. As a result, *civil* forfeiture is the last available mechanism that exists to right the second wrong.

Civil forfeiture, unlike criminal forfeiture, does not require a conviction as a prerequisite to forfeiture of the property. *United States v. One Parcel of Real Estate Located at 7715 Betsy Bruce Lane Summerfield, N.C.*, 906 F.2d 110, 111–12 (4th Cir. 1990) ("In civil forfeiture cases, property is subject to forfeiture 'even if its owner is acquitted of—or never called to defend against—criminal charges.'" (citation omitted)). It is an *in rem* action against the property itself. The Government would bear the burden of proof to establish, by a preponderance of the evidence, that the property is subject to forfeiture. 18 U.S.C. § 983(c). Presumably then, the Government's immunity deal would not prevent it from pursuing a civil forfeiture action against the money returned to Whiting that he admittedly obtained through selling drugs.[5] But the decision to pursue such an action is that of the Government, not this court.

The point of this analysis is to show that despite Taylor's best arguments to the contrary, returning admitted ill-gotten gains to Whiting through the district court's restitution award does not show a flaw or absurdity in the MVRA. It shows that existing federal statutory and common law remedy both wrongs when appropriately followed. If the Government is unable to right the second wrong, it is because of its immunity deal. It

[5] The focus of this concurring opinion is the $15,970 in admitted ill-gotten gains that are being returned to Whiting pursuant to the district court's restitution order. That is the amount Whiting admitted was associated with illegal drug activity. But the $15,970 is just a small portion of $228,304 total restitution awarded to Whiting and Stevenson. To the extent the Government believes it can meet its burden of proof under 18 U.S.C. § 983(c) as to the remaining $212,334, nothing in this opinion should be construed as suggesting that only $15,970 would be subject to a civil forfeiture action. The Government retains the right and ability—assuming not foreclosed by its immunity deal—to pursue forfeiture of any money or property that bears the required connection to illegal drug activities.

must take ownership of that decision. Not this court. Not the district court. And not Congress.

* * *

The facts of this case reveal two wrongs. The district court, through an order of restitution mandated by the MVRA, righted one wrong. It is left to the Government to right the other.

APPENDIX A...

APRIL 4, 2023 ORDER

(WITHRAWAL OF COUNSEL AND MOTION FOR EXTENSION OF TIME)
USCA4 APPEAL: 19-7246, DOC. 100

FILED: April 4, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7246 (L)
(1:17-cr-00106-CCB-6)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARCUS ROOSEVELT TAYLOR

Defendant - Appellant

ORDER

Upon consideration of the motion to withdraw as counsel for appellant Marcus Taylor, the court grants the motion.

Upon consideration of appellant's motion for an extension of time in which to file a petition for rehearing or rehearing en banc, the court grants the motion and extends the deadline for filing a petition for rehearing or rehearing en banc to April 18, 2023.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX B...

APRIL 28, 2023 ORDER

(DENYING PETITIONS FOR REHEARING AND REHEARING EN BANC)
USCA4 APPEAL: 19-7246, DOC. 103

FILED: April 28, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7246 (L)
(1:17-cr-00106-CCB-6)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARCUS ROOSEVELT TAYLOR

Defendant - Appellant

No. 21-4422
(1:17-cr-00106-CCB-6)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARCUS ROOSEVELT TAYLOR

Defendant - Appellant

ORDER

The court denies the petitions for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petitions for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Heytens, and Judge Lydon.

For the Court

/s/ Patricia S. Connor, Clerk

Kam'

United States District Court
District of Maryland

UNITED STATES OF AMERICA

v.

MARCUS ROOSEVELT TAYLOR

AMENDED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed on or After November 1, 1987)
Case Number: CCB-1-17-CR-00106-006
Defendant's Attorney: Gerald C. Ruter, Esq.
Assistant U.S. Attorney: Leo J. Wise & Patrick G. Selwood
Date of Original Judgment: June 7, 2018
(or date of last amended judgment)

THE DEFENDANT:

☐ pleaded guilty to count(s) ___

☐ pleaded nolo contendere to count(s) _____, which was accepted by the court.

