No. _____

IN THE

Supreme Court of the United States

SIDNEY JOSEPH,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Does the Fifth Circuit's interpretation of the phrase "all other available and reasonable means" in 18 U.S.C. §18 U.S.C. § 3664(m)(1)(A)(ii) to mean a "court order" authorizing the "turnover" of a restitution debtor's property—when no federal or state enforcement law authorizes such an order—violate the rules of statutory interpretation and, in doing so, create separation of powers and due process problems?

(2) Does the Fifth Circuit's interpretation of the lien provision in 18 U.S.C. § 3613(c) violate the rules of statutory interpretation and, in doing so, expand the scope of the government's power to encumber and seize private property?

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. Sidney Joseph*, No. 2:99-cr-238-1, U.S. District Court for the Eastern District of Louisiana. Order entered December 21, 2022.
- *United States v. Sidney Joseph*, No. 23-30005, U.S. Court of Appeals for the Fifth Circuit. Judgment entered May 20, 2024. Petition for Rehearing En Banc denied on October 22, 2024.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Sidney Joseph respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

JUDGMENT AT ISSUE

The opinion of the United States Court of Appeals for the Fifth Circuit is attached as Pet. App. 1, along with the order denying rehearing en banc.

JURISDICTION

On May 20, 2024, the Fifth Circuit affirmed the district court's judgment and sentence. Mr. Joseph filed a timely petition for rehearing en banc, which was denied on October 22, 2024. Ninety days from October 22, 2024, is Monday, January 20, 2025, which is the federal Martin Luther King, Jr. Day holiday, making the petition due on January 21, 2025. Thus, this petition for a writ of certiorari is timely filed pursuant to Supreme Court Rule 13. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 18 U.S.C. § 3613 states in relevant part:

> **(a) Enforcement**.--The United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law. Notwithstanding any other Federal law (including section 207 of the Social Security Act), a judgment imposing a fine may be enforced against all property or rights to property of the person fined, except that--
>
> > (1) property exempt from levy for taxes pursuant to section 6334(a)(1), (2), (3), (4), (5), (6), (7), (8), (10), and (12) of the Internal Revenue Code of 1986 shall be exempt from enforcement of the judgment under Federal law;
> > (2) section 3014 of chapter 176 of title 28 shall not apply to enforcement under Federal law; and
> > (3) the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) shall apply to enforcement of the judgment under Federal law or State law.
>
> **(b) Termination of liability**.--The liability to pay a fine shall terminate the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person fined, or upon the death of the individual fined. The liability to pay restitution shall terminate on the date that is the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person ordered to pay restitution. In the event of the death of the person ordered to pay restitution, the individual's estate will be held responsible for any unpaid balance of the restitution amount, and the lien provided in subsection (c) of this section shall continue until the estate receives a written release of that liability.
>
> **(c) Lien**.--A fine imposed pursuant to the provisions of subchapter C of chapter 227 of this title, an assessment imposed pursuant to section 2259A of this title, or an order of restitution made pursuant to sections1 2248, 2259, 2264, 2327, 3663, 3663A, or 3664 of this title, is a lien in favor of the United States on all property and rights to property of the person fined as if the liability of the person fined were a liability for a tax assessed under the Internal Revenue Code of 1986. The lien arises on the entry of judgment and continues for 20 years or until the liability is satisfied, remitted, set aside, or is terminated under subsection (b).
>
> . . .

> **(f) Applicability to order of restitution**.--In accordance with section 3664(m)(1)(A) of this title, all provisions of this section are available to the United States for the enforcement of an order of restitution.
>
> * * *

Title 18 U.S.C. § 3664(m)(1)(A) states in relevant part:

> **(i)** An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title;[1] or
>
> **(ii)** by all other available and reasonable means.
>
> * * *

[1] Subchapter B of chapter 229 includes 18 U.S.C. § 3613.

