No. 25-6876

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

REPLY BRIEF OF PETITIONER

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INTRODUCTION

A jury convicted Petitioner for participating in a sprawling "wagon wheel"[1]-type criminal conspiracy orchestrated by her co-conspirator. The trial evidence established that Petitioner worked with that co-conspirator and a compromised Verizon employee in a discrete portion of the scheme; it did not establish that she participated in any other facet of the overall conspiracy. Nevertheless, the district court assessed restitution against Petitioner for the entire conspiracy devised and executed by the main co-conspirator. At issue is whether that judgment

1 A "wagon wheel" conspiracy is one where a main co-conspirator is at the center but the "spokes" of the wagon wheel do not interact. Here, Petitioner was one of the spokes of the conspiracy but was not at the center of the wheel.

of restitution is consistent with this Court's prior precedent and its most recent ruling in *Ellingburg*.

The Government's opposition brief underscores why this Court's review is urgently needed. Previously, in *Hughey v. United States*, 495 U.S. 411 (1990), this Court held that restitution may be imposed only for losses arising from the "specific conduct that was the basis of the offense of conviction." *Id.* At 413. Yet the Government argues that *Hughey* carries limited force because Congress later amended the restitution statutes to "expand conspiracy liability." Opp. 12. That concession highlights the need to answer the precise question presented here: how far did Congress expand restitution liability, and what limits —if any—remain after those amendments?

In the twenty-plus years since the statutory language was amended the circuit courts of appeal are in conflict. The Second, Fifth, and Ninth Circuits allow restitution to be imposed in conspiracy cases on a broad basis, including even uncharged conduct, if it forms part of a broader scheme. The Third and Seventh Circuits, by contrast, have invoked *Hughey*'s precedent, requiring that the losses be tied to the "offense of conviction" in conspiracy convictions. The Eleventh Circuit likewise

requires that a restitution analysis identify the specific scope of a "defendant's jointly undertaken activity" before making a judgment as to the reasonably foreseeable losses within that scope.

This Court's findings in *Ellingburg v. United States*, 607 U.S. 163 (2026)—that restitution is criminal punishment for purposes of the *ex post facto* clause—adds additional urgency to the question presented by this case. If restitution is a criminal penalty subject to criminal procedure, as *Ellingburg* recognized, that conclusion reinforces the need for restitution awards to remain closely tied to the criminal adjudication itself and the facts necessarily established through that process. Yet the jury trial did not establish either the scope of the conspiracy Petitioner agreed to join or the total loss that resulted from reasonably foreseeable acts of co-conspirators undertaken within the scope of that agreement. The Government responds that *Ellingburg* does not "call the decision below into question" principally because courts of appeals have held that restitution under the MVRA falls outside *Apprendi* where "no statutory maximum applies to restitution." Opp. 11. But at least two Justices have questioned that reasoning. *See Hester v. United States*,

586 U.S. 1104, 1107 (2019) (Gorsuch, J., joined by Sotomayor, J., dissenting from denial of certiorari).

Petitioner's case presents an ideal case to resolve these conflicts and provides a clear framework to determine restitution in conspiracy cases. Below, the Fifth Circuit upheld the trial court's finding that Petitioner could be ordered to pay restitution for the full losses of a large-scale fraud scheme engineered by her co-conspirator, even without findings that she personally caused, agreed to participate in, or benefited from the full scope of the scheme. The joint and several restitution imposed on Petitioner below totaled $454,077.61, despite Petitioner's underlying conduct at issue involving only ten iPhones delivered to her home; four payments totaling $2,400 to the compromised Verizon customer services representative on behalf of a co-conspirator; and a jury verdict that included conspiracy to commit mail fraud. This Court's intervention is warranted to clarify whether the current restitution statutes permit such expansive punishment based tenuously on notions of vicarious conspiracy liability and, if so, what limiting principles constrain it.

