

No. 24-6405

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IN THE SUPREME COURT OF THE UNITED STATES

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SIDNEY JOSEPH, PETITIONER

v.

UNITED STATES OF AMERICA

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

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court properly issued an order authorizing the Bureau of Prisons to turn over funds from petitioner's inmate trust account to be paid as restitution to the victims of petitioner's bank-robbery offenses.

2. Whether a lien established by 18 U.S.C. 3613(c) (2000) must expire no later than 20 years after entry of the judgment of conviction.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. La.):

United States v. Joseph, No. 99-cr-238 (Sept. 17, 2001)

United States v. Joseph, No. 99-cr-238 (August 17, 2007)

United States v. Joseph, No. 99-cr-238 (May 21, 2020)

United States Court of Appeals (5th Cir.):

United States v. Joseph, No. 01-31119 (June 9, 2003)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-10a) is reported at 102 F.4th 686.<sup>1</sup> The order of the district court (App., infra, 1a-7a) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1a-2a) was entered on May 20, 2024. A petition for rehearing was denied on October 22, 2024 (Pet. App. 11a). The petition for a writ of

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<sup>1</sup> This brief refers to the 11 pages of the appendix to the petition for a writ of certiorari as if they were consecutively paginated, consistent with its table of contents.

certiorari was filed on January 20, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

#### STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Louisiana, petitioner was convicted on three counts of armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d); three counts of brandishing a firearm during a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii); four counts of possessing a firearm as a convicted felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2) (2000); one count of carjacking, in violation of 18 U.S.C. 2119; and one count of possessing a firearm without a serial number, in violation of 26 U.S.C. 5842, 5861(h), and 5871. Superseding Indictment 1-6; Judgment 1. He was sentenced to 462 months of imprisonment, to be followed by five years of supervised release. Judgment 1. The district court also ordered petitioner to pay \$24,025 in restitution. Ibid. The court of appeals affirmed, United States v. Joseph, 333 F.3d 587 (5th Cir. 2003), and this Court denied a petition for certiorari, 540 U.S. 973 (2003).

While petitioner was serving his sentence, the government learned that he had a balance of about \$18,217.83 in his inmate trust account. Pet. App. 4a. The government moved the district court for an order authorizing the Bureau of Prisons (BOP) to turn over those funds to the clerk of the court to be paid as restitution. Ibid. The court granted that motion, ordering that all but

\$400 in the account be turned over. D. Ct. Doc. 148 (Dec. 21, 2022). The court of appeals affirmed. Pet. App. 3a-10a.

1. Congress enacted the Victim and Witness Protection Act of 1982 (VWPA), Pub. L. No. 97-291, 96 Stat. 1248, "to enhance and protect the necessary role of crime victims \* \* \* in the criminal justice process" and "to ensure that the Federal Government does all that is possible within limits of available resources to assist victims \* \* \* without infringing on the constitutional rights of the defendant," § 2(b)(1) and (2), 96 Stat. 1248-1249. The VWPA provided that, when sentencing a defendant convicted of a Title 18 offense, the district court "may order, in addition to \* \* \* any other penalty authorized by law, that the defendant make restitution to any victim of such offense." 18 U.S.C. 3663(a)(1)(A). The VWPA authorized the United States to enforce a restitution order in the same manner that it collects fines or enforces civil judgments, including through the imposition of a lien for a period of 20 years from the entry of the judgment or upon the death of the individual fined. 18 U.S.C. 3663(h)(1), 3664; see 18 U.S.C. 3613(b)(1).

In 1996, Congress enacted the Mandatory Victims Restitution Act of 1996 (MVRA), Pub. L. No. 104-132, Tit. II, Subtit. A, 110 Stat. 1227, which superseded the VWPA in part. As relevant here, the MVRA changed the period of liability for a restitution obligation to "the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the [defendant]." 18

U.S.C. 3613(b). The MVRA also provides that a restitution order constitutes "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." 18 U.S.C. 3613(c). Such a 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)." Ibid.