INTRODUCTION

The Fifth Circuit held in a published decision that the government can seek—and district courts can grant—"turnover orders" seizing an individual's private property for payment of restitution debts without having to comply with any state or federal law for enforcing judgments. Instead, it held that the district court "reasonably read" a provision in the Mandatory Victims Restitution Act ("MVRA") stating that a restitution order may be enforced "by all other available and reasonable means" as "includ[ing] a court order." That holding was wrong—and profoundly so.

The Fifth Circuit's holding is contrary to the statutory language in 18 U.S.C. § 3613(a) and the MVRA (18 U.S.C. §§ 3663A, 3664), conflicts with the decisions of numerous other federal Courts of Appeals, and frustrates the Congressional policy scheme. More importantly, the Fifth Circuit's decision raises significant separation of powers and due process concerns, because a district court can only order restitution where authorized by statute, and it can only enforce a restitution order as permitted by statute. But nowhere did the Fifth Circuit's decision (or the government's briefing, for that matter) locate and identify valid statutory authority for a district court to use the "means" of a "turnover order" to seize accumulated prison wages, as happened in this case. Thus, the Fifth Circuit's holding permits district courts in Louisiana, Mississippi, and Texas to seize a restitution debtor's property via court order *when Congress has not authorized it.*

Additionally, the Fifth Circuit incorrectly held that the government maintains a lien on a restitution debtor's property for the entire period in which he is liable for

the debt, despite Congress's clear intent in 18 U.S.C. § 3613 to create separate terms for liability and the lien. In holding otherwise, the Fifth Circuit violated basic rules of statutory interpretation. At base, it transparently substituted its policy preference for the Congressionally chosen policy, and, in doing so, further frustrated the Congressionally chosen scheme, which balances the rights of victims and restitution debtors as Congress saw fit.

The Fifth Circuit's decision not only creates significant separation of powers and due process problems, but also raises serious policy concerns regarding the relative rights of victims and restitution debtors that will have far-reaching implications for the enforcement of restitution orders and fines. This case is not about *whether* Mr. Joseph is obligated to pay restitution to his victims—he is, and he has been making regular payments for years through the Bureau of Prisons' restitution program. Rather, this case is about *how* a restitution obligation can be enforced, and—more importantly—*who* gets to decide what enforcement mechanisms are available: Congress, through validly enacted statutes? Or a district court, at the behest of the government, through a court order unmoored from any identifiable statutorily authority?

STATEMENT OF THE CASE

In 2001, Petitioner Sidney Joseph was convicted in the Eastern District of Louisiana of multiple bank robberies. The district court sentenced him to 38.5 years of imprisonment and ordered him to pay $24,025 in restitution to two financial institutions. The judgment was entered on September 17, 2001.

More than 21 years later, the government filed a motion for a purported "turnover order" directing the Bureau of Prisons ("BOP") to transfer Mr. Joseph's entire inmate trust account to the Clerk of Court for the Eastern District for payment toward his restitution obligation. The government claimed that its request was pursuant to 18 U.S.C. § 3613(a), which provides, in relevant part:

> The United States may enforce a judgment imposing [restitution[2]] ***in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law***.

(emphasis added). The government did not identify any state or federal enforcement law under which it was proceeding, instead arguing that it was entitled to a "turnover order" based on a lien that arose in its favor under § 3613(c) when Mr. Joseph's judgment was entered in 2001.

Through counsel, Mr. Joseph argued that the government's motion should be denied because its lien under § 3613(c) expired on September 17, 2021—20 years from the judgment date. He also argued that the government cited no federal or state law authorizing the requested "turnover order," as required by § 3613(a). Finally, Mr. Joseph asked the court to deny the government's motion or, alternatively, adjust

[2] *See* 18 U.S.C. § 3613(f).

his restitution payment schedule in accordance with 18 U.S.C. § 3664(k), explaining that his trust account consisted primarily of prison wages, that he had been making regular payments toward his restitution obligation in compliance with the BOP's Inmate Financial Responsibility Program ("IFRP"), and that he needed the funds in his account for prison necessities.

