

No.

In the Supreme Court of the United States

—————
JOQUETTA RILEY, *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*

—————

PETITION FOR A WRIT OF CERTIORARI

—————

SHANNON W. LOCKE
The Locke Law Group
15600 San Pedro Avenue
Suite 105
San Antonio, Texas 78232
210.229.8300 (Tel)
214.229.8301 (Fax)
Texas State Bar No. 24048623

Counsel for Petitioner

QUESTION PRESENTED

To what extent may a defendant be held liable for the losses caused by the conduct of their co-conspirators under the Mandatory Victims Restitution Act of 1996?

RELATED PROCEEDINGS

United States District Court for the Western District of Texas:

United States v. Joquetta Riley, No. 5:21-CR-00170-DAE-3

(September 10, 2024)

United States Court of Appeals for the Fifth Circuit:

United States v. Joquetta Riley, No. 24-50728 (October 22, 2025)

TABLE OF CONTENTS

QUESTION PRESENTED	i
RELATED PROCEEDINGS.....	ii
INTRODUCTION.....	1
OPINION BELOW.....	3
JURISDICTION.....	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..	4
STATEMENT.....	5
A. Legal Background.....	5
B. Proceedings Below.....	10
i. District Court.....	10
ii. Appeal.....	15
REASONS FOR GRANTING THE PETITION.....	17
I. The courts of appeals remain deeply and persistently divided over restitution in conspiracy cases.....	17
II. The decision below is wrong and conflicts with this Court’s precedent.....	20
A. The courts below misapplied the “reasonable foreseeability” standard.....	21
B. The approach below conflicts with <i>Hughey</i> and constitutional limits on punishment.....	23
III. This is a critical and recurring question.....	25
IV. This case is an ideal vehicle for addressing this question.....	26

CONCLUSION27

APPENDIX

Court of appeals opinion (October 22, 2025)1a

TABLE OF AUTHORITIES

Cases

<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000)	10, 24
<i>Ellingburg v. United States</i> , 223 L.Ed.2d 446 (U.S. 2026)	9, 24
<i>Hester v. United States</i> , 139 S. Ct. 509, 510 (2019)	25
<i>Hughey v. United States</i> , 495 U.S. 411 (1990)	5, 6, 7, 17, 18, 20, 23, 24
<i>Krulewitch v. United States</i> , 336 U.S. 440 (1949)	8
<i>Nye & Nissen v. United States</i> , 336 U.S. 613 (1949)	8
<i>Pinkerton v. United States</i> , 328 U.S. 640 (1946)	7, 8, 17, 21, 22, 24
<i>United States v. Adams</i> , 363 F.3d 363 (5th Cir. 2004)	9, 24
<i>United States v. Akande</i> , 200 F.3d 136 (3d Cir. 1999)	9, 18
<i>United States v. Barry</i> , 163 F.4th 1346 (11th Cir. 2026)	19, 23
<i>United States v. Bogart</i> , 576 F.3d 565 (6th Cir. 2009)	8
<i>United States v. Booth</i> , 309 F.3d 566 (9th Cir. 2002)	7

<i>United States v. Boyd</i> , 222 F.3d 47, 51 (2d Cir. 2000)	7, 8, 18
<i>United States v. Chaney</i> , 964 F.2d 437, 452 (5th Cir. 1992)	7, 18
<i>United States v. DeSalvo</i> , 41 F.3d 505 (9th Cir. 1994)	18
<i>United States v. Feldman</i> , 338 F.3d 212 (3d Cir. 2003)	6
<i>United States v. George</i> , 403 F.3d 470 (7th Cir. 2005)	9, 18
<i>United States v. Hensley</i> , 91 F.3d 274, 277 (1st Cir. 1996)	7
<i>United States v. Hilliard</i> , 823 F. App'x 80 (3d Cir. 2020)	17
<i>United States v. Ismoila</i> , 100 F.3d 380 (5th Cir. 1996)	8
<i>United States v. Newell</i> , 658 F.3d 1 (1st Cir. 2011)	8
<i>United States v. Newsome</i> , 322 F.3d 328 (4th Cir. 2003)	8
<i>United States v. Norwood</i> , 49 F.4th 189 (3d Cir. 2022)	26
<i>United States v. Odom</i> , 252 F.3d 1289 (11th Cir. 2001)	8
<i>United States v. Osborne</i> , 332 F.3d 1307 (10th Cir. 2003)	8