The MVRA authorizes the United States to enforce a restitution order "in the manner provided for in \* \* \* subchapter B of chapter 229 of this title." 18 U.S.C. 3664(m)(1)(A)(i). In that subchapter, Section 3613(a)(1) provides that the government may enforce a judgment "in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law" -- which include levying the defendant's property -- and may pursue "all property or rights to property of the [defendant] \* \* \* except \* \* \* property exempt from levy for taxes pursuant to" certain enumerated provisions of the Internal Revenue Code in 26 U.S.C. 6334(a). 18 U.S.C. 3613(a)(1); see 18 U.S.C. 3613(f) ("In accordance with [18 U.S.C. 3664(m)(1)(A)], all provisions of this section are available to the United States for the enforcement of an order of restitution."). In addition, the MVRA permits the government (or a victim) to request that the district court modify the defendant's restitution payment schedule. 18 U.S.C. 3664(k). Congress further provided that an order of restitution "may be

enforced by the United States \* \* \* by all other available and reasonable means." 18 U.S.C. 3664(m)(1)(A). In addition, "[i]f a person obligated to provide restitution \* \* \* receives substantial resources from any source," then "such person shall be required to apply the value of such resources to any restitution or fine still owed." 18 U.S.C. 3664(n).

2. In 1999 and 2000, petitioner robbed several banks in New Orleans. Presentence Investigation Report (PSR) ¶¶ 19-22. As relevant here, in February 2000, petitioner robbed a bank of about \$12,000. PSR ¶ 20. Minutes later, petitioner led police on a high-speed chase, crashed his car, opened fire on an officer, hijacked another car at gunpoint, and fled. PSR ¶ 21. Months later, petitioner robbed another bank of about \$12,000. PSR ¶ 22. When the police later arrested petitioner, they found a handgun with a scratched-off serial number. PSR ¶ 23.

Following a jury trial in the Eastern District of Louisiana, petitioner was convicted on three counts of armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d); three counts of brandishing a firearm during a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii); four counts of possessing a firearm as a convicted felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2)(2000); one count of carjacking, in violation of 18 U.S.C. 2119; and one count of possessing a firearm without a serial number, in violation of 26 U.S.C. 5842, 5861(h), and 5871. Superseding Indictment 1-6; Judgment 1. In September 2001, the district court

sentenced petitioner to 462 months of imprisonment, to be followed by five years of supervised release. Judgment 1. The district court also ordered petitioner to pay \$24,025 in restitution. Ibid. Over the next 20 years, petitioner paid \$2,772.03. D. Ct. Doc. 138, at 2 (Sept. 23, 2022).

3. In 2022, the United States learned that petitioner had a balance of about \$18,217 in his BOP inmate trust account. D. Ct. Doc. 138, at 1-2. The government moved the district court for an order authorizing the BOP to turn over those funds to the clerk of the court to be paid as restitution. Id. at 2-4. The government cited three grounds supporting its request. Ibid. First, the government invoked 18 U.S.C. 3664(m) (1) (A) and 3613(a), which provide that “[a]n order of restitution may be enforced” by the government “in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law” or “by all other available and reasonable means.” Second, the government observed that the restitution order constituted “a lien in favor of the United States on all property and rights to property of” petitioner under 18 U.S.C. 3613(c). Finally, the government invoked 18 U.S.C. 3664(n)’s requirement that “the value of” any “substantial resources” petitioner received during his incarceration be “appl[ied]” to “any restitution \* \* \* still owed.”

The district court granted the government’s motion. App., infra, 1a-7a. The court concluded that the government had a valid

lien on petitioner's property and that the lien could be enforced by directing the BOP to turn over funds from petitioner's inmate trust account. Id. at 5a-6a. The court ordered BOP to turn over up to \$17,817.83, leaving \$400 in petitioner's inmate trust account. Id. at 7a.

4. The court of appeals affirmed. Pet. App. 3a-10a. The court found no "abuse of discretion" in the district court's decision because 18 U.S.C. 3613 authorizes enforcement of a restitution order "'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,'" and further authorizes enforcement "'by all other available and reasonable means,'" which "could [be] reasonably read \* \* \* to include a court order." Pet. App. 8a. (brackets and citation omitted). The court of appeals also agreed with the district court that the government had an enforceable lien on petitioner's property, and rejected petitioner's argument that the lien automatically expired 20 years after his judgment of conviction. Id. at 6a-8a. Under Section 3613(c), the court of appeals explained, a lien "'continues for 20 years or until the liability is \* \* \* terminated under subsection (b)'," and under Section 3613(b), petitioner's liability "terminate[s] on the date that is the later of 20 years from the entry of judgment or 20 years after [petitioner's] release from imprisonment." Id. at 6a (emphases added; citations omitted).