The district court granted the government's motion, concluding the government had an unexpired lien on Mr. Joseph's property and was "entitled to the relief it requests"—*i.e.*, the seizure of his entire trust account. The court interpreted § 3613(c) as imposing a lien that continues until the defendant's liability expires under § 3613(b), *i.e.*, "for twenty years from the later of the entry of judgment or Defendant's release from imprisonment." However, in concluding that the government was "entitled" to the requested turnover order, the court did not cite any state or federal enforcement law authorizing the order, instead relying solely on its finding that the government had an unexpired lien.

On appeal, Mr. Joseph argued that the district court erred (1) in its interpretation of § 3613(c)'s lien duration provision and (2) in concluding that a valid lien alone "entitled" the government to the requested order. Further, Mr. Joseph explained that the "turnover order" was not issued pursuant to any federal or state law, and, even if the government had properly pursued enforcement, § 3613(a) precluded it from seizing all of Mr. Joseph's prison wages. Finally, Mr. Joseph argued that the court's decision to seize nearly all of his money was unreasonable and arbitrary.

Following oral argument, the Fifth Circuit affirmed the district court's "turnover order." *United States v. Joseph*, 102 F.4th 686 (5th Cir. 2024).[3] The panel held that the government's lien had not expired, affirming the district court's conclusion that the lien defined in § 3613(c) is coterminous with the termination of liability under § 3613(b). *Id.* at 689-91. While conceding that Mr. Joseph "may be correct that § 3613(a) requires a federal or state enforcement statute," the panel then suggested that the second sentence in § 3613(a)—which imposes certain limitations on the property subject to seizure—somehow negates that requirement. *Id.* at 690. The panel then held:

> Further, even assuming the district court did not have sole authority under § 3613(a), the MVRA provides for enforcement "by all other available and reasonable means." The district court could have reasonably read this provision to include a court order.

Id. (quoting 18 U.S.C. § 3664(m)(1)(A)(ii)).[4] Accordingly, the panel held that the district court's ruling was not based on any legal error.[5]

Mr. Joseph filed a timely petition for rehearing en banc on June 3, 2024. Ten days later, the Court issued an order withholding issuance of the mandate and a directive requesting the government to respond to the petition for rehearing en banc.

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[3] Although the panel initially issued its opinion as an unpublished decision, *see United States v. Joseph*, No. 23-30005, 2024 WL 2271845 (5th Cir. May 20, 2024), the government moved to publish it. The panel granted that motion, reissuing its opinion as a published decision on May 29, 2024.

[4] Notably, the district court never asserted § 3664(m)(1)(A)(ii) as the basis for its order, relying solely on § 3613(a) and (c).

[5] The panel declined to address whether the district court's order erroneously seized all of Mr. Joseph's prison wages in violation of § 3613(a)'s garnishment limitation, concluding that the argument was forfeited—even though Mr. Joseph argued in the district court proceeding that the government's motion did not comport with § 3613(a), and the government never asserted forfeiture on appeal. *See Joseph*, 102 F.4th at 691.

Four months later, on October 22, 2024, the Court denied the petition for rehearing en banc.

REASONS FOR GRANTING THE PETITION

I. The Fifth Circuit's holding that district courts have freestanding authority to issue "turnover orders" seizing private property of restitution debtors at the behest of the government disregards the rules of statutory construction, violates the separation of powers, and creates conflict with other Circuits.

The MVRA provides that "[a]n order of restitution may be enforced by the United States" via two statutory avenues: "[1] in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; or [2] by all other available and reasonable means." 18 U.S.C.A. § 3664(m)(1)(A)(i) and (ii). Subchapter B of chapter 229 includes 18 U.S.C. § 3613, which provides that "[t]he United States may enforce a judgment imposing [restitution] in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law." § 3613(a), (f). It also provides that a restitution order "is a lien in favor of the United States on all property and rights to property of the person fined as if the liability of the person fined were a liability for a tax assessed under the Internal Revenue Code of 1986." § 3613(c).

