No. _____

IN THE

Supreme Court of the United States

DAVID DAVALOS, SR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Nelson S. Ebaugh
NELSON S. EBAUGH, P.C.
3730 Kirby Dr., Ste. 1200
Houston, TX 77098
(713) 752-0700

Counsel for Petitioner

QUESTION PRESENTED

Whether *Honeycutt v. United States*, 581 U.S. 443 (2017) and its progeny require the Fifth Circuit to limit forfeiture to tainted property the defendant himself actually acquired as the result of the crime.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

United States v. Davalos, No. 2:16-cr-01115-AM-11, U. S. District Court for the Western District of Texas. Judgment entered August 19, 2022.

United States v. Davalos, No. 22-50763, U. S. Court of Appeals for the Fifth Circuit. Judgment entered July 13, 2023.

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Supreme Court of the United States

PETITION FOR A WRIT OF CERTIORARI

David Davalos, Sr., petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion (Pet. App. 1a-14a) is unpublished but is reported at 2023 WL 4533395. The district court's order (Pet. App. 15a-17a) is unpublished.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on July 13, 2023. Pet. App. 1a. No petition for rehearing was filed in the Fifth Circuit. The Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

21 U.S.C. § 853 is reproduced in full at Pet. App. 18a-24a.

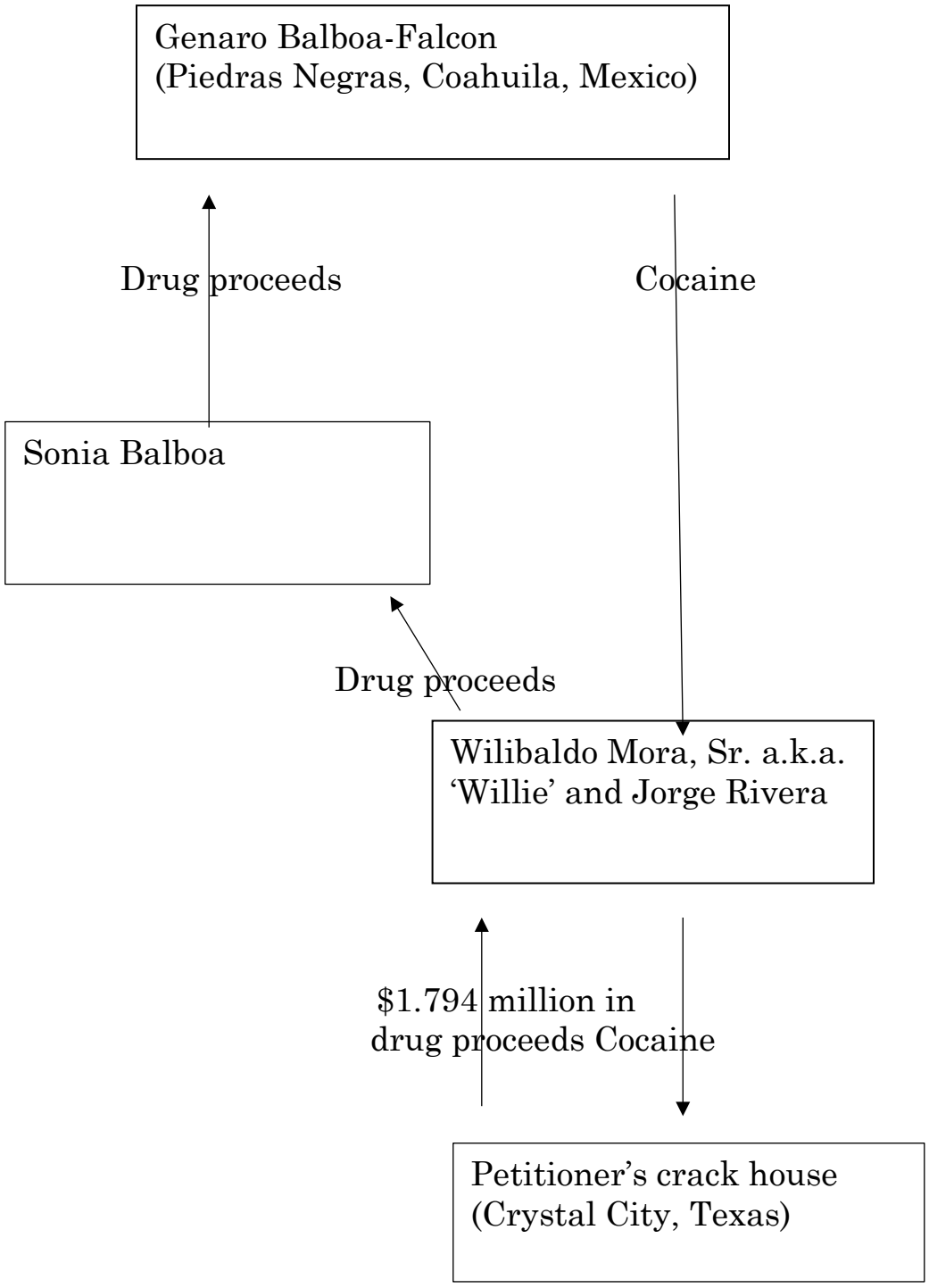
STATEMENT OF THE CASE

Petitioner David Davalos, Sr., 54 years old, is a United States citizen born in Crystal City, Texas. After high school, petitioner attended a Job Corps program in Tulsa, Oklahoma. Since then, he worked as a self-employed welder and a seasonal laborer in Crystal City, Texas. Petitioner is married and has three children.

Between October 2012 and August 2016, law enforcement agencies investigated the drug trafficking activities of the Genaro Balboa-Falcon Drug Trafficking Organization ("Balboa-Falcon" or "DTO"), which was based in Mexico. The DTO smuggled kilograms of cocaine from Mexico into Crystal City, Texas. Cocaine distribution occurred out of at least three "crack houses" in Crystal City. Petitioner operated and maintained one of the "crack houses."

After the cocaine had been distributed and sold from petitioner's crack house and other Crystal City locations, coconspirators would then gather the drug proceeds and arrange for additional coconspirators to act as couriers to transport the money back to Genaro Balboa-Falcon in Mexico. The following flowchart illustrates the petitioner's position in the Genaro Balboa-Falcon drug trafficking organization (DTO):