<i>United States v. Rand</i> , 403 F.3d 489 (7th Cir. 2005)	8
<i>United States v. Reed</i> , 80 F.3d 1419 (9th Cir. 1996)	18
<i>United States v. Riley</i> , 335 F.3d 919 (9th Cir. 2003)	8
<i>United States v. Rodriguez</i> , 915 F.3d 532 (8th Cir. 2018)	8

Statutes

Mandatory Victims Restitution Act, Pub. L. No. 104-132, 110 Stat. 1214 (1996)	6
Victim and Witness Protection Act, Pub. L. No. 97-291, 96 Stat. 1248 (1982)	5
18 U.S.C. § 2	10
18 U.S.C. § 1341	4, 10
18 U.S.C. § 1349	5, 10
18 U.S.C. § 3663	5, 6
18 U.S.C. § 3663A	4, 6, 15
28 U.S.C. § 1254(1).....	3

Other Authorities

GAO, G. Goodwin, Federal Criminal Restitution 25 (GAO-18- 203, 2018)	25
---	----

In the Supreme Court of the United States

MICHAEL THOMAS MCCOWAN, *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*

PETITION FOR A WRIT OF CERTIORARI

Petitioner Joquetta Riley respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

This case asks whether a defendant convicted of conspiracy may be ordered to pay restitution for the full sweep of a large-scale fraud

scheme—losses she neither caused, profited from, nor was proven to have agreed to undertake.

The Government alleged a broad scheme to defraud Verizon, a multibillion-dollar telecommunications corporation, through the manipulation of internal credit-approval systems. According to Verizon's business records, the scheme involved hundreds of phones, dozens of delivery addresses, multiple call-center employees, and losses approaching half a million dollars in this case alone. Other alleged fraud involving additional compromised employees was said to total even more.

Joquetta Riley's proven conduct was far narrower. The jury convicted her of four substantive mail-fraud counts tied to ten iPhones delivered to her home and of conspiracy to commit mail fraud. The evidence showed that she made four Cash App transfers totaling \$2,400 to a Verizon customer service agent on behalf of a co-conspirator—and that she was reimbursed by her co-conspirator for those payments in full. She did not profit from the scheme. There was no evidence that she knew of the broader network of addresses, that she had communicated with call-center employees, or that she understood the overall scale of the operation.

Yet the district court imposed \$454,077.61 in restitution, holding her jointly and severally liable for the aggregate losses attributed to the larger Verizon fraud. The Fifth Circuit affirmed, concluding that a conspirator may be held responsible for all reasonably foreseeable losses within the broader scheme.

The petition therefore asks whether there is legal basis for restitution awards that are untethered to a defendant's proven role and effectively unpayable in practice.

OPINION BELOW

A copy of the unpublished opinion of the court of appeals, *United States v. Joquetta Riley*, No. 24-50728 (October 22, 2025), is reproduced at App. 1a–5a.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Fifth Circuit were entered on October 22, 2025. On January 6, 2026, Justice Samuel Alito extended the time to petition for a writ of certiorari to February 19, 2026. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Section 3663A of Title 18 of the United States Code provides in relevant part:

“(a) [...] (2) For the purposes of this section, the term “victim” means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant’s criminal conduct in the course of the scheme, conspiracy, or pattern. [...]

(b) The order of restitution shall require that such defendant— (1) in the case of an offense resulting in [...] loss [...] of property of a victim of the offense— [...] (B) pay an amount equal to— (i) the greater of— (I) the value of the property on the date of the [...] loss [...]; or (II) the value of the property on the date of sentencing”

2. Section 1341 of Title 18 of the United States Code provides in relevant part:

“Whoever, having devised or intending to devise any scheme or artifice [...] for obtaining money or property by means of false or

fraudulent pretenses, representations, or promises [...] knowingly causes to be delivered by mail or such carrier according to the direction thereon [...] shall be fined under this title or imprisoned not more than 20 years.”