Consistent with the plain text of § 3613(a) and § 3664(m)(1)(A), the government must identify and comply with a specific federal or state enforcement law to enforce a restitution order—it is not enough to merely assert a lien under § 3613(c). Likewise, in accord with both the statutory text and constitutional principles of the separation of powers, a district court can only grant the government relief that is authorized by a federal or state enforcement law. "A district court may order

restitution only when authorized by statute." *United States v. Robinson*, 44 F.4th 758, 760 (8th Cir. 2022). "A court's power to order the turnover of funds held in an inmate trust account likewise depends on a statutory source of authority." *Id.* (citation omitted).

In this case, however, the Fifth Circuit held that the government had the authority to seek, and the district court had the authority to grant, a "turnover order" seizing Mr. Joseph's property (his accumulated prison wages)—even though the court order sought and issued was not authorized by a specific state or federal enforcement law. Instead, the Fifth Circuit concluded that the district court "reasonably read" the "by all other available and reasonable means" provision in § 3664(m)(1)(A)(ii) as "includ[ing] a court order." That holding was grievously wrong.

The MVRA provision authorizing enforcement "by all other *available* . . . means" (emphasis added) does not provide independent authority for the government to seize a restitution debtor's private property by seeking a court order from a district court. If it did, that would be a sweeping grant of essentially unbounded authority, which would be odd given the carefully prescribed enforcement authority granted elsewhere in the statute. Rather, § 3664(m)(1)(A)(ii) merely provides that the government is not strictly limited to enforcement "in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title." § 3664(m)(1)(A)(i). In other words, the government is not prevented from utilizing "all other" statutorily authorized enforcement mechanisms. § 3664(m)(1)(A)(ii).

The government must always, however, comply with some "*available* . . . means" of enforcement, § 3664(m)(1)(A)(ii) (emphasis added)—*i.e.* "means" authorized by *some other statute* outside of "subchapter C of chapter 227 and subchapter B of chapter 229 of this title." In other words, the government can only rely on § 3664(m)(1)(A)(ii) *in combination with* another federal or state enforcement statute to enforce a restitution order. Thus, a district court cannot simply grant the government its requested enforcement relief by issuing a court order unless it has some statutory authority to do so—authority that is not provided by § 3664(m)(1)(A)(ii) alone.

"The MVRA does not define what it means for a method of enforcement to be 'available.' 'When Congress uses a term in a statute and does not define it, we generally assume that the term carries its plain and ordinary meaning.'" *United States v. Saemisch*, 70 F.4th 1, 7 (1st Cir. 2023) (quoting *City of Providence v. Barr*, 954 F.3d 23, 31 (1st Cir. 2020)). The plain and ordinary meaning of the term "available" is "[a]ble to be used" or "at one's disposal." Available, Oxford English Dictionary Online (3d ed. 2022). Thus, for a means of enforcement to be "available," that means must be statutorily authorized—otherwise, it would not lawfully be "at [the district court's] disposal" and therefore "able to be used" to enforce the restitution order upon the request of the government.

Consistent with the text, numerous federal Courts of Appeals have recognized that an enforcement means is only "available" if it is authorized by some applicable state or federal law. And the Eighth Circuit has even made clear that, on appeal, it

will "consider only the restitution enforcement procedures the government invoked." *United States v. Kidd*, 23 F.4th 781, 784 (8th Cir. 2022).

For example, the First, Seventh, and Eleventh Circuits have held that when an incarcerated restitution debtor receives "substantial resources," an order seizing those funds is authorized under § 3664(m)(1)(A)(ii) *in combination with* § 3664(n), which instructs that the debtor "shall be required to apply the value of such resources" toward restitution. *See Saemisch*, 70 F.4th at 7-9; *United States v. Lemberger*, 673 F. App'x 579, 580 (7th Cir. 2017); *United States v. Connolly*, No. 22-12922, 2023 WL 2498086, at *1-2 (11th Cir. Mar. 14, 2023).