ARGUMENT

I. The restitution judgment conflicts with this Court's precedent in *Hughey* and *Ellingburg*.

The Government's opposition brief advances a sweeping theory of conspiracy restitution; once a defendant is convicted of conspiracy, that proved "agreement" enables the Government to retroactively define the scope of the proven scheme and find defendant responsible for restitution on all reasonably foreseeable losses within that scheme. Opp. 6-10.

In *Hughey v. United States*, 495 U.S. 411 (1990), this Court rejected precisely the kind of free-floating restitution theory the Government advances here, explaining that restitution is limited to losses caused by the "specific conduct that is the basis of the offense of conviction." *Id.* at 413. The Government attempts to minimize *Hughey* by noting that Congress later amended the language to permit restitution for losses arising from a "scheme, conspiracy, or pattern of criminal activity." Opp. 10. But those amendments did not erase *Hughey*'s core holding that restitution must remain tethered to the offense of conviction.[2]

2 The amendment of the VWPA's language to which the Government refers, Opp. 10, left fundamentally unchanged the statutory element allowing "a defendant *convicted of an offense*" under the federal criminal code "to any victim of *such of-*

To the contrary, the amendments merely clarified that when the offense of conviction itself includes a scheme or conspiracy as an element, restitution may encompass losses to a victim "directly harmed by a defendant's criminal conduct in the course of the scheme, conspiracy, or pattern." 18 U.S.C. § 3663A(a)(2). Congress did not authorize courts to impose restitution for every act undertaken by every participant in a criminal enterprise simply because conspiracy liability exists in the abstract. Nor did Congress eliminate the requirement that sentencing courts identify the actual scope of the defendant's agreement and the losses sufficiently connected to that agreement.

The Government nevertheless argues that, after a jury conviction, a sentencing court may simply adopt the indictment's description of the conspiracy to define restitution exposure. Opp. 11, citing *United States v. Stouffer*, 986 F.2d 916, 928-929 (5th Cir.). However, circuit-level precedent does not indicate that the court should always mechanically adopt a charging instrument's description of the scope of conspiracy.

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fense." 18 U.S.C. § 3663(a)(1), emphasis added; cf. 18 U.S.C. 3579(a)(1) (1982). The "amendment [only] enlarged the group of victims who would be entitled to restitution, but the triggering event—the offense of conviction—remains the same." *United States v. Akande*, 200 F.3d 136, 141 (3rd Cir. 1999) (citing *United States v. Wesland*, 23 F.3d 205, 207 (8th Cir. 1994)).

A determination of the scope of the conspiracy for purposes of restitution would involve not only an examination of the Government's allegations made in the indictment or at sentencing, but also consideration of the jury verdict or plea proceedings. The Fifth Circuit has ruled that in cases decided through plea agreement the court "looks beyond the charging document and defines the underlying scheme by referring to the mutual understanding of the parties." *United States v. Adams*, 363 F.3d 363, 366 (5th Cir. 2004). Likewise, the Third Circuit explains that the "offense of conviction" in a plea-bargain case is determined not only in the indictment, but also in the plea agreement and colloquy. *Akande*, 200 F.3d 136, 142-3 (3d Cir. 1999).

The Fifth Circuit's attempted distinction between the entry of a guilty plea—where in its view "the scope of the underlying scheme [i]s defined by the parties themselves"—and a conviction by jury—where the extent of the scheme is defined by the allegations of the indictment, *Adams*, 363 F.3d 363, 366 (5th Cir. 2004)—is misguided. If anything, a jury trial would provide more information (not less) about the scope of the conspiracy to which a defendant agreed; restitution thus should automatically adopt an indictment's broad allegations while

disregarding the possibility that the jury found a defendant guilty of agreeing to participate in a conspiracy of lesser scope.