3. Section 1349 of Title 18 of the United States Code provides in relevant part:

“Any person who [...] conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the [...] conspiracy.”

STATEMENT

A. Legal Background.

1. In 1982, Congress passed the Victim and Witness Protection Act of 1982 (VWPA), establishing for the first a time a generalized framework to administer restitution as a part of a defendant’s sentence in a criminal case. At that time, the law provided that the sentencing court “may order [...] the defendant [to pay] restitution to any victim of [the] offense.” 18 U.S.C. § 3663 (prior to 1990 amendment); Victim and Witness Protection Act, Pub. L. No. 97-291, 96 Stat. 1248 (1982).

2. In *Hughey v. United States*, this Court held that this language limited restitution orders to the loss caused by the *specific offense* which

formed the basis for the defendant's conviction. *Id.*, 495 U.S. 411, 414, (1990). Courts may not award restitution for acts beyond the offense of conviction. *Ibid.*

3. In 1990, a subsequent version of the VWPA was put into law that added language defining a victim in broader terms: as an entity “directly and proximately harmed as a result of the commission of an offense” and “in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.” 18 U.S.C. § 3663(a)(2). When Congress passed the Mandatory Victims Restitution Act (MVRA), which made restitution required (and not optional) for certain offenses, the statute tracked this language defining victims exactly. 18 U.S.C. § 3663A(a)(2); Mandatory Victims Restitution Act, Pub. L. No. 104-132, 110 Stat. 1214 (1996). Under the MVRA, the amount of restitution to be awarded to qualifying victim must be “value of the property” lost in its totality.

4. Under this updated version of the VWPA (and the MVRA which followed in its wake), courts have interpreted the statute(s) to require a restitution calculus that focuses principally on the “actual loss” to the victim. *See, e.g., United States v. Feldman*, 338 F.3d 212, 216 (3d

Cir. 2003). Still, it remains a continuous question before appellate courts, to what extent should extra-conviction conduct be assessed for restitution liability under the MVRA, and whether this Court's stated principles in *Hughey* should provide any basis to limit restitution after Congress's revisions to the statutory language.

5. Following the expansion of the VWPA and MVRA, some courts went so far as to allow restitution on even *acquitted conduct*, so long as the government alleges that such acts are part of a conspiracy or scheme. See, e.g., *United States v. Booth*, 309 F.3d 566 (9th Cir. 2002), *United States v. Boyd*, 222 F.3d 47, 51 (2d Cir. 2000), *United States v. Chaney*, 964 F.2d 437, 452 (5th Cir. 1992), *United States v. Hensley*, 91 F.3d 274, 277 (1st Cir. 1996).

6. Still, to ensure that the VWPA and MVRA do not function as an open-ended source of restitution liability in conspiracy cases, courts have found it necessary to put some limits on the extent of the restitution to be awarded. Under *Pinkerton v. United States*, 328 U.S. 640 (1946), a defendant can be liable for the crimes of their co-conspirators, but they should only be liable for their co-conspirators' conduct deemed "in furtherance" of the conspiracy to which they agreed and that is "reasonably foreseeable" to him/her. *Id.* at 640-7.

7. This interpretation of criminal liability has faced continual criticism,¹ but it has still proven to be one the touchstones courts use to determine restitution applicable in conspiracy cases. Thus, appellate courts have held that a defendant in a conspiracy may be held liable for restitution not only for the harm caused by their own acts, but also for “reasonably foreseeable” losses caused by co-conspirators in furtherance of the scheme. *See, e.g., United States v. Newell*, 658 F.3d 1 (1st Cir. 2011), *United States v. Boyd*, 222 F.3d 47 (2d Cir. 2000), *United States v. Newsome*, 322 F.3d 328 (4th Cir. 2003), *United States v. Ismoila*, 100 F.3d 380 (5th Cir. 1996), *United States v. Bogart*, 576 F.3d 565 (6th Cir. 2009), *United States v. Rand*, 403 F.3d 489 (7th Cir. 2005), *United States v. Rodriguez*, 915 F.3d 532 (8th Cir. 2018), *United States v. Riley*, 335 F.3d 919 (9th Cir. 2003), *United States v. Osborne*, 332 F.3d 1307 (10th Cir. 2003), and *United States v. Odom*, 252 F.3d 1289 (11th Cir. 2001).