The Sixth Circuit has held that withholding federal stimulus payments is an "available and reasonable means" under § 3664(m)(1)(A)(ii) because such withholdings are authorized by (and thus "available" under) the Treasury Offset Program in 31 U.S.C. § 3716(a). *See United States v. Haynes*, No. 23-3252, 2023 WL 10553977, *1-2 (6th Cir. 2023). The Seventh Circuit has likewise held that "a judgment against the United States" pursuant to the Federal Tort Claims Act can be used to "offset" a restitution obligation because "31 U.S.C. § 3728 authorizes the government to use offset for that type of settlement award," and therefore "[o]ffset, as a collection tool available to the United States, is . . . a means of enforcement" that is "available" under § 3664(m)(1)(A)(ii). *Stacy v. United States*, 70 F.4th 369, 373, 377 (7th Cir. 2023).

Similarly, the Second and Eighth Circuits have held that § 3664(m)(1)(A)(ii) authorizes district courts to grant injunctive relief to prevent defendants from hiding

assets from enforcement because such injunctions are permitted under the "All Writs Act," 28 U.S.C. § 1651. *See United States v. Bengis*, 611 F. App'x 5, 7 (2d Cir. 2015); *United States v. Yielding*, 657 F.3d 722, 727 (8th Cir. 2011). And the Ninth Circuit has held that a district court in California could approve a plan providing for the sale of a debtor's personal property to satisfy his restitution judgment as an "available" means under § 3664(m)(1)(A)(ii) because California law permits creditors to "credit-bid" on property subject to judgment liens. *United States v. Kaczynski*, 551 F.3d 1120, 1130 (9th Cir. 2009).

Multiple federal Courts of Appeals have thus consistently interpreted the words "all other available . . . means" in § 3664(m)(1)(A)(ii) as referring to *statutorily authorized* enforcement means other than the means previously referenced in the preceding subsection, § 3664(m)(1)(A)(i) (*i.e.*, "the manner[s] provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title"). Those words do not, however, provide the government with *carte blanche* to seek "court orders" seizing property at the government's request, nor permit district courts to issue such freestanding orders. But that is precisely what the Fifth Circuit's decision does. In reaching this decision, the Fifth Circuit not only incorrectly interpreted the statutory text, but created grave separation of powers and due process problems by affirming the use of a restitution enforcement mechanism that has not been authorized by Congress. *See Robinson*, 44 F.4th at 760.

II. The Fifth Circuit's interpretation of the lien provision in 18 U.S.C. § 3613(c) violates basic rules of statutory interpretation and substantially expands the scope of the government's power to encumber and seize private property.

The Fifth Circuit also interpreted 18 U.S.C. § 3613(c) as creating a lien in favor of the government that is coterminous with a defendant's liability to pay restitution under § 3613(b). The Fifth Circuit's analysis here too is wrong and disregards the applicable canons of statutory interpretation, resulting in a holding that contravenes Congress's carefully crafted framework and will impact scores of defendants going forward. The upshot of the Fifth Circuit's holding is a substantial expansion in the scope of the government's power to encumber and seize the property of private citizens subject to restitution judgments.

At the outset, the Fifth Circuit stated that "congress [*sic*] has used 'lien' and 'liability' interchangeably." *Joseph*, 102 F.4th at 690. But it cited no authority for that proposition, and for good reason, because those two terms have well-established—and distinct—legal meanings. *See Liability*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("A financial or pecuniary obligation in a specified amount; debt."); *Lien*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("A legal right or interest that a creditor has in another's property, *lasting usu. until a debt or duty that it secures is satisfied*." (emphasis added)). From this definitional error, the Fifth Circuit's erroneous reading of the statute as creating a government lien coterminous with liability was all but foretold. But the Fifth Circuit's reading is clearly inconsistent with the statute, which creates two separate terms for the liability and the lien in two separate statutory subsections.

Section 3613(b), titled "termination of liability," provides that "[t]he liability to pay restitution shall terminate on the date that is the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person ordered to pay restitution." It then further provides for the special circumstance of the death of the restitution debtor: "In the event of the death of the person ordered to pay restitution, the individual's estate will be held responsible for any unpaid balance of the restitution amount, and the lien provided in subsection (c) of this section shall continue until the estate receives a written release of that liability" [hereafter, the "death exception"].