Organizational Chart for the Genaro Balboa-Falcon DTO involving the Petitioner



To be sure, approximately $1.794 million flowed through the petitioner's crack house. But then the $1.794 million "flowed south to" Balboa-Falcon in Mexico.

The petitioner was charged with conspiracy to possess with intent to distribute five or more kilograms of cocaine and with the use and maintenance of a premises to distribute cocaine. Pet. App. 2a. The indictment included, among other things, a notice of demand for forfeiture of certain real property and a money judgment of $5,980,000 with a provision as to substitute assets. Pet. App. 2a.

The petitioner pleaded guilty to the charged offenses without a plea agreement. According to the probation office, about 230 kilograms of cocaine were distributed during the duration of the conspiracy (i.e., approximately five kilograms of cocaine each month over about 46 months). Each "crack house" sold roughly 1.5 kilograms of cocaine. Over the course of the conspiracy, the total drug proceeds were equal to nearly $5,980,000.

The district court sentenced the petitioner to 235 months of imprisonment on each count of conviction and ordered the prison terms to be served concurrently. Pet. App. 3a. It also sentenced the petitioner

to five total years of supervised release and imposed certain conditions associated with that supervised release. Pet. App. 3a.

In addition, the district court addressed the government's forfeiture demand. The court initially pronounced that there was "a money judgment in the case of the amount alleged of [$]5,980,000, but that is joint and several liability." Pet. App. 4a. The government instructed the court it only sought a money judgment of $1,794,000. Pet. App. 4a. The government referred to *Honeycutt v. United States*, 581 U.S. 443 (2017), in which the Supreme Court concluded that a defendant is not jointly and severally liable under 21 U.S.C. § 853 for any property that his coconspirator derived from the offense but that he did not acquire himself. Pet. App. 4a. The district judge concluded that the amount of the money judgment was $5,980,000 for "everybody combined," but the amount attributable to the petitioner alone was $1,794,000. Pet. App. 4a. The judgment included a money judgment stating that the petitioner must forfeit a sum of money equal to $1,794,000. Pet. App. 4a.

