

No.

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---

VAHE DADYAN and ARTUR AYVAZYAN,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent

---

On Petition for Writ of Certiorari to the  
Ninth Circuit Court of Appeals

---

**PETITION FOR WRIT OF CERTIORARI**

VERNA WEFALD  
State Bar No. 127104  
65 North Raymond Avenue,  
Suite 320  
Pasadena, California 91103  
Telephone: 626-577-2658  
Email: [verna@vernawefald.com](mailto:verna@vernawefald.com)

Attorney for Vahe Dadyan

*Counsel of Record*

KATHRYN A. YOUNG  
State Bar No. 94566  
Deputy Federal Public Defender  
321 East Second Street  
Los Angeles, CA 90012-4202  
Telephone: 213-894-2863  
Email: [kathryn\\_young@fd.org](mailto:kathryn_young@fd.org)

Attorney for Artur Ayvazyan

## **QUESTION PRESENTED**

Whether 18 U.S.C. § 3663A (Mandatory restitution to victims of certain crimes) which imposes restitution for losses “directly and proximately” caused by a defendant (i.e. that which is “reasonably foreseeable”), permits a court to order the least culpable member of a conspiracy to pay the same amount of restitution as the most culpable member?

## **RELATED PROCEEDINGS**

United States District Court

*United States v. Ayvazyan, et al.*, 20-CR-579-SVW (C. D. Cal.)

Ninth Circuit Court of Appeals

*United States v. Dadyan and Ayvazyan*, Nos. 21-50237 and 21-50302

## TABLE OF CONTENTS

OPINION BELOW.....	1
JURISDICTION.....	2
STATUTORY PROVISIONS INVOLVED .....	2
STATEMENT OF THE CASE.....	2
A.    The COVID PPP Conspiracy.....	2
B.    Vahe's Restitution Obligation is \$10 Million .....	4
C.    Artur's Restitution Amount is \$17.7 Million .....	6
REASONS FOR GRANTING THE WRIT .....	6
THIS COURT SHOULD SETTLE WHETHER DEFENDANTS CONVICTED OF MINOR ROLES IN A CONSPIRACY ARE LIABLE FOR THE FULL AMOUNT OF RESTITUTION FOR LOSSES ATTRIBUTABLE TO THE OVERALL CONSPIRACY .....	7
A.    Vahe's Restitution Argument .....	7
B.    Artur's Restitution Argument.....	8
C.    Certiorari Should Be Granted to Decide What "Reasonably Foreseeable" Means in the Context of Restitution When Co-Conspirators have Minimal Involvement in the Overall Conspiracy .....	11
CONCLUSION.....	12

## TABLE OF AUTHORITIES

### CASES

<i>United States v. Riley</i> , 335 F.3d 919 (9th Cir. 2003) .....	8, 9
<i>United States v. Stoddard</i> , 150 F.3d 1140 (9th Cir. 1998).....	7

### STATUTES AND GUIDELINES

18 U.S.C. §3231 .....	2
18 U.S.C. § 3663A .....	2, 5, 9, 11
18 U.S.C. § 3663A(a)(2) .....	7
18 U.S.C. § 3664.....	2
18 U.S.C. § 3664(e).....	7, 11
28 U.S.C. §1254(1) .....	2
28 U.S.C. §1291 .....	2
Guideline § 2B1.1(b)(1) .....	5, 6
Guideline § 5E1.1 .....	2

## TABLE OF AUTHORITIES

### CASES

No.

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---

VAHE DADYAN and ARTUR AYVAZYAN,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent

---

**PETITION FOR WRIT OF CERTIORARI**

Petitioners Vahe Dadyan and Artur Ayvazyan respectfully pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Ninth Circuit filed on August 7, 2023. The opinion is published. *United States v. Dadyan*, 76 F.4th 955 (9th Cir. 2023). The court also issued two unpublished memorandum decisions.

**OPINION BELOW**

On August 7, 2023, the Court of Appeals entered its decision affirming Dadyan and Ayvayzan's fraud convictions. Appendix A, B, and C. The petition for rehearing was denied on October 25, 2023. Appendix D.