Section 3613(c), titled "lien," imposes a lien in favor of the government that "arises on the entry of judgment and continues ***for 20 years or until the liability is satisfied, remitted, set aside, or is terminated under subsection (b)***." (emphasis added). In other words, the lien ends either 20 years from the judgment date or when the debt is no longer owed. The only reasonable reading of the statute is that the lien expires upon the *earlier* of the listed events; the Fifth Circuit's contrary holding violates several canons of statutory construction.

For example, the Fifth Circuit's interpretation renders the phrase "for 20 years or" inoperative in § 3613(c). *See Corley v. United States*, 556 U.S. 303, 314 (2009). The termination of liability provision in § 3613(b) states that liability ends on "***the later of*** 20 years from the entry of judgment or 20 years after the release from imprisonment" (emphasis added). Under the Fifth Circuit's interpretation, however, § 3613(c) would have the same meaning if it imposed a lien that "continues ~~for 20~~

~~years or~~ until the liability is satisfied, remitted, set aside, or is terminated under subsection (b)," because termination of liability under subsection (b) will always occur at least 20 years after the judgment date.

Further, the Fifth Circuit's interpretation disregards the statute's text and structure. The fact that Congress used "the later of" in defining the termination of liability in § 3613(b) but omitted that phrase in defining the lien duration in § 3613(c) shows that Congress intended the lien to expire on the earlier of the listed events. *See, e.g.*, *Russello v. United States*, 464 U.S. 16, 23 (1983); *Gulf Fishermens Ass'n v. Nat'l Marine Fisheries Serv.*, 968 F.3d 454, 466 (5th Cir. 2020). Moreover, in several other statutory provisions—including the tax code referenced in § 3613(c)—Congress has imposed liens that "continue until liability is satisfied or becomes unenforceable by reason of lapse of time," showing that Congress knows how to articulate a lien provision that is coterminous with liability when it so desires. *See* 26 U.S.C. § 6322; 26 U.S.C. § 6324A(d)(2); 29 U.S.C. § 1368(b); 30 U.S.C. § 934.

Finally, the legislative history contradicts the Fifth Circuit's reading. Section 3613 originally *did* make the termination of "liability" and expiration of the "lien" coterminous—but Congress separated them into different clauses in 1996. *See* 18 U.S.C. § 3613 (1990); *see also United States v. Taylor*, 142 S. Ct. 2015, 2024 (2022) ("[W]e do not lightly assume Congress adopts two separate clauses in the same law to perform the same work."); *see Ross v. Blake*, 578 U.S. 632, 641-42 (2016) ("When Congress amends legislation, courts must presume it intends the change to have real and substantial effect."). At that time, Congress also considered—but rejected—a

proposed revision to § 3613 that *would have* extended both the lien and liability terms in the same manner. *See* H.R. 665, 104th Cong. (Dec. 22, 1995), at 30:18. Thus, "Congress specifically understood, considered, and rejected a version" of the statute that would have made the lien coterminous with liability. *See Warger v. Shauers*, 574 U.S. 40, 48 (2014).

The Fifth Circuit's disregarded these traditional canons of statutory interpretation. Further, contrary to the panel's conclusion, Mr. Joseph's correct reading of the statute does not "result in a nonsensical outcome." *Joseph*, 102 F.4th at 690. Rather, the Fifth Circuit seems to have misunderstood the impact of the death exception in § 3613(b), when it said that "it would make no sense that if the person who owes restitution (debtor) *dies*, their estate would be held responsible for the unpaid balance of the restitution in accordance with the lien until they receive a written release, but if the debtor *lives*, he is released from the restitution requirement after 20 years." *Id.* That is not what the statute does.

From 1996 to 2016, liability to pay fines and restitution automatically terminated "upon the death of the individual fined." 18 U.S.C. § 3613(b) (1996); *see also* 18 U.S.C. § 3613(f) (making "all provisions" of § 3613 apply to restitution orders). Thus, an existing lien under § 3613(c) would end simultaneously with death, because liability was "terminated under" § 3613(b) upon death. In 2016, Congress amended § 3613(b) to allow for "collection of restitution from [the] defendant's estate," while keeping the automatic termination of fine liability. Justice for All Reauthorization Act of 2016, Pub. L. No. 114-324, 130 Stat. 1948, at § 2 (Dec. 16, 2016). By stating

that "the lien provided in subsection (c) of this section shall continue until the estate receives a written release of that liability," Congress simply defined what it means for liability to be "terminated under subsection (b)" under that scenario.

