No. 25-2

In the Supreme Court of the United States

DEON REESE, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the doctrine of coconspirator liability described in *Pinkerton* v. *United States*, 328 U.S. 640 (1946), should be overruled.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-5) is available at 2025 WL 314103. The order of the district court (Pet. App. 18-20) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 28, 2025. On April 21, 2025, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including May 28, 2025. On May 16, 2025, Justice Alito further extended the time to and including June 27, 2025, and the petition was filed on that date. 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 Western District of Pennsylvania, petitioner was convicted on one count of Hobbs Act robbery, in vi-

olation of 18 U.S.C. 1951; one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951; and one count of discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii). Pet. App. 46-47. The district court sentenced petitioner to 271 months of imprisonment to be followed by five years of supervised release. *Id.* at 2. The court also revoked his supervised release on a prior conviction and imposed a term of 24 months of imprisonment, consecutive to the term for his convictions. *Id.* at 2-3. The court of appeals affirmed. *Id.* at 1-5.

1. In March 2017, petitioner and two coconspirators orchestrated a violent home invasion robbery of a Pittsburgh drug dealer. See Pet. App. 6-8. Petitioner received text messages from a female coconspirator who was with the dealer and claimed to have seen where he stored his cocaine and cash. C.A. App. 471, 479-480, 535-540, 650; C.A. Supp. App. 4-5. The woman told petitioner that she "need[ed] help wit[h] this lick," *i.e.*, a robbery. C.A. Supp. App. 5; see C.A. App. 412. Petitioner asked for details, like whether the dealer was armed, and later replied that he was "herre" [sic] and "in back." C.A. Supp. App. 3; see *ibid.* (telling another correspondent that he was "bout to hit a lick").

Wearing masks, petitioner and another robber entered the dealer's apartment, held him at gunpoint, and ordered the female informant to leave. C.A. App. 482-484. The robbers took the dealer's cocaine and demanded more drugs. *Id.* at 484-485. After the dealer questioned whether the gun was real, one robber—who, like petitioner, had hand tattoos and a lazy eye—shot the dealer at least three times in the chest. *Id.* at 485-487, 493-494, 513-515, 521. The other robber smashed a plastic chair over the dealer, and the two men fled. *Id.*

at 486-487. As petitioner fled, he dropped his cellphone in the dealer's home. *Id.* at 491-492, 530, 535-540. The dealer staggered outside, was rushed to the hospital, and, after five surgeries, survived. *Id.* at 487-489.

State law enforcement investigated and charged petitioner. C.A. App. 644-645. Petitioner sought covertly to offer the dealer $1000 not to testify at trial and to persuade the woman who called him to the dealer's apartment to provide a false explanation of how his phone came to be there. *Id.* at 421, 671-676, 766-769; C.A. Supp. App. 20.

2. A grand jury in the Western District of Pennsylvania indicted petitioner on one count of Hobbs Act robbery, in violation of 18 U.S.C. 1951; one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951; one count of discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii); and one count of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). Pet. App. 6-10. The Commonwealth of Pennsylvania dismissed the state charges, and trial proceeded in petitioner's federal case. C.A. App. 76, 371.

Before trial, the government sought a jury instruction, in accord with this Court's decision in *Pinkerton* v. *United States*, 328 U.S. 640, 647-648 (1946), that permitted a conviction for discharging a firearm, in violation of Section 924(c)(1)(A)(iii), if either petitioner committed the offense or a coconspirator foreseeably committed the offense in furtherance of a conspiracy to which petitioner was a party. C.A. App. 71-72. Petitioner agreed that the instruction correctly stated the law but preserved an objection to *Pinkerton*. *Id.* at 73-74. The district court overruled the objection and gave the

Pinkerton instruction as to the Section 924(c)(1)(A)(iii) count. *Id.* at 574, 873-875.

During deliberations, the jury asked if petitioner could be found guilty of Hobbs Act robbery "[i]f a co-conspirator took the drugs." C.A. App. 1012. The government proposed instructing the jury that it could find petitioner guilty in that circumstance under either an aiding-and-abetting or a *Pinkerton* theory. *Id.* at 970, 983. The defense objected to an aiding-and-abetting instruction and asked to "rely on the current *Pinkerton* charge." *Id.* at 991. The district court adopted petitioner's proposal and instructed the jury that it could find petitioner guilty of Hobbs Act robbery under a *Pinkerton* theory. *Id.* at 991-992.

The jury found petitioner guilty on all counts except for the felon-in-possession count. C.A. App. 1005-1008. The district court sentenced him to 271 months' imprisonment to be followed by five years of supervised release and, after revoking a prior term of supervised release, ordered him to serve an additional 24 months of imprisonment consecutively. Pet. App. 2-3.

3. The court of appeals affirmed in an unpublished opinion. Pet. App. 1-5. Among other things, the court observed that binding precedent foreclosed petitioner's claim that the *Pinkerton* instructions violated his Fifth and Sixth Amendment rights. *Id.* at 5 n.2; see Pet. C.A. Br. 17-18, 60-61.

ARGUMENT

Petitioner contends (Pet. 15-27) that this Court's explication of coconspirator liability in *Pinkerton* v. *United States*, 328 U.S. 640 (1946), should be overruled. *Pinkerton* is correct on its own terms and entitled to significant respect as a matter of statutory *stare decisis*. This Court has repeatedly and recently declined to

revisit *Pinkerton*. See *Gomez* v. *United States*, 145 S. Ct. 190 (2024) (No. 23-7415); *LaForest* v. *United States*, 142 S. Ct. 2876 (2022) (No. 21-7093). The Court should follow the same course here, particularly given that the conspiracy and substantive statutes under which petitioner was convicted were enacted after *Pinkerton*.

1. In *Pinkerton*, Daniel Pinkerton and his brother were charged with a conspiracy to violate the tax laws and several substantive tax violations. 328 U.S. at 641. Although no evidence was introduced showing that Daniel Pinkerton participated directly in the substantive offenses, the district court instructed the jury that each defendant could be found guilty of the other's substantive offenses if the defendants were part of the same criminal conspiracy and those offenses occurred "in furtherance of the unlawful conspiracy or object of the unlawful conspiracy." *Id.* at 646 n.6; see *id.* at 645. The jury found Daniel Pinkerton guilty of both the conspiracy and some of the substantive offenses, and this Court affirmed. *Id.* at 641, 646.

The Court explained that "acts in furtherance of the conspiracy" are "attributable" to each conspirator "for the purpose of holding them responsible for the substantive offense." *Pinkerton*, 328 U.S. at 647. The Court noted that a "different case would arise if the substantive offense committed by one of the conspirators was not in fact done in furtherance of the conspiracy, did not fall within the scope of the unlawful project, or was merely a part of the ramifications of the plan which could not be reasonably foreseen as a necessary or natural consequence of the unlawful agreement." *Id.* at 647-648. But in *Pinkerton* itself, "there was evidence to show that these substantive offenses were in fact com-

mitted * * * in furtherance of the unlawful agreement or conspiracy existing between the brothers." *Id.* at 645.

In arriving at its holding, the Court highlighted the "settled" principle that "'an overt act of one partner may be the act of all without any new agreement specifically directed to that act.'" *Pinkerton*, 328 U.S. at 646-647 (quoting *United States* v. *Kissel*, 218 U.S. 601, 608 (1910)); see *id.* at 647 (reiterating the "principle" "recognized in the law of conspiracy" that "the overt act of one partner in crime is attributable to all"). The Court quoted from a then-decades-old decision in which Justice Holmes had made clear that "[a] conspiracy is a partnership in criminal purposes." *Kissel*, 218 U.S. at 608. And the common law—against which Congress presumptively legislates, see *Perttu* v. *Richards*, 605 U.S. 460, 468 (2025)—treated "every Partner" as "an agent of the Partnership" whose acts within the scope of the partnership bound his partners. Joseph Story, *Commentaries on the Law of Partnership* § 1, at 1 (5th ed. 1859). Just as each member of a lawful partnership is an agent whose acts bind his partners, "[e]ach conspirator is the agent of the other, and the acts done are therefore the acts of each and all." Wm. L. Clark, Jr., *Handbook of Criminal Law* 162 (3d ed. 1915).

Accordingly, well over a century before *Pinkerton*, Justice Story's decision for the Court in *United States* v. *Gooding*, 25 U.S. 460 (1827), had recognized, in the context of admitting one conspirator's testimony against another, "once the conspiracy or combination is established, the act of one conspirator, in the prosecution of the enterprise, is considered the act of all, and is evidence against all." *Id.* at 469. Other nineteenth-century authorities agreed. See, *e.g.*, 1 Joel Prentiss Bishop, *New Commentaries on the Criminal Law* § 629.1, at 385 (8th

ed. 1892) ("When two or more persons unite to accomplish a criminal object, * * * each individual whose will contributes to the wrong-doing is in law responsible for the whole, the same as though performed by himself alone."); 3 Joseph Chitty, *A Practical Treatise on the Criminal Law* 1143a (5th Am. ed. 1847) ("Where several persons are proved to have combined together for the same illegal purpose, any act done by any of the party, in pursuance of the original concerted plan, and with reference to the common object, is, in the contemplation of the law, the act of the whole party."); John Wilder May, *The Law of Crimes* § 89, at 99 (1881) ("[E]ach is responsible for all acts of his confederates, done in pursuance of the original purpose."); *Collins* v. *Commonwealth,* 3 Serg. & Rawle 220, 223 (Pa. 1817) (When done "in pursuance of the project in which they were all engaged," "[t]he act of one [coconspirator] * * * is to be considered as the act of all.").

Thus, as *Pinkerton* recognized, "so long as the partnership in crime continues, the partners act for each other in carrying it forward." 328 U.S. at 646; see *Salinas* v. *United States*, 522 U.S. 52, 63-64 (1997) ("[P]artners in [a] criminal plan [who] agree to pursue the same criminal objective * * * may divide up the work, yet each is responsible for the acts of each other."). "A scheme to use the mails to defraud, which is joined in by more than one person, is a conspiracy." *Pinkerton*, 328 U.S. at 647. "Yet all members are responsible, though only one did the mailing." *Ibid.* And "[t]he governing principle is the same when the substantive offense is committed by one of the conspirators in furtherance of the unlawful project." *Ibid.*

The Court emphasized that "[e]ach conspirator instigated the commission of the crime"; "[t]he unlawful

agreement contemplated precisely what was done"; and "[t]he act done was in execution of the enterprise." *Pinkerton*, 328 U.S. at 647. Just as an "overt act" that is an "essential ingredient of the crime of conspiracy" under a particular conspiracy statute—which can itself be a separately punishable substantive offense—"can be supplied by the act of one conspirator," "the same or other acts in furtherance of the conspiracy" are similarly "attributable to the others for the purpose of holding them responsible for [a] substantive offense." *Ibid.*

2. Petitioner asks (Pet. 15-27) this Court to overrule *Pinkerton*. Review of that request is unwarranted, and *stare decisis* considerations do not favor that result.

a. Although "not an inexorable command," *stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Kimble* v. *Marvel Entm't, LLC*, 576 U.S. 446, 455 (2015) (citation omitted). And in statutory cases, "*stare decisis* carries enhanced force" because "Congress can correct any mistake it sees." *Id.* at 456. *Pinkerton*'s explication of the substantive law of conspiracy, as it relates to federal criminal statutes, is a decision of statutory construction. And even if it were a "judicially created doctrine," it is still a "'substantive'" rule that "Congress may overturn or modify" to which statutory *stare decisis* applies. *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U.S. 258, 274 (2014) (citation omitted).

Congress had ample notice and opportunity to disavow *Pinkerton* when it enacted the offenses for which petitioner was convicted. Congress enacted the Hobbs Act, ch. 537, 60 Stat. 420—including the offense of conspiracy to commit Hobbs Act robbery of which peti-

tioner was convicted, Pet. App. 47—in July 1946, less than a month after *Pinkerton*. The two substantive statutes underlying the convictions that petitioner challenges were likewise enacted after *Pinkerton*: The Hobbs Act robbery crime was enacted at the same time as the conspiracy crime, and the discharge crime is a 1998 addition to a crime first enacted in the 1960s. See Act of Nov. 13, 1998, Pub. L. No. 105-386, § 1(a), 112 Stat. 3469; Gun Control Act of 1968, Pub. L. No. 90-618, Tit. I, § 102, 82 Stat. 1224.

When Congress enacted those provisions, Congress was presumptively aware of *Pinkerton* and, had it wished to displace *Pinkerton*'s default rule, could have done so. See *Bartenwerfer* v. *Buckley*, 598 U.S. 69, 80 (2023) ("This Court generally assumes that, when Congress enacts statutes, it is aware of this Court's relevant precedents.") (citation omitted). Indeed, this Court has held that *Pinkerton* does not apply in the criminal-forfeiture context because the statute's "text and structure" indicate that Congress did not incorporate *Pinkerton*'s "background principles." *Honeycutt* v. *United States*, 581 U.S. 443, 453 (2017). But in the Hobbs Act and Section 924(c)(1)(A)(iii), Congress did nothing to displace *Pinkerton* in a situation where it would plainly by its own terms apply. This Court should not "manufacture a new presumption now and retroactively impose it on a Congress that acted * * * years ago." *Tanzin* v. *Tanvir*, 592 U.S. 43, 52 (2020).

b. In any event, ordinary *stare decisis* considerations likewise favor leaving any modification or disavowal of *Pinkerton* to Congress. Even outside the statutory context, overruling a prior decision of this Court requires "'special justification[],'" and considers factors that include the "quality of [the decision's] reasoning,"

its "workability" and "consistency," as well as "developments since the decision was handed down, and reliance on the decision." *Janus* v. *American Fed'n of State, Cnty., & Mun. Emps.*, 585 U.S. 878, 917, 929 (2018) (citations omitted).

Correctness and Quality of Reasoning. Petitioner principally argues (Pet. 16-21, 24-25) that *Pinkerton* was wrongly decided. For the reasons above, *Pinkerton* correctly applied common-law agency principles. Petitioner claims that *Pinkerton* clashes with cases establishing that "Congress ha[s] sole responsibility for crafting the elements of federal criminal offenses." Pet. 16 (citing *United States* v. *Hudson*, 11 U.S. 32, 34 (1812)). But courts do not "craft" offenses under *Pinkerton*; they apply traditional common-law principles to hold defendants responsible for acts committed by their agents. See 328 U.S. at 645-648; pp. 6-8, *supra*.

Petitioner is incorrect (Pet. 20) that *Pinkerton* invented its common-law principles by "blend[ing]" aiding and abetting and the common-law conspiracy crime. *Pinkerton* was grounded in settled conspiracy principles, not aiding and abetting. See 328 U.S. at 647. The Court also emphasized the separateness of the doctrines shortly after *Pinkerton* was decided in an opinion by *Pinkerton*'s author. See *Nye & Nissen* v. *United States*, 336 U.S. 613, 619-620 (1949). Regardless, petitioner's mine-run interpretive disagreements come nowhere close to establishing that *Pinkerton* is the kind of "grievously or egregiously wrong" decision that would warrant overruling. *Ramos* v. *Louisiana*, 590 U.S. 83, 121 (2020) (Kavanaugh, J., concurring in part).

Workability. *Pinkerton*'s limits on coconspirator liability have proven familiar and workable for nearly 80 years. This Court has often restated *Pinkerton*'s rule as

settled law. See, *e.g.*, *Twitter, Inc.* v. *Taamneh*, 598 U.S. 471, 496 (2023) ("[C]onspiracy liability * * * typically holds co-conspirators liable for all reasonably foreseeable acts taken to further the conspiracy."); *Smith* v. *United States*, 568 U.S. 106, 111 (2013) ("[A] defendant who has joined a conspiracy * * * becomes responsible for the acts of his co-conspirators in pursuit of their common plot.") (citation omitted); *Salinas*, 522 U.S. at 63-64 ("The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other.").

Petitioner claims (Pet. 26) that this Court "refused to apply *Pinkerton*" in *Nye & Nissen*, *supra*. But that was because the jury had not been instructed under *Pinkerton*, not because the Court saw any defect in *Pinkerton*'s reasoning. *Nye & Nissen*, 336 U.S. at 618-620. And in *Honeycutt*, this Court did not apply *Pinkerton* to a criminal-forfeiture scheme because the statute's "text and structure * * * did not incorporate [*Pinkerton*'s] background principles." 581 U.S. at 453. The Court did not imply any broader concerns with coconspirator liability. Contra Pet. 25-26.

Petitioner also asserts (Pet. 26-27) that *Pinkerton* is unworkable because some courts have imposed "due process limitations" on *Pinkerton* when a defendant plays an "'extremely minor role[] in the conspiracy'" or has only a "'slight'" relationship to a coconspirator's substantive offense. *E.g.*, *United States* v. *Grasso*, 724 F.3d 1077, 1089 (9th Cir.) (citations omitted), cert. denied, 571 U.S. 979 (2013). But even assuming that limitation is correct, petitioner cites nothing (Pet. 27) aside from one critical law-review article to suggest that the inquiry is difficult; nor does he show that the issue arises with any frequency. The defendant's involve-

ment in the conspiracy also informs whether a coconspirator's offense was reasonably foreseeable or in furtherance of a conspiracy, see, *e.g.*, *United States* v. *Wade*, 318 F.3d 698, 703 (6th Cir. 2003)—a familiar judicial enterprise.

Subsequent Developments. *Pinkerton* has not been undercut by subsequent developments. Petitioner cites (Pet. 22-24) unrelated cases discussing the importance of fair notice in criminal cases. But petitioner does not identify any meaningful uncertainty over the scope of coconspirator liability. Such liability attaches only to substantive offenses that are "reasonably *foresee[able]* as a necessary or natural consequence of the unlawful agreement." *Pinkerton*, 328 U.S. at 648 (emphasis added).

Furthermore, the agency principles that *Pinkerton* embodies are commonplace in criminal law. The hearsay exception for out-of-court statements by one conspirator in furtherance of the conspiracy, for example, is rooted in the principle that "conspirators are partners in crime" and therefore "agents of one another." *Anderson* v. *United States,* 417 U.S. 211, 218 n.6 (1974); see Fed. R. Evid. 801(d)(2)(E). Likewise, lower courts have applied "traditional principles of conspiracy liability" to hold that a defendant forfeits his Confrontation Clause rights if his coconspirator procures a witness's unavailability to prevent the witness from testifying. *United States* v. *Dinkins*, 691 F.3d 358, 384 (4th Cir. 2012), cert. denied, 568 U.S. 1177 (2013); see *id.* at 384-385 (collecting cases). It is overruling, not retaining, *Pinkerton* that would risk destabilizing effects throughout the law.

Reliance. Jettisoning *Pinkerton* 80 years later would upset the government's substantial reliance in safeguarding the finality of criminal convictions and Con-

gress's settled expectations. Congress presumptively legislates with awareness of this Court's decisions. *Bartenwerfer*, 598 U.S. at 80. On multiple occasions, Congress has declined to enact legislation that would have effectively overruled *Pinkerton*. See, *e.g.*, Criminal Code Revision Act of 1983, H.R. 2013, 98th Cong., 1st Sess. § 501 (1983); Criminal Code Revision Act of 1981, H.R. 4711, 97th Cong., 1st Sess. § 501 (1981). Instead, Congress has repeatedly enacted new criminal statutes criminalizing conspiracy and other crimes—including the ones at issue here—against the backdrop of *Pinkerton*. See pp. 8-9, *supra*. Indeed, Congress enacted Title 18 into positive law in 1948, two years after *Pinkerton*. Act of June 25, 1948, ch. 645, 62 Stat. 683. In crafting the criminal laws, Congress had no need to adopt affirmatively a rule of coconspirator liability since Congress was presumptively aware of *Pinkerton*. Imposing a new presumption at this late date would upend Congress's choice not to alter this Court's articulation of the standard for coconspirator liability.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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