## **JURISDICTION**

On August 7, 2023, the Court of Appeals affirmed Petitioners' convictions. Appendix A, B, and C. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). The petition for rehearing was denied on October 25, 2023. Appendix D. This petition is due for filing on January 23, 2024. Supreme Court Rule 13. Jurisdiction existed in the District Court pursuant to 18 U.S.C. §3231 and in the Ninth Circuit Court of Appeals under 28 U.S.C. §1291.

## **STATUTORY PROVISIONS INVOLVED**

18 U.S.C. § 3663A (Mandatory restitution to victims of certain crimes)

18 U.S.C. § 3664 (Procedure for issuance and enforcement of order of restitution)

Sentencing guideline § 5E1.1 (Restitution)

These statutes are included in Appendix E.

## **STATEMENT OF THE CASE**

### **A. The COVID PPP Conspiracy**

Petitioners Vahe Dadyan and Artur Ayvazyan were convicted of conspiracy and fraud for obtaining COVID relief from the Paycheck Protection Program (“PPP”), which provided forgivable loans to small

businesses for job retention and other related business expenses. Vahe<sup>1</sup> obtained a single loan in his own name for \$157,500 for his own legitimate business. However, he falsely stated that he had 11 employees and a large monthly payroll when he had none. His cousin Tamara Dadyan submitted the paperwork for him.

Artur, who was married to Tamara, obtained two loans on behalf of his legitimate towing company, Allstate, the total amount of \$274,000. He may also have been asked to perform some ministerial errands over the course of the conspiracy.

The ringleader of the conspiracy was Artur's brother Richard who, along with his wife, Marietta Terabelian, and Tamara, used dozens of synthetic or stolen identities to obtain millions of dollars from the COVID relief programs. They created a vast network of bank accounts opened under false pretenses and stolen identities in order to purchase high end real estate, gold coins, diamonds, jewelry, luxury watches, and cars. They also used the fraudulently obtained COVID relief money to take expensive vacations. The government did not even attempt to prove that Vahe or Artur were aware of,

---

<sup>1</sup> Because several defendants have the same last name the Petitioners will be referred to by their first names to avoid confusion.

much less agreed, to the crimes committed by Richard, Marietta, and Tamara.

Vahe, Artur, Richard, and Marietta were tried together and all were convicted. Vahe was sentenced to 1 year and 1 day and Artur to 5 years.

Tamara pled guilty and was sentenced to 130 months. Prior to sentencing Richard and Marietta fled to the Eastern European country of Montenegro. Tamara joined them before she was supposed to surrender to serve her sentence. In absentia, Richard was sentenced to 17 years, Marietta to 6 years. Richard, Marietta, and Tamara were eventually apprehended and returned to the United States.

Vahe and Artur had a joint appeal. One of the primary issues on appeal was the amount of restitution each was ordered to pay.

## **B. Vahe's Restitution Obligation is \$10 Million**

Despite the fact that Vahe's offense involved \$157,500, he was ordered to pay \$10 million in restitution, as that was the amount attributable to the entire conspiracy at the time that he joined it. The Ninth Circuit affirmed Vahe's convictions and restitution amount but remanded to the district court to amend the judgment to reflect that the restitution was jointly and severally liable. Appendix A at 5.

Vahe's Presentence Report ("PSR") calculated the guideline loss as +16. (CR 1008, PSR ¶ 74.) As for the mandatory restitution under 18 U.S.C. § 366A (and Guideline § 5E1.1) the PSR recommended a total of \$1,789,153, for the amounts in the counts of conviction. (CR 1007 at 1; CR 1008, PSR ¶ 159-160.)

Defense counsel argued that the loss calculation should be +10, for losses between \$150,000 and \$250,000. [Guideline § 2B1.1(b)(1)F]. As for restitution, counsel argued that it should be limited to the \$157,500 paid out by Celtic Bank for Vahe's PPP loan application. (1-ER-43-44.)