Of course, neither liability nor a lien can "continue" if it has already expired. Yet, the Fifth Circuit seems to have incorrectly read the death exception as swallowing the rule and somehow indefinitely extending the term of both the liability and the lien. The statute does not state that transfer of liability only occurs if the defendant dies before his liability expires, but that clearly is what Congress meant. One could not reasonably argue that Congress intended for a defendant's death to otherwise extend either restitution liability or lien duration beyond the temporal limits contained in the statute. Thus, the only reasonable reading is that the death exception applies only to existing liability that has not terminated due to the passage of time. Likewise, the only reasonable reading of the reference to § 3613(c) is that Congress was making clear that an existing government lien continues when liability transfers to the estate. In other words, Congress was simply defining what constitutes "termination" in that unique situation. That does not change the fact that the lien may end prior to termination by "written release" if another of the events identified in § 3613(c) occurs first, like the passage of time.

At base, the Fifth Circuit appeared to simply make a policy decision that it "makes [more] sense" for the liability and the government lien to be coterminous. *Joseph*, 102 F.4th at 690. Thus, the Fifth Circuit strayed from statutory interpretation into impermissible judicial policymaking. *See, e.g.*, *Pereida v.*

Wilkinson, 141 S. Ct. 754, 766-67 (2021); *Beatty v. Lumpkin*, 52 F.4th 632, 635 (5th Cir. 2022). In doing so, the Fifth Circuit seemingly ignored that Congress provided for different rules for the government and for victims. Indeed, victims owed restitution can obtain and enforce a lien as long as the liability exists, *see* 18 U.S.C. § 3664(m)(1)(B), but Congress has decided that the government's automatically arising third-party lien should be more temporally limited.

The Fifth Circuit also seemingly ignored that Congress provided the government with other enforcement options even after its lien expires. For example, the government can move to adjust payment schedules under § 3664(k). In this case, however, the government did not use any of the myriad enforcement mechanisms provided for by Congress. Instead, it sought a so-called "turnover order," despite a lack of statutory authority for the government to seek, and the district court to issue, such an order under these circumstances.

Yet, the Fifth Circuit affirmed, which now allows the government to seek enforcement whenever and however it wants via court order—even though Congress has not provided authority for it to do so. *See* 18 U.S.C. § 3664(m)(1)(A). The Fifth Circuit thus grants district courts unbounded authority to dispose of debtor property outside of the limitations legislated by Congress and incentivizes the government to disregard statutes regulating enforcement of restitution orders. This outcome raises significant institutional concerns, upsets the proper balance of power between the three co-equal branches of governments, and ultimately frustrates and undermines Congress's policy goals in violation of separation of powers principles.

III. The Fifth Circuit's decision raises serious legal and policy concerns necessitating correction by this Court.

This case is not about *whether* Mr. Joseph is obligated to pay restitution to his victims—he is, and he has been making regular payments in compliance with the BOP's Inmate Financial Responsibility Program ("IFPR") for years. Rather, it is about *how* his restitution obligation can be enforced, and—more importantly—*who* decides what enforcement mechanisms are "available" to the government: Congress, through validly enacted statutes? Or a district court, at the behest of the government, through a court order unmoored from any enforcement statute?

Under our Constitution and this Court's precedents, the answer is Congress. *See Pereida*, 592 U.S. at 241 ("It is hardly [the] Court's place to pick and choose among competing policy arguments like these along the way to selecting whatever outcome seems to us most congenial, efficient, or fair."). Yet, the Fifth Circuit's decision allows federal district courts—at the behest of the government—to substitute their discretion for the statutory limitations explicitly legislated by Congress. *See, e.g.*, *United States v. Carson*, 55 F.4th 1053, 1059 (6th Cir. 2022) (explaining that, under 18 U.S.C. § 3613, "the government may treat a defendant's restitution obligation as a lien in its favor and acquire the funds in an inmate's trust account" but that "this authority has . . . limits" imposed by statute).

