No. 24–6405

IN THE
Supreme Court of the United States

SIDNEY JOSEPH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF FOR PETITIONER

CLAUDE J. KELLY
FEDERAL PUBLIC DEFENDER, EASTERN DISTRICT OF LOUISIANA
SAMANTHA J. KUHN
STEVEN E. SPIRES
500 Poydras St., Ste. 318
Hale Boggs Federal Bldg.
New Orleans, LA 70130

ANDREW KIM
Counsel of Record
MARIE T. EDOUARD
GOODWIN PROCTER LLP
1900 N Street, NW
Washington, DC 20036
(202) 346-4000
andrewkim@goodwinlaw.com

JESSE LEMPEL
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210

June 10, 2025

Counsel for Petitioner

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

INTRODUCTION

The government sought more than $17,000 from petitioner's inmate trust account—almost everything he had—to put toward a restitution obligation more than 20 years old. Under the Mandatory Victim Restitution Act (MVRA), the government could only do so by following "the practices and procedures for the enforcement of a civil judgment under Federal law or State law," 18 U.S.C. § 3613(a); *id.* § 3664(m)(1)(A)(i), or "by all other available and reasonable means," *id.* § 3664(m)(1)(A)(ii).

The government can usually rely on one of several statutory "means" to seize funds for restitution, but the usual "means" weren't available here because they would have required the government to show that there was a danger of the funds disappearing (there wasn't), 28 U.S.C. § 1651; that petitioner was hiding the funds (he wasn't), 28 U.S.C. § 3204(a)(2); or that petitioner got a windfall from an outside source (he didn't), 18 U.S.C. § 3664(n). So, the government argued that the very statutes directing the use of certain "practices and procedures," or "all *other* available and reasonable means," provided independent authority to order the turnover of petitioner's funds.

The Fifth Circuit agreed, putting it at odds with seven other circuits, which have looked beyond those statutes to find restitution-enforcement authority. Two circuits have even invoked the All Writs Act—a statute of last resort—which necessarily means that those circuits do not think § 3613(a) and § 3664(m)(1)(A)(ii) confer such authority.

The government posits there is no circuit split, arguing that the majority has merely held other statutes beyond the two at issue here can authorize turnover. Yet no other circuit has even *hinted* that § 3613(a) and § 3664(m)(1)(A)(ii) confer standalone authority to collect restitution. With good reason: if these two statutes were enough, the government would *always* have statutory authority to enforce a restitution order as to any and all property.

In directing courts to apply "all *other* available and reasonable means," 18 U.S.C. § 3664(m)(1)(A)(ii) (emphasis added), Congress plainly intended for the requirements and protections of other statutes to provide at least a modest amount of procedural due process; it wanted courts to "indicate … statutory authority" and "make the required findings." *United States v. Carson*, 55 F.4th 1053, 1059 (6th Cir. 2022). The Fifth Circuit's construction of § 3613(a) and § 3664(m)(1)(A)(ii) allows the government to sidestep those requirements and strips restitution debtors of the due process provided through these other statutes. And because the cost of resisting the government's efforts will almost always exceed the amount of the funds being seized, the vast majority of debtors will fight *pro se* or give up entirely. Unless this Court takes up the first question now, the Fifth Circuit's deprivation of process will continue to recur—and in many cases, recur unchallenged.

The second question presented also calls out for this Court's review. Section 3613(c) states that the government's restitution lien "continues for 20 years or until the liability is satisfied, remitted, set aside, or is terminated under subsection (b)." The Fifth Circuit's decision to borrow from § 3613(b) and

extend the life of that lien to the *later of* 20 years or "20 years after the release from imprisonment of [the debtor]" would render § 3613(c)'s use of the phrase "continues for 20 years" surplusage. The court of appeals' problematic reading of § 3613(c) is likely to recur, as other courts have reached a similar atextual conclusion.

ARGUMENT

I. The circuits are divided on the first question presented: whether restitution enforcement orders require statutory authority other than sections 3613(a) and 3664(m)(1)(A)(ii).

1. The Fifth Circuit held that some combination of 18 U.S.C. § 3613(a) and § 3664(m)(1)(A) provides an independent source of authority to enforce an order of restitution. Pet. App. 8a.