## ARGUMENT

Petitioner renews his contention (Pet. 15-20) that the district court lacked authority to issue an order permitting the BOP to turn over funds from his inmate trust account to be paid as restitution. Petitioner also asserts (Pet. 20-25) that the government's lien on his property expired under 18 U.S.C. 3613(c). The court of appeals correctly rejected those arguments, and petitioner identifies no decision of this Court or another court of appeals that has reached a contrary conclusion. In addition, this case would not be a suitable vehicle for considering the questions presented because neither question, standing alone, is outcome-determinative. Further review is unwarranted.

1. Petitioner contends (Pet. 11, 15-20) that the district court lacked "identifiable statutor[y] authority" to authorize the BOP to turn over funds from petitioner's inmate trust account to the clerk of the district court to be paid to petitioner's victims as restitution. That is incorrect.

Congress authorized the United States to enforce a restitution obligation "in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law." 18 U.S.C. 3613(a); see 18 U.S.C. 3613(f), 3664(m) (1) (a). The principal practices and procedures for enforcing civil judgments under federal law are set forth in the Federal Debt Collection Procedures Act of 1990, 28 U.S.C. 3001 et seq. Among other things, they include "writs pursuant to [the All Writs Act, 28

U.S.C. 1651]," 28 U.S.C. 3202(a), and, if the "judgment debtor \*\*\* is diverting or concealing substantial earnings from any source," orders requiring "installment payments," 28 U.S.C. 3204(a)(2). The government likewise has authority to seek the seizure of an incarcerated debtor's funds to satisfy a restitution obligation when the debtor has "receive[d] substantial resources from any source." 18 U.S.C. 3664(n). A lien on a defendant's property provides an additional basis for enforcement because it operates "as if" it were "a liability for a tax assessed under the Internal Revenue Code of 1986," 18 U.S.C. 3613(c), which means that it may be "collected by levy or by a proceeding in court," 26 U.S.C. 6502(a). And as the court of appeals recognized, Congress further authorized the United States to enforce a restitution order "by all other available and reasonable means." 18 U.S.C. 3664(m)(1)(A)(ii); see Pet. App. 7a-8a.

The district court's order comfortably fits within those various authorities. Petitioner does not contest that Section 3664(m)(1)(A)(ii) "authorizes district courts to grant injunctive relief" to aid enforcement of a restitution obligation "because such injunctions are permitted under the 'All Writs Act.'" Pet. 18-19 (citation omitted). Nor does petitioner dispute (Pet. 15, 18) that a court order is an appropriate means to collect an assessed tax. 26 U.S.C. 6502(a); see 18 U.S.C. 3613(c). Given the court of appeals' conclusion that the United States has a valid lien on petitioner's property, the district court properly issued

the challenged order under its authority to enforce a restitution obligation "by all other available and reasonable means." Pet. App. 8a (citation omitted).

The decision below does not conflict with any decision of this Court or another court of appeals. Rather than identify any division of authority, petitioner cites (Pet. 17-19) decisions confirming the many statutory grounds permitting a district court to enforce a restitution obligation through a turnover order.<sup>2</sup> The Eighth Circuit's decisions in United States v. Kidd, 23 F.4th 781 (2022), and United States v. Robinson, 44 F.4th 758 (2022), do not hold otherwise. In Kidd, the court of appeals elected to "consider only the restitution enforcement procedures the government invoked" during litigation -- there, 18 U.S.C. 3664 -- and declined to decide sua sponte whether additional sources of authority could have justified the order at issue in that case. 23 F.4th at 784 & n.2. Similarly, Robinson declined to "address on th[e] record"