☒ was found guilty on counts 1s, 2s, & 3s, of the Superseding Indictment after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number
18:1962(d)	Rico Conspiracy	6/22/2017	1s
18:1962(c) Rico	18:1962(c) Rico	6/22/2017	2s
18:1951 Hobbs Act Robbery; 18:2 Aiding & Abetting	18:1951 Hobbs Act Robbery; 18:2 Aiding & Abetting	3/22/2016	3s

The defendant is adjudged guilty of the offenses listed above and sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 as modified by U.S. v. Booker, 543 U.S. 220 (2005).

☒ The defendant has been found not guilty on count 4s of the Superseding Indictment

☒ Original Indictment is dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

July 30, 2021
Date of Imposition of Judgment

7/30/21
Date

Catherine C. Blake
United States District Judge

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 18 years (216 months) as to Counts 1s, 2s, and 3s to run concurrent to each other.

☒ The court makes the following recommendations to the Bureau of Prisons: that the defendant be placed in a facility consistent with his security level that is as close as possible to Maryland, so he may be close to his family.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ a.m./p.m. on _____.
☐ as notified by the United States Marshal.

☐ The defendant shall surrender, at his/her own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:

☐ before _____ a.m. on _____.

A defendant who fails to report either to the designated institution or to the United States Marshal as directed shall be subject to the penalties of Title 18 U.S.C. §3146. If convicted of an offense while on release, the defendant shall be subject to the penalties set forth in 18 U.S.C. §3147. For violation of a condition of release, the defendant shall be subject to the sanctions set forth in Title 18 U.S.C. §3148. Any bond or property posted may be forfeited and judgment entered against the defendant and the surety in the full amount of the bond.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By:_____
DEPUTY U.S. MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years as to Counts 1s, 2s, and 3s to run concurrent to each other.

The defendant shall comply with all of the following conditions:

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

A. MANDATORY CONDITIONS

1) You must not commit another federal, state or local crime.
2) You must not unlawfully possess a controlled substance.
3) You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4) ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5) You must cooperate in the collection of DNA as directed by the probation officer.
6) ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7) ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page

B. STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4) You must answer truthfully the questions asked by your probation officer.
5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13) You must follow the instructions of the probation officer related to the conditions of supervision.

C. SUPERVISED RELEASE ADDITIONAL CONDITIONS

You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.

You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

You must participate in an [inpatient/outpatient] alcohol abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Marcus Roosevelt Taylor CASE NUMBER: CCB-1-17-CR-00106-006

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 5B.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$300.00	$228,304.00	Waived	$.00	

☐ CVB Processing Fee $30.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
Clerk, U.S. District Court 101 W. Lombard Street Baltimore, Maryland 21201	$228,304.00	$228,304.00	

TOTALS $ 228,304.00 $ $228,304.00

☐ Restitution amount ordered pursuant to plea agreement _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Marcus Roosevelt Taylor CASE NUMBER: CCB-1-17-CR-00106-006

SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☒ In full immediately; or

B ☐ $_____ immediately, balance due (in accordance with C, D, or E); or

C ☐ Not later than _____; or

D ☐ Installments to commence _____ day(s) after the date of this judgment.

E ☐ In _____ (*e.g. equal weekly, monthly, quarterly*) installments of $_____ over a period of _____ year(s) to commence when the defendant is placed on supervised release.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Unless the court expressly orders otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the Clerk of the Court.

☐ **NO RESTITUTION OR OTHER FINANCIAL PENALTY SHALL BE COLLECTED THROUGH THE INMATE FINANCIAL RESPONSIBILITY PROGRAM.**

If the entire amount of criminal monetary penalties is not paid prior to the commencement of supervision, the balance shall be paid:

☐ in equal monthly installments during the term of supervision; or

☒ on a nominal payment schedule of $ 100.00 per month during the term of supervision.

The U.S. probation officer may recommend a modification of the payment schedule depending on the defendant's financial circumstances.