For example, § 3613(a)(3) provides that "the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. § 1673) [CCPA] shall apply to enforcement." The statute's incorporation of the CCPA's garnishment limitations is a policy choice. In limiting enforcement against wages to 25 percent of a debtor's weekly

earnings, Congress thoughtfully balanced the rights of victims to collect restitution with the need to permit debtors to retain a portion of their earnings. By endorsing a district court's free-floating authority to issue turnover orders outside of 18 U.S.C. § 3613(a)'s (or any statute's) strictures, the Fifth Circuit's holding is contrary to this congressionally chosen policy. *See Carson*, 55 F.4th at 1059.

Additionally, the Fifth Circuit's holding incentivizes the government to bypass legislatively authorized enforcement mechanisms—such as statutorily limited garnishment—and to instead seek "turnover orders" directly from district courts. Such statutory evasion also frustrates the will of Congress. Recognizing the need for adherence to statute, federal courts of appeals have rejected government attempts to circumvent statutory limits on restitution collection in the past. *See, e.g.*, *United States v. Hughes*, 914 F.3d 947, 951 (5th Cir. 2019) (rejecting government's attempted use of § 3664(n) to seize "the gradual accumulation of prison wages" from an inmate's trust account because the property did not "fit[] within § 3664(n)'s ambit"); *Kidd*, 23 F.4th at 784 n.2 (rejecting the same and surmising that the government pursued that effort "because it knew that a claim for garnishment or a lien turnover order would be subject" to § 3613(a)(3)'s limitations). The Fifth Circuit's decision in this case, by contrast, countenances the government's statutory evasion.

In disrupting the statutory scheme that Congress carefully crafted, the Fifth Circuit's decision is detrimental to victims, debtors, and society. For example, the decision disincentives the government from aggressively enforcing restitution judgments in a timely manner on behalf of victims, as Congress intended. *See, e.g.*,

United States v. Phillips, 303 F.3d 548, 551 (5th Cir. 2002). Here, for example, rather than pursuing available enforcement mechanisms like wage garnishment or payment adjustments, the government did nothing for more than two decades before seeking a lumpsum "turnover order." In affirming, the Fifth Circuit endorsed this type of delayed enforcement—an approach that is likely more efficient for (and therefore preferable to) the government but is not necessarily in the best interest of victims, who may have to wait years to receive collectible funds rather than receiving them on a steady, ongoing basis via garnishment. Indeed, it is unclear whether the financial institutions owed restitution in this case even still exist 21 years later.

Finally, permitting district courts to wield unlimited authority to order the seizure of property to satisfy restitution judgments undermines the due process rights of debtors and upsets Congress's careful balancing of interests between debtors and victims. Additionally, with respect to incarcerated debtors, "court orders withdrawing prison wage payments made into inmates' . . . accounts at the behest of prosecutors could significantly threaten prison security and administration by hurting inmate morale, discouraging inmates from gaining the benefits of prison work, and interfering with the BOP's carefully constructed [IFRP] that includes provisions for paying restitution obligations while incarcerated." *Kidd*, 23 F.4th at 787. Inmates who work are significantly less likely to recidivate and are more likely to secure gainful employment upon release. *See United States v. Price*, 2023 WL 4599841, at *3 (E.D.N.Y. July 18, 2023). "Courts should thus be reticent to further disincentivize

participation in such work programs by making wages paid into inmate trust accounts garnishable at will by the Government." *Id.*

CONCLUSION

Congress legislated limitations on restitution enforcement in the MVRA. By endorsing "turnover orders" that are not subject to those laws, the Fifth Circuit's decision is contrary to the statutory text, Congressional will, and the constitutional separation of powers, and it also threatens far-reaching, detrimental consequences for both victims and restitution debtors. For all of these reasons, this Court should grant Mr. Joseph's petition for writ of certiorari.

Respectfully submitted,

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