NO. 24-571

In the
Supreme Court of the United States

ELIZABETH PETERS YOUNG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Ms. Young's petition explains why the decision below conflicts with this Court's holding in *Honeycutt v. United States*, 581 U.S. 443 (2017), defies basic principles animating forfeiture law, exacerbates a circuit split on the proper scope of the application of *Honeycutt*, and presents a question of exceptional importance that warrants this Court's review. In its opposition, the government posits that *Honeycutt*'s bar on joint and several liability simply does not apply to "high-level members" of a conspiracy like Ms. Young. But that distinction has no basis in either the underlying forfeiture statute or this Court's decision in *Honeycutt*. Nothing in the statute or in *Honeycutt* suggests that the application of joint and several liability depends on the role the defendant played in the conspiracy.

The government also attempts to downplay the conflict among the circuits as mere "tension," even though the Eleventh Circuit acknowledged a split with the Ninth Circuit. The truth is that Ms. Young would not be liable for the $338,255 that her co-conspirator received if she had been convicted of the underlying federal offense in California as opposed to Florida.

Along the same lines, the government tries to downplay the gravity of the question presented by noting that it has now agreed not to take away Ms. Young's family home. But that is small consolation. Ms. Young is still liable for a substantial amount of money that went into her co-conspirator's pocket, and she—like others in her predicament—endured great hardship when the government's actions threated her family with homelessness for

several years. This Court's review is warranted and needed.

I. The government misconstrues *Honeycutt*'s prohibition on joint and several liability as a one-way street.

In *Honeycutt*, the Court held that "[f]orfeiture . . . is limited to property the defendant himself actually acquired as the result of the crime." 581 U.S. at 454. Applying this rule, the Court held that although Terry Honeycutt physically exercised dominion and control over the cash proceeds of the conspiracy of which he was convicted, he could not be ordered to forfeit those proceeds because he did not actually "acquire[]" them—meaning, he did not "personally benefit" from them. *Id.* at 454. The Court determined that the forfeiture statute did not authorize the imposition of joint and several liability on Mr. Honeycutt for the profits of those sales that ended up in the hands of his co-conspirator.

Properly understood, *Honeycutt* bars the imposition of joint and several liability on Ms. Young for the $338,255 in proceeds that ended up in the hands of her co-conspirator Mitchell, because she did not "personally acquire" those proceeds. Ms. Young may have briefly and temporarily "controlled" the proceeds and distributed them to a co-conspirator according to the terms of the conspiracy. But she did not "actually acquire" the proceeds that she directed to Mitchell, as she did not keep those proceeds as her own or otherwise "personally benefit" from them. *See* Merriam Webster Dictionary (2025), https://www.merriam-webster.com/dictionary/acquire (defining "acquire" as "to get as one's own").

The government does not dispute that the central holding of *Honeycutt*—that a court may not impose joint and several liability for proceeds that a defendant does not actually, personally acquire—extends to the applicable forfeiture statute in this case, 18 U.S.C. § 982(a)(7). But the government reads *Honeycutt*'s holding as a one-way street. In the government's view, the prohibition on joint and several liability does not apply to someone like Ms. Young because she temporarily "'controlled'" those proceeds and "distributed them in her capacity as a high-level member of the conspiracy." BIO 9 (quoting App.41). This argument fails for several reasons.

To begin with, as the government itself recognizes, Mitchell received more than $200,000 *directly from the pharmacy*. BIO 3. Ms. Young did not exercise *any* control over that amount. And even as to the amount that briefly flowed through Ms. Young, she did not *actually acquire* that amount. There is no dispute that 20% of the money sent by Drugs4Less was always destined for Mitchell, according to the terms of their conspiracy. App.37. At best, Ms. Young exercised temporary custody of the 20% of profits she had already agreed to pay him. But in that respect, she is no different from Terry Honeycutt or the hypothetical college student, each of whom temporarily "controlled" proceeds and "distributed" them to co-conspirators in furtherance of the conspiracy. Yet this Court held that neither Mr. Honeycutt nor the hypothetical student could be ordered to forfeit those passed-along proceeds. The pertinent question, the Court held, is *not* whether the defendant at any point exercises control over the proceeds before distributing them to a co-conspirator.

Rather, it is whether the defendant "*actually acquire[s]*" the proceeds. 581 U.S. at 454 (emphasis added).

Perhaps realizing as much, the government tries to distinguish Ms. Young from Mr. Honeycutt by pointing to her lead role in the conspiracy. But the government's contrived distinction between a "high-level member" of a conspiracy, on the one hand, and a rank-and-file conspiracy member, on the other, has no basis in *Honeycutt*. The government reads *Honeycutt* to suggest that imposing joint and several liability is permissible so long as it is imposed on the "mastermind" of the conspiracy. But *Honeycutt*'s statutory analysis did not turn on who came up with the idea for the conspiracy or who had a greater part in managing its execution. Nothing in the Court's decision suggested that its prohibition on joint and several liability turns on the role the defendant played in the conspiracy.

The Court's hypothetical marijuana conspiracy shows that the government's proposed distinction lacks merit. In *Honeycutt*, the Court considered a marijuana farmer who recruits a college student to make deliveries of marijuana on campus. The farmer pays the student a nominal salary, while the farmer keeps the profits from the sales. *Id.* at 448. The Court explained that the college student could not be held jointly and severally liable for those profits beyond the amount in income that the student "personally acquired." *Id.* In the government's view, however, the result would be different if the student, rather than the farmer, masterminded the conspiracy, recruited the farmer, and proposed the terms of the farmer's

compensation. Even if the student kept only $3,600 for himself and distributed the rest of the $3 million proceeds to the farmer, the government's approach compels the conclusion that, merely by virtue of being a "high-level" or "managing" member of the conspiracy, the student could be ordered to forfeit the remaining $2,996,400. *Honeycutt* does not countenance that result. Regardless of who came up with the idea for the scheme, or who was giving orders to whom, the student only kept $3,600, and that is the only amount he could be ordered to forfeit. Otherwise, the student would be improperly forced to forfeit untainted property, in violation of fundamental principles of forfeiture. *Id.* at 449.

The government argues that "[t]he engineer of a criminal enterprise who re-invests her proceeds in the conspiracy benefits as much—or more than—a criminal who spends the proceeds on unrelated items." BIO 8. But that argument does not survive *Honeycutt*. Both Honeycutt and the hypothetical college student "re-invested" in the conspiracy by passing along funds to their co-conspirators. But that did not justify imposing joint and several liability on those individuals for money that they did not actually retain.

In addition to contradicting precedent, the government's proposed distinction lacks any basis in the text of the forfeiture statute applicable in this case. Under 18 U.S.C. § 982(a)(7), the court may only "order the person to forfeit property . . . that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense." The government's proposed distinction between a "high-

level participant" and "low-level participant" is unmoored from that text, which does not draw any lines between senior and junior partners in crime.

Grasping for support for its extratextual argument, the government references a finding the district court made at sentencing—that Ms. Young was a "manager or supervisor" of the conspiracy. BIO 5, 11. But this conflates the sentencing guidelines with the forfeiture statute. The former allows the court to consider the role that the defendant played in a conspiracy; the latter does *not*. The government identifies no authority suggesting it is appropriate to graft rules or principles articulated in the sentencing guidelines onto a forfeiture statute. In drafting § 982(a)(7), Congress could have authorized the disparate treatment of "masterminds" and "low-level participants" for forfeiture purposes. It did not do so, and the Court should reject the government's attempt to import that distinction into the statute.

The government fails to defend the Eleventh Circuit's application of joint and several liability. Neither the governing statute nor this Court's decision in *Honeycutt* allows the imposition of joint and several liability simply because the defendant played a lead role in the conspiracy.

II. The circuit split is real, as the court below itself acknowledged.

The Eleventh Circuit's decision is not only wrong on the merits, but it also deepens a circuit split over the proper application of *Honeycutt*. In *United States v. Thompson*, the Ninth Circuit held that under *Honeycutt*, forfeiture judgments imposed on co-

conspirators "must be separate, for the approximate separate amounts that *came to rest* with each of them after the loot was divided." 990 F.3d 680, 692 (9th Cir. 2021) (emphasis added). There can be no doubt that $338,255 in proceeds "came to rest" with Mitchell, not with Ms. Young. Thus, had Ms. Young been prosecuted in California and not Florida, *Thompson* would squarely prohibit a forfeiture order holding Ms. Young liable for that amount.

The government dismisses this conflict as mere "tension," attempting to distinguish *Thompson* on the grounds that it did not involve "someone like petitioner, a manager or supervisor of criminal activity who used a portion of the proceeds to pay a subordinate for his role in the conspiracy and to keep the scheme running." BIO 11. Evidently, the Eleventh Circuit did not think *Thompson* distinguishable on that ground, as it acknowledged that the Ninth Circuit's approach was in direct conflict with the one it took. App.40. And the Eleventh Circuit had good reason to acknowledge that conflict, because nothing in *Thompson* supports the distinction the government attempts to draw. To the contrary, *Thompson* recognized that in many conspiracies, "physical control over the property change[s] from time to time," so a defendant cannot be held liable for property merely because they are a "stop[] on the way" to another co-conspirator. 990 F.3d at 691. Whether a defendant is a "stop on the way" does not depend on whether the defendant is a senior member or a junior member in the conspiracy. The controlling factor in *Thompson*, as in *Honeycutt*, was where the money ended up, or "came to rest," *not* the path it took to get there.

So too with the Fourth Circuit, another court that is in conflict with the Eleventh Circuit. Indeed, the Fourth Circuit has instructed district courts in the circuit to follow *Thompson*. In remanding a forfeiture order to the district court, the Fourth Circuit recently directed the lower court to include in the forfeiture award only "the portion of the conspiracy proceeds that actually 'came to rest' with [defendant] herself." *United States v. Limbaugh*, 2023 WL 119577, at *5 (4th Cir. Jan. 6, 2023) (citing *Thompson*, 990 F.3d at 691–92, and *United States v. Chittenden*, 896 F.3d 633, 650 (4th Cir. 2021)). These decisions are irreconcilable with the decisions of the First, Second, Sixth, and Eleventh Circuits. Pet. 17–19.

The government further asserts that the Ninth Circuit's decision in *United States v. Prasad*, 18 F.4th 313 (9th Cir. 2021), somehow mitigates the existence of a circuit split. Not so. In *Prasad*, the court determined that a defendant could be ordered to forfeit certain sums that the defendant paid to third parties—who were not charged as co-conspirators—over the course of a visa fraud scheme. The government in that case was not seeking to impose forfeiture liability on the defendant for proceeds that the defendant temporarily possessed but that came to rest with a co-conspirator—the common thread between *Honeycutt* and the present case. Thus, the court in *Prasad* simply did not have occasion to consider *Honeycutt*'s bar on joint and several liability for proceeds that a defendant's "co-conspirator derived from the crime but that the defendant himself did not acquire." 581 U.S. at 445.

As recognized by the Eleventh Circuit, there is a real circuit split as to whether, under *Honeycutt*, a defendant may be held jointly and severally liable for proceeds that she temporarily controlled but ultimately passed to a co-conspirator. The Court should grant review to resolve that split.

III. The Eleventh Circuit's imposition of forfeiture liability on proceeds lawfully obtained from private insurers also warrants review.

The Eleventh Circuit compounded its misapplication of *Honeycutt* with a separate error regarding the scope of forfeiture. Applying an expansive "but-for" test that finds no support in the text of the forfeiture statute or this Court's cases, the Eleventh Circuit determined that Ms. Young could be ordered to forfeit proceeds obtained from private insurers—notwithstanding that the receipt of those proceeds does not violate the Anti-Kickback Statute. As explained in the petition, and in the dissent authored by Judge Jordan, the decision below discarded the plain text of the AKS and effectively imposed criminal penalties on Ms. Young for lawful behavior. That manifest error independently warrants review.

The government does not—and cannot—contend that the statute of which Plaintiff was convicted, 42 U.S.C. § 1320a-7b, criminalizes payments in connection with private insurers. Instead, the government defends the majority's decision by invoking the Eleventh Circuit's "but for" test, which, according to the government, allows forfeiture orders to capture perfectly lawful payments. BIO 13–14. This

Court has never endorsed that expansive "but for" test. That test sweeps in *any* proceeds—regardless of whether they were lawfully obtained—that the defendant would not have received "in the absence of" the conspiracy. App.45 (quoting *United States v. Gladden*, 78 F.4th 1232, 1251 (11th Cir. 2023)). By applying that test to the AKS, the Eleventh Circuit imposed criminal penalties on Ms. Young's receipt of payments from private payors—activity that was lawful under the statute she was charged with violating.

To avoid this conclusion, the government dismisses critical textual differences distinguishing 18 U.S.C. § 1347, the statute at issue in the Eleventh Circuit's previous decisions applying the "but for" test, and 42 U.S.C. § 1320a-7b, the statute at issue in the present case. But those differences are not merely semantic—the former refers to "any health care benefit program," while the latter refers to "federal health care program[s]." The language of the underlying statute necessarily dictates what proceeds are subject to forfeiture—a penalty, as the government observes, intended to "separat[e] a criminal from his *ill-gotten* gains." *Honeycutt*, 581 U.S. at 447 (emphasis added) (quoting *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 629 (1989)). The government cannot jettison the clear text of the statute to seek forfeiture of lawfully obtained proceeds.

The Eleventh Circuit's approach would extend forfeiture to untainted property that has a minimal causal connection to wrongdoing. That distortion of

basic principles of forfeiture likewise warrants this Court's review.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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