Special instructions regarding the payment of criminal monetary penalties:

☒ Joint and Several
Restitution in the amount of $204,000.00 shall be paid joint and several with Co-Defendants, Evodio Hendrix, Maurice Ward and Wayne Jenkins in Criminal Case Number CCB-17-0106.

Restitution in the amount of $24,304.00 shall be paid by the defendant. This amount is not joint and several.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA **v.** **MOMODU BONDEVA KENTON GONDO,** **EVODIO CALLES HENDRIX,** **DANIEL THOMAS HERSL,** **WAYNE EARL JENKINS,** **JEMELL LAMAR RAYAM, and** **MAURICE KILPATRICK WARD,** **Defendants.**		**Criminal No. CCB 17-106**

UNITED STATES OF AMERICA **v.** **THOMAS ALLERS,** **Defendant.**		**Criminal No. CCB 17-0452**

MEMORANDUM

Between 2018 and 2019 defendants Momodu Gondo, Evodio Hendrix, Daniel Hersl, Wayne Jenkins, Jemell Rayam, Marcus Taylor, Maurice Ward, and Thomas Allers, all former members of the Baltimore Police Department (BPD), were convicted in the above captioned matters of racketeering conspiracy and related offenses for their involvement in a conspiracy which involved robbing citizens in the course of the officers' police duties. Though all of the defendants have been sentenced, the matter of restitution in Gondo's, Hendrix's, Hersl's, Jenkins's, Rayam's, Ward's, and Allers's cases has not been finalized, largely due to Mr. Taylor's premature appeal to the Fourth Circuit Court of Appeals of the court's August 30, 2019, order

granting the government's motion for restitution as to all defendants. (ECF 520). The court having finalized and perfected the order of restitution as to Taylor, the court will now finalize the order of restitution as the remaining defendants in this case.

BACKGROUND

After all of the defendants in this matter had been sentenced the government submitted a global motion for restitution under the Mandatory Victims Restitution Act ("MVRA"), 18 U.S.C. § 3663A, seeking to repay victims of various robberies committed by the defendants. (CCB-17-106, ECF 500). The government submitted a table summarizing the amounts taken in the relevant robberies, identified by date, to which each defendant either pled guilty or was found guilty at trial, with citations to the specific paragraphs of each defendant's plea agreement where he admitted to a robbery in the amount listed in the table or to the specific paragraphs of a defendant's presentence report in the case of the defendants (Taylor and Hersl) who went to trial. (*See* ECF 500 at 4–5). All of the defendants who pled guilty had expressly agreed, as part of their plea agreements, to the entry of an order of restitution in the full amount of the victim's losses. (*See* CCB-17-106, ECF 158 (Hendrix) at 5–6; CCB-17-106, ECF 161 (Ward) at 5–6; CCB-17-106, ECF 196 (Rayam) at 5–6; CCB-17-106, ECF 200 (Gondo) at 7; CCB-17-106, ECF 254 (Jenkins) at 11; CCB-17-452, ECF 20 (Allers) at 8).

Only Taylor and Ward opposed the motion, arguing (1) that the victims of their offenses were not victims as defined by the MVRA because the money stolen from them was proceeds from their illegal drug activities and (2) that the government had failed to adequately prove the amount of restitution requested. (CCB-17-106, ECFs 506, 507). On reply, the government contended that victim status under the MVRA is not dependent on whether property taken is derived from lawful activity. (CCB-17-106, ECF 513). On Friday, August 30, 2019, the court granted the government's motion for restitution, finding that the motion was unopposed except by

Taylor and Ward, and that "the restitution requested is well supported by the facts in Ward's plea agreement and the jury verdict as to Taylor." (CCB-17-106, ECF 520). The court further ordered that Amended Judgments would issue. (*Id.*). Three days later, on Monday September 2, 2019, a court holiday in observance of Labor Day, Taylor filed a notice of appeal as to the restitution order. (CCB-17-106, ECF 521). At this point, the court had not had an opportunity to finalize the order of restitution as to any of the defendants nor to issue Amended Judgments.