¹ For example, Justice Rutledge characterized Pinkerton as a “dangerous” innovation, departing from the principle that “guilt [in the] criminal field [is] personal, not vicarious.” *Pinkerton*, 328 U.S. at 649 (Rutledge, J., dissenting in part). Similarly, Justice Frankfurter criticized the doctrine as establishing guilt “not on the basis of personal responsibility, but by association.” *Nye & Nissen v. United States*, 336 U.S. 613, 625–26 (1949) (Frankfurter, J., dissenting). Justice Jackson also noted that Pinkerton relied on a “novel and dubious theory” of criminal law. *Krulewitch v. United States*, 336 U.S. 440, 451 (1949) (Jackson, J., concurring).

8. Beyond “reasonable foreseeability,” another way courts have hypothesized they might be able to put a “limit” on unchecked restitution/conspiracy liability under the VWPA and the MVRA is through a clear check on the “scope” of the underlying scheme that was at the heart of the offense of conviction, as it has been variously defined within an indictment, a plea agreement, or jury verdict. *See, e.g., United States v. Adams*, 363 F.3d 363 (5th Cir. 2004); *United States v. Akande*, 200 F.3d 136 (3d Cir. 1999); and *United States v. George*, 403 F.3d 470 (7th Cir. 2005).

9. Just recently, this Court’s decision in *Ellingburg v. United States* made clear that restitution under the MVRA is not just some civil compensation tacked on to criminal proceeding—it is itself criminal punishment for purposes of the ex-post-facto clause. *Id.*, 223 L.Ed.2d 446 (U.S. 2026). If that is so, the constitutional safeguards that apply to criminal punishment generally must apply to restitution as well.

In conspiracy cases, therefore, the “scope” of the agreement the defendant actually joined directly determines the size of the punishment. Those are not minor sentencing details; they are facts that define the extent of criminal liability. They therefore cannot be expanded through judge-found determinations untethered to the jury’s

verdict but must be established in a manner consistent with the constitutional protections that govern criminal adjudication. *See, e.g., Apprendi v. New Jersey*, 530 U.S. 466 (2000) (punishment-defining facts must be charged and proved).

B. Proceedings Below.

i. District Court

1. In April 2021, and again in a superseding indictment returned in December 2022, the Government charged Riley and three others with a scheme to obtain cellphones from Verizon through fraudulent online applications. Riley was charged with conspiracy to commit mail fraud, 18 U.S.C. §§ 1349 and 1341, and with four substantive counts of mail fraud and aiding and abetting, 18 U.S.C. §§ 1341 and 2. Two additional mail-fraud counts were charged only against co-defendant Daniels.

2. Verizon's ordering system allowed customers to purchase phones through an automated credit-approval process. When an order could not be verified automatically, the system generated an application number and routed the customer to a Verizon representative for manual review.

3. The Government alleged that Daniels became acquainted with Verizon customer-service representative Cobb and that the two devised

a plan in which Cobb would approve previously denied applications in exchange for payments of approximately \$200 to \$250 per order. Riley's alleged involvement was having made four payments (totaling \$2400) to Cobb and receiving 4 packages containing phones to her home address.

4. Riley elected to take her case to trial.

5. At trial, Cobb testified that, after meeting Daniels online and agreeing to help him approve phone-orders in exchange for side-payments, she had received funds from various Cash App account handles and other sources. More than \$1,700 came from Daniels directly via Walmart's money-transfer service, RIA Financial Services (and some of these transactions occurred before Riley had even become acquainted with Daniels). \$18,800 came from an account belonging to Lamar Williams, who was never charged in this case. \$2,000 came from an account belonging to Armani Martin (also uncharged). \$2,400 came from an account associated with Riley, but cross-examination of the investigating agent on the case confirmed there was no evidence that Riley knew Daniels' co-conspirators who had sent the remaining amounts.