Here, the evidence at trial showed that, during the same period in which the Daniels (the primary co-conspirator) induced Petitioner to make four CashApp payments totaling $2,400 to compromised Verizon employee Caitlyn Cobb, Daniels also conspired with at least two additional, uncharged co-conspirators to make numerous other payments to Cobb, resulting in the shipment of fraudulent iPhones throughout the Detroit area. Although the jury returned a conspiracy conviction, nothing in the verdict established that Petitioner agreed to participate in the broader enterprise involving those uncharged individuals or their separate transactions. Yet restitution was imposed based on an expansive conception of the conspiracy that swept in losses attributable to actors unknown to Petitioner and conduct beyond the conspiracy the jury necessarily found she joined. Ultimately, the trial court assessed restitution not only regarding what Petitioner agreed to do, but also encompassing Daniels's entire conspiracy.

A. The restitution assessed against Petitioner improperly relied on facts not found by the jury

As discussed, Petitioner's restitution should have been limited to the scope of the conspiracy she actually agreed to join. Within the scope of the agreement, courts have often permitted restitution awards under the MVRA to include losses caused by co-conspirators when those losses were "reasonably foreseeable." *See, e.g., United States v. Hilliard*, 823 F. App'x 80 (3d Cir. 2020) (collecting cases).

The Government argue that the lower courts' foreseeability findings "do[] not warrant this Court's review" because Petitioner's challenge is merely factual in nature. Opp. 9. But Petitioner does not simply dispute the lower courts' assessment of the evidence. Rather, she challenges the premise that these foreseeability determinations could be made by the sentencing court without corresponding jury findings. The jury found only that Petitioner joined a conspiracy. It did not determine which acts of co-conspirators were within the scope of Petitioner's jointly undertaken activity, nor which resulting losses were reasonably foreseeable to her. Those findings were instead supplied by the district court at sentencing and then used to impose broad restitution liability.

This Court's recent decision in *Ellingburg* reinforces the importance of that distinction. There, the Court recognized that restitution constitutes criminal punishment for purposes of the *ex post facto* clause. Under the Mandatory Victims Restitution Act, this Court emphasized that restitution operates as part of the defendant's criminal sentence: district courts impose restitution through the same procedures governing other criminal penalties, and Congress expressly directed the Sentencing Commission to incorporate restitution into the federal sentencing framework. *Id.* at 167. *Ellingburg* thus confirms what this Court's prior decisions in *Manrique*, 581 U.S. 116 (2017), *Pasquantino*, 544 U.S. 349 (2005), and *Paroline*, 572 U.S. 434 (2014) had already strongly suggested: restitution is not a collateral civil remedy, but a component of criminal punishment itself.

That principle is fully consistent with Petitioner's argument below that she could not be held criminally responsible for restitution far beyond the losses engendered by her proven conduct, consistent with this Court's precedent. Yet the Fifth Circuit's precedent permits sweeping restitution awards based on judicial findings regarding the scope of the conspiracy and the foreseeability of losses—findings never

made by the jury itself. *Ellingburg* underscores the tension between such expansive theories of vicarious liability and this Court's repeated insistence that restitution remain anchored to the criminal adjudication process itself. At minimum, because restitution is a criminal sanction, it must remain closely tied to the conduct the Government actually proved and the jury necessarily found beyond a reasonable doubt.

II. The circuit split concerning restitution in conspiracy cases is enduring and directly bears on the calculation of Petitioner's restitution obligation

The Government acknowledges the various approaches to restitution calculation established within the Third, Seventh, and Eleventh circuits, but minimizes their import for Petitioner's appeal, claiming they would not have made a difference in Petitioner's own calculation. Opp. 12. This conclusion, however, relies on a too-narrow reading of the opinions in question and is contradicted by the record.

Under the Fifth Circuit's restitution regime, a restitution judgment in a conspiracy case may cover any "reasonably foreseeable losses" stemming from conduct of co-conspirators so long as it is characterized as part of a broader scheme. App. 1a-5a, *see also United States v. Chaney*, 964 F.2d 437, 452 (5th Cir. 1992).