The government argued for a +20 loss enhancement that would include not just the counts of conviction but all the loan applications submitted by the codefendants as relevant conduct. (CR 999 at 11-12, 2-ER-137-138.) The government's declaration contained a spreadsheet that mentioned Vahe's name only once. (4-ER-404, sealed.)

The court accepted the government's loss calculation as +20. (10/18/21 RT 33, 1-ER-40.) Over defense objection, the court also accepted the government's restitution calculations. (1-ER-43.) The court disagreed with defense counsel that the amount of restitution should be limited to \$157,500, "because I think that he is responsible having been found guilty of the conspiracy." (1-ER-44.)

Later, when the court sentenced ringleader Richard Ayvazyan in absentia, the court found the loss guideline was only +16. (11/15/21 RT 13.) The government objected pointing out that “in the sentencing hearing for Vahe Dadyan, the Court found that the loss amount that should apply is the entire amount of the conspiracy.” (11/15/21 RT 17, 2-ER-112.) The court responded: “I probably made a mistake.” (*Id.*)

### **C. Artur’s Restitution Amount is \$17.7 Million**

Artur was ordered to pay \$17.7 million, as that comprised all of the loans obtained by the entire conspiracy. Artur argued that his restitution should be limited to \$274,000, the amount of the two loans to Allstate Towing. (ER 272.) But the district court imposed the same restitution upon Artur, Richard, Tamara, and Marietta, without any discussion of their respective roles in the conspiracy. Vahe’s amount was less because he was found to have joined the conspiracy later.

The Ninth Circuit affirmed Artur’s convictions and restitution amount, but vacated his sentence and remanded for a new sentencing hearing because the trial court had not afforded Artur allocution at the time of sentencing. Appendix A at 5; Appendix C at 2.

**REASONS FOR GRANTING THE WRIT**

**THIS COURT SHOULD SETTLE WHETHER DEFENDANTS**

**CONVICTED OF MINOR ROLES IN A CONSPIRACY ARE LIABLE**

**FOR THE FULL AMOUNT OF RESTITUTION FOR LOSSES**

**ATTRIBUTABLE TO THE OVERALL CONSPIRACY**

**A. Vahe’s Restitution Argument**

Under 18 U.S.C. § 3664(e) the district court must resolve the dispute as to restitution by a preponderance of the evidence. In addition, the government has the burden of proof. On appeal Vahe argued, *inter alia*, that the district court failed to resolve the restitution dispute by a preponderance of the evidence.

Vahe also argued that the ten million dollar loss was not reasonably foreseeable to him. This is particularly so, when the PSR only recommended restitution in the amount of \$1,789,153 (PSR ¶¶ 159-160) and the district court admitted that the +20 loss calculation was “a mistake.” (2-ER-112.)

Restitution cannot be awarded for consequential damages but only for losses “directly and proximately” caused by the commission of an offense, which includes a “scheme, conspiracy, or pattern of criminal activity.” § 3663A(a)(2). *United States v. Stoddard*, 150 F.3d 1140, 1147 (9th Cir.

1998). In a conspiracy, restitution may be ordered to the extent the victim's losses were *reasonably foreseeable* to that defendant. *United States v. Riley*, 335 F.3d 919, 932 (9th Cir. 2003).

The Ninth Circuit cited *Riley* but rejected Vahe's restitution argument stating the "district court did not err by holding Vahe and Artur jointly and severally liable for restitution in the full amount of loss that the entire conspiracy entailed." Appendix A at 8. *Riley*, however, did not hold that restitution is always proper for the entire amount in any given conspiracy.

The Ninth Circuit failed to acknowledge that the PSR's restitution calculation was 8 million dollars less than what the government requested. The Court also failed to acknowledge that the district court conceded the loss calculation for Vahe was "a mistake."

## **B. Artur's Restitution Argument**

Artur argued on appeal that the district court made no effort to determine the amount of harm directly resulting from his criminal conduct. His involvement in the conspiracy, as noted above, was limited. The government conceded that Artur lacked personal involvement in the non-Allstate fraudulent loan applications submitted by co-conspirators. Answering Brief at 38. Nonetheless, the district court imposed restitution of

\$17.7 million against Artur and four other differently situated defendants, the total of all the loans submitted by the conspiracy.