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<sup>2</sup> See United States v. Saemisch, 70 F.4th 1, 6-8 (1st Cir. 2023) (affirming order under 18 U.S.C. 3664(m)(1)(A)(ii) and n)); United States v. Bengis, 611 Fed. Appx. 5, 7 (2d Cir. 2015) (affirming order under 18 U.S.C. 3664(m)(1)(A)(ii) and the All Writs Act); United States v. Yielding, 657 F.3d 722, 726-727 (8th Cir. 2011) (similar); see also United States v. Hayes, No. 23-3252, 2023 WL 10553977, \*1-\*2 (6th Cir. Nov. 13, 2023) (affirming order under 18 U.S.C. 3664(m)(1)(A)(ii) and the Treasury Offset Program under 31 U.S.C. 3716); Stacy v. United States, 70 F.4th 369, 373, 378 (7th Cir. 2023) (similar); United States v. Kaczynski, 551 F.3d 1120, 1130 (9th Cir. 2009) (affirming order under 18 U.S.C. 3664(m)(1)(A)(ii) and California law); United States v. Connolly, No. 22-12922, 2023 WL 2498086, at \*1-\*2 (11th Cir. Mar. 14, 2023) (per curiam) (affirming order under 18 U.S.C. 3613(a), (c), and (f), and 3664(k) (m)(1)(A), and (n)).

presented to it "what authority is available to a district court under [18 U.S.C. 3613]"; it thus remanded for, among other things, "additional findings of fact regarding the application of [Section] 3664(n)." 44 F.4th at 760-761. Neither Kidd nor Robinson has any bearing here because the government invoked adequate statutory and factual grounds supporting a turnover order, Gov't C.A. Br. 5-7, 22-25; D. Ct. Doc. 138, at 2-4, and because petitioner does not seek this Court's review on the case-specific application of the factual record to those cited statutory provisions.

Petitioner mischaracterizes the decision below as having granted the United States "carte blanche" to seize a restitution debtor's property "via court order when Congress has not authorized it." Pet. 10, 19 (some emphasis omitted); see Pet. ii (asserting that "no federal \* \* \* enforcement law authorizes such an order"). In actuality, the court of appeals found -- on the facts of this case and consistent with the decisions on which petitioner relies -- that the district court did not abuse its discretion in issuing a turnover order targeting the newly discovered resources in petitioner's inmate trust account, particularly given the lien on petitioner's property. See Pet. App. 5a-8a. Accordingly, petitioner's "policy concerns" regarding separation of powers, due process, and "unlimited authority" are not implicated here. Pet. 26, 28 (emphasis omitted).

2. The court of appeals correctly rejected petitioner's argument (Pet. 20-25) that, under 18 U.S.C. 3613(c), the lien on his

property expired 20 years after the judgment of conviction -- i.e., before the district court issued the challenged order. Petitioner does not identify, and the government has been unable to locate, any judicial decision that has adopted petitioner's interpretation of Section 3613(c) or that otherwise conflicts with the decision below. He accordingly presents no sound basis for this Court's review. See Sup. Ct. R. 10.

In enacting the MVRA, Congress expressly contemplated that a lien supporting an order of restitution could last longer than 20 years after the judgment. Section 3613(c) provides that a 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)." 18 U.S.C. 3613(c) (emphases added). Subsection (b) states 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." 18 U.S.C. 3613(b) (emphases added). Congress's use of the disjunctive "or" therefore establishes various conditions for a lien's continuation, some of which will persist for more than 20 years from the judgment. See Loughrin v. United States, 573 U.S. 351, 357 (2014) (explaining that the "ordinary use" of the term "or" "is almost always disjunctive, that is, the words it connects are to be given separate meanings") (citation omitted).

Petitioner incorrectly asserts (Pet. 21-22) that a lien under Section 3613(c) must expire on the "earlier of" 20 years from the judgment or when the debt is no longer owed. The statute does not support petitioner's effort to insert the modifier "earlier" in Section 3613(c), and courts ordinarily "resist reading words or elements into a statute that do not appear on its face." Bates v. United States, 522 U.S. 23, 29 (1997). Petitioner also errs in contending (Pet. 20-21) that a lien under Section 3613(c) cannot be coterminous with liability under Section 3613(b) on the theory that those provisions are "two separate statutory subsections" with "distinct" meanings. In establishing a lien's duration in subsection (c), Congress explicitly incorporated "subsection (b)." 18 U.S.C. 3613(c).