By contrast, the Seventh and Third Circuits require that restitution 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); *Akande*, 200 F.3d 136 (3d Cir. 1999). The Eleventh Circuit similarly requires an individualized finding of the scope of the defendant's agreement before an analysis of reasonably foreseeable losses can be broached. *United States v. Barry*, 163 F.4th 1346, 1350 (11th Cir. 2026). The Government focuses solely on the particulars of each case, Opp. 12, ignoring the broad implication of these circuits' divergent approaches: that a determination of the "offense of conviction"—here, specifically, the question of a conspiracy's scope—is a necessary predicate towards calculating restitution; as explained supra 6-8, requiring this analysis makes a meaningful difference in defendant's restitution calculation, considering the evidence of the limits of her agreement with her co-conspirator Daniels, when compared with the totality of his fraudulent exploits.

Even on the terrain of the particular circumstances of the cases described within these opinions, however, the circuits' divergent approaches could have yielded different restitution outcomes for

Petitioner. Attempting to distinguish *Akande*, for example, the Government asserts that Petitioner "was not held liable to pay restitution for losses that predate her agreement to join the conspiracy." Opp. 12. But the record suggests otherwise. The trial evidence showed that the first of the ten phones shipped to Petitioner's address arrived on February 19, 2019. Indictment 7. The first CashApp payment from Petitioner to the compromised Verizon employee occurred nearly a month later, on March 14, 2019. Exhibit 304. Yet the restitution amount imposed against Petitioner included approximately $30,000 in losses that arose before her participation in her co-conpsirator's fraudulent schemes, as reflected in the "Orders not found in EDW" tab, Exhibit 102. Defense counsel specifically objected at sentencing that, at minimum, losses predating Petitioner's entry into the conspiracy should not be included in the calculation. Sent. Tr. 6.

The Government argues that *George* and *Barry* are inapposite because Petitioner "was not ordered to pay restitution for losses that were outside the scope of the conspiracy of which she was a member," and because the Fifth Circuit concluded that she "understood the extent of Daniels' scheme" and willingly participated in it. Opp. 13 (citing Pet.

App. 2a, 5a). But that framing itself demonstrates the Fifth Circuit's departure from the approaches employed in *George* and *Barry*. Rather than undertaking a threshold analysis of the actual offense for which she was convicted—including the temporal and substantive limits of Petitioner's agreement—the Fifth Circuit treated generalized awareness of Daniels' broader activities as sufficient to impose restitution for all "reasonably foreseeable" losses. Pet. App. 2a-5a. The court did not identify when Petitioner joined the conspiracy, what conduct she specifically agreed to undertake, or whether the challenged losses fell within the scope of the conspiracy she personally joined. Instead, once the court concluded that Petitioner knowingly participated in some portion of Daniels' fraud, it effectively collapsed the distinct inquiries of conspiracy membership, conspiracy scope, and restitution into a "foreseeability" analysis. This approach is rejected by circuits that require restitution to be tied to the defendant's actual offense of conviction.

III. This case is an ideal vehicle for resolving the question presented.

This case cleanly presents the disagreement among the circuits concerning the proper scope of restitution in conspiracy prosecutions. Petitioner preserved the issue below, having objected to the proposed restitution calculation at each stage of the proceedings. Nevertheless, the court of appeals rejected her arguments on the merits and held Petitioner jointly and severally liable for $454,077.61 based on the broader conspiracy. Pet. App. 1a-5a.

The case also illustrates the practical consequences of the question presented. Petitioner's own conduct involved ten iPhones shipped to her residence and four CashApp payments totaling $2,400. Yet the restitution judgment imposed below will likely follow Petitioner for the remainder of her life, despite her subsequent efforts at rehabilitation and lawful employment. Whether federal restitution statutes permit such sweeping and effectively lifelong liability based on generalized conspiracy principles is an important and recurring question warranting this Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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