The petitioner filed an appeal in which he, among other things, challenged the money judgment and alleged that it was inconsistent with *Honeycutt*. *See United States v. Davalos*, 810 Fed. Appx. 268, 272-73 (5th

Cir. 2020). He argued that the district court made no factual findings on whether he actually acquired $1,794,000 or other substitute property as a result of the crime. *Id.* at 273. The Fifth Circuit agreed, *see id.* at 272-73, reasoning that the money judgment lacked sufficient factual support and ordered that it be vacated and remanded to make factual findings on the appropriate money judgment in accordance with *Honeycutt*. *Id.* at 270, 273, 276.

Upon remand, the district court entered an order addressing the issues for which the case had been remanded. Pet. App. 15a-17a. Again, it ordered a money judgment for $1,794,000. Pet. App. 15a-16a. The district court found that 1.5 kilograms of cocaine were distributed each month through the "crack house" operated by the petitioner; the length of the conspiracy was 46 months; and the "amount for each kilo was $26,000 per kilo." Pet. App. 16a. Accordingly, the district court concluded that "1.5 kilos per month multiplied by 46 months and multiplied by $26,000 totals $1,794,000." Pet. App. 16a.

The petitioner appealed again. He argued that the district court's forfeiture order was erroneous and that it should determine an award based on the property he "actually acquired." The Fifth Circuit affirmed

the forfeiture order in an unpublished decision, declaring that "the district court did not need to identify which portion of the $1.794 million petitioner 'actually acquired.'" Pet. App. 7a.

REASONS FOR GRANTING THE PETITION

I. The Fifth Circuit's rule that a defendant who briefly possesses drug proceeds must forfeit all amounts, even if he did not "actually acquire" some of them, is wrong.

A. The Fifth Circuit's rule conflicts with this Court's holdings in *Honeycutt*.

Honeycutt v. United States, 581 U.S. 443 (2017) is a bulwark against excessive criminal forfeiture. In that case, this Court interpreted 21 U.S.C. § 853 as limiting forfeiture to tainted property "the defendant himself actually acquired as the result of the crime." *Id.* at 454. This interpretation "foreclose[s] joint and several liability for co-conspirators." *Id.* at 450.

For clarity, the *Honecutt* Court provided an example: If a farmer made a scheme to sell marijuana on campuses and hired a student for deliveries at $300/month, and the farmer earns $3 million in a year while the student makes $3,600 during that same period, a court could only order the student to forfeit $3,600. *Id.* at 448-49. In other words, because

the student only acquired $3,600, the student could not be liable for the total $3 million. *Id.*

Here, the Fifth Circuit took a different course. It affirmed the district court's order forfeiting all drug proceeds that "flowed" through the petitioner's "crack house"—amounting to $1.794 million—even though the petitioner did not "actually acquire" all of it. Pet. App. 10a-11a. It is uncontested that the petitioner's supplier in Mexico acquired a portion of the proceeds. This interpretation by the Fifth Circuit is in stark opposition to *Honeycutt*'s holding that forfeiture is limited to the tainted property that "the defendant himself actually acquired as the result of the crime." *Honeycutt*, 581 U.S. at 454.

While the Fifth Circuit acknowledged this Court's ruling in *Honeycutt*, it paradoxically determined that there was no need to discern which portion of the drug proceeds flowing through his property the petitioner "actually acquired." Pet. App. 7a-10a. The Fifth Circuit's reasoning leaned on *United States v. Olguin*, 643 F.3d 384, 399-400 (5th Cir. 2011)—a case decided before *Honeycutt*—which suggested forfeiture can exceed profits. *See* Pet. App. 9a-10a. But because the defendants were jointly and severally liable for the proceeds of the conspiracy in *Olguin*,

that case conflicts with *Honeycutt*. Moreover, the issue here was not about profits but what the petitioner "actually acquired."

The implications of the Fifth Circuit's decision are far-reaching. If permitted to stand, it would sanction the government's forfeiture of amounts exceeding what a defendant "actually acquired." This would depart from the strict limitation that the *Honeycutt* decision imposes.

Considering the glaring inconsistencies between *Honeycutt* and the Fifth Circuit's interpretation of § 853, this Court must intervene.