6. Riley's bank records showed that Riley had been reimbursed for the \$2,400 of Cash App payments she made to Cobb (in the form of

cash deposits to her account, at the time of the Cash App transfers, in the exact amount she had transferred); evidently, she did not profit from this scheme and had effectively served a pass-through for portions of Daniels' schemes. Cobb testified she did not know Riley and had never communicated with anyone by that name.

7. Evidence also showed Riley had provided Daniels her mailing address in their text message conversations, and that four packages—containing ten iPhones—were delivered to that address via FedEx.

8. As part of their case at trial, the Government introduced a spreadsheet of Verizon business records reflecting losses from fraudulent approvals by Cobb and another co-defendant Sandra Lock. Those records documented shipments to at least ninety addresses across the Detroit area (and beyond), representing hundreds of phones and losses approaching half a million dollars. Only one address on that spreadsheet—11932 Buffalo Street—was tied to Riley, and it accounted for ten phones.

9. Text messages introduced at trial also confirmed that Riley and Daniels were in a relationship and that Daniels instructed Riley to send payments to Cobb and to confirm when packages arrived at her residence. The messages did not reference the broader scope of the

Detroit-area fraud, other addresses, other participants, or the volume of phones involved beyond the shipments to Riley's residence.

10. The Government also admitted into evidence Daniels's public Facebook posts displaying cash and iPhones and presented for the jury a text message in which Riley told a friend that Daniels was her new romantic partner and that he was "big" on social media.

11. The jury convicted Riley on the counts charged against her, the four substantive counts of mail-fraud aiding and abetting (corresponding to the packages delivered to her address) and one count of conspiring to commit mail fraud.

12. At sentencing, the Government sought approximately \$500,000 in restitution under the Mandatory Victims Restitution Act. That figure represented the total losses attributed to fraudulent approvals issued by Verizon call-center employees Caitlyn Cobb and Sandra Lock; their approvals had resulted in shipments to dozens of addresses unknown to Riley and involved participants with whom the trial evidence showed Riley had no connection.

13. Riley objected that the requested restitution far exceeded the scope of her jointly undertaken criminal activity and was not reasonably foreseeable to her. She emphasized that the trial evidence showed

knowledge only of four payments and four shipments—ten phones total—and no awareness of the broader network reflected in Verizon’s spreadsheet totaling Cobb and Lock’s fraudulent approvals.

14. The Government responded that Riley should be held jointly and severally liable for all losses caused by Cobb and Daniels because, in its view, Daniels’s social-media posts and the existence of other shipments made the full extent of the scheme reasonably foreseeable to Riley. The Government further argued that its proposed loss figure was actually *under*-inclusive, asserting that she could have been held liable for even broader fraud against Verizon amounting to nearly \$1 million, involving additional compromised agents in other call centers.

15. At a sentencing hearing, Riley reasserted her arguments that the approximately half-million in proposed restitution was legally unjustifiable. Riley stressed that she had only a minor participant in Daniels’ schemes and did not have knowledge of the extent of Daniels’ fraud. She also argued that Daniels’ actions committed before she joined the scheme could not in fact be reasonably “foreseeable” to her because they had already occurred.

16. The district court adopted the Government’s position and imposed \$454,077.61 in restitution, jointly and severally with Daniels,

without identifying evidence that Riley knew of, or agreed to participate in, the vast majority of the conduct for which she was held liable. Separately, co-conspirator Cobb, who entered into a plea agreement with the Government, was held responsible for \$29,279 of restitution; and co-conspirator Lock deceased prior to her case being resolved.

ii. Appeal

1. On appeal, among several issues presented for the Fifth Circuit's consideration, Riley reasserted her arguments that she should have only been administered a restitution judgment for the conduct for which the jury had found her guilty—namely, the four substantive counts of mail-fraud proven by the Government, corresponding to the delivery of ten iPhones to her home address. Riley argued that this represented the extent of the conspiracy they participated in and all that the Government had proven to the jury.

2. Riley pointed to the Mandatory Victims Restitution Act's requirement that restitution be limited to harm “directly and proximately” caused by the offense of conviction, 18 U.S.C. § 3663A(a)(2) and circuit precedent allowing for restitution for the actions of coconspirators based on principles of “reasonable foreseeability.” Riley argued that the jury's verdict established only that she received ten

phones and made four Cash App payments totaling \$2,400 to a compromised Verizon employee—which only represents a small fraction of the broader losses the Government attributed to the scheme. Riley further argued that the losses stemming from Daniels’ fraudulent dealings with other co-conspirators were unforeseeable to Riley.