Petitioner's remaining arguments (Pet. 21-25) lack merit. It is immaterial that Congress included the phrase "the later of 20 years" in Section 3613(b), but did not repeat that language in Section 3613(c), because Congress achieved that same end by providing that a lien would last for "20 years or until the liability is satisfied, remitted, set aside, or is terminated under subsection (b)." 18 U.S.C. 3613(c) (emphases added). Petitioner's reliance (Pet. 22-23) on legislative history is similarly misplaced. Legislative history cannot overcome the language that Congress enacted. See, e.g., Whitfield v. United States, 543 U.S. 209, 215 (2005) ("Because the meaning of [the statutory] text is plain and unambiguous, we need not accept petitioners' invitation to con-

sider the legislative history."). And petitioner's observation that Congress used distinct wording in some statutory provisions concerning other types of liens, see Pet. 22, does not change the plain meaning of 18 U.S.C. 3613(b) and (c).

Finally, petitioner's statutory interpretation suffers from additional significant flaws. Pet. App. 7a-8a. Section 3613(b) provides that "[i]n the event of" a restitution-debtor's death, the debtor's "estate will be held responsible for any unpaid balance of the restitution amount, and the lien provided in [Section 3613(c)] shall continue until the estate receives a written release of that liability." 18 U.S.C. 3613(b). Under petitioner's theory, "if the [debtor] dies," then his estate remains subject to the lien -- possibly for decades -- until it receives a written release. Pet. App. 7a-8a. "[B]ut if the debtor lives," then he will automatically be "released" from the lien after 20 years from entry of judgment. Id. at 8a. As the court of appeals observed, that would be "a nonsensical outcome." Id. at 7a. Although petitioner insists (Pet. 23-24) that the court misunderstood Section 3613(b), he does not dispute the consequence of adopting his novel position, and he offers no sound reason to embrace that counterintuitive result.

3. In all events, this case would be a poor vehicle for considering the questions presented because petitioner would have to prevail on both issues to be entitled to relief: The existence of a valid lien is one of several independent bases supporting the

district court's order in this case. See pp. 6, 8-11, supra. Accordingly, neither question is presented cleanly.

CONCLUSION

The petition for a writ of certiorari should be denied.  
Respectfully submitted.

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MAY 2025

APPENDIX

District court order granting motion for turnover  
(Dec. 21, 2022) ..... 1a

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA**

**CRIMINAL ACTION**

**VERSUS**

**NO. 99-238**

**SIDNEY JOSEPH**

**SECTION: "E"**

**ORDER AND REASONS**

Before the Court is a Motion for an Order Authorizing the Bureau of Prisons to Transfer Funds Held in the Defendant's Inmate Trust Account to the Court Clerk ("Motion" or "Motion for Turnover Order") by the United States of America ("Government").<sup>1</sup> Sidney Joseph ("Defendant") opposes the Motion.<sup>2</sup> The Government filed a reply.<sup>3</sup> For the reasons that follow, the Motion is **GRANTED**.

**BACKGROUND**

On September 13, 2001,<sup>4</sup> then-District Judge Edith Brown Clement sentenced Defendant to a total of 462 months incarceration based on Defendant's convictions for three counts of bank robbery in violation of 18 U.S.C. § 2113(a); one count of carjacking in violation of 18 U.S.C. § 2119; three counts of brandishing a firearm during and in relation to crimes of violence, to wit, bank robberies and carjacking, in violation of 18 U.S.C. § 924(c)(1)(A)(ii); for counts of felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); and one count of possession of a firearm with an obliterated serial number in violation of 26 U.S.C. §§ 5842, 5861(h), and 5871.<sup>5</sup> Judge Clement, in her

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<sup>1</sup> R. Doc. 138.

<sup>2</sup> R. Doc. 146.

<sup>3</sup> R. Doc. 147.

<sup>4</sup> R. Doc. 65.

<sup>5</sup> R. Doc. 67.

judgment, also ordered Defendant to pay an \$1,100 special assessment and restitution in the amount of \$24,025 to Liberty National Bank and Fidelity Homestead Association, collectively.<sup>6</sup>

To date, while incarcerated, Defendant has paid \$2,772.03 toward his restitution obligation and \$160.45 toward his special assessment.<sup>7</sup> Defendant participates in the Bureau of Prisons' Inmate Financial Responsibility Program ("IFRP"), which is designed to help federal inmates meet their financial obligations by creating a financial plan based on the individual's resources.<sup>8</sup> As part of his participation in the IFRP, Defendant has made regular payments toward his restitution for at least the last four years.<sup>9</sup> It appears Defendant has not made a payment toward his special assessment obligation since 2003.<sup>10</sup>

On September 23, 2022, the Government filed the instant Motion, requesting the Court "to enter an Order directing the Bureau of Prisons to turnover to the Clerk of Court \$18,217.83 of funds held in the [Defendant's] inmate trust account . . . as payment towards the criminal monetary penalties imposed in this case."<sup>11</sup> The Defendant has accumulated approximately \$18,217.83 in his inmate trust account maintained by the Bureau of Prisons.<sup>12</sup> Undisputedly, the funds in Defendant's inmate trust account constitute prison wages.