In sharp contrast to that holding, at least seven circuits require a separate enforcement scheme outside of these two statutes in searching for "practices and procedures for the enforcement of a civil judgment," 18 U.S.C. § 3613(a), or "means" of enforcement that are "available," *id.* § 3664(m)(1)(A). In the First, Second, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits, courts must look for a "statutory source of authority" to order the turnover of funds, *United States v. Robinson*, 44 F.4th 758, 760-61 (8th Cir. 2022)—usually, a judgment-enforcement or other collection-specific statute, but never § 3613(a) or § 3664(m)(1)(A)(ii).[1] As the

[1] *United States v. Saemisch*, 70 F.4th 1, 7 (1st Cir. 2023) (section 3664(n)); *United States v. Haynes*, No. 23-3252, 2023 WL

Seventh Circuit has explained, § 3664(m)(1)(A) gives the government access to means of restitution enforcement that are "housed elsewhere in the Code." *Stacy v. United States*, 70 F.4th 369, 373 (7th Cir. 2023). None of these circuits has recognized that either § 3613(a), § 3664(m)(1)(A)(ii), or the two statutes combined confer authority to enforce a restitution order, independent of any other "means."

The circuit conflict is confirmed by the Second and Eighth Circuits' reliance on the All Writs Act, 28 U.S.C. § 1651(a), as a "means" of enforcing a restitution order where there is a risk that a debtor will otherwise abscond with or hide recoverable funds. *United States v. Yielding*, 657 F.3d 722, 727 (8th Cir. 2011); *United States v. Bengis*, 611 F. App'x 5, 7 (2d Cir. 2015). Had these circuits accepted the Fifth Circuit's view that § 3613(a) and § 3664(m)(1)(A)(ii) are independently sufficient, the All Writs Act would be out of bounds, as the Act may be used only for "writs that are not otherwise covered by statute." *Pa. Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985).

2. The government argues (at 10) there is no split, as the majority approach merely confirms "the many statutory grounds permitting a district court to enforce a restitution obligation through a turnover order." But the Fifth Circuit is the only court of

---

10553977, at *1 (6th Cir. Nov. 13, 2023) (administrative offset under 31 U.S.C. § 3716(a)); *Stacy v. United States*, 70 F.4th 369, 373-74 (7th Cir. 2023) (same); *United States v. Myers*, 136 F.4th 917, 926 (9th Cir. May 6, 2025) (sections 3664(n) and 3664(k)); *United States v. Connolly*, No. 22-12922, 2023 WL 2498086, at *2 (11th Cir. Mar. 14, 2023) (sections 3612(c), 3664(m)(1)(A), and 3664(n)); *United States v. Bengis*, 611 F. App'x 5, 7 (2d Cir. 2015) (All Writs Act).

appeals to recognize that § 3613(a) and § 3664(m)(1)(A)(ii) independently provide such a "statutory ground." No other circuit has followed that approach—and the Second and Eighth Circuits have implicitly rejected it by invoking the residual power of the All Writs Act. *See* p. 4, *supra*.

Rightly so: the Fifth Circuit's holding contradicts the plain language of § 3613(a) and § 3664(m)(1)(A)(ii). Section 3613(a) states that "[t]he United States may enforce … in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law." And § 3664(m)(1)(A)(ii) instructs, if not § 3613(a), a court may resort to "*other* available and reasonable means." The Fifth Circuit's decision turns both statutes on their heads: if these provisions confer an "available and reasonable means" of enforcing a restitution order, without some other "federal or state enforcement statute," Pet. App. 8a, district courts would have no need to search for a "statutory source of authority." *E.g.*, *Robinson*, 44 F.4th at 760-61. The mere invocation of § 3613(a) and § 3664(m)(1)(A)(ii) would be enough to enforce a restitution order and seize a debtor's funds, and there would be no need to "indicate what statutory authority" justifies a turnover or to "make the required findings," *see Carson*, 55 F.4th at 1059. The majority of circuits have plainly rejected that approach.

3. The MVRA directs the government to enforce an order of restitution either "in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law," or by "other available and reasonable means." But, in

cases like this one—where the government seeks to seize inmate funds, which it can readily access—the government has argued to district courts that it need not follow the "practices and procedures for the enforcement of a civil judgment," or search for "other available and reasonable means," as § 3613(a) and § 3664(m)(1)(A)(ii) authorize enforcement by themselves. *E.g.*, U.S. Mot. to Authorize Payment from Inmate Tr. Account at 3, ECF No. 182, *United States v. Erker*, No. 20-cr-478 (N.D. Ohio Mar. 29, 2024) ("The United States is not required to rely upon other formal collection remedies….").