B. The Fifth Circuit's rule conflicts with its sister circuits' precedent.

Although "the $1.794 million flowed south to [one of petitioner's conspirators] in Mexico," and thus the drug proceeds were passed on to the petitioner's supplier, the Fifth Circuit held that "the district court did not need to identify which portion of the $1.794 million [petitioner] 'actually acquired.'" Pet. App. 7a-8a. This ruling by the Fifth Circuit contrasts with other circuit courts of appeal decisions.

Other circuits have followed *Honeycutt*'s precedent, holding that forfeiture "is limited to property the defendant himself actually acquired as the result of the crime." *Honeycutt*, 581 U.S. at 454. Below is a sampling of such cases:

- The Third Circuit: This court remanded the case so the district court could "calculate how much [the defendant] 'himself actually acquired' due to his involvement in the schemes." *United States v. Scarfo*, 41 F.4th 136, 217 (3d Cir. 2022), *cert. denied sub nom. Pelullo v. United States*, 143 S. Ct. 1044, 215 L. Ed. 2d 201 (2023).
- The Ninth Circuit: This circuit vacated the forfeiture judgments, directing the district court to "make findings denoting approximately how much of the proceeds of the crime came to rest with each of the three conspirators . . ." *United States v. Thompson*, 990 F.3d 680, 691 (9th Cir.), *cert. denied*, 142 S. Ct. 616, 211 L. Ed. 2d 384 (2021). "Though no forfeiture judgment was issued against [one of the conspirators], neither [of the defendants could] be subjected to forfeiture of amounts that came to rest with [the conspirator without a forfeiture judgment], since those amounts were not proceeds that came to rest with them." *Id.* at 692. "The forfeiture judgments must be separate, for the approximate separate amounts that came to rest with each of them after the loot was divided among the swindlers." *Id.*

- The Sixth Circuit: In *United States v. Bradley*, 897 F.3d 779 (6th Cir. 2018), the court "vacate[d] the entire forfeiture order and remand to the district court so that it can conduct fresh factfinding and figure out 'an amount proportionate with the property [Bradley] actually acquired through the conspiracy.'" *Id.* at 784 (citation omitted). Similarly, in *United States v. Elliott*, 876 F.3d 855 (6th Cir. 2017), the court remanded "the forfeiture judgments . . . to the district court for the limited purpose of recalculation, to an amount proportionate with the property defendants actually acquired through the conspiracy." *Id.* at 868.

The discrepancy between the rulings of the Fifth Circuit and those of other circuits is glaringly evident.

II. The question presented is important.

The question presented deserves the Court's attention for two reasons.

1. The question raised by this case—whether *Honeycutt* requires a court to limit forfeiture to tainted property the defendant himself actually acquired as the result of the crime—arises with regularity.

2. It can be devastating when defendants face forfeiture in situations like this. Many of these offenders are already financially struggling. DTO operatives often lure them with promises of easy money, especially those living near the border who are unsophisticated and in need. The money sought in forfeiture often far exceeds any assets these offenders might have.

Take this case as an example: The petitioner's only asset, his home, is set to be taken by the government. He already has a debt of $11,419, which will make his reintegration into society challenging after his release. Adding a $1.794 million forfeiture penalty for money he never received will make it harder for him to reestablish himself in the community.

III. This case is an ideal vehicle to resolve the question presented.

1. The facts here are simple and undisputed. The petitioner and his coconspirators sold cocaine in Crystal City, Texas, which a Mexican DTO supplied. After selling the drugs, they collected the money and had couriers transport it back to the drug supplier in Mexico.

2. The question presented is also outcome-determinative. As mentioned above, it is undisputed that the petitioner's coconspirators

would gather the drug proceeds and arrange for additional coconspirators to act as couriers to transport the money back to the drug supplier in Mexico. Accordingly, the property the petitioner himself actually acquired as the result of the crime is less than the $1.794 million set forth in the forfeiture judgment.

CONCLUSION

For these reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

/s/ Nelson S. Ebaugh
Nelson S. Ebaugh
NELSON S. EBAUGH P.C.
3730 Kirby Drive, Suite 1200
Houston, Texas 77098
(713) 752-0700

Counsel for Petitioner

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