On September 26, 2022, the Court entered an order "direct[ing] the Office of the Federal Public Defender, Eastern District of Louisiana to appoint counsel to represent the

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<sup>6</sup> *Id.*

<sup>7</sup> R. Doc. 146 at p. 1; *see also* R. Doc. 138 at pp. 1-2.

<sup>8</sup> R. Doc. 146 at pp. 1-2.

<sup>9</sup> *Id.*

<sup>10</sup> *See* R. Doc. 143-1.

<sup>11</sup> R. Doc. 38 at p. 1. The Court refers to this as a turnover order.

<sup>12</sup> *Id.* at p. 2.

Defendant in connection with this matter.”<sup>13</sup> First Assistant Federal Public Defender Valerie Welz Jusselin enrolled as defense counsel on September 29, 2022. Through counsel, Defendant filed an opposition to the Government’s Motion.<sup>14</sup> The Government filed a reply in support of its Motion on November 14, 2022.<sup>15</sup>

### **LAW AND ANALYSIS**

A district court’s decision to issue a turnover order will “be reversed only if the court has acted in an unreasonable or arbitrary manner.”<sup>16</sup> Here, the Government bases its request for a turnover order authorizing the Bureau of Prisons to release \$18,217.83 in Defendant’s prison inmate trust account to the Clerk of Court on two distinct statutory vehicles: (1) 18 U.S.C. § 3613(c) and (2) 18 U.S.C. § 3664(n). Because the Court finds the Government’s Motion should be granted under 18 U.S.C. § 3613(c), the Court need not reach 18 U.S.C. § 3664(n).<sup>17</sup>

Title 18, United States Code, Section 3556 provides that a court, in imposing sentence, “shall order restitution in accordance with section 3663A, and may order restitution in accordance with section 3663.” Restitution is commonly ordered under the Victim and Witness Protection Act, 18 U.S.C. § 3663, or the Mandatory Victim Restitution Act (“MVRA”), 18 U.S.C. § 3663A. The MVRA, which Defendant is subject to, provides that “[a]n 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

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<sup>13</sup> R. Doc. 139.

<sup>14</sup> R. Doc. 146. The Defendant himself filed an opposition—not drafted by his appointed counsel. R. Doc. 143. The Court has considered both oppositions in rendering its decision.

<sup>15</sup> R. Doc. 147. No party requested a hearing.

<sup>16</sup> See *Santibanez v. Wier McMahon & Co.*, 105 F.3d 234, 239 (5th Cir. 1997) (applying an abuse of discretion standard of review).

<sup>17</sup> It appears unlikely 18 U.S.C. § 3664(n) would provide a pathway for the Government to collect Defendant’s prison wages in light of *United States v. Hughes*, 914 F.3d 947, 951 (5th Cir. 2019) (“We do not think the gradual accumulation of prison wages constitutes ‘substantial resources’ such that it fits within § 3664(n)’s ambit.”).

this title [18 U.S.C. § 3613]; or . . . by all other available and reasonable means.”<sup>18</sup> “The attorney general is required by the MRVA to enforce victim restitution orders ‘aggressively.’”<sup>19</sup>

Under § 3613, generally, the Government “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. [A] judgment imposing [restitution] may be enforced against all property or rights to property of the person fined,”<sup>20</sup> subject to certain statutory carveouts. As a result, when Judge Clement entered judgment in this case, a lien in favor of the Government sprung into existence and attached “to all property and rights to property of [the Defendant] as if the [restitution liability] of [the Defendant] were [a liability] for a tax assessed under the Internal Revenue Code of 1986.”<sup>21</sup>

Both the liability and the corresponding lien can be extinguished simply by the passage of time. In terms of the liability, § 3613(b) operates to extinguish “[t]he liability . . . the later of 20 years from the entry of judgment or 20 years after the [Defendant’s] release from imprisonment.”<sup>22</sup> Section 3613(c) provides that “[t]he lien arises on the entry of judgment and continues for 20 years or until the liability is satisfied, remitted, set aside, or terminated under subsection (b).”