3. In response, the Government argued that Riley was aware of, and participated in, the broader scope of Daniels’ scheme, not just the iPhones she personally received. Evidence at trial and sentencing—including her texts to Daniels, deliveries she received outside Cobb’s involvement, and Daniels’ public social-media posts showing extensive fraud—supported the conclusion that Riley knew the scheme extended beyond her individual transactions. The Government contended that it was therefore appropriate for the court to hold Riley responsible for the full losses caused by Daniels’ conspiracies, writ large.

4. The Fifth Circuit rejected Riley’s arguments on restitution. The court held that conspirators may be held jointly and severally liable for all reasonably foreseeable losses within the scope of the conspiracy, regardless of whether a specific loss is attributable to a particular conspirator. The court found the trial record sufficient to establish that

Riley understood the extent of Daniels' scheme and thus responsible for the \$454,077.61 imposed.

REASONS FOR GRANTING THE PETITION

I. The courts of appeals remain deeply and persistently divided over restitution in conspiracy cases.

Published opinions across the circuits often state (without analysis) that *Pinkerton's* theory of vicarious liability is determinative of loss calculation for purposes of assessing restitution in a conspiracy: a defendant is liable for losses caused by reasonably foreseeable conduct of his/her co-conspirators.² However, this supposed consensus belies the extent of the disagreement over whether restitution is limited by the specifics of a defendant's indictment, trial, or a court's individualized findings regarding the scope of the criminal activity that a defendant actually undertook in a conspiracy case.

Indeed, the appellate circuits have not come to a consensus over whether, under *Hughey v. United States*, courts can award restitution losses based on uncharged (or acquitted) conduct. The Ninth Circuit holds that the VWPA's amendment expanding the definition of "victim"

² See, e.g., *United States v. Hilliard*, 823 F. App'x 80 (3d Cir. 2020) (collecting cases).

effectively overruled *Hughey v. United States* in cases where the offense of conviction includes a scheme or conspiracy element. Consequently, once a defendant is convicted of a conspiracy or scheme-based offense, the district court may award restitution for any conduct that was part of the scheme—including conduct not charged, not proven, or even conduct underlying counts of acquittal. *See, e.g., United States v. Reed*, 80 F.3d 1419, 1423 (9th Cir. 1996); *United States v. DeSalvo*, 41 F.3d 505, 514 n.8 (9th Cir. 1994). Several other circuits have adopted similar reasoning, permitting restitution covering reasonably foreseeable losses in conspiracy cases to encompass acquitted or uncharged conduct so long as it is characterized as part of the broader scheme. *See, e.g., United States v. Boyd*, 222 F.3d 47, 51 (2d Cir. 2000); *United States v. Chaney*, 964 F.2d 437, 452 (5th Cir. 1992).

By contrast, the Seventh and Third Circuit adhere to *Hughey*'s guiding principle that restitution must be tied to the “offense of conviction” and the specific conduct underlying that conviction. *See United States v. George*, 403 F.3d 470, 474 (7th Cir.), cert. denied, 546 U.S. 1008 (2005); *United States v. Akande*, 200 F.3d 136 (3d Cir. 1999). These courts require a direct link between the conduct proven and the restitution ordered, even in conspiracy cases. They reject the view that

a conspiracy conviction operates as a blank-check authorizing restitution for every alleged act within a broadly described scheme against a particular victim. They hold that restitution may not include losses disconnected from an offense of conviction.

Providing a third approach, the Eleventh Circuit has required that a court must first make an individualized finding of a defendant's criminal conduct within a conspiracy, and only then determine what conspiratorial conduct might be reasonably foreseeable to him/her. *United States v. Barry*, 163 F.4th 1346 (11th Cir. 2026). The Eleventh Circuit, thus, limits a court's ability to broadly impose restitution liability, without first determining how much criminal conduct a defendant engaged in; restitution based on the "reasonably foreseeable" actions of co-conspirators can only be imposed if they are limited by the individualized analysis of a defendant's role within the conspiracy, whose scope is implied by a court's engagement with the facts particular to the defendant in question.