Some courts have resisted the government's invitation to abandon the search for "other formal collection remedies." These courts have instead tasked the government with showing that the requirements of some enforcement statute *other than* § 3613(a) or § 3664(m)(1)(A)(ii) have been satisfied. *E.g.*, Order at 4-6, ECF No. 186, *United States v. Erker*, No. 20-cr-478 (N.D. Ohio May 1, 2024) (the government failed to show funds were "substantial" to obtain turnover under § 3664(n)).

But many have not. If they offer any reasoning at all for ordering turnover, these courts have either accepted the government's premise that they are relieved of the need to "rely upon other formal collection remedies,"[2] or they, like the Fifth Circuit, have accepted the government's *ipse dixit* that § 3613(a) and § 3664(m)(1)(A), separately or in concert, provide a standalone mechanism for

---

[2] *E.g.*, Order at 4-5, ECF No. 69, *United States v. Williams*, No. 08-cr-30089 (C.D. Ill. Mar. 21, 2025); Order, ECF No. 131, *United States v. Linot*, No. 3:16-cr-18-BJD-PDB (M.D. Fla. Nov. 7, 2024).

enforcing a restitution order.[3] The resulting turnover orders are almost never appealed—if they are even contested in the first place—because the cost of the fight almost always well exceeds the amounts at stake. If a debtor chooses to fight a turnover request at all, it is usually *pro se*.

Congress's directive for courts to use "*other* available and reasonable means" provides some semblance of procedural due process before a debtor's funds are taken away from him. *E.g.*, 15 U.S.C. § 1673 (limitations on wage garnishment); *United States v. Kidd*, 23 F.4th 781, 784 n.2 (8th Cir. 2022) (noting that the government did not seek a tax lien "perhaps because it knew that a claim for garnishment or a lien turnover order would be subject to Consumer Credit Protection Act limitations on the garnishment of 'earnings'"); *Carson*, 55 F.4th at 1059 (court's authority under § 3613(a) "has two limits," which may be required by "the constitutional guarantee of due process"). And in the mine run of restitution-collection efforts, the government will have several options for statutory "means," so long as it can meet the requirements for those "means." *See* pp. 8-10, *infra* (discussing several such "means," and why they don't apply here). But not every effort at seizing funds for restitution can be paired with statutory authority. And the MVRA does not justify the Fifth Circuit's decision to fashion such authority from whole cloth,

---

[3] *E.g.*, Order for Payment of Restitution, ECF No. 131, *United States v. Carpentino*, No. 17-cr-157-PB-1 (D.N.H. May 3, 2024); Order on Motion for Turnover Order, ECF No. 185, *United States v. Sanders*, 1:19-cr-147-JRS-MJD-2 (S.D. Ind. Nov. 16, 2023).

simply because doing so would nominally serve the MVRA's ultimate aims by making the collection of restitution easier. *See Dolan v. United States*, 560 U.S. 605, 625 (2010) (Roberts, C.J., dissenting) (as to the MVRA, "it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law" (citation omitted)).

II. This case is an excellent vehicle for deciding the first question presented, as turnover cannot be justified on alternative grounds.

The government offers five scattershot reasons why the district court *could have* ordered turnover by invoking "various authorities." *See* BIO 8-9, 14-15. None undermines certworthiness: four of the "authorities" do not apply here, and the fifth involves the first question presented.

First, the All Writs Act. Even assuming that the Act, in the abstract, provides an appropriate "means" of enforcing a restitution order, it is not appropriate here. The Act might apply where a debtor "tak[es] steps to evade enforcement of the district court's restitution order." *Bengis*, 611 F. App'x at 7; *accord United States v. Catoggio*, 698 F.3d 64, 68-69 (2d Cir. 2012). There is no evidence of evasion here; petitioner had a track record of consistently making restitution payments. C.A. ROA.577.

Second, the assessed-tax collection statute, 26 U.S.C. § 6502(a), which may be used to collect on a lien created under 18 U.S.C. § 3613(c). The government never invoked § 6502(a) in asking for a turnover order below. Nor could it: collection is possible

"only if the levy is made or the proceeding begun … within 10 years after the assessment of the tax." 26 U.S.C. § 6502(a)(1). Assuming the lien is an "assessment," the government's enforcement efforts came a decade too late.

Third, the Federal Debt Collection Practices Act, 28 U.S.C. § 3001 *et seq.*, which provides federal "practices and procedures for the enforcement of a civil judgment." *United States v. Phillips*, 303 F.3d 548, 551 (5th Cir. 2002). Here, for the first time, the government points to 28 U.S.C. § 3204(a)(2), which allows a court to order installment payments if the judgment debtor "is diverting or concealing substantial earnings from any source." That statute does not apply because the order on review is a lump-sum turnover, not an installment payment, and there is no evidence that petitioner diverted or concealed any funds.