Relying on § 3613(c), the government argues, because, “upon entry of judgment, a

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<sup>18</sup> 18 U.S.C. § 3664(m)(1)(A).

<sup>19</sup> See *U.S. v. Ekong*, 518 F.3d 285, 286 (5th Cir. 2007) (quoting *United States v. Phillips*, 303 F.3d 548, 551 (5th Cir. 2002)). *Ekong* confirms that restitution in this case is immediately collectable. To the extent there is an installment plan in Judge Clement’s judgment, it only takes effect post-incarceration, meaning it is not yet “triggered.” See *United States v. Hughes*, 914 F.3d 947, 950 (5th Cir. 2019).

<sup>20</sup> “[A]ll provisions of . . . section [3613] are available to the United States for the enforcement of an order of restitution.” 18 U.S.C. § 3613(f).

<sup>21</sup> 18 U.S.C. § 3613(c).

<sup>22</sup> The liability also will extinguish upon the death of the obligor.

lien arose against all of the defendant's property and rights to property, including the defendant's interest in funds held by the BOP in his inmate trust account,"<sup>23</sup> the Court should grant its Motion.<sup>24</sup> Defendant, conversely, argues the Government's restitution lien has expired because the judgment was entered September 17, 2001, and the Government did not file its motion until September 2022. In a footnote, Defendant posits "[t]hough not explicitly stated in § 3613(c), the lien expiration date must be the earlier of 20 years or the date that the liability is satisfied, remitted, set aside, or terminated. To read the statute otherwise would make the 20-year provision superfluous."<sup>25</sup> As such, Defendant argues, the lien no longer exists because it has been over twenty years since judgement was entered.<sup>26</sup>

While the Fifth Circuit has not explicitly interpreted when a restitution lien imposed under § 3613(c) expires,<sup>27</sup> a court within this circuit, relying on the reasoning of the U.S. Court of Appeals for the Eleventh Circuit,<sup>28</sup> has. In *United States v. Mann*, the U.S. District Court for the Western District of Texas found "a lien imposed under § 3613(c) continues for twenty years from the later of the entry of judgment or release from imprisonment of the person fined."<sup>29</sup> To reach that result, the *Mann* court reasoned:

Section 3613(c) establishes that an order of restitution is a lien in favor of the United States, which exists from the entry of judgment and continues for twenty

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<sup>23</sup> R. Doc. 138 at p. 2.

<sup>24</sup> *Id.* at p. 4.

<sup>25</sup> R. Doc. 146 at p. 3 n.1.

<sup>26</sup> *Id.* at p. 3.

<sup>27</sup> The Third Circuit also recently recognized, though in passing, that "under the MVRA, a restitution lien never becomes unenforceable, and a defendant's liability to pay expires not twenty years after entry of the defendant's judgment, but twenty years after the defendant's release from imprisonment." *See United States v. Norwood*, 49 F.4th 189, 197 (3d Cir. 2022).

<sup>28</sup> *United States v. Pickett*, 505 F. App'x 838, 831 (11th Cir. 2013) ("The lien becomes unenforceable 20 years from the entry of the judgment or 20 years after the release from imprisonment of the person, whichever is later, or upon the death of the person.").

<sup>29</sup> *United States v. Mann*, CR92-129, R. Doc. 67 at p. 4 (W.D. TX 12/22/2016) (Parks, J.).

years or until liability is satisfied, remitted, set aside, or terminated under subsection(b). Subsection (b) terminates a [liability] upon death of the individual . . . or following the later of twenty years from the entry of judgment or twenty years after the release from imprisonment of the person fined, whichever is later. Consequently, taken together, subsections (b) and (c) indicate a restitution lien arises upon entry of judgment and continues for twenty years from the entry of judgment or twenty years from the release from imprisonment of the person, whichever is later, until liability is satisfied, remitted, set aside, or upon the death of the person fined.<sup>30</sup>