After Taylor filed an opening brief in the Fourth Circuit, the parties agreed that the notice of appeal had been prematurely filed and filed a consent motion requesting that the Fourth Circuit remand the case for the order of restitution to be "perfected and finalized" and to stay the briefing on appeal. *See* Case No. 19-7246, ECF 23. The Fourth Circuit granted the motion on August 12, 2020. (CCB-17-106, ECF 578). On remand, the court granted the parties' request for supplemental briefing to allow the parties to resolve any outstanding issues as to restitution. (CCB-17-106, ECF 587). On July 12, 2021, the court issued a memorandum and order resolving restitution as to Taylor including a finding that the victims' alleged illegal activities did not bar their claim for restitution. (CCB-17-106, ECF 682, 683). An amended judgment issued on July 30, 2021. (CCB-17-106, ECF 695). The court will now finalize the orders of restitution as to the remaining defendants.

DISCUSSION

The MVRA requires that restitution be paid for certain offenses against property in which an identifiable victim or victims have suffered a physical injury or pecuniary loss. 18 U.S.C. § 3663A(c)(1). The statute defines a "victim" 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.* § 3663A(a)(2). Restitution under MVRA is mandatory—if the

defendant has committed a covered offense and caused physical injury or pecuniary loss to a victim, the court is required to order full restitution irrespective of an individual's ability to pay. *See id.* §§ 3663A(a)(1), (c), 3664(f)(1)(A); *United States v. Ritchie*, 858 F.3d 201, 207, 216 (4th Cir. 2017). When restitution is ordered under the MVRA, the court must follow the procedures for calculating and ordering restitution set forth in 18 U.S.C. § 3664. *See* 18 U.S.C. § 3663A(d). The court previously found restitution was warranted under the MVRA against Gondo, Hendrix, Hersl, Jenkins, Rayam, Ward, and Allers, to victims in this case in the amounts requested by the government. (*See* CCB-17-106, ECF 500 at 4–5 [requesting $59,376 as to Allers, $47,700 as to Gondo, $204,000 as to Hendrix, $27,893 as to Hersl, $239,300 as to Jenkins, $79,000 as to Rayam, $204,500 as to Ward]; CCB-17-106, ECF 520 [granting the government's motion]).

Upon the determination of the amount of restitution owed to each victim, the court must specify in the restitution order "the manner in which, and the schedule according to which, the restitution is to be paid" and in doing so must consider "(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled; (B) projected earnings and other income of the defendant; and (C) any financial obligations of the defendant; including obligations to dependents." *Id.* § 3664(f)(2). The court must make factual findings "keying the payment schedule to these factors and demonstrating the feasibility of the schedule." *United States v. Leftwich*, 628 F.3d 665, 668 (4th Cir. 2010) (citing *United States v. Dawkins*, 202 F.3d 711, 717 (4th Cir. 2000)). The court will address the payment schedules for each of the above-named defendants in turn.

I. Gondo

Gondo's most recent employment was as an officer with the BPD. In that position he earned $70,000 per year, plus overtime. (CCB-17-106, ECF 384 ¶ 200). Gondo's projected earnings and income upon release are very difficult to predict, given that law enforcement had

been his career for over ten years at the time he was sentenced, a career to which he almost certainly will not be able to return. Based on his level of education, a high school diploma with some college coursework, (see id., ¶ 197–99), the court believes it is unlikely Gondo will, at least in the short term, earn close to his prior salary. Gondo's financial resources appear to be greatly diminished at this time, but perhaps not permanently so. Accordingly, the court will order that the restitution is due in full immediately, but will waive interest, and will impose a nominal payment schedule of $100 per month during the term of supervision if the entire amount of restitution is not paid prior to the commencement of supervision. See 18 U.S.C. §§ 3572(d), 3612(f)(3)(A), 3664(f)(3)(B). The Probation Officer also will be authorized to recommend to the court an adjustment in the monthly payment schedule depending on Gondo's financial circumstances during supervision. *See Dawkins*, 202 F.3d at 716 n.2; 18 U.S.C. § 3664(f)(3)(B).