18 U.S.C. §3663A requires the defendant to make restitution to “any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.” The plain language of the statute states the court may order restitution against Artur only to any person who was directly harmed by his criminal conduct.

The Ninth Circuit upheld the restitution order on the grounds that a conspirator is vicariously liable for reasonably foreseeable substantive crimes committed by a coconspirator in furtherance of the conspiracy. Appendix A at 8, citing *Riley*, 335 F.3d at 923. However, according to *Riley*, Artur is vicariously liable only for reasonably foreseeable crimes.

The government cited no evidence that it was reasonably foreseeable to Artur that the codefendants sought and obtained \$17.7 million in the fraudulent loan applications. To the contrary, the government's case relied upon thousands of texts between the principals Richard Ayvazyan and Tamara Dadyan. Of those thousands of texts, there were only a few instances where Tamara suggested that she might ask Artur to run a few ministerial errands.

The government also acknowledged that Artur lacked involvement in the fraudulent loan applications submitted by the codefendants. There was no evidence that Artur had any reason to suspect the codefendants were involved in over \$17.7 million in loan applications.

Artur also argued on appeal that the district court erred in imposing an amount of restitution that exceeded the amount of actual loss. He challenged the district court's imposition of \$17.7 million in restitution, especially when the district court calculated the Sentencing Guidelines range found the conspiracy resulted in \$1.5-\$3.5 million in actual or intended loss. Although loss may in some circumstances be different from restitution, the district court did not explain how the distinguishing principles in the court's authorities supported the inexplicable result in this case.

The Ninth Circuit held that there is no categorical rule that restitution must be equal to or less than the amount of loss determined under the Sentencing Guidelines. Appendix A at 9. The Court posited various scenarios where loss under the Sentencing Guidelines may be different than loss for purposes of restitution. Appendix A at 11-12. But the opinion did not explain how these principles translated into a ten-fold difference between loss and restitution.

Throughout the appeal, the government disclaimed reliance upon any actual involvement by Artur in the substantive activities of the conspiracy (e.g., the government acknowledged that Artur lacked personal involvement in the coconspirators' fraudulent loans); and the errands which the government ascribed to Artur based upon Tamara's texts turned out to be unfounded. The law of restitution requires that Artur be liable only for harm directly resulting from Artur's criminal conduct and reasonably foreseeable to him.

**C. Certiorari Should Be Granted to Decide What “Reasonably Foreseeable” Means in the Context of Restitution When Co-Conspirators have Minimal Involvement in the Overall Conspiracy**

The Mandatory Victim restitution act, 18 U.S.C. § 3663A, Appendix E, is an important and frequently employed statute to order defendants to pay restitution. The lower courts are in need of guidance as to how to award restitution when the government fails to prove that the entire loss caused by an overall conspiracy was reasonably foreseeable to a defendant who played a minor role. See 18 U.S.C. § 3664(e) (“The burden of demonstrating the amount of loss sustained by a victim as a result of the offense shall be on the attorney for the government.”) Appendix E at 5.

Here, the government failed to prove that \$10 million was reasonably foreseeable to Vahe who only sought a loan for \$157,500, and where even the PSR believed he should only pay \$1,789,153. The government failed to prove that \$17.7 million was reasonably foreseeable to Artur, who only sought loans of \$274,000, for his legitimate towing business.

Section 3663A does not state that the court should order the least culpable co-conspirator to pay restitution in the amount of the most culpable co-conspirator, particularly when those dollar figures are many millions apart. This case presents the perfect opportunity to hand down some guidelines for the lower courts who must often rule how much restitution to require a minor co-conspirator to pay.

## CONCLUSION

For the reasons expressed above, Petitioners Vahe Dadyan and Artur Ayvazyan respectfully request that a writ of certiorari issue to review the judgment of the Ninth Circuit Court of Appeals.

Date: January 22, 2024      Respectfully submitted,

## VERNA WEFALD

*Counsel of Record*