Applying the reasoning of *Mann* to the case at bar, the Court finds the Government's restitution lien over the Defendant's property has not expired.<sup>31</sup> The Government's lien under § 3613(c) continues for twenty years from the later of the entry of judgment or Defendant's release from imprisonment. Additionally, the property at issue is cash derived from prison wages, meaning it does not fall within any of the applicable categories of exempt property under § 3613(a) that a defendant may claim.<sup>32</sup> The Government has established it has a restitution lien over Defendant's inmate trust account, pursuant to 18 U.S.C. § 3613. The Government seeks to enforce its lien by way of a turnover order. “[W]hen the property is within the Government's control, like it is here with respect to Defendant's inmate trust account, . . . the Government [may] seek a turnover order from the Court that issued the restitution order.”<sup>33</sup> As such, the Government is entitled to the relief it requests.<sup>34</sup> The Court will grant the Government's

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<sup>30</sup> *Id.*

<sup>31</sup> This is by operation of the restitution liability owed by Defendant. The Defendant's \$1,100 special assessment obligation has been extinguished by the passage of time under 18 U.S.C. § 3613(c), which provides “[t]he obligation to pay an assessment ceases five years after the date of judgment.”

<sup>32</sup> See 18 U.S.C. § 3613(a); *United States v. Rand*, 924 F.3d 140, 144 (5th Cir. 2019) (“This court therefore has no basis for shielding the wages and deposition that make up [Defendant's] commissary account from a properly submitted turnover order.”).

<sup>33</sup> *United States v. Curry*, 2017 WL 10457419 (S.D. Ind. 8/11/2017); see *United States of Am. v. Kimoto*, 2016 WL 3031058, at \*1 (S.D. Ill. May 27, 2016) (citing *United States v. Hester*, 2016 WL 1007335, at \*2 (S.D. Cal. Mar. 14, 2016); *United States v. Gibbs*, 2015 WL 5895461, at \*1 (S.D. Ill. Oct. 8, 2015)).

<sup>34</sup> To the extent Defendant seeks modification of his payment schedule as part of the voluntary Inmate Financial Responsibility Program (“IFRP”) administered by the Bureau of Prisons, the Fifth Circuit instructs that defendants “can challenge the IFRP plan only in a petition under 28 U.S.C. § 2241 after exhausting administrative remedies.” See *United States v. Guzman*, 560 F. App'x 426, 472 (5th Cir. 2014); see also *United States v. Guzman*, 781 Fed. Appx. 373 (5th Cir. 2019).

motion and order the funds be paid to the Clerk of Court, minus the sum of \$400.00, which shall remain in the Defendant's inmate trust account for prison expenses.<sup>35</sup>

**CONCLUSION**

**IT IS ORDERED** that the Motion for an Order Authorizing the Bureau of Prisons to Transfer Funds Held in the Defendant's Inmate Trust Account to the Court Clerk is **GRANTED**.

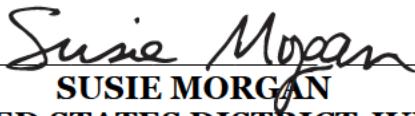
**IT IS FURTHER ORDERED** that the Bureau of Prisons is authorized to turn over to the possession of the Clerk of Court, U.S. District Court for the Eastern District of Louisiana, no more than \$17,817.83 of funds held in Defendant's inmate trust account in payment for the restitution imposed in this case. The U.S. Treasury check shall be made payable to the Clerk, U.S. District Court, and forwarded to:

Clerk, United States District Court  
Eastern District of Louisiana  
ATTN: Financial Unit  
500 Poydras Street  
New Orleans, Louisiana, 70130

The Clerk shall apply these funds as payment towards the restitution owed by Defendant in this case.

**IT IS FURTHER ORDERED** that a minimum of \$400.00 must remain in Defendant's inmate trust account.

**New Orleans, Louisiana, this 21st day of December, 2022.**

  
\_\_\_\_\_  
**SUSIE MORGAN**  
**UNITED STATES DISTRICT JUDGE**

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<sup>35</sup> District courts have discretion to control the payment of restitution. Many courts, faced with motions identical to the Government's here, exercise that discretion to leave incarcerated defendants funds to purchase necessities through the commissary. See, e.g., *United States v. Hinton*, Crim. A. 14-256, R. Doc. 496 (4/20/2021 E.D. Mis.); *United States v. Lanham*, Crim. A. 20-152, R. Doc. 45 (D. Neb. 8/1/2022). The Court exercises its discretion to do the same here.