Fourth, the MVRA's "substantial resources" provision, 18 U.S.C. § 3664(n). The government never persuaded the courts below to justify turnover on this basis. That is no surprise, as petitioner's funds were not from a "single" windfall "from outside sources." *See Kidd*, 23 F.4th at 787. Most of petitioner's funds came from wages that he earned over time. C.A. ROA.586-87.

That leaves the final "authority" for turnover: the district court's purported "authority to enforce a restitution obligation 'by all other available and reasonable means.'" BIO 10. The Fifth Circuit's recognition of such "authority" places it out of step with seven other circuits. That "authority" is the only possible justification for the district court's turnover order; thus, if this Court were to resolve the split by

adopting the majority approach and the "authority" were no longer available, petitioner would obtain meaningful relief—even if this Court were to reach only the first question presented. While the government contends (at 14-15) that this Court must consider both questions to grant petitioner relief, that is not true; without a statutory "means" of enforcement, the government cannot collect on an expired lien more than 20 years old—even if it is right that the lien is somehow still valid.

III. The second question presented is important and warrants this Court's review.

"[A]n order of restitution … is a lien in favor of the United States," and "[t]he lien … 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). Although more than 20 years had passed since the district court ordered restitution (thereby creating a lien in the government's favor on petitioner's assets), the Fifth Circuit nevertheless concluded that the lien lived on, as "[t]he *liability* to pay restitution" does not terminate by statute until "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); Pet. App. 7a-8a.

On the merits, the government defends (at 12) the Fifth Circuit's decision on its terms. It argues that § 3613(c)'s use of the phrase "under subsection (b)" suggests Congress intended to incorporate § 3613(b)'s "the later of 20 years" language, so that a lien runs for *either* 20 years, or 20 years after the

restitution debtor is released from prison, whichever is later.

But the government's reading of § 3613(c) would render the phrase "continues for 20 years" unnecessary. Pet. 21-22. By contrast, petitioner's construction—under which a lien is extinguished if liability *terminates first*—"leaves no part of the statute ignored or left without work to do." *Feliciano v. Dep't of Transp.*, 145 S. Ct. 1284, 1294 (2025). (And petitioner's reading would still give effect to § 3613(b)'s liability provisions, as the *victim* can always seek an abstract of judgment while liability is "live," 18 U.S.C. § 3664(m)(1)(B).) Not every reading of the MVRA needs to serve "the statute's primary objective," especially if that reading attempts to "trump the clear statutory text." *Dolan*, 560 U.S. at 625 (Roberts, C.J., dissenting).

The government, like the Fifth Circuit, asserts that petitioner's reading of § 3613(c) creates a "nonsensical outcome," one where a lien might last longer in the restitution debtor's death than in the debtor's life. BIO 14; Pet. App. 7a-8a. That outcome is hardly "nonsensical." Probate can last years, and a restitution lien may expire during that time—even if the government seeks to enforce the lien before the 20-year period is up. *Cf. United States v. Norwood*, 49 F.4th 189, 214 (3d Cir. 2022) (under the MVRA's predecessor, a lien is unenforceable after 20 years "whether or not the Government has commenced collection"). Congress simply did not want the government to lose its ability to seek restitution because a lien was tied up in a labyrinthine state probate process.

The court of appeals' holding on the second question presented is the latest recurrence of a court extending the life of a restitution lien favoring the government with a brisk, atextual statutory analysis. *E.g.*, *Norwood*, 49 F.4th at 197. Congress did not write in the MVRA that "a restitution lien never becomes unenforceable," *id.*; rather, it expressly kept the 20-year clock on liens. Absent this Court's intervention, the Fifth Circuit's error will only recur, especially as more liens created after the MVRA's April 24, 1996 effective date continue to mature past their 20-year mark. *See* Pub. L. No. 104-132, 110 Stat. 1214.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

CLAUDE J. KELLY
FEDERAL PUBLIC DEFENDER, EASTERN DISTRICT OF LOUISIANA
SAMANTHA J. KUHN
STEVEN E. SPIRES
500 Poydras St., Ste. 318
Hale Boggs Federal Bldg.
New Orleans, LA 70130

ANDREW KIM
Counsel of Record
MARIE T. EDOUARD
GOODWIN PROCTER LLP
1900 N Street, NW
Washington, DC 20036
(202) 346-4000
andrewkim@goodwinlaw.com

JESSE LEMPEL
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210

June 10, 2025

Counsel for Petitioner