II. Rayam

Rayam's most recent employment was as an officer with the BPD. (CCB-17-106, ECF 495 ¶ 232). Rayam appears to have owed no debts at the time of sentencing (*id.* ¶ 234), but he did have child support obligations, (*id.* ¶¶ 218). Rayam's projected earnings and income upon release are very difficult to predict, given that law enforcement or security had been his career for approximately fifteen years at the time he was sentenced, a career to which he almost certainly will not be able to return. Rayam's financial resources appear to be greatly diminished at this time, but perhaps not permanently so, given his level of education, a bachelor's degree in marketing. (*Id.* ¶ 231). Accordingly, the court will order that the restitution is due in full immediately, but will waive interest, and will impose a nominal payment schedule of $100 per month during the term of supervision if the entire amount of restitution is not paid prior to the commencement of supervision. See 18 U.S.C. §§ 3572(d), 3612(f)(3)(A), 3664(f)(3)(B). The Probation Officer also will be authorized to recommend to the court an adjustment in the monthly payment schedule

depending on Rayam's financial circumstances during supervision. See *Dawkins*, 202 F.3d at 716 n.2; 18 U.S.C. § 3664(f)(3)(B).

III. Hendrix

Hendrix's most recent employment was as an officer with the BPD. (CCB-17-106, ECF 181 ¶ 96). Hendrix's projected earnings and income upon release are very difficult to predict, given that law enforcement had been his career for approximately eight years at the time he was sentenced, a career to which he almost certainly will not be able to return. Based on his level of education, a high school diploma, (*id.*, ¶ 95), the court believes it is unlikely Hendrix will, at least in the short term, earn close to his prior salary. Hendrix's financial resources appear to be greatly diminished at this time, but perhaps not permanently so. Accordingly, the court will order that the restitution is due in full immediately, but will waive interest, and will impose a nominal payment schedule of $100 per month during the term of supervision if the entire amount of restitution is not paid prior to the commencement of supervision. See 18 U.S.C. §§ 3572(d), 3612(f)(3)(A), 3664(f)(3)(B). The Probation Officer also will be authorized to recommend to the court an adjustment in the monthly payment schedule depending on Hendrix's financial circumstances during supervision. See *Dawkins*, 202 F.3d at 716 n.2; 18 U.S.C. § 3664(f)(3)(B).

IV. Hersl

Hersl's most recent employment was as an officer with the BPD. In that position he earned approximately $80,000 per year, plus overtime. (CCB-17-106, ECF 431 ¶ 100). Hersl appears to have been in debt at the time of sentencing. (*Id.* ¶¶ 107–08). Hersl's projected earnings and income upon release are very difficult to predict, given that law enforcement had been his career for approximately ten years at the time he was sentenced, a career to which he almost certainly will not be able to return. Based on his level of education, a GED with some college coursework, (*id.* ¶ 98), the court believes it is unlikely Hersl will earn close to his prior salary. Hersl's financial

resources appear to be greatly diminished at this time, but perhaps not permanently so. Accordingly, the court will order that the restitution is due in full immediately, but will waive interest, and will impose a nominal payment schedule of $100 per month during the term of supervision if the entire amount of restitution is not paid prior to the commencement of supervision. See 18 U.S.C. §§ 3572(d), 3612(f)(3)(A), 3664(f)(3)(B). The Probation Officer also will be authorized to recommend to the court an adjustment in the monthly payment schedule depending on Hersl's financial circumstances during supervision. See *Dawkins*, 202 F.3d at 716 n.2; 18 U.S.C. § 3664(f)(3)(B).

V. Jenkins

Jenkins's most recent employment was as an officer with the BPD. (CCB-17-106, ECF 412 ¶ 216). At the time of sentencing, Jenkins owned a home and two rental properties. (*Id.* ¶ 217). Jenkins's projected earnings and income upon release are very difficult to predict, given that law enforcement had been his career for approximately fifteen years at the time he was sentenced, a career to which he almost certainly will not be able to return. Based on his level of education, a high school diploma (*id.* ¶ 214), the court believes it is unlikely Jenkins will, at least in the short term, earn close to his prior salary. Jenkins's financial resources appear to be greatly diminished at this time, but perhaps not permanently so. Accordingly, the court will order that the restitution is due in full immediately, but will waive interest, and will impose a nominal payment schedule of $100 per month during the term of supervision if the entire amount of restitution is not paid prior to the commencement of supervision. See 18 U.S.C. §§ 3572(d), 3612(f)(3)(A), 3664(f)(3)(B). The Probation Officer also will be authorized to recommend to the court an adjustment in the monthly payment schedule depending on Jenkins's financial circumstances during supervision. *See Dawkins*, 202 F.3d at 716 n.2; 18 U.S.C. § 3664(f)(3)(B).

VI. Ward

Ward's most recent employment was as an officer with the BPD (ECF 182 ¶ 101). Ward's projected earnings and income upon release are very difficult to predict, given that law enforcement had been his career for approximately fourteen years at the time he was sentenced, a career to which he almost certainly will not be able to return. Based on his level of education, a high school diploma with some college coursework, (*id.*, ¶ 100), the court believes it is unlikely Ward will, at least in the short term, earn close to his prior salary. Ward's financial resources appear to be greatly diminished at this time, but perhaps not permanently so. Accordingly, the court will order that the restitution is due in full immediately, but will waive interest, and will impose a nominal payment schedule of $100 per month during the term of supervision if the entire amount of restitution is not paid prior to the commencement of supervision. See 18 U.S.C. §§ 3572(d), 3612(f)(3)(A), 3664(f)(3)(B). The Probation Officer also will be authorized to recommend to the court an adjustment in the monthly payment schedule depending on Ward's financial circumstances during supervision. See *Dawkins*, 202 F.3d at 716 n.2; 18 U.S.C. § 3664(f)(3)(B).

VII. Allers

Allers's most recent employment was as an officer with the BPD. In that position he earned approximately $98,000 per year. (CCB-17-452; ECF 23 ¶ 163). Allers also had significant assets at the time of sentencing (*Id.* 165). Allers's projected earnings and income upon release are very difficult to predict, given that law enforcement had been his career for over twenty years at the time he was sentenced, a career to which he almost certainly will not be able to return. Based on his level of education, a high school diploma with some college coursework, (*id.* ¶ 160–62), the court believes it is unlikely Allers will, at least in the short term, earn close to his prior salary. Allers's financial resources appear to be greatly diminished at this time, but perhaps not

permanently so. Accordingly, the court will order that the restitution is due in full immediately, but will waive interest, and will impose a nominal payment schedule of $100 per month during the term of supervision if the entire amount of restitution is not paid prior to the commencement of supervision. See 18 U.S.C. §§ 3572(d), 3612(f)(3)(A), 3664(f)(3)(B). The Probation Officer also will be authorized to recommend to the court an adjustment in the monthly payment schedule depending on Allers's financial circumstances during supervision. See *Dawkins*, 202 F.3d at 716 n.2; 18 U.S.C. § 3664(f)(3)(B).

CONCLUSION

Restitution will be finalized as to Gondo, Hendrix, Hersl, Jenkins, Rayam, Ward, and Allers. For the foregoing reasons, for each defendant, restitution will be due in full immediately, interest will be waived, and the court will impose a nominal payment schedule of $100 per month during the term of supervision if the entire amount of restitution is not paid prior to the commencement of supervision. A separate Order follows. Amended Judgments will issue. Following the court's initial order of restitution, the government provided, under seal, the victims' names, addresses, and restitution amounts owed, to be included in the sealed Statement of Reasons accompanying the Amended Judgment. Should the government have any updates to the victims' addresses, the government will be directed to provide that information to the Clerk's Office.

8/25/2021
Date

/S/
Catherine C. Blake
United States District Judge

Additional material from this filing is available in the Clerk's Office.