In sum, the result is an entrenched conflict. In some circuits, a conspiracy conviction authorizes restitution for the entire alleged scheme, regardless of acquittals or the specific conduct proven. In others,

restitution must be confined to the conduct that forms the basis of the conviction, as required by *Hughey*.

II. The decision below is wrong and conflicts with this Court’s precedent.

The Fifth Circuit’s decision to impose \$454,077.61 of restitution damages on Riley cannot be reconciled with this Court’s holding in *Hughey v. United States* that restitution is limited to the loss caused by “the specific conduct that is the basis of the offense of conviction.” 495 U.S. at 413. Although Congress amended the VWPA and later enacted the MVRA to clarify that victims of a “scheme” or “conspiracy” may recover restitution, it did not authorize courts to impose punishment for conduct never found by a jury to be within the scope of the defendant’s agreement.

Here, the jury convicted Riley of four substantive mail-fraud counts tied to ten iPhones delivered to her address, and of conspiracy to commit mail fraud. Nothing in the verdict establishes that Riley agreed to, knew of, or reasonably foresaw the many additional shipments reflected in Verizon’s fraud-loss spreadsheet. Yet the district court imposed \$454,077.61 in restitution—representing losses upwards of a hundred transactions, to dozens of addresses, involving participants with whom

Riley did not communicate and, according to the Government's own evidence, Riley did not know.

A. The courts below misapplied the “reasonable foreseeability” standard.

Even assuming *Pinkerton* principles inform restitution analysis, the courts below misapplied them. Under *Pinkerton v. United States*, a conspirator is liable only for acts within the scope of the criminal agreement she joined and in furtherance of that agreement, and reasonably foreseeable to her. *Id.*, 328 U.S. at 646-48. Foreseeability is not a substitute for proof of the agreement's scope; it is a limitation operating within it.

The district court never made a finding—grounded in the jury's verdict—about the scope of Riley's jointly undertaken activity. Instead, it assumed that the relevant conspiracy was as broad as the Government's theory of Daniels's operations and then asked whether the total losses were “foreseeable.” That approach inverts *Pinkerton*. The threshold question is what conspiracy Riley agreed to join, not what conspiracy Daniels in fact ran.

The trial record showed: four Cash App transfers totaling \$2,400; ten iPhones shipped to Riley's address; text messages confirming her

relationship with Daniels; and no evidence that she knew the call-center employees, the other addresses receiving shipments, or the volume of phones fraudulently procured as reflected in Verizon's master spreadsheet. The Government's own evidence established that large portions of the loss were attributable to funds sent by other individuals (some uncharged) and to conduct occurring before Riley became involved. At a minimum, acts that predate a defendant's entry into a conspiracy cannot be "reasonably foreseeable" to her in any meaningful sense.

Nor did the courts identify evidence showing that Riley was aware of the geographic breadth, number of participants, or scale of the fraud. The Government relied heavily on Daniels's social media posts and the mere existence of additional shipments. But generalized awareness that one's partner is engaged in fraud is not equivalent to knowledge of, or agreement to, a half-million-dollar operation spanning a wide geographic region. *Pinkerton* liability does not attach solely based on association or relationship.

The Fifth Circuit compounded the error by treating joint and several liability for reasonably foreseeable losses as effectively dispositive once a conspiracy conviction was established. App. 1a–5a. Relying on its

precedent that conspirators “may be held jointly and severally liable for all foreseeable losses within the scope of their conspiracy,” the court concluded—without further analysis—that Riley was responsible for the full restitution amount because trial evidence showed she “understood the extent of Daniels’ scheme.” App. 5a. The court did not explain how the specific evidence established that Riley reasonably foresaw hundreds of additional fraudulent approvals, shipments to unknown addresses, or losses approaching half a million dollars. Nor did it tether the aggregate loss figure to conduct the jury necessarily found to be within the scope of Riley’s agreement. Instead, it deferred to the district court’s lump-sum calculation. *Cf. United States v. Barry*, 163 F.4th 1346 (11th Cir. 2026) (vacating restitution where the district court failed to make individualized findings and to establish proximate causation).

B. The approach below conflicts with *Hughey* and constitutional limits on punishment.

This Court in *Hughey v. United States* made clear that restitution must be tied to the offense of conviction. Expanding restitution to encompass all losses attributed to a broadly described scheme—without limiting those losses to conduct within the scope of the *defendant’s*

proven agreement—effectively revives the very practice *Hughey* rejected.

Moreover, this Court has held that restitution under the MVRA constitutes criminal punishment. *See Ellingburg v. United States*, 223 L.Ed.2d 446 (U.S. 2026). If restitution is punishment, then the factual determinations that define its magnitude (especially the scope of the conspiracy and the losses attributable to it) cannot be expanded through judge-found facts untethered to the jury’s verdict. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

In conspiracy cases, the “scope” of the agreement a defendant actually joined directly determines the size of the punishment. Here, the difference between liability for ten phones and liability for hundreds of phones is not a minor sentencing detail; the court’s decision erroneously imposes sweeping financial responsibility for an enterprise the jury was never asked to define with precision.

By allowing restitution to be driven by the Government’s broadly construed description of Verizon’s fraud loss rather than by the scope of the conspiracy established at trial, the courts below eliminated critical limiting devices for the analysis of conspiracy and restitution awards, as elaborated in binding precedent such as *Hughey* and *Pinkerton*. This

error resulted in a restitution order untethered to the jury’s verdict and incompatible with the statutory and constitutional limits on criminal punishment.

III. This is a critical and recurring question.

The question of how much potential restitution liability can attach to a criminal conspiracy judgment is a question of critical importance: restitution increasingly plays a central role in the sentencing and penalty in criminal judgments; thus, the question posed is exceptionally consequential because it could dramatically affect the amount of criminal penalty a defendant might be assessed at the conclusion of their case.

“[F]rom 2014 to 2016 alone, federal courts sentenced 33,158 defendants to pay \$33.9 billion in restitution.” *Hester v. United States*, 139 S. Ct. 509, 510 (2019) (Gorsuch, J., joined by Sotomayor, J., dissenting) (citing GAO, G. Goodwin, Federal Criminal Restitution 16 (GAO-18-203, 2018)). Research shows that much of this restitution assessed will never be paid. In 2016, \$100 billion (ninety-one percent) of the \$110 billion in outstanding federal restitution debt was uncollectible because offenders had “little ability to pay.” GAO, G. Goodwin, Federal Criminal Restitution 25 (GAO-18- 203, 2018).

Thus, a restitution judgment often places a heavy burden on formerly incarcerated individuals trying to reintegrate into society by subjecting them to potentially lifelong restitution obligations, mandatory compounding interest, the looming threat of default, and the collateral consequences that attach to ongoing criminal liability, including re-incarceration. *See United States v. Norwood*, 49 F.4th 189, 196 (3d Cir. 2022). Further, unpaid restitution orders can result in the denial of “the right to vote, to serve on a jury, or to run for office, along with suspension of one’s driver’s license, or the right to own a firearm.” *Norwood*, 49 F.4th at 219 (citations omitted).

In sum, the question of the extent of restitution liability a court can impose in a conspiracy case is a critical one that will profoundly affect anyone facing punishment for a case of this type. This Court’s intervention would provide lower courts with necessary guidance in defining the magnitude and duration of criminal punishment imposed in numerous federal cases each year.

IV. This case is an ideal vehicle for addressing this question.

This case cleanly presents the issue of whether a defendant convicted of conspiracy may be held jointly liable in restitution for the full amount of loss caused by co-conspirators, regardless of her personal conduct.

Riley preserved that issue at every stage. She objected to the restitution calculation in the district court and renewed her challenge on appeal. The court of appeals rejected her argument as a matter of law and affirmed the full restitution award. The judgment rests squarely on that legal holding.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

/s/ Shannon Locke

Shannon Locke

State Bar No. 24048623

15600 San Pedro Avenue, Suite 105

San Antonio, Texas 78232

Tel: 210-229-8300

Fax: 210-229-8301

Counsel for Petitioner